

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2013-001680

Marcus Bailey,.....Appellant,

v.

The State of South Carolina,.....Respondent.

RECORD ON APPEAL
Volume I

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1 THE COURT: All right. Let's talk about this
2 afternoon. What all do we have?

3 MS. CAMPBELL: Your Honor, the defendant did give a
4 statement in this case. I believe the defense counsel
5 just provided us with -- they have two motions to suppress
6 the statement.

7 THE COURT: Okay.

8 MS. CAMPBELL: And then, of course, we need to put up
9 testimony on that.

10 THE COURT: Okay. So we have a Jackson versus Denno?

11 MR. MYERS: Your Honor, we're not necessarily
12 challenging the -- the motion that we're filing, we're not
13 challenging the voluntariness of the statement.

14 THE COURT: Okay.

15 MR. MYERS: It's basically on other grounds.

16 THE COURT: Okay. What else do we have this
17 afternoon?

18 MR. MYERS: But there -- there are actually more like
19 nine motions.

20 THE COURT: Well, that's what I'm saying.

21 MR. MYERS: Yes.

22 THE COURT: What else do we have?

23 MR. MYERS: Yes, sir. Judge, we also have motions on
24 the indictment itself, just various motions to suppress
25 what we believe to be the evidence in this case.

1 THE COURT: Okay. And how many of those will you
2 need to call witnesses on?

3 MR. MYERS: Judge, we do not anticipate having to
4 call any witnesses on our motion. Now, we do have what we
5 believe to be a pretty serious motion that has been heard
6 in front of Judge Benjamin.

7 I would imagine that's going to take up maybe 30 to
8 45 minutes in order to get the court caught up to where we
9 were when we left Judge Benjamin.

10 MS. CAMPBELL: I don't know which one. What's the
11 name of it? What's the motion about, is all I'm asking.
12 Are you complaining about discovery again?

13 MR. MYERS: Regarding discovery, yeah.

14 MS. CAMPBELL: Okay.

15 MR. MYERS: Yes.

16 THE COURT: Now, are they aware of all your other
17 motions?

18 MR. MYERS: Yes, sir. I provided Ms. Campbell with
19 copies of all of our motions.

20 THE COURT: Okay. Do I copies of them?

21 MR. MYERS: I believe you do. I handed them up. If
22 not, we can certainly --

23 THE COURT: We don't have them, so if you can give me
24 copies, that would be great.

25 MR. MOORE: Your Honor, the only one we don't have in

1 signing of the statement to ensure that the individual has
2 had an opportunity to read over the statement; that what
3 law enforcement typed up for that individual is exactly
4 what he says.

5 Without that and without the ability to read it and
6 certainly, as time goes on, the memory of any sort of
7 witness is diminished.

8 At that point, he or she cannot articulate whether or
9 not what his statement is at that time was the statement
10 that he made.

11 ~~So the prejudice here, Your Honor, which I believe~~
12 that the State will argue -- will try and make us argue,
13 "Well, where is the prejudice?"

14 The prejudice here is that it wasn't given at the
15 time that Mr. Bailey made the statement. Now, I'm not
16 standing before the Court and saying that I've never seen
17 this statement or it was never given to me.

18 It was provided to me during discovery, but that's
19 not the purpose of the statute. The purpose of the
20 statute is to be given to the witness, or in this case
21 Mr. Bailey, so that he can then read over it, recall
22 exactly what was said and then make any changes that are
23 necessary.

24 Certainly, without that benefit, he cannot adequately
25 cooperate with our defense if he cannot remember what he

1 Your Honor, the defense has conceded in this case
2 that they did receive a copy of the defendant's statement
3 in discovery. I believe that was provided in the
4 year 2012, and just tell me -- correct me if I'm wrong,
5 Mr. Myers.

6 MR. MYERS: Judge, I think we got it in December
7 of 2012. She is correct. I'm not contending that we
8 didn't receive it in discovery.

9 THE COURT: I know. She was just clarifying the
10 time.

11 MS. CAMPBELL: I just wanted to clarify because the
12 four months before trial would be significant.

13 In that case, this appellant argued the same
14 violation of codes 8-15-50, 19-180 and 19-190 since a copy
15 was not provided at the time the statement was made.

16 The Court respectfully, Your Honor -- and this is a
17 Supreme Court case, disagreed and basically goes on to say
18 that South Carolina code section shall not be applied in a
19 hyper-technical manner, cites State vs. Jones.

20 There is nothing in the record to indicate there was
21 any prejudice to the appellant's right. Clearly,
22 appellate had ample time to prepare his case after
23 receiving a copy of his confession.

24 That would be why the time period from December 2012
25 which is July 2013. He's had it approximately eight

1 months and been able to prepare, which is twice the time
2 that the court in that case found to be ample in 1982.

3 They go on to say, "Appellant is due a fair trial,
4 not a perfect one, and the exception was without merit."

5 Respectfully, Your Honor, we do think this case would
6 be controlling. It did come out after Motes. That was a
7 1975 case. Correct me if I'm wrong.

8 (Pause).

9 Yes.

10 I believe that has been overruled, Your Honor. I
11 ~~don't know if it's on the same point or a different point~~
12 it's different.

13 However, Your Honor, no matter what, Butler did come
14 out subsequent to Motes and, Your Honor, we feel it would
15 be controlling of this situation assuming, Your Honor --
16 and I can put up testimony as far as what the intent was
17 of the officers.

18 It certainly wasn't to intentionally deprive of this
19 person of the statement. Apparently, an attempt was made
20 to provide a copy of the statement. However, they cannot
21 recall whether or not they specifically gave him a copy.
22 He did not sign off that he received it.

23 THE COURT: Well, wasn't -- was the statement taken
24 at the hospital or at the sheriff's department?

25 MS. CAMPBELL: The statement was taken...

1 individuals were also present. And they failed to comply
2 with the statute.

3 We don't need show prejudice, but I believe that the
4 prejudice argument can be overcome by simply indicating
5 that by the time Mr. Bailey got to that statement, his
6 memory was diminished to the point that certainly, it was
7 beyond the three weeks announced in Butler.

8 THE COURT: So why didn't they give him a copy of the
9 statement?

10 MS. CAMPBELL: Your Honor, I think it was inadvertent
11 on their part. They actually went off to make a copy of
12 the statement and give it to him. Through some just -- I
13 can certainly put up testimony.

14 THE COURT: Put him up. Whoever took the statement,
15 Mr. Clark? Investigator Clarke? Investigator Clarke?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Come forward and swear him, please.

18 JOSEPH CLARKE, after being duly sworn,
19 testified as follows:

20 THE CLERK: Have a seat in the witness box. State
21 your name for the record, please.

22 THE WITNESS: Joseph Clarke.

23 THE COURT: Yes, ma'am.

24 DIRECT EXAMINATION:

25

1 BY MS. CAMPBELL:

2 Q Investigator Clark, did you become involved in the
3 investigation of this case?

4 A I did.

5 Q And did you actually respond to the hospital on
6 August 23rd, I believe, of last year?

7 A I did.

8 Q And when you responded to the hospital, who did you
9 make contact with?

10 A Marcus Bailey.

11 Q And when you made contact with Marcus Bailey, were
12 you aware of some of the factors involved in finding
13 Ms. Smith's body in the front yard?

14 A I had been made aware that they discovered a body in
15 the front yard, yes.

16 Q What was the purpose of you going to the hospital
17 that day?

18 A I was to interview Marcus Bailey due to the fact that
19 he is, apparently, the one that notified or made known
20 there was a body in the front yard at the house.

21 Q Once you got to the hospital what, if anything, did
22 you advise him of prior to talking to him?

23 A I advised him of his Miranda rights.

24 MS. CAMPBELL: Do you want me to go through those? I
25 don't think they are challenging that?

1 THE COURT: No. Just skip to the part where they
2 finished taking the statement.

3 BY MS. CAMPBELL:

4 Q Were there certain statements taken there? You don't
5 have to say what they were, oral statements that he made
6 to you there after being advised of his rights?

7 A Yes.

8 Q And at some point, was he transported to the Richland
9 County Sheriff's Department?

10 A Yes, he was.

11 Q And once you get back to the Richland County Sheriffs
12 Department, did you also advise him of his rights again?

13 A Yes, I did.

14 Q In written form?

15 A Yes.

16 Q And at the end of typing his statement up -- or who
17 actually typed his statement up?

18 A I typed it as he gave it. That's what we do. We
19 speak. It's a matter of how I've always done it. I speak
20 with the person, take it down, and clarifying with them --
21 I'm doing it on computer due -- for numerous reasons,
22 nonetheless would be spell check -- but more importantly,
23 to say, "Is this what you mean?" Then I continue on with
24 the Q and A. At the end, I always ask, "Is there anything
25 else you want to add?"

1 Q Prior to giving the written statement, did he
2 actually give you his version orally?

3 A Yes.

4 Q And after you reduced it to writing, did he
5 acknowledge that was his statement?

6 A Yes, he did.

7 Q Did he sign off on it?

8 A Yes, he did.

9 Q And at some point, did you make an attempt to
10 actually provide him with a copy of it?

11 A Yes.

12 Q And what did you do to make that attempt?

13 A I went to the copier machine. I remember that, okay,
14 but I don't know at that point. I cannot recall exactly
15 what happened afterwards.

16 Q Do you recall whether or not you actually provided
17 him with a copy when you went to the copy machine to make?

18 A I do not.

19 Q And what would be the reason for that? Was it
20 intentional on your part?

21 A None whatever.

22 Q And, in fact, who else was present when you were
23 taking the statement?

24 A Investigator Robert Martin.

25 Q And so you just simply can't say for sure whether or

1 not you gave him a copy?

2 A No, ma'am, I cannot.

3 Q But he never signed off the part at the bottom that
4 says he received a copy?

5 A Apparently that's the case. He did not, no.

6 Q Was that his statement?

7 A Yes.

8 Q And was that the same statement he first gave you
9 orally, and then you reduced to writing?

10 A Correct.

11 Q Was it intentional on anyone else's part not to give
12 him a copy of the statement?

13 A Certainly not.

14 Q And is that the same statement that was provided in
15 discovery and turned over to the defense?

16 A Yes, ma'am.

17 MS. CAMPBELL: That's all I have, Your Honor.

18 CROSS-EXAMINATION:

19 BY MR. MYERS:

20 Q Investigator Clarke --

21 If I may approach the witness, Your Honor.

22 Investigator Clarke, I'm going to hand to you this
23 document. Does that appear to be Mr. Bailey's statement?

24 A It does, yes.

25 Q Now, do you see one signature on that page?

1 A Where?

2 Q Do you see his signature on that page?

3 A I do.

4 Q Now, it is clear, wouldn't you agree, that his
5 signature is not on the portion that will be for the
6 receipt?

7 A That is correct.

8 Q Now, did Marcus Bailey make up this form?

9 A What is your meaning, have you make it up?

10 Q Who created this form?

11 A ~~That would be part of the sheriff's department.~~ That
12 one would be of our templates.

13 Q Okay. But Marcus Bailey did not create this form?

14 A That's correct.

15 Q Your office created this form?

16 A Correct.

17 Q So your office is familiar with this form?

18 A Correct.

19 Q Your office is more familiar with this form than
20 Mr. Bailey?

21 A Certainly.

22 Q You have no evidence that prior to August 23rd, 2012
23 that Mr. Bailey had ever seen this form?

24 A Correct.

25 Q Now, you say that you went to the copy machine.

1 There's no evidence that the copy machine was broke, is
2 there?

3 A Not that I recall.

4 Q All right. So you just basically failed to give them
5 a copy. That's your testimony.

6 A I did not. I do not recall giving him a copy of the
7 report.

8 Q All right. So you have no evidence to contradict
9 Marcus Bailey's testimony that he was not given a copy of
10 this statement?

11 A ~~I don't appear to have any evidence to contradict~~
12 that.

13 Q Beg the Court's indulgence.

14 (Pause).

15 Investigator Clarke, how many other individuals were
16 there when Mr. Bailey gave his statement?

17 A The only person present when I was taking his
18 statement in my cubical was myself and Marcus Bailey.

19 Q Okay. But there were other people around when he
20 gave the statement?

21 A Certainly. This is the main floor of the sheriff's
22 department. This is our main area.

23 Q All right. Whose responsibility was it to make sure
24 that Marcus Bailey was provided a copy of that statement?

25 A I would assume if I'm taking the statement, it would

1 be my responsibility.

2 Q And you failed to give it to him?

3 A ~~I do not recall giving it to him, or why I did not~~
4 give it to him.

5 Q But you don't have any evidence to contradict
6 Mr. Bailey's statement that he was not given a copy of
7 this statement?

8 A That's correct, yes.

9 Q Because if you had such evidence, all you needed to
10 do was to have him sign this receipt at the bottom of the
11 statement, right?

12 A That's logical, yes, sir.

13 Q And it's clear that on the bottom of this statement,
14 it is not signed by Marcus Bailey?

15 A The part where he would take receipt of the statement
16 is not signed by Marcus Bailey, but he signed it as is
17 true and gave statement. And he did that in my presence,
18 post Miranda.

19 Q Sure, but it would not have been difficult to get him
20 to sign the bottom acknowledging the receipt of this
21 statement?

22 A I wouldn't argue it, but you're correct.

23 MR. MYERS: Thank you.

24 No further questions, Your Honor.

25 REDIRECT EXAMINATION:

1 BY MS. CAMPBELL:

2 Q Did you intentionally not give him a copy of the
3 statement?

4 A No, ma'am.

5 Q And when you went to the copier to make a copy, what
6 was your intent?

7 A To provide him with a copy.

8 Q And do you know why -- you don't recall whether you
9 did or not?

10 A I do not.

11 Q Do you know why you wouldn't have? Would it have
12 been on any intentional part of yours?

13 A There would be -- never be in my past or in the
14 policy of the sheriff's department to deny anyone a copy
15 of a statement if they so asked for it.

16 MS. CAMPBELL: I don't have anything further, Your
17 Honor.

18 THE COURT: All right. Anything further, Mr. Myers?

19 MR. MYERS: Nothing further, Your Honor.

20 THE COURT: Thank you, Investigator Clarke. You may
21 step down.

22 All right? Anything else on this matter?

23 MR. MYERS: Your Honor, I think it's clear that he
24 just failed to do what he was required to do. The statute
25 doesn't say that it needs to be intentional or whether or

1 not it needs to be unintentional.

2 Investigator Clarke just simple failed to do what he
3 was required to do by law. It's obvious that the copy
4 machine was working. There's no evidence to contradict
5 Mr. Bailey's statement, and he admitted that he failed to
6 do his job.

7 We're not taking something out of the ordinary. All
8 we're asking is that the defendant be given a copy, which
9 he did not -- he was not provided a copy of it. The only
10 remedy in this case is a suppression of the statement and
11 any references to it.

12 THE COURT: All right. Based on State vs. Butler and
13 Banister vs. State -- Bannister vs. State is found at 333
14 SC 298. I'm going to find that the statement is
15 admissible.

16 In Bannister, the defendant was given a copy of his
17 statement on the morning of the trial. The Court goes on
18 to find that there is -- there was no evidence in that
19 case.

20 He did not have adequate time to review his statement
21 in preparation for his trial, and the Court goes on to
22 cite State vs. Butler, their own case from 1982.

23 They say as long as the witness has time to prepare
24 for the trial after receiving a copy of the written
25 statement, the failure to provide the defendant with a

1 statement at the time it was made is not reversible error.

2 Based on those and the knowledge that the defense has
3 had a copy of the statement since December 2012 -- we're
4 now in July of 2013 -- I deem the statement to be
5 admissible even though the statutes that were referenced
6 in the motion were not complied with.

7 Next?

8 MR. MOORE: Your Honor, the next statement -- the
9 next motion we have would also go to a request to at least
10 suppress the statement, and this is an interesting
11 argument.

12 THE COURT: The statement we were just talking about?

13 MR. MOORE: Yes.

14 THE COURT: Okay.

15 MR. MOORE: Your Honor, the State has provided us
16 with an indictment which is interesting. There will be a
17 motion made regarding the sufficiency of the indictment.

18 There was a killing, and so the State takes the
19 position -- its asserted position is that between these
20 dates, Almanita Smith died, was killed.

21 Now, the statement from the defendant basically says,
22 hey, I was with her the day before she was found, which is
23 a statement which is totally contrary to what the State
24 has alleged it intends to prove.

25 So we know that the content of the statement is not

1 offered to prove what is in the statement. So we know
2 it's not offered as a hearsay exception because it's not
3 hearsay.

4 They're not offering it to prove that he was with her
5 the day before. It offered to basically prove that what
6 he said wasn't true.

7 Now, to me when you offer something to prove that
8 what somebody says wasn't true, that goes to the issue of
9 credibility. So the statement would be something that
10 would go to a defendant's credibility. That's the only
11 thing it possibly could go to. ~~He told us something that~~
12 wasn't true. That goes directly to the issue of his
13 credibility.

14 Now, if the defendant do does not testify in the
15 case, then you have a situation where his credibility is
16 not an issue. His truthfulness is not an issue because he
17 hasn't made an issue by taking the stand and testifying.

18 Since they're not offering the evidence to prove the
19 truth of the matter asserted, the hearsay wouldn't apply.
20 So the exception to the hearsay rule have no credibility.
21 If they did offer it to prove the matter asserted, they're
22 vouching for his credibility, but even if they don't, it's
23 inconsistent with the positions they've taken throughout
24 the case.

25 So what we have here is a statement they're offering

1 into evidence to attack the credibility of the defendant.

2 I would respectfully submit they can't do that until
3 and unless the defendant testifies. So we would basically
4 ask the Court to exclude from evidence the statement on
5 the basis that it's irrelevant. It's non-exception to the
6 hearsay rule, and it's an improper use of a statement to
7 attack credibility when that is not an issue in the case.

8 THE COURT: Thank you.

9 MR. MOORE: Thank you, Your Honor.

10 MS. CAMPBELL: May it please the Court, Your Honor.

11 ~~Respectfully under 801(d)(2) admission by a party~~

12 opponent, by definition, the defendant's own statement is
13 not hearsay. So, therefore, his entire hearsay argument
14 would not apply if that's his argument.

15 MR. MOORE: No, ma'am. I think she misunderstands my
16 argument. Commission by a party opponent is basically an
17 exception to the hearsay rule.

18 THE COURT: No, it's not. It says statements which
19 are not hearsay. Now, that's not under the exceptions
20 part of it.

21 MR. MOORE: All right. If it's not hearsay, which I
22 think we agree it's not hearsay because it's not offered
23 for the truth of the matter asserted, then we have a
24 situation it's only offered to impeach the credibility.
25 That's basis of my motion.

1 Certainly, a statement of a party opponent is
2 admissible if relevant, but it doesn't become relevant
3 until it becomes relevant to the issue for which it's
4 offered, which the issue it's offered for is the issue of
5 credibility.

6 The statement basically says he lied about what
7 happened. Okay. Impeachment, credibility. If he doesn't
8 testify, which he has a constitutional right not to,
9 credibility is not an issue. Therefore, the statement
10 basically is irrelevant.

11 MS. CAMPBELL: It's a different argument, Your Honor.
12 The defendant gives statements lying about the decedent's
13 whereabouts in the week prior to this. He gives different
14 statements to police officers, which I think we provided
15 to the Court. I don't know if you had an opportunity to
16 review them --

17 THE COURT: I did.

18 MS. CAMPBELL: -- basically, chronically the last
19 time he saw her; that she was alive and well; that she
20 went off with some other guy. Things of that nature.

21 Of course, those would be admissible under an 801
22 admission by the defendant. His statement would come in,
23 Your Honor. It's not hearsay. We aren't trying to use it
24 as character evidence. We are trying use it as evidence
25 of guilt.

1 It is extremely relevant as to whether or not he was
2 the one that actually committed this murder when he does
3 give a statement saying that he had seen the victim the
4 day before, chronicles her whereabouts, goes through a
5 whole series talking about what she had done, what he had
6 done that week before when, in fact, the testimony from
7 the experts for the State, at least, Your Honor -- and I
8 believe they don't have any others -- will testify that
9 she has been dead at least three to seven days from the
10 time the body is found that morning.

11 So the statement he gives could not be more relevant
12 in this case or more of an admission of guilt than in this
13 case. I do understand why they're seeking to suppress
14 them.

15 This is not about his character. This is about the
16 relevant admissions or the information he chooses to give
17 police when asked basically where was the victim in this
18 case and what was happening with her, and these are his
19 responses, Your Honor, which contradict the forensic
20 evidence in this case which contradict eyewitness evidence
21 in this case and which contradict cell phone evidence in
22 this case, as well as everything else.

23 Just as in a case I did recently, there were a number
24 of statements given by a defendant in the case about the
25 murder of his wife which were slightly different or

1 changed over time. Of course, that was relevant evidence
2 and was allowed to be introduced by the State by its very
3 nature.

4 THE COURT: Anything further, Mr. Moore?

5 MR. MOORE: Your Honor, I think counsel makes my
6 point. What they're trying to put in is evidence that he
7 lied. That's -- that goes to the issue of credibility.
8 The fact that he may have lied --

9 THE COURT: The fact that it goes to credibility, how
10 does that mean it's inadmissible?

11 MR. MOORE: Because -- because his credibility does
12 not come into evidence unless he chooses to testify. His
13 credibility is not an issue in this case until and unless
14 he testifies. It is simply all.

15 THE COURT: I thought that was his character.

16 MR. MOORE: Character and credibility are basically
17 the -- in effect, you -- they are basically the same
18 thing. You cannot put in -- in effect, it's impeachment
19 testimony. Basically, the fact that there is an
20 inconsistent statement is basically evidence of character.
21 You basically use the inconsistent statement through bad
22 character by way of being a liar.

23 That does not come into evidence until it becomes
24 relevant. It doesn't become relevant until such time as
25 his character is an issue.

1 The fact that he is a liar simply goes to his
2 character. Now, he may have lied. He may not have lied,
3 but whether he lied or not is a question of character, a
4 question of whether or not he is subject to being
5 impeached. You impeach people by proving they lied. It's
6 an impeachment testimony. He lied about something. Okay.
7 The fact that he lied about something, how is that
8 relevant to guilt or innocence?

9 THE COURT: The State's position is that's directly
10 relevant to the guilt of the defendant because it's in
11 direct contradiction to the forensic evidence that they
12 planned on presenting.

13 MR. MOORE: Right. And their testimony then
14 basically is it's relevant in that regard because it
15 proves he is a liar.

16 THE COURT: Right.

17 MR. MOORE: That basically is evidence of bad
18 character which basically says he is not worthy of being
19 believed. That's exactly my point.

20 It's a very, very, very fine point, and it's an
21 interesting point. It does appear to me that evidence of
22 lying is evidence of bad character. Character does not
23 become in evidence, relevant evidence until such time as
24 he places his character in issue by taking the stand.

25 Thank you.

1 THE COURT: Yes, sir.

2 Yes, ma'am, Ms. Campbell.

3 MS. CAMPBELL: Yes, sir, Your Honor. -- Under these
4 theory, then there would never be any situation in which
5 the defendant's statement would come in unless and until
6 he testified because all they would ever have to say is he
7 lied about whether he did it or didn't do it.

8 Respectfully, Your Honor, any statement against his
9 interest -- in this case, it would clearly be of
10 significance -- comes in against the defendant.

11 ~~There is case law out there~~ Your Honor, Your Honor,
12 if you give me a moment. He didn't present any case
13 law -- so I didn't have any prepared -- in his motion, but
14 there is case law out there that if the State offers or
15 intends to offer a statement by the defendant, that
16 inherently, it does come in, and the defense can't try to
17 bootstrap it by not allowing it in because it's not an
18 admission in and of itself.

19 The fact that he gives statements indicating that the
20 victim is alive as recently as, I believe, 18 hours prior
21 to the discovery of her body would directly contradict
22 everything about the State's case as far as the forensic
23 evidence, Your Honor.

24 Very simply, under his theory, that statement would
25 never be admissible. He has offered no precedent that

1 says we are limited in any way to offer the defendant's
2 statement in the manner in which he seeks, Your Honor.

3 ~~We aren't offering it as character evidence. We are~~
4 offering it as the statement. His responses to the
5 questions of, "When did you last see Almanita? When was
6 she alive? What was she doing with you? Where have you
7 been over the last week?" Things of that nature, because
8 even the police officers who initially went to the scene,
9 the level of decomposition was definitely not consistent
10 with what he said.

11 ~~In addition to that, Your Honor, the police officers~~
12 had gone to his residence and done a well check at the
13 request of Ms. Smith's family.

14 At that point, he talked to officers, as well, told
15 them she was alive. She had left that morning with some
16 friend of hers. He couldn't give any further description.

17 So, Your Honor, taken as a whole, of course, if it's
18 in the State's case, the statement would be critical and
19 basically outlining the whole theory of the case giving
20 Mr. Bailey the opportunity -- not only the opportunity but
21 the means and the motive to kill Ms. Smith as he did in
22 this case, Your Honor.

23 Respectfully, Your Honor, I know of no precedent for
24 which Mr. Moore has based his creative argument, Your
25 Honor. We would just ask that you allow the statement in

1 if that's the basis of their motion to exclude.

2 THE COURT: Anything else on the issue?

3 (There was no response.)

4 All right.

5 MR. MOORE: No.

6 THE COURT: Thank you. I wanted to make sure
7 everyone had the opportunity to make the record clear.
8 I'm going to find that under rule -- South Carolina Rules
9 of Evidence 801(d)(2), this is an admission by a party
10 opponent.

11 I further find that it is relevant under South
12 Carolina Rules of Evidence 401. This was a statement
13 given by the defendant on the day that the alleged
14 victim's body was found.

15 He has signed the statement. There is no argument as
16 to the voluntariness of the statement or him being coerced
17 and forced to give any type of information.

18 As to the credibility issue, I believe that the
19 statement is still admissible, even over the defendant's
20 assertion that it goes directly credibility and character,
21 and I'm going to deem that the statement is admissible.

22 All right. What's next?

23 MR. MYERS: Thank you, Your Honor. May it please the
24 Court. Your Honor, this is our motion to quash the
25 indictment. If I may approach --

1 THE COURT: Yes, sir.

2 MR. MYERS: -- hand the Court a copy. The copy has
3 been provided to Ms. Campbell.

4 THE COURT: Thank you.

5 MR. MYERS: It was filed this morning, Your Honor.

6 Your Honor, this motion is based on statutory law
7 section 17-19 ---I'm sorry, 17-20-19 that talks about the
8 validity of an indictment.

9 The relevant statute states that a murder indictment
10 is invalid if it does not give a plain statement divested
11 of all useless phraseology of the manner in which the
12 death of the deceased was caused.

13 Here in the indictment, Your Honor, the indictment
14 simply states that Marcus Bailey did in Richland County
15 intentionally kill the victim, Almanita Smith, with malice
16 aforethought either expressed or implied by means of
17 asphyxiation.

18 Your Honor, asphyxiation is a medical term. It, in
19 essence, is not any sort of causing trauma to a body such
20 as hanging, such as strangulation. It simply means that
21 Ms. Smith stopped breathing.

22 THE COURT: Lack of oxygen.

23 MR. MYERS: Your Honor, I would venture to guess that
24 everyone in the cemetery is there because they stopped
25 breathing. It doesn't mean there was any sort of

1 intentional act to cause them to stop breathing.

2 They have referenced nothing in the indictment that
3 indicates that Marcus Bailey did anything to cause this
4 young lady's untimely and unfortunate death, but there is
5 nothing to suggest that she didn't just stop breathing.

6 Your Honor, without there being any specificity in
7 the indictment, it makes it very challenging and very
8 difficulty for us to make an argument as to the cause of
9 death or whether or not he did absolutely anything to
10 cause the death.

11 Again, that is simply a medical terminology that they
12 use to indicate that she stopped breathing. That is
13 unsufficient to say that he did anything to cause her to
14 stop breathing, which we believe the indictment needs to
15 state, based on the statutory law, and the cases that are
16 interpreted the statutory law.

17 Here, to simply state that he intentionally killed
18 her by means of asphyxiation, well, that just simply means
19 she stopped breathing, but there's no allegations of what
20 he did to cause that to occur.

21 Without those allegations, without that plain meaning
22 and without that specificity that's required in the
23 indictment, then the only remedy is a quashing of the
24 indictment, the old-school bill in particular that we are
25 entitled to know exactly what they are alleging in order

1 to prepare a proper and adequate defense, and this
2 indictment fails to do that.

3 MS. CAMPBELL: May it please the Court. Your Honor,
4 if I might approach.

5 THE COURT: Sure.

6 MS. CAMPBELL: I would hand up State vs. Owens which
7 addresses this issue, and then, Your Honor, I'm handing up
8 State vs. Riveria -- Rivera.

9 Your Honor, the only thing I would note in that is
10 not that it addresses that exact issue. However, in the
11 opinion, it talks about the facts, and it goes into her
12 death was the result of asphyxiation.

13 THE COURT: Okay.

14 MS. CAMPBELL: That's just in the actual copy. I'll
15 hand those to the defense counsel.

16 Your Honor, in State vs. Owens, basically in that
17 case, they raised the issue of an indictment being
18 sufficient, basically talking about whether it's stated
19 with sufficient certainty and particularity to enable the
20 court to know what judgment to pronounce, the defendant to
21 know what he is the called up to answer, and if an
22 acquittal or conviction thereon may be pleaded is barred
23 to any subsequent prosecution.

24 They went on to give examples of what was sufficient
25 as far as the cause of death. Allegations may state in

1 the alternative the manner and instrumentality of death,
2 citing the State vs. King. It says or may state the death
3 was caused by means or instrumentality unknown, State vs.
4 Jenkins.

5 Your Honor, that's generally the language that's used
6 in no body cases. You know, when there's not a
7 determination, we can't show anything from a pathologist
8 report.

9 The case -- the State in Owens -- excuse me, the
10 court in Owens goes further and talks about the fact that
11 the -- that was more than sufficient in order to put him
12 on notice as to what he is answering, Your Honor.

13 I believe here, asphyxiation as cited in the Rivera
14 court as being the cause of death, and then if you follow
15 the Owens -- that the cause of death being asphyxiation is
16 sufficient to put him on notice as required by the
17 statute.

18 MR. MYERS: Your Honor, very briefly, reading
19 Owens --

20 THE COURT: Which one are you in, Owens?

21 MR. MYERS: Owens.

22 THE COURT: Okay.

23 MR. MYERS: State vs. Owens. Your Honor, it's my
24 understanding that in Owens, the indictment alleged that
25 the defendant murdered the victim by means of forcibly

1 sedating him and/or roughing him up by violently
2 manhandling him, beating him and depriving him of his
3 life-sustaining medication and/or mortally injuring him by
4 means of instruments.

5 So there, you have more specificity than what we have
6 now. All we have is that intentionally killed her by
7 asphyxiation, which again is a medical term.

8 If anything, Owens makes our argument clear because
9 it goes into basically stating what the State was
10 intending to prove and the different matters in which the
11 defendant may have caused the alleged -- the victim's

12 death in that case, but here all we have is just a
13 statement, a bland statement, that she died by means of
14 asphyxiation which, Your Honor, is the importance of those
15 x-rays, in our opinion, because it certainly would go to
16 our establishment of the defense if we had an opportunity
17 to look at those x-rays.

18 But again, here, as distinguished in Owens, all we
19 have is just a statement that she died by means of
20 asphyxiation, but even in Owens, they go into detail as to
21 how the defendant may have caused the victim's death.

22 THE COURT: Yes, ma'am.

23 MS. CAMPBELL: Respectfully, Your Honor, he just made
24 my point. Basically they give alternative means that it
25 could have happened, the last of which being and/or

1 mortally injuring them by means or instrument unknown.

2 It doesn't get any more vague than that, Your Honor.

3 Here we are much more -- at least succinct in that, Your

4 Honor, and the court has held that having alternative

5 manners of death or possibility of death and/or saying

6 that death is caused by means or instrumentality unknown

7 is sufficient as far as the indictment goes, and that's

8 what Owens does. He mischaracterized that, Your Honor.

9 MR. MYERS: But again, Your Honor, Owens basically
10 state by means of -- in detail of things. This indictment
11 just states by means of asphyxiation.

12 THE COURT: Yeah, but what this case basically says
13 is that if they had written in this indictment that she
14 died by means or instrumentality unknown, that would be
15 sufficient.

16 So if the indictment said nothing more than Ms. Smith
17 died as a result of means or instrumentality unknown --
18 meaning we have no clue -- that would be sufficient.

19 Here, they have given you a manner. Now, I'm not
20 saying that you don't have cross-examination and arguments
21 and legal arguments and factual arguments and all kinds of
22 arguments as to the manner of Ms. Smith's death.

23 However, if the indicted statement -- if the indicted
24 statement -- we don't know how she died essentially, it
25 would still be sufficient. So the fact that they narrowed

1 it down to by a manner of asphyxiation, I find that -- I
2 mean, you're on notice of what they're charged -- what
3 he's charged with. I'm on notice of what he's charged
4 with.

5 There is no issue of subsequent prosecution. They
6 narrowed down the date. They narrowed down the time.
7 They narrowed down the circumstances, and he is aware of
8 what he is on -- called upon -- of what this case is about
9 and what he's, therefore, required -- or it's necessary
10 for him to be prepared.

11 ~~There is no issue of double jeopardy or subsequent~~
12 prosecution upon the same facts, and I'm not sure that
13 that doesn't actually help you by them narrowing it down
14 that much as opposed to them just making it, "We don't
15 know how that happened."

16 So I'm going to deny your motion to quash the
17 indictment. I think the fact that they put asphyxiation,
18 which I understand to mean a lack of oxygen, is not
19 detrimental to the defendant or the causes that we have to
20 be concerned about and the indictment as a notice
21 document.

22 MR. MYERS: Thank you, Your Honor.

23 THE COURT: Thank you.

24 MR. MOORE: Your Honor, I may be able to shorten some
25 of where we are right now.

1 THE COURT: All right.

2 MR. MOORE: My understanding is that we're going to
3 take up the issue of the cadaver dog whenever we get to
4 testimony.

5 THE COURT: Right.

6 MS. CAMPBELL: Actually, Your Honor, we would like to
7 take it up, if possible, just first thing in the morning.

8 THE COURT: Okay.

9 MS. CAMPBELL: It shouldn't be long.

10 THE COURT: Well, when do you want to call the
11 cadaver dog witness?

12 MS. CAMPBELL: At nine o'clock maybe?

13 THE COURT: No. I mean in the course of the trial.

14 MS. CAMPBELL: It would be pretty early. It should
15 be in the first day.

16 I apologize, Your Honor. I didn't get this motion
17 until lunchtime. I could see if he's available.

18 THE COURT: No. I don't want to do it today.

19 MS. CAMPBELL: Okay.

20 THE COURT: We're going to take up the cadaver dog
21 before I let that in. The issue is do I let anybody talk
22 about it now, the State argue about it, or do I do it
23 first thing at nine o'clock tomorrow morning.

24 MR. MOORE: Yes, sir.

25 THE COURT: I'm still thinking about that.

1 MR. MOORE: Why don't we wait until the appropriate
2 time.

3 THE COURT: Okay.

4 MR. MOORE: That motion involves this issue, which
5 basically, there are a number of cases which we cited in
6 our motion. I hope the Court has a copy of it. If you
7 don't, I'll hand one up.

8 THE COURT: I don't.

9 MR. MOORE: It's what happens when the 6th Amendment
10 butts up against a witness's 5th amendment privilege
11 against incrimination? We understand that the defendant

12 has an absolute right to full and complete
13 cross-examination of all witnesses.

14 THE COURT: Okay.

15 MR. MOORE: We're going to ask the informant, "If you
16 are charged with murder, do you have any hope of leniency?
17 Are you guilty of murder? Are you guilty of what you're
18 charged with?"

19 If he intends to take the 5th Amendment on that, the
20 law is fairly clear that that creates his -- he has an
21 absolute privilege to take that 5th Amendment, but it
22 butts up against my client's right to cross-examination.
23 So when I ask him, "Are you guilty of these charges that
24 are pending against you now," if he says, "I take the 5th
25 Amendment," at that point in time, the law tends to

1 indicate that he can't testify.

2 So I believe that before he testifies, we need -- we
3 will need to find if he is asked that question, what his
4 response will be. Does he intend to take the 5th
5 Amendment, and I think his attorney needs to be here in
6 order to advise him properly when we get to that point.

7 So if we can have a hearing at the appropriate time,
8 we can get to the direction of where he's going so we'll
9 know where we're going.

10 If he gets up and says, "Yeah, I'm guilty" or so
11 forth or, "No, I didn't," at that point in time, we don't
12 even have a motion, but if he intends to take the 5th
13 Amendment when asked the question, the case law is pretty
14 clear that the remedy is the exclusion of the testimony.
15 I can hand up a copy of the motion with the case.

16 THE COURT: Yes.

17 MR. MOORE: I think the solicitor as a copy.

18 THE COURT: I need a copy, please.

19 Do you want to jump in?

20 MS. CAMPBELL: Yes, sir. I mean, I don't know under
21 what theory he thinks he can go into the underlying facts.
22 Of course, Your Honor, under State vs. Mandell Sims and
23 all those cases, he has the right to go into the fact he
24 has a pending murder charge or whatever charges are
25 pending charges.

1 He has a right, absolute right, to go into the fact
2 that he can cross-examine him at that time about how much
3 time he is facing. He has an absolute right to go into
4 the fact of whether or not the State --

5 THE COURT: Slow down a minute. Sorry.

6 MS. CAMPBELL: Sorry.

7 THE COURT: It's the end of the day. We're all
8 moving a little slower.

9 MS. CAMPBELL: He has a right to go into the fact of
10 whether or not he was been promised anything in exchange,
11 whether he hopes for any kind of reward, any kind of deals
12 that have been done.

13 Your Honor, I don't know under what theory Mr. Moore
14 thinks he is allowed to -- and maybe I'm just ignorant,
15 allowed to go into the facts -- underlying facts of the
16 pending charge in any way, shape or form.

17 I will be glad to review his cases, but I'm not aware
18 of this that case law.

19 MR. MOORE: Certainly, I think we would be entitled
20 to go into them on the issue of credibility and on the
21 issue of whether or not he has any expectation of reward.
22 If in fact, he is guilty of the crime of murder and goes
23 to the solicitor or the authorities with incriminating
24 evidence of what he is basically seeking, because he is,
25 in fact, guilty is hoping for some form of leniency.

1 You know, it's one thing to hope for leniency if
2 you're guilty. It's another one to hope for leniency if
3 you're not. It seems to me like the question is certainly
4 relevant to the issue of credibility, promises or hopes of
5 reward and what he would actually be given leniency for.
6 I might be wrong about that, but I don't think so.

7 THE COURT: All right. let's do this: Let's contact
8 Mr. Sutherland, see how his client is going to answer
9 those questions.

10 MS. CAMPBELL: Your Honor, the only question we're
11 objecting to that we don't think he has the right to go
12 into is whether --

13 THE COURT: Are you guilty of --

14 MS. CAMPBELL: -- are you guilty of murder.

15 THE COURT: Well, that would be murder and/or --

16 MS. CAMPBELL: And/or armed robbery, yeah.

17 THE COURT: And/or attempted armed robbery.

18 MS. CAMPBELL: Yes. Well, it's attempted armed
19 robbery, I'm sorry.

20 THE COURT: Okay.

21 MS. CAMPBELL: I'm misspeaking. I don't know under
22 what theory or what case, but I'll be glad to do more
23 research.

24 THE COURT: Well, he has got two cases cited in here.
25 I'll have to read them tonight, but in the interest of

1 expediency, let's see what -- how Mr. Sutherland is going
2 to advise his client to answer that question and make it
3 known to everybody.

4 If he's going to -- if he's going to -- I mean, he
5 may -- I don't know what he's going to say because I don't
6 know what it is, but I'll read these cases.

7 I've never heard of anybody being able to get into
8 the underlying facts of the case on a cross-examination
9 unless it's something you've been convicted of, and it's
10 going to his credibility.

11 I don't even know I've heard it on a case that he's
12 been convicted of other than, "Well, you're a drug
13 dealer," or you know, those kind of basic questions, but
14 I'll be happy to read your cases, Mr. Moore, but I will
15 need to read those. I'm not familiar with that before
16 ruling on that issue.

17 MR. MOORE: Thank you, Your Honor.

18 The last motion I think we have today is a motion in
19 limine to suppress the statements of the decedent under
20 State vs. Williams.

21 I'll hand up this motion, as well, anything that she
22 may have said, in our humble opinion, would be hearsay,
23 and we would certainly not have a right to cross-examine
24 the victim. I guess we can try, but I don't think it will
25 do any good.

1 THE COURT: Ms. Campbell?

2 MS. CAMPBELL: Your Honor, I'm checking to see. I
3 don't know of -- that's more of a hearsay objection --

4 THE COURT: Right.

5 MS. CAMPBELL: -- which should be contemporaneous
6 with our trying to offer anything.

7 MR. MOORE: I'm happy to wait until the appropriate
8 time, Your Honor.

9 THE COURT: Okay. All right.

10 MS. CAMPBELL: And we'll try not to violate any
11 hearsay rules.

12 THE COURT: Okay.

13 MR. MYERS: Your Honor, if I may, one last motion
14 which deals with just how Ms. Smith may be characterized.
15 I know certainly the tendency is to characterize her as a
16 victim, but certainly there is -- there are allegations at
17 this point.

18 Mr. Bailey has not pled guilty to anything. That's
19 for the trier of fact to make that determination. So we
20 would just respectfully ask for a ruling from the Court
21 that she is to be referred to as either the decedent or
22 Ms. Smith.

23 THE COURT: Okay. Here is what I do, and I get this
24 in almost every trial in this courthouse, for some reason.
25 Here is what I'm going to do: I'm going to let them call

1 her -- and I mean no disrespect to any family members here
2 on either side.

3 This is a -- at this point in these trials, it just
4 becomes a legal exercise, and we often forget that there
5 are families involved. So I apologize. I mean no
6 disrespect to anybody.

7 I'm going to allow them to call Ms. Smith "the
8 victim". If it gets out of hand, like some witnesses --
9 especially police officers -- will just use it over and
10 over and over and over again.

11 If it gets out of hand on a specific witness, then I
12 will get it under control. As long as -- they don't need
13 to be saying the word victim every time they turn around,
14 but I do believe that they have a right to refer to her as
15 the victim in this case based on the allegations that have
16 been made in the charging documents.

17 However, if I find it's getting out of control, and I
18 find it's for some other reason other than the convenience
19 of the witness speaking, then I will stop it at that point
20 in time.

21 I just caution the solicitor's office, just watch
22 yourself, and I'm not going to say you can't say it, but
23 you all know -- we all in the courtroom that -- we do this
24 every day -- when somebody is just saying it for no other
25 reason than just to say the word victim, and I'm not going

1 to allow that.

2 MS. CAMPBELL: Okay. All right. And one --

3 THE COURT: And what are we doing about witnesses?

4 Are we sequestering witnesses, not sequestering witnesses?

5 MR. MOORE: We would like to sequester the witnesses,
6 Your Honor.

7 THE COURT: Okay. Do you have any objection,
8 Ms. Campbell?

9 MS. CAMPBELL: Your Honor, the family members, of
10 course, can stay in. We have no problem. They're not
11 asking for law enforcement to be sequestered, just lay

12 witnesses? I know that --

13 MR. MOORE: I don't have any problem. Lay witnesses
14 is fine.

15 THE COURT: Ma'am -- sir? I'm sorry.

16 MR. MOORE: Lay witnesses --

17 THE COURT: It's the end of the day so just...

18 MR. MOORE: -- are fine.

19 THE COURT: Okay. Lay witnesses are sequestered.

20 MS. CAMPBELL: Until they testify?

21 THE COURT: Until they testify, that's right.

22 Now, listen, I know this case has a lot of emotion
23 for those of you that are out there, and I understand
24 that.

25 We're going to do our best to move this case along

1 and give a fair trial to everybody, but I need everybody
2 in the audience that's with me to do your best to stay
3 away from the jurors, to -- you know, if you see them or
4 you come in contact with them, just move the other
5 direction so we can keep this same -- as peaceful as we
6 can.

7 This is an important case for both sides and all
8 parties involved, and we are -- I am going to do my best.
9 I know the attorneys are going to do their best to ensure
10 that everybody has a fair trial and has their day in
11 court.

12 There are a lot of procedural protections that we
13 must go through that I'm required to go through by law as
14 we process through this to make sure that this is done to
15 the best of our ability and in accordance with the South
16 Carolina Rules of Law, so I would appreciate everybody's
17 patience in that matter.

18 Okay. Go ahead, Ms. Campbell.

19 MS. CAMPBELL: The final thing, Your Honor. Mr. Dove
20 is here from SLED. I asked him about trying to get the
21 computer to boot up or whatever you call it. He tells me
22 that it would -- he can do it, right?

23 He may be -- can he address the court?

24 THE COURT: This is -- for the record, this is Britt
25 Dove with the South Carolina Law Enforcement Division,

1 Computer Crimes Center.

2 MR. DOVE: Yes, sir.

3 MS. CAMPBELL: I think it may change things on the
4 computer. We don't want that to haunt us --

5 THE COURT: Okay.

6 MS. CAMPBELL: -- as far as what he can do and can't
7 do.

8 MR. DOVE: The hard drive could be placed back into
9 the computer. It can be started, but once that happens,
10 it starts changing time and states of the original
11 evidence on the files.

12 It also starts running through processes. It will
13 start automatically looking for any updates for Windows,
14 antivirus, things like that which can overwrite previous
15 logs that would have been on the original file.

16 THE COURT: Okay. Is there a way to get Ms. Smith's
17 email off the computer?

18 MR. DOVE: If I remember correctly -- and I'd have to
19 actually pull the report -- I apologize because I was in
20 the middle of doing another case when they called me.

21 I believe hers is a Yahoo-based email system is what
22 she used. If that's the case, you can actually subpoena
23 Yahoo, and they would send you a copy of her e-mails in
24 the same form, the dates, the times, who it went to, who
25 it came from. They could provide you with log-in

1 information.

2 On a computer, when you do that, what you're doing is
3 ~~you're actually going out online to access your email.~~

4 THE COURT: Right. You're going onto the internet to
5 get into it.

6 MR. DOVE: Yes, sir. So all you're going to get are
7 remnants on the computer itself. Unless you save the
8 email, it's still going to be on their server.

9 THE COURT: I thought Yahoo deleted their server
10 after awhile.

11 ~~MR. DOVE: They do after a period of time.~~

12 That's changed. At one time, it was 90 days.
13 Forgive me, but I'm not positive of the exact same frame
14 now. They change it periodically.

15 First, it's like Outlook. It's a client-based email.
16 That would be on your computer in a folder like without a
17 way to archive it.

18 THE COURT: Were you able to look at her email?

19 MR. DOVE: I did a Yahoo search for Yahoo. That
20 pulled back some remnants. It wouldn't have been a
21 complete -- like you wouldn't be able to look at the
22 actual email. It would just be pieces of the email.

23 THE COURT: Okay.

24 MS. CAMPBELL: Is that all you're able to look up at
25 this point?

1 MR. DOVE: Yes.

2 THE COURT: Even if you turned it on and even if all
3 of that stuff -- I'm going to say the word changed because
4 I don't know the right word --

5 MR. DOVE: Yes.

6 THE COURT: Could you pull that up?

7 MR. DOVE: I would have to go out online to her Yahoo
8 account, log into her Yahoo account using the user name
9 and password to be able to access her account.

10 THE COURT: Do you have that information?

11 MR. DOVE: No, sir. That would be something that
12 legal process would have to be served at Yahoo to obtain.

13 THE COURT: What's their turnaround?

14 MR. DOVE: Their turnaround, last time I sent one out
15 was two to three weeks, and that's the last time I sent a
16 search warrant to them.

17 THE COURT: All right. Mr. Myers, do you want to
18 jump in on this?

19 MR. MYERS: I mean, I think the only remedy, Judge,
20 is for us to view it. If we got beyond -- we could ask
21 for a continuance with a jury in the box, but I think you
22 just -- we would just be allowed to see what exactly he is
23 talking about. It sounds like Greek to me at this point,
24 so I think the only remedy is for us to be able to --

25 THE COURT: Will you -- will you stipulate that if I

1 order him to turn the computer back on to see what's on
2 there, and you're allowed to be present, that there's not
3 going to be any argument that they -- since from that
4 point forward have done anything to manipulate the
5 computer?

6 I mean, I think that's what Ms. Campbell's concern
7 is, is she is pretty computer illiterate, but I mean, what
8 I hear them saying is if I turn on the computer, all these
9 things are naturally going to happen --

10 MR. DOVE: Yes.

11 THE COURT: That I can't stop, is that right, Agent
12 Dove?

13 MR. DOVE: Yes, sir. That's part of the programs for
14 antivirus, Windows, where you can turn on your computer,
15 and it says you have updates ready to go. It's part of
16 the program that goes on periodically, especially on
17 Tuesday when Microsoft -- it's traditionally their patch
18 day.

19 So automatically, it starts looking to fix the system
20 and looking to see what's new on there.

21 THE COURT: How are you able to get email off there
22 anyway without her user name and password?

23 MR. DOVE: What I did is we do a bit-by-bit copy of
24 the hard drive, which is we get every piece of that hard
25 drive. We take that copy of it. We look at it.

1 I did a keyword search for Yahoo, went through there.
2 It returned, I believe, 2,000 plus results. I went
3 through each result looking. Some of them may have had an
4 email header to it as far as the first part of the user
5 name, Yahoo, then nothing else.

6 Some had pieces of the emails. I went through all
7 that, looked. If it looks like a piece of an email or a
8 half-constructed email, I saved it out and put it on the
9 disc that I provided to Richland County.

10 Anything that was just a name or just said Yahoo.com
11 or where they went to Yahoo to look up the news and
12 weather, when it hit on those, I didn't include those
13 because those are just searches off the Yahoo website.
14 That's how I was able to go just go through a keyword
15 search.

16 MS. CAMPBELL: So I believe they would already have
17 from the disc we provided them --

18 THE COURT: Right.

19 MS. CAMPBELL: -- everything that he was able to get
20 to her.

21 THE COURT: So on your bit by bit that you have,
22 they're not going to be able to see anything that you
23 haven't already provided, is that right?

24 MR. DOVE: Yes, sir.

25 THE COURT: So did you all get emails?

1 MR. MYERS: Judge, in this, we got just websites that
2 we believe the victim searched but not emails.

3 The problem is that if all we got were just remnants
4 or emails, or what he's telling me is all he's able to get
5 are just remnants, then I don't think that necessarily
6 gets us anywhere as far as the ability to look at what's
7 on the computer.

8 MS. CAMPBELL: I believe Mr. Dove put it in a folder
9 that was provided to the defense labeled --

10 MR. DOVE: There is one on there, and I can't
11 remember. Let's look at the report. It says notable

12 emails or email information. It's on one of the forensic
13 reports. It's on the disc where I pulled out that.

14 Under the keyword results, there would be information
15 there, too. If I was able to just extract part of the
16 email, it would be in that.

17 THE COURT: Okay. So that's the one on the disc that you
18 provided?

19 MR. DOVE: Yes, sir.

20 THE COURT: And you provided that disc, Ms. Campbell,
21 to the defense?

22 MS. CAMPBELL: To the defense.

23 THE COURT: Okay. All right. Tell me -- I'm trying
24 to help you, but what else can I do to help you with the
25 computer?

1 MR. MOORE: I wish -- I wish I knew. Apparently,
2 what we've been given are only bits and pieces of
3 something because they couldn't put it together, so I
4 don't know.

5 THE COURT: Okay.

6 MR. MOORE: I wish I did. Sounds like portions of it
7 apparently have been destroyed.

8 THE COURT: I mean, I think some of them you were
9 able to get real emails?

10 MR. DOVE: Yes, sir. I was able to get some of them.
11 ~~When you look at an email in an internet service, you're~~

12 not saving it. You're not saving it, so all you're doing
13 is just getting parts of the unallocated space, and that
14 gets overwritten and reused periodically.

15 THE COURT: All right. Okay. Anything else before
16 we break for the night?

17 MR. MYERS: None from the defense, Your Honor.

18 MS. CAMPBELL: The phones, Your Honor, were
19 attempted -- there are three phones, Your Honor. We're
20 still working on the phones.

21 THE COURT: Okay. All right. You all stay in
22 communication. Let's -- let's do the cadaver dog at nine,
23 and I'm going to read these snitch cases, for lack of a
24 better term.

25 MS. CAMPBELL: Your Honor, could we email you any

1 additional cases we may find on that, and we'll email the
2 defense, too?

3 THE COURT: Thank you.

4 Okay. Y'all are working on x-rays?

5 MS. CAMPBELL: Yes, sir. We should have those by
6 eleven in the morning to turn over forensic pathologist
7 CDs.

8 THE COURT: Okay. And you're working on the cell
9 phones?

10 MS. CAMPBELL: Yes. It looks like one of the
11 cellphones, we're not going to be able to -- two of them

12 are on the form and may not be able to -- I have to get
13 more on that.

14 THE COURT: Okay.

15 MS. CAMPBELL: I'm just getting relayed information.

16 THE COURT: Okay. Y'all are --

17 MS. CAMPBELL: We're trying.

18 THE COURT: Do y'all know how to communicate with
19 each other after hours?

20 MR. MYERS: Your Honor, I have direct dials, but
21 cellphone -- I think everybody has my cellphone number.
22 I've put it out several times, Your Honor.

23 THE COURT: Okay. All right. Just let us know if
24 something happens. We'll see you at nine in the morning.

25 MS. CAVANAUGH: Thank you, Your Honor.

1 THE COURT: Court is in recess until nine. Oh --

2 MS. CAMPBELL: What do you want us to do about the
3 computer? Do they want us to plug it in or not? --

4 THE COURT: I don't think so.

5 All right. Go back on. Go back on the record.

6 Listen, Mr. Bailey, listen to me, okay. All right.

7 Quiet down, please.

8 You are required to be here tomorrow morning. Do you
9 understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: ~~Your jury has not been sworn, so I cannot~~
12 take you into custody. However, if you do not appear here
13 tomorrow morning, this case is going to go straight on
14 forward whether you're sitting here or not. Do you
15 understand me?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you have any questions about that?

18 THE DEFENDANT: No, sir.

19 THE COURT: In any way, shape, or form?

20 THE DEFENDANT: No, sir.

21 THE COURT: Mr. Myers, can you represent to me, as an
22 officer of the court, that you haven't had any issues in
23 getting in touch with him or communicating with him or
24 anything else?

25 MR. MYERS: I've had absolutely no problems, Your

1 Honor.

2 Just so the Court knows, his mother, Ms. Cassandra
3 Bailey, she is here. She flew in from San Diego, —
4 California.

5 THE COURT: Okay.

6 MR. MYERS: So she's --

7 THE COURT: I'm not saying anything about him because
8 I don't know him, but I'm required to give you that
9 warning prior to, to make sure you understand that. At
10 nine o'clock tomorrow morning, we're going forward whether
11 you're in here or not. Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Thank you very much.

14 All right. Court will be in recess until nine
15 tomorrow morning.

16 MR. MOORE: Thank you, Your Honor.

17 THE COURT: Thank you.

18 (Whereupon, there was an overnight recess).

19 THE COURT: Are we ready to proceed with the cadaver
20 dog issue?

21 MS. CAVANAUGH: Yes, we are.

22 THE COURT: Yes, ma'am, Ms. Cavanaugh.

23 MS. CAVANAUGH: The State calls Stephen Pearrow to
24 the stand, Your Honor.

25 THE COURT: Please come forward and be sworn, sir.

1 THE BAILIFF: Place your left hand on the Bible,
2 raise your right, face the clerk for me, please, sir.

3 ~~STEPHEN PEARROW, after being duly~~
4 sworn, testified as follows:

5 THE COURT: For the record, this is a hearing outside
6 of the presence of the jury pursuant to State vs. White
7 and the dog tracking.

8 Thank you, Ms. Cavanaugh. You may go forward.

9 MS. CAVANAUGH: Thank you, Your Honor.

10 THE COURT: Would you spell your last name for us
11 please, sir?

12 THE WITNESS: Pearrow, P-E-A-R-R-O-W.

13 DIRECT EXAMINATION:

14 BY MS. CAVANAUGH:

15 Q Is it Deputy Pearrow?

16 A Correct.

17 Q Deputy Pearrow, where are you employed?

18 A Richland County Sheriff's Department.

19 Q And what is your position at the sheriff's
20 department?

21 A I'm senior canine specialist.

22 Q Okay. Are you also affiliated with the STARR
23 nonprofit organization?

24 A Yes, ma'am.

25 Q And what is STARR exactly? What does that acronym

1 stand for?

2 A STARR is the acronym for Search Tactics And Rescue
3 Recovery.

4 Q And what is the agency actually used for?

5 A It's a nonprofit organization that assists official
6 agencies on searching for the lost and the missing.

7 Q Can you state that again?

8 A It's a nonprofit organization that assists official
9 agencies in the search for the lost and the missing.

10 Q Okay.

11 THE COURT: Deputy, would you do me a favor and scoot
12 a little closer to that microphone or scoot it closer to
13 you, please, sir?

14 Thank you.

15 BY MS. CAVANAUGH:

16 Q And when did -- when did STARR come into existence?

17 A I started working on the idea in 1994, did some
18 training, 503(c)(3), did some paperwork, things like that.
19 We went from active service in August of 2002.

20 Q Okay. And just to be clear, is the STARR
21 organization -- is that run by Richland County Sheriff's
22 Department?

23 A No; no, ma'am.

24 Q It's a separate entity?

25 A Yes, ma'am.

1 Q Other than being the -- you said you founded STARR?

2 A Uh-huh.

3 Q ~~Do you have any other active roles with your~~
4 organization?

5 A Yes. I direct everyone there. We have about a
6 55-member team there under me, as well as I oversee all
7 canine training for the dogs. I do the finances. I do
8 the grant writing.

9 Q The grant writing?

10 A Yes, ma'am.

11 Q Okay. And are you also the head master trainer?

12 A Yes.

13 Q Ask you explain that? Can you expand on that?

14 A It is a certification given by an origination that
15 hosts them which gives you a title of a certified dog
16 trainer and the handler, the ones that handle the dogs.
17 You're also the trainer to them.

18 Q You said it's a certified organization?

19 A Yes. It's a certified -- it's kind of hard to
20 explain. Most of these foundations or organizations that
21 certifies you as a master trainer are organizations that
22 have been recognized either nationally or internationally
23 by other organizations, whether they be NASAR, FEMA, NAP
24 WAD, things like that, organizations like that that do
25 canine training and have come up with a standard. And as

1 you go and take these tests and do -- you pass their
2 standards and therefore, they certify you.

3 Q And what is the name of the organizations that STARR
4 is certified by?

5 A We're certified through NASAR, Nap Wad. I cannot
6 give you exactly what that stands for and FEMA.

7 Q Okay. FEMA, that's a Federal Emergency?

8 A Management Agency.

9 Q And you said NASAR?

10 A NASAR, National Association of Search and Rescue.

11 Q And then the second one, it's NA---

12 A It's called NAP WAD. It's more of a police than it
13 is a search and rescue, but they still recognize our
14 certification.

15 Q Okay. Now, as far as your training as it relates to
16 being a master canine trainer what types -- can you
17 explain the training that you -- like what is involved in
18 the training?

19 A To get the certification?

20 Q Yes.

21 A It's very intense. It starts off usually with the
22 agency that I went to.

23 Q Which is?

24 A The IDCF, which is the International Detective Canine
25 Foundation --

1 Q Okay.

2 A -- which is where I got my master canine

3 certification training from. Usually it's during

4 seminars, large seminars that they are hosting.

5 They have multiple agencies coming in, their dogs.

6 They have trial dogs, dogs that have not been evaluated to

7 see if they are able to do the work that they're looking

8 for, and you will be tested on evaluating these dogs.

9 You will look at all the dogs. They will bring you
10 back, they will say, "Tell us what you think. What was

11 this dog lacking? Was this dog -- is this dog promising
12 in this area? What is it lacking in this area?"

13 You have to get it right. You have to get it right.

14 It goes into -- which is one of the only agencies I've

15 heard of where you actually train your own green dog.

16 When I say by green dog, it's a dog that has zero

17 training.

18 Q Uh-huh.

19 A You actually find your own dog, and you are training

20 that dog while you're being evaluated by the

21 instructors --

22 Q Uh-huh.

23 A -- and then you are put through -- which I did

24 multiple discipline training, which is decoy, which is

25 putting on the suit and having the dog apprehend you --

1 Q Uh-huh.

2 A -- explosives detection, narcotics tracking,
3 accelerants, cadaver, explosives. So we -- I was -- I was
4 laid out in just about all of them.

5 Q Okay. So you said your training is also related
6 specifically to cadaver dogs?

7 A Yes.

8 Q And what is meant by the term cadaver?

9 A Cadaver is nothing but a deceased human body.

10 Q And you mentioned the training that you went through
11 with the IDCF what other trainings have you attended
12 related to the use of cadaver dogs?

13 A I've done some seminars that it is hard to find a lot
14 of seminars with cadaver because it is not a huge -- they
15 are very -- most agencies are looking at drug dogs,
16 explosive detection dogs, things like that.

17 There was one in Atlanta -- I'm sorry, Orlando that
18 NASAR put on at one time a few years ago, and I attended
19 that one.

20 Q Uh-huh.

21 A But keeping up the skills was one of the best ways --
22 one of the best ways of keeping up my skills is the dogs
23 that we have on the STARR team now that I oversee
24 training.

25 Q Okay. And you've been doing this for at least 15

1 years; is that correct?

2 A Yeah, over 15 years.

3 Q ---And you mentioned that your organization is certified
4 by FEMA. Can you give an example of when your dogs were
5 used by FEMA?

6 A Yeah. Our certification is recognized by FEMA, and
7 it was actually done eight months after hurricane Katrina
8 struck New Orleans.

9 We were asked to come down, do a two-week rotation in
10 New Orleans, in the lower quarter. We stayed down there
11 the entire time.

12 We went through -- actually, the Army Corps of
13 engineers had asked us to come in. FEMA was picking up
14 the bill. What they wanted to do was they wanted these
15 houses demolished, and several agencies, including FEMA,
16 were not going to demolish buildings until we had cadaver
17 dogs come in.

18 We were a rotation. The day we came, a two-week
19 rotation of another team left. The day we left, another
20 team was coming in. So they would clear the buildings.
21 We would deem those buildings -- we would never say the
22 buildings were clear. We would say, "These buildings have
23 been checked. We found nothing."

24 Q What would they do if you told FEMA you found
25 nothing?

1 A We don't know what they did after that, but we were
2 told they would do another search, a hand search by it,
3 and then after that, the buildings would be deemed safe to
4 demolish.

5 Q And were there some billions where your cadaver dogs
6 actually did alert?

7 A Yes.

8 Q And you would let FEMA know that?

9 A What's that?

10 Q You would let FEMA know?

11 A Yes, yes. We would let -- we would let them know.
12 We -- they actually -- they trailed us and followed us the
13 entire time.

14 Q Okay.

15 A And we were able to tell them, and then they did
16 markings on the buildings or -- and things like that to
17 tell them that these buildings were not to be demolished.

18 Q And it was from that -- from the use of your dogs,
19 your cadaver dogs with STARR, that your agency was
20 certified by FEMA?

21 A I met with additional people from FEMA before we
22 left. We talked a couple of weeks after that and got the
23 letter. I actually requested it, and then we got the
24 letter about two to three weeks later saying that we were
25 officially recognized by FEMA.

1 Q Okay. I'm going to move on to Mia's training.

2 A Uh-huh.

3 Q And who is -- who is Mia? -----

4 A Mia is a three-year-old female Belgian Malinois.

5 Q Can you say her breed again, please?

6 A It's a Belgian Malinois.

7 Q How do you spell that last?

8 A M-A-L-A-N-I-O-U-S, I believe.

9 Q And why are those particular -- why is that breed
10 used with cadaver dogs?

11 A Well, you can use a lot of different breeds. Mia
12 actually came up to us as a donation from another vendor
13 that breeds these dogs out.

14 Belgian Malinois are very, very high drive, very high
15 strung, very confident. A lot of times they -- once they
16 -- you've got them trained, they don't even need you
17 anymore. They can go do their own thing without you.

18 So very high drive, very driven. Can go high stress,
19 high temperatures, very different kind of environments for
20 a longer period of time than most other breeds.

21 Q What about their sense -- what about their sense of
22 smell?

23 A It's very good.

24 Q Very acute?

25 A I guess very acute. I wouldn't say it's any better

1 than some of the other dogs that are used in this type of
2 work or police work, but their sense of smell is very
3 good.

4 Q Okay. How long has Mia been a part of your agency?

5 A From the time we got her. We got her, I would say,
6 maybe five months old, and we -- once we get her through
7 the puppy stage and the biting and chewing and let her be
8 a puppy for awhile, usually it's anywhere from ten to 12
9 months before we start any type of training.

10 Q And just to be clear, Mia was used in the cadaver
11 detection at 613 Heron Glen Road, right?

12 A Correct.

13 Q Now, is she a -- what's termed a single-purpose dog?

14 A Yes. A single-purpose dog which means she has one
15 criteria, one purpose, that we use her for.

16 Q And what is that?

17 A That is for cadaver.

18 Q And you say cadaver, actually refers to dead people?

19 A Dead human body.

20 Q And did you actually train Mia?

21 A Yes. I had a -- we actually were two trainers with
22 the dog: Me and the handler of the dog, the owner of the
23 dog has Mia now. We took this project on together.

24 Q And who is the person you're referring to?

25 A Jamie Gunter is the actual handler of the dog, the

1 actual owner of the dog.

2 Q So how did you go about training Mia?

3 A ~~Mia was easy. She was easier than most dogs. Her~~
4 drive was -- when I mean by drive, ball drive, play drive
5 was the second she came out of the kennel or crate, was
6 immediately going to look for something, her toy, her
7 reward, immediately went to look for it.

8 So toy driven and what we look for, ball driven, prey
9 drive, hunt drive is what we look for. She had so much of
10 it that she would wear us out long before we wore her out.
11 So that was the easier part. Odor recognition for her was
12 very simple.

13 Q Can you describe that?

14 A Odor recognition for the dog is pretty much when
15 you're imprinting the type of odors you wish for that dog
16 to find for you. It starts off very, very simple.

17 There are several different ways you can start by --
18 if you're familiar with a Kong, the big rubber toys that
19 are supposed to be indestructible for dogs. We actually
20 odor inside of it, throw it into high grass, high field
21 area.

22 She sees where -- in the general direction where it
23 goes and, you know, 15, 20 yards from it, she cannot
24 remember -- doesn't know where to go, so she immediately
25 has to go into hunt drive where she has to drop her nose

1 and start searching the area for the odor.

2 She would find it. We would do that over and over
3 and over weeks. Then we would go to a next stage which
4 would be odor boxes.

5 We would place three to four boxes out, empty. We
6 made them out of plywood. Only one box contains odor.
7 All the other boxes never had odor in them. Then she is
8 to -- they have holes cut in the top of them.

9 Q Uh-huh.

10 A She is to go to each box and indicate or -- indicate
11 only on the box that has the odor in it, which would be
12 the cadaver odor in it.

13 Q Uh-huh.

14 A We move the boxes around.

15 Q So when you're referring to odor, you're talking --
16 you're referring to cadaver odor?

17 A Yes, yes.

18 Q Okay. And how do you actually put the odor in the
19 instrument that you're referring to?

20 A Basically there's holes cut on the top of it.
21 There's hinges. Only one box out of the four boxes or
22 three boxes, how ever many you want to use. It only has
23 hinges on the one we need to open and place the odor in
24 and close it. The rest of them are just solid boxes with
25 all different types of --

1 Q What odor?

2 A Brain tissue, liposuction, blood, knee fluid,
3 ~~whatever we can use. To get a DHEC license to house this~~
4 stuff, DHEC actually had to write a policy. We were the
5 first people to actually ask for this.

6 Q Uh-huh.

7 A But --

8 Q So when you're referring to odor that you put into
9 these boxes that you put in these instrumentalities, you
10 are referring to decomposition of a body?

11 A Yes; yes, teeth, hair. We break those odors down.
12 Teeth will be one of the hardest things, bone that has
13 been, you know, human bone that has been dried out, human
14 bone that still has marrow, whatever the case may be, we
15 have literally 60 to 70 different containers with dates
16 written on them with -- so I can know this is an older
17 odor. This is a newer odor. This is a liquid, a blood,
18 brain tissue, whatever the case may be.

19 Q And this is how she is trained?

20 A Yes.

21 Q How do you know -- how did you know when Mia was
22 ready to actually be used in searches?

23 A What we like to look for is -- mine are a little bit
24 higher standards. I like a -- we don't try to go off a
25 percent, but as far as our training paperwork is

1 concerned, it's 98 percent accuracy.

2 Once they reach that, then we are ready to attempt
3 their certification. Mia passed her certification the
4 first time, which was only the third dog in the history of
5 the team that's ever done it.

6 Q And you stated earlier also one of her handlers?

7 A Right.

8 Q What is meant by that term?

9 A A handler is just someone that has hands on with the
10 dog. Uses -- that is the person that uses that dog.

11 Q Okay. And with Mia, you said she only has two
12 handlers?

13 A Yes. It's just me and her.

14 Q Jamie?

15 A Uh-huh.

16 Q And is anyone else allowed to handle her?

17 A No.

18 Q And why is that?

19 A Two reasons. One reason, she is not going to have it
20 as far as she just will not work for you. The second
21 reason is I -- we have one handler where these new -- the
22 handlers that come in now.

23 If they come in with just their dogs, it's one
24 handler, one-dog policy that we try to keep, especially
25 when these handlers come in and they purchase their dogs

1 or we help them find a dog.

2 It's your dog. We don't want anybody else handling
3 the dog for the exact reason you know the dog. You know
4 the cues the dog does. You know its quirks. You know
5 when it wants something. You know when it doesn't want
6 something. Even when it doesn't show outright, it's bred
7 -- a lot of your dog owners ill know when the dog growls
8 before it actually growls.

9 They know when it doesn't want something long before
10 it tries to show a human that it doesn't want something,
11 so it's this little -- each dog alerts in different ways.

12 We teach indications the same, but each dog alerts in
13 different ways whether it be -- we have got some that just
14 sit there, you know, and spin. We have some that will
15 drool.

16 The tails will go straight. The hackles will go up.
17 The head will spin, turn. The ears will do something
18 different. You take a dog that has been working with one
19 handler for two or three years and say, "Bring another dog
20 in here, and go work that dog. We need to find this
21 person." We could as a matter, to the handler, go get the
22 handler. I need you to take this dog. It's not going to
23 work.

24 Q And does Mia still go through training?

25 A Yes.

1 Q She goes through maintenance training?

2 A Yes.

3 Q And how often?

4 A A minimum two to three times a week. Anywhere from
5 30 minutes to three hours.

6 Q So you mentioned earlier that Mia is a singular
7 purpose dog?

8 A Uh-huh.

9 Q She is trained to detect cadaver scent?

10 A Correct.

11 Q And is she detecting on a source? Is she -- can you
12 describe what she is -- what is meant by the term source?

13 A Source is the only odor that we put out for her that
14 she is rewarded for finding.

15 Q Okay.

16 A That is basically what it -- so if it's human
17 decomp., whether it be blood, knee fluid, liposuction,
18 whatever, we can -- we were able to get -- be able to use.
19 It is -- she is only rewarded when those odors are found.

20 Q Okay. In your experience as Mia's handler and
21 trainer, has she proven to be reliable?

22 A Yes.

23 Q And can you give examples of that? How can you tell
24 that she is proven to be reliable?

25 A Mia has only been on a couple of searches that we've

1 been able to use her for. One that we did in another
2 county was actually remarkable for her or for any dog for
3 that matter was she -- she located -- she was what we
4 call -- she was in an area of odor.

5 We -- of course, we couldn't smell anything, but she
6 kept -- we pulled her away. She would go back. We
7 started her in a different area. She would go back to
8 that area. So at one point, we kind of threw our hands up
9 because we were walking the area, and we didn't see
10 anything.

11 This was -- so we pulled her out. We let the agency
12 that requested us know, "Look, our dog is showing some
13 serious interest this area. She is not pinpointing, but
14 she is showing some serious interest in this area."

15 They came and there was actually a body that had been
16 buried about -- I don't remember exactly. It was a very,
17 very shallow grave that had been there for about 18
18 months. That showed definite reliability on her and her
19 training.

20 She only gets -- I mean, of course, dogs have their
21 days, but she only seems to be progressing each time we do
22 her training.

23 Q And you were in -- she won't detect on something like
24 a dead animal?

25 A No. We actually use that as distractions. We'll

1 actually lay people -- some of our other members will
2 actually go and lay on the ground near the area where we
3 want her to search.

4 We've actually put -- we put road kill out there in
5 areas where the search area will be, whether it be in her
6 path or in the search area that we want her to be in.

7 She -- of course, they're going to go check it, but
8 we make sure that there is nothing going through training
9 as her training. She has come to figure out she doesn't
10 get rewarded for those types of things. She leaves them
11 and goes back to work.

12 Q And can you estimate how many times Mia has been used
13 in search and rescue assisting other agencies?

14 A I'd say 12 to 15.

15 Q Okay.

16 A Easy for her.

17 Q Now, in this search, Heron Glen Road, what -- do you
18 remember approximately what time you arrived at the scene?
19 Do you have your report in front of you?

20 A Yeah. I know I had to go and get the dog.

21 Q Uh-huh.

22 A I was actually working that day. I had to leave, go
23 home, get the dog and bring her back. You know, I think
24 it was around -- the first time I got the call was around
25 three o'clock. As far as what my actual arrival time

1 there, I'm not too sure if I recall that.

2 Q Was this on the crime scene log when you went in?

3 A --- Yes, yes.

4 Q Was it fair to say a couple of hours?

5 A Yes.

6 Q Okay. And when you arrived, was crime scene up? Was
7 crime scene tape up?

8 A Crime scene tape was up, yes.

9 Q Okay. Now, as far as the area being contaminated --
10 we had the coroner -- deputy coroner and other deputies
11 come in and out of the crime scene. Does that contaminate
12 the scene in any way for Mia's use?

13 A No.

14 Q Why is that?

15 A She is only trained to detect the dead, not the
16 living.

17 Q Was it your understanding there was only one dead
18 body located at that house?

19 A That's what I was told, yes.

20 Q Now, once you arrived at 613 Heron Glen Road,
21 describe what you first did.

22 A When I -- when I drove up, there were several cars
23 that were on the left shoulder or on that side of the
24 house on the road. I parked behind them which put me a
25 couple doors down from the left of the house when I

1 stopped.

2 Like I said before with Mia, she is very, very high
3 strung, very, very high drive. I like to bring her out
4 and work a little bit of that out of her, let her get that
5 immediate frustration and literally going crazy out of her
6 first.

7 Q Is that done away from the actual --

8 A Yeah. That was done, you know, three or four doors.

9 Q Okay.

10 A It was quick, just a couple of -- a couple of tosses
11 in the front yard, a little bit of, you know, petting the
12 dog, whatever.

13 Then I went back to the car, let her get a drink of
14 water. I leashed her up and brought her back out and went
15 and break her, which is go out and use the bathroom.

16 Q Is that done away from --

17 A That was in the same location where she -- where I
18 went out and just kind of played with her a little bit.

19 Q A couple houses down?

20 A A couple houses down, yes, ma'am. Then we moved up
21 the front yards of those houses that were a couple doors
22 down, and I got to just left of the driveway of the house
23 next door. I released her --

24 Q Okay.

25 A -- and gave her the -- her call sign to search which

1 is basically just find it. Pretty much, if you break the
2 leash off of her, she kind of has it figured out.

3 Q Now, do you have any information at all related to
4 the crime scene itself before you arrive 3there?

5 A No.

6 Q Why is that important?

7 A I never ask. Even when we do a lot of the search and
8 rescue, I will not ask. We're out there to find and
9 locate but there are other things that can be done for
10 training purposes, as well that can come back and help the
11 dog so --

12 Q Did it also -- it is also because you don't want
13 to --

14 A I do not want to know where because the best handlers
15 in the world that have been doing it for a long, long
16 time, if they know where it's at, a lot of times, they
17 will unconsciously -- you know, not consciously gather a
18 dog to that area.

19 Q Okay.

20 A Which is one thing that I did not want to do.

21 Q Okay. So once -- once Mia was released from the
22 leash and you gave her the sign "find it" -- is that what
23 you said?

24 A Right.

25 Q What did she immediately do?

1 A She went to the house next door, the house to the
2 left next to the house and walked along the house, made a
3 little bit of a right around the corner of the house and
4 then made a huge head turn, what we call an alert, and
5 worked her way into the house in question and went in
6 front of the front door.

7 I don't know how many feet it was in front of the
8 front door. I was actually still a ways behind her
9 because she -- she had moved so quickly.

10 She walked up to an area of grass that was in the
11 front door or just beyond the front door, nose went down,
12 you know, a great alert. She followed it kind of with her
13 nose still down but walking her body kind of like a 180
14 degree.

15 I think most of it was to turn around and be able to
16 face me, because she is the type of dog that likes to see
17 the toy coming. She doesn't like to be surprised by it.
18 She came around, and she indicated right there at a spot.

19 Q And what -- what about her behavior shows you that
20 she has indicated?

21 A Oh, an indication is a trained response. So it's
22 whatever we trained her to do to be rewarded is what she
23 will do. Hers is just to sit down, lay down. An alert is
24 any kind of change in behavior that the dog is -- or the
25 dog trails when it is around the target odor.

1 Q And the indication for Mia, what occurs in her body,
2 like what -- what --

3 A ~~On an alert~~

4 Q No --

5 A -- an indication.

6 Q -- an indication.

7 A An indication, she drops immediately, and the ears
8 go.

9 Q And that's stronger than an alert, right?

10 A Oh, yes.

11 Q And that's what she did in the front yard?

12 A Right.

13 Q Now, that time, was there -- the body had been
14 removed, is that correct?

15 A Yes.

16 Q For State's identification purposes only, do you
17 recognize?

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

20 THE COURT: What number is that?

21 THE COURT REPORTER: One.

22 BY MS. CAVANAUGH:

23 Q One.

24 For State's identification only, do you recognize
25 this picture?

- 1 A Yes.
- 2 Q Okay. And what does that show?
- 3 A It's a -- appears to be a body in the front lawn.
- 4 Q Okay. Now, you stated that the body was not there?
- 5 A Correct.
- 6 Q But is that the area that Mia indicated on?
- 7 A Yes, yes.
- 8 Q Okay. And what did you do next? And again, you
- 9 described her behavior as what, the indication? What are
- 10 the signs that she will have?
- 11 A ~~She will --~~ she will immediately lay down either very
- 12 close to or on the source.
- 13 Q Okay.
- 14 A And her ears will go up because she knows that the
- 15 reward is coming sometime.
- 16 Q Okay. Now, does anything else happen other than her
- 17 ears go up?
- 18 A Yeah. She has been -- when she gets into -- when she
- 19 starts to alert, there's a lot of things. Her hackles
- 20 will go up, which if you're not familiar, it's the dog's
- 21 mohawk -- you get a male and a female, two males. She
- 22 will drool, and her ears will literally pin themselves
- 23 back. So it's -- she is pretty easy to read.
- 24 Q Okay. And what -- what occurred after that?
- 25 A After that, we -- she was to break. We put her up to

1 break after that. Mainly, it was to get her out of the
2 area, put her up, let her rest.

3 ~~Like I said before, Mia is a very, very high strung,~~
4 strong, moves very quickly dog. It doesn't take her long
5 to wear herself out, so she has to be put up several times
6 for a certain period of time to let her catch herself.
7 That's what we did there.

8 I think that was probably -- I would say a minimum of
9 ten minutes with probably the length of maybe 20 minutes
10 is the longest on that.

11 Q Okay.

12 A Then I was asked to bring her out and put her in the
13 residence here. We went through the front door.

14 Q Uh-huh.

15 A And I did these things. Mia is not the type of dog
16 that -- you don't just want to hang on to her. You have
17 to release her, or she'll just pull you everywhere. She
18 was released again.

19 There's, you know, Mia -- she is very strong minded.
20 She has her own head, and she knows what she is supposed
21 to be doing, especially when that leash is cut off of her.

22 Q Which is seeing if she detects?

23 A Right.

24 Q What?

25 A Cadaver.

1 Q Okay. From the source? Is it -- how is it related
2 to the source that she hits on where the dead body is
3 located?

4 A How is what now?

5 Q Is she -- what ask she looking for after she has hit
6 the source?

7 A What is she rewarded with?

8 Q No. What is she continuing to look for when you
9 brought her in the home?

10 A Oh, she is still doing cadaver.

11 Q Okay.

12 A She is still looking for cadaver.

13 Q Okay. Is it from the source?

14 A No.

15 Q Not necessarily?

16 A No, no. Not at all.

17 Q Okay.

18 A As a matter of fact, we came in, and as we had to
19 shut the door and -- because all she is going to do is
20 turn around and go back out again.

21 Q Okay. And that's to prevent contamination from the
22 source to other locations in the house?

23 A Correct, she was released, again, from there. She
24 had showed interest in the downstairs right in the middle
25 of the -- I guess it would be the great room or the den

1 area.

2 Q Uh-huh.

3 A ~~There was no~~ --- no alerts. No indications, but I --
4 we noticed that she was showing interest and then
5 upstairs. She bolted upstairs.

6 We -- well, before she bolted upstairs, I tried to
7 get her to work the rest of the house, to get in the
8 kitchen and to go around, and she did, but her interest
9 was upstairs. So I allowed her to do it.

10 Q Okay.

11 A I went upstairs. You know, dogs are usually just
12 like we are. They're going to take the path of least
13 resistance. She just happened to go left, and there was
14 a -- I'm trying to remember which one.

15 MS. CAVANAUGH: Beg the Court's indulgence.

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

18 BY MS. CAVANAUGH:

19 Q I'm going to show you what's marked as State's
20 Exhibit 2. Is that there to the left?

21 A Yes, yes.

22 Q Okay. And what happened once you were in that room?

23 A When we went in that room, she went to the right side
24 of the bed, which I think the other part of the bed is
25 against the wall. It would be the right side of the bed,

1 turned and immediately indicated.

2 Q Okay.

3 A Just very, very quickly on that.

4 Q Now, I'm going to ask you to look at your report, the
5 first report that you completed you wrote alert instead of
6 indicate. But she -- alert is just a lower level of
7 indication; is that correct?

8 A Correct.

9 Q Okay. But is it still a change in behavior?

10 A It is a change in behavior.

11 Q Yes. What type of change in behavior?

12 A It was the hackles back up again, the ears folding
13 back. She gets low to the ground. At first I thought
14 maybe it was overwhelming for her because we don't use, in
15 many cases, a high intensity odor or a lot of. It's very
16 small amounts, but it was very recognizable, very, very
17 easy to detect.

18 Q Now, moving on to the bedroom that was to the right
19 of the stairwell that you noted in your report, I show you
20 what's marked as State's Exhibit 3 for ID purposes only.

21 (WHEREUPON, State's Exhibit No. 3 was marked for
22 identification only.)

23 BY MS. CAVANAUGH:

24 Q Is this the second room you refer to in your report?

25 A Yes, yes.

1 Q Okay. And do you recognize that room?

2 A Yes.

3 Q ~~And where did she alert in that room?~~ - - - - -

4 A She did a search of the room and the bathroom and
5 then went in the closet, and she actually indicated in the
6 closet.

7 Q And indicated. That's a stronger --

8 A It's just a trained. I wouldn't necessarily say it's
9 stronger.

10 Q Okay.

11 A ~~But it is the trained because dogs are dogs.~~
12 Sometimes they alert, sometimes they indicate, get so sped
13 up they don't know what to do. That's why you need to
14 have a handler that's educated in the dog.

15 Q Right.

16 A I wouldn't say it's stronger. The indication is not
17 any stronger than an alert as far as odor.

18 Q As far as odor. So it's just a different term?

19 A Right.

20 Q Once you got into the closet, how did her behavior
21 change?

22 A It was basically the same. She is very easy to read.
23 I believe -- maybe she may have even got -- she may have
24 even started to whine in there, which is -- she is a very,
25 very quiet dog.

1 She doesn't do what -- it was the same thing, the
2 drooling. The front legs bring the front part of the body
3 down to the ground, and the ears get pinned back.

4 Q And did you actually try to bring her -- hold on a
5 minute right there.

6 This one is State's Exhibit 4.

7 (WHEREUPON, State's Exhibit No. 4 was marked for
8 identification only.)

9 BY MS. CAVANAUGH:

10 Q I'm going to show you what's marked as State's
11 Exhibit 4 for ID purposes only. Is that the closet you're
12 referring to?

13 A Yes, ma'am.

14 Q Okay. And did you actually try to bring her out of
15 the closet to search in the car?

16 A Yes.

17 Q What happened when you tried to do that?

18 A She left and went back in the closet again.

19 Q And then finally, this is not included in your
20 report; however, did she hit in another bedroom in the
21 home?

22 A There was an alert shown in the third bedroom that we
23 had gone on. That was in a bed -- it was a bed, a closet
24 to the right and a night table. It was in between that
25 little area there.

1 (WHEREUPON, State's Exhibit No. 5 was marked for
2 identification only.)

3 BY MS. CAVANAUGH:

4 Q I'm going to show you what's marked for ID purposes
5 only as State's Exhibit 5 and ask do you recognize is that
6 the bedroom?

7 A Yes.

8 Q How did Mia's behavior change?

9 A There was an alert in there, as well, same thing,
10 body lowered, ears pin back.

11 Q Okay. Now, after -- after this series of alerts,
12 indications, the search, the first time, what did you do
13 after that?

14 A She was put back up again.

15 Q Okay.

16 A For another break which was probably a good 20
17 minutes, I would imagine. It was warm. You know, she
18 needed a good rest, get water. Basically what I do is
19 when I open up the door and I don't hear anymore panting,
20 then I consider that dog rested which was probably, you
21 know, 15, 20 minutes.

22 She was brought back out again, because the way -- my
23 protocol, my standards are, is that we do it again.

24 Q Okay.

25 A I did not want anything where she first indicated --

1 I don't want to bring her anywhere near there.

2 Q You're talking about the front yard?

3 A Front yard.

4 Q And why was that?

5 A Because I could smell it.

6 Q Okay.

7 A If I can smell it, then I know it was -- it could be
8 overwhelming for her. We went literally all the way the
9 neighbor's yard and into the back door of the house and
10 deployed her from there, and it was like watching a rerun.

11 Everything was the same.

12 Q Okay.

13 A On that trip.

14 Q And you said you tried to do -- you do the second --
15 in every -- the second search in every search and rescue?

16 A It's either two search, or we use more than one dog,
17 yes. I do not go off with just one dog.

18 Q And that's just to verify the first results?

19 A Right.

20 Q Now, was Mia used a second time during this
21 investigation?

22 A That afternoon, yes, ma'am.

23 Q And where was that?

24 A That was at the Richland County Sheriff's Department
25 headquarters.

1 Q Oh, and I'm sorry, one more question related to the
2 house.

3 A -- Uh-huh.

4 Q Were there investigators present when --

5 A Yes.

6 Q Okay. And they were following you?

7 A They have to follow me.

8 Q And Were you indicating what you were observing with
9 Mia to them?

10 A Yes.

11 Q Do you remember who those were?

12 A I know the one behind me was there.

13 Q Investigator Clarke?

14 A Right, and I don't recall the other one.

15 Q Okay. Okay. So continue. Were you asked to respond
16 to the forensic garage at the -- is it the sheriff's
17 department?

18 A Yes, ma'am.

19 Q Okay. Did you?

20 A Yes.

21 Q And was it later on that afternoon?

22 A It was.

23 Q Okay. And what were you asked to assist with at the
24 forensic garage?

25 A I was -- I was told -- I was given more detail when I

1 got there.

2 Q Uh-huh.

3 A All I knew was they needed me and the dog to come
4 down to the headquarters because they wanted to use her
5 for something else.

6 Q Uh-huh.

7 A When I got there, they went into explaining, and I
8 said -- I saw what they had done. They had placed some
9 cardboard boxes, three of them to be exact, anywhere
10 two-and-a-half, three feet tall, had them, you know,
11 closed and had them in a line.

12 And before they could even -- I said, "I don't want
13 to know. I've already got a pretty good indication of
14 what you're wanting the dog to do, so let's just do it.

15 I said, you know, I don't want to know exactly
16 what -- I know you've got an item in something, and the
17 other two are probably empty or they may all three empty.
18 You were -- they may be testing the dog. They may be --
19 the boxes may have been empty. I didn't know.

20 Q Okay.

21 A But whatever the case may be, if it was a test, then
22 I wanted to take this test. So they just stepped back and
23 let me do it.

24 So I released the dog in that area and working scent
25 boxes during training, she knew exactly what she needed to

1 do. She figured it out, and she went to the boxes, and
2 then she literally indicated on one of the boxes.

3 Q --Okay--

4 A And I pointed the box out. All I said was
5 "indication" to them.

6 Q And did you have any idea what was in that box?

7 A Nope.

8 Q What was done after the first?

9 A We brought them outside.

10 Q Okay.

11 A I said, "Let's get them outside."

12 Q The boxes?

13 A Yes, the boxes. I said, "Let's bring these outside."
14 Again, I think I put her up. They asked me what else
15 would you like. I said, "Let's bring them outside, and
16 let's get the doors shut. Let's put it in a different
17 environment."

18 Q The door, which door are you referring to?

19 A It was the bay door to where they had the dogs which
20 I guess is the forensics holding area.

21 Q Okay.

22 A I said, "Let's get them out. Let's shut the doors,"
23 and we -- another 20, 30 minutes went by, and we brought
24 her out once again.

25 The boxes were moved around and not in the same

1 sequence they were before and deployed her again. She
2 indicated again, and they also stated to me that was --
3 actually, they didn't say anything to me.

4 I wanted to know, but they couldn't tell me. I said,
5 "It's this box."

6 Okay. That was about all I knew. I didn't know
7 anything else past that.

8 Q Beg the Court's indulgence.

9 THE COURT: Yes, ma'am.

10 (Pause).

11 MS. CAVANAUGH: Thank you Deputy Pearrow. Please
12 answer any questions from the defense.

13 THE COURT: Yes, sir.

14 THE WITNESS: Yes, ma'am.

15 MR. MOORE: May it please the Court.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION:

18 BY MR. MOORE:

19 Q Sir, now, as I understand it, you are a deputy with
20 the Richland County Sheriff's Department; is that correct?

21 A Correct, yes, sir.

22 Q On the morning in question, were you responding as a
23 deputy from the sheriff's department or as some sort of
24 employee of STARR?

25 A I was requested by the chief, because they knew I had

1 a cadaver dog. I actually had to take a flex time or
2 comp. time because of it, because they knew that I had
3 ~~gone from one to the other, so...~~

4 Q My real question is were you functioning as a
5 sheriff's deputy, or were you functioning as something
6 else?

7 A I had to go as them -- I actually had to use some
8 comp. time or flex time, vacation time, whatever I had to.

9 Q And, of course, when you do that, the sheriff's
10 department makes no compensation to anyone for that time?

11 A Correct.

12 Q Okay. Now, you claim to be an expert in some field
13 related to dogs; is that right?

14 A I wouldn't say an expert, no.

15 Q So you wouldn't claim to be an expert?

16 A Right.

17 Q There's no field that you claim to be an expert
18 related to dogs?

19 A No.

20 Q And, of course, what you do then as a nonexpert is
21 that you have a dog do something, and you interpret dog
22 motions.

23 A Correct.

24 Q So the way you come to a conclusion in regard to what
25 has happened is you're interpreting what the dog is

1 telling you.

2 A Correct.

3 Q --- So basically, you are speaking for a dog saying what
4 you think the dog thinks by what it did.

5 A It's -- it's the trained responses and the
6 difference, the body language, that the dog performs
7 during a search time but yes.

8 Q You believe you know what the dog is thinking, and
9 you interpret that as a nonexpert in this field?

10 A I don't know about thinking, but I can read the body
11 language of them, yes.

12 Q So what you're doing as a nonexpert is basically
13 reading dog body language?

14 A Correct.

15 Q So you are a reader of body language of dogs.

16 A That's a way to put it, yes.

17 Q Now, you say that there is someone who has certified
18 this organization as a reader of dog body language. Who
19 is it that certified this dog, Mia?

20 A We did internally.

21 Q When you say "we", I'm not sure I know who "we" is.
22 Are you the person that certified the dog as being able to
23 be body language read?

24 A We, as the STARR team, has an internal certification
25 of protocols that I have written that they must pass

1 before they can be used or deployable.

2 Q Well, who wrote the protocols?

3 A For the -- my group?

4 Q Yes.

5 A I did.

6 Q Okay. So you basically then wrote the protocols for
7 interpreting dog body language for people that you work
8 with?

9 A Correct.

10 Q Now, if I wanted to see those protocols for
11 interpreting dog body language, where would I look?

12 A If you wanted to see what?

13 Q If I wanted to see that dog interpretation body
14 language, where would I look to see those protocols?

15 A I have my areas of what they must -- what the dogs
16 must be on -- what the handlers must be able to pass when
17 the dog either alerts and/or indicates.

18 Q So the only person that has established the
19 certification for, let's say, the dog handlers or the dog
20 to interpret this dog body language would basically be
21 you?

22 A Yes. There is no statewide certification for it.

23 Q And there's no national certification for it?

24 A No, sir.

25 Q And there's no nationally recognized field of

1 interpreting dog body language, correct?

2 A I can't say yes or no to that.

3 Q You don't know of one?

4 A No.

5 Q All right. So -- and, of course, how you go about
6 interpreting dog body language can vary from organization
7 to organization, can it not?

8 A No. A dog is a dog, too.

9 Q A dog is a dog, absolutely, and I would assume that
10 since you're not an expert in the field, you don't have
11 anybody who works with you that's more of an expert than

12 you are that you know of?

13 A I define expert as someone that thinks they know
14 everything.

15 Q I understand. Now, this -- what these dogs are
16 trained to do, as I understand it, is to find dead bodies,
17 right?

18 A (Nods in the affirmative.)

19 Q That's really what they're taught to do. They're
20 basically designed in the whole organization is so that
21 you can locate dead bodies, things like for FEMA where you
22 have tragedies or something of that nature?

23 A (Indicating in the affirmative.)

24 THE COURT: I need you to answer out loud, please,
25 deputy.

1 THE WITNESS: I'm sorry. I picked myself up on that
2 one.

3 THE COURT: That's okay. That's okay.

4 BY MR. MOORE:

5 Q Of course, by the time you got there, everybody
6 already knew where the dead body was, right?

7 A I assume, yes.

8 Q Because that's where you smelled the odor in the
9 yard?

10 A Correct.

11 Q Was the dead body still there when you got there?

12 A No, sir.

13 Q The dead body had been removed?

14 A Yes, sir.

15 Q But with regard to doing what this organization is
16 all about, finding the dead body, the dead body had
17 already been found by the time you got there.

18 A Correct.

19 Q So we know there wasn't a dead body in the house.

20 A Correct.

21 Q There wasn't one upstairs.

22 A Correct.

23 Q There wasn't one in any of the rooms that you
24 basically searched?

25 A Yes, sir.

1 Q Because a dead body was in the yard?

2 A Correct.

3 Q ~~So what your group is certified to do is actually~~
4 finding the actual bodies of people who are killed in
5 disasters or something of that nature.

6 A Or where they may have been at one point.

7 Q Well, let's talk about where they may have been at
8 one point. I thought these were called cadaver dogs?

9 A Correct.

10 Q Cadaver dog is basically -- is operated by a handler,
11 right?

12 A Correct.

13 Q Who seeks dead bodies?

14 A Right.

15 Q All right. Now, do you know that when a body dies,
16 the body itself has no smell. You know that, don't you?

17 A Correct.

18 Q What happens is that there is something which
19 basically is decaying by way of bacteria which is emitting
20 an odor that you can detect, correct?

21 A Right.

22 Q And we know that this body was emitting a strong odor
23 because you could still smell it when you showed up?

24 A Correct.

25 Q And we also know that your employer, the Richland

1 County Sheriff's Department, has a serious and
2 sophisticated DNA laboratory, correct?

3 A Yes, I do.

4 Q And we know that after the dog -- what you call
5 alerted on these three rooms, there was a major search of
6 the rooms to see if there was anything there which would
7 have been decomposing to emit such an odor, right?

8 MS. CAVANAUGH: Objection.

9 THE COURT: He can answer if he knows.

10 THE WITNESS: I don't. Yeah, I don't know what
11 investigations may have been done or who may have been in
12 the house.

13 BY MR. MOORE:

14 Q Do you know if anything was ever found in any of the
15 rooms?

16 A I don't know.

17 Q Well, you were there when the dog alerted, right?

18 A Correct.

19 Q You looked inside the room?

20 A Correct.

21 Q Was there a cadaver in any of the rooms?

22 A No.

23 Q Was there any decaying material in the rooms?

24 A Not that I'm aware of, no.

25 Q Well, were you able ever to find anything that would

1 have caused the dog to alert in these three rooms?

2 A No, I was going off the dog.

3 Q -- Was there anybody that you know of anywhere in the
4 world that ever found anything that would have been
5 emitting the gases that was in those rooms?

6 A I don't understand the question.

7 Q At any point in time, we know that the dog did what
8 you called an alert, right?

9 A Right.

10 Q The dog had body language that you interpreted as an
11 alert, and you went inside the room, right?

12 A Yes, sir.

13 Q And found nothing.

14 A Right.

15 Q Okay. And as a matter of fact, not only did you find
16 nothing, that horrendous smell that was still lingering in
17 the yard, you didn't smell anything in the rooms, right?

18 A Not that I would deem anything, no.

19 Q You smelled nothing inside of the house that smelled
20 like a body better either, right?

21 A Well, I smelled something, but as far as saying that
22 it was a dead body, no, I'm not.

23 Q All right. Now, as I understand it, you say that
24 it's very important for there be one dog, one handler,
25 correct?

1 A Correct.

2 Q And why it so important to have one dog, one handler?

3 A I like to do one dog, one handler, especially for
4 your newer handlers and because they need only that one
5 dog. They're only assisting in training that one dog, and
6 they're only going to be handling that one dog.

7 Q Right. And the handler of this particular dog all
8 through training was a gentleman by the name of Jamie
9 Gunter.

10 A Female, actually.

11 Q A lady by the name of Jamie Gunter.

12 A Correct.

13 Q Actually, Mia belonged to Jamie Gunter.

14 A Correct.

15 Q Jamie Gunter had trained Mia.

16 A There was a dual training, yes.

17 Q Well, let's take a look at what your reports indicate
18 in regard to the STARR canine Training Search Report.

19 These are the training dogs for Mia, correct?

20 A Yes, sir.

21 Q All right. We'd like to have these marked if we
22 could, Your Honor.

23 THE COURT: Okay. Do you want to mark them as a
24 package?

25 MR. MOORE: I think a package would be fine, Your

1 Honor.

2 THE COURT: Okay.

3 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
4 identification only.)

5 THE COURT: Sorry, Mr. Moore.

6 MR. MOORE: I apologize also to the court reporter.
7 Your Honor, I can get ahead of myself sometimes.

8 THE COURT: That's okay.

9 BY MR. MOORE:

10 Q Sir, explain to the Court why it's so important to
11 have one dog, one handler.

12 A I just -- it is -- especially for your newer
13 handlers, the ones that don't have a lot of experience
14 with multiple dogs, someone else may not be able to read
15 another dog, another handler's dog and vice versa.

16 Q And this is all important to the business of
17 interrupting dog body language which is what you all do?

18 A Right.

19 Q Okay. So in order for you to properly be able to
20 interpret dog body language, you have to have one dog, one
21 handler.

22 A Correct.

23 Q And that would be important so the handler knows the
24 dog. The dog knows the handler so when you go about
25 interpreting this body language trying to say what the dog

1 is saying, there be a constant -- that the dog has with
2 the handler so nobody gets confused.

3 A Right.

4 Q Because interpreting dog body language, sometimes you
5 can get confused.

6 A Absolutely.

7 Q Sometimes you can have false readings.

8 A Absolutely.

9 Q Sometimes it's hard to understand what the dog is
10 trying to tell you with his body language.

11 A Correct.

12 Q Now, in the training, according to the training
13 records of the STARR canine Training Organization, tell
14 me -- looking at these training records, these are the
15 training records of the dog, right?

16 A Yes.

17 Q The trainer who basically is the one-on-one trainer
18 during the actual training of this dog would have been
19 who?

20 A Probably most of these reports is just Jamie.

21 Q Well, all of those reports are just Jamie, correct?

22 A Right.

23 Q So we know that person who actually appears on your
24 records to have been the handler engaged in all the
25 training of this dog was Jamie, right?

1 A No.

2 Q Well, that's what those reports say?

3 A Okay.

4 Q Are there any reports you have that indicate this is

5 what we're getting as the training records of this dog?

6 A I understand. I understand.

7 Q The records are accuracy, aren't they?

8 A She is very good at it, yes.

9 Q All right. So you folks keep accurate records,

10 right?

11 A Yes.

12 Q So according to the records of your organization, the

13 only handler who ever handled this dog during training,

14 according to your records, is Jamie?

15 A Yeah, she is -- yes. On these sets of records, yes.

16 Jamie is the only one.

17 Q Sir, those are the training records for the dog as

18 you just told us, right?

19 A These are some of the training records for the dog,

20 yes.

21 Q Well, when I asked you a moment ago, you said those

22 are the training records of the dog. Now you say those

23 are some of the training records of the dog. Are you

24 telling us there are records that you haven't given us?

25 A There are -- at the time when these records were

1 asked, they could not be gotten -- they could not be
2 getting because Jamie was out of town.

3 Q Well, those are the records relating to Jamie. The
4 ones you have are the ones that relate to Jamie.

5 A Correct.

6 Q So someone could give you all the records related to
7 Jamie but not records related to anybody else?

8 A (Nods in the affirmative.)

9 Q Is that what you're telling us?

10 A These are the only training records that I have
11 turned in, yes.

12 Q Those are the only training records that you have?

13 A Yes.

14 Q Those are the only training records that you know of?

15 A Right.

16 Q All right. Now -- now, that we've got that straight,
17 according to all of the training records we know of
18 applicable to this dog, the only handler who was ever
19 involved in training was Jamie?

20 A Well, I was there for these, yes. I was there for a
21 lot of these.

22 Q Well, sir, then you're telling me your records are
23 inaccurate because they basically say -- like you said,
24 one person one dog, right?

25 A Uh-huh.

1 Q And according to this, during all the training, the
2 handler is Jamie, correct?

3 A Right.

4 Q Show me where it says that during any of this
5 training you functioned as a handler of the dog.

6 A Well, I never handled the dog during the training. I
7 would watch the training of Jamie.

8 Q Oh, okay.

9 A I oversaw her handling of the dog. I helped her
10 train the dog.

11 Q Well, so you watched it, but the person who actually
12 trained the dog for this one-on-one was Jamie?

13 A Correct.

14 Q Now, if we look at the records that have been turned
15 in -- Your Honor, may we have these marked?

16 THE COURT: Yes, sir.

17 (WHEREUPON, Defendant's Exhibits Nos. 2, 3 were
18 marked for identification only.)

19 MR. MOORE: And may I offer these into the record at
20 this time?

21 THE COURT: Yes, sir.

22 (WHEREUPON, Defendant's Exhibits Nos. 2, 3 were
23 admitted into evidence.)

24 BY MR. MOORE:

25 Q Let's talk about this Exhibit No. 2. Actually, let's

1 talk about number three first.

2 I believe this is the actual report from the STARR
3 Search Tactics and Rescue Recovery dealing with this
4 incident of August 23, 2012, correct?

5 A Which one? There's two different ones.

6 Q This one.

7 A Okay.

8 Q All right. This is the one discovering -- or
9 describing where the search was made of the house.

10 A (Indicating in the affirmative.)

11 ~~THE COURT: I need you so speak up for me, Deputy.~~

12 THE WITNESS: I'm sorry. I catch myself doing it
13 again.

14 BY MR. MOORE:

15 Q Go to page two.

16 A Yes, sir.

17 Q And tell me who the handler is for Mia on that
18 particular day?

19 A I was.

20 Q It says Stephen Pearrow.

21 A Correct.

22 Q That's you?

23 A Yes, sir.

24 Q And if we go to Exhibit No. 2, which is the dog body
25 language interpretation from the sheriff's department,

1 that basically says that you also were the handler of Mia,
2 correct?

3 A Yes.

4 Q I guess so much for the one-on-one, huh?

5 A (There was no response).

6 Q Basically, you're not the trainer. You're not the
7 owner. You're not the handler of this dog on a regular
8 basis, and yet, the person who handled, owned and trained
9 this dog wasn't the person who took the dog to the scene
10 for the dog body language interpretation that you told us
11 about, correct?

12 A I was not the official handler of that dog, no.

13 Q And who was the official handler of that dog?

14 A Jamie.

15 Q Jamie is the one that trained the dog, correct?

16 A No. We both had training. The training records you
17 have right there does show that.

18 Q Well, according to the official records of this
19 one-on-one like you told us was so important -- the
20 one-on-one, the one human was named Jamie, right?

21 A Correct.

22 Q It wasn't named Pearrow, was it?

23 A Correct.

24 Q And you've told us this one on one is so important in
25 order to interpret dog body language because you know the

1 dog. You trained the dog. You handled the dog. You
2 sense the dog. You're with the dog all the time, correct?

3 A Correct.

4 Q How many dogs does the Search Tactics and Rescue
5 Recovery company have that you performed this supervisory
6 relationship on?

7 A How many dogs do we have now?

8 Q Right?

9 A Seventeen.

10 Q How many did you have at the time?

11 A About 20.

12 Q Now, did you have this up close and personal
13 relationship with all of the 20 dogs?

14 A I knew what was going on with them, yes.

15 Q Well, there's a difference between knowing what's
16 going on and having this up close and personal
17 relationship you've told us is necessary in order to be
18 able to interpret the dog body language, right?

19 A Yes, sir.

20 Q So you knew what was going on with Mia.

21 A Right.

22 Q But you didn't have the same one-on-one up close and
23 personal relationship with the dog that Jamie had, right?

24 A No.

25 Q That's true?

1 A True.

2 Q Yes. Was Jamie on the scene that morning?

3 A No.

4 Q Was anybody on the scene that morning who had the
5 important one-on-one relationship with the dog that is
6 necessary to properly interpret dog body language?

7 A Jamie was not on the scene, no.

8 Q And Jamie would be that one-on-one person you said
9 has got to be there to have the up close and personal
10 relationship with the dog in order to give a legitimate
11 interpretation to the body's body language.

12 A I think I reiterated before about newer handlers that
13 don't have any experience. I have the experience. Jamie
14 has the experience.

15 Q Right.

16 A Yeah.

17 Q Jamie is the person with the up close and personal
18 relationship that you described is totally necessary in
19 order to properly have an understanding of what the dog is
20 telling out about her body language, right?

21 A Correct.

22 Q Not you, right?

23 A I won't say yes or no to that.

24 Q You can't say yes or no. That's an honest answer.

25 Thank you very much, because as you told us, it has to be

1 the handler who properly interprets the dog's body
2 language, right? You have already told us that, correct?
3 A It is a policy that we have, but this was a different
4 dog. This was two very experienced people.
5 Q You had that policy for a reason, don't you?
6 A Yes.
7 Q Because it's necessary to have that policy to do your
8 job properly, right?
9 A If your a beginner handler, yes.
10 Q Well, you have the policy apply not just to beginner
11 handlers but all your handlers?
12 A Actually, it is for beginner handlers.
13 Q Well, the one thing that's for certain, the person
14 who was the handler with the one-on-one relationship with
15 this dog wasn't you, correct?
16 A Correct.
17 Q Okay. Let's talk for a minute if we could about who
18 else from this Search Tactics and Rescue Recovery, Inc.
19 was out there with the dog. Was there somebody else with
20 you from the STARR team?
21 A No, sir.
22 Q Just you?
23 A Yes, sir.
24 Q Where was Jamie?
25 A Out of town, working actually. I think she was

1 working that day.

2 Q Do you have a dog with which you have the necessary
3 one-on-one relationship to be able to interpret the dog
4 body language?

5 A Yes, sir.

6 Q Where was your dog?

7 A On death's door.

8 Q Death's door. Your dog was sick?

9 A She was very sick. He has actually passed away now,
10 but she was retired and very sick.

11 Q Where was Jamie?

12 A At work.

13 Q What does Jamie do for a living?

14 A Richland County -- Lexington County Sheriff's
15 Department.

16 Q Do you have any -- are they employees of STARR?

17 A No. They are a nonprofit. No one gets paid.

18 Q Do you have any handlers who aren't police people?

19 A Yes.

20 Q So we know you have 20 dogs available. Why didn't
21 you just take a dog out there that did have the necessary
22 one-on-one relationship in order to comply with your
23 policy relating to interpreting dog body language?

24 A Mia was the dog I chose.

25 Q I understand that, but you've told us about the

1 policy requiring one on one. You've told us about the
2 necessity of having one on one. You've told us about why
3 it's so important to have one on one.

4 You told us that you're not the person that had the
5 one-on-one relationship with Mia. What I want to do is to
6 ask you why in the world didn't you get a handler who did
7 have the necessary one-on-one to interpret the dog body
8 language?

9 A Well, there wasn't any available at that time.

10 Q So you just did the best you could with what you had?

11 A Yes, sir.

12 Q Even though it didn't comply with the policy, right?

13 A Yes, sir.

14 Q Right? All right. Well, you've been certified as
15 being an expert -- well, not it an expert. You told us
16 you're not an expert.

17 Well, you've testified about being able in some
18 fashion to interpret dog body language. Don't the
19 certification agencies require you to have, keep, and
20 maintain the policies?

21 A No, sir.

22 Q So you could be certified as a dog body language
23 interpreter without having any type of policy related to
24 how you go about interpreting dog body language?

25 A Yes, sir.

1 Q And the training that you've had in interpreting the
2 dog body language, have you been to any actual school?

3 I'm not talking about seminar but actual school.

4 A The school where I got my master handler, trainer.

5 Q The school where you got what?

6 A My canine master training course.

7 Q I see. Is that where they taught you that when
8 you're in the business of interpreting dog language, that
9 you need to have this one-on-one relationship with the
10 dogs?

11 A No.

12 Q Where did you learn that was so important?

13 A Earlier when I started this organization.

14 Q All right. And you learned it's important because,
15 like you say, different dogs act in different ways,
16 correct?

17 A Correct.

18 Q And this dog, you say, is three years old?

19 A Correct.

20 Q In August of 2012, this dog would have only been two
21 years old.

22 A Correct.

23 Q This was a relatively new dog, correct?

24 A Correct.

25 Q Actually, at two, they still got some puppy in them,

1 don't they?

2 A Some do, yes.

3 Q So what you could tell us from when you were out
4 there that morning is that the dog alerted to three rooms
5 where you found nothing in the rooms.

6 A Correct.

7 Q When the dog did whatever you interpreted as
8 alerting, were you able to get a good -- was she able to
9 tell you what it is she actually smelled?

10 A No.

11 Q You know this lady, Ms. Smith, had lived in the house
12 for a long time, right?

13 A No. I didn't know.

14 Q So all you could tell is that the dog alerted to
15 something, but you're not good enough to be able to
16 explain further how you interpreted the language to what
17 it is she actually was telling you she--

18 A The dog is only rewarded on that certain odor, yes.
19 She knows she is not going to get rewarded unless it's
20 that certain odor.

21 Q As I understand it, the dog alerted at the sheriff's
22 department to a box with a towel in it, correct?

23 A I believe that's what I was told, yes.

24 Q The dog didn't alert to anything downstairs, did it?

25 A No, sir.

1 Q Did you know that the towel was found downstairs?

2 A No, sir.

3 Q If the towel was found downstairs, that would
4 indicate that she didn't alert to what she found at the
5 sheriff's department?

6 A I can't answer that, no.

7 Q All right. Now, do you have any idea how many people
8 had been through that house and on that scene before you
9 got there?

10 A No, sir.

11 Q I'm going to show you what appears to be a Richland

12 County Sheriff's Department crime scene log. That would
13 basically show you the amounts of people -- you recognize
14 that as a form of the sheriff's department, don't you?

15 A Yes, sir; yes, sir.

16 Q That could tell you how many sheriff's department
17 people had been there before you got there, couldn't it?

18 A Yes, sir.

19 Q How about count for me, and tell me how many folks
20 had actually been there.

21 A Thirty plus.

22 Q It's important, as you already told us, that there be
23 no contamination of the scene before the dog arrives for
24 you to do the interpretation of the dog body language,
25 right?

1 A I'm sorry, I didn't --

2 Q Haven't you already told us, sir, no more than about
3 25 or 30 minutes ago that it is very important that where
4 the dog is going to sniff so you can interpret is that it
5 not be contaminated?

6 A No, sir. No, sir. This area, I'm not worried about
7 contamination.

8 Q Oh, you're not worried about contamination?

9 A Not for this, no, sir. Not for cadaver, no.

10 Q Well, the odor was strong, right?

11 A Which odor?

12 Q The odor of the body. You told us that.

13 A Outside, yes.

14 Q And if someone in close proximity to the body and
15 gets some of those gases in their clothing, a person can
16 certainly take -- go inside the house, and the gas is
17 released from the clothes into the atmosphere, can't they?

18 A Yes, they can.

19 Q And that can cause a false alert, right?

20 A Correct.

21 Q And that's one of the reasons this is important that
22 the place not be contaminated with people who have been
23 tramping all over the crime scene, right?

24 A Could be.

25 Q Because odors can be transported from outside to

1 inside, right?

2 A Yes.

3 MR. MOORE: Your Honor, might we have this marked?

4 THE COURT: Yes, sir.

5 (WHEREUPON, Defendant's Exhibit No. 4 was marked for
6 identification only.)

7 BY MR. MOORE:

8 Q Sir, this photograph would basically show a -- what
9 appears to be a police officer's boot about how far from
10 the body?

11 THE COURT: Is that Defense Exhibit No. 4?

12 THE COURT REPORTER: Four.

13 THE COURT: Okay. Thank you.

14 THE WITNESS: Six to eight inches maybe.

15 BY MR. MOORE:

16 Q If that boot were on the scene before you started
17 doing the dog language of interpretation, before you
18 brought the dog, do those boots -- have them walking
19 through the house -- it clearly could have taken gaseous
20 material inside the house that the dog could have actually
21 hit on, correct?

22 A Yes, sir.

23 Q Because the dogs have hyper-sensitive noses, correct?

24 A Correct.

25 Q And you know, sir, because you put it in your report

1 that the house was searched thoroughly by the people who
2 were there on the scene, correct?

3 A I don't know if I put in my report that it was
4 searched. I don't --

5 Q Well, you know that some of those 30 guys who had
6 been there in the yard in proximity of the body had been
7 walking there?

8 MS. CAVANAUGH: Objection. He doesn't know, Your
9 Honor. Speculation.

10 THE COURT: You can answer if you know.

11 THE WITNESS: I do not know. I don't.

12 BY MR. MOORE:

13 Q Well, so then, you don't know if the house had been
14 contaminated by people walking through it before you got
15 there?

16 A No, I don't know.

17 Q You would have to know that in order to be able to
18 opine as to what the alerting actually meant, wouldn't
19 you?

20 A Well, I mean, I would think that most of these that
21 were on this crime scene list did not enter into the
22 house.

23 Q They shouldn't have.

24 A As far as how many did, I cannot give you an answer
25 on that.

1 Q Right. And therefore, we don't know if the scene in
2 which the dog, according to you, alerted had been
3 contaminated with gases brought inside the house from
4 people who had been in close proximity to the body, right?

5 A If it happened, yes, it could.

6 Q As a matter of fact, we don't have any idea if the
7 dog actually alerted what she was alerting to, do we?

8 A All I can put on my report is where the dog indicated
9 and alerted at.

10 Q Right, but there's no way you can tell us what the
11 dog alerted to.

12 A Correct.

13 Q You couldn't tell if it's false alert, right?

14 A I can read them pretty good. I could read her pretty
15 good.

16 Q You couldn't tell if it's false alert.

17 MS. CAVANAUGH: Objection, asked and answered.

18 BY MR. MOORE:

19 Q He said, "I can read them pretty good." You couldn't
20 tell us for sure if it's a false alert.

21 A I know a false alert when I see it, yes.

22 Q You couldn't tell if it's a pair of tennis shoes or
23 socks or old clothes or anything else, or gas from outside
24 or contamination or anything? You don't know.

25 A Correct.

1 Q As a matter of fact, you couldn't tell us for sure
2 even if it was a false alert, could you?

3 A Yes, I can, actually. I know if the dog gives a
4 false alert. They do false alerts. That's a part of
5 trying to be able to understand the dog and know what it's
6 trying to do.

7 Q Are you telling me that you did not talk to anyone
8 from the sheriff's department before you arrived?

9 A Only that I needed to be there; that they were
10 requesting me to come down there.

11 Q That's all?

12 A Once I got there. They wouldn't -- I didn't ask, and
13 they didn't give much information at all.

14 Q All right. So basically then, you kind of went into
15 the house blind.

16 A Yes.

17 Q Didn't know anything about what you were there for
18 except to walk through the house?

19 A Well, I knew that there had been a body -- or
20 somebody told me there may have been a body in the house.

21 Q Well, basically what you were told, isn't it, is that
22 the victim was found outside in the yard.

23 A Correct.

24 Q And they also told you that they believed that the
25 body had been inside the house.

1 A Correct.

2 Q They also told you that they believed the body had
3 been in the house for a period of time?

4 A Correct.

5 Q Who told you all of that?

6 A The investigators.

7 Q Why is it so important that you not have information
8 about what's going on before you arrive at a scene?

9 A There's a lots of times I don't want information:
10 One, being with the search team, it doesn't concern me.
11 I'm there to do a specific job. That specific job is
12 done, and I leave. I don't need to know the information.

13 Q You actually don't want to know the information.

14 A Yes, sir.

15 Q But you were given information anyway.

16 A I was given some information, yes.

17 Q Now, you indicate that the dog alerted on this third
18 bedroom, but that's not in your report.

19 A Correct.

20 Q You've been trained on how to make reports, haven't
21 you?

22 A Yes.

23 Q You make them all the time.

24 A Yes.

25 Q So there's just something that you remember of

1 significance that you just forgot?

2 A Absolutely.

3 Q Just -- it was just an error on your part in writing
4 up your interpretive remarks about what you found. You
5 just forgot that?

6 A Correct.

7 Q And the dog did alert outside?

8 A Yes, sir.

9 Q So the dog had actually been, too, in the area where
10 the body had been?

11 A Correct.

12 Q And that happens. Those gases can basically get on
13 the dog, as well, can't they?

14 A It could.

15 Q And like you say, it's important that the dog be
16 fresh before it starts its investigations, right?

17 A Uh-huh.

18 Q What happened is the dog went outside where the body
19 had been and then went inside house, right?

20 A Correct.

21 Q All right. How long after this body was found did
22 you actually show up with this other person's dog?

23 A I have no knowledge of that.

24 Q So when you arrived on the scene, you knew it was a
25 cadaver search.

1 A Correct.

2 Q So what you were looking for was not evidence of -- a
3 body had been there: You were looking for the actual
4 body.

5 A I was told after that -- I knew there had been
6 something outside. I knew it had been removed.

7 Q You knew it had been removed.

8 A Yes.

9 Q Do you know now that the body had been inside and was
10 removed?

11 A I think that's what I was called for.

12 Q Well, do you know that now? You testified it had
13 been removed. Did you see any --

14 A No. I'm talking about the body that was outside. I
15 knew that had been removed.

16 Q Removed from outside?

17 A Right.

18 Q Oh, I see.

19 A Yeah.

20 Q And you knew when you went inside, it was a murder
21 investigation.

22 A Correct.

23 Q Since you were there for a cadaver search, did you
24 ever inquire, "Hey, y'all have already found a body. Why
25 do you need me?"

1 A No. I knew what I was going there for when I got
2 there.

3 Q To look for a body?

4 A No. To look for any type of remains that may have
5 been -- or any type of -- if the body had been in the
6 house at any time.

7 Q Oh, so you weren't there to do what your organization
8 is certified in, which is cadaver search. You were there
9 to look to see if you could find any evidence that the
10 body had maybe been somewhere else before you got there?

11 A Correct.

12 Q So what your organization is actually certified in is
13 hunting for dead bodies, right?

14 A Yes.

15 Q Your organization is not certified in finding
16 evidence that dead bodies had been somewhere else before
17 they wound up where they were located.

18 A Well, there is no certification for that, sir.

19 Q Exactly. There is no certification for the area that
20 you were basically coming for. You weren't coming to look
21 for what you were certified in, which is to hunt for dead
22 bodies. You were coming to look for something you're not
23 certified in, which is to find evidence that the body had
24 been somewhere else before it was moved to where it was
25 located, right?

1 MS. CAVANAUGH: Objection. I think he may be
2 confusing the witness.

3 THE WITNESS: I think -- what I'm saying is that --

4 MR. MOORE: We --

5 THE COURT: Wait a minute. We talk -- we talk one at
6 a time so the record can be complete.

7 What is your objection, Ms. Cavanaugh?

8 MS. CAVANAUGH: The questions are fairly long and
9 convoluted. I'm not sure if he quite understands what Mr.
10 Moore is asking him.

11 THE COURT: Okay. If he doesn't understand -- if you
12 don't understand the question, then --

13 THE WITNESS: I might be able to clarify. I'm sorry.

14 THE COURT: -- you may ask Mr. Moore to repeat the
15 question --

16 THE WITNESS: Right.

17 THE COURT: -- or tell him that you do not
18 understand. That's perfectly permissible. I'll give you
19 a full opportunity to explain whatever answer you have as
20 going forward.

21 So Mr. Moore, why don't we come back to where you
22 were, and we'll start this over again.

23 Deputy Pearrow, if you need to inquire further as to
24 him or if you need clarification on it, then you can do
25 that. I'll give you a full opportunity to explain your

1 answer.

2 THE WITNESS: Yes, sir; yes, sir. Thank you.

3 THE COURT: Thank you.

4 BY MR. MOORE:

5 Q Sir, your dogs are certified in the nonscientific
6 field of finding dead bodies, right?

7 A We don't use -- if that would be the case, then I
8 would have to use dead bodies to train my dogs.

9 Q I didn't ask you about training. I asked what you
10 were certified in. Your dogs are certified in the
11 nonscientific field of finding dead bodies.

12 A Human remains.

13 Q Right. There is no certification, nor scientific or
14 technological field known as finding where dead bodies
15 have been, is there?

16 A I'm not aware.

17 Q And you're not certified in finding where dead bodies
18 have previously been.

19 A We're finding human remains.

20 Q Right.

21 A Correct.

22 Q But you're not certified in finding where those human
23 remains were before they got to where they were found?

24 A Correct.

25 Q And you found no human remains.

1 A Correct.

2 Q Well, my understanding, then is you went into the
3 house to find that which you're certified in which is to
4 find human remains, correct?

5 A I was asked to go in and see if a dog would indicate
6 and/or alert on any type of human remains, yes.

7 Q And to your knowledge, there were no human remains
8 ever found that the dog had alerted on?

9 A Just the areas of where the dog indicated, no.

10 Q Whatever the dog alerted on, it sure wasn't human
11 remains as far as you know?

12 A Correct.

13 Q Normally, when you're searching for human remains,
14 it's either where you're looking for a body that is
15 missing or searching for a body that has been killed in
16 some sort of thing like Hugo or hurricane, something like
17 that.

18 A Yes, sir.

19 Q Now, did you know when this body was found, that it
20 had fecal material on it?

21 A No.

22 Q Did the dog ever alert to anything that was
23 determined to be blood or fecal material that was found in
24 the house that you know of?

25 A No.

1 Q Were you able to find any evidence of any human
2 remains at any of the places where this dog allegedly
3 alerted?

4 A Just where the dog was indicated. I saw nothing.

5 Q The dog indicates, according to you, but there was
6 nothing found that would cause the dog to indicate that
7 you know of?

8 A Correct.

9 Q Is this dog trained to alert to things like feces and
10 urine and that sort of stuff?

11 A No, sir.

12 Q All it alerts to, according to you, is decomposing
13 human remains?

14 A Correct.

15 Q This question is probably not necessary, but the
16 actual one-on-hand handler of this dog, Jamie, was she
17 working on the day in question?

18 A Yes, she was.

19 Q As a law enforcement officer?

20 A Yes, sir.

21 Q And there was just no way she could leave her duties
22 in Lexington County and come over and provide assistance
23 to Richland County?

24 A Correct.

25 Q Do all of the dogs live out there at STARR?

1 A No, sir.

2 Q They live with their handlers?

3 A Correct.

4 Q Where did you pick Mia up from?

5 A From her residence.

6 Q So you went to Jamie's house to get the dog?

7 A Correct.

8 Q So the dog actually lives with her one-on-one primary

9 handler?

10 A Correct.

11 MR. MOORE: One moment please, Your Honor, if the

12 court could indulge me.

13 THE COURT: Yes, sir.

14 (Pause.)

15 BY MR. MOORE:

16 Q The laundry room was downstairs, wasn't it?

17 A Yes, sir.

18 Q The dog never alerted on the laundry room, correct?

19 A Correct.

20 MR. MOORE: Your Honor, thank you so much. I have no

21 further questions.

22 THE COURT: Redirect?

23 MR. MOORE: Your Honor, I hate to ask this, but could

24 I have about two minutes for a restroom? It's sort of

25 necessary.

1 THE COURT: Yes, sir.

2 Let's take a ten-minute break. We've been going for
3 an hour-and-a-half. Court will be in recess for ten
4 minutes. Thank you very much. Start back at 11:10.

5 Deputy, you are not to discuss your testimony with
6 anybody at all.

7 THE WITNESS: Yes, sir.

8 (WHEREUPON, a short break was taken.)

9 THE COURT: All right. Ready, Ms. Cavanaugh?

10 MS. CAVANAUGH: Yes.

11 THE COURT: Yes, ma'am, redirect.

12 REDIRECT EXAMINATION:

13 BY MS. CAVANAUGH:

14 Q Deputy Pearrow, you are the master trainer at STARR,
15 correct?

16 A Correct.

17 Q You founded STARR?

18 A Correct.

19 Q As part of your duties as the master trainer, do you
20 supervise Jamie when she handles Mia?

21 A Correct.

22 Q And were you present when Jamie was training Mia?

23 A Many times, yes.

24 Q Over the course of two years?

25 A Correct.

- 1 Q Is it fair to say that you were intimately familiar
- 2 with the training and the handling of Mia?
- 3 A Correct.
- 4 Q Part of Mia's training -- Mr. Moore mentioned that
- 5 part of Mia's training was for finding human remains.
- 6 A Correct.
- 7 Q Is part of Mia's training also to find and locate
- 8 human scent?
- 9 A Yes.
- 10 Q When you were testifying on direct earlier, you were
- 11 talking about odors being placed in boxes and other
- 12 instruments?
- 13 A Correct.
- 14 Q And Mia was thoroughly trained in this area --
- 15 A Yes.
- 16 Q -- of detecting human scent?
- 17 A Yes.
- 18 Q And again, as your role of supervisor, you were
- 19 present when Jamie was trained?
- 20 A Correct.
- 21 Q And you are also qualified in your role as supervisor
- 22 and master trainer to handle Mia?
- 23 A Yes.
- 24 Q To train Mia?
- 25 A Yes.

1 Q The use of cadaver dogs, is that a nationally
2 recognized field?

3 A It is a recognized field, yes.

4 Q The FBI uses cadaver dogs.

5 A Yes.

6 MS. CAVANAUGH: Beg the Court's indulgence.

7 (Pause.)

8 THE COURT: Recross?

9 MR. MOORE: Nothing further.

10 THE COURT: Anything further from the State?

11 MS. CAVANAUGH: No, Your Honor.

12 THE COURT: Any further witnesses from the defense?

13 MR. MOORE: No.

14 THE COURT: All right. I'll be happy to hear from
15 you on this issue.

16 MR. MYERS: Your Honor, may it please the Court.
17 Your Honor, we believe the relevant case concerning the
18 cadaver dog is State vs. White.

19 THE COURT: Right. That's Judge Barber's case,
20 right?

21 MR. MYERS: Yes, sir, but, Judge, it didn't involve
22 this type of facts, as we very well know. In order for
23 the Court to admit the testimony regarding this cadaver
24 dog, it has to satisfy -- that testimony has to satisfy
25 the requirements in Rule 702 and then also in Rule 403.

1 Obviously, when hearing Deputy Pearrow's testimony,
2 we get several things. We know that he is not an expert
3 in handling dogs. He testified to it himself out of his
4 own mouth.

5 We also know that the primary handler, according to
6 his records, was not him. It was actually Jamie. Now, he
7 can come into court and testify that he was a master
8 handler. He was this, and he has got all of these
9 certifications, but his own documents that were just
10 provided to us yesterday revealed that Jamie was the
11 individual that handled that dog.

12 Jamie was the primary handler. Jamie was the
13 individual that should have handled that dog, or the
14 remedy certainly would have been -- as I heard the
15 testimony -- is that he had several other dogs available
16 to him. He certainly could have obtained one of those
17 other dogs in which he had a personal relationship with.

18 In White, the handler in White -- and that dog had
19 operated for seven years. So you had an extensive
20 relationship between the handler and the dog.

21 Here we don't know what type of relationship that
22 Deputy Pearrow actually had with Mia because Jamie was the
23 primary handler, and Deputy Pearrow just basically stepped
24 in because Jamie was unavailable at that time.

25 The next requirement is the dog's liability. There

1 has been no testimony that Mia was reliable. We know that
2 the primary purpose of the cadaver dog is to come in and
3 try to find human remains. The dog didn't even alert to
4 human remains.

5 By time Deputy Pearrow had gotten there,
6 approximately seven to eight hours later, the body had
7 been removed. He indicated -- or he testified clearly on
8 several different questions asked about 15 different ways
9 that he didn't even find any sort of remnants of the body
10 inside the house.

11 ~~He didn't find any downstairs. He didn't find it in~~
12 the laundry room. The only way that he claimed that Mia
13 alerted was in the upstairs bedroom, but again, we know
14 that the dog is unreliable because it didn't alert to the
15 cadaver or the body or the remains of a dead body.

16 We believe that with this individual not testifying
17 that he is an expert; that he cannot provide any sort of
18 scientific evidence that he is a trained individual to
19 testify before this jury that a cadaver was inside that
20 house.

21 It clearly does not pass the 702 test, and it does
22 not past the 403 test, because the testimony would be more
23 prejudicial than probative.

24 To have him testify, "Well, I came in. I didn't
25 really know much about what was going on. The dog

1 alerted," that's clearly prejudicial in this case. The
2 prejudicial value clearly outweighs the probative
3 lieutenant because he is not an expert. The dog is
4 unreliable. The dog didn't even alert to what it was
5 supposed to alert to which was the dead body which wasn't
6 there, and clear testimony in the record will reveal that
7 he never even saw any remains or alerted to any remains
8 inside the house.

9 Based on those grounds, Your Honor, we respectfully
10 ask the court to suppress any testimony regarding the
11 ~~cadaver dog based on not having a burden -- not meeting~~
12 the burden of 702, and obviously, when you balance the
13 testimony under 403, it's more prejudicial than probative.

14 Thank you, Your Honor.

15 THE COURT: Yes, ma'am.

16 Let me tell you where I am. You can stand up.
17 That's okay.

18 I just want to tell you where my mind is before so
19 you don't argue things that you don't have to argue if you
20 don't want to.

21 My issue at this point is that what Deputy Pearrow in
22 his capacity as the head of this nonprofit organization
23 testified to is that the dog was not certified in finding
24 where a body was. He said that the dog was certified in
25 finding a cadaver, a deceased body.

1 The testimony is that he was not certified in finding
2 where -- essentially where a body had been, and all the
3 tests that he mentioned in the training, he said that we
4 put out these boxes. And we have, you know, human remains
5 essentially, some form of human remains or body in these
6 different boxes.

7 I never heard about any training where they placed
8 human remains and then took them up, and then the dog went
9 and found that. That's my issue at this point.

10 I mean, I know he said he's not an expert. I think
11 by the very essence of his training, his experience, the
12 classes that he attended, the seminars that he's attended,
13 the training that he's done and the certifications that
14 he's had and his extensive experience, I mean, he may not
15 believe he's an expert.

16 I find under the rules that I could find that he is
17 an expert based on his training, experience, knowledge and
18 specialized knowledge that he has in this area.

19 My concern is that the dog was not trained or
20 certified in determining where human remains had been, not
21 where they were. The dog is trained to find where the
22 human body was or to locate a body, you know, based on the
23 test that he said that he gave the dog and in the
24 different things that they went through.

25 The dog was reliable, but I haven't heard any

1 testimony about that the dog was trained or certified to
2 figure out where human remains had been. That's where I
3 am, Ms. Cavanaugh.

4 MS. CAVANAUGH: Okay. Your Honor, from what I
5 remember about Deputy Pearrow's testimony is that when he
6 was referring to the policy that he had to write for DHEC
7 to allow him to obtain, I believe he referred to -- he
8 referred to different parts, different parts of --

9 THE COURT: Tissues, fluid, right.

10 MS. CAVANAUGH: Exactly, clearly referring to dead
11 human remains. When I specifically was asking him about

12 where does he get the -- he kept referring to odor, so
13 he -- then he in his direct, he clarified to say that
14 while he was referring to DHEC and the policy written, he
15 has to -- I said, "Where did you get the odor?"

16 That's when he referred to DHEC about how he was able
17 to obtain remains, and that's how the odor is then placed.
18 Because I asked how does the odor get into the boxes, and
19 that's when he went into describing obtaining dead human
20 body samples from DHEC and using those to place the odor
21 in the boxes and the another instrumentalities that are
22 used to train Mia.

23 He did testify to that on direct. It may not have
24 come across very clear, but that's what he --

25 THE COURT: I still haven't heard does he -- he said

1 bone with marrow on it.

2 Does he take the bone, put it in the box and leave it
3 in the box? Does he take the bone, leave it in the box
4 for some amount of -- period of time and then take it back
5 out and then run the tests? I mean, none of that is clear
6 in the record as to what is before the court right now.

7 MS. CAVANAUGH: It was my understanding from his
8 direct that is what he was referring to.

9 THE COURT: What was what he was referring to?

10 MS. CAVANAUGH: Placing these items that are -- that
11 are from the deceased human beings, bone marrow, tissue in
12 the boxes and then removing them in order to get the odor
13 in those boxes. That is what my understanding was from
14 his testimony.

15 Beg the Court's indulgence.

16 (Pause.)

17 In addition to what the defense -- I'm not sure what
18 exhibit it's marked, but they introduced for
19 identification purposes the certain training records as
20 they relates to Mia, the dog that was used in this case,
21 and there are several -- beg the Court's indulgence.

22 (Pause.)

23 I'm sorry. There are several records that reflect
24 where -- during Mia's training some of the training aids
25 that were used were blood, teeth, tissues that were then

1 removed from the objects that they were located in.

2 THE COURT: Can you show me that?

3 It's Defense Exhibit...

4 THE COURT REPORTER: I believe she's talking about
5 either 2 or 3. That's where he was talking about --

6 THE COURT: No. It was more.

7 MR. MYERS: There should be more, Your Honor.

8 THE COURT: I'm trying to find a report that says
9 that.

10 MS. CAVANAUGH: Your Honor, just, for instance, on
11 ~~page 11, the numbers on the bottom of this exhibit.~~

12 THE COURT: I'm there.

13 MS. CAVANAUGH: The training aid was blood, and then
14 Mia conducted a cadaver detection on the scent boxes. The
15 boxes was moved three times, indication all three
16 searches.

17 THE COURT: How do you put blood in something and
18 take it back out? Most of these say things like the hide.
19 I assume that's -- I don't know what the hide is, but I
20 assume that's an object or teeth.

21 Hide was put under a trailer behind a pin. That
22 means something was placed there. Teeth hid in hose reel
23 box in front yard.

24 I guess the "hide" is the object. The hide is the
25 object, not part of an animal or something, but the FBI --

1 it's the training aid being the blood, tissue, bone or
2 other.

3 MS. CAVANAUGH: Your Honor, just to point out, the
4 defense counsel themselves asked whether Mia would be able
5 to detect on transfer, which would include -- which would
6 infer transferred odor, and the -- Deputy Pearrow said
7 yes, that is part of her training, as well is to detect
8 transfer of decomposition odor, which inherently comes
9 from a dead body.

10 He also testified that it is -- the odor that it's
11 referring to is not from the dead body itself but from the

12 blood and tissue. The gases coming from -- that are
13 expanding into the air, that's the testimony that was
14 elicited from the defense.

15 THE COURT: The testimony further elicited from the
16 defense is that he was not -- the dog was not certified in
17 finding where a body was.

18 That's -- my issue is that is the exact fact pattern
19 here. This isn't a case of where Mia showed up to find
20 the body. Everybody knew where the body was.

21 The body had been removed by all accounts. I don't
22 think there's any disputes about that at the point when
23 Mia -- and for the record, Mia is a dog, when Mia gets
24 there.

25 So the only thing that she could potentially -- I

1 mean, I think everybody agrees -- and Ms. Cavanaugh, you
2 can tell me if I'm wrong -- but that there's no human
3 remains found anywhere inside the house; is that right?

4 MS. CAVANAUGH: That is right; however, the testimony
5 as far as her training was that she -- Mia was thoroughly
6 trained in detecting human decomposition odor, not just
7 remains but the odor that comes from the human
8 decomposition.

9 And what he was referring to, he cannot tell you as
10 part of his -- he cannot tell you whether -- Mia is not
11 trained to alert on live bodies, so that wasn't made clear

12 to Deputy Pearrow when the defense was asking the very
13 long question of whether he was referring to a live body
14 or to a dead body. Perhaps that was a response.

15 I mean, it was my understanding that through his
16 direct that Mia is thoroughly trained in detecting
17 decomposition odor from dead bodies.

18 Part of her training included detecting on known --
19 an odor that comes from dead body tissue samples, bone
20 marrow, teeth, and she indicated in this case, where the
21 dead body was located when the officers arrived on the
22 scene.

23 She is trained to find that odor of decomp., not
24 necessarily related to that source but whether there is
25 decomp., in other areas of the incident location where she

1 is asked to respond.

2 In this case, the deputy testified that she did alert
3 upstairs, and she alerted the most strong in the front
4 yard when the body was known to be. That was the
5 strongest detection. That was the strongest alert.

6 THE COURT: Okay. I'm going to -- anything else from
7 either side?

8 MR. MYERS: Judge, just the only thing I would add is
9 that the testimony was clear that this was a cadaver dog,
10 not a scent-sniffing dog, not some sort of tracking down.

11 THE COURT:-- I got all that.

12 MR. MYERS: But, Your Honor, the thing is that the
13 dog was never trained to basically do what it was supposed
14 to do in this case.

15 All the testimony basically related to FEMA; that
16 they were called to FEMA to alert to basically find dead
17 bodies in New Orleans.

18 To quote them, folks were under water; they needed to
19 be found. They used those dogs to find those cadavers.
20 Here, this dog was not trained or neither received the
21 certification to basically do what it was supposed to do
22 in this case.

23 Again, highly prejudicial. It's not reliable at all
24 to the point that's it's scary if a jury were to even hear
25 any of this testimony. This dog is just clearly not

1 reliable, and the testimony in this case reveals that.

2 THE COURT: All right. I'm going to take this issue
3 under advisement as we proceed through this. Nobody is to
4 mention the cadaver dog or the use of it in opening
5 statements.

6 When you get close getting ready to call that
7 witness, you let me know.

8 MS. CAMPBELL: Respectfully, Your Honor, we would
9 request a ruling from the court, if possible, before we
10 swear the jury.

11 THE COURT: ~~Before you swear the jury?~~

12 MS. CAMPBELL: Yes, sir.

13 THE COURT: Why?

14 MS. CAMPBELL: Because it may be something we need to
15 discuss as far as whether it's an interlocutory appeal.

16 MR. MOORE: That's fair. If they want to appeal it,
17 that's okay by us. It's a fair request.

18 I'm not standing I apologize.

19 MS. CAMPBELL: I'm not saying that we would, Judge.
20 I'm just saying we would like the opportunity to discuss
21 it.

22 THE COURT: All right. Any other legal issues before
23 we bring the jury back in?

24 MS. CAMPBELL: The only other thing we do have, Your
25 Honor, is you requested Mr. Sutherland be here with us.

1 THE COURT: Right. Mr. Sutherland, are you with us?

2 MR. SUTHERLAND: Yes, sir.

3 THE COURT: For the record, this is Tivis Sutherland,
4 and you represent Edward Walker; is that right?

5 MR. SUTHERLAND: Yes, sir.

6 THE COURT: He is on the witness list for this case;
7 is that right?

8 MR. SUTHERLAND: Yes, sir.

9 THE COURT: He has pending charges in this county?

10 MR. SUTHERLAND: He does, Your Honor.

11 THE COURT: Okay. And have you -- if he were asked a
12 question about those underlying -- about the pending
13 charges, how would he respond to that?

14 MR. SUTHERLAND: Well, I think the fact that there
15 are pending charges -- I mean, this is what I do for a
16 living.

17 I'd argue that it is relevant that there are pending
18 charges, but as a matter of law, he is innocent. He is
19 not guilty. He is not guilty. The matter hasn't been
20 adjudicated.

21 I would -- I wouldn't advise him to answer, "Are you
22 guilty?" I mean, the answer would be "not guilty", but I
23 wouldn't want him to be asked about his culpability in
24 that regard.

25 Although I'm not a party to the litigation, that's

1 how I would temper my advice to him. I would just state I
2 believe as a matter of law, he is not guilty. He is
3 innocent at this point, sir.

4 THE COURT: Okay. Anything further on that issue?

5 MS. CAMPBELL: No, Your Honor. I did review Mozelle
6 overnight, and I think it does support our presumption --
7 our -- what we said would be admissible as far as cross.

8 THE COURT: Okay. Anything on that, Mr. Moore, or do
9 you need to talk to Mr. Sutherland anymore?

10 MR. MOORE: Your Honor, my understanding is -- I just
11 talked to Mr. Sutherland. The answer is if we were

12 allowed -- if we were allowed, and we think -- we think
13 that -- we think that based upon the facts of this case
14 and the case law we've cited that we are entitled to ask
15 him that, are you -- "Did you do it?"

16 My understanding is that he would be inclined to take
17 the 5th Amendment. If that's the case, then we're in a
18 posture where I guess we have to decide -- we don't know
19 how the exact cross-examination goes down, but there are
20 questions that I would intend to ask about the underlying
21 charges which I understand he would take the 5th
22 Amendment.

23 If that's the case, we sort of need to know it
24 because it puts forth the issue that we raised in our
25 motion.

1 My understanding is again, we've had some
2 conversations. I just think it would be -- I think
3 there's a strong chance this man will take the 5th
4 Amendment if asked the appropriate questions on
5 cross-examination.

6 THE COURT: I just don't understand where the defense
7 has the right to get into whether he's guilty or not
8 guilty of the charge he's been arrested for but not
9 convicted of.

10 MR. MOORE: I can explain that.

11 THE COURT: Okay. I mean, I understand the
12 confrontation issue, and I understand the 6th Amendment
13 and the confrontation issue.

14 I'm balancing that against Mr. Walker's 5th Amendment
15 right against self-incrimination and the fact that he has
16 pending charges that carry life without parole, mandatory
17 30 years to life without parole.

18 That means -- now, I'm not saying that it means -- I
19 mean, you could certainly cross-examine him on plea deals,
20 plea negotiations. I mean, I think that case law has been
21 clarified recently by the State Supreme Court in the
22 Pradubsri. Is that how you say it? Some case name that I
23 can't say, but I mean, I don't know of a situation where
24 you're able to say, "Are you guilty" to a testifying
25 witness of a pending charge against you.

1 MR. MOORE: Yesterday we had a very long day. Some
2 very interesting theories were advanced, some of which
3 were a tad on the unique side. I will acknowledge that.

4 I'm very, very, very sincere in what I am urging to
5 the court in this regard. I understand that under normal
6 circumstances, a person may not be -- may not make inquiry
7 as to a pending criminal charge because there's been no
8 conviction yet, and the person is presumed innocent.

9 THE COURT: All right.

10 MR. MOORE: So when it goes to the issue of
11 character, normally, you could ask about crimes of moral
12 turpitude, because they automatically and per se go to the
13 issue of character.

14 THE COURT: Right.

15 MR. MOORE: This isn't about character. I'm not
16 asking this line of questioning to say, "Oh, you've been
17 charged with murder." This has nothing to do with a
18 character cross-examination.

19 I'm not asking the question on the issue of
20 character. What I do have is this: The 6th Amendment to
21 the United States Constitution which says I have a
22 constitutional right to confrontation.

23 Now, let us assume that this man has serious charges
24 pending against him that he is, in fact, guilty of or even
25 claims not guilty of but understands that negotiations

1 are, have, or may be in place with the State where he has
2 a hope of leniency.

3 In order to talk about what conceivable leniency he
4 might get and how important leniency is and how important
5 leniency may be, the jury will have to know the nature and
6 extent of what he did or what he may have did.

7 Look, here is the deal: "Mister, did you do this?"

8 "Yes."

9 "How bad was it?"

10 "Horrendous."

11 Okay. All you've got under those conditions is a

12 hope of leniency. That's all you've got, so you start
13 making things up because the only thing you've got to deal
14 with the State at that time is the hope of leniency.

15 The gravity of a charge -- let's assume he is in jail
16 for spitting on the sidewalk. Then he hadn't got anything
17 really at risk, but if he was in jail for armed robbery
18 and murder, which he actually did.

19 If he did it, the only thing he's got to bargain with
20 is to find something to bargain with which basically then
21 goes to the issue of his credibility but on a different
22 way.

23 It doesn't go to the issue of character. It goes to
24 the issue of credibility which --

25 THE COURT: Now, you said yesterday character and

1 credibility were the same thing.

2 MR. MOORE: I did. I did, but it goes to the issue
3 of credibility.

4 Any lawyer can argue both sides. Hey, you keep
5 reminding me of what I said.

6 THE COURT: I just want you to know that I'm
7 listening to you.

8 MR. MOORE: You are listening, there's no question,
9 and let me say this: I sincerely appreciate that fact.
10 We were treated with great courtesy yesterday, and I
11 appreciate that very, very much. We didn't win much
12 yesterday, but we were treated nicely.

13 The issue here goes to the issue of credibility. You
14 know, in order for the jury to decide is there any real
15 reason that this guy would want to get on the freedom
16 train?

17 You know, if he can come in and help, then he would
18 have an expectation of leniency. If he comes in and says,
19 "Heck no. I didn't do it. I have got an airtight alibi.
20 It wasn't me. It was somebody else. To heck with you,
21 Mr. Moore. I'm doing this because I'm a great American, a
22 wonderful citizen," so forth and so on.

23 The issue becomes what would he have? What would he
24 have to gain?

25 THE COURT: Well, you're going to get to ask him what

1 he has to gain because under the case law in Mozelle, the
2 case that you cited in your motion and under the case --
3 I'm sorry. She e-mailed me the name of it.

4 How do you say that? P-R-A-D-U-B-S-R-I, which I
5 don't know how to say, but I mean -- I mean, you're going
6 to get to ask him, "Are you facing 30 years to life
7 without parole?"

8 I mean, the court in Mozelle specifically said that
9 your client or a defendant's right of confrontation
10 outweighs the interest of keeping what your client is
11 facing away from the jury knowing that because sentencing
12 is not their issue.

13 So you're going to be allowed to ask. You have --
14 I'm just going off of memory, so don't anybody hold me to
15 this, but Walker has a murder charge pending; is that
16 right, Mr. Sutherland?

17 MR. SUTHERLAND: Yes, sir.

18 THE COURT: And he has got an armed robbery pending;
19 is that right?

20 MR. SUTHERLAND: Yes, sir.

21 THE COURT: Does he have anything else pending?

22 MS. CAMPBELL: I believe it's an attempted armed
23 robbery.

24 MR. SUTHERLAND: Oh, he has an attempted on the
25 another one.

1 THE COURT: You're going to be able to say, "So
2 essentially, Mr. Walker, you're facing life without
3 parole, and you're testifying here because you want some
4 kind of break from the State."

5 MR. MOORE: But here is the deal: The question
6 becomes why am I allowed to ask that question?

7 THE COURT: You're allowed to ask that question
8 because -- so that the State, so that the jury -- that
9 your client has the ability to confront him on what
10 possible leniency he would get in exchange for his
11 testimony.

12 MR. MOORE: Now, the only way he would be seeking
13 leniency, the only way he would be seeking leniency in
14 exchange for his testimony is if, in fact, he was guilty
15 and wanted to cut a deal.

16 THE COURT: That's not -- that's a big speculation.

17 MR. MOORE: But it may be, but it's not up to the
18 Court to be the judge of the facts. It's up to the jury
19 to be able to do those sorts of speculations.

20 The question is at least relevant. The question at
21 least becomes relevant because if he claims to be not
22 guilty.

23 THE COURT: Now, as to the confrontation clause of
24 the 6th Amendment of the United States of America which
25 was made -- passed through the states via the 14th

1 Amendment, and our Supreme Court in the State vs. Mozelle
2 said as to confrontation -- let me go back and find the
3 language of it right here.

4 It says that it goes to -- it just doesn't go to your
5 ability to confront. It goes to you being able to
6 establish an interest, a bias or impartiality.

7 MR. MOORE: Exactly.

8 THE COURT: Whether or not he is guilty or not guilty
9 of the murder or the armed robbery doesn't have anything
10 to do with it because it's not related to this case.

11 Mr. Walker's case has nothing to do with this case,
12 right, Mr. Sutherland?

13 MR. SUTHERLAND: No, sir.

14 THE COURT: Because it's not related to this case, it
15 doesn't have anything to do with interest, bias or
16 impartiality of a witness.

17 MR. MOORE: Certainly it does. Certainly it does.

18 THE COURT: Find me a case where it says you can ask
19 a person who has pending murder charges whether or not
20 they did it on the witness stand, and I'll consider it.
21 At this point, I'm not going to allow it.

22 MR. MOORE: Let me see what I can find legally.

23 THE COURT: Okay.

24 MR. MOORE: We've done some preliminary research, but
25 I believe that I am -- I am convinced that what I'm

1 arguing is correct.

2 THE COURT: Well, I need a case that says you are
3 correct.

4 MR. MOORE: Okay. We'll look. Thank you, sir.

5 THE COURT: Yes, x-rays.

6 MS. CAMPBELL: Your Honor, x-rays are being handed
7 over.

8 THE COURT: Okay.

9 MS. CAMPBELL: We did attempt to charge the phones.
10 They didn't charge. My understanding is they're no longer
11 wishing to look at the computer because of the information
12 that was brought by Brett Dove yesterday.

13 MS. CAVANAUGH: It's actually this set, I think.

14 MR. MOORE: Are they different?

15 MS. SIMPSON: They're the same. This has to do with
16 the identifying information. There's a victim on the
17 outside of the package; that's correct.

18 MS. CAMPBELL: And I'm not sure if -- are we in
19 compliance with all your other orders from yesterday,
20 Judge?

21 I believe so. We turned over the two CDs. We're
22 attempting to get the third CV from the treating doctor
23 here. We don't know that we are going to use him,
24 however.

25 THE COURT: And before the -- Mr. Walker testifies,

1 we'll need to do a hearing on which part of his criminal
2 record --.

3 MS. CAMPBELL: Yes, sir.

4 THE COURT: -- that they can go into.

5 MS. CAMPBELL: We have turned over several witness
6 records so a far where we can get the rest of those.

7 THE COURT: Great. Thank you very much.

8 All right. Now, let's talk about scheduling for just
9 a second. I've had that jury back there for north of two
10 hours.

11 Do you all want me to send them to lunch and start
12 with the opening on the law and closing and opening
13 statements after lunch? Does anybody have an objection to
14 that?

15 MS. CAMPBELL: No objection.

16 MR. MOORE: That suits us.

17 MR. MYERS: There's no objection, Your Honor.

18 THE COURT: And I have a matter that I need to
19 discuss with counsel in chambers when we take up this
20 break.

21 Let's do this. Let's take a break. We're going to
22 take a break until 1:30. Plan on reconvening at 1:30
23 where I will rule on the dog issue, and then we will go
24 forward.

25 Quiet, please.

1 We will go forward and do an opening on the law and
2 opening statements at that time, but I do need to see
3 counsel in chambers. Thank you.

4 Court is in recess until 1:30.

5 (WHEREUPON, a lunch break was taken.)

6 (WHEREUPON, Court's Exhibit No. 1 was marked for
7 identification only.)

8 THE COURT: We're back on the record. At this time,
9 I want to put a matter that came to the Court's attention
10 this morning on the record.

11 I received a note from an alternate juror stating
12 that she had some concerns about her own personal
13 situation in regards to this case.

14 I informed all counsel in chambers about the juror's
15 concern and showed them the notes. With the consent of
16 both the State and the defense, that alternate juror has
17 been released.

18 For the record, again, she was an alternate juror.
19 She was not on the panel, and all parties agreed to her
20 release.

21 All right. Ms. Campbell, is everything in line with
22 lay witnesses sequestered? I just have a note to myself.
23 Okay. If you can just keep up.

24 MS. CAMPBELL: We'll try to keep up, Judge, and I'll
25 make sure to keep up and make sure the paralegals, as well

1 keep their eyes open.

2 THE COURT: Thank you very much. Okay.

3 MS. CAMPBELL: Your Honor, her parents, however, will
4 be allowed to remain in the courtroom?

5 THE COURT: Yes, ma'am.

6 MS. CAMPBELL: Okay. We just would ask the defense
7 counsel if defense counsel, godparents.

8 MR. MOORE: I don't have a problem with that.

9 MS. CAMPBELL: Just immediate family.

10 MR. MOORE: Sure.

11 MS. CAMPBELL: And we have all the lay witnesses.

12 MR. MOORE: Sure. Your Honor, we've got the
13 defendant's mother here. She may testify, but I guess
14 it's okay for her, the mom to remain in?

15 MS. CAMPBELL: That's fine. She wasn't on your
16 witness list.

17 MR. MOORE: We doubt very seriously she testifies.

18 MS. CAMPBELL: We have no problem with her staying.

19 THE COURT: Okay. Good. All of that is resolved.

20 As these things crank up, sometimes it's hard to keep up
21 with who is in here and who is not.

22 MS. CAMPBELL: Yes, sir.

23 THE COURT: So if you can just do your best on that,
24 I greatly appreciate it on both sides, both sides. Okay.

25 This evening when we stop, how many exhibits do y'all

1 think you have?

2 MS. CAMPBELL: Over 100.

3 THE COURT: Okay. Are any of them premarked?

4 MS. CAMPBELL: We just got the stickers, Your Honor.
5 I'm sorry. That's totally my fault.

6 THE COURT: Okay.

7 MS. CAMPBELL: I don't know why we didn't pre-mark
8 our photos, at least.

9 THE COURT: Okay. If you can get together either --
10 tonight with the defense or in the morning. I'm not
11 saying they're admissible, just look at them. We can at
12 least know where they are. Maybe we can save them a
13 little bit of time --

14 MS. CAMPBELL: That suits us.

15 THE COURT: -- and speed this thing up.

16 MS. CAMPBELL: That should expedite this.

17 THE COURT: Okay. Great. As to the cadaver dog
18 issue, here is what I'm going to do. I'm going to allow
19 the testimony as to the cadaver dog, and this is why.

20 Based on Rule 702 -- I'm looking at 702. I'm also
21 looking at State vs. White, which is a 2009 case out of
22 the state Supreme Court, and I guess my -- I don't want to
23 say I guess.

24 My issue about the -- the dog is not trained to find
25 the body. The dog -- because as Mr. Moore pointed out in

1 his cross-examination and the witness Deputy Pearrow
2 agreed, the body itself has no smell.

3 What the dog is finding or is attempting to find or
4 is alerting to is the odor, the odor in and of itself. So
5 the dog is not specifically searching for a body or a body
6 part. The dog is searching for the odor. Therefore, I'm
7 going to allow that testimony to come in over defense
8 objection.

9 Mr. Myers, Mr. Moore, whoever handles that witness
10 throughout the trial, just at the beginning of it, just
11 remind me of your previous objection so you're protected
12 on the record, and that issue is appropriately preserved
13 for appeal.

14 If necessary, of course, however, I find that deputy
15 Pearrow is an expert under Rule 702. I find that the
16 evidence shows that the dog, being a Belgian Malinois, is
17 a dog, a breed characterized by an acute power of scents
18 and that the dog has been trained to follow or to look for
19 a scent, and that the dog has been found to be reliable.
20 I'm going to allow that testimony into play.

21 I understand, Mr. Myers, your 403 argument that the
22 prejudicial effect outweighs the probative value. Based
23 on the nature and the circumstances of this case, I'm
24 going to find that the probative value outweighs any
25 prejudicial effect under South Carolina Rule of Evidence

1 403.

2 All right. Anything else before we bring the jury
3 in?

4 MS. CAVANAUGH: No, Your Honor.

5 MR. MYERS: No, sir, Your Honor.

6 THE COURT: All right. Let's bring the jury in.

7 MR. MOORE: Might I be heard one second on that?

8 THE COURT: Yes, sir.

9 Can you stop them one second, Mr. Truitt?

10 THE CLERK: Yes, sir.

11 MR. MOORE: Your Honor, let's assume for a moment

12 this was not a cadaver dog. Let's assume for a moment
13 it's a drug dog, and the drug dog, like the cadaver dog,
14 is not trained to smell the actual plant but the emissions
15 that come from the plant.

16 Assume my client was charged with possession of
17 marijuana, and the drug dog hit on a room. The police
18 went in and found no marijuana. Would that be evidence of
19 possession of marijuana?

20 The dog hits on something that's a scent. Would that
21 be admissible in the trial? The dog basically hit on
22 something that nobody can say was there.

23 There was absolutely nothing in this room that was
24 determined to be emitting whatever odor the dog alerted
25 to, nothing. There is nothing they'll be able to show you

1 that shows there was any remnants of anything.

2 So the dog alerted to nothing. The reason why you
3 have a dog is to find physical evidence. This dog
4 alerted, and there's no physical evidence. So the purpose
5 of this dog interpretation is to prove that the body had
6 been in the room when there's no -- there's nothing to
7 corroborate the fact that the body was ever there.

8 What you basically have here is a form of hearsay
9 given to us by a dog. That's what the gentleman testified
10 he was doing. He was interpreting what the dog was
11 saying. This is testimony from a dog. It's hearsay

12 testimony from a dog because interpreted by somebody,
13 who with all due respect, the Court has found to be an
14 expert who says he's not.

15 That's okay. You know, we accepted that, but the
16 issue here is if it were a drug case, and the dog alerted
17 to the smell of what it thought was interpreted to be
18 marijuana, you couldn't put -- you couldn't charge a
19 person with possession of marijuana.

20 THE COURT: Of course, you couldn't but you could, in
21 a drug case where drugs were found somewhere else in the
22 house, have an investigator who is a narcotics officer who
23 has obtained specific training in the smell and detection
24 of marijuana say when they entered the house in the search
25 warrant, I smelled the smell of marijuana.

1 MR. MOORE: Well, yes, but none of that was the case.

2 THE COURT: I'm not saying that, because the dog's
3 nose and the dog's training is different than the human
4 nose and the human training.

5 I mean, I understand you. I agree with you. You
6 couldn't charge that person with possession of marijuana
7 based off the smell of it, but we would all -- I mean, I
8 don't know any judge who wouldn't let an officer who says,
9 "You know, I've smelled marijuana however many times. I
10 know what it smells like, and I have received specific
11 training on it get on the witness stand and say I smelled
12 marijuana."

13 MR. MOORE: Absolutely, a human being who has direct
14 testimony say, "I went and I smelled marijuana, fine."
15 But in this case, we don't have that.

16 We don't have any human being who said, "I smelled
17 the odor of a dead body," and there was nothing found in
18 any of the rooms where the dog alerted. So what we have
19 is -- as far as we know, the dog alerted to absolutely
20 nothing.

21 THE COURT: And I think you're going to have a strong
22 opportunity to cross-examination that witness if they so
23 choose to call him during the trial about all of those
24 different issues.

25 I know that based on the examination you did this

1 morning, you're going to do a very good job of the
2 examination again, but at this point in time -- and I
3 understand you preserving the record and protecting the
4 record, and I appreciate you doing that, Mr. Moore.

5 At this time, I'm going to deem that the dog
6 testimony is admissible.

7 MR. MOORE: Thank you, sir.

8 THE COURT: And please renew your objection when we
9 get to that point in the trial so you can be protected for
10 the record, and we preserve that issue.

11 MR. MOORE: Your Honor, could we just go ahead at
12 this point in time to ask that all of the things that we
13 argued about before remain as continuing objections
14 throughout the trial?

15 THE COURT: You can do that. I'm going to tell you
16 that the way I read South Carolina case law --

17 MR. MOORE: I know.

18 THE COURT: -- I would not do that if I were you.
19 It's your objection, and it's yours to make. I'm happy to
20 rule on it.

21 Now, I'm not going to need you to go back into
22 everything in great detail, especially in front of the
23 jury on some of these more complicated issues, but my
24 understanding of the South Carolina case law and the
25 training that we have received is for you to do to protect

1 not allow note taking. I want you to use your memory. I
2 want you to pay attention to what's going on.

3 What happens with note taking is you start taking
4 notes and as you start taking notes, you stop listening,
5 okay. Then as you start your deliberations, your note
6 says one thing. Your fellow juror's note says another
7 thing on the same exact issue. Neither one of those notes
8 is controlling because the only true and accurate record
9 of what's going on in this courtroom is right here with
10 madam court reporter who is, as I told you yesterday --
11 ~~Ms. Ambroziak is the most important person in the room~~

12 because she is taking down everything that is said during
13 and throughout the trial and keeping up with all of the
14 exhibits.

15 That concludes my opening statements to you as your
16 introductory statements on the law.

17 We will now move to opening statements.

18 MS. SIMPSON: Thank you. May it please the Court.

19 THE COURT: Yes, ma'am.

20 OPENING STATEMENT:

21 MS. SIMPSON: Almanita Smith, at the young age of 26,
22 she was smart, independent. She just graduated from
23 Columbia College and was about to start an upper level
24 program that week.

25 She owned her own house, her own car, and she proudly

1 Smith. Marcus Bailey did absolutely nothing to hurt, harm
2 or injure his roommate, his lover, his financial
3 supporter, at all. Throughout this trial, and at the end
4 of this trial, there will be absolutely no evidence of
5 method, motive, or murder.

6 Good afternoon, madam Forelady, ladies and gentlemen
7 of the jury. I'm Stanley Myers. I was introduced to you
8 earlier or yesterday. I'm a lawyer over in Lexington
9 County. I'm here with my law partner, Jake Moore, and our
10 associate, Mr. Brooks Biediger.

11 We have the absolute pleasure and privilege of
12 representing a fine and decent young man, Marcus Bailey.

13 Marcus, needless to say, is nervous, and he's scared
14 out of his mind because for the first time in his life,
15 his life is literally in the hands of someone else, your
16 hands, and that with a simple vote of yea or nay can put
17 him behind bars for the rest of his life..

18 MS. SIMPSON: Objection, Your Honor.

19 THE COURT: Mr. Myers.

20 Disregard the last statement, members of the jury.

21 Please move on.

22 MR. MYERS: Ladies and gentlemen, a trial is a search
23 for the truth. Now, the way the truth comes in is from
24 testimony from that witness stand. That's the only way
25 the evidence and the truth comes out.

1 hear, but it's also the testimony after cross-examination.

2 Now, Marcus Bailey is a fine and decent young man. I
3 think you can see that from looking at him. His mother is
4 in the courtroom, and she will be for the remainder of
5 this trial.

6 Marcus is a father. His five-year-old child's mother
7 is also in the courtroom. She will be with us throughout
8 this trial.

9 Marcus is also a former soldier of this great nation
10 having served two combat tours in Iraq. Marcus grew up in
11 the San Diego area of California, didn't necessarily have

12 a whole lot but saw a need to defend his country.

13 So at the young age of 18, 19, he joined the
14 military, did very well, two combat tours to Iraq, several
15 metals, several meritorious awards, did outstanding,
16 achieved the rank of staff sergeant and was basically here
17 at Fort Jackson until January 2012 when he was discharged.

18 After that discharge, he met again, not for the first
19 time but for the second time, Ms. Almanita Smith. They
20 had met. You see, as Ms. Simpson told you, Ms. Almanita
21 Smith. They met on his second tour in Iraq.

22 When he came here, her hadn't seen her for awhile,
23 but we believe the testimony is going to show that through
24 Jeff Holden, Marcus Bailey was reintroduced to Almanita
25 Smith.

1 Q Okay. And who was -- was it your understanding that
2 was the actual victim's home?

3 A At the time that I arrived, I didn't know whose home
4 it was.

5 Q Did you later learn that it was her home?

6 A Correct.

7 Q Okay. And was there also a crime scene log that was
8 started?

9 A Yes.

10 Q Okay. And what is the purpose of the crime scene
11 log?

12 A To show who makes entry into the crime scene and what
13 their purpose is there and what the length and duration
14 they stay.

15 Q And what's the purpose of the crime scene being put
16 up around the --

17 A To prevent any further contamination of the crime
18 scene.

19 Q And whoever enters the tape has to sign often on the
20 log; is that correct?

21 A Correct. They're time in is notated, what their
22 purpose is, who they work for, and their time out.

23 Q Now, did you actually get fairly close to the victim?

24 A I did.

25 Q And what did you immediately observe about the body?

1 Q And did you direct a deputy to follow the ambulance?

2 A I did.

3 Q And who was that?

4 A Deputy Presley went and followed him to the hospital.

5 Q And why did you do that?

6 A Well, we didn't know for sure what had happened, and
7 we considered him a possible suspect.

8 Q Approximately how long did you stay on the scene that
9 day?

10 A I left at the initial time at ten o'clock in the
11 morning, around ten o'clock in the morning.

12 Q And before you left, did you -- did you actually
13 enter in the home?

14 A I did. At one point, myself and Deputy Lauren Lofley
15 entered the house to do a protective sweep just to make
16 sure there were no other -- no other victims, no other
17 bodies, inside the residence.

18 Q And were there?

19 A There were no other bodies, no.

20 Q Did you notice anything about the smell in the home?

21 A It smelled very strongly of deodorizers, very, very
22 strong.

23 Q Okay. Now, I'm going to point you to your incident
24 report on the -- it says incident date August 23rd, 2012.

25 Now, does that refer to the actual incident or the time

1 that you actually received the call?

2 A That's just the time we received the call.

3 Q And 6:20, what does that actually refer to?

4 A That we received the call between 06:20 in the
5 morning and 06:35 in the morning.

6 Q And under the web type, there is a code 95. What
7 does that mean?

8 A That means unknown. We didn't know at the time.

9 Q And before leaving the scene, were you able to
10 determine who the victim was lying in the yard?

11 A Yes.

12 Q And who was that?

13 A Almanita Smith.

14 Q Okay. Were you able to get her identifiers as far as
15 her age?

16 A Yes.

17 Q Dates of birth?

18 A Yeah, I was able to obtain those off the DMV.

19 Q And how old was she?

20 A She was 26.

21 Q I'm going to show you State's Exhibit No. 6. This is
22 Longtown Road --

23 A Correct.

24 Q -- and you -- does this depict the general area, the
25 overview of 613 Heron Glen Road?

1 Q And they went into the house.

2 A That I couldn't testify to. I don't recall who went
3 in.

4 Q You know you went in the house.

5 A I did.

6 Q And you did a -- what you called a sweep of the
7 house?

8 A Correct.

9 Q And you found it to be orderly?

10 A Yes, sir.

11 Q You found it to be clean.

12 A Yes.

13 Q You found it to be neat.

14 A Yes, sir.

15 Q You found no evidence of a struggle.

16 A Yes, sir.

17 Q You found nothing broken.

18 A That's correct.

19 Q You found no visible evidence of any type of fight.

20 A That's correct.

21 Q No evidence of visible struggle.

22 A That's correct.

23 Q So what you found inside that house was totally
24 unremarkable.

25 A Besides the smell, yes.

1 Q The smell of room deodorants?

2 A Of what?

3 Q Deodorizer?

4 A It was overwhelmingly, almost take your breath,
5 strong.

6 Q Okay. Now, this was late August in South Carolina,
7 correct?

8 A That's correct.

9 Q And as I recall last August, we had a record number
10 of 100 degree days, correct?

11 A I don't remember that.

12 Q It was hot last summer, wasn't it?

13 A I'll take your word for it.

14 Q Did you examine the body?

15 A Examine it, no, sir.

16 Q Do you know that as part of the investigation there
17 was a hair, a long hair, found in Ms. Smith's left hand?

18 A I don't.

19 Q You didn't see it?

20 A No, sir.

21 Q That actually would not have been something that you
22 would have been responsible for doing as the first officer
23 on the scene, right?

24 A That's correct.

25 Q Your job was to secure the scene, and it was somebody

1 THE COURT: They posted seven percent.

2 MR. MYERS: I'm sorry, seven percent to the court.

3 Judge, I would ask, I respectfully submit there are
4 extenuating circumstances here. I would ask that he be
5 allowed to at least post another reasonable amount of
6 bond.

7 If the Court is inclined to give him a new bond,
8 certainty, we're prepared to argue as to why it should be
9 a low one.

10 The mother is here today, but again, Judge, under
11 these circumstances, we see no reason for him to have to

12 go back to the Alvin S. Glenn Detention Center if the
13 court would entertain a new bond.

14 THE COURT: Do you want to be heard than?

15 MS. CAMPBELL: Our position is the bond is down.

16 There are no provisions I'm aware for you to institute a
17 bond. He is charged with murder. We would ask that he be
18 treated as every other person.

19 He has had the luxury of being out on bond. We would
20 ask that you do as we do in every case and take him into
21 custody.

22 THE COURT: Does he have a record?

23 MS. SIMPSON: No, sir.

24 MS. CAMPBELL: No, Your Honor, as far as convictions.

25 MR. MYERS: No convictions.

1 THE COURT: Where does he live?

2 MR. MYERS: He lives with his child's mother here in
3 Richland County, Ms. Kalisha Parker.

4 THE COURT: Does he have a job?

5 MR. MYERS: No, sir. He does not have a job. He is
6 collecting unemployment right now. It has been difficult
7 to get a job for the past six months with the murder
8 charge on his record.

9 THE DEFENDANT: I'm disabled.

10 THE COURT: Okay. I'm going to take him into
11 custody. It's a serious charge he's facing. He is facing
12 30 years to life without parole. This are serious
13 circumstances.

14 I believe the law states that his bond that his
15 mother posted is over. It concludes once the jury is
16 sworn, and I'm going to have him be taken into custody.

17 Thank you.

18 MR. MOORE: Thank you, Your Honor.

19 THE COURT: Fifteen minute break.

20 (WHEREUPON, a short break was taken.)

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

23 (WHEREUPON, State's Exhibits Nos. 7 - 55 were marked
24 for identification only.)

25 MS. CAMPBELL: Your Honor, I informed everyone who is

1 in the courtroom to stay in the courtroom. The only
2 exception that might. If we have to, that might be
3 something we have to put a law clerk out there.

4 THE COURT: And I understand that. I just thought,
5 you know --

6 MS. CAMPBELL: And we'll try to minimize it.

7 THE COURT: Just try to minimize it. I'm not going
8 to say lock the back door or anything like that. I
9 understand there's a lot of moving parts to this that
10 happen behind the scenes. That's true on both sides, BUT
11 try to keep to it a minimum, that's all.

12 MR. MOORE: I will.

13 THE COURT: Ready?

14 MS. CAMPBELL: We're ready, Your Honor.

15 THE COURT: Defense ready?

16 MR. MYERS: We're ready, Your Honor.

17 THE COURT: Okay. All right. Bring the jury back
18 in.

19 (WHEREUPON, the jury came into open court at
20 approximately 3:45 p.m.)

21 THE BAILIFF: The jurors are all present, Your Honor.

22 THE COURT: Thank you, sir.

23 Madam Forelady, I have made your note a Court
24 Exhibit. I have instructed all the lawyers and asked them
25 to speak up. We have also turned up -- speaking of that,

1 we've also turned up the sound system in the courtroom, so
2 it should be a little bit easier to hear.

3 Now, if you all are having difficulty hearing, then
4 somebody just kind of -- you don't need to say anything,
5 just kind of slip your hand up. We will -- I'll make that
6 person get closer too it or back up from it. Sometimes
7 it's an adjustment.

8 As to the people coming in and out of the courtroom,
9 I've asked them to try to keep that under control. It is
10 a public courtroom. So I can't necessarily lock the door
11 and keep everybody out.

12 If it gets to be too much of a hassle, then I will
13 resort to that. I don't want it to be too much of a
14 distraction. Thank you for your concern in those two
15 areas. I appreciate the attention you are paying
16 everything so far.

17 You may continue.

18 MS. CAVANAUGH: The State calls Crystal Bailey.

19 THE COURT: Please come forward and be sworn.

20 CRYSTAL BAILEY, after being duly
21 sworn, testified as follows:

22 THE CLERK: Please have a seat up here, ma'am. Speak
23 into the microphone. State your full name for the record.

24 THE BAILIFF: Watch your step up. Watch your step.
25 State your name for the record.

1 THE WITNESS: Crystal Bailey.

2 DIRECT EXAMINATION:

3 BY MS. CAVANAUGH:

4 Q Good afternoon, Ms. Bailey. Ms. Bailey, where are
5 you from?

6 A Originally from Florida.

7 Q And when did you move to South Carolina?

8 A 2006.

9 Q Okay. And where do you currently live?

10 A In Columbia.

11 Q And what's your address?

12 A Oh, 617 Heron Glen Road.

13 Q Heron Glen Drive?

14 A Heron Glen Drive.

15 Q How long have you lived there?

16 A Since 2006.

17 Q And who lives there with you?

18 A Me and my daughter and my brother and his wife.

19 Q Can you repeat that for me?

20 A Me, my youngest daughter, my brother, his wife and
21 her daughter.

22 Q And where--

23 A They weren't living there at the time. They live
24 there now.

25 Q Okay. And where do you work?

1 A Department of Transportation.

2 Q And how long have you worked there?

3 A Since 2006.

4 Q And I'm going to direct your attention back to August

5 of 2012. Is that where you worked?

6 A Yes.

7 Q Okay. And what time do you -- where is your work

8 located?

9 A At that time, I worked in Lexington County.

10 Q Okay. And you said for the Department of.

11 Transportation?

12 A Yes, ma'am.

13 Q And what time do you usually leave for work?

14 A I normally leave between six and 6:30.

15 Q And was that the case back in August 2012?

16 A Yes, ma'am.

17 Q I'm going to take your attention to August, the

18 morning of August 23rd, 2012. Do you remember that

19 morning?

20 A Yes, ma'am.

21 Q And what do you remember about that morning,

22 specifically?

23 A When I was backing out of my driveway and when I went

24 to turn to go around in the cul-de-sac to go down the

25 road, I noticed a young lady laying in the grass in my

1 neighbor's yard that I found out later was actually my
2 neighbor, but it didn't look like her at the time.

3 Q And why didn't it look like her?

4 A Her face was decomposed, and her body had swollen.
5 She wasn't even the same complexion. It didn't look like
6 her.

7 Q And what was your -- what was your neighbor's name?

8 A Her name was Almanita Smith.

9 Q And what did -- can you describe her appearance in
10 general before? Was she small, smaller?

11 A Yeah. She was slender, athletic. She was a very
12 nice, young -- very nice and clean, very nice personality.

13 Q But you didn't recognize her when you saw her that
14 morning?

15 A No, ma'am.

16 Q And could you tell whether she was alive or deceased?

17 A It was -- she was deceased. Her face was
18 decomposing.

19 Q And where actually -- did you immediately know it was
20 a body?

21 A Yes.

22 Q And where did you work prior to the Department of
23 Transportation?

24 A I worked at the State Attorney's Office in the State
25 of Florida.

1 Q So you've seen a lots of pictures in your --

2 A Yes, ma'am. I was a legal assistant and a paralegal.

3 Q At the Attorney General's Office?

4 A Yes.

5 Q When you first observed her, was she -- was she
6 wearing anything? What did she have on?

7 A She had on a black shear top, but no under clothes.

8 Q And did you get close enough to see anything about
9 her face?

10 A Her face was -- to me, her face was gone. It was
11 decomposing.

12 Q Now, how long had she lived beside you?

13 A She lived there, I want to say about a year.

14 Q Okay. Did you know her really well as a neighbor?

15 A As a neighbor, I've talked to her several times.

16 Q And was she a polite young lady?

17 A Yeah. She was extremely polite. She was talking
18 about her future and what plans she was having.

19 Q And did you know that the defendant, Marcus Bailey
20 lived -- did you see him at that location?

21 A I saw him a couple of times, but I never spoke with
22 him.

23 Q So did you have many conversations with him at all?

24 A No, ma'am, other than the passing waiving his hand or
25 something like that, but I never had a conversation with

1 him..

2 Q Now, I'm going to go back to when you saw the body.

3 What did you immediately do?

4 A I saw the body on the ground. I got out of my car
5 because I thought at first that maybe somebody was passed
6 out drunk. As I got close to the body, I noticed it was a
7 deceased person, so I went and got my cell phone and I
8 called 9-1-1.

9 Q I'm going to ask you to see if you recognize that.

10 Do you recognize that? Were you asked to listen to a --

11 A Yes, I was asked to listen to it.

12 Q Okay. Is this what that conversation?

13 A Yes.

14 Q Okay. And was this -- was this the conversation you
15 had with the 9-1-1 operator --

16 A Yes.

17 Q -- that morning?

18 A Yes.

19 Q Okay. And you called on what day?

20 A On that morning of.

21 Q When you located the body?

22 A Yes, uh-huh.

23 Q When you saw the body?

24 A Uh-huh.

25 MS. CAVANAUGH: Your Honor, at this time, we'd

1 introduce State's Exhibit 8 into evidence.

2 MR. MYERS: No objection, Your Honor.

3 THE COURT: Admitted without objection.

4 THE COURT REPORTER: I'm sorry, I thought number
5 eight was a photo. That was what I was told during the
6 break.

7 MS. CAMPBELL: I'm sorry.

8 (WHEREUPON, State's Exhibit No. 8 was admitted into
9 evidence.)

10 (Whereupon, the 9-1-1 recording was played for the
11 jury.)

12 BY MS. CAVANAUGH:

13 Q Now, Ms. Bailey, you referred to, "Oh my gosh. I
14 think it's that girl" in your tape -- I mean, in your
15 9-1-1 call. Who did you think it was?

16 A Gabriel Swainson.

17 Q Because that investigation was going on around this
18 time, as well?

19 A Yeah. I had -- you know, me and my neighbors, we had
20 got fliers and everything in regards to that young lady,
21 and that's who I thought it was.

22 Q Because again, the body was so decomposed you
23 couldn't recognize it, is that right?

24 A That's correct.

25 Q Now, you also referred to someone coming out and

1 crying. Can you describe -- can you explain that for us?

2 A While I was on the 9-1-1 call?

3 Q Yes, ma'am.

4 A He came out, ran to the body and grabbed her and was
5 mumbling and making noise like he was crying.

6 Q Did --

7 A But I couldn't hear exactly all that he was saying.

8 Q Did you ever see his face when he --

9 A Yeah. He had his head down when he ran. He grabbed
10 her. His head was kind of down. Then when he lifted his
11 face up, he didn't have no tears or anything.

12 Q So you didn't observe any tears once you got a good
13 look at his face.

14 A Yes.

15 Q Now, you were on the phone with 9-1-1?

16 A Yes.

17 Q Was there a lot of commotion going on outside?

18 A No. There was no commotion at all. When I was out,
19 I was the first one outside in my car with my daughter,
20 and then while I was on the phone with 9-1-1, my neighbor
21 James, he came out.

22 He thought it was the same young lady, Gabrielle
23 Swainson. And while I -- me and him was standing out
24 there, and I was on the 9-1-1 call, that's when he ran
25 outside the house.

1 Q Okay. And --

2 A But we -- it was quiet. We wasn't out there making
3 any noise, and we didn't knock on the door or anything.

4 Q Was it unusual for you to see your neighbor, James --
5 is it Postell?

6 A Postell.

7 Q Postell?

8 A Uh-huh.

9 Q Was it unusual for you to see James in the early
10 morning?

11 A No. I see James in the morning. Most of the times,
12 we leave around the same time.

13 Q Okay. And had you ever seen the defendant outside?

14 A No, not that time of morning.

15 Q Can you describe -- did you observe the defendant
16 when he came out the front door?

17 A When he came outside, he was -- I thought it was odd
18 because he was fully clothed, t-shirt, shorts, shoes, and
19 he ran straight to her.

20 Q Did he do anything before he ran to her?

21 A He ran -- he came outside, and he looked. He looked
22 around and ran to her body.

23 Q Where did he look?

24 A It was like he was looking to see if somebody was
25 around. I don't know. It was not -- it was kind of

1 weird.

2 Q Because?

3 A Because she was -- she was there, and he just came
4 out. He was looking, and then he ran to her body and
5 picked her up. Then he was mumbling, and then at one
6 point, he left and he went inside the house. He got a
7 blanket, and he came outside and covered her up.

8 Q Because the body is right in front of the door
9 basically, right?

10 A A few feet from the door; that's correct.

11 Q But not until this happened?

12 A Where the front door is, there's like a little
13 sidewalk, and then there's a patch of grass. She was in
14 the patch of grass.

15 Q But he looked around before he...

16 A Yes.

17 Q Before he went to the body.

18 A Yeah. He came out the door, and he looked around and
19 went to her body.

20 Q Now, what were you focused on during -- were you
21 focused on giving the information to the 9-1-1 caller, as
22 well?

23 A Yes, ma'am.

24 Q Okay. And are you still on the phone while Marcus
25 was?

1 A Yeah. When he ran out the house, yes. I was still
2 on the phone.

3 Q Now, did you provide a statement to the police in
4 this case?

5 A Yes.

6 Q And did you give them an estimate as far as how
7 long -- when the last time you had seen the victim was?

8 A Yes. It was just an estimate. I couldn't remember
9 exactly when the last time I had saw her.

10 Q Okay. And do you remember what that estimate -- what
11 you told them?

12 A It probably was about three to five days.

13 Q Okay. And, again, that was just an estimate?

14 A Yes, ma'am.

15 Q Now, before that morning, when is the last time that
16 you had remembered seeing the defendant? Would a copy --

17 A It was estimated probably about a week or so.

18 Q Was your memory fresher at the time you gave the
19 statement?

20 A The statement, I think, I said about three to five
21 days.

22 Q Would you -- would you like to look at a copy of it?

23 A Sure.

24 Q Did you give an estimate of when you saw the
25 defendant last?

1 A (There was no response).

2 Q Right around the middle.

3 A Oh, okay. "The last time I saw him, he was yelling
4 out his door, but the last time I saw her, it was about --
5 I estimate about three to five days before that."

6 Q Okay.

7 A But it could have been longer.

8 Q Before that morning, when was the last time that you
9 remembered looking out in the yard, her yard?

10 A The night before.

11 Q And do you remember about what time?

12 A It was nighttime, eight, 8:30.

13 Q And did you see a body in the front yard at that
14 time?

15 A There was no body in that yard.

16 Q Beg the Court's indulgence.

17 (Pause.)

18 A few more questions. When you first saw the body,
19 do you remember seeing very many bugs?

20 A There were not that many bugs.

21 Q Okay. Did they increase as time went on?

22 A Well, when the police -- when the rescue came, I
23 wasn't close to the body no more at that point.

24 Q Okay.

25 A But when I saw her, there was not that many bugs.

1 Q Because did you go on to take your daughter to
2 school?

3 A I took my daughter in the house, and I called my
4 oldest daughter to come pick her up and take her to
5 school.

6 Q And when you saw the body, you didn't see any bugs?

7 A No.

8 Q Beg the Court's indulgence.

9 (Pause.)

10 Can you identify the person that you saw come out of
11 the house on August 23rd, 2012?

12 A That gentleman right there, Marcus Bailey.

13 Q Can you describe what he's wearing?

14 A Dark colored suit with a white shirt and a tie.

15 Q Is he sitting on the right side?

16 A On my right, yes.

17 Q Okay. Of the three lawyers?

18 A Yes.

19 MS. CAVANAUGH: Your Honor, let the record reflect
20 she has identified the defendant.

21 THE COURT: Yes, ma'am.

22 MS. CAVANAUGH: Thank you, Ms. Bailey.

23 THE WITNESS: You're welcome.

24 THE COURT: Cross-examination?

25 MR. MYERS: Thank you, Your Honor.

1 CROSS-EXAMINATION:

2 BY MR. MYERS:

3 Q Good afternoon, Ms. Bailey.

4 A Good afternoon.

5 Q Ms. Bailey, I'm not wanting to be wrong, but you are
6 not related in any way to Marcus Bailey?

7 A No, I am not, no relation, not relative or otherwise.

8 Q Okay. Now, do you know anything about Mr. Bailey's
9 personality?

10 A No, I do not.

11 Q You testified earlier that you basically seen him,

12 but you didn't know him; is that correct?

13 A That's correct.

14 Q But you actually knew Ms. Almanita Smith, but you did
15 not know Mr. Bailey?

16 A That's correct.

17 Q So it's safe to say you never had any sort of
18 discussions with Mr. Bailey?

19 A No, I did not.

20 Q You don't know anything about his demeanor, correct?

21 A No, I don't. I don't know anything about him.

22 Q All right. So you don't know anything about the way
23 he carries himself?

24 A No.

25 Q Didn't know anything about his attitude?

1 A The only thing I saw him one time yelling in the
2 front yard.

3 Q All right. Now, you say that Ms. Smith had moved in
4 about a year or so before August 23rd, 2012; is that
5 correct?

6 A That's an approximation. I can't give you the exact
7 date.

8 Q And you had always lived there, right?

9 A In 2006; that's correct.

10 Q Now, during the time in which you were there and she
11 moved in, you never noticed or witnessed any arguments

12 between Almanita and Marcus Bailey?

13 A I saw him yelling, but I don't know who he was
14 yelling with.

15 Q When you say yelling, can you be more specific?

16 A Having an argument with someone, but I didn't see the
17 other person.

18 Q So you say he was yelling, but you don't know if it
19 was an argument. You never saw the other person, correct?

20 A That's correct.

21 Q So you never specifically saw him argue with Almanita
22 Smith, correct?

23 A No. I did see him. I didn't see the other person
24 who he was arguing with.

25 Q At any time, did you see a -- prior to August 23rd,

1 2012, had you ever seen law enforcement there
2 investigating any sort of domestic dispute between Marcus
3 Bailey and Almanita Smith?

4 A No.

5 Q Had any other third person or any witnesses
6 whatsoever ever come to your door and say, "Hey, I just
7 say Almanita and Marcus arguing"?

8 A They wouldn't come to me and tell me that.

9 Q Sure. I just want to make sure no one, though, has
10 come to you indicating that they had seen Marcus Bailey
11 and Almanita Smith arguing?

12 A I've had neighbors that said that they've seen the
13 police come over there.

14 Q You've seen neighbors say that?

15 A No, a neighbor told me that.

16 Q Do you know if that neighbor is going to testify?

17 A I don't know.

18 Q Okay. Now, this 9-1-1 call that was just played, you
19 recall that morning, right?

20 A Uh-huh.

21 Q That was a bad morning, was it not?

22 A Yes, it was.

23 Q It was a hectic morning, was it not?

24 A That's right.

25 Q Pretty chaotic, right?

1 A Uh-huh, yes.

2 Q And you testified that when you saw the body, you
3 initially thought that it was the little girl that had
4 been missing at that time?

5 A That's correct. It did not look like Almanita.

6 Q Okay.

7 A And when he called the name "Nakita", I didn't know
8 her by that name.

9 Q And when you called 9-1-1, your testimony or your
10 phone call, your conversation with the 9-1-1 operator, was
11 that Marcus could not talk at that moment, correct?

12 A Right. Because he was holding her body, and he was
13 mumbling. He has his head down, and he was mumbling.

14 Q And you also indicated that he was very emotional on
15 that tape, correct?

16 A Yeah. He presumed to be emotional, but when he
17 lifted his head up, he didn't have a tear in his eye.

18 Q But you didn't tell the 9-1-1 operator that, "Well,
19 wait a minute. He's not -- he's not really crying. He
20 can talk to you"?

21 A I wouldn't have. I just -- she asked me to ask him a
22 question but...

23 Q Sure.

24 A I couldn't. At that time, he was holding her, and he
25 was mumbling.

1 Q And the only thing that you told the 9-1-1 operator
2 was that he was too emotional to talk.

3 A Uh-huh, that's correct.

4 Q You at no time indicated that, "Well, I don't see any
5 tears"?

6 A Well, I wasn't dissecting the conversation --

7 Q Sure.

8 A -- with 9-1-1.

9 Q I understand that, but my question is, you never
10 related to the 9-1-1 operator that, "Hey, I don't see any
11 tears"?

12 A No, because that didn't seem relevant at the time
13 when there is a dead body in front of me.

14 Q Sure. But my question is not that, ma'am. My
15 question is simply that you told the 9-1-1 operator.

16 A Yeah. He was holding her body --

17 Q Right.

18 A -- and he was rocking, and he was mumbling.

19 Q And in fact --

20 A He couldn't --

21 (Talking at the same time.)

22 THE COURT: Whoa, whoa, whoa. Stop.

23 When I talk, nobody else talks. The court reporter
24 can only take down one of you at a time. I will give you
25 every opportunity to explain your answer in full and as

1 much as you need to. I promise you that.

2 There is no doubt about that, but please Mr. Myers,
3 and this goes for you, too, please do not talk over each
4 other.

5 Mrs. Ambroziak can only take one of you at a time,
6 okay.

7 THE WITNESS: Okay.

8 THE COURT: Rephrase your question. I promise you,
9 I'll give your every opportunity you'd like to answer your
10 question in full.

11 BY MR. MYERS:

12 Q Ms. Bailey, you at no point during the conversation
13 with the 9-1-1 operator indicate that you did not believe
14 he was not emotional?

15 A No.

16 Q You at no time during your conversation with the
17 9-1-1 operator indicate that you thought he was
18 pretending?

19 A No.

20 Q You at no time during that conversation with the
21 9-1-1 operator indicate that you believed he was faking
22 it?

23 A No.

24 Q Your conversation with the 9-1-1 operator was simply
25 that he was too emotional to talk, correct?

1 A That's correct.

2 Q Now, prior to this day, you don't know anything -- or
3 you didn't know anything about Marcus Bailey, did you?

4 A That's correct.

5 Q You didn't know anything about his military service;
6 is that correct?

7 A I heard rumors.

8 Q You didn't know any --

9 A That he was discharged.

10 Q You didn't know anything about any tours he may have
11 served for his country.

12 A No, I did not.

13 Q All you knew is that he came out on that morning,
14 correct?

15 A That's correct.

16 Q And you testified that it was early in the morning,
17 correct?

18 A Yes.

19 Q Now, there were a lot of screaming -- or was a lot of
20 screaming at that time?

21 A No, there was not.

22 Q So --

23 A There was no noise out there.

24 Q Can you say that when Mr. Bailey came out, that he
25 was expecting to see what he saw on that morning?

1 A I don't think he was expecting it. I don't know. I
2 can't -- I can't speak for him. I don't know what he
3 would have been expecting.

4 Q Isn't it true that when he saw the body, he bent
5 down, correct?

6 A Yes.

7 Q And he then went back on the inside and got a
8 blanket, correct?

9 A He was -- he grabbed her, and he held her. He was
10 rocking with her first, and then he went and got a blanket
11 and came back.

12 Q You didn't attempt to get a blanket, correct?

13 A No. I wouldn't touch it. I wouldn't touch a dead
14 body like that because, you know, crime scene.

15 Q Okay. Mr. Postell, the other individual on the
16 scene, he didn't get a blanket, did he?

17 A No.

18 Q So the blanket that was put on Almanita's body was
19 put there by Mr. Bailey, correct?

20 A That's correct.

21 Q Now, Ms. Smith's body, I believe you testified that
22 it was face down.

23 A Her face was on the side.

24 Q Her face was on the side. Was she facing down,
25 though?

1 A Yeah. Her body was face forward, but her head was
2 turned.

3 Q Now, if her body was face down, how were you able to
4 see her face?

5 A I said her body was face -- was pointed down. Her
6 face was turned to the side.

7 Q Okay.

8 A And I could see that her face was gone.

9 Q Did you notice any sort of a distinct odor from
10 Ms. Smith's body?

11 A No.

12 Q Did -- have you ever heard of postmortem evacuation?

13 A Yes.

14 Q You will agree with me that postmortem evacuation is
15 caused after death, correct?

16 A That's correct.

17 Q And it occurs when there is a decrease in an
18 individual's blood pressure, correct?

19 A That's correct.

20 Q And when there is a decrease in the blood pressure
21 objection, it causes the bowels to release.

22 A Uh-huh.

23 Q Is that a yes? You have to say yes or no to the
24 court reporter.

25 A Yes.

1 Q And it also causes the urine that's in the body to
2 release, correct?

3 A Yes.

4 Q And did you notice any fecal matter on the body?

5 A Yes, she --

6 Q Did you notice any urine around the body?

7 A I didn't notice any urine, but I noticed the feces.

8 Q Now, how close to the body did you get?

9 A I was very, very close.

10 Q All right. Was it to the point where your feet were
11 touching around the area where the body was laying?

12 A I didn't touch the body. I was in the grass. I was
13 in the same grass that the body was.

14 Q How about Mr. Postell? Did he get close to the body?

15 A He stood next to me. We were fairly close. We could
16 see everything.

17 Q All right. Do you know -- whether sitting here
18 today, do you know whether or not any of the fecal matter
19 that you saw on the body was found inside the house?

20 A I don't know anything about that.

21 Q Do you know whether or not any of the urine that you
22 saw was found on the inside of the house?

23 A I don't know anything about that.

24 Q All right. Would it surprise you to learn that none
25 of those things were found on the inside of the house?

1 A Would it surprise me?

2 Q Yes, ma'am.

3 A I don't know what she has to wear so...

4 Q Are you aware that gripped in her left hand, that
5 Ms. Smith actually had a hair follicle in her left hand?

6 A Well, I had no reason to open up her hand, sir.

7 Q All right. Would it surprise you to learn that there
8 was a relatively long hair gripped in her hand?

9 A Once again, I wouldn't have no reason to look in her
10 hand to have that surprise.

11 Q Now, Marcus Bailey, do you recall him having the same
12 haircut?

13 A He had more hair on his head.

14 Q Your testimony is that he had more hair?

15 A I mean, it was short but it wasn't that short. He
16 had a little bit more.

17 Q Well, how long would you say it was?

18 A I couldn't get a measuring tape and tell you that it
19 was four inches or two.

20 Q Do you think?

21 A I that he had a haircut since then.

22 Q Did he have an Afro?

23 A Maybe, not a big Afro but just a little bit more hair
24 than what he has now.

25 Q Would it have been two inches longer?

1 A I mean, I don't -- I didn't measure his hair.

2 Q Would it have been three inches long?

3 A I couldn't measure his hair.

4 Q So you didn't know?

5 A It was more than what he has now.

6 Q All right. Now, you testified that when Marcus came
7 out, that you believe he was in a pair of shorts and a
8 pair of shoes?

9 A He had on a shirt, some shorts and some pants.

10 Q Would it surprise you -- I'm sorry. I didn't mean --
11 did I interrupt you? I'm sorry.

12 A No, go ahead.

13 Q Would it surprise you to learn that he actually was
14 wearing pajama pants and a t-shirt?

15 A I would be surprised if those were pajama pants.

16 Q But if there is testimony that he was wearing pajama
17 pants and at-shirt, that would be different than a pair of
18 shorts and a t-shirts as you testified to.

19 A It didn't look like packaging pants to me.

20 Q This was an emotional morning, was it not?

21 A It could have been, but it didn't look like packaging
22 pants to me.

23 MR. MYERS: Now, if I can have this photograph as
24 Defendant's Exhibit -- I apologize, Madam Court Reporter.
25 I can't recall.

1 THE COURT REPORTER: Five.

2 THE COURT: Have you seen this?

3 MS. CAVANAUGH: Yes, Your Honor.

4 (WHEREUPON, Defendant's Exhibit No. 5 was marked for
5 identification only.)

6 MR. MYERS: May I approach the witness, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. MYERS:

9 Q Ms. Bailey, I'm going to show you a photograph. Does
10 this appear to be Marcus Bailey?

11 A Yeah.

12 Q And this appears to be Marcus Bailey on August 23rd,
13 2012?

14 A Uh-huh.

15 Q Is that a yes?

16 A Yes.

17 Q And he appears here to be draped in a hospital
18 uniform, correct?

19 MS. CAVANAUGH: Your Honor, I'm going to object at
20 this point. If he's going to put it into evidence, we
21 have no objection but he can't --

22 THE COURT: What are we doing with the picture?

23 MR. MYERS: Your Honor, I would move to put this into
24 evidence, Defendant's Exhibit 5.

25 THE COURT: Okay. Defense Exhibit 5 without

1 objection.

2 (WHEREUPON, Defendant's Exhibit No. 5 was admitted
3 into evidence.)

4 BY MS. CAVANAUGH:

5 Q Now, how long does it hair appear to be on this
6 photograph?

7 A A little longer than what he has now.

8 Q So your testimony is that his hair in this photograph
9 is longer than his hair?

10 A I said a little longer. Like I told you, I didn't
11 have a measuring tape.

12 MR. MYERS: Permission to publish to the jury, Your
13 Honor?

14 THE COURT: Yes, sir.

15 BY MR. MYERS:

16 Q So let me just make sure I understand. Your
17 testimony is that in Defense Exhibit No. 5, Marcus
18 Bailey's hair appears to be longer than it is right now?

19 A Yeah.

20 Q It does? Would you agree with me that that does not
21 appear to be several inches long?

22 A I never said it was several inches long. I said it
23 was a little longer. I told you I didn't have a measuring
24 tape to measure it.

25 Q Sure. Well, if the hair found gripped in Almanita

1 Smith's hand was a long hair, several inches long, then
2 that could not have been the hair as depicted on Marcus
3 Bailey?

4 A I wouldn't know where the hair came from.

5 Q Ms. Bailey, if I understand the layout of this house,
6 this was a two-story house?

7 A Her house is a two-story house, yes, sir.

8 Q It had a garage on it, did it not?

9 A Yes.

10 Q Was it a single-car garage or a double-car garage?

11 A Double-car garage.

12 Q Do you know how many cars were inside the garage?

13 A Why would I know how many cars they had in the
14 garage?

15 Q Well, I'm just asking. Do you know how many cars
16 were in the garage?

17 A At that time, no. The garage door was down.

18 Q Did you ever see Ms. Almanita driving any sort of
19 car?

20 A I've seen her drive a car before, yes.

21 Q What type of car did she have?

22 A A dark colored car.

23 Q Was it blue?

24 A It was either blue or black.

25 Q Did you ever see Marcus Bailey drive a car?

1 A Blue or black, yes.

2 Q Would it have been the same car owned by Almanita
3 Smith?

4 A I didn't keep a record of what car he was driving.

5 Q Okay. But do you know how many cars were at the
6 location?

7 A I would give a guess and only those two cars over
8 there.

9 Q So your testimony is you believe there were two cars?

10 A Yeah, but one was hers. One was somebody else's, or
11 somebody was visiting. ~~Because she had friends come over~~

12 and visit. It could have easily been their car. I didn't
13 know who owned what car.

14 Q Sure. Ms. Bailey, having not known Mr. Bailey and
15 having not known -- know anything about the relationship
16 he had with Ms. Smith, sitting here today, do you know of
17 any reason that Marcus Bailey would have had to hurt
18 Almanita Smith?

19 A No, I would not know.

20 Q And the body -- I just want to make sure I'm clear,
21 the body, Ms. Smith's body, wasn't found in the dumpster,
22 correct?

23 A Correct.

24 Q It wasn't found nearby in a lake, correct?

25 A Correct.

1 Q It was there in the front yard?

2 A Yes.

3 MR. MYERS: Beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 (Pause).

6 BY MR. MYERS:

7 Q I'm done with this question, but I just want some
8 clarification, Ms. Bailey. Your testimony is that Marcus
9 Bailey came out after you had called 9-1-1, correct?

10 A That's correct.

11 Q And when he came out, the first thing he did was to

12 kneel down next to her body?

13 A No. He came out the door, and he looked around and
14 then went to the body.

15 Q Now, in your statement, you didn't say that he looked
16 around. Do you recall giving your statement to law
17 enforcement that Ms. Cavanaugh asked you about earlier?

18 A Yes.

19 Q Can you tell me or show me anywhere in your statement
20 where it indicates that when he came out, he looked
21 around?

22 A No.

23 Q So going by the statement that you gave to law
24 enforcement, he came out after you called 9-1-1?

25 A I was still on the phone with 9-1-1.

1 Q That ain't my question. He came outside after you
2 were on this phone with 9-1-1?

3 A Yeah. While I was on the phone with 9-1-1, he came
4 out the door.

5 Q And he bent down next to her body?

6 A He came out. He looked. He went to the body and
7 bent down.

8 Q And he sat there, and he cradled the body, correct?

9 A He grabbed her.

10 Q And he sat there and rocked with her for several
11 seconds or minutes, did he not?

12 A It was a short period of time, but then he went and
13 got a blanket and came back.

14 Q Sure. But my question is he sat there, and he rocked
15 with her for several seconds or minutes, correct?

16 A It was a short period of time, but the amount of
17 time, I couldn't -- I didn't have a stopwatch.

18 Q And when you talked to 9-1-1, you told 9-1-1 on that
19 day, that he was too emotional to talk, right?

20 A That's what the presumption was.

21 MR. MYERS: Thank you.

22 No further questions.

23 THE COURT: Yes, ma'am.

24 MS. CAVANAUGH: No further questions, Your Honor.

25 THE COURT: Any objection to this witness being

1 excused?

2 MR. MYERS: None from the defendant, Your Honor.

3 THE COURT: Ms. Bailey, thank you for being here.

4 You are excused. You may step down.

5 Call your next witness.

6 MS. SIMPSON: The State called James Postell.

7 THE COURT: Come forward, Mr. Postell, be sworn.

8 THE WITNESS: Yes, sir.

9 THE BAILIFF: Place your left hand on the Bible,
10 raise your right, face the clerk.

11 JAMES POSTELL, after being duly sworn,

12 testified as follows:

13 THE CLERK: Please have a seat up here, sir. Speak
14 into that microphone. State your name for the record and
15 spell your last.

16 THE WITNESS: My name is James A. Postell. You said
17 spell my last name, sir?

18 THE CLERK: Yes.

19 THE WITNESS: P-O-S-T-E-L-L.

20 DIRECT EXAMINATION:

21 BY MS. SIMPSON:

22 Q Mr. Postell, how old are you?

23 A I'm 48 now.

24 Q Forty-eight. And are you married?

25 A Yes.

1 Q Who are you married to?

2 A My wife is Katrina A. Postell.

3 Q Okay. And do y'all live here in Columbia?

4 A Yes, ma'am.

5 Q Are you from Columbia?

6 A No.

7 Q Where are you from?

8 A I'm originally from New York.

9 Q From New York. How long have you been living here in
10 Columbia?

11 A Since 2005 when I returned from Germany and stationed
12 here in Fort Jackson.

13 Q Okay. So you're in the military?

14 A Retired.

15 Q Retired. Tell the jury a little bit about your
16 military background.

17 A I served 22 years, four months and ten days in the
18 United States Army; two combat tours, two tours in Europe,
19 two tours in the Pacific far east.

20 Q And is your wife also military?

21 A No.

22 Q No. Where do you all live?

23 A My home address here in Columbia, South Carolina is
24 620 Heron Glen Drive.

25 Q Heron Glen Drive. And is that on the northeast side

1 of town?

2 A Yes, ma'am.

3 Q And how long have you been living at Heron Glen?

4 A We closed on that December 31st, 2006.

5 Q 2006, and you stated you retired from the Army when?

6 A 1 October 2008.

7 Q 2008. And where -- are you currently working?

8 A Yes. I work for Fort Jackson. I'm still a civilian
9 employee on Fort Jackson.

10 Q Okay. And what do you do at Fort Jackson?

11 A I am an instructor, writer, teacher. I teach the

12 auto mechanic's school on Fort Jackson, but currently, I
13 work at the Ammo Supply Company, so I deliver all the
14 ammunition to all of B.R., basic rifle ranges.

15 Q Okay. Back in 2012 were you working at Fort Jackson?

16 A Yes.

17 Q Okay. In that same capacity doing the same type
18 thing?

19 A As an instructor, yes.

20 Q Okay. And what were your hours, typically?

21 A My hours were -- excuse me, I wasn't an instructor.
22 I was working at the Ammo Supply Point. So my hours are
23 from eight o'clock until five.

24 Q Okay. And do you know the victim in this case,

25 Almanita Smith?

1 A I just knew her as a neighbor. I knew she lived in
2 the house next to me. I never spoke to her or anything.
3 I might have waived at her once or twice.

4 Q Okay. So you didn't know her very well. You just
5 had seen her before and knew her as a neighbor?

6 A Yes, ma'am.

7 Q Did you know Ms. Crystal Bailey, who we just heard
8 from?

9 A Yes, ma'am.

10 Q Okay. And how well did you know Ms. Bailey?

11 A I knew her as my neighbor, as well, but I spoke to

12 Crystal several times since I've been living there
13 since 2005.

14 Q And do you know the defendant in this case, Marcus
15 Bailey?

16 A No. I've seen him, knew that he had stayed there.
17 I've seen him a few times, but I never spoke to him or
18 properly introduce myself to him.

19 Q Okay. So you had just seen him around. I want to
20 turn your attention to August 23rd, 2012. Do you recall
21 that day?

22 A That was the first day of school, 2012.

23 Q Yes, sir.

24 A That's how I remember that day because I tried to get
25 to work early on that day, 2012.

1 Q Okay. Your general time is eight o'clock, but you
2 tried to get there a little bit earlier?

3 A Yes, ma'am. I knew there was going to be a lot of
4 traffic that day because it was the first day of school.

5 Q And tell the jury about what happened when you left
6 to go to work?

7 A So I tried to leave at around -- I'd say six o'clock
8 in the morning, 6:05, maybe 6:15, and as I walked back --

9 THE COURT: Would you -- would you speak just a
10 little slower for us?

11 THE WITNESS: Oh, I'm sorry. Excuse me, sir. Okay.

12 THE COURT: They're okay. Everybody has to hear you,
13 and this young lady has to type it all down. So if you
14 would just speak a little slower for us, that would be
15 much appreciated, sir.

16 THE WITNESS: Yes, sir. That morning, I left around
17 six o'clock or 6:15, maybe 6:20. I walked out my front
18 door, and I noticed my neighbor was standing in the
19 cul-de-sac.

20 BY MS. SIMPSON:

21 Q And you say your neighbor. Who are you referring to?

22 A Ms. Crystal.

23 Q Okay. Ms. Crystal and that's Crystal Bailey?

24 A Yes, ma'am.

25 Q Yes, sir. And when you saw her, what happened next?

1 A Her vehicle was parked in the middle of the
2 cul-de-sac, so I thought something was wrong with her
3 vehicle. I walked over to Crystal and asked her what was
4 wrong.

5 She didn't say anything to me, and then I looked on
6 the ground. I saw a body on the ground, and I immediately
7 went back into the house to tell my wife that I thought it
8 was Gabbiee Swainson. That's who I thought it was when I
9 first seen the body on the ground.

10 I didn't want my wife to bring the kids out, because
11 I knew she was going to bring the kids out.

12 Q So your wife was actually going to take them to
13 school?

14 A Yes, ma'am. So I went back inside. I was kind of
15 loud with it, telling my wife that it's the girl on the
16 ground. My wife asked me, "What girl?"

17 I said, "It's Gabbiee Swainson."

18 So then I walked back outside, and Crystal was on her
19 cell phone. So I walked back over to Ms. Crystal, and I
20 was just standing there. Crystal and I, and I was
21 looking -- and I was looking at the body on the ground.

22 A short time after that, the front door of the house
23 that the body was in opened, and the defendant came
24 outside.

25 Q And the defendant, Marcus Bailey?

1 A Yes, ma'am. And so, once he came outside, Crystal
2 and I were still staying on the phone. We didn't know who
3 the body was. Ms. Crystal asked him, as he came up to the
4 body, "Do you know who that is?"

5 He exclaimed, "Yes. It's my girlfriend." So he went
6 to the ground. He tried to turn her over to look at her,
7 just patting her head.

8 He picked up his cell phone to make a phone call.
9 Ms. Crystal told them that, "I'm already on the phone with
10 the 9-1-1 operator." So he got up.

11 He hit his hand on the two pillars. He had two white
12 columns. He banged his hand on the columns. He went
13 inside, and as he went inside, he came back out with a
14 blanket and covered her up with a black blanket.

15 So he went back inside, and Crystal and I were still
16 standing there until the first ambulance came, the rescue
17 truck came first.

18 So we stood there. The rescue truck came, and then
19 the police came. The ambulance put the people in the
20 ambulance, the rescue truck.

21 They put the monitor on the body, and we were still
22 standing on the curb, Crystal and I. The ambulance came,
23 and I believe the first police officer came.

24 When the ambulance came, they also got out of the
25 truck and went inside to attend to Mr. Bailey.

1 Q Okay. And let me -- let me stop you just for a
2 minutes and back up. Once you came out and first noticed
3 Ms. Crystal on the phone, did you know she was on the
4 phone with 9-1-1 at that point?

5 A No.

6 Q You didn't know?

7 A I didn't know who she was talking to.

8 Q Okay. So you saw the body and just went back to make
9 sure that your children weren't brought out?

10 A Yes, ma'am.

11 Q And when you went back outside, were you yelling at
12 all?

13 A No. As a matter of fact, I just stood next to
14 Ms. Crystal, and then I looked down. I really couldn't
15 tell -- it didn't seem like a body to me. So I was trying
16 to look at it to see if it was a body, a person. It
17 didn't look real, so I wasn't saying anything. Crystal
18 was doing all the talking on the phone.

19 Q Okay. And was she fairly quiet, as well?

20 A Yes, ma'am.

21 Q And tell us what you observed about Marcus Bailey
22 when he came out of the door. Do you remember his
23 clothing at all?

24 A I believe he had on some shorts and a shirt. He came
25 outside the door, just opened.

1 Q Did you knock on the door at all?

2 A No, neither one of us. We stayed right at the curb.
3 We didn't even go onto the property. So he opened the
4 door. He looked both ways before he came out, and then he
5 walked towards the body. As he walked towards the body,
6 Crystal had asked him, "Do you know who that is?"

7 Q Okay. So he had not come up and grabbed her and
8 turned her before he recognized and said, "That's my
9 girlfriend"?

10 A Right, he didn't.

11 Q He wasn't even up to the body at that point?

12 A Right.

13 Q And the body didn't look even like a body to you,
14 right?

15 A Right. It didn't look -- to me, it didn't look real.

16 Q Okay. And so once -- once you got -- went and got
17 your wife, did she actually come outside, as well?

18 A Yeah. I didn't see my wife because she was behind
19 me, but she was standing on the porch.

20 Q Okay. Was she loud or yelling at all?

21 A No, no.

22 Q And when the police arrived, you said at some point
23 Marcus Bailey, he picked her up.

24 A He tried to roll her over. He picked her up.

25 Q He tried to roll her over.

1 A Right.

2 Q She was on her --

3 A Face down.

4 Q And what happened? What did you observe? What did
5 he do?

6 A He told Ms. Crystal, he said, "Yeah, I know who that
7 is. That's my girlfriend, Almanita." He think he called
8 her name. Then he tried to roll her over, and he patted
9 -- he was patting her head. Then he tried to grab his
10 cell phone to make a phone call.

11 At that the time, Ms. Crystal told him -- Crystal

12 told Mr. Bailey that I'm already on the phone talking to
13 the 9-1-1 operator. So at that point, he got up and he
14 walked towards the house, back towards the house. That's
15 when he slammed the two pillars.

16 Q Okay. By two pillars, are they on the outside like
17 the edge of the door walking back into the house?

18 A Yeah. They're on the porch in front of the door, so
19 he actually put one left hand and one right hand, and
20 slammed the pillars.

21 Q And how far would you say -- and it's okay if you
22 don't know the exact distances -- that the body was from
23 the front door? Was it really far? Was it fairly close?

24 A It was in the front yard. It wasn't that far. It
25 was in the front yard.

1 Q And these front yards, are they fairly small in size?

2 A Yes, ma'am.

3 Q So he went back in the house, and then what happened?

4 A Once he went back in the house, he came back outside,

5 put a blanket over her.

6 Q Okay. And was he crying --

7 A No.

8 Q -- at any point? Did he seem emotional or upset?

9 A Not to me he didn't.

10 Q Okay. He didn't seem upset to you?

11 A Right.

12 Q And when police arrived, you said that -- or the

13 ambulance arrived.

14 A The rescue truck came first.

15 Q The fire department came first?

16 A Yeah, I think it was the rescue truck.

17 Q Rescue truck.

18 A Yeah, it was the rescue truck. Then I could hear. I

19 didn't see him -- the commotion inside of the foyer of the

20 house. So the ambulance people were attending to him.

21 Crystal and I were still standing in the same spot on

22 the curb, and we stood there until they had put it him on

23 a stretcher and brought him out.

24 Q Okay.

25 A Put him in the rescue car. As they put him in the

1 rescue car, all the police started coming at that time.

2 Q And when was the last time that you remember seeing
3 Almanita alive?

4 A I wouldn't see her, you know, like on a daily basis.
5 So the last time I seen her -- I can't really recall the
6 date that I saw her last alive. I can't really recall it.

7 Q Okay. Do you remember what she was doing when you
8 last saw her?

9 A Yeah. I believe -- I recall her driving into her
10 house. Sometimes I would sigh her in her P.T. uniform.

11 Q And the last time -- did you actually speak with law
12 enforcement, as well --

13 A Yes.

14 Q -- in this case?

15 A As the police came, we told our story to the police.
16 He told our story to the detective. We told our story to
17 the investigator.

18 Q Okay. So you told them about that what you heard,
19 and you ultimately gave a written statement in this case,
20 too, correct?

21 A Yes, ma'am.

22 Q And in that statement, you actually mentioned that
23 you had seen her maybe the month before, too, actually
24 taking pictures outside?

25 A Yeah. I remember that, as well. I think a week

1 prior. I want to say a week or two weeks prior to her
2 body being on the ground. She was taking pictures in
3 front of her house with her family members.

4 Q Okay. About a week prior to --

5 A Right.

6 Q -- you seeing this? And did Marcus Bailey say
7 anything to you?

8 A No. I never spoke a word to him. I never really
9 spoke a word to her, as well.

10 Q Okay. And even on the day that all of this happened,
11 he didn't talk to you outside of --

12 A No.

13 Q -- just saying to everyone that that was his
14 girlfriend?

15 A Yeah. That he was the only time that he spoke to me.

16 Q And the person you saw come outside the house that
17 day, do you see him here in the courtroom?

18 A Yes.

19 Q And can you point him out?

20 A Yes. He's sitting --

21 Q For the jury?

22 A He's sitting over there, Mr. Bailey.

23 Q Okay. What's he wearing?

24 A A dark gray suit and a white shirt, green tie.

25 Q Okay. Sitting next to his attorneys on the end?

1 A Yes.

2 MS. SIMPSON: Your Honor, let the record reflect that
3 he has identified the defendant.

4 THE COURT: Yes, ma'am.

5 MS. SIMPSON: Thank you.

6 CROSS-EXAMINATION:

7 BY MR. MYERS:

8 Q Good afternoon, Mr. Postell.

9 A How are you doing, sir?

10 Q Thank you for your service.

11 A Yes, sir.

12 Q Now, were you gone by the time Operation Iraqi
13 Freedom and Operation Enduring Freedom got kicked up?

14 A No, sir. I was the beginning of OIF 1, and during
15 Freedom, I was actually there in Iraq, Baghdad.

16 Q Now, prior to your testimony here today, had you ever
17 received a phone call from the Fifth Circuit Solicitor's
18 Office to come in and talk to them about what you knew?

19 A Yes, sir.

20 Q And before you took the stand to testify today, did
21 you meet with either Ms. Simpson, Ms. Cavanaugh, or Ms.
22 Campbell?

23 A Yes, sir, both the two ladies.

24 Q When did you meet with them?

25 A They came to my house Friday.

1 Q This past Friday?

2 A Yes, sir.

3 Q And how long were they there?

4 A Roughly maybe 30, 45 minutes.

5 Q Did they talk to you about what they were doing to
6 ask you today?

7 A Yeah. They just told me to come in. They wanted me
8 to testify, and they had already had my statement. They
9 gave me my statement, and I just told them everything that
10 I had already said on the statement.

11 Q So when you say they told you to come in, you didn't

12 actually go in. They came to your house.

13 A Yeah, they came to my house.

14 Q Okay. That the time, they had a copy of the
15 statement that you had given to law enforcement, right?

16 A Yes, sir; yes, sir.

17 Q That statement was on the 23rd of August 2012, right?

18 A Yes, sir.

19 Q And how long would you say you met with Ms. Cavanaugh
20 and Ms. Simpson?

21 A Again, around 30 to 45 minutes.

22 Q Thirty to 45 minutes?

23 A Yes, sir.

24 Q And did they ask you and go over the questions at
25 that time that they were going to ask you today?

1 A We didn't go over the questions. They handed me my
2 statement. They just asked me what happened, and I just
3 explained it to them.

4 Q All right.

5 A But we didn't per se go over the statement that I
6 wrote.

7 Q Okay. All right. So your testimony is that you live
8 at 620 Heron Glen Road, right?

9 A Heron Glen Drive, yes.

10 Q I'm sorry, and that is a couple houses down from
11 where Ms. Almanita Smith lived at 613 Heron Glen Road?

12 A Yes, sir, actually two houses away from it.

13 Q Now, I believe you testified that you didn't really
14 know Ms. Smith, correct?

15 A Right.

16 Q You never had any conversations with Ms. Smith?

17 A Right.

18 Q You never were at an outing within the neighborhood
19 with Ms. Smith?

20 A Never.

21 Q Now, how about Mr. Bailey? You never had an
22 opportunity to talk to Mr. Bailey either, did you?

23 A Never.

24 Q You don't know anything about him, do you?

25 A Didn't know anything about him.

1 Q Don't know the extent of the relationship the two of
2 them had?

3 A No.

4 Q Did you ever see them engage in any sort of argument?

5 A No.

6 Q Ever see Marcus become violent toward Almanita?

7 A No.

8 Q Did you ever see Almanita become violent toward
9 Marcus?

10 A No.

11 Q So at this point on August 23rd, you knew absolutely

12 nothing about the relationship between Ms. Smith and
13 Mr. Bailey, correct?

14 A Correct.

15 Q You didn't know if they had any fights, right?

16 A No, never.

17 Q Don't know if law enforcement ever responded to the
18 house for any sort of domestic disputes?

19 A No, don't.

20 Q Ever hear a neighbor say, "Hey, a police officer just
21 responded to 613 Heron Glen Drive"?

22 A Never.

23 Q Do you sitting here today have any knowledge that
24 Mr. Bailey had anything to do with Ms. Smith's death?

25 A Well, the incident -- I saw him come outside. I

1 don't know the details of how Ms. Smith's body was in the
2 grass, but the only thing I know is that I saw her on the
3 grass. I saw him come outside, and the ambulance came and
4 they took him away.

5 Q Sure, but you don't know any way as to how she got
6 outside, correct?

7 A No.

8 Q There were no plastic containers surrounding the
9 body, correct?

10 A No.

11 Q There were no blankets underneath the body, correct?

12 A Only the blanket that he put on her.

13 Q And that was just the blanket that he got after he
14 came out, right?

15 A Yes, sir.

16 Q Other than that, there were no plastic containers
17 around the body, right?

18 A Correct.

19 Q There were no blankets underneath the body, correct?

20 A Correct.

21 Q There was nothing to indicate anything there was
22 anything other than there was the blanket he got around
23 that body?

24 A Right.

25 Q Now, did you notice any fecal matter around the body?

1 A No, sir.

2 Q Did you notice any urine around the body?

3 A No, sir.

4 Q Did you know whether or not any fecal matter was
5 inside the house?

6 A No, sir.

7 Q How about any urine on the inside of the house?

8 A No, sir.

9 Q Now, when Mr. Bailey came outside, it was early in
10 the morning, right?

11 A Yes, sir.

12 Q And did you knock on the door to indicate to him that
13 you were outside?

14 A No, sir.

15 Q Did anybody knock on the door to indicate that y'all
16 were outside?

17 A No, sir.

18 Q He came out, right?

19 A Yes, sir.

20 Q And he actually saw the body.

21 A Yes, sir.

22 Q And he said, "That's my girlfriend," right?

23 A Yes, sir; yes, sir.

24 Q And he bent down --

25 A Uh-huh.

1 Q -- toward the body? He actually tried to pick her
2 up, right?

3 A Yes, sir. He tried to turn her over.

4 Q And he sat there, and he tried to rock with her and
5 cradle her.

6 A Yes, sir.

7 Q Did he not? He appeared concerned about her, didn't
8 he?

9 A Yes, sir.

10 Q Now, your testimony is that he came out in a pair of
11 shorts.

12 A I believe he had on shorts. He was dressed.

13 Q Do you recall what color shorts they were?

14 A No. I don't recall, sir.

15 MR. MYERS: If I can have this marked, Your Honor, as
16 Defendant's Exhibit 6.

17 (WHEREUPON, Defendant's Exhibit No. 6 was marked for
18 identification only.)

19 THE COURT: Do you want to mark those one other ones?

20 MR. MYERS: Yes, sir, six, seven, and eight.

21 (WHEREUPON, Defendant's Exhibits Nos. 7, 8, 9 were
22 marked for identification only.)

23 BY MR. MYERS:

24 Q Mr. Postell, I'm going to hand to you --

25 THE COURT: Have y'all seen these?

1 MS. SIMPSON: I don't know which photographs he has.

2 MR. MYERS: I apologize.

3 THE COURT: That's okay.

4 (Pause).

5 MS. SIMPSON: No objection, Your Honor.

6 THE COURT: Okay.

7 MS. SIMPSON: Well, if this is properly...

8 THE COURT: I understand. I just want to make sure
9 you had seen them.

10 MS. SIMPSON: Thank you, Your Honor.

11 BY MR. MYERS:

12 Q Mr. Postell, I'm going to hand to you what has been
13 previously marked as Defense Exhibit 6, 7 and 8. Here is
14 6 first. Does it not appear to be depicted in that
15 photograph the white t-shirt.

16 A That's right, the white t-shirt.

17 Q And a pair of burgundy pants --

18 A Yes, sir.

19 Q -- that appear to be pajama pants?

20 A Yes, sir.

21 Q And also a cell phone. I might have given you -- I'm
22 sorry. I meant sandals.

23 A Yes, sir.

24 Q But certainly not clothes and shoes?

25 A Yes, sir.

1 Q They appear to be sandals --

2 A Yes, sir.

3 Q -- or flip flops, I should say.

4 A Yes, sir.

5 MR. MYERS: Your Honor, at this time, I would move
6 into evidence what has been previously marked as Defense
7 Exhibit 6.

8 THE COURT: He hasn't said how he knows that's what
9 that is in relation to the case.

10 BY MR. MYERS:

11 Q Isn't that true, Mr. Postell, that represents the
12 clothing Mr. Bailey wore on August 23rd, 2012?

13 A I believe so, sir.

14 Q And here in Defense Exhibit No. 7, the only thing
15 different you see what is depicted as a cell phone,
16 correct?

17 A Yes, sir.

18 Q And here is another photograph that appears to be
19 another picture of the pajama pants.

20 A Yes, sir.

21 Q And all three of these pictures appear to be the
22 clothing in which Mr. Bailey was wearing on August 23rd,
23 2012?

24 A Yes, Your Honor, I believe so.

25 MR. MYERS: Your Honor, at this time I would move it

1 into evidence?

2 THE COURT: Any objection?

3 MS. SIMPSON: No Your Honor, no objection.

4 MR. MYERS: And permission to show to the jury panel?

5 THE COURT: Yes, sir. Y'all don't need to ask that
6 for -- if you need -- if something gets put into evidence
7 and you want to show it to the jury, you can go ahead and
8 publish it to them. There's enough evidence -- there's
9 enough materials that will be potentially submitted to the
10 jury, just go ahead.

11 MR. MYERS: Thank you, Your Honor.

12 MS. SIMPSON: Thank you, Your Honor.

13 (WHEREUPON, Defendant's Exhibit No. 7 was admitted
14 into evidence.)

15 BY MR. MYERS:

16 Q Mr. Postell, one thing is clear is that there are no
17 shorts depicted in those photographs, right?

18 A Yes, sir.

19 Q So in your previous testimony when you indicated that
20 he was wearing shorts, you were mistaken about that,
21 right?

22 A Yes, sir. Again, it happened a year ago. So my
23 memory fails me.

24 Q Sure, sure. I understand. I'm not saying anything
25 wrong about that. It's just you were mistaken about the

1 possibilities he was wearing shorts.

2 A Yes, sir.

3 Q Now, when you approached Ms. Smith's body, did you
4 notice any distinct odor?

5 A No, sir. I never approached the body that was on the
6 curb. I mean, I didn't enter the property. I stayed on
7 the curb.

8 Q Okay. So you were -- how far would you say the curb
9 was in relation to the body?

10 A Maybe four feet, maybe four feet.

11 Q So you never approached the body?

12 A Never.

13 Q So you never got up close and personal with the body?

14 A No, sir.

15 Q All right. You basically are saying what other
16 individuals -- what you heard other individuals say about
17 the body, right?

18 A Say it again now, sir.

19 Q When you say as far as how the body looked, you
20 stated, I believe, in your direct examination that it
21 looked as if it was unreal?

22 A Right.

23 Q That was from the perspective of four feet away,
24 correct?

25 A Right.

1 Q You never got any closer than four feet of the body?

2 A Yes, sir.

3 Q And this body, it was obvious that it was in the
4 front yard?

5 A Yes, sir.

6 Q It wasn't in a dumpster?

7 A No, sir.

8 Q It wasn't in a lake?

9 A No, sir.

10 Q It wasn't in a river?

11 A No, sir.

12 Q It wasn't in a trash can?

13 A Right, correct.

14 Q Are there regular dumps in the neighborhood where
15 sanitation normally comes within that neighborhood?

16 A The sanitation people come and pick up our garbage
17 out at the curb.

18 Q Right. I'm an old country boy, so I may be wrong
19 about this, but is it the old herbie curbie?

20 A The garage people for the city, whoever they are,
21 come.

22 Q Is that what they come and pick up?

23 A The green garbage cans.

24 Q And the body was not in that herbie curbie?

25 A Right.

1 Q It was in the front yard?

2 A Yes, sir.

3 Q An unlikely place for a body to be, right?

4 A Yes, sir.

5 Q Are you aware sitting here today, Ms. Postell, that
6 Ms. Smith had gripped in her left hand a hair follicle?

7 A I didn't get that close to tell if she had a hair
8 follicle or a flea particle or anything else.

9 Q Would it surprise you to know that she had a hair
10 follicle gripped in her left hand?

11 A Yes, sir.

12 Q Now, Mr. Bailey, you've identified him earlier in
13 your direct testimony. Would you agree with me that he
14 had short hair today?

15 A Yes, sir.

16 Q He actually would have a regulation military haircut,
17 would he not?

18 A Yes, sir.

19 Q And was his hair any longer on August 23rd, 2012 than
20 it is today?

21 A No, it was no longer.

22 Q So if there was a piece of hair two to three inches
23 long found in Ms. Smith's hand, you can certainly say that
24 it didn't belong to Marcus Bailey, right?

25 A Correct, sir.

- 1 Q This neighborhood, single family dwelling, correct --
- 2 A Yes, sir.
- 3 Q -- was there a garage attached to this house?
- 4 A Yes, sir. There was a garage attached to the house.
- 5 Q Was it a two car or a single car?
- 6 A Two car.
- 7 Q Do you know how many cars were present?
- 8 A In the garage?
- 9 Q Yes, sir.
- 10 A No, I don't. The garage was closed.
- 11 Q Had you ever seen Ms. Smith drive a car?
- 12 A Drive a car?
- 13 Q Yes, sir. What type of car did she have?
- 14 A It was a black car. I want to say Mazda or -- it was
- 15 a foreign-made car. It was a black foreign-made car.
- 16 Q Did you ever see Mr. Bailey drive a car?
- 17 A Yes, sir.
- 18 Q What car did you ever see him drive?
- 19 A If I could recall, it could have either been a blue
- 20 or a gray Honda.
- 21 Q How long before August 23rd, 2012 do you recall
- 22 seeing Mr. Bailey drive a car?
- 23 A Again, I didn't see them on a daily basis. I only
- 24 saw them from time to time. So I can't recall a specific
- 25 date whether it was a week before, two weeks before or 30

1 days before.

2 Q You can't say it was a month before?

3 A No. I can't really.

4 Q You can't say it was 45 days before?

5 A No.

6 Q You just don't know?

7 A Right.

8 Q Sitting here today, do you know of any reason
9 Mr. Bailey would have had to hurt Ms. Almanita Smith?

10 A Not that I know of, no, sir.

11 MR. MYERS: Beg the Court's indulgence.

12 (Pause.)

13 Thank you, Ms. Postell. No further questions.

14 THE COURT: Redirect?

15 MS. SIMPSON: Brief, Your Honor.

16 REDIRECT EXAMINATION:

17 BY MS. SIMPSON:

18 Q And you had seen Almanita, correct, even though you
19 didn't really talk a lot?

20 A Yes, ma'am.

21 Q And how was her hair? Do you remember the length of
22 her hair?

23 A It wasn't long hair. It was, I guess, short.

24 Q Shoulder length?

25 A Yes.

1 Q So not down to the back long?

2 A Right.

3 Q But definitely longer hair?

4 A Yes, ma'am.

5 Q And the defense showed you the pictures of the pants
6 or the shorts. Was that your focus that day, what he was
7 wearing?

8 A Yeah. When I seen him come out, I believe that's
9 what he was wearing.

10 Q Okay. And is that what you were paying attention to
11 the most exactly what his clothing looked like?

12 A No. I wasn't paying attention to the clothing the
13 only thing he had on that day.

14 Q But you did observe his behavior?

15 A Yes, ma'am.

16 Q And it was odd to you?

17 A It was -- it wasn't excited -- overly excited. He
18 was, I guess, normal.

19 Q And, again, at what point did he recognize and say,
20 "That's my girlfriend"?

21 A Shortly after Ms. Crystal asked him, "Do you know who
22 that is?"

23 Q Okay. Before he got to the body and rolled her
24 over --

25 A Yes, ma'am.

1 Q -- right?

2 Okay. All right. Thank you.

3 THE COURT: Anything?

4 RECROSS-EXAMINATION:

5 BY MR. MYERS:

6 Q Mr. Postell, just one question. You never knew
7 Ms. Bailey, right?

8 A I never personally introduced myself to Mr. Bailey.

9 Q So when you say normal, you don't know anything about
10 his demeanor?

11 A No, I don't.

12 Q You don't know anything about his natural behavior?

13 A No, I don't.

14 Q You don't know how he reacted to certain things,
15 whereas, how you react to certain things?

16 A No, that's correct.

17 MR. MYERS: No further questions.

18 THE COURT: All right. Any objection to this witness
19 being excused?

20 MS. SIMPSON: None from the State.

21 MR. MYERS: No, sir, Your Honor.

22 THE COURT: Thank you, Mr. Postell. I appreciated
23 your being here. You are free to leave.

24 THE WITNESS: Thank you.

25 THE BAILIFF: Watch your step down. Step down and

1 lived two doors -- at the time, I didn't know it was my
2 neighbor, but later it was two doors down. It was a body
3 there actually in the front yard.

4 Q And did you even realize it was a body at first when
5 you saw it?

6 A When I first recognized it, it looked kind of strange
7 from the distance that I was at. Then I got up a little
8 bit closer, and I realized after I saw that there were
9 feet and legs. Yes, it was a body.

10 Q And was the body clothed when you first saw it?

11 A The body was clothed from the top portion. The lower
12 portion from the waist down was nude.

13 Q And at that point, was it fairly quiet outside?

14 A Very quiet.

15 Q What happened after your husband came and got you?

16 A After he came and got me, we both went outside. My
17 husband -- my husband and I walked outside. Our neighbor
18 Crystal was already outside. She was on the phone, and we
19 were just standing there viewing the body in disbelief at
20 what we were seeing.

21 Q And what happened while y'all were out there? Did
22 anybody come out?

23 A While we were out there, I'd say a few minutes
24 passed. We had been standing out there a good five
25 minutes or so, three to five minutes, and then the door to

1 where the body was laying out at opened, and a gentleman
2 came out.

3 Q Okay. And what did he do when he first came out?

4 A When he first opened up the door, I recognized him.
5 He didn't actually step outside the door. He kind of
6 opened the door, looked to the right, looked to the left,
7 and then he proceeded out.

8 Q Did that seem -- did that seem odd to you?

9 A It seemed odd to me because nobody knocked on the
10 door, nobody was making a noise or anything for him to
11 even open up the door.

12 Q Was he -- what did his demeanor appear to you? Was
13 he showing you emotion?

14 A When he opened up the door, he showed no emotion. He
15 looked to the right. He looked to the left. He came out,
16 and he ran to the body and collapsed on the ground. My
17 neighbor, Crystal, was still on the phone with 9-1-1, and
18 I remember her saying, "Do you know who that is?"

19 He hovered -- he was hovered over the body. He
20 rolled the body over and looked and said, "Yes. It's my
21 girlfriend," something Nita. I didn't get the full name,
22 but I heard it, Kita or Amika (phonetic) at the end.

23 Q How often did you see Almanita Smith?

24 A Not often.

25 Q Okay.

DIRECT EXAMINATION:

BY MS. CAVANAUGH:

Q Good morning, Investigator Lee.

A Good morning.

Q Where are you currently employed?

A The Richland County Sheriff's Department Crime Scene Unit.

Q And how long have you worked with the sheriff's department?

A Eighteen years.

Q And how long have you been employed in your capacity as a crime scene investigator?

A Next month it will be six years.

Q So in August of 2012, you were employed as a crime scene investigator with the Richland County Sheriff's Department?

A Yes, ma'am.

Q And what type of training have you -- what are your responsibilities as a crime scene investigator?

A As a crime scene investigator, we respond to scenes. It can be any scene such as a burglary, theft, a robbery, all the way to a natural death, a homicide, suicide.

Our job is to go there and to assess the scene, collect any physical evidence that's related to the crime, analyze that evidence and submit it to evidence to be held

1 for court, if needed.

2 Q And have you trained training in crime scene
3 investigation?

4 A I have.

5 Q And --

6 A Over the last six years, I have attended almost 400
7 hours of courses. Some of those pertaining to what I did
8 in this case are going to be June of 2007, Basic
9 Fundamentals of Crime Scene Investigation. It's a 16-hour
10 course; Advanced Blood Pattern Analysis, that's November
11 of 2007. That was a one-day course; Advanced Crime Scene

12 Photography Techniques, November of 2007, 16-hour course;
13 crime Scene Processing. This was a homicide
14 investigation. This was a 40-hour course, and that was
15 January to February of 2008; Basic Blood Pattern Analysis,
16 May of 2007. That was a 40-hour course; Expert Witness
17 Testimony, August of 2008, 40-hour course; Crime Scene
18 Reconstruction, September 2008, 40-hour course; Advanced
19 Blood Pattern Analysis, October 2008, 40-hour course;
20 Forensic Anthropology and Archeology, that was a two-day
21 course in October of 2009.

22 Let's see. Blood Pattern Analysis, November of 2011.
23 That was a 40-hour course; Crime Scene Reconstruction
24 course, November of 2012. That was a 40-hour course. I'm
25 also a certified crime scene investigator through IEI.

1 Last year I obtained my certificate. It was a year-long
2 study to pretty much get that.

3 We also have an in-house testing program. It takes
4 upward of three years to complete, and I believe I
5 completed that in 2010 fully. It's a ten-phase process.
6 It covers many difference things, all the disciplines, we
7 deal with daily.

8 Q And can you estimate how many times you responded to
9 a crime scene as a crime scene investigator?

10 A As a crime scene investigator, on a minimum, actual
11 crime scene, 500, at least.

12 Q Okay. And in your capacity with the sheriff's
13 department before that?

14 A I was a corporal on the road for many years. We
15 responded to calls and various things like that. At least
16 1,000 different crime scenes I went to. In crime scene, I
17 mean, it could be anything from a minor to a major, of
18 course.

19 Q And as a crime scene investigator, have a lot of
20 your -- have you responded to a large number of murder
21 cases?

22 A Not a large number of murder cases, but a large
23 number of death cases.

24 Q Okay. I apologize. I misspoke.

25 A Yeah. It depends on the rotation. Sometimes we will

1 get a homicide, and sometimes we will be off on the other
2 rotation. We'll get one. We're called upon by the
3 coroner's office to investigate any death scene, whether
4 it's a child, natural. If we need to come in and assist
5 with that, we assist with that.

6 That could be one week to more than that. So I could
7 have responded to, in the last six years, 100 death
8 scenes. Of those, probably less than 20 were a homicide
9 or homicide related and so forth.

10 Q And have you been qualified as an expert in crime
11 scene analysis and investigations before?

12 A I have.

13 Q In a court of law?

14 A Yes, in a court of law.

15 Q In criminal court?

16 A Yes.

17 Q How many times?

18 A I believe I've testified three times July and August
19 of 2010 and testified two times in July and August
20 of 2011. Five times total.

21 Q As an expert?

22 A Yes.

23 MS. CAVANAUGH: Your Honor, I'd ask at this time
24 Timothy Lee be qualified as an expert in the area of crime
25 scene investigation and analysis.

1 MR. MYERS: No objection, Your Honor.

2 THE COURT: Do you wish to voir dire the witness on
3 this?

4 MR. MYERS: No, sir.

5 THE COURT: All right. Ladies and gentlemen,
6 normally, a person that testifies before you cannot give
7 opinion testimony. Normally when a person testifies, they
8 may testify as to what they either saw, heard, sensed by
9 smell or something of that nature.

10 However, there is an exception under our Rules of
11 ~~Evidence when someone is qualified because of education or~~
12 experience. They are permitted to give their opinion in
13 certain areas if the court qualifies them in that way.

14 This witness, Investigator Lee, will be qualified in
15 the area of crime scene analysis and investigation. He
16 will be allowed to give opinion testimony in that area.
17 Now, just because of this, that does not mean that you
18 must accept his opinion. As I told you in my opening
19 charge, and I will tell you throughout this case, it is
20 your job to weigh the evidence.

21 It is your job to find the truth, and you must look
22 at this evidence and this testimony as you would any other
23 testimony and give it the weight and credibility that you
24 and you alone deem that is appropriate under the
25 circumstances.

1 Thank you very much, Ms. Cavanaugh. You may
2 continue.

3 MS. CAVANAUGH: Thank you, Your Honor.

4 BY MS. CAVANAUGH:

5 Q Investigator Lee, did you respond to 613 Heron Glen
6 Road back in August of 2012?

7 A I did.

8 Q And what day did you respond?

9 A The date was August 23rd, 2012. I received a call
10 from Corporal Tucker at 7:20 a.m.

11 Q And Corporal Tucker was the supervising responding
12 officer?

13 A He was.

14 Q And what time did you actually arrive at the scene?

15 A I arrived at the scene at 8:20 a.m.

16 Q What was the nature of the call? Why did you
17 respond?

18 A I was called in reference to a suspicious death. A
19 person was found deceased in the front yard at that
20 location.

21 Q Who else was at the scene once you arrived?

22 A When I arrived on scene, I met with Corporal Tucker
23 who briefed me on what they had. I believe Deputy Coroner
24 Jane Powell had already arrived, and I think shortly
25 after, that Investigator Rob Martin arrived, as well.

1 Investigator Bouknight, who was with our crime scene,
2 as well, he was the on-call supervisor. He was contacted
3 en route. Our policy is a supervisor responds to most
4 death scenes, especially if they're suspicious in nature
5 to assist on call, and I was on call at the time.

6 Q And was this a suspicious in nature call?

7 A It was.

8 Q And why was that?

9 A Because the body was found in a decomposition state
10 in the front yard.

11 Q And what did you observe about the scene upon

12 arriving? Was there already crime scene tape up?

13 A There was. When first responders, such as Corporal
14 Tucker respond, they're required to secure the scene for
15 us. Crime scene tape is surrounded around the property,
16 depending on what it is.

17 It could be a large scene. It could be a small
18 scene. A log is started. The log is for entry, why they
19 went in. What was the purpose of it, such as EMTs
20 responding to check on the body, things of that nature.
21 So when I arrived, the crime scene tape was up, the log
22 was maintained.

23 Q And did you observe the body in the front yard when
24 you first arrived?

25 A I did. I observed a person in the front yard with a

1 blanket, a dark-colored blanket over the top of them.

2 Q I'm going to show you what's been marked as State's
3 Exhibit 157 through 159, as well as State's Exhibit 9.

4 Does that fairly and accurately depict the front of
5 the house and the scene when you arrived? You can glance
6 at those.

7 A (Pause). Yes, it does.

8 MS. CAVANAUGH: Okay. Your Honor, at this time I'd
9 request that State's Exhibit 157 through 159 and number 9
10 be admitted into evidence.

11 ~~MR. MYERS: Without objection, Your Honor.~~

12 THE COURT: Admitted without objection.

13 (WHEREUPON, State's Exhibits Nos. 157-159, 9 were
14 admitted into evidence.)

15 BY MS. CAVANAUGH:

16 Q Can you describe the yard at the victim's residence?

17 A The yard was small in the front. Most of the
18 properties in this subdivision are not very large and
19 probably a quarter acre or less.

20 It was in a cul-de-sac. The home was vinyl in color,
21 tannish with red shutters. It's a two story with an
22 attached garage on the right side, a small driveway.

23 There was no vehicle in the driveway, and the victim was
24 in the front yard close to the front porch sidewalk area.

25 Q Thank you. Okay. And did you -- while you were on

1 the scene, did you learn who the victim was?

2 A Yes. Corporal Tucker told me that it's going to be
3 the occupant of the home, a Ms. Smith, and this was told
4 to him by the defendant before he was transported for a
5 medical condition.

6 Q Okay. And the defendant, he was gone by the time you
7 arrived; is that correct?

8 A That's correct.

9 Q How was the body actually laid?

10 A She was face down on her stomach. The head was
11 slightly cocked to the side.

12 Q Okay. And was it your understanding that a search
13 warrant being obtained for the home?

14 A Right. The investigations division was drawing up a
15 search warrant. I believe Investigator Josh Mauldin was
16 seeking that with a judge while we were on the scene. We
17 dealt with the exterior crime scene, and we did not enter
18 in the home until the search warrant was secured.

19 Q What did you do with the exterior of the home? How
20 did you process that?

21 A Anytime we respond to a scene, we start with an
22 assessment of the area. Assessing is just visually
23 looking, seeing what is there, making sure there is no
24 evidence that can be disturbed or too badly disturbed
25 where EMS coming in. They're going to disturb the scene

1 slightly just because of the way it is, but photographs
2 are collected of all different angles, close ups, distance
3 and so forth. That's what I did. I photographed around
4 the property, including behind the home. I photographed
5 the victim, as well.

6 Q I'm going to show you what's marked as State's
7 Exhibit 160 and 161, as well as 10 through 13. Does that
8 fairly and accurately depict the victim when you arrived
9 at the scene?

10 A Yes, it does.

11 MS. CAVANAUGH: Your Honor, at this time I'd move to
12 admit photographs ten through 13 into evidence, as well as
13 160 and 161.

14 MR. MYERS: No objection, Your Honor.

15 THE COURT: Admitted without objection.

16 Give Ms. Ambroziak one second to write all of that
17 down.

18 (WHEREUPON, State's Exhibits Nos. 10 - 13, 160, 161
19 were admitted into evidence.)

20 THE COURT: Ladies and gentlemen, the reason we do
21 that is because not only is she taking everything down by
22 hand and it's being recorded, but she is also keeping a
23 log so at the end of the case, we can make sure that the
24 appropriate items come back to you. That's the reason for
25 that pause in there, so that we can make sure we have an

1 accurate record, and that's the only reason.

2 Thank you, Ms. Cavanaugh.

3 BY MS. CAVANAUGH:

4 Q Now, what was your understanding about that black
5 blanket?

6 A Corporal Tucker stated that Mr. Bailey had got the
7 blanket from inside the home and covered up the victim.
8 that was prior to him arriving. So he never went inside,
9 but that's where the blanket had come from was inside the
10 home.

11 Q When you take photographs, do you try to start from
12 the -- from a wider angle and then get closer?

13 A Yes.

14 Q Okay. And what's the purpose of that?

15 A It displays everything as an actual view from a
16 distance. What you're seeing from a distance when you
17 actually viewed that. So when I arrived, I was always
18 away. That is an accurate depiction of the way it looked.

19 Then when you get closer, you can see more things.
20 You want to focus in on smaller items, such as there was a
21 cell phone beside the victim's hand lying in the grass.

22 There was beginning fly activity on the victim.
23 That, you probably wouldn't clearly see from a distance,
24 so you do further away. Then you move in to get closer
25 shots.

1 Q And you just mentioned -- did you say flies?

2 A That's correct.

3 Q What did you notice about the flies as you were on
4 the scene?

5 A Typically, on an exterior scene with a body, there
6 could be a lot of fly activity depending on the time of
7 the year. This being August, it was cloudy. It was warm.
8 It was becoming humid.

9 You'll see fly activity begin. It was minimal.
10 Clearly, this was not where she died, and Jane Powell,
11 Deputy Coroner and I discussed that when we got on the

12 scene, but this was not going to be where she first died.
13 There's a secondary scene somewhere. The flies were
14 beginning, and they increased throughout the scene when we
15 got there.

16 Q Did you notice any type of odor while you were
17 photographing the victim?

18 A Yes. Any time with a death scene, there's going to
19 be an odor of death. Decomposition increases that odor,
20 the gases and so forth. This was very pungent.

21 I've gone to many death scenes. Many of them being
22 decomp. I've attended many autopsies the same way. The
23 odor is very pungent. It's very strong. You'll never
24 forget it. It's distinctive, and it was clear that day
25 there was an odor of decomp. around the body.

1 Q I'm going to show you what's marked -- before I show
2 you these, did you actually observe any type of what
3 appeared to blood on her face or her red --

4 A Yeah, I believe --

5 Q Red bodily fluid on her face.

6 A Let me look at my notes real quick. There was a
7 reddish fluid behind -- it would be behind the left ear
8 running slightly down beside the neck that he was
9 photographed, and it was...

10 Q Okay. I'm going to show you what's marked as State's
11 Exhibit 16 and then 162 through 165. I'm going to ask you

12 if those depict both the fly activity as you were on the
13 scene as well as the red that you just mentioned that was
14 on her face. Did it appear to be blood?

15 A It appeared to be blood, yeah.

16 Q Okay.

17 A Yeah. We don't usually classify it as that until we
18 can have it tested, but being the death of a person, you
19 would expect blood to come from a body. So yes, those are
20 accurate.

21 MS. CAVANAUGH: Your Honor, at this time I'd move to
22 introduce State's Exhibit 16, 162 through 165 into
23 evidence.

24 MR. MYERS: No objection, Your Honor.

25 THE COURT: Admitted without objection.

1 (WHEREUPON, State's Exhibits Nos. 16, 162 - 165 were
2 admitted into evidence.)

3 BY MS. CAVANAUGH:

4 Q At some point, was the blanket removed?

5 A Yes.

6 Q And were more photographs taken of her body after
7 that?

8 A That's correct.

9 Q What did you notice about her arms and her other
10 limbs?

11 A ~~I observed the victim to only have a multicolor brown~~
12 and black t-shirt on. They appeared to be sustained with
13 fluid. She was nude from the waist down.

14 Her arms had what they consider slippage where the
15 skin is slipping away, discoloration to the skin, and
16 there was swelling, as well.

17 Q And is that -- as far as you understand, is that
18 because of the level of decomposition of the body?

19 A From what I've seen from the scenes I've gone to,
20 that's -- that's consistent with that, but I'm not a
21 medical examiner. So -- but my experience, yes, that's
22 typical.

23 Q Okay. I want to show you what's marked as State's
24 Exhibit 14 through 17. Does that fairly and accurately
25 depict the slippage that you're referring to?

1 A Yes. Do you want me to look at all of them?

2 Q Yes, please.

3 A Yes.

4 MS. CAVANAUGH: Your Honor, at this time, I'd move to
5 introduce State's Exhibit 14 through 17 -- I'm sorry, 14,
6 15 and 17 into evidence.

7 MR. MYERS: No objection, Your Honor.

8 THE COURT: Admitted without objection. That's 14,
9 15, and --

10 MS. CAVANAUGH: And 17.

11 THE COURT: Seventeen.

12 (WHEREUPON, State's Exhibits Nos. 14, 15, 17 were
13 admitted into evidence.)

14 BY MS. CAVANAUGH:

15 Q Do these photos also show the cell phone that was
16 located by her body?

17 A That's correct.

18 Q And there appears to be some type of instrument on
19 her arm. What was?

20 A That's going to be an EKG lead that the EMTs will put
21 on the body to check for any signs of life.

22 Q At some point, was the victim's body turned around?

23 A It was. It was rolled over.

24 Q Okay. At what point was that done? Was that
25 after -- can you describe that for us?

1 A Let me refer to my notes.

2 (Pause).

3 It would have -- it would have been done before
4 the -- before we proceeded much further with the scene.
5 We went to check the body, make sure that we could
6 determine -- if we can determine, was -- was she shot?
7 Was she stabbed? Was there any signs of injury that we
8 could say that she died from? With the assistance of the
9 coroner's office, we always do that.

10 The body needs to be looked at on both sides to see
11 if there's anything underneath, you know, or on the back
12 if they're on the back.

13 So she would have been rolled over, and she would
14 have been -- her hands were processed by Investigator
15 Bouknight, and they were bagged, meaning bags cover the
16 hands to contain any trace evidence, and she would have
17 been transported to the morgue in preparation for an
18 autopsy.

19 Q And were there any signs of -- you spoke of signs of
20 injury. Other than the level of decomposition, were there
21 other signs of injury that you noted while you were there?

22 A No, not that we could see at that time.

23 Q Let me show you what's marked as State's Exhibit 18
24 and 19, as well as 169 through 172 and ask you if that
25 fairly and accurately depicts the victim after she was

1 rolled over?

2 A It does.

3 MS. CAVANAUGH: Your Honor, at this time, I'd move to
4 introduce 18 and 19, as well as 169 through 172 into
5 evidence.

6 MR. MYERS: No objection.

7 THE COURT: Admitted without objection.

8 (WHEREUPON, State's Exhibits Nos. 18, 19, 169 - 172
9 were admitted into evidence.)

10 BY MS. CAVANAUGH:

11 Q ~~What did you notice about her tongue, Investigator~~
12 Lee?

13 A Her tongue was very swollen and protruding from the
14 mouth. From the death scenes I've been to that are
15 decomp. related, that's -- that's a sign that usually
16 happens with a body.

17 Q Were there also closeups taken of the victim's feet?

18 A There was.

19 Q I show you what's marked as State's Exhibit 166
20 through 168, as well as 175 through 178 and ask you if
21 those fairly and accurately depict the victim's feet at
22 the home that morning?

23 A Yes, they do.

24 MS. CAVANAUGH: Your Honor, at this time I'd move to
25 introduce 167 through 168 into evidence, as well as 175

1 through 178.

2 THE COURT: Earlier you said 166, too. Is 166 in
3 there?

4 MS. CAVANAUGH: 166 through 168, yes, sir.

5 THE COURT: And then 175 through 178?

6 MS. CAVANAUGH: Yes, sir.

7 THE COURT: Okay.

8 (WHEREUPON, State's Exhibits Nos. 166-168, 175-178
9 were admitted into evidence.)

10 BY MS. CAVANAUGH:

11 Q ~~What did you observe about the victim's heels?~~

12 A The heels were discolored. It appeared to be some
13 type of -- possibly a bruise, but like I said, I'm not a
14 medical examiner, so I'm not sure what that was. It was
15 -- they were discolored around the heels.

16 MS. CAVANAUGH: Beg the Court's indulgence.

17 THE COURT: Yes, ma'am.

18 (WHEREUPON, State's Exhibit No. 205 was marked for
19 identification only.)

20 (Pause.)

21 BY MS. CAVANAUGH:

22 Q I'm going to show you what's marked as State's
23 Exhibit 205. Does that depict the discoloration on her
24 heel that morning?

25 A Yes, it does.

1 MS. CAVANAUGH: Your Honor, I'd move to admit State's
2 Exhibit 205 into evidence.

3 MR. MYERS: No objection, Your Honor.

4 THE COURT: 205 admitted without objection.

5 (WHEREUPON, State's Exhibit No. 205 was admitted into
6 evidence.)

7 BY MS. CAVANAUGH:

8 Q When you collect evidence, what do you use? Are you
9 wearing gloves when you're within the crime scene tape?

10 A Right. Any time evidence is touched that's going to
11 be collected, we change out our gloves, use fresh gloves.

12 It's placed into clean bags.

13 If it's wet, it will go into -- if it's a biohazard,
14 it will go into a plastic bag to be taken back to be
15 dried. We have drying cabinets back in our forensic
16 garage to be used to dry this evidence, so it doesn't
17 mildew and destroy evidence and so forth.

18 But anything that is collected, you know, a pile of
19 discarded gloves you're going to see on the scene. We're
20 going to be changing gloves a lot. We are to preserve the
21 evidence to retain anything that is on there trace and so
22 forth.

23 Q Did you actually collect the black blanket that was
24 covering her body?

25 A I did.

1 Q I'm going to show you what's marked as State's
2 Exhibit 185, can you tell me what this is?

3 A This is an evidence slip that I filled out for a
4 black blanket.

5 THE COURT: Do you have some gloves, too,
6 Ms. Cavanaugh? Do you have some gloves?

7 MS. SIMPSON: Here they are.

8 BY MS. CAVANAUGH:

9 Q Can you describe the blanket again while I'm...

10 A The blanket -- to me, I called it a fuzzy blanket.
11 It appeared to be kind of like a -- maybe like a felt or

12 something like that in texture, so it had been a soft
13 dark-colored blanket that was kind of fuzzy.

14 Q And when you collect items of evidence, how do you --
15 can you explain that process?

16 A The item is going to be contained the best that you
17 can in order to not lose or try to not lose any trace
18 evidence and placed into a sealed container whether it be
19 a box or a bag for transport back to the house.

20 Q And is this the blanket that you collected from the
21 victim's body that morning?

22 A That appears to be, yes.

23 Q And you described it as black, fuzzy?

24 A Yes, I did.

25 MS. CAVANAUGH: Your Honor, at this time I'd move to

1 introduce State's Exhibit 185 into evidence.

2 MR. MYERS: No objection, Your Honor.

3 THE COURT: Admitted without objection.

4 (WHEREUPON, State's Exhibit No. 185 was admitted into
5 evidence.)

6 BY MS. CAVANAUGH:

7 Q Did you also take pictures of the backyard?

8 A I did.

9 Q Did you recognize anything out of the ordinary in the
10 backyard?

11 A No, nothing was noted out of the ordinary in the

12 backyard.

13 Q Let me show you what's marked as State's Exhibit 173
14 and 174. Does that fairly and accurately depict the
15 victim's backyard that morning?

16 A Yes, it does.

17 MS. CAVANAUGH: Your Honor, at this time, I'd move to
18 introduce 173 and 174 into evidence.

19 MR. MYERS: No objection.

20 THE COURT: 173 and 174 admitted without objection.

21 (WHEREUPON, State's Exhibits Nos. 173, 174 were
22 admitted into evidence.)

23 BY MS. CAVANAUGH:

24 Q You mentioned that you took measurements of the front
25 yard?

1 A I did take measurements to add to the sketch, as
2 well.

3 MS. CAVANAUGH: Okay. Beg the Court's indulgence.
4 (Pause.)

5 THE COURT: Yes, ma'am.

6 BY MS. CAVANAUGH:

7 Q I show you what's marked as State's Exhibit 204. Is
8 that an enlarged version of your crime scene sketch with
9 the measurements?

10 A Yes, that's the computer-generated version.

11 Q Okay.

12 Your Honor, at this time, I'd like to introduce
13 State's Exhibit 204 into evidence.

14 MR. MYERS: No objection, Your Honor.

15 THE COURT: Admitted without objection.

16 (WHEREUPON, State's Exhibit No. 204 was admitted into
17 evidence.)

18 BY MS. CAVANAUGH:

19 Q Now, what is the purpose of -- well, I'll have you
20 step down.

21 THE COURT: All right. Investigator Lee, I'm fine
22 with you stepping down. I need you to make sure that the
23 court reporter can hear you and all the way to the back
24 row of our jury, that they can hear you.

25 So if you can't hear, somebody just kind of give me a

1 sign, and we'll fix that.

2 THE WITNESS: Right. I have hearing loss, so if I
3 don't speak loud enough, say something. I won't be
4 offended by it.

5 THE COURT: Okay. Thank you.

6 BY MS. CAVANAUGH:

7 Q We'll be brief with this.

8 Would you -- can you describe what we're looking at
9 right here?

10 A We use a program called Crime Scene PD. Basically,
11 ~~what you can use on this is you can take your measurements~~

12 that I collected from the scene. I'll do a hand sketch
13 from the scene, and we can put it in.

14 It helps to clean it up a little bit and make it look
15 nice. This is where the body was, was the home is. This
16 is the porch and the garage attached that I described as
17 the home.

18 This is driveway, the mailbox, just a few other
19 smaller items, and what we'll do is we'll take -- you can
20 use triangulation. That's what I used this time. I
21 triangulate it from different areas of the body to fixed
22 points such as the sidewalk, the edge of the driveway, the
23 water meter to the victim, and also, this helps in case we
24 need to recreate the scene. We can accurately put them
25 back into it.

1 There are certain programs that you can use that are
2 a lot more sophisticated. This is a basic technique
3 that's taught to crime scene processing, just taking
4 general measurements, three points and so forth and using
5 that. You accurately -- within, you know, put the item,
6 object or the person back in that spot.

7 Q And did you measure the distance between the front
8 porch and where the victim is laying?

9 A From the front porch here to the victim?

10 Q Uh-huh.

11 A From the front door to say the head is going to be
12 roughly 19 feet, seven inches.

13 Q Is that an 8 or 19?

14 A Where? Right here?

15 Q Right.

16 A I believe that's 8.7, I think.

17 Q Okay.

18 A I'm sorry. It's going to be -- yes, 8.7 inches from
19 the edge of the sidewalk to the top of the victim's head,
20 and then from the front door to the edge of the sidewalk
21 is 11 feet which is here to here and then there.

22 Q Okay. You can sit back down, Investigator Lee.

23 A All right.

24 Q Okay. After you finished with the outside, what did
25 you do next?

1 A Let me refer to my notes. Once we finished outside,
2 the victim was transported. Everything was a scene from
3 the edge of the property onto the home, so now we're ready
4 to enter into the home.

5 We're waiting on the search warrant, and at 09:45
6 hours Investigator Mauldin arrived with a search warrant.
7 Investigator Bouknight, who was my supervisor, we entered
8 into the residence executing the search warrant and began
9 viewing the scene, analyzing the scene and taking
10 photographs.

11 Q ~~I'm going to show you what's marked as State's~~
12 Exhibit 20 through 21. Does that depict the front door of
13 the victim's home as it appeared that morning?

14 A It does.

15 MS. CAVANAUGH: Your Honor, at this time, I'd move to
16 introduce 20 and 21 into evidence?

17 MR. MYERS: No objection, Your Honor.

18 THE COURT: Admitted without objection.

19 BY MS. CAVANAUGH:

20 Q And did there appear to be --

21 THE COURT: Hold on.

22 (WHEREUPON, State's Exhibits Nos. 20, 21 were
23 admitted into evidence.)

24 BY MS. CAVANAUGH:

25 Q Did there appear to be any type of forced entry or

1 anything of that nature?

2 A No. There was no forced entry.

3 Q Did you also take photographs of the living room?

4 A I did.

5 Q I'm going to show you what's marked as State's
6 Exhibit 22 through 35 and ask you if these fairly and
7 accurately depict the living room as it appeared that
8 morning?

9 A Yes, that's accurate.

10 MS. CAVANAUGH: Okay. Your Honor, at this time I'd
11 ~~move to introduce State's Exhibit 22 through 35 into~~
12 evidence.

13 MR. MYERS: No objection, Your Honor.

14 THE COURT: Admitted without objection.

15 (WHEREUPON, State's Exhibits Nos. 22 - 35 were
16 admitted into evidence.)

17 BY MS. CAVANAUGH:

18 Q Was there a computer located beside the couch on the
19 chair?

20 A There was a laptop that was on a polka dot chair in
21 the living room..

22 Q And does that appear to be a flier on State's
23 Exhibit 23?

24 A Yes.

25 Q Can you tell what that flier is? Do you remember

1 what that was?

2 A I believe it was a flier that was being put out in
3 the neighborhood in reference to Gabbiie Swainson.

4 Q Okay. Was there also a vacuum cleaner that was right
5 in the front of the living room?

6 A Yes. There was a red vacuum cleaner.

7 Q Did you notice anything about the smell inside of the
8 home in that living room area?

9 A There was a lot of air freshener, incense, just very
10 strong when you walked in the door. The home was tidy.

11 ~~It was neat, but it was almost excessive on the smell of~~
12 the incense and the air freshener.

13 Q I'm going to show you what was marked as State's
14 Exhibit 27. Do you see the air freshener behind the TV in
15 that photo?

16 A Yes.

17 Q And did you take closer pictures of that canister?

18 A I did.

19 Q I'm going to show you State's Exhibit 32. Does that
20 depict as you're looking through the front door?

21 A Yes. That's the living room looking into the kitchen
22 that's going to be off to the right.

23 Q And there appears to be some short of shelving piece
24 of furniture. What's on top of that?

25 A That is a battery powered air freshener almost like a

1 commercial grade in a sense, not like an Air Wick or
2 something like you'd buy in the store. It's a larger one.

3 Q Were there more of those located downstairs?

4 A I located a bag behind -- if you're looking at that
5 photograph off to the left, there was a small bar, and
6 there was a bag, plastic bag behind the bar with another
7 one in it and the boxes from the containers, as well.

8 Q And I'm going to show you what's marked as State's
9 Exhibit 35. Is that a candle?

10 A Yes.

11 Q ~~As well as a shelving unit with pictures of the~~
12 victim and her family or what appeared -- well, the victim
13 with others, people in the pictures?

14 A I believe it is.

15 Q In the pictures?

16 A Yeah, I believe it is.

17 Q And is that the back door?

18 A Yes.

19 Q Okay. Now, the vacuum canister, did you collect
20 that?

21 A I did.

22 THE COURT: Did they move in 27 and 32?

23 THE COURT REPORTER: Yes.

24 THE COURT: My mistake. I'm sorry. I'm trying to
25 keep up.

1 BY MS. CAVANAUGH:

2 Q I'm going to show you what's marked as State's
3 Exhibit 187. Do you recognize this box?

4 A Yes. It's an evidence label that I filled out
5 stating "Dirt Devil vacuum canister".

6 Q And was that what you collected from the living room
7 that morning?

8 A It was, just the canister, not this entire vacuum.

9 MS. CAVANAUGH: Your Honor, at this time I'd move to
10 introduce State's Exhibit 187 --

11 MR. MYERS: No objection.

12 MS. CAVANAUGH: -- into evidence.

13 MR. MYERS: No objection, Your Honor.

14 THE COURT: 187?

15 MS. CAVANAUGH: Yes.

16 THE COURT: Okay. Admitted without objection.

17 (WHEREUPON, State's Exhibit No. 187 was admitted into
18 evidence.)

19 BY MS. CAVANAUGH:

20 Q I'm going to show out what's marked as State's
21 Exhibit 179 and 180. Does that fairly and accurately
22 depict the couch that morning in the living room?

23 A Let me see it a second.

24 Q Sure.

25 A Yes, it does.

1 MS. CAVANAUGH: At this time, I'd like to introduce
2 179 through 180 into evidence.

3 MR. MYERS: No objection.

4 THE COURT: 179 and 180 admitted without it
5 objection.

6 (WHEREUPON, State's Exhibits Nos. 179, 180 were
7 admitted into evidence.)

8 BY MS. CAVANAUGH:

9 Q Does there appear to be some sorts of bank slip
10 underneath that couch?

11 A There is a receipt that was right next to the couch.

12 I believe it was an ATM receipt.

13 Q What did you do after you finished photographing --
14 well, before I move on, was there also a bar area below
15 the stairs that was off the living room?

16 A Yes. There was a small leather-type looking bar that
17 was right next to the stair steps leading to the second
18 floor.

19 Q And did you photograph that area, as well?

20 A I did.

21 Q What did you notice that was behind that bar area?

22 A Let me look at my notes.

23 (Pause.)

24 Behind the bar was a small plastic bag that contained
25 two small boxes. I believe they're called Stratus 2, and

1 that is going to be the automatic air freshener, the one
2 you saw on the bakers rack. There was another one in the
3 box that had not been opened at the time.

4 Q I'm going to show you what was marked as State's
5 Exhibit 37 through 43.

6 MR. MYERS: No objection, Your Honor.

7 (WHEREUPON, State's Exhibits Nos. 37 - 43 were
8 admitted into evidence.)

9 BY MS. CAVANAUGH:

10 Q And -- is that how the bar area and the commercial
11 air grade air freshener that you located behind the bar,
12 is that how it appeared that morning?

13 A Yes, it is.

14 MS. CAVANAUGH: Okay.

15 THE COURT: That's 37 through --

16 MS. CAVANAUGH: I apologize, through 43.

17 THE COURT: So 37 through 43 is without objection; is
18 that right, Mr. Myers?

19 MR. MYERS: Yes, sir.

20 THE COURT: Okay. Thank you.

21 BY MS. CAVANAUGH:

22 Q Now, on top of the -- on top of the bar, is there
23 also an incense and a lighter, as well as what appears to
24 be a candle on the ledge?

25 A Let me look at that. Yeah, there's burnt incense

1 holders, and I'm not sure what that other thing is, if
2 that's a candle or an ashtray, I don't remember, but it
3 was a small glass object. I believe it was a candle.

4 Q Okay. And it appeared to be full of ashes, the
5 incense tray?

6 A Right; correct.

7 Q And then you stated that you found a commercial -- a
8 box, an empty box, and then a full box of commercial air
9 grade freshener; is that right?

10 A That's correct, one was empty, I believe the unit was
11 in the second one, and there were additional batteries in
12 the bag, as well.

13 Q Okay. And I'm going to ask you, can you read what's
14 on the bottom of that box?

15 A It says "Hospital Specialty Company" on the bottom
16 left-hand side of the box.

17 Q And in your experience as a crime scene investigator,
18 is this something that you normally see in homes?

19 A No. I've never seen one in a home. Usually, you're
20 going to see it in a business.

21 Q Did you collect these, the commercial grade air
22 fresheners?

23 A Yes, I did.

24 Q I'm going to show you what's marked as State's
25 Exhibit 188. Does this box contain --

1 A Yeah. This is my evidence slip that contains a
2 Stratus 2 aerosol dispenser box, a Stratus 2 dispenser box
3 with a unit, three D batteries. It says a dispenser unit
4 with D batteries in it with good, health guard aerosol can
5 and a used condom wrapper. We packaged some items
6 together for a hold.

7 MS. CAVANAUGH: Your Honor, at this time I'd move to
8 introduce State's Exhibit 188 into evidence.

9 MR. MYERS: No objection.

10 THE COURT: 188 admitted without objection. Thank
11 you.

12 (WHEREUPON, State's Exhibit No. 188 was admitted into
13 evidence.)

14 BY MS. CAVANAUGH:

15 Q So there is a full box that hadn't been opened yet;
16 is that correct?

17 A If I remember correctly, yes.

18 Q Okay. And then it appears that these type of air
19 fresheners take a large battery?

20 A It appears so.

21 Q And were those collected, as well, at the scene?

22 A Yes.

23 Q Several of them?

24 A Yes.

25 Q And then this appears to be the one that was already

1 opened; is that correct, that was on the bar, the shelving
2 unit? I'm sorry, the shelving unit right by the kitchen.

3 A No. I think that is the new one. That was never
4 opened.

5 Q Okay. But you collected the one that you saw on the
6 -- by the kitchen?

7 A On the baker's rack, yes.

8 Q Baker's rack, and then what is this?

9 A That appears to be the cartridge that goes inside the
10 aerosol.

11 Q Okay. How many did you actually collect?

12 A Of the --

13 Q The commercial --

14 A Dispensers?

15 Q Yes. Describe what -- yeah, the dispensers.

16 A Let me look at my notes real quick. I collected the
17 dispenser units that were in the bag, the boxes, and the
18 one unit from behind the bar.

19 Then I collected the automatic aerosol dispenser that
20 was on top of the bakers rack and a used aerosol air
21 freshener can that appeared to go with that unit from the
22 kitchen trash and related that item -- those items that
23 appeared to be everything that I collected on that.

24 Q And this -- does this appear to be empty to you?

25 A I would say so, yes.

1 Q And did you also photograph the closet that was off
2 the living room before you went to the kitchen?

3 A I did.

4 Q Let me show you what's marked as State's Exhibit 36.
5 Is that a fair and accurate depict of the closet?

6 A From the exterior, yes.

7 MS. CAVANAUGH: Your Honor, at this time I'd move to
8 36 into evidence.

9 MR. MYERS: No objection.

10 THE COURT: Admitted without objection.

11 (WHEREUPON, State's Exhibit No. 36 was admitted into
12 evidence.)

13 BY MS. CAVANAUGH:

14 Q Okay. Where did you go after you finished processing
15 the living room and collecting the evidence from the
16 living room area?

17 A Everything was photographed as we went along, and
18 then we noted items that needed to be collected. We were
19 assisted on the search by the investigators but when Mike
20 Bouknight and I -- when we go in, we keep everybody out.

21 We photograph everything that we need to photograph,
22 and we identify items of interest. In the kitchen area
23 there are items of interest relating to the strong odor of
24 air fresheners.

25 We noted that there was more in there. There were

1 more candles. There was more incense holders on top of
2 the actual kitchen counter and on the actual kitchen
3 table.

4 Q I'm going to show you State's Exhibit 44 through 54
5 and ask you if that fairly and accurately depicts the
6 kitchen at the victim's home that morning?

7 A Yes, it does.

8 MS. CAVANAUGH: Your Honor, at this time I'd move to
9 introduce State's Exhibit 44 through 54 into evidence.

10 MR. MYERS: No objection.

11 THE COURT: ~~Forty-four through 54 without objection.~~

12 (WHEREUPON, State's Exhibits Nos. 44 - 54 were
13 admitted into evidence.)

14 BY MS. CAVANAUGH:

15 Q Does there appear to be some type of diffuser on the
16 kitchen table?

17 A Yeah, incense or diffuser; that's correct.

18 Q Okay. Was there also some sort of sticker on the
19 kitchen counter?

20 A Yes, there was.

21 Q What did that appear to be?

22 A To me, it looked like there are air fresheners that
23 are gel type that are odor absorbent. You remove the
24 sticker on them, put them in a closet. They absorb mildew
25 or musty odors, that's what it appeared to have went to.

1 Q Did you also take photographs of the contents of the
2 sink?

3 A I did.

4 Q And what did you -- what was in the sink, do you
5 remember?

6 A There appeared to be used shot glasses and a wine
7 glass and several other like a pot and a cup.

8 Q And were these bottles right outside of the -- right
9 beside the kitchen area?

10 A They were.

11 Q Did those appear to be liquor bottles?

12 A Liquor bottles, correct.

13 Q Did you also process the contents of the kitchen
14 trash can, or did you take photographs of the kitchen
15 trash can and collect any evidence from there?

16 A We photographed the trash can. And I looked in and
17 identified certain items in there that we thought were of
18 interest. There were additional aerosol cans, deodorizer
19 cans.

20 I believe there was a used condom wrapper and a
21 condom that was located in there. The aerosol cans from
22 the automatic dispenser was in there, as well, food items,
23 other small things.

24 Q So there was a used condom -- a condom wrapper and a
25 used condom in the trash can?

1 A Yes.

2 Q Did you collect those?

3 A I did.

4 Q I'm going to show you what's marked as State's
5 Exhibit 55 through 63 and ask you if that fairly and
6 accurately depicts the trash can that morning, the kitchen
7 trash can?

8 A Yes, it does.

9 MS. CAVANAUGH: Your Honor, at this time I'd move to
10 introduce State's Exhibit 55 through 63 into evidence.

11 MR. MYERS: No objection.

12 THE COURT: Admitted without objection. Thank you.

13 (WHEREUPON, State's Exhibits Nos. 55 - 63 were
14 admitted into evidence.)

15 BY MS. CAVANAUGH:

16 Q Does that appear to be -- can you tell what kind of
17 bag that is within that trash can?

18 A It says menswear.

19 Q Okay. And that's where you collected the empty, I
20 guess, aerosol can that we just showed -- saw?

21 A Yes. I believe it came out of the trash along with
22 those other items.

23 Q Were there also several receipts that were taken from
24 the kitchen trash can, or did the investigator -- or they
25 photographed beside the trash can -- I mean, the bag?

1 A This photograph I placed the trash bag on the table
2 so I could show my items that I was photographing. I'm
3 not sure if the receipts came out of the trash or they
4 were located by Investigator Mauldin, but I was asked to
5 photograph them. They were just laying only the table
6 until I could get to those items.

7 Q Did you actually get a close up of those receipts?

8 A I don't know.

9 Q Okay.

10 A I'd have to look back through my pictures.

11 Q That's okay. We can get to those there. And again,

12 the used condom is located in the downstairs trash can; is
13 that correct?

14 A That's correct.

15 Q Now, when we were going through the box of -- 188,
16 you mentioned that there was a used -- this is the used
17 condom and the wrapper that you collected that was in that
18 box, right?

19 A Just the wrapper.

20 (WHEREUPON, State's Exhibit No. 211 was marked for
21 identification only.)

22 BY MS. CAVANAUGH:

23 Q Just the wrapper, okay.

24 I show you what's marked as State's Exhibit 211. Is
25 this the used condom wrapped that you collected?

1 A That is the packaging that says used condom wrapper.

2 Q Okay. And does this envelope contain the actual
3 wrapper?

4 A It appears so, yes.

5 MS. CAVANAUGH: Okay. Your Honor, at this time I
6 would move to introduce State's Exhibit 211 evidence.

7 MR. MYERS: No objection.

8 THE COURT: 211?

9 MS. CAVANAUGH: Yes, Your Honor.

10 THE COURT: Admitted without objection..

11 (WHEREUPON, State's Exhibit No. 211 was admitted into
12 evidence.)

13 BY MS. CAVANAUGH:

14 Q Did you also collect the used condom?

15 A I did.

16 Q And is this -- is this what's in this bag, this bag?

17 A Right. I placed the used condom in the sealed
18 container to be sent over to the DNA lab. With it being
19 wet, it needed to go immediately to the lab instead of
20 going through the evidence room, so it was placed into
21 that container.

22 Q And it was packaged separately?

23 A Yes.

24 (WHEREUPON, State's Exhibit No. 208 was marked for
25 identification only.)

1 MS. CAVANAUGH: And this is actually State's
2 Exhibit 208.

3 Your Honor, at this time, it I'd move to introduce
4 State's Exhibit 208 into evidence.

5 MR. MYERS: No objection.

6 THE COURT: Admitted without objection.

7 (WHEREUPON, State's Exhibit No. 208 was admitted into
8 evidence.)

9 BY MS. CAVANAUGH:

10 Q And when you collect these, do you have gloves --
11 when you collected this, did you have gloves on?

12 A Of course.

13 Q And was it sealed appropriately in this package?

14 A It was.

15 Q And what's the purpose of that?

16 A To preserve the evidence. You want it in a clean
17 container, just as a clean bag. Anything that you put in
18 needs to be sterile and as clean as possible so there's no
19 cross-contamination. It's placed into that sealed
20 container for being sent to the DNA lab.

21 Q Once you finished with the kitchen and the kitchen
22 trash can, what did you -- what room did you go into?

23 A Down the hall to the garage is the laundry room. I
24 looked through the laundry room, and I noticed that in the
25 laundry room, there was an odor. The odor was very

1 consistent to decomp.

2 I identified it as being that, so I had tried to
3 figure out where it was coming from. In the washing
4 machine was a top-load washing machine. There was a green
5 small towel that was in there. It didn't appear that it
6 was coming from that.

7 Opening the dryer up, the odor got much more intense.
8 There was a dark blanket, another fuzzy-type blanket
9 similar to the one that was placed on the victim's body
10 that was inside the dryer.

11 I believe there was a blue towel that was with that

12 blanket and a large amount of dryer sheets, more than --
13 than a normal person would put on their laundry, and the
14 odor was coming from these items that were coming out of
15 the dryer.

16 Q Let me show you what's marked as State's Exhibit 64
17 through 68, as well as 183 and 184 and ask you does that
18 fairly and accurately depict the laundry room and the
19 dryer and washing machine contents that you just referred
20 to?

21 A Right. The laundry room is on the left, the front
22 door there, that goes to the garage.

23 Q Okay.

24 A Yes. Those are accurate.

25 MS. CAVANAUGH: Your Honor, at this time I'd move to

1 introduce State's Exhibit 64 through 67 into evidence, as
2 well as 183 and 184.

3 THE COURT: And last time you said 68. Is 68 not
4 there?

5 MS. CAVANAUGH: I apologize. Sixty-four through 68.

6 THE COURT: Sixty-four through 68 and 183 and 184; is
7 that right?

8 MS. CAVANAUGH: Yes, Your Honor.

9 (WHEREUPON, State's Exhibits Nos. 64 - 68; 183, 184
10 were admitted into evidence.)

11 THE COURT: Those items are admitted without

12 objection.

13 BY MS. CAVANAUGH:

14 Q And you stated that the odor of decomposition that
15 you noted was very strong?

16 A It was noticeable, yes, even above all the incense
17 and air fresheners in the home, maybe from all the scenes
18 I've gone to, I'm a little more -- you know, identify that
19 stuff easier, but it was definitely the odor of decomp.

20 Q And where did it appear to be coming from?

21 A From the dryer.

22 Q And the blanket was located in that dryer?

23 A It was.

24 Q There's also a green towel in the washing machine; is
25 that correct?

1 A That's correct.

2 Q Did you actually collect those items, the towel and
3 the blanket?

4 A I collected the items from the dryer, not the item
5 from the washing machine.

6 Q And what did you notice -- once you collected the
7 blanket from the dryer, what did you notice about the odor
8 of decomposition?

9 A Once it was removed from the laundry room, the odor
10 decreased. Obviously, that was what was generating the
11 odor. It was on those items.

12 Q I'm going to show you what's marked State's
13 Exhibit 186 and ask you to read the contents of that box.

14 A That's my evidence slip containing a black fuzzy
15 blanket, a blue bath towel, and dryer sheets.

16 Q And when you collected these, did you have a
17 different set of the gloves on?

18 A That's correct.

19 MS. CAVANAUGH: Your Honor, at this time I'd move to
20 introduce State's Exhibit 186 into evidence.

21 MR. MYERS: No objection.

22 (WHEREUPON, State's Exhibit No. 186 was admitted into
23 evidence.)

24 THE COURT: 186 is admitted without objection.

25

1 BY MS. CAVANAUGH:

2 Q While I'm opening this box, the black blankets, did
3 you take that later to the forensic garage?

4 A Yes.

5 Q And was there a cadaver dog brought to that location?

6 A Later on that afternoon I was requested to meet with
7 a cadaver dog at our forensic garage, yes.

8 Q Okay.

9 MR. MOORE: And, Your Honor, I'd just like to note
10 our continuing objection to this line of questioning.

11 THE COURT: Yes, sir, and I understand what you are
12 referring to from our pretrial hearings. I overrule your
13 objection and allow them to move forward.

14 Thank you. You are protected for the record.

15 MR. MOORE: Thank you. Could you similarly allow our
16 position to run thought so I won't have to delay standing
17 up, objecting every time that's mentioned?

18 THE COURT: Yes, sir.

19 MR. MOORE: Thank you.

20 BY MS. CAVANAUGH:

21 Q Was this the black blanket that you collected from
22 the dryer?

23 A Yes, it appears so.

24 Q And this is the blanket that had the significant odor
25 of decomposition from it?

1 A That day, correct.

2 THE COURT: What number is that, Ms. Cavanaugh?

3 MS. CAVANAUGH: This is in State's Exhibit 185.

4 THE COURT: 185, okay. Thank you.

5 BY MS. CAVANAUGH:

6 Q And then you say you also collected the dryer sheets?

7 A Yes.

8 Q Okay. And did you package the blanket and the towel
9 that you collected from the washing machine separately?

10 A Yes.

11 Q And the blanket was located in the dryer. Is that

12 what you stated?

13 A The blanket and the blue towel were both in the dryer
14 together with the dryer sheets.

15 Q And this is the towel?

16 A That appears so, yes.

17 Q Now, when you collected this blanket, did you
18 immediately take it out to your crime scene truck or is
19 that?

20 A Huh --

21 Q Did you remove it from the laundry room?

22 A It was packaged. It was removed whether I secured it
23 in the vehicle that the moment, I don't recall. It was
24 most likely secured in the truck.

25 Q And these are the dryer sheets that you collected?

1 A Yes, it appears so.

2 Q That's the extent of the processing of the laundry
3 room?

4 A It was.

5 Q Did you proceed upstairs after you finished with the
6 downstairs area of the house?

7 A Let me look at my notes. I believe we went upstairs
8 before we photographed anything in the garage, yes.

9 Q Okay. I show you what's marked as State's Exhibit 71
10 through 74 and 75 -- 71 through 75. Are those photographs
11 of the upstairs or the stairs that lead you to upstairs?

12 A Yes. It's the stairwell. That's the top. Once you
13 reach the top of the stairwell, it's more like an open
14 space between the bedrooms and the bathroom and the office
15 area.

16 Q Okay.

17 A And those are accurate.

18 MS. CAVANAUGH: Your Honor, at this time I'd move to
19 introduce 71 through 75 into evidence.

20 MR. MYERS: No objection.

21 THE COURT: Those are admitted without objection.

22 (WHEREUPON, State's Exhibits Nos. 71 - 75 were
23 admitted into evidence.)

24 BY MS. CAVANAUGH:

25 Q Is there a ledge once you reach the top of the

1 stairs?

2 A There is.

3 Q And what did you notice about that ledge?

4 A There was a candle and additional incense holder on
5 the ledge.

6 Q And did the incense holder -- was it full of ashes at
7 that point?

8 A Yes, it was.

9 Q Did you also photograph the ironing board that was
10 located in the upstairs area right when you enter?

11 A I did. Investigator -- I believe it was Investigator

12 Mauldin noted receipts and asked me to photograph those
13 receipts.

14 Q Okay. Does that fairly and accurately depict the
15 ironing board with the receipts that you photographed?

16 A It does.

17 MS. CAVANAUGH: And, Your Honor, at this time I'd
18 move to introduce 76 and 77 into evidence.

19 MR. MYERS: No objection, Your Honor.

20 THE COURT: Seventy-six and 77 without objection.

21 (WHEREUPON, State's Exhibits Nos. 76, 77 were
22 admitted into evidence.)

23 THE COURT: Thank you.

24 BY MS. CAVANAUGH:

25 Q And what is the actual -- what are the actual dates

1 on these receipts? Can you read those for us?

2 A If I can see it.

3 The first receipt is going to be Beauty Supply. The
4 date is 8/17/12, and the time is 5:36p.m. p.m. It's going
5 to be for a charge of \$3.20. The second one is American
6 Eagle, and it's showing 8/17/2012 at 11:12 a.m. and a
7 total transaction of roughly \$28.

8 Q Okay. Did you -- how many bedrooms were upstairs?

9 A There are three bedrooms.

10 Q And did you photograph those?

11 A I did.

12 Q And which bedroom did you go into first?

13 A Most likely, the first bedroom which would be the
14 bedroom on the left, appeared to be a spare or a guest
15 bedroom with a futon in it.

16 Q I'm going to show you what's marked as State's
17 Exhibit 90 and 91. Does that fairly and accurately depict
18 the third --

19 A The bed area.

20 Q -- the third bedroom or the bedroom to the left of
21 the stairs?

22 A Yes, that's the futon.

23 MS. CAVANAUGH: Okay. And, Your Honor, at this time
24 I'd like to introduce 90 and 91 into evidence?

25 MR. MYERS: No objection.

1 THE COURT: Admitted without it objection. Thank
2 you.

3 (WHEREUPON, State's Exhibits Nos. 90, 91 were
4 admitted into evidence.)

5 BY MS. CAVANAUGH:

6 Q What did you observe about the pillows and the area
7 underneath the pillows?

8 A When we first photographed the room or reviewed the
9 room, we didn't move any items around. Coming back doing
10 our search again, we moved those pillows and the pillows
11 were damp. You could clearly see on the sheet that they

12 had transferred moisture onto the lower sheet.

13 Q Did you collect the bedspread from that -- from the
14 futon?

15 A Yes, I believe we did.

16 Q Beg the Court's indulgence.

17 (Pause).

18 (WHEREUPON, State's Exhibit No. 214 was marked for
19 identification only.)

20 BY MS. CAVANAUGH:

21 Q I show you what's marked as State's Exhibit 214.
22 What are the contents of this box?

23 A It's my evidence label, and it states a multicolor
24 bedspread.

25 Q And does that appear to be the bedspread that you

1 collected?

2 A That appears to be, yes.

3 MS. CAVANAUGH: Your Honor, at this time I'd move to
4 introduce State's Exhibit 214 into evidence.

5 MR. MYERS: No objection.

6 (WHEREUPON, State's Exhibit No. 214 was admitted into
7 evidence.)

8 BY MS. CAVANAUGH:

9 Q And you described it as multicolored; is that right?

10 A I believe in my notes it was clarified a little
11 further as blue and purple.

12 THE COURT: 214 is admitted without objection. Do
13 you have what you need?

14 THE COURT REPORTER: Yes, thank you.

15 THE COURT: All right.

16 BY MS. CAVANAUGH:

17 Q Did you also collect the pillows from that bedroom?

18 A Yes. There should be two black pillows.

19 Q I show you what's marked as State's Exhibit 190.

20 A That's going to be my evidence slip. It shows two
21 black pillows, a tan bed sheet, and a green sweatshirt.

22 MS. CAVANAUGH: Okay. Your Honor, at this time I'd
23 move to introduce State's Exhibit 190 into evidence.

24 MR. MYERS: No objection.

25 THE COURT: 190 is admitted without objection.

1 (WHEREUPON, State's Exhibit No. 190 was admitted into
2 evidence.)

3 BY MS. CAVANAUGH:

4 Q You stated -- were the pillows themselves damp when
5 you collected them?

6 A They appeared to be damp by the transfer. Wearing
7 gloves, it's hard to get a full feel. You don't want to
8 touch it with your bare hands. Even with the gloves on,
9 it appeared to be slightly damp, and also, the transfer
10 appeared to be currently damp.

11 Q Which -- was that the extent of your processing of
12 the bedroom to the left of the stairs?

13 A That I did, yes.

14 Q And what room did you go to after that?

15 A Most likely I went to the next bedroom which would
16 have been directly to the left of that room, and that
17 would have been considered the master bedroom.

18 Q Okay. I show you what's marked as State's
19 Exhibit 93, 94, 95, as well as 97, 98, 105 and 106.

20 A Those are accurate.

21 MS. CAVANAUGH: Your Honor, at this time I'd move to
22 introduce 93, 94, 95, 97, 98, 105 and 106 into evidence.

23 MR. MYERS: No objection, Your Honor.

24 THE COURT: Those items are admitted without
25 objection. Thank you.

1 (WHEREUPON, State's Exhibits Nos. 93 - 95, 97, 98,
2 105, 106 were admitted into evidence.)

3 BY MS. CAVANAUGH:

4 Q And did this appear to be the bedroom of the victim
5 in this case?

6 A Yes. It appeared to be a female's bedroom.

7 Q And how were you able to tell that?

8 A The items that were in the room, makeup bags,
9 clothing, undergarments, were evidence around the room
10 that this is most likely going to be a female's room.

11 There was also investigators that were assisting
12 found identification cards for the victim that were in the
13 room.

14 Q And you said her makeup, what appeared to be a makeup
15 bag was located on one of her dressers?

16 A Yeah. The dresser closest to the door, there was a
17 multicolored bag. I believe it would be a makeup bag. A
18 jewelry box was next to that, small items that are
19 consistent with a female.

20 Q And was there also a can of what appears to be cash
21 in the -- in her room?

22 A Right. There are items around the room of value that
23 were not taken, and that was one of the items that had
24 some cash in it.

25 Q Okay. Did her wallet -- what appeared to be her

1 wallet, was that located in her bedroom, as well?

2 A Yes, I believe so.

3 Q Okay. And were items like that photographed?

4 A Yes.

5 Q And did her wallet contain her driver's license and
6 other identification cards?

7 A I believe there are identification cards in there
8 that had her name on it, credits cards and so forth.

9 Q And did you also photograph her closet?

10 A I did.

11 Q And what appears to be hanging right there to the
12 right as you enter?

13 A There appeared to be a military uniform hanging.

14 Q Did you also take photographs of the contents in her
15 closet?

16 A Yes.

17 Q I show you what's marked as State's Exhibit 102
18 through 104. Do these fairly and accurately depict the
19 contents of her closet behind the door that morning?

20 A They do.

21 Q Your Honor, at this time, I'd move to introduce 102
22 through 104 into evidence.

23 MR. MYERS: No objection.

24 THE COURT: 102, 103, 104.

25

1 (WHEREUPON, State's Exhibits Nos. 102 - 104 were
2 admitted into evidence.)

3 THE COURT: Admitted without objection.

4 BY MS. CAVANAUGH:

5 Q Do one of those items that were located behind the
6 door, were they like a brownish black pair of pants?

7 A Yes, they were.

8 Q Did it appear to match her shirt that she was found
9 in in the front yard?

10 A They had similar characteristics to the shirt that
11 she was wearing, yes.

12 Q Okay. And what was significant about those items?

13 A They were damp.

14 Q Did you collect any items from her closet?

15 A Yes, I collected the pants and the green towel. Let
16 me refer to my notes for clarification.

17 (Pause).

18 From the master bedroom closet floor was black and
19 brown cotton pants and a green, tan bath towel. I believe
20 it's going to be what's together.

21 Q I show you what's marked as State's Exhibit 189. Are
22 those the items you just described that you collected?

23 A Yes. That's my evidence label that says black and
24 brown cotton pants, green hand towel and a green bath
25 towel.

1 MS. CAVANAUGH: Your Honor, at this time, I'd move to
2 introduce 189 into evidence.

3 MR. MYERS: No objection.

4 THE COURT: 189 admitted without objection.

5 (WHEREUPON, State's Exhibit No. 189 was admitted into
6 evidence.)

7 BY MS. CAVANAUGH:

8 Q Are these the pants that you collected --

9 A Yes, that appears to be the pants.

10 Q -- from her closet? As well as the towel that was
11 located beside it?

12 A Yes. That appears to be the same.

13 Q And another towel?

14 A That appears to be bath towel.

15 Q Thank you. And all of these, you stated, were damp?

16 A That's correct.

17 Q Were those the only items that you collected from the
18 closet?

19 A Yes, from the closet.

20 THE COURT: All right. Let's do this: It's about
21 10:45, just a couple minutes shy of that. We've been
22 going for about an hour-and-a-half. I think, everybody,
23 it's probably a good time for a break.

24 Ladies and gentlemen of the jury, you will be retired
25 to your jury room. Keep an open mind about the case. Do

1 not discuss the case. I know you have seen a lot of
2 exhibits this morning, and I know they have been passed
3 around.

4 You're trying to pay attention and also look at them.
5 Keep in mind, as I told you at the beginning, at the
6 conclusion, you will have all of these back there with
7 you. Don't feel like you didn't have enough time to spend
8 with them. You will when the time is appropriate.

9 You can take them out, Mr. Tolbert.

10 Everybody remain seated, please.

11 ~~(WHEREUPON, the jury left open court at approximately~~
12 ~~10:44 a.m.)~~

13 THE COURT: All right. Investigator Lee, you're
14 allowed to step down and take care of business as you need
15 to. Do not discuss your testimony with anybody during the
16 break. When we come back, if you'll just be seated right
17 there, that will be much appreciated.

18 THE WITNESS: Yes, sir. Thank you.

19 THE COURT: Court will be in recess about 15 minutes.
20 That means we're starting at eleven. Don't be walking in
21 late. Thank you.

22 (WHEREUPON, a short break was taken.)

23 MS. CAVANAUGH: Your Honor, 115, 118 and 120 are not
24 going to be used. I marked those.

25 THE COURT: They're out?

1 MS. CAVANAUGH: Yes.

2 THE COURT: Say those one more time.

3 MS. CAVANAUGH: 115, 118 and 120.

4 THE COURT: Everybody ready?

5 MS. CAVANAUGH: Yes, Your Honor.

6 MR. MYERS: Ready.

7 THE COURT: Bring in the jury, please, Mr. Dye.

8 THE BAILIFF: Okay.

9 (WHEREUPON, the jury came into open court at
10 approximately is 11:04 a.m.)

11 THE BAILIFF: The jury is seated, Your Honor.

12 THE COURT: Thank you very much.

13 Thank you, ladies and gentlemen. Welcome back.

14 We'll now continue with the testimony of Investigator Lee.

15 Thank you.

16 BY MS. CAVANAUGH:

17 Q Investigator Lee, I believe we just finished with the
18 victim's closet.

19 A That's correct.

20 Q Did you also take photographs and process her
21 bathroom?

22 A Yes. We looked through the bathroom. Corporal
23 Tucker had described some stains that he had observed in
24 her bathroom in the tub. We wanted to take a look at
25 those.

1 Those were photographed and Investigator Bouknight
2 checked them later on with a chemical. They did not come
3 back positive for blood.

4 Q I show you what's marked as State's Exhibit 100, 101,
5 107 through 109. Does that fairly and accurately depict
6 the victim's bathroom the morning of August 23rd?

7 A Yes, it does.

8 MS. CAVANAUGH: Your Honor, at this time I'd move to
9 introduce 100, 101, 107 through 109 into evidence.

10 MR. MYERS: No objection.

11 THE COURT: Admitted without objection. Thank you.

12 (WHEREUPON, State's Exhibits Nos. 100, 101, 107-109
13 were admitted into evidence.)

14 BY MS. CAVANAUGH:

15 Q Now, as far as the bathroom and the counter was
16 concerned, what did you -- what all was on her counter?
17 At least what does it appear to be?

18 A It appears to be various items, fingernail polish
19 removal, some makeup, lotion, small items like that.

20 Q Okay. And did you observe a towel hanging in her
21 bathroom?

22 A I believe there was a light towel on the rack here on
23 the wall. I don't recall any other towels in that room.

24 Q Okay. And you mentioned the tub. Did there appear
25 to be some sort of stain on the tub?

1 A There appeared to be rust on the bottom, some kind of
2 a rust or reddish color. It can be mistaken with blood,
3 so we wanted to check that. We ended up checking that
4 with Bluestar.

5 Q And Investigator Bouknight or either one of the other
6 crime scene investigators did that?

7 A Bouknight did, yes.

8 Q Okay.

9 A He can testify to those reports.

10 Q And is this also -- it's a darker picture, but is
11 this also a picture of the victim's tub?

12 A Yes. It's a garden tub.

13 Q And did there appear to be long hairs in her tub?

14 A There appeared to be hairs around the drain, yes.

15 Q Okay. Did you process the other bedroom in the home
16 as well, or take photographs of it?

17 A I photographed the second bathroom upstairs before I
18 went to that one.

19 Q Okay.

20 A Nothing was noted of value or anything suspicious in
21 that room. Next to that bathroom --

22 Q Let me -- can I just stop you for a second?

23 A I'm sorry.

24 Q I show you what's marked as State's Exhibit 84 and
25 85. Is that the bathroom that you just referred to?

1 A Yes.

2 Q And does that fairly and accurately depict it that
3 morning?

4 A Yes.

5 MS. CAVANAUGH: Your Honor, at this time, I'd move
6 State's Exhibit 84 and 85 into evidence.

7 MR. MYERS: No objection.

8 MS. CAVANAUGH: And --

9 THE COURT: Eighty-four and 85 are admitted without
10 objection.

11 (WHEREUPON, State's Exhibits Nos. 84, 85 were

12 admitted into evidence.)

13 BY MS. CAVANAUGH:

14 Q You said no items of note were in that bathroom?

15 A We never noted anything that stood out to us, no.

16 Q Okay. Did -- were there any towels that were in that
17 bathroom? Maybe a -- I think it's a washcloth. I think
18 it's a washcloth hanging. I can show you.

19 A Yeah, let me show that photo. It would be easier.

20 Q Okay.

21 A There was a washcloth in the shower area.

22 Q Okay.

23 A I don't recall if there was anything on the actual
24 towel rack on the wall.

25 Q Okay. Thank you.

1 Was that bathroom attached to a bedroom, do you
2 remember?

3 A No. It led out into the open area between all the
4 bedrooms.

5 Q Okay. After you finished with that bathroom, which
6 room did you move to?

7 A It went to the spare room, which would have been
8 considered spare room number two, which would have been to
9 the right of the guest bath is what we consider that to
10 be. That appeared to be a male occupied that room. There
11 were several items in there that we noted.

12 Q Okay. I apologize. These numbers are out of order,
13 but I'm going to show you what's marked as 79, 80, 81, 82,
14 96, 112 through 114, 116, 117 and 119 and then 121 and ask
15 you to look at these and tell me if they fairly and
16 accurately depict the male's bedroom that you just
17 referred to.

18 A (Pause).

19 Yes, they do.

20 MS. CAVANAUGH: Your Honor, at this time I'd move to
21 introduce -- just let me go through the numbers again --
22 79, 80, 81, 82, 96, 112, 113, 114, 116, 117, 119, 121 into
23 evidence.

24 MR. MYERS: No objection, Your Honor.

25 THE COURT: All right. Those items are admitted

1 without objection. Thank you.

2 (WHEREUPON, State's Exhibits Nos. 79-82, 96, 112-114,
3 116, 117, 119, 121 were admitted into evidence.)

4 BY MS. CAVANAUGH:

5 Q And you said there appeared to be male clothing
6 throughout -- a few items of male clothing in this
7 bedroom?

8 A Correct. There was a bag on the floor that appeared
9 to have male shoes in it. There was a ball cap on the
10 dresser directly in front of the bed. There were a pair
11 of shorts like jean shorts, khaki shorts, on the bed,

12 appeared to be male shorts.

13 Q I'm going to show you what's marked as State's
14 Exhibit 96. What does that box read?

15 A It's a MacBook Pro.

16 Q Okay. And then does that appear to be a shopping bag
17 with JOU on it. Can you tell?

18 A That could be what it says. It looks like a shopping
19 bag.

20 Q Okay. Do you remember anything about the closet in
21 this bedroom?

22 A I don't, no.

23 Q Okay. I am going to show you 119. What is beside
24 that red cap?

25 A These items right here are mail.

1 Q Okay.

2 A And I believe that it was the victim's name and
3 address that was on the mail.

4 Q Did you take closer pictures of those?

5 A There should be closer ones, yes.

6 Q And do you remember what that green card that was
7 located beside the mail is?

8 A Green card?

9 Q You took closer photos that I can show you.

10 A Yes.

11 Q And is there also an American Eagle bag on the bed?

12 A Yes, there is.

13 Q You just mentioned some items of mail. I'm going to
14 show you what's marked 86 through 89 and ask you if those
15 are the close-up pictures taken of the mail that was
16 located on the dresser?

17 A Yes. These are closeups, and also a close up of a --
18 appears to be a room card for the Hilton Garden Inn.

19 Q Okay.

20 MS. CAVANAUGH: Your Honor, at this time, I'd move to
21 introduce 86 through 89 into evidence.

22 MR. MYERS: No objection.

23 THE COURT: 86 through 89 without objection.

24 (WHEREUPON, State's Exhibits Nos. 86-89 were admitted
25 into evidence.)

1 BY MS. CAVANAUGH:

2 Q You stated there was some unopened mail on what
3 appeared to be the male, M-A-L-E's bedroom, is that
4 correct?

5 A That's correct. There was mail that was on the
6 dresser in that spare room.

7 Q And it had the name of Almanita Smith on the mail?

8 A It did.

9 Q Did it appear to be from Columbia College?

10 A I think there was one from Columbia College, as well,
11 yes.

12 Q And was it unopened?

13 A They all appeared to be unopened, yes.

14 Q I'm going to ask you to look at that postage stamp on
15 that envelope. What's the date on there?

16 A The date is 8/20/2012.

17 Q Okay.

18 A On both of them.

19 Q And, again, you -- you were photographing these items
20 on the 23rd; is that right?

21 A That's correct.

22 Q Those were not in the victim's bedroom?

23 A No. They were in the spare bedroom to the right of
24 the spare bathroom.

25 Q Was that the extent of photographing and observing of

1 the male's bedroom?

2 A Of that room, yes.

3 Q And what did you do after you complete that?

4 A Right next to that room is an office that they used
5 for an office. There was a desk and file cabinets. That
6 was another area that Corporal Tucker noted some sort of
7 stain that he saw on the floor, and I believe also on the
8 closet handle.

9 When we got in there and looked around, it appeared
10 to be paint. We checked that area with Bluestar, as well,
11 and it was negative for blood.

12 Q Okay. And Investigator Bouknight, is it your
13 understanding that he came back the next day to the crime
14 scene?

15 A I don't know that.

16 Q Okay. I'm going to show you what's marked as State's
17 Exhibit 123 through 126. Does that fairly and accurately
18 depict the office that morning?

19 A Yes, it does.

20 MS. CAVANAUGH: Your Honor, at this time I'd move to
21 introduce 123 through 126 into evidence.

22 MR. MYERS: No objection.

23 THE COURT: 123 through 126 admitted without
24 objection.

25

1 (WHEREUPON, State's Exhibits Nos. 123-126 were
2 admitted into evidence.)

3 BY MS. CAVANAUGH:

4 Q I'm going to show you State's Exhibit 125. What does
5 that appear to be?

6 A This appears to be some type of a chest.

7 Q Okay.

8 A Like maybe a locker, small footlocker.

9 Q With what appears to be camouflage clothing or -- in
10 it?

11 A Could be military uniforms, yes.

12 Q Okay. Did you also -- oh. I'm going to -- let's
13 see. Were there photographs taken of the actual air units
14 in the home?

15 A Actual what, I'm sorry? I didn't hear you.

16 Q The air conditioner.

17 A The actual thermostats?

18 Q Yes, the thermostat, yes?

19 A Yes. They were also noted on my bench notes on the
20 temperature.

21 Q I believe in your bench notes, you puts 70?

22 A I believe. Yes. Hold on one second. Let me look at
23 it.

24 (Pause).

25 I have 70/72. I believe the 70 is going to be the

1 upstairs, and the 72 was the downstairs. That could have
2 fluctuated from us coming and going, the door not being
3 closed all the way, those photographs show it to be 69.

4 Q Okay. And this is Exhibit 181 and 182; is that
5 right?

6 A That's correct.

7 MS. CAVANAUGH: Your Honor, at this time, I'd move to
8 introduce 181 and 182 into evidence.

9 MR. MYERS: Go objection.

10 (WHEREUPON, State's Exhibits Nos. 181-182 were
11 admitted into evidence.)

12 BY MS. CAVANAUGH:

13 Q And were there actually --

14 THE COURT: Admitted without objection.

15 MS. CAVANAUGH: Thank you, Your Honor. I apologize.

16 BY MS. CAVANAUGH:

17 Q Was there one thermostat upstairs and one downstairs?

18 A I believe that's correct. I believe it was a split
19 system. There would have been one, should have been in
20 the living room area probably closer to the baker's rack
21 area and the other one was next to the victim's bathroom,
22 the master bedroom upstairs.

23 Q Okay. And, finally, we will move to the garage. Did
24 you also process the garage?

25 A We -- we searched the garage, as well. The victim's

1 vehicle was still located in there. We looked through the
2 vehicle, and we just photographed some items in the
3 vehicle that we thought were important such as
4 identification, registration, things like that.

5 Q I'm going to show you what's marked as State's
6 Exhibit 127 through 137 and ask you if these fairly and
7 accurately depict the victim's car on August 23rd.

8 A Yes, they do.

9 MS. CAVANAUGH: Your Honor, at this time, I'd move to
10 introduce State's Exhibit 127 through 137 into evidence.

11 MR. MYERS: No objection.

12 THE COURT: Admitted without objection. Thank you.
13 (WHEREUPON, State's Exhibits Nos. 127-137 were
14 admitted into evidence.)

15 BY MS. CAVANAUGH:

16 Q Now, was this the only car at the scene at 613 Heron
17 Glen Road that belonged to anybody at that home that
18 morning?

19 A Yes, ma'am. It was the only vehicle at the
20 residence. It was located in the garage.

21 Q And was the garage door closed?

22 A When I arrived at the scene, yes, it was.

23 Q And, again, this was the victim's car; is that right?

24 A Per the registration, yes.

25 Q I'm going to show you what's marked as State's

1 Exhibit 133. Can you read what that box says at the --
2 what appears to be the passenger's side of the floorboard?

3 A I think it says Mobato.

4 Q Okay. And then I am going to show you the picture of
5 the victim's front door and the handle. I'm sorry, the
6 picture of the car, the driver's side front door handle?

7 A Uh-huh.

8 Q Are these where the identification card and the two
9 credit cards were located?

10 A That's right. They were in the driver's door.

11 Q And were there close up photographs taken?

12 A Yes.

13 Q Okay. And this appears to be -- what is that?

14 A Those are the three items from the door.

15 Q And can you tell what they are?

16 A One is a USAA debit card.

17 Q What is the name on it?

18 A It has the victim's name on it. The other is
19 American Express with the victim's name and then a
20 military ID card.

21 Q Is that of the victim?

22 A Of the victim, yes.

23 Q Does it show her rank on the military ID, right
24 there?

25 A It appears to be Staff Sergeant.

1 Q Okay. I'm also going to show you what's being marked
2 State's Exhibit 138 through 140. Are these additional
3 photographs of the victim's car in the garage that
4 morning?

5 A Yes. They're overall pictures of the garage. That's
6 a front on view of the vehicle, and that's the trunk
7 photograph.

8 MS. CAVANAUGH: Your Honor, at this time, I'd move to
9 introduce 138 to 140 into evidence.

10 MR. MYERS: No objection.

11 THE COURT: Number 138 through 140 admitted without
12 objection.

13 (WHEREUPON, State's Exhibits Nos. 138-140 were
14 admitted into evidence.)

15 BY MS. CAVANAUGH:

16 Q Did there appear to be several American Eagle bags in
17 the garage with clothing on them?

18 A Yes; that's correct.

19 Q And I just showed you a photograph of those cards and
20 the military ID that were located on the driver's side of
21 that car. I'm going to show you what's marked as State's
22 Exhibit 110 and 111. What do these pictures reflect?

23 A These are items, I believe, investigators had removed
24 from the victim's wallet in the master bedroom, her credit
25 cards, Georgia driver's license, Department of Veteran

1 Affairs ID card, miscellaneous papers.

2 MS. CAVANAUGH: Okay. Your Honor, at this time I'd
3 move to introduce 110 and 111 into evidence.

4 MR. MYERS: No objection.

5 (WHEREUPON, State's Exhibits Nos. 110, 111 were
6 admitted into evidence.)

7 THE COURT: 110 and 111 without objection.

8 BY MS. CAVANAUGH:

9 Q And, again, this wallet with the driver's license and
10 what appeared to be other cards some with stickers on them
11 were located in the victim's bedroom; is that right?

12 A I believe so, yes.

13 Q Can you make out what her weight appears to be on the
14 driver's license?

15 A I believe the weight says 106.

16 Q Thank you.

17 I apologize. I'm going to show you what's being
18 marked as State's Exhibit 69 and 70. What do these photos
19 depict?

20 A These going to be cleaning products that were found
21 down in the kitchen area. They're going to be incense
22 sticks. It would be the actual holders of the incense,
23 and it's a plastic bag which I'm not sure what's in the
24 plastic bag. It probably came from that plastic bag so...

25 Q Okay. And these were located in the victim's home?

1 A Yes. They were in the kitchen area.

2 MS. CAVANAUGH: Your Honor, at this time, I'd move to
3 introduce 69 and 70 into evidence.

4 MR. MYERS: No objection.

5 (WHEREUPON, State's Exhibits Nos. 69, 70 were
6 admitted into evidence.)

7 THE COURT: Sixty-nine and 70 without objection.

8 MS. CAVANAUGH: Beg the Court's indulgence.

9 THE COURT: Yes, ma'am.

10 (Pause.)

11 BY MS. CAVANAUGH:

12 Q What was your -- after you finished processing the
13 home and photographing the home, what did you do next in
14 this case?

15 A After we reviewed the home and finished conducting
16 our search, all items that were collected were scribed on
17 the search warrant. Scribing just means they're wrote
18 down in great detail.

19 The items that I collected were, of course, packaged,
20 and I took those items back to headquarters. I signed out
21 on the crime scene log in order to transport those items
22 back.

23 Q Oh, what time did you actually leave the scene that
24 day?

25 A The log shows that I departed at 13:31 which would

1 have been 1:31 p.m. on the 23rd.

2 Q And would you have taken all the items that you
3 collected at 1:30 when you left that afternoon?

4 A Yes. Anything I collected would have remained with
5 me.

6 Q Okay. Does that include the blanket that you
7 collected from the laundry room?

8 A Yes.

9 Q Okay. To continue, what did you do after you left
10 the scene?

11 A Items were taken back. Any items that we thought

12 were maybe damp, we wanted to preserve them, so of course,
13 the drying cabinets as I described earlier, we had three
14 located in our forensics garage at headquarters on Two
15 Notch. The items are placed there to start drying. Once
16 they are dried, we can package them, place them into
17 evidence. You know, they need to go.

18 Q Did you have any other involvement in this case later
19 that afternoon?

20 A That afternoon I was contacted in reference to K-9 to
21 check that blanket that I collected. That was a cadaver
22 dog. Investigator Bouknight contacted me.

23 Q And what time -- what time was this?

24 A Let me look at my notes.

25 (Pause).

1 I received the call at 16:40 hours or 4:40 p.m. in
2 order to take the blanket that was collected from the
3 dryer.

4 What we wanted to do was we wanted to set up three
5 boxes: Two of them would be empty; one of them would
6 contain those items that were collected from the dryer.

7 These were all clean boxes that I had taped together,
8 and I put three in a row. They were there inside the
9 forensics garage in order for the canine to check I put
10 them inside the forensics garage for canine to check to
11 see if they could alert on anything.

12 Q Okay. And was the canine -- was a cadaver dog
13 brought?

14 A The cadaver dog arrived. Let me look at my times. I
15 think it took a little bit for them to get there, and I
16 waited for them.

17 The K-9 officer brought the canine. It was a cadaver
18 dog. The boxes were set up in the garage. It alerted to
19 the box that had the blanket in it. The dog was removed
20 from the garage.

21 The garage door portion is open on the garage. I
22 took the boxes out into the parking lot, rearranged them,
23 and then they re-ran the dog over. The dog alerted to the
24 box. The boxes were not set up in the same order. They
25 were switched around.

1 I only knew what was in there and which box was the
2 item of interest, and they did alert on those boxes.

3 Q And, again, the -- one of those boxes contained the
4 blanket?

5 A The blanket from the dryer, correct.

6 Q And that was the blanket that you detected the odor
7 of decomposition?

8 A Yes, ma'am.

9 Q What time was that completed?

10 A That was completed at 19:00 hours. The item was
11 resecured into the drying cabinet.

12 Q Beg the Court's indulgence.

13 (Pause.)

14 At any time any of these items and evidence that you
15 collected, were they altered, tampered in any way before
16 you submitted them to the evidence room?

17 A No. They were collected, dried and then submitted to
18 evidence.

19 MS. CAVANAUGH: Thank you, Investigator Lee. Please
20 answer any questions for the defense.

21 THE WITNESS: Thank you.

22 CROSS-EXAMINATION:

23 BY MR. MYERS:

24 Q Good morning, Investigator Lee.

25 A Good morning, counsel.

1 Q We've seen each other than around the courtroom for
2 the past couple days, have we not?

3 A Yes, sir.

4 Q You were here on yesterday?

5 A Correct.

6 Q You heard opening statements?

7 A I did.

8 Q You heard what the State intends to prove and what we
9 intend to show?

10 A That's correct.

11 Q And during that testimony, you heard -- It wasn't Ms.

12 Cavanaugh. It was Ms. Simpson as she was giving her
13 opening statements. She stated that these air fresheners
14 were of commercial grade, correct?

15 A Several of them, yes.

16 Q All right. And she stated that they were so
17 commercially graded that they were capable of eliminating
18 odors within 6000 square feet. Do you remember that?

19 A I do believe she said that.

20 Q All right. She basically said it was the size of a
21 warehouse that these air fresheners could eliminate odors
22 from.

23 A Okay. Yes.

24 Q Do you remember that?

25 A Yes.

1 Q Okay. Now, I'm going to hand to you one of these
2 boxes, and let me just make sure. I want to put this in
3 perspective. I'm going to go back to my college days of
4 football. You've seen a football field before, right?

5 A Yes.

6 Q You would agree with me that a football field is from
7 end zone to end zone 100 yards, right?

8 A Yes.

9 Q You have the extension of the goal post, which is an
10 additional 10 yards on both sides. So that would be 100,
11 correct? ~~I don't want to put anything in your mouth.~~

12 A I believe you're correct.

13 Q All right. So that would be 120 yards long, right?

14 A Yes, sir.

15 Q And from sideline to sideline, it's about 50 yards,
16 right?

17 A I believe so, yes.

18 Q If you do the math, that's about 6,000 square feet,
19 right?

20 A Sounds right.

21 Q So according to Ms. Simpson, these commercially grade
22 issue fresheners were able to eliminate odors within the
23 size of a football field, right?

24 A Yes.

25 Q All right. And you stated that this is the canister

1 that you pulled from 613 Heron Glen Drive?

2 A Let me look at it. I believe it is.

3 THE COURT: Could you refer to an exhibit number,
4 please, Mr. Myers?

5 MR. MYERS: Can you help me out here, Investigator,
6 because I don't know. I don't want to misstate.

7 THE WITNESS: That is State's Exhibit No. 188.

8 THE COURT: Thank you.

9 BY MR. MYERS:

10 Q 188. Now, you testified that these have not been
11 altered in any way, correct?

12 A No. I did not do anything with them but collect
13 them.

14 Q All right. Could you read paragraph three on the
15 side of that box, please?

16 A Paragraph three?

17 Q Yes.

18 THE COURT: Can you turn around or come back? Come
19 back in this corner so that she can hear you and they can
20 hear you, please.

21 THE WITNESS: Okay. Number three says, "Position
22 dispenser in desired location. Recommended height is
23 seven feet from floor and away from ventilation.
24 Dispenser can service up to 6,000 cubic feet."

25 Q Cubic feet. That's not square feet, is it?

1 A No.

2 Q In fact, there's a huge difference between cubic feet
3 and square feet, right?

4 A There could be.

5 Q Well, let's just think about it. Cubic feet is not
6 the same as square feet.

7 A You're correct.

8 Q In order to get square feet, you would have to
9 actually measure the actual footage of a room, right?

10 A Correct.

11 Q ~~And cubic feet is actually a lot smaller than that.~~

12 In fact, a cubic foot or cubic feet is more like 20 by 30,
13 right?

14 A You could be right.

15 Q So that canister, according to that box, is only able
16 to eliminate the odor in a room of about 300 square feet?

17 A You may be right.

18 Q Okay. And 300 square feet is a lot less than 6,000
19 square feet as Ms. Simpson testified or stated in her
20 opening statement.

21 A Yes.

22 Q All right. And, in fact, one of those canisters was
23 not even being used, right?

24 A Yes.

25 Q In fact, it wasn't plugged in to anything.

1 A No. It was in the back.

2 Q You stated that it was just battery operated, right?

3 A These all appeared battery operated.

4 Q But it wasn't plugged into an outlet.

5 A No.

6 Q So the source of a battery, certainly, is not any
7 greater than the source of an outlet, right?

8 A You could be right.

9 Q All right. So you would agree with me then that you
10 just had one dispenser that was basically inside the house
11 that was operable.

12 A Of these dispensers, yes.

13 Q Okay. And whoever was attempting to use that
14 dispenser made no attempt to hide it, right?

15 A No. It was in plain view.

16 Q Because when you came in, as you stated, it was out
17 in the open.

18 A Correct.

19 Q It wasn't tucked underneath anything.

20 A Correct.

21 Q It wasn't in a manner that was inconspicuous?

22 A Correct.

23 Q It was just out in the open, right? You didn't have
24 to ask anybody, didn't have to look for it, right?

25 A That's correct.

1 Q And there is, obviously, nothing wrong with anyone
2 having any sort of air freshener in their house, right?

3 A No.

4 Q You stated that these folks appeared to be tidy?

5 A That's correct.

6 Q They appeared to be clean, right?

7 A Correct.

8 Q And an air freshener that is only able to eliminate
9 odors of 6,000 cubic feet can be found at a grocery store,
10 can it not?

11 A Could be.

12 Q You don't have to go out of your way to find anything
13 that just eliminates odors within a 6,000 cubic feet area,
14 right?

15 A You're correct.

16 Q I mean, you can go to Food Lion, right?

17 A Correct.

18 Q Go to Wal-Mart?

19 A I'm sure they would carry stuff like that, yes.

20 Q No extensive research is necessary to find an air
21 freshener just to eliminate odors within a 6,000 cubic
22 feet area, right?

23 A Yes.

24 Q And there was just one, right?

25 A There was one of that grade, yes.

1 Q Okay. One that was operable, but the other one was
2 actually in the box?

3 A That is correct.

4 Q That was not operable?

5 A That is correct.

6 Q That they made no attempt to use, right?

7 A I don't know if they made an attempt to use it. It
8 was not operating when I collected it.

9 Q Okay. Now, I'm going to talk to you a little bit
10 about the odors.

11 Judge, without waiving any objection regarding the

12 cadaver dog, I would like to question the witness
13 regarding the use of cadaver dog.

14 THE COURT: Understood.

15 BY MR. MYERS:

16 Q Now, Ms. Cavanaugh though took you room by room a few
17 moments ago, and she talked to you about what you
18 photographed, right?

19 A That's correct.

20 Q Now, let me just make sure I understand this house.
21 This was a residential house, right?

22 A Yes.

23 Q It wasn't very big?

24 A It was a large home.

25 Q How much square footage would you say was in the

1 house?

2 A I would estimate 2,000 square feet.

3 Q All right. So it was four bedrooms, right?

4 A There were three bedrooms.

5 Q And the -- I counted the office, I'm sorry. If you
6 count the office, it would be four bedrooms, right?

7 A If you slept on the floor in it, yes.

8 Q All right. Now, the staircase inside this house, it
9 was a residential staircase?

10 A Yes.

11 Q ~~You would agree with me that a residential staircase~~
12 was only about 3 feet wide, right?

13 A I guess they could be. I'm not a builder.

14 Q I mean, this wasn't an intentionally large staircase,
15 was it?

16 A It was not a cathedral staircase, no, sir.

17 Q I mean, when you walked in, you didn't notice
18 addition out of the ordinary and said, "Wow. This is a
19 much wider staircase than what I'm normally used to
20 seeing."

21 A I don't know.

22 Q All right. Now, when you got to the scene, you
23 stated that you were the individual that was responsible
24 for taking the photographs of the scene, correct?

25 A I was of the crime scene, taking photographs of the

1 scene, yes.

2 Q You were not the only one there, right?

3 A I don't understand your question.

4 Q You were not the only individual from law enforcement
5 that was on the scene at the time you started taking
6 photographs?

7 A Yes. There were other individuals from our agency
8 there.

9 Q Okay. Now, I'm going to hand to you a photograph. I
10 don't think you introduced this one or showed this one to
11 the jury, but does this appear to be a photograph
12 depicting Ms. Smith?

13 A It does.

14 Q Now, next to her appears to be a boot, does it not?

15 A Yes.

16 Q Now, I'm assuming that if you took photographs, would
17 that be your boot?

18 A It's quite possible it was.

19 Q Because otherwise, for that photograph to have been
20 taken, someone would have been standing on top of you,
21 would it not?

22 A Next to me.

23 Q But you're pretty sure that is your boot next to her
24 face?

25 A Probably is, yes.

1 MR. MYERS: Your Honor, at this time I'd like to move
2 this into evidence as Defense Exhibit 8.

3 THE COURT: Defense Exhibit 8. Any objection?

4 MS. CAVANAUGH: There is no objection.

5 THE COURT: Okay. Thank you. Defense Exhibit 8
6 without objection.

7 (WHEREUPON, Defendant's Exhibit No. 8 was admitted
8 into evidence.)

9 BY MR. MYERS:

10 Q Now, Investigator Lee, perhaps it's invisible in
11 ~~here, but do you have to show the jury any sort of booties~~
12 you were wearing on your boot before you approached the
13 body?

14 A No.

15 Q Do you have -- so is it safe to say you were not
16 wearing any sort of booty before you got to the body?

17 A I was not, no.

18 Q Now, are you aware of the concept of postmortem
19 evacuation?

20 A I am.

21 Q And you are aware, as you heard -- you were here
22 yesterday. You heard Ms. Bailey testify that postmortem
23 evacuation is the concept at death when the blood pressure
24 actually lowers, correct?

25 A There is some area around that, yes.

1 Q And when the blood pressure lowers, it causes any
2 sort of feces inside the body to be released?

3 A That's inaccurate.

4 Q Well, what's accurate?

5 A Based on my experience, sir, not everybody will do
6 that.

7 Q Well, it was clear, though, that this body did it,
8 right?

9 A At this time, yes.

10 Q Right. So, in fact, you testified to the photograph
11 that showed the fecal matter from Almanita Smith.

12 A Yes.

13 Q So we can assume that upon her death, there was some
14 sort of postmortem evacuation?

15 A Correct.

16 Q Right. So there was feces over her body, right?

17 A There was feces on her body.

18 Q Okay. Now -- but you took no steps to put any sort
19 of booties or any type of covering over your boot before
20 you stepped next to her body.

21 A That's correct.

22 Q And you agree with me that it appears that your boot
23 was very close to her body.

24 A It was probably within a foot, yes.

25 Q Okay. Do you have any evidence that any other

1 officer that went inside the house wore booties as they
2 went through the house?

3 A I don't know.

4 Q Do you have any evidence that would dispute that
5 every officer that went to the scene actually came close
6 to the body?

7 A I doubt every officer that was on the scene got close
8 to the body.

9 Q Because you --

10 A Most officers are not going to get close to the body.

11 Q Sure. I understand. So let me make sure I

12 understand. You testified that you eliminated or you
13 secured the crime scene, correct?

14 A The scene was secured when I arrived.

15 Q All right. And the scene, in fact, when you say it
16 was secured, you're talking about the entire house was
17 secured, right?

18 A The property at that location, yes.

19 Q Meaning that there was tape around the house?

20 A Yes.

21 Q Right. But there was no tape around the body?

22 A No.

23 Q And that tape is important because it lets the
24 individuals who were coming to the scene know not to go
25 near it unless authorized, correct?

1 A The tape bars anybody from entering the scene that
2 doesn't need to.

3 Q Sure.

4 A That's correct.

5 Q But there was no tape around the perimeter of
6 Ms. Smith's body, correct?

7 A You wouldn't put tape around the body.

8 Q But nothing would stop an individual who has been on
9 the scene from going to the body if there was no tape.

10 A The barrier tape should keep anybody out.

11 Q Well --

12 A That is what the crime scene log and the tape is
13 there for.

14 Q But we know, sir, that people did, in fact, go inside
15 that crime scene tape which was around the house?

16 A Yes. They're on the log.

17 Q Okay. Now, going through the house, you stated or
18 you testified that you noticed an odor coming from the
19 laundry room; is that correct?

20 A I did.

21 Q Are you aware that the cadaver dog that went through
22 the house did not notice any sort of odors inside the
23 laundry room?

24 A I don't know. I wasn't there with the cadaver dog.

25 Q All right. But you were here yesterday when there

1 was testimony regarding a cadaver dog, were you not?

2 A Part of the testimony, yes, sir.

3 Q And during that testimony, you heard that the cadaver
4 dog did not alert anywhere near the laundry?

5 A Yes.

6 Q And an alert would indicate that he noticed any sort
7 of decomposition or any sort of evidence of decomposition
8 in the laundry room?

9 A I believe so. I'm not a canine handler.

10 Q Sure.

11 A So I don't know what terminology they used.

12 Q But you heard the testimony where he stated -- the
13 handled, Deputy Pearrow stated, that he did not alert in
14 that laundry room, right?

15 A I believe I was here for that testimony.

16 Q All right. I'm going to show you a photograph which
17 I don't think you introduced this either, but does this
18 appear to be a photograph of the washer and dryer?

19 A It does.

20 Q Is this an accurate depiction of the washer and dryer
21 on August 23rd, 2012 when you went in?

22 A It should be accurate, yes.

23 MR. MYERS: I'm going to have -- Your Honor, if I may
24 move to introduce that into evidence as Defense Exhibit

25 10.

1 Now --

2 THE COURT: Hold on. Any objection to that?

3 MS. CAVANAUGH: Your Honor, can I just glance at the
4 photo?

5 THE COURT: Oh, yes, ma'am.

6 (Pause.)

7 (WHEREUPON, Defendant's Exhibits Nos. 10, 11 were
8 marked for identification only.)

9 MS. CAVANAUGH: No objection.

10 THE COURT: Okay. That's Defense Exhibit No. 10
11 without objection.

12 MR. MYERS: And 11, Your Honor.

13 THE COURT: Any objection to 11?

14 MS. CAVANAUGH: No, Your Honor.

15 THE COURT: And 11.

16 MR. MYERS: And I'm going to hand to you --

17 THE COURT: Hold on.

18 MR. MYERS: I'm sorry. I'm sorry.

19 (WHEREUPON, Defendant's Exhibits Nos. 10, 11 were
20 admitted into evidence.)

21 BY MR. MYERS:

22 Q Thank you.

23 Now, in Defense Exhibits No. 10, you stated that this
24 is an accurate depiction of the washer and the dryer at
25 the home, correct?

1 A It appears to be, yes.

2 Q And in number 11, this appears to be the opening of

3 the washing machine, correct?

4 A Yes.

5 Q And you stated nothing was altered, right?

6 A Right.

7 Q You didn't do anything to alter it?

8 A I did not alter it, no.

9 Q And you're pretty sure that no one at the scene did

10 anything to alter it, correct?

11 A Yes, I believe so.

12 Q Now, does it not appear that the inside of that

13 washer and dryer appears to be dry?

14 A Yes.

15 Q I mean, it's bone dry, is it not?

16 A Yes.

17 Q Which would indicate that it hadn't been used, right?

18 A Correct.

19 Q Because I mean, even if it had been used within the

20 past several hours, you think there would be some type of

21 condensation around that washing machine?

22 A That's possible.

23 Q But in this photograph here, it was bone dry?

24 A Appears to be that way, sir.

25 Q In fact, the towel that's inside the washing machine,

1 that's dry, as well, is it not?

2 A I don't recall if it was completely dry or if it was
3 damp.

4 Q Okay. But does it -- it appears to be dry in that
5 photograph, correct?

6 A Yes, sir. In that photograph, it appears to be dry.

7 Q And we know the cadaver dog did absolutely nothing to
8 alert in that laundry room, correct?

9 A I believe that's what the testimony was.

10 Q In fact -- or let's go back to this house. This
11 ~~house, the flooring in this house, it was standard carpet,~~

12 was it not?

13 A The majority of it, yes.

14 Q All right. Except for in the laundry room. That's
15 obvious. It appears to be some sorted of linoleum in the
16 laundry room, correct?

17 A I'd have to look at my notes. Hold on.

18 (Pause).

19 It appears there was a wood-type floor in the foyer.

20 There was carpeting in the living room that led towards
21 the kitchen. The kitchen appeared to have linoleum on it,
22 as well as the hallway towards the garage, and the laundry
23 room floor appeared to have linoleum on it, as well.

24 Q Okay. So carpet was in the house, right?

25 A Yes.

1 Q In fact, your department pulled back some of the
2 carpet to determine whether or not there was any evidence
3 underneath the carpet, right?

4 A I don't know. I wasn't there.

5 Q Okay. There was no evidence of decomposition found
6 in the carpet, right?

7 A I don't know. I wasn't there.

8 Q No evidence of any sort of fibers found inside the
9 carpet, was there?

10 A I don't know. I wasn't there.

11 Q ~~Who would have been the individual that would have~~
12 pulled the carpet back?

13 A I believe Investigator Bouknight.

14 Q Who would have been the individual that would have
15 collected any sort of evidence from the carpet?

16 A It might have dealt with the carpet. It would have
17 been him.

18 Q So all the boxes that you testified before this jury,
19 none of it contains any sort of evidence of decomposition
20 taken from the carpet, right?

21 A I had nothing to do with the carpet, no, sir.

22 Q All right. In fact, the only thing related to
23 carpet, I believe, is this Dirt Devil which appears to be
24 State's Exhibit -- help me out here if you don't mind,
25 sir. State's 87. Is that 187?

1 A It's either a 2 or a 7. I think it's a 7.

2 Q Well, let's be sure. I don't want to...

3 A You don't know if it's 187?

4 (Pause).

5 Yeah, okay, 7.

6 THE COURT: 187.

7 BY MR. MYERS:

8 Q So according to 187, this Dirt Devil would have been
9 the only thing that you would have collected connected to
10 any sort of carpet cleaning.

11 A That's right.

12 Q How about the machine that this canister came from?

13 A I did not collect that. I already testified to that.

14 Q All right. How about -- so you don't have any have
15 any idea whether or not any bristles from the Dirt Devil
16 vacuum cleaner had any sort of decomposition on it?

17 A I don't know.

18 Q Any sort of scrub brushes found inside the house?

19 A I don't know. Let me look at my notes. I do not
20 recall any.

21 (Pause).

22 I don't know. I don't show any.

23 Q Okay. So no evidence of any Clorox.

24 A I don't think so. Let me look at the laundry room
25 photos.

1 (Pause).

2 Yes. There's Clorox in the laundry room.

3 Q In the laundry room?

4 A Yes.

5 Q Which would be used to clean white clothes, right?

6 A Yes.

7 Q But that was the only location which the Clorox was
8 found?

9 A I believe, yes.

10 Q And no -- as you stated, no scrubbing brushes.

11 A Not that I noted, no.

12 Q No sort of hard chemical -- no sort of -- no evidence
13 of any sort of commercial grade cleaning equipment inside
14 the house, right?

15 A No.

16 Q In fact, the photograph pretty much showed that it
17 was the standard cleaning solution found inside the house,
18 right?

19 A Yes.

20 Q Things that you would expect to find in any house?

21 A Yes.

22 Q I mean, nothing out of the ordinary on the photograph
23 that you showed to the jury that would cause any sort of
24 suspicion regarding what was found by way of cleaning
25 supplies, right?

1 A Cleaning products, no. Air fresheners are odd.

2 Q The air fresheners, we've already discussed the first

3 air freshener.

4 A Right.

5 Q And there was only one of those, right?

6 A In operation.

7 Q And the only other air freshener that you indicated

8 would have been incense, right?

9 A There's incense, yes.

10 Q And by incense, I just want to make sure I'm clear.

11 ~~Those are the incense that individuals would just~~

12 basically stick in a little container and just light it up

13 so it could smell good, right?

14 A Right.

15 Q Is there anything wrong with wanting your house to

16 smell good?

17 A No.

18 Q I mean, so the fact that he might have had any sort

19 of incense, that doesn't necessarily mean that he was

20 anything but an individual that was concerned about where

21 he was living, right?

22 A I guess you're right, yes.

23 Q So I mean, there's nothing out of the ordinary about

24 him having incense inside the house.

25 A Not of the item itself. The excessiveness is odd.

1 Q Now, when you got to the scene, were you aware that
2 the victim had in her left hand a long hair?

3 A Yes.

4 Q Now, I'm going to show you a photograph that we'll
5 have marked as defense number 12.

6 (WHEREUPON, Defendant's Exhibit No. 12 was marked for
7 identification only.)

8 BY MR. MYERS:

9 Q Does this appear in Defense Exhibit No. 12 to be the
10 hair that was found in the victim's left hand?

11 A ~~I don't know. You'll have to ask Investigator~~
12 Bouknight. He collected that.

13 Q But if this was the hair that was found inside her
14 left hand, that would be pretty important, would it not?

15 A If it's the one, it could be.

16 Q Because any such hair could actually be forensic
17 evidence that could basically connect that hair to
18 anybody, correct?

19 A It could be. It could be transfer.

20 Q Sure. By transfer, you mean from somebody else to
21 Ms. Smith, correct?

22 A No. Ms. Smith was placed there. If her body was
23 drug, she could have picked it up off the floor. It could
24 have been transferred from any source.

25 Q Speaking of drug or dragging, do you have any

1 evidence that would suggest that she was dragged?

2 A No. But if you're going to move a decomposing body,
3 it's not going to be really easy to do.

4 Q Sure. We'll get to that later, but there was no
5 evidence that you have that the body was dragged into its
6 location.

7 A It's possible that the bruising on the heels of the
8 victim could have been caused from that.

9 Q So were there drag marks around the body?

10 A Not that I noted, no.

11 ~~Q I mean, did the grass have any sort of drag marks?~~

12 A By the time I got there, the scene had been occupied
13 by EMTs, fire, and first responders, so no.

14 Q So going back to what I asked you earlier, there were
15 a lot of other individuals around that body by the time
16 you got there?

17 A There had been per the log. There was not when I got
18 there.

19 Q Now --

20 A But they, obviously, had to enter in, in order to
21 give your client medical attention.

22 Q Sure, but this photograph here which depicts this
23 hair that was found in Ms. Smith's hand, that's a long
24 hair, is it not?

25 A Appears to be, yes.

1 Q You see Mr. Bailey's head, right?

2 A Correct.

3 Q This hair could not belong to Mr. Bailey, could it?

4 A Not from his head, no.

5 MR. MYERS: At this time, Your Honor, I'd like to
6 move into evidence Defense Exhibit 12.

7 MS. CAVANAUGH: Can I see it?

8 (Pause).

9 No objection.

10 THE COURT: What's your position on that?

11 ~~MS. CAMPBELL: Your Honor, we don't object. If he~~

12 could just out of courtesy, we showed him the pictures.

13 If we can expedite this whole thing, show us the pictures
14 he's going to use.

15 MR. MYERS: She's right, Your Honor. I apologize.

16 MS. CAMPBELL: That would just be helpful.

17 THE COURT: When we take a lunch break, come back a
18 little early. Anything you want to show.

19 MR. MYERS: Yes.

20 THE COURT: Now, I mean, I haven't heard this witness
21 say that he took the photo or knows that it's the hair or
22 knows that it's the one collected or anything else.
23 That's my concern with the photo at this point.

24 BY MR. MYERS:

25 Q Let's go back, Investigator Lee. You stated that you

1 knew there was a hair found in her hand, right?

2 A That's right.

3 Q And as I understood it, I may have been wrong, you
4 were the individual responsible for taking the photograph
5 of the scene, were you not?

6 A I took photographs, yes.

7 Q Was there someone else that took photographs?

8 A I don't recall.

9 Q So who else would have taken a photograph of her
10 hair?

11 A ~~Of that picture? It was most likely done in the lab.~~

12 Q Okay. So the photograph, even though a piece of hair
13 was found, you did not take a photograph of that hair at
14 the scene?

15 A No. I know of the hair from reading Investigator
16 Bouknight's report.

17 Q So you don't know who took a photograph of the hair?

18 A That is not from the scene.

19 Q But it was found at the scene, was it not?

20 A From his report, it was. It was found in her hand.

21 Q Sure. And she was at the scene, was she not?

22 A She was.

23 Q So the hair was at the scene?

24 A Yes. I don't know where you're going with your
25 question.

1 Q Yes.

2 A Are you asking me to agree with me, or asking you
3 this question.

4 Q I'm asking that you were responsible for taking
5 photographs of everything at the scene, right?

6 A Correct.

7 Q And you were told when you came there that was there
8 a hair found in the victim's hand, right?

9 A No.

10 Q You were not told at all that there was a hair found
11 inside her hand?

12 A I have the copy of Investigator Bouknight's report,
13 and that's where I read it. He processed her hands for
14 gunshot residue. I recall him stating, "I collected a
15 fiber from there."

16 Fibers are difficult to photograph. Sometimes you
17 don't photograph them. Sometimes you collect them so you
18 don't lose them immediately.

19 Q Sure.

20 A If you take the time to photograph a small hair, by
21 the time you change lenses, it could be gone. You get
22 that immediately. You secure it immediately.

23 Q Sure.

24 A And that's what Investigator Bouknight did. He
25 followed protocol. There's nothing wrong with what he

1 did.

2 Q Okay.

3 A And it can be photographed in the lab. Just like
4 they photographed it right there. We don't use wooden
5 rulers out on the scene. We have our own tape.

6 Q Okay. So sitting here today, do you or do you not
7 know whether or not that was the hair found in Ms. Smith's
8 hand?

9 A The picture that you're showing me?

10 Q Yes.

11 A I have no idea.

12 Q Okay. But if it was found in her hair, it would be
13 important, would it not?

14 A In her hand or in her hair?

15 Q In her hand.

16 A Okay. I thought you said hair.

17 Q Okay.

18 A It could be important, yes.

19 Q Now, the positioning of the body, it was face down
20 when you got there, right?

21 A That's correct.

22 Q Thank you. I'm going to hand to you, sir, what I
23 will have marked as Defense 13.

24 (WHEREUPON, Defendant's Exhibit No. 13 was marked for
25 identification only.)

1 BY MR. MYERS:

2 Q Does this reflect accurately Ms. Smith's body as it
3 appeared when you arrived at the scene?

4 A No.

5 Q What is different about this photograph?

6 A When I arrived at the scene, she was covered with a
7 blanket.

8 Q Is this how it was when you retrieved the blanket
9 from her body?

10 A That appears to be the way she looked when we removed
11 the blanket, only a t-shirt, nude from the waist down.

12 Q Okay. And there appears to be fecal material from
13 the body?

14 A Sorry to say.

15 Q So safe to say, there was some sort of postmortem
16 evacuation from her body?

17 A Probably.

18 MR. MYERS: I would like to move into evidence, Your
19 Honor, what has been marked as Defense Exhibit No. 13.

20 MS. CAVANAUGH: No objection.

21 THE COURT: No objection? Admitted without
22 objection.

23 (WHEREUPON, Defendant's Exhibit No. 13 was admitted
24 into evidence.)

25

1 BY MR. MYERS:

2 Q Now, according to the sketch, that you performed, the
3 head is here. The feet are here, right? (Indicating).

4 A That's correct.

5 Q If you were looking at the house, her right arm would
6 have been toward the house, right?

7 A Yes, it was closest to the house.

8 Q Her left arm would have been closer to the road,
9 right?

10 A Let me look at my photos, but I believe you're
11 correct.

12 (Pause).

13 Yes, sir, feet were facing the driveway which would
14 put her right arm towards the door.

15 Q Okay. And it appears the right arm is closer to the
16 body than the left arm is, does it not?

17 A That appears so, yes.

18 Q In fact, it looks as if the weight of her body is
19 distributed more towards the right side of her body than
20 the left side of her body, right?

21 A I can't tell based on the photograph.

22 Q All right. Well, I don't want to put words in your
23 mouth, but does it not appear -- her feet were pigeon
24 toed, right, or turned inwardly, right?

25 A In the photograph they were. I don't know if she

1 walked that way normally.

2 Q All right. And the grass here along the right side
3 appears to be standing up, right?

4 A It appears to be, yes.

5 Q And the grass here on the left side of her body
6 appears to be laid down, right?

7 A You can't 100 percent say that by the way the
8 photograph was taken.

9 Q All right. But we know that this right arm appears
10 to be -- was closer to the house, right?

11 A Yes.

12 Q And the left arm was closer to the street, right?

13 A That's correct.

14 Q Now, you've had some law enforcement physical
15 training, have you not?

16 A I have.

17 Q And in law enforcement physical training, you would
18 have had to learn how to evacuate perhaps an injured body,
19 right?

20 A I don't understand your question.

21 Q In your training, in your physical training, have you
22 ever learned how to carry a body?

23 A How to carry a body?

24 Q Sure.

25 A Yes.

1 Q You would agree with me that there are only a certain
2 number of ways in which a body can be carried, right?

3 A A living body or a dead body?

4 Q An injured body; a dead body.

5 A There could be a certain number of ways.

6 Q There is what's called "the soldier's carry" when the
7 body is draped over one shoulder because the soldier would
8 need to have at least one arm available for the weapon,
9 right?

10 A I wasn't a soldier. I don't know.

11 Q All right. Well, did you learn about the firearm's
12 carry where the body is draped over both shoulders?

13 A I have seen it before, yes.

14 Q And, you know, there is the standard old cradle carry
15 where the arms are underneath the body, right?

16 A I believe there is one, yes.

17 Q Are you aware of any other ways to carry a body from
18 your training?

19 A To carry a body?

20 Q Sure.

21 A A body could be just grabbed and lifted.

22 Q Okay. There were no containers around this body,
23 right?

24 A Containers?

25 Q Any plastic containers surrounding the body?

1 A I don't understand your question.

2 Q Were there any sort of items that you can say that
3 this is what the body was carried in?

4 A As if like it was placed a plastic container or
5 something?

6 Q Sure, sure.

7 A None that were there.

8 Q Because we can agree that the body didn't just drop
9 from the sky, right?

10 A That's right.

11 Q ~~So it had to have been placed there, right?~~

12 A Correct.

13 Q And if it was placed there, you have no evidence that
14 it was placed there from a container?

15 A No.

16 Q There was no plastic containers found in the house?

17 A No.

18 Q No plastic containers found in the garage?

19 A I don't recall any.

20 Q In the living room?

21 A No.

22 Q Upstairs?

23 A No.

24 Q In any of the rooms?

25 A Not that I remember, no.

1 Q The only item that you saw was a blanket, right?

2 A Blanket placed there by your client, correct.

3 Q Now, if your theory that the body was inside the
4 house is correct, Mr. Bailey would have had to have
5 carried that body down those stairs, right?

6 A You would think, yes.

7 Q Those stairs that are only three feet wide, right?

8 A Could be. Measurements weren't taken.

9 Q And Ms. Smith was longer than three feet wide, was
10 she not?

11 A ~~She was longer than three feet wide?~~

12 Q Longer than three feet. Well, in fact, she was about
13 5'6", 5'7", was she not?

14 A I don't recall. I think you may be right.

15 Q That's longer than three feet, right?

16 A Feet to head, yes.

17 Q Do you have any photographs to show this jury of any
18 sort of decomposition along the walls of the stairwell?

19 A No.

20 Q Do you have any sort of evidence that would show any
21 sort of decomposition outside of the door?

22 A Which door?

23 Q Outside of the front door.

24 A Any decomposition outside of the front door?

25 Q Sure.

1 A Of course. The victim was there. She was in decomp.

2 Q Well, I mean, the front door as far as the sides of
3 the door.

4 A I don't get what you -- you mean transfer?

5 Q Sure.

6 A No. There was no transfer on the doorframe.

7 Q So do you have any sort of theory as to how
8 Mr. Bailey would have gotten a body from the upstairs --
9 from the upstairs room downstairs?

10 A Well, if she was wrapped in a -- say, a dark blanket
11 ~~that I removed from the dryer, then there would not be~~
12 transfer.

13 Q There's --

14 A It would be less likely to have transfer. It would
15 be easier to contain a body and carry them if they were
16 wrapped tightly in something.

17 Q The same blanket that the cadaver dog never alerted
18 to, correct?

19 A No. The cadaver dog alerted to that blanket.

20 Q The cadaver dog never alerted to the laundry room,
21 did it?

22 A I don't know about the laundry room. I wasn't there
23 for it.

24 Q It didn't alert to any of the filters around the
25 filter, did it?

1 A I don't know. I wasn't there.

2 Q It didn't alert to any of the filters on the outside
3 of the house, did it?

4 A I don't know.

5 Q So the cadaver dog didn't do any sort of alerting to
6 that laundry room, right?

7 A I don't know. I wasn't there.

8 Q And if, as the State has alleged, that Ms. Smith was
9 strangled, would you agree with me that strangulation does
10 not cause any sort of bleed?

11 A Normally, no.

12 Q So if there was any sort of blood on the blanket, it
13 would not have come as a result of any sort of
14 strangulation, would it not?

15 A I don't know. I'm not a medical examiner.

16 Q Now, you have worked with the Richland County
17 Sheriff's Department for some time, right?

18 A I have, yes.

19 Q In fact, the sheriff's department prides itself on
20 being accredited as a forensic crime lab, right?

21 A Our lab, correct.

22 Q In fact, it is the ASCLD/lab international accredited
23 laboratory, right?

24 A ASCLD, yes.

25 Q So I mean, this place is the CSI of Columbia, right?

1 A Could be.

2 Q Right.

3 A It could be considered that.

4 Q And certainly, you have the capability of finding
5 forensic evidence at a crime scene, don't you?

6 A Yes.

7 Q So if there was any sort of evidence of decomposition
8 on the inside of the house, your office has the equipment
9 to locate it, does it not?

10 A To finding decomp. inside?

11 Q Right.

12 A In order to find any evidence, it's based on an
13 investigator.

14 Q Sure. But your office is equipped with the equipment
15 to locate any sort of forensic evidence at a crime scene,
16 right?

17 A Forensic evidence, not decomposition. There is no
18 equipment to find decomp.

19 Q You got a dog apparently, right?

20 A Yes.

21 Q And you don't have -- you mean to tell me that there
22 is nothing in the CSI lab of Columbia that could detect
23 any sort of blood in a house?

24 A Blood, yes. We used Bluestar.

25 Q It could also -- you have the equipment to also

1 detect any sort of fingernail scrapings from a victim,
2 right?

3 A The DNA lab, correct.

4 Q You have the ability to test any sort of slippage
5 from skin that may have been at a crime scene, right?

6 A No. I don't understand what you're saying with that
7 question.

8 Q Right.

9 A To test slippage of skin?

10 Q Sure. I'll rephrase that. Inside that house, your
11 ~~office found no evidence of traces of blood inside the~~
12 house, did you?

13 A That's correct.

14 Q In the living room, right?

15 A Correct.

16 Q You found no traces of it in the kitchen, right?

17 A That's correct.

18 Q You found no traces of it in the bedroom?

19 A That's correct.

20 Q Underneath Ms. Smith's fingernails, you found no
21 trace evidence that would connect Marcus to that body,
22 correct?

23 A I don't have information on that.

24 Q Do you know if there's going to be testimony whether
25 or not there was some sort of forensic evidence belonging

1 to Marcus Bailey underneath Almanita Smith's fingernails?

2 A I don't know if there is or not.

3 Q If there was one -- because that's the purpose of you
4 putting bags over her hands, correct?

5 A To contain any trace evidence, yes.

6 Q To preserve that evidence, correct?

7 A You're right.

8 Q So you sitting here right now are unaware of whether
9 or not there was any sort of forensic evidence connecting
10 Marcus Bailey to Almanita Smith's body, do you?

11 A No. Our lab is different from television, sir. We
12 collect. There are other people that handle other aspects
13 of it such as our DNA lab. That would be a question for
14 them.

15 Q I want to -- I want to go back to something real
16 quick. You notice -- or you testified earlier that the
17 skin slippage -- that there was skin slippage on the body,
18 was there not?

19 A That's correct.

20 Q And the skin slippage would indicate a level of
21 bloating of the body, right?

22 A It could. The skin is starting to separate.

23 Q It could also indicate where someone attempted to
24 touch the body, and it caused the skin to slip, right?

25 A It could have, yes.

1 Q And I'm sure that you saw the photographs where the
2 skin slippage of Almanita's body was prevalent around her
3 back shoulders, right?

4 A I'd have to look at my pictures. Where do you mean
5 back shoulders? She is wearing a shirt.

6 Q Investigator Martin [sic], you might need to step
7 down for this one. I don't want to hit you on the stand
8 with that.

9 MS. CAVANAUGH: Objection. It's not in evidence to
10 show it to the jury, Your Honor.

11 THE WITNESS: I just want to -- can I speak?

12 THE COURT: Hold on.

13 Let me see it first. What are -- are you moving this
14 into evidence?

15 MR. MYERS: No, sir, Your Honor. I just want to
16 talking him about the skin slippage that we were
17 discussing.

18 THE COURT: Okay. Well, how are we going to do that
19 without it being in evidence?

20 MR. MYERS: Well, Judge, I think I can use it just as
21 reference.

22 THE COURT: What is it?

23 MR. MYERS: It's just a diagram from the forensic
24 pathologist that just basically shows the level of
25 decomposition, skin slippage.

1 THE COURT: There is no testimony that he had
2 anything do with that.

3 Did you have anything to do with the forensics
4 pathology report?

5 THE WITNESS: I never went to the autopsy, no, sir.

6 THE COURT: Have you reviewed the report?

7 THE WITNESS: I don't know. I've never seen it, no.

8 BY MR. MYERS:

9 Q You were responsible for taking the photographs,
10 though, right? I mean, I think we're clear on that.

11 A At the scene, yes.

12 Q And according to the photographs that you had or the
13 photograph that you took, there was skin slippage on the
14 body, was there not?

15 A There appeared to be, yes.

16 Q And the skin slippage was prevalent across the back
17 shoulders, right?

18 A No. There's a shirt that was on. I don't know what
19 -- maybe at the autopsy once they removed the shirt, but I
20 never noted any on the back.

21 Q And there was also skin slippage along the buttocks
22 area, right?

23 A Hold on. I don't know if that's slippage or that's
24 tearing of the skin. That would be a pathologist
25 question.

1 Q All right. Well, let's talk about where skin
2 slippage was not. There was no skin slippage on her
3 abdomen area, right?

4 A I don't know. She had her shirt on.

5 Q You didn't take any photographs with her shirt
6 removed?

7 A No. We held that until autopsy. Autopsy, they take
8 those photographs.

9 Q From what you could see, there was no skin slippage
10 on the lower body except on the buttocks region, right?

11 A If that's slippage on the buttocks, yes.

12 Q And if there was slippage at least on the back
13 shoulder and the buttocks, that would coincide with
14 perhaps the individual or someone lifting her in a cradled
15 position, would it not?

16 A It could have but I never saw anything on the back
17 because her shirt was on.

18 Q Sure, but if the body had been draped over a
19 shoulder, you would think that there would be some form of
20 slippage on the abdomen area, right?

21 A Could have been, yes.

22 Q I mean, there would be some sort of trauma to the
23 skin if it were carried in that fashion, would it not?

24 A The arms are more likely to start slipping, you know,
25 depending on the extent of the decomp.

1 Q Okay.

2 A The smaller the area, the more excessive it could be
3 where the abdomen would retain maybe more and not slip
4 nearly as bad. I don't know. That's a medical examiner
5 question.

6 Q Okay.

7 A I'm not a medical examiner.

8 Q I don't want to ask anything unfairly --

9 A I don't want to speculate on that.

10 Q -- but it would appear that if someone was carrying
11 or had carried that body, the skin slippage on the body

12 would be more consistent with that individual cradling the
13 body as opposed to draping it over his shoulder, right?

14 A I don't know. I don't have an answer for you.

15 Q In fact, the way that body is positioned in that
16 yard, it appears that the body was dumped from the road,
17 does it not?

18 A Appears that she was placed in the yard. I think
19 you're speculating to say it came from the road.

20 Q Okay. So the fact that the right arm was closer to
21 the body, right, that you testified to, right?

22 A The right arm.

23 Q The right arm which was closest to the body and
24 closest to the house.

25 A Correct.

1 Q The fact that the weight of the body appeared to be
2 distributed on the right side, right?

3 A That's what you say, yes.

4 Q So if that is the case, it would be more consistent
5 with someone dumping that body from the road, right?

6 A That's your theory on it. I don't -- I don't agree
7 with you on that. You can't 100 percent say how a body is
8 dropped.

9 Q Okay.

10 A It may land on one side more than the other because
11 of fluid.

12 Q Okay. But we know that in your certified crime lab,
13 you found no organic material from Almanita's body inside
14 that house?

15 A I don't know. I did not collect any.

16 Q You didn't take any photographs of any organic
17 material found inside the house?

18 A Sometimes you can't photograph organic material, but
19 no, I did not.

20 Q All right. And the items that you stated that
21 appeared -- or let me go back. In the bathroom, the
22 upstairs bathroom, you indicated that there was a red mark
23 somewhere near the tub, right?

24 A There was a reddish brown stain inside the garden
25 tub.

1 Q Sure, and you took a photograph of that, did you not?

2 A Sure.

3 Q And that didn't turn out to be anything other than
4 rust, right?

5 A It could have been rust. It was not blood.

6 Q Sure. And the items found in the bedroom that you
7 stated were damp, the pillowcase that was damp, do you
8 recall that testimony?

9 A In the spare bedroom?

10 Q Sure.

11 A On the futon?

12 Q Yes.

13 A They were pillowcases not futons.

14 Q All right. But you recall stating that it appeared
15 to be moist, right?

16 A That is correct.

17 Q That was nothing that belonged to Almanita Smith, was
18 it?

19 A I don't know who it belong to.

20 Q Okay.

21 A It was in her home. I would assume that was hers.

22 Q The clothing that you said that you found inside her
23 closet that you stated were damp --

24 A Inside the master bedroom closet.

25 Q Yes, sir.

1 A Okay.

2 Q There were no items of decomposition found on that
3 clothing, right?

4 A The odor was not there unlike other areas.

5 Q You didn't find any blood on the clothes?

6 A Not that I could see. It was damp.

7 Q You didn't find any fecal matter on the clothes?

8 A No, but I didn't take it completely apart. I
9 collected it as it was for being dried.

10 Q You didn't find any urine on the clothes?

11 A No, I did not.

12 Q In fact, you found absolutely no organic material
13 belonging to Almanita Smith on the items that you
14 testified to?

15 A I did not test for them on the scene. That could
16 only be tested in the lab. I don't know what the results
17 are on that.

18 Q Beg the Court's indulgence.

19 (Pause.)

20 Investigator Lee, CSI of Columbia, is it your
21 testimony that your lab is incapable of finding where
22 carpet soaked up any parts of a decomposed body?

23 A Reword your question.

24 Q Is it your testimony that your accredited lab, your
25 accredited CSI lab, that it is unable to detect whether or

1 not carpet soaked up parts of a decomposed body?

2 A If there was a decomposing body on the carpet, we
3 probably would have found it, but the carpet did not show
4 any signs of decomposition.

5 Q Didn't show any signs even when they pulled it back,
6 right?

7 A I don't know. I wasn't there for that. Like I told
8 you in my earlier testimony, Investigator Bouknight
9 handled the carpet.

10 Q Okay. So your testimony is that if there was any
11 sort of decomposition in the carpet, your office has the
12 capability of detecting it?

13 A My nose based on my experience at crime scenes of
14 decomp., sometimes subflooring even has to be removed.
15 The smell will not go away.

16 Q Because the odor --

17 A It has to be on that, though.

18 Q Sure, because the odor --

19 A If it was on the futon or some other item, I don't
20 know. But the carpet that was checked, I don't know the
21 results on that.

22 Q Sure.

23 A Surely it would show some signs, if so. A common
24 person would understand that.

25 Q And a body that had been decomposing would have had

1 an odor under that, certainly would have been
2 recognizable, right?

3 A Should have, yes, but there's many different
4 conditions on decomp. that affect it.

5 Q Sure.

6 A I can explain if you want me to.

7 Q Sure. I don't want to be rude to you. You can
8 certainly explain.

9 A Decomposition, different stages can be affected by
10 temperature. If a body is outside in August humid heat,
11 it could decompose quicker. If it's kept inside where

12 it's cooler, the reason why we put them in coolers when
13 they go to the morgue is to slow down this process, so
14 being inside in air conditioning could have slowed things
15 down.

16 Q Let's talk about that because I thought you testified
17 that you didn't know anything about levels of
18 decomposition when I asked you that question earlier.

19 A No. Based on my experiences I have said I have seen
20 the difference in bodies that are outside compared to
21 bodies inside.

22 Q Sure.

23 A Compare bodies to the summertime and bodies in the
24 wintertime.

25 Q Sure. This body was found, though, during the

1 summertime.

2 A You're correct.

3 Q August of 2012, right?

4 A Correct.

5 Q You recall that August 2012 was a very hot month,
6 right?

7 A A lot of years are warm, yes.

8 Q In fact, last year you recall that the temperatures
9 got in excess of 100 degrees, right?

10 A Most years they do.

11 Q So when you testified earlier that you saw the

12 thermostat set at a certain temperature, that would not
13 have been out of the ordinary for, first of all, the air
14 conditioning to be on, right?

15 A No, not at all.

16 Q So the fact that it was set at a standard temperature
17 could mean that the individual was just trying to keep the
18 house cool, could it not?

19 A It could have, yes.

20 Q Nothing to indicate that the temperature was at
21 69 degrees on the inside could be because it was trying to
22 hide a dead body?

23 A That's correct.

24 MR. MYERS: Thank you. No further questions.

25 THE WITNESS: Thank you.

1 THE COURT: Redirect?

2 REDIRECT EXAMINATION:

3 BY MS. CAVANAUGH:

4 Q This photograph of the hair with the ruler that
5 defense counsel kept asking you about, would you be
6 surprised to learn that this was actually taken by defense
7 counsel at the Solicitor's Office? Were you aware of
8 that?

9 A No, I wasn't. I know it wasn't my photograph.

10 Q Just to be clear, the blanket that you stated had a
11 distinct odor of human decomposition, that was found in
12 the dryer, correct?

13 A That's correct.

14 Q And you removed -- and that was emanating from the
15 blanket itself, is that correct?

16 A It appeared to be coming from the items in the dryer,
17 correct.

18 Q And you had removed that blanket before the cadaver
19 dog arrived at the scene; is that right?

20 A That's correct.

21 Q And that is this same blanket that was placed in
22 those boxes at the forensic garage; is that correct?

23 A Yes..

24 Q And that is the same blanket that the cadaver dog
25 detected on.

1 A That's correct.

2 Q Twice.

3 A Correct.

4 Q And there's no testing for decomposition. There is
5 testing for blood DNA; is that correct? Is there a test
6 for decomposition or a test or blood, is that right?

7 A There is a test that you can test for blood. A lot
8 of the times decomposition is an odor. If there is
9 nothing to clearly state that there is a body there, such
10 as the body, but no, there is no testing for decomposition
11 that I know of.

12 Q And you stated -- you mentioned the bug activity
13 around the victim's head area and body at the scene. Did
14 that increase as you were there?

15 A Yes, it did.

16 Q Was that significant?

17 A It wasn't significant, but you could see that
18 activity was increasing. If she would have remained, it
19 probably would have gotten a larger amount of flies there.

20 Q But when you first arrived there, there was very --
21 there was little bug activity?

22 A There was activity, but it wasn't excessive.

23 Q And it increased as you were there?

24 A Compared to other scenes I've gone to, it was
25 minimal, but it was there. It was evident.

1 Q Is it fair to say that there was an excessive amount
2 of incense, air freshener, Plug Ins, and then this -- is
3 it fair to say there was an excessive amount of those
4 items in the house?

5 A There was a lot noted, yes.

6 Q That appeared to be freshly burned?

7 A That's correct.

8 Q And this Stratus aerosol dispenser Hospital Specialty
9 Company, is this usual to find in homes?

10 A I've never seen one before. At first I thought it
11 was actually a bug sprayer.

12 MS. CAVANAUGH: Thank you, Investigator Lee.

13 RE CROSS-EXAMINATION:

14 BY MR. MYERS:

15 Q Now, when I asked you that question about that air
16 freshener, that air canister, you told me, you told this
17 jury, that that's an air freshener that you could find at
18 Wal-Mart, did you not?

19 A No, you told me.

20 Q No, sir. You agreed with me that that --

21 THE COURT: He has the right to answer. He has the
22 right to answer --

23 THE WITNESS: You're the one that said, "Is it
24 something that you could find at Food Lion, Wal-Mart, some
25 place like that?" And I agreed with you.

1 BY MR. MYERS:

2 Q Yes, sir.

3 A You probably could find something similar to that.

4 Q I didn't --

5 A I didn't know about that exact brand.

6 Q You didn't say anything on my cross-examination to
7 disagree that you could find that at Wal-Mart, right?

8 A I agreed that it's possible.

9 Q You didn't say anything to disagree with me that you
10 could find it at Food Lion, right?

11 A I agreed it's possible with you.

12 Q But on her redirect, now you testified that this is
13 something that you have to look for?

14 A No. It's something I haven't seen in a home before.

15 MR. MYERS: No further questions, Your Honor.

16 THE COURT: All right. Thank you, Investigator Lee.
17 You may step down.

18 THE WITNESS: Thank you, Judge.

19 THE COURT: Any objection to this witness being
20 excused from the subpoena?

21 MS. CAVANAUGH: No, Your Honor.

22 MR. MYERS: None, Your Honor.

23 THE COURT: Okay. Thank you, Investigator Lee.

24 THE WITNESS: All right. Thank you.

25 THE COURT: Are we short on the next one? I'm not

1 holding you to it. Just tell me where we are.

2 MS. CAVANAUGH: Your Honor, may we approach?

3 THE COURT: Sure.

4 (WHEREUPON, a bench conference was held in the
5 Presence but not within the hearing of the jury).

6 THE COURT: Here is what we're going to do: We're going
7 to take a quick five-minute break. When I say mean five
8 minutes, I mean everybody can take care of their business,
9 and then we're going to come back out. Then we're going
10 to do one more witness before lunch.

11 Now, I'm not holding the lawyers to this, but they're

12 telling me that that witness isn't going to be too long.
13 If the witness goes past one o'clock, I'll just stop it,
14 but the witness has been waiting all morning.

15 So we're going to take a quick five-minute break.
16 We'll come right back, finish that witness and then we'll
17 take lunch.

18 Everyone remain seated while the jury is excused.

19 (WHEREUPON, the jury left open court at approximately
20 12:31 p.m.)

21 THE COURT: All right, sir. Five minutes.

22 (WHEREUPON, a short break was taken.)

23 THE COURT: Ready?

24 MS. CAMPBELL: Yes, Your Honor. The only thing is if
25 I could -- like we discussed earlier, there's some

1 photographs and stuff -- and the only reason being we
2 showed them our photographs. It makes us look like we are
3 idiots, which we are, but it helps if I wouldn't have to
4 object or look at them.

5 THE COURT: We're going to do that.

6 MS. CAMPBELL: We extended them the same courtesy.

7 THE COURT: We're going to do that.

8 Everybody ready?

9 MS. CAVANAUGH: Yes, Your Honor.

10 THE COURT: Bring them back in.

11 (WHEREUPON, the jury came into open court at

12 approximately 12:39 p.m.)

13 THE BAILIFF: The jury seated, Your Honor.

14 THE COURT: Thank you very much.

15 Call your next witness.

16 MS. CAVANAUGH: Thank you, Your Honor. The State
17 calls Ethan Kenny.

18 THE COURT: Sir, please come forward to be sworn.

19 ETHAN KENNY, after being duly sworn,
20 testified as follows:

21 THE CLERK: Have a seat in the witness box. State
22 your full name for the court.

23 THE WITNESS: Ethan Kenny. K-E-N-N-Y.

24 DIRECT EXAMINATION:

25

1 A It was believed to be the boyfriend.

2 Q No, the actual victim.

3 A It was the girlfriend.

4 Q And what was her name?

5 A Almanita Smith.

6 Q Okay. And once you pronounced the victim deceased,
7 did you help to treat anyone else?

8 A Yeah. My partner came out with Mr. Bailey and said
9 that he was going to be transported to the hospital as a
10 patient.

11 Q Okay. Was he in any sort of respiratory distress at
12 the time that you saw him at the house?

13 A He appeared to be in no distress.

14 Q Was he crying?

15 A No. He was not crying.

16 Q Did he make any statements to you?

17 A Yeah. We were in the back of the truck. We -- we
18 were asking him questions, and he did say things.

19 Q And did you note those on your report?

20 A I did.

21 Q And what were those?

22 A He stated that he thought that the patient was out
23 with some friends last night; that he never laid eyes on
24 her, but he had heard her come and go throughout the house
25 during the day.

1 Q Did he say this? Can you just read what you notated?

2 A Sure.

3 MR. MOORE: Your Honor, I would object to her
4 impeaching her own witness. The gentleman has just given
5 his own testimony.

6 Now, she is attempting to impeach the witness which
7 is her own witness. The gentleman answered the question
8 about what it is that the gentleman said.

9 THE COURT: You need to rephrase your question as to
10 him going into the report.

11 BY MS. CAVANAUGH:

12 Q Thank you.

13 Did you note on your report what he told you?

14 A Yes.

15 Q And what were those statements?

16 MR. MOORE: Your Honor, he has already answered that
17 question. The question was already answered.

18 THE COURT: Overruled.

19 MS. CAVANAUGH: Thank you.

20 THE COURT: Go ahead.

21 THE WITNESS: I wrote that patient's boyfriend unsure
22 of events leading to the inclusion, just stated that he
23 thought the patient was out with some friends last night
24 and came home sometime later that night.

25 The patient's boyfriend found the patient laying in

1 the front yard when he heard a commotion coming from
2 outside the house where the neighbors had apparently found
3 her. He came outside, and that's he first noticed the
4 patient on the ground.

5 BY MS. CAVANAUGH:

6 Q Okay. And was he actually taken to the hospital
7 later on?

8 A He was.

9 Q When was that? You have a copy of his report, I
10 think.

11 A We left the scene at 7:13.

12 Q And you actually didn't write this report. That was
13 your partner, correct?

14 A That's correct.

15 Q And was he treated at the hospital? Or was he -- did
16 you take him to the hospital?

17 A Correct.

18 Q Was that the extent of your treatment with the
19 defendant?

20 A Yes, ma'am.

21 Q Again from your observations, he was in no
22 respiratory distress?

23 A That's correct.

24 Q And he was not crying?

25 A That's correct.

1 THE CLERK: Have a seat in the witness box. State
2 your name.

3 THE WITNESS: Harold Bouknight.

4 DIRECT EXAMINATION:

5 BY MS. SIMPSON:

6 Q Where are you employed?

7 A The Richland County Sheriff's Department crime scene
8 unit.

9 Q Okay. And how long with the crime scene unit?

10 A I've been with the crime scene unit eight years next
11 month.

12 Q And how long have you been with the sheriff's
13 department?

14 A The sheriff's department is 11 years this month,
15 actually.

16 Q Okay. And can you please the jury a little bit about
17 what your duties include as a crime scene investigator?

18 A As a crime scene investigator, I respond to crime
19 scenes and document, identify, preserve, and collect,
20 process evidence.

21 As a supervisor, I am called out to assist in
22 processing scenes whether it's something major or if
23 they're backed up. I also do fingerprint comparisons,
24 footwear, tire wear comparisons, blood stain pattern
25 analysis, shooting incident reconstruction, and crime

1 scene reconstruction.

2 Q Okay. And you stated, I'm sorry, that your position
3 now, you work in more of a supervisory role?

4 A Yes.

5 Q Can you tell this jury a little bit about your
6 educational background and training?

7 A I had an Associate's Degree in criminal justice from
8 Midlands Technical College. I've been in crime scene,
9 like I said, almost eight years.

10 Whenever I was promoted to crime scene investigator,
11 I went through our in-house training program. The

12 in-house training program consisted of reading, taking
13 written tests, and doing practical tests to prove that I
14 was proficient in those, do yearly proficiency tests in
15 fingerprints, blood stain analysis, and footwear.

16 I've been certified since 2008 as a crime scene
17 investigator by the International Association for
18 Identification, and since 2011 as a blood stain pattern
19 examiner.

20 I've attended several classes in crime scene
21 reconstruction, blood stain analysis, basic principles of
22 crime scene processing, and crime scene photography.

23 Q You stated something earlier about proficiency tests.
24 Do you also continue educational trainings and courses
25 within the area of crime scene investigation?

1 A Yes, ma'am. I try to each year get at least one
2 course whether it's in blood stain analysis or crime scene
3 reconstruction or something along those lines.

4 Q Okay. And tell us a little bit about the lab that
5 you actually work in.

6 A We have different areas in our forensic science unit.
7 I'm under the crime scene latent prints unit, and then we
8 have a DNA area and firearms, tool marks, and drug ID,
9 fire debris section.

10 We collect the evidence from the scene and then
11 process it and then turn it in to evidence where, you

12 know, our swabs and things like that we collect the
13 possible DNA would be picked up and run or compared by the
14 appropriate subsection next door.

15 Q And this is the lab within the Richland County
16 Sheriff's Department?

17 A Yes.

18 Q And is it accredited?

19 A Yes, ma'am.

20 Q So crime scene investigation includes all aspects
21 such as blood spatter, I guess general collection, trace
22 evidence, fingerprints?

23 A Yes.

24 Q Things of that nature. Have you ever been qualified
25 as an expert before?

1 A Yes, ma'am.

2 Q About how many times would you say you've been
3 qualified?

4 A Approximately nine in crime scene investigation and
5 then in sub disciplines, you know, around four or five.

6 MS. SIMPSON: All right. Your Honor, at this time
7 I'd like to qualify Investigator Harold Bouknight as an
8 expert in crime scene investigation.

9 MR. MYERS: I have no objection, Your Honor. No voir
10 dire.

11 THE COURT: Thank you very much, Mr. Myers.

12 Ladies and gentlemen, this witness will be qualified
13 in the area of crime scene investigation. As I told you
14 earlier this morning, he will be allowed to give opinion
15 testimony in that area.

16 Now, that does not mean that you are required to
17 accept his opinion, but it is evidence for you to use in
18 any way that you see fit and give the weight and
19 credibility you believe is appropriate just as you are to
20 with every other witness that appears before you.

21 Thank you very much. You may continue.

22 BY MS. CAVANAUGH:

23 Q Turning your attention back on August 23rd of 2012,
24 did you have the opportunity to become involved in this
25 case?

1 A Yes, ma'am, I did.

2 Q Can you tell the jury how you were notified and where
3 and when you responded?

4 A I was the supervisor on call, which as I stated
5 earlier in -- we have a major scene or someone needs help,
6 they call the supervisor on call.

7 Investigator Lee contacted me and told me that we had
8 a deceased body in the front yard of 613 Heron Glen Drive,
9 and asked that I respond out there to assist him. I did.

10 He called me around seven o'clock in the morning. I
11 got there about 20 minutes until nine. Once a search

12 warrant was acquired, I assisted him in processing the
13 interior of the scene searching for evidence. He did most
14 of the collecting. I was there basically as a supervisor.

15 Q And so when you arrived on scene, what did you
16 observe?

17 A The victim was in the front yard of the location with
18 a black blanket over her. She had some reddish brown
19 liquid behind her left ear on the left side of her head,
20 and there was some skin slippage on her arms. Her right
21 shoulder had a greenish color tint to it, and she was
22 wearing a tank top and a bra, and that was it.

23 After we went inside the home, we saw several air
24 fresheners in the living room, dining room, kitchen area.
25 There is a blanket in the laundry room in the dryer and

1 some dark jeans and a belt on the bed in the master
2 bedroom upstairs and brown shorts and a belt in the second
3 bedroom upstairs.

4 Then there was a pillow and comforter in the third
5 bedroom upstairs that appeared to be damp, and those were
6 all photographed by Investigator Lee.

7 Then we used -- to search for evidence, we used
8 Bluestar, which is a presumptive test for blood. It
9 reacts with the hemoglobin with the blood and produces --
10 it glows.

11 If you've seen lumenal on TV or anything like, the
12 basis of Bluestar is lumenal. It's just their proprietary
13 blend. It's just as sensitive as lumenal. It gives a --
14 you don't have to have total darkness to be able to see
15 it.

16 We sprayed in the master bedroom, bathtub, the
17 closet, and in the third bedroom with no reaction.

18 Q And let me back you up just a bit. When you observed
19 the victim's body in the yard, she was -- when you first
20 arrived on the scene, she was covered with a blanket,
21 correct?

22 A Yes, ma'am.

23 Q At some point, did you notice the condition of her
24 face?

25 A Yes, ma'am. Whenever she was rolled over and we were

1 able to look at her face, there was -- the tongue was very
2 swollen. Her face was -- decomposition was going on.

3 Q And have you responded or had any experience with
4 decomposition cases?

5 A Yes, ma'am.

6 Q When we say decomposition, what exactly is
7 decomposition?

8 A Decomposition is a process whenever you die, your
9 body begins to decompose, and there's a process that it
10 goes through. There's bloating and things like that and
11 skin slippage where the skin begins to come off of the

12 body, discoloration, and things like that.

13 Q And decomposition, you stated it's a process. Is it
14 -- what do you mean by that as compared to -- I'm trying
15 to word my question correct so that I understand, as well,
16 a process versus a condition, I guess, or an item?

17 A Well --

18 Q Of decomposition?

19 A -- decomposition is something that occurs to a body.
20 What would be left behind from decomposition are, you
21 know, bodily fluids and things like that that -- when I
22 refer to as decomposition, it's referred to as body
23 fluids.

24 Q And do you all have any tests for decomposition?

25 A No, ma'am.

1 Q And the victim, as you found her, was her condition
2 consistent with being in some level or stage of
3 decomposition?

4 A Yes, ma'am.

5 Q Now, who all was on scene. I know you indicated that
6 Investigator Lee was processing and photographing when you
7 arrived?

8 A Yes, ma'am.

9 Q Who else was on the scene that you recall?

10 A Everybody that was on -- Investigator Lee,
11 Brailsford, Investigator Mauldin, Investigator Bass,

12 Investigator Bolding and Deputy Wenzell and myself.

13 Q Okay. And did you actually assist in the search of
14 the search warrant was obtained?

15 A Yes, ma'am.

16 Q And you noted some air fresheners at the scene. What
17 was of particular, I guess, significance to you about
18 these air fresheners when you arrived?

19 A Just the number of them that were out in the area,
20 and they were -- some were empty, some were used, just the
21 number of them seemed odd.

22 Q And there was incense as well?

23 A I don't remember seeing incense.

24 Q Do you recall whether there was any odor at all when
25 you arrived?

1 A I remember smelling an odor in the laundry room
2 around the washer and dryer.

3 Q And what type of odor do you recall?

4 A I smelled like a decomposing body.

5 Q And, again, you're familiar with that smell?

6 A Yes, ma'am.

7 Q Is that smell necessarily like other smells or can
8 you even describe what the smell of decomposition is?

9 A A decomposing human has its own smell. When you
10 smell it, you remember it.

11 ~~MR. MYERS: Objection. Your Honor, I'm simply just~~

12 renewing my pretrial objection regarding the use of the
13 cadaver dog and just hoping the record is --

14 THE COURT: Understood and noted for the record, and
15 I understand which pretrial issue you are referring to.
16 Thank you.

17 Did you finish answering your question?

18 THE WITNESS: Yes, sir. I believe I did.

19 THE COURT: Okay.

20 BY MS. SIMPSON:

21 Q Thank you, Your Honor.

22 I'm going to show you -- you said you collected --
23 you collected some items of evidence throughout the home,
24 as well?

25 A Yes, ma'am.

1 Q I'm going to show you as what's been marked as
2 State's 194. Do you recognize that?

3 A That's the brown shorts from the second bedroom.

4 Q And also a belt, as well?

5 A Yes, ma'am.

6 Q And you actually collected this item?

7 A Yes, ma'am.

8 MS. SIMPSON: Your Honor, at this time I would offer
9 State's 194 into evidence.

10 MR. MYERS: No objection.

11 MS. SIMPSON: I'm going to say --

12 THE COURT: Hold on.

13 194 admitted without objection.

14 (WHEREUPON, State's Exhibit No. 194 was admitted into
15 evidence.)

16 MS. SIMPSON: Oh, my apologies.

17 THE COURT: That's okay.

18 BY MS. SIMPSON:

19 Q And what do you do with items once you collect the
20 evidence?

21 A It depends on what the item is and its relationship
22 to the case. If it's something that we're looking for
23 fingerprints on, then we bring it back. Then we'll
24 process it for fingerprints using superglue and powders.

25 If it's something that we're just swabbing for DNA,

1 we'll swab it. With items, if they're extremely wet --
2 because if we turn them into evidence, and they mildew.

3 Some items we collect, and we turn them in to be
4 held. We don't know that we're going to need them. We
5 don't know if it's important or not because we don't
6 always have all the facts of the case when we're out
7 there.

8 So a lot of times we collect things that may seem an
9 over abundance of evidence, but we don't know if we're
10 going to need it. We'd rather have it and not need than
11 need it and not have it.

12 Q And with respect to the item of clothing or items or
13 clothing, once you collected it, were they properly
14 sealed, packaged?

15 A Yes, ma'am.

16 Q By you. I'm going to show you what's been marked as
17 State's 192. Do you recognize this?

18 A Yes, ma'am. It's just dark jeans from the master
19 bedroom.

20 Q And were you just collecting -- I noticed -- of
21 course, Investigator Lee who testified earlier was also
22 collecting evidence, correct?

23 A Yes, ma'am.

24 Q Were you directed to these items, or were they just
25 of note to you?

1 A Whenever -- sometimes whenever investigators are in
2 there with us, they may point out something, say that
3 looks funny, or we might need that. We'll collect it. We
4 work well. We work together with them. They point out
5 things that are of interest to them.

6 Q Okay. So you don't necessarily know the significance
7 of an item or insignificance when you collect it?

8 A Correct.

9 MS. SIMPSON: Your Honor, at this time, the state
10 would offer State's 192 into evidence.

11 MR. MYERS: No objection.

12 MS. SIMPSON: And, again, these items --
13 (WHEREUPON, State's Exhibit No. 192 was admitted into
14 evidence.)

15 THE COURT: 192 without objection. Thank you.

16 BY MS. SIMPSON:

17 Q Sorry. I promise I'll get it down.

18 While State's 129 was in your possession, was it
19 properly sealed and packaged, as well?

20 A Yes, ma'am.

21 Q And then in a third bedroom, I believe you noted
22 something damp, correct?

23 A Yes, ma'am.

24 Q Tell the jury about that.

25 A Two pillows and a comforter or a blanket that was on

1 an inflatable mattress, you would say. They appeared to
2 be damp. It's kind of hard to tell with gloves on where
3 you're processing the scene.

4 Sometimes you feel it, and you can tell it's kind of
5 slick. We know it's damp, but we don't know what it was
6 damp with.

7 Q And you were with Investigator Lee when you all noted
8 these items, as well?

9 A Yes.

10 Q And he actually collected it in this case, correct?

11 A Yes, ma'am.

12 Q But you observed it?

13 A Yes, ma'am.

14 Q Moving on, you stated the odor of decomposition was
15 in the laundry room.

16 A Yes, ma'am.

17 Q What item that was in the laundry room was ultimately
18 collected by Investigator Lee?

19 MR. MYERS: Objection, leading, Your Honor. I don't
20 think she has laid a proper foundation to get a response.

21 THE COURT: What's the question?

22 MS. SIMPSON: I said what item was collected by
23 Investigator Lee from the laundry room. He was with
24 Investigator Lee at the time.

25 THE COURT: Did you see that happen?

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. He can testify to it.

3 Overruled.

4 MS. SIMPSON: Thank you, Your Honor.

5 THE WITNESS: A dark blanket.

6 BY MS. SIMPSON:

7 Q And, again, that's where the odor that you recall?

8 A Yes, ma'am.

9 Q Did you observe any computers at the location at this
10 time?

11 A Yes, ma'am. There was one in the living room on the
12 arm of the couch, and then there was a MacBook Pro in the
13 second bedroom from the bed.

14 Q And at some point, did you actually go out to process
15 the victim's body in this case?

16 A Yes, ma'am. I collected a GSR kit, a gunshot residue
17 collection kit. With the reddish liquid we saw behind her
18 ear on the left side of her head, we weren't sure how she
19 died. We didn't know if there had been gunshots or
20 anything like that.

21 Out of an overabundance of caution, I collected a
22 gunshot residue kit from her hands. While collecting from
23 her left hand, there was what looked like a hair or a
24 fiber in her hand, and I collected that separately from
25 the GSR kit.

1 Q Now, with respect to the GSR kit, even though -- what
2 exactly is a GSR kit, and how is it collected?

3 A A GSR kit is four sticky tabs. They're labeled right
4 back, left back, right palm, left palm. We dab those tabs
5 on the person's hand in the described areas, and then we
6 send that to SLED, and they will examine those for
7 particles of gunshot residue.

8 Q I'm going to show you what's been marked as State's
9 Exhibit 191. Do you recognize that?

10 A Yes, ma'am.

11 Q What is it?

12 A It's a gunshot residue kit that I collected from the
13 victim.

14 MS. SIMPSON: Your Honor, at this time the State
15 would offer State's 191 into evidence.

16 MR. MYERS: No objection.

17 (WHEREUPON, State's Exhibit No. 191 was admitted into
18 evidence.)

19 THE COURT: 191 without objection. Thank you.

20 BY MS. SIMPSON:

21 Q And in this case, you all didn't know how she died at
22 this point?

23 A Correct.

24 Q And in the middle of processing, I guess you're
25 actually working directly with her hands?

1 A Yes, ma'am.

2 Q And you stated that you noticed something. Can you
3 tell us about that?

4 A It was a dark in color, either a hair or a fiber.
5 I'm not sure what it was.

6 Q Okay. And it was in her -- which hand was it in?

7 A The left hand.

8 Q And how -- how do you collect that?

9 A If we have tweezers available, we'll pick those up
10 and use that to drop them into an envelope or if you have
11 an envelope handy, you just slide it right in.

12 Q Okay. With hair and fiber evidence, again, you
13 collect it but you didn't photograph it in this case,
14 correct?

15 A Correct.

16 Q And what were you doing at the time you observed this
17 fiber?

18 A I had sticky tabs, and I was collecting the gunshot
19 residue from her left hand.

20 Q I'm going to show you what's been marked as State's
21 193. Do you recognize that?

22 A Yes, ma'am. It's the hair or fiber -- hair slash
23 fiber from her left hand.

24 MS. SIMPSON: All right. Your Honor, at this time I
25 would offer State's 193 into evidence.

1 MR. MYERS: No objection.

2 THE COURT: 193 so admitted without objection.

3 (WHEREUPON, State's Exhibit No. 193 was admitted into
4 evidence.)

5 MS. SIMPSON: Beg the Court's indulgence.

6 THE COURT: Yes, ma'am.

7 BY MS. SIMPSON:

8 Q You mentioned the hair, and we heard reference to a
9 long hair and things of that nature. Is this the hair
10 that you collected in State's 193?

11 A Yes, ma'am.

12 Q And, again, you actually collected it, not
13 photographed, correct?

14 A Yes; yes, ma'am.

15 Q And this is the actual hair?

16 A Yes, ma'am.

17 Q And you don't actually do the testing --

18 A No, ma'am.

19 Q -- correct? And do you determine what to test in a
20 case, or is that also left to the investigators?

21 A The investigators and the technicians and the
22 analysts.

23 Q And once you processed the victim's body, what did
24 you do?

25 A After that, we went into the home and finished

1 processing and then collected the shorts and the dark
2 jeans. And then we sealed up the house until after
3 autopsy.

4 Q And by seal up the house, what do you mean?

5 A We keep a deputy posted on scene, and we make sure
6 the doors are locked except one way where we can get back
7 in.

8 We put evidence tape across the door and initial it
9 to where we go in, it's going to break the evidence tape,
10 but we can say that it was still secured from when we left
11 it.

12 Q Later that day, did you actually go to headquarters,
13 the Richland County Sheriff's Department, and do some
14 processing on an item?

15 A Yes, ma'am. Around four o'clock that afternoon, I
16 collected a swab from a phone while Investigator Mauldin
17 retained custody of the phone.

18 Q Okay. I'm going to show you what's been marked as
19 State's 201. Do you recognize that?

20 A Yes, ma'am, it's the swab. I believe the way you
21 pronounce it is it's CEO phone. I'm not sure.

22 Q Okay. And how do you collect the swab for a phone?

23 A For a phone, we use a sterile cotton swab, some
24 distilled water. You dampen the swab, and then rub the
25 swab in a suspected area for DNA and then place it, seal

1 it in a box. Seal that and then forward to it the DNA
2 processing.

3 Q And, again, you don't necessarily know what may be on
4 the item. This is just part of the processing?

5 A Yes, ma'am.

6 Q And was it properly sealed and packaged?

7 A Yes, ma'am.

8 Q And this was actually -- do you know where this phone
9 was recovered or was it given to you by Investigator
10 Mauldin?

11 A Investigator Mauldin had it in his custody and asked
12 me to swab it while he retained custody of it.

13 MS. SIMPSON: Your Honor, at this time, I'd offer
14 State's 201 into evidence.

15 MR. MYERS: No objection.

16 (WHEREUPON, State's Exhibit No. 201 was admitted into
17 evidence.)

18 THE COURT: Is that 201?

19 MS. SIMPSON: 201.

20 THE COURT: 201 is admitted without objection.

21 BY MS. SIMPSON:

22 Q And later that same day on August 23rd, did you
23 respond back to the crime scene in this case?

24 A Yes, ma'am, I did.

25 Q Can you tell us about that?

1 A Yes, ma'am. I was notified by Chief Wilson to
2 respond back out of the scene while Deputy Pearrow brought
3 a cadaver dog out to go through the house.

4 I was out there with Investigator Clarke and Deputy
5 Pearrow. Whatever her worked the dog through the home, he
6 would point out the areas to me that she alerted here or
7 here, and there were three areas that he pointed out to me
8 that I notated and took photos of.

9 Q Okay. I'm going to show you State's 83. Do you
10 recognize that?

11 A Yes, ma'am. This is the area in front of the closet
12 in between the bed and the second bedroom. That's an area
13 where Deputy Pearrow pointed out an alert.

14 Q And it fairly and accurately depicts the area that
15 was pointed out to you?

16 A Yes, ma'am.

17 Q Well, Your Honor, at this time, I'd offer State's 83
18 into evidence.

19 MR. MYERS: No objection.

20 MS. SIMPSON: And --

21 MR. MYERS: Well, we take it back. Without waiving
22 prior objection --

23 THE COURT: Over the defendant's objection.

24 MR. MYERS: Yes.

25 THE COURT: You're protected on the record.

1 83 is in.

2 (WHEREUPON, State's Exhibit No. 83 was admitted into
3 evidence.)

4 MS. SIMPSON: Thank you.

5 BY MS. SIMPSON:

6 Q Tell the jury what -- who are you with again?

7 A Deputy Pearrow.

8 Q And he is pointing out to you where the dog alerted?

9 A Yes, ma'am. I was with him while he was working with
10 dog. He is trained to notice what an alert is. I'm not a
11 canine handler. Whenever he says that's an alert, that's

12 what I have to go by, and then I photographed that area
13 and document it.

14 Q Okay. And what area of the home did you -- was this
15 from?

16 A That's the second bedroom.

17 Q The second bedroom?

18 A Yes, ma'am. When you walk in to the second bedroom,
19 it would be on the right.

20 Q And this was the one where the male clothing and
21 items were located?

22 A Shorts and the MacBook Pro, yes, ma'am.

23 (WHEREUPON, State's Exhibit No. 212 was marked for
24 identification only.)

25

1 BY MS. CAVANAUGH:

2 Q I'm going to show you what's been marked as State's
3 Exhibit 212. Do you recognize that?

4 A Yes, ma'am. It's the master bedroom, master bedroom
5 closet. That's another area where the dog, the canine,
6 alerted.

7 Q And the master bedroom closet, did it have primarily
8 male, female clothing, or did you learn whose room that
9 primarily was?

10 A Primarily female.

11 Q And this fairly and accurately depicts --

12 A Yes, ma'am.

13 Q -- the area that was alerted to?

14 Your Honor, at this time, the State would offer
15 State's 212 into evidence.

16 THE COURT: 212 will be admitted over the defendant's
17 objection.

18 MR. MYERS: Thank you, Your Honor.

19 MS. SIMPSON: And where --

20 THE COURT: Just one second. Let her mark it down.

21 (WHEREUPON, State's Exhibit No. 212 was admitted into
22 evidence.)

23 BY MS. SIMPSON:

24 Q And where is this area again?

25 A That's the master bedroom closet. If you go into the

1 master bedroom, back right.

2 Q And the area -- you're photographing the entire area,
3 correct, where the dog was and what was pointed out to
4 you?

5 A That's the area. I mean, from what my understanding,
6 there was no one specific point like a bullet hole would
7 be a specific point of where okay something is here. The
8 dog is more of, "It's somewhere around here. It's this
9 area."

10 Q And did you learn about some items that had been
11 recovered from this area?

12 A I believe a pair of pants were recovered by
13 Investigator Lee there.

14 Q I'm going to show you what's marked as State's 92, 99
15 and 122. Do you recognize these?

16 A Yes, ma'am. It's the third bedroom closet, and the
17 floor in front of it and some boxes of clothing.

18 Q Okay. And what's the significance of this area?

19 A That's the third area where the canine alerted.

20 Q And do these fairly and accurately depict the area --

21 A Yes.

22 Q -- that was alerted to?

23 A Yes, ma'am, they do.

24 MS. SIMPSON: Your Honor, at this time I would offer
25 State's 92, 99 and 122 into evidence.

1 THE COURT: And those are going to be admitted over
2 the defense's objection in the pretrial hearing. The
3 issue has been. We have discussed it, I understand.
4 That's 92, 99 and 122.

5 (WHEREUPON, State's Exhibits Nos. 92, 99, 122 were
6 admitted into evidence.)

7 BY MS. SIMPSON:

8 Q Okay. And what area -- you indicated this was a
9 third room. Can you describe the room?

10 A The third bedroom was the one with the inflatable
11 mattress in it and the damp pillows and comforter.

12 Q Okay. That were actually collected by Investigator
13 Lee?

14 A Yes, ma'am.

15 Q And were these items -- had they already been
16 collected?

17 A Yes, ma'am.

18 Q So this search occurred a little later in the
19 afternoon?

20 A Yes, ma'am. We were there about five o'clock that
21 afternoon.

22 Q Okay. And the State's 99, the door is opening. Is
23 this a closet-type area?

24 A Yes, ma'am.

25 Q And in State's 92 --

1 A Yes, ma'am.

2 Q -- same area, just a different perspective?

3 A Yes, ma'am.

4 Q And then State's 122, what are we seeing there?

5 A That's a box of clothing that was in that area of the
6 closet.

7 Q It was actually underneath the other box that we see
8 in State's 92?

9 A Yes, ma'am.

10 Q And, again, you're not trained in canine cadaver
11 searches?

12 A No, ma'am.

13 Q Is your job just to document?

14 A To document and then search for any other evidence
15 and collect any that might be located.

16 Q Did you also observe some additional items that were
17 collected on that day or at that time?

18 A I observed some additional items. They were
19 collected the next day by me. It was a pink Post It note
20 with the victim's name on it written a few times, and then
21 there was three pieces of loan paperwork that had the
22 victim's signature on it. Once again, I collected those
23 not knowing if we would need them or would not need them,
24 just to have a writing sample from her.

25 Q So you actually observed on the 23rd but went back

1 and collected them the next day.

2 A Yes, ma'am. When I did a final walk through the next
3 day with Investigator Martin, I collected those, some
4 brown pillow cases, and brown sheets, and a digital
5 camera.

6 Q I'm going to show you first State's 203. Do you
7 recognize this?

8 A Yes, ma'am. It's two brown pillow cases and brown
9 sheets.

10 Q And what was your -- were these just additional items
11 that you collected?

12 A Yes, ma'am. Like I said, walking through with
13 Investigator Martin, they were pointed out, and I decided
14 to collect them.

15 Q And what room were these located in?

16 A I believe they were in the bedroom.

17 MS. SIMPSON: Okay. Your Honor, at this time the
18 State would offer 203 into evidence.

19 MR. MYERS: No objection?

20 THE COURT: State's 203 without objection.

21 (WHEREUPON, State's Exhibit No. 203 was admitted into
22 evidence.)

23 BY MS. SIMPSON:

24 Q I'm also going to show you State's 202. Do you
25 recognize that?

1 A Yes, ma'am. It's the pink Post It note and the three
2 pieces of loan paperwork.

3 Q Okay. And are these the items that you photographed
4 and collected?

5 A Yes, ma'am. I photographed a pink Post It note it on
6 the 23rd and then collected it on the 24th.

7 MS. SIMPSON: Your Honor, at this time I would offer
8 State's 202 into evidence.

9 MR. MYERS: No objection.

10 (WHEREUPON, State's Exhibit No. 202 was admitted into
11 evidence.)

12 MS. SIMPSON: You stated you --

13 THE COURT: Hold on.

14 MS. SIMPSON: Oh, sorry.

15 THE COURT: State's 202 without objection.

16 (WHEREUPON, State's Exhibits Nos. 206, 207 were
17 marked for identification only.)

18 BY MS. SIMPSON:

19 Q I'm going to show you State's 206 and 207. Do you
20 recognize those?

21 A Yes, ma'am. This is the pink Post It note that I
22 collected.

23 Q Okay. And these were actually photographed on the
24 23rd --

25 A Yes, ma'am.

1 Q -- by you?

2 MS. SIMPSON: Your Honor, at this time I would offer
3 State's 206 and 207, photographs, into evidence.

4 MR. MYERS: No objection.

5 THE COURT: Okay. 206 and 207 without objection.

6 MS. SIMPSON: And what area --

7 THE COURT: Hold on.

8 Admitted without objection.

9 (WHEREUPON, State's Exhibits Nos. 206, 207 were
10 admitted into evidence.)

11 BY MS. SIMPSON:

12 Q And what area of the home were these located in?

13 A It's in the home office which was in the same area as
14 bedroom two, in that part of the home.

15 Q And did you note something about that sticky note
16 or -- when you collected it?

17 A It just had the victim's name on it several times.

18 Q Okay. Is this the sticky note?

19 A Yes, ma'am.

20 Q So it was the signature being done over and over
21 again on this sticky note?

22 A Yes, ma'am.

23 Q And that was at the top of the trash can or in the
24 trash can kind of by itself?

25 A Yes, ma'am.

1 Q And what is the name that's on this Post It note
2 that's written over and over again?

3 A Almanita Smith.

4 Q And that's the deceased victim in this case?

5 A Yes, ma'am.

6 Q And in addition to full signatures with last and
7 middle names, are initials also represented on this?

8 A It appears so, yes.

9 Q And then you stated there was some loan paperwork.
10 Where was this found?

11 A That was also in the office.

12 Q Okay. And who is the name on the paperwork?

13 A That's Almanita Smith.

14 Q Okay. So also in the area.

15 And was that the extent of your processing of the
16 scene at Heron Glen on the 24th?

17 A The only other thing I collected was a digital camera
18 from the 24th, and we did cut up the carpet. Or when I
19 say we, I. In the areas where the cadaver dog had
20 alerted, I cut the carpet and pulled it up with the
21 padding to see if anything was below it where it may have
22 been -- the carpet may have been cleaned, but it may have
23 seeped through, but nothing was located under it.

24 Q And when you're doing this, you're actually looking
25 for fluids and things of that nature like bodily fluids?

1 A Yes, ma'am.

2 Q And do you all typically cut carpet or holes in the
3 wall were there might be potential evidence?

4 A Yes, ma'am.

5 Q And did you find anything in this area?

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

7 Q But this was the area that the K-9 dog had alerted
8 to?

9 A Yes, ma'am.

10 Q Did you actually attend the autopsy in this case?

11 A Yes, ma'am, I did.

12 Q Where and when did you respond?

13 A That was on the 24th, and I went to 3301 Harden
14 Street, Richland Memorial morgue. I arrived at 8:50 in
15 the morning, and then I left at 11:39 that morning.

16 Q Okay. So the autopsy lasted around 3 hours?

17 A Just about, yes, ma'am.

18 Q And was the -- who was the person's autopsy that you
19 were attending?

20 A It was Almanita Smith.

21 Q And what did you observe when you arrived?

22 A She had a swollen tongue. She was wearing just a
23 tank top and a bra. She was -- the decomposition had been
24 occurring.

25 Dr. Durso performed the autopsy. From the victim, I

1 collected nail scrapings from her right and left hands,
2 head hairs, buccal swab, which was a swab in the mouth to
3 get a DNA standard from the victim, and postmortem
4 fingerprints from the victim.

5 Q Okay. So who conducted the actual autopsy?

6 A Dr. Durso.

7 Q And is it typical for a crime scene investigator, for
8 you all to attend autopsies?

9 A Yes, ma'am. Anytime we have a homicide, a suicide or
10 a suspicious natural death, things like that, we will
11 attend the autopsy to collect any evidence that may be

12 presents on or in the body, collect clothing, fingerprints
13 that we may need, DNA reference sample and to determine if
14 we can -- if they have a cause of death. If it is a
15 homicide or if it is a suicide or a natural death.

16 Q Okay. And backing up, you actually photographed the
17 autopsy as it's being conducted, as well?

18 A Yes.

19 Q And you stated that you collect items -- a GSR kit
20 was already collected in this case. Are those sometimes
21 also done at autopsy?

22 A Yes, ma'am. As to what's collected at the scene, at
23 an autopsy, depends on what was collected at the scene
24 depends on what else we have to do there.

25 Q I'm going to show you State's 198. Do you recognize

1 that?

2 A Yes, ma'am. That's the postmortem prints that I
3 collected from Almanita Smith.

4 Q Okay. And what are postmortem prints?

5 A Postmortem, after death. It's just fingerprints that
6 we collect. So if we do get any fingerprints developed at
7 the scene or on an item of evidence, we can eliminate the
8 victim from those.

9 MS. SIMPSON: Okay. Your Honor, at this time, I'd
10 offer State's 198 into evidence.

11 MR. MYERS: No objection.

12 MS. SIMPSON: I'm also going to show you State's --

13 THE COURT: 198 without objection.

14 (WHEREUPON, State's Exhibit No. 198 was admitted into
15 evidence.)

16 BY MS. SIMPSON:

17 Q -- State's 196. Do you recognize that?

18 A Yes, ma'am. It's a sexual assault protocol kit that
19 I collected from Dr. -- I received it from Dr. Durso who
20 actually collected it from Almanita Smith.

21 Q And, again, you don't actually do the testing?

22 A Correct.

23 Q You just collect the items?

24 A Yes, ma'am.

25 Q And when you collect them, are they properly sealed

1 and packaged?

2 A Yes, ma'am, they are.

3 Q Are they tampered or altered in any way while in your
4 custody?

5 A No, ma'am.

6 Q I'm going to show you State's 195. Do you recognize
7 these?

8 A Yes. That's the tank top and the bra that were on
9 the victim, Almanita Smith, whenever I was at autopsy.

10 Q Okay. And these are her clothes that you observed at
11 the scene, as well?

12 A Yes, ma'am.

13 MS. SIMPSON: Your Honor, at this time, I'd offer
14 State's 195 into evidence.

15 MR. MYERS: No objection.

16 THE COURT: State's 195 without objection.

17 (WHEREUPON, State's Exhibit No. 195 was admitted into
18 evidence.)

19 BY MS. SIMPSON:

20 Q I'm going to show you -- did you say you collected a
21 buccal swab, as well?

22 A Yes, ma'am.

23 Q I'm going to show you State's 200. Do you recognize
24 this?

25 A Yes, ma'am. It's buccal swab from Almanita Smith.

1 Q Okay. And what is a buccal swab?

2 A It's basically a sterile cotton swab inside the mouth
3 on the inside of the cheek, and it picked up skin cells
4 and DNA from that person so we can have it.

5 I collected postmortem prints to eliminate her from
6 any fingerprints we would find as to eliminate her profile
7 from any DNA profiles we may develop or to confirm her
8 profile.

9 Q All right. And once you collected it, was it
10 properly sealed and packaged?

11 A Yes, ma'am.

12 Q And was it altered or tampered with in any way?

13 A No, ma'am.

14 MS. SIMPSON: Your Honor, at this time, the State
15 would offer State's 200 into evidence.

16 MR. MYERS: No objection.

17 (WHEREUPON, State's Exhibit No. 200 was admitted into
18 evidence.)

19 THE COURT: Admitted without objection.

20 BY MS. SIMPSON:

21 Q And State's 199, do you recognize that?

22 A Yes, ma'am. It's nail scrapings from the right and
23 left hand of Almanita Smith, and the way we collect nail
24 scrapings is we have a piece of paper that's marked left
25 hand and one marked right hand.

1 We have a big metal -- or a big wooden stick that's
2 got a point on one end and kind of beveled on the other.
3 We scrape under the fingernails into those pieces of
4 paper, and then we fold them up in a druggist fold and
5 secure those inside of Ziploc bags and turn them in where
6 they can be checked for any kind of evidence. If there
7 was a struggle or anything like that, sometimes they can
8 get DNA under their fingernails.

9 Q Okay. And in pretty much all the cases that you can
10 and autopsies that you attend, you collect these certain
11 items, correct?

12 A Yes, ma'am.

13 Q And that's just for any potential evidence that may
14 be found.

15 A Yes, ma'am.

16 Q I'm actually going to direct your attention back to
17 State's 195. Bear with me for one second.

18 (Pause).

19 Is this for shirt that was collected from Almanita?

20 THE COURT: What number are we on?

21 BY MS. SIMPSON:

22 Q 195. It looks as though it's been cut. Is that what
23 we have to do?

24 A At autopsy, to remove the clothing, they cut up the
25 sides and down the sleeves so they can slide it out from

1 under the victim. If there were bullet holes or anything
2 like that, they would obviously cut around those and not
3 through it.

4 Q And this item was photographed by you, as well?

5 A Yes, ma'am.

6 Q And her bra is located in here. Finally, I'm going
7 to show you State's 197. Do you recognize this?

8 A Yes, ma'am. It's a set of head hairs collected from
9 Almanita Smith.

10 Q Okay. And these are hairs collected from her at the
11 autopsy?

12 A Yes, ma'am.

13 Q And this was the hair that was collected?

14 A Yes, ma'am.

15 MS. SIMPSON: Your Honor, at this time -- my
16 apologies, I would offer State's 197 into evidence.

17 MR. MYERS: No objection.

18 (WHEREUPON, State's Exhibit No. 197 was admitted into
19 evidence.)

20 BY MS. SIMPSON:

21 Q Okay. So this is the hair from autopsy and we just
22 -- the other hair was from her hand at the scene?

23 A Yes, ma'am.

24 Q And, again, you just collect these items, properly
25 seal them, package them, and submit them to evidence.

1 A Yes, ma'am.

2 Q Did you observe any obvious signs of trauma or
3 injury?

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

5 Q And is that unusual?

6 Do you need water?

7 A No. I'll be fine.

8 Q Is that unusual with this level of decomposition?

9 A No, ma'am. Many times you -- when someone is
10 decomposed or decomposing, you can't see any injuries.

11 There may be some there, could have been bruising, but

12 it's -- just by the discoloration. You can't see it
13 anymore.

14 Q Did you also observe Dr. Durso remove something from
15 the victim's body?

16 A She removed the hyoid bone from the victim's neck.

17 Q Okay. And did you photograph that or document it in
18 some way?

19 A Yes, ma'am.

20 Q And, again, Dr. Durso is the one who actually -- she
21 is the forensic pathologist, correct?

22 A Yes, ma'am.

23 Q And did you note in your report whether there are any
24 fractures?

25 A She -- I noted that the hyoid bone was not fractured.

1 Q And does that information come from you, or is
2 Dr. Durso informing you of certain things, as well?

3 A Dr. Durso is informing me.

4 Q With respect to -- you said that sometimes you try to
5 learn whether -- or you respond when there is a suspicious
6 death. Cause of death is one of the things you would
7 document. What was noted at this time, the day after the
8 body was discovered?

9 A Cause of death couldn't be determined. It was going
10 to be held pending further investigation.

11 Q And that was a determination made by Dr. Durso?

12 A Yes, ma'am.

13 Q Again, is it unusual to ever have a cause of death
14 delayed somewhat pending further investigation?

15 A Sometimes there will be pending toxicology results or
16 something like that. If it's an overdose or where we have
17 somebody that dies suddenly at a decent age, and they
18 don't have any obvious marks on them. Sometimes, yes, it
19 could be pending further investigation or pending
20 toxicology.

21 Q Okay. Was that the extent of your involvement in the
22 autopsy?

23 A Yes, ma'am.

24 Q And, finally, on that same day, at some point, did
25 you go back to the incident location and do a walk

1 through?

2 A Yes, ma'am. That's where I collected the Post It
3 note, and brown sheets, and pillow cases with Investigator
4 Martin.

5 MS. SIMPSON: Thank you.

6 THE WITNESS: Thank you.

7 MR. MYERS: Judge, could I take a two-minute restroom
8 break? I don't know what's wrong with my bladder. I just
9 need to use the restroom, with the Court's permission.

10 THE COURT: All right. Let's take about a ten-minute
11 break --

12 MR. MYERS: Thank you, Your Honor.

13 THE COURT: -- and we'll start right back up.

14 MR. MYERS: Thank you.

15 THE COURT: I'll let the jury retire to their jury
16 room. We'll take about a ten-minute break and come back.

17 Everyone remain seated.

18 (WHEREUPON, the jury left open court at approximately
19 3:08 p.m.)

20 MR. MYERS: I apologize, Your Honor.

21 THE COURT: All right. Ten minutes, please.

22 (WHEREUPON, a short break was taken.)

23 THE COURT: Yes, ma'am. We're back on the record.

24 Yes, ma'am.

25 MS. CAMPBELL: Your Honor, the only thing is, I just

1 informed the defense, I'm trying to get him an update on
2 who we're calling.

3 I do have the nurse here. My understanding is she
4 would be qualified as an expert. She would not be
5 considered a lay witness. However, Mr. Moore objects to
6 her being in the courtroom. I just didn't know what your
7 position would be on that.

8 THE COURT: What's the objection to her being in
9 here?

10 MR. MOORE: Well, if she is the lady that I have just
11 learned has been in the courtroom basically all day, we
12 have a sequestration order.

13 My understanding is -- and I could be wrong about
14 this, my understanding is that the sequestration would
15 apply to everybody except police and family members and
16 that the parties were basically instructed to keep on the
17 look out to make sure their witnesses were not in the
18 courtroom.

19 Now, if she is the lady I think she is, I have just
20 learned that she basically has been in the courtroom a
21 significant period of time listening to all kinds of
22 testimony.

23 If that's the case, I think she is here in violation
24 of the sequestration order. I think they know it, should
25 have known it, and I believe if we look at the order from

1 the court, that order applied to everybody except police
2 officers and family members, but I could be wrong.

3 THE COURT: Where is the nurse?

4 MS. CAMPBELL: She is here in the back, Your Honor.

5 THE COURT: She's been here most of the day.

6 MS. CAMPBELL: I don't know.

7 What time did you get here?

8 THE WITNESS: I came in at 10:00 a.m.

9 THE COURT: What's the substance of her testimony?

10 MS. CAMPBELL: The substance of her testimony is the
11 medical records from the hospital where the defendant

12 went. That's the extent of her testimony.

13 THE COURT: So she is going to testify about...

14 MS. CAMPBELL: What's in the it records.

15 THE COURT: About how they treated Mr. Bailey at the
16 hospital?

17 MS. CAMPBELL: Yes, limited to that, yes, sir.

18 THE COURT: That's all.

19 MS. CAMPBELL: That's all.

20 THE COURT: She didn't go to the crime scene?

21 MS. CAMPBELL: No.

22 THE COURT: She didn't attend to the victim?

23 MS. CAMPBELL: No.

24 THE COURT: Anything else?

25 MS. CAMPBELL: Nothing else. Just, just -- and it's

1 been turned over, the records.

2 THE COURT: Right. I understand that.

3 MS. CAMPBELL: Just her treating him at the hospital.

4 THE COURT: Okay.

5 MR. MOORE: I'm not sure I understand. Just her
6 treating him at the hospital, you know, I'm not certain if
7 she is a medical records custodian or if she is someone
8 who actually performed the treatment.

9 THE COURT: Which one is she?

10 MS. CAMPBELL: She treated him.

11 THE COURT: She treated him.

12 MR. MOORE: So it's not just as to medical records.
13 She basically will testify as a treating healthcare
14 provider.

15 MS. CAMPBELL: She created the medical records.

16 MR. MOORE: Apparently, she treated him and created
17 the health, the medical records. If that is the case, we
18 would certainly object to her testimony because her
19 presence is a violation of the Court's order. I could be
20 wrong.

21 THE COURT: Now, she is in violation of the Court
22 order, because I did order sequestration of all witnesses
23 except family and law enforcement. However, due to the
24 nature of her testimony that the State has given me and is
25 telling me as an officer of the court, I don't find

1 anything she has listened to today -- one part of it was
2 about the defendant's behavior on the scene and the EMS
3 transportation.

4 THE WITNESS: And I missed that.

5 MS. CAMPBELL: Apparently, she missed that.

6 THE COURT: Okay. And according to this lady, she
7 wasn't here for that. So she is in violation of the
8 order, and I am admonishing the solicitor's office that
9 you need to make sure nobody is in here --

10 MS. CAMPBELL: I apologize.

11 THE COURT: -- that's not sequestered and -- but I
12 will allow her to testify due to the limited nature of her
13 testimony.

14 MR. MOORE: Your Honor, apparently, the nature of her
15 testimony is it's not all that limited. It sounds as if
16 the solicitor's office intends to use a nurse to render
17 some form of medical opinion.

18 When the solicitor basically came to me and advised
19 me that she had been in here, I was told that she was an
20 experts witness.

21 MS. CAMPBELL: She is a nurse.

22 MR. MOORE: Well, if she is testifying as an expert
23 witness, then apparently, what they intend to do with her
24 is have her give some sort of expert opinion in regard to
25 the diagnosis and so forth and so on.

1 They tell you one thing and tell me something else.
2 That's a problem. They tell me she is an expert witness
3 and is going to testify as an expert. Now, they come in
4 and say, no. She is just the person who created the
5 medical records.

6 Now, she is the person who treated this individual.
7 We don't know; how we don't know. So I've now got -- and,
8 apparently, this issue is something they think is a big
9 deal.

10 They were asking the EMS worker about it. They
11 raised the issue. They think it's a big deal. If the
12 testimony has no value and it's not prejudicial, then it's
13 not relevant.

14 If it does have value and it is relevant, it is
15 something they basically have raised, they were under the
16 Court's admonition to basically abide by the sequestration
17 order.

18 It's their witness. We had no idea until a little
19 while ago as to who she even was. I mean, we either have
20 an order or we don't. I mean, they violated the Court's
21 order without any excuse.

22 They have known she has been in the courtroom all
23 morning long. We haven't known about it all morning long.
24 If they tell us that it was just incidental. They didn't
25 realize who she was; they didn't know her, didn't

1 recognize her; it was just an accident, okay.

2 But if the solicitor's office knew she was in here,
3 knew who she was, knew of the existence of the order, they
4 have intentionally been in violation of the sequestration,
5 and that lady should not be allowed to testify.

6 Now, I don't know if she was in here or not. It was
7 an accident, okay, but there is no proof at this point in
8 time that it was an accident.

9 There appears to have been a complete disregard of
10 the Court's order and admonition and we were all
11 instructed to basically keep the witnesses out of the
12 courtroom.

13 They have known she has been in here -- apparently
14 known. Now, if they say they haven't, it's just a
15 mistake, okay. But if they knew who she was, recognized
16 her, they can tell us as an officer of the court they
17 didn't know that, didn't know she was in here; that it was
18 an accident, then I can understand.

19 But if it ain't no accident there, has to be a remedy
20 for violation of an order.

21 MS. CAMPBELL: I'm sorry, Your Honor. I've never met
22 the woman before. It just came to my attention that she
23 was in here. I brought it to Mr. Moore's attention first
24 and your attention as long as I found out.

25 MR. MOORE: And there are two other solicitors in the

1 courtroom, Your Honor, plus investigators and paralegals
2 who all know the Court's order.

3 MS. CAVANAUGH: The first time I saw the nurse was
4 when we were talking a break before the EMT testified.
5 She was right outside the door. I said, "You can leave.
6 We're not going to use you until after lunch."

7 THE COURT: Okay.

8 MS. SIMPSON: And I did not realize she was in here,
9 Your Honor, until now.

10 THE COURT: Whose witness is she?

11 MS. SIMPSON: Mine.

12 THE COURT: Okay. So you didn't see her in here?

13 MS. SIMPSON: I was focused on -- I really wasn't
14 looking in the courtroom and didn't see her.

15 THE COURT: Okay.

16 MR. MOORE: I would accept their word as true. If
17 it's an accident, I withdraw my objection to it. Thank
18 you, Your Honor.

19 THE COURT: Now, listen, I know y'all have got a lot
20 going on. I know there's a million moving parts, but I
21 really do need -- I mean, the next time this happens, you
22 know, I mean -- if she -- I mean, she didn't hear any
23 major crucial testimony that's directly related to her
24 testimony, but I mean, we need to -- we need to keep an
25 eye out.

1 I know this witness list is long, and I understand
2 that. I appreciate that, and I understand and appreciate
3 the complexity of it. I've been there, and I've done it.
4 I need y'all to really look out for it.

5 Thank you.

6 MS. CAMPBELL: Yes, sir.

7 THE COURT: Okay.

8 MS. CAMPBELL: And just to clarify, Your Honor, the
9 only other thing, we tried to get witness in to make sure
10 we have enough to keep going.

11 THE COURT: Right.

12 MS. CAMPBELL: He is objecting to -- the pathologist
13 can't come in or just law enforcement?

14 THE COURT: Just law enforcement and the immediate
15 family.

16 MS. CAMPBELL: Okay.

17 THE COURT: I mean, unless they're not a witness.

18 MS. CAMPBELL: And, Your Honor, if I could just be
19 heard. I think there's some case law on experts witnesses
20 be allowed to observe other experts testify. I'll bring
21 that to the Court's attention --

22 THE COURT: Okay.

23 MS. CAMPBELL: -- before I bring anybody in.

24 THE COURT: All right. Now, if you run into that
25 situation, just let me know. I mean...

1 MS. CAMPBELL: Yes, sir. I'll bring it to the
2 Court's attention before --

3 THE COURT: Right.

4 MS. CAMPBELL: I'm not trying to violate any orders.

5 THE COURT: No, I understand.

6 MS. CAMPBELL: Thank you, sir.

7 THE COURT: Okay. Bring the jury in.

8 (WHEREUPON, the jury came into open court at
9 approximately 3:29 p.m.)

10 THE BAILIFF: The jury seated, Your Honor.

11 THE COURT: Thank you very much, Mr. Dye.

12 Ladies and gentlemen, I appreciate you that I own a
13 watch, and I told you ten minutes. Sometimes when I come
14 back in here at ten minutes, things have come up that I
15 don't know about that I have to address. I apologize for
16 keeping you a little longer than normal. I hope you
17 enjoyed your break.

18 Mr. Myers, cross-examination.

19 MR. MYERS: Thank you, Your Honor.

20 CROSS-EXAMINATION:

21 BY MR. MYERS:

22 Q Good afternoon, Investigator Bouknight.

23 A Good afternoon.

24 Q Now, if I understood your testimony, you were the
25 chief, one of the chief investigators on the scene on

1 August 23rd, 2012, correct?

2 A I was the senior crime scene analyst.

3 Q All right. As senior, that means that you had some
4 junior deputies and investigators under you, right?

5 A Correct.

6 Q And they were all looking to you for direction,
7 right?

8 A Yes, sir.

9 Q They were counting on you to tell them at least what
10 you thought was going on, right?

11 A No, sir.

12 Q So they didn't listen to you?

13 A No. They listened, but they weren't -- I was there
14 to assist them. They were capable of making their own
15 decisions, and as I said earlier with the other
16 investigators that were there, Investigator Martin and
17 Bolden and those, they don't work for crime scenes. So we
18 don't work directly under each other. We work together.

19 Q Okay. So needless to say, you were one of the senior
20 investigators on the scene, right?

21 A Yes, sir.

22 Q And when you got there, you saw that the body was
23 laying face down in the yard, right?

24 A Yes, sir.

25 Q And the body, I think you'll agree with me, was a

1 mess?

2 A Yes, sir.

3 Q I mean, there was feces, right?

4 A Yes, sir.

5 Q There was urine, right?

6 A I don't remember urine.

7 Q You indicated there was some blood, right?

8 A Some reddish liquid.

9 Q And, in fact, when you saw that, you and your other

10 deputies and investigators, y'all got together and someone

11 went to the magistrate to swear out to get a search

12 warrant for the house, right?

13 A Yes, sir.

14 Q And at that time, when you go to the magistrate to

15 get a search warrant, you swear under oath that what

16 you're telling that magistrate is the truth, right?

17 A Yes, sir.

18 Q You're basically telling him that based on your

19 personal knowledge, that everything that you guys can do

20 -- that everything that you're saying to get that search

21 warrant is the truth, right?

22 A Yes, sir.

23 Q Now, you told them -- the search warrant alleged that

24 the cause of death was a possible gunshot wound, right?

25 A I didn't sign the search warrant. I just executed

1 it. I would have to look back through the probable cause
2 affidavit.

3 Q Sure. If I may, I have a copy of the search warrant
4 right here.

5 If your would look on page three of five, the reason
6 for affiant's belief.

7 A Yes, sir. It says, "May have suffered a gunshot
8 wound".

9 Q All right. And you just told this jury that when you
10 met with Dr. Durso at the autopsy, you told her that the
11 cause of death could not be determined, right?

12 A I told who?

13 Q Dr. Durso, the pathologist.

14 A Dr. Durso told me that the cause of death could not
15 be determined.

16 Q Well, was she at the scene?

17 A No, sir. Dr. Durso is the one that makes the
18 determination of the cause of death.

19 Q Sure. But at the time you went, you -- this search
20 warrant was executed before that body got to Dr. Durso,
21 right?

22 A Yes, sir.

23 Q So by the time the body got to Dr. Durso, the search
24 warrant for the gunshot wound had already gone to the
25 magistrate, right?

- 1 A Yes, sir.
- 2 Q And we know that she didn't suffer -- or she didn't
- 3 die as a result of a gunshot wound, right?
- 4 A Correct.
- 5 Q So the information that you told this jury that the
- 6 cause of death could not be determined is not consistent
- 7 with what you told that magistrate to get that search
- 8 warrant, is it?
- 9 A I didn't tell the magistrate anything. I didn't sign
- 10 the warrant.
- 11 Q ~~But we know that Ms. Smith did not suffer or sustain~~
- 12 ~~any gunshot wound, right?~~
- 13 A Correct.
- 14 Q When you're looked at the body, did you notice any
- 15 sort of entrance wound from a gunshot?
- 16 A No.
- 17 Q Did you notice any exit wound on the body?
- 18 A No, sir.
- 19 Q And you said you pulled out your GSR kit, right?
- 20 A Yes, sir.
- 21 Q And there was no gunshot residue found on the body.
- 22 A I don't know. It's not an instant ID kit.
- 23 Q So law enforcement's initial theory in what you told
- 24 the magistrate about a gunshot was not true, right?
- 25 A I didn't tell the magistrate --

1 Q Somebody in your office told the magistrate that --

2 A Somebody in the sheriff's department's did, yes, sir.

3 Q And that wasn't true, right?

4 A There was no gunshot wound.

5 Q In fact, there was no trauma at all to the body,
6 right?

7 A Not that we could -- not a visible trauma, no, sir.

8 Q There were no strangulation marks on the body?

9 A No, sir.

10 Q But we know there were no ligature marks on the body,
11 right?

12 A Correct.

13 Q There were no stabbing wounds on the body.

14 A Correct.

15 Q There was absolutely nothing to indicate any sort of
16 trauma to the body at the time you saw it, right?

17 A Correct.

18 Q So when you met with Dr. Durso when she performed
19 that autopsy, did you just go there to observe and say
20 nothing to Dr. Durso?

21 A I'm -- what am I supposed to say to --

22 Q Well --

23 A I was there to collect evidence, and then if
24 Dr. Durso has any questions about the scene, the condition
25 of the scene or anything like that, she will ask, but she

1 is there. She is the doctor in the morgue to make the
2 determination.

3 Q But when she was performing this autopsy, were you
4 the only individual from the Richland County Sheriff's
5 Department with her?

6 A Yes, sir.

7 Q So if she had any questions about this investigation,
8 you were the one to answer it, right?

9 A Yes.

10 Q So you would have told her what you found, right?

11 A Yes.

12 Q And did you tell her that there were feces on the
13 body at the time you saw it?

14 A No, sir.

15 Q You didn't tell her that?

16 A No, sir.

17 Q Okay. But it's obvious the body was a mess, right?

18 A Yes, sir.

19 Q I mean, the fact that the body had feces and urine on
20 it would indicate that it was a mess, right?

21 A As I said, I only observed feces.

22 Q Now, you didn't notice any sort of containers like
23 plastic containers around the body, right?

24 A No, sir.

25 Q You didn't -- and the body was found right there in

1 the front yard. There's no question about that, right?

2 A Correct.

3 Q And the only blanket that had been placed on the body
4 was what Mr. Bailey actually placed over her, right?

5 A I believe. I didn't -- I don't know. I just know
6 there was a blanket over her.

7 Q Now, you mentioned -- there's been some testimony
8 about a blanket found inside the dryer.

9 A Yes, sir.

10 Q Do you recall that testimony?

11 A Yes, sir.

12 Q Now, from looking at the evidence, that blanket
13 appears to have the ability to absorb. Would you agree
14 with that?

15 A Yes, sir.

16 Q But at the same time, it also allows for some
17 leakage, right?

18 A Yes.

19 Q I mean, there's no plastic inside the blanket,
20 nothing that would prevent anything from leaking if that
21 blanket contained anything, right?

22 A If it was saturated to the point of leaking, yes,
23 sir.

24 Q All right. So we know that based on your
25 investigation of the house, there was no blood found in

1 the house, right?

2 A Correct.

3 Q There was no feces found in the house?

4 A Correct.

5 Q There was no urine found in the house that belonged
6 to Ms. Smith?

7 A As far as I know.

8 Q There was no organic material that came from
9 Ms. Smith's body that was inside that house, was there?

10 A Correct.

11 Q And you testified that y'all pulled the carpet back,
12 right?

13 A Yes, sir.

14 Q And I'm assuming that this carpet is the normal
15 standard carpets that may become saturated, as well?

16 A Yes, sir.

17 Q Which means that it could leak, right?

18 A Yes, sir.

19 Q So when you pulled the carpet back, you didn't notice
20 any blood, right?

21 A Correct.

22 Q You didn't notice any urine?

23 A Correct.

24 Q You didn't notice any organic material coming from
25 Ms. Smith's body, right?

1 A Correct.

2 Q In fact, in the bedroom that you testified to about
3 that cadaver dog, when you say that that cadaver dog
4 alerted, you stated that you weren't the handler, right?

5 A Yes, sir.

6 Q The dog didn't turn to you and say, "Hey, I'm
7 alerting", right?

8 A Right.

9 Q So you're basically just saying what the handler told
10 you the dog says?

11 A Yeah. Whatever -- the handler, he works with his dog
12 and noticed, "Okay. This is an alert for this dog." You
13 know, different dogs alert different ways.

14 As you said, I have to depend on -- that's why the
15 K-9 handler was there to tell me, "Okay. That's an
16 alert."

17 Q We know that the cadaver dog did not alert to the
18 laundry room, right?

19 A Correct.

20 Q Didn't alerted anywhere near the laundry room, right?

21 A Correct.

22 Q In fact, the cadaver dog only so called alerted
23 upstairs, right?

24 A Yes, sir.

25 Q Even in the locations it alerted, you still found no

1 blood, right?

2 A Correct.

3 Q You found no urine, right?

4 A Correct.

5 Q You found no fecal matter, right?

6 A That's correct.

7 Q You found no organic matter from Almanita Smith's
8 body where the dog allegedly alerted, right?

9 A No, sir.

10 Q How about inside of the garage? Did you notice any

11 -- did you find any of those things inside of the garage?

12 A No, sir.

13 Q Did you find anything of that nature inside the car
14 inside the garage?

15 A No, sir.

16 Q And it's true that there was only one car inside of
17 that garage, correct?

18 A Yes, sir.

19 Q Now, you know now that car belonged to Ms. Smith,
20 right?

21 A Yes, sir.

22 Q Do you know whether or not Mr. Bailey had a car
23 during this time?

24 A I don't know.

25 Q Were you aware that his car was wrecked several.

1 months before and inoperable?

2 A No, sir.

3 Q But you're sure that there was no blood found inside
4 that car?

5 A Yes, sir.

6 Q And by inside the car, I mean within the compartment
7 of the car and also within the trunk of the car.

8 A Correct.

9 Q No blood.

10 A No.

11 Q No urine.

12 A No, sir.

13 Q No feces.

14 A No, sir.

15 Q No organic material.

16 A No, sir.

17 Q Now, this Bluestar material that you say you used,
18 right?

19 A Yes, sir.

20 Q This is basically to detect whether or not there was
21 any blood inside the house, right?

22 A It's there to detect latent or trace amounts of
23 blood.

24 Q All right. And you testified that you used that
25 Bluestar inside of the house, right?

1 A Yes, sir.

2 Q And the Bluestar didn't reveal that there was any
3 sort of blood in the bathroom, right?

4 A Correct.

5 Q Didn't find any blood anywhere, right?

6 A Correct.

7 Q And even on the clothing that you testified to that
8 was taken from the scene, no blood on the clothing, right?

9 A Correct.

10 Q So the dampness, we know it wasn't blood, right?

11 A Yes, sir.

12 Q We know it wasn't urine, right?

13 A Right.

14 Q We know it wasn't fecal matter, right?

15 A Well, I don't know if it was tested for urine or
16 fecal matter or anything like that. We know it wasn't
17 blood.

18 Q But we know that -- or you know as you sit here that
19 the clothing that was taken from the location had no sort
20 of evidence of decomposition on it.

21 A Which clothing are you talking about, the ones I
22 collected?

23 Q Yes, sir.

24 A Okay, correct.

25 Q Now, this hair follicle -- there's been a lot of talk

1 about this hair follicle. Let's -- this hair follicle
2 that you testified to that was found gripped in
3 Ms. Smith's hand, correct.

4 A Yeah. I'm not sure if a follicle was on there. It
5 was just the hair.

6 Q Just the hair.

7 A I don't know if a follicle was attached, but it was
8 in her left hand.

9 Q All right. And you saw it?

10 A Yes, sir.

11 Q And when you saw it, you thought it was important,
12 right?

13 A I didn't know if it was going to be important or not,
14 but I saw it and it was evidence.

15 Q In fact, anytime something like that is found, you
16 always want to make sure you collect it because it could
17 ultimately be important, right?

18 A Yes, sir.

19 Q And your office -- as crime scene, you're aware of
20 the crime scene department at the Richland County
21 Sheriff's Department, right?

22 A Yes, sir. I am aware of it.

23 Q Now, this hair, it was pretty long, was it not? I
24 mean, when you testified a few moments ago, you saw the
25 hair. It was pretty long, was it not?

- 1 A Average length.
- 2 Q Okay. What's average length to you?
- 3 A A few inches.
- 4 Q A few inches.. When you say a few, I'm thinking
- 5 three.
- 6 A Three or four.
- 7 Q All right. So about three inches. About that long
- 8 (indicating)?
- 9 A No, sir.
- 10 Q Well, I'm sorry. You show me three inches.
- 11 A (Indicating).
- 12 Q About that long (indicating)?
- 13 Would you say that Marcus Bailey's hair is that long?
- 14 A No, sir.
- 15 Q And you -- did you see him on this day?
- 16 A No, sir.
- 17 Q Did anybody tell you that that hair could have
- 18 matched Marcus Bailey's hair?
- 19 A No, sir.
- 20 Q Now, did your office ever put that hair under a
- 21 microscope?
- 22 A Not that I'm aware of.
- 23 Q Did it ever do anything to compare that hair to
- 24 Ms. Smith's hair?
- 25 A Not that I'm aware of.

1 Q It never even put any of the hair from Almanita's
2 body that was actually on her hair next to it to compare
3 that it was her hair, right?

4 A As far as I'm aware of, no, sir.

5 Q As far as you're aware of. So as you sit here today,
6 we don't know whose hair that is, do you?

7 A Correct.

8 Q But it certainly does not match Marcus Bailey's hair?

9 A Not to the hair he has now.

10 Q You testified that you also was present for -- well,
11 you yourself took the nail scrapings from Almanita Smith's

12 body, correct?

13 A Yes, sir.

14 Q And by nail scrapings, you mean the nails, the
15 scrapings that were underneath the fingernails, right?

16 A Yes, sir.

17 Q And obtaining that sort of information is important
18 because it could also link any individual to Ms. Smith's
19 body, correct?

20 A Correct.

21 Q And those nail scrapings came back with no results,
22 right?

23 A I don't know.

24 Q Well, we know that nothing from Marcus Bailey was
25 ever connected to any sorts of nail scrapings, right?

1 A I don't know the results at all, sir. I turned them
2 in.

3 Q The buccal swab -- am I saying that right?

4 A Buccal.

5 Q The buccal swab, none of that ever came back to
6 Marcus Bailey, right?

7 A Yes, sir, because it's a standard for Ms. Smith.

8 Q Okay. Sure. And there was some testimony about a
9 condor, a used condom that was found. Do you know
10 anything about the condom?

11 A No, sir.

12 Q Okay.

13 A I'm aware that one was found, but I'm not aware there
14 was any testing.

15 Q And you stated there was a sexual assault kit?

16 A Sexual assault protocol kit.

17 Q And there was no sort of semen linking Mr. Bailey to
18 the body, right?

19 A Once again, I'm not aware of the results. After I
20 turn it in to evidence, I -- I don't get the results.
21 That goes to the investigator.

22 Q Okay. So the investigator would know?

23 A Yes, sir.

24 Q So how many investigators were there on the scene?

25 A I think there was a total of -- at the original

1 scene?

2 Q Yes, sir.

3 A Around five of us.

4 Q Do you have a photograph, Investigator Bouknight,
5 that would indicate the level of sanitation that was
6 around the scene at the time you arrived?

7 A I'm not sure what you mean by sanitation.

8 Q Were you wearing any sorts of footies or booties to
9 cover your boots?

10 A No, sir.

11 Q Were any officers wearing any footies or boots at the
12 crime scene?

13 A No, sir.

14 Q So even as y'all went from where the body was and
15 inside the house, no one ever put on any booties or any
16 sort of footies?

17 A No, sir.

18 MR. MYERS: Thank you, sir. No further questions.

19 THE COURT: Redirect?

20 MS. SIMPSON: Briefly, Your Honor.

21 REDIRECT EXAMINATION:

22 BY MS. SIMPSON:

23 Q Investigator Bouknight, with respect to the K-9
24 search that you were present for, when the K-9 came back
25 to the house, had the items of evidence been removed as

1 Q Okay. And was Almanita?

2 A She was.

3 Q And had she recently been promoted?

4 A She had. She was supposed to be -- I was going to be
5 the cadet battalion commander. I was for this past year.
6 She was supposed to be my cadet sergeant major, which is
7 basically my assistant that was supposed to be responsible
8 for like enlisted matters and stuff like that within Army
9 ROTC. So that was supposed to be her position for this
10 past year.

11 Q And around August 17th, 18th, 19th, what was going on
12 with the ROTC unit at this point?

13 A At that point, we were getting ready for school to
14 start back up. We were having our initial meetings with
15 our battalion commander, the actual battalion commander,
16 of the Army ROTC, was supposed to have sit downs with me
17 of my staff and with Almanita so that we could go over the
18 year and how to start the year off and stuff like that, to
19 which -- try to get ready for the school year.

20 Q And was she -- was it important for her to be at
21 those meetings?

22 A It was.

23 Q Okay. And was she very involved with the ROTC unit?

24 A She definitely was.

25 Q So as you were trying to get ready for the meetings

1 that you just referred to, did you try to contact her?

2 A I did.

3 Q And how did you do that?

4 A Through text messages, phone calls. I don't think I
5 got through to her but text messages and phone calls and
6 leaving her voicemails and stuff.

7 Q And do you remember when you started, approximately
8 when you started, trying to get in touch with her?

9 A It was -- I don't remember the exact dates. I know
10 it was probably sometime around the 16th, 17th-ish, right
11 before school started. I know classes hadn't started yet.

12 They usually start around the 18th so sometime around
13 then.

14 Q And was she able -- well, did she ever call you back?

15 A No, she did not.

16 Q And you tried several times?

17 A Yes.

18 Q Was this unusual for her not to get back in touch
19 with you?

20 A It was.

21 Q And did you become concerned?

22 A I did.

23 Q And what did you do?

24 A After she hadn't returned phone called, hadn't
25 responded to texts, which was very unusual for her, we --

1 Q And Almanita told you they were gym buddies.

2 A Yes.

3 Q Now, going back to when you went to go check on her,
4 you stated that Marcus opened the door.

5 A Uh-huh.

6 Q And did you inquire about where Anita was?

7 A Yes.

8 Q And where were y'all standing? Who went with you,
9 actually?

10 A It was my roommate at the time, Richard Benson.

11 Q Okay. And where were y'all standing when you were
12 talking to Marcus?

13 A Outside the front door.

14 Q Okay. And did you ever go inside?

15 A No.

16 Q And did you ask him where Anita was?

17 A Yes.

18 Q What did he tell you?

19 A He said he had seen Nita that morning, and that she
20 had left to go shopping with friends.

21 Q Did he know who she went with?

22 A No.

23 Q And how long do you think that you were outside, just
24 an approximation?

25 A Probably maybe five minutes.

DIRECT EXAMINATION:

BY MS. SIMPSON:

Q Ms. Bailey, where are you employed?

A I work for Agape Hospice.

Q And what do you do?

A I'm a registered nurse.

Q And how long have you been an RN?

A Since 1997, 16 years or so.

Q And have you lived in Columbia and worked in Columbia during that time?

A I don't live in Columbia now. I live outside Columbia. I've worked in -- all over South Carolina. I've worked in Orangeburg. I've been in Columbia for six years, seven years.

Q Okay. Can you tell the jury a little bit about your educational background and your training?

A Graduated from OC Tech in 1997, deans list as a registered nurse, went into labor and delivery and early education, certified in childbirth education at that point.

I left that after 13 years and came to Columbia, went in -- transferred over to the emergency room, certified in ACLS, of course, always BLS.

I studied for trauma room nursing and received a certification on that prior to leaving the emergency room

1 and had taken some extensive courses in studying for
2 certification in emergency room nursing.

3 Q Okay. And what is -- tell us a little bit about what
4 a trauma nurse does in the emergency room.

5 A We were going to stabilize anyone that comes in who
6 is compromised in a life-threatening situation.

7 Q And what types of cases do you see, or how do people
8 present to you in the emergency room?

9 A Blocked airway, they can't breathe. They need to be
10 stabilized. Sometimes the hospital that I worked in was a
11 lower acuity level. The more high trauma will go to

12 Richland, but in our hospital because of our location, we
13 are trained to receive whatever comes through the door.

14 Chest tubes for, you know, frail lungs, hemorrhage,
15 stabilized for surgical procedures. I mean, anything that
16 would compromise your life from your head to your toe, we
17 would stabilize and ship you to where you need to be
18 shipped or to surgery or to where you would need to go to
19 hopefully continue your breathing.

20 Q Be back at -- you're at Agape now. Back in 2012,
21 where were you working?

22 A Providence Northeast.

23 Q Providence Northeast?

24 A Yes, ma'am.

25 Q In the ER?

1 A Yes, ma'am.

2 Q As a trauma nurse?

3 A Yes, ma'am.

4 Q How many patients would you say you've treated or
5 seen as a trauma nurse in the ER?

6 A Wow. It probably fluctuates from 60 to 120 every 24
7 hours. We work 12-hour shifts. So I work three 12s a
8 week. Somebody is beginning to have to do the math here.
9 I'm not good at math. I'm a good nurse.

10 I worked there for over 4 years, so whatever that
11 comes out to be.

12 Q A lot, right?

13 Your Honor, at this time I would offer Ms. Bailey as
14 an expert as a registered nurse, specifically with respect
15 to emergency medicine and in the trauma unit.

16 THE COURT: Do you want to voir dire?

17 MR. MOORE: No, sir. I just want to make sure I
18 understand that what she is being offered in is an expert
19 in the field of nursing; is that correct?

20 MS. SIMPSON: Yes, Your Honor; that's correct.

21 THE COURT: I've got nursing with emergency medicine
22 and trauma unit.

23 MR. MOORE: I would accept her qualifications in that
24 regard with no questions.

25 THE COURT: Thank you.

1 All right. Ladies and gentlemen, as I explained to
2 you one or two times earlier today, this witness will be
3 qualified in the area as an expert in the area of nursing
4 in emergency medicine and specifically the trauma unit.
5 She will be allowed to give opinion testimony in that
6 area.

7 Now, that does not mean, as I've told you before,
8 that you have to accept her opinion, but it is evidence
9 for you to use in any way you see fit and necessary to
10 give it the weight and credibility that you believe is
11 appropriate just as you will have to do with every other
12 witness that testifies before you.

13 Thank you.

14 BY MS. SIMPSON:

15 Q Now, Ms. Bailey, I want to turn your attention
16 specifically to August 23rd, 2012 while we're here. Do
17 you recall the defendant in this case, Marcus Bailey?

18 A I do.

19 Q Tell the jury how he presented to you and how you
20 became involved.

21 A We're assigned room assignments in the emergency
22 room. Each nurse is given certain room numbers, and this
23 patient was moved to my room.

24 Our rooms were set up in the emergency room so that
25 we could see inside of them from the outside to view our

1 patients, unless they need privacy, in which case we pull
2 the curtains.

3 Q So you're responsible for a room or several rooms?

4 A Several rooms, yes, ma'am.

5 Q Okay.

6 A And this patient was -- when I first saw him, he was
7 in my room on a stretcher.

8 Q Okay. And when you saw him, what information did you
9 have about why he was there?

10 A The first time I saw him, I didn't have a background
11 on him, which isn't unusual because we worked together as

12 a team in the emergency room. Other nurses were attending
13 to him.

14 When I saw him, he was in my room, so he was
15 primarily my responsibility. So my -- at my point of
16 contact visually, I made sure he was breathing and moving
17 and he was doing, okay. That's how we prioritize what
18 we're going to do next, and he had attention from other
19 nurses that were in and out of the room.

20 Q And do you recall the name of any of those nurses?

21 A Sue, we call her. Her name is Martha and Kindy
22 (phonetic).

23 Q And had the defendant actually been in a room prior
24 to coming to your room?

25 A He had. He had been on the front hall, we call it,

1 which is a more isolated area and moved to a room in front
2 of the nurse's desk.

3 Q Okay. And I guess in your -- the number of cases you
4 had, is there any reason that this one in particular
5 stands out to you or why you're able to recall it?

6 A Well, I've thought about it since I was asked to come
7 here, you know, to testify. There's not another reason
8 that it would stand out.

9 Q Okay. And going to when Mr. Bailey was in your room,
10 what did you do and how did you observe him?

11 A Like I do all patients, the first thing is if they're
12 breathing in the emergency room. Airway, is number one,
13 and he was breathing.

14 You know, I could see chest rising, fall, and I could
15 see he was moving around in the room on the stretcher. I
16 was not hurried to his bedside as far as the acuity level
17 of that patients based on what my responsibilities were at
18 the time.

19 Q And did he seem to be having any difficulty breathing
20 to you?

21 A No, he did not. I noted that he was in no
22 respiratory distress.

23 Q Okay. And have you been presented with people who've
24 had panic attacks?

25 A I have, yes.

1 Q Can you describe for the jury how a panic attack may
2 look, for lack of a better way to put it?

3 A When someone has had a panic --

4 MR. MOORE: Objection, Your Honor. That would be
5 beyond the scope of her expertise as a trauma nurse.

6 THE COURT: What was the question again?

7 MR. MOORE: That would be up to a medical doctor to
8 basically give -- she basically is asking for the
9 characteristics of a panic attack. That's beyond the
10 scope of the expertise of her as a nurse.

11 I've done enough medical work to know that that's for

12 a doctor, not for a nurse. She can certainly testify as
13 to what she did, what she saw, and those sorts of things.

14 She can't give diagnosis, and she certainly doesn't
15 have the ability to give typical characteristics of
16 disease.

17 THE COURT: I think you need to lay some more
18 foundation about her experiences with panic attacks.

19 BY MS. SIMPSON:

20 Q Okay.

21 And how many patients would you say you've seen with
22 a panic attack?

23 A I would I guess probably anywhere from 20 to 30
24 patients.

25 Q Okay. And have you also seen patients with the

1 effects of having a panic attack or coming down from a
2 panic attack, for lack of a better way to put it?

3 A Well, those same patients would be the ones that I
4 would use, as an example in my experience, dealing with
5 patients with panic attacks.

6 Q And how would you describes a person's condition with
7 respect to the panic attacks based on your experience?

8 MR. MOORE: Your Honor, I would objection to any
9 extremely conscious discussion about any type of person
10 having a panic attack. I think this case is about this
11 one gentleman.

12 I think that the question would have to be limited to
13 that, plus again, having seen 20 or 30 people in the
14 course of how many years who claim to be suffering from
15 panic attacks, I don't believe that gives you the
16 necessary expertise. This is the sort of thing that a
17 doctor would need to testify to.

18 THE COURT: I'm going to overrule your objection.
19 I'm going to find that she can testify to this based on
20 her experience, her training, her knowledge, and her and
21 her experience in the ER.

22 MS. SIMPSON: Thank you, Your Honor.

23 BY MS. SIMPSON:

24 Q So tell us what type of things you've seen with
25 respect to a person having a panic attack.

1 A When a patient presents with a panic attack or
2 symptoms of a panic attack, the first thing that we're
3 concerned with, again, is as with everything we're taught
4 in nursing school is airway. It's ABC: Airway,
5 breathing, and circulation.

6 A lot of times if people are afraid and panicking,
7 they will be breathing abnormally and be blowing off too
8 much -- you know, retaining too much carbon dioxide, not
9 transfusing gases properly. Their heart rate will
10 increase.

11 Sometimes the panic attack will escalate to the point
12 of them actually passing out or not being able to, you
13 know, not breathing properly, so what we try to do is calm
14 them down, slow their breathing, get oxygen, you know, on
15 that person.

16 Sometimes we have to intervene with drugs to calm
17 them. Again, it's usually airway. If someone is having a
18 panic attack, a lot of times, it could be someone in this
19 room right now because a lot of times in public, you know,
20 as a nurse, you're just aware of what's going on and what
21 people are experiencing.

22 You know, it would be to make sure that their airway
23 was clear. They have -- to calm them verbally because,
24 you know, to have them to breathe properly.

25 Q And so struggling with the breathing, and just

1 because a person's, I guess, heart rate is elevated, does
2 that necessarily mean that they're having a panic attack?

3 A It does not. People's heart rate can be elevated for
4 any number of reasons, especially these drinks that we
5 have now, the Red Bull and so forth. There's so much
6 caffeine that it elevates people. A cup of coffee can
7 elevate somebody's heart rate.

8 Q So --

9 A There's lots of reasons for people's heart rate to be
10 up, if that's just one condition. A lot of times if
11 people are having a panic attack, you'll see air hunger

12 fear on their face because they're starved for air.

13 It's very real with them, and so that's one of the
14 typical signs that you would look for.

15 Q And when you observed Marcus Bailey, was he in, I
16 guess, the acute stage of a panic attack or seemed to be
17 having a panic attack?

18 A When I observed him, his respirations were equal
19 bilateral. Just as a registered nurse that was in charge
20 of that room, I made note of what his vital signs were.

21 If -- his heart rate, I think, had been elevated but
22 his blood pressure was not at that time, his respirations,
23 I think, were within normal limits at that time.

24 Q And did you also have some of the information
25 available to you from, I guess, Mr. Dink, or one of the

1 other nurses at the time that he presented to you?

2 A I may have, but usually don't pay attention to what
3 other people write down because I don't -- I mean, I'm my
4 own registered nurse. I work with my own license, and I
5 know what I do is what I do. I rely on my own self
6 because it feeds me.

7 Q And if there had been something of concern, though,
8 or something of an immediate nature, Mr. Dink would have
9 made you aware of that?

10 A Oh, certainly. He would have intervened himself. I
11 worked with these people as professionals enough to know

12 that he, as a registered nurse, would have intervened with
13 something if he needed to.

14 Also, I think the doctor had been in and out of the
15 room, and he also would have intervened with something.
16 In the emergency room, you have to remember we have
17 monitors also.

18 Most people in the emergency room are kept on a
19 monitor. All of my patients when I enter the room, I put
20 them on a monitor. They're on a timer. The blood
21 pressure cuff is on a timer.

22 Q So the monitor is monitoring their blood pressure and
23 things?

24 A You're on a telemetry monitor so you can watch their
25 heart rate, which is the normal pattern. You have the

1 normal QRS pattern on the monitor, so you know there's
2 nothing visually wrong with the heart, even though it's
3 beating rapidly.

4 The blood pressure cycles, so if there's a change in
5 the status of the patient, then you are made aware. You
6 have an alarm on the monitor, so if you happen to be away
7 or in another room. Also --

8 Q And his didn't go off, just so we're clear.

9 A Not that I'm aware of. I mean, it's been a year ago,
10 but if it had went off, it would have -- you know, you
11 would have a reason for it to go off.

12 You would have an elevated blood pressure, or the
13 heart rate reaches such an elevated point that it would
14 have caused an alarm. You have parameters that are set on
15 those machines.

16 Q And in this case with respect to Mr. Bailey, was he
17 provided a prescription upon release?

18 A That I'm not aware of?

19 Q Did you have a chance to review the records in this
20 case at some point.

21 A I did but I'm not sure if he had a prescription.

22 Q Just to refresh.

23 A This right here says that he had a Vistaril.

24 Q What is a Vistaril?

25 A Well, I want to go back to your first question just

1 because that's the way I am. This is not a prescription.

2 Q Oh, okay. That's just the --

3 A There's a --

4 Q -- to be written?

5 A Yeah, this is a doctor's order telling that this
6 patient had that medication, yes.

7 Q So it's a doctor's order, essentially for the
8 medication that --

9 A Right.

10 Q -- that he may receive.

11 A Right. And to answer our other question, that's a

12 Vistaril 25 milligram, that's kind of like Benadryl's
13 cousin. They're in the same family.

14 Vistaril is kind of like an antihistamine.

15 Histamines are what are released in the body when you have
16 an allergic reaction.

17 So any time, again -- antihistamine is something to
18 fight histamines. If you're having an allergic reaction,
19 it can be given. And also, it's -- it will kind of calm
20 him, calm you down.

21 Q But it's not a -- I mean, I guess in terms of
22 laymen's terms as far as a power or strength of the
23 medication, this is fairly benign?

24 A Yeah. That medication was given -- because of my
25 history in working with pregnant women, that medication

1 was given a lot in the later stages of pregnancy to help
2 moms who are getting big and uncomfortable rest. So it's
3 that benign that it didn't hurt mamas and babies.

4 Q And do you recall whether Mr. Bailey was there for
5 any significant period of time or length of time?

6 A I -- we pretty much have a 90 minute turn around goal
7 in the emergency room or had when I was a part of that.
8 I'm not sure what they do now.

9 They had worked very extensively to critique the
10 emergency room to make it more efficient. So I don't
11 remember him being there a long time, and I remember us

12 working very hard as professionals to try to have a good
13 turnaround time in our emergency room.

14 Q And so he wasn't discharged for surgery or to some
15 other unit or for further medical observation?

16 A He was discharged with law enforcement, the best I
17 remember.

18 Q Okay. So he was turned over to this custody of the
19 Richland County Sheriff's Department or whoever was there?

20 A Law enforcement is all. I don't remember what the
21 names were. They just had uniforms on.

22 MS. SIMPSON: All right. Thank you, Ms. Bailey.

23 THE WITNESS: You're welcome.

24 CROSS-EXAMINATION:

25

1 BY MR. MOORE:

2 Q Ms. Bailey, my understanding is you started trying to
3 remember about this case when you learned that you were
4 going to be a witness; is that correct?

5 A I thought about this it after I was told I was going
6 to be here.

7 Q My question really is who told you that you were
8 going to be a witness?

9 A I was called and asked if I would -- could testify in
10 this case. I don't -- I think I was told I was going to.
11 I don't really think I was asked.

12 Q My question is the name of the person who called you
13 and told you that you were going to be a witness.

14 A Sir, I don't remember.

15 Q Would that have been somebody from the solicitor's
16 office?

17 A It would have been.

18 Q And how long ago was it that you received the
19 telephone call from the prosecutor in this case and were
20 told that you were going to be a witness?

21 A That I'm not sure either, but it was within the last
22 ten days, the best that I can remember.

23 Q All right. So you'd been trying to recall about this
24 case for this last ten days or so?

25 A No, sir. I have not.

1 Q Well, I thought your testimony was that you started
2 trying to recall this case and think about this case after
3 you learned you were going to be a witness.

4 A I gave it a thought, sir, but I'm a very busy person.
5 I didn't put a lot of thought into it.

6 Q I see. Well, now, my understanding is that what you
7 are basically is a trauma nurse; is that correct?

8 A When I worked in the emergency room, that was my
9 role, sir.

10 Q And my understanding is that Mr. Bailey would have
11 actually have been treated by a physician, correct?

12 A And he was treated by a physician, sir. We work as a
13 team.

14 Q That was my question. He was actually primarily
15 treated -- is -- the person primarily responsible for his
16 treatment would have been a medical doctor.

17 A I guess I will use an analogy. When a woman is
18 pregnant and has a baby, she sees a doctor probably a
19 total of two hours and is with the nurses probably 20.
20 It's kind of the same way in the emergency room. The
21 doctor works with a license, and I work with a license
22 also. We work independently but together.

23 Q You don't have the right to prescribe medication, do
24 you?

25 A Actually in my job now I do; yes, sir.

1 Q You didn't back then, did you?

2 A In that job, I did the not prescribe medications.

3 Q And, actually, the person who would have been
4 responsible for the diagnosis of Mr. Bailey would have
5 been the person known as the attending physician; is that
6 right?

7 A Dr. Gonzales, yes, sir.

8 Q Dr. Jose Louis Gonzales would have been the attending
9 physician, and it would have been his job to make the
10 primary diagnosis in this case, correct?

11 A It would have been.

12 Q And, actually, before coming here today, you've had a
13 chance to meet and talk to the prosecutor's office,
14 correct?

15 A I did.

16 Q And yet, they have shown you the medical records in
17 this case, correct?

18 A I read my nurse's notes. I read what I wrote last
19 year.

20 Q Well, you've also seen -- you realize, of course,
21 that the primary attending physician whose patient this
22 was, Dr. Gonzales, diagnosed an acute stress reaction; is
23 that correct?

24 A Actually, like I said, we work under a different
25 license, and we work separately. As a registered nurse,

1 my goal is to treat the human response to whatever
2 happens. That's what nurses do. We treat a human
3 response.

4 Q Yes, ma'am. You treat a human response, and it's
5 medical doctors who basically make the diagnosis.

6 A Exactly.

7 Q Well, let's take a look also the medical records from
8 Providence Hospital by the people whose job it was to
9 diagnose, the medical doctor. What was the official
10 diagnosis of Dr. Gonzales, the primary treating physician,
11 on the day in question?

12 A Do you want me to read what is written right here,
13 sir?

14 Q The primary diagnosis.

15 A It was says primary impression.

16 Q Primary impression, all right. So?

17 A The doctor's impression was that this was an acute
18 stress reaction.

19 Q All right. So you know of nothing that would have --
20 that's ever been written that changes that primary
21 impression, correct?

22 A I don't understand your question.

23 Q You don't know where Dr. Gonzales ever changed his
24 impression, do you?

25 A Do I know where he changed it?

1 Q Do you know? Do you know? Can you testify that
2 Dr. Gonzales ever changed his mind that there was an acute
3 stress reaction?

4 A No, sir. Because -- I mean, I'm having an acute
5 stress reaction right now.

6 Q Ma'am.

7 A I mean, you know, honestly.

8 Q So then I would ask for a recess, Your Honor. This
9 lady is having a panic attack.

10 A No. I'm going to deal with it because sometimes we
11 have to.

12 Q Your Honor.

13 A I'm not having a panic attack. I'm having an acute
14 stress reaction.

15 Q Do you know that acute stress reaction is another
16 medical term meaning panic attack?

17 A I think there's probably a difference, but like I
18 said, I treat a human response. I don't diagnose.

19 Q Are you telling us that you don't know?

20 A I'm telling --

21 Q Wait a minute. Are you telling us you don't know if
22 there's a difference between a panic attack and an acute
23 stress reaction?

24 A Well, I think your wording changed a little bit when
25 you asked the question both times. This is what I think

1 in my professional opinion: I think a panic is an acute
2 situation. I think a stress reaction is something that
3 elevates someone's heart rate and makes them
4 uncomfortable.

5 I think a panic attack is something that compromises
6 someone's airway, and they have a fear of not being able
7 to breathe --

8 Q All right.

9 A -- and there's some impending doom. I think that's
10 the difference.

11 Q Now, you know then that the official impression from
12 the medical doctors who treated this gentleman was an
13 acute stress reaction?

14 A Exactly.

15 Q Now, would you please describe for me what your
16 definition of an acute stress reaction is.

17 A Yes, sir. I thought I just did. I'm sorry if I
18 didn't make it clear. An elevated heart rate and a
19 feeling of uncomfortableness. In different people, it
20 could be different.

21 Right now, it would be an elevated heart rate for me.
22 I'm not comfortable completely where I am. Not like I am
23 when I'm at home playing Words with Friends where I am
24 comfortable.

25 Q Did you know there are at least 13 different symptoms.

1 plus others which are definable for the phenomenon known
2 as an acute stress reaction?

3 A And it's probably different from panic attacks, yes,
4 sir.

5 Q Well, did you know that basically the symptoms of
6 acute stress reaction and panic attack are identical
7 according to the descriptive terminology -- the
8 descriptive wording for the various diseases?

9 There's a -- I'm looking at the thing right now.
10 Would it surprise to you to learn they're exactly the
11 same?

12 A Well, I would. There's a lot of things I learned in
13 nursing school, and then when we go over to this real
14 world, you apply them a lot differently.

15 If someone comes in and they said they are having a
16 stress reaction in the emergency room, you would -- you
17 would not put that on the same acuity level as someone
18 having a panic attack.

19 Q Now, if a doctor -- one thing is for certain. When
20 the gentleman went to the hospital the day after his
21 girlfriend was found dead in the yard, a medical doctor
22 diagnosed something called an acute stress reaction,
23 correct?

24 A That's what I read on this paper, yes, sir.

25 Q And a medical doctor chose to treat that acute stress

1 reaction by way of a prescription drug, correct?

2 A I think you have to have a prescription for Vistaril,
3 yes, sir.

4 Q Yes, ma'am. As a matter of fact, you do have to have
5 a prescription for Vistaril because it's used for a number
6 of things including pain and anxiety and basically, other
7 things, as well, correct?

8 A Anxiety, sleep, but in the realm of my world, I would
9 think that if someone was in pain, they would be given
10 something along with the Vistaril for pain.

11 Q So you're telling me that as an expert in the field

12 of nursing, you do not know that Vistaril is a
13 prescription drug?

14 A I'm telling you it's -- something else is given with
15 it. If someone else is in pain, in the world that I'm in.
16 I'm very well aware of what Vistaril is, but pain
17 medications are pain medications.

18 Q Vistaril is actually also known as an anti-anxiety
19 drug, is not?

20 A Anxiety doesn't hurt, sir.

21 Q Yes, ma'am. But Vistaril -- that wasn't my question.
22 Vistaril is an anti-anxiety drug, is it not?

23 A Question -- the question prior was did I not know it
24 was given for pain.

25 Q Did you not know that Vistaril is also given as an

1 anti-anxiety medication?

2 A I know that, sir.

3 Q And we know that Dr. Gonzales should not provide
4 prescription medication to anyone unless he finds a need
5 for it, correct?

6 A Dr. Gonzales works under his license, and I work
7 under my license, sir.

8 Q Yes, ma'am. But you claim to be in the field in the
9 area of nursing. Knowing what you know about nursing, you
10 understand that no medical provider is to provide
11 medication to someone who doesn't need it. That's true,

12 isn't it?

13 A (There was no response).

14 Q You don't have a hard time answering that question,
15 do you?

16 A Well, it's because I like to be very detailed, and I
17 want to be correct here.

18 Q The question is very simple.

19 A Well --

20 Q In your field of nursing, are you ever going to
21 provide medication, prescription medication, to a person
22 who doesn't need it unless you're directed to by a
23 supervisor?

24 A I'm going to provide medication because the doctor
25 wrote the order for it. If -- I am not, as a registered

1 nurse, going to give someone something if it's going to
2 harm them and the doctor has written it. Vistaril is very
3 benign.

4 If I give you a Vistaril right now, it's not going to
5 hurt you unless you're allergic to it.

6 Q The doctor should not have ordered a prescription
7 medication such as Vistaril, even if it is benign, unless
8 Mr. Bailey needed it, should he?

9 A Exactly.

10 Q So the doctor determined that whatever his condition
11 was, it was such that prescription medication was needed.

12 A Was needed.

13 Q And it was actually administered to Mr. Bailey in the
14 hospital.

15 A Of course.

16 Q And as a result of this administration of this benign
17 medication, he wasn't allowed to leave the hospital or 30
18 minutes so that they could basically be sure that he
19 didn't have a problem with the medication, correct?

20 A Protocol, all patients.

21 Q So it's so benign that you made him wait 30 minutes
22 before actually leaving the hospital because you gave him
23 the Vistaril?

24 A Every patient that would have been given Vistaril
25 would have been required to wait 30 minutes. It's

1 protocol.

2 Q Do you also know that before or at the time you that
3 first saw Mr. Bailey, he was on oxygen?

4 A He wasn't on oxygen when I saw him. He would have
5 been in another nurse's care at that time. All patients
6 in the emergency room are put on oxygen a lots of times,
7 because like I said, panic attack.

8 Q You --

9 A Airway, oxygen assists with your airway. We would
10 have ruled out the need for it and took it away rather
11 than have held it and him needed it.

12 Q You've seen the medical record. You know he was
13 given oxygen, don't you?

14 A No, sir. I didn't read all the medical records. I
15 read my notes pertaining to this.

16 Q All right. So in order to be as precise as you are
17 and as particular as you are knowing you were getting
18 ready to come, you were so particular and so precise, you
19 did not read all the medical records?

20 A Sir, I'm not testifying to what someone else did.
21 I'm testifying for what I did. What someone else did is
22 none of my concern.

23 MR. MOORE: Thank you very much.

24 THE WITNESS: Thank you, sir.

25 MS. SIMPSON: Briefly, Your Honor.

REDIRECT EXAMINATION:

BY MS. SIMPSON:

Q Ms. Bailey -- and you're not related to Marcus Bailey?

A No, we aren't related but I --

Q I'm going to show you the patient notes. Is there a time with respect to when Mr. Bailey was actually received into the room?

MR. MOORE: With all due respect, I didn't ask her what time. I believe she is exceeding the scope of her redirect testimony.

MS. SIMPSON: Your Honor, he talked well about the time Marcus presented before he got there, how long the wait time was once the Vistaril was administered.

This is going to how long he actually was there and how early he was discharged, how quickly he was discharged by the nurse, by the doctor.

MR. MOORE: I know I didn't ask what time he got there and what time he left and how long he stayed. That's where she's going. That clearly exceeds the scope of her direct testimony. That's apparently is where she said she is headed.

THE COURT: You went into how long it took to release him.

MR. MOORE: I just asked -- it took 30 minutes to

1 release him because of the medication. It wasn't --
2 nothing about how long the entire --

3 THE COURT: You asked him about -- you asked him
4 about the oxygen being provided.

5 MR. MOORE: I did, and I am not sure I heard a
6 question about the oxygen, Your Honor.

7 THE COURT: No, it was not.

8 MR. MOORE: If it's about oxygen, I didn't hear it.

9 THE COURT: Overruled. Objection noted.

10 BY MS. SIMPSON:

11 Q Thank you.

12 What time was that noted on this first note?

13 A On this first note, the patient was received in the
14 room at 7:32 on 8/23/12.

15 Q So that's 7:32 a.m., correct?

16 A Yes, ma'am.

17 Q Is there also a note maybe two down that indicates a
18 time when the doctor came in, and then he was ready to be
19 discharged, he being Marcus Bailey?

20 A The MD was in to see the patient at 8:03 a.m. The
21 patient was cleared for discharge at that time. The nurse
22 made a note. Not this nurse, another nurse, made a note
23 that there was a 20-minute med. wait time before
24 discharge.

25 Q Okay. So he was in at 7:32, seen by the doctor and

1 ready for discharge by 8:03, and that was just with the
2 20-minute wait time. No further course of treatments.

3 A The way I read it, the 20 minutes would have been
4 after the eight o'clock, so the patient would have been
5 able to be released any time after --

6 Q After the 8:03?

7 A Uh-huh, 8:23.

8 Q And law enforcement was actually involved, and he was
9 released into their custody, right?

10 A Exactly.

11 MS. SIMPSON: Thank you, Ms. Bailey.

12 THE COURT: Mr. Moore?

13 MR. MOORE: Nothing further, Your Honor. Thank you.

14 THE COURT: Thank you, ma'am. You may step down.

15 Any objection to this witness being excused?

16 MS. SIMPSON: None from the State.

17 MR. MOORE: None.

18 THE COURT: Oh, thank you. Thank you, ma'am. You
19 are excused.

20 THE WITNESS: Thank you.

21 MS. CAVANAUGH: State calls Octavia Ransom.

22 OCTAVIA RANSOM, after being duly
23 sworn, testified as follows:

24 THE CLERK: Have a seat in the witness box. State
25 your name for the record and spell it, please.

1 THE WITNESS: Octavia, O-C-T-A-V-I-A, Ransom,
2 R-A-N-S-O-M.

3 DIRECT EXAMINATION:

4 BY MS. CAVANAUGH:

5 Q Ms. Ransom, where do you live?

6 A I live in LaGrange, Georgia.

7 Q And are you currently employed?

8 A Yes, ma'am.

9 Q Okay. And where do you work?

10 A I'm in the US Army.

11 Q And how long have you been in the Army?

12 A Nine-and-a-half years, ma'am.

13 Q And what is your position in the Army?

14 A As of right now, I'm an Army recruiter.

15 Q Army recruiter?

16 A Yes, ma'am.

17 Q Did you know Almanita Smith?

18 A Yes, ma'am. I did know her.

19 Q And how did you know her?

20 A I know her through the military. We were deployed
21 together.

22 Q Where were you -- where were you deployed with Nita?

23 A In 2007; Baghdad, Iraq.

24 Q Would it be fair to say that you were close with
25 Almanita?

1 A The last time I actually spoke to Almanita Smith was
2 on the 16th of August, 2012.

3 Q Okay. And how do you know that that was the last
4 day?

5 A That was the day because that was prior to his
6 weekend, birthday weekend. They wanted to invite me to --
7 well, Almanita Smith wanted to invite me to a cookout that
8 she wanted to do for Mr. Bailey.

9 Q Were you able to attend the cookout?

10 A I was not. I had a mandatory picnic that I had to
11 attend.

12 Q And that was supposed to be his birthday weekend?

13 A Yes.

14 Q Did y'all actually make plans to get together later
15 on in the month?

16 A We made plans for September 3, Labor Day weekend. I
17 was supposed to be there for a week.

18 Q I'm going to turn your attention to August 22, 2012.
19 Does that date stick out in your mind?

20 A Yes, ma'am.

21 Q Prior to that date, had you been trying to get into
22 contact with Almanita?

23 A Yes, ma'am.

24 Q And did you ever hear from her?

25 A No, ma'am.

1 Wednesday. Yes, she did. I'm sorry.

2 Q Okay. And but this was 11 months ago, so it could be
3 the 23rd that she called you; is that correct?

4 MR. MOORE: Objection to leading her own witness.

5 THE WITNESS: The day that -- the day that she told
6 me, it was on the same day that she was looking for her,
7 on that Wednesday.

8 THE COURT: Don't ask leading questions, please.

9 MS. CAVANAUGH: Okay.

10 BY MS. CAVANAUGH:

11 Q Okay. Now, did you have any other -- you hadn't

12 spoken to Almanita in the week prior, right?

13 A I spoke the week prior. I did on the 16th. That was
14 the last day.

15 Q But you never heard back from her?

16 A No.

17 Q After that?

18 A No, ma'am.

19 (Pause.)

20 Thank you.

21 THE COURT: Cross?

22 CROSS-EXAMINATION:

23 BY MR. MOORE:

24 Q Ms. Ransom, on the 16th, you know that Almanita was
25 happy because she was planning to give Marcus a birthday

1 BY MS. CAVANAUGH:

2 Q Did she make plans that Saturday?

3 A Repeat the question, please.

4 MR. MYERS: Objection, Your Honor. That would be
5 basically relying on hearsay information in order for this
6 witness to know that.

7 THE COURT: Ms. Cavanaugh?

8 MS. CAVANAUGH: I'll rephrase my question.

9 THE COURT: Thank you.

10 BY MS. CAVANAUGH:

11 Q What did you say to Nita that afternoon about grass
12 and...

13 A I -- I told her I had cut her grass. I told her that
14 she could borrow my lawn mower.

15 Q Was she going to come get your lawn mower that
16 Saturday?

17 MR. MYERS: Objection.

18 THE COURT: No, no, that's not. I overrule that
19 objection.

20 Go ahead.

21 BY MS. CAVANAUGH:

22 Q Did she make plans to go get the lawn mower from you
23 that Saturday?

24 MR. MYERS: Objection, Your Honor. If she is talking
25 about making plans, obviously, that would be relying on

1 any sort of conversation.

2 THE COURT: She can testify as to what she has
3 personal knowledge about. She is not asking what she said
4 to you. She is asking what does she know. Does she have
5 personal knowledge as to whether or not Ms. Smith was
6 coming to get a lawn mower, apparently.

7 I'll overrule the objection.

8 Now, listen, there's rules, okay. And I know you're
9 nervous --

10 THE WITNESS: Uh-huh.

11 THE COURT: -- but you can't say what she said.

12 THE WITNESS: Okay.

13 THE COURT: You can say what you said.

14 THE WITNESS: Okay.

15 THE COURT: Okay. You can say what you did, but you
16 can't say what Ms. Smith said.

17 THE WITNESS: Okay.

18 THE COURT: Okay.

19 THE WITNESS: I said that she could borrow my lawn
20 mower.

21 BY MS. CAVANAUGH:

22 Q And was she going to come get it from you that
23 Saturday?

24 A Yes, she was.

25 Q And did she ever come get the lawn mower from you on