

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

William H. Seals, Jr., Circuit Court Judge

RECEIVED
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S.C. Supreme Court

KEVIN WALTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000018

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

COURT OF GENERAL SESSIONS
04-GS-21-1168

STATE OF SOUTH CAROLINA

-vs-

KEVIN WALTON

:
:
:
:
:

TRANSCRIPT OF RECORD

FRIDAY, FEBRUARY 9, 2007
FLORENCE, SOUTH CAROLINA

B E F O R E:

HONORABLE THOMAS RUSSO, JUDGE.

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

JACK LAWSON, DEPUTY SOLICITOR
ATTORNEY FOR THE STATE

KAREN PARROTT, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

I N D E X

1

2

3 CERTIFICATE OF COURT REPORTER 21

4

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10 E X H I B I T S

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12 (NO EXHIBITS WERE INTRODUCED DURING THE HEARING.)

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1 MR. LAWSON: MAY IT PLEASE.

2 THE COURT: YES, SIR.

3 MR. LAWSON: MAY IT PLEASE THE COURT. THIS MATTER IS
4 THE STATE VERSUS KEVIN WALTON, INDICTMENT 04-GS-21-1168.
5 YOUR HONOR, WE'RE HERE ON MR. WALTON'S MOTION FOR RELIEF OF
6 COUNSEL. HE'S REPRESENTED BY MS. PARROTT FROM THE PUBLIC
7 DEFENDER'S OFFICE.

8 THE COURT: ALL RIGHT.

9 MS. PARROTT: YOUR HONOR, IF I MAY.

10 MR. LAWSON: DIDN'T HE ORIGINALLY FILE A MOTION
11 AND ---

12 MS. PARROTT: THAT IS EXACTLY WHAT I WAS GOING TO ADD.
13 HE HAS ORIGINALLY FILED A MOTION. BUT THERE HAS BEEN SOME
14 ADDITIONAL INFORMATION WHICH I'VE JUST RECENTLY RECEIVED,
15 SO IT WOULD BE BOTH OF US MAKING THE MOTION FOR ME TO BE
16 RELIEVED.

17 THE COURT: ALL RIGHT. YOU JOIN THE MOTION?

18 MS. PARROTT: YES, YOUR HONOR.

19 THE COURT: WELL, DO YOU WANT TO BE HEARD FIRST OR MR.
20 WALTON? IT DOESN'T MATTER TO ME.

21 MS. PARROTT: HOWEVER THE COURT WISHES TO PROCEED.

22 THE COURT: ALL RIGHT. GO AHEAD, MS. PARROTT. I'LL
23 HEAR FROM YOU. THEN I'LL HEAR FROM YOU, MR. WALTON.

24 MS. PARROTT: MAY IT PLEASE THE COURT, YOUR HONOR.

25 THE COURT: YES, MA'AM.

1 MS. PARROTT: IN QUITE FRANKNESS, YOUR HONOR, THIS IS
2 A CASE THAT HAS BEEN OPEN SINCE AUGUST OF 2003. IT
3 PERTAINS TO A MURDER CASE THAT HAPPENED IN MARCH OF 2003
4 DOWN IN PAMPLICO. MR. WALTON WAS CHARGED WITH MURDER AS
5 WELL AS GRAND LARCENY. AND THE ALLEGATIONS HAVE IT THAT HE
6 WOULD HAVE FLED TO FLORIDA AS WELL AS TO VIRGINIA WHERE HE
7 WAS THEN CAUGHT AND CAPTURED, HOWEVER, AND THEN HELD
8 PENDING EXTRADITION TO SOUTH CAROLINA.

9 HE ARRIVED BACK IN SOUTH CAROLINA IN AUGUST OF 2003
10 OUR FILE WAS THEN OPENED.

11 BECAUSE OF THE COMPLEXITY OF MULTIPLE JURISDICTIONS,
12 AS WELL AS JUST A NUMBER OF MURDERS THAT HAVE OCCURRED AND
13 THE COMPLEXITY OF THE COURT SCHEDULE, THERE HAVE BEEN MANY
14 REASONS WHY THIS CASE HAS NOT BEEN HEARD NECESSARILY BEFORE
15 NOW.

16 MR. LAWSON AND I HAVE TALKED ABOUT WHEN IT WOULD BE
17 QUITE A FEW DIFFERENT TIMES; THAT'S BEEN A PART OF MY FILE
18 AS WELL AS THE DISCOVERY THAT'S BEEN TURNED OVER. AND I'VE
19 MADE COPIES OF EVERY BIT OF DISCOVERY THAT I'VE BEEN GIVEN
20 AND GIVEN IT TO MR. WALTON, EXCEPT FOR THE DISK OR THE CD
21 OF THE AUTOPSIES PHOTOS WHICH, OF COURSE, THEY WOULD HAVE
22 NO WAY OF SEEING OR BEING ABLE TO VIEW WHILE DOWN AT THE
23 DETENTION CENTER ANYWAY.

24 SO ALL THAT HAVING BEEN SAID, HE HAS FILED THIS MOTION
25 AS WELL APPARENTLY ANOTHER FEDERAL MOTION. HE HAD FILED

1 ONE OF THOSE PREVIOUSLY ALSO QUESTIONING WHETHER OR NOT HE
2 SHOULD HAVE BEEN EXTRADITED, WHETHER OR NOT HE SHOULD HAVE
3 BEEN HELD.

4 AND APPARENTLY ACCORDING TO THE INFORMATION THAT I
5 HAVE -- NOW, AGAIN, THERE'S ANOTHER WRIT OF HABEAS CORPUS
6 THAT HAS BEEN FILED. HE IS VERY DISSATISFIED WITH THE FACT
7 THAT I WOULD NOT FILE A MOTION FOR A SPEEDY TRIAL.

8 BUT, OF COURSE, THE PROBLEM WITH THAT IS QUITE SIMPLY
9 THAT IN A CASE THAT IS THIS COMPLICATED, YOUR HONOR, ONE,
10 THAT'S A PROBLEM. TWO, IT'S USUALLY NOT -- USUALLY NOT SO
11 GREAT FOR A DEFENDANT TO HAVE A SPEEDY TRIAL; THAT GIVES IT
12 MORE TIME FOR THE CASE TO DEAL WITH WHATEVER WAY IT'S GOING
13 TO BE DEALT WITH. BUT ---

14 THE COURT: WELL, IS THERE ANY REMEDY FOR MR. WALTON
15 UNDER A SPEEDY TRIAL MOTION?

16 MS. PARROTT: NO, YOUR HONOR. WHENEVER WE HAD THE
17 BOND HEARING AND HE WAS SCHEDULED FOR THE BOND HEARING, HE
18 WAS BROUGHT OVER. HE ACTUALLY ---

19 THE COURT: IS THERE A HOLD FROM OTHER STATES?

20 MS. PARROTT: THERE ARE STILL CHARGES THAT ARE PENDING
21 IN FLORIDA. I'M NOT SURE IF THERE'S A HOLD ACTUALLY IN
22 EFFECT AT THIS TIME OR NOT. BUT THERE ARE CHARGES IN
23 FLORIDA.

24 THE COURT: DO YOU KNOW, MR. WALTON? I DON'T KNOW.
25 YOU MAY NOT KNOW.

1 MR. WALTON: I DON'T KNOW.

2 THE COURT: YOU DON'T KNOW. OKAY.

3 MS. PARROTT: BUT BEYOND THAT, WHENEVER HE WAS BROUGHT
4 OVER FOR HIS BOND HEARING, HE TOLD ME HE DIDN'T WANT TO
5 HAVE IT. HE DIDN'T KNOW WHY I FILED TO HAVE IT TO BEGIN
6 WITH AND ASKED THAT I WAIVE IT. HE DIDN'T WANT IT HEARD,
7 WHICH IS EXACTLY WHAT I THEN DID.

8 SO MY HANDS HAVE BEEN A LITTLE BIT TIED JUST SIMPLY BY
9 WHAT THIS CASE IS. BUT ALL THAT HAVING BEEN SAID, I HAVE
10 TO RESPOND VERY CLEARLY TO THE SUPREME COURT, AND I PLAN ON
11 DOING SO VERY CLEARLY TO THE SUPREME COURT WITH QUITE A BIT
12 OF THE INFORMATION THAT IS CONTAINED IN THIS FILE SO THAT I
13 CAN FULLY AND COMPLETELY PROTECT MYSELF FROM HIS
14 ALLEGATIONS WHICH QUITE INTERESTINGLY ALSO CITE MR. SPARKS
15 AND WHAT HIS SITUATION WAS.

16 SO THERE'S QUITE A BIT OF INFORMATION, BUT HE ALSO HAS
17 HIS OWN REASONS FOR WANTING ME REMOVED. BUT I DO BELIEVE
18 THAT DUE TO THE NATURE OF WHAT I MUST SAY AND WHAT I MUST
19 DO TO RESPOND TO THE SUPREME COURT, I WOULD ASK I BE
20 REMOVED AS COUNSEL.

21 THE COURT: THANK YOU. MR. WALTON, I'D BE HAPPY TO
22 HEAR FROM YOU, SIR. DO YOU HAVE ANYTHING YOU WANT TO SAY?

23 MR. WALTON: YEAH. IS THIS A HEARING CRIMINALLY AS
24 FAR AS MY MOTION TO DISMISS COUNSEL OR IS THIS A HEARING
25 WITH REGARDS TO MY COMPLAINT WITH THE SUPREME COURT?

1 THE COURT: THIS IS REGARDING YOUR MOTION TO HAVE HER
2 RELIEVED AS COUNSEL AND HAVE ANOTHER LAWYER APPOINTED.

3 MR. WALTON: OKAY. SO THIS HAS NOTHING TO DO WITH MY
4 COMPLAINT IN FRONT OF THE SUPREME COURT.

5 THE COURT: NO, SIR.

6 MR. WALTON: OKAY. ALL RIGHT.

7 THE COURT: I MEAN, THAT'S AN ISSUE THAT MS. PARROTT
8 RAISES IN HER REQUEST TO BE RELIEVED. BUT WHAT I'M
9 INTERESTED IN AND WHAT I'M HEARING TODAY, SIR, IS YOUR
10 REQUEST TO HAVE HER RELIEVED.

11 MR. WALTON: OKAY. I JUST WANTED TO KNOW IF THIS WAS
12 A REMEDY FROM THE SUPREME COURT OR BY MY OWN MOTION TO
13 DISMISS.

14 THE COURT: NO. THIS IS ON YOUR MOTION TO DISMISS ---

15 MR. WALTON: OKAY. THANK YOU.

16 THE COURT: --- MS. PARROTT AS YOUR COUNSEL.

17 MR. WALTON: WILL I BE ABLE TO HAVE A COPY OF THIS
18 HEARING TODAY?

19 THE COURT: IT IS ---

20 MR. WALTON: FOR APPELLATE PURPOSES.

21 THE COURT: IT IS BEING TRANSCRIBED (SIC), YES.

22 MR. WALTON: AS YOU KNOW, MY NAME IS KEVIN WALTON.

23 AND THIS CASE WAS ORIGINATED BACK IN MARCH OF 2003 WHEN MS.

24 SHANNON DALE CARTER WAS KILLED. I'VE BEEN CHARGED WITH

25 THAT CRIME, YOUR HONOR. I'VE BEEN APPOINTED A PUBLIC

1 DEFENDER. I SAW MS. PARROTT IN AUGUST OF 2003 WHERE WE
2 TALKED BRIEFLY FOR PROBABLY ABOUT 10 MINUTES. AND I
3 HAVEN'T TALKED TO HER SINCE, AND THIS IS 2007.

4 SHE'S KNOWN ALL ALONG, AS WELL AS MR. CLEMENTS, THAT I
5 DESIRE A SPEEDY TRIAL. THEY'VE BOTH DENIED THAT --
6 BRINGING THAT TO THE COURT'S ATTENTION..

7 I FILED SEVERAL MOTIONS -- SEVERAL COMPLAINTS IN
8 FEDERAL COURT WITH THIS SAME ISSUE. BACK IN 2005 MR.
9 CLEMENTS ADVISED THE MAGISTRATE FOR THE FEDERAL DISTRICT
10 COURT THAT IF I WANTED A SPEEDY TRIAL THAT ALL I HAD TO DO
11 WAS ASK MY ATTORNEY.

12 SO GIVEN THAT, I ASKED HER IN FEBRUARY OF 2006 TO PUT
13 FORTH A MOTION FOR SPEEDY TRIAL PROTECTING MY RIGHTS
14 THROUGH A SPEEDY TRIAL. AND SHE WROTE ME BACK BASICALLY
15 TELLING ME THAT, NO, SHE WOULD NOT, AND, NO, I COULD NOT.

16 HAVING PATIENCE, I WAITED SIX MONTHS FOR HER TO DO
17 SOMETHING -- FOR SOMETHING TO COME FORTH FROM MY REQUEST.
18 AND WHEN IT DID NOT IN AUGUST OF 2006, I FILED SUBSEQUENT
19 MOTIONS HERE IN THIS COURT AND ALSO UP UNDER SECTION 28 241
20 OF THE FEDERAL STATUTE CODE.

21 I'VE BEEN WAITING TO HAVE THIS HEARD FOR APPROXIMATELY
22 FOUR MONTHS. AND THAT'S -- THAT'S -- THAT'S PRETTY MUCH
23 IT.

24 NOW, MS. -- MS. -- MS. PARROTT -- IF I MAY COMMENT TO
25 WHAT SHE SAID BRIEFLY.

1 THE COURT: YES, SIR.

2 MR. WALTON: SHE -- SHE EXPRESSES A REASON WHY SHE
3 DOESN'T FILE FOR A SPEEDY TRIAL. AND -- AND I FEEL THE
4 REASONS -- BUT ALSO AT THE SAME TIME HER REASONS CONFLICT
5 WITH MY RIGHT TO REQUEST A SPEEDY TRIAL.

6 NOW, SINCE I'VE ASKED HER FOR A SPEEDY TRIAL AND SHE'S
7 TOLD ME, NO, THAT SHE WOULD NOT, I FEEL THAT BECAUSE I CAN
8 ONLY FILE A MOTION TO DISMISS HER AND NOT A MOTION FOR
9 SPEEDY TRIAL ON MY OWN, THAT I HAVE BEEN PRECLUDED FROM
10 FILING A REQUEST FOR A SPEEDY TRIAL FOR OVER A YEAR NOW,
11 PARTLY BECAUSE OF HER SAYING, NO, AND PARTLY BECAUSE OF THE
12 COURT NOT BEING ABLE TO HEAR MY MOTION FOR THE LAST FOUR
13 MONTHS.

14 FOR SOME REASON, THERE'S A PROBLEM WITH HEARING PRO SE
15 MOTIONS. THE COURT GIVES US A RIGHT TO FILE A PRO SE
16 MOTION TO DISMISS OUR ATTORNEY, BUT WE DO NOT HAVE ANY KIND
17 OF -- SOMETHING SAYING THAT THEY HAVE TO HEAR THAT MOTION
18 WITHIN A REASONABLE TIME.

19 IN MY CASE IT'S TAKEN FOUR MONTHS. AND IN SPARKS'
20 CASE IT'S TAKEN A YEAR AND A HALF, WHICH IS CLEARLY NOT ---

21 MR. LAWSON: YOUR HONOR, I'D ASK THAT THIS BE CONFINED
22 TO MR. WALTON'S CASE. IT HAS NOTHING TO DO WITH MR.
23 SPARKS.

24 THE STATE INTENDS TO TRY MR. WALTON IN THE APRIL TERM
25 OF COURT, SO THE ISSUE OF SPEEDY TRIAL IS MOOT AT THIS

1 POINT.

2 SO IF HE WANTS A SPEEDY TRIAL, HE'S GETTING IT IN
3 APRIL.

4 THE COURT: MR. WALTON, LET ME ASK YOU, SIR ---

5 MR. WALTON: YOUR HONOR ---

6 THE COURT: LET ME ASK YOU THIS.

7 MR. WALTON: I WAS JUST INTERRUPTED, YOU KNOW.

8 THE COURT: LET ME JUST ---

9 MR. LAWSON: AS I HAVE THE RIGHT TO DO UNDER THE
10 RULES.

11 THE COURT: LISTEN. I'M GOING TO ASK BOTH OF YOU NOT
12 TO SPEAK AGAIN UNLESS I RECOGNIZE YOU.

13 MR. WALTON: YES, SIR.

14 THE COURT: MR. LAWSON HAS INDICATED THAT YOUR CASE --
15 HE INTENDS TO CALL IT FOR TRIAL IN APRIL. NOW, THAT HAS
16 NOTHING TO DO -- AND I UNDERSTAND -- WITH YOUR REQUEST TO
17 HAVE MS. PARROTT RELIEVED AS YOUR ATTORNEY.

18 LET ME ASK YOU THIS, BECAUSE I'M ASSUMING THIS. I'M
19 ASSUMING THAT YOU WOULD LIKE TO HAVE HER RELIEVED AND HAVE
20 SOMEONE APPOINTED IN HER PLACE TO REPRESENT YOU?

21 MR. WALTON: I HAVEN'T MADE THAT DECISION YET, YOUR
22 HONOR. I HAVE -- I HAVE -- IF I MAY TALK NOW?

23 THE COURT: YES.

24 MR. WALTON: I HAVE A COUPLE QUESTIONS FOR THE COURT.
25 AND IN RESPONSE TO THAT -- TO MY -- TO MY QUESTIONS, IT

1 WILL DETERMINE WHETHER OR NOT I CHOOSE COUNSEL OR WHETHER
2 OR NOT I WILL CHOOSE TO HAVE THE COURT APPOINT MYSELF TO
3 REPRESENT MYSELF.

4 THE COURT: ALL RIGHT.

5 MR. WALTON: NUMBER ONE, IF I CHOOSE TO REPRESENT
6 MYSELF, WILL I HAVE ACCESS TO A LAW LIBRARY?

7 THE COURT: YES.

8 MR. WALTON: AND WILL THAT ACCESS BE DAILY OR HOW MUCH
9 ACCESS WILL I HAVE?

10 THE COURT: THAT I CAN'T ANSWER.

11 MR. WALTON: MY DECISION IS CONTINGENT ON THOSE
12 ANSWERS.

13 THE COURT: WELL, HERE'S WHAT I'LL DO. IN ANY CASE IS
14 IT MY UNDERSTANDING -- AND YOU TELL ME AM I CORRECT THAT IN
15 ANY CASE YOU EITHER WOULD CHOOSE TO PROCEED PRO SE OR WITH
16 AN ATTORNEY OTHER THAN MS. PARROTT; IS THAT STILL YOUR
17 POSITION?

18 MR. WALTON: THOSE ARE MY OPTIONS.

19 THE COURT: OKAY. SO YOU STILL WANT TO GO FORWARD
20 WITH HAVING MS. PARROTT RELIEVED?

21 MR. WALTON: ABSOLUTELY.

22 THE COURT: ALL RIGHT. I'M GOING TO GRANT YOUR MOTION
23 WITH REGARDS TO THAT.

24 MS. PARROTT, I'M GOING TO RELIEVE YOU FROM
25 REPRESENTATION. HAVING SAID THAT, I ASSUME YOU'VE GOT A

1 VOLUMINOUS FILE. HERE'S WHAT I'M GOING TO DO.

2 I'M GOING TO APPOINT ANOTHER ATTORNEY TO REPRESENT
3 YOU, MR. WALTON. HOWEVER, AT SOME POINT YOU CAN CHOOSE TO
4 PROCEED PRO SE. YOU CAN REPRESENT YOURSELF. I AM GOING TO
5 APPOINT AN ATTORNEY SO THAT IF YOU DO DECIDE THAT YOU DO
6 NEED COUNSEL, YOU NEED REPRESENTATION, THAT YOU HAVE A
7 LAWYER IN PLACE. AND I'M FINDING OUT WHO THAT'S GOING TO
8 BE.

9 MR. WALTON: IF YOU DO THAT, YOUR HONOR, WILL HE OR
10 SHE BE THE ATTORNEY OF RECORD? WILL THAT PRECLUDE ME FROM
11 FILING MOTIONS?

12 THE COURT: WELL, LET ME SAY THIS. IF YOU HAVE AN
13 ATTORNEY OF RECORD, IN OTHER WORDS, YES, MOTIONS WOULD HAVE
14 TO BE THROUGH YOUR LAWYER. BUT HERE'S WHAT I'M NOT GOING
15 TO DO AND I'M NOT GOING TO ALLOW TO HAPPEN. I'M GOING TO
16 NEED -- IN OTHER WORDS, I'M GOING TO APPOINT AN ATTORNEY.

17 NOW, YOU CAN DECIDE THAT YOU DO NOT WANT AN APPOINTED
18 COUNSEL, AND THAT YOU WANT TO PROCEED PRO SE. YOU CAN MAKE
19 THAT DECISION. AND IF YOU DO THAT, THEN, OF COURSE, YOU'RE
20 PROCEEDING PRO SE. AND YOU FILE YOUR MOTIONS HOWEVER YOU
21 SEE FIT.

22 BUT HERE'S WHAT I'M NOT GOING TO DO: I'M NOT GOING TO
23 LET YOU MANIPULATE THE SYSTEM WHERE YOU HAVE A LAWYER AND
24 YOU'RE FILING YOUR OWN MOTIONS.

25 MR. WALTON: I UNDERSTAND I CAN'T HYPER COUNSEL, YOUR

1 HONOR.

2 THE COURT: THAT'S RIGHT, WE'RE NOT GOING TO DO THAT.
3 SO HERE'S WHAT I'M GOING TO DO. THE NEXT ATTORNEY ON THE
4 LIST IS PATRICK MCLAUGHLIN (PHONETIC). I'M GOING TO NOTIFY
5 -- AND WE'LL GIVE YOU THAT INFORMATION BEFORE YOU LEAVE
6 HERE. I'M GOING TO NOTIFY PATRICK MCLAUGHLIN THAT HE HAS
7 BEEN APPOINTED ON YOUR CASE AND THAT HE NEEDS TO CONTACT
8 YOU.

9 MEET WITH MR. MCLAUGHLIN. TALK WITH HIM. IT MAY BE
10 THAT YOU DECIDE THAT YOU WANT TO PROCEED PRO SE OR THAT YOU
11 WORK WELL WITH HIM AND YOU'RE READY TO GO FORWARD AND MR.
12 MCLAUGHLIN IS IN PLACE. OKAY?

13 MR. WALTON: MY ONLY PROBLEM WITH THAT, YOUR HONOR, IS
14 GETTING INTO THE SAME SITUATION I HAD WITH MS. PARROTT.
15 OBVIOUSLY, THE COURT REALLY DOESN'T CARE WHETHER SHE FILED
16 A SPEEDY TRIAL IN MY BEHALF OR NOT. IF I GET ANOTHER
17 ATTORNEY THAT SAYS, MR. WALTON, I'M NOT GOING TO FILE A
18 SPEEDY TRIAL, WILL I HAVE TO WAIT ANOTHER YEAR ---

19 THE COURT: NO.

20 MR. WALTON: --- BEFORE I GET ---

21 THE COURT: NO.

22 MR. WALTON: I JUST ---

23 THE COURT: LISTEN TO ME.

24 MR. WALTON: I'M JUST ASKING FOR SOME SAFEGUARDS HERE,
25 YOUR HONOR.

1 THE COURT: I UNDERSTAND YOU ARE. BUT LET ME SAY
2 THIS. FILING A MOTION FOR A SPEEDY TRIAL -- I MEAN, THAT
3 CAN BE DONE FOR YOU TODAY. BUT BASED ON WHAT MR. LAWSON IS
4 SAYING, IT'S A MOOT POINT BECAUSE THEIR NEXT TERM OF COURT
5 IS IN APRIL, WHICH IS WHEN HE INTENDS TO CALL YOUR CASE.
6 THEY COULDN'T CALL IT BEFORE THEN IF THEY WANTED TO.

7 MR. WALTON: MY ONLY PROBLEM WITH THAT, SIR.

8 THE COURT: IS IF HE DOESN'T?

9 MR. WALTON: NO. NO. NO. MY ONLY PROBLEM WITH THAT
10 IS ON JULY 21ST I WAS BROUGHT BEFORE THE COURT. AND ON
11 JULY 21ST MS. PARROTT TOLD ME THAT I WAS GOING TO COURT ON
12 SEPTEMBER 7TH, WHICH I ASSUMED SHE GOT FROM MR. CLEMENTS'
13 OFFICE. SO THAT INFORMATION THAT SHE GAVE ME WAS NOT TRUE.

14 THE COURT: OKAY. WE'RE DONE WITH MS. PARROTT AND
15 WORRIED ABOUT WHATEVER HAPPENED WITH REGARDS TO MS.
16 PARROTT; THAT'S NOT AN ISSUE HERE.

17 HERE'S WHAT WE HAVE HERE.

18 MR. WALTON: OKAY.

19 THE COURT: FROM THE HORSE'S MOUTH SO TO SPEAK -- THIS
20 IS THE GENTLEMAN WHO'S PROSECUTING THE CASE. THEY INTEND
21 FOR THIS CASE TO BE TRIED IN APRIL.

22 NOW, MR. MCLAUGHLIN WILL ALSO BE NOTIFIED OF THAT.
23 YOU AND HE NEED -- IF I MAY, YOU AND HE NEED TO FOCUS YOUR
24 ATTENTION ON PREPARING FOR TRIAL.

25 NOW, WHAT I'M TELLING YOU BECAUSE I'M THE CHIEF

1 ADMINISTRATIVE JUDGE FOR THE NEXT YEAR HERE ---

2 MR. WALTON: I DON'T KNOW WHO YOU ARE, JUDGE.

3 THE COURT: I'M THE CIRCUIT COURT JUDGE WHO'S THE
4 CHIEF ADMINISTRATIVE JUDGE FOR THE NEXT YEAR.

5 MR. WALTON: ALL RIGHT.

6 THE COURT: IT'S NOT NECESSARY THAT YOU KNOW ME
7 PERSONALLY. WHAT'S NECESSARY IS YOU KNOW THAT I'M THE
8 JUDGE THAT'S GOING TO MAKE THE DECISION.

9 MR. WALTON: WHAT I SAY, I DON'T EVEN KNOW YOUR NAME,
10 SIR.

11 THE COURT: TOMMY RUSSO.

12 MR. WALTON: OKAY.

13 THE COURT: IF COME APRIL THEY DON'T CALL YOUR CASE
14 FOR TRIAL -- OKAY? AND WE'RE ON THE RECORD HERE. THEN MR.
15 LAWSON -- AND THERE MAY BE REASONS. I'M NOT SAYING THERE
16 WON'T BE VALID REASONS. BUT THEN I'M GOING TO ASK THAT YOU
17 BE BROUGHT BACK BEFORE ME FOR ME TO ENTERTAIN -- FIRST OF
18 ALL, TO HEAR FROM THE STATE ON WHY THEY DIDN'T CALL YOUR
19 CASE FOR TRIAL, AND THEN TO ENTERTAIN YOUR MOTION WITH
20 REGARDS TO A SPEEDY TRIAL.

21 MR. WALTON: CAN I SAY SOMETHING?

22 THE COURT: SURE.

23 MR. WALTON: I DON'T KNOW IF IT'S IMPROPER OR NOT.
24 BUT I WAS HERE ON NOVEMBER 3 ---

25 THE COURT: I CAN'T DEAL WITH YOUR PAST.

1 MR. WALTON: WELL, NO, SIR. YOU WERE THE JUDGE THEN.

2 THE COURT: ALL RIGHT.

3 MR. WALTON: I WAS HERE ON NOVEMBER 3RD.

4 THE COURT: OKAY.

5 MR. WALTON: AND ON NOVEMBER 3RD I SAT IN THE JURY BOX
6 FOR FIVE HOURS WHILE OTHER CASES WENT BEFORE ME. WHEN IT
7 GOT TIME FOR MY CASE, YOU TOLD ME PERSONALLY, MR. WALTON,
8 WE DON'T HAVE TIME FOR YOU TODAY. I WILL BRING YOU BACK
9 BEFORE ME IN THREE WEEKS. MR. WALTON, CAN YOU WAIT 21 DAYS
10 FOR ME TO COME BACK?

11 THIS WAS NOVEMBER 3RD, YOUR HONOR.

12 I'VE BEEN SITTING IN THE COURTROOM SINCE THEN. YOU
13 DIDN'T BRING ME BACK. AND SO NOW YOU'RE SAYING -- YOU'RE
14 TRYING TO TELL ME SOMETHING THAT I'M SUPPOSED TO BELIEVE
15 WHEN I HAVE A PAST HISTORY WITH YOU TELLING ME SOMETHING
16 THAT YOU DID NOT MAKE COME TRUE.

17 THE COURT: OKAY. MR. WALTON, LISTEN TO ME.

18 MR. WALTON: OKAY.

19 THE COURT: I'M GRANTING YOUR MOTION TO DISMISS MS.
20 PARROTT FROM YOUR CASE.

21 MR. WALTON: OKAY.

22 THE COURT: MR. MCLAUGHLIN IS BEING APPOINTED IN HER
23 STEAD. HE WILL BE NOTIFIED. HE'LL COME TALK TO YOU. YOUR
24 CASE IS SUPPOSED TO BE TRIED THE TERM OF APRIL COURT. IF
25 IT'S NOT TRIED DURING THE TERM OF APRIL COURT, I'M ASKING

1 MR. LAWSON TO HAVE YOU BROUGHT BACK BEFORE ME SO THAT WE
2 CAN ADDRESS THAT ISSUE.

3 YOU CAN BELIEVE ME. YOU CANNOT BELIEVE ME. YOU CAN
4 GO ON PAST RECORD. YOU CANNOT. BUT THAT'S THE RULING OF
5 THE COURT.

6 MR. WALTON: ALL RIGHT. SO ARE YOU SAYING THAT YOU
7 DIDN'T TELL ME THAT IN NOVEMBER?

8 THE COURT: I DON'T RECALL DOING THAT. I DON'T RECALL
9 SEEING YOU.

10 MR. WALTON: I DON'T HAVE A RIGHT TO REQUEST AN
11 ATTORNEY OF MY CHOICE?

12 THE COURT: YOU DO NOT.

13 MR. WALTON: OKAY.

14 THE COURT: YOU DO NOT.

15 MR. WALTON: OKAY. AND AS FAR AS ME REPRESENTING
16 MYSELF ---

17 THE COURT: NOW, HANG ON. IN RESPONSE TO THAT, YOU DO
18 NOT HAVE THE RIGHT TO SELECT YOUR APPOINTED COUNSEL. YOU
19 HAVE EVERY RIGHT TO HIRE ANY ATTORNEY YOU WANT TO HIRE.

20 SO HAVING SAID THAT, MR. MCCLAUGHLIN HAS BEEN APPOINTED
21 TO REPRESENT YOU. IF YOU HAVE ANOTHER LAWYER THAT YOU
22 WOULD RATHER HANDLE YOUR CASE, THEN YOU CAN HIRE THAT
23 ATTORNEY ---

24 MR. WALTON: I DON'T HAVE ANY MONEY, SIR.

25 THE COURT: WELL, AND WHICH IS THE REASON WHY YOU

1 QUALIFIED FOR APPOINTED COUNSEL. BUT MY POINT IS, THAT YOU
2 DON'T HAVE THE RIGHT TO SELECT YOUR APPOINTED COUNSEL.
3 OKAY. I DIDN'T WANT YOU TO GO AWAY THINKING THAT YOU
4 COULDN'T HIRE SOMEBODY ELSE, BECAUSE YOU CAN.

5 MR. WALTON: RIGHT.

6 THE COURT: ALWAYS.

7 MR. WALTON: ALL RIGHT. I HAVE ONE MORE QUESTION.

8 THE COURT: ALL RIGHT.

9 MR. WALTON: DOES THIS HEARING SATISFY THE CONCLUSIONS
10 OF LAW AND THE FINDINGS OF FACT WITH REGARD TO MS. PARROTT?

11 THE COURT: THERE IS NO CONCLUSION OF LAW OR FINDINGS
12 OF FACT REGARDING MS. PARROTT. I ENTERTAINED YOUR MOTION.

13 MR. WALTON: DID YOU READ MY MOTION, YOUR HONOR?

14 THE COURT: I'M ENTERTAINING YOUR MOTION TO RELIEVE
15 MS. PARROTT AS YOUR COUNSEL. I'M GRANTING IT. SHE'S
16 RELIEVED.

17 MR. WALTON: DID YOU READ IT?

18 THE COURT: I'M NOT MAKING ANY FINDINGS OF FACT. I'M
19 GRANTING YOUR MOTION.

20 MR. WALTON: NOW ---

21 THE COURT: IN OTHER WORDS, WHAT YOU'RE TRYING TO DO,
22 SIR, IS YOU'RE TRYING TO SET UP MS. PARROTT ON SOMETHING
23 THAT OCCURRED HERE TODAY. YOU'RE TRYING TO PIGEON HOLE
24 SOME FACTS THAT YOU CAN TAKE TO A HIGHER COURT TO USE
25 AGAINST MS. PARROTT. THAT'S NOT THE PURPOSE OF THIS

1 MOTION.

2 YOU FILED A MOTION TO HAVE HER RELIEVED AS YOUR
3 ATTORNEY. I'VE HEARD FROM YOU.

4 MR. WALTON: RIGHT.

5 THE COURT: BASED ON WHAT YOU'VE SHARED WITH ME ---

6 MR. WALTON: I WAS INTERRUPTED. I DIDN'T GET A CHANCE
7 TO FINISH.

8 THE COURT: I'VE HEARD ALL I'M GOING TO HEAR FROM YOU.
9 YOUR MOTION IS GRANTED. YOUR MOTION IS GRANTED. YOU GOT
10 WHAT YOU ASKED FOR.

11 MR. WALTON: CAN YOU ORDER MY TRANSCRIPT?

12 THE COURT: NO. YOU CAN ORDER IT YOURSELF.

13 MR. WALTON: OKAY. THANK YOU.

14 (PAUSE.)

15 MR. LAWSON: MAY IT PLEASE THE COURT. ONE THING,
16 THERE IS AN ISSUE ---

17 THE COURT: COME ON BACK IN, SIR.

18 MR. LAWSON: IF HE'S FILED A FEDERAL WRIT -- AND WE'VE
19 DEALT WITH THIS ALREADY ONE TIME. ONE OF THE DELAYS IN
20 THIS CASE HAS BEEN THAT FEDERAL JURISDICTION IN WAITING FOR
21 A RULING ON THE FEDERAL WRIT THAT WAS FILED PREVENTED US
22 FROM MOVING FORWARD, BECAUSE WE WERE WAITING ON A RULING
23 FROM THE FEDERAL COURT.

24 WE MAY BE IN THE SAME SITUATION. I'LL HAVE TO FIND
25 THAT OUT FROM THE FEDERAL COURT. BUT OUR INTENTION IS THAT

1 THIS WILL BE CALLED ON THE THIRD WEEK OF THE APRIL TERM.

2 THE COURT: ALL RIGHT.

3 MR. WALTON: CAN I SAY SOMETHING IN RESPONSE TO THAT?

4 THE COURT: I'LL HEAR FROM YOU IN JUST A MINUTE.

5 I UNDERSTAND WHAT YOU'RE TELLING ME. AND THAT'S WHY I
6 SAID EARLIER THAT IF FOR WHATEVER REASON, MR. LAWSON, YOU
7 ALL ARE NOT ABLE TO CALL THIS CASE IN THE APRIL TERM, I'LL
8 HEAR FROM YOU WITH REGARDS TO WHY THAT IS THE CASE. AND
9 THEN ALSO, OBVIOUSLY, MR. WALTON, I'LL HEAR FROM YOU WITH
10 REGARDS TO THAT.

11 NOW, ALL RIGHT. I'D BE HAPPY TO HEAR FROM YOU.

12 MR. WALTON: THAT FEDERAL WRIT HAS BEEN DISPOSED OF.

13 THE COURT: OKAY. SO THAT SHOULDN'T BE A PROBLEM.

14 MR. WALTON: NO. BECAUSE THE MATTER OF BETWEEN STATE
15 AND FEDERAL, THAT'S BEEN DISPOSED OF.

16 THE COURT: ALL RIGHT. GOOD DEAL.

17 MR. LAWSON: I KNEW THE FIRST ONE WAS, BUT I THOUGHT
18 THERE'S A SECOND ONE THAT'S BEEN FILED.

19 THE COURT: ALL RIGHT. MY POINT IS THIS: IT'S DONE.

20 --- END OF TRANSCRIPT OF RECORD ---

21

22

23

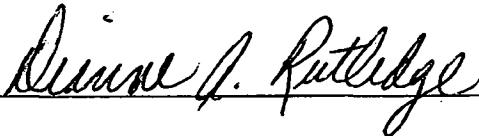
24

25

1 I, THE UNDERSIGNED DIANNE A. RUTLEDGE, OFFICIAL COURT
2 REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF
3 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
4 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THE RECORD OF THE
5 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF
6 THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
7 COURT FOR FLORENCE COUNTY, SOUTH CAROLINA ON THE 9TH DAY OF
8 FEBRUARY 2007.

9 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

11 OCTOBER 18, 2008

12
13 A handwritten signature in cursive script, reading "Dianne A. Rutledge", is written over a horizontal line.

14 COURT REPORTER

STATE OF SOUTH CAROLINA	)	
	)	IN THE GENERAL SESSIONS COURT
COUNTY OF FLORENCE	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
PLAINTIFF,	)	
	)	
VS	)	MOTION TO DISMISS INDICTMENT
	)	WITH PREJUDICE DUE TO VIOLATION
KEVIN WALTON,	)	OF DEFENDANT'S RIGHT TO A
Indictment 04-GS-21-1168	)	SPEEDY TRIAL
DEFENDANT.	)	
	)	

TO: HONORABLE JACK LAWSON, ASSISTANT SOLICITOR, TWELFTH JUDICIAL CIRCUIT:

NOW COMES the Defendant, by and through his undersigned counsel of record, pursuant the rights granted him by the Sixth Amendment of the Constitution of the United States, as well as Article I, Section Fourteen (14) of the Constitution of the State of South Carolina, asking the court dismiss with prejudice the criminal indictments against the Defendant. The Defendant so moves on information and belief that his right to a speedy trial, guaranteed by the documents cited above, has been violated.

LEGAL STANDARD

The fundamental law of this State reserves to each defendant the right to a speedy trial. The Sixth Amendment to the Constitution of the United States contains a like provision and it applies to state criminal cases by virtue of the Fourteenth Amendment. A speedy trial does not mean an immediate one; it simply means a trial without unreasonable and unnecessary delay. *State v. Dukes*, 256 S.C. 218, 182 S.E.2d 5 (1971), *State v. Monroe*, 262 S.C. 346, 204 S.E.2d 433 (1974). The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other

factors that go into the balance. A twenty-six-month delay in trying a defendant charged with first-degree burglary, grand larceny, and financial transaction card fraud, was found by the South Carolina Court of Appeals to be presumptively prejudicial. State v. Kennedy, 339 S.C. 243, 538 S.E.2d 700 (2000).

The Kennedy court went on to list several factors (hereinafter referred to as “Kennedy factors”) that the United States Supreme Court had used in determining whether a defendant has been denied the right to a speedy trial including: (1) the length of delay, (2) the reason the government uses to explain the delay, (3) when and how the defendant asserted his speedy trial right, and (4) the prejudice to the defendant. The Kennedy court also stated that prejudice should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect, citing the United States Supreme Court identification of three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Kennedy at 704.

The delay must be attributable to the State before the defendant can complain. State v. Dukes, 256 S.C. 218, 182 S.E.2d 5 (1971). South Carolina has not established specific period of time beyond which the right to speedy trial is deemed violated. Whether the accused's right to speedy trial has been violated will depend upon the individual circumstances of each case. Relief granted where accused has been denied right to speedy trial is dismissal of criminal charge. Op Atty Gen No 91-36, p. 95 (1991).

PROCEDURAL BACKGROUND

The incident in question took place on March 28, 2003. An arrest warrant on the charge of Grand Larceny was issued for Kevin Walton on March 28, 2003. An arrest warrant on the charge of Murder was issued for Kevin Walton on March 31, 2003. On or about April 22, 2003, the Defendant turned himself in to Virginia authorities, as he suspected he was wanted by the

authorities. On August 7, 2003, the Defendant was served with the arrest warrants mentioned above and booked into the Florence County Detention Center.

In June of 2004, the Defendant filed a *Petition for Writ of Habeus Corpus* (Case No.: 9:04-2201-Hff-GCK), attempting to assert rights under the Interstate Agreement on Detainers Act. On September 9, 2004, the Grand Jury of Florence County issued an indictment against the Defendant for the charges of Grand Larceny and Murder. On December 30, 2004, The Honorable Ed L. Clements III, Twelfth Circuit Solicitor, filed a response to the Defendant's June 2004 petition.

In June of 2005, the Federal Court denied the aforementioned petition, stating that the Defendant was a pre-trial detainee and thus not entitled to the speedy trial provisions of the Interstate Agreement on Detainers Act. On February 22, 2006, the Defendant sent correspondence to the Florence County Solicitor's office, as well as to his Public Defender, requesting a speedy trial. This correspondence was received by the Solicitor's office on February 27, 2006.

On August 24, 2006, the Defendant filed another *Petition for Writ of Habeus Corpus* in State Court. That Petition was filed August 25, 2006 in Federal Court. On August 28, 2006, the Defendant filed a *Motion to Dismiss his Attorney*. On August 29, 2006, United States Magistrate Judge George Kosko filed a *Report and Recommendation* that the Defendant's petition be dismissed without prejudice and without the Respondents being required to file a *Return*. This *Report and Recommendation* was adopted by Order signed by U.S. District Judge Henry P. Floyd, on November 9, 2006.

ARGUMENT

The Defendant argues his right to a speedy trial has been violated by the State, due the extraordinary delay in bringing his case to trial. The Defendant was brought into the custody of this

jurisdiction on August 7, 2003. His case is scheduled to start April 23, 2007. This is a delay of approximately 3 years and 8 months. The Defendant will address each of the Kennedy factors below:

I. THE LENGTH OF DELAY

As previously mentioned, the Kennedy court found a Twenty-six (26) month delay to be presumptively prejudicial. Additionally, the Supreme Court of South Carolina has found that a delay of three years and five months in prosecuting a murder charge, though not dispositive on the issue of whether the speedy trial right was violated, was sufficient to trigger review of other factors in speedy trial analysis. State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997). In the present case, we are dealing with a delay of approximately 3 years and 8 months. On its face, the defendant believes such a delay is certainly troubling enough to trigger further inquiry.

II. THE REASON THE GOVERNMENT USES TO EXPLAIN THE DELAY

The Defendant is informed and believes that the State will attempt to explain the delay is a result of the Defendant's own conduct. The Defendant believes the State may attempt to argue that the Defendant's attempts to fight extradition from Virginia to South Carolina attributed to the delay in bringing the Defendant to trial. However, the Defendant would note that he has been in custody in this jurisdiction since August 7, 2003. In other words, notwithstanding the period of time from when the Defendant turned himself in to Virginia authorities until the Defendant was taken into custody by this jurisdiction (approximately five (5) months), the State has still delayed bringing the Defendant to trial for a period of 3 years and 8 months.

The Defendant is informed and believes that the State will also argue the Defendant caused this delay through his various court filings. The Defendant believes this a likely position

of the State, due to comments made by the State at a previous hearing. The State asserted they had to file responses to the Defendant's filings and that had contributed to the delay. The Defendant would note that his initial *Habeus* petition, filed in June of 2004, was dismissed in June of 2005. In fact, the Defendant's attorney was served with a *Notice of Intention to Seek Life Without Parole* on February 14, 2005. The Defendant believes this is evidence that the State was certainly moving forward on his case and not being "delayed" by his Federal Court filings. As to the Defendant's second *Habeus* petition filed on August 24, 2006, the Respondents were never required to file a response, per the United States Magistrate Judge's *Report and Recommendation* and the subsequent *Order* adopting that report and recommendation.

The Defendant is informed and believes the State may attempt to argue that the delay is due to the complexities of the case, most notably the location of the witnesses, and piecing together the circumstantial evidence. The State seems poised to assert this case involves law enforcement agents and witnesses from three separate jurisdictions: South Carolina, Florida and Virginia. However, South Carolina's Supreme Court has held such reasons do not excuse lengthy delay. *State v. Brazell* at 76. Due to the above, the Defendant does not believe the State has an excusable reason for the lengthy delay in bringing his case to trial.

III. WHEN AND HOW THE DEFENDANT ASSERTED HIS SPEEDY TRIAL RIGHT

Admittedly, the Defendant has never filed a formal motion for speedy trial. However, the Defendant argues a formal motion requesting a speedy trial is not the lone determinate in whether or not a defendant has asserted his speedy trial right. Specifically, the Defendant would argue that the Supreme Court of South Carolina has stated, "the failure to assert the right to a speedy trial will make it difficult for a defendant to prove that he was denied a speedy trial." *State v.*

Waites, 270 S.C. 104, 240 S.E.2d 651 (1978) quoting from Barker v. Wingo, Warden, 407 U.S. 514 (1972). In the Barker case, the United States Supreme Court explained whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The Defendant would note the above cases do not *bar* a finding that a Defendant's speedy trial right was violated due to failure to file a motion for speedy trial. The Courts in those cases simply state such failure will make it difficult for Defendant to *prove* a speedy trial violation.

The Defendant would argue that his original *Petition for Writ of Habeus Corpus* was in fact an assertion by him for a speedy trial. It is clear from the argument set forth in that petition, failure to follow the deadline on bringing him to trial, per the Interstate Agreement on Detainers Act, is an attempt by the Defendant to assert his right to a speedy trial. Further, the Defendant sent correspondence to both his own attorney and the solicitor's office in February 2006 attempting to assert his right to a speedy trial. His failure to enjoy this right is documented in his *Motion to Dismiss Counsel* as one of the main issues contributing to that very request. The Defendant's August 24, 2006 *Petition for Writ of Habeus Corpus* was yet another attempt to assert this right. While the Defendant can certainly be found to have not had a formal motion for speedy trial filed on his behalf, he can most certainly also be found to have attempted to have such a motion filed on his behalf. It is the Defendant's position that his actions described above document his attempts to assert his right to a speedy trial.

IV. THE PREJUDICE TO THE DEFENDANT.

As to the prejudice to the Defendant, the Defendant would have a hard time pinpointing specific ways in which he had been prejudiced. The main reason for this is that at the proposed call of his case (April 23, 2007), the defendant will have been in custody for four (4) years. Due to being in custody that entire time, the Defendant has been unable to adequately prepare his defense. Specifically, had the Defendant not been in custody, he could have attempted to locate witnesses who could have a) established an alibi for the Defendant, and/or b) provided information concerning other possible suspects.

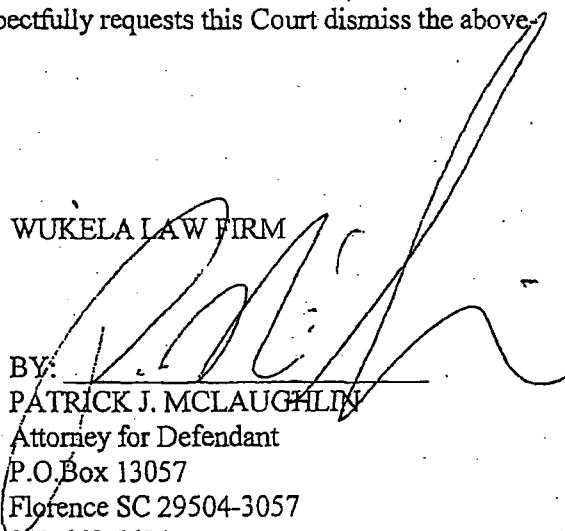
The Defendant understands this is somewhat of general assertion. The Defendant would note that in denying a Defendant's motion to dismiss due to a speedy trial violation, the South Carolina Supreme Court has explained that a bare assertion of prejudice is insufficient. State v. Wilkes, 270 S.C. 104, 240 S.E.2d 651 (1978). However, the Defendant would note that the Wilkes court specifically mentioned the Defendant had not been incarcerated. Wilkes at 654. The Defendant argues the Wilkes court made that point, because it is inherently obvious that incarceration will interfere with a Defendant's ability to participate in his defense. In the present case, The Defendant believes the lengthy pre-trial incarceration he has suffered has subjected him to the exact prejudice the Wilkes court had in mind when it singled out incarceration for special mention.

The Defendant would note one specific problem in which the delay has prejudiced his defense. The Defendant is informed and believes that the victim's computer is no longer in evidence. The Defendant is aware that the victim in this case kept a daily diary on said computer. Given his knowledge of how often the victim updated this diary, the Defendant believes this diary

could have provided him with exculpatory evidence. Unfortunately, the Defendant has been informed that the State returned this evidence to someone. Even if the computer could be located now, the integrity of the files on the computer could not be established, as the chain of custody has been broken.

For the above reasons, the Defendant believes the extraordinary delay in this case has prejudiced his defense. Therefore the Defendant respectfully requests this Court dismiss the above-cited indictments with prejudice.

WUKELA LAW FIRM

BY: 

PATRICK J. MCLAUGHLIN

Attorney for Defendant

P.O. Box 13057

Florence SC 29504-3057

843-669-5634

April 23, 2007

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

COURT OF GENERAL SESSIONS
2004-GS-21-1168

State of South Carolina)
PLAINTIFF)

vs.)

TRANSCRIPT OF RECORD

Kevin Walton)
DEFENDANT)

April 23-26, 2007
Florence, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO.

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

JACK LAWSON, DEPUTY SOLICITOR
STEPHEN HILL, ASSISTANT SOLICITOR
Attorneys for the State

PATRICK MCLAUGHLIN, ESQ.
Attorney for the Defendant

KESHIA REED
Circuit Court Reporter

<u>I N D E X</u>				
<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Opening Statements				
Mr. Hill	61			
Mr. McLaughlin	63			
Joseph W. Poston				
Mr. Lawson	67		86	
Mr. McLaughlin		78		
Steve Driggers				
Mr. Lawson	89			
Mr. McLaughlin		95		
David Brown				
Mr. Lawson	109		159	
Mr. McLaughlin		147		162
Sherrie Bennett				
Mr. Lawson	170			
Mr. McLaughlin		186		
Patti Ruff				
Mr. Lawson	201			
Mr. McLaughlin		207		

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Kenneth Bogan				
4	Mr. Lawson	210		234	
5	Mr. McLaughlin		224		
6					
7	Jason Dore				
8	Mr. Hill	237			
9					
10	Adam Moore				
11	Mr. Hill	241			
12	Mr. McLaughlin		244		
13					
14	Harry Brown				
15	Mr. Hill	245		247	
16	Mr. McLaughlin		247		
17					
18	Theresa Bennett				
19	Mr. Lawson	249			
20	Mr. McLaughlin		259		
21					
22	Dr. Janice Ross				
23	Mr. Lawson	265		281	
24	Mr. McLaughlin		277		282
25					

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Kurt A. Brower				
4	Mr. Lawson	284		299	
5	Mr. McLaughlin		297		
6					
7	Caralee Daugherty				
8	Mr. Lawson	301			
9					
10	Dawn McDonald				
11	Mr. Lawson	307			
12	Mr. McLaughlin		327		
13					
14	Amy McGuckian				
15	Mr. Lawson	329		335	
16	Mr. McLawson		334		
17					
18	James Giumenta				
19	Mr. Lawson	336		342	
20	Mr. McLaughlin		342		343
21					
22	Samuel C. Reighley, Jr.				
23	Mr. Lawson	351		358	
24	Mr. McLaughlin		357		358
25					

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	David Samuels				
4	Mr. Lawson	360			
5	Mr. McLaughlin		366		
6					
7	D. Lee Switzer, Jr.				
8	Mr. Lawson	369			
9	Mr. McLaughlin		375		
10					
11	Sandra P. Simmons				
12	Mr. Lawson	376			
13	Mr. McLaughlin		384		
14					
15	Gary L. Brunelli				
16	Mr. Lawson	385			
17	Mr. McLaughlin		397		
18					
19	D.J. Huggins				
20	Mr. Lawson	399			
21					
22	Keith Lutcken				
23	Mr. Lawson	404			
24	Mr. McLaughlin		434		
25					

1	<u>I N D E X</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Jennifer Ketchum				
4	Mr. Lawson	454		498	
5	Mr. McLaughlin		477		
6					
7	B.B.				
8	Mr. Hill	502			
9					
10	Closing Arguments				
11	Mr. Lawson	533			
12	Mr. McLaughlin	536			
13	Mr. Lawson	550			
14					
15	Charge of the Court	557			
16	Verdict of the Court	573			
17	Sentence of the Court	577			
18	Certificate of Reporter	578			
19					
20					
21					
22					
23					
24					
25					

<u>E X H I B I T S</u>				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	S-1	Aerial Photo		87
4	S-2	Crime Scene Log		88
5	S-3	Comforter	123	206
6	S-4	Fitted Sheet	125	207
7	S-5	Comforter Cuttings	128	215
8	S-6	Body Tissue & Fluids from Autopsy	129	215
9	S-7	Hairs from Autopsy	130	245
10	S-8	Green Pillow	134	245
11	S-9	Photograph		245
12	S-10	Photograph		245
13	S-11	Photograph		245
14	S-12	Photograph		245
15	S-13	Photograph		245
16	S-14	Photograph		245
17	S-15	Photograph		245
18	S-16	Photograph		245
19	S-17	Photograph		245
20	S-18	Photograph		245
21	S-19	Defendant's DNA	140	214
22	S-20	Trace from Suspect Kit	140	245
23	S-21	Photograph		162
24	S-22	Photograph		176
25	S-23	Fingerprint Card		248

<u>E X H I B I T S</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EVD.</u>
1			
2			
3	S-24	Photograph	273
4	S-25	Photograph	275
5	S-26	Aerial Photograph	292
6	S-27	Property Report	300
7	S-28	Photograph	304
8	S-29	Photograph	304
9	S-30	Photograph	304
10	S-31	Photograph	304
11	S-32	Photograph	305
12	S-33	Photograph	305
13	S-34	Photograph	305
14	S-35	Photograph	320
15	S-36	Photograph	321
16	S-37	Photograph	324
17	S-38	Photograph	324
18	S-39	Photograph	324
19	S-40	Photograph	324
20	S-41	Photograph	324
21	S-42	Photograph	326
22	S-43	Photograh	363
23	S-44	Photograph	363
24	S-45	Fingerprint Card	383
25	S-46	Fingerprint Card	383

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
S-47	Fingerprint Card		383
S-48	Enlargement Card		390
S-49	Boots		424
S-50	Shoe Impressions		432
S-51	Shoe Impressions		432
S-52	2 Diskettes		465
S-53	1 Set of Keys		470
D-1	Photograph		80
D-2	2 Documents		158
D-3	Serology Analysis Report		229
D-4	Case Supplemental Report		344
D-5	Forensic Document		436

1 THE COURT: All right. Ladies and gentlemen, we're
2 ready to proceed with drawing a jury on our next case.
3 Mr. Lawson, if you would please call the next case for the
4 State.

5 MR. LAWSON: May it please the Court, the State would
6 call 2004-GS-21-1168, The State vs. Kevin Walton.

7 THE COURT: All right. Ladies and gentlemen, the
8 State has called the case of the State of South Carolina
9 vs. Kevin Walton indictment 2004-GS-21-1168, that
10 indictment charges Mr. Walton under Count 1 with murder
11 and under Count 2 grand larceny in an amount in excess of
12 a thousand dollars, but less than \$5,000.

13 Now, ladies and gentlemen, as I told you before on
14 the last case that we pulled a jury on, it applies to
15 every case that comes into this criminal court and that is
16 this to this indictment Mr. Walton has pled not guilty.
17 The presumption of innocence rest with him. He is
18 presumed innocent of these charges unless or until the
19 State can prove his guilt beyond a reasonable doubt. In
20 other words, the burden of proof rest with the State of
21 South Carolina. Now, this indictment as I told you
22 earlier is simply a piece of paper that brings these
23 allegations or these charges into court. It is not
24 evidence and any matters that it contains is not evidence.
25 But it is simply the charges that bring Mr. Walton into

1 court. And at this point, the allegations of the
2 indictment. I will read them to you please listen
3 carefully. Under Count 1, the State alleges that on or
4 around March the 28th of '03, 2003, that Mr. Walton did
5 feloniously, willfully and with malice aforethought, kill
6 one Shannon Burelson Carter by means of strangulation and
7 that said Shannon Burelson Carter did die as a proximate
8 result thereof. Count 2 alleges that Mr. Walton did on or
9 around the 28th of March 2003, did feloniously take and
10 carry away the personal goods of Shannon Burelson Carter
11 of the value of more than \$1,000, but less than \$5,000
12 described as follows, a 1996 Chevrolet Cavalier automobile
13 and approximately \$2,000 in cash monies with the intent to
14 deprive the owner thereof of such goods permanently.

15 Ladies and gentlemen, to these charges to these two
16 counts Mr. Walton has pled not guilty and that places the
17 burden of proof on the State of South Carolina. Is there
18 any member of the jury panel who knows anything about this
19 case other than what I've just read to you hear today, if
20 so please stand? Thank you. There none.

21 Now, ladies and gentlemen, this case is being
22 prosecuted on behalf of the State of South Carolina by
23 Mr. Jack Lawson and Mr. Stephen Hill. Mr. Lawson and
24 Mr. Hill, if y'all would please stand and introduce
25 yourselves to the jury.

1 MR. LAWSON: I'm Jack Lawson. I'm a deputy solicitor
2 here in the Twelfth Circuit. I was in private practice
3 for a number of years prior to going into the Solicitor's
4 office.

5 MR. HILL: I'm Stephen Hill. I'm assistant solicitor
6 with the same office.

7 THE COURT: Thank you, gentlemen. Ladies and
8 gentlemen of the jury, is there any member of the jury
9 panel related by blood, connected by marriage, who has any
10 close personal or business relationship or who has been
11 represented by at any time either Mr. Lawson or Mr. Hill,
12 if so please stand? Thank you. There none.

13 Mr. McLaughlin, if you would please introduce
14 yourself and introduce your client to the members of the
15 jury.

16 MR. MCCLAUGHLIN: My name is Patrick McLaughlin and I
17 practice law here in Florence with the Wukela law firm
18 Steve and Stephen Wukela, Ben Moore, Christi McDaniel,
19 Phoebe Clark. And seated here to my left is Kevin Walton.
20 And from time to time during my trial the young lady
21 behind me is my assistant is Melanie (inaudible).

22 THE COURT: All right. Thank you, sir. I will begin
23 with Mr. McLaughlin. Is there any member of the jury
24 panel related by blood, connected by marriage or who has
25 any close personal or business relationship or who has

1 been represented by Mr. McLaughlin or his law firm, if so
2 please stand? All right, and you name, sir?

3 PROSPECTIVE JUROR: Scott Cramer.

4 THE COURT: All right. Mr. Cramer.

5 MR. CRAMER: I didn't know if it was relevant or not.
6 I've used their firm for doing a house closing before.

7 THE COURT: Okay. You've used the Wukela firm to
8 close on a house?

9 MR. CRAMER: Yes, sir.

10 THE COURT: Well, let me ask you, sir -- this is
11 juror number 28. The fact that you've used the Wukela
12 law firm to in that situation would that in anyway affect
13 your ability to be fair and impartial during the trial of
14 this case?

15 MR. CRAMER: No, sir.

16 THE COURT: Thank you very much, sir. You may have a
17 seat.

18 Yes, ma'am, your name.

19 PROSPECTIVE JUROR: My name is Marsha Chapman. I
20 work with State Farm Insurance and I handled claims with
21 that law firm before automobile claims.

22 THE COURT: All right. Sure. Ms. Chapman, the fact
23 that in your position with State Farm you've dealt with
24 the Wukela law firm, would that in anyway affect your
25 ability to be fair and impartial and give both the State

1 of South Carolina and the defendant at bar a fair and
2 impartial trial?

3 MS. CHAPMAN: It want affect it.

4 THE COURT: Thank you very much, ma'am.

5 Yes, ma'am.

6 PROSPECTIVE JUROR: The same as that fellow. They
7 close a house for me.

8 THE COURT: All right, Ms. Watt. Gentlemen, this is
9 juror number 136. Ms. Watt, the fact that they've -- that
10 law firm has -- you've employed that law firm in the past
11 in some of your legal needs would that in anyway affect
12 your ability to be fair and impartial during the trial of
13 this case, ma'am?

14 MS. WATT: No, sir.

15 THE COURT: Thank you very much. All right. Now,
16 ladies and gentlemen, I'm going to call out some names of
17 potential witnesses. Now, as I said earlier, these are
18 potential witnesses all or some of these witnesses may
19 appear, but the question regarding any of these names is
20 if you are related by blood, connected by marriage or have
21 any close personal or business relationship with any of
22 these individuals and if that question applies, please
23 stand if you hear a name and it applies, continue to
24 listen. I've got several names here that I'm going to
25 call out. And it may be that that question would apply to

1 more than one name. So please listen if there any of
2 those witnesses in court when I call your name if you
3 would please stand, face the jury for a moment and then
4 have a seat. I would appreciate that. All right. Darren
5 Yarborough, Keith Lutcken, David Brown, Jason Dore, Adam
6 Moore, Kim Cockfield, Donnie Huggins, Warren Poston, Steve
7 Driggers, Harry Brown, Michael Prodan, Samuel Reighley,
8 Kenneth Bogan, Patti Ruff, James Giumenta, Kurt Brower,
9 Dawn McDonald, Caralee Daugherty, Amy McGuckian, Lee
10 Switzer, Jr., D.J. Huggins, David Samuels, Sandra Simmons,
11 Gary Brunelli, Janice Ross, Don Reynolds, Ron Cain,

12 B.B. Sherrie Bennett, Theresa Bennett,
13 Jennifer Ketchum. All right. Let me begin with this
14 gentleman is Rev. Baber. Is that correct, sir?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: And who own that list, sir?

17 MR. BABER: I'm not sure, but D.J. Huggins may have
18 been a former member of my church. I don't know how old
19 he is. He would have been a teenager.

20 THE COURT: All right, sir. Well, the fact that if
21 that is the same individual, would that in anyway affect
22 your ability to be fair and impartial in the trial of this
23 case?

24 MR. BABER: No, Your Honor.

25 THE COURT: Thank you, sir. You may have a seat.

1 Yes, sir, in the back your name?

2 PROSPECTIVE JUROR: I'm Simon Lee.

3 THE COURT: All right, Mr. Lee, who on that list did
4 you know?

5 MR. LEE: I know Darren Yarborough. He use to parol
6 my area.

7 THE COURT: All right. Anyone else on that list,
8 sir?

9 MR. LEE: No, sir.

10 THE COURT: The fact that you know Mr. Yarborough in
11 that way, would that in anyway affect your ability if you
12 were selected as a member of this jury to be fair and
13 impartial would it affect your ability?

14 MR. LEE: No, Your Honor.

15 THE COURT: Thank you, sir. You may have a seat.
16 Mr. Lee was juror number 80 for your purposes, gentlemen.

17 Is there any member of the jury panel or any member
18 of your immediate family or close friends ever been a
19 victim of a crime, if so please stand? Thank you. There
20 none.

21 Earlier, ladies and gentlemen, I mention to you
22 that -- well, in this case it's Mr. Walton, but in any
23 criminal case when a defendant pleads not guilty to a
24 charge, the State and in this country that person is
25 presumed innocent of those charges. Is there any member

1 of the jury panel who is not able to afford the defendant
2 the presumption of innocence and maintain that presumption
3 of innocence unless or until the State proves that
4 person's guilt beyond a reasonable doubt? Is there any
5 person who is unable to adhere to that premise in our law,
6 if so please stand? Thank you. There none.

7 Ladies and gentlemen, is there any member of the jury
8 panel who knows of any reason at all that if you were
9 selected as a member of this jury to hear this case that
10 you would not be able to perform those services in a fair
11 and impartial way. In other words, be able to give both
12 the State and Mr. Walton a fair and impartial trial. Is
13 there any member of the jury panel who knows of any reason
14 that you would not be able to do that, if so please stand?
15 Thank you. There none. Any further questions with
16 regards to the voir dire from the State?

17 MR. LAWSON: None from the State, Your Honor.

18 THE COURT: Anything further from the defense?

19 MR. MCLAUGHLIN: None, Your Honor.

20 THE COURT: All right. Now, ladies and gentlemen,
21 the same procedure that we used earlier is the same
22 procedure we'll use at this time. If your name is called,
23 if you would please gather any belongings that you brought
24 to court bring them up with you and come and stand by the
25 microphone if your name is called. And this is ten and

1 five strikes.

2 MR. LAWSON: Correct, Your Honor.

3 THE COURT: All right.

4 THE CLERK: 26 David Cowles. What say the State?

5 MR. LAWSON: Please present Professor Cowles.

6 THE CLERK: What say the defendant?

7 MR. MCLAUGHLIN: Please seat the juror.

8 THE CLERK: Please have a seat in the jury box. 3

9 Regina Arde. What say the State?

10 MR. LAWSON: Please present Ms. Ard.

11 THE CLERK: What say the defendant?

12 MR. MCLAUGHLIN: Please seat Ms. Ard.

13 THE CLERK: Please have a seat in the jury box.

14 41 John Evans. What say the State?

15 MR. LAWSON: Please present Mr. Evans.

16 THE CLERK: What say the defendant?

17 MR. MCLAUGHLIN: Please excuse Mr. Evans.

18 THE CLERK: You been excused from this trial only.

19 92 James McDowell. What say the State?

20 MR. LAWSON: Please present Mr. McDowell.

21 THE CLERK: What say the defendant?

22 MR. MCLAUGHLIN: Please seat Mr. McDowell.

23 THE CLERK: Please have a seat in the jury box. 27

24 Kimberly Coxe. What say the State?

25 MR. LAWSON: Please present Ms. Coxe..

1 THE CLERK: What say the defendant?
2 MR. MCLAUGHLIN: Please seat Ms. Coxe.
3 THE CLERK: Please have a seat in the jury box.
4 115 Elouise Sanders. What say the State?
5 MR. LAWSON: Please present Ms. Sanders.
6 THE CLERK: Say the defendant?
7 MR. MCLAUGHLIN: Please excuse Ms. Sanders.
8 THE CLERK: You been excused from this trial only.
9 97 Dozier Montgomery. What say the State?
10 MR. LAWSON: Please excuse Mr. Montgomery from this
11 case.
12 THE CLERK: 18 Pearlle Burgess. What say the State?
13 MR. LAWSON: Please excuse Ms. Burgess.
14 THE CLERK: You been excuse from this trial only.
15 123 Trenton Streett. What say the State?
16 MR. LAWSON: Please present Mr. Streett.
17 THE CLERK: What say the defendant?
18 MR. MCLAUGHLIN: Please seat Mr. Streett.
19 THE CLERK: Please have a seat in the jury box.
20 16 Dominique Brown. What say the State?
21 MR. LAWSON: Please present Ms. Brown.
22 THE CLERK: What say the defendant?
23 MR. MCLAUGHLIN: Please seat Ms. Brown.
24 THE CLERK: Please have a seat in the jury box.
25 31 Whitney Davis. What say the State?

1 MR. LAWSON: Please present Ms. Davis.

2 THE CLERK: What say the defendant?

3 MR. MCLAUGHLIN: Please seat Ms. Davis.

4 THE CLERK: Please have a seat in the jury box.

5 49 Larry Godfrey. What say the State?

6 MR. LAWSON: Please present Mr. Godfrey.

7 THE CLERK: What say the defendant?

8 MR. MCLAUGHLIN: Please excuse Mr. Godfrey.

9 THE CLERK: You been excused from this trial only.

10 127 Christine Trout. What say the State?

11 MR. LAWSON: Please excuse Ms. Trout from this trial.

12 THE CLERK: You been excused from this trial only.

13 83 Freeman Linton. What say the State?

14 MR. LAWSON: Please present Mr. Linton.

15 THE CLERK: Say the defendant?

16 MR. MCLAUGHLIN: Please excuse Mr. Linton.

17 THE CLERK: You been excuse from this trial only.

18 104 Teresa Perkins. What say the State?

19 MR. LAWSON: Please present Ms. Perkins.

20 THE CLERK: Say defendant?

21 MR. MCLAUGHLIN: Please excuse Ms. Perkins.

22 THE CLERK: You been excused from this trial only.

23 39 Robert Euten. What say the State?

24 MR. LAWSON: Please present Mr. Euten.

25 THE CLERK: What say the defendant?

1 MR. MCLAUGHLIN: Please seat Mr. Euten.

2 THE CLERK: Please have a seat in the jury box.

3 37 Chase Eaton. What say the State?

4 MR. LAWSON: Please present Mr. Eaton.

5 THE CLERK: What say the defendant?

6 MR. MCLAUGHLIN: Please seat Mr. Eaton.

7 THE CLERK: Please have a seat in the jury box, sir.

8 139 Ayeshia Williams. What say the State?

9 MR. LAWSON: Please excuse Ms. Williams.

10 THE CLERK: You been excuse from this trial only.

11 53 Brandi Hanna. What say the State?

12 MR. LAWSON: Please present Ms. Hanna.

13 THE CLERK: Say the defendant?

14 MR. MCLAUGHLIN: Please seat Ms. Hanna.

15 THE CLERK: Please have a seat in the jury box.

16 125 Roy Thompson. What say the State?

17 MR. LAWSON: Please present Mr. Thompson.

18 THE CLERK: What say the defendant?

19 MR. MCLAUGHLIN: Please excuse Mr. Thompson.

20 THE CLERK: You been excused from this trial only.

21 151 Lucinda Brown. What say the State?

22 MR. LAWSON: Please present Ms. Brown.

23 THE CLERK: What say defendant?

24 MR. MCLAUGHLIN: Please excuse Ms. Brown.

25 THE CLERK: You been excused from this trial only.

1 134 Tonya Watford. What say the State?

2 MR. LAWSON: Please present Ms. Watford.

3 THE CLERK: Say defendant?

4 MR. MCLAUGHLIN: Please seat Ms. Watford.

5 THE CLERK: Please have a seat in the jury box.

6 95 Tony Miller. What say the State?

7 MR. LAWSON: Please excuse Mr. Miller for this case.

8 THE CLERK: You been excused from this trial only,
9 sir.

10 99 Fred Moser. Does the State wish to challenge
11 this juror for cause?

12 MR. LAWSON: No, ma'am.

13 THE CLERK: What say the defendant?

14 MR. MCLAUGHLIN: Please excuse Mr. Moser.

15 THE CLERK: You been excuse from this trial only.

16 114 Courtney Rowell. Does the State wish to
17 challenge this juror for cause?

18 MR. LAWSON: No, ma'am.

19 THE CLERK: What say the defendant?

20 MR. MCLAUGHLIN: Please excuse Ms. Rowell.

21 THE CLERK: You been excused from this trial only,
22 sir.

23 32 Jimmy Deas. Does the State wish to challenge this
24 juror for cause?

25 MR. LAWSON: No, ma'am.

1 THE CLERK: What say the defendant?

2 MR. MCLAUGHLIN: Please seat Mr. Deas.

3 THE CLERK: Please have a seat in the jury box.

4 THE COURT: We are going to do two alternates.

5 THE CLERK: Forty-seven Ashely Gee. What say the
6 State?

7 MR. LAWSON: Please excuse Ms. Gee for this trial.

8 THE CLERK: You been excused from this trial only.

9 54 Holland White. The State wish to challenge this
10 juror for cause?

11 MR. LAWSON: No.

12 THE CLERK: What say defendant?

13 MR. MCLAUGHLIN: Please seat Ms. White.

14 THE CLERK: Please have a seat in the jury box.

15 14 Antonio Brown. What say the State?

16 MR. LAWSON: Please present Mr. Brown.

17 THE CLERK: What say the defendant?

18 MR. MCLAUGHLIN: Please seat Mr. Brown. Please have
19 a seat in the jury box.

20 THE COURT: All right. Any motions with regard to
21 jury selection from the State?

22 MR. LAWSON: None from the State, Your Honor.

23 THE COURT: Anything from the defense?

24 MR. MCLAUGHLIN: None from the defense, Your Honor.

25 THE COURT: All right. Let me do this. At least,

1 the remaining members of the panel, ladies and gentlemen,
2 I'm going to excuse the remaining members of the jury
3 panel for the balance of the day. What I'm going to do
4 though as you leave, I'm going to have passed out to you
5 phone numbers. Those are the numbers that you need to
6 call after six o'clock tonight. Okay. And then there
7 will be some instruction on there for you about when you
8 need to return. As I told you earlier, we will not bring
9 you back unless we have to. So we have this trial and the
10 trial we selected earlier going on. I don't know when
11 either of these trials will end, but as long as both of
12 them are going on, we want need you. So if both of these
13 trials go into tomorrow, you probably will get a message
14 tonight telling you to call back after six o'clock
15 tomorrow night. I'm not sure what the message will be
16 just please if you would call back after six o'clock the
17 number that you get when you leave here. If you call that
18 number and it's busy, please just hang up and try again
19 later. It's a recording. It will be on there all night
20 long. So you don't have to call right at six, but please
21 don't call before six. Thank you very much. And all of
22 you members of the jury panel are excused for the balance
23 of the day.

24 (WHEREUPON, the remaining jury panel was excused.)

25 THE COURT: Ladies and gentlemen, I was just

1 conferring with the attorneys with regards to our
2 schedule. I'm going to give you -- you look like a hungry
3 panel a couple of hours for lunch. I'm going to excuse
4 you in just a moment to go to lunch and I am going to
5 ask -- just almost one o'clock. I'm going to ask if you
6 would be back in the jury room at three o'clock, that
7 gives you a couple of hours should give you plenty of time
8 to get away from the complex, get something to eat and be
9 able to find parking and get back.

10 Now, let me mention this to you, ladies and
11 gentlemen, I didn't mention anything to the other panel
12 because they were going downstairs to Judge Nettles
13 because he's presiding over that case. I'm presiding over
14 this case. So what I'm going to tell you when you leave
15 here and that is this, you are currently sitting here what
16 I like to call a blank slate. You don't know anything
17 about this case other than what I read to you off the
18 indictment and really you still don't know anything about
19 because that's not evidence, that's simply an allegation.
20 So when you leave here, please have no conversation with
21 anyone about this case and that includes even amongst
22 yourselves. And I know that may seem odd because juries
23 are so suppose to be together when they deliberate. Well,
24 it's not time to deliberate. The only time it will be
25 proper for you to have any discussions with anybody about

1 this case will be after all of the evidence is in. The
2 lawyer have had an opportunity to address you with their
3 closing arguments. And then the Court has charged you on
4 the law. It's only after all of that has occurred that
5 you are able or should be able to have any conversation
6 with anybody about this case and that even means amongst
7 yours. So when you leave here and you go to lunch, please
8 don't have any conversation with anybody about the trial.
9 Don't allow anyone to have conversation with you. If
10 anyone approaches you and discusses the case in anyway,
11 please be polite and just tell them say listen I'm not
12 allowed to have any discussion about this case according
13 to the judge, so please don't ask. If they persist, you
14 get their name and let me know who it is. And I'll make
15 sure that that doesn't occur again. Enjoy your lunch,
16 relax. If you'll be back in your jury room at three
17 o'clock and we'll begin after that. So if everyone else
18 will remain seated. Members of the jury, you are excused
19 for the lunch break.

20 (WHEREUPON, the jury was excused for lunch.)

21 THE COURT: All right. Yes, sir.

22 MR. MCLAUGHLIN: Your Honor, if I may, I have
23 prepared a written motion. I've already given the State a
24 copy of it. I'm just going to give that to you in case
25 you got a chance to look at before we go.

1 THE COURT: Absolutely, I appreciate that. I will do
2 that. Gentleman, what I'm going to do at this point is
3 we're going to adjourn for the lunch break ourselves.
4 However, we want take the couple hours the jury is
5 getting. We'll start back at two o'clock, 2:15, whenever
6 everybody get back and get settled in. So we'll start
7 back in about 2:15. Thank you.

8 (WHEREUPON, a lunch break was taken.)

9 THE COURT: All right. Mr. McLaughlin, you ready to
10 proceed with your motion?

11 MR. MCLAUGHLIN: I am, Your Honor.

12 THE COURT: Solicitor, are you ready to proceed on
13 that motion?

14 MR. LAWSON: Yes, Your Honor.

15 THE COURT: All right. I have taken the opportunity
16 the over the lunch break to read the motion that was
17 submitted by Mr. McLaughlin. I'll be happy to recognize
18 you now, sir.

19 MR. MCLAUGHLIN: Thank you, Your Honor. Just --
20 since, Your Honor, has had an opportunity to read it, I'll
21 be relatively brief. The Court's aware obviously
22 Mr. Walton had appeared in front His Honor sometime ago,
23 so the Court is really aware about the, I guess, the
24 extensive period of the time that Mr. Walton has been in
25 pretrial custody.

1 This incident took place on March 28th 2003. Arrest
2 warrants were issued on the 28th of grand larceny and on
3 the 31st for the actual murder charge. On August the 7th
4 2003, the defendant was served with the warrants when he
5 came back into this jurisdiction. I believe he was
6 actually turned himself into authorities, Your Honor, I
7 believe sometime in April of 2003. Basically, it gets
8 down to about a period of three years and eight months
9 from the time that Mr. Walton came back into this
10 jurisdiction until today's date, Your Honor.

11 I've cited some of the case law as far as speedy
12 trial. Of course, I certainly don't want to represent to
13 the Court that it's an easy thing to prove as it is not.
14 It does not mean an immediate trial. It simply means one
15 without unreasonable or unnecessary delay. In the past,
16 our courts have found delays with as little as 26 months
17 to be presumptively prejudicial. I believe that the
18 murder case cited in the motion that was three years and
19 five months. So shorter than the actual period we're
20 talking about here for Mr. Walton where the same thing.

21 Now, I'm not representing any one of those cases.
22 The defendant's rights to a speedy trial were found to be
23 violated. They were other reasons, I believe, that they
24 were not found to be violated in that, but the key is that
25 it was presumptively prejudicial enough to trigger the

1 analysis that we have that I listed here referring to the
2 Kennedy analysis.

3 The Kennedy analysis was State vs. Kennedy and I've
4 laid it out for, Your Honor, the factors that the Court
5 looks at is the length of the delay. The reason the
6 government uses to explain the delay, when and how the
7 defendant asserted his speedy trial right, and the
8 prejudice to the defendant.

9 Your Honor, I'm at a little bit of a disadvantage in
10 that I came into this case after it had already been going
11 on for some while. I have no reason to believe that the
12 Solicitor's office hasn't, you know, fully complied with
13 discovery and Brady for me. In fact, I believe they have.
14 But there's certain documents that I don't have -- I
15 didn't have access to because they were filed by
16 Mr. Walton through the federal court. He has provided me
17 with handwritten copies that he made himself of these
18 petitions and stuff. And I've had to allow some of that
19 in here. The dates I believe -- since, Mr. Lawson has
20 been involved in this since the beginning I'll leave it to
21 his turn to object to any of the dates I have cited in
22 here. I believe they are fairly accurate. I know that a
23 couple of them anyway I have been able to have sheets
24 printed from the electric filing system from the federal
25 court.

1 And basically, it comes down to, Your Honor, that as
2 I side earlier the late delay is presumptively
3 prejudicial. The reasons the government will use to
4 explain, once again I wasn't at some previously hearings,
5 but I believe this subject may have come up. And there
6 may have been some discussion about it and I try to
7 address that in here. Obviously any talk about well,
8 Mr. Walton, tried to fight extradition originally, but
9 what it matter because we're not counting that time in the
10 length of delay time that I'm talking about.

11 THE COURT: The three years and eight months were
12 calculated from August 7th when he was ---

13 MR. MCLAUGHLIN: Yes, sir, Your Honor, I believe his
14 entire time in pretrial custody has been almost four years
15 if you go back to when he originally turned himself into
16 the authorities in Virginia.

17 The other issue is the court filings, Your Honor,
18 that Mr. Walton, you know, is responsible so far for these
19 court filings -- for this delay because of his court
20 filings. He has filed two petitions for writ of habeas
21 corpus that I'm aware of. And then with the second
22 petition for the writ of habeas corpus I believe he
23 attached a motion to dismiss. His appointed counsel at
24 the time who was Ms. Parrot.

25 For reasons, I'll briefly go into. I don't believe

1 that that could be the reason for this extensive delay.
2 Number one, the first petition for habeas corpus was
3 dismissed. It was filed in June of 2004 was dismissed in
4 June of 2005. During that period of time that the
5 petition was still actually pending, Your Honor, the State
6 was moving forward with the case. They serve Ms. Parrott.
7 I have a copy of it in the file that I got. Once I got
8 this case, where they served Ms. Parrott with a notice of
9 intention to seek life without parole on February 14th
10 2005. Certainly, they were proceeding with trying to get
11 this case ready for trial. Like I said that petition was
12 dismissed in June of 2005.

13 The second petition was filed on August 24, 2006, but
14 the respondent, which would have the State, never had to
15 file a response to that. There was a report
16 recommendation that was issued by the U.S. Magistrate
17 judge saying that he recommend -- that his recommendation
18 was that the petition be dismissed and that the State not
19 have to file any response to it. That report
20 recommendation was in fact adopted by the Court when the
21 U.S. District Court judge I believe it was Judge Houck
22 signed that order. So they were never -- they never had
23 to even answer the second petition, Your Honor. So the
24 idea that, you know, they have to stop what they're doing
25 to answer these writ petitions for writ of habeas corpus,

1 I don't think holds water.

2 Probable the more difficult thing here, Your Honor,
3 is how he asserted his right. In fact and once again, I'm
4 having to rely on some handwritten copied stuff that I
5 received, but my understanding that original petition
6 and -- in fact, I have a copy of at least one page of the
7 order sent dismissing that where it appears that the
8 State, the Solicitor Ed Clements, answered in his
9 response. He says in there one of the reasons why
10 Mr. Walton petition should not be granted is because he
11 hasn't exhausted his state remedy. His attorney had not
12 filed for a motion for speedy trial. After receiving that
13 order, it appears that Mr. Walton started having
14 discussions with his attorney to try to get her to file
15 this motion for speedy trial. In fact, that is my
16 understanding when he came before, Your Honor, for the
17 motion to dismiss that was one of the things that him and
18 Ms. Parrott disagreed over.

19 The case law on asserting the right, Your Honor, is
20 this State vs. Waits case, which quotes from a United
21 States -- The State vs. Waits is a South Carolina Supreme
22 Court. And they quote some language from a U.S. Supreme
23 Court case, which is Barker vs. Wingo Warden. And it's --
24 I'm reading from page six right at the top of that
25 paragraph, Your Honor, whether and how a defendant asserts

1 his right is closely related to the other factors we have
2 mentioned.

3 The strength of his efforts would be affected by the
4 length of delay to some extent by the reason for the delay
5 and most particularly about a personal by the prejudice
6 which is not always readily identifiable. And I bring
7 that language up because in that same case the Court had
8 said, the failure to assert the right to a speedy trial
9 will make it difficult for a defendant to prove he was
10 denied a speedy trial. It would make it difficult.

11 Your Honor, our interpretation of that is that the
12 State Supreme Court would say if you failed to move --
13 make a motion for a speedy trial, it's going to be hard to
14 prove that you are prejudice against that right. But I
15 think it's pretty telling that they use the language that
16 it will be difficult to prove, that it will be hard and
17 difficult. It doesn't bar. It just says he's going to
18 have a hard time proving it and so I think the Court was
19 letting some leeway there for special circumstances and I
20 go into -- the case -- procedural history that I tried to
21 piece together since I got in this case, the filings of
22 the two different petitions for the writ of habeas corpus,
23 in fact having been moved to dismiss counsel. All these
24 things I think show that Mr. Walton attempted to assert
25 that right that there's also some -- it's my understanding.

1 that he in fact sent correspondence return receipt mail to
2 the Solicitor's office requesting a speedy trial. Well,
3 of course, the Solicitor's office is going to get that and
4 he's got appointed counsel. And so they're not going to
5 take that as a formal motion. He has to go through his
6 attorney to do that, but it is definitely an attempt by
7 Mr. Walton to assert that speedy trial right.

8 Of course, that did not come this mailing to the
9 Solicitor's office, Judge, did not come until after
10 Mr. Clements' office had filed that first response which
11 brought up the fact about the failure to file the motion
12 for a speedy trial. I would imagine the State will say,
13 well, at that point you look at that and that was February
14 of 2006. We're, you know, right now first -- we're in
15 April of 2007, that's not that unreasonable amount of
16 time. It's our position that given the entire length of
17 pretrial custody that the defendant had been in that it is
18 unreasonable.

19 The last, Judge, with prejudice to the defendant, it
20 is hard to pinpoint something from Mr. Walton to be able
21 to pinpoint something that he's been prejudice by because
22 he has in fact been locked up for four years. He hasn't
23 had the opportunity to get out and try to find witnesses
24 who could have -- to try to find witnesses who
25 approximately could have helped established an alibi for

1 himself, could have possibly seen other folks who could
2 have been suspects in this case. And one thing I would
3 like to point out the Court is there's a case that deals
4 with this prejudice and it says that you can't -- a
5 defendant can't prove prejudice to himself by failure for
6 the speedy trial right just by making a blanket assertion.
7 It's not good enough just to make a blanket assertion,
8 well, I been locked up that's what prejudice means or I
9 been in pretrial detention for so long that's what
10 prejudice me. It took a long time to get to trial, but
11 the Court actually makes a point of pointing out that in
12 that particular case the defendant was not in custody.

13 There was a delay before he was brought to trial, but
14 he was not incarcerated during that delay. So I believe
15 that the Court when it brings up that you can't make a
16 blanket this assertion. They were stating that because
17 that particular defendant had not been out of custody. He
18 could have gone out and worked his case or work his
19 defense been able to do these things that Mr. Walton has
20 been deprived of because he was locked up for four years.
21 With that, Your Honor, I will sit down and let Mr. Lawson
22 respond for the State.

23 THE COURT: All right. Thank you, Mr. McLaughlin.
24 Mr. Lawson.

25 MR. LAWSON: May it please the Court, the State's

1 position is not as asserted. However, the defendant was
2 represented at all times relevant herein. His attorney
3 never filed a motion for speedy trial. At the time that
4 the issue did come before the Court, it was just recently
5 at which time Mr. McLaughlin was appointed and the Court
6 set today as a trial date and here we are.

7 Your Honor, the entire time that he's been
8 represented he's had the public defender, which has an
9 office with two investigators who it's their job to go out
10 and investigate cases and to check on cases and look for
11 witnesses. If there were witnesses that were needed to be
12 sought, then it would appear it would be the defendant's
13 job to notify his then attorney to -- of the names of
14 those witnesses and who they may be or where they may be
15 or their location at some point. But the assertion was
16 never -- the motion was never made and the fact that that
17 he was in jail in and of itself is not a showing of
18 prejudice that would activate a dismissal of the charges.

19 THE COURT: All right.

20 MR. LAWSON: That's all.

21 MR. MCLAUGHLIN: Your Honor, if I could just briefly
22 respond to that?

23 THE COURT: Sure.

24 MR. MCLAUGHLIN: It's my understanding Ms. Parrott
25 gave me basically everything she had. I certainly have no

1 investigators notes in here. From the copies I've
2 received as I said, these are handwritten copies of
3 Mr. Walton by me. Discussions over whether or not
4 investigators are working the case once again factors in
5 his motion to have Ms. Parrott relieved as counsel.

6 THE COURT: Well, let me ask you this,
7 Mr. McLaughlin, how long have you been representing
8 Mr. Walton?

9 MR. MCLAUGHLIN: I believe sometime in February, Your
10 Honor.

11 THE COURT: And during the time that you've been
12 representing him has he ever made a request to you to find
13 certain witnesses or given you the name of any witnesses
14 or ask you to perform any investigation that he believes
15 would be beneficial in his defense?

16 MR. MCLAUGHLIN: We have had discussions about
17 potential people who I -- who could have shed some light
18 on certain circumstances around this case, Your Honor. In
19 all candor, some of those people I'm not so sure of what
20 they would have been able to help with could have helped
21 us. In other ones by the time I got this case and got to
22 it, it took a great deal of my effort just to get through
23 the discovery that we had had until today.

24 THE COURT: Which is also a reason that the case was
25 somewhat delayed because of having to change horses in the

1 middle of the stream so to speak.

2 MR. MCLAUGHLIN: Yes, sir.

3 THE COURT: Although, I realize it was after some
4 period of time.

5 MR. MCLAUGHLIN: One thing that, Your Honor, I would
6 say to that also is that this was almost four years ago.
7 It's hard to go in ---

8 THE COURT: This is the hard time I'm having and this
9 is this, the Court has said there's simply needs to be
10 more than simply a blanket assertion that I have been
11 prejudiced. And the only thing that I've heard that takes
12 it out of that situation is that that defendant was not
13 incarcerated. Mr. Walton has been. But all he's doing is
14 making blanket assertions that he's been prejudiced.
15 There's no showing to this court on any specifics on how
16 he's been prejudiced other than he's been incarcerated.

17 MR. MCLAUGHLIN: Yes, sir. Your Honor, one specific
18 thing that we have talked about that Mr. Walton was pretty
19 adamant about wanting to be able to take a look at was
20 this computer that I referenced at the very end of the
21 motion. Now, it's hard to say what would be on that
22 computer and what would not be on that computer. Of
23 course, I put that -- I think I detailed enough in my
24 brief about what Mr. Walton believes could be on there.
25 My understanding that she kept this diary that could have

1 brought up potential other suspects and that, of course,
2 now has been returned.

3 THE COURT: But when was anyone who represents
4 Mr. Walton informed of that computer and the need to look
5 into that computer? I mean, that's -- if you were
6 informed of this computer subsequent to it being returned,
7 then how in world can anyone other than the defendant be
8 blamed for that prejudice, if he remained silent and kept
9 that until -- in other words, you represent him. He says
10 to you, Mr. McLaughlin, you need to check into this
11 computer, but there's no sense in doing it now cause
12 they've already returned it.

13 MR. MCLAUGHLIN: Well, at the time, Your Honor, this
14 ---

15 THE COURT: And you can only speak to your time
16 representing him and I understand that.

17 MR. MCLAUGHLIN: That's correct. There are two I
18 believe last week or maybe the week before I received some
19 additional discovery from the State it was a report from
20 SLED that dealt with I believe it was two floppy disks.
21 The old 3.5 floppy disk. I don't know where those floppy
22 disks are from. It's digital media, so I'm assuming -- I
23 assume that that may have been information that the local
24 authorities here put on the disk and sent off to SLED to
25 have SLED try to take a look at these two disk. Those

1 disks the report that I got back that I received from the
2 Solicitor's office last week says that the disk themselves
3 were scratched. So up until that time I assume that these
4 disks will be able to be reviewed, but they have
5 physically the disk have been scratched on it and so you
6 can't go in and look at those. In fact, I spoke with
7 Mr. Lawson last week made arrangements -- he provided me
8 with Ms. Cockfields information, so I could go out there
9 with a computer person to see if they could salvage what
10 was on there. And, you know, I spoke with the person who
11 handles the information systems for our office and they
12 told me, well, if it's been scratched, if the disk itself
13 has a physical problem with it, you can't get in there to
14 get the stuff off of it. If just somebody deleting
15 something off of something then, we can recover it and do
16 stuff like that. But if there's a physical problem with
17 the disk, we can't do anything.

18 So that information right there in fact I'm pretty
19 sure it was just last week because I was going to plan to
20 go out there Saturday with my guy and take a look at it.
21 So that is one day where we send this information --
22 that's the information contained on the disk. I may be
23 wrong I'm not sure. And just the other thing, Your Honor,
24 is certainly they do have a -- you know, the public
25 defender does have these investigators that -- and I

1 believe that the one big point that the Court was making
2 when they said that, you know, they drew that distinction
3 that that defendant was not in jail was no was going to
4 care as much about a case as the person who's being
5 charged.

6 THE COURT: I don't disagree with that, but I'm not
7 being shown whether you're incarcerated or not that the
8 level of activity on the part of the defendant with his
9 previous counsel. Now, I recall the hearing from earlier.
10 I don't recall all the details of it, but -- and that's
11 the concern I've got is that it's one thing if the length
12 of the incarceration has prejudiced an individual --
13 shown here I just got blanket assertions. I've been
14 locked up therefore because of the length of time I been
15 prejudiced three months -- three years and eight months
16 seems to be the big thing here, so it's just a blanket
17 assertion.

18 Now, also on top of that in addressing these other
19 issues and I realize that the State can't simply rely on
20 this is a complex case, so it took time and I understand
21 that, but that is certainly a factor to look at. It is
22 one of the factors to look at. And based on everything
23 that I've seen in this case, that I've heard in this case,
24 and that I've read listen to the attorneys, yes, it's
25 taken a long time for this case to come to trial. But

1 based on the information that this court has, it has not
2 been unduly delayed. It has not been delayed
3 unnecessarily. There have been several matters that have
4 been going on throughout the course of Mr. Walton's
5 incarceration some that he initiated, others that he is
6 not initiated.

7 There's never been a motion for a speedy trial filed
8 and that's not fatal as you pointed out and I understand
9 that. But it's certainly had a motion for speedy trial
10 been filed sometime ago would have at least put the State
11 under that time frame to try the case or at least to show
12 to the Court a reason why a case could not go forward.
13 And then in that case then Mr. Walton would have been
14 looking at the opportunity to have been released on bond.
15 I've not seen nor heard anything in this case that leave
16 the Court to believe that a remedy as drastic as
17 dismissing the indictment with prejudice is appropriate.
18 So I'm going to deny your motion to dismiss this charge
19 with prejudice. And I certainly will note any exception
20 you have to that ruling for the record.

21 MR. MCLAUGHLIN: Just note my objection.

22 THE COURT: Yes, sir, absolutely. Anything further?

23 MR. MCLAUGHLIN: Your Honor, I like to make a motion
24 to sequester the State witnesses please.

25 THE COURT: Mr. Lawson, any issues involving that?

1 MR. LAWSON: Your Honor, I have witnesses that are
2 also victims. The victims and I would ask that those
3 people be allowed to stay in the courtroom, Your Honor, as
4 the daughter of Ms. Carter.

5 THE COURT: Would those fact witnesses?

6 MR. LAWSON: She will be a fact witness. And, Your
7 Honor, as I understand it, there has to be some reason
8 that the defense wishes it be sequestration and I don't
9 know what the reason in this case may be for having the
10 witnesses sequestered.

11 THE COURT: Mr. McLaughlin.

12 MR. MCLAUGHLIN: Your Honor, other than that they are
13 from the discovery that we been given and going over with
14 my client, there are some inconsistencies and differences
15 that come up in some statements given to the police early
16 on. I believe Miss -- the victim's friend -- the victim's
17 daughter discovered her and then she went next door and
18 got the victim's friend to come over.

19 There some questions about how the victim's body was
20 discovered and then differences on EMS reports and stuff
21 like that. There's enough differences there that I don't
22 think will be appropriate for one of those witnesses to
23 sit in and listen in on how the other one described coming
24 in and seeing the scene and finding the deceased. And as
25 far as later on, Your Honor, some of the law enforcement

1 witnesses that Mr. Lawson has provided to the defense on
2 his potential witness list. There's also some questions I
3 will get into those perhaps. My next pretrial motion
4 about how -- who did what and who took what, who entered
5 took in, who took fingerprints, and who actually entered
6 them in and things like that. There's some differences
7 between what our discovery is shown and what the state
8 witness list showed. And so that would be my reason for
9 me sequestering those of law enforcement.

10 THE COURT: Mr. Lawson, would you like to respond to
11 that? I'm not aware of and maybe you can point out if
12 there is. I'm not aware of -- now, obviously victims
13 are -- victims of crime are certainly allowed to be in and
14 are couraged to be present. But when those victims become
15 fact witnesses in a case, I'm not aware of any provision
16 that they're accepted from sequestration if that's
17 appropriate.

18 MR. LAWSON: Your Honor, I think it can be along the
19 same lines that is -- argue along the lines that the State
20 has right to have the investigating officer stay in the
21 courtroom even during sequestration.

22 THE COURT: And I certainly would give you that
23 opportunity. I'm assuming that you have a lead officer
24 that you don't do want present, but you may not. It may
25 be that you want the victim present. I don't know. My

1 point is that I think the defense has shown a valid reason
2 to request sequestration. I'm not aware of an exception
3 that simply because a witness is also considered a victim,
4 that they would be accepted for that.

5 MR. LAWSON: Your Honor, could we have a few minutes
6 whenever we complete this to discuss it with the victims
7 as to who we would keep here?

8 THE COURT: As a matter of fact, why don't we do
9 this. Why don't we just take a short break here. And the
10 reason I want to do that at this time is it's three
11 o'clock. And I believe probably the balance the jury
12 panel is here and they're probably -- I just soon get them
13 settled into their jury room and then we'll pick back up.
14 So why don't we just take -- and literally let's just take
15 five minutes long enough for them to get the jury
16 reassembled all in the jury room and then we'll start
17 back. And I'll hear the rest of whatever you have.

18 (WHEREUPON, a break was taken.)

19 THE COURT: All right. Mr. Lawson, are you ready to
20 continue?

21 MR. LAWSON: Yes, Your Honor. We will at this point
22 Keith Lutcken or either David Brown will be my case agent.
23 And we're waiting on Keith to get back up to determine
24 between the two of them. We'll sequester the fact
25 witnesses from the victim's family. And a friend B.B.

1 [REDACTED], Sherrie Bennett and Jennifer Ketchum and so
2 they'll be sequestered.

3 THE COURT: And let me say this and this would also
4 be for the defense as well. If anybody has -- I mean, if
5 we run into a space problem, my conference room is open.
6 If y'all need to put some people back there and it's easy
7 access to get to them, you're welcome to that. Okay.

8 MR. LAWSON: I can see that becoming a problem
9 tomorrow and Wednesday.

10 THE COURT: Well, we'll certainly do whatever we can
11 to accommodate anyone on behalf of either the State or the
12 defense. All right.

13 Mr. McLaughlin, I'm going to agree that the witness
14 are going to be sequestered. So I'll grant that motion.
15 What else you got?

16 MR. MCLAUGHLIN: Judge, the next motion I have is a
17 motion to suppress any evidence about fingerprint evidence
18 or testimony about fingerprint from this car from Florida
19 that was found in Virginia.

20 THE COURT: What's the basis of that?

21 MR. MCLAUGHLIN: Your Honor, there is a State's
22 witness or potential witness list that they provided the
23 Court this morning. I see listed from a Chesterfield
24 police department Gary L. Brunelli or Officer Gary
25 Brunelli.

1 THE COURT: From where now?

2 MR. MCLAUGHLIN: I'm on the second page, Judge.

3 THE COURT: I got you.

4 MR. MCLAUGHLIN: All these folks from Virginia.

5 There were -- it's our understanding the State's theory
6 of the case is that Mr. Walton is responsible for
7 murdering the victim. He took some money or something
8 from her and her car and hightailed it down to Florida.
9 The car was found in Florida. Near where the car was
10 found in Florida, a Lexus was stolen and that Lexus winds
11 up in Virginia. And my client turns himself into
12 authorities in Virginia.

13 Looking at the discovery that the State has provided
14 so far, these prints that are matched to my client from
15 the Lexus, but first off the State of Florida is not
16 prosecuting for the theft of the car, that's one of the
17 discovery items we have is where the attorney general of
18 Florida refuses to prosecute for the theft of the Lexus.
19 And I would imagine the primary reason for that, Your
20 Honor, is all these prints are from the exterior of the
21 vehicle. That there was other discovery where there were
22 supposedly some razor or hair clippings inside the car
23 that was checked. There's certainly nothing identifying
24 in discovery saying that that ever came back positive to
25 Mr. Walton nor did they have of these fingerprints. The

1. fingerprints are all from the exterior of the car. And
2. sorting through the discovery, Your Honor, it's my
3. understanding that any of the fingerprints have matched
4. what have been pulled by a forensic tech Parish and I
5. don't see any ---

6. MR. LAWSON: Your Honor, that's premature. When the
7. people from Virginia get here if we can't establish the
8. appropriate chain, so be it, but at this point, we're not
9. in a position to argue that without our witnesses here.
10. But I will advise counsel that Ms. Parish and Mr. Simmons,
11. Sandra P. Simmons is Sandra Parish Simmons. So
12. Ms. Simmons is Ms. Parish.

13. MR. MCLAUGHLIN: Your Honor, that may be and I
14. realize this may be a little bit premature, but not
15. knowing the order that the State's going to call these
16. witnesses. And you got these folks from Florida that may
17. testify before the folks from Virginia may testify. I'm
18. doing it -- as a precautionary measure that some testimony
19. doesn't come out on the stand. We started investigating
20. Walton because we got a fingerprint hit back from Virginia
21. on this car.

22. THE COURT: Well, but let me ask you this cause I'm
23. not sure that I'm in a position to rule. I mean, for
24. example, your concern was or at least your indication was
25. that these were lifted by Officer Parish. Parish wasn't

1 listed. As it turns out, Parish is listed. It's just
2 that she is married since that.

3 MR. MCLAUGHLIN: I assume so, Your Honor. One other
4 thing that I have is that whether or not the prejudicial
5 factor of it would outweigh any probative factor. Cause
6 he certainly -- the State of Florida doesn't consider they
7 have enough to charge him with stealing this car.

8 THE COURT: Well, I don't think -- I mean, again that
9 goes to the weight of the evidence.

10 MR. MCLAUGHLIN: Yes, Your Honor.

11 THE COURT: That's for the jury to decide. I don't
12 know what the State's going to say. I don't know if
13 they're going to allege that he's stole the vehicle or
14 they're simply going to try to establish that his prints
15 were on a vehicle that was reported stolen. I mean, I
16 don't know. So but again, that would go to the weight of
17 the evidence not to this admissibility.

18 MR. MCLAUGHLIN: And I understand, Your Honor, that
19 Mr. Lawson and the Court's decision that this may be
20 premature, but simply not knowing the order that some of
21 these witnesses are going to be called, I just -- to
22 protect the issue, I feel like I need to bring that up.
23 And the other motion I have, Your Honor ---

24 THE COURT: But let me ask you because we might can
25 address it now and resolve it. I mean, I don't want to

1 blow pass and say we can't do it yet. But like for
2 example, the one issue you just raised that's certainly
3 goes to the weight of the evidence. It doesn't go to
4 admissibility. Have you got any concerns over
5 admissibility other than the fact they may not be able to
6 establish the chain?

7 MR. MCLAUGHLIN: No, sir. No, Your Honor.

8 THE COURT: Okay. Mr. Lawson is I think clearly --
9 he's been practicing law I was going to say longer than
10 I've been alive, but he's not that old. But in other
11 words, he's certainly aware of the requirements that is in
12 a chain. And if he cannot do that, then certainly he
13 knows that that evidence want come in. But at this point
14 unless you can, you know point out some specific way that
15 you feel I can rule, I mean, you see what I'm saying,
16 Mr. McLaughlin?

17 MR. MCLAUGHLIN: Your Honor, I guess what I would ask
18 and I'm not sure if this is proper or not, but there any
19 witnesses who are going to give testimony before they can
20 testify about any type of evidence stuff dealing with a
21 link by fingerprints from one of these places that it
22 needs to be -- the fingerprint evidence itself must be ---

23 THE COURT: I mean, obviously a witnesses can't
24 testify to a piece of evidence and use that piece of
25 evidence, if it hasn't been admitted into the case. So I

1 mean I don't think you need to worry about that.

2 MR. MCLAUGHLIN: It's just my concern, Your Honor,
3 is that this is -- it is a bit of a different case
4 certainly a first for me where we have all these different
5 jurisdictions. And so you're going to be having these
6 police officers in Virginia who, you know, obviously
7 they're talking back and forth about these cases. And
8 they're telling each other about these developments in the
9 case. And I just want to make sure that that testimony
10 nothing gets in through that testimony that shouldn't
11 actual established.

12 THE COURT: All right. Well. And I certainly
13 understand that concern. All I can tell you is to pay
14 close attention to the witnesses and be ready to stand up
15 and voice your objection if it's appropriate -- if you
16 feel it's appropriate. But I think it is -- I mean, it's
17 premature to determine whether or not the State's going to
18 be able to show any admissibility issues involving the
19 fingerprints until they make an effort to do that unless
20 you have some -- like for example, the issue you raised
21 was valid issue. It seems that it's been resolved, but
22 unless you knew for a fact that they were not going to be
23 able to present their chain and then you could bring that
24 up at this point. But apparently, that's going to be
25 something that we got to deal with as it comes up.

1 MR. MCLAUGHLIN: I believe that's it.

2 THE COURT: All right. Now, Mr. Lawson, anything on
3 behalf of the State before we bring the jury out?

4 MR. LAWSON: No, Your Honor. I just want to make
5 sure that witnesses don't get --

6 THE COURT: Come in.

7 MR. LAWSON: Yes, sir. Because I have a lot of law
8 enforcement witnesses and I think one of them may even be
9 on court detail. Driggers.

10 THE COURT: He's not working in a official capacity.
11 He's here as a witness.

12 MR. LAWSON: Okay, good. I just -- because it's hard
13 for me to sit here and watch who's coming in and out too.
14 That's why you got that outstanding staff sitting there
15 behind you.

16 DEPUTY: Judge, is there any one certain place we
17 want all them to go?

18 THE COURT: I judge for purposes of Mr. McLaughlin's
19 motion I just want to make sure that all the witnesses
20 that are involved in this trial are outside and not privy
21 to what's going on in here. It doesn't matter to me where
22 you house them. Mr. Lawson obviously would need to be
23 able to access them, but I just want to make sure that
24 they're not in this courtroom and able to know what's
25 happening in here. So if you need to use the family

1 courtroom on the tenth floor if assuming it's available,
2 again if you need to use my conference room more then
3 happy to do that whatever you need.

4 All right. Are we ready for the jury?

5 MR. LAWSON: The State ready.

6 MR. MCLAUGHLIN: Defense is ready, Your Honor.

7 THE COURT: Gentlemen -- Ms. Joe, if you would ask
8 the members of the jury to join us please.

9 (WHEREUPON, the jury returned to the courtroom.)

10 THE COURT: Thank you, ladies and gentlemen,
11 appreciate your patience. I been taking care of some
12 matters so that the trial can flow more smoothly as when
13 we begin and we're are about to do that. Before we do
14 that though, let me mention this to you as you go out and
15 come into the courtroom. You know we are all creatures of
16 habit. I know my wife and I when we go to church on
17 Sunday, we been going to the same church for as long as we
18 been married, and if we walk in and somebody's sitting in
19 our seats, we look around like we're lost and don't know
20 what to do. Of course, we don't have assigned seats at
21 church, but we been sitting in those same seats for a long
22 time and we kind of have taken a hankering to them. You
23 don't have assigned seats in the jury box.

24 The only people that have assigned seats are the two
25 alternates right here on the back row and then at some

1 point I'll appoint a foreperson and that person will
2 occupy this seat that this gentlemen is in right here. So
3 other than those three seats, the rest of you can please
4 feel free to sit wherever you like to sit. And if you are
5 sitting in particular seat and we take a break and when
6 you come back out if you in a different seat, that's okay.
7 Now, I'll never stop anybody if they taken a particular
8 hankering to a seat and tell them they can't sit there.
9 I'm not going to get involved in that, but please feel
10 free to file in and sit wherever you are comfortable.

11 Now, before we begin this trial, I want to tell you
12 some things. One of the things I want to tell you is that
13 this trial probably will be very different from what you
14 might expect. Many people do not have the chance to
15 attend actual court hearings or court sessions as you are
16 doing now. And you may think from watching televisions or
17 movies or reading books that trials are always filled with
18 high drama and intense action and riveting circumstances.
19 Now, while all of these things may be true at times, this
20 trial, ladies and gentlemen, is not for your
21 entertainment. It is a fundamental part of our democracy.
22 It is a search for the truth in an effort to make sure
23 justice is done between the parties that are before the
24 Court. And as you are probably well aware in searching
25 for the truth, it is often a slow, a deliberate and often

1 times repetitive, which is much the opposite of what you
2 may have read in books or seen on television or seen in
3 the movies.

4 This courtroom, ladies and gentlemen, is a place of
5 honor that is dedicated to the protection and the
6 preservation of citizens' rights through what many have
7 called greatest justice system ever created. The
8 attorneys who appear before you are advocates for the
9 sides that they represent, but first and foremost, they
10 are officers of the Court sworn to uphold the integrity
11 and the fairness of our judicial system and to help you in
12 your search for the truth. You should expect them to be
13 professional, competent and ethical in the representation
14 of their client's interest. Remember that you in just a
15 moment will take an oath and in that oath you will swear
16 to try and to reach a fair and just verdict in this case.
17 And so you are also expected to also be professional,
18 reasonable and ethical in your duties.

19 I want to thank you at this point for taking on this
20 responsibility of jury service and for your contribution
21 to our system of justice. Now, in a moment, I'm going to
22 give what is intended to be a kind of an overview or
23 introduction of this -- of our procedure that with are
24 going to follow, but before I do that, I'm going to ask
25 you if you would give your attention to the clerk so that

1 she can place you under your oath as jurors in this case.

2 (WHEREUPON, the jury panel was sworn.)

3 THE COURT: All right. Thank you, ladies and
4 gentlemen. As I indicated to you these remarks that I am
5 going to make to you are an introduction. They are not a
6 charge on the law in this case. I will instruct you on
7 the law applicable to this case at the end of this trial
8 before you retire to consider your verdict. This is
9 merely an explanation of the procedure that we will follow
10 in this trial, so you may better understand and follow
11 what is occurring.

12 The defendant in this case, Mr. Walton, is charged by
13 an indictment filed in this court. And he is charged with
14 the crimes of murder, and grand larceny in an amount in
15 excess of a thousand dollars but less than \$5,000. The
16 elements of these crimes will be explain to you later.

17 Ladies and gentlemen, the indictment as I indicated
18 to you earlier is simply the charge by which this case is
19 brought to court. And it is not in any sense evidence of
20 any of the allegations that it contains. The defendant
21 has pled not guilty to this indictment. The State
22 therefore has the burden of proving each of the elements
23 of the indictment beyond a reasonable doubt. And it will
24 be your duty, ladies and gentlemen, to decide whether the
25 State has met that burden. Your purposes as jurors is to

1 find and determine the facts. You are the sole judges of
2 the facts in this case. If at any time I make any comment
3 regarding the facts, you must disregard those comments.
4 You are to determine the facts from the testimony that you
5 hear in other evidence that is introduced. It is up to
6 you to determine the inferences which you may feel are
7 properly drawn from the evidence.

8 It is especially important that you perform your duty
9 of determining the facts diligently and conscientiously
10 because ordinarily there's no way to correct an erroneous
11 determination of facts by a jury. On the other hand and
12 we think with emphasis, the same law that makes you the
13 judges of the facts makes me the judge of the law. The
14 law is given by the Court as the only law that you may
15 consider. You must accept and follow it even though you
16 may disagree with it. I cannot tell you what the facts
17 are and you are not allowed to disagree with me about what
18 the law is or what you think it should be. Your job is to
19 take the law as I give it to you and to apply it to the
20 facts as you find them from the testimony of the witnesses
21 and any other evidence that is introduced. After doing
22 that, you will render your verdict a true and just verdict
23 under the solemn oath that you just took as jurors.

24 Now, until I advise you to begin your deliberations,
25 you must not discuss this case with anyone including your

1 fellow jurors, friends, family members and anyone involved
2 in the case. After the case is submitted to you, you must
3 discuss it then only in the jury room with your fellow
4 jurors. The attorneys and the parties in this case have
5 been advised that they are not to talk to you at all. So
6 if you see anyone involved in this case and they don't
7 even say hello to you, they're not being unfriendly.
8 They're just following the instructions of the Court.

9 During the trial, do not read, listen to or watch any
10 news report about this case. I don't know that there
11 would be any, but if there are, you are to disregard those
12 and turn away from those. This includes anything that may
13 be in newspapers or on the internet, radio or television.
14 You must not consider anything you may have read or heard
15 about this case outside of the courtroom whether either
16 before or during this trial. It is important that you
17 keep an open mind and not decide any issue in the case
18 until all of the evidence has been presented, the parties
19 have made their closing arguments, and I have instructed
20 you on the law in this case.

21 It is your solemn responsibility to determine the
22 guilt or innocence of the defendant and your verdict must
23 be based solely on the evidence as it is presented to you
24 in this trial and on the law as I instruct you during and
25 at the close of this trial.

1 Now, in just a moment the solicitor, Mr. Lawson, will
2 make what is called an opening statement in which he will
3 explain to you the issues in this case or at least what he
4 thinks that the issues in this case are. At that point,
5 the attorney for the defendant, Mr. McLaughlin, may also
6 make an opening statement although he is not required to
7 do so. What the attorneys tell you during their opening
8 statements, ladies and gentlemen, is not evidence in this
9 case. It is only their contention as to what the issues
10 are. The evidence in this case will be presented to you
11 by the testimony of sworn witnesses from the witness stand
12 here and or by exhibits which may be introduced during the
13 course of the trial.

14 From time to time during the trial, you may hear one
15 of the lawyers say something along these lines, Your
16 Honor, may we approach the bench or, Your Honor, we have a
17 matter of law that we need to take up with the Court.
18 Sometimes I may find it necessary to excuse you from the
19 courtroom for a short while while the attorneys and I
20 discuss a matter of law. The reason for this is because
21 as I told you earlier, you are the judges of the facts in
22 this case. And sometimes when I'm discussing matters of
23 law with the lawyers, it may be necessary for me to make
24 some comment as to the facts in connection with a ruling
25 whether or not a particular law applies. I'm not suppose

1 to tell you what I think about the facts. So I will
2 excuse you from the courtroom while these discussions take
3 place, so that in no way will you be influenced by
4 anything that I might say or do in connection with the
5 facts.

6 In determining what the true facts are in this case,
7 you must decide whether or not the testimony of a witness
8 is believable. It will be my responsibility to rule as a
9 matter of law as to whether certain testimony admissible
10 at all or not, but once the testimony is admitted whether
11 or not you believe it, is solely for you to determine.

12 In deciding whether to believe a witness, you have
13 the right to consider the interest of any witness, the
14 bias of any witness, the prejudice of any witness, the
15 opportunity for the witness to have seen the matters and
16 things about which that witness may testify and the way
17 that witness acts on the witness stand.

18 Ladies and gentlemen, you have the right to consider
19 anything that is in this record that will help you to
20 evaluate the testimony of witnesses, that means that it is
21 your duty to pay close attention to the witnesses, to
22 observe the witnesses, to listen to the witnesses and to
23 pay close attention to the attorneys and to the Court.
24 Please don't let your thoughts wonder, but give strict
25 attention to the testimony in this case so that at the end

1 of the testimony after their attorneys have made their
2 closing arguments and you had the charge on the law by the
3 Court, you will then be in a position to determine what
4 the true facts are to apply the law to those facts and
5 thus render a true and a just verdict. Now, ladies and
6 gentlemen, as indicated to you, this is simply an
7 introduction to the case. At this time, I'm going to ask
8 and recognize, Mr. Lawson, any exceptions to the Court's
9 opening statements?

10 MR. LAWSON: None from the State, Your Honor?

11 THE COURT: Anything, Mr. McLaughlin, from the
12 defense?

13 MR. MCLAUGHLIN: None from the defense, Your Honor.

14 THE COURT: Now, ladies and gentlemen, at this time
15 please give your attention to the State as Mr. Lawson
16 proceeds with his opening statement.

17 MR. LAWSON: Your Honor, Mr. Hill will open for the
18 State.

19 THE COURT: I apologize. Mr. Hill, be more than
20 happy to hear from you, sir.

21 MR. HILL: Thank you, Your Honor. Ladies and
22 gentlemen, the place that we are in is held with a great
23 deal of reverence. It's a special place. It's a place
24 where we gather to gather to hash out issues. And in some
25 respects, it's a pleasant place and I want to take you

1 back now four years ago to approximately six o'clock in
2 the morning on June 28th 2003. I want to take you back to
3 the town of Pamplico in Florence County where on that
4 morning of March 28th, a young girl, 11 years of age name,
5 B.B. awoke to the sound of her mother's
6 alarm clock. She woke because it was the normal time for
7 her to wake up to go to school Pamplico, Hanna Pamplico
8 Middle. It was also the normal time for her mother to
9 wake up to prepare to go to work at One Hour Martinizing
10 in Florence, but as B.B. got out of bed that morning
11 something wasn't normal and this day wasn't normal.

12 As B.B. got out of bed, she sense something
13 wasn't right. She looked out of her bedroom window and
14 the car that her mother drove, a Chevrolet, that normally
15 was in a parking spot wasn't there. And she open the door
16 to her bedroom and stepped in the hall. The lights that
17 were normally off in the house, in the computer room, and
18 in kitchen were on, that wasn't normal either. As she
19 walked across the hall to her mother's room and open the
20 door, Kevin Walton wasn't there, her mother's boyfriend,
21 that was abnormal. And then as she walked to her mother's
22 bed and called for mother, her mother, Shannon Carter
23 Burelson, didn't answer. When she moved and touched her
24 mother, her mother didn't move. And then as she pulled
25 the covers back from her mother to wake her definitely

1 wasn't normal because she found to her utter dismay and
2 horror, her mother was dead. And her panic and fright,
3 she ran, ran to her neighbor and to the home of her best
4 friend, banging on the door looking for help, looking for
5 something, someone to help her. Nothing was normal about
6 that day. And at the same time that she was going about
7 these actions and her life was all these things were
8 happening. Kevin Walton was fleeing Pamplico in Florence
9 County. So that's where we are -- that brings us to where
10 we are today.

11 The State of South Carolina through the Solicitor's
12 office has a burden to prove the allegations to you beyond
13 a reasonable doubt and that's a burden that we gladly
14 share because it's a burden that we gladly take. You also
15 have a burden and that's why you were chosen and selected
16 and asked to sit here that is listen to the evidence, to
17 put the evidence together, to pay attention, to use your
18 collective common sense that you don't leave outside the
19 front door of this courthouse and to use each and every
20 bit of it to reach or write a just and truthful
21 conclusion, which we submit to you is that Kevin Walton
22 committed murder, that he murdered Shannon Carter
23 Burelson.

24 Just let me introduce a few people, the case will be
25 presented for the State by Chief Deputy Solicitor Jack

1 Lawson. My name is Stephen Hill and I'll be assisting
2 him. We will look forward to trying this case with you.
3 Thank you for your attention and thank you for your time.

4 THE COURT: Thank you, Mr. Hill.

5 Mr. McLaughlin.

6 MR. MCLAUGHLIN: May it please the Court.

7 THE COURT: Yes, sir.

8 MR. MCLAUGHLIN: Ladies and gentlemen of the jury,
9 this is an indictment. You've already heard the judge
10 read from the indictment. You heard charges that are on
11 this indictment. This indictment is a piece of paper,
12 that is all it is. It does not mean someone is guilty.
13 If this was TV right now, this where I rip a piece of
14 paper up and walk off, but I may need this later, so I'm
15 not going to do that. What I am going to do is talk just
16 a little bit about what Mr. Walton has been charged with.
17 He's been charged with murder. Well, the judge is in
18 charge of the law, so at the end of this case, the judge
19 is going to explain to you exactly what the law is on
20 murder. But I want to get into it a little bit because as
21 you hear the evidence from the State during this case, you
22 need to focus and you need to listen to see whether or not
23 they prove every single element to what Mr. Walton has
24 been charged with. Okay.

25 Murder is gone be -- the judge will give you the

1 exact definition. It's not different from what you heard
2 on the indictment. And that is that Mr. Walton's charged
3 with feloniously, willfully and with malice aforethought
4 killing Shannon Burelson Carter. The State just don't
5 have to prove that Ms. Carter died. They don't just have
6 to prove that someone killed her. They have to prove that
7 she died, that she was killed by someone, that she was
8 killed by someone with intent feloniously and willfully.
9 And they have to prove that there was malice aforethought.
10 As the State presents their evidence, you got to listen --
11 you got to be very exact. In fact, you almost have to be
12 skeptical because Mr. Walton and he sits over there
13 besides that green jacket that he's got on, he is strouded
14 in a cloak of innocence. He is presumed innocent as part
15 of the oath that you just took.

16 Same thing with larceny. Larceny is a felonious
17 taking and carrying away of someone's property. They have
18 to prove the intent feloniously. Someone admit to
19 stealing it, but first off the first property was taken,
20 that someone meant to take this property. The charge that
21 he's face with is grand larceny and so they'll have to
22 prove a dollar amount on this statement. So it's
23 important that you listen to the State's case and you make
24 them prove each and every one of those elements.

25 Now, how far do they have to prove it? We've all

1 watch TV and we all watch movies beyond a reasonable
2 doubt. When you take that phrase, which the judge will
3 give you a charge on what reasonable doubt is when it
4 comes that time. But I would submit to you that it's a
5 doubt that would cause a reasonable person to hesitate to
6 act. When you take that reasonable doubt and you take
7 that presumption of innocence, that is a microscope under
8 which you are suppose to look at the State's case. He is
9 presumed innocent.

10 When the judge read that indictment, when I just read
11 it, when I just went over those charges, when the State
12 just got up here and gave their opening and they read
13 these horrendous things that have happened, some of you
14 may have been sitting there and the natural reaction will
15 be to look over here at Mr. Walton and go I am glad they
16 got that guy. He's guilty. You can't do that. If you
17 did it, you're wrong. You did it, you're not going to be
18 following your oath. You have to look at him with that
19 presumption of innocence. That means he sits there
20 wrongfully accused that's what an indictment is. It is an
21 accusation. If he is presumed innocent, the indictment is
22 wrong. And so all the evidence the State presents about
23 Mr. Walton you have to look through a microscope. You
24 have to be skeptical of it. You got to pick it up and
25 turn it over and see whether or not it rises beyond that

1 level of reasonable doubt. If you do that and you grant
2 Mr. Walton the presumption that he is afforded, that you
3 sworn an oath to grant him, then we have confidence that
4 you'll come back with a verdict of not guilty. Thank you.

5 THE COURT: Thank you, Mr. McLaughlin. The State may
6 call its first witness.

7 MR. LAWSON: The State would call J. Warren Poston,
8 Your Honor.

9 THE COURT: All right.

10 THE CLERK: Please place your left hand on the Bible
11 and raise your right hand. Do you swear that the
12 testimony you give in this case will be the truth, the
13 whole truth, and nothing but the truth so help you God?

14 MR. POSTON: I do.

15 THE CLERK: Please be seated and state your name for
16 the record?

17 MR. POSTON: Joseph Warren Poston.

18 WHEREUPON,

19 Joseph W. Poston,
20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. LAWSON:

23 Q And you go by Warren?

24 A Yes, sir, by Warren.

25 Q Your friends call you Warren?

1 A Yes, sir.

2 Q I guess everybody else calls you other things. And
3 you're now employed with Florence County sheriff's
4 department?

5 A Yes, sir.

6 Q And how long have you been employed with the
7 sheriff's department?

8 A Since November of 2004, I been at the sheriff's
9 department.

10 Q All right, sir. Prior to November of 2004, were you
11 employed in law enforcement?

12 A Yes, sir, I was with the Pamlico police department.

13 Q And how long were you employed there?

14 A From September of '02 'till November of '04.

15 Q All right, sir. So in March of 2003, you were with
16 the Pamlico police department?

17 A Yes, sir.

18 Q And what position did you hold there during that
19 period of time?

20 A Well, I started out as a patrol officer and worked my
21 way up to lieutenant.

22 Q All right, sir. And in March of 2003 what position
23 were you in at that time?

24 A At the time, I was still a patrol officer.

25 Q All right, sir. And did -- do you recall whether or

1 not you were on duty on March -- the evening March the
2 27th early morning of March 28th of 2003?

3 A Yes, sir, I was on duty from 10 p.m. that night 'till
4 8:00 a.m. the next morning.

5 Q And how do you know that?

6 A Because I just remembered.

7 Q And did anything unusual happen during that shift?

8 A Yes, sir, I received a call that morning of
9 March 28th around 6:13 a.m. Received a call dispatch out
10 to [REDACTED] which is located in Pamplico in
11 the projects area in reference to a dead body is the way
12 the call originally came out.

13 Q All right. And that was at what time?

14 A The call came in at 6:13 a.m. that's what time I was
15 dispatched.

16 Q So that's 6:13 in the morning?

17 A Yes, sir.

18 Q And did you respond to that call?

19 A Yes, sir, I did. I responded out to that location.
20 I arrived on scene about two minutes later at 6:15 a.m.

21 Q All right. So I guess in Pamplico you were pretty
22 close to your destination?

23 A Yes, sir, it's a very small town.

24 Q So pretty much everything's close to each other in
25 Pamplico?

1 A Yes, sir.

2 Q All right. And what did you find when you arrived on
3 the scene?

4 A When I pulled up at -- on the scene, I seen a young
5 lady probably early teens stand in front yard very upset,
6 crying. Then I -- there was another lady probably about
7 mid 30's standing at the door. The lady standing at the
8 door later identified as Ms. Sherrie Bennett she had told
9 me that her friend was dead. I asked her to take me to
10 the body and let me see. She took me into the apartment
11 at that location. I went to the back bedroom and I did
12 see the victim, Ms. Shannon Dale Carter, was deceased
13 laying in the bed.

14 Q All right. Did you check for a pulse or respiration
15 or how did you determine?

16 A You can tell by looking at her she was deceased. You
17 could tell there was no doubt.

18 Q All right, sir. And what did you do at that point?

19 A At that point, I escorted Ms. Bennett back out of the
20 residence and I secured the crime scene until forensics
21 and investigations could get there. And EMS also had to
22 come in to run a strip on her.

23 Q All right. And by securing the crime scene, what did
24 you do to secure the crime scene?

25 A Basically, I just put crime scene tape around the

1 front door entrance to the residence and the back door was
2 already secured and locked from the inside. There was
3 nobody else in there, so I knew there's no way that door
4 again lock I knew it was secure. And I stood at the front
5 door to make sure nobody came in or out that shouldn't be.

6 Q All right. And people that were there when you got
7 there, did you leave them in the house or did you take
8 them out?

9 A No, sir. Me and Ms. Bennett were the only two that
10 went inside that house when I arrived on scene. And I
11 escorted her back out of the residence and secured it.
12 The young lady who was B.B. the victim's
13 daughter, she was already outside the residence. She
14 didn't go back inside with us.

15 Q All right.

16 A And there was nobody left in the residence when I
17 went back out.

18 Q You say she was crying and very upset?

19 A Yes, sir, she was.

20 Q All right. Who else was there?

21 A At that time, I believe it was only us three. I
22 believe maybe Ms. Bennett's daughter I don't know her name
23 she was there consoling B.B. the victim's daughter.

24 Q All right. Now, you had been -- did you notice a car
25 there?

1 A No, sir, I didn't notice any vehicle parked in front
2 of that residence.

3 Q All right. And is there a parking area there?

4 A Yes, sir. Yes, sir. The way the apartments are set
5 up there's two apartments in one building. They're split
6 by a wall in the middle. And there's a parking space in
7 front of those two apartments. And there's two for one
8 side and two for the other side.

9 Q All right. And were there any cars in front that you
10 noticed?

11 A Not that I can remember.

12 Q All right. You had been on duty since ten o'clock
13 the night before?

14 A Yes, sir.

15 Q And did you from time to time go and patrol areas in
16 Pamplico?

17 A Yes, sir, that was my duty to patrol the area through
18 midnight shift to make sure we didn't have any break ins.

19 Q All right. And what times did you go out if you
20 recall?

21 A Well, we typically stay out through the night ten
22 a.m. to 8:00 a.m. the next morning. We might go back to
23 the office for a little while to eat or we might go back
24 to do some paperwork every now and then.

25 Q All right. Now, so you were out between five and

1 5:30?

2 A Yes, sir.

3 Q You recall where you were at that time?

4 A Yes, sir, I do. At that time, I was traveling north
5 on Highway 51 on Walnut Street in Pamplico. I remember it
6 because I had seen the victim's car there that morning. I
7 was traveling north on 51 on Walnut Street and the car
8 came pulling up to the stop sign at First Avenue and 51.
9 And I had notice that vehicle because it's a small town
10 and typically we don't have traffic between that time in
11 the morning.

12 Q All right. And was that car stopped at a stop sign?

13 A When I first noticed that it was approaching a first
14 stop sign and it did stop at a stop sign to let me go, it
15 had to stop.

16 Q So you went by the car?

17 A Yes, sir.

18 Q And is there a street light at that intersection?

19 A Yes, sir, it's well lit intersection.

20 Q All right. Did you notice anybody else at that --
21 around or that close to that intersection?

22 A I did. I actually seen my Captain Donnie Huggins of
23 the sheriff's office. He was walking along the sidewalk
24 in that same area.

25 Q All right. And you later find out that something he

1 does on regular basis?

2 A Yes, sir, he walked every morning back then pretty
3 routinely.

4 Q All right. How did you know or recognize this car to
5 be Shannon Carter's car?

6 A I was familiar with the car because back on December
7 23rd '02 just couple months prior to that, I had stop that
8 vehicle in front of her apartment, that's how I know the
9 vehicle. I had stopped her for a minor traffic violation.
10 It think it was either a headlight out or a tag light out.
11 I wrote her a written warning, but I remember that vehicle
12 because I stopped it right in front of her residence.

13 Q All right. And as a result of having stopped and
14 written that ticket, you remembered that vehicle?

15 A Yes, sir, I do remember that vehicle.

16 Q And that is the vehicle that you saw that morning
17 between five and 5:30 at the intersection of First Avenue
18 Highway 51?

19 A Yes, sir, that is the vehicle I saw that morning.

20 Q And for those of us that aren't familiar with
21 Pamplico, what is Highway 51?

22 A Highway 51 it's also called Walnut Street. It's the
23 main highway that runs through Pamplico. I mean, pretty
24 much every road in Pamplico branches off of it.

25 Q And where if -- I guess what -- if you go in one

1 direction on 51, where does it run north and south?

2 A Yes, sir, it runs north and south. If you get on it
3 in Pamplico and run north, you'll into Florence in about
4 18 miles.

5 Q All right. And if you go south?

6 A If you go south, it will run you down to Highway 378.

7 Q And that's not River Road is it, the Old River Road?

8 A No, sir, that's not Old River Road. Old River Road
9 does not run in through town limits. It's outside of town
10 limits.

11 Q All right. And First Avenue is located where in
12 relation to Highway 51?

13 A First Avenue runs perpendicular to Highway 51. It's
14 probably a half mile from the south end of town limits.
15 It's not a very big town only about two miles on 51 inside
16 of town.

17 Q All right. And highway or First Avenue then runs
18 east and west?

19 A Yes, sir.

20 Q Okay. Did you do any investigation at the scene
21 there when you reported that -- when you responded that
22 morning to the dispatch?

23 A I did not do any investigations. Your job as patrol
24 offer is to arrive on scene. Any victims that need help,
25 give them help. If not, if you're unable to give that

1 help, then you secure the crime scene until forensics and
2 investigations arrive on scene.

3 Q All right. After -- you arrived first; is that
4 correct?

5 A Yes, sir.

6 Q All right. And who arrived after you if you recall?

7 A The first responders and EMS pulled up on the scene
8 shortly after I did.

9 Q By first responders, what do you mean by that?

10 A Fire department members that are CPR certified are
11 able to give aid -- render aid to medical aid to people.

12 Q So that would be Pamplico rescue?

13 A Pamplico rescue squad, yes, sir.

14 Q And EMS also pulled up about the same time?

15 A Yes, sir, about the same time.

16 Q And did both Pamplico rescue and EMS go into the
17 scene or just EMS?

18 A Just EMS went into the scene. They -- I let them go
19 in the scene to run a strip on the victim. You have to
20 run an EKG machine or some type of machine that registers
21 the heart beat, so we can have a flat line strip showing
22 that she was deceased so that can be passed on to the
23 coroner.

24 Q And as far as you know that's what took place?

25 A Yes, sir, as far as I know that's what took place.

1 Q All right. You didn't -- and it wasn't your duty to
2 take any pictures or any photographs ---

3 A No, sir.

4 Q --- of the scene?

5 A No, sir, my job was to secure that scene and make
6 sure the only people authorized were to come in and out of
7 it.

8 Q All right. And what do you do to ensure that?

9 A Like I said I stand at -- in this case, I stand at
10 the front door because the crime scene or the interior of
11 the residence or interior of the apartment. And my job is
12 to stand at that front door with the crime scene log and
13 make sure that if you came in, you was authorized. And if
14 you did come in, you were put on that crime scene log.

15 Q All right. What's a crime scene log?

16 A A crime scene log is just a sheet of paper that shows
17 who came in, what their position was, and the reason for
18 them coming in.

19 Q All right. And that would have been started by you?

20 A Yes, sir. It's my job to keep up with that.

21 Q And you would keep up with it until the area was
22 cleared?

23 A Yes, sir.

24 Q Now, is Pamplico located in Florence County?

25 A Yes, sir, it is.

1 Q And this apartment where Shannon Carter died it's
2 located in Pamplico?

3 A Yes, sir.

4 Q So it also is in Florence County?

5 A Yes, sir.

6 Q I believe that you said that you immediately treated
7 this as a crime scene; is that correct?

8 A Yes, sir.

9 Q Why did you do that?

10 A Because when I arrived on scene, the victim's
11 daughter she was visibly upset and crying. She made the
12 statement that Kevin killed her mother. And, you know,
13 when you hear that, you got a deceased body, it needs to
14 be investigated and needs further investigation.

15 Q All right. So that alerted you to the fact that you
16 needed to treat this thing seriously from the start?

17 A Yes, sir.

18 MR. LAWSON: Answer any questions Mr. McLaughlin
19 might have for you.

20 MR. MCLAUGHLIN: Please the Court.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. MCLAUGHLIN:

24 Q Officer Poston, how long did you say you been working
25 for Pamplico at the time this happened?

1 A I had been there since September of '02 and March of
2 '03 about six months.

3 Q And I believe you testified that one of your duties
4 is to patrol around and look for break ins stuff like that
5 make sure people aren't breaking in stuff like that; is
6 that correct?

7 A Yes, sir.

8 Q Did you patrol this particular neighborhood
9 regularly?

10 A Yes, sir.

11 Q How would you describe this neighborhood? Is it a
12 good neighborhood as far as crime or is it a bad
13 neighborhood as far as crime?

14 A I mean, it's a pretty decent neighborhood. I mean,
15 it's not the best neighborhood we got in Pamplico.

16 Q You answer a lot of calls there?

17 A I would say we answer a good bit of calls there.
18 Like I said, it's Pamplico a few calls we do get a year.

19 Q Yes, sir. I'm familiar with Pamplico. I would
20 imagine.

21 MR. MCLAUGHLIN: Your Honor, may I approach?

22 THE COURT: Yes, sir.

23 MR. MCLAUGHLIN: I guess I need to have this marked
24 for identification please.

25 MR. LAWSON: You can mark it for admission. I have

1 no objection.

2 THE COURT: You want to move that in?

3 MR. MCLAUGHLIN: Yes, sir.

4 THE COURT: All right, that is Defense Exhibit Number
5 1.

6 (WHEREUPON, Defendant's Exhibit No. 1 was admitted
7 into evidence.)

8 Q I guess is it deputy?

9 A Yes, sir.

10 Q Deputy, I'm showing you what's been marked as Defense
11 Exhibit 1 could you tell me what that shows? Let me ask
12 you this, are you familiar with that image?

13 A Yes, sir. It looks like a picture to the entrance to
14 the projects in Pamplico.

15 Q In the image, what does it display?

16 A I guess you talking about the sign is what you want
17 to know about?

18 Q That's correct.

19 A It shows a sign.

20 Q Fair to say that that sign let's everybody know that
21 this property is under the jurisdiction of the Pamplico
22 police department?

23 A Yes, sir.

24 Q It's fair to say that it says that there's to be no
25 trespassing, no illegal drugs, no loitering, no loud

1 music, no public alcohol use?

2 A Yes, sir.

3 Q Okay. I'm familiar with Pamplico, but I don't know
4 how many neighborhoods I would say it had. But is there
5 any other area of town that's got a sign like this located
6 out there at the entrance to it?

7 A No, sir.

8 Q I want to get back to the -- Mr. Lawson asked you
9 about this -- the fact you had seen the victim's car
10 before and I believe you testified that you had pulled the
11 victim sometime in December?

12 A Yes, sir.

13 Q Of '03; is that correct?

14 A December of '02.

15 Q '02. Okay. When did you realize that?

16 A When did I realize that was the same car?

17 Q Yeah, when you pulled up there to the house since you
18 had seen it before?

19 A That was -- yes, sir, pretty much. When I pulled up
20 there and recognized it was that house that -- like I said
21 after we got talking with them, they told us that the car
22 was gone, that's when I put two and two together.

23 Q I'll come back to that. I want to get when you first
24 went in the house and you went looked at the body, did you
25 notice anything unusual about the body?

1 A I notice that there was a handcuff on the victim.

2 Q Okay. You say on the victim on the wrist, on the
3 feet?

4 A It was on the wrist.

5 Q On both wrist, one wrist?

6 A I can't remember if it was both wrist or one wrist.
7 I just -- you know, like I said I just peeked in glance
8 saw she wasn't breathing.

9 Q Did you notice anything else about the victim's
10 appearance?

11 A Other than she was laying in the bed that's all.

12 Q Okay. Could you tell whether, or not she was clothed,
13 partially clothed, nude?

14 A If I remember correctly, when I first went in she had
15 cover on her. I believe she had on a T-shirt.

16 Q Did you recognize anything else unusual in that scene
17 on the bed, around the bed?

18 MR. LAWSON: Objection, Your Honor, relevance.

19 MR. MCLAUGHLIN: A typical question I imagine a
20 police officer goes into scenes all the time. Sometimes
21 these scenes may or may not be usual.

22 THE COURT: I'm going to overrule, but maybe you need
23 to be a little bit more specific. You're on cross I'm
24 going to give you leeway.

25

1 BY MR. MCLAUGHLIN:

2 Q Did you notice any sex toys in the room?

3 A Yes, sir, I believe I did notice some sex toys in the
4 room.

5 Q Okay. In location to the body, where were these
6 things located at?

7 A I believe the only thing I really caught a look at in
8 the room was a toy on the night stand beside the bed.

9 Q And I'm not trying to embarrass you by asking you
10 that question. We just trying to figure out what all was
11 there. You testified that EMS went in with Pamplico
12 rescue; is that right?

13 A No, sir, just EMS went in.

14 Q Just EMS went in?

15 A Yes, sir.

16 Q And you stayed outside; is that correct?

17 A Yes, sir.

18 Q Did you look around the house or anything like that?

19 A No, sir, I didn't. Like I said, I was at the front
20 door securing the crime scene.

21 Q As part of your duties, I guess, being first arrival
22 crime at a scene, do you have to fill out a report?

23 A Yes, sir.

24 Q Okay. And generally speaking I imagine paperwork is
25 sometimes get behind, but we are talking about Pamplico

1 here. So how long is a turnaround on you doing like an
2 incident report for something like this usually?

3 A Typically, we try to get the incident report done as
4 quickly as we can.

5 Q Okay. Did you do an incident report in this
6 particular case?

7 A Yes, sir, I did.

8 Q Okay. Do you recall when you got that incident
9 report done?

10 A I believe I got it done that morning after leaving
11 the crime scene.

12 Q Okay. Did you complete your entire incident report
13 that morning?

14 A I wrote a supplemental report later on after speaking
15 to Investigator Yarborough.

16 Q And you recall when you wrote the supplemental
17 report?

18 A It was a couple days after the incident is my
19 recollection.

20 Q A couple days after the incident?

21 A Yes, sir.

22 Q Okay. As an officer, what is your training or what
23 do you understand your training to say that you should put
24 in a incident report?

25 A You're trained everything that's relevant.

1 Q Would arriving at the scene of an alleged murder and
2 realizing that you had seen the victim's car earlier that
3 night, would that be relevant?

4 A Yes, sir, it would be relevant.

5 Q Okay. Do you recall whether or not you put that in
6 your initial report?

7 A No, sir, I did not.

8 Q Okay. And this is the -- what was your reason for
9 filing a supplemental report?

10 A I'm not gone lie to you. This is the first dead body
11 I ever worked whether it be natural cause, homicide or
12 suicide. This was the first dead body I ever worked. I
13 only been on the police force for six months and that was
14 in Pamplico. We don't get many calls. So at the time
15 what I didn't think was relevant somebody else thought was
16 relevant after talking to Investigator Yarborough who has
17 a whole lot more experience than I do.

18 Q I can understand that. But you believe you filled
19 out the supplemental report a few days later?

20 A Actually, I got a copy of it here.

21 Q Could you take a look at it?

22 A Yes, sir. The date on it is August 19th 2003, so
23 that would be the time that I filed the supplement.

24 Q Okay. So that's quite a while?

25 A Yes, sir, it's more than a few days that I first

1 thought.

2 MR. MCLAUGHLIN: Thank you, Deputy, no further
3 questions.

4 THE COURT: Anything on redirect examination?

5 MR. LAWSON: As I understand it is Defendant's 1 is
6 in evidence; is that correct?

7 THE COURT: Yes, it is.

8 REDIRECT EXAMINATION

9 BY MR. LAWSON:

10 Q Officer Poston, can you recognize or do you recognize
11 this overhead photograph?

12 A Yes, sir.

13 Q Go ahead.

14 A It's a picture that's marked River Road First Avenue,
15 so it's a picture of the part of the project doesn't show
16 the back side of the projects.

17 Q All right. Does it show where the buildings that
18 relate to this incident?

19 A Yes, sir.

20 Q All right. Can you point them out to the jury?

21 A See this is Pine Street. This is First Avenue. This
22 would have been the victim's apartment right here.

23 Q All right. And that would be two apartments in there
24 one on each side?

25 A Yes, sir, and like I said split in the middle by a

1 wall.

2 Q All right. And then would this also be a duplex in
3 here?

4 A That is a single unit and then a duplex here.

5 Q All right. And do you know who lives in this unit?

6 A Ms. Sherrie Bennett, the neighbor that was on scene
7 that morning, she lives here.

8 Q All right.

9 MR. LAWSON: Your Honor, we move to introduce this
10 State's Exhibit 1.

11 THE COURT: All right, State's Exhibit 1 without
12 objection. Is that a blown up photograph or an aerial?

13 MR. LAWSON: Aerial photograph. It is blown up.

14 MR. MCLAUGHLIN: No objection.

15 (WHEREUPON, State's Exhibit No. 1 was admitted into
16 evidence.)

17 Q On Defense Exhibit 1 that sign that sign looks
18 awfully familiar to me. Isn't that sign on a whole lot of
19 private property around Florence county?

20 A I believe that sign is on any property that falls
21 under Florence Housing Authority. They put that sign up
22 on all their properties. If I'm not mistaken, I believe I
23 seen them several other places.

24 Q All right. I think on some Wal-Marts and things like
25 that?

1 A Yes, sir.

2 Q So it's not a unusual thing to see that sign around
3 Florence County?

4 A No, sir.

5 Q All right. The crime scene log I ask you if you can
6 look at that and identify it for me?

7 A That's the crime scene entry log that was done by me
8 that morning.

9 MR. LAWSON: We move the crime scene log as State's
10 Exhibit 2, Your Honor.

11 THE COURT: Any objection?

12 MR. MCLAUGHLIN: No, Your Honor.

13 THE COURT: State's Exhibit 2 crime scene log without
14 objection.

15 (WHEREUPON, State's Exhibit No. 2 was admitted into
16 evidence.)

17 MR. LAWSON: That's all.

18 THE COURT: All right. Thank you, Officer. You may
19 step down.

20 (WHEREUPON, the witness leaves the witness stand.)

21 THE CLERK: Please place your left hand on the Bible
22 and raise your right hand. Do you swear that the
23 testimony you give in this case will be the truth, the
24 whole truth, and nothing but the truth so help you God?

25 MR. DRIGGERS: Yes, ma'am.

1 THE CLERK: Please be seated and state your name for
2 the record.

3 MR. DRIGGERS: My name is William Driggers.
4 WHEREUPON,

5 William Driggers,
6 after first having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. LAWSON:

9 Q Do you go by Steve?

10 A Yes, sir, I go by Steve.

11 Q And, Deputy Driggers, where are you employed?

12 A Florence County sheriff's office.

13 Q And how long you been so employed?

14 A Since October of 2005.

15 Q And prior to October of 2005, where were you
16 employed?

17 A Florence County EMS.

18 Q And how long were you employed with EMS?

19 A I was employed there from 1987 till 1994. I took a
20 brief time off, came back in 2002 and was employed there
21 until 2005.

22 Q Do you remember whether or not -- and I assume based
23 on what you said you were employed there in March of 2003?

24 A Yes, sir.

25 Q And were you employed there -- were you on duty on

1 March the 28th of 2003?

2 A Yes, sir.

3 Q And did you respond to a call that day?

4 A Yes, sir.

5 Q And I ask you if you have seen this document before?

6 A Yes, sir, I have.

7 Q And what is that?

8 A This is a DHEC patient care form. It's a form that's
9 filled out on each ambulance call.

10 Q All right. So I assume you filled out a number of
11 those in the years that you work with EMS?

12 A Yes, sir.

13 Q And with EMS are there normally two people on an
14 ambulance when you arrive?

15 A Yes, sir.

16 Q And how do you determine who's the lead paramedic on
17 a given case?

18 A Generally speaking if there's two paramedics on a
19 truck, we just alternate calls.

20 Q And where did you get a call to on the morning of
21 March 28th 2003?

22 A It would have been [REDACTED] in Pamplico.

23 Q And do you recall how long it took you to arrive
24 there?

25 A Referring to the sheet, it was only approximately

1 four minutes.

2 Q Where were you at the time that you received the
3 dispatch to go to that location do you recall?

4 A Yes, sir, we were at the EMS station in Pamplico.

5 Q All right. And I think as someone said earlier
6 everything in Pamplico is pretty close together?

7 A Yes, sir.

8 Q So it didn't take you long to respond from that
9 location to First Avenue?

10 A No, sir.

11 Q All right, sir. And what did you do upon arriving at
12 the scene?

13 A We first arrived at the scene. Pamplico officer came
14 out to us kind of give us real quick overview of what we
15 had. He told us it was going to be a crime scene and he
16 gave us the location of where the person was located
17 inside of the home.

18 Q All right. And was that Warren Poston ---

19 A Yes, sir.

20 Q --- that came out. And then what did you do upon
21 learning that information?

22 A As we would always do, we got our equipment and went
23 into the residence.

24 Q All right. And upon going in the residence, did you
25 find Shannon Carter's body?

1 A Yes, sir.

2 Q Was there a pulse?

3 A No, sir.

4 Q Did you check for that?

5 A Yes, sir.

6 Q Was there any respiration, breathing at all?

7 A No, sir.

8 Q All right. In that situation, what do you do next?

9 A We would apply the cardiac monitor to the person and
10 check for any heart activity.

11 Q All right. And is that called an EKG?

12 A Yes, sir.

13 Q And did you do that in this case?

14 A Yes, sir, we did.

15 Q And what was the result?

16 A It was an asystole which is a flat line.

17 Q And what does that mean?

18 A That means there's no heart activity.

19 Q And do you have instructions in relation to what you
20 are to do when that happens?

21 A Yes, sir, we do.

22 Q And what are those instructions?

23 A You notify law enforcement. Law enforcement on the
24 scene. Then we also notify the coroner.

25 Q And so one of you runs the EKG or the machine monitor

1 the heart?

2 A Yes, sir.

3 Q And do you know who did that in this case?

4 A It was me.

5 Q You ran that?

6 A I did.

7 Q And just -- what does the EKG look like the -- is it
8 just a narrow strip of paper?

9 A Yes, sir, it's an inch and three quarters, maybe two
10 inches wide and run route.

11 Q All right. And it's got graph lines on it?

12 A Yes, sir.

13 Q And that's to determine a beat or something if you
14 get one?

15 A Use to measure the bet.

16 Q And do you have a copy of the one which ran on
17 Shannon Carter?

18 A I have it.

19 Q And does it -- what does it show you?

20 A It shows there is no heart beat, no electrical
21 activity.

22 Q All right. And at the time that you receive that,
23 then what did you do?

24 A Once we ran it on Ms. Carter, we stop. We make a
25 copy of it. And we also check it in another lead to make

1 sure that there was not some malfunction in the machine.

2 Q All right. And what was the result?

3 A Both leads show the same asystole.

4 Q All right. How many leads do you use in all?

5 A We use three leads.

6 Q And that those round things that they stick on you.

7 ---

8 A Yes.

9 Q --- at the doctor's office when they do test?

10 A Yes.

11 Q And so there would be three of those?

12 A Yes.

13 Q And do you take those off when you finish?

14 A No, sir, not really. Sometimes when you pull the
15 electrode off, sometimes they leave the pad behind
16 sometimes they come off.

17 Q All right. Did at the point that you got the results
18 in this case that you got them, what did you do?

19 A I'm sorry ask me that again.

20 Q What did you do at the point that you obtained these
21 results?

22 A We notified the Lake City or the Pamplico officer
23 that was on the scene that she had indeed passed on and we
24 notified our central dispatch to notify the coroner.

25 Q And what did you do at that point?

1 A We packed up our stuff and left the residence.

2 Q All right. And did you leave the scene also?

3 A No, sir, we were set up outside of the apartment
4 building out on the street. We went back to our unit, our
5 ambulance.

6 Q And did you do anything in relation to investigation
7 or taking photographs?

8 A No, sir.

9 Q Anything else?

10 A No, sir.

11 Q All right. What did you do in relation to this
12 investigation from the point that you left the building?

13 A We write down the report and then we leave a copy of
14 that report and the heart strip with the coroner if he's
15 there. If not, we leave it with the officer that's in
16 charge.

17 Q And that's what happened in this case?

18 A Yes, sir.

19 MR. LAWSON: Answer any questions Mr. McLaughlin
20 might have for you. Thank you.

21 THE COURT: Mr. McLaughlin.

22 CROSS-EXAMINATION

23 BY MR. MCLAUGHLIN:

24 Q Deputy Driggers, did you notice anything unusual as
25 well -- strike that. You gone into -- I'm going to assume

1 that you went into a lot of crime scenes as well -- a fair
2 amount of crime scenes during your time with EMS?

3 A Yes, sir.

4 Q Is that fair to say?

5 A Yes, sir.

6 Q Anything strike you as unusual about this particular
7 crime scene?

8 A Just the fact that she had on a pair of handcuffs.

9 Q And you recall -- well, you were I believe you just
10 testified you were the one who did EKG?

11 A Yes, sir.

12 Q So you were up close with her having to put these
13 leads on; is that right?

14 A Close as we can get without disturbing anything.

15 Q Yes, sir, I understand. You recall how she was
16 handcuffed?

17 A I remember that the hands were above her head.

18 Q Both hands, one hand?

19 A At that point, I think it was both hands were above
20 her head.

21 Q Okay. In fact, if I represented to you that on your
22 DHEC form that's exactly what you said, would you think
23 that accurate?

24 A Yes, sir.

25 Q Okay. How long did say you had been with EMS in

1 Pamplico?

2 A We were only in Pamplico for a month at a time.

3 Q Okay. During that how long when this happened had
4 you been going to Pamplico or been to EMS to where you
5 were going?

6 A I been back with EMS approximately a year. I was
7 there seven years approximately before that.

8 Q How many crime scenes did you think you been to in
9 Pamplico?

10 A In Pamplico?

11 Q Yes, sir.

12 A Very few in Pamplico.

13 Q Not a whole heck of a lot of crime out there?

14 A Not a lot.

15 Q Okay. Have you ever responded to a crime scene in
16 this neighborhood?

17 A Can you define crime scene?

18 Q Where there was a crime?

19 A I been on crime scenes not may be of this nature,
20 but, yes, I been on crime scene in that neighborhood.

21 MR. MCLAUGHLIN: No further questions. Thank you,
22 Deputy.

23 THE COURT: Anything on redirect examination?

24 MR. LAWSON: Nothing, Your Honor.

25 THE COURT: All right. Thank you, sir. You may step

1 down.

2 (WHEREUPON, the witness leaves the witness stand.)

3 MR. LAWSON: Your Honor, may we approach?

4 THE COURT: Yes, sir.

5 (WHEREUPON, a bench conference was held in the
6 presence of the jury, but out of the hearing of the
7 jury.)

8 THE COURT: All right. Ladies and gentlemen, we are
9 just going to take a short break here. What we're trying
10 to do is we're looking at the time. I like to try to keep
11 us as close to a schedule that doesn't take you out your
12 normal routine if we can. And so we're going to take a
13 short break and let the State kind of review their
14 witnesses to see if they got someone that is not terribly
15 lengthy or whatever. But anyway while we do that, we're
16 just going to take a short break and allow you to go back
17 into your jury room. If you would please when go back, I
18 would ask that you have no conversation about the case, no
19 conversation about anything you heard, continue getting to
20 know each other, discuss whatever it is you like to
21 discuss, but please have no discussions involving the
22 case. I'll bring you back out shortly. Thank you.

23 (WHEREUPON, the jury retired to the jury room.)

24 (WHEREUPON, a break was taken.)

25 THE COURT: If you would ask the members of the jury

1 to join us.

2 (WHEREUPON, the jury returned to the courtroom.)

3 THE COURT: All right. Ladies and gentlemen, I talk
4 with the attorneys and it appears that any number of the
5 State's next witnesses could possibly be -- and when I say
6 lengthy, I'm just talking about in terms of being here at
7 the end of the afternoon. So what we're going to do is
8 we're going to adjourn court for the day at this time and
9 excuse you to go home and go to your families and we'll
10 start back in the morning. Let me say to you as I told
11 you earlier and I think you understand the importance both
12 of the State and for the defense is that your clean slate
13 remain that way. That you not have any influence on
14 anyone or anything outside this courtroom. You need to
15 decide this case based solely on the testimony of
16 witnesses and any exhibits that are introduced into this
17 case. When you go home as I said earlier, I've not seen
18 any of what I know to be any reporters here. I've not
19 seen any coverage, so I don't know that there would be.
20 But if there is if it's television, please turn it off.
21 If it's a newspaper, please set it down. Put it away if
22 you want to read it when it's all over, but please have no
23 contact with anything or anyone about this case outside
24 this courtroom.

25 Now, when you get home, there's just no question that

1 your loved ones or your friends or whoever are going to
2 ask did you get picked on a jury. You can tell them you
3 were selected, but please at that point, you need to leave
4 it at that because I know they're going to say what's it
5 about or who's on trial. It's important that you not even
6 tell them the charges or anything. And the reason is is
7 because sure enough as soon as you say something about the
8 case that person is going to say something that could
9 possibly compromise your ability to be fair and impartial.
10 So if you would again politely just tell them that you
11 have been selected to serve on a jury. You're not allowed
12 to discuss it with them even to the extent of telling them
13 who's involved or what the charge is. You can inform them
14 that when it's over, you'll tell them everything and
15 probably more than they want to hear about it. You can
16 write books. Jurors are making millions of dollars
17 writing books nowadays at least out in California they
18 are. But the important thing is is that all of that is
19 after the trial is concluded. While you are an active
20 member of this jury, it's important that you have no
21 contact with anyone about this trial. So I want to thank
22 you for adhering to that.

23 Now, when you go home this evening, I don't know if
24 you were able to tell by your short period of time this
25 afternoon, but jury service can be tiring not necessarily

1 from a physical muscular standpoint, but certainly from a
2 mental standpoint. Tonight if you can get a good meal,
3 get a good night's rest, come back tomorrow well rested
4 and ready to go to work. And what we'll do is we'll start
5 back at 9:30. So if you would please try to figure in
6 terms of parking situation and all of that. And please
7 get here in time where you can be here in your jury room
8 at 9:30 and we'll resume at that time. Again don't allow
9 anyone to have contact with you. Have a wonderful evening
10 and we will see all of you back here at 9:30 in the
11 morning. Everyone else please remain seated while the
12 jury is excused.

13 (WHEREUPON, the jury was excused for the day.)

14 THE COURT: All right. Gentlemen, anything that we
15 need -- any matters we need to take up before we conclude
16 for the evening?

17 MR. LAWSON: Nothing from the State.

18 THE COURT: Now, Patrick, do you and Mr. Walton need
19 sometime while he's here or you want him back over early
20 in the morning?

21 MR. MCLAUGHLIN: What time are we reconvening?

22 THE COURT: We're gone reconvene at 9:30 for to start
23 the trial. What time would you like?

24 MR. MCLAUGHLIN: If he could be back here by 8:30 in
25 the morning.

1 THE COURT: All right. Gentlemen, could y'all have
2 him here at that time.

3 MR. LAWSON: Your Honor, I would like to ask one
4 thing in relation to the sequestration order. I have two
5 police witnesses Darren Yarborough who was the lead
6 investigator and Keith Lutcken who was the forensic --
7 head of forensic. It would help me tremendously to have
8 both of them in the courtroom. Lieutenant Lutcken is not
9 the primary investigator on the forensic side David Brown
10 was. However, he would be a tremendous help to me in
11 relation to lining up the witnesses as to who testified in
12 relation to chain of custody. Being the head of the
13 forensic unit at the sheriff's department, he could help
14 which would help move the trial along. And I would ask
15 that I be allowed to have two agents in that respect.

16 THE COURT: Now, is there any -- again, I have no
17 idea about the testimony that either one of those
18 gentlemen would give. And I'm going to use my own phrases
19 here. With regard to Officer Lutcken and Officer
20 Yarborough, is there anything that they're going to
21 testify to in their own capacities that they could spring
22 board off the other one? I mean, is there a question in
23 the discrepancy of their testimony, is there any
24 overlapping or is it completely fact in crime scene over
25 here and forensic over here?

1 MR. LAWSON: It's totally separate as to those two,
2 Your Honor, and even within forensics David Brown who
3 worked the scene and Lieutenant Lutcken was there but was
4 in secondary capacity even their testimony is -- would not
5 feed off of each other as I understand it, Your Honor.
6 And if that be the case ---

7 THE COURT: The same as with Officer Yarborough?

8 MR. LAWSON: That's correct. Officer Yarborough as
9 far as forensics are concerned he did not have anything to
10 do with the forensic side of the investigation.

11 THE COURT: All right. Mr. McLaughlin. I'm just
12 trying keep the spirit of the purpose of sequestration
13 try to not violate that. I don't think there's a
14 violation of the sequestration spirit of that by having
15 more witnesses in the courtroom as long they are not able
16 to spring board off of or to form their testimony, you
17 know, in conjunction with the other witnesses, that's why
18 I was asking it. It seems like these two witnesses with
19 their testimony doesn't overlap at all.

20 MR. MCLAUGHLIN: Your Honor, I can't -- and I just
21 discuss this with my client think of a reason that I can
22 enumerate for the Court why they should both be allowed to
23 hear other than to say my previous discussion about the
24 fact that the special circumstances of this case where we
25 had these different jurisdictions so that -- and the way

1 the evidence was gathered one car showing up in Florida
2 several months after the other one stolen stuff like that.
3 These folks were on the phone a lot together calling back
4 and forth asking for things to be process. The calling to
5 talk to Florence and find out, you know, do you have
6 fingerprints on this guy. I can't enumerate a particular
7 thing that jumps out at this. But I just -- I guess I
8 have to take no position. I can't stipulate to that,
9 Your Honor, but it just raises the previous concerns I had
10 about special circumstances of this case.

11 THE COURT: Let me do this, Mr. Lawson, talk to those
12 guys. If their testimony is completely, you know, apples
13 and oranges and there's no advantage to being present for
14 the others, you know, and I certainly ---

15 MR. MCLAUGHLIN: I would almost say that the
16 testimony by those two individuals about the actual scene
17 and stuff like, I don't think from the discovery that
18 anything is different between what those two would testify
19 as to that. It's the rest of the investigation and, I
20 guess, time line aspect with communication with these
21 other jurisdictions that's where the red flag comes up.

22 THE COURT: Concerns come in.

23 MR. MCLAUGHLIN: Yes, sir.

24 THE COURT: I got you.

25 MR. LAWSON: And we may can resolve that simply by I

1 really need Lieutenant Van Lutcken. And when David brown
2 testifies because that's when most of the evidence was
3 accumulated and he can feed it to me as I was presenting
4 it to David. When the other jurisdictions come in, Keith
5 could leave the courtroom and I don't see there would be a
6 problem in that.

7 THE COURT: Well, is he going to be a testifying
8 witness for you?

9 MR. LAWSON: Yes, Keith would be, yes, sir.

10 THE COURT: All right. But once he testifies, he's
11 no longer under sequestration. Would that occur before
12 the other jurisdictions or no?

13 MR. LAWSON: It should. I'll try to work that out
14 tonight.

15 THE COURT: Okay. Let's revisit it in the morning if
16 we need to and we'll ---

17 MR. LAWSON: There may be a way to avoid all of it I
18 just thought of it.

19 THE COURT: It may be. I'm not trying to get you to
20 alter your flow of your case either, so my point is this
21 we will maintain the integrity and the spirit of the
22 purpose of sequestration, but may be that we can do that
23 without literally having everybody excluded out of the
24 courtroom.

25 MR. LAWSON: Okay.

1 MR. MCLAUGHLIN: Thank you, Your Honor.

2 (WHEREUPON, the proceedings were concluded for the
3 day to be reconvened on April 24, 2007.)

4 THE COURT: Gentlemen, are we ready for the jury to
5 get started? Let me ask you, Mr. Lawson, did y'all talk
6 about the situation of having Investigator Yarborough and
7 Investigator Lutcken?

8 MR. LAWSON: Your Honor, I believe that at least this
9 morning there will be no possibility that Mr. Lutcken
10 could learn anything off of anybody. There be nobody from
11 out of state called this morning. And Officer Brown who
12 was the lead forensic investigator on the scene will be
13 the first witness and Officer Lutcken's assistance in
14 identifying the evidence and presenting it will be most
15 beneficial to me for this witness.

16 THE COURT: All right. Mr. McLaughlin.

17 MR. MCLAUGHLIN: I don't have any objection to that.

18 THE COURT: All right. Is there anything that we
19 need to take up before we begin, before we bring the jury
20 out is there any issues?

21 MR. LAWSON: Not from the State.

22 THE COURT: Anything, Mr. McLaughlin?

23 MR. MCLAUGHLIN: None from the defense, Your Honor.

24 THE COURT: Okay. All right. Having said that,
25 Ms. Joe, if you would ask the members of the jury to

1 please join us.

2 (WHEREUPON, the jury returned to the courtroom.)

3 THE COURT: Good morning, ladies and gentlemen.

4 Mr. Cowles, I am going to ask if you would serve as the
5 foreman of the jury, so if you would occupy that seat
6 right there. I just want to let everybody get on in.

7 Ladies and gentlemen, let me address you for a moment with
8 regards to that. At some point at the end of this trial
9 when you retire to your jury room to deliberate, I will
10 instruct you on the law. One of the things that I'm going
11 to instruct you is that your verdict whatever that may be
12 must be unanimous. Now, having said that that obviously
13 lets you know that no one persons vote weighs any more
14 than another. It's going to take all to agree on a
15 verdict before you can render a verdict.

16 So having said that, I've appointed Mr. Cowles to be
17 foreman of the jury. His role as foreman is no greater or
18 lessor than anyone's role on this jury. And when you go
19 back to deliberate, everyone's opinions are rated or
20 weighed I should say the same. The purpose of a foreman
21 or foreperson is simply this to act as a liaison between
22 the jury panel and the Court. It may be that at any time
23 that any member of the jury or the jury as a whole needs
24 to communicate with the Court rather than doing that on
25 individual basis or whatever, it's always better just to

1 have one person designated to be that contact person. So
2 if there is a question from either any individual member
3 of the jury or from the jury as a whole to the Court, then
4 Mr. Cowles will take a pad and a paper will write that
5 question down and pass it out to the Court. I'll review
6 the question. If I feel that I can just pass the
7 information on to Mr. Cowles and he can pass it on to the
8 rest of the jury, I'll do that or if I feel it's necessary
9 to bring the entire panel out and answer your question, I
10 will do that. So that's one role of the foreperson is to
11 basically be the contact person between the Court and the
12 jury. The other role is simply to preside over the
13 deliberations. And when I say preside over the
14 deliberations, I don't mean run the show or to rule over
15 it. But simply to have, you know, got 12 people in there
16 talking someone, one person needs to be the point person
17 just to say, okay, we need to go ahead and begin our
18 deliberations.

19 I will instruct you later that once you impanel to
20 deliberate that all members of the jury must be present.
21 So therefore, if someone during the course of
22 deliberations must excuse themselves to use the restroom
23 or something like that, then the foreperson would stop
24 deliberations, make sure that no further conversation goes
25 on until that person returns and then start back, so

1 that's basically the role of foreman in this case, the
2 foreman in this case. So now, Mr. Cowles, and our two
3 alternates will occupy those three seats. The rest of you
4 can sit anywhere that you're comfortable okay. If you
5 will recall yesterday, we recessed just a tad early. And
6 the State is still in their case and so I would recognize
7 Mr. Lawson for his next witness.

8 MR. LAWSON: May it please the Court, the State would
9 call David Brown.

10 THE COURT: All right, please come around, sir.

11 THE CLERK: Please place your left hand on the Bible
12 and raise your right. Do you swear the testimony you give
13 in this case will be the truth, the whole truth, and
14 nothing but the truth so help you God?

15 MR. BROWN: I do.

16 THE CLERK: Please be seated and state your full name
17 for the record.

18 MR. BROWN: David Brown.

19 WHEREUPON,

20 David Brown,
21 after first having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. LAWSON:

24 Q And, David, where are you employed?

25 A I'm employed by the Florence County sheriff's office?

1 Q And how long have you been so employed?

2 A For nine years.

3 Q And do you actually work with the sheriff's
4 department at this point?

5 A No, I'm signed full time to the drug enforcement
6 administration under the department of justice.

7 Q And is this something y'all do with regularity?

8 A Yes, I work there full time at the DEA acting as a
9 federal agent under drug enforcement task force.

10 Q And that task force is comprised of federal agencies
11 and state agencies and county agencies as well?

12 A Yes.

13 Q And you're a representative from the Florence County
14 sheriff's department?

15 A That's correct.

16 Q Prior -- when did you go to the drug enforcement
17 administration?

18 A March of last year. A little over a year ago.

19 Q So March of 2006?

20 A Yes.

21 Q All right. And prior to that, you were with the
22 sheriff's department full time?

23 A Yes, I was assign to the crime scene unit as a crime
24 scene investigator.

25 Q And is that commonly known as forensics?

1 A Yes.

2 Q And how long were you employed in the crime scene
3 unit with the Florence County sheriff's department?

4 A I started in 2002, so I was in there for four years.

5 Q And how long have you been employed in law
6 enforcement?

7 A For nine years always been in Florence County
8 sheriff's office.

9 Q And were you employed in the crime scene unit in
10 March of 2003?

11 A Yes, I was.

12 Q And during -- when you're with that unit, are you
13 on-call at certain times?

14 A Yes, during that time, we were on-call from -- we
15 worked a shift from 4:00 p.m. until midnight and then we
16 were on-call from midnight 'til approximately 7:00 a.m.
17 the next morning.

18 Q All right. And that rotated?

19 A Yes, it rotated every three weeks.

20 Q And on March the 28th of 2003, were you on-call on
21 that particular day?

22 A I was actually not on call that day, but it was
23 during this time if something came in close to the seven
24 o'clock cut off, they would contact the day-shift person
25 if there was a call for a crime scene unit.

1 Q All right. And that would have been you?

2 A Yes.

3 Q And did you get a call on that on March the 28th of
4 2003?

5 A Yes, it's approximately 6:30 a.m. when the call came
6 in.

7 Q And what did you do as a result of that call?

8 A The Pamplico police department had contacted the
9 sheriff's office and stated that they had a possible
10 homicide and in the city limits of Pamplico. The Pamplico
11 police department is in charge of everything that happens
12 inside the city limits, but if they have a major crime
13 whether it be a burglary or homicide or rape, they'll
14 call the sheriff's office for assistance just due to the
15 fact they only have a few people work there and they don't
16 have anybody specialize in those areas. On this morning
17 due to thinking they had a possible homicide, they went
18 ahead and call for a sheriff's deputy to go out there.
19 And he in turned contacted the on-call investigator and
20 also for the crime scene unit to come there.

21 Q All right. And did you in fact report to that
22 location?

23 A Yes, I did. I arrived a little after seven o'clock.

24 Q And when you arrived, did you notice who else was
25 there?

1 A Yes, sir, Warren Poston he's employed by the Florence
2 County sheriff's office now, but at the time he was
3 employed as a Pamplico police officer. He was on the
4 scene as well as the Chief Scott Tanner, who's the chief
5 of police for Pamplico police department and Michael
6 Brummels who responded out as the initial contact with the
7 sheriff's office.

8 Q And then you were the first crime scene person on the
9 scene?

10 A That's correct.

11 Q What did you do upon your arrival?

12 A When I arrived, I spoke with the officers who were
13 there kind of found out what they had, why they believe
14 they had a homicide, who they may have as a suspect and to
15 make sure that the crime scene was secured. And by
16 secure, I mean no one else go into the crime scene until
17 myself and the investigators went inside.

18 Q And did you find that to be the case?

19 A Yes, I did.

20 Q What -- who was in charge of the crime scene if you
21 know?

22 A I don't know.

23 Q And did it appear that it had been properly
24 maintained?

25 A Yes, there was yellow crime scene tape. You're

1 familiar it says crime scene do not cross or police line
2 do not cross. It's like a yellow ribbon was across the
3 front door and around the back.

4 Q And what did you do upon your arrival after observing
5 that?

6 A Any kind of death investigation the sheriff's office
7 crime scene unit goes on. We always wait on a second
8 investigator, to get their second crime investigator as
9 well as actual criminal investigator who goes out and does
10 the part where speaking to witnesses, speaking to
11 suspects. Since, I was the first one on the scene I had
12 to wait on Lieutenant Lutcken who is my supervisor and be
13 the second person to go in on this death investigation and
14 also Investigator Darren Yarborough who was the criminal
15 investigator at that time.

16 Q And neither one of them were there at the time?

17 A Not when I arrived on scene they were not.

18 Q All right. And did they arrive shortly thereafter?

19 A They did.

20 Q Do you know approximately what time?

21 A I do not know.

22 Q All right. And what was your next step in relation
23 to the investigation?

24 A Once everyone arrived and we spoken kind of all got
25 on the same sheet of music, at that time we got with

1 Officer Poston forgive me I want to call him Deputy
2 Poston, but Officer Poston who was with the Pamplico
3 police department. And he took us through the crime scene
4 showing us what he had inside since he was first person in
5 there with law enforcement. We wanted to get his
6 perspective on what he had seen inside before we went
7 through and processed the scene.

8 Q All right. And what did you find when you went in to
9 process the scene?

10 A We found a white female in the last bedroom of the
11 house. She had her shirt pulled up over her breast. She
12 did not have a bra on, so you would see her breast. She
13 had the comforter or bedspread pulled up to her waist.
14 And I could see a pair of handcuffs attached to her left
15 wrist and both of her hands up on her chest.

16 Q All right. And were the handcuffs attached to both
17 hands?

18 A No, just to the left hand.

19 Q And what did you do after that?

20 A What I did actually as I walk through the hall I was
21 taking photographs of the scene as it was before anyone
22 else had moved anything. We wanted to get a picture of
23 exactly how it looked, so we could get an overall view of
24 what was going on.

25 Q All right. And so the photographs that were taken on

1 the scene that day you took?

2 A Yes, I did.

3 Q All right. And that would have been part of your
4 responsibility as a crime scene investigator?

5 A That's right.

6 Q All right. And once you completed the photographs,
7 what did you do then?

8 A Actually, I need to backtrack for a second if I
9 could.

10 Q All right. Go right ahead.

11 A Before I went into the area, what was being examined
12 was the outside. This was a duplex apartment, so what we
13 did was examine the outside of the apartment, took
14 photographs to make sure that there no points of forced
15 entry in other words somebody broke into a window, removed
16 window screen, places like that from my experience were
17 places where you generally get fingerprints or maybe get
18 blood evidence where someone had cut themselves. We
19 didn't see any points of forced entry on the house and I
20 photographed that before going inside.

21 Q All right. Did you check the doors as well to see if
22 there was any evidence of forced entry?

23 A I did.

24 Q Did you find any evidence?

25 A No, the front door was already open with the crime

1 scene tape across it whenever I arrived.

2 Q Okay. Did you check the locks and the door casing to
3 see if there was any evidence of some kind of forced entry
4 into the front door?

5 A Yes, as well as checking the door jams and check the
6 door itself to make sure there were no like the shoe would
7 leave a mark on the door or some kind of pry bar would
8 leave a mark on the door, some kind of impact weapon force
9 the door open. We didn't find any evidence of that.

10 Q All right. Did you check -- was there a back door?

11 A Yes, there was.

12 Q And did you check that door as well.

13 A The back door was actually secured from inside.
14 Somebody had locked it from the inside, so there's no way
15 to get out without unlocking the door. You couldn't lock
16 it from the outside.

17 Q All right. And did you check the door jam in every
18 -- and the door itself on the back door as well?

19 A Yes, we did.

20 Q Any evidence of forced entry on that door?

21 A No, there was not.

22 Q All right, sir. And after having gone around -- any
23 evidence that any of the windows were tampered with in
24 anyway?

25 A I know there was not. The screens were on the

1 windows. The windows were locked from inside. There was
2 no broke glass on the windows.

3 Q So the outer circumference all the way around the
4 building appeared to be intact?

5 A It was intact.

6 Q And did not appear to have been breeched at least in
7 the recent past?

8 A No, there were no signs of anyone trying to get into
9 the house in the past such as screwdriver marks or pry
10 marks or using a pry bar, somebody trying to kick through
11 the screen or through a window.

12 Q All right. So as a crime scene investigator, what
13 does that tend to lead you to believe in relation to entry
14 of the premises?

15 A In my experiences, just the regular patrol deputy and
16 working burglaries as well as a crime scene investigator.
17 If you don't have signs of forced entry, the door was
18 unlocked, someone had a key or someone let them in one of
19 those three.

20 Q All right, sir. And after examining the outer or
21 exterior of the building, I assume you then went in and
22 proceeded to take photographs of the inside of the house?

23 A Yes, I did as I went in and that's where I discovered
24 the victim as described before how she was in the bed.

25 Q All right. Did you determine whether or not the

1 victim had been moved at any time prior to your arrival?

2 A I could not determine that she had been moved. We
3 always talk to the officers and he said he had not moved
4 her. But I don't know if anyone had moved her prior to
5 them arriving on scene securing the house.

6 Q All right, sir. And what did you do after completing
7 the photographs?

8 A Actually, as we paragraphed the house, there were a
9 lot of items of evidence that I noticed or things that
10 kind of stood out to me. One thing I could see where the
11 bedspread kind of been moved to one side and it was --
12 there was a lead attached what EMS used to determine if
13 there's a heartbeat on the patient, that's a standard
14 protocol for EMS to do that on a death investigation.
15 Number one just to make sure that the patience is actually
16 deceased and also they give it to the coroner the print
17 out of it to show there's no heart rhythm, that's
18 something that the coroner places in his file.

19 Q There was a lead left on the body?

20 A Right. And when I say a lead, it looks similar to a
21 flat piece of, I guess, you could say kind of a thin like
22 wafer shape that has a metal point for attaching
23 electronic leads to the heart rate monitor for EMS and
24 this was still attached to the victim's left side.

25 Q How many leads were still attached just one?

1 A All I could see was one at that point. We didn't
2 want to move the bedspread off of her at that point
3 because we wanted to examine the bedspread itself to make
4 sure there was no items of evidence on top of it whether
5 it be hair, fibers, any kind of blood evidence, any kind
6 of body fluids. Like I said, this is just stuff I
7 observed before we move the bedspread off of her.

8 Q All right. And did you observe the bedspread?

9 A Yes.

10 Q And did there appear to be anything on it of
11 evidentiary value?

12 A Not that we could see as she was in the bed.

13 Q Did you have occasion to examine the bedspread at
14 other times?

15 A Yes, I did. On March 31st, I examine the bed using a
16 forensic light source and found different places on there
17 where there were stains that fluoresced. Anyone familiar
18 with CSI you can always see them running around with the
19 orange glasses on and the stuff glows in the dark or if
20 you ever been around a black light, it notice that things
21 like your teeth or stains left on your clothes different
22 stains on your body by will fluoresce. What I was primary
23 looking for was stains on the bedspread that showed bodily
24 fluids primarily semen or vaginal fluids, that's what we
25 were looking for on the bedspreads.

1 Q And did you observe what appeared to be any such
2 stains?

3 A Yes. The items that fluoresced when I put them under
4 the forensic light source, I actually took a permanent
5 marker a Sharpie and circled those items before sending
6 them off to the State Law Enforcement Division forensic
7 services laboratory. We don't have anyone in-house that
8 can examine DNA evidence, so we have to send everything to
9 the State for that kind of examination.

10 Q All right. And was the bedspread the only thing --
11 why did you have to examine that at a different location?

12 A To use the forensic light source, you have to have
13 total darkness. Unlike what you see on TV, where they run
14 around with the forensic light source outside, so you have
15 to have total darkness in order to see this. We took it
16 back to our lab at the sheriff's office where I could
17 have, you know, all the lights turned out and it's totally
18 blacked out. There's no windows inside this place, so I
19 could see those areas that were fluorescing a little
20 better than I could at seven o'clock in the morning inside
21 of a house with windows.

22 Q All right. And did you check any -- let me ask you
23 -- if you could, Agent Brown, open that box and tell me
24 what it contains?

25 A This is a box that the sheriff's office uses to

1 process package any kind of evidence that may have DNA on
2 it. The reason we use this versus say a closed plastic
3 bag is that items like this need to be able to breath
4 otherwise you'll get mold and mildew form on it. We still
5 use biohazard bags, but we leave them open so that the
6 items can breath. And as you can see, there's various
7 holes in the bag so that the item can breath, but if
8 there's any kind of DNA or anything that may come out of
9 the bag, we still put it in plastic. This is the
10 bedspread that are moved off of the bed. You can see
11 where someone else has gone in and put their initials and
12 marked on here item place may take cutting from that area,
13 same thing here.

14 Q Do you yourself take any cuttings from the evidence?

15 A Sometimes, we do depending on the item. In this
16 case, we submitted the whole bedspread with the area
17 circled that we had seen fluoresced in order for SLED to
18 process it further in cases anyone wants to pull the bag
19 off of it.

20 Q All right. And what happened to this item of
21 evidence after you placed it in this box?

22 A It was transported to the State Law Enforcement
23 Division forensic services laboratory where they examined
24 it.

25 Q And did you transport that?

1 A Yes, I did on April 3rd of 2003, I transported this
2 to the State Law Enforcement Division and submitted it to
3 their forensic services laboratory.

4 Q And did you pick it back up?

5 A I would need a second to consult my notes. Yes, I
6 did. I brought it back from SLED and placed it into
7 sheriff's office in a secure evidence room where it was
8 locked up until this time.

9 Q All right.

10 MR. LAWSON: Your Honor, we mark this for
11 identification as State's 1. I would move to admit, but I
12 have someone from SLED that can testify that they did the
13 cuttings.

14 THE COURT: All right. We'll at this time move it in
15 for identification purposes only. Without objection
16 that's State's 3 for identification purposes.

17 MR. MCLAUGHLIN: Yes, sir.

18 (WHEREUPON, State's Exhibit No. 3 was marked for
19 identification only.)

20 Q All right. Did you do the same process on any other
21 items of evidence?

22 A There were several other items that I photographed
23 inside the apartment. When I came into the bedroom, there
24 was a candle burning beside the bed. Beside this candle
25 was a red vibrator, a sex toy, and there was also a

1 controller, an electronic controller for a sex toy beside
2 this candle. I collected both of those items. Beside the
3 sex toy on the same table, there was also a South Carolina
4 driver's license that had the information from the victim
5 in the bed which was Shannon Burelson Carter. And the
6 photo also matched the person that was in the bed.

7 Q Now, did you have the opportunity to use the process
8 you just described on -- that you used on the bedspread on
9 any other item from the bedroom?

10 A Actually, I did not check any of the sex toys because
11 given that they are sex toys they would have that type of
12 bodily fluid on them. We felt that we would have stronger
13 evidence from the bedspread and from the vaginal swabs
14 that we taken at autopsy as well as rectal swabs that we
15 taken at autopsy to be submitted.

16 Q All right. What -- see if you recognize this
17 particular item?

18 A Now, this is a purple fitted sheet that was
19 underneath Ms. Carter on the bed.

20 Q And did you retrieve that item?

21 A Yes, after Ms. Carter was removed by EMS, we removed
22 this from the bed.

23 Q All right. And what did you do with it upon removing
24 it?

25 A All of these items we packaged separate. We put them

1 in separate bags, so that there's no cross contamination.
2 We don't want possible DNA on one item to get transferred
3 to another item. So you can see it's placed in one bag
4 and then it was transported back to the sheriff's office
5 where we placed it into evidence.

6 Q And was this item also sent to SLED?

7 A Let me consult my notes again. I apologize we have
8 so many items. Yes, it was also submitted on April 3rd
9 2003. It was also submit to the State Law Enforcement
10 Division.

11 Q And you took that?

12 A Yes, I did. And I also brought it back on April 2nd
13 of 2004 almost one year later.

14 Q All right.

15 MR. LAWSON: Your Honor, the State would move for
16 identification purposes State's Exhibit 4.

17 THE COURT: All right. Without objection State's 4
18 for identification purposes.

19 (WHEREUPON, State's Exhibit No. 4 was marked for
20 identification only.)

21 BY MR. LAWSON:

22 Q Corporal Brown, I'm gone ask you to look inside of
23 this envelope and see if you can describe what is inside?

24 A This is a pouch from the State Law Enforcement
25 Division. This is something they collect and seal. I

1 don't know what's inside of it.

2 Q You want to open it and see if you can identify it?

3 A It says on these pouches it's cuttings from the
4 comforter that I submitted to State Law Enforcement
5 Division cuttings actually removed for further examination
6 for DNA.

7 Q So what they do is they take the full comforter or
8 the full sheet and they take cuttings from those little
9 circles that you make on it. And they test actually
10 what's on the cuttings?

11 A Right, that's correct.

12 Q As oppose to the great big spread or bedspread or
13 sheet they use the smaller pieces?

14 A That's correct. And the reason for doing that is you
15 may have different contributors someone -- a second person
16 or third person whatever may have contributed DNA to that
17 place that actually fluoresced on the comforter which is
18 the places I circled.

19 Q So you checking for inclusion and exclusion
20 purposes?

21 A That's correct.

22 Q All right. Now, these would be cuttings from the
23 items State's Exhibit 3 and 4 for identification that you
24 just testified you took to SLED; is that correct?

25 A That is correct.

1 Q All right. Now, the cuttings themselves did you
2 bring them back from SLED?

3 A Yes, on June 9 of 2004, I brought these items back
4 from SLED and place them into Florence County sheriff's
5 evidence room.

6 Q So they were taken by you to SLED and then brought
7 back to Florence by you from SLED?

8 A When I took the comforter to SLED, these cuttings
9 were a part of the comforter. SLED actually removed the
10 cuttings from the comforter and returned them back to us.
11 They don't store evidence for after they process. They
12 store it for a certain amount of time and they return it
13 to the agency that submitted it just for the simple reason
14 they don't have enough space to store everyone in the
15 State evidence.

16 Q And the sheet as well cuttings would be included?

17 A I would need to open it.

18 Q That's fine.

19 A These are actually all cuttings from the comforter.
20 You can see where it says comforter on the front of it,
21 According to what the person that collected them has them
22 labeled as there's no cuttings from the sheet. These are
23 all comforter cuttings.

24 MR. LAWSON: Your Honor, the State would move this
25 for identification as State's Exhibit 5.

1 MR. MCLAUGHLIN: No objection.

2 THE COURT: Without objection State's 5 for ID
3 purposes.

4 (WHEREUPON, State's Exhibit No. 5 was marked for
5 identification only.)

6 BY MR. LAWSON:

7 Q If you could please identify what's in that envelope?

8 A These items are swabs that were taken at autopsy by
9 the forensic pathologist. I see a oral swab, a rectal
10 swab, a vaginal swab, some aortic blood. These are
11 different things that the forensic pathologist takes at
12 autopsy that they submit to the State Law Enforcement
13 Division toxicology lab and also to their DNA lab for
14 examination.

15 Q And did you in fact take these items to SLED?

16 A Yes, I did.

17 Q And did you pick them up?

18 A Yes, I did on June 9th 2004, I brought these back
19 from SLED and place them back in secure storage at the
20 sheriff's office.

21 Q And they're provided by the pathologist at the
22 autopsy for purposes of whatever SLED test SLED may need
23 to run on them toxicology, DNA whatever?

24 A That's correct.

25 MR. LAWSON: Your Honor, we move for identification

1 State's Exhibit 6.

2 THE COURT: Without objection State's 6 for ID.

3 (WHEREUPON, State's Exhibit No. 6 was marked for
4 identification only.)

5 BY MR. LAWSON:

6 Q Also can you identify that, Officer Brown?

7 A These are items also that were removed by the
8 forensic pathologist pulled pubic hair. I would need to
9 cut into it in order to look at it. These items are also
10 submitted by myself. You can see the D.B. on the top of
11 it where I submitted it to SLED and put my initials on it
12 and sealed it.

13 Q And those would also appear on State's identification
14 number six. And anything else that you sealed from SLED
15 would have your initials on it?

16 A That's correct. You can see on the side of it here
17 where SLED actually did not cut across my seal whoever cut
18 the side of it out. Once they seal it, they put their
19 initials back over it and the date. It's pulled pubic
20 hair, loose hairs that were removed from the chest of
21 Ms. Carter, loose hair that were found in her pubic hair
22 and some pulled head hair from Ms. Carter.

23 Q And my understanding you submitted that to SLED?

24 A Yes, on April 3rd of 2003, you could see my name and
25 date it on the front of the package here.

1 Q And you picked it up from SLED?

2 A Yes, I did.

3 MR. LAWSON: Your Honor, the State would move for
4 identification of State's Exhibit 7.

5 THE COURT: Any objection?

6 MR. MCLAUGHLIN: No objection.

7 THE COURT: State's 7 without objection for ID.

8 (WHEREUPON, State's Exhibit No. 7 was marked for
9 identification only.)

10 BY MR. LAWSON:

11 Q Now, you -- is it my understanding you also took
12 pillow cases from the bed; is that correct?

13 A I did. There was some type of stain on the pillow
14 case, so we removed the pillow case from the bed.

15 Q And the majority of the pillow cases is it true were
16 not tested?

17 A Actually all of the bedding was tested to see if with
18 forensic light source to see if there was any type of
19 bodily fluid other than blood. By bodily fluid, I mean
20 vaginal fluid or semen. Those items would fluoresce.
21 Saliva or blood will not fluoresce. Blood will actually
22 give off a black color. And by fluoresce, I mean it will
23 glow. It would actually glow in the dark.

24 Q All right. If you could on each of these boxes if
25 you can tell me from your best recollection what the item

1 is and whether or not anything of any -- what appeared to
2 you to be of any evidentiary value was on that piece of or
3 that item?

4 A This is a purple pillow case that was on the bed. I
5 don't recall any type of anything fluorescing on there,
6 anything that stood out to me to make it -- for me to go
7 ahead and submit it to SLED.

8 Q All right. So was not submitted to the best of your
9 knowledge?

10 A To the best of my knowledge, it was not.

11 Q All right. And this?

12 A This is an additional purple pillow case that was
13 removed from the bedding underneath Ms. Carter. I could
14 see again these are all packaged separately, so we don't
15 get any type of cross contamination on two different
16 items.

17 Q And did there appear to be anything of any
18 evidentiary value on this item?

19 A I did not note anything that was -- that stood out to
20 me.

21 Q And this item?

22 A This a another pillow case, a blue pillow case that
23 was removed from the bed. Nothing that I know of noted as
24 far as evidence on this.

25 Q All right. And each of these items you took into the

1 lab with the dark room and did the same fluorescent test
2 that you did on the pillow case, on the bedspread and the
3 fitted sheet?

4 A That's correct.

5 Q What about this item?

6 A This was a white towel that was found inside the
7 bedroom. This was another item that we were interested in
8 to see if there was any type of DNA on it. People
9 particularly, you know, would clean themselves off either
10 a towel or pillow case after they've sexually assaulted
11 someone or had sex for that matter. Did not find any
12 items on this that stood out where it was submitted for
13 further examination.

14 Q This item?

15 A This is a flowered pillow case that's the way I
16 described it. It was a flowered colored pillow case
17 nothing of evidentiary value on it that I was able to find
18 on the forensic light source.

19 Q And this?

20 A This is what I had described as a multicolored pillow
21 case. There was nothing that I found that fluoresced on
22 it for me to submit it for further examination.

23 Q All right. And did you look as closely at these
24 items as you did at the comforter and the fitted sheet?

25 A I did. These items were all examined at the same --

1 during the same testing time under the same conditions.

2 Q Now, was there a flat sheet on the bed as well or
3 just the fitted sheet?

4 A I don't recall, but I can consult my notes. No,
5 there was not. There was just a fitted purple sheet and a
6 comforter that was on the bed.

7 Q All right, sir. And you check to see if that were
8 the case and everything that was on the bed you retrieved
9 ---

10 A Yes, I did.

11 Q --- for examination purposes?

12 A Yes, I did.

13 Q All right. Now, I ask you if you can identify what's
14 in this box if you have to open that's...

15 A This was a green pillow that was on the bed with
16 Ms. Carter. And you can see on the pillow where someone
17 has gone in circled several areas and removed cuttings
18 from the pillow, so they can examine it. This is not
19 anything that I cut or removed or marked.

20 Q But is it my understanding, you did collect that from
21 the scene?

22 A I did select this. And the reason for that
23 collection was there was some type of stain on there
24 that's not anything that fluoresced.

25 Q And once you collected this item, what did you do

1 with it?

2 A It was placed in the secured storage at the sheriff's
3 office evidence room?

4 MR. LAWSON: Your Honor, the State would move item
5 eight for identification.

6 MR. MCLAUGHLIN: No objection.

7 THE COURT: Without objection item eight for
8 identification purposes.

9 (WHEREUPON, State's Exhibit No. 8 was marked for
10 identification only.)

11 BY MR. LAWSON:

12 Q Now, how long did you remain on the scene, Officer
13 Brown?

14 A I arrived at 7:06 a.m. and departed the scene at
15 9:37 a.m. So an hour and 31 minutes -- that's correction
16 I'm sorry two hours and 31 minutes.

17 Q Officer Brown, ask you if you would look through
18 these photographs and tell me if you in fact took those
19 photographs?

20 A All of these are photos that I took with my 35
21 millimeter camera. The reason I looked at the back of
22 them is there's an orange permanent marker has my initials
23 on it and that's what I did with all my photos. We took
24 on 35 millimeter, so that I could identify them later on
25 as photos I took.

1 Q All right. Now, I ask you if you could compare and
2 tell me if each of these is a blowup of one of those
3 photographs?

4 A These are all enlargements of the photos that I took
5 that morning.

6 Q And they are exact replicas of the photographs that
7 you had taken?

8 A Yes, sir.

9 Q And are there ten photographs?

10 A Yes, ten photographs?

11 MR. LAWSON: The State to introduce these
12 photographs, Your Honor.

13 THE COURT: Any objection?

14 MR. LAWSON: State's 9 through 18.

15 THE COURT: State's 9 through 19 photographs are
16 admitted into evidence without objection.

17 MR. LAWSON: We would move the introduction of the
18 enlargements, Your Honor, which he testified are exact
19 same photographs.

20 THE COURT: Any objection to the enlargements?

21 MR. MCLAUGHLIN: Just let me look at them. They're
22 okay, Your Honor.

23 THE COURT: And these are 19 through 11?

24 MR. LAWSON: Nine through 19.

25 THE COURT: Well, nine through 18 are the

1 photographs, the originals.

2 MR. LAWSON: We're just putting in the blowups, Your
3 Honor.

4 THE COURT: You're not putting in the original?

5 MR. LAWSON: No, sir.

6 THE COURT: Okay.

7 MR. LAWSON: I see no reason.

8 THE COURT: So the originals -- the blowups are going
9 in instead of the originals?

10 MR. LAWSON: Correct.

11 THE COURT: All right. And that's State's 9 through
12 18.

13 (WHEREUPON, State's Exhibit Nos. 9-18 was admitted
14 into evidence.)

15 BY MR. LAWSON:

16 Q Corporal Brown, on State's Exhibit 18 where is that
17 picture taken?

18 A This was taken in the victim's bedroom. This is in
19 the bedroom that we found her in. You can see the purple
20 sheet that I showed you earlier as well and the comforter
21 in the right bottom to the corner of the photograph.

22 Q All right. And there seems to be a white canister of
23 some kind. Is that dirty clothes or what does that appear
24 to be?

25 A This is a hamper of dirty clothes hamper. And on top

1 of the hamper is several multicolored push pins like you
2 hang stuff on the wall like on a bulletin board.

3 Q So that's what those little items on top of it are?

4 A Yes, there's some detail been lost in this photograph
5 due to it being enlarged. You can see it a lot better in
6 the original photograph.

7 Q But those are those little tacts that got the holder
8 on them?

9 A Yeah, plastic multicolored like I think the correct
10 term is push pin like you would hang pictures or hang
11 photographs up with.

12 Q And could tell if anything had been stuck in a wall
13 there?

14 A I don't recall anything, you know, noticing that. I
15 do remember seeing the pushpins there look like something
16 had been pulled down off the wall and these pushpins been
17 piled on top of the dirty clothes hamper.

18 Q If you would go through the photographs and explain
19 to the jury by number what each of the photographs in the
20 case?

21 A The first photograph is a picture of the front of the
22 apartment. You can see [REDACTED] right here. This is [REDACTED]
23 [REDACTED] in Pamplico. This is the front door and you can
24 see the yellow tape that I talked about earlier blocking
25 the front door of the residence. This is State's Exhibit

1 9. State's Exhibit 10 is a photograph I took of the rear
2 of the residence. And when I talked about earlier about
3 the window screen being intact, you can tell these are
4 actually if you look in the photograph these are actually
5 mesh screens that are on there. It's not typical like you
6 would have on a storm window. This is something to
7 prevent people from coming inside the residence. You
8 could see these all across the back as well as over the
9 screen door on the back of the house. State's Exhibit 11
10 is the front door as I found it. You can see that the
11 front door is open also that the screen door on the front
12 is propped on open. State's Exhibit 12 is a view from the
13 front door. This is the photograph I took showing the
14 couch and the living room area. State's Exhibit 13 is
15 another photograph of the living room area. State's
16 Exhibit 14 is a photograph I took standing in the living
17 room area and this is the view is from the living room
18 area back towards the bedroom and also towards the
19 kitchen. You can see the kitchen right in here in this
20 hallway coming back toward the bedroom where the residence
21 are. State's Exhibit 15 is the view of the kitchen as I
22 came up on it. If you could look back in 14, you can see
23 the doorway to the kitchen. This is as I'm moving through
24 the house I'm photographing as I walk through. This is a
25 view of the kitchen as I turn to my left walking down the

1 hall. State's Exhibit 16 is a double deep sink. It's got
2 dishes in it. It's in the kitchen. State's Exhibit 17 is
3 of another bedroom that was being used as an office. You
4 can see the computer in here the photographs on the wall.
5 And State's Exhibit 18 is a photograph taken from the foot
6 of the bed. This is the bed where we found the victim.
7 In this photograph, she's actually still in the bed. You
8 can't see her in her she's covered by this comforter.
9 This is as we found her in the room when we came into it.
10 On this white hamper right here the dirty clothes hamper,
11 you can see the pushpins that I talked about. You can
12 also see the chest of drawers back here where one of the
13 drawers is open.

14 Q Is there anything in that drawer?

15 A No, there's not.

16 Q One more time I'm going to ask you in these envelopes
17 if you can identify what is contained in those envelopes?

18 A This is suspect kit from Kevin Walton, the defendant.
19 A suspect kit is just standards, DNA standards we get from
20 someone to compare to unknown DNA standards. In other
21 words, we get a kit from you and we compare it to whatever
22 we have that's unknown. We know that this is his
23 standard. This is something that Officer Jason Dore,
24 who's in our crime scene unit, submitted to the State Law
25 Enforcement Division.

1 Q And did you receive that from Lieutenant Lutcken and
2 place it into the evidence room prior to it going to SLED?

3 A Yes, you can actually see my handwriting on the front
4 of the envelope. This is another part of the suspect kit
5 that contains pulled head hair, pulled pubic hair and
6 pubic hairing combings is what it says on the outside of
7 the bag. This is another part of the suspect kit.
8 There's saliva is taken from the mouth using a piece of
9 paper suspect or whoever will bite down on it. Blood is
10 removed by the nurse at the detention center and also one
11 of the forensic technicians or Lieutenant Lutcken would go
12 in and actually remove hair from the suspect.

13 Q And did you also take that piece of the suspect kit
14 from Lieutenant Lutcken and place it into the evidence
15 room at the sheriff's department?

16 A I did.

17 MR. LAWSON: Your Honor, we move to introduce for
18 identification purposes State's Exhibit 19 and 20.

19 THE COURT: Any objection for ID purposes?

20 MR. MCLAUGHLIN: None, Your Honor.

21 THE COURT: All right. Without objection that be
22 State's 19 and 20.

23 (WHEREUPON, State's Exhibit Nos. 19 and 20 was marked
24 for identification only.)

25

1 BY MR. LAWSON:

2 Q Now, Corporal Brown, you familiar with the term rigor
3 mortis or morbidity in any of those terms?

4 A I'm familiar with rigor mortis.

5 Q And what have you been trained in relation to that
6 time set?

7 A Training, I received on that is just on-the-job
8 training I received from the coroner.

9 Q What is rigor mortis?

10 A Rigor mortis is the muscles where the body will start
11 to contract and rigor mortis sets in. Typically, if
12 someone has their arms bent, it's very difficult to
13 straighten them back out. If they had their arms
14 straight, it's very difficult to bend them again. It's
15 you have muscle that actually extend your arms and muscles
16 that will bring your arms back in. Same things with your
17 legs, your head, your back, any muscles in your body these
18 muscles will contract. Rigor mortis sets in the body
19 typically is very stiff and it's hard to move the body.

20 Q And I assume this is someone who is deceased?

21 A Correct, that's only in deceased people.

22 Q Well, I get pretty stiff sometimes too. As a general
23 rule is this an immediate process?

24 A No, it's not an immediate process.

25 Q What is the time frame?

1 A I don't know the time frame that's something that
2 Lieutenant Lutcken can answer better for you. It's not
3 something that's immediate as soon as you pass away you
4 don't automatically, you know, rigor mortis don't
5 automatically set in. It can be slowed down by things as
6 far as temperature where they are, the environment that
7 kind of thing.

8 Q All right, sir. Now, after accumulating this
9 information and the evidence that you accumulated, you
10 went back to the sheriff's department and the forensic
11 unit?

12 A Yes, I did.

13 Q Is that at that point at which you will begin to box
14 the items and mark them and put them into evidence?

15 A They were actually bagged up at the scene
16 individually bagged and then we boxed them up once they
17 got back to the evidence room.

18 Q All right. And did you immediately do the fluoresce
19 testing on the bedspread and the sheets and the pillow
20 cases?

21 A The bedding was actually checked on the 31st three
22 days later.

23 Q All right. And that was done by you?

24 A Yes, the reason for the bedding being checked after
25 that was any areas that are on there we want them to dry

1 first. So the bedding was actually hung up and spread out
2 where it could actually dry and then we go in and examine
3 it.

4 Q Is there a reason for that?

5 A If it's wet -- you got a stained area and it's wet,
6 you may be able to transfer it to a certain place. Other thing
7 is if you don't let it dry properly, it will mold and
8 mildew and you get somewhat of a smell off of it in our
9 evidence room. With everything we work with, you want be
10 able to stay in the evidence room with that type of smell
11 in there.

12 Q If you recall were any of the spots or did any of the
13 spots on the sheet or the bedspread appeared to be wet or
14 damp?

15 A There were several areas that were wet or damp. I
16 recovered a bottle of climax personal lubricate that was
17 in the bed underneath the victim. Obviously, you know,
18 any kind of lubricate is going to stay wet for a while
19 that was still wet on the sheets. There was also an area
20 -- several areas where I couldn't determine if it was the
21 lubricant or not similar to that on the bed.

22 Q And any areas where there appeared to be semen that
23 was damp or wet?

24 A There were several areas that were wet. I couldn't
25 determine if it was semen or not.

1 Q So that would have been determined by the DNA people?

2 A Correct.

3 Q When did you complete your work on this
4 investigation?

5 A The last thing that I performed in this investigation
6 as far as processing of evidence was on April 1st of 2003.

7 Q And what did that involve?

8 A I used the cyanoacrylate fuming. What it is is you
9 heat for a lack of a better term superglue. Superglue is
10 the trade name of cyanoacrylate. We heat that. When it's
11 heated, the vapors off of it will stick any type of
12 fingerprints. It will help develop the fingerprint on the
13 item. As well as once it dries if you had -- if you use
14 superglue before, you know how hard it dries. It actually
15 preserves the fingerprint on there, so it can't be taken
16 off from just something simple like putting in a bag could
17 rub the fingerprints off of it. So we fumed these items
18 so that they can reserved for evidence later on. I fumed
19 several items that had been removed from the kitchen area
20 and also the bedroom door knob. And then I used black
21 powder which sticks fingerprints anything that's what they
22 use to try to develop any fingerprints on those items from
23 the kitchen and also from the bedroom. I did not find any
24 type of what I would call usable latent prints. Anything
25 that could be submitted for comparison or be submitted as

1 unknown to the automatic fingerprint identification
2 systems AFIS, which is what we submit unknowns to to try
3 to determine who these fingerprints are. I was not able
4 to find anything like that.

5 Q All right. So you tested the fingerprints, but you
6 didn't find any that you could use?

7 A That's correct.

8 Q And is that unusual?

9 A No, it's not.

10 Q Is it pretty rare to find a fingerprint?

11 A To find a usable fingerprint is pretty rear. Living
12 in the south a lot of people, a lot of workers and stuff
13 have rough hands. Also due to humidity in the air
14 fingerprints are primarily water and with some oil in
15 them. The oil is water based, so it's -- it will
16 disintegrate pretty rapidly.

17 Q And that affects the ability to obtain usable
18 fingerprints?

19 A It affects the ability in the fingerprint to stay on
20 the item as far as it, you know, being transferred. Low
21 humidity would also contribute to lack of fingerprint
22 being transferred to an item. The item itself can also
23 decide if, you know, determine as to whether we can get a
24 fingerprint off of it.

25 Q Some items are easier to pick up a fingerprint easier

1 than others?

2 A Metal, glass and stuff like that, paper. Those are
3 items typically are easier to pick up. Door knobs are
4 very difficult just because you leave a fingerprint on
5 there, but because you twist your hand on the door knob
6 you tend to smear the fingerprint on there. You can see
7 something on there, but you can't pick up any details on
8 it. The same thing like the lids of a jar, things like
9 car windows outside of the cars, doors on homes on the
10 window part of it. You can pick up fingerprints on other
11 things.

12 Q Inside cars and stuff like that is a little
13 different?

14 A Inside cars are very difficult. There's not a lot of
15 items, a lot of places in there that are conducive to
16 prints fabric, leather things like that are not -- you can
17 get a lot of prints out of there. My experience has been
18 a lot easier to get fingerprints off of either the rear
19 view mirror, the radio, the panel where the face of the
20 radio or items left in the car like drinking cans, food
21 wrappers, anything they left in the car and on the
22 interior glass of the car.

23 MR. LAWSON: I have no further questions. Answer any
24 Mr. McLaughlin might have.

25 THE COURT: Mr. McLaughlin.

1 MR. MCLAUGHLIN: May it please the Court.

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. MCLAUGHLIN:

5 Q Good morning, Agent Brown.

6 A Good morning.

7 Q I'm not sure if you were here the other day or not,
8 but I'm Patrick McLaughlin. I'm representing Mr. Walton
9 in this case. I just want to go over a few things that
10 Mr. Lawson brought out on direct. You described who was
11 there as far as law enforcement officials when you got
12 there. Was there any members of the family still around
13 when you got there or neighbors?

14 A I don't recall. There was no one in the house and
15 who I met with were the law enforcement officers.

16 Q Okay. Is it fair to say that you didn't have any
17 conversations with neighbors or family members when you
18 were there?

19 A The crime scene unit does not usually talk to
20 neighbors, that's left up to the criminal investigator.
21 As I said before, he's the one that goes out and talks to
22 the witnesses and family members.

23 Q Well, let me ask you this which I understand I'm not
24 sure if you're still doing crime scene stuff now with the
25 drug enforcement agency or not, but it seems to me that if

1 you show up at a crime scene to do this forensic work, one
2 of the first things you would want to know was whether or
3 not anything had been moved or misplaced anything like
4 that?

5 A That's correct.

6 Q And it would typically -- it would seem to me that
7 it's not law enforcement officers who are the first ones
8 walking up on a potential crime scene. It's going to be
9 regular every day people, family, friends, neighbors and
10 stuff like that?

11 A That's correct.

12 Q Okay. Would it help to talk to family members and
13 neighbors to see if they had disturbed anything in a crime
14 scene?

15 A That's why criminal the investigators usually does
16 that.

17 Q So you rely on the -- well, let me ask you this, do
18 you rely on the these law enforcement people that you show
19 up and they already there? Do you rely on them doing that
20 questioning for you and then informing you?

21 A I do that. That's the reason why we take the first
22 officer through the scene so that he can show us exactly,
23 you know, what he has been notified of and what he noticed
24 to be the first person on the scene.

25 Q Are you aware of whether or not the first officer on

1 this scene -- at this scene talk with the family members
2 or the neighbors who first walked into this scene to see
3 whether or not they had disturbed anything?

4 A I don't know if he asked them about that, that's a
5 typical question we would have asked, but it's my
6 understanding he did talk to the person who discovered the
7 body.

8 Q This -- and I believe it was the first exhibit which
9 would have been State's Number 3 this comforter right
10 here. What was the purpose of this bag that it's kept in
11 in the box?

12 A It's a biohazard bag. The purpose of it is that
13 Occupational Safety and Health Administration makes us
14 place anything that may have a biohazard such as any
15 fluids of the body. And we have to place it inside that
16 bag in order keep to it from seeping out through the
17 cardboard box.

18 Q Okay. The comforter that's in here did you look over
19 the comforter to see whether or not any cuttings had been
20 taken from spots that you had not circled?

21 A Today?

22 Q Previously.

23 A There look like there were some items that some
24 places had been circled where someone else's initially
25 drawn there.

1 Q Okay. So in other words, there spots on that
2 comforter -- I believe you testified that when you
3 fluoresced that the things that you saw you circled; is
4 that correct?

5 A Right, only the places that fluoresced is what I
6 circled. There were other stains on there. I did not
7 circle them just because they didn't fluoresced, that's
8 why the whole comforter was submitted to SLED so that they
9 could actually go over it again for places they had wanted
10 to examine further.

11 Q Okay. Do you know whether or not these additional
12 cuttings -- I'm going to call them additional cuttings
13 that were made. In other words, cuttings that weren't --
14 cuttings from places that weren't identified by you. Do
15 you know whether or not any of those cuttings were --
16 those spots were identified by using a black light or the
17 special lights fluoresced in it?

18 A Are you asking me do I know if a SLED examiner did
19 that?

20 Q Whether or not those additional cuttings came because
21 they fluoresced found some new spots?

22 A I do not know that. You would have to ask them.

23 Q Okay. I believe you testified that there was a
24 candle on the bedside table I believe?

25 A Yes.

1 Q Okay. That candle was still burning?

2 A Yes, it was.

3 Q Does that candle -- is that candle evident in any of
4 the pictures that you taken?

5 A Not in the photographs that have been shown to me
6 today, but it is in one of the photos.

7 Q All right. Do you recall if it was a big candle,
8 little candle?

9 A It was a smaller candle. It was approximately this
10 big around. And if I remember correctly, there's about
11 this much of it left.

12 Q Okay. Did it appear that it had been burned down for
13 quite a while or...

14 A I couldn't determine it.

15 Q Okay. Was that candle preserved at all?

16 A No.

17 Q I believe you -- Mr. Lawson asked you a question that
18 was -- everything from the bed had been retrieved for
19 examination purposes; is that right? And you answered,
20 yeah?

21 A Yes.

22 Q When Mr. Lawson asked you that question, did you
23 understand that to be all the bedding material or
24 everything that was on the bed?

25 A The items that were on the bed. There were several

1 items that were collected off of the bed as well as the
2 bedding.

3 Q So that was everything that was on there?

4 A Right. Everything the way -- if this would help
5 answer your question. You took the purple sheet off after
6 the victim had been removed everything that would have
7 been inside that purple sheet, you know, the pillow cases,
8 the comforter, the sex toys that were on the bed, the
9 bottle of climax location that type of stuff is all
10 collected.

11 Q Agent Brown, do you recognize that document?

12 A Yes, I do.

13 Q And I'm -- this document it's stapled and there
14 several pages. And I'm not sure whether or not it's all
15 kind of part of one or not. This is kind of how we got it
16 with discovery is this all kind of -- it says at the top
17 forensic service request. Is that all the papers you see
18 there? Is that all part of the forensic service request?

19 A Just the top two are part of the forensic service
20 request.

21 Q So you would not have prepared these other sheets on
22 here at all?

23 A Several of them I did. You can see my name at the
24 bottom of it in the chain of custody where it says D.
25 Brown.

1 Q Did you handle all the latent examinations from this
2 scene?

3 A Examinations?

4 Q Or checking for latent fingerprints. Did you handle
5 that for everything that was collected at this scene?

6 A The items that were collected at the scene I examined
7 them back in our lab.

8 Q Okay. And part of this report -- and I understand
9 that I don't see your name written anywhere on this
10 report. But I'm looking at the first sheet that's
11 evidence log sheet and it lists looks like six items and
12 then at the bottom it start items to be processed for
13 latents?

14 A Yes.

15 Q Are those the items that you recall processing for
16 latent fingerprints?

17 A Yes, sir.

18 Q To the best of your knowledge was anything else
19 processed for fingerprints?

20 A These are the items that were -- these are all of the
21 items that I know of were processed outside of the scene
22 for fingerprints.

23 Q And those back pages they seem to line up at least
24 with the second page of the forensic service request where
25 it looks like it list the items of evidence and then over

1 here it's got call exam requested?

2 A Yes, this is actually the forensic service request is
3 actually something that I filled out to let the lead
4 criminal investigator know what we had taken into
5 evidence. They can fill out one and submit it back to us
6 if they want items to examine, but this is primarily used
7 just to notify the investigator that this is what we have
8 in evidence instead of giving him 15 or 20 evidence
9 sheets. He has this one that tells what it is.

10 Q Okay. The part that says exam requested who ---

11 A I filed that out.

12 Q Do you decide what gets marked for exam and what
13 doesn't?

14 A Some items I can, you know, I decide also the
15 investigator can ask if he wants items. One person
16 doesn't have the final say so on that, that would be left
17 up to lieutenant of the crime scene unit.

18 Q I'm reading from this second page. And I'm going to
19 go down and read all the items that were on here. And if
20 I could, I like for you to tell me where those were found
21 at the scene.

22 A Okay.

23 Q Item number eight handcuffs?

24 A That was attached to the victim's left wrist that we
25 talked about earlier.

1 Q Okay. Item number nine sex toy controller?

2 A This is what I was describing earlier that's on the
3 nightstand beside the candle and picture of the driver's
4 license.

5 Q Did I understand you earlier saying that it was a
6 cord that was hooked to this?

7 A I don't remember saying there was a cord hooked. I
8 remember talking about the controller being in the bed --
9 I'm sorry on the nightstand.

10 Q Okay. My mistake. Number ten clear sex toy?

11 A Clear sex toy was found in the bed. This actually
12 did have a cord on it. It look like it went to the
13 controller.

14 Q Okay. I knew there was a cord somewhere. Red
15 vibrator number 11?

16 A That was found beside the sex toy controller beside
17 the -- on the nightstand where the candle and the driver's
18 license were.

19 Q Number 12 flesh colored vibrator?

20 A I need to clarify something. The flesh colored
21 vibrator was actually found in the bed. The clear colored
22 sex toy that you talked about number ten on here was
23 actually found on the nightstand.

24 Q Okay.

25 A The flesh colored vibrator is the one you were asking

1 about with the cord on it that was found in the bed.

2 Q Number 13 two purple pillow cases?

3 A Those were from the bed.

4 Q Number 14 flower pillow cases?

5 A The bed also.

6 Q Number 15 compact was already open computer tower?

7 A That's the computer that you can see in one of the
8 statements photos that's in the office.

9 Q That's in a separate room from the bedroom; is that
10 right?

11 A Correct. That's the room that I described as an
12 office or just another bedroom in the apartment.

13 Q All right. Okay. Number 16 jar of Jiff. I'm
14 assuming that's Jiffy peanut putter?

15 A Yes, that's from the kitchen area.

16 Q Okay. Number 17 jar of Smucker's grape jelly?

17 A From the kitchen area.

18 Q Number 18 a blue plastic cup?

19 A Kitchen area.

20 Q Number 19 a white plastic cup?

21 A Kitchen area.

22 Q Number 20 Save-Way coffee mug?

23 A The kitchen area.

24 Q Number 21 doorknob?

25 A The doorknob was from the door to the bedroom where

1 the victim was found.

2 Q Okay. And then 22 the photos of the crime scene
3 those were some of the photos that already been entered
4 in?

5 A Yes.

6 Q And then 23, three by five latent lifts?

7 A I believe those were latent lifts, that Lieutenant
8 Lutcken may have recovered from the scene. I don't know
9 for sure of those. They are not anything that I noted in
10 my report.

11 Q As far as those first two pages of that report, you
12 recall preparing that report; is that right?

13 A Yes, my name and my signature on the bottom of it.

14 Q Okay. And that report is how you remember preparing
15 it; is that correct?

16 A Yes, this is a copy of my report that I gave to
17 Investigator Yarborough as well as I maintain a copy of my
18 case file.

19 MR. MCLAUGHLIN: At this time, I like to offer those
20 top two sheets into evidence.

21 THE COURT: Solicitor, Mr. Lawson.

22 MR. LAWSON: Your Honor, I'm -- I don't have any
23 objection.

24 THE COURT: All right. That is Defense Exhibit 2
25 without objection.

1 MR. MCLAUGHLIN: I'm going to staple these two.

2 THE COURT: Sure.

3 (WHEREUPON, Defendant's Exhibit No. 2 was admitted
4 into evidence.)

5 BY MR. MCLAUGHLIN:

6 Q The window screens you described in one of those
7 photos, if I recall correctly, you were testifying about
8 those. You were saying those were or appeared to be that
9 you testifying those were different than, I guess, the
10 average window screens folks would have on storm windows?

11 A That's correct.

12 Q That these screens are kind of made to keep people
13 out?

14 A Yes, they were a little heavier duty than those seen
15 on the normal residential construction.

16 Q All right. Is it fair to say there's a more of a
17 security type screen?

18 A That's the way it look to me.

19 Q Okay. When you discussed the bed or the comforter
20 having to take it back and hang it up because it was still
21 areas that were wet on it; is that correct?

22 A Yes.

23 Q And it seems from your testimony that you were at
24 least -- you at least thought that some of the wet areas
25 were from the lubricate that you had found on the scene;

1 is that right?

2 A That's right.

3 MR. MCLAUGHLIN: Give me one second. No further
4 questions, Your Honor. Thank you.

5 THE COURT: Thank you. Anything on redirect
6 examination?

7 MR. LAWSON: Bear with me one moment, Your Honor.

8 (WHEREUPON, a pause in the proceedings.)

9 REDIRECT EXAMINATION

10 BY MR. LAWSON:

11 Q On the -- I guess it's Defense Exhibit 2 at the time
12 this is submitted to Darren Yarborough, the investigator,
13 the lead investigator; correct?

14 A Right. The lead criminal investigator.

15 Q And you're asking him you're saying this is the stuff
16 that I have from my forensic investigation. Do you want
17 anything further done with it; is that correct?

18 A That's correct.

19 Q It's a method of communication between different
20 areas within the law enforcement family. It's between
21 forensic and investigators?

22 A The purpose of it so that if the investigator has a
23 question about something that's in evidence, he can
24 consult his file versus having to find me. I may be out
25 on another scene. He has to find me or try to run down

1 the evidence first, so they can look in the evidence
2 computer where they may in fact be at SLED submitting
3 evidence or something that he can go to his file and
4 immediately find out what's in evidence.

5 Q And when it says one purple fitted sheet an exam
6 requested none, that means at this time which is 7:29 '03
7 there had been no exam requested?

8 A There been no exam requested by the investigator now.
9 If there's stuff that I saw that needed to be examined, it
10 would be sent off to SLED, but that's nothing that he had
11 requested an exam be done on. That does not mean there
12 was not in fact an exam done or that I submitted for
13 further exam. It's just that he had not requested it at
14 that time.

15 Q All right. So the fitted sheet and the comforter
16 that you testified were taken to SLED for purposes of
17 further testing, that was done because you felt like there
18 was a need to do it without even asking the investigator?

19 A That is correct.

20 MR. MCLAUGHLIN: He's leading, Your Honor.

21 THE COURT: Sustained to the leading.

22 Q Then does the investigator have the ability to ask
23 you to do further testing?

24 A He does.

25 Q And is that one of the purposes of this document?

1 A That is the purpose.

2 Q Show you a photograph ask you if you took that
3 photograph?

4 A Yes, I did. My initials on the back of it.

5 Q And what's that a photograph of?

6 A This is a photograph of the nightstand. In it, you
7 can see the candle burning. You can see the driver's
8 license photo of Ms. Carter and you can see the red
9 vibrator. You can see the controller for the sex toy.
10 There's several coffee cups or mugs in here that were on
11 the nightstand. There's a clear sex toy that I stated
12 earlier was on the bed, but then I corrected myself and
13 said the clear one actually on the nightstand and the
14 flesh colored one's in the bed. And there are several
15 coffee cups or I'm sorry several cups on the bed that I
16 believe I stated were in the kitchen area earlier that
17 could look in this photo you could see three of them here.

18 Q Are they in the bed or on the nightstand?

19 A I'm sorry the nightstand beside the bed.

20 Q And is there any cords running from any of those
21 controls?

22 A No, the control was still attached to what I
23 described as the flesh colored sex toy still in the bed
24 underneath the body.

25 Q And is not shown in that photograph?

1 A No, it's not. The body in the bed is actually off to
2 the right of the photograph out of sight.

3 Q All right. Now, the candle does there appear to be
4 any burnt wax around or on that candle?

5 A There's no wax down on the edge of it that I can see
6 in this photo nor is there any wax on the nightstand.

7 Q Do you recall any when you investigated?

8 A I don't recall.

9 MR. LAWSON: Your Honor, the State would move this
10 into evidence as State's Exhibit 21.

11 THE COURT: Any objection?

12 MR. MCLAUGHLIN: No objection.

13 THE COURT: All right. State's 21 without objection.
14 (WHEREUPON, State's Exhibit No. 21 was admitted into
15 evidence.)

16 MR. LAWSON: No further questions.

17 MR. MCLAUGHLIN: Recross.

18 THE COURT: Yes, sir.

19 RE CROSS-EXAMINATION

20 BY MR. MCLAUGHLIN:

21 Q Agent, I'm going to ask you to go back to that second
22 page of that forensic service results?

23 A Defense Exhibit Number 2?

24 Q Yes, please.

25 A The second page?

1 Q Yes, sir. The purple sheet's not listed on there; is
2 it?

3 A Not on page 2.

4 Q So as far as all the things that are listed on this
5 page, do you know of any other exams that were conducted
6 on those other than the ones that are marked latents?

7 A Yes, I do.

8 Q You do?

9 A Yes.

10 Q What would that have been?

11 A The purple pillow cases, the flowered pillow case.
12 Those were all examined with the forensic light source
13 that I talked about earlier.

14 Q Fair enough. Other than those two anything else on
15 there that have been examined other than what's marked?

16 A Not on page two.

17 MR. MCLAUGHLIN: Thank you. No further questions.

18 THE COURT: Thank you, Officer, you may step down,
19 sir.

20 (WHEREUPON, the witness leaves the witness stand.)

21 THE COURT: All right. Ladies and gentlemen, we been
22 going about an hour and a half. I think this will be a
23 good time to take a break. We're going to ask if you
24 would please retire back to your jury room. Please have
25 no conversation about the trial, about this case at all,

1 talk about anything else you want. And we'll just take
2 about ten, 15 minutes give you a chance to stretch your
3 legs, use the restroom and then we'll resume after that.

4 MR. LAWSON: Your Honor, I would ask that Agent Brown
5 be relieved?

6 THE COURT: Any objection?

7 MR. MCLAUGHLIN: No.

8 THE COURT: You may be relieved.

9 (WHEREUPON, the jury retired to the jury room.)

10 (WHEREUPON, a break was taken.)

11 THE COURT: I just need to mention something to you
12 and Patrick. We got this juror first alternate. I don't
13 know her name. There's two alternates one's a lady, one's
14 a man. It's the girl. Apparently, when I asked the
15 question about is there any reason this particular week is
16 not a good week for you and you want to be transferred,
17 she decided not to respond, so she ended up getting picked
18 as an alternate.

19 Well, she got real upset yesterday. She wanted to
20 leave yesterday because her sister is having a baby --
21 sister-in-law was taken to the hospital, I think,
22 yesterday. And I told Ms. Joe just to inform her that we
23 would go to five o'clock around that time. And then we
24 would -- she be excused then she go straight to the
25 hospital. She's not having the baby. She ain't the

1 daddy. She ain't in the birthing room. I mean, you know,
2 what I'm saying, so any way. Now, during the break
3 Ms. Joe says she's in there she wants her cell phone so
4 she can just check on the progress to see.

5 Now, I don't have a problem, but I want to talk to
6 y'all. I don't have a problem. I'm not gone give her her
7 cell phone, but to let Ms. Joe take her into this other
8 room and make a phone call to the hospital to get an
9 update. But I'm not gone have this be a pattern where she
10 is going to be constantly using the phone every time we
11 take a break, but is there any problem with me allowing
12 her to call the hospital to just get an update on her
13 sister-in-law?

14 MR. LAWSON: No, sir.

15 THE COURT: Apparently, she had not had the baby as
16 of this morning. Now, another thing is and I'm gone share
17 it with y'all then y'all can talk to your people and let
18 me know. Once she has the baby -- in other words, this
19 juror needs to calm down and I don't know any of the
20 details. I don't know if it's a high risk pregnancy. If
21 there's a threat going into early labor. I don't know
22 anything about it, but I guess it's something just to keep
23 in mind. If things get on and it develops into an
24 emergency situation, on whether we excuse her or not. I'm
25 going to at least let her make this phone call to relieve

1 her mind if that's all right.

2 MR. MCLAUGHLIN: That's fine.

3 MR. LAWSON: If I could while she's doing that, I
4 have some people that's just come in from Virginia. I
5 just like to go and tell them what time to be back.

6 THE COURT: All right. Now, let me ask you this,
7 we're approaching noon. Your next witness you think we
8 can get it in in an hour? And I'm not holding you to you
9 it. You know, if we don't we don't, that's fine.

10 MR. LAWSON: I can look and try to find one that we
11 can.

12 THE COURT: I don't want to interfere with your trial
13 strategy. I just want -- cause if you think -- well, the
14 one I call next maybe lengthy again, we can take the early
15 lunch break. Not take any more time, but just take it a
16 little bit earlier and then relieve her. She can run over
17 to the hospital let her run over to the hospital if that's
18 what she wants to do.

19 MR. LAWSON: Let me look over at my list.

20 (WHEREUPON, a break was taken.)

21 THE COURT: Ask the jury members to please join us.

22 (WHEREUPON, the jury returned to the courtroom.)

23 THE COURT: All right. Ladies and gentlemen, during
24 the break, the attorneys approached me. You know, I just
25 want you to understand everyone's very aware of time and

1 your time and everything. So it appears that the next
2 witness for the State could possibly -- and there's no way
3 of knowing until you actually get a witness on the stand
4 and everybody gets their chance to do their questioning,
5 but it does appear that that witness could possibly run on
6 into our lunch break. So what we thought we would do is
7 since it is noon is to go -- and I know this may not be
8 early for some of you cause some of you may eat at noon.
9 But typically, we go to about one o'clock and we break for
10 lunch. But today, we're going to go ahead and break now.
11 And ask you to go ahead and take your lunch break from one
12 to 1:30 -- excuse me 12 to 1:30 ask you to please be back
13 in your jury room at 1:30 and same instructions as always.
14 It is inappropriate for anyone to have conversation with
15 you about this trial. Please don't allow that to occur.
16 And if there's anyone that insist on talking to you about
17 it, let me know and I'll make sure that that does not
18 occur. So if you would -- if everyone else would remain
19 seated. Members of the jury, you're excused for lunch.
20 If you please be back in your jury room at 1:30.

21 (WHEREUPON, the jury was excused for a lunch break.)

22 THE COURT: All right. We'll be in recess then,
23 ladies and gentlemen, until 1:30. Everybody enjoy your
24 lunch. We'll see you back here in about an hour and a
25 half.

1 (WHEREUPON, a lunch break was taken.)

2 THE COURT: Mr. Lawson, is the State ready to
3 proceed?

4 MR. LAWSON: Yes, Your Honor.

5 THE COURT: Mr. McLaughlin, is the defense ready to
6 proceed?

7 MR. MCLAUGHLIN: We are, Your Honor.

8 THE COURT: Ms. Joe, please ask the jury to join us
9 please.

10 (WHEREUPON, the jury returned to the courtroom.)

11 THE COURT: All right. Ladies and gentlemen, welcome
12 back I hope everyone had a good lunch and ready to start
13 back to work.

14 Mr. Lawson, recognize the State for your next
15 witness, sir.

16 MR. LAWSON: May it please the Court, the State would
17 call Sherrie Bennett.

18 THE COURT: Ms. Bennett, if you would please come
19 around.

20 THE CLERK: Place your left hand on the Bible and
21 raise your right hand. Do you swear the testimony you
22 give in this case to be the truth, the whole truth, and
23 nothing but the truth so help you God?

24 MS. BENNETT: I do.

25 THE CLERK: Please be seated and state your name for

1 the record.

2 MS. BENNETT: Sherrie Lanette Bennett.

3 THE COURT: All right. Mr. Lawson and
4 Mr. McLaughlin, step up here before we get started.

5 (WHEREUPON, a bench conference was held in the
6 presence of the jury, but out of the hearing of the
7 jury.)

8 THE COURT: Ladies and gentlemen, I discussed it with
9 the attorneys and I will allow and I'm going to get the
10 clerk to assist me in getting you some paper and something
11 to write with if you need it. I will allow you to take
12 notes, but let me say this to you. The danger in taking
13 notes sometimes can be that -- because you have to
14 understand listening to a witness testify encompasses much
15 more than simply your hearing senses. It's also watching
16 the witness, observing the demeanor of the witness, other
17 things that are involved as sometimes when you're taking
18 notes obviously a witness most of the time will talk
19 faster than you can write and maybe that while you're
20 writing something, you're missing something else that's
21 being said.

22 Now, having said all that, there's also an advantage
23 to taking notes if you are brief with those notes. But
24 let me caution you to this if you do take notes, when you
25 do retire to the jury room to deliberate, you must rely on

1 your recollection. And I would caution each of you to go.
2 on your recollection of what the facts are and not on what
3 someone else's notes reflect because it could be that
4 that's inaccurate, could be that your recollection maybe
5 inaccurate. But you have to go on what you recall. But
6 having said these things, I will allow if there is anyone
7 that like to take notes I will allow you to do that. And
8 as I said, the clerk is going to assist us in getting you
9 some paper and pencils if you do decide you want to do
10 that. All right. Mr. Lawson, you may proceed with your
11 witness, sir.

12 MR. LAWSON: Thank you, Your Honor.

13 WHEREUPON,

14 Sherrie Bennett,
15 after first having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. LAWSON:

18 Q Ms. Bennett, where do you live?

19 A [REDACTED] in Johnsonville.

20 Q And how long have you live there?

21 A Two years.

22 Q And where did you live before that?

23 A [REDACTED] in Pamplico.

24 Q And is that close to where Shannon Carter lived?

25 A Yes, sir, two doors down.

1 Q Okay. Show you State's Exhibit 1 ask you if you can
2 do you -- that's First Avenue. Do you recognize where
3 your house was? This is an overhead view. These are the
4 apartments here and that's the road and that's Pine Street
5 and that's Elm Street.

6 A I thought Walnut Street was in the front.

7 Q [REDACTED].

8 A This is my apartment and this is Shannon's.

9 Q It's on the end here?

10 A Yeah.

11 Q Okay. Now, how long or when did you meet Shannon
12 Carter?

13 A About seven years earlier.

14 Q All right. So you had known her a long time?

15 A Yes, sir.

16 Q And were you friends?

17 A We became friends when I first met her.

18 Q And so you had been friends for about seven years?

19 A Yes, sir.

20 Q All right. And 2003 you lived in Pamplico?

21 A Yes, sir.

22 Q And how long had you lived in Pamplico in March of
23 2003?

24 A A year.

25 Q A year. How long had Shannon lived there?

1 A Just about a year or two. She got there a month
2 before me.

3 Q And did you move there because she was there or?

4 A Yes, sir.

5 Q All right. And did you have children living with
6 you?

7 A Yes, sir, I had four children living with me.

8 Q And were they with you there on Pine Street -- on
9 [REDACTED] in Pamplico?

10 A They were all there except for one during that time
11 frame. My son was away in Kentucky going to Job Corp.

12 Q And what ages were they?

13 A One was 13. One is 15, and 17 and Robert's 18.

14 Q And you had a daughter named Theresa; is that
15 correct?

16 A Yes, sir.

17 Q And she was good friends with Shannon Carter's
18 daughter, B.B. is that correct?

19 A Yes, sir.

20 Q Okay. Do you remember a guy name Kevin Walton?

21 A Yes, sir.

22 Q Do you remember when Shannon Carter met him?

23 A First part of February of that year.

24 Q Of 2003?

25 A 2003.

- 1 Q And did he stay with her for some period of time?
- 2 A Yes, he did until the day she died.
- 3 Q From early February?
- 4 A Yes, sir.
- 5 Q And how do you know when it was that they met?
- 6 A Because I was there when she met him.
- 7 Q You were with her?
- 8 A Yes, sir.
- 9 Q And where were you when you met or when they met?
- 10 A We were at Teddies nightclub at the Holiday Inn on 52
- 11 and 95.
- 12 Q All right. And did you have occasion to go back
- 13 there several days later?
- 14 A Yeah, went back there got his clothes out of the
- 15 truck he had left there.
- 16 Q Out of a truck?
- 17 A Out of a pick-up truck.
- 18 Q And what kind of pick-up truck was it?
- 19 A A Ford '90 something model -- I mean, a '70 something
- 20 model and it was dark brown.
- 21 Q And he just left the truck there?
- 22 A Yes, sir.
- 23 Q And where did you go from there?
- 24 A Went back to her apartment.
- 25 Q Back in Pamplico?

1 A Back in Pamplico.

2 Q Did you ever see that truck again?

3 A Yes, sir, we went back to check on it to see if it
4 was still there me and Shannon did. It wasn't working so.

5 Q When was that?

6 A About a couple days after the fact when he took the
7 clothes.

8 Q Was this still in February?

9 A Yes, sir.

10 Q And was the truck still there?

11 A Yes, sir.

12 Q And was it registered -- did it have a South Carolina
13 license plate?

14 A No, it had a Michigan license plate.

15 Q Michigan?

16 A Yes, sir.

17 Q And now what did you -- what did you do from there?

18 A We glanced in the glove box noticed it wasn't
19 registered to Kevin.

20 Q Registered to someone else?

21 A It was registered to some female. We had asked him
22 about that and he said ---

23 MR. MCLAUGHLIN: Objection to hearsay.

24 THE COURT: Sustained.

25 Q Let's go ahead and -- what's the next thing you

1 remember in relation to Mr. Walton?

2 A We'd ask him about the truck and he said ---

3 MR. MCLAUGHLIN: Objection relevance.

4 THE COURT: Sustained.

5 Q Don't say what he said.

6 A Okay.

7 Q You can say what you did as a result of what he said.

8 A We just asked him about the truck.

9 Q All right. Now, do you see Kevin Walton in this
10 courtroom?

11 A Yes, sir, he's right over there.

12 Q And how do you recognize?

13 A By his eyes and his chin.

14 Q His eyes and his chin?

15 A Yes, sir.

16 Q Is there some difference?

17 A There's a big difference. He's gained a lot of
18 weight. His hair is cut real short. He had hair down to
19 here. He had a mustache, a long mustache and it's gone.

20 Q And did you give a description to the police when
21 they talk with you?

22 A I told them what he looked like and also told them
23 that it was a picture on her computer showing him -- good
24 picture of him.

25 Q All right. I'll ask you if you can identify that

1 photograph?

2 A Yes, sir, that's him that's one.

3 Q And does that look more like the Kevin Walton you
4 knew than the one siting over there?

5 A Yes, sir.

6 MR. LAWSON: The State move to introduce, Your Honor.

7 MR. MCLAUGHLIN: No objection.

8 THE COURT: All right. Without objection that's
9 State's Exhibit Number 22.

10 (WHEREUPON, State's Exhibit No. 22 was admitted into
11 evidence.)

12 MR. LAWSON: Permission to publish?

13 THE COURT: Yes, sir.

14 BY MR. LAWSON:

15 Q Now, Mr. Walton stayed there with Shannon; is that
16 correct?

17 A Yes, sir.

18 Q And from the day that he moved in until March the
19 28th, did you see Shannon basically every day?

20 A Yes, sir, every single day.

21 Q And was there ever a day that he was not there in the
22 morning?

23 A No.

24 Q Or there in the evening?

25 A No.

1 Q All right. On the March the 28th, was he there that
2 morning?

3 A No, sir.

4 Q All right. Was Shannon's car there?

5 A No, sir, it was gone.

6 Q All right. How was Shannon about her car?

7 A She was very particular. She didn't want nobody to
8 drive that car. She barely even let me drive it.

9 Q How long did you know her before she let you drive?

10 A About five years.

11 Q And what about while she was with Mr. Walton, did she
12 allow him to drive the car?

13 A Only one time I found out from someone else that he
14 did. And she told me later on, yeah, she let him drive it
15 just the one day to go pick up something.

16 Q So one time?

17 A Just one time.

18 Q Now, on March the 27th, did you have occasion to see
19 Shannon that day?

20 A That morning we were out together and that afternoon
21 we went out.

22 Q All right. And you say that afternoon approximately
23 what time?

24 A We went out about eight o'clock close to nine.

25 Q All right. And where did you go?

- 1 A Went to Mona Lisa's.
- 2 Q And what is Mona Lisa's?
- 3 A It's a little hole-in-the-wall bar.
- 4 Q And where is it?
- 5 A It's in Florence on the outskirts of Florence.
- 6 Q All right. And what road is it on?
- 7 A On Pamplico Highway.
- 8 Q All right. And who went with you and Shannon?
- 9 A Me, Shannon and Kevin.
- 10 Q All right. The three of you went to Mona Lisa's
- 11 about eight o'clock?
- 12 A Yes, sir.
- 13 Q And how long did you stay there?
- 14 A About one o'clock.
- 15 Q All right. And what did you drink?
- 16 A Ice water.
- 17 Q Ice water?
- 18 A Yes, sir.
- 19 Q And why did you go to a bar and drink ice water?
- 20 A Because I knew they were going out to drink, so I was
- 21 the designated driver.
- 22 Q So you were elected driver for that night?
- 23 A Yes, sir.
- 24 Q And did Shannon have something to drink?
- 25 A A few beers.

1 Q And Kevin Walton have something to drink?

2 A Have a few beers too.

3 Q Now, you got home you say -- what time would you say
4 you got home?

5 A I know I got in my house at 1:35. I looked at the
6 alarm clock and said, darn, I stayed out late. I'm not
7 getting up in the morning.

8 Q All right. It took about 30 minutes, 35 minutes to
9 get from Mona Lisa's back to Pamplico?

10 A It takes about yeah 25 minutes?

11 Q About 25 minutes?

12 A Yes.

13 Q All right. And so your daughter, Theresa, where had
14 she stayed while you were gone?

15 A She stayed with B.B.

16 Q All right. And how much -- how hold was B.B. at
17 that time?

18 A Eleven.

19 Q And how old was your daughter, Theresa?

20 A Like 13, 14.

21 Q All right. And so they stayed together at your house
22 or at?

23 A They stayed together at Shannon's house.

24 Q At Shannon's house?

25 A Yes, sir.

1 Q All right. And when you got home what did you do?

2 A I gave Shannon the keys and said goodnight I love you
3 and I see you in the morning. And she said goodnight,
4 mom, I'll see you in the morning.

5 Q All right. Your daughter, Theresa, did she come home
6 with you?

7 A No, she came home a few minutes later.

8 Q All right. So she stayed a few minutes after you
9 left?

10 A Yes, sir.

11 Q Did you go in the house?

12 A No, sir.

13 Q So you just went straight on over to your house?

14 A On to the apartment.

15 Q And where did you park the car?

16 A In the parking lot right in front of her house.

17 Q All right. So if I'm looking right on this, that
18 would be in the parking lot right out here?

19 A Yes, sir.

20 Q So the car would have been right out there?

21 A Yes, sir.

22 Q All right. I assume you then went to bed?

23 A I checked on my son and he was asleep and I went on
24 to bed.

25 Q All right. And which son was this?

1 A Robert.

2 Q And how hold was he at the time?

3 A Fifteen or 16.

4 Q Okay. And then you went to sleep?

5 A Yes, sir.

6 Q All right. And did -- what time -- if you know what
7 time did you wake up?

8 A I was woke up at 6:05 in the morning when I heard
9 banging on the door.

10 Q Who was banging on the door?

11 A B.B. was.

12 Q And who went to the door?

13 A Both me and Theresa got to the door -- well, Theresa
14 got to the door a little bit faster than I did because her
15 room is closer to the door.

16 Q And what happened when you open the door?

17 A She said ---

18 MR. MCLAUGHLIN: Objection, Your Honor.

19 MR. LAWSON: Your Honor, that witness is available
20 and will testify. I don't believe it's hearsay in that
21 situation. Not only that but it's an excited utterance
22 if, Your Honor, will hear it.

23 THE COURT: All right. I overrule.

24 A She said I think Kevin killed mama. Mama's dead.
25 And we ran straight to the house.

1 Q All right. What was her condition?

2 A She was very frantic. She was shaking and she was
3 crying.

4 Q And so you did what?

5 A I ran straight to the house and ran straight to the
6 bedroom.

7 Q And what did Theresa do, did you know?

8 A Theresa came in with B.B. and they stayed in the
9 dining area of the apartment.

10 Q All right. And you went into Shannon's room?

11 A Yes, sir.

12 Q What did you find when you got there?

13 A She was covered up and lying on her right side.

14 Q And how was she laying?

15 A When I felt to see if she was dead, I didn't feel no
16 pulse. So I pulled the covers back and I seen she was in
17 a fetal position.

18 Q And what did you do at that point?

19 A I rolled her over and tried to do CPR.

20 Q And where did you learn CPR?

21 A My job. I'm a nurse's aid. I have to be certified
22 in CPR to be a nurse's aid.

23 Q And where were you a nurse's aid?

24 A Nursing homes.

25 Q All right. So you work with elderly people?

1 A Yes, sir, I work with the elderly.

2 Q So it wasn't unusual to have to use CPR?

3 A No, it wasn't unusual to try CPR?

4 Q You tried CPR?

5 A Yes, sir, I tried CPR and there was nothing I could
6 do.

7 Q What did you do after that?

8 A I covered her back up and went -- picked up the phone
9 and dialed 911.

10 Q All right. So you called 911?

11 A Yes, sir.

12 Q You have any idea what time that was?

13 A About 6:10.

14 Q What did you do after you called 911?

15 A I called her sister Pat and her older daughter,
16 Jennifer.

17 Q And what did you at that point?

18 A Just sat there with the kids and waited for the cops
19 to show up.

20 Q All right. Where did you sit inside the house?

21 A Inside the house in the dining area.

22 Q And during that period what was B.B. condition?

23 A She was very frantic, crying, shaking.

24 Q The place where you parked her car what was the
25 condition of that spot?

1 A It was empty.

2 Q And when did you notice that?

3 A When I first went over to the apartment, I notice it
4 was gone.

5 Q All right. Did you notice anything else that was
6 gone?

7 A Not later. I asked about two lock boxes that was in
8 the house.

9 Q All right. And what kind of lock boxes were they?

10 A They were fire boxes.

11 Q And where -- was one of them yours?

12 A One was mine and one was Shannon's.

13 Q And you kept it at Shannon's house?

14 A Yes, sir.

15 Q Where did you keep it?

16 A In her spare bedroom where the computer is.

17 Q And they called it the computer room?

18 A Yeah, they called it the computer room.

19 Q And what did you have in that box?

20 A I had \$1,980.

21 Q How can you be so sure of that?

22 A Because I had put 2,000 in it beforehand before I put
23 it in the apartment. I just took 20 out so we could put
24 gas in the car.

25 Q Where did you get the \$2,000?

1 A My tax refund money.

2 Q And this was March the 28th 2003?

3 A Yes, sir.

4 Q So you just gotten your tax refund back?

5 A Yes, sir.

6 Q And have you seen that box since?

7 A No, sir.

8 Q All right. Were either of the boxes there?

9 A No, sir, nowhere in the house.

10 Q Why did you keep that box at Shannon's house?

11 A Because my young son took my money sometimes just to
12 get him some cigarettes and buy him some junk.

13 Q So you had a son that would help himself to your
14 money?

15 A Help himself to my money.

16 Q And how long had you kept that locked fire box at
17 Shannon's house?

18 A A couple days just bought the box.

19 Q Who all knew about that?

20 A Just me and Shannon and Kevin knew about it. And the
21 kids knew it was there.

22 Q Did you notice any pictures that were missing?

23 A I notice the picture that was on the wall was gone
24 that was in her bedroom. There was one of a drawing and
25 one of a digital photo of Kevin and Shannon taken at the

1 beach.

2 Q And both of those pictures?

3 A Both of those pictures taken were gone.

4 Q What about the other picture you said it was a
5 drawing?

6 A It was a drawing he draw for Shannon. It was a rose.

7 Q And where had they been? Were they on the wall?

8 A They were posted on the wall above her hamper. She
9 had stick pins in them to keep them on the wall.

10 Q What's that?

11 A She had stick pins. She put them up with stick pins.

12 Q Like little tacks?

13 A Yeah, like little tacks.

14 Q With the little plastic ends on them?

15 A Yeah, the little plastic ends on them.

16 MR. LAWSON: That's all the questions I have. Answer
17 any questions Mr. McLaughlin may have. Thank you, ma'am.

18 MR. MCLAUGHLIN: May it please the Court.

19 MR. LAWSON: Mr. McLaughlin.

20 CROSS-EXAMINATION

21 BY MR. MCLAUGHLIN:

22 Q Ms. Bennett, my name is Patrick McLaughlin and I
23 represent Mr. Walton. First of all, let me apologize. I
24 can tell by the comments you made that you were very close
25 to the victim in this case and she was a good friend. I

1 am sorry for your loss. I guess I want to preface before
2 I ask a question by letting you know having said that I
3 got to ask you some questions some of them may make you
4 feel uncomfortable, but that's not my intention. My
5 intention is to get to the bottom of -- try to get as much
6 factual material for the jury I can.

7 A No problem.

8 Q You testified that you were with the victim the night
9 that she met Mr. Walton or was it nighttime or daytime?

10 A It was at night.

11 Q It was at night?

12 A Yes, sir.

13 Q And y'all met him at Teddy's?

14 A Yes, sir.

15 Q Is that kind of -- do y'all go out to Teddy's?

16 A Every so often.

17 Q Every so often. Just one of the night spots that
18 y'all would go to?

19 A Yes, sir.

20 Q Okay. I realize you're saying that you were with her
21 the night she met him. Were you actually with her when
22 she met Mr. Walton in the bar?

23 A I sure was because we walked in the door together.

24 Q Okay. And how did that meeting take place?

25 A We walked up to the bar and she ordered herself a

1 beer. I ordered myself some water. She noticed him
2 sitting at the bar and she walked up to him and started
3 talking to him.

4 Q How long were y'all at Teddy's?

5 A Not very long.

6 Q Okay.

7 A Probably about an hour or two.

8 Q Did Mr. Walton leave with y'all from Teddy's?

9 A Yes, sir.

10 Q Where did y'all go from Teddy's?

11 A Spirits.

12 Q Which is not too far from where Teddy's; is that
13 right?

14 A Right down the street.

15 Q Okay. How long were y'all at Spirits?

16 A About two or three hours.

17 Q Okay. Let me back up for a second. About what time
18 did y'all get to Teddy's?

19 A About eight, nine o'clock.

20 Q Okay. In the evening, right?

21 A In the evening.

22 Q Okay. So y'all were there for about an hour and then
23 you go to Spirits. And you think may be there for two or
24 three hours, so it's fair to say we're talking about 11 to
25 midnight maybe where we're at now?

1 A Yes, sir.

2 Q Okay. What happened then?

3 A We went on back to the apartments.

4 Q Okay. Did Mr. Walton go back with you?

5 A Yes, sir, we went back with Shannon.

6 Q Who's idea was it for him to go back home with her?

7 A I believe it was both, both parties.

8 Q Certainly, he was invited to come back?

9 A Yes, sir.

10 Q Okay. Were you concerned at all about her taking
11 Mr. Walton back to her apartment?

12 A Yeah, I was.

13 Q Was that an unusual thing?

14 A Yes, it was.

15 Q When you got back to her apartment, what happened
16 then? Did you all three of y'all go into the apartment
17 and hang out?

18 A Went in for a little while.

19 Q Okay. How long did you hang out with them?

20 A Maybe about 30 minutes to an hour.

21 Q Okay. And then what happened?

22 A I went on back home.

23 Q The next morning did you go over?

24 A Yeah, I talk to her.

25 Q Okay. Were you concerned about leaving her alone in

1 apartment that night?

2 A A little bit.

3 Q Did you voice that concern to her?

4 A Yeah, she said I'll be all right. I'll call you if I
5 need you.

6 Q Okay. So you went back over the next morning to
7 check on your friend to see if she was okay?

8 A Yeah.

9 Q And was she okay?

10 A She was just fine.

11 Q Okay. I'd imagine best friends talk. Did she seem
12 happy, sad?

13 A She was talking and she said he was all right.

14 Q Okay. Well, Mr. Walton went home with her that
15 evening then wound up sticking around it sounds about two
16 months thereabout?

17 A Yes, sir.

18 Q Was it ever discussed between you and the victim?

19 A She said she told him he could stay for a little
20 while.

21 Q Okay. And why did she want him to stay?

22 A She just enjoyed his company.

23 Q Okay. She certainly wasn't fearful of him, was she?

24 A No.

25 Q All right. She wanted a -- well, you knew she kept

1 somebody around that she was scared of?

2 A No, she wouldn't.

3 Q I want to ask you a few questions about the car
4 sounds like you got stuck being the designated driver a
5 lot; is that right?

6 A Yes, sir, I didn't mind. I wasn't a drinker anyway.

7 Q Well, that's a valuable service glad you were doing
8 it. How long had she had this car before this took place?

9 A Probably a couple years.

10 Q A couple years. Can you be little more specific than
11 that?

12 A I'm not sure. I know she had this one car and it
13 broke down and she got that one.

14 Q Okay. Was that car actually -- did she purchase that
15 car or did she inherit that car? Do you recall?

16 A I'm not sure.

17 Q How often would y'all -- even before Mr. Walton
18 appeared, how often would y'all go out for girl's night
19 out?

20 A Probably once a month.

21 Q Once Mr. Walton appeared on the scene, did you still
22 go out with ---

23 A I go out with both of them.

24 Q Okay. And how often was it that y'all would usually
25 go out then?

1 A Maybe every other weekend.

2 Q Okay. Who usually drove when you were doing that?

3 A Sometimes me and sometimes Shannon.

4 Q Did you ever have an occasion to go with Mr. Walton
5 and Shannon out of town?

6 A To the beach.

7 Q To the beach?

8 A Yeah.

9 Q And could you explain that?

10 A We just went and spent a day at the beach.

11 Q Who else went?

12 A My daughter, Theresa, and B.B. Shannon's
13 daughter.

14 Q Did y'all ever go anywhere else together as a group
15 like that?

16 A No, just to the beach.

17 Q Do you know whether or not Ms. Shannon ever took any
18 other visits out of town together?

19 A No.

20 Q Beyond overnight visits going somewhere out of town
21 like a race or something like that?

22 A No.

23 Q And your testimony you said that you asked about two
24 locked boxes; is that right?

25 A Yes, sir.

1 Q Who did you ask?

2 A I asked when we weren't allowed to stay in the house
3 I had asked the police. And they said they didn't see it
4 in there. When the family when they were cleaning out the
5 house, and they didn't come across it either.

6 Q Do you recall giving a statement -- being taken to
7 the sheriff's office and giving a statement that same day?

8 A Yes, sir.

9 Q Getting a little bit ahead of myself let me back up
10 for a second. When you talked about getting this alarming
11 knock at the door and it woke you up and you went to the
12 door, what time I believe you said that was about 6:05; is
13 that right?

14 A Yes, sir.

15 Q And then you said that you went down there you went
16 down to Shannon's house and checked on her tried to give
17 her CPR then called 911; is that right?

18 A Yes, sir.

19 Q And then I think that you said you called 911 at
20 6:10?

21 A Yes, sir.

22 Q All right. So figure of about five minutes you were
23 able to get down there and try to perform CPR and you
24 called 911; is that correct?

25 A Yes, sir.

1 Q That's how close y'all residences were?

2 A Yes, sir.

3 Q Is that right? You no longer live in the
4 neighborhood; is that right?

5 A No, sir, I don't.

6 Q Did you ever have any problems in the neighborhood
7 break ins anything like that?

8 A Not until a couple of days after the murder.

9 Q What was that?

10 A Break ins.

11 Q Somebody brook into your home?

12 A I believe so.

13 Q Can you explain the circumstances behind that?

14 A Broke in the back window. The apartment faces the
15 woods.

16 Q Did they take anything?

17 A Just my daughter's stereo system.

18 Q Did you file a police report on that?

19 A I sure did.

20 Q Police come out there and investigate it then?

21 A Yes, they did.

22 Q Did they ever catch anybody doing that?

23 A No, sir.

24 Q Was there ever anything before this event that
25 happened?

1 A No, sir.

2 Q Did you ever have an incident when you woke up one
3 time and someone -- thought someone was in your house?

4 A No, sir.

5 Q I think you just -- I asked you a question earlier
6 about Mr. Walton going home with Shannon whether or not
7 that had ever happened before. I'm sorry I'm asking you
8 to repeat your answer. I can't remember if you said no or
9 very rarely?

10 A No, she never took nobody else home.

11 Q And once again, I understand this is your friend. I
12 just want to try to get what happened here. She didn't
13 have on occasion before this she had never have for a lack
14 of a better term ---

15 MR. LAWSON: Objection, asked and answered and
16 attacking victim's character.

17 THE COURT: I'm not sure what he's about to ask.

18 Q Had she ever picked anyone else up at a bar?

19 A No.

20 THE COURT: I'm going to allow that question and move
21 on.

22 Q You did not go into the house; is that right that
23 night? That night -- I'm sorry that evening when you got
24 back?

25 A We got back I went in for a little while.

1 Q Okay. So you went into the house for a little while?

2 A For a little while.

3 Q And your daughter was there when you got there?

4 A You talking about the first night we met or?

5 Q No, ma'am, I'm sorry I got you confused there. The
6 night you went to Mona Lisa's?

7 A No, I did not go in the house.

8 Q Okay. You just came back home. Was your daughter
9 over there that evening?

10 A Yes, she was.

11 Q She was hanging out with her friends who was

12 B.B.

13 A B.B.

14 Q And did your daughter leave right at the time you got
15 home?

16 A She came back later a few minutes later.

17 Q Okay. So she was right behind you?

18 A Yeah, right behind me.

19 Q Did you notice anything different that night when you
20 were with Shannon and Mr. Walton?

21 A No, just the same as any other night going out.

22 Q All right. Did -- was there any problems that y'all
23 had at Mona Lisa's. Did she get into any arguments with
24 anybody or anything like that that evening?

25 A He had a tiff with her because she -- another guy

1 wanted to give her money to put in the jukebox to play the
2 jukebox. He kind of pouted.

3 Q Did anyone get upset with the music she played on the
4 jukebox?

5 A No.

6 Q I ask you just a minute give ago if you remember
7 giving a statement and I believe you said you did; is that
8 right?

9 A Yes, sir.

10 Q Okay. You went -- and where did you give that
11 statement at?

12 A At the county complex.

13 Q The detention center?

14 A Yes, sir.

15 Q Out in Effingham?

16 A Yes, sir.

17 Q Okay. Do you remember who you gave that statement
18 to?

19 A Mr. Yarborough.

20 Q I'm going to ask you a couple questions about this
21 statement. I'm going to give you a copy so you can look
22 at it.

23 MR. MCLAUGHLIN: May I approach, Your Honor?

24 THE COURT: Yes.

25 Q Ms. Bennett, I don't know that you ever seen a

1 written copy of this?

2 A Yes, sir, I have.

3 Q You have seen a written of it?

4 A Yes, sir.

5 Q Sometimes they tape record them and then they'll
6 describe them later after you gone.. But you had a chance
7 to see a written copy of this?

8 A Yes.

9 Q When is the last time, you saw a written copy of this
10 statement?

11 A Recently..

12 Q Okay. Try to refresh your memory about what
13 happened?

14 A Yes, sir.

15 Q Okay, fair enough. Did Investigator Yarborough ask
16 you about the handcuffs that were found on the victim?

17 A Yes, sir.

18 Q He did. And what did you tell Mr. Yarborough to
19 explain that to him?

20 A That wasn't -- that wasn't Shannon's rule of conduct.

21 Q And I'm going to paraphrase from your statement. I'm
22 looking at page ---

23 MR. LAWSON: Objection, Your Honor, that's not the
24 proper use of a statement, not to paraphrase her answer to
25 a statement.

1 THE COURT: I'll sustain that. If you want to get
2 her to refresh her memory with that.

3 BY MR. MCCLAUGHLIN:

4 Q Would you take a look at page 2. I'm going to say
5 that down there where you see Yarborough. Then right here
6 on this page is where this part of the conversation take
7 place. If you would take a look at that and explain to me
8 what you told Investigator Yarborough?

9 A It says she had handcuffs on one wrist. She never
10 handcuffed herself. She always handcuffed the person that
11 she had sexual contact with never herself, that's her rule
12 of conduct for herself.

13 Q Okay. And then if you'll flip over to the next page
14 continue from the top of that next page right there.
15 Investigator Yarborough he was asking you a question
16 basically repeating that testimony. And then if you all
17 talked about that before and if you would go from there
18 please.

19 A I said, yes, we talked about that before.

20 Q And then he said okay and you said what?

21 A Several times.

22 Q Okay. Then you got into explaining to Investigator
23 Yarborough later about those lock boxes; didn't you?

24 A Yes, sir.

25 Q And you told him how much money you thought was in

1 it; is that right?

2 A Yes, sir.

3 Q Okay. Then you also told him why it was kept over
4 there?

5 A Yes, sir.

6 Q Okay. And what was the reason that you told
7 Investigator Yarborough why you kept your money over there
8 in a lock box?

9 A Exactly what's on here because I really don't trust
10 it in my house. My son cause he takes money and uses it
11 to buy cigarettes and stuff. The same thing I said
12 earlier.

13 Q Yes, ma'am. And that you gave this statement the
14 same day that you got this terrible wake-up call; didn't
15 you?

16 A Yes, sir.

17 Q Okay. The time on this statement appears to be 1556,
18 that's about 3:56, does that sound about right?

19 A Yes, sir.

20 MR. MCLAUGHLIN: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 (WHEREUPON, a pause in the proceedings.)

23 MR. MCLAUGHLIN: I don't have any further questions.

24 Thank you.

25 THE COURT: Anything on redirect, Mr. Lawson?

1 MR. LAWSON: Nothing further, Your Honor.

2 THE COURT: Thank you, ma'am. You may step down.

3 (WHEREUPON, the witness leaves the witness stand.)

4 MR. LAWSON: May this witness be allowed to -- the
5 sequestration order to be lifted as to this witness?

6 THE COURT: Sure. Ms. Joe.

7 Ladies and gentlemen, if anybody on the panel would
8 like a pad and a pen or a pencil, Ms. Joe has some just
9 let her know.

10 You may call your next witnesses.

11 MR. LAWSON: May it please the Court, the State calls
12 Patti Ruff.

13 THE CLERK: Please place your left hand on the bible
14 and raise your right hand. Do you swear the testimony you
15 give in this case to be the truth, the whole truth, and
16 nothing but the truth so help you God?

17 MS. RUFF: Yes, I do.

18 THE CLERK: Please be seated and state your name for
19 the record.

20 MS. RUFF: My name is Patti Brown Ruff. R-U-F-F.

21 WHEREUPON,

22 Patti Ruff,

23 after first having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. LAWSON:

1 Q And, Ms. Ruff, where are you employed?

2 A I am employed with the South Carolina Law Enforcement
3 Division which is more commonly known as SLED.

4 Q And how long have you been so employed?

5 A I been employed with SLED for approximately 24 years.

6 Q And do you hold any special position there at SLED?

7 A Yes, sir, I do. I'm a forensic evidence technician
8 in the evidence processing department.

9 Q And if you would explain to the jury what that means?
10 What do you do?

11 A What I do is process evidence for the DNA department
12 and trace department. For example, in trace department,
13 it's mainly fibers, glass and some debris. In evidence
14 for DNA department, includes biological stains such as
15 urine, saliva, semen, blood, perspiration and even to
16 epithelial skin cells and hairs.

17 Q All right. And how long have you been involved in
18 this activity with SLED?

19 A I have been actually processing evidence for 16
20 years.

21 Q And have you testified in court before?

22 A Yes, sir, I have.

23 Q On how many occasions?

24 A Approximately 60 times.

25 Q And you look at something and try to determine

1 whether or not there's possible evidence there to be
2 examined by someone else; is that correct?

3 A That is correct. What I do for example in this case
4 looking for body fluids which was semen. I do presumptive
5 testing. I use an alternate light source which I know
6 you're familiar with seen on some of these poplar TV shows
7 where it fluoresces under an ultraviolet light. A lot of
8 things fluoresce under this light, but semen is one of
9 them. So I been trained to recognize stains that could
10 possible be semen. I circle these stains and then I do a
11 chemical test, which is a presumptive test. And by that I
12 mean, doesn't necessarily mean that if it's positive that
13 it is semen. And it's a possibility that it's semen. So
14 I will cut the sample and then I'll send it to the DNA
15 department for actual analysis and further testing.

16 Q All right. And did you have occasion to work on the
17 case that we're on Kevin Walton in the death of Shannon
18 Carter?

19 A Yes, I did.

20 Q I ask you first of all if you can tell me whether or
21 not you worked with what's been marked for identification
22 as State's 3? I guess it's easier over here and there's
23 gloves if you want them.

24 A Yes, I can recognize this box because after we seal a
25 box, we put our initials and date it. There's my initials

1 on the outside of this box. I did process a beige
2 comforter and I can recognize this item by my markings on
3 there.

4 Q All right. So the markings mean that you found items
5 that you thought were evidence in the case?

6 A That is correct. Like I side earlier, a lot of
7 things fluoresce like saliva fluoresces, some clothes
8 detergent fluoresces, urine fluoresces. So there's
9 numerous things that fluoresce that when we put it under
10 this light source, we'll circle these areas. Then we'll
11 go into the chemical test. So you'll see for example, an
12 area right here that I circled this area also -- this item
13 is also premarked by the agency when it came in. So my
14 areas are marked with the blue. But this area is
15 fluoresced under the alternate light source, but it was
16 negative for my chemical test which is called acid
17 phosphatase light test. It reacts to the acid phosphatase
18 that's actually found in semen. It was negative. So what
19 I do is I mark it with -- it looks as an equal sign that I
20 use for the circle and that means negative. So the areas
21 that you see that are circled and have a sign like this
22 are negative. If it were positive, I actually make a
23 cutting and I give a sub item and the cutting will go to
24 the DNA department for further testing?

25 Q Did you find such items on this exhibit for

1 identification number three?

2 A Yes, sir, I did. I made ten cuttings.

3 Q You made ten cuttings on it?

4 A Yes, sir.

5 Q Okay. And then what would be done with the comforter
6 itself?

7 A I'll put the comforter back in its original
8 container, tape it up, and seal it with evidence tape,
9 put my date and my initials and date on the outside and
10 it's returned to the agency. The cuttings go the DNA
11 department and the rest of the evidence that I not collect
12 sample off of is returned to the agency.

13 Q All right. So this would come back to Florence and
14 be here today?

15 A That is correct.

16 Q Okay.

17 MR. LAWSON: Your Honor, I now move the comforter
18 into evidence.

19 THE COURT: That State's Exhibit 3.

20 MR. LAWSON: State's Exhibit 3, yes, sir.

21 THE COURT: Any objection?

22 MR. MCLAUGHLIN: No objection.

23 THE COURT: All right. Without objection State's 3
24 is now in evidence.

25

1 (WHEREUPON, State's Exhibit No. 3 was admitted into
2 evidence.)

3 BY MR. LAWSON:

4 Q Also ask you if you are familiar with this container
5 marked for identification as State's Exhibit 4?

6 A Here's my initials and item number on this item.

7 Q And did you make any cuttings on that item?

8 A No, sir, I did not. There was a few areas that
9 fluoresced, but they were negative for the ADS testing.

10 Q All right. And so that was then boxed up and sent
11 back to the agency as well?

12 A Yes, sir, that's correct.

13 MR. LAWSON: Your Honor, the State would move exhibit
14 four into evidence at this time.

15 THE COURT: Any objection?

16 MR. MCLAUGHLIN: No, sir.

17 THE COURT: Without objection State's Exhibit 4 is
18 now in evidence.

19 (WHEREUPON, State's Exhibit No. 4 was admitted into
20 evidence.)

21 BY MR. LAWSON:

22 Q Ask you if you would, agent, special agent?

23 A I'm just a technician, no title.

24 Q No title?

25 A No, sir.

1 Q What's been marked for identification as State's
2 Exhibit 5 if you could tell me if you have had anything to
3 do with that exhibit?

4 A Yes, sir, these are samples that I collected each one
5 that has my initials on the back of each envelope. These
6 are actual cuttings I made from the comforter.

7 Q All right. Those would have then been sent to the
8 DNA lab?

9 A That is correct.

10 Q And did you do anything else in relation to this
11 case?

12 A No, sir, I did not.

13 Q Okay.

14 MR. LAWSON: Bear with me one moment, Your Honor.

15 (WHEREUPON, a pause in the proceedings.)

16 MR. LAWSON: That's all the questions for I have for
17 Agent Ruff, Your Honor.

18 MR. MCLAUGHLIN: May it please the Court.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. MCLAUGHLIN:

22 Q Agent Ruff, I have just one quick question. I
23 believe you just testified that saliva fluoresces?

24 A Yes, sir.

25 MR. MCLAUGHLIN: Thank you. No further questions.

1 THE COURT: All right. Anything further?

2 MR. LAWSON: We ask that the agent be excused from
3 her subpoena, Your Honor.

4 THE COURT: Any objection to that?

5 MR. MCLAUGHLIN: No, sir.

6 THE COURT: All right. Ma'am, thank you very much.
7 You're free to go.

8 (WHEREUPON, the witness leaves the witness stand.)

9 MR. LAWSON: May we approach, Your Honor?

10 THE COURT: Yes, sir.

11 (WHEREUPON, a bench conference was held in the
12 presence of the jury, but out of the hearing of the
13 jury.)

14 THE COURT: Ladies and gentlemen, we been going for
15 about an hour. The next witness the Court's informed may
16 -- cause as I told you, we like to try to take a break
17 about every hour and half or so and Mr. Lawson knew that
18 we been going about an hour. And this next witness will
19 probably go longer than half an hour to 45 minutes. So I
20 suggest that may be we take a break at this point and I
21 think that's a good idea. So what I'm going to do is
22 excuse you to your jury room. Please have no conversation
23 about the trial. And we'll take about ten minutes allow
24 you to stretch and use the restroom if you need to, get
25 something to drink and then we'll will start back.

1 (WHEREUPON, the jury retired to the jury room.)

2 THE COURT: All right. We'll be in recess for the
3 next ten minutes.

4 MR. LAWSON: Thank you, Your Honor.

5 (WHEREUPON, a break was taken.)

6 THE COURT: Mr. Lawson, the State ready to proceed?

7 MR. LAWSON: Yes, Your Honor.

8 THE COURT: Mr. McLaughlin, the defense ready to
9 proceed?

10 MR. MCLAUGHLIN: We are, Your Honor.

11 THE COURT: Ms. Joe, if you ask the members of the
12 jury to please join us.

13 (WHEREUPON, the jury returned to the courtroom.)

14 THE COURT: All right. Ladies and gentlemen, we are
15 ready for the State to proceed. You may call your next
16 witness, Mr. Lawson.

17 MR. LAWSON: May it please the Court, the State would
18 Kenneth Bogan.

19 THE COURT: Mr. Bogan, if you will come around
20 please, sir.

21 THE CLERK: Please place your left hand on the Bible
22 and raise your right hand. Do you swear or affirm that
23 the testimony you give in this case will be the truth, the
24 whole truth and nothing but the truth so help you God?

25 MR. BOGAN: Yes, I do.

1 THE CLERK: Please be seated and state your full name
2 for the record?

3 MR. BOGAN: My name is Kenneth L. Bogan. My last
4 name is spelled B-O-G-A-N.

5 DIRECT EXAMINATION

6 BY MR. LAWSON:

7 Q It is, Agent Bogan, Special Agent Bogan, how do you
8 prefer to be?

9 A Just Mr. Bogan will be fine.

10 Q Where are you employed, sir?

11 A I'm an agent with the South Carolina Law Enforcement
12 Division. I currently work in the DNA analysis section.

13 Q And how long have you been employed in that section?

14 A I been employed with SLED since 1984. It's been a
15 little bit over 23 years. I been employed in the DNA
16 analysis section since 1990, so 17.

17 Q Seventeen as best I can figure. And if you would
18 explain -- well, tell us your background academically in
19 relation to DNA analysis?

20 A Well, basically, I have a bachelor of science degree
21 from the University of Central Florida. My degree is in a
22 field of science called medical technology. Medical
23 technology deals with the runnings of test in our
24 laboratory situation for diagnostic purposes. Again, it
25 was hospital laboratory I ran test primarily on blood.

1 Those results were used by physicians in diagnosing their
2 patients. I did that for approximately six years before
3 being employed with the South Carolina Law Enforcement
4 Division. Again, I began working in 1984 as a forensic
5 serologist. I was training by qualified forensic
6 serologist at the State Law Enforcement Division. I also
7 received training in basic forensic serology from the
8 Federal Bureau of Investigation in Quantico, Virginia.
9 And subsequently through the years, I attended other
10 training courses in semen analysis from Carolina Research
11 Institute in Emeryville, California. Also received
12 training from Serological Research Institute in blood
13 stain analysis. In 1990, I attended the Federal Bureau of
14 Investigations school on DNA analysis typing methods. I
15 also received training for about year and a half from 1990
16 to the middle of 1991 from court qualified DNA analyst at
17 the State Law Enforcement Division. And in the middle of
18 1991, I began accepting my own cases for DNA analysis.

19 Q So you basically were in on the ground floor with DNA
20 analysis as I understand basically started in '84?

21 A Well, our DNA analysis lab probably began it's roots
22 in 1988. There was some groundwork being formed then.
23 And, of course, I was present, but in a small part of it.

24 Q And have you testified in court in relation to DNA
25 analysis?

1 A Yes, I have.

2 Q On how many occasions?

3 A I been qualified as an expert in DNA analysis
4 approximately 60 times.

5 Q In state court or federal court or both?

6 A Primarily in state court, general sessions court.

7 MR. LAWSON: Your Honor, we offer Agent Ken Bogan as
8 an expert in DNA analysis.

9 THE COURT: Any objection?

10 MR. MCLAUGHLIN: No, Your Honor.

11 THE COURT: Before we begin, members of the jury, let
12 me explain to you briefly and I'll explain to you more
13 when I give you the charge on the law. Mr. Bogan has been
14 qualified as an expert regarding DNA analysis. A person
15 who by their education, their background, their
16 experiences can become an expert in a particular field of
17 science or industry or whatever. And that person is
18 allowed to give their opinions as to the studies or the
19 research they done. The difference in an expert witness
20 and a lay witness is simply this and that is that an
21 expert witness is allowed to give opinion testimony. A
22 lay witness is not allowed to give opinion testimony. A
23 lay witness is only allowed to testify to things that they
24 seen, heard, smelled or tasted, but not give their
25 opinions as to those senses. An expert by use of their

1 education and experience is allowed to give expert -- is
2 allowed to give opinions based on their findings. So just
3 want to point that out to you. As with all witnesses, you
4 give an expert witness' testimony whatever weight you feel
5 is appropriate. And you judge the credibility and
6 believability of witnesses, that is solely up to you as
7 members of the jury. But that's the distinction between a
8 lay witness and an expert witness.

9 Mr. Lawson.

10 MR. LAWSON: Thank you, Your Honor.

11 BY MR. LAWSON:

12 Q Agent Bogan, I ask you if you had occasion to use
13 either of these items which been marked for identification
14 State's 19 and State 20. You can open the envelope and
15 see what's in them to make it easier?

16 A State's Exhibit 19 contains what they refer to as a
17 suspect evidence collection kit. I recognized it based on
18 the laboratory number which is on the front. I also have
19 my initials and several places here and again here where I
20 sealed it up. So again, this is a suspect evidence
21 selection kit from Kevin Walton.

22 Q And did you use that?

23 A Yes, I did.

24 MR. LAWSON: Your Honor, the State would move
25 introduction of State's Exhibit 19.

1 THE COURT: Any objection?

2 MR. MCLAUGHLIN: No objection, Your Honor.

3 THE COURT: All right. State's 19 is in evidence
4 without objection.

5 (WHEREUPON, State's Exhibit No. 19 was admitted into
6 evidence.)

7 A State's Exhibit 20 is some evidence that was
8 collected. It's trace evidence package and actually I
9 don't think I've ever had this in my custody.

10 Q Possibly, I got State's Exhibit 6 for identification?

11 A State's Exhibit 6 contains a heat sealed pouch. I
12 have had this in my custody. It bears my case number,
13 that's my initials here, here and here again where I
14 sealed it. This is a basically some evidence that was
15 collected from Shannon Carter in this case that includes
16 various samples one being blood standard and some other
17 samples that were collected.

18 Q And did you use that material?

19 A Yes, I did.

20 MR. LAWSON: Your Honor, the State would move
21 admission of State's Exhibit 6.

22 THE COURT: Any objection to State's Exhibit 6 coming
23 into evidence?

24 MR. MCLAUGHLIN: No, Your Honor.

25 THE COURT: All right. Without objection State's

1 Exhibit 6 is in evidence.

2 (WHEREUPON, State's Exhibit No. 6 was admitted into
3 evidence.)

4 BY MR. LAWSON:

5 Q What's been marked for identification as State's
6 Exhibit 5?

7 A State's Exhibit 5 also has my case number and my
8 initials on it. It's a heat sealed pouch that contains
9 cuttings from a bedspread. I also had actually examined
10 and analyzed.

11 Q And you actually analyzed these cuttings?

12 A Yes, I did.

13 MR. LAWSON: Your Honor, the State would move
14 admission of exhibit five.

15 THE COURT: Any objection?

16 MR. MCLAUGHLIN: No, objection.

17 THE COURT: Without objection State's 5 is in
18 evidence.

19 (WHEREUPON, State's Exhibit No. 5 was admitted into
20 evidence.)

21 BY MR. LAWSON:

22 Q All right. Let's, sir, at this point let's stop
23 there and go into exactly what you examined and what you
24 were looking for?

25 A As I mentioned, I received some evidence from Shannon

1 Carter. In that packaged were included an oral swab, a
2 rectal swab, and vaginal swabs. A slide from the vaginal
3 area and a rectal slide. I will explain what those are
4 and what I was looking for. The oral swab and the case
5 where there might be some sexual involvement. I analyzed
6 that for the presence of semen. I did that on the oral
7 swab and no semen was identified. Also did the same
8 procedure on the rectal swab to identify semen and no
9 semen was identified. Vaginal swabs were also examined
10 and no semen was identified. Vaginal slides and rectal
11 slides were collected. Those are basically glass slides
12 where material is applied from the vaginal area, rectal
13 area. I stained them to look at them from under the
14 microscope for the presence of spermatozoa. And I did not
15 perform any analysis on there. I did not actually do the
16 analysis since the swabs from those same areas were
17 negative. Also included in that packet was a known blood
18 standard from Shannon Carter. And known blood standard
19 sample blood is drawn from a vein or an artery that can be
20 used for comparison and DNA. It's a sample which we know
21 the source.

22 Q Did you develop a profile of Shannon Carter from that
23 known blood sample?

24 A Yes, I was able to develop a DNA profile from that
25 that I could use from comparison to other items of

1 evidence.

2 Q A profile, a DNA profile just basically like a
3 fingerprint. The DNA profile is what you use to compare
4 the unknown sample to the known sample; is that correct?

5 A That's correct.

6 Q So if the two match, then it's just like a
7 fingerprint matching, just genetic fingerprinting is in
8 affect what we're doing?

9 A Certainly, it's a little bit different than
10 fingerprinting. I'm not a fingerprint expert. But
11 fingerprinting they look at different ridge details and
12 compare -- almost like comparing say one picture to
13 another for me. DNA profile or genetic typing is a little
14 bit different in that genetic markers can be examined and
15 quantitated. And basically, what I'm doing is comparing
16 genetic markers from an individual to evidence samples.

17 Q All right. And my understanding you had also a known
18 sample from Kevin Walton?

19 A Yes, sir, I did.

20 Q And did you develop a profile, a known profile on
21 Kevin Walton?

22 A Yes.

23 Q All right, sir. And what did you do at that point?

24 A The cuttings that I received from the bedspread. I
25 received ten of them. I was requested to see if I could

1 identify semen on those cuttings and to attempt to
2 identify DNA profile from those cuttings for comparison to
3 the known standard. So with the cuttings that I received,
4 I did identify semen on all ten of the cuttings. I did
5 perform DNA analysis on nine of the cuttings. One of the
6 cuttings the sample size was by my estimate small and I
7 did not attempt to do DNA analysis on that one. So I
8 develop DNA profile for comparison purposes on nine of the
9 ten cuttings from the bedspread.

10 Q And what results did you obtain in comparing the
11 results of those profiles with the known profile of Kevin
12 Walton?

13 A On -- I got varying degrees of results on some of the
14 cuttings probably based on the amount of DNA present,
15 which we reflected on the amount of semen that was
16 present. On seven of the cuttings, I was able to get a
17 full profile, DNA profile which matched the DNA profile of
18 Kevin Walton. On two of the cuttings, I had partial
19 results and although there wasn't sufficient amount to say
20 that they matched Kevin Walton, I could not exclude him as
21 a possible contributor of semen on those items. In sexual
22 assault evidence, particularly a semen stain or a stain
23 that has been identified as being semen, I perform what is
24 known as a differential extraction. And basically, a
25 differential extraction is there is a possibility that

1 there is a male contributor. Semen being from a male and
2 a female contributor body fluids may be mixed in that
3 sample. I attempt to separate those two perform what is
4 called a differential extraction. I did that on each of
5 these samples. And in the female extraction, I also got
6 some genetic material that I was able to compare to
7 Shannon Carter and I could not exclude her as a
8 contributor of additional genetic material other than
9 semen to six of the cuttings.

10 Q All right, sir. Now, when you talk about differing,
11 you got differing amounts or differing degrees of DNA
12 samples. I mean, you have to have a certain amount of DNA
13 to develop a profile to start with; is that correct?

14 A Yes.

15 Q And if you don't have enough DNA, then the profile
16 will be too weak to compare to someone else or your, I
17 guess, your graft or whatever will be too low to compare
18 or properly compare?

19 A Yes, in some instances, there is an insufficient
20 amount of DNA material there. I may not even develop any
21 further profile. In other instances, there may be a
22 sufficient amount of DNA to develop what I would call a
23 partial profile. And in other instances, there is
24 sufficient amount of DNA to develop what I call a full
25 profile.

1 Q And it's my understanding that as you testified that
2 the threshold for exclusion is lower than the threshold
3 for inclusion; is that correct?

4 A Yes, it's a little bit difficult to explain, but
5 basically if I have genetic markers even if I only have a
6 partial profile, I can tell whether or not somebody could
7 have contributed to that sample. If I can tell that they
8 are excluded and could not have contributed to that
9 genetic material, then I'm able to say that they're
10 excluded. And sometimes, it's easier to say somebody
11 excluded a sample than to say that they actually
12 contributed to that sample. In order to say that it
13 matches or individual contributes, I have to have a
14 sufficient amount of DNA. I have to have sufficient level
15 that reaches a threshold in which I'm confident that I
16 could calculate a statistic or a probability associated
17 with that.

18 Q And seven of the ten cuttings you had that sufficient
19 amount of DNA to make a probability analysis that it was
20 in fact Kevin Walton's sperm; is that correct?

21 A Yes, I calculated a probability of somebody else
22 having the same DNA profile chosen at random unrelated
23 individual chosen at random having that same DNA profile
24 that I developed from semen on those seven cuttings.

25 Q And what was that -- the number?

1 A Probability of randomly selecting an unrelated
2 individual have same DNA profile developed on those seven
3 cuttings is approximately 73 quadrillion.

4 Q Quadrillions got how many zeros?

5 A Be 15.

6 Q Fifteen zeros?

7 A Yes.

8 Q So that's pretty -- that's more than the people ever
9 lived on the face of the earth; is it not?

10 A Yes.

11 Q And as I understand it, that's seven out of the ten
12 cuttings. On two out of the ten, you could not exclude
13 him, but you couldn't get enough to say it was in fact
14 him?

15 A That's correct.

16 Q And on one you didn't get enough to even develop a
17 profile?

18 A That's correct.

19 Q All right. So on seven out of ten it's one and 73
20 quadrillion?

21 A Yes.

22 Q Now, later were you asked to look at what's been
23 marked for identification as State's Exhibit 8. Do you
24 recognize this item?

25 A Yes, I do.

1 Q All right, sir. And who made the drawings and the
2 cuttings on that?

3 A I did.

4 Q You in fact did that?

5 A Yes.

6 Q And what were you looking for in relation to those
7 cuttings on this item?

8 A It was requested that I examine that pillow for
9 presence of saliva.

10 Q All right, sir. And you made four cuttings; is that
11 correct?

12 A Yes, I did.

13 Q And what did those ---

14 MR. LAWSON: Your Honor, by the way, the State would
15 move introduction of State's Exhibit 8 into evidence.

16 THE COURT: Any objection to State's Exhibit 8?

17 MR. MCLAUGHLIN: No objection.

18 THE COURT: All right. Without objection State's 8
19 is in evidence.

20 (WHEREUPON, State's Exhibit No. 8 was admitted into
21 evidence.)

22 BY MR. LAWSON:

23 Q What were the results of the test that were done on
24 that pillow?

25 A I was requested again to examine those four --

1 examine the pillows for the presence of saliva. I made
2 four cuttings and analyzed them for the presence of
3 amylase, which is an enzyme found in Saliva. Three of
4 those areas that I cut no saliva was indicated. And one
5 simple that I cut saliva was indicated, so positive
6 results.

7 Q So there were -- the enzyme was present in one out of
8 the saliva four cuttings?

9 A That reach my detection limit, yes. One of them gave
10 me a positive result.

11 Q As I understand it, the -- it could be mixed or
12 diluted to the degree that you wouldn't receive a positive
13 reading with your -- with your testing; is that correct?

14 A Well, you use the mix or diluted it could -- I don't
15 know mix with what, but or diluted. But basically, it
16 could have been present, but below my detection limit. In
17 other words, it wasn't just as sufficient amount there for
18 me to get a positive result.

19 Q Said kind of like running radar if you got a radar
20 that only picks you up if you going over 35. If you going
21 25, the radar want pick you up?

22 A Sort of like that I guess.

23 Q Well, I never found a radar that wouldn't pick me up
24 me.

25 MR. LAWSON: Be that as it may, I have no further

1 questions, Your Honor. Answer any Mr. McLaughlin may
2 have.

3 THE COURT: Mr. McLaughlin.

4 CROSS-EXAMINATION

5 BY MR. MCLAUGHLIN:

6 Q Mr. Brown, would it be unusual for you to check my
7 bedspread at home and find my DNA on it?

8 A I suppose not unusual. I imagine depending on how
9 often you did your laundry.

10 Q You probably find it then. Is it unusual to find the
11 DNA of someone on bedding if that person had lived and
12 been on that bedding for two months?

13 A As long as there is some biological material deposit
14 because of body fluids, without the concentrated area,
15 stained areas, it would be difficult just based on may be
16 she had skin cells to find enough DNA.

17 Q But if there was some type of biological fluid that
18 got on that bedding, it would certainly stay there until
19 it had been cleaned?

20 A Exactly, yes.

21 Q Is there anyway to -- by the time, this stuff gets to
22 your office is there anyway to tell how old it is?

23 A No.

24 Q These items forensic stuff comes into your office
25 pretty regularly I would image. Are you familiar with the

1 paperwork that's done to submit these things and then to
2 send it on?

3 A Yes.

4 MR. MCLAUGHLIN: May I approach the witness, Your
5 Honor?

6 THE COURT: Yes, sir.

7 BY MR. MCLAUGHLIN:

8 Q Okay. Mr. Brown, what you have before you there is
9 something that was given over as part of discovery to the
10 defense. And it appears to be some type of request form
11 that the local authorities fill out when they send stuff
12 to you guys at SLED and ask for test to be done. Have you
13 ever seen one of those types of forms? Is that type of
14 form make it all the way to you?

15 A Yes, I'm familiar with these forms.

16 Q Okay. And I'm looking on the back page of that form.
17 It list the lab number L03-3515. What is that number?

18 A Every case that comes into forensic services
19 laboratory is assigned a case number and that is case
20 numbers for this particular case.

21 Q Mr. Brown, let me show you one other document. This
22 appears to me to be a report I guess that you prepared
23 kind of going along with what you just testified to; is
24 that right?

25 A This is a copy of -- appears to be a copy of the

1 report that I prepared based on the analysis of the
2 pillow.

3 Q Okay.

4 A And by the way, my last name is Bogan.

5 Q I'm sorry. I'm thinking about the last forensic guy.
6 My mistake.

7 A No problem.

8 Q On your report, you also put that number down as well
9 I believe; is that correct?

10 A Yes, sir.

11 Q Okay. And you just testified that all the evidence
12 that comes in on a certain case, you guys slap a specific
13 number on it so you can keep track of it; is that right?

14 A On the items of evidence or the case?

15 Q On the items of evidence; is that right?

16 A Yes.

17 Q Okay. Going back to that first piece of paper I
18 handed you, I'm looking at it on the last page items ten
19 and 11 oral are ten, 11, 12, 13 and 14 oral swab, rectal
20 swab, vaginal swabs, vaginal slide, oral slide, rectal
21 slide. Are those the items of evidence that your
22 testimony just now that you talked about testing are those
23 the same items of evidence?

24 A Yeah.

25 Q Okay.

1 MR. MCLAUGHLIN: At this time, I like to move for
2 both of these to be entered in evidence, Your Honor.

3 THE COURT: Any objection?

4 MR. LAWSON: Move what into evidence now?

5 MR. MCLAUGHLIN: Both of these documents into
6 evidence.

7 THE COURT: Mr. McLaughlin, if you would show
8 Mr. Lawson what you're trying to put in.

9 MR. LAWSON: I have no objection to the report he's
10 testified to that. To the forensic service request form,
11 I do have an objection, Your Honor. It's no reason for it
12 to be put in. He testified at this point and this is a
13 request from the coroner regarding Shannon Carter not the
14 defendant.

15 THE COURT: Well, I mean does that make it
16 inadmissible or you just don't understand the reason he's
17 doing it?

18 MR. LAWSON: I don't understand what the reason in
19 the world reason to admit it. Well, it's irrelevant.

20 MR. MCLAUGHLIN: Your Honor, it directly deals with
21 evidence they just -- they just offered into evidence what
22 was offered without any objection.

23 THE COURT: I'm going to allow it. Defense 3 is in
24 evidence.

25

1 MR. LAWSON: Your Honor, we offered testimony. We
2 didn't offer slides and we didn't offer the actual
3 evidence.

4 THE COURT: Hand me what you're admitting. And,
5 Mr. Lawson, your objection is that you don't feel these
6 documents are relevant is that -- I just want to make sure
7 I understand your objection.

8 MR. LAWSON: It's irrelevant, Your Honor. And it's
9 not related to -- this witness didn't prepare this
10 document. It's not prepared by him. There's no
11 indication ---

12 THE COURT: Well, now the report is his report.

13 MR. LAWSON: I understand that, Your Honor, and I
14 didn't object to the report.

15 THE COURT: I thought you objected to both of these
16 items.

17 MR. LAWSON: No, sir, I didn't object to it.

18 THE COURT: All right. Well, let me ---

19 MR. LAWSON: I mean, it's his report. I don't object
20 to that.

21 THE COURT: So you're objecting to the SLED
22 laboratory forensic services request?

23 MR. LAWSON: It's not prepared by this witness.

24 THE COURT: All right. Mr. McLaughlin, you want to
25 respond to that? I would agree that it wouldn't be able

1 to get this in with this witness.

2 MR. MCLAUGHLIN: Your Honor, I would simply say that
3 it's the relevancy. It deals with items that have been
4 testified to and offered up.

5 THE COURT: I understand that. However, this
6 gentleman did not prepare this document, so he would not
7 be able -- you would not be able to get it in through him.
8 You could certainly recall or you could call the
9 individual who prepared it if you wish to get it in that
10 way. And then, of course, subject to any objections, but
11 at least at this point, I'm going to sustain the objection
12 to the SLED laboratory forensic services request. The
13 report is in all right. And is my understanding this is
14 defense three. Mr. McLaughlin, has that been marked yet?

15 MR. MCLAUGHLIN: It has not.

16 THE COURT: Let's get that marked and that's Defense
17 3, Mr. Lawson, Mr. Bogan's report.

18 MR. LAWSON: Correct.

19 (WHEREUPON, Defendant's Exhibit No. 3 was admitted
20 into evidence.)

21 BY MR. MCLAUGHLIN:

22 Q Mr. Bogan, your testimony here today concerns the
23 stains and biological fluid and looking at those things to
24 get DNA evidence. What else can you look at to get DNA
25 evidence?

1 A You mean as far as items of evidence or body fluids?

2 Q Whatever you can look at -- things off of a human
3 sweat, saliva all that stuff comes from the human body.
4 What else from the human body can you look at to get DNA
5 evidence?

6 A Basically, any type of biological material comes from
7 the human body. I can potentially develop a DNA profile.
8 I give you some examples hair root for example, skin
9 cells, body fluids, body fluid such as blood, semen,
10 saliva. You can get DNA from teeth and the pulp material
11 on teeth. DNA profiles develop from bones, fingernail
12 scrapings, just about any type of material that biological
13 material coming from the human body there's a potential to
14 carrying DNA which I developed a profile.

15 Q So any biological material you can develop --
16 potentially develop a profile from?

17 A As long as it's human, yes.

18 Q The SLED laboratory evidence inventory sheet that I
19 showed you earlier and that we had found the slides and
20 swabs that you had looked at there appeared to be other
21 material that's listed on there that you didn't testify
22 about. Could you read for me the material that you did
23 not test on that sheet please?

24 A I had your sheet original, but I do have a copy.

25 Q I'm sorry here you go.

1 A I'll read from the copy that you provide me. Items
2 that I did not examine?

3 Q Please sir.

4 A There were basically various tubes of blood collected
5 from -- all these items were collected from Shannon Carter
6 according to this report or request. There was blood
7 samples that I did not examine although I did examine
8 another one urine, ocular fluids, bowel, gastric. It says
9 gastric I'm assuming that's gastric fluid. I think it
10 says left arm injection site. I don't know what that that
11 is brain, liver. It lists the oral slide which I did not
12 find in inventory pulled pubic hair, pulled head hair,
13 loss hair pubic. I think that's what it says, loose hair
14 from chest. And there's a sheet listed and I don't think
15 I examine anything from the sheet. Just on that last
16 page?

17 Q Yes, sir, that's all. The -- I believe Mr. Solicitor
18 Lawson asked you about State's 20?

19 MR. LAWSON: I believe I can straighten out that
20 problem with just one word, Your Honor. It's toxicology
21 that's where item 20 went to DNA.

22 THE COURT: All right.

23 BY MR. MCLAUGHLIN:

24 Q I guess I'm a little confused, Mr. Bogan, because I
25 understand that you test the DNA and there appears to be

1 more DNA type stuff that was submitted and may be you can
2 help me trace that out.

3 MR. MCLAUGHLIN: May I approach, Your Honor?

4 THE COURT: Yes.

5 Q I'm going to show you two pages that say trace
6 evidence department at the top. And I guess what I'm
7 trying to figure out here is are there two different -- at
8 SLED do y'all separate out what you're going to test for
9 DNA and you get some of it and somebody else get something
10 else?

11 A Evidence is separated according to which department
12 might work it. Again, I specialize DNA analysis. There
13 is trace department. They specialize in examining
14 evidence request for different area of science. I don't
15 share my DNA evidence with them. In other words, DNA
16 evidence doesn't necessarily go to them. Sometimes
17 evidence needs to be evaluated by another department
18 before it's either submitted or handed off to another
19 laboratory. I don't know if that helps answer your
20 question or not.

21 Q Well, I understand. I'm probably not asking it very
22 well, but if I had some trace evidence that I wanted to
23 have a DNA profile built off of, would the trace evidence
24 department handle that or would they need to work with you
25 to get you to do a profile off of some type of trace

1 evidence they had discovered?

2 A If it went for analysis -- if an item of evidence
3 went to the trace department and they discovered through
4 examination that there is some potential biological
5 material that DNA analysis could be performed, they would
6 then make a decision probably through consultation with
7 the submitting agency or whoever initially submitted that
8 on the DNA list.

9 Q And could you tell me -- what is that report that I
10 handed you?

11 A First time I ever seen this report. It appears to be
12 a copy issued by South Carolina Law Enforcement Division
13 trace evidence department regarding some items of evidence
14 and sign by a trace examiner who's a special agent with
15 the South Carolina Law Enforcement Division.

16 Q And I know that that's not your report. You didn't
17 do any testing on that, but could you tell me what items
18 are listed on that report?

19 MR. LAWSON: Objection, Your Honor, to hearsay. He
20 didn't write the report and until that person comes in ---

21 THE COURT: Sustained.

22 MR. MCLAUGHLIN: No further questions, Your Honor.

23 THE COURT: Anything on redirect examination?

24 MR. LAWSON: May it please the Court, just a couple
25 of questions.

REDIRECT EXAMINATION

BY MR. LAWSON:

Q Agent Bogan, if you're doing a -- are you requested to produce a profile on someone for DNA purposes, what is the best source that you can have to produce that profile?

A A known blood standard.

Q And if you receive a known blood standard and you produce a profile from that, would you then go to some other known object or known provider of possible DNA to try and develop the profile of that same individual?

A I have done that before, yes. Sometimes, the blood sample that I receive is degraded or petrified and sometimes submitted along with that might be another sample that I can use as a standard. It's a known biological standard might be in the form of dried saliva. I've even done some for known -- hair that has been pulled that has hair roots on it, but that doesn't happen routinely.

Q All right. If you have a good blood sample and produced a strong profile, would you have any reason to go somewhere else looking to develop a profile?

A No.

Q And you would use that profile against any unknown material that developed a profile to -- if you were trying to match it to that individual?

1 A That's correct.

2 Q And you don't work in the toxicology department at
3 SLED, do you?

4 A No, I don't.

5 MR. LAWSON: No further questions, Your Honor.

6 THE COURT: Any recross?

7 MR. MCLAUGHLIN: No, Your Honor.

8 THE COURT: All right. Thank you, sir, you may step
9 down.

10 MR. LAWSON: We ask that Agent Bogan to be released.

11 THE COURT: Absolutely. You're excused.

12 (WHEREUPON, the witness leaves the witness stand.)

13 MR. LAWSON: May we approach, Your Honor.

14 THE COURT: Yes, sir.

15 (WHEREUPON, a bench conference was held in the
16 presence of the jury, but out of the hearing of the
17 jury.)

18 THE COURT: All right. Ladies and gentlemen, I'm
19 going to send you back to your jury room for a few
20 minutes. And just so you'll understand logistically we
21 have witnesses in several areas of the building. We have
22 to go and get them. And so, Mr. Lawson needs a few
23 minutes to gather the next group of witnesses he's got
24 together. If you'll please retire to your jury room.
25 Please have no discussions about this case and we'll start

1 back -- it want be that long, so it'll be about five
2 minutes we'll start back.

3 (WHEREUPON, a break was taken.)

4 THE COURT: Mr. Lawson, you ready to proceed?

5 MR. LAWSON: Give me one second, Your Honor, let me
6 find Mr. Hill he's doing the next witness.

7 (WHEREUPON, a pause in the proceedings.)

8 THE COURT: You ready to proceed?

9 MR. HILL: I am, Your Honor.

10 THE COURT: All right. Defense ready to proceed?

11 MR. HILL: We are, Your Honor.

12 THE COURT: All right. Please ask the members of the
13 jury to please join us, Ms. Joe.

14 (WHEREUPON, the jury returned to the courtroom.)

15 THE COURT: All right. Ladies and gentlemen, thank
16 you very much. And, Mr. Hill, you may call your next
17 witness.

18 MR. HILL: Thank you, Your Honor. Jason Dore.

19 THE CLERK: Please place your left hand on the Bible
20 and raise your right hand. Do you swear or affirm the
21 testimony you give in this case to be the truth, the whole
22 truth, and nothing but the truth so help you God?

23 MR. DORE: I do.

24 THE CLERK: Please be seated and state your full name
25 for the record.

1 MR. DORE: Jason Dore.

2 WHEREUPON,

3 Jason Dore,

4 after first having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HILL:

7 Q Mr. Dore, with whom are you employed.

8 A Florence County sheriff's office.

9 Q And how long you been employed with that office?

10 A A little over 13 years.

11 Q During the year of 2003 and 2004, what department
12 were you in?

13 A I was assign to the forensic division.

14 Q Okay. Based upon your work during those years, are
15 you familiar with the case that brought you here today?

16 A Yes, I am.

17 Q Okay. As an officer involved in this case, did you
18 handle any evidence that was collected in this case?

19 A I did.

20 Q Okay. Familiar with the chain of custody?

21 A Yes, sir, I am.

22 Q Okay. Were you involved in the chain of custody with
23 the evidence in this case?

24 A I was.

25 Q I need to ask you specifically about two items of

1 evidence that we discussed today and I need to establish a
2 chain with you. First, I'm going to show you what's been
3 marked as State's Exhibit 7 for identification purposes.
4 Did you examine that document and tell me if you recognize
5 it?

6 A I do.

7 Q What is it?

8 A It's hair that was received from the autopsy of the
9 victim.

10 Q Okay. And did you receive that item after the
11 autopsy was performed?

12 A I did.

13 Q And after the body was delivered back to Florence
14 County?

15 A That's correct.

16 Q Okay. After you retrieved that item -- by the way,
17 who gave it to you when it was brought back?

18 A Paramedic or EMT, Florence County EMS by the name of
19 Donald Fore.

20 Q Okay. So he delivered the body back to you?

21 A He did not deliver the body back to me. When he
22 returned from the autopsy, he brought back several pieces
23 of evidence and I met him. Basically, it was items of
24 evidence from him.

25 Q After he gave you that hair, where did you take it?

1 A I took it to the sheriff's office and logged it in in
2 the evidence room.

3 Q And do your records reflect that that's what you did?

4 A Yes, sir, it does.

5 Q Next I need to show you what's been marked for
6 identification purposes as State's Exhibit Number 20?

7 A Okay.

8 Q Do you recognize that?

9 A Yes, sir, I do.

10 Q What is it?

11 A It is the hair that I took to SLED to be analyzed
12 which came out of a kit I believe.

13 Q All right. So you retrieved that item from Florence
14 County evidence?

15 A Right. It was logged into the evidence room and I
16 logged it out of evidence room and transported it to SLED
17 headquarters to the lab at SLED to be analyzed.

18 Q And that's in Columbia?

19 A That's correct.

20 Q And when you left it at SLED, did you have to sign
21 off on that document?

22 A I did and my signature appears on the outside of the
23 envelope, as well as the heat seal with my initials.

24 Q Did that complete your involvement with the evidence
25 in this case?

1 A Yes, sir, it did.

2 MR. HILL: Thank you. I have no other questions.

3 MR. MCLAUGHLIN: No, Your Honor. Thank you, sir.

4 THE COURT: Thank you, sir, you may step down.

5 MR. HILL: Your Honor, we ask Mr. Dore be excused.

6 THE COURT: Any objection?

7 MR. MCLAUGHLIN: No, Your Honor.

8 THE COURT: You're excused from your subpoena, sir.

9 (WHEREUPON, the witness leaves the witness stand.)

10 MR. HILL: Your Honor, the next witness we call we
11 would be Adam Moore.

12 THE COURT: All right.

13 MR. HILL: Your Honor, may we approach.

14 (WHEREUPON, a bench conference was held in the
15 presence of the jury, but out of the hearing of the
16 jury.)

17 THE COURT: Ladies and gentlemen, let me just explain
18 to you while we're waiting for this next witness. The
19 witnesses involved in this trial are sequestered. In
20 other words, all the witnesses are outside the presence of
21 the courtroom. And purpose for that is so that one
22 witness can't springboard off another witness so to speak.
23 So that every witness' testimony is based on their
24 recollection and not what they heard from someone else.
25 And so that's why it requires us to take may be a little

1 bit of time between witnesses that we wouldn't normally
2 have to do to go and retrieve those witnesses and bring
3 them into court cause of the number of witnesses, the
4 volume of them. There's numerous witnesses. We have some
5 are down here in this room, some are over here so...
6 Anyway that's just what we're going through so you'll -- I
7 don't want it to appear that one side isn't prepared.
8 They're well prepared. It's just we have to make due with
9 the facilities that we have to house these various
10 witnesses. Mr. Hill.

11 MR. HILL: Thank you, Your Honor. At this time, we
12 call Adam Moore.

13 THE COURT: Mr. Moore, if you come around please,
14 sir.

15 THE CLERK: Please place your left hand on the Bible
16 and raise your right hand. Do you swear or affirm the
17 testimony you give in the case will be the truth, the
18 whole truth, and nothing but truth so help you God?

19 MR. MOORE: I do.

20 THE CLERK: Please be seated and state your full name
21 for the record.

22 MR. MOORE: Adam Moore.

23 WHEREUPON,

24 Adam Moore,

25 after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 BY MR. HILL:

3 Q Mr. Moore, by whom are you employed?

4 A Florence County sheriff's office.

5 Q And what is your title and job at that office?

6 A Right now I'm corporal over forensics technician
7 crime scene unit.

8 Q During the years of 2003 and 2004, were you employed
9 in the forensic's office there?

10 A I was.

11 Q Did you work in the Florence County sheriff's
12 evidence room?

13 A I did.

14 Q And as -- were you a deputy at that time?

15 A In '03, I was not. In 2004, I was appointed full
16 time to run evidence room.

17 Q In '03, I believe you were an intern; is that
18 correct?

19 A Yes, sir.

20 Q But as a part of your responsibilities, were you
21 allowed to handle evidence and take it into evidence in
22 the evidence room?

23 A Yes, sir, I was.

24 Q And did some -- were you also allowed to travel back
25 and forth from Florence to Columbia to SLED to deliver or

1 retrieve evidence?

2 A In 2003?

3 Q Or 2004?

4 A I started in 2004.

5 Q Okay. I need to show you a few pieces of evidence

6 and complete a chain. Show you what's been marked as

7 State's Exhibit Number 7 for identification. Did you

8 examine that evidence and tell me what it is and whether

9 you recognize it and what you did with it?

10 A Yes, sir. I recognized it. This is marked on the

11 envelope as item number 123317 and it is described as hair

12 from autopsy. This package I picked up from David Brown

13 and I went to SLED on August the 19th of 2004, after I

14 started full time. And I picked up this package and we --

15 David and I brought it back to our evidence room and it

16 was secured in our evidence room.

17 Q And you secured it there; is that correct?

18 A Yes, sir.

19 Q And followed all the procedures properly in doing

20 that; is that correct?

21 A Yes, sir.

22 Q I need to show you what's been marked as State's

23 Exhibit Number 20 for identification. Would you examine

24 that and tell us the same information?

25 A This is one of our evidence packages labeled item

1 number 123320 and it's traced from the suspect kit. This
2 would have been brought back on the same day David and I
3 went to SLED. And it was secured in our evidence room.

4 Q And so you delivered it and returned it; is that
5 correct?

6 A No, sir. I just picked it up from SLED and returned
7 it to the evidence room. I didn't take it to SLED.

8 Q And did you follow all the procedures correctly?

9 A Yes.

10 MR. HILL: Answer any questions that the defense may
11 have.

12 THE COURT: Mr. McLaughlin.

13 CROSS-EXAMINATION

14 BY MR. MCLAUGHLIN:

15 Q State's 7, Mr. Moore, is that correct that you picked
16 that up from the autopsy? Is that what you testified to?

17 A No, sir. David and I went to SLED. Corporal Brown
18 on the 19th of August in 2004. We then picked up the
19 envelope, the package containing SLED evidence and brought
20 it back to our evidence room.

21 MR. MCLAUGHLIN: Thank you. No further questions.

22 MR. HILL: No further questions, Your Honor.

23 THE COURT: You may step down, sir.

24 (WHEREUPON, the witness leaves the witness stand.)

25 MR. HILL: Your Honor, at this time, the State would

1 move State's Exhibits Numbers 7 and 20 previously marked
2 for identification be admitted into evidence.

3 THE COURT: Any objections, Mr. McLaughlin?

4 MR. MCLAUGHLIN: None, Your Honor.

5 THE COURT: All right. Without objection State's
6 Number 7 and State's 20 are in evidence.

7 (WHEREUPON, State's Exhibit Nos. 7 and 20 was
8 admitted into evidence.)

9 MR. HILL: May we have just a moment?

10 THE COURT: Yes.

11 (WHEREUPON, a pause in the proceedings.)

12 MR. HILL: Your Honor, the State would call Harry
13 Brown.

14 THE COURT: Ask Mr. Brown to step in please.

15 THE CLERK: Please place your left hand on the Bible
16 and raise your right hand. Do you swear or affirm the
17 testimony you give in this case be the truth, the whole
18 truth, and nothing but the truth so help you God?

19 MR. BROWN: Yes.

20 THE CLERK: Please be seated and state your full name
21 for the record.

22 MR. BROWN: Harry Devon Brown.

23 WHEREUPON,

24 Harry Brown,

25 after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 BY MR. HILL:

3 Q Mr. Brown, by whom are you employed?

4 A Florence County detention center.

5 Q And how long have you worked in that department?

6 A Approximately 11 years.

7 Q Okay. And as a detention center officer is one of
8 your responsibilities fingerprinting inmates or people
9 when they come in to be booked?

10 A Yes.

11 Q Okay. Do you recall making a set of fingerprints for
12 Mr. Kevin Walton?

13 A Yes.

14 Q I want to show you this document, this card. Will
15 you tell us what it is?

16 A Fingerprint card.

17 Q Is it a card that you made?

18 A No, sir.

19 Q Did you take the prints that are on the card?

20 A Yes.

21 Q Okay. You didn't make the paper, but you put the
22 prints on there; right?

23 A Yes.

24 Q That's what I needed to establish. When you made
25 these prints, did you follow all your procedures;

1 correctly?

2 A Yes.

3 MR. HILL: Your Honor, at this time, I don't believe
4 there's an objection. The State would move fingerprint
5 card testified to into evidence as State's 21.

6 MR. MCLAUGHLIN: I don't think there's going to be
7 any objection, but I have one question I would like to
8 ask.

9 THE COURT: All right. Let you question the witness
10 with regards to that.

11 CROSS-EXAMINATION

12 BY MR. MCLAUGHLIN:

13 Q Mr. Brown, when did you do those fingerprints?

14 A I can't recall.

15 Q You can't recall?

16 A I can't recall exactly when.

17 Q Recently?

18 A Recently.

19 Q Within the last two weeks?

20 A I believe so.

21 THE COURT: All right. Any objection?

22 MR. MCLAUGHLIN: No, Your Honor.

23 MR. HILL: Just one follow-up, Your Honor.

24 REDIRECT EXAMINATION

25

1 BY MR. HILL:

2 Q Mr. Brown, do you recognize the gentlemen that you
3 fingerprinted?

4 A Yes.

5 Q Do you see him in the courtroom?

6 A Yes.

7 Q Will you point him out to us? Who are you pointing
8 out?

9 A White gentlemen wearing eye glasses and a stripped
10 shirt.

11 Q You know his name?

12 A Kevin Walton.

13 MR. HILL: Thank you, Your Honor. That's all we
14 have.

15 THE COURT: Then that's State's 23 is in evidence
16 without objection.

17 (WHEREUPON, State's Exhibit No. 23 was admitted into
18 evidence.)

19 THE COURT: All right. You may call your next
20 witness.

21 MR. LAWSON: May we approach, Your Honor.

22 THE COURT: Yes, sir.

23 (WHEREUPON, a bench conference was held in the
24 presence of the jury, but out of the hearing of the
25 jury.)

1 THE COURT: You may call your next witness.

2 MR. LAWSON: May it please the Court, the State would
3 call Theresa Bennett.

4 THE COURT: Ms. Bennett, please come around to the
5 witness stand.

6 THE CLERK: Place your left hand on the Bible and
7 raise your right hand. Do you swear or affirm the
8 testimony you give in this case be the truth, the whole
9 truth, and nothing but the truth so help you God?

10 MS. BENNETT: I do.

11 THE CLERK: Please be seated and state your full name
12 for the record.

13 MS. BENNETT: My name is Theresa Bennett.

14 WHEREUPON,

15 Theresa Bennett,
16 after first having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. LAWSON:

19 Q And, Theresa, where do you live?

20 A In Johnsonville.

21 Q And how long you lived in Johnsonville?

22 A About two years.

23 Q And how old are you?

24 A Eighteen.

25 Q When did you turn 18?

1 A In August.

2 Q In August of?

3 A This year or last year.

4 Q Last year. We hadn't had August yet. You getting
5 ahead of yourself. You graduated from high school this
6 year?

7 A Yes, sir.

8 Q Now, do you know B.B.

9 A Yes, I do.

10 Q And did you know Shannon Carter?

11 A Yes, I did.

12 Q How did you know them?

13 A B.B. had been my best friend since I had known
14 her since I was about five years old and I had known
15 Shannon through my mother.

16 Q All right. And are you older, younger, same age?

17 A I'm a little older than B.B.

18 Q How much older?

19 A About three years.

20 Q About three years. And but y'all been close for a
21 long time?

22 A Many years.

23 Q And before you lived in Johnsonville, where did you
24 live?

25 A In Pamplico.

1 Q Where in Pamplico?

2 A On [REDACTED].

3 Q You remember the address?

4 A [REDACTED].

5 Q And where did B.B. live on [REDACTED] in

6 Pamplico?

7 A Two doors up from me.

8 Q Two doors up?

9 A Yes, sir.

10 Q All right. And you lived in a duplex that's two
11 apartments?

12 A Yes, sir.

13 Q And then there was between you and B.B. there was
14 a single apartment?

15 A Yes, sir.

16 Q All right. And when did y'all live there?

17 A We move there in my eighth grade year, right before
18 my eighth grade year and all way up until I was a
19 sophomore.

20 Q And so were you living there in 2003?

21 A Yes, sir.

22 Q In March of 2003?

23 A Yes, sir.

24 Q And was there a night in March where you stayed with
25 B.B.

1 A I probably stayed with them many nights.

2 Q A lot of nights?

3 A Yes, sir.

4 Q That's good. And do you recall specifically any of
5 those nights?

6 A Probably every weekend.

7 Q What about during the week, you ever stay over there
8 during the week?

9 A Every so often I stayed late helping her with
10 homework and stay the night.

11 Q All right. Were you -- basically sounds like a big
12 sister to her?

13 A Yes, sir.

14 Q And she was your little sister, I guess?

15 A Yes, sir.

16 Q And what about Shannon Carter how well did you know
17 Ms. Shannon?

18 A She was like a second mother to me.

19 Q And had she been that way as long as you known her?

20 A For pretty much since I moved to South Carolina, yes,
21 sir.

22 Q All right. In March of 2003, did something bad
23 happen?

24 A Something very bad happened.

25 Q How about if you would let's go back and tell the

1 jury if you can what you recall the night of March the
2 27th in the morning of March the 28th of 2003?

3 A I remember helping B.B. going over to her house
4 after school and help B.B. with her homework. I think
5 she had a science test the next day and so I was helping
6 her with her homework and ---

7 Q You remember what day of the week it was?

8 A It was a Thursday night. And so I decided to help
9 her with her homework and Shannon wanted to go out. And
10 so she and Kevin and mom decided to go out. And they were
11 saying they were going to Mona Lisa's and they left about
12 nine o'clock. They were gone most of the night. I stayed
13 with B.B. because she was still only 11. I wanted to
14 make sure she wasn't home alone. And when they got back
15 about one o'clock, I decided to just go home because I had
16 planned on staying the night, but I didn't have any
17 clothes to stay the night, so I just went on home. I was
18 locking the door behind me and I was telling Shannon
19 goodnight. And I went home looked at the clock it was
20 probably one that's about one and just went to bed. Next
21 thing I know someone was banging on my door. My first
22 reaction was that I had been late for school and I had
23 overslept cause I knew it was late when I got home. But I
24 looked at the clock it was about 6:05, so I was wondering
25 who was at my door and it was B.B. coming to tell me

1 that her mom was dead that Kevin had killed her. And he
2 took her car and she was gone.

3 Q All right. Now, you say 6:05 why does that number
4 stick out in your mind?

5 A Because I wake up in the middle of the night at 6:05
6 almost every morning.

7 Q You just remember looking?

8 A I remember looking at my clock. It was on my
9 headboard.

10 Q And your first thought was you were -- you had
11 overslept?

12 A Yes, sir.

13 Q Until you saw the clock?

14 A Yes, sir.

15 Q What did you do then?

16 A I got up and went to the door.

17 Q All right. Where was your mom at this time?

18 A Me and my mom made met about in the hallway and we
19 went to the door together.

20 Q Who open the door?

21 A I believe I did.

22 Q And when you open the door what did you see?

23 A B.B. crying. She's upset, really incoherent
24 about what she was saying, but because we had been best
25 friends for so many years, I could understand what she was

1 saying. And she was really upset because she didn't know
2 what to do. And she wanted to be with somebody who would
3 comfort her and somebody that could do something for her.

4 Q And you could tell that she was -- visually you could
5 look at her and tell she was upset?

6 A Yes, sir.

7 Q All right. What did you do at that point?

8 A I went over to the house with my mom and B.B.
9 And I was -- I stayed in the kitchen with B.B. while
10 my mom went to check on the body.

11 Q Okay. Did you -- did you go back to Ms. Carter's
12 bedroom?

13 A No, I did not.

14 Q You stayed with B.B.

15 A Yes, sir.

16 Q The -- how long was your mom gone?

17 A I don't know. I was with B.B. trying to comfort
18 her trying to make sure she was all right, but it may be
19 one or two minutes.

20 Q What did y'all do then?

21 A My mom came in and she was on the phone with 911.

22 Q And what were you and B.B. doing?

23 A Sitting in the kitchen crying.

24 Q And what happened next?

25 A We sat around not knowing what to do. My mom went

1 back with the body because she done -- wanted to do CPR.
2 So she said I'm going to do CPR. She went back there. Me
3 and B.B. stayed in the front room because I didn't
4 want her to see that. I stay with her made sure that she
5 was doing okay.

6 Q Do you remember what kind of car Ms. Carter had?

7 A A Chevy Cavalier.

8 Q And what color was it?

9 A White.

10 Q You remember -- do you know what model it was.

11 A I don't know much about cars.

12 Q Okay. Was it there when you woke up?

13 A No, sir, that was one of the first things that I
14 noticed that it was gone.

15 Q All right. And could you see the driveway or the
16 parking place for the cars at B.B. house from your
17 house?

18 A Yes, sir.

19 Q And at what point did you realize that the car was
20 gone?

21 A When I was going to the house after B.B. had come
22 to the door. When she said that the car was gone, I
23 looked and could see that it was gone.

24 Q And when you left the night before, was the car
25 there?

1 A Yes, sir.

2 Q Did you actually see it there?

3 A Yes, sir.

4 Q When you walk out of the door to their apartment,
5 would the car be basically dead in front of you?

6 A Yes, sir, you can see it.

7 Q You be right in front of it. And you saw it that
8 night?

9 A Yes, sir.

10 Q And this is somewhere between one and 1:30 this
11 morning?

12 A Yes, sir.

13 Q And then at some five minutes after six the next
14 morning the car was gone?

15 A Yes, sir.

16 Q All right. Now, at one o'clock in the morning of
17 March the 28th, who came back from having gone out do you
18 remember?

19 A Shannon and Kevin came in and my mom went on home
20 because I was at B.B.

21 Q So your mom didn't come in?

22 A No, sir.

23 Q But she was outside?

24 A I assume she went on home.

25 Q Was she at home when you got there?

1 A Yes, sir.

2 Q All right. Now, how long did you stay after she had
3 left?

4 A I let Shannon get settled in, made sure B.B. was
5 okay because I think she was asleep when I left. And it
6 was probably less than five minutes before I left.

7 Q All right. So the same three people came back that
8 left to go out that evening?

9 A Yes, sir.

10 Q There's no question in your mind about that?

11 A No, sir.

12 Q The next morning at six o'clock your mom was there?

13 A Yes, sir.

14 Q Shannon Carter was dead?

15 A Yes, sir.

16 Q And Kevin Walton was gone?

17 A Yes, sir.

18 Q And have you seen Kevin Walton since that night at
19 one o'clock in the morning?

20 A No, sir.

21 Q All right. Is he in this courtroom?

22 A Yes, sir.

23 Q Where is he?

24 A At defense table.

25 Q And does he look the same now as he did then?

1 A No, sir.

2 Q How long did y'all stay there at that apartment until
3 you moved to Johnsonville?

4 A A couple more years because it happen when I was in
5 the eighth grade and I didn't move until I was a
6 sophomore.

7 Q All right. That area there were you lived did you
8 have a lot of problems there or was it a pretty decent
9 place?

10 A It was a pretty decent place to live small town.

11 MR. LAWSON: Thank you. Answer any questions
12 Mr. McLaughlin may have.

13 MR. MCLAUGHLIN: Please the Court.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. MCLAUGHLIN:

17 Q Teresa, my name is Patrick McLaughlin. I'm attorney
18 for Mr. Walton. I'm real sorry that you got to be here
19 today. I'm sorry that somebody so close to you -- it's
20 unfortunate thing that happen to them. You don't need to
21 take a break before go on, do you?

22 A I'm fine.

23 Q Okay. I got to ask you some questions. Some of
24 those question may make you a little bit uncomfortable,
25 that's not what I'm trying to do. I just have to make

1 sure that we give the jury the best set of facts we can?

2 A Okay.

3 Q How long had you lived in the neighborhood?

4 A We had lived there since I had my first year of my
5 eighth grade year.

6 Q Okay. And would have been what how many years before
7 the March 28th, 2003 night?

8 A I guess only a couple months because I was still in
9 the eighth grade when this happened.

10 Q All right. You testified that you were over there a
11 pretty good bit that y'all were like sisters almost?

12 A Yes, sir.

13 Q And it sounds like you -- in fact, you made a comment
14 you didn't like leaving her alone, so you would stay over
15 there with her a good bit; is that right?

16 A Yes, sir.

17 Q Is it fair to say that you wound up kind of baby
18 sitting?

19 A Yes, sir.

20 Q For her a pretty good bit. Did you have a key to the
21 house to get in if you needed to get in when you were baby
22 sitting for her?

23 A No, sir.

24 Q Okay. How would you usually get into the house if
25 you went over there and needed to stay with her because

1 her mom was gone?

2 A Just knock on the door.

3 Q Okay. Do you know whether or not your mother had a
4 key to the house?

5 A I don't think that she did.

6 Q You testified that you think that everybody got back
7 that night about one o'clock; is that right?

8 A Yes, sir.

9 Q Okay. And then you said that you stuck around a
10 little bit, I guess, until you made sure they didn't need
11 you any more and then you went home; is that right?

12 A Yes, sir.

13 Q And when you got over to your house, I guess got
14 settled in, you thought it was about one o'clock?

15 A Yes, sir, a little after.

16 Q Okay. Do you remember when Mr. Walton kind of showed
17 up on the scene there in y'all's neighborhood?

18 A It was about February, early February.

19 Q Okay. What was your understanding of the
20 relationship that he had with Ms. Shannon?

21 A They were boyfriend and girlfriend.

22 Q Okay. And he was living there with them?

23 A Yes, sir.

24 Q Okay. Did he live there with them that whole time he
25 was there?

1 A Yes, sir.

2 Q Do you know whether or not Ms. Shannon ever had any
3 other boyfriends live over there with her?

4 A No, sir.

5 Q Did -- do you have any reason to think that
6 Ms. Shannon was ever scared?

7 A No, sir.

8 Q Of Mr. Walton?

9 A No, sir.

10 Q Okay. Sounds kind of like a woman who want be scared
11 of much?

12 A No, sir.

13 Q Did you ever -- Theresa, did you ever go on any types
14 of trips with Shannon and her mom and Mr. Walton or at any
15 time?

16 A I went on a trip with Shannon and Mr. Walton, no.

17 Q Y'all never went to North Carolina together?

18 A No, sir.

19 Q Okay. How about did y'all go to the circus together
20 anything like that?

21 A No, sir.

22 MR. MCLAUGHLIN: That's all the questions I have.

23 THE COURT: Any redirect?

24 MR. LAWSON: None, Your Honor.

25 THE COURT: Thank you, ma'am. You may step down.

1 (WHEREUPON, the witness leaves the witness stand.)

2 MR. LAWSON: May we approach?

3 THE COURT: Yes.

4 (WHEREUPON, a bench conference was held in the
5 presence of the jury, but out of the hearing of the
6 jury.)

7 THE COURT: All right. Ladies and gentlemen, we're
8 going to stop for the evening. It's about 12 minutes to
9 five. We'd ask that you be back in your jury room
10 tomorrow morning at 9:30 ready to go back to work.

11 Again, let me ask everyone to please try to get some
12 rest tonight. Some of you look like you are struggling
13 little bit with being a little tired. I'm tired. To the
14 extent, I can do something about the temperature in here I
15 will try. Sometimes, they tell me they can do something
16 about it. Sometimes, I'm told they have to control it out
17 of Atlanta. I don't know what the truth is. If anybody
18 is uncomfortable, if you let me know that I'll try to do
19 something, try to have a good evening and get some rest.
20 If you would please, if you taken any notes or anything
21 like that, if you would leave your pads and everything in
22 the jury room. You're not allowed to take any of those
23 materials out of the courtroom.

24 Again, you know the scheme here. Do not allow anyone
25 to talk with you. Don't talk with anyone about the case.

1 I will tell you more than likely as the week goes on love
2 ones will talk to you more and more about what's going on,
3 what's going on, how much longer whatever. To be honest
4 with them, tell them you don't know because we don't know,
5 but just explain to them that you're not allowed to talk
6 about it. And there come a time when you can fill them in
7 on everything, but until that time, I ask them to please
8 respect your request that they not talk to you. Have a
9 good evening. And if you please, be back in your jury
10 room at 9:30 in the morning.

11 (WHEREUPON, the jury was excused for the day.)

12 THE COURT: All right, ladies and gentlemen --
13 anything that we need to do this afternoon, Mr. Lawson,
14 Mr. McLaughlin, still?

15 MR. LAWSON: No, sir.

16 THE COURT: Mr. McLaughlin, what time would you like
17 Mr. Walton to be back over?

18 MR. MCLAUGHLIN: Same time, Your Honor, 8:30.

19 THE COURT: All right. We'll be in recess until
20 tomorrow morning resume at that point.

21 (WHEREUPON, the proceedings were concluded for the
22 day to be reconvened on April 25, 2007.)

23 THE COURT: Is there anything we need to take up
24 before we bring the jury out and proceed?

25 MR. LAWSON: Nothing from the State, Your Honor.

1 MR. MCLAUGHLIN: None from the defense?

2 THE COURT: All right. Ms. Joe, if you would ask the
3 members of the jury to join us please.

4 (WHEREUPON, the jury returned to the courtroom.)

5 THE COURT: Good morning, ladies and gentlemen. I
6 hope everyone had a nice evening and are ready to go back
7 to work this morning. We left off yesterday with the
8 State's case and we'll continue this morning. Mr. Lawson,
9 you may call your first witness, sir.

10 MR. LAWSON: May it please the Court, the State would
11 call Dr. Janet Ross.

12 THE COURT: All right, Dr. Ross, if you come around
13 please.

14 THE CLERK: Place your left hand on the Bible and
15 raise your right hand. Do you swear or affirm the
16 testimony you give in this case be the truth, the whole
17 truth, and nothing but the truth so help you God?

18 DR. ROSS: I do.

19 THE CLERK: Please be seated and state your full name
20 for the record.

21 DR. ROSS: Janice Edwards Ross.

22 WHEREUPON,

23 Dr. Janice Ross,
24 after first having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. LAWSON:

2 Q And, Dr. Ross, where are you from?

3 A Newberry, South Carolina.

4 Q And are you employed in Newberry?

5 A Yes, with Newberry Pathology Associates.

6 Q In what position?

7 A As a forensic pathologist.

8 Q And how long have you been so employed?

9 A Seven years.

10 Q How long have you been -- is that -- you are a doctor
11 with the specialty in forensic pathology?

12 A Yes.

13 Q And how long have you been practicing medicine?

14 A For 30 years.

15 Q And what is your training please, ma'am?

16 A I received a bachelor's degree from the University of
17 South Carolina in biology. And then I receive my MD from
18 Upstate Medical Center in Syracuse, New York. Did my
19 training there in pathology which is the study of disease
20 and received board certification in three areas of
21 pathology including anatomic pathology, clinical
22 pathology, and forensic pathology.

23 Q All right. And what is the difference between those
24 three pathologies?

25 A A pathologist learns how to identify and diagnose

1 diseases by looking at tissues that comes out you from
2 surgery for instance, looking at blood cells. We
3 generally run a laboratory in the hospital, that's called
4 anatomic and clinical pathology. Forensic pathology the
5 word forensic means legal. So we use our pathology
6 training for anything forensic and legal matter and
7 including autopsies on accidental deaths, suicides,
8 homicides, include such things as rape victims.

9 Q And how long have you been a forensic pathologist?

10 A I been doing autopsies for coroners for 30 years,
11 was board certified in that specialty in 1985.

12 Q Have you testified in court before today?

13 A Yes.

14 Q On how many occasions?

15 A In South Carolina about 42 times.

16 Q And you have been a -- you've been qualified in other
17 courts as well?

18 A Yes.

19 Q And what are some of those courts?

20 A Civil court and federal court.

21 Q And federal courts here in South Carolina?

22 A Yes.

23 Q And what have you been qualified in those courts as
24 well?

25 A A forensic pathologist.

1 MR. LAWSON: Your Honor, we would offer Dr. Ross as
2 an expert in the area of forensic pathology.

3 THE COURT: Any objection?

4 MR. MCLAUGHLIN: No objection, Your Honor.

5 THE COURT: All right. Without objection.

6 BY MR. LAWSON:

7 Q Dr. Ross, in your position as a forensic pathologist,
8 did you have occasion to become involved in a case
9 involving the deceased Shannon Carter?

10 A Yes.

11 Q And would you explain to the jury how that occurred?

12 A Yes, I participated along with Dr. Joel Sexton in the
13 autopsy of Shannon Carter on March 29th 2003.

14 Q And how -- do you work with Dr. Sexton?

15 A Yes.

16 Q And is it just the two of you in Newberry Pathology
17 that are the pathologist?

18 A Right now. In 2003, there were three of us.

19 Q All right. And what was the purpose of your
20 involvement in this case?

21 A To assist in the autopsy. And with two of us there
22 when it comes time for court and one was out of town, the
23 other one testifies.

24 Q And what -- why did y'all become involved in this
25 case?

1 A We were asked by the Coroner Bubba Matthews to do the
2 autopsy.

3 Q And what was the reason for the request for an
4 autopsy?

5 A Suspicious death.

6 Q And any time there's a suspicious death that is when
7 coroners routinely ask for autopsies?

8 A Yes.

9 Q And during the autopsy of Shannon Carter was there a
10 determination made as to the cause of death?

11 A Yes.

12 Q And what was that, Doctor?

13 A It was asphyxia meaning not enough oxygen getting to
14 the brain due to compression of the neck.

15 Q And where there certain physical things that led you
16 to these findings?

17 A Yes.

18 Q Explain to the jury what those were?

19 A First of all, we noted what's called petechia over
20 the face and in the -- around the eye whites of the eye.
21 These little petechia are actually little areas of
22 hemorrhage where blood is forced out of little tiny blood
23 vessels capillaries. And this is caused by compression of
24 the blood vessels this level of the neck because we could
25 see injury in the voice box of the larynx and bruises

1 around the muscles there and that's where the compression
2 was. When you compress the front of the neck, you're
3 closing off blood vessels so that blood cannot get up to
4 the brain and blood cannot come back down to the brain.
5 And when blood cannot be released back down to the heart
6 towards the heart, then it congests and go backwards and
7 that's when you get the little hemorrhages that's called
8 petechia. It look like little red dots all over.

9 Q And that is caused by blood trying to get back out of
10 the head and into the flow of the body?

11 A Yes, blocked up so it can't go anywhere.

12 Q All right. I don't regularly watch wrestling, but
13 I've seen wrestling on TV where they talk about he's got
14 him in the sleeper hole. Is there such a thing as where
15 you can put pressure on some area of the neck and cause
16 someone to pass out relatively quickly?

17 A Yes, and this has been witnessed. You can
18 compression the neck in that manner and people will go
19 unconscious within a matter of five seconds, but if you
20 release the hold, they will wake back up.

21 Q How long would that hold have to continue to result
22 in death?

23 A You have maintain that pressure on the neck for a
24 good four to five minutes for complete death.

25 Q So the pressure applied to the neck would have to be

1 continuous from four to five minutes?

2 A Yes.

3 Q All right. What if during the four to five minutes
4 you let off, would it start all over or would -- how that
5 that effect the time?

6 A Depending on how long just a few seconds, then you
7 release and then the person can wake up. If it's a couple
8 minutes, you release the person may continue to live, but
9 may have a little bit of brain damage, so it will be
10 progressive.

11 Q All right. And in this case, you found physical
12 evidence of this having happened; is that correct?

13 A Yes.

14 Q And what physical evidence did you find?

15 A We talk about the petechia, but on the neck
16 underneath the skin, we saw bruising around the muscles,
17 around the voice box. And we found one of the cartilages
18 of the larynx in the voice box was actually fractured.

19 Q Now, a lot of times in these cases, you talk about
20 there's a bone that looks kind of like the wish bone on
21 the chicken neck. What is that bone?

22 A That's called a **hyoid bone**. It's right above the
23 larynx and that was not fractured.

24 Q All right. And is that unusual in a strangulation
25 case that it would not be fractured?

1 A It's not unusual, but when it's fractured, then the
2 additional proof that there was a lot of pressure on that
3 part of the neck.

4 Q All right. And in this case, you actually found
5 fractured cartilage. You found bruising under the skin
6 and that bruising would not have had time to show itself
7 externally; is that correct?

8 A Yes, there were no marks on the outside of the skin
9 indicating like a ligature or a belt or something like
10 that, so whatever compressed -- whatever manner was
11 compressed there must have been something soft or maybe an
12 arm hold.

13 Q All right. And but it was enough pressure to cause
14 bruising?

15 A Yes.

16 Q To fracture the ligament?

17 A Fracture the cartilage.

18 Q The cartilage. And to cause death?

19 A Yes.

20 Q And in your autopsy, did you make a determination as
21 to the cause of death?

22 A Yes.

23 Q And what was that?

24 A Again, asphyxia which means no oxygen through the
25 blood system getting to the brain due to compression of

1 the neck.

2 Q All right. And common every day language would we
3 call that strangulation?

4 A Yes.

5 Q And what in your determination was the manner of
6 death?

7 A Homicide.

8 Q Now, when you talk about petechia, I'll show you this
9 photograph and just ask you if you can identify it at this
10 point?

11 A Yes.

12 MR. LAWSON: Your Honor, the State would move the
13 introduction of State's Exhibit 24.

14 THE COURT: Any objection?

15 MR. MCLAUGHLIN: No objection.

16 THE COURT: All right. State's 24 is in evidence
17 without objection.

18 (WHEREUPON, State's Exhibit No. 24 was admitted into
19 evidence.)

20 Q If you could, Dr. Ross, explain to the jury what is
21 that a photograph of?

22 A This is a photograph from our autopsy of Shannon
23 Carter showing the left cheek, the left ear, the left
24 mandible and particular showing the little tiny red dots
25 we call petechia on the skin.

1 Q And if I could point those out?

2 A They are all over. This is from the neck up, the
3 upper part of the neck up.

4 Q And that would be from the blood trying to get out of
5 the head?

6 A Well, congested little capillaries was actually blood
7 cells because of the pressure.

8 Q All right. And this was taken during the autopsy?

9 A Yes.

10 Q Now, again can you identify that photograph?

11 A Yes.

12 MR. MCLAUGHLIN: Can she explain what it is?

13 THE COURT: Get her to identify it. Get the doctor
14 to identify that?

15 MR. LAWSON: Yes.

16 BY MR. LAWSON:

17 Q If you would, Doctor, can you identify what this
18 photograph is?

19 A This is taken at the autopsy of Shannon Carter of the
20 left arm that's particularly the left inner elbow is
21 called antecubital space showing a bruise.

22 MR. LAWSON: The State would move this photograph in
23 as State's Exhibit 25.

24 THE COURT: Any objection?

25 MR. MCLAUGHLIN: No, objection, Your Honor.

1 THE COURT: All right. Without objection State's 25
2 is in evidence?

3 (WHEREUPON, State's Exhibit No. 25 was admitted into
4 evidence.)

5 BY MR. LAWSON:

6 Q Now, Dr. Ross, as a result of having found that
7 evidence, what is the -- you do in relation to the
8 completion of the autopsy?

9 A This area is very often used to draw blood out of the
10 vessel or to put -- inject something in the vein the blood
11 vessel. If you can see the little dot in the middle that
12 looks like a needle puncture wound. So we took some
13 tissue in that area for examination for drugs.

14 Q All right. And did you actually test that?

15 A No, we send that to SLED.

16 Q And you send it to SLED toxicology; is that correct?

17 A Yes.

18 Q And then they do the test and report back to you?

19 A Yes.

20 Q And based on their report, then you issue a final
21 autopsy report?

22 A Yes.

23 Q In your final autopsy report, did you find any reason
24 to change your original diagnoses in the original autopsy?

25 A Well, the original autopsy we did send it for

1 toxicology just to make sure lot there weren't a lot of
2 drugs on board. And with the results of the toxicology,
3 we been able to amend the report to show that it was
4 homicidal compression of the neck or strangulation.

5 Q All right. And so the report you receive back
6 indicated no drugs used?

7 A Only alcohol.

8 Q All right. And now in a situation where
9 strangulation occurs as an event of suicide or accident,
10 what are some of the things that you find that are not
11 present in this case?

12 A Well, the evidence was not found at the scene of any
13 apparatus that the person might have been in to even
14 commit suicide or accidentally hang themselves.

15 Q All right. So if I decide to end it all and hang
16 myself, presumably when I die when someone finds me, the
17 apparatus that I used be it a rope or whatever would still
18 be there with me?

19 A Yes, in a addition, there was a lot of injuries to
20 the neck indicating pretty good force that you don't
21 usually see in someone who hang themselves.

22 Q All right. So the force of the injury around the
23 neck would be inconsistent with suicide or accidental
24 killing?

25 A At least suicide, yes.

1 Q All right.

2 MR. LAWSON: Bear with me for one moment, Your Honor.

3 (WHEREUPON, a pause in the proceedings.)

4 MR. LAWSON: I have no further questions. Please
5 answer any questions Mr. McLaughlin might have. Thank
6 you, Doctor.

7 THE COURT: Mr. McLaughlin.

8 MR. MCLAUGHLIN: May it please the Court.

9 CROSS-EXAMINATION

10 BY MR. MCLAUGHLIN:

11 Q Dr. Ross, I introduced myself to you a little bit
12 earlier and I don't have very many questions for you just
13 a couple. Dr. Ross, I hand you what's been marked as
14 State's Exhibit Number 7 and ask you whether or not you
15 can tell me what that is and identify it?

16 A This -- these are things we obtained at the time of
17 autopsy for testing including loose hairs from the chest.
18 We put them in a little bag and seal it and send it to
19 SLED for analysis one is loose hairs, pubic hairs. One is
20 pulled head hair and one is pulled pubic hair.

21 Q So this is a regular procedure for y'all to, I guess,
22 collect this evidence as part of the autopsy?

23 A Yes.

24 Q Okay. And then would Newberry Pathology take this
25 and send it straight to SLED or would Newberry take this

1 and send it to Florence and let Florence decide whether or
2 not to send it?

3 A Well, at that time, evidence on a homicide we did not
4 take directly to SLED. So that was signed for by the EMS
5 person who brought us the body and he transported it back
6 to Florence.

7 Q I'm going to show you an additional document,
8 Dr. Ross, going to represent to you that that's a SLED
9 evidence forensic evidence request sheet that appears to
10 document some evidence that was sent by Florence to SLED.
11 And down at the bottom, it appears that the evidence you
12 just identified as State's Exhibit 7 was sent to SLED?

13 A Yes.

14 Q Would you agree with that representation?

15 A Yes.

16 Q Give me one moment, Doctor. All right. Doctor, I'm
17 going to hand you one other document and this is labeled
18 trace evidence department and this is a SLED form. I know
19 you didn't fill this out. You can't testify to the
20 accuracy of this report, but what I would ask you to do is
21 read the items on here and tell me whether or not you --
22 it would appear to be what is part of State's Exhibit 7?

23 A Yes, item 16 is one envelope labeled pulled pubic
24 hair labeled Shannon B. Carter with results of pubic hair
25 standard. Item 17 one envelope labeled pulled head hair

1 Shannon B. Carter, results of head hair standard. Item 18
2 one envelope labeled loose hairs pubic Shannon B. Carter,
3 results two brown hair fragments and one blood hair fabric
4 were found. Item 19 one enveloped labeled loose hairs
5 from chest Shannon B. Carter results two Brown Hairs were
6 found. These hairs are similar to the victim's head hair
7 standard referring to item 17.

8 Q Okay.

9 A Item 22.1 one enveloped labeled pulled head hairs
10 from Kevin Walton results head hair standard.

11 MR. LAWSON: Your Honor, objection.

12 THE COURT: Go ahead I'm sorry.

13 MR. LAWSON: I think the question was limited as to
14 whether or not the items are the items that were sent.
15 The results would be hearsay because Dr. Ross didn't
16 prepare the document nor the results.

17 THE COURT: All right. I think the question was the
18 items that appear on the report are those the same items
19 ---

20 MR. MCLAUGHLIN: Do those appear to be the items that
21 were sent in State 7. And she got into -- Dr. Ross I
22 should have stopped her got into some stuff from
23 Mr. Walton, which she certainly would not have taken part
24 of.

25 THE COURT: That's all right. I'll sustain the

1 objection just allow her responses that those are the same
2 items.

3 MR. MCLAUGHLIN: Okay. All right.

4 Q So that would certainly seem to be the evidence that
5 Newberry collected and sent back to Florence?

6 A Yes.

7 Q All right. Dr. Ross, are you familiar with the term
8 and I'm going to try and say this see if I get it right
9 hypoxyphilia?

10 A How do you spell it?

11 Q Also commonly referred to as autoerotic asphyxia?

12 A Yes.

13 Q Could you explain to the jury what those terms mean?

14 A Yes, autoerotism is a procedure some people use.
15 They set up a way to put pressure on their neck to
16 decrease blood flow to the brain while they are
17 masturbating and it heightens the sexual feelings. These
18 are usually set up so that there is a trigger mechanism to
19 a statement feel like they're getting into trouble.
20 Sometimes say with pressure on the neck you can go
21 unconscious within seconds, so sometimes they don't escape
22 and they end up essentially hanging themselves,
23 strangulating themselves. And you find these people in
24 the apparatus with all kinds of set up usually some kind
25 of pornographic material around them.

1 Q That certainly that that seems most common thing
2 someone performing this with themselves?

3 A Yes.

4 Q But it can also be done with a partner; is that
5 correct?

6 A Yes.

7 MR. MCLAUGHLIN: One second, Your Honor.

8 (WHEREUPON, a pause in the proceedings.)

9 MR. MCLAUGHLIN: No further questions, Doctor, thank
10 you.

11 MR. LAWSON: May it please the Court.

12 REDIRECT EXAMINATION

13 BY MR. LAWSON:

14 Q And what you were just talking about, Doctor, in the
15 event that it goes bad, was it my understanding that you
16 would then normally find evidence of what was used to cut
17 off the flow of oxygen, blood whatever?

18 MR. MCLAUGHLIN: Objection cause for speculation.

19 THE COURT: Overrule. This is an expert witness she
20 can take a hypothetical and give a response.

21 A Yes.

22 Q And to your knowledge in this case based on the
23 evidence that was presented to you, was there any such
24 evidence found in this case?

25 A No, there was not.

1 MR. LAWSON: Nothing further, Your Honor.

2 MR. MCLAUGHLIN: Brief recross.

3 RECROSS-EXAMINATION

4 BY MR. MCLAUGHLIN:

5 Q Dr. Ross, certainly one doesn't have to have an
6 apparatus to perform this type of act, do they? If they
7 have a partner who's performing it with them?

8 A Correct.

9 MR. MCLAUGHLIN: Thank you, no further questions.

10 THE COURT: All right. Thank you, Doctor. You may
11 step down.

12 FURTHER EXAMINATION

13 BY MR. LAWSON:

14 Q Doctor, if they have a partner performing it with
15 them, wouldn't that be someone akin to homicide?

16 MR. MCLAUGHLIN: Objection, Your Honor, speculation.

17 THE COURT: Sustained.

18 MR. LAWSON: That's fine. We ask that Dr. Ross be
19 excused, Your Honor.

20 THE COURT: Any objection?

21 MR. MCLAUGHLIN: No objection.

22 THE COURT: Thank you, Dr. Ross. Ma'am, you may be
23 excused from your subpoena. Thank you for being here.

24 (WHEREUPON, the witness leaves the witness stand.)

25 THE COURT: Mr. Lawson, you may call your next

1 witness.

2 MR. LAWSON: May it please the Court, we call Kurt
3 Brower. Your Honor, may we approach?

4 THE COURT: Yes.

5 (WHEREUPON, a bench conference was held in the
6 presence of the jury, but out of the hearing of the
7 jury.)

8 THE COURT: Sir, you go ahead and have a seat over
9 here for right now. We going to take a short break.
10 Ladies and gentlemen, we're going to take a short five,
11 ten minute break. You return to your jury room. Please
12 have no discussions about the trial. We'll bring you back
13 out shortly.

14 (WHEREUPON, the jury was excused to the jury room.)

15 (WHEREUPON, a break was taken.)

16 THE COURT: Mr. Lawson, are you ready, sir?

17 MR. LAWSON: Yes, sir.

18 THE COURT: And, Mr. McLaughlin, are you ready, sir?

19 MR. MCLAUGHLIN: We are, Your Honor.

20 THE COURT: All right. Ms. Joe, if you ask the
21 members of the jury to return.

22 (WHEREUPON, the jury returned to the courtroom.)

23 THE COURT: All right. Ladies and gentlemen, I was
24 kidding with Ms. Joe when she asked about you being able
25 to bring out your drinks. I said, well, that's fine as

1 long as they don't act like my two year old and knock them
2 over and stuff like that, which is almost assuredly now I
3 will spill this one up here. Murphy's law there. You are
4 welcome to bring your drinks out if you that helps you.
5 At this point, we would recognize Mr. Lawson for his next
6 witness.

7 MR. LAWSON: May it please the Court, the State would
8 call Kurt Brower.

9 THE COURT: Mr. Brown, if you come around please,
10 sir. Thank you.

11 THE CLERK: Please place your left hand on the Bible
12 and raise your right hand. Do you swear or affirm the
13 testimony you give in this case be the truth, the whole
14 truth, and nothing but truth so help you God?

15 MR. BROWER: I do.

16 THE CLERK: Please be seat and state your full name
17 for the record.

18 MR. BROWER: Kurt K-U-R-T Richard Brower.
19 B-R-O-W-E-R.

20 WHEREUPON,

21 Kurt Brower,
22 after first having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. LAWSON:

25 Q And, Mr. Brower, where are you employed, sir?

1 A I'm employed at the City of Boca Raton, Baco Raton,
2 Florida.

3 Q All right. In what capacity?

4 A I'm a police officer.

5 Q And how long have you been so employed?

6 A Since August of 1995.

7 Q '95. And has -- were you employed in law enforcement
8 prior to 1995?

9 A No, I was -- did some private security work not law
10 enforcement.

11 Q All right. And what position do you now hold in Boca
12 Raton?

13 A I'm police a officer.

14 Q Is that ---

15 A I don't have a title, road patrol officer.

16 Q Uniform ---

17 A Yes, uniform patrol.

18 Q Marked car?

19 A Yes.

20 Q Speeding ticket type?

21 A Yes.

22 Q You fit in good around here. Now, in 2003, what
23 position did you hold at that time?

24 A The same as a police officer on road patrol.

25 Q And you were on road patrol means basically what?

1 A I handle calls for service, enforce traffic laws
2 like. Primarily respond to any type of call that would be
3 in my zone or anything dispatch to me.

4 Q All right. And as a result of that, do you become
5 the initial officer on the scene of a lot of
6 circumstances?

7 A Yes, I'm either initial officer or primary officer
8 handle the call.

9 Q All right. In April of 2003, you were doing that
10 kind of duty; is that correct?

11 A Yes.

12 Q And did you happen to have a call in relation to an
13 automobile?

14 A May I refer to the report that you are talking to
15 or...

16 Q Yes, sir.

17 A Yes, I did.

18 Q Did you prepare a report?

19 A Yes, I did.

20 Q And you have that with you?

21 A I do have a copy, yes.

22 Q And you using it to fresh your memory?

23 A Yes.

24 Q Go right ahead.

25 A Thank you. Yes, responded to a burglary on 4-16 of

1 2003.

2 Q April 16th 2003?

3 A Yes.

4 Q And as a result of arriving there, what did you do?

5 A I spoke with the homeowners and basically took the
6 information I needed to compile my report.

7 Q And were other officers called to the scene?

8 A I know I had a crime scene technician called out to
9 the scene to assist me.

10 Q All right. And did you yourself become involved in
11 the investigation?

12 A Yes, I did. Again, as I said, I spoke to the
13 complainant, the victim of the burglary, and I got
14 information on what transpired. And I also processed -- I
15 dusted for latent fingerprints, positive fingerprints
16 around that look like the point of entry of the house.

17 Q Now, how did you determine the point of entry?

18 A May I refer to my report?

19 Q Yes, sir.

20 A I recall it was a cut in the screen. I believe it
21 was pointed out by the homeowner. It was a cut in the
22 screen that was pointed out by the homeowners.

23 Q All right. And you talking about cut in the screen
24 that ---

25 A It was a -- as I have here a hole -- a grapefruit

1 size hole in the screen. The window was open and there's
2 a screen to keep out insects. There was a hole through
3 that.

4 Q All right. Now, did you -- and you said you dusted
5 that area for fingerprints?

6 A According to my report, yes, sir, I recall dusting
7 the area for fingerprints.

8 Q All right. And you probably also checked to see if
9 there was any blood if someone had cut themselves on the
10 screen?

11 A I don't recall if I checked for blood. I recall that
12 there was a boot print in that area.

13 Q All right. You saw a boot print?

14 A Yes.

15 Q All right. But there wasn't any blood that you
16 recognize?

17 A I don't recall.

18 Q All right. And what was taken out of that window of
19 that opening?

20 A I recall that there was a set of keys, a wallet, and
21 I believe a money clip as well. I have a full itemized
22 report if you need to read what was taken.

23 Q Keys being to?

24 A To the homeowner's vehicle.

25 Q All right. Now, were you on duty some month and a

1 half later in June of 2003?

2 A Yes.

3 Q And were you the first officer to respond to a call
4 in relation to another vehicle?

5 A The call you're referring to that is the actual call
6 for 911 call to respond to. Anytime someone makes a
7 mistake or calls accidentally, we still go out and make
8 sure that everybody is okay. And that's what I was
9 initially responding to and I was later told about a
10 vehicle by a person.

11 Q All right. And as a result of the conversation that
12 you had, what did you do?

13 A I check the vehicle for a license plate and I believe
14 there was no license plate on there. So I had dispatch
15 check vehicle identification number and my notes found
16 that it was stolen. It was a stolen vehicle from South
17 Carolina.

18 Q Stolen vehicle out of South Carolina. And what kind
19 vehicle was it make and model?

20 A Model this is a '96 Chevy Cavalier white in color.

21 Q And did you receive information as to the owner of
22 the vehicle?

23 A I don't recall. I'm sure that when I ran the license
24 plate, I usually get the vehicle registration information
25 as well as if it's wanted or stolen. I'm sure I did get

1 that, but I don't remember where that would be.

2 Q All right. Now, is it my understanding that the
3 license plate had been removed from this vehicle?

4 A Yes, I believe there was no license plate on the
5 vehicle.

6 Q So -- and this was how long after the burglary at the
7 other residence?

8 A This report is dated June 21st, so previously was in
9 April so almost two months little less.

10 Q What exact date in April?

11 A The burglary was April 16th and the vehicle recovery
12 was June 21st two months.

13 Q Now, in the -- in each incident, there were other
14 officers called out to assist you; is that correct?

15 A Yes, I don't recall -- burglary that I had the crime
16 scene technician come out to assist me at the scene to
17 photograph the footprint -- or I'm sorry the boot print.
18 I believe in the case with the vehicle that it was taken
19 back to our department to be processed and the crime scene
20 tech processed it there.

21 Q All right. So it was impounded?

22 A Yes, basically it was towed back to the police
23 department.

24 Q All right. Let me ask you if you can look at this
25 map basically and tell me if you can identify that?

1 A I'm not familiar with the roof tops, but it appears
2 that it's Palmetto Park Road in my city -- in jurisdiction
3 of my -- in the area of the burglary and the -- where the
4 vehicle was found if this is Palmetto; is that correct?

5 Q And is it also in the vicinity of the vehicle
6 recovery?

7 A Yes. The vehicle would have been recovered small
8 trip on here.

9 Q All right. And could -- from that picture could you
10 tell where the -- are you close to the Atlantic ocean
11 there?

12 A Yes.

13 Q And how far away is the ---

14 A A block or two.

15 Q All right. And which side of the photograph is it
16 on?

17 A Would be on the right side.

18 Q Talking about over here?

19 A Yes. This should be a park here, ocean beach would
20 be right just off picture to the right.

21 Q All right.

22 MR. LAWSON: Your Honor, the State would move the
23 introduction of this photograph State's Exhibit 26.

24 THE COURT: Any objection?

25 MR. MCLAUGHLIN: Your Honor, as long as -- I'm a

1 little unclear the testimony of the witness. He did
2 recognize. He seem to ask Mr. Lawson to confirm something
3 for him, but if he says that he recognizes that's the area
4 no objection, but seems to be relying on Mr. Lawson's ---

5 THE COURT: Well, let me -- go ahead, Mr. Lawson, and
6 ask if on his own recollection he can identify that area?

7 Q Officer Brower ---

8 A From the label which is on here, it says East
9 Palmetto Park Road. It appears to be Palmetto Park Road.
10 It appears to be as I would see it on a map from when I
11 worked that area. The building on the corner and the
12 building on the roof top applies would be correct being in
13 that general area, also with parking over here on the top.
14 So as far as without labels on the streets, I would say
15 this is -- as far as I can tell this is the area that's on
16 here.

17 Q And it would be the area ---

18 A That's correctly labeled the area of 895 East
19 Palmetto Road.

20 Q And would it be also an area where the car was
21 recovered and where the break in took place?

22 A It would be the same general area.

23 Q All right.

24 THE COURT: All right. Admit item number 26 as a
25 State's Exhibit.

1 (WHEREUPON, State's Exhibit No. 26 was admitted into
2 evidence.)

3 Q If you could mark or draw a circle around where the
4 general area where the car from South Carolina was
5 recovered?

6 A It was basically around this area I believe.

7 Q All right. And that is a parking lot?

8 A It's a parking lot behind a business. It's several
9 businesses in one building and it's a parking lot behind
10 them.

11 Q And we're dealing with an area that is close to the
12 beach?

13 A Yes.

14 Q And there's strip malls and stores, I guess,
15 scattered all through the area?

16 A There are some, yes, some residential as well.

17 Q All right. And is there a residential area where the
18 -- you were called to observed, to investigate the break
19 in?

20 A Yes, one related to this would be north of where the
21 vehicle was recovered.

22 Q All right. Can you circle that general area on that
23 map?

24 A I'm not sure exactly what street, but it be in this
25 general area. I'm not sure which label on the streets was

1 in the general area to the north.

2 Q All right. And would that would be north?

3 A North would be -- if you're looking at the paper, it
4 would be basically at the top.

5 Q And if you would just on the margin write on which
6 side the Atlantic Ocean if you would? Are there any
7 streets between this street and the ocean?

8 A No, there's a -- on this side, there's a park. In
9 the park, there is parking, but it's not a public street.
10 And this Palmetto Park Road extends a little bit further
11 to a parking area. They call it the pavilion basically a
12 place where you can sit and look at the beach.'

13 Q Public access?

14 A Yes.

15 Q Okay. Now, what did your -- what was your
16 involvement in these two situations after your initial
17 appearance there?

18 A I know I spoke to the crime technician that was
19 processing the vehicle and I was telling her about how we
20 had burglary in that area as well as a car was stolen.
21 Typically, it's been my experience that when a car is
22 stolen another car is left. So we were talking about that
23 and I told her -- I recall how it came up, but we started
24 to talk about boot prints. She said she found ---

25 MR. MCLAUGHLIN: Objection to hearsay.

1 THE COURT: Sustained.

2 MR. LAWSON: That witness is present and will
3 testify, Your Honor.

4 BY MR. LAWSON:

5 Q What did you do as a result of the conversation?

6 A We compared boots that were found in the vehicle to
7 the picture of what we did.

8 Q All right. And that would be a picture ---

9 A A picture of the boots that was taken at the
10 burglary.

11 Q All right. And at the scene of the burglary, did --
12 was there any physical evidence recovered?

13 A I'm sorry say that again.

14 Q At the scene of the burglary, was there any physical
15 evidence recovered?

16 A There was a set of keys found.

17 Q All right, sir. And I will ask you if that matches
18 the description -- did you find those keys?

19 A I don't recall that I found those keys. I know they
20 found a set of keys. I'm not exactly sure who pointed
21 them out, but I know that a set of keys was found at the
22 scene and I placed them into evidence.

23 Q All right. And how were they described?

24 A I believe according to my report a set of three keys.
25 I don't have the proper report with me.

1 Q How about that?

2 A The key is described as one GM key and two unknown
3 keys on a key chain.

4 Q All right. And the set of keys is contained what the
5 ones that I have shown you?

6 A A GM key and two other keys.

7 Q All right. Consistent with the report?

8 A Yes.

9 Q Were -- did you discuss at the second scene where the
10 car was recovered, did you have a discussion in relation
11 to the fact that keys had been found at the first location
12 that you had worked?

13 A I believe I had that discussion with the crime scene
14 tech. I'm not sure if it was the crime scene tech or the
15 detective one of the two.

16 Q And do you know or were you present during the
17 investigation of the recovered car?

18 A That's -- I recovered the car. When I said I
19 recovered the car, I was the officer that responded to the
20 scene. And I was the officer that basically took back to
21 our department and I was the officer that wrote the
22 report.

23 Q All right. And did -- as I understand it, y'all
24 impounded the car which means you towed it in?

25 A We brought it back to our police department to be

1 processed. And later goes to the owner or to the company
2 depending on the wishes of the investigator.

3 Q All right. And at the time that it is looked at
4 after impound, were you present at that time?

5 A I was present when in fact I came back to speak with
6 the crime scene tech in the sally port when it was being
7 processed. I wasn't present during the entire time that
8 it was being processed, but I did speak to her while it
9 was still there.

10 MR. LAWSON: Thank you, Officer Brower. Answer any
11 questions Mr. McLaughlin may have for you.

12 THE COURT: Mr. McLaughlin.

13 MR. MCLAUGHLIN: Thank you, Your Honor. May it
14 please the Court.

15 CROSS-EXAMINATION

16 BY MR. MCLAUGHLIN:

17 Q Officer Brower, I introduced myself to you during our
18 break. I just have few questions for you. You recall
19 whether or not the car that that you found when you
20 responded to this call at the shopping plaza, do you
21 recall whether or not it was locked or unlocked?

22 A I don't recall. I believe my report says it was
23 unlocked.

24 Q Check your report and refresh your memory?

25 A It was unlocked.

1 Q Do you recall whether or not the trunk was open or
2 closed?

3 A I don't recall. I believe it was closed.

4 Q That be something unusual enough if you had seen an
5 open trunk, you may have made note of that in your report?

6 A Yeah, I would think so.

7 Q How many GM automobiles do you believe are in the
8 Boca Raton area?

9 A I have no idea.

10 Q Sufficit to say a pretty good number probably?

11 A Yes.

12 Q And the keys -- the set of keys you were shown by
13 Mr. Lawson a few minutes ago, you have no way of
14 identifying that those are the keys that were found at the
15 scene of this other burglary?

16 A Apparently no. But if there were recovery of
17 evidence should be a chain of custody meaning that when I
18 drop into evidence somebody would have noted and they went
19 into evidence and kept track until they were released to
20 here.

21 Q The area where this victim in this case car
22 Ms. Carter's car was found the car that you found at the
23 shopping plaza, I believe you testified it was near the
24 beach?

25 A Yes, it was.

1 Q Pretty heavily trafficked area?

2 A The beach was, yeah. I don't know about the parking
3 lots.

4 Q Okay. But do y'all patrol that area regularly since
5 I imagine it be a tourist attraction?

6 A We patrol the area, yes.

7 Q Did you testify that you took part in comparing a
8 boot to this boot print that was photographed?

9 A I recall us looking myself and the other crime scene
10 tech comparing photographs that I believe that was the
11 case.

12 Q You compared the photo to what?

13 A The negatives from the photos to the boots found in
14 the trunk of the vehicle.

15 Q Okay. Boots that were in the vehicle back over at
16 the shopping plaza?

17 A Yes. After it been brought back to the sally port.

18 Q Where were those boots found in the car, do you know?

19 A I believe they were found in the trunk.

20 MR. MCLAUGHLIN: No further questions. Thank you,
21 Your Honor.

22 MR. LAWSON: May it please the Court, one question.

23 REDIRECT EXAMINATION

24 BY MR. LAWSON:

25 Q Is this the item that you referred to in

1 cross-examination as being ---

2 A Yes, it's a property report. Down here at the bottom
3 shows chain of evidence. My signature here where I signed
4 it and my name at the bottom as well.

5 Q And what does it relate to?

6 A Three keys found at the scene.

7 Q All right. And so anything else that may have been
8 found would be on different sheets, but this sheet refers
9 only to the keys?

10 A Correct.

11 Q All right, sir.

12 MR. LAWSON: Your Honor, the State would move this
13 into evidence as State's 27.

14 MR. MCLAUGHLIN: Like to take a look at it.

15 THE COURT: All right.

16 MR. MCLAUGHLIN: No objection.

17 THE COURT: Without objection State's 27 is in
18 evidence.

19 (WHEREUPON, State's Exhibit No. 27 was admitted into
20 evidence.)

21 THE COURT: Anything further of this witness?

22 MR. LAWSON: Nothing further. And, Your Honor, we
23 ask that Mister -- Officer Brower be excused. He is
24 involved in something in Florida and we broke him away
25 from it.

1 THE COURT: Any objection?

2 MR. MCLAUGHLIN: No objection.

3 THE COURT: All right. Officer, thank you very much,
4 sir. You are certainly released from your subpoena.

5 (WHEREUPON, the witness leaves the witness stand.)

6 THE COURT: You may call your next witness, sir.

7 MR. LAWSON: May it please the Court, the State would
8 call Caralee Daugherty.

9 THE CLERK: Ma'am, please, go around place your left
10 hand on the Bible and raise your right hand. Do you swear
11 or affirm the testimony you give in this case to be the
12 truth, the whole truth, and nothing but the truth so help
13 you God?

14 MS. DAUGHERTY: I do.

15 THE CLERK: Please be seated and state your full name
16 for the record.

17 MS. DAUGHERTY: Caralee Daugherty.

18 WHEREUPON,

19 Caralee Daugherty,
20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. LAWSON:

23 Q Ms. Daugherty.

24 A Daugherty.

25 Q And, Ms. Daugherty, where are you employed?

1 A For the Boca Raton police services department in Boca
2 Raton, Florida.

3 Q And how long have you been so employed?

4 A Twenty-one years.

5 Q And do you have any special classification or duties?

6 A I am a crime lab supervisor.

7 Q And how long have you been involved in the crime lab?

8 A Twenty-one years.

9 Q So your entire career has been with the crime lab?

10 A Yes, I been seven years as a supervisor and another
11 15 crime scene technician.

12 Q Do you still take calls as a technician from time to
13 time?

14 A When needed, yes.

15 Q And I'll ask you to go back to April of 2003, you
16 would have at that time been in the same capacities that
17 you are now?

18 A Yes.

19 Q And at that time, you also would go and take calls on
20 a as needed basis?

21 A Yes, sir.

22 Q All right. Did you happen to be called to a
23 particular scene on or about April the 16th of 2003?

24 A Yes.

25 Q Would you explain to the jury what that was?

1 A I responded out to [REDACTED] in
2 Boca to a resident burglary in order to photograph a shoe
3 print that Officer Brower had located on the scene.

4 Q All right. And when you go in that situation, are
5 you going just for a single purpose or are you going also
6 to act as a crime scene investigator?

7 A At this particular scene, I just went out to
8 photograph the shoe print. Officer Brower had already
9 processed the scene for fingerprints.

10 Q Okay. And other than that and you had no other
11 duties on that particular day?

12 A No, I did not.

13 Q And you in fact photographed a boot print?

14 A Yes, I did.

15 Q And do you have that photograph with you?

16 A Yes, I do.

17 Q And I assume you took other photographs so that you
18 could locate the specific spot?

19 A I photographed the outside of the house the window
20 where the suspect had broken into and the boot print
21 itself was underneath the window where he broke into.

22 Q All right. And ask you if you can just look at these
23 four photographs and just tell me if you can identify them
24 at this point?

25 A Yes, sir.

1 Q And are they photographs that you took?

2 A Yes.

3 MR. LAWSON: Your Honor, the State would move
4 introduction of exhibits 28, 29, 30 and 31.

5 THE COURT: Any objection?

6 MR. MCLAUGHLIN: No objection, Your Honor.

7 THE COURT: All right. Without objection, State's 28
8 through 31 are in evidence.

9 (WHEREUPON, State's Exhibit Nos. 28-31 was admitted
10 into evidence.)

11 BY MR. LAWSON:

12 Q Officer, I would ask you if you could using the
13 number on the back go through and describe to the jury
14 what each of those photographs represent and I
15 specifically like the first photograph item 28. There's
16 something laying beside the boot print. What is that?

17 A Did you want me to show it?

18 Q Yeah, you can stand up.

19 A This is a close-up picture of the shoe print that's
20 in the dirt. Next to it is a scale, so that you're able
21 to blow the picture up to the exact size of the boot print
22 for the person going to do the comparison. Then be able
23 to see the exact size.

24 Q And that's used as a scale?

25 A Yes. And that's picture number 28. Picture 29 is

1 the same.

2 Q Okay. Is the scale also in that?

3 A Yes. Picture number 30 the same. There's only one
4 shoe print. And then picture 31 is you always take one
5 picture without the scale to show how you're seeing it.

6 Q Officer, ask you if you would look through these and
7 tell me if they appear to be the exact replicas of the
8 photographs you took only bigger?

9 A They are the same pictures only you guys have the
10 negative reversed, just means when they printed the
11 negatives in a reversed position, so the scales will be
12 backwards on them.

13 Q In effect, they going one, two, three or four ---

14 A My picture show the shoe this way. Your picture show
15 the shoe going in the opposite direction. The boots the
16 same.

17 Q Picture is the same.

18 MR. LAWSON: Your Honor, the State would move the
19 introduction of the three enlargements.

20 THE COURT: Any objection?

21 MR. MCLAUGHLIN: No, objection.

22 THE COURT: Without objection.

23 (WHEREUPON, State's Exhibit Nos. 32-34 was admitted
24 into evidence.)

25 Q Officer, on the other photographs generally were

1 taken as I understand it to show the location of the
2 prints in relation to the house itself?

3 A Yes.

4 Q Okay. Did you have any other involvement in the
5 investigation at this location?

6 A No, I did not.

7 Q So -- and you had nothing to do with the any car keys
8 or anything in that relation to that?

9 A No, just strictly the photographs.

10 Q All right. Now, did you have any other
11 involvement -- did you have any involvement in the
12 recovery of a stolen vehicle from South Carolina in June
13 of that same year?

14 A No, I did not.

15 Q All right. So in relation to what you're here today
16 about it had to do with those boot prints?

17 A Yes.

18 Q And did -- were you called to look at any boots in
19 relation to the boot print in those photographs?

20 A No, I was not.

21 Q Okay.

22 MR. LAWSON: Okay. All right. Thank you, Officer.
23 Answer any questions that Mr. McLaughlin may have.

24 THE COURT: Mr. McLaughlin.

25 MR. MCLAUGHLIN: I have no questions of this witness,

1 Your Honor. We don't object to her being excused.

2 (WHEREUPON, the witness leaves the witness stand.)

3 MR. LAWSON: Thank you, Your Honor.

4 THE COURT: You may call your next witness.

5 MR. LAWSON: Your Honor, the State would call Dawn
6 McDonald.

7 THE COURT: Ms. McDonald, if you come around.

8 THE CLERK: If you will place your left hand on the
9 Bible and raise your right hand please. Do you swear or
10 affirm the testimony you give in this case to be the
11 truth, the whole truth, and nothing but the truth so help
12 you God?

13 MS. MCDONALD: I do.

14 THE CLERK: Please be seated and state your full name
15 for the record.

16 MS. MCDONALD: My name is Dawn McDonald. D-A-W-N
17 M-C-D-O-N-A-L-D.

18 WHEREUPON,

19 Dawn McDonald,
20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. LAWSON:

23 Q And, Ms. McDonald, where are you employed?

24 A I'm employed by the Boca Raton police department
25 crime in the scene unit.

1 Q And how long have you been so employed?

2 A I been employed in the crime scene unit for 12 years.

3 Q And in that capacity what is your job?

4 A My job is to go out to crime scenes, document them
5 through photographs, notes, reports, process evidence or
6 there are times that at the police department evidence or
7 items may be brought to me.

8 Q All right. And how long have you been doing this?

9 A For 12 years.

10 Q So in Boca Raton, you're the CSI team?

11 A Yes. We're crime scene technicians, so we're CST,
12 but, yes, that would be the CSI.

13 Q CST. Doesn't sound as good as CSI, that's why they
14 name the television show different. What you do is
15 basically the same thing?

16 A Yes.

17 Q To a limited extent. Were you -- I assume you were
18 then employed in that capacity in 2003?

19 A Yes, the entire time I been employed by Boca it's
20 been through the crime scene unit.

21 Q And you were trained specifically for that?

22 A Yes. I had over 2000 hours of professional training
23 on top of two associate degrees in my field.

24 Q All right. And just for the juries information Boca
25 Raton is located where in Florida?

1 A That's going to be in the south area south end of
2 Florida. We are the first city north of Broward County.
3 We are actually West Palm Beach, but we're in the south
4 end.

5 Q How close to Miami?

6 A Miami -- it goes West Palm Beach, then Broward
7 County, then Miami, but probably about a 45 minute drive
8 if you were driving.

9 Q All right. And I guess we all know Orlando and
10 Disney and Mickey Mouse whatever. How far from Orlando?

11 A That's going to be about two and half hours north of
12 us.

13 Q All right. Now, in April of 2003, were you asked to
14 do anything in relation to a burglary involving the theft
15 of a Lexus automobile?

16 A No, I was called in a couple months after in
17 reference to a vehicle they thought was involved in a
18 case.

19 Q All right. And what day were you called in?

20 A This is on June 21st 2003 and I was contacted by
21 Officer Brower and he asked me to process a vehicle that
22 was found a very short distance from a previous burglary
23 he had taken.

24 Q All right. And what type of automobile -- did you go
25 to the actual scene of where the car was found?

1 A No, it was towed in the sally port at the police
2 department and that was brought right to me. So I met
3 Officer Brower out at sally port.

4 Q All right. And y'all talk there?

5 A Yes.

6 Q And what did you do or what were your duties at that
7 time in relation to that autopsy?

8 A Officer Brower explain that the vehicle did come from
9 South Carolina, so on top of speaking to Officer Brower I
10 did speak with a detective over the phone who asked us to
11 go ahead and process it. And by that, we documented
12 everything through notes, photographs, and processing for
13 fingerprints. Items were also collected out of the
14 vehicle too. So when I say process, those are the
15 different areas that we do.

16 Q All right. Did -- was there anybody assisting you in
17 this regard?

18 A No, I was the only one processing the vehicle. I
19 just met with Officer Brower prior to me starting to see
20 what had actually he wanted or needed to be done.

21 Q Did you determine that the owner of the vehicle
22 during your involvement in the case?

23 A What was your question?

24 Q Did you determine the owner of the vehicle?

25 A Officer Brower did explain that it was from South

1 Carolina and it was involved possibly in a South Carolina
2 case. So I went really much by the information that was
3 found with the vehicle.

4 Q All right. Which was the -- what was the vin number?

5 A Yes. The tag was removed from the vehicle. When I
6 saw the vehicle the tag had already been removed, so at
7 that point the identification of the vehicle would have
8 been from the vin.

9 Q All right. So there was no tag that you could use to
10 go by?

11 A Correct.

12 Q All right. And what -- how did you start evaluating
13 this automobile?

14 A When the vehicle was dropped off in our sally port,
15 the first thing I did was start taking notes on it and
16 also started with overall photos of the outside of the
17 vehicle and then working my way inside.

18 Q All right. And after completing the photographs,
19 what did you do then?

20 A After photographing the vehicle, I then -- the rear
21 driver side door all of the doors were found close, but
22 rear driver side door was the only vehicle on unlocked.
23 Entering the vehicle through that door, I proceeded to
24 take notes and photographs before anything was moved or
25 anything. And then after taking photos and documenting it

1 through notes certainly going through and, you know,
2 seeing exactly the entire vehicle.

3 Q All right. Was the trunk locked or unlocked?

4 A That was closed at the time that vehicle was brought
5 in, but then, you know, pushing the trunk release latch I
6 did open that too, also photographing the inventory items
7 that were found in the trunk.

8 Q All right. So you were able to open the trunk from
9 inside the car?

10 A Yes.

11 Q All right. But it was locked when you first got it
12 in the sally port?

13 A Yes.

14 Q And the doors were all locked except for the left
15 rear door?

16 A Correct. And all of the windows are rolled up.

17 Q All right. That's the door behind the driver?

18 A Yes, the driver rear door.

19 Q All right. And I assume you processed for
20 fingerprints?

21 A Yes, the inside and the outside had been processed
22 for fingerprints. The outside did not yield any
23 fingerprints. I did get fingerprints from the inside of
24 the vehicle.

25 Q Were any of them fingerprints that had sufficient

1 ridge detail?

2 A The fingerprint lifts were I think turned over to the
3 identification section, so I did not do analysis on them.
4 But I processed the vehicle that day and also any of the
5 items that could be processed were brought into the crime
6 lab and those were also processed too. All of the
7 fingerprints that I process for were turned over to our
8 identification section.

9 Q All right. To your knowledge, did any of them yield
10 identification?

11 A Not that I know of, but I don't do the analysis.

12 Q Right. But you would be advised of what your
13 investigations was yielding as it continues from time to
14 time, would you not?

15 A Yes, and if I were to hand in prints through 12 years
16 of training and many, you know, fingerprint classes and
17 latent courses, if I was turning in something they did not
18 have ridge detail and there was some value to them, but
19 who identify or if they were identified through latent I
20 don't know.

21 Q All right. You were never advised of that?

22 A Correct.

23 Q All right. Now, did at some point someone with your
24 agency come to the car with a set of keys?

25 A Yes, Detective Giumenta who also works in our

1 investigation area he was also aware of the vehicle that I
2 was processing. And he recovered a set of keys that was
3 turned into the evidence room by Officer Brower. The keys
4 that he turned in were from the burglary scene that he
5 responded to previously and those had fit the doors to the
6 vehicle I was processing.

7 Q All right. Did you see if they also cranked the car?

8 A I was not present when Detective Giumenta was trying
9 the doors. He came to me and advised me that the vehicle
10 I had processed those keys did fit.

11 Q All right. Now, after doing the finger -- I assume
12 you did photographs, then fingerprints, then what did you
13 do?

14 A All of the items in the vehicle and in the trunk were
15 all collected because at this point I don't know what is
16 and what is not going to be of value. So everything that was
17 in the vehicle that's listed in my report was collected
18 and that included clothing items, cigarette butts, shoes,
19 numerous items that I can list from my property reports.

20 Q All right. Did you take and recover all of the
21 cigarette butts in the car?

22 A Yes, I did. A number of them were of the same brand
23 and there was one that was not the same brand, but I did
24 also have an empty cigarette pack found in the vehicle.

25 Q All right. And did the empty cigarette pack and that

1 one match or did the empty cigarette pack match with all
2 the other ones?

3 A The empty cigarette pack is going to be a Seneca
4 100's and the cigarette butts that were in the ashtray are
5 going to be Marlboro's. There is going to be one separate
6 cigarette butt that was found on the front floorboard that
7 was not a Marlboro. And I don't believe it had a name on
8 it, so it could have been from a Seneca pack. I don't --
9 it just did not state a name on it.

10 Q All right. Was it a -- did it have a filter on it?

11 A I believe so.

12 Q And was it a brown filter?

13 A Yes.

14 Q Were any of the cigarette butts found in the ashtray
15 white filters?

16 A Yes, they were and that's going to be the Marlboro
17 ones.

18 Q So all of them were white with the exception of ---

19 A The Marlboro one's correct were the white ones and
20 then a second one -- the other brand that I got I'm not
21 sure if that's what brand that is that was one.

22 Q Okay. Now, what did you do with the cigarette butts?

23 A All the cigarette butts because those could be tested
24 in other ways I went and check those fingerprints those
25 could be tested for DNA or other, you know, areas. Those

1 were all collected and turned into the evidence
2 department.

3 Q Okay. Now, what other items were found that would
4 possibly yield evidence?

5 A There was a hair brush found in the vehicle hairs
6 were also collected out of that. Hairs were also found
7 and collected from different items that were in the
8 vehicle too. The hairs which would also be a different,
9 you know, type of, you know, non-fingerprint type of
10 evidence. I collected hairs from a fitted sheet that was
11 in the trunk of a vehicle. I collected hairs from a
12 garbage bag that was in the glove box just ones that were
13 on the outside of it. Hairs were collected from -- they
14 were stuck to a coin that was in the center console and I
15 collected hairs from the hair brush.

16 Q Okay. Now, I assume you turned them over to a
17 different unit for testing?

18 A When all of our evidence is collected, it is turned
19 into the evidence department. At that point, they can
20 determine whether it's going to be sent out for DNA or any
21 other type of analysis.

22 Q All right. You said there was a sheet found in the
23 trunk?

24 A Yes, there were many clothing items and a fitted
25 sheet were found in the trunk of the vehicle.

1 Q Just a fitted sheet or one or two sheets how many?

2 A I recovered one full-size fitted sheet, a standard
3 size pillow case, clothing items, a pair of black
4 Brahma's, that would be the brand of it, boots and the
5 clothing items listed in case you want to know what were
6 jackets and T-shirts.

7 Q All right. And so there was one sheet found. Did
8 you do any testing, independent testing on the sheet?

9 A No, not myself. I do know that there was a brownish
10 stain that was tested with phenolphthalein which will test
11 -- as a test use to test for blood and I believe that was
12 with negative results.

13 Q All right. So you did in fact try to have the sheet
14 tested further?

15 A Yes, but that was with negative results?

16 Q And you would not have done that first thing.

17 A No, another one of your technicians and in our lab
18 did that the phenolphthalein test. There are other items
19 that can be sent out. Boca Raton is a small department.
20 We don't have a DNA lab, but there other items that can be
21 tested for DNA.

22 Q All right. And those you have to send to the county?

23 A Yeah, that's going to be sent to Palm Beach sheriff's
24 office which that's not far from us at all, that's within
25 the West Palm Beach County.

1 Q And is that the county that y'all are in?

2 A Yes.

3 Q All right. Now, as to clothes, what type of clothes
4 were found in the vehicle?

5 A These were all going to be men's clothes and they
6 were off large sizes. I do have the sizes and the break
7 down of the clothes found if you like to know those per
8 item.

9 Q Well, let's go ahead -- it's either that or put in
10 all those pants and shirts?

11 A Inside, I have blue jacket size 14. A Hunter's Run
12 leather coat size medium and that's probably going to be
13 one of the smallest items I have. A tan pair of work
14 pants and those are going to be size 36 waist. A pair of
15 blue beige pants size XL, a pair of sweat pants size 3XL.
16 A pair of Rangular blue jeans size 36 waist, 34 length. I
17 also do have a blue twin size flat sheet, which I did not
18 mention that earlier.

19 Q Well, was that sheet tested also?

20 A Nothing -- there's going to be nothing found on that
21 blue sheet, that's a blue twin flat sheet not a fitted
22 sheet. And the shirts and the T-shirts found in there are
23 going to be mainly large and extra large T-shirts. Three
24 T-shirts and they're all large or extra large, eight white
25 socks. And other than the clothing items, there's going

1 to be blade and a broken blade that belong to a saw, and
2 miscellaneous tools and cleaning products.

3 Q Now, a saw you talking about a hand saw?

4 A Yes.

5 Q And what kind of hand saw they call them do you know?

6 A I do have photographs of all the evidence I took
7 because I don't do many home project myself. I don't know
8 if there's certain names for that saw.

9 Q Okay. Well, could you describe it or hold on a
10 minute we'll get the picture. Were the clothes tested as
11 well?

12 A The clothing there was one shirt that had food stains
13 on it other than that there were no significant areas to
14 test. Nothing as far as stains or anything. I believe
15 the shoes were turned over to be examined further for
16 analysis.

17 Q All right. Were you involved in any other
18 investigations in relation to this or another case related
19 to this case?

20 A My main job is going to be on the vehicle itself and
21 collecting the items out of it. Other than Detective
22 Giumenta coming and telling me that keys that were found
23 at another scene did fit the vehicle that would be my only
24 other connection.

25 Q All right. I ask you if this -- first can you

1 identify that photograph?

2 A Yes, this is the saw which I don't know the name of
3 it. Your Honor, may I approach the jury?

4 Q Not yet.

5 A This is the saw. And this is my photograph that I
6 took of it.

7 MR. LAWSON: All right. Your Honor, the State would
8 move introduction of photograph of State's Exhibit 35.

9 THE COURT: Any objection?

10 MR. MCLAUGHLIN: None, Your Honor.

11 THE COURT: Without objection State's 35 is in
12 evidence.

13 (WHEREUPON, State's Exhibit No. 35 was admitted into
14 evidence.)

15 BY MR. LAWSON:

16 Q Now, I ask you this there appears to be a small
17 yellow blade. Does that appear to be a broken blade?

18 A Correct. May I approach and just show them?

19 Q Sure go ahead and publish?

20 MR. LAWSON: Permission to publish, Your Honor?

21 THE COURT: Yes.

22 A This is a saw. And like I said I don't know actual
23 names hacksaw. And right below it this is taken in the
24 lab is going to be the full blade that was found and right
25 below it is just a smaller half broken one.

1 Q As far as tools that's the only tool that was found
2 in the trunk; is that correct?

3 A Correct. That's going to be in the trunk. I believe
4 a screwdriver was found in the front area of the vehicle.

5 Q All right. I ask you if you could open this bag and
6 tell me if you recognize the contents look like this side
7 is...

8 A CST -- when we collect all of our items, they're
9 sealed with our names on them showing who it was who
10 actually collected the item.

11 Q Well, apparently that has not ---

12 A No, this is the original seam. This has not been
13 broken at all. For any analysis, what they would do is go
14 to a different area always showing my original seal.

15 These shoes are going to be collected from the trunk of
16 the vehicle and these are Brahma shoes size 10 triple E.

17 Q And did -- you did not test these any further?

18 A No, I believe these were sent for further analysis.

19 MR. LAWSON: Your Honor, the State move the
20 introduction of the boots.

21 THE COURT: Any objection?

22 MR. MCLAUGHLIN: No objection, Your Honor.

23 THE COURT: No objection State's 36 is in evidence.

24 (WHEREUPON, State's Exhibit No. 36 was admitted into
25 evidence.)

1 BY MR. LAWSON:

2 Q All right. Other than the boots, none of the other
3 items from the car were of any evidentiary value other
4 than possibly cigarette butt; is that correct?

5 A Correct. The other items sent in -- I did also have
6 a map that belonged to Jekyll Island in Georgia. And I
7 did have also a pocket watch and I don't know who that
8 belongs too.

9 Q All right. Now, Jekyll Island -- do you know
10 anything about the Georgia sea islands down in that area?

11 A No, I have been to Georgia, but that area I'm
12 unfamiliar with.

13 Q All right. But these are areas that are open to
14 general public; is that correct?

15 A That I'm not sure. I've never been there before not
16 to that area, but I also did have a Best Western 2003
17 travelers guide and a road atlas that were found in the
18 vehicle.

19 Q All right. Now, earlier I asked you about the color
20 of the cigarette butts and the filters. And it appears
21 those are photographs that were taken by you?

22 A Yes.

23 Q And it appears that the cigarette butts are brown and
24 not white?

25 A The filter tips. Yes, the tips on the cigarette that

1 are found in the ashtray. These are going to be
2 Marlboro's. I do have a brown filter of paper.

3 Q All right. And it appears from the ashtray and that
4 also was taken by you; is that correct?

5 A Yes, this is exactly as they were found in the
6 vehicle.

7 Q And that all of those also are brown; is that
8 correct?

9 A Correct.

10 Q So there weren't any white tips?

11 A No. When you say white, I'm thinking of the actual
12 cotton.

13 Q The cotton filter instead of the wrap. Maybe, I
14 should say the wrapping around the paper wrapping?

15 A I don't smoke so, yeah, that would have established
16 my as a non-smoker.

17 Q Officer, if you could just look through these
18 photographs and without describing just tell me if you
19 recognize them and if they're photographs that you
20 actually took?

21 A Yes, these are vehicles I took the first time I seen
22 the vehicle.

23 Q And is that also?

24 A Yes, this is going to be the trunk as it's open
25 exactly as items were found in it.

1 Q And this is before you moved anything?

2 A Correct.

3 MR. LAWSON: Your Honor, the State would move the
4 introduction of five photographs that would be State's 37,
5 38, 39, 40 and 41.

6 THE COURT: Any objection?

7 MR. MCLAUGHLIN: No objection, Your Honor.

8 THE COURT: All right. State's 37 through 41 without
9 objection.

10 (WHEREUPON, State's Exhibit Nos. 37-41 was admitted
11 into evidence.)

12 BY MR. LAWSON:

13 Q Now, if you would, Officer, refer to the number and
14 tell the jury what is contained on each photograph and I
15 don't think it's necessary. They can look at it. But if
16 you would just refer to the number and tell them what's on
17 the photograph?

18 A Photo exhibit number 37 is the vin plate from inside
19 of the driver side door.

20 Q By vin, what do you mean?

21 A The vin number is going to be the number that is
22 assigned to the car, I believe, that when it's made.

23 Q The vehicle identification number is actually what it
24 stands for?

25 A Correct. Photo exhibit number 38 is going to be the

1 front of the vehicle and that's in our sally port area.

2 Q And what type of vehicle?

3 A This is going to be a Chevy Cavalier.

4 Q What color?

5 A Four-door white 1996. Photo exhibit number 39 is
6 going to be the rear of the vehicle. You'll see that
7 there's no tag on it.

8 Q Is that the way it appears when you first saw it,
9 Officer?

10 A Yes. Photo exhibit number 40 is going to be the
11 front of the vehicle standing directly in front of it.
12 State's Exhibit photo number 41 is going to be the items
13 in the trunk once the trunk was opened. None of the items
14 had been moved that's exactly how it was found.

15 Q Now, after you completed the photographing,
16 fingerprinting and retrieving what evidentiary matter you
17 could from the vehicle, did you have any other involvement
18 in this investigation?

19 A The only other involvement would be like the photo of
20 the saw is taking some additional photos inside of the
21 crime lab just so that there's close-up pictures of the
22 items.

23 Q All right. And things like the boots primarily?

24 A Correct.

25 Q And the clothes as well?

1 A Yes. In the trunk, you'll see in the original photo,
2 it's just one big clump of items. Those items were
3 actually laid out and photographed, you know, possibly in
4 groups or by themselves inside a lab just to get a closer
5 look at them.

6 Q And they existed of those items you listed to the
7 jury in your testimony?

8 A Correct.

9 Q I believe you said that there was a pocket watch
10 found; is that correct?

11 A Yes.

12 Q And would this be a photograph of that?

13 A Yes. And that's going to be found in the center
14 console of the vehicle, that's not in the trunk that's
15 going to be in the center console.

16 MR. LAWSON: The State would move admission of this
17 photograph State's Exhibit 42.

18 THE COURT: Any objection to State's 42?

19 MR. MCCLAUGHLIN: No objection.

20 THE COURT: Without objection State's 42 is in
21 evidence.

22 (WHEREUPON, State's Exhibit No. 42 was admitted into
23 evidence.)

24 BY MR. LAWSON:

25 Q Now, the other items in State's Exhibit 42 were they

1 also found in the console?

2 A Yes, photo exhibit number 42 will be one of the items
3 that were all found in the center console. This photo is
4 of the items laid out in the crime lab to get a close
5 look.

6 Q All right. Did you notice whether or not there was
7 any engraving in the pocket watch or?

8 A On the pocket watch, there is a serial number
9 engraved on it. Other than that, I did not know anything
10 engraved.

11 MR. LAWSON: Thank you, Officer McDonald. Answer any
12 questions Mr. McLaughlin may have.

13 MR. MCLAUGHLIN: May it please the Court.

14 THE COURT: Mr. McLaughlin.

15 CROSS-EXAMINATION

16 BY MR. MCLAUGHLIN:

17 Q Officer McDonald, I just have one question. Were any
18 of the cigarette butts smoking when you picked them up?

19 A No.

20 MR. MCLAUGHLIN: Thank you. No further questions.

21 THE COURT: Mr. Lawson, anything further?

22 MR. LAWSON: May it please the Court, the State would
23 call ---

24 THE COURT: I just ask you were there anything
25 further?

1 MR. LAWSON: Oh, I'm sorry. No, sir, I don't have
2 any other questions. I was gone sit on her lap.

3 THE COURT: Thank you, ma'am.

4 MR. LAWSON: Your Honor, we would ask that she be
5 released from her subpoena so she can return?

6 THE COURT: Without objection.

7 (WHEREUPON, the witness leaves the witness stand.)

8 (WHEREUPON, a bench conference was held in the
9 presence of the jury, but out of the hearing of the
10 jury.)

11 THE COURT: All right. Ladies and gentlemen, we are
12 going to recess for lunch at this time. It's 12:15 would
13 ask if you would please be back in your jury room at 1:45,
14 that gives you an hour and a half. Please have no
15 conversation with anyone about the case. Do not allow
16 anyone to have conversation with you. Have a good lunch
17 if you'll be back at 1:45 we'll resume at that time.
18 Thank you.

19 (WHEREUPON, the jury was excused for lunch.)

20 THE COURT: All right. We'll be in recess until
21 1:45.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: State's ready to proceed?

24 MR. LAWSON: Yes, Your Honor.

25 THE COURT: Defense?

1 MR. MCLAUGHLIN: We are, Your Honor.

2 THE COURT: All right. Ask the members of the jury
3 to join us please.

4 (WHEREUPON, the jury entered the courtroom.)

5 THE COURT: All right. Ladies and gentlemen, I hope
6 everyone had a good lunch break and ready to go back to
7 work. Mr. Lawson, recognize the State for your next
8 witness.

9 MR. LAWSON: May it please the Court, the State would
10 call Amy McGuckian.

11 THE CLERK: Ma'am, if you will please go around and
12 place your left hand on the Bible and raise your right
13 hand. Do you swear or affirm the testimony you give in
14 this case to be the truth, the whole truth, and nothing
15 but the truth so help you God?

16 MS. MCGUCKIAN: I do.

17 THE CLERK: Please be seated and state your name for
18 the record.

19 MS. MCGUCKIAN: It's Amy McGuckian.

20 M-C-G-U-C-K-I-A-N.

21 WHEREUPON,

22 Amy McGuckian,

23 after first having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. LAWSON:

1 Q And, Ms. McGuckian, where do you work?

2 A I work for the Palm Beach County sheriff's office in
3 Palm Beach County Florida.

4 Q What position do you hold there?

5 A I am the technical leader of the forensic biology
6 unit for the crime laboratory.

7 Q What does that involve?

8 A As a technical leader, I have two main job duties.
9 My first job duty is as a senior forensic scientist where
10 I process items of evidence for the presence of DNA
11 material, author laboratory reports, and testify in courts
12 of law. And as the technical leader of the laboratory, I
13 am responsible for training new analyst in the laboratory,
14 conducting research and development on new methodologies
15 or chemistries that are going to be used in our
16 laboratory, as well as writing and maintaining our
17 protocols to ensure that we meet the national DNA
18 standards.

19 Q All right. What is your background in relation to
20 education and training?

21 A I have a bachelor's of science in biology from Siena
22 College in Albany, New York. And I have a master's of
23 science in forensic science from the George Washington
24 University in Washington D.C.

25 Q And how long have you been working in the area

1 forensic science?

2 A This June will be seven years.

3 Q And how much of that involved in law enforcement?

4 A All seven years.

5 Q And how long have you been employed with the your
6 present employer?

7 A Seven years.

8 Q Okay. Your entire career has been with this
9 laboratory?

10 A That is correct.

11 Q And have you been qualified before as an expert to
12 testify in court?

13 A Yes, I have.

14 Q And in relation to DNA?

15 A Yes.

16 Q And how many times have you been so qualified?

17 A Thirty.

18 Q All right. In State court, federal court both?

19 A Mostly in State court. And I also been qualified
20 once in federal court.

21 Q And that would be in the State of Florida?

22 A Yes.

23 Q Ever in the State of South Carolina?

24 A No.

25 MR. LAWSON: Your Honor, I would at this time offer

1 Ms. McGuckian as a expert in DNA analysis.

2 MR. MCLAUGHLIN: No objection.

3 THE COURT: All right. Without objection.

4 BY MR. LAWSON:

5 Q Ms. McGuckian, did you become involved in the case
6 involving the recovery of a vehicle from South Carolina?

7 A Yes.

8 Q And explain to the jury how that became -- how did
9 you become involved?

10 A In June of 2003, a call from a Detective Giumenta
11 from the Boca Raton police department placed a call to the
12 supervisor of the forensic biology unit requesting DNA
13 analysis on various items of materials that were recovered
14 from a vehicle. Upon that phone call, the case was assign.
15 to me and I made contact with Detective Giumenta and began
16 my analysis.

17 Q All right. And what were you provided in order to
18 make or do analysis?

19 A Submitted to the laboratory were eight socks, two
20 boots, 13 cigarette butts, one addition cigarette butt,
21 that was collected from the passenger front floorboard,
22 and that was it.

23 Q All right. And did you then perform test on any or
24 all of these items?

25 A Yes, I examined the pair of boots which was right and

1 left boot as well as cigarette butts that was identified
2 as being we recovered from the passenger right floorboard.

3 Q All right. And did you find any usable DNA material
4 on the boot?

5 A No, DNA profile was not able to be generated from the
6 boots.

7 Q All right. What about on the cigarette butt?

8 A Yes, I was able to obtain a DNA profile.

9 Q All right. And what kind of a profile did you
10 obtain, was it a bad profile or a medium profile or fairly
11 good profile?

12 A It would -- I would consider it a fairly good
13 profile. The profile that was obtained indicated that it
14 was from only one individual. And the forensic laboratory
15 in Palm Beach County, we examined 16 different areas of
16 DNA. And on this profile, I was able to obtain
17 information for 15 out of those 16 areas.

18 Q All right. And the more areas that you obtained
19 identifiable results from, of course, the better the DNA?

20 A Yes, the more uncommon the profile becomes.

21 Q And were you at some point provided a known sample of
22 a substance that may contain DNA?

23 A Yes, I was provided a reference to look at for
24 comparison.

25 Q And what was that that you were provided?

1 A I was provided a reference sample. In the reference
2 sample, there is a sample taken from an individual who's
3 identity is known receive it from the South Carolina Law
4 Enforcement Division. And it was identified as a blood
5 sample taken from Kevin Walton.

6 Q And did you run a DNA profile on that known sample?

7 A Yes, I did.

8 Q Did you compare it to the sample obtained from the
9 cigarette?

10 A Yes.

11 Q What were the results?

12 A That Kevin Walton is the source of the DNA profile
13 obtained from the cigarette butt.

14 Q Okay.

15 MR. LAWSON: I have no further questions, Your Honor.

16 Thank you, Ms. McGuckian. Answer any questions

17 Mr. McLaughlin may have.

18 THE COURT: All right. Mr. McLaughlin.

19 MR. MCLAUGHLIN: May it please the court.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. MCLAUGHLIN:

23 Q Ms. McGuckian, just one question for you. You were
24 submitted how many cigarette butts to test?

25 A Fourteen in total.

1 Q Okay. Only one came back with a hit of Mr. Walton?

2 A Only one was tested.

3 MR. MCLAUGHLIN: Thank you.

4 THE COURT: Anything further, Mr. Lawson?

5 MR. LAWSON: May it please the court.

6 REDIRECT EXAMINATION

7 BY MR. LAWSON:

8 Q When you tested that one, you received the profile
9 that you talked about whenever on direct; is that correct?

10 A Yes.

11 Q So there was no need to go further with further
12 analysis; is that correct?

13 A That was correct.

14 MR. LAWSON: Thank you.

15 THE COURT: All right. Thank you, ma'am you. May be
16 excused.

17 MR. LAWSON: May she be excused from her subpoena,
18 Your Honor?

19 THE COURT: Any objection?

20 MR. MCLAUGHLIN: None, Your Honor.

21 THE COURT: All right. You may be excuse from that
22 subpoena. Thank you for being here, ma'am.

23 (WHEREUPON, the witness leaves the witness stand.)

24 THE COURT: The State may call its next witness.

25 MR. LAWSON: May it please the Court, the State would

1 call Detective James Giumenta.

2 THE CLERK: Sir, if you would, place your left hand
3 on the Bible and raise your right hand. Do you swear or
4 affirm the testimony you give in this case to be the
5 truth, the whole truth, and nothing but the truth so help
6 you God?

7 MR. GIUMENTA: Yes, I do.

8 THE CLERK: Please be seated and state your full
9 anymore for record.

10 MR. GIUMENTA: My name is James Giumenta. Spelled
11 G-I-U-M-E-N-T-A.

12 WHEREUPON,

13 James Giumenta,
14 after first having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. LAWSON:

17 Q Is it James?

18 A Yes, sir.

19 Q Do you mind if I call you James?

20 A No, sir, go right ahead.

21 Q It's easier for me than Giumenta.

22 A That's fine, sir.

23 Q And, James, where do you work?

24 A I currently work for the Boca Raton police department
25 Boca Raton, Florida.

1 Q And how long have you been so employed?

2 A Been there ten years.

3 Q And what position do you hold there?

4 A I'm a detective with the investigative bureau.

5 Q And how long have you been a detective?

6 A Six years.

7 Q And so in 2003 you were a detective at that time?

8 A Yes, sir.

9 Q Were you in fact lead detective in relation to a
10 burglary break in that occurred there in your
11 jurisdiction?

12 A I was actually the lead detective for a recovered
13 vehicle. As it developed, I realize that the burglary
14 case became part of my recovery of the vehicle case.

15 Q All right. And the burglary case was there a
16 automobile taken in that case?

17 A Yes, sir.

18 Q What kind?

19 A It was a 2003 silver Lexus model SC 430.

20 Q And was that a Florida vehicle?

21 A It was register to a Florida tag.

22 Q And so what did you -- what were your duties in
23 relation to the case as you began your work on this
24 matter?

25 A My duties was at the time to realize that the

1 abandoned vehicle or the recovered vehicle may be linked
2 to the burglary insomuch as that we had evidence at the
3 burglary scene a set of keys caught my interest. And then
4 from those keys I wanted to see if in fact it was related
5 the recovered vehicle. I retrieved those keys and brought
6 them to (inaudible) which time was matched.

7 Q All right. So the keys that were found by Officer
8 Brower were in evidence?

9 A That's correct.

10 Q And you checked them out?

11 A Yes, sir.

12 Q And took them where?

13 A I took them to our tow yard and impound lot in Boca
14 Raton. And I -- the ignition key that I used was the door
15 key and I unlocked the door.

16 Q All right. And did -- and so the keys that were
17 found at the scene of the scene of the burglary operated
18 to open the door of the car?

19 A Yes, sir.

20 Q Do these look familiar?

21 A Yes, sir.

22 Q And does that look like the set of keys that you
23 used?

24 A Yes, sir, it is.

25 Q Now, after having done that, what did you proceed to

1 do at that point?

2 A At that point, I realized that in fact we had a
3 vehicle used in what I believe both cases kind of match.
4 I thought it was related to the other insomuch as that I
5 wanted to make sure that in fact if there was any type of
6 evidence on the victim's vehicle from that burglary that
7 was found in Virginia, that might be related to the
8 abandoned vehicle in Boca Raton. So I contacted Detective
9 Switzer from the Chesterfield police department.

10 Q All right. So at this time you already knew that the
11 Lexus had been recovered in Virginia?

12 A That's correct.

13 Q And I assume then you found out that the Lexus was
14 recovered before you went and tried the keys in the car
15 that was recovered?

16 A That's correct.

17 Q All right. Okay. And you say you contacted
18 Detective Switzer?

19 A Yes, sir.

20 Q And what did you do at that point?

21 A Well, I had asked him if in fact upon recovering our
22 stolen vehicle in Virginia, if that vehicle had been
23 processed for any type of evidence or latent fingerprints.
24 And I asked him if in fact they had that evidence to
25 consider an individual by the name of Kevin Walton.

1 Q And why did you use that name?

2 A It was at my attention at the time that Mr. Walton
3 may be in fact a suspect in the case here in South
4 Carolina from which the victim's vehicle was in fact the
5 abandoned vehicle.

6 Q All right. And did you also have the DNA from your
7 crime lab at that point?

8 A When we recovered the victim's vehicle here in Boca
9 Raton, our crime scene evidence technicians did retrieve
10 certain amount of evidence which would include cigarette
11 butts and other things from the vehicle clothing and such.
12 And a period of time thereafter, I requested those items
13 go to the sheriff's office lab for such a comparison and
14 having retrieve them.

15 Q And the reason for that is because you don't have
16 that ability in your own police department to do those
17 kind of test?

18 A That's correct.

19 Q All right. Now, on -- now, I ask you what's been
20 marked as State's Exhibit 26 and if you can tell me what
21 that depicts?

22 A The map itself depicts an area of East Palmetto Park
23 Road which borders Ocean Boulevard and east of that quest
24 is the Atlantic Ocean. That particular area that's --
25 there's two areas circled on this area photograph. The

1 smaller circle where I know the vehicle, the abandoned
2 vehicle was found that's actually behind -- at the time,
3 it was a annex to the police department. And the larger
4 area where the victim's vehicle was taken from her
5 residence, driveway of her residence.

6 Q All right. And is there anyway on the large circle
7 could you make that smaller as to which -- as to where the
8 location was as to where the Lexus was taken?

9 A Yes, sir, it's indicated there where the word end is.

10 Q If you could just put. Would you just put your
11 initial right in there. Okay. What transpired after you
12 contacted Detective Switzer?

13 A After I had spoken with him, it did take a while for
14 any kind of result and word back to me of any type of
15 identification. However, that did come back to me in a
16 memo in late -- I'm sorry mid July that in fact the
17 fingerprints were found on the victim's vehicle from the
18 burglary in Boca Raton that did match those of Kevin
19 Walton.

20 Q All right, sir.

21 MR. LAWSON: Thank you, Detective Giumenta, answer
22 any questions Mr. McLaughlin may have for you.

23 MR. MCLAUGHLIN: May it please the Court.

24 THE COURT: Mr. McLaughlin.

25 CROSS-EXAMINATION

1 BY MR. MCLAUGHLIN:

2 Q Detective Giumenta, giving you had all this evidence
3 linking Mr. Walton to this supposed stolen car case, was a
4 warrant for his arrest ever issued for it?

5 A No, it wasn't issued for it. But we submitted the
6 information to our state attorney's office and their
7 letter dated August 22nd 2003, indicated that they would

8 ---

9 Q They refused to prosecute it. They did not recommend
10 prosecution?

11 A That's correct.

12 MR. MCLAUGHLIN: Thank you. No further questions.

13 THE COURT: Anything further from the State?

14 MR. LAWSON: May it please the Court.

15 REDIRECT EXAMINATION

16 BY MR. LAWSON:

17 Q Was that -- at that time, was there a warrant
18 outstanding for Mr. Kevin Walton in South Carolina?

19 A It's my understanding at that time it had already
20 been served.

21 Q It had already been served. Do you know in effect
22 that what transpired is that it was basically referring to
23 the South Carolina charges?

24 A Yes, sir, that's correct.

25 MR. LAWSON: Thank you.

1 THE COURT: Mr. McLaughlin.

2 RE CROSS-EXAMINATION

3 BY MR. MCLAUGHLIN:

4 Q So you're saying that if I understand you correctly,
5 you're saying Florida choose not to prosecute Mr. Walton
6 out of difference to South Carolina?

7 A That's my understanding.

8 Q That's your understanding?

9 A Yes, sir.

10 Q Well, you just appeared to be reading almost from a

11 ---

12 MR. MCLAUGHLIN: May I approach, Your Honor?

13 THE COURT: Yes, sir.

14 Q I'm going to show you what is titled case
15 supplemental report. Do you recognize that?

16 A Yes, sir.

17 Q And did you prepare that?

18 A Yes, sir, I did.

19 Q And read that to the jury?

20 A On 8-29-03, I received a letter from the assistant
21 state attorney, Darren Schull, letter advising court will
22 file end quote, in a request for a warrant due to the fact
23 as presented did not quote rise to the amount of evidence
24 needed to prosecute the defendant end quote. Request for
25 case clear letter is placed in records case file.

1 MR. MCLAUGHLIN: Thank you, Detective. At this time,
2 I move to have this marked and entered in as our next
3 defense exhibit, Your Honor.

4 THE COURT: Will be Defense 4. Any objection?

5 MR. LAWSON: No objection, Your Honor, but request
6 right to redirect.

7 THE COURT: Without objection.

8 (WHEREUPON, Defendant's Exhibit No. 4 was admitted
9 into evidence.)

10 THE COURT: All right, Mr. Lawson.

11 MR. LAWSON: May it please the Court.

12 FURTHER EXAMINATION

13 BY MR. LAWSON:

14 Q Detective Giumenta, what is the -- I assume you been
15 involved in these kind cases before; is that correct?

16 A Yes, sir.

17 Q And if you would explain the situation that takes
18 place in these kind of cases?

19 A Cases that have multiple jurisdictions most of the
20 time if not of my experience all of the time, the counties
21 or States involved would defer to the county or State that
22 had more serious charges and therefore a less considered
23 charge is dropped.

24 Q And the charge in Florida was obviously less severe
25 than the charge in South Carolina?

1 A Yes.

2 Q What well about the fact that the statement failure
3 of evidence or lack of evidence?

4 A My letter is from Darren Schull. It's quite a
5 paragraph. The amount of effort I think ---

6 MR. MCLAUGHLIN: Objection, Your Honor, I would
7 object to him reading the letter from someone else.

8 THE COURT: Sustained that would be hearsay.

9 MR. LAWSON: I'd say he open the door. He initially
10 asked him about the communication between he and the
11 State's attorney. The whole correspondence here relates
12 to the questions that were asked in relation to the
13 State's attorney.

14 MR. MCLAUGHLIN: Your Honor, I showed him a report
15 that he prepared himself and asked him to read from that
16 report. It was certainly could -- it could have been
17 hearsay in that report. They could have objected to when
18 he quoted someone they didn't object to it, that report is
19 in now. He prepared that report that he read to the jury.
20 Well, if they wanted to get into stuff on the letter ---

21 THE COURT: He may open the door, Mr. Lawson, to
22 going into area, but that doesn't necessarily mean that
23 you can use hearsay to go into there.

24 MR. LAWSON: No, sir, Your Honor, but it can explain
25 the reason that -- and the reason behind what he wrote and

1 why he wrote it.

2 THE COURT: I think he can testify to that without
3 presenting the hearsay statement to the jury.

4 MR. MCLAUGHLIN: Your Honor, I believe that's just
5 Mr. Walton asked him to do the answer he just gave
6 Mr. Walton -- Mr. Lawson asking him to elaborate on
7 circumstances behind cases like this.

8 THE COURT: I'm not going to allow the letter to be
9 published, but I'll allow you to ask him based on his
10 conversations, you know, what his -- what he did, what his
11 his procedure was.

12 MR. LAWSON: And I think that's what I asked.

13 FURTHER EXAMINATION

14 BY MR. LAWSON:

15 Q What -- based on your correspondence and your
16 communication, what was your reaction or your response?

17 A Upon receiving this letter, I quoted from this letter
18 in that report that I just previously read. Those quotes
19 were from Mr. Darren Schull off of this letter. And with
20 that we don't necessarily from this letter receive such
21 correspondence. We generally receive a very brief letter
22 as to how the State prepared their case, what they feel is
23 rising to the level of prosecution. And in this case, it
24 would appear that there was very much involved in both the
25 recovery of the vehicle and burglary to the residence with

1 which their vehicle was stolen that they simply referred
2 to South Carolina.

3 MR. LAWSON: Thank you.

4 MR. MCLAUGHLIN: Recross, Your Honor?

5 THE COURT: Sure.

6 FURTHER EXAMINATION

7 BY MR. MCLAUGHLIN:

8 Q You've had circumstance where this has happened
9 before, Detective?

10 A In my office not to my case personally.

11 Q Okay. And when you file a report or you keep these
12 reports for every investigation you have; correct?

13 A I'm sorry.

14 Q The exhibit that I just showed you, the document that
15 was admitted as an exhibit, that's part of an
16 investigative report; is that correct?

17 A That document.

18 Q And you keep those for all investigations you get
19 assigned?

20 A Yes, sir.

21 Q Okay. And you're trained to write -- I imagined
22 you're trained to write anything of significance into that
23 report; is that correct? Significance to the
24 investigation?

25 A No, sir. The investigations already been completed

1 and sent to the state attorney's office. I indicated in
2 that report as to why possibly or probably that state
3 attorney's office refuse to prosecute.

4 Q Would you -- in that supplemental report you just
5 read, you're asking for a case to be cleared; right?

6 A Correct.

7 Q Okay. So what's the status of the case pending your
8 recommendation to clear it?

9 A The status of the case to be cleared is more of an
10 in-house clearing as oppose to prosecution clearing.

11 Q But it's still somewhat open in your office until you
12 made that request; right? In-house ---

13 A No, sir. When a request goes to the state's attorney
14 office, we quote close the case with a warrant requested.
15 When we receive correspondence back such as this, we
16 request that the department close the case based on
17 whatever the state attorney's office recommend.

18 Q Well, how does the department consider cases before
19 you request that the department close it? Are they
20 considered opened or they considered pending prosecution?

21 A Pending prosecution.

22 Q Pending prosecution. So if anything happens in a
23 case is of significance between the closing of the
24 investigative portion of the case and the prosecution
25 portion of the case, you want to file a supplemental

1 report?

2 A Certainly, if I have something significant certainly.

3 Q Okay. And failure to have enough evidence or excuse
4 me -- deciding to defer prosecution would not be something
5 that would be important instead of deciding that you don't
6 have enough evidence to prosecute?

7 A I can't answer that.

8 Q Well, you make the report; right?

9 A I make the supplemental report based on Mr. Schull's
10 letter.

11 Q Okay. But that's your report; correct?

12 A Based on Mr. Schull's letter.

13 Q So you want make any note anywhere that they decided
14 not to prosecute because they were gone let South Carolina
15 take care of it?

16 A That's correct.

17 Q That's not something that's important enough that you
18 want to keep track and memorialize?

19 A No, sir, that is something after correspondence
20 possibly through a telephone conversation after the fact
21 that this letter has been prepared.

22 MR. MCLAUGHLIN: Okay. No further questions.

23 FURTHER EXAMINATION

24 BY MR. LAWSON:

25 Q It's my understanding, Detective, that -- what was

1 the date of that?

2 A The date of this letter is August 22nd 2003.

3 Q Wasn't Mr. Walton already in custody in South
4 Carolina at that time?

5 MR. MCLAUGHLIN: Objection relevance, Your Honor.

6 MR. LAWSON: Just asking what did they know about the
7 defendant's location in relation to the charges.

8 THE COURT: What relevance is that to his ---

9 MR. LAWSON: Relevance as to the entire process
10 that's been going for the last few minutes.

11 THE COURT: I'll allow it then.

12 A Yes, sir, it was.

13 MR. LAWSON: I don't have anything else, Your Honor.

14 THE COURT: Anything?

15 MR. MCLAUGHLIN: Briefly, Your Honor.

16 THE COURT: All right. This is it not going back.

17 FURTHER EXAMINATION

18 BY MR. MCLAUGHLIN:

19 Q If Mr. Walton had it been in custody, are you saying
20 that the results would have been any different from the
21 attorney general's office -- you're not even in a position
22 to say that, are you?

23 A I'm not in a position to say, sir.

24 MR. MCLAUGHLIN: Thank you.

25 THE COURT: Thank you, sir. You may step down.

1 (WHEREUPON, the witness leaves the witness stand.)

2 MR. LAWSON: Ask, Your Honor, that the detective be
3 allowed to....

4 THE COURT: No objection. Thank you, sir.

5 You may call your next witness, Mr. Lawson.

6 MR. LAWSON: May it please the Court, the State would
7 call Samuel Cyle Reighley, Jr.

8 THE CLERK: Sir, if you will go around place your
9 left hand on the Bible and raise your right hand. Do you
10 swear or affirm the testimony you give in this case to be
11 the truth, the whole truth, and nothing but the truth so
12 help you God?

13 MR. REIGHLEY: I do.

14 THE CLERK: Please be seated and state your full name
15 for the record.

16 MR. REIGHLEY: Samuel Cornelius Reighley, Jr.

17 R-E-I-G-H-L-E-Y.

18 WHEREUPON,

19 Samuel C. Reighley Jr.,

20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. LAWSON:

23 Q Is it you go by Kyle; is that correct?

24 A That's correct.

25 Q Kyle, where are you employed?

1 A I'm currently employed with the South Carolina Law
2 Enforcement Division or it's commonly referred to as SLED.

3 Q In what capacity?

4 A Currently, I work in the counter terrorism unit.
5 Prior to that, I work for the toxicology unit, which is in
6 forensics performing death investigations, analyzing body
7 fluids, tissue for the presence of drug and alcohol.

8 Q And how long did you do that, Kyle?

9 A I was within the toxicology unit for just over seven
10 years.

11 Q And in 2003, where were you employed at that time?

12 A I was in the toxicology unit at that time.

13 Q And in your capacity in the toxicology unit, did you
14 become involved in toxicology as it relates to a Shannon
15 Carter?

16 A Yes, I did.

17 Q And how did that come about?

18 A This particular case it was submitted to our
19 laboratory for analysis. The case itself was submitted
20 through our evidence log-in area, which at that time a
21 sample would come in from an outside agency pathologist or
22 sheriff's department come log it into our evidence
23 processing area. At that point, the -- whoever would log
24 it in would put all the information the victim's name,
25 types of analysis they wanted. Then they would drop that

1 into an evidence box area. Before that they would have
2 which I have with me evidence bag. All the evidence would
3 be placed into it, sealed up, and dropped into that box
4 where I would retrieve it and perform the analysis on the
5 case.

6 Q All right. Did you in fact perform analysis in the
7 case involving Shannon Carter?

8 A Yes, I did.

9 Q And what did you test -- what kind of test did you
10 run?

11 A On this particular case, I had multiple samples
12 submitted. I had a blood sample submitted. It was
13 labeled Shannon B. Carter with FA03-156 on the label.
14 Also submitted a urine sample, ocular fluid sample or eye
15 fluid sample, bowel gastric, a left arm injection site,
16 brain and liver tissue.

17 Q And did you do test on each and everyone one of those
18 items?

19 A Not all of the items. I performed test on the blood
20 sample, the urine sample, the ocular fluid, and the left
21 arm injection site.

22 Q All right. And as a result of the tests, what were
23 your findings in relation to Shannon Carter's toxicology?

24 A For the blood sample itself, I received and analyzed
25 it for the presence of alcohol or ethanol which is

1 commonly drinking alcohol got receive a .029 percent
2 weight by volume ethanol was found in the blood. I also
3 screened the sample for various classes of drugs, screened
4 for benzodiazepine, which was a negative screen. Screened
5 for cocaine or cocaine metabolite which was also negative.
6 Screen for opiates which was negative. And then I also
7 did a general screen on a another piece of instrumentation
8 which is called a gas chromatograph mass spectrometer to
9 look for a wide variety of drugs that was also negative.
10 Performed a alcohol test on the urine sample and received
11 a result of a .099 percent weight by volume ethanol found
12 in urine. Also did an alcohol test on the ocular fluid
13 which was a 0.113 percent weight by volume ethanol found
14 in the ocular fluid. And also did a test on the left arm
15 injection site. And did a general overall gas
16 chromatograph mass spectrometer test on that for the
17 presence of any drugs and that was also negative.

18 Q All right. Now, the ocular fluid I notice the
19 alcohol was higher there than in the urine or in the
20 blood. What does that indicate to you as the
21 toxicologist?

22 A When we test for alcohol in these samples, the reason
23 why we test the blood sample, the urine sample, and the
24 ocular sample is that helps us give an indication of what
25 stage that a person is in as far as absorbing alcohol in

1 their system, if they reached a plato or if they're at the
2 down swing or excreting alcohol out of their system.
3 Those three levels help to give us that indication. In
4 this particular case where the ocular fluid is actually
5 higher than the blood, would indicate that the person is
6 on the down swing. They stopped drinking at some point
7 until the alcohol level starting to tail off at that
8 point. So there's a little bit of a delay between the
9 levels between the eye fluid and the blood sample and that
10 gives you an indication sort of where they are in that
11 stage of alcohol absorption.

12 Q And which one would tell the best as to where they
13 are as far as intoxication the blood or the ocular fluid?

14 A The blood sample would give what at the time of death
15 what that level was in their system. One of the other
16 uses with the ocular fluid is in a case where if a person
17 if they haven't been found for several days and they start
18 to go through decomposition process, that sometimes you
19 will get bacteria within the blood or other areas of the
20 body that will actually produce ethanol. And that ocular
21 fluid would give you a good indication of what they were
22 at that time if you had that situation. But if there's --
23 the person's found fairly quickly and then you would look
24 at the blood sample give a good indication of where there
25 impairment was at the time of their death.

1 Q Now, as to the arm injection site, you tested that I
2 believe specifically did you not?

3 A That's correct.

4 Q And how -- and State's Exhibit 25 is a photograph of
5 that site?

6 A Yes, sir.

7 Q All right. And what did you do to actually test that
8 site?

9 A Within the injection site, it's submitted to us for
10 analysis. That sample is collected at the time of an
11 autopsy by the pathologist. They will actually remove
12 that section and submit it to us for analysis. Within the
13 toxicology department, what I do with that sample is take
14 it prepare it. In order to analyze it, go through a
15 series of -- a process in order to subtract or extract any
16 drugs out of that sample and analyze it to see if there's
17 anything present at the time.

18 Q And when you did that in relation to Ms. Carter what
19 was were your findings as to the injection site?

20 A With the analysis that I performed on it, it did not
21 indicate any presence of drugs at that site.

22 Q And you tested for basically all of the known street
23 drugs so to say cocaine, heroin, opiates the whole range
24 of those kind of drugs?

25 A Yes, that particular test would cover your basic

1 street drugs along with any prescribed prescription type
2 drugs antidepressants things like that that test would
3 indicate all those different kinds of drugs, yes.

4 Q And you actually test the arm itself or the part that
5 sent to you to see if there is any drugs that are in that
6 tissue; is that correct?

7 A That's correct. It's actually a portion of the
8 tissue that's removed around the injection site, the
9 injection site itself and that's what I'm testing is that
10 tissue portion that's been removed at autopsy.

11 Q If an individual has been to the doctor within two or
12 three days of death and had blood drawn, would that would
13 be consistent with what you saw in the photograph I showed
14 you?

15 A Yeah, that could be an explanation of that injection
16 site. Yes, that's correct.

17 MR. LAWSON: That's all the questions I have. Please
18 answer any questions Mr. McLaughlin may have.

19 MR. MCLAUGHLIN: Thank you. May it please the court.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. MCLAUGHLIN:

23 Q Mr. Reighley, just one brief question. The levels of
24 ethanol that you discussed in the urine and the ocular
25 fluid to the juries benefit, would someone be considered

1 impaired in South Carolina with those level of ethanol?

2 A Well, based on the amount in the blood is what I
3 would go by for impairment, yes, they would be -- have
4 impairment associated with that level, yes.

5 MR. MCLAUGHLIN: Okay. Thank you.

6 THE COURT: Anything further?

7 MR. LAWSON: May it please the court.

8 REDIRECT EXAMINATION

9 BY MR. LAWSON:

10 Q If I'm not mistaken in 2003, that would not have been
11 the case; would it wasn't .10 at that time?

12 A Well, as far as what the statute would read, it would
13 below that level, but with physical impairment with it,
14 there would be some impairment associated with that level
15 base on scientific end of it.

16 MR. LAWSON: That's all.

17 RECROSS-EXAMINATION

18 BY MR. MCLAUGHLIN:

19 Q The ocular fluid results was .113 percent; is that
20 correct?

21 A That's correct.

22 Q Okay. And then the only other one would be urine
23 results; is that right?

24 A That's correct.

25 Q And then it was a .092 -- I guess, there was a blood

1 result; is that correct?

2 A That's correct.

3 Q .092?

4 A Yes.

5 MR. MCLAUGHLIN: Thank you. No further questions.

6 THE COURT: All right. Anything further?

7 MR. LAWSON: Your Honor, I'd ask that Mr. Reighley be
8 excused. He has to go tend to the debate tomorrow night,
9 so I wish him well on that venture.

10 THE COURT: All right. You are excused, sir. You're
11 certainly free to go.

12 (WHEREUPON, the witness leaves the witness stand.)

13 MR. LAWSON: May we approach?

14 THE COURT: Yes.

15 (WHEREUPON, a bench conference was held in the
16 presence of the jury, but out of the hearing of the
17 jury.)

18 THE COURT: All right. Ladies and gentlemen, we're
19 going to take a short break. Ask you to retire to your
20 jury room, ask you please not to have any discussions
21 about the case. And we'll -- it's going to be a short
22 break. It's just again gathering witnesses type of break,
23 so we want be out very long, but go ahead and call you
24 back out in just a bit.

25 (WHEREUPON, the jury was excused to the jury room.)

1 (WHEREUPON, a break was taken.)

2 THE COURT: All right. We ready?

3 MR. LAWSON: Yes, Your Honor.

4 MR. MCLAUGHLIN: Yes, Your Honor.

5 THE COURT: Ms. Joe, ask the members of the jury to
6 come in.

7 (WHEREUPON, the jury returned to the courtroom.)

8 THE COURT: Ladies and gentlemen, we will start back.
9 Mr. Lawson, you may call your next witness, sir.

10 MR. LAWSON: May it please the Court, the State would
11 call David Samuels.

12 THE COURT: Mr. Samuels, come around please.

13 THE CLERK: Sir, if you will please place your left
14 hand on the Bible and raise your right hand. Do you swear
15 or affirm the testimony you give in this case to be the
16 truth, the whole truth, and nothing but the truth so help
17 you God?

18 MR. SAMUELS: I do.

19 THE CLERK: Please be seated and state your full name
20 for the record.

21 MR. SAMUELS: My name is David Samuels. I'm a police
22 officer in Chesterfield County Virginia.

23 WHEREUPON,

24 David Samuels,

25 after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWSON:

Q And you said in Virginia?

A Yes, sir.

Q And how long have you been in police work?

A I been in police work a total of ten years eight with Chesterfield County.

Q And you said eight?

A Yes, sir.

Q With -- who do you actually work for now?

A Chesterfield County police.

Q And is it a county police or sheriff's department?

A It's a county police department.

Q Do you have a sheriff's department too?

A Yes, we do.

Q Okay. Now, you been with the county police how long?

A Eight years.

Q So in 2003, you work with the county police?

A Yes, I did.

Q Did you have occasion to be called to a recovery of a vehicle?

A Yes, I did.

Q Would you explain to the jury how that occurred?

A I was dispatch to 9645 Jefferson Davis Highway in Chesterfield County to JD's bar. Parked in front of the

1 business there was a silver Lexus SC 430 parked in front
2 of the business with Florida license plates. Our dispatch
3 confirmed through Florida that the vehicle was stolen.

4 Q What did you do at that point?

5 A After verifying it was stolen, I made contact with
6 one of our forensic techs and it was processed for
7 fingerprints.

8 Q And was that done there at the scene?

9 A Correct.

10 Q All right. You say this was at a bar?

11 A Yes, sir.

12 Q And where is that located?

13 A On Jefferson Davis Highway, it's about at the most a
14 mile or so off of I-95.

15 Q All right. And if you would for the jury explain
16 where is Chesterfield County Virginia?

17 A Chesterfield County is just South of Richmond
18 basically right off of 95.

19 Q Is 95 in Chesterfield County?

20 A Ninety-five runs through Chesterfield County.

21 Q Do -- so you are quite familiar then with I-95?

22 A Yes, sir.

23 Q Where was the car parked when you found it?

24 A From what I recall, it was parked near the front door
25 of the restaurant.

1 Q Okay. And was it taken from there by the police
2 department?

3 A Correct. After it was processed, we called a tow
4 truck and it was stored by them.

5 Q All right. And ask you if you can just look at these
6 two photographs and tell me if you recognize them?

7 A I do. I recognize the damage from the rear of the
8 vehicle also.

9 MR. LAWSON: Your Honor, the State would move State's
10 Exhibits 43 and 44 into evidence.

11 THE COURT: No objection?

12 MR. MCLAUGHLIN: No objection, Your Honor.

13 THE COURT: State's 43 and 44 without objection in
14 evidence.

15 (WHEREUPON, State's Exhibit Nos. 43 and 44 was
16 admitted into evidence.)

17 BY MR. LAWSON:

18 Q Now, is -- if you would take and using the number
19 describe to the jury what's depicted in State's Exhibit 43
20 and 44?

21 A Forty-three, there's a silver Lexus SC 430 parked in
22 front of a glass door which is the right most entrance to
23 JD's restaurant and bar on Jefferson Davis Highway. And
24 the second picture physically it's the same vehicle a
25 picture taken from the front of the vehicle the same

1 Lexus.

2 Q All right. And is it those pictures are they taken
3 at the scene of where the vehicle was located?

4 A Correct.

5 Q And how did you get the information that you needed
6 to find that vehicle?

7 A From what I recall, one of the bartenders had to call
8 to report it. It's kind of an unusual vehicle for that
9 location.

10 Q Okay. This JD is a bar?

11 A It's a restaurant and bar.

12 Q More restaurant, more bar?

13 A In my opinion, it's more bar.

14 Q Okay. And it's fairly close to I-95?

15 A Yes, it is like I say no more than two miles.

16 Q Is it a local establishment or one that is frequented
17 by people up and down the interstate?

18 A It goes both ways, I guess.

19 Q And what did you do upon arriving there and finding
20 the vehicle?

21 A The first thing I do is have our dispatch run the
22 license plate to confirm that the vehicle is stolen and
23 from what jurisdiction.

24 Q And is that accurate or was that accurate
25 information?

1 A Correct. Florida sent us a response back saying it
2 was stolen from there. At that point, I called one of our
3 forensic techs to have the vehicle process.

4 Q And did you stay there while that was done?

5 A Yes, I did.

6 Q All right. Did you in effect, I guess, protect the
7 crime scene?

8 A Correct.

9 Q All right. I don't know did you put up tape or did
10 you just wait there?

11 A I just waited there.

12 Q And did you allow anyone to touch that vehicle once
13 you got there?

14 A No, I did not.

15 Q Was it -- did it appear to be a busy night there or
16 medium or kind of quiet?

17 A I honestly don't recall.

18 Q All right. Is there anything else that you did in
19 relation to this investigation?

20 A I actually talked to the bartender to see if she may
21 have know who it belong to and that was the night
22 bartender. I also talk to the daytime, I guess,
23 restaurant worker.

24 Q All right. And none of them knew who's vehicle it
25 was?

1 A They could not tell me for sure who it belong to.
2 They had just overheard conversations.

3 Q And other than that did you do anything else?

4 A That was pretty much the extent of my involvement
5 with the car.

6 Q All right.

7 MR. LAWSON: Answer any questions Mr. McLaughlin may
8 have for you.

9 MR. MCLAUGHLIN: May it please the court.

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. MCLAUGHLIN:

13 Q Officer Samuels, just a few questions. When you
14 spoke with -- you mention you spoke with the morning
15 person of this establishment?

16 A Correct.

17 Q So that be a girl by the name of Beth?

18 A Correct.

19 Q And did Beth give you any information pertaining to
20 who may have been driving the car?

21 A Ms. Roberts -- if I may refer to my notes. She
22 stated she overheard two customers talking about the owner
23 of the car suppose it was a white male with long red hair.

24 Q She also seem to describe the hair as being
25 dreadlocks?

1 A That's correct.

2 Q She mention something about possibly two people
3 driving the car?

4 MR. LAWSON: Your Honor, I'm going to object at this
5 point as response is hearsay. If he wants to ask him what
6 he did as a result of the conversation, that's fine not
7 what she may have said.

8 MR. MCLAUGHLIN: Just describe the appearance of the
9 person reporting it to the officer and, of course, the
10 duties.

11 THE COURT: He did object then. He's objecting now.

12 MR. MCLAUGHLIN: Fair enough.

13 THE COURT: I sustain the objection.

14 BY MR. MCLAUGHLIN:

15 Q Did you find anything else in the car that could have
16 -- I don't know been a possible lead where the car had
17 been or anything like that?

18 A The car itself was actually locked. The only thing I
19 could see from what recall is a business card from a local
20 tire shop.

21 Q Okay. What was the name of that tire shop?

22 A I want to say it was Will's tire and auto.

23 Q Okay. Is that tire shop located in Chesterfield?

24 A No, it's actually in the City of Richmond.

25 Q In the City of Richmond. How far is that from where

1 the car was found?

2 A Let's see we were in the 9600 hundred block. The
3 tire shop from what I recall was roughly in the 900 block
4 -- I'm sorry the 800 block. So the way they do the blocks
5 there it was at least five to six miles north of where we
6 found the vehicle.

7 Q Okay. Did you go to this Will's tire shop to perform
8 any further investigation at all?

9 A No, I did not. It was 12:15 a.m. There wouldn't
10 have been anything open at that time.

11 Q Any other time the next day or anything like that?

12 A The extent that I dealt with the vehicle ended that
13 night.

14 Q Okay. And then it was turned over to an
15 investigator?

16 A Correct.

17 MR. MCLAUGHLIN: All right. One second.

18 (WHEREUPON, a pause in the proceedings.)

19 MR. MCLAUGHLIN: No further questions, Your Honor.
20 Thank you, Officer.

21 THE COURT: Anything on redirect?

22 MR. LAWSON: Nothing on redirect, Your Honor. We'd
23 ask that, Officer Samuels be excused.

24 THE COURT: I don't think there's any objection to
25 that. Thank you, Officer Samuels. You're excused from

1 your subpoena, sir.

2 (WHEREUPON, the witness leaves the witness stand.)

3 MR. LAWSON: And the sequestration order should he
4 want to stay.

5 THE COURT: Sure, absolutely.

6 MR. LAWSON: The State would call Lee Switzer.

7 THE CLERK: Sir, if you would please go around and
8 place your left hand on the Bible and raise your right
9 hand. Do you swear or affirm the testimony you give in
10 this case to be the truth, the whole truth, and nothing
11 but the truth so help you God?

12 MR. SWITZER: I do.

13 THE CLERK: Please be seated and state your full name
14 for the record.

15 MR. SWITZER: My name is Donald Lee Switzer, Jr.

16 WHEREUPON,

17 Donald Lee Switzer, Jr.,

18 after first having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BT MR. LAWSON:

21 Q And is it, Detective Switzer?

22 A Yes, sir, I'm a career detective.

23 Q Where do you work?

24 A Chesterfield County Virginia.

25 Q And what agency?

1 A Chesterfield County police department.

2 Q And I just found out that it's a county police force?

3 A Yes, sir.

4 Q And you also have a sheriff's department?

5 A Yes, sir.

6 Q And how long have you worked for Chesterfield County
7 police department?

8 A Twenty-one years.

9 Q And how long of that have you -- how much of that
10 time have you been a detective?

11 A Eleven years.

12 Q Now, in 2003, then you were a detective; is that
13 correct?

14 A Yes, sir.

15 Q Did you happen to become involved in a case involving
16 an automobile that had been stolen in Florida?

17 A Yes, sir.

18 Q And how did you become involved in that?

19 A As a motor vehicle theft detective assigned in a
20 division whenever cars be recovered in our jurisdiction
21 that's stolen from another jurisdiction, they assign it to
22 a detective just to review the notes and make sure that
23 the car is properly handled.

24 Q All right. And what did you do when you were
25 assigned this case?

1 A I contacted the jurisdiction where the car was stolen
2 which was Boca Raton, Florida, and spoke to the detective
3 who was Detective Giumenta just to find out if they had
4 leads or any things that we needed to follow up on.

5 Q What did you do as a result of that conversation?

6 A Well, at the time, he didn't have any leads. It
7 wasn't until the 24th of April I contacted the owner of
8 the car to find out when he was going to come to
9 Chesterfield to pick up the car. And when he told me he
10 was coming on the 24th, I had a evidence technician, a
11 street technician respond to the wreck lot. And when he
12 opened it up, he processed the vehicle on the inside. At
13 the time, we only process the exterior of the car.

14 Q What had you found if anything in processing the car?

15 A The initial processing we found fingerprints on the
16 exterior of the vehicle. And on the interior, we just
17 found some odd items that were just sent in the property.

18 Q All right. And no usable fingerprints on the inside?

19 A Not on the inside, no, sir.

20 Q And in your -- how long have you worked in the what
21 recovery of stolen automobiles?

22 A I worked in the motor vehicle theft division for
23 eight years.

24 Q All right. And in your experience, how -- is it
25 normal, is it abnormal to find fingerprints on the

1 interior of an automobile?

2 A In all the years that I've worked, I haven't gotten a
3 single fingerprint off the interior of any vehicle.

4 Q And the exterior?

5 A Exterior plenty of prints. It's much easier surface
6 to process.

7 Q And do you know -- what's the problem with the
8 interior of an automobile?

9 A Well, in most vehicles, the surfaces are so rounded
10 aerodynamic in design that you can't get a full print.
11 Plus, a lot of the cars have film when they clean the
12 interior like an armour oil or a cleaning substance and a
13 lot of times whether it's a button or a gear shift you're
14 only touching it with a partial part of your finger or
15 your palm. It's just not admissible for fingerprints.

16 Q And what did you recover from the interior of the
17 vehicle, if anything, that assisted in the case?

18 A Well, there was nothing recovered in the car that
19 assisted in this case that I know of.

20 Q All right. And on the exterior?

21 A Exterior there were latent prints that were matched
22 to unknown suspect.

23 Q And what did -- how long were you involved in this
24 investigation?

25 A Well, from the start until Detective Giumenta advised

1 me that they were -- there was a good possibility they
2 were going to place charges in Boca Raton. Detective
3 Giumenta called me I'm not sure the exact date I think it
4 was June 30th and said that they had a possible suspect in
5 the stolen car from Boca Raton and he gave me the name.
6 And he asked me to run his prints and match them with the
7 prints or compare them to the prints that were recovered
8 on the exterior of the vehicle. So I ordered a
9 fingerprint comparison with the prints that were recovered
10 from the vehicle and those that were assign to Kevin
11 Walton when he was arrested in our jurisdiction on April
12 22nd.

13 Q All right. And what did you do next?

14 A Well, after Gary Brunelli who is a fingerprint
15 comparison from Chesterfield County who works in the
16 forensics division notified me that the prints were an
17 exact match to that of Kevin Walton, I notified Detective
18 Giumenta that the prints were matched. At which point in
19 time, he advised me that they were going to bring charges
20 against him and our case was closed.

21 Q And your case would have been possession of a stolen
22 vehicle?

23 A Chesterfield's policy is we don't normally charge for
24 recovered vehicles from other jurisdictions that aren't
25 adjoining. We would for Richmond city which is an

1 adjoining, but for another jurisdiction and especially not
2 another State our common wealth attorney does not normally
3 place charges for possession of stolen property or
4 possession of a stolen vehicle just because of the
5 extradition problems and the amount time they have to
6 spend trying to get people in and out of court. So the
7 common wealth attorney ruled that as long as Florida was
8 planning on bringing charges we wouldn't.

9 Q Now, Detective Switzer, how did you or did you
10 ultimately find Mr. Walton?

11 A Did I personally?

12 Q No not personally, but your agency?

13 A Well, when Detective Giumenta advised me that
14 Mr. Walton had been arrested in our jurisdiction, I ran a
15 history check and found that on April 22nd or I think it
16 was April 22nd he had called Chesterfield police and
17 wanted to turn himself in. She said he was wanted on ---

18 MR. MCLAUGHLIN: Objection, Your Honor.

19 THE COURT: What's your objection?

20 MR. MCLAUGHLIN: No objection.

21 THE COURT: All right. Objection withdrawn. Go
22 ahead, sir.

23 A I found a history where he had turned himself in to
24 police and was arrested on charges in another
25 jurisdiction.

1 Q All right. On the 22nd of April?

2 A Yes, sir.

3 Q And when was the car found?

4 A The following day about 12 o'clock noon the 23rd?

5 MR. LAWSON: Thank you, Detective. Answer any
6 questions Mr. McLaughlin may have.

7 MR. MCLAUGHLIN: Please the Court.

8 THE COURT: Mr. McLaughlin.

9 CROSS-EXAMINATION

10 BY MR. MCLAUGHLIN:

11 Q Detective Switzter, just a few questions, how many
12 fingerprints were developed off of this car?

13 A No, sir, I do not know.

14 Q Okay. Are there any fingerprints that were developed
15 off of the car that do not match Mr. Walton?

16 A Yes, sir, there were.

17 Q Who is Dean Phillip Lampkey do you recognize that
18 name?

19 A Yes, sir.

20 Q And who is Mr. Lampkey?

21 A His prints were also recovered on the exterior of the
22 vehicle.

23 Q Did you or Chesterfield police department investigate
24 Mr. Lampkey at all?

25 A Yes, sir.

1 Q And was he ever located?

2 A No, sir.

3 Q Okay. So we don't know who Mr. Lampkey is as he
4 relates to the car?

5 A No, sir, we do not.

6 MR. MCLAUGHLIN: Thank you. No further questions.

7 THE COURT: Anything further?

8 MR. LAWSON: Nothing further and we'd ask that the
9 detective be excused so he can get back on the road.

10 THE COURT: All right. Thank you, sir. Thank you.
11 for being here. You certainly are excused from your
12 subpoena.

13 MR. LAWSON: May it please the Court, the State would
14 call Sandra Perry Simmons.

15 THE CLERK: Place your left hand on the Bible and
16 raise your right hand please. Do you swear or affirm the
17 testimony you give in this case to be the truth, the whole
18 truth, and nothing but the truth so help you God?

19 MS. SIMMONS: Yes, I do.

20 THE CLERK: Please be seated and state your full name
21 for the record.

22 MS. SIMMONS: My name is Sandra Parish Simmons.

23 WHEREUPON,

24 Sandra P. Simmons,

25 after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 BY MR. LAWSON:

3 Q Ms. Simmons, where do you live and work?

4 A I live in Chesterfield, Virginia and I work for
5 Chesterfield police department.

6 Q And how long have you worked for Chesterfield police
7 department?

8 A For nine years.

9 Q And do you have a special position that you hold
10 there?

11 A Yes, sir, I work in our forensic unit forensic
12 technician.

13 Q What does that involve?

14 A We respond to crime scenes, collect evidence and take
15 photographs.

16 Q So you're the CSI person for the police department?

17 A Yes, sir, very similar.

18 Q How long have you been doing that?

19 A For nine years.

20 Q So the whole time you been involved in law
21 enforcement it's been with crime scene investigation?

22 A Yes, sir.

23 Q And when you go to a crime scene, what do you
24 normally do?

25 A Take photographs, look for evidence, process for

1 fingerprints.

2 Q Were you in 2003 involved in a case involving the
3 recovery of a Lexus automobile taken from the State of
4 Florida?

5 A Yes, sir.

6 Q How did you become involved in that?

7 A Officer Samuels called me to come and process the
8 vehicle for fingerprints. He had told me that the vehicle
9 was stolen from Florida and requested me to come to the
10 scene where he was at.

11 Q All right. And do you remember what day that was
12 that you became involved?

13 A I believe it was April the 23rd 2003.

14 Q And where did you go to process the vehicle?

15 A It was at a location. I don't know if anyone is
16 familiar with Chesterfield County on Jefferson Davis
17 Highway. I believe it was 9645 Jefferson Davis Highway.
18 It was in front of a restaurant I believe it was called
19 JD's.

20 Q And what -- was it daytime, nighttime what do you
21 recall?

22 A When I responded, it was nighttime.

23 Q And what did you do when you arrived?

24 A I took photos of the exterior of the vehicle. As I
25 got closer, I realize the vehicle was locked. I could not

1 get inside the vehicle. I tried to take some photos of
2 the vehicle through the window as best I could.

3 Q All right. And I ask you if State's Exhibit 43 and
4 44 are those the photographs that you took?

5 A Yes, sir.

6 Q And is that the vehicle?

7 A Yes, sir, it is.

8 Q And that shows you're taking those pictures at
9 nighttime?

10 A Yes, sir.

11 Q Okay. And other than taking the pictures, what did
12 you do then?

13 A I black powder process the exterior of the vehicle.

14 Q You did what?

15 A I took fingerprint powder and process the exterior of
16 the vehicle. Obviously, I couldn't do the inside because
17 it was locked.

18 Q All right. Did -- and processing the exterior do you
19 have a certain routine that you follow in doing that like
20 where you start and where you stop?

21 A I usually -- everyone has their own way of doing it.
22 I usually start with the driver door. And then I just
23 work around the whole area of the car.

24 Q All right. And if you are looking for -- then what
25 do you use the black powder for?

1 A The black powder it's made of carbon. It's black in
2 color. It's not like black powder that you would put in a
3 gun. And you basically -- you would take a brush which is
4 called latent brush put a little bit of powder on it and
5 then you dust the area. And then if there's fingerprints
6 there they will appear.

7 Q And you do that all the way around the car?

8 A Yes, sir.

9 Q You do it on the hood of the car?

10 A I went around the hood area of the trunk area and the
11 driver and passenger side.

12 Q Did you, I guess, say list any prints?

13 A Yes, sir, I did.

14 Q Do you recall how many?

15 A I believe it was seven.

16 Q And is it unusual to get prints on the exterior of an
17 automobile?

18 A It's possible to get prints off the exterior, yes,
19 sir.

20 Q Now, what about usable prints -- how unusual or usual
21 is it get to usable prints?

22 A Well, I turn my fingerprints in for examination to
23 our latent print examiner. I believe that he advise me
24 that three came back which were AFIS qualities. I believe
25 he'll explain what AFIS quality is, but those are very

1 very good prints.

2 Q Okay. And that's something that we refer to as ridge
3 detail; is that correct?

4 A Yes, sir. There was ridge detail, yes, sir.

5 Q And when you have ridge detail, then you normally
6 have a print that can be identified?

7 A Yes, sir.

8 Q If you don't have ridge detail, it becomes much
9 harder or very unlikely that you going to be able to
10 identify a print?

11 A That's correct.

12 Q And if you would tell the jury what is a ridge
13 detail?

14 A If you look at your fingers, you can see like the
15 little lines in your fingers ridges. Those are your
16 ridges. And when you touch something, you may or may not
17 leave a fingerprint depending on the oils in your skin,
18 depending on a lot of factors.

19 Q So just because I touch this doesn't necessarily mean
20 I'm gone leave a print?

21 A That's correct.

22 Q But if I do leave a print, then it's necessarily
23 means I was in this location?

24 A Yes, sir.

25 Q Do you have the prints with you?

1 A Yes, sir, I do.

2 Q And are these the ones that you turned over to the
3 fingerprint examiner?

4 A Yes, sir.

5 Q And did he then return them to you?

6 A He has -- he keeps them. He has chain of custody,
7 has a file where he keeps the fingerprints. He did
8 explain to me though that they were very good
9 fingerprints.

10 Q Okay. And if I might, do you -- did you place the
11 writing on these cards?

12 A On the back, the fingerprint examiner. On the front
13 that's my handwriting, this is where I collected the
14 fingerprints from. It's kind of like a drawing of the
15 back of the car. And where I have the little X, that's
16 the trunk area. So the front of the card, I filled out.
17 On the back when the latent examiner examine them, he
18 wrote his notations down.

19 Q Okay. And do you have copies of these with you or
20 can I have these?

21 A No, those are the originals. You can have them.

22 MR. LAWSON: Your Honor, the State would move State's
23 Exhibit 45, 46, 47.

24 THE COURT: Any objection?

25 MR. MCLAUGHLIN: No objection.

1 THE COURT: Without objection State's 45, 46 and 47
2 are in evidence.

3 (WHEREUPON, State's Exhibit Nos. 45, 46 and 47 was
4 admitted into evidence.)

5 BY MR. LAWSON:

6 Q And the examiner will be familiar with these cards
7 and with the placement of your X's as to where you found
8 the respective prints; is that correct?

9 A Yes, sir.

10 Q Okay. Did you or were you instructed to seek any
11 other form of evidence?

12 A No, sir, because the vehicle was locked. It was a
13 very expensive car. We did not have excess to a slim gym.
14 I was advised that the interior of the vehicle will be
15 processed in the morning.

16 Q All right. And was that done later?

17 A Yes, sir.

18 Q And the interior was done, I guess, once you could
19 get into the interior; is that correct?

20 A Yes, sir, another technician processed the vehicle on
21 the next day.

22 Q And to your knowledge no usual prints were obtained
23 from inside the vehicle?

24 A That is correct.

25 MR. LAWSON: Answer any questions Mr. McLaughlin may

1 have. Thank you, ma'am.

2 THE COURT: Mr. McLaughlin.

3 CROSS-EXAMINATION

4 BY MR. MCLAUGHLIN:

5 Q Ms. Simmons, do you know when your fingerprints you
6 lifted were entered into AFIS?

7 A No, sir, I do not.

8 Q Would that be your supervisor who would handle
9 entering in prints into AFSI?

10 A It would be our latent examiner.

11 Q Okay. And the prints you lifted, were do they come
12 from on the exterior of the car?

13 A Yes, sir.

14 Q I mean, where on the exterior of the car?

15 A I believe two were on the trunk on the exterior of
16 the trunk area and I believe one was on the passenger side
17 door.

18 MR. MCLAUGHLIN: No further questions.

19 THE COURT: Anything further?

20 MR. LAWSON: Nothing further. We ask that
21 Ms. Simmons release from her subpoena?

22 THE COURT: All right. Ms. Simmons, you may be
23 excused, ma'am.

24 (WHEREUPON, the witness leaves the witness stand.)

25 MR. LAWSON: The State would call Gary Brunelli.

1 THE CLERK: Sir, if you will please place your left
2 hand on the Bible and raise your right hand. Do you swear
3 or affirm the testimony you give in this case be the
4 truth, the whole truth, and nothing but the truth so help
5 you God?

6 MR. BRUNELLI: I do.

7 THE CLERK: Please be seated and state your full name
8 for the record.

9 MR. BRUNELLI: My name is Gary L. Brunelli.
10 WHEREUPON,

11 Gary L. Brunelli,
12 after first having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. LAWSON:

15 Q And, Mr. Brunelli, where do you work, sir?

16 A I'm employed by the Chesterfield County police
17 department in Chesterfield Virginia as a latent print
18 examiner.

19 Q And how long have you been so employed?

20 A I have been with the Chesterfield County for the last
21 11 years. And I have eight years previous in the same
22 type position with the Richmond police department in
23 Virginia.

24 Q And how long have you been involved as a latent
25 fingerprint examiner?

1 A Eighteen years.

2 Q And what training and background do you have in
3 relation to fingerprint identification?

4 A I been through different courses with the FBI to
5 include the ten print classification, the latent print
6 comparison course and development course, judicial
7 comparatory course for fingerprints and the advanced
8 administrative latent course. I've also taken courses
9 with the State of Virginia as far as the NEC which is our
10 type of AFIS computer training, how to prepare a case both
11 on the computer and for court. And most recently, I was
12 with a development course for digital photographs of
13 fingerprints in Florida with Fray Incorporated.

14 Q And have you been qualified as an expert in the area
15 of fingerprint identification?

16 A I have qualified in both state courts of Virginia and
17 also federal courts in Virginia.

18 Q And on how many occasions have you been so qualified?

19 A I don't have any running totals on it numerous
20 occasions.

21 MR. LAWSON: Your Honor, we would Officer Brunelli as
22 an expert in the area of fingerprint identification.

23 THE COURT: Any objection?

24 MR. MCLAUGHLIN: No objection, Your Honor.

25 THE COURT: All right. Without objection.

1 Q Officer Brunelli, did you have occasion to become
2 involved in the identification of fingerprints on what was
3 a stolen vehicle from the State of Florida a Lexus, I
4 believe?

5 A Yes, I did.

6 Q This would have been in 2003; is that correct?

7 A That is correct, sir.

8 Q When did you become involve?

9 A In July of 2003.

10 Q And how did you become involved?

11 A The forensic technician that just testified or
12 investigator she had developed prints on the stolen
13 vehicle. And it's my job to evaluate those fingerprints,
14 enter them into our AFIS system for possible candidates
15 and from that point also compare any possible suspects we
16 may have to them.

17 Q All right. And AFIS is a computer program that may
18 or may not identify or give you the name of the possible
19 suspect; is that correct?

20 A That's correct. It stands for the automotive
21 fingerprint identification system. It can give us back
22 candidates, but it's up to the individual examiner to look
23 at what they give you in comparison to the latents what
24 you have.

25 Q So just because something comes back on AFIS doesn't

1 mean your job is finished, does it?

2 A No, sir, it doesn't.

3 Q Just the contrary is true. Your job is just
4 beginning at that point?

5 A That's correct.

6 Q All right. Now, ask you if you recognize what's been
7 marked as exhibits 45, 46 and 47 State's Exhibit?

8 A Yes, I do. These are the actual latent lifts
9 developed by the forensic investigator that just
10 testified.

11 Q And do you recognize the handwriting on that?

12 A Yes, it is my handwriting. As to identify the
13 fingerprints from which we had compared these latents
14 prints to.

15 Q And the -- that's on which side is your handwriting?

16 A It's on the actual face side in the blue.

17 Q All right. And on the opposite side there is also
18 handwriting that is not your writing; is that correct?

19 A That is correct.

20 Q And who's writing is that?

21 A This should be Forensic Investigator Simmons.

22 Q And what information are you putting on that card
23 when you write on it as you do there?

24 A That I put on, sir?

25 Q Yes, sir.

1 A I'm actually entering the number of the finger that
2 we have compared it to and identified it as starting with
3 the right thumb. It goes as one, two, three, four, five,
4 six, seven, eight -- I'm sorry six, seven, eight, nine,
5 and ten for the left hand.

6 Q All right. And did you compare and have you had
7 access to State's Exhibit 23?

8 A Yes, these are the prints that I compared yesterday
9 to the actual suspect prints that we worked with in
10 Virginia.

11 Q All right. Go ahead.

12 A These prints right here are the same prints that we
13 have in Virginia.

14 Q All right. So you had prints in Virginia and
15 yesterday when you got down, you took the South Carolina
16 prints and compared them to the print that was lifted from
17 this card?

18 A Yes, sir.

19 Q All right. And that was to avoid having to bring the
20 fingerprint taker from Virginia all the way down here to
21 testify simply that he took those fingerprints?

22 A That is correct.

23 Q But your comparison took place long before yesterday?

24 A Yes, sir.

25 Q You just redid it yesterday; is that correct?

1 A That's correct. I compared the ten prints or the
2 known prints that were taken in South Carolina to the
3 known prints that we had in Virginia to verify it was one
4 in the same person.

5 Q And did you prepare for purposes of demonstration for
6 purposes of presentation to the jury ---

7 A Charted enlargement.

8 Q A what?

9 A Charted enlargement.

10 Q An enlargement of the print that was found in known
11 the print?

12 A I did.

13 Q And is this what you prepared?

14 A Yes, it is.

15 MR. LAWSON: Your Honor, State would move this as
16 exhibit 48.

17 MR. MCLAUGHLIN: Without objection.

18 THE COURT: All right. Without objection State's
19 Exhibit 48 is in evidence.

20 (WHEREUPON, State's Exhibit No. 48 was admitted into
21 evidence.)

22 BY MR. LAWSON:

23 Q Officer Brunelli, you want to come down and explain
24 to the jury what you did in relation to prints known and
25 unknown?

1 A Yes, sir.

2 MR. BRUNELLI: Your Honor, may I approach the jury?

3 THE COURT: Yes, sir. Mr. Lawson, we got some those
4 fancy sticks right there. I have a laser pointer, but my
5 clerk went to get it. You welcome to use it if it would
6 help.

7 A This only one of the fingerprint that I compared. I
8 has seven such comparisons that I identified. I put
9 fingerprints on this card which was Kevin Walton. This
10 was one enlarged just to give you an idea of how I do it.
11 On the -- on this side where it says known print this
12 print is actually enlarged from number nine or left ring
13 finger of this person. This print is taken from I believe
14 it was this latent card right here that was lifted by
15 forensic investigator. Now, in doing so, what you see
16 here is this section on the latent print is enlarged to
17 give you an idea and show what we're looking at where the
18 ridge come down and forks on this particular one. If you
19 look over here in the known same position, it does the
20 same thing. What we do is compare this to this to make
21 sure it's the same spacial relationship as well the same
22 area of the print. In other words, if we look at this, we
23 got a ridge right here and one here. It may or may not
24 show another ridge in here, but these points are what
25 we're looking at, what the ridge is actually doing whether

1 it's stopping, beginning or making a circle. We have
2 those type areas. The other thing we look at is the type
3 of pattern. You see the circular type pattern both here
4 and here. This class is a world print. We look at that.
5 We have rolls, loops and arches. A loop just gone up and
6 comes back and arch comes in one side of the fingerprint
7 and goes out the other for our three main types. If you
8 look down here at the second characteristics that I have
9 enlarged here, it comes up and ends, over here it does the
10 same thing. And what I done is just charted eight
11 different areas that I looked at. Now, in doing so, I
12 looked at this entire print of the latent against this.
13 The biggest thing that as an examiner and testifying as an
14 expert in this trial there can be no dissimilarities that
15 are unexplained. In these two prints, there are none. In
16 the additional six that we had here, there are none. So I
17 can say without any question that these prints that were
18 developed on these cards are this persons.

19 Q Do you know how many latent prints did the -- did the
20 examiner pick up or find on the vehicle that were
21 identifiable?

22 A Of the forensic investigator?

23 Q Yes.

24 A We had ten. We had ten total partial prints or
25 latent prints that were identifiable.

1 Q And how many of those were identifiable to the
2 defendant in this case Kevin Walton?

3 A Seven. I'm sorry may I correct that we had 11.

4 Q Eleven.

5 A Right 11 total.

6 Q You had 11 total?

7 A Yes.

8 Q And the other four were they identifiable?

9 A Yes, they were.

10 Q And do you know who took?

11 A We know one of them was a Mr. Lampkey who we have
12 prints on file in Virginia. The other three were not
13 identifiable as Mr. Lampkey or Mr. Walton.

14 Q Were they put in AFIS?

15 A No, they were not. We have to have a certain quality
16 to even get it in AFIS. They were not entered into AFIS.

17 Q Because the quality was not good?

18 A That's correct.

19 Q And that gets back to ridge detail is that ---

20 A Yes, sir.

21 Q --- to some extent?

22 A AFIS we have three different levels of fingerprints
23 we look at as an expert. Level one is just the basic
24 pattern type arch lope or whorl and how the ridge flow.
25 We cannot make an identification from that. We cannot

1 make identification. However, we can't make a positive
2 identification. We can exclude the person only. Level
3 two detail is what I just said the ridges are doing
4 whether beginning, stopping or forking making a circle
5 that's what we look at as level two, that's primarily what
6 AFIS or the automated fingerprint identification systems
7 uses. In our level three, we're looking at each
8 individual ridge and how the pores are on the ridge
9 whether the ridges goes narrow and widens out all these
10 things that are taken into consideration we do
11 examination.

12 Q During this examination when the interior of the car
13 was examined, were you given any fingerprints from the
14 interior of the vehicle?

15 A Yes, I was.

16 Q Were any of them identifiable?

17 A No, they were not.

18 Q Is it as a fingerprint examiner and having worked in
19 it for 18 years, is it a normal situation to find
20 fingerprints inside a vehicle?

21 A It's a very difficult situation because of the many
22 surfaces that are not conducive fingerprints or whatever
23 is on those fingerprints.

24 Q All right. And in your years of experience, how
25 often do you find that you obtained fingerprints on the

1 interior of a vehicle?

2 A I couldn't put a number on it, but are very few
3 cases. They're usually off of the rear view mirror or a
4 very smooth surface or radio or something like that. Most
5 of your cars are manufactured in such a way that they
6 don't want fingerprints to show because it makes it look
7 bad to the public.

8 Q So you don't want smudges in your car that's why it's
9 hard to get fingerprints out of the inside of a car?

10 A That's correct.

11 Q I guess in the surfaces aren't conducive to
12 fingerprints either; is that correct?

13 A That's correct. They're usually a pebbled surface
14 where a surface such as this which be very difficult to
15 lift a print from that would be a very identifiable print.

16

17 Q And fingerprints are basically water and oil; is that
18 correct?

19 A They are 99 percent water and oil and anything that
20 the finger comes in contact with could be deposited also.

21 Q And so anything that absorbs or an absorbant surface
22 is next to impossible to lift a print from that is going
23 to be identifiable it absorbs the water or the oil?

24 A Well, we have to if it's a very hard surface such as
25 glass, it would not be absorbed, but it would evaporate.

1 And the other surface you have to look at is wood or
2 paper. We can do it, but then it's a special product
3 called enhydren (sic). And in a vehicle you have no wood
4 most of it is plastic and it would just reflect the -- the
5 water evaporates off and what you might have left is just
6 a little bit of oil.

7 Q All right. What class quality prints were these that
8 that you tested in relation to Mr. Walton?

9 A I don't understand your question, sir.

10 Q You said there were class one, class two, class three
11 quality prints?

12 A Levels of detail?

13 Q Yes.

14 A There was definitely level one, two and three. We
15 had more than enough level two detail within the print
16 which is actually the ridge structure to make an
17 identification with no problem at all.

18 Q All right. Did you have any that were as good as
19 three?

20 A Oh, yes, there's characteristics in all of them, but
21 because of way the fingerprints are taken live scan, it
22 doesn't show a lot of detail as far as the three
23 characteristics.

24 MR. LAWSON: Thank you.

25 THE COURT: Answer any questions Mr. McLaughlin may

1 have for you.

2 MR. MCLAUGHLIN: May it please the Court.

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. MCLAUGHLIN:

6 Q Detective Brunelli, is it detective?

7 A No, it's actually mister thank you.

8 Q Mr. Brunelli, just a couple questions I have for you.

9 Do you know when -- well, you said there were 11
10 identifiable prints y'all gotten off of this vehicle; is
11 that correct?

12 A That's correct.

13 Q Okay. Do you know when they went into AFSI?

14 A I can check my report and tell you, sir.

15 Q Please do if you don't mind.

16 A These were entered into AFIS on April 29th.

17 Q All right. And do you know when the first
18 identification was made of anyone off of these prints?

19 A The first identification I don't believe I have the
20 exact date just -- just a minute please. Apparently, it
21 will be rest of the fingerprint cards not entered into
22 evidence. There's one. The first print was made to
23 Mr. Lampkey.

24 Q If I told you file one is a supplemental report 5103
25 in discovery would that sound about right?

1 A I have it. I can tell you. It was made on 4-28 I
2 believe or 4-29.

3 Q You got a hit one print?

4 A Mr. Lampkey, yes.

5 Q Do you know when the first hit was made on a print
6 that you identified as being Mr. Walton?

7 A Yes, sir.

8 Q And when was that?

9 A July 8th '03.

10 Q All right. Just briefly about Mr. Lawson got into a
11 detailed discussion about the interior of cars. You
12 familiar at all with the interior of the car that these
13 prints were lifted from?

14 A I do not see it, sir.

15 Q Okay. Would it be uncommon for a luxury car to have
16 chrome placements in it, touch screens for radio stuff like
17 that?

18 A I can't answer that not knowing the vehicle at all.

19 Q You ever been in a Lexus, Mercedes anything like
20 that?

21 A No, sir, I can't. I have not.

22 Q Fair enough.

23 MR. MCLAUGHLIN: Thank you. No further questions.

24 THE COURT: Mr. Lawson, anything further?

25 MR. LAWSON: Your Honor, we ask that Mr. Brunelli be

1 excused from his subpoena?

2 THE COURT: All right. Any objection to Mr. Brunelli
3 being excused?

4 MR. MCLAUGHLIN: No objection.

5 THE COURT: Thank you, sir. You certainly free to
6 go.

7 (WHEREUPON, the witness leaves the witness stand.)

8 THE COURT: You may call your next witness.

9 MR. LAWSON: May it please the Court, the State would
10 call D.J. Higgins.

11 THE CLERK: Please place your left hand on the Bible
12 and raise your right hand. Do you swear or affirm the
13 testimony you give in this case to be the truth, the whole
14 truth, and nothing but the truth so help you God?

15 MR. HIGGINS: Yes, I do.

16 THE CLERK: Please be seated and state your full name
17 for the record?

18 MR. HIGGINS: I'm sorry David Higgins with
19 Chesterfield police department.

20 WHEREUPON,

21 David Higgins,
22 after first having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. LAWSON:

25 Q Mr. Higgins, what is your position with the

1 Chesterfield police department?

2 A Currently, I'm a sergeant in the office of
3 professional standings.

4 Q And what does that entail?

5 A Currently, I -- it's basically internal affairs
6 investigation. I had a different position in 2003.

7 Q What was your position in 2003?

8 A I was a forensics detective.

9 Q And as a forensic detective, what were you called on
10 to do?

11 A We work major crime scenes, collect physical
12 evidence, examine physical evidence. It's also latent
13 examiner.

14 Q In 2003, did you become involved in a case that
15 involve the taking of a Lexus automobile in Florida as the
16 recovery thereof in Chesterfield County?

17 A Yes, I did.

18 Q In what capacity?

19 A At that time, I would be reviewing the latents and
20 verifying any comparisons made with latents and
21 fingerprints.

22 Q All right. And is it my understanding that your
23 department policy is that Mr. Brunelli who examine the
24 fingerprints that there is a secondary source that comes
25 behind him and checks his work in relation to the

1 identification of that fingerprint?

2 A Yes, their practices that if he makes an
3 identification that I would do a verification if I made an
4 identification, he would in turn do the verification for
5 me checks and balances.

6 Q All right. And in this case, what was your job?

7 A I was making verifications.

8 Q And as a result of that job, did -- were you called
9 on to make any verifications?

10 A Yes.

11 Q And what did that involve?

12 A This would involved a series of latent prints that
13 were submitted by one of the technicians, Technician
14 Simmons. The were examined by Technician Brunelli and
15 then they were submitted to me and admitted identification
16 on total of seven identifications across these prints to a
17 Kevin Walton.

18 Q All right. And also was there another individual
19 that was identified as prints on this vehicle?

20 A I believe there was. I don't recall if I a did
21 verification on that one also or not.

22 Q All right, sir. But your job was to do the
23 verification on Kevin Walton?

24 A That's correct.

25 Q And that would be on all seven identifications in

1 relation to Mr. Walton?

2 A Yes, sir.

3 Q Would that be seven different fingerprints?

4 A Yes.

5 Q Okay. So as I understand it, then basically your job
6 was one of over site as you said checks and balances in
7 relation to this case and that's your policy within the
8 Chesterfield County police department?

9 A Yes, sir.

10 Q All right.

11 MR. LAWSON: Answer any questions Mr. McLaughlin may
12 have for you.

13 THE COURT: Mr. McLaughlin.

14 MR. MCLAUGHLIN: I have no questions, Your Honor, and
15 no objection to him being excused.

16 THE COURT: All right. Thank you, sir. You may step
17 down and you are excused from your subpoena.

18 (WHEREUPON, the witness leaves the witness stand.)

19 MR. LAWSON: Your Honor, could we have a brief
20 recess.

21 THE COURT: All right. Ladies and gentlemen, ask you
22 if you would please retire to your jury room, have no
23 discussions about the case. And if you need anything
24 while you're back there beverage-wise, just please let the
25 bailiff know.

1 (WHEREUPON, the upon the jury retired to the jury
2 room.)

3 THE COURT: All right. We'll be in recess for about
4 ten minutes.

5 (WHEREUPON, a break was taken.)

6 THE COURT: Mr. Lawson, is the State ready to
7 proceed?

8 MR. LAWSON: Yes, sir.

9 THE COURT: Mr. McLaughlin, is the defense ready?

10 MR. MCLAUGHLIN: We are, Your Honor.

11 THE COURT: Please ask the jury to join us, Ms. Joe.

12 (WHEREUPON, the jury returned to the courtroom.)

13 THE COURT: All right. Mr. Lawson, you may call your
14 next witness, sir.

15 MR. LAWSON: May it please the Court, the State would
16 call Keith Lutcken.

17 THE COURT: All right. Detective, if you come around
18 please.

19 THE CLERK: If you will please place your left hand
20 on the Bible and raise your right hand. Do you swear or
21 affirm the testimony you give in this case to be the
22 truth, the whole truth, and nothing but the truth so help
23 you God?

24 MR. LUTCKEN: I do.

25 THE CLERK: Please be seated and state your full name

1 for the record.

2 MR. LUTCKEN: Name is Keith Von Lutcken.

3 WHEREUPON,

4 Keith V. Lutcken,

5 after first having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. LAWSON:

8 Q And, Lieutenant, where are you employed?

9 A I'm employed with the Florence County sheriff's
10 office.

11 Q And how long have you been so employed?

12 A I been employed with them it'll be 22 years this
13 September.

14 Q And what position do you hold there?

15 A Currently, I'm the lieutenant over the forensics
16 crime scene unit.

17 Q And how long have you been involved in the crime
18 scene unit?

19 A Been involved with it 19 years.

20 Q And how long have you been law enforcement?

21 A Going on 22.

22 Q And so most of the -- almost your entire career been
23 involved in crime scene?

24 A Yes, sir, crime scene and forensics.

25 Q And how long have you been the lieutenant over the

1 crime scene unit?

2 A Since 1992.

3 Q And in that position, what are your job
4 responsibilities?

5 A Job responsibilities is varied. I manage the
6 day-to-day operation of the forensics unit. Those
7 operations would include those supervisions of four other
8 individuals within the unit, the in-house laboratory, the
9 evidence room, our impoundment yard and also monitoring
10 folks as they respond to crime scene in answering
11 questions and supervising them on the other things.

12 Q In March of 2003, you would have been in charge of
13 the unit at that time; is that correct?

14 A That's correct.

15 Q Do you recall the morning of March the 28th 2003?

16 A Yes, sir, I do.

17 Q What happened on that date?

18 A On that morning, I was notified by our central
19 communications center that the town of Pamplico police
20 department was requesting us in reference to a death
21 investigation. This was about 6:20 that morning. At that
22 time, being a supervisor, I also notified my on-call
23 forensic person to respond with me to process the scene
24 which was Corporal David Brown at that time.

25 Q What did you do at that point?

1 A At that time, after I spoke with him, I proceeded to
2 the scene. I arrived on scene at approximately 0700,
3 which is seven a.m. And at that time, met with other
4 officers that were present on the scene, made sure that a
5 perimeter had been set up, and that the scene was secured.
6 And at that time received a briefing from the first
7 responding officers.

8 Q Was David Brown -- Corporal Brown was he already
9 there.

10 A Yes, sir, he was.

11 Q Had he begun anything at that point?

12 A At that point, he may have taken some overall
13 photographs of the scene from a distance, but at that
14 time, he was waiting on my arrival.

15 Q Upon your arrival, what did you do?

16 A Upon my arrival like I said at first as with every
17 other scene, we received a briefing from the first
18 responding officers. And also may be EMS if they're still
19 present at the scene find out what they seen and what they
20 may have tampered with or moved in order to assist the
21 victims. At that time, after we receive a briefing, we do
22 an initial what we refer to as a initial walk through. We
23 do initial walk through with Officer Warren Poston at this
24 time at the apartment. The scene was secure. Nobody was
25 in the scene. We did a walk through. She showed us where

1 the victim was and then he exited the scene along with us.
2 Corporal Brown at that time began taking overall
3 photographs of the apartment buildings and the duplexes.
4 After doing this, we checked all windows and doors to make
5 sure there's no pry marks or any tampering with those
6 objects where somebody may have forced their way iwith the
7 residence. After doing this, then we proceeded towards
8 the inside of the residence.

9 Q Did there appear to be any indication that there was
10 a -- or any evidence of a forced entry into the premises?

11 A No, sir, all the windows on the apartment were in
12 tact all of them were locked. The two doors which were
13 entry or exit points into the apartment one on the front
14 and one also on the rear no tool marks or pry marks were
15 present on those doors or on the spines of those doors.

16 Q And the windows had screens on them; is that correct?

17 A Yes, sir, the screens were in tact on all the
18 windows.

19 Q What did y'all do after securing the or checking the
20 outer perimeter?

21 A After checking the outer perimeter and as I said, we
22 took photographs. At that time, we moved to the front
23 door of the residence. And at that time, Corporal Brown
24 began taking more photographs of the interior of the
25 residence. As you walk into the front door of the

1 residence, you immediately walk into the living room area
2 or the den area whatever it may be. There's a couch and a
3 sofa, entertainment system, television there. At that
4 time, we took photographs there. And then immediately
5 turn to the right. Once we turn to the right, you are
6 looking at the kitchen area which also had an adjoining
7 eating area where there's a table and chairs where they
8 had their meals at and we proceeded from that point. When
9 we do these walk through, what we're trying to do at that
10 time is document the scene as we find it when we arrive on
11 the scene. And also besides document the scene, we're
12 trying to locate any possible evidence that may be -- it
13 would be on the floor. You don't want to step on it. You
14 don't want to kick it. It could be on the counters. And
15 you got to remember that evidence comes in many different
16 forms. So we don't want to disturb anything. We're not
17 just there to take fingerprints and take measurements and
18 do drawings. We're walking through and we're observing
19 things as we're making our way through. Once we went
20 through the kitchen, then to the computer room. Once you
21 come out of the computer room going down the hallway
22 immediately to your left is a small bathroom. It's a full
23 bathroom, past the bathroom there's also the daughter's
24 bedroom, which is on the left-hand side. Then immediately
25 to the right across from her bedroom was the victim's

1 bedroom which is where we found her.

2 Q And did you stay with Corporal Brown or did y'all go
3 in different directions? How did you work that?

4 A No, sir. When we work as a team or a pair in these
5 type of situations in a lot of instances some units may
6 separate. And in my years of experience, I found that the
7 best way to document these things and the best way of
8 communication is to stay together. One person will take
9 the photographs, another person that's with them will do
10 the log for the photographs. Likewise, the person doing
11 the log for the photographs may also be doing a rough
12 sketch of the apartment, the scene in that case. And
13 we're talk walking together because four eyes are a lot
14 better than just two. So we're both looking for things.
15 We're both pointing things out to each other that way we
16 don't miss anything.

17 Q And what, if you recall, what were you doing as
18 Corporal Brown as taking the photographs?

19 A As Corporal Brown was taking photographs, his main
20 focus at that point is to take photographs and make sure
21 that we have an accurate depiction of the residence.
22 Primarily, what I'm doing is I'm walking through looking
23 at things and looking for any possible evidence also.
24 He's doing the same thing looking for any evidence that
25 may be present somewhere, but primarily his focus is to

1 take photographs and I'm looking for any evidence that may
2 be laying around.

3 Q All right. And did you find any evidence laying
4 around?

5 A Well, from some of the information that we have
6 received from Officer Poston, the daughter stated that
7 that night he had been seen or witnessed making a peanut
8 butter jelly sandwich in the kitchen area. And, of
9 course, when we got to the kitchen area inside there on
10 the kitchen counter was a jar of, I believe, it was Jiff
11 peanut butter and a jar of Smucker's grape jelly. There's
12 numerous utensils in the sink that he used to make a
13 sandwich. The bread was there. Also some of the other
14 things that we're looking for is any signs of a struggle
15 that may have taken place within those areas. You're
16 talking about a small apartment, so if there's any signs
17 of a fight or struggle that may have taken place, you
18 know, it would have been obvious at that time. These are
19 things that we're trying to locate as we're going through.
20 We're corroborating what witnesses say, what the daughter
21 stated that she saw him doing that night and then we're
22 proceeding from that point.

23 Q So on the counter in the kitchen area set a bottle of
24 or a jar of peanut butter and a jar of jelly?

25 A Yes, sir, that's correct.

1 Q And neither were in the refrigerator they were both
2 out?

3 A They're both sitting on the kitchen counter didn't
4 have to go looking for them.

5 Q Now, did you see or observe any signs of a struggle
6 in the house?

7 A No, sir. The house -- another thing that we note is
8 the condition of the residence or the condition of any
9 scene that we respond to. And in this case, a lot of the
10 cases that we respond to the scenes especially residence
11 are not particularly clean all the time, but it was
12 exceptionally noted that in this particular scene the
13 house was fairly neat. You know, you could tell people
14 live there, but somebody kept the house up very well. So
15 to answer your question, no, there's no signs of any
16 struggle anywhere.

17 Q All right. And the house was well kept?

18 A Yes, it was.

19 Q And what did y'all do after or at the point that
20 Corporal Brown completed documenting the scene with
21 photographs?

22 A After we took photographs and once again like I said,
23 this is a step by step process. We ended up in the
24 bedroom where the victim's located. At that time, we do
25 overall photographs of the bedroom along with the victim.

1 Okay. Now, this is before we actually move in closer to
2 where the victim's located. After we take these overall
3 photographs, then we move in closer to the victim and we
4 begin photographing any potential evidence as located
5 around the victim in the bedroom. And then at that time,
6 we begin our examination of the victim herself.

7 Q All right. And at this point Corporal Brown still
8 taking photographs?

9 A Yes, sir, that's correct.

10 Q And what were you doing?

11 A At that time just basically viewing the room trying
12 to locate evidence that's lying around and relay that
13 Corporal Brown, so those photographs could be documented.

14 Q Did you at some point turn your attention to the
15 body?

16 A Yes, sir, we did.

17 Q And what did you do in that regard?

18 A As we locate evidence, the evidence was photographed
19 in place, was documented and then packaged before even
20 tempering with the victim. At the time, once all evidence
21 had been removed from the victim, we began examining her
22 before we even moved her for any visible wounds that may
23 have been present in the current position that she was in.
24 The victim was on her posterior side which would be her
25 back, slightly candid to her right which would be her

1 lateral side. And she had one handcuff attached to her
2 left wrist. And as I said at this point, we began
3 documenting any type of evidence that we see on her before
4 moving her.

5 Q All right. And this handcuff, these handcuffs did --
6 would you need a key to open these handcuffs?

7 A No, sir, you don't.

8 Q How is it that that can be?

9 A Handcuffs have a key hole for them. We did not
10 locate a key anywhere in the apartment for the cuffs, but
11 cuffs did have a safety release latch on them. They
12 weren't typical handcuffs that were used in the
13 performance of our duties. These handcuffs were more
14 like toy handcuffs, but they're chrome plated like you see
15 in little toy kits for children. They have a latch on.
16 Once you got the cuffs snapped, the cuffs hold, but once
17 you remove that latch, the cuff can be done very easily.

18 Q So without a key you can open the handcuff and remove
19 it?

20 A Yes, sir.

21 Q And that's where the latch is on both sides?

22 A Yes, sir, there's a safety latch on each cuff.

23 Q Now, did you notice the body in relation to any rigor
24 mortis or lividity or anything in that respect?

25 A Yes, sir, in the performance of our duties when we

1 go to examine a deceased person, these are things that we
2 looked for as far as determination of death beyond going
3 as far as looking at the wounds themselves at first. In
4 the victim, we notice that lividity had already set in the
5 victim. The levity is the process after death and it
6 begins occurring immediately. It's not a gradual thing.
7 Lividity which is also referred to as rigor mortis begins
8 to set immediately and basically all it is is gravities
9 taking it's effect. The blood is settling into the
10 independent capillaries and that's the position that blood
11 will remain. Now, after about two hours, lividity becomes
12 what we refer to as fixed. And you know how you can press
13 on your skin and you can see the blotting of your skin the
14 white places. Once lividity has become fixed in the
15 victim, there will be no blanching. And this is one way
16 that we indicate where to check for estimation of death,
17 so in Ms. Carter we knew by the lividity and the
18 non-blanching that she had probably been dead may be
19 approximately two hours. Now, we take it a step beyond
20 that and we begin looking at other things that happen
21 during the decomp process after death. And the other one
22 that we look through rigor mortis or rigidity. Rigor
23 mortis as I believe was explain to you is the contraction
24 of the muscles. It's the break down of the gases in the
25 chemicals within the human body also occurs within

1 animals. It occurs within every species, every living
2 species. Rigor mortis usually happens and begins to occur
3 a couple hours after death. Like I said, it's a gradual
4 thing. Rigor mortis is normally theft or fully set to the
5 point that a person is non-bendable within eight to 12
6 hours. Rigor mortis is normally leaving the body or
7 completely left the body within 34 to 38 hours. Now, you
8 think how can they tell how that person or how long that
9 person's been dead. We look at the rigor, okay, and in
10 this Ms. Carter's case number one we knew that the rigor
11 mortis had been there about at least two hours
12 approximately. Rigor had already began to set in her.
13 Her jaws had already been tightened, which is what happens
14 in the trunk area. This is what we refer to as the trunk
15 had already began to contract also. The arms were
16 stiffening and also the joints, the knees, the elbows, the
17 ankles, the feet were straight out. So these were
18 indications to us that she had been dead no more than, no
19 more three hours. Okay. She was still bendable, pliable,
20 but it wasn't to the point we couldn't bend her at all.
21 The other thing that you have to take into account not
22 with lividity, but with rigor mortis is the size of the
23 person. In larger people, rigor takes a lot longer to set
24 in. Smaller people as in the case of Ms. Carter rigor
25 sets in a lot faster and it also leaves the body a lot

1 faster. Then you have to take in the account of the
2 humidity temperature and everything. And since she was in
3 a controlled climate within her bedroom, rigor was setting
4 at a normal pace. So our estimation of time judging from
5 these things would have been probably two to three hours
6 she had passed away.

7 Q And this is approximately seven to 7:30 in the
8 morning?

9 A It's seven o'clock when I arrived probably about 0730
10 when we were examining.

11 Q That's four, 4:30 something like that?

12 A I estimated the time of death to be between four and
13 4:30 that morning.

14 Q Now, what did you do after examining the body?

15 A After examining the body I mean as I said, we
16 continued with other things with the body. We're noting
17 any bruising to the body. We did note that around the
18 neck area were red marks which possibly indicate
19 strangulation. Also to the body to the face area
20 specifically the cheek area, the throat area and more
21 particularly but specifically what we look for in carbon
22 monoxide poisonings and also strangulations is the rupture
23 in the blood vessels that are in the eyes, okay. We refer
24 to this as petechia. Now, the petechia was present within
25 the eyes also the cheeks and the neck, but it was more

1 prominent within the eyes. As I said, we continued
2 looking for any other trauma to the body. At that time,
3 we examined the head closely. We examined the anterior,
4 the posterior side of the shirt that he was wearing which
5 was a red in color shirt was pulled above her breast. We
6 examined every part of her down her to feet. And there
7 was nothing to note anywhere else except for the neck and
8 above.

9 Q After you completed that did I assume based on
10 Corporal Brown's testimony, that he began taking things
11 into evidence; is that correct?

12 A Yes, sir. Well, actually before we began the
13 examination of her, we began collecting evidence from the
14 bed.

15 Q Okay. And it would have been as primarily his job on
16 this particular case to bag the evidence and proceed to
17 bring it back to the law enforcement center?

18 A That's correct. After he finishes initial sequence
19 of photographs, my job was to examine the body, note
20 anything about the body and his was to collect evidence as
21 we came upon it.

22 Q All right. And did you have anything to do with the
23 fact that a car was missing?

24 A No, sir, I did not.

25 Q All right. And did -- well, what did you do as

1 Corporal Brown was collecting evidence? What -- were you
2 also doing the same thing?

3 A Well, I was assisting him as he was collecting the
4 evidence. After we finished our examination of
5 Ms. Carter, then we had her removed from the scene Captain
6 Chuck Haynes with EMS. After her body was removed where
7 we can work a little more where we're not afraid of
8 tampering or disturbing anything, then we proceed with
9 with further collection of evidence. While he was doing
10 that, I began my process of fingerprinting the bedroom and
11 working through other areas of the house that may have
12 been touched by the subject.

13 Q To your knowledge, do you recall whether or not you
14 obtained any usable fingerprints in the house?

15 A The latent impressions that were obtained from the
16 residence were what we refer to as insufficient for
17 identification. And basically what that means is that
18 those latent impressions were either smeared, smudged or
19 they contained not the proper amount of identifying
20 characteristics that we need in order to make a positive
21 identification.

22 Q Did both you and David Brown dust for fingerprints?

23 A At the scene, I process the scene as far as dusting
24 for fingerprints. The items that were in the kitchen that
25 we know that the subject handled those items were

1 photographed and collected and transported back to the law
2 enforcement center to our in-house laboratory where they
3 were further processed.

4 Q Was there a reason for that?

5 A Yes, sir. Those items that we know that he
6 absolutely had to touch, we took them back to our in-house
7 laboratory where we could cyanoacrylate fume or superglue
8 fume them as it's referred to. Where the fumes are
9 actually, the glues actually heated and the fumes adhere
10 or crystalize to the ridges of the fingers and that way we
11 don't disturb anything. We stand a better chance of
12 getting fingerprints off of those type of items. I do
13 remember I took the doorknob off of the door bedroom and
14 gave it to Corporal Brown, that was also transported back
15 to the lab to be processed for prints. But the other
16 items of evidence on things that he may have touched the
17 dressers, doors, light switches things of that nature that
18 you ordinarily come in contact within the residence, those
19 were my jobs at the scene.

20 Q And none of them yielded identifiable prints?

21 A No, sir. Nothing that could be positively
22 identified.

23 Q And when you got -- I mean, you bring these items
24 back to give you a better chance of getting the usable
25 prints, but in this case, you still didn't get anything?

1 A That's correct. If there's a situation where we can
2 actually take the item, the items actually mobile where we
3 can take it and transport it back to our lab where we can
4 process it in a controlled environment. It's a lot
5 better. We stand a lot better chance of retrieving latent
6 prints off of it. Items as you would imagine a dresser,
7 chester drawers, bedside table, those types of things are
8 not exactly mobile enough, you know, to fit into our
9 vehicles, so those have to be processed at the scene.

10 Q After the process on the scene in relation to
11 fingerprints, what did y'all do at that point?

12 A At that point, after processing the scene for prints,
13 once again making sure that we covered the interior
14 residence. We collected what evidence we had to. At that
15 point, then we exited the scene and turn the scene back
16 over to a family member.

17 Q All right. Do you recall approximately what time it
18 was that y'all finished on the scene?

19 A I believe we completed the scene around ten o'clock
20 that morning.

21 Q What was the next thing that you did in relation to
22 this case?

23 A Of course, I assisted Corporal Brown with the
24 processing of the evidence that we took back in getting
25 our paperwork and in line with getting everything logged

1 into evidence. The next dealings that I had which was
2 with Investigator Yarborough dealing with the case just
3 trying to figure out what things we had get things
4 transported to SLED was also sending a man the next
5 morning or EMS in this case send a man to the autopsy to
6 accompany her for the autopsy.

7 Q All right. And then that person would bring back
8 anything that the pathologist wanted further test done on?

9 A Yes, sir.

10 Q And then you or someone in your department would then
11 take it to SLED?

12 A That's correct.

13 Q And the request will be made through your office for
14 specific test to be done depending on what the pathologist
15 ask for in that respect?

16 A Yes, sir. In that regard just whatever they request.
17 And I also immediately after a scene will at some point
18 sit down with my person, my crime scene person that
19 assisted with the scene and go over everything is
20 basically a case review within a weeks time. You know,
21 we're doing a case review in determining, you know, what
22 has to go whether is of potential evidence and what needs
23 to go to SLED to be analyzed.

24 Q All right. Did you at some point become aware of a
25 situations involving the recovery of Ms. Shannon Carter's

1 car?

2 A Yes, sir. I was made aware of that. The car had
3 been recovered in Boca Raton, Florida in a parking lot.

4 Q Were you made aware of any of the circumstances
5 leading up to that or surrounding that?

6 A Yes, sir, I was.

7 Q As a result, did you do any test or become involved
8 in anyway in that situation?

9 A Yes, sir. I was advised that several items of
10 evidence collected by the department. And there were
11 cigarette butts in the ashtray, numerous articles of
12 clothing were collected from the vehicle and that would
13 include also a black pair -- a black pair of Brahma boots
14 these items were collected. Also, it was determined that
15 a residence had been broken into and a shoe print had been
16 located outside the window that was entered in through and
17 that it had also been photographed by their crime scene
18 unit.

19 Q So if you identify any of these items which have been
20 marked which are in evidence?

21 A State's Exhibit 30 is a black and white 35 millimeter
22 photograph depicting a shoe impression with a scale.
23 State's Exhibit Number 29 is another photograph of the
24 shoe impression using a scale. State's Exhibit Number 28
25 is the same. State's Exhibit Number 31 is the footprint

1 of the shoe impression without a scale. Did you want this
2 one to go in also?

3 Q Got mixed up. I'm sorry?

4 A State's Exhibit Number 32 is the shoe impression
5 without the scale blown up. And State's Exhibits Number
6 33 and 34 are also eight by ten photographs of the shoe
7 impression with the scales.

8 Q Which exhibits were provided to you by Boca Raton?

9 A The exhibit itself presented would be State's Exhibit
10 28, 29, 30 and 31.

11 Q All right. And the State's Exhibit 32, 33, and 34
12 are you aware of where they came from?

13 A Yes, sir, I am.

14 Q And where was that?

15 A These photographs are just enlargements that we had
16 made for the purposes of comparison or examination
17 purposes.

18 Q All right. So Boca Raton provided the small pictures
19 and then they were blown up here?

20 A Yes, sir, that is correct for examination purposes.

21 Q All right. I'll ask you if you recognize what's been
22 marked as State's Exhibit 36?

23 A Yes, sir, I do.

24 Q And what is that?

25 A It's the pair of Brahma work boots that were

1 recovered from the victim's car in Boca Raton.

2 Q Ask you if you could open this box and tell me if you
3 can identify what's in that box?

4 A Yes, sir. These are the Brahma work boots that I
5 recovered myself from Kevin Walton's personal effects in
6 the jail at the law enforcement center.

7 MR. LAWSON: May it please the Court, the State would
8 move the admission of State's Exhibit Number 49 a pair of
9 boots?

10 THE COURT: Any objection?

11 MR. MCLAUGHLIN: No objection.

12 THE COURT: Without objection State's 49 is in
13 evidence.

14 (WHEREUPON, State's Exhibit No. 49 was admitted into
15 evidence.)

16 BY MR. LAWSON:

17 Q All right. Lieutenant, what size boots are these did
18 you -- can you determine that?

19 A Yes, sir, the size that I retrieved -- the ones I
20 retrieved from the jail were a size 11 triple E.

21 Q All right. And do you know the size of the one's
22 that were in the car?

23 A I believe that they are a size 10 triple E's. Yes,
24 sir, they are 10 triple E's.

25 Q And can you tell from the photograph what size the

1 off of the desk top or linoleum. We wouldn't necessarily
2 use this and then have a three dimensional image at that
3 time. At that point in time, we take ink impressions or
4 powdered impressions something of that sense, okay. But
5 just show you what was done and what it looks like is
6 this. A shoe is actually placed into the phone and then
7 roll and place their foot and it goes from heal to toe and
8 then it's lifted. And on this particular one, this is the
9 right boot. And then we also when we question impressions
10 we have one impression here. You always when we can we
11 take both shoes of the suspect and I can explain that
12 shortly and this would be the left shoe. So therefore as
13 I said these are basically taken to represent a three
14 dimensional aspect of that impression so we can do a
15 comparison.

16 Q And what do you use the three dimensional aspect for?

17 A Three dimensional aspect is to get an idea of the
18 wear patterns that that shoe could have created. A lot of
19 people don't realize that footwear impressions just like
20 tire impressions is very misunderstood. Footwear
21 impressions, tire impressions kind of like fingerprints,
22 okay. They have their own identifiable characteristics to
23 them. Judging by your feet, the way you walk, the way you
24 stride, your activities, your hobbies what dictate the
25 amount of wear that you place on any given shoe and on

1 that foot. A lot of people tend to go from heel to toe
2 most people do, but depending on the bone structure of
3 your feet, it's gone dictate how you wear that shoe and
4 the wear pattern will develop on that shoe and that's what
5 we look for when we do these comparisons.

6 Q And what shoes were used to make those impressions?

7 A The shoes that I retrieved from Mr. Walton's personal
8 belongings in the jail.

9 Q The new shoes?

10 A Correct.

11 Q All right?

12 A But there's a reason for that and not using the old
13 shoes for the exemplaries.

14 Q What is that?

15 A Judging from the photographs that the crime scene
16 people took in Boca Raton of the shoe impression. The
17 edges around the shoe impression located outside the
18 window are very sharp, very clear. Now, they do have a
19 wear pattern on the outside heel. This particular image
20 which is a positive image of the photograph was no doubt
21 the right boot. The wear pattern is to the outside of
22 that heel on the very edge. Therefore, after examining
23 the boots that Boca Raton retrieved from the car, we knew
24 by looking at those boots that there's no way they could
25 have made them due to the wear pattern. They had quite a

1 bit of wear on them.

2 Q In other words, they were older?

3 A They were older boots. And then when we retrieved
4 the ones from Mr. Walton's belongings in the jail, we saw
5 that they were newer boots would have had sharper edges to
6 make those images.

7 Q Then so the new boots would be more consistent with
8 those impressions than the old boot?

9 A Without a doubt absolutely.

10 Q And that's based on observing the bottom of the boot?

11 A That's correct.

12 Q Did you do a comparison of the shoe patterns that you
13 developed and the one in the photograph?

14 A Yes, sir, I did.

15 Q And what did you find?

16 A The impressions that were taken were photographed.
17 As I said, these are blown up eight by tens. This is not
18 an actual one to one representation. The actual one to
19 one representation would look exactly like the bottom of
20 his boots that he just showed you. The problem with the
21 type of soil that this boot print was made in is what we
22 core soil. It's pebbled. It has a lot of pebbles in
23 it. And due to that, it takes away -- that type of soil
24 takes away a lot of the identifying characteristics that
25 we look for when we're looking at shoe impressions. Just

1 like with fingerprints, there's certain things that we
2 look for in the shoe impressions the way they wear. When
3 shoes come from a manufacturer, they have what we refer to
4 as class characteristics. Class characteristics is
5 basically what it is. It's the design. It's the specific
6 design or tread design of those shoes. Same way with
7 tires, but as I stated as you wear those shoes, they
8 become ripped. They have tears in them. Those little
9 minute things that we look for. When I looked at the
10 photographs and examined them closely and, you know, by
11 the soil make up and everything, it was determined at that
12 time that I would be able to do an proximate shoe size.
13 My examination revealed that the tread design for the
14 class characteristics in the shoe impression were
15 consistent with the shoes that were retrieved from
16 Mr. Walton's belongings. Also, the wear pattern which is
17 on the outside right heel of this shoe impression is also
18 consistent with the shoes that I retrieved from
19 Mr. Walton's personal belongings.

20 Q What about the old shoes they would not make the
21 distinct marks that the newer shoes would make, would
22 they?

23 A No, sir. As I said, the out sole of the shoe
24 impression in this photograph are very sharp. The details
25 very sharp. You can see the lugs in the boot, the spaces

1 where they made from the manufacturer. The boots that
2 were recovered from the car were severely worn around the
3 edges. The only tread designs left on the shoes recovered
4 from the car was actually in the center of those shoes, so
5 there's no way those shoes could have made that
6 impression.

7 Q All right. And -- but the design of the bottom of
8 the old shoes it is consistent with the design on the new
9 shoes; is that correct?

10 A Yes, sir, it is. That is correct.

11 Q Because they're made by the same manufacturer?

12 A Same manufacturer.

13 Q And so they are consistent in that respect?

14 A Yes, they are.

15 MR. LAWSON: Your Honor, State would move these
16 impressions in as State's Exhibit 50 and 51.

17 THE COURT: Any objection?

18 MR. MCLAUGHLIN: Your Honor, I'm going to object
19 right now at this point after my cross-examination.

20 THE COURT: What's the basis of your objection?

21 MR. MCLAUGHLIN: Other parts of discovery that I have
22 in the report that was done by Lieutenant Lutcken and his
23 results of examining the shoes. I have some questions
24 about his testimony to the results.

25 THE COURT: You certainly will be able to do that.

1 What that we've heard thus far would make these
2 inadmissible?

3 MR. MCLAUGHLIN: May we approach, Your Honor?

4 THE COURT: Sure.

5 (WHEREUPON, a bench conference was held in the
6 presence of the jury, but out of the hearing of the
7 jury.)

8 THE COURT: All right. I'm going to overrule the
9 objection and admit the impressions as State's Exhibits 50
10 and 51.

11 (WHEREUPON, State's Exhibit No. 50 and 51 was
12 admitted into evidence.)

13 BY MR. LAWSON:

14 Q Lieutenant Lutcken, did you or were you involved in
15 any other aspects of this investigation?

16 A No, sir.

17 Q Now, is it my understanding based on your
18 observations that the footprints that were made in Boca
19 Raton are made by shoes or were made by these shoes?

20 A Correct, but I retrieved them from Mr. Walton's
21 personal belongings.

22 MR. LAWSON: Thank you. One minute, Your Honor.

23 (WHEREUPON, a pause in the proceedings.)

24 Q Lieutenant, did you prepare a report based on the
25 examination of the footwear from Boca Raton?

1 A I'm sorry can you repeat that.

2 Q Did you prepare a report based on an evaluation of
3 the footwear obtained in Boca Raton?

4 A As a result of my examination?

5 Q Yes.

6 A Yes.

7 Q All right. And when you did that, you were -- you
8 had photographed the photographs of the impressions, the
9 foot impressions and also photographs of the boot; is that
10 correct?

11 A That is correct.

12 Q And what -- do you remember what your findings were?
13 Do you have a copy of that report?

14 A Yes, sir, I have my report in front of me.

15 Q All right. And what did you find in relation to
16 that?

17 A My report under items submitted will be one pair of
18 Brahma work boots from Kevin Walton's personal effects.
19 Also three black and white photos of a footwear impression
20 from Boca Raton police department. And then the results
21 of my examination, it was determine that question
22 impression corresponds in physical shape and size, design
23 and specific wear characteristics with the right boot of
24 Kevin Walton's. Due to the lack of identifying
25 characteristics, it could not be determined that the right

1 boot of Kevin Walton's made the question impression.

2 Q All right. And what are you saying there please?

3 A Basically, what I'm saying as I explained, I tried to
4 determine a size, that it is consistent with the size
5 somewhere in between a 10, 10 and a half and 11. That the
6 design, the class characteristics of that boot are the
7 same as the one's in the shoe impressions that were
8 photographed. The specific wear-tear characteristics, the
9 wear characteristics that I had described to you on the
10 outer part of the heel were also consistent with Kevin
11 Walton's right boot.

12 Q All right. And did -- and so at this point, you
13 didn't do anything further in this investigation?

14 A No, sir.

15 MR. LAWSON: Answer any questions that Mr. McLaughlin
16 may have.

17 THE COURT: Mr. McLaughlin, yes, sir.

18 CROSS-EXAMINATION

19 BY MR. MCLAUGHLIN:

20 Q Lieutenant Lutcken, I guess I'm a little bit confused
21 and hopefully you can straighten this out for me.

22 A Well, I hope so.

23 MR. MCLAUGHLIN: May I approach, Your Honor?

24 THE COURT: Yes, sir.

25

1 Q That document right there, can you explain what that
2 is?

3 A Yes, sir, a copy of my report, but I just read off.

4 Q And that report you're saying is for the black boots?

5 A No, sir.

6 Q So that's for these boots?

7 A That is -- yes, it's from these boots that I
8 retrieved from his personal belongs not the black boots.

9 Q Did you make -- and you just testified you made this
10 report; is that correct?

11 A Yes, sir, that is my report.

12 Q And it was on April 12th 2007; is that correct?

13 A That is correct.

14 Q Could you read the last sentence again. I believe
15 you just read it, but I'm going to ask for you to read the
16 last sentence again for me?

17 A Last sentence states that due to the lack of
18 identifying characteristics, it could not be determined
19 that the right boot of Kevin Walton's made the question
20 impression.

21 Q Okay. So it can't be determined that his boot made
22 that impression?

23 A It cannot, but, you know, it could go either way.

24 Q As far as your report say it cannot be determined?

25 A That's what I'm stating in the report that's correct.

1 MR. MCLAUGHLIN: At this time, I like this to be
2 entered into evidence.

3 THE COURT: Any objection?

4 MR. LAWSON: No, Your Honor.

5 THE COURT: All right. Without objection this is
6 Defense 5.

7 (WHEREUPON, State's Exhibit No. 5 was admitted into
8 evidence.)

9 BY MR. MCLAUGHLIN:

10 Q Just a few more questions. The -- when you were
11 testifying just kind of about your role and I want a -- I
12 got the understanding you're kind of just the supervisor
13 for all the forensic stuff that comes through Florence
14 County sheriff's office; is that right?

15 A Yes, sir, that's correct.

16 Q Was it odd for you to wind up being present at this
17 scene or is that pretty much a fairly common occurrence?

18 A No, I respond to all of them. I'm on-call all the
19 time.

20 Q Did Officer Brown who testified way back on Monday I
21 believe, he's the forensic technician that is assign to
22 case; is that right?

23 A Correct. Just so you're clear, the other folks that
24 work within the unit they rotate weeks of being on-call,
25 that is their week. They're on-call for one week. And

1 during that time anything major that transpires within the
2 county, I come to supervise them not to look over their
3 shoulders, but I'm there to assist them.

4 Q Make sure they're well -- you periodically review
5 their cases and what they're doing and where they stand at
6 sending evidence out or testing evidence and getting it
7 back; is that correct?

8 A That's correct.

9 Q I believe you testified that you also take part in --
10 that you dealt with Investigator Yarborough who is the
11 chief investigator on this on deciding what gets sent out
12 to SLED and stuff?

13 A Correct.

14 Q Do you see all the reports that come back from SLED
15 regarding what's sent out on the cases?

16 A In most cases, in most instances, yes.

17 Q Okay. And you testified that you do a case review
18 with -- in this case with Corporal Brown to make sure that
19 I guess that all your ducks were in a row as far as the
20 investigation; is that right?

21 A Yes, sir, that's correct.

22 Q Do you feel like -- well, how familiar do you feel
23 with this case? Do you know all the forensic evidence
24 pretty well?

25 A Yes, sir.

1 Q Do you know all the testing that was done on the
2 evidence pretty well?

3 A Yes, sir.

4 Q Do you know all the reports that were sent from
5 Newberry, from SLED back to the sheriff's office pretty
6 well?

7 A Pretty much.

8 Q Okay. Do you feel like all the forensic evidence
9 that was gathered -- well, let me see how I want to phrase
10 this. Do you feel like y'all explored every avenue that
11 the forensic evidence that was gathered in this case seem
12 to point to?

13 A Yes, sir, absolutely.

14 Q And are you of the opinion that all the forensic
15 evidence in this case pointed to Mr. Walton?

16 A Yes, I am.

17 Q Okay. And there's nothing that you've seen in your
18 review of the case or all the reports or anything else
19 that point to anyone other than Mr. Walton?

20 A That is correct.

21 MR. LAWSON: Your Honor, I object this was not
22 written by this witness. It's pitting and it's at this
23 point would be absolute hearsay to put it in.

24 MR. MCLAUGHLIN: Your Honor, the witness just
25 testified that he reviews all the forensic evidence in the

1 case the reports, the evidence that is gathered.
2 Specifically testified on direct that he deals with
3 sending stuff off to SLED. On my cross-examination, he
4 said that he reviews all the reports coming back from
5 SLED. This is a report from SLED. I'm not offering it
6 for the truth of what's said inside, but whether or not
7 he's ever seen the report before.

8 THE COURT: Let me see the report.

9 (WHEREUPON, a bench conference was held in the
10 presence of the jury, but out of the hearing of the
11 jury.)

12 THE COURT: Just for the record, I'm going to sustain
13 the objection as to the admissibility of the report, but
14 I'm going to allow you to continue your line of
15 questioning.

16 Q Lieutenant Lutcken, I handed you what's entitled
17 trace evidence report from SLED. And just few a minutes
18 ago, you testified that you felt like you had followed
19 every avenue the forensic evidence had pointed to in this
20 case, that you did not believe that any of the forensic
21 evidence pointed to anyone other than Mr. Walton. Is that
22 a correct summation of your testimony just now?

23 A Yes, sir, that's correct.

24 Q Without getting into -- without specifically
25 publishing anything on that report, do you see anything on

1 that report that calls into question that testimony you
2 just gave?

3 A No, sir. .

4 Q Okay. What color hair does the defendant have?

5 A It's dark.

6 Q Okay. You went to the scene -- I think you testified
7 earlier that you saw the victim at the scene; is that
8 correct?

9 A That's correct.

10 Q What color hair does the victim have?

11 A It's brownish red.

12 Q Okay. After stating those two facts, is there
13 anything on that report that makes you question that
14 earlier testimony?

15 A I mean, there's one statement at the bottom if that's
16 what you're referring to, but no I don't question it.

17 Q I'm going to hand you what's been marked as State's
18 Exhibit 7. Would you explain to the jury what that is?

19 A State's Exhibit 7 is a heat sealed pouch containing
20 pulled pubic hair from Shannon Carter, loose hairs from
21 the chest of Shannon Carter, loose hairs pubic from
22 Shannon Carter and pull head hair from Shannon Carter.

23 Q Okay. I'm interested in the loose pubic hairs from
24 Shannon Carter. Well, first off that evidence -- where
25 would that evidence be collected?

1 A From the autopsy.

2 Q From the autopsy?

3 A Yes, sir.

4 Q And then before putting it away, I like you to take
5 out the small pouch. How do you -- loose pubic hair. I
6 guess you need to be careful to -- can you open it over
7 this or something?

8 A You said the loose pubic hairs?

9 Q That's correct. Let's take a look at those please.
10 There appears to be how many hairs on there?

11 A There's one hair.

12 Q Just one hair.

13 MR. MCLAUGHLIN: One second, Your Honor.

14 (WHEREUPON, a pause in the proceedings.)

15 Q There seem to be a discrepancy between the paper ---

16 MR. LAWSON: Objection, Your Honor. It's -- there's
17 no reason to even go any further into this inquiry.

18 THE COURT: All right. Come on up.

19 (WHEREUPON, a bench conference was held in the
20 presence of the jury, but out of the hearing of the
21 jury.)

22 THE COURT: Ladies and gentlemen, we need to take up
23 this matter of law. A lot of them as you've seen earlier
24 during the course of the trial I can do right here, but I
25 need to explore this one a little further. So I'm going

1 to get you to step back into your jury room. Please have
2 no discussion about the trial and we will get you back in
3 just shortly.

4 (WHEREUPON, the jury retired to the jury room.)

5 THE COURT: All right. Let me -- we're back on the
6 record. Mr. Lawson, let me hear your objection and then
7 we'll...

8 MR. LAWSON: Your Honor, my objection goes back to
9 the beginning. Number one this report was not prepared by
10 this witness.

11 THE COURT: Okay. And for that reason, I sustained
12 your objection and kept it out of evidence.

13 MR. LAWSON: And I mean, but to allow him to be
14 questioned as to the content thereof, there's no
15 difference than admitting the evidence itself.

16 THE COURT: Well, and here's my question to,
17 Mr. McLaughlin. I've already ruled that at least through
18 this witness that that document is not admissible. You
19 can't come in the back door and admit the document into
20 evidence. And I know you're not admitting it like -- with
21 the defense sticker and it's in, but you're trying to get
22 that -- what's in that document published to the jury
23 through this witness. Publishing a document to the jury
24 if it's been ruled that it's inadmissible, it's also
25 improper to publish the contents to the jury.

1 Now, again, I'm not saying the document as a whole is
2 inadmissible. It is through this witness. I mean, if you
3 get that -- if you for example, subpoena that witness and
4 get that witness into court and can substantiate that
5 report and have it entered into in that way, then it would
6 be admissible. Now, having said that the issue here and I
7 think what Mr. Lawson's objection is is that it's already
8 been ruled that that document is inadmissible, but what
9 you're trying to do through this witness is publish a
10 portion of that document because the only way you can ask
11 the question you're going to ask is to reveal what that
12 document says. Maybe I'm wrong.

13 MR. MCLAUGHLIN: Yes, sir, and I understand
14 Mr. Lawson's position, Your Honor. And I guess it has to
15 be pose to that. But what about is there anything -- he's
16 already reviewed it.

17 THE COURT: He's reviewed it.

18 MR. MCLAUGHLIN: He's reviewed the document and I
19 believe he testified that -- I don't know exactly can't
20 recall he saw something on there that he understood what I
21 was pointing at. Something -- there was one thing on the
22 bottom there that he understood. When I asked him if
23 there as anything that -- after telling him about the hair
24 color of getting him to discuss the hair color of the
25 defendant and the victim and then to relook at the report

1 was there anything on there that would not point to either
2 one of them. And I believe Lieutenant Lutcken testified
3 that well I see one thing and I said well do you -- is
4 there anything on there that makes you feel like you
5 didn't pursue every suspect the evidence pointed to and at
6 that point he said no.

7 THE COURT: Okay.

8 MR. MCLAUGHLIN: The question is there anything on
9 that that is inconsistent, any forensic evidence or
10 anything on that report that is inconsistent with
11 identifying the victim or Mr. Walton whether or not that's
12 a proper question.

13 THE COURT: I think you can ask him that based on
14 your review of the evidence in this case...

15 MR. MCLAUGHLIN: I mean, I understand the Court and
16 Mr. Lawson's position that it's hearsay. You can't get
17 into the exact thing, but the prior questioning to is more
18 along the lines of not exactly what the evidence was, but
19 whether or not all avenues were pursued in the
20 investigation. It could have possibly pointed to someone
21 else and whether or not ---

22 THE COURT: You can ask him that.

23 MR. MCLAUGHLIN: I've asked him and he's answered
24 that question.

25 THE COURT: All right.

1 MR. MCLAUGHLIN: But whether or not anything on the
2 report is inconsistent with identifying the victim or the
3 defendant. And, Your Honor, maybe that's still getting
4 too close.

5 THE COURT: You're treading real close to publishing
6 the contents of the report. And as I said, the report as
7 through this witness is not admissible. It may be an
8 admissible document if done through someone else. So I
9 don't think you can ask that question without publishing
10 the contents of that report. Was that the question you
11 were about to ask when the objection arose or something
12 along those lines?

13 MR. MCLAUGHLIN: I was going to try to ask something
14 along those lines.

15 THE COURT: All right. I know you were trying.

16 MR. MCLAUGHLIN: It was something that lasted 30
17 seconds. I'm not sure what my thought was.

18 THE COURT: I understand. I understand. In other
19 words, Mr. McLaughlin, what I'm saying is is that is that
20 that's the path you were headed to try to essentially get
21 this witness to testify that -- to what he just saw in
22 that report. And as I indicated, there's other ways to
23 get that report in, but not through this witness. Go
24 ahead you need to talk to Mr. Walton?

25 MR. MCLAUGHLIN: Yes, sir.

1 (WHEREUPON, a pause in the proceedings.)

2 MR. MCLAUGHLIN: Your Honor, I understand the Court's
3 position. And in fact, I'll go ahead and tell I don't
4 believe I have any other questions for Lieutenant Lutcken.

5 THE COURT: All right. For the record then, I'm
6 going to sustain your objection, Mr. Lawson, and just
7 leave it at that, not going to go any further when the
8 jury comes in. If in fact, Mr. McLaughlin, if you have
9 any other question for the witness, certainly you may ask
10 those. If you don't, then you can make that -- make that
11 known. And then, Mr. Lawson, if you have anything on
12 redirect and we'll get back on track on questioning.

13 All right. Ms. Joe, if you'll ask them to return
14 please.

15 (WHEREUPON, the jury returned to the courtroom.)

16 THE COURT: All right. Thank you for your
17 corporation, your understanding. I'm going to sustain the
18 objection for Mr. Lawson.

19 Mr. McLaughlin, you may continue with your
20 questioning -- your line of questioning, sir.

21 BY MR. MCLAUGHLIN:

22 Q Lieutenant Lutcken, did you investigate any digital
23 evidence in this case?

24 A No, sir, I did not.

25 Q Are you familiar with whether or not there was any

1 digital -- I mean by that anything stored on a computer,
2 some digital type device? Are you familiar with whether
3 or not there was any such evidence in this case?

4 A No, sir.

5 Q On April 10, 2007, did you request Special Agent
6 Christopher Johnson ---

7 MR. LAWSON: Objection, Your Honor. The same
8 objection as we have had all the reports there it's
9 hearsay.

10 THE COURT: All right. Sustained.

11 Q You at no time requested some floppy disk to be
12 reviewed at all in conjunction with this?

13 A Floppy disk.

14 Q I'm sorry that's what I'm referring to when I say
15 digital media.

16 A Three and a half inch floppy disk two of them.

17 Q Okay. But they came from a computer right or did
18 they just come from the scene?

19 A They came from an individual. They came from one of
20 her daughters.

21 Q From an individual?

22 A Yes.

23 Q Who provided that evidence?

24 A Jennifer Ketchum.

25 Q Was there a computer removed from the victim's

1 house?

2 A Yes, sir, there was.

3 Q Did y'all do any testing or investigation on the
4 computer?

5 A We did not. No, we don't have those capabilities.

6 Q How about plugging it up and turning it on and seeing
7 what's on it?

8 A That's a no no.

9 Q That's a no no?

10 A That's a no no.

11 Q Why is there a chain of evidence problems?

12 A Presents a chain of evidence problem. Also when you
13 turn the computer on, it has a tendency to delete files
14 that are already on it that are stored on that hard drive.
15 That is something we found out through one case is a no
16 no. You do not do that. We leave it to the experts to go
17 into.

18 Q Well, if you need something -- if you need someone to
19 go in and look at what's on the computer and possibly
20 retrieve evidence in a case, how do you handle that?

21 A That evidence is sent to the computer's crime lab at
22 the State Law Enforcement Division in Columbia.

23 Q And do you know whether or not that was done on the
24 computer in this case?

25 A At that time -- at that present time, I don't believe

1 they were doing it.

2 Q I mean do they have a computer's crime lab at SLED?

3 A That's what I'm saying at that present in 2003 when
4 the tower was taken from the residence, I don't believe
5 they had that, no.

6 Q Okay. Was there any process by which y'all would be
7 able to investigate a computer?

8 A At that time, no. We did not have means of examining
9 the computer's hard drives.

10 Q The case where you learn about the deleting when you
11 turn it on when was that -- was that prior to after ---

12 MR. LAWSON: Objection, Your Honor, relevancy.

13 MR. MCLAUGHLIN: Your Honor, I'm trying to ascertain
14 whether or not there was means to...

15 THE COURT: Go ahead. I overrule.

16 A It's last year.

17 Q So that was last year. So y'all just learned -- that
18 just became a no no last year not to turn the computer on
19 to see what was on it?

20 A Correct, correct. One my folks inadvertently turned
21 one on.

22 Q I bet he got an ear full?

23 A Yes.

24 MR. MCLAUGHLIN: No further questions. Thank you.

25 THE COURT: Anything on redirect?

1 MR. LAWSON: Nothing, Your Honor.

2 THE COURT: Thank you, sir. You may step down.

3 (WHEREUPON, the witness leaves the witness stand.)

4 THE COURT: All right. Ladies and gentlemen, it went
5 a little later today than we been going, but we want to
6 make sure that we completed this witness, so we are going
7 to adjourn for the evening and we'll reconvene at 9:30.
8 Same instructions as you've had all week. Please do not
9 discuss this case with anyone. Do not allow anyone to
10 discuss it with you. If anyone is reaching any level of
11 concern about us concluding this case this week, I don't
12 think we're going to have any problem doing that. So
13 don't -- if you recall Monday, I told you that this term
14 of court is a one week term of court and your service
15 would be concluded at the end of the week. I don't see
16 any reason why that still want be the case. So if I can
17 relieve anyone who may be thinking we're into one of these
18 two-week types of cases that should not occur. And we
19 will finish this week, but anyway have a good evening.
20 Please get your rest and we'll see you back here in the
21 jury room at 9:30.

22 (WHEREUPON, the jury was excused for the day.)

23 THE COURT: All right. Anything we need to take up?
24 Anything further this evening before we adjourn?

25 MR. LAWSON: No, Your Honor.

1 MR. MCLAUGHLIN: No, Your Honor.

2 THE COURT: All right. We will reconvene at 9:30.

3 And, Mr. McLaughlin, Mr. Walton the same schedule. Thank
4 you.

5 (WHEREUPON, the proceedings were concluded for the
6 day to be reconvened on April 26, 2007.)

7 THE COURT: Let me talk to y'all real quick about
8 scheduling as far as -- if I recall correctly, I think --
9 and if I'm wrong, correct, but I think the State has two
10 more witnesses?

11 MR. LAWSON: That's correct, Your Honor.

12 THE COURT: And I'm trying to think in terms of --
13 Stephen and Patrick and I talked yesterday about
14 scheduling purposes. Mr. McLaughlin, I'm sure you and
15 Mr. Walton have talked. Certainly, we give you more
16 opportunity to talk about at the conclusion of the State's
17 case whether or not y'all intend to put any further
18 evidence. And I'm not asking for your answer now, but I'm
19 just -- I'll give you time to discuss that. But I'm
20 thinking in terms of possibly not time wise just -- you
21 know, if I send the jury out for lunch, it is a minimum of
22 an hour and a half because you got to give them time to
23 leave the premises, eat, and then come back find a parking
24 space, to get back. So you got to give them that much
25 time. If we have lunch brought in for them, then you can,

1 you know, you can trim that down in about 45 minutes or
2 half the time. Now, I'm not terribly concern because we
3 have today and tomorrow. Of course, we have Saturday and
4 Sunday if we need it. We got as much time as it takes,
5 but I know you're concerned over there. But my point is
6 I'm trying as we get toward the end of the week to be more
7 aware of our time, more aware of jurors' time. So my
8 thought process, Nicole, if you would just talk with Doris
9 and get the take on the clerk's perspective. I'm thinking
10 about bringing them lunch in today. I just think it will
11 be a better use of our time.

12 So here's my thought process then because I have no
13 idea how long the witnesses will be that are remaining for
14 the State. But I'm thinking you'll call your first
15 witness, that will testify. At the conclusion of that
16 witness, take a short break let them take orders from the
17 jurors have food ordered. Then you call your next
18 witness. At the conclusion of that, then either the food
19 will be here or will be on the way. And then we will
20 proceed with whatever -- wherever we're at in the trial,
21 but then when their food comes, we'll break, but we'll
22 only break for about 45 minutes and let them eat and then
23 we'll start back. My point is by the time we get the jury
24 out we actually acknowledge the State for their next
25 witness it's probably going to be ten o'clock. I don't

1 know how long the witness will take, but at the conclusion
2 of that we'll get their order and place it. I mean, if
3 the food get here at 11:30 and we're at a breaking spot,
4 they can eat at 11:30. If it's here at noon, they can eat
5 at noon. Anyway that's kind of the thought process, so
6 anticipate that we'll take a break after your first
7 witness.

8 MR. LAWSON: That's fine, Your Honor.

9 THE COURT: Having said that we'll bring the jury out
10 and ---

11 MR. HILL: Before we do that, State has prepared
12 charges on evidence of flight may I submit them to the
13 Court?

14 THE COURT: Sure absolutely. We'll read those. Have
15 you got a copy for Mr. McLaughlin. I'll look over them.
16 And then obviously before we finalize any charges,
17 Mr. McLaughlin, I'll hear from you on that than anything
18 that if there's anything you would like for us to
19 consider. All right. Okay. Ms. Joe, if you would ask
20 the members of the jury to join us.

21 (WHEREUPON, the jury returned to the courtroom.)

22 THE COURT: Good morning, ladies and gentlemen. I
23 hope everyone had a good evening and we're ready to go to
24 work today. We're going to do things a little differently
25 today. I'm changing it up a little bit. We're going to

1 in a moment recognize the State for their next witness and
2 we're going to hear from that witness. At the close of
3 that witness, we're going to take a break short and I'm
4 going to get madam clerk to come in and take your orders
5 for lunch. The county is going to treat you to lunch
6 today. And then after we take your lunch orders, we'll
7 bring you back out to hear further testimony.

8 Mr. Lawson, you may call your next witness, sir.

9 MR. LAWSON: May it please the Court, the State would
10 call Jennifer Ketchum.

11 THE COURT: Ms. Ketchum, if you would please come
12 around.

13 THE CLERK: If you will please, place your left hand
14 on the Bible and raise your right hand. Do you swear or
15 affirm the testimony you give in this case to be the
16 truth, the whole truth, and nothing but the truth so help
17 you God?

18 MS. KETCHUM: I do.

19 THE CLERK: Please be seated and state your full name
20 for the record.

21 MS. KETCHUM: My name is Jennifer Ketchum.

22 WHEREUPON,

23 Jennifer Ketchum,
24 after first having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. LAWSON:

2 Q And what's your first name?

3 A Jennifer.

4 Q Jennifer. And, Jennifer, where do you live?

5 A I live right on the line of Florence in Effingham.

6 Q And how long have you lived in that location?

7 A I've lived there about six years.

8 Q And are you from Florence county?

9 A Yeah, I spent most of my life in Florence County,
10 yeah.

11 Q Okay. Now, explain something when you answer you
12 need to verbally respond instead of shaking your head
13 because the court reporter has to take everything down,
14 okay?

15 A Okay.

16 Q All right. Now, are you related to the victim
17 Shannon Carter?

18 A Yeah, she's my mother.

19 Q Your mother. Were you living there on [REDACTED]
20 in Pamplico in March of 2003?

21 A I was not living with her then at the time, no.

22 Q Where were you living?

23 A I was living where I currently live now.

24 Q And was that y'all had some falling out or what was
25 the situation?

1 A Well, off and on I've lived with her. I've moved out
2 a few times and move back in with her mostly because may
3 be because she had asked me to move back in to, you know,
4 just be there with her and, you know, help her pay bills.
5 I decided to move back out with my boyfriend, so it was
6 for not a specific reason like a falling out or anything.

7 Q All right. And do you have any children?

8 A Yes, I have a daughter who'll be two in July.

9 Q And so the daughter was born after your mother died?

10 A Right.

11 Q Were you pregnant at -- in March of 2003?

12 A No, I wasn't. I got pregnant a while after mom had
13 already been dead, so she never had a chance to meet her
14 granddaughter.

15 Q Okay. Now, you recall the morning of March the 28th
16 2003?

17 A Yes, I do. I remember mom's number came up on my
18 caller ID. It was about six or 6:30. I'm not sure
19 exactly I was asleep. Sometimes, she would call me in the
20 mornings to pick on me and play on the phone to wake me up
21 because she know I'd be asleep. And she call and play on
22 the phone or ask me to come to her job and hang out with
23 her. So when I first saw the number on the caller ID, I
24 hadn't gotten much sleep that night so I kind of ignored
25 it. And I said I'd call her back later because I knew she

1 just wanting to play on the phone and I was sleepy, so I
2 didn't answer it. A few minutes later she called again
3 and I answered the phone, what, Mom. And it wasn't mom.
4 It was Sherrie and she was hysterical and crying on the
5 phone screaming. I couldn't really understand what she
6 was saying too well. I just kept hearing I heard your
7 momma and just a bunch of crying and I couldn't understand
8 what was going on. And I was still kind of half asleep,
9 so I was confused. I said what are you talking about let
10 me talk to momma and she said you can't. And I said why
11 not give her the phone and she's like you can't. You
12 don't understand she's dead. And I said where's B.B.
13 And she said she's right here. And I said let me talk to
14 her. And when B.B. answered the phone, I just said
15 what's going on. What is she talking about. And she said
16 Kevin killed, momma, are you coming. And I just said
17 what. That's all I could say was what. I just couldn't
18 believe that she was even saying this. So I said, yes,
19 I'm on my way. I'm coming now. And she said okay and
20 hung up. Then I called my Aunt Patricia and I said -- as
21 soon as she said hello, and I said, hey, uh -- she said I
22 know I'm on my way there now. You just stay where you
23 are. And I said, no, I'm coming. I have to come. I told
24 B.B. I was coming she ask me. I'm on my way and she
25 said okay. So then I threw on some clothes and headed to

1 come to Pamplico. And then when I got there Patricia was
2 already there and my Uncle Bruce was already there. And
3 Sherrie and Theresa and some other people were standing
4 outside and there were some police there parked outside.
5 And I ---

6 Q You said Uncle Bruce?

7 A Yes, that's Patricia's husband.

8 Q Patricia's husband.

9 A Uh-huh. And I walked up and my sister came up to me
10 and I gave her a hug. And she was crying and I said it's
11 going to be okay. You just going to come be with me. And
12 then we just all kind of stood outside talked and gave
13 statements to the police and stuff like that until they
14 told us that we could go ahead and leave because they were
15 about to bring out the body and that we wouldn't want to
16 be there for that. So we all left together and went to my
17 Aunt Patricia's house to call other family.

18 Q All right. So when you left, were you in a separate
19 vehicle?

20 A I had driven my car there and Pat was in hers. I
21 actually want to feel like -- I'm not sure. I'm kind of
22 fuzzy about whether I drove my car back or I feel like
23 somebody else might have driven my car back, so I could
24 ride with them or we were all in the car later, that's
25 kind of fuzzy to me, but I know that I was in my own car

1 when I got there.

2 Q All right. And from that point, you don't know --
3 you can't really recall whether you drove home or not?

4 A I'm not sure if I drove to Patricia's house or not,
5 but I know I went there directly from there.

6 Q So you all -- the family all left Pamplico and went
7 to your Aunt Patricia's house?

8 A Right.

9 Q And how is Patricia related to you?

10 A Patricia is my aunt my mother's sister.

11 Q All right. And so y'all all went to her house?

12 A Yes.

13 Q Is that correct?

14 A Yes.

15 Q And where does she live?

16 A Her house is in Florence not far from mine actually.

17 Q Now, what did you do after that?

18 A After that, we called other family members to tell
19 them what had happened. I tried to find any of my mom's
20 friends and our family members and just try to contact
21 everybody and tell them what was going on. And we all
22 just kind of were sitting around Patricia's house as a
23 family just being together nobody wanted anybody to be by
24 themselves after such a thing had happened.

25 Q All right. There were -- B.B. was your younger

1 sister?

2 A Yes.

3 Q How much difference is there between the two of you?

4 A It's almost 12 years.

5 Q And are there any siblings older or younger?

6 A No, we're the only two sisters. We're the only two
7 siblings that mom had or the only two children that mom
8 had.

9 Q And it's about 12 years between the two of you?

10 A Yes.

11 Q And would you describe your relationship with
12 B.B. close or?

13 A Yes, we're extremely close now. We're actually
14 closer than any other sisters would be I think. At the
15 time that this happened, we were close then, but just like
16 regular sisters. I think that this brought us closer and
17 people actually think it's odd how close we are because
18 they say you like your sister that much. I don't like my
19 sister. They don't expect us to be so close, but we're
20 extremely close.

21 Q Now, during the days and weeks that passed, did you
22 have occasion to go back to your mother's house?

23 A We went back there a few times to get B.B.
24 things. The first time we went back we went to get a
25 couple things for B.B. because she didn't have

1 anything with her like, you know, her clothes, hair brush
2 stuff like that. We went back for that first time and
3 then we had other places to go to prepare for the funeral
4 and such. So we came back another day to get her other
5 things. And actually her house was broken into by
6 somebody we don't know who and lot of her stuff was stolen
7 out of the house in between the trips that we went back
8 when we went the first time is probably either that
9 evening or next day that her house was broken into. And
10 then we went back a day or two after that to get to the
11 rest of her stuff and move everything out and clean
12 everything up.

13 Q Okay. Of course, this is when nobody is living there
14 nobody's in the home?

15 A Right. The house was empty because nobody had been
16 there but mom and B.B. There was nobody there
17 because B.B. was with us.

18 Q And did there come a time when you took -- where you
19 obtain a computer from the house?

20 A Yes, what happened with that was when we arrived on
21 the scene, they were asking if we had any pictures of him
22 for the wanted poster. And I thought about it for a few
23 minutes and Sherrie and I had talked about it that there
24 was a picture of him on her computer. And they took the
25 computer into evidence to get a picture off of it to use.

1 Q Do you know if it was obtained?

2 A Yes, they got the picture and we saw it on the wanted
3 posters right after that.

4 Q State's Exhibit 22 can you identify that?

5 A Yes, this is him, Kevin Walton.

6 Q And does that ---

7 A This is not the actual picture that was taken from
8 the computer. This is a picture I believe from the
9 Florence County sheriff's office pictures.

10 Q Okay. But that is an accurate representation?

11 A Yes, it is. The police took the computer into
12 evidence and got the picture and then I later after the
13 house was broken into B.B. computer was stolen and,
14 you know, so was pretty much everything good in the house.
15 So I knew about, you know, that computer was still there I
16 thought she might like to have mom's computer since her's
17 was stolen. So I contacted Investigator Darren Yarborough
18 at the sheriff's office and asked him would I be able to
19 get the computer back because he had previously said that
20 I should be able to. So he told me that it wasn't going
21 to be a problem that I would be able to get it back and
22 that I could come pick it up any time. So I went up there
23 and picked it up took and it home. And set it up in
24 B.B. room and went through it and tried to kind of
25 clean it up get rid of the junk and just deleted files and

1 clean out the computers, so it would run better and faster
2 for her to use.

3 Q All right. Did you at any time find a diary that
4 your mother may have kept on the computer?

5 A No, I didn't. There was no diary on the computer.
6 The pictures of Kevin were still on there, some other
7 pictures and just regular files that my mom had saved, but
8 no diary notes were on the actual computer itself.

9 Q All right. Did you find some floppy disks at some
10 point?

11 A Yes, my mom had several diskettes that were in her
12 room by the computer and I went through them. And I found
13 a couple of them that said diary notes on them and it said
14 2003. And I tried to put it in the computer because I
15 wanted to read, you know, what she may have said about
16 anything that might have happen it wouldn't read. And so
17 when I took the diskette out and I pulled the metal slid
18 back to look at the film, it had a deep cut in it and both
19 of the diskettes that had diary notes had a cut in it just
20 the same. And I remember getting upset about it because I
21 thought, you know, I was upset that the diary notes were
22 destroyed. I thought that maybe he might have cut them to
23 try to hid something, so I kept them just in case anybody
24 would ever tell me that they would be able to read
25 something out off it.

1 Q To your knowledge was anything ever recovered from
2 those?

3 A No, I believe they weren't able to recover anything
4 because of the cuts.

5 Q So it was actual physical damage to the disk?

6 A Yes.

7 Q That made it impossible for the computer to read it?

8 A The film inside the disk was cut in a straight line
9 right in the window of the slide. And it was a very deep
10 cut which damaged it beyond your ability to look at it at
11 all by anybody even SLED I've heard.

12 Q So there were no diary notes on the computer itself
13 and on the disk, the floppy disk that you couldn't read
14 anything on them?

15 A Right. And the only diary notes that I did find
16 anywhere were so old they were long before anything had
17 ever happened. They were from 2000 and '99 and just old
18 diskettes that I had found. There was nothing that was
19 from the present time.

20 Q I'm going to show you something just tell me if you
21 can identify that?

22 A Yes, these are the diskettes they found in my mom's
23 room and that I gave to the Solicitor's office.

24 Q And ---

25 MR. LAWSON: Your Honor, the State would move the

1 introduction of these State's Exhibit 52.

2 THE COURT: Any objection?

3 MR. MCLAUGHLIN: No objection.

4 THE COURT: All right. Without objection State's 52
5 is in evidence.

6 (WHEREUPON, State's Exhibit No. 52 was admitted into
7 evidence.)

8 MR. LAWSON: Your Honor, it would one exhibit two
9 disks, two floppy disks.

10 THE COURT: All right.

11 BY MR. LAWSON:

12 Q And, Jennifer, can you see on then the cuts that
13 you're talking about, can you?

14 A Yes, if you take and slid the window back and you can
15 see the cuts on the film itself. It's a deep cut. I
16 actually tried to put a little piece of tape over it after
17 it wouldn't read a while to see if I could get it to read
18 if it was a flat surface and not with a cut in it. I
19 wasn't able to do that either.

20 Q It's just nothing you tried could generate any
21 information off of these disks?

22 A No, not at all. The computer wouldn't even read it.
23 It just kept making a clicking sound and it said invalid
24 disk or something like that. It wouldn't let you read
25 anything off.

1 Q And your understanding is that was the same situation
2 with SLED as well?

3 A Yeah, that's my understanding.

4 Q Did there come a time when you became or gained
5 possession of your mother's automobile?

6 A Yes. I got a call from Investigator Darren
7 Yarborough telling me that they had found mom's car in
8 Boca Raton, Florida, and that a towing company had it in
9 their possession by the name of Emerald towing which was
10 in Boca Raton. And I called them to ask about the car and
11 what I could do to get it. And he told me that I had to
12 get a statement from Darren Yarborough saying that I was
13 allowed to take it because, you know, just to make sure
14 that it wasn't needed as evidence and that I was allowed
15 to have the car. I got Darren to fax that to them and I
16 contacted a company called Nationwide Auto Transporters
17 that was out of Fort Lauderdale, that's what they do for
18 people who move. They will take their car and tow it to
19 wherever you want it to go. So I had Nationwide pick up
20 the car from Emerald Towing and bring it to me. And I
21 paid \$385 to have it brought to me. They met me at a gas
22 station in Florence where I picked up the car and they
23 gave me the keys to it. And I drive it home from there.
24 Originally, I didn't know if they were going to have the
25 keys. They told me that -- he asked me at Emerald Towing

1 if I had the keys and I told him that I assume the keys
2 are with the car because I don't have them. He took them
3 with him. And he said, well, if I can't find the keys, do
4 you have a spare to mail me. And I said, yes, I do. I'll
5 call you back tomorrow and see if you have the keys. So I
6 call back tomorrow he said don't worry we have them.

7 Q All right. And are these the keys that came with the
8 car?

9 A Those are the keys that Nationwide Auto Transporters
10 gave to me when they gave me the car.

11 Q Do those keys operate the automobile?

12 A Yes, they do.

13 Q Have you actually used those keys to crank up the
14 automobile?

15 A Yes, I have. I've cranked the car many times to move
16 it around my yard. It's still in my yard. I originally
17 was going to sell the car, but I guess I couldn't part
18 with it until all this was over because I was scared to
19 loose it and the keys anything just in case. I always
20 want to hold on to everything. So I would go out and
21 crank it every now and then and move it around the yard.
22 And I've driven it around the circle of the neighborhood,
23 but that's it. I haven't used the car or anything like
24 that.

25 Q You know the value of this automobile back in 2003?

1 MR. MCLAUGHLIN: Objection speculation.

2 THE COURT: Sustain, at this point. I'll let you
3 further try to flesh that out.

4 BY MR. LAWSON:

5 Q Did in 2003, did you receive this car in 2003? When
6 did you get it back?

7 A Yes, in 2003.

8 Q What month?

9 A It was February I believe. I have the paperwork
10 still that says all -- I saved all the paperwork.

11 Q Do you have it with you?

12 A I do. It's in the conference room.

13 Q You said February -- it didn't.---

14 A I don't remember what it says. I just looked at it
15 last night and I don't remember what it says. Because the
16 date is on the top of the paper of the fax, so that's how
17 I know when it was faxed.

18 Q Whatever date it may have been, did you obtain a
19 value of that automobile?

20 A I did actually because at the time I was going -- I
21 was planning on selling the car and that was my intention
22 when I wanted to get the car towed. So I looked at the
23 Kelly Blue Book it's 1930, so that I could sell the car
24 and see, you know, how much I would be able to get for it.
25 And I was going to use that money and my plan was to

1 hopefully help my sister get her car when it was time.
2 But when we first got the car and we cleaned it out and
3 stuff, my sister and I cleaned it out together, and we
4 decided to wait a little bit before we sold it. Then I
5 said I was going to sell it a hundred times since then,
6 but every time someone would approach me about it, I still
7 felt uneasy and I just couldn't do. Hopefully, I will be
8 able to sell it after all of this is over.

9 Q All right. So you used the Kelly Blue Book and you
10 obtained a value of a 1996 Chevrolet Cavalier?

11 A Yes.

12 Q Do you remember what condition?

13 A I had looked up good condition. As far as I knew
14 when it had left my mom's house, it was in pretty good
15 condition except for a little bit of damage on the front
16 bumper. I wasn't sure exactly what condition it would be
17 in when I got it back, but that's what I was hoping for
18 that it would still be in the same condition as when it
19 left.

20 Q All right. And you obtained the value for good
21 condition?

22 A Yes.

23 Q And you also looked at the value for fair condition?

24 A Right. Fair condition I believe was 1,300 and the
25 good condition was the 1930. I stuff some random papers

1 in here that I held onto over the time. Actually, it says
2 on here. This is my notes that I wrote down. It says
3 that I wrote down fair condition was 1525 and good
4 condition was 1930. And actually, the date on it is
5 July 25th 2003 definitely not February.

6 Q July of 2003?

7 A Yes.

8 Q And use the Kelly Blue Book figure?

9 A Yes.

10 MR. LAWSON: Your Honor, we would move that she be
11 allowed to testify as to value based on that.

12 MR. MCLAUGHLIN: No objection, Your Honor.

13 THE COURT: All right, without objection.

14 Q Now, if you would tell the jury the value in relation
15 to fair condition was?

16 A Fair condition was \$1,525.

17 Q And good condition?

18 A Was 1930.

19 Q All right.

20 MR. LAWSON: Bear with me one moment, Your Honor.

21 (WHEREUPON, a pause in the proceedings.)

22 MR. LAWSON: May it please the Court, I would move
23 the introduction of the keys as State's Exhibit 53.

24 THE COURT: Any objection?

25 MR. MCLAUGHLIN: Your Honor, just I'm a little unsure

1 where those keys came from. Are those the keys that she
2 provide the State?

3 THE COURT: Well, I think she testified that those
4 are the keys she got from the people in Florida who
5 returned the car.

6 MR. LAWSON: That's correct.

7 MR. MCLAUGHLIN: No objection.

8 THE COURT: All right. Without objection.

9 (WHEREUPON, State's Exhibit No. 53 was admitted into
10 evidence.)

11 MR. LAWSON: Your Honor, I have an envelope would
12 that make it easier for the court reporter.

13 THE COURT: Thank you, Mr. Lawson.

14 MR. LAWSON: It just says car keys.

15 THE COURT: We'll just mark the outside of the
16 envelope and put them in there.

17 BY MR. LAWSON:

18 Q Now, Jennifer, after obtaining the car, was there any
19 other property or anything that you obtained from the
20 house?

21 A Well, just her personal things that were left after
22 the robberies took place all of her clothes and just all
23 of her regular stuff around the house. The only thing
24 that I obtained as far as her estate or anything like that
25 goes was a refund from deposits from bills and just stuff