

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KENNETH ANDREW LYNCH,

APPELLANT

APPELLATE CASE NO. 2012-212547

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THE FOLLOWING EXHIBIT'S ARE ON FILE WITH THIS COURT:

STATE'S EXHIBITS # 7 - # 17 (PHOTOS OF APARTMENT), STATE'S # 120 - 122 (PHOTOS OF MEDICINE), STATE'S # 129 (PHOTOS OF CLOTHES IN CLOSET), STATE'S # 130 (PHOTOS OF TOILETRIES), STATE'S # 131 (PHOTOS OF CLOTHES IN CLOSET), STATE'S # 154 (PHOTO OF BLOOD SPLATTER IN CHAIR), STATE'S # 166 (PHOTO), STATE'S # 179 (PHOTO OF SINK), STATE'S # 181 - # 182 (PHOTOS OF TOOTHBRUSHES), STATE'S EXHIBIT # 202 (PHOTO OF GRANDBABY CLOTHES)

1 arrest, providing a different law enforcement agency for
2 the specific person -- purpose, nothing to do with his
3 duties as a Border Patrol agent.

4 All the cases Mr. Myers had before lunch dealt
5 with things he could do in his official job as a Border
6 Patrol agent. Those documents were given to West Columbia
7 for an unrelated investigation for which he no authority,
8 nor -- no dog in the fight. That's our problem with that.

9 So if -- even with the arrest being lawful,
10 anything seized before the arrest still creates a problem.

11 MR. MYERS: I don't know where he's getting all
12 that from, Your Honor. We've submitted the cases to you.
13 If you have a detention at the border, they have the right
14 to do that and you so ruled. They could seize what he
15 had. They had the right to do that, and I think you've so
16 ruled on that, too.

17 Once they call West Columbia and they say a
18 warrant is coming, a felony warrant, he's arrested then.
19 They don't have to have the warrant in hand. State versus
20 Dean says that. You can detain him until the warrant gets
21 there. And you can arrest somebody without a warrant. So
22 I don't know where he's coming from, but God bless him.

23 But here's the thing: That fellow's in
24 detention, they can give him to anybody they want to after
25 they arrest him, and they did. They gave him to the local

1 county jail, then we got him back later on, and those bags
2 came on back, not by him, through valid law enforcement
3 channels.

4 So when we submit to you the law and the facts
5 are one and the same, they're combined together, we ask
6 you to so rule, Your Honor.

7 Thank you, sir.

8 THE COURT: All right. My rulings thus far
9 being the detention at the border and the seizure by the
10 Border Patrol and the Customs agent was lawful within the
11 border exception. The affidavit and representations made
12 to Judge Reinhart were sufficient to meet the burden of
13 probable cause for the issuance of an arrest warrant.

14 I believe that it would be proper for the
15 arrest, or I believe it is proper that the arrest warrant
16 upon issuance once the magistrate signs it, it's valid.
17 And when that happened, the cell phones and all that -- I
18 mean that's not before me, but news travels fast.

19 Once the warrant is issued, it can be
20 communicated verbally to the West Coast very quickly;
21 thus, sometime prior to the reading of the warrant in the
22 state of Washington by the Whatcom County deputy, it was
23 signed on I-26 and driven back to Lexington or West
24 Columbia or one of the police departments, I don't know
25 which one, but it wasn't on the Peak exit, there's no

1 police department out there, and I took judicial notice of
2 that. It was driven somewhere by a police department --
3 you haven't told me which one -- but West Columbia Police
4 Department, I trust. And at sometime all the content,
5 documents in the bag, which were seized lawfully by the
6 customs agent, was transmitted back to West Columbia
7 Police investigators.

8 It was testified by the customs agent that he
9 was not certain of the accuracy of the time clock and time
10 stamp on the fax demarcation on each sheet faxed to the
11 West Columbia Police Department. All that occurred in a
12 close proximity of time, and I don't know exactly what
13 time, but it was in close proximity of time, sometime in
14 the early morning hours of April -- I'm sorry, June 18.
15 That is right day, isn't it, the early morning hours of
16 the 18th?

17 MR. STITELY: Yes, sir.

18 THE COURT: I mean, the search incident to
19 arrest, the seizure at the border, all of that took place
20 in a very short amount of time; it was not days, it was
21 hours, inside of hours, and I find that to be reasonable
22 within the consideration and the application of all the
23 laws you-all presented to me. And I believe that the
24 transmittal of the documents to the West Columbia Police
25 Department are not suppressed for that reason, that they

1 were retrieved from Mr. Lynch by the Border Patrol before
2 the actual issuance of a warrant in -- on the East Coast.
3 I don't know how that time fits together, but the fact
4 that the Border Patrol got them in their hands before the
5 warrant was signed by the magistrate, it was in very close
6 time that that all occurred.

7 So they will not be suppressed for the fact that
8 the Border Patrol seized them certainly before the arrest
9 warrant was signed.

10 I believe that timing's right. I don't know
11 what amount of time it was, but it was some -- it had to
12 be before -- Border Patrol talked to Mr. Lynch before the
13 deputy talked to Judge Reinhart, whatever amount of time
14 that was, I don't know.

15 It won't be suppressed for that reason. There
16 maybe another reason. I don't know.

17 MR. MYERS: May we now proceed with the
18 witnesses now, Your Honor, on the list?

19 THE COURT: All right. Now, what -- what issues
20 are we -- where do we stand now on -- there's three issues
21 that I've dealt with. One was the detention, the issuance
22 of the arrest warrant, two, and the seizure of the
23 documents is three.

24 MR. STITELY: I think we're back to their direct
25 examination of Border Agent Bresee at this point.

1 MR. MYERS: Can we start back before the jury
2 now?

3 THE COURT: We're starting back before a jury,
4 so I believe we need to make certain we appropriately move
5 forward and make a full record.

6 MR. MYERS: Yes, sir.

7 THE COURT: All right.

8 MR. HUBBARD: Your Honor, I would call Agent
9 Bresee.

10 Your Honor, perhaps I should make on the record
11 a motion that whatever testimony he's testified to while
12 on the stand be incorporated from the hearing into the
13 trial, just in case I missed something.

14 THE COURT: And I think you're allowed to do
15 that.

16 MR. STITELY: I believe that's fine.

17 THE COURT: And that is done without objection.

18 And likewise, if we come to another point, I
19 would expect them to give the same consideration to the
20 incorporation of prior testimony from the defense.

21 MR. HUBBARD: Yes, sir.

22 THE COURT: I have no doubt they will.

23 This is off the record.

24 (Discussion off the record.)

25 THE COURT: Now we're back on the record.

1 Agent, tell me your name one more time.

2 THE WITNESS: It's Bresee.

3 THE COURT: Bresee?

4 THE WITNESS: Yeah.

5 THE COURT: Agent Bresee, let me remind you,
6 you're still under oath.

7 THE WITNESS: Yes, Your Honor.

8 NATHAN BRESEE, after previously being duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HUBBARD:

12 Q Agent Bresee, since it's been awhile since we last
13 spoke, I'd like to maybe recap a little bit.

14 A Okay.

15 Q I understand Kenneth Lynch presents himself before
16 you at your counter; is that correct?

17 A That's correct.

18 MR. HUBBARD: Your Honor, I may lead a little
19 bit, if that's all right, just to get up to this point?

20 THE COURT: Sure.

21 BY MR. HUBBARD:

22 Q He produces a birth certificate and a driver's
23 license for his identity, which you required; is that
24 correct?

25 A That's correct.

1 Q And the birth certificate is now in evidence. I
2 believe it is State's Exhibit 18.

3 You inquire why he's being returned to the U.S.
4 and run a criminal background check, correct?

5 A Yes, I do.

6 Q You find out he's a missing person, that's a red
7 flag?

8 A Correct.

9 Q You detain him and search him?

10 A Correct.

11 Q And subsequently you have a more full pat-down search
12 when he's taken into detention and held in your cell?

13 A That is correct.

14 Q You also seized two bags from him, State's IDs 20 and
15 19, a leather-looking bag which is 20, and a canvas bag
16 which is 19; is that correct?

17 A Correct. We detained those bags. We didn't --

18 Q Okay. You've got the bags?

19 A Correct.

20 Q Then you search through those bags?

21 A Yes, I did.

22 Q I want to show you several items that I've shown you
23 before marked as Court's exhibits and see if you recognize
24 them again. This is Court's Exhibit 19. What is this?

25 A That's Kenneth's -- Kenneth Lynch's Greyhound bus

1 ticket from Seattle to Vancouver on the 17th of June, 2006.

2 Q And did that come State's ID 20, the leather-looking
3 bag?

4 A Yes, it did.

5 MR. HUBBARD: Your Honor, I move this into
6 evidence at this time.

7 THE COURT: That will be State's Exhibit No. 21.

8 MR. STITELY: Subject to the previous objection.

9 THE COURT: Your objection is on the record as
10 outlined in the pretrial motion that we just came off the
11 record for.

12 (WHEREUPON, STATE'S Exhibit No. 21 was marked
13 for identification and received into evidence.)

14 MR. MYERS: The two bags, what were their
15 numbers?

16 THE COURT: Solicitor, they're right here.
17 They're 19 and 20, and he's on Court's Exhibit 19, and
18 it's going to become State's Exhibit 21.

19 MR. MYERS: Thank you, Your Honor.

20 MR. HUBBARD: That's pretty good.

21 THE COURT: I've got a good law clerk. She's on
22 this.

23 MR. HUBBARD: Your Honor, for the record, so
24 Your Honor knows and the defense knows, I'm putting it
25 slightly next to the Court's exhibit number in case

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1 anybody wants to check later.

2 BY MR. HUBBARD:

3 Q All right. Agent Bresee, Court's Exhibits 20 and 21,
4 what are these?

5 A They're Motel 6 receipts with Mr. Lynch's name on it
6 for two different dates.

7 Q Okay. Court's Exhibit 20, what date is on there?

8 A June 14th is the check-in date and June 15th is the
9 departure date.

10 Q And then Court's Exhibit 21?

11 A Check-in date of June 12th and a departure date of
12 June 16, 2006. Departure date -- arrival date --
13 June 13th, departure date.

14 MR. HUBBARD: All right. Offer these into
15 evidence.

16 MR. STITELY: Objection, Your Honor.

17 THE COURT: Admitted over objection, State's 22
18 and 23.

19 (WHEREUPON, STATE'S Exhibits Nos. 22-23 were
20 marked for identification and received into
21 evidence.)

22 BY MR. HUBBARD:

23 Q Finally, I want to show you a set of keys marked as
24 Court's Exhibit 22. Do you recognize these keys?

25 A Yes, I do. They came from Mr. Lynch's leather bag.

1 Q Okay. Which is, again, State's ID 20; is that
2 correct?

3 A That's correct.

4 MR. HUBBARD: Your Honor, I offer these into
5 evidence.

6 THE COURT: 24 admitted, notwithstanding the
7 objection renewed.

8 MR. MCGUIRE: Yes, sir.

9 MR. STITELY: Yes. Thank you, sir.

10 (WHEREUPON, STATE'S Exhibit No. 24 was marked
11 for identification and received into evidence.)

12 BY MR. HUBBARD:

13 Q And, again, Agent Bresee you had contacted the
14 sheriff's department in Whatcom County?

15 A That's correct.

16 Q To send somebody and actually serve the arrest
17 warrant on Mr. Lynch?

18 A That's correct.

19 Q And that was done?

20 A Yes, sir.

21 Q And then Mr. Lynch left with that sheriff's
22 department -- or do you remember the deputy's name?

23 A Mr. Polinder.

24 Q Polinder. Mr. Lynch was taken by Deputy Polinder to
25 the Whatcom County jail?

1 A That's correct.

2 Q The two bags that we've been talking about, State's
3 ID 19 and 20, did those depart with him as well?

4 A Yes, they did.

5 Q Okay. I'm going to do one more thing. I want to put
6 up another little board with a map if I could.

7 I want you to orientate yourself. This red dot
8 up here is where?

9 A That's going to be Blaine, Washington.

10 Q Then the red dot I've got here?

11 A Seattle, Washington.

12 MR. HUBBARD: Your Honor, I believe this has not
13 been marked yet.

14 BY MR. HUBBARD:

15 Q But if you would, I'm going to show you this that
16 reads, June 17th, 2006, at 10:45 p.m., U.S./Canadian
17 border, Pacific Highway, POE -- which is point of entry --
18 Blaine, Washington; is that correct?

19 A That's correct.

20 Q All right. I'd ask you, sir, if you'd take that, I'm
21 going to fix it so that it shows Blaine.

22 I will show you another one. It says,
23 June 17th, 2006, 7:48 a.m., Greyhound lines, Seattle,
24 Washington, cash purchase, one-way ticket -- bus ticket,
25 \$26.50..

1 A Uh-huh.

2 Q If I could have you take that, affix it pointing to
3 Seattle.

4 MR. HUBBARD: Your Honor, I'll go ahead and
5 offer the map at this time.

6 MR. STITELY: We wouldn't object to it being a
7 demonstrative piece of evidence. We're not sure that it
8 would count as a regular piece of evidence at this point.

9 MR. HUBBARD: I'm offering it, Your Honor,
10 because it will end up showing the flow, which is
11 evidence, and everything that's going on the board is
12 going to come from the witness.

13 MR. STITELY: I'd just object. It's
14 demonstrative, Your Honor, it's not any piece of evidence
15 that any one witness who is here is creating.

16 THE COURT: I'm going to allow it. It's a map
17 with comments which are being testified to thus far by one
18 witness as to two events.

19 MR. HUBBARD: Yes, sir.

20 Your Honor, this will be State's -- I'm sorry --
21 let me catch up with you here -- Your Honor, this will be
22 State's Exhibit 25.

23 (WHEREUPON, STATE'S Exhibit No. 25 was marked
24 for identification and received into evidence.)

25 MR. HUBBARD: Your Honor, at this time I'll go

1 ahead and offer the two bags, State's ID 20 and
2 State's 19.

3 MR. STITELY: Your Honor, if we may.

4 Your Honor, we're going to object to the chain
5 of custody on those items at this time.

6 MR. HUBBARD: Your Honor, I'd submit that based
7 on the Court's ruling, I don't need to show a chain of
8 custody. These were taken and stayed and remained in law
9 enforcement's custody.

10 MR. STITELY: I don't think we're there yet. I
11 know for a fact that the bags went to West Columbia at
12 some point. I've seen the West Columbia stuff. I think
13 there's still a chain problem.

14 MR. HUBBARD: And I'd say they're non-fungible
15 items, Your Honor. They've been identified non-fungible,
16 it not like drugs or blood, and there's absolutely no
17 testimony they've ever left law enforcement's hands.

18 THE COURT: I don't --

19 MR. STITELY: Your Honor, we don't even really
20 know what's in them.

21 THE COURT: Is there something in them?

22 MR. HUBBARD: There are some items, as we've
23 discussed, and they have remained -- the stuff that's in
24 them that's been there since they were seized. Certain
25 items were pulled out. They're -- they're aware of what

1 items were pulled out because those were stored separately
2 at the West Columbia Police Department. Some of those are
3 the items that I just put in evidence. Everything else is
4 still in the bags.

5 And they've been through these bags, they've had
6 an opportunity to go through them.

7 If there's something in those bags they find
8 very objectionable, perhaps they can state that on the
9 record. But, otherwise, they've always been in the
10 custody of law enforcement.

11 MR. STITELY: There's -- there's no list of
12 what's in those bags, they've never been inventoried.

13 MR. HUBBARD: They've inventoried them. They've
14 have had a chance go through them.

15 MR. STITELY: We have no way of saying what's in
16 those bags is exactly what was in those bags at the time
17 that this agent took them, unless he's going through them
18 item by item and confirm that "this was what was in that
19 bag the day I took it."

20 THE COURT: I'm not going to admit them right
21 yet. And I have no idea what's in them. So perhaps
22 you-all can tie it together if there's something there
23 that's important. It appears they're bags and they were
24 seized, and --

25 MR. HUBBARD: Yes, sir.

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1 THE COURT: -- other than that --

2 MR. HUBBARD: That's fine, Your Honor.

3 THE COURT: -- I'm not certain what they prove.

4 MR. HUBBARD: Yes, sir.

5 BY MR. HUBBARD:

6 Q Agent Bresee, I want to show you a few strips here
7 and see if you can confirm that these are accurate
8 statements. If they're not, we'll correct them.

9 June 17th, 2006, 10:45 p.m., Officer Bresee of
10 U.S. Customs and Border Patrol encounters Lynch; runs
11 checks; discovers Lynch is a missing person; detains Lynch
12 and confiscates bags. Is that correct?

13 A That's correct.

14 Q Here's another strip: June 17th, 2006, Lynch was
15 denied entry into Canada; is that correct?

16 A That's correct.

17 MR. STITELY: Your Honor?

18 THE COURT: Yes, sir.

19 MR. STITELY: We would make a comment that's
20 subject to the hearsay objections to the Canadian form
21 document that didn't come in as hearsay.

22 BY MR. HUBBARD:

23 Q Another one, June 17th, 2006, one-way Greyhound bus
24 ticket in the name of Kenneth Lynch, scheduled to leave at
25 6:15 p.m. from Seattle to arrive at Vancouver at

1 10:25 p.m. found in Lynch's bag.

2 A That's correct.

3 Q Another one, June 18th of 2006, at 3:10 a.m., U.S.

4 Border Patrol confirms grand larceny warrant out of South
5 Carolina and contacts Whatcom County Sheriff's Department.

6 A The only issue is that it wasn't Border Patrol; it
7 was U.S. Customs and Border Protection.

8 Q All right.

9 A But that's my only --

10 THE COURT: While he's working on that, the
11 issue on the hearsay?

12 MR. STITELY: Your Honor, I said that the form
13 from Canada was not admissible, so we would have an
14 objection to that one tab.

15 MR. HUBBARD: I'm changing it.

16 (Pause.)

17 BY MR. HUBBARD:

18 Q All right. U.S. Customs and what?

19 A Border Protection.

20 I just want to get it right.

21 Q Let's try again and see if I've got it right this
22 time.

23 A All right.

24 Q That's why I've been asking you stuff. So if there's
25 something wrong, we've got to change it.

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1 June 18th, 2006, at 3:10 a.m., U.S. Customs and
2 Border Protection confirms grand larceny warrant out of
3 South Carolina and contacts Whatcom County Sheriff's
4 Department.

5 A That's correct.

6 Q All right.

7 THE COURT: Let's go back to the denial of entry
8 real quick so that Mr. Hubbard understands your objection.

9 MR. STITELY: Yes, sir.

10 THE COURT: I didn't rule on it, so I'm going --

11 MR. STITELY: Yes, sir. We would just object to
12 that one tab.

13 When -- when asked earlier, the guy who brought
14 this warrant, this border agent, or U.S. Customs and
15 Border Patrol -- I get it wrong, too -- the piece of paper
16 that -- from Canada was declared hearsay, so we would
17 object to any testimony having to do with the denial from
18 Canada. Your Honor kept it out.

19 THE COURT: I kept it out, but the fact that he
20 was denied entry I don't think was challenged.

21 MR. HUBBARD: No, sir, it wasn't. And there's
22 testimony that was not objected to to that effect. It was
23 the documents that were challenged.

24 THE COURT: The documents were challenged, but
25 I -- he testified to coming back in because -- and that

1 document that was handed to him, albeit hearsay, was
2 notice of the denial.

3 MR. STITELY: Yes, sir.

4 THE COURT: So the document's not in, but the
5 testimony was to the effect that he was denied entry.

6 MR. HUBBARD: Thank you.

7 THE COURT: And I don't believe that's a
8 challenged fact, but perhaps it is.

9 BY MR. HUBBARD:

10 Q Here's another strip: June 14th, 2006, Motel 6
11 receipt found in Lynch's bag.

12 And just so you can see -- let me get these --
13 this would be No. 1263, which is State's Exhibit 22, and
14 the date on there again, arrival date is, what?

15 A 6-14-2006.

16 Q So this reads correctly?

17 A Yes, it does.

18 Q Thank you.

19 Now, referring to State's Exhibit 23, do you see
20 a number on this Motel 6 receipt of 4189?

21 A Yes, I do.

22 Q And the date is June 12th, 2006?

23 A Yes, it is.

24 Q This strip reads, June 12th, 2006, Motel 6 receipt
25 found in Lynch's bag, No. 4189.

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1 A Yes, it does.

2 Q Is that correct?

3 A Yes, it is.

4 MR. HUBBARD: Beg the Court's indulgence.

5 (Pause.)

6 MR. STITELY: Judge, while he's doing that, we
7 would still maintain that anything put on the board would
8 still be subject to the same objections with the items
9 coming --

10 MR. HUBBARD: Hang on. I'm sorry, I was --

11 THE COURT: The -- everything you put on the
12 board, the same objections to the items themselves --

13 MR. STITELY: Yes, sir.

14 THE COURT: -- that he's already made a record
15 of, that I've overruled the objection. So he's making the
16 record --

17 MR. STITELY: Thank you, Your Honor.

18 THE COURT: -- consistent with his prior
19 argument and consistent with his prior objections.

20 MR. STITELY: Thank you, Your Honor.

21 MR. HUBBARD: Agent Bresee, that's all I have at
22 this time.

23 MR. STITELY: May it please the Court, Your
24 Honor.

25 THE COURT: Hang on one second, Mr. Stitely.

1 For the record, your objection's noted, but
2 overruled --

3 MR. STITELY: Yes, sir.

4 THE COURT: -- on the board issues as well as
5 the documents that were received in.

6 All right. I think it's an appropriate time to
7 take a break. We've been going for about an hour and
8 15 minutes, so I want you to wait on your cross. You-all
9 have stayed busy and we've been going an hour and 15. So
10 we'll stand at ease for 15 minutes.

11 MR. STITELY: Yes, sir.

12 (A break was taken.)

13 THE COURT: All right.

14 MR. STITELY: May it please the Court, Your
15 Honor.

16 THE COURT: Yes, sir.

17 MR. STITELY: And we're to assume the same
18 thing, questions asked of him on our side would be brought
19 into the record just like they were on direct.

20 THE COURT: Now, for the purpose of the actual
21 record, you do not wish the court reporter to duplicate
22 them and reprint them in the trial portion of the case?
23 If you do -- I mean we're going to tell her now and she'll
24 do it consistently throughout. I don't there's a
25 necessity for it. I think you-all stating that all those

1 questions and testimony presented are now republished and
2 that's sufficient for the court of review to realize that
3 I'm considering it now as evidence.

4 MR. HUBBARD: Yes, sir. That's -- that's what I
5 certainly intended. I do not want to double the workload
6 on our court reporter, Your Honor.

7 THE COURT: Fair enough?

8 MR. STITELY: Yes, sir.

9 THE COURT: Okay.

10 MR. STITELY: I just didn't want to go back
11 through all my questions on cross. I'll keep it pretty
12 limited, assuming everything else is already in.

13 CROSS-EXAMINATION

14 BY MR. STITELY:

15 Q Officer Bresee, just a few more quick questions.

16 We talked a little bit earlier this morning
17 about the Mexico border. Would your system somewhere -- I
18 take it you have a computer system you can look at when
19 you pull up records, NCICs, et cetera, at your station?

20 A Uh-huh.

21 Q You have to say "yes" for her. I'm sorry.

22 A Yes.

23 Q Okay. If there was a report of Mr. Lynch dealing
24 with Customs or Border Patrol that week down in Mexico,
25 would those kind of notes make their way into your system?

1 A I can't tell you anything about our system
2 specifically, how it operates or anything like that.
3 We're not allowed to speak about it, so -- in that context
4 of how our -- how TEC, the Treasury Enforcement
5 Communication system works, we're not allowed to say how
6 it operates.

7 Q I guess that's for security reasons?

8 A That's correct.

9 Q Can you tell me, was there any proof at all that
10 Mr. Lynch tried to cross the border anywhere else in the
11 United States that week?

12 A Offhand right now, I do not know. I -- I can't
13 recall -- I ran standard checks. I can't recall if he has
14 any border crossings down into Mexico or attempted to
15 cross the border into Mexico or anything like that.

16 I could rerun him and verify that for you guys
17 or we could have somebody at Customs and Border Protection
18 run that if that's something that you requested, but I
19 can't tell you how it operates or anything like that.

20 Q Nothing jumps out in your mind, though, when you
21 recall that, if you'd seen that or anything like that,
22 nothing jumps out at you in particular?

23 A With Mexico? In relation to Mexico?

24 Q Yes.

25 A No, it doesn't.

1 Q Okay. And just once again, when you walk back across
2 the Canada border, you said it would not be very difficult
3 to skirt your patrol station and just kind of walk into
4 the United States, correct?

5 A That's correct.

6 Q And you actually described it as a shot in the dark
7 whether someone would have noticed?

8 A Correct. At that point in the evening, correct.

9 MR. STITELY: That's all the questions I have.
10 Thank you.

11 MR. HUBBARD: No follow-up, Your Honor.

12 THE COURT: All right. Agent Bresee, you may
13 step down.

14 THE WITNESS: Thank you, sir.

15 MR. HUBBARD: We would ask that he be excused
16 and released from the subpoena. I don't know if they have
17 a subpoena on him or not.

18 MR. STITELY: Yes, sir, Your Honor, he can go
19 home.

20 Thank you.

21 THE COURT: Congratulations.

22 THE WITNESS: Thank you.

23 MR. HUBBARD: The State calls Courtney Polinder.
24 Your Honor, I'm assuming he's still under oath.

25 THE COURT: Yes, sir.

1 Deputy, you're still under oath.

2 THE WITNESS: Yes, sir.

3 THE COURT: Proceed again.

4 MR. HUBBARD: And, Your Honor, in an abundance
5 of caution, I am again moving to take the testimony that
6 was heard in the hearing and incorporate it into the
7 trial.

8 THE COURT: It is so incorporated.

9 COURTNEY POLINDER, having been previously duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. HUBBARD:

13 Q Deputy Polinder, I am going to go back through it
14 with you just because I know I'll miss something, but
15 please tell us where you work.

16 A I work for the Whatcom County Sheriff's Office,
17 Whatcom County, Washington.

18 Q How long have you been working for Whatcom?

19 A I've been employed there for about eight and a half
20 years.

21 Q Back in 2006, do you remember coming in contact with
22 Kenneth Lynch?

23 A Yes. I was working on the -- or the night shift
24 patrol and got dispatched to the border to arrest
25 Mr. Lynch on a felony warrant and transport him to jail.

1 Q Okay. And you, in fact, went to the border and
2 encountered Mr. Lynch?

3 A Yes.

4 Q And you had a warrant when you got there; is that
5 correct?

6 A Yes. I was provided a copy of the grand larceny
7 warrant for Mr. Lynch by a couple of customs agents.

8 MR. HUBBARD: Okay. Beg the Court's indulgence.

9 (Pause.)

10 BY MR. HUBBARD:

11 Q Court's Exhibit 24, is that the warrant that you
12 served on Mr. Lynch?

13 A Yes.

14 Q And what is that warrant for?

15 A The offense is listed as grand larceny, \$5,000 or
16 more.

17 Q Okay. When you served that warrant on Mr. Lynch,
18 what was his reaction?

19 A His initial reaction was he looked surprised, he
20 appeared surprised.

21 Q Okay. And when you placed him under arrest, you
22 cuffed him?

23 A Correct.

24 Q And you took him to -- take him in your car?

25 A I walked him out to my vehicle.

1 Q Okay. And what, if anything, did you do at your
2 vehicle?

3 A Once we got out to my vehicle, I searched his person,
4 as we have to before he's placed in our car, didn't find
5 anything on his person and then advised him of his rights.

6 Q Those are the Miranda rights?

7 A Yes, his Miranda warnings.

8 Q And I want to show you Court's Exhibit 25. Do you
9 recognize the photocopy there?

10 A Yes. It's a photocopy of my department-issued
11 Miranda rights form card.

12 Q If you would, I'm going to go ahead and offer this
13 again into evidence, as opposed to a Court's exhibit.

14 MR. STITELY: Subject to any previous
15 objections.

16 THE COURT: Certainly. Subject to objection,
17 it's admitted. That's State's Exhibit 26.

18 (WHEREUPON, STATE'S Exhibit No. 26 was marked
19 for identification and received into evidence.)

20 BY MR. HUBBARD:

21 Q Deputy Polinder, I'm going to ask you again, if you
22 would, to read your card to him, those Miranda rights, as
23 you read those rights to him that evening or early morning
24 hours.

25 A I read: "You have the right to remain silent.

1 Anything you say can be used against you in a court of
2 law.

3 "You have the right at this time to talk to a
4 lawyer and have him present with you while you're being
5 questioned. If you cannot afford to hire a lawyer, one
6 will be appointed to represent you before any questioning,
7 if you wish.

8 "You can decide at any time to exercise these
9 rights and not answer any questions or make any
10 statements."

11 In addition to that, there's two voluntary
12 waiver questions. The first is: "Do you understand each
13 of these rights as I have explained them to you?" And the
14 follow-up question is: "Having these rights in mind, do
15 you wish to talk with us now?"

16 Q Did he say he understood his rights?

17 A He did.

18 Q Did you ask him any questions at that time?

19 A I did not.

20 Q Now, Deputy Polinder, you were out near your car; is
21 that correct?

22 A Yeah, we're standing at the rear of my patrol
23 vehicle, and there's a couple of custom agents in the
24 immediate proximity because they'd carried his possessions
25 out there.

1 Q Those possessions being the two black bags that we've
2 talked about?

3 A Yes.

4 Q State's ID 20 and 19?

5 A Yes.

6 Q These agents, were they -- you say they were present
7 when you read him his rights?

8 A In close proximity, five, ten feet.

9 Q Did Mr. Lynch, at that time when you read him his
10 rights, did he appear to be of sound mind?

11 A Yes.

12 Q He said he understood what you were saying?

13 A Yes.

14 Q Any indication that he might be on medication or
15 suffering from any physical or mental problems?

16 A No.

17 Q Deputy Polinder, when you read him his rights or at
18 any time after reading him his rights, did you make any
19 representations to him that it might be good for him to
20 talk to you?

21 A No.

22 Q Did you suggest that it might be good for him to talk
23 to someone in law enforcement about that warrant?

24 A No.

25 Q Or about any of his legal issues?

1 A No.

2 Q Did you try to goad him or promise him into talking
3 at any time?

4 A No.

5 Q Did you in any way threaten him into talking to you?

6 A No.

7 Q Deputy Polinder, did you at any time attempt to
8 initiate a conversation with the defendant Mr. Lynch in
9 order to get him to talk?

10 A When we were driving to jail, we engaged in a casual
11 conversation where he asked me exactly what the warrant
12 was about. So I informed him at that point what the
13 affidavit said on the warrant.

14 Q Okay. Did he start that conversation or you?

15 A He asked what it was about.

16 Q Okay. And what was his -- let me ask you this: Did
17 he make any statement about that warrant, about inquiring
18 whose vehicle or anything about that warrant, or did he
19 make any denials about knowing whether there was a
20 vehicle?

21 A In -- in our conversation, he denied any involvement
22 with the vehicle in reference to this warrant.

23 Q Okay. What specifically do you remember him saying?

24 A When I told him the -- the basic details of the
25 warrant, he said that he was shocked, and he had no

1 involvement with that vehicle. He never drove a vehicle
2 out west and he rode out west with a friend and then took
3 a bus to the Canadian border from Portland, Oregon.

4 Q Okay. So as to any vehicle that was mentioned in
5 that warrant, he denied any involvement with that vehicle?

6 A Yes.

7 Q And he's -- and I want to do this: At any time while
8 he was talking to you and telling you this, did he ask for
9 an attorney?

10 A No.

11 Q Did he -- at any time while he was talking to you,
12 did he go, You know, I think I'm going to just be quiet?

13 A No.

14 Q Now, let's go through it a little bit more carefully.

15 He said he didn't know anything about the
16 vehicle mentioned in the warrant, correct?

17 A Correct.

18 Q How did he say that he got from South Carolina to
19 Canada or to Blaine, Washington?

20 A He told me that he left South Carolina with a friend.
21 His friend drove a newer Cadillac. He wouldn't tell me --
22 I asked who his friend was, he wouldn't say who it was
23 because he didn't want to bring anybody else into this.

24 And then he said he got to Portland, Oregon,
25 took a bus to Seattle, and then from Seattle, he was

1 taking a bus to Vancouver, B.C. but he got stopped at the
2 border and then detained by the border -- or the customs
3 agents.

4 Q Okay. He said he did not want to bring anyone else
5 into this?

6 A Correct.

7 Q And the vehicle he says he initially rode in was a
8 Cadillac?

9 A He said his friend's vehicle was a newer Cadillac,
10 but he wouldn't elaborate on that.

11 Q And, then, at what point did he say he took a bus?

12 A After he got to Portland, Oregon, he said he took a
13 bus to Seattle and then got on another bus from Seattle
14 with the intention to go to Vancouver but got stopped at
15 the border.

16 Q Okay. Did he indicate when he left South Carolina
17 his intentions of where he was planning to go?

18 A Yeah. He said he was going to go to Canada. I
19 remember him talking about going to Vancouver to see
20 bears, which I thought was a little bit interesting
21 because Vancouver is a large sprawling urban area with
22 millions of people, bears are way up north, but I
23 didn't -- I didn't go into great detail about that. But I
24 remember him saying he was going to Canada see bears.

25 Q And his initial intention, though, as he left South

1 Carolina was, I'm going to Canada?

2 A Correct.

3 Q According to what he said to you?

4 A What he told me.

5 Q Did he mention anything about being stopped in Texas?

6 A No.

7 Q Did he mention anything about Portia Washington and
8 her granddaughter?

9 A Yes.

10 Q What did he say about them?

11 A In our conversation, he said he used -- he said he
12 used to live with a woman named Portia Washington and her
13 granddaughter, and that he decided to leave for awhile to
14 see Canada. And then he told me he quit his job a few
15 days ago and then was going to go back home after he'd
16 seen Canada.

17 Q Now, when he says "go back home," was your impression
18 as to this girlfriend Portia Washington, did he say she
19 used to be my girlfriend?

20 A He didn't say that --

21 Q Or used to live with Portia Washington?

22 A Correct. He said he used live with a woman named
23 Portia and her granddaughter.

24 Q Okay. So how did you take that? Did you take that
25 when he would go back to South Carolina, he would be going

1 back to live with Portia Washington? What was your
2 impression?

3 MR. STITELY: Judge, I'm going to object to
4 speculation at this point as to what he thinks Mr. Lynch
5 might have had in mind when he said that.

6 MR. HUBBARD: I'm asking his impression of
7 what -- how he took that during this conversation.

8 MR. STITELY: It's still speculation.

9 MR. HUBBARD: I think it's relevant if they're
10 going to say he's going back home. It's -- it's clearly
11 relevant. And this officer, based on the context of the
12 statement, I think he can make that impression, what his
13 impression was.

14 MR. STITELY: If we were to offer that in
15 defense at some point, they're more than welcome to recall
16 him to impeach him, but at this point, he's just
17 speculating.

18 THE COURT: I think he can answer questions
19 about what did he -- where was home, but as far as -- tell
20 me the question one more time.

21 MR. HUBBARD: I asked him, the base was, he used
22 to live with Portia Washington. So my question was, was
23 it your impression that when he goes back home, he would
24 not be going back to her or would he be going back to her.
25 I think I can ask an either/or, Your Honor.

1 MR. STITELY: It's speculation. He's guessing,
2 what do you think he meant by the word "home." I mean --

3 MR. HUBBARD: Not exactly. What I'm asking is
4 when he said he used to live with Portia Washington.

5 THE COURT: You said that.

6 MR. HUBBARD: Yes. I want to know how he took
7 that. When the defendant later says he's going back home,
8 is home just going back to South Carolina or is it going
9 back to the apartment where Portia Washington lived with
10 her granddaughter?

11 THE COURT: I'm going to sustain his objection
12 unless he said something else. He can say what the
13 comments were, and what those comments were is what they
14 were.

15 MR. HUBBARD: All right.

16 THE COURT: That perhaps can become a question
17 of fact.

18 MR. HUBBARD: Okay. Thank you, Your Honor.

19 BY MR. HUBBARD:

20 Q Deputy, just to make sure, it was "used to live,"
21 those were his words?

22 A Yes, "used to live."

23 Q And you said he had decided to see Canada, leave for
24 awhile and see Canada?

25 A That's what he told me.

1 Q Okay. And he had quit his job. When did he say he
2 had quit his job?

3 A He told me he had quit it a few days ago.

4 Q What -- what did he say after that?

5 A Immediately after that, he basically just told me he
6 was going to go see Canada and then go back home. And
7 then he stated, "My problems are my problems," and he
8 didn't want to -- he said he didn't want to say anything
9 else about it.

10 So at that point, we'd arrived at the jail about
11 that time. I offered while we were in my car to -- he had
12 an opportunity give a voluntary statement and I would
13 write it for him and let him, you know, say, Hey, I wasn't
14 involved with the vehicle or whatever he wanted, but he
15 refused to give a statement.

16 Q All right. And were you there when he was booked in?

17 A Yes, I was there through that process.

18 Q And did you check the bags in, State's ID 20 and 19,
19 did you turn those into evidence?

20 A Yes. After he was all booked in, I gathered his
21 clothes, then went downstairs and logged those into
22 evidence.

23 Q Okay. And what paperwork did you do after that?

24 A During the booking process, I completed a probable
25 cause statement for his booking, took the evidence down,

1 completed all the evidence ID tags, made an evidence entry
2 log, and then I believe I secured my shift for that night,
3 wrote my report 8 p.m. the following night, Pacific time.

4 Q On the probable cause statement, does it have on that
5 statement an address that was listed for Mr. Lynch?

6 A Yeah. When we were at the -- at the booking window,
7 the corrections deputy for the jail asked -- always asks
8 the arrestees for their information, and he provided an
9 address to them at that time, so I wrote that address down
10 on the form.

11 Q Can you tell us what address Mr. Lynch provided your
12 officer?

13 A The address he provided was Apache Road, No. 7-M --
14 excuse me -- which is the Park Place Apartments at West
15 Cayce, South Carolina 29033.

16 Q West Cayce?

17 A West Cayce, correct.

18 Q When you were turning him in, turned the bags into
19 evidence, did you check these bag for anything?

20 A Yes. Per our policy, we have to go through all the
21 possessions and ensure there's no weapons or anything
22 that's biohazard or dangerous. I went through everything.

23 Q What about cash?

24 A Yes. If we come across any significant amount of
25 currency, we'd have to book that as a separate item.

1 Q Did you find cash in the bags?

2 A Zero cash, just some miscellaneous change.

3 Q All right. As far as the change, what are we talking
4 about? I mean, is there like a big bucket of change or --
5 or --

6 A No. There's a little plastic bag that had just
7 miscellaneous coins. I didn't count it out, but it
8 couldn't be more than five or ten dollars at the most.

9 Q Okay. And that's the only money he had on him?

10 A That's the only money, yes.

11 Q Okay. And just for the record, who was the evidence
12 custodian you turned the bags into?

13 A There's actually -- there's two at the time that
14 would do that. I secured the evidence obviously before
15 business hours, and then they came in. It would one of
16 two people at the time. It was a Lynette Morris Reed or
17 Connie Meyer.

18 Q Those two individuals, what was their job in your
19 office?

20 A They're -- they're termed evidence technicians and
21 records specialists, but those two people along with the
22 records manager are the three people that have keys to our
23 evidence facility, lockdown facility. And so in the
24 morning, they would come to work, take all the evidence
25 that the deputies enter in during the evening and log it

1 in their system and in their secure room.

2 Q Since another law enforcement agency, in this case
3 West Columbia, was going to be coming and taking Mr. Lynch
4 and these bags, did they inventory or break down the bags
5 to take anything out of the bags, to your knowledge?

6 A To any knowledge, they didn't take anything out and
7 remove them, other than one item to make a photocopy,
8 which was returned to the bags.

9 Q Was all that done in the evidence area?

10 A That would all be done by the technicians in the
11 secure evidence area.

12 Q Okay. These bags never left their custody and
13 control?

14 A No.

15 Q Until South Carolina came and retrieved them?

16 A Correct.

17 Q And the bags were held until West Columbia came and
18 retrieved them, correct?

19 A Yes.

20 Q And Mr. Lynch was also in your jail until he was
21 retrieved by West Columbia?

22 A Yes.

23 MR. HUBBARD: Beg the Court's indulgence.

24 (Pause.)

25 BY MR. HUBBARD:

1 Q I'm going to show you a strip here for our timeline
2 board. I want to read it to you: June 18, 2006, at
3 4 o'clock a.m., Deputy Polinder with Whatcom County
4 Sheriff's Department serves warrant on Lynch and
5 transports to Whatcom County jail.

6 A That's correct.

7 MR. HUBBARD: Okay. Deputy Polinder, I believe
8 that's all I have at this time.

9 Please answer any questions the defense has.

10 CROSS-EXAMINATION

11 BY MR. STITELY:

12 Q Hello again, Deputy Polinder. I actually don't have
13 too many questions for you, just a couple.

14 When you arrested Mr. Lynch that night, was his
15 demeanor okay with you? Was he rude to you or anything
16 like that?

17 A No. He was cooperative.

18 Q Okay. Did he try to run?

19 A No. There's really no opportunity, but, no.

20 Q Did he fuss with you about cuffs or anything like
21 that?

22 A No.

23 Q Okay. Had an okay conversation with you, wasn't
24 angry, threatening, anything like that, while you guys
25 ride in the car?

1 A No, just casual.

2 Q Okay. Mr. Hubbard had asked, he had no money on him.

3 Did Mr. Lynch in his possession or whatever,
4 have several credit cards, bank cards?

5 A I don't recall.

6 Q How about a gold Rolex watch?

7 A I don't recall that either.

8 Q Okay.

9 MR. STITELY: Beg the Court's indulgence. I'm
10 sorry, I'm not sure where they are in here.

11 (Pause.)

12 BY MR. STITELY:

13 Q Do you remember there being credit cards or a gold
14 Rolex watch in those bags?

15 A I know he had some cards. I don't remember what
16 specifically.

17 It wouldn't surprise me if there's a watch, but
18 it's not an item that we would single out in that -- in
19 this instance.

20 Q And what was the item -- you said you took something
21 out and photographed it or copied it. What was that? You
22 told Mr. Hubbard you took something out and photographed
23 it or copied it.

24 A Oh, a receipt? That was done at a later time in the
25 evidence, so I didn't do that that night.

COURTNEY POLINDER - Cross-Exam by Mr. Stitely

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1 Q What was that, do you know?

2 A I believe it was a Motel 6 receipt or a hotel receipt
3 of some sort.

4 Q And it was taken out of those bags at that -- at some
5 later time?

6 A Our evidence technician did it at some later time,
7 yeah.

8 MR. STITELY: Nothing further. Thank you.

9 MR. HUBBARD: Nothing further.

10 The State calls Brenda Wilson.

11 THE COURT: You may step down.

12 MR. HUBBARD: Your Honor, I would ask that he be
13 excused and released from his subpoena.

14 MR. STITELY: That's fine, Your Honor. Thank
15 you.

16 THE COURT: So released.

17 BRENDA D. WILSON, after being duly sworn,
18 testified as follows:

19 THE CLERK: Have a seat, please, ma'am.

20 Once you're seated, speak up loud and clear,
21 stating your full name, spelling your last for the record,
22 please.

23 THE WITNESS: Brenda D. Wilson, W-I-L-S-O-N.

24 DIRECT EXAMINATION

25 BY MR. HUBBARD:

1 Q Agent Wilson, where do you work?

2 A For the Federal Bureau of Investigation.

3 Q Where is your office located?

4 A Bellingham, Washington.

5 Q And did at some point you get involved in the case
6 involving Kenneth Lynch?

7 A Yes, I did.

8 Q Can you tell us how you got involved and when?

9 A I got involved with my supervisor calling me, telling
10 me to go up and interview Mr. Lynch at the Whatcom County
11 jail on June 19.

12 Q 2006?

13 A 2006.

14 Q Did you take anybody with you to go conduct that
15 interview?

16 A Bellingham Police Detective Glen Hutchings.

17 Q And is there any reason why you chose Glen?

18 A One of the -- my partner, my FBI partner in
19 Bellingham was not available at the time, so I took --
20 Bellingham Police Department, we always take two to do an
21 interview.

22 Q And had you worked with Detective Glen Hutchings
23 before?

24 A Yes, I had.

25 Q An experienced law enforcement officer?

BRENDA WILSON - Direct Exam by Mr. Hubbard

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1 A Very experienced.

2 Q Hold on just a moment, Agent, please.

3 Do you remember, was it about 11:30 to 11:50
4 when you-all made contact with the defendant?

5 A That sounds about correct.

6 Q In the morning?

7 A Correct.

8 Q And that was at the jail?

9 A That's correct.

10 Q Now -- and you-all conducted an interview?

11 A Yes, we did.

12 Q Where did the actual interview take place?

13 A In one of the interview rooms.

14 Q Okay. And what --

15 MR. STITELY: Your Honor, at this time we have
16 an Edwards issue to take up.

17 Your Honor, I think this interview happened
18 while Mr. Lynch was represented by counsel who was not
19 there at the time. We would like to take up the Edwards
20 issue.

21 MR. HUBBARD: Do you want me to ask a few more
22 questions about counsel before --

23 THE COURT: Sure. Go ahead and ask those
24 questions.

25 BY MR. HUBBARD:

1 Q All right. So this is somewhere between 11:30 and
2 11:50 that you -- you and Detective Hutchings meet
3 Mr. Lynch?

4 A That is correct.

5 Q It's outside of the jail itself, but he's in an
6 interview room?

7 A Correct.

8 Q Did you read him his Miranda rights?

9 A I did.

10 Q What, if anything, did you use to assist you in that?

11 A The standard FD-395 form that the FBI uses.

12 Q Do you have that with you?

13 A I do.

14 Q And if you would, you've got it in front of you,
15 would you please explain for the Court the process you
16 used in reading Mr. Lynch his rights.

17 A I read the form from -- directly verbatim from the
18 form itself. I read everything to him. I then asked if
19 he understood it, to which he replied yes, he did. I then
20 had him read each statement, initial next to each
21 statement, and then sign the form that he understood it.

22 Q Would you do this for the Court, would you please
23 read it out loud as you did to Mr. Lynch that day?

24 A Certainly.

25 "Before you -- before we ask you any questions,

1 you must understand your rights.

2 "You have the right to remain silent. Anything
3 you say can be used against you in court.

4 "You have the right to talk to a lawyer for
5 advice before we ask you any questions. You have the
6 right to have a lawyer with you during the questioning.
7 If you cannot afford a lawyer, one will be appointed for
8 you before any questioning, if you wish. If you decide to
9 answer questions now without a lawyer present, you have
10 the right to stop answering at any time.

11 "I have read this statement of my rights and
12 understand my rights -- what my rights are. At this time,
13 I am willing to answer questions without a lawyer
14 present."

15 Q Did he say he understood his rights?

16 A He did.

17 Q And then, you said you asked him to read those as
18 well?

19 A I did.

20 Q Now, when you asked him to do that, did you ask him
21 to just read it to himself or what did you do?

22 A No, I asked him to read it out loud so that I knew
23 that he understood his -- that he knew how to read and
24 write.

25 Q Okay. And in doing so also, did it show that he --

1 he had an awareness and he was cognizant of what was going
2 on?

3 A Yes, it did.

4 Q Any indication that he was under the influence of any
5 drugs or alcohol?

6 A No.

7 Q Did he at any time when you're reading these rights
8 about you have a right to an attorney, did he go, Whoa,
9 whoa, whoa, I've already got an attorney?

10 A No, he did not.

11 Q Did he at any time that you were with him suggest or
12 even imply that he had an attorney?

13 A No, he did not.

14 Q And I take it, he didn't mention any attorney by
15 name?

16 A No, he did not.

17 Q Or make any reference to an attorney?

18 A No, he did not.

19 Q Did you make any promises or even subtle hints that
20 it would be helpful for him if he would talk to you?

21 A That he would talk to me?

22 Q Yes.

23 A Yes.

24 Q Did you make any promises to him?

25 A Oh, no, I did not. I said it would be helpful for

1 him if he talked to us, but I didn't make him any promises
2 or anything like that.

3 Q Okay. All right. You didn't lay anything out there
4 saying, Listen, if you talk to us, we'll help you out
5 or --

6 A No.

7 Q -- you won't get charged?

8 A No. no.

9 Q Did you make any threats?

10 A No.

11 Q Anything that might be implied or construed as a
12 threat, like, Listen, if you don't talk to us, here's
13 what's going happen to you?

14 A No.

15 Q Was this interview -- was it -- was it a friendly
16 tone or did it get aggressive at any time?

17 A No, it was friendly.

18 Q What was his demeanor throughout this process?

19 A Very friendly and open.

20 Q Did he at any time say, You know, I've had enough, I
21 don't want talk anymore?

22 A At the very end, he did.

23 Q When he did that, did the conversation stop?

24 A Yes, it did.

25 Q And again, during the interview, at any time during

1 the course of the interview, did he say, Listen, I do have
2 an attorney or I'd like to have an attorney?

3 A At the very end, he said, I think I might need to
4 talk to an attorney, and that at that point is when we
5 stopped the interview and he was -- then we left.

6 Q To an attorney?

7 A To an attorney.

8 Q An attorney.

9 A He didn't specifically specify a particular one by
10 name or anything.

11 Q Did he say, "to my attorney"?

12 A No, "an attorney."

13 Q Okay. As if he wanted to get one?

14 A Correct.

15 Q Now, let me ask you, the process there, are you aware
16 of the process by which someone is in jail, gets an
17 attorney? Is there, like, an appearance date when
18 attorneys are assigned or appointed?

19 A During the initial appearance, he would be
20 appointed -- the person would be appointed a counsel or
21 they would have their counsel present if they already have
22 one.

23 Q And were you aware of a time that he and other folks
24 were going to be scheduled for a first appearance?

25 A I knew it was in the afternoon, around 3 or 4 that

1 afternoon.

2 Q Okay. And, of course, you're talking to him around
3 11:30, 11:50, somewhere in that range?

4 A That's correct.

5 Q That's when it begins?

6 A That's when it begins.

7 Q Is it fair to say you know that if you're not through
8 by the time it's time for him to go to the first
9 appearance, then you're stuck with whatever you got?

10 A That's correct.

11 Q And was it your understanding that when he goes to
12 the first appearance, that's when he gets an attorney?

13 A That's correct.

14 Q You've been working in that area for how long?

15 A In Bellingham, a little over six years.

16 Q I'd like to go into the actual statement itself.

17 MR. STITELY: Now, Your Honor, at this time, we
18 do have an Edwards issue.

19 I think the testimony will flesh out and we have
20 a video of the courtroom that even indicates that they
21 were delayed in getting him over to the courtroom because
22 the FBI was continuing to interrogate when he'd already
23 been appointed a public defender. I think through her
24 testimony right there she said, "Well, we had to hurry up
25 and get his questioning before he could see his public

1 defender."

2 MR. HUBBARD: Your Honor, if they want to take
3 this time to put up some witnesses as oppose to argument,
4 that's fine.

5 THE COURT: We'll do that.

6 MR. STITELY: We got -- we got the tape.

7 MR. HUBBARD: You don't have a witness?

8 MR. STITELY: We can ask her if she's seen the
9 tape, seen the proceedings.

10 MR. HUBBARD: She's my witness.

11 Your Honor, she's already told me what I need to
12 know.

13 If he's got a tape, I think he needs a warm body
14 that can say what the tape is and why it's valid.

15 This officer, this agent with the FBI, said she
16 was done before he went to court.

17 MR. STITELY: Your Honor, the tape itself is a
18 self-authenticating document that's kept in the regular
19 course of business.

20 Unless Mr. Hubbard wants to agree that his
21 actual arraignment with a judge and the FBI knew that they
22 were taking him over there with the judge, even making the
23 comment, Oh, we have to -- we had to wait on you to make
24 sure we did you last, we had wait on you so the FBI could
25 finish talking to you, if they really have a problem with

1 the Court seeing the whole exhibit, I mean, I think she
2 can testify whether or not this is a courtroom, this is
3 the proceeding that they took him straight to.

4 MR. HUBBARD: Your Honor, I tell you what. I'll
5 make it easy. Rather than Mr. Stitely testifying, I'll
6 let the tape speak for itself and we won't object.

7 THE COURT: Very well.

8 For the Court's record, please identify this
9 tape for me, Mr. Stitely.

10 MR. STITELY: Judge, it's actually like an hour
11 and 15 minutes into this. I intend to skip forward to the
12 point when he appears on camera. I don't think you want
13 to hear the whole thing.

14 MR. HUBBARD: Your Honor, I tell you what. We
15 do have a witness from the clerk's office that we
16 subpoenaed and rather -- I'd really like this agent to be
17 able to go home tomorrow. If it'll expedite things, we'll
18 bring her out if that's all right with Your Honor.

19 THE COURT: Let's do that.

20 MR. HUBBARD: And I guess Agent Wilson can step
21 out here.

22 THE COURT: She can stand down for a few
23 moments.

24 DARLENE L. PETERSON, after being duly sworn,
25 testified as follows:

1 THE CLERK: Have a seat right up there.
2 Once you're seated, speak up loud and clear.
3 State your full name, spelling your last for the record,
4 please.

5 THE WITNESS: Darlene L. Peterson,
6 P-E-T-E-R-S-O-N.

7 DIRECT EXAMINATION

8 BY MR. STITELY:

9 Q Hello, Ms. Peterson. You're a clerk at the Whatcom
10 County court?

11 A Whatcom County Superior Court, yes.

12 Q Okay. And you're the clerk who, I guess, has
13 something to do with criminal proceedings?

14 A I'm the Chief Deputy Clerk of Superior Court, so I'm
15 over all of superior court.

16 Q Okay. And superior court handles criminal and civil,
17 I take it?

18 A Correct.

19 Q Okay. I have a tape. We're going to try to show it.

20 If you saw a tape that had four camera blocks
21 with individuals in it, would you be able to identify it
22 as courtroom proceedings that were recorded from your
23 courtroom?

24 A I would.

25 Q Okay. Do your standard -- in your practice, do you

1 keep recordings of courtroom proceedings?

2 A We do.

3 Q Do you know if a copy of courtroom proceedings
4 specifically involving a Kenneth Lynch from June of 2006
5 were turned over to police?

6 A I do.

7 Q Okay.

8 MR. GRAHAM: Your Honor, if I can make it
9 simple, I believe that Ms. Peterson has a certified copy
10 that she brought with her from Washington. It should be
11 the same, but she hasn't seen that one. She has seen the
12 one in her possession.

13 THE WITNESS: I do have a certified copy.

14 BY MR. STITELY:

15 Q Fantastic. Will it play in a DVD player or are we
16 going to have to get a computer?

17 A It's the same disc that you're holding except that
18 this one is certified from our court.

19 MR. STITELY: I guess we would mark this as a
20 Court's exhibit or straight into evidence?

21 MR. GRAHAM: It would be a Court's exhibit. I
22 don't think a jury would get to see it, Your Honor.

23 THE COURT: Court's Exhibit 27.

24 (WHEREUPON, The Court's Exhibit No. 27 was
25 marked for purposes of the record.)

1 BY MR. STITELY:

2 Q While that's loading here, I have a couple of
3 questions.

4 Are you familiar with the procedure in which
5 someone with an extradition situation would get a lawyer?

6 A I am.

7 Q Okay. Could you tell us a little bit about that
8 procedure?

9 A Certainly.

10 Underneath my jurisdiction, I have an Office of
11 Assigned Counsel. That Office of Assigned Counsel is
12 generally where inmates from the jail would get appointed
13 an attorney.

14 In the morning, they look over the jail booking
15 records. When they look that over, there is a certain
16 designation for someone who is a fugitive from another
17 state. It would have the letters "FUG" for fugitive.
18 They would know in that case that they did not need to
19 interview the defendant because that defendant will be
20 getting a public defender without having to qualify.

21 Q At what point would you say that the public
22 defender's office is appointed to an individual then?

23 A That would be at the first appearance.

24 Q Okay. And when is that?

25 A Generally, they are every day at 3 p.m. on weekdays

1 for superior court.

2 Q Okay. And specific to this case, do you know that --
3 if Mr. Lynch's appearance was delayed because he was still
4 being questioned by the FBI?

5 A It was not.

6 Generally what happens is, we have a lot of
7 cases that are heard and they just kind of take them one
8 at a time. We usually start with the lesser cases and
9 work our way up. And so it starts at 3, but there's not a
10 specific order. If -- anything that started at the
11 3 o'clock hearing and went through to the end of the
12 hearing would be on that calendar.

13 Q Okay. Do you know when the public defender would
14 have received a file on Mr. Lynch to prepare for that
15 3 o'clock hearing?

16 A There would not have been one.

17 The charging document that was filed by the
18 prosecutor was filed at approximately 11:24 in the
19 morning. But, actually, in the first appearance hearing,
20 as you will note on the tape, the judge is the one at that
21 hearing that appoints the public defender, and then on
22 that day he also signed an order ordering that the public
23 defender be appointed and explained that to the defendant.
24 And then we have a clerk that stamps that in court, filed
25 in open court, and so we have that document showing that

1 that's when the Court ordered that the public defender be
2 appointed.

3 Q Do you happen to have Mr. Lynch's file with you? Is
4 that one of the items you brought with you?

5 A I do have a certified copy of the file as well.

6 Q May I look at that, please?

7 A Absolutely.

8 (Pause.)

9 BY MR. STITELY:

10 Q Thank you, ma'am. I'll give you this back.

11 A I would also tell you, this is a copy, a certified
12 copy. Our records are electronic.

13 Q Yes, ma'am.

14 Now, would there have been a way for the public
15 defender's office to meet with Mr. Lynch between that
16 11:24 when the solicitor's -- or the prosecutor's -- when
17 the prosecutor's office created that file and when he
18 would have had his hearing?

19 A Generally, the normal course of business, I know that
20 the public defender's office will send over an
21 investigator. But usually the first time that they meet
22 is in the court. And in this particular instance, there
23 is a portion of the tape where his attorney introduces
24 himself to the defendant and says hi and then takes him
25 away from the hearing to have a meeting with him.

1 Q Tell me about that investigator part. When would the
2 investigator have gone over to see Mr. Lynch, potentially?

3 A There's no set time. That would be up to the public
4 defender's office, and I'd have no knowledge of that.

5 Q And -- and before I get to playing this, the time
6 that you said that they opened a file was at 11:24?

7 A No, sir.

8 Q Okay.

9 A That was the time that the prosecutor filed the
10 charging document.

11 One of the preliminaries before a public
12 defender can be appointed is that you -- a defendant must
13 be charged. That's part of our Superior Court -- Superior
14 Court policy. So at that time, that is just when the
15 prosecuting attorney's office -- or in your case, it would
16 be a solicitor -- filed their charging document.

17 Q And that was --

18 A That's not an opening of the file, per se.

19 Q I got you. And that was 11:24 that morning on the
20 19th?

21 A Yes, it was.

22 Q Would that document have made it to Mr. Lynch
23 immediately? When is that document served on him, the
24 actual formal charging document?

25 A No, it wouldn't. He wouldn't have most likely known

1 until the first appearance. And on the tape, I think it
2 brings that up.

3 Q All right. It doesn't look -- you wouldn't know the
4 specific time stamp, do you?

5 A I would.

6 Q Perfect.

7 A It is 4:23.

8 Probably if you start about 4:22, you'll catch
9 the whole thing.

10 (Video played but not transcribed.)

11 THE WITNESS: The courtroom that you saw in the
12 beginning was all of the other defendants that were
13 waiting for their hearing as well at the same hearing.

14 If you wanted to see the part where the
15 defendant met his attorney, you would need to back it up.

16 BY MR. STITELY:

17 Q Okay.

18 A And --

19 Q We'll -- we'll go ahead and just do the part that
20 we're almost to right now.

21 A Okay.

22 (Video paused.)

23 BY MR. STITELY:

24 Q So it would be your position that this is the first
25 time that Mr. Lynch is able to meet with his public

1 defender?

2 A At 4 o'clock is when you see Mr. Rainey, his public
3 defender, introducing himself.

4 He -- the public defender handles almost all of
5 the defendants on that calendar, so generally what happens
6 is, he'll meet one. There is a side room to the left
7 where he'll take each defendant and meet with them and go
8 over what they're going to do that day.

9 On this particular day, there were two public
10 defenders and Mr. Rainey had the bulk of the calendar, but
11 there was another public defender that also had a few
12 defendants, and so they take turns bringing the clients
13 up. And I believe it's at approximately 4 o'clock when
14 Mr. Lynch, the defendant, comes in, and Mr. Rainey comes
15 up and introduces himself and they go off to that side
16 room to have a meeting.

17 Q Do you not have court on -- on the weekends?

18 A We do not.

19 Q They don't set bonds on the weekends out there?

20 A What they do is, for instance, I believe Mr. Lynch
21 was brought to the jail Sunday morning. That afternoon,
22 the prosecutor/solicitor would have had a phone call with
23 a judge -- they do it by phone -- which I think we call it
24 probable cause hearing, I'm not exactly sure what it would
25 be called here.

1 Q Okay. And what --

2 A And that is just for the arrest to make sure that --
3 why the defendant is there.

4 Q And then they won't do anything with his bond for, in
5 this case, more than, like, 30 -- 36 hours, or whatever,
6 until they get him for his appearance?

7 A As we watch the film, you'll see that the bond is set
8 at this hearing.

9 Q But there wouldn't have been anything before this for
10 the first day and a half he's held?

11 A No.

12 (Video resumed and then paused.)

13 BY MR. STITELY:

14 Q Is that a fair and accurate depiction of the
15 proceedings that day?

16 A Yes, sir.

17 Q Oh, sorry.

18 (Video resumed and then concluded.)

19 BY MR. STITELY:

20 Q Is that a fair and accurate depiction of the
21 proceedings that day?

22 A Yes, sir.

23 MR. STITELY: At this time we'd offer Court's
24 No. 27 into evidence.

25 MR. GRAHAM: Your Honor, it would never -- I

1 don't think it would go in front of a jury. It's a legal
2 question, and it shouldn't be in evidence. It should be
3 marked as a Court's exhibit.

4 THE COURT: It is marked as a Court's exhibit,
5 is it not, Exhibit 27?

6 MR. STITELY: It is Court's Exhibit 27. We'd
7 ask it be offered as Defense Exhibit 4.

8 MR. GRAHAM: Your Honor, a jury would never see
9 that. Under what theory would a jury see that? That's a
10 legal question for Your Honor and --

11 THE COURT: And didn't we go into motions mode
12 with the raising of the Edwards issue?

13 MR. STITELY: We did.

14 THE COURT: And Mr. Hubbard questioned the FBI
15 agent about the rights advised and threats made, promises
16 made, the demeanor and everything, understanding, and then
17 abated the questions at that point because we brought the
18 clerk in to see this. We haven't really ruled -- we
19 haven't got out of motions mode, I don't believe.

20 MR. STITELY: Your Honor, we -- I guess -- I
21 don't know if they're going to call her again. We'll be
22 happy to put her under subpoena again and call her at a
23 later time so she can authenticate it again.

24 We still intend to offer it. It's a direct
25 impeachment with everything that the Cayce or West

1 Columbia Police Department will show. And further it goes
2 into our argument that --

3 MR. MYERS: Excuse me, call her again for what?
4 I don't understand.

5 MR. STITELY: To authenticate it again if we
6 have to and go through the whole proceeding.

7 MR. MYERS: We don't need to do that.

8 THE COURT: All right. Here's where my
9 confusion is. I understand the proceeding we just saw was
10 a bond hearing more or less in the state of Washington
11 after counsel is appointed in the state of Washington.
12 I'm not certain on the timing of the appointment. I
13 didn't -- I wasn't clear on that from the testimony of the
14 clerk. And then I wasn't clear on the timing of when the
15 questioning ended. I'm -- I think for the purpose of this
16 hearing, I need to hear that. Do we have that or did I
17 miss it?

18 MR. STITELY: This -- this happens at 4 o'clock.
19 And as the public defender said -- we've had a lot of
20 trouble trying to get him. He lives on a sailboat,
21 apparently. He sails from Hawaii is what he told us.

22 He -- it's clear that his office's appointed and
23 sent an investigator over. He's brought in at the end of
24 the tape. The FBI kept him away from his opportunity to
25 see his lawyer. That's going to fall under Edwards. I

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1 think this is probative as specifically to that issue and
2 admissible as such.

3 MR. GRAHAM: Your Honor, he's arguing a motion
4 before I've even had a chance to cross-examine this
5 witness.

6 THE COURT: I agree with you. I want to
7 break -- I want to break real quick, but I want to try to
8 get this done today because I'm not going -- we're not
9 going to break for today. I'm going to step in the back
10 and give you a break, I believe. So with what we've got,
11 you-all are allowed that opportunity. So we'll stand down
12 for a few minutes.

13 (A break was taken.)

14 THE COURT: All right.

15 Go ahead.

16 MR. GRAHAM: Thank you.

17 CROSS-EXAMINATION

18 BY MR. GRAHAM:

19 Q Ms. Peterson, you are the Chief Deputy Clerk of Court
20 for Whatcom County; is that correct?

21 A Yes, sir.

22 Q And underneath that, you have juvenile court, drug
23 court, family court, civil court, and criminal court?

24 A Yes, sir.

25 Q One of the things underneath you is the Office of

1 Assigned Counsel?

2 A That is correct.

3 Q And those are the people who actually go and screen
4 inmates?

5 A That is correct.

6 Q To see whether they're -- financially they're
7 qualified for an attorney or not?

8 A That is correct.

9 Q Isn't it true that nobody would have screened
10 Mr. Lynch from your office? There's no question he's
11 eventually going to get an attorney, so there's no reason
12 to screen him?

13 A That is correct.

14 Q Do you have in your file or are you aware of any
15 request that Mr. Lynch ever made asking for an attorney?

16 A No, he did not.

17 Q You had testified earlier about a complaint being
18 filed at 11:24 a.m. that Monday morning?

19 A That's correct.

20 Q What kind of complaint are you talking about?

21 A I am talking about the fugitive complaint. It is
22 created by the prosecuting attorney's office. I have a
23 copy of it. And in that complaint, it alleges what the
24 charge is that they're going to be asking to hold
25 Mr. Lynch on.

1 Q You're not appointing Mr. Lynch an attorney on grand
2 larceny charges out of Lexington County, South Carolina,
3 correct?

4 A No, sir. This is just a temporary appointment of
5 counsel.

6 Q For the fugitive complaint?

7 A Correct.

8 Q So technically, there's nothing pending in your court
9 system at all until that fugitive complaint's filed; is
10 that correct?

11 A Correct.

12 MR. GRAHAM: Your Honor, we'd ask that that
13 document of the fugitive complaint be made a Court's
14 exhibit.

15 THE COURT: Court's Exhibit 28.

16 THE WITNESS: It -- it is a part of the
17 attachment of the whole file. Did you want me to take it
18 apart, Your Honor?

19 MR. GRAHAM: Your Honor, we'll just make that
20 whole file a Court's exhibit. That's all the certified
21 records that she brought with her.

22 THE COURT: The whole file will be made Court's
23 Exhibit 28.

24 MR. GRAHAM: Your Honor, should she mark it now?

25 THE COURT: Sure. That would be easier.

1 (WHEREUPON, The Court's Exhibit No. 28 was
2 marked for purposes of the record.)

3 BY MR. GRAHAM:

4 Q All right. Ms. Peterson, although he's being held,
5 the first time he's charged in Whatcom County is when the
6 prosecutor filed that paperwork at 11:24 a.m. Monday
7 morning?

8 A That is when the prosecutor notifies the Court of
9 their intention to hold him on that charge.

10 Q He wouldn't have been served a copy of that complaint
11 at that time, would he?

12 A No.

13 Q That complaint gets served on him in the court
14 hearing at the initial appearance at 3 o'clock or later;
15 isn't that true?

16 A Correct.

17 Q So Mr. Lynch wouldn't have known exactly what was
18 coming, it would not have been served on him yet?

19 A No, sir.

20 Q The proceeding -- and you've watched this entire
21 tape -- and that has all the appearances, all the first
22 appearances on June 19th starting roughly at 3 o'clock; is
23 that correct?

24 A That is correct.

25 Q Inmates are brought in and out at all times, aren't

1 they?

2 A Correct.

3 Q It's not surprising to you that Mr. Lynch was one of
4 the last ones to go because he's wanted on a fugitive
5 warrant from an out-of-state warrant involving missing
6 bodies and theft of cars. Would that surprise you at all?

7 A No, and not just because of the charges. It's very
8 random, and it's as the attorneys have time to meet each
9 one, then they come up before the bench.

10 Q You had testified earlier, I believe, that there was
11 something on here at 4 o'clock when Mr. Rainey, the public
12 defender that's ultimately appointed, meets Mr. Lynch for
13 the first time; is that correct?

14 A That's correct.

15 Q Let me play that for you and ask you to explain to
16 the Court what you're talking about.

17 (Video played.)

18 THE WITNESS: If you look at the bottom bar on
19 the left, that square is where it's most obvious.

20 BY MR. GRAHAM:

21 Q You're talking about the bottom lower left panel?

22 A Yes, number three.

23 This may have been started too late. My memory
24 thought it was about 4 o'clock and this is almost 4:02.

25 Where the guard is standing at the back of the

1 courtroom on the left is the entrance from the cells.

2 Q Are there interview rooms where the attorneys and the
3 clients can talk?

4 A They are on the left in front of where the guard is
5 standing.

6 There's only one entrance into them. There's no
7 exit. And the attorneys can go in there with their
8 clients -- in fact, that's probably where the attorneys
9 are right now -- and then they come back out into the jail
10 courtroom.

11 Q The door at the back of the courtroom where the
12 deputy is standing, where does that door go to?

13 A That leads out into the actual cell block where the
14 inmates are kept. It's a several-story high prison or
15 jail, but that is one of the floors of the courtroom.

16 This is where -- let's see -- that door just
17 opened. I can't tell if someone's coming in or not.

18 Q Where that laser light is --

19 A Yes.

20 Q -- that's the door you're talking about that goes
21 back into the jail?

22 A Yes.

23 Q And who are we going to see walk through that door?

24 A Shortly we should see the defendant walk through the
25 door.

1 Q The interview room that you're talking about over
2 here on this side?

3 A That's correct. It appears that the jailer just went
4 out or the officer just went out to get somebody. That
5 might be him getting Mr. Lynch.

6 Q These three people sitting in the courtroom now, who
7 are they?

8 A They're other defendants.

9 Q Are anybody other than defendants' lawyers and deputy
10 sheriffs allowed in that room other than court staff?

11 A Other than court staff, no.

12 Q The people up here, those would be family and friends
13 and they're in another location?

14 A They are actually in the basement of our courthouse,
15 which is alongside of our jail, and that is called our
16 viewing room, and that is where any family or other people
17 who want to be at the hearing, they can be in that room.

18 There's a TV in there that they're facing, and
19 they can actually watch what's going on in the third cell.

20 There is also a microphone up at that table in
21 the viewing room where the Court can converse with
22 whoever's in there.

23 I believe the door's opening now.

24 Q And what are we seeing right here?

25 A We're seeing Mr. Lynch come into the courtroom and be

1 seated in the front row.

2 Q And who is that right there?

3 A Mr. Rainey.

4 (Video paused.)

5 BY MR. GRAHAM:

6 Q And what they doing?

7 A If -- if you listen, you can hear Mr. Rainey
8 introducing himself, and then Mr. Lynch follows him to the
9 interview room.

10 Q Introducing himself as if they're meeting for the
11 first time?

12 A Yes, sir.

13 (Video resumed.)

14 BY MR. GRAHAM:

15 Q And they're going into an interview room, and then?

16 A Yes. And they'll be in the interview for awhile, and
17 then we'll notice that they come back out.

18 (Video concluded.)

19 THE WITNESS: And then Mr. Rainey sits back --
20 or excuse me -- Mr. Lynch sits back where he was while
21 they finish with other defendants, and then Mr. Lynch is
22 called up.

23 BY MR. GRAHAM:

24 Q You've worked in that courtroom before?

25 A Yes, sir. I've worked there since 1991.

1 Q How many years have you been with the clerk's office
2 or with the county dealing with the criminal system,
3 including settings like these?

4 A With the county, I've been there 21 years.

5 Q Knowing the system as you do, what, if any, opinion
6 do you have as to whether Mr. Rainey would have met with
7 Mr. Lynch prior to this meeting right here?

8 MR. STITELY: I'm going to object to items
9 outside of her personal knowledge. Unless she asked Mr.
10 Rainey specifically, she'd be speculating.

11 MR. GRAHAM: Your Honor, the question just had
12 to do with what, if any, opinion based on her work she --
13 I mean, I agree she can't say that didn't happen for sure,
14 but she sure can give an opinion of whether it should have
15 happened or not based on the running of the court system
16 there.

17 MR. STITELY: I mean, Mr. Rainey on the video
18 says that someone from his office was out there this
19 morning to see him. I mean, anything she said would just
20 be a guess.

21 THE COURT: I'll allow her to answer the
22 question. Your objection is noted.

23 BY MR. GRAHAM:

24 Q Ms. Peterson, based on all your experience with the
25 Whatcom County Clerk of Court's office, what, if any,

1 opinion do you have whether Mr. Rainey would have met with
2 Mr. Lynch prior to this meeting?

3 A In my office as staff, as a probation officer, as a
4 Clerk of the Court, when the attorneys come to the first
5 appearance hearings at 3 o'clock is generally when they
6 first meet the clients, they take them into the interview
7 rooms, talk about whatever they're going to do at that --
8 what's going to happen at that first appearance, and then
9 the Commissioner Verge, who is in block number four, will
10 advise them that they're being appointed a public defender
11 and actually signs the order which appoints the public
12 defender at that time.

13 Q What, if any -- isn't it true that in Whatcom County
14 if the -- with the Clerk's office and you getting people
15 screened and helping the Court -- because you-all don't
16 appoint attorneys, do you?

17 A No, sir.

18 Q That's for the judge to do?

19 A Absolutely.

20 Q So even if you screen somebody, and even if they're a
21 fugitive going to have an attorney eventually, the Court,
22 the judge on the bench is the one who signs the order who
23 appoints the attorney?

24 A That's correct. We're merely screening for
25 eligibility.

1 Q Isn't it true by written policy that an attorney
2 couldn't even have been assigned to Mr. Lynch until after
3 the fugitive complaint was filed?

4 A That is correct.

5 Q And the first time that he would get an attorney
6 would be when the judge on the screen appoints him one at
7 4:23 in the afternoon?

8 A Yes. When the judge signed that order, it's called
9 Order and Warrant of Arrest and Detention of Fugitive
10 Complaint.

11 Q Okay.

12 A That is when it becomes official that he is appointed
13 a public defender.

14 Q And that's one of the documents in the Court exhibit
15 that we have in front of you right now?

16 A Correct.

17 Q And that document is signed in court at the same time
18 the judge orally says that he's appointing the public
19 defender?

20 A Correct.

21 Q What does that order -- okay.

22 Would you read that order and publish it to the
23 Court, please?

24 A Would you like me to read the whole thing?

25 Q Please.

1 A "Whereas in the Superior Court for said county held
2 at Bellingham, Washington, the prosecuting attorney for
3 said Whatcom County did present and file a fugitive
4 complaint on the part of the state of Washington charging
5 the above-named Kenneth Andrew Lynch with being a fugitive
6 from the state of South Carolina, committed as follows:
7 That on the 18th day of June, 2006, Whatcom County
8 Sheriff's Office received a teletyped message warrant from
9 the West Columbia Police Department located in the city of
10 West Columbia, county of Lexington, state of South
11 Carolina, stating that the above-named defendant, Kenneth
12 Andrew Lynch, is wanted in said county and state for the
13 commission of a felony; to wit, grant larceny, \$5,000 or
14 more, and that Warrant No. J-030721 was issued on
15 June 18th, 2006, by a municipal for the state of South
16 Carolina for his apprehension; that bail has been set in
17 the amount of no bail; that a photocopy of the teletyped
18 message warrant is attached hereto and is incorporated by
19 reference as if set out in full herein.

20 "Whereas, said defendant Kenneth Andrew Lynch
21 has made his first appearance before the above-entitled
22 court on June 19th, 2006, and was advised of his right to
23 counsel and the public defender was appointed to represent
24 him or he waived his right to counsel, and the Court
25 finding that the defendant is the person described in the

1 fugitive complaint, and that he is a fugitive from the
2 state of South Carolina.

3 "The state of South Carolina has 30 days from
4 the date of current date to secure and perfect an arrest
5 under the governor's warrant of extradition.

6 "Now, therefore, in the name of the state of
7 Washington, you are commanded forthwith to apprehend,
8 arrest and detain the said Kenneth Andrew Lynch and bring
9 him before this court to answer said charge and aid such
10 further order as the court may make in the premises,
11 provided that if the governor's warrant is served upon the
12 defendant within the above-mentioned 30-day period, he
13 shall be released to the custody of the agent from the
14 demanding state.

15 "If the governor's warrant has not arrived
16 within 30 days, he shall forthwith be produced in court
17 for further proceedings upon expiration of said 30 days.

18 "It is further ordered that you may accept bail
19 in the sum of \$500,000 upon the condition that the
20 defendant remain available at a Whatcom County address,
21 and that he shall report to the court on 7-20-06 at 8:30,
22 if not sooner surrendered to the agents of the demanding
23 state. \$500,000."

24 And then it is signed by Commissioner Thomas L.
25 Verge.

1 Q Specifically, what does the order say about him being
2 appointed a public defender?

3 A That he was advised of his right to counsel, and that
4 the public defender was appointed to represent him.

5 Q That happened in court, and that's the order that
6 reflects what we saw on the screen?

7 A That is correct. And it is stamped with a file (sic)
8 that says, "Filed in open court," and the commissioner has
9 signed it.

10 Q And on the -- on the screen, that was approximately
11 at 4:24, I think, when he was appointed a public defender?

12 A I believe so.

13 Q Right now on the screen it says 4 o'clock and about
14 30 seconds. That's about the time when the defendant
15 comes in and when Mr. Rainey meets him for the first time?

16 A That's correct.

17 Q In either this video, which you obviously viewed
18 numerous times, or any written requests or anything you're
19 aware of, did Mr. Lynch ever affirmatively ask for an
20 attorney?

21 A No, sir, not that I'm aware of.

22 Q So what you are aware of is that one was appointed to
23 him without him saying a word?

24 A Correct.

25 MR. GRAHAM: Thank you, Ms. Peterson.

1 Q Specifically, what does the order say about him being
2 appointed a public defender?

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4 the public defender was appointed to represent him.

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11 at 4:24, I think, when he was appointed a public defender?

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14 30 seconds. That's about the time when the defendant
15 comes in and when Mr. Rainey meets him for the first time?

16 A That's correct.

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18 numerous times, or any written requests or anything you're
19 aware of, did Mr. Lynch ever affirmatively ask for an
20 attorney?

21 A No, sir, not that I'm aware of.

22 Q So what you are aware of is that one was appointed to
23 him without him saying a word?

24 A Correct.

25 MR. GRAHAM: Thank you, Ms. Peterson.

1 who is a fugitive is going to get appointed an attorney.

2 Q And it's the standard practice, you said, for a
3 fugitive warrant, they get a public defender, as
4 Mr. Graham said, without even having to say a word?

5 A That is our office policy.

6 Q Okay. And you like to think law enforcement who had
7 been working specifically in Bellingham County for those
8 six years before that would probably know that? Common
9 sense, as you said?

10 A Our policy is that they can interview up until first
11 appearance unless an attorney has appeared privately or
12 something as such.

13 Q My only other question is about when you read that
14 long document, it said South Carolina said no bond or no
15 bail. Where are you-all getting that from?

16 A From the warrant that they issued.

17 Evidently, my understanding is that when South
18 Carolina puts out a warrant, they don't have to attach a
19 bail. But in Washington, you have to have bail set. So
20 South Carolina had no bail on their warrant, but we have
21 to set a bail and that's why the commissioner went through
22 that process.

23 Q Okay. It's not -- so that's just saying that you-all
24 are assigning a bail to that warrant for Washington's
25 sake?

1 A For Washington's sake, we're the ones that assigned
2 that \$500,000.

3 MR. STITELY: Your Honor, one second, please.

4 (Pause.)

5 BY MR. STITELY:

6 Q You know, and this is just a question, we do it this
7 way in South Carolina. Is there a list generated -- and
8 you may not know this -- by the jail that goes to the
9 public defender's office about people that were brought to
10 the jail over the weekend, or anything like that?

11 A Yes. It's called a booking record.

12 Q And it goes to the public defender's office probably
13 at the beginning of the week?

14 A It is on a universal computer system. Jail booking
15 records are accessible to the prosecutor, public defender,
16 to our office, to many offices.

17 We have a practice in the morning that after our
18 assigned counsel people go over and interview, they will
19 also resend a list of everybody that they know that
20 they've interviewed, and so it's available in several
21 different ways.

22 Q And that would be -- that information would be
23 transmitted to the public defender's office and your -- we
24 would call them court-appointed lawyers, but like your
25 court-appointed lawyer list would be transmitted in that

1 Monday morning?

2 A It would go to the offices, but it's just the booking
3 record, it's just the jail record of what they've done
4 over the weekend.

5 Q Okay.

6 A I have an example of one.

7 Q Yeah. Let me look at that if you don't mind.

8 A Please.

9 Q Does that have Mr. Lynch on it?

10 A No, this is one -- no, this is one from April, and
11 that's the standard jail record that everybody looks at.

12 Q And a record like this would be transmitted to public
13 defenders, the court-appointed list and whoever else?

14 A They would have access to it. It's in the system and
15 you just access it.

16 MR. STITELY: Just so the Court gets to see it,
17 we'll mark it as a Court's exhibit if you don't mind.

18 (WHEREUPON, The Court's Exhibit No. 29 was
19 marked for purposes of the record.)

20 BY MR. STITELY:

21 Q And to your knowledge -- I didn't ask. Can we have
22 that copy for the Court's exhibit? You didn't need that
23 for your file, did you?

24 A No, sir.

25 Q Okay. To your knowledge, the public defender's

1 office could use that to send one of their people out to
2 sign up their new customers, fair?

3 A I don't believe so because just because somebody was
4 booked -- well, if a defendant asked -- called his
5 attorney, but otherwise there's been no charge filed, the
6 person has just been arrested, so I don't think that they
7 would be -- I don't know.

8 Q Is there --

9 A I'm not a public defender. I don't know how their
10 process works.

11 Q Is there a free manner by which individuals who are
12 in the Whatcom County Detention Center can get in touch
13 with a public defender's office and make that phone call
14 for free?

15 A Not until they were appointed.

16 Q So is there any way that an individual -- so they
17 can't call out to the public defender's office without
18 being appointed on that order?

19 A No. We -- we don't -- they don't have any phone
20 access as well.

21 In our jail, we have what the inmates call
22 kites, and it's a piece of paper where they can send a
23 request or whatever. That would be the only way, but
24 until someone's appointed, there would be nowhere to send
25 it.

1 Q So do you have the ability to get in touch with the
2 public defender's office if you're in the jail if they
3 didn't send a representative out to meet with you?

4 A No. You wouldn't even know you had one coming.
5 There -- there's no communication at that point.

6 Once he had gone, or any defendant, goes to
7 court, and the Court tells you you have a public defender,
8 then you can send kites, you can tell them you want to
9 meet with them.

10 I don't believe you can call them. We don't
11 have phone access for inmates.

12 Q Okay. And, I guess, the other thing is, the
13 information we heard the prosecutor -- she's the
14 prosecutor, right, now?

15 A Yes.

16 Q -- say is there any copy of the information that
17 she's relying upon in her presentation to the judge
18 anywhere in a court file or a clerk's file or anything
19 like that in Whatcom County?

20 A No.

21 MR. GRAHAM: Objection, Your Honor, I'm not
22 sure --

23 THE WITNESS: -- not that I'm aware.

24 MR. GRAHAM: -- I'm not sure of the relevance of
25 the hearing for exactly that question. We're talking

1 about attorney issues and he's going into prosecutor
2 records.

3 MR. STITELY: And I apologize. I just assumed
4 this was the only time we were going to talk to this
5 particular witness. If we're going to go ahead and call
6 her again after the fact, I guess I can ask her then.

7 I'll hold that question and recall her in a
8 second.

9 MR. GRAHAM: I mean, she might already have
10 answered it again. After this hearing, we don't have any
11 intention of calling her back.

12 MR. STITELY: I'd like to ask her the question,
13 then we could just call her done for the day.

14 THE COURT: Ask her what?

15 BY MR. STITELY:

16 Q The information that the prosecutor was stating, does
17 that ever come to the clerk's office or anything that
18 there'd be a firm record of that -- that you would ever
19 see or that would be kept?

20 When she said that she had gotten information
21 that he had been denied at Mexico and West Columbia told
22 him this, told him that, is there any record of all that
23 that's filed with the court at any time?

24 A No, sir.

25 Q So nothing that would be in your records?

1 A No.

2 MR. STITELY: That was my question.

3 Thank you.

4 THE COURT: Ma'am, I've got a question about the
5 four cameras that were done. Is that done on all the bond
6 hearings?

7 THE WITNESS: All hearings that we don't have a
8 court reporter. Our trial courtrooms have a court
9 reporter and so they're not recorded on tape. Any hearing
10 in the jail and in any of our commissioner's courtrooms,
11 they're appointed by the judges as commissioners. We do
12 all of those and they're all recorded.

13 THE COURT: Interesting. Okay. Thank you,
14 ma'am.

15 MR. STITELY: That's a good process. I wish we
16 had it.

17 MR. GRAHAM: Your Honor, we don't have any other
18 questions for Ms. Peterson. We ask that she be excused
19 and released from her subpoena.

20 MR. STITELY: Your Honor, that's fine with us.

21 THE COURT: Ms. Peterson, thank you for coming
22 to South Carolina.

23 THE WITNESS: Thank you, sir.

24 MR. HUBBARD: Brenda Wilson.

25 THE COURT: Wait a minute.

1 MR. STITELY: Your Honor, you've heard the
2 breadth of our Edwards motion. We have no other witness.
3 We have some we might have called, but we're not going to
4 call them; we're just going to rely on what we've heard so
5 far.

6 Our position would be there's some testimony at
7 least out there through the court's records that an
8 individual came up to see him. Through this witness we've
9 heard he had no other way to even call out to request
10 them, and it's a standard practice, they knew he was going
11 to have a public defender, may have already had one, and
12 they hurried to interrogate him before the Court could get
13 ahold of him.

14 I think it's a deliberate attempt where there's
15 been some testimony he already had a public defender to
16 try to circumvent his use of an attorney during
17 questioning.

18 THE COURT: Well, I guess the testimony I heard
19 was at 11:24 was a clocked-in copy of the filing of the
20 complaint that initiated the process to have the hearing
21 set at 3. But his attorney wasn't appointed until 4:23.

22 MR. STITELY: We have the -- the only thing we
23 have on that is the testimony of Mr. Rainey. We've tried
24 to get in touch with him. He apparently sails around the
25 world. We've heard that he was going on a six-month trip

1 the last time we talked to him and he'd be sailing. But
2 as he said, someone from his office went out there.

3 I asked the clerk, "Is that a deliberate tact?"
4 She says, "Well, yeah, that's what the police do, they try
5 to circumvent this person having a lawyer."

6 It would be our position, someone came out to
7 see him. At that point, the public defender's engaged.
8 Any questioning done was a direct intent to circumvent --
9 they didn't even tell him he had a lawyer or would have a
10 lawyer. He was interviewed that morning by somebody, and
11 they went ahead and questioned him in a direct attempt to
12 get it in before he got to court.

13 THE COURT: But as I understood the testimony of
14 the FBI agent, the young lady, she advised him of the
15 standard Miranda warnings and rights, asked him questions,
16 his understanding of his rights, asked him if he waived
17 them before she asked questions, and he waived those
18 rights. And then sometime -- and I don't know how long
19 the interview was -- but he said, "I need to talk to a
20 lawyer," or made some comment about a lawyer, and then
21 immediately at that raising of the right, of a comment
22 about needing counsel, the interview was terminated.

23 It's my understanding reading Miranda and all
24 the cases that follow is that's exactly what the
25 interviewer, the police, is supposed to do. And that

1 seems plausible and reasonable under all the rights that
2 are inherent with Miranda, the law that we go by.

3 So I've heard nothing which contradicts her
4 testimony that rights were given, they were reasonably
5 given, they were understanding (sic), he appeared to
6 understand them, he voluntarily waived them, he's not
7 promised, threatened, coerced, offered any promises, which
8 she was thorough in her presentation of the waiver of the
9 Miranda rights, and it seems that she did -- Mr. Lynch
10 waived them to her up until the point he invoked the right
11 to counsel, so that would be my ruling in this Edwards
12 hearing, as I'll call it.

13 MR. STITELY: Thank you, Your Honor.

14 MR. GRAHAM: Your Honor, just briefly, if I can
15 make a note for the record.

16 The Sixth Amendment doesn't even attach until
17 the critical stage. The critical stage is when he's
18 brought to the courtroom and he's served with that
19 warrant. He's appointed an -- he's appointed an attorney
20 at that time. That's the first time he can.

21 It's his right, he has to invoke it. There is
22 no evidence that he ever invoked his right. What there is
23 evidence of is that he's meeting his attorney for the
24 first time.

25 I just wanted that on the record, Your Honor.

1 Thank you.

2 THE COURT: Very good. All right.

3 Are you ready to call her?

4 MR. STITELY: Judge, so we don't waive -- we
5 disagree with the Solicitor's position on that. We think
6 that the critical stage happened at the very first contact
7 when he was detained by --

8 THE COURT: I understand. And your record's
9 protected.

10 MR. HUBBARD: Brenda Wilson.

11 THE COURT: Yes. Bring her back.

12 MR. MYERS: Your Honor, I think that concludes
13 most of the legal arguments.

14 We've got this lady and about three more that
15 they'll try to get up this afternoon, and some of them
16 will be very short.

17 THE COURT: All right. Now, having ruled that
18 the rights were given properly under the case law, which
19 has been explained thoroughly since Miranda and the
20 applicable South Carolina law up until the -- I mean, in
21 this case as far as I know, the entire statement given to
22 the FBI agent was with advice and waiver of Miranda
23 rights. Thus, continue your questions. We're now back in
24 trial mode.

25 MR. HUBBARD: And, Your Honor, just as an

1 abundance of caution, I'd move to incorporate his rights
2 in the Jackson v Denno into the trial as well.

3 THE COURT: So done. The testimony as well?

4 MR. HUBBARD: We didn't actually get to the
5 statement itself, I don't think.

6 THE COURT: All right.

7 MR. HUBBARD: Yes, sir.

8 CONTINUED DIRECT EXAMINATION

9 BY MR. HUBBARD:

10 Q Agent Wilson, at any time when you --

11 THE COURT: Hang on one second.

12 MR. STITELY: The Clerk of Court and all her
13 testimony we're going to go ahead and move in. I mean, I
14 would have called her again directly if he would have. I
15 thought that's what we just cleared up.

16 MR. HUBBARD: I'm talking about this witness.

17 MR. STITELY: Okay. I'm just making sure
18 that --

19 THE COURT: Okay. Fair enough.

20 Go ahead.

21 BY MR. HUBBARD:

22 Q Agent Wilson, did anyone while you and
23 Detective Hutchinson -- Hutchings were interviewing the
24 defendant, did anyone come and knock on the door and say,
25 Hey, we need to take Mr. Lynch to court?

1 A No.

2 Q At no time were you-all interrupted?

3 A No.

4 Q Okay. Now, you had an Advice of Rights form that you
5 read?

6 A I did.

7 Q And may I see it?

8 A (Witness complies.)

9 MR. HUBBARD: Your Honor, I'd like to offer the
10 Advice of Rights form into evidence at this time.

11 THE COURT: Without objection?

12 MR. STITELY: Oh, I'm sorry, Judge.

13 THE COURT: That'll be State's 27.

14 (WHEREUPON, STATE'S Exhibit No. 27 was marked
15 for identification and received into evidence.)

16 BY MR. HUBBARD:

17 Q Agent Wilson, did you and Detective Hutchings have a
18 kind of a plan going in on who would be the primary and
19 who would be more of a note taker or what was the
20 arrangement, if you had any?

21 A I would take the notes and Glen would ask -- or
22 Officer Hutchings would ask the questions.

23 Q Were you also able to interject and ask questions as
24 well?

25 A Yes. Yes, I asked clarifying questions or if there

1 was something that was -- which I misunderstood, I would
2 ask.

3 Q Okay. Did Mr. Lynch provide an address for you-all?

4 A He did.

5 Q Can you please tell us what that address was?

6 A Park Place Apartment -- Park Place Apartments,
7 apartment 7-M, West Caynce, South Carolina 29033.

8 Q West Caynce?

9 A That's how I had it typed, C-A-Y-N-C-E.

10 Q Wasn't West Columbia?

11 A No, sir.

12 Q Okay. And did he mention his employment?

13 A He said he had worked at Bob Bennett Ford.

14 Q Did -- you say he worked. Did he mention anything
15 about whether he was still working at Bob Bennett Ford?

16 A He said he had quit the Friday, on June 9th.

17 Q All right. And did he say what his plans were after
18 quitting?

19 A He was going to attend a 15-day truck driving school,
20 Warner Truck Driving, I believe.

21 Q Did he say where that would be?

22 A Somewhere -- somewhere in South Carolina. I would
23 have to refer to my notes specifically.

24 Q If you would, that would be great.

25 A Newberry, South Carolina.

1 Q Okay. So he was going to attend Warner Truck Driving
2 School in Newberry, South Carolina?

3 A That's correct.

4 Q A 15-day course?

5 A That's correct.

6 Q And these were the big 18-wheelers he's talking
7 about?

8 A That is correct.

9 Q As for him being detained, did he have any questions
10 as to why he was being held?

11 A He stated that he did not know why he was being
12 detained until earlier that morning, until about 4:30 that
13 morning, he'd been told that he was -- supposedly he had
14 taken somebody's car.

15 Q Did he act -- did he indicate that he had no idea
16 whose car he was supposed to have taken?

17 A Yes, that is correct.

18 Q How did he claim to have gotten from South Carolina
19 to Washington state?

20 A He claimed that he had gone across country with
21 friends, that they had driven him and he had stayed at
22 their houses and gone up to Portland, Oregon, and then
23 caught a bus from Portland to Seattle, and then a bus to
24 Seattle and he was trying to get to Canada.

25 Q Did he ever mention who these friends were?

1 A He -- he refused to identify the friends.

2 Q But the friends were plural?

3 A Yes, correct.

4 Q What, if anything, did he mention about Portia
5 Washington?

6 A He said that they were boyfriend/girlfriend
7 approximately two years prior to that, and that about a
8 year prior, they had become more like roommates.

9 Q And did he indicate where she had worked?

10 A He said she also worked at Bob Bennett Ford.

11 Q When did he say he last saw Portia Washington?

12 A That Friday that he quit Bob Bennett Ford, on
13 June 9th.

14 Q What, if anything, did he convey about informing her
15 of his intentions?

16 A He said he told her that on the ride home that he had
17 quit and that he wasn't going to be coming back to work on
18 Monday.

19 Q Did he mention a young girl by the name of Cassandra,
20 also known to us as **Cassandra L. [REDACTED]**

21 A Yes, he did.

22 Q What did he -- what did he say about her?

23 A He said it was Portia's granddaughter and that she
24 was approximately seven years old.

25 Q Did he indicate why she was living in that house as

1 well or the apartment as well?

2 A He said he didn't know. He said it wasn't his
3 business, and he didn't want to get in their business.

4 Q So he didn't know why -- what was Portia's
5 relationship to Cassandra or Angelica?

6 A Grandmother and granddaughter.

7 Q And he's saying he didn't know why she was raising --
8 why Portia was raising Cassandra?

9 A That's correct.

10 Q Did you-all ever ask him if he ever babysat or took
11 care of Cassandra --

12 A Yes.

13 Q -- or Angelica?

14 A Yes, we did.

15 Q And what was his response?

16 A He said, "No."

17 Q No. Did you-all ask him about the documents he had
18 at the border?

19 A We did.

20 Q What did you-all ask him about?

21 A Which documents he had with him, to which he replied
22 he had his South Carolina driver's license and his birth
23 certificate.

24 Q If -- why did he say he had a driver's license and a
25 birth certificate?

1 A I don't -- I don't know.

2 Q Oh, he just said that's what he had in his --

3 A That's what he had in his possession.

4 Q So when he left South Carolina, he took those items
5 with him?

6 A Correct.

7 Q Did he mention anything about Portia Washington's
8 car? When you-all first initially were asking him
9 about -- did you-all ask him about Portia Washington's
10 car, let me ask you that?

11 A We did.

12 Q Did you-all ask him if he knew what type of car she
13 had?

14 A We did.

15 Q What was his response?

16 A He said he believed it to be a 2005 or 2006 Ford
17 Focus, brown -- a brown-colored car.

18 Q Did he indicate when he had last seen that vehicle?

19 A He indicated on Friday, that Friday that he -- that
20 she drove him home from work on the 9th of June.

21 Q She drove him home?

22 A Yes.

23 Q And that was the last time he saw the car?

24 A That's correct.

25 Q Did you ask him if he had taken that car or did you

1 or Glen ask him if he had taken that car outside of South
2 Carolina?

3 A We did.

4 Q And what was his response?

5 A That no, he had not.

6 Q Did he indicate whether he had been in contact with
7 Portia Washington or her granddaughter since that Friday?

8 A He indicated he had not.

9 Q What, if anything, did he say about his relationship
10 with Portia Washington at the time he decided to leave?

11 A He said it was amicable. He said that she didn't
12 understand why he'd quit, but she was okay with it.

13 Q Did he say anything about how things were at home and
14 why he was leaving?

15 A He said they seemed to be fine.

16 Q Okay. Did he say anything about things weren't good
17 for a long time?

18 A He did say -- he did say that things were going bad
19 and they were going to go their separate ways.

20 Q Okay. And this is about the time he decided to quit
21 his job and take a trip?

22 A Correct. He said he needed to take a breather.

23 Q Did he say anything about Portia's -- what was going
24 on with Portia at Bob Bennett Ford, whether she was
25 struggling at work or doing well at work?

1 A He indicated that she was in over her head, and that
2 everybody at Bob Bennett Ford knew it, and that she was
3 going to fail at the job that she had taken over.

4 Q When he left that Friday, when he claimed to have
5 left that Friday, did he indicate who he was leaving with
6 or if he was leaving with anybody at all?

7 A He indicated that he was going to leave with a friend
8 who wanted to go to Georgia and that he was going to catch
9 a ride with this friend to Georgia.

10 Q So initially, did he indicate that's what the plan
11 was, to simply go from South Carolina to Georgia?

12 A Initially, he said yes, and then after he got on the
13 road, he realized he really liked being on the road, so he
14 just continued on south -- I mean, west.

15 Q Did he indicate at that point in the conversation
16 that -- anything about Canada?

17 A He indicated that he had seen some commercials on TV,
18 and that he wanted see the bears in Canada and the
19 wildlife.

20 Q But did that come up later? I guess what I'm asking,
21 he initially talks about Georgia and then making a
22 decision to head west?

23 A Correct.

24 Q Was he -- let me ask you this: When he initially
25 said he was going to leave South Carolina, did he indicate

1 he had Canada on the mind?

2 A No, he did not.

3 Q Did it appear it was an evolving plan?

4 A That is correct.

5 Q Do you recall after he had been through Georgia, at
6 what point he said, I think I'm going to continue to head
7 west?

8 A I think it was after he said he got to Louisiana that
9 he liked it, being out on the road, and he decided to head
10 west.

11 Q Did he mention Mississippi as well?

12 A Yes, he did.

13 Q Did he indicate to you where he staying as he was
14 going -- heading west?

15 A He indicated with friends.

16 Q Just these friends that he wouldn't name?

17 A Exactly.

18 Q After Louisiana, where did he say he headed to?

19 A I believe it was Texas, Los Angeles -- no -- Los
20 Angeles, Portland, and then Seattle.

21 Q So he took a southerly route west?

22 A Correct.

23 Q And when it came to the point of him realizing, Hey,
24 I want to go to Canada, what did he say about Canada?

25 A He said he wanted to see the bears and the wildlife

1 in Canada.

2 Q And his entry point that he was shooting for in
3 Canada, was there a particular city or a place he was
4 looking to go to?

5 A Vancouver.

6 Q And did he indicate that at some point along the way
7 he realized Vancouver is not the wilderness and there's no
8 bears except for maybe in a zoo?

9 A He indicated that the people at -- while he was
10 waiting to catch the bus in Seattle had told him that
11 there weren't -- that there weren't going to be any bears
12 in Vancouver, that's it's a metropolitan city.

13 Q And he decided to go anyway?

14 A He decided to go anyways.

15 Q At some point in this interview, did you-all confront
16 him about driving Portia's car?

17 A Yes, we did.

18 Q Did he admit or deny it?

19 A He admitted it.

20 Initially, he denied it, and then, you know,
21 after we confronted him with that fact that he had been
22 stopped by a trooper in Texas, then he admitted that yes,
23 he'd driven it.

24 Q So, initially he said, "I wasn't driving it"?

25 A That's correct.

1 Q And then you-all gave him the information that
2 you-all knew --

3 A Correct.

4 Q -- he'd been stopped in Texas?

5 A Correct.

6 Q What did he say when you confronted him with the fact
7 that you-all already knew he had that car in Texas?

8 A Well, he indicated that she was okay with it, that
9 she was trying to get rid of the car -- "she" being
10 Portia -- was trying to get rid of the car, and that it
11 would be okay that he -- he just went ahead and took it,
12 and so, yeah, he was driving it.

13 Q Did he mention anything about her being over her head
14 in payments?

15 A Yes, he did.

16 Q Did he indicate that what he was doing was more or
17 less a favor?

18 A Yes, he did.

19 Q Now, you talked a little bit about his plans about
20 the trucking school.

21 Did he say how long he planned to be gone before
22 he came back to go to that trucking school?

23 A He said for about a week or two weeks and then he
24 would head back to South Carolina for truck driving
25 school.

1 Q Did he say where he had gotten money to travel from
2 South Carolina to Seattle and to the border and Vancouver?

3 A From his account.

4 Q From his accounts.

5 Did he indicate that he had not touched Portia's
6 accounts?

7 A Yes, he did.

8 Q Did you-all question him at some point about Portia's
9 and Cassandra's or Angelica's whereabouts?

10 A Yes, we did.

11 Q What, if anything, did he indicate about his
12 knowledge of where they were?

13 A He indicated he had no knowledge of where they would
14 be.

15 Q Did he give you any indication as to whether it would
16 be in Portia's character or out of character for her to
17 just simply disappear?

18 A It would be out of character for her to simply
19 disappear.

20 Q And that's what Mr. Lynch said?

21 A Yes.

22 Q Did he indicate whether she had a routine or habit of
23 going to, say, church or whether she didn't go to church?

24 A Yes, he indicated that she had a habit of going to
25 the beauty salon and then church.

1 Q And, again, for her to just simply disappear would be
2 out of the ordinary?

3 A Yes, sir.

4 Q Did you-all ask him if he had ever seen any other men
5 coming to the apartment to date or see Portia Washington?

6 A He indicated there were none.

7 Q Did you-all ask him about the fact that if Portia
8 Washington's still living in South Carolina and still had
9 a job, how was she going to get to work, how was she going
10 to get to church, how was she going to get around?

11 A He indicated that she had a lot of friends and family
12 that would gladly pick her up and take her wherever she
13 needed to go.

14 Q Okay. Did he indicate where Portia was originally
15 from and why she might have so many friends?

16 A He indicated she was from South Carolina.

17 Q And so all her friends would be here in South
18 Carolina?

19 A That is correct.

20 Q Did he indicate where he was from?

21 A He said originally from New Jersey and then his
22 family moved to South Carolina.

23 Q Did he ever mention serving time in the military?

24 A Yes, he did.

25 Q What branch?

1 A The Army.

2 Q Did he indicate how long?

3 A For four years.

4 Q Four years.

5 What, if anything, did he say about Portia
6 Washington's and Cassandra L. [REDACTED] plans for
7 Saturday?

8 A He indicated that they had hair appointments.

9 Q What, if anything, did he say about the fact that
10 when you-all confronted him with they couldn't be located,
11 what was his reaction to that?

12 A He was shocked. He was, like, that's unusual, that
13 he would have no idea where they're at.

14 Q Did he give any indication if he had knowledge that
15 anyone else in this world might want to hurt her?

16 A No, he said he did not know anybody.

17 Q Did you-all confront him about Portia's car and the
18 fact that it was found in Seattle?

19 A Yes, we did.

20 Q What was his response to that?

21 A He indicated that he just left it there and that he
22 wanted to take the bus up to Canada.

23 Q No other explanation other than that?

24 A Yes. He said it was his right to take the bus, and
25 he wanted to take the bus, so he felt like taking the bus,

1 so he took the bus.

2 Q Okay. He's through with the car and just wanted to
3 take the bus?

4 A That was the statement, yes.

5 Q Did you ask him about the fact that the ticket that
6 he had was a one-way ticket? That would be Court's
7 Exhibit 21, the Greyhound bus ticket. Did you-all
8 confront him with the fact that it's a one-way ticket,
9 it's not a round-trip ticket?

10 A We did.

11 Q What was his response to that?

12 A He said that he wasn't sure of his exact return date,
13 so he didn't want to waste the \$46 that it would cost him
14 to come back to Canada -- or back to the U.S. from Canada.

15 Q Did you-all give him an opportunity to write down his
16 statements or his thoughts about what he was saying to
17 you-all?

18 A Yes, we did.

19 Q And what was his response?

20 A He refused.

21 Q Did he mention anything about little Cassandra's
22 plans for the summer, what plans Portia had for her and
23 what plans Cassandra had?

24 A Well, she apparently was going to be attending both a
25 cheer -- I think a cheerleading school that week and then

1 a summer camp through the church later on in the summer.

2 Q Did you-all, at some point, begin to hone in on him
3 and push him on whether he might be involved in their
4 disappearance?

5 A Yes, we did.

6 Q How did you-all go about that, and what was his
7 response?

8 A We tried to appeal to his sense of conscience as far
9 as, like, you know, his -- that he should do the right
10 thing if he knew that, you know, if he had done something,
11 if maybe it was an accident that, you know, he needed to
12 come -- to come clean, and tell us, Hey, it was an
13 accident and I hurt her, she slipped and --

14 Q So you tried to give him kind of an out --

15 A Correct.

16 Q -- to explain if he did something, there might be a
17 less horrific explanation?

18 A Correct.

19 Q What was his response about there being a possibility
20 of an accident in the apartment that he might be
21 responsible for, what was his response?

22 A He indicated that wouldn't be the case.

23 Q Okay. What did you-all pose to him as far as what
24 had taken place in that apartment, if he could assist
25 you-all in some way?

1 A We -- we indicated that there might be photographs
2 that had been taken of the apartment, and that we could
3 show him the photographs, and he could show us if anything
4 was missing or if any furniture had been overturned, or
5 anything like that, and he said that he would be willing
6 to do that.

7 Q He was willing to do that?

8 A He was willing to assist us, yes.

9 Q Did you-all question him about whether he had ever
10 abused Portia Washington?

11 A Yes, we did.

12 Q What was his answer?

13 A He indicated that he had not.

14 Q Now, at some point, you-all took a break in the
15 interview; is that correct?

16 A That's correct.

17 Q And, initially, what was your plans when taking the
18 break?

19 A Initially, it was that we were going to inspect the
20 two black bags that he had in his possession, but we -- we
21 never made it that far.

22 Q Did you-all go so far as to maybe get a permission
23 slip from him --

24 A Yes, we did.

25 Q -- a permission --

1 A Yes, we did.

2 Q But you-all never searched the bags or looked at the
3 bags?

4 A No, we did not look.

5 Q During that break, what did you-all do?

6 A We stepped outside and made a phone call back here to
7 South Carolina to the investigators and told them what we
8 had discovered in the first, you know, the first portion
9 of the interview that we had done.

10 Q Okay. And did you-all also ask for any additional
11 information they might have?

12 A Correct.

13 Q When you-all stopped the first session and stepped
14 out and took a break, did he indicate he would be willing
15 to talk to you again when you -- when you came back?

16 A Yes, he did.

17 Q And when you-all re-approached him, did he say, No,
18 I've had it, I don't want to talk anymore?

19 A No, he did not.

20 Q Did he say at this time, Listen, I think it's time
21 for a lawyer?

22 A No, he did not.

23 Q Did he indicate he's still willing to talk?

24 A Yes, he did.

25 Q And did you-all talk some more?

1 A Yes, we did.

2 Q Did he talk to you about -- or did you-all get some
3 information about Portia being in the car at the apartment
4 complex like at night? Did you-all ask him a question
5 about that?

6 A Yes, we did.

7 Q What exactly did you-all ask him?

8 A If she had ever slept in the car, if she would ever
9 sleep in the car, and he indicated that yes, she would go
10 out to the car to cool down.

11 Q At some point, did he indicate he thought he might
12 need a lawyer?

13 A Yes, he did, at the very end.

14 Q Okay. And it was at the very end?

15 A It was at the very end.

16 Q And did you-all terminate the talk at that time?

17 A Yes, we did.

18 Q And, again, just for clarification, did at any time
19 in this conversation he hint that, You know, I think I
20 need a lawyer?

21 A No, he did not.

22 Q Did he indicate that he might need to call somebody,
23 even a friend, to get some advice?

24 A No, he did not.

25 Q If he had done that, would you-all have stopped?

1 A Yes. If he had said a lawyer, yes.

2 Q Those words never came up?

3 A No, they did not.

4 Q In fact, you said he invited you-all back for the

5 second -- after the break to talk to him some more?

6 A That's correct.

7 Q And, again, no one knocked on the door either the

8 first time or the second -- after the break, the second

9 time when you-all were talking to him and said, Hey, look,

10 we got to take him to court?

11 A No, we did -- no -- no one did.

12 MR. HUBBARD: Beg the Court's indulgence.

13 (Pause.)

14 MR. HUBBARD: Thank you, Agent.

15 Please answer any questions for the defense.

16 MR. STITELY: No questions for the agent, Judge.

17 MR. HUBBARD: Your Honor, I'd ask that she be

18 excused and released of her subpoena and able to go home.

19 MR. STITELY: Yes, sir.

20 THE COURT: No objection?

21 MR. STITELY: No, sir.

22 THE COURT: Thank you, ma'am.

23 THE WITNESS: Thank you.

24 THE COURT: Travel safely.

25 MR. HUBBARD: Do you want to do another one,

1 Your Honor?

2 THE COURT: It was represented it may be very
3 short?

4 MR. HUBBARD: I was going to say, this is the
5 other officer that was involved in that, so I would go
6 through -- he was the one actually doing the questioning.

7 THE COURT: I would guess he's not going to be
8 short, then.

9 MR. STITELY: That would be about 40 minutes
10 just on direct and no cross.

11 MR. HUBBARD: I can try to ask real fast
12 questions.

13 THE COURT: Are they leaving tonight or leaving
14 tomorrow?

15 THE WITNESS: I'm leaving tomorrow.

16 MR. MYERS: They're supposed to leave at 10
17 tomorrow.

18 THE COURT: Oh, so if we start at 9, they would
19 not be through baggage check.

20 MR. McGUIRE: And, Judge, the thing I was going
21 to add is when I went out to Seattle, I didn't have the
22 opportunity to interview the FBI agents, but I have
23 interviewed Mr. Hutchings, so we might have some questions
24 for him. We might not have the same no questions for this
25 fellow.

1 I mean, I'm not guaranteeing I'll be asking
2 questions, but I have talked to him and I've got a lot of
3 information on him.

4 MR. HUBBARD: I'm prepared, Your Honor.

5 THE COURT: Let me ask you this, Mr. McGuire.
6 If we get this officer done today, will he then be
7 likewise released? Is this going to help them get home or
8 not or is he a potential subject to recall? Or is that a
9 question you can't answer?

10 MR. MCGUIRE: No, I think I can.

11 My answer doesn't help me because I want to quit
12 right now, but I can tell you this, in all likelihood,
13 yeah, he would be done.

14 When I talked to Glen, he indicated they were
15 pretty much tagged and assigned with the interview process
16 and they were pretty much off of it. So what you've just
17 heard from this agent, it's basically going to be
18 cumulative with Glen.

19 THE COURT: All right. Let's try to get him
20 done.

21 MR. HUBBARD: Glen Hutchings.

22 THE COURT: Wait a minute.

23 GLEN HUTCHINGS, after being duly sworn,
24 testified as follows:

25 THE CLERK: Have a seat right up there, please,

1 sir.

2 Once you're seated, speak up loud and clear,
3 spelling your last name for the record, please.

4 DIRECT EXAMINATION

5 BY MR. HUBBARD:

6 Q Please state your name.

7 A My name's Glen Hutchings, and it's H-U-T-C-H-I-N-G-S.

8 Q Detective Hutchings, where do you currently work?

9 A I currently work for the Swinomish Indian Tribal
10 Police in La Conner, Washington.

11 Q You might need to spell a number of those words.

12 A It's S-W-I-N-O-M-I-S-H. And La Conner is two words,
13 L-A C-O-N-N-E-R.

14 Q Detective Hutchings, back in 2006, where were you
15 working?

16 A I was working for the Bellingham Police Department.

17 Q How long have you been in law enforcement?

18 A About 35, 36 years, started in 1975.

19 Q Did you ever have an occasion to work in homicides?

20 A Yes.

21 Q How many years did you do homicides and violent
22 crimes?

23 A About 17 years.

24 Q And are you also trained to do something else?

25 A Yes.

1 Q What do you do currently?

2 A Currently, I'm the assistant chief with the Swinomish
3 Police Department.

4 Q Okay. But you -- I guess what I meant to ask you,
5 what else are you trained in?

6 A Well, I've been trained as a polygraph examiner for
7 the last 20 years.

8 Q Okay. Back on June 19th, did you have an occasion
9 to conduct an interview with Mr. Lynch?

10 A Yes, I did.

11 Q And who was with you at that time?

12 A Brenda Wilson Davis of the Bellingham FBI office.

13 Q Before you -- well, what time did you -- were you
14 contacted to assist or to conduct that interview?

15 A It was about 11:20 in the morning that she came by
16 the Bellingham Police Department.

17 Q Did you-all kind of get a pre-game plan of
18 information from South Carolina so you-all would know what
19 to ask him about?

20 A Yes. There was just some very brief information that
21 the special agent shared with me before we went to conduct
22 the interview.

23 Q What information were you-all working off of before
24 you walked in and introduced yourselves to Mr. Lynch?

25 A That there was a Portia Washington and her

1 seven-year-old granddaughter, Cassandra, who lived in
2 Columbia, South Carolina, who had been reported missing.
3 And the information we had, as I recall, was that they --
4 they were last seen on June 9th, which would have been a
5 Friday, that they hadn't been seen since that time. And
6 that Mr. Lynch was associated with both Portia and
7 Cassandra, lived in the same residence, and I believe we
8 were advised that he -- that they -- he and Portia also
9 worked together.

10 Q Okay. What information did you have about the
11 vehicle and Mr. Lynch's use of that vehicle?

12 A We were advised that the vehicle was missing from the
13 home in South Carolina, that a law enforcement officer in
14 the El Paso, Texas, area had contacted the vehicle and its
15 operator, Mr. Lynch, and that later the vehicle was
16 located in Seattle, Washington, near a Greyhound bus
17 station.

18 Q And were you-all given -- given information on how he
19 got from Seattle to the border?

20 A Yes.

21 Q Okay. How -- what was --

22 A And that was that he had been contacted at the -- the
23 Pacific border crossing, which is like a -- we usually
24 refer to it as the truck crossing just outside of Blaine,
25 Washington, riding a Greyhound bus, and that he had taken

1 the bus from Seattle, Washington, to the border.

2 Q What time did you-all make contact with Mr. Lynch?

3 A It was ten minutes to 12 or 11:50.

4 Q Do you recall the Miranda rights being read to
5 Mr. Lynch?

6 A Yes, I do.

7 Q Who handled that?

8 A Special Agent Davis did.

9 Q Okay. Were all of those rights read?

10 A Yes, they were.

11 Q And if I can show you what's been marked State's --
12 it looks like 27.

13 MR. HUBBARD: I think it's smeared a little bit,
14 Your Honor.

15 BY MR. HUBBARD:

16 Q Does that appear to be the advice of rights form
17 that was read to Mr. Lynch that evening -- or that
18 morning?

19 A Yes, it is.

20 Q And the initials beside those rights, did you witness
21 those?

22 A Yes, I did.

23 Q Who made those initials?

24 A Mr. Lynch.

25 Q Did he indicate he understood these rights?

1 A Yes, he did.

2 Q And do you see his signature on there?

3 A Yes, right under -- under the waiver of rights, it's
4 signed Kenneth Lynch, and I watched him make that
5 signature.

6 Q Did he appear to understand these rights before he
7 signed this form?

8 A Yes, he did.

9 Q And, Detective, you've -- you've been doing this
10 quite a while.

11 Was there any indication that Mr. Lynch didn't
12 know what he was doing?

13 A No.

14 Q Any indication that he might be under the influence
15 of drugs, alcohol, or anything like that?

16 A No.

17 Q Did you-all, before you talked to him or at any time
18 while you were talking to him, make any promises about
19 what might happen to him if he would just cooperate?

20 A No, we did not.

21 Q Did you-all in any way make any threats of what might
22 happen to him if he refused to cooperate or stop talking?

23 A No.

24 Q Was he aware that any time he could stop talking with
25 you?

1 A Yes.

2 Q Was he aware at any time he could say, "You know
3 what? I want an attorney"?

4 A Yes, he was.

5 Q In fact, at some point, did he ask or indicate that
6 he might want an attorney?

7 A Yes, he did.

8 Q When that point came, what did you do?

9 A We terminated the interview.

10 Q Okay. So that was at the end of the interview?

11 A That's correct.

12 Q Did he indicate at any time that he already had an
13 attorney?

14 A No.

15 Q Or when he wanted -- when he terminated his
16 interview, did he indicate, "I've got an attorney in
17 mind"?

18 A No.

19 Q Nothing about, "I've already met with somebody"?

20 A No. In fact, he said he needed an attorney.

21 Q Okay. All right. Now, I want to ask you about
22 Portia Washington. What did he indicate his relationship
23 was with her?

24 A Well, he indicated that he had lived with her for
25 approximately two years, that during the first year that

1 he and Portia lived together, they were -- they had a
2 boyfriend/girlfriend relationship, and then following that
3 year, the most -- most previous year, they had more
4 evolved into a roommate relationship in which they shared
5 living expenses.

6 Q Did he indicate where they both worked?

7 A Yes, Bob Bennett Ford.

8 Q And did he indicate what she did for Bob Bennett
9 Ford, what her job was?

10 A He said she was the head of maintenance.

11 Q Did he offer any kind of indication of issues she was
12 having at work?

13 A Yes.

14 Q What did he say?

15 A He said that she was way over her head in the job and
16 that people were really on her back.

17 Q What was his status at work?

18 A He said he worked in the parts department.

19 Q And when you were talking to him, had he indicated
20 that he was still employed?

21 A No. He said that his last day at Bob Bennett Ford
22 was Friday -- would have been Friday, which I inferred was
23 June 9th.

24 Q And did he indicate what his plans were since he was
25 quitting or had quit?

1 A Yes. He said that his plans were to travel around
2 for a couple of weeks and then return to the -- it kind
3 of -- it sounded like the general area and look into
4 taking a job with a trucking company called Warner
5 Trucking because they had a 15-day driver training
6 program.

7 Q Let me ask you this: Are you familiar with the
8 Warner Trucking business?

9 A Yes, I am.

10 Q How are you familiar with that?

11 A My son drives for Warner Trucking and has driven for
12 them for about eight years now.

13 Q Does he have a CDL?

14 A Yes, he does.

15 Q Is there, to your knowledge, a 15-day school where
16 you can learn to drive a rig that big?

17 A Not to my knowledge.

18 I paid for my son to go to a driving school
19 before he was even hired by Warner. Then he had to go
20 through a 30-day ride-along type of -- have a senior
21 driver ride with him.

22 Q How long was his schooling all together?

23 A His schooling was six weeks.

24 Q Did you-all question him or confront him with
25 stealing Portia Washington's car?

1 A Yes.

2 Q And about the fact that he was under arrest for
3 stealing that car?

4 A I asked him what he was under arrest for. I didn't
5 ask him if he was under arrest for stealing Portia's car.

6 Q Okay. Did he appear to understand or know whose car
7 he might be responsible for having taken?

8 A No. He directly told me that he did not -- he knew
9 he was in jail or arrested for stealing a car and he
10 didn't know whose car they were accusing him of stealing.

11 Q So he didn't know he was being accused of stealing
12 Portia Washington's car?

13 A That's what he said.

14 Q Did you ask him if he had been driving that car out
15 west?

16 A Yes, I did.

17 Q What was his answer?

18 A He said -- I'd asked him specifically whether he'd
19 driven the car outside of South Carolina. He said, "No."
20 I asked him then if he'd driven the car across the country
21 and he said, "No."

22 Q How did he say he got across the country?

23 A He said he had driven across the country with some
24 friends and taken the bus.

25 Q Any -- did he say what day he departed from South

1 Carolina?

2 A Friday night.

3 Q Did he tell you if he was with somebody when he left
4 South Carolina?

5 A He said he left South Carolina with a friend going to
6 Georgia.

7 Q Did he name that friend?

8 A No.

9 Q What other states did he head to?

10 A He said he then went to either Louisiana or
11 Mississippi, then through Texas. He specifically stated
12 he remembered going through Aberdeen, Texas, went to
13 Los Angeles, Sacramento, Portland, and Seattle.

14 Q At some point along the way, did he indicate he had a
15 final destination?

16 A Yes.

17 Q Where was that?

18 A He said eventually -- as he was driving, he started
19 going west and decided that he would head toward
20 Vancouver, British Columbia.

21 Q When he initially left South Carolina, did he have a
22 plan to go to Vancouver, Canada?

23 A No.

24 Q That plan developed as he drove west?

25 A It sounded like it was something that came to him or

1 it just evolved as he was driving.

2 Q And why Vancouver?

3 A He made reference to wanting to see the bears in the
4 wilderness, out in the wilderness.

5 Q And was he informed at some point along the way that
6 Vancouver's not where you go to see the bears in the
7 wilderness?

8 A Yeah. He said when he was in Seattle, he learned
9 that that wasn't very realistic.

10 Q But he went to Vancouver anyway?

11 A Yes.

12 Q Or tried to?

13 A Tried to.

14 Q Did he say what type of car Portia Washington owned?

15 A He said it was a 2005 or 2006 Ford Focus, that it was
16 brown in color.

17 Q And, again, you said you asked him about driving it
18 out of South Carolina?

19 A Yes, I did.

20 Q At some point, did you confront him --- oh, and his
21 response about driving it out of South Carolina was what?

22 A No.

23 Q No. At some point, did you confront him with
24 information you had that he had, in fact, left the state
25 in that car?

1 A Yes, I did.

2 Q What did you confront him with?

3 A I advised him that we had information that he had
4 been stopped by law enforcement in the El Paso, Texas,
5 area driving Portia Washington's car.

6 Q What was his response?

7 A He said that he actually had driven Portia's car,
8 that Portia was having difficulty making the payments on
9 the car and that she wouldn't have -- she didn't care if
10 he took the car because she was going to return it to the
11 dealership or he was going to have to start making
12 payments on it.

13 Q Now, let me ask you this: If you knew that he had
14 been stopped in Texas and the car had been found in
15 Seattle before you began to interview him, why did you go
16 through that series of questions with him about driving
17 the car?

18 A Well, it's just to establish kind of a baseline of
19 truthfulness, having never met Mr. Lynch before.

20 Q Okay. So you also knew that there was information of
21 two missing people; is that right?

22 A That's correct.

23 Q Of the two pieces of information, a car or missing
24 people, which was the most serious issue for you?

25 A Well, clearly, the missing people were the most

1 important issue.

2 Q And you chose to set a baseline of truthfulness on
3 the car?

4 A Yes.

5 Q And, again, if he wasn't truthful on the car, what
6 was your assumption?

7 A That he wouldn't -- likely not be truthful on the
8 missing people.

9 Q That Friday coming home from work, what did he say --
10 what conversation did he say, if any, with -- did he have
11 with Portia Washington?

12 A As I recall, he said that he'd had his normal --
13 followed his normal routine, which was, he got off at
14 4 o'clock. He waited at the dealership until she got off
15 at 5, rode home with her.

16 When they got home, he had told her he wasn't
17 going back to work, and the extent -- that was the extent
18 of my recollection of their conversation other than Portia
19 informing him that she and Cassandra were going swimming,
20 or to a swimming pool.

21 Q So they had plans at the pool. And what did he do
22 while they were swimming?

23 A This is where he said he sat down and had a couple of
24 beers, and then went to Georgia with a friend.

25 Q Did he indicate what time he had left?

1 A He said it was 10, 10:30.

2 Q And when you confronted him about taking the car and
3 that you knew he had the car, did he deny it at that
4 point?

5 A No, he stated he took the car.

6 Q That's after you confronted him with the stop in
7 Texas?

8 A That's correct.

9 Q And did he go on to admit about when -- what time he
10 had taken that car, what time of the day on Friday?

11 A Yes. That's what he said, it was Friday at
12 10:30 p.m.

13 Q Did you question him about Portia's and Cassandra's
14 whereabouts?

15 A Yes, I did.

16 Q What, if anything, did he say about the last time he
17 saw them?

18 A He, again, said the last time he saw them was when
19 they were going to the swimming pool Friday night.

20 Q So he claimed he had not seen them the next day,
21 Saturday, because he had been gone, right?

22 A Correct.

23 Q Did he have any knowledge or indicate he had any
24 knowledge about what Portia and Cassandra's plans were for
25 the next day, for that Saturday?

1 A He said that Portia had a standing appointment at a
2 beauty shop where she had her hair done every Saturday at
3 8 o'clock in the morning, and that it would be very
4 unusual if she did not go to that appointment.

5 Q What about church?

6 A And he also said that she would have church on
7 Sundays, and she would never miss church.

8 Q Would she take her granddaughter with her?

9 A Yes. He stated he didn't go to church, but they did.

10 Q Okay. When you told him that they were missing, what
11 was his response?

12 A There really wasn't a response. It was a very flat
13 affect, he didn't ask me any questions, didn't show any
14 emotion.

15 Q Now, is -- you've been in the business a long time.
16 Is that unusual?

17 A That was very unusual to me.

18 Q Why is that?

19 A Well, he was talking about somebody who he had been
20 in a relationship, which I assumed was a romantic
21 girlfriend/boyfriend relationship, for an extended period
22 of time, that he was still in a good enough relationship
23 that they could continue to be roommates together, work
24 together, see each other every day, so to not have a
25 question about their well-being or the well-being of a

1 seven-year-old girl, seemed to be very unusual.

2 Q Did he tell you whether that would be -- knowing
3 Portia Washington as he did, whether it would be usual or
4 unusual for her to just pick up and go?

5 A Oh, he said it would be very unusual.

6 Q Did he indicate whether he had any ideas where they
7 might be?

8 A No.

9 Q He didn't indicate or --

10 A He said he had no idea as to where they were.

11 Q I think I just asked a poorly thought-up question.

12 At some point, Detective, did you question him
13 and hone in on him about what might have happened in that
14 apartment?

15 A Yes, I did.

16 Q Okay. Can you tell us about that?

17 A Well, at one point, I suggested to him that things do
18 happen in relationships and that people get mad and they
19 do things that are out -- could be out of character, lose
20 their -- you know, maybe lose their temper, and he maybe
21 got into a physical skirmish with Portia, maybe she fell
22 down, maybe he -- she hit her head on a coffee table and
23 became injured, and maybe he just panicked, and now that
24 he has time to think about what happened, you know, maybe
25 he could reflect and help figure out what had happened to

1 Portia and Cassandra.

2 Q What was his response when you approached him in that
3 manner?

4 A He asked me if the police had searched the home,
5 conducted a search of the home that Portia and he lived
6 in.

7 Q Was that his immediate response?

8 A Yes.

9 Q What was your response to that?

10 A My response was, I didn't know. I had said I assumed
11 they would most likely had conducted a search, that I
12 could find out, that possibly we could even get some
13 photographs from that home emailed out to us or sent to us
14 so that we could have him look at it and help us identify
15 items that might be out of -- out of their normal
16 position.

17 Q Did he indicate he might be willing to assist you in
18 that?

19 A Yes, he did. He said he would.

20 Q Now, did you-all ask him about his personal life, his
21 belongings, and what he may or may not have taken to go on
22 this trip west?

23 A Yes. We had -- he said that he took just a few
24 things, that he had a storage unit back in -- I don't know
25 that he specifically said Columbia, but he had a storage

1 unit in South Carolina where he had some of his own
2 belongings. His intention was to return to South
3 Carolina.

4 Q He didn't indicate back to Portia Washington?

5 A No. Just South Carolina because he was going --
6 again, talked about going to this truck driving job.

7 Q Okay. And that was Newberry County?

8 A Never mentioned a county to me.

9 Q Okay. That you recall anyway?

10 A Not that I recall, no.

11 Q Okay. What did he say about the clothes he had on or
12 what he did for clothing?

13 A When asked about clothing, he said he was wearing the
14 clothes that he had left -- had been wearing when he left
15 Columbia, South Carolina.

16 The clothes -- he said, "The clothes I wore on
17 June 9th are the clothes I have on now except for one
18 change of clothes that I stopped and purchased at a thrift
19 store on Fourth Avenue in Seattle.

20 Q At some point, did you-all ask him about going
21 through whatever bags he might have had to look at that
22 clothing?

23 A Yes.

24 Q What was your point in that?

25 A Well, many times there's trace evidence that are on

1 clothing that a person might not even see. So we thought
2 it would be important to secure those items of clothing.

3 Q Okay. Did he agree to let you-all go through those
4 bags?

5 A Yes.

6 Q Did you-all ever get to go through them?

7 A No, we never did.

8 Q What did you-all do instead?

9 A We -- at that point, we had him -- there's a standard
10 form in the Whatcom County jail, it's a transfer of
11 property form. We presented that to him, he signed it,
12 allowing us to transfer his property into our custody.

13 We went out of the interview room, which was in
14 the jail itself, and at that time, Agent Brenda Wilson
15 Davis had made a phone call back to South Carolina, had
16 learned some additional information, and so we returned to
17 the interview room without going -- without dealing with
18 the property.

19 Q I see. Now, when you-all got this permission slip,
20 is that about the time you-all took a break or --

21 A Yes. That was kind of the reason for the break is --

22 Q Okay.

23 A -- to go out and look at this -- look at these
24 clothes, give him a chance to think.

25 We'd asked him, you know, names, you know, if

1 you remember any names of people, see if you can think of
2 those things, and we'll come -- and we would come back if
3 it was okay with him, and he said it was fine and invited
4 us to come back.

5 Q He invited you to come back?

6 A Yes. And we also -- we also had this discussion
7 about these photographs, so there was going to be a -- you
8 know, that was also an item that we had anticipated we
9 might look into, the availability of any photographs from
10 the apartment.

11 Q And did you re-approach him?

12 A Yes.

13 Q And was Officer Wilson with you?

14 A Yes.

15 Q Did he welcome you back to ask more questions?

16 A Yes, he did.

17 Q Now, when you-all talked to him again, or I don't
18 know if this before or after, but did he say anything
19 about Portia's -- Portia Washington's intentions with her
20 job? Do you recall?

21 A Yes. I recall that her job -- he had indicated her
22 job was pretty tenuous at best, that she was so much over
23 her head that she was going lose her job, be terminated
24 or -- you know, so he had -- it sounded like he had
25 counseled her to consider resigning to avoid termination,

1 get out of the pressure of them being on her back for her
2 inabilities.

3 Q Okay. I kind of took that out of order, but do you
4 recall about what time you-all took the break to go make
5 phone calls and check the bags if they were available?

6 A My recollection, it was about 25 minutes after 2 that
7 we took that break.

8 Q Do you remember about what time it was when you
9 reinitiated the interview?

10 A I'm going to say just shortly after 3 o'clock.

11 Q And, again, he was willing to talk?

12 A Yes.

13 Q Did you question Mr. Lynch about using Portia
14 Washington's car in South Carolina on Saturday, June 10th?

15 A Yes.

16 Q What was his response?

17 A He said he'd had -- he had left on Friday. And I had
18 actually posed the question, is there any way that you
19 could be on videotape driving Portia's car in Columbia,
20 South Carolina, or around the apartment complex, and he
21 said, there is no way, he left Friday night.

22 Q And, again, when you asked him about being around the
23 apartment complex that Saturday with or without the car,
24 what was his response?

25 A He was gone. He had left Friday night.

1 Q Did you ask him about touching or hitting Portia
2 Washington?

3 A Yes.

4 Q What was his response?

5 A He stated that he had never hit Portia. He said that
6 Portia was somewhat mentally unstable and that at times
7 she would become angry, and the only way that she could
8 control herself was she would go out to her car and would
9 sometimes sleep in her car, but for short periods of time,
10 and then she would come back.

11 And then he elaborated further saying that, in
12 fact, she had hit him one time and he had called the
13 police to stand by so he could get some of his belongings
14 to leave the apartment.

15 Q So when you confront him with whether he's ever hurt
16 her, he indicated to you one time she actually attacked
17 him?

18 A That's correct.

19 Q Was that a surprising response for you based on what
20 you had already been hearing from him?

21 A No.

22 Q Okay. Did you confront Mr. Lynch around this time
23 with just not being honest with you-all and up front?

24 A Yes.

25 Q What did he say?

1 A When I confronted him, it was, again, more of a
2 statement that I made that I don't believe you're being
3 honest with us, we're talking about a seven-year-old girl
4 who may be right now injured -- seriously injured or may
5 have even passed, and that it just seemed like the right
6 thing to do to be able to help in identifying where she is
7 and get her out of harm's way. And I told him I just
8 didn't think he was the kind of person who would let a
9 little girl lay in the mud someplace. And I urged him to
10 tell us whatever he knew about what happened with Portia
11 and Cassandra.

12 Q What was his response?

13 A He looked at me and he says, "I know you -- I know
14 what you think," and "I didn't have anything to do with
15 them being missing at this time, and I think that I should
16 talk to a lawyer. I've gotten myself in enough trouble."

17 Q Before he invoked, as to Portia Washington's car, did
18 he eventually admit whether he had permission or not to
19 take that car?

20 A Yes, he eventually admitted that he did not have
21 permission. And, of course, he did add that she wouldn't
22 have cared anyway because she was going to lose the car.

23 Q I want to ask one other thing, and this may sound
24 strange. Do you have your report with you?

25 A Yes, I do.

1 Q There is a phone number I wanted you to look at. Did
2 he -- did Mr. Lynch give you Portia Washington's phone
3 number?

4 A Yes, he did.

5 Q What phone number was that?

6 A It was (803) 665-4636.

7 Q I'm going to show you a strip that says Portia's cell
8 number (803) 665-4636. Is that accurate?

9 A That is accurate, yes.

10 MR. HUBBARD: Detective Hutchings, one moment,
11 please.

12 (Pause.)

13 MR. HUBBARD: I have no further questions at
14 this time.

15 Please answer any questions the defense might
16 have.

17 THE WITNESS: Thank you.

18 CROSS-EXAMINATION

19 BY MR. STITELY:

20 Q It's actually Chief Hutchings now, isn't it, sir?

21 A Assistant Chief, yes.

22 Q Very good. I don't have a ton of questions for you,
23 but I do have some.

24 My name is Ben Stitely. How are you?

25 A Nice to meet you.

1 Q First time you've ever been to South Carolina?

2 A Yes, it is.

3 Q Okay. The last thing -- well, towards the very end
4 there when you were speaking with Mr. Hubbard, you said
5 that you brought it to him, saying, you know, do the right
6 thing, you don't -- you don't look like that kind of guy,
7 and you said his response was "You know, I didn't do
8 anything, but I don't want to get in anymore trouble."

9 What exactly was his response when you said that
10 something may have happened or you thought something may
11 have happened? Did you write something different in your
12 report, a report you published on June 22nd of 2006? Do
13 you recall?

14 In fact, you indicated he actually teared up,
15 sat quietly, and then he said, "I understand the idea is
16 that you think I may have done something, but I have not
17 hurt anyone and have no idea what happened to Portia
18 Washington nor Cassandra."

19 That's what he actually said at that point,
20 isn't it true, that that was his reaction?

21 A Yes, sir.

22 MR. HUBBARD: Your Honor, I have no objection if
23 he wants to put that in.

24 MR. STITELY: That's good. He clarified it for
25 me.

1 BY MR. STITELY:

2 Q Assistant Chief, would it surprise you if an
3 individual from the West Columbia Police Department,
4 specifically one of the techs on this case, said that's
5 really too bad that you did the interrogation because he
6 could have got a confession that you didn't get?

7 MR. HUBBARD: Objection. Your Honor, what is
8 that? What is the relevance of that?

9 MR. STITELY: Your Honor, it's going to be very
10 specific. That statement was made directly before me and
11 three other witnesses by Lieutenant Edwards, saying that
12 it was unfortunate that this individual did the
13 interview --

14 THE COURT: It was said to him?

15 MR. STITELY: Huh? No. Said to me as well as
16 three other witnesses, and I intend to impeach
17 Officer Edwards. Usually we would have done it by
18 recalling this gentlemen after it happened.

19 THE COURT: All right.

20 MR. STITELY: The direct comment was made by
21 Lieutenant Edwards that it's unfortunate that this
22 gentleman --

23 THE COURT: I understand. But the comment was
24 made to him?

25 MR. STITELY: No, it was made to myself as well

1 as three other witnesses.

2 THE COURT: And so --

3 MR. HUBBARD: This is not the witness to be
4 bringing this up. I object to relevance.

5 MR. STITELY: Then I'm going to ask to keep him
6 here until we get a chance to recall him after it
7 happened.

8 MR. HUBBARD: No, sir. I object. If he wasn't
9 present, he doesn't have to stay around. He's not a party
10 to that.

11 THE COURT: All right. Tell me why you'd need
12 him if he wasn't -- I mean, the scenario you've described
13 is --

14 MR. STITELY: Yes.

15 THE COURT: -- is a South Carolina investigator
16 perceives himself as being more sophisticated in
17 questioning than the witness from Washington?

18 MR. STITELY: Yes, sir.

19 THE COURT: And that's his opinion or whatever,
20 he made comments. How can he clarify that?

21 MR. STITELY: I would just clarify that he felt
22 his investigation techniques were sound because,
23 obviously, through West Columbia's own statement, they
24 attempted to impeach his interviewing abilities.

25 MR. HUBBARD: No, sir. That is just absolutely

1 so far out there. But one thing it isn't, is relevant.

2 If they want to put Matt Edwards on the stand
3 and determine whether he's a good investigator or not and
4 grill him, have at it. But this officer was not involved
5 in that conversation.

6 He has said what he did. If they don't have any
7 more questions, I think it's time for him to go home.

8 THE COURT: All right. I mean, how,
9 Mr. Stitely, assuming you asked -- I mean, assume for the
10 sake of its truth that the statement was made, that
11 Edwards made that statement.

12 MR. STITELY: I guess I can clarify.

13 THE COURT: I mean, he's testified that he's
14 30-several years experienced and 20 years working the
15 polygraph examination --

16 MR. STITELY: Yes, sir.

17 THE COURT: -- and a lot of homicide
18 investigation. He was there for the interview.

19 MR. STITELY: Yes, sir.

20 THE COURT: I mean, he's been very thorough.
21 And he's now the assistant chief of the --

22 MR. STITELY: Yes, sir.

23 THE COURT: -- Indian tribe, the Swinomish.

24 MR. STITELY: I was -- I was making sure he
25 didn't feel there was any problems with the investigation

1 he did, and if he thought that was the case, that maybe he
2 did something wrong.

3 THE COURT: I mean, if you want to tender an
4 expert as to what he could have done and establish the
5 standard, you may do so.

6 MR. STITELY: Yes, sir. I don't intend to do
7 that at this time.

8 THE COURT: I don't think you can use him for --
9 you may want to use him to -- never mind.

10 MR. STITELY: And, Your Honor, that actually
11 would be my point. I would intend to recall him to
12 impeach Lieutenant Edwards and his investigation. And if
13 we're going to come to that, it's going to become relevant
14 at that time, I want to be able to recall him.

15 MR. HUBBARD: No, sir. They can go get somebody
16 else if they want to do that, but, first, right now it's
17 speculative even if they're going to get into those type
18 of questions. But one thing is absolutely clear: This
19 officer only did stuff in Washington state, he did an
20 interview, he wasn't privy to a lot of other things. This
21 is just absolutely irrelevant right now.

22 If they want to bring Lieutenant, or whatever he
23 is, Matt Edwards in, grill him, cross him, go out and
24 retain their own expert to say he's a lousy officer,
25 that's fine.

1 THE COURT: Well, I mean --

2 MR. HUBBARD: This man's under our subpoena, not
3 theirs.

4 THE COURT: I don't -- well, he's not been
5 qualified as an expert.

6 MR. STITELY: I would just -- my question was
7 the investigating agency called him into question through
8 direct testimony. I was just confirming that he stands by
9 his interview. That was all.

10 THE COURT: He can answer that question.

11 MR. HUBBARD: He can answer that one, Judge. I
12 have no objection to that.

13 THE COURT: That is -- the objection is
14 overruled as to that question.

15 You may answer.

16 THE WITNESS: I certainly stand by this
17 interview.

18 BY MR. STITELY:

19 Q And you said you spent 20 to 30 years doing major
20 crimes, correct?

21 A Correct.

22 Q You worked murders before?

23 A Yes.

24 Q Let me ask you a couple of questions.

25 One of the things -- have you ever worked a

1 missing person case?

2 A Yes, I have.

3 Q Is it important at times to follow up on leads in a
4 missing person case?

5 A Correct.

6 Q Sightings?

7 A Correct.

8 Q Okay. Take, for example, you have one sighting
9 that's isolated. Would that be overly relevant to you?

10 A Well, you wouldn't know until you followed up on it.

11 Q Right. You'd want to follow up on it.

12 What if they say they had five sightings within
13 a narrow geographical area over a one-and-a-half week
14 span, would you find that relevant?

15 A Like I said, whether one or five, you'd want to
16 follow up on it, and then you could determine if it's
17 relevant.

18 Q If --

19 MR. HUBBARD: Your Honor, with those
20 questions -- excuse me -- I guess I would object to
21 couching them that there is a possibility to follow up on
22 them, some sightings. There is no information. So maybe
23 you could be a little bit more clear.

24 MR. STITELY: Sure, I will. And if you'd just
25 give me a second here.

1 BY MR. STITELY:

2 Q If you got a tip that an individual specifically saw
3 Portia Washington at a grocery store in Torrance,
4 California, on 8-19 of 2008, believing that information,
5 that tip was called in -- I'm going to go through all
6 these so I can -- so you have a foundation.

7 Also on 8-19, there was a call that Portia
8 Washington --

9 MR. HUBBARD: Your Honor, he can ask the short
10 version. If we're going to be here all night, I'll
11 withdraw my objection.

12 MR. STITELY: Well, he asked me to qualify, and
13 I'm happy to qualify. And I'd like to --

14 THE COURT: No, no, no.

15 MR. STITELY: -- lay a foundation before I did.

16 As we've established, he has 30 years of
17 experience.

18 THE COURT: All right. I want to take a break.
19 I want to talk to you-all over here.

20 (A bench conference was held with the judge and
21 attorneys.)

22 THE COURT: All right. Mr. Stitely.

23 MR. STITELY: Thank you.

24 BY MR. STITELY:

25 Q Assistant Chief Hutchings, just a couple more

1 questions.

2 And just in a general sense, in your 20 to 30
3 years of major crime investigation, if you had received
4 five tips within a one-to-two-week span from a very
5 localized geographic location, would it have been normal
6 practice to investigate yourself or send someone else on
7 your team to investigate it, if you still didn't know
8 where the people were?

9 A Well, you certainly would evaluate those -- evaluate
10 those tips. Maybe there would be local agencies that
11 would -- could follow up on those. You could determine
12 the accuracy and the worthiness of the tips.

13 Q Have you ever heard of NCMEC, the National Center for
14 Missing --

15 A -- and Exploited Children, yes.

16 Q It's a recognized agency?

17 A Correct.

18 Q One that works closely with the FBI and other
19 agencies all the time?

20 A Yes.

21 Q One that would be known across the country?

22 A That's correct.

23 MR. STITELY: No other questions.

24 Thank you very much for your time.

25 MR. HUBBARD: No questions.

1 I would ask that this officer be released from
2 his subpoena so he can go home.

3 MR. STITELY: That's fine, Judge.

4 THE COURT: Told you.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: I told him at the break I was going
7 to get to him tonight or get him away or released tonight.
8 Good luck to you.

9 MR. HUBBARD: Do you want to do any more, Your
10 Honor?

11 THE COURT: Not particularly.

12 MR. HUBBARD: I've got some short ones.

13 THE COURT: Not particularly.

14 How many more Washington people do you have?

15 MR. HUBBARD: We've got a couple of Seattle
16 officers, one who found the car that's fairly quick, and
17 the other one who basically helped obtained the warrant to
18 search it.

19 MR. STITELY: We're going to at least have to
20 make objections about search warrants, arrests.

21 THE COURT: All right. Let's --

22 MR. HUBBARD: Your Honor, I can put that one up
23 that found the car. There's no -- there's not a search
24 issue on that.

25 THE COURT: All right. If that would get him

1 home and if those search issues -- the search issue's
2 going to take a little bit because --

3 MR. HUBBARD: It's not a search issue.

4 THE COURT: All right. Let's do the one on the
5 car and we'll make somebody else --

6 MR. HUBBARD: Bradley Richardson.

7 THE COURT: -- happy or unhappy depending on
8 whether his family's waiting on him at the airport.

9 BRADLEY RICHARDSON, after being duly sworn,
10 testified as follows:

11 THE CLERK: Have a seat.

12 Once you're seated, speak up loud and clear,
13 stating your full name, spelling your last name for the
14 record, please.

15 THE WITNESS: My name is Officer Brad
16 Richardson. The last name is spelled R-I-C-H-A-R-D-S-O-N.

17 DIRECT EXAMINATION

18 BY MR. HUBBARD:

19 Q Officer Richardson, where do you work?

20 A The Seattle Police Department.

21 Q How long have you been there?

22 A Since September of 2004.

23 Q Did you have occasion back in 2006, June of 2006, to
24 get involved in the Kenneth Lynch case?

25 A I did, yes.

1 Q How did that come about and what were you tasked with
2 doing?

3 A The morning of the 18th, I had been sent a message
4 over my laptop computer in my car to look for a vehicle
5 involved in an incident back in South Carolina.

6 Q What did you do?

7 A All the information I was given was be on the lookout
8 for a particular vehicle that was apparently parked and
9 maybe in the area of a Greyhound bus station, and so I
10 went out to that location around the Greyhound bus
11 station, which is where I was dispatched.

12 Q And were you able to locate a vehicle that matched
13 the description you were given?

14 A Yes, I did.

15 Q And can you describe the vehicle?

16 A It was a tan Ford Focus, and according to my
17 information that was given to me on the computer, it was a
18 2005.

19 Q And let me ask you about that Ford Focus.

20 When you found it, what type of condition was it
21 in?

22 A Completely clean. There was no plates on the
23 vehicle.

24 When we first go out and look at a vehicle, if
25 we find a vehicle involved in anything, the first thing is

1 we go out and do kind of a cursory check just to make sure
2 there's nothing in the car, the condition, kind of
3 depending on the case, but we didn't see anything inside
4 the vehicle. It was completely clean.

5 Q Talking about the exterior of the vehicle, was there
6 any indication that the vehicle had been damaged or broken
7 into?

8 A There was no sign of any damage on the exterior.

9 Q Now, you said the plates were missing. The license
10 plates?

11 A Both the front and the back plate were gone from the
12 vehicle.

13 Q So it had no plates whatsoever?

14 A No plates whatsoever.

15 Q And did you -- in looking at the interior, did you
16 open the door or just look through the window?

17 A At first, I actually checked the VIN just to verify
18 the vehicle we were looking for was that particular
19 vehicle.

20 Q Do you have that VIN number with you?

21 A I have it in front of me, if I can --

22 Q If you don't mind --

23 A Absolutely.

24 Q -- reading it into the record.

25 A The VIN on the vehicle came back as 1 Frank Adam

1 Frank Paul 34 Nora 25 William 228072. And once that plate
2 was put into our computer, it came back to a 2005 Ford
3 Focus, four-door, tan in color.

4 Q Did it indicate who the owner was, the registered
5 owner?

6 A It did. It came back to a Portia Washington of
7 Lexington -- looks like it was written down as Lexington
8 County.

9 Q And the interior of the car, clean or messy?

10 A Clean. I recall it looked like actually a rental
11 car, it was so clean.

12 Q And what did you do once you located this car?

13 A I -- we actually came in tandem as another officer
14 was also there. I notified him what we had. At that
15 point, I believe he contacted the original complainant,
16 which was a Lieutenant Matt Edwards back from West
17 Columbia PD, which is what was requested of us once we
18 found car -- that car, excuse me.

19 Q Okay. And what did you do after that?

20 A At that point, we sat on the car to secure it. I
21 believe our sergeant from the homicide unit was also
22 notified as well, letting him know we found it, and then
23 we just waited to get further instructions from him. The
24 information that also came through was to check the car
25 for possible bodies.

1 Q Okay. And you had looked in the interior. Did you
2 see anybody in the interior?

3 A Saw nothing in the interior.

4 Q What about the trunk?

5 A The trunk was popped. Nothing was in the trunk,
6 spotless, just as the interior of the car was as well.

7 Q What did you do then?

8 A We secured the car. I drove back to the police
9 department, which is only a few blocks away. The other
10 officer actually waited for me to come back with a --
11 basically a garage key, it's a secured garage key that we
12 don't have at the precincts, obtained that, and at that
13 point, we contacted a tow truck company to have them come
14 pick up the car, and per our sergeant with the homicide
15 unit, bring it back to a secured, locked facility at one
16 of the headquarters buildings downtown.

17 Q And you followed the tow truck in with the car?

18 A From start to finish, yes.

19 Q It that basically to -- for what purpose?

20 A Just to maintain evidence, make sure that nobody
21 penetrates the car, gets in the car, opens the car, if
22 there was a car accident, things like that, so --

23 Q And the secure facility the car was taken to, where
24 was that?

25 A That was south in the industrial area of Seattle, so

1 maybe four miles away, three miles away, not far at all.

2 Q I'm going to show you a chart. See if this chart is
3 familiar and you can identify what's on this chart.

4 A It's the area where we actually located the vehicle,
5 so, yes, it's --

6 Q And does it also show an enlarged portion where the
7 Greyhound bus station is and an enlarged portion showing
8 where the car was parked?

9 A It does, yes.

10 MR. HUBBARD: Okay. Your Honor, I'd move this
11 into evidence at this time.

12 MR. STITELY: No objection to that picture,
13 Judge.

14 THE COURT: State's 28 without objection.

15 (WHEREUPON, STATE'S Exhibit No. 28 was marked
16 for identification and received into evidence.)

17 BY MR. HUBBARD:

18 Q Officer, if you would, what street was this vehicle
19 found on?

20 A Terry Avenue.

21 Q I'll tell you what, let me stand over here.

22 A Okay. It was located on Terry Avenue, and the
23 Greyhound bus station was about a block and a half to the
24 west of where I located the vehicle.

25 Q Okay. What is this -- I'm pointing to the far left

1 side of this diagram. What is this that I'm pointing to?

2 A That's the Greyhound bus station, downtown Seattle.

3 Q And Terry Avenue would be about how many blocks from
4 that bus station?

5 A A block and a half just to the east of the Greyhound
6 bus station.

7 Q And what block or section on Terry Avenue was the
8 vehicle located in?

9 A The 1800 block.

10 Q And was this car that had no tags, it was real clean,
11 where was it parked, was it metered parking?

12 A It was on the side of the street, metered parking,
13 but on Sundays there is no real issue as far as paying for
14 parking or anything like that. It's pretty much free on
15 Sunday.

16 Q What about Monday through Friday?

17 A Monday through Friday, we've had parking enforcement
18 officers probably come by, ticket the vehicle if it's been
19 sitting, and then probably go back and continue ticketing
20 the vehicle, eventually impounding it, pretty much showing
21 that it's an abandoned vehicle if it hasn't been picked up
22 after so many days.

23 Q Okay. It would just take a matter of days?

24 A I'm not sure what their protocol is as far as how
25 many days, but usually no more than a week, so it's

1 usually --

2 Q Would the fact that it didn't have a license plate
3 draw even more suspicion by the people that keep up with
4 the cars, that department?

5 A It would. That is not typical parking behavior of
6 people, so --

7 Q Did the car appear to be abandoned to you?

8 A With no plates on the vehicle, we didn't know what we
9 had, but, of course, most people park with at least some
10 license plate on their vehicle, so that seemed unusual.

11 Q In fact, if somebody had gotten in that car and
12 started to drive off, would they be ticketed?

13 A Well, they'd be stopped, and, yes, they'd be ticketed
14 and all the information verified.

15 Q I'm going to show you this strip, read it to you and
16 see if it's accurate.

17 June 18, 2006, at 9:16 a.m., Portia Washington's
18 2005 Ford Focus found near Greyhound bus terminal in
19 Seattle, Washington. License tag missing.

20 A That's correct, yes.

21 Q Okay. That's accurate?

22 A That's very accurate, yes.

23 Q Were the doors to the car locked or unlocked?

24 A I don't recall if they were locked or unlocked,
25 actually.

1 Q Could you tell if keys were located in the car or
2 not?

3 A There was no keys. I know it was noted on the report
4 that there was no damage to the ignition as well.

5 Q But no keys?

6 A No keys. No keys were located in the car. There was
7 no damage to the ignition, no damage to the doors.

8 MR. HUBBARD: Thank you, Officer.

9 Please answer any questions the defense may
10 have.

11 CROSS-EXAMINATION

12 BY MR. STITELY:

13 Q Good evening, Officer Richardson. I hope to be quick
14 today. How are you today?

15 A Good evening, yes.

16 Q You're a road officer?

17 A A beat officer, yes, a patrol officer.

18 Q Very good. Have you ever been in South Carolina
19 before?

20 A First time.

21 Q Very good. Is it warmer?

22 A Just cold back home, so I would say maybe.

23 Q You said one thing that keyed you off was the front
24 plate was missing. You would have no idea that South
25 Carolina doesn't do front plates, I take it?

1 A The front and rear were both missing, yes.

2 Q I guess it's a Washington thing, they have front
3 plates and rear plates?

4 A Most cars in the United States, I think, have front
5 and rear plates, but I don't know what the standard is for
6 South Carolina, no, I do not.

7 Q South Carolina doesn't, if you'd like to know.

8 A Interesting.

9 Q Neither does Florida, actually.

10 How close to Seattle is a place called Kirkland,
11 Washington?

12 A It's east of Seattle, maybe ten minutes.

13 Q Metro area? I mean, Seattle metro area, is that how
14 you would describe it?

15 A I would say from downtown Seattle from where I
16 patrol --

17 Q Okay.

18 A -- maybe a ten-minute drive.

19 Q Is that you-all's jurisdiction out that way?

20 A Negative.

21 Q Is that the county?

22 Down here we have city police officers. We also
23 have county police officers.

24 A Kirkland PD does just Kirkland, the city of --

25 Q Okay.

1 A -- which is in King County, so you also have sheriffs
2 also in the area, so --

3 Q Is part of Seattle in King County?

4 A It is in Seattle -- or it is in King County, yes.

5 Q Okay. So it's in the very same county?

6 A Correct.

7 Q Okay..

8 A Across the Lake Washington, so yeah.

9 Q Sure. If you had gotten a call about something in
10 Kirkland, Washington, would it be relatively easy for an
11 officer, either at Seattle PD or King County, to head over
12 there?

13 A It wouldn't be common.

14 Q Okay. Pretend that you got a -- and you're a beat
15 officer. Do you ever get calls to follow up on tips, you
16 know, look at -- look into something, anything like that?

17 A I think it depends on what the case is or what the
18 call is.

19 Q Sure. Say that there was a spotted person called in
20 on 7-14 of 2006. Now, the day you were on the scene here
21 was the 20th of June -- or the 18th of June, correct?

22 A Correct, the 18th of June.

23 Q Okay. So about a month and a half later. Were there
24 officers -- or not even a month and a half -- less than a
25 month later, were there officers available in King County

1 or Kirkland, Washington, that could have followed up on a
2 lead if someone spotted anything, as an officer in that
3 area?

4 A I think it depends on what their calls were.

5 Q Sure.

6 A Most police departments have their own specialized
7 units.

8 Q Like if an individual called into West Columbia
9 Police Department and said they had just spotted
10 Ms. Washington and her daughter (sic) in a Safeway
11 supermarket -- are there Safeway supermarkets up there?

12 A All across Washington, yes.

13 Q Okay. So it's a place you'd be familiar with?

14 A Correct.

15 Q As a random chance, you don't know a Tony Rankin who
16 works in a Safeway supermarket in Kirkland, Washington, do
17 you?

18 A Never met him.

19 Q Fair enough. But that's pretty close to you-all?

20 A Kirkland?

21 Q Yeah.

22 A Ten minutes away maybe.

23 Q Ten minutes from where this car was found, correct?

24 A I think on a good day with no traffic, maybe.

25 Q Have you ever done any investigation work or always

1 just been beat work?

2 A There's been some follow-up, but extensive, no.

3 Q Okay. If a missing person was a case you were
4 working and their car was located in Seattle, Washington,
5 on Terry Avenue --

6 A Yes.

7 Q -- and someone within a couple of weeks called and
8 said they just saw that person and a little girl no more
9 than ten minutes away, do you think it would have been
10 reasonable to follow up on that? Would your supervisor
11 have told you to?

12 A It wouldn't come to me. It'd probably go to a
13 specialized unit for follow-up.

14 Q Would it surprise you-all if you-all would have
15 followed up on that?

16 A No.

17 MR. STITELY: Thank you.

18 No other questions.

19 REDIRECT EXAMINATION

20 BY MR. HUBBARD:

21 Q One quick one.

22 The facility that you took the car to, was that
23 part of Seattle Police Department's --

24 A Correct.

25 Q What was the facility? I have --

1 A It's called Park 95 that has pretty much our motor
2 officers, SWAT officers. It's pretty much a large, a very
3 large facility.

4 Q Does it also have your CSI unit?

5 A CSI, forensics. It's a large, indoor locked impound
6 lot, so it's a pretty big premises.

7 Q And it's under your auspices of Seattle PD?

8 A Downtown west precinct, yeah, it's still amongst that
9 precinct today, so it's very close.

10 MR. HUBBARD: Thank you.

11 Your Honor, I have no more questions.

12 THE COURT: And is he likewise released?

13 MR. STITELY: Yes.

14 MR. HUBBARD: I'd ask that he be released from
15 his subpoena and good to go home.

16 THE COURT: Congratulations.

17 THE WITNESS: Thank you, sir.

18 THE COURT: I hope your stay here was nice. All
19 right.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: I hope that was -- I think that was
22 very good of you-all, the whole group, to get the four or
23 five west coast officers that we could get done, done and
24 released. So I applaud you both, both sides for their
25 efforts.

1 Do you-all want to resume tomorrow morning about
2 the same time we did this morning?

3 MR. HUBBARD: Yes, sir.

4 THE COURT: All right. We'll try to start close
5 to 9. I can't promise you at 9, but we'll be here about
6 9, about like this morning.

7 MR. McGUIRE: Yes, sir.

8 MR. HUBBARD: Thank you, Your Honor.

9 (The proceedings were concluded for the day to
10 be reconvened on April 20, 2012.)

11 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

12 VOLUME 4 OF 10

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1 THE COURT: All right. Ladies and gentlemen,
2 are we ready to begin?

3 MR. McGUIRE: Yes, sir, Your Honor.

4 THE COURT: All right. Solicitor.

5 MR. GRAHAM: The State calls Trooper Shane
6 Ramirez.

7 SHANE RAMIREZ, after being duly sworn, testified
8 as follows:

9 THE CLERK: Have a seat right here, please, sir.
10 Once you're seated, sir, speak up loud and
11 clear. State your full name, spelling your last.

12 DIRECT EXAMINATION

13 BY MR. GRAHAM:

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

15 A Shane Ramirez, S-H-A-N-E R-A-M-I-R-E-Z.

16 Q Shane, if you'd just pull the microphone -- just --
17 can you slide -- or scoot a little forward in the chair.
18 That way you won't have to lean forward when you talk.

19 Where are you employed?

20 A Texas Department of Public Safety, Texas Highway
21 Patrol.

22 Q And how long have you been with the Texas Highway
23 Patrol?

24 A Approximately nine years.

25 Q I'm sorry?

1 A Approximately nine years.

2 Q Nine years. And what do you -- what have been your
3 job duties with the highway patrol?

4 A Excuse me?

5 Q What job duties do you have as a highway patrolman?

6 A Routine traffic patrol, just working accidents, stuff
7 like that.

8 Q Okay. So you've been working the highways in Texas
9 for nine years?

10 A Yes, sir.

11 Q If I asked you where Milepost 72 on I-10 is, can you
12 give me the idea of the geography of Texas and where that
13 is?

14 A That's actually in Fort Hancock, Texas, just outside
15 of El Paso, east of El Paso, Texas.

16 Q Okay. Referring to State's 25, where are we in the
17 United States?

18 A Where are we at right now?

19 Q Well, no. Where is El Paso, where in the
20 Fort Hancock area?

21 A Right there.

22 Q So it's the far western side of --

23 A Texas.

24 Q -- Texas.

25 How close is Fort Hancock to the Mexican border?

1 A Approximately 10, 15 miles.

2 Q And is there a point of entry anywhere near there?

3 A Yes, sir.

4 Q Where -- how far away is that from Fort Hancock?

5 A Actually, it's in -- in Fort Hancock.

6 Q So right there? It's right there?

7 A It's right there.

8 Q Were you on patrol on June 14th of 2006?

9 A Yes, sir.

10 Q And did you have an occasion to stop a 2005 Ford
11 Focus driven by Mr. Lynch at about 12:12 p.m.?

12 A Yes, sir.

13 Q And is it routine practice for yourself and other
14 members of the Texas Highway Patrol to record traffic
15 stops?

16 A Yes, sir.

17 Q Let me show you a CD and ask if you recognize it.

18 A Yes, sir.

19 Q And how do you recognize it?

20 A I put my initials on it.

21 MR. GRAHAM: Bill, do you want to take a look at
22 this?

23 BY MR. GRAHAM:

24 Q What does this disc contain?

25 A The traffic stop.

1 Q And how is it recorded -- how is it recorded in your
2 car?

3 A On our dash cam, the time of the VHS.

4 Q And then you've looked at it, and this is a fair and
5 accurate representation, exactly the way the traffic stop
6 occurred?

7 A Yes, sir.

8 Q The microphones -- do you record sound as well?

9 A Yes, sir.

10 Q How many microphones are there?

11 A Two. We have a body mike -- a body mike and an
12 in-car mike.

13 MR. GRAHAM: Your Honor, the State would offer
14 this into evidence at this time.

15 MR. DRYLIE: No objections, Your Honor.

16 THE COURT: Very good. It's admitted without
17 objection, State's 29.

18 (WHEREUPON, STATE'S Exhibit No. 29 was marked
19 for identification and received into evidence.)

20 BY MR. GRAHAM:

21 Q What was the make and model of the car that you
22 stopped?

23 What was the reason you stopped the car?

24 A I stopped the vehicle for speeding. It was a 2005
25 Ford Focus.

1 Q And do you remember the tag number of the vehicle?

2 A I have it on my -- they were South Carolina plates,
3 682 Sam Edward Henry.

4 Q And did that tag come back to that car?

5 A Yes, sir.

6 Q And were you able to determine who the registered
7 owner was for the car?

8 A Yes, sir.

9 Q And who was the registered owner?

10 A It came back to Portia Washington.

11 Q Portia Washington?

12 Were you able to determine who the driver of the
13 car was?

14 A Yes, sir.

15 Q And who was that?

16 A Kenneth A. Lynch. He handed me his South Carolina
17 driver's license.

18 Q So you had a driver's license in your hand?

19 A Yes, sir.

20 Q And the driver's license showed Kenneth A. Lynch?

21 A Yes, sir.

22 Q And did it have a photograph on it?

23 A Yes, sir.

24 Q And what, if anything, did you do with that
25 photograph as far as comparing that photograph to the

1 driver of the vehicle?

2 A I make sure the driver's license looks like the
3 driver, make sure it's him.

4 Q Are you able to -- do you see the driver of that
5 vehicle in the courtroom today?

6 A Yes, sir.

7 Q And where is he?

8 A Sitting there.

9 Q And we're talking about the defendant, the African
10 American man sitting over at the defense table?

11 A Yes, sir.

12 Q And that's the person who was driving the vehicle
13 that day?

14 A Yes, sir.

15 Q Were there any other passengers in the car?

16 A No, sir.

17 Q You didn't look in the trunk, did you?

18 A No, sir.

19 Q Okay. But there were no other passengers? There was
20 a driver, no passengers?

21 A Right. Correct.

22 MR. GRAHAM: Your Honor, at this time the State
23 would publish this.

24 THE COURT: No objection to that.

25 (The videotape was played but not transcribed.)

1 BY MR. GRAHAM:

2 Q I believe -- what is he looking for right now?

3 A Insurance.

4 Q Were you able to determine whether the brake lights
5 are on?

6 A They're on.

7 (The videotape was concluded.)

8 BY MR. GRAHAM:

9 Q Trooper Ramirez, was that the traffic stop that you
10 performed on Kenneth Lynch on June 14th, 2006, at about
11 12:12 p.m.?

12 A Yes, sir.

13 Q You stopped him for speeding. Let's go through what
14 happened there.

15 So after you turn your lights on and pull him
16 over, where are you at?

17 A We're on an overpass.

18 Q An overpass. Is that coming off the interstate?

19 A Yes, sir.

20 Q Tell me about the stop. When you saw him speeding,
21 which way were you going, which way was he going?

22 A He was traveling westbound; I was traveling
23 eastbound.

24 Q So he's westbound on I-10?

25 A Yes.

1 Q The median --

2 A The median, yes, sir.

3 Q And you're over on the eastbound lane of I-10.

4 A Eastbound.

5 Q What do you see as he's coming toward you?

6 A I saw a brown passenger vehicle speeding.

7 Q What did you do?

8 A I turned on my lights, crossed the median, turned
9 around, caught up to the vehicle, and we -- he pulled --
10 stopped on the overpass.

11 Q Okay. Now, we're on the overpass on the interstate,
12 or where are we at?

13 A Yes, an overpass on the interstate, to -- going to
14 Fort Hancock, as a matter of fact.

15 Q Is he still on I-10, or is he on an exit ramp?

16 A Actually, we're on the overpass in between --

17 Q I-10 goes straight into Fort Hancock?

18 A Yes.

19 Q Once you pulled him over and both vehicles are at a
20 stop, what do you do?

21 A I exit my vehicle, make contact, identify myself,
22 advise the driver why he was stopped, then ask for a
23 driver's license, insurance.

24 Q So you told him -- why did -- you told him that he
25 was stopped for speeding?

1 A Yes, sir.

2 Q When you asked him for his driver's license and
3 insurance, what, if anything, did he produce for you?

4 A Just the driver's license.

5 Q Just the driver's license.

6 I had asked you while the video was going on --
7 it looked like he was looking for something --

8 A Yes, sir.

9 Q -- going through the compartment of the car. What
10 was he looking for?

11 A The insurance.

12 Q Did he ever find it and produce it to you?

13 A No, sir.

14 Q Did you record his DL number, his driver's license
15 number?

16 A Yes, sir.

17 Q And can you -- for the record, would you tell the
18 court reporter what that number was?

19 A South Carolina Driver's License 0100752941.

20 Q Was he ever able to produce paperwork for who the
21 registered owner of the car was?

22 A Yes, sir.

23 Q And who was the registered owner?

24 A Portia Washington.

25 Q So that was reported back to you from your dispatch

1 as well as you saw the South Carolina registration card
2 that had Ms. Washington's name on it?

3 A Yes, sir.

4 Q There were no other passengers in the car.

5 What about the condition of the car? How would
6 you describe -- how did it look?

7 A It was messy, like someone had been living out of it.

8 Q When you say, "messy" and "somebody living out of
9 it," can you describe what you're talking about?

10 A Just stopping to eat and keep on driving, just
11 leaving the trash on the floor, on the seats.

12 Q Was it like that in the front and the backseat?

13 A In the front seat. And in the backseat, there was
14 trash.

15 Q Things on the seat, things on the floor?

16 A Yes, sir.

17 Q Did you see any bags?

18 A No, sir.

19 Q What, if anything, did you see in the backseat of
20 that vehicle?

21 A I observed a car seat.

22 Q A car seat. When you say, "a car seat," what are we
23 talking about?

24 A A child's car seat, like a -- how to explain -- like
25 a booster seat, like.

1 Q Well, you have infant seats, like you would carry
2 around an infant in that lock in. We're not talking about
3 that, are we?

4 A No, sir.

5 Q When you're talking about a booster seat or a child
6 seat, there's also one for older kids that just have the
7 bottom but no back.

8 A Yes, sir.

9 Q So which one are you talking about?

10 A The one -- actually, this one had a seat with a
11 removable back. That's what it appeared to be.

12 Q So it was a car seat, or a place for them to sit,
13 that raises them up; and then it had a back for their back
14 and their -- to protect their head --

15 A Yes.

16 Q -- and then the seat belt would come across there.

17 And then later on it was one of the removable
18 kinds so it could just go to a booster seat and the back
19 would be able to move away as the child grew older?

20 A Yes, sir.

21 Q In your conversation with Mr. Lynch, what, if
22 anything, did you ask him about where he was headed to?

23 A I asked him where he was headed to. He stated
24 Arizona.

25 Q Did he tell you why he was going to Arizona?

1 A To pick up his wife.

2 Q Pick up his wife.

3 What, if anything, did he say about picking up
4 Portia Washington?

5 A Nothing, sir.

6 Q What, if anything, did he say about picking up
7 **Cassandra L.**

8 A Nothing, sir.

9 Q Did you ask him where he was coming from?

10 A Yes, sir.

11 Q And what did he say?

12 A Mississippi.

13 Q Did you ask him -- what, if anything, did you ask him
14 about who the vehicle belonged to?

15 A I asked him who the vehicle belonged to.

16 Q And what did he say?

17 A Actually, I don't recall that.

18 Q Did he say it was his vehicle?

19 A No, sir.

20 Q What, if anything, did he say to you about going to
21 Canada?

22 A Nothing, sir.

23 Q What, if anything, did he say to you about wanting to
24 clean the car out?

25 A At the end he just stated he needed to clean his car

1 out at the gas station.

2 Q So he said he needed to clean his car out?

3 A Yes, sir.

4 Q What did he ask you about cleaning his car out? Did
5 he ask you any questions?

6 A No, sir. He just stated he needed to clean his car
7 out.

8 Q Did he talk about where he was going to go to do
9 that?

10 A No, sir, just down -- I advised him at the gas
11 station.

12 Q The gas station right there off the interstate?

13 A Yes, sir.

14 Q How would you describe Mr. Lynch's behavior during
15 this traffic stop?

16 A He looked tired, like he had been up. He just seemed
17 kind of out of it.

18 Q Did you notice anything unusual about his speech
19 pattern?

20 A It was slow, just -- I can't really explain, just
21 like -- took time to respond to the questions and stuff.

22 Q What, if anything, did you notice about him repeating
23 your questions back to you?

24 A Just everything, he would just repeat it, buying
25 time.

1 Q What, if anything, did you notice about the ashtray
2 in the vehicle?

3 A It was full of cigarettes, cigarette butts.

4 Q At any time during your conversations with Mr. Lynch,
5 did he ever at any time refer to Portia Washington as his
6 wife?

7 A No, sir.

8 Q Let me show you a couple of items and ask if they are
9 accurate.

10 Referring to State's No. 25 that I showed you
11 earlier, the map of the United States, there's a sticker
12 on here that says June 14th, 2006, 12:12 p.m.,
13 Interstate 10, Milepost 72, Fort Hancock, Texas.

14 Does that accurately describe the time and the
15 location of your traffic stop with Mr. Lynch?

16 A Yes, sir.

17 Q And where again, roughly, are we at in the United
18 States for where that stop occurred?

19 A (Witness indicating.)

20 MR. GRAHAM: Your Honor, at this time we would
21 add this to State's 25 consistent with his testimony.

22 Would you put it on there for me, Trooper?

23 THE COURT: Subject to the same objection?

24 MR. DRYLIE: Yes, sir, subject to the same
25 objection.

1 THE COURT: Very well. Overruled. We'll allow
2 the placement of the decal I'm going to call it.

3 BY MR. GRAHAM:

4 Q Let me show you this statement that you've reviewed
5 before and ask you if it's accurate and represents your
6 testimony.

7 June 14, 2006, Lynch stopped for speeding
8 outside of El Paso, Texas, in a 2005 brown Ford Focus
9 registered to Portia Washington; no other occupants; child
10 seat in backseat. And that was at 12:12 p.m.

11 Is that accurate and consistent with your
12 testimony?

13 A Yes, sir.

14 MR. GRAHAM: Your Honor, I'll add this to our
15 board for demonstrative purposes.

16 Trooper Ramirez, thank you. Please answer any
17 questions the defense has for you.

18 CROSS-EXAMINATION

19 BY MR. DRYLIE:

20 Q Good morning, Trooper Ramirez.

21 A Good morning.

22 Q My name's Eric Drylie, and I just have a couple of
23 questions for you.

24 You've been a trooper for nine years?

25 A Yes, sir.

- 1 Q And you stopped Mr. Lynch on June 14th?
- 2 A June 14th, 2006, yes, sir.
- 3 Q You said you were traveling eastbound on I-10 and he
- 4 was going westbound?
- 5 A Yes, sir.
- 6 Q And you had to flip around and turn your lights on --
- 7 A Yes, sir.
- 8 Q -- and speed up to catch up with him?
- 9 A Yes, sir.
- 10 Q And he didn't run at all?
- 11 A No, sir.
- 12 Q He pulled right over when you were coming after him?
- 13 A He exited and he stopped on the overpass.
- 14 Q Now, when you pulled him over, you got his driver's
- 15 license?
- 16 A I asked for his driver's license.
- 17 Q And you ran his driver's license?
- 18 A Yes, sir.
- 19 Q And you ran the plates of the South Carolina car?
- 20 A Yes, sir.
- 21 Q And there were no warrants?
- 22 A No, sir.
- 23 Q No holds?
- 24 A No, sir.
- 25 Q Nothing?

1 A Nothing, sir.

2 Q Now, you stated that there was a point of entry at
3 Fort Hancock into Mexico?

4 A Yes, sir.

5 Q Have you ever been to Mexico?

6 A Yes, sir.

7 Q Do you know in 2006 what was needed to get into
8 Mexico?

9 A No, sir.

10 Q Would you say it's difficult to get into Mexico from
11 where you were at in Fort Hancock?

12 A No, sir.

13 Q Now, you stated that Mr. Lynch stated that he was
14 going to pick up his wife.

15 A Yes, sir.

16 Q Is it possible that the person he was meeting was
17 Ms. Washington?

18 A I don't know, sir.

19 Q But he never said she wasn't his wife?

20 A No, sir.

21 Q Did you ever ask him if Portia Washington was his
22 wife?

23 A No, sir.

24 Q And you have no way of knowing if he dropped off
25 passengers earlier in that day?

1 A No, sir.

2 Q Now, you had a conversation with April Bayne later
3 that day?

4 A Excuse me?

5 Q Did you have a conversation with April Bayne later
6 that day, Detective Bayne, or anyone in West Columbia?

7 A I don't recall.

8 Q You don't recall. Was it possible you stated in that
9 conversation that Mr. Lynch was going to meet the
10 registered owner of the car?

11 A No, sir.

12 Q Okay. So it was pretty much just a routine traffic
13 stop?

14 A Yes, sir.

15 Q And then you went along your way?

16 A Yes, sir.

17 Q And he went along his?

18 A Yes, sir.

19 MR. DRYLIE: Just one moment.

20 (Pause.)

21 MR. DRYLIE: No further questions.

22 MR. GRAHAM: Nothing else for Trooper Ramirez,
23 Your Honor and ask that he be excused and released from
24 his subpoena.

25 MR. DRYLIE: Without objection.

1 THE COURT: Have a safe one, Trooper.

2 THE WITNESS: Thank you.

3 MR. GRAHAM: The State calls Cloyd Steiger.

4 CLOYD STEIGER, after being duly sworn, testified
5 as follows:

6 THE CLERK: Have a seat, please, sir.

7 Once you're seated, speak up loud and clear.
8 State your full name, spelling your last name for the
9 record, please.

10 THE WITNESS: My name is Cloyd Steiger. I'll
11 spell both names. My first name is C-L-O-Y-D. My last is
12 S-T-E-I-G-E-R.

13 DIRECT EXAMINATION

14 BY MR. HUBBARD:

15 Q Detective Steiger, where do you work?

16 A I'm a homicide detective with the Seattle Police
17 Department.

18 Q How long have you been working with Seattle?

19 A I've been there a little over 32 years.

20 Q How long in homicide?

21 A I've been in homicide about 18 years.

22 Q Were you asked at some point to get involved in the
23 case of Kenneth Lynch?

24 A Yes, I was.

25 Q How were you brought into this situation?

1 A I believe it was my sergeant that informed me that
2 there was a case where a person from South Carolina had
3 been -- or a car -- excuse me -- had been recovered in
4 Seattle and that they needed to get a search warrant for
5 it.

6 So he put me in touch with -- I believe it was
7 Matt Edwards from the West Columbia Police Department,
8 over the phone. I gathered enough information to complete
9 an affidavit for search warrant and then later went to the
10 court and had it signed.

11 Q Which court did you give it to in Seattle?

12 A I went to King County Superior Court, Judge Julie
13 Spector, S-P-E-C-T-O-R.

14 Q And the information you had put in that affidavit
15 came from West Columbia PD?

16 A That's correct, yes.

17 Q Did you supplement that affidavit at all?

18 A I did not, no.

19 Q And do you know, is that search warrant -- when did
20 you get the search warrant, let me ask you that?

21 A It was signed on June 20, 2006, at 11:15 a.m.

22 Q And when was it executed?

23 A Well, at that point I just gave the completed search
24 warrant to Kevin O'Keefe in the crime scene unit who was
25 going to actually do the search on the car. And I don't

1 have any direct information about when he actually
2 processed the car.

3 Q Okay. Did you get involved later after the search?

4 A Only in returning -- excuse me?

5 Q Yes. Did you return the return of the search
6 warrant?

7 A Yes, I did.

8 Q And what items were listed on that return?

9 A I have to check my copy.

10 Q Is that a certified copy?

11 A This is not a certified copy, no.

12 Q The certified copy --

13 A I gave to your office, yes.

14 The return of the warrant lists two latent print
15 cards, one swab, and something that says trace evidence.

16 Q Trace evidence. Okay.

17 MR. HUBBARD: Beg the Court's indulgence.

18 (Pause.)

19 BY MR. HUBBARD:

20 Q May I see your copy?

21 A Certainly.

22 MR. HUBBARD: Your Honor, I'd like to make a
23 Court's exhibit of this.

24 THE COURT: This is Court's Exhibit No.?

25 MR. HUBBARD: Court's Exhibit No. 30, Your

1 Honor.

2 THE COURT: That's consistent with my records.

3 (WHEREUPON, The Court's Exhibit No. 30 was
4 marked for purposes of the record.)

5 MR. HUBBARD: No further questions. Please
6 answer anything the defense might have.

7 CROSS-EXAMINATION

8 BY MR. STITELY:

9 Q Is it Detective Steiger?

10 A Steiger, right.

11 Q You don't have any kin down in south Florida, do you?

12 A Not that I know of.

13 Q One of the girls I grew up with had the same last
14 name.

15 My name is Ben Stitely. How are you today?

16 A Good. Thanks.

17 Q Good. Just very briefly, did you have anything to do
18 with the actual search of the vehicle?

19 A I did not.

20 Q So all you did was procure the warrant?

21 A That's correct.

22 Q And you just relied on the information from
23 West Columbia?

24 A Will you repeat that question?

25 Q You relied on the information from West Columbia?

1 A That's correct, yes.

2 Q Put it in an affidavit --

3 A That's right.

4 Q -- and present it to a local judge?

5 A Right.

6 Q Okay. You're on the return because you're the
7 officer who got the warrant, I take it?

8 A Right.

9 Q You don't know anything about what was found or --
10 aside from the fact that they said print cards, swab?

11 A I don't have any direct evidence.

12 Q Perfect.

13 Now, you said that you worked in King County?

14 A I work for the Seattle Police Department. It is in
15 King County, yes.

16 Q Okay. Do you know where a place called Kirkland,
17 Washington, is?

18 A Yes, I do.

19 Q Is that also in King County?

20 A Yes, it is.

21 Q You said you've been in homicide investigations for
22 approximately 18 years, correct?

23 A That's right.

24 Q Have you ever had, during your job description, the
25 opportunity to work a homicide case?

1 A Hundreds.

2 Q Ever one where you couldn't find the bodies
3 originally?

4 A Yes.

5 Q Okay. How about a situation where they were
6 suspected missing people? Would a common practice of
7 yours be to follow up on sightings or leads?

8 A It depends. It depends on what I believe the
9 veracity of the lead is.

10 Q Okay. If you found a car, say, in Seattle,
11 Washington, and you had a lead that came in from a
12 Kirkland, Washington, do you think that might be something
13 you want to look into?

14 A Well, it depends, again, what the lead is.

15 Q Okay. Are you familiar with Safeway supermarkets?

16 A Yes.

17 Q Are they relatively easy to locate?

18 A Yes.

19 Q Okay. If you had a -- are you familiar with an
20 individual by the name of Tony Rankin?

21 A No.

22 Q Would it be that hard if West Columbia had asked
23 someone in Seattle or King County to go to a Safeway
24 supermarket in Kirkland, Washington, to speak an employee,
25 would that be something you-all could accommodate or at

1 least one of the local law enforcement agencies could have
2 done?

3 A Would we have done it if asked? Yes, we would, yeah.

4 Q And if you got a tip, for example, that for the past
5 several days, a woman and a small child matching the two
6 descriptions had been in there shopping, it would have
7 been relatively easy to ask if you or a nearby department
8 maybe to follow up on that?

9 A Are you asking if I was the detective investigating
10 the case --

11 Q Yeah.

12 A -- would I ask somebody to do that?

13 Q Sure.

14 A Well, that depends on a lot of things. It would
15 depend on whether the person who says they saw them has
16 any reason to recognize these people.

17 Q If they said they saw the posters on TV and "I just
18 saw those two people in my store the past several days."

19 A I don't know. I don't know about any posters on TV
20 in Seattle, but --

21 Q Sure.

22 A -- maybe.

23 Q But it wouldn't have been that hard?

24 A No, it wouldn't have been difficult.

25 Q And you said that this Kirkland, Washington, is no

1 more than ten minutes from where you guys collected the
2 car, give or take?

3 A Actually, I didn't say anything about that.

4 Q How far away is it? I apologize.

5 A It's about 20 minutes away.

6 Q Same county, though?

7 A Yes.

8 Q Relatively close proximity to where you located the
9 car?

10 A Well, it's on the opposite side of Lake Washington.
11 Yeah, I mean, it's reasonably close. I mean, you couldn't
12 walk there.

13 Q Same county?

14 A It is the same county, yes.

15 MR. STITELY: I have no other questions. Thank
16 you very much, Detective.

17 THE WITNESS: All right.

18 REDIRECT EXAMINATION

19 BY MR. HUBBARD:

20 Q Mr. Steiger, I actually have some copies that I'd
21 like you to look at on that search warrant.

22 A Right.

23 Q Are these the certified copies?

24 A Those are the certified copies of that search
25 warrant.

1 Q Is this your certified affidavit?

2 A Yes, it is.

3 Q Is this the certified search warrant itself?

4 A Yes, it is.

5 Q Is this a certified return?

6 A Yes, it is.

7 MR. HUBBARD: Your Honor, I move these as
8 Court's exhibits as well, just to make sure the record's
9 clear.

10 THE COURT: All right. They will be accepted
11 without objection as Court's Exhibit 31, inclusive.

12 MR. HUBBARD: No further questions.

13 THE COURT: Anything else?

14 MR. STITELY: No, Judge.

15 (WHEREUPON, The Court's Exhibit No. 31 was
16 marked for purposes of the record.)

17 (A discussion was held off the record.)

18 MR. GRAHAM: Your Honor, the State calls Carly
19 Coviello.

20 CARLY COVIELLO, after being duly sworn,
21 testified as follows:

22 THE CLERK: Have a seat, please.

23 Once you're seated, speak up loud and clear,
24 stating your full name, and spelling your last.

25 THE WITNESS: Carly Coviello.

1 DIRECT EXAMINATION

2 BY MR. GRAHAM:

3 Q Spell your last name, please.

4 A C-O-V-I-E-L-L-O.

5 Q State it for me one more time.

6 A Carly Coviello.

7 Q Ms. Coviello --

8 A Yes.

9 Q -- can you tell me where you are currently employed?

10 A T-Mobile.

11 Q T-Mobile. That's a cell phone company?

12 A Yes, sir.

13 Q What do you do for T-Mobile?

14 A I am currently a manager with the group. We process
15 subpoena requests, and we also appear as custodian of
16 records for the company.17 Q How many times have you testified as a records
18 custodian for T-Mobile?

19 A A hundred maybe.

20 Q If I said -- if I asked you about SunCom and the
21 phone company SunCom, tell me about the relationship with
22 T-Mobile.23 A We bought SunCom a few years back, and we took over
24 any of their systems or reports or customers and converted
25 them over into T-Mobile systems.

1 Q So in addition to buying their physical things and
2 their customers, you also have taken their records as
3 well?

4 A Yes.

5 Q So now that T-Mobile has become SunCom, you are still
6 a records custodian for T-Mobile's records as well?

7 A Yes.

8 Q The records we're talking about -- phone records,
9 billing records, account information -- are those records
10 that are kept in the regular course of business?

11 A Yes.

12 Q And are those records made at or near the time that
13 the event occurred?

14 A Yes.

15 Q By someone or a system with knowledge of the event
16 occurring?

17 A Yes.

18 Q And did you receive a subpoena on this case for a
19 particular cell phone number?

20 A Yes.

21 Q And that number is (803)665-4636; is that correct?

22 A Yes.

23 Q Who did you identify as the subscriber for that
24 account?

25 A I need a copy of the records.

1 MR. STITELY: May I see those?

2 BY MR. GRAHAM:

3 Q Do you recognize those as being T-Mobile's records
4 related to that number?

5 A Yes.

6 Q Who is the registered account holder, or the
7 subscriber, for that telephone number we just discussed?

8 A Ms. Rosalyn Sumter.

9 Q Can you spell the last name for me?

10 A S-U-M-T-E-R.

11 Q Let's talk about the last call that was made from
12 that. That's a cell phone number. We're talking about
13 T-Mobile. It's not a landline, it's a cell phone?

14 A Correct.

15 Q The last call that you document, tell me about that
16 call. What was the originating number?

17 A The originating number was (803) 665-4636.

18 Q Okay. So that means that the person who dialed out
19 would be from the number we're talking about?

20 A Correct.

21 Q What was the number that was called?

22 A (803) 776-0369.

23 Q And what date was that on?

24 A June 10th, 2006.

25 Q Are you able to tell when that report was ran that

1 includes these numbers and these calls?

2 A The report was completed on June 15th, 2006.

3 Q So what, if anything, does that tell us as far as
4 other calls being made after -- well, I didn't ask you
5 yet: What time was that last call placed?

6 A 2126 and 29 seconds.

7 Q 2126. So we're in military time?

8 A Yes.

9 Q So 9:26 p.m.?

10 A Yes.

11 Q That's the last call that is made in or out that's
12 recorded by T-Mobile; is that correct?

13 A Correct.

14 Q So from then, you said the report was from June 15th,
15 2006?

16 A Yes.

17 Q There's no other incoming or outgoing calls?

18 A Correct.

19 Q That call lasted how long?

20 A Four minutes and 45 seconds.

21 Q If I can see those records just a second.

22 Looking at your records, are you able to
23 determine the cell tower location for that call that
24 originated from (803)665-4636?

25 A Yes. It came off of a cell tower.

1 Q Do you have the address for that cell tower?

2 A 1123 Leaphart Street in West Columbia.

3 Q Let me show you a statement and ask if that reflects
4 your testimony so far.

5 June 10th, 2006, last call from (803)665-4636 to
6 (803)776-0369. Cell tower: 1123 Leaphart, West Columbia.
7 And it occurred at 9:26 p.m.?

8 A That would be correct.

9 Q Let's talk about another call in the records for that
10 cell phone. I believe it's the -- itemized as Number 4.

11 The originating number is (803)748-8692. Do you
12 see that call?

13 A Yes.

14 Q Can you tell me who's calling who?

15 A That would be an incoming call received by the
16 subscriber from that number.

17 Q So is it fair to say, then, that (803)748-8692 called
18 the subscriber, which that number is (803)665-4636?

19 A Yes.

20 Q The date that that call occurred?

21 A June 10th, 2006.

22 Q And the time?

23 A 1653 and 30 seconds.

24 Q Back again on military time?

25 A Yes, sir.

1 Q Is that 4:53 p.m.?

2 A Yes.

3 Q That is on June 10th, 2006?

4 A Yes.

5 Q How long did that call last?

6 A Eleven minutes and 11 seconds.

7 Q Let me show you another board and ask if this
8 represents what we just talked about.

9 June 10, '06, at 4:35 p.m. (sic), last call
10 between (803) 748-8692 and (803) 665-4636.

11 A That would be correct.

12 Q So from the records you have, the last call that was
13 made or received was on June 10th of 2006 at 9:26 p.m.;
14 is that correct?

15 A Yes.

16 Q Let me ask you a couple of different scenarios of
17 calls.

18 If you have a cell phone and somebody calls and
19 your phone is on, it rings, correct?

20 A Correct.

21 Q Then eventually it would go to voice mail?

22 A Correct.

23 Q Do you-all record that as a call in those records?

24 A No.

25 Q What kind of calls do you record?

1 A Just the ones that were actually answered.

2 Q So either a call that was made from that number that
3 was answered or a call that somebody called in that was
4 answered on the phone?

5 A Correct.

6 Q If the phone -- if you're on the phone, what happens?
7 Does it ring and then go to voice mail, or what happens?

8 A If the customer has call-waiting, if they choose to
9 answer it; if not, it goes to voice mail.

10 Q If the phone is turned off and someone calls in, what
11 happens?

12 A Automatically goes into voice mail.

13 Q If the battery is removed?

14 A Automatically goes into voice mail.

15 Q If the phone's destroyed?

16 A Automatically goes to voice mail.

17 Q Do you see any calls -- well, would that cell
18 phone -- if you had that cell phone and you called your
19 own voice mail, would it be recorded on there?

20 A It's possible. It might appear as the subscriber's
21 telephone number.

22 Q Do you see any record of that?

23 A Yes.

24 Q And where is that at?

25 A It looks like the first one would be call number --

1 it looks like 18.

2 Q What date and time was that?

3 A June 10th, 2006, at 9:02:41.

4 Q So we're in military time; so it's a.m., in the
5 morning?

6 A Yes.

7 Q So after the last call on June 10, 2006, at
8 9:26 p.m., since we now know that it would be recorded,
9 are there any records of that voice mail ever being
10 checked?

11 A No.

12 MR. GRAHAM: Thank you, ma'am. Please answer
13 any questions the defense has.

14 THE WITNESS: Thank you.

15 CROSS-EXAMINATION

16 BY MR. STITELY:

17 Q How are you today?

18 A Good, thank you.

19 Q My name is Ben Stitely. I don't have very many
20 questions for you, just a couple.

21 Where are you in from?

22 A New Jersey.

23 Q New Jersey. Outstanding. What part of New Jersey?

24 A Northern.

25 Q Up by the city?

1 A About a half hour out.

2 Q My people are from Asbury Park/Neptune City area.

3 A Got you.

4 Q Just a couple of questions.

5 These logs -- these logs that -- you still have
6 a copy in your hands?

7 A Yes, sir.

8 Q I don't want to be unfair.

9 They stop on June 15th, 2006, at 3:42?

10 A That's when it was created, yes.

11 Q Did you bring any logs beyond that date with you
12 today?

13 A No.

14 Q Now, when you told Mr. Graham a few minutes ago that
15 the first one denoted as call number one came from an
16 address, where are you getting that cell tower address
17 from?

18 A That's listed on the papers.

19 MR. STITELY: May I approach?

20 THE COURT: You may.

21 BY MR. STITELY:

22 Q All right. Can you please show me what you're
23 talking about?

24 A Right here.

25 Q Okay. So the only one that you're aware of is that

1 one particular call?

2 A Correct.

3 Q There's nothing in this log that tells us where that
4 cell tower was. That would be a different set of
5 information?

6 In a log, is just the phone number sheet on the
7 front?

8 A Correct.

9 Q That's not telling us where the cell phone tower is.

10 A In the third column over, it says, Initial Cell ID --

11 Q Okay.

12 A -- the 5265 --

13 Q Okay.

14 A -- that would be reference to the address that was
15 provided.

16 Q Okay. What is the tower for 5243?

17 A I don't know.

18 Q Okay. Is there any way for me to know by looking in
19 these documents or anything?

20 A No.

21 Q Can I go online and Google it, or it won't tell me?

22 A No.

23 Q All right. Who is Rosalyn Sumter?

24 A That is the name of the customer listed on this
25 account.

1 Q Okay. By knowing that, would you assume that this
2 phone belonged to a Rosalyn Sumter?

3 A Correct.

4 Q With an address in Columbia?

5 A Yes.

6 Q And there's nothing to lead you, as the custodian, to
7 believe that anyone other than Rosalyn Sumter in Columbia
8 was using this phone?

9 A Correct.

10 Q You had the Social Security number assigned to it?

11 A Correct.

12 Q Is it -- and I guess the same question would apply.
13 You wouldn't be able to tell me what any of the other cell
14 towers would be?

15 A No, I would not.

16 Q Is that evidence that would have been available if
17 someone would have requested it?

18 A Six years ago? Yes.

19 Q Okay. So how about now?

20 A No.

21 Q So if, as defense, we wanted to get those cell
22 towers, there's no way that we could get them?

23 A Not that I'm aware of, no.

24 MR. STITELY: Thank you very much.

25 No further questions.

1 MR. GRAHAM: No other questions, Your Honor.

2 And we'd ask that she be excused.

3 THE COURT: Any objection?

4 MR. STITELY: No, sir.

5 THE COURT: Thank you for coming.

6 THE WITNESS: Thank you.

7 MR. GRAHAM: The State calls Steve Newnom.

8 STEVEN NEWNOM, after being duly sworn, testified
9 as follows:

10 THE CLERK: Have a seat, please.

11 Once you're seated, speak up loud and clear.
12 State your full name, spelling your last on the record,
13 please.

14 THE WITNESS: Sure. Steven Lawrence Newnom,
15 N-E-W-N-O-M as in Mary.

16 DIRECT EXAMINATION

17 BY MR. GRAHAM:

18 Q Mr. Newnom, where are you employed, sir?

19 A TransUnion Credit Bureau.

20 Q Can you tell me what TransUnion Credit Bureau is?
21 What do you-all do?

22 A We collect credit information and store it into our
23 database for which potential creditors pull copies of
24 credit reports for giving -- extending credit to
25 individuals for credit cards, automobiles, home mortgages.

1 Q How many different credit agencies are there like
2 yours?

3 A There's three major credit bureaus: Experion,
4 Equifax, and TransUnion.

5 Q What, specifically, do you do for TransUnion?

6 A I am a team leader, working in the priority
7 processing department. I handle -- 14 associates report
8 directly to me. I basically handle government agencies
9 who -- consumers write to government agencies, such as
10 Better Business Bureaus, attorney generals, complaining or
11 disputing information about their credit report. It would
12 come to my department.

13 Also, individuals that sue TransUnion -- we
14 compile information for attorneys to defend those
15 lawsuits, subpoenas, information, individuals looking for
16 credit reports.

17 Q As part of your job, are you -- have you been
18 designated as custodian of records for TransUnion?

19 A Yes, I have.

20 Q And when we're talking about records, we're talking
21 about you coming to court and testifying like you are
22 today; isn't that correct?

23 A Yes, many times.

24 Q And the records we're talking about are those credit
25 inquiries on people all across the United States; is that

1 correct?

2 A Yes, anything about the credit report.

3 Q And those records are kept in the regular course of
4 business, because that's what you-all do?

5 A Yes, we do.

6 Q They're made at or near the time the event occurred.
7 When a request comes in or an inquiry comes in, you-all
8 log it, store it, and make a record of it?

9 A Exactly at the time it comes in.

10 Q And you keep that in the regular course of your
11 business?

12 A Yes. They are kept for up to two years.

13 Q You were sent a court order, asking you to get
14 records for two individuals. The first one was -- the
15 information you were provided was for Portia Sumter
16 Washington with a date of birth of 6/20/52 and a Social
17 Security number of 247-96-4101; is that correct?

18 A Yes, it is.

19 Q With that information, what could you -- what can you
20 tell me about -- what kind of reports can you run? What
21 kind of records do you-all keep?

22 A What we'd do is we'd pull a copy of the credit report
23 at that given time when we receive the request, and we
24 would have any information regarding that consumer at that
25 time, all their credit information, who inquired into

1 their accounts, and also their personal information, the
2 name, address, Social Security number.

3 Q So what information do you use -- you were given a
4 name, date of birth, and a Social.

5 What information do you use to check? Sometimes
6 people use different names, they use different dates of
7 birth, different Socials. How do you make sure that we're
8 talking about the right person?

9 A What we do is within our database, we input the
10 information that we have and we -- it returns any possible
11 matches regarding all the information with the address,
12 the name, and the Social Security number.

13 Q Okay. Well, based on the information you provided,
14 then, let's talk about the request as it relates to
15 Ms. Portia Washington. Tell me what you found.

16 A What we returned was a report that showed three
17 accounts on her file, plus it provided three additional
18 addresses, her name, date of birth, Social Security
19 number. And that was all the information that was
20 returned.

21 Q What names came up associated with that information?

22 A I'm sorry. Also Portia Bracey, B-R-A-C-E-Y.

23 Q So it accessed information for Portia Washington,
24 Portia Bracey. And did it also do Portia Bracey
25 Washington?

1 A We would have returned anything involved within the
2 name or Social Security number, and this is all the
3 information that was returned.

4 Q What was the current address that was affiliated with
5 Ms. Washington's credit report, or Ms. Bracey's credit
6 report?

7 A From what we had on the report, 430 New Street -- I'm
8 sorry -- New State Road, Cayce, C-A-Y-C-E, South Carolina
9 29033.

10 Q And what's the report date on that one?

11 A This report was pulled on March 9th, 2012, at 8:27
12 Central Time.

13 Q Did it have a previous address?

14 A Yes, it does. It has two additional previous
15 addresses.

16 Q And what are those?

17 A 1035 Commanche Trail, Apartment M-7, West Columbia,
18 South Carolina 29169; and also [REDACTED]
19 Columbia, South Carolina 29204.

20 Q So three addresses came up with that name, with that
21 Social Security number, and that date of birth?

22 A Yes. We only returned three addresses.

23 Q And that was a combination of the name, Social
24 Security number, and the date of birth, not just all three
25 of them; is that right?

1 A Correct.

2 Q Am I saying that correctly?

3 A Correct.

4 Q Besides the three addresses -- one in Columbia, one
5 in Cayce, and one in West Columbia -- were there any other
6 addresses reported in South Carolina?

7 A Not on this document. We only returned three for the
8 credit report.

9 Q Were there any other addresses located in any other
10 state in the United States?

11 A Not to my records.

12 Q Are there any addresses associated with any other
13 countries in the world?

14 A Not to my records.

15 Q You said that you pulled back -- I think it showed
16 that there were two inquiries; is that correct?

17 A Actually, on this report there is no inquiries.

18 Q What is an inquiry?

19 A An inquiry is when a creditor obtains a copy of your
20 credit report for a credit transaction. Basically, if you
21 go for a car loan, they will pull a copy of your credit
22 report to see if they're going to extend you that car
23 loan. Or a mortgage, credit card, same scenarios.

24 Q So if somebody -- so if Ms. Washington, or somebody
25 using her name or a combination of her name or her Social

1 Security number or her date of birth -- if that individual
2 would have applied for a credit card, would it have shown
3 up?

4 A Yes, it would have.

5 Q If that person would have applied for any type of
6 consumer credit, would it have showed up as an inquiry?

7 A Yes, it would have.

8 Q If somebody was applying to get utilities, is that
9 something that's also checked with, made an inquiry on
10 TransUnion's accounts?

11 A Yes, they are.

12 Q If somebody wanted to get apartment, would that show
13 up on there?

14 A Yes, it would.

15 Q If somebody applied for a mortgage, I think you said?

16 A Yes.

17 Q How about some -- how about utilities, like a house
18 phone?

19 A Yes.

20 Q A cell phone?

21 A Yes.

22 Q How about even a job?

23 A Yes, they would show up if they pulled a copy of the
24 report.

25 Q And there are no inquiries on her account, so what

1 does that mean?

2 A That means no one has looked into her credit report
3 for any credit transactions or employment or insurance.

4 Q You were also asked, in that same order, for records
5 relating to Cassandra L. Cassandra L. with a date of
6 birth of July 2nd, 1998, and a Social Security number of
7 658-03-2923; is that correct?

8 A Correct.

9 Q What did TransUnion's credit report show as far as
10 Angelica?

11 A We didn't return anything. The individual is a
12 minor.

13 Q So what does that mean?

14 A It means that they have no credit to obtain because
15 they cannot obtain credit because they are not over 18.

16 Q No inquiries, no reports, no nothing?

17 A Correct.

18 MR. GRAHAM: Thank you, Mr. Newnom. Please
19 answer any questions the defense has.

20 THE WITNESS: Thank you.

21 MR. STITELY: May I approach the witness, Your
22 Honor?

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. STITELY:

1 Q May I take a look at the report on Ms. Bracey
2 Washington?

3 Now, in looking at the report, it says the
4 current address of New State Road, yet a previous address
5 of Commanche Trail.

6 Would that lead you to believe that the last
7 time this report was actually run, she was living at New
8 State Road and not Commanche Trail?

9 A The report doesn't state exactly where they're
10 living.

11 How that information is reported to us, the
12 address is either given to us by the creditors or the
13 individual themselves.

14 So whenever a creditor updates their monthly
15 information to us, they will give us what they have on
16 file for that consumer. So that's how it gets upgraded.

17 Q Sure. So you don't arbitrarily pick what address to
18 assign to an individual. That must come from the
19 individual telling a creditor, or telling someone.

20 A The individual would tell the creditors, and it
21 depends on how many creditors have that address that would
22 cycle to the current status.

23 Q Very good. And you said that you-all would get a hit
24 if someone pulled their credit?

25 A Yes.

1 Q Okay. But if, say, I went into a place that charged
2 by the month, that doesn't pull credit, you obviously
3 wouldn't get a hit?

4 A I don't know if they would pull a report or not.

5 Q If I applied for a job that didn't run my credit, you
6 most likely wouldn't get a hit?

7 A If they did not run your credit, no, you would not.

8 Q Okay. And this report was generated just recently?

9 A March 9th, 2012.

10 MR. STITELY: No other questions. Thank you
11 very much. Have a good day.

12 MR. GRAHAM: Your Honor, no other questions.
13 And we'd ask that he be excused from his subpoena.

14 MR. STITELY: No objection, Judge.

15 THE COURT: Thank you for coming.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: All right. Let's take a brief
18 break. It's a good time to stop.

19 (A break was taken.)

20 MR. STITELY: Your Honor, before they call the
21 next witness, one issue came up with the testimony of that
22 last witness. We'd make a motion to request an order of
23 credit for the record.

24 We've previously run what's called an Accurate,
25 which is when the private investigator runs the credit,

1 THE WITNESS: Okay. My name is Dawn Hurley,
2 H-U-R-L-E-Y.

3 DIRECT EXAMINATION

4 BY MR. GRAHAM:

5 Q Ms. Hurley, where are you employed, ma'am?

6 A I'm employed by Bank of America, NA.

7 Q And are you here today to talk about some records
8 that Portia Washington had as far as the accounts that she
9 had with Bank of America?

10 A Yes, I am.

11 Q How many accounts did Ms. Portia Washington have with
12 Bank of America back in 2006?

13 A Ms. Washington maintained two accounts with Bank of
14 America.

15 Q One was a savings account?

16 A Right.

17 Q Can you give the account number for that one?

18 A Sure. The savings account ending in 9685 in the name
19 of Portia Washington and the checking account ending in
20 8750 in the same name.

21 Q Did your records show that she had any other accounts
22 with Bank of America?

23 A No, sir.

24 Q Let's talk about the savings account first.

25 A Okay.

1 Q Specifically, let's go to June. Can you tell me
2 about what user transactions there were in Ms. Portia's
3 savings account in June of 2006?

4 A In June there was a transaction on 6-12 in the amount
5 of \$75, and that was a teller cash withdrawal.

6 Q What does a teller cash withdrawal mean?

7 A That meant the customer came into a banking center to
8 withdraw cash from the teller, from one of the tellers.

9 Q Can you tell me from your records where the location
10 was? What banking center was that? What branch was that?

11 A I might have printed the banking center's name, but
12 I'm not sure.

13 Q Can you show me the transaction we're talking about
14 on her statement?

15 A Do you want the physical address? You just want the
16 name of the banking center?

17 Q Yes, ma'am, the name of the banking center.

18 A The name of the banking center is Park Place.

19 Q So the banking center -- that's the Park Place branch
20 that's in South Carolina, correct?

21 A That's correct, in Cayce, South Carolina.

22 Q In Cayce, South Carolina.

23 Now, the date -- you said that transaction
24 occurred -- or the record reflected June 12th. That's the
25 date that's posted; isn't that correct?

1 A That's correct. That actual transaction was done on
2 6-10-2006.

3 Q So the transaction occurred on 6-10 of 2006?

4 A That is correct.

5 Q Why was it that it wasn't posted until Monday,
6 June 12th?

7 A 6-10 was an actual -- it was a Saturday. So the
8 business day for Saturday banking will be the Monday,
9 which would be the next business day, which was 6-12.

10 Q Were you able to determine -- so what that says is
11 that Ms. Portia's account had \$75 taken out of it on
12 Saturday, June 10th, 2006, at the Park Place branch in
13 Cayce, South Carolina; is that correct?

14 A That is correct.

15 Q Are you able to determine what time that transaction
16 occurred?

17 A Yes. That transaction took place at 9:50 a.m.

18 Q So 9:50 a.m. Saturday, June 10th, \$75 is being taken
19 out of Ms. Portia's savings account?

20 A That is correct.

21 Q The balance that was left in that account after that
22 transaction was what?

23 A The balance was 72 cents.

24 Q Seventy-two cents?

25 A That's correct.

1 Q At the end of that statement period, I believe there
2 was a two-cent credit for interest earned on the money she
3 had in her account that month?

4 A That is correct. That was the interest paid, and
5 then the balance increases to 74 cents.

6 Q Seventy-four cents.

7 Let me show you something and ask if this
8 accurately reflects what you've testified to so far.

9 June 10th, 2006, 9:50 a.m., the last transaction
10 from Portia's savings account, withdrawal at Bank of
11 America, Park Place branch, Cayce, South Carolina, balance
12 of 74 cents.

13 A That is correct.

14 Q Were there any other user transactions in June of
15 2006 on Ms. Portia's savings account?

16 A No, sir.

17 Q When I say "user transaction," am I correct in saying
18 that that means somebody didn't cash out, somebody writing
19 a check on, somebody depositing money?

20 A That is correct.

21 Q What eventually happened to that account? When was
22 it closed?

23 A The account closed on December 12, 2011.

24 Q Between this last transaction, which you told me that
25 occurred June 10th, 2006, and when that account closed in

1 2011, were there any user transactions?

2 A No, sir. There was just the maintenance fee of \$5
3 every month, which depleted the account, and then the
4 account became closed.

5 Q Let's move on to the checking account. I believe --
6 is that the account that ends in 8750?

7 A No. The checking account is -- yes, 8750.

8 Q Let's talk about a couple of transactions, again, on
9 the June 2006 statement, the statement that ended
10 June 19th, 2006. There is a posting on June 6th. Tell
11 me what you can about that.

12 A The June 6th transaction was for \$20.09. It was
13 used as a check card, which is her debit card. It was
14 used at Eagle Express in West Columbia; West Columbia,
15 South Carolina.

16 Q The next one, second from the bottom, has a date
17 posting of June 12th of 2006. Do you see that one, ma'am?

18 A Yes, sir.

19 Q It's in the amount of \$266.77; is that correct?

20 A That is correct.

21 Q Can you tell me about that? What can you tell me
22 about that transaction?

23 A That transaction was a payment to Ford Motor Credit,
24 and that payment was for June 6, 2012 (sic), but posted
25 on June 12, 2006.

1 Q So it's a 266 -- now, was it a check? Was it a
2 draft? How did that money get out of Ms. Portia's
3 checking account?

4 A It was by check payment.

5 Q By check?

6 A That's correct. Not a actual written check. She
7 authorized Ford Motor Credit to debit her account.

8 Q So it was an automatic draft?

9 A That is correct.

10 Q So it was authorized for Ford Motor Credit to take
11 out \$266.77?

12 A That is correct.

13 Q They took it out on June 6th, and it got posted on
14 her account June 12th?

15 A That is correct.

16 Q The last entry we see for this bank statement period
17 of June 19th, '06, is also posted on June 12th. What can
18 you tell me about that?

19 A That was a check card transaction done at Hess, and
20 it was done on June 8th in Columbia, South Carolina, and
21 it was posted July 12th, 2006.

22 Q June 12th, ma'am?

23 A It was posted June, June 12th.

24 Q And the dollar amount for that one?

25 A \$8.45.

1 Q Are there any other user transactions on Ms. Portia's
2 checking account in the June statement period?

3 A In June? No, sir.

4 Q What was Ms. Portia's balance in her checking account
5 at the end of the June 19th, 2006, statement in her
6 checking account? How much did she have left in there?

7 A \$214.39.

8 Q Let me show you a statement and ask if this
9 accurately reflects your testimony.

10 June 8th, 2006, last transaction from Portia's
11 checking account, Hess Express, Columbia, South Carolina,
12 in the amount of \$8.45, balance of 214.39.

13 A That is correct.

14 Q So we know at the end of the June 19th, 2006
15 statement, that Ms. Portia had \$214.39 in that account; is
16 that right?

17 A That is right.

18 Q When did that account close?

19 A The account closed September 17th, 2007.

20 Q September 17th, 2007, that account was closed,
21 ma'am?

22 A Yes, sir.

23 Q Were there any user transactions after the last check
24 card use on June 8th, 2006?

25 A No, sir.

1 Q So what happened to all that money? What happened to
2 the \$214.39?

3 A The account had a maintenance fee of \$5 per month,
4 which depleted the account, and the bank closed it.

5 Q So nobody ever withdrew that money, Bank of America
6 ate it up in fees?

7 A In fees, that's correct.

8 Q Let me show you a document and ask if you recognize
9 this document.

10 A Yes, sir.

11 Q And what is that document, ma'am?

12 A This is a check written from Portia Washington's
13 account. And I think I have a copy of it.

14 Q I'll bring this back to you, ma'am.

15 A Okay. The check is written in the amount of \$75 for
16 Portia Washington's account in the account ending 8750.
17 The check is made payable to Youth Camper.

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

20 MR. STITELY: No objection, Judge.

21 THE COURT: Offered and accepted without
22 objection. It will be State's 30.

23 (WHEREUPON, STATE'S Exhibit No. 30 was marked
24 for identification and received into evidence.)

25 BY MR. GRAHAM:

1 Q Ms. Hurley, let's look at what's been marked now in
2 evidence as State's Exhibit No. 30.

3 A Okay.

4 Q The original check doesn't exist anymore; is that
5 correct?

6 A That's correct.

7 Q So what we have here is Bank of America's scanning
8 in, I guess, of that check as it came through and it was
9 processed?

10 A That's correct.

11 Q So it's Check No. 333, and it's on a Bank of America
12 account.

13 Is that her checking account?

14 A Yes, sir.

15 Q And it's paid to the order of who?

16 A Youth Camper.

17 Q Youth Camper. And the amount?

18 A Of \$75.

19 Q And are you able to read who signed it?

20 A It's signed by Portia Washington.

21 Q Let me show you a strip and ask you whether this
22 represents your testimony regarding that check.

23 4-30-06, Portia writes check to Youth Camper.

24 And on the back of it, can you tell me who
25 deposited that check?

1 A It was deposited into the account of Church of God,
2 SC State Office.

3 Q So this says 4-30-06, Portia writes check to Youth
4 Camper, and in parentheses it has "Church of God." Is
5 that correct?

6 A Yes, sir.

7 MR. GRAHAM: Ms. Hurley, thank you very much.
8 Please answer any questions the defense has for you.

9 THE WITNESS: Sure.

10 CROSS-EXAMINATION

11 BY MR. STITELY:

12 Q Good morning, Ms. Hurley. How are you today?

13 A Fine, thank you.

14 Q You said there was a \$5 maintenance fee, that's why
15 the account depleted in September of 2007?

16 A Correct.

17 Q Now, you said the last time you guys looked at it, it
18 had \$214.39 on June 12th?

19 A Yes, sir.

20 Q And just doing the math, that's, what, 42 months at
21 \$5 a month? Is that fair? Five times 42 is 210?

22 A Okay. So the question --

23 Q You said it was depleted by the \$5 maintenance fee in
24 September of 2007, correct?

25 A Yes. That's when the account closed.

1 Q Okay. And you have in front of you, I take it, a
2 statement that looks to be the period ending 6-19-06 that
3 Mr. Graham was asking about?

4 A Yes, sir.

5 Q Do you see any checks to pay rent, anything addressed
6 to a Park Place Apartments, or any check that looks large
7 enough to be a rent check?

8 A No, sir.

9 Q Were there any checks out of her savings account in
10 that time period that was large enough to be a rent check?

11 A No, sir.

12 MR. STITELY: Nothing further, Your Honor.

13 One second, Your Honor. I apologize. One more
14 question.

15 (Pause.)

16 BY MR. STITELY:

17 Q Do you know if the account had overdraft protection
18 either for debit card or check use? Can you tell?

19 A For overdraft?

20 Q Yes, ma'am.

21 A No, sir.

22 MR. STITELY: Nothing else. Thank you very
23 much, ma'am.

24 THE WITNESS: You're welcome, sir.

25 MR. GRAHAM: No other questions, Your Honor.

1 We'd ask that Ms. Hurley be excused.

2 THE COURT: Thank you for coming.

3 THE WITNESS: Yes, sir.

4 MR. GRAHAM: The State would call Takiesha
5 Shelton next.

6 TAKIESHA SHELTON, after being duly sworn,
7 testified as follows:

8 THE CLERK: Have a seat, please.

9 Once you're seated, speak up loud and clear.
10 State your full name, spelling your last.

11 THE WITNESS: Thank you.

12 Takiesha Shelton, S-H-E-L-T-O-N.

13 DIRECT EXAMINATION

14 BY MR. GRAHAM:

15 Q Ms. Shelton, you work for Motel 6; is that correct?

16 A Yes, sir.

17 Q Motel 6 is a motel chain across the United States?

18 A Correct.

19 Q And as part of Motel 6's you-all keep records; is
20 that correct?

21 A Yes, sir.

22 Q Let me show you some documents and ask if you can
23 help me identify these.

24 MR. STITELY: Your Honor, we would maintain our
25 objection from before that these documents were obtained

1 illegally.

2 THE COURT: All right. And your objection is
3 noted and overruled at this time.

4 MR. GRAHAM: Let's see if I can get this on the
5 overhead for us.

6 BY MR. GRAHAM:

7 Q While that is warming up, Ms. Shelton, let me show
8 you State's 22 and 23 --

9 A Okay.

10 Q -- that are in evidence. And just in general terms,
11 what am I looking at?

12 A Okay. This one right here is a receipt.

13 Q Okay.

14 A Well, actually, this is the reg card -- I'm sorry --
15 on the top and this is the receipt on the bottom.

16 The reg card would have the room number, folio
17 number, number of adults and children in the room, the
18 date they checked in, the date they're supposed to check
19 out, and the rate type.

20 Q All right. Now, when somebody checks in at Motel 6,
21 you talked about a receipt and a reg card?

22 A Correct.

23 Q What are we talking about?

24 A A reg card is a registration card. It's a hard copy
25 of the information that we keep in our computer system for

1 backup in case the computer system fails and we need to
2 get in touch with people in the rooms.

3 Q Okay. So when somebody -- walk me through the
4 process. Let's say that I was going to check in. Or
5 let's say that Mr. Lynch was going to check in to a
6 Motel 6.

7 A Okay.

8 Q How does that work?

9 A We would ask the person to give us their driver's
10 license, and from there we would enter the information off
11 the driver's license into the system.

12 We no longer use that style of reg cards
13 anymore, so we would have them fill out, with their own
14 handwriting, the reg card and sign the bottom.

15 The general information on a reg card is the
16 address, city and state, and the license plate of the car
17 that they will be driving, and email address.

18 Q All right. On the overhead we're looking at
19 State's 23.

20 A Yes, sir.

21 Q This was the receipt portion of it, right?

22 A Correct.

23 Q So when somebody checks in, there's two portions?

24 A Yes.

25 Q It looks like that's perforated up here. Why would

1 it be perforated?

2 A On the top of the form is the reg card.

3 Q Okay. So the registration card goes on top?

4 A Uh-huh, yes.

5 Q The receipt goes on the bottom?

6 A Correct.

7 Q Let's talk about this receipt for a second.

8 A Okay.

9 Q Can you tell me who the person is who rented the
10 room?

11 A The last name is Lynch. First name is Kenneth.

12 Q Can you -- are you able to see from where you're at
13 how many occupants there are -- there were in the room?

14 A It's not really clear, but it looks like one adult,
15 zero children.

16 Q That would be right there where I'm showing?

17 A Yes, sir.

18 Q If there were more people in there, it would have
19 different numbers?

20 A Yes. If they identified there were more people, it
21 would have different numbers.

22 Q The arrival date -- and I can bring it back to you if
23 you can't see it. Can you see it on there?

24 A No, sir, I cannot.

25 Thank you.

1 The arrival date is 6-12-06.

2 Q Yes, ma'am. And the departure date?

3 A 6-13-06.

4 Q And can you tell how much Mr. Lynch paid for that
5 room?

6 A He paid 41.99 plus tax. With the tax it came to a
7 total of 46.19.

8 Q All right. So when you were testifying to the date
9 of arrival, you said June 12th, '06. That's the arrival
10 date?

11 A Yes, sir.

12 Q The next one over, you said the departure date was
13 June 13th. Is that where the laser is pointing?

14 A Yes, sir.

15 Q He paid \$46.19 in total?

16 A Correct.

17 Q And down here in the body where it says,
18 "description," it says the word "cash." What does that
19 mean?

20 A That's the method of payment he used to pay for the
21 room.

22 Q There are two numbers up top. I see where it says
23 Motel 6 and then it's got a number sign and it says 4189.

24 A 4189 would be the location, the store number as we
25 call it.

1 Q Are you able to tell me where Motel 6 4189 is?

2 A Yes. Property 4189 is located in Vicksburg,
3 Mississippi, at 4127 North Frontage Road.

4 You want the telephone number?

5 Q No, ma'am. That's okay.

6 A Okay.

7 Q Let me show you a couple of things.

8 A Okay.

9 Q Does this strip on this board accurately reflect what
10 we've talked about so far, Motel 6, Store Number 4189 is
11 in Mississippi?

12 A Correct.

13 Q Does it have a checkout or the check-in time on there
14 anywhere? Can you see that?

15 A No, I cannot. But I really can't read the receipt
16 from over there.

17 Q Would it be on the receipt, or do you think it would
18 be on the registration card?

19 A Sometimes it's on the receipt; sometimes it's on the
20 registration card. I would have to look.

21 Q Let me know if you're able to find the time on there.

22 A No, the time is not showing on this portion.

23 Q Let me ask you if this is accurate: June 12th
24 through the 13th, 2006, Motel 6, Vicksburg, Mississippi,
25 pays cash, \$46.19.

1 A That is correct.

2 Q I'm going to show you State's Exhibit No. 25. This
3 is a map of the United States. Do you recognize this?

4 A Yes.

5 Q If I ask you to help me to put the sticker showing
6 where Vicksburg, Mississippi, is, can you do that for me?

7 A Sure. It would be somewhere right about there. Is
8 that okay?

9 Q Uh-huh. There is also a number up here. See where
10 the laser is in the upper right?

11 A Yes, sir.

12 Q That 120929658. What does that mean?

13 A It's a tracking number for the document. All of our
14 papers are labeled with numbers to show what batch they
15 were printed from, and it's supposed to be in, I guess,
16 date order. So, like, if I'm using that batch that day,
17 it'll start at 600 and end at 699.

18 Q Let's talk about the other receipt. This is going to
19 be State's 22.

20 A Okay.

21 Q Can you see that on the overhead?

22 A Yes.

23 Q Okay. The person who is identified as checking in
24 here, who are we talking about again?

25 A Last name, Lynch; first name, Kenneth.

1 Q The check-in arrival date?

2 A Is 6-14-06.

3 Q The departure date?

4 A 6-15-06.

5 Q How many people, adults and children?

6 A One adult, zero children.

7 Q Again, the total price?

8 A Is 45 -- is that a 3 -- 43? I can't see it.

9 Q 45.43.

10 A Okay. 45.43.

11 Q And, again, can you determine how payment was made?

12 A Cash.

13 Q Here up at the top, we have a store number or a motel
14 number of 1263. Can you tell me where Motel 6 No. 1263
15 is?

16 A Casa Grande, Arizona. It is property 1263, and
17 they're located at 4965 South Sunland Gin Road in Eloy,
18 Arizona. Eloy, Arizona. I'm not sure.

19 Q Can you spell that for me?

20 A E-L-O-Y.

21 Q E-L-O-Y.

22 Let me show you a statement and ask if this is
23 accurate. Motel 6, Store No. 1263. That's in Arizona?

24 A Yes, sir.

25 Q Can you tell me, ma'am, if this accurately reflects

1 your testimony: June 14th through the 15th, 2006, Motel
2 6, Casa Grande, Arizona, pays cash, \$45.43?

3 A That's correct.

4 Q And if you would hold that for me and help me affix
5 that to the proper location on State's No. 25, I would
6 appreciate it.

7 A Sure. The little tape sticky things don't want to
8 come off. It's right about there.

9 Q Now, earlier we talked about there are two parts when
10 a person checks in. What we looked at so far are the
11 receipt parts; is that correct?

12 A Yes, sir.

13 Q Let's talk about the other side.

14 I'm going to show you two documents and ask if
15 you recognize these.

16 A These are registration cards.

17 Q Are you able to determine whether these are
18 registration cards for Motel 6?

19 A Yes, these are registration cards from Motel 6.

20 Q Looking at those registration cards, ma'am, I'm going
21 to hand you back State's Exhibit Nos. 22 and 23 and ask if
22 you can tell me if there's any relationship between the
23 receipts and the registration cards.

24 A Okay. Twenty-three goes with the registration card
25 with the same number of 120929658. You will see them both

1 in the top right-hand corner of the document.

2 And 22 goes with this registration card right
3 here. They have the same exact number in the top
4 right-hand part of the document.

5 MR. GRAHAM: Your Honor, the State would offer
6 both of these in evidence at this time.

7 MR. STITELY: Can I see them?

8 THE COURT: You may.

9 MR. STITELY: No objection, Judge. Well,
10 subject to any previous objections.

11 THE COURT: Subject to previous objections
12 outlined in the suppression hearing, the objections are
13 overruled and it's admitted as State's Exhibit 31 and 32.

14 Two exhibits?

15 MR. GRAHAM: There are two, Your Honor.

16 (WHEREUPON, State's Exhibits Nos. 31-32 were
17 marked for identification and received into
18 evidence.)

19 BY MR. GRAHAM:

20 Q All right, ma'am. Looking at State's 23 and State's
21 31 -- can you see those up there?

22 A Yes, sir.

23 Q What does this number mean and what is its importance
24 to that number?

25 A They're off the same document. Basically the reg

1 card and the receipt have to be correlated for it to be
2 the same information for the same person.

3 Q So is it fair to say that this receipt for Kenneth
4 Lynch matches this registration card for Kenneth Lynch?

5 A Yes, sir.

6 Q Again, it shows that he checked in June 12th, 2006,
7 checked out on June 13th, '06, one adult, no children; is
8 that correct?

9 A That's correct.

10 Q It says that he was a walk-in. What does that mean?

11 A He didn't have a reservation. He walked in off the
12 street.

13 Q He paid in cash?

14 A Correct. That is the method of payment.

15 Q And it's 46.19, again, right?

16 A Correct. That's the total amount paid.

17 Q Down in the guest signature, what's the purpose of
18 that? I see some writing down there. What would that be?

19 A That would be the signature of the person who
20 registered to the room.

21 The purpose of that is to show that we did have
22 that person registered to that room. It's definitely a
23 backup for us when it comes to credit cards.

24 Q So an individual checked in whose name is Kenneth
25 Lynch, and then that person signed down here; is that

1 correct?

2 A Correct.

3 Q Over here in the gray area in that upper left-hand
4 corner, there's a place for an address with a ZIP code and
5 city and state. Where does that information come from?

6 A Well, it depends on the locations. We have corporate
7 and franchises.

8 Corporate locations, we take it directly off the
9 driver's license. We have to have the person's license in
10 hand and we take the information from the driver's license
11 and impose it into the computer and print out that
12 document.

13 With franchisees, they're a little more relaxed
14 with their rules, and it can be spoken to them by the
15 person registering to the room.

16 Q Are you able to tell from this receipt or from this
17 registration card whether this was a franchise or a
18 corporate hotel?

19 A Yes, I can.

20 Q How can you do that?

21 A The store number.

22 Q So the 4189 tells us the location but also tells us
23 something a little more?

24 A Correct.

25 Q What does it tell us in this case?

1 A It tells us that 4189 is a franchise because the
2 store number starts with a 4.

3 Q Okay. Again, as far as following regulations, which
4 one is a little stricter?

5 A Corporate.

6 Q So we're here on a franchise; is that correct?

7 A Correct.

8 Q So when we're up here looking at the address, what
9 are the possibilities for how that address could have
10 gotten on there?

11 A It could have been given to them by the guest
12 checking in, or it could have been given off of a license.

13 Q So either a driver's license or orally?

14 A Orally given, yes.

15 Q The person who said their name was Kenneth Lynch --

16 A Right.

17 Q -- would he have to have an ID?

18 A Well, I can't directly say this -- say yes or no.

19 With corporate I can because I work for
20 corporate. You have to have an ID to check in.

21 As far as franchises go, it's up to owner.

22 Q So that franchise owner may not have even verified
23 that the person saying they were Kenneth Lynch --

24 MR. STITELY: Your Honor, I'm going to object to
25 speculation. He's now asking her to guess what a

1 franchise owner may or may not have known.

2 THE COURT: I'm going to allow the question. I
3 don't think it's -- I think she was explaining the answer
4 as to how the franchisees receive the information and that
5 was not how this was received, but the possible ways the
6 franchisee could receive the information. So I'll allow
7 the question.

8 MR. GRAHAM: Thank you, Your Honor.

9 BY MR. GRAHAM:

10 Q What are the possible ways the franchise owner, the
11 clerk whose name up there is Jenny, how could she have
12 gotten that information?

13 A She could have gotten the information from an ID, or
14 she could have taken it directly from the person checking
15 in.

16 Q What address do you see listed on the registration
17 card for the receipt in Vicksburg, Mississippi?

18 A [REDACTED] Orange Park, Florida 3206 -- and
19 I think that might be a 7 or a 1. I'm unsure.

20 Q Let me show you, ma'am, State's 31 and ask if you can
21 tell off of that.

22 A Okay. That was [REDACTED] Orange Park,
23 Florida 32067.

24 Q Thank you.

25 A You're welcome.

1 Q Let's move on to the other receipt and the other
2 registration card. So we're looking at State's 22 and
3 State's 32 at this point. Do you recognize them?

4 A Yes, sir.

5 Q Okay. Let's go through these again.

6 So the bottom is the receipt?

7 A Correct.

8 Q The top is the registration card; is that correct?

9 A Yes, sir.

10 Q Again, when we talk about the registration card, what
11 was the check-in date?

12 A Check-in date was 6-14-06.

13 Q The departure date?

14 A 6-15-06.

15 Q The amount paid for the room?

16 A Amount paid total was 45.43.

17 Q Again, we see walk-in. And what did that mean?

18 A He walked in. He did not have a reservation.

19 Q Method of payment again?

20 A Cash.

21 Q Number of occupants registered to that room?

22 A One adult, zero children.

23 Q And, again, we know that this receipt matches with
24 this registration card because of that number right there?

25 A Correct.

1 Q That 122454375 is on both the receipt and the
2 registration card?

3 A Yes, sir.

4 Q In the upper right-hand corner, do you see
5 handwriting?

6 A Yes.

7 Q What does that say?

8 A "One key."

9 Q What would that mean?

10 A She only gave out one key.

11 Q Now, the number here is No. 1263 for the Motel 6
12 store, and that's the one that's out, I think you
13 previously testified to, in Arizona; is that correct?

14 A That's correct.

15 Q What is that number? Does that tell us anything
16 about whether it's a franchise or a corporate location?

17 A It's a corporate location. Corporate locations
18 generally start with a 0 or a 1 or a 2.

19 Q And what policy or guidelines do corporate locations
20 have as far as how an individual checks in?

21 A We must receive an ID -- driver's license, passport,
22 or such. The address and information must be taken
23 directly off the ID and transposed onto the registration
24 card, and the driver's license number must be also
25 included, or ID number.

1 Q So is it fair to say that the policy for a franchise
2 location -- excuse me -- for a corporate location is that
3 a person -- if I come in and want to check in, I need to
4 have a driver's license or ID?

5 A Yes. And it must be valid.

6 Q And it must be a valid one?

7 A Correct.

8 Q And the information that's inputted into your
9 registration card comes off of that information?

10 A Exactly.

11 Q That's the policy and guidelines for a corporate
12 location?

13 A Yes.

14 Q All right. The individual who checked in here, what
15 was his name?

16 A Last name, Lynch; first name, Kenneth.

17 Q The address that was taken from the driver's license?

18 A [REDACTED] And that was in Cayce,
19 South Carolina 29033.

20 Q Now, right there in the middle between the [REDACTED]
21 [REDACTED] and the Cayce, South Carolina 29033, there
22 are some other numbers. What are those?

23 A It's the South Carolina driver's license number and
24 the birth date of the person on the ID.

25 Q Could you read those off for me, please, ma'am?

1 A Yes. South Carolina Driver's License No. 100752941.
2 Date of birth is February 9th, 1960.

3 Q Down below there -- over here in the bottom right
4 where it says, "guest signature," that would be where the
5 person saying they were Kenneth Lynch signed; is that
6 correct?

7 A Correct.

8 Q Over here there's some -- in the upper left-hand
9 corner around the registration card, there is some
10 additional handwriting. What would that be?

11 A That would be the car. And it's supposed to be the
12 state and license plate number of the car.

13 We do that because we do have cars that park in
14 our parking lot that we tow, so we want to make sure that
15 the correct car is registered to the guest and it's not
16 just, like, some random car left there.

17 Q Well, obviously, the car information wouldn't be on
18 the driver's license, so how does the check-in clerk --
19 whose initials are, I guess, RL -- how did that person get
20 that information?

21 A That would be given to us by the person checking in
22 to the property.

23 Q And would you read off what the car description was?

24 A Ford Escort, brown, 1989, with a South Carolina
25 plate.

1 MR. GRAHAM: Thank you, ma'am. Please answer
2 any questions they have.

3 THE WITNESS: Okay.

4 CROSS-EXAMINATION

5 BY MR. STITELY:

6 Q Hello, Ms. Shelton. How are you?

7 A I'm good. How are you?

8 Q I am fantastic.

9 Now, you're not the clerk for either of these
10 two Motel 6s, correct.

11 A This is correct.

12 Q Just a couple general questions about Motel 6. Tell
13 me if I'm wrong.

14 Frequently, especially back a couple of years
15 ago, there used to be a different rate, depending on how
16 many people checked into the room, right?

17 A Yes, that's correct. Now, too.

18 Q So it was actually cheaper if you said it was just
19 you than saying there's four of us?

20 A That's correct.

21 Q It would be, like, five bucks a head, something like
22 that?

23 A Three.

24 Q Three, okay. So there was a definite financial
25 advantage to saying you were the only one in the room,

1 correct?

2 A Correct.

3 Q Did you guys have, like, a room police who went out
4 and made sure when people were checking in they were the
5 only one in the room?

6 A No.

7 Q What does "rack" mean?

8 A That is the rate of the day basically. Rack rate is
9 day -- the base rate, the low rate.

10 Q We didn't know. He didn't ask you.

11 A Okay.

12 Q Is there any way to tell if it's a smoking room or a
13 nonsmoking room?

14 A No.

15 Q When you-all keep your records, does this go into
16 some big database somewhere?

17 A No. These are kept on the property for seven years.

18 Q Is there any way to track who stayed in a Motel 6
19 through you?

20 A For us?

21 Q Yeah.

22 A From my property?

23 Q I mean, if you want to know -- if I called you up and
24 said, "I know I was in a Motel 6 before," can you find any
25 way to tell me if I stayed in a Motel 6 before?

1 A I can only tell you whether or not you stayed at my
2 property.

3 Q So you're not with the corporate office?

4 A I work for our corporate office, but I'm at a branch.

5 Q What is your job description?

6 A I'm the manager on duty, and I'm also a manager in
7 training.

8 Q I guess this was kind of overlooked.

9 So you're not an evidence custodian for every
10 Motel 6, then?

11 A We all use the same type of recordkeeping.

12 Q Do you have any documents showing the owner of the
13 franchise of 4 -- whatever -- 4169, the store's number?

14 A No. Like, we have our guide book. Here.

15 Q Thank you.

16 A You can keep that.

17 Q I appreciate it.

18 Does anywhere in here it tell me that this is
19 owned by a manager or the corporation?

20 A No.

21 Q Do you have anything you can actually prove to me
22 documented from Motel 6's corporate office that that one's
23 a corporate office and the other one was a franchise
24 office?

25 A I wish I would have known that. I would have brought

1 my training manual, because it tells us.

2 Q There's nothing here that we can provide to the Court
3 into evidence for the judge to verify that?

4 A No. But I can get it to him if he needs it.

5 Q That's fine.

6 Motel 6 -- they have cameras?

7 A Yes.

8 Q All of them?

9 A In the lobby. All of them in the lobby. Not all
10 over the property, but all in the lobby.

11 Q How about parking lots?

12 A No, generally not.

13 Q Generally not. Some do?

14 A Some.

15 Q Is there any way to request camera footage from
16 Motel 6s?

17 A You can subpoena it.

18 Q How long do you keep that?

19 A Ours are generally switched out monthly. We use a
20 recording -- well, my property --

21 Q Thirty days?

22 A Thirty days and it rotates out.

23 Q When I used to manage a store, we were the same way.

24 Do you know if you brought any videotapes from
25 either Store 1263 or 4189 with you today?

1 A No.

2 Q Do you know if they were requested?

3 A No.

4 Q But you said that police officers, or whoever,
5 probably could have got them back then?

6 A If they were requested at that time.

7 Q There's nothing you can tell me, or tell any of us,
8 the Court, that says that Mr. Lynch and two other people
9 didn't check into this room but they just said one person
10 for the cheapest rate?

11 A Right.

12 Q Does that happen a lot?

13 A Often.

14 Q Often. More often than not probably?

15 A It's probably the norm.

16 Q So you're not surprised it says one adult, no
17 children on there?

18 A No.

19 Q And you said that would actually be more often than
20 not, that's what it would show?

21 A Correct.

22 Q Are even your franchise owners told to get a copy of
23 a driver's license?

24 A It's called "Best Practices" for the franchise
25 owners. It's called rules for corporate.

1 Q I got you.

2 And if you work with a franchise or something
3 like that, if the district manager or, I guess, a secret
4 shopper or someone came in without a driver's license,
5 they would probably get in trouble if they didn't take the
6 driver's license?

7 A Correct.

8 Q A lot of trouble?

9 A Probably so.

10 Q So once again, you're just guessing they didn't look
11 at a driver's license. It's entirely possible that they
12 did look at a driver's license on the other receipt and
13 that's what it said?

14 A There is a possibility, but they don't have the
15 driver's license number or the birthdate, which is
16 required as well.

17 MR. STITELY: Okay. Thank you, ma'am.

18 THE WITNESS: You're welcome.

19 MR. GRAHAM: No other questions, Your Honor.

20 We'd ask that she be excused from her subpoena.

21 THE COURT: Good luck. Travel safely.

22 THE WITNESS: Thank you.

23 MR. GRAHAM: The State calls Nancy Hyler.

24 NANCY HYLER, after being duly sworn, testified
25 as follows:

1 THE CLERK: Have a seat over here, please.
2 Once you're seated, speak up loud and clear.
3 State your full name, spelling your last on the record,
4 please.

5 THE WITNESS: Nancy M. Hyler, H-Y-L-E-R.

6 DIRECT EXAMINATION

7 BY MR. GRAHAM:

8 Q Ms. Hyler, how are you today?

9 A Fine.

10 Q Where are you currently employed, ma'am?

11 A Dick Dyer Toyota.

12 Q What do you do for Dick Dyer Toyota?

13 A I'm the office manager.

14 Q Prior to that were you involved with Bob Bennett
15 Ford?

16 A Yes.

17 Q What did you do for Bob Bennett Ford?

18 A I was the office manager.

19 Q What is an office -- what did you do as the office
20 manager for Bob Bennett Ford?

21 A In charge of all the paperwork, the payroll, all
22 office -- accounting.

23 Q As part of your job for Bob Bennett Ford, were you in
24 charge of keeping all the records?

25 A Yes.

1 Q Does that include payroll records, time cards, things
2 like that?

3 A Yes.

4 Q Bob Bennett Ford doesn't exist anymore, does it?

5 A That's correct.

6 Q When did Bob Bennett Ford close its doors?

7 A I'm sorry?

8 Q When did Bob Bennett Ford close its doors? Or what
9 happened to the store?

10 A The dealership was sold to Classic, I believe in 2009
11 or '10. I'm not real certain.

12 Q But back when it was Bob Bennett Ford, you were the
13 records custodian for their records?

14 A Yes.

15 Q Do you know Kenneth Lynch?

16 A I'm sorry. You need to speak up. I can't hear you.

17 Q I'm sorry, ma'am.

18 Do you know Kenneth Lynch?

19 A I know him as an employee with Bob Bennett Ford.

20 Q Back when you were there?

21 A Yes.

22 Q What were your years with Bob Bennett, again? When
23 did you start and when did you end with Bob Bennett Ford?

24 A I started approximately 1972 and ended after Classic
25 purchased, which was 2009 or '10.

1 Q Did you know Portia Washington?

2 A Yes.

3 Q Did you know her as an employee?

4 A As an employee.

5 Q Can you tell me when Portia Washington began working
6 with Bob Bennett Ford?

7 A Can I look at my papers to verify it?

8 Q Yes, please.

9 A Portia started in June of 2000.

10 Q And what was the last day that she worked?

11 A I can't really tell you the last day.

12 Q Well, going by the payroll records and the time card
13 records, when was the last day that she worked?

14 A The last check date was 6-16. That was the week of
15 6-16, ending 6-16.

16 Q Friday -- well, tell me how pay periods worked.

17 A Pay periods ran from Thursday to Wednesday, with
18 payroll on Friday, paycheck on Friday.

19 Q So, ma'am, if we're looking at State's Exhibit No. 1,
20 this is a calendar from June of 2006. Can you see that?

21 A Yes, sir.

22 Q Okay. Were there any time -- do you have a copy of
23 the last time card that Ms. Portia turned in?

24 A I'm sorry. I can't hear you.

25 Q Do you have a copy of the time card that Ms. Portia

1 turned in, her last time card?

2 A I believe in the papers I was given, yes, sir. Yes,
3 I do.

4 Q What was the last date that her time card reflects
5 that she worked?

6 MR. STITELY: Your Honor, object to foundation.
7 She said these papers were given to her. She's working
8 somewhere else now. I wonder where these papers came
9 from.

10 THE COURT: Lay the foundation.

11 BY MR. GRAHAM:

12 Q Ms. Hyler, the records that you have in front of you,
13 those are the records of Bob Bennett Ford, aren't they?

14 A Yes, they are.

15 Q Those are the records that you were custodian for --
16 of at the time?

17 A Yes.

18 MR. GRAHAM: Your Honor, she's identified them
19 and said that she was the custodian.

20 MR. STITELY: I would like to find out where
21 they came from. I mean, she said she hasn't worked there
22 in two years. Has she been the person maintaining these
23 records since then?

24 THE COURT: I believe it was sold two years ago
25 or within the last two years is what she said.

1 MR. STITELY: I guess my question is, did they
2 give her the papers, or did they go to someone else? I
3 mean, I'll -- I might have a chain of custody problem as
4 well as foundation. We don't know where these records
5 have been for the past couple of years.

6 MR. GRAHAM: Your Honor, paper is fungible -- I
7 mean a non-fungible item. It's not changing.

8 She said that those are her records. She's
9 identified them. Where they've been, honestly, doesn't
10 matter.

11 THE COURT: Don't they come in under business
12 records?

13 MR. STITELY: She didn't say they were her
14 records. She said someone gave them to her. If she's the
15 one who kept the records, I think that would be one thing.

16 MR. GRAHAM: She has said that she was the
17 custodian of those records.

18 BY MR. GRAHAM:

19 Q Let me ask you this question: Did you process those
20 time cards, Ms. Portia's time cards? Did you or somebody
21 underneath your supervision process those time cards?

22 A Underneath my supervision. There was a girl that did
23 the actual payroll.

24 Q Back at the time that Ms. Portia went missing, did
25 you assist the police by providing information about her

1 last time card?

2 A Yes.

3 Q Is the time card that you're looking at in the papers
4 before you, is that Ms. Portia's last time card, or a copy
5 of it?

6 A I have a copy of the time card that was dated the
7 week ending 6-7.

8 MR. GRAHAM: Your Honor, I'm not offering into
9 evidence -- they're her records. She's identified them.
10 I don't know what more we can do.

11 THE COURT: I'll allow the testimony. Continue.

12 BY MR. GRAHAM:

13 Q According to the time card for Ms. Portia, what was
14 the last date that she worked?

15 A The time card I'm looking at is dated -- the last
16 time clock entry was Wednesday the 7th.

17 Q Do you have another time card?

18 A I'm sorry. I couldn't hear you.

19 Q Do you have another time card after June 7th?

20 A No.

21 Q But you said there was a check cut later, didn't you?

22 A There was a check cut for the week of 6/8 through the
23 14th, June the 14th.

24 Q And are you able to tell from the check that was cut
25 when Ms. Washington worked?

1 A I know -- I can tell that she worked 18 hours of that
2 week.

3 Q Okay. So how many days would that be?

4 A Like, two days.

5 Q In addition to keeping time cards -- well, what was
6 the last check amount that you cut off of that -- I think
7 you said June 17th day?

8 A The last check was \$188.

9 Q Ma'am, let me show you an item and ask if you can
10 identify it. Do you recognize that document, ma'am?

11 A Yes. It's the same check I have a copy of.

12 Q And that's a check made out to who?

13 A To Portia Washington.

14 MR. GRAHAM: Your Honor, the State would offer
15 this into evidence at this time.

16 MR. STITELY: For clarification, we would object
17 to foundation unless she or someone in her office creates
18 those documents. It looks like it may come from a payroll
19 company who she definitely is not the custodian of records
20 for.

21 THE COURT: Lay a further foundation, if you
22 can.

23 MR. GRAHAM: Thank you, Your Honor.

24 BY MR. GRAHAM:

25 Q Ms. Hyler, you recognize this check?

1 A Yes, I do.

2 Q Who makes those checks? Who made those checks for
3 Bob Bennett Ford?

4 A The payroll clerk.

5 Q Somebody who worked for Bob Bennett Ford?

6 A Yes.

7 Q Somebody who worked for you?

8 A Yes.

9 Q Do you recognize that as being the last paycheck for
10 Portia Washington from Bob Bennett Ford?

11 A Yes, I do.

12 MR. GRAHAM: Your Honor, the State would again
13 offer this into evidence.

14 MR. STITELY: We're okay with it now.

15 THE COURT: Okay. With the foundation being
16 laid, it's admitted into evidence as State's Exhibit 33
17 without objection.

18 (WHEREUPON, STATE'S Exhibit No. 33 was marked
19 for identification and received into evidence.)

20 BY MR. GRAHAM:

21 Q Ms. Hyler, this is not a copy of the check, this is
22 the check, right?

23 A That's correct.

24 Q What was the amount of that check?

25 A The net amount was \$97.60.

1 Q Did Ms. Portia ever come and claim this check?

2 A No.

3 Q This check was never cashed?

4 A No.

5 Q This was money that was owed to Ms. Portia for
6 working for Bob Bennett Ford that she never claimed?

7 A That's correct.

8 Q In addition to time cards and checks, did you also
9 keep track of sick leave, vacation time, missed days,
10 things like that?

11 A Yes.

12 Q How would those have come in to you? How would you
13 have found out somebody was sick or going to be sick or
14 had a doctor's appointment? How would that happen?

15 A I sorry, I didn't -- I couldn't understand you.

16 Q How would you find out when you were doing --
17 preparing time cards and payroll, whether somebody was
18 going to be sick or requested to be off for a doctor's
19 visit?

20 A There would be absentee slips hooked to their
21 paycheck -- I mean to their time card -- or the manager
22 would come in if they were being paid beforehand.

23 Q How about vacation time? How would that work?

24 A The same. It would either be requested before the
25 actual week of vacation or the time that they were not

1 there.

2 Q How about if somebody was going to quit? How would
3 you get notification of that?

4 A I would get notification when they actually did quit.

5 Q What, if any, notification do you have in your file
6 regarding Portia Washington asking for sick leave,
7 vacation time, or stating that she was going to quit
8 beginning on June 12 -- Monday, June 12, 2006, or later?
9 Do you have any information in your file related to that?

10 A No.

11 Q Prior to leaving work on the last date that
12 Ms. Portia worked for Bob Bennett Ford, did she give you
13 any direction as far as what to do with her check? Did
14 she say to send it somewhere, "mail it to me"?

15 A No.

16 Q Let me ask you, ma'am, if this is accurate.

17 June 16th, '06, the last paycheck for Portia
18 from Bob Bennett Ford in the amount of \$97.60. Check was
19 never claimed.

20 Does that go along with your testimony, ma'am?

21 A Yes.

22 Q Ma'am, from your records and personal knowledge, when
23 you worked there, did Portia Washington, from your
24 knowledge -- from your records and from your knowledge as
25 an employee of Bob Bennett Ford, and knowing Portia

1 Washington, what, if any, recollection do you have of
2 whether she showed up to work on Monday June 12th?

3 A I don't understand your question.

4 Q Well, earlier you had talked about that last paycheck
5 covered two days.

6 A Right.

7 Q And I was asking you about the last day that she
8 worked. And then we also talked about her paycheck and
9 you told me that her paycheck covered two days.

10 And then I asked you several questions about her
11 turning in a notice that she was quitting, a notice that
12 she was going to take sick time.

13 MR. STITELY: Object to leading. He's clearly
14 trying to tell her what he wants her to say.

15 THE COURT: Rephrase your question. Sustained
16 as to leading.

17 BY MR. GRAHAM:

18 Q Ms. Hyler, you remember your testimony earlier?

19 A Yes.

20 Q Do you have any knowledge of whether Ms. Portia
21 Washington showed up for work on June the 12th, or after,
22 in 2006?

23 A She did not show up for work.

24 Q So when we're talking about the two days that she got
25 paid for, what two days do we have to be talking about?

1 A Thursday and Friday.

2 Q So we're talking about Thursday and Friday of which
3 week?

4 A Of June 8th and 9th.

5 Q So if I ask you again the last day she worked, what
6 day is it going to be?

7 A I would say the 9th.

8 Q Let me show you another statement and ask if this
9 fairly and accurately represents your testimony.

10 June 9th, 2006, last day Portia worked at Bob
11 Bennett Ford. No notice of vacation time or quitting.

12 Is that accurate?

13 A That's correct.

14 Q Ma'am, let's move on and talk about Kenneth Lynch
15 now.

16 He was also an employee of Bob Bennett Ford; is
17 that correct?

18 A That's correct.

19 Q His last paycheck -- do you remember what time period
20 that covered? His last paycheck, do you remember the time
21 period that it covered?

22 A That was the same time period, 6/8 to 6/14.

23 Q Is that the same pay period that we talked about with
24 Ms. Portia?

25 A Yes.

1 Q Let me show you an item and ask if you recognize this
2 item, ma'am. Do you recognize that, ma'am?

3 A Yes, I do.

4 Q What is that item?

5 A I'm sorry?

6 Q What is that item?

7 A It's Kenny Lynch's paycheck.

8 Q And, again, that's a paycheck that was processed by
9 somebody under your supervision, correct?

10 A That's correct.

11 Q And that was produced at Bob Bennett Ford for Kenneth
12 Lynch?

13 A Yes.

14 MR. GRAHAM: Your Honor, the State would offer
15 this into evidence.

16 MR. STITELY: No objection.

17 THE COURT: State's 34 without objection.

18 (WHEREUPON, STATE'S Exhibit No. 34 was marked
19 for identification and received into evidence.)

20 BY MR. GRAHAM:

21 Q Ms. Hyler, looking at State's 34, is this the last
22 paycheck that was issued for Kenneth Lynch?

23 A Yes.

24 Q What was the amount of the check?

25 A The net pay was 138.55.

1 Q Did Mr. Lynch ever claim this check?

2 A No.

3 Q Did he ever leave any forwarding information as to
4 where this check should be mailed or who it should be
5 given to?

6 A No.

7 Q So this check was never claimed?

8 A No.

9 Q What, if any, information do you have regarding
10 Kenneth Lynch stating that he was not going to be there on
11 Monday, June 12th, or after?

12 A None.

13 Q Did he -- did you receive notice that he was going to
14 quit?

15 A No.

16 Q Did you receive any request for vacation time?

17 A No.

18 Q Did you receive any request for sick time?

19 A No.

20 Q Similar to Ms. Portia, the check that we're talking
21 about here for Mr. Lynch in the amount of 138.55 -- how
22 many days of work did that cover for Mr. Lynch?

23 A Two days.

24 Q Two days. Are you able to tell me what the last day
25 that Kenneth Lynch worked was, based on that information?

1 A Would have been Friday, the 9th.

2 Q So the last day Mr. Kenneth Lynch worked was Friday,
3 June 9th of 2006?

4 A That's correct.

5 Q Let me ask you if some statements are correct, ma'am.

6 This one here, June 9th, 2006, last day Lynch
7 worked at Bob Bennett Ford. No notice of vacation time or
8 quitting.

9 Is that accurate?

10 A Yes.

11 Q Let me show you this last one, ma'am.

12 June 16th, 2006, last paycheck for Lynch from
13 Bob Bennett Ford in the amount of 138.55. Check was never
14 claimed.

15 Is that accurate?

16 A Yes.

17 MR. GRAHAM: Ms. Hyler, thank you very much.

18 Please answer any questions they have for you.

19 CROSS-EXAMINATION

20 BY MR. STITELY:

21 Q Good morning, Ms. Hyler. How are you today?

22 A Fine.

23 Q I don't think I have a ton of questions for you.

24 Do you know if Ms. Washington got the job at Bob
25 Bennett Ford through Voc Rehab?

1 A Yes.

2 Q Is that a common place that Bob Bennett Ford would
3 get employees?

4 A We hired several from Voc Rehab.

5 Q But for the Court's edification -- we usually do this
6 in front of a jury, and I know the judge knows -- but what
7 is Voc Rehab, if you know?

8 A I really don't know other than they have people come
9 through them.

10 Q Okay. And I will hand these back up to you, if you
11 want, but do you know who made more money, Mr. Lynch or
12 Ms. Washington?

13 A I would have to look at my papers, or your papers.

14 Q Go ahead and look at your papers.

15 A Portia made more than Kenny.

16 Q She made \$10; he made the \$9?

17 A Yes.

18 Q Okay. And Ms. Washington's check for those -- what
19 was an average check for her?

20 A Average check was --

21 Q Like an average check over a pay period. Do you
22 have, like, a pay period before?

23 A No.

24 Q You don't have that information?

25 Do you know why Ms. Washington took a four-day

1 vacation in April of 2006?

2 A No.

3 Q If I showed you a little slip -- let me show you
4 something. Can you identify these little documents?

5 A Yes. They're absentee reports.

6 Q Like the ones you guys keep at Bob Bennett Ford?

7 A Yes.

8 Q Do you have anything else in your records to indicate
9 that Ms. Washington may have taken a four-day vacation in
10 April of 2006? Would you have it in your records?

11 A I have it on her paycheck that she had taken -- that
12 would be 40 hours.

13 Q Okay. All right. You don't know anything about
14 where she went or what she did with her vacation time,
15 though?

16 A No.

17 Q Do you know how long Mr. Lynch worked at Bob Bennett
18 Ford?

19 A He worked from November of 2001.

20 Q And you knew him as Kenny Lynch?

21 A I'm sorry?

22 Q You knew him as Kenny Lynch?

23 A I'm sorry, I couldn't hear you.

24 Q You knew him as Kenny Lynch? That's how you referred
25 to him.

1 A Yes.

2 MR. STITELY: Thank you, ma'am. No further
3 questions.

4 MR. GRAHAM: No other questions, Your Honor, and
5 we'd ask that she be released from her subpoena.

6 MR. STITELY: Yes, sir.

7 THE COURT: You may be released.

8 THE WITNESS: Thank you.

9 THE COURT: Thank you for coming.

10 MR. GRAHAM: The State would call Annette
11 Williams.

12 ANNETTE WILLIAMS, after being duly sworn,
13 testified as follows:

14 THE CLERK: Have a seat, please, ma'am.

15 Once you're seated, speak up loud and clear,
16 stating your full name, spelling your last for the record.

17 THE WITNESS: Annette Williams Capilos; C, as in
18 Charlie, A-P-I-L-O-S.

19 DIRECT EXAMINATION

20 BY MR. GRAHAM:

21 Q Where are you employed, ma'am?

22 A CSC.

23 Q What do you do there?

24 A Work in the homeowners department.

25 Q Can you pull your chair a little closer or maybe pull

1 the mike closer?

2 A Better?

3 Q Better. Thank you.

4 Did you work at Bob Bennett Ford at sometime?

5 A Yes, I did.

6 Q Do you remember when you worked there?

7 A As well as I can relate, it was probably from either
8 '03 to '05, somewhere in that time frame.

9 Q In the time that you worked there, did you get to
10 know Portia Washington?

11 A Yes, I did.

12 Q Tell me about your relationship with her when you
13 worked at Bob Bennett Ford.

14 A We were coworkers, friends at work, lunch buddies,
15 talked about our family a lot and just, you know, shared a
16 lot of things about our family, and went out to lunch and
17 just became friends.

18 Q How often would you say that you talked to her?

19 A Every day.

20 Q And how often would you say that you-all went out to
21 lunch?

22 A Well, we either went out somewhere or we would eat in
23 the break room, usually probably two to three times a
24 week.

25 Q What, if anything, can you tell me about Portia and

1 the 2005 Ford Focus?

2 A I'm sorry?

3 Q What, if anything, can you tell me about Portia and
4 that new Ford Focus that she bought?

5 A Oh, she loved it. She was very proud of it. She was
6 very proud that she was able to get to the point of being
7 able to purchase a new car, and she loved her car. She
8 was very proud of it, excited about it.

9 Q When you worked at Bob Bennett Ford, did you become
10 acquainted with the defendant, Kenneth Lynch?

11 A No, I did not.

12 Q Do you remember when Portia began dating him?

13 A To the best of my memory, I think I left in '05; so
14 it was either somewhere around the end of that year, maybe
15 in '05 is what I'm thinking, maybe.

16 Q Do you remember -- although you may not remember the
17 exact date, do you remember that you found out that Portia
18 was dating him?

19 A Probably in -- it would have had to be either July or
20 August maybe.

21 Q Although you can't remember the exact date, you do
22 remember the event?

23 A Yes. I remember she told me she had a new boyfriend
24 and --

25 MR. STITELY: Objection to hearsay, Judge.

1 BY MR. GRAHAM:

2 Q Don't say what she told you.

3 THE COURT: Sustained.

4 THE WITNESS: Okay. Thank you.

5 BY MR. GRAHAM:

6 Q Tell me how -- prior to her beginning seeing
7 Mr. Lynch, describe Portia.

8 A She was always happy and laughing, and, you know, she
9 and I were always, you know, eager to share our stories
10 about our family. My son was a teenager at the time,
11 learning to drive, and so I had lots of stories about him.
12 And she would talk about, you know, her granddaughter and
13 just -- we talked about clothes and shopping and, you
14 know, just regular, I'd say, girl things.

15 Q Do you remember what part of 2005 you left Bob
16 Bennett Ford?

17 A As well as I can remember, it probably would have
18 been around July or August.

19 Q So that would have been about the time that she began
20 dating Mr. Lynch?

21 A As far as I can remember, yes.

22 Q Tell me about your relationship with Portia after you
23 left Bob Bennett Ford.

24 A After I left, we stayed in touch. We talked on the
25 phone. Usually I called her at work, which when I say at

1 work, I mean I called her at Bob Bennett. Occasionally I
2 would call her on her cell phone. We would -- you know,
3 we would still meet for lunch, maybe not as often as we
4 had before, because I was working at a different location,
5 but, you know, we would try to get together at least
6 maybe, you know, every couple of weeks or every month and
7 still have lunch.

8 Q Did you still consider her your friend?

9 A I did.

10 Q What, if any, changes did you notice in her behavior,
11 in the way she looked, and the way she acted after you
12 left Bob Bennett Ford and she began dating Kenneth Lynch?

13 A In '05, I was having a birthday party in August and I
14 told her about it and she was real excited about coming.
15 It was going to be at my house and, you know, we just
16 talked about -- you know, she said, "What do I wear?" you
17 know, those types of things. And she was really excited
18 about coming. And up until the very last minute, as far
19 as I knew, she was still going to come to my party, which
20 was at -- a party at my house. And she didn't show up.

21 So then this was on a Saturday night, and the
22 next week -- it was, like, you know, to maybe talk to her,
23 she just said she couldn't make it.

24 MR. STITELY: Objection to hearsay.

25

1 BY MR. GRAHAM:

2 Q Without saying what she said to you --

3 A Okay. She didn't make it to the party, you know,
4 and --

5 Q Is that usual or unusual?

6 A It would have been unusual because usually if we had
7 plans, we would always try to keep our plans without
8 calling ahead to say, "Sorry, can't make it."

9 Q Is there something else that stands out in your mind
10 in December of 2005?

11 A Yes. That same year I had a big Christmas party at
12 my house. I invited her to my party. Same conversation
13 we had, you know. It's like we both, you know, talked
14 about what we're going to wear, who was going to be at the
15 party. I told her she'd get a chance to meet a lot of my
16 family, my sisters and my brothers. And, you know, she
17 was real excited about coming again. And we -- and I
18 assumed, you know, she was coming. And then she just
19 didn't show up again.

20 Q And, again, that would be unusual?

21 A Yes.

22 Q Sometime in January or February of 2006, did you have
23 lunch with Portia?

24 A I did. We met at one of our usual places, which was
25 called Captain Tom's on Broad River Road. We met there

1 and --

2 Q Tell me how she looked.

3 A She had lost weight. Her hair had thinned out. And
4 I kind of made a comment about it and -- I can't say what
5 she said, but her hair had thinned out.

6 And we talked, and she just seemed different.
7 She was very unhappy. And as lunch went on, she became
8 upset and she started to cry and then she told me some
9 things that --

10 MR. STITELY: Object to any hearsay.

11 THE COURT: I will allow the comment "She told
12 me some things." She didn't say what she said.
13 Otherwise, she can't repeat what was said to her.

14 MR. STITELY: She was getting ready to.

15 BY MR. GRAHAM:

16 Q She was upset and began to cry?

17 A Yes, she did.

18 Q And did you-all talk after that point?

19 A We did.

20 Q How long do you-all think you talked that day?

21 A We were there probably for two hours.

22 Q Was that a normal lunch, or was that --

23 A No, it was not.

24 I don't remember if it was a holiday for me, but
25 I know I was not working that day, because I remember I

1 had on jeans, which would not have been my normal work
2 attire. And she would normally only get an hour for
3 lunch, but because of the events that were -- you know,
4 that we were discussing, it went over the hour.

5 Q Based on your conversation with Ms. Portia during
6 that two hours what, if any, advice did you give her?

7 A I told her from what she had told me, that she needed
8 to go talk to Mr. Dempsey and Mr. Bennett and advise them
9 of what things were going on.

10 Q And who is Mr. Bennett?

11 A He was Bob Bennett, owner of Bob Bennett Ford.

12 Q And who is Mr. Dempsey?

13 A General manager at that time.

14 Q When you were giving her advice, did you have any
15 specific advice regarding Kenneth Lynch that you gave
16 Portia Washington?

17 A I did.

18 Q And what was that?

19 A I told her she needed to get away from him and stay
20 away from him.

21 Q After that lunch, did you later have another
22 conversation with her on the phone that stands out in your
23 mind?

24 A Yes. We talked on the phone. The minute she heard
25 my voice, she just broke down and started crying and she

1 was like --

2 MR. STITELY: Objection to hearsay.

3 BY MR. GRAHAM:

4 Q Without saying what she said --

5 A She broke down and started crying.

6 Q Again, based on that phone conversation with her,
7 what, if anything, did you tell her? What advice did you
8 give her?

9 A I told her the same thing that I had told her -- that
10 I had told her at the restaurant: "You need to take this
11 to Mr. Bennett and Mr. Dempsey."

12 MR. STITELY: Your Honor, I'm going to object at
13 this point. This is hearsay. It's her own statements,
14 but now they're using it to bolster her previous
15 statements. It's to serve for the truth of the matter
16 asserted to prove a prior consistent statement, I guess,
17 at this point.

18 THE COURT: I'm certain I didn't understand what
19 you're talking about. You're going to have to explain it
20 to me.

21 MR. STITELY: I mean --

22 THE COURT: She had a lunch meeting, discussed
23 things, gave advice, a phone conversation, and she
24 testified about that. You're going to have to explain to
25 me what you're talking about.

1 MR. STITELY: We say it's just still hearsay. I
2 mean, she's using her own statements now to bolster. She
3 said the same thing twice.

4 THE COURT: I think she's allowed to say exactly
5 that: "I gave the same advice both times." So I'll
6 overrule that objection.

7 BY MR. GRAHAM:

8 Q In that phone conversation -- so you have the lunch
9 where she broke down -- y'all had the two-hour lunch where
10 she broke down and cried.

11 A Right.

12 Q Later you had the phone call. She hears your voice,
13 and she begins to cry.

14 A Correct.

15 Q Based on that phone conversation, while you're on the
16 phone with her, what did you tell her to do?

17 A I gave her the same advice I gave her at lunch: "You
18 need to escalate this to Mr. Bennett and Mr. Dempsey."

19 Q Why did you think that would help?

20 A Well, I mean, they were the managers there. She was
21 employed there, he was employed there. To me, that would
22 have been a good step to take.

23 Q Later on -- let's move forward into March or April.
24 Do you remember a time when you took your car in for
25 service at Bob Bennett Ford?

1 A Uh-huh, correct.

2 Q Did you have an occasion to see and speak with Portia
3 again at that time?

4 A Yes, I did.

5 Q Tell me about that.

6 A She was still very sad, very emotionally upset, you
7 know, still -- things had not changed.

8 Q Again, based on that conversation in March or April,
9 what advice did you give her?

10 A I gave her the same advice again. I said this -- to
11 me, that was what she needed to do, you know: "You need
12 to take this to your managers here at your place of
13 employment and see if there's anything that they can do to
14 assist you with this."

15 Q Later on, closer into June of 2006, did you receive a
16 phone call from Portia?

17 A I can't remember if she called me again or not, but I
18 know that June was her birth month, so in June -- and I
19 cannot remember the exact day, but it had to be a few days
20 prior to the 13th.

21 Q Why do you remember it being a few days prior to
22 June 13th?

23 A June the 13th is when I received a call from someone
24 at Bob Bennett that told me that she --

25 MR. STITELY: Object to hearsay.

1 THE COURT: Okay. Sustained on that.

2 MR. GRAHAM: It's not offered for the truth of
3 the matter, Your Honor. It's offered to explain her
4 memory. It's telling why she remembers that conversation,
5 why she remembers that date.

6 MR. STITELY: She can say she got a call from
7 Bob Bennett Ford, but she can't go into what they told
8 her.

9 THE COURT: I think he's right. Sustained.

10 BY MR. GRAHAM:

11 Q Annette, you remember without a doubt that you
12 received a phone call from somebody at Bob Bennett Ford on
13 Tuesday, June 13th?

14 A Correct. I do.

15 Q And testifying as far as your memory, you were
16 talking about you attempting to contact her a few days
17 prior to that. Do you remember that?

18 A A few days prior to that because it was her birthday,
19 and I normally made her a birthday cake for her birthday.
20 I just liked to bake for people. I would make her
21 different things at Easter, whatever. I knew her birthday
22 was coming up. I was calling her to see how she was doing
23 and ask her what kind of birthday cake she wanted.

24 Q When you tried -- did you get ahold of her?

25 A No. The phone went straight to voice mail. I tried

1 on her cell phone. It went straight to voice mail.

2 Q You consider yourself a good friend to Portia?

3 A I did, and I do.

4 Q Did you know about her family?

5 A I knew briefly about her family. Like I said, that
6 was what we discussed, was our family. That's what we
7 talked about. She talked about her granddaughter, her
8 daughter, her son. I talked about my son.

9 Q What, if any, opinion do you have as to whether
10 Portia would disappear voluntarily?

11 MR. STITELY: I'm going to object to
12 speculation.

13 MR. GRAHAM: It's her opinion.

14 MR. STITELY: The question was whether she would
15 disappear voluntarily. That's state of mind. She's not
16 speculating as to Ms. Washington's state of mind. She was
17 asked, "Would you expect Ms. Washington to leave" --

18 MR. GRAHAM: I can rephrase that, Your Honor.

19 THE COURT: Rephrase it. I'll sustain
20 because -- as to speculation.

21 MR. GRAHAM: Beg the Court's indulgence.

22 (Pause.)

23 BY MR. GRAHAM:

24 Q Annette, during this time that we talked about,
25 starting when you left Bob Bennett Ford, your

1 friendship -- relationship continuing all the way up until
2 your last contact with her leading up to June of 2006,
3 what was Portia's emotional state of mind as it dealt with
4 Kenneth Lynch?

5 MR. STITELY: I'm going to object to speculation
6 and then, also, calling for hearsay. He's obviously
7 trying to ask what she would have known specifically from
8 what she was told. She's either speculating as to what
9 someone's thinking or asking without saying what did she
10 say or what she's been told.

11 THE COURT: I apologize. I didn't listen to
12 that question that closely, so I want to hear it again.

13 MR. GRAHAM: Your Honor, it would be the same
14 argument we had with the witnesses that we began the trial
15 with, the Weston and Garcia.

16 THE COURT: I understand. I want to hear your
17 question again. I don't think I fully heard it. Is it --
18 his objection was lengthy and had numerous parts and I
19 want to hear the question again so I understand my --
20 before I make my ruling.

21 BY MR. GRAHAM:

22 Q Annette, going back to when you left Bob Bennett Ford
23 and the time that Portia began a relationship with Kenneth
24 Lynch, and moving forward, in your contact with Portia,
25 your conversations with Portia, your dealings with Portia,

1 as we approach your last contact with her and her
2 disappearance in June of 2006, what, if anything, can you
3 tell me about her state of mind toward Kenneth Lynch?

4 MR. STITELY: And that's my objection. And now
5 she's either asked to speculate as to what her state of
6 mind was or -- without saying, "What did she say? What
7 did she tell you?" You're trying to elicit hearsay or
8 asking her just to glaringly speculate.

9 THE COURT: My understanding under Garcia and
10 Weston is that you can ask, "What did she tell you?" She
11 can't explain where the emotion or state of mind came from
12 as to why, but she can -- she can answer that question if
13 she knows and if she was -- I think she can testify as to
14 that. I'm not sure your question asked that. It tries.

15 MR. GRAHAM: Thank you, Your Honor.

16 THE COURT: Rephrase it to comply with my -- I'm
17 going to let you rephrase it again and then I'm going to
18 let Mr. Stitely make an objection so we can make every
19 attempt to only elicit a response which would be allowed
20 or as I previously ruled is allowed under Garcia and
21 Weston.

22 BY MR. GRAHAM:

23 Q Without stating what Portia told you -- don't repeat
24 why -- but as time went on in her relationship with
25 Kenneth Lynch, can you tell me what Portia's state of mind

1 was as to her feelings for or about Mr. Lynch?

2 MR. STITELY: I think we're in the same place.
3 Now these aren't things that she said, like, "She said I
4 was nervous."

5 THE COURT: Well, under Weston "I'm afraid," but
6 not why. That's what was allowed, wasn't it?

7 MR. GRAHAM: Yes, Your Honor.

8 THE COURT: Okay. She's allowed to -- and
9 that's the exception to hearsay that she's allowed to
10 repeat.

11 MR. STITELY: If that's the answer that the
12 Solicitor expects to hear, I don't know if it is or not.

13 THE COURT: All right. And I don't know either.
14 I'm just using an example in the case from Weston
15 regarding Ms. Franchey's state of mind.

16 So I'm going to ask you to rephrase the question
17 yet again.

18 BY MR. GRAHAM:

19 Q Annette, without going into details about why,
20 regarding what Portia said to you, not the details of why,
21 but leading up to this -- your last contact with her in
22 the summer of 2006, did she tell you what her state of
23 mind was regarding having Kenneth Lynch in her life?

24 A Did she tell me? Is that what you're asking me?

25 Q That's the first question. Yes, ma'am.

1 A Yes, she did.

2 Q Without going into details of why she felt a certain
3 way, can you tell me how she indicated she felt regarding
4 Kenneth Lynch?

5 A She was scared and afraid.

6 MR. STITELY: We would offer our objection and
7 ask to strike it.

8 THE COURT: I note your objection, but I believe
9 that characterization question is proper under Weston,
10 describing what's allowed under the Garcia case.

11 So note your objection. She can't explain why,
12 but she's allowed to answer the question and has so
13 answered with your objection noted for the record.

14 BY MR. GRAHAM:

15 Q Annette, do you have an opinion as to whether Portia
16 would contact you if she needed help?

17 A Yes, I do.

18 Q Based on your friendship and your conversations with
19 her over the course of your friendship when you worked
20 there and afterwards, what is your opinion as to whether
21 if Portia needed help, whether she would contact you or
22 not?

23 A I believe she would contact me.

24 Q Have you ever heard -- what, if any, contact did you
25 have with Portia Washington since your last attempt to

1 call her to ask her about her birthday cake?

2 A None.

3 MR. GRAHAM: Please answer any questions the
4 defense has. Thank you, ma'am.

5 THE WITNESS: Thank you.

6 MR. STITELY: Your Honor, I'll be very brief. I
7 don't think I have too many questions, that we can do it
8 before lunch.

9 CROSS-EXAMINATION

10 BY MR. STITELY:

11 Q Hi, Ms. Williams.

12 A Hi.

13 Q My name is Ben Stitely, and I actually just have a
14 very, very few questions for you.

15 You knew Ms. Washington over the time of 2005
16 and 2006 you testified, right?

17 A Correct.

18 Q Did you know that she was going to the doctor
19 regularly for what they call obstructive sleep apnea?

20 A No, I did not.

21 Q Did you know that over the period of just the summer
22 of '05 until the summer of '06, she went no less than six
23 times to the doctor?

24 A No.

25 Q Okay. Did you know that she was also diagnosed as

1 being bipolar?

2 A No.

3 MR. STITELY: One second, Your Honor. I'm
4 sorry.

5 (Pause.)

6 BY MR. STITELY:

7 Q Two little things. Do you know where Ms. Washington
8 went on vacation in April of 2006 for four days? Do you
9 remember?

10 A I can't remember.

11 Q No problem.

12 You say you spoke frequently on the phone?

13 A Yes.

14 Q Do you happen to remember what her phone number was?

15 A I can't remember it. I have a new cell phone. All
16 my numbers were programmed in. I can't even remember my
17 own old cell phone number.

18 Q So you wouldn't know your phone number from back in
19 '06 or '05 either?

20 A No, I would not.

21 MR. STITELY: One more second and I think that's
22 it, though, Judge.

23 (Pause.)

24 MR. STITELY: Thank you, ma'am, for coming.

25 That's all I have.

1 THE WITNESS: Thank you.

2 THE COURT: Any redirect?

3 MR. GRAHAM: No, Your Honor. We ask that she be
4 excused from her subpoena.

5 MR. STITELY: Yes, sir.

6 THE COURT: Very well. Thank you, Ms. Williams.

7 THE WITNESS: Thank you.

8 THE COURT: I think this would be an appropriate
9 lunch break time.

10 MR. GRAHAM: Yes, Your Honor.

11 THE COURT: See you-all back here at 2 o'clock.

12 (Lunch recess taken.)

13 THE COURT: Ready to continue?

14 MR. GRAHAM: Yes, sir.

15 THE COURT: Call your witness.

16 MR. MYERS: Mr. Harry Wertz.

17 HARRY WERTZ, after being duly sworn, testified
18 as follows:

19 THE CLERK: Please be seated. State your full
20 name.

21 THE WITNESS: Harry Wertz.

22 DIRECT EXAMINATION

23 BY MR. MYERS:

24 Q Mr. Wertz, what is your occupation?

25 A My current occupation is I'm a sales consultant with

1 Stokes-Trainor GMC Buick Cadillac dealership in Newberry,
2 South Carolina.

3 Q Any other occupation?

4 A I'm also a pastor.

5 Q Now, you're in the car business; is that right?

6 A Yes, sir.

7 Q Now, Mr. Wertz, at one time did you ever work with
8 Bob Bennett Ford?

9 A Yes, I did.

10 Q And what were the years that you were working with
11 Bob Bennett Ford, please, sir?

12 A Bob Bennett Ford from 1998 right up until
13 October 8th of 2008.

14 Q All right. While you were working at Bob Bennett
15 Ford, did you have an occasion to come in contact with
16 Portia Washington?

17 A Yes, I did.

18 Q And 2005 or '06, you knew her then?

19 A Yes, I did.

20 Q Were you-all close, Mr. Wertz?

21 A Yes, we were.

22 Q And would she ever come to you to discuss various
23 personal matters, family matters, things of -- personal
24 relationship, kind of confide in you?

25 A Yes, she did.

1 Q Did you talk with her frequently?

2 A Yes, I did.

3 Q Did you give her advice sometimes?

4 A Yes, I would sometime give her some advice, yeah.

5 Q Now, did you know her granddaughter?

6 A Yes, we did.

7 Q Did you ever see her granddaughter?

8 A Yes.

9 Q Where would that be?

10 A When she brought her to the dealership.

11 Q So she would bring her granddaughter to the
12 dealership from time to time?

13 A Correct.

14 Q Did you ever at any time assist her in any way with
15 her granddaughter?

16 A Yes. My wife and I would -- at time would give
17 Portia some assistance, to give her granddaughter some
18 gifts.

19 Q And over what kind of holidays, or anything, would
20 this be for?

21 A It could be the Easter holidays, could be Christmas,
22 birthdays.

23 Q And when she would bring Angelica, her granddaughter,
24 out to the dealership, would she bring the granddaughter
25 over to talk with you?

1 A Sure. She would always come by and speak to me.

2 Q Would the granddaughter know that you and your wife
3 would be helping?

4 A She did. She would -- Portia would let her know that
5 we was the reason -- we were the reason they gave her some
6 of the things that she received.

7 Q Did you know anything about the granddaughter
8 planning on going to a church summer camp in 2006?

9 A Yeah. Portia had spoke that to us, that she's going
10 to send her away to a church camp.

11 MR. STITELY: Objection to hearsay.

12 MR. MYERS: It doesn't go to the truth of the
13 matter asserted, Your Honor. It's what they were going to
14 do that summer.

15 MR. STITELY: Isn't that exactly the truth of
16 the matter asserted?

17 MR. MYERS: No, it's not. It can be taken or
18 rejected.

19 THE COURT: Considering we've received the
20 check, I believe, in reference to that camp --

21 MR. MYERS: Yes, sir.

22 THE COURT: -- I will allow it.

23 MR. MYERS: Thank you, Your Honor.

24 THE COURT: I don't want -- he can't testify
25 further as to what she told him.

1 MR. MYERS: Yes, sir. And I'm not planning on
2 going there, Judge.

3 BY MR. MYERS:

4 Q Now, let me ask you this, Mr. Wertz: Did you ever at
5 any time tell Portia if she needed anything, you were
6 there for her?

7 A Yes, I have. I did.

8 Q How did you put that to her?

9 A Well, we told Portia if any time that she's in need,
10 especially to help the granddaughter, just to let me know.

11 Q Or anything else?

12 A Yes, sir.

13 Q And she would confide in you?

14 A Yes, she did.

15 Q And she would come to you for advice or help on
16 occasion; is that correct?

17 A Yes, she did.

18 Q Working around Bob Bennett Ford, did she carry her
19 load or not?

20 A She did -- as in the workplace?

21 Q Yes.

22 A She done an excellent job.

23 Q Just in one area?

24 A In all areas.

25 Q All over the dealership?

- 1 A Yes, sir.
- 2 Q I think she was in maintenance, things of that
3 nature?
- 4 A Janitorial, yes, sir.
- 5 Q Was she one who would sporadically come to work, or
6 was she punctual in coming to work?
- 7 A She was very -- always be at work.
- 8 Q Was her job in jeopardy in any way at Bob Bennett
9 Ford?
- 10 A No, sir.
- 11 Q Now, let me ask you about that car.
12 Do you remember when she got that new car?
- 13 A Yes, the Focus. Yes.
- 14 Q What was her feelings about having that new car?
- 15 A That was her pride and joy.
- 16 Q Who is the fellow named Frank Dempsey?
- 17 A Frank Dempsey is the general sales manager at that
18 time at Bob Bennett Ford.
- 19 Q Did he assist her in any way in obtaining that car?
- 20 A Oh, yes, he did.
- 21 Q How?
- 22 A Frank made a phone call over to Ford Credit and got
23 Ford Credit to put a deal together for her to be able to
24 purchase that vehicle.
- 25 Q He played a major role?

1 A Yes.

2 Q And he was one of the higher-ups in the dealership?

3 A Yes. He was the second in charge to Bob Bennett.

4 Q Therefore, he was helping her?

5 A Correct.

6 Q Now, you knew that years before that Portia had a
7 rather wild lifestyle?

8 A Yes.

9 Q Was that still her lifestyle in '05 and '06?

10 A No, no, no, that was not.

11 Q What was her lifestyle in '05 and '06?

12 A She was very responsible, very caring, very loving
13 person.

14 Q Would you describe her as being responsible or
15 irresponsible?

16 A Responsible.

17 Q And what did that granddaughter mean to her?

18 A That was her life. That was her life, her joy. That
19 was her whole life. That's what she lived for.

20 Q Let me ask you about another lady out there, a lady
21 named Debra Hobgood. Did Portia ever rely on Debra
22 Hobgood?

23 A Yes, she did.

24 Q Were they pretty close?

25 A They were.

1 Q And would Debra offer her advice, assistance, and
2 other things?

3 A Yes, she did.

4 Q A person that Portia could count on?

5 A Yes.

6 Q Now, let me ask you about Monday, June 12th, when
7 Portia didn't show up for work.

8 About what time did you realize she was not at
9 work?

10 A Somewhere around about 10:30. That's when everybody
11 began to question where's Portia.

12 Q Why?

13 A Because that's not Portia.

14 Q What do you mean?

15 A Portia don't show up for work. She don't miss work.

16 Q Any concern about her not being there?

17 A Sure.

18 Q And what were some of the actions you took?

19 A Well, everybody began to call her cell phone just to
20 try to find out what's going on.

21 Q Was anybody able to contact her?

22 A No.

23 Q Later on in the day, still a concern?

24 A Yes.

25 Q What was some of the actions that you-all took?

1 A Some of us were trying -- continued trying to call
2 her cell phone and some also was trying to call some of
3 the members of the family, see when had they last seen
4 Portia.

5 Q What about on into Tuesday? Did she show up for work
6 on Tuesday?

7 A No, she did not.

8 Q Any more concern?

9 A Well, we became very concerned. At that time we was
10 able to get Brad, director of parts, to go by her
11 apartment.

12 Q Now, who is Brad?

13 A Brad Clary is the director of service and parts at
14 Bob Bennett Ford at that time.

15 Q Brad Clary?

16 A Yes.

17 Q People still trying to find out where Portia is?

18 A Yes.

19 Q Kenneth Lynch, he worked at Bob Bennett Ford?

20 A Yes, he did.

21 Q Was he there on Monday or Tuesday?

22 A No, he was not.

23 Q When was the last time that you saw Portia?

24 A Friday right when she left to go home for the
25 weekend.

1 Q You say anything to her?

2 A Sure. I just told her bye. I was coming out of the
3 sales, front of the store to the shop. She was getting in
4 the car. And I told her, "I'll see you after the
5 weekend." And she said, "I'll see y'all Monday."

6 Q "I'll see y'all Monday"?

7 A Yes.

8 Q Any indication that she was going to quit her job?

9 A No, sir.

10 Q Any indication that she wasn't going to come in
11 Monday?

12 A No, sir.

13 Q Who was with her when she left on that Friday?

14 A Kenny. Kenny was driving the car.

15 Q And whose car was it?

16 A Portia's.

17 Q Now, from that Friday, Mr. Wertz, did you ever talk
18 with Portia again?

19 A No, I did not.

20 Q Ever see Portia again?

21 A No, I have not.

22 Q Is that ordinary or unordinary for her to disappear
23 like that?

24 A That's unordinary for her to disappear.

25 Q And if she needed anything, advice or help or

1 anything, she could contact you?

2 A Yes. She would contact many peoples, yes. I'm one,
3 yes.

4 Q You told her that?

5 A Yes, sir.

6 Q She never has?

7 A She never has.

8 MR. MYERS: Thank you, Mr. Wertz. Please answer
9 any questions they have.

10 CROSS-EXAMINATION

11 BY MR. STITELY:

12 Q Good afternoon, Mr. Wertz. How are you, sir?

13 A How are you doing today, sir?

14 Q I'm doing very well.

15 My name is Ben Stitely. We have met before.

16 A Uh-huh.

17 Q I want to touch on something in backwards order
18 there.

19 You said when they left on Friday, Kenny was
20 driving the car?

21 A Yes, sir.

22 Q And that was pretty much the norm, Kenny would drive
23 the car from work, to work?

24 A Well, this is probably -- maybe my first time
25 probably ever seeing Kenny to drive that car.

1 Q But he definitely was driving the car?

2 MR. MYERS: What was that last question?

3 MR. STITELY: That he definitely was driving the
4 car.

5 MR. MYERS: That one time, that day.

6 BY MR. STITELY:

7 Q Mr. Wertz, you said you'd known Ms. Washington for a
8 while, correct?

9 A Yes.

10 Q Do you remember talking to a Detective Jones at
11 West Columbia back in June of that year?

12 A He came in.

13 Q Did you know that Ms. Washington and Mr. Lynch had a
14 relationship?

15 A I wasn't fully aware of their relationship, no, I
16 wasn't.

17 Q So you didn't know that they had lived in three
18 separate houses -- well, two houses, then an apartment --
19 together over the time?

20 A No, I did not.

21 Q How often did you talk to Ms. Washington?

22 A I probably talked to Portia every day.

23 Q Okay. Did you know about her medical conditions?

24 A I never knew she had a medical condition. As to
25 what?

1 Q Well, I mean, between -- did you know that between
2 the summer of 2005 and the spring of 2006, she went to the
3 doctor no less than six times about sleep apnea and some
4 other problems?

5 A I know she was going to the doctor, but I couldn't
6 specifically -- no, I couldn't say for what specific
7 reason.

8 Q Did she ever talk to you about having problems
9 sleeping?

10 A I can't remember.

11 Q No problem. I understand.

12 Did you ever give a written statement to law
13 enforcement?

14 A No.

15 MR. STITELY: One second, please.

16 (Pause.)

17 BY MR. STITELY:

18 Q And that Friday and everything, Ms. Washington seemed
19 okay?

20 A She seemed very happy.

21 Q Very happy?

22 A Yes.

23 MR. STITELY: Okay. Nothing further.

24 MR. MYERS: We'd move he be excused, Your Honor.

25 MR. STITELY: No problem, Judge.

1 THE COURT: Okay. Thank you, Mr. Wertz.

2 THE WITNESS: Thank you.

3 THE COURT: Travel safely.

4 MR. HUBBARD: The State calls Brad Clary.

5 BRAD CLARY, after being duly sworn, testified as
6 follows:

7 THE CLERK: Please take a seat.

8 State your full name and spell your last name.

9 THE WITNESS: Jack Bradford Clary, C-L-A-R-Y.

10 DIRECT EXAMINATION

11 BY MR. HUBBARD:

12 Q Mr. Clary, where do you work currently?

13 A I work for Mike Addy at Addy's Harbor Dodge in
14 Myrtle Beach.

15 Q Been in the car business for quite a while?

16 A Longer than I'd like to tell you.

17 Q Did you at one time work for Bob Bennett Ford?

18 A I did.

19 Q How long did you work there?

20 A I worked there 11 years.

21 Q Do you know from what year to what year?

22 A Went to work on tax day -- I can remember that one --
23 of 1997, and I worked the last day that Bob Bennett owned
24 the dealership, which, I think, was the last day of
25 October of 2008. August of 2008 maybe.

1 Q What was your position with Bob Bennett?

2 A I was the fixed operations director.

3 Q As a fixed operations director -- well, let me ask
4 you this: What does that entail?

5 A That's -- the departments that answered to me were
6 the service department, body shop, parts department, and
7 then the general upkeep of the building.

8 Q Being in that position, did you ever come in contact
9 with a woman by the name of Portia Washington?

10 A I did.

11 Q Was she an employee?

12 A An employee. She was.

13 Q What was her job?

14 A She was the custodian.

15 Q At some point was she the only custodian?

16 A There were times where she was, but then there were
17 times when we had others.

18 Q When you had others, what, if anything, was her role
19 with those other custodians?

20 A She -- I won't say that she officially supervised
21 them, but she was there -- she looked after them. She
22 kept them under her wing.

23 Q Some of the people that assisted her, did they need
24 some assistance?

25 A Yes, they did.

1 Q Were you-all generous in the way you-all hired people
2 sometimes?

3 A I'd like to think so. We actually hired a lot of
4 folks through Voc Rehab.

5 Q Let me ask you: Was Portia Washington one of those?

6 A She was.

7 Q Did she seem appreciative for her job?

8 A Very much.

9 Q Seemed happy with her job?

10 A Very happy. Portia just seemed -- I don't know about
11 outside, but at work, she was happy all the time, had a
12 smile on her face.

13 Q Who was her immediate supervisor?

14 A That would be me.

15 Q Now, did she answer to somebody else, too?

16 A Frank Dempsey, our general manager, she did answer to
17 him as well.

18 Q What was her relationship with Frank Dempsey?

19 A They had a very good relationship.

20 Q What was his title?

21 A He was the general manager.

22 Q So he's right under the owner?

23 A Right under Mr. Bennett.

24 Q We talked about you hired her from Voc Rehab. Are
25 you aware of the problems in the past?

1 A We don't get into that with Voc Rehab.

2 Q I tell you what. I'm going to back that microphone
3 off a little bit. It's just a little sensitive. I think
4 you actually talk clear enough. There we go.

5 Did you pry into what issues may have led her to
6 Voc Rehab?

7 A No.

8 Q What was that?

9 A No.

10 Q Was that ever a concern?

11 A Not at all.

12 Q I might sit you up just a little bit. I'm trying to
13 find the right thing.

14 A You try to find something to clarify my voice, you've
15 created a miracle.

16 Q How would you describe her as an employee?

17 A She was a model employee. I wish everyone who had
18 ever worked for me was like Portia.

19 Q She was that good?

20 A She was that good. She came to work when she was
21 supposed to. She went home when she was supposed to, did
22 everything she was supposed to do and then some.

23 Q And where exactly were her primary duties?

24 A Mainly around the showroom and outside, front of the
25 building. We actually used her to keep every part of the

1 building the customers saw on a regular basis in tip-top
2 shape.

3 Q Is that part of why she and Mr. Dempsey were so
4 tight?

5 A It is.

6 Q Now, was she ever a problem?

7 A Not with me. I don't know of anyone who had a
8 problem with her.

9 Q She's just that type of person?

10 A Just that kind.

11 Q Would you ever say that she found herself to be over
12 her head in the work you-all were giving her?

13 A No, not at all.

14 Q Was there ever a hint that you-all were going to have
15 to let her go or fire her because she just couldn't do the
16 job?

17 A No, sir. We -- that's the -- she's one of the last
18 people we'd have wanted to lose.

19 Q If I were to say people were on her back, her
20 managers were on her back about doing the job, would that
21 be true or false?

22 A No way. That would be me.

23 Q And you weren't on her back?

24 A Never.

25 Q What hours did she work?

1 A Her hours were 8 to 5. She may have been in a little
2 before 8. I think 7:30 most days, but 8 to 5 Monday
3 through Friday.

4 Q Monday through Friday. If she was ever going to miss
5 a day on the job, would she call you?

6 A She would. She would either -- she'd call me. If
7 she couldn't get me, she'd leave word with our cashier to
8 get it to me.

9 Q Would you describe her as being conscientious about
10 letting people at work know?

11 A Very conscientious.

12 Portia really liked her job, and I don't know if
13 she -- like, if she did anything that was out of place,
14 she might have an issue, but she never ever did.

15 Q Now, did you ever know Mr. Lynch, Kenneth Lynch?

16 A I did.

17 Q And did you have a whole lot of contact with him?

18 A Not a lot really. Kenny worked back in the -- along
19 from where my office was, actually on the opposite side of
20 the building.

21 Q The little bit that you did come in contact with him,
22 how would you describe him?

23 A Very quiet.

24 Q Not someone that you would easily get to know?

25 A I don't know if anybody really did, but that would be

1 my opinion is you'd really -- really never get close to
2 him.

3 Q Did at some point you become aware that Portia
4 Washington and Kenneth Lynch were dating?

5 A Yeah, probably right near the end of her tenure
6 there.

7 Q Before she went missing?

8 A Yeah.

9 Q Did the fact that those two were dating -- did that
10 seem -- did that seem like a natural occurrence, or how
11 would you describe it?

12 A Surprised me.

13 Q Surprised you?

14 A Yeah.

15 Q Did Portia Washington have any family that she talked
16 about?

17 A A granddaughter, Angelica. That was the apple of her
18 eye.

19 Q She talked about Angelica a lot?

20 A Every day.

21 Q Every day. Say she's proud of her?

22 A Very proud.

23 Q Did she have photos and mementos of Angelica around
24 the workplace?

25 A She did. You know, she didn't actually have a place

1 where she kept things, but she had -- in her pocketbook
2 and all she had pictures that she'd show. If anything
3 happened, she'd tell us what happened.

4 Q Did she also have a fairly big closet area where she
5 had set up shop?

6 A That was -- we'd joke about having an office in a
7 closet, but that's what she had.

8 Q If you were to go into that office, would you see
9 pictures of Angelica?

10 A Yes, sir.

11 Q Would you see drawings from Angelica?

12 A Anything that she had -- that Portia had would show
13 up there.

14 Q At some point do you recall Portia getting a new car?

15 A Yes, I do. That was the highlight -- I won't say
16 highlight, but that was a big event in her life.

17 Q Do you remember what kind of car?

18 A New Focus.

19 Q Was it 2005? Does that sound about right?

20 A Yeah, I would say so.

21 Q Did she get any help in getting that Focus?

22 A Yeah. You know, Portia had obviously had I would say
23 a pretty tough life. She was not a wealthy woman by any
24 means and Frank Dempsey did go out of his way and -- to
25 put a deal together for her to be able to get the car.

1 Q So the general manager of this dealership made sure a
2 custodian in his business got a new car?

3 A He certainly did.

4 Q Did she seem appreciative?

5 A Very much.

6 Q How would you describe her thoughts based on the
7 way -- your relationship with her, and that car?

8 A She was proud of that car. That was probably like
9 her second baby after Angelica.

10 Q Mr. Clary, did there come a time when Portia just
11 went missing?

12 A Yes.

13 Q Was that -- was that unusual, or was this usual?

14 A Very unusual. Portia -- you know, if she was gone --
15 if she needed to be gone for an hour, I knew or she got
16 word to me. Somebody knew.

17 Q Do you remember that June 13th, that Monday when she
18 didn't show up that first day?

19 A Yeah. We were all concerned because that was just so
20 uncharacteristic of her. I mean, she was either there or
21 she would call me if there was an issue. If she couldn't
22 get me, she would leave word with our cashier to get it to
23 me. But we -- you know, we were concerned all day,
24 talking among ourselves if anybody had heard from Portia.
25 And, of course, naturally, no one had.

1 Q I said June 13th. That Monday was June 12th. But
2 June 13th, that Tuesday, what, if anything, did you do?

3 A Well, we didn't hear from her Tuesday morning again.
4 It was about mid-morning, I went into the accounting
5 office and got her address, and I actually drove over to
6 where she had an apartment to see if she was there, to see
7 if her car was there. Her car wasn't there.

8 I knocked on the door, didn't get any activity
9 in the apartment. And then I actually asked the complex
10 manager had she seen anything or anything of her, and she
11 really couldn't tell me anything.

12 Q Okay. So you went all the way from Bob Bennett Ford
13 to West Columbia to check on an employee?

14 A I did.

15 Q Is that how much she meant to you-all?

16 A Well, that's how much she meant to us, and that's how
17 uncharacteristic it was of her not to be at work and
18 somebody not know why or where she was.

19 Q Mr. Clary, prior to her going missing, had she come
20 to you and said, "I've got some plans. I'm going to be
21 going on a trip out of state for some time and I just need
22 to let you know that"?

23 A No, sir.

24 Q Didn't talk about any extended vacation?

25 A Not at all.

1 Q Did she take much in the way of vacations?

2 A Very little. I mean, maybe a day here if she needed
3 or had something to do, but that's about it.

4 Q Was there any talk about quitting?

5 A No.

6 Q About "I'm just not happy with this job or the people
7 here anymore. I think I have to quit"?

8 A No. That never -- I was never made aware. I never
9 even sensed anything like that from her.

10 Q Is it fair to say you would deal with her most every
11 day?

12 A Every day.

13 Q Would it be out of character for the Portia
14 Washington you knew to just up and leave?

15 A Not at all. That's just not her -- wasn't her
16 nature.

17 Q When you talked about Portia Washington not being a
18 wealthy woman, if I told you she left a paycheck at Bob
19 Bennett Ford, would that cause you concern?

20 A It definitely would.

21 Q Is she someone that needed that paycheck?

22 A Yes, sir.

23 Q Would that have been like Portia Washington to leave
24 a paycheck at her place of business?

25 A I would say no.

1 Q She was raising more than just herself. She had a
2 granddaughter, right?

3 A She had to take care of Angelica.

4 Q Mr. Clary, since June of 2006, have you seen or heard
5 from Portia Washington?

6 A I have not.

7 Q Have you seen or heard from her young granddaughter,
8 Angelica?

9 A I have not.

10 MR. HUBBARD: Thank you. Please answer any
11 questions the defense might have.

12 CROSS-EXAMINATION

13 BY MR. STITELY:

14 Q Hello, Mr. Clary. How are you today?

15 A Good. And you?

16 Q I'm fine. Thank you.

17 My name's Ben Stitely. Just a couple of
18 questions very briefly.

19 A Okay.

20 Q One thing you said is that she never took vacations.

21 Do you know where Ms. Washington went for four
22 days on April 27th of 2006, by chance, on vacation?

23 A I think -- I think she was actually moving.

24 Q On April 27th?

25 A I think. I can't tell you for sure, but I think she

1 was.

2 Q You said that you only became aware that she was
3 dating Mr. Lynch towards the end. Were you aware they
4 lived in three different residences over the past year and
5 a half before that?

6 A I was not.

7 Q Were you aware of any of her medical conditions?

8 A Not to say that I knew what they were. I did know
9 she had some medicine she took, but that's it.

10 Q Okay. Did she ever talk to you about sleep apnea --

11 A No.

12 Q -- or bipolar disorder?

13 A No.

14 Q You did characterize she seemed happy?

15 A Pretty much every day that I can tell you I came in
16 contact with her, she always seemed to be happy.

17 Q You saw her almost every day?

18 A At least every day. More than once a day.

19 Q Upbeat at work?

20 A Uh-huh.

21 Q Not downtrodden?

22 A Never in my presence.

23 Q And that was as long as you remember?

24 A As long as I remember, yes.

25 MR. STITELY: No other questions. Thank you for

1 coming today.

2 MR. HUBBARD: No further questions. We'd ask
3 this witness be excused.

4 MR. STITELY: Yes, sir.

5 THE WITNESS: Thank you.

6 MR. HUBBARD: Rosalyn Sumter.

7 ROSALYN SUMTER, after being duly sworn,
8 testified as follows:

9 THE CLERK: Please be seated.

10 State your full name, spelling your last name.

11 THE WITNESS: Rosalyn Sumter, S-U-M-T-E-R.

12 DIRECT EXAMINATION

13 BY MR. HUBBARD:

14 Q Ms. Sumter, do you know Portia Washington?

15 A I did.

16 Q What was your relationship to her?

17 A I called her my sister-in-law, but she's my aunt.

18 But she's older than me so I didn't want to -- I'm her
19 aunt by marriage. I'm married to her mother's youngest
20 brother.

21 Q Would that be Robert?

22 A That's correct.

23 Q Now, just to tell a little bit about you and your
24 husband, Robert, where does your husband work?

25 A He's currently working on Fort Jackson as a range

1 tech and he also works with me part-time.

2 Q Now, working out at Fort Jackson, was there a time
3 that he was in the military?

4 A That's correct.

5 Q I'm going to move the microphone up a touch. There
6 we go. I've been playing with it all day and I mess up
7 every time I touch it, but I'm going to give it a shot.

8 How many years was he in the military?

9 A Twenty-three.

10 Q Were you in the military at one point, too?

11 A I was.

12 Q How many years?

13 A Ten.

14 Q Is that how you-all met?

15 A That's correct.

16 Q And when you-all married, is that how you got to know
17 Portia Washington?

18 A That's correct.

19 Q When did you first meet her, what year?

20 A 1988, when we got stationed at Fort Jackson.

21 Q Now, the last few years, what job have you been
22 working?

23 A The last few years, I have my own business. I'm a
24 driver's instructor.

25 Q Okay. What's the name of your business?

1 A Emily's Driving School.

2 Q Who is Emily?

3 A That's my grandmother.

4 Q Your late grandmother?

5 A That's correct.

6 Q I want to ask you something about an arrangement you
7 had with Portia Washington.

8 A Okay.

9 Q Did she have cell phone service in your name?

10 A That's correct.

11 Q Now, did she have permission to have that?

12 A Sure.

13 Q And was she on your family plan?

14 A That's correct.

15 Q Or on your plan?

16 A That's right.

17 Q How did the pay arrangement work out? How did
18 you-all have that arranged?

19 A I told her that she didn't have to, but, you know,
20 Portia said, "No, I'm going to pay you." And it was \$30 a
21 month, and she would pay me the beginning of each month.

22 Q Did she always make those payments?

23 A That's correct.

24 Q As far as the phone itself, did you provide her the
25 phone?

- 1 A I'll be honest, I do not remember. I don't know
2 about if I bought one or, you know, I had an extra one.
3 I'm not sure.
- 4 Q Now, did she ever miss a phone payment?
- 5 A No.
- 6 Q Did she ever do anything with that phone to cause
7 trouble for you?
- 8 A No.
- 9 Q Was it ever a problem or a burden?
- 10 A No.
- 11 Q Was she very responsible?
- 12 A Very.
- 13 Q Was she thankful?
- 14 A Yes.
- 15 Q I want to ask you about your relationship with
16 Portia.
- 17 A Uh-huh.
- 18 Q You say she's kind of like a sister --
- 19 A That's correct.
- 20 Q -- or sister-in-law?
- 21 A That's correct.
- 22 Q Did you-all often talk?
- 23 A We did.
- 24 Q Did you ever go by and see her at work?
- 25 A I did.

- 1 Q Do you remember where she worked?
- 2 A Bob Bennett Ford near the zoo.
- 3 Q Greystone?
- 4 A Greystone.
- 5 Q The zoo's right down the road.
- 6 Speaking of Bob Bennett Ford, do you ever
- 7 remember her having a car?
- 8 A I do.
- 9 Q Do you remember her getting a new car?
- 10 A I do.
- 11 Q Did she get it while she worked at Bob Bennett Ford?
- 12 A That's correct.
- 13 Q I don't know. Do you know what kind of car?
- 14 A I just know it was a Ford.
- 15 Q Just a Ford?
- 16 A Yes.
- 17 Q Now, had she -- in your time knowing her, had she
- 18 ever had a new car?
- 19 A No.
- 20 Q No?
- 21 A No.
- 22 Q Was this a brand-new car?
- 23 A Yes. And she was excited.
- 24 Q Now, she was excited. But did Portia have a lot of
- 25 driving experience?

- 1 A No, not that much.
- 2 Q Did somebody have to help Portia learn how to drive?
- 3 A Yes, they did.
- 4 Q Who would have done that?
- 5 A Well, I helped her with her learner's permit, we
- 6 studied together, and then my husband helped her with the
- 7 driving.
- 8 Q Now, with that learner's permit, did Portia sometimes
- 9 struggle with reading?
- 10 A That's correct.
- 11 Q And writing?
- 12 A That's correct.
- 13 Q And you were there for her for that?
- 14 A Right.
- 15 Q And you-all made sure she learned how to drive, too?
- 16 A That's right. Well, my husband, he -- when he first
- 17 retired, he was living with his sister, Sarah Parker. And
- 18 he used to see Portia waiting at the bus at 5 o'clock in
- 19 the morning. He used to get so angry. He asked her does
- 20 she need a ride. She said, "No, because I get to work too
- 21 early," because of the way the bus was.
- 22 Q Right.
- 23 A So she didn't --
- 24 Q And now with the new car --
- 25 A It was very -- she was happy because she didn't have

1 to live on the bus route. She could live where she wanted
2 to live, very independent.

3 Q Independent?

4 A Uh-huh.

5 Q So that car meant a lot more than just being able to
6 get around, she was free now?

7 A She was free.

8 Q Was there someone special in Portia Washington's
9 life? I mean really special.

10 A Her granddaughter.

11 Q What's that granddaughter's name?

12 A Cassandra.

13 Q Did they also call her Angelica?

14 A Angelica.

15 Q Did she go by two different names?

16 A Yes.

17 Q Now, Portia, she would call her Angelica?

18 A Angelica, yes.

19 Q How would you describe Angelica's role in Portia's
20 life?

21 A Angelica was Portia's motivation, you know. She
22 just -- anything -- everything was Angelica. Any
23 conversation you started, Angelica's name was in there.

24 Q Was Angelica why Portia worked so hard?

25 A Yes.

1 Q Was Angelica why Portia worked so hard to keep
2 herself straight, too?

3 A That's correct.

4 Q Did you ever know a time when she failed Angelica in
5 any way?

6 A No.

7 Q Did she do a good job raising her?

8 A She did. Wonderful.

9 Q Did you ever have an opportunity to go over by
10 Portia's house, before the apartment, and sit and visit
11 with Portia?

12 A I did.

13 Q And would you-all go over and eat sometimes?

14 A Yes. She invited us for, I know, one Thanksgiving.
15 And just on Sundays, you know, she would just love to
16 cook. She'd say, "I cooked. Come on." So we went over
17 there.

18 Q You mentioned Thanksgiving. Now, are you from down
19 south?

20 A No, sir.

21 Q Now, how would you describe cooking where you come
22 from to cooking down here?

23 A It's different, but -- because I'm from New York
24 City, but my grandmother's from South Carolina so I had
25 some of the good food, too.

1 Q How would you describe Portia's food?

2 A Oh, excellent.

3 Q Did you like going over there to eat?

4 A I did, very much.

5 Q Did there come a time when you-all would go over
6 there and she was now dating someone and someone was
7 living with her?

8 A That's correct.

9 Q Would that be Mr. Lynch, Kenneth Lynch?

10 A I've never seen him. I just heard the name Kenny,
11 but I never seen him. I didn't know his last name.

12 Q Now, you say you'd go there to eat. You were in the
13 house?

14 A Yes.

15 Q Would this be Thanksgiving, too?

16 A Yes.

17 Q And Kenneth Lynch is living there?

18 A Yes.

19 Q Was he there?

20 A He was in the back, of course, I guess. I know
21 somebody was in the back, and she just said, "That's
22 Kenneth," you know, so --

23 Q So he wouldn't come out even when the whole family is
24 there?

25 A That's correct.

1 Q Now, do you recall when she moved to West Columbia,
2 to that apartment?

3 A Yes, I do.

4 Q Did you and your husband Robert ever go over there to
5 eat?

6 A We did.

7 Q Was Kenneth still living with her then?

8 A Yes, he was.

9 Q Did you see him at that time?

10 A No, I did not.

11 Q Where was he?

12 A In a room.

13 Q In the back?

14 A That's correct.

15 Q Did there come a point in time when you-all just
16 stopped going over Portia's?

17 A We did. We was a little uncomfortable.

18 Q Now, I want to ask you -- I brought up your
19 grandmother. You called her Granny?

20 A That's correct.

21 Q And her real name was?

22 A Emily.

23 Q Did there come a time that she was sick and passed?

24 A That's correct.

25 Q Was that in June of 2006?

1 A Yes, sir.

2 Q And what state did she live in?

3 A New York.

4 Q Did Portia know about Granny?

5 A She knows my grandmother, yes. And when my
6 grandmother came to visit me here, Portia just waited on
7 her and just -- my grandmother loved it, Portia loved it.

8 Q It was kind of a mutual thing?

9 A Yes.

10 Q Now, when your grandma passed, was this -- what
11 about -- what time of the year was that, or what day of
12 the month? Do you remember?

13 A It was the middle of June.

14 Q Middle of June?

15 A Yes.

16 Q Now, when that happened, were you up in New York, or
17 did you go up to New York?

18 A I did.

19 Q What, if anything, did you hear from Portia?

20 A Nothing.

21 Q And at this point, had you known anything that had
22 happened to Portia?

23 A I did not.

24 Q So when you're up in New York concerned about a loved
25 one who's just passed away --

- 1 A Uh-huh.
- 2 Q -- who are you not hearing from?
- 3 A Portia.
- 4 Q What did that do to you?
- 5 A It kind of made me feel bad because she knew Granny,
6 she always used to ask me about her, but --
- 7 Q Did you feel hurt?
- 8 A Yes, I did.
- 9 Q And at this point, you didn't know what was going on
10 down here in South Carolina?
- 11 A That's correct.
- 12 Q Did you try calling her?
- 13 A I did.
- 14 Q On that phone you gave her?
- 15 A I did.
- 16 Q Did she ever answer?
- 17 A No. It went straight to voice mail.
- 18 Q When did you return to South Carolina?
- 19 A I think it was after the 18th.
- 20 Q Okay. Was it about that time you learned she was
21 missing?
- 22 A I did.
- 23 Q Now, you knew she worked at Bob Bennett Ford?
- 24 A That's correct.
- 25 Q Had you done something, put in an order before you

1 went up to New York?

2 A I did. I ordered something for my husband's truck.

3 Q What did you order?

4 A A rear mirror that goes in the back and an extender.

5 Q Extender for the back of the truck?

6 A That's correct.

7 Q And when you ordered that, you were still here in
8 South Carolina?

9 A I was.

10 Q And this was before Granny died?

11 A That's correct.

12 Q Before Portia went missing?

13 A That's correct.

14 Q Did you order it through what company?

15 A Bob Bennett Ford.

16 Q When you got back and found out Portia's missing, did
17 you go to Bob Bennett Ford?

18 A I did.

19 Q Did you pick up those parts?

20 A I did.

21 Q How would you describe that time?

22 A Well, I was -- I was asking, you know, like, "What
23 happened?" You know, I mean, it's like they don't know,
24 they was asking me what happened.

25 Q Everybody's trying to find out what's going on?

1 A We was just lost on what was going on.

2 Q Nobody had answers?

3 A No.

4 Q The Portia you had known, the Portia Washington that
5 you had known and shared meals with and visited so much,
6 was it like her to just pick up and leave?

7 A No.

8 Q Would the Portia Washington you know leave and not
9 contact any family members?

10 A No.

11 Q Would she take that granddaughter of hers and leave
12 and not let you-all ever hear from that granddaughter?

13 A No. She would not leave her family, and she would
14 not take her granddaughter from her Uncle Patrick because
15 he was very helpful to her, with her.

16 Q Ms. Sumter, since June of 2006, have you seen or
17 heard from Portia Washington or Angelica?

18 A No.

19 Q Not a bit?

20 A No.

21 MR. HUBBARD: Thank you, ma'am. Please answer
22 any questions the defense might have.

23 CROSS-EXAMINATION

24 BY MR. STITELY:

25 Q Hello, ma'am.

1 A Hello.

2 Q Do you remember a time when Ms. Portia lived on [REDACTED]

3 [REDACTED]

4 A Charlotte Street, yes.

5 Q Do you remember when Mr. Lynch first came to live
6 with her there?

7 A No, I don't.

8 Q Okay. How about at the New State Road?

9 A No.

10 Q Okay. Where was this house that you described going
11 to dinner then?

12 A On Charlotte Street.

13 Q Okay. So you didn't even know they lived in another
14 house for a year in between there?

15 A I don't recall.

16 MR. HUBBARD: Your Honor, I believe the question
17 is: Do you remember when he lived there? It was kind
18 of -- I kind of took it as when they first -- he first
19 moved in.

20 MR. STITELY: I'll clarify it.

21 BY MR. STITELY:

22 Q But you would recall that Mr. Lynch was at least
23 staying with her when they lived at [REDACTED]

24 A Like I said, I've never seen him before, but I just
25 heard "Kenny."

1 Q Okay. Did you know that Ms. Portia moved on
2 March 1st, 2005, to a house on New State Road?

3 A I don't recall.

4 Q Okay. And do you know about when she moved into the
5 apartment in West Columbia?

6 A Yes.

7 Q When was that?

8 A Oh, I don't know exactly when, but I have been there.

9 Q If you had to guess when she moved in -- I mean, do
10 you remember when you were there?

11 MR. HUBBARD: Your Honor, guessing would be
12 inappropriate.

13 MR. STITELY: I asked if she remembered when she
14 was there.

15 MR. HUBBARD: I don't have a question with
16 that -- a problem with that, but I do have a problem with
17 "if you had to guess." That's not what witnesses do.

18 THE COURT: All right. Rephrase your question.

19 BY MR. STITELY:

20 Q To the best of your recollection, when were you
21 there? 2005, early 2006?

22 A Early 2006.

23 Q Early when it was still cold, or when it had gotten
24 warmer?

25 A I can't remember.

1 Q Okay. That's fine.

2 Do you know where the car that Ms. Washington
3 traded in to get the new Focus came from?

4 A I know it was burgundy. That's all I can remember.

5 Q Burgundy?

6 A Yeah.

7 Q What kind of car was it? Do you remember? Was it a
8 big car?

9 A Midsize.

10 Q All right. Like a sedan, though, like a four-door
11 car?

12 A Yeah. I think so, yeah.

13 Q You don't know where that car came from?

14 A No, I can't remember.

15 Q Did she used to drive that car?

16 A No. Her mother did.

17 Q Did you know Theresa, by chance?

18 A Her daughter?

19 Q Yes.

20 A Yes.

21 Q Angelica's mother?

22 A That's correct.

23 Q Do you know where she was around this time?

24 A I do not know where she lived, no.

25 Q Okay. Do you know why she didn't have Angelica?

1 A Not really.

2 Q Do you know why Portia had Angelica?

3 A She wanted her.

4 MR. STITELY: Thank you, ma'am.

5 THE WITNESS: You're welcome.

6 MR. HUBBARD: No further questions.

7 THE COURT: You may step down.

8 THE WITNESS: Thank you.

9 MR. HUBBARD: The State calls Sarah Parker.

10 SARAH PARKER, after being duly sworn, testified
11 as follows:

12 THE CLERK: Please be seated.

13 State your full name and spell your last name.

14 THE WITNESS: My name is Sarah Parker,
15 P-A-R-K-E-R.

16 DIRECT EXAMINATION

17 BY MR. HUBBARD:

18 Q Ms. Parker.

19 A Yes, sir.

20 Q Do you know Ms. Portia Washington?

21 A She my niece.

22 Q She's your niece. Would you say that your family is
23 a fairly close-knit bunch?

24 A Yes, sir.

25 Q Is that your family out there?

1 A Yes, sir.

2 Q Is that Portia's family?

3 A Yes, sir.

4 Q Was there a time when you allowed Portia Washington
5 to use your name for something?

6 A Light bill.

7 Q Light bill?

8 A Electric.

9 Q So, electricity?

10 A Yes.

11 Q She had your permission to do that?

12 A Yes, she did.

13 Q When about did -- how long ago was that when she
14 started doing that, if you can remember?

15 A I can't remember exactly when it was, but whenever it
16 was, she asked me for my permission.

17 Q Let's see. She went missing in 2006, so was it a
18 number of years prior, before that? You don't have to
19 tell me how many years.

20 A Yes.

21 Q Okay. Was there something going on in her life about
22 the time she asked you for that?

23 A She had breast cancer.

24 Q Now, when she moved, were you aware she moved from --
25 she had a number of different places she lived?

- 1 A Yes.
- 2 Q Did she keep your name on the electric bill each
3 time?
- 4 A Yes, she did.
- 5 Q Each time she moved, would she ask for permission?
- 6 A Yes, she did.
- 7 Q And you allowed her to keep your name on her electric
8 bill?
- 9 A Yes.
- 10 Q Would the bills go to her or to you?
- 11 A They went to her.
- 12 Q To your knowledge, she always paid them?
- 13 A She always paid them on time.
- 14 Q Did you ever get late notices?
- 15 A No, sir.
- 16 Q Did it ever affect your credit, having -- Portia
17 Washington having electricity in your name?
- 18 A No, sir.
- 19 Q Did you know where Portia Washington worked?
- 20 A Bob Bennett Ford.
- 21 Q Bob Bennett Ford. How did she like that job?
- 22 A She liked that job. She loved her job.
- 23 Q Do you recall there came a time when she got a new
24 car?
- 25 A Yes, sir.

- 1 Q I don't know if you remember what kind of car?
- 2 A All I know, it was a Ford.
- 3 Q Which makes sense at Bob Bennett Ford, huh?
- 4 A Yes.
- 5 Q What did she think of that car?
- 6 A She loved her car.
- 7 Q Was there someone else that she really loved a lot?
- 8 A Angelica.
- 9 Q Who is Angelica?
- 10 A That's her granddaughter. That's her heart.
- 11 Q That's her heart?
- 12 A Yes.
- 13 Q For whatever reason, Portia was raising her, but did
- 14 she raise her good?
- 15 A Yes, she did.
- 16 Q Did she take care of Angelica?
- 17 A Yes, she did.
- 18 Q Treat her as her own?
- 19 A Yes.
- 20 Q And love her?
- 21 A Yes, she did.
- 22 Q Did she make sure Angelica had an opportunity to see
- 23 her family?
- 24 A Yes, she did.
- 25 Q All these people out here?

- 1 A All those people out there.
- 2 Q Did she share Angelica with --
- 3 A With everybody. I meant with family.
- 4 Q You-all were tight?
- 5 A Yes, sir.
- 6 Q Did she and Angelica ever come over to your place?
- 7 A Yes, sir.
- 8 Q Ms. Parker, if Portia Washington was in trouble and
9 needed to move into a place to have shelter, would you
10 have let her move in your place?
- 11 A Yes, sir.
- 12 Q And how about Angelica?
- 13 A Both of them.
- 14 Q Would there be any question about it?
- 15 A No question about it.
- 16 Q And is that pretty much true for all the family?
- 17 A Yes, sir.
- 18 Q I want to ask you something else about Portia.
19 Was she the type of woman to take trips?
- 20 A No, sir.
- 21 Q Did she go out of state much?
- 22 A She didn't go out of state.
- 23 Q So she never went to, say, Louisiana?
- 24 A No, sir.
- 25 Q Or California?

1 A No, sir.

2 Q Canada?

3 A No, sir.

4 Q Mexico?

5 A No, sir.

6 Q That just wasn't Portia?

7 A She didn't like the highway.

8 Q She didn't like the highway. But she got that car.

9 Was she still learning how to drive?

10 A Yes, sir.

11 Q Would the Portia Washington you know -- you knew and
12 loved let you-all know, you and the rest of this family,
13 know if she was going away for a long time?

14 A She would have.

15 Q Would the Portia Washington you knew and loved --

16 A She won't go nowhere.

17 Q She wouldn't go anywhere?

18 A No.

19 Q Would she take Angelica away from you-all?

20 A No, sir.

21 Q Since June of 2006, have you heard from or seen
22 Portia Washington or Angelica?

23 A No, sir.

24 MR. HUBBARD: Beg the Court's indulgence.

25 (Pause.)

1 MR. HUBBARD: Thank you, ma'am. Please answer
2 any questions the defense might have.

3 CROSS-EXAMINATION

4 BY MR. STITELY:

5 Q Ms. Parker, did you speak with Ms. Washington
6 frequently?

7 A Yes, sir.

8 Q You said you knew that she had breast cancer. Did
9 you know if she was still going to the doctor?

10 A I don't know if she was still going to the doctor or
11 not.

12 Q Did you know if she was going to the doctor for any
13 other health conditions?

14 A No, I didn't.

15 Q Did you know about her being diagnosed as bipolar?

16 A No.

17 MR. HUBBARD: Your Honor, I do have a -- I'm
18 just going to ask you: Is there a good-faith basis for
19 all this?

20 MR. STITELY: I've got her oncologist's reports.

21 BY MR. STITELY:

22 Q I'm sorry. Do you know where Ms. Washington lived?

23 A I know she lived in West Columbia.

24 Q Sure. We'll start there.

25 Where did she live in West Columbia?

1 A I didn't know the address.

2 Q Okay. Was it a house or an apartment? Do you
3 remember?

4 A I don't know.

5 Q Did you ever go over there?

6 A No.

7 Q Okay. Do you know where she lived before
8 West Columbia?

9 A She lived on Two Notch or either on Hanover, but I
10 don't know which one it was.

11 Q Out in Columbia?

12 A Yeah.

13 Q Do you remember a time when she lived in Cayce for
14 about a year?

15 A Yes.

16 Q Okay. Do you know if that was before or after she
17 lived in Columbia?

18 A That was after.

19 Q Okay. Maybe before she lived in West Columbia?

20 A No.

21 Q Okay. So when do you think she lived in Cayce?

22 A I don't know.

23 Q And you never went to the house, so you didn't know
24 any of her neighbors in West Columbia?

25 A No.

1 Q Did you know that she was dating Mr. Lynch?

2 A No.

3 MR. STITELY: No other questions. Thank you,
4 ma'am.

5 THE COURT: Any redirect?

6 MR. HUBBARD: Nothing further.

7 THE COURT: Thank you, ma'am. Be careful
8 stepping down.

9 MR. GRAHAM: Vicki Williams.

10 VICKI WILLIAMS, after being duly sworn,
11 testified as follows:

12 THE CLERK: Please have a seat.

13 State your full name and spell your last name
14 for the record.

15 THE WITNESS: It's Vicki Williams,
16 W-I-L-L-I-A-M-S.

17 DIRECT EXAMINATION

18 BY MR. GRAHAM:

19 Q Ms. Williams, where are you employed, ma'am?

20 A Nationwide Insurance, the Adams Agency.

21 Q What do you do for Nationwide Insurance?

22 A I sell insurance, and I take payments and change
23 policies and write insurance, that type of thing.

24 Q The agency you work for, what's the name of that
25 agency?

1 A Consultative Insurance Group. Sorry. We just
2 changed it, so --

3 Q Is part of your job, in addition to writing policies,
4 collecting payment, were you also the records custodian
5 for that group?

6 A Yes.

7 Q And that would include keeping track of policies,
8 keeping track of payments?

9 A Cancellations.

10 Q Renewals, cancellations, things like that?

11 A That's right.

12 Q Did you know Portia Washington personally?

13 A No.

14 Q Did you know her as a client of Nationwide?

15 A Yes.

16 Q And did you have -- have you had an opportunity to
17 look through some records related to her policy?

18 A I have.

19 Q Did she have insurance on -- what did Nationwide
20 provide for her, Portia Washington?

21 A She had automobile insurance with us.

22 Her mother had a policy with us. And when she
23 got her own policy -- she was moved onto her own policy --
24 and I believe it was in 2004.

25 Q Do you know what kind of car -- what was the last car

1 she had insured?

2 A I got it here. I didn't bring my glasses.

3 It was a 2005 Ford Focus, I believe is right.

4 Q And do you know when the coverage began?

5 A Yes. It began -- let's see -- February the 9th of
6 2004.

7 Q And what was her monthly payment?

8 A It ran approximately \$67 a month.

9 Q And do you know how she made payments?

10 A She normally paid in cash or money order or -- yes,
11 cash or money order. There was no checks, I believe.

12 Q So you said that coverage began when?

13 A February -- let's see. I should have brought my
14 glasses with me.

15 Yes, February the 9th of 2004.

16 Q When was the last payment that you-all processed on
17 that policy for Ms. Washington?

18 A It was May 15th of 2006.

19 Q So in the time that she had the policy, how long of a
20 time period would that be?

21 A A little over two years.

22 Q In that two-year time period, what, if anything, can
23 you tell me about Ms. Washington being late on payments?

24 A She was never late. She always made her payments on
25 time every month.

1 Q Was there ever a lapse in coverage?

2 A No.

3 Q The last payment you processed was -- did you say --
4 May what?

5 A May the 15th of 2006.

6 Q When would her next payment have been made? When
7 would it have been due, I guess?

8 A Yeah. It should have been paid around June 15th.

9 Q Did you ever receive payment from Ms. Washington, or
10 anybody, for that car?

11 A No, not past that point. Very unusual.

12 Q So when payment wasn't made, what happened to her
13 coverage?

14 A It canceled.

15 Q Did she ever contact you, or do you have any records
16 of her contacting you to discuss the lapse in coverage or
17 the cancellation of her policy?

18 A No.

19 MR. GRAHAM: I think that's all, Ms. Williams.
20 Please answer any questions they have. Thank you.

21 MR. STITELY: May I approach the witness to look
22 at what she's been referring to?

23 THE COURT: You may.

24 MR. STITELY: Do you have the whole policy?

25 THE WITNESS: No. All I have is the

1 cancellation. I have the original application, but it's
2 not on that same vehicle. February of 2004.

3 MR. STITELY: Can I look at that, too?

4 THE WITNESS: Sure.

5 CROSS-EXAMINATION

6 BY MR. STITELY:

7 Q And, ma'am, for the court reporter, what you've --
8 it's pretty much her entire file that you-all have?

9 A Yes. And we do everything electronically now, so the
10 only thing in there is really her policy and her bill of
11 sale.

12 Q Okay. And looking at this, is there any way you
13 could tell me what this -- oh, there it is. The first car
14 that she had when she started the policy, what was it?

15 A I don't have my glasses on. I'm sorry.

16 Q Is it a 1993 Ford Tempo?

17 A Yes.

18 Q So it wasn't a 2005 Ford Focus?

19 A No. That was -- she changed that vehicle later on.

20 Q Okay. Can you tell me when that happened?

21 A Is that the bill of sale for it? No, that's the '93.

22 I do not know the date that she --

23 Q Would it surprise you if I told you it was June of
24 2005?

25 A No, that would not surprise me. These are just her

1 payments and how much she made and the date she made them.

2 Q Okay.

3 A And then that's the cancellation notice.

4 Q You don't actually have a copy of the full policy
5 with you?

6 A No.

7 MR. STITELY: No other questions. Thank you for
8 coming, ma'am.

9 THE WITNESS: Thank you.

10 MR. GRAHAM: Nothing else for Ms. Williams, Your
11 Honor. We ask that she be excused.

12 THE WITNESS: Thank you.

13 THE COURT: Thank you for coming.

14 THE WITNESS: You're welcome.

15 THE COURT: We're going to take a few minutes'
16 break.

17 (Recess taken.)

18 THE COURT: All right. Mr. Graham.

19 MR. GRAHAM: Your Honor, if I may -- I made an
20 error.

21 When Ms. Williams, the Nationwide agent and
22 custodian, was on the stand, I forgot to show her a strip
23 and ask her if it was accurate. I don't know if she's
24 here to be re-called or if the defense will allow --

25 MR. STITELY: That's fine, Judge.

1 THE COURT: You'll stipulate he can put that on
2 there?

3 MR. STITELY: Yes, sir.

4 THE COURT: Have you reviewed it?

5 MR. STITELY: I just read it when he was holding
6 it.

7 It looks like she's here, we could call her
8 again. So because she's still here, we're fine.

9 THE COURT: Very well.

10 Thank you, Ms. Williams.

11 MR. HUBBARD: Kevin Odell.

12 KEVIN ODELL, after being duly sworn, testified
13 as follows:

14 THE CLERK: Please have a seat.

15 State your full name, spelling your last name.

16 THE WITNESS: Kevin Patrick Odell, O-D-E-L-L.

17 DIRECT EXAMINATION

18 BY MR. HUBBARD:

19 Q Deputy Odell, where do you work?

20 A Lexington County Sheriff's Department, sir.

21 Q How long have you been there?

22 A Eight years, sir.

23 Q Where are you stationed right now?

24 A Where I work, in North Region patrol as a field
25 training officer.

1 Q Back in June of 2006, or back in 2006, where were you
2 working?

3 A I was working in the jail for Lexington County
4 Sheriff's Department.

5 Q In the booking section?

6 A Yes, sir.

7 Q Did you have an occasion to get involved -- just a
8 small bit involved -- in the case of Kenneth Lynch?

9 A Yes, sir. Yes, sir, I did, by taking fingerprints.

10 Q You were the one that booked him in in the jail?

11 A That's correct.

12 Q I want to show you something, see if you recognize
13 this. Is this a fingerprint card?

14 A That is a fingerprint card, yes, sir.

15 Q And whose name is that on there?

16 A It's Lynch, Kenneth Andrew.

17 Q Lynch?

18 A Yes, sir.

19 Q And on the back do you see your name?

20 A Yes, I do.

21 Q Were you the one that created this card?

22 A That's correct.

23 MR. HUBBARD: Your Honor, I offer this into
24 evidence.

25 MR. STITELY: Subject to the prior arrest

1 objections, other than that, we're okay.

2 THE COURT: Subject to the objections, it will
3 be admitted as 35, State's 35.

4 (WHEREUPON, State's Exhibit No. 35 was marked
5 for identification and received into evidence.)

6 BY MR. HUBBARD:

7 Q Deputy Odell, back in the old days you-all would roll
8 fingerprints; is that correct?

9 A That's correct.

10 Q Is there a digital system that helped create this?

11 A Yes. That's what created it. That created that card
12 right there.

13 Q So you don't have to put ink on their hands anymore?

14 A No, sir, we do not.

15 Q Now, on this digital system, do you still roll it
16 like you did in the old days?

17 A Yes, we do, sir.

18 Q And once you roll it, do you print out that card?

19 A That card is printed out and it's electronically
20 filed into the system.

21 Q Okay. So it's a digital system?

22 A That's correct.

23 Q Now, the minute you put it in the system -- say
24 I'm -- what system does it go into?

25 A It goes into their criminal record immediately,

1 showing that they have been charged with that charge. So
2 if you were to run their criminal rap sheet, it would
3 immediately show up within five minutes of it.

4 Q So if I was down in Horry County and wanted to run
5 somebody's rap sheet and you had just rolled a print, it'd
6 hit?

7 A Yes, sir, you would see it.

8 Q And is it part of what they call the AFIS system?

9 A That's correct. That's the name of the system.

10 Q So now if, say, somebody in Marlboro County wanted to
11 get fingerprints from somebody, they could just pull it up
12 through AFIS and print it out themselves?

13 A Provided they had access, yes, sir.

14 MR. HUBBARD: Thank you. That's all the
15 questions I have.

16 MR. STITELY: Just one question.

17 CROSS-EXAMINATION

18 BY MR. STITELY:

19 Q They still do the rolled fingerprints over at the
20 jail, too, though, right?

21 A No, sir. They're using strictly the AFIS system.

22 Q At booking, but the girls at the front desk -- if
23 someone comes to get a fingerprint card done, they still
24 use the blue sheet, the roll system, too, don't they?

25 A Yes. The system is available for use, yes, sir.

1 Q And AFIS -- like -- I don't know if you know. When
2 we went to take the Bar, we had to be printed and submit a
3 card.

4 A Yes, sir.

5 Q Would I be in your AFIS system?

6 A You're going -- that, I don't know, sir. I honestly
7 do not know.

8 MR. STITELY: It's just a question. That's all
9 I have. I was wondering.

10 Thank you. No further questions.

11 MR. HUBBARD: No further questions. I ask that
12 the witness be excused.

13 THE COURT: Any objection?

14 MR. STITELY: No, sir.

15 THE COURT: He's close by. We can find him.

16 You're excused. Thank you for coming.

17 THE WITNESS: Thank you, sir.

18 MR. GRAHAM: The State calls Special Agent Rod
19 Green.

20 ROD GREEN, after being duly sworn, testified as
21 follows:

22 THE CLERK: Please be seated.

23 State your full name and spell your last name.

24 THE WITNESS: My name is Roderick Green,
25 G-R-E-E-N.

1 DIRECT EXAMINATION

2 BY MR. GRAHAM:

3 Q Where are you employed, Mr. Green?

4 A I'm employed with South Carolina Law Enforcement
5 Division.

6 Q And how long have you worked for SLED?

7 A I've worked for SLED for 12 years now.

8 Q Back in June of 2006, did you work for SLED at that
9 time?

10 A Yes.

11 Q What were you doing for SLED then?

12 A In 2006 I worked in the latent print/crime scene
13 department. My duties were as a fingerprint examiner,
14 footwear/tire wear examiner, blood stain pattern analysis,
15 and we also responded to crime scenes, helped process
16 scenes.17 Q Were you involved in the execution of a search
18 warrant in Seattle, Washington, on June 22nd of 2006,
19 about 10:30 a.m., that'd be local time out there, related
20 to a car involved in the State versus Kenneth Lynch?

21 A Yes.

22 Q Do you remember what kind of car it was?

23 A I think it was a Ford Focus, if I'm correct.

24 Q Let me show you State's Exhibit No. 4 and ask if you
25 recognize that.

1 A Yes. This is the car that we processed.

2 Q That's the car that you processed?

3 A Yes.

4 Q In fact, this picture was taken by you?

5 A Yes.

6 Q What are we looking at there on the overhead?

7 A This is the car we responded to, Seattle Police
8 Department. The car was inside of a vehicle processing
9 area, and this is just an outside view of the car.

10 Q Let me show you several other photographs and ask if
11 you recognize these.

12 A Yes. These are all photographs that we took that
13 day.

14 Q Do they fairly and accurately depict what you
15 recorded actually how the car -- the condition of the car
16 that day?

17 A Yes.

18 MR. GRAHAM: Your Honor, the State would offer
19 these photos into evidence.

20 MR. McGUIRE: Without objection.

21 THE COURT: Without objection?

22 MR. McGUIRE: Yes, sir.

23 (WHEREUPON, State's Exhibits Nos. 36-46 were
24 marked for identification and received into
25 evidence.)

1 BY MR. GRAHAM:

2 Q Agent Green, when you're out in Seattle and you're
3 processing this vehicle, tell me what it mean to process a
4 vehicle. Particularly, in this case what did you do?

5 A In this case we processed the vehicle looking for
6 evidence that -- looking for evidence that may have been
7 tied to the disappearance of the two victims in this case.

8 Q Well, let's go through some pictures then, and you
9 can help explain what you did.

10 State's 36. That's a -- just describe what it
11 shows.

12 A This is another photograph of the outside of the
13 vehicle on the passenger's side.

14 Q State's 37?

15 A Another general photograph of the outside of the
16 vehicle, the driver's side of the vehicle.

17 Q State's 38. What, if anything, did you notice
18 unusual about State's 38? What are we looking at here?

19 A This is a photograph of the back of the vehicle, and
20 the tag is missing from the vehicle.

21 Q Right here there should be a tag and there wasn't one
22 there?

23 A Yes.

24 Q State's 39. I don't know if you're going to be able
25 to read it on there. Maybe you can. What are we looking

1 at there?

2 A This is a photograph of the VIN number of the
3 vehicle. This is the one that's under the dashboard -- on
4 top of the dashboard.

5 Q On top of the glass that you see from the outside,
6 through the glass?

7 A Yes.

8 Q The general condition of the exterior of the car, did
9 you notice anything unusual about it or -- unusual, or did
10 it look normal?

11 A It looked normal. It was clean.

12 Q When you went inside the car and started looking
13 there -- let's look at State's 40. What are we going to
14 be looking at here?

15 A This photograph, the inside of the car from the
16 driver's side -- from the driver's side to the passenger's
17 side of the car, showing the front two seats, the front
18 part of the cab.

19 Q What, if anything, did you -- well, let me just show
20 you the other photograph, which is 41. Is that the same
21 interior shot from the other side?

22 A Yes, same interior shot from the other side.

23 Q The front, what did the condition appear to be?

24 A The condition was --

25 Q Clean?

1 A The condition was clean, wasn't trash or anything in
2 the car.

3 Q Moving to the backseat, State's 42, what do we find
4 in the backseat?

5 A The backseat was in the same condition, pretty clean,
6 no loose papers or anything.

7 Q State's 43. The same backseat from that other door?

8 A Yes.

9 Q Same thing?

10 A Same thing.

11 Q What, if anything -- well, did you look in the trunk?

12 A Yes.

13 Q So anywhere -- did you look under the engine? Did
14 you look under the hood at the engine?

15 A Yes.

16 Q Did you find a child's car seat anywhere in there?

17 A No, we didn't.

18 Q Did you find any car registration paperwork in there?

19 A No. We searched the glove box and also photographed
20 it. The glove box was empty.

21 Q So is that what you're showing in State's 44?

22 A Yes. In that photograph we're on the passenger's
23 side of the vehicle. We opened the glove box and
24 photographed that it was empty.

25 Q So nowhere in that car you found any kind of

1 registration paperwork, or any insurance cards, or
2 anything?

3 A No.

4 Q No paperwork at all?

5 A None.

6 Q So short of the VIN number on that car, what, if
7 anything, would you be able to tell about the owner? If
8 that VIN number hadn't have been on the car, would you
9 have had any idea who the owner was?

10 A No.

11 Q Once you did an exterior and interior visual
12 examination and you documented it with these photographs,
13 what did you do next?

14 A We then began searching for any blood stains
15 throughout the car.

16 Q How do you do that?

17 A We start visually just looking for signs of blood.
18 Any stains we find, we do a presumptive test with a
19 chemical called phenolphthalein. Phenolphthalein is
20 clear, but once it comes in contact with blood, it turns
21 pink. So any stains we saw, we would test it with that
22 phenolphthalein, and everything was negative. So there
23 was no signs of blood.

24 Q So you found no blood evidence anywhere on or inside
25 that car?

1 A Correct.

2 Q Once you're done looking for blood, what do you do
3 next?

4 A We also process the car for fingerprints. We use
5 black powder and spread it over the car to develop latent
6 fingerprints.

7 Q What, if anything, did you discover on or inside the
8 vehicle relating to latent fingerprints?

9 A We didn't find any inside the vehicle, but we found
10 some on the rear of the vehicle towards the trunk.

11 Q Let me show you a photograph -- this is going to be
12 State's 45 -- and ask if you can tell me what I'm looking
13 at there.

14 A When we checked for fingerprints in this case, we put
15 black powder on the car, and at that point some
16 fingerprints became visible. And what you're seeing here
17 is we then spread tape over the fingerprints in order to
18 lift and preserve the fingerprints.

19 Q So what part of the car are we on right here?

20 A This is the back of the car on the passenger's side
21 near the trunk area.

22 Q So the trunk area on the passenger's side?

23 A Yes.

24 Q There's some what looks like paper or something here
25 and here. What do those depict?

1 A That is tape, clear tape, that we press -- that we
2 put on top of the latent fingerprint.

3 Q Let me show you State's 46 and ask: What are we
4 seeing here?

5 A That's a closer view of the latent impressions that
6 we developed on the car with the tape over the top of
7 them.

8 Q Let me show you two items and ask if you can identify
9 these, Agent.

10 A Yes, I can identify them.

11 Q And do you recognize these? How do you recognize
12 these?

13 A These are the latent lifts that we developed. I
14 recognize them because once they're -- once we put the
15 tape onto the car, they're labeled with my initials. And
16 once I return to the lab, the lab number and item numbers
17 are placed on them.

18 Q So those are the actual prints that you lifted off
19 that car?

20 A Yes.

21 Q And that's what we're seeing in the exhibit on the
22 overhead, I think 47, that's up on the screen?

23 A Yes.

24 Q Each one of those clear areas of tape that you're
25 talking about translates into one of those cards in front

1 of you?

2 A Yes.

3 MR. GRAHAM: Your Honor, the State would offer
4 both of those cards into evidence at this time.

5 MR. McGUIRE: Without objection, Your Honor.

6 THE COURT: Without objection they will be
7 marked separately.

8 (WHEREUPON, State's Exhibits Nos. 47 and 48 were
9 marked for identification and received into
10 evidence.)

11 BY MR. GRAHAM:

12 Q Looking at State's 47 -- and this is on top of the
13 photograph of 46 -- what are we looking at here, Agent
14 Green?

15 A This is the fingerprint card, the latent lift that I
16 developed. It's Item 27, which is the lower print on the
17 card. Yes, that one.

18 Q So there's an arrow that's pointing up there on
19 State's 47. What does that up arrow mean?

20 A I'm just showing the orientation of the print, just
21 making a note pretty much to myself.

22 Q That is up in the air?

23 A That's towards the front of the car.

24 Q Front of the car?

25 A Yes.

1 Q So now, is that oriented with the photograph?

2 A Yes. I would have to look at the back, but I'm
3 pretty sure that's towards the front of the car, if I put
4 an arrow on the back of that also.

5 Q Are your initials -- you said something about your
6 initials being on here.

7 A Yes. RAG. Those are my initials.

8 Q Which one is that, over here?

9 A No, in blue. Right there, yes.

10 Q In blue. Okay.

11 Now on the back side of this, still on
12 State's 47, what are we looking at? What does that tell
13 us? Do you recognize the handwriting?

14 A Yes. That's my handwriting. I did a diagram of the
15 car, and I put an X showing the approximate location where
16 that latent lift was developed.

17 Q Moving on to State's 48, again, that's your initials
18 there and this is the latents that you collected?

19 A Yes.

20 Q What are we looking at here? What do we see here?

21 A The items -- this is Item 26. I've sub-itemed .1,
22 .2, and .3. Those are finger impressions that we
23 developed.

24 Q So on one piece of tape you captured --

25 A Three separate --

1 Q Three separate fingerprints?

2 A Right.

3 Q And you broke that into Item 26, 26.1, 26.2, and
4 26.3?

5 A Yes, that's correct.

6 Q The up arrow here has the word that looks to be to me
7 "up."

8 A Up.

9 Q What does that tell you as far as orientation?

10 A That is, again, orientation towards the -- I'm
11 pointing towards the front of the car just to orient,
12 looking at the print, how I found it.

13 Q And, again, the back side. This is just showing --
14 this is your handwriting again showing that you again
15 collected this from the rear of the car; is that correct?

16 A Yes.

17 Q In addition to fingerprints, did you also collect
18 something else from the vehicle?

19 A Yes. We also did what we call a "blind swab" of the
20 steering wheel. We simply put saline on a Q-tip and we
21 swabbed the steering wheel of the car.

22 Q Let me show you an item and ask you if you recognize
23 one of the contents of this bag, and the bag itself.

24 A Yes. This is the blind swab that we took from the
25 victim's steering wheel.

1 Q And how do you know that that's the blind swab from
2 the steering wheel?

3 A I labeled it "one blind swab from victim's steering
4 wheel," and it also has the lab number and my initials on
5 it.

6 Q What's the SLED lab number that's associated with
7 this case?

8 A The SLED lab number is L06, which stands for the year
9 2006, 9031.

10 Q That's the same as we're seeing on your print cards
11 up there; is that correct?

12 A Yes.

13 Q On what you have identified as the blind swab, tell
14 me what you mean by blind -- how do you collect -- how did
15 that happen? What is it?

16 A A blind swab is simply we're taking a sample of --
17 we're trying to get a DNA sample off an area. We can't
18 see what we're sampling. So we simply wet a swab and then
19 rub all over the area and submit it to DNA for DNA
20 testing.

21 Q So once you take that swab and you're just blindly
22 doing it -- and this was off the steering wheel, I
23 believe --

24 A Yes.

25 Q -- of the vehicle there?

1 Once you do it and you have that swab in your
2 hand, how did it come out? I mean, how do you make sure
3 it's not contaminated. What do you do to protect it?

4 A We then sit it in an area where it can dry, but we
5 sit it by itself. And once it's dry, we put it into an
6 envelope and seal the envelope.

7 Q That's the envelope that you are talking about there
8 that you recognize?

9 A Yes.

10 Q And was there a specific -- we've got a lab number.
11 Is there a specific item number that's associated with the
12 swab?

13 A Yes, Item No. 11.

14 Q Item 11. Now, that's -- Item 11 is inside of a bag
15 with several other items, isn't it?

16 A Yes.

17 Q Do you recognize the bag itself?

18 A Yes.

19 Q Tell me how you recognize that.

20 A I recognize the bag. It's an evidence bag from SLED.
21 It's also labeled with the lab number and a container
22 number and it has my initials and a date on it.

23 MR. GRAHAM: Your Honor, the State would offer
24 at this time this bag for ID purposes.

25 MR. MCGUIRE: For ID purposes? No objection.

1 THE COURT: It would be ID'd as number --
2 State's 49.

3 (WHEREUPON, State's Exhibit No. 49 was marked
4 for identification only.)

5 BY MR. GRAHAM:

6 Q Agent, you said that you recognize this package, the
7 clear plastic package that has all the items inside as
8 well, right?

9 A Yes.

10 Q It has your initials on it?

11 A Yes.

12 Q Okay. Tell me how it was created and what condition
13 it was in when it left your possession.

14 A I would have gathered all my swabs in this case and
15 put it into this container and had it sealed. Then when
16 it went to log-in to be submitted into evidence, they
17 would have put -- made sure the lab number was put on the
18 container number and sealed.

19 Q This clear plastic bag that contains the blind swabs
20 from the vehicle along with some other items has the same
21 lab number as we're talking about; is that correct?

22 A Yes.

23 Q And you said something about a container number.
24 What's it labeled?

25 A It's labeled A.

1 Q Now, these are known as -- if I said a
2 tamper-resistant, tamper-proof bag, is that what we're
3 talking about?

4 A Yes.

5 Q What does that mean?

6 A The bag is -- the bag is able to be sealed,
7 heat-sealed, and which then we put our initials on it. So
8 it's not able to keep people, say, out of the bag, but
9 it's -- they would have to cut open the bag, so you would
10 see evidence that the bag had been tampered with.

11 Q Somewhere on here, is there evidence that you sealed
12 this bag?

13 A Yes.

14 Q How do we know that?

15 A Along the seal, I put my initials.

16 Q Is that the black ink up at the top?

17 A Yes.

18 Q It says RAG, and there's a date. What's the date?

19 A I have June 20th, '06.

20 Q Is that the date that you sealed this and that you
21 turned over custody to --

22 A Yeah, that should have been the date that I sealed
23 it.

24 Q And then the label that got on, that would have
25 actually been put on by either yourself or somebody at

1 evidence log-in?

2 A Yes.

3 Q And then at some point while it's sealed and
4 everything's safe and sound inside, you hand it away?

5 A Yes.

6 Q The item that's inside that we have been talking
7 about, the blind swab, once it's collected, how do you
8 make sure that it's secure? That's Item No. 11 inside
9 that bag.

10 A We use evidence tape and seal it within the envelope,
11 and that evidence tape is also initialed.

12 MR. GRAHAM: Your Honor, at this time the State
13 would move the bag and its contents into evidence.

14 MR. McGUIRE: Can I see it first?

15 Your Honor, we'd object to the chain of custody.
16 Looks like there's about eight, ten swabs in the bag. You
17 want to put everything in evidence?

18 I mean, I have no objection if he wants to ID
19 the evidence bag -- he's put his initials on it -- but I
20 object to anything in that bag that's left his hands, gone
21 to a lab and changed hands 20 times, and come back here
22 just because his initials are on this bag. That's our
23 objection, it's a chain-of-custody objection.

24 MR. GRAHAM: I think, specifically, Your Honor,
25 the item -- we can go ahead and cut it out and separate

1 it. I guess we've recorded well enough that it was secure
2 when it left his possession.

3 Item 11 was an item he collected. That's a
4 swab. That's the testimony that we've already had.

5 I think it's admissible at this point. I don't
6 think necessarily the results are admissible until we
7 prove the chain of custody up to the analyst, but I think
8 the item itself is admissible.

9 MR. MCGUIRE: Judge, my understanding is we've
10 got swabs from a mop bucket, a hall bathroom, a sink,
11 door, chair.

12 THE COURT: I thought the testimony thus far was
13 a swab of the steering wheel.

14 MR. GRAHAM: The only one -- pursuant to
15 Mr. McGuire's objection, I was going to cut into the bag
16 here in court, pull out the swabs from there and have
17 that -- the swabs from the steering wheel marked into
18 evidence. He collected it, it's his, and nobody's going
19 to testify to the results until we establish the chain of
20 custody up to the analyst.

21 MR. MCGUIRE: Judge, that would be sort of like
22 a microscope slide with a drop of blood on it. It's
23 completely fungible, can't ID it. If it was a rifle that
24 he could say, "I know it's that rifle, I know it's the
25 marks I put on the stock," I'd have no objection. We're

1 talking about a Q-tip that looks like a thousand million
2 Q-tips. It's a chain-of-custody issue. We've got to go
3 through every person that touched it.

4 THE COURT: I think at the present time I'm
5 going to sustain his objection as to the admissibility of
6 that swab. I'm not certain I've heard enough quite yet to
7 get it in.

8 MR. GRAHAM: The only issue, then, that I have
9 at this time, Your Honor, is I don't know -- there are
10 multiple items in that bag. He's identified by testimony
11 that there is a -- I believe he testified that there is a
12 gold envelope, I believe is what they call them, that in
13 his handwriting states, "one blind swab from victim's
14 steering wheel" and has this case number on it.

15 I don't want to have any chain-of-custody issues
16 with me cutting into the bag. If we're okay with the
17 understanding that he states that's his, that he put it in
18 there, he sealed it, when it left his hands it was
19 properly sealed, I won't separate this bag at this time,
20 but I don't want to have a problem later.

21 THE COURT: I don't think you will. I mean, I'm
22 going to agree with you on that point. You're not going
23 to bring him back when you cut the bag open and say -- is
24 it No. 11? You distinguished it?

25 MR. GRAHAM: He's got it in here as Item No. 11.

1 Inside -- Item No. 11 are multiple items inside what's
2 called Container A.

3 THE COURT: I mean, that's been specifically
4 identified by this SLED agent and I don't think you need
5 him again if you don't cut the bag open until Tuesday.

6 The bag's going to stay -- assuming nothing else
7 happens to the bag until it gets opened by the next
8 witness or whichever witness it is, 11 has been identified
9 by this agent --

10 MR. GRAHAM: Thank you, Your Honor.

11 THE COURT: -- as the one he retrieved. But
12 it's not in, but that section of the chain has been
13 sufficiently covered.

14 MR. GRAHAM: Thank you, Your Honor.

15 BY MR. GRAHAM:

16 Q Once you finished processing the car, did you then go
17 back to South Carolina?

18 A Yes.

19 Q And at some point did you have an opportunity to
20 compare the fingerprints that you took off the car --
21 which is State's 47 and 48 -- did you have a chance to
22 compare those with State's No. 35?

23 A That's correct.

24 Q Okay. State's 35 was the fingerprints of Mr. Lynch?

25 A Yes.

1 Q Tell me what, if anything, you found when you
2 compared his fingerprint cards -- his fingerprint card of
3 known prints versus the unknown prints that you took from
4 the vehicle.

5 A Item 26, which has several items, .1, .2, and .3,
6 those were compared and I identified those to Mr. Lynch.

7 Q What does that mean when you say "identified"?

8 A Well, fingerprints are permanent and unique, meaning
9 that there's only one person that could have created those
10 prints. So by comparing an unknown, which are the prints
11 I found on the car, to a known fingerprint card, which was
12 Mr. Lynch's, I find them to be created by the same person.

13 Q All right. So looking at State's 48, 26.1, .2, and
14 .3, it's your testimony that those are all identified from
15 this card with Mr. Lynch; those are Mr. Lynch's
16 fingerprints?

17 A Yes.

18 Q What, if anything, did you find out when you tried to
19 compare Item 27?

20 A For Item 27 I found -- I gave no conclusion due to
21 the quality of his fingerprint card. And that could
22 mean -- that means either the -- by comparing the known to
23 the unknown, the area on the unknown is -- it could not
24 have -- it probably wasn't represented in the fingerprint
25 cards.

1 On the fingerprint cards you got mostly
2 fingertips, fingers. So that could be either a partial
3 palm print that I developed or just that -- looking at the
4 fingerprint card, it's not of high enough quality to
5 compare it, that area.

6 Q All right. So when you took 27, which was
7 State's 47, and compared it against the fingerprint card,
8 you couldn't find it in there?

9 A Correct.

10 Q And that was either because, in your opinion --
11 obviously, it could have been somebody else, but it might
12 have been on the palm, which isn't represented on the
13 fingerprint card, or it might have been in an area
14 where -- I notice some of them seem incredibly dark --

15 A Yes.

16 Q -- where you couldn't get enough detail.

17 A Yes.

18 MR. GRAHAM: Thank you, Agent Green. Please
19 answer any questions the defense has for you.

20 Your Honor, we will recall him for another
21 matter.

22 THE COURT: Okay. Mr. McGuire.

23 CROSS-EXAMINATION

24 BY MR. MCGUIRE:

25 Q Good afternoon, Agent Green. How are you doing?

1 A Yes.

2 Q Do you go by Rod?

3 A Yes.

4 Q Okay. I saw your name on a couple of things. I

5 didn't know if that was short for -- is it Roderick?

6 A Roderick.

7 Q Okay. Thank you.

8 Since we've got the fingerprints up there, let's

9 talk about those for a little bit.

10 When you compare things, you are comparing the

11 ridge detail?

12 A Yes.

13 Q And you're looking for a unique aspect on the finger.

14 For instance, there's forks, there's U-turns, there's

15 swirls, that sort of thing, correct?

16 A Yes.

17 Q I've left a couple out, right?

18 A Yes.

19 Q Okay. And what you're looking for is on -- when you

20 get lucky, you actually have a full fingerprint to compare

21 to a full fingerprint, you want to get as many items of

22 consistency as possible?

23 A Yes.

24 Q And with regard to the comparison in this case, which

25 ones are you calling a match, just quickly?

1 A Point 1 -- one moment. 26.1.

2 Q Okay.

3 A That's the No. 10 finger, so that's the pinky finger
4 on the left hand.

5 Q Got you.

6 A Point 2 is the No. 9 finger, so that's the ring
7 finger on the left hand.

8 Q All right.

9 A And .3 is the middle finger on the left hand.

10 Q Okay. And how many points of similarity did you find
11 in .1?

12 A We don't keep count of points.

13 Q How do we know it's a match?

14 A I identified it, and it's also given to a second
15 examiner, who has to independently identify them.

16 Q Okay. But you don't have a protocol at SLED for we
17 need, say, two points, four points, ten points, twelve
18 points?

19 A No.

20 Q What's the lowest you've ever called a match at?

21 A I would say five points.

22 Q There is no bar at SLED saying we need at least two
23 points or three points or twelve or anything like that?

24 A No.

25 Q Okay. And you don't know how many points you had on

1 No. -- on .1 there?

2 A No. In this case, you're also looking at what they
3 would call a "simultaneous print." Just looking at those
4 three fingers and imagine sitting them on a surface, you
5 see the orientation they're in? So therefore, in this
6 kind of print, we could actually look through all three
7 prints and count up all the characteristics since they
8 were deposited at the same time. We call that a
9 simultaneous print.

10 Q All right. Let me make sure we're on the same page
11 here.

12 A Uh-huh.

13 Q Does that mean that if you have, say, one point of
14 consistency on .1, No. 10 finger and No. 10 finger; you
15 have one point of similarity between .2 and the 9 finger
16 of the known print card; and you've got one point of
17 similarity on .3 with the middle finger there; are you
18 going to call that three points of consistency?

19 A In a simultaneous print. I mean, depending on the --
20 I mean, we don't go by -- it's -- you go by clarity also.
21 I mean, you have points and you have clarity. So, I mean,
22 I don't know -- I've never called a print with, say, one
23 point. But there's just a range of things you use.

24 Q I see. And in this situation where you have the
25 prints together, you can use the whole print, the

1 composite of the .1, .2, .3 to add up your points of
2 consistency?

3 A Yes. But -- and in this case, I think they all stood
4 independently.

5 Q But we don't know if you don't keep records of how
6 many points are consistent?

7 A Right.

8 Q Do you-all find that problematic?

9 A No.

10 Q How about right now?

11 A No.

12 Q Okay. Now, prints also have what are called
13 "artifacts" or "noise" in them, right? Some people might
14 use the term "noise"; some people might use the word
15 "artifacts." You know what I'm talking about?

16 A I'm not sure.

17 Q All right. For instance, let's say you've got .2
18 there, and .2 is resting over a print somebody left
19 before. You might actually have a point of inconsistency
20 with the No. 9 finger with .2, right?

21 A Well, then if a print is on top of a print, they'll
22 be separated. I mean, the ridges won't line up. So that
23 will clue you in: You're looking at two prints, not one.
24 So I would label it .2 -- well -- or .1 and .2. It
25 wouldn't be .2 by itself.

1 Q Okay.

2 A It would be labeled as two separate prints.

3 Q Sure. Or you could have what some people might call
4 "noise," which is just your powder's picked up something.
5 Like, say, it's a paper bag and you're picking up a
6 wrinkle in a paper bag. That could happen, right?

7 A Yes.

8 Q And you could actually have a point of what's called
9 "inconsistency" between a latent print and a known print,
10 right?

11 A I'm sorry. I'm not -- I guess I never used those
12 terms, so --

13 Q Okay. Let's slow down to simplify.

14 When you're comparing the latent to the known,
15 you can actually come to a point where it appears that you
16 have a point of inconsistency, because let's say the
17 latent has what looks to be like a little fork, but on the
18 known you don't see it. Now, somebody could explain that
19 as an artifact or something foreign to the print being on
20 the latent, correct?

21 A Okay. I see. Yes.

22 Q Okay. How many -- did you find any inconsistencies
23 in these prints?

24 A We don't -- I didn't know -- we -- in order to effect
25 identification, we match points, like you say --

1 Q Right.

2 A -- and there has to be no unexplainable differences.

3 Q Okay. So sometimes you-all do make a judgment call
4 and say, "I see something that looks a little unique on
5 the latent, I don't see it on the known, but I'm
6 explaining that as a wrinkle in a bag," something like
7 that?

8 A Correct.

9 Q And you-all don't take notes and record if there's a
10 point of inconsistency?

11 A No.

12 Q All right. With regard to the inside of the car,
13 you-all hit it with phenol, right?

14 A Well, yes.

15 Q That's because you're looking for trace evidence;
16 namely, blood?

17 A Yes. We used phenol and also LCV.

18 Q And LCV is Leucocrystal Violet?

19 A Yes, sir.

20 Q And it's similar to Hungarian Red, Crowle's Double
21 Staining, Amido Black, those substances?

22 A Yes. I'm familiar with Amido Black.

23 Q Okay. These are very sensitive, sensitive about one
24 to ten thousand; is that right?

25 A I don't know the sensitivity of it.

1 Q Okay. Anyway, the bottom line is no trace evidence
2 with regard to blood found in the car?

3 A Yes, sir. No trace evidence.

4 Q No blood?

5 A No blood.

6 Q The trunk?

7 A Yes, sir. We also tested the trunk. Didn't find
8 any.

9 Q I was looking in the notes, and somebody noticed that
10 the car trunk even had, like, a new-car smell? Was that
11 your note?

12 A Yes.

13 Q Did you notice any other odors in the car?

14 A No.

15 Q No perfumes, air cleaner, nothing that was strong?

16 A No. I didn't note any.

17 MR. MCGUIRE: That's all I have for you on this
18 subject, but I think we'll be talking again from my
19 understanding with these guys.

20 Thank you, sir.

21 MR. GRAHAM: Your Honor, his testimony, his
22 opinion was allowed in and Mr. McGuire was crossing him on
23 some specific questions. So, I guess, at this time I'd
24 ask if they would stipulate that he is an expert in the
25 field of latent print examination or whether I need to go

1 through those questions.

2 MR. MCGUIRE: I'm not satisfied he's a complete
3 expert in blood-stain analysis.

4 MR. GRAHAM: That's not what I asked, Your
5 Honor.

6 THE COURT: You're talking about fingerprint,
7 latent fingerprint examination?

8 MR. GRAHAM: All I asked for was latent print
9 examination. And latent print examination is what he
10 testified to.

11 MR. MCGUIRE: Yes. I would ask that the State
12 lay a foundation.

13 REDIRECT EXAMINATION

14 BY MR. GRAHAM:

15 Q Let's talk about your experience with latent print
16 examination.

17 What kind of a -- what's your educational
18 background?

19 A I have a Bachelor of Science degree from Furman
20 University. I graduated from the Criminal Justice
21 Academy.

22 In terms of latent prints, we have a
23 latent-print training program at SLED, and that's about a
24 two-year program. The program consists of required
25 readings. There is hands-on tests. There is also written

1 tests. And this is overlooked by other court-qualified
2 examiners in latent prints.

3 Besides those, we also took classes through
4 seminars and outside vendors on fingerprints.

5 Q How many fingerprint comparisons have you done in
6 your career?

7 A I've done tens of thousands, I would say, fingerprint
8 examinations.

9 Q And have you ever been qualified as an expert in the
10 state of South Carolina as a latent-print examiner, as an
11 expert?

12 A Yes. I have been qualified as an expert in the state
13 of South Carolina and also in federal court as a latent
14 print examiner.

15 MR. GRAHAM: Your Honor, at this time the State
16 would offer him as an expert in latent-print examination.

17 THE COURT: I'll allow voir dire if Mr. McGuire
18 desires.

19 MR. MCGUIRE: Very briefly, Your Honor, if I can
20 voir dire.

21 VOIR DIRE EXAMINATION

22 BY MR. MCGUIRE:

23 Q About how many hours do you have in fingerprint
24 analysis training?

25 A Sir, that's -- it's over a two-year program to -- I

1 mean, we work 40-hour weeks, but we divide that up between
2 the crime scene and the lab. Most of the lab work is
3 fingerprint analysis.

4 Q Okay. I will take that as a good bit. How about
5 that?

6 A Yes, sir. Over six and a half years in the unit.

7 Q Fair enough.

8 Does SLED have a manual or protocol regarding
9 fingerprints at all?

10 MR. GRAHAM: Objection, Your Honor. That
11 doesn't have anything to do with his qualifications as an
12 expert.

13 MR. MCGUIRE: Well, if he used it in his
14 training.

15 THE COURT: I will allow the question.

16 THE WITNESS: I'm not sure of the -- exactly
17 what he asked.

18 BY MR. MCGUIRE:

19 Q Do you have a -- do you have a manual or protocol
20 with regard to fingerprints that's used either in training
21 or in your work?

22 A There's a -- I mean, we have a training program. I'm
23 not sure about -- exactly about a protocol. I mean, the
24 training is done through other qualified examiners.

25 Q And part of your training is obviously on-the-job,

1 right?

2 A Yes.

3 Q Okay. And when you're on-the-job training, obviously
4 your supervisor or mentor would -- if you had a written
5 protocol, would certainly say, "Make sure that your
6 analysis is to protocol," correct? If you have one. You
7 might not.

8 A I've been out of the unit for about six, seven years.
9 I just don't remember talking about protocols. I mean,
10 it's a side-by-side comparison of a known and an unknown.

11 Q Who is the current head of the SLED fingerprint
12 division?

13 A Jeff Crooks.

14 MR. MCGUIRE: That's all I have. Thank you,
15 sir.

16 MR. GRAHAM: Your Honor, at this time we'd ask
17 that he be qualified as an expert in latent-print
18 examination.

19 MR. MCGUIRE: Without objection, Your Honor.

20 THE COURT: We'll find him so qualified in the
21 field of latent-fingerprint examination.

22 MR. GRAHAM: That will be all that we have for
23 this witness.

24 THE COURT: Very good. So he'll be qualified
25 when he comes back and we won't have to go through it

1 again.

2 Thank you, Mr. Green.

3 All right, gentlemen. I'm getting close on my
4 limit.

5 MR. MCGUIRE: We've been there.

6 MR. GRAHAM: I do have one more that we can do,
7 Your Honor.

8 THE COURT: Does he live out of town?

9 MR. GRAHAM: No. But he's been here four or
10 five times already. Your choice.

11 (A discussion was held off the record.)

12 THE COURT: Let's adjourn for the week. I think
13 we intended to work late tonight, but we accomplished more
14 last night because of the motivation of the 10 o'clock
15 flights this morning. So again, I commend everybody for
16 that. We will resume about 9 o'clock Monday morning.

17 MR. MCGUIRE: Yes, sir.

18 THE COURT: We'll see you then.

19 Is there anything I need to do before I leave?
20 I'll be here about 15 minutes.

21 MR. MCGUIRE: Thank you, Judge.

22 (The proceedings were concluded for the day to
23 be reconvened on April 17, 2012.)

24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

25 VOLUME 1 OF 10

1 THE COURT: Any matters we need to take up
2 before resuming the testimony, gentlemen?

3 MR. McGUIRE: Not from the defense, Your Honor.

4 MR. HUBBARD: No, sir, Your Honor.

5 THE COURT: Very well. Call your witness.

6 MR. HUBBARD: The State calls Stuart Darby.

7 STUART DARBY, after being duly sworn, testified
8 as follows:

9 THE CLERK: Have a seat up there, please, sir.

10 Once you're seated, we need you to speak up loud
11 and clear, stating your full name, spelling your last on
12 the record, please.

13 THE WITNESS: My full name is C. Stuart Darby,
14 D-A-R-B-Y.

15 DIRECT EXAMINATION

16 BY MR. HUBBARD:

17 Q And before I get into your title, Mr. Darby, what is
18 your educational background?

19 A I'm actually a practicing physician assistant. I
20 have a master's and a doctorate degree, and I'm currently
21 practicing at the V.A. Hospital.

22 Q Okay. So you are a doctor, but you're also a
23 physician's assistant?

24 A Correct.

25 Q Okay. And where are you practicing right now?

1 A Dorn Veterans Hospital.

2 Q In Columbia?

3 A Columbia, yes.

4 Q In 2006, where were you working?

5 A I was working at the Eau Claire Family Practice on
6 Monticello Road.

7 Q During your practice at Eau Claire, did you have an
8 opportunity to have a patient by the name of Portia
9 Washington?

10 A I did.

11 Q Do you remember about, approximately, how long she
12 had been a patient of yours?

13 A Approximately three to four years.

14 Q Do you have a record or records that indicate the
15 last visit Portia Washington made to your clinic?

16 A Yes, I do.

17 Q And what was that last visit?

18 A It was May of 2006.

19 Q May 23rd? Is that --

20 A Yes.

21 Q -- right?

22 A Correct.

23 Q What was her primary issue for her coming to see you?

24 A For that visit, it was basically an upper respiratory
25 infection. She had a cough with some sinus problems that

1 we had been treating her for, mostly sleep disorder and
2 some anxiety.

3 Q Okay. Was that the primary recurring diagnosis when
4 she would meet with you?

5 A Yes, the sleep disorder.

6 Q And were you able to, in talking with your patient --

7 Let me ask you this: In dealing with someone
8 with a sleep disorder, do you try to get to the root cause
9 of what might be causing a sleep disorder?

10 A Correct. You know, there's medicine we use and also
11 there's a machine called CPAP that most patients are on,
12 but we still try to get to the root of why you're having
13 the problem, so we kind of did some investigation there.

14 Q And what was your finding?

15 A Well, we think mostly, like I say, she had some
16 anxiety problems. We look at weight and just, you know,
17 sleeping habits.

18 Q Okay.

19 A So during the sleep study, we look at all that.

20 Q Did she reveal any stress?

21 A Yes, she did say, "I've been stressed," and I asked
22 her several times, she said it was home and work.

23 MR. STITELY: I'm going to object to any hearsay
24 at this point.

25 MR. HUBBARD: He's a doctor. This is part of

1 his diagnosis. It's medical history going in so he knows
2 how to diagnose a patient. That's not hearsay, that's --
3 that's within the realm of his job. He's got to ask.

4 MR. STITELY: I guess it depends what he's about
5 to find out. I mean, if these are medical-specific
6 questions, but the reason why she would be stressed would
7 fall outside of any particularity of his medical
8 treatment..

9 If he wants to testify she was stressed, I'm not
10 opposed to that, but I think anything that would go to why
11 would be hearsay.

12 BY MR. HUBBARD:

13 Q Doctor, when you ask somebody about stress, any
14 patient, do you try to get to the root cause so you know
15 how to treat it?

16 A Yes, I do.

17 Q So you need to know the why?

18 A Yes, I do.

19 Q Then I will ask you: She said she was stressed.
20 Why?

21 A Well, we didn't go into really detail. She said it
22 was home situation and work.

23 Q Okay. Did she focus on one primarily?

24 A No, she didn't.

25 Q Okay. Now, you say she had a -- is it a CPAP?

1 A Yes.

2 Q Is that C-P-A-P?

3 A C-P-A-P.

4 Q What is a CPAP?

5 A It's a machine that we use with people with a
6 sleeping disorder that actually has continuous pressure
7 and gives them oxygen at night. They wear a mask at night
8 and it just presents oxygen while they're sleeping so they
9 won't snore and wake up with other complications.

10 Q Now, when you would meet with her, was she a good,
11 conscientious patient?

12 A Yes, she was. She made all her appointments, and she
13 followed the rules, per se.

14 Q If she had something that would come up on her
15 schedule that conflicted, was she good about calling y'all
16 letting you know before, well in advance of --

17 A She --

18 Q -- the appointment?

19 A Yes, she did in the past.

20 Q And she would reschedule?

21 A Yes, she would.

22 Q May 23rd of 2006, did you schedule her out for a
23 follow-up?

24 A Yes. As I can remember, it was her two-month
25 follow-up from there.

1 Q So it would have been in July of 2006 that she was
2 supposed to come back and see you?

3 A Correct.

4 Q And let me ask you, just with Portia Washington and
5 with any patient, do you try to get to know that patient?

6 A We do. We have small talk, and it kind of helps me
7 open up, you know, with the patient. So we'll talk about
8 work, we talk about family, hobbies, stuff like that.

9 Q Did you know where she worked?

10 A Yeah. I think she was working at a car dealership.
11 I think Bob Bennett at the time.

12 Q And what were one of the things you would talk about
13 to loosen her up to let her talk to you?

14 A We talked about cars. I'm a car lover, she knew it,
15 so we would talk about cars when she comes in just to kind
16 of open up a little.

17 Q Now, that May 23rd visit, you had scheduled her to
18 come back in a couple months?

19 A Correct.

20 Q Did she ever come back?

21 A To my remembrance, no.

22 Q Did she ever call y'all to say, "Look, I've got a
23 conflict" or "I'm moving out of state"?

24 A No, she didn't.

25 Q Have you ever seen Portia Washington since May 23rd

1 of 2006?

2 A No, I haven't.

3 Q I'm going to show you something and see if this
4 accurately reflects what we've discussed today.

5 May 23rd, 2006, last visit from Portia to Eau
6 Claire Cooperative Health Centers, instructed to return in
7 two months, never heard from again.

8 A Yes.

9 Q Is that accurate?

10 A It is.

11 MR. HUBBARD: Beg the Court's indulgence.

12 (Pause.)

13 THE COURT: Yes.

14 BY MR. HUBBARD:

15 Q Doctor, let me ask you this: That CPAP machine, if
16 Ms. Washington was going to go on a trip, did she need to
17 take that machine?

18 A Yes, she would definitely need to take it. I mean,
19 it was kind of, like, you need it to sleep, so without the
20 machine your sleep would definitely be interrupted.

21 Q And she understood that?

22 A Oh, yeah, yeah.

23 Q And if she went on a long trip without it, she wasn't
24 going to have a good trip?

25 A No.

1 MR. HUBBARD: Thank you, Doctor.

2 THE WITNESS: Okay.

3 THE COURT: Mr. Hubbard, hang on.

4 I want to make certain for the record to note an
5 objection about the diagnosing and the medical history
6 received by the doctor. I never made an actual ruling.

7 Your objection is noted, overruled, and I'll
8 allow the testimony under 803, Exception No. 4. And we'll
9 go forward.

10 But for the record, your objection is noted.

11 MR. STITELY: And I think when he re-clarified
12 the question on four, I'm okay with that, Judge.

13 THE COURT: Okay.

14 MR. STITELY: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. STITELY:

17 Q Dr. Darby, how are you today?

18 A I'm well. And yourself?

19 Q I'm very good. My name is Ben Stitely.

20 So you're a P.A. and a doctor?

21 A Yes.

22 Q Which one do you like doing more?

23 A It's actually the same.

24 Q Okay. Just the same idea?

25 A Yes.

1 Q Just depends on where you work?

2 A Right.

3 Q Okay. Just a couple of questions.

4 Do you know when Ms. Washington first told you
5 or first became diagnosed with sleep apnea?

6 A No. It was sometime during the course of her seeing
7 me in the three to four years. I don't know the dates
8 exactly.

9 Q Okay. So when did -- do you have all of her records
10 in front of you, her --

11 A No, I don't have anything.

12 Q Do you know when she first started treating with you
13 at Eau Claire Cooperative Health Centers?

14 A It was in that three-year period. I'm not sure of
15 the dates.

16 Q Okay. We filed a subpoena for records, and the only
17 thing we got dates back to the summer of 2005. Were there
18 records before then?

19 A There could have been. We went to electronic medical
20 records from regular paperwork records, so some of them
21 might have not been transferred over.

22 Q You didn't bring her chart or anything like that?

23 A No, I didn't.

24 Q Okay. I'll just ask a couple of questions about
25 sleep apnea in general.

1 Is it true that one of the major side effects of
2 sleep apnea is depression?

3 A It could be, you know.

4 Q It's not uncommon for those who have trouble --

5 A No, it's not.

6 Q All right. How about things like hair loss?

7 A No, that's usually not related to sleep apnea.

8 Q Okay. Did you have anything in your charts reporting
9 that Ms. Washington was suffering hair loss?

10 A No, I didn't.

11 Q Did you know that she was a patient of South Carolina
12 Oncological Associates, dealing with breast cancer?

13 A She mentioned it, but we didn't do the referral, so
14 we didn't have any records on it.

15 Q Okay. Do you have any records about any mental
16 health treatment she may have received as well?

17 A No, we haven't.

18 Q So your treatment was limited to the sleep apnea
19 so --

20 A Yes. And we're a family practice, so we just kind of
21 deal with the daily stuff.

22 Q Like the cold, you said she had --

23 A Right, correct.

24 MR. STITELY: Thank you for coming, Doctor.

25 THE WITNESS: You're welcome.

1 MR. HUBBARD: No further questions.

2 THE COURT: You may step down.

3 THE WITNESS: Thank you.

4 MR. HUBBARD: Your Honor, we'd ask that he be
5 released from his subpoena.

6 MR. STITELY: Yes, sir.

7 THE COURT: You're released. Good luck.

8 MR. HUBBARD: The State calls Dr. Mary Parish.

9 THE COURT: Mary Parish.

10 MARY MIELKE PARISH, after being duly sworn,
11 testified as follows:

12 THE CLERK: If you'll just have a seat right up
13 there.

14 Once you're seated, Doctor, please state your
15 full name, spelling your last on the record, please.

16 THE WITNESS: Okay. My full name is Mary
17 Mielke, M-I-E-L-K-E, Parish.

18 DIRECT EXAMINATION

19 BY MR. HUBBARD:

20 Q Dr. Parish, where do you work?

21 A I work at Sterling Sharpe Pediatrics on Monticello
22 Road.

23 Q Okay.

24 A 4605.

25 MR. HUBBARD: I'm going to move this microphone

1 again, Judge.

2 BY MR. HUBBARD:

3 Q If you could just speak up, it will catch.

4 A Okay.

5 Q So you work where?

6 A At Sterling Sharpe Pediatrics at 4006 --

7 4605 Monticello Road in Columbia, 29223.

8 Q Is that on the other wing of the Eau Claire Medical
9 Center where some of the -- where adults go, kind of a --

10 A Yes, it's adjacent. There are two separate
11 buildings.

12 Q Okay. And Sterling Sharpe Pediatrics obviously is
13 just for kids?

14 A Yes, that side of -- there are a lot of practices in
15 the Eau Claire Cooperative.

16 Q Yeah. How long have you been working at Sterling
17 Sharpe?

18 A Twenty years.

19 Q For just a little while then?

20 A Yeah.

21 Q Okay. Do you recall having a patient by the name of
22 Cassandra or Cassandra L.

23 A Yes, I do.

24 Q Do you know how long she had been a patient of yours?
25 If you need to refer to your notes.

1 A Okay.

2 Q Let me ask you, do you recall her being a patient
3 since she was a newborn?

4 A Let me check.

5 Q That's okay, Doctor. We'll just move on.

6 A Let me -- I think that Medical Records left some of
7 the -- oh, wait, I've got a two-month visit here, so, yes.

8 Q Okay. So she was a newborn when she first came to
9 you?

10 A Yes, uh-huh.

11 Q On May 15th, 2006, was that her last visit?

12 I'll show you a document just to refresh your
13 memory.

14 A Yes, it was.

15 Q Okay. All right. So that year, would she be about
16 seven years old at that time?

17 A Yes, uh-huh.

18 Q So she had been seeing you for roughly seven years?

19 A Yes, uh-huh.

20 Q Did you have information on where she was going to
21 school as part of your records?

22 A Not the exact school, but she was in the second
23 grade.

24 Q Okay. Let me ask you this about her last visit.

25 A Yes.

1 Q Was that a sick visit or a wellness visit?

2 A That was a well-child visit. And at that time, she
3 did have symptoms of ADHD as well as, you know, just the
4 test for scoliosis, but that's --

5 Q Otherwise, she was a healthy child?

6 A Yes, she was.

7 Q And this visit wasn't because she had bronchitis or
8 anything like that, correct?

9 A No. No viral or bacterial illnesses.

10 Q Okay. No illnesses like that?

11 A Correct.

12 Q Now, you mentioned ADHD. Was she already taking
13 medicine that you had prescribed her from another visit?

14 A Yes. She had been on 18 milligrams and then I
15 believe at this visit I increased her to 27 of Concerta
16 for her attention deficit.

17 Q Okay. Concerta?

18 A Yes.

19 Q Is that C-O-N-C-E-R-T-A?

20 A Yes.

21 Q Okay. And that's what you would give a child that's
22 hyperactive?

23 A Having -- well, or just can't focus well in school.

24 Q Now, based on her last visit, May 15th of 2006, did
25 you have an indication that she would be going to some

1 summer camps?

2 A Yes. Actually, there were two different camps. I
3 think one was with her church and one was kind of
4 cheerleading.

5 Q Okay. And the medication you were giving her, would
6 she need to be taking that during those camps?

7 A Yes, so she could focus there as well and relate to
8 her peer groups well.

9 Q On this last visit of May 15th, did you give her a
10 follow-up of when you wanted to see her?

11 A You know, I just put in a year, as far as a
12 well-child check. I usually follow up ADHD every six
13 months.

14 Q Okay. Did she ever come back to your facility?

15 A No. This looks like it was the last visit that we
16 saw her in May of 2006.

17 Q And when you last saw her, other than the ADHD, she
18 was a healthy child?

19 A Yeah.

20 Q She had some things you wanted to look out for and
21 follow up as a doctor?

22 A Right.

23 Q But she was a healthy child?

24 A Right, exactly.

25 Q Since that last date, did you get any requests from

1 other doctors or other medical facilities saying, She's
2 now our patient, we need your records?

3 A No.

4 Q None at all?

5 A No, unh-huh.

6 Q Have you seen or heard from Cassandra Angelica
7 Livingston since that date?

8 A No, I have not.

9 Q Let me show you something, Doctor. I want to see if
10 this comports with your testimony. May 15th of 2006?

11 A Correct.

12 Q Last visit from Angelica to Sterling Sharpe
13 Pediatrics, never heard from again?

14 A Correct.

15 Q That's correct?

16 A Uh-huh.

17 MR. HUBBARD: Thank you, Doctor.

18 Please answer any questions the defense might
19 have.

20 CROSS-EXAMINATION

21 BY MR. STITELY:

22 Q It was Dr. Parish, right, ma'am?

23 A Yes, that's correct.

24 Q Do you have Ms. Livingston's chart there with you,
25 her file?

1 A I do.

2 MR. STITELY: Your Honor, we would ask for a
3 brief recess so I can take a minute to look at that. She
4 referred to it during her testimony. I think we're
5 entitled to at least a couple minutes to take a look to
6 see if I have any direct questions.

7 THE COURT: I don't find that unreasonable.
8 We'll take a few minutes recess to do that.

9 We'll stand at ease.

10 (A break was taken.)

11 THE COURT: We'll come back to order.

12 All right. Mr. Stitely, are you ready?

13 MR. STITELY: Yes, sir.

14 THE COURT: Hang on one second. We'll get
15 everybody seated again.

16 MR. STITELY: No problem.

17 THE COURT: We've been at ease.

18 All right. We'll continue.

19 BY MR. STITELY:

20 Q Dr. Parish, just two real quick questions.

21 Miss Livingston, you didn't have any records to
22 indicate she had diabetes, did you?

23 A No.

24 Q That wasn't one of your diagnoses?

25 A No.

1 Q And you just generally treated her for normal
2 seven-year-old kid stuff, right?

3 A Yes. Correct.

4 MR. STITELY: No other questions.

5 Thank you.

6 MR. HUBBARD: No further questions, Your Honor.

7 I ask that she be excused and released from her
8 subpoena.

9 THE COURT: Thank you for coming, Doctor.

10 THE WITNESS: Okay. Thank you.

11 MR. GRAHAM: The State calls Lisa Sloan.

12 LISA K. SLOAN, after being duly sworn, testified
13 as follows:

14 THE CLERK: Take your file, please, ma'am. Have
15 a seat right up there.

16 Once you're seated, speak up loud and clear,
17 state your full name, spelling your last on the record,
18 please.

19 THE WITNESS: Thank you.

20 Okay. My name is Lisa W. Sloan, that's
21 S-L-O-A-N.

22 DIRECT EXAMINATION

23 BY MR. GRAHAM:

24 Q Good morning, Ms. Sloan. How are you?

25 A Fine, thank you. How are you?

1 Q I'm good.

2 Where are you employed, ma'am?

3 A I'm employed with SCANA, which is South Carolina
4 Electric and Gas Company.

5 Q And what do you do for SCANA and also SCE&G?

6 A I work in the legal department and I handle, you
7 know, the documents, the files.

8 Q And are you here today as the custodian of the
9 records for SCE&G?

10 A Yes, I am.

11 Q Let's talk about some records that have been provided
12 related to an account owned by Sarah Parker. Are you
13 familiar with that?

14 A Yes, I am.

15 Q What was the service address for SCE&G for that
16 account?

17 A The service address is 1035 Commanchee Trail,
18 Apartment M, as in mother, 7.

19 Q Can you tell me when that account was set up and when
20 the service began?

21 A Service began on 2-23 of 2006.

22 Q And when was the last payment that was received?

23 A It -- the last payment received is -- it was on
24 May 20th of 2006.

25 Q Now, were there other bills that were sent out after

1 that time?

2 A No.

3 Q But there were final notices that were sent on the
4 account?

5 A Yes.

6 Q Wasn't there a bill that was sent out on May 30th of
7 2006?

8 A Yes.

9 Q Okay. So there was another bill after that payment
10 on May 20th?

11 A Yes. It was a bill that was on that same -- the same
12 balance that was there.

13 Q Okay. As of the May 20th, 2006, payment, was that
14 account current at that time?

15 A Yes, it was.

16 Q Did you -- were there any other payments made after
17 that date?

18 A No.

19 MR. GRAHAM: Okay. Thank you, ma'am.

20 Please answer any questions the defense has.

21 THE WITNESS: Thank you.

22 CROSS-EXAMINATION

23 BY MR. STITELY:

24 Q All right. Good morning, Ms. Sloan, how are you?

25 A Fine. How are you?

1 Q Very good. Thank you. Sorry, it's Monday. I'm
2 still getting there.

3 A That's okay.

4 Q The account for 1035 Commanchee Trail, Apartment M-7
5 was initiated on 2-23-06, would you say, correct?

6 A Right.

7 Q Was that a new account or was that a transfer?

8 A Actually, it was a new account.

9 Q Okay. Do you have anything in front of you that
10 indicates the address Ms. Parker was using before that
11 1035 Commanchee Trail or just as a new account is all you
12 have?

13 A That's all I have is the -- it would be a new
14 account.

15 Q Okay. So who would you assume was the resident at
16 1035 Commanchee Trail --

17 MR. GRAHAM: Objection, Your Honor. That calls
18 for speculation. He said, "Who would you assume."

19 THE COURT: Rephrase your question.

20 BY MR. STITELY:

21 Q Who does SCE&G's records indicate to be the person to
22 be living at 1035 Commanchee Trail, Apartment M-7?

23 A Sarah Parker.

24 Q Okay. You said that the May 30th bill was a second
25 bill on the same -- what did you mean by that? Was all of

1 the bill paid on May 20th or only part of it?

2 A No. All the bill was paid, that last payment that we
3 received. It was the next, you know, the next -- what we
4 do is, we come out and read the meter to final bill the
5 account. But really what happened was they sent -- it's
6 more like, you know, the next bill was sent --

7 Q Okay.

8 A -- and then final notices were sent.

9 Q Do you have that in front of you, the May 30th item?

10 A Let me see. I have a --

11 MR. STITELY: May I approach?

12 THE COURT: You may.

13 THE WITNESS: -- it looks like a history of
14 payments and bills.

15 BY MR. STITELY:

16 Q Will you show me where it is?

17 A This is from the last payment.

18 Q Okay.

19 A Okay. And these were the bills leading up to when
20 they "finalled out" the account. That's where, you know,
21 this happened on here.

22 Q Okay. Is there any way -- does this tell you --
23 okay. I see it.

24 And so the last bill, in theory, went out in
25 October of 2006 when it was finalled out?

1 A Right. It takes a little time, you know, a couple of
2 months before they actually -- you know, if nothing
3 happens to the account, they close it out automatically.

4 MR. STITELY: Thank you very much, Ms. Sloan.

5 THE WITNESS: Thank you.

6 MR. STITELY: No other questions.

7 MR. GRAHAM: No other questions, Your Honor.

8 I'd just ask that she be released from her
9 subpoena.

10 MR. STITELY: Yes, sir.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you.

13 MR. GRAHAM: The State would call Julie Price.

14 THE COURT: Julie Price.

15 (Discussion was held off the record.)

16 JULIA PRICE, after being duly sworn, testified
17 as follows:

18 THE CLERK: Have a seat right up there, please,
19 ma'am. You can take your purse and your water.

20 Once you have a seat, speak up loud and clear,
21 stating your full name, spelling your last on the record,
22 please.

23 THE WITNESS: Julia Price, P-R-I-C-E.

24 DIRECT EXAMINATION

25 BY MR. GRAHAM:

1 Q Ms. Price, where are you employed, ma'am?

2 A Ford Motor Credit Company.

3 Q Here in South Carolina?

4 A Yes.

5 Q What do you do for Ford Motor Credit Company?

6 A I'm a business development manager, and I am a
7 representative for the local dealers here in Columbia and
8 Greenville.

9 Q And have you been designated as the custodian or the
10 keeper of records relating to Portia Washington's account
11 with Ford Motor Credit?

12 A Yes, I have.

13 Q And did you bring those records with you today?

14 A Yes.

15 Q Did Ford Motor Credit loan money to Portia Washington
16 for Portia's car?

17 A Yes.

18 Q Can you tell me when she purchased that vehicle?

19 A June 22nd, 2005.

20 Q And the make and model and color of that car?

21 A It was a new 2005 Ford Focus. I'm not sure of the
22 color.

23 Q Do you have the VIN number on file?

24 A Yes, I do.

25 Q Can you read it off, please?

1 A It's 1F, Frank, A, apple, F, Frank, P, Paul, 34N,
2 Nancy, 25W228072.

3 Q And can you tell me what the purchase price was of
4 that Ford Focus?

5 A \$16,289.

6 Q And can you tell me whether she had money that she
7 put down or a trade-in?

8 A There was a manufacturer rebate of \$500, \$800 cash,
9 and a \$3,057 trade allowance.

10 Q And do your records indicate what kind of a car was
11 used for the trade-in allowance?

12 A All I know is a 1993 Ford. I do not know make --
13 model, make.

14 Q So what was her original loan amount with Ford Motor
15 Credit?

16 A The amount financed?

17 Q Yes, ma'am.

18 A It was \$12,260.

19 Q What was her monthly payment that was due to Ford
20 Motor Credit?

21 A \$267.14.

22 Q And how many payments did she make?

23 A Eleven.

24 Q Was she ever late with any of her payments?

25 A There was one that was 11 days late, and a late

1 charge was assessed, but none over 30.

2 Q When was her last payment processed?

3 A June the 12th of 2006.

4 Q And what, if any, contact do your records reflect
5 that Ms. Washington had with Ford Motor Credit after that
6 payment?

7 A There was none.

8 Q What happened to that Ford Focus? What happened to
9 Ms. Washington's Ford Focus?

10 A It was repossessed.

11 Q And after it was repossessed, what happened to the
12 vehicle?

13 A It was sold at an auction.

14 Q What was the value of the car at the time that it was
15 sold at auction?

16 A It's unknown.

17 Q What was the amount --

18 A It sold at the auction?

19 Q Yes, ma'am.

20 A Proceeds were \$8,700. The actual value, I'm not
21 sure.

22 Q Okay. So Ford, after the car was sold at auction,
23 that's how much money Ford Motor Credit got?

24 A That's correct. We sold it for \$8,700.

25 MR. GRAHAM: Thank you, Ms. Price.

1 Please answer any questions the defense has.

2 CROSS-EXAMINATION

3 BY MR. STITELY:

4 Q Good morning, Ms. Price.

5 Did you have a -- I saw you carrying some stuff
6 up there with you. You just had the credit history?

7 A I have a payment history.

8 Q Did you have a list of questions to be expecting
9 today?

10 A Yes, sir.

11 Q Okay. Do you have the odometer reading from the
12 vehicle at the date it was taken back by Ford in front of
13 you?

14 A Not in front of me.

15 Q Do you happen to know what it was?

16 A I may have that information, but I do not have it.

17 Q You may have it somewhere else, just not with you
18 today?

19 A Right.

20 MR. STITELY: No other questions.

21 Thank you, ma'am.

22 THE WITNESS: Uh-huh.

23 THE COURT: You may step down.

24 THE WITNESS: Thank you.

25 MR. GRAHAM: Your Honor, we ask that she be

1 excused.

2 THE COURT: Certainly.

3 MR. HUBBARD: The State calls Clarissa Mack.

4 CLARISSA MACK, after being duly sworn, testified
5 as follows:

6 THE CLERK: Take your file. Have a seat right
7 up there, please, ma'am.

8 Once you're seated, speak up loud and clear,
9 stating your full name, spelling your last, please.

10 THE WITNESS: My name is Clarissa Mack, M-A-C-K.

11 DIRECT EXAMINATION

12 BY MR. HUBBARD:

13 Q Ms. Mack, where do you work?

14 A South Carolina Department of Motor Vehicles.

15 Q As part of your job are you a custodian of records --

16 A Yes.

17 Q -- for the South Carolina Department of Motor
18 Vehicles?

19 A Yes.

20 Q And is that why you're here today?

21 A Yes, sir.

22 Q I want to ask you about some records on a 2005 Ford
23 Focus and Ms. Portia Washington.

24 A Okay.

25 Q Do you have an affidavit of sale in your materials?

1 A Yes.

2 Q All right. Let me show you this. Is this a
3 certified true copy of an affidavit of sale?

4 A Correct.

5 Q And whose name is on this application?

6 A Ms. Portia Washington.

7 Q Okay. And the document that I'm showing you now, is
8 that an application for what?

9 A Certificate of Title and Registration.

10 Q And whose name is on that?

11 A Portia Washington.

12 Q And then this final, is this a Certificate of Origin
13 for Vehicle?

14 A Yes, correct.

15 Q And does that show Bob Bennett Ford having possession
16 of it?

17 A Yes.

18 Q And selling it to Portia Washington?

19 A Correct.

20 Q The dates on these -- what date does it show for this
21 transaction?

22 A That's June 22nd, 2005.

23 MR. HUBBARD: Your Honor, I offer this into
24 evidence.

25 MR. STITELY: May I see it?

1 MR. HUBBARD: Sure.

2 MR. STITELY: Okay.

3 (Pause.)

4 MR. HUBBARD: Your Honor, if there's no
5 objection, I offer this into evidence.

6 THE COURT: Can we mark them together?

7 MR. STITELY: Yeah, that's fine, Judge.

8 THE COURT: All right. We'll staple it
9 together. It will be State's Exhibit 50.

10 State's 50 is all -- how many pages?

11 MR. HUBBARD: This is four pages with this
12 exhibit, Your Honor.

13 THE COURT: It's the Affidavit of Bill of Sale,
14 Certificate of Origin, and some application to purchase
15 the vehicle; is that right?

16 MR. HUBBARD: Yes, sir, Your Honor.

17 THE COURT: Excellent.

18 (WHEREUPON, STATE'S Exhibit No. 50 was marked
19 for identification and received into evidence.)

20 BY MR. HUBBARD:

21 Q Ms. Mack, if I may approach and show you also this.
22 What is this item I'm showing you?

23 A This is where the title has been surrendered to
24 another state.

25 Q Okay. And it's a Certificate of Title?

1 A Yes.

2 Q And whose title was it in -- whose name was this
3 title in?

4 A Portia Washington.

5 Q Okay. And it shows it's surrendered to who?

6 A It was surrendered to Hannah's Motor Company in
7 Vancouver, Washington, on August 2nd of 2006.

8 Q Okay. So the title for the vehicle was surrendered
9 in August of 2006?

10 A Correct.

11 Q To a company up in Washington state?

12 A Right.

13 MR. HUBBARD: Your Honor, I offer this into
14 evidence at the time.

15 MR. STITELY: No objection to that document.

16 THE COURT: That will be State's 51?

17 MR. HUBBARD: Yes, sir.

18 THE COURT: Without objection.

19 (WHEREUPON, STATE'S Exhibit No. 51 was marked
20 for identification and received into evidence.)

21 BY MR. HUBBARD:

22 Q One final document. What is this document?

23 A This is a certified title history.

24 Q Okay. And on who would this document be on?

25 A Portia Washington.

1 Q And what does it show?

2 A That it's been surrendered to another state.

3 Q Okay. And does it show that she had originally
4 gotten it from Bob Bennett Ford?

5 A Yes. That's her lienholder, Ford Motor Credit
6 Company.

7 Q Okay. And let's see. The date of surrender, let's
8 see if it's on here.

9 It's not on there, is it?

10 A It's not on this document here.

11 Q But this involves a 2005 Ford Focus?

12 A Correct.

13 Q Surrendered to another state, and it's Portia
14 Washington's vehicle?

15 A Right.

16 MR. HUBBARD: Your Honor, I offer this into
17 evidence.

18 MR. STITELY: No objection, Your Honor.

19 THE COURT: State's 53 without objection.

20 52, I'm sorry.

21 (WHEREUPON, STATE'S Exhibit No. 52 was marked
22 for identification and received into evidence.)

23 BY MR. HUBBARD:

24 Q Now, Ms. Mack, in referring to State's 52,
25 State's 51, and State's 50, is the only name on the title

1 and the registration belonging to one person?

2 A Just one person, Portia Washington.

3 Q So there is no Kenneth Lynch on the title?

4 A No.

5 Q No Kenneth Lynch on the registration?

6 A No.

7 Q No Kenneth Lynch anywhere in any of these records?

8 A No, sir.

9 Q The owner of the car was who?

10 A Portia Washington.

11 MR. HUBBARD: Thank you.

12 I believe that's all the questions I have for
13 you. Thank you very much, Ms. Mack.

14 THE WITNESS: Thank you.

15 MR. HUBBARD: Please answer any questions the
16 defense might have.

17 CROSS-EXAMINATION

18 BY MR. STITELY:

19 Q Hi, Ms. Mack. How are you today?

20 A I'm great. And yourself?

21 Q I'm very good.

22 MR. STITELY: Your Honor, may I approach?

23 THE COURT: You may.

24 BY MR. STITELY:

25 Q Ms. Mack, you don't have anything to do with driver's

1 licenses they just told me, right?

2 A No, sir.

3 Q Okay. I have what's already just been put into
4 evidence as No. 51.

5 A Uh-huh.

6 Q That's what you were just looking at, the title?

7 A Right.

8 Q On the back, this is where you were saying that it's
9 transferred to someone else?

10 A Right.

11 Q In fact, it says Hannah Motor Company, Vancouver,
12 Washington?

13 A Uh-huh.

14 Q What does it indicate the mileage of the vehicle to
15 be?

16 A 20,444.

17 Q Okay. So a little over 20,000 miles?

18 A Yes.

19 Q And when was the vehicle purchased new?

20 A The vehicle was purchased on 6-22-2005.

21 Q Okay. So around 20,000 miles that year?

22 A Yes.

23 MR. STITELY: I have no other questions.

24 MR. HUBBARD: No further questions.

25 I ask that this witness be excused.

1 MR. STITELY: Yes, sir.

2 THE COURT: Without objection, you may be
3 excused.

4 Thank you for coming.

5 THE WITNESS: Thank you.

6 MR. HUBBARD: The State calls Marie Wearing.

7 MARIE WEARING, after being duly sworn, testified
8 as follows:

9 THE CLERK: Have a seat right up here, please,
10 ma'am.

11 Once you're seated, speak up loud and clear,
12 stating your full name, spelling your last.

13 THE WITNESS: That's Marie Wearing,
14 W-E-A-R-I-N-G.

15 DIRECT EXAMINATION

16 BY MR. HUBBARD:

17 Q Ms. Wearing, where do you work?

18 A South Carolina Department of Motor Vehicles.

19 Q And what are your duties there?

20 A I certify copies of driver's records for court.

21 Q Okay. So part of your job is testifying in court
22 about certified documents?

23 A That's correct.

24 Q I want to talk to you today about some records on a
25 Portia Washington.

1 A Okay.

2 Q I want to show you a document and see if you can
3 identify that.

4 A Yes. It's a certificate of a copy of a driver's
5 record.

6 Q Okay. On a Portia Washington?

7 A Portia Washington.

8 MR. HUBBARD: Okay. Your Honor, I offer this
9 into evidence.

10 MR. STITELY: Without objection, Your Honor.

11 THE COURT: This is State's 53.

12 (WHEREUPON, STATE'S Exhibit No. 53 was marked
13 for identification and received into evidence.)

14 BY MR. HUBBARD:

15 Q Ms. Wearing, looking at State's 53, if you would,
16 would you publish the driver's license number for
17 Ms. Washington.

18 A 11668309.

19 Q Okay. What is the status on that record of her
20 driver's license?

21 A Suspended.

22 Q And does it indicate why it was suspended?

23 A For cancellation of insurance.

24 Q So when insurance is canceled, your ability to drive
25 is also suspended; is that correct?

- 1 A That's correct.
- 2 Q Does it have a date when that was canceled?
- 3 A September 6th, 2006.
- 4 Q Okay. And when did the actual suspension begin?
- 5 A I'm sorry. It was canceled July the 9th, 2006, and
- 6 the action began in September 6, 2006.
- 7 Q Okay. So it's canceled in July --
- 8 A That's correct.
- 9 Q -- of 2006?
- 10 A That's right.
- 11 Q And the actual suspension began in September?
- 12 A September 6th, 2006.
- 13 Q All right. Now, if her driver's license had not been
- 14 suspended, when was she up to have it renewed?
- 15 A July -- July 20, 2007.
- 16 Q July or June?
- 17 A I'm sorry, June 20, 2007.
- 18 Q June 20th of 2007?
- 19 A 2007. That's correct.
- 20 Q Okay. And let me ask you, if you look at her date of
- 21 birth, is that June 20th?
- 22 A June the 20th, yes.
- 23 Q Of '52?
- 24 A Of 1952.
- 25 Q So she was -- the following year, 2007, on her

1 birthday is when she was to get it renewed?

2 A Yes.

3 Q But by your records, it was canceled or suspended
4 July 9th of 2006?

5 A Yes.

6 Q For failure to pay insurance?

7 A That's right.

8 Q Or cancellation of insurance?

9 A Yes.

10 MR. HUBBARD: Okay. Thank you.

11 Please answer any questions the defense has.

12 CROSS-EXAMINATION

13 BY MR. STITELY:

14 Q Hello, ma'am.

15 A Hello.

16 Q I just have a couple of questions about that document
17 for you as well.

18 This is State's Exhibit No. 53, the driver's
19 record.

20 A Okay.

21 Q When does it indicate Ms. Washington first started
22 driving?

23 A March the 21st, 2002.

24 Q That's when she got her regular license?

25 A That's correct.

1 Q She had a beginner's permit, though, the year before?

2 A That's correct.

3 Q Okay. So she had been driving in South Carolina for
4 at least three and a half years before the summer of 2005,
5 correct?

6 A Correct.

7 MR. STITELY: No further questions.

8 Thank you, ma'am.

9 REDIRECT EXAMINATION

10 BY MR. HUBBARD:

11 Q One quick followup.

12 Ms. Wearing, is there any information that you
13 have that shows that her license was ever renewed again?

14 A No.

15 Q So the status is still canceled?

16 A That's correct.

17 MR. HUBBARD: Thank you. I have no further
18 questions.

19 I ask that this witness be excused, Your Honor.

20 MR. STITELY: Yes, sir.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you.

23 MR. GRAHAM: The State calls Nicky Rodgers.

24 NICKY RODGERS, after being duly sworn, testified
25 as follows:

1 THE CLERK: Have a seat, please.

2 Once you're seated, state your full name,
3 spelling your last for the record, please, ma'am.

4 THE WITNESS: I'm Nicky Rodgers, R-O-D-G-E-R-S.

5 DIRECT EXAMINATION

6 BY MR. GRAHAM:

7 Q Ms. Rodgers, where are you employed, ma'am?

8 A Lexington County 911.

9 Q And what do you do for Lexington County 911?

10 A I am the department head for Lexington County 911,
11 and I'm the keeper of the records and manage the budget,
12 the department as a whole, complaints, everything.

13 Q As part of your job, can you tell me what NCIC is?

14 A Yes, sir. I am also the TAC for our agency, which is
15 terminal agency coordinator with SLED, and we run driver's
16 licenses, wanted people, tags, enter missing, wanted, all
17 that kind of thing, for Lexington County dispatch.

18 Q And you said part of that was access to driver's
19 licenses?

20 A Correct.

21 Q Is that limited to the state of South Carolina?

22 A No. We -- it's national and international searches.

23 Q And as part of you being here today, were you
24 requested to check on the driver's license issued to
25 Portia Washington?

1 A Yes, sir, I was.

2 Q Can you tell me what you found?

3 A I found one driver's license for Portia Washington
4 for the state of South Carolina. We did search all of the
5 50 states, and -- do you want me to read her license or --

6 Q Yeah, if you would give me her license number.

7 A Her license number -- all right. I should have brung
8 my glasses, but it is 11668309.

9 Q And was there a Social Security number attached to
10 Ms. Washington?

11 A Actually, this driver's license report does not
12 include Social Security numbers. It does have her
13 address, the -- oh, I'm sorry, it does have a Social
14 Security number. It is -- do you want me read it out?

15 Q Please.

16 A 247-96-4101.

17 Q And the date of birth?

18 A Date of birth is 6-20 of '52.

19 Q Okay. And what was the status of her license?

20 A At this time, the driver's license was suspended.

21 Q So your checks not only show ones that are current
22 but also suspended licenses?

23 A Correct.

24 Q What about licenses that were applied for 20 years
25 ago?

1 A It would also show those, and if they were expired.

2 Q Okay. So the only license that you found for Portia
3 Washington was a suspended license in the state of South
4 Carolina?

5 A Correct.

6 Q What about the other states in the United States?

7 A There was no record of any license.

8 Q So would that mean that she never had one there?

9 A She's never applied for one or had one.

10 MR. GRAHAM: Thank you, Ms. Rodgers.

11 Please answer any questions that the defense
12 has.

13 THE WITNESS: Okay.

14 MR. STITELY: May I approach the witness, Your
15 Honor?

16 THE COURT: You may.

17 CROSS-EXAMINATION

18 BY MR. STITELY:

19 Q I just want to take a look at whatever your report
20 is.

21 Thank you, ma'am.

22 Okay. Maybe I just don't know. How does this
23 show you what the other states say or it would just have
24 something if you found it?

25 A I only printed the one for -- that was found. Since

1 it was all 50 states, it would just say, "No record
2 found."

3 Q Okay.

4 A But I only printed the one that was found.

5 Q Okay. Did you run all known aliases and all other
6 used names?

7 A I ran Portia Washington, and that was the only name
8 that I ran for her.

9 Q Did you run Portia Bracey?

10 A Let's see. I'm sorry. Portia Washington, Portia
11 Sumter Washington, and Portia Bracey Washington. Portia
12 Sumter and Portia Bracey.

13 Q Okay. So she has used several names in the past?

14 A Yes.

15 MR. STITELY: Thank you, ma'am.

16 THE WITNESS: Okay.

17 MR. STITELY: No other questions.

18 MR. GRAHAM: No other questions, Your Honor.

19 We'd just ask that she be excused.

20 THE COURT: You may step down and you're
21 excused.

22 Thank you for coming.

23 THE WITNESS: Thank you.

24 MR. GRAHAM: The State would call Jim Hinton.

25 JAMES HINTON, JUNIOR, after being duly sworn,

1 testified as follows:

2 THE CLERK: Have a seat, please, sir.

3 Once you're seated, speak up loud and clear.

4 State your full name, spelling your last for the record.

5 THE WITNESS: I'm James Hinton, Junior,

6 H-I-N-T-O-N.

7 DIRECT EXAMINATION

8 BY MR. GRAHAM:

9 Q Mr. Hinton, where are you employed, sir?

10 A I work for Lexington School District 2.

11 Q And what do you do for Lexington School District 2?

12 A I am the assistant superintendent for administration
13 and student services.

14 Q What does that mean?

15 A Basically, administration means I'm over policy, and
16 student services means anything that students have to --
17 that deal with anything from sports to student records.

18 Q So as part of your job, you're in charge of all the
19 student records for every student --

20 A I oversee and am the keeper of the student records.

21 Q Specifically, are you here today to talk about some
22 records for Cassandra L. [REDACTED]

23 A Yes, sir.

24 Q And you had those and you've reviewed them?

25 A Yes, sir.

1 Q Okay. What was the last day that Angelica attended
2 school in Lexington School District 2?

3 A It would have been right around June 1st of 2006, the
4 end of her second grade year, of the '05-'06 school
5 session. She was in second grade. She was going to be a
6 third grader in '06-'07.

7 Q What school was she attending at that time?

8 A Claude A. Taylor Elementary School.

9 Q Where is that at?

10 A It's in Cayce. If you -- if you're coming down Frink
11 Street, you would turn on Sunset Drive, and it would be
12 down there. It's near Davis Elementary, which is right
13 off 321 as you're heading towards Gaston and Swansea.

14 Q Do you know who her teacher was in the second grade,
15 the one that she finished with?

16 A I could look it up. I don't know.

17 Q Would it take you long to look it up?

18 A No.

19 She had Ms. Marcom in first grade and Adams in
20 kindergarten. And I'm sorry. Ms. Nelson.

21 Q Ms. Nelson.

22 At the end of the school year 2006, what, if
23 any, information or expectation did Lexington School
24 District 2 have about Angelica coming back for third
25 grade?

1 A The expectation was that we had not received any
2 information from her grandmother, who was her guardian at
3 that time, Ms. Washington, and that our expectation was
4 that she would return for the following school year.

5 Q Did you have any information stating that she would
6 be going to any other school starting the fall of 2006?

7 A No, sir. In fact, during that summer, law
8 enforcement had informed the school district that she and
9 her grandmother were suspected missing. The person that
10 was in my position at that time, Dr. Holland -- who is now
11 the superintendent, and I moved into Dr. Holland's
12 position -- had actually written a letter for the parents
13 of Taylor Elementary going into the '06-'07 school year
14 letting them know that -- that Cassandra was missing.

15 Q So what you have maintained, is that her official
16 school record, her transcript, and things like that?

17 A Yes, sir. Ever since I received requests from both
18 sides to get a copy of the records, I've maintained the
19 security of this particular record in my office locked up.

20 Q Mr. Hinton, what happens if somebody wants to come
21 enroll in Lexington School District 2 and they come from
22 another school? Tell me about that process.

23 A They come in. They have to prove they're -- they
24 live in the school district, providing two -- two forms of
25 residency; a lease, owning of a house, power bill,

1 something like that. That's a requirement. They have --
2 if they're a first-timer, like, in kindergarten, they have
3 to provide the shot record and the birth certificate.

4 If they're -- if they're continuing, we get the
5 parent to sign a release and we get the address or fax
6 number of the -- of the school they're coming from, and we
7 fax a release to get their records so we'll know what
8 they've done in the past.

9 Q So if somebody was transferring into Lexington School
10 District 2 and they were going to be starting third grade,
11 for instance, you would want a copy of their transcript,
12 and you would get a release and send off for that
13 transcript?

14 A That's standard operating procedure, yes, sir.

15 Q Do you know if that's normal throughout all schools
16 in the United States?

17 A Even -- even today with these new virtual schools,
18 and things like that, and private schools in the past,
19 they all want copies of the records.

20 Q What, if any, requests have ever been made for
21 Angelica's records from any other schools than the state
22 of South Carolina?

23 A In my four years in this job, there has been none.

24 Prior to that, speaking -- knowing the principal
25 that was principal of Taylor at that time, Dr. Hayward

1 Evans, who now works at the district with me, and
2 Dr. Holland who was in my position at that time, and the
3 latest principal, Dr. Johnson, who is currently the
4 principal and took over for Dr. Hayward Evans, no request
5 has been received.

6 Q What about from other schools in other states, have
7 there been any requests for Angelica's records?

8 A There's been no request for her records at all.

9 Q Even outside the country?

10 A Even outside the country.

11 MR. GRAHAM: Thank you, Mr. Hinton.

12 Please answer any questions the defense has for
13 you.

14 THE WITNESS: Yes, sir.

15 MR. McGUIRE: Your Honor, if I could approach
16 the witness.

17 THE COURT: All right.

18 CROSS-EXAMINATION

19 BY MR. McGUIRE:

20 Q I'm sorry, your last name, again?

21 A Hinton, H-I-N-T-O-N.

22 Q Hey, how you doing, Mr. Hinton?

23 A Hi.

24 Q Can I take a look at your records, sir?

25 A Sure.

1 Q I want to hand you the file back.

2 A Yes, sir.

3 Q If you want to let go of that one.

4 MR. MCGUIRE: Ma'am, if I could have that marked
5 for ID, defense number whatever we are now. Actually both
6 of those, one after the other.

7 THE COURT: Carol, do you have 4?

8 THE COURT REPORTER: 4 and 5.

9 THE COURT: Defense 4 and 5.

10 MR. MYERS: Your Honor, we couldn't hear what
11 was going on.

12 THE COURT: He's marked two documents, 4 and 5,
13 for identification purposes that he had in his hand.

14 MR. MYERS: Can we see them?

15 THE COURT: You may.

16 (WHEREUPON, Defendant's Exhibits Nos. 4-5 were
17 marked for identification only.)

18 BY MR. MCGUIRE:

19 Q Mr. Hinton, I am going to pass up for the record
20 what's been marked No. 4 and No. 5, defense exhibits.

21 If you would, look at No. 4 there and just tell
22 me if you recognize that or if that's part of your record,
23 your file?

24 A Yes, sir, I've seen this in the record before.

25 Q And that's a letter from the school to Cassandra

1 Livingston's guardian?

2 A It is.

3 Q And I believe the import of the letter, or the
4 substance of the letter, the main import, is that
5 **Cassandra L.** was in jeopardy of being held back
6 and repeating a grade?

7 A It's standard operating procedure in Lexington School
8 District 2 if you have even an inkling of whether or not a
9 student is going to be retained or not, if there's any
10 question, you let the -- you let the family know at the
11 beginning of second semester -- the third nine weeks for
12 an elementary school -- and with the date being
13 January 6th, 2005, Dr. Hayward Evans was just following
14 our standard operating procedure.

15 I've been an elementary principal a lot longer
16 than I've been what I'm doing now. I'd be sending the
17 same type of letters that particular year because I was an
18 elementary principal, too.

19 Q Sure. And do you have Ms. Livingston's grades for
20 first and second grade?

21 A I do. This will take me just a second.

22 Yes, sir.

23 Q If I could just take a look at them.

24 What grade is this?

25 A And that's a permanent record. It would have first

1 grade and second grade on it.

2 Q Okay. And that's identical to Defense No. 5?

3 A Yes, sir.

4 Q Okay.

5 A Yes, sir. It's a copy.

6 Q Okay. And these records in your control here, you're
7 the custodian of these records, the keeper of these
8 records; is that correct, sir?

9 A Yes, sir.

10 Q I'm sorry. You've got to answer yes or no.

11 A I'm sorry. I'm sorry. Yes.

12 Q She can't type down a nod of the head.

13 And these records are normally kept in the
14 course of the business of running the school?

15 A Our schools keep them in fireproof, sealed, locked
16 cabinets.

17 Q Okay.

18 A File cabinets.

19 Q These are records just normally kept in the ordinary
20 course of running the school?

21 A Yes, sir.

22 Q Okay.

23 MR. MCGUIRE: Judge, we'd offer up Nos. 4 and 5
24 into evidence.

25 MR. GRAHAM: No objection, Your Honor.

1 THE COURT: 4 and 5 defense exhibits are
2 admitted without objection.

3 (WHEREUPON, Defendant's Exhibits Nos. 4-5 were
4 admitted into evidence.)

5 BY MR. MCGUIRE:

6 Q And if you --

7 THE COURT: Hang on.

8 (Pause.)

9 THE COURT: All right. Go ahead, Mr. McGuire.

10 MR. MCGUIRE: Okay. Thank you, sir.

11 BY MR. MCGUIRE:

12 Q Looking over the grades there for Miss Livingston,
13 did she ever receive a perfect report card or I guess what
14 would be referred to as all Es?

15 A Oh, no, sir.

16 Q Okay. Her performance was not exemplary?

17 A Speaking just from the records because I didn't know
18 the student nor the situation, no, sir. Looking at these
19 grades, she had means to -- needing to improve.

20 Q Yes, sir.

21 MR. MCGUIRE: If I could have just one second,
22 Judge.

23 (Pause.)

24 MR. MCGUIRE: If I could have that marked ID No.
25 6, please.

1 (WHEREUPON, Defendant's Exhibit No. 6 was marked
2 for identification only.)

3 BY MR. MCGUIRE:

4 Q All right. Dr. -- Mr. -- is it Dr. Hinton?

5 A Mister.

6 Q Mr. Hinton -- almost promoted you there -- I want to
7 show you for the record what's been marked Defense Exhibit
8 No. 6. Is that a document also contained in your file?

9 A Oh, yes, sir.

10 MR. MYERS: We couldn't hear the question, Your
11 Honor. We didn't hear back here.

12 THE COURT: He marked 6 for identification
13 purposes, and asked if he could identify it, and he's
14 responded affirmatively. If you-all haven't seen it yet,
15 he'll provide it.

16 BY MR. MCGUIRE:

17 Q And that's also another document in your file?

18 A Part of the registration packet at that time. It's
19 been altered and improved since that 2006 year, but, yes,
20 sir, that's part of our packet back then.

21 Q Okay. And this is another record that's kept in the
22 normal course of business?

23 A Part of the enrollment packet, yes, sir. We fill one
24 out every year on students.

25 MR. MCGUIRE: Judge, we'd move No. 6 into

1 evidence.

2 THE COURT: Let Mr. Graham see it.

3 MR. MCGUIRE: He's seen it.

4 THE COURT: All right.

5 MR. GRAHAM: No objection, Your Honor.

6 THE COURT: 6 admitted without objection.

7 (WHEREUPON, Defendant's Exhibit No. 6 was
8 admitted into evidence.)

9 BY MR. MCGUIRE:

10 Q Now, it seems to indicate that -- and tell me if I'm
11 wrong -- but the document seems to indicate that Portia
12 Washington is the guardian for Miss Livingston; is that
13 correct?

14 A Yes, sir.

15 Q And part of that form asks why is the child with you,
16 not with her biological mom or dad; is that correct?

17 A Yes, sir.

18 Q And does the document indicate that the reason Miss
19 Livingston was with Portia Washington is because
20 Ms. Washington did not know where the child's biological
21 mother was?

22 A Right. According to this document and
23 Ms. Washington's signature, she answered "Why is the
24 student with you," she said, "Don't know where the mother
25 is."

1 Q Okay. Let me have that back.

2 MR. McGUIRE: Judge, I want to give the --
3 Ms. Court Reporter a chance to mark it for -- in evidence.

4 THE COURT: I thought it was already admitted,
5 No. 6?

6 MR. McGUIRE: It was marked for ID. I'm not
7 sure -- do you need to mark it again?

8 THE COURT REPORTER: No.

9 MR. McGUIRE: Okay.

10 THE COURT: But 6 has been -- you gave her a new
11 one, No. 7?

12 MR. McGUIRE: No, sir.

13 THE COURT: 6 has been admitted without
14 objection by Mr. Graham.

15 MR. McGUIRE: Okay. Then we're good.

16 Mr. Hinton, that's all I've got for you.

17 Thank you, sir.

18 THE WITNESS: Yes, sir.

19 MR. GRAHAM: No other questions, Your Honor.
20 I'd ask that he be excused.

21 MR. McGUIRE: Yes, sir. No objection.

22 THE COURT: Very well. Thank you, Mr. Hinton.

23 THE WITNESS: Thank you.

24 MR. HUBBARD: The State calls Pastor Joe Grice.

25 JOE GRICE, after being duly sworn, testified as

1 follows:

2 THE CLERK: Have a seat, please, sir.

3 Once you're seated, please speak up. State your
4 full name, spelling your last for the record, please.

5 THE WITNESS: Joe Grice, G-R-I-C-E.

6 DIRECT EXAMINATION

7 BY MR. HUBBARD:

8 Q Mr. Grice, are you a pastor of a church right now?

9 A Yes, I am.

10 Q And where are you a pastor?

11 A Dillon Church of God. Dillon, South Carolina.

12 Q Church of God?

13 A Yes, sir.

14 Q Back in 2006, were you a pastor?

15 A Yes, sir.

16 Q How long have you been a pastor?

17 A Seventeen years.

18 Q And back in 2006, where were you a pastor?

19 A City of Hope, West Columbia.

20 Q City of Hope?

21 A Yes, sir.

22 Q Where is that located in West Columbia, if you
23 remember? Is that on D Avenue?

24 A D Avenue. I think it's 1401.

25 Q About how many members did you-all have back at that

1 time?

2 A Between 200, 300.

3 Q As pastor of City of Hope, did you have an occasion
4 to meet a Portia Washington?

5 A Oh, yes, sir.

6 Q Did you have an occasion to meet her granddaughter
7 Cassandra L. [REDACTED]?

8 A Yes, sir.

9 Q How would you describe their attendance; were they
10 sporadic or regular attendees?

11 A Regular.

12 Q Do you remember Portia Washington on those Sunday
13 mornings?

14 A Oh, yes, sir.

15 Q Do you remember where she sat?

16 A About halfway back on the right side.

17 Q Now, the children, do they usually sit with the
18 parents or did y'all have children kind of together?

19 A We have children's church. They would be in the back
20 in children's church.

21 Q Was Cassandra L. [REDACTED] involved in children's
22 church?

23 A Yes, sir.

24 Q Was she involved with the other children?

25 A Yes, sir.

1 Q Now, Pastor, does the Church of God, or at least back
2 then, I don't know if they still do, did they have a youth
3 camp program?

4 A Yes, sir, we do.

5 Q Was it called Youth Camper?

6 A Youth camp. I'm not sure what the thing was that
7 year. It's just Church of God youth camp.

8 Q I want to show you something that's been marked as
9 State's Exhibit 30.

10 Who's -- do you see a check?

11 A Yes, sir.

12 Q Whose check is that?

13 A Portia Washington.

14 Q Portia Washington?

15 A Uh-huh.

16 Q And who is it made out to?

17 A Youth camp.

18 Q And who did it go to pay to the order of?

19 A Church of God state office.

20 Q Okay. And does it say what campus?

21 A PeeDee.

22 Q PeeDee campus?

23 A Uh-huh.

24 Q And that was a \$75 check?

25 A Yes, sir.

1 Q And the date on that is?

2 A Is 04-30-06.

3 Q Okay. The PeeDee campus, do you remember when that
4 program started that summer?

5 A The Fourth of July week.

6 Q Fourth of July week?

7 A Uh-huh.

8 Q Were you and anyone in your family involved in that
9 PeeDee camp?

10 A Yes, sir. I was the head of the camp that year.

11 Q Your understanding was Cassandra L. [REDACTED] supposed
12 to be attending that camp?

13 A Yes, sir.

14 Q Did she show up?

15 A No, sir.

16 Q At what point did you discover that she was missing?

17 A I believe it was the first day on Monday, if we
18 started -- some weeks we start on Monday, some weeks we
19 start on Tuesday. It was the first day, late in the
20 afternoon, when she didn't show up. We have to contact
21 the parents to find out where they're at, and we didn't
22 have anyone to contact.

23 Q Is that when you found out that she and
24 Ms. Washington --

25 A Yes.

1 Q -- were missing?

2 A Correct.

3 Q What, if anything, did you all do at that camp at
4 that time?

5 A We just gathered the campers together and all the
6 staff and had prayer.

7 Q Pastor Grice, since that time in July, have you seen
8 or heard from Portia Washington?

9 A No, sir.

10 Q Have you seen or heard from Cassandra L. [REDACTED]

11 A No, sir.

12 Q And Angelica not only showed up to camp -- not showed
13 up to camp, but they didn't show up to church anymore?

14 A No, sir. Never seen them again.

15 Q Never heard from them?

16 A No, sir.

17 MR. HUBBARD: Please answer any questions the
18 defense has.

19 THE WITNESS: Yes, sir.

20 MR. STITELY: We have no questions for the
21 witness.

22 THE COURT: You may step down.

23 MR. HUBBARD: I ask that this witness be
24 excused, Your Honor.

25 THE COURT: This would be an excellent time for

1 a break.

2 All right. We're going to take a few minutes
3 break. This is my normal break time in the morning.

4 MR. HUBBARD: Your Honor, before you do, may I
5 do one thing, the strip?

6 THE COURT: You may.

7 BY MR. HUBBARD:

8 Q Pastor Grice, if you'd stand near the court reporter
9 so she hears.

10 Would it be accurate to say July 4th of '06,
11 Angelica did not show up to attend Church of God camp?

12 A Yes.

13 MR. HUBBARD: Okay. Thank you.

14 THE COURT: Very well. That's allowed without
15 objection.

16 All right. We'll stand at ease for a few
17 minutes.

18 (A break was taken.)

19 THE COURT: Call your witness.

20 MR. GRAHAM: The State calls Matt Edwards to the
21 stand.

22 MATT EDWARDS, after being duly sworn, testified
23 as follows:

24 THE CLERK: Have a seat, please.

25 Once you're seated, speak loud and clear. State

1 your full name, spelling your last.

2 THE WITNESS: Matt Edwards, E-D-W-A-R-D-S.

3 DIRECT EXAMINATION

4 BY MR. GRAHAM:

5 Q Where are you employed?

6 A The West Columbia Police Department.

7 Q And what do you do there?

8 A I'm a major over operations. At the time of this
9 case, I was a lieutenant over investigations.

10 Q Do you remember making a trip out to Washington to
11 escort Mr. Lynch back and to take possession of items that
12 had been taken from him?

13 A Yes, sir.

14 Q Do you remember when that was?

15 A Yes, sir. That was on -- the last day when I took
16 possession of him and his bags was August the 3rd of 2006.

17 Q Okay. And what specifically did you take possession
18 of as far as the personal effects that he had, items of
19 personal effects?

20 A I took possession of two of his black bags, two
21 travel-type bags, and the clothing that he had in his
22 possession at the time of his arrest at the border.

23 Q Was there also a folding gold knife as well?

24 A Yes, there was.

25 Q Okay. What time did you take possession of those?

1 A That was at 3:19 in the afternoon.

2 Q On what day?

3 A That was on August the 3rd, 2006.

4 Q And what was the address of where that -- where those
5 items were obtained from?

6 A That was 311 Grand Avenue in Bellingham, Washington,
7 at the Whatcom County Sheriff's Department.

8 Q That was the Whatcom County Sheriff's Department?

9 A Yes, sir.

10 Q Did you get it directly from their evidence room?

11 A I did. Well, from the jailer who had possession of
12 them, yes.

13 Q And that was one of the evidence custodians?

14 A Yes.

15 Q And what was the name of that individual that gave
16 you all these items?

17 A Lanette Morris-Reed.

18 Q Those items that you took that we just talked about,
19 once you took hold of them, you had to get on a plane and
20 you had to come back; is that correct?

21 A That's right.

22 Q Did those items ever leave your custody?

23 A No, they did not.

24 Q Did -- when you brought them back to West Columbia,
25 were they in the same condition as when you got them from

1 the Whatcom County Sheriff's office?

2 A Yes, they were.

3 Q Okay. Let me show you some items and let's see if
4 you can identify them.

5 This is State's 19. There's also a sticker from
6 the Whatcom Sheriff's Department. Can you match that up
7 with your records? Do you recognize the bag?

8 A Yes.

9 Q Okay. Can you match that up with your records and
10 then tell me which one that is on your sheet?

11 A Yeah. On the evidence sheet, that would item B, and
12 that is the black travel bag that's labeled "black
13 travel -- black bag with personal items."

14 Q Now, did you go inside the bag?

15 A Just before we got on the plane, I opened the bag to
16 make sure there were no weapons or anything that we
17 couldn't take on a plane, but I did not go through and
18 categorize everything.

19 Q Okay.

20 A Just a quick look.

21 Q You didn't take anything out of it?

22 A No.

23 Q Didn't put anything in it?

24 A No.

25 Q Okay. Let me show you State's 20. It also has a

1 sticker from the Whatcom County Sheriff's Department. Do
2 you recognize this bag?

3 A Yes.

4 Q Okay. Tell me about this bag.

5 A This is listed as item A on my evidence log. Again,
6 it's listed as "black bag with personal items, two sets of
7 keys."

8 Q Did you take anything out of that bag or put anything
9 into it?

10 A No. I'm sorry.

11 Q Did you take anything out of that bag or put anything
12 into it?

13 A No, I did not.

14 Q Okay. So it was in the same -- when you let go of it
15 and turned it into the West Columbia evidence locker, it
16 was the same as you had gotten it?

17 A Yes, sir.

18 Q Let me show you some other items.

19 Let me show you a brown paper bag and ask if you
20 recognize that and its contents.

21 A Can I pull it out?

22 Q Uh-huh.

23 A Can I open this all the way?

24 THE COURT: Detective, your voice trails away
25 from me sometimes.

1 THE WITNESS: I'm sorry.

2 THE COURT: You trail away with your voice. I
3 think the court reporter can hear you, but I'm having
4 difficulty.

5 THE WITNESS: Yes, sir. I'll speak up, Your
6 Honor.

7 THE COURT: All right.

8 THE WITNESS: Yes, sir, that's the gold knife
9 that he had in his possession at the time.

10 BY MR. GRAHAM:

11 Q Now, it's not in the same condition; it's been taken
12 apart since you took it in your possession?

13 A Right.

14 Q The bag on the outside, does this say West Columbia?

15 A That's a West Columbia evidence bag that we use to
16 log property.

17 Q There's some writing on the top part, handwriting in
18 black ink. Do you recognize that?

19 A Yes, I do.

20 Q And who does it reflect as turning that item into
21 the --

22 A Recovered by Matt Edwards.

23 MR. GRAHAM: Okay. Your Honor, the State would
24 offer that knife and the bag into evidence at this time.

25 MR. STITELY: Judge, we're going to still object

1 to all of these items being taken as fruit of an unlawful
2 search and seizure.

3 THE COURT: All right. Your objection is noted.
4 But subject to your objection, they're admitted.

5 MR. STITELY: Likewise, we're going to have an
6 objection to the chain of custody on the knife. He just
7 said that there was someone named Lanette Morris-Reed who
8 gave it to him, and unless they're going to bring her in
9 to say where it came from, we're going to object to the
10 chain of custody.

11 MR. GRAHAM: If I can, Your Honor, address that.

12 THE COURT: I'll let you address it.

13 MR. GRAHAM: He's identified who he received it
14 from, and I believe earlier when Courtney Polinder was up,
15 he identified who had touched all of these items at the
16 Whatcom County Sheriff's Department.

17 It's a non-fungible item. It's a knife. It's
18 been taken apart since he received it, but he recognizes
19 it as the knife that he took into his possession.

20 I think that we have established a chain of
21 custody as far as the law in South Carolina requires, and
22 any issue they would have on the chain would go to the --
23 not the admissibility, I guess, but the credibility of it.
24 But it should be admissible, Your Honor....

25 MR. STITELY: Your Honor, Deputy Polinder said

1 he never opened the bags nor went through them nor had any
2 idea what was in them. Unless they're going to bring the
3 person who can tell us exactly when that knife came out of
4 the bag and was handed to Mr. Edwards, we're still going
5 to maintain our objection to the chain of custody.

6 Polinder's testimony was that he didn't open the
7 bags, didn't go through them, didn't know what was in
8 them.

9 MR. GRAHAM: Your Honor, Courtney Polinder
10 testified that he took four things into evidence. They're
11 the same four things that Major Edwards was testifying to.
12 He put in one black bag, two black bags, this knife and he
13 also put a -- his clothes that the defendant was wearing
14 when he was taken into custody. And he identified the
15 chain of custody, I believe, for all those items.

16 THE COURT: I don't remember the knife. I
17 remember the bags and the clothes, but the knife is new
18 for me. I don't remember that being identified as
19 something that Deputy Polinder -- he was the deputy from
20 Whatcom County that was --

21 MR. GRAHAM: Who took him into custody --

22 THE COURT: Took him into custody.

23 MR. GRAHAM: -- from the border, yes, sir.

24 THE COURT: I remember him saying, I didn't go
25 through the bags, two bags, his clothes, which were

1 retrieved once he got him to the jail and he's put in the
2 utility uniform that the normal -- they put him in out
3 there, and he combined the clothes for purposes of doing
4 some trace evidence examination potentially.

5 MR. GRAHAM: Your Honor, if we can do that at
6 this time, maybe we can mark it for ID, and then during
7 the lunch break or some other time, the court reporter can
8 go back and review his testimony and we'll see where that
9 leads us.

10 THE COURT: We'll mark the knife for -- the
11 knife, the packaging, and the evidence bag will be marked
12 all together as one exhibit for identification purposes.

13 But I believe as far as the two black bags and
14 the clothes, which we've not --

15 MR. GRAHAM: Correct.

16 THE COURT: -- seen the clothes.

17 But the illegal search, I've ruled on that, but
18 the chain of custody was not ruled on.

19 MR. STITELY: Yes, sir. And, Judge, maybe I can
20 help the Court clarify what the -- and the problem we're
21 going to run into is the bags were full of items. When we
22 went to inspect the items in West Columbia, they're all
23 now taken out of the bag and tagged differently. So we're
24 going to have a real problem with the chain as to who took
25 these items out of the bag, who separated them, put them

1 in individual evidence bags.

2 We can't tell how they were in those bags, where
3 they were, what condition they were because there's about
4 20 items that are marked at West Columbia; keys, rings,
5 phones, cameras, videotapes, watch, CDs that are no longer
6 in the bags, which must have come from the bags, so we
7 would assume, just by looking at what West Columbia wrote
8 on the evidence bag, that's going to be our problem. And
9 I don't know what they going to be bringing in. But stuff
10 came out of the bags at some point, and we just want to
11 know who was playing with what is in the bags.

12 MR. GRAHAM: Your Honor, if I may?

13 THE COURT: You may.

14 MR. GRAHAM: We're not there yet. The next
15 witness will be the one who will talk about going into the
16 bags. I mean, this witness has testified that he took
17 those two bags, he made a cursory look, I believe, for
18 weapons, or maybe not, and then he brought them down,
19 didn't add anything to it, didn't take anything away. So
20 he's not the witness to go into their concern. But I do
21 understand their concerns, but this isn't the right
22 witness.

23 THE COURT: All right. Correct me I'm wrong,
24 the bags have been properly identified as 19 and 20
25 consistently, but they were full of personal items,

1 toiletries. They've been described in different ways, but
2 mostly a description, general description with nothing
3 specific, other than there was some documents which were
4 faxed back. Those have been marked separately.

5 The keys have been discussed. And then the
6 clothes that he had on are separate.

7 I guess the issue is going to be a two-part
8 issue. The bags seem to be identified and there seems to
9 be a chain outlined thus far, but the contents have not.
10 Can we distinguish those? I mean --

11 MR. GRAHAM: Yes. I think that's exactly where
12 we're at, Your Honor.

13 THE COURT: All right.

14 MR. GRAHAM: This witness is only here for chain
15 of custody on these items now, not introduction of
16 anything.

17 THE COURT: All right. So I'm not going to rule
18 on their admissibility. I understand your objection and
19 challenging at this point... Y'all will have to keep me on
20 top of that issue because the bags aren't in yet. The
21 documents, I believe, I've already ruled.

22 MR. STITELY: Yeah. That was a separate
23 objection.

24 THE COURT: Separate objection. The documents
25 that were faxed, those are done. They're in evidence.

1 MR. GRAHAM: It's my understanding that the
2 documents, the two hotel receipts, the Greyhound bus
3 ticket, I think there was a North Carolina title or birth
4 certificate for Mr. Lynch, and I believe the car keys, the
5 one set of car keys that's been identified, those are all
6 in evidence.

7 THE COURT: Okay. Fair enough. So these aren't
8 in evidence, but we're still establishing the chain. And
9 I'm not excluding them; they're just not quite yet
10 admitted because of the issue the Court has of
11 distinguishing the bag from the contents.

12 MR. GRAHAM: Correct.

13 THE COURT: And so keep moving. As long as
14 we're on the same page, we know where we are.

15 BY MR. GRAHAM:

16 Q Major Edwards, in addition to the two bags which
17 we've discussed and the folding knife that we discussed,
18 did you also take some clothes into custody?

19 A Yes, I did.

20 Q Let me show you another item and see if you recognize
21 it.

22 Do you recognize that bag and its contents?

23 THE COURT: I want to make certain my notes are
24 consistent.

25 The knife, the paper wrapping -- the dismantled

1 knife, the paper wrapping, and the paper bag with the West
2 Columbia writing on it has been marked for identification
3 purposes as No. 54; is that right?

4 THE COURT REPORTER: It has not been marked yet.

5 THE COURT: All right. Let's get that done, and
6 then we'll move to this.

7 (WHEREUPON, State's Exhibit No. 54 was marked
8 for identification only.)

9 THE COURT: All right. You may continue.

10 BY MR. GRAHAM:

11 Q Major, do you recognize that bag and its contents?

12 A Yes. I haven't look at the contents yet, but I
13 recognize the bag.

14 Yes, it's the pants that Mr. Lynch had on when
15 he was arrested.

16 Q Do you recognize those as being the pants you took
17 into custody?

18 A Yes.

19 Q And on the evidence sheet --

20 A That would have been part of item D.

21 Q That's D as in dog?

22 A Yes, sir, D, delta.

23 MR. GRAHAM: Your Honor, the State would offer
24 those pants into evidence. He's identified them and he
25 took custody of them. They are what they are.

1 MR. STITELY: Judge, just to the seizure/search
2 stuff, not the chain. I think this is the items that
3 Mr. Polinder said he recalled, secured from Mr. Edwards.

4 THE COURT: Your objection for the seizure is
5 noted. Under the Fourth Amendment issue you've already
6 raised and made a record of, that's been overruled. The
7 Court will find that the chain, Deputy Polinder received
8 them, turned them into the evidence custodian, the deputy,
9 and that chain appears complete and they'll be admitted as
10 State's 55.

11 MR. GRAHAM: Thank you, Your Honor.

12 THE COURT: And that will be everything, the bag
13 and the packing and the pants all as one exhibit.

14 MR. GRAHAM: Yes, sir.

15 (WHEREUPON, STATE'S Exhibit No. 55 was marked
16 for identification and received into evidence.)

17 BY MR. GRAHAM:

18 Q Major Edwards, let me show you another bag and ask if
19 you recognize the bag and also the contents of the bag.

20 A Yes, sir. That's the pullover shirt that he had on
21 at the time he was taken into custody.

22 Q Is that the same condition that it was when you took
23 it?

24 A Yes, sir, it appears to be.

25 MR. GRAHAM: Your Honor, the State would offer

1 that in evidence at this time.

2 THE WITNESS: I'm sorry?

3 MR. GRAHAM: I was offering it into evidence.

4 MR. STITELY: Same objection.

5 THE COURT: All right. Subject to the same
6 objection for the seizure issue, search and seizure issues
7 which the Court's ruled on, this will be admitted as
8 State's 56, the shirt, the packaging, all in one item
9 admitted.

10 (WHEREUPON, STATE'S Exhibit No. 56 was marked
11 for identification and received into evidence.)

12 BY MR. GRAHAM:

13 Q Let me show you another item and see if you recognize
14 it.

15 A Yes, I do.

16 Q And those are the shoes that you took into custody
17 from the Whatcom Sheriff's Department that Mr. Lynch was
18 wearing at the time of his arrest?

19 A They are.

20 Q They're in the same condition?

21 A Same condition. And I do recognize the bag as well.

22 MR. GRAHAM: Your Honor, the State would offer
23 the shoes and the bag into evidence at this time.

24 MR. STITELY: Same objection.

25 THE WITNESS: Sorry, Your Honor.

1 THE COURT: That's all right.

2 State's 57, the shoes, admitted subject to the
3 same objection by the defense on the seizure issues,
4 admitted subject to the objection. They'll be marked as
5 57.

6 (WHEREUPON, STATE'S Exhibit No. 57 was marked
7 for identification and received into evidence.)

8 BY MR. GRAHAM:

9 Q All right. Major, those items that we've been
10 discussing, the two black bags, the knife, and then the
11 pair of shoes, the pants, and the shirt that were taken
12 from Mr. Lynch, those are all the items that you received
13 from the Whatcom County Sheriff's Department related to
14 this case?

15 A Yes, sir.

16 Q You brought them back to South Carolina, and what did
17 you do with them?

18 A I kept them in my possession the whole time we
19 traveled back. The airplane -- we were picked up in
20 Charlotte, North Carolina, and brought them straight back
21 to the West Columbia Police Department where I logged them
22 into evidence, a hard drop box.

23 Q I was going to ask you, you said a drop box, a hard
24 drop box. What is that?

25 A It's a secure box that you drop -- we drop evidence

1 into that goes straight into the evidence room. It's only
2 accessible by the evidence custodian. Just a very secure
3 method of placing evidence into the evidence room.

4 Q Okay. So they went from your -- physically from your
5 hands with nobody else touching them into --

6 A Into the drop box, yes, sir.

7 Q Which is a secured area that only the custodian has
8 access to at the West Columbia Police Department?

9 A Yes, sir.

10 MR. GRAHAM: Thank you, Major.

11 Please answer any questions the defense has.

12 THE WITNESS: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. STITELY:

15 Q Good morning, Major Davis -- or Edwards.

16 When did it become Major?

17 A About two weeks ago.

18 Q Congratulations.

19 A Thank you.

20 Q I have some other questions, I guess, about your role
21 in this investigation.

22 You weren't the lead investigator in this case,
23 correct?

24 A No, sir.

25 Q Okay. That was Ms. April Bayne?

1 A That's correct.

2 Q Okay. In her notes, she frequently refers to people
3 as being A1 or A2. Have you looked at her notes? Do you
4 know which one of those people you are?

5 A I would have to see what you're talking about. I'm
6 not -- not specifically sure what you're talking about.

7 Q All right. Actually, I just have a couple other
8 questions.

9 Now, in this case, whenever there was a, I
10 guess, a tip or a follow-up or a hint, you create in West
11 Columbia something called a lead intake sheet. Is that
12 fair?

13 A Yes, sir.

14 Q Okay. And they're lettered and numbered, like A1, B
15 something?

16 A Right.

17 Q Okay. Where do those numbers come from? In other
18 words, how are they generated?

19 A The B1 or A1, the A would be the investigator that
20 was taking in the lead, I believe, and I'm, you know,
21 speaking for the way she categorized her file. But the
22 way I recognize it is as the A would be -- if you're
23 talking about on the lead sheets, the specific
24 investigator, and the 1 would be, you know, the first lead
25 that that investigator followed up on --

1 Q All right.

2 A -- or the second or the third.

3 Q For example, in the first wave of discovery we got,
4 there was a B14, which appeared to be an interview you
5 conducted with Mr. Grazier or Ms. Geiger.

6 A Okay.

7 Q There's also a B14 that we just got last month which
8 is a follow-up on a Daddy-O's Ice Cream Shop.

9 Is there any reason why they would have the same
10 number or the same letter/number combo?

11 A I'm not sure. Can I look at them?

12 Q Sure. You have the other B14? I only have the one.

13 I will hand you up the one copy of B14.

14 A Thank you.

15 Q And while they're grabbing the other one for me, I
16 can kind of show you what I'm asking about with the
17 lettering.

18 If it says, "IO," who I guess would be the
19 officer who's working the case, spoke with A2, advised
20 cleared, is there any way to know who they are or we'd
21 have to ask Ms. Bayne?

22 A Yeah, I think you need to ask her.

23 Q Okay. The other one, it also just says B14. I just
24 was wondering ~~is it~~ just depending on who was in charge of
25 the investigation at the time or is it just the way they

1 got numbered?

2 A Those are both my notes. I would imagine it was
3 clerical error on my part. B14, B14.

4 Q No problem. We were just wondering if there was any
5 particular significance about how they're lettered and
6 numbered.

7 A No. It was just the order in which they occurred,
8 you know, in sequence.

9 Q Okay. Thank you.

10 I do want to ask you specifically about the
11 contact you had with B14, and I'm going to hand it back to
12 you.

13 A Thank you.

14 Q This was a lead intake dealing with a Daddy-O's Ice
15 Cream Shop. It appears -- correct me if I'm wrong -- but
16 you may have responded to either a call or something on
17 July 10th of 2006; is that correct?

18 A Right. A called-in tip.

19 Q Okay.

20 A On July 10th of '06, yes, sir.

21 Q All right. And that was on or about July 1st of
22 2006, at 10 a.m., a Ms. Williams called and said that she
23 had spotted --

24 MR. GRAHAM: Objection, Your Honor. Hearsay.

25 MR. STITELY: I'll rephrase it.

1 THE COURT: Rephrase the question.

2 BY MR. STITELY:

3 Q Why did you respond out to Daddy-O's in the beginning
4 of July of 2006? What call got you out there?

5 A We were responding to --

6 THE COURT: Hang on. I'll allow that question.
7 The objection is sustained. So your rephrased question's
8 allowed.

9 BY MR. STITELY:

10 Q Okay. What caused you-all to go out there on
11 July 10th of 2006?

12 A We were responding to a called-in tip.

13 Q Okay. And without saying exactly what the tip was,
14 but it was a sighting tip, correct?

15 A Yes, sir.

16 Q Okay. Did y'all do an interview of the individual at
17 that time?

18 A We did not at that time.

19 Q Okay. And that was back in 2006, correct?

20 A Yes, sir.

21 Q Okay. However, you actually did follow up with that
22 individual in February of this year, correct?

23 A Did I follow up with them? I'm not sure what you're
24 referring to.

25 Q I will show you this.

1 A All right.

2 Q We'll see if you recognize this.

3 I'm going to show you some notes real quick to
4 see if you can identify them.

5 A Okay. I mean, they're not my notes.

6 Q Did you have anything to do with this followup on
7 12-29 by a West Columbia officer to Daddy-O's?

8 A No, I did not.

9 Q Okay. And your part of the investigation, though,
10 you never did a follow-up at Daddy-O's?

11 A The original tip was followed up on, but the
12 secondary followup, no, sir.

13 Q And just to clarify because I don't think I said,
14 Daddy-O's is an ice cream shop in the West Columbia area,
15 correct?

16 A In Pine Ridge, yes, sir.

17 Q Okay. I don't think I got that on the record, so I
18 wanted to make sure everyone understood what it was.

19 One other thing. You had a lead on a B15. I'll
20 show you that real quick.

21 A Yes, sir. That's a copy of the back of B14.

22 Q This is lead sheet B15. It was to a Dem's Jewelry
23 Store.

24 A Right.

25 Q Why did you all go out to Dem's Jewelry Store?

1 A Dem's Jewelry Store is located very close to where
2 Grazier and Geiger live.

3 Q Was there any reason that y'all were at the jewelry
4 store? I mean, you said that's --

5 A To pick up a videotape, yes, sir.

6 Q Okay. Were you ever able to watch the contents of
7 that videotape?

8 A I don't recall seeing the contents of that videotape,
9 no.

10 Q Okay. And the reason you-all went was just you were
11 pulling surveillance cameras anywhere close?

12 A Yes, sir.

13 Q Or trying to?

14 A Yes, sir.

15 MR. STITELY: One second, Your Honor.

16 (Pause.)

17 BY MR. STITELY:

18 Q And just to make sure -- I think I asked you, but
19 this B14, the first intake to Daddy-O's, that was your
20 notes, your handwritten notes?

21 A Let me look at it one more time.

22 Q I apologize.

23 A That's all right.

24 Yes, that is my -- that's my handwriting, my
25 notes.

1 MR. STITELY: Your Honor, at this time, we would
2 offer this sheet into evidence, Defense Exhibit, I think
3 we're on 6 or 7. It's the B14 sheet.

4 (WHEREUPON, Defendant's Exhibit No. 7 was marked
5 for identification only.)

6 MR. GRAHAM: Your Honor, this is -- we would
7 object. This is just an attempt to get the hearsay in
8 that they couldn't elicit through testimony.

9 MR. STITELY: Your Honor, we're not offering it
10 for the hearsay of the fact that what's stated. It's
11 simply offered to impeach the investigation, the fact that
12 the tip was given on 7-10 of 2006, and no followup was
13 done until 2-29 of 2012.

14 It's not specifically for the hearsay contained
15 in it. It's simply to show when the investigation was --
16 when the tips came in, and ultimately we'll later show
17 through the relevant witness when they actually followed
18 up on the lead.

19 MR. GRAHAM: Your Honor, they haven't -- he got
20 all that testimony out through cross. I don't think the
21 document's relevant.

22 When -- when a tip came in and when he -- I
23 mean, what's on that piece of paper doesn't matter; he got
24 the testimony out that he needed. Everything else is
25 hearsay, and it's not relevant.

1 THE COURT: I'm going to allow it subject to
2 your objection. It will be Defense 7.

3 (WHEREUPON, DEFENDANT'S Exhibit No. 7 was
4 admitted into evidence.)

5 MR. STITELY: Thank you, Major. That's all I
6 have.

7 THE WITNESS: Do you want this copy back of B15?

8 MR. STITELY: Yes, sir.

9 MR. GRAHAM: No other questions at this time,
10 Your Honor.

11 THE COURT: All right. You may step down.

12 THE WITNESS: Thank you, sir.

13 (Discussion held off the record.)

14 MR. GRAHAM: The State calls Chuck Bramlett to
15 the stand.

16 CHARLES D. BRAMLETT, JR., after being duly
17 sworn, testified as follows:

18 THE CLERK: Have a seat, please.

19 Once you're seated, speak up loud and clear.
20 State your full name, spelling your last for the record,
21 please.

22 THE WITNESS: Charles D. Bramlett, Junior,
23 B-R-A-M-L-E-T-T.

24 DIRECT EXAMINATION

25 BY MR. GRAHAM:

1 Q Investigator Bramlett, where are you employed, sir?

2 A West Columbia Police Department.

3 Q And what do you do there?

4 A I'm evidence custodian.

5 Q Major Edwards, who just testified, was talking about
6 some items that he had brought back from Washington
7 related to this case. You were present in the courtroom
8 when that testimony was given?

9 A Yes, I was.

10 Q He referred to four sets of items. You're familiar
11 with all those items?

12 A Yes, I am.

13 Q Did you receive those items into your possession, and
14 would you tell me about how and when that happened?

15 A On August the 4th of '06, Major Edwards had dropped
16 them -- logged them into evidence and dropped them in the
17 drop box. They stayed in there until 8-22-06, where I
18 took them in control and logged them in and kept and
19 maintained the care and custody of them.

20 Q Let's talk about these individually now.

21 What's been marked as State's Exhibit Number 20,
22 which is a black leather bag, do you recognize this bag?

23 A Yes, sir.

24 Q Now, which item is this as far as you taking it into
25 custody?

1 A It says item 1; that should be A.

2 Q And you have that as a black --

3 A It's a black bag with personal items.

4 Q And you took this out of the evidence drop box on
5 what date?

6 A Well, the drop box slips -- when they -- when they
7 drop it, it drops straight into my evidence room. So I
8 took it, I logged it in on August the 22nd of '06.

9 Q And later on, there was a search warrant performed on
10 this bag and the other bag, but prior to that date and
11 time, did you go into these bags?

12 A No, I did not.

13 Q Okay. Were they in the same condition that you got
14 them out of the lockbox that Major Edwards had put them
15 into when you took them in actual physical custody and
16 logged it into the West Columbia Police Department
17 evidence room?

18 A Yes.

19 Q Let me show you State's 19, which is a fabric travel
20 bag. Do you recognize this one?

21 A Yes, sir, that will be the second bag.

22 Q And that is labeled as B on your sheet?

23 A Yes.

24 Q And, again, this was with the other bag when you
25 retrieved it out of that locked evidence box at the West

1 Columbia Police Department?

2 A Yes, it was.

3 Q Did you -- other than a search warrant later, did you
4 go into it at that time?

5 A No, I did not.

6 Q In the same condition as when you got it out of the
7 lockbox?

8 A Yes.

9 Q Let me show you State's 54 for identification. This
10 is a gold folding knife.

11 Do you recognize that?

12 A I recognize the bag as being one of our evidence bags
13 and this gold-colored folding knife from it.

14 Q Besides it being -- the knife itself being in a
15 different condition now, do you recognize that as being
16 the knife that you took custody of when you opened that
17 lockbox?

18 THE WITNESS: Bear with me, Judge. I'm putting
19 on some gloves.

20 THE COURT: I understand.

21 THE WITNESS: My hands are a little dry.

22 Yes, sir.

23 BY MR. GRAHAM:

24 Q I know that it's been taken apart now, but when you
25 received it, it was all together?

1 A It was all together.

2 Q Did you do anything yourself to change -- did you
3 take it apart?

4 A No, I did not.

5 Q Did you add anything to it, take anything away from
6 it?

7 A No, I did not.

8 Q It was in the same condition as when you got it out
9 of the lockbox along with the bags?

10 A Yes.

11 Q State's 55, 56, and 57 are, respectively, pants,
12 shirts, and shoes that were identified as taken from
13 Mr. Lynch. You actually passed those up to me when
14 Major Edwards was on the stand. Do you remember that?

15 A Yes, I did.

16 Q Those, again, were in the same lockbox with the knife
17 and the two bags?

18 A Yes, they were.

19 Q Did you do anything to alter or change the clothes,
20 the shirt or the shoes?

21 A No, I didn't.

22 Q Specifically, let's talk about the bags.

23 Were you present when a search warrant was
24 performed on those bags?

25 A Yes, I was.

1 Q Tell me about -- tell me about that.

2 A The bags stayed in my care until Investigator Bayne
3 came with a search warrant to get inside the bags.

4 Q So the bags were in your custody prior to the search
5 warrant. During the search warrant, did they leave your
6 possession?

7 A No, they did not. I stayed with the bags and all the
8 property as it was -- as the search warrant was conducted
9 on the bags.

10 Q And what, if anything, did you do to -- did you take
11 things -- were things taken out of the bags and not
12 returned at that time?

13 A Yes, they were. As Investigator Bayne did her search
14 warrant, she was taking the items out. I started logging
15 them into the evidence sheets. Since they had been
16 removed from the original bag, I wanted to show the chain
17 of custody of them since we took them out. And as they
18 came out, I entered them onto our evidence property
19 receipt.

20 Q Now, there was one search warrant that covered both
21 bags?

22 A Yes, sir.

23 Q When was that search warrant executed?

24 A The search warrant was executed on September the 25th
25 of '06.

1 Q Now, did you itemize what items were taken out?

2 A I did.

3 Q Okay. And did you bring those items with you into
4 court today?

5 A I did.

6 Q And where are they at?

7 A Everything is in that big box sitting in the corner.

8 Q So on that date and time, a search warrant was
9 executed on these two bags?

10 A Yes.

11 Q Okay. Let's talk about State's No. 19 first. That's
12 going to be the fabric American Tourister bag that you've
13 already recognized.

14 When you executed the search warrant, what, if
15 anything, did you find inside that bag?

16 A The item that was taken out at the time that's listed
17 is going to be a pair of night vision, black goggle
18 binoculars.

19 Q Do you have those up there with you?

20 A Yes.

21 Q Would you pull those out, please.

22 A (Witness complies.)

23 Q Do you recognize those as being the night vision
24 binoculars that you took out of the American Tourister bag
25 when the search warrant was executed?

1 A Yes.

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

4 MR. MCGUIRE: Your Honor, I would object. We
5 have -- we object to these items being offered into
6 evidence based on the fact that the search warrant is
7 actually unlawful. We would have to have a hearing on the
8 search warrant.

9 THE COURT: This is the search warrant in West
10 Columbia, not the search warrant out west?

11 MR. GRAHAM: Correct, Your Honor. The items --
12 those two bags had made it back to West Columbia and a
13 search warrant was -- excuse me -- was executed in West
14 Columbia to go into the bag. This is the first item we're
15 offering.

16 THE COURT: All right. Let's -- I guess we're
17 going into motion mode, outside of trial mode --

18 MR. MCGUIRE: Yes, sir.

19 THE COURT: -- and have a hearing on the
20 validity of the search warrant issued here in South
21 Carolina.

22 MR. MYERS: Yes, sir, in camera?

23 THE COURT: Yes, we're going in camera. We're
24 in motions mode. So we're in camera, not trial mode.

25 MR. MYERS: Do you have a certified copy of the

1 search/warrant?

2 THE WITNESS: I just have my copy of it. The
3 original would be somewhere else.

4 Your Honor, I do need to make one clarification.
5 When --

6 THE COURT: Hang on one second.

7 MR. MYERS: Your Honor, we hand up the affidavit
8 and stand on it and let them make their showing.

9 MR. GRAHAM: Your Honor, we'll mark this as a
10 Court's ID.

11 THE COURT: Yes, we will. It will be Court's ID
12 No. 32.

13 (WHEREUPON, The Court's Exhibit No. 32 was
14 marked for purposes of the record.)

15 THE COURT: Your witness.

16 MR. McGUIRE: Judge, we'd call -- actually, we'd
17 call a witness. We'd call April Bayne.

18 THE COURT: All right. For the purposes of this
19 in camera hearing, we'll call Detective Bayne.

20 You may stand down.

21 APRIL BAYNE, after being duly sworn, testified
22 as follows:

23 THE COURT: All right. Is she going to refer to
24 the search warrant? Because if not, I'd like a copy of it
25 while you-all are doing this.

1 THE CLERK: Once you're seated, state your full
2 name, spelling your last.

3 THE WITNESS: My full name is April Bayne, B, as
4 in bay, A-Y-N-E.

5 MR. MCGUIRE: Your Honor, for this limited
6 hearing, I'd ask that Officer Bramlett be sequestered.
7 His testimony overlaps.

8 MR. MYERS: What's the reason for that? This is
9 the affiant on the search warrant, on behalf of the search
10 warrant. What's the reason for it?

11 MR. MCGUIRE: You'll find out.

12 MR. MYERS: I want to know now. I don't care
13 about finding out. He's made a -- he's made some kind of
14 motion here. I don't know what he's talking about.

15 He's got to attack the search warrant, and this
16 is the affiant on the search warrant. He can't go into
17 anything else other than the validity of the search
18 warrant.

19 MR. MCGUIRE: I tell you what, Judge. What I
20 can do to put Mr. Myers at ease, I can just recall
21 Officer Bramlett and take care of him first.

22 THE COURT: All right. We'll do that first.

23 MR. MCGUIRE: Call Officer Bramlett.

24 THE COURT: Call Officer Bramlett.

25 Ms. Bayne, you may step down.

1 THE CLERK: Still under oath, Your Honor?

2 THE COURT: Yes. Both -- Mr. Bramlett is under
3 oath. Ms. Bayne has taken her oath but not been
4 questioned yet. So both of these witnesses, for purposes
5 of this hearing, are under oath.

6 All right, Detective. I'll remind you that
7 you're still under oath.

8 THE WITNESS: Yes, sir, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. MCGUIRE:

11 Q Is it Officer Bramlett?

12 A Investigator.

13 Q Investigator Bramlett, where are you so employed?

14 A I'm sorry, sir?

15 Q Currently, where are you employed?

16 A West Columbia Police Department.

17 Q Okay. In some of the notes we've received, officers
18 refer to apparently supervisors or other detectives or
19 other officers by sort of like a code or shorthand, A1,
20 A2. Are you familiar with that?

21 A No, sir, not at all.

22 Q Okay. What I want to do now is talk to you a little
23 bit about your evidence room and securing these black
24 bags.

25 When they --

1 MR. MYERS: This is not -- this is not for the
2 search warrant. Now, if he's attacking the search
3 warrant, he can't depose a witness in an in camera hearing
4 about something other -- collateral matter.

5 Now, if he's asking him about the search
6 warrant, the validity of the search warrant, I have no
7 objection. If it's not about the validity of the search
8 warrant, I do have an objection.

9 MR. McGUIRE: It goes directly to the search
10 warrant.

11 MR. MYERS: Could I ask how?

12 THE COURT: I'm going to allow it. Since we're
13 in camera, I'm going to allow him a little latitude.

14 MR. McGUIRE: Thank you.

15 THE COURT: So proceed, Mr. McGuire. But your
16 objection is noted.

17 MR. McGUIRE: Thank you, Your Honor. And this
18 won't take too long to hash out.

19 BY MR. McGUIRE:

20 Q When you first get custody of these bags, how do they
21 come to your possession?

22 A Evidence is dropped into my drop box. Basically, my
23 evidence room is a wall-to-ceiling concrete bunker. No
24 windows, a metal door. In the wall is a drop box like you
25 would have for a mailbox slot. You pull it open, you drop

1 the evidence down in it, it goes to a spring-loaded trap
2 and it goes into my evidence room.

3 Q And the purpose of that mechanism is to make sure
4 this is a one-way street; evidence can come in, but
5 evidence isn't going out, right?

6 A Correct.

7 Q And it's to keep it completely secure?

8 A Yes.

9 Q So that things aren't tampered with or rifled
10 through, that sort of thing?

11 A Correct.

12 Q Do y'all keep a log to determine who comes in to
13 examine evidence once it's been logged in?

14 A Nobody comes into my evidence room to examine
15 evidence.

16 Q Never?

17 A If they need to examine evidence, they let me know
18 what it is, I make arrangements, I pull it, and then I go
19 outside my evidence room either to our squad room or
20 upstairs to our training room, depending on what it is,
21 and then they look at it there.

22 Q Okay. And you'd have a record of that?

23 A I don't have a record of every time I pull evidence
24 out. As I transfer evidence from one person to another, I
25 have a record of that through my evidence form.

1 Q Okay. Well, let's say Detective Edwards just says,
2 "I want to come in and take a look at these bags." Can he
3 do that?

4 A I would say --

5 MR. MYERS: Continuing objection as this does
6 not go to the validity of the search warrant.

7 THE COURT: The objection's noted. I'm going to
8 allow the question.

9 THE WITNESS: I would tell him I'd pull them,
10 and I'll meet him outside in the squad room or training
11 room, whatever, whatever has to be done, then we would go
12 to a secure location to do such.

13 BY MR. MCGUIRE:

14 Q Okay. And with regard to these two bags, you don't
15 have any recollection of anybody requesting your
16 permission to go through them before the search warrant;
17 is that correct?

18 A That is correct. Nobody went through these bags
19 before the search warrant.

20 Q Okay. And nobody would be allowed to go into your
21 evidence room and look at them without you knowing it,
22 correct?

23 A Correct. They wouldn't come into my evidence room to
24 look at the bags.

25 MR. MCGUIRE: That's all I have for you, sir.

1 MR. MYERS: No questions.

2 THE COURT: Officer Bramlett, you may step down.

3 MR. MCGUIRE: We would call April Bayne.

4 THE COURT: Ms. Bayne, I'll remind you you're
5 still under oath.

6 THE WITNESS: Yes, sir.

7 APRIL BAYNE, having been previously sworn,
8 testified as follows:

9 MR. MCGUIRE: And, Your Honor, I'm going to have
10 this marked as defense for ID only right now.

11 THE COURT: What is it?

12 MR. MCGUIRE: It's some handwritten notes of
13 April Bayne.

14 THE COURT: Very well. So that's ID'd as
15 Defense 8.

16 (WHEREUPON, Defendant's Exhibit No. 8 was marked
17 for identification only.)

18 DIRECT EXAMINATION

19 BY MR. MCGUIRE:

20 Q Ms. Bayne, I'm going to hand you what has been marked
21 as Defense No. 8 for ID purposes only. Do you recognize
22 that?

23 A Yes, sir.

24 Q Are those some of your handwritten notes?

25 A They're my handwriting, let me confirm.

1 Yes, sir.

2 Q Regarding the entry, August 24, '06, at what appears
3 to be 1318?

4 A Yes, sir.

5 Q Am I reading that correct?

6 A Yes, sir. My handwriting is fast and furious.

7 Q Sure.

8 You indicate that you spoke with A2; is that
9 correct?

10 A Yes, sir.

11 Q Who is A2?

12 A I believe at that time, that was Captain Tony Owens
13 over investigations. They changed through the years as
14 they're assigned to rank, but I believe at the time that
15 was Captain Owens.

16 Q And you received an instruction from Captain Owens
17 around this time, correct, to get a search warrant?

18 A I can't remember who instructed me to get a search
19 warrant, but it was certainly decided that we needed to
20 get one on Kenneth Lynch's travel bags.

21 Q Okay. And he advised you that he had glanced through
22 Lynch's bags, saw some items of interest, and he advised
23 he needs a search warrant to go in and look?

24 A My notes don't -- my notes -- let me read my notes
25 verbatim because it doesn't say anything to the effect of

1 what Captain Owens stated.

2 It says, "Investigating officer spoke with A2,
3 advised glanced through Lynch's bags, saw some items,
4 interest. He advised, need a search warrant to go in and
5 look through it all."

6 Q So did I misread this? It's actually you saying
7 that?

8 A I don't know who had glanced through the bags. What
9 I have is that A2, the captain, had advised me that there
10 are items of interest in there and we need to search it.

11 Now, whoever had glanced through it, I don't
12 have it as a direct quote from him, so I can't tell you.

13 Q Okay. Let me ask you this: There's some information
14 about timing the search warrant. It says, "Time it with."
15 Can you finish that sentence?

16 A Look through it all. That's not -- the word's not
17 "time," it's "through." It's my handwriting. I
18 apologize.

19 Q You have caused me some frustration.

20 A I'm sorry.

21 Q Okay. So it actually says, "IO --

22 A Yes, sir.

23 Q "Investigating officer --- spoke with A2, advised
24 glanced through Lynch's bags, saw some items, interest.
25 He advised need search warrant to go in and look through

1 it" --

2 A "All," correct.

3 Q "All." Got you.

4 And as you sit there, you don't know who glanced
5 through the bags or when?

6 A I don't know. At the time, Captain Owens was meeting
7 with all of the investigators on this case, he kind of
8 oversaw all of it, so I don't know where he got that
9 information from.

10 Q Okay.

11 A That's not a direct quote.

12 Q Were you informed as to what items were of interest?

13 A No. We -- I was just told, You need to get a search
14 warrant. We need to search anything and everything in
15 that bag in its entirety.

16 MR. MCGUIRE: Okay. Judge, I'm going to ask the
17 court reporter to mark these three documents as just one
18 single exhibit, Defense No. --

19 THE COURT: 9.

20 MR. MCGUIRE: 9. Thank you.

21 (WHEREUPON, Defendant's Exhibit No. 9 was marked
22 for identification only.)

23 MR. MCGUIRE: Judge, I'd move No. 8 into
24 evidence.

25 THE COURT: For purposes of this hearing?

1 MR. MCGUIRE: Yes, sir.

2 THE COURT: Any objection on that?

3 MR. MYERS: I don't know what it is.

4 MR. MCGUIRE: It's No. 8.

5 THE COURT: 8 was marked for identification. It
6 was Ms. Bayne's notes.

7 MR. MYERS: Okay. And that's it?

8 THE COURT: Singular page, I believe.

9 MR. MCGUIRE: Yes, sir.

10 THE COURT: All right. They're admitted for the
11 purposes of this hearing.

12 (WHEREUPON, Defendant's Exhibit No. 8 was
13 admitted into evidence.)

14 BY MR. MCGUIRE:

15 Q Ms. Bayne, I'm going to pass up what's been marked
16 No. 9 for ID purposes only at this time.

17 MR. MYERS: And No. 9 is what?

18 BY MR. MCGUIRE:

19 Q Detective Bayne, do you recognize --

20 MR. MYERS: No. 9 is what?

21 THE WITNESS: Can you give me a second? I'm
22 verifying this is exactly what I have in my file as well.

23 MR. MCGUIRE: Take your time.

24 MR. MYERS: No. 9 is what?

25 THE COURT: I'm uncertain, Solicitor. She's

1 looked at it and identified it. It's being marked for ID
2 purposes, but not identified any further past that.

3 (Pause.)

4 THE WITNESS: I've reviewed it.

5 BY MR. MCGUIRE:

6 Q And you've compared it with your electronic file
7 there?

8 A Yes, sir.

9 THE COURT: Can the Solicitor see it? He's been
10 asking --

11 MR. MYERS: I don't know what he's talking
12 about.

13 THE COURT: He's been asking to see it. She's
14 identified it, so he can see it.

15 (Pause.)

16 BY MR. MCGUIRE:

17 Q And, Ms. Bayne, to put Mr. Myers at ease --

18 MR. MYERS: I'm always at ease. I'm never
19 upset, Judge.

20 BY MR. MCGUIRE:

21 Q As part of your search warrant, your affidavit on the
22 search warrant regarding the bags?

23 A Yes, sir.

24 MR. MCGUIRE: Okay. As soon as Mr. Myers is
25 done, we'll ask you some questions.

1 MR. MCGUIRE: Yes, sir.

2 THE COURT: Any objection on that?

3 MR. MYERS: I don't know what it is.

4 MR. MCGUIRE: It's No. 8.

5 THE COURT: 8 was marked for identification. It
6 was Ms. Bayne's notes.

7 MR. MYERS: Okay. And that's it?

8 THE COURT: Singular page, I believe.

9 MR. MCGUIRE: Yes, sir.

10 THE COURT: All right. They're admitted for the
11 purposes of this hearing.

12 (WHEREUPON, Defendant's Exhibit No. 8 was
13 admitted into evidence.)

14 BY MR. MCGUIRE:

15 Q Ms. Bayne, I'm going to pass up what's been marked
16 No. 9 for ID purposes only at this time.

17 MR. MYERS: And No. 9 is what?

18 BY MR. MCGUIRE:

19 Q Detective Bayne, do you recognize --

20 MR. MYERS: No. 9 is what?

21 THE WITNESS: Can you give me a second? I'm
22 verifying this is exactly what I have in my file as well.

23 MR. MCGUIRE: Take your time.

24 MR. MYERS: No. 9 is what?

25 THE COURT: I'm uncertain, Solicitor. She's

1 looked at it and identified it. It's being marked for ID
2 purposes, but not identified any further past that.

3 THE WITNESS: I've reviewed it.

4 BY MR. MCGUIRE:

5 Q And you've compared it with your electronic file
6 there?

7 A Yes, sir.

8 THE COURT: Can the Solicitor see it? He's been
9 asking --

10 MR. MYERS: I don't know what he's talking
11 about.

12 THE COURT: He's been asking to see it. She's
13 identified it, so he can see it.

14 BY MR. MCGUIRE:

15 Q And, Ms. Bayne, to put Mr. Myers at ease --

16 MR. MYERS: I'm always at ease. I'm never
17 upset, Judge.

18 BY MR. MCGUIRE:

19 Q As part of your search warrant, your affidavit on the
20 search warrant regarding the bags?

21 A Yes, sir.

22 MR. MCGUIRE: Okay. As soon as Mr. Myers is
23 done, we'll ask you some questions.

24 (Pause.)

25 BY MR. MCGUIRE:

1 Q Ms. Bayne, I'm going to return what is marked No. 9
2 for ID to you.

3 A Thank you.

4 Q That's your probable cause affidavit regarding the
5 search warrant for the bags; is that correct?

6 A That's correct.

7 Q Just very briefly, on page 1352 --

8 A So that would be page 2 of Attachment B for the
9 affidavit?

10 Q Yes, ma'am.

11 A Okay.

12 Q You indicate in the first paragraph that Mr. Lynch
13 stated to the Highway Patrol that he was en route to pick
14 up the registered owner, Ms. Washington, in Arizona?

15 A "Mr. Lynch stated to the Highway Patrol that he was
16 en route to pick up the registered owner, Ms. Washington,
17 in Arizona," correct.

18 Q And the officer said, if you recall, that he was
19 going to pick up his wife to the trooper?

20 A Can you point that out in this affidavit? Because I
21 don't see that.

22 Q Well, the information that was relayed to you when
23 you were preparing this, you are aware that Mr. Lynch
24 indicated he was going to pick up his wife to the trooper;
25 did you not know that?

1 A There is some verbiage about his wife, yes.

2 Q Okay.

3 A However, it's not stated in the affidavit.

4 Q You're right. That's --

5 A Correct.

6 Q Right. It only states Mr. Lynch stated to the
7 Highway Patrol that he was en route to pick up the
8 registered owner, Ms. Washington, in Arizona --

9 A Correct.

10 Q -- on the affidavit?

11 A Correct.

12 Q But you are aware, of course, there was some, as you
13 referred to it as verbiage saying he was going -- when he
14 was actually talking to the trooper, he did say he was
15 going to pick up his wife?

16 A Yes, sir.

17 Q You indicate in the second paragraph of the same page
18 that search incident to arrest, officers found a bus
19 ticket from Seattle, Washington, on his person?

20 A Correct.

21 Q You would agree that the bus ticket was actually
22 faxed to you before Mr. Lynch was arrested?

23 A I think we've already gone through that issue ad
24 nauseam.

25 Q Well, ma'am --

1 A I'm confused. What is your question?

2 Q Would you agree that you were faxed the bus ticket
3 before Mr. Lynch was arrested?

4 A Let me refer to my notes.

5 At 2:10 in the morning our time, I was notified
6 that he had a receipt for storage on him. He also a had
7 Motel 6 receipt. He had a car title, a bus ticket, a note
8 from his aunt, A U-Car rental, a business card.

9 And I have also in my notes at 6 o'clock that
10 morning, I received a fax on documents Lynch had in his
11 possession.

12 Q Do you recall getting the documents at 2:49 in the
13 morning?

14 A I did not receive the fax on the documents, as it
15 states in my notes, until 6 o'clock that morning.

16 Q Ma'am, regarding the last paragraph of your affidavit
17 --

18 A Yes, sir.

19 MR. MCGUIRE: And, Judge, this is just for the
20 Court's benefit.

21 The last paragraph -- I'm not sure the Court has
22 a copy of the warrant.

23 THE COURT: I have a copy of the warrant.

24 MR. MCGUIRE: I'm going to move the warrant into
25 evidence for the purposes of the hearing so the Judge can

1 take a look at it.

2 THE COURT: This will be marked as
3 Defendant's 10?

4 MR. MCGUIRE: It's ID'd as No. 9 --

5 THE WITNESS: I think it's 9.

6 MR. MCGUIRE: -- right now for ID. I'll move it
7 in as a Court's exhibit for this hearing.

8 THE COURT: As for right now, it's Court
9 Exhibit 32 -- I have it in my hand -- for the purposes of
10 this hearing.

11 MR. MCGUIRE: Judge, I'm going to go ahead and
12 pass it up to the Court as No. 9.

13 I don't know how else to really do this. The
14 last paragraph actually contains information from another
15 search warrant, and we're objecting to that warrant as
16 well.

17 I just wanted you to be able to read the last
18 paragraph.

19 THE COURT: And for the record, the Attachment A
20 and B are parts of Exhibit 32 already in my hand, and so
21 these are duplicate exhibits made.

22 Would it be any simpler for you to note what
23 I've gotten already as Court's exhibit -- we've got two of
24 them, and let's make certain, either call them by both
25 names or the consistent name.

1 MR. MCGUIRE: Let's see what I've got.

2 THE COURT: I don't care how we identify them as
3 long as we're using the same numbers and not confusing the
4 record. And if we need to separate them, we'll separate
5 them.

6 MR. MCGUIRE: I've only got two more questions.
7 It's probably best leave it as it is.

8 THE COURT: All right. So what's been marked as
9 State's ID No. 9 --

10 MR. MCGUIRE: Defense 9.

11 THE COURT: Defense No. 9 will remain for ID
12 purposes.

13 MR. MCGUIRE: Yes, sir.

14 THE COURT: All right.

15 MR. MCGUIRE: So, Judge, I don't know how to
16 really do this, but the last paragraph of that affidavit
17 includes reference to information regarding a June 20th --
18 a search warrant that was executed on June 20th, and of
19 course, we have an objection to both that search warrant,
20 the search and the evidence recovered at the execution of
21 that search warrant. So we'll have to leave this as sort
22 of a hanging question, I guess, on this affidavit.

23 THE COURT: All right. So I understand it. I'm
24 trying to piece what you presented together.

25 The supplemental affidavit provided by Ms. Bayne

1 to the magistrate for the search warrant for the bag
2 included another reference to yet another search warrant
3 which was for the apartment back in June, to go through
4 the apartment. You're challenging that search also?

5 MR. MCGUIRE: I am, Your Honor. So our position
6 would be that that language, that entire paragraph, should
7 be redacted, but I do have a specific question for
8 Ms. Bayne on that.

9 THE COURT: All right. You're -- I guess we're
10 on the wrong search warrant order, but the prior search
11 warrant would be simpler.

12 How about this: It's received as a Court's
13 exhibit at the present time, 32, which includes what
14 you've marked as Defense No. 9 for ID purposes and some
15 other -- the entire portion of the search warrant. And
16 you're objecting to the last paragraph of Attachment B
17 which starts on June 20th, 2006, pursuant to a search
18 warrant of the residence, correct?

19 MR. MCGUIRE: Yes, sir.

20 THE COURT: And that is information used for
21 evidence retrieved from the benefit of the search warrant
22 in June of '06, which you're challenging also. We have
23 not yet come to that point in the trial.

24 MR. MCGUIRE: That's correct.

25 THE COURT: All right. I'll note your

1 objections on both search warrants. I'm going to let you
2 ask your next question. And I'm not certain whether we
3 redact it or not for purpose of this hearing. For
4 purposes of evidence, we'll address that when we get to
5 it.

6 MR. MCGUIRE: Yes, sir.

7 THE COURT: Is that okay?

8 MR. MCGUIRE: Yes, sir.

9 THE COURT: Solicitor, is that okay?

10 MR. MYERS: Yes, sir.

11 THE COURT: All right. I think that's the best
12 way to handle this since there seems to be an issue within
13 an issue is for Court's exhibit purposes, we're going to
14 move forward with this hearing.

15 All right. Mr. McGuire.

16 MR. MCGUIRE: Thank you, Your Honor.

17 BY MR. MCGUIRE:

18 Q Ms. Bayne, if you would, regarding the last
19 paragraph, you indicate in your affidavit here that there
20 was a large blood stain found on the carpet in the
21 residence. Is that true?

22 A "A large blood stain was found on the carpet in the
23 residence indicating a serious injury." That's correct.

24 Q Okay. The phrase "serious injury," where did you get
25 that verbiage?

1 A If I can refer back to my notes.

2 Generally when we're drafting warrants, we don't
3 keep the original as our working draft. We keep the final
4 draft. But I can check and see if there's anything in my
5 notes in reference to that.

6 Q My point is, were you advised by a pathologist or a
7 medical professional or did you just come up with this
8 language by yourself?

9 A I can't remember who helped me draft this warrant,
10 honestly. There were so many warrants. I can check my
11 notes but --

12 Q And then you indicate further that "DNA from the
13 stain was collected. Analysis was performed by SLED and
14 results indicated the blood was that of Angelica
15 Livingston."

16 Is that what your affidavit states?

17 A Correct.

18 Q Based on the fact that there was not an intimate
19 sample from Miss Livingston, and that her father had been
20 murdered and was not around to give a sample from himself
21 --

22 A Correct.

23 Q -- you do understand that the very best SLED can do
24 with the DNA comparison would be able to make the
25 statement that the DNA was not inconsistent with that of

1 an offspring of Theresa Brown, or put another way, was
2 consistent with an offspring of Theresa Brown?

3 A I'm not a DNA expert; I couldn't testify to that.

4 Q Okay. But this is your language?

5 A Correct.

6 MR. MCGUIRE: Okay. Judge, if I could have just
7 one second.

8 THE COURT: All right. I'm trying to get my
9 notes sufficient, so I was really going to beg your
10 indulgence.

11 (Pause.)

12 THE COURT: Go ahead.

13 MR. MCGUIRE: Thank you, Your Honor.

14 BY MR. MCGUIRE:

15 Q Ms. Bayne, is there any way for us to discover or
16 find out who glanced through Lynch's bags?

17 A All I can tell you is what's in my notes.

18 Q Okay.

19 A I don't know who told Captain Owens that, whether
20 that came from him or from another investigator. I just
21 documented that I was instructed that we needed a search
22 warrant to go through the bags.

23 Q Okay. I guess really the only thing we can say for
24 sure is that the glancing happened before the search
25 warrant was procured?

1 A According to my notes.

2 MR. MCGUIRE: That's all I've got for you,
3 ma'am. Thank you.

4 THE COURT: You may step down.

5 MR. MYERS: What procedure are we on?

6 THE COURT: He's asked her all the questions he
7 wished to regarding her affidavit which she was providing
8 to the magistrate. He's done, so I guess your witness.
9 I'm sorry. I thought -- I apologize.

10 MR. MYERS: I just didn't know where we were.

11 THE COURT: And we're still within the motions
12 hearing.

13 THE WITNESS: That makes two of us.

14 CROSS-EXAMINATION

15 BY MR. MYERS:

16 Q Ms. Bayne, who went before the magistrate?

17 A I did.

18 Q And is there anything you advised the magistrate of,
19 orally, to supplement what's written in this warrant?

20 A No, sir.

21 Q Everything that you had was in there?

22 A Yes, sir.

23 MR. MYERS: That's all I have.

24 MR. MCGUIRE: Nothing further, Judge.

25 THE COURT: Now you can step down.

1 THE WITNESS: Thank you.

2 MR. McGUIRE: Judge, for the Court's
3 convenience, we'd move to incorporate by reference for
4 this limited issue the testimony of Robin Taylor, the SLED
5 DNA analyst, at the Schmerber hearing that we had before
6 Your Honor regarding the degree to which she could say
7 that the DNA profile developed from the carpet was that of
8 an offspring of Theresa Brown.

9 THE COURT: Any objection to incorporating that
10 testimony by way of reference, Solicitor?

11 MR. MYERS: No, sir.

12 MR. McGUIRE: That'd be all we have on this
13 issue, Judge.

14 THE COURT: All right. I had those notes on a
15 separate note pad. I think they're in chambers, so I can
16 review those, but I do remember the testimony.

17 All right. Next witness.

18 MR. STITELY: That's all the witnesses we have.
19 We have our argument on the motion.

20 THE COURT: All right. Let's hear it.

21 MR. STITELY: It's very simple, Judge. It's
22 twofold.

23 The first part is obviously there was a search
24 conducted on these bags by an officer of West Columbia
25 Police Department. It's clearly indicated in Court's

1 Exhibit No. 8. Her notes -- she was asked directly there
2 at the end.

3 Obviously someone went through these bags,
4 brought that to Captain Owens. We don't know if it was
5 Captain Owens who went through the bags or not, said,
6 "Hey, you want to search these bags." By definition
7 someone searched them and said, "Hey, wow, we should get a
8 search warrant." It is searched, then procured a search
9 warrant after the fact to perfect the search. It's
10 unlawful.

11 Second, within the affidavit itself, there's a
12 number of things that are inaccurate. Besides the fact
13 that we would object to the whole portion of what was
14 discovered on June 20th, the testimony placed forward in
15 the actual search warrant is that the blood at the
16 apartment was confirmed by SLED to belong to Angelica
17 Livingston. Three separate times, the SLED analyst has
18 confirmed that she cannot make that determination. She
19 cannot say that. She cannot say that, period.

20 So one, the search was already done, and they
21 used reliance on the fact it had already been searched --
22 I guess this will parlay into a chain of custody motion
23 that you'll hear down the road.

24 And, second, the evidence presented in the
25 search warrant for probable cause was inaccurate with

1 anything SLED's told anybody to date.

2 MR. MYERS: I take it that their argument, Your
3 Honor, is that somebody looked through the bags prior and
4 that's what they're basing this on?

5 THE COURT: That, and the inconsistency with the
6 DNA testimony from the Schmerber hearing to today.

7 I guess it's the characterization that it was
8 the child's DNA, when the child's DNA at that time -- I
9 guess at this time is still unknown.

10 MR. MYERS: I think that Robin Taylor testified
11 that based on not having any other samples of any other
12 offsprings, she was very comfortable in saying this is
13 Angela (sic) Livingston's blood.

14 The other thing is, somebody looking in the bag
15 before -- well, certainly, protective evidence. It's
16 already testified he looked through the bags when he
17 brought them back in, checking for weapons and things of
18 that nature. He's the guy who brought the bags from
19 Washington state back to West Columbia and dropped them
20 into the chute. And he looked through them before. So
21 there's your gleaning through the bags right there because
22 he was checking for weapons then.

23 But be that as it may, Your Honor, the search
24 warrant is valid, the search warrant is proper. But we
25 don't rely on the search warrant. We rely on State versus

1 Mark Muquit, M-u-q-u-i-t, 381 S.C. 114, 671 S.E.2d 643;
2 United States versus Eugene H. Edwards, 415 U.S. 800. And
3 also another case, Your Honor, in South Carolina, State
4 versus McTier, M-C-T-I-E-R, at 215 S.E.2d 908.

5 All three of these cases stand for the
6 proposition that if someone is arrested, taken into
7 custody, and their personal effects are taken and put into
8 evidence, including his clothes and his other personal
9 effects, then you don't need a search warrant. That's
10 what happened in State versus Muquit.

11 State versus Muquit, they got a search warrant.
12 When Muquit was arrested, they took his personal effects,
13 placed them into the evidence locker. They wanted to go
14 back and look at those personal effects later on, and they
15 got a search warrant. But the search warrant was
16 defective because the search warrant said they wanted to
17 search the defendant, not the evidence locker.

18 And so the judge ruled at that time, even
19 without a valid search warrant, they still had the right
20 warrantlessly to look at those items and to go into it
21 without a search warrant.

22 They cited Edwards. Edwards stands for the same
23 proposition.

24 And they said this in Muquit: "Authority to
25 search an arrestee is derived not only from the need to

1 disarm him, but also from the need to preserve evidence on
2 his person for later use at trial.

3 "When an arrestee's property is already in the
4 custody of law enforcement as an incident of the arrest,
5 the police may seize it at a later time as evidence
6 relating to his offense.

7 "A person has no expectation to privacy of stuff
8 in possession of law enforcement. Once the police
9 acquired custody of Muquit's personal effects, they had
10 authority to search or seize that property for use as
11 evidence in prosecuting the crime for which he was
12 arrested."

13 State versus McTier, that other South Carolina
14 case at 215 S.E.2d 908, when a person was arrested, they
15 took his personal effects, went through them. The court
16 said the procurement of his personal effects upon his
17 arrival at the police station was likewise legal and
18 proper.

19 State versus Edwards is the same thing, Your
20 Honor. A person in jail, locked up, his personal effects
21 in the evidence locker.

22 Now, they went on a delay theory to the United
23 States Supreme Court. They were on search incident to
24 arrest and inventoried his personal effects.

25 So we have several issues here. Number one, the

1 search warrant's good. If the search warrant's not good,
2 the search and seizure is still valid because the officers
3 go through, it's in their evidence locker where they can
4 go through it and look at it and get items for the
5 prosecution of the case at trial, which is what Muquit
6 said in there. Either a search incident to arrest or as
7 an inventory search.

8 So we got a valid warrant. If we don't have a
9 valid warrant, we got a valid warrantless search and
10 seizure by the United States Supreme Court and by the
11 South Carolina courts.

12 MR. STITELY: Your Honor, in response to that, I
13 think it's problematic, two-fold.

14 One, the simple date timing is appropriate. As
15 you can see with Detective Bayne's notes, it's clearly
16 indicated that they came to this information on 8-24-2006.
17 Detective Edwards brought the bags back on June 22nd, more
18 than two months in advance. So if we're going on
19 reliance, we guessed that it was him. There's a two-month
20 delay in reporting on that.

21 As far as the actual Muquit, they speak about
22 inventory searches. As the Solicitor said, you know,
23 things will go forward with that arrest. But
24 Officer Bresee testified the bags were taken prior to an
25 arrest. Your Honor made the determination that was within

1 his ability as a border patrol agent. So they were seized
2 before an arrest.

3 Secondarily, if we're to assume it's the arrest,
4 the only arrest warrant in this case at that point is a
5 grand larceny, and that doesn't change until 2008 when a
6 murder warrant is brought. So unless they're relying on
7 the fact that they were going through these bags
8 specifically for evidence on a grand larceny, that
9 argument flies out the window.

10 The only thing Mr. Lynch was arrested for back
11 in 2006 was grand larceny. Any search incident to the
12 arrest on a grand larceny, maybe we can get a little
13 closer, but we would still maintain the search warrant was
14 invalid. West Columbia knew they had to get a search
15 warrant because someone went rifling through his bags.

16 Detective Bramlett said, "No one goes through my
17 evidence." I guess I'm mixing my chain issues in here,
18 too, but someone obviously went through it. You cannot do
19 a search and then use what you found during that search to
20 get your probable cause to get a search warrant.

21 One second, Your Honor.

22 (Pause.)

23 MR. STITELY: All right. I apologize. It was
24 actually -- it was about a month before because there was
25 a 30-day extradition process, Judge, so I apologize. He

1 wasn't brought to South Carolina until July, not June. I
2 apologize. I did misspeak. But it's still a month out.

3 MR. MYERS: I've been looking at search and
4 seizure for over 35 years, Your Honor. And during that
5 time, I have yet to see a case that says that somebody's
6 got to be arrested to make a search warrant valid.

7 He's talking about, Well, he wasn't arrested on
8 murder. That makes no difference. The guy's in jail.
9 He's locked up. He could have been arrested for
10 jaywalking. As a matter of fact, in Edwards, they
11 arrested a guy for some innocuous crime. It wasn't a
12 thing -- it was public drunk, or something like that.

13 He's arrested. He's in jail. Once he's in
14 jail, law enforcement has lawful authority of his effects
15 in evidence, in the evidence locker, they have a right to
16 go into it.

17 And I'm sorry the Supreme Court ruled like that
18 on the defendant's behalf, but obviously they were
19 grasping for straws because they hadn't cited a case yet.

20 And the timeliness factor, that's immaterial.
21 State versus Corn, the search warrant, I think, was about
22 three months down the road. SLED versus 192 Poker
23 Machines, that was three or four months down the road.
24 Timeliness is not a factor because it's non-fungible, it's
25 there. They could have looked through this thing last

1 week and brought it. So timeliness is not a factor.

2 And it shows you when they don't have any legal
3 authority, all they can do is just attack what we have.
4 They have no basis for it.

5 THE COURT: All right. I want to read those
6 cases over lunch because it's time for a lunch break,
7 anyway, about 11:24 -- I'm sorry, 12:24, an hour off. And
8 so I'll consider your arguments and I'll review these
9 cases y'all put up as well as the other items which have
10 been introduced for the purposes of this hearing and let
11 you know shortly after lunch.

12 MR. MYERS: Thank you, Your Honor.

13 MR. STITELY: Thank you, Your Honor.

14 THE COURT: All right.

15 (A lunch break was taken.)

16 THE COURT: We're still in the in camera hearing
17 for the validity of the search warrant.

18 You-all mind telling me what's in the bag that's
19 not in evidence yet that's real -- I mean, as I've looked
20 back on the evidence, the receipts are already in that
21 were seized by the Canadian -- I mean the United
22 States/Canadian border patrol. The keys are in, of some
23 type, to the automobile, I believe. All of his clothes
24 are in; shoes, pants, and shirt. The knife's one thing.
25 I'm still -- I don't -- I don't know where the knife came

1 from.

2 So, I mean, outside the knife, what else is
3 there that's relevant to any of the issues? I mean,
4 deodorant I don't see as relevant. And I haven't heard
5 that, but I've heard toiletries.

6 MR. GRAHAM: There is another set of keys in
7 there that are not in evidence at this time, Your Honor,
8 that are relevant. There is a lot of paperwork that it
9 would be the State's contention that somebody going on
10 vacation wouldn't bother to take all that.

11 There's some -- I think there's three watches, a
12 necklace, and a ring that -- and maybe seven or eight
13 dollars' worth of loose change. I think there's a
14 one-dollar bill, but there's no other cash in there.

15 There's just a lot of bank statements and bank
16 records and things like that that you wouldn't take on
17 vacation.

18 THE COURT: Okay.

19 MR. GRAHAM: I mean, our thought, honestly, was
20 to go through item by item, and I know it would take a
21 long time to put them in because I think during closing
22 arguments and all that, it is necessary and relevant to
23 discuss those issues.

24 THE COURT: Okay. Now, can you-all point me to
25 which witness testified where the knife came from?