

VOLUME I OF III

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Clifton Newman, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

FRANKIE LEE MCGEE,

APPELLANT

APPELLATE CASE NO. 2011-197606

RECORD ON APPEAL

KATHRINE H. HUDGINS
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, SC 29202-0192
(803) 576-1800

Attorneys for Respondent

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STATE OF SOUTH CAROLINA)

County of Richland)

COURT OF General Sessions

2010-GS-40-0121

2010-GS-40-0124

The State)

vs.)

Frankie Lee McGee,)

Defendant)

PARTIAL

TRANSCRIPT OF RECORD

August 1 & 2, 2011
Columbia, South Carolina

BEFORE:

The Honorable Clifton Newman, Judge, and a jury

APPEARANCES:

Kathryn Luck Campbell, Assistant Solicitor
Dolly J. Garfield, Assistant Solicitor
Nicole Simpson, Assistant Solicitor
Attorneys for the State

Douglas Strickler, Esq.
Fielding Pringle, Esq.
Jennifer Davis, Esq.
Attorneys for the Defendant

KAREN AMBROZIAK
Official Court Reporter

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2	Audio Statement/Disk	109	
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4	Photo Lineup & ID Page	176	
5	Photo (withdrawn)	201	
6	Photo (withdrawn)	201	
7	Photo (withdrawn)	201	
8	Photo	201	356
9	Photo (withdrawn)	201	
10	Photo (withdrawn)	201	
11	Photo (withdrawn)	201	
12	Photo	201	356
13	Photo (withdrawn)	201	
14	Photo	201	356
15	Photo (withdrawn)	201	
16	Photo	201	215
17	Photo		215
18	Photo		215
19	Photo		215

EXHIBITS-Continued:STATE'S EXHIBITS - Continued:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
20	Photo		215
21	Photo		215
22	Photo		215
23	Photo		215
24	Photo		215
25	Photo		215
26	Photo		215
27	Photo		215
28	Photo		215
29	Photo		215
30	Photo		215
31	Photo		215
32	Photo		215
33	Photo		215
34	Photo		215
35	Photo		215
36	Photo		215
37	Photo		215
38	Photo		215

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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40	Photo		215
41	Photo		215
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44	Photo		215
45	Photo		215
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52	Photo		439
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55	Photo		439
56	Photo		217
57	Photo	218	

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
58	Photo	218	
59	Photo		216
60	Photo	218	
61	Photo		216
62	Photo		216
63	Photo		216
64	Photo		216
65	Photo		214
66	Photo		214
67	Photo		214
68	Photo		215
69	Photo		214
70	Photo		215
71	Photo		215
72	Photo		215
73	Photo		215
74	Photo		214
75	Photo		215
76	Photo		214

EXHIBITS-Continued:STATE'S EXHIBITS - Continued:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
77	Photo		214
78	Photo		214
79	Photo		214
80	Photo		214
81	Photo		214
82	Photo		214
83	Photo		214
84	Photo		214
85	Photo		214
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90	Photo		214
91	Photo		214
92	Photo		214
93	Photo		214
94	Photo		214
95	Photo		214

EXHIBITS-Continued:STATE'S EXHIBITS - Continued:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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97	Photo		215
98	Photo		215
99	Photo		215
100	Photo		215
101	Photo		215
102	Photo		215
103	Photo		215
104	Socks (previously premarked by the State)		
105	Swab		426
106	Swab (previously premarked by the State)		
107	Rod		416
108	Swab	442	
109	Door		407
110	Blow Up		321
111	Blow Up		434
112	Blow Up		434
113	Blow Up		434
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
115	Sneakers (previously premarked by the State)		
116	Swab	442	
117	Photo	322	323
118	Swab	429	

DEFENDANT'S EXHIBITS:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>

(There were no Defendant's exhibits introduced in this portion of the trial.)

COURT'S EXHIBITS:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Document	13	
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1 (WHEREUPON, Court's Exhibit No. 1 was marked for
2 identification only.)

3 THE COURT: Are you ready?

4 MS. CAMPBELL: Yes, Your Honor. The State is
5 ready. I did notice in the defendant's requested
6 voir dire --- I don't know if you wish me to address
7 that at this point?

8 THE COURT: Yes.

9 MS. CAMPBELL: Whatever you think is appropriate,
10 Your Honor. We would ask that it be made reciprocal
11 on those certain questions where that would apply.

12 THE COURT: Okay. Anything else regarding the
13 State's voir dire?

14 MS. PRINGLE: No, Your Honor.

15 THE COURT: All right. Well, anything else
16 before we get a jury in here?

17 MS. GARFIELD: Your Honor, just from the State's
18 perspective, I need to disclose that Palmer Freeman
19 is a juror on the list was a former victim of mine,
20 several individuals charged with burglaries. I
21 believe it was back in 2003'ish.

22 THE COURT: Carol's husband, Palmer?

23 MS. GARFIELD: Yes, sir.

24 THE COURT: All right. Anything else?

25 MR. STRICKLER: Your Honor, will you be

1 (WHEREUPON, the jury left open court at
2 approximately 1:53 p.m.)

3 THE COURT: Ladies and gentlemen, those of you
4 who were not selected in the case, we need to discuss
5 a matter of law outside of your presence, so we need
6 all of you all to go outside the courtroom in the
7 lobby area. We'll have you come back in, in a few
8 minutes.

9 Please do not discuss the case, but go --- I
10 need all jurors to leave the courtroom while we
11 discuss the matter. Do not go astray.

12 (WHEREUPON, the unselected members of the jury
13 left the courtroom.)

14 THE COURT: We'll be at ease for about five
15 minutes.

16 MS. CAMPBELL: Thank you, Your Honor.

17 THE COURT: All right.

18 (WHEREUPON, a short break was taken.)

19 THE COURT: Regarding the jury selection, what
20 says the State?

21 MS. CAMPBELL: The State has nothing.

22 THE COURT: What says the defense?

23 MR. STRICKLER: We have nothing.

24 THE COURT: All right. Both sides are satisfied
25 with the jury. We need the jury panel to come back

1 in, so I can let them go.

2 What do you want them to do, madam clerk?

3 (Pause)

4 Ladies and gentlemen, those of you who were not
5 selected in the trial of this case, both the State
6 and the defense are satisfied with the jury we have
7 selected, so I want to thank you all for your
8 cooperation.

9 You all can return downstairs, and they'll tell
10 you what you need to do from there downstairs. Thank
11 you very much.

12 (WHEREUPON, the unselected members of the jury
13 left the courtroom.)

14 THE COURT: And we need the panel to come in.

15 (WHEREUPON, the jury came into open court at
16 approximately 2:11 p.m.)

17 THE BAILIFF: The jury is all seated, Your Honor.

18 THE COURT: All right, sir. Thank you. Welcome
19 back. Now, ladies and gentlemen, you have been
20 selected to be the jury in the trial of this case.

21 We have a number of matters that we have to take
22 up on this, and some unrelated matters, before we are
23 ready for you to begin the trial --- with you.

24 So we're going to excuse you all for the balance
25 of today and have you all return to the jury room at

1 10:30 tomorrow morning. We need you there at 10:30
2 tomorrow morning.

3 When you come, you'll need to avoid coming
4 through the courtroom. Avoid, at all times,
5 congregating in the hallway outside of the courtroom
6 or the lobby out there.

7 I need you to avoid contact with any of the
8 parties or family members of either side and also to
9 avoid any contact with the --- any prospective
10 witnesses or any of the lawyers involved in this case.

11 It's also important, absolutely essential, that
12 you not discuss the case with anyone on the jury or
13 anyone off the jury, including family members, and
14 specifically, you are to refrain in engaging in any
15 form of personal research, any social media
16 conversations, any internet research regarding this
17 case because as jurors, you are to decide the case
18 solely and only based on the evidence presented in
19 the courtroom and only through deliberating and
20 discussing what you've heard with the same people who
21 have heard it, which would be your fellow jurors and
22 no one else.

23 You cannot decide to discuss it with a family
24 member or a friend and then come here and then decide
25 to discuss it with the jurors.

1 The case is to only be discussed with fellow
2 jurors, and that is only after you have heard the
3 entire case, and I have given you the okay to begin
4 deliberations.

5 I look forward to working with you all on this
6 case. I hope we can keep the case moving, make
7 valuable use of your time, and we look forward to
8 seeing you all tomorrow morning at what time?

9 THE JUROR: 10:30.

10 THE COURT: 10:30. All right. We'll see you
11 then. Have a good evening.

12 (WHEREUPON, the jury left open court at
13 approximately 2:15 p.m.)

14 THE COURT: All right. We're going to break in
15 this case until 3:15.

16 MS. PRINGLE: Your Honor, may I hand up motions
17 they don't have?

18 MS. GARFIELD: Judge, remind Judge Barber about
19 our motions.

20 (Unrelated matters were heard.)

21 THE COURT: All right. Motions? Hearings?
22 Preliminary matters from the State?

23 MS. CAMPBELL: Your Honor, as the Court is aware,
24 there was a statement that was given in the case. We
25 are intending to introduce the statement in a

1 redacted version.

2 We have worked on it some over the weekend and
3 need to continue to work on that, actually tonight,
4 since it will be one of our first pieces of evidence.
5 As far as the voluntariness, I assume that they want
6 us to put up testimony.

7 We also would like to make a copy of the actual
8 recording of the conversation itself in which he is
9 read his rights, and he clearly waives them as part
10 of the record.

11 I believe last week we met, and we did provide
12 you with a copy, a rough transcript. Your Honor, I
13 can substitute the actual --- I can have that
14 transcribed by a professional, give you a copy of
15 that transcript, as well.

16 THE COURT: Okay.

17 MS. CAMPBELL: With the court's permission, and
18 one for the defense.

19 THE COURT: The CD that I already received is
20 blank. I did read the --- I reviewed the statement,
21 but there is nothing on the CD.

22 MS. CAMPBELL: That was nice. I'll be glad to
23 get another copy, hopefully that won't be blank, Your
24 Honor, to provide to the Court.

25 THE COURT: All right.

Direct of Thomas by Campbell
(pretrial)

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1 MS. CAMPBELL: However, I believe you had an
2 opportunity to review the transcript. We would be
3 redacting out any references to him being in prison.

4 We redacted the first two or three pages where
5 they're talking to the warden and any references he
6 makes to being in prison or to having a prior
7 criminal record.

8 THE COURT: You may call your first witness.

9 MS. CAMPBELL: The State would call Sergeant
10 Thomas.

11 ARTHUR L. THOMAS,
12 after being duly sworn, testified as follows:

13 THE CLERK: Thank you. Have a seat in the
14 witness stand, please. State your name for the
15 record.

16 THE WITNESS: Arthur L. Thomas.

17 DIRECT EXAMINATION:

18 BY MS. CAMPBELL:

19 Q Sergeant Thomas, where are you employed?

20 A The City of Columbia Police Department.

21 Q What are your current duties there, sir?

22 A I'm a supervisor over the special victim's unit.

23 Q I want to turn your attention back to May 3rd,
24 2009. Did you become involved in an investigation
25 involving what eventually was the murder of Reverend

1 Eichelberger?

2 A Yes, I did.

3 Q And as the investigation progressed and months
4 passed, eventually did y'all develop a suspect in the
5 case of Frankie Lee McGee?

6 A Yes, we did.

7 Q And I believe he was not identified until March
8 of 2010; is that correct?

9 A That's correct.

10 Q Through a CODIS hit through SLED?

11 A That's correct.

12 Q As a result of that and some further
13 investigation you did, did you make contact with
14 Frankie Lee McGee?

15 A Yes, we did.

16 Q And where did that contact take place, sir?

17 A At a correctional facility.

18 Q And you can talk freely in here. We aren't in
19 front of the jury.

20 At a correctional facility?

21 A Correct.

22 Q And would that be Wateree?

23 A That's correct.

24 Q And did you set it up with the warden ahead of
25 time so that you could make contact him and try to

1 interview him?

2 A Yes, we did.

3 Q At that point, in addition to the CODIS hit, did
4 you develop other information about the identity of
5 the person who had committed the murder?

6 A Yes, we did.

7 Q Once you made contact with --- well, let me ask
8 you this: Where did you make contact with him in the
9 prison? Was it in a conference room or some other
10 type of room?

11 A They set a room aside that was large enough that
12 we all could meet with him, talk with him comfortably.
13 I believe it was just an office area to the side
14 there.

15 Q And who all was with you that day?

16 A It was Investigator Kevin Reese and Investigator
17 Lance Reeves and myself.

18 Q And when you first made contact with the
19 defendant as reflected in this transcript, did y'all
20 exchange basically some basic information?

21 A Yes, we did.

22 Q But prior to asking him anything about the
23 specifics of this case, did you advise him of his
24 rights?

25 A Yes, I did.

1 Q And I refer to page seven of the transcript.

2 This was all recorded, as well; is that right?

3 A Yes. The interview was recorded.

4 Q And how was the recording done?

5 A We have a small recording device, a digital
6 recorder, and we just turned it on prior to entering
7 the room.

8 Q Once you were inside the room, did you advise
9 him of his rights?

10 A Yes, I did.

11 Q And the advice of rights as you did it, is it
12 reflected accurately in the transcript? Do you want
13 to look at it?

14 A Yes, it is.

15 Q And specifically as far as the advice of rights,
16 what rights did you advise him of, as reflected in
17 the transcript, as well as in the audio recording?

18 A "Before we ask you any questions, you must
19 understand your rights. You have the right to remain
20 silent. Anything you say can be used against you in
21 court. You have the right to talk to a lawyer for
22 advice before we ask you any questions and to have
23 him with you during questioning."

24 I'm reading these rights as they are --- I'm
25 going to check off each area. This is my

Direct of Thomas by Campbell
(pretrial)

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1 conversation to Mr. McGee: "To make sure that you
2 understand, did you understand those previous ones as
3 I just read them?"

4 He said, "I understood".

5 The next one is, "If you cannot afford a lawyer,
6 one will be appointed for you for questioning, if you
7 wish."

8 "Okay. All right." "If you decide to answer
9 questions now without a lawyer present, you will
10 still have the right to stop answering questions at
11 any time. You also have the right to stop answering
12 questions at any time until you talk to a lawyer. Do
13 you understand that?"

14 His answer was, "I understand".

15 Q And there was a colloquy that followed that
16 where he went back and forth about possibly
17 initialing and/or signing off on the form?

18 A That's correct.

19 Q And what was the form you were using that day, I
20 think the original?

21 A It was our basic advisement of rights form that
22 we use at the police department.

23 Q And does that contain on it all the rights you
24 went over with him?

25 A Yes, it did.

1 Q And once you had explained his rights to him, at
2 first, I believe he did not want to sign off on
3 anything?

4 A That's correct.

5 Q And did he ever indicate whether or not he
6 understood what his rights were?

7 A Each time he stated that he understood what his
8 rights were.

9 Q Once he stated that he understood what his
10 rights were, was there also a second section of that
11 document?

12 Your Honor, if I might mark this as State's
13 Exhibit Number 1.

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

16 BY MS. CAMPBELL:

17 Q Thank you.

18 I show you what's been marked as State's Exhibit
19 Number 1. Is that the document you're referring to,
20 the actual original?

21 A Yes, it is.

22 Q And the typewritten language that's on there,
23 does that include the advice of rights?

24 A It does.

25 THE COURT: Stop just a moment here.

Direct of Thomas by Campbell
(pretrial)

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1 MR. STRICKLER: I apologize to Ms. Campbell.

2 (Pause)

3 MS. CAMPBELL: May it please the Court.

4 THE COURT: Yes, you may proceed.

5 BY MS. CAMPBELL:

6 Q When you went through the advice of rights, did
7 you have him initial beside each right to indicate
8 that he understood them?

9 A Yeah. Our practice is to have him initial it.
10 Also our practice is to ask what grade or education
11 level he has.

12 Q Is that reflected on the form?

13 A Yes, it was.

14 Q And what grade does it indicate, or education
15 level?

16 A He indicated the 12th grade and advised that he
17 could read and write and did fully understand his
18 rights.

19 Q Once he initialed up at that time top part,
20 which is the advice of rights part, what's the second
21 part of that form?

22 A On the second part is the actual waiver of
23 rights, and we have him read that and initial it, as
24 well.

25 Q Okay. And, ultimately, did he sign off on these

1 rights ---

2 A Yes.

3 Q --- acknowledging them?

4 A Yes, he did.

5 Q And is that his signature?

6 A Yes, it is.

7 Q And at any time when you were advising him of

8 his rights and then asking him to waive his rights,

9 did anyone promise him anything or threaten him in

10 anyway?

11 A No. We actually mentioned we weren't promising

12 him anything.

13 Q And, in fact, did you explain the term coercion

14 and what that meant?

15 A Correct.

16 Q Did you go through and --- at any point, did you

17 deprive him of any creature comforts, use any threats,

18 force, anything to make him talk to you?

19 A No, we did not.

20 Q In your experience as an investigator, was he

21 voluntarily talking to you that day?

22 A Yes, he was.

23 Q And did he want to give you --- in fact, on the

24 --- in the transcript, it reflects that he says he

25 wanted to talk to you, correct?

Direct of Thomas by Campbell
(pretrial)

91

- 1 A Yes, he did.
- 2 Q At any time, did he ever tell you he didn't want
3 to talk anymore?
- 4 A Not during the course of our conversation.
- 5 Q At any time, did he ask for an attorney?
- 6 A No, he did not.
- 7 Q And had he done any of those things, would the
8 conversation have ceased?
- 9 A Yes; yes, ma'am.
- 10 Q And did he appear to be coherent and understand
11 your questions?
- 12 A Oh, he was quite coherent.
- 13 Q Did he respond appropriately?
- 14 A Yes, he did.
- 15 Q Did he appear to be under the influence of any
16 drugs or alcohol?
- 17 A He did not appear to be under the influence.
- 18 Q Once he signed off acknowledging he understood
19 his rights and then signed off stating he wanted to
20 waive his rights, did y'all then initiate a
21 conversation?
- 22 A Yes, we did.
- 23 Q And is that conversation reflected in this
24 transcript?
- 25 A From what I read earlier.

Direct of Thomas by Campbell
(pretrial)

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1 Q I just handed it to you, but yeah.

2 A What I read earlier and so forth. I haven't
3 read it completely but the portions that I read.

4 Q And there was also an audio recording that goes
5 with this, as well?

6 A Correct.

7 Q And that audio recording, you've had an
8 opportunity to review that on prior occasions?

9 A Yes.

10 Q Does that accurately reflect the conversation
11 that took place, including the advice of rights?

12 A Yes, it does.

13 Q Did he actually know y'all were recording him?

14 A No, he did not know.

15 Q Okay. But that conversation, as far as you know
16 and the one you viewed, has not been altered or
17 tampered with in any way?

18 A No, it has not.

19 MS. CAMPBELL: Your Honor, if I could make this
20 a Court's Exhibit, the actual transcript?

21 THE COURT: Okay.

22 MS. CAMPBELL: Thank you.

23 (WHEREUPON, Court's Exhibit No. 2 was marked for
24 identification only.)

25 BY MS. CAMPBELL:

Direct of Thomas by Campbell
(pretrial)

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1 Q During the course of the conversation, did y'all
2 ask him some specific questions, without going into
3 all the details, about the murder of Reverend
4 Eichelberger?

5 A Yes, we did.

6 Q And did he give you information about his
7 whereabouts and what he was doing that night?

8 A Yes, he did.

9 Q And you weren't the only one to do the
10 questioning in this case; is that correct?

11 A No. Myself, Investigator Reese and Investigator
12 Reeves.

13 Q The person you interviewed at Wateree
14 Correctional Institute, do you see him here in the
15 courtroom?

16 A Yes. He's the gentleman in the white shirt
17 sitting next to his attorneys.

18 MS. CAMPBELL: Your Honor, may the record
19 reflect he has identified the defendant?

20 THE COURT: Yes.

21 MS. CAMPBELL: Thank you, Your Honor. I don't
22 have anything further.

23 THE COURT: From the defense?

24 MR. STRICKLER: Thank you. May it please the
25 Court.

Cross of Thomas by Strickler
(pretrial)

94

1 CROSS-EXAMINATION:

2 BY MR. STRICKLER:

3 Q Good afternoon, Mr. Thomas.

4 A Good afternoon, counselor.

5 Q In March of 201, when you all developed
6 Mr. McGee as a suspect in this case, he was at that
7 point in time in Wateree Correctional Institution,
8 correct?

9 A That's correct, sir.

10 Q And was it you or was it one of the other
11 officers on the case that contacted Wateree and had
12 him --- how do you use the term, on lockdown,
13 isolated?

14 A I can't recall. It's either going to be myself
15 or Investigator Kevin Reese.

16 Q Okay.

17 A We were the chief investigators in this case.

18 Q And that was done a couple of days prior to
19 y'all going out there to talk with him?

20 A To my recollection; that's correct.

21 Q What was the purpose of that?

22 A The purpose of the lockdown?

23 Q Yes, sir.

24 A It was to our understanding that the institution
25 which he was being held was one that was not of great

Cross of Thomas by Strickler
(pretrial)

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1 security.

2 Q Okay.

3 A I think it was a minimum security facility.

4 Q Okay.

5 A And any time I look to interview any of my
6 possible defendants in a case and they're already
7 detained, I make a courtesy call to the warden of our
8 intent and advise that they take whatever necessary
9 means to make sure that he's secured in case he's
10 communicated by anyone prior to our arrival.

11 Q Okay.

12 A In lieu of any kind of escape or anything of
13 that nature.

14 Q Okay. So at some point in time, a couple of
15 days, three days, however long after you made the
16 call, you and Investigator Reese and Investigator
17 Reeves ---

18 A That's correct.

19 Q --- went out there?

20 A Yes, sir.

21 Q Correct? And I'm sorry, I didn't see this
22 before it was presented to you. Is this State's
23 Exhibit 1 is the actual advice of rights that y'all
24 worked from ---

25 A That's correct.

Cross of Thomas by Strickler
(pretrial)

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1 Q --- that day?

2 A That's correct, sir.

3 Q Now, how long total did y'all spend talking with
4 Mr. McGee?

5 A To be honest, I don't have anything that I can
6 reference to as far as time or completion or what
7 have you, but I would imagine over an hour or so.

8 Q About an hour, and of that time --- now, this
9 would be reflected in the audio transcript, but of
10 that time, how long did y'all spend trying to get
11 Mr. McGee to sign that advice of rights?

12 A We discussed with Mr. McGee the advisement of
13 rights and explained to him in great detail what it
14 meant as he asked questions. I can't really tell you
15 exactly the length of his questions about the
16 advisement of rights prior to him signing, several
17 minutes. It could have been five to ten minutes.

18 Q All right. Referencing what's marked as State's
19 Exhibit Number 1 ---

20 A Uh-huh.

21 Q --- was this filled out by you or Investigator
22 Reese or who?

23 A The signatures are by the individual
24 investigators, and then I filled it out.

25 Q Okay. Up in the top corner, it's got the date

Cross of Thomas by Strickler
(pretrial)

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- 1 3/17/10?
- 2 A Correct.
- 3 Q It's got a time, 12:10 p.m.; is that correct?
- 4 A That's correct.
- 5 Q That would be the time at which you began the
- 6 discussion with Mr. McGee regarding his advice of
- 7 rights?
- 8 A That's correct, sir.
- 9 Q And then at the bottom of this form, you have
- 10 got a time, 12:24 p.m.?
- 11 A That's correct.
- 12 Q Okay. That's immediately underneath the
- 13 signatures, correct?
- 14 A Yes, sir.
- 15 Q That would be the time y'all completed the
- 16 advice of rights?
- 17 A That's correct.
- 18 Q Okay. So according to this form, 14 minutes to
- 19 review these, these rights on this form?
- 20 A That is correct. I didn't have that document in
- 21 front of me. Thank you.
- 22 Q That's 14 minutes out of approximately an hour.
- 23 I believe you said you thought it was about an hour?
- 24 A That's correct, sir.
- 25 Q The interview concluded at 1:38 p.m.; does that

1 sound correct?

2 A Again, I don't have any documents in front of me,
3 so I can't give you quotes on time at this juncture.

4 Q Page 103 at the bottom, line 23 of this
5 transcript.

6 A All right.

7 Q Is that correct?

8 A That is correct, 1:38 p.m.

9 Q Okay. So you spent from 12:10 to 12:24 managing
10 to get Mr. McGee to sign this advice of rights form?

11 A Well, I explained to Mr. McGee what the advice
12 of rights form meant and what it meant to sign or not
13 sign ---

14 Q Yes.

15 A --- and his rights therein, yes.

16 Q Well, it would be fair to characterize
17 Mr. McGee's reaction to signing that advice of rights
18 as less than enthusiastic, wouldn't it?

19 A It was inquisitive, if you ask me. He wanted to
20 know what everything meant, and we were willing to
21 explain that. We did so for 14 minutes.

22 Q So you convinced him to sign?

23 A No, sir. We explained to him what it meant, and
24 when he understood, he signed.

25 Q All right. Now, you have yourself, Investigator

Cross of Thomas by Strickler
(pretrial)

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- 1 Reese, Investigator Reeves ---
- 2 A Yes, sir.
- 3 Q --- in this room with Frankie McGee, right?
- 4 A That's correct, sir.
- 5 Q That was everyone that was in the room, correct?
- 6 A That was everyone, yes. I ---
- 7 Q I believe at one point in time --- I'm sorry,
- 8 sir. I didn't mean to interrupt. I believe at one
- 9 point in time, someone knocks on the door, and
- 10 someone enters the room and then leaves?
- 11 A I can't recall, but that's quite probable.
- 12 Q And how large was the room?
- 13 A A standard office room. I can't tell you the
- 14 footage of it. I really wasn't that intent on it.
- 15 It was very spacious compared to some of the rooms we
- 16 do our interviews in.
- 17 Q But you don't know what size it was?
- 18 A Not off the top of my head, no.
- 19 Q That's not reflected. You didn't document that
- 20 as far as videotaping it. You didn't document it as
- 21 far as taking any pictures or anything like that?
- 22 A It's not my practice to do videotaping, so no,
- 23 sir. We do audio, digital recording.
- 24 Q Right. But you can't tell me how large the room
- 25 was?

Cross of Thomas by Strickler
(pretrial)

100

- 1 A No, sir, not off the top of my head.
- 2 Q What was the furniture that was in the room?
- 3 A A few chairs and a few desks, one desk or a
- 4 table and some chairs, something of that nature.
- 5 Q How large was the table?
- 6 A In truth, enough to fit and accommodate the
- 7 persons there: Myself, Investigator Reese and
- 8 Mr. McGee.
- 9 Q So all four of you were around the table?
- 10 A No. I think Investigator Reeves sat a little
- 11 further back and against the wall area.
- 12 Q Okay. So you had two investigators at the table
- 13 itself?
- 14 A Correct.
- 15 Q Mr. McGee at the table itself, and then one
- 16 investigator like behind the other two?
- 17 A He was sitting to the side.
- 18 Q Off to the side?
- 19 A Yes, sir.
- 20 Q Okay.
- 21 A So again, a spacious room that could accommodate
- 22 all of us in that --- those parameters.
- 23 Q Now, you audio recorded this interrogation,
- 24 correct?
- 25 A We audio recorded the interview of Mr. McGee,

Cross of Thomas by Strickler
(pretrial)

101

- 1 yes.
- 2 Q Yes. It was an interrogation, wasn't it?
- 3 A It was an interview.
- 4 Q It was an interview?
- 5 A Yes, sir.
- 6 Q Okay. Hand slamming on the desk during the
- 7 course of questioning, that's normal for an interview?
- 8 A It's normal for our interviews.
- 9 Q Cursing at the subject who is being interrogated
- 10 or interviewed is normal in the course of an
- 11 interview for the Columbia Police Department. Is
- 12 that what your testimony is?
- 13 A It takes place in my interviews.
- 14 Q And perhaps I'm being a little too --- will you
- 15 please define for me the difference between an
- 16 interview and an interrogation?
- 17 A Well, I guess sometimes that's up to the person
- 18 who has an opinion on it. To me, an interrogation is
- 19 using different tactics and so forth to get
- 20 information from an individual.
- 21 Q What type ---
- 22 A An interview is ---
- 23 Q I'm sorry. Go ahead.
- 24 A An interview is, again, asking questions and
- 25 getting a response from an individual, and we did an

1 interview.

2 Q What type of tactics are used in an
3 interrogation?

4 A I don't know. I do interviews. I don't do
5 interrogations.

6 Q You're not acquainted with procedures used in
7 conducting interrogations?

8 A I don't do interrogations. I do interviews.

9 Q That wasn't my question, sir.

10 A Yes.

11 Q You're not acquainted with the procedures used
12 in conducting interrogations?

13 A I can't elaborate on any of that, no, sir.

14 Q Okay. You have not been trained as an officer
15 in procedures involved in interrogations?

16 A I have been trained on interviews.

17 Q On interviews.

18 A Yes, sir.

19 Q What procedures do they train the employee on
20 during the course of the interviews?

21 A Making sure they ask the appropriate questions
22 and see if you can get truthful answers.

23 Q Slamming the table?

24 A The Supreme Court says that's not against the
25 law.

Cross of Thomas by Strickler
(pretrial)

103

1 Q That would be a yes then, correct? That would
2 be yes in response to my question? Yes?

3 A Yes.

4 Q Verbally intimidate the subjects?

5 A I don't verbally intimidate anyone. I ask
6 questions.

7 Q Characterize this for me, please, sir. "I've
8 got an ass of people in Columbia that I could choose
9 from where I wouldn't have to ride the fuck out to
10 Wateree to interview you." That's not intimidation?

11 A No, that's a statement.

12 Q And the delivery of the statement will be
13 reflected in that CD, the audio CD of this interview,
14 correct, sir?

15 A I'm sure it will, sir.

16 Q And again, slamming the table is part of the
17 interview, not part of an interrogation; is that
18 correct?

19 A That is correct. That's part of my interview,
20 yes, sir.

21 Q And not telling the subject that he's being
22 recorded while you're speaking with him, that's part
23 of the procedure?

24 A That was part of this procedure, yes.

25 Q Why would that be, sir?

Cross of Thomas by Strickler
(pretrial)

104

1 A I record all my interviews.

2 Q Why would you --- do you always not tell the
3 people who are being recorded that they are being
4 recorded?

5 A I pick and choose. I pick and choose, yes.

6 Q Was Mr. McGee on any medication at the time
7 y'all conducted this interview?

8 A He didn't advise that he was under any.

9 Q Did you ask him whether he was taking any
10 medication?

11 A To be honest, I cannot recall if we asked him
12 about medication.

13 Q Okay. The transcript will reflect, and the CD
14 will reflect, whether or not you did, correct?

15 A I'm certain they will.

16 Q So during the course of this --- let's see. The
17 advice is signed at 12:24, and the interview
18 terminates at 1:38, an hour and 12 minutes. During
19 the hour and 12 minutes that three of you officers
20 interrogated Mr. McGee, did you all remain seated, as
21 you described it, the entire time?

22 A Again, I cannot truthfully tell you exactly if
23 anyone remained seated, or if anyone came in off the
24 top of my head right now.

25 Q Okay.

Cross of Thomas by Strickler
(pretrial)

105

1 A You asked that question earlier and I can't
2 recall.

3 Q Okay. So you don't know whether --- you had two
4 officers at the table and one off to the side for the
5 entire hour and 12 minutes or whether at some point
6 in time, ya'll changed positions?

7 A There was no positional change that I can recall,
8 no.

9 Q Can you tell us whether or not Investigator ---
10 was it Investigator Reese who was off to the side?

11 A Investigator Reeves.

12 Q Reeves, I'm sorry.

13 A Yes.

14 Q Was --- no, no. It was Investigator ---

15 A Investigator Reese and I ---

16 Q Right.

17 A --- were the persons doing most of the
18 questioning.

19 Q And Investigator Reese was at the table, or he
20 was off to the side?

21 A He was at the table.

22 Q It was at the table, so it was Investigator
23 Reese?

24 A Reeves.

25 Q Reeves.

Cross of Thomas by Strickler
(pretrial)

106

1 A Yes.

2 Q Did he at any point in time approach the table?

3 A To my recollection, I can't recall if he
4 approached, but he was open to ask questions if he
5 chose to do so.

6 Q Okay.

7 A And if he chose to scoot up to the table and ask
8 his questions, I would not have told him not to. He
9 was in training.

10 Q Okay. And what was the lighting like in the
11 interrogation room?

12 A Well, we had no control over the lighting in the
13 interview area, but it was standard lighting similar
14 to this, maybe even brighter.

15 Q Perhaps brighter than the courtroom?

16 A Perhaps.

17 Q Now, you did promise him, promise Mr. McGee,
18 things during the course of the interrogation,
19 correct?

20 A I can't recall any promises.

21 Q "You won't be in any trouble for waiving your
22 rights"?

23 A He wasn't. That was his right.

24 Q You informed him in regards to his rights that
25 --- beg the Court's indulgence, Your Honor.

Redirect of Thomas by Campbell
(pre-trial)

107

1 (Pause)

2 Isn't it true that you informed Mr. McGee
3 regarding waiving his rights, "You're not giving up
4 anything when you waive your rights. If you sign
5 this paper, all it says is I want to talk"?

6 A Correct.

7 Q Which is immediately after saying, "You're not
8 giving up anything by signing the waiver"?

9 A I don't have it before me, but if it's in the
10 typed document as part of the fact in the recording,
11 then I said it and that's correct.

12 I also said, "If you choose to stop speaking at
13 any time, you can."

14 MR. STRICKLER: That's all. Thank you, Your
15 Honor.

16 THE COURT: Any redirect?

17 MS. CAMPBELL: Just a couple of questions, Your
18 Honor.

19 REDIRECT EXAMINATION:

20 BY MS. CAMPBELL:

21 Q He asked you specifically about giving up
22 anything. Pages 14 through 18 of the transcript, he
23 goes back and forth about whether or not he wants to
24 sign off on that, I believe, and he's the one that
25 originally brought up the fact that he might get in

1 trouble.

2 A Correct.

3 Q And, basically, it boiled down to when you get
4 down to the fact that he said he wanted to talk to
5 you.

6 A Correct.

7 Q And signing off on his waiver of rights meant
8 that he wanted to talk to you.

9 A That's correct.

10 Q And that's what you explained to him?

11 A Correct.

12 (Pause)

13 THE COURT: Anything further?

14 MS. CAMPBELL: One other thing, too.

15 BY MS. CAMPBELL:

16 Q Later on, if he chose to waive his rights, you
17 reminded him again that if at any time, he wanted to
18 stop talking to you, he could stop ---

19 A We consistently stated that ---

20 Q --- and exercise that right? And that's
21 reflected in the transcript?

22 A Yes, it is.

23 MS. CAMPBELL: Thank you.

24 THE COURT: You may step down.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: Next witness.

2 MS. CAMPBELL: Your Honor, with the Court's
3 permission, we have the actual --- they tell me the
4 disk that works now. If we could mark that as a
5 State's Exhibit at this point and hand it up to the
6 Court and make it a part of this record.

7 THE COURT: All right.

8 MS. CAMPBELL: Because I think it would most
9 accurately reflect the conversations.

10 THE COURT: That's the working one or there's
11 another one?

12 MS. CAMPBELL: They tell me it's working.

13 THE COURT: Okay.

14 MS. CAMPBELL: But they told me the other one
15 worked, too.

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

18 MS. CAMPBELL: Your Honor, we feel like the
19 sergeant's testimony, coupled with State's Exhibit
20 Number 2, would be sufficient for this hearing
21 because that would accurately reflect what happened.

22 THE COURT: All right. Any witnesses for the
23 defense?

24 MR. STRICKLER: Beg the Court's indulgence, Your
25 Honor.

1 (Pause)

2 No, sir. Thank you.

3 THE COURT: Any argument on the issue, the State
4 or the defense? The State?

5 MS. CAMPBELL: Your Honor, just you know the law
6 better than we do, the case law.

7 THE COURT: All right. Mr. Strickler?

8 MR. STRICKLER: Your Honor, simply that under
9 the totality of the circumstances, what you have ---
10 what will be reflected on the disk and what isn't
11 reflected in the transcript itself and that's --- the
12 transcript is Court's 1; is that correct?

13 THE COURT REPORTER: No, 2.

14 MR. STRICKLER: Two?

15 MS. CAMPBELL: Court's Exhibit 1 is the
16 transcript; State's Exhibit 2 is the disk.

17 MR. STRICKLER: Court's 2 is the transcript, I'm
18 sorry.

19 What would be reflected on the disk and the
20 transcript is 14 minutes of an extremely reluctant
21 Frankie McGee being, I would submit, cajoled into
22 talking with the police.

23 What is further reflected on the disk far more
24 than I went into at this hearing is intimidating and
25 abusive behavior on the part of the officers during

1 the course of their interrogation, cursing at him,
2 slamming their hands or objects, on furniture,
3 engaging in verbal intimidation of him.

4 I'd submit that under the totality of the
5 circumstances and would submit that Your Honor needs
6 to go ahead and listen to the disk prior to making a
7 decision in this regard because --- because the ---
8 what comes across on the audio is of significance.

9 I would submit that under the totality, when you
10 take those things into consideration, that the
11 statement was not voluntary in nature.

12 I don't have any particular argument regarding
13 whether or not he was Mirandized on the form itself.
14 He has very reluctantly signed off on it. I can't
15 deny it went through Miranda.

16 THE COURT: And accepting what you say is
17 correct, do you have any authority where any court
18 has decided that that made a statement involuntary?

19 MR. STRICKLER: Well, certainly, statements that
20 are made in response to promises or threats or
21 coercion are involuntary in nature, and --- and I
22 would submit that the environment in which the
23 statement was given was coercive in nature. That's
24 reflected by the tape, by the recording itself.

25 THE COURT: But I thought you were arguing that

1 it was abusive and some other words that you used. I
2 didn't hear you use the words "coercive".

3 MR. STRICKLER: I'm sorry.

4 THE COURT: "Intimidating". You might have said
5 intimidating.

6 MR. STRICKLER: Well, I apologize if I left
7 those out, Your Honor. I just --- when I speak of
8 abusive conduct and intimidating conduct, I equate
9 those with coercion. So --- and my argument is that
10 the --- that the statement is itself coerced, it was
11 not a product of a voluntary nature on the part of
12 Mr. McGee.

13 THE COURT: Yeah, but do you have any authority
14 where the --- where the court considered that law
15 enforcement cursed at the defendant, shouted at the
16 defendant, screamed at him, pounded the table, and
17 the court cited these factors in deciding that a
18 statement was coerced?

19 MR. STRICKLER: No; no, sir.

20 THE COURT: All right. What does the State say
21 about all of that?

22 MS. CAMPBELL: Your Honor, I think if you listen
23 to the tapes in conjunction with the transcript,
24 you'll see they went out of their way to explain his
25 rights to him and to make sure he understood his

1 rights.

2 He does have a history, which can't go before
3 the jury, of dealing with the police, which he
4 references, to --- about the prior police trying to
5 railroad him.

6 So, clearly, he shows some insight into what his
7 actual rights were, and he just considered those
8 carefully before making the decision. The officers
9 go out of their way to explain it to him as to what
10 his rights are, and that, in fact, it won't hurt him
11 as to whether or not he wants to talk to them.

12 He repeatedly, every time when asked, said he
13 wants to talk to them. I see no evidence at all of
14 any kind of coercion, threats, or physical force that
15 was used here or any type of intimidation that he is
16 referring to.

17 This defendant was, in fact --- and I think the
18 record will reflect --- very deliberate and careful
19 about whether or not he wanted to tell the police his
20 side of the story, which ultimately he did in denying
21 what happened.

22 THE COURT: In the 14 minutes of talking about
23 signing the paper, was that related to whether or not
24 he wanted to talk to them, or whether or not he
25 wanted to sign a piece of paper?

1 MS. CAMPBELL: That was just whether or not he
2 wanted to sign the piece of paper. At no point does
3 he ever say he doesn't want to talk to them. Every
4 time when they asked him do they want to talk to him,
5 his answer is yes.

6 THE COURT: Anything else on this issue?

7 MR. STRICKLER: No, sir.

8 THE COURT: All right, sir. Well, I'll try
9 listening to this one here, and then we'll --- I'll
10 rule on that issue in the morning then. But assuming
11 that I rule that it is a voluntary statement, then
12 the issue of redacting, when will you all deal with
13 that?

14 MR. STRICKLER: We can deal with it now, Your
15 Honor, if you'd like.

16 THE COURT: All right. Ms. Campbell mentioned
17 the parts that the State is going to take out and
18 redact. Do you have some others that she didn't
19 mention?

20 She mentioned the references to prison, the
21 warden, and the prior record.

22 MR. STRICKLER: Yes, sir. Beg the Court's
23 indulgence one moment.

24 (Pause)

25 MS. CAMPBELL: And prior dealings with police.

1 THE COURT: And prior dealings with police.

2 MR. STRICKLER: I have a whole litany of things
3 which we need to consider. However, of course,
4 they're not in reference to their transcript because
5 we just got it today.

6 However, those things that we are concerned with
7 relate to prior history in part, going to drug houses,
8 drug dealers, using drugs, references to a truck that
9 you've heard referenced by the State already. That's
10 tied into another issue that we have to deal with
11 here.

12 THE COURT: All right.

13 MR. STRICKLER: Whether or not that's admissible,
14 drug dealers, drug houses, dishonorable discharge
15 from the military, going back to prison, drugs, prior
16 record and the truck.

17 THE COURT: All right. And which truck? Which
18 truck? Getting in a truck and driving to a crack
19 house or stealing the truck?

20 MR. STRICKLER: The truck that is alleged to
21 have been --- well, the truck that definitely was
22 stolen by someone on May 2nd in Camden and which was
23 recovered on May 3rd, 2009, on Token Street, I don't
24 know, seven blocks or so from the incident location.
25 It's a Peterbilt tractor, semi tractor-trailer.

1 THE COURT: I thought there was something about
2 he got into the driver's seat of the truck, and while
3 the truck driver was in the crack house, he drove the
4 truck. Is that the same truck we're talking about?

5 MR. STRICKLER: Not according to his statement.
6 His statement was that was a Mack truck.

7 THE COURT: Oh, a Mack Truck.

8 MR. STRICKLER: And this was a Peterbilt truck,
9 very definitely. That did not occur at the same time
10 as --- same timeframe that they're talking about.

11 THE COURT: All right. What says the State?

12 MS. CAMPBELL: Your Honor, our position is he is
13 referring to the same truck. He described it as a
14 Mack truck, not a Peterbilt truck, it's semantics,
15 but he's trying to explain how evidence got into the
16 truck which was found, which they did confront them
17 with.

18 I think if you read the transcript, that's
19 pretty clear.

20 THE COURT: All right.

21 MS. CAMPBELL: This is the same truck that was
22 stolen on the 2nd, and that ended up being found that
23 day or the next day a few blocks from Reverend
24 Eichelberger's house.

25 It's the same truck that would have been a winch

1 bar in it. It would have been exactly like the winch
2 bar that was used during this murder.

3 THE COURT: Generally, the defense doesn't want
4 you all to say that --- introduce any testimony that
5 shows that the defendant is a drug user, went to drug
6 houses, bought drugs, used drugs.

7 MS. CAMPBELL: Your Honor ---

8 THE COURT: I think that's the argument ---

9 MS. CAMPBELL: --- the only references as far as
10 the drug houses --- Your Honor, that's how he
11 explains where he was that day instead of being at
12 the reverend's house, and he explains that when he
13 did an assault, which he admitted to his wife that he
14 assaulted someone, he was explaining that that was
15 the same night that he was hitting a drug dealer
16 nearby, but it wasn't Reverend Eichelberger.

17 We think that would be significant, just for
18 that limited purpose as far as just those references,
19 because basically, he's explaining why he wasn't
20 killing Reverend Eichelberger. That's his
21 explanation for why he couldn't have killed Reverend
22 Eichelberger.

23 THE COURT: All right. All right.

24 MS. CAMPBELL: And, Your Honor, I don't believe
25 it would fall under a prior bad act. It would be

1 more --- our position would be an admission because
2 he was trying to explain why he couldn't have killed
3 Reverend Eichelberger, but any references to any drug
4 use that was --- at that exact time period or
5 relevant to that exact time period --- we will redact.
6 I don't think we can go into his history of the drug
7 use.

8 THE COURT: So the State's position is that drug
9 history unrelated to the events regarding time and
10 place connecting him with being there at the scene or
11 at the scene should be admissible.

12 The defense says none of it should come in. Is
13 that what you're saying? I don't know.

14 MR. STRICKLER: Yes, sir.

15 THE COURT: All right.

16 MR. STRICKLER: Yes, sir; that's correct. I
17 mean, my understanding was you have to establish
18 pretty intimately between drug use and the offense
19 charged in order for it to be admissible, and they
20 don't have that here.

21 It's a very open question as to whether he was
22 even talking about the same night, but they go around
23 and around and around about what exact day they're
24 speaking about as far as that goes, and there is
25 nothing to show that there --- that there is a link

1 between --- if you assume the drug use was the same
2 day, there was nothing showing a link between that
3 and the offense.

4 THE COURT: All right.

5 MR. STRICKLER: Nothing to show he was doing
6 drugs before he went to kill him, to get money and
7 went out and bought more drugs with it, which is a
8 classic situation in which the State would be
9 successful in arguing that it's admissible.

10 They just want to go ahead and link him up with
11 drug use, and they can't do that.

12 THE COURT: All right.

13 MS. CAMPBELL: This is his admission where he
14 links himself up to explaining why he couldn't have
15 killed the reverend because he was assaulting --- he
16 refers to him as a drug dealer.

17 These aren't words we put into his mouth. This
18 isn't under a 404(b). This isn't a prior bad act
19 issue. It's his explanation as to why he could not
20 have killed the reverend that night, because he was
21 busy, involving a drug dealer, whose name he would
22 not provide --- and I'll have all that other
23 information, Your Honor --- which taken into a
24 totality of the circumstances would be relevant.

25 Your Honor, we would rely on State vs. Beck and

1 State vs. Adams as to this proposition, and we can
2 get that --- to those cases, as well, Your Honor, on
3 the other issues as far as the robbery, the taking of
4 the truck.

5 THE COURT: All right.

6 MR. STRICKLER: What ---

7 THE COURT: Yes, sir.

8 MR. STRICKLER: Excuse me. What I would like
9 to --- not that I have any say in the matter, but
10 what I would like is to have the State point out
11 those portions of the transcript they submit support,
12 support, their contention that the discussions about
13 drug usage that night as opposed to some other time;
14 that the assault that she's referencing was that
15 night, as opposed to some other time.

16 They're the people that want to get that in.
17 They're the people who want to introduce that
18 evidence, which clearly is prior bad act evidence.

19 They're the people that need to go ahead and
20 link it up. You know, just making the statement that
21 it's not about it, that doesn't cover it. I need to
22 be able to respond to specifically what she claims
23 links --- links these incidents.

24 THE COURT: All right.

25 MR. STRICKLER: I mean, I've got a transcript

1 that's marked up one side and down the other that I
2 could point out and --- that indicate places I have
3 issues with as far as drug evidence. It's not their
4 transcript. I just got it, their transcript now.

5 THE COURT: All right. What else do we have?

6 (There was no response.)

7 Let's take a few minutes and take a break for a
8 few minutes, and then we'll come back and talk about
9 whatever else we have.

10 MR. STRICKLER: Yes, sir. Thank you.

11 (WHEREUPON, a short break was taken.)

12 THE COURT: All right. Mr. Strickler.

13 MR. STRICKLER: If I could, Your Honor, just by
14 way of suggestion ---

15 THE COURT: Sure.

16 MR. STRICKLER: --- I would ask as far as the
17 drug question goes that we defer resolving that until
18 first thing tomorrow morning, so that I can go and
19 reference their transcript with the transcript I have
20 so that the specific areas I have problems with will
21 agree with whatever specific areas she has, and we
22 can discuss them and resolve them at that point in
23 time.

24 I think Your Honor has an understanding of the
25 general positions of the two parties, but I think it

1 could be --- it could be more appropriately dealt
2 with if we both can address the individual places.

3 I have probably 15 places in this transcript
4 that reference drugs, some of which could be dealt
5 with by redacting a word or two, some of which are
6 entire pages and entire concepts. So that's what I
7 would suggest as far as that goes.

8 We have some other things that will also relate
9 to redaction that we can take up this evening and
10 probably can resolve.

11 THE COURT: All right.

12 MS. SIMPSON: Your Honor, if I may briefly ---

13 THE COURT: Yes.

14 MS. SIMPSON: --- with respect to waiting until
15 in the morning, I think if we address probably what
16 the defense is referring to with the separate
17 incidents that the State will --- or not even
18 separate. We are arguing that they are very
19 interrelated and connected to the murder, as well as
20 the burglary, which would be a very limited portion
21 of the defendant's drug use, as well as the
22 tractor-trailer incident.

23 If we address those now, then the issue of
24 redaction will be much easier for us to deal with
25 later. However, I think we need to address those now,

1 because depending on the court's ruling, then we will
2 be able to decide which portions of the audiotape
3 should or should not be redacted.

4 Your Honor, also, additionally, the State has
5 several cases to hand up: State v. Adams, State v.
6 Beck, State v. Gillian and copies for the defense, as
7 well, on this issue with respect to the defendant's
8 prior drug use, as well as to the tractor-trailer
9 incident. These would be beneficial to the motions,
10 if we are going to address them now.

11 THE COURT: All right.

12 MS. SIMPSON: Permission to approach?

13 THE COURT: Yes.

14 All right. Tell me how these cases support the
15 State's position.

16 MS. SIMPSON: Well, essentially, Your Honor, I
17 think it would be helpful if we give you just a
18 little bit of background, or an overlay of the case,
19 so you're not looking at this piecemeal.

20 Essentially, of course, Reverend Eichelberger
21 was murdered on May 3rd of 2009. Prior to May 3rd of
22 2009, a truck was stolen from Camden, Camden Metal
23 and Steel Company.

24 The defendant, his residence, is in Camden,
25 South Carolina. He was living, I believe, on 112

1 Dove Road at the time.

2 The truck was actually found the next day on
3 May 3rd on the same day that Reverend Eichelberger
4 was murdered on Token Street, which is only several
5 blocks away from the murder, as well as the location
6 of where the winch bar was found and a pair of socks.

7 THE COURT: Were the ---

8 MS. SIMPSON: Your Honor, with respect to that
9 tractor-trailer incident ---

10 THE COURT: Were the socks found near the truck?

11 MS. SIMPSON: Well, Your Honor, I'll back up; I
12 got ahead of myself, and I'll address that first.
13 With respect to --- on May 3rd, it's the State's
14 position that the defendant did enter Reverend
15 Eichelberger's home armed with a winch bar and beat
16 him, essentially, ultimately causing his death.

17 When he entered Reverend Eichelberger's home, as
18 he was holding the winch bar, we argue that he was
19 wearing a pair of socks, which were used as gloves.
20 The winch bar was found across the street at [REDACTED]
21 [REDACTED] in the backyard of Mr. Larry Harp, who
22 is able to identify the defendant as being at
23 Reverend Eichelberger's home earlier that day, and
24 indicated that the winch bar, which is --- I don't
25 know if Your Honor is familiar --- probably about a

1 three-foot-long heavy bar commonly found in the cabs
2 of 18 wheelers, trucks used for --- I guess, to like
3 jack --- for better --- to like jack the truck up.

4 THE COURT: It's used for winching.

5 MS. SIMPSON: Winching, sure. I have a limited
6 knowledge in these matters, Your Honor.

7 Additionally, behind [REDACTED] on Abraham
8 directly backing up to [REDACTED] and directly across the
9 street from Reverend Eichelberger's house, a pair of
10 socks were found. These socks do contain, on the
11 outside, the victim's blood, as well as the inside,
12 DNA from the defendant.

13 These three streets are only several blocks away
14 from the 18 wheeler. There is going to be testimony
15 that the winch bar used in the murder is similar and
16 consistent with one that would have been in the cab
17 of that 18 wheeler truck, and also, Your Honor, that
18 the defendant is familiar with this --- this
19 instrument or tool, for lack of a better word, even
20 though in his statement he indicates he doesn't know
21 what it is.

22 He actually does have a CDL license and did
23 drive trucks for a period of time. With respect to
24 the video or to the tractor-trailer incident, Your
25 Honor, this was caught on video.

1 The defendant's sister, Sandra Thomas, who is a
2 Columbia Police Department officer actually
3 identifies the defendant on the video as being her
4 brother.

5 Now, the defendant is not charged with this
6 burglary. However, we are --- or this theft of the
7 tractor trailer; however, we are seeking to introduce
8 evidence of that incident because, first of all, it
9 puts the defendant in the location in the area at the
10 time of the murder. He is not from here.

11 The truck was stolen from Camden where he is
12 from. He is on video identified by his sister,
13 Sandra Thomas, several blocks away from the incident
14 location.

15 The winch bar that was used is something that
16 would be found in this type of truck, Your Honor. So
17 we are seeking to introduce that.

18 With respect to his drug use, we would limit it
19 to, of course, his statements and his admissions
20 regarding the drug use of that day, or at least in
21 that timeframe of this incident.

22 We will not go into his background as to his
23 general crack addiction, which I believe is alluded
24 to throughout the discovery.

25 THE COURT: His drug use on that day, how ---

1 how do we know we're talking about the day of the
2 murder that he was --- how are the two days, the day
3 of the drug use, the day of the murder, how are those
4 two days pinpointed as being the same day?

5 MS. SIMPSON: Your Honor, with respect to his
6 statement, I believe on page 74 of the transcript,
7 just so the defense is aware of what I'm referring to,
8 the defendant initially said yes, it was on that day
9 that he was using drugs and at a drug house where he
10 got into an altercation with someone at the drug
11 house, a drug dealer in which he, I guess,
12 essentially pistol whipped the drug dealer with his
13 own gun. He then later denies that it was the same
14 day.

15 However, these statements are relevant, and Your
16 Honor, once you read or review the audiotape, I
17 believe you'll find that the officers address several
18 issues as it goes forward in this incident that the
19 defense seems to have answers related to all of the
20 allegations and things that he's confronted with.

21 Many of his responses refer to his drug use, and
22 essentially, that is why he was in Greenvew at the
23 time. He was not killing Reverend Eichelberger.

24 It's clearly relevant to the issues at hand in
25 this trial, Your Honor. Additionally, there is no

1 unfair prejudice with what the State is agreeing to
2 limit the testimony to.

3 THE COURT: All right. What says the defense,
4 Ms. Pringle?

5 MS. PRINGLE: Thank you, Your Honor. May it
6 please the Court.

7 As I understand the State's argument --- I think
8 as I understand it, they are electing to proceed or
9 requesting admission of this evidence under the
10 theory of res gestae. That is how I interpret her
11 argument, both as to the truck and as to drug use. I
12 want to take those up in turn, Your Honor.

13 The standard of res gestae, as the court is well
14 aware, is that the two offenses or however many
15 offenses you're looking at must be so intertwined
16 that one cannot be proven without the other.

17 The res gestae doctrine came about to prevent
18 the State from being hamstrung, to prevent the State
19 from having to fragmentize the language that you read
20 in a lot of these cases, their case.

21 When you look at what we have going on here,
22 what I would say is that the opposite is going on.
23 They want to use the truck to pull in and put these
24 two --- put this case together whereas the truck has
25 absolutely no relevance to this case.

1 There was a statement made by the State that the
2 winch bar --- that there was a winch bar taken from
3 the truck, when in fact, there is no evidence that
4 I'm aware of, based on the discovery, that there was
5 a winch bar that was stolen or removed from that
6 truck; that when that truck, after it was impounded
7 and towed and returned back to Camden, that there was
8 any record or any note or any evidence that there was
9 a winch bar that was on that truck that then went
10 missing.

11 The only thing that they can say about that
12 winch bar is that it is similar to other winch bars
13 at Camden Steel and Metal.

14 The other thing about those winch bars is you
15 can pick those up at truck stops. You can pick those
16 up at any truck stop. They are very --- it's a very
17 common tool, but that particular winch bar that is
18 found in that yard is not linked in any way to this
19 offense other than speculation and conjecture.

20 One thing that I --- and I want to go through
21 the cases, if you'll permit me, Your Honor.
22 Specifically, particularly the State --- the case
23 that the State cites, one very constant theme in the
24 res gestae case is that there is a temporal component;
25 that there is a temporal connection.

1 I looked and looked and looked. In every case I
2 could come up with, that language comes back, and
3 when you read the facts of those cases, those res
4 gestae cases where they either exclude it or uphold
5 it, there is usually some very close temporal
6 connection, which makes sense, because when you have
7 something happening back to back or hours --- you
8 know, hours and minutes, some of these cases --- the
9 case cited by the State, State vs. Adams, is 30
10 minutes.

11 The prior incident that they admit is at
12 5:30 a.m. there is a robbery. There is a murder at
13 six a.m. The robbery, the court ruled, was
14 admissible both as to motive under 404(b) and as to
15 res gestae. I'll come back to the drugs component of
16 that, but that's a huge difference.

17 This truck, I don't know what time it was stolen.
18 I don't think the State knows. We saw the time of
19 the video.

20 All we know is that on May 2nd at two p.m., at
21 sometime before that, that truck was stolen. That's
22 when the deputy rides and discovers the gate is down,
23 and this truck is gone.

24 As far as I know, it's some time prior to that
25 on May 2nd, which is Saturday. Reverend Eichelberger

1 is assaulted on May 3rd, Sunday evening, sometime
2 around 10:30 or 11:00 p.m. So we're talking a
3 day-and-a-half, much, much later.

4 A couple of the cases that I wanted to bring to
5 the Court's attention, State vs. Wood, this is a 2004
6 case. I believe this was in the upstate.

7 I think it was a capital case, but what
8 happened in that case is there was a shooting of a
9 police officer who was killed, and then the defendant
10 fled and was subsequently charged with --- charges
11 relating to incidents, I guess, basically ---
12 incidents that took place when they were trying to
13 apprehend him. So assault and battery, fleeing, and
14 failure to stop for a blue light.

15 In Wood, the trial court actually limited them
16 and said that, "You can't say that an officer was
17 killed. You can say an incident took place."

18 The court upheld that as res gestae. That was
19 one to two hours apart. It makes sense. The reason
20 that they were chasing him is because he had shot and
21 killed a cop.

22 State vs. Beck, which I think if I'm not --- I
23 think the person may have referred to. In State vs.
24 Beck, this is the escort case where two escorts two
25 days apart are assaulted.

1 It's very, very similar. They have got the same
2 boots, the same weapon, the same MO basically. What
3 the court finds is that they uphold the admission of
4 it as to identity, but they say no, that's not
5 admissible as to res gestae.

6 They specifically say, "We agree the crimes are
7 not part of the same criminal episode since the
8 murder occurred nearly two days after the assault and
9 battery of the employee." So, again, they're talking
10 about a temporal connection.

11 In State vs. --- I don't know how you pronounce
12 this, Odell Gagum, G-A-G-U-M. That is a 1997 case,
13 and in this case there, is a robbery of --- or ---
14 well, a strong arm robbery, a mugging of a woman, who
15 then tells her boyfriend.

16 Her boyfriends takes off, gets the suspect, who
17 then attempts to assault the boyfriend and offers to
18 sell him dope.

19 So they talk about whether or not that should be
20 admissible as res gestae. The court said, "Yeah,
21 it's totally contemporaneous." That makes sense. If
22 you put those two apart, it would be impossible to
23 explain what happened or what took place.

24 THE COURT: Spell that word for me again.

25 MS. PRINGLE: G-A-G-U-M. The cite is 492 S.E.2d

1 822.

2 THE COURT: Gagum.

3 MS. PRINGLE: Gagum.

4 THE COURT: Well, I don't know. I just said
5 that.

6 MS. PRINGLE: Other cases, I guess, are going to
7 overlap a little bit because they are all --- there
8 are many res gestae cases that involve drugs.

9 Oh, the only --- the last one that I would point
10 out would be the State vs. Gillian or Gillian, which
11 is 602 S.E.2d 62. The year was 2006.

12 In that case, the defendant lured the victim to
13 a jewelry store to kill him, and he lured the victim
14 by telling him, "I burglarized this jewelry store,
15 and I want to show you what I did."

16 He repeated that to someone, I think his brother
17 or some other witness, and the court said, "Yeah,
18 that comes in." It is evidence of a prior bad act,
19 another act that he committed, but that is admissible
20 because it explains why they're there at all.

21 The other cases --- these --- every single case
22 that addresses drugs and res gestae, there is direct
23 evidence of drug use that has some connection, some
24 logical connection, to what took place.

25 Either they were robbing someone to buy drugs,

1 or they took the money that they stole and they went
2 and immediately bought drugs, and that's every single
3 case.

4 There is no such evidence in this case. I mean,
5 we can argue back and forth, probably endlessly,
6 about this transcript. I know that that's just
7 something that the court will have to come to your
8 own conclusion, but there is --- it would be our
9 position that there is zero evidence that he says
10 anywhere in there --- he makes mention of being in
11 the drug house.

12 Our position is it's not on the same day, but
13 there is zero evidence of him using drugs on that day.
14 Even if that's their position, it doesn't have any
15 connection to the crime, none.

16 There's no --- there's not a single statement
17 that I have --- you know, I went there because I
18 needed money to buy drugs, or I was strung out on
19 drugs. There is no connection between drug use and
20 this man and that incident, none. No connection, no
21 direct evidence of drug use even on that day, and
22 they are asking the questions.

23 They're questioning him. They are bringing this
24 up. I would say to you that if they asked him ---
25 you know, it's not admissible just because they're

1 the ones asking him.

2 You know, he's answering the questions. If they
3 ask him about any number of other bad things he did,
4 that wouldn't just be admissible just because they're
5 asking. There is no connection between these two
6 things.

7 Those cases, Your Honor, State vs. Adams is a
8 case that they cite. The exact example of what I'm
9 saying, direct evidence that they robbed to buy drugs
10 and they used the money that they stole to buy drugs.

11 State vs. Broaddus, B-R-O-A-D-D-U-S; State vs.
12 Dickerson, Broaddus is a 2004 case, 605 S.E.2d 579.
13 In Broaddus, the defendant borrowed a car in exchange
14 for drugs to go make drug deliveries.

15 There was a witness who could come in and talk
16 about that. Someone is killed in the interim, and
17 the court says that is not res gestae; that you don't
18 need it. You don't need to explain why he borrowed
19 the car.

20 You just need to explain --- you can prove your
21 murder, and you don't need it. I think that's kind
22 of what it --- kind of what it boils down to.

23 With respect to the truck --- and I'm almost
24 done. With respect to the truck, Your Honor, as I
25 stated, they just --- they don't have any evidence of

1 a connection to that winch bar.

2 That is a common item. They have no evidence
3 that he needed transportation. He actually has his
4 own pickup truck. That is referred to in the
5 evidence.

6 He has wife, who also has a car. So there is no
7 evidence that he needed a truck to get to Columbia
8 that would make that probative of anything.

9 THE COURT: Well, not that he needed a truck,
10 but he --- that's how he got there.

11 MS. PRINGLE: We'd say not and that's ---

12 THE COURT: They say they have evidence that he
13 stole the truck, and the truck he stole ended up near
14 the victim's home.

15 They have to put him at the scene of the crime,
16 don't they? So that's evidence that, if the jury
17 believes this, that is putting him at the scene.

18 Whether that directly puts him at the scene or
19 circumstantially puts him at the scene, that's
20 evidence --- of course, you all will file another
21 motion about a sister who can't identify her brother.
22 You know, I have to hear that. A motion to --- a
23 motion in limine or to exclude identification
24 testimony.

25 Is there a notice of alibi in this case?

1 MS. PRINGLE: No.

2 THE COURT: You know, I'm just --- I'm just
3 thinking out loud. I've got to review all of this,
4 because you all have been working on the case for a
5 long period of time.

6 It's really amazing to bring it all to a judge,
7 and within half an hour, the judge is supposed to
8 know everything about the case and issue important
9 constitutional rulings without having much of an
10 opportunity to even know anything about the case.

11 Typically, with me if I --- once I hear the case,
12 I get a feel for what's going on, then I can rule on
13 issues as they come up during the course of the trial.
14 But to rule in advance of knowing anything, just
15 based on what you all are telling me at this point,
16 having not read this transcript, not heard this
17 statement, not seen any documents or anything, it's
18 extremely difficult.

19 But with respect to the transcript, I know there
20 is some --- it seems sort of confusing to me as to
21 whether or not the date that the defendant has
22 acknowledged --- acknowledging being in this
23 neighborhood or in his yard or in his house, that he
24 was discovered dead or some other date, or it was a
25 discovered injury, or whether the defendant places

1 himself at the scene, in addition to the truck theft
2 placing him at the scene and whether or not the State
3 should be able to --- or to what extent the State
4 should be able to use the defendant's admissions of
5 being at the scene or near the scene. So all of that
6 factors in, as well.

7 I do recall him first being vague and hesitant
8 about knowing where Greenview is and having been to
9 Greenview and going from there to admitting to being
10 at all these places in Greenview, including the
11 decedent's home and crack house and gas station and
12 this place and that place.

13 So to the extent to which the State should be
14 able to use this evidence, to place him at the scene
15 without unduly destroying his character by him
16 putting him --- putting his own character in evidence,
17 this is a dilemma.

18 So I'm just thinking out loud. Go ahead.

19 MS. PRINGLE: With respect to all of the drug
20 house references, I guess it would be their position
21 that we're entitled to say where he says he was.

22 You know, it's our position that since there is
23 no connection to a link between drugs and what they
24 believe took place in this event that you could edit
25 out that part.

1 You know, you could have him saying, "I was at
2 house there, or I was at a house in the area" without
3 adding in that inflammatory sort of information that
4 goes against his character.

5 We do have a motion relating to the testimony of
6 Sandra Thomas, and that would be, in my opinion,
7 opposition that that's their sole piece of evidence
8 that he stole that truck.

9 I think that you need to view the video. I
10 don't know if that's been provided to you or not. We
11 can't read the copy they gave us. I'll have to ---

12 THE COURT: Yeah, but I can't view the evidence
13 and say, "Well, I can tell that's him." I mean...

14 MS. PRINGLE: I think you can view it and tell
15 that you can't tell it's him. That's part of our
16 argument that you cannot tell who that is.

17 THE COURT: Well, the sister says that she ---
18 well, I don't know what she would say. She might ---
19 you know, "I know that egg on his head", or I don't
20 know what she might say as to the basis that she
21 knows it's her brother.

22 But that's --- you know, I don't know that I can
23 substitute my judgment for someone else's judgment.
24 It depends on her testimony, and the question is
25 whether that goes to admissibility and the weight of

1 the testimony, but I'm happy to hear any motions,
2 including finishing up this one.

3 MS. SIMPSON: Your Honor, I believe we have one
4 more additional case just to hand up for the record.
5 It's State v. Rice in support of this issue.

6 THE COURT: Well, considering that I've been
7 handed up all of these cases to read, or transcript
8 to read and a disk to hear, I have to do all of that
9 before I rule.

10 So I'm back to what Mr. Strickler is saying now,
11 because you've handed them all up. But I've got to
12 read them at some point.

13 MS. SIMPSON: Your Honor, briefly, I think the
14 defense also provided a copy of the motion regarding
15 Sandra Thomas' actual testimony.

16 THE COURT: Right.

17 MS. SIMPSON: Just for purposes of having
18 argument on that issue for you to consider. We want
19 to go ahead and address that.

20 THE COURT: Is she here?

21 MS. SIMPSON: Yes, she is.

22 THE COURT: All right. So there is a motion to
23 exclude testimony?

24 MS. PRINGLE: Yes, sir. It's our position that
25 that would be --- if they're offering that, they're

1 offering an opinion of a lay witness, and that
2 they're prohibited by the Rules of Evidence from
3 doing that.

4 Rule 602 --- and this is all outlined in my
5 brief. I need to make them both Court's Exhibits,
6 but Rule 602 requires that a witness, in order to
7 testify, have a personal knowledge of the events to
8 which she is testifying or he is testifying, and she
9 does not.

10 Even if she did, she can only testify --- she
11 can only issue an opinion as a lay witness if the
12 requirement of 701 are met.

13 701(a) requires that her opinion be based on her
14 perceptions, and she --- or it would be our opinion
15 that she doesn't have any direct knowledge. She is
16 viewing exactly what the jury can view, exactly what
17 you can view, and coming to her own conclusions; that
18 are not --- that's not helpful or probative to
19 anything that the jury must determine.

20 Subsection B says it must be helpful to a clear
21 understanding of a witness's testimony or a
22 determination of a fact in issue.

23 Our position is she doesn't have any personal
24 knowledge. There is no fact that her testimony can
25 assist the jury in determining. The cases that I

1 cite in the brief ---

2 THE COURT: Well, I can't make that conclusion
3 based on your argument. I have to make it ---
4 whatever conclusion I make, I have to make it based
5 on some evidence, and argument is not evidence.

6 For you to say that she cannot discern or say
7 that this is her brother, I can't just agree with you.
8 I'd have to hear what she has to say about it.

9 MS. PRINGLE: Well, I'd ask the State proffer
10 her testimony and also that the State provide to the
11 court a copy of the video. We've all had
12 technological problems with the video. I don't have
13 an --- I know they can get you one, and we can run it
14 on your machine, but I don't have one.

15 THE COURT: All right. Okay.

16 MS. CAMPBELL: May it please the Court.

17 THE COURT: Yes.

18 MS. CAMPBELL: Can we call?

19 THE COURT: Sure.

20 MS. CAMPBELL: The State calls Sandra Thomas.

21 SANDRA THOMAS,

22 after being duly sworn, testified as follows:

23 THE CLERK: Thank you. Have a seat in the
24 witness stand please.

25 THE BAILIFF: Watch your step. State your name

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1 for the record.

2 THE WITNESS: Sandra McGee Thomas.

3 DIRECT EXAMINATION:

4 BY MS. CAMPBELL:

5 Q And, Ms. Thomas, how old are you?

6 A Forty.

7 Q And do you have a brother?

8 A Yes.

9 Q Is he here in the courtroom?

10 A Yes.

11 Q You all grew up together?

12 A Yes.

13 Q You've known him your entire life. Is he older
14 or younger than you?

15 A Older.

16 Q So you've known him your entire 40 years?

17 A Yes.

18 Q I'm going to turn your attention back to May of
19 2009. Did you have an opportunity to view the news
20 one night?

21 A Yes.

22 Q And tell the judge what you saw on the news that
23 night, and what you recognized.

24 A I saw a surveillance video of someone stealing a
25 large truck and ramming it through a gate.

1 Q And on that surveillance video, at one point,
2 does the person who is stealing the truck actually
3 get out of the truck and come closer to the camera?

4 A Yes.

5 Q And when you observed the video, what was your
6 immediate reaction?

7 A I said, "Oh, my God. That's my brother."

8 Q And you did that based on knowing him for 40
9 years?

10 A Yes.

11 Q Or, at the time, I guess it would have been
12 about 38?

13 A Yes.

14 Q And when you saw him, based on what you were
15 able to see on the video, was there any doubt in your
16 mind that was your brother?

17 A No.

18 Q As a result of what you saw on TV, did you
19 actually make a phone call to Crimestoppers?

20 A Yes.

21 Q And did you report anonymously what you had
22 observed?

23 A Yes.

24 Q Later on, about a year, a little less than a
25 year later, did you receive a phone call from the

Cross of Thomas by Pringle
(Pre-trial)

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1 defendant's wife?

2 A Yes.

3 Q And as a result of that phone call, did you then
4 contact anybody or were you contacted?

5 A I contacted someone.

6 Q And who did you contact?

7 A Investigator Reese.

8 Q As far as your knowledge about what happened to
9 Reverend Eichelberger, it's limited to the videotape
10 you observed from the taking of the truck?

11 A All I saw was the truck being taken.

12 Q And you reported that immediately to
13 Crimestoppers that night, based on what you observed?

14 A Yes.

15 Q Is there any doubt in your mind that's your
16 brother?

17 A No.

18 MS. CAMPBELL: Thank you. I'm sorry.

19 THE COURT: All right.

20 MS. PRINGLE: May it please the Court.

21 THE COURT: Yes.

22 CROSS-EXAMINATION:

23 BY MS. PRINGLE:

24 Q Ms. Thomas, you work for whom?

25 A Columbia Police Department.

Cross of Thomas by Pringle
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1 Q You work for the City of Columbia Police
2 Department?
3 A Yes.
4 Q And how long have you been working for the City
5 of Columbia Police Department?
6 A This month, 21 years.
7 Q How long?
8 A Twenty-one years.
9 Q Okay. So you --- you've been working there for
10 21 years. What do you do there?
11 A I'm a police officer.
12 Q All right. And at the time that this took ---
13 have you seen the video since you saw it on
14 Crimestoppers?
15 A Yes.
16 Q When did you view the video again recently?
17 A About a week ago.
18 Q And your --- you viewed it here?
19 A Yes.
20 Q With Ms. Campbell or somebody in the solicitor's
21 office?
22 A Yes.
23 Q And when you --- when you viewed the video, it
24 was just sort of a gut reaction, "That's my brother"?
25 A Yes.

Cross of Thomas by Pringle
(Pre-trial)

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1 Q All right. So you saw it, and that sums it up.

2 "That's my brother."

3 A Yes.

4 Q And your brother has been in trouble in the past?

5 A He has, yes.

6 Q And you know that, right?

7 A Yes.

8 Q And so that wasn't that foreign of a thought to
9 you, right?

10 A No.

11 Q Because you know he's been in trouble for things
12 like that before?

13 A Yes.

14 Q And there was nothing about it other than just
15 you saw it and your thought was, "That's him"?

16 A Oh, and I recognized his build, yes.

17 Q Well, you would agree that there are a lot of
18 people that have that build, right?

19 A I'm sure. Yes, I'm sure.

20 Q I mean, he's certainly not the only --- he's
21 about 5'7", I don't know, about 200 pounds?

22 A Yes.

23 Q Plenty of African American men that look similar
24 to that build, right?

25 A Yes.

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1 Q All right. So there's nothing, nothing else
2 about the video that stood out to you. It was just
3 sort of the whole thing, right?

4 A No.

5 Q Okay. And you reported this to Investigator
6 Reese in March of 2010?

7 A Yes.

8 Q Is that correct? Went --- and I guess this is
9 when you found out about this?

10 A Yes.

11 Q And you work for law enforcement?

12 A Yes.

13 Q But you didn't report it to anybody at the City
14 of Columbia or in Camden or Kershaw back when it
15 happened?

16 A I called Crimestoppers.

17 Q Right.

18 A I wouldn't report it to the City of Columbia,
19 because it's out of our jurisdiction.

20 Q Right. But you didn't report it to any police
21 officer, or did you report it to your supervisor at
22 the City of Columbia?

23 A No, I didn't.

24 Q Did you contact Kershaw Police Department
25 directly?

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(Pre-trial)

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1 A No.

2 Q But you certainly would know how to do that?

3 A Yes.

4 Q And you would know --- you wouldn't have to go
5 through Crimestoppers, right?

6 A I wouldn't have to.

7 Q And if it --- do you recall when you called
8 Crimestoppers?

9 A I can't quite ---

10 THE COURT: Ms. Pringle, is all of this related
11 to her --- whether or not she can testify as to the
12 identity of her brother?

13 MS. PRINGLE: I think it goes to whether or
14 not --- I think it goes to the credibility of how
15 firm that belief was at this time. I'm about done,
16 Your Honor, but that would be my argument.

17 THE COURT: All right.

18 MS. PRINGLE: That if you were ---

19 THE COURT: Okay. I understand. Go ahead.

20 BY MS. PRINGLE:

21 Q That if you were certain, you would have
22 reported it at the time. That's all. You didn't
23 report it to law enforcement other than calling
24 Crimestoppers.

25 A Right.

Cross of Thomas by Pringle
(Pre-trial)

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1 Q And Crimestoppers, when you call them, that's
2 just an anonymous tip, right?

3 A Well, they --- they report it to the local law
4 enforcement.

5 Q Was there any follow-up on it?

6 A No.

7 Q As far as you know, did they investigate?

8 A I don't know.

9 THE COURT: How did you know that that was your
10 brother on the picture?

11 THE WITNESS: I know my brother's build. I know
12 his facial features. I know the type of clothes that
13 he wears. I've seen him all my life. I recognize my
14 brother.

15 THE COURT: All right. Solicitor, anything
16 further?

17 MS. CAMPBELL: No, Your Honor.

18 THE COURT: Anything further?

19 MS. PRINGLE: No, Your Honor.

20 THE COURT: All right. You may step down.

21 THE WITNESS: Okay.

22 THE COURT: I deny the motion regarding her
23 identifying her brother. I think in any scenario, it
24 would go to the weight and not to the admissibility.

25 MS. PRINGLE: May I respond, Your Honor?

1 THE COURT: Sure.

2 MS. PRINGLE: May I call ---

3 THE COURT: I'm sorry. You want to call a
4 witness?

5 MS. PRINGLE: No.

6 THE COURT: Oh, I'm sorry.

7 MS. PRINGLE: I just wanted to make one brief
8 argument ---

9 THE COURT: All right.

10 MS. PRINGLE: --- and then I'd offer the court a
11 case cite.

12 THE COURT: Uh-huh.

13 MS. PRINGLE: State vs. Duane Herring that was
14 tried in Richland County a couple of years ago, I'd
15 like to hand that up. I think I have a clean copy,
16 Your Honor.

17 In the Herring case, the solicitor called
18 witnesses to testify as to what was taking place on
19 video. What was taking place on the video of
20 gunshots, a surveillance video of gunshots from a
21 nightclub, I believe.

22 The defense attorney objected on the same
23 grounds that I've objected and on which my brief was
24 based, and there's no personal knowledge. And that
25 that was inappropriate.

1 When you read the Herring case, while they
2 uphold it, it is clear to me that the import of the
3 Herring case is that should not have taken place;
4 that opinion testimony should not have taken place.

5 THE COURT: An opinion of somebody identifying
6 what?

7 MS. PRINGLE: That --- what they're doing is
8 they're testifying as to what was taking place in the
9 video, what they see --- what their opinion is as to
10 what has taken place in the video. It would be my
11 position that's the same thing.

12 She doesn't identify him based on his clothing
13 or his walk or his --- it was just a gut reaction
14 kind of thing.

15 THE COURT: Well, she said she identified him
16 based on all of those things and based on the fact
17 that she knows her brother.

18 I mean, I think if I saw my children, wife,
19 whomever on a video, if I can identify them, I can.
20 If I can't, I can't, but as a motion in limine or to
21 exclude the testimony, based on what I've heard, I
22 deny that motion.

23 You know, I'm sure with the Herring case, there
24 were any number of issues the court has to deal with.
25 Many times, the side comments and opinions that ---

1 where the court is discussing various things, I mean,
2 in the end, he's --- he's still in prison for it,
3 whatever number of years he got.

4 I don't know that any law on that area was made
5 on this issue, because it's not a --- it's an issue
6 of whether a person based on their perception can
7 testify and identify someone, I don't --- I don't see
8 a problem with her identifying her brother.

9 If she says she can, she can. I'll be happy to
10 review that case again and hear you further on that,
11 Herring, H-E-R-R-I-N-G?

12 MS. PRINGLE: Yes, sir. And if I --- may I ask
13 that the State provide a copy of the video, because a
14 lot of the argument I'm basing this on is when you
15 see the video, you can't objectively say that that's
16 him.

17 He's been in trouble for doing this very similar
18 kind of thing before, but when you view the video,
19 it's a surveillance video. It isn't great quality.
20 You couldn't determine who it is.

21 THE COURT: Well, that goes to your trying to
22 convince the jury that his sister couldn't --- can't
23 identify him. She says she can, but I'll be happy to
24 look at whatever, whatever I need to look at,
25 whatever you want me to look at, including the video.

1 MS. PRINGLE: Thank you, Your Honor. Of course,
2 they it would have to provide that to you.

3 THE COURT: All right.

4 MS. CAMPBELL: We'll be glad to get that, Your
5 Honor. We did have to get it transferred onto a
6 different format. She tells me she has it.

7 THE COURT: All right.

8 Next matter?

9 MR. STRICKLER: Your Honor, changing gears just
10 a little bit to something that's probably susceptible
11 to conclusion at this point in time.

12 THE COURT: Yeah.

13 MR. STRICKLER: There --- I anticipate there are
14 numerous --- appears to be from the witness list, lay
15 witnesses which may be called in this case.

16 I would move that we be supplied with criminal
17 histories of those individuals so that we can take up
18 the issue of any impeachable offenses that they have.

19 THE COURT: All right.

20 MS. CAMPBELL: Your Honor, I'll be glad to give
21 them. Some of the first witnesses, Mr. Harp, he has
22 no impeachable --- he has pretty much nothing.

23 Ms. Ashford, nothing impeachable, and I'll hand
24 those over.

25 Your Honor, in that same vein, too, we did ask

1 for a date of birth on his witnesses, and we have
2 been told that they don't have those. We would ask
3 that those be provided in order so that we don't bog
4 down the trial and we can do all that we need to do
5 on those.

6 MR. STRICKLER: Well --- by the time the State
7 is done with their case and we have received the
8 records for our review on the three pages, single
9 spaced, where the witnesses they have, we will see
10 what we can do about the date of birth about our
11 single witness.

12 THE COURT: All right.

13 MR. STRICKLER: And have them --- I'll give them
14 to them in a timely fashion.

15 THE COURT: So you have a single witness at this
16 time, did you say?

17 MR. STRICKLER: That's the person I stood up and
18 informed the court of during jury selection.

19 THE COURT: What was that name again?

20 MS. CAMPBELL: Jonathan Reeves, Your Honor.

21 THE COURT: Jonathan Reeves, all right.

22 Regarding giving him rap sheets on the State's
23 witnesses, what did you say?

24 MS. CAMPBELL: As far as lay witnesses, Your
25 Honor.

1 THE COURT: Yes.

2 MS. CAMPBELL: I think we've given him all but
3 one. We'll give that to him, just a short witness.

4 THE COURT: All right.

5 MS. CAMPBELL: We will get that to him tonight.

6 THE COURT: Okay.

7 MS. CAMPBELL: We would still appreciate it if
8 he could do the same courtesy and give us the date of
9 birth of his witness. So that --- we just don't want
10 to bog the trial down, Your Honor, as far as doing
11 what we need to do.

12 THE COURT: Well, considering the nature or the
13 length, projected length of this trial, the defense
14 will need to give the State that information by
15 Wednesday at five p.m.

16 MR. STRICKLER: Yes, sir.

17 THE COURT: What else do we have?

18 MR. STRICKLER: Beg the Court's indulgence.

19 MS. PRINGLE: I have the copies of the cases I
20 have cited to the court.

21 THE COURT: Okay. Thank you.

22 MS. PRINGLE: They're just all the ones I cited
23 in my argument.

24 MS. CAMPBELL: Your Honor, could we get a copy
25 of those, as well?

1 MS. PRINGLE: I can provide them the cites, just
2 everything that I quoted today. They're all in my
3 briefs, as well, but I'll be happy to sit down with
4 them after I specifically tell them.

5 THE COURT: All right. Regarding the sister's
6 ID --- all of these are regarding the sister's ID and
7 the res gestae?

8 MS. PRINGLE: Yes, sir, only as to res gestae
9 and the ID.

10 THE COURT: All right.

11 MR. STRICKLER: Your Honor, at this point in
12 time, we would move to sequester any witnesses in
13 this case.

14 And out of an abundance of caution, we would
15 have --- of course, I don't know who the State is
16 going to call. We have a number of identifications
17 or attempted identifications that could arise.

18 We have a lot of opportunity for people to
19 tailor their testimony consciously or subconsciously.
20 I'm more worried about subconscious than conscious
21 tailoring based on the testimony of people who
22 testified before them.

23 I would move, with the exception of the State's
24 Chief Investigating Officers, that the witnesses be
25 sequestered.

1 THE COURT: All right. What says the state?

2 MS. CAMPBELL: Your Honor, of course, that would
3 be in the court's discretion. There were statements
4 taken from all the witnesses, or this document, as to
5 what they know in the investigative notes. All the
6 police officers gave statements and documentation in
7 this case that we plan on calling.

8 Of course, any family members would be allowed
9 to stay in here, Your Honor. I'm not aware, in this
10 case, why there would be any need for sequestration
11 or how anyone would tailor their testimony other than
12 what's already in the report of the discovery that's
13 been provided to them.

14 THE COURT: Anything else, Mr. Strickler?
15 Anything else?

16 MR. STRICKLER: No, sir.

17 THE COURT: All right. Sequestration is granted
18 only as to non-law enforcement, non-family member lay
19 witnesses.

20 MS. CAMPBELL: Thank you, Your Honor.

21 MR. STRICKLER: Thank you, sir.

22 THE COURT: All right.

23 MR. STRICKLER: Your Honor, at this point in
24 time, Mr. McGee is charged with burglary in the first
25 degree. One of the allegations regarding the

1 burglary first degree, or one of the facts that the
2 State would rely on in proving burglary in the first
3 degree, is two prior burglary convictions.

4 At this point in time, the defense will
5 stipulate that should there be a burglary proven in
6 this case, it is a burglary in the first degree. I
7 mean, there is no necessity ---

8 THE COURT: You said the defense has said what
9 now?

10 MR. STRICKLER: We will stipulate that should a
11 burglary be proven in this case, and it be proven
12 that it was committed by Mr. McGee, that it is a
13 burglary in the first degree.

14 THE COURT: All right.

15 MR. STRICKLER: In other words, there is no need
16 for the State to prove two prior burglaries to prove
17 burglary first degree through that.

18 There are any number of ways they can get there.
19 The assault and injury is another way of getting
20 there, but specifically, the indictment itself
21 references, among other things, two prior burglary
22 convictions.

23 We're stipulating that if they prove Mr. McGee
24 is guilty of burglary, and we're willing to stipulate
25 he is guilty of a burglary, then it is, indeed, a

1 burglary in the first degree.

2 THE COURT: So the jury will only be asked to
3 consider whether he's guilty of burglary without spec
4 --- meaning the entry into a dwelling with the intent
5 to commit a crime?

6 MR. STRICKLER: Correct, sir.

7 THE COURT: All right. Ms. Simpson?

8 MS. SIMPSON: Yes, Your Honor. May it please
9 the Court.

10 THE COURT: Yes.

11 MS. SIMPSON: Essentially --- and I have State
12 vs. Cheatam, State vs. James, and State v. Hamilton
13 to hand up to the Court.

14 The State is not required to accept the
15 defense's stipulation in this matter. Two prior
16 burglaries is an element of the offense, which we
17 must prove beyond a reasonable doubt.

18 The State is entitled to prove its case, and in
19 addition, Your Honor, we are limiting their cases
20 that have addressed this where seven burglaries have
21 been entered or, you know, the number as to whether
22 the prejudicial effect of this.

23 We are only entering two prior burglaries for
24 the simple point of supporting and proving our case
25 that it ---

1 THE COURT: To prove that it is a burglary?

2 MS. SIMPSON: A burglary in the first degree,
3 yes.

4 And, Your Honor, the case law supports it. I'll
5 be happy to provide you with a copy. Again, there is
6 no prejudicial effect here, which is what the court
7 has considered, when determining whether this
8 evidence should be introduced.

9 I believe State v. Cheatham is directly on point
10 with respect to the fact that the State does not have
11 to accept the defense's stipulation.

12 THE COURT: All right. What about that,
13 Mr. Strickler?

14 MR. STRICKLER: Your Honor, I'm well aware of
15 the case law. In fact, the case law indicates that
16 she can go ahead and beat on a man like that. As to
17 the State of South Carolina, I would just submit does
18 not make it right.

19 I understand what the case law says, Your Honor,
20 and I have no argument with any --- with any
21 interpretation of the case law that's been advanced
22 by the solicitor. She is correct in stating that.

23 THE COURT: All right.

24 MR. STRICKLER: So I take it they turned down my
25 kind offer to make their job easier.

1 THE COURT: All right.

2 MR. STRICKLER: In that case, Your Honor, I
3 would at this point in time ask the State to tell us
4 which prior burglaries they intend to introduce.

5 THE COURT: All right. Which prior burglaries
6 do you want to introduce?

7 MS. CAMPBELL: Your Honor, he has three prior
8 burglary third convictions from Kershaw County.
9 We'll be glad to let them choose whichever two.

10 I mean, I don't think it matters. They were on
11 his rap sheet. Those have been provided to him.
12 They are public documents; however, I will give him
13 copies at this point and will show him they are
14 similar.

15 MR. STRICKLER: Well, I understand that there
16 are more than two. That's why I asked which two.

17 MS. CAMPBELL: Okay. I'll get you the
18 information.

19 THE COURT: When is --- when is Ms. McDonald
20 coming over?

21 MS. CAMPBELL: She is scheduled for Wednesday,
22 Your Honor.

23 THE COURT: Wednesday?

24 MS. CAMPBELL: Yes, sir.

25 THE COURT: I'm sure she will have all of her

1 details when she comes.

2 MS. CAMPBELL: Yes, sir. She will.

3 THE COURT: She is quite efficient.

4 MS. CAMPBELL: She is.

5 MR. STRICKLER: I couldn't agree with you more,
6 Your Honor.

7 THE COURT: All right. Well, Wednesday is a
8 good time for that.

9 MR. STRICKLER: Your Honor, beg the Court's
10 indulgence.

11 (Pause)

12 I was informed today that the State has
13 interviewed Sophia McGee, wife of him, and that she
14 had been interviewed during the course of the
15 investigation in this case.

16 The State has informed me that the information
17 she provided them when they interviewed her Friday of
18 last week differs from that that's been provided to
19 us in the discovery in this matter. I'd ask that we
20 be provided that information.

21 THE COURT: All right.

22 MS. CAMPBELL: Yes, Your Honor. The defendant
23 --- the victim --- excuse me, the witness is Sophia
24 McGee. She is the defendant's wife.

25 She did meet with the Public Defender's Office

1 on Friday. Then she came to our office and was
2 interviewed by an investigator who I just got into
3 the courtroom so I could make sure I give them
4 accurate information.

5 I did turn that over, though, this morning to
6 make sure that he understood that her story was
7 different. I wanted to make sure what I told him is
8 accurate, because we've been kind of rushing today.
9 I wanted to make sure that I told him exactly what is
10 accurate.

11 THE COURT: What did she say earlier, and what
12 did she say later?

13 MS. CAMPBELL: Beg the Court's indulgence.

14 (Pause)

15 Your Honor, my investigator is here. He can
16 tell you --- I didn't interview her. So I don't want
17 to misspeak.

18 THE COURT: Of course, he would be testifying,
19 so you need to --- you can discuss with him and tell
20 me, or he can testify.

21 MS. CAMPBELL: Beg the Court's indulgence.

22 (Pause)

23 And I'm sorry, Your Honor. I just didn't have a
24 chance.

25 (Pause)

1 Beg the Court's indulgence.

2 (Pause)

3 If it please the court.

4 THE COURT: Yes.

5 MS. CAMPBELL: Your Honor, referencing the
6 statement by the police from her, in the second
7 answer paragraph, she basically states that she
8 doesn't remember if the timeframes are correct,
9 referring to May 6th.

10 She also is not sure that she actually picked
11 him up from the Piggly Wiggly parking lot anymore.
12 Sometimes she would pick him up from the hotel. That
13 may or may not be the same.

14 THE COURT: How does that differ from what she
15 said before?

16 MS. CAMPBELL: Before she said she thinks it was
17 early Sunday morning around three to six o'clock a.m.
18 It was in May, but before May 6th. She is just not
19 sure about that any more.

20 Then she says that she picked him up from the
21 Piggly Wiggly; that it was across the street from the
22 hotel. Now she's not sure if it was the Piggly
23 Wiggly; that it may have been from the hotel or
24 somewhere else.

25 THE COURT: Is this on the day of the assault on

1 the reverend?

2 MS. CAMPBELL: This would be what we would have
3 --- she is not clear on the timeframe, but she is
4 just not sure about any of the timeframe.

5 THE COURT: All right.

6 MS. CAMPBELL: I do believe they had an
7 opportunity to interview her that morning. I don't
8 know if her story changed from what she told them or
9 not.

10 THE COURT: All right.

11 MS. CAMPBELL: Anything else on that issue?

12 MR. STRICKLER: No, sir.

13 MS. CAMPBELL: That's pretty much it other than
14 what's in there.

15 THE COURT: All right. Anything else on that
16 issue?

17 MR. STRICKLER: No, sir.

18 THE COURT: All right.

19 MR. STRICKLER: Thank you.

20 THE COURT: Any other issues?

21 MR. STRICKLER: Well, while we're talking about
22 it, I guess at this point in time, I'll have to renew
23 a previously filed discovery motion, a Brady motion,
24 in this matter. It's been made.

25 It's been renewed, it's been moved to compel on

1 a couple of occasions. I don't have anything that I
2 believe is still out there, but as long as we're
3 cleaning house.

4 THE COURT: All right. Is there anything else?

5 MS. CAMPBELL: Your Honor, we aren't aware of
6 anything. We did contact, I believe Ms. Thompson
7 last week and ask her if we had any discovery issues.

8 There have been a couple of motions that have
9 been heard. This extensive list we went through on
10 multiple occasions. I believe my paralegal and his
11 paralegal got together and resolved many of those
12 matters.

13 I am not aware of any outstanding discovery in
14 this case. The only thing we may have are Google
15 maps, just the overhead views, just the general area.
16 He may not have reviewed that.

17 He did have an opportunity to view all the
18 evidence on Friday. Did you get to see the door?

19 MR. STRICKLER: No.

20 MS. CAMPBELL: I've got the door. The
21 reverend's front door was taken. I didn't have that
22 up here at this time. I've got it now, if he wants
23 to see that.

24 THE COURT: All right.

25 MR. STRICKLER: Thank you, sir.

1 THE COURT: Yes, sir.

2 MR. STRICKLER: We have not met regarding
3 photographs.

4 MS. CAMPBELL: We did ---

5 MR. STRICKLER: Resolving those --- I went back
6 and forth conversationally last week. The last
7 message I got was that they decided which photographs
8 they could use except for autopsy photographs.

9 Those are probably the ones that are most
10 significant as to --- frankly, the crime scenes
11 photos, I don't much care one way or the other,
12 except possible cumulative photographs.

13 I don't know if they're prepared to discuss the
14 autopsy photographs at this point in time. The
15 message was they wanted to review them with their
16 pathologist before deciding what they would use or
17 not use.

18 MS. CAMPBELL: Those would be limited to one or
19 two, Your Honor. I don't think those would be
20 overbearing to take up at a later time. I just
21 wanted the opportunity to view those with him.

22 THE COURT: All right. Well, they obviously
23 have to be ---

24 MS. CAMPBELL: And we do have this other
25 photograph if he wants to real quick after this

1 hearing, and if we could, with the Court's permission,
2 go ahead and get State's stickers so we can start
3 marking the evidence tonight.

4 THE COURT: All right.

5 MS. CAMPBELL: Is that okay?

6 THE COURT REPORTER: I have stickers. I hope I
7 have some left from two weeks ago.

8 MS. CAMPBELL: We don't have 400 pieces of
9 evidence in this case.

10 THE COURT: Any pictures that you all do not
11 agree to the admissibility of, I will have to see and
12 rule. There should be some advance time for all of
13 that.

14 MR. STRICKLER: Yes, sir. I think that could
15 all get resolved very easily. That's not time
16 consuming.

17 We do have some identification issues that have
18 to be dealt with. There were some photo arrays shown
19 to various people. I don't know whether we can deal
20 with that now or whether we deal with that, one of
21 the things to take care of in the morning. I don't
22 know if the State has the witness here to do that or
23 not.

24 THE COURT: Well, is that something that will
25 come during the course of the trial, or is that

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1 something that needs to be addressed before we start
2 the trial? The identification of various people?

3 MR. STRICKLER: Your Honor, I don't think it has
4 to be done before the trial. It might smooth things
5 out during the course of the trial if it were done
6 pretrial, but it doesn't have to be.

7 THE COURT: All right.

8 MS. CAMPBELL: We're ready.

9 THE COURT: Ms. Campbell.

10 MS. CAMPBELL: May I go ahead and call a witness?

11 THE COURT: On photo lineups and all that?

12 Well...

13 MS. CAMPBELL: We could do a short one.

14 THE COURT: All right. Let's do a short one.

15 MS. CAMPBELL: Larry Harp.

16 LARRY HARP,

17 after being duly sworn, testified as follows:

18 THE CLERK: Have a seat in the witness stand,
19 please. State your name for the record.

20 THE WITNESS: Larry Harp, Larry Darnell Harp.

21 DIRECT EXAMINATION:

22 BY MS. CAMPBELL:

23 Q Mr. Harp, where do you live?

24 A [REDACTED].

25 Q How long have you been living there, sir?

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- 1 A Since '91.
- 2 THE COURT: Did you say Hart or Harp?
- 3 THE WITNESS: H-A-R-P.
- 4 THE COURT: Mr. Harp.
- 5 THE WITNESS: Yes, sir.
- 6 BY MS. CAMPBELL:
- 7 Q Did you know Reverend Eichelberger?
- 8 A Yes, ma'am. I did.
- 9 Q Tell the judge how you knew Reverend
- 10 Eichelberger.
- 11 A When I moved there, he would always come and ask
- 12 me if I needed help doing this or that. We wound up
- 13 helping each other out doing different things. He
- 14 worked on cars and whatnot. We just kind of
- 15 befriended each other.
- 16 Q Where was his house in relation to your house?
- 17 A There was a house across the street from me, and
- 18 his house was to the left of it.
- 19 Q Okay. If you look out the window or the front
- 20 porch or your house, can you actually see his house
- 21 from there?
- 22 A I can see his house, yes.
- 23 Q And, in fact, it's just kind of across the
- 24 street and a little bit caddy corner?
- 25 A Right, kind of caddy corner.

1 Q And at times, would Reverend Eichelberger have
2 people come over to his house?

3 A They --- he would have visitors, yes, he would.

4 Q Okay. And sometimes would he give out food from
5 his garden?

6 A Right. He was infamous for that.

7 Q And I want to turn your attention to May 3rd,
8 the day that he got assaulted, actually, during that
9 daytime.

10 A Right.

11 Q Around three p.m., did you observe anybody over
12 at the reverend's house?

13 A Yes, I did.

14 Q Can you tell the judge what you saw, where you
15 were?

16 A I saw a male, a black male, pacing from the
17 driveway to the sidewalk over on the other entrance,
18 and this happened, I guess it was about six or seven
19 times.

20 He was talking on his cellular phone, and he had
21 blue jean shorts on, athletic-type jersey, ball cap,
22 and like I say, he was talking on his cell phone. He
23 was a light skinned male, kind of light skinned and
24 heavy build.

25 Q And you observed him, I believe you said, pacing

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- 1 back and forth?
- 2 A Right.
- 3 Q And how far away were you from him?
- 4 A Across the street. I'd give it a street length,
- 5 maybe.
- 6 Q Street length?
- 7 A Street width, maybe a street-and-a-half.
- 8 Q So maybe like ---
- 9 A About here to maybe that second panel back there.
- 10 Q Okay. So the day when you were observing him,
- 11 was anything blocking your view?
- 12 A No.
- 13 Q Were you able to see him?
- 14 A Right. I saw him.
- 15 Q Were you paying attention to what he looked like?
- 16 A Yes.
- 17 Q Were you wondering why he was over there?
- 18 A Yes.
- 19 Q And when you observed him --- you said you saw
- 20 him pace back and forth six or seven times, so you
- 21 were able to observe him for a period of time.
- 22 A Right.
- 23 Q And did you get a look at his face?
- 24 A Yes, I did.
- 25 Q Was Reverend Eichelberger there at the time you

1 saw him or ---
2 A Not pacing.
3 Q --- did you see ---
4 A I didn't see Reverend Eichelberger when he was
5 pacing.
6 Q Did you see him later that day?
7 A Yes, I did; yes.
8 Q And when you saw that same man that same day,
9 where did you see him?
10 A I saw him leaving Reverend Eichelberger's house
11 with a styrofoam plate, a styrofoam cup, eating
12 something from the plate with a napkin in his hand.
13 Q And was that the same man you saw that same day?
14 A Yes, ma'am.
15 Q And had you ever seen him before that you knew
16 of?
17 A No.
18 Q Was it unusual for Reverend Eichelberger to have
19 people coming in and out of his house?
20 A Walking, yes; walking, yes. He didn't have that.
21 Most people that came in, they drove up.
22 Q Okay. Later that evening, did you run into
23 Reverend Eichelberger?
24 A That --- that --- when I saw the guy leaving, I
25 saw him then. He was doing something with his

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1 flowers out there.

2 Q Okay. Turning your attention to about one that
3 morning, did you get awakened ---

4 A Yes, I did.

5 Q --- that night at your house?

6 A Yes, I did.

7 Q And what woke you up, sir?

8 A Police officers knocking at my door.

9 Q And when they were knocking at your door, did
10 you become aware, just for the record, of an assault
11 that had taken place with Reverend Eichelberger?

12 A Actually, when I peeked out to see who was
13 knocking on my door at that time, I saw it was police
14 officers. I opened my door, and I asked them what
15 happened. They said, your neighbor got assaulted.

16 Q Okay. Over the course of that evening and the
17 next several days into the months, did the police
18 make contact with you on various occasions?

19 A Yes, they did.

20 Q And specifically, did they take a statement from
21 you, I believe, on May 4th --- and I'll show you a
22 copy of it --- about what you had observed earlier
23 that day?

24 A Right. This was happening --- yeah, this is ---
25 this is what happened.

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1 Q What you just testified to?

2 A What I wrote that night, right.

3 Q That night. And then at a later date, I believe
4 in August of that year --- this was in May. In
5 August, did they show you some photo lineups or a
6 series of photographs?

7 A Yes.

8 Q I show you the first --- I need to mark this.
9 I'm sorry.

10 The first time they showed you photographs?

11 A Oh, yeah; yeah. That was later on.

12 Q Later on.

13 (WHEREUPON, State's Exhibits Nos. 3, 4 were
14 marked for identification only.)

15 BY MS. CAMPBELL:

16 Q The first one I'm going to show you, they showed
17 you and asked if you recognize anybody.

18 A This was the first one?

19 Q The first one.

20 A Right. I didn't recognize anyone.

21 Q You didn't recognize anyone?

22 A No.

23 Q And at that point, did you tell them you didn't
24 recognize anyone?

25 A Yes, I did.

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1 Q And specifically, were you sure you didn't see
2 the guy that you saw pacing that day in front of the
3 reverend's house?

4 A I was sure.

5 Q And you told them that?

6 A I told them that.

7 Q I want to turn your attention to March of ---
8 March the 12th of 2010, almost ten months ---

9 A Yes.

10 Q --- later.

11 A Right.

12 Q Did the police make contact with you again, sir?

13 A Yes. They did.

14 Q And when they came --- when they made contact
15 with you, where did the contact take place?

16 A In my house.

17 Q In your house?

18 A Right.

19 Q And when they came to your house, did they show
20 you a photographic lineup at that point?

21 A Yes, they did.

22 Q And what, if anything, did they tell you when
23 they showed you the photographic lineup?

24 A They just asked me if I recognized ---

25 Q Anyone who ---

- 1 A Anyone who ---
- 2 Q And did they tell you which one to pick?
- 3 A No, they didn't.
- 4 Q Did they tell you that you had to pick anybody?
- 5 A No..
- 6 Q Did they influence you in any way?
- 7 A No.
- 8 Q And when you looked at what's been marked as
- 9 State's Exhibit 4, the actual photographs ---
- 10 A Right.
- 11 Q When you looked at those photographs, there
- 12 wasn't any writing on that page ---
- 13 A No.
- 14 Q --- other than the numbers?
- 15 A No.
- 16 Q And when you looked at those six photographs,
- 17 tell the judge what you realized?
- 18 A I realized, and I pointed straight to this
- 19 picture, number three. I said, "That's the guy that
- 20 I saw."
- 21 Q And you were sure?
- 22 A I was sure.
- 23 Q Any hesitation?
- 24 A No hesitation.
- 25 Q That was him?

Direct of Harp by Campbell
(Pretrial).

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1 A Right.

2 Q And at that point, did they then have you circle
3 the picture you identified?

4 A Circle it, initial it and put the date.

5 Q And the time?

6 A Right.

7 Q And that's your handwriting there?

8 A That's my handwriting.

9 Q Then they actually filled out the first page of
10 this, which is State's Exhibit 4 ---

11 A Right.

12 Q --- and you signed off?

13 A Right.

14 Q And did anyone influence your decision as to who
15 you recognized as pacing in front of his house that
16 day?

17 A No.

18 Q And later saw him?

19 A No.

20 MS. CAMPBELL: Your Honor, may I approach?

21 THE COURT: Yes.

22 BY MS. CAMPBELL:

23 Q And other than what you saw on the outside or
24 coming out of the reverend's house that day, you
25 observed what actually happened to the reverend that

Cross of Harp by Pringle
(Pretrial)

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1 night?

2 A No, I didn't; no.

3 MS. CAMPBELL: Thank you, sir.

4 THE COURT: Any cross-examination?

5 MS. CAMPBELL: One more question, I'm sorry. I
6 apologize, Your Honor.

7 BY MS. CAMPBELL:

8 Q The person that you saw pacing in front of the
9 house that you identified in the picture, do you see
10 him here in the courtroom?

11 A Yes, I do.

12 Q Can you point him out, for the record?

13 A In the white shirt.

14 Q Sitting at the table?

15 A Yes, ma'am.

16 Q Next to his lawyers?

17 A Yes.

18 MS. CAMPBELL: Your Honor, may the record
19 reflect he has identified the defendant?

20 THE COURT: It does.

21 MS. CAMPBELL: Thank you.

22 THE COURT: Examination, defense?

23 MS. PRINGLE: May it please the Court.

24 CROSS-EXAMINATION:

25 BY MS. PRINGLE:

Cross of Harp by Pringle
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- 1 Q Good evening, Mr. Harp.
- 2 A Hi. How are you?
- 3 Q I just have a couple of questions for you.
- 4 A Uh-huh.
- 5 Q Your house --- just to be clear, your house
- 6 actually --- you're on the opposite side of the
- 7 street from ---
- 8 A Right.
- 9 Q --- Reverend Eichelberger's house?
- 10 A Right.
- 11 Q And there is a house directly in front of your
- 12 house?
- 13 A Right.
- 14 Q And his house is one down to the left, if you're
- 15 facing away from your house?
- 16 A The first house to the left.
- 17 Q And you, at the time that this took place, was
- 18 there something in your driveway?
- 19 A My Mazda and ---
- 20 Q Was there a something ---
- 21 A --- a shed. I got shed.
- 22 Q Okay. Could you describe the shed?
- 23 A The shed is a big gray portable garage. I
- 24 bought it from Harbor Freight.
- 25 Q And how big --- well, what do you keep in the

Cross of Harp by Pringle
(Pretrial).

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- 1 shed?
- 2 A My Porsche.
- 3 Q Okay. So it's big enough to hold a car?
- 4 A Right.
- 5 Q So the shed was there and another car?
- 6 A Right.
- 7 Q And if you're facing away from your house, that
- 8 would be to the left?
- 9 A Yeah.
- 10 Q Okay. And to the left is also where Reverend
- 11 Eichelberger's house is?
- 12 A Right.
- 13 Q All right. And when you were outside --- and
- 14 the first time you saw him was at three p.m.?
- 15 A Yeah.
- 16 Q Okay.
- 17 A About three o'clock.
- 18 Q It was at three o'clock, and when you first saw
- 19 him, you were outside doing what?
- 20 A I was getting in my Mazda to pull it up on the
- 21 grass, so I could get my Porsche out and take it down
- 22 the highway.
- 23 Q Okay. And you said that this individual was
- 24 pacing, right?
- 25 A Right.

Cross of Harp by Pringle
(Pretrial)

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1 Q So then he would be walking towards you and then
2 away from you?

3 A Right, toward me and away from me.

4 Q All right. So he's on the front of the street.
5 So some of the time he would be facing you. The rest
6 of the time he would be walking ---

7 A Right.

8 Q But the whole time that first time, he was in
9 motion?

10 A No. He stood still sometimes.

11 Q And so this took place while just during the
12 span of time that you're moving your car?

13 A Right, moving the car, getting in the other one,
14 right.

15 Q So then you're actually --- you're doing other
16 things, right?

17 A Yeah.

18 Q And you're not ---

19 A I'm watching also, because it's highly unusual
20 for someone to pace in Reverend Eichelberger's yard.
21 So I'm watching, too.

22 Q Okay. I understand, but it's not unusual to see
23 people coming and going, and I understand you said
24 walking on foot.

25 A Walking it is.

Cross of Harp by Pringle
(Pretrial)

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1 Q But to see people coming and going is not
2 unusual?

3 A In cars, it's not unusual.

4 Q And Reverend Eichelberger actually helped a lot
5 of people in the community, correct?

6 A He did. He did.

7 Q But there were a lot of people come to him for
8 various reasons?

9 A I imagine, yes.

10 Q So a lot of people would be coming and going?

11 A I can't say a lot of them, not walking, not
12 walking.

13 Q By car?

14 A By car, yeah.

15 Q Just people coming in general. And he actually
16 had his sons living with him; is that right?

17 A I think one son was living with him inside, and
18 one was living in the back little apartment-type
19 thing he had.

20 Q So there are actually three grown adult men
21 living there, right?

22 A Right.

23 Q And so this fellow that you saw, you saw him at
24 three p.m., and then what time was it when you saw
25 him later?

Cross of Harp by Pringle
(Pretrial)

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1 A I guess it was around five, 5:30 or so. I had
2 gone down toward Florence. I remember getting off on
3 the Monetta exit. I got some gas. I filled my car
4 up and came back.

5 I went inside, took me a nap for about half an
6 hour or so, came back outside to move my Mazda back
7 behind my portable garage.

8 At that time was when I saw Mr. McGee walking
9 away eating from the plate or whatever he had, and he
10 was probably no farther than from me to him.

11 Q So when he left Reverend Eichelberger's house,
12 did he go left or right?

13 A He went toward Farrow Road, which would be my
14 right, left going out of his driveway.

15 Q Okay. And that took place, by your recollection,
16 on May 3rd?

17 A Right.

18 Q And you did not make this identification, or you
19 weren't asked to look at this lineup until March
20 of 2010.

21 A Right.

22 Q About ten months later.

23 A Right.

24 MS. PRINGLE: Nothing further. Thank you,
25 Mr. Harp.

Direct of Sumter by Campbell
(Pretrial)

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1 THE COURT: Anything else?

2 MS. CAMPBELL: No, sir.

3 THE COURT: All right. Thank you, Mr. Harp.

4 THE WITNESS: Yes, sir.

5 THE COURT: Any other witnesses regarding this
6 issue?

7 MS. CAMPBELL: The State would call Clarence
8 Sumter.

9 CLARENCE SUMTER,
10 after being duly sworn, testified as follows:

11 THE CLERK: Thank you. Have a seat in the
12 witness stand, please. State your name for the
13 record.

14 THE WITNESS: Clarence Sumter.

15 DIRECT EXAMINATION:

16 BY MS. CAMPBELL:

17 Q Investigator Sumter, where are you employed?

18 A Police department here in Columbia.

19 Q And how long have you been with the police
20 department?

21 A A little over 17 years.

22 Q Okay. I want to turn your attention back to
23 March of 2010. Did you assist in following up on
24 some leads in the investigation of the murder of
25 Reverend Eichelberger?

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(Pretrial)

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1 A I did.

2 Q And specifically, were you asked to make contact
3 with a Larry Harp?

4 A Yes, I was.

5 Q Where did that contact take place, sir?

6 A At Mr. Harp's residence.

7 Q And I'm showing you State's Exhibit Number 4.

8 The date on that would be March 12th of 2010?

9 A Yes, ma'am.

10 Q And when you went over to see Mr. Harp on that
11 day at his residence on Isaac Street, did you take a
12 photo lineup with you?

13 A I did.

14 Q What was the purpose of you going over there
15 that day, sir?

16 A To see if I could help him identify, or get him
17 to identify, if there was someone in that photo
18 lineup that he recognized as being at Reverend
19 Eichelberger's house.

20 Q Okay. And during the course of your helping in
21 this investigation, did you become aware that Mr.
22 Harp had seen someone over at the Reverend's house
23 that day ---

24 A Yes.

25 Q --- that he was murdered?

Direct of Sumter by Campbell
(Pretrial)

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- 1 A Yes.
- 2 Q When you got over to Mr. Harp's house, did you,
3 in fact, present him with a lineup?
- 4 A I did.
- 5 Q And I want to show you the second page of
6 State's Exhibit Number 4. Is that the lineup you
7 showed him?
- 8 A Yes, ma'am.
- 9 Q But it didn't have any of the handwriting on it
10 when you showed it to him, did it?
- 11 A No. It was blank.
- 12 Q And when you showed it to him, what, if anything,
13 did you say to him about what he needed to do?
- 14 A I just asked him if he recognized anyone in this
15 lineup as being at Reverend Eichelberger's house that
16 day.
- 17 Q And did you influence him in anyway?
- 18 A No, ma'am.
- 19 Q Did you tell him who to pick?
- 20 A No, ma'am. I even turned the photo lineup over,
21 had him turn it over himself.
- 22 Q Okay. And when he turned it over himself, did
23 he look at the pictures?
- 24 A Yes, he did.
- 25 Q And was he able to identify anyone while you

Direct of Sumter by Campbell
(Pretrial)

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1 were there?

2 A Yes, ma'am.

3 Q And who did he indicate to you that he
4 recognized?

5 A Number three, he recognized number three on
6 there.

7 Q And did he indicate why he recognized him?

8 A He said that was the one he saw at the
9 reverend's house that day.

10 Q Okay. Once he indicated that he recognized that
11 person, did you have him memorialize that in any way
12 there on the paper?

13 A Yes. I had him circle it, put his initials,
14 date and time.

15 Q And once you did that, did you also fill out the
16 top portion of this first page of State's Exhibit
17 Number 4?

18 A I did.

19 Q And then he signed off on it; is that correct?

20 A Yes, ma'am.

21 Q Did anyone --- who was with you that day?

22 A Basically, Mahoney was with me, but he kept
23 going outside. He kind of stepped in and out. He
24 was looking around trying to see if he could see
25 anything out there.

Cross of Sumter by Pringle
(Pretrial)

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1 Q Okay. And when you went over there that day, it
2 was just you and him when you were showing the lineup?

3 A Yes, ma'am.

4 Q So no one else had the opportunity to influence
5 him in any way?

6 A No, ma'am.

7 Q And did it take him very long to recognize the
8 person?

9 A Not long at all.

10 Q And he was sure about his identification?

11 A He was.

12 Q And that's why he signed off on it?

13 A Yes, ma'am.

14 MS. CAMPBELL: Your Honor, that's all I have of
15 this witness.

16 THE COURT: Any examination?

17 MS. PRINGLE: May it please the Court.

18 CROSS-EXAMINATION:

19 BY MS. PRINGLE:

20 Q Good evening.

21 A Good evening.

22 Q Investigator Sumter, did you know which picture
23 of which individual in the photo lineup was the
24 suspect?

25 A Yes, ma'am.

Cross of Sumter by Pringle
(Pretrial)

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1 Q All right. And did you actually put the lineup
2 together yourself?

3 A No, ma'am.

4 Q But you were aware that number three was
5 Mr. McGee?

6 A Yes, ma'am.

7 Q And that Mr. McGee was a suspect in the case?

8 A Yes, ma'am.

9 Q All right. And what did you say, exactly, to
10 him?

11 A Just asked him to see if he could recognize
12 anybody in that --- in this lineup that he could
13 recognize as far as being at the reverend's house
14 that day.

15 Q All right. And what policies or procedures or
16 guidelines for showing photo lineups does the City of
17 Columbia have in place?

18 A Written policies, you mean?

19 Q Yes, sir.

20 A There aren't any that I'm aware of. We just
21 have to make sure we don't influence our people in
22 any way, shape, form, or fashion.

23 Q All right. So there are no written policies,
24 guidelines or procedures that inform you on how to
25 conduct a lineup?

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1 A No. There's some policies we discussed in a
2 lineup on how we are to do to ensure that we don't
3 influence our people when we show them lineups.

4 Q And is the extent of that just to be careful and
5 to be sure that you don't say anything or suggest
6 anything?

7 A And also, we try to present these lineups in a
8 fashion that we don't have any --- any directional
9 indication as far as our hand movements or anything.
10 Actually, I had him to turn it over. I turned it
11 over and I had him flip it over himself so as to not
12 influence him in anyway.

13 Q Okay. And you --- that's just sort of
14 on-the-job, learned from other officers, or in-house
15 training?

16 A In-house training.

17 Q Do you have any training in conducting lineups
18 or identification procedures outside of that?

19 A No, ma'am.

20 Q After he --- after he chose the individual,
21 after he told you that was the individual, did you
22 tell him that is the suspect?

23 A No, ma'am.

24 Q Did you tell him at any point in time after you
25 left --- or after he picked, did he learn at any

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1 point in time that he picked the right guy?

2 A I'm not sure. I didn't tell him. I'm not sure
3 what he learned from anybody else, but I didn't tell
4 him.

5 Q Were you in there when Investigator Mahoney ---
6 when you were in there, was Investigator Mahoney ever
7 in there when you weren't in there?

8 A No.

9 Q Okay. So you guys were either together or gone?

10 A Yes.

11 Q All right. In fact, are you familiar with the
12 blind sequential method, as recommended, for
13 conducting lineups?

14 A No, ma'am, I'm not.

15 Q Are you familiar with the double blind method?

16 A No.

17 Q All right. You're not familiar with any of the
18 recommendations or any of the research on conducting
19 eyewitness identifications ---

20 A No, no, ma'am.

21 Q --- in recent years. But you are aware that
22 eyewitness identifications can certainly be mistaken?

23 A Yes, ma'am.

24 Q Has that ever happened?

25 MS. CAMPBELL: Objection, Your Honor, on the

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1 relevance in this case in this hearing.

2 THE COURT: All right. I overrule the objection.

3 BY MS. PRINGLE:

4 Q And certainly, those kinds of mistakes do happen.

5 A I would imagine.

6 Q In this case, Mr. Harp actually --- he picked
7 number three, right?

8 A Yes.

9 Q But then he also went to number six and said,
10 "That could be him." And then your notes say he
11 quickly went back to number three.

12 A No, ma'am. He picked number three. Then I
13 asked him to make sure. He looked it over again and
14 said, "Well, just" --- the other picture looked like
15 it, but he was sure that he had picked the right one
16 initially.

17 Q If you would please, sir, just tell me if I'm
18 correct. Your notes actually say, "He chose photo
19 number three. This photo is that of Frankie Lee
20 McGee. He then said, 'Photo number six kind of looks
21 like the person' but quickly said no and returned
22 back to photo number three"?

23 A Yes, ma'am.

24 Q Okay. So that sums it up?

25 A Yes, ma'am.

1 MS. PRINGLE: Nothing further.

2 THE COURT: All right. Anything else?

3 MS. CAMPBELL: No, sir.

4 THE COURT: All right. You may step down.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Any other witnesses on this issue?

7 MS. CAMPBELL: Not on this identification, Your

8 Honor.

9 THE COURT: All right. I find that the lineup

10 process was not unduly suggestive.

11 All right. What else are issues?

12 MS. CAMPBELL: Your Honor, that was shortest

13 thing we have. We have one more for in the morning

14 which should not take very long either ---

15 THE COURT: All right.

16 MS. CAMPBELL: --- on identification.

17 THE COURT: We can do that at 9:30.

18 MS. CAMPBELL: Yes, sir.

19 THE COURT: The jury is coming in at 10:30.

20 MS. CAMPBELL: One or two, Your Honor, but they

21 aren't --- they aren't long and --- unless there's

22 something else they want to take up tonight.

23 THE COURT: Well, how much of this --- assuming

24 that the --- that I find that the statement is

25 voluntary, how much of all this do you plan to use in

1 opening statements or early on?

2 MS. CAMPBELL: I mean, without doing --- you
3 know, we would like to in opening statements, of
4 course, be able to reference the identification from
5 the video, things of that nature, that he admits in
6 his statement that he was in the truck; that he moved
7 the truck and go into some specifics as to the
8 statements. As far as the drug use, Your Honor, I
9 don't know that we need to go into any of that.

10 THE COURT: All right. Now, the part about
11 moving the truck because someone else went in the
12 drug house, the truck driver went in the drug house.
13 Is that connected with any evidence anywhere? Are
14 there fingerprints or something else that puts him in
15 the truck?

16 MS. CAMPBELL: The video puts him taking the
17 truck in Camden. We then put the truck a few blocks
18 away, and then his own statements put him --- he's
19 trying to --- and the gist, Your Honor, not that it's
20 obvious, but the gist of it is that he's trying to
21 explain why his fingerprints would be on the truck or
22 why his DNA would be on the steering wheel, that's
23 why he comes up with this explanation.

24 THE COURT: All right.

25 MS. CAMPBELL: That would be significant.

1 THE COURT: All right. So ---

2 MS. CAMPBELL: Because he's trying --- even
3 though we don't have that evidence, he's trying to
4 explain why if we did, it would be in there.

5 THE COURT: All right.

6 MR. STRICKLER: Except, of course, he's trying
7 to explain why if there were evidence in a Mack truck
8 that he said he moved, it would be in there. The
9 State doesn't have a Mack truck. They have a
10 Peterbilt. They're talking about apples and oranges.
11 It's not some minor difference.

12 THE COURT: We only have one truck that he stole,
13 according to ---

14 MR. STRICKLER: One truck they claim he stole.

15 THE COURT: According to the witness, his sister.

16 MR. STRICKLER: His statement is that someone
17 else had a Mack truck that he moved at some point in
18 time.

19 THE COURT: Yeah. You see, all of that makes it
20 --- all of that works toward it being admissible,
21 because if --- if he --- if they have evidence that
22 he stole the truck --- you know, viewing the evidence
23 in the light most favorable to the State, if he stole
24 the truck, drove it to the location.

25 He was asked about it in the statement. He made

1 up some other story about him getting in a truck on
2 some occasion, and for a guy who is a truck driver
3 that he flagged down who ended up going in a drug
4 house --- the --- I'm raising all of this in the
5 sense of a question of if the portion where the truck
6 driver goes in a drug house and he does not go in the
7 drug house, does that impact on his credibility or
8 his --- his character, not credibility, his character,
9 regarding drug use or just on the truck driver whom
10 he said went in the crack house, drug house?

11 So is --- is the portion about the other person
12 who went in the drug house --- would the defense have
13 any --- any basis to object to that portion of it,
14 even if the State is not allowed to say that he had
15 been in and around drug houses all day and beat up a
16 drug dealer and all that?

17 MR. STRICKLER: Well, I'm --- I'm hoping I'm
18 going to be able to go ahead and reference their
19 transcript so I can reference the page and line
20 numbers and walk through this.

21 THE COURT: All right.

22 MR. STRICKLER: My contention is, of course, if
23 his statement is, "I ran into some guy with a
24 different kind of truck," then it is just plain not
25 relevant. It's not relevant to anything. It's a

1 Mack truck.

2 THE COURT: It's not relevant if you accept his
3 view of things or not relevant under any scenario?

4 MR. STRICKLER: There is no evidence that I'm
5 aware of that a Peterbilt truck was involved in this
6 incident in any way, shape, form or fashion --- or
7 excuse me, that a Mack truck was involved in this
8 incident in any way, shape, form, or fashion.

9 THE COURT: All right. I understand. Well,
10 you'll have that opportunity tomorrow. It's probably
11 a good time to leave today, so I'll have an
12 opportunity to be prepared to follow your argument
13 about it tomorrow.

14 MR. STRICKLER: Yes.

15 THE COURT: Yes, sir.

16 MR. STRICKLER: I'm more than --- more than
17 ready to get out of here today myself. I just
18 wondered, Your Honor, if --- especially given the
19 events of yesterday ---

20 THE COURT: All right.

21 MR. STRICKLER: Your Honor, if there is any
22 schedule, as far as you're aware of, that you intend
23 to conform to this week.

24 THE COURT: No.

25 MR. STRICKLER: I'm not aware of what the

1 schedule might be, and I have not had an opportunity
2 to ---

3 THE COURT: Judge Perry's funeral is Thursday
4 morning at --- at eleven.

5 MR. STRICKLER: Okay.

6 THE COURT: And I plan to attend.

7 MR. STRICKLER: I kind of figured that.

8 THE COURT: Thursday is going to be very --- I
9 don't know how much, if anything, we'll be able to
10 get done on Thursday.

11 MR. STRICKLER: I just --- I was unsure whether
12 it was Wednesday or Thursday.

13 THE COURT: Thursday, it's Thursday.

14 MR. STRICKLER: Thank you, sir.

15 MS. GARFIELD: Your Honor, I do have the video
16 from the Camden Steel Metal that I believe should be
17 formatted for you to view.

18 THE COURT: All right. One for me.

19 Have you all seen it?

20 MR. STRICKLER: We've seen it in their office at
21 one point in time. We have never managed to get one
22 that would play on any machine in our office.

23 THE COURT: All right. Well, I'll take these.

24 I'll check them out tonight. Thank you.

25 All right. All right. Can we go now, or do you

1 have something else?

2 MS. CAMPBELL: No, sir.

3 MR. STRICKLER: Not unless you make me, Judge.

4 THE COURT: No. No. I'm ready to go.

5 MR. STRICKLER: I'm ready to go.

6 THE COURT: All right. 9:30 tomorrow morning.

7 MS. SIMPSON: Thank you.

8 MS. CAMPBELL: Thank you, Your Honor.

9 THE COURT: We'll start then.

10 (WHEREUPON, There was an overnight recess).

11 (WHEREUPON, Court's Exhibits Nos. 3, 4 were
12 marked for identification only.)

13 (WHEREUPON, State's Exhibits Nos. 5 - 16 were
14 marked for identification only.)

15 THE COURT: Good morning.

16 MS. CAMPBELL: May it please the Court.

17 THE COURT: Yes.

18 MS. CAMPBELL: One of the first things we'd like
19 to take up is that in the testimony of the one
20 eyewitness that was at the scene that night, her name
21 is Tameka Ashford.

22 Your Honor, there were interviews done of her.
23 In one of the interviews, she mentions she had a
24 prior relationship with Reverend Eichelberger.

25 She characterizes it as he would give her money

1 to pay her water bill at times. Sometimes she would
2 give him sex.

3 Your Honor, under State vs. Lyles, on the night
4 in question, however, she does not allege that. She
5 went there to get money to pay her water bill.

6 Under State vs. Lyles, Your Honor --- if I may
7 approach --- we would ask that any testimony about
8 that not be allowed. It's irrelevant to the events
9 of that night, and I think Lyles is on point.

10 THE COURT: All right. That's an issue to be
11 addressed later.

12 MS. CAMPBELL: We would just ask that they not
13 address it in opening then until you make your ruling.

14 MS. PRINGLE: I guess ---

15 THE COURT: Ms. Pringle.

16 MS. PRINGLE: The question would be, to me, how
17 are they now going to navigate around it with her
18 testimony.

19 She is pretty clear that she was there. In her
20 recorded interview, she was very specific and clear
21 that she was there to have sexual relations with him.

22 It was not a prostitutorial relationship, but
23 she would have sexual relations with him and he would
24 give her money. I'm just not sure how they will
25 navigate around --- she gives two different versions

1 of her story. It will be difficult, I think, to
2 avoid stumbling into that.

3 THE COURT: We'll deal with her when she comes.

4 MS. CAMPBELL: Your Honor, as far as any other
5 lineups that were shown, positive identifications in
6 court, the only other person --- Tameka Ashford was
7 also shown a series of lineups.

8 She, at different points in time, points at
9 different people, looks at the person. She said he
10 has similar head type or similar hairline or the
11 build is the same, things along that nature, on a
12 number of different lineups.

13 She was shown a total of six different lineups.
14 She narrows it down each time to one or two or
15 eliminates everyone in those lineups.

16 She cannot positively identify anyone in court.
17 She just says he matches the physical build and
18 everything, what it is.

19 In one of those lineups, she does narrow it down,
20 pointing to him, and another person in the lineup as
21 looking similar to the person. However, there is not
22 going to be any positive in-court identification,
23 Your Honor.

24 She will say, specifically, the physical build,
25 shape of his head, things of that nature are

1 consistent with what she saw that night because it
2 was dark.

3 The only other person, I think, who does any
4 type of identification is Michelle Perry. She knew
5 him where --- the defendant, she had seen him on
6 prior occasions going to the church.

7 She was shown a photograph and all she could say
8 is that she recognized him as attending the church on
9 prior occasions. I just wanted to clear up and wrap
10 up the identification issues.

11 Mr. Harp will be the one who can positively
12 identify the defendant as being there.

13 THE COURT: All right.

14 MS. PRINGLE: May it please the Court. We would
15 object to any out-of-court identification made by
16 Tameka Ashford as to the photo lineup.

17 She actually initially, at the scene, identified
18 someone else entirely on the evening in question.
19 Subsequently, they take three, maybe four photo
20 lineups to her, and she can never identify anyone.

21 THE COURT: All right.

22 MS. PRINGLE: That under Neil vs. Biggers and
23 the case law following Neil vs. Biggers would be per
24 se inadmissible. She has no level of certainty, did
25 made no reference to this individual looks like him,

1 particularly where she points to only one lineup.

2 She identifies two people, including Frankie
3 McGee, and it is absolutely inadmissible. She
4 can't --- she can't identify him. She has no
5 certainty as to whether or not it's him, and we would
6 object to any mention as to those lineups.

7 THE COURT: All right. We'll need to address
8 that once she gets ready to testify.

9 MS. PRINGLE: Yes, sir.

10 I also object to --- I would request a Neil vs.
11 Biggers hearing in regard to Michelle Perry.

12 The only thing that we've been provided in
13 discovery in the case is that she saw him on perhaps
14 one or two occasions at the church. I don't think
15 that's sufficient to say that she knew him.

16 It would be our position to say the same thing,
17 an out-of-court identification. She didn't know him.
18 She didn't know his name. She didn't know anything
19 about him, didn't know anybody acquainted with him.

20 She indicated to law enforcement that she had
21 only seen him once or twice. She was shown a single
22 photo mug shot of him at the cab company.

23 We would object to admissibility of that
24 out-of-court identification. Obviously, there are
25 many arguments to be made about a single photo lineup

1 identification that I can take up now or later, Your
2 Honor.

3 THE COURT: All right.

4 MS. CAMPBELL: Your Honor, on that issue, we
5 would rely on State vs. McLeod, M-C-L-E-O-D, talking
6 about how if somebody has seen them before and knows
7 them by sight, there is no need for a Neil vs.
8 Biggers hearing.

9 THE COURT: All right. Under Rule 103, matters
10 regarding matters where the Court --- where there are
11 issues regarding inadmissible evidence, the Court
12 should have here, and outside the presence of the
13 jury, prior to such inadmissible evidence being
14 introduced whether --- of course, that rule doesn't
15 say we need to do it before we start the trial.

16 I'm not going to try to screen every witness in
17 advance of the trial to go through who is --- what is
18 admissible and what's not. Those things that need to
19 be taken up during the course of the trial, we will
20 do so. We'll take up that one, as well, during the
21 course of the trial.

22 MS. CAMPBELL: Thank you, Your Honor.

23 The only thing that we would ask is in opening
24 as far as the issue we had about the relationship
25 with Ms. Ashford, if they intend to kind of ring that

1 bell in opening, that would be our concern.

2 MS. PRINGLE: I won't do that.

3 THE COURT: She won't ring that bell.

4 MS. CAMPBELL: Thank you.

5 THE COURT: All right. What else?

6 MS. GARFIELD: Your Honor, I do have two
7 criminal histories to turn over to the defense of two
8 possible witnesses.

9 THE COURT: All right.

10 MS. GARFIELD: Ivy Moore and Michelle Perry.

11 MS. CAMPBELL: Your Honor, we have provided them
12 with as far as --- or allowed them to inspect the
13 burglary convictions. We have those now and also
14 there are pictures. They are reviewing the ones we
15 intend to introduce this morning to expedite that
16 process.

17 THE COURT: All right. What else?

18 MS. CAMPBELL: We do have a motion on
19 third-party guilt.

20 THE COURT: All right. What is that? Solicitor,
21 what's your motion?

22 MS. SIMPSON: Thank you, Your Honor. May it
23 please the Court.

24 Just as a preface, with respect to this
25 investigation, the defendant wasn't identified until

1 months later.

2 This incident occurred on March 3rd of 2009.
3 The defendant was later identified in March of 2010.
4 During that time, law enforcement officers ---

5 THE COURT: Well, the indictment alleges May 3rd,
6 2009.

7 MS. SIMPSON: Yes, Your Honor. That's when the
8 reverend was actually attacked. The defendant wasn't
9 identified in this case through DNA until March
10 of 2010.

11 THE COURT: All right.

12 MS. SIMPSON: During that time ---

13 THE COURT: Your statement was that this
14 occurred during March of 2009.

15 MS. SIMPSON: Oh, I apologize, Your Honor.

16 THE COURT: All right.

17 MS. SIMPSON: That's a misstatement on my part.

18 THE COURT: All right.

19 MS. SIMPSON: Your Honor, during that time, law
20 enforcement officers did a very thorough
21 investigation.

22 A suspect composite was actually released based
23 on Tameka Ashford's description. It was released in
24 the media.

25 Your Honor is probably familiar with the

1 Greenview area. Numerous tips were called in. These
2 investigators followed up on anybody and everybody
3 who potentially matched the description of the
4 defendant or --- I'm sorry, of the composite or was
5 even mentioned.

6 They followed up numerous leads, and with
7 respect to those people, those names are mentioned in
8 the discovery. However, those people were excluded
9 for a variety of reasons, be it they didn't match the
10 description; their polygraphs didn't indicate any ---
11 any deception, as well as just cleared through other
12 evidence or a lack of corroboration on their part.

13 We would just inquire as to how far the defense
14 intends to go. We've had no notice of any motion
15 that they would be seeking to introduce evidence of
16 third-party guilt, but we do believe that that
17 requires a hearing at this point, or at least some
18 knowledge prior to opening statements.

19 I'll be happy to provide some of the basis, the
20 law as to why this evidence should be precluded.

21 THE COURT: All right.

22 MS. PRINGLE: Thank you, Your Honor. At this
23 time, we don't seek to introduce any evidence of
24 third-party guilt per se.

25 If that were to change, I would be happy to

1 bring it to the Court's attention. We do intend to
2 cross-examine the State's main eyewitness, the
3 on-the-scene eyewitness to the homicide as to the
4 person that she identified that night and she names
5 in her statement. That's not introducing evidence to
6 third-party guilt, but cross-examining her as to the
7 events of that evening and who she picks out. We're
8 certainly entitled to do that.

9 There are 50, maybe, plus suspects in this case.
10 I think if that's what she is talking about, I'm not
11 speculating as to that. I'm not --- we're not going
12 into that.

13 We will be cross-examining the officers to the
14 integrity of the investigation, but if we, at some
15 point, seek to introduce that type of testimony or
16 evidence, I will inform the court prior to presenting
17 that.

18 THE COURT: All right.

19 MS. SIMPSON: And just for a point of
20 clarification, I believe the person that she is
21 referring to would be David Williams, and that
22 would --- we would just ask that it be limited to
23 David Williams with respect to the possible identity
24 of others.

25 THE COURT: I have no clue who David Williams is,

1 so I don't know what to say about that. We'll just
2 have to give it testimony.

3 MS. SIMPSON: Thank you, Your Honor.

4 THE COURT: What's the leading case on that
5 third-party guilt that you're referring to?

6 MS. SIMPSON: Your Honor, the State would be
7 happy to provide up State vs. Rice, which simply says
8 that evidence of third-party guilt which can have no
9 other effect than to cast a bare suspicion upon
10 another or to raise a conjectural inference as to the
11 commission of a crime by another is not admissible.

12 Before such testimony can be received, there
13 must be such proof of connection with it, such that a
14 train of facts or circumstances as tends to clearly
15 point out another person as the guilty party. Remote
16 acts, disconnected and outside of the crime itself
17 cannot be used for that purpose.

18 Your Honor, there is also an additional ---
19 several other cases where the courts found, such as
20 in State vs. Gay, that the evidence was properly
21 excluded where it didn't raise a reasonable inference
22 as to the defendant's innocence and samples in that
23 case from the third party didn't match any of the
24 evidence.

25 THE COURT: All right. I just wanted to know

1 what the leading cases were. I guess the Gay case
2 was about the cigarette butt or something. Is that
3 the one? That's all right. I don't need the cases
4 now. We'll get into it, if we need to get into it.

5 MS. SIMPSON: Thank you.

6 THE COURT: All right. What else?

7 MR. STRICKLER: If I may, Your Honor.

8 THE COURT: Yes, sir.

9 MR. STRICKLER: First of all, as to photographs,
10 I've had an opportunity to review, not all the
11 photograph, but the ones which I believe the State
12 intends to get into today.

13 Got a stack that I'm giving back to them, but my
14 contention is I could have some objections to but I
15 don't.

16 THE COURT: All right.

17 MR. STRICKLER: Or I won't advance them. They
18 have a file labeled "red truck". There is a red
19 truck in this case which belongs to Mr. McGee, Mr.
20 McGee's wife to be involved.

21 There is a series of photographs, State's 50, 51,
22 52, 53, 54, 55 of this truck. Now, my objection to
23 all but 50, which is a picture of the truck, is that
24 they're cumulative and they're irrelevant.

25 There is a picture of the license tag. You can

1 see the license tag and the picture of the VIN
2 numbers. The pictures of the damage to the truck, I
3 believe to the bumper area, none of which is involved
4 in this case in any way, shape, form, or fashion,
5 unless I'm really missing something.

6 My best knowledge of what they have to say about
7 the truck is that his wife is supposed to have picked
8 him up in the red truck.

9 THE COURT: All right. We'll focus on what you
10 do not object to. You do not object to exhibits
11 number what?

12 MS. CAMPBELL: It's number 96 through 102; 16
13 through 49 and 75 through --- no, excuse me.

14 MR. STRICKLER: Make sure it's the ---

15 MS. CAMPBELL: I apologize, Your Honor. They
16 were in order.

17 (Pause)

18 Sixty-eight through 73 and 75. Is 74 missing
19 one?

20 MR. STRICKLER: No.

21 MS. CAMPBELL: Excuse me, 74, 78 through 93.

22 THE COURT: Is that correct, Mr. Strickler?

23 MR. STRICKLER: Your Honor, I was focusing on
24 the ones that I had a problem with, I'm sorry.

25 THE COURT: All right. Well, I can't --- well,

1 I can't --- I'm not going to admit what you have a
2 problem with. I'm going to admit what you have no
3 problem with. So that ---

4 MR. STRICKLER: All right.

5 THE COURT: I need to confirm what you agree is
6 admissible.

7 MR. STRICKLER: I do not have a problem.

8 THE COURT: Go one by one, and then you'll get
9 to the end as opposed to going back and forth. Go
10 ahead.

11 MR. STRICKLER: The following I have no problem
12 with, Your Honor: 90, 88, 89, 66, 65, 67, 69, 76, 91,
13 77, 79, 80, 81, 94, 95, 82, 83 and 84.

14 THE COURT: All right. Those are admitted
15 without objection. All right. Continuing on.

16 (WHEREUPON, State's Exhibits Nos. 90, 88, 89, 66,
17 65, 67, 69, 76, 91, 77, 79, 80, 81, 94, 95, 82,
18 83 and 84 were admitted into evidence.)

19 MR. STRICKLER: I further do not have objection
20 to: 74, 78, 85, 86, 87, 92 and 93.

21 THE COURT: All right. They're admitted without
22 objection.

23 (WHEREUPON, State's Exhibits Nos. 74, 78, 85, 86,
24 87, 92 and 93 were admitted into evidence.)

25 MR. STRICKLER: No objection to the following,

1 Your Honor: 68, 70, 71, 72, 73 and 75.

2 THE COURT: All right. They're admitted without
3 objection.

4 (WHEREUPON, State's Exhibits Nos. 68, 70, 71, 72,
5 73 and 75 were admitted into evidence.)

6 MR. STRICKLER: Your Honor, without objection to:
7 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28,
8 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41,
9 42, 43, 44, 45, 46, 47, 48, 49.

10 THE COURT: All right. They're admitted without
11 objection.

12 (WHEREUPON, State's Exhibits Nos. 16, 17, 18, 19,
13 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,
14 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43,
15 44, 45, 46, 47, 48, 49 were admitted into
16 evidence.)

17 MR. STRICKLER: Further without objection to:
18 102, 103, 101, 100, 99, 98, 97 and 96.

19 THE COURT: They're admitted without objection.

20 (WHEREUPON, State's Exhibits Nos. 102, 103, 101,
21 100, 99, 98, 97 and 96 were admitted into
22 evidence.)

23 MR. STRICKLER: Your Honor, I've passed up a set
24 of photographs. There is one in there --- I'm sorry,
25 the shot of the body ---

1 THE COURT: You said you had no objection to 50?

2 MR. STRICKLER: That's correct.

3 THE COURT: Fifty is in without objection, the
4 same without objection.

5 (WHEREUPON, State's Exhibit No. 50 was admitted
6 into evidence.)

7 MR. STRICKLER: And without objection as to:
8 State's 59, 61, 62, 63, 64.

9 THE COURT: All right. They're in without
10 objection.

11 (WHEREUPON, State's Exhibits Nos. 59, 61, 62, 63,
12 64 were admitted into evidence.)

13 MR. STRICKLER: I do have another sequence that
14 I have an objection to.

15 THE COURT: All right. So as of right now, I
16 have you have objections to 51, 52, 53, 54 and 55.
17 They will be --- well, if they're offered by the
18 State, they'll be for ID purposes only at this time.

19 MR. STRICKLER: And then, Your Honor, there is
20 56, 57, 58 and 60 which I have no objection to the
21 introduction of one of them.

22 THE COURT: All right.

23 MR. STRICKLER: I maintain the others are
24 cumulative.

25 THE COURT: Which one do you have no objection

1 to?

2 MR. STRICKLER: Fifty-six.

3 THE COURT: All right. Fifty-six, that's
4 without objection.

5 (WHEREUPON, State's Exhibit No. 56 was admitted
6 into evidence.)

7 THE COURT: You object to 57 through 60. Is
8 that it?

9 MR. STRICKLER: 57, 58 and 60, if I can see them.

10 THE COURT: Fifty-seven, 58 and 60. They'll be
11 for ID only at this time.

12 Let me also see the one that you have no
13 objection to, 56.

14 MR. STRICKLER: This is the one which I have no
15 objection. These are the ones that I would maintain
16 I have an objection to.

17 THE COURT: All right. No objection to those.
18 The others are --- the others are --- the others are
19 ID only at this time.

20 Do you have the ID only numbers pretty clear?

21 THE COURT REPORTER: I would have to get them
22 after, because I have to make a record here. I try
23 to keep a paper record.

24 THE COURT: Okay. All right.

25 THE COURT REPORTER: So I'll have to get that

1 from them after.

2 THE COURT: All right.

3 What else about photographs?

4 MR. STRICKLER: That's it about photographs.

5 THE COURT: Okay.

6 MS. GARFIELD: Except the autopsy.

7 MR. STRICKLER: I'm sorry? They haven't gotten
8 the autopsy photos, so we haven't dealt with those
9 yet.

10 THE COURT: All right. What else have you got?

11 MR. STRICKLER: Beg the Court's indulgence.

12 THE COURT: All right. I'll give you a moment.
13 We'll be at ease for just a moment.

14 (WHEREUPON, a short break was taken.)

15 (WHEREUPON, State's Exhibit Nos. 57, 58, and 60
16 were marked for identification only.)

17 THE COURT: All right. We're on the record,
18 yes, sir.

19 MR. STRICKLER: Yes, Your Honor. Does Your
20 Honor have the transcript ---

21 THE COURT: I do.

22 MR. STRICKLER: --- supplied by the State?

23 THE COURT: I do.

24 MR. STRICKLER: If I can reference page numbers
25 at this point, Judge.

1 THE COURT: All right.

2 MR. STRICKLER: This will be the pages and
3 specific areas that we have objections to. First,
4 page 11, lines 13 and 14 by Mr. McGee, "I'd rather
5 talk to you, because I've had a lot of run ins with
6 the law, and I'll talk with you." That's prior bad
7 act on his part.

8 THE COURT: All right. Well, a lot of these the
9 State would not have any objection to, some they may.

10 So first, you tell me what the objection is.
11 I'll find out whether the State has any problem with
12 your objection before we discuss all the reasons for
13 it.

14 MR. STRICKLER: Yes, sir.

15 THE COURT: All right. So page 11, 13 and 14,
16 what says the State?

17 MS. CAMPBELL: On page 11, Your Honor, we would
18 agree those two lines should be redacted.

19 THE COURT: All right. So 13 and 14 are out.

20 MR. STRICKLER: Page 38, Judge.

21 THE COURT: Page 38.

22 MR. STRICKLER: There --- lines 13 and 14, "I
23 was standing with friends that I knew in Columbia
24 that I did time with before," same problems as --- as
25 before.

1 THE COURT: All right. What says the State?

2 MS. CAMPBELL: We would agree that it should go
3 all the way, 22 through 25.

4 MR. STRICKLER: I was going to address those
5 separately, yeah. Probably the easiest would be 22
6 through 25, if that's what you're saying.

7 He references, again, on 22, "People that I did
8 time with before."

9 MS. CAMPBELL: I would leave in that, "I was
10 staying with friends in Columbia," taking out the
11 part about that he did time with before, then leave
12 in the part about the first names and then go down to
13 line 22 and redact that, "I did time; that I did time
14 with before; that I did time with before that." That
15 would be my proposal.

16 MR. STRICKLER: So redact --- redact line 14,
17 "That I did time with before"?

18 MS. CAMPBELL: Yes, sir.

19 MR. STRICKLER: And redact line 22 starting with
20 I did time --- that I did time with before.

21 MS. CAMPBELL: Time with before.

22 MR. STRICKLER: That I did time with before, so
23 partial, 22 through 25.

24 MS. CAMPBELL: Yes, sir.

25 THE COURT: All right. Redact all the

1 references to "did time with before" on page 38.

2 MS. CAMPBELL: Thank you.

3 THE COURT: All right.

4 MR. STRICKLER: Page 43, Your Honor, lines one
5 and two. One is "... a drug house," and one
6 "...don't even know, picked you out of a lineup."

7 Now, that's a statement on the part of the
8 police referencing --- if you look at the preceding
9 page, "Two more people put you in the earth, okay,
10 two more. All right."

11 That's two more all right. That's from --- it's
12 from Mr. McGee, and then we hit 43, lines one and two
13 from Mr. Reese. "One, a drug house, and one don't
14 even know you picked you out of a lineup." Well,
15 "The one in the drug house" is what I have a problem
16 with.

17 MS. CAMPBELL: We would agree that that should
18 be removed, the one ---

19 THE COURT: The phrase "a drug house" is out?

20 MS. CAMPBELL: "A drug house" is out.

21 THE COURT: All right.

22 MS. CAMPBELL: What's your next page?

23 MR. STRICKLER: The next page is 44, line 15.

24 This is from Mr. McGee, line 14: "We're talking
25 about a house on the left-hand side. It's the drug

1 house."

2 MS. CAMPBELL: I don't think that does anything
3 but use it as an identifier, and that's the
4 defendant's own words.

5 MR. STRICKLER: It's the defendant's own words
6 in response to a line of questioning initiated by
7 representatives of the State, the police in the case.

8 They start tossing out of drug houses, and now
9 he's going to be pinned with knowledge of drug houses.

10 MS. CAMPBELL: Well, but Your Honor, if you look
11 at it in context, he's talking about the reason he
12 denied Reverend Eichelberger's killing is because
13 he's at the drug house.

14 He's using it as an identifying feature. "The
15 house on the left-hand side is a drug house." That's
16 what he talked about. "You come down Farrow Road.
17 The gas station is right there. You cross the train
18 tracks."

19 MR. STRICKLER: "The house on the left-hand
20 side."

21 What does that have to do with, "It's a drug
22 house" other than putting him at a drug house?

23 THE COURT: All right. We'll --- we'll put a
24 pin in that one and move on, and I'll come back and
25 rule on that.

1 MS. CAMPBELL: Okay.

2 MR. STRICKLER: But, Your Honor, page 45, again,
3 it's a description of a location, lines six and seven.
4 "There there's a drug house right down there. The
5 same guy who had the hotel room, he stayed at the
6 drug house."

7 Then from Investigator Reese, lines nine and ten,
8 "You can be talking about the drug smoke blow up your
9 ass."

10 THE COURT: You want that in or out?

11 MR. STRICKLER: I object to both those
12 statements, Your Honor.

13 THE COURT: Okay. All right. What says the
14 State?

15 MS. CAMPBELL: Your Honor, again, we think that
16 he's talking about a third person. He's using that
17 as an identifying factor, because he's trying to say
18 he's with other people that night.

19 The police are trying to get information about
20 who he's with, and all he can come up with is he
21 lives in a drug house. Those are his words, other
22 than Reese just repeating it back to him.

23 THE COURT: All right. So you want it all in?

24 MS. CAMPBELL: Yes, sir. We would want all that
25 in.

1 THE COURT: Okay. All right. We'll put a pin
2 on that one, and we'll come back to it.

3 MS. CAMPBELL: Okay.

4 MR. STRICKLER: Page 46, and it's actually going
5 to be 46 through 49. Forty-six beginning at line 22,
6 Reeves --- and they're talking about another
7 individual. "Is he a drug dealer?"

8 "Yes. He's a drug dealer."

9 "How often have you bought drugs from him?"

10 Page 47, line one, "On multiple occasions."

11 "About four occasions?"

12 "Yes."

13 MS. CAMPBELL: I think I can expedite this.

14 THE COURT: Okay.

15 MS. CAMPBELL: We would leave lines 24 and 25 on
16 page 46 through page 49 down to line --- picking back
17 up at line 17, getting into, "Frank, you got a CDL
18 license."

19 MR. STRICKLER: All right. Then we're in
20 agreement on that, Your Honor.

21 THE COURT: Starting at ---

22 MS. CAMPBELL: Twenty-one.

23 THE COURT: Question, 22, is he a drug dealer?

24 MS. CAMPBELL: No. I'm starting at line 24.

25 MR. STRICKLER: Okay. Well, then we're in

1 agreement but for the fact that 22 and 23 ought to
2 come out.

3 THE COURT: All right. So then this gets to
4 just a general objection where the defense is
5 objecting to the defendant making references to drug
6 houses and drug dealers.

7 The state saying, "Well, he's identifying places
8 and people so ---

9 MR. STRICKLER: Well ---

10 THE COURT: --- what is the defense's --- the
11 basis for the defendant's objection to him talking
12 about, "This person is a drug dealer. That's a drug
13 house."?

14 MR. STRICKLER: It paints him with a brush of
15 being intimately associated with drug users. The
16 implication is ---

17 THE COURT: Because he knows someone is a drug
18 dealer or knows someone ---

19 MR. STRICKLER: Yes, sir.

20 THE COURT: --- is a drug user?

21 MR. STRICKLER: Yes, sir.

22 THE COURT: It paints him with a person who
23 knows drug dealers, or is related to drug dealers.
24 How does that violate his constitutional right by
25 putting his character in evidence, such as if the

1 State were to say --- do the part saying, "Well, I
2 bought drugs from him?"

3 The State consents that's out, because it brings
4 his character in, but if he's talking about someone
5 else, how does that violate his rights?

6 MR. STRICKLER: Well, Your Honor, I think --- I
7 think he's --- I think he's painted with the same
8 brush that's used for the person he characterized as
9 the drug dealer. It's guilt by implication, guilt by
10 association, a character attack by association.

11 THE COURT: Well, does the law go there or you
12 just ---

13 MR. STRICKLER: Your Honor, I can't give you ---
14 I can't give you a case on that, but I would submit
15 beyond that, it's completely irrelevant as to the
16 case here because they're just injecting drugs into
17 the situation where no drugs are involved in the
18 situation, or there's no evidence that drugs involved
19 in the situation.

20 THE COURT: All right. What do you say about
21 that, Solicitor?

22 MS. CAMPBELL: Well, Your Honor, he's the one
23 that put the drug dealer there that identifies him.
24 That's an identifying factor he uses that these
25 officers are then supposed to go follow up and find

1 this person.

2 He's the one who has identified the person as a
3 drug dealer, and he's the one that injects about how
4 he was using drugs. We have got pages we have agreed
5 to redact where he talks about his drug use on and
6 off.

7 We do feel like, you know, pursuant to the law,
8 we are not allowed to get into that, and that would
9 paint his character or whatever, even though he's the
10 one who brings up the fact that he's using drugs in
11 all of this.

12 As far as him just identifying --- I mean, it
13 would be like me identifying someone who's at the
14 crack house in the neighborhood. It's a known factor.

15 Mr. Eichelberger himself could be identified as
16 a crack house. It doesn't mean he's a crack user.
17 It's just an identifying feature, and I know of no
18 case law that supports his position on that.

19 We tried to make sure that anything that would
20 follow the law and should be redacted is.

21 THE COURT: All right. Well, we'll --- we'll
22 move on as I ponder that question, both sides of it.

23 MR. STRICKLER: Yes, sir. But we are in
24 agreement that lines 24 and 25 on page 46 and then
25 all of page 47 and page 48 through line 16 on page

1 49 ---

2 MS. CAMPBELL: Picks back up at line 17.

3 MR. STRICKLER: --- should be redacted.

4 THE COURT: Agree, 46 through anywhere?

5 MS. CAMPBELL: It starts back, Your Honor, with
6 line 17 on page 49 where he asked about the CDL
7 license.

8 THE COURT: So the part that you --- where do
9 you start on 46?

10 MS. CAMPBELL: We would start, Your Honor, with
11 line 24 redacting, "How often have you bought drugs
12 from him?"

13 MR. STRICKLER: And we'll start with 22, so the
14 only two lines are 22 and 24.

15 THE COURT: Twenty-two and 24, that's the issue.
16 All right.

17 All right.

18 MR. STRICKLER: Your Honor, next, are pages 53
19 and 54.

20 THE COURT: Fifty-three and 54.

21 MR. STRICKLER: That could --- I begin at line
22 three at page 53 and go through line 19 on page 54.
23 This involves an accusation on the part of Mr. Reese
24 about stealing a truck --- stealing an 18 wheeler,
25 and his claim that he's been identified as the thief

1 involved in stealing the truck.

2 Now, I understand, and I believe Your Honor has
3 ruled, on the admissibility of that testimony
4 yesterday.

5 THE COURT: Well, I sort of ruled, and then
6 Ms. Pringle made some arguments, and I said
7 something ---

8 MR. STRICKLER: All right.

9 THE COURT: --- after she said something.

10 MR. STRICKLER: Well, our contention is it
11 should be excluded for the same reason that any
12 testimony regarding the theft of the truck should be
13 excluded. It's the same argument that she made
14 yesterday in that regard. I mean, it's simply ---
15 it's simply not proven.

16 THE COURT: All right. Ms. Campbell.

17 MS. CAMPBELL: Your Honor, we would rely on our
18 arguments yesterday as far as the identification.
19 Their argument goes --- well, I think their
20 argument --- there was opinion testimony by lay
21 witnesses.

22 THE COURT: Yeah, I think I understand. She
23 said that the court should view the video.

24 MS. CAMPBELL: Yes, sir.

25 THE COURT: Prior to ruling. Is that basically

1 it, Ms. Pringle?

2 MS. PRINGLE: I think that's how we left it.

3 THE COURT: That's how we left it.

4 MS. PRINGLE: There was additional argument as
5 far as the res gestae component.

6 THE COURT: Right. I understand. And I have
7 since reviewed the video, and I think the video
8 reinforces my ruling that the sister should be in a
9 position to identify her brother on the video, and it
10 all goes to the weight of her testimony, not the
11 admissibility of the testimony.

12 Also, in connection with the --- whether or not
13 the --- there is a sufficient nexus between the theft
14 of the truck and the crimes in Greenview --- crime in
15 Greenview.

16 I find that the evidence of the tractor trailer
17 theft is admissible as part of res gestae in the case.
18 I think circumstantially it's intimately
19 interconnected and explanatory of the crime.

20 It is places, the theft of the truck, the
21 discovery of the tool and placing the defendant at
22 the scene of the crime puts it all into context, and
23 the admission of that testimony is necessary for the
24 State to be able to present a complete unfragmented
25 case. So that's my ruling on the issue.

1 MR. STRICKLER: Thank you, sir.

2 Could we interrupt just a moment, let
3 Ms. Pringle just get a couple of things on the record
4 in that regard?

5 THE COURT: Absolutely.

6 MS. PRINGLE: Thank you, Your Honor. This is
7 just purely for the record. I'd like to specifically
8 note that we did, of course, file a motion objecting
9 to this motion under 404(b), State vs. Lyle, the 5th
10 and 14th amendment of the US Constitution, of course,
11 finally, the provisions in the South Carolina
12 Constitution.

13 Those briefs, motions, have been filed both with
14 the clerk and the court reporter marked, I believe,
15 as Court's Exhibits 2 and 3.

16 The cases that were cited by me to the court
17 yesterday were also handed up. I cannot remember if
18 that was actually on the record, but I did hand up
19 case law to the court that was cited in responding to
20 the argument regarding res gestae.

21 The final --- the only other thing that I didn't
22 say about res gestae yesterday that I would like to
23 state for the record is that one of the things about
24 res gestae is that there is no threshold burden of
25 proof component under State vs. Lyle or 404(b).

1 I think that that's significant because it's
2 just further evidence of what res gestae is and how
3 inextricably combined and intertwined the offenses
4 are in the cases in which that's been upheld. I
5 believe --- well, that's it, Your Honor.

6 THE COURT: Yeah. I reviewed the --- the brief
7 that you filed, the Lyle brief, and the analysis
8 contained in the brief.

9 All of that notwithstanding, I find the res
10 gestae component of it all and the obligation of the
11 State to --- I'm going to allow the State to present
12 a complete case unfragmented by the evidence of other
13 bad acts.

14 So it's --- this is not a Lyle situation in the
15 sense of the State seeking to introduce evidence
16 totally unconnected, such as I've been to the crack
17 house buying crack or drugs in the months before.
18 That would be a Lyle type of situation, but here, the
19 stealing of the truck and the circumstances
20 surrounding the winch bar being stolen, as well and
21 the truck being found in an area, and the defendant
22 being placed in an area as a result of that, and the
23 stolen truck and winch bar being used to commit the
24 crime, that's not excluded under Lyle. That's part
25 of the proof of guilt in this case.

1 I find that it is admissible, all of the
2 authority, the cases and briefs filed by the defense
3 not withstanding.

4 MS. PRINGLE: Thank you, Your Honor.

5 May I just add, the reason that I proceeded on
6 Lyle, and I should have mentioned this yesterday, but
7 we would further argue that there's questions as to
8 whether res gestae is still viable.

9 I recognize it's been recognized in opinions
10 post the 1995 adoption of the Rules of Evidence, but
11 I would point out there is no res gestae in the Rules
12 of Evidence. And that this is an evidentiary
13 admission question as to evidence, so that is what
14 steered me towards Lyle. I would further submit that
15 to the court.

16 THE COURT: Well, to the extent that it is a
17 Lyle issue, I find that the probative value outweighs
18 any prejudicial effect.

19 All right.

20 MR. STRICKLER: Yes, sir.

21 THE COURT: So you can continue on with your
22 part.

23 MR. STRICKLER: I'm sorry?

24 THE COURT: You can continue with your part.

25 MR. STRICKLER: Thank you, sir. So we're

1 dealing with 53 and 54. I believe your ruling is
2 that testimony, or that portion of the recorded
3 statement, will be permitted, the record.

4 THE COURT: Yes, sir.

5 MR. STRICKLER: Just if we could, please, for
6 the reasons just stated by Ms. Pringle, I would
7 object to that.

8 THE COURT: All right. Since I ruled on that,
9 any other redaction issue?

10 MR. STRICKLER: Yes, sir.

11 THE COURT: My ruling, considered on page 53.
12 You're otherwise good with 53?

13 MR. STRICKLER: Yes, sir. My objection was 53,
14 line three through 54 line 20, all dealing with the
15 truck.

16 THE COURT: All right.

17 MR. STRICKLER: The next page, Your Honor, would
18 be page 70. This is a pure statement on the part of
19 the prosecution, page 70, lines 12 and 13.

20 "Eichelberger's blood on your socks," line 12.

21 Reese: "All right. I don't care how bad
22 somebody is on crack."

23 Now, at no point in time had Mr. McGee indicated
24 he was on crack the evening of the incident. At no
25 point in time did he admit that he had been involved

1 in the incident at all.

2 Mr. Reese is indicating or is attempting to go
3 ahead and portray him as being on crack cocaine.

4 THE COURT: All right. Ms. Campbell.

5 MS. CAMPBELL: Your Honor, in that paragraph,
6 he's not referring to the defendant in any way. He
7 is referring to the defendant's story that he left
8 the socks by a trash can at the Gazbah on Farrow Road
9 and that somebody else picked them up and put them on,
10 because the defendant had to leave them there because
11 he had athlete's foot.

12 He talked --- he's saying nobody, even someone
13 on crack, would pick up those socks. That's how he
14 phrased it. He's not referring to the defendant in
15 any way.

16 THE COURT: Well, he's saying, "The most crazy,
17 delusional person in the world would not" ---

18 MS. CAMPBELL: Would not ---

19 THE COURT: --- find someone's stinky socks and
20 put them on that they find at the Gazbah or wherever
21 that was.

22 MR. STRICKLER: Well.

23 THE COURT: It's not a --- it's just the
24 opposite of characterizing the defendant as being on
25 crack. It's talking about somebody who might ---

1 even a crackhead is not going to find socks that's
2 bloody and wear them. I mean, that's the
3 interpretation I got from reading that.

4 MR. STRICKLER: Of course --- of course, my
5 problem is reading it in conjunction with other
6 references to drug use, and specifically in
7 conjunction with the --- with the portions of 47
8 through 49 that we have agreed go out, where the
9 officer talks with him at length about his prior drug
10 use.

11 THE COURT: All that is out.

12 MR. STRICKLER: That is outside the ---

13 THE COURT: That's out, so this is in.

14 MR. STRICKLER: Yes, sir.

15 THE COURT: Okay.

16 MR. STRICKLER: Next, page 71, Your Honor, lines
17 24 and 25 through line one on page 72, and the same
18 thing with the truck.

19 I don't feel compelled to go ahead and read the
20 exact language to Your Honor but "took that bar out
21 of the truck that you stole and brought to it
22 Columbia and touched the bar" so it's basically a
23 statement --- it's an allegation that he committed a
24 prior bad act.

25 It's an allegation of an action that is, we

1 would submit, not res gestae of this case, and it's
2 inappropriate to go ahead put that in front of the
3 jury. Once again, I reference back to the argument
4 made on the part of Ms. Pringle.

5 THE COURT: Your objection starts at 24?

6 MR. STRICKLER: Twenty-four and 25, line one on
7 the following page, 72.

8 THE COURT: All right. What says the State?

9 MS. CAMPBELL: Your Honor, we would rely on our
10 earlier argument in your rulings.

11 THE COURT: Well, the question is, there is an
12 officer is making a statement, but the defendant, in
13 effect, didn't respond. He said "mm". I don't know
14 if that's "mm-hmm". It's typed up "mm" double M-M.
15 Is that "mm"? So --- so does it --- does it
16 constitute a question, a response, or just a
17 statement by the officer?

18 If it's just a statement by the officer, then is
19 that admissible as part of a statement by the
20 defendant? What do you say about it, Mr. Strickler?

21 MR. STRICKLER: Well, Your Honor, that's not the
22 essence of my objection. I assume that's an
23 additional basis of it.

24 THE COURT: Well, on the additional basis, I
25 think it should not --- this should come out, because

1 it's not a --- it's not anything that the defendant
2 responded to.

3 MS. CAMPBELL: And, Your Honor, we would take it
4 out through line five just so it will stay in context
5 starting at line 24 moving to page 72 through line
6 five.

7 THE COURT: All right. That's out then.

8 All right.

9 MR. STRICKLER: Thank you, sir. Next, page 73,
10 Your Honor, lines nine and ten.

11 "Now, I'm guilty for being on drugs. Well, I
12 used to be on drugs." It's immediately after he
13 denies being involved with killing the reverend.

14 MS. CAMPBELL: We would take that out, Your
15 Honor.

16 THE COURT: All right. Nine and ten, they're
17 out.

18 MR. STRICKLER: Then the bottom of the page ---
19 beginning at lines 21 and running through page 76,
20 line ten, beginning with, "What if I told you that I
21 spoke to someone who literally said you asked or you
22 had something on your heart in the frame of that if I
23 told you that I hurt somebody?"

24 McGee says, "I did hurt somebody."

25 "Why did you hit somebody?" This relates to a

1 conversation that Mr. McGee is alleged to have had
2 with his wife, okay, at some point after the incident
3 in the fall of the year. I'm not sure off the top of
4 my head.

5 THE COURT: So is that ---

6 MR. STRICKLER: He goes on to relate that he
7 hurt somebody, one of the drug dealers at the house
8 that night, not at the Eichelberger house, at the
9 drug house.

10 It's unclear whether it was the same night or a
11 different night, and this gets further confabulated
12 later, later in the statement.

13 THE COURT: All right. What says ---

14 MR. STRICKLER: It all relates to --- to him
15 confessing to an act of assault independent of that
16 which is alleged in this case and unrelated to that
17 which is alleged in this case. It's a prior bad act.

18 THE COURT: All right.

19 MR. STRICKLER: It should be excluded.

20 THE COURT: On 75, four to five, they kept
21 asking, "same night, on the same night," and he ---
22 McGee says, "The same night."

23 MR. SUTHERLAND: It's all indistinct.

24 THE COURT: Some of it is indistinct, but at
25 least I'm just going based on the transcript, but

1 "the same night" is not really indistinct.

2 It's another --- then he asked him what he hit
3 him with. He talked about taking the guy's pistol
4 and hitting him with it, so he --- he says it's ---

5 MR. STRICKLER: Well, arguably, the indistinct
6 before on line five --- the transcript reads,
7 "Indistinct." Same night, in the stream. I'm not
8 sure, and I guess that will be figured out by the
9 people who listen to it.

10 THE COURT: All right.

11 MR. STRICKLER: But regardless, I mean, really
12 it's kind of independent of whether or not it's the
13 same night. It's a separate incident. It's not
14 Reverend Eichelberger.

15 THE COURT: Okay.

16 MR. STRICKLER: And so what relevance does that
17 have to this other than to smear his character?

18 THE COURT: So your objection is relevance?

19 MR. STRICKLER: Relevance and timeframe,
20 timeframe and Lyle.

21 THE COURT: Timeframe and Lyle?

22 MR. STRICKLER: And Lyle.

23 THE COURT: All right.

24 MS. CAMPBELL: Your Honor, basically, there is a
25 statement that he made to his wife that he had hurt

1 somebody or hit somebody, and they merely asked him
2 about that statement.

3 He admits to saying that, and he's the one who
4 then chooses to go in and explain that on that same
5 night he was hitting somebody else, not the reverend.
6 That's his explanation to get around the admission of
7 this --- he said that, but he admits that he made the
8 statement.

9 THE COURT: Well, is the wife going to testify?

10 MS. CAMPBELL: The wife is under subpoena, Your
11 Honor, and is available.

12 THE COURT: All right.

13 MR. STRICKLER: And we believe the wife will not
14 testify. We believe she will assert her privilege in
15 that regard.

16 MS. CAMPBELL: But at the very least, he admits
17 to saying it.

18 THE COURT: Yeah, well, I think it all depends,
19 to some extent, on whether the wife testifies,
20 because you have the --- at least the issue of, "Did
21 you tell your wife that you hit somebody?" Whether
22 that's hearsay or...

23 MS. CAMPBELL: We ---

24 THE COURT: On that.

25 MS. CAMPBELL: Then, Your Honor, specifically,

1 even beyond that, though, is the frame --- if you
2 look at the bottom of page 73 ---

3 THE COURT: All right.

4 MS. CAMPBELL: --- it says, literally, you were
5 asked if you had something in the frame of, "What if
6 I told you I hurt somebody," which he is quoting what
7 the defendant said.

8 McGee said, "I did hurt somebody, all right, or
9 hit somebody. I did hit somebody."

10 I mean, he made an admission to --- and he
11 admits he made the admission. That's pretty crucial
12 to our case, because as much as he can explain it's
13 in reference to someone else, we would have the right
14 to show the jury that he made that reference and to
15 the reverend.

16 He goes on to explain it as being some other
17 drug dealer or somebody else on that night, but at
18 least that part, Your Honor, we think we can get in,
19 because he admits he said he hurt somebody. That's
20 an admission on his part.

21 THE COURT: On lines what?

22 MS. CAMPBELL: Starting with the question ---
23 starting at the bottom of page 73, Your Honor.

24 THE COURT: All right.

25 MS. CAMPBELL: It actually starts with, "I told

1 you I spoke to someone. If you had something in your
2 heart --- in the frame of what, if I told you I hurt
3 somebody."

4 He's quoting the defendant saying, "You said
5 that statement."

6 The defendant says, "I did hurt somebody."

7 "All right."

8 "Or hit somebody. I did hit somebody."

9 And our position would be --- and that's
10 referenced --- he goes on to explain he hits somebody
11 else on that night, not the reverend, but that's an
12 admission on his part.

13 So if he wants to limit it to that part, we
14 don't have a problem with it, but we think it would
15 be admissible. We think the whole thing would be
16 admissible, Your Honor, respectfully, but...

17 Just so you can have the context, Your Honor,
18 when he states to his wife that, you know, he hurt
19 somebody, he doesn't explain who it was.

20 THE COURT: Well, I mean, looking at it, it's
21 actually, the officers didn't say --- didn't mention
22 him --- his wife. He did.

23 MS. CAMPBELL: Correct.

24 THE COURT: He said it happened with my wife, so
25 this is --- if he volunteers --- he injects the wife

1 into the conversation. He doesn't say who.

2 Well, Mr. Strickler, to the extent that you're
3 objecting because he is claiming that, "I hurt
4 someone that night that wasn't Reverend Eichelberger,
5 it was someone else," I overrule that objection.

6 Now, the --- your --- you have some other
7 objection about it being a drug dealer who he said he
8 hurt?

9 MR. STRICKLER: Well, it does --- again, it puts
10 him in connection with a drug dealer, yes, sir.

11 I certainly don't argue with Your Honor. I just
12 note that on page 73 where this question begins at
13 the bottom of the page is already denied twice on
14 that very page doing any injury to Reverend
15 Eichelberger.

16 THE COURT: All right.

17 MR. STRICKLER: So for the State to claim now
18 he's making an admission about it, I mean, lines
19 eight and nine or --- "which I didn't kill Reverend
20 Eichelberger, which I did not do. I didn't do that,"
21 and lines 12 and 13, "I'm not guilty for murdering
22 Reverend Eichelberger or a homicide." I mean, that's
23 immediately preceding this.

24 THE COURT: But from the State's perspective,
25 every time he is trapped, he then throws someone

1 else's name in that --- where there is a degree of
2 confession and a degree of deception, these are his
3 responses.

4 MR. STRICKLER: Well, I understand your ruling.
5 I'll take exception to your ruling.

6 THE COURT: All right.

7 MR. STRICKLER: Then I will further modify my
8 request referencing specifically page 74 beginning at
9 line 19. "Who was it you were telling her you hit or
10 hurt?"

11 The response, "One of the drug dealers at the
12 house that night."

13 That's, once again, injecting him in relation to
14 drug dealers, drug usage, his character in that
15 regard.

16 THE COURT: All right. So you're at 74
17 beginning at 19.

18 MR. STRICKLER: Nineteen through 22, Your Honor.

19 THE COURT: And then 74 extending through line
20 one, "Not at Eichelberger's house, but at the drug
21 house I was at that night"?

22 MR. STRICKLER: Beg the Court's indulgence one
23 moment.

24 (Pause)

25 I'm sorry.

1 THE COURT: Yes, sir, go ahead.

2 MR. STRICKLER: It would be those lines and then
3 the question as to which house he's at.

4 He says, "No, no, no. Not at the Eichelberger
5 house."

6 Then line one, page 75, "but at the drug house,
7 the drug house I was at."

8 THE COURT: All right. What says the State?

9 MS. CAMPBELL: Your Honor, that's his
10 explanation for where he was on the night in question.
11 Again, he's putting himself in a drug house at this
12 point.

13 If you want us to --- and I guess to keep it in
14 context, I mean, we can take out starting at "but at
15 the drug house, the drug house I was at" on page 75
16 and take everything out to line 10 on 76, if he
17 doesn't want the explanation in. I'm just assuming
18 he's going to.

19 THE COURT: So the State proposes to start
20 striking where?

21 MS. CAMPBELL: The first line "but at the drug
22 house" on 75.

23 THE COURT: All right.

24 MS. CAMPBELL: And then go through line ten
25 starting back with line 11 on 76.

1 MR. STRICKLER: Your Honor, how about I simplify
2 this thing?

3 THE COURT: All right.

4 MR. STRICKLER: I mean, if lines 19 through 22
5 are coming in on page 74, this --- my objection as to
6 injecting drugs into this situation, I'm going to
7 withdraw it on this particular instance.

8 THE COURT: All right.

9 MR. STRICKLER: My previous objection that you
10 have already ruled on as far as --- as far as the
11 whole conversation with his wife aspect of things, I
12 don't withdraw it.

13 THE COURT: All right.

14 MR. STRICKLER: The additional objection as to
15 drugs, I withdraw it.

16 THE COURT: You're withdrawing as to...

17 MR. STRICKLER: So we don't have to deal with
18 lines 19 through 22 or line one --- 19 through 22 on
19 page 74 or lines one through 25 on page 75 in that
20 regard or lines one through ten on page 76 in that
21 regard.

22 THE COURT: All right.

23 MS. CAMPBELL: I'm sorry, I was under the
24 impression we were taking out 19 through 20. So if
25 you want those out, we have no objection, and then

1 the proposal I just made.

2 MR. STRICKLER: I withdraw my objection in that
3 regards.

4 THE COURT: You withdraw your objection to ---

5 MS. CAMPBELL: To anything.

6 THE COURT: To everything on 74, 75 and 76,
7 keeping your objection to about what he has told his
8 wife.

9 MR. STRICKLER: To the fact that it arose out of
10 that conversation, yes, sir.

11 THE COURT: All right. All right. That
12 resolves of it.

13 MR. STRICKLER: Next, Your Honor, is page 78,
14 line six through page 79, line 24.

15 THE COURT: I don't know where it starts.

16 (Pause)

17 Say it again, please.

18 MR. STRICKLER: Page 78. Excuse me. Page 78,
19 lines six through page 79 line 24. This discusses
20 him being picked up by his wife, and it's clear that
21 --- actually, it gets back to the whole explanation
22 on the --- on the fight at the drug house.

23 Your Honor, page 79, line 13. "The night that
24 my wife said she picked me up at the Piggly Wiggly,"
25 which is what is my understanding is what the State

1 will allege happened subsequent to Reverend
2 Eichelberger's attack.

3 "The night that she said she picked me up at
4 Piggly Wiggly wasn't --- wasn't the night I got into
5 it with the guy," the fight that we've just been
6 talking about. "That was when they let him use the
7 truck."

8 He was supposed to wait there at the drug house.
9 It's a completely different incident, so now the
10 whole incident with the individual at the drug house
11 is a completely different night than the evening in
12 question.

13 They've already --- he will establish he was in
14 Columbia on a number of occasions. They just haven't
15 sat through the questions.

16 THE COURT: So what are you objecting to, which
17 lines and numbers, if any?

18 MR. STRICKLER: That entire line of questioning,
19 because it's regarding --- it involves a separate and
20 distinct bad act on his part.

21 THE COURT: I thought you're --- you're
22 objecting to --- beginning at 78, line six?

23 MR. STRICKLER: Yes, sir.

24 THE COURT: About his wife picking him up in the
25 pickup truck?

1 MR. STRICKLER: Well, I started there out of
2 context more than anything else, Judge.

3 THE COURT: I need know what I have got to rule
4 on, what the State needs to respond to.

5 MR. STRICKLER: Well, the entire conversation is
6 --- it relates to him being --- him explaining that
7 he had been picked up by his wife; that the fight
8 that happened, which we just talked about, was at a
9 separate time from that which is involved in this
10 case.

11 THE COURT: Well, that's one interpretation.
12 Someone else may have another interpretation. He was
13 all over the place with that.

14 MR. STRICKLER: Yes, sir.

15 THE COURT: What says the State?

16 MS. CAMPBELL: Your Honor, we think that this is
17 just him trying to explain. You just said it all. I
18 mean, he's got various interpretations of what
19 happened.

20 At this point, he's just trying to explain about
21 how he got to Columbia and about his involvement with
22 the truck. I'm not clear. I...

23 THE COURT: All right. Well, I'm overruling the
24 objection beginning on page 78.

25 The only question is a portion on 79 where he

1 talks about, "And I told him to give me so many drugs,
2 and he didn't want to do it," so something, something.

3 If you have some objection to talking about him
4 getting drugs from somebody or some reason for a
5 truck whatever he's getting it for.

6 MR. STRICKLER: Yes, sir. I had separately
7 highlighted on page 79, line eight, lines 17, "a
8 little drug house" and then line 19, "So I told him
9 to give me so many drugs."

10 THE COURT: All right.

11 MR. STRICKLER: That's just drug usage right
12 there.

13 THE COURT: All right. "A little drug house,"
14 and "So I told him to give me some drugs." What says
15 the State?

16 MS. CAMPBELL: We have no objection to
17 removing --- I'm sorry, Your Honor, which line was
18 that? I have ---

19 THE COURT: "A little drug house" on page 17
20 through most of line 19. I think that's it, right?

21 MR. STRICKLER: Yes, sir.

22 THE COURT: All right. So beginning with "A
23 little drug house" on 79, line 17 through "So many
24 drugs" on line 19. That's out. All that is out.

25 MS. CAMPBELL: That's fine.

1 THE COURT: Okay.

2 MS. CAMPBELL: If you...

3 Your Honor, if he wants to keep it in context,
4 we'll take the whole paragraph out, whatever he wants.

5 MR. STRICKLER: The next paragraph I'm asking to
6 be out. Whatever Your Honor wants.

7 THE COURT: All right. What's next?

8 MR. STRICKLER: Your Honor, page 80, lines 24
9 and 25. This is again just a statement on the part
10 of Investigator Thomas.

11 "I'm not talking about --- I'm not emphasizing
12 other the drug dealers." I don't know where it comes
13 from to begin with, but once again, we're just
14 injecting drug dealers in this situation.

15 THE COURT: Any objection to 24 and 25?

16 MS. CAMPBELL: No objection.

17 THE COURT: All right. That's out. We're
18 getting there. On page 81. We have to go through
19 104.

20 MR. STRICKLER: Yes, sir. Eighty-one, beginning
21 at lines 16 through 22, "It wasn't just one incident
22 where I went to Columbia."

23 "Oh, I'm certain it wasn't."

24 "That's back to that drug area right there."

25 "Oh, yeah. We know that. Yeah, we know that."

1 So that's his comment about going to it --- him
2 personally going to a drug area, and the police
3 response --- that they were sure it did go to a drug
4 area.

5 MS. CAMPBELL: It's just him describing the area
6 where he went. I don't know how that would ---
7 should be excluded under any ---

8 THE COURT: All right. I overrule, overrule
9 that objection.

10 MR. STRICKLER: Page 82, once again, lines 22
11 through 25, "I can tell you this, sir. I'm pretty
12 sure you hadn't raided the drug house. If you go to
13 the drug house," talked about that again, placing
14 himself with knowledge of a place being a drug house.

15 My contention would be the people --- it would
16 be reasonable for the jury to infer that people who
17 know what a drug house is are drug users.

18 THE COURT: People who know what a drug house is
19 are drug users?

20 MR. STRICKLER: People who have intimate
21 awareness --- the police will, too, probably, you
22 know, being able to point out the drug houses on the
23 street, maybe people in the neighborhood might.

24 THE COURT: Well, concerned citizens. "That's a
25 drug house. That's a drug house."

1 MR. STRICKLER: They might.

2 THE COURT: That doesn't mean that they use
3 drugs.

4 MR. STRICKLER: Basically ---

5 THE COURT: Anyway, what do you say about that,
6 Madam Solicitor?

7 MS. CAMPBELL: Your Honor, we have no problem
8 taking out lines 21 through the next page on page 83
9 through the end of line four.

10 THE COURT: All right. They're ---

11 MR. STRICKLER: I'm sorry?

12 THE COURT: She is agreeing with line 21 through
13 the next page, line four.

14 MR. STRICKLER: Four?

15 MS. CAMPBELL: Let's just take out that entire
16 paragraph.

17 MR. STRICKLER: All right.

18 THE COURT: All right. It's out.

19 MR. STRICKLER: On page 83, lines nine through
20 11, once again, "That's the day --- that's the day
21 you rode up there in that 18 wheeler from that
22 construction company." That's the very issue that
23 you dealt with and disposed of as far as
24 Ms. Pringle's arguments. I just want to object to
25 introducing that ---

1 THE COURT: All right.

2 MR. STRICKLER: --- for the same reasons that
3 Ms. Pringle said.

4 THE COURT: I understand. I've ruled on that
5 issue.

6 MR. STRICKLER: And, again, line --- page 83,
7 line 16 through page 87. Well, no, page 83, line 16
8 through page 86, line 23.

9 THE COURT: All right.

10 MR. STRICKLER: This all involves the discussion
11 between the investigators and Mr. McGee regarding a
12 Mack truck that he says he moved, not Peterbilt.
13 It's --- it's got no relevance to this case
14 whatsoever, so I would object on the basis of
15 relevance in that regard.

16 THE COURT: All right. Well, I overrule it for
17 the reason that they could have been talking about
18 the same truck.

19 MR. STRICKLER: Yes, sir.

20 Page 87, lines three through ten, they discuss
21 his dishonorable discharge from the military.

22 THE COURT: All right. What do you say about
23 that, solicitor?

24 MS. CAMPBELL: Your Honor, we would delete any
25 mention of the military in any way. We would --- he

1 mentioned, "How long you had that pot belly and
2 receding hairline," out to 96 to make it clean.

3 MR. STRICKLER: Well, I'm asking just to delete
4 three through --- three through nine on page 87,
5 which would be they discussed the receding hairline
6 and pot belly, which I'm sure they want to discuss.
7 That's part of the description, and then his response,
8 "Ever since I got out of the military," take it back
9 up with --- at line ten.

10 THE COURT: All right. So you want three
11 through nine out?

12 MR. STRICKLER: Yes, sir.

13 THE COURT: And the extra stuff the State wants
14 out, you object to taking that out?

15 MR. STRICKLER: Taking what out? "Ever since I
16 got out of the military, and that was when" --- so
17 that's, I'll make it five through ten, Your Honor.
18 That lets them get the date of his termination from
19 the military in without going into the particulars of
20 it.

21 THE COURT: So you want five through ten?

22 MR. STRICKLER: Yes, sir, five through ten.

23 THE COURT: All right.

24 MS. CAMPBELL: Your Honor, we're just going to
25 --- ask if you take out that, you take out any

1 mention ---

2 THE COURT: What's with all these notes from the
3 jury?

4 MS. CAMPBELL: We have more?

5 (Pause)

6 THE COURT: We have two notes. "I'm on a
7 special diet. I have a cooler in my car. If I may
8 bring it to get my lunch, please."

9 I think that's fine if they can go and come
10 right back. Hopefully, they won't be gone more than
11 five minutes.

12 THE BAILIFF: Okay.

13 THE COURT: All right. What were you --- what
14 were you saying?

15 MS. CAMPBELL: I was just saying, Your Honor, in
16 order to keep it --- and some of this has been taken
17 out of context. In order --- starting at line 24, we
18 would ask that it be taken out through line 14 at the
19 next page, the whole context of that conversation.

20 MR. STRICKLER: So start ---

21 MS. CAMPBELL: If he wants to take the rest of
22 it out.

23 MR. STRICKLER: So start at page 24 on line ---
24 page 86, and then 14 on page 87?

25 MS. CAMPBELL: Yes.

1 MR. STRICKLER: That's fine.

2 THE COURT: All right. All of that is out.

3 MR. STRICKLER: Your Honor, page 88, line one.

4 "I think you were strung out on crack. You're an
5 opportunist. Eichelberger's house was dark, looking
6 for stuff to do, like you always do when you go to
7 burglarize all those other places. You're looking
8 for some stuff to get, to get your next hit.

9 "I've been doing this. I've been doing this a
10 long time. All the places I got on police reports
11 where you were arrested for burglary and convicted of
12 burglary." So that's page 88, line --- beginning
13 with the second sentence on line one through line 12.

14 THE COURT: All right. What says the State?

15 MS. CAMPBELL: Your Honor, we would agree to
16 take out through line 16. We agree with him. Take
17 out that entire conversation.

18 THE COURT: Through 16? You agree with that,
19 Mr. Strickler?

20 MR. STRICKLER: Yes, sir. Thank you.

21 THE COURT: All right.

22 MR. STRICKLER: Your Honor, page 91, line 25.
23 Investigator Reese, "You knew you were going back to
24 prison if you could have just gotten to the
25 telephone." So that refers to prior criminal history,

1 that sentence.

2 THE COURT: All right. What about that,
3 Solicitor?

4 MS. CAMPBELL: We would agree that has to come
5 out.

6 THE COURT: All right. What line was that,
7 again?

8 MR. STRICKLER: Begins on line 25 on page 91 and
9 carries over to page one on line --- page 92, line
10 one.

11 THE COURT: All right.

12 MR. STRICKLER: And then further down on page 92,
13 line ten. "You were going --- you were going away
14 because you --- it was beyond three strikes."

15 THE COURT: All right. Do you agree with that,
16 Solicitor?

17 MS. CAMPBELL: Where do you want to start? I'm
18 sorry. I missed that. "You were going"?

19 MR. STRICKLER: Well, that portion is the
20 portion ---

21 MS. CAMPBELL: Or "you were going away"?

22 MR. STRICKLER: You might want to start at the
23 beginning of the paragraph, I don't know. That's the
24 portion that's objectionable right there.

25 THE COURT: So the part about you knew --- if he

1 had gotten to the telephone, you're leaving that in
2 and striking the rest of the sentence?

3 MR. STRICKLER: That's where I'm asking to
4 strike the rest of the sentence. That is directly
5 objectionable.

6 THE COURT: The next sentence?

7 MR. STRICKLER: It may not read very well.

8 THE COURT: I understand.

9 MS. CAMPBELL: Our position would be to either
10 take a paragraph or --- but he's saying if he had
11 gotten to the telephone, you were going. You were
12 going away. He's saying that's why you hit him.

13 Of course, you would be going away if you struck
14 the reverend and just --- and we agree that the
15 strike issue should be taken out.

16 THE COURT: All right.

17 MS. CAMPBELL: So I would just say take the
18 whole paragraph out.

19 MR. STRICKLER: Lines nine through 17?

20 MS. CAMPBELL: Yeah.

21 MR. STRICKLER: That's fine.

22 THE COURT: It's out.

23 MR. STRICKLER: Your Honor, page 93, line 15.

24 Just the full sentence is, "Well, how do you think we
25 know about your receding hairline and your pot

1 belly?" That part I object, and "Your crazed-ass
2 look high on drugs," if they've got someone to
3 testify and identify him as having that look.

4 MS. CAMPBELL: She does. I believe the
5 eyewitness will say that he had a crazed look on his
6 face. I don't know if that's the exact language, but
7 she describes to the police that he has ---

8 THE COURT: All right. "High on drugs." You
9 object to that?

10 MR. STRICKLER: The high on drugs part, yes,
11 definitely, sir.

12 THE COURT: All right. Any objection to that?

13 MS. CAMPBELL: We can take out that, Your Honor.

14 THE COURT: It's out, the high on drugs. All
15 right.

16 MR. STRICKLER: Your Honor, page 99. We're
17 through, almost, so bear with me. That's lines two
18 and three in reference to the drug house. Same
19 objections I had in reference to "drug house" all
20 morning.

21 THE COURT: Line two and three?

22 MR. STRICKLER: Yes, sir. It's just the phase
23 beginning on line two, "the drug house".

24 THE COURT: What says the State?

25 MS. CAMPBELL: Again, just to keep it in context,

1 if you take out those two lines, I don't have an
2 objection to it, but if you take out the whole
3 paragraph starting on pages 98, line 25...

4 THE COURT: What says the defense?

5 MS. CAMPBELL: And Reese ---

6 MR. STRICKLER: That's fine.

7 MS. CAMPBELL: Actually, just through line nine.

8 MR. STRICKLER: Through line nine?

9 MS. CAMPBELL: Uh-huh.

10 THE COURT: All right.

11 MR. STRICKLER: That's fine, Your Honor.

12 Page 100, Judge. This is a question from Reeves
13 carrying over from page 99. "You were strung out on
14 drugs, all right." That's a statement by the police.

15 MS. CAMPBELL: I'm sorry, I missed the page.

16 MR. STRICKLER: Page 100, line one.

17 MS. CAMPBELL: That should come out.

18 THE COURT: All right. Those words, "You were
19 strung out on drugs, all right" will come out.

20 MR. STRICKLER: That's all I have, Your Honor.

21 THE COURT: All you have.

22 MS. CAMPBELL: And, Your Honor, for the record,
23 that's all you want taken out?

24 MR. STRICKLER: Yes.

25 MS. CAMPBELL: Your Honor, we'll go ahead and

1 start redacting this and then provide them with an
2 opportunity to review it.

3 THE COURT: All right.

4 MS. CAMPBELL: Prior to publishing anything to
5 the jury.

6 THE COURT: All right. Well, then back to page
7 43 talking about the drug house, the comment by Reese
8 about a drug house. Strike that out.

9 MS. CAMPBELL: Take that out, Your Honor?

10 THE COURT: Page 43.

11 MS. CAMPBELL: Yes, sir.

12 THE COURT: Well, I think you all probably agree
13 to that. That's 44, McGee.

14 MS. CAMPBELL: That's McGee's words, Your Honor.

15 THE COURT: Forty-four, line 15, McGee says,
16 "It's a drug house." Forty-five, "There is a drug
17 house right down there." We're going to take that
18 out. "It's a drug house," 44, line 15, and on 45,
19 line six through ten or six through 11.

20 All right. Any other --- any other unreadiness
21 before we start with the jury?

22 (Pause)

23 THE COURT: Anything else?

24 MR. STRICKLER: That's all that will be redacted
25 from the --- is that correct?

1 THE COURT: Any other preliminary matters
2 motions, issues?

3 MR. STRICKLER: That's it.

4 THE COURT: All right. How about that.

5 All right. We're going to take five minutes,
6 and then we're going to bring in the jury and start
7 the case, five minutes.

8 (WHEREUPON, a short break was taken.)

9 THE COURT: Before we begin, I wanted to
10 admonish everyone in the courtroom, including
11 families of the defendant, families of the victim,
12 spectators, participants, there is to be absolutely
13 no contact or any effort to contact any juror in this
14 case.

15 No one is to try to engage in any kind of
16 conversation outside of the courtroom that is
17 intended to influence the jurors, not making any
18 comments that you're trying to get the jury to
19 overhear. Any of that would be contemptuous conduct
20 and subject to contempt of court.

21 Several weeks ago we had a guy on trial, and the
22 family members of the defendant, they saw the jurors
23 coming, they were shouting, "I know he's innocent.
24 There's no way that he would hurt anyone."

25 It caused a serious problem, so we don't want

1 anyone to fall trap to that at this time, and --- and
2 word to the wise should be sufficient on that.

3 Are we ready for the jury?

4 MS. CAMPBELL: Yes, sir.

5 MR. STRICKLER: Yes, sir.

6 THE COURT: All right. Let's bring them on.

7 (WHEREUPON, the jury came into open court at
8 approximately 11:22 a.m.)

9 THE BAILIFF: The jury is seated, Your Honor.

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

11 Ladies and gentlemen, if you all will stand to
12 be sworn.

13 THE CLERK: Please raise your right hand.

14 (WHEREUPON, the jury panel was sworn.)

15 THE COURT: All responded affirmatively.

16 PRETRIAL CHARGE

17 Welcome back, ladies and gentlemen. We're ready
18 to proceed with the trial of this case. I will give
19 you some introductory comments concerning this matter.

20 These remarks are not intended to be a charge on
21 the law of this case. I will instruct you on the law
22 in much greater detail at the end of the end of the
23 trial, but to explain to you the procedure that we
24 will follow in this trial so that you may better
25 understand what will be happening.

1 MS. SIMPSON: Yes, Your Honor.

2 OPENING STATEMENT:

3 MS. SIMPSON: Born December 13th, 1921, the
4 victim, Reverend Eichelberger, was 87 years old when
5 he was brutally beaten and murdered.

6 At 87 years old, he was the father of eight
7 children and proud grandfather of over 24
8 grandchildren. At 87 years old, his life had spanned
9 decades with historical moments and events that many
10 have only read about in history books: The Great
11 Depression, World War II, and the dropping of the
12 atomic bomb, the struggle for civil rights, the Cuban
13 missile crisis, the Cold War, the Gulf War, Vietnam
14 War, Oklahoma City bombings, the 9/11 terrorist
15 attacks, along with many more, countless influential
16 leaders and presidents, resignations, assassinations,
17 as well as advances in modern science, medicine, and
18 technology.

19 I submit to you that while 87 years is a long
20 time, Reverend Eichelberger's life ended too soon
21 because his life was cut short by the actions of the
22 defendant, Frankie Lee McGee.

23 Now, Reverend Eichelberger was known, loved, and
24 respected by his family and his friends and members
25 of the Greenview and Columbia community, a business

1 owner and a pastor.

2 He was known for his charitable giving. He gave
3 money, gave food from his garden, or even from his
4 own table, if somebody asked.

5 Before May 3rd, 2009, he was independent, living
6 in his own home on Isaac Street, still active in the
7 community as a minister, but we are here today
8 because rather than die of old age or natural causes
9 or an accident and live the final days, months, years,
10 whatever may have been left of his life and his
11 retirement in peace, free from violence, he was
12 brutally attacked and beaten in his own home, a
13 beating from which he never recovered, a beating from
14 which he suffered for nearly three months before he
15 finally passed away, a beating that I submit to you
16 happened at the hand of the defendant who earlier
17 that day Reverend Eichelberger had welcomed into his
18 home. He gave him food to eat and perhaps even a
19 kind word and spiritual guidance.

20 How did the defendant thank him? He came back
21 later that day and took his life. So what happened
22 on May 3rd, 2009?

23 Well, May 3rd was a Sunday, and it started out
24 probably like many others: A visit with his friends,
25 talking on the phone with family, any other ordinary

Opening by Simpson

1 day, but unfortunately for Reverend Eichelberger, on
2 this day, someone else was in Greenview, the
3 defendant, who you'll learn actually lived in Camden,
4 and the defendant actually paid Reverend Eichelberger
5 a visit that day.

6 You're going to hear from Larry Harp, a neighbor
7 who lived directly across the street from Reverend
8 Eichelberger who actually saw the defendant pacing in
9 the front yard on his cell phone.

10 He left, went about his business, Mr. Harp. He
11 came back later and saw the defendant again, this
12 time eating some food, a little unusual. Then later
13 on, probably around eleven o'clock, Tameka Ashford
14 came over to the Reverend's home to get money for a
15 water bill.

16 Now, the defendant was no longer there. You're
17 going to hear from her today. When she arrived, she
18 and the reverend were in the home in one of the back
19 rooms when they heard a commotion.

20 Reverend Eichelberger went to see what --- what
21 it was. "What are you doing in here?" Tameka heard
22 more commotion.

23 Scared at this point, she ran out of the house,
24 got into her car and drove around the block coming
25 back towards the victim's home.

1 At that point, she saw a man matching the
2 description of the defendant walking out carrying
3 what looked to be a large pipe or stick and wearing
4 what appeared to be gloves.

5 She took a second glance, but he was kind of
6 coming in her direction, so she sped off and called
7 9-1-1.

8 Officers arrived to find Reverend Eichelberger
9 in his kitchen in a pool of his own blood, a
10 laceration to his head.

11 He was bleeding heavily, unable to respond to
12 their questions, "What happened? Who did this to
13 you?" He couldn't respond.

14 EMS was called to the scene. When they arrived,
15 they judged that there was approximately two liters
16 of his own blood that had drained out, so he was
17 transported by EMS unresponsive.

18 Now, officers had a description that had been
19 provide by Ms. Ashford. So as they were going to the
20 scene, a be-on-the-look-out went out for someone
21 matching this description, anyone.

22 Officers actually did find somebody who was
23 walking with someone else. Now, that person was
24 later cleared during this investigation.

25 You're going to hear about the course of this

1 investigation, but when officers arrived to the scene,
2 they also made contact with Ms. Ashford who pointed
3 them in the direction that Reverend Eichelberger's
4 assailant went.

5 So they followed that direction looking for
6 anything. When they did, they went across the street.
7 In the back of Larry Harp's yard, directly across the
8 street, they found a long metal bar, which was later
9 identified to be a winch bar, which is commonly used,
10 tractor trailers, 18 wheelers.

11 When they found that bar, it had what appeared
12 to be blood on it, this heavy bar. So they secured
13 it. Later the evidence was collected, but they
14 continued to look.

15 Backing up to Mr. Harp's home on [REDACTED]
16 [REDACTED] is [REDACTED], and there officers found a
17 pair of dirty white socks.

18 This was important because of Ms. Ashford's
19 contention that she saw someone who appeared to be
20 wearing white gloves, and these gloves, too, had what
21 appeared to be blood on them.

22 Now, this evidence would be collected and, in
23 fact, it would be tested, and the blood on the socks
24 would come back to the defendant --- I mean, I
25 apologize, to the victim, and the blood on the winch

1 bar came back to the victim.

2 The door that was taken, from which I submit to
3 you the defendant had entered the home, had tool
4 markings consistent with that of a winch bar. So
5 they collected this evidence.

6 Now investigators interviewed in this case
7 numerous people, because based on Tameka Ashford's
8 description, a composite was developed, a hand-drawn
9 picture that was released to the media.

10 The Greenview community is pretty small, yet
11 everyone kind of knows everybody, numerous tips,
12 calls, "this person may look like him." They
13 followed up leads, descriptions. Whatever came to
14 them, they followed up. Nothing at this point, but
15 they continued for months.

16 I want to backtrack just a little bit because on
17 July 31st, 2009, nearly three months after the
18 assault on Reverend Eichelberger, he died in the
19 hospital.

20 You're going to hear about that time, some of
21 the surgical procedures that he had to go through.
22 He suffered from pneumonia, and all the while he
23 never got better, a man who had been active and
24 independent, never unresponsive, bedridden. Three
25 months he suffered.

1 So law enforcement continued their investigation,
2 and they learned at some point about some new testing
3 for DNA, more sensitive testing, because those items
4 that I mentioned to you earlier were initially tested.

5 But law enforcement went back to them and said,
6 "Please, can you retest this? We hear there's
7 something new out."

8 You're going to hear from the analyst who is
9 going to tell you about all the testing and what was
10 done. So finally, in March of 2010, a break in the
11 case, because a DNA profile was developed from those
12 socks that had the defendant's blood on them, a DNA
13 profile which matched this defendant, Frankie Lee
14 McGee.

15 So now, in the course of their investigation,
16 they have a lead. So they begin to investigate
17 Mr. Frankie Lee McGee.

18 During the course of that, they find out about a
19 theft that occurred on May 2nd, 2009, the day before
20 Reverend Eichelberger was attacked.

21 This became important because it was the theft
22 of a truck, essentially the tractor part of an 18
23 wheeler. The theft of this truck occurred at Camden
24 Metal and Steel, which is located in Camden, South
25 Carolina, where the defendant lived.

1 But this becomes more important, because that
2 truck was found on May 3rd, 2009, the day that
3 Reverend Eichelberger was assaulted on Token Street,
4 which is only several blocks from the murder, Token
5 Street in Columbia, South Carolina.

6 That tractor trailer in Camden found its way to
7 Columbia several blocks from where Reverend
8 Eichelberger was murdered.

9 Now, the actual theft hadn't been reported yet.
10 You're going to hear about that, and so the owner of
11 the property happened to be the tow service, took the
12 truck out of the road.

13 Now, the truck was actually reported missing
14 that day, and video surveillance was recovered from
15 the theft. You're going to hear how that video
16 surveillance made its way into the media and how
17 Sandra Thomas, an officer with the Columbia Police
18 Department and sister to the defendant, Frankie Lee
19 McGee, saw that video. "Oh my God. That's my
20 brother."

21 She positively identified him as being the
22 person who stole that tractor trailer, which found
23 its way from Camden several blocks away to where
24 Reverend Eichelberger was murdered.

25 You're going to hear from her today. That's not

1 all. They went back and they interviewed Larry Harp
2 who had the opportunity to see someone in Reverend
3 Eichelberger's yard. As he was questioned, he
4 maintained, "I'll know who it is when I see him." So
5 a photo lineup was developed, and he picked out the
6 defendant.

7 The defendant was the one who he had seen in
8 Reverend Eichelberger's home that day. It starts
9 building, evidence adding up.

10 They look into Frankie McGee's background. He
11 has a CDL license. He's familiar with tractor
12 trailers and trucks and tools of the trade. He went
13 to diesel school. More begins to add up.

14 With all this information, they go to the
15 defendant, speak with him about what they have. The
16 defendant agrees to talk to them and denies
17 assaulting Reverend Eichelberger, denies that he was
18 involved in any way, but he has an answer for
19 everything.

20 When confronted and only when confronted, he has
21 an answer for everything. "I was in Greenvew that
22 day. I hitchhiked for a car ride. I don't remember.
23 I was in Greenvew. Oh, yeah, I was at Reverend
24 Eichelberger's house, but I couldn't have attacked
25 him."

1 When shown a picture of the murder weapon, the
2 winch bar that he should have been familiar with,
3 that I submit to you he was familiar with, "I don't
4 know what that is. I don't know what that's used
5 for."

6 When confronted about why evidence may be found
7 linking him to the theft of a truck, he says, "Well,
8 yeah. I was around there. I went up to some guy
9 about a job interview. Now, I don't know the guy's
10 name. I don't even know what the company's name was,
11 and at some point we went somewhere. Then I got into
12 the truck and moved it. I had to, to get it off the
13 street." This guy's truck that didn't know me, I
14 didn't know him, an answer.

15 Then when approached or confronted about the
16 socks, he admits that those dirty white socks were
17 his. "Those were my socks. I actually took them off,
18 and I put them by a dumpster at the Gazbah because I
19 had athletes' foot. My feet were sweating, sweaty,
20 smelly.

21 "I just took them off, put them by a dumpster.
22 Oh wait, maybe I'll put them by a light pole."
23 There's a light pole. Were they ever found?

24 So, "Why would the victim's blood and on your
25 socks?"

1 Conveniently, an answer for everything and many
2 more.

3 Now, you're going to have that interview and
4 those statements, together with the other evidence in
5 this case. It will be up to you to decide what
6 happened on May 3rd, 2009.

7 I submit to you that this didn't have to happen.
8 Reverend Eichelberger didn't deserve to die this way.
9 I submit to you that the evidence will support that
10 the defendant is the one responsible.

11 Good afternoon, members of the jury. My name is
12 Nicole Simpson. I, along with my co-counsel, Senior
13 Assistant Solicitors Dolly Garfield and Luck Campbell,
14 together, we represent the State in this matter.

15 As solicitors, it is our job to prosecute all
16 crimes that occur here in Richland County. As a
17 result of his actions, the defendant has been charged
18 with burglary, first degree, and murder.

19 Now, in every criminal case, the defendant is
20 presumed innocent until proven guilty. As the State,
21 we bear the burden of proof in this case, just as we
22 do in the prosecution of every criminal case.

23 What that means is that we must prove to you
24 each element for the crime for which the defendant
25 has been charged beyond a reasonable doubt. I can

1 tell you that we welcome that burden here today.

2 Now, in South Carolina, a person is guilty of
3 burglary if he enters the dwelling of another without
4 consent and with the intent to commit a crime therein.

5 Now, that burglary becomes a burglary in the
6 first degree where one of several aggravating factors,
7 as we call them, may be present.

8 He might be armed with a deadly weapon or that
9 entering occurs during the nighttime hours or hours
10 of darkness, or the defendant has been convicted; has
11 two prior convictions for house breaking or burglary.

12 I submit to you the evidence will show here
13 today that this defendant has two prior convictions
14 for house breaking or burglary, specifically burglary.

15 I submit to you that that winch bar, whose
16 purpose may not have been a deadly weapon, was used
17 as a deadly weapon, and I submit to you that the
18 defendant was armed with that winch bar when he pried
19 open the door and came into Reverend Eichelberger's
20 home uninvited.

21 Now, the defendant has also been charged with
22 murder. Now, murder is one of our most serious
23 offenses, perhaps the most serious offense that we
24 have, but it has, probably, the shortest definition.

25 In South Carolina, a person is guilty of murder

1 if he kills another with malice aforethought either
2 expressed or implied.

3 Now, the evidence will show here today that
4 Reverend Eichelberger was attacked on May 3rd, 2009,
5 brutally beaten, but he didn't die that day. He
6 didn't get the luxury of a gunshot or a quick death.

7 He suffered for nearly three months, never
8 recovering from that beating and died on July 31st,
9 2009. I submit to you when a person beats another,
10 assaults him, and that person dies from that assault,
11 it's murder.

12 Now, members of the jury, I also stated that we
13 must prove to you each of these elements beyond a
14 reasonable doubt. So what is proof beyond a
15 reasonable doubt? Well, I can tell you that it is
16 proof that leaves you firmly convinced of the
17 defendant's guilt.

18 Now, there are very few things that we know in
19 this world with absolute certainty. The law does not
20 require the State to produce proof that overcomes all
21 doubt or every possible doubt, only that doubt which
22 is reasonable.

23 Now, His Honor, the Honorable Judge Newman, is
24 the judge of the law in the case. He is going to
25 instruct you on the law as you are to apply it to the

1 facts of this case.

2 If ever there is a discrepancy between what His
3 Honor says, what any of the attorneys in this case
4 say, you are to follow his rulings and his
5 instructions to you.

6 Now, with that said, members of the jury, you
7 are the sole finders and triers of fact in this case.
8 What that means is that each of you here today is
9 wearing a black robe.

10 Individually and collectively, you must decide,
11 and only you can decide if the defendant is guilty of
12 burglary first degree and murder, but we don't expect
13 you to solve a mystery. This is not TV. You're not
14 here to solve a mystery.

15 As the State, it is our job to give you all the
16 tools that you need to do your jobs. We anticipate
17 and plan to do just that, through the physical
18 evidence and the testimony produced during this trial.

19 Like I said, some of that evidence is going to
20 be physical evidence, evidence which you get to see,
21 touch, feel, hear, such as DNA evidence, the door
22 from Reverend Eichelberger's home, the murder weapon,
23 the winch bar, the socks that were recovered with
24 both the victim's blood and the defendant's DNA, the
25 audio transcript of his interview, photographs,

1 things of that nature, but much of the evidence you
2 have before you is going to come from right here on
3 this witness stand.

4 You're going to hear from a lot of witnesses
5 throughout this trial, including the officer who
6 responded, Ms. Ashford, eyewitnesses to the event,
7 Mr. Harp.

8 You're going to hear from Sandra Thomas, the
9 defendant's sister. You're going to hear from the
10 crime scene investigators who processed the scene.
11 You're going to hear from the lead investigators on
12 this case who followed up numerous leads which
13 finally leads them to the defendant.

14 You're going to hear from some experts, as well:
15 The forensic pathologist who conducted the autopsy.
16 You're going to hear from the treating doctor.
17 You're going to hear from the DNA analyst in this
18 case.

19 You're going to hear from other witnesses, and
20 through those witnesses, you're going to learn, I
21 submit, a number of things.

22 You're going to learn that the defendant lived
23 in Camden, and that a tractor trailer was stolen from
24 Camden on May 2nd, 2009; and that that tractor
25 trailer was found several blocks away from Reverend

1 Eichelberger's home where he was murdered the next
2 day, putting the defendant in Columbia in the
3 Greenview area.

4 Through these witnesses, you're going to learn
5 that he's identified on video stealing that truck.
6 You're going to learn that he has knowledge of winch
7 bars, tractor trailers, even though he denies such
8 knowledge.

9 You're going to hear how his DNA was found in
10 the socks with the victim's blood on it, how the
11 victim's blood was found on the winch bar.

12 You're basically going to hear about how the
13 officers conducted this investigation and how the
14 evidence led them to the defendant, Frankie McGee.

15 You're going to hear his statements, an answer
16 for everything, everything that could possibly
17 incriminate him in the murder of Reverend
18 Eichelberger.

19 Now, it's up to you to judge the credibility of
20 each and every witness that takes this stand, and
21 based on your determination, you can believe some of
22 what a witness says. You can believe all of what a
23 witness says, or you can believe nothing of what a
24 witness says.

25 But in making those determinations, we just ask

1 that you consider a few things: What was that
2 witness' demeanor on the stand? Was that witness
3 hesitant or forthright when testifying? Was the
4 testimony of that witness consistent? Is it
5 corroborated by other evidence, and perhaps most
6 importantly, did that witness have any reason to be
7 biased or prejudiced in this case?

8 Now, there are two very, very important
9 witnesses who will not be testifying in here today.
10 Perhaps they're the most important of all, and that's
11 common sense and human nature.

12 While we expect and ask that you check your
13 prejudice and your sympathies at the door, we expect
14 and hope that you will use your good common sense and
15 what you know about human nature when you decide this
16 case.

17 Now, it is said that truth is the mother of
18 justice. It is your job, your duty here today, to
19 find the truth and to seek justice.

20 I submit to you that after you've heard all of
21 the evidence, there will be only one just verdict.
22 At the close of this case, my co-counsel, Ms.
23 Campbell, is going to come before you. She is going
24 to ask you for a verdict that the evidence will
25 support and that justice will demand.

1 She is going to ask that you find the defendant,
2 Frankie Lee McGee, guilty of burglary in the first
3 degree and guilty of the murder of Reverend
4 Eichelberger, guilty. Thank you.

5 MS. PRINGLE: May it please the Court.

6 THE COURT: Yes, Ms. Pringle.

7 MS. PRINGLE: Thank you.

8 OPENING STATEMENT:

9 Last winter in about January, I was down in
10 Charleston celebrating a birthday and went out to
11 dinner with a group of about ten people, a large
12 group of people, maybe ten, twelve people.

13 It was during that cold spell, that super cold
14 spell where you just couldn't get warm no matter what
15 you did, all bundled up in coats and scarves and hats,
16 and it was just absolutely frigid, which I know is
17 hard to even imagine right now in Columbia in the
18 August heat.

19 As we were all gathering up our belongings and
20 saying goodbye, it was a large group. There were
21 other people in the restaurant. It was crowded. We
22 were all gathering up our things. We're hugging and
23 saying goodbye.

24 We leave. I'm with a girlfriend down there.
25 She and I go home back to her house and we're talking,

1 just enjoying the evening.

2 I realized that I left my hat at this restaurant.
3 There's nothing special about this hat that --- as
4 far as expensive or fancy, but it's one my mother
5 gave me.

6 I've had it forever, and I love it. I've been
7 wearing it for years. So I immediately called the
8 restaurant. They were closed. They said that would
9 look. They looked. They don't find it.

10 So I went back down there that morning, the next
11 morning. I looked because I knew where I thought it
12 might be. I looked and it's gone.

13 I don't know where it is. I don't know who has
14 it. What I do know is that that hat would have my
15 DNA on it. There is no question about that. I wore
16 that hat three years.

17 That hat would have my DNA on it. What I do
18 know is that now that item of mine, that item that
19 contains my DNA, is out of my custody, my possession
20 and my control.

21 So should that give me pause thinking about it
22 in preparing for this case? Should that cause me
23 concern? What you need to know, what you need to
24 understand, is that everywhere we go, we leave our
25 DNA.

1 I touch this, I potentially have left my DNA. I
2 touch this table, I potentially left my DNA. The
3 more I touch it, the more likely it is I will leave
4 my DNA on that surface.

5 If you came in here and you swabbed these
6 surfaces. You come over here and you swab this
7 surface, what you would find is the DNA of many
8 different people: Bailiffs, witnesses, deputies,
9 other lawyers.

10 So what I'm going to ask you to do is to listen
11 to this testimony about this DNA very, very carefully,
12 because that is what this case boils down to.

13 The DNA hit on Frankie McGee came on March 11th.
14 This case was over on March 22nd, so this long
15 investigation that was described to you by the State,
16 once they got that DNA hit, it was 11 days, an 11-day
17 investigation into Mr. McGee before they charged him
18 with murder and burglary, first degree, the two most
19 serious things you could be charged with.

20 What you will hear about that DNA, and why I ask
21 you to be cautious, is an interesting thing about the
22 timing. They submitted those socks, as they should
23 have done, right at the time that the incident took
24 place.

25 In June of 2009, after those socks had been

1 tested for DNA, a report was issued by the lab. What
2 they found is that the results of that testing were,
3 and this is a quote, "too weak to reliably interpret".
4 That's in June of '09.

5 This is a terrible case, and this was a long
6 investigation. It is a terrible crime. As you can
7 imagine, these investigators wanted to solve it.

8 You go along all through the fall. Reverend
9 Eichelberger dies in the fall. You go all through
10 the fall, and you go through the winter. It's still
11 not solved.

12 You get to January, and it's still not solved.
13 There is pressure, and you'll hear about the
14 different kinds of pressure on law enforcement to
15 solve it, from the community, from everyone.
16 Everyone wanted to solve it.

17 So what happens is in January 2010, the lead
18 investigator decides, "I'm going to resubmit this.
19 Let's try again," and what do you know? We have a
20 DNA hit to Frankie McGee.

21 When you listen to that testimony, you've taken
22 an oath. You've sworn an oath, and I know that you
23 will abide by this, to listen to everything, to
24 listen to both sides.

25 The direct examination of that analyst will be

1 very, very simple. He will say, "This is Frankie
2 McGee, one in a" --- they make numbers up,
3 quintillion, a number you probably you never heard of
4 before.

5 Wait and listen to the cross-examination. Wait
6 and listen to the cross-examination. It is not
7 simple. This is one of the hardest things you're
8 ever going to have to do.

9 It will be tedious and difficult. It's
10 hard-core science, and it's something that you are
11 going to have to strive to understand.

12 I don't know all of your backgrounds, but I know
13 most people don't know much about DNA. Unless you
14 have a specialty in that or you're educated in that
15 area.

16 You're going to learn a lot this week about DNA,
17 and I ask you to pay close attention all the way
18 through cross-examination.

19 That is not simple, but what is simple is what
20 took place after this incident occurred. What took
21 place with Tameka Ashford.

22 Tameka Ashford is the young woman who was with
23 Reverend Eichelberger in his home when this happened.
24 Tameka is in another room. The break-in is in front
25 of the house.

1 When she hears it, she knows something terrible
2 has happened --- or something --- she doesn't really
3 know, but she knows something serious happened. She
4 runs out the door.

5 Later when the police get there, Ms. Ashford
6 tells them what happened. She is not entirely
7 truthful at first, but she tells them what happened.
8 She does the right thing.

9 Instead of fleeing when she left, she circled
10 the block. She called 9-1-1. She gave them a
11 description. She told them what the guy looked like.
12 She told them what they were looking for.

13 She stayed and she drove back around, and she
14 even looked for the guy. At one point, she comes
15 back and she finds the officer on the scene. She
16 runs up to him and says, "I saw him again. He's over
17 here."

18 She saw him twice. When she drove around the
19 block the first time, she sees him standing outside
20 of Reverend Eichelberger's home, and she describes a
21 man with a dazed or off, crazy look on his face. She
22 says he has on long white gloves and a stick in his
23 hands standing in that driveway. That's the first
24 time she sees him.

25 She stares right at him. She drives around the

1 block, three, four, several times, waiting for the
2 police to get there.

3 One of the times when she is driving around the
4 block, she sees him again. She sees him twice. The
5 second time she sees him, she goes back and tells the
6 officer, "He's over here."

7 The officer tells her to get in her car. She
8 gets in her car. They tell her, "You stay there,"
9 and she does the right thing and she stays.

10 When they do come and speak to her, she gives
11 them a description. She gives them a statement. She
12 describes this big heavy set guy, receding hairline,
13 with a white T-shirt that is sweaty around the neck
14 and blue jeans.

15 She tells them what they are looking for. She
16 tells them that she has seen him. A little bit later,
17 they catch a guy. This guy's name is David Williams.

18 They see this guy who fits the description that
19 she has given walk into the neighborhood, and they go
20 up to detain him and talk to him. You know, they're
21 --- they can do that.

22 You see someone that fits the description, they
23 go up, detain him, talk to him, but David Williams
24 runs. He runs. He does not stop and stay.

25 He runs as fast as he can. They chase him down

1 to his house. He runs into his house, and they have
2 to pursue him. He ran from them.

3 They bring him back. They got him into the
4 police car. He's under arrest at that point. Once
5 they've got him in custody, they let the other
6 officers who have Tameka Ashford come.

7 They bring Tameka Ashford over to the scene.
8 What does Tameka Ashford say? She says, "Yes. That
9 is the guy that I saw standing in the driveway with
10 the long stick and the white gloves. That is the
11 guy."

12 That guy is not my client. That guy is David
13 Williams. He's not here today. Not only does she
14 say it to them at the scene, but she puts it in a
15 written statement.

16 I don't know what --- I don't know what she'll
17 say when she testifies here. I don't know what
18 they'll do about that. That is what she said that
19 night, and she wrote those words in her handwriting
20 in her statement; that that is the guy that she saw.

21 That guy, you will hear, is not Frankie McGee.
22 You're also going to hear about other eyewitness
23 identifications, basically. People who say they saw
24 Mr. McGee in and around the Greenview area.

25 I'll tell you a couple of things about that:

1 One, I'd ask you to judge the skepticism and judge
2 critically when the State asks you to not believe one
3 eyewitness identification but then to believe others.

4 What I'm not going to tell you is that Frankie
5 had no ties to the Greenview community. He did. He
6 had been in and around that community. He told them
7 that when they came to talk to him in his statement.
8 He tells them that.

9 So that's not an issue, but when you listen to
10 people who say that they saw him or that they picked
11 him out of a photo lineup, I think you have to judge
12 that critically when you're asked to disbelieve, and
13 you're asked to believe at the same time.

14 This statement, you're going to hear it. These
15 officers recorded their statement, and when they took
16 the statement from Frankie, Frankie was in prison.
17 He was at Wateree Correctional.

18 He was serving a probation violation for
19 burglary, and you will hear about that from the State.
20 You're going to have to determine if he had the two
21 prior burglaries. That's one of the things that they
22 have to prove. He did. He has a past. He's been in
23 trouble, and we wanted you to know that.

24 They come down, and they talk to him at the
25 prison. Before they get there, he's put into lock

1 down. He's put into isolation two, three days, and
2 you'll hear about that.

3 Then when he's brought up --- he's about to be
4 released, also. He was supposed to be in released in
5 April, and this is in March.

6 When they bring him in, there are three homicide
7 detectives, three, in the room with him who scream at
8 him, who yell at him, who curse at him and who lie to
9 him for over an hour. You'll hear all of that for
10 yourself.

11 Ask yourself, if you're being cursed at,
12 screamed at, yelled at, lied to, do you try to come
13 up with an answer? This is a guy who is being
14 accused of something that he didn't do.

15 He has ties to that community. He explained to
16 them about these socks, and these socks are going to
17 go into evidence.

18 When you get back to the jury room, look at
19 these socks. They are filthy, and they smell
20 horrible, even two years later. Look at them. I'm
21 sorry to ask you to do it, but you've got to do it.
22 Ask yourself, is it possible that these socks have
23 been handled by more than one person.

24 The truck, this issue about the truck is based
25 on conjecture and speculation. I'm just going to ask

1 you to do one thing: The only evidence that they
2 have that has anything to do that connects that truck
3 to Frankie McGee is his sister saying it's him, in my
4 opinion, it's him.

5 You look at that video and you decide for
6 yourself if a mother could tell that was her own son
7 with any certainty. Just look at that video. It's a
8 surveillance video. It's not great quality. You
9 judge that for yourself, and I ask you to come up
10 with your own opinion.

11 Don't adopt the opinions of the other people who
12 take the witness stand. You are the people who
13 decide. You are the people who must make an
14 individual determination for yourself.

15 At the end of the opening statement, I always
16 talk about reasonable doubt, and Ms. Simpson talked
17 to you a little bit about reasonable doubt. I'll
18 just add a couple of things about that.

19 It is a doubt that leaves you firmly convinced,
20 but it is also a doubt that would cause you to
21 hesitate to act.

22 These rights and these protections and the
23 presumption of innocence and the burden of proof,
24 those rights, those are the rights that we've been
25 fighting all these wars for, you know, the wars

1 Ms. Simpson talked about, Afghanistan, Iraq, Pakistan.
2 We believe in those rights. That is because it is
3 the best system in the world. It is the best system
4 in the world.

5 So when we speak of these rights, we stand tall.
6 You must find Frankie McGee guilty or not guilty
7 beyond a reasonable doubt, and if you have a
8 hesitation to act, if you are not firmly convinced,
9 you must find him not guilty.

10 So they're going to talk to you about those
11 rights and how our entire system, our entire country,
12 is built around those rights. I'd finish with that,
13 and I'd ask you to find him not guilty beyond a
14 reasonable doubt and I'd be finished.

15 But I want to say one last thing to you. We all
16 have an idea, people who are non-lawyers, have an
17 idea about rights, about constitutional rights, about
18 these rights that we protect and defend.

19 We have an abstract idea about it. You hear
20 about it in the movies. You hear about it in the
21 television. We have Court TV, now people watch
22 trials, and you hear about it in the abstract. But
23 for you guys, it is no longer abstract.

24 This week it will become very, very concrete.
25 For you, that standard will be placed in your hands,

1 and I believe that you will embrace it and you will
2 find Frankie McGee not guilty beyond a reasonable
3 doubt. And I believe that when you do, you will
4 stand tall, as you should.

5 Thank you.

6 THE COURT: Call your first witness.

7 MS. GARFIELD: Thank you, Your Honor. The State
8 calls Officer Chauncey Duckett with the Columbia
9 Police Department.

10 CHAUNCEY DUCKETT,

11 after being duly sworn, testified as follows:

12 THE CLERK: Thank you. Have a seat in the
13 witness stand, please. State your name for the
14 record.

15 THE WITNESS: My name is Chauncey Duckett.

16 DIRECT EXAMINATION:

17 BY MS. GARFIELD:

18 Q Officer Duckett, where are you employed?

19 A City of Columbia Police Department.

20 Q And what are your duties with the Columbia
21 Police Department?

22 A My normal duties are actually just a call taker
23 at that time, the time of this event, respond to
24 calls, dispatch calls, whatnot.

25 Q Currently, what are your duties?

1 A Currently, now I'm on the Proactive Community
2 Enforcement Team, so we do a little bit more
3 proactive policing.

4 Q Can you explain to the jury what the Proactive
5 Community Enforcement team exactly is?

6 A We deal most closely with the community, attend
7 the community meetings and pretty much handling the
8 complaints that the community members have, as far as
9 any kind of illegal activity or even as small as kids
10 continually playing basketball in the middle of the
11 street, not allowing cars to pass through, things of
12 that nature.

13 Q This particular team was not in existence back
14 in 2009, correct?

15 A No, ma'am. It was not.

16 Q Okay. What were your duties back in 2009?

17 A In 2009, I was assigned to North Region, C-Squad
18 at the time, shift work, 12-and-a-half hours a day.

19 Q And being the North Region, does that encompass
20 the Greenview neighborhood?

21 A Yes, ma'am, it sure does.

22 Q And, Officer Duckett, before you were employed
23 with the Columbia Police Department, what did you do?

24 A I was actually a student in Colorado.

25 Q And what were you a student in?

- 1 A Criminal justice at Colorado State University.
- 2 Q And did you receive a degree in college --- from
- 3 the college in Colorado?
- 4 A No, ma'am, I did not finish.
- 5 Q And when did you leave?
- 6 A I left in 2006.
- 7 Q And where did you go?
- 8 A I went back to Colorado Springs.
- 9 Q And that's where you're originally from?
- 10 A Yes, ma'am.
- 11 Q What lead you to Columbia?
- 12 A I just filled out a few applications, wanted to
- 13 get in law enforcement, and I ended up here.
- 14 Q And you've been actively involved with the
- 15 Columbia Police Department ever since you relocated?
- 16 A Yes, ma'am.
- 17 Q Okay. But back in 2009, you were familiar with
- 18 the Greenview neighborhood area?
- 19 A Yes, ma'am.
- 20 Q And, specifically, on the early morning hours of
- 21 May --- or the late morning hours --- late evening
- 22 hours of May 3rd, 2009, did you have an opportunity
- 23 to respond to a call on Isaac Street?
- 24 A Yes, ma'am.
- 25 Q Can you please share with the jury where you

1 were dispatched?

2 A I was dispatched to [REDACTED] At that
3 time I was actually at [REDACTED], which is the
4 Gazbah gas station right at the intersection of
5 Wilson and Farrow Road.

6 I was two or three blocks away, so I went ahead
7 and took that call and jumped in my patrol car. I
8 actually was stopped in there to get something to
9 drink, hopped in my patrol car, northbound on Farrow
10 Road towards Isaac Street.

11 Q Do you remember what time you received this call?

12 A This call went out at about --- around 11:35,
13 somewhere around in there.

14 Q And, Officer, do you have your report before you?

15 A Yes, ma'am, I sure do.

16 Q If you need to refer to that for anything,
17 please do.

18 A Yes, ma'am.

19 Q And do you recall the nature of the call you
20 received from dispatch?

21 A I don't remember the exact word, exactly what
22 call it was. I believe it was a civil disturbance in
23 progress. I'm not exactly sure exactly what it was.

24 Q While you were en route to Isaac Street, did you
25 observe anything abnormal?

Direct of Duckett by Garfield

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1 A Yes, ma'am. While I was northbound on Farrow
2 Road, for some unknown reason, I was drawn to an
3 individual that was walking southbound, opposite
4 direction of which way I was headed on the sidewalk.

5 He was --- appeared to be a light skinned black
6 male. He was wearing a white T-shirt, a white or
7 gray light colored T-shirt and jeans.

8 At that time, I had got on the radio and asked
9 dispatch if they had a description at that time of
10 the individual that was seen leaving the house, but
11 they didn't have one. So I continued on to [REDACTED]
12 [REDACTED].

13 Q Can you recall anything about that person's
14 complexion or height or weight?

15 A Based on --- based on what I have on the
16 paperwork I have, he was approximately 5'10",
17 anywhere from 200 to 220 pounds, just based on my
18 driving by of what I saw.

19 Q He was obviously a male?

20 A Yes, ma'am.

21 Q And a black male, white male?

22 A Black male.

23 Q And can you recall skin tone?

24 A What I have in front --- what I had stated at
25 that time, it appeared to be a light skinned black

1 male.

2 Q And did you at that time stop to detain or to
3 speak to this person?

4 A No, ma'am. I continued on [REDACTED].

5 Q And why did you not stop?

6 A I had --- at that time, I had no reason to stop
7 that individual, none at all. And plus, I was the
8 closest unit to the --- the actual scene, so it's
9 policy to make sure I get there.

10 Q It's policy that you continue to the dispatch
11 location?

12 A Yes, ma'am.

13 Q And did you, in fact, go to [REDACTED]?

14 A Yes, ma'am. I responded to [REDACTED].

15 Q And when you arrived at this location, whose
16 residence did you determine it to be?

17 A In the police investigation, it was later
18 determined that it was Tryon Eichelberger.

19 Q Tryon Eichelberger?

20 A Yes, ma'am.

21 Q And when you got to that location, what did you
22 initially observe?

23 A When I initially got to the location, I exited
24 my patrol vehicle. Before I could get to the door,
25 that's when Ms. Tameka pulled up and jumped out of

1 her vehicle and told me she had called the police.

2 At that time, I asked her to step back in her
3 car so I could figure out what was going on first.

4 Q And, Officer, why would you ask this witness who
5 indicates to you that they have called the police to
6 get back into their car?

7 A Safety reasons. I don't know what's in the
8 house, if somebody is still in the house or anything
9 like that. It was purely for her safety, as well as
10 mine.

11 Q And did she, in fact, get back into her car?

12 A Yes, ma'am.

13 Q And what was your next course of action, Officer
14 Duckett?

15 A I proceeded to the residence. At that time, I
16 noticed that the door had been damaged. It appeared
17 to be forced open.

18 I could --- as I stepped into the residence, I
19 could hear moaning coming from my immediate left. I
20 took a quick peek around the corner to see who it was.
21 At that time, I observed Mr. Eichelberger laying on
22 the kitchen floor bleeding heavily.

23 Q And were you able to have any type of
24 conversation with Mr. Eichelberger?

25 A Before I said anything to Mr. Eichelberger, for

1 safety purposes, I went ahead and cleared the house
2 to make sure no one else was in there. I came back,
3 and I asked --- you know, at that time, I'm getting
4 on the radio.

5 I called for my supervisor to --- to respond to
6 the scene. I asked Mr. Eichelberger, did he know
7 what happened, just general questions to see if he
8 would be responsive. At that time, he wasn't
9 responsive at all.

10 Q Was he conscious at all?

11 A He appeared to be conscious, because he was
12 moving and rolling a little bit. He was moaning, but
13 he wasn't able to respond to anything I was asking.

14 Q Based on your observations, he appeared to be in
15 pain?

16 A Yes; yes, ma'am. He appeared to be in a lot of
17 pain.

18 Q And you notified your supervisor?

19 A Yes, ma'am.

20 Q And, in turn, would notification have been made
21 with EMS?

22 A Yes, ma'am. I made contact with EMS immediately
23 at the same time I called for my supervisor.

24 Q After you made the appropriate calls to
25 supervisors and whatnot, what did you next do?

1 A The next process was to go ahead and tape off
2 the residence with crime scene tape, and I proceeded
3 to do that. I also make contact with Ms. Tameka.

4 Q And to backtrack, Officer Duckett, this was on
5 Isaac Street in the City of Columbia in Richland
6 County?

7 A Yes, ma'am.

8 Q Thank you. All right. Next, you said you went
9 back outside and made contact with Tameka Ashford?

10 A Yes, ma'am.

11 Q Is Ms. Ashford still in her vehicle?

12 A Yes, ma'am.

13 Q And at that time, did she exit her vehicle?

14 A Yes, ma'am.

15 Q And without going into exactly what she said,
16 what did you gather from the information she gave you?

17 A Through my interview, my quick interview with Ms.
18 Ashford, she stated that she was pulling up to speak
19 with Mr. Eichelberger about paying a --- him giving
20 her some money for a water bill or whatnot.

21 It was at that time that she observed a man
22 coming out of the house wearing white gloves and
23 carrying a rod. She stated that she had drove off
24 and pointed me into the direction of which way she
25 believed he went.

1 Q And what direction was that?

2 A That was --- would have been across the street
3 southbound through an open field area towards --- I
4 believe it was Abraham Street.

5 Q And this would be, in short, neighbors of
6 Mr. Eichelberger?

7 A Yes.

8 Q And after you interviewed Ms. Ashford and
9 gathered that information, what did you do next?

10 A After I made sure the scene was secure and my
11 sergeant was on the scene, I began to walk the path
12 in which she had directed me on which way the suspect
13 went.

14 Q And describe that location that you were going
15 to look into.

16 A Well, it's, you know, midnight, so it's
17 completely dark. There is one street light that just
18 happens to be in the middle of the field, and
19 obviously, I have my flashlight.

20 I'm just walking to see if I --- anything sticks
21 out, anything out of the ordinary. As I proceed
22 through the grass area right inside, maybe about five
23 feet inside of the neighbor's fence, which is, I
24 later determined to be [REDACTED], there was a
25 steel rod, which fit the description of the weapon

1 that Ms. Ashford stated that she had observed the
2 subject carrying.

3 You know, just from my peeking over the fence,
4 it appeared to have blood on it. So I marked it with
5 a cone and continued to walk.

6 Q You're talking about like a traffic cone?

7 A Yes, ma'am.

8 Q You marked the steel rod that you found with a
9 cone?

10 A Yes, ma'am.

11 Q Did you continue to search the area?

12 A Yes, ma'am.

13 Q And did you locate any other items of interest?

14 A Yes, ma'am, I did. I continued to walk up
15 through the path which led me --- comes out on
16 Abraham Street, and maybe about 25 yards, 30 yards,
17 from the steel rod that I had located, was a pair of
18 white tube socks, and they also appeared to have
19 blood on them. So I marked those with a cone, as
20 well.

21 Q And did you touch these items in any way?

22 A No, ma'am.

23 Q And what did you do after that?

24 A After I marked of those items, I had an officer
25 stand by there. I went and notified my supervisor at

1 that time. I believe that ID Tech Nelson was
2 responding to the scene. I notified him of that, and
3 he went through his collection process.

4 Q ID Tech, is that someone from our crime scene
5 investigations?

6 A Yes, ma'am.

7 Q But you in no way handled these items?

8 A No, ma'am, not at all.

9 Q Did you obtain statements from anyone else?

10 A At that time, I did knock on, I believe,
11 Mr. Harp's door and asked him did he know. He
12 stepped out. I asked him, "Is this your tool in your
13 back yard?" He said no, had no idea what it was
14 doing there.

15 Q And the tool you're referring to is this metal
16 rod?

17 A Yes, ma'am.

18 Q And Mr. Harp, would that be Larry Harp?

19 A Yes, ma'am.

20 Q That would be Reverend Eichelberger's neighbor
21 across the street?

22 A Directly across the street.

23 Q Thank you. Anyone else that you had an
24 opportunity to talk to?

25 A No, ma'am.

1 Q Other than Tameka Ashford and Larry Harp?

2 A Yes.

3 Q Did --- and you may have testified to this,
4 Officer. Did you --- did Tameka Ashford give you a
5 description as far as skin color, height, weight,
6 anything of that nature?

7 A I don't remember if she gave me a description of
8 the skin color, but she had said she had seen
9 somebody who was wearing a white t-shirt and jeans.

10 Q Did she say whether it was a white male, black
11 male?

12 A I don't remember exactly, whether she said it
13 was a white male, black male.

14 Q Okay. Just beg the Court's indulgence.

15 A Yes, ma'am.

16 (Pause)

17 Q Did you have an opportunity to observe the door
18 that had been broken into, the door at Reverend
19 Eichelberger's house?

20 A Yes, ma'am.

21 Q Can you describe that for the jury?

22 A It --- the door had what appeared to be wedged
23 open, but it also appeared to have been hit with a
24 large object. It was spliced and some wood, you know,
25 was damaged.

1 Q Officer, I'm going to ask you to review several
2 photographs that have already been admitted into
3 evidence, and I'm going to ask you if you would
4 please just step down and go through these one by one
5 and explain to the jury what they are a photographs
6 of.

7 First, I'll hand you State's Exhibit Number 90.

8 A That is a picture of Mr. Eichelberger's house
9 that night with the crime scene tape.

10 Q And that is from what location?

11 A 119 Isaac Street.

12 Q I mean, is that from the front or the back?

13 A That would be the front.

14 Q The front of Mr. Eichelberger's house?

15 A Yes, ma'am.

16 Q Thank you. I'll show you State's Exhibit number
17 88. Can you explain to the jury what this is a
18 photograph of?

19 A Mr. Eichelberger had a screened in porch on the
20 front of his house, and that would be the screened in
21 porch.

22 Q And that's looking at it from the outside?

23 A Yes, ma'am.

24 Q And that's State's Exhibit 88.

25 A Yes, ma'am.

1 Q I'll now show you State's Exhibit number 89.

2 Can you explain to the jury what this is a photograph
3 of?

4 A This is once you step into the screened porch
5 area. That would be the actual front door into the
6 house.

7 Q So this is the perception you would have if you
8 were entering Mr. --- Reverend Eichelberger's house?

9 A As soon as you enter the screen door, that would
10 be exactly what you would see.

11 Q Okay. I show you State's Exhibit number 66.

12 Can you explain to the jury what this is a photograph
13 of?

14 A Same thing, Mr. Eichelberger's house, door
15 opening.

16 Q And if I can specifically point out to the door
17 you just referenced, is that the door that was ---
18 that entry was made by the defendant?

19 A Yes.

20 Q Or by the person that broke into the home?

21 A Yes.

22 Q And did you observe that door to be damaged?

23 A Yes, ma'am.

24 Q And this is a closer view of State's Exhibit
25 Number 65, also a picture of that door?

1 A Yes, ma'am.

2 Q And specifically, State's Exhibit Number 67. If
3 you could explain to the jury what this photograph
4 reflects.

5 A That's --- that's also a picture of the door.
6 It's the doorframe that's damaged where the
7 individual attempted to make entry.

8 Q And based on your observations and experience
9 with law enforcement, how does it appear that door
10 was ---

11 A Wedged open. It was hit in the corner and
12 wedged open.

13 Q Thank you.

14 I show you State's Exhibit Number 69. Can you
15 briefly describe for the jury what this is a
16 photograph of?

17 A Okay. That would be the door is open at this
18 time. So if you would come into the door, that would
19 be the immediate left into the kitchen area. Inside
20 that doorway is the kitchen area.

21 Q And, again, this is the way you would perceive
22 this home if you were entering it?

23 A Yes, ma'am.

24 Q Okay. I'm going to take you now outside of the
25 home in State's Exhibit Number 76. Can you share

1 with the jury what this is a photograph of?

2 A That is a photograph of the front yard area of
3 Mr. Eichelberger's residence.

4 Q And this would be looking across the street area?

5 A Yes, yes.

6 Q Okay. And now I'll show you State's Exhibit
7 Number 91. Can you explain to the jury what this
8 photograph reflects?

9 A Yes, ma'am. That's a cone that I put down to
10 mark the socks that I had located. This street back
11 here is Abraham Street. This residence is located
12 right on Abraham Street, which comes from --- this
13 would be the grassy area that I had walked through
14 that night, if you can imagine this.

15 Q This would be across the street from Reverend
16 Eichelberger's home?

17 A Yes, ma'am, across the street and through the
18 walkway.

19 Q The walkway. And if you kept walking, you would
20 end up on what street?

21 A Abraham.

22 Q But Reverend Eichelberger lived on Isaac Street?

23 A Yes, ma'am.

24 Q Thank you. State's Exhibit Number 77?

25 A Same.

- 1 Q But a closer view?
- 2 A You can see that.
- 3 Q Thank you. And State's Exhibit Number 79?
- 4 A Those are the white socks that I had located.
- 5 Q And that would be in the field across the street
- 6 from Reverend Eichelberger's home?
- 7 A Yes.
- 8 Q Heading toward Gabriel Street?
- 9 A Abraham.
- 10 Q Abraham, I'm sorry.
- 11 A Abraham.
- 12 Q Gabriel Street is over here, too?
- 13 A Yes, ma'am.
- 14 Q Okay. State's Exhibit Number 80?
- 15 A It's just a close up of the socks that I had
- 16 located.
- 17 Q Thank you. Same with Exhibit number 81?
- 18 A Yes, ma'am, same thing.
- 19 Q All right. And can you explain the significance
- 20 of State's Exhibit Number 94, this photograph?
- 21 A This is the actual light pole that was kind of
- 22 in the middle of the cut that walks through this, the
- 23 light pole, actually.
- 24 Q And whose fence does that belong to?
- 25 A That is a neighbor's fence. It would be

1 Mr. Harp.

2 Q Okay.

3 A At [REDACTED].

4 Q Was anything found inside that fence?

5 A That was inside there where we located the metal
6 winch.

7 Q Again, State's Exhibit Number 95, can you
8 explain what this photograph reflects?

9 A Okay. This would be a photograph from what
10 appears to be the street up Isaac Street. This is
11 [REDACTED], which would be Mr. Harp's residence.

12 If you come out of Mr. Eichelberger's house and
13 walked across the street, you would be walking
14 directly down this cut path. As you can see, the
15 light is there, and you can see that. That is the
16 cone that I marked to mark where the winch, which was
17 found inside the fence.

18 Q Officer Duckett, would you agree that this was a
19 zoomed out picture of the photograph we previously
20 saw, the light bulb?

21 A Yes, ma'am.

22 Q Officer, please explain what you see in State's
23 Exhibit Number 82.

24 A This was the metal winch that was found inside
25 of the neighbor's yard.

1 Q And I believe 83 and 84 --- if you'll just hold
2 those and explain what those are.

3 A Yes, ma'am. These are also the same picture of
4 the metal bar which was found inside the back yard of
5 the neighbor's house. As you can see, it's within,
6 you know, four to five feet, if that, inside that
7 fence.

8 Q And same with ---

9 A Same with that, yes, ma'am.

10 Q But you, at no time, collected these items?

11 A No.

12 Q Right?

13 A No, ma'am.

14 Q Someone else collected these?

15 A Yes.

16 Q Just a second.

17 (Pause)

18 Officer Duckett, I'm going to show you and the
19 jury what has been marked as State's Exhibit
20 Number 110 for identification purposes.

21 Would you agree with me this is a map of some of
22 the areas of the Greenview area?

23 A Yes, ma'am.

24 Q Can you show the jury where you were? Is it on
25 here when you were? Tell me where you were when you

1 got the call?

2 A No, ma'am.

3 Q Can you show the jury where you were?

4 A I'm right here at the Gazbah on Wilson and
5 Farrow Road.

6 Q Okay. And then can you show the jury the path
7 you took to go towards the victim's residence?

8 A Yes, ma'am. Once I exited the parking lot, I
9 went completely northbound on Farrow Road until I
10 reached Isaac Street, right there to
11 Mr. Eichelberger's residence.

12 Q Can you show the jury where you saw the person
13 with the white shirt and jeans on?

14 A I saw the individual walking on the sidewalk
15 between Gabriel and Abraham Street.

16 Q Can you show the jury where, in relationship to
17 the victim's home, the items, the socks and winch bar
18 were located by?

19 A The winch bar would have been found in the back
20 of this residence right here, and the socks were
21 found right there.

22 Q And it's true this could would --- could
23 continue towards the area where you saw the person?

24 A Yes, ma'am.

25 Q Thank you. You can take your seat.

1 Your Honor, at this time, we'd like to introduce
2 State's 110 into evidence.

3 THE COURT: Any objection to admitting that
4 photograph?

5 MS. DAVIS: No objection, Your Honor.

6 THE COURT: It's in.

7 (WHEREUPON, State's Exhibit No. 110 was admitted
8 into evidence.)

9 BY MS. GARFIELD:

10 Q Officer Duckett, did you do anything else in
11 reference to this investigation?

12 A No, ma'am.

13 Q And did you do anything the days following?

14 A No, ma'am.

15 Q Were you ever approached some time later about
16 this investigation?

17 A By Investigator Reese?

18 Q Yes, sir.

19 A Yes, ma'am, I surely was.

20 Q And what was the purpose of him contacting you
21 at a later time?

22 A He wanted to see if I could ID the individual
23 that I observed walking on the road.

24 Q And were you shown a photographic lineup?

25 A Yes, ma'am. I certainly was.

1 Q Beg the Court's indulgence. I need to have this
2 marked.

3 (WHEREUPON, State's Exhibit No. 117 was marked
4 for identification only.)

5 BY MS. GARFIELD:

6 Q Officer Duckett, I'll show you what's been
7 marked as State's Exhibit 117. Do you recognize this
8 document?

9 A Yes, ma'am.

10 Q And can you please explain what that document
11 reflects?

12 A It reflects a six-photo lineup of what appeared
13 to be possible suspects.

14 Q Were you asked to see if you could identify any
15 of those potential people ---

16 A Yes.

17 Q --- as the person you saw walking that evening?

18 A Yes, ma'am, I was.

19 Q And were you able to make the identification?

20 A I was able to narrow it down, but I wasn't able
21 to make an exact identification of who I observed.

22 Q And by narrowing it down, you narrowed it down
23 to two individuals?

24 A Yes, ma'am.

25 Q And what numbers are those?

1 A Four and five.

2 Q And are those individuals matching the
3 description of the person you saw?

4 A At that time it did, from what I remembered.

5 Q Okay.

6 A From what I did decide.

7 MS. GARFIELD: Thank you, Your Honor. At this
8 time, I'd like to introduce this into evidence.

9 THE COURT: What says the defense?

10 MS. DAVIS: No objection.

11 THE COURT: It's admitted without objection.

12 MS. GARFIELD: Thank you.

13 (WHEREUPON, State's Exhibit No. 117 was admitted
14 into evidence.)

15 BY MS. GARFIELD:

16 Q At any time, Officer, in your investigation of
17 this case, did you accompany Tameka Ashford to view
18 any possible suspects?

19 A No.

20 Q And that was the extent of your investigation in
21 this case?

22 A Yes, ma'am.

23 Q Clearing the scene?

24 A Yeah.

25 Q Roping the house off?

- 1 A Yes, ma'am.
- 2 Q And finding these objects across the street?
- 3 A Yes, ma'am.
- 4 Q Thank you. Beg the Court's indulgence.
- 5 (Pause)
- 6 Officer Duckett, that night the person that draw
- 7 your attention walking down Farrow Road, do the
- 8 physical characteristics, from the best of your
- 9 recollection, match those of the defendant sitting in
- 10 the courtroom today?
- 11 A Somewhat, yes.
- 12 MS. GARFIELD: Thank you.
- 13 Please answer any questions defense counsel may
- 14 have for you.
- 15 THE WITNESS: Yes, ma'am.
- 16 THE COURT: All right. Ms. Davis?
- 17 MS. DAVIS: Thank you, Your Honor. May it
- 18 please the Court.
- 19 THE COURT: Yes.
- 20 CROSS-EXAMINATION:
- 21 BY MS. DAVIS:
- 22 Q Officer Duckett, you said you were actually
- 23 assigned to the North Region area ---
- 24 A Yes, ma'am.
- 25 Q --- back in 2009?

- 1 A At that time, yes, ma'am, I was.
- 2 Q You're not now?
- 3 A No.
- 4 Q So you were familiar with that area?
- 5 A Yes, ma'am.
- 6 Q And patrolled that area frequently?
- 7 A Yes, ma'am. That was my normal --- that was my
- 8 normal patrol area that I was assigned for the first
- 9 two-and-a-half years that I worked with the police
- 10 department.
- 11 Q So you're very familiar with the Greenview area?
- 12 A Yes, ma'am.
- 13 Q And this particular night, you said on direct
- 14 that it was abnormal --- something caught your eye
- 15 that was abnormal?
- 16 A Right, yes, ma'am.
- 17 Q And that was someone walking up Farrow Road?
- 18 A Yes, ma'am.
- 19 Q Being familiar with that area, it's pretty heavy
- 20 foot traffic ---
- 21 A Yes, ma'am.
- 22 Q --- in that area, though, right?
- 23 A Yes, ma'am.
- 24 Q There is actually an Exxon or Gazbah gas station
- 25 right up the road?

- 1 A Yes, ma'am.
- 2 Q A lot of traffic there?
- 3 A Yes, ma'am.
- 4 Q And that particular night, you said when you got
5 the dispatch call, you were actually at that gas
6 station?
- 7 A Yes, ma'am.
- 8 Q You were inside when you got the call?
- 9 A Yes, ma'am.
- 10 Q And you immediately proceeded to respond to that
11 call?
- 12 A Yes, ma'am.
- 13 Q And you said you jumped in the --- jumped in
14 your patrol car?
- 15 A Yes, ma'am.
- 16 Q Did you turn your sirens on?
- 17 A No.
- 18 Q Did you have your lights on?
- 19 A No.
- 20 Q But you went directly down to Isaac Street?
- 21 A Yes, ma'am.
- 22 Q Which is two, three blocks?
- 23 A Yes, ma'am.
- 24 Q So you got there quickly. And on your way there,
25 you said that's when you saw an individual that for

1 whatever reason caught your attention.

2 A Yes, ma'am.

3 Q And at that time, you could only say that it was
4 a black male?

5 A Black male wearing a white T-shirt, white or
6 grayish light-colored t-shirt and jeans, yes, ma'am.

7 Q And that he would come --- that you saw him
8 between Abraham Street and Gabriel?

9 A Yes, ma'am.

10 Q Which is just a couple of blocks over?

11 A Yes, ma'am.

12 Q I'll actually use this map.

13 If he can step down, Your Honor?

14 THE COURT: Sure.

15 BY MS. DAVIS:

16 Q If you can step down here.

17 And so this is the area that you would have seen
18 the individual?

19 A No, ma'am.

20 Q I'm sorry, Farrow Road, in between there?

21 A In between there.

22 Q And then you went over to Isaac Street?

23 A Yes, ma'am.

24 Q And you're familiar with the area, so Gabriel
25 Street is right here?

- 1 A Yes, ma'am.
- 2 Q And this comes up to --- this is actually Luke
3 Street is here?
- 4 A I believe so.
- 5 Q Okay. And are you familiar on that night that's
6 where the other individual was detained?
- 7 A Yes, ma'am.
- 8 Q So it would have been just up Gabriel Street?
- 9 A Yes, ma'am.
- 10 Q Okay. Thank you.
- 11 Also, that night you stated when you responded
12 to the scene, one of the first things you did was to
13 clear the area?
- 14 A The --- yes, ma'am. Once I entered the
15 residence, yes, ma'am.
- 16 Q Yes, sir.
- 17 A Is that what you're referring to?
- 18 Q I apologize, yes, sir.
- 19 A Okay.
- 20 Q That's because at that time when you received
21 the dispatch call, you didn't have a whole lot of
22 information about what had happened?
- 23 A No.
- 24 Q It was a possible home invasion?
- 25 A I think that's what it was. I can't directly

1 tell you what the call was dispatched as.

2 Q But you had a lot of information you were trying
3 to find out?

4 A Yes, ma'am.

5 Q And so one of the first things is you said for
6 your own safety, because you wanted to secure the
7 area, clear it, to make sure no one was inside the
8 home.

9 A Yes, ma'am.

10 Q And you did that?

11 A Yes, ma'am.

12 Q And when you went into the residence, the place
13 wasn't ransacked?

14 A No, ma'am. It didn't appear to be ransacked.

15 Q Everything was where you would assume it to be,
16 from what you could tell?

17 A Yes, ma'am.

18 Q And at that point, that's when you found
19 Mr. Eichelberger?

20 A Yes, ma'am.

21 Q And you called for EMS?

22 A Yes, ma'am.

23 Q You made and --- or created an incident report
24 from this, correct?

25 A Yes, ma'am.

- 1 Q And you have a copy of that with you?
- 2 A Yes, ma'am.
- 3 Q That night --- I'm sorry. In that report, you
- 4 list the complainant, which is the person who called
- 5 9-1-1 ---
- 6 A Uh-huh.
- 7 Q --- and that's Tameka Ashford?
- 8 A Yes, ma'am.
- 9 Q And you also list the victim's name,
- 10 Mr. Eichelberger?
- 11 A Yes, ma'am.
- 12 Q And you also, on your incident report, list that
- 13 there is a suspect, David Williams.
- 14 A Yes, ma'am.
- 15 Q And in that report, you list that he is about
- 16 six feet tall?
- 17 A Yes, ma'am.
- 18 Q About 250 pounds?
- 19 A Approximately.
- 20 Q A black male?
- 21 A Yes, ma'am.
- 22 Q And you also list that he was using --- or next
- 23 to drugs, you checked yes for use of drugs.
- 24 A It should have been checked unknown.
- 25 Q Okay. On the report that you filed initially,

1 it was a yes.

2 A It should have been checked unknown.

3 Q Okay. And you also checked on here that the
4 subject was identified, at the bottom of your
5 incident report?

6 A Yes, ma'am.

7 Q And that the subject was located?

8 A Yes, ma'am.

9 Q And at that time, that was all in reference to
10 David Williams?

11 A Yes, ma'am.

12 Q And as we point out on the map, that's the
13 person who was detained just a few blocks up Gabriel
14 Street?

15 A Yes, ma'am.

16 Q And that's just a few blocks from Isaac Street?

17 A Yes, ma'am. To clarify, the subject identified
18 and the subject located, that is for our records; is
19 that the name that was given to us is corroborated
20 with the person it actually is, as the suspect being
21 identified, not identified by anybody else.

22 Q Oh, no. I understand.

23 A Yes, ma'am.

24 Q I understand, but at that time, that was who you
25 identified ---

- 1 A Yes, ma'am.
- 2 Q --- as a suspect. And are you --- you're aware
- 3 if he was arrested at that point?
- 4 A Yes, ma'am.
- 5 Q And the Solicitor mentioned that you had been
- 6 shown at a later date a photo lineup.
- 7 A Yes, ma'am.
- 8 Q And that's this lineup here?
- 9 A Yes, ma'am.
- 10 Q And at that point, you were able to, what you
- 11 said, narrow it down to two individuals.
- 12 A From what I could have remembered from that time.
- 13 Q That fit that basic description.
- 14 A Yes, ma'am.
- 15 Q And one of the things that you told Investigator
- 16 Reese at that time is the way you narrowed it down to
- 17 those two is because they had a round head.
- 18 A Yeah, I believe so.
- 19 Q Beg the Court's indulgence.
- 20 (Pause)
- 21 I apologize.
- 22 A That's all right.
- 23 Q The photo lineup also that you were shown,
- 24 State's Exhibit --- that's 117, in that photo lineup,
- 25 is David Williams in that lineup?

1 A I'm not sure.

2 Q You're not aware of that?

3 A No.

4 MS. DAVIS: Okay.

5 Nothing further, Your Honor.

6 THE COURT: Any redirect?

7 MS. GARFIELD: Very brief, Your Honor.

8 REDIRECT EXAMINATION:

9 BY MS. GARFIELD:

10 Q When you're responding to Reverend
11 Eichelberger's home, you saw one person on Farrow
12 Road?

13 A Yes, ma'am.

14 Q He wasn't with anyone else?

15 A No, ma'am.

16 Q And did you, on that evening, have any direct
17 contact with David Williams?

18 A No, ma'am.

19 Q And it was alluded in cross-examination that
20 that night David Williams was arrested?

21 A I believe so.

22 Q Are you familiar for what?

23 A No, ma'am.

24 Q And when you looked at this photographic lineup,
25 State's Exhibit Number 117, do you know any of the

1 individuals in this lineup?

2 A Not one.

3 Q And were you able to identify number four or
4 number five as the person you saw?

5 A No, ma'am.

6 Q Number four and number five were the people that
7 met the description you gave?

8 A Yes, ma'am.

9 MS. GARFIELD: Thank you, Officer Duckett.

10 THE COURT: Anything further?

11 MS. DAVIS: No, Your Honor.

12 THE COURT: Okay. Thank you, sir.

13 Next witness.

14 MS. SIMPSON: The State calls Larry Harp.

15 He is sequestered, Your Honor.

16 THE COURT: All right. I think we'll break for
17 lunch before we take the next witness, Mr. Harp.

18 MS. SIMPSON: Thank you.

19 THE COURT: Ladies and gentlemen, we're going to
20 take a one-hour break for lunch. I'm speaking
21 primarily to the jury at this point when I say,
22 ladies and gentlemen. So when we break, the jury
23 goes before everyone else moves.

24 We'll break for one hour. I understand lunch
25 has been ordered for you and it's here. Please do

1 not discuss the case. If you will go to the jury
2 room at this time.

3 (WHEREUPON, the jury left open court at
4 approximately 12:48 p.m.)

5 THE COURT: Is there anything else before we
6 break?

7 MS. GARFIELD: No, sir.

8 THE COURT: All right. We'll start back at ten
9 till two, ten till two.

10 MR. STRICKLER: If I may, Your Honor.

11 THE COURT: Yes, sir.

12 MR. STRICKLER: Very briefly, I'm sorry. I
13 would just note at this point that during the
14 Solicitor's opening, she remarked twice on the length
15 of time that Mr. Eichelberger suffered between the
16 time of the incident and the time of his death.

17 His pain, his suffering, and with all due
18 respect to everyone around, is not at issue in this
19 case. It's inappropriate.

20 I didn't --- no objection was lodged during the
21 testimony; however, I would just note that I find it
22 objectionable, and the next time we start discussing
23 pain and suffering, there will be an objection and
24 I'll be requesting a mistrial in this regard.

25 THE COURT: All right. What says the State?

1 Regarding whether or not ---

2 MS. SIMPSON: Your Honor ---

3 THE COURT: --- it's objectionable?

4 MS. SIMPSON: Your Honor, with respect to ---
5 the State would argue that it is not objectionable in
6 addition to the fact it was not objectionable.

7 In addition, Your Honor, we have to prove malice
8 with respect to murder. We anticipate putting up
9 witnesses that will end up --- while not going into
10 degrees of pain --- is going to explain about
11 Reverend Eichelberger's condition, which is important
12 to this case and the State's burden of proof.

13 THE COURT: All right. Mr. Strickler?

14 MR. STRICKLER: And, Your Honor, proving malice
15 is one thing. Extended discourses as to pain and
16 suffering goes into purely playing on the bias and
17 prejudice and inflaming the passions of the jury.
18 That's what I find objectionable.

19 Certainly, I would never try to keep them from
20 proving malice. That's their job.

21 THE COURT: In addition to the issue of malice,
22 the State must prove that the death was caused by the
23 assault.

24 MR. STRICKLER: Certainly.

25 THE COURT: The death was caused by the

1 defendant, so anytime you have a case where the
2 incident occurred, three months, and there's some
3 lapse of time, then --- it's a year-and-a-day rule?

4 MR. STRICKLER: Yes, sir. No question they have
5 to prove the causation.

6 THE COURT: It must be the nexus, so to that
7 extent, they have to prove that. Whatever degree
8 that is, we'll leave it for objections and rulings.

9 MR. STRICKLER: Yes, sir.

10 THE COURT: All right.

11 MR. STRICKLER: Thank you.

12 THE COURT: We'll be back in an hour.

13 MS. GARFIELD: Thank you, Your Honor.

14 (WHEREUPON, a lunch break was taken.)

15 THE COURT: Is there anything before we bring
16 the jury?

17 MS. GARFIELD: Judge, Mr. Strickler and I
18 discussed previous to lunch.

19 THE COURT: Okay.

20 MS. GARFIELD: If we could take up some
21 photographs that we had not agreed to, if we could
22 take that up at this time.

23 THE COURT: Sure.

24 MS. GARFIELD: Your Honor, these are photographs
25 taken at the hospital of the victim. I showed them

1 all to Mr. Strickler.

2 He said, obviously, he would object because
3 there are too many, cumulative. The State will only
4 be requesting three. Those were previously marked as
5 State's Exhibits number 8, 12 and 14.

6 MR. STRICKLER: Beg the Court's indulgence, Your
7 Honor.

8 (Pause)

9 Your Honor, I'm deferring to co-counsel here on
10 this.

11 MS. DAVIS: Yes, sir, Your Honor. Exhibit
12 Number 12 and actually 8, both, we argue are more
13 prejudicial than probative.

14 It's after the fact of surgery where they had
15 cleaned up the wounds and it looks like, I guess, put
16 staples in. But we --- I can go into more detail of
17 the case law of the prejudicial effect of photos like
18 this being admitted or not admitted at this stage of
19 the case, but we would object to both 8 and 12.

20 MS. GARFIELD: Your Honor, these picture were
21 taken within hours of the victim being admitted to
22 the hospital. Law enforcement was on the scene, and
23 took the photographs.

24 We are withdrawing six exhibits: 5, 6, 7, 9, 10,
25 11 and 12 --- I'm sorry, 13 and 15. I'll present

1 those all to Your Honor for review.

2 We believe that these pictures are relevant. We
3 need to show the injuries, especially since it is our
4 duty to prove malice in this case.

5 THE COURT: All right.

6 MS. GARFIELD: These are the three that we would
7 ask to be admitted.

8 MS. DAVIS: And, Your Honor, our argument would
9 be that number 8 and number 12 don't show the injury.
10 They show the surgical repair of the injury after the
11 fact.

12 MS. GARFIELD: I would submit that if it was
13 pre-repair, it would be much more prejudicial.

14 THE COURT: Anything further at this time?

15 MS. SIMPSON: Yes, Your Honor. On this issue or
16 another issue?

17 THE COURT: On this issue, yeah.

18 MS. DAVIS: Your Honor, I just stand by that
19 objection. The case law goes into the pictures where
20 they do admit injuries or up-close photographs of the
21 victim's body or injuries is usually to show the same
22 condition they were in at the time or the way the
23 defendant would have, quote, left then.

24 So I think the fact that --- I understand what
25 Ms. Garfield is saying in terms of the prejudicial

1 effect, if it hadn't been cleaned or whatnot.

2 We don't have those photos before us. What we
3 do have has been altered --- it's post surgery, and
4 we object to those at this time.

5 THE COURT: Subject to the --- them being
6 authenticated, they will be admitted over the
7 objection.

8 MS. GARFIELD: Thank you, Your Honor.

9 THE COURT: I find that the State has to show
10 the injury and to explain to the jury what happened
11 to the victim, and they are --- I find that they're
12 more probative than prejudicial.

13 Anything else? Ms. Simpson?

14 MS. SIMPSON: Yes, Your Honor. May it please
15 the Court. Briefly, during the pretrial, we entered
16 into evidence two lineups, State's Exhibit 3 and 4.

17 I just wanted to confirm prior to Mr. Harp being
18 called to the stand that these actually were admitted
19 into evidence at this time, or do we need to put it
20 up and admit them through this witness?

21 THE COURT: They typically would be admitted
22 through the witness.

23 MS. SIMPSON: Thank you, Your Honor.

24 THE COURT: All right. Let's bring in the jury.

25 (WHEREUPON, the jury came into open court at

1 approximately 2:01 p.m.)

2 THE BAILIFF: The jury is seated, Your Honor.

3 THE COURT: Thank you, sir.

4 Next witness, please.

5 MS. SIMPSON: The State calls Larry Harp.

6 LARRY HARP,

7 after being duly sworn, testified as follows:

8 THE CLERK: Have a seat in the witness stand,
9 please. State your name for the record.

10 (There was no response.)

11 THE CLERK: Would you state your name, please?

12 THE WITNESS: Oh, Larry Darnell Harp, H-A-R-P,
13 as in pancake.

14 DIRECT EXAMINATION:

15 BY MS. SIMPSON:

16 Q Okay. Good afternoon, Mr. Harp.

17 A Good afternoon.

18 Q How old are you?

19 A I'm 49.

20 Q And you indicated earlier that you're actually
21 on vacation now.

22 A Right.

23 Q What type of work do you do?

24 A I'm a waste water plant operator.

25 Q And how long have you been doing that?

1 A Twenty-one years.

2 Q I want to take you back to May of 2009. Where
3 were you living at the time?

4 A At [REDACTED]

5 Q Where is that located?

6 A That is kind of caddy corner to Reverend
7 Eichelberger's house.

8 Q And then ---

9 A Across the street at the house next to him.

10 Q Okay. And is that in Greenvview?

11 A That's in Greenvview.

12 Q How long have you been living there?

13 A Since about '91.

14 Q Did you know Reverend Eichelberger?

15 A I knew of him, but I didn't actually get to meet
16 him until I moved there.

17 Q Okay. And once you moved there, what was your
18 relationship?

19 A We --- we grew a friendship, you know. We ---
20 I'd go over to his house and sit there and talk to
21 him sometimes for a couple of hours and kind of help
22 him work on his car, you know, on his cars and
23 whatnot.

24 Q And take you back for just a second. I believe
25 you said that you lived across the street from him.

1 A No.

2 Q Is that correct?

3 A Caddy corner.

4 Q Caddy corner. And next to you, what kind of
5 area is that?

6 A It's a grassy field. Actually, the church uses
7 it. Greenview Baptist Church uses it as a parking
8 lot.

9 Q Okay. Back on May 3rd, 2009, do you recall that
10 day?

11 A Yes, ma'am.

12 Q And just tell us a little bit about that, what
13 you observed in Reverend Eichelberger's yard.

14 A On that day, I guess it was about three o'clock
15 in the afternoon or so, I noticed a black male pacing
16 back and forth between the driveway.

17 There is a sidewalk which leads to another
18 entrance to his house, pacing back and forth. He was
19 talking on his cell phone. I noticed --- that's what
20 I noticed that day.

21 Q And you said that was about three o'clock in the
22 afternoon?

23 A Right around three o'clock, yes, ma'am.

24 Q Was it pretty sunny?

25 A Yes, ma'am.

1 Q Were you able to get a good look at him?

2 A Right, I was.

3 Q And this guy, did you see him again that day?

4 A Yes, ma'am.

5 Q When was that?

6 A I guess it was about two, two-and-a-half hours
7 later. It was still light outside.

8 Q And what had you been doing during that time
9 period?

10 A Well, I backed one of my cars out, parked it on
11 the grass and got my other car out of the shed.

12 Q What type of cars do you have?

13 A It's a Mazda and a Porsche.

14 Q Okay. So you were backing the Mazda out?

15 A I backed the Mazda out, put it on the grass, and
16 then got the Porsche out, went back in the house, got
17 my license and everything I needed to drive and took
18 off driving.

19 Q And where did you go?

20 A Down toward Florence and decided to get off on
21 the Monetta exit, filled my car up with gas and
22 turned back around and came back home and ---

23 Q And when did ---

24 A When ---

25 Q Oh, I apologize. What did you do when you got

1 home?

2 A I went inside. I took a nap for about maybe
3 half an hour, 45 minutes or so. Then I went back
4 outside to park my Mazda back behind my shed, you
5 know, that the Porsche was sitting in.

6 That's when I saw the guy walking from Reverend
7 Eichelberger's house holding a styrofoam plate and a
8 napkin and a cup. He was drinking from the cup and
9 eating, looks like cake it was, from the plate.

10 Q So is this the game guy that you had seen
11 earlier on the telephone?

12 A Yes, ma'am; yes, ma'am.

13 Q Are you sure it was the same guy?

14 A I'm sure it was the same guy.

15 Q And was Reverend Eichelberger with him at that
16 time?

17 A He was out --- Reverend Eichelberger was outside
18 tending to his --- doing something to his flowers.
19 He had on a straw hat, dress straw hat, and a blue
20 suit.

21 Q Did he attempt to talk to you at any time?

22 A Yes, he did. He said he was going to tell me
23 something, and I told him, "Okay. Well, let me go
24 put a shirt on."

25 He said, "Well, you don't have a shirt on. I'll

1 tell you later." Those were the last words I heard
2 him say.

3 Q After you saw him, when you got back in your
4 home, what do you recall happening next?

5 A I watched a little TV, went to sleep, and I was
6 awakened in the middle of the night by the police
7 knocking on my door.

8 Q And was this after midnight?

9 A Yes, ma'am.

10 Q What time? Sometime after ---

11 A Sometime around midnight or it might have been a
12 little before midnight, because at that time, when
13 I --- when I was outside, I heard the church bells
14 toll. We haven't heard those bells toll in years,
15 and me and the policeman, we looked at each other.
16 We were like, "Uh-oh."

17 MS. PRINGLE: Your Honor, I'm going to object to
18 this on the grounds of relevance.

19 THE COURT: The objection is overruled.

20 BY MS. SIMPSON:

21 Q And when the officers arrived, what did they
22 talk to you about?

23 A Well, actually, I didn't know what had happened.
24 I peeked out the door, and I saw the police cars. I
25 opened the door, and I asked them what happened.

1 They said that your neighbor has been badly beaten.

2 Q And they were referring to who?

3 A Reverend Eichelberger.

4 Q At some point, did they take you to your
5 backyard?

6 A Yes, ma'am, they did. They wanted me to put my
7 dog up. I --- so that --- they found an object in my
8 backyard, I guess, by shining a flashlight.

9 Q And that object, can you describe it for the
10 jury, as best you can remember?

11 A It was a long, looked like a chrome steel ---
12 chrome bar, and it had like ridges for grips on it.
13 And I don't know what else, but it was pointed on one
14 end and kind of blunt on the other.

15 Q Was that your bar?

16 A No, ma'am.

17 Q And did the police ask you about that?

18 A They asked me if it was mine. I told them no,
19 it's not mine.

20 Q And you had never seen it before?

21 A I had never seen it.

22 Q Now, I want to take you back just a little bit.
23 Law enforcement officers, they essentially talked to
24 you throughout the course of this investigation
25 occasionally, right?

1 A Yes, yes.

2 Q And at some point when they approached you, it
3 was regarding that person that you saw on the cell
4 phone ---

5 A Yes.

6 Q --- correct? And in Reverend Eichelberger's
7 yard that day?

8 A Correct.

9 Q And what did they typically want to know? Were
10 you sure if you saw them again that you would know
11 who it was?

12 A Yes. I told them if I saw him ---

13 MS. PRINGLE: Object to the leading.

14 MS. SIMPSON: I apologize, Your Honor.

15 THE COURT: Objection sustained as to leading
16 the witness.

17 BY MS. SIMPSON:

18 Q I apologize, Your Honor.

19 What did they tell you about that?

20 A Well, actually, I was getting ready to tell you
21 that. I told them that if I saw him --- if I saw a
22 picture of him or whatever, I would know who he is.
23 Or if I saw him, I would know.

24 Q I'm showing you what has been previously marked
25 as State's Exhibit 3. Does that look familiar to you?

1 A Yes, ma'am.

2 Q And did officers show you that?

3 A They did.

4 Q And what is that?

5 A This is one of the lineups that they brought me.

6 Q And there is nothing circled on that, correct?

7 A No, no.

8 MS. SIMPSON: Your Honor, at this time, the
9 State would seek to introduce State's Exhibit
10 Number 3 into evidence.

11 THE COURT: What says the defense?

12 MS. PRINGLE: No objection.

13 THE COURT: It's admitted without objection.

14 (WHEREUPON, State's Exhibit No. 3 was admitted
15 into evidence.)

16 BY MS. SIMPSON:

17 Q So you didn't circle or say that you knew
18 anybody in this lineup?

19 A No. Well, hold on. I told him I knew that guy
20 there, and I knew that wasn't him in the yard.

21 Q Okay. So you knew him personally?

22 A Yeah, right.

23 Q But that wasn't him in the yard?

24 A That wasn't him in the yard.

25 Q Now, officers came back to you, I believe it was

1 a little while later in March of 2010, March 12th,
2 2010.

3 A Right.

4 Q Do you remember speaking with investigators at
5 that time?

6 A Yes, I do.

7 Q And did they show you another photo lineup?

8 A Yes, they did.

9 Q I am showing you --- wrong one. I apologize.
10 I am showing you what has been previously marked
11 as State's Exhibit 4 for ID. Do you recognize this?

12 A Yes, ma'am.

13 Q And what is that?

14 A This is what they filled out after I had
15 identified subject number three.

16 Q Three, and prior to them showing you this, was
17 it just pictures?

18 A Just pictures.

19 Q Just pictures. And that's as you remember it?

20 A Right. My initials, the date and the time.

21 MS. SIMPSON: Your Honor, at this time, the
22 State would seek to introduce State's Exhibit 4 into
23 evidence.

24 MS. PRINGLE: I'd object to that, Your Honor.
25 The lineup, actual lineup, is admissible. We'd

1 object to that being entered into evidence. He can
2 certainly testify to it, but we object to the
3 admission of the lineup.

4 THE COURT: Can I see the exhibit that you're
5 offering?

6 (Pause)

7 Ladies and gentlemen, I'm going to have you step
8 to the jury room for a few minutes. Please do not
9 discuss the case while you're there.

10 (WHEREUPON, the jury left open court at
11 approximately 2:12 p.m.)

12 THE COURT: All right. Ms. Pringle, you said
13 that the actual lineup is not admissible?

14 MS. PRINGLE: Yes, Your Honor. I'd refer the
15 court to State vs. Turner, 644 S.E.2d 693. It's a
16 2007 case in which the court held that photo lineups
17 do not need to be introduced at trial unless there is
18 some specific reason the State needs it in.

19 There is no specific reason. He's here. He can
20 testify to it. There is nothing particular, unique,
21 about that lineup that they need it in. It's
22 prejudicial, and I'd say that under State vs. Turner,
23 it's not admissible.

24 I believe the reasoning in that case, Your Honor,
25 is that it's a mug shot, a series of mug shots, of

1 course, including the defendant's.

2 THE COURT: Give my the cite of that State v.
3 Turner again.

4 MS. PRINGLE: 644 S.E.2d 693, 2007, I believe.

5 (Pause)

6 Yes, I have that cite, Your Honor, it's State v.
7 Turner, it's 2007, 644 S.E.2d 693.

8 THE COURT: All right. What says the State?

9 MS. SIMPSON: Thank you, Your Honor.

10 MS. CAMPBELL: I'll take this.

11 State vs. Benson, which is a 1977 case. It says
12 a photo lineup comprised of mug shots cannot be
13 introduced unless the State has a demonstrable need.
14 Photographs themselves do not identify the
15 defendant's criminal record and the matter of
16 introduction at trial is such that it does not call
17 particular attention.

18 I am pulling Turner, Your Honor. I don't have
19 that case in front of me. I believe that the State
20 does have a demonstrable need in this case.

21 The entire defense in this case is that it's not
22 him. It's not that it was a self-defense case or any
23 other type of case.

24 It's up to us, and the burden is on us, to show
25 the identity of the defendant, and that the jury has

1 a right and a need to be able to evaluate the
2 accuracy of this defendant's both out of court and
3 in-court identification.

4 THE COURT: Anything else from the defense?

5 MS. PRINGLE: Just that the line up doesn't add
6 anything to the need to demonstrate the accuracy or
7 the certainty or anything. It adds nothing to it,
8 other than a picture of him in a mug shot.

9 MS. SIMPSON: Your Honor, if I may briefly. If
10 they're willing to stipulate that it was him, then
11 we'd be more than happy ---

12 THE COURT: Voluntary argument doesn't help the
13 court, particularly if I'm reading at the time.

14 MS. SIMPSON: Sorry, Your Honor.

15 (Pause)

16 THE COURT: State v. Turner, he was found guilty
17 of armed robbery and assault of a high and aggravated
18 nature, sentenced to 15 years in prison for robbery,
19 ten for ABHAN. He appeals the case.

20 He was identified as the robber of a pizza
21 delivery woman. Based on the victim's identification,
22 he was found guilty.

23 The question for the court was whether the court
24 erred in admitting identification testimony where the
25 photographic lineup was unduly suggestive.

1 Did the court err by sending written charges to
2 the jury? Did the court err by limiting --- by
3 limiting cross-examination regarding --- by not
4 allowing them to ask the victim about being treated
5 for schizophrenia?

6 There is a pretrial suppression hearing
7 regarding the pretrial identification. The judge,
8 trial judge, John Few, ruled that the identification
9 process was not unduly suggestive.

10 At trial, the victim testified regarding the
11 photo lineup. Over the defendant's objection, the
12 lineup was admitted into evidence, and she then
13 identified the appellant, the defendant, as her
14 assailant.

15 She is arguing on appeal that the lineup was
16 suggestive because of different colored backgrounds
17 and that the picture stands out. The defendant's
18 picture stands out from all the --- one other picture.

19 The court then reviews the law regarding
20 admissibility of out-of-court identification, citing
21 Neil vs. Biggers, et cetera.

22 The court then says that the photo lineup here
23 is not unduly suggestive, despite the variation of
24 color backgrounds and regardless of whether the photo
25 lineup was suggestive, the identification was still

1 reliable because she had an ample opportunity to see
2 the defendant and view him and all that.

3 The trial court properly admitted the
4 identification. Talking about the judge giving
5 written charges to the jury, then the court stated
6 that a trial court may in its discretion submit its
7 instruction on the law to the jury in writing.

8 The next thing they talked about, the limitation
9 on cross-examination regarding the victim being
10 treated for schizophrenia, and I'm trying to find the
11 language or something that gives the basis for you're
12 citing this case, Ms. Pringle.

13 MS. PRINGLE: I can't find it either. I know
14 the case exists, and I must have --- I must have the
15 wrong cite down. I'll find it. I know it exists. I
16 don't know why I have this as State vs. Turner, but I
17 know that case is out there.

18 THE COURT: Well, I overrule the objection. I
19 think that it's --- that the court --- I have
20 conducted a pretrial hearing.

21 I have concluded that the identification process
22 is not unduly suggestive. The lineup exhibits have
23 been authenticated by the witness, and I deny the ---
24 overrule the objection.

25 We are ready for the jury. Is there anything

1 else before they come in?

2 MS. SIMPSON: No, Your Honor.

3 THE COURT: All right. If you'll bring the jury
4 back.

5 THE COURT REPORTER: Which numbers did you
6 withdraw, again? You said six, but I got confused
7 because you said, "I'm sorry," and then the other
8 ones ---

9 MS. GARFIELD: It's on...

10 THE COURT REPORTER: Yeah, but it looks like
11 there are more than six numbers, and I'm trying to
12 figure out which ones you meant.

13 I have five, six, seven, nine, ten, 11 and 12,
14 and then you said, "I'm sorry, 13 and 14." So I
15 don't know if you meant 13 and 14 instead of 11 and
16 12.

17 MS. GARFIELD: State's Exhibit 5, 6, 7, 9, 10,
18 11, 13 and 15.

19 THE COURT REPORTER: Thank you.

20 (WHEREUPON, the jury came into open court at
21 approximately 2:22 p.m.)

22 (WHEREUPON, State's Exhibits 8, 12 & 14 were
23 entered into evidence.)

24 THE BAILIFF: The jury is seated.

25 THE COURT: All right. The objection is

1 overruled. You may proceed.

2 MS. SIMPSON: Thank you, Your Honor.

3 BY MS. SIMPSON:

4 Q Mr. Hart, if you can go back just a moment. I'm
5 showing you State's Exhibit Number 4, the lineup that
6 was shown to you by law enforcement.

7 When they showed this to you, did they suggest
8 in any way that you had to pick anybody?

9 A No, they didn't.

10 Q Tell us about what happened?

11 A Well, they showed it to me. I scanned it over
12 maybe five, six seconds, and I said, "That's him."
13 It was number three.

14 Q Number three, and you indicated that how?

15 A I pointed to it. I put my finger on it.

16 Q And did you mark it in some other way?

17 A Oh yes, yes. I initialed and I dated it and put
18 the time.

19 Q And this person that you identified, which
20 person is that?

21 A That's the defendant at the table with the
22 defense in the white shirt.

23 Q Sitting in between his lawyers?

24 A Right.

25 MS. SIMPSON: Let the record reflect that the

1 witness has identified the defendant.

2 THE COURT: It does.

3 BY MS. SIMPSON:

4 Q And this person that you identified in this
5 picture, was that the person that was at Reverend
6 Eichelberger's house that day?

7 A Yes, ma'am.

8 Q And are you absolutely certain?

9 A I am absolutely certain.

10 Q Is there any doubt in your mind ---

11 A No. Doubt in my mind.

12 MS. PRINGLE: Objection to the leading and the
13 repeating of the question.

14 THE COURT: All right. The objection is
15 overruled.

16 MS. SIMPSON: Beg the Court's indulgence.

17 (Pause)

18 Nothing further at this time.

19 THE COURT: Cross-examination?

20 MS. PRINGLE: May it please the Court.

21 CROSS-EXAMINATION:

22 BY MS. PRINGLE:

23 Q Good afternoon, Mr. Harp.

24 A Good afternoon.

25 Q Mr. Harp, you remember the events of this date,

- 1 May 3rd, 2009, pretty well, don't you?
- 2 A Yes, ma'am.
- 3 Q And on this day when you saw this individual, I
- 4 mean, you took note of it, right?
- 5 A Yeah.
- 6 Q And you paid attention?
- 7 A Yes, ma'am.
- 8 Q And you were --- you were just alert to it,
- 9 right?
- 10 A Yes, ma'am.
- 11 Q And very certain about what you observed, right?
- 12 A Right.
- 13 Q And you're certain that it was --- the first
- 14 time you saw him was about three p.m.?
- 15 A Yes, around three.
- 16 Q And you're certain of that?
- 17 A Yes, ma'am.
- 18 Q And the second time you saw him was 5:30?
- 19 A Somewhere about there, two hours, two-and-a-half,
- 20 right.
- 21 Q So it could have even been five?
- 22 A No. Because I went down to Monetta. It takes
- 23 about an hour to drive each way, so it's close to
- 24 about two hours plus.
- 25 Q Okay.

1 A And then I took a nap, and when I came back out
2 to move my second car, that's when I saw him again.

3 Q And you --- and you testified that was about
4 5:30 p.m., your best guess?

5 A About 5:30, just guessing.

6 Q Okay. About 5:30 p.m., when you saw him the
7 second time, you said that Reverend Eichelberger was
8 outside, as well?

9 A Right.

10 Q And you saw him?

11 A Yes.

12 Q And you're certain of that?

13 A Right.

14 Q It was still daylight?

15 A It was still daylight.

16 Q And you didn't ever see that individual again,
17 did you?

18 A I saw him at that time same that I saw Reverend
19 Eichelberger.

20 Q Right. I understand.

21 A Right.

22 Q So you saw him at three. You saw him at 5:30,
23 but you didn't see him any time after ---

24 A Not after then.

25 Q Right. And you have given a description of the

- 1 person you see today and prior to today, right?
- 2 A Right.
- 3 Q I'm just going to ask you about some of the
- 4 things that you said, okay.
- 5 A Okay.
- 6 Q You said that this individual was a medium,
- 7 heavy build?
- 8 A Right.
- 9 Q Brown skin?
- 10 A Yeah, brown, light.
- 11 Q And had on a blue --- like a baseball jersey?
- 12 A It was some type of the athletic jersey.
- 13 Q And shorts?
- 14 A Shorts, denim shorts.
- 15 Q He was wearing denim shorts?
- 16 A Yes. The baggy --- the long baggy kind.
- 17 Q And you're sure that he had on shorts?
- 18 A Yes, ma'am.
- 19 Q All right. They weren't long pants?
- 20 A No, ma'am.
- 21 Q And he had on a ball cap?
- 22 A Yes.
- 23 Q And he was about six feet, 230 pounds?
- 24 A That's what I guestimated it at.
- 25 Q All right. You said a big guy, right?

- 1 A Yeah, a big guy.
- 2 Q And when you saw him, either at three o'clock or
- 3 at 5:30, did he have a bag with him?
- 4 A No. I didn't pay any attention to a bag.
- 5 Q Like a book bag or a shopping bag?
- 6 A No.
- 7 Q Was he --- he wasn't carrying anything that you
- 8 noticed?
- 9 A A cell phone.
- 10 Q But not carrying anything ---
- 11 A I didn't pay --- I didn't notice it, if he did.
- 12 I just noticed the clothing.
- 13 Q All right. And Reverend Eichelberger, he was
- 14 known in the community.
- 15 A Yes, ma'am, very much so.
- 16 Q And he was known to help a lot of people.
- 17 A That's right.
- 18 Q And he would particularly --- I guess he would
- 19 help anyone, wouldn't he?
- 20 A Yes, ma'am.
- 21 Q So somebody that was down on their luck, he
- 22 would help?
- 23 A Yes, he would.
- 24 Q He didn't care if you were homeless. He would
- 25 help a homeless person?

1 A He would help you.

2 Q All right. And so street people, homeless
3 people, if they came to them, he would help them?

4 A If they did, he would, but you didn't see foot
5 traffic come up there to his house.

6 Q But folks knew.

7 A Yeah, most people knew that they could get help
8 from him.

9 Q All right. And if you asked around out there,
10 that would be a person that you would say you could
11 go to?

12 A I don't think would actually say that you could
13 go to him, but people that know of him would know
14 they could.

15 Q Well, let me ask ---

16 A I don't think that they would get a reference
17 from anybody, "Go to Reverend Eichelberger's house."
18 I don't think that they would get a reference for
19 that.

20 Q I understand, but he was someone who was known
21 to ---

22 A To help.

23 Q --- and to reach out.

24 A Right.

25 Q And so if you were a stranger, he would reach

1 out to a stranger, as well?

2 A Yes, ma'am.

3 Q And he actually --- he had a radio address, I
4 think. Did you ever hear his radio address?

5 A I've heard it before. It's not his, but he was
6 on the radio. He was on the radio on Sunday mornings,
7 yeah.

8 Q And he would tell people about his garden?

9 A Yeah. He took pride in his garden. He told a
10 couple of stories about it. I don't know whether he
11 actually --- I heard a story about it, but --- on the
12 radio, but I don't know if he actually made that a
13 habit.

14 Q When I'm talking about the garden, I know he had
15 flowers, as well.

16 A No. I'm talking about the garden.

17 Q But he grew vegetable, greens and stuff like
18 that, right?

19 A Right.

20 Q He would say on the radio say to people come by
21 and get some? Did you ever hear that?

22 A I never heard him say that.

23 Q He also had two grown sons living with him,
24 correct?

25 A Right.

- 1 Q Right. Who was living with him?
- 2 A Terry Eichelberger and one we known as Doolie,
- 3 Jonathan.
- 4 Q Right. And that second time that you saw this
- 5 individual, he had food in his hand.
- 6 A Right.
- 7 Q And he still doesn't have a bag, as far as you
- 8 could see.
- 9 A No.
- 10 Q And he still has his same clothes on?
- 11 A Yes.
- 12 Q Baseball, blue jersey ---
- 13 A Right.
- 14 Q And shorts.
- 15 A Right.
- 16 Q And you didn't see any arguing between him and
- 17 Reverend Eichelberger?
- 18 A No, ma'am.
- 19 Q You didn't see any fussing?
- 20 A No, ma'am.
- 21 Q Or fighting?
- 22 A No, ma'am.
- 23 Q You didn't see them interacting?
- 24 A No.
- 25 Q There's nothing of note at all?

1 A Not at all.

2 Q When you saw them together?

3 A When I saw them; yes, ma'am.

4 Q And that --- that last time was at 5:30 when you
5 saw Reverend Eichelberger?

6 A It was around that time, yes, ma'am.

7 MS. PRINGLE: Thank you, Mr. Harp.

8 THE WITNESS: All right.

9 THE COURT: Redirect?

10 MS. SIMPSON: No, Your Honor. Nothing further.

11 THE COURT: You may step down.

12 Next witness?

13 MS. GARFIELD: Thank you, Your Honor. The State
14 calls Angela King.

15 THE COURT: All right. Come up here, ma'am.

16 THE BAILIFF: Place your left hand on the Bible,
17 raise your right hand.

18 ANGELA KING,

19 after being duly sworn, testified as follows:

20 THE CLERK: Have a seat in the witness stand,
21 please.

22 THE BAILIFF: Watch your step.

23 THE CLERK: State your name for the record.

24 THE WITNESS: Angela King.

25 DIRECT EXAMINATION:

1 BY MS. GARFIELD:

2 Q Thank you. Ms. King, where are you employed?

3 A Richland County EMS.

4 Q How long have you been employed with EMS?

5 A For just over 14 years.

6 Q And as an emergency room responder --- I'm sorry,
7 emergency responder, what kind of background,
8 educational background, do you have?

9 A Actually, I got into EMS straight out of high
10 school. Once you get certified at like advanced
11 cardiac life support for adults, children, infants,
12 hazardous materials, trauma life support, advanced
13 trauma life support, this is not just something you
14 do once. You constantly have to be certified to be
15 able to practice.

16 Q And you've been continuously an EMS responder
17 for fourteen years?

18 A Yes.

19 Q And these were your same duties back in 2009, as
20 well as today?

21 A Yes, ma'am.

22 Q And what shift do you normally work?

23 A Night shift, 5:15 to 5:30 in the morning.

24 Q And are you currently working that shift?

25 A Yes, I clocked out this morning.

1 Q At 5:30?

2 A Yes, ma'am.

3 Q You've been up continuously?

4 A Yes, ma'am.

5 Q Thank you, Ms. King. Did you have an
6 opportunity to respond to a call involving Reverend
7 Eichelberger back in May of 2009?

8 A Yes, ma'am.

9 Q Can you recall what type of call that you
10 received to respond to?

11 A Initially, I believe it was something fairly
12 simple, such as a simple abrasion or a laceration.
13 We didn't have any indication from our dispatcher
14 that the call was as serious as it turned out to be
15 when we got there.

16 Q And when you got there, who all were you with?

17 A Chris Wall.

18 Q I'm sorry?

19 THE COURT: Is the mic in front of her?

20 MS. GARFIELD: I'm having a hard time hearing
21 you, too.

22 THE WITNESS: I apologize.

23 MS. GARFIELD: If you can pull it closer to you.

24 THE COURT: The mic that should be in front of
25 the witness.

1 THE WITNESS: A little better?

2 MS. GARFIELD: Yes, thank you.

3 THE WITNESS: I was with Chris Wall.

4 BY MS. GARFIELD:

5 Q And who was in relationship to you?

6 A He was the gentleman I was scheduled to work
7 with that night, an EMT, not allowed to do the same
8 things I'm allowed to do in the back of the truck,
9 but he's not working with us anymore.

10 Q And when you got to this location on Isaac
11 Street, what was the first thing you observed?

12 A Aside from a lot of police officers, there was
13 crime scene tape up. I'm thinking, "Well, if this
14 was just a simple laceration or abrasion, why am I
15 seeing crime scene tape?" That was odd.

16 Q And was that located outside the home?

17 A Yes.

18 Q And did you have the an opportunity to enter the
19 home?

20 A Yes, ma'am.

21 Q And when you entered the home, what did you
22 observe?

23 A What I remember is seeing a gentleman laying on
24 the floor on his stomach. If he moved at all, it
25 wasn't in response. Like if I were to ask you, "Hey,

1 show me two fingers," nothing purposeful just a
2 minimal movement, occasionally moaning, and just the
3 amount of blood on the scene was incredible.

4 Q Would you estimate how much blood was on the
5 floor?

6 A I would say, and like I reported to the doctors
7 in the trauma room when we got to the hospital, two
8 liters, easily.

9 Q On the floor?

10 A Yes, ma'am.

11 Q And did you determine who the victim on the
12 floor was?

13 A Could I determine?

14 Q Who it was, or were you told who it was?

15 A No, ma'am, not that I remember, no.

16 Q Okay. And was the victim able to respond to any
17 of your questions?

18 A No, ma'am.

19 Q What did he do as far as your observations,
20 just...

21 A He would occasionally moan. He would
22 occasionally be unresponsive, but didn't follow any
23 commands or anything I asked him to do. If I were to
24 ask him his name, which I don't remember doing, it's
25 not something he answered to.

1 Q Do you have a copy of your report with you?

2 A Not with me right now.

3 Q Would you like to view it?

4 A Please.

5 Q I would like for you to look at your report and
6 just explain to the jury what type of action you took
7 in the care of Reverend Eichelberger, or the victim
8 that you were treating?

9 A Starting on the third line, "The wounds that I
10 saw were bandaged" --- excuse me, "were bandaged, but
11 could not control the bleeding." It says "bleeding
12 still uncontrolled. Placed him in spinal
13 precautions," which is anybody with facial trauma,
14 head trauma, that sort of thing, we treat them almost
15 as if they've been in a car accident, collar,
16 backboards, a lot of straps.

17 He was placed on oxygen face mask at 15 liters,
18 which is as high as we can get it, placed him on a
19 heart monitor, and started two IVs on him.

20 Q Did you observe anything on the wounds as far as
21 his appearance was concerned? Was he sweating?

22 A Yes, from this, yes; yes, he was.

23 Q And did you load him into the ambulance?

24 A Yes, ma'am.

25 Q At that time, where did you proceed?

1 A Richland Memorial.

2 Q And once you got to Richland Memorial Hospital,
3 what was your next course of action?

4 A We brought him into --- I don't remember which
5 room we brought him into, but it was one of the --- I
6 believe it was the first trauma room as soon as you
7 enter the double doors. I turned him over to all the
8 doctors and nurses that were waiting on him in the
9 trauma room.

10 Q Was that the extent of your involvement in the
11 care of this person?

12 A Yes. After I gave my report and transferred
13 patient care, then ---

14 Q Did you have anything else to do with Isaac
15 Street that evening?

16 A Not that I remember at all, no, ma'am.

17 Q Beg the court's...

18 Please answer any questions the defense counsel
19 may have for you.

20 A Yes, ma'am.

21 MR. STRICKLER: May it please the Court.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION:

24 BY MR. STRICKLER:

25 Q Good afternoon, ma'am.

1 A Good afternoon, sir.

2 Q My name is Doug Strickler. I'm one of the
3 attorneys representing Mr. McGee.

4 Just a couple of things. You responded to the
5 scene and had another person with you ---

6 A Yes, sir.

7 Q --- when you responded, right?

8 A Yes, sir.

9 Q As I understand your testimony, he doesn't work
10 with y'all anymore; is that correct?

11 A No.

12 Q Okay. And do you have your report in front of
13 you?

14 A Yes, sir.

15 Q May I take a look at that?

16 A Yes, sir.

17 Q I have got a copy of it, quite frankly. I can
18 barely read the copy.

19 A Sure.

20 Q Just one moment, please.

21 (Pause)

22 Thank you, ma'am.

23 A Yes, sir.

24 Q Just a couple of questions, if I may.

25 Now, if I read this correctly, you received the

- 1 call at 23:48?
- 2 A Apparently so. This is --- our supervisors are
3 in charge of putting times on the paperwork. It's
4 not something I put in.
- 5 Q Okay. That's put on by someone else?
- 6 A My supervisor fills in the times, and where
7 you're reading 23:48, yes, sir.
- 8 Q Okay. And your supervisor, is that someone that
9 is not traveling with you at that point?
- 10 A No. Not that evening, no, sir.
- 11 Q Well, where do they receive the time from? Are
12 you acquainted with the procedure?
- 13 A I believe they get a sheet printed up from
14 dispatch. I don't know if they fax them, e-mail them
15 or what have you, but they get some sort of printout
16 from the office where they can fill in the times.
- 17 Q Okay. I see an entry, "Arrived at scene at
18 00:03." I guess that would be three minutes after
19 midnight?
- 20 A Yes, sir.
- 21 Q Okay. Now, I would assume that that information
22 was conveyed to them by either you or your partner
23 from your vehicle or call in that we're on the scene,
24 now?
- 25 A And then like if I were to say, "Central 202 is

1 on the scene at Isaac Street," they would say
2 something like "Central copy at 00:03."
3 Q Okay. And then there is a listing that departed
4 scene at 00:14, 14 minutes after midnight?
5 A Yes, sir.
6 Q Actually, now no longer May 3rd, but the very
7 beginning of May 4th, right?
8 A Yes, sir.
9 Q Okay. And then you arrive at the hospital 21
10 minutes after midnight ---
11 A Yes, sir.
12 Q --- is that correct? Okay. So you're on the
13 scene for right at --- it looks like 11 minutes?
14 A Yes, sir.
15 Q Now, what you know is --- is the condition of
16 the gentleman when you saw him there, correct?
17 A Yes, sir.
18 Q And the steps you took to stabilize him and
19 enable you to transport him to the hospital for
20 lifesaving procedures there, correct?
21 A Yes, sir.
22 Q Okay. You have no idea what happened to him,
23 the particulars of what happened to him to cause this
24 injury to him, correct?
25 A Not at all, sir.

1 Q Okay. You have no idea who did it, correct?

2 A No, sir.

3 MR. STRICKLER: Thank you very much, ma'am.

4 THE COURT: Yes, sir.

5 MS. GARFIELD: Just two questions, Judge.

6 THE COURT: All right.

7 REDIRECT EXAMINATION:

8 BY MS. GARFIELD:

9 Q Ms. King, when you said --- talking about the
10 times and the copies, are you talking about dispatch
11 through your radio?

12 A Yes, they acknowledge us. Sometimes they just
13 say, "Central copy" or they'll say, "Central copy"
14 and give us the time, yes, ma'am.

15 Q And you're hearing this through your
16 transmission radio?

17 A Yes, ma'am.

18 Q Ms. King, in your course of treatment to the
19 victim, did you do all you could to save his life?

20 A Absolutely.

21 MS. GARFIELD: Thank you. Nothing further.

22 THE COURT: Anything further?

23 MR. STRICKLER: No, sir.

24 THE COURT: Thank you.

25 Thank you. You may step down.

1 THE WITNESS: Thank you, sir.

2 THE COURT: Next witness?

3 MS. GARFIELD: Thank you, Your Honor. The State
4 calls Officer Brian Carroll.

5 BRIAN CARROLL,

6 after being duly sworn, testified as follows:

7 THE CLERK: State your name for the record.

8 THE WITNESS: Brian Carroll.

9 DIRECT EXAMINATION:

10 BY MS. GARFIELD:

11 Q Officer Carroll, where are you employed?

12 A City of Columbia Police Department.

13 Q How long have you been employed with the City of
14 Columbia?

15 A Just over five years.

16 Q And what are your duties at the Columbia Police
17 Department?

18 A Currently, I'm assigned to the front desk.

19 Q And were those your duties back in May of 2009?

20 A No, ma'am.

21 Q What were your duties back in May of 2009?

22 A I was assigned to North Region, C Squad, patrol
23 division.

24 Q Can you explain what your duties entailed?

25 A Answer various calls for services, accidents,

1 any kind of call that citizens may call in for. We
2 respond to it.

3 Q Were you asked to respond to a call at 119 Isaac
4 Street back on May 3rd, 2009?

5 A I was.

6 Q And can you please tell the jury what kind of
7 call you reported to?

8 A I believe it was a disturbance or assault. I
9 don't remember exactly what it was.

10 Q When you got to that location, what did you
11 observe?

12 A There was a --- the door was cracked open on, I
13 believe, it was the side or the front of the house.
14 When I arrived, there were already some units on the
15 scene.

16 Q Had EMS already responded when you arrived?

17 A No. Not at that time.

18 Q Were you present when EMS responded?

19 A I was.

20 Q And were you present when the victim in this
21 case was loaded into the ambulance?

22 A I was.

23 Q Do you recall the name of the victim?

24 A Was informed it was Mr. Eichelberger.

25 Q Okay. Through your investigation there at the

1 scene, were you asked to report to any other location?

2 A I was advised by Sergeant Clark to go to
3 Richland Memorial Hospital to stand by with the
4 victim.

5 Q Did you, in fact, go to the hospital?

6 A I did.

7 Q Can you tell the jury about how long elapsed
8 between the victim leaving in an ambulance and you
9 responding to the hospital?

10 A I'm guessing about an hour, maybe.

11 Q And when you responded to the hospital, did you
12 have the opportunity to photograph the victim?

13 A I did.

14 Q Officer Carroll, I'm going to show you've what's
15 been marked into evidence State's Exhibit Number 8,
16 number 12 and number 14. Do you recognize these
17 photographs?

18 A I do.

19 Q And what are those photographs reflecting?

20 A The injuries that were visible to me at that
21 time that he sustained.

22 Q Of the Reverend Eichelberger?

23 A Yes, ma'am.

24 Q And those photographs were taken at the hospital?

25 A Yes, ma'am.

1 Q Your Honor, at this time, I'd like to publish
2 the photographs to the jury.

3 THE COURT: And...

4 MR. STRICKLER: May I take a look at them
5 quickly?

6 (Pause)

7 Thank you.

8 THE COURT: What are the exhibit numbers, again?

9 MS. GARFIELD: Eight, 12 and 14.

10 THE COURT: All right. They're in evidence.
11 You may do so.

12 MS. GARFIELD: Thank you, Your Honor.

13 Officer Carroll, please answer any questions the
14 defense counsel may have for you.

15 THE WITNESS: Yes, ma'am.

16 THE COURT: From the defense?

17 (Pause)

18 Any questions?

19 MR. STRICKLER: I'll need to reference the
20 photographs. I don't want to interrupt them.

21 THE COURT: Well, you can go get them.

22 The photos are in evidence. They'll be in the
23 jury room. If you need them during cross-examination,
24 you can get them.

25 (Pause)

1 Madam Juror, if you'll hand the photographs to
2 the lawyer, Mr. Strickler.

3 MR. STRICKLER: Thank you.

4 CROSS-EXAMINATION:

5 BY MR. STRICKLER:

6 Q State's 14 is a picture of what?

7 A His shoulder, his left shoulder.

8 Q It's an abrasion on the shoulder?

9 A Yes, sir.

10 Q And State's 8 is a picture of --- what injury
11 does that show?

12 A The left shoulder and the back left side of his
13 head.

14 Q Okay. And State's 12 is the back left side of
15 his head, correct?

16 A It's a close up of it, yes, sir.

17 Q And that's not actually a picture of the injury,
18 is it? That's a picture of a surgical repair of the
19 injury, correct?

20 A Yeah, at some point after. I don't know what
21 extent it was.

22 Q But you would agree with me there's staples,
23 some sort of ---

24 A Yes, sir.

25 Q That wasn't done as part of the injury?

1 A Yes, sir.

2 Q That's done as part of the surgery, correct?

3 A That's correct.

4 Q Okay. So the injury is in that area, but this
5 picture does not reflect what the injury looked like
6 when it happened, correct?

7 A Correct.

8 Q It reflects what the injury looks like after a
9 surgeon has worked on it in an attempt to save Mr.
10 Eichelberger's life, correct?

11 A Yes, sir.

12 MR. STRICKLER: That's all I have. Thank you
13 very much, sir.

14 THE COURT: Redirect?

15 MS. GARFIELD: No, sir.

16 THE COURT: All right. You may step down, sir.
17 Next witness?

18 MS. GARFIELD: The State calls Investigator
19 William Pegram.

20 WILLIAM PEGRAM,

21 after being duly sworn, testified as follows:

22 THE CLERK: State your full name for the record.

23 THE WITNESS: William Pegram.

24 DIRECT EXAMINATION:

25 BY MS. GARFIELD:

- 1 Q Sergeant Pegram, where are you employed?
- 2 A The Columbia Police Department.
- 3 Q How long have you been employed with the
- 4 Columbia Police Department?
- 5 A 18 years.
- 6 Q And what are your duties with the Columbia
- 7 Police Department?
- 8 A I supervise the Violent Crime Unit for the
- 9 Columbia Police Department.
- 10 Q And were those your duties back in May of 2009?
- 11 A No, they were not.
- 12 Q Can you please explain to the jury what your
- 13 duties were at that time?
- 14 A I was an investigator in that same unit.
- 15 Q In what, violent crimes?
- 16 A Yes, ma'am.
- 17 Q And violent crimes would obviously include
- 18 burglary and murder in the first degree?
- 19 A No. It's the aggravated assaults, armed
- 20 robberies and murder.
- 21 Q And murder?
- 22 A Yes, ma'am.
- 23 Q And were you asked to respond to a scene at 119
- 24 Isaac Street back in May of 2009?
- 25 A I was.

1 Q And do you recall in what capacity you responded
2 to it?

3 A Well, initially I responded as the lead
4 investigator.

5 Q And what did you do when you responded?

6 A I had met with the sergeant that was on the
7 scene. He briefed me on what they had at that point.
8 From there I waited on ID, and I entered the crime
9 scene, along with our ID tech.

10 Q Sergeant Pegram, you were immediately relieved
11 because you were on call?

12 A Yeah, I was on call, but I think I was next up
13 for leave.

14 Q And then it was eventually referred to
15 Investigator Reese, correct?

16 A Yeah. Investigator Reese and I got together,
17 and he had a rapport with the Greenview Community.
18 We thought it would be better for the community to
19 have someone that they were familiar with. We
20 decided that Kevin would take the lead.

21 Q On that particular evening when you responded,
22 did you have any occasion to come into contact with a
23 suspect by the name of David Williams?

24 A Yes.

25 Q Would it help you to refresh your notes ---

1 A It would.

2 Q --- to refresh your memory? Here's a copy of
3 your notes, Sergeant.

4 A Thank you.

5 Q And in what capacity did you come in contact
6 with David Williams?

7 A At some time, I believe prior to my arrival on
8 the scene, the patrol officers chased this individual.
9 They stopped him at a house, and then they detained
10 him. They actually arrested him for failure to stop.

11 Q Failure to stop what?

12 A Failure to stop for police command.

13 Q Okay.

14 A From there, I --- after I evaluated the crime
15 scene, I actually had left and gone to the hospital.
16 From the hospital, I went back to headquarters. I
17 think at that point is when Mr. Williams was at the
18 police department being interviewed.

19 Q So it was your contact with Mr. Williams was at
20 the police department?

21 A Yeah, and it was very brief.

22 Q And in your contact with him, Mr. Williams, were
23 you able to gain any information towards his case?

24 A Actually, no. I mean, he --- he was initially
25 suspected, but the part that I played in that is we

1 secured DNA, the DNA swab.

2 I secured the DNA swab, and I actually had his
3 shoes seized based on the blood evidence in the house.
4 If he had been a suspect, we would have had blood
5 trace evidence on the soles of his shoes. So I had
6 the shoes secured for later testing for blood trace
7 evidence.

8 Q Sergeant, I'm going to show you what's been
9 premarked as State's Exhibit Number 115. Do you
10 recognize that item?

11 A I do.

12 Q And can you please share with the jury what that
13 item is?

14 A These are the shoes that were seized and tagged
15 in. I'm --- I'm down as the individual who actually
16 recovered the shoes from --- from Mr. Williams, and I
17 actually tagged these shoes into the evidence locker.

18 Q And the evidence locker is at the Columbia
19 Police Department?

20 A Yes, ma'am.

21 Q Thank you.

22 A Yes.

23 Q (Pause)

24 I apologize. Sergeant, I'll show you State's
25 Exhibit Number 106. Do you recognize this item?

1 A Yes, ma'am. This is an oral swab, it's a buccal
2 swab for DNA taken from Mr. Williams by ID Tech
3 Nelson.

4 Q And was that also taken on that evening or
5 morning that you were interviewing him?

6 A It was taken on the morning of the 4th, on
7 May 4th, 2009.

8 Q Were you present at that time?

9 A I don't actually remember if I was there when he
10 gave the buccal swab.

11 Q Did you ever actually come into possession of
12 that swab?

13 A No, I don't believe so. No, I'm listed on it as
14 the investigator, but as far as the actual retaining
15 of it or taking it, no. It's not mine.

16 Q Did you direct Investigator Nelson to --- to
17 take that swab?

18 A I would --- I would believe so, yeah.

19 Q Okay. Thank you.

20 Sergeant Pegram, on that particular night, in
21 your involvement on that case, were you able to rule
22 out Mr. Williams?

23 A Not at that point. No, I didn't feel that he
24 was ---

25 MR. STRICKLER: Objection to his feelings, Your

1 Honor.

2 THE WITNESS: Based on my experience in law
3 enforcement, I didn't have the evidence I needed to
4 say that he was, in fact, a suspect. We submitted
5 the shoes and the DNA for comparison for a later date
6 to identify or exclude him as a suspect.

7 MS. GARFIELD: Thank you, sir. Please answer
8 any questions the defense counsel may have.

9 THE COURT: Mr. Strickler?

10 MR. STRICKLER: Thank you, sir. May it please
11 the Court.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION:

14 BY MR. STRICKLER:

15 Q Good afternoon, Sergeant.

16 A Good afternoon, sir.

17 Q You've been referring to some notes.

18 (Indicating.)

19 Can I take a quick look at them, please?

20 A (Complies.)

21 Q Thank you, sir.

22 A Thank you.

23 Q Just so I'm straight on your part in this
24 investigation, you were initially the lead
25 investigator on the case.

- 1 A Yes, sir.
- 2 Q And if I understand the testimony you've given
3 on direct, it was determined at some point that
4 Investigator Reese, because of his acquaintance with
5 the community, would be better situated to fulfill
6 that job; is that correct?
- 7 A That is correct.
- 8 Q Okay. You responded to the scene, right?
- 9 A Yes.
- 10 Q When you got to the scene, was the reverend
11 still there, or had he been transported yet?
- 12 A I believe he was still on the scene.
- 13 Q All right.
- 14 A I arrived at midnight.
- 15 Q You arrived at --- straight up midnight?
- 16 A Yes.
- 17 Q Okay. You had other police units there at that
18 point in time?
- 19 A Yes, sir.
- 20 Q Marked units, correct?
- 21 A That's correct.
- 22 Q Were you the first investigator on the scene, or
23 were there other investigators?
- 24 A I don't recall who --- what investigators were
25 on the scene.

1 Q Okay. And just so we're clear, when I say
2 investigators, you have uniformed units ---

3 A That's correct.

4 Q --- operating marked patrol cars, and then you
5 have investigators, generally plain clothes ---

6 A That's correct.

7 Q --- not necessarily in marked cars, often in
8 unmarked cars, correct?

9 A Yes, sir.

10 Q Okay. And they have distinct and separate
11 responsibilities and roles in investigating criminal
12 offenses, right?

13 A Yes.

14 Q Is that correct?

15 A Yes, sir.

16 Q Had the scene been secured at the point you
17 arrived?

18 A When I have arrived, yeah. I mean, the scene
19 was secure, as best we could tell.

20 Q Did they have crime scene tape up at that point
21 in time?

22 A I believe they did.

23 Q I think ---

24 A I don't recall. I mean, I'm sure that it was
25 already taped off.

1 Q How long were you on the scene for?

2 A Not --- not very long. I was there long enough
3 to be briefed by Sergeant CO Clark. I was there long
4 enough to enter the crime scene with our ID tech, and
5 from there, I left.

6 Q Okay. And was CO, was he the supervisor for the
7 responding officers?

8 A I imagine he was a sergeant for the road
9 officers at that time.

10 Q CO Clark, I'm sorry.

11 A CO Clark.

12 Q You went from there to the hospital?

13 A That's correct.

14 Q Okay. And from the hospital to ---

15 A Back to headquarters.

16 Q Back to headquarters?

17 A Yeah.

18 Q And that's the sum total of what you had to do
19 with this case; is that correct?

20 A That's pretty much it.

21 MR. STRICKLER: That's complete as far as I have,
22 sir. Thank you.

23 THE WITNESS: Thank you.

24 MS. GARFIELD: Nothing.

25 THE COURT: You may step down, sir.

1 THE WITNESS: Thank you, sir.

2 THE COURT: Next witness?

3 MS. CAMPBELL: The State would call Investigator
4 Paul Nelson.

5 THE COURT: Mr. Nelson.

6 Let's stand for a moment as Investigator Nelson
7 is coming, everyone.

8 (Pause)

9 All right.

10 PAUL NELSON,

11 after being duly sworn, testified as follows:

12 THE CLERK: Have a seat in the witness stand,
13 please. State your name for the record.

14 THE WITNESS: Paul Nelson.

15 DIRECT EXAMINATION:

16 BY MS. CAMPBELL:

17 Q Investigator Nelson, where are you employed?

18 A City of Columbia Police Department.

19 Q What do you do there, sir?

20 A Crime scene unit.

21 Q Crime scene unit?

22 A Yes.

23 Q And as a member of the crime scene unit, what
24 are typically your duties? What do they include?

25 A Photograph evidence, evidence collection,

1 fingerprints.

2 Q Can you tell this jury a little bit about your
3 education, your training, in the field of crime scene
4 investigation in this case, CSI as it's referred to?

5 A In my four-year career with the crime scene ---

6 Q You're going to have to speak up. For some
7 reason, the microphone is not working.

8 A In my four years at the Crime Scene Unit, I have
9 been to training classes, as --- photography school,
10 fingerprint school, as well as crime scene schools.

11 Q And have you testified before --- and when you
12 talk about training in those specific areas, what
13 specific training do you get?

14 A Fingerprint and proper handling of evidence,
15 proper sealing of evidence, photographic scenes,
16 persons, and pretty much evidence.

17 Q Okay. And over the last four years as a member
18 of the crime scene investigative unit, you've
19 responded to --- can you say how many crime scenes to
20 process them?

21 A Hundreds.

22 Q Hundreds. And, typically, when you go to a
23 crime scene, say a crime scene, such as where a
24 physical assault occurs or something of that nature,
25 what is it that do you first do prior to collecting

1 any evidence?

2 A Assess the scene.

3 Q Have you testified before as an expert in the
4 field of crime scene investigation?

5 A Yes, I have.

6 Q And you've been qualified in the courts in South
7 Carolina?

8 A Yes.

9 Q Your Honor, at this time, we'd offer him as an
10 expert in the field of crime scene investigation?

11 THE COURT: What says the defense?

12 MS. DAVIS: No objection.

13 THE COURT: All right. He's admitted.

14 Now, ladies and gentlemen of the jury,
15 ordinarily witnesses cannot offer opinions concerning
16 matters except for things that the witness may have
17 observed or perceived based on their own senses.

18 A different rule applies to witnesses who have
19 been qualified by the court as expert witnesses.
20 Expert witnesses are witnesses who, by virtue of
21 their education, training or experience, has gained
22 some specialized knowledge in some field.

23 This witness is qualified as an expert in the
24 field of crime scene analysis and may be able to
25 offer opinions in areas where lay witnesses cannot

1 offer opinions, provided that the opinions conform to
2 the Rules of Evidence.

3 You may proceed.

4 BY MS. CAMPBELL:

5 Q Thank you, Your Honor.

6 Sir, I want to turn your attention to the
7 evening of May 3rd, 2000 [sic]. I believe it was
8 after midnight when you actually responded to the
9 crime scene on Isaac Street?

10 A Into the 4th, correct.

11 Q What kind of crime scene were you responding to
12 that night?

13 A I was responding to an assault and battery with
14 intent to kill, ABIK.

15 Q And when you go to a crime scene, as the crime
16 scene investigator, you are not the guy that
17 necessarily responds to the 9-1-1 call, are you?

18 A No.

19 Q And, in fact, I believe it's investigator ---
20 Officer Duckett was the first one on the scene in
21 this case?

22 A Correct.

23 Q And he would make the call in to assess whether
24 or not crime scene investigation should actually
25 respond to the scene?

1 A Correct.

2 Q And that was done in this case?

3 A That was.

4 Q And when you responded to the scene, do you know
5 approximately what time it was in the morning?

6 A Approximately 12:15.

7 Q 12:15. And when you got to Isaac Street, what
8 did you, initially, do when you got there?

9 A Assess the scene, made contact with the lead
10 investigator. At the time, it was Investigator
11 Pegram and Officer Duckett, who advised me on the
12 scene of what happened.

13 Q And when you got there, had they already secured
14 the scene, like with crime scene tape and made sure
15 nobody disturbed any possible evidence that may or
16 may not have been found?

17 A Correct, it was roped off.

18 Q And when you first made contact with
19 Investigator Duckett, were you able to --- or was he
20 able at that time to make you aware of certain
21 evidence of items --- items of evidence, sorry,
22 across the street that may be probative in this case?

23 A Correct.

24 Q I want to show you what's already been put into
25 evidence as State's Exhibits Number 76, 90 and 90

1 [sic]. What do you those show, sir?

2 A Those are photographs of Mr. Eichelberger's home
3 that were taken from the street on Isaac, at 119
4 Isaac Street.

5 Q And this actually shows the exterior of his home?

6 A Correct.

7 Q And were those taken that night by you?

8 A It was.

9 Q And is it proper etiquette in the crime scene
10 investigator world to actually document what the
11 exterior, as well as the interior, as it happens
12 inside ---

13 A Correct.

14 Q --- looks like? And you did that in this case?

15 A I did.

16 Q And I noticed the background in these pictures
17 looks like it's dark out.

18 A Pretty dark.

19 Q And you were able to take those. Was there a
20 particular entranceway that was significant or would
21 become significant in this investigation, as shown in
22 State's Exhibit 88, and then the interior in 89?

23 A Correct, the screened-in porch off the driveway.

24 Q It's a screened-in porch off the driveway?

25 A That's right.

1 Q Is this how it appeared when you got there that
2 night?

3 A That's correct.

4 Q And I notice that there is --- inside the
5 screened-in porch, the second picture, State's
6 Exhibit 89, what does that show?

7 A That shows the interior of the screened-in porch
8 towards the dining room door, which enters the house.

9 Q And when you were going around --- and when you
10 first get there, you try to assess the scene; is that
11 correct?

12 A Pretty much.

13 Q And when you were assessing the scene, as shown
14 in State's Exhibit Number 66 and 65, were there
15 significant marks on that door that I'll get back to
16 in a minute?

17 A There appeared to be some kind of tool marks on
18 that door.

19 Q And, in fact --- we'll get back to this, did you
20 actually collect the door itself that night from the
21 crime scene?

22 A I did.

23 Q And when you say there's significant marks, in
24 your expertise and your training as a crime scene
25 investigator, what do those marks indicate to you?

1 A Tool marks.

2 Q And what does tool marks mean for people like me?

3 A Tool marks are just an impression into the door
4 that's consistent to a tool or from a tool.

5 Q And I show you State's Exhibit Number 67. What
6 does that show?

7 A That shows the damage to the door, basically.

8 Q And the tool mark on the door, plus in State's
9 Exhibit Number 67, you actually see the damage, is it
10 to the door itself or to the ---

11 A Door casing.

12 Q The door casing or the doorframe. Was that
13 significant to you in your investigation?

14 A That was; that's correct.

15 Q And what does that indicate to you the
16 combination of tool marks on the door, along with the
17 damage to the doorframe?

18 A The door was forced open.

19 Q Once inside, did you continue to photograph the
20 interior? And let me get this straight, too, when
21 you got there, was EMS already there?

22 A No.

23 Q Did EMS come while you were there?

24 A No. They were not on the scene.

25 Q EMS never came to the scene that night to remove

1 him?

2 A Oh yes. They removed him, but they were not
3 there on my arrival.

4 Q On your arrival, they had already left the scene.

5 A Right.

6 Q Let me back up. Sorry. So Mr. Eichelberger, my
7 point is, was already gone when you got there?

8 A Correct.

9 Q So you weren't able to photograph him in his
10 actual position in the kitchen; however, it's
11 important to take photographs of the area where the
12 assault may have occurred?

13 A Correct.

14 Q I want to show you've what's been marked as
15 State's Exhibit 69. Do you recognize that?

16 A Right, the interior of the home from the dining
17 room into the kitchen.

18 Q I notice that's a door right here. Is that the
19 door we've been talking about?

20 A Correct.

21 Q With the tool marks?

22 A With the tool marks.

23 Q As then you enter the home, immediately to the
24 left, what was there?

25 A The kitchen.

1 Q The kitchen. And that's what's shown in this
2 picture?

3 A Correct.

4 Q And I notice even from this picture, you can see
5 on the floor there's some towels and some other areas,
6 some dark red areas. What were those?

7 A I don't know about what was placed there, but
8 Officer Duckett advised me that the items were placed
9 there possibly before his arrival by the witness or
10 EMS.

11 Q I want to back up a little, because these have
12 put in through different witnesses. I want to show
13 you this photograph as well, which is State's Exhibit
14 Number 74, and which has already been admitted. Do
15 you recognize that?

16 A Yeah, in front of home.

17 Q Is that from another angle of the front of
18 Reverend Eichelberger's house?

19 A Right.

20 Q And that's how it appeared that night when you
21 were there?

22 A Correct.

23 Q Once you were inside the home, did you take some
24 additional photographs from the ones I've already
25 shown you?

1 A I did.

2 Q I show you State's Exhibits numbers 68, 70, 71,
3 73 and 75. Just, first, I'd ask you to look at those
4 and see if you recognize them.

5 A I do. These are photographs that I've taken of
6 the interior of the home at 119 Isaac Street. Some
7 are close ups of the tool mark impressions on the
8 door.

9 Q Okay.

10 A As well as an exterior photograph of the front
11 of the residence.

12 Q Thank you. And if you can just step down here
13 in front of the jury so we can tell them exactly
14 what's shown in these pictures. If you will come on
15 this side and face the court reporter so she can hear
16 you.

17 State's Exhibit Number 68, what does that show?

18 A A photograph that I had taken from the dining
19 room into the kitchen, a westerly direction.

20 Q And that's just a close-up photograph of the one
21 we just showed the jury showing the kitchen area?

22 A Correct.

23 Q And is that how it appeared when you got there
24 that night?

25 A That's how it appeared.

1 Q And as far as the information, of course, when
2 you first get to a crime scene, you get some type of
3 history?

4 A Correct.

5 Q So that you know kind of what to look for or to
6 help you?

7 A Yes.

8 Q In that case, you are aware that this reddish
9 brown liquid on the floor, was that significant?

10 A To possibly being blood?

11 Q Yes.

12 A Yes.

13 Q I want to show you what's been marked as State's
14 Exhibit Number 70. What area does that show?

15 A This is coming in the dining room, when you
16 first come into the doorway, the dining room was
17 right there.

18 Q In every case when you're collecting evidence,
19 you don't know what may or may not be significant
20 down the line?

21 A Not at the time.

22 Q I show you what's been marked as State's Exhibit
23 Number 73. Do you recognize that?

24 A I do.

25 Q And we've mentioned earlier that there were some

1 tool marks on the actual door; is that correct?

2 A Correct.

3 Q And does that show these?

4 A It does.

5 Q And specifically, State's Exhibit 71, 72, if
6 you'll look at those.

7 A It's a scale of the door.

8 Q Are those close up of the actual markings we're
9 talking about?

10 A Right near the doorknob.

11 Q And the difference between these is one is with
12 the scale and one is without?

13 A Right.

14 Q And, again, what did that indicate to you?

15 A The size of the tool mark impressions, the tools
16 that were recovered, just trying to get the size of
17 this.

18 Q I'm going to show you a number of photographs
19 from the kitchen area, specifically. First, I'll
20 show you 61, 59, 63, 56, 64, and 62 and first ask are
21 those photographs you took that night?

22 A Yes. I saw them. These are the ones I've taken.

23 Q And do those show the kitchen area as it
24 appeared when you got there that night?

25 A They're all from the kitchen area.

1 Q And taking them in order first, I'm going to
2 show you State's Exhibit Number 61 and then 56. What
3 areas of the kitchen do those show?

4 A This one right here is right in front of the
5 stove. This one right here that you're looking at is
6 from the kitchen in the opposite direction eastbound
7 into the dining room. There is the door going out.

8 Q This is showing the general overview of the
9 kitchen area and what you found when you got there,
10 correct?

11 A Correct, an overall, most of them are on those
12 surfaces.

13 Q Was there also some significant reddish --- what
14 appeared to be blood in other areas, on State's
15 Exhibit 59?

16 A Right, what appears to be blood there within the
17 kitchen area.

18 Q And in State's Exhibit Number 64?

19 A What appeared to be blood and a shoe impression
20 going out.

21 Q And when you say a shoe impression going out ---

22 A Towards the dining room, straight in toward ---

23 Q And what does it look like the shoe impression
24 was made with?

25 A Blood.

1 Q Blood. Finally, I show you State's Exhibit
2 Number 62 and 63. What do those show?

3 A Close ups with the scale.

4 Q And in order to get a shoe impression into ---
5 this wasn't like a shoe impression made in dirt so
6 you couldn't lift it, could you?

7 A No. Photographing it would be probably the best
8 evidence to collect on something like that.

9 Q Have a seat. Once second.

10 (Pause)

11 Once you had photographed the interior of the
12 house --- thank you, sir.

13 Once you had photographed the interior of the
14 house, did you collect certain items from the
15 interior of the house?

16 A I did.

17 Q And what items did you collect from the interior?

18 A I collected a door, the door, and the --- a hat
19 that was found in the corner by the sink ---

20 Q Uh-huh.

21 A --- across opposite from the kitchen on the
22 stove.

23 Q And I'm going to show you what's been marked as
24 State's Exhibit Number 109. Is this the door?

25 A Correct, that's the door.

1 Q And is this the door that was actually collected
2 and shown in the photograph that we published to the
3 jury?

4 A Right. That's the door.

5 Q Your Honor, at this time I'd offer State's
6 Exhibit 109 and evidence.

7 MS. DAVIS: No objection, Your Honor.

8 THE COURT: Admitted without objection.

9 (WHEREUPON, State's Exhibit No. 109 was admitted
10 into evidence.)

11 BY MS. CAMPBELL:

12 Q Can you put it here?

13 I just want to put it here for a seconds, Your
14 Honor, and I'll move it.

15 THE COURT: All right.

16 BY MS. CAMPBELL:

17 Q You can step down.

18 Here on State's 109, at a later time, did you
19 attempt to get certain information from this, and
20 tell them how you did that?

21 A It's a door cast mold. It's simple as
22 Silly-Putty. I have to make it. The mixture, I
23 tried to complete it. It was bad, so I couldn't get
24 to it make that impression. So I went ahead and
25 collected the whole door, which you see.

1 Q And I notice that there is some kind of --- well,
2 I guess putty color would be a good thing ---

3 A Right.

4 Q --- around here. Is that what you applied?

5 A That's what I applied, generally. Then once I
6 had the door in our evidence room, I made a mold of
7 it.

8 Q And you attempted to make a mold of it?

9 A Yeah.

10 Q Were you able to get a useful mold of it?

11 A Yes.

12 Q Okay. And that would be used at a later date to
13 compare to other items that may have or may not have
14 been collected in this case?

15 A Right, correct.

16 Q You can put the door down. Just put it side
17 ways here like this.

18 After that, you had --- while inside the house,
19 did you also attempt to collect any type of
20 fingerprint evidence in this case?

21 A Correct.

22 Q Tell this jury exactly how you went about doing
23 that and what areas you looked for?

24 A I processed smooth surfaces. There were many
25 flat-type of surfaces throughout this whole house,

1 including the door, screen doors, storm door, every
2 doorknob I could come across I processed. It's a
3 black powder. It's actually an interior ---

4 Q If you could speak up a little bit.

5 A Okay.

6 Q It's hard to hear what you're saying.

7 A Black powder is --- it's applied with a brush,
8 and you go over surfaces with it to try to lift or
9 develop a fingerprint.

10 Q And you mentioned that you used kind of a black
11 powder. How is that actually applied to the surface
12 to then later go back and lift, what's known as a
13 latent print versus a known print?

14 A A latent print is something that you get off of
15 the scene that you can later identify. A known print
16 is a person's print that is on file when a person is
17 arrested. That's called a known fingerprint card.

18 Q Even a person such as myself, if I come up here
19 and touch this, am I necessarily going to leave a
20 print?

21 A No.

22 Q And what are the variables that occur in order
23 for a person to actually leave what's known as an
24 identifiable print at the scene?

25 A I describe it as a firm grasp, holding onto

1 something with a good grasp. Holding onto something.

2 Q Does the surface affect it?

3 A It does.

4 Q Exposure to the elements?

5 A Right, it does.

6 Q People come back and touch over it?

7 A Correct.

8 Q All of those factors?

9 A All of those are factors.

10 Q And is it unusual to process a crime scene and
11 not get any identifiable prints?

12 A No.

13 Q And why is that, sir?

14 A Because sometimes you don't get prints.

15 Q In certain cases, depending on the sweat and the
16 different things on the skin, can it affect an
17 ability to leave a print?

18 A Right.

19 Q And the surface itself?

20 A Right.

21 Q What about if the person is wearing gloves?

22 A You are not going to get anything, nothing at
23 all.

24 Q In this case, what areas of the house did you
25 process for prints?

- 1 A The kitchen.
- 2 Q Did that appear to be where the assault took
3 place?
- 4 A Pretty much so, yes. And the room to the side.
- 5 Q And the room to the side?
- 6 A The side.
- 7 Q And when you processed those areas, were you
8 able to get any identifiable prints?
- 9 A What I lifted was unidentifiable.
- 10 Q What does that mean?
- 11 A Insufficient ridge detail. Basically, there's
12 not enough for me to make a match.
- 13 Q So if I look at the end of my finger, there's
14 certain circles and loops and things there?
- 15 A Correct.
- 16 Q And there has to be a certain amount of the
17 print itself in order to be able to make an
18 identification?
- 19 A We refer to it as characteristics.
- 20 Q Characteristics. Say if I reach down here and
21 leave it, I may believe a few characteristics?
- 22 A A few.
- 23 Q But it depends on --- are you also familiar with
24 the term smudge?
- 25 A Right.

1 Q What does that mean, sir?

2 A Smudged is a --- basically, terminology that
3 citizens would know as the print was there and it
4 just --- somebody slightly moved their hand, smeared
5 it, and they would be able to be caught.

6 Q And, again, if the person has gloves on, they
7 aren't going to leave anything either?

8 A No.

9 Q Once you had processed the interior and
10 collected certain evidence in there, did you also ---
11 did you become --- or were you made aware, I guess,
12 upon arrival of certain items that were across the
13 street?

14 A Right, right. I was shown that first.

15 Q First. And I'm taking them in backwards order,
16 sorry.

17 Had those items already been secured by Officer
18 Duckett?

19 A They were.

20 Q And just making sure nobody disturbed those
21 items.

22 A Correct.

23 Q And did you actually go out and photograph those
24 items ---

25 A I did.

1 Q --- prior to collecting them?

2 A Prior, yes.

3 Q I'm going to show you what's been marked as
4 State's Exhibit Numbers 93 and 92. Do you recognize
5 those two?

6 A Yes, I do.

7 Q And ---

8 A This is the photograph that I've taken of the
9 tool in the back yard. Just a second.

10 (Pause)

11 [REDACTED]

12 Q [REDACTED]

13 A Yes.

14 Q Where is that located in relation to the
15 reverend's house?

16 A Across the street.

17 Q And I want to show you some other photographs,
18 State's Exhibits Number 83 and 84, that are already
19 in evidence. Do you recognize those?

20 A Yes, I do.

21 Q And is that how the tool appeared in the back of
22 Mr. Harp's yard that night?

23 A That's how it appeared when I saw it.

24 Q And prior to collecting it or doing any testing
25 on it, is it proper for you to photograph it?

1 A Correct.

2 Q And that's what you did in this case?

3 A Right.

4 Q And that's how it appeared when you got there,
5 having already been secured by Investigator Duckett,
6 right?

7 A Right.

8 Q State's Exhibit Number 93 shows a close up of
9 the tool itself?

10 A Right, correct.

11 Q And then State's Exhibit Number 92?

12 A Close up.

13 Q What was significant at that end?

14 A The tool, at that time when I saw it, it was
15 consistent to what's on the door.

16 Q And when you say consistent with what's on the
17 door, that would be the tool mark that we're talking
18 about?

19 A The tool mark.

20 Q Did you also notice on the item once you
21 collected it certain --- what appeared to be a
22 certain stain or smudge on it?

23 A Right. Appeared to be --- at that time,
24 appeared to be blood, blood on it.

25 Q Did you collect the actual winch bar that night?

1 A I did.

2 Q And in collecting it, you take certain
3 precautions, are you trained in how to collect
4 evidence to make sure you consider any possible
5 evidence that may or may not be there?

6 A Correct, preserve the evidence.

7 Q And did you take those precautions that night?

8 A I did.

9 Q And especially if you observed what appeared to
10 be blood, you wanted to preserve that evidence,
11 correct?

12 A Correct.

13 Q And how did you collect the actual winch bar
14 that night?

15 A I had gloves on. I created a box right there.
16 I put it into that box, tied it and secured it for
17 processing.

18 Q And it's been opened for us to look at, the
19 defense to look at, but it was secured that night
20 properly?

21 A Right, just like so you see that tape there.

22 Q That would have been secure at the time?

23 A Right.

24 Q And you don't actually do any DNA testing
25 yourself, do you?

1 A No.

2 Q But you collect it in order to preserve it for
3 DNA testing?

4 A I do.

5 Q I'm going to show you what's been marked as
6 State's Exhibit number 107. Let me first ask you, do
7 recognize this item?

8 A I do.

9 Q Is this the item you collected that night that
10 we just talked about being in Exhibits 92, 93 and
11 these other exhibits?

12 A Okay, yeah. Yes, that's it.

13 Q And you recognize it because of a certain
14 writing on there?

15 A There's initials on it.

16 Q Does it look like CAD?

17 A I'm not good at it.

18 MS. CAMPBELL: Your Honor, at this time, we'd
19 offer State's Exhibit 107 into evidence.

20 MS. DAVIS: Can I see?

21 MS. CAMPBELL: Sure.

22 MS. DAVIS: No objection, Your Honor.

23 THE COURT: It's admitted without objection.

24 (WHEREUPON, State's Exhibit No. 107 was admitted
25 into evidence.)

1 BY MS. CAMPBELL:

2 Q State's Exhibit Number 107, this is the actual
3 item you collected from the yard that night?

4 A Right, that's it.

5 Q Was there another cone a little further away
6 from this that marked another --- smaller items of
7 evidence that were proved to be significant in this
8 case?

9 A Right. Further away from all --- [REDACTED]
10 [REDACTED] the street from Mr. Eichelberger's home
11 and further down.

12 Q Further down?

13 A Yes, across the field.

14 Q And I wants to show you what's been marked as
15 State's Exhibit 79 and 81. Do you recognize those?

16 A I do.

17 Q Are those photographs you actually took that
18 night?

19 A That's correct.

20 Q And what's in these photographs, sir?

21 A A pair of socks.

22 Q And is this how they were when you found ---
23 they have been secured, but is this how it was when
24 you photographed them?

25 A That's correct.

1 Q And approximately how far from the actual yard
2 itself, which is actually located in the fenced area,
3 were these socks found?

4 A 25 yards.

5 Q 25 yards?

6 A Approximately.

7 Q And I want to show you what's already in
8 evidence, State's Exhibits Number 87 and 86 --- oops.
9 Let me just do 87 and 78, are those additional?

10 A Correct.

11 Q And you've actually added your own marker there,
12 which is item number five. That's used as a marker
13 by you?

14 A One over all and one close up.

15 Q Okay. And these were initially marked, I
16 believe, by Investigator Duckett by cone and you
17 placed it ---

18 A Right.

19 Q But you didn't bother with the socks?

20 A No.

21 Q And that's how they appeared that night when you
22 collected them?

23 A Right.

24 Q And the location where the socks were found and
25 where the rod was found, where is that in location

1 with the actual --- in relation to Reverend
2 Eichelberger's home?

3 A Basically, from the socks, go back in an east
4 direction towards Eichelberger's home. I'd say
5 approximately 100 yards ---

6 Q Okay. Across the street?

7 A --- from his house. Yeah, across the street.

8 Q I'll show you State's Exhibits Number 85 and 86.
9 Are those close ups on the scale?

10 A Right.

11 Q And did you actually collect the socks that
12 night?

13 A I collected those socks.

14 Q And, again, you've been trained to collect
15 evidence in a certain way?

16 A Correct.

17 Q In order to preserve any evidence that may be on
18 it for DNA testing down the road; is that correct?

19 A That's right.

20 Q And you collected the socks that night?

21 A I did.

22 Q I'm going to show you what's been marked as
23 State's Exhibit Number 104. Again, what steps did
24 you take to make sure that you preserved any evidence
25 that might be on the socks?

1 A Proper sealing, paper bag, just keep them dry,
2 as well as sealed.

3 Q And that was done in this case?

4 A That was.

5 Q And, again, you wouldn't have done the DNA
6 testing yourself, but you would have collected it and
7 preserved it?

8 A That's right.

9 Q When you collected the socks, prior to
10 collecting them, did you observe anything of interest
11 on the socks?

12 A The socks also had what appeared to be blood on
13 them.

14 Q Based on your experience as a crime scene
15 investigator and the amount of blood you saw there at
16 the scene, if someone had been wearing or having
17 those socks on during the assault, would you expect
18 to find blood on them?

19 A I would.

20 Q And you did?

21 A Yes.

22 Q State's Exhibit Number 75, what is that?

23 A This is a cell phone I found in front of
24 Mr. Eichelberger's home.

25 Q In front of Mr. Eichelberger's home?

- 1 A Uh-huh.
- 2 Q And where in front of his home was it located?
- 3 A Right on ---
- 4 Q On the asphalt?
- 5 A --- Isaac Street in the roadway.
- 6 Q Directly on the roadway?
- 7 A Off on the shoulder there.
- 8 Q And at the time, did you know whether or not it
- 9 would be significant in this case?
- 10 A Right.
- 11 Q You collected it?
- 12 A Yes.
- 13 Q But later, what happened to it?
- 14 A It turned out to be a family member that came by.
- 15 She accidentally dropped her phone.
- 16 Q You mentioned that you processed the interior of
- 17 the home for fingerprints. What areas, specifically,
- 18 did you dust for prints?
- 19 A Countertops, the stove, side of the stove, front
- 20 of the stove, countertops to the left and right of
- 21 the stove, kitchen cabinets, both sides, door casing
- 22 through the kitchen, door going out to the
- 23 screened-in porch, storm door, as well as swinging
- 24 screen storm door going out on the porch.
- 25 Q And were you able to get any identifiable prints

1 in this case?

2 A Nothing identifiable.

3 Q I also notice one of the photographs --- let me
4 go back --- on the door casing itself, there is what
5 appears to be blood on it. Did you follow up to
6 account for that on the actual door casing frame
7 itself?

8 A Right, correct. There was some blood on there.

9 Q And were you able to account on how that blood
10 got there?

11 A Officer Duckett, I was paying attention to it.
12 He saw me start to photograph it. He explained when
13 they were transporting Mr. Eichelberger out, he
14 swiped it on the door casing going out when they had
15 him on the stretcher.

16 Q Did you do anything out at the scene, else out
17 at the scene that night?

18 A No.

19 Q That same evening, did you collect certain swabs?

20 A Yes, I did.

21 Q And who did you collect a swab from, as well as
22 some tennis shoes?

23 A Just a second.

24 (Pause)

25 Mr. David Williams.

1 Q Mr. David Williams?

2 A Yes. At 4:41 in the morning on the 4th.

3 Q And I'm going to show you what's been marked as
4 State's Exhibit Number 115, which is already in
5 evidence and State's Exhibit Number 106. Do you
6 recognize those two items?

7 A Correct. It's a swab of David Williams.

8 Q That you collected that night?

9 A Yes.

10 Q And 106 is called --- what's this called?

11 A Oral swab, DNA swab.

12 Q And tell the court how you collected it and what
13 the purpose is.

14 A The method we use is basically a kit, and we
15 collect the saliva, which is the DNA profile that we
16 could use.

17 Q And that's kind of a known standard. Is that
18 what it is?

19 A A known standard, correct.

20 Q And what's the reasons for getting a known
21 standard from a possible suspect in a case?

22 A Process of elimination, see if they're involved
23 in it.

24 Q Or inclusion?

25 A Put them at the scene at the time.

1 Q The shoes you observed, also, those were
2 collected from him, his person?

3 A Correct.

4 Q And why were y'all collecting those shoes that
5 day?

6 A Because of the shoe marks, they possibly had on
7 the kitchen.

8 Q And were those also collected properly and
9 preserved for any further DNA testing?

10 A They were.

11 Q And specifically, there were shoe prints in the
12 kitchen, you referred to, in blood?

13 A Right.

14 Q Beg the Court's indulgence.

15 (Pause).

16 I show you State's Exhibits Number 63 and 62.

17 A Uh-huh, that's right, the kitchen.

18 Q Those are partial shoe prints, actually.

19 A Correct.

20 Q And were you able to just by sight include or
21 exclude the tread from these shoes?

22 A Right away.

23 Q It's not there?

24 A No.

25 Q Excuse me, what's your opinion?

1 A It wasn't --- it's not this. This is not
2 consistent with this.

3 Q And that's your expert opinion?

4 A Right. If I may, this is more like a boot
5 pattern.

6 Q It's a different pattern ---

7 A Right.

8 Q --- from the soles of the shoes collected by
9 David Williams that night?

10 A It's inconsistent with that.

11 Q That night did you also respond to Richland
12 Memorial Hospital?

13 A I responded the next day.

14 Q The next day. I'm sorry, actually on the 4th?

15 A Actually, it was the same day.

16 Q The same day.

17 A Just later on.

18 Q And that was ---

19 A Daylight hours.

20 Q --- that afternoon?

21 A Right.

22 Q And I show you what's been marked as State's
23 Exhibit number 106. Do you recognize that?

24 A William, David --- this is a swab I took at
25 4:41 in the morning.

1 Q At four...

2 Beg the Court's indulgence.

3 (Pause)

4 How about State's Exhibit 105?

5 A Mr. Eichelberger.

6 Q And is that the swab you collected from the
7 victim in this case at the hospital?

8 A Right, at the hospital.

9 Q And again, how did you collect that swab?

10 A Just a large swab, a large Q-tip. I collected
11 it from inside of his mouth and then properly sealed
12 it.

13 Q And that was done in this case?

14 A Yes.

15 MS. CAMPBELL: Your Honor, we'd move State's
16 Exhibit 105 into evidence.

17 MS. DAVIS: No objection.

18 THE COURT: It's admitted.

19 (WHEREUPON, State's Exhibit No. 105 was admitted
20 into evidence.)

21 BY MS. CAMPBELL:

22 Q It was later that day, I believe, that you also
23 tried to make a cast of the tool mark impression?

24 A Right.

25 Q And were you able to come to any conclusions

1 when you compared the tool marks from the door to the
2 actual winch bar that you collected?

3 A Right. After processing was done, I looked at
4 it.

5 Q After processing was done?

6 A Right.

7 Q And what were your conclusions, sir?

8 A That it fit the door. The box and the tool fit
9 the door.

10 Q And, specifically, which end did you think was
11 consistent with the tool marks on the door?

12 A The box end.

13 Q You say the box end. You'll have to help me.

14 A The box ends right here. Square by the pigtail
15 ends.

16 Q By the pigtail end, the square end?

17 A Yeah.

18 Q And that was consistent?

19 A To the door, correct.

20 Q The items that you collected there at the scene
21 --- on the pair of sneakers, did you actually
22 transport the sneakers in State's Exhibit Number 115
23 to Tena Goff at the Richland County Sheriff's
24 Department?

25 A Yes.

1 Q And I believe that --- when was that done?

2 A On the --- June 3rd.

3 Q And prior to that, where had they been held?

4 A In our evidence room at the City of Columbia.

5 Q And would they have been --- as far as the time
6 period, when you have things in your possession, as
7 well as in all this evidence, whenever you're holding
8 evidence in your possession, does anyone have an
9 opportunity to alter it, tamper with it, or change it
10 in any way?

11 A No.

12 Q And that goes for all the evidence we're getting
13 ready to talk about?

14 A Right.

15 Q What was the purpose of taking evidence to the
16 Richland County Sheriff's Department?

17 A To be analyzed by the DNA lab.

18 Q To the DNA lab?

19 A Uh-huh.

20 Q And it was to be analyzed?

21 A Right, correct.

22 Q And you actually checked it out of your city
23 evidence room?

24 A I did.

25 Q And then turned it in to Tena Goff at the

1 evidence room counter?

2 A Right.

3 Q And during the time period you had those items,
4 did anyone alter with them or tamper with them in any
5 way?

6 A No.

7 Q And the items you transported would be the pair
8 of sneakers?

9 A Right.

10 Q The steel rod, or the winch bar?

11 A Correct.

12 Q And the pair of socks? Excuse me.

13 A Right.

14 Q And, I believe, oral swabs from the victim, as
15 well as David Williams, at that point?

16 A And there was another swab.

17 Q And another swab from another suspect?

18 A A guy named Johnson.

19 Q Johnson?

20 A I didn't collect that, though.

21 Q I show you for ID purposes 118.

22 (WHEREUPON, State's Exhibit No. 118 was marked
23 for identification only.)

24 BY MS. CAMPBELL:

25 Q Was that also an item you forwarded?

1 A When I worked with Curry, Pete Curry.

2 Q Pete Curry. And those were all taken, and
3 during the time period they were in your custody, no
4 one altered them, tampered with them, and they were
5 properly sealed?

6 A Right.

7 Q And when they were submitted to the Richland
8 County Sheriff's Department, they were properly
9 sealed; is that correct?

10 A Correct.

11 Q And prior to that, all of those items had been
12 put into your evidence room by you and properly
13 sealed?

14 A Right.

15 Q When was your next involvement in this case, sir?
16 I believe there was an autopsy that was performed
17 some three months after this event?

18 A Right. I attended the autopsy.

19 Q Where did the autopsy actually take place, where
20 was it?

21 A At Richland Memorial Hospital.

22 Q What was the purpose of you going to the autopsy?

23 A I'm always first, photographic evidence.

24 Q And that was on August 1st of what year?

25 A August 1st of 2009.

1 Q August 1st of 2009, and the assault of Reverend
2 Eichelberger took place when?

3 A On the 3rd of 2009, 5/3/2009.

4 Q That would be May 3rd?

5 A Right, May 3rd.

6 Q So this was approximately three months later?

7 A Approximately.

8 Q And when you attended the autopsy, did you take
9 certain photographs?

10 A I did.

11 Q Who actually performed the autopsy, do you know?

12 A Dr. Marcus Bradley --- Bradley Marcus.

13 Q Bradley Marcus?

14 A Two first names.

15 Q Later were you requested --- excuse me. I want
16 to show you certain photographs of the steel rod
17 itself, State's Exhibit 96 through 103. First, I ask
18 if you recognize those.

19 A Right.

20 Q And are those photographs you took?

21 A After processing was complete, back in our
22 custody at headquarters, we photographed the steel
23 rod with the initials. I didn't take these two
24 pictures, though. I don't know who did.

25 Q Okay. And those just reflect close-ups of the

1 steel rod that was in question?

2 A Right. I didn't take this picture. I don't
3 know who did.

4 Q Okay. The others you took?

5 A Right.

6 Q And do those accurately reflect how the steel
7 rod appeared, and I show you State's Exhibit No. 101.
8 Is there anything significant in that picture?

9 A There is damage to the tool on the grip part.

10 Q Finally, for reference points later, even though
11 you collected all the items of evidence, the night
12 this occurred, did you go back the next day and take
13 photographs in the daylight?

14 A I did.

15 Q Why is that, sir?

16 A To save confusion on knowing where the tool was
17 in location to the residence.

18 Q And I'm going to show you a series of
19 photographs, State's Exhibit 16, I believe through 49.
20 Did those show the exterior of the reverend's house,
21 as well as where you found the tool?

22 A This is house on Abraham right here ---

23 Q Uh-huh.

24 A --- where I collected the socks from.

25 Q That would be the yellow house?

1 A Correct.

2 (Pause)

3 Yeah, I did all of these.

4 Q And those show, just basically, the reverend's
5 house, as well as the areas across the street where
6 the items were found?

7 A Right.

8 Q And you took those in the daylight hours for
9 there to be a clear reference with better lighting?

10 A Right.

11 Q Finally, before I do the sketches, did you
12 respond to any other crime scenes in this case?

13 A I'm not sure what you're asking.

14 Q Were you involved in a truck that was
15 photographed?

16 A I'm sorry?

17 Q A truck.

18 A No, I didn't do that.

19 Q Did you also prepare, as a result of your
20 investigation in this case, certain diagrams that we
21 have blown up ---

22 A Right.

23 Q --- depicting the area where these items were
24 found?

25 A Correct.

1 Q I want to show you four of the blow-ups, State's
2 Exhibit 111, 112, 113, and 114.

3 A Okay.

4 Q Do you recognize those?

5 A I do.

6 Q And do those diagrams --- you prepared in this
7 case?

8 A Yes.

9 Q Do those show the general area where you found
10 the items?

11 A Yes.

12 Q And will these aid you in your testimony before
13 the jury?

14 A Right.

15 MS. CAMPBELL: Your Honor, at this time, we'd
16 offer them into evidence.

17 You've got copies of them.

18 MS. DAVIS: No objection, Your Honor.

19 THE COURT: They're admitted without objection.

20 (WHEREUPON, State's Exhibits Nos. 111 - 114 were
21 admitted into evidence.)

22 BY MS. CAMPBELL:

23 Q And if you could just step down, and if you'll
24 come over on this side so the court reporter can hear
25 you.

1 A Okay.

2 Q I'll get out of your way. Now, State's Exhibit
3 Number 111, is this basically an aerial view of what?

4 A Mr. Eichelberger's home on [REDACTED].

5 Q And does that actually show how it configures,
6 and where is Isaac Street on here?

7 A Right here. Farrow Road is down here.

8 Q And the area where the items, the socks, as well
9 as the winch bar were found, where --- what area is
10 it?

11 A Approximately in this area, the field across the
12 street.

13 Q And I show you State's Exhibit Number 113. What
14 does that show?

15 A This shows the area where I collected the steel
16 rod. Mr. Eichelberger's home is just up here.

17 Q This is Mr. Eichelberger's home?

18 A Right. This is [REDACTED]

19 Q And this is actually what part of [REDACTED]

20 [REDACTED]

21 A Backyard, fenced in.

22 Q And that's depicted in the photograph?

23 A Correct.

24 Q I show you what's been marked as State's Exhibit
25 Number 112. Do you recognize that?

- 1 A I do.
- 2 Q What does that show, sir?
- 3 A A photograph of Abraham Street where the socks
4 were collected. It's down here.
- 5 Q And does that also show Mr. Harp's residence at
6 [REDACTED]?
- 7 A Right here. That's his yard.
- 8 Q And, finally, State's Exhibit Number 114. For
9 the record, where your arrows are pointed are
10 approximately placed?
- 11 A Approximate, yes.
- 12 Q Does that show the areas ---
- 13 A Areas on Mr. Eichelberger's residence, the
14 backyard at [REDACTED] and Abraham Street where the socks
15 were collected and Farrow Road.
- 16 Q And this is Farrow Road right here?
- 17 A Right.
- 18 Q Thank you, sir. You can step back up.
- 19 I want to turn your attention to the next year.
- 20 I want to show you --- do you recognize that?
- 21 A Yes, ma'am, I do.
- 22 Q And are those swabs that were actually collected
23 by you?
- 24 A Correct.
- 25 Q From the interior of the vehicle?

- 1 A Right.
- 2 Q And what vehicle was that, sir?
- 3 A That was Mr. McGee's vehicle, a pickup truck.
- 4 Q And you didn't actually go there and process
5 that pickup truck until when?
- 6 A Just a second.
- 7 (Pause)
- 8 Q Uh-huh.
- 9 A March 16th, 15:04 hours.
- 10 Q Of what year?
- 11 A 2010.
- 12 Q So that would be approximately how many months
13 after the actual assault on the reverend?
- 14 A That would be just within a year, just under a
15 year.
- 16 Q Okay. And there was a vehicle --- where did you
17 actually go to process the vehicle?
- 18 A I went to Camden.
- 19 Q And what was the purpose in you trying to get
20 these swabs from the interior of the vehicle?
- 21 A Try to find the victim's DNA inside the vehicle
22 in the floorboard area.
- 23 Q And, again, it is your practice to try to
24 collect evidence. You don't know whether any will be
25 there; is that correct?

1 A That's correct.

2 Q I'm going to show you what's been marked as
3 State's Exhibit Number 50. Do you recognize this?

4 A I do.

5 Q And is that the red vehicle we're talking about?

6 A That's it.

7 Q The truck, pickup?

8 A Yes.

9 Q Your Honor, State's Exhibit 50 is in evidence.
10 There were others marked for ID at this point.

11 THE COURT: Yes.

12 MS. CAMPBELL: Will we be allowed to try to
13 offer those at this point?

14 THE COURT: All right.

15 MS. CAMPBELL: Thank you, sir.

16 BY MS. CAMPBELL:

17 Q I show you what's being marked as State's
18 Exhibit 52 --- excuse me, 51 through 55. Are those
19 identifying features of the vehicle?

20 A Yes, they are.

21 Q And do those fairly and accurately reflect this
22 vehicles that you processed ---

23 A I did.

24 Q --- on March 16th, 2010?

25 A Right. At that time, correct.

1 MS. CAMPBELL: Your Honor, at this time, we'd
2 offer 51 through 55.

3 THE COURT: Any objection?

4 MS. DAVIS: Your Honor, there was a prior
5 objection as to relevance and cumulative.

6 THE COURT: They're admitted over objection.

7 MS. CAMPBELL: Thank you, Your Honor.

8 (WHEREUPON, State's Exhibits Nos. 51 - 55 were
9 admitted into evidence.)

10 THE WITNESS: If I may, the reference was
11 approximately ten months in that question you asked
12 earlier.

13 BY MS. CAMPBELL:

14 Q So even though this happened approximately ten
15 months later, you were still attempting to get
16 evidence?

17 A Correct.

18 Q Although, the likelihood...

19 A Right.

20 Q Did you process the vehicle for fingerprints?

21 A No, I did not.

22 Q And had so much time elapsed, that simply
23 wouldn't be feasible?

24 A Right. I knew who the owner of the vehicle was.
25 If I found Mr. McGee's fingerprints, I know it would.

1 be his.

2 Q Finally, sir, did you also --- I believe it
3 would have been May of 2010 --- did you receive a
4 court order?

5 A Yes.

6 Q And what did that court order instruct you to do?

7 A Collect a buccal swab.

8 Q And that was signed by a circuit court judge, I
9 believe?

10 A Right.

11 Q And again, what's a --- when you say buccal swab,
12 I say buccal swab, how do you spell it?

13 A It's B-U-C-C-A-L.

14 Q Okay, that swab. Again, what is that, just in
15 simple terms?

16 A An oral swab.

17 Q To get a known standard?

18 A Right.

19 Q And the simplest way to get that is to get a
20 buccal swab?

21 A Correct.

22 Q And pursuant to the court order, who did you
23 collect --- I show you State's Exhibit 108. Who did
24 you get that from?

25 A Mr. McGee on 5/11/2010 at 13:46 hours right here

1 in this courthouse.

2 Q 5/11, right here in this courthouse?

3 A Right.

4 Q On May 11, 2010?

5 A Right.

6 Q And did you follow the standards? You collected
7 every piece of evidence in this case to ensure the
8 integrity of the evidence?

9 A Correct.

10 Q And during the time period this was in your
11 custody, did you alter it or tamper with it in any
12 way?

13 A No.

14 Q And was it submitted properly into your evidence
15 room?

16 A Correct.

17 Q And then it was transported to the Richland
18 County Sheriff's Department for further testing?

19 A Right, for further testing.

20 Q Beg the Court's indulgence.

21 (Pause)

22 That swab that we just mentioned, along with the
23 swabs you got from the car, which is State's
24 Exhibit 116 and 108 ---

25 A Uh-huh.

1 Q --- did you later transport those to Richland
2 County for testing, as well?

3 A I did.

4 Q And again no one altered with them or tampered
5 with them?

6 A No.

7 MS. CAMPBELL: Your Honor, at this time, I need
8 to offer State's Exhibit 108 and 116 into evidence.

9 MS. DAVIS: Your Honor, we'd object at this
10 point to there is no chain of custody.

11 MS. CAMPBELL: I belief the swab itself is a
12 tangible object versus the testing. Of course, we
13 have to prove the chain before we get the test
14 results in.

15 THE COURT: What says the defense?

16 MS. DAVIS: We just want them to establish the
17 chain before it's admitted into evidence.

18 THE COURT: It's going to be marked for
19 identification at this time.

20 (WHEREUPON, State's Exhibit Numbers 108 and 116
21 were marked for identification only.)

22 MS. CAMPBELL: Thank you, Your Honor.

23 Is that on the swabs from the car, as well?

24 MS. DAVIS: Yes.

25 BY MS. CAMPBELL:

1 Q Okay. And for the record, the defendant's swab,
2 you mentioned was collected by you on May 11th, 2010?

3 A Right.

4 Q And then you transferred it to, I believe,
5 Officer Buffington in your evidence room?

6 A Correct.

7 Q And then --- and that was done when?

8 A That same day.

9 Q And then later, Officer Buffington then
10 rereleased it to you for you to transport it to
11 Richland County?

12 A Right.

13 Q And that would have been done when?

14 A I don't have that date.

15 Q Can I use your notes to refresh your memory?

16 A Yes.

17 Q July 9th?

18 A Correct, July 9th.

19 Q Of 2010?

20 A Of 2010.

21 Q And when things are put into your evidence room,
22 are there precautions? Do they take certain
23 precautions to make sure everything remains sealed
24 and is properly maintained?

25 A Right.

1 Q And when you transported all the items you
2 talked about, were they properly sealed and submitted
3 in the proper fashion?

4 A Right.

5 Q And no one tampered with them or altered them at
6 all?

7 A No, no.

8 Q Beg the Court's indulgence.

9 (Pause)

10 The socks, you've already testified to that are
11 already in evidence, those were submitted initially
12 to Richland County?

13 A Right.

14 Q And I believe that those were actually
15 resubmitted; is that correct?

16 A Right.

17 Q And did you participate in that?

18 A I didn't, no, I did not.

19 MS. CAMPBELL: Beg the Court's indulgence.

20 (Pause)

21 BY MS. CAMPBELL:

22 Q Specifically, if I turn your attention to
23 September 11th of 2010, did you pick those up from
24 the Richland County Sheriff's Department?

25 A I did.

1 Q And then resubmitted them into your ---

2 A Back into our evidence room.

3 Q On the 14th?

4 A Right.

5 Q And during the time period they were in your
6 custody, did anyone alter them or tamper with them in
7 any way?

8 A No.

9 Q And then later, did investigator ---- Officer
10 Buffington put them back later for you to resubmit
11 them?

12 A Right.

13 Q You, again, you didn't alter them or change them
14 in anyway?

15 A No.

16 Q When you received all the items of evidence in
17 this case, was everything properly sealed and
18 submitted that way?

19 A Correct, everything.

20 MS. CAMPBELL: Thank you, Your Honor. I don't
21 have anything further.

22 THE COURT: All right.

23 Ladies and gentlemen, we'll take a break now
24 before cross-examination. We'll take about 15
25 minutes. Please go to the jury room. Please do not

1 discuss the case in the jury room.

2 (WHEREUPON, the jury left open court at
3 approximately 3:56 p.m.)

4 THE COURT: Anything else before we break?

5 MS. CAMPBELL: No, sir.

6 MS. PRINGLE: No.

7 THE COURT: All right.

8 MS. PRINGLE: Your Honor, if I may supplement my
9 previous objection. I had objected to the
10 introduction of the photo lineups from Mr. Larry Harp.

11 I did not have the correct cite. I do now have
12 the correct cite. It is State vs. Traylor, 600
13 S.E.2d 523. It's a 2004 case.

14 The holding in this case is that introduction of
15 a lineup in that case was error, and the Court states,
16 "The introduction of a mug shot of the defendant is
17 reversible error unless, one, the State has a
18 demonstrable need to introduce the photograph; two,
19 the photograph shown to the jury does not suggest the
20 defendant has a criminal record; and three, the
21 photograph is not introduced in such a way as to draw
22 attention to its origin or implication."

23 In that case, they found no demonstrable need to
24 introduce the photo lineup. I don't think that one
25 has been articulated here.

1 I would just renew my previous objection and ask
2 at that time if the Court would consider --- I guess
3 I would move for a mistrial. If the court does not
4 grant a mistrial, I would ask the court consider
5 withdrawing that photo lineup from evidence.

6 I think that we can at least diminish any
7 prejudice by its admission. We would feel that
8 it's...

9 THE COURT: All right. Well, first of all,
10 there is no prejudice because it hadn't been shown to
11 the jury. Secondly, the --- for the defense to seek
12 a mistrial based on misrepresented authority by the
13 defense in citing the case, it is not supported by
14 law.

15 And how do you spell the word "Traylor"?

16 MS. PRINGLE: T-R-A-Y-L-O-R, 600 S.E.2d 523,
17 South Carolina Supreme Court, 2004. I have copy for
18 the Court, if you'd like me to hand it up.

19 THE COURT: All right. We'll be in recess for
20 15 minutes.

21 You may step down, sir. Please do not discuss
22 your testimony.

23 THE WITNESS: Yes, sir.

24 (WHEREUPON, a short break was taken.)

25 THE COURT: Ms. Pringle, do you claim that the

1 lineup that Mr. Harp was shown contains a mug shot?

2 MS. PRINGLE: I believe they are mug shots, Your
3 Honor.

4 THE COURT: All right. And what do you ---
5 what's a mug shot to you?

6 MS. PRINGLE: A shot --- a photograph taken upon
7 arrest.

8 THE COURT: So any photograph upon arrest is a
9 mug shot?

10 MS. PRINGLE: Taken by the facility, the
11 detaining facility, or the police station who is
12 arresting the individual, I would say, is a mug shot.

13 THE COURT: I'll hear from the State.
14 Ms. Campbell?

15 MS. CAMPBELL: Your Honor, in Traylor, it
16 specifically talks about the mug shot being that it
17 has identifying information on it.

18 It talks about the police department in York
19 County. The photographs reflect the height of the
20 individual, and his was different from the other ones.

21 They were all --- I would agree that that would
22 be impermissibly suggestive. There is nothing in
23 these photographs to say that they are anything but a
24 driver's license picture or some other photograph
25 after they've been detained.

1 I would refer to the State vs. Derrick Ford and
2 Anthony Brown, which is 513 S.E.2d 385. I would
3 distinguish Traylor on those grounds, Your Honor, and
4 I don't think I need to say anything else.

5 THE COURT: What are those other cases about in
6 relation to this issue?

7 MS. CAMPBELL: In State vs. Ford and Anthony
8 Brown, Your Honor, a photographic lineup that
9 included a mug shot of the defendant was admissible.
10 I can hand that up at this time, and I would just
11 hand up this case that's in that same...

12 THE COURT: All right. Do you agree with
13 Ms. Pringle that a mug shot is any photograph taken
14 upon arrest that's included in a lineup?

15 MS. CAMPBELL: No, Your Honor. I think a mug
16 shot has identifying characteristics on it which make
17 it a mug shot. In other words, like --- you know how
18 they used to hold the little sign with the
19 identifying information about themselves?

20 THE COURT: Yeah.

21 MS. CAMPBELL: That's traditionally what's
22 considered to be a mug shot, and I think that is
23 referenced in Traylor quite readily.

24 THE COURT: Well, the defense continues to offer
25 what the defense intends to be authority to support

1 its position, and when I read the cases, they seem to
2 say the opposite of what the defense is arguing.

3 In this State v. Traylor case where there was a
4 robbery and burglary of three people and the police
5 got all three of them around the table and they went
6 through a lineup procedure where all three witnesses
7 were there and were picking out Traylor as the
8 defendant --- as the assailant in the case.

9 And in addition to that, the photograph that was
10 used was --- of Traylor was different than the ---
11 those of the others in the --- in the array.

12 In Traylor, the other photographs, I guess, had
13 a --- didn't it have a date on the bottom or
14 something to that effect, whereas, Traylor's photo
15 had York Police Department on it.

16 It was fairly clear that from the manner in
17 which this particular lineup was done is that the ---
18 the procedure was suggestive because it caused a
19 simultaneous lineup procedure.

20 The Court stating that the victims should be
21 individually shown a lineup and individual
22 identifications made, as opposed to a group of three
23 identifying defendants, then the Court further says,
24 "We caution trial judges against utilization of mug
25 shot photos unless absolutely necessary."

1 The Court in this case goes on to describe this
2 particular photo as --- photo as to why they consider
3 it to be a mug shot.

4 Let's see. What does --- what does it say?

5 (Pause)

6 Let me see now.

7 All right. The fact that the photo of Traylor
8 was clearly a mug shot revealed by the front and side
9 poses and the height indicators.

10 And I think to suggest any photo put in a lineup
11 is a mug shot is not a fair use of the term "mug
12 shot". Mug shot, I believe, is as described in this
13 case of the --- showing the front view, the side view,
14 the height indication. Then in this particular case,
15 the bottom of it is stamped "Police Department, York
16 County," and the fact that the photographs reflected
17 the height of the individual is inadmissibly
18 suggestive, as the Court indicated. None of that is
19 as indicated in any of these photographs as used by
20 the department here.

21 I don't see where the --- where the defense has
22 offered me anything, other than just another case
23 that doesn't support its argument. I overrule the
24 objection.

25 You'll --- if you'll take the witness stand. Oh,

1 you're on the witness stand.

2 If you'll bring the jury, please.

3 (WHEREUPON, the jury came into open court at
4 approximately 4:28 p.m.)

5 THE BAILIFF: The jury is seated, Your Honor.

6 THE COURT: All right.

7 Cross-examination, Ms. Davis?

8 MS. DAVIS: Thank you, Your Honor. May it
9 please the Court.

10 CROSS-EXAMINATION:

11 BY MS. DAVIS:

12 Q Good afternoon.

13 A Good afternoon.

14 Q Just a couple of questions.

15 A Yes, ma'am.

16 Q On direct, you stated that you're the one who
17 got to the crime scene and did the photographs for
18 the interior and exterior of the house?

19 A Right, correct.

20 Q And part of those photographs, or a few of those
21 photographs, you would agree --- the place wasn't
22 ransacked.

23 A Right.

24 Q Everything was where it was supposed to be ---

25 A It was.

1 Q --- from what you could tell? And that's in
2 Exhibit 69?

3 A Yeah, yeah.

4 Q And then there's also a photograph of the ---
5 Mr. Eichelberger's checkbook?

6 A On top of the dining room table.

7 Q And I believe there's also a photograph that you
8 took that showed his wallet, along with a cell phone.

9 A In the back --- in his bedroom in the back.

10 Q Yes, sir. So everything from what you could
11 tell was in order in the house?

12 A Pretty much, yes.

13 Q And that same night, you collected some evidence,
14 including some socks?

15 A Right.

16 Q And a metal bar?

17 A Correct.

18 Q And one of the things you collected was a cell
19 phone that was outside?

20 A Right.

21 Q And you stated that --- let's see. You arrived
22 on the scene at about 12:15 ---

23 A Right.

24 Q --- that night or early that morning ---

25 A I did.

1 Q --- in the report. That time is when you
2 started collecting those items?

3 A Pretty much, yes.

4 Q And the cell phone, you --- actually, later that
5 same day, you gave back to the family?

6 A Correct.

7 Q And that was because you were told a family
8 member had dropped it.

9 A I was told through Investigator Reese.

10 Q And do you know who that family member was that
11 had dropped the phone?

12 A No. I gave to it Investigator Reese.

13 Q You gave the phone to Investigator Reese?

14 A Right.

15 Q And one of the other things you did that same
16 day was you took a swab from David Williams?

17 A Correct, early that morning.

18 Q And you did that at the request of Investigator
19 Reese?

20 A A.L. Thomas.

21 Q Okay. Investigator Thomas?

22 A Right.

23 Q That was done right after they had been
24 interrogating him?

25 A Correct.

1 Q Down at headquarters?

2 A Right.

3 Q Beg the Court's indulgence.

4 (Pause)

5 In your opinion, when you were photographing the
6 interior of the house, was there any indication that
7 anything was stolen?

8 A No.

9 Q Anything removed from the --- from the house
10 obvious to you?

11 A No, except Mr. Eichelberger.

12 Q Yes, sir.

13 Nothing further, Your Honor.

14 THE COURT: Any redirect?

15 MS. CAMPBELL: Just one question, Your Honor, or
16 two, excuse me.

17 REDIRECT EXAMINATION:

18 BY MS. CAMPBELL:

19 Q She asked you about whether or not everything
20 was in order in this house.

21 A Right.

22 Q In the kitchen area --- let's just go through
23 the pictures.

24 State's Exhibit 64, did that indicate that
25 everything was in order in this house?

1 A The shoe impressions?

2 Q The stuff on the floor.

3 A No.

4 Q And is that what you typically find in a house
5 that's in order?

6 A (Laughing)

7 Q Blood all over the kitchen floor, two liters of
8 it?

9 A No.

10 Q So in your opinion as a CSI, was everything in
11 order in this house?

12 A No.

13 MS. CAMPBELL: Thank you.

14 THE COURT: Anything else?

15 MS. DAVIS: Nothing further, Your Honor.

16 THE COURT: Thank you, sir. You may step down.

17 THE WITNESS: Yes, sir.

18 THE COURT: Call your next witness.

19 MS. CAMPBELL: The State would call Tracy Dixon.

20 TRACY DIXON,

21 after being duly sworn, testified as follows:

22 THE CLERK: Have a seat in the witness stand,
23 and state your name for the record.

24 THE WITNESS: It's Tracy Dixon.

25 DIRECT EXAMINATION:

1 BY MS. CAMPBELL:

2 Q Ms. Dixon, where are you employed?

3 A At the Columbia Police Department.

4 Q What do you ---

5 A In the evidence room.

6 Q In the evidence room?

7 A Uh-huh.

8 Q And what do your duties in there include?

9 A What I normally do is collect evidence that the
10 officers tag in. From there, I log it in, place in a
11 proper location.

12 Q Is your evidence room kept secure?

13 A Yes.

14 Q And could anyone just come in, take a item, try
15 to change it, or tamper with it or alter it in any
16 way?

17 A No.

18 Q And security measures are in place to make sure
19 that happens?

20 A Yes.

21 Q When you receive an item of evidence --- and
22 we're going to talk about some items in a second
23 because we have to prove chain --- are you --- do you
24 make sure that it's properly submitted prior to you
25 actually receiving it, logging it in and placing it

1 properly?

2 A Yes.

3 Q Was that done in this case on these items that
4 we're getting ready to talk about?

5 A Yes.

6 Q And it must be sealed and packaged properly
7 prior to you getting it?

8 A Yes.

9 Q I want to refer to a pair of tennis shoes of
10 David Williams'. On June 3rd, 2009, did you check
11 those out to, I believe, Investigator Paul Nelson?

12 A Yes, I did.

13 Q And also on that same date, did you also check
14 out a steel rod to Lieutenant Nelson?

15 A Yes.

16 Q Also on that same date, did you also check out a
17 pair of socks to Mr. Nelson?

18 A Yes.

19 Q And some oral swabs, including one from, I
20 believe, the victim in this case, Mr. Eichelberger,
21 as well as David Williams?

22 A Yes.

23 Q And, finally, the only different thing you did
24 was the actual buccal swab that was taken from the
25 victim in this case. You actually logged in from

1 Mr. Nelson when he would have originally gotten that
2 item?

3 A Yes.

4 Q When you checked those items out, if you
5 received the one item, and then you checked the rest
6 of the items out we discussed, were they all properly
7 packaged and sealed for transportation to the
8 Richland County Sheriff's Department?

9 A Yes.

10 Q And had anyone altered them or tampered with
11 them in any way while they were in your evidence
12 room's custody?

13 A No.

14 MS. CAMPBELL: Thank you, ma'am. I don't have
15 anything further.

16 THE COURT: By the defense?

17 (Pause)

18 MR. STRICKLER: No, sir. Thank you very much.

19 THE COURT: Thank you. You may step down.

20 MS. CAMPBELL: The State would call Donna Martin.

21 DONNA MARTIN,

22 after being duly sworn, testified as follows:

23 THE CLERK: Have a seat in the witness stand.

24 THE BAILIFF: Watch your step. State your name
25 for the record.

1 THE WITNESS: Donna Martin.

2 DIRECT EXAMINATION:

3 BY MS. CAMPBELL:

4 Q Ms. Martin, where are you employed?

5 A City of Columbia Police Department, evidence
6 unit.

7 Q And what do you do in the evidence unit?

8 A I intake all evidence that any officer or
9 investigator brings to us or ID tech.

10 Q Is there an evidence locker where, say on the
11 weekend, evidence can be submitted and remain secure
12 until you can log in it?

13 A Yes.

14 Q And is that unusual for that to happen in the
15 case?

16 A No. It's not unusual. That happens every day.

17 Q Okay. And prior to you taking any evidence into
18 your evidence room and logging it in, do you make
19 sure it's properly sealed and submitted?

20 A Yes.

21 Q And in all the evidence we're going to talk
22 about in this case, that was done?

23 A Yes.

24 Q Specifically as to a pair of sneakers involved
25 in this case, did Investigator Pegram put them in a

1 locker where you collected them, or did they just go
2 directly to you? I'm not sure which.

3 A It was put in a locker.

4 Q And you actually collected those items from that
5 locker?

6 A Yes.

7 Q And were those properly submitted?

8 A Yes.

9 Q Sealed?

10 A Uh-huh.

11 Q And while they were in your possession, has
12 anyone had an opportunity to alter them or change
13 them in any way?

14 A No. Once an officer or investigator puts
15 something in a locker, it's under a lock. The only
16 way it can be unlocked is by us.

17 Q Okay. And if, in fact, an item is not properly
18 sealed or submitted or it looks like it's been
19 tampered with, what steps would you take to make sure
20 that ---

21 A We inform the --- whoever turns it in, the
22 officer or the ID person, before we can --- we
23 receive it in, but we don't touch it until they come
24 and properly take care of it.

25 Q But in this case, that wasn't an issue?

1 A No.

2 MS. CAMPBELL: Thank you, ma'am. I don't have
3 anything further.

4 MR. STRICKLER: No, sir. Thank you.

5 THE COURT: Thank you. You may step down.

6 MS. CAMPBELL: The State would call Officer
7 Buffington.

8 WILLIAM BUFFINGTON,
9 after being duly sworn, testified as follows:

10 THE CLERK: Thank you. Have a seat in the
11 witness stand, please. State your name for the
12 record.

13 THE WITNESS: Bill Buffington.

14 DIRECT EXAMINATION:

15 BY MS. CAMPBELL:

16 Q Officer Buffington, where are you employed?

17 A The City of Columbia Police Department.

18 Q What do you do there, sir?

19 A Right now I work in the supply unit.

20 Q Back in 2009 and 2010, were you working in the
21 evidence room?

22 A Yes, I did.

23 Q And what did your duties include there, sir?

24 A Evidence came in. I would log it in, and it
25 would be stored there until it was needed later.

1 Q And you were one of the other evidence
2 technicians that have testified in this case?

3 A Yes.

4 Q And, again, for the record, everything would be
5 kept secure in your evidence room?

6 A Yes, ma'am.

7 Q And before you check any evidence in or check
8 them out, does it have to be properly packaged and
9 sealed?

10 A Yes, ma'am.

11 Q And all the evidence we're talking about in this
12 case was?

13 A That's right.

14 Q I want to turn your attention to a pair of socks
15 that I believe were submitted to you from Paul Nelson
16 on September 14th, 2009.

17 A What number? Oh, okay. Yes, that was number 16?

18 Q Yeah.

19 A Okay.

20 Q And those were actually logged in back into the
21 evidence room, having been out to, I believe, the
22 county.

23 A This says ---

24 Q They were logged in by Investigator Paul Nelson.

25 A It looks like they were taken --- that they were

1 left in the locker.

2 Q By Paul Nelson?

3 (Pause)

4 Well, let me rephrase.

5 A I --- I...

6 Q Were they properly submitted?

7 A Yeah, they were properly submitted to the locker.

8 Q And sealed?

9 A Yes, ma'am.

10 Q And what date was that?

11 A This is March 17th, 2010.

12 Q Can you go back to September 14th, 2009?

13 A Okay. September 14th, '09?

14 Q Uh-huh.

15 A Okay. I see at that time it was --- Donna

16 Martin logged something out to Paul Nelson on

17 September 14th, '09, some photos.

18 Q Do you remember on the --- does it show the

19 chain of custody on the a pair of socks?

20 A Yes.

21 Q And can you go through the chain of custody, for
22 the record?

23 A Yes.

24 Q Which were they originally submitted?

25 A That would be number 16. Number 16, the pair of

1 socks looks like it was originally submitted ---

2 Q And then resubmitted.

3 A --- on March 17th, 2010. It was left in the
4 locker and that's where I took them and logged them
5 into the property room.

6 Q You took them and logged them into the property
7 room?

8 A Yes.

9 Q And then on --- there were four swabs from the
10 interior of the vehicle that were the latest
11 submission in this case?

12 A What date was that?

13 Q On 3/23/2010, collected them from a locker.

14 A On 3/23, let's see. Okay. Yes, four swabs and
15 one forensic kit.

16 Q Okay.

17 A That was also left in the locker. I took it out
18 and logged it into the evidence room.

19 Q Okay. And then those items were logged back out,
20 I believe, to Investigator Nelson in July of that
21 year. You're referring to the notes ---

22 A There's a lot of writing on here so...

23 Let me see. That was 20, 21 --- 20 and --- all
24 right. Number 20 ---

25 Q Uh-huh.

1 A --- was from me to Paul Nelson ---

2 Q Uh-huh.

3 A --- on 7/09/10.

4 Q That's correct.

5 A It went to the Richland County Sheriff's
6 Department.

7 Q That's correct.

8 A Okay.

9 Q And that item when you submitted it or
10 transferred it to him, it hadn't been altered or
11 tampered with in any way?

12 A No, it had not.

13 Q It was sealed?

14 A That's correct.

15 Q And other than that, were you involved in the
16 chain of custody on the pair of socks?

17 A Yes. That would have been on March 1st, 2010.
18 The socks were taken from me to Paul Nelson, and it
19 was also taken to the Richland County sheriff's
20 office.

21 Q That's right. And when you submitted those to
22 Paul Nelson, while they had been in your evidence
23 room, had anyone tampered with them or altered them
24 in any way?

25 A No.

1 Q And when they were left, were they properly
2 sealed?

3 A Yes, they were.

4 Q Did you have any --- beg the Court's indulgence.

5 (Pause)

6 Specifically, as to item number five on your
7 list.

8 A The socks?

9 Q The socks.

10 A Uh-huh.

11 Q Finally, did you have any involvement with the
12 socks in this case as far as transferring evidence on
13 those?

14 A That was the one --- I have to start with that
15 number five.

16 (Pause)

17 Yes. That's what we were talking about on
18 March 1st, 2010. Paul Nelson checked the socks out
19 from ---

20 Q Out.

21 A --- the evidence room.

22 Q You would receive those back from him on
23 September 14th, 2009, is the only part I'm missing?

24 A Okay. September 14th?

25 Q They had been logged back in.

1 A Okay, yes.

2 Q And that's noted in your records; is that
3 correct?

4 A Yes.

5 Q And when those were submitted back in, and then
6 ultimately, you sent them back out to the county, had
7 anyone altered them or tampered with them in any way?

8 A No, ma'am.

9 MS. CAMPBELL: That's all I have, Your Honor.

10 THE COURT: Examination, defense?

11 MR. STRICKLER: If it may please Your Honor.

12 THE COURT: All right.

13 CROSS-EXAMINATION:

14 BY MR. STRICKLER:

15 Q You've been referring to some records while
16 you've been up here?

17 A Yes. This is in an evidence card, and then all
18 the information that goes with it.

19 Q Thank you. May I see it for just a moment,
20 please?

21 (Complies)

22 (Pause)

23 Thank you very much.

24 I don't have any questions, Your Honor?

25 THE COURT: You may step down.

1 MS. CAMPBELL: Thank you, Your Honor.

2 THE COURT: Next witness?

3 MS. CAMPBELL: The State would call William
4 Cedarstaff.

5 WILLIAM CEDARSTAFF,
6 after being duly sworn, testified as follows:

7 THE CLERK: Thank you. Have a seat in the
8 witness stand.

9 THE BAILIFF: Watch your step. State your name
10 for the record.

11 THE WITNESS: William Cedarstaff.

12 DIRECT EXAMINATION:

13 BY MS. CAMPBELL:

14 Q Sir, where are you employed?

15 A Richland County Sheriff's Department, evidence
16 room.

17 Q What do you do there, sir?

18 A I log in any and all evidence that is turned in
19 by officers and maintain it for testing or to be
20 taken to court or whatever.

21 Q Once an item has been submitted for testing, say
22 in your DNA lab, is it typically stored in the
23 evidence room first?

24 A If it comes from an outside agency, yes.

25 Q And if an outside agency is submitting it, is

1 that how it would be handled?

2 A Correct.

3 Q And during the time period when it is stored in
4 the evidence room, are precautions taken --- take
5 place to make sure that that evidence remains sealed
6 and properly stored?

7 A That is correct.

8 Q And that was done in this case by the items
9 we're about to talk about?

10 A That's correct.

11 Q Specifically, I want to refer to your Richland
12 County Sheriff's item number five, which is a pair of
13 sneakers; item number six, which is a steel rod; item
14 number four, which was a pair of socks, and a swab
15 from the victim, Tryon Eichelberger, and a swab from
16 David Williams.

17 Were those items submitted, and then later you
18 forwarded them to other members of your staff at the
19 Richland County Sheriff's Department?

20 A That is correct.

21 Q And specifically on June 8th, 2009, who did you
22 forward those items to?

23 A (There was no response.)

24 Q Do you know Christine Barrickman?

25 A Yes, I do.

1 Q And do you know where she works?

2 A She works at the Richland County Sheriff's
3 Department in the forensics lab.

4 Q In the forensics lab?

5 A Yes.

6 Q And were those items that I just mentioned
7 forwarded to her on June 8th, 2009?

8 A Yes, that's correct.

9 Q From your evidence room?

10 A That is correct.

11 Q And when you submitted those to her, or allowed
12 her to pick them up, actually, is how it would work,
13 were they properly sealed or was there any evidence
14 of any tampering?

15 A No. The items had not been tampered with.

16 Q And if there had been any evidence of tampering,
17 if they hadn't been properly submitted or anything,
18 that would have been noted and dealt with in a
19 completely different avenue?

20 A That is correct.

21 Q But that's not present in this case?

22 A No, it's not.

23 MS. CAMPBELL: Thank you, sir.

24 THE COURT: From the defense?

25 MR. STRICKLER: Thank you, sir. May it please

1 the court.

2 CROSS-EXAMINATION:

3 BY MR. STRICKLER:

4 Q Good afternoon, Mr. Cedarstaff.

5 A Good afternoon.

6 Q My name is Doug Strickler. I'm one of the
7 attorneys representing Mr. McGee here.

8 How long have you been employed with the
9 evidence department?

10 A Four years.

11 Q Four years, okay. And Richland County was not
12 the investigating agency in this case, correct, to
13 your knowledge?

14 A I have no knowledge of that, sir.

15 Q All right. You have the --- the Richland County
16 property report with you?

17 A Yes, I do.

18 Q May I take a look at it, please?

19 (Pause)

20 Just so we're on the same page.

21 A Thank you.

22 Q If you'll reference that, as an agency, Richland
23 County assigns case numbers to cases; is that correct?

24 A That is correct, sir.

25 Q Okay. Was this number --- case assigned a case

1 number?

2 A Yes, it was, sir.

3 Q What was the case number assigned by Richland
4 County?

5 A 0906031603.

6 Q And in referring to the first page of the report
7 right near the top, "property class", that is a
8 property class in this particular case, evidence to
9 assist another agency?

10 A That's correct, sir.

11 Q Okay. And I take it you did not actually ---
12 when the property first came to the sheriff's
13 department, you didn't work the evidence custodian
14 that received it at that point in time, correct?

15 A That's correct.

16 Q That was received by one Tena Goff, who also
17 works in your department?

18 A That's correct.

19 Q That lady right back there.

20 A Yes.

21 Q Okay. But Ms. Campbell specifically asked you
22 about transfers of evidence to Christine Barrickman,
23 who was with your forensic department?

24 A Correct.

25 Q On June 8th of 2009?

1 A That is correct, sir.

2 Q Okay. And at that point in time, you
3 transferred evidence numbers one, two, three, four,
4 five, and six, correct?

5 A That is correct.

6 Q One would be the buccal swabs from
7 Mr. Eichelberger?

8 A That is correct, sir.

9 Q Two would be buccal swab from David Williams?

10 A That is correct, sir.

11 Q Three would be a buccal swab from Michael Allen
12 Johnson?

13 A That is correct, sir.

14 Q Four would be a pair of white socks?

15 A That is correct.

16 Q Five would be two white K-Swiss shoes?

17 A That is correct.

18 Q Six would be a stainless steel rod?

19 A That's correct.

20 MR. STRICKLER: That's correct. Okay. Thank
21 you very much, sir.

22 THE COURT: Anything further?

23 (There was no response.)

24 THE COURT: Any redirect?

25 MS. CAMPBELL: Oh no, sir. I'm sorry.

1 THE COURT: Thank you, sir. You may step down.

2 THE BAILIFF: Watch your step.

3 THE COURT: Next witness?

4 MS. GARFIELD: The State calls Patricia Weed.

5 PATRICIA WEED,

6 after being duly sworn, testified as follows:

7 THE CLERK: Thank you. Have a seat in the
8 witness stand. State your name for the record.

9 THE WITNESS: Patricia Weed.

10 DIRECT EXAMINATION:

11 BY MS. GARFIELD:

12 Q Deputy Weed, where are you employed?

13 A Richland County Sheriff's Department in the
14 evidence room.

15 Q And were you also with the evidence room back in
16 2009 and 2010?

17 A Yes, ma'am.

18 Q And is your duties with the evidence room to
19 maintain the evidence?

20 A Yes, ma'am.

21 Q To keep it secure?

22 A Yes.

23 Q Do you accept any evidence that's not packaged
24 properly?

25 A No.

1 Q If there is evidence that's not packaged
2 properly, what do you do?

3 A We call the officer and have them come fix it
4 before we take it into the evidence room.

5 Q Okay. Specifically, in this case that we're in
6 court today involving the victim, Reverend
7 Eichelberger, were you in possession of any evidence
8 pertaining to this case?

9 A Yes.

10 Q And I'm specifically referring to a pair of
11 socks. Are you familiar with those socks?

12 A Yes, ma'am.

13 Q Did you transfer those socks to a Mr. John
14 Barron back on March 1st, of 2010?

15 A Yes.

16 Q And were those packaged properly?

17 A Yes, ma'am.

18 Q And was there any other evidence that you
19 assisted with containing --- concerning this case?

20 A The socks was the only thing I had to deal with.

21 MS. GARFIELD: Thank you, Deputy Weed. Please
22 answer any questions the defense has for you.

23 THE COURT: Anything from the defense?

24 MR. STRICKLER: Your Honor, I have no questions
25 for the witness.

1 THE COURT: Thank you. You may step down.

2 Your next witness?

3 MS. CAMPBELL: The State would call Tena Goff.

4 TENA GOFF,

5 after being duly sworn, testified as follows:

6 THE CLERK: Thank you. Have a seat in the
7 witness stand. State your name for the record.

8 THE WITNESS: Tena Goff.

9 DIRECT EXAMINATION:

10 BY MS. CAMPBELL:

11 Q Ma'am, where are you employed?

12 A The Richland County Sheriff's Department
13 evidence room.

14 Q And how long have you worked with Richland
15 County?

16 A Over 18 years.

17 Q And what do your duties include in the evidence
18 room?

19 A Help to log in, accept, store evidence, maintain
20 the chain of custody for evidence and also the
21 purging process.

22 Q And we've all been referring to documents in
23 this case as to your chain of evidence document by
24 computer?

25 A Yes, it is.

1 Q And that was done in this case?

2 A Yes, ma'am.

3 Q And, specifically, were you involved in the
4 chain involving several items that were ultimately
5 tested by the DNA lab in this case?

6 A Yes, I was.

7 Q And I want to look at items one through four.
8 What are those items?

9 A Item one is a buccal swab from Tryon
10 Eichelberger. Item two is a buccal swab from David
11 Williams. Item three is a buccal swab from Michael
12 Allen Johnson. Item four is a pair of white socks.
13 Item five is two white K-Swiss shoes, and item six is
14 a stainless steel rod.

15 Q Those are items that were initially submitted
16 with assisting another agency case?

17 A Yes.

18 Q And when you have that label in a case,
19 "assisting another agency", what does that mean?

20 A That means another agency has brought us their
21 evidence, because it means they need our help in
22 testing it.

23 Q Okay. And is that pretty standard procedure?

24 A Yes.

25 Q And those items, I believe, were taken in by you,

1 all those items we just mentioned, items one through
2 six, from Investigator Nelson on June 4th, 2009?

3 A I brought them in --- yes. I accepted them on
4 June 4th.

5 Q And at that point --- and that was in 2009,
6 correct?

7 A Yes.

8 Q And at that point, what was done with them by
9 you?

10 A Before they were accepted, I made sure that they
11 were packaged and labeled properly and sealed
12 properly. Once that had been done, then I logged
13 them in and put them on our shelves in the back.

14 Q And when you log in items --- as we go through
15 talking about all of these items, you check to make
16 sure everything is proper, nothing has been tampered
17 with or looks like it has been altered in any way?

18 A That is correct.

19 Q And everything was properly submitted in this
20 case?

21 A Yes.

22 Q And as far as the initial submission in this
23 case of items one through six, when you secured them
24 into your evidence room, they were properly stored
25 and maintained?

1 A Yes, they were.

2 Q And would have been kept --- would anybody have
3 any access to them during that time they were there?

4 A No.

5 Q And y'all have a protocol in place to make sure
6 that doesn't happen?

7 A Yes, ma'am.

8 Q Then in items that were checked back out were
9 items one through four then returned back to CPD back
10 on September 11th, 2009?

11 A Yes. I released them to Deputy Nelson, or
12 Arthur Nelson, from CPD.

13 Q In this case, there was a pair of socks we keep
14 referring to. Originally, they were item number four;
15 is that correct?

16 A Yes.

17 Q And they were later resubmitted the next year
18 for further testing. Would they have been given a
19 different number?

20 A Yes, they were. They were given item number ten.

21 Q And that didn't affect them being a different
22 item. It was just because it was resubmitted, it was
23 assigned another number; is that correct?

24 A Yes.

25 Q Okay. And at that time, also, in 2010, were

- 1 additional items, 11 and 12, submitted?
- 2 A Yes, there was.
- 3 Q By Investigator Nelson to your department?
- 4 A Yes.
- 5 Q What items were those?
- 6 A Item 11 was an oral swab from Frankie Lee McGee.
- 7 Item 12 was four swabs from the interior side vehicle.
- 8 Q And those were properly submitted to your
- 9 department on, I believe, on July 9th, 2010?
- 10 A Yes. They were.
- 11 Q And secured in the evidence room?
- 12 A Yes, they were.
- 13 Q And did you actually personally transfer those
- 14 to the DNA analyst in this case, John Barron?
- 15 A I transferred them on July 15th, 2010, at
- 16 8:37 in the morning.
- 17 Q Okay. And during the time period they were kept
- 18 in your evidence room, did anyone tamper with them,
- 19 alter them or do anything to them?
- 20 A No, ma'am.
- 21 Q And they were submitted to --- as all the other
- 22 items in this case, when they were submitted to be
- 23 tested, were they sealed properly and properly
- 24 submitted?
- 25 A Yes, ma'am.

1 Q Beg the Court's indulgence.

2 (Pause)

3 And when those items were transferred for
4 testing during the time period there, y'all hadn't
5 resealed them or changed the seals or anything like
6 that. They were submitted the way they were
7 submitted to your evidence room for further testing?

8 A If they're not packaged in our packaging, we
9 have them repackaged. But no, there's no tampering
10 or altering of the evidence at all.

11 Q You don't break the original seal. You just
12 repackage them later?

13 A No, ma'am, we do not.

14 MS. CAMPBELL: Thank you. Nothing else.

15 THE COURT: Anything from the defense?

16 MR. STRICKLER: Thank you, Your Honor. I have
17 no questions for this witness.

18 THE COURT: All right.

19 MR. STRICKLER: Thank you.

20 THE COURT: All right. You may step down.

21 Next witness?

22 MS. GARFIELD: The State calls Christine
23 Barrickman.

24 CHRISTINE BARRICKMAN,

25 after being duly sworn, testified as follows:

1 THE CLERK: Thank you. Have a seat in the
2 witness stand.

3 THE WITNESS: Christine Barrickman.

4 DIRECT EXAMINATION:

5 BY MS. GARFIELD:

6 Q Ms. Barrickman, where are you employed?

7 A Richland County Sheriff's Department.

8 Q If you'll please tell the jury what your duties
9 are with the sheriff's department.

10 A I work in the DNA lab. I assist the analyst
11 with the processing of cases.

12 Q And what is your prior education and experience
13 to allow you to do so?

14 A I have a criminal justice degree, Bachelor of
15 Science, criminal justice. I've had numerous
16 in-house training disciplines. I attended outside
17 agency --- I mean, outside classes, and we go through
18 training every year.

19 Q How long have you been with the sheriff's
20 department?

21 A Five years.

22 Q And has all five years been in the DNA
23 department?

24 A Yes, it has.

25 Q Specifically, on this case, or any case, what do

1 you when you come in possession of evidence?

2 A I first make sure that the case numbers, the
3 paperwork, all the information on the packaging is
4 correct; that it is packaged and sealed properly, and
5 then I would actually open the evidence and process
6 the evidence.

7 Q And when you say process the evidence, can you
8 explain to the jury what you mean?

9 A It depends on what kind of evidence it is. If
10 it's a swab where something has already been swabbed,
11 I would cut that and put it into a tube, and then the
12 tubes, the cuttings that are in the tubes are turned
13 over to the analyst.

14 If it needs to be tested --- if we think it
15 might be possible blood or, you know, possible semen,
16 something like that, we run those kinds of tests.

17 If it's clothing, depending on what they want
18 with the clothes, we may examine those for blood,
19 semen, saliva. Then if we were to find something, we
20 would take a cutting or a swab from that.

21 Q Ms. Barrickman, did you have the opportunity to
22 have control of any of the evidence in this case that
23 we're in court with today?

24 A Yes, I did.

25 Q And, specifically, did you come in contact with

1 a pair of tennis shoes on June 11th, 2009?

2 A Yes, I did.

3 Q And did you have the opportunity to come into
4 contact with a steel rod on June 11th, 2009?

5 A Yes.

6 Q And also, did you come into contact with a pair
7 of socks on June 11th, 2009?

8 A Yes.

9 Q And did you come into possession, also, of three
10 separate buccal swabs belonging to Tryon Eichelberger,
11 David Williams, and the defendant, Mr. Frankie McGee?
12 I'm sorry, not Mr. McGee. Did you have a chance to
13 come into contact with three swabs? Sorry, it's
14 getting late.

15 A Yes.

16 Q Okay. And let's just go through them one by one.
17 Starting with the buccal swabs, what did you do
18 initially when you came into possession of those?

19 A Again, the buccal swabs, I would have just
20 strictly cut a piece of the swab and put it into a
21 tube. The white socks, I examined them. I swabbed
22 the inside of the socks to get any DNA from that.

23 There was a stain on the outside of the socks
24 that I tested with a chemical presumptive test called
25 phenolphthalein for the presence of blood. That was

1 positive, so I did take a cutting from that.

2 There were two socks. I did same thing on both
3 of those. There was a pair of tennis shoes. There
4 was a couple spots that could have possibly been
5 blood, in my opinion, so I tested those. They were
6 negative.

7 I did take a swab from the inside of the shoes
8 just to get any possible DNA evidence. And then the
9 metal bar, I swabbed one end of the bar for possible
10 DNA. The other ends of the bar had a stain on it
11 which I tested, and it was positive for blood. I
12 swabbed that and ---

13 Q When you say swabbed --- they don't do this
14 every day. Would you explain to the jury what,
15 physically, you do?

16 A Right. The swab is basically like a Q-tip. You
17 take a Q-tip, and you add distilled water to it,
18 which makes the swab wet, which helps you, you know,
19 get the stain up off of the item that you're trying
20 to swab.

21 Q And you did that with this item that you
22 previously testified to?

23 A Correct.

24 Q And after you did those swabs and took the
25 cutting, what did you do with the physical evidence?

1 A The evidence and the cuttings are then passed
2 over to whichever analyst is working the case.

3 Q Do you recall the analyst that worked this case?

4 A John Barron.

5 Q And did you give the items to John Barron?

6 A I did.

7 Q And they were not tampered with in any way?

8 A No.

9 Q And was that the extent of your working on this
10 case?

11 A Yes.

12 MS. GARFIELD: Thank you. Please answer any
13 questions the defense counsel may have.

14 THE COURT: Defense?

15 MR. STRICKLER: Just a couple of things please,
16 sir.

17 CROSS-EXAMINATION:

18 BY MR. STRICKLER:

19 Q Good afternoon, ma'am.

20 A Hi.

21 Q My name is Doug Strickler. I'm one of the
22 attorneys representing Mr. McGee here. Just a couple
23 of questions.

24 The solicitor was asking you about coming into
25 contact with the items on June 11th. You actually

1 came into contact with the items first on June 8th,
2 correct? They were transferred to you by William
3 Cedarstaff on June 8th?

4 A Yes, you're correct. The date is June 8th,
5 correct.

6 Q Okay. And then on June 11th, you transferred
7 those items that she had been talking about to
8 Mr. Barron, who is with the DNA department, correct?

9 A That's correct.

10 Q Okay. And you've been referring to some notes?

11 A Uh-huh.

12 Q May I take a quick look at them, please?

13 A Sure. These are my notes, and then this is the
14 property report.

15 Q Okay. You do --- you do the preliminary testing
16 on items submitted to the DNA department?

17 A Correct.

18 Q Is that correct? You testified about
19 phenolphthalein test, which is the presumptive test
20 for the presence of human blood?

21 A Correct.

22 Q And depending on the nature of the things that
23 are submitted to you, there might be other
24 presumptive tests that you might do?

25 A Correct.

1 Q For the presence of other --- other bodily
2 fluids, correct?

3 A Correct.

4 Q And then you take samples of areas that --- that
5 you get a positive result on; is that right, you
6 talked about clipping, taking clippings from socks in
7 this particular case?

8 A Right. If there was a stain on the socks, I
9 would test that. If it was positive, then I would
10 cut where I swabbed and where it was positive.

11 Q And that --- that's what happened in this
12 particular case, correct?

13 A Correct.

14 Q Okay. Because what you've done is a presumptive
15 test, which means it's not for sure that there's
16 blood there, human blood there, and it needs to be
17 tested further?

18 A Correct.

19 Q If you do the presumptive test and nothing comes
20 up, then you don't have to worry about testing it
21 further.

22 A I generally don't test it, correct.

23 MR. STRICKLER: Thank you very much, ma'am.

24 That's all I have.

25 MS. GARFIELD: Just briefly, Judge.

Redirect of Barrickman by Garfield
Direct of Hines by Campbell

490

REDIRECT EXAMINATION:

1
2 BY MS. GARFIELD:

3 Q You can get DNA, however, from the swab, correct?

4 A Correct.

5 Q You couldn't make a cutting of that rod though,
6 right?

7 A Right.

8 MS. GARFIELD: Thank you.

9 THE COURT: Anything further?

10 MR. STRICKLER: Oh, no, sir.

11 THE COURT: You may step down.

12 Next witness?

13 MS. CAMPBELL: The State would call Teresa Hines.

14 TERESA HINES,

15 after being duly sworn, testified as follows:

16 THE CLERK: Thank you. Have a seat in the
17 witness stand.

18 THE WITNESS: Teresa Hines, that's H-I-N-E-S.

19 MS. CAMPBELL: Your Honor, may we approach just
20 to clarify?

21 THE COURT: Yes.

22 (WHEREUPON, a bench conference was held in the
23 presence, but not within the hearing of the
24 jury.)

25 DIRECT EXAMINATION:

1 BY MS. CAMPBELL:

2 Q Agent Hines, where are you employed?

3 A I'm employed with the South Carolina Law
4 Enforcement Division, also known as SLED.

5 Q What do you do there, ma'am?

6 A I'm a DNA analyst assigned to the database
7 department.

8 Q Tell the jury a little bit about your education
9 and training in the field of DNA analysis.

10 A I started off in the DNA case work department as
11 an analyst. I had to go through two years of
12 training up under a court-qualified analyst. I had
13 extensive training outside of SLED. That's for cases
14 work and for the database itself.

15 I've also attended training through the FBI for
16 the department I am currently assigned to. I have a
17 Bachelor Degree in biology from the University of
18 South Carolina, and I do have four of the classes
19 that are required in order to be a DNA analyst.
20 That's cellular and molecular biology, genetics
21 registry (phonetic) and statistics.

22 Q And how long have you worked with the DNA
23 department?

24 A Whenever I started, I was an intern, that was in
25 2005. It was actually one department known as DNA.

1 Since then, it's actually been split from case work
2 into CODIS.

3 Q CODIS?

4 A Uh-huh.

5 Q And are you currently assigned to ---

6 THE COURT: If you'll slide the mic towards ---
7 toward the left some, since you're looking that way
8 when you're speaking.

9 THE WITNESS: Sorry.

10 BY MS. CAMPBELL:

11 Q And what is CODIS?

12 A CODIS is basically an acronym. It's the
13 Combined DNA Index System. It's basically a
14 repository of DNA database samples from forensic
15 laboratories. It's used by the state, local, and
16 federal agencies to assist in investigations.

17 Q And are you currently assigned to the CODIS
18 division?

19 A I am.

20 Q Do you have any specialized training as far as
21 what you do for the CODIS division?

22 A That was part of the training that I had to go
23 through for the FBI, and I also have to attend
24 training every year to continue to be qualified as an
25 analyst in the DNA database department.

1 Q And your expertise is in DNA analysis, along
2 with your specialty as CODIS.

3 A Correct.

4 Q Is that a correct way to put it?

5 A Yes?

6 MS. CAMPBELL: Your Honor, at this time, we'd
7 offer her as an expert in those fields.

8 MR. STRICKLER: Which field?

9 MS. CAMPBELL: DNA analysis with an expertise in
10 CODIS.

11 MR. STRICKLER: I'd like the opportunity to voir
12 dire Ms. Hines.

13 THE COURT: You may.

14 MR. STRICKLER: Thank you.

15 Good afternoon, Ms. Hines.

16 THE WITNESS: Hi.

17 MR. STRICKLER: Your position at SLED with CODIS,
18 are you actually involved in DNA testing and analysis
19 in that position?

20 THE WITNESS: Yes. We have proficiency testing,
21 not only in case work, but also in the DNA database.

22 I don't specifically handle evidence samples,
23 because that is a casework thing. However, because I
24 do case work, as well as the database department, we
25 do analyze, and we have to be qualified to do that,

1 the same as casework.

2 MR. STRICKLER: Okay. So you were actively
3 involved in, as part of your job, analyzing DNA
4 samples and coming up with DNA profiles?

5 THE WITNESS: Correct.

6 MR. STRICKLER: All right.

7 That's all I have, Judge. Thank you. I have no
8 objection.

9 THE COURT: All right. She is so qualified.

10 BY MS. CAMPBELL:

11 Q Thank you.

12 What does CODIS stand for?

13 A CODIS, again, is an acronym for the Combined DNA
14 Index System.

15 Q And tell this jury how, if someone has a ---
16 what kind of sample would you receive as part of
17 CODIS?

18 A There are several different types of samples
19 that we would receive. The vast majority of our
20 samples are from convicted offender samples. There
21 is basically a log, and it's outlined in ---
22 basically, it's Title 23, chapter 3, article 9 ---

23 Q Okay. Let me stop you there.

24 A Okay.

25 Q Basically, there are known standards that are

1 collected from certain individuals across the state?

2 A Correct.

3 Q And those are sent to you and maintained within
4 in your database, which is called CODIS?

5 A Correct.

6 Q Is that simplifying it a little bit?

7 A Yes, it is.

8 Q Are there certain regulations and policies and
9 protocols in place to ensure the integrity of your
10 results?

11 A Absolutely.

12 Q And if a certain agency, such as the Richland
13 County Sheriff's Department DNA lab has an unknown
14 sample, is there --- do they have the ability to send
15 it to your CODIS unit to see if it would match any of
16 the known offenders that you have within your unit?

17 A Yes.

18 Q How does that work? Explain that whole
19 procedure.

20 A The analyst at Richland County will pretty much
21 process their case. They will come up with an
22 unidentified profile. As long as that profile meets
23 certain requirements, it can be uploaded.

24 I'll have to go into certain levels. There's
25 three different levels of CODIS. There is the LDIS,

1 which is the local level. An example of that is
2 Richland County. They are their own local DNA
3 database.

4 Then we have SDIS. That's the state level.
5 That's SLED. We house all the offender samples.
6 There's the national DNA. That's where all the
7 samples from the local and the state are basically
8 maintained at the national level.

9 So in a particular case, you can have a profile
10 that's developed from evidence at Richland County.
11 They can then submit it to SLED, and we can search it
12 to see if there's been a hit in the database.

13 Q And can just any sample be submitted for a CODIS
14 hit, or does it have to have a certain number of
15 alleles that actually show up?

16 A There are certain requirements that each profile
17 must meet in order for it to be submitted for
18 searching.

19 Q And that's something you reviewed prior to
20 searching through your system?

21 A With a case like this, it would be Richland
22 County's responsibility to ensure that the profile is
23 eligible to be searched.

24 Q Okay. And in this case, specifically, I want to
25 turn your attention --- did you receive a submission

1 of a sample from John Barron with the Richland County
2 Sheriff's Department?

3 A Yes.

4 Q Was that entered into the CODIS system?

5 A He would have entered it, yes.

6 Q He can enter it in himself?

7 A Yes, he can.

8 Q And your responsibilities and your duties once
9 that profile --- and I'll get back to that in a
10 minute --- is entered into the system. Then you
11 report out the findings? Is that one of your duties?

12 A Yes.

13 Q And in this case, in March of 2010, did
14 Investigator Barron put a profile into your system?

15 A He did.

16 Q And were you able to match that profile from
17 evidence that he was testing to the name and identity
18 of a certain person whose DNA profile was stored in
19 your system?

20 A Yes, I was.

21 Q And what was the name of the person who matched
22 that DNA profile?

23 A The name of the person that matched the DNA
24 profile is a Frankie McGee.

25 Q Frankie McGee?

1 A Uh-huh.

2 Q And when this information --- how does this
3 information come to your attention?

4 A When the search is actually ran through CODIS,
5 the program is able to pull up any of the associated
6 matches, and pretty much, we have to go through ---
7 we analyze the samples initially when they come
8 in-house.

9 Once there is a hit, that sample must be
10 reanalyzed again. Fingerprints also must be verified
11 with other information on the collection card that is
12 submitted. Once that is done, a report can be
13 written, but it has to be tech reviewed, and it also
14 has to go through an admin review.

15 Q And were all the proper procedures and
16 everything you just outlined followed as far as
17 procedure goes in this case?

18 A Yes, they were.

19 Q And were you able to report out, I believe, it
20 was March 11th ---

21 A Yes, I was.

22 Q Am I right?

23 A Yes, it was.

24 Q Of 2010 ---

25 A Yes, it was.

1 Q --- to Investigator Barron of the Richland
2 County Sheriff's Department the results of your CODIS
3 hit?

4 A Yes, it was.

5 Q I've shown you some --- it's not been marked ---
6 a copy of the letter that would have been forwarded
7 to that agency?

8 A Yes.

9 Q And does that reflect the information you just
10 testified to?

11 A Yes, it does.

12 Q And the sample that was loaded into the system
13 and submitted by John Barron from this case matched
14 whom?

15 A It was a Frankie McGee, M-C-G-E-E.

16 Q And you took all the proper procedures and
17 everything as far as forwarding that information
18 prior to forwarding it?

19 A Yes, I did.

20 MS. CAMPBELL: Thank you. Nothing further.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION:

23 BY MR. STRICKLER:

24 Q Good afternoon, again. Just a few questions, if
25 I could, please.

1 You indicate that Mr. Barron would enter the
2 information that he had developed into CODIS ---

3 A Correct.

4 Q --- correct? On the person he was searching.
5 What is the nature of the information that is
6 entered?

7 A Could you be more specific?

8 Q Well, what does he put into the system?

9 A He is basically putting in a specimen number,
10 which should be associated with the lab number and
11 their item number.

12 Q Okay.

13 A That's the way that SLED does it. That's ---
14 I'm assuming because I'm not exactly sure how they
15 name it, but that's how they do theirs, as well.

16 There should be some type of identifying
17 information to match the case with an item. There's
18 also alleles, which are basically --- alleles are
19 basically just a set of numbers that are uniquely
20 identified to a particular person.

21 In DNA 99.9 percent of our DNA is unique. It's
22 pretty much the same between individuals. It's
23 that .1 percent that makes each and every one of us
24 different.

25 There are the exceptions with identical twins,

1 of course. In this case, what would have been
2 entered in are the alleles from that profile that was
3 developed. That was the information that would have
4 been entered in.

5 Q Okay. And then if I understand you, your
6 testimony, you compare the alleles that he's entered
7 into the system with the database, the alleles in the
8 database that you have?

9 A With Richland County ---

10 Q Right.

11 A --- they will actually notify SLED and let us
12 know if they want the profile confirmed. So they
13 actually make the comparison.

14 We will look at it, but they actually tell us if
15 they want it confirm or not. So Richland County
16 would actually --- pretty much makes the determining
17 decision on if they consider this to be a hit.

18 Q Okay. And Richland County, in making that
19 determination, is comparing the questioned sample
20 with --- with samples in their local database?

21 A With the state database.

22 Q State database?

23 A State database.

24 Q So they directly compare with the database that
25 y'all maintain; is that correct?

1 A Through searching, yes.

2 Q Okay. They don't compare with the national
3 database?

4 A They could.

5 Q Okay.

6 A I'm not sure if they've done that in this
7 particular case. Again, there are certain
8 requirements.

9 We actually don't handle Richland County's
10 searches for the national level. It's kind of like
11 where there is --- you have to go from the local to
12 the state and the state to the national, but with the
13 local database, they actually can communicate ---
14 once it's all received, all the information is
15 received ---

16 Q Right.

17 A --- they look at their own stuff. We don't make
18 their determinations on their cases.

19 Q But they asked for a confirmation from you?

20 A On this particular case, yes.

21 Q Okay. And your --- this --- this letter that
22 you just testified about ---

23 A Yes, sir.

24 Q --- right here?

25 A Uh-huh.

1 Q Okay. This hasn't been marked for --- when you
2 make that confirmation, what do you tell the agency?

3 A When we make the confirmation --- okay. Let me
4 take a step back. I was asked how do we do
5 confirmations.

6 The sample originally comes in-house. It's
7 analyzed once. If there is a hit on the case, it has
8 to be reanalyzed. In this particular case, it was
9 reanalyzed.

10 The fingerprints also have to be verified. Once
11 all that is done, the information that's released is
12 information you just looked at on this letter, which
13 basically states --- would you like for me to read it?

14 Q Sure.

15 A It basically states that a search of the State
16 DNA Index System, which is SDIS, which that SLED
17 maintains resulted in match number SA0000062909.

18 What I'd like to specify with that, so that
19 there is no confusion there, when CODIS does a search,
20 it basically assigns each individual hit a number.
21 So that it can be associated with the information
22 that we're providing, so that number is associated
23 with a hit.

24 So there is that match number that says,
25 "Between specimen number 09060316-10," that is

1 Richland County's information that they put in. "In
2 offender specimen number 04-10917," that information
3 is what we put in. That information comes from our
4 collection cards. "Enclosed is a copy of the CODIS
5 hit match report. Basically, this match is to inform
6 you of a possible investigative lead related to your
7 specimen.

8 "The offender specimen has been examined, and
9 the match has been confirmed. It is recommended that
10 your agency obtain an additional biological specimen
11 from the subject, and that the sample is examined in
12 your laboratory."

13 The reason for this, the CODIS samples that I
14 analyze for the database that are required to come
15 in-house by convicted offenders do not have chain of
16 custody on them. Therefore, that's why it's
17 investigative information only and additional
18 standards must be submitted for analysis.

19 The letter says, the offender information is
20 Frankie McGee, that's M-C-G-E-E. There is an FBI
21 number associated with that individual, which is
22 204263DB9.

23 There is also a South Carolina SID number
24 associated with that. That is SC01022763. At the
25 bottom, it says "The South Carolina DNA Database Unit.

1 If we can be of further assistance, please call us

2 [REDACTED] Sincerely, Teresa Hines, DNA Database
3 Unit."

4 Q Okay. And the SCCID SID number is an identifier
5 from the Department of Corrections?

6 A It's an identifier from whichever agency
7 actually submitted the samples.

8 Q Okay.

9 A We have several agencies that submit samples to
10 SLED for this particular purpose.

11 Q Okay. And the FBI number doesn't relate to
12 anything other than the fact that there is a record
13 that the FBI has maintained on him, correct?

14 A On our collection card, there are certain fields
15 that we ask to be filled in. The SID number and the
16 FBI number, are two of the main fields, along with
17 the name, the fingerprint, things of that sort.

18 Those are on there for additional identifying
19 markers so that when we get that in-house, we can
20 look at the tube of blood, and we can look at the
21 collection card to verify that each one of those
22 match. If they don't match, then we will actually
23 request a redraw, and that particular sample will not
24 be entered into the database.

25 Q Okay. And you indicate "enclosed is a match of

1 the CODIS match report."

2 A Yes, sir.

3 Q Correct?

4 A Uh-huh.

5 Q And let me show you the document I have and ask
6 you if I'm referring to the same thing.

7 A Let me take a look at them. I actually have to
8 make sure that everything is correct on that. Give
9 me just a second.

10 (Pause)

11 This is a State match detail report. That is
12 what would have been enclosed.

13 Q Okay. That is the match report in this case?

14 A Let me take a look at what I actually have, if
15 you don't mind.

16 Q Sure.

17 A Sorry.

18 (Pause)

19 Q All right.

20 A This is a copy of the State match detail report.
21 The copy that I have, there are a few differences
22 where it says source ID, no, for the Richland County
23 case. On mine it, actually says source ID, yes,
24 because there was a hit.

25 Q Okay.

1 A And they were able to change that, but yes, that
2 looks like mine.

3 Q All right. Now, you say there is --- without
4 getting too involved in DNA testing at this point,
5 okay, you indicated there was a match. In DNA
6 testing, you examine DNA at a number of different
7 places.

8 A Yes, sir.

9 Q Loci would be in the vocabulary, okay. In
10 particularly --- in particular, you all, in your
11 comparisons, are doing a 14-loci comparison; is that
12 correct?

13 A There's actually 16 loci.

14 Q I understand.

15 A Are you referring to this one?

16 Q Yes, ma'am, uh-huh.

17 A If you're talking about any comparisons, you
18 probably want to address that to Richland County,
19 because they would have the ones to actually look at
20 it and say they want it confirmed. We wait on them
21 to give us to give us the okay to confirm it.

22 Q Okay. Because I notice on the --- you have two
23 copies. You have target.

24 A Right.

25 Q And you've got candidate?

1 A Correct.

2 Q The target is the question --- the questioned
3 sample, what's being submitted to you by Richland
4 County, correct?

5 A Correct.

6 Q And then the candidate is the information that
7 y'all have in your database from --- from your
8 records, correct?

9 A Correct.

10 Q Okay. Now, it looks to me like the target, the
11 question sample has 16 loci in it, and the convicted
12 offender sample has 14?

13 A I can explain that, if you'll let me look back
14 at yours.

15 Q Okay.

16 A Because mine actually has those two additional
17 loci in there.

18 Q Okay.

19 A When the sample came in --- this was a 2004
20 sample. Back then, the type of technology that was
21 used was a kit called Profiler Cofiler.

22 It did not include two of those loci ---

23 Q Right.

24 A --- which were D2 and D19. However --- and I'm
25 assuming --- I'm looking just from hearing the

1 current testimony, this is a newer case, or a newer
2 --- pretty much when Richland County analyzed this
3 case, they used a different kit which actually
4 included that D2 and D19.

5 Q Identifier?

6 A Yes.

7 Q All right.

8 A Now, I don't know exactly what they used, but
9 the identifier included D2 and D19.

10 Q Yes, ma'am.

11 A The current --- actually, the State matched
12 detail report that I have, which is one that I
13 printed from 7/26/2011, it actually does include D2
14 and D19 because the sample was ran an additional time
15 with an identifier kit.

16 Q Okay.

17 A Does that answer your question?

18 Q It sure does. Thank you.

19 A Okay.

20 Q And, again, without getting into too much detail
21 as far as DNA at this point in time, in essence, what
22 you would look for at any one of these locations at
23 any loci ---

24 A Uh-huh.

25 Q --- you would expect to find --- for one

1 individual, you would expect to find one allele or
2 two alleles; is that correct?

3 A It depends on what type of profile they put in.
4 If you're looking at a single-source profile, you're
5 expecting to find one, or you're expecting to find
6 two. However, if you're putting a profile in that
7 may have a major, you may have one or two.

8 If you're doing a profile that may be a mixture,
9 you can have more than two.

10 Q Okay.

11 A So, for instance, I think you're referring to
12 probably D2F1338 that has three alleles, but if
13 you'll look at the top where it says target, it
14 specifically says it's a forensic mixture. So you
15 can have possibly more than two alleles.

16 Q Okay. Well, if you would look two down from
17 there.

18 A Sure.

19 Q At the ---

20 A VWA.

21 Q Locus term VWA.

22 A Yes.

23 Q The forensic mixture indicates an allele 16.

24 A Yeah.

25 Q Correct?

1 A Correct.

2 Q Now, the forensic mixture, that's what Richland
3 County is looking at, correct?

4 A Correct.

5 Q So at that one spot, the forensic mixture is
6 16 ---

7 A Correct.

8 Q --- and what you have listed for Frankie McGee,
9 the record that you have that you associate with
10 Frankie McGee, is 16 and 19, correct?

11 A That's correct. Also, look at the bottom of
12 that target specimen, and you'll see down there where
13 it says partial profile. They have it marked as yes.

14 A partial profile may mean that there is an
15 alleles that dropped out. It basically means that
16 all the alleles may not have typed. Therefore,
17 that's probably the reason why they have a partial.
18 Again, I don't have the report.

19 It's not something that I've been involved in
20 tech reviewing. This is something that John Barron
21 would actually be able to answer better, but I'm
22 assuming there is probably an allele that dropped out
23 at that specific location. That's why it says
24 partial profile.

25 Q Well, and that's why your cover letter says,

1 "This report is to inform you of a possible
2 investigative lead related to your specimen," correct?

3 A The reason why it says possible is because, as I
4 stated before, that CODIS is an investigative tool.
5 It is used to actually aid in investigations. It's
6 not used to solve investigations. That's why an
7 additional standard must be submitted. So that
8 number, one, there is a chain of custody to it, and
9 that there is evidence that it came from that
10 particular individual that the sample is being taken
11 from.

12 Q All right, ma'am.

13 Now, part way down your report "matched summary,
14 14 locus candidates, two, total candidates, two."
15 Frankie McGee is one candidate. Who is the other
16 candidate for a match of that?

17 A That is --- there could have been --- whenever
18 it says 14 loci candidates, mine actually has one.
19 Yours has two. So basically, if you look at the
20 side --- this may get a little complicated, if it
21 hasn't already, where you see the locus matched
22 stringency.

23 Q Yes.

24 A Can you see where a lot of these say high?

25 Q Yes.

1 A And then you may have one that probably says
2 moderate?

3 Q Correct.

4 A Others say high. We searched, and we're looking
5 at the high ones. Anywhere where it says high, there
6 is a definitive match there. Like if you look at the
7 first one, there is a 13, 13. The match frequency is
8 high.

9 Anytime you get below a high stringency --- say,
10 for instance, VWA, that's where you mentioned that
11 16-19.

12 Q Okay.

13 A Or 19.

14 Q That's a moderate.

15 A That's a moderate.

16 Q Correct.

17 A If you get below that, that's a low. You could
18 have other possible things in there, but in other
19 words, you're looking at this, and you're taking the
20 best.

21 Q Okay.

22 A That's what this is.

23 Q Well ---

24 A Every single one of these matched with a --- at
25 a high stringency, with the exception of that VWA.

1 Q Well, can you tell me what the profile was of
2 the other one of the two candidates?

3 A I do not have that. No, I do not. I cannot
4 tell you that.

5 Q So when you ran the --- when John --- when
6 Mr. Barron ran the information regarding Frankie
7 McGee --- and if I understand you, it's basically
8 inputting like the 16 and the 19 at the very --- for
9 each locus, you input the allele site, correct?

10 A With the target, yes.

11 Q So you got --- there were two matches that came
12 up ---

13 A With ---

14 Q --- and somehow, we end up with one being
15 reported?

16 A Without me having additional information with me
17 or being able to look at CODIS itself, I cannot
18 definitively say that.

19 What I can say is if there were other hits
20 associated with this, we weren't asked to confirm
21 them. We report out what we are asked to confirm,
22 unless it's our own case, then we make that
23 determination.

24 It is also possible that this offender could
25 have been in the database as a duplicate, then it

1 as a juvenile.

2 As a juvenile, you don't have something called
3 an SID number. You would have something called an
4 MIS number. We enter that into our system, and
5 that's how we track all of these. If you're then
6 arrested again later as an adult, you're assigned an
7 SID number.

8 It may have been, and this is a possibility ---

9 MR. STRICKLER: Objection to possibilities as to
10 what it might be.

11 THE COURT: The objection is overruled.

12 MS. CAMPBELL: Okay. Go ahead.

13 THE WITNESS: It's a possibility that there was
14 a duplicate sample in the system, because there could
15 have been more than one arrest.

16 Somebody on the submitting agency side didn't
17 catch the fact that the sample was already at SLED
18 and another sample was submitted.

19 BY MS. CAMPBELL:

20 Q And this matched to McGee, which would have been
21 confirmed by Richland County. It would be unique to
22 him.

23 A Yes, it would.

24 Q Thank you.

25 THE COURT: Redirect?

1 MR. STRICKLER: Very briefly.

2 THE COURT: Yes, sir.

3 RECROSS-EXAMINATION:

4 BY MR. STRICKLER:

5 Q You're referring to something that shows one
6 match. You ran that particular report when --- the
7 one that shows one match?

8 A That shows one --- I actually printed this out
9 on 7/26 of 2011.

10 Q Okay. So last week?

11 A Yes.

12 Q Okay. And assuming what I have was what was
13 sent to Mr. Barron, we can ask him about that. That
14 would have been what was reported out back on
15 March 12th, 2010?

16 A Yes.

17 MR. STRICKLER: Okay. All right. Thank you
18 very much.

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

21 And ladies and gentlemen, that will be it for
22 this day. We will start tomorrow at 9:30. Thank you
23 very much. Have a good evening. Please do not
24 discuss the case. We'll need you back at 9:30 a.m.

25 (WHEREUPON, the jury left open court at

1 approximately 5:39 p.m.)

2 THE COURT: Any other matters before we leave?

3 MS. CAMPBELL: No, sir.

4 THE COURT: From the defense?

5 MR. STRICKLER: No, sir. Thank you.

6 THE COURT: All right. 9:30 tomorrow morning.

7 (WHEREUPON, There was an overnight recess).

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State of South Carolina) In the Court of General Sessions
) Fifth Judicial Circuit
County of Richland) 2009-GS-40-121
) 2009-GS-40-124

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Frankie Lee McGee,)
)
 Defendant.)
)
)
)

August 3, 2011
Columbia, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge

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

Kathryn "Luck" Campbell, Esquire, Assistant Solicitor
Dolly Justice Garfield, Esquire, Assistant Solicitor
Nicole M. Simpson, Esquire, Assistant Solicitor
Attorneys for the State

Douglas S. Strickler, Esquire
Elizabeth Fielding Pringle, Esquire
Jennifer C. Davis, Esquire
Attorneys for the Defendant

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

WEDNESDAY, AUGUST 3, 2011

DAY 3 OF TRIAL

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S-4	Photograph Lineup		245
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	<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>
1				
2	D-6	Enlarged Chart	114	119
3	D-7	Enlarged Chart		114
4	D-8	Enlarged Chart		114
5	D-9	Enlarged Chart		114
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1 WEDNESDAY, AUGUST 3, 2011

2 (COURT RESUMES AT 9:36 A.M.)

3 THE COURT: Good morning. Issues, concerns?

4 MS. CAMPBELL: Your Honor, one of witnesses we
5 anticipate could go up today is Ms. Ashford. She was shown
6 a series of I believe were six sets of lineups from which
7 she would identify people. She never positively identified
8 anybody, but she would say this looks like him. He has the
9 same type of face, the same build, things of that nature.

10 The final lineup she was shown did contain Frankie
11 McGee. She narrowed it down to two people in that one and
12 said that it was similar to those two people in that one as
13 well.

14 She is not going to be able to make any kind of
15 in-court identification. The most she's going to be able
16 to say is that he has the same general build and general
17 shape as the person she saw that night. I don't know that
18 that would require -- since, since we aren't getting an
19 in-court ID, I don't know, and the state's position would
20 be I don't think that requires a hearing on the matter.
21 However, I think the defense is requesting one.

22 THE COURT: All right.

23 MS. CAMPBELL: And I didn't know if you wanted to take
24 that up now or later. It doesn't matter to us.

25 THE COURT: All right, now is good.

1 Ms. Pringle.

2 MS. PRINGLE: Thank you, Your Honor. May it please
3 the court? We would object to the photo lineup including
4 the picture of Frankie McGee, which is the final lineup
5 that she's shown. The preceding lineup that she's shown,
6 she doesn't ever -- she, she says this looks like, this
7 looks like. I don't have any objection to those. But the
8 final lineup that she's shown does include his picture.
9 And what she says on that is that it could be this one, or
10 it could be that one, one of which is Mr. McGee.

11 I think we would need a *Neil vs. Biggers* hearing on
12 that. That would be an identification since she does
13 initially select him. I understand that she wouldn't be
14 indicating any certainty, but I think that's the purpose of
15 *Neil vs. Biggers*.

16 THE COURT: Okay. Call your first witness.

17 MS. CAMPBELL: The state calls Temika Ashford.

18 (A PAUSE.)

19 MS. CAMPBELL: There's a little technical difficulty,
20 Your Honor. Apparently they've misplaced the lineups.

21 (A PAUSE.)

22 TEMIKA ASHFORD, BEING DULY SWORN,
23 TESTIFIES AS FOLLOWS:

24 CLERK OF COURT: State your name for the record.

25 WITNESS: My name is Temika Ashford.

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

9

1 EXAMINATION BY MS. CAMPBELL:

2 Q. Ms. Ashford, how old are you?

3 A. Thirty.

4 Q. And do you live here in the Columbia area?

5 A. Yes, ma'am.

6 Q. And how long have you been living in Columbia?

7 A. All my life.

8 Q. Did you know the Reverend Eichelberger?

9 A. Yes, ma'am.

10 Q. And did you have an occasion to go over and see him in
11 his house?

12 A. Yes, ma'am.

13 Q. Sometimes would he give you money to help you out with
14 some of your bills?

15 A. Yes, ma'am.

16 Q. And I want to turn your attention to the night of May
17 the 3rd. That evening, were you over at his house that
18 night?

19 A. Yes, ma'am.

20 Q. And did you actually go in his house?

21 A. Yes, ma'am.

22 Q. And tell the judge what happened when you got in the
23 house, and where did Reverend Eichelberger go?

24 A. We sat in the living room for a while. While we was
25 in the living room, I guess maybe a couple, like, thirty,

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

10

1 forty-five minutes later, I heard a noise. I heard the
2 first noise. The first noise, he didn't hear. I said you
3 didn't notice? He said ain't hear nothing, girl. You just
4 hearing things.

5 Q. Okay, you've got to slow down a little bit. You
6 nervous here today?

7 A. Yes, ma'am.

8 Q. Okay. Slow down and speak real clearly for me. You
9 said what?

10 A. I asked him did he hear the first noise. He said I
11 don't hear anything. You just hearing stuff, girl. And so
12 the second time around, noise got a little louder. He
13 heard the second noise, and he say sit here. I'll come
14 around -- go around there and see what's going on.

15 Q. What part of the house were y'all in?

16 A. We was in the front room.

17 Q. In the front room?

18 A. Uh-huh.

19 Q. Is that kind of the living room area?

20 A. Yes, ma'am.

21 Q. And could you tell what room or area of the house the
22 noise was coming from? A different room?

23 A. A different, yes, ma'am.

24 Q. Not in the room where you were?

25 A. No, ma'am.

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

11

1 Q. And so then he went to another part of the house?

2 A. Uh-huh.

3 Q. And could you tell what part of the house he went to?

4 A. No, ma'am. He went -- he couldn't go no further.

5 Then -- not too far from me because I could hear. I heard
6 a noise again. Like when the sound, the person I guess
7 came in, you could hear it.

8 Q. Okay, and then what happened?

9 A. And then when he went around, he said how did you get
10 in here. And from there, I just heard like a lot of
11 scuffling, so I ran.

12 Q. You ran out of the house?

13 A. I tiptoed to the front door and I ran.

14 Q. And once you got out of the house, where did you go?

15 A. I got in my car and went around the block. Went back
16 up, came around, and my first time coming around I seen
17 this guy standing outside.

18 Q. Okay. So, you didn't actually see anything that
19 happened in the house between he and somebody else?

20 A. No, ma'am.

21 Q. And it didn't happen in your presence?

22 A. No, ma'am.

23 Q. And you went outside, and so you went and got in your
24 car?

25 A. Yes, ma'am.

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

12.

1 Q. And you actually started your car up and it started
2 moving?

3 A. Yes, ma'am.

4 Q. And the reverend's house is on Isaac Street?

5 A. Yes, ma'am.

6 Q. And where was your car parked?

7 A. It was parked on the side road.

8 Q. On the side road?

9 A. Uh-huh.

10 Q. Not Isaac but the side road?

11 A. Yes, ma'am.

12 Q. Because it's right there on the corner.

13 A. Uh-huh.

14 Q. And when you got in your car, you said you saw
15 somebody come out the front?

16 A. No, ma'am, not when I got in my car. When I went
17 around the corner.

18 Q. You went around the corner?

19 A. Uh-huh, and came back down.

20 Q. Isaac Street?

21 A. But I kept calling his phone. He wouldn't answer,
22 yes, ma'am.

23 Q. Okay.

24 A. When I came back down, that's when I seen the guy
25 standing on the porch.

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

13

1 Q. On the porch?

2 A. Yes, ma'am.

3 Q. And how far away from you was he? You were on the
4 road.

5 A. I was, yes, ma'am. I was on the road.

6 THE COURT: You asked the question. Then you answered
7 the question. Let the witness answer. You asked the
8 question. Then you answered the question.

9 MS. CAMPBELL: I'm sorry.

10 THE COURT: Let the witness answer.

11 BY MS. CAMPBELL:

12 Q. Where were you?

13 A. I was sitting by the road. I wasn't sitting. I was
14 just riding by real slowly.

15 Q. Okay, and you saw somebody up on the porch?

16 A. Yes, ma'am, just standing there.

17 Q. And what happened next?

18 A. I rode back around. Called the police the second time
19 around after I seen the person, and I rode back around
20 again. I went further up to wait till the police come
21 because I didn't want to go there, go back and stop. So, I
22 went back around. Then I went back around. I seen the
23 same guy as I saw coming back around walking up Farrow
24 Road.

25 Q. Okay. Let me ask you this. When you saw the guy on

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

14

1 the porch, could you tell the judge what he looked like or
2 what you noticed about him?

3 A. He was -- his body weight was kind of built. He was
4 big framed, and he was a, you know, kind of big guy.

5 Q. Did you notice anything else about him and his
6 clothing?

7 A. A pot belly, yes, ma'am.

8 Q. Did you notice anything about his clothing, what he
9 was wearing?

10 A. He had a white T-shirt and some khakis.

11 Q. What else did you notice about him?

12 A. He was real sweaty.

13 Q. Okay. Were you able to see his hands?

14 A. Yes, ma'am.

15 Q. What did you notice about those?

16 A. I seen gloves.

17 Q. And what color were the gloves, what you thought were
18 gloves?

19 A. They were, like, I guess maybe plastic gloves.

20 Q. That's what you thought?

21 A. Yes, ma'am.

22 Q. What color were they?

23 A. They were white.

24 Q. Okay. What was the lighting like that night when you
25 were looking at him?

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

15

1 A. It was real dark.

2 Q. It was dark?

3 A. Yes, ma'am.

4 Q. But you were able to notice that much about him?

5 A. Yes, ma'am.

6 Q. And then you said you saw the same guy walking down
7 Farrow road?

8 A. Uh-huh. He was walking along the sidewalk. Was a
9 bunch of trees. That he was walking real fast.

10 Q. Was he walking towards the -- do you know where the
11 Gaz-Bah is?

12 A. Yes, ma'am. He was not that far up. He was like
13 maybe just turned off of Ivy Street maybe a little bit.
14 Wasn't really that far up.

15 Q. You said you called the police?

16 A. Yes, ma'am.

17 Q. And that's all you saw on that night. Is that
18 correct?

19 A. Yes, ma'am.

20 Q. Okay. When you called the police, did they respond?

21 A. Yes, ma'am.

22 Q. And when they responded, did you talk to them?

23 A. Yes, ma'am.

24 Q. And when you talked to them, did you give them a
25 description of the guy?

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

16

1 A. Yes.

2 Q. That you saw on the porch?

3 A. Yes, ma'am.

4 Q. And what else did you tell them? Do you remember?

5 A. No, ma'am.

6 Q. Were you upset that night?

7 A. I was nervous, yes, ma'am.

8 Q. Did you ever go back in the house?

9 A. No, ma'am.

10 Q. That night, did you go and did the police take you to
11 look at somebody that they had stopped?

12 A. That was around the corner, yes, ma'am.

13 Q. And what did you tell them about that person?

14 A. The person that they caught around the corner do not
15 have on the same clothes.

16 Q. Did you actually go down and did you give a statement
17 that night?

18 A. I don't think it was that night. I think was the next
19 day.

20 Q. Okay, and when you gave that statement, what was your
21 frame of mind?

22 A. I was nervous.

23 Q. Did the police bring you back in at a later date and
24 actually record a statement from you?

25 A. Yes, ma'am.

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

17

1 Q. And did you tell them, to the best of your ability,
2 what you could remember?

3 A. Yes, ma'am.

4 Q. On a number of occasions, did the police show you
5 photo lineups?

6 A. Yes, ma'am.

7 MS. CAMPBELL: Beg the court's indulgence.

8 (A PAUSE.)

9 BY MS. CAMPBELL:

10 Q. And I believe the first time they showed you a photo
11 lineup was on August the 25th, or do you remember the date?

12 A. No, ma'am, I don't.

13 Q. And I show you what's been marked as State's Exhibit
14 Number 3. Do you remember seeing that lineup the first
15 time they showed you a lineup?

16 A. Yes, ma'am.

17 Q. But did you recognize anybody?

18 A. No, ma'am.

19 Q. Nobody in this one?

20 A. No, ma'am.

21 Q. And that's what you told the police on that date?

22 A. Yes, ma'am.

23 Q. And then later they showed you some more photo lineups
24 later on in the fall. Is that correct?

25 A. Yes, ma'am.

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

18

1 Q. And I what to show you ---

2 MS. CAMPBELL: Your Honor, I'm going to mark these.

3 (PHOTOGRAPHIC LINEUP MARKED AS STATE'S EXHIBIT NUMBER
4 119 FOR IDENTIFICATION.)

5 (PHOTOGRAPHIC LINEUP MARKED AS STATE'S EXHIBIT NUMBER
6 120 FOR IDENTIFICATION.)

7 (PHOTOGRAPHIC LINEUP MARKED AS STATE'S EXHIBIT NUMBER
8 121 FOR IDENTIFICATION.)

9 MS. CAMPBELL: Beg the court's indulgence.

10 (A PAUSE.)

11 BY MS. CAMPBELL:

12 Q. And I'm going to show you State's Exhibit Number 119.
13 Do you recognize that?

14 A. Yes, ma'am.

15 Q. And does that have some of your handwriting on it?

16 A. Yes, ma'am.

17 Q. And when you looked at this photograph or the set of
18 photos, did it have any handwriting on it? Do you
19 remember?

20 A. No, ma'am.

21 Q. And when you looked at it, what did you tell the
22 police? Do you remember?

23 A. Yes, ma'am.

24 Q. And what did you tell them?

25 A. The one that I marked looked similar to the guy.

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

19

1 Q. Looked similar to the guy?

2 A. Uh-huh.

3 Q. But you couldn't positively identify anybody?

4 A. No, ma'am.

5 Q. Okay, but you initialed where -- the ones that looked
6 similar?

7 A. Yes, ma'am.

8 Q. And wrote it down at the bottom?

9 A. Yes, ma'am.

10 Q. And did you actually sign this?

11 A. Yes, ma'am.

12 Q. And that's the one they showed you on that occasion.
13 Is that correct?

14 A. Yes, ma'am.

15 Q. I want to show you what's been marked as State's
16 Exhibit Number 120 and 121, and they showed you these
17 photographs?

18 A. Yes, ma'am.

19 Q. And in this one, did it -- did you circle one when you
20 were shown this photograph, and I believe the date on this
21 one is January 22nd?

22 A. Yes, ma'am.

23 Q. What did you say when you saw that photograph?

24 A. That he had the head shape and the body shape.

25 Q. And other than that, were you able to say anything?

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

20

- 1 A. I wasn't positive that was him.
- 2 Q. So, you couldn't identify anybody?
- 3 A. No, ma'am.
- 4 Q. But you mentioned in -- did you write on there what
- 5 you recognized about that person?
- 6 A. Yes, ma'am.
- 7 Q. And down at the bottom, what does it say?
- 8 A. The head shape and the body build.
- 9 Q. And you didn't recognize State's Exhibit Number 121?
- 10 A. No, ma'am.
- 11 Q. Finally on March the 13th, did they show you some
- 12 photographs?
- 13 A. Yes, ma'am.
- 14 Q. And when they showed you these photographs in State's
- 15 Exhibit 121, none of those writing was on there, was it, or
- 16 was it?
- 17 A. No, ma'am.
- 18 Q. And when they showed you the photographs, and each
- 19 time they showed you the photographs, did they tell you who
- 20 to pick?
- 21 A. No, ma'am.
- 22 Q. Did they influence you in any way?
- 23 A. No, ma'am.
- 24 Q. And did they just let you look at the photographs?
- 25 A. Yes, ma'am.

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

21

1 Q. And when you looked at those photographs, what did you
2 decide?

3 A. That the guys that I picked looked similar to the guy.

4 Q. Looked similar to the guy?

5 A. Yes, ma'am.

6 Q. And which one did you narrow it down to that time?

7 A. 31 and 1.

8 (PHOTOGRAPHIC LINEUP MARKED AS STATE'S EXHIBIT NUMBER
9 122 FOR IDENTIFICATION. SECOND LINEUP INCORRECTLY MARKED
10 AS STATE'S 121 AND LATER CORRECTED ON THE RECORD AS 123.)
11 BY MS. CAMPBELL:

12 Q. And once you have done that, did you initial it?

13 A. Yes, ma'am.

14 Q. And State's Exhibit 121, the two that you thought it
15 looked like.

16 A. Yes, ma'am.

17 Q. And down at the bottom, what does it say? Can you
18 read that?

19 A. Yes, ma'am: Witness states the subject, she saw him.

20 B-3 and plus one. She picked 3 first but started
21 -- stated both of the suspects because of the
22 hand shape and the body build.

23 Q. And I've got to back up for a minute because I missed
24 something. In State's Exhibit 122, back in January they
25 showed you three sets of pictures. Is that right?

T. ASHFORD - EXAMINATION BY MS. CAMPBELL

22

1 A. Yes, ma'am.

2 Q. Was this is one of them?

3 A. Yes, ma'am.

4 Q. And again you said -- did you positively identify
5 anybody?

6 A. No, ma'am.

7 Q. Okay, but did you indicate one of them looked like
8 him?

9 A. Yes, ma'am.

10 Q. And is that here in State's Exhibit 22?

11 A. Yes, sir.

12 Q. Each time the police showed you a set of photographs,
13 at any time did they tell you who to pick?

14 A. No, ma'am.

15 Q. Did they influence you in any way?

16 A. No, ma'am.

17 Q. And you were never able to make a positive
18 identification?

19 A. No, ma'am.

20 Q. And you just talked about the things were talked about
21 here today?

22 A. Yes, ma'am.

23 Q. Which are what that you recognized or thought were
24 similar?

25 A. The body build, and the pot belly, and the head shape.

T. ASHFORD - EXAMINATION BY MS. PRINGLE

23

1 MS. CAMPBELL: Your Honor, I may approach?

2 THE COURT: Yes.

3 (A PAUSE.)

4 BY MS. CAMPBELL:

5 Q. Other than the person that you saw on the front porch
6 from when you were in your car.

7 A. Yes, ma'am.

8 Q. And then you later saw him on Farrow Road.

9 A. Yes, ma'am.

10 Q. Did you ever see that person again?

11 A. No, ma'am.

12 MS. CAMPBELL: That's all I have on this matter, Your
13 Honor.

14 THE COURT: Ms. Pringle.

15 MS. PRINGLE: Thank you, Your Honor. May it please
16 the court?

17 CROSS-EXAMINATION BY MS. PRINGLE:

18 Q. Good morning, Ms. Ashford.

19 A. Good morning.

20 Q. In the photo lineups that you were shown, specifically
21 the last one, you couldn't say for sure if that was the
22 person that you saw that night?

23 A. No, ma'am.

24 Q. In fact, you didn't tell them that that was the guy
25 that night, that you ---

T. ASHFORD - EXAMINATION BY MS. PRINGLE

24

1 A. But they looked ---

2 Q. --- saw that night?

3 A. Yes, ma'am.

4 Q. But they looked alike, all right.

5 A. Similar.

6 Q. Exactly the same as what you had said about the other
7 individuals that you saw on the other lineups, and that's
8 all you could say, right?

9 A. Yes, ma'am.

10 Q. You can't say that that was the person?

11 A. No, ma'am.

12 Q. But on this one, you do have next to number 3, which
13 the record will reflect that's a picture of my client, you
14 do have circled and your initials ---

15 A. Yes, ma'am.

16 Q. --- on that picture in addition to number 1, right?

17 A. Yes, ma'am.

18 MS. PRINGLE: I have no further questions, Your Honor.

19 THE COURT: Anything further?

20 MS. CAMPBELL: No, sir.

21 THE COURT: Thank you. You can step down.

22 (THE WITNESS EXITS THE STAND.)

23 THE COURT: Next witness?

24 MS. CAMPBELL: State would call Investigator Kevin
25 Reese.

K. REESE - EXAMINATION BY MS. CAMPBELL

25

1 KEVIN REESE, BEING DULY SWORN,
2 TESTIFIES AS FOLLOWS:

3 (A PAUSE.)

4 MS. CAMPBELL: Sorry, Your Honor. Just making sure of
5 sequestration.

6 EXAMINATION BY MS. CAMPBELL:

7 Q. Investigator Reese, where are you employed?

8 A. Columbia Police Department.

9 Q. How long have you worked there, sir?

10 A. Since -- this is my second tour around. Since 1991.

11 Q. Since 1991?

12 A. Uh-huh.

13 Q. And were you actually the lead investigator in the
14 case involving the murder of Reverend Eichelberger?

15 A. I was.

16 Q. At some point over the court of several months, did
17 you develop a number of suspects?

18 A. I, yeah, I did, persons of interest, suspects, yeah.

19 Q. Persons of interest?

20 A. Uh-huh.

21 Q. And during the course of that, were you aware, were
22 there any eyewitnesses to the actual assault?

23 A. No, not the actual assault.

24 Q. But was there a witness who saw someone on the front
25 porch right after this happened?

K. REESE - EXAMINATION BY MS. CAMPBELL

26

1 A. Yes, it was.

2 Q. And who was that?

3 A. Temika Ashford.

4 Q. And did you make contact with her on multiple
5 occasions?

6 A. I did.

7 Q. To get statements, as well as to show certain lineups?

8 A. Yeah, Your Honor. We had, you know, every -- when we
9 had different questions to ask her, we would locate her,
10 ask her, you know, times we had photo lineups that we had
11 put together, we needed to ask her about.

12 Q. August 25th, did you make contact with her to show her
13 a lineup, which is State's Exhibit Number 3?

14 A. Yes, I did.

15 Q. And on that occasion, was that the only photo lineup
16 that was shown to her?

17 A. On this occasion, yes, it was.

18 Q. And what, if anything, did you say to her prior to
19 showing her that lineup?

20 A. I told her what I tell everybody. The person may or
21 may not -- that she seen may or may not be in this lineup.
22 If she sees that person, recognize them, would you pick
23 them out.

24 Q. And was she able to recognize anybody or say they
25 looked similar?

K. REESE - EXAMINATION BY MS. CAMPBELL

27

1 A. No, she did not. Don't have anything marked on this
2 one, so she didn't.

3 Q. I want to turn your attention September 30th of 2009.
4 Did you make contact with Ms. Ashford again?

5 A. I did, myself and Investigator Thomas.

6 Q. And at that point, were you also asking her to look at
7 a series of photos again?

8 A. Yes, I was.

9 Q. And in State's Exhibit 119, is that the photo lineup
10 you showed to her?

11 A. Yes. Yes, it is.

12 Q. And when you showed her that lineup, did it have any
13 writing on it like it does now?

14 A. No, it did not.

15 Q. What, if anything, did you say to her prior to showing
16 her that lineup?

17 A. The person that she saw that night may or may not be
18 in this lineup. If she would look at the lineup and she
19 can recognize the person that she seen, point him out for
20 us.

21 Q. And was she able to identify anyone or make any
22 statement about any of the people in the lineup?

23 A. She couldn't positively identify anybody, but photo
24 number 3 and photo number 5, she picked them out. She said
25 it looks like those subjects.

K. REESE - EXAMINATION BY MS. CAMPBELL

28

1 Q. And did you have her initial that, those two photos?

2 A. Yeah. That's her, her handwriting. I had her initial
3 it, put -- and put that day's date in it. Also sign off on
4 it, sign her name.

5 Q. And she did that?

6 A. Yeah.

7 Q. And then moving on to January 22nd of 2010, did you
8 show her another series of pictures that are State's
9 Exhibits 120 through 122?

10 A. Yes, ma'am.

11 Q. And was she shown all three of those arrays of photos
12 on that day?

13 A. Yeah. I showed her these photos.

14 Q. And were they shown individually?

15 A. Yeah. They were shown individually.

16 Q. And what, if anything, was she able to say about those
17 photos that were shown to her on January 22nd?

18 A. Okay, on State's Exhibit Number 122, she pointed out
19 number 2. I don't know what, what she said about this one.
20 I would have to look at my case notes, but she initialed
21 number, photo number 2.

22 Q. For the record, was she ever able to positively
23 identify anybody?

24 A. No. She did not possibly identify these people.

25 Q. State's Exhibit Number 120, and that's a six-photo

K. REESE - EXAMINATION BY MS. CAMPBELL

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1 array as well?

2 A. It is.

3 Q. And was she able to positively identify anybody in
4 that?

5 A. She picked out photo number 3. She didn't positively
6 identify him, but it's the same thing. She -- I made a
7 note that she said that head -- she picked him out because
8 of the head shape, the body build, kind of receding
9 hairline.

10 Q. Finally, the single photo, State's Exhibit Number 121,
11 did you also show her that?

12 A. I showed her this photo.

13 Q. And?

14 A. I basically showed her this, and it wasn't in the form
15 of a lineup. Just to see whether she knew this person or
16 had ever seen this person. He wasn't necessarily a
17 suspect.

18 Q. Okay, but she didn't recognize him?

19 A. She didn't recognize him, no.

20 Q. Finally moving to State's Exhibit Number ---

21 MS. CAMPBELL: We have two 121s. We can make this
22 make this -- I apologize, Your Honor.

23 (PHOTOGRAPHIC LINEUP MARKED AS STATE'S EXHIBIT NUMBER
24 123 FOR IDENTIFICATION.)

25 MS. CAMPBELL: Your Honor, the March lineup will now

K. REESE - EXAMINATION BY MS. CAMPBELL

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1 become State's Exhibit 123. I apologize.

2 BY MS. CAMPBELL:

3 Q. Did you make contact with Ms. Ashford again?

4 A. Yes, I did.

5 Q. And did you show her this lineup?

6 A. I did.

7 Q. When you showed her the lineup, did it have any
8 writing on it?

9 A. No, it did not.

10 Q. And what, if anything, did you say to her when you
11 showed her the lineup?

12 A. Your Honor, this lineup was showed to Ms. Ashford on
13 March the 13th, 2010. I told her the same thing I told her
14 about every other lineup. The person that she saw that
15 night may or may not be in this lineup. If she'll look at
16 the lineup, if she'll recognize that person, please pick
17 him out for us.

18 Q. And was she able to positively identify anyone?

19 A. No. She didn't positively identify anybody. She
20 picked out two of the photos.

21 Q. And what was she able to say about those?

22 A. In my notes here I have written on this photo lineup,
23 I said:

24 The witness states that the subject she saw, saw
25 on 5/3/09 could be number 3 and number 1.

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1 She picked out number 3 first and stated that both
2 resembles the suspect because of the head shape and the
3 body build.

4 Q. And did you have her memorialize that much?

5 A. I did.

6 Q. By initialing?

7 A. She initialed it and dated it.

8 Q. And was that the extent of the photographs that were
9 shown to Ms. Ashford?

10 A. That, that was all.

11 MS. CAMPBELL: And, Your Honor, at the appropriate
12 time, I'd like to hand those up, but I don't know if they'd
13 want them for cross.

14 MS. PRINGLE: I'd like to see them.

15 (COUNSELORS CONFER.)

16 MS. CAMPBELL: I think she wants to use one on cross,
17 Your Honor. I'd hand them up at the appropriate time.
18 That's all I have, Your honor.

19 THE COURT: Yes, ma'am.

20 MS. PRINGLE: Please the court?

21 EXAMINATION BY MS. PRINGLE:

22 Q. Good morning, Investigator Reese.

23 A. Good morning. How are you?

24 Q. Good, thank you. So, she, Ms. Ashford, at no time
25 makes a positive identification of anyone in any of these

K. REESE - EXAMINATION BY MS. PRINGLE

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1 lineups at no time? I'm sorry, she doesn't make any
2 positive identification of anyone in these lineups,
3 correct?

4 A. No, ma'am.

5 Q. And she did make a positive identification the night
6 of this incident of someone else during a show-up
7 identification procedure, correct?

8 A. She, I think she told the officer that was him, but
9 she said he did have on the same clothing.

10 Q. You are familiar with her subsequent written
11 statement?

12 A. Yeah, I am. I'd have to have a look at it if you're
13 going to ask me questions about it.

14 Q. Certainly.

15 A. But I'm familiar with it.

16 THE COURT: Now, is the purpose of this line of
17 questioning to deal with the issue before the court
18 regarding whether it's suggestive lineup proceeding, and to
19 just review testimony ---

20 MS. PRINGLE: Well, just ---

21 THE COURT: --- in general?

22 MS. PRINGLE: It just goes to reliability of what took
23 place. The fact that she did actually choose someone else
24 and identify someone else that evening.

25 THE COURT: The reliability of her testimony?

K. REESE - EXAMINATION BY MS. PRINGLE

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1 MS. PRINGLE: No. Reliability of -- it would be my
2 position that they're sort of straddling the fence here.
3 That this, that this is an identification and it's not an
4 identification.

5 And I understand that it's a little more complex than
6 the usual situation we have. But while they say that she
7 doesn't identify anyone, she does circle his picture on the
8 lineup.

9 THE COURT: So, this is on the reliability of the
10 identification?

11 MS. PRINGLE: Yes, sir.

12 THE COURT: Is that an issue for me to decide with
13 regard to whether it's a suggestive lineup procedure?

14 MS. PRINGLE: I think it goes to prong two. I'm -- I
15 don't think I would be arguing that the process was unduly
16 suggestive, but whether or not the out-of-court
17 identification, if you deem it an identification, was not
18 reliable under all the circumstances, if you look at all
19 the various factors you have to look at.

20 THE COURT: Okay.

21 (HANDWRITTEN STATEMENT MARKED AS DEFENDANT'S EXHIBIT
22 NUMBER 1 FOR IDENTIFICATION.)

23 BY MS. PRINGLE:

24 Q. Investigator Reese, I hand you what's been marked as
25 Defense Exhibit for identification purposes only at this

1 time Number 1. Do you recognize that?

2 A. It, it in is a handwritten statement. It looks like
3 by Ms. Ashford, taken by Investigator Pegram on March 4th
4 about 12:15 in the morning.

5 Q. All right, and on the second page, if you would turn
6 to the second page, would you agree that her written
7 statement does indicate that she picked someone else that
8 evening as being the person who had the stick in his hands
9 and the gloves on his hands in the driveway of Reverend
10 Eichelberger?

11 A. Well, by this statement, yeah.

12 Q. Thank you, and on State's Exhibit 123, this is the
13 photo lineup that includes Mr. McGee, correct?

14 A. Right.

15 Q. That's the last lineup that you showed her?

16 A. Yes.

17 Q. And the handwriting, that's her signature on there?

18 A. That's her signature.

19 Q. That's circled?

20 A. Uh-huh.

21 Q. And she actually initials and circles two pictures?

22 A. That's correct.

23 Q. One of which is Frankie McGee?

24 A. That's right.

25 Q. And the handwriting at the bottom that I believe you

1 read on direct, that's your handwriting?

2 A. That's mine.

3 Q. So -- I'm sorry, and that would be your statement?

4 A. These are my notes, yeah. I wrote ---

5 Q. Your notes? I'm sorry.

6 A. --- based on what she said.

7 (A PAUSE.)

8 MS. PRINGLE: No further questions.

9 THE COURT: Anything else?

10 MS. CAMPBELL: No, sir.

11 THE COURT: All right, you may step down

12 WITNESS: Thank you, Your Honor.

13 (THE WITNESS EXITS THE STAND.)

14 THE COURT: Any other witnesses?

15 MS. CAMPBELL: No, sir.

16 THE COURT: All right, anything else?

17 MS. CAMPBELL: Nothing from the state.

18 THE COURT: Ms. Pringle?

19 MS. PRINGLE: Thank you, Your Honor. Please the
20 court? We would object to admission of the final lineup
21 under *Neil vs. Biggers*, and also because South Carolina
22 cases addressing *Neil vs. Biggers* issues as to prong two,
23 not under prong one.

24 But I would argue to the court that the out-of-court
25 identification, that it is, in fact, an identification

1 simply because she does circle, and it is circled on his
2 picture. The investigator's notes also indicate that she
3 chose him first, which I think exacerbates the problem. We
4 would, therefore, argue to suppress ---

5 THE COURT: Exacerbate what problem?

6 MS. PRINGLE: Well, because I think, I guess the
7 state's position is that it's not an identification, but
8 yet you have him emphasizing that she did, in fact, circle
9 that one first, which I think ---

10 THE COURT: Who? You have Reese. You need to give
11 complete thoughts to me so I can be sure and follow you.

12 MS. PRINGLE: Your Honor.

13 THE COURT: The him and hes and hers and all of that.
14 Go ahead

15 MS. PRINGLE: Yes, sir. Investigator Reese at the
16 bottom of the photo lineup indicates that she chose that
17 number. That she chose -- let me get it. If I could hand
18 up to the court State's Exhibit Number 123?

19 THE COURT: All right.

20 MS. PRINGLE: Those are Investigator Reese's notes at
21 the bottom, and he indicates that she selected number 3
22 first, and that is the photo of my client.

23 THE COURT: Okay.

24 MS. PRINGLE: So, we would move on those grounds to
25 exclude.

1 I would also renew my motion respectfully, Your Honor,
2 with regards to *State vs. Traylor*. It would be my position
3 that those are mug shots, and they are obviously mug shots.
4 That's my position. I understand the court ---

5 THE COURT: They are obviously mug shots based on
6 what?

7 MS. PRINGLE: I just think the images, when you look
8 at them -- perhaps I've seen too many of them. I don't
9 know, but to me, they're obviously mug shots.

10 THE COURT: They just seem pictures to me. They're
11 just photographs.

12 MS. PRINGLE: I understand, Your Honor.

13 THE COURT: People are -- one guy has a jacket on.
14 One has a t-shirt. One has a shirt with a collar. One
15 looks like he's dressed to go to a party. I mean, I don't
16 know. There's a -- the cases distinguish between photo
17 lineups and photo lineups containing mug shots. These are
18 photos. These are not mug shots, but go ahead.

19 MS. PRINGLE: I understand.

20 THE COURT: Aside from your *Traylor* argument, let's
21 focus on -- which I rejected -- let's focus on that, on the
22 other.

23 MS. PRINGLE: Yes, sir.

24 THE COURT: Others.

25 MS. PRINGLE: I've stated my grounds.

1 THE COURT: But I think I missed your -- if you could
2 tell me your grounds again because I missed something in
3 which your -- whatever you were emphasizing, I missed. So,
4 if you could tell me that again to highlight it.

5 MS. PRINGLE: Well, that -- it is my position that
6 they're seeking to introduce into evidence an out-of-court
7 identification. And while they are presenting it as not a
8 positive identification, in fact what you have is a same
9 lineup sheet that has my client's photograph circled. And
10 I think that that is what *Neil vs. Biggers* is intended to
11 prohibit.

12 She had not -- if you look at the totality of the
13 circumstances, the court is required to consider: one, was
14 the identification process unduly suggestive; two, was the
15 out-of-court nevertheless so reliable that no substantial
16 likelihood of misidentification existed. And I think that
17 it's not reliable.

18 She talks about it being darker. That she didn't --
19 she wasn't really able to see him. But I think the bottom
20 line is that she doesn't pick him, but you have her yet
21 circling him, and so it should not come in. It's
22 unreliable.

23 THE COURT: All right, says the state?

24 MS. CAMPBELL: Your Honor, she is not able to make a
25 positive identification. I understand her argument if he

1 were -- she were to come in here in court today and say she
2 can't say. All she can say is that he is similar, as she
3 did with the other ones. That is reflected in the photo
4 lineups.

5 We don't know of anything in the manner in which the
6 lineups were shown that that would be unduly suggestive.

7 As far as her argument, I think that goes to the
8 weight, not the admissibility, of the actual photo lineups.
9 We are introducing all the lineups where she thought people
10 were similar to make sure we keep it in context and to be
11 fair. So, put it in context, and he is just one of many
12 that she did.

13 We do not see anything in the way that the photo
14 lineups were presented that would be suggestive or was
15 suggestive in this case. And it goes to the weight, not
16 admissibility.

17 THE COURT: Well, I don't think she's arguing that the
18 procedure was suggestive. Are you arguing that as well?

19 MS. PRINGLE: No, sir.

20 THE COURT: She's not claiming it was suggestive.
21 She's claiming prong 2: that the identification is not
22 reliable. I believe that's supposed to be the essence of
23 it.

24 MS. CAMPBELL: Your Honor.

25 THE COURT: That she is circling this person, circling

1 that person. She doesn't know who it is. That is
2 suggestive, unduly suggestive.

3 MS. CAMPBELL: That it's unduly ---

4 THE COURT: Not -- I'm sorry, not suggestive. It's
5 unreliable.

6 MS. CAMPBELL: And I think that goes to the weight,
7 not the admissibility and the actually -- what she's shown
8 and was able to say. That's certainly something I think
9 she could argue to the jury and everything else. However,
10 there is -- she is shown people that are similar to that.
11 And we think we would have the right just to go into it for
12 that purpose.

13 THE COURT: Ms. Pringle, you, didn't you tell the jury
14 in the opening that the person there picked someone else
15 out of a lineup and identified someone differently?

16 MS. PRINGLE: Yes, sir. She did.

17 THE COURT: And you don't think she should have an
18 opportunity to explain or talk about what you told the
19 jury, that the wrong person was identified and all that?

20 MS. PRINGLE: That person isn't in any of those. That
21 was a person on the scene that night.

22 THE COURT: Well, is that the person you asked Reese
23 about just a minute ago?

24 MS. PRINGLE: Yes, sir. That was, that, that person
25 is David Williams, and he was caught running on the scene.

1 And they just, they did a show-up I.D. there, which she
2 chose him there.

3 THE COURT: Well, you've in effect told the jury
4 through your opening statement that this witness identified
5 someone else. The state wants to introduce evidence that
6 the defendant looked like the person who committed the
7 crime, though she is not positive about her identification.

8 You don't question the process used by law
9 enforcement, but you are questioning the reliability of the
10 witness. In *State vs. Simmons*, the -- which occurred, the
11 robbery at McDonald's out on Decker Boulevard case, the
12 court allowed the identification though the witness was not
13 absolutely certain of the identification. And the
14 appellate courts found no problem with that. How do you
15 distinguish that, if you do?

16 MS. PRINGLE: Well, she's not certain at all. She
17 says could be.

18 THE COURT: Well, she picked him. She picked him out
19 of the lineup, didn't she?

20 MS. PRINGLE: She says it could be him. It could be
21 the other guy, and she says similar things on other -- with
22 respect to others.

23 THE COURT: Well, in *Simmons* she said the witness,
24 third eyewitness testified that Simmons looked like the
25 robber, and the appellate court found no problem with the

1 testimony, no error in allowing her testimony. How is that
2 different from this case?

3 MS. PRINGLE: I think it's weaker here.

4 THE COURT: Well, to what degree? Does that mean that
5 when -- you consider you've told the jury that some third
6 person was identified. So, therefore, we have this witness
7 that you've said has picked someone else. That would
8 suggest to the exclusion of your client that she picked
9 someone else. And now you're seeking to prevent the state
10 from asking her any questions concerning her
11 identification.

12 MS. PRINGLE: I've only seeking to exclude that final
13 lineup. I'm not objecting, and I don't think that I could
14 object to the other lineups. I'm only objecting to the one
15 that includes his photo.

16 THE COURT: You want to exclude the lineup in which
17 she picked your client?

18 MS. PRINGLE: Yes.

19 THE COURT: Well, they'd have no point in calling her
20 as a witness, then, if she had nothing of value to testify
21 to as far as the state's position.

22 I think that the purpose of *Neil vs. Biggers* is for
23 the court to certainly review both prongs, but also to
24 ensure that the testimony given is, is open to challenges
25 by lawyers on both sides. The witnesses are examined and

1 cross-examined, and then the jury weighed the -- weighs the
2 evidence.

3 But for me to start suggesting the jury can hear this
4 but not hear that, how will they -- what will they have to
5 base their decision on?

6 I certainly understand your point of view in the case.
7 These are not absolutely clear issues one way or the other
8 because every case, there's a different nuance in every
9 matter presented. No two circumstances are generally
10 identical.

11 But I think on balance, the testimony is sufficiently
12 reliable to be introduced during the course of the trial
13 and for the jury to evaluate all of it. Evaluate what you
14 told them in opening statements, and what the witnesses
15 said, and what -- she is, after all, the only, apparently
16 the only witness to the case who saw the perpetrator
17 standing on the man's front porch immediately after the
18 crime, and she can talk about it. So, I deny the motion.

19 Well, did you get all those jurors? All right, we'll
20 take a two-minute stretch, and then we'll be ready to bring
21 the jury.

22 (OFF THE RECORD.)

23 THE COURT: You may bring in the jury.

24 (THE JURY ENTERS AT 10:29 A.M.)

25 BAILIFF: Jurors are seated, Your Honor.

J. MORRISON - VOIR DIRE EXAMINATION BY MS. SIMPSON

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1 THE COURT: All right. Good morning. Your next
2 witness, please.

3 MS. SIMPSON: The state calls Dr. James Morrison.

4 JAMES E. MORRISON, BEING DULY
5 SWORN, TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Have a seat in the witness box, and
7 state your name for the record, please.

8 WITNESS: My full name is Dr. James Edward Morrison,
9 M-O-R-R-I-S-O-N.

10 VOIR DIRE EXAMINATION BY MS. SIMPSON:

11 Q. Good morning, Dr. Morrison. What do you do?

12 A. I am a full-time trauma and critical care surgeon at
13 Palmetto Health Richland, which is the level one trauma for
14 the Midlands of South Carolina.

15 Q. And how long have you been licensed to practice in
16 this state?

17 A. I moved here approximately nine years ago for the
18 State of South Carolina. Prior to that, I was licenced in
19 California.

20 Q. And can you tell us a little bit about your education
21 and training?

22 A. Yes, ma'am. To become a physician, you have to
23 complete college, so you do four years of college. After
24 college, you do four years of medical school; that's a
25 general medical education. After medical school, you can

J. MORRISON - DIRECT EXAMINATION BY MS. SIMPSON

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1 choose a specialty training. I chose surgery. Surgery is
2 a six year training program called a residency. At the end
3 of those six years, you take both a written and an oral
4 exam, and those then help you become a board certified
5 general surgeon, which is what I am.

6 I then also did a one year specialty training in
7 addition in surgical critical care, which I also took a
8 test for which then qualifies me to work in intensive care
9 units and take care of surgery patients who are critically
10 ill.

11 And my focus of practice since the thirteen years
12 after graduation have all been in trauma and critical care,
13 predominately involving injured patients.

14 Q. And, Doctor, how many patients would you say you've
15 seen in the course of your years?

16 A. I would have to say ---

17 Q. Can you even put a number on it?

18 A. I can say thousands. Palmetto Health Richland sees
19 over 2000 trauma patients per year, and I round regularly
20 either on the floor or in the intensive care unit. So, I
21 have some exposure to essentially all of them.

22 Q. And have you testified before?

23 A. I've testified in this court and been certified as an
24 expert witness.

25 MS. SIMPSON: Your Honor, at this time the state would

J. MORRISON - DIRECT EXAMINATION BY MS. SIMPSON

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1 seek to qualify Dr. Morrison as an expert in general
2 surgery, as well as trauma and surgical critical care.

3 MR. STRICKLER: No objection.

4 THE COURT: He's admitted.

5 DIRECT EXAMINATION BY MS. SIMPSON:

6 Q. Now, did you have occasion to see the victim, Tryon
7 Eichelberger, professionally?

8 A. Yes, ma'am.

9 Q. And when was that?

10 A. That was in May of 2009. He came in late in the
11 evening, or if you prefer early in the morning. Part of my
12 job involves staying in a hospital kind of like firemen
13 stay in a fire department overnight. I stay in the
14 hospital overnight and then see anyone who comes in who is
15 severely injured. And he came in on my call shift.

16 Q. Do you have any personal recollection about this case?

17 A. My recollection is more from when he was discharged
18 than when he came in. When he came in, he was, to me, any
19 of many assaulted patients that I see. But I do
20 specifically remember discharging the pastor, preacher to
21 long-term care with the expectation that he was not going
22 to do well. And I have very specific memory of that.

23 Q. Okay, and did you review any medical records in
24 preparation for this case here?

25 A. I have the medical records that were sent to me by

J. MORRISON -- DIRECT EXAMINATION BY MS. SIMPSON

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1 your office.

2 Q. Where did you see Mr. Eichelberger?

3 A. Mr. Eichelberger was brought in as a critical trauma
4 patient. He is what we call a 911 alert. So, when someone
5 is so badly injured that the paramedics fear that they are
6 dying from their injuries, they call ahead. We page out
7 what's called a 911 alert, and an entire team of surgeons,
8 technicians, nurses, emergency room physicians all convene
9 in the emergency room to meet that patient as they arrive.
10 And he arrived in that circumstance. He was what we call a
11 911 trauma.

12 Q. Backing up just a little bit. You said it's a team.
13 What is your role with respect to this team?

14 A. I am the lead surgeon. I'm often called an attending
15 because I oversee residents. There are surgery residents
16 who are in their surgical training that are on call with
17 me. So, they arrive. There's also emergency room
18 physicians that are certified as such. They have their
19 trainees there as well. And then there, again, there are
20 multiple nurses, technicians, people doing X-rays -- even
21 the chaplain comes -- all to help support the evaluation of
22 the critically injured patient.

23 Q. But you're the lead, so are you responsible ---

24 A. Yes, I am. I am responsible.

25 Q. --- essentially for this force? How did he arrive on

1 May the 4th?

2 A. He was brought in by paramedics, and then if you'll
3 look at the record, what they'll say is he came in in what
4 they call full C-spine precautions. And what that means is
5 they put him on a backboard to keep him stiff and straight
6 in case he's got a spine injury. They put a collar on his
7 neck so that he doesn't move his neck in case there's a
8 neck injury. He had most likely put some sort of dressing
9 on his head. That I don't specifically recall, and then
10 they may or may not put an IV in him as they bring him in
11 if they have time.

12 Q. And do you recall about what time this would have been
13 on May 4th of 2009?

14 A. It was in the area of midnight. I know that my
15 resident's note that was done on computer was timed in at
16 just past midnight on the 4th of May 2009.

17 Q. In emergency situations, can initial info regarding
18 how the patient presents be beneficial to you?

19 A. All that information is beneficial. I take the
20 paramedics at their word. So, when they bring me someone
21 that's crashed in a car, I believe they were at a scene
22 that looked like a car cash. When they bring me someone
23 who's been assaulted, I believe the paramedics were at a
24 scene that looked like someone could have been injured or
25 beaten up. They tell me that when they arrive, and I

J. MORRISON - DIRECT EXAMINATION BY MS. SIMPSON

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1 take that into account as I consider what the injuries
2 might be.

3 Q. And how did Mr. Eichelberger arrive? Under what
4 circumstances?

5 A. He was reported as someone, reported to me as someone
6 who had been assaulted. He was found in a very large pool
7 of blood. And the reason that the paramedics had him
8 brought in as a critical trauma was due to the amount of
9 blood at the scene, and their concern that he could be
10 bleeding to death.

11 Q. So, there was a large amount of blood at the scene?

12 A. I heard as much as 2 liters reported. A liter is
13 about a quart, so maybe 2 quarts of blood, half gallon of
14 blood, somewhere in that neighborhood, but it was a large
15 pool, enough to make the paramedics nervous.

16 Q. And when he arrived, what was his condition?

17 A. He was head injured in that he could not make sense,
18 and he cannot follow commands. He could say some random
19 words, but not a full sentence that made sense. He would
20 pull at things, but he couldn't follow commands. He had a
21 large cut on the top of his head which was bleeding which
22 we had to sew, and those were his main -- initial injuries
23 that we identified as he came in the door.

24 Q. So, in that state, was he able to provide any
25 information to you as far as his background or happened?

1 Was he very helpful at all in that respect?

2 A. He was unable to give us any information himself.

3 Q. And can you describe for us his movements with respect
4 to when he came in?

5 A. When people come in where their head's been injured,
6 we do what's called a Glasgow Coma Scale Score, and it's a
7 number we give and we kind of grade things. We grade how
8 well you open your eyes, we grade how well you speak, and
9 we grade how intentionally you move.

10 He couldn't follow commands. He would grab at things,
11 pull at things, but could not follow commands. He would
12 not open his eyes, and he would say random but nothing that
13 made sense or even meant a sentence.

14 Q. And I want to back up to the visible injuries that you
15 observed. Can you tell us a little bit about that? I
16 believe you said a laceration. What is a laceration?

17 A. A laceration is a cut. The scalp is extremely
18 vascular. If you cut your, cut your head shaving, just
19 like when you cut you face shaving, it bleeds a lot.

20 If you get a cut where I gesture on the top of my head
21 where his was -- his was on the top left of his head --
22 you've got a large cut there, that can bleed profusely.
23 You can loose an extremely large amount of blood from that
24 area. His cut was 7 centimeters, which is just short of 3
25 inches in length, so it was a pretty good gash, and it was

J. MORRISON - DIRECT EXAMINATION BY MS. SIMPSON

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1 actively bleeding.

2 Q. And would that have -- injury, absent any care, been
3 potential life-threatening on its own?

4 A. I know of patients in the literature who have bled to
5 death from a scalp laceration.

6 Q. And did you happen to note whether there were any
7 defensive wounds? I guess first tell us what a defensive
8 wound would be.

9 A. A defensive wound is something that if someone is
10 striking you, if you raise up your hands to block a knife
11 or a bat or a stick, then your hands get struck. So, those
12 -- I'm going to put my hands in front of my face. But if
13 you put your hands in front of your face to block yourself,
14 they're going to get hit first. So, those are considered
15 defensive wounds.

16 I do not recall any on him. I have not seen any
17 pictures of any on him.

18 Q. And can you describe for the jury the nature of the
19 examinations, if any, that you did at that time?

20 A. We do two examinations when somebody arrives in the
21 emergency department. We do a quick head to toe. It's
22 actually called the ABCs, but there's something we check
23 that starts with an A, something that starts with a B kind
24 of as an algorithmic way to fix quickly life-threatening
25 things.

1 C is circulation. He was bleeding. I've got to stop
2 the bleeding, so that was part of the quick head to toe
3 looking for life-threatening, immediately, I'm dying kind
4 of injuries.

5 And then once we've got that settled, we go back. We
6 do a very careful head to toe exam looking at every hair,
7 every cut, every bruise, and your eyes and your ears and
8 your nose, listening to your lungs, et cetera. Complete,
9 complete head to toe exam. And then from there we pick
10 what X-rays and scans we want to get to further look for
11 injuries.

12 Q. And did you actually do any scans on that day, May the
13 4th?

14 A. He has a full set of CAT scans and some regular
15 X-rays. A CAT scan is special kind of X-ray which in many
16 ways takes the body part and turns it into, like, slices of
17 bread. So, if you were going to look at a whole loaf of
18 bread that was sliced, you could look at each little slice
19 of bread.

20 The CAT scan, when I gesture like in lines across my
21 head, it will take little slices of each area of your body,
22 and I can look internally at your brain, at the bones in
23 your neck, at your heart and lungs, at all your internal
24 organs, and look for injury or bleeding that could
25 positively -- possibly cause someone to die.