

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

JERENE HAYWARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000633

A P P E N D I X

LAURA R. BAER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

J. CLAYTON MITCHELL
Staff Attorney
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 A I DON'T REMEMBER THAT, I JUST REMEMBER THAT THEY DID
2 FIGURE OUT THAT THERE HAD BEEN A BREAK-IN. SO, I GUESS
3 THAT ALL TRANSPIRED IN MY DRIVEWAY.

4 Q AND YOU DIDN'T SEE ANYTHING THAT OCCURRED NEXT DOOR,
5 THE BREAK-IN OR ANYTHING?

6 A NO.

7 Q DID ANY STRANGER APPROACH YOUR HOUSE THAT AFTERNOON?

8 A NO.

9 Q YOU WERE JUST THERE WHEN LOURDES CAME OVER TO SEEK
10 HELP?

11 A THAT IS CORRECT.

12 Q AND DID THE SHERIFFS DEPARTMENT EVENTUALLY SHOW UP IN
13 YA'LL'S NEIGHBORHOOD?

14 A YES.

15 Q AND DID ANYONE TALK TO YOU?

16 A NOT IN THE SENSE THAT I WAS INTERVIEWED OR ANYTHING.

17 Q DID YOU GIVE A WRITTEN STATEMENT?

18 A NO.

19 Q NOTHING FURTHER.

20 THE COURT: CROSS-EXAMINE.

21 MS. MOBLEY: YOUR HONOR, I DON'T BELIEVE I HAVE ANY
22 QUESTIONS.

23 THE COURT: YOU MAY STEP DOWN, THANK YOU.

24 MR. JOPHLIN: THE STATE CALLS EMME DELL MCMAHON.

25 EMME DELL MCMAHON, AFTER BEING DULY SWORN,

1 TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. JOPHLIN:

4 Q HOW ARE YOU DOING, MS. MCMAHON?

5 A FINE.

6 Q JUST REMEMBER TO SPEAK UP, IT IS SORT OF HARD TO HEAR
7 IN HERE. WHERE DO YOU LIVE.

8 A I LIVE [REDACTED] DRIVE, BLYTHEWOOD, SOUTH
9 CAROLINA.

10 Q WHERE IS YOUR HOUSE IN RELATION TO THE CONNELL'S
11 HOUSE?

12 A WE HAVE ONE HOUSE ACROSS THE STREET, DIRECTLY ACROSS
13 FROM MY HOUSE. AND THEN THERE IS A VACANT LOT AND THEN
14 MR. CONNELL'S LOT, HOUSE AND LOT.

15 Q AND ON APRIL, I WANT TO TAKE YOU BACK TO APRIL 13TH
16 OF 2004, WERE YOU HOME THAT AFTERNOON?

17 A YES, I WAS.

18 Q AND WITHOUT TELLING US ANYTHING THAT OCCURRED BEFORE,
19 WHAT WE ARE GOING TO TALK ABOUT, DID SOMEONE APPROACH YOUR
20 DOOR IN THE AFTERNOON?

21 A YES.

22 Q AND CAN YOU DESCRIBE YOUR FRONT DOOR FOR US, HOW IT
23 IS SITUATED?

24 A OKAY. MY DOOR BELL RANG, I WENT INTO THE FOYER AND
25 THE FRONT DOOR IS A WOODEN DOOR. ON EACH SIDE OF THE

1 WOODEN DOOR WE HAVE GLASS PANELS. AND OVER THE GLASS
2 PANELS WE HAVE SHEERS.

3 Q SO, YOU CAN SEE WHO AS AT THE FRONT DOOR?

4 A I CAN SEE THROUGH THE SHEERS AND THE GLASS.

5 Q AND DID SOMEONE COME TO YOUR DOOR THAT DAY?

6 A YES, SOMEONE RANG MY DOORBELL. AND I ASKED WHO IT
7 WAS AND HE TOLD ME HIS NAME BUT HE MUMBLED AND I COULD NOT
8 UNDERSTAND HIS NAME. AND THEN I ASKED HIM WHO IT WAS OR
9 WHAT COMPANY HE WAS WITH AND HE MUMBLED SOMETHING ELSE AND
10 I COULD NOT UNDERSTAND THAT. AND I SAID THAT I DIDN'T
11 NEED ANYTHING HE WAS SELLING. AND HE SAID IN A TONE OF
12 VOICE THAT I COULD UNDERSTAND, HAVE A GOOD DAY. AND THE
13 BLACK MALE THAT WAS STANDING THERE TURNED AROUND AND LEFT.

14 Q AND IS YOUR DOOR, DOES IT FACE THE STREET?

15 A YES.

16 Q AND YOU SAID IT WAS A YOUNG BLACK MALE?

17 A THAT IS RIGHT.

18 Q COULD YOU SEE, WHEN YOU LOOKED IN THE DOOR COULD YOU
19 SEE ANY FEATURES ABOUT HIM OR SEE HIS FACE?

20 A HE WAS DRESSED IN DARK CLOTHING AND HAD A BACKPACK ON
21 HIS BACK.

22 Q WAS HE FACING THE DOOR?

23 A WELL, HE WAS LOOKING SIDEWAYS, LOOKING DOWN THE
24 STREET. I DIDN'T SEE HIS FULL FACE BUT I COULD TELL HE
25 WAS A BLACK PERSON, A MALE.

1 Q AND DID YOU SEE ANYBODY ELSE WITH HIM WHILE HE WAS AT
2 YOUR DOOR?

3 A NO, HE WAS ALONE AT MY DOOR.

4 Q AND DID YOU, YOU WERE LOOKING OUT TOWARDS YOUR FRONT
5 DOOR FACING THE STREET?

6 A RIGHT.

7 Q WAS THERE ANYBODY ELSE IN THE STREET THAT YOU SAW?

8 A I DIDN'T SEE ANYONE OUT THERE.

9 Q AND WAS YOUR HUSBAND THERE WHILE THIS WAS HAPPENING?

10 A NO, HE HAD JUST LEFT WHEN MY DOORBELL RANG, I WOULD
11 SAY THREE OR FOUR MINUTES AFTER HE LEFT, PULLED OUT THE
12 DRIVE THE DOORBELL RANG.

13 Q OKAY. NOTHING ELSE, MA'AM.

14 THE COURT: CROSS-EXAMINE.

15 CROSS-EXAMINATION

16 BY MS. VAN GINHOVEN:

17 Q GOOD AFTERNOON, MS. MCMAHON.

18 A GOOD AFTERNOON.

19 Q NOW, I WANT YOU TO DESCRIBE JUST A LITTLE BIT MORE.
20 YOUR DOOR IS SOLID, RIGHT?

21 A YES, THE DOOR IS SOLID.

22 Q AND YOU HAVE WINDOWS ON THE SIDE?

23 A GLASS PANES ON THE SIDE.

24 Q AND THE SHEERS, OF COURSE, ARE ON THE INSIDE OF YOUR
25 HOUSE?

1 A RIGHT.

2 Q AND SO ALL YOU CAN SAY THERE WAS A BLACK MALE THAT
3 CAME TO YOUR DOOR?

4 A RIGHT, WITH A BACKPACK ON.

5 Q I HAVE NO FURTHER QUESTIONS.

6 THE COURT: ANY REDIRECT.

7 MR. JOPHLIN: NOTHING FURTHER, YOUR HONOR.

8 THE COURT: MA'AM, YOU MAY STEP DOWN.

9 MR. JOPHLIN: YOUR HONOR, MAY SHE BE RELEASED.

10 THE COURT: WITHOUT OBJECTION THIS WITNESS IS
11 EXCUSED.

12 THE COURT: THE STATE CALLS ANDY MCMAHON.

13 ANDY MCMAHON, AFTER BEING DULY SWORN, TESTIFIED
14 AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. JOPHLIN:

17 Q HOW ARE YOU DOING, MR. MCMAHON?

18 A FINE.

19 Q WOULD YOU PLEASE TELL US WHERE YOUR HOUSE IS?

20 A I LIVE ON [REDACTED] DRIVE, BLYTHEWOOD, SOUTH
21 CAROLINA.

22 Q AND WERE YOU AT HOME ON THE AFTERNOON OF APRIL 13TH
23 OF 2004?

24 A YES.

25 Q AND DID YOU HAVE A CHANCE TO OBSERVE ANY TIME THAT

1 AFTERNOON MS. LOURDES ANTONIO IN THIS CASE?

2 A YES, I WAS. I HAD AN APPOINTMENT DOWNTOWN BETWEEN
3 3:00 AND 4:00. AND I PULLED OUT OF MY DRIVEWAY AND SHE
4 WAS IN THE ROAD WITH JEFF'S SON AND SHE WAS TALKING TO A
5 YOUNG MAN, A BLACK MALE.

6 Q AND WHICH WAY WERE YOU HEADED WHEN YOU WERE LEAVING
7 YOUR DRIVEWAY?

8 A I TURNED LEFT AND HEADED UP TOWARDS COLUMBIA CLUB
9 DRIVE.

10 Q YOU SAID LOURDES ANTONIO AND A BLACK MALE WERE
11 TALKING?

12 A RIGHT.

13 Q AND WERE YOU ABLE TO HEAR WHAT THEY WERE TALKING
14 ABOUT?

15 A NO, I COULDN'T HEAR WHAT THEY WERE TALKING ABOUT.

16 Q WERE YOU ABLE TO GET A LOOK AT WHO SHE WAS TALKING
17 TO?

18 A YES.

19 Q CAN YOU SORT OF DESCRIBE WHAT YOU SAW?

20 A HE WAS A BLACK MALE AND MEDIUM BUILT, HE HAD DARK
21 CLOTHING ON.

22 Q AND DID HE HAVE ANYTHING ELSE ON HIM BESIDES JUST
23 DARK CLOTHING.

24 MS. VAN GINHOVEN: YOUR HONOR, I OBJECT TO THE
25 LEADING.

1 THE COURT: OVERRULED, HE CAN ANSWER THAT QUESTION.
2 GO AHEAD AND ANSWER THAT QUESTION IF YOU CAN, PLEASE, SIR.
3 A HE HAD A BAG, EVIDENTLY HE WAS A SALESMAN.
4 Q JUST GO INTO WHAT YOU KNOW, WHAT YOU SAW THAT DAY.
5 A HE HAD A BAG.
6 Q AND WAS ANYBODY ELSE WITH HIM WHILE HE WAS TALKING TO
7 LOURDES?
8 A NO, THE BABYSITTER AND THE SON AND THE BLACK MALE.
9 Q AND WHEN YOU ARE LEAVING YOUR HOUSE AND DRIVING TO
10 COLUMBIA CLUB DRIVE DID YOU OBSERVE ANYONE ELSE IN THE
11 AREA?
12 A NO.
13 Q I WANT TO SHOW YOU A PICTURE REAL QUICK. I SHOW YOU
14 STATE'S EXHIBIT NUMBER 33, IS YOUR HOUSE LOCATED IN THAT
15 PICTURE OR IN REFERENCE TO THE HOUSE SHOWN IN THAT
16 PICTURE?
17 A THIS LOOKS LIKE THE HOUSE NEXT DOOR TO ME.
18 Q THAT IS THE HOUSE NEXT DOOR TO YOU?
19 A YES.
20 Q DO YOU REMEMBER WHERE THEY WERE IN RELATION TO THAT
21 HOUSE AND YOUR HOUSE?
22 A THEY WERE RIGHT OUT IN FRONT OF MY HOUSE, YES, ACROSS
23 THE STREET, THIS SIDE OF THE STREET.
24 Q OKAY. I HAVE NOTHING FURTHER.
25 THE COURT: CROSS-EXAMINE?

CROSS-EXAMINATION

BY MS. VAN GINHOVEN:

Q GOOD AFTERNOON, MR. MCMAHON.

A GOOD AFTERNOON.

Q YOU WERE ON YOUR WAY DOWNTOWN, IS THAT RIGHT?

A THAT IS RIGHT.

Q SO, YOU WERE DRIVING IN YOUR CAR?

A THAT IS RIGHT.

Q SO, YOU JUST LOOKED AT THEM WHEN YOU PASSED BY?

A YES.

Q AND IT WAS JUST A BLACK MALE, THAT IS WHAT YOU SAW?

A I SAW A BLACK MALE AND THE BABYSITTER.

Q NO FURTHER QUESTIONS.

THE COURT: ANYTHING FURTHER?

MR. JOPHLIN: NOTHING FURTHER, YOUR HONOR.

THE COURT: SIR, YOU MAY STEP DOWN. WATCH YOUR STEP,
PLEASE.

MR. JOPHLIN: MAY HE BE RELEASED.

THE COURT: THE WITNESS IS EXCUSED.

MR. JOPHLIN: THE STATE CALLS JANICE BRYSON.

JANICE BRYSON, AFTER BEING DULY SWORN, TESTIFIED
AS FOLLOWS:

DIRECT EXAMINATION

BY MR. JOPHLIN:

Q MS. BRYSON, GOOD AFTERNOON.

Vic's Blood evidence on shoes

- 1 A GOOD AFTERNOON.
- 2 Q WHERE ARE YOU EMPLOYED?
- 3 A SOUTH CAROLINA LAW ENFORCEMENT DIVISION.
- 4 Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?
- 5 A IT WILL BE 17 YEARS IN JUNE.
- 6 Q AND WERE YOU WORKING THERE BACK IN AUGUST OF 2004?
- 7 A YES.
- 8 Q AND DID YOU HAVE A CHANCE TO COME INTO CONTACT WITH
- 9 ANY EVIDENCE IN THIS CASE?
- 10 A YES, I DID.
- 11 Q AND WHAT PIECES OF EVIDENCE WOULD THAT BE?
- 12 A I RECEIVED THREE ITEMS. ONE WAS A GOLD ENVELOPE
- 13 CONTAINING THE BLOOD SWAB. A LONG SLEEVED PULLOVER
- 14 SWEATER AND A PAIR OF NIKE TENNIS SHOES.
- 15 Q AND DID YOU, DID SLED, DO YA'LL HAVE A PARTICULAR LAB
- 16 NUMBER THAT YA'LL ASSIGN TO THESE ITEMS?
- 17 A YES, WE DO.
- 18 Q WHAT IS THAT NUMBER?
- 19 A IT IS L04-4126.
- 20 Q AND THAT IS TO EACH INDIVIDUAL ITEM YOU JUST LISTED,
- 21 THE BLOOD SWAB, THE BLUE SWEATER AND THE PAIR OF SHOES.
- 22 DO EACH ONE OF THOSE HAVE A SUB-NUMBER ASSIGNED TO THEM?
- 23 A I CREATED THE SUBITEMS.
- 24 Q AND LET'S START WITH THE GOLD ENVELOPE YOU ARE
- 25 TALKING ABOUT CONTAINING THE BLOOD SWAB. WHEN DID YOU

1 RECEIVE THAT?

2 A AUGUST THE 26TH OF 2004.

3 Q AND WHERE DID YOU RECEIVE THAT FROM?

4 A D16 WHICH IS THE LARGE WALK-IN REFRIGERATOR.

5 Q AND WAS THE EVIDENCE INTACT AT THE TIME WHEN YOU
6 RECEIVED IT?

7 A YES.

8 Q WAS IT SEALED?

9 A YES.

10 Q DID IT APPEAR TO BE TAMPERED WITH IN ANY WAY?

11 A NO, SIR.

12 Q AND WHAT DID YOU DO WITH THE EVIDENCE, THAT PIECE,
13 THE BLOOD SWAB AND THE GOLD ENVELOPE, IF ANYTHING, DID YOU
14 DO WITH IT?

15 A I DIDN'T OPEN THE ENVELOPE, I INITIALED THE ENVELOPE
16 ONLY AND I PUT IT IN A HEAT SEALED POUCH AND TRANSFERRED
17 IT TO THE DNA DEPARTMENT.

18 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
19 STATE'S EXHIBIT NUMBER 2 AND ASK IF YOU, IF THAT IS THE
20 ENVELOPE WE ARE SPEAKING ABOUT.

21 A YES SIR, IT IS.

22 Q AND HOW DO YOU KNOW THAT IS THE ENVELOPE?

23 A THESE ARE MY INITIALS, THE SLED LAB NUMBER AND THE
24 DATE THAT I RECEIVED IT.

25 Q IS THAT, WHAT HAS BEEN REFERENCED TO EARLIER IS ITEM

1 1?

2 A RIGHT.

3 Q YOU SAID YOU DIDN'T OPEN IT IN ANY WAY?

4 A NO SIR, I DIDN'T. I JUST INITIALED THE ENVELOPE
5 ONLY.

6 Q WHEN DID THAT ITEM LEAVE YOUR POSSESSION?

7 A AUGUST THE 27TH.

8 Q AND WHERE DID YOU PLACE IT?

9 A IN THE DNA BOX.

10 Q IS THAT A SECURED AREA?

11 A IT IS THE LARGE REFRIGERATOR.

12 Q AND DOES EVERYBODY AND ANYBODY HAVE ACCESS TO THAT?

13 A AS FAR AS I KNOW IT IS JUST THE DNA TECHNICIANS THAT
14 HAVE ACCESS.

15 Q AND YOU SAY YOU DIDN'T OPEN OR TAMPER WITH THAT PIECE
16 OF EVIDENCE IN ANY WAY?

17 A NO, SIR.

18 Q ALTER IT BY ANY MEANS?

19 A NO, SIR.

20 Q THAT IS THE SAME AS YOU RECEIVED IT AS THE SAME AS
21 WHEN YOU, WHEN IT LEFT YOUR CONTROL?

22 A THAT IS CORRECT.

23 Q OKAY. THE NEXT ITEM WOULD BE A BLUE SWEATER, DID YOU
24 HAVE A CHANCE TO COME INTO CONTACT WITH IT?

25 A YES, SIR.

1 Q AND WHEN DID YOU RECEIVE IT?

2 A AUGUST THE 26TH OF 2004.

3 Q AND WHERE DID YOU RECEIVE IT FROM?

4 A D16 WHICH IS A LARGE VAULT REFRIGERATOR.

5 Q AND DID YOU GIVE IT A SPECIFIC NUMBER?

6 A WHEN IT CAME IN IT WAS ASSIGNED NUMBER 2.

7 Q AND WHAT, IF ANYTHING, DID YOU DO WITH THE SWEATER?

8 A WHENEVER ITEMS ARE COMING TO THE LAB WITH A REQUEST
9 TO LOOK FOR HAIR, FIBER, BLOOD OR SEMEN, IT IS MY
10 RESPONSIBILITY TO GO THROUGH THE EVIDENCE, COLLECT ANY
11 EVIDENCE AND MAKE SURE IT IS ROUTED TO THE APPROPRIATE
12 DEPARTMENT AND TO TAKE RESPONSIBILITY FOR WHEN I DON'T
13 COLLECT ANY EVIDENCE.

14 Q AND DID YOU TEST THIS SWEATER FOR ANYTHING?

15 A RIGHT. I WAS LOOKING FOR BLOOD ON THE SWEATER AND I
16 PROCESSED IT FOR BLOOD AND I DIDN'T FIND, THERE WAS NO
17 BLOOD DETECTED.

18 Q AND HOW DID YOU KNOW TO PROCESS FOR BLOOD?

19 A I WENT OVER THE ITEMS THAT WERE BROUGHT INTO SLED,
20 THEY REQUESTED IT ON THE LOGIN SHEET.

21 Q I WANT TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
22 EXHIBIT NUMBER 3, IS THIS HOW YOU RECEIVED THAT SWEATER?

23 A IN THE PAPER BAG AND IT WAS PROBABLY IN A BOX.

24 Q OKAY. BUT IT IS IN A PACKAGE?

25 A THAT'S CORRECT, THOSE ARE MY INITIALS, DISPLAY THE

1 LAB NUMBER, THE ITEM NUMBER AND THE DAY THAT I PROCESSED
2 THE SWEATER.

3 Q AND THAT IS HOW YOU ARE AWARE THAT THIS IS THE
4 PACKAGE THAT YOU PROCESSED?

5 A RIGHT. AND MY INITIALS SHOULD BE ON THE SWEATER
6 ALSO.

7 Q OKAY. IS THIS THE SWEATER THAT YOU DESCRIBED AS
8 RECEIVING; ARE THERE ANY IDENTIFYING MARKS SHOWING THIS IS
9 THE SWEATER YOU RECEIVED?

10 A YES, SIR. MY INITIALS ARE ON THE NECK OF THE
11 SWEATER.

12 Q THAT RIGHT THERE?

13 A YES, SIR.

14 Q AND AFTER YOU WERE DONE WITH THAT PROCESSING OF THE
15 SWEATER WHAT DID YOU DO WITH IT?

16 A I PLACED IT IN THE BOX OR THE CONTAINER THAT I
17 RECEIVED IT, SEALED IT UP AND PLACED IT BACK IN D16 FOR
18 ONE OF THE TECHNICIANS TO RETURN IT TO THE SUBMITTING
19 AGENCY.

20 Q NOW, IS THIS THE CONDITION THAT YOU RECEIVED OR THIS
21 CAME OUT OF THE BOX IN, OPEN OR WHAT CONDITION WAS IT IN?

22 A NO, SIR. IT HAD EVIDENCE TAPE ON IT AND I BROKE THE
23 EVIDENCE TAPE.

24 Q IS THAT WHERE THE EVIDENCE TAPE CONTINUED?

25 A THAT'S CORRECT.

1 Q SO, YOU ACTUALLY OPENED THIS BAG UP AND TOOK THE
2 SWEATER OUT AND BEFORE THAT IT WAS SEALED WITH EVIDENCE
3 TAPE?

4 A THAT'S CORRECT.

5 Q DID IT LOOK LIKE IT HAD BEEN TAMPERED WITH BEFORE YOU
6 GOT A HOLD TO IT?

7 A NO, SIR.

8 Q AND YOU SAY YOUR RESULTS WERE NEGATIVE FOR BLOOD?

9 A NO BLOOD DETECTED.

10 Q AND WHEN DID THIS LEAVE YOUR POSSESSION?

11 A AUGUST THE 27TH OF 2004.

12 Q AND WHERE DID YOU PLACE IT?

13 A I PLACED IT ON THE SHELF OF D16 TO BE RETURNED.

14 Q OKAY. AND THE NEXT ITEM, WHAT IS THE NEXT ITEM THAT
15 YOU PROCESSED?

16 A IT IS A PAIR OF NIKE AIR TENNIS SHOES.

17 Q AND WHAT DATE DID YOU RECEIVE THOSE?

18 A AUGUST THE 26TH OF 2004.

19 Q AND FROM WHERE DID YOU RECEIVE THEM?

20 A D16 WHICH IS A LARGE WALK-IN REFRIGERATOR.

21 Q AND WERE THESE SECURE WHEN YOU RECEIVED THEM?

22 A YES.

23 Q DO THEY APPEAR TO BE ALTERED OR TAMPERED IN ANY WAY?

24 A NO, SIR.

25 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS

1 STATE'S EXHIBIT NUMBER 4. HOW MANY SHOES WAS IT?

2 A IT WAS A LEFT SHOE AND A RIGHT SHOE.

3 Q AND YOU ASSIGNED SEPARATE NUMBERS PER SHOE?

4 A YES, SIR. THEY WERE INDIVIDUALLY PACKAGED AND I GAVE
5 THE LEFT SHOE ITEM 3.1 AND I GAVE THE RIGHT SHOE I GAVE
6 3.2.

7 Q OKAY. AND OBVIOUSLY, WERE THEY IN THIS CONDITION
8 WHEN YOU RECEIVED THEM, OPENED BAGS AND FLOATING AROUND?

9 A NO SIR, I BROKE THE EVIDENCE TAPE ON THE BAGS.

10 Q ON BOTH BAGS?

11 A THAT IS CORRECT.

12 Q AND HOW DO YOU KNOW THAT THESE BAGS ARE THE ONES THAT
13 YOU RECEIVED?

14 A THOSE ARE MY INITIALS.

15 Q RIGHT HERE?

16 A RIGHT, THE SLED LAB NUMBER AND THE ITEM NUMBER AND
17 THE DAY THAT I PROCESSED IT AND IT IS THE SAME.

18 Q BOTH OF THESE SHOW THE CORRECT LAB NUMBER, CORRECT
19 ITEM NUMBER AND THE DATE, AUGUST 26TH OF 2004?

20 A THAT'S CORRECT.

21 Q AND WHAT, IF ANYTHING, DID YOU DO WITH THESE SHOES?

22 A WHEN I LOOK FOR BLOOD ON AN ITEM I DO A VISUAL AND IF
23 I SEE ANY STAINS OR AREA THAT MAY BE POSSIBLY BLOOD I DO A
24 THREE STEP CHEMICAL TEST, IT IS A PRESUMPTIVE TEST FOR
25 BLOOD, IT DOESN'T CONFIRM BLOOD. I SEE AN AREA AND I TAKE

1 A SWAB AND PUT SALINE ON THE SWAB AND I DO A, JUST LIGHTLY
2 ON THE AREA THAT MAY BE POSSIBLY BLOOD AND THEN I PUT A
3 DROP OF PHENOLPHTHALEIN ON THE SWAB AND A DROP OF HYDROGEN
4 PEROXIDE AND IF THE SWAB TURNS A TISSUE PINK THAT IS THE
5 JEST OF THE PRESENCE OF BLOOD. AND I KNOW TO COLLECT THAT
6 AREA THAT WAS POSITIVE FOR A PRESUMPTIVE TEST OF BLOOD AND
7 SEND IT TO THE DNA DEPARTMENT FOR FURTHER ANALYSIS.

8 Q AND WAS THAT DONE WITH THESE TWO SHOES?

9 A YES, SIR. I PROCESSED THE LEFT SHOE AND IT WAS
10 NEGATIVE FOR THE PRESENCE OF BLOOD. AND THE RIGHT SHOE I
11 COLLECTED TWO SWABS THAT WAS POSITIVE FOR THE PRESUMPTIVE
12 TEST OF BLOOD.

13 Q HOW DO YOU KNOW THIS SHOE IS THE SHOE THAT YOU
14 TESTED?

15 A THESE ARE MY INITIALS ON THE SHOE AND THE ITEM
16 NUMBER. AND THIS RIGHT HERE IS MY MARKINGS, I SWABBED THE
17 SHOE ENTIRELY AND IT WAS NEGATIVE SO I WRITE ON THE SHOE,
18 THAT MEANS THAT I SWABBED THE SHOE ENTIRELY AND I PUT AN
19 EQUAL SIGN WITH A CIRCLE AROUND IT SAYING THAT THAT WAS
20 NEGATIVE AND I WRITE PHENOL ALL OUTSIDE OF IT.

21 Q AND THAT IS THE CHEMICAL THAT YOU USED TO COLLECT
22 BLOOD THAT YOU JUST DESCRIBED?

23 A THAT IS CORRECT.

24 Q AND WHEN YOU SAY ENTIRE SHOE, DO YOU MEAN UPPER AND
25 BOTTOM OR JUST ONE SIDE?

1 A THAT IS CORRECT, INSIDE.

2 Q INSIDE, THE ENTIRE SHOE?

3 A THAT IS CORRECT.

4 Q AND DID YOU DO THAT WITH THE SECOND SHOE?

5 A YES SIR, THESE ARE MY INITIALS AND THE ITEM NUMBER.

6 AND THIS WAS THE AREA THAT I COLLECTED THAT WAS POSITIVE
7 FOR THE PRESUMPTIVE TEST FOR BLOOD. I CIRCLED, MADE MARKS
8 SO I WOULD KNOW WHERE IT WAS. AND I GIVE THOSE SWABS AN
9 ITEM NUMBER AND I GAVE THE SWABS 3.2.1 AND THEN I SWABBED
10 THE REST OF THE SHOE AND IT WAS NEGATIVE FOR PHENOL.

11 Q DID YOU CREATE A REPORT SHOWING A RESULT OF THAT
12 TESTING ON THESE SHOES?

13 A YES, SIR. I HAVE A DIAGRAM THAT I USE TO KNOW WHERE
14 I TOOK THE SWAB FROM. SO, IF IT EVER COMES BACK AND THEY
15 ASK ME WHERE I GOT IT FROM I CAN NOTE WHERE I GOT IT.

16 Q AND IS THAT THE DIAGRAM THAT YOU DREW?

17 A YES, SIR. I DIDN'T DRAW IT, IT IS ALREADY--

18 Q REFERENCED.

19 A RIGHT.

20 MR. JOPHLIN: YOUR HONOR, THE STATE SEEKS TO
21 INTRODUCE STATE'S NUMBER 56 FOR DEMONSTRATIVE PURPOSES.

22 MS. VAN GINHOVEN: FOR ID PURPOSES.

23 MR. JOPHLIN: FOR ID, YES.

24 MS. VAN GINHOVEN: YES.

25 THE COURT: FOR ID, IT IS MARKED FOR IDENTIFICATION

1 AT THIS TIME, STATE'S 56.

2 (WHEREUPON, STATE'S EXHIBIT NO. 56 WAS MARKED FOR
3 IDENTIFICATION ONLY.)

4 Q AND IF YOU COULD, MAY THE WITNESS STEP DOWN FOR A
5 MOMENT.

6 THE COURT: KEEP YOUR VOICE UP SO THAT EVERYONE IS
7 ABLE TO UNDERSTAND YOU.

8 Q AND THIS WOULD BE THE RIGHT SHOE?

9 A THAT IS CORRECT.

10 Q AND THAT AREA RIGHT THERE, IS THAT WHERE WE ARE
11 TALKING ABOUT?

12 A YES, SIR. THAT IS WHERE I COLLECTED THE TWO SWABS.

13 Q AND WHAT IS THAT LITTLE REFERENCE THERE?

14 A THAT IT WAS POSITIVE FOR THE PRESUMPTIVE TEST OF
15 PHENOLPHTHALEIN.

16 Q AND THAT IS 3.2.1?

17 A IS THE SUBITEM THAT I HAD THE TWO SWABS THAT I
18 CREATED AND THAT IS THE SLED LAB NUMBER, THE ITEM NUMBER,
19 MY INITIALS AND THE DATE THAT I PROCESSED THE EVIDENCE.

20 Q OKAY, YOU CAN HAVE A SEAT. FIRST YOU DID A
21 PRESUMPTIVE TEST AND THAT IS THE FUCHSIA PINK WHERE IT
22 TURNS COLORS?

23 A THAT IS CORRECT.

24 Q DO YOU USE A SWAB FOR THAT?

25 A YES SIR, I DO.

1 Q AND IS THAT THE SAME SWAB YOU ARE TALKING WHEN YOU
2 ARE TALKING ABOUT MAKING TWO OTHER SWABS?

3 A NO, SIR. I TOOK TWO SWABS AND RUBBED THAT AREA THAT
4 I HAD CIRCLED THE BEST I COULD.

5 Q RIGHT THERE?

6 A THAT'S CORRECT. AND I SAVE THOSE TWO SWABS, I DON'T
7 DO ANY CHEMICAL TESTING ON THOSE TWO SWABS. I PUT IT IN A
8 GOLD COIN ENVELOPE, PLACE THOSE IN A HEAT SEALED POUCH AND
9 TRANSFERRED IT TO THE DNA BOX.

10 Q IS THAT WHAT WAS DONE IN THIS INSTANCE?

11 A YES, SIR.

12 Q AND IS THERE ANY BLOOD OR BIOMATERIAL LEFT ON THIS
13 SHOE AFTER YOU ARE FINISHED WITH IT?

14 A MAYBE A TRACE OR TWO LEFT BUT I REALLY COULDN'T SAY.

15 Q WITHOUT TAKING IT BACK TO THE LAB AND TRYING TO
16 RETEST IT. AND WHEN YOU ARE DONE WITH THESE TWO SHOES DID
17 YOU, HOW DID YOU PACKAGE THEM BACK UP?

18 A I PLACED THEM BACK IN THE BAG IT CAME IN AND JUST
19 FOLDED THE BAG AND PLACED IT BACK IN THE BOX, I SEALED THE
20 BOX, I PUT THE EVIDENCE TAPE, MY INITIALS AND THE DATE,
21 PLACED IT IN D16 TO BE RETURNED TO THE SUBMITTING AGENCY.

22 Q AND YOU RETURNED THE SHOES ON WHAT DAY?

23 A AUGUST THE 27TH OF 2004.

24 Q WHERE DID YOU PLACE THEM?

25 A D16.

1 Q AND THAT IS THAT LARGE WALK-IN REFRIGERATOR YOU WERE
2 TALKING ABOUT EARLIER?

3 A THAT IS CORRECT.

4 Q AND FINALLY THE SWABS YOU WERE TALKING ABOUT. I SHOW
5 YOU STATE'S EXHIBIT NUMBER 55. DOES THAT LOOK FAMILIAR TO
6 YOU?

7 A YES, SIR. THIS IS THE GOLD COIN ENVELOPE THAT I
8 PLACED THE SWABS IN, THAT IS THE SLED LAB NUMBER, THE ITEM
9 NUMBER THAT I ASSIGNED IT AND THE DESCRIPTION WAS THE
10 RIGHT SHOE THAT WAS SWABBED FOR THE PRESENCE OF
11 PRESUMPTIVE BLOOD. AND I TAPED IT AND INITIALED IT ON THE
12 BACK AND THE DATE.

13 Q NOW, IS THAT IN THE SAME CONDITION AS IT WAS WHEN IT
14 LEFT YOU?

15 A WELL, I AM SURE THEY OPENED IT BUT I SEAL IT WITH
16 TAPE.

17 Q AND DO YOU TAKE ANY PRECAUTIONS TO MAKE SURE THAT
18 THOSE SAMPLES DON'T GET CONTAMINATED IN ANY WAY?

19 A THAT'S CORRECT.

20 Q WHAT KIND OF PRECAUTIONS DO YOU TAKE TO MAKE SURE?

21 A I LET THE SWABS DRY AND THEN I PLACE THEM IN THE GOLD
22 COIN ENVELOPE.

23 Q WHAT PURPOSE IS SERVED BY LETTING THEM DRY?

24 A SO THEY WON'T BE WET WHEN THEY ARE IN THE ENVELOPE.

25 Q DID YOU KEEP THESE, WHEN THEY ARE AIR DRYING ARE THEY

1 IN A SECURE AREA?

2 A THAT IS CORRECT.

3 Q AND DOES ANYBODY AND EVERYBODY HAVE ACCESS TO THIS
4 AREA?

5 A NO SIR, THEY DON'T.

6 Q WHO HAS ACCESS TO THE AREA THEY ARE IN?

7 A JUST THE TECHNICIANS AND THE EVIDENCE PROCESSING.

8 Q AND YOU SAID YOU PLACED THEM IN A HEAT SEALED PACK?

9 A THAT'S CORRECT.

10 Q DID YOU PLACE THEM BY THEMSELVES IN A HEAT SEALED
11 PACK?

12 A I RE-CONTAINERIZED ITEM NUMBER 1 AND I PLACED IT IN A
13 HEAT SEALED POUCH.

14 Q AND I WILL SHOW YOU STATE'S EXHIBIT NUMBER 2 WHICH IS
15 THE BLOOD SWAB THAT YOU DIDN'T OPEN.

16 A THAT'S CORRECT.

17 Q SO, YOU PUT THESE TWO TOGETHER?

18 A THAT'S CORRECT.

19 Q AND IS THIS THE SEALED POUCH?

20 A NO, SIR.

21 Q BUT YOU PLACED IT IN A HEAT SEALED POUCH OF SOME
22 SORT?

23 A THAT'S CORRECT.

24 Q DOES THAT SECURE IT IN ANY WAY?

25 A I HEAT SEALED THE POUCH, INITIAL IT AND DATE IT.

1 Q AND SO, WOULD THAT BE TAMPER EVIDENT, THAT HEAT
2 SEALED POUCH IN ANY WAY OR IS IT JUST MORE OF A PROTECTION
3 FOR THE EVIDENCE INSIDE?

4 A IT IS BOTH.

5 Q AND AFTER YOU CREATED THESE SHOE SWABS OR THE SWABS
6 FROM THE SHOES WHERE DID YOU PLACE THEM?

7 A I PLACED THEM IN THE DNA BOX.

8 Q AGAIN, CAN YOU DESCRIBE WHAT THAT IS?

9 A IT IS THE UPRIGHT REFRIGERATED BOX.

10 Q AND IS IT A SECURE AREA?

11 A YES, IT IS.

12 Q AND WHAT DATE DID YOU PLACE THEM IN THAT DNA
13 REFRIGERATOR BOX?

14 A AUGUST THE 27TH OF 2004.

15 MR. JOPHLIN: I BEG THE COURT'S INDULGENCE. NOTHING
16 FURTHER, IF YOU CAN ANSWER ANYTHING THE DEFENSE MIGHT
17 HAVE.

18 THE COURT: ALL RIGHT, MS. VAN GINHOVEN.

19 CROSS-EXAMINATION

20 BY MS. VAN GINHOVEN:

21 Q THE SWABS THAT YOU RECEIVED FROM THE SHOE IDENTIFIED
22 AS 3.2.1?

23 A THAT'S CORRECT.

24 Q AND YOU DID A PRESUMPTIVE TEST ON THE SHOE?

25 A THAT'S CORRECT.

1 Q PRESUMPTIVE MEANS IT MAY BE THERE BUT IT MAY NOT BE
2 THERE, THERE NEEDS TO BE FURTHER TESTING?

3 A THAT'S CORRECT.

4 Q THEN YOU PUT IT IN THE DNA BOX?

5 A THAT'S CORRECT.

6 Q AND THAT WAS FOR FURTHER DNA PROCESSING?

7 A THAT'S CORRECT.

8 MS. VAN GINHOVEN: I BEG THE COURT'S INDULGENCE.

9 Q DO YOU KNOW IF IT EVER WENT FOR FURTHER PROCESSING?

10 A NO, WHEN IT LEAVES MY HANDS I HAVE NO IDEA, NO.

11 Q NO FURTHER QUESTIONS.

12 THE COURT: ANY REDIRECT?

13 MR. JOPHLIN: NOTHING FURTHER FROM THE STATE.

14 THE COURT: YOU MAY STEP DOWN.

15 MR. JOPHLIN: MAY THE WITNESS BE EXCUSED, YOUR HONOR.

16 THE COURT: WITHOUT OBJECTION THIS WITNESS IS
17 EXCUSED.

18 MR. JOPHLIN: THE STATE CALLS SHERRY BROWN.

19 MS. MOBLEY: YOUR HONOR, MAY WE APPROACH.

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
21 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
22 JURY.)

23 SHERRY BROWN, AFTER BEING DULY SWORN, TESTIFIED
24 AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. JOPHLIN:

2 Q GOOD AFTERNOON, MS. BROWN.

3 A GOOD AFTERNOON.

4 Q WHERE ARE YOU EMPLOYED?

5 A SLED ALSO KNOWN AS THE STATE LAW ENFORCEMENT DIVISION
6 ALSO KNOWN AS SLED.

7 Q AND HOW LONG HAVE YOU BEEN WORKING THERE?

8 A 11 AND A HALF YEARS.

9 Q AND DO YOU HAVE A CERTAIN DEPARTMENT THAT YOU WORK
10 IN?

11 A I AM CURRENTLY ASSIGNED TO THE DNA DEPARTMENT.

12 Q AND BACK IN 2004 RIGHT AROUND SEPTEMBER, DO YOU
13 REMEMBER WHAT DEPARTMENT YOU WERE IN?

14 A DNA.

15 Q THE SAME DEPARTMENT?

16 A YES.

17 Q DID YOU HAVE A CHANCE TO COME INTO CONTACT WITH ANY
18 EVIDENCE IN THIS CASE?

19 A YES, I DID.

20 Q AND WHAT PIECE OF EVIDENCE WOULD THAT BE?

21 A I HANDLED ITEM NUMBER 1, THE BLOOD SWAB.

22 Q THE BLOOD SWAB?

23 A YES.

24 Q AND DO YOU RECOGNIZE WHAT SLED LAB NUMBER WOULD OF
25 BEEN ASSIGNED TO THAT BLOOD SWAB?

1 A YES, OUR LAB NUMBER ASSIGNED WAS LO44126.

2 Q WHAT DAY DID YOU COME INTO CONTACT WITH THAT BLOOD
3 SWAB?

4 A FROM MY RECORDS I PICKED IT UP OUT OF THE DNA BOX,
5 THAT IS A SECURED BOX IN OUR EVIDENCE LOGIN ON 8/2/2004.

6 MR. JOPHLIN: I BEG THE COURT'S INDULGENCE.

7 A I AM SORRY, I READ THE WRONG LINE. I STILL HAVE TO
8 GET USED TO THESE GLASSES.

9 Q OKAY, WHAT DATE IS IT?

10 A IT IS, ACCORDING TO MY RECORDS, AUGUST 27TH OF 2004.

11 Q DO YOU HAVE A DETAILED REPORT OF WHO HANDLED THIS
12 EVIDENCE?

13 A YES SIR, I HAVE A PHOTO COPY.

14 Q AND THE PERSON WHO HANDLED IT RIGHT BEFORE YOU, WHAT
15 DATE DID THEY HANDLE IT?

16 A MY COPIES IS KIND OF BLURRED, IT DID NOT COPY VERY
17 WELL. IT IS VERY BLURRED, I DON'T KNOW IF IT IS A 9 OR A
18 8 BECAUSE OF THE PHOTOCOPY, I AM SORRY.

19 Q WOULD YOU DISPUTE IF I SAID THE WITNESS PRIOR TO YOU
20 TESTIFIED THAT SHE TOOK THAT PIECE OF EVIDENCE FROM
21 HERSELF AND SHE DEPOSITED IT IN THE DNA BOX ON AUGUST THE
22 27TH OF 2004?

23 A YES, THAT IS WHAT I CAN READ.

24 Q AND YOU TOUCHED THAT EVIDENCE AFTER SHE PLACED IT IN
25 THE DNA BOX?

1 A YES.

2 Q SINCE SHE DID IT ON AUGUST THE 27TH COULD YOU OF
3 HANDLED IT AUGUST 2ND OR SEPTEMBER THE 2ND?

4 A SEPTEMBER THE 2ND BECAUSE IT IS--

5 Q BECAUSE YOU SAID IT WAS A BLURRED COPY?

6 A YES, SIR.

7 Q BUT YOU DID HANDLE IT IMMEDIATELY AFTER JANICE BRYSON
8 DEPOSITED IT IN THE DNA BOX ON AUGUST THE 27TH?

9 A YES.

10 Q AFTER THE DNA BOX WHERE DID YOU PLACE IT?

11 A IN A HOLDING BIN, DNA PROCESSING ROOM, THIRD FLOOR.

12 Q AND IS THAT A STORAGE FACILITY?

13 A THAT IS A SECURED AREA WITHIN THE DNA DEPARTMENT.

14 Q AND DOES ANYBODY AND EVERYBODY HAVE ACCESS TO THAT?

15 A THE DNA DEPARTMENT HAS, THE ONLY PEOPLE IN THE
16 DEPARTMENT THAT HAVE A KEY TO THE ROOM.

17 Q SOLE ACCESS?

18 A YES.

19 Q AND DID YOU TAMPER WITH THAT EVIDENCE, THE BLOOD SWAB
20 IN ANY WAY?

21 A NO, I DIDN'T.

22 Q AND WAS IT IN SECURE CONDITION WHEN YOU TOOK A HOLD
23 OF IT?

24 A YES, ONE OF OUR PROTOCOL IS TO MAKE SURE IS WHEN WE
25 GET A SEALED POUCH THAT THE HEAT SEAL IS SEALED COMPLETELY

1 AND THEIR INITIALS ARE OVER THE HEAT SEAL.

2 Q AND SO WHEN YOU RECEIVED IT AND THEN YOU DEPOSITED IN
3 THE DNA PROCESSING FLOOR IT WAS IN THE SAME CONDITION ON
4 BOTH TIMES?

5 A YES.

6 Q AND DID YOU ALSO HAVE A CHANCE TO COME INTO CONTACT
7 WITH ITEM NUMBER 3.2.1, THE SHOE SWABS, I BELIEVE JANICE
8 BRYSON JUST TESTIFIED TO THEY WERE PACKAGED TOGETHER.

9 A WE ARE SPEAKING 3.2.1?

10 Q YES, MA'AM.

11 A YES, I DID.

12 Q AND WHAT DATE DID YOU HANDLE THOSE?

13 A THIS COPY IS, 9/2/2004.

14 Q OKAY. AND WHERE DID YOU RECEIVE THEM FROM?

15 A THE DNA BOX.

16 Q AND WHERE DID YOU PLACE THEM?

17 A IN THE SAME ROOM AS THE OTHER ONE, THE DNA PROCESSING
18 ROOM, THIRD FLOOR.

19 Q AND DO YOU HAVE ANY INDEPENDENT RECOLLECTION OF
20 WHETHER THEY WERE PACKAGED TOGETHER WHEN YOU WERE
21 TRANSPORTING THEM?

22 A THE CONTAINER NUMBERS, YES.

23 Q OKAY. AND THAT IS WELL, SINCE THEY WERE PACKAGED
24 TOGETHER YOU DIDN'T TAMPER WITH THIS ITEM IN ANY WAY?

25 A NO, SIR.

1 Q IT WAS SECURE AS WELL?

2 A YES.

3 Q IT DIDN'T HAVE ANY EVIDENCE OF BEING TAMPERED WITH
4 WHEN YOU TRANSPORTED IT?

5 A NO, SIR.

6 Q FROM ONE AREA TO ANOTHER?

7 A IT WAS, I RECEIVED IT IN A SEALED POUCH AND IT WAS
8 TRANSFERRED IN THE SAME CONDITION.

9 Q NOTHING FURTHER.

10 THE COURT: CROSS-EXAMINE.

11 MS. VAN GINHOVEN: NOTHING, YOUR HONOR.

12 THE COURT: YOU MAY STEP DOWN, WATCH YOUR STEP,
13 PLEASE.

14 MR. JOPHLIN: THE STATE CALLS EMILY NORRIS.

15 EMILY NORRIS, AFTER BEING DULY SWORN, TESTIFIED
16 AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. JOPHLIN:

19 Q GOOD AFTERNOON, MS. NORRIS.

20 A GOOD AFTERNOON.

21 Q WHERE ARE YOU EMPLOYED?

22 A I AM EMPLOYED WITH THE SOUTH CAROLINA LAW ENFORCEMENT
23 DIVISION?

24 Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

25 A I HAVE BEEN THERE ALMOST FOUR YEARS.

1 Q AND DO YOU WORK IN A SPECIFIC DEPARTMENT?

2 A I WORK IN THE DNA DEPARTMENT, I AM A FORENSIC
3 TECHNICIAN.

4 Q AND BACK ON SEPTEMBER OF 2004 WHAT WERE, YOU WERE
5 STILL WORKING WITH SLED?

6 A YES.

7 Q AND WHAT DEPARTMENT WERE YOU IN THEN?

8 A DNA DEPARTMENT.

9 Q DID YOU HAVE A CHANCE TO COME INTO CONTACT WITH ANY
10 EVIDENCE IN THIS CASE?

11 A YES, I DID.

12 Q MORE SPECIFICALLY DID YOU HAVE A CHANCE TO COME INTO
13 CONTACT WITH A PACKAGE CONTAINING A BLOOD SWAB?

14 A YES, I DID.

15 Q AND FIRST OF ALL DID THIS CASE HAVE A SPECIFIC
16 NUMBER?

17 A YES, IT DID. IT IS L0404126.

18 Q AND THIS BLOOD SWAB, DOES IT HAVE A SPECIFIC NUMBER
19 ASSIGNED TO IT?

20 A IT WAS ITEM 1.

21 Q AND WHAT DAY DID YOU RECEIVE IT?

22 A THIS WAS 9/8/2004.

23 Q AND WHERE DID YOU RECEIVE IT FROM?

24 A THE DNA, IT IS CALLED THE DNA PROCESSING ROOM. THAT
25 IS THE ROOM WHERE WE PROCESS OUR EVIDENCE AND THEM FROM

1 THERE WE DECIDE WHETHER OR NOT THE EVIDENCE CAN BE
2 ASSIGNED OR WHERE TO GO FROM THERE WHICH MAY BE A HOLDING
3 BIN.

4 Q AND WHERE WAS THIS EVIDENCE TAKEN TO?

5 A IT WAS TRANSFERRED TO DNA F5 WHICH THAT IS A SECURE
6 BIN, IT IS OUR FORTH FLOOR LARGE REFRIGERATOR. WE ASSIGN
7 EACH CASE TO A BIN WHICH WE WILL HOLD FOR ABOUT SIX
8 MONTHS. AND THE AGENCY RETURNS IT OR THE CASE IS TO BE
9 ANALYZED WE WILL RETURN IT FROM THERE.

10 Q SO, IN THIS CASE IT WENT TO DNA PROCESSING FOR
11 PROCESSING, IT WAS PLACED IN THIS HOLDING BIN YOU ARE
12 TALKING ABOUT?

13 A CORRECT.

14 Q SO, IT WAS NOT PROCESSED?

15 A NO.

16 Q AND ARE BOTH OF THOSE AREAS, DNA F5, THE HOLDING BIN,
17 IS THAT A SECURED AREA?

18 A YES, IT IS. ONLY DNA PERSONNEL HAVE KEYS TO THIS
19 AREA OR ACCESS TO THAT AREA.

20 Q AND WHEN YOU TRANSPORTED, WELL, LET ME BEFORE I GO
21 INTO THAT. WE WILL GO TO THE NEXT ITEM. DID YOU HAVE
22 CONTACT WITH ITEM 3.2.1, THE SHOE SWABS?

23 A YES, I DID.

24 Q AND WHERE DID YOU GAIN CONTROL OF THOSE ITEMS?

25 A ALSO IN THE DNA THIRD PROCESSING AND I ALSO

1 TRANSFERRED THAT EVIDENCE TO THE DNA BOX.

2 Q AND WHAT DATE WAS THAT?

3 A THAT WAS ON THE 9/8/2004.

4 Q AND WERE THOSE ITEMS PACKAGED TOGETHER?

5 A NO, THEY HAD, YES, THEY WERE. THEY HAD THE SAME E
6 NUMBER, E218503.

7 Q AND WHEN YOU SAY E NUMBER, WHAT IS THAT?

8 A THAT IS THE NUMBER THAT IS ASSIGNED TO A SYSTEM THAT
9 WE HAVE WHICH IS CALLED SLIM. EACH ITEM NUMBER HAS AN E
10 NUMBER AND THAT IS THE WAY THAT WE IDENTIFY THEM BY
11 SCANNING IT AND PUTTING IT INTO THE SYSTEM.

12 Q SO, THAT WOULD BE A CONTAINER?

13 A YES.

14 Q THAT IS CARRIED FROM PLACE TO PLACE?

15 A CORRECT.

16 Q YOU SAID E218503?

17 A YES.

18 Q AND THOSE ITEMS, WERE THEY SEALED WHEN YOU
19 TRANSPORTED THEM?

20 A YES, SIR.

21 Q HAD THEY BEEN TAMPERED WITH IN ANY WAY?

22 A NO, SIR.

23 Q DID YOU TAMPER WITH THEM IN ANY WAY?

24 A NO, SIR.

25 Q AND WERE THEY PLACED IN THE SAME CONDITION THAT YOU

1 PICKED THEM UP IN?

2 A YES, SIR.

3 Q DROPPED OFF IN THE SAME CONDITION?

4 A YES, SIR.

5 Q AND WERE THEY EXPOSED TO ANY KIND OF CONTAMINATION,

6 EITHER WHEN PLACED IN THE DNA BOX, I AM SORRY, DNA

7 PROCESSING OR IN DNA F5?

8 A NO.

9 Q NOTHING FURTHER.

10 THE COURT: CROSS-EXAMINE?

11 MS. VAN GINHOVEN: WE HAVE NO QUESTIONS, YOUR HONOR.

12 THE COURT: YOU MAY STEP DOWN, MA'AM.

13 MR. JOPHLIN: THE STATE CALLS KATIE CORLEY.

14 KATIE CORLEY, AFTER BEING DULY SWORN, TESTIFIED

15 AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. JOPHLIN:

18 Q HOW ARE YOU DOING THIS AFTERNOON, MS. CORLEY?

19 A FINE, HOW ARE YOU?

20 Q GOOD. WHERE ARE YOU CURRENTLY EMPLOYED?

21 A I AM EMPLOYED WITH THE DEPARTMENT OF HEALTH AND

22 ENVIRONMENTAL CONTROL.

23 Q AND WHERE WERE YOU WORKING PRIOR TO THAT?

24 A I WORK FOR SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

25 Q AND IN OCTOBER OF 2004 WERE YOU WORKING WITH SOUTH

1 CAROLINA LAW ENFORCEMENT DIVISION?

2 A YES SIR, I WAS.

3 Q OR STATE LAW ENFORCEMENT DIVISION. AND DID YOU HAVE
4 A CHANCE TO COME INTO CONTACT WITH ANY EVIDENCE IN THIS
5 CASE?

6 A YES SIR, I DID.

7 Q MORE SPECIFICALLY DID YOU HAVE A CHANCE TO COME INTO
8 CONTACT OR LET ME START OVER. DID THIS CASE HAVE A
9 SPECIFIC LAB NUMBER AT SLED?

10 A YES, SIR. IT WAS L044126.

11 Q AND DID YOU HAVE A CHANCE TO COME INTO CONTACT WITH
12 ITEM NUMBER 1, A BLOOD SWAB?

13 A YES SIR, I DID.

14 Q AND WHAT DATE DID YOU HANDLE THAT PIECE OF EVIDENCE?

15 A IT WAS OCTOBER THE 14TH OF 2004.

16 Q AND WHERE DID YOU PICK IT UP FROM?

17 A I PICKED IT UP OUT OF DNA F5.

18 Q AND WHERE DID YOU PLACE IT OR TAKE IT TO?

19 A I PUT IT IN THE RETURN BIN WHICH WE CALL DNA RETURN.

20 Q AND WHAT KIND OF PLACE IS DNA RETURN?

21 A IT IS A SECURED LOCATION ON THE FORTH FLOOR OF THE
22 DNA LAB.

23 Q AND WHO HAS ACCESS TO THAT ROOM?

24 A THE DNA PERSONNEL AND THEN LOGIN ALSO.

25 Q AND ALSO DID YOU HAVE A CHANCE TO COME INTO CONTACT

1 WITH ITEM 3.2.1, THE SHOE SWABS?

2 A YES SIR, I DID.

3 Q IN FACT, WERE ITEM 1 AND ITEM 3.2.1 TRAVELING
4 TOGETHER?

5 A YES SIR, THEY WERE.

6 Q AND WHAT DATE DID YOU HANDLE 3.2.1?

7 A OCTOBER THE 14TH OF 2004.

8 Q AND AGAIN, IT WENT FROM WHERE?

9 A IT WENT FROM DNA F5 TO DNA RETURN.

10 Q AND THE PACKAGE THAT BOTH OF THOSE ITEMS WERE IN WAS
11 IT A SECURE PACKAGE?

12 A YES SIR, IT WAS SECURE.

13 Q WHEN YOU WERE PICKING IT UP AND TRANSPORTING IT AND
14 TOUCHING IT HAD IT BEEN TAMPERED WITH IN ANY WAY?

15 A NO, SIR.

16 Q DID YOU TAMPER WITH IT IN ANY WAY?

17 A NO, SIR.

18 Q AND WAS IT IN YOUR CUSTODY AND CONTROL THE WHOLE TIME
19 YOU WERE TRANSPORTING IT?

20 A YES, SIR.

21 Q AND THE SAME CONDITION THAT IT WAS IN WHEN YOU PICKED
22 IT UP AND YOU DROPPED IT OFF?

23 A YES, SIR.

24 Q AND DNA RETURN, IS THERE ANY WAY IT WAS CONTAMINATED
25 IN ANY WAY IN THAT AREA?

1 A NO, SIR.

2 Q YOU SAID IT WAS A SECURED AREA?

3 A RIGHT, YES SIR.

4 Q NOTHING FURTHER.

5 THE COURT: CROSS-EXAMINE.

6 MS. VAN GINHOVEN: WE HAVE NO QUESTIONS.

7 THE COURT: YOU MAY STEP DOWN.

8 MR. JOPHLIN: THE STATE CALLS MARILYN FITZPATRICK.

9 MARILYN FITZPATRICK, AFTER BEING DULY SWORN,
10 TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. JOPHLIN:

13 Q MS. FITZPATRICK, HOW ARE YOU DING?

14 A FINE.

15 Q WHERE ARE YOU EMPLOYED?

16 A AT SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

17 Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

18 A THREE YEARS.

19 Q AND DO YOU HAVE A PARTICULAR DEPARTMENT THAT YOU WORK
20 IN?

21 A TOXICOLOGY.

22 Q AND BACK IN OCTOBER OF 2004 WERE YOU IN TOXICOLOGY
23 BACK THEN?

24 A NO SIR, I WAS IN EVIDENCE CONTROL.

25 Q AND DID YOU HAVE A CHANCE TO COME INTO CONTACT WITH

1 ANY EVIDENCE IN THIS CASE?

2 A YES, SIR.

3 Q AND WHAT SLED LAB NUMBER DO YOU REFERENCE WHEN YOU
4 ARE SPEAKING OF THE EVIDENCE IN THIS CASE?

5 A L0404126.

6 Q AND I AM POINTING YOUR ATTENTION TO TWO ITEMS
7 SPECIFICALLY, ITEM 1, A BLOOD SWAB. AND ITEM 3.2.1, SOME
8 SHOE SWABS. WERE THOSE ITEMS PACKAGED IN THE SAME PACKAGE
9 WHEN YOU RECEIVED THEM?

10 A YES, SIR.

11 Q AND WHAT WAS THAT PACKAGE NUMBER THERE?

12 A CONTAINER NUMBER E218503.

13 Q SO, ANYTHING YOU DID WITH ONE YOU DID WITH THE OTHER?

14 A YES, SIR.

15 Q ON BOTH OF THOSE ITEMS DID YOU HAVE A CHANCE TO PICK
16 THEM UP AND TAKE THEM ANYWHERE?

17 A YES, SIR.

18 Q AND WHERE DID YOU PICK THEM, WHAT DATE WAS THAT?

19 A OCTOBER THE 14TH OF 2004.

20 Q AND WHERE DID YOU PICK THEM UP FROM?

21 A THE DNA RETURN BIN.

22 Q AND WHAT KIND OF PLACE IS THAT?

23 A IT IS A SECURE ROOM IN THE DNA DEPARTMENT.

24 Q AND WHERE DID YOU TAKE THAT PACKAGE CONTAINING THOSE
25 TWO ITEMS TO?

1 A BACK DOWN TO THE EVIDENCE CONTROL. THERE IS ALSO A
2 SECURE ROOM THERE AND A PROCESSING BIN.

3 Q AND THE EVIDENCE ROOM THAT YOU TOOK IT, IS THAT A
4 SECURE AREA?

5 A YES, SIR.

6 Q IS ANYBODY AND EVERYBODY AT SLED HAVE ACCESS TO IT?

7 A NO, SIR.

8 Q AND WHEN YOU PICKED UP THE ITEM HAD IT BEEN TAMPERED
9 WITH IN ANY WAY?

10 A NO, SIR.

11 Q AND WHEN YOU TRANSPORTED IT DID YOU TAMPER WITH IT IN
12 ANY WAY?

13 A NO, SIR.

14 Q AND WHEN YOU DROPPED IT OFF WAS IT IN THE SAME
15 CONDITION THAT YOU PICKED IT UP IN?

16 A YES, SIR.

17 Q AND THE EVIDENCE ROOM WHERE YOU DROPPED IT OFF IS
18 THERE ANY WAY THAT THAT, THOSE TWO ITEMS COULD BE
19 CONTAMINATED WITH ANYTHING IN ANY WAY?

20 A NO, SIR.

21 Q AND IS THERE ANYTHING THAT WAS DONE TO CHANGE THE
22 NATURE OF THE EVIDENCE ON TRANSPORTING IT?

23 A NO, SIR.

24 Q NOTHING FURTHER, YOUR HONOR.

25 THE COURT: CROSS-EXAMINE.

1 MS. VAN GINHOVEN: WE HAVE NO QUESTIONS.

2 THE COURT: MA'AM, YOU MAY STEP DOWN, WATCH YOUR
3 STEP, PLEASE.

4 MR. JOPHLIN: THE STATE CALLS LAURA CORLEY.

5 LAURA CORLEY, AFTER BEING DULY SWORN, TESTIFIED
6 AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. JOPHLIN:

9 Q HOW ARE YOU DOING, MS. CORLEY?

10 A I AM FINE.

11 Q WHERE ARE YOU EMPLOYED?

12 A SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

13 Q AND DO YOU HAVE A PARTICULAR DEPARTMENT YOU WORK IN?

14 A RIGHT NOW I WORK IN THE COMPUTER DEPARTMENT FOR
15 ADMINISTRATION.

16 Q BACK IN 2004 WHERE DID YOU WORK?

17 A IN THE LOGIN DEPARTMENT.

18 Q OUT AT SLED?

19 A YES, IN EVIDENCE CONTROL.

20 Q DID YOU HAVE A CHANCE TO COME INTO CONTACT WITH ANY
21 ITEMS IN THIS CASE?

22 A L044126.

23 Q YES.

24 A YES.

25 Q AND WHAT IS THAT NUMBER YOU JUST READ OFF?

1 A L044126.

2 Q THAT IS THE SLED?

3 A THAT IS OUR SLED LAB NUMBER.

4 Q AND MORE SPECIFICALLY I POINT YOU TO ITEM THAT IS
5 ITEM 2 AND ITEM 3. ITEM 2 WOULD BE A BLUE SWEATER AND
6 ITEM 3, A PAIR OF SHOES?

7 A OKAY. YES.

8 Q WHAT CONTAINER NUMBER DID THOSE HAVE?

9 A E20, IT LOOKS LIKE 6623 OR 8823.

10 Q 6623?

11 A YES, 6623.

12 Q AND WERE BOTH OF THOSE ITEMS TRAVELING IN THAT SAME
13 CONTAINER?

14 A YES.

15 Q E2066?

16 A 6623, YES.

17 Q 6623. THE PACKAGE, E206623, THAT CONTAINS THE ITEM
18 2, BLUE SWEATER AND ITEM 3, A PAIR OF SHOES. WHEN DID YOU
19 HAVE A CHANCE TO COME INTO CONTACT WITH THOSE, WHAT DATE?

20 A AUGUST THE 31ST OF 2004.

21 Q AND WHERE DID YOU TAKE CONTROL OF THOSE ITEMS AT?

22 A THERE IN THE EVIDENCE ROOM AND TENA GOFF AT THE
23 RICHLAND COUNTY SHERIFFS OFFICE PICKED UP THE EVIDENCE AND
24 THEY WERE RETURNED TO HER AT THAT TIME.

25 Q SO, YOU DELIVERED THEM TO TENA GOFF?

1 A RIGHT.

2 Q FROM THE EVIDENCE ROOM?

3 A YES.

4 Q IS THAT ROOM A SECURE AREA?

5 A YES.

6 Q AND THE PACKAGE THAT THESE TWO ITEMS WERE CONTAINED
7 IN HAD IT BEEN TAMPERED WITH IN ANY WAY?

8 A NO.

9 Q DID YOU TAMPER WITH IT, ALTER IT?

10 A NO.

11 Q AND THE EVIDENCE ROOM, IS THERE ANY WAY IT COULD BE
12 TAMPERED WITH OR CONTAMINATED OR MESSED WITH IN ANY WAY
13 WITHOUT BEING OBVIOUS?

14 A RIGHT, IT IS SEALED WHEN IT COMES DOWNSTAIRS IN
15 STOCK.

16 Q IF IT IS UNSEALED OR TAMPERED WITH IN ANY WAY THIS IS
17 OBVIOUS?

18 A RIGHT.

19 Q AND I AM GOING TO SHOW YOU, WHEN YOU GIVE ITEMS TO A
20 PARTICULAR AGENCY, GIVING THEIR ITEMS BACK. IN THIS
21 INSTANCE, RICHLAND COUNTY SHERIFFS DEPARTMENT, TENA GOFF.
22 DO YA'LL PRINT OUT ANY KIND OF RECEIPT OR TRANSFER RECEIPT
23 WHEN YOU GIVE IT TO THEM?

24 A YES, WE DO.

25 Q I AM GOING TO SHOW YOU THIS PIECE OF PAPER, SET OF

1 PAPERS, CAN YOU READ THE TITLE OF THAT AND THE DATE?

2 A THIS IS A TRANSFER CUSTODY RECEIPT.

3 Q DOES THAT COME FROM YA'LL?

4 A CORRECT. THIS IS WHAT IS PRINTED OUT WHEN WE RETURN
5 THE EVIDENCE AND IT HAS A LISTING OF EVERYTHING THAT THEY
6 SIGNED FOR THAT DAY.

7 Q WHEN YA'LL RETURN STUFF IS IT JUST THIS ONE THING
8 THAT TENA CAME AND GOT FROM YOU THAT DAY?

9 A IT IS ANYTHING WE HAVE IN A BAG THAT IS READY TO BE
10 RETURNED TO THAT AGENCY. THEY COME IN AND THEY LOG IN AND
11 THEY MAY JUST TAKE WHATEVER IS READY TO GO OUT.

12 Q AND THIS LAB NUMBER OR IS THIS PACKAGE NUMBER ON THAT
13 LIST THAT YOU RETURNED TO HER ON AUGUST THE 31ST?

14 A YES.

15 Q WERE THOSE ITEMS IN THAT PACKAGE NUMBER?

16 A YES.

17 Q AND HOW DO YOU KNOW THAT YOU GAVE THOSE TO TENA GOFF
18 AND SHE RECEIVED THEM?

19 A MY NAME IS ON HERE WHERE I SIGNED IT AND ALSO IT IS
20 WRITTEN ON HERE THAT I GAVE IT TO TENA. SO, IT IS IN THE
21 COMPUTER AS WELL AS MY SIGNATURE.

22 Q OKAY. NOTHING FURTHER.

23 THE COURT: CROSS-EXAMINE?

24 MS. VAN GINHOVEN: I HAVE NO QUESTIONS, YOUR HONOR.

25 THE COURT: YOU MAY STEP DOWN, WATCH YOUR STEP,

1 PLEASE.

2 MR. JOPHLIN: THE STATE CALLS TENA GOFF TO THE STAND.

3 TENA GOFF, AFTER BEING DULY SWORN, TESTIFIED AS
4 FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. JOPHLIN:

7 Q OFFICER GOFF, DEPUTY GOFF OR IS IT INVESTIGATOR GOFF?

8 A IT IS JUST TENA.

9 Q OKAY. WHERE ARE YOU EMPLOYED?

10 A AT THE RICHLAND COUNTY SHERIFFS DEPARTMENT.

11 Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

12 A ALMOST 13 YEARS NOW.

13 Q AND WHAT ARE YOUR DUTIES AT THE SHERIFFS DEPARTMENT?

14 A I AM THE EVIDENCE CUSTODIAN, MY JOB IS TO MANAGE THE
15 EVIDENCE ROOM WHICH MEANS I SUPERVISE THE PEOPLE THAT WORK
16 UNDER ME AND ALSO MAKE SURE WHEN THE EVIDENCE COMES IN IT
17 IS PROPERLY HANDLED.

18 Q TENA, SORT OF DESCRIBE FOR THE JURY WHAT KIND OF
19 PLACE THIS EVIDENCE ROOM IS?

20 A THE EVIDENCE ROOM IS A SECURED ROOM IN THE FIRST
21 FLOOR OF THE SHERIFFS DEPARTMENT. THERE ARE ONLY THREE
22 PEOPLE IN THE DEPARTMENT THAT HAVE KEYS. MYSELF, MY
23 PARTNER AND MY SUPERVISOR. IT HAS SECURITY ALARMS, LOCKED
24 DOORS, EVERYTHING IS SECURED, NO ONE IS ALLOWED IN THAT
25 ROOM UNLESS WE ARE THERE TO ESCORT THEM OR THEY HAVE A

1 SPECIFIC PURPOSE.

2 Q WHAT IS KEPT THERE?

3 A ALL OF THE EVIDENCE FORM CRIME SCENES, ANY EVIDENCE
4 WHATSOEVER THAT COMES IN.

5 Q AND IT COMES TO YOU, WHAT KIND OF PROCESS HAPPENS
6 WHEN AN OFFICER COMES TO YOU WITH SOME EVIDENCE AND WANTS
7 TO PUT THAT EVIDENCE IN THAT SECURED ROOM?

8 A THEY HAVE TO FILL OUT AN EVIDENCE FORM OR EVIDENCE
9 LABELS. AND THEY LIST ON THAT FORM ALL THE ITEMS THEY ARE
10 TURNING IN ON THE SPECIFIC CASE. WE VERIFY THAT, MAKE
11 SURE THE PACKAGE IS SEALED PROPERLY, WE SIGN OFF ON IT, DO
12 COMPUTER DATA ENTRY AND THEN PUT THE EVIDENCE ON A SHELF
13 AND IT IS KEPT THERE UNTIL IT IS REQUESTED FOR COURT OR
14 FOR ANALYSIS.

15 Q AND I HEARD YOU SAY AS IT IS SEALED PROPERLY?

16 A YES.

17 Q DO YA'LL TAKE IN EVIDENCE IF IT IS NOT SEALED
18 PROPERLY?

19 A NO, SIR.

20 Q LIKE AN OPENED BOX, LIKE THIS BOX RIGHT HERE, WOULD
21 YOU TAKE IT?

22 A NO, SIR.

23 Q AND WE HAD SOME PREVIOUS WITNESSES TALK ABOUT THIS
24 EVIDENCE TAPE. IS THAT WHAT IS USED IN A LOT OF TIMES TO
25 SECURE ITEMS?

1 A YES.

2 Q AND THEN IF THE TAPE IS BROKE OR ANY KIND OF PACKAGE
3 IS BROKE OR LOOKS LIKE IT IS NOT CLOSED COMPLETELY, DO YOU
4 EVER TAKE IT IN?

5 A NO.

6 Q I WANT TO BRING YOU TO THE ATTENTION OF THIS CASE.
7 DID YOU HAVE A CHANCE TO ACCEPT SOME EVIDENCE IN THIS
8 CASE?

9 A I DID.

10 Q AND I WILL START OFF WITH SOME MARIJUANA THAT WAS
11 RECOVERED FROM THE SUSPECT.

12 A YES, SIR.

13 Q WHAT DATE DID YOU RECEIVE THIS MARIJUANA?

14 A APRIL 14TH OF 2004 AT 8:00 O'CLOCK IN THE MORNING.

15 Q AND FROM WHOM DID YOU RECEIVE IT?

16 A IT WAS SUBMITTED BY INVESTIGATOR BARNES AND I
17 ACCEPTED IT FROM THE DROP BOX.

18 Q AND WHEN YOU SAY DROP BOX, WHAT DO YOU MEAN BY THAT?

19 A WE HAVE A TEMPORARY BOX OUTSIDE OF THE EVIDENCE ROOM
20 FOR AFTER HOURS OR WEEKENDS. IF THE EVIDENCE ROOM IS
21 CLOSED OFFICERS HAVE A CHANCE TO DROP THEIR EVIDENCE IN
22 THESE LOCKERS FOR TEMPORARY STORAGE CONTAINERS. NO ONE
23 HAS KEYS TO THOSE OTHER THAN THOSE WHO WORK IN THE
24 EVIDENCE ROOM.

25 Q SO, ONCE AN OFFICER PUTS SOMETHING IN THIS LOCK BOX,

1 LOCKS IT, WHAT KIND OF LOCK IS IT?

2 A A KEY LOCK.

3 Q LIKE A PADLOCK KIND OF THING?

4 A YES, SIR.

5 Q AND NOBODY ELSE CAN GET TO IT EXCEPT FOR YOU AND YOUR
6 STAFF?

7 A THAT'S CORRECT.

8 Q AND HOW DO YOU, WHEN YOU SAY PEOPLE COME AND FILL OUT
9 FORMS AND YA'LL VERIFY WHAT IT IS YOU ARE TURNING IN. HOW
10 DO YOU KNOW AS IT IS MARKED ON THE FORM THAT YOU GOT IT
11 FROM THE DROP BOX?

12 A IT IS THE TIME.

13 Q THE TIME OF DAY?

14 A YES, SIR.

15 Q WAS THAT MARIJUANA PACKAGED PROPERLY WHEN YOU TOOK IT
16 INTO EVIDENCE?

17 A YES, IT WAS.

18 Q AND DID YOU RELEASE THAT EVIDENCE AT ANY POINT?

19 A I RELEASED IT APRIL 16TH OF 2004 AT 2:00 O'CLOCK IN
20 THE AFTERNOON TO TRISH COLLINS.

21 Q YOUR EVIDENCE ROOM IS SECURE?

22 A YES, IT IS.

23 Q AND WAS THE EVIDENCE IN THE SAME CONDITION AS IT WAS
24 WHEN YOU RECEIVED IT WHEN YOU TRANSFERRED IT TO TRISH
25 COLLINS?

1 A YES, SIR.

2 Q AND IT WASN'T TAMPERED WITH IN ANY WAY?

3 A NO.

4 Q CONTAMINATED IN ANY WAY.

5 A NO.

6 Q AND WHEN DID YOU RECEIVE THAT EVIDENCE BACK?

7 A MAY 5TH OF 2004 AT 9:45 IN THE MORNING.

8 Q AND I WILL SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
9 EXHIBIT NUMBER 1. BY LOOKING AT THAT BAG CAN YOU IDENTIFY
10 IT?

11 A YES, I CAN.

12 Q WHAT IS THAT BAG?

13 A THIS IS THE PACKAGE THAT WAS SUBMITTED BY
14 INVESTIGATOR BARNES.

15 Q AND IS THAT BAG CORRELATED WITH THIS REPORT YOU JUST
16 READ?

17 A YES, IT DOES.

18 Q MOVING ON TO THE NEXT ITEM. DID YOU EVER RECEIVE
19 THREE ITEMS FROM INVESTIGATOR STAN RICHARDS?

20 A I DID.

21 Q AND WHAT WERE THOSE THREE ITEMS?

22 A AN INTEGRA SWAB, BLOOD SWAB, ONE BLUE ICEHOUSE DOUBLE
23 XX LARGE SWEATER, AND A PAIR OF NIKE AIR TENNIS SHOES.

24 Q AND WHAT DATE DID YOU RECEIVE THEM?

25 A APRIL 19TH, 2004 AT 12:30.

- 1 Q AND WHO DID YOU RECEIVE THEM FROM?
- 2 A INVESTIGATOR RICHARDS.
- 3 Q WERE THEY SECURE WHEN YOU RECEIVED THEM?
- 4 A THEY WERE SEALED, YES.
- 5 Q SEALED, I AM SORRY. AND THEY WENT INTO YOUR EVIDENCE
- 6 ROOM?
- 7 A YES, SIR.
- 8 Q AND DO EACH ONE OF THOSE ITEMS HAVE A SPECIFIC ITEM
- 9 NUMBER?
- 10 A THEY DID.
- 11 Q WHAT WAS THE ITEM NUMBER FOR THE INTEGRA SWAB, BLOOD
- 12 SWAB?
- 13 A 1SR.
- 14 Q AND THE BLUE ICEHOUSE, EXTRA LARGE, XX LARGE SWEATER?
- 15 A 2SR.
- 16 Q AND THE NIKE AIR TENNIS SHOES?
- 17 A 3SR.
- 18 Q AND IS THE INTEGRA SWAB PACKAGE YOU RECEIVED?
- 19 A YES, SIR.
- 20 Q AND HOW DO YOU KNOW?
- 21 A IT HAS INVESTIGATOR RICHARDS LABEL THAT HE PRINTED AT
- 22 THE LAB AND IT ALSO HAS THE ITEM NUMBER AT THE BOTTOM.
- 23 Q AND WHAT ITEM NUMBER IS ON THAT PACKAGE?
- 24 A 1SR.
- 25 Q OKAY. AND ITEM NUMBER 2 ON THAT LIST, IT THIS THE

1 ITEM THAT YOU RECEIVED?

2 A YES, IT IS.

3 Q AND WHAT NUMBER IS ON THAT PACKAGE?

4 A 2.

5 Q AND IS IT SIGNED BY ANYBODY?

6 A INVESTIGATOR RICHARDS.

7 Q INVESTIGATOR RICHARDS?

8 A YES.

9 Q AND THAT IS THE PACKAGE THAT YOU RECEIVED?

10 A IT IS.

11 Q AND I AM SORRY, THAT WAS STATE'S EXHIBIT NUMBER 3.

12 AND IN STATE'S EXHIBIT NUMBER 4, CAN YOU READ WHAT IS ON
13 THAT PACKAGE?

14 A ITEM NUMBER 3, RICHARDS.

15 Q AND WHAT NUMBER DOES THAT CORRELATE TO ON THAT
16 REPORT?

17 A 3SR.

18 Q WHICH IS THE NIKE SHOES?

19 A YES, IT IS.

20 Q AND THOSE WERE NOT IN THAT CONDITION WHEN YOU
21 RECEIVED THEM?

22 A NO, THE BOX WAS SEALED.

23 Q AND YOU WOULDN'T HAVE RECEIVED THEM IF THEY WERE?

24 A THAT IS CORRECT.

25 Q NOW, ON THE EVIDENCE FORM THAT HE SUBMITTED TO YOU ON

1 THESE THREE ITEMS, DID HE HAVE ANY SPECIFIC INSTRUCTIONS
2 AS TO THE DISPOSITION OF THEM?

3 A HE WANTED THEM TO GO TO SLED.

4 Q AND WAS ANY FORM SUBMITTED TO YOU TO GIVE YOU
5 INSTRUCTIONS OR TO DIRECT SLED AS TO WHAT TO DO WITH THOSE
6 ITEMS?

7 A YES, HE FILLED OUT SLED REQUEST FORMS.

8 Q AND WHAT DATE DID YOU TAKE THESE THREE ITEMS TO SLED?

9 A APRIL THE 21ST OF 2004.

10 Q AND HOW DO YOU KNOW THAT WAS YOU WHO DELIVERED THEM?

11 A THE OFFICIAL DOCUMENTS OF THIS CASE FILE WERE SIGNED
12 BY ME.

13 Q DO YOU HAVE WHO THEY WERE RECEIVED BY AT SLED?

14 A DENISE EARGLE.

15 Q IS HER NAME ON THOSE DOCUMENTS AS WELL?

16 A YES, SIR.

17 Q AND WHAT ITEMS ARE LISTED THAT HAS BEEN DELIVERED TO
18 SLED?

19 A IT WOULD BE SLED ITEM NUMBER 1, 2 AND 3.

20 Q AND IF YOU CAN JUST BRIEFLY, LIKE THE FIRST LINE OF
21 EACH DESCRIPTION.

22 A SLED ITEM NUMBER 1 IS INTEGRA SWAB, BLOOD SWAB. ITEM
23 2 IS THE BLUE ICEHOUSE XX LARGE SWEATER AND THE SLED
24 NUMBER 3 IS A PAIR OF NIKE AIR TENNIS SHOES.

25 Q AND BACK UP A LITTLE BIT, DOES THIS CASE HAVE A

1 SPECIFIC RICHLAND COUNTY SHERIFFS DEPARTMENT INCIDENT
2 NUMBER THAT IS SORT OF TIES IT ALL TOGETHER?

3 A IT HAD THE INCIDENT NUMBER, THE CASE NUMBER.

4 Q WHAT IS THAT?

5 A 04041318.

6 Q DID YOU AGAIN, DID YOU ASSIGN A DIFFERENT NUMBER TO
7 THAT, THIS EVIDENCE TO KNOW WHAT IT WAS?

8 A IT WAS ADDITIONAL EVIDENCE TURNED IN TO THE BAG, THE
9 BAG OF GREEN TYPE MATERIAL THAT WAS TURNED IN ALREADY BY
10 INVESTIGATOR BARNES.

11 Q AND WHAT NUMBER DID YOU GIVE IT IN YOUR EVIDENCE
12 ROOM?

13 A 04-1342.

14 Q AND FINALLY DID YOU HAVE A CHANCE TO RECEIVE ANY
15 EVIDENCE FROM INVESTIGATOR CHARLES EARLES?

16 A YES.

17 Q AND IT IS REGARDING THE SAME INCIDENT NUMBER?

18 A IT IS.

19 Q AND WHAT DID YOU RECEIVE FROM HIM?

20 A TWO ORAL SWABS FROM LOURDES ANTONIO.

21 Q AND WHAT DATE DID YOU RECEIVE THOSE?

22 A OCTOBER 12 OF 2004 AT 11:30 IN THE MORNING.

23 Q AND DID YOU RECEIVE THEM DIRECTLY FROM INVESTIGATOR
24 EARLES?

25 A I DID.

1 Q I GIVE YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT
2 NUMBER 5, IS THAT WHAT YOU RECEIVED FROM INVESTIGATOR
3 EARLES?

4 A YES SIR, IT IS.

5 Q HOW DO YOU KNOW THAT IS THE PACKAGE?

6 A MY EVIDENCE NUMBER IS ON THE TOP, THIS IS
7 INVESTIGATOR EARLES' LABEL FROM THE LAB. AND HE HAS GOT
8 THE ITEM THERE AND THE DATE STAMPED ON THE BACK.

9 Q OKAY. AND WAS THIS ITEM SECURE WHEN IT CAME INTO
10 YOUR EVIDENCE ROOM?

11 A YES, SIR.

12 Q WAS IT TAMPERED WITH OR CONTAMINATED IN ANY WAY WHILE
13 IT WAS IN YOUR EVIDENCE ROOM?

14 A NO, SIR.

15 Q AND IS IT IN THE SAME CONDITION NOW AS WHEN YOU
16 RECEIVED IT?

17 A YES, SIR.

18 Q I SEE A SEAL WHEN IT WAS GIVEN TO YOU BY INVESTIGATOR
19 EARLES, I KNOW THE SEAL HAS BEEN BROKEN NOW, WAS IT SEALED
20 WHEN HE GAVE IT TO YOU?

21 A YES, IT WAS.

22 Q OKAY. DID YOU HAVE A CHANCE TO SIGN THE EVIDENCE OUT
23 TO ANYONE?

24 A I DID.

25 Q WHO DID YOU SIGN IT OUT TO?

1 A DR. GREG AMICK.

2 Q AND WHAT DATE WAS THAT?

3 A OCTOBER 25TH OF 2004 AT 9:50 IN THE MORNING.

4 Q AND DID YOU RECEIVE IT BACK FROM HIM?

5 A I DID.

6 Q AND WHAT DATE DID YOU RECEIVE IT BACK?

7 A NOVEMBER THE 10TH OF 2004 AT 3:35 IN THE AFTERNOON.

8 Q BEFORE I GO ANY FURTHER, AND WHEN YOU RECEIVED IT
9 BACK FROM DR. GRAY AMICK, WAS IT IN, THE PACKAGE, WAS IT
10 IN THE SAME CONDITION AS WHEN YOU RECEIVED IT FROM
11 INVESTIGATOR EARLES?

12 A YES, IT JUST HAD A NEW SEAL ON THE BACK.

13 Q OKAY. AND LET ME GO BACK TO THIS EVIDENCE YOU TOOK
14 TO SLED. WHILE YOU WERE TAKING IT TO SLED DID, WAS IT
15 TAMPERED WITH IN ANY WAY OR EXPOSED TO ANY CONTAMINATION
16 ON THE WAY TO SLED?

17 A NO.

18 Q COMPROMISED IN ANY WAY?

19 A NO.

20 Q EVENTUALLY THE ITEMS YOU TOOK TO SLED CAME BACK TO
21 YOU?

22 A YES, SIR.

23 Q FIRST I WANT TO START OFF, WHEN YOU GO TO SLED TO
24 PICK UP ITEMS DO YOU RECEIVE ANY KIND OF RECEIPT OF WHAT
25 YOU PICK UP?

1 A I DO.

2 Q AND A LIST, THE ITEMS THAT YOU RECEIVED?

3 A YES.

4 Q THAT WE HAD A BUNCH OF SLED AGENTS IN HERE AND THEY
5 DESCRIBED HOW THEY PACKAGED THINGS IN DIFFERENT CONTAINERS
6 AND THEY TOLD US A COUPLE OF CONTAINERS THAT WE HAVE SOME
7 OF OUR EVIDENCE IN. DO YOU RECEIVE CONTAINERS OF
8 EVIDENCE?

9 A YES.

10 Q AND DO YOU RECEIVE SEVERAL DIFFERENT CASES ALL AT
11 ONCE?

12 A THAT IS TRUE.

13 Q ON AUGUST 31ST OF 2004 DID YOU HAVE A CHANCE TO GO TO
14 SLED AND PICK UP SOME EVIDENCE?

15 A I DID.

16 Q WAS ANY EVIDENCE IN THIS CASE IN THAT PICKUP?

17 A YES.

18 Q WHAT WAS THE CONTAINER NUMBER THAT YOU PICKED UP FROM
19 SLED THAT DAY?

20 A THE CONTAINER NUMBER WAS E206623.

21 Q DO YOU KNOW WHAT WAS CONTAINED IN THAT CONTAINER?

22 A A BLUE SWEATER, A PAIR OF NIKE TENNIS SHOES AND THEN
23 IT BROKE THE SHOES DOWN, LEFT SHOE AND RIGHT SHOE.

24 Q AND THEY PRINTED YOU OUT A RECEIPT AND YOU RECEIVED
25 THAT?

1 A YES, I DID.

2 Q AND DO YOU HAVE THAT RECEIPT WITH YOU?

3 A I DO.

4 Q AND DOES IT SHOW WHO YOU RECEIVED IT FROM?

5 A LAURA CORLEY.

6 Q AND WHAT DATE DID YOU RECEIVE THAT?

7 A AUGUST THE 31ST OF 2004.

8 Q AND BOTH OF YOUR SIGNATURES ON THERE SHOWING THAT SHE
9 GAVE IT TO YOU AND YOU RECEIVED IT?

10 A YES.

11 Q WAS IT IN A SECURE PACKAGE WHEN YOU RECEIVED IT BACK
12 FROM SLED?

13 A YES.

14 Q AND WHEN YOU TRANSPORTED IT BACK TO RICHLAND COUNTY
15 SHERIFFS DEPARTMENT DID YOU EXPOSE IT IN ANY WAY, ANY KIND
16 OF CONTAMINATION OR TAMPERING?

17 A NO.

18 Q SO, IT WAS SECURE AND UNALTERED FROM WHEN YOU PICKED
19 IT UP FROM SLED AND BROUGHT IT BACK TO YOUR EVIDENCE ROOM,
20 IT WAS IN THE SAME CONDITION AS IT WAS WHEN IT LEFT SLED?

21 A YES.

22 Q AND ONCE AGAIN, WHILE IT IS IN YOUR EVIDENCE ROOM IT
23 IS SECURE?

24 A IT IS.

25 Q AND OFFERING YOUR ATTENTION TO OCTOBER 20TH OF 2004,

1 DID YOU MAKE ANOTHER PICKUP FROM SLED?

2 A I DID.

3 Q AND WAS ANY EVIDENCE FROM THIS CASE PART OF THAT
4 PICKUP?

5 A YES, IT WAS.

6 Q AND WHAT CONTAINER NUMBER WAS PICKED UP BY YOU ON
7 THAT DAY?

8 A E218503.

9 Q AND WHAT WAS IN THAT CONTAINER THAT YOU PICKED UP?

10 A ONE BLOOD SWAB AND THEN SLED BROKE IT DOWN AND THEN
11 THERE WAS MORE SWABS.

12 Q AND JUST TO CLARIFY, THE BLOOD SWAB YOU ARE TALKING
13 ABOUT, THE FIRST BLOOD SWAB YOU MENTIONED, ITEM 1.

14 A YES, 1SR.

15 Q THAT WOULD BE THE EVIDENCE SWAB FROM STAN RICHARDS,
16 IT IS STATE'S EXHIBIT NUMBER 2?

17 A YES.

18 Q HOWEVER, THAT SECOND ITEM YOU PICKED UP, 3.2.1, YOU
19 NEVER DROPPED THAT OFF AT SLED?

20 A NO, I DID NOT.

21 Q BUT YOU PICKED IT UP FROM SLED?

22 A I DID.

23 Q AND IT WAS TRAVELING IN THE SAME PACKAGE, OR THE SAME
24 CONTAINER AS ITEM 1SR, THE BLOOD SWAB THAT STAN RICHARDS
25 TURNED INTO YOU?

1 A YES.

2 Q WERE BOTH ITEMS, WHEN YOU TRANSPORTED THEM BACK TO
3 YOUR EVIDENCE ROOM AT THE SHERIFFS DEPARTMENT, DID YOU
4 TAMPER WITH THEM IN ANY WAY?

5 A NO.

6 Q CONTAMINATE THEM, EXPOSE THEM TO ANY CONTAMINATION?

7 A NO.

8 Q WERE THEY IN A SECURE PACKAGE WHEN YOU RECEIVED THEM?

9 A YES.

10 Q WERE THEY IN A SECURED PACKAGE WHEN YOU PUT THEM IN
11 YOUR EVIDENCE ROOM?

12 A YES.

13 Q AND, AGAIN, FOR ALL OF THIS EVIDENCE THE EVIDENCE
14 ROOM IS SECURE?

15 A IT IS.

16 Q UNDER LOCK AND KEY?

17 A YES.

18 Q AND IF IT IS NOT LOCKED SOMEONE IS STANDING THERE TO
19 MAKE SURE NO ONE UNAUTHORIZED CAN GET IN?

20 A THAT'S CORRECT.

21 Q AND BRIEFLY, LET ME GO BACK ONE MOMENT. IF WE CAN GO
22 BACK TO THE EVIDENCE SHEET WHERE STAN RICHARDS SIGNED, THE
23 BLOOD SWAB AND THE SWEATER AND THE SHOES. I FAILED TO GO
24 INTO, DID YOU SIGN THAT OUT, ANY OF THOSE ITEMS OUT TO
25 ANYONE?

- 1 A YES, I DID.
- 2 Q WHICH ITEM DID YOU SIGN OUT?
- 3 A 1SR.
- 4 Q AND WHAT DATE DID YOU SIGN THAT OUT?
- 5 A OCTOBER THE 21ST OF 2004.
- 6 Q AND TO WHOM?
- 7 A DR. GRAY AMICK.
- 8 Q WHEN DID YOU RECEIVE THAT?
- 9 A NOVEMBER THE 10TH OF 2004.
- 10 Q DO YOU KNOW IF ANYTHING ELSE WAS TRAVELING WITH THAT
- 11 1SR WHEN YOU SIGNED OUT TO GRAY AMICK?
- 12 A IT WAS A HEAT SEALED POUCH THAT I RECEIVED FROM SLED
- 13 THE DAY BEFORE.
- 14 Q THE HEAT SEALED POUCH WOULD OF BEEN E218513, THE SLED
- 15 LAB NUMBER, I AM SORRY, THE CONTAINER NUMBER?
- 16 A 218513, YES.
- 17 Q AND THAT CONTAINED BOTH ITEM 1SR, THE BLOOD SWAB, THE
- 18 INTEGRA SWAB, BLOOD SWAB?
- 19 A YES.
- 20 Q AND ITEM 3.2.1 WAS CREATED AT SLED?
- 21 A YES.
- 22 Q THEY WERE IN A HEAT SEALED POUCH AND THEY TRAVELED TO
- 23 GRAY AMICK TOGETHER?
- 24 A YES, THEY DID.
- 25 Q AND HE RECEIVED IT, THEY WERE IN THE SAME CONDITION

1 AS WHEN YOU TOOK IT IN THE EVIDENCE ROOM?

2 A YES.

3 Q AND FINALLY, ON THE BACKSIDE, I JUST WANT TO CLARIFY
4 A LITTLE NOTE YOU MADE REAL QUICK. ON THE BACK OF
5 INVESTIGATOR EARLE'S EVIDENCE SHEET HE SUBMITTED TO YOU
6 FOR ORAL SWABS FROM LOURDES ANTONIO YOU HAVE A NOTE DOWN
7 AT THE BOTTOM, IF YOU COULD READ THAT NOTE.

8 A ON NOVEMBER 23RD OF 2004 AT 8:15 HOURS I OBSERVED
9 ITEM 1CE STABLED TO ITEM 1SR WHICH WAS RETURNED ON
10 NOVEMBER THE 10TH OF 2004. THE PAPERWORK WAS NOT
11 COMPLETED AT THE TIME BUT LATER COMPLETED BY INVESTIGATOR
12 AMICK AND INVESTIGATOR TRISH COLLINS ON 11/23/04.

13 Q SO, INVESTIGATOR GRAY AMICK CHECKED OUT THE BLOOD
14 SWAB AND TWO SWABS CREATED AT SLED ON OCTOBER THE 21ST OF
15 2004?

16 A YES.

17 Q AND THEN HE CHECKED OUT THESE SWABS FROM THE VICTIM,
18 ITEM 1CE ON OCTOBER 25TH OF 2004?

19 A YES.

20 Q AND ITEM 1CE HE GAVE BACK TO YOU ON NOVEMBER THE 10TH
21 AND 1SR HE GAVE YOU BACK WHICH IS 3.2.1 BECAUSE THEY WERE
22 TRAVELING TOGETHER ON OCTOBER, NOVEMBER THE 10TH AS WELL?

23 A YES.

24 Q AT THAT TIME HE STABLED 1CE WHICH IS THE ORAL SWABS
25 OF THE VICTIM TO 1SR WHICH IS THE BLOOD SWAB THAT HE

1 COLLECTED?

2 A I DON'T REMEMBER WHO STABLED THEM.

3 Q OKAY.

4 A THEY WERE STABLED.

5 Q DID YOU WRITE THAT ICE STABLED TO ITEM 1SR?

6 A I DID NOT WRITE THAT.

7 Q WHOSE INITIALS ARE THOSE?

8 A THAT IS TRISH COLLINS AND GRAY AMICK'S INITIALS.

9 Q I APOLOGIZE. I THOUGHT THAT WAS A T AND A G. YOU
10 RECEIVED BOTH OF THOSE ITEMS ON NOVEMBER THE 10TH OF 2004?

11 A YES.

12 Q SORRY FOR THE CONFUSION, NOTHING FURTHER.

13 THE COURT: CROSS-EXAMINE.

14 CROSS-EXAMINATION

15 BY MS. VAN GINHOVEN:

16 Q GOOD AFTERNOON, MS. GOFF.

17 A GOOD AFTERNOON.

18 Q ALL OF THESE ITEMS THAT WE HAVE TALKED ABOUT, AFTER
19 YOU RECEIVED THEM FROM GRAY AMICK WHO DID YOU RELEASE THEM
20 NEXT?

21 A TO SOLICITOR AARON JOPHLIN.

22 Q AND WHEN DID YOU DO THAT?

23 A JUNE 7TH OF 2005.

24 Q WE HAVE NO FURTHER QUESTIONS.

25 THE COURT: ANY REDIRECT?

1 MR. JOPHLIN: BRIEFLY, YOUR HONOR.

2 REDIRECT EXAMINATION

3 BY MR. JOPHLIN:

4 Q YOU RELEASED THEM TO ME ON JUNE 7TH OF 2005?

5 A YES, SIR.

6 Q WHAT WAS THE REASON FOR THAT?

7 A YOU HAD ASKED FOR A REPORT.

8 Q AND ON OR ABOUT THAT DATE WAS THERE A HEARING
9 PERTAINING TO THIS EVIDENCE?

10 A I AM NOT AWARE OF ONE.

11 Q OR DID YOU PARTICIPATE IN A HEARING AROUND THAT TIME?

12 A I DON'T REMEMBER.

13 Q OKAY. BUT ACCORDING TO YOUR RECORDS YOU RELEASED
14 THEM TO ME?

15 A YES.

16 Q AND THAT WAS AFTER YOU HAD ALREADY TOOK THEM OUT TO
17 DR. AMICK AND THEN CHECKED OUT THE MATERIAL TO TRISH
18 COLLINS?

19 A THAT IS CORRECT.

20 Q NOTHING FURTHER, YOUR HONOR.

21 THE COURT: ANY RECROSS?

22 MS. VAN GINHOVEN: NO, YOUR HONOR.

23 THE COURT: YOU MAY STEP DOWN.

24 MR. JOPHLIN: YOUR HONOR, MAY WE APPROACH?

25 THE COURT: SURE.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
2 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
3 JURY.)

4 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN, WE
5 WILL BREAK AT THIS TIME FOR THE AFTERNOON AND WE WILL
6 START BACK AT 9:30. BE HERE AT 9:30 AND WE WILL CONTINUE,
7 DON'T DISCUSS THE CASE OR READ ANYTHING OR WATCH ANYTHING
8 ABOUT IT AND WE WILL SEE YOU IN THE MORNING. EVERYONE
9 ELSE STAY SEATED, PLEASE.

10 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AND
11 THE TRIAL WILL CONTINUE AT 9:30 THE NEXT MORNING.)

12 THE COURT: ALL RIGHT, IS THE STATE READY?

13 MS. COOPER: YOUR HONOR, I HAVE HANDED UP A CERTIFIED
14 COPY, I HAVE A ORIGINAL RIGHT HERE, I GAVE YOU A COPY AS
15 WELL AS THE DEFENSE OF THE WEATHER CONDITIONS ON APRIL THE
16 13TH OF 2004, THIS IS THE SOUTHEAST REGIONAL CLIMATE
17 CENTER THAT, THEY KEEP A DATA OF ALL WEATHER CONDITIONS.
18 THE PURPOSE OF REQUESTING THAT THE COURT TAKE JUDICIAL
19 NOTICE OF THE WEATHER ON THAT DAY IS BECAUSE THERE IS
20 DISCREPANCIES BETWEEN WHAT THE VICTIM DESCRIBED AND WHAT
21 RON COWART DESCRIBED AS FAR AS WHAT THE WEATHER WAS LIKE.
22 AND THIS FORM SHOWS THAT IT WAS INDEED RAINY IN THE
23 MORNING, FOGGY IN THE MORNING BUT IN THE AFTERNOON THE
24 WEATHER CONDITIONS DID CLEAR UP. IT ALSO SHOWS THAT THE
25 WINDS WERE ABOUT 20 MILES PER HOUR AROUND 3:00 O'CLOCK IN

1 THE AFTERNOON WHEN THE VICTIM WAS WALKING THE BABY. AND
2 SO WE WOULD RESPECTFULLY REQUEST THAT THE COURT TAKE
3 JUDICIAL NOTICE OF THE WEATHER CONDITIONS ON APRIL 13TH OF
4 2004 AND THIS IS PURSUANT TO RULE 201 OF THE RULES OF
5 EVIDENCE.

6 THE COURT: MS. VAN GINHOVEN?

7 MS. VAN GINHOVEN: YOUR HONOR, I WOULD OBJECT TO
8 THAT. THIS IS MERELY A CERTIFIED COPY AND THERE HAS BEEN
9 NO FOUNDATION AS TO WHO IT COMES FROM OR WHAT, THE OTHER
10 PROBLEM IS READING THE DOCUMENT.

11 THE COURT: I DIDN'T HEAR WHAT YOU SAID.

12 MS. VAN GINHOVEN: READING THE DOCUMENT, IT IS
13 SOMEWHAT CONFUSING, I THINK THIS ALL GOES TO THE WEIGHT, I
14 THINK THE JURY HAS ALREADY HEARD THIS. IT IS CUMULATIVE,
15 CLEARLY ONE VICTIM SAYS ONE WAY, THAT BEING MS. ANTONIO.
16 MR. COWART SAW IT ANOTHER WAY BUT I AM NOT SURE HOW IT
17 COMES IN UNDER RULE 201. THEY ARE BASICALLY TRYING TO
18 PATCH SOME ISSUE THAT THEY HAVE WITH THEIR OWN WITNESSES
19 TESTIMONY. IT IS CUMULATIVE AND IT HAS ALREADY BEEN
20 TESTIFIED TO AND I STILL BELIVE THAT IT IS SOMETHING THAT
21 YOU COULD TAKE JUDICIAL NOTICE OF.

22 MS. COOPER: YOUR HONOR, THE SECOND PAGE OF THAT
23 DOCUMENT HAS A TABLE WHERE THE JURORS CAN READ THAT AND
24 UNDERSTAND WEATHER, THEY CALL THEM THE WEATHER TYPE ON THE
25 FRONT PAGE. IT SAYS ER, FG, RAFG, RADR, THAT IS ALL

1 WRITTEN IN THE LITTLE TABLE ON THE SECOND PAGE TO DESCRIBE
2 WHAT THOSE CONDITIONS ARE. IF IT IS NOT PRESENT THAT
3 MEANS THAT THOSE CONDITIONS ARE NOT PRESENT. ALSO, YOUR
4 HONOR, THERE IS TIME TO DETERMINE WHAT TIME THESE
5 CONDITIONS WERE PRESENT. AND, YOUR HONOR, THIS WOULD HELP
6 ASSIST THE JURY IN DETERMINING WHAT THE TRUTH IS THEN IT
7 IS RELEVANT.

8 THE COURT: ALL RIGHT, MS. VAN GINHOVEN.

9 MS. VAN GINHOVEN: YES, YOUR HONOR, I HAVE A COUPLE
10 OF ARGUMENTS. ONE, I DON'T THINK IT FALLS UNDER RULE 201,
11 IT IS NOT A FACT GENERALLY DONE IN A TERRITORIAL
12 JURISDICTION OF A TRIAL. AND I DON'T BELIEVE THAT ANYONE
13 IS GOING TO REMEMBER SPECIFICALLY ON APRIL THE 13TH OF
14 2004 WHAT THE WEATHER WAS LIKE OR CAPABLE OF ACCURATE
15 DETERMINATION BY RESORT ACCURACY IS NOT REASONABLY
16 QUESTIONED. CLEARLY, THIS IS MERELY A CERTIFIED COPY,
17 THERE HAS BEEN NO FOUNDATION AS TO WHERE IT CAME FROM, WHO
18 IT CAME FROM. IN THE OPENING REMARKS THAT YOU MADE TO THE
19 JURY AND I BELIEVE IN YOUR JURY CHARGE YOU ARE NOT THE
20 JUDGE OF THE FACTS BUT THE JUDGE OF THE LAW. AND IF YOU
21 TAKE JUDICIAL NOTICE THAT IN FACT THAT IT WAS CLEAR THAT
22 DAY YOUR COMMENT IS BASICALLY BOLSTERING THAT MS. ANTONIO
23 SAYS IT IS CLEAR THAT DAY. WHAT THEY COULD OF DONE WITH
24 THIS DOCUMENT IS THAT THEY COULD OF IMPEACHED MR. COWART
25 YESTERDAY. I FEEL LIKE IT WOULD BE IMPROPER AND HIGHLY

1 PREJUDICIAL TO ALLOW, FOR YOU TO TAKE JUDICIAL NOTICE OF
2 THE WEATHER WHICH IS PART OF THE CONTENTION OF THIS TRIAL
3 TO THE ID OF MR. HAYWARD. I JUST THINK IT IS HIGHLY
4 PREJUDICIAL, I THINK IT FALLS IN RULE 201. AND I DO
5 BELIEVE IT WOULD BE COMMENTING ON FACTS AND THUS
6 BOLSTERING THE TESTIMONY OF A VICTIM WHEN THEY COULD OF
7 HANDLED THIS IN A DIFFERENT MANNER BY IMPEACHING THEIR
8 WITNESS THAT THEY CALLED YESTERDAY.

9 THE COURT: ANYTHING FURTHER?

10 MS. COOPER: YOUR HONOR, AS TO RESPOND TO THE
11 CONTENTS OF THE RULE, UNDER RULE 201(B) AND THEN
12 SUBSECTION 2(B), JUDICIALLY NOTED, NOT SUBJECT TO
13 REASONABLE DISPUTE IN THAT IT IS EITHER ONE, GENERALLY
14 KNOWN WITHIN THE TERRITORIAL JURISDICTION OF THE TRIAL
15 COURT. OR TWO, IS WHICH WHAT WE BASE OUR REQUEST ON, YOUR
16 HONOR, CAPABLE OF ACCURATE AND READY DETERMINATION BY
17 RESORT TO SOURCES WHOSE ACCURACTY CANNOT BE REASONABLY BE
18 QUESTIONED.

19 THE COURT: YOU HAVE GOT A FACTUAL DISPUTE, YOU HAVE
20 GOT ONE WITNESS SAYING IT WAS CLEAR AND BREEZY OR WINDY.
21 AND YOU HAVE GOT ANOTHER WITNESS SAYING IT WAS DARK AND
22 OVERCAST AND IT WAS RAINY, RIGHT?

23 MS. COOPER: 'YES, SIR.

24 THE COURT: AND YOU ARE WANTING ME TO TAKE JUDICIAL
25 NOTICE THAT IT WAS CLEAR AND BREEZY.

1 MS. COOPER: IN THE AFTERNOON AND RAINY IN THE
2 MORNING.

3 THE COURT: YOU ARE GOING TO HAVE TO BRING SOMEBODY
4 IN TO ESTABLISH THAT, I AM NOT GOING TO TAKE JUDICIAL
5 NOTICE OF THAT.

6 MS. COOPER: OKAY, YOUR HONOR, WE WILL ADD AN
7 INDIVIDUAL ASSIGNED TO THE DOCUMENT TO OUR WITNESS LIST.

8 THE COURT: ALL RIGHT.

9 MS. COOPER: AND HE IS ON STANDBY.

10 THE COURT: WHAT ELSE DO WE HAVE.

11 MS. COOPER: ANOTHER MATTER, YOUR HONOR, THE LAST
12 QUESTION OR THE ONLY QUESTION THAT THE DEFENSE ASKED TENA
13 GOFF WHO WAS THE CUSTODIAN RECORDS AT THE RICHLAND COUNTY
14 EVIDENCE ROOM. THE QUESTION THEY ASKED HER WAS WHEN WAS
15 THE EVIDENCE RELEASED TO THE SOLICITORS OFFICE OR
16 SOMETHING IN THAT NATURE AND SHE ANSWERED JUNE 7TH OF
17 2005. THAT WAS AFTER THE RESULTS OF THE DNA EXAMINATION
18 WAS ALREADY REPORTED. THE STATE FEELS THAT IS SOME SORT
19 OF INNUENDOED BY THE STATE, BY THE DEFENSE TO THE JURY
20 THAT THE STATE HAD THIS EVIDENCE IN THEIR CUSTODY AND THAT
21 THAT IS IMPROPER. WE WOULD LIKE TO PUT JIM TRUITT ON THE
22 STAND WHO IS PREPARED TO TESTIFY THAT ALL OF THIS EVIDENCE
23 HAS BEEN IN HIS POSSESSION SINCE JUNE 7TH OF 2005 AND THAT
24 WAS RELEASED TO OUR OFFICE FOR TRIAL ON MARCH 8TH OF 2005
25 WHICH WAS LAST WEDNESDAY. THEY OPENED THE DOOR, IN OTHER

1 WORDS YOUR HONOR, AND I BELIEVE WE ARE ENTITLED TO EXPLAIN
2 WHERE THE EVIDENCE HAS BEEN SINCE JUNE 7TH OF 2005.

3 THE COURT: HOW DID HE COME INTO POSSESSION OF IT.

4 MS. COOPER: DURING THE COURT PROCEEDING, YOUR HONOR,
5 ANY TIME EVIDENCE IS ENTERED THROUGH THE EVIDENCE, THE
6 CLERK OF COURT TAKES POSSESSION OF IT. HE HAS A DOCUMENT
7 WITH THE COURT REPORTERS NAME WHICH IS KAREN TRACY AND
8 THEN AS A RESULT OF THAT THE EVIDENCE HAD REMAINED IN THE
9 CUSTODY OF THE CLERK'S OFFICE AND HE IS PREPARED TO
10 TESTIFY AS TO THE PARTICULAR ITEMS OF EVIDENCE THAT HAS
11 BEEN IN HIS CUSTODY SINCE THAT HEARING ON JUNE 7TH OF
12 2005.

13 THE COURT: ALL RIGHT, MS. VAN GINHOVEN.

14 MS. VAN GINHOVEN: YOUR HONOR, THE REASON THAT I HAVE
15 THE QUESTION IS BECAUSE ON ALL THE DOCUMENTS, WE DID HAVE
16 A HEARING IN JUNE OF 2005. THEY WERE TRYING TO GET THE
17 TESTIMONY OF TENA GOFF, THAT THEY COULD POSSIBLE USE THAT
18 TESTIMONY AND THAT OF COURSE WAS OBJECTED TO. IN ANY
19 EVENT, CLEARLY ON THE BACK OF ALL OF THE EVIDENCE FORMS,
20 THE NEXT PERSON, WHAT HAPPENS IN THE CHAIN, I BELIEVE THE
21 CHAIN WOULD BE COMPLETE, IT WAS RELEASED FROM TENA GOFF TO
22 AARON JOPHLIN. I WAS NOT TRYING TO, THAT IS THE CHAIN,
23 WHERE IT WENT AFTER THAT I GUESS MR. TRUITT I GUESS COULD
24 IN FACT TESTIFY TO THAT. HE IS NOT ANYWHERE ON THE CHAIN
25 EXCEPT FOR ON THE COURT REPORTER AND I AM LOOKING FOR THAT

1 DOCUMENT. I DON'T SEE MR. TRUITT'S NAME ON HERE ANYWHERE.

2 MS. COOPER: WE WILL ESTABLISH THE FOUNDATION.

3 THE COURT: THAT IS FINE, HE CAN ESTABLISH THAT IT
4 HAS BEEN IN HIS CUSTODY AND CONTROL SINCE OF JUNE,
5 WHATEVER, OF '05.

6 MS. COOPER: THANK YOU, YOUR HONOR.

7 THE COURT: ANYTHING FURTHER?

8 MS. COOPER: NO, SIR. I AM SORRY, YOUR HONOR, THERE
9 IS ONE MORE MATTER. ONE OF OUR WITNESSES THIS MORNING
10 WILL BE INVESTIGATOR ERIC BARNES AND WE WOULD MAKE A
11 MOTION IN LIMINE TO, FOR THE COURT TO INSTRUCT THE DEFENSE
12 TO NOT QUESTION THE INVESTIGATOR CONCERNING THE
13 INDICTMENTS THAT WERE PRESENTED TO THE GRAND JURY AFTER
14 THE DEFENDANT WAS WILLING TO PLEAD GUILTY TO THE ORIGINAL
15 PLEA OFFER. I BELIEVE THAT WOULD BE IN VIOLATION OF RULE
16 408 AND 410 CONCERNING NEGOTIATIONS BETWEEN PARTIES PRIOR
17 TO TRIAL. AND I JUST DON'T WANT THE JURY TO FEEL THAT
18 THERE HAS BEEN ANY VINDICTIVE PROSECUTION ON THE PART OF
19 THE STATE, THE STATE IS ENTITLED TO GO FORWARD ON ALL
20 CHARGES THAT THE FACTS SUPPORT. AND SO WE RESPECTFULLY
21 REQUEST TO INSTRUCT THE DEFENSE NOT TO GO INTO THE PLEA
22 NEGOTIATIONS FOR MATTERS CONCERNING NEGOTIATIONS BETWEEN
23 THE PARTIES.

24 MS. VAN GINHOVEN: YOUR HONOR, I FEEL LIKE I AM GOING
25 TO HAVE TO PUT ON THE RECORD EVERYTHING THAT DID HAPPEN.

1 I HAVE NO INTENTION OF ASKING INVESTIGATOR BARNES ABOUT
2 PLEA NEGOTIATIONS. I DO HAVE THE INTENTION OF ASKING HIM
3 WHAT HE CHARGED OUR CLIENT WITH WHICH IS COMPLETELY
4 RELEVANT ON WHAT CHARGES HE BROUGHT AGAINST MR. HAYWARD.
5 AND THIS IS PART OF THE SITUATION IN THIS CASE. OF
6 COURSE, MR. HAYWARD WAS ARRESTED APRIL 14TH OF 2004, HIS
7 CASE WAS PENDING. I DID RECEIVE A PLEA OFFER ON JUNE 2ND
8 OF 2005, THAT OFFER WAS REVOKED. THEY DID DIRECTLY
9 PRESENT AN INDICTMENT POINTING AND PRESENTING A FIREARM ON
10 APRIL 20TH OF 2005 ALONG INDICTING HIM ON WARRANTS THAT
11 HAD BEEN SERVED UPON HIM. THAT MEANS BURGLARY, FIRST
12 DEGREE, PETTY LARCENY, ASSAULT AND BATTERY OF A HIGH AND
13 AGGRAVATED NATURE AND POSSESSION OF MARIJUANA. IN JULY,
14 JULY 20TH OF '05 HE RECEIVED ANOTHER OFFER AND WERE TOLD
15 THEN IN FRONT OF THE HONORABLE JUDGE GOODE, THE HONORABLE
16 KENNETH GOODE, I BELIEVE JUDGE GOODE THAT IF WE DID NOT
17 ACCEPT THE PLEA BY THE END OF THE DAY THAT THEY WERE GOING
18 TO SERVE THREE DIRECTLY PRESENTED INDICTMENTS ON HIM.
19 THOSE BEING THE INDICTMENTS OF KIDNAPPING, ASSAULT AND
20 BATTERY WITH INTENT TO KILL AND THE POSSESSION OF A WEAPON
21 BY A CONVICTED FELON. WE AGAIN REJECTED AN OFFER, JUDGE
22 GOODE GAVE US UNTIL THE FOLLOWING MORNING TO THINK ABOUT
23 IT VERSUS MAKING HIM DECIDE THAT AFTERNOON. THEN JANUARY
24 THE 9TH OF 2006 WHEN I FILED THE MOTION FOR A SPEEDY TRIAL
25 AT WHICH TIME YOUR HONOR TOLD ME THAT IF THIS CASE WASN'T

1 CALLED BY MARCH 15TH THEN I COULD REFILE MY MOTION WITHOUT
2 PREJUDICE. JUST LAY OUT THE FACTS OF THIS CASE, MR.
3 HAYWARD BY INVESTIGATOR BARNES WAS CHARGED WITH BURGLARY
4 FIRST DEGREE, PETTY LARCENY, ASSAULT AND BATTERY WITH A
5 HIGH AND AGGRAVATED NATURE AND POSSESSION OF MARIJUANA,
6 THREE WARRANTS. IN HIS INVESTIGATION THAT IS WHAT HE
7 ADVISED MY CLIENT THAT HE WAS CHARGING HIM WITH. I DO
8 BELIEVE THAT I CAN GO INTO THOSE FACTS AND THAT IS THE
9 FACT THAT I INTEND TO GO INTO. BUT FOR PURPOSES OF THE
10 RECORD I WOULD LIKE TO PUT ON THE RECORD THAT THE
11 GOVERNMENT, THE SOLICITORS OFFICE DID DIRECTLY PRESENT HIM
12 ON INDICTMENT OF POINTING AND PRESENTING A FIREARM APRIL
13 20TH OF 2005. THEN IN MAY OR JUNE, I BELIEVE IT WAS JUNE,
14 THAT WAS THE ISSUE WITH THE GRAND JURY, THEY DID DIRECTLY
15 PRESENT AN INDICTMENT OF KIDNAPPING, ASSAULT AND BATTERY
16 WITH INTENT TO KILL AND POSSESSION OF A WEAPON BY A
17 CONVICTED FELONY. MY UNDERSTANDING OF THIS TRIAL, OF
18 COURSE, THEY WERE NOT GOING TO GO FORWARD ON THE ASSAULT
19 AND BATTERY OF A HIGH AND AGGRAVATED NATURE TO WHICH
20 INVESTIGATOR BARNES CHARGED HIM WITH AND SAID THEY WERE
21 GOING TO GO FORWARD ON THE ASSAULT AND BATTERY WITH INTENT
22 TO KILL. THE POSSESSION CHARGE WAS QUASHED IN THE
23 BEGINNING OF THIS HEARING. I HAVE NO INTENTION OF ASKING
24 MR. BARNES ABOUT PLEA NEGOTIATIONS AND ABOUT THE DIRECTED
25 PRESENTMENT OF INDICTMENTS. HOWEVER, I DO BELIEVE THAT IT

1 IS RELEVANT, THAT HE INFORMED MY CLIENT OF WHAT THE
2 CHARGES WERE GOING TO BE, THOSE ARE THE CHARGES THAT HE
3 WAS CHARGED WITH THAT HE HAD FROM APRIL THE 14TH OF 2004.
4 THESE OTHER DIRECTED PRESENTED INDICTMENTS DID NOT COME UP
5 UNTIL 2005.

6 THE COURT: SOLICITOR, DO YOU WANT TO RESPOND?

7 MS. COOPER: YOUR HONOR, AGAIN, THIS IS ALL DEALING
8 WITH NEGOTIATIONS BETWEEN THE PARTIES. AND THE FACT THAT
9 THE STATE ELECTED TO GO FORWARD ON ALL CHARGES THAT ARE
10 PERTAINING TO THIS OFFENSE OR THIS SINGLE INCIDENT ON
11 APRIL THE 13TH OF 2004, SHE IS TRYING TO INJECT A SORT OF
12 INNUENDO THAT THE STATE IS VINDICTIVELY PROSECUTING THE
13 DEFENDANT AND I THINK THAT IS INAPPROPRIATE. ON THE OTHER
14 HAND SHE IS PERMITTED TO GO INTO THE DIFFERENT TIMES HE
15 WAS CHARGED EITHER BY WARRANT OR BY GRAND JURY PRESENTMENT
16 THEN I BELIEVE THAT INVESTIGATOR BARNES CAN EXPLAIN WHY IT
17 IS THAT HE PRESENTED THEM.

18 MS. VAN GINHOVEN: YOUR HONOR, AGAIN, I DON'T THINK
19 IT IS RELEVANT TO THIS CASE WHAT WAS DIRECTLY PRESENTED
20 AND WHAT WAS NOT. HOWEVER, THE STATE CAN DIRECTLY PRESENT
21 WHATEVER THEY WANT TO. THE INVESTIGATIVE REPORT, IT SAYS,
22 UPON ESCORTING HIM INTO THE TRANSPORT VAN, INVESTIGATOR
23 BARNES' INVESTIGATIVE REPORT. OFFICER ADVISED HIM THAT HE
24 WAS BEING CHARGED WITH BURGLARY FIRST, AGGRAVATED ASSAULT,
25 PETTY LARCENY AND SIMPLE POSSESSION OF MARIJUANA. THAT IS

1 ALL I INTEND TO ASK INVESTIGATOR BARNES, WHAT HE WAS
2 CHARGED WITH AND THEN IT ALSO GOES INTO THE OTHER PART OF
3 THE STATEMENT THAT THEY ARE TRYING TO GET IN. AND IT IS
4 COMPLETELY RELEVANT. AND, YOUR HONOR, I WILL HAND UP THE
5 INVESTIGATIVE REPORT IF YOU WOULD LIKE TO SEE IT BUT IT IS
6 COMPLETELY RELEVANT OF THEM TRYING TO GET IN OTHER
7 STATEMENTS THAT WE HAD A JACKSON VERSUS DENNO. I DON'T
8 PLAN ON ASKING HIM ABOUT THE DIRECTED PRESENTING
9 INDICTMENTS, JUST WHAT HE CHARGED MY CLIENT WITH.

10 THE COURT: THE JURY IS NOT GOING TO UNDERSTAND ANY
11 DIFFERENCE IN A DIRECT INDICTMENT AND A WARRANT, THEY ARE
12 NOT GOING TO UNDERSTAND ALL OF THAT. THOSE AREN'T MATTERS
13 THAT WE NEED TO BE CONCERNED WITH. WHAT EVERYBODY OUGHT
14 TO BE CONCERNED WITH IS WHAT ARE THE CHARGES BEING
15 PRESENTED TO THIS JURY AND WHETHER THE STATE HAS PROVEN
16 THAT CHARGE. AND FOR THAT REASON THE MOTION IS GRANTED.

17 MR. JOPHLIN: THANK YOU, YOUR HONOR. AND ONE MORE
18 BRIEF MATTER, IN PRETRIAL MATTERS DEALT WITH ON MONDAY
19 YOUR HONOR RULED THAT THE STATE IS NOT TO BRING OUT ANY
20 TESTIMONY REGARDING ERIC BARNES, DISCUSSIONS WITH THE
21 DEFENDANT REGARDING MARIJUANA USE, MARIJUANA USE, ANYTHING
22 OF THAT SORT. HOWEVER, THIS IS REGARDING THE CHARGE OF
23 SIMPLE POSSESSION OF MARIJUANA, IN HIS CASE SUMMARY HE
24 DOES STATE THAT HE HAS POSSESSION OF A SMALL BAG OF GREEN
25 LEAF MATERIAL AND THAT HE ADMITTED IT WAS HIS. THE STATE

1 JUST WANTS TO CLARIFY THAT WE DO SEEK TO GO INTO THAT
2 SINGLE STATEMENT IN REGARDS TO SIMPLE POSSESSION OF
3 MARIJUANA CHARGE, NOTHING FURTHER, NOTHING REGARDING THE
4 USE OR ABUSE, MERELY THAT THE DEFENDANT ADMITTED IT WAS
5 HIS GREEN LEAF MATERIAL WAS FOUND.

6 THE COURT: AS I RECALL WHEN I WAS BEING SHOWN AND
7 LOOKING AT ON MONDAY WE WERE TALKING ABOUT IN THE PAST
8 THAT HE HAS USED AND THINGS OF THIS NATURE AND THAT IS NOT
9 RELEVANT. THE STATEMENT AS TO WHAT WAS SEIZED FROM HIM AT
10 THE TIME OF THE ARREST WOULD BE RELEVANT.

11 MR. JOPHLIN: I JUST WANTED TO CLARIFY BEFORE I GET
12 THERE, THANK YOU, YOUR HONOR.

13 THE COURT: AND, MS. VAN GINHOVEN, I KNOW YOU SAID
14 YOU HAD A COUPLE OF THINGS.

15 MS. VAN GINHOVEN: WELL, YOUR HONOR, I JUST, I
16 UNDERSTAND YOUR RULING. I JUST, FOR THE RECORD, CAN I
17 JUST READ FROM THE INVESTIGATIVE REPORT?

18 THE COURT: SURE.

19 MS. VAN GINHOVEN: IT IS DESCRIBING INVESTIGATOR
20 BARNES IS SPEAKING WITH MY CLIENT, DESCRIBING ABOUT HIM
21 TALKING ABOUT HIS PAST, ABOUT HIS MANNERS DURING THIS
22 STATEMENT. THIS IS THE PART I THINK IS RELEVANT TO YOUR
23 PRIOR RULING. OFFICER PLACED HIM BACK IN THE DETENTION
24 CELL AND FINISHED AND CALLED FOR TRANSPORT. UPON ESCORTING
25 HIM INTO THE TRANSPORT VAN OFFICER ADVISED HIM THAT HE WAS

1 BEING CHARGED WITH BURGLARY FIRST, AGGRAVATED ASSAULT,
2 PETTY LARCENY AND SIMPLE POSSESSION OF MARIJUANA. HE
3 ACKNOWLEDGED IT AND WANTED TO KNOW WHY THAT HE WAS NOT
4 ALLOWED TO SMOKE. AND THE AGREEMENT WAS THAT IF HE TOLD
5 THE TRUTH THEN WE WOULD ALLOW HIM TO SMOKE. BUT HE WASN'T
6 BEING TRUTHFUL ABOUT EVEN THE BASIC FACTS. HE ANSWERED BY
7 SAYING, YOU HAVE GOT EVERYTHING YOU NEED, YOU HAVE GOT MY
8 SHOES AND CLOTHES AND EVERYTHING. HE SAID, THE SHERIFFS
9 DEPARTMENT CAN DO OUR JOB OR WORDS TO THAT AFFECT.
10 INVESTIGATOR RICHARDS, THAT HE FOUND ON THE SUSPECTS SHOES
11 THAT HE BELIEVES WOULD COME BACK TO THE VICTIM.
12 ADDITIONALLY, THE TREADS DO APPEAR TO MATCH. THAT IS THE
13 PORTION THAT I JUST BELIEVE, AFTER BEING TOLD THAT HE WAS
14 BEING ARRESTED THEN HE GAVE THE ANSWERS AND I THINK I NEED
15 TO BE ABLE TO GO INTO THAT TO EXPLAIN WHY HE GAVE THE
16 STATEMENTS THAT HE GAVE.

17 THE COURT: I HAVEN'T KEPT YOU FROM GOING INTO THAT.
18 YOU CAN TALK ABOUT WHAT WAS DISCUSSED, YES. MY
19 UNDERSTANDING IS THAT THE STATE IS OBJECTING TO ANY
20 QUESTIONING THAT YOU, YOU WOULD SAY SOMETHING TO THE
21 EFFECT, THIS IS WHAT YOU TALK ABOUT WITH THE DEFENDANT AT
22 THAT POINT AND TIME AND NOW YOU CHARGE HIM WITH THESE
23 ADDITIONAL CHARGES. AND THAT IS WHAT I AM NOT GOING TO
24 PERMIT.

25 MS. VAN GINHOVEN: AND I AM NOT GOING TO DO THAT.

1 THE COURT: YOU CAN GO INTO WHAT WAS TALKED ABOUT AT
2 THAT POINT AND TIME.

3 MS. VAN GINHOVEN: OKAY, I CAN DO THAT. THOSE BASIC
4 THINGS. OKAY. YOUR HONOR, WE DON'T HAVE ANYTHING ELSE.

5 THE COURT: ANYTHING ELSE FROM THE STATE?

6 MS. COOPER: JUST WANTING TO LET THE THE DEFENSE KNOW
7 WE ARE GOING TO CALL JIM TRUITT UP FOR OUR FIRST WITNESS.

8 THE COURT: LET'S GET THE JURY IN, PLEASE.

9 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
10 APPROXIMATELY 10:00 A.M.)

11 THE COURT: LADIES AND GENTLEMEN, WE WILL CONTINUE.
12 SOLICITOR, CALL YOUR NEXT WITNESS, PLEASE.

13 MS. COOPER: THE STATE CALLS JIM TRUITT TO THE STAND.

14 JIM TRUITT, AFTER BEING DULY SWORN, TESTIFIED AS
15 FOLLOWS:

16 DIRECT EXAMINATION

17 BY MS. COOPER:

18 Q MR. TRUITT, ~~WILL YOU~~ TELL THE JURY WHERE YOU ARE
19 EMPLOYED?

20 A RICHLAND COUNTY CLERK OF COURTS OFFICE.

21 Q AND WHAT IS THE CLERK OF COURTS OFFICE?

22 A THE CLERK OF COURTS OFFICE IS RESPONSIBLE FOR ALL THE
23 EVIDENCE HANDLED IN A COURTROOM TRIAL AND THEY ARE A COURT
24 OF RECORD. SO ALL THE RECORDS ARE KEPT IN THE CLERK OF
25 COURTS OFFICE.

1 Q SO, FOR INSTANCE IF I WAS A CIVIL LAWYER AND I WANTED
2 TO FILE A LAWSUIT WHERE WOULD I GO?

3 A TO THE CLERK OF COURTS OFFICE.

4 Q AND COULD YOU TELL THE JURY A LITTLE BIT ABOUT WHAT
5 YOUR PERSONAL DUTIES ARE AND YOUR TITLE IS WITH THE CLERKS
6 OFFICE?

7 A MY TITLE IS ADMINISTRATIVE DEPUTY CLERK, I HANDLE
8 EVIDENCE, CUSTODIAN, I AM SUPERVISOR OF THE BAILIFFS, I DO
9 PROPERTY DAMAGE, ARBITRATION. THAT IS ABOUT IT.

10 Q AND WHERE IS YOUR OFFICE LOCATED?

11 A SECOND FLOOR OF THIS BUILDING.

12 Q DESCRIBE FOR THE JURY HOW IT IS YOU RECEIVE EVIDENCE?

13 A WELL, MYSELF AND I ALSO WORK THE COURT ROOMS DURING
14 TRIALS AND THEN WE HAVE FOUR OTHER DEPUTY CLERKS THAT WORK
15 THE TRIALS AND ANY EVIDENCE THAT IS TURNED OVER FROM THEM
16 TO ME OR TO MYSELF.

17 Q AND SO FOR AN EXAMPLE, THE CLERK IN THIS COURT ROOM,
18 SHE WOULD PRESENT ALL OF THIS EVIDENCE TO YOU, IS THAT
19 CORRECT?

20 A ALL EVIDENCE WOULD BE TURNED OVER TO ME.

21 Q OKAY. I AM GOING TO BRING YOUR ATTENTION TO EVIDENCE
22 INVOLVING STATE VERSUS JERENE HAYWARD. DO YOU HAVE SOME
23 DOCUMENTATION CONCERNING THIS CASE?

24 A I DO.

25 Q CAN YOU EXPLAIN FOR THE JURY IF YOU EVER CAME INTO

1 CONTACT WITH ANY EVIDENCE IN THIS CASE?

2 A YES, WE KEEP AN EVIDENCE SHEET IN ALL CRIMINAL,
3 CIVIL, FAMILY COURT CASES AND I HAVE A SHEET HERE THAT I
4 HAVE RECEIVED EVIDENCE ON JUNE THE 7TH OF 2005.

5 Q COULD YOU EXPLAIN WHAT ITEMS OF EVIDENCE THAT YOU
6 RECEIVED IN THIS CASE?

7 A I HAVE ITEMS 1 THROUGH 5 WHICH WOULD BE NUMBER 1
8 WOULD BE A GRAY MATERIAL; 2, BLOOD SWABS; 3, A SWEATER; 4,
9 SHOES AND 5, ORAL SWABS.

10 Q AND YOU INDICATED THE DATE WAS JUNE THE 7TH OF 2005?

11 A RIGHT.

12 Q AND WHAT WOULD HAVE OCCURRED FOR YOU TO RECEIVE THIS
13 EVIDENCE ON JUNE THE 7TH OF 2005?

14 A HEARING ANY PRETRIAL HEARINGS, ANY MOTIONS, ANYTHING
15 THAT WOULD BE MARKED AS ID IN THE COURSE OF AN EXHIBIT.

16 Q AND WHERE HAS THIS EVIDENCE REMAINED SINCE JUNE 7TH
17 OF 2005 AND HOW LONG HAS IT REMAINED IN YOUR CUSTODY?

18 A EVER SINCE THAT DAY IT WOULD BE IN THE CLERK OF
19 COURT'S EVIDENCE ROOM WHICH IS UNDER LOCK AND KEY AND
20 MOTION DETECTORS.

21 Q AND WHAT DATE WAS IT RELEASED FOR PURPOSES OF THIS
22 TRIAL?

23 A FOR THIS TRIAL IT WAS RECEIVED BY SOLICITOR AARON
24 JOPHLIN ON MARCH THE 8TH OF '06.

25 Q LAST WEEK?

1 A YES, MA'AM.

2 Q THANK YOU, NO FURTHER QUESTIONS.

3 THE COURT: CROSS-EXAMINE.

4 CROSS-EXAMINATION

5 BY MS. VAN GINHOVEN:

6 Q GOOD MORNING, MR. TRUITT.

7 A GOOD MORNING.

8 Q I HAVE NO QUESTIONS.

9 THE COURT: YOU MAY STEP DOWN. CALL YOUR NEXT
10 WITNESS, SOLICITOR.

11 MR. JOPHLIN: THE STATE CALLS INVESTIGATOR TRISHA
12 COLLINS.

13 DIRECT EXAMINATION

14 BY MR. JOPHLIN:

15 Q GOOD MORNING, INVESTIGATOR COLLINS?

16 A GOOD MORNING.

17 Q WHERE ARE YOU EMPLOYED?

18 A AT RICHLAND COUNTY SHERIFFS OFFICE.

19 Q AND HOW LONG HAVE YOU BEEN EMPLOYEE THERE?

20 A A LITTLE OVER 7 YEARS.

21 Q AND WHAT ARE YOUR DUTIES?

22 A CURRENTLY MY PRIMARY DUTY IS THE EXAMINATION AND
23 COMPARISON OF LATENT FINGERPRINTS.

24 Q AND DID YOU HAVE A PRIOR JOB DESCRIPTION BACK IN SAY,
25 APRIL OF 2004?

1 A I DID, I WAS A CRIME SCENE INVESTIGATOR, I STILL AM
2 BUT I SPECIALIZE IN LATENT FINGERPRINTS NOW.

3 Q AND DID YOU SPECIALIZE IN ANYTHING ELSE PRIOR TO
4 THAT?

5 A WELL, MY JOB DUTIES ARE A LOT OF THINGS. WE DID
6 MARIJUANA TESTING, WE DID PROCESSING OF EVIDENCE COLLECTED
7 BY OTHER OFFICERS, WE WORK CRIME SCENES, PHOTOGRAPH CRIME
8 SCENES, DID A LITTLE BIT OF EVERYTHING.

9 Q AND WHAT IS YOUR EDUCATIONAL BACKGROUND IN
10 SPECIFICALLY TO FINGERPRINT ANALYSIS OR LATENT PRINT
11 ANALYSIS AND MARIJUANA ANALYSIS.

12 A I HAVE BEEN TRAINED BY SLED IN MARIJUANA ANALYSIS, I
13 WAS INITIALLY CERTIFIED BY SLED TO DETECT MARIJUANA. I
14 HAVE SINCE BEEN RECERTIFIED BY ONE OF OUR OWN CHEMIST
15 WHICH WAS FORMALLY A SLED CHEMIST. JUST PRETTY MUCH THE
16 SAME TRAINING, JUST RECERTIFICATION. LOTS OF TEST IS
17 BEING PERFORMED. AS FAR AS FINGERPRINTS I HAVE HAD A
18 NUMBER OF FINGERPRINT CLASSES INCLUDING AT THE SOUTH
19 CAROLINA CRIMINAL JUSTICE ACADEMY, I HAVE HAD SOME OUTSIDE
20 CLASSES TAUGHT BY SPECIALIST FROM MISSISSIPPI CRIME LAB
21 AND OTHER AGENCIES AROUND THE COUNTRY.

22 MR. JOPHLIN: AND, YOUR HONOR, AT THIS TIME WE WOULD
23 OFFER INVESTIGATOR TRISHA COLLINS AS AN EXPERT IN LATENT
24 PRINT ANALYSIS AND IN MARIJUANA ANALYSIS.

25 THE COURT: ANY OBJECTION, ANY CROSS-EXAMINATION?

1 MS. MOBLEY: NO EXAMINATION AND NO OBJECTION, YOUR
2 HONOR.

3 THE COURT: THE WITNESS IS FOUND TO BE AN EXPERT IN
4 THE FIELD OF LATENT PRINT ANALYSIS AND ANALYSIS OF
5 CONTROLLED SUBSTANCES. GO AHEAD.

6 Q INVESTIGATOR COLLINS, DID YOU HAVE A CHANCE TO COME
7 INTO CONTACT WITH ANY EVIDENCE IN THIS CASE?

8 A I DID.

9 Q AND MORE SPECIFICALLY WE WILL GO BACK TO A BAG OF
10 GREEN LEAF MATERIAL. DID YOU HAVE A CHANCE TO RECEIVE
11 SUCH AN ITEM FROM THE EVIDENCE ROOM AT THE SHERIFFS
12 DEPARTMENT?

13 A I DID.

14 Q AND DO YOU KNOW WHAT DAY YOU RECEIVED THAT?

15 A I DON'T KNOW WHAT DAY I RECEIVED THE PACKAGE, I KNOW
16 WHAT DAY I DID THE EXAMINATION.

17 Q WOULD IT HELP TO REFRESH YOUR MEMORY IF I SHOWED YOU
18 THE EVIDENCE LOGIN SHEET?

19 A CERTAINLY.

20 Q AND WOULD YOU JUST TELL US WHAT DATE YOU SIGNED THAT
21 OUT?

22 A I SIGNED IT OUT ON THE 16TH OF APRIL OF 2004.

23 Q AND WHEN DID YOU RETURN IT TO THE EVIDENCE ROOM?

24 A ON MAY 5TH OF 2004.

25 Q OKAY. THANK YOU. AND WHAT DID YOU DO WHEN YOU

1 SIGNED THE MATERIAL OUT, WHAT DID YOU DO WITH IT.

2 A IT APPEARS THAT I PROBABLY PUT IT IN MY LOCKER AND
3 SECURED IT THERE UNTIL SUCH TIME I WAS ABLE TO TEST IT.

4 Q AND WERE YOU REQUESTED TO TEST IT?

5 A I WAS.

6 Q AND LET ME HAND YOU WHAT HAS BEEN MARKED AS STATE'S
7 EXHIBIT NUMBER 1. IS THAT THE PACKAGE THAT YOU SIGNED
8 OUT?

9 A YES, IT IS.

10 Q AND HOW DO YOU KNOW?

11 A BECAUSE MY INITIALS ARE ON IT.

12 Q OKAY. AND YOU SAY YOU TESTED THAT MATERIAL?

13 A YES, I DID.

14 Q AND INSIDE IS THAT WHAT YOU TESTED?

15 A YES.

16 Q OKAY. AND CAN YOU SORT OF DESCRIBE FOR US BRIEFLY
17 HOW YOU GO ABOUT TESTING MARIJUANA OR TESTING A GREEN
18 LEAFY PLANT MATERIAL TO DETERMINE IF IT IS MARIJUANA?

19 A SURE. THE TEST ACTUALLY HAS TWO COMPONENTS. THERE
20 IS A MICROSCOPIC TEST THAT YOU ARE LOOKING FOR THREE
21 PARTICULAR KINDS OF HAIRS. YOU ARE LOOKING FOR A
22 UNICELLULAR HAIRS, MULTICELLULAR HAIRS AND CYSTOLITHIC
23 HAIRS WHICH YOU CAN ALSO SAY THEY LOOK LIKE REGULAR HAIRS,
24 THEY LOOK LIKE CINNAMON STICKS AND THEY LOOK LIKE BEAR
25 CLAWS. THAT IS PRETTY MUCH HOW WE REFER TO THEM. YOU

1 HAVE TO HAVE ALL THREE OF THESE, IF YOU DON'T HAVE ALL
2 THREE OF THESE THEN YOU CAN'T CALL A POSITIVE TEST. YOU
3 ALSO HAVE TO PERFORM A CHEMICAL TEST WHICH IS INVOLVED IN,
4 YOU PLACE CERTAIN CHEMICALS ON THE MARIJUANA, YOU PLACE A
5 DROP OF HYDROCHLORIC ACID ON IT AND THEN A DROP OF
6 CHLOROFORM ON IT AND YOU ARE LOOKING FOR A PARTICULAR
7 COLOR FOR ALL OF THE LEAVES TO TURN AND YOU ARE LOOKING
8 FOR A PINK EYE IN THE CENTER OF ALL OF THIS LIQUID. IF
9 YOU DON'T HAVE A POSITIVE TEST CHEMICALLY OR YOU DON'T
10 HAVE A POSITIVE TEST MICROSCOPICALLY, EVEN IF THE OTHER
11 TEST ARE POSITIVE YOU HAVE TO DECLARE A NEGATIVE TEST.
12 SO, YOU HAVE TO HAVE A POSITIVE ON BOTH OF THE CHEMICAL
13 TEST AND MICROSCOPIC TEST.

14 Q AND DID YOU PERFORM THOSE TEST ON THAT SAMPLE YOU ARE
15 HOLDING?

16 A I DID.

17 Q AND CAN YOU PROVIDE THE COURT OF YOUR OPINION WITHIN
18 A REASONABLE DEGREE OF SCIENTIFIC CERTAINTY WHETHER THAT
19 IS MARIJUANA OR NOT?

20 A IT WAS.

21 Q AND DO YOU KNOW THE APPROXIMATE WEIGHT?

22 A IT WAS .79 GRAMS.

23 MR. JOPHLIN: YOUR HONOR, AT THIS TIME WE WOULD LIKE
24 TO MOVE IN STATE'S EXHIBIT NUMBER 1 INTO EVIDENCE.

25 THE COURT: ANY OBJECTION?

1 MS. MOBLEY: I DON'T BELIEVE THAT IT HAS QUITE
2 ESTABLISHED THE CHAIN. MAY WE APPROACH?

3 THE COURT: YES.

4 MR. JOPHLIN: YOUR HONOR, I UNDERSTAND.

5 THE COURT: AT THIS TIME THE OBJECTION IS SUSTAINED.

6 Q MOVING ON INVESTIGATOR COLLINS, DID YOU HAVE A CHANCE
7 TO COME INTO CONTACT WITH ANY OTHER EVIDENCE IN THIS CASE?

8 A I DID.

9 Q AND WHAT WAS THAT?

10 A LATENT FINGERPRINTS LIFTED FROM THE CRIME SCENE.

11 Q AND DO YOU KNOW WHAT DAY YOU RECEIVED THOSE PRINTS?

12 A I DON'T KNOW WHAT DATE I RECEIVED THE PRINTS BECAUSE
13 AT SOME POINT, INITIALLY I WASN'T DOING THIS JOB.
14 EVERYBODY WAS LOOKING AT THEIR OWN LATENT PRINTS. NOW, I
15 AM THE PRIMARY PERSON, THEN EVERYBODY KEPT THEIR OWN
16 LATENT PRINTS AND I RECEIVED THEM FROM EVERYBODY ELSE. I
17 DON'T KNOW SPECIFICALLY WHAT DAY I RECEIVED THEM.

18 Q DID YOU RECEIVE A REQUEST FROM SOMEONE TO LOOK AT
19 THESE PRINTS?

20 A I DID.

21 Q DO YOU KNOW WHAT PERSON THAT WAS?

22 A INVESTIGATOR RICHARDS.

23 Q AND WHAT PRINTS, CAN YOU DESCRIBE WHAT THE PRINT IS
24 AND WHERE IT WAS FOUND?

25 A YES, SIR. I RECEIVED TWO LATENT PRINT CARDS, TWO

1 LITTLE CARDS THAT THEY PUT THE LATENT PRINTS ON. ONE WAS
2 LIFTED FROM, I BELIEVE, WAS A DRESSER INSIDE THE RESIDENCE
3 IN THE BEDROOM AND THE SECOND ONE WAS LIFTED FROM THE
4 VEHICLE ON THE RIGHT SIDE.

5 Q AND ON THOSE CARDS, WERE YOU ASKED TO COMPARE THOSE
6 PRINTS TO A PARTICULAR PERSON?

7 A I WAS.

8 Q AND WHO WAS THAT PERSON YOU WERE ASKED TO COMPARE TO?

9 A TO JERENE HAYWARD.

10 Q AND WHAT IS YOUR OPINION WITHIN A REASONABLE DEGREE
11 OF SCIENTIFIC CERTAINTY AS TO THE CARD OR THE FINGERPRINTS
12 FROM THE BEDROOM DRESSER OR NIGHTSTAND?

13 A THEY WERE NOT MADE BY JERENE HAYWARD.

14 Q AND YOUR SAME OPINION AS TO THE REMAINING PRINT CARDS
15 THAT WERE LIFTED?

16 A THERE WAS NOT ENOUGH INFORMATION CONTAINED IN THE
17 FINGERPRINT IN ORDER TO MAKE ANY KIND OF REAL RESULT.

18 Q WHAT DOES THAT MEAN, IT WAS INSUFFICIENT.

19 A INSUFFICIENT RIDGE DETAIL. BASICALLY, IF YOU WILL
20 LOOK AT YOUR FINGER YOU WILL SEE THAT THERE ARE LITTLE
21 RIDGES ALL OVER IT AND IT IS SORT OF LIKE AN INK STAMP,
22 THE OILS AND THE SWEAT THAT YOU HAVE THAT YOU NATURALLY
23 PRODUCE. THEY ARE KIND OF LIKE THE INK FROM A INK STAMP.
24 WHEN YOU TOUCH SOMETHING YOU LEAVE THAT IMPRESSION OVER
25 AND OVER AND OVER AGAIN. SOMETIMES THERE WON'T BE ENOUGH

1 INK ON THE STAMP SO IT DOESN'T MAKE A PROPER TRANSFER. OR
2 YOU COULD MOVE SOMETHING AND IT WOULD BE SMEARED OR THERE
3 COULD BE TOO MUCH OIL OR TOO MUCH SWEAT OR TOO MUCH DIRT
4 ON THE STAMP WHICH IS YOUR FINGER WHICH IT WOULDN'T MAKE A
5 GOOD TRANSFER. SO, GENERALLY SPEAKING THAT IS WHAT
6 HAPPENS WHEN YOU HAVE SOMETHING THAT IS INSUFFICIENT, IT
7 JUST DOESN'T HAVE ENOUGH RIDGE DETAIL IN ORDER TO MAKE A
8 REAL COMPARISON OR SPECIFICALLY IDENTIFICATION.

9 MR. JOPHLIN: BEG THE COURT'S INDULGENCE.

10 Q AND WERE YOU EVER PROVIDED WITH ANYONE ELSE'S TO
11 COMPARE TO THE CARDS THAT YOU HAVE TO COMPARE?

12 A NOT TO MY KNOWLEDGE.

13 MR. JOPHLIN: NOTHING FURTHER, YOUR HONOR.

14 THE COURT: CROSS-EXAMINATION?

15 MS. MOBLEY: THANK YOU, YOUR HONOR.

16 CROSS-EXAMINATION

17 BY MS. MOBLEY:

18 Q GOOD MORNING, INVESTIGATOR COLLINS.

19 A GOOD MORNING.

20 Q WE WILL TALK ABOUT THE MARIJUANA FIRST. I BELIEVE
21 YOU REPORTED THAT IT WAS .78 GRAMS?

22 A I BELIEVE IT IS .79 GRAMS.

23 Q .79, EXCUSE ME.

24 A YES, MA'AM.

25 Q HOW MANY OUNCES IS THAT?

1 A .02 GRAMS, I AM SORRY, .02 OUNCES.

2 Q I JUST WANTED TO GET A PICTURE OF HOW MUCH YOU ARE
3 TALKING ABOUT HERE, THAT IS A VERY SMALL AMOUNT?

4 A RIGHT.

5 Q AND I AM JUST NOT SURE WHAT YOU ARE LOOKING AT, IS
6 THIS THE REPORT THAT YOU ARE READING FROM, THIS IS YOUR
7 FINGERPRINT REPORT?

8 A YES, MA'AM.

9 Q AND I BELIEVE L1 IS A PRINT FROM THE DRESSER DRAWER,
10 IS THAT HOW YOU IDENTIFIED IT?

11 A YES, MA'AM.

12 Q AND YOU WERE TALKING ABOUT INKS AND STAMPS AND STUFF
13 A MINUTE AGO?

14 A RIGHT.

15 Q YOU WERE ABLE TO GET A GOOD IMPRESSION FROM THIS,
16 RIGHT?

17 A I DIDN'T LIFT IT.

18 Q YOU DIDN'T LIFT IT?

19 A NO.

20 Q BUT IN YOUR TEST YOU WERE ABLE TO MAKE A
21 DETERMINATION DEFINITELY THAT IT WAS NOT ONE PERSONS?

22 A THAT IS RIGHT.

23 Q CAN YOU TELL ME ONE MORE TIME WHOSE PRINT THAT
24 WASN'T?

25 A IT WASN'T JERENE HAYWARD'S.

1 Q WAS NOT JERENE HAYWARD'S FINGERPRINT. I HAVE NOTHING
2 FURTHER.

3 THE COURT: ANY REDIRECT.

4 REDIRECT EXAMINATION

5 BY MR. JOPHLIN:

6 Q ON DIRECT EXAMINATION WE ARE TALKING ABOUT
7 INSUFFICIENT RIDGE DETAIL AND SMUDGES AND DIRTY OBJECTS
8 AND HOW SOMETIMES NOT ENOUGH INK ON THE PAD TO LEAVE A
9 FINGERPRINT?

10 A YES.

11 Q SO, IF I TOUCHED SOMETHING, EVERY TIME I TOUCH
12 SOMETHING AM I GOING TO LEAVE A FINGERPRINT?

13 A NO, NOT NECESSARILY.

14 Q AND IF MY HANDS ARE COVERING UP WITH ANYTHING--

15 MS. MOBLEY: YOUR HONOR, I WOULD OBJECT, THAT IS
16 OUTSIDE THE SCOPE OF MY CROSS-EXAMINATION.

17 MR. JOPHLIN: I WILL WITHDRAW THAT QUESTION.

18 THE COURT: SUSTAINED.

19 Q NOTHING FURTHER.

20 THE COURT: YOU MAY STEP DOWN. CALL YOUR NEXT
21 WITNESS, PLEASE.

22 MR. JOPHLIN: THE STATE CALLS GRAY AMICK.

23 GRAYSON AMICK, AFTER BEING DULY SWORN, TESTIFIED
24 AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. JOPHLIN:

2 Q GOOD MORNING, DR. AMICK.

3 A GOOD MORNING.

4 Q WHERE DO YOU WORK?

5 A CURRENTLY EMPLOYED FOR THE RICHLAND COUNTY SHERIFFS
6 DEPARTMENT.

7 Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

8 A APPROXIMATELY 2 YEARS.

9 Q AND WHERE WERE YOU EMPLOYED BEFORE THAT?

10 A BEFORE THAT I WAS EMPLOYED AT THE SOUTH CAROLINA LAW
11 ENFORCEMENT DIVISION COMMONLY KNOWN AS SLED IN THE DNA
12 DEPARTMENT.

13 Q AND WHAT IS YOUR EDUCATIONAL BACKGROUND?

14 A I HAVE A BS IN BIOLOGY, GOT THAT IN 1989. I HAVE GOT
15 A PHD IN BIOCHEMISTRY FROM UNIVERSITY OF SOUTH CAROLINA,
16 GOT THAT IN 1993 AFTER WHICH I WAS TRAINED BY COURT
17 QUALIFIED EXPERTS AT SLED IN THE FIELD OF, ORIGINALLY IN
18 TOXICOLOGY BUT FOR THE LAST YEARS AT SLED IN DNA SEROLOGY.
19 HAVE, EVERY YEAR CONTINUE IN CONTINUING EDUCATION IN THE
20 FIELD OF FORENSIC DNA ANALYSIS AND STATISTICS AS IT
21 RELATES TO THAT FIELD. AND HAVE BEEN INVOLVED IN
22 METHOVALIDATION AT BOTH SLED AND RICHLAND COUNTY.

23 Q AND HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN THE
24 FIELDS OF FORENSIC SEROLOGY AND DNA ANALYSIS?

25 A I HAVE.

1 Q AND HOW MANY TIMES HAVE YOU BEEN QUALIFIED?

2 A APPROXIMATLEY 40 TIMES.

3 MR. JOPHLIN: YOUR HONOR, AT THIS TIME WE WOULD OFFER
4 INVESTIGATOR AMICK AS AN EXPERT IN THE SEROLOGY AND DNA
5 ANALYSIS.

6 MS. VAN GINHOVEN: NO OBJECTION, YOUR HONOR.

7 THE COURT: WITHOUT OBJECTION, THE WITNESS IS FOUND
8 TO BE QUALIFIED AS AN EXPERT IN THE FIELD OF FORENSIC
9 SEROLOGY AND DNA ANALYSIS. YOU MAY CONTINUE.

10 Q INVESTIGATOR AMICK, WHAT IS FORENSIC SEROLOGY?

11 A FORENSIC SEROLOGY IS SIMPLY THE IDENTIFICATION OF IT
12 IS BLOOD, IS IT HUMAN BLOOD, IT IS SEMEN, IT IS SALIVA, IT
13 IS BASICALLY WHAT SEROLOGY ASK.

14 Q SEROLOGY IS, YOU KNOW IT IS SOMETHING BUT WHAT
15 SPECIFIC?

16 A I AM SORRY, WHAT BODY FLUID.

17 Q AND THEN WHAT IS FORENSIC DNA ANALYSIS?

18 A ANALYSIS TAKES, USUALLY THOSE BODY FLUIDS AND TRIES
19 TO IDENTIFY WHO LEFT THAT BODY FLUID. SO, IT ATTEMPTS TO
20 DEVELOPE A PROFILE, A DNA PROFILE TO PROFILE AN INDIVIDUAL
21 AND IF THERE IS ENOUGH EVIDENCE INVOLVED IN THE CASE AND
22 SEE IF THE TWO MATCH.

23 Q AND THEN YOU ARE TALKING OF MATCHES OF DNA, WHAT IS
24 DNA?

25 A DNA IS A MOCK OF EVERYBODY'S BODY THAT IS BASICALLY

1 LIKE A BLUEPRINT. AN OAK TREE HAS DNA, ANTS HAVE DNA,
2 HUMANS HAVE DNA. IT MAKES US HAVE TWO ARMS AND TWO LEGS,
3 ETCETERA, ETCETERA AND WHAT WE USE OR THE CHARACTERISTIC
4 OF DNA THAT WE USE IN FORENSICS IS THAT IT IS UNIQUE TO
5 EVERYBODY EXCEPT FOR IDENTICAL TWINS. SO, EVERYBODY HAS
6 UNIQUE DNA AND WE EXPLOIT THAT FOR FORENSIC PURPOSES, THAT
7 IS WE CAN TAKE SOMEBODIES DNA AND DEVELOPE LIKE A
8 FINGERPRINT AND COMPARE TO ANY EVIDENCE LEFT AT A CRIME
9 SCENE.

10 Q AND DID YOU HAVE A CHANCE TO OR WERE YOU REQUESTED TO
11 PERFORM ANY TYPE OF ANALYSIS IN THIS CASE?

12 A YES, I WAS.

13 Q AND DO YOU HAVE THE NAME OF WHO REQUESTED THIS
14 ANALYSIS?

15 A I BELIEVE MY REPORT WAS ISSUED TO ERIC BARNES, HE
16 WOULD OF BEEN ONE OF THE ONES WHO REQUESTED THE ANALYSIS.

17 Q AND LET ME SHOW YOU A FEW ITEMS, I AM GOING TO SHOW
18 YOU STATE'S EXHIBIT NUMBER 2 WHICH WOULD BE ITEM 1SR FROM
19 THE RICHLAND COUNTY SHERIFFS DEPARTMENT. DID YOU RECEIVE
20 THAT ITEM?

21 A 1SR, LET ME CHECK MY NOTES. I DID.

22 Q AND DO YOU RECALL WHEN YOU RECEIVED THAT ITEM FROM
23 THE EVIDENCE ROOM?

24 A ON OCTOBER 21 OF 2004.

25 Q I WILL SHOW YOU WHAT HAS BEEN MARKED AS STATE'S

1 EXHBIT NUMBER 5, DID YOU EXAMINE OR RECEIVE INTO YOUR
2 CUSTODY THAT ITEM?

3 A ITEM 1CE, YES I DID.

4 Q DO YOU RECALL WHEN YOU RECEIVED THAT FROM THE
5 EVIDENCE ROOM?

6 A OCTOBER 25TH OF 2004.

7 Q AND FINALLY I WILL SHOW YOU STATE'S EXHBIT NUMBER 55,
8 DID YOU HAVE A CHANCE TO RECEIVE THAT FOR YOUR
9 EXAMINATION?

10 A YES, I DID.

11 Q HOW DO YOU KNOW YOU RECEIVED THOSE ITEMS IN YOUR
12 POSSESSION?

13 A I HAVE A CHAIN CUSTODY SHEETS WITH MY SIGNATURE ON
14 THEM.

15 Q MORE PARTICULARLY, DID YOU, WERE ANY OF THESE ITEMS
16 TRAVELING TOGETHER WHEN THEY CAME INTO YOUR CUSTODY?

17 A THIS ITEM HERE, NUMBER 3 WHICH I MARKED NUMBER 3 WAS
18 ACTUALLY AN ITEM THAT WAS COLLECTED AT THE SLED LAB IN
19 THEIR EVIDENCE PROCESSING DEPARTMENT AND IT IS A SWAB FROM
20 THE SHOE.

21 Q WHEN YOU RECEIVED FROM THE EVIDENCE ROOM DID YOU
22 RECEIVE A HEAT SEALED POUCH FROM LAW ENFORCEMENT DIVISION?

23 A YES, I DID. AND THAT WAS WHAT THIS WAS CONTAINED IN.

24 Q AND FROM THE TESTIMONY YESTERDAY WE HAD ESTABLISHED
25 IN THAT HEAT SEALED POUCH, STATE'S EXHIBIT NUMBER 55, WHAT

1 DID YOU DO WITH THAT POUCH OR LET'S SAY YOU RECEIVED THAT
2 POUCH FROM THE EVIDENCE ROOM. HAD IT BEEN TAMPERED WITH--

3 MS. VAN GINHOVEN: OBJECTION TO THE LEADING, YOUR
4 HONOR.

5 THE COURT: SUSTAINED TO THE FORM OF THE QUESTION.

6 Q WHAT WAS YOUR OBSERVATION ABOUT THAT HEAT SEALED
7 POUCH WHEN YOU RECEIVED IT?

8 A IT WAS PROPERLY SEALED LIKE THE OTHER EVIDENCE.

9 Q AND DURING THE COURSE OF YOUR EXAMINATION WHAT DID
10 YOU DO WITH THAT POUCH?

11 A I CUT THAT POUCH OPEN TO RETRIEVE THE EVIDENCE FOR
12 THE ANALYSIS JUST LIKE I WOULD OPEN THESE OTHER ENVELOPES
13 DURING MY ANALYSIS. SO, I CUT THAT OPENED AND RETRIEVED
14 THE ITEM OUT OF IT AND DO MY ANALYSIS ON IT. IN THIS CASE
15 I PHOTOCOPIED THAT POUCH ITSELF TO SHOW THAT IS WHERE THIS
16 ITEM CAME FROM.

17 Q AND ON THAT POUCH CAN YOU READ WHAT SLED LAB NUMBER
18 IS ASSIGNED TO THAT POUCH.

19 A YES, IT IS L AS IN LABORATORY, 0404126.

20 Q AND CAN YOU PLEASE, IS THERE AN E NUMBER ON THAT
21 POUCH?

22 A YES, IT IS.

23 Q AND AT SLED WHAT DOES THAT DENOTE?

24 A THAT IS THE CONTAINER NUMBER, THE NUMBER I HAVE IS
25 THE CASE NUMBER, FOR EACH CASE THERE MAY BE SEVERAL

1 CONTAINERS OF EVIDENCE AND THE E NUMBER, THE CONTAINER
2 NUMBER ON HERE AS WELL IDENTIFIES THE POUCH. AND IT IS E
3 AS IN EDWARD, 218503.

4 Q AND IS IT SIGNED BY ANYONE WHO SEALED THAT POUCH?

5 A YES, JANICE BRYSON WHO WORKS IN THE EVIDENCE
6 PROCESSING DEPARTMENT.

7 Q AND WHAT DATE?

8 A 8/27/2004.

9 MR. JOPHLIN: YOUR HONOR, AT THIS TIME WE WOULD LIKE
10 TO MOVE THE COPY OF THAT POUCH INTO EVIDENCE AS STATE'S
11 EXHIBIT NUMBER--

12 MS. VAN GINHOVEN: YOUR HONOR, WE OBJECT.

13 THE COURT: ON WHAT GROUNDS.

14 MS. VAN GINHOVEN: YOUR HONOR, IT IS A COPY, IT IS
15 NOT AN ORIGINAL. I DON'T BELIEVE THAT THEY CAN MOVE IT
16 INTO EVIDENCE.

17 THE COURT: LET ME TAKE A LOOK AT IT. THE OBJECTION
18 IS OVERRULED, STATE'S WHAT.

19 MR. JOPHLIN: STATE'S 57.

20 (WHEREUPON, STATE'S EXHIBIT NO. 57 WAS ADMITTED INTO
21 EVIDENCE.)

22 MR. JOPHLIN: AND ALSO AS WELL, THE STATE WOULD LIKE
23 TO INTRODUCE INTO EVIDENCE AT THIS TIME STATE'S EXHIBIT
24 NUMBER 5, NUMBER 2 AND NUMBER 55.

25 THE COURT: ANY OBJECTION.

1 MS. VAN GINHOVEN: YOUR HONOR, CAN WE APPROACH.

2 THE COURT: YES.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
4 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
5 JURY.)

6 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN, I
7 NEED TO GET SOME OF THESE ARGUMENTS ON THE RECORD. I AM
8 GOING TO ASK YOU TO STEP BACK TO YOUR JURY ROOM AND I WILL
9 HAVE YOU BACK IN A FEW MINUTES. DON'T DISCUSS THE CASE,
10 PLEASE.

11 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

12 THE COURT: ALL RIGHT, LET'S GET YOUR OBJECTION ON
13 THE RECORD, MS. VAN GINHOVEN.

14 MS. VAN GINHOVEN: YOUR HONOR, I AM OBJECTING TO THE
15 TESTING COMING IN, I UNDERSTAND THAT THEY HAVE IDENTIFIED
16 THE PEOPLE IN THE CHAIN BUT THE MANNER IN WHICH THEY HAVE
17 HANDLED IT HAS NOT BEEN IDENTIFIED, HAS NOT BEEN TESTIFIED
18 CORRECTLY. CLEARLY, OFFICER ROE TESTIFIED THAT HE
19 CONFISCATED THE SHOES, PUT THEM INTO A PAPER BAG. AT THAT
20 POINT THEY HAD THE DNA EVIDENCE ON THEM, DNA IS EXTREMELY
21 SENSITIVE MATERIAL. AT THAT POINT THEN INVESTIGATOR
22 RICHARDS TESTIFIED YESTERDAY WHEN HE RECEIVED THE BAG WITH
23 THE SHOES IN IT THAT THE SHOES WERE TOGETHER.

24 THE COURT: THE SHOES WERE WHAT?

25 MS. VAN GINHOVEN: THE SHOES WERE TOGETHER IN ONE

1 BAG. AND THAT YESTERDAY INVESTIGATOR RICHARDS TESTIFIED
2 THAT HE PUT THEM IN INDIVIDUAL PAPER BAGS WHICH SHOULD OF
3 BEEN DONE IN THE BEGINNING. AND SO FOR THAT REASON WE ARE
4 OBJECTING TO THE EVIDENCE BEING INTRODUCED. AND, AGAIN,
5 THERE WAS ALL THIS TESTIMONY REGARDING THAT IT COULD OF
6 BEEN IN THE FLOORBOARD, IT COULD OF BEEN IN THE TRUNK.
7 ALL WE KNOW IS THAT WHEN ROE BROUGHT THE SHOES TO RICHARDS
8 THEY WERE IN A PAPER BAG. HE KEPT SAYING THAT HE PUT THE
9 SHOES, CONFISCATED THE SHOES, PUT THEM IN THE FLOORBOARD
10 OR THE TRUNK, HE WASN'T SURE, HE COULDN'T REMEMBER. WE
11 KNOW THAT WHEN RICHARDS GOT IT IT WAS IN A PAPER BAG,
12 THERE WERE TWO SHOES TOGETHER IN ONE PAPER BAG AND THEN
13 RICHARDS TESTIFIED THAT HE WAS THE ONE WHO PUT THEM INTO
14 SEPARATE PAPER BAGS IN ORDER TO SEND THEM ON TO BE TESTED.

15 THE COURT: SOLICITOR.

16 MR. JOPHLIN: YES SIR, YOUR HONOR, ROE DID TESTIFY
17 THAT HE PLACED THEM INTO A PAPER BAG. I DON'T THINK IT IS
18 RELEVANT TO WHETHER HE PLACED THEM INTO HIS TRUNK OR INTO
19 HIS FLOORBOARD. HE PLACED THEM INTO SECURE, HE
20 TRANSPORTED TO STAN RICHARDS WHO FURTHER SECURED THEM AND
21 HE NEVER WENT BACK TO THE CRIME SCENE. THERE WAS NEVER A
22 CHANCE FOR THEM TO BE CONTAINED WITH ANY OTHER BLOOD FROM
23 THE CRIME SCENE. IT GOES TO THE WEIGHT OF THE EVIDENCE
24 AND NOT TO THE ADMISSIBILITY.

25 THE COURT: MS. VAN GINHOVEN.

1 MS. VAN GINHOVEN: MY UNDERSTANDING IS YOU HAVE TO
2 DETERMINE WHO THE PEOPLE ARE AS WELL AS THE MANNER IN
3 WHICH THEY HANDLED IT. AND CLEARLY CAN'T BE ESTABLISHED
4 THAT OFFICER ROE, HE WAS AT THE CRIME SCENE AT ONE POINT
5 AND THERE WAS A CHANCE FOR CONTAMINATION. HE HAD BEEN
6 THERE AND AGAIN THE SHOES COME INTO CUSTODY, HE
7 CONFISCATED THEM AND CAN'T REMEMBER WHERE HE PUT THEM.
8 AND HE, I MEAN BASICALLY WHAT HE SAID, I CAN'T REMEMBER
9 WHETHER I PUT THEM IN THE FLOORBOARD, CAN'T REMEMBER IF I
10 PUT THEM IN THE TRUNK. HE HAD ALREADY TAKEN THE GUN, HE
11 THEN PUT THEM INTO, I DON'T THINK HE TESTIFIED THAT HE PUT
12 THEM IN A BAG. BUT I KNOW INVESTIGATOR RICHARDS, ALL
13 CANDOR TO THE COURT, I CANNOT REMEMBER FOR SURE. I KNOW
14 INVESTIGATOR RICHARDS SAID THAT WHEN HE RECEIVED THE ITEMS
15 TO DO THE PRESUMPTIVE TEST, THEY WERE BOTH SHOES AND WERE
16 IN ONE BAG AND THAT HE WAS THE ONE THAT THEN PUT THEM INTO
17 SEPARATE PAPER BAGS. AND THE REASON THAT HE DID THAT WAS
18 TO OF COURSE TO NOT HAVE ANYTHING TO CONTAMINATE IT.

19 THE COURT: RICHARDS TESTIFIED WHEN HE DID THAT HE
20 HAD SWABBED ONE SHOE AND FOUND NOTHING AND FOUND SOMETHING
21 ON THE OTHER FOR THE PRESUMPTIVE TEST FOR BLOOD. IS THAT
22 RIGHT, IS THAT WHAT YOU RECALL?

23 MS. VAN GINHOVEN: RIGHT.

24 MR. JOPHLIN: CORRECT.

25 THE COURT: AND I BELIEVE HE TESTIFIED THAT THE FIRST

1 SHOE THAT HE DID SWAB WAS THE ONE THAT HE FOUND NOTHING
2 ON.

3 MR. JOPHLIN: THAT'S CORRECT.

4 MS. VAN GINHOVEN: I AM SORRY, WHAT?

5 THE COURT: I THINK HE TESTIFIED, RICHARDS TESTIFIED
6 THAT THE FIRST SHOE THAT HE SWABBED WAS THE ONE HE FOUND
7 NOTHING ON, I DON'T KNOW IF IT WAS THE LEFT OR THE RIGHT.

8 MS. VAN GINHOVEN: AND I DON'T BELIEVE IT IS TO OFFER
9 SO MUCH TO THAT AS IT IS TO INVESTIGATOR ROE TAKING THE
10 SHOES FROM MR. HAYWARD. I DO NOT REMEMBER HIM SAYING THAT
11 HE PLACED THEM INTO A BAG. THAT COULD BE JUST A MEMORY
12 PROBLEM ON MY PART.

13 THE COURT: WHAT ABOUT THAT, SOLICITOR.

14 MR. JOPHLIN: YOUR HONOR, I WILL REFER TO MY NOTES
15 AND BUT HE DID SAY THAT HE PLACED THEM INTO A SECURED
16 ENVIRONMENT. HE DID NOT GO BACK TO THE CRIME SCENE WHERE
17 THE CRIME TOOK PLACE WHERE ANY BLOOD WAS AT. AND HE DID
18 TESTIFY AS TO HIS, AS OPPOSED TO DEFENSE COUNSELS
19 ARGUMENT, HE DID TESTIFY AS TO WHAT HE DID WITH THEM AND
20 THE MANNER OF TRANSPORTATION OF THEM. WHETHER THEY WERE
21 IN THE FLOORBOARD OF THE TRUNK, EITHER WAY--

22 THE COURT: WERE THEY IN A BAG.

23 MR. JOPHLIN: I AM SORRY?

24 THE COURT: WERE THEY IN A BAG?

25 MR. JOPHLIN: IF I CAN HAVE A MOMENT, YOUR HONOR, TO

1 REFER TO MY NOTES. YOUR HONOR, IT IS IN MY NOTES THAT HE
2 SECURED THE SHOES. IT WOULD STILL BE THE STATE'S ARGUMENT
3 THAT THAT WOULD GO TO THE WEIGHT OF THE TESTIMONY AND NOT
4 OF THE ADMISSIBILITY. AND STAN RICHARDS, THERE ARE NO,
5 THAT STAN RICHARDS DID RECEIVE THEM, OUR RECOLLECTION IS
6 THAT STAN RICHARDS DID RECEIVE THEM IN A BAG.

7 THE COURT: MS. VAN GINHOVEN.

8 MS. VAN GINHOVEN: YOUR HONOR, FROM MY NOTES I HAVE
9 THAT HE RECALLS GETTING THE SHOES FROM THE SUSPECT,
10 PUTTING THEM IN THE TRUNK, THAT IS WHEN WE WENT THROUGH
11 WHETHER HE PUT IT IN THE TRUNK OR THE FLOORBOARD, HE CAN'T
12 REMEMBER, HE WASN'T SURE. YOU KNOW, THE OTHER ISSUE IS, I
13 UNDERSTAND THAT HE DID NOT GO BACK TO THE CRIME SCENE BUT
14 HE WAS THERE ORIGINALLY AND HE WAS THE ONE WHO PATTED MR.
15 HAYWARD DOWN. THERE IS CLEARLY A POSSIBILITY THAT HE HAD
16 SOMETHING ON HIS SHOES THAT RUBBED OFF ON MR. HAYWARD'S
17 SHOE. THERE IS CLEARLY A POSSIBILITY THAT THERE MAY OF
18 BEEN SOMETHING IN THE TRUNK OR THE FLOORBOARD WHICH WE ARE
19 NOT EVEN SURE BECAUSE HE CANNOT REMEMBER. I DO NOT
20 BELIEVE THAT HE EVER TESTIFIED ABOUT PUTTING THEM IN THE
21 BACK. AS A MATTER OF FACT, WHAT I RECALL IS HE SAID HE
22 GOT THE SHOES FROM THE SUSPECT, HE PUT THEM IN THE TRUNK
23 OR PUT THEM IN THE FLOORBOARD, HE COULDN'T RECALL, HE WAS
24 GOING OFF OF HIS MEMORY. I KNOW THAT WHEN INVESTIGATOR
25 RICHARDS GOT THEM, TWO SHOES WERE IN ONE BAG. AND THAT HE

1 SAID HE PUT THEM INTO TWO SEPARATE BAGS. AND THE PROBLEM
2 IS WE DON'T KNOW WHAT HAPPENED WHEN THE SHOES WERE
3 ORIGINALLY TAKEN INTO CUSTODY. AND WHERE WERE THEY STORED
4 PRIOR TO GIVING THEM TO AND IT WENT BACK AND FORTH FROM
5 THAT TOO. HE GAVE THEM TO INVESTIGATOR BARNES, THEN GOT
6 THEM BACK AND TOOK THEM TO INVESTIGATOR RICHARDS. AND I
7 DON'T KNOW WHEN, I JUST DON'T BELIEVE THAT THEY CAN PROVE
8 THE MANNER IN WHICH OFFICER ROE HANDLED THIS ITEM. HE
9 CAN'T REMEMBER EXACTLY WHAT HE DID, THE TRUNK AND
10 FLOORBOARD BUT IT MENTIONS NOTHING ABOUT THE BACK.

11 THE COURT: ALL RIGHT, SOLICITOR.

12 MR. JOPHLIN: YOUR HONOR, AS I POINTED OUT THE FACT
13 THERE IS BLOOD ON ONE SHOE, NOT BOTH SHOES, THERE IS NO
14 CONTAMINATION BETWEEN THE SHOES. AND INVESTIGATOR ROE
15 TESTIFIED THEY WERE IN A SECURE LOCATION, SECURED THE
16 SHOES. AND BACK WITH INVESTIGATOR BARNES, MR. BARNES TOLD
17 HIM TO TAKE THEM DIRECTLY TO STAN RICHARDS. AND ONCE
18 AGAIN, THE DEFENSE HAS PROVIDED US AN EXAMPLE OF WHAT CAN
19 BE ARGUED IN CLOSING ARGUMENTS AS TO THE WEIGHT OF THE
20 EVIDENCE AND NOT TO THE ADMISSIBILITY OF IT.

21 MS. COOPER: YOUR HONOR, ALSO I WAS JUST TALKING TO
22 INVESTIGATOR BARNES WHO WAS PRESENT AT THE SCENE WHEN ROE
23 TOOK THE SHOES, HE WILL BE PREPARED TO LAY A MORE
24 FOUNDATION AS TO WHY THE SHOES WERE TAKEN FROM THE
25 SUSPECT.

1 THE COURT: WELL AT THIS TIME THE MOTION TO ADMIT
2 THOSE NOW IS DENIED. AND WHEN I HEAR THAT I WILL LET YOU
3 MOVE THEM INTO EVIDENCE AND I WILL LISTEN TO IT. GETTING
4 THE CART BEFORE THE HORSE, IF SOMEBODY IS GOING TO COME
5 BACK AND THEN FILL IN ALL OF THE SPACES. THAT IS WHAT IT
6 SEEMS TO ME LIKE, I KNOW THE SPACE YOU ARE TALKING ABOUT,
7 IF THAT IS WHAT WE ARE GOING TO CALL IT, HOW THEY CAME,
8 WHEN THEY GOT PUT INTO A BAG, WHO PUT THEM INTO A BAG, ALL
9 OF THOSE THINGS. THAT MAY STILL BE A PROBLEM EVEN AFTER
10 THE INVESTIGATOR TESTIFIES.

11 MS. VAN GINHOVEN: AND, YOUR HONOR, THE PROBLEM
12 BECOMES, OFFICER ROE IS ON THE STAND. HE CLEARLY, HE SAID
13 HE DID A PAT-DOWN AND HE CONFISCATED THE SHOES. NO ONE
14 ELSE WAS AROUND TO HEAR OR SEE ANY OF THAT. I JUST CAN'T
15 FATHOM THAT OFFICER ROE GETS UP THERE AND TESTIFIES AND
16 SAYS HE TOOK THE SHOES AND PUTS THEM IN THE FLOORBOARD OF
17 THE TRUNK AND THAT SOME ONE IS NOW GOING TO COME BACK,
18 THEIR LAST WITNESS AND SAY, WELL, HE PUT THEM IN A BAG
19 BEFORE HE PUT THEM IN THE FLOORBOARD OR TRUNK ESPECIALLY
20 AFTER YESTERDAYS TESTIMONY WHERE NO ONE SAID ANYTHING ELSE
21 GOING ON WHEN THE PAT-DOWN STARTED BECAUSE NO ONE HEARD
22 ANY MIRANDA RIGHTS. ROE WAS RESPONSIBLE FOR THE PAT-DOWN
23 AND FOR TAKING THE SHOES.

24 MR. JOPHLIN: YOUR HONOR, IF I RECALL ROE DID NOT
25 TAKE THE SHOES, HE TESTIFIED THAT ERIC BARNES, I AM SORRY,

1 ERIC BARNES INSTRUCTED HIM. I APOLOGIZE.

2 MS. VAN GINHOVEN: YOUR HONOR, WE WOULD JUST ASK THAT
3 INVESTIGATOR BARNES NOT BE ALLOWED TO--

4 MS. MOBLEY: YOUR HONOR, I BEG THE COURT'S
5 INDULGENCE.

6 MS. VAN GINHOVEN: YOUR HONOR, THERE IS SOME EVIDENCE
7 THAT MS. MOBLEY BROUGHT TO MY ATTENTION. IF DR. AMICK IS
8 ABLE TO GO AHEAD AND TESTIFY ABOUT THE FINDINGS ON THE
9 SHOES BEFORE THE CHAIN IS COMPLETED I BELIEVE WE WOULD BE
10 AT A MISTRIAL STAGE BECAUSE ALL OF THE EVIDENCE HAS BEEN
11 TESTIFIED TO.

12 THE COURT: SOLICITOR.

13 MS. COOPER: IF I MAY, YOUR HONOR, THEN WE WOULD
14 TYPICALLY BE DONE WITH QUESTIONING DR. AMICK UNTIL WE HAVE
15 ESTABLISHED THE CHAIN TO THE COURT'S SATISFACTION. AND WE
16 WILL DO THAT THROUGH INVESTIGATOR BARNES.

17 THE COURT: ALL RIGHT, AT THIS TIME THE STATE WILL BE
18 PERMITTED TO, WELL, I WILL PERMIT THE STATE TO STAND THE
19 WITNESS ASIDE AND THEN YOU CAN CALL ANOTHER WITNESS AND
20 SEE WHERE WE GO FROM THERE.

21 MR. JOPHLIN: THANK YOU, YOUR HONOR.

22 THE COURT: DR. AMICK, YOU MAY STEP DOWN. ANYTHING
23 ELSE BEFORE WE BRING THE JURY BACK.

24 MS. VAN GINHOVEN: CAN WE TAKE A BREAK.

25 THE COURT: WE WILL TAKE A SHORT BREAK.

1 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

2 THE COURT: ALL RIGHT, ANYTHING ELSE BEFORE WE BRING
3 THE JURY IN?

4 MR. JOPHLIN: YOUR HONOR, DURING THE BREAK WE DID
5 SOME RESEARCH AND WE WERE WONDERING IF WE CAN RE-APPROACH
6 THIS ISSUE?

7 THE COURT: ALL RIGHT.

8 MR. JOPHLIN: DOING SOME QUICK RESEARCH, BASED ON
9 THESE CASES THE STATE FEELS AND THIS IS STATE V. TAYLOR,
10 598, S.E. 2ND, 735. THE STATE V. GOVERNOR, 608, S.E. 2ND,
11 474. AND STATE V. MATHIS, 597, S.E. 2ND, 872. ALL OF
12 THESE CASES COME TO THE CONCLUSION THAT THE PROOF OF THE
13 CHAIN OF CUSTODY BE NOT TO GETTING ALL POSSIBILITY OF
14 TAMPERING, JUST ESTABLISHING A COMPLETE CHAIN. AND THAT A
15 WEAKNESS IN THE CHAIN IMPLICATES CREDIBILITY AND DOES NOT
16 RENDER THE EVIDENCE INADMISSIBLE. FURTHERMORE, IF THE
17 IDENTITY OF EACH PERSON WHO HANDLED THE EVIDENCE IS
18 ESTABLISHED AND THE MANNER OF HANDLING IS REASONABLY
19 DEMONSTRATED THERE IS NO ABUSE OF DISCRETION, ADMITTING OF
20 THE EVIDENCE, ABSENCE, ANY PROOF OF TAMPERING, BAD FAITH.
21 AND ALSO STATE V. GOVERNOR, THE RULE THAT WHERE EVERYBODYS
22 IDENTITY IS HANDLED, THE EVIDENCE HAS BEEN ESTABLISHED.
23 THAT EVIDENCE REGARDING ITS CARE GOES ONLY TO THE WEIGHT
24 OF THE SPECIMEN AS CREDIBLE EVIDENCE AND NOT TO ITS
25 ADMISSIBILITY. THE STATE V. MATHIS ALSO AGREES WITH THAT

1 AND ONCE AGAIN EVIDENCE, STATE V. HARBOR, 544, S.E. 2ND,
2 835 IN SAYING EVIDENCE REGARDING CARE OF CERTAIN EVIDENCE
3 GOES ONLY TO THE WEIGHT OF THE SPECIMEN AS CREDIBLE
4 EVIDENCE. WHERE THERE IS A WEAK LINK IN THE CHAIN OF
5 CUSTODY, AS IN THE CHAIN OF CUSTODY AS OPPOSED TO A
6 MISSING LINK, THE QUESTION IS ONLY ONE OF CREDIBILITY AND
7 NOT OF ADMISSIBILITY. THE STATE WOULD ARGUE THAT
8 INVESTIGATOR ROE'S TESTIMONY WOULD BE A WEAK LINK AS TO
9 HOW HE HANDLED THE SPECIMEN, HOW THE CARE OF THE SPECIMEN,
10 THE TIME HE TRANSPORTED AND THEREFORE THAT WOULD GO TO THE
11 CREDIBILITY AND NOT TO ITS ADMISSIBILITY IN THIS TRIAL.

12 THE COURT: MS. VAN GINHOVEN?

13 MS. VAN GINHOVEN: YOUR HONOR, STATE VERSUS TAYLOR, I
14 BELIEVE IT IS CLEAR THAT THE MANNER OF HANDLING OF HOW TO
15 BE REASONABLY DEMONSTRATED. AND I DON'T BELIEVE THAT IN
16 THIS CASE THAT THAT HAS BEEN DONE. ~~AS IN STATE VERSUS~~
17 ~~GOVERNOR, IT WAS INVOLVING COCAINE THAT WAS PUT INTO THE~~
18 ~~TRUNK OF A CAR WHERE THE OFFICER WAS THE ONLY ONE WHO HAD~~
19 ~~KEYS. THE WHOLE POINT IS, IF THE SHOES WERE TAKEN AND NOT~~
20 ~~PASSAGED PROPERLY, BECAUSE IT IS DNA EVIDENCE, NOT~~
21 COCAINE, NOT DRUGS, NOT ANY OF THAT NATURE, IT IS DNA
22 EVIDENCE THAT IS SO SENSITIVE THAT IF YOU TOUCH SOMETHING
23 THEN THE ITEM CAN BE CONTAMINATED. AND I DON'T BELIEVE
24 THAT THIS STATE VERSUS GOVERNOR IS WITH AN OFFICER WHO
25 TAKES THE COCAINE, PUTS IT IN THE CAR AFTER HE HAS WEIGHED

1 AND FIELD TESTED IT. HE DID WEIGH AND FIELD TEST IT BUT
2 HE KNEW WHAT IT WAS, PUT IT IN THE TRUNK OF HIS CAR.
3 RIGHT NOW THERE IS, WE HAVE NO TESTIMONY AS TO HOW ROE
4 HANDLED THE SHOES ONCE HE GOT THEM, HE CAN'T REMEMBER
5 WHERE HE PUT THEM, I DON'T BELIEVE THAT THAT WAS
6 REASONABLY DEMONSTRATED. AND I THINK IT WAS HEIGHTENED BY
7 THE FACT THAT THIS IS DNA EVIDENCE, WE ARE NOT TALKING
8 ABOUT EVIDENCE THAT IS NOT EASILY CHANGEABLE. ANY, I
9 MEAN, ALL OF THE EXPERTS WILL SAY IT IS EXTREMELY, CLEARLY
10 IT CAN BE CHANGED FOR CONTAMINATED VERY EASILY BASED ON
11 THE SUBSTANCE. AND ALL WE HAVE IS HE TOOK THE SHOES AND
12 PUT THEM INTO A TRUNK OR A FLOORBOARD. AND I DON'T
13 BELIEVE THAT THAT IS, IF ANY EVIDENCE OF BEING REASONABLY
14 HANDLED AND THAT THAT HAS BEEN DEMONSTRATED SO FAR. I
15 UNDERSTAND THAT IT GOES TO THE WEIGHT BUT I ALSO, BUT IT
16 ALSO GOES TO THE CREDIBILITY OF ALLOWING THIS EVIDENCE IN
17 WHEN WE DON'T HAVE THAT SPECIFIED, WE DON'T HAVE A
18 REASONABLY HANDLED DEMONSTRATED BY THE TESTIMONY THAT THEY
19 HAVE SO FAR. IT IS JUST COMPLETELY DIFFERENT FROM COCAINE
20 THAT HAS BEEN WEIGHED AND TESTED AND PUT INTO THE TRUNK OF
21 A POLICE CAR.

22 THE COURT: YA'LL ARE MISUNDERSTANDING WHAT I AM
23 SAYING. I AM NOT JUST SATISFIED AT THIS POINT EXACTLY
24 WHAT HAPPENED TO THE STUFF, I AM ONLY SAYING IT IS NOT
25 ADMISSIBLE BECAUSE I AM NOT REAL SATISFIED WITH MAY OF

1 WHAT HAPPENED BETWEEN ROE AND THE INVESTIGATOR AND WHEN IT
2 GOT TO THE LAB. THESE CASES, OBVIOUSLY THEY HAD GOTTEN
3 THROUGH TRYING TO PROVE THE ENTIRE CHAIN AND AS I
4 UNDERSTAND WHAT IS GOING ON HERE, THE STATE IS INSISTING
5 ON GOING AHEAD AND HAVE THE ANALYSIS TO TESTIFY TO WHAT IT
6 WAS BEFORE YOU COMPLETELY DO THE CHAIN. I DON'T KNOW WHY
7 YOU WANT TO DO THAT, I AM JUST SAYING, NO. PUT THE
8 INVESTIGATOR UP, COMPLETE YOUR CHAIN AND THEN I WILL RULE
9 ON IT.

10 MR. JOPHLIN: YES SIR, YOUR HONOR.

11 MS. COOPER: YOUR HONOR, INVESTIGATOR BARNES DID NOT
12 OBSERVE DEPUTY ROE PACKAGE IT OR WHAT HE DID WITH THE
13 SHOES, HE CAN ONLY TESTIFY TO ROE COMING TO HIS CUBICLE AT
14 HEADQUARTERS AND HE INSTRUCTED HIM AT THAT POINT TO TAKE
15 THEM TO STAN RICHARDS, THE CRIME SCENE INVESTIGATOR.
16 COULD YOU PROVIDE US WITH SOME, I GUES GUIDANCE, WE DO
17 HAVE DEPUTY ROE BACK HERE, WE CAN CLEAN UP ANYTHING YOU
18 ARE CONCERNED ABOUT CONCERNING THE HANDLING OF THE SHOES
19 IN ORDER TO SATISFY MORE AS TO THE CHAIN. AS FAR AS THESE
20 ITEMS OF EVIDENCE CONCERNING THE BASIS FROM THE DNA
21 RESULTS, THE CHAIN IS COMPLETE.

22 THE COURT: DID MR. BARNES SEE THE SHOES, DID ROE
23 JUST TELL HIM HE HAD THEM AND MR. BARNES TAKE THEM ON TO
24 RICHARDS. I DON'T KNOW WHAT HAPPENED, I CAN'T--

25 MS. COOPER: LET ME FIND OUT, YOUR HONOR. YOUR

1 HONOR, INQUIRING WITH INVESTIGATOR BARNES, HE OBSERVED THE
2 SHOES AT THE SCENE, HE NOTICED THE BLOOD ON THE SHOES ON
3 THE DEFENDANT AND HE INSTRUCTED ROE TO TAKE OFF OF THE
4 DEFENDANT. HE DOES NOT RECALL WHETHER OR NOT THE SHOES
5 WERE ALREADY BEEN BAGGED BY THE TIME INVESTIGATOR ROE
6 BROUGHT THEM TO HIM AT HEADQUARTERS. BUT HE DOES SAY THEY
7 DO APPEAR TO BE IN THE SAME CONDITION. FOR PURPOSES OF
8 THE CHAIN OF CUSTODY, YOUR HONOR, INVESTIGATOR BARNES WAS
9 NEVER, HAD ANY CUSTODY OF THE SHOES SO HE WOULD NOT BE A
10 CHAIN OF CUSTODY WITNESS. YOUR HONOR, I AM SORRY, HE IS
11 PART OF THE CHAIN, HE INDICATES HE CONFISCATED THE SHOES
12 FROM THE DEFENDANT AND GAVE THEM TO ROE, WE WILL GO AHEAD
13 AND CALL HIM THEN.

14 THE COURT: BRING THE JURY IN, PLEASE.

15 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
16 APPROXIMATELY 11:15 A.M.)

17 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN,
18 BEFORE WE CONTINUE, THE WITNESS WHO WAS TESTIFYING HAS
19 BEEN STOOD ASIDE AND WE WILL HEAR HIS TESTIMONY LATER.
20 THE STATE MAY CALL ITS NEXT WITNESS.

21 MS. COOPER: THE STATE CALLS INVESTIGATOR ERIC BARNES
22 TO THE STAND.

23 ERIC BARNES, AFTER BEING DULY SWORN, TESTIFIED
24 AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. JOPHLIN:

2 Q INVESTIGATOR BARNES, WHERE ARE YOU EMPLOYED?

3 A AT THE RICHLAND COUNTY SHERIFFS OFFICE IN THE MAJOR
4 CRIME SECTION AND I AM CURRENTLY THE FULL TIME COLD CASE
5 INVESTIGATOR.

6 Q AND WHAT ARE YOUR DUTIES ENTAIL?

7 A WE HANDLE ALL THE COLD CASE HOMICIDES IN THE COUNTY
8 AND I AM RESPONSIBLE MAINTAINING THOSE AS LEADS COME IN
9 AND IN WORKING THOSE THAT WOULD BE MY PRIMARY JOB. THE
10 SECONDARY JOBS WOULD BE, I WOULD STILL HAVE MURDER CALLS
11 AND OTHER MAJOR CRIME FUNCTIONS THAT WOULD COME UP, I ALSO
12 HAVE REGULAR CALLS. FOR INSTANCE I HAVE A REGULAR CALL
13 ABOUT EVERY FIVE WEEKS WHERE I AM THE ON CALL INVESTIGATOR
14 IN CASE SOMETHING HAPPENS, WHETHER IT BE SOMETHING LIKE
15 THIS OR ANY FORGERY OR ANY OTHER TYPE OF CRIME WHERE THERE
16 NEEDS TO BE ASSISTANCE FOR INVESTIGATIONS.

17 Q AND DID YOU HAVE, WERE YOU WITH THE SHERIFFS
18 DEPARTMENT ON APRIL OF 2004?

19 A I WAS.

20 Q AND DID YOU HAVE A CHANCE TO RESPOND TO AN INCIDENT
21 THAT AFTERNOON?

22 A I DID.

23 Q AND WHAT WAS THE PROMPT TO, FOR YOU TO RESPOND TO
24 SOMETHING?

25 A I WAS THE, THERE WAS A REPORT OF A HOME INVASION THAT

1 OCCURRED IN THE NORTHEAST. DEPUTY WAGNER WAS ASKING FOR
2 AN INVESTIGATOR AT THE HOSPITAL AND I RESPONDED TO THE
3 HOSPITAL, PROVIDENCE NORTHEAST AND MET WITH HER. THE
4 VICTIM, MS. LOURDES ANTONIO, WHO WAS BEING TREATED BY DR.
5 BOYER AT THE TIME IN THE EMERGENCY ROOM. AND IT WENT FROM
6 THERE.

7 Q DID YOU MEET UP WITH DEPUTY HOLLY WAGNER AND THE
8 VICTIM, LOURDES ANTONIO?

9 A I DID.

10 Q ANYBODY ELSE WITH THEM?

11 A THE VICTIM'S HUSBAND WAS THERE ALONG WITH I BELIEVE A
12 PERSON FROM THE HOSPITAL WHO WAS ALSO ATTEMPTING TO ACT AS
13 AN INTERPRETER AS WE TRIED TO BRIDGE THE COMMUNICATION GAP
14 WE HAD.

15 Q AND WHEN YOU GOT HERE WHAT DID YOU OBSERVE AS FAR AS
16 THE VICTIM?

17 A THE VICTIM WAS ON A GURNEY IN THE HOSPITAL EMERGENCY
18 ROOM. SHE WAS OBVIOUSLY IN A LOT OF PAIN. SHE WAS IN
19 DISCOMFORT, SHE WAS SCARED. I MEAN, WE GOT TO, WE WERE
20 ABLE TO BRIDGE SOME OF THE CONVERSATION AND I WAS ABLE TO
21 GET A DESCRIPTION OF KIND OF WHAT HAPPENED. AND MS.
22 WAGNER FILLED ME IN A LITTLE BIT ABOUT WHAT HAPPENED BUT
23 IT BECAME OBVIOUS I NEEDED TO GO BACK TO THE SCENE AND GET
24 A LITTLE BETTER UNDERSTANDING OF WHAT WAS GOING ON AT THE
25 SCENE.

1 Q WERE YOU AT THE HOSPITAL FOR LONG?

2 A PROBABLY 20 MINUTES OR SO.

3 Q AND WHAT WERE YOU ABLE TO DETERMINE AS FAR AS, FROM--

4 A LET ME STOP YOU THERE, I SAID PROBABLY 20 MINUTES OR
5 SO, TO GIVE OR TAKE THERE, I DIDN'T REALLY KEEP NOTES AT
6 THE TIME FROM THAT STANDPOINT. BUT IT WAS SUFFICIENT
7 ENOUGH TO GET THE INFORMATION THAT I NEEDED.

8 Q AND WHAT INFORMATION DID YOU RECEIVE FROM THE VICTIM
9 AT THE HOSPITAL?

10 A THAT SHE HAD BEEN ASSAULTED IN THE HOME OF HER, SHE
11 WAS IN THE EMPLOYEE OF MR. AND MS. CONNELL. AND SHE WAS
12 SUPPOSEDLY KEEPING THEIR YOUNG CHILD AND WALKING THEIR
13 CHILD AND THAT SHE HAD BEEN, THERE WAS AN ASSAULT THAT HAD
14 OCCURRED OUT THERE AT THE SCENE AND THE SUSPECT WAS A
15 BLACK MALE ABOUT 5'8", ABOUT 23 YEARS OLD, SLIM, DARK
16 SKINNED, NO MUSTACHE, AND A LONG DARK BLUE SWEATER, BLUE
17 JEANS, TENNIS SHOES AND A DARK BLUE BACKPACK. AND THERE
18 WAS A MENTION OF A PISTOL.

19 Q OKAY. AND DID THIS COME DIRECTLY TO YOU FROM
20 LOURDES, WERE YOU ABLE TO UNDERSTAND HER IN SPANISH OR WAS
21 HER HUSBAND AND ANOTHER INTERPRETER THERE?

22 A WELL, IT DID NOT COME, I WOULD BE HESITANT ABOUT
23 SAYING IT CAME DIRECTLY FROM LOURDES. I WAS TRYING TO GET
24 AN OVERVIEW OF WHAT HAPPENED. SO, THIS CAME AS A RESULT
25 OF CONVERSATIONS I HAD BETWEEN WAGNER AND THE VICTIM AND

1 THE PEOPLE IN THE ROOM TRYING TO GATHER WHAT ACTUALLY
2 HAPPENED SO I COULD BETTER UNDERSTAND WHAT WAS GOING ON.
3 IN MY MIND I FELT LIKE THAT THE VICTIM DIDN'T, WE DIDN'T
4 NEED, SHE WASN'T IN A STATE THAT SHE COULD GIVE A
5 STATEMENT AT THE TIME. BUT THOSE BASIC FACTS WAS ENOUGH
6 FOR ME TO GO TO THE SCENE AND WORK FROM THERE. SO, THOSE
7 WERE BASIC FACTS THAT WAS KIND OF LIKE A BROAD SWEEPING
8 COLOR ACROSS THE CANVAS, SO TO SPEAK.

9 Q FROM THE HOSPITAL WHERE DID YOU GO?

10 A WENT TO [REDACTED] THE HOME OF MR. AND MS.
11 CONNELL.

12 Q AND IS THAT HERE IN RICHLAND COUNTY?

13 A IT IS, UP IN THE LONGCREEK SUBDIVISION IN THE
14 NORTHEAST SECTION OF RICHLAND COUNTY.

15 Q AND WHEN YOU GOT THERE WHO WAS THERE?

16 A MR. CONNELL WAS THERE, DEPUTY ROE AND INVESTIGATOR
17 RICHARDS.

18 Q STAN RICHARDS?

19 A STAN RICHARDS, YES.

20 Q AND WHAT DID THEY DO, WERE YOU BRIEFED ON THE SCENE
21 OR WHAT DID THEY TELL YOU HAPPENED, SORT OF TO CATCH YOU
22 UP ON WHAT WAS GOING ON?

23 A THEY BRIEFED ME ON THE SCENE, I HAD ALSO, LET ME JUMP
24 RIGHT ACROSS FOR JUST A SECOND. I HAD ALSO TALKED WITH
25 MS. CONNELL IN THE LOBBY OF THE HOSPITAL AND SHE KIND OF

1 FILLED IN SOME OF THE BLANKS TOO AS FAR AS THE VICTIM
2 BEING HER CARETAKER AND THAT MR. CONNELL WAS THERE AT THE
3 SCENE. AND SHE ALSO HAD MENTIONED, YOU KNOW, SOME THINGS
4 THAT MAY OF BEEN ODD IN THE COMMUNITY SUCH AS THE TREE
5 COMPANY OR SOMETHING LIKE THAT. SO, I DID TALK TO HER
6 PRIOR TO GOING OVER THERE AND HAD THOSE IN MIND WHEN I
7 WENT TO THE SCENE AND WAS BRIEFED BY DEPUTY ROE AND
8 RICHARDS AND MR. CONNELL. WHEN I FIRST TALKED TO MR.
9 CONNELL, OF COURSE, IN MY MIND I WAS INTERESTED OF WHAT
10 WAS DIFFERENT IN THE NEIGHBORHOOD. AND FROM AN
11 INVESTIGATIVE STANDPOINT AND HAVING BEEN WORKED IN THE
12 COUNTY FOR QUITE A BIT I UNDERSTAND A LITTLE BIT, I HAVE
13 LIVED IN THAT AREA OF RICHLAND COUNTY AND KNOW A LITTLE
14 BIT ABOUT THE CRIME AND THE TRENDS IN THE AREA. SO, I WAS
15 LOOKING FOR SOMETHING THAT DOESN'T FIT AND SO I ASKED HIM
16 ABOUT THE LANDSCAPING PART, THE TREE COMPANY THAT HIS WIFE
17 HAD JUST MENTIONED AND REALIZED THAT THE WORKERS DID NOT
18 FIT THE GENERAL DESCRIPTION THAT WE WERE LOOKING FOR AT
19 THIS TIME. AND THEN I WAS TOLD ABOUT THE PISTOL BEING
20 MISSING, WAS TOLD ABOUT THE ASSAULT, THE BLOOD ON THE
21 FLOOR AND WHEN MR. RICHARDS WAS THROUGH PHOTOGRAPHING THE
22 SCENE, WAS ABLE TO WALK THROUGH AND LOOK AT THE SCENE.

23 Q I WANT TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
24 EXHIBIT NUMBER 43, IS THIS HOW IT APPEARED WHEN YOU WALKED
25 IN, AT THE TIME YOU WALKED IN, IN THE FOYER?

1 A AT THAT TIME IT APPEARED, I DON'T RECALL, I AM COMING
2 IN AFTER MR. RICHARDS IS ALREADY TAKING THE PHOTOGRAPHS,
3 WE JUST DON'T DO THAT, HE HAS GOT THE SCENE. SO, WHEN I
4 AM LOOKING AT THIS AND YOU ASK THE QUESTION, IS THIS HOW
5 IT APPEARED. I DON'T RECALL THAT, THE NUMBERS ARE THERE
6 BUT CERTAINLY THE FOYER AND THE BLOOD, THAT IS HOW I
7 RECALL SEEING THE BLOOD IN THE FOYER.

8 Q OKAY, THE GENERAL APPEARANCE?

9 A THE GENERAL APPEARANCE, YES SIR.

10 Q AND AT THIS POINT AND TIME WERE THERE OTHER DEPUTIES
11 INVOLVED IN THE NEIGHBORHOOD?

12 A REGION SIX HAS DONE A MAGNIFICENT JOB OF BRINGING
13 PEOPLE TO THE FOREFRONT AND IN GETTING UNITS IN THE AREA,
14 TRYING TO FIND OUT, TRYING TO SEARCH FOR POSSIBLE SUSPECTS
15 AND IT WAS CALLED IN FROM WAGNER FROM THE HOSPITAL TO ROE
16 AND ROE WAS RELAYING NOT ONLY AT THE SCENE BUT THEY WERE
17 COMMUNICATING BACK AND FORTH. REGION SIX HAD QUITE A
18 NUMBER OF DEPUTES IN THE AREA AND THAT WAS, THAT IS A
19 QUITE A BIG AREA TO COVER, THE NEIGHBORHOODS AND STUFF,
20 THERE WERE QUITE A FEW UNITS OUT THERE.

21 Q AND WHERE DID MR. CONNELL TELL YOU HIS PISTOL HAD
22 BEEN TAKEN FROM?

23 A HIS MASTER BEDROOM, I UNDERSTOOD IT TO BE A
24 NIGHTSTAND.

25 Q AND CAN YOU DESCRIBE WHAT KIND OF WEAPON IT WAS?

1 A IT WAS A .45 PISTOL AND THE NUMBER OF CLIPS, FOUR
2 CLIPS.

3 Q AND AT THIS POINT YOU FINISHED TALKING WITH, GETTING
4 BRIEFED BY HOLLY WAGNER, GETTING BRIEFED BY DEPUTY ROE AT
5 THE SCENE AT THE HOME OF JEFF CONNELL, WHERE DID YOU GO
6 FROM THERE?

7 A I BECAME AWARE THAT THE DEPUTIES HAD GOTTEN ONTO A
8 LEAD OF THIS GROUP THAT HAD BEEN SELLING PRODUCTS DOOR TO
9 DOOR IN THE NEIGHBORHOOD. MR. CONNELL, AS I RECALL,
10 ACTUALLY MENTIONED THAT TO ME AS WELL. BUT THAT BECAME
11 CONFIRMED AS LIEUTENANT TYLER AND HIS MEN WERE GOING INTO
12 THE AREA AND ACTUALLY FINDING THESE PEOPLE. I BECAME
13 AWARE THAT THEY HAD PULLED OVER OR AT LEAST TALKED TO A
14 FEW AND WERE IN CONTACT OR TRYING TO SHORE THAT PARTICULAR
15 INFORMATION UP.

16 Q AND WHAT KIND OF PRODUCTS WERE YOU MADE AWARE THAT
17 THEY WERE SELLING?

18 A THERE WERE SELLING CLEANING PRODUCTS, I DON'T KNOW
19 WHAT WAS IN THOSE CLEANING PRODUCTS, I AM CAN TELL YOU
20 FROM EXPERIENCE WHAT I HAVE SEEN IN THOSE CLEANING
21 PRODUCTS. BUT THEY WERE SELLING CLEANING PRODUCTS,
22 HOUSEHOLD CLEANING PRODUCTS.

23 Q AND DID THAT MATCH THE DESCRIPTION THAT YOU WERE
24 GIVEN PREVIOUSLY ABOUT WHO APPROACHED THE VICTIM?

25 A AS I RECALL THERE WAS SOME TALK ABOUT THAT SHE HAD

1 BEEN APPROACHED BY SOMEONE LIKE THAT. SO, IT MATCHED,
2 THAT PARTICULAR THING WAS A RED FLAG, IF THERE WAS SOME
3 AREA THAT COULD BE ONE OF THOSE THINGS THAT DIDN'T FIT
4 THAT DAY. SO, WE WERE TRYING TO CONCENTRATE ON THAT.

5 Q AND IN YOUR REPORT DID YOU NOTATE WHETHER ANYONE
6 NOTICED SOMEONE APPROACHING THE VICTIM?

7 A I DID NOTATE IN MY DEBRIEFING FROM ROE AT THE SCENE,
8 HE MENTIONED THAT THERE WAS A GENTLEMAN THAT WITNESSED A
9 BLACK MALE IN THE STREET SELLING SOME CLEANING PRODUCTS.
10 THIS IS JUST A NOTATION, I DIDN'T HAVE ANY NAMES BUT I DID
11 NOTATE IT.

12 Q AND YOU WERE MADE AWARE THAT THERE WAS A GROUP IN THE
13 NEIGHBORHOOD SELLING CLEANING PRODUCTS, LIEUTENANT TYLER
14 AND HIS GROUP WERE DEALING WITH THAT?

15 A THAT IS RIGHT, THEY WERE GOING INTO ALL THE
16 NEIGHBORHOODS AROUND THE AREA. OF COURSE, THERE ARE A
17 COUPLE OF OUTLETS TO LONGCREEK PLANTATION AND I REFERRED
18 TO THE MAP AND THEN YOU CAN SEE YOURSELVES ON THAT. BUT
19 THEY WERE TRYING, YOU TRY TO, YOU HOOK FOR THE BEST ON A
20 LOT OF THESE THINGS AND YOU HOPE YOU ARE IN AN AREA WHEN
21 IT IS HAPPENING. BUT THEY DID A VERY GOOD JOB GETTING
22 INTO THOSE NEIGHBORHOODS AND ACTUALLY WERE FLAGGED DOWN BY
23 MR. COWART A LITTLE LATER ON AND IN A NEIGHBORHOOD RIGHT
24 DOWN THE STREET FROM WHERE WE WERE. AND I BECAME AWARE OF
25 THAT WHILE I WAS OUT THERE AT THE SCENE.

1 Q SO PART OF TYLER'S GROUP WAS SOMEONE IN THAT GROUP,
2 WAS FLAGGED DOWN BY MR. RON COWART?

3 A COWART ACTUALLY TALKED TO ME DOWN IN THAT
4 NEIGHBORHOOD, I DON'T RECALL IF HE ACTUALLY FLAGGED AND
5 SENT TYLER DOWN OR IF HE FLAGGED THE DEPUTY DOWN AND THEN
6 LIEUTENANT TYLER BECAME AWARE OF IT, WENT OVER THERE BUT I
7 WENT DOWN AND MET WITH LIEUTENANT TYLER AND MR. COWART.
8 AND THEN LIEUTENANT TYLER LEFT AND CONTINUED HIS SEARCH
9 WHILE I TALKED TO MR. COWART.

10 Q WHAT DID YOU LEARN FROM MR. COWART?

11 A MR. COWART STATES OR STATED THAT HE HAD PICKED UP A
12 GENTLEMAN THAT HAD BEEN SWEATING AND FIT THE SAME GENERAL
13 DESCRIPTION AS WHAT I HAD BEEN TOLD EARLIER IN THE
14 INVESTIGATION. AND THAT HE PICKED HIM UP ON THE AND I
15 HAVE GOT TO SAY THE NORTH SIDE OF LONGTOWN WEST, I DON'T,
16 THAT IS PROBABLY RIGHT, THE NORTH SIDE OF LONGTOWN WEST
17 BECAUSE IT COME UP CLOSER TO BLYTHEWOOD MIDDLE SCHOOL.
18 SO, IF YOU, THE WAY HE DESCRIBED IT IT IS ON THE NORTH
19 SIDE OF TAM-O-SHANTER AS LONGTOWN COMES AROUND, YOU HAVE
20 TO REFER TO THE MAP OF WHERE I UNDERSTOOD HE WAS SAYING.
21 BUT ANYWAY, HE HAD TO PICK HIM UP AND THEN HE BROUGHT HIM
22 DOWN BELOW IN LONGCREEK SUBDIVISION, BELOW AND INTO THE
23 NEXT NEIGHBORHOOD. AND THE GUY WAS SWEATING, HE SAID TWO
24 GUYS WERE CHASING HIM, A WHITE GUY AND A BLACK GUY AND
25 THEY HAD CHASED HIM, THE SAME TWO GUYS THAT CHASED HIM THE

1 DAY BEFORE. AND HE DESCRIBED HIM AND THEN I TOOK HIS
2 STATEMENT FROM MR. COWART BASED ON WHAT HE SAID AND THEN
3 WE TRIED TO PROCESS HIS TRUCK LOOKING FOR FINGERPRINTS.
4 AND WE SEARCHED HIS TRUCK LOOKING FOR THE GUN BECAUSE WE
5 WERE CONCERNED FROM A SAFETY STANDPOINT FOR THE
6 NEIGHBORHOOD THAT WE OBVIOUSLY HAD SOMEBODY THAT WAS
7 VIOLENT. AND WE NEEDED TO MAKE SURE WE COVERED THAT AS
8 WELL AND WE DIDN'T FIND THE GUN AND BUT WE DID LOOK FOR
9 IT.

10 Q AND ON THIS MAP APPROXIMATELY WHERE DID MR. COWART
11 TELL YOU THAT HE PICKED UP THE INDIVIDUAL?

12 A THIS IS COLUMBIA CLUB DRIVE RIGHT HERE, IT GOES ON
13 THE NORTH SIDE OF THE RICE CREEK LAKE. THIS IS
14 TAM-O-SHANTER RIGHT HERE, I UNDERSTOOD HIM AT THAT TIME
15 THAT I UNDERSTOOD HIM PICKING THE SUSPECT OR THE PERSON
16 WHO GOT IN HIS TRUCK UP AROUND IN HERE, THAT IS MY
17 UNDERSTANDING. AND I DIDN'T HAVE A MAP AT THAT TIME, I
18 DIDN'T REVIEW A MAP AT THAT TIME WITH HIM BUT THAT WAS MY
19 UNDERSTANDING, ABOVE HERE AND THEN HE PICKED HIM UP AND
20 BROUGHT HIM DOWN INTO THE NEIGHBORHOOD DOWN HERE.

21 Q AND DID MR. COWART TELL YOU ANYTHING ABOUT WHAT HE
22 HAD OBSERVED IN THE POCKETS?

23 A HE SAID HE OBSERVED A GREEN CIGARETTE PACK HALF
24 FILLED WITH CIGARETTES AND HE DID HAVE THE BACKPACK.

25 Q WHEN YOU GOT THERE, OBVIOUSLY, THE PERSON WAS GONE,

1 DID HE SAY WHICH DIRECTION HE SENT HIM TO OR WHERE HE SENT
2 HIM TO?

3 A WELL, AND I GUESS ANOTHER RED FLAG CAME UP, WAS THAT
4 IT WASN'T JUST LIKE SOMEONE APPROACHING ME ON THE STREET
5 AND WANTING TO INVITE ME TO A CUP OF COFFEE. MR. COWART
6 EXPRESSED A FEELING, A FEAR AND EVEN TOOK HIS KEYS OUT
7 OF--

8 MS. VAN GINHOVEN: OBJECTION, YOUR HONOR, I DON'T
9 THINK HE CAN TESTIFY AS TO WHAT MR. COWART WAS FEELING.

10 THE COURT: NO, HE SAID COWART EXPRESSED AND HE CAN
11 TESTIFY TO WHAT WAS SAID. OVERRULED, GO AHEAD.

12 A PUT THE KEYS OUT OF THE IGNITION AND THAT THE SUBJECT
13 HAD, WAS ACTING UNUSUAL TO THE POINT THAT IT THREW UP SOME
14 RED FLAGS FOR MR. COWART AND MR. COWART HAD EXPRESSED THAT
15 TO ME. AND THAT HE WAS NOT FEELING GOOD ABOUT IT SO HE
16 HAD ASKED MR. COWART ABOUT GETTING A JOB. MR. COWART SAID
17 I DIDN'T, I DON'T HAVE A JOB FOR YOU. THEN THE SUBJECT
18 WAS WANTING TO KNOW HOW TO, WHERE WAS THE NEAREST STORE
19 AND THEN MR. COWART POINTED IN THE GENERAL DIRECTION AND I
20 UNDERSTOOD IT BACK TOWARDS CLEMSON ROAD WHICH THE CLOSEST
21 STORE WOULD BE THE PUBLIX RIGHT THERE AT LEE AND HARD
22 SCRABBLE AND HE POINTED DOWN BACK THAT WAY. AND THEN MR.
23 COWART, IT WAS MY UNDERSTANDING THAT MR. COWART WENT ON TO
24 DO HIS WORK AND THIS GUY JUST KIND OF MELTED INTO THE
25 NEIGHBORHOOD AND DISAPPEARED. AND MR. COWART ADVISED ME

1 THAT HE HAD LEFT ABOUT FIVE OR TEN MINUTES LATER AND WENT
2 RIDING DOWN THE ROAD AND DID NOT SEE WHERE THIS GUY HAD
3 BEEN OR WHERE HE WENT TO. SO, THEN HE SAID WHEN HE SAW
4 THE DEPUTIES COME INTO THE AREA AND HE BECAME SUSPICIOUS
5 AND MAYBE THERE WAS SOMETHING ELSE GOING ON AND THAT IS
6 WHEN HE FLAGGED US DOWN.

7 Q ARE YOU TALKING ABOUT THE CLOSEST STORE WOULD BE
8 PUBLIX ON LEE AND HARD SCRABBLE, I THINK YOU SAID?

9 A RIGHT.

10 Q STATE'S EXHIBIT NUMBER 13 IS A BIG MAP, CAN YOU POINT
11 RIGHT AROUND WHERE THAT PUBLIX WOULD BE?

12 A THIS IS THE NEIGHBORHOOD WHERE HE SAID HE LAST SAW
13 HIM. IN ORDER TO GET OUT OF THE NEIGHBORHOOD YOU HAVE TO
14 COME UP HERE. THIS IS WHERE LONGTOWN WEST ENDS AND
15 LONGTOWN STARTS, IT IS LIKE A BIG CIRCLE. THIS IS
16 LONGTOWN ROAD AND THEN IS LEE ROAD RIGHT HERE AND THIS IS
17 THE PUBLIX GROCERY STORE AND IT IS LIKE A STRIP MALL, A
18 LONG STRIP MALL RIGHT THERE. THAT IS ACTUALLY THE CLOSEST
19 AND CLEMSON ROAD IS ON DOWN HERE AND THERE IS QUIET A BIT
20 OF BUILDUP DOWN HERE BUT THIS IS ACTUALLY THE CLOSEST AND
21 SO I UNDERSTOOD MR. COWART POINTING IN THIS DIRECTION.
22 BUT I ALSO NOTE THAT THIS IS THE CLOSEST AS FAR AS THE
23 SHOPPING CENTER.

24 Q AND STATE'S EXHIBIT NUMBER 54, IS THAT A BLOWUP OF
25 THE AREA THAT YOU JUST POINTED OUT?

1 A IT IS.

2 Q THANK YOU. NOW, YOU DID SPEAK WITH MR. COWART AND
3 YOU REALIZED THAT THE DESCRIPTION THAT HE GAVE YOU WAS
4 SIMILAR TO THE ONES HE HAD BEEN RECEIVING FROM OTHER--

5 MS. VAN GINHOVEN: YOUR HONOR, I AM GOING TO OBJECT
6 TO THE LEADING.

7 THE COURT: SUSTAINED. REPHRASE YOUR QUESTION.

8 Q CAN YOU GIVE THE SPECIFIC DESCRIPTION THAT RONALD
9 COWART GAVE YOU WHEN HE SHOWED UP?

10 A RONALD COWART GAVE ME A DESCRIPTION OF A BLACK MALE,
11 SLIM, AND, WHAT I AM DOING IS I AM LOOKING AT MY NOTES SO
12 I DON'T MISQUOTE HERE SO JUST GIVE ME JUST A MOMENT. HIS
13 DESCRIPTION WAS CLOSE CUT HAIRCUT ABOUT 6', DARK COLORED
14 BACKPACK, BLACK LONG SLEEVED SHIRT, BAGGY BLUE JEANS.

15 Q AND AFTER YOU FINISHED SPEAKING WITH MR. COWART DID
16 YOU RECEIVE AN UPDATE FROM LIEUTENANT TYLER?

17 A I DID, THAT THEY HAD STOPPED OR GOTTEN INTO CONTACT
18 WITH THE BOSS LADY OF THE PEOPLE SELLING DOOR TO DOOR AND
19 THAT SHE WAS GOING TO MEET HIM OVER ON COLUMBIA CLUB
20 DRIVE. HALFWAY BETWEEN TAM-O-SHANTER, IT ENDED UP BEING
21 HALFWAY BETWEEN TAM-O-SHANTER AND THE GOLF CLUB DOWN
22 THERE. WHEN I GOT THERE, AFTER I WAS DEALING WITH MR.
23 COWART, THERE WERE SEVERAL OF THE OTHER VENDORS THAT SHE
24 HAD, SHE HAD NOT GOTTEN THERE AT THAT PARTICULAR POINT.
25 AND THEN SHE DROVE UP SHORTLY THEREAFTER.

1 Q DID ANY OF THOSE INDIVIDUALS THAT YOU JUST SPOKE OF,
2 DID ANY OF THEM MATCH THE DESCRIPTION THAT YOU HAD BEEN
3 GIVEN?

4 A NO.

5 Q AND WHEN DID SHE GET, WHEN DID THE SUPERVISOR ARRIVE?

6 A SHE ARRIVED A FEW MINUTE LATER. LIEUTENANT TYLER
7 COORDINATED GETTING OTHER DEPUTIES THERE, FELT CONFIDENT
8 THAT WE WERE GETTING CLOSER TO WHERE WE NEEDED TO BE, AT
9 LEAST BY IDENTIFYING OR RULING OUT THIS PARTICULAR PERSON,
10 IF INDEED HE WAS IN THIS PARTICULAR GROUP. WE THOUGHT
11 LIKE WE WERE GETTING PRETTY CLOSE.

12 Q AND WITHOUT GOING INTO WHAT THE EMPLOYER SAID TO YOU,
13 THE SUPERVISOR SAID TO YOU. AFTER SPEAKING TO HER WERE
14 YOU ABLE TO DEVELOPE THE SUSPECT?

15 A THAT IS CORRECT, JERENE HAYWARD WHO WOULD OF BEEN AN
16 EMPLOYEE OF HERS, JUST HAD BECOME AN EMPLOYER OF HERS IN
17 THE LAST FEW WEEKS.

18 Q AND AFTER SPEAKING WITH HER DID THE DESCRIPTION OF
19 HER EMPLOYER MATCH THE DESCRIPTION GIVEN BY THE VICTIM?

20 A RIGHT, THE OTHER EMPLOYEE THAT SHE HAD THAT WE HAD
21 SEEN ON THE SCENE DID NOT FIT THE DESCRIPTION, THE OTHER
22 EMPLOYEE THAT WE DESCRIBED DID NOT. BUT THE DESCRIPTION
23 THAT WAS GIVEN OF HIM SEEMED TO FIT THAT DESCRIPTION, THE
24 CLOTHING, THE AGE, THE RACE, THE GENDER AND TO INCLUDE A
25 BACKPACK, THE SAME GENERAL DESCRIPTION.

1 Q AND WHAT WAS COORDINATED WITH HER?

2 A WELL, THERE WAS ALMOST, AT THAT TIME WHEN SHE WAS
3 DRIVING UP SHE HAD JUST RECEIVED A PHONE CALL WAS MY
4 UNDERSTANDING FROM JERENE HAYWARD WANTING TO GET PICKED UP
5 IN A NEARBY AREA. WE WEREN'T QUITE SURE WHERE THAT AREA
6 WAS OR AT LEAST I WASN'T AT THE TIME. BUT WE MADE AN
7 EFFORT TO COME UP WITH A PLAN AND I TOLD LIEUTENANT TYLER
8 AND DEPUTY WAGNER TO GET INTO THE VAN, I KNEW THAT THERE
9 WAS A, WE HAD A SWEAT SHIRT OR SOMETHING THAT LIEUTENANT
10 TYLER COULD PUT ON AND WE PUT ALL OF THE OTHER WORKERS OUT
11 OF THE VAN. AND WE HAD, I ACTUALLY STOOD BY WITH THEM AND
12 WHERE TALKING WITH THEM AND SOME OTHER DEPUTIES WERE
13 STANDING BY WITH ME AND WE SENT, ONE OF THE DEPUTES WAS
14 STANDING BY ME AND WE SENT THE OTHER DEPUTIES AS BACKUP
15 WITH THE VAN TO GO AND TAKE A LOOK AND SEE JERENE AND SEE
16 THE DESCRIPTION AND THEN TRY TO FOLLOW-UP.

17 Q AND WHO WERE YOU SENDING AS BACKUP?

18 A WE HAD DEPUTY ROE, SERGEANT MCCOLMAN, A SERGEANT AT
19 THE TIME AND I BELIEVE DEPUTY GRAZIOSO, I BELIEVE THERE
20 WERE A COUPLE OF OTHER DEPUTIES, TREVOR HOLT WAS OUT
21 THERE, I BELIEVE THAT IS ABOUT IT.

22 Q AND DO YOU RECALL WHERE SHE WAS GOING TO PICK HIM UP?

23 A IT WAS MY UNDERSTANDING THEY WERE GOING TO THE HARD
24 SCRABBLE ROAD AREA AND THEN I WAS TOLD OVER THE RADIO THAT
25 THEY HAD IDENTIFIED HIM AND HAD HIM IN DETENTION IN THE

1 SOUTHWOOD SUBDIVISION OVER IN NIGHT HERON COURT.

2 Q AND LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
3 EXHIBIT 13, AGAIN, BUT THEN STATE'S EXHIBIT NUMBER 54
4 WHICH IS ABOVE THE AREA. CAN YOU IDENTIFY NIGHT HERON
5 COURT?

6 A NIGHT HERON COURT WOULD BE THE SECOND COURT IN THIS
7 SUBDIVISION, AND THIS WOULD BE THE SOUTHWOOD SUBDIVISION
8 RIGHT THERE, IT WOULD BE THE SECOND CUL-DE-SAC ON THE
9 RIGHT AND THIS IS THE PUBLIX RIGHT HERE, RIGHT ACROSS FROM
10 THE PUBLIX.

11 Q AND THAT IS THE PUBLIX THAT WE WERE SPEAKING ABOUT
12 EARLIER?

13 A THAT IS CORRECT.

14 Q SO, DID YOU IMMEDIATELY FOLLOW ALONG WITH THE REST OF
15 THE OFFICERS?

16 A I DID NOT IMMEDIATELY FOLLOW, ALTHOUGH I FELT PRETTY
17 CONFIDENT THIS IS THE WAY OF THE CIRCUMSTANCES, THE
18 TOTALITY OF THE CIRCUMSTANCES. I FELT PRETTY CONFIDENT
19 THEY WERE GOING TO AT LEAST IDENTIFY HIM AND BUT I DID NOT
20 FOLLOW ALONG WITH THEM BECAUSE I STAYED WITH THE OTHER
21 WORKERS AND I WAS TALKING BRIEFLY WITH THEM AND LISTENING
22 TO THE RADIO AT THE TIME. I CAME IN WHEN THEY NOTIFIED ME
23 THAT THEY HAD SOMEBODY DETAINED OUT THERE.

24 Q AND WE HAVE HAD A LOT OF TALK ABOUT DEPUTY WAGNER PUT
25 A HANDCUFF ON HIM AND HE WAS HANDCUFFED AND BEING HELD

1 THERE. CAN YOU EXPLAIN WHY OR SOME OF THE CIRCUMSTANCES
2 TO THAT BEING CUFFED AND BEING DETAINED IN THAT WAY?

3 A SURE.

4 MS. VAN GINHOVEN: YOUR HONOR, I DON'T BELIEVE HE
5 DOESN'T HAVE ANY KNOWLEDGE OF THAT.

6 THE COURT: YOU WANT TO RESPOND.

7 MR. JOPHLIN: CAN I LAY A BETTER FOUNDATION, YOUR
8 HONOR.

9 THE COURT: YES, SIR. AT THIS TIME THE OBJECTION IS
10 SUSTAINED BUT YOU CAN QUESTION FURTHER, GO AHEAD.

11 Q WHEN YOU ARRIVED ON THE SCENE IS IT PART OF YOUR
12 INVESTIGATIVE DUTIES, WERE YOU OVER THE WHOLE
13 INVESTIGATION AS A WHOLE?

14 A YES.

15 Q DIRECTING WHAT WAS GOING ON?

16 A YES, SIR.

17 Q AS PART OF YOUR AUTHORITATIVE DUTIES WERE YOU MADE
18 AWARE OF WHAT HAD HAPPENED WHEN THEY COME INTO CONTACT
19 WITH THE SUSPECT AND WHAT HAD TRANSPIRED?

20 A I WAS MADE AWARE THAT THEY HAD SOMEONE DETAINED AS
21 THE RESULT OF THE INVESTIGATION AND BASED ON THE
22 DESCRIPTIONS THAT WE HAD PRIOR TO THAT. AND THEN I
23 RESPONDED.

24 Q OKAY. AND BEFORE YOU HAD GOTTEN THERE OR WHEN YOU
25 GOT THERE WHAT HAPPENED THEN, ONCE YOU GOT THERE?

1 A WHEN I ARRIVED ON THE SCENE AND THERE WAS A LITTLE
2 BIT OF CHAOS AT FIRST FROM THE STANDPOINT OF WHERE THEY
3 WERE, WHEN YOU COME UP IN THAT SUBDIVISION YOU CREST THE
4 HILL AND I THINK THERE WAS SOME DISCREPANCIES OF TAKING A
5 LEFT OR TAKING A RIGHT. AND WHEN I FINALLY REALIZED WHERE
6 THEY WERE AND GOT UP IN THERE THERE WERE SEVERAL DEPUTIES
7 UP IN THERE, THERE WAS THE WHITE VAN. I OBSERVED DEPUTY
8 ROE, SERGEANT MCCOLMAN AND LIEUTENANT TYLER AND HOLLY
9 WAGNER, I BELIEVE I RECALL HOLLY WAGNER WAS COMPLAINING OF
10 AN INJURY SHE HAD SUSTAINED IN CUFFING THE SUBJECT. BUT
11 THEY TOLD ME, DEPUTY ROE APPROACHED AS I WAS COMING OUT
12 AND ADVISED ME AS I RECALL, ADVISED ME THAT HE HAD
13 VERBALLY MIRANDIZED HIM. I AM ALWAYS ANXIOUS ABOUT WHEN
14 PEOPLE DO THAT AND I AM NOT DOING THAT BECAUSE I AM NOT
15 SURE, BECAUSE I LIKE TO HAVE LIKE, A CONTROL FREAK
16 SOMETIMES ON THE LEAD INVESTIGATIONS BECAUSE I HAVE HAD TO
17 TESTIFY TO THINGS. BUT SO I WAS A LITTLE ANXIOUS ABOUT
18 THAT BUT HE ADVISED ME OF IT AND I WENT AND INTRODUCED
19 MYSELF TO JERENE WHO WAS IN THE CAR AT THE TIME. NOW, I
20 ALSO NOTICED THAT THERE WERE OTHER CIVILIANS IN THE
21 CUL-DE-SAC THAT WERE PART OF THE HOMES THERE AND I RECALL
22 THE BOSS LADY THERE AS WELL WITH THE VAN. I RECALL THAT
23 JERENE WAS VERY VOCIFEROUS AND VERY LOUD. AND BUT WENT UP
24 AND INTRODUCED MYSELF TO HIM AT THAT TIME.
25 Q AND DID THE DEPUTIES, AFTER HE WAS HANDCUFFED, DID

1 THE DEPUTIES FIND ANYTHING ON JERENE?

2 A I WAS ADVISED THAT THEY HAD FOUND A .45 CALIBER HAND
3 GUN, SIMI-AUTOMATIC WITH FOUR CLIPS IN A PLASTIC BAG. AS
4 I RECALL SERGEANT MCCOLMAN HAD THAT ON TOP OF A CAR, I
5 DON'T RECALL WHICH CAR BUT I THINK I RECALL HIM HAVING IT
6 ON TOP OF THE HOOD OR THE BACK OF A CAR AND WERE STANDING
7 BY THOSE. BUT MY FOCUS WAS TOWARDS JERENE.

8 Q WAS ANYTHING ELSE FOUND ON JERENE?

9 A I WAS TOLD THAT THEY HAD FOUND A LITTLE BIT OF
10 MARIJUANA ON HIM AND WE SAY THAT, WE SAY THAT ON THE
11 STREET, WHEN WE SAY A LITTLE BIT OF MARIJUANA, TECHNICALLY
12 WE CAN'T TESTIFY TO THAT, WE CAN'T SAY IT WAS DEFINITELY
13 MARIJUANA, WE SAY IT IS A GREEN LEAFY SUBSTANCE. OKAY.
14 WE DID NOT TEST IT OUT THERE ON THE SCENE BUT WE FELT LIKE
15 IT WAS MARIJUANA AND DEPUTY ROE ADVISED ME OF THAT, THAT
16 THEY HAD FOUND SOME ON HIM.

17 Q AND AFTER THE RESULT OF FINDING THE WEAPON OR HEARING
18 THAT A WEAPON WAS FOUND ON JERENE FROM YOUR OFFICERS DID
19 YOU APPROACH THE DEFENDANT WITH THAT INFORMATION?

20 A I DID.

21 Q AND WHAT DID, DID HE SAY ANYTHING IN RESPONSE?

22 A DID I QUESTION HIM ABOUT THE GUN?

23 Q NOT QUESTION HIM BUT MERELY REGARDING, A STATEMENT
24 REGARDING THE GUN THAT YA'LL FOUND?

25 A DID I MAKE A STATEMENT IN REGARDS?

1 Q WHAT WAS HIS STATEMENT REGARDING THE GUN THAT YA'LL
2 FOUND?

3 A I DON'T RECALL ACTUALLY, I DON'T RECALL RIGHT NOW
4 ACTUALLY QUESTIONING HIM ABOUT THE GUN AT THE SCENE. I
5 THINK THAT WAS KIND OF A GIVEN. I RECALL HIM SHOUTING HIS
6 INNOCENCE TOWARDS HIS BOSS LADY, I RECALL QUITE A BIT OF
7 THAT, I RECALL MYSELF INTRODUCING MYSELF TO HIM, I RECALL
8 BEING VERY INTERESTED IN THE SHOES BECAUSE WE HAD SHOE
9 PRINTS AT THE SCENE THAT WERE IN BLOOD. SO, I WAS VERY
10 INTERESTED IN GETTING TO THOSE SHOES BEFORE ANY MORE BLOOD
11 COULD BE TAKEN OFF OF IT, OBVIOUSLY SOME TIME HAD ELAPSED
12 AND HAD, IN MY MIND HE HAD ALREADY GOTTEN IN THE BACK OF,
13 IF THIS WAS INDEED HIM, HE HAD ALREADY GOTTEN IN THE BACK
14 OF A PINE STRAW TRUCK, HE HAD ALREADY WALKED ON THE
15 STREETS, HE HAD ALREADY WALKED IN THE WOODS SO I WAS VERY
16 INTENT ON GETTING THE SHOES AND LOOKING AT THEM AND SEEING
17 IF THE TREAD PATTERNS WERE SIMILAR AND SEEING IF THERE
18 WERE ANY BLOOD ON THE SHOES. SO, THAT WAS, IN MY MIND
19 IMPORTANT WHEN I WAS INITIALLY APPROACHING HIM. AND WHEN
20 HE IS SHOUTING HIS INNOCENCE AND STUFF I IMMEDIATELY
21 BROUGHT HIM OUT OF THE CAR AND LOOKED AT THE BOTTOM OF HIS
22 SHOES AND REALIZED THERE WAS A PRINT SIMILAR TO WHAT WAS
23 LEFT OF THE SCENE. AND REALIZED THERE WAS A LITTLE BIT OF
24 BLOOD ON THE SHOES AS WELL OR AT LEAST IT LOOKED LIKE
25 BLOOD TO ME.

1 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
2 EXHIBIT NUMBER 50, ARE THOSE THE SHOES YOU ARE TALKING
3 ABOUT?

4 A THOSE ARE.

5 Q AND STATE'S EXHIBIT NUMBER 4, IS THIS ONE OF THE
6 SHOES?

7 A YES.

8 Q AND LET ME SHOW YOU STATE'S EXHIBIT NUMBER 44, IS
9 THAT THE PRINT YOU ARE TALKING ABOUT LEAVING?

10 A THAT IS RIGHT.

11 Q AND WHAT DID YOU FEEL WHEN YOU LOOKED AT THE TREAD ON
12 ~~THE BOTTOM OF THE SHOE AND THE PRINT ON THE SCENE, WHAT~~
13 ~~DID YOU FEEL?~~

14 A I FELT LIKE THAT THERE WAS SOME SIMILARITIES BASED ON
15 ~~THE TREAD, IN THAT QUICK MOMENT THAT I AM LOOKING AT IT~~
16 ~~THAT WOULD CAUSE ME ANOTHER RED FLAG TO GO UP ABOUT THIS~~
17 ~~PARTICULAR INDIVIDUAL.~~

18 MR. JOPHLIN: YOUR HONOR, MAY I APPROACH WITH THESE
19 TWO PHOTOS?

20 THE COURT: THEY ARE ALREADY IN EVIDENCE, RIGHT?

21 MR. JOPHLIN: YES, SIR.

22 THE COURT: YES, SIR.

23 Q YOU DON'T HAVE ANY SPECIFIC TRAINING IN SHOE PRINT
24 ~~ANALYSIS OR COMPARISON?~~

25 A NO, NOT IN SHOE PRINT ANALYSIS.

1 Q BUT YOU ARE JUST FAMILIAR WITH YOUR INVESTIGATORY
2 EXPERIENCE?

3 A RIGHT AND JUST EVERY DAY EXPERIENCE FOR THAT MATTER.
4 IT APPEARED AT THAT PARTICULAR TIME, IN THAT SHORT AMOUNT
5 OF TIME WOULD BE, TO BE A CLOSE ENOUGH IN MY MEMORY, A
6 CLOSE ENOUGH MATCH TO SAY THAT THIS COULD BE THEM RIGHT
7 HERE.

8 Q AND AT THE TIME WHAT DID YOU DO?

9 A I TOOK THE SHOES.

10 Q YOU TOOK HIS SHOES?

11 A I TOOK HIS SHOES.

12 Q AND DO YOU RECALL WHAT YOU DID WITH THE SHOES?

13 A WELL, INVESTIGATOR ROE WAS STANDING RIGHT THERE WITH
14 ME, RIGHT BY HIS DOOR, THIS IS, YOU KNOW, HE WAS THERE
15 WITH ME. AND I TOOK HIS SHOES AND I HANDED THEM TO ROE
16 AND ADVISED HIM TO SECURE THEM BECAUSE WE ARE GOING TO BE
17 USING THOSE AS EVIDENCE. I NOTICED THE BLOOD ON THE SIDE
18 OF THE SHOE OR WHAT I THOUGHT WAS BLOOD. AND THEN I
19 CONTINUED TO TALK WITH JERENE.

20 Q AND DID THE DEFENDANT MAKE ANY STATEMENTS AFTER YOU
21 APPROACHED HIM ABOUT BLOOD BEING ON THE SHOE?

22 A I MADE THE COMMENT THAT HE IS GOING TO HAVE A HARD
23 TIME EXPLAINING HOW THE VICTIM'S BLOOD GOT ON THE SHOE AND
24 HE MADE THE COMMENT THAT HE WAS IN THE HOUSE BUT IT WAS
25 THE OTHER GUY THAT KICKED HER OR HIT THE LADY, NOT HIM.

1 Q AND I WANT TO BRING YOU BACK A LITTLE BIT IN YOUR
2 NOTES TO WHEN ANY STATEMENTS WERE MADE REGARDING THE GUN
3 THAT JERENE MAY OF MADE TO YOU.

4 A OKAY, ALL RIGHT, I UNDERSTAND. THE GUN THAT WAS
5 FOUND ON HIM, WHEN HE IS SHOUTING HIS INNOCENCE TO THE
6 WORLD OUT THERE HE IS CLAIMING THAT HE DID NOT GET THE GUN
7 OUT OF THE HOUSE OR HE DIDN'T SAY THE HOUSE, HE SAID HE
8 BOUGHT THE GUN FROM SOME OTHER GUY DOWN THE STREET. HE
9 DIDN'T KNOW WHO THE GUYS WERE AND THIS GUY WAS BUT HE HAD
10 BOUGHT IT FROM SOMEONE ELSE. THAT IS HOW HE CAME IN
11 POSSESSION OF THE GUN. IT IS MY UNDERSTANDING THAT THE
12 GUN ACTUALLY DID NOT, IT ACTUALLY FELL OUT OF HIS LEG, HIS
13 PANTS LEG. SO, IT WASN'T LIKE THEY WERE SEARCHING OR
14 FINDING IT ON SOME CAVITY ON HIM OR SOMEWHERE IT FELL OUT.
15 AND SO I DON'T KNOW IF THAT HAS ANYTHING TO DO WITH
16 ANYTHING BUT THE, BUT IN SHOUTING THAT TO THE WORLD HE IS
17 SAYING THAT HE GOT THE GUN FROM, THAT HE JUST BOUGHT IT
18 FROM SOMEONE.

19 Q AND AFTER HE MADE THE STATEMENT REGARDING THAT HE WAS
20 IN THE HOUSE BUT IT WASN'T HIM DID YOU, DID HE HAVE ANY
21 PERSONAL BELONGINGS ON HIM?

22 A HE HAD THE BACKPACK, THE BACKPACK WAS TAKEN DURING
23 THE COURSE OF THE ARREST AND I WAS ADVISED THAT INSIDE THE
24 BACKPACK WAS A SWEATER. I RECALL THE WITNESS STATED THAT
25 HE HAD A DARK BLUE SWEATER OR SOME SORT ON. I ALSO RECALL

1 THAT JERENE DID NOT HAVE ON HIM AT THE TIME A DARK BLUE
2 SWEATER AND I DON'T RECALL EXACTLY WHAT HE HAD ON HIM.
3 YOU KNOW, IN HINDSIGHT I THINK, WELL I DON'T RECALL WHAT
4 KIND OF SHIRT HE HAD ON. BUT WE WERE LOOKING FOR THE BLUE
5 SWEATSHIRT. BUT IN THE BACKPACK WE FOUND A BLUE
6 SWEATSHIRT AND WE ALSO FOUND SOME CIGARETTES ON HIS PERSON
7 AND I CAN'T RECALL WHETHER THEY WERE FOUND IN THE BACKPACK
8 OR HIS PERSON BUT THERE WAS A GREEN PACK OF CIGARETTES.

9 Q I WILL SHOW YOU STATE'S EXHIBIT NUMBER 9, IS THAT THE
10 BACKPACK YOU ARE REFERRING TO?

11 A THAT IS.

12 Q AND INSIDE THAT BACKPACK ARE THESE THE CIGARETTES YOU
13 ARE REFERRING TO?

14 A THAT IS CORRECT.

15 Q AND YOU SAID INSIDE OF THAT BACKPACK, LET ME SHOW YOU
16 WHAT HAS BEEN MARKED FOR IDENTIFICATION STATE'S EXHIBIT
17 NUMBER 3, IS THIS THE INSIDE OF THE BACKPACK?

18 A YES SIR, THAT IS THE BLUE SWEATER THAT WAS FOUND IN
19 THE BACKPACK.

20 MR. JOPHLIN: YOUR HONOR, AT THIS TIME THE STATE
21 WOULD MOVE INTO EVIDENCE EXHIBIT NUMBER 3.

22 THE COURT: ANY OBJECTION.

23 MS. VAN GINHOVEN: NO OBJECTION.

24 THE COURT: WITHOUT OBJECTION STATE'S 3 IS IN
25 EVIDENCE.

1 (WHEREUPON, STATE'S EXHIBIT NO. 3 WAS ADMITTED INTO
2 EVIDENCE.)

3 Q CAN YOU BRIEFLY DESCRIBE THIS SWEATER?

4 A THIS IS AN ICEHOUSE SWEATER WITH SOME SORT OF A PRINT
5 ON THE FRONT WITH THE LETTERS ICE HISTORY ON THE FRONT OF
6 IT AND THEN DOWN ON EACH SLEEVE YOU HAVE ICEHOUSE, TYPE
7 HISTORY AND ICE HISTORY.

8 Q AND WHAT COLOR IS, PREDOMINANT COLOR?

9 A BLUE IS THE PREDOMINANT COLOR WITH LIGHT GRAY AND
10 LIGHT BLUE ALSO.

11 Q OKAY. AND WHO DID YOU CALL OUT TO THE SCENE AFTER
12 THESE STATEMENTS HAD BEEN MADE AND FOUND THE GUN, FOUND
13 THE SWEATER AND BACKPACK?

14 A I CALLED MR. COWART BACK BECAUSE WE NEEDED TO SEE IF
15 THIS WAS THE SAME PERSON HE HAD PICKED UP. SO, WE CALLED
16 HIM BACK TO THE SCENE IN HOPES THAT HE WOULD BE ABLE TO
17 RULE THIS PERSON IN OR RULE THIS PERSON OUT.

18 Q AND WHAT DID YOU SAY TO MR. COWART WHEN YOU CALLED
19 HIM TO THE SCENE?

20 A I DON'T RECALL THE EXACT WORDS. I CAN TELL YOU WHAT
21 I REMEMBER, WHAT I REMEMBER IS THAT I NEEDED HIM TO LOOK
22 AT SOMEBODY AND WE COULD STOP OUT ON THE ROAD. AND IF HE
23 WOULD COME OVER THERE AND TAKE A LOOK AT HIM WE WOULD BE
24 APPRECIATIVE OF THAT. AND HE DID, IT TOOK HIM A WHILE TO
25 GET THERE BUT HE CAME OVER AND HE STOPPED A SHORT DISTANCE

1 AWAY. THE DEPUTES WERE AROUND AND HE CAME UP.

2 Q SO, HE DID MAKE A POSITIVE IDENTIFICATION THAT THAT
3 WAS THE PERSON?

4 A THAT THAT WAS THE PERSON THAT GOT INTO HIS TRUCK ON
5 THE NORTH SIDE OF TAM-O-SHANTER AND THAT HE DROVE DOWN TO
6 THE SOUTH SIDE TO THAT NEIGHBORHOOD THAT HE WAS WORKING.

7 Q AND JUST TO CLARIFY, THE DEFENDANT WAS IN HANDCUFFS
8 AT THE TIME?

9 A THAT IS CORRECT.

10 Q AND THERE WERE UNIFORM OFFICERS AND PATROL CARS
11 AROUND?

12 A THAT IS CORRECT.

13 Q AND DID YA'LL SUGGEST OR INITIATE OR ANYTHING THAT
14 THIS PERSON WAS THE PERSON THAT HE PICKED UP?

15 A NO, I DON'T RECALL ANYTHING LIKE THAT. I RECALL HIM
16 WALKING UP OR COMING UP, I SAID WALKING UP, I DON'T RECALL
17 IF HE DROVE UP AND STAYED IN THE TRUCK AT THAT PARTICULAR
18 TIME AND THEN WAS GETTING OUT OF THE TRUCK AND THEN
19 ENGAGED IN CONVERSATION WITH ME. BUT ANYWAY HE CAME UP TO
20 ME AND SAID THAT WAS DEFINITELY HIM. AND HE TALKED ABOUT
21 THAT THAT WAS A DIFFERENT SHIRT AND HE RECALLED HIM HAVING
22 AND THEN WE PULLED OUT THE SWEATER OUT OF THE BACKPACK AND
23 HE SAID, YES, THAT IS THE SWEATER THAT HE HAD ON.

24 Q OKAY. AND ONCE YOU CONFISCATED THE SHOES DO YOU
25 REMEMBER WHO THEY WERE GIVEN CUSTODY TO, OR WHO TOOK

1 CUSTODY OF THEM?

2 A ROE WAS STANDING RIGHT NEXT TO ME, I TOOK THE SHOES
3 AND ADVISED ROE TO TAKE CARE OF THEM WHILE I CONTINUED TO
4 TRY TO SPEAK TO MR. HAYWARD AND TRY TO TOUCH BASE WITH THE
5 OTHER OFFICERS AROUND THERE AS WELL. SERGEANT MCCOLMAN
6 HAD THE GUN IN ONE PLACE SO ROE'S TASK WAS TAKING CARE OF
7 THE SHOES. OF COURSE, WE HAD MS. WAGNER OVER THERE AND
8 THEN WE HAD A CROWD OUT THERE AS WELL AND WE HAD TO GET
9 WITH THE BOSS LADY WHO WAS STILL THERE. AND THERE WERE
10 OTHER SITUATIONS FROM A PUBLIC SAFETY STANDPOINT. WE
11 WANTED TO GET IN, TAKE CARE OF THINGS AND MOVE OUT AS
12 QUICKLY AS POSSIBLE AS WELL.

13 Q DID YOU OBSERVE WHERE DEPUTY ROE PLACED THE SHOES?

14 A I DO NOT RECALL WHERE HE PLACED THE SHOES OTHER THAN
15 THEY WERE IN HIS CAR SOMEWHERE.

16 Q OKAY. AFTER COWART MADE HIS IDENTIFICATION WHERE DID
17 YA'LL GO FROM THERE?

18 A WE WENT STRAIGHT BACK TO HEADQUARTERS, I BELIEVE, THE
19 REASON I AM PAUSING HERE I AM TRYING TO FIGURE OUT IF I
20 HAD SPOKE TO THE LAB INVESTIGATOR RICHARDS TO TRY TO
21 ENGAGE WHERE HE WAS OR NOT. BUT WE WENT STRAIGHT BACK TO
22 HEADQUARTERS, ROE HAD JERENE IN THE BACK SEAT OF HIS CAR
23 AND I FOLLOWED ROE AND WE WENT STRAIGHT TO HEADQUARTERS
24 FROM THERE. THAT MEANS GOING DOWN HARD SCRABBLE ROAD AND
25 GETTING ON FARROW ROAD AND THEN GETTING DOWN TO

1 HEADQUARTERS FROM THERE WHICH IS ON 5623 TWO NOTCH ROAD,
2 IT TAKES ABOUT TEN MINUTES TO GET THERE WITH NO STOPS.

3 Q AND AT THIS POINT YA'LL HAD FOUND MARIJUANA?

4 A THAT IS CORRECT.

5 MS. VAN GINHOVEN: YOUR HONOR, I AM OBJECTING TO THE
6 LEADING.

7 THE COURT: SUSTAINED, WELL, NO, I WILL LET HIM DO IT
8 IN THAT FASHION, GO AHEAD.

9 MR. JOPHLIN: THANK YOU, YOUR HONOR.

10 Q THE MARIJUANA, A PISTOL AND CONFISCATED HIS SHOES?

11 A CORRECT.

12 Q HOW WERE THOSE ITEMS DEALT WITH ONCE BACK AT
13 HEADQUARTERS?

14 A WE HAD JERENE TOO, WE HAD TO MAKE SURE HE WAS SECURED
15 AS WELL. BUT AS WE WERE GETTING ALL OF THOSE THINGS BACK
16 IN, THIS ISN'T IN AN A, B SITUATION, IT IS NOT JUST LIKE
17 YOU DECIDE SOMETHING. WE ARE WORKING, ROE AND I ARE
18 WORKING TOGETHER GOING THROUGH TRYING TO FIGURE OUT WHAT
19 NEEDS TO GO WHERE AND I AM TELLING ROE HE NEEDS TO PUT
20 THIS HERE, PUT THIS THERE. I ADVISED ROE HE NEEDS TO GET
21 UP WITH RICHARDS TO TAKE THOSE SHOES BACK TO HIM
22 IMMEDIATELY BECAUSE WE HAD BLOOD SITUATION ON THE SHOES
23 THAT WE WANTED TO MAKE SURE THAT WE GOT THAT, DIDN'T GET
24 TRANSFERRED ANYMORE THAN THEY POSSIBLY HAD BEEN ALREADY.
25 WE WANTED TO MAKE SURE WE GRABBED A HOLD OF THAT AS

1 QUICKLY AS POSSIBLE. THEN WE WENT THROUGH THE BACKPACK
2 LOOKING FOR INFORMATION ABOUT JERENE. I CALLED MR.
3 CONNELL IN REFERENCE TO A GUN TO SEE IF HE CAN IDENTIFY
4 THE GUN THAT WE HAD. CERTAINLY THAT WAS A PIECE OF
5 EVIDENCE THAT WOULD ALSO LINK HIM TO THE SCENE AS WELL, SO
6 THAT WAS IMPORTANT TO US, IF MR. CONNELL PICKED THAT GUN
7 OUT, IF THIS BEING HIS.

8 Q SO, YOU AND ROE WERE WORKING THROUGH THIS EVIDENCE
9 TOGETHER?

10 A CORRECT.

11 Q AND WHEN THE SHOES CAME BACK TO HEADQUARTERS, YA'LL
12 WERE WORKING ON THEM, WERE THEY IN THE SAME CONDITION AS
13 THEY WERE AT THE SCENE?

14 A THEY WERE.

15 Q AND DO YOU REMEMBER HOW THEY WERE TRANSPORTED FROM,
16 WERE YA'LL WORKING ON THEM THROUGH RICHARDS, DO YOU
17 RECALL?

18 A RICHARDS' OFFICE IS RIGHT DOWN THE HALL SO YOU KNOW,
19 IT IS COMING IN, WE ARE TALKING ABOUT PARTICULAR EVIDENCE.
20 I DON'T RECALL HANDLING THE SHOES AT ALL, OKAY, I ALREADY
21 KNEW THAT THERE WAS BLOOD ON THE SHOES OR FELT LIKE THERE
22 WAS BLOOD ON THE SHOES, I SAW VISUALLY THAT THERE WAS
23 BLOOD ON THE SHOES. I TOLD ROE TO HOOK WITH INVESTIGATOR
24 RICHARDS RIGHT DOWN THE HALL, TO TAKE THOSE SHOES DOWN
25 THERE AND SEE IF WE CAN'T GET AS MUCH OF THE BLOOD ON

1 THERE AS POSSIBLE, TO SEE IF THE BLOOD IS BLOOD.
2 INVESTIGATOR RICHARDS, FROM MY EXPERIENCE, WOULD DO A
3 PRESUMPTIVE TEST TO SEE IF IT IS BLOOD OR NOT. THERE HAVE
4 BEEN CASES WHERE I THOUGHT IT WAS BLOOD AND IT TURNED OUT
5 TO BE PAINT. SO WE NEEDED TO KNOW ONE WAY OR THE OTHER.
6 AND SO THAT WAS IMPORTANT TO US AT THAT PARTICULAR TIME
7 WHEN WE FIRST CAME IN.

8 Q AND WHEN WORKING TOGETHER ON THIS EVIDENCE WHERE DID
9 THE MARIJUANA GO?

10 A I PUT THE MARIJUANA INTO EVIDENCE, I PACKAGED IT UP
11 AND AT SOME POINT, IT WAS IN MY CONTROL IN MY DESK AREA.
12 AND THEN IT WAS PLACED INTO EVIDENCE.

13 Q AND DO YOU RECALL WHAT DATE YOU PLACED THAT INTO
14 EVIDENCE?

15 A THAT DAY, THAT EVENING.

16 Q THAT EVENING.

17 A I DON'T RECALL WHAT TIME, THEY HAD A DROP BOX THERE
18 AND THERE WAS NO TIME STAMP AT THAT PARTICULAR TIME. THAT
19 ALWAYS FACILITATES OR HELPS US IF WE HAD A TIME STAMP BUT
20 WE DIDN'T HAVE A TIME STAMP AT THAT TIME.

21 Q I SHOW YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT
22 NUMBER 1, DOES THAT LOOK FAMILIAR?

23 A IT DOES AND I DO HAVE THAT IN 2300 TIME PERIOD ON
24 THIS PARTICULAR ENVELOPE THAT WE HAD, IT WAS ON THE DATE
25 OF 4/13/04 AND THE TIME WAS 2300 SO THAT IS GOING TO BE

1 11:00. AND SO THIS WOULD BE THE GREEN LEAFY SUBSTANCE
2 THAT I PUT IN.

3 Q AND WAS IN THAT CONDITION, OPENED UP AND LOOSE AND
4 FREE WHEN YOU TURNED IT IN?

5 A WAS IT IN THIS CONDITION RIGHT HERE?

6 Q I AM SORRY, REGARDING THE YELLOW ENVELOPE?

7 A WAS IT IN THE YELLOW ENVELOPE WHEN I FIRST GOT IT?

8 Q WHEN YOU TURNED IT INTO EVIDENCE.

9 A WHEN I TURNED IT INTO EVIDENCE, YES, THIS IS, THAT IS
10 HOW I WOULD OF PACKAGED IT. I WOULD HAVE PUT THE TAPE
11 OVER IT, OR I WOULDN'T HAVE EVEN PUT THE TAPE OVER IT. I
12 DON'T RECALL PUTTING THE TAPE OVER IT BUT I DID PUT IT IN
13 THE ENVELOPE, THAT IS MY HANDWRITING.

14 MR. JOPHLIN: YOUR HONOR, AT THIS TIME WE SEEK TO
15 INTRODUCE INTO EVIDENCE STATE'S EXHIBIT NUMBER 1.

16 THE COURT: ANY OBJECTION.

17 MS. VAN GINHOVEN: YOUR HONOR, I DON'T HAVE AN
18 OBJECTION.

19 THE COURT: WITHOUT OBJECTION STATE'S 1 IS IN
20 EVIDENCE.

21 (WHEREUPON, STATE'S EXHIBIT NO. 1 WAS ADMITTED INTO
22 EVIDENCE.)

23 Q AND AT THAT TIME AS WELL DID STAN RICHARDS TAKE A
24 PICTURE OF A PARTICULAR PIECE OF EVIDENCE?

25 A YES, HE DID.

1 Q AND WHAT DID HE TAKE A PICTURE OF.

2 A HE TOOK A PICTURE OF THE GUN AND THE FOUR MAGAZINES
3 THAT WE HAD RECOVERED OFF OF JERENE HAYWARD, THIS WAS
4 RIGHT AROUND THE TIME THAT MR. CONNELL WAS COMING IN TO
5 VIEW IT AS WELL.

6 Q AND I SHOW YOU WHAT HAS BEEN MARKED AS STATE'S NUMBER
7 10, CAN YOU IDENTIFY THAT PICTURE?

8 A THIS WOULD BE THE GUN AND FOUR MAGAZINES THAT STAN
9 RICHARDS TOOK A POLAROID OF AND THIS WOULD BE, THIS WAS
10 TAKEN OUT OF MY CUBICLE INVESTIGATIONS.

11 Q AND WHOSE HANDWRITING IS ON THAT PICTURE?

12 A THAT IS MY HANDWRITING WITH THE CASE NUMBER AND THE
13 DATE.

14 Q AND ON THE BACK OF THE PICTURE, WHOSE HANDWRITING IS
15 THAT?

16 A THAT IS MY HANDWRITING AS WELL.

17 MR. JOPHLIN: YOUR HONOR, AT THIS TIME WE WOULD SEEK
18 TO PUBLISH THE PICTURE TO THE JURY.

19 THE COURT: YOU MAY. IT IS ALREADY IN TO EVIDENCE, I
20 BELIEVE.

21 MR. JOPHLIN: IT IS IN EVIDENCE.

22 Q AND AS FAR AS THE GUN THAT THE JURY IS TAKING A LOOK
23 AT NOW, THAT PICTURE, DO YOU RECALL THE VICTIM, MR.
24 CONNELL, REGARDING THAT GUN?

25 A I DID AND ASKED HIM TO COME DOWN TO HEADQUARTERS TO

1 SEE IF THIS WAS HIS GUN.

2 Q AND DID HE?

3 A HE DID, HE CAME IN AND I PULLED HIM ASIDE AND ASKED
4 FOR A GENERAL DESCRIPTION OF THE GUN THAT HE HAD MISSING
5 AS WELL JUST FOR MY BENEFIT. AND HE GAVE ME THE
6 DESCRIPTION OF THE GUN AND THEN CAME AND LOOKED AT THE GUN
7 AND DEFINITELY IDENTIFIED IT AS HIS.

8 Q AND WHAT HAPPENED TO THE GUN?

9 A I TURNED IT OVER TO HIM.

10 Q ALONG WITH--

11 A ALONG WITH THE FOUR MAGAZINES.

12 Q OKAY.

13 A WELL, I SAID I DID, I GAVE ROE THE AUTHORIZATION TO
14 GO AHEAD AND TURN IT OVER TO HIM AS I CONTINUED, LIKE I
15 SAID, IT IS A WORK IN PROGRESS THERE, BUT AS WE CONTINUED
16 TO SIT THROUGH THE DIFFERENT THINGS THAT WE HAD GOING ON.

17 Q SO, ONCE AGAIN YOU AND ROE WERE WORKING TOGETHER?

18 A CORRECT.

19 Q WITH ALL OF THIS EVIDENCE. AND DID YOU HAVE A CHANCE
20 TO SPEAK WITH THE DEFENDANT LATER ON THAT EVENING?

21 A I DID.

22 Q AND HOW DID THAT BEGIN?

23 A WELL, THIS WAS, ONE OF THE THINGS THAT WE WERE
24 WORKING ON WHEN ALL OF THIS WAS GOING ON, INVESTIGATOR
25 RICHARDS ALSO NEEDED TO DO SOME PRINTS ON MR. HAYWARD.

1 SO, WHEN MR. RICHARDS WAS THROUGH WITH MR. HAYWARD BACK IN
2 THE LAB THEN I VERBALLY MIRANDIZED MR. HAYWARD AND WE SAT
3 DOWN IN LIEUTENANT SMITH'S OFFICE WHO WAS NOT THERE, IT
4 WAS JUST THE THREE OF US, I KIND OF COMMANDEERED THE
5 OFFICE.

6 Q IS THAT PRIMARY?

7 A IT IS MORE PRIMARY, AT LEAST YOU HAVE THE FOUR WALLS
8 AND A DOOR. I DON'T RECALL SHUTING THE DOOR OR CLOSING IT
9 OFF BUT I DON'T RECALL A LOT PEOPLE, SEEING A LOT OF
10 PEOPLE AT THAT PARTICULAR TIME EITHER.

11 Q YOU SAY YOU READ HIM HIS MIRANDIZED?

12 A I VERBALLY MIRANDIZED HIM, GAVE HIM HIS MIRANDA, GAVE
13 HIM HIS MIRANDA LIKE YOU SEE ON TV. AND THEN WENT UP TO A
14 BACKGROUND SHEET WHERE YOU GO AND TALK ABOUT WHERE THEY
15 ARE FROM AND WHAT THEY ARE DOING AND YOU KNOW AND THAT
16 SORT OF THING.

17 Q AND TO YOUR UNDERSTANDING WERE THE RIGHTS THAT YOU
18 READ UNDERSTOOD BY THE DEFENDANT?

19 A YES, HE ACKNOWLEDGED THAT HE UNDERSTOOD HIS RIGHTS.

20 Q AND JUST BRIEFLY GO THROUGH THE RIGHTS THAT YOU READ
21 TO HIM AT THAT TIME.

22 A THE ONES THAT I TOLD HIM WAS, YOU HAVE THE RIGHT TO
23 REMAIN SILENT. ANYTHING YOU SAY CAN BE USED AGAINST YOU
24 IN COURT. YOU HAVE A RIGHT TO TALK TO A LAWYER AND HAVE
25 HIM WITH YOU DURING QUESTIONING. IF YOU CANNOT AFFORD A

1 LAWYER ONE WILL BE APPOINTED FOR YOU BEFORE QUESTIONING IF
2 YOU WISH. IF YOU DECIDE TO ANSWER QUESTIONS WITHOUT A
3 LAWYER YOU STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY
4 TIME. YOU ALSO HAVE THE RIGHT TO STOP ANSWERING AT ANY
5 TIME UNTIL YOU TO TALK TO A LAWYER. AND I ASKED HIM IF HE
6 UNDERSTOOD AND HE SAID HE DID.

7 Q THE BACKGROUND INFORMATIN SHEET THAT YOU FILLED OUT
8 WOULD YOU BRIEFLY GO THROUGH THE DESCRIPTION THAT YOU
9 WROTE ON THAT BACKGROUND INFORMATION SHEET?

10 A GIVE ME ONE MOMENT TO LOCATE IT. HE GAVE ME HIS DATE
11 OF BIRTH, HIS AGE, HIS SOCIAL SECURITY NUMBER. HE IS A
12 BLACK MALE, I LISTED HIM AS 5'9", 165, BROWN EYES, BLACK
13 HAIR, LITTLE BIT OF CHIN HAIR IS WHAT I MENTIONED. AND HE
14 HAD TATTOOS ON HIS NECK ON EITHER SIDE.

15 Q AND YOU SAY FACIAL HAIR ON THE CHIN, HOW MUCH FACIAL
16 HAIR WAS ON THE CHIN?

17 A THERE WASN'T MUCH, YOU KNOW, BIKER GUYS LIKE HAVE THE
18 FULL CHIN HAIR, IT WASN'T MUCH ON THE CHIN.

19 Q ON THE CHIN OR ON THE LIP?

20 A IT WAS RIGHT IN HERE. I RECALL THAT, YOU KNOW, ONE
21 OF THE THINGS THAT WE WERE ASKING WAS, DID HE HAVE A
22 MUSTACHE BECAUSE WE WERE TRYING TO GET SOME SORT OF
23 DESCRIPTION AND I RECALL NO MUSTACHE AND HE DIDN'T HAVE A
24 MUSTACHE AT THE TIME. THAT COULD OR COULD NOT BE
25 IMPORTANT BUT I JUST RECALL THE CHIN HAIR BECAUSE THAT WAS

1 THE ONLY FACIAL HAIR THAT I SAW.

2 Q OKAY. AFTER FILLING OUT THIS BACKGROUND INFORMATION
3 SHEET AND YA'LL ARE IN A PRIVATE AREA WHAT DID YA'LL START
4 DISCUSSING?

5 A WELL, THE ENVIRONMENT AT THAT PARTICULAR TIME WAS
6 TENSE AT THE STANDPOINT THAT HE WAS YELLING AT THE SCENE
7 WHEN WE WERE TALKING TO HIM EARLIER. AS FAR AS HAVING A
8 CONVERSATION WITH HIM YOU NEED TO BRING HIM DOWN A NOTCH
9 OR TWO. SO MY HOPES WERE WAS TO HAVE A REPERTOIRE WITH
10 HIM IN SOME WAY, SHAPE OR FORM AND YOU DO THAT THROUGH THE
11 BACKGROUND SHEET, YOU DO THAT FROM YOUR NORMAL EVERYDAY
12 TALKING TO PEOPLE. YOU DON'T, YOU LIKE TO TALK TO SOMEONE
13 AND THEN GET TO THE MEAT OF THE ISSUE. SO, IN OUR KIND OF
14 DAY-TO-DAY LIVES WE DO THAT ALL THE TIME. SO, THE SAME
15 THING WENT ON HERE. WE TRIED TO TALK ABOUT THINGS THAT WE
16 HAD SIMILAR, WE TRIED TO TALK ABOUT OUR BACKGROUND, WHERE
17 WE WERE FROM, DID WE HAVE ANY COMMONALITIES THERE, IS WHAT
18 I AM LOOKING FOR. SO, WE TALKED ABOUT HIS BACKGROUND AND
19 TALKED ABOUT WHERE HE WAS FROM AND THAT SORT OF THING. HE
20 WAS VERY VAGUE, DIDN'T WANT TO GIVE SPECIFICS. SOMETIMES
21 THAT HAPPENS AND IN THIS CASE IT DID HAPPEN, HE WAS VERY
22 VAGUE IN HIS BACKGROUND, WHO HE WAS, WHERE HE CAME FROM,
23 THE WAY OF LIFE THAT HE DIDN'T LIKE. THAT SORT OF THING.

24 Q AND WHERE DID HE TELL YOU HE HAD LIVED OR WHERE HE
25 WAS FROM.

1 A HE TOLD ME THAT HE WAS FROM TUSON, DETROIT, LA,
2 HOUSTON, MISSISSIPPI, SOME OF THE PLACES HE NAMED ALONG
3 WITH ALABAMA.

4 Q DID YOU HAVE AN APPROXIMATION ABOUT HOW LONG HE HAD
5 BEEN IN THE RICHLAND COUNTY AREA?

6 A I RECALL THAT HE HAD BEEN HERE JUST FOR A FEW WEEKS,
7 IT WASN'T LONG AT ALL.

8 MS. VAN GINHOVEN: YOUR HONOR, CAN I PUT ON THE
9 RECORD THAT I AM RENEWING MY PRIOR OBJECTIONS.

10 THE COURT: ALL RIGHT, RULING WILL PERMIT THE SAME.
11 YOU MAY CONTINUE, SOLICITOR.

12 Q AND AFTER TALKING WITH HIM ABOUT THIS TIME YOU ARE
13 STILL FILLING OUT THE BACKGROUND INFORMATION SHEET?

14 A THAT IS RIGHT, LIKE I SAID, IT IS NOT AN A, B, C OR D
15 PROCESS. THIS IS, IT IS A PROCESS BUT IT IS ALL
16 ENTERTAINED, I DON'T FILL OUT, YOU KNOW THE BACKGROUND
17 SHEET AND THEN GO TO MY NOTES AND THEN, YOU KNOW, ASK HIM
18 THESE QUESTIONS. IT IS A FREE FLOW PROCESS WHICH KIND, IN
19 ALL OF THE PROCESSES IN GENERAL FROM BEGINNING TO END IS A
20 FLOWING TYPE OF THING.

21 Q AND GOING BACK TO THAT BACKGROUND INFORMATION, CAN
22 YOU READ FOR US THE AGE YOU PUT ON THAT INFORMATION,
23 BACKGROUND INFORMATION SHEET?

24 A 24 YEARS OLD.

25 Q AND THE DATE OF BIRTH?

1 A 1/9/1980.

2 Q AND MOST SPECIFICALLY THE TATTOOS, CAN YOU READ WHAT
3 TATTOOS YOU NOTED ON HIM?

4 A I HAD, I LISTED HIS TATTOOS ON HIM AS BOSS FREE ON
5 THE RIGHT NECK AND GD ON THE LEFT NECK.

6 Q THEN HIS FATHER AND MOTHER THAT YOU LISTED?

7 A MICHAEL LAMAR WOULD BE HIS FATHER AND VIOLA HAYWARD
8 FROM ALABAMA WOULD BE HIS MOTHER.

9 Q AND YOU LISTED, ON YOUR INFORMATION SHEET, HOW LONG
10 HAD HE BEEN IN RICHLAND COUNTY?

11 A THREE WEEKS.

12 Q AND IS HE FROM ACCORDING TO THIS SHEET?

13 A DETROIT.

14 Q AND WHAT OCCUPATION DID HE GIVE WHEN YOU WERE FILLING
15 THIS OUT OR DID YOU WRITE DOWN?

16 A I WROTE DOWN SALESMAN JUST BASED ON MY KNOWLEDGE OF
17 WHAT HE WAS DOING THAT DAY.

18 Q DID HE EVER, IN REGARDS TO BEING A SALESMAN DID HE
19 TALK ABOUT WHAT HE WAS, WHAT HIS EMPLOYMENT WAS HERE IN
20 COLUMBIA?

21 A IN THE BAG THAT WE FOUND, WE FOUND SOME PAPERWORK
22 FROM THE COMPANY, I BELIEVE WE HAD PULLED THAT OUT EARLIER
23 IN THE TRIAL. SO, WE TALKED A LITTLE BIT OF HOW HE HOOKED
24 UP WITH THE COMPANY. BASED ON INFORMATION THAT I GAINED I
25 UNDERSTOOD THAT HE HAD MAYBE HOOKED UP WITH A COMPANY

1 BECAUSE OF A GIRL. WE TALKED ABOUT THAT AND HE BECAME A
2 LITTLE VAGUE ABOUT HOW HE HOOKED UP WITH THE COMPANY, HE
3 KNEW ABOUT THE COMPANY FOR A LONG TIME BUT JUST RECENTLY
4 GOT HIRED ON WITH THEM.

5 Q BUT HOW DID YOU FEEL IN HIM ANSWERING HIS QUESTIONS?

6 A I THINK HE WAS TRYING TO, IT WASN'T FREE FLOWING FROM
7 THE STANDPOINT OF, YOU KNOW, THIS IS WHAT I AM DOING, MR.
8 BARNES. I AM NOT DOING THAT, I AM NOT DOING THIS, I AM
9 DOING THIS, THIS IS THE TYPE OF PRODUCTS THAT WE HAVE. IT
10 WAS MORE OF A, YOU KNOW, I AM ASKING A QUESTION AND TRYING
11 TO GET SOMETHING OUT OF HIM, HE IS TRYING TO HOLD BACK.
12 HE AGAIN, HE IS VAGUE, I GUESS THAT IS THE BEST WAY TO PUT
13 IT ON THE INFORMATION I WAS ABLE TO GET FROM HIM, IT WAS
14 KIND OF A, IT WAS TOUGH GETTING THE SPECIFICS.

15 Q DID YOU EVER GET INTO, I SEE HOW HIS MOTHER AND HIS
16 FATHER ARE LISTED, BUT DID YOU EVER DISCUSS RELATIONSHIPS
17 WITH FAMILIAR, RELATIONSHIPS OR CONTACTS.

18 A WE TALKED ABOUT SIBLINGS, WE TALKED ABOUT HIS FAMILY,
19 I UNDERSTOOD HE WAS NOT CLOSE TO HIS FAMILY FROM THAT
20 STANDPOINT, THERE WAS QUITE OF BIT OF SIBLINGS IN HIS
21 FAMILY. HE HAD A COUPLE OF HALF-SISTERS THAT HE KNEW
22 ABOUT BUT THEY WEREN'T REALLY CLOSE, CLOSE.

23 Q WHAT WAS YOUR OVERALL IMPRESSION AFTER TALKING WITH
24 HIM?

25 A MY OVERALL IMPRESSION IS THAT HE WAS TRANSIENT FROM

1 PLACE TO PLACE. HE IS 24 YEARS OLD, HE HAS LIVED IN THIS
2 MANY PLACES AND HE IS NOT CLOSE TO HIS FAMILY AND HE IS ON
3 HIS OWN. AND HE DID NOT GRADUATE FROM HIGH SCHOOL BUT HE
4 IS LIVING FROM PLACE TO PLACE ON THE STREET AND DID NOT
5 HAVE ANY REAL TIES ANYWHERE.

6 Q NOW, THIS HAS BEEN A LOT OF TALK ABOUT TRYING TO GET
7 TO KNOW HIM, TRYING TO FIND A SIMILAR GROUND BETWEEN YOU
8 AND HE. DID YOU EVER STEER THE QUESTIONING?

9 A I TRIED TO STEER THE QUESTIONS WHEN I HANDED THE, HE
10 WANTED TO STAY IN DETROIT IS WHERE HE WANTED TO STAY IN
11 AND HOW HE WAS IN DETROIT. BUT WHEN I WOULD TRY TO STEER
12 THE QUESTION BACK TO WHAT IS GOING ON TODAY OR THAT DAY HE
13 BECAME VERY AGITATED AND TO THE POINT WHERE WE HAD TO
14 SPEND A GREAT DEAL OF TIME CALMING HIM BACK DOWN AND IT
15 WAS AN AGITATION THAT WOULD GROW THE LONGER WE SPENT ON
16 THE PARTICULAR SUBJECT THAT WE WERE TALKING ABOUT, THAT
17 MEANING THAT INCIDENT THAT DAY.

18 Q WHEN YOU STARTED BRINGING OUT THAT INCIDENT WHAT WAS
19 HIS RESPONSE ESPECIALLY ABOUT SOME OF THE STATEMENTS THAT
20 HE MADE BACK AT THE SCENE, HE BOUGHT THE GUN FROM--

21 MS. VAN GINHOVEN: YOUR HONOR, I OBJECT, HE IS
22 LEADING.

23 THE COURT: SUSTAINED TO THE FORM OF THE QUESTION,
24 LET HIM TESTIFY, SOLICITOR.

25 Q WHAT WAS HIS RESPONSE?

1 A WELL, HE DENIED EVEN THE STATEMENT THAT HE MADE AT
2 THE SCENE WHERE WE WERE TALKING ABOUT THE BLOOD ON HIS
3 SHOES, WHERE AT THE POINT HE WAS GOING TO HAVE A HARD TIME
4 EXPLAINING HOW HER BLOOD GOT ON HIS SHOES. AND HE MAKES
5 THE COMMENT THAT IT WASN'T HIM. THAT HE WAS THERE BUT IT
6 WAS THE OTHER GUY THAT HIT HER. HE DENIES THAT STATEMENT
7 AT THIS POINT, HE DENIES EVERYTHING ABOUT THE CASE AT THAT
8 POINT. HE STARTED GETTING LOUDER, HE CONTINUED TO SAY
9 THAT HE BOUGHT THE GUN FROM SOME GUY OFF OF THE STREET,
10 THAT SORT OF THING. HE DEFINITELY BECAME LOUDER AND
11 LOUDER, THE MORE WE TRIED TO TALK ABOUT IT. AND AT SOME
12 POINT YOU HAVE JUST GOT TO SAY, WELL, AM I GOING TO SPEND
13 ALL DAY WITH THIS GUY OR IS THERE ANYTHING OF VALUE TO
14 COME OUT OF THIS, WHETHER TO RULE HIM IN OR RULE HIM OUT.
15 AT SOME POINT YOU JUST HAVE TO SAY, WE WILL GO WITH WHAT
16 WE HAVE GOT AND I GOT OFF THE INTERVIEW AT THAT POINT WHEN
17 ~~IT BECAME APPARENT IN MY MIND THAT HE DIDN'T WANT TO GIVE~~
18 A STATEMENT.

19 MS. VAN GINHOVEN: OBJECTION, YOUR HONOR, WE HAVE A
20 MATTER OF LAW IF WE CAN APPROACH.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
22 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
23 JURY.)

24 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN, LET
25 ME ASK YOU TO STEP BACK TO YOUR JURY ROOM FOR A MINUTE

1 WHILE I GET THIS ON THE RECORD, PLEASE, DO NOT DISCUSS THE
2 CASE. EVERYONE ELSE STAY SEATED.

3 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

4 THE COURT: MADAME COURT REPORTER, PLAY BACK THE
5 LAST, JUST THE LAST STATEMENT.

6 (WHEREUPON, THE COURT REPORTER PLAYED BACK THE LAST
7 STATEMENT MADE BY MR. BARNES)

8 SOME POINT YOU JUST HAVE TO SAY, WE WILL GO WITH WHAT
9 WE HAVE GOT AND I GOT OFF THE INTERVIEW AT THAT POINT
10 WHEN IT BECAME APPARENT IN MY MIND THAT HE DIDN'T
11 WANT TO GIVE A STATEMENT.

12 MS. VAN GINHOVEN: YOUR HONOR, WE OBJECT TO MR.
13 BARNES MENTIONING THAT MR. HAYWARD REFUSED TO GIVE A
14 STATEMENT WAS BASICALLY, CLEARLY THAT WAS A VIOLATION ON
15 DOYLE VERSUS OHIO. IT IS A COMMENT ON HOPE OF SILENCE AND
16 WE WOULD BE MOVING FOR A MISTRIAL FOR THAT.

17 THE COURT: SOLICITOR.

18 MR. JOPHLIN: YOUR HONOR, DOYLE VERSUS OHIO ONLY
19 PERTAINS WHAT AFTER A SUSPECT INVOKES HIS RIGHTS AND AT
20 THIS POINT INVESTIGATOR BARNES HAS TESTIFIED THAT THE
21 DEFENDANT UNDERSTOOD HIS RIGHTS AND HE WAS WILLING TO TALK
22 AND THAT HE FELT IT WAS FUTILE TO GET A STATEMENT.

23 THE COURT: ALL RIGHT, RESPONSE.

24 MS. VAN GINHOVEN: YOUR HONOR, OUR RESPONSE WAS THAT
25 CLEARLY HE WAS ADVISED OF MIRANDA AND HE WAS INVOKING AT

Doyle
✓

1 THE TIME, HE WAS NOT GIVING ANY STATEMENTS AND THERE IS NO
2 MAGIC LANGUAGE TO INVOKE FOR MIRANDA RIGHTS AND I MEAN
3 CLEARLY HE WAS INVOKING HIS RIGHTS AND THEY NEVER DID,
4 THEY NEVER WENT OVER THE WRITTEN WAIVER OF RIGHTS THAT
5 THEY HAVE TESTIFIED NUMEROUS TIMES, HE WAS GIVEN THOSE
6 RIGHTS. BUT I THINK IT IS CLEARLY A COMMENT ON HIS
7 INVOKING MIRANDA. AND THEY ARE TRYING TO HOLD THAT AGAINST
8 US OR AGAINST MR. HAYWARD IN THE EYES OF THE JURY.

9 THE COURT: WHAT IS THE DIFFERENCE IN WHAT THE
10 INVESTIGATOR HAD JUST TESTIFIED TO, THAT IF A DEFENDANT
11 SAYS, I DON'T WANT TO TALK ANYMORE AND THE INVESTIGATOR
12 SAYS, SO, I TERMINATED THE INTERVIEW THAT IT WAS APPARENT
13 BECAUSE HE DIDN'T WANT TO TALK AND THAT HE HAD INVOKED HIS
14 RIGHTS, WHAT IS THE DIFFERENCE.

15 MS. VAN GINHOVEN: YOUR HONOR, THE DIFFERENCE IS IF
16 HE SAYS THAT I DON'T WANT TO TALK ANYMORE THEN THAT IS,
17 THEN THAT DOES NOT STOP YOU. THE PROBLEM IS OUR CLIENT
18 WAS STILL TALKING TO HIM AND HE SAID, INVESTIGATOR BARNES
19 SAYS THAT HE TERMINATES IT BECAUSE OUR CLIENT IS NOT GOING
20 TO MAKE A STATEMENT. WHAT HE IS MEANING IS MAKING A
21 STATEMENT OF ADMISSION AND THEN HE GOES ON LATER ON AND
22 DISCUSSES, CONTINUES TO QUESTION HIM OR THERE IS MORE
23 DISCUSSIONS BETWEEN THE TWO.

24 MS. MOBLEY: YOUR HONOR, THE COMMENT THAT I HEARD
25 BEFORE THE COMMENT THAT INVESTIGATOR BARNES JUST MADE WAS,

1 NO, HE HAD THIS GUY AND HE WANTED TO SPEND ALL DAY WITH
2 THIS GUY OR SOMETHING THAT THAT EFFECT. I CAN'T REMEMBER
3 THE EXACT WORDS BUT I THINK THAT IS CLEARLY A COMMENT ON
4 THE SILENCE, NOT JUST THAT HE TERMINATED THE INTERVIEW
5 WHICH IS ALL HE NEEDED TO SAY, THERE WAS A COMMENT ABOUT
6 HE FELT LIKE HE WAS GOING TO BE THERE FOREVER AND EVER AND
7 WITH THIS GUY AND HE JUST WASN'T GOING TO GIVE A
8 STATEMENT.

9 MR. JOPHLIN: YOUR HONOR, IF I MAY. I AM SORRY, I
10 DON'T RECALL ANY SUCH STATEMENT COMING FROM ERIC BARNES
11 MOUTH ON THE STAND.

12 THE COURT: ANY SUCH STATEMENT AS WHAT?

13 MR. JOPHLIN: WHAT MS. MOBLEY JUST STATED, I AM
14 SORRY, I MAY OF NOT HEARD IT.

15 THE COURT: HE SAID I HAD TO DECIDE TO WHETHER TO
16 MOVE ON OR STAY WITH HIM ALL DAY OR NIGHT OR WHETHER WE
17 JUST GO WITH WHAT WE HAD.

18 MR. JOPHLIN: LIKE I SAID, BUT CLEARLY THE DEFENDANT
19 MUST INVOKE HIS RIGHTS TO STAY SILENT, THOSE OFFICERS
20 AREN'T MIND READERS WHEN IT COMES TO IT. AND CLEARLY THE
21 DEFENDANT IS TALKING BACK AND FORTH WITH HIM. THERE WAS
22 NOTIFICATION OF THE RIGHT TO REMAIN SILENT DURING THAT
23 WHOLE EXCHANGE.

24 THE COURT: ALL RIGHT. I FIND BASED ON WHAT HAS BEEN
25 PRESENTED THAT THE DEFENDANT HAD NOT AT THAT POINT AND

Denied

1 TIME INVOKED HIS RIGHT TO REMAIN SILENT. FOR THAT REASON
2 I WILL PERMIT THE TESTIMONY TO CONTINUE. I DENY THE
3 MOTION FOR A MISTRIAL.

4 MS. VAN GINHOVEN: THANK YOU, YOUR HONOR.

5 THE COURT: GET THE JURY BACK IN, PLEASE.

6 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
7 APPROXIMATELY 12:35 P.M.)

8 THE COURT: YOU MAY CONTINUE.

9 BY MR. JOPHLIN:

10 Q INVESTIGATOR BARNES, DID YOU AT THIS TIME START

11 FILLING OUT AN, WHAT IS CALLED AN ADVICE OF RIGHTS FORM?

12 A DURING THE COURSE OF THAT TIME I SPENT WITH HIM I HAD
13 AN ADVICE OF RIGHTS FORM THAT I HAD, WHEN I AM TALKING TO
14 A PERSON IN REGARDS TO A CRIME MY ULTIMATE GOAL IS TO TRY
15 TO MEMORIALIZE THEIR STATEMENTS IN WRITING. IT HAS BEEN
16 IN MY EXPERIENCE THAT PEOPLE JUST DON'T COME RIGHT INTO MY
17 OFFICE LIKE THEY DO IN ACCOUNTING OFFICES AND SCHOOL
18 COUNSELORS OFFICE, BUT THEY DON'T COME INTO MY OFFICE AND
19 IMMEDIATELY START THROWING THINGS DOWN IN WRITING. YOU
20 HAVE TO BUILD A BRIDGE IN SOME RESPECTS. SO, WHEN I AM
21 FILLING OUT THE PAPERWORK THAT I AM GETTING READY TO BRING
22 FOR A STATEMENT AND ONE OF THOSE IS A WRITTEN ADVICE OF
23 RIGHTS FORM THAT WE HAVE. IT GOES ALONG WITH THE
24 PAPERWORK THAT WE HOPE TO ESTABLISH OR TO GET IN WITH OUR
25 TIME WITH THE PEOPLE THAT WE HAVE IN OUR OFFICES.

1 Q I AM GOING TO SHOW YOU COURT'S EXHIBIT NUMBER 2.

2 A THAT IS THE COPY OF THE ADVICE OF RIGHTS FORM THAT I
3 HAD STARTED TO FILL OUT.

4 Q IS THE DEFENDANTS SIGNATURE ON THIS FORM?

5 A NO, IT IS NOT.

6 Q THERE IS A LIST OF RIGHTS HERE AND ARE ANY OF THEM
7 CHECKED OFF?

8 A THEY ARE NOT.

9 MR. JOPHLIN: THE STATE WOULD SEEK TO INTRODUCE THIS
10 AS STATE'S EXHIBIT NUMBER 58.

11 MS. VAN GINHOVEN: YOUR HONOR, WE OBJECT THAT HE JUST
12 TESTIFIED TO IT, THERE IS NO, CAN WE APPROACH FOR A
13 MINUTE.

14 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
15 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
16 JURY.)

17 THE COURT: STATE'S 58 IS OBJECTED TO AND THE
18 OBJECTION IS OVERRULED AND IT IS ADMITTED.

19 (WHEREUPON, STATE'S EXHIBIT NO. 58 WAS ADMITTED INTO
20 EVIDENCE.)

21 Q AND, FINALLY, INVESTIGATOR BARNES, WAS THE DEFENDANT
22 CHARGED WITH ANY CRIMES AS A RESULT OF YOUR INVESTIGATION
23 THIS DAY?

24 A HE WAS, I CHARGED HIM WITH BURGLARY FIRST AND
25 AGGRAVATED ASSAULT, SIMPLE POSSESSION OF MARIJUANA AND

1 PETTY LARCENY.

2 Q AND WHAT WAS HIS ACKNOWLEDGEMENT AFTER YOU TELLING
3 HIM THAT?

4 A AFTER I TOLD HIM THAT HE THEN, HE BECAME UPSET
5 BECAUSE I HAD PROMISED HIM TO, A CHANCE TO SMOKE A
6 CIGARETTE. AND THEN I SAID THAT HE HAD NOT BEEN TRUTHFUL
7 WITH EVEN THE BASIC FACTS. AND WHEN I AM TALKING ABOUT
8 THAT I AM TALKING THINGS SUCH AS IN MY QUESTIONING I WAS
9 ASKING HIM WHERE HE WAS STAYING, WHEN WE FOUND THE
10 FAIRGROUNDS PLAZA HOTEL KEY. WE HAD TRIED TO FIGURE OUT
11 HOW LONG HE HAD BEEN IN TOWN, HE WAS BEING EVASIVE. AND SO
12 EVEN ON THESE SMALL POINTS AND SO I REMINDED HIM THAT HE
13 WASN'T EVEN BEING TRUTHFUL ON THE SMALL FACTS AND WE
14 WEREN'T GOING TO ALLOW HIM TO SMOKE IN THAT REGARD. AND
15 HE MAKES THE COMMENT THAT YOU HAVE EVERYTHING YOU NEED TO
16 DO YOUR JOB, YOU HAVE GOT EVERYTHING YOU NEED, YOU HAVE
17 GOT MY SHOES, CLOTHES AND EVERYTHING. HE SAID WE DIDN'T
18 NEED ANYTHING ELSE TO DO OUR JOB OR WORDS TO THAT AFFECT.

19 Q AND AT THAT TIME WHAT WAS DONE TO THE DEFENDANT?

20 A HE WAS SENT DOWN TO THE DETENTION CENTER AND WE
21 CONTINUED WITH THE INVESTIGATION.

22 Q OKAY. NOW, ON A LATER DATE, LET'S GO BACK, DURING
23 THAT WHOLE TIME WHEN YOU WERE TALKING WITH HIM DID YOU
24 EVER MAKE ANY PROMISES OF LENIENCY TO HIM?

25 A NO, SIR.

1 Q DID YOU EVER WITHHOLD ANY KIND OF NECESSITIES FROM
2 HIM?

3 A NO, SIR.

4 Q DID YOU COERCE HIM?

5 A NO, SIR.

6 Q OR INTIMIDATE HIM IN ANY WAY?

7 A NO, SIR.

8 Q AND ALSO, LET'S GO FOWARD, DID YOU HAVE A CHANCE
9 LATER ON TO SPEAK WITH THE VICTIM AGAIN IN THIS CASE?

10 A I DID, ON THE 22ND OF THAT MONTH. I INVITED THE
11 VICTIM DOWN TO THE SHERIFFS OFFICE IN AN EFFORT TO FINALLY
12 SIT DOWN WITH HER AFTER HER INJURIES, AFTER SHE HAD FELT A
13 LITTLE BETTER AND INVITED HER TO SIT DOWN WITH ME AND
14 DISCUSS WHAT HAPPENED AT THAT PARTICULAR TIME.

15 Q AND WHO WAS PRESENT DURING THIS?

16 A WE HAD A SECRETARY AT OUR OFFICE AT THE TIME WHO
17 SPOKE VERY FLUENT SPANISH, SHE ACTUALLY GAVE CLASSES AND
18 WAS GIVING CLASSES TO INVESTIGATORS AND SAID WE COULD HONE
19 UP ON OUR SKILLS AND SHE WAS KIND ENOUGH TO SIT IN THERE
20 AND ACT AS AN INTERPRETER FOR ME AND COULD HELP ME THROUGH
21 INTERVIEWING THE VICTIM IN THIS CASE.

22 Q AND WAS IT JUST THE VICTIM THAT SHOWED UP?

23 A THE VICTIM AND HER HUSBAND.

24 Q OKAY. AND CAN YOU TELL US WHAT TRANSPIRED OUT OF
25 THAT MEETING, WHAT WAS TALKED ABOUT?

1 A SURE, KEEP IN MIND, I AM GETTING MY INFORMATION
2 THROUGH MS. LOURDES WHO SPEAKS VERY FLUENT SPANISH BUT
3 THIS IS BASICALLY THE JEST OF WHAT I GOT OUT OF THERE.
4 THAT SHE WAS, SHE HAD WORKED FOR MR. CONNELL FOR ABOUT A
5 YEAR AT THAT PARTICULAR MOMENT, SHE WORKED ALMOST EVERY
6 DAY WITH THEIR SON WHO IS AROUND ONE YEARS OLD, LESS THAN
7 ONE YEARS OLD. AND I DOCUMENTED LAST WEDNESDAY,
8 TECHNICALLY LAST TUESDAY OR WHEN THIS PARTICULAR THING
9 HAPPENED. SHE WENT TO WORK AND WALKED THE CHILD STARING
10 AROUND 2:45 AND THE WALK TOOK ABOUT A HALF HOUR THAT DAY
11 WHICH IS SHORTER THAN HER USUAL WALK OF ONE HOUR. SHE
12 SAID IT WAS WINDY, WHILE WALKING A BLACK MALE CAME UP TO
13 HER AND WANTED TO SELL HER SOMETHING. SHE TOLD HIM, NO,
14 AND WENT ON WALKING. SHE DESCRIBED THE GUY AS 5'8",
15 SKINNY, HE WALKED A LITTLE FURTHER AND THEN CAME BACK TO
16 THE HOUSE, OR SHE WALKED A LITTLE FURTHER AND THEN CAME
17 BACK TO THE HOUSE.

18 Q AND WERE ANY DRAWINGS MADE AS A RESULT OF, THROUGH
19 THIS MEETING?

20 A THERE WERE, THERE WAS A DRAWING OF THE WALK, HOW SHE
21 TOOK THE WALK IN THE NEIGHBORHOOD, THEN THERE WAS A
22 DRAWING, A DRAWING OF THE HOUSE.

23 Q AND I SHOW YOU WHAT HAS MARKED AS STATE'S EXHIBIT
24 NUMBER 39, ARE THESE THE TWO DRAWINGS YOU ARE REFERRING
25 TO?

1 A THAT IS CORRECT.

2 Q AND AFTER LOOKING AT YOUR NOTES WHO MADE THOSE
3 DRAWINGS?

4 A THIS DRAWING RIGHT HERE HAS A LOT OF MY SIGNATURES,
5 THIS IS A DRAWING OF THE NEIGHBORHOOD, AND HER PATH
6 THROUGH THE NEIGHBORHOOD, THIS IS MY HANDWRITING RIGHT
7 HERE. AS I RECALL HER HUSBAND HELPED WITH THIS, I DON'T
8 RECALL HOW MUCH HE HELPED WITH IT BUT HE HELPED WITH THIS
9 PARTICULAR DRAWING AND HE HELPED WITH THE NEXT DRAWING.

10 MR. JOPHLIN: I BEG THE COURT'S INDULGENCE.

11 Q SO, THE HUSBAND WAS HELP DRAWING, YOU WERE HELPING
12 LABEL SOME THINGS TO GET HER READY ORIENTATED?

13 A THAT IS CORRECT.

14 Q AND AFTER THEY MADE THESE DRAWING TO HELP ORIENTATE
15 EVERYBODY WHAT DID YOU TALK ABOUT THEN?

16 A WE TALKED ABOUT, OF COURSE, HOW MUCH TIME SHE SPENT
17 OUT THERE ON THE WALK THAT DAY. SHE SAID SHE TOOK IT
18 SHORTER BECAUSE IT WAS WINDY, SHE DESCRIBED HOW SHE WENT
19 UP THE ROAD AND CAME BACK. SHE ALSO DESCRIBED IT, FOR THE
20 PURPOSES OF THAT INTERVIEW, WHERE, WHAT HER NORMAL WALK
21 ENTAILED, GOING DOWN, HOW FAR UP AND BACK DOWN AND THEN
22 SHE DESCRIBED HOW SHE CUT IT SHORTER THIS TIME. WHEN SHE
23 GOT BACK TO THE HOUSE SHE NOTICED HER SIDE DOOR WAS OPEN.
24 SHE DESCRIBED PUTTING THE BABY, THE BABY WAS IN THE
25 STROLLER AND HAD, SHE HAD THE BABY IN THE STROLLER OUTSIDE

1 AS SHE WENT IN AND SHE SAID SHE NORMALLY, SHE DOES LEAVE
2 THE BABY OUTSIDE UNTIL SHE CAN GET SOME THINGS TAKEN CARE
3 OF INSIDE. BUT THE DOOR WAS ALSO OPEN AND SHE THOUGHT IT
4 WAS WINDY AND THE WIND HAD BLOWN IT OPEN BUT SHE WAS ALSO
5 HESITANT ABOUT GOING INTO THE HOUSE AS WELL A LITTLE BIT,
6 AS I RECALL. BUT SHE SAID THAT THIS WAS HER NORMAL
7 ROUTINE AND SHE WAS IN THE LIVING ROOM AND SHE HEARD
8 SOMEONE IN THE CHILDS ROOM AND SHE TURNED AND HE COMES
9 TOWARDS HER. SHE ASKED HIM WHY HE WAS THERE AND HE
10 ANSWERED NOTHING OR SOMETHING TO THAT EFFECT. SHE TOLD
11 HIM THAT HE WASN'T SUPPOSE TO BE THERE, SHE STARTED
12 BACKING AND GOING TOWARDS THE DOOR AND HE CAME TOWARDS
13 HER.

14 MS. VAN GINHOVEN: YOUR HONOR, I HAVE AN OBJECTION,
15 ALL OF THIS IS CUMULATIVE, WE HAVE ALREADY HEARD THE SAME
16 TESTIMONY FROM THE VICTIM.

17 MR. JOPHLIN: AND IT IS ALSO CORROBORATIVE, YOUR
18 HONOR.

19 THE COURT: OVERRULED, GO AHEAD.

20 Q AND HOW MANY PEOPLE DID SHE SAY WAS IN THE HOUSE THAT
21 AFTERNOON?

22 A SHE CONTINUED TO SAY THERE WAS ONLY ONE PERSON
23 INVOLVED IN THIS WHOLE SITUATION, THERE WAS ONE PERSON ON
24 THE STREET, THERE WAS ONE PERSON IN THE HOUSE, THERE IS
25 ONE PERSON ASSAULTING HER.

1 Q OKAY. CONTINUE AS TO WHAT SHE TOLD YOU HAPPENED.

2 A SHE STARTED BACKING AND GOING TOWARDS THE DOOR AND HE
3 CAME TOWARDS HER, HE GRABBED HER ARM AND HE TOLD HER THAT
4 SHE WASN'T GOING TO CALL THE POLICE. SHE STRUGGLED TO GET
5 AWAY AND HE GRABBED HER HARDER, HE KEPT SAYING DON'T CALL
6 THE POLICE, DON'T CALL THE POLICE. HE PUSHED HER TO THE
7 FLOOR, SHE TRIED TO STAND, HE KICKED HER IN THE CHEST WITH
8 HIS FOOT, SHE COULDN'T BREATHE AT THAT POINT. AT THIS
9 POINT SHE OBSERVED HIM, HAD A PERIPHERAL VISION OF HIM IN
10 A KNEELING POSITION AND HAD HIS BACKPACK. AND SHE SAW THE
11 PISTOL ON THE FLOOR. THE SUSPECT WAS ON HIS KNEES MESSING
12 WITH HIS PANTS AND THEN WALKING ON HIS KNEES TOWARDS HER.
13 AS HE WAS APPROACHING HER SHE GRABBED A CURTAIN ROD FROM A
14 BOX NEAR HER AND HIT HIM WITH THE CURTAIN ROD. HE STOOD
15 US AND STARTED KICKING HER AND THEN I STOPPED HER
16 SOMEWHERE IN THERE AROUND THIS TIME AND THEN STOPPED HER
17 IN REFERENCE TO JUST SEEING IF SHE COULD IDENTIFY THE
18 PERPETRATOR OF THIS CRIME.

19 Q AND WHEN YOU SAY, LET'S GO BACK, WHEN SHE IS TELLING
20 YOU THE STORY THERE ARE TWO PEOPLE THERE HELPING HER
21 TRANSLATE?

22 A THAT'S CORRECT.

23 Q WHAT WAS YOUR IMPRESSION AS TO THE ACCURACY OF WHAT
24 SHE WAS SAYING GETTING TO YOU, HER REAL MEANING OF WHAT
25 SHE WAS SAYING GETTING TO YOU?

1 A MY MAIN FOCUS WAS HER, HER STORY. AND I ENGAGED FROM
2 THAT CONVERSATION THAT WE WERE HAVING WHERE I WOULD MAKE A
3 REQUEST OF A QUESTION, THEN MS. TORRES WOULD TRANSLATE FOR
4 ME AND THEN OBVIOUSLY THE ANSWER WOULD COME BACK THROUGH
5 MS. TORRES BUT I UNDERSTOOD THE ANSWER FROM THE VICTIM TO
6 BE RIGHT ON QUE WITH THE TRANSLATION WITH MS. TORRES. SO,
7 IT WASN'T LIKE SHE WAS TURING TO HER HUSBAND LOOKING FOR
8 ANSWERS, WHAT SHOULD I SAY OR SOMETHING LIKE THAT, THIS
9 WAS COMING FROM HER, FROM HER MEMORY, FROM HER HEART, FROM
10 HER EXPERIENCE.

11 Q AND YOU TALKED ABOUT ATTEMPTING TO GET HER TO
12 IDENTIFY WHO DID THIS TO HER?

13 A RIGHT.

14 Q HOW DID YOU DO THAT?

15 A I HAD INITIATED A PHOTO LINEUP THROUGH OUR
16 INVESTIGATIVE WORK THROUGH THE SHERIFFS OFFICE, THAT
17 INCLUDED JERENE, THE SUSPECT IN THAT PARTICULAR CASE AT
18 THAT TIME. BUT I INITIATED THAT PHOTO LINEUP AND HAD
19 BROUGHT IT INTO THE ROOM AND I STOPPED HER AND ASKED HER
20 IF SHE COULD PICK OUT ANYONE IN THAT PHOTO LINEUP THAT
21 MIGHT BE INVOLVED IN THIS IN SOME WAY. SOMETHING ALONG
22 THOSE LINES, I DON'T KNOW THE EXACT WORDS.

23 MS. VAN GINHOVEN: YOUR HONOR, I AM RENEWING MY PRIOR
24 OBJECTION.

25 THE COURT: ALL RIGHT, OVERRULED, GO AHEAD.

1 Q AND CAN YOU START EXPLAINING HOW THIS PHOTO LINEUP
2 GETS GENERATED?

3 A WE HAVE A DATA BASE OF PHOTOS THAT WE USE AND WE PUT
4 THEM INTO A SYSTEM, WE PUT IN THE PERSON THAT WASN'T IN
5 THE SYSTEM AND THEN IT AUTOMATICALLY PUTS IT INTO A SIX
6 PHOTO LINEUP FORM AND WE ARE NEVER QUITE SURE OF WHERE
7 THAT PHOTO OF THE PERSON WHO WASN'T IN THERE IS GOING TO
8 END UP IN THAT PHOTO LINEUP, WE DON'T KNOW IF IT IS GOING
9 TO END UP AS ONE, POSITION NUMBER ONE, TWO, THREE, FOUR OR
10 FIVE OR SIX. BUT WE TRY TO GET PEOPLE WHO ARE FAIRLY
11 SIMILAR TO GO INTO THAT PHOTO LINEUP AND TRY TO MAKE IT AS
12 GOOD A LINEUP AS POSSIBLE. YOU DON'T WANT PEOPLE WHO ARE
13 SO OUTRAGEOUS THAT THEY AREN'T GOING TO PICK THEM BUT YOU
14 WANT THEM CLOSE, YOU WANT THEM SIMILAR. AND YOU DON'T
15 WANT TO DO ANYTHING TO HARM THE CASE BUT YOU WANT TO
16 PRESENT IT IN A WAY THAT IS BEST FOR THE CASE.

17 Q OKAY. AND LET ME SHOW YOU STATE'S EXHIBIT NUMBER 6,
18 IS THIS THE PHOTO LINEUP THAT YOU GENERATED FOR THIS CASE
19 TO SHOW MS. LOURDES THAT AFTERNOON?

20 A IT IS.

21 Q AND DID IT HAVE ALL OF THESE NUMBERS ON THERE AND
22 INITIALS ON THERE AT THE TIME YOU SHOWED HER?

23 A NO, IT DID NOT. IT DID NOT HAVE THE WRITTEN NUMBERS,
24 IT HAS OBVIOUSLY THESE NUMBERS DOWN HERE.

25 Q SOME COMPUTER GENERATED NUMBERS?

1 A COMPUTER GENERATED NUMBERS BUT IT DID NOT HAVE THE
2 WRITTEN NUMBERS, THOSE WOULD BE MY NUMBERS THAT I ADDED
3 LATER.

4 Q LATER AS IN OR CAN YOU EXPLAIN HOW THAT PIECE OF
5 PAPER, HOW YOU SHOWED HER THE LINEUP?

6 A I WANT TO SHOW HER THE PHOTO LINEUP AND I AM TELLING
7 HER THAT I AM GETTING READY TO SHOW HER PHOTO LINEUP AND
8 IT MAY OR MAY NOT HAVE THE PERSON SHE IS LOOKING FOR.
9 THIS IS GENERALITY, I AM NOT SAYING WORD FOR WORD OF WHAT
10 I SAID BUT THIS IS KIND OF THE BASICS OF WHAT I DO ON
11 EVERY CASE THAT I HAVE DONE. BUT I SHOW HER THE PHOTO
12 LINEUP AND I SAY, YOU NEED TO CONCENTRATE, YOU KNOW, ON
13 THINGS THAT DON'T CHANGE ABOUT THE FACIAL FEATURES. THOSE
14 ARE IMPORTANT THINGS TO LOOK AT, JUST TAKE A LOOK AT THE
15 PHOTO LINEUP. SO, WHAT I WILL DO IS SET THE PHOTO LINEUP
16 DOWN IN FRONT OF HER AND THEN I WILL TURN MY HEAD EVERY SO
17 SLIGHTLY, BUT I WILL TURN MY HEAD SO NOT TO DRAW ATTENTION
18 TO ONE OR ANOTHER OF THESE PHOTOS. AND SHE IMMEDIATELY ON
19 THIS PARTICULAR CASE, SHE IMMEDIATELY WENT TO PHOTO NUMBER
20 6 AS THE PERSON WHO WAS THE PERPETRATOR OF THE CRIME AND
21 THE SOLE PERPETRATOR OF THE CRIME, ASSAULTING HER AND
22 COMING INTO THE HOME.

23 Q AND WHAT DID SHE DO TO INDICATE NUMBER 6 WAS HER
24 CHOICE?

25 A THEN WE WENT BACK THROUGH AND I NUMBERED THEM AT THAT

1 POINT. SO, WHAT WE ARE SAYING, IF I NUMBERED THESE 1, 2,
2 3, 4, 5, 6, ARE YOU SAYING THAT NUMBER 6 IS THE PERSON WHO
3 DID THIS CRIME. AND, OF COURSE, MS. TOREES IS
4 INTERPRETING FOR ME, THE VICTIM SAYS, YES. AND I ASKED
5 HER TO DOCUMENT THAT AND MEMORIALIZE THAT WITH HER
6 INITIALS AND SHE DOES.

7 Q WHEN YOU SHOWED THAT TO HER ORIGINALLY WITHOUT ANY
8 NUMBERS OR ANY INITIALS DID YOU MAKE ANY GUARANTEES THAT
9 THE PERSON, THE SUSPECT WAS ON THAT PIECE OF PAPER?

10 A NO GUARANTEES.

11 Q AND DID YOU SUGGEST IN ANY WAY THAT THAT PERSON,
12 WHICH PHOTO TO PICK?

13 A NO, SIR.

14 Q AND ALSO TOO, HER HUSBAND AS WE KNOW WAS SITTING
15 RIGHT THERE WITH HER?

16 A CORRECT.

17 Q DID YOU OBSERVE ANY ACTIONS ON HIS PART INFLUENCING
18 HER DECISION?

19 A NO. AS I RECALL THE IDENTIFICATION WAS SO
20 INSTANTANEOUS, I DON'T KNOW IF THAT WOULD OF BEEN AN
21 OPTION AT THAT POINT BECAUSE SHE WENT STRAIGHT TO IT.

22 Q AND AFTER SHE PICKED PHOTO NUMBER 6 WAS ANOTHER
23 PIECE OF PAPER DRAWN UP?

24 A CORRECT.

25 Q TO MEMORIALIZE THAT DECISION?

1 A THAT'S RIGHT.

2 Q AND STATE'S EXHIBIT NUMBER 7, IS THAT THE PHOTO OR
3 THE PAPER?

4 A THIS IS WHAT WE GENERALLY REFER TO AS A PHOTO LINEUP
5 TO KIND OF MEMORIALIZE WHAT EXACTLY WE ARE DEALING WITH
6 HERE. BUT THIS IS MY HANDWRITING AND THEN I AM ASKING MS.
7 TOREES TO TRANSLATE WHAT IS BEING GENERATED HERE. AND, OF
8 COURSE, I WROTE DOWN THE TIME AND THE DATE AND WHAT I DID
9 WAS HAVE HER READ THROUGH IT.

10 Q ON THAT, DID MS. ANTONIO SIGN THAT PIECE OF PAPER?

11 A SHE DID, SHE SIGNED IT STATING THAT OF THESE SIX
12 PICTURES, SHE PICKED OUT JERENE HAYWARD AS THE SUSPECT
13 THAT ASSAULTED HER THAT DAY.

14 Q AND DOES IT LIST THE DATE AND ADDRESS OF THE INCIDENT
15 LOCATION?

16 A THAT'S CORRECT.

17 MR. JOPHLIN: YOUR HONOR, AT THIS TIME I WOULD JUST
18 LIKE TO CLARIFY THAT STATE'S NUMBERS 6 AND 7 ARE ADMITTED
19 INTO EVIDENCE AND NOT FOR ID PURPOSES.

20 THE COURT: THEY ARE IN EVIDENCE, IS THAT CORRECT
21 MADAME REPORTER?

22 COURT REPORTER: YES SIR, THAT IS RIGHT.

23 MR. JOPHLIN: I JUST WANT TO CLARIFY, THANK YOU.
24 PERMISSION TO PUBLISH THE PHOTO LINEUP TO THE JURY, YOUR
25 HONOR.

1 THE COURT: THAT IS FINE.

2 Q I THINK WE LEFT OFF, YOU STARTED, INTERRUPTED THE
3 VICTIM WHEN SHE WAS TELLING YOU ABOUT THE STORY THAT
4 HAPPENED?

5 A THAT IS RIGHT.

6 Q AFTER SHE PICKED OUT NUMBER 6 AS THE DEFENDANT OR I
7 AM SORRY, AS BEING THE PERSON WHO ASSAULTED HER DID SHE
8 PICK UP AND TELL YOU THE REST OF THE STORY OF WHAT
9 HAPPENED.

10 A WE WANT TO FINISH THE EVENTS OF THAT DAY, SHE WENT ON
11 TO SAY THAT AFTER HE KICKED HER HE WENT INTO THE HALLWAY
12 AND SHE WENT OUT TO THE GARAGE AND INTO THE YARD. AND HE
13 CATCHES UP TO HER BEFORE SHE GETS TO THE NEIGHBORS HOUSE,
14 HE GRABS HER AND STARTS KICKING HER AGAIN AT THE END OF
15 THE DRIVEWAY WHERE THERE IS A SMALL GARDEN. THEN HE ONLY
16 STOPS KICKING HER WHEN SHE NO LONGER MOVES. HE LEFT
17 SHORTLY AFTER, I QUESTIONED HER ABOUT, HE LEFT SHORTLY
18 AFTER THAT.

19 Q AND THEN FROM THERE WERE YA'LL FINISHED WITH THE
20 INTERVIEW?

21 A WELL, WE TALKED A LITTLE BIT ABOUT, THERE WAS A
22 QUESTION FROM INVESTIGATIVE STANDPOINT ABOUT WHETHER OR
23 NOT SHE WAS SEXUALLY ASSAULTED WHICH WE HAD SOME
24 TRANSLATION PROBLEMS. WE HAD SOME SERIOUS PROBLEMS THERE,
25 UP UNTIL THIS POINT I HAD NOT HAD TIME TO SIT DOWN WITH

1 HER AND JUST CONFIRM OR REFUTE THAT THEORY THAT WE HAD
2 GOING ON. THE, THE TESTIMONY FROM HER AT THAT PARTICULAR
3 TIME WAS THAT HE WAS ON HIS KNEES COMING TO HER AND HIS
4 HANDS WERE KIND OF LOOSE. MR. COWART HAD SAID THAT ONLY
5 ONE BUTTON WAS HOLDING HIS PANTS UP--

6 Q SHE DENIED ANY OF THAT, CORRECT?

7 A SHE DENIED ALL OF THAT, YES.

8 Q AND SHE SAID THAT WASN'T THE CASE AT ALL.

9 A THAT'S RIGHT, AND WE FELT PRETTY CONFIDENT OF THAT.
10 AND I THINK WE FINISHED UP THE CONVERSATION AGAIN WITH HOW
11 MANY PEOPLE WERE INVOLVED AND SHE SAID ONLY ONE. ONE
12 PERSON INVOLVED.

13 Q DID SHE GIVE A WRITTEN STATEMENT THAT YOU WROTE OUT
14 AND SHE SIGNED IT?

15 A SOMETIMES WE TAKE WRITTEN STATEMENTS AND SOMETIMES WE
16 DON'T. WE FELT PRETTY CONFIDENT THAT SHE WOULD TESTIFY
17 HERE TODAY AND THAT EVERYONE WOULD HAVE A FEELING OF WHAT
18 HAPPENED TRANSPIRED HERE. IN THIS PARTICULAR CASE WE DID
19 NOT TAKE A WRITTEN STATEMENT. AND THAT WAS THE DECISION
20 THAT WAS MADE.

21 Q AND SHE UNDERSTANDS SPANISH AND SHE WOULD OF WRITTEN
22 IN SPANISH MOST LIKELY?

23 A YES.

24 Q AND YOU MEMORIALIZED YOUR INTERVIEW WITH HER?

25 A YES, SIR.

1 Q AND GOING BACK REAL QUICK, I WANT TO TOUCH ON A
2 COUPLE OF THINGS. REGARDING THE BAG OF GREEN LEAFY
3 MATERIAL THAT WAS FOUND ON THE DEFENDANT. IN YOUR CASE
4 SUMMARY THERE WAS A SEPARATE DOCUMENT, YOU NOTATED, WHAT
5 DID YOU NOTATE OF HIS ACKNOWLEDGEMENT OF YOU FINDING THAT?

6 A DURING THE COURSE OF THAT INTERVIEW WE WERE GOING
7 BACK AND FORTH ON SEVERAL THINGS. HE DID ACKNOWLEDGE THAT
8 THAT WAS HIS MARIJUANA.

9 Q AND THE SHOES THAT, THESE TENNIS SHOES THAT YOU TOOK
10 OFF OF THE DEFENDANT AT THE SCENE AND HANDED TO ROE, ROE
11 TRANSPORTED THEM BACK TO HEADQUARTERS, DID THEY APPEAR TO
12 YOU TO BE IN THE SAME CONDITION FROM THE SCENE THAN HAS
13 BEEN AT HEADQUARTERS?

14 A YES.

15 Q DID YOU OBSERVE THE MANNER IN WHICH THEY WERE
16 TRANSPORTED FROM, THAT ROE TRANSPORTED THEM TO STAN
17 RICHARDS?

18 A YES, I OBSERVED HIM LEAVING MY AREA AND TAKING THEM
19 BACK TO STAN AND, YES I DO.

20 Q OKAY.

21 MR. JOPHLIN: I BEG THE COURT'S INDULGENCE.

22 Q AND DO THOSE SHOES, DO THEY APPEAR TO BE TAMPERED
23 WITH IN ANY WAY WHEN THEY GOT TO HEADQUARTERS?

24 A AT THAT TIME, NO.

25 Q ALTERED IN ANY WAY?

1 A NO.

2 Q CONTAMINATED IN ANY WAY?

3 A NO.

4 Q AND THE PERSON WHO, LOURDES ANTONIO PICKED OUT A
5 LINEUP, IS HE IN THE COURTROOM TODAY?

6 A YES.

7 Q AND WHERE IS HE SEATED?

8 A HE IS SEATED BY HIS COUNSELOR IN THE WHITE SHIRT.

9 Q CAN YOU POINT HIM OUT TO THE JURY.

10 A (THE WITNESS POINTED TO THE DEFENDANT.)

11 MR. JOPHLIN: LET THE RECORD REFLECT INVESTIGATOR
12 BARNES POINTED TO THE DEFENDANT, JERENE HAYWARD.

13 THE COURT: ALL RIGHT, SIR.

14 MR. JOPHLIN: NOTHING FURTHER, YOUR HONOR.

15 THE COURT: LADIES AND GENTLEMEN, WE WILL BREAK FOR
16 LUNCH, DON'T DISCUSS THE CASE AMONG YOURSELVES OR WITH
17 ANYONE ELSE. BE BACK AT 2:15 AND WE WILL CONTINUE AT THAT
18 TIME. EVERYONE ELSE STAY SEATED, PLEASE.

19 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
20 A LUNCH BREAK.)

21 THE COURT: DON'T DISCUSS YOUR TESTIMONY DURING
22 LUNCH, WE WILL START BACK AT 2:15.

23 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

24 THE COURT: IS THE STATE READY TO PROCEED?

25 MR. JOPHLIN: YES, YOUR HONOR.

1 THE COURT: IS THE DEFENSE READY?

2 MS. VAN GINHOVEN: YOUR HONOR, WE WOULD LIKE TO PUT
3 JUST ONE THING ON THE RECORD. AT THIS POINT THE TESTIMONY
4 WE HAVE HAD, TESTIMONY FROM TWO DIFFERENT POLICE OFFICERS
5 CONDUCT. AND WE BELIEVE THAT IS A PROBLEM, IT GOES BACK
6 TO THE CHAIN ISSUE AND ONE--

7 THE COURT: I DON'T UNDERSTAND, YOU SAID TWO OFFICERS
8 ARE THE SAME?

9 MS. VAN GINHOVEN: TWO OFFICERS TESTIFIED TO THE
10 EXACT SAME CONDUCT IN CONFISCATING THE GUN, I MEAN THE
11 SHOES. OFFICER ROE TESTIFIED THAT HE CONFISCATED THE
12 SHOES, OFFICER BARNES TESTIFIED THAT HE CONFISCATED THE
13 SHOES. AND THIS ALL GOES BACK TO THE CHAIN ISSUE THAT WE
14 HAVE.

15 THE COURT: I THINK IF YOU ARE GOING TO MAKE A MOTION
16 IT WOULD BE APPROPRIATE WHEN THE WITNESS HAS COMPLETED HIS
17 TESTIMONY.

18 MS. VAN GINHOVEN: OKAY, THANK YOU, YOUR HONOR.

19 THE COURT: BRING THE JURY IN, PLEASE. WE HAD A
20 MESSAGE DURING LUNCH FROM ONE OF THE JURORS WHO HAD A
21 CHILD FROM DAY CARE, THE CHILD IS SICK AND NOBODY ELSE CAN
22 GET THE CHILD. I HAVE EXCUSED THAT JUROR AND WE WILL SEAT
23 THE ALTERNATE.

24 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
25 APPROXIMATELY 2:30 P.M.)

1 THE COURT: YOU MAY COME BACK ON THE STAND. WE WILL
2 CONTINUE, MS. VAN GINHOVEN, CROSS-EXAMINATION.

3 CROSS-EXAMINATION

4 BY MS. VAN GINHOVEN:

5 Q GOOD AFTERNOON, INVESTIGATOR BARNES.

6 A GOOD AFTERNOON.

7 Q INVESTIGATOR BARNES, WILL YOU TELL US AGAIN HOW LONG
8 HAVE YOU BEEN WITH THE SHERIFFS DEPARTMENT?

9 A IT HAS BEEN, BEEN IN LAW ENFORCEMENT FOR 19 AND THE
10 SHERIFFS OFFICE 17.

11 Q AND, OF COURSE, YOU ARE ALSO TRAINED, YOU HAVE BEEN
12 THROUGH THE ACADEMY, IS THAT RIGHT?

13 A I HAVE BEEN TO THE ACADEMY, SEVERAL ACADEMIES, YES.

14 Q OKAY. AND PART OF YOUR TRAINING IS THAT YOU LEARN
15 HOW TO RESPOND TO A CRIME SCENE, IS THAT RIGHT?

16 A SOME OF YOUR BASIC STUFF AT THE ACADEMY DEALS WITH
17 THAT. YOU ARE TRAINED WITH SOME OF THE ISSUES THAT HAVE
18 COME UP, A LOT OF THAT IS HONED IN OR ARE DRUMMED INTO THE
19 OFFICERS THAT ARE ON THE STREET, DURING THE TRAINING
20 OFFICER STATUS.

21 Q AND YOU HAVE BEEN AN OFFICER FOR A WHILE SO YOU KNOW
22 HOW TO INTERVIEW WITNESSES, RIGHT?

23 A THAT CAME, QUIET HONESTLY THAT CAME ONCE I BECAME
24 INTO INVESTIGATIONS. THAT IS SORT OF ON THE JOB TRAINING
25 AND THEN IN TRAINING, THE FORMAL TRAINING IS REALLY ONLY

1 COMING UP FOR THIS LAST ADMINISTRATION. IT HAS BEEN IN
2 EVALUATION IN A LOT OF RESPECTS FOR LAW ENFORCEMENT, LAW
3 ENFORCEMENT STATE.

4 Q AND SINCE YOU HAVE BEEN INVOLVED IN SO MANY CASES AND
5 FOR SO LONG YOU OFTEN KNOW HOW IMPORTANT IT IS FOR YOU TO
6 WRITE A COMPLETE INCIDENT REPORT?

7 A YES, RIGHT.

8 Q BECAUSE IN CASES LIKE THIS, OF COURSE, IT IS NOW TWO
9 YEARS LATER AND YOU HAVE TO RELY ON THOSE NOTES?

10 A RIGHT.

11 Q AND YOU WERE TESTIFYING EARLIER YOU WERE RELYING A
12 LOT ON YOUR INVESTIGATIVE NOTES?

13 A CORRECT.

14 Q NOW, YOU ARE INVESTIGATING A BURGLARY IN THIS CASE?

15 A A HOME INVASION IS WHAT IT WAS CLASSIFIED, A HOME
16 INVASION FROM A BURGLARY, AGGRAVATED ASSAULT IS WHAT IT
17 APPEARED TO BE.

18 Q AND YOU INVESTIGATED NUMEROUS BURGLARIES BEFORE?

19 A YES, MA'AM.

20 Q AND SO YOU WOULD KNOW WHAT TO EXPECT WHEN YOU GO TO A
21 BURGLARY?

22 A YOU KNOW THE PARAMETERS THAT YOU ARE DEALING WITH,
23 YOU MAY HAVE TO DEAL WITH WHEN YOU GET THERE BUT EACH
24 INDIVIDUAL INCIDENT SCENE CAN BE A LITTLE DIFFERENT.

25 Q A LOT OF THINGS TAKEN, REMOVED FROM HOMES OR OTHER

1 PLACES WHERE PEOPLE STEAL THINGS, THEY TRY TO GET THINGS
2 THAT THEY CAN TAKE WITH THEM WOULDN'T YOU SAY.

3 A IF IT IS A PROPERTY KIND OF BURGLARY, YES, THEY TRY
4 TO TAKE THINGS.

5 Q THEY MAY TRY TO TAKE THINGS LIKE JEWELRY OR EVEN GUNS
6 BECAUSE THEY ARE EASY TO PAWN OR SELL ON THE STREET?

7 A THAT IS RIGHT, THEY ARE LOOKING FOR SOME SORT OF
8 MARKET VALUE OR TROPHY VALUE WITHIN THOSE TIMES IF IT IS A
9 PROPERTY TYPE OF BURGLARY.

10 Q I THINK WE HAVE BEEN OVER THIS A COUPLE OF ITEMS BUT
11 YOUR FIRST PART OF THIS INVESTIGATION IS YOU ARE
12 RESPONDING TO THE HOSPITAL?

13 A THAT IS RIGHT.

14 Q AND THAT IS WHERE YOU RECEIVED THE DESCRIPTION OF THE
15 SUSPECT FROM EITHER THROUGH MS. ANTONIO OR THROUGH OFFICER
16 WAGNER?

17 A RIGHT, BASICALLY, YES.

18 Q RELAYING THE INFORMATION THAT SHE HAD RECEIVED?

19 A THAT IS CORRECT.

20 Q THE DESCRIPTION THAT YOU HAD WAS A BLACK MALE, 23,
21 5'8". SLIM, DARK SKIN, NO MUSTACHE, LONG SLEEVED DARK BLUE
22 SWEATER, BLUE JEANS, TENNIS SHOES, DARK BLUE BACKPACK. IS
23 THAT RIGHT?

24 A CORRECT AND A PISTOL POSSIBLY STOLEN FROM THE HOME.

25 Q RIGHT. NOW, THE NEXT WAY YOU ARE INVOLVED IN THIS

1 YOU ACTUALLY GO TO THE SCENE OF THE HOME, IS THAT RIGHT?

2 A YES, MA'AM.

3 Q OKAY. AND THAT IS WHEN YOU ARE DEBRIEFED BY OFFICER
4 ROE AND INVESTIGATOR RICHARDS?

5 A THAT IS RIGHT, AND THE HOMEOWNER.

6 Q AND THE HOMEOWNER. AND THIS IS WHERE YOU LEARNED BUT
7 YOU SAY, I AM NOT SURE WHEN IT HAPPENED, DEPUTY RICHARDS
8 OBSERVED SHOE PRINTS WITH ROUND TREAD AND THE VICTIM'S
9 BLOOD INSIDE THE HOUSE?

10 A RIGHT, I WAS ADVISED OF THAT AND THEN LATER OBSERVED
11 THAT AS I WAS ABLE TO GAIN ACCESS INTO THE CRIME SCENE.

12 Q AND THIS WOULD BE THE PRINT, STATE'S NUMBER 44 THAT
13 WE ARE TALKING ABOUT?

14 A THAT IS CORRECT.

15 Q YOU ALSO AT THAT TIME LEARNED THAT THERE WAS A PRINT
16 LIFTED OFF THE BEDSIDE TABLE DRAWER?

17 A CORRECT.

18 Q AND THAT IS WHERE THE GUN HAD BEEN STORED?

19 A CORRECT.

20 Q OKAY. AND I BELIEVE THAT THAT IS THIS PICTURE,
21 STATE'S NUMBER 48?

22 A THAT APPEARS TO BE, YES MA'AM.

23 Q AND DON'T YOU OFTEN NOTE IN YOUR REPORT THAT THAT
24 PRINT WAS COMPARED BY INVESTIGATOR RICHARDS TO JEFFREY
25 CONNELL'S PRINTS WITH NEGATIVE RESULTS?

1 A I DO HAVE THAT IN MY REPORT.

2 Q AND THEN YOUR NEXT INVOLVEMENT IS WHEN YOU GO TO, YOU
3 ARE SUMMONED TO MR. COWART BY LIEUTENANT TYLER, IS THAT
4 CORRECT?

5 A CORRECT.

6 Q AND YOU SPEAK WITH MR. COWART AT THAT POINT AND GET
7 HIS DESCRIPTION?

8 A THAT IS RIGHT.

9 Q AND YOU ACTUALLY WROTE HIS STATEMENT, ISN'T THAT
10 RIGHT?

11 A THAT IS CORRECT.

12 Q AND IN THIS DESCRIPTION A BLACK MALE, 6', CLOSE
13 HAIRCUT, DARK COLORED BACKPACK, BLACK LONG SLEEVED SHIRT
14 AND BAGGY JEANS, IS THAT RIGHT?

15 A THAT IS CORRECT.

16 Q NOW, AT THIS TIME IS WHEN LIEUTENANT TYLER, IS WHAT
17 THE OTHER SALESMAN THAT ARE IN THE AREA?

18 A AT SOME POINT AFTER TALKING, AFTER HE WAS WITH MR.
19 COWART HE DID RUN INTO THESE PEOPLE, YES SIR.

20 Q AND YOU WERE IN HERE YESTERDAY WHEN HE SAID THERE
21 WERE PROBABLY APPROXIMATELY FOUR TO FIVE BLACK MALES THAT
22 WERE SALESMEN?

23 A FOUR TO FIVE PEOPLE, I KNOW THAT NOT ALL OF THEM WERE
24 BLACK MALES. THERE WERE SEVERAL FEMALES I BELIEVE, OR AT
25 LEAST I RECALL ONE FEMALE.

1 Q AND SEVERAL OF THEM WERE BLACK MALES.

2 A IF YOU ARE ASKING IF I RECALL THAT SPECIFIC
3 TESTIMONY, I DO NOT RECALL THAT SPECIFIC TESTIMONY BUT I
4 DO RECALL YA'LL GETTING ON THAT POINT.

5 Q FAIR ENOUGH, FAIR ENOUGH. LET ME ASK YOU, DO YOU
6 HAVE A DESCRIPTION OF ANY OF THESE SALESMEN?

7 A NO.

8 Q OKAY, AND THEN THE NEXT THING THAT HAPPENED YOU GET
9 THE PLAN TO GO TO THE SOUTHWOOD SUBDIVISION TO TALK WITH
10 THE SUSPECT AND THAT IS WHEN WAGNER AND TYLER GET IN THE
11 VAN?

12 A THAT'S CORRECT.

13 Q AND YOU WILL AGREE WITH ME, ALTHOUGH YOU WEREN'T
14 THERE ORIGINALLY BUT THERE WERE A NUMBER OF POLICE CARS
15 THERE?

16 A ORIGINALLY WHEN THE VAN PULLED UP?

17 Q NO, AFTERWARDS.

18 A WHEN I GOT THERE?

19 Q I THOUGHT YOU TESTIFIED EARLIER THAT ALL OF THE
20 OFFICERS PULLED IN AND THEN YOU ARRIVED AFTERWARDS?

21 A CORRECT.

22 Q SO, WHEN YOU GOT THERE THERE WERE A NUMBER OF POLICE
23 CARS THERE?

24 A THAT'S CORRECT.

25 Q THERE WERE A NUMBER OF POLICE OFFICERS IN UNIFORM

1 THERE?

2 A THAT IS CORRECT.

3 Q AND MR. HAYWARD HAD ALREADY BEEN HANDCUFFED?

4 A THAT IS CORRECT.

5 Q NOW, YOU UNDERSTAND THE IMPORTANCE OF MIRANDA

6 WARNING?

7 A YES.

8 Q IT IS VERY IMPORTANT THAT THOSE WARNINGS ARE GIVEN,

9 CORRECT?

10 A THAT IS CORRECT.

11 Q NOW, YOU SAID THAT ONCE YOU ARRIVED THERE ROE AND

12 MCCOLMAN WERE DOING A TERRY FRISK AT THAT TIME?

13 A THEY HAD ALREADY DONE THAT.

14 Q THEY HAD ALREADY DONE THAT, OKAY. SO, YOU NEVER

15 HEARD ANY MIRANDA WARNING GIVEN TO HIM.

16 A NO.

17 Q AND IN YOUR INVESTIGATIVE REPORT YOU DON'T MENTION

18 ANYTHING ABOUT MIRANDA WARNINGS BEING READ IN THE

19 SOUTHWOOD SUBDIVISION, DO YOU?

20 A NO.

21 Q ALSO, I GUESS SUBSEQUENT TO THIS TERRY FRISK THEY

22 ACTUALLY FIND MARIJUANA, IS THAT RIGHT?

23 A YES, SOMETIME AFTER THAT, THE TERRY FRISK WHERE THEY

24 HAVE THE GUN AND THEN THE MARIJUANA. IT IS MY

25 UNDERSTANDING THAT THE MARIJUANA WAS FOUND AFTER THAT.

1 Q AND THERE IS NO MENTION OF MARIJUANA IN YOUR
2 INVESTIGATIVE REPORT?

3 A THAT IS IN THE CASE SUMMARY.

4 Q IN YOUR INVESTIGATIVE NOTES WHERE YOU GO THROUGH
5 DETAILS WHAT HAPPENED AND WHAT YOU LEARNED IS NOT
6 MENTIONED IN THERE, IS IT?

7 A IN THAT PARTICULAR PART OF THE CASE, NO.

8 Q DO YOU KNOW THE APPROXIMATE TIME WHEN YOU ARRIVED ON
9 THE SCENE AND MR. HAYWARD WAS IN CUSTODY?

10 A I CAN PINPOINT THE TIME, BETWEEN THE TIME THAT I TOOK
11 THE STATEMENT FROM MR. COWART AND I HAD THE TIME THERE AND
12 THE TIME THAT WE WERE DOWN AT THE OFFICE INTERVIEWING MR.
13 HAYWARD, I CAN PINPOINT SOMETIME BETWEEN THOSE TWO TIMES.

14 Q YOU JUST DON'T RECALL?

15 A I DON'T RECALL.

16 Q NOW, LET'S TAKE YOU BACK HERE, YOU ARE AT THE SCENE
17 AND HE HAS BEEN HANDCUFFED AND THAT IS WHEN YOU START TO
18 SPEAK TO HIM, IS THAT RIGHT?

19 A YES, MA'AM.

20 Q AND YOU INTRODUCED YOURSELF TO HIM, OF COURSE?

21 A OF COURSE.

22 Q AND AT THAT TIME HE DENIED BEING INVOLVED AND SAID HE
23 HAD BOUGHT THE GUN FROM SOME A LITTLE WHILE AGO?

24 A YES, MA'AM.

25 Q AND HE CONTINUED TO SAY THAT HE HAD NOTHING TO DO

1 WITH IT?

2 A HE WAS PRETTY VOCAL AT THAT POINT, YES MA'AM, HE WAS
3 YELLING AND DIRECTING THOSE SHOUTS IN MY ESTIMATION TO HIS
4 BOSS LADY AND SEVERAL OTHERS.

5 Q THAT HE WASN'T INVOLVED?

6 A THAT IS WHAT HE SAID, SAID HE WAS BEING SET UP.

7 Q HE SAID THAT THEN?

8 A I BELIEVE HE WAS SAYING THAT THROUGH THAT WHOLE, IN
9 DIFFERENT POINTS TO TRY TO CONVINCE HIS BOSS LADY.

10 Q AND AT THAT POINT YOU, I BELIEVE YOU SAID YOU
11 CONFISCATED HIS SHOES?

12 A I WENT UP AND LOOKED AT HIS HOES, I BELIEVE MY
13 TESTIMONY WAS THAT DEPUTY ROE WAS STANDING BY ME, I WAS
14 LOOKING FOR THAT PARTICULAR TREAD DESIGN, I NOTICED THE
15 TREAD DESIGN AND IT IS GOING TO BE A MANNER OF SEMANTICS
16 IN A LOT OF WAYS. WHEN I SAY I CONFISCATED HIS SHOES A
17 LOT OF TIMES I MEAN, I AM DIRECTING SOMEBODY TO CONFISCATE
18 HIS SHOES OR I AM CONFISCATING THEM MYSELF AND THAT IS
19 WITHIN THE VERBIAGE WITHIN MY REPORT. I DO NOT RECALL IF I
20 ACTUALLY REACHED DOWN WHILE ROE WAS STANDING NEXT TO ME
21 AND TOOK THE SHOES OFF OF HIM OR IF I DIRECTED ROE TO
22 REACH DOWN AND TAKE THE SHOES OFF OF HIM. BUT THE
23 DIRECTION WAS FROM ME AS THE LEAD OFFICER. SO, I GUESS
24 FROM THAT STANDPOINT I AM GOING TO HAVE TO SAY I DON'T
25 RECALL IF I ACTUALLY PULLED THE SHOES OFF OF HIM OR NOT.

1 Q IF YOU DIDN'T TAKE THEM OFF AND YOU DIDN'T CONFISCATE
2 THEM AT SOME POINT YOU JUST LOOKED AT THE BOTTOM OF THEM,
3 IS THAT RIGHT?

4 A I DID LOOK AT THE BOTTOM OF THEM.

5 Q YOU DON'T KNOW WHETHER YOU ACTUALLY CONFISCATED THEM
6 OR NOT?

7 A I DON'T KNOW IF I ACTUALLY PHYSICALLY TOOK THE SHOES
8 OFF OF HIM OR NOT BUT AFTER I DID OR AFTER IT WAS DONE ROE
9 TOOK THEM AND SECURED THEM.

10 Q SO, YOU DIDN'T ACTUALLY SEE WHAT ROE DID WITH THE
11 SHOES AFTER YOU TOLD HIM TO CONFISCATE THEM?

12 A RIGHT, I DIRECTED ROE AND HE IS TAKING THE SHOES AND
13 HE HAS PLACED THEM IN HIS CAR SOMEWHERE.

14 Q AND THESE ARE THE SHOES WE ARE TALKING ABOUT?

15 A CORRECT.

16 Q AND AT THAT TIME YOU BELIEVE THAT THESE SHOES MATCHED
17 THE SHOE PRINT, IS THAT RIGHT?

18 A IT LOOKED LIKE IT WAS A VERY GOOD POSSIBILITY. AT
19 FIRST I DIDN'T HAVE THE PRINT THERE TO COMPARE BUT THE
20 BLOOD, WHAT APPEARED TO BE BLOOD ON THE SIDE OF THE SHOE
21 WAS ALSO IMPORTANT TO ME IN MAKING THAT DETERMINATION.
22 SO, IT WAS A COMBINATION OF THE TREAD AND THE BLOOD AND
23 COULD BE VERY POSSIBLE. CERTAINLY WE, I HOPE I WOULD OF
24 BEEN, IF I HAD NOT SEEN THE BLOOD I HOPE I WOULD OF BEEN
25 GOOD ENOUGH TO TAKE THE SHOES ANYWAY AND COMPARE BUT

1 BECAUSE THE BLOOD WAS THERE WE DID TAKE THEM.

2 Q AND THAT IS WHEN YOU TOLD MR. HAYWARD HE WAS GOING TO
3 HAVE A HARD TIME EXPLAINING HOW THE LADY'S BLOOD WAS ON
4 HIS SHOES IF HE WASN'T INVOLVED?

5 A THAT IS CORRECT AND THAT IS WHEN HE MADE THE COMMENT
6 THAT HE WAS THERE BUT HE DIDN'T HIT HER, IT WAS THE OTHER
7 GUY.

8 Q RIGHT, AFTER YOU TOLD HIM THAT THE LADY'S BLOOD WAS
9 ON HIS SHOE AND HE WAS GOING TO HAVE A HARD TIME
10 EXPLAINING IT?

11 A CORRECT.

12 Q AND SUBSEQUENT TO THAT, OF COURSE, THAT THAT PRINT
13 SHOE, THAT THAT SHOE DOES NOT MATCH THAT SHOE PRINT?

14 A THAT IS WHAT INVESTIGATOR RICHARDS SAYS.

15 Q AND I THINK YOU TESTIFIED EARLIER AS AN INVESTIGATOR
16 YOU HAVE KNOWLEDGE OF ALL THESE DIFFERENT REPORTS BECAUSE
17 YOU ARE LEAD CHIEF INVESTIGATOR ON THE CASE, IS THAT
18 RIGHT?

19 A THAT IS RIGHT. THE ASSUMPTION IS IS THAT REPORT CAME
20 IN THAT PARTICULAR DAY, I WOULD SAY IT DID NOT.

21 Q NO, AND I AM NOT SAYING THAT.

22 A OKAY.

23 Q BUT YOU DID LEARN LATER THAT THESE SHOES DO NOT MATCH
24 THIS SHOE PRINT?

25 A THAT IS WHAT HE SAID, YES, MA'AM.

*shoes don't
match
1404 shoeprint*

1 Q NOW, ALSO AT THIS TIME WHEN YOU LOOKED AT THE SHOES
2 SOMEONE HAS ALREADY CONFISCATED THE GUN, IS THAT RIGHT?

3 A MCCOLMAN HAD THE GUN AND WAS CLEARING THE CHAMBER AND
4 WAS MAKING SURE IT WAS SAFE TO TRANSPORT.

5 Q AND THAT GUN WAS NEVER TESTED FOR FINGERPRINTS.

6 A NOT TO MY KNOWLEDGE.

7 Q AND THERE WAS ALSO A BAG THAT THE GUN WAS WRAPPED IN
8 AND THAT WASN'T TESTED FOR FINGERPRINTS EITHER?

9 A NOT TO MY KNOWLEDGE.

10 Q NOW, AT THIS POINT YOU BRING MR. COWART TO THE SCENE,
11 IS THAT RIGHT?

12 A WELL, I ASKED HIM TO COME TO THE SCENE AND HE COMES
13 ON HIS OWN.

14 Q YOU DIRECTED HIM TO COME TO THE SCENE?

15 A RIGHT, I DID NOT BRING HIM.

16 Q AND HE COMES THERE WITH HIS WORKERS, IS THAT RIGHT?

17 A THAT'S CORRECT.

18 Q HE HAD TWO WORKERS WITH HIM?

19 A THAT IS CORRECT.

20 Q AND WHEN HE ARRIVES ON THE SCENE IT IS THE SAME
21 SITUATION, THERE IS POLICE CARS, THERE IS POLICEMEN IN
22 UNIFORM, THERE IS SOMEONE HANDCUFFED?

23 A SURE.

24 Q AND AT THAT POINT IS WHEN HE ID'D MR. HAYWARD?

25 A THAT IS RIGHT.

1 Q I THINK YOU TESTIFIED THAT YOU PULLED A SWEATER AND
2 MR. COWART IDENTIFIED THE SWEATER?

3 A THAT IS CORRECT.

4 Q THROUGH YOUR REPORT DO THE WORKERS IDENTIFY THE
5 SWEATER?

6 A NO.

7 Q AND THEN YOU TRANSPORT MR. HAYWARD TO HEADQUARTERS?

8 A YES, MA'AM.

9 Q NOW, ONCE YOU ARE AT HEADQUARTERS, BEFORE YOU TALK TO
10 MR. HAYWARD THIS IS WHEN OFFICER ROE BRINGS THE SHOES TO
11 YOU BUT THEN BRINGS THEM TO RICHARDS BECAUSE YOU TOLD HIM
12 TO TAKE THEM TO RICHARDS, IS THAT RIGHT?

13 A RIGHT, I AM TRYING TO RECALL HOW WE ACTUALLY GOT IN
14 WITH ALL THE EVIDENCE WITH HIM WITH THE SUSPECT AND
15 EVERYTHING AND OF COURSE I FOLLOWED HIM FROM THE SCENE.
16 OKAY, WE HAVE GOT ALL THE EVIDENCE IN MY CAR, WE HAVE GOT
17 THE SUSPECT IN HIS CAR, WE HAVE THE ITEMS THAT HE
18 RECOVERED, HE HAS GOT IT IN HIS CAR. AND WE ALL GET TO
19 HEADQUARTERS AND I DON'T RECALL HOW WE ACTUALLY GOT INSIDE
20 WITH ALL OF THAT STUFF AND GRABBING HIM AND BRINGING THESE
21 IN. MY RECOLLECTION IS THAT THIS STUFF WAS BROUGHT TO, WE
22 BROUGHT IT TO MY CUBICLE AND THEN I IMMEDIATELY DIRECTED
23 ROE THAT WE NEEDED TO GET THOSE SHOES DOWN TO INVESTIGATOR
24 RICHARDS WHO WAS JUST DOWN THE HALL. AND WHEN I SAY, JUST
25 DOWN THE HALL I AM TALKING ABOUT FROM THE HALL LITERALLY

1 FROM OUTSIDE OF MY CUBICLE IS PROBABLY NO MORE THAN TO
2 THAT DOOR DOWN THERE. THAT IS HOW FAR IT WOULD BE TO HIS
3 OFFICE. BUT, YES.

4 Q SO, IT WAS PRETTY QUICK, HE KIND OF COME IN WITH THE
5 SHOES AND YOU SAID GO AHEAD AND BRING THEM TO RICHARDS AND
6 THEN HE WENT DOWN THERE AND DROPPED THEM OFF?

7 A THAT IS RIGHT.

8 Q SO, YOU DIDN'T ACTUALLY, WHEN HE BROUGHT YOU THE
9 SHOES LOOK AT THEM AGAIN AND THEN BRING THEM TO RICHARDS?

10 A NO, I WAS TRYING TO FIGURE OUT IF I HAD CONTACTED
11 RICHARDS TO SEE WHERE HE WAS AT THE TIME, I WOULD NOT, IT
12 WOULD NOT BE FARFETCHED FOR ME TO HAVE CALLED RICHARDS AND
13 LET HIM KNOW THAT IT WAS COMING.

14 Q NONE OF THIS IS IN YOUR REPORT THAT YOU LOOK AT AND
15 REFRESH YOUR MEMORY?

16 A RIGHT.

17 Q AND THE GUN WAS RETURNED TO THE HOMEOWNER?

18 A RIGHT.

19 Q NOW, AGAIN AT THIS TIME YOU THEN TOOK A STATEMENT
20 FROM MR. HAYWARD, IS THAT RIGHT, OR YOU ATTEMPTED TO SPEAK
21 TO MR. HAYWARD?

22 A SURE, I ATTEMPTED TO SPEAK TO MR. HAYWARD.

23 Q AND YOU SAY THAT YOU VERBALLY MIRANDIZED HIM?

24 A I DID.

25 Q BUT WE HAVE ALREADY BEEN THROUGH, THERE IS AN ADVISE

1 OF RIGHTS FORM THAT YOU CAN FILL OUT WITH A SUSPECT, IS
2 THAT RIGHT?

3 A THAT IS CORRECT.

4 Q AND THAT IS WHAT IS MARKED AS STATE'S 58?

5 A CORRECT.

6 Q AND ON THIS FORM IT HAS GOT EVERY SINGLE RIGHT AND
7 THE BOX BESIDE IT?

8 A THAT IS CORRECT.

9 Q AND YOU READ IT TO THEM AND YOU CHECK OFF THE BOX?

10 A THAT IS RIGHT.

11 Q YOU HAVE THEM SIGN IT?

12 A CORRECT.

13 Q AND THEN YOU HAVE GOT A WRITTEN DOCUMENT THAT HE HAS
14 BEEN ADVISED OF HIS RIGHTS?

15 A THAT IS RIGHT.

16 Q AND THAT WASN'T DONE HERE?

17 A THAT PAPERWORK, FILLING OUT THAT PAPERWORK WHERE HE
18 HAD SUBSEQUENTLY SIGNED IT, AFTER I READ IT, THAT WAS NOT.

19 Q AND THIS, DID YOU DO THIS PAPERWORK RIGHT AT THE
20 BEGINNING BECAUSE THERE IS A TIME ON HERE OF 9:25?

21 A RIGHT, AND IT IS VERY POSSIBLE IN THE COURSE OF THAT
22 I WAS TRYING TO FILL OUT SEVERAL DIFFERENT PIECES OF
23 PAPERWORK WHILE I WAS TALKING TO HIM, FILLING OUT THE
24 BACKGROUND SHEET. BUT I DON'T RECALL EXACTLY WHEN THAT
25 WAS.

1 Q AND THERE IS NO TIMES IN YOUR REPORT EITHER. BUT IT
2 WOULD BE FAIR TO SAY THAT, HAD PROBABLY BEEN IN HANDCUFFS
3 OR HE HAD BEEN DETAINED FOR TWO TO THREE HOURS BY NOW?

4 A HOLD ON FOR JUST ONE SECOND. BETWEEN THE TIME, I
5 WOULD SAY THAT THAT MAY BE RIGHT IN LINE WITH THAT. THAT
6 IS VERY POSSIBLE THAT HE WAS DETAINED AT THAT POINT. THE
7 FACT WAS IS THAT HE WAS ARRESTED AT THAT POINT, RIGHT.

8 Q OKAY. AND THEN WHEN YOU ARE TALKING TO MR. HAYWARD
9 YOU GO OVER ALL OF THE BACKGROUND WITH HIM AND WHERE HE
10 LIVED AND GO THROUGH ALL OF THAT. AND WHEN YOU STEERED
11 QUESTIONING BACK, HE AGAIN DENIED BEING INVOLVED.

12 A I AM TRYING TO FOLLOW WHERE YOU ARE AT, BUT YES HE
13 DID, WHEN I DID ATTEMPT TO STEER THE QUESTIONING ALL
14 THROUGH THAT INTERVIEW TO THE MATTERS AT HAND, DIFFERENT
15 POINTS IN THIS TIME THAT I HAVE HAD WITH HIM HE DID DO
16 THAT. HE BECAME ABRASIVE, HE BECAME LOUD, HE BECAME
17 VOCIFEROUS, HIS DENIAL WERE MIXED WITH, YOU KNOW, JUST
18 FIGHTING IT BACK TO OTHER TOPICS.

19 Q AND HE CONTINUED TO SAY THAT HE HAD BOUGHT THE GUN
20 FROM SOMEONE, IS THAT RIGHT?

21 A THAT IS WHAT HE SAID, YES MA'AM.

22 Q NOW, AFTER THIS YOU SAID YOU JUST STOPPED. YOU SPENT
23 ALL OF THIS TIME WITH HIM AND YOU DIDN'T KNOW HOW MUCH
24 LONGER YOU WERE GOING TO SPEND WITH HIM. YOU JUST STOPPED
25 THE INTERVIEW, IS THAT RIGHT?

1 A THAT IS CORRECT, WHEN IT BECAME APPARENT THAT WE WERE
2 NOT GOING ANY FURTHER WITH HIM THEN I STOPPED.

3 Q AND THEN WHEN YOU TAKE HIM OUT OF THE DETENTION CELL
4 YOU ARE TAKING HIM TO PUT HIM IN THE TRANSPORT VEHICLE?

5 A I PUT HIM IN THE DETENTION CELL TO FINISH UP THE
6 PAPERWORK AND CALLED THE PATTY WAGON TO GET HIM
7 TRANSPORTED DOWN TO THE JAIL.

8 Q AND YOU TOLD HIM HE WAS BEING CHARGED WITH BURGLARY,
9 FIRST DEGREE; AGGRAVATED ASSAULT, PETTY LARCENY AND SIMPLE
10 POSSESSION OF MARIJUANA?

11 A CORRECT.

12 Q DO YOU KNOW HOW LONG HE STAYED IN THE DETENTION CELL?

13 A NO, MA'AM.

14 Q SO, BASICALLY HE HAS BEEN CUFFED, DETAINED FOR ABOUT
15 TWO OR THREE HOURS, YOU HAVE SPOKEN WITH HIM AND THEN WHEN
16 YOU ARE TAKING HIM TO THE TRANSPORT HE WANTED TO KNOW IF
17 HE COULD SMOKE?

18 A THAT IS RIGHT.

19 Q AND YOU TOLD HIM NO BECAUSE IN YOUR MIND HE HAD NOT
20 TOLD YOU THE TRUTH, IS THAT RIGHT?

21 A NOT THE TRUTH BUT THE BASIC, THE SMALLEST POINTS OF
22 THAT TRUTH. SOME OF THINGS, THEY WERE CORROBORATED, LIKE
23 THE FAIRGROUNDS PLAZA HOTEL WOULD BE ONE THING THAT HE
24 COULD TELL BUT IT WOULDN'T HAVE BEEN ANYTHING AGAINST HIM
25 IF HE SAID, BUT HE WASN'T EVEN BEING TRUTHFUL ABOUT EVEN

1 THE SMALLEST MATTERS IN REGARDS TO THAT.

2 Q AND THAT IS WHEN HE MADE THE STATEMENT, YOU HAVE GOT
3 EVERYTHING THAT YOU NEED?

4 A THAT IS RIGHT.

5 Q AND PRIOR TO HIM, OF COURSE, MAKING THAT STATEMENT
6 YOU HAD ALREADY TOLD HIM THAT THE BLOOD WAS ON HIS SHOE?

7 A THAT IS RIGHT.

8 Q YOU HAD ALREADY TOLD MR. HAYWARD THAT THERE WAS BLOOD
9 ON HIS SHOE, IS THAT RIGHT?

10 A THAT IS RIGHT.

11 Q NOW, WHEN YOU TALKED TO THE VICTIM, THIS IS APRIL THE
12 22ND, THIS IS NINE DAYS LATER, WHEN SHE COMES IN TO GIVE
13 HER STATEMENT AND DO HER ID?

14 A THAT IS RIGHT.

15 Q SHE COMES IN AND AGAIN YOU GO OVER WHAT HAPPENED AND
16 SHE GIVES YOU A DESCRIPTION AS BEING A BLACK MALE, 5'8"
17 AND SKINNY, IS THAT RIGHT?

18 A THAT IS CORRECT.

19 Q SHE MENTIONS IN THERE THAT AND I AM NOT GOING TO GO
20 OVER ALL OF IT AGAIN BUT SHE MENTIONS AT SOME POINT THAT
21 SHE SAW THE PISTOL ON THE FLOOR?

22 A THAT IS CORRECT.

23 Q AND THERE IS CLEARLY NO TYPE OF SEXUAL ASSAULT HERE
24 AT ALL?

25 A THAT IS CORRECT.

1 Q LET ME ASK YOU A LITTLE BIT ABOUT THE ID PROCEDURE.
2 AND THIS IS STATE'S EXHIBIT NUMBER SIX. THIS IS THE PHOTO
3 LINEUP THAT SHE SAW?

4 A THAT IS CORRECT.

5 Q IN BLACK AND WHITE?

6 A THAT IS CORRECT.

7 Q AND YOU JUST DIDN'T SHOW HER ANY COLORED PICTURES?

8 A NO.

9 Q NOW, AGAIN, SUBSEQUENT TO THIS HAPPENING YOU ALSO,
10 YOU STATED IN YOUR REPORT THAT THE FINGERPRINT IN THE
11 BEDROOM DID NOT MATCH THE HOMEOWNERS FINGERPRINT?

12 A CORRECT.

13 Q AND YOU LATER LEARNED THAT THE FINGERPRINT ON THE
14 BEDROOM DRESSER DID NOT MATCH MR. HAYWARD?

15 A THAT IS CORRECT, THAT IS MY UNDERSTANDING THROUGH
16 INVESTIGATOR RICHARDS.

17 Q AND THERE IS ONE OTHER QUESTION, WHEN THE VICTIM CAME
18 AND SPOKE TO YOU YOU DIDN'T TAKE A WRITTEN STATEMENT?

19 A NO, MA'AM.

20 Q AND THIS IS A PRETTY SERIOUS CASE, THESE CHARGES?

21 A IS THAT A QUESTION?

22 Q YES.

23 A YES.

24 Q AND YOU DECIDED NOT TO TAKE THE WRITTEN STATEMENT?

25 A IT WAS MY DECISION BASED ON MY EXPERIENCE, YES.

1 Q SO, BUT NORMALLY YOU DO TAKE STATEMENTS FROM
2 WITNESSES?

3 A NO, I MEAN, I CAN'T SAY THAT NORMALLY I DO THAT.
4 SOMETIMES I DO AND SOMETIMES I DON'T, SOMETIMES FOR
5 INSTANCE IN A ROBBERY SITUATION OUR, WE HAVE A ROBBERY
6 QUESTIONNAIRE THAT WE FILL OUT ON OUR WITNESS. THAT IS A
7 SERIOUS CRIME AS WELL AND IT IS JUST A QUESTIONNAIRE AND
8 WE DON'T GET INTO A LOT OF THE DETAILS OF THAT. SO, IT IS
9 CASE BY CASE.

10 Q BUT YOU TOOK A STATEMENT BY MR. COWART, RIGHT?

11 A SURE.

12 Q WHO DIDN'T EVEN SEE THE ACTUAL ALLEGED INCIDENT?

13 A THAT IS RIGHT, THERE WAS A DIFFERENCE.

14 Q BUT YOU DID NOT TAKE A STATEMENT FROM THE VICTIM WHO
15 WAS ACTUALLY THERE?

16 A THAT IS RIGHT.

17 Q I HAVE NO FURTHER QUESTIONS.

18 THE COURT: ANY REDIRECT?

19 MR. JOPHLIN: YES SIR, YOUR HONOR.

20 REDIRECT EXAMINATION

21 BY MR. JOPHLIN:

22 Q HOWEVER, WHEN YOU INTERVIEWED THE VICTIM YOU DID PUT
23 HER STORY IN YOUR INVESTIGATIVE REPORT, CORRECT?

24 A THAT IS CORRECT.

25 Q AND HOW MUCH OF THAT PAGE GETS FILLED UP WITH

1 STATEMENTS THAT YOU GOT ON THAT DAY?

2 A I HAVE A PAGE HERE--

3 MS. VAN GINHOVEN: I OBJECT TO HIM PUBLISHING IT TO
4 THE JURY.

5 THE COURT: SUSTAINED, JUST ANSWER THE QUESTION.

6 A MOST OF THE PAGE.

7 Q OKAY. AND WHEN YOU WENT OUT TO LIEUTENANT TYLER AND
8 HE HAD THE CLEANING CREW, IN THIS SUBDIVISION AND BEFORE
9 TYLER GOT IN THE VAN, AND WAGNER GOT IN THE VAN, HOW MANY
10 EMPLOYEES WERE UNACCOUNTED FOR AT THAT TIME WHEN YOU
11 ARRIVED?

12 A THERE WAS ONLY TWO UNACCOUNTED FOR.

13 Q AND WHO WERE THEY?

14 A ONE WAS THE BOSS LADY AND THE OWNERS NEPHEW, SHE
15 DESCRIBED HIM.

16 Q WHAT WAS HIS DESCRIPTION?

17 A HIS DESCRIPTION WAS DIFFERENT, I DON'T RECALL WHAT
18 THE DESCRIPTION WAS, THE DESCRIPTION WAS DIFFERENT FROM
19 WHAT WE WERE LOOKING FOR. AND THE OTHER WAS DESCRIBED AS
20 JERENE HAYWARD WHICH WE WERE LOOKING AT AND TRYING TO
21 FIGURE OUT WHAT HE WAS WEARING, WHAT HE HAD ON. AND THAT
22 FIT THE DESCRIPTION.

23 Q AND ON PAGE TWO OR YOUR INVESTIGATIVE REPORT, CAN YOU
24 READ AND I WILL POINT OUT THAT SENTENCE.

25 A OKAY AND I AM SORRY, YOU ARE CORRECT. AND I WILL

1 READ IT BUT I HAVE A MISSPELLING IN HERE. OKAY. HE,
2 NEPHEW AND HER, HER NEPHEW WHO WAS WEARING A BUTTON WHITE
3 SHIRT DID NOT FIT THE DESCRIPTION.

4 Q THANK YOU. AND GOING TO THE SUBDIVISION WHERE YA'LL
5 APPREHENDED THE DEFENDANT?

6 A YES, SIR.

7 Q WERE BOTH YOU AND ROE PRESENT WHEN THE SHOES WERE
8 REMOVED FROM THE DEFENDANT?

9 A YES, SIR.

10 Q AND WHAT IN INTEREST WAS ON THOSE SHOES AT THE TIME?

11 A BLOOD OR WHAT APPEARED TO BE BLOOD.

12 Q AND ON CROSS-EXAMINATION THEY ASKED YOU ABOUT THE
13 DUSTING FOR FINGERPRINTS ON THE BAG AND GUN, THE BAG THAT
14 THE GUN WAS CONTAINED IN, WHY WAS FINGERPRINTS, WHY
15 WEREN'T, I AM SORRY, FINGERPRINTS DONE ON THOSE TWO ITEMS?

16 A IT CAME OUT OF HIS PANTS AND I FELT PRETTY CONFIDENT
17 THAT, THAT WAS A DECISION ON MY PART TO NOT, I THINK WE
18 WERE LOOKING AT THE TOTALITY OF THE CIRCUMSTANCES IN MY
19 MIND AND I JUST DID NOT DIRECT ANYONE TO FINGERPRINT.

20 Q AND ON CROSS-EXAMINATION YOU STATED THAT WHEN COWART
21 ARRIVED HE ID'D THE SWEATER?

22 A THAT IS CORRECT.

23 Q DID HE IDENTIFY ANYONE?

24 A HE IDENTIFIED JERENE HAYWARD AS THE PERSON HE HAD
25 PICKED UP.

1 Q AND THAT WAS IN ADDITION TO THE SWEATER?

2 A THAT WAS BEFORE THE SWEATER, THAT WAS IN ADDITION TO
3 THE SWEATER.

4 Q OKAY. AND DID YOU KNOW THAT THE DEFENDANT WAS THE
5 SAME PERSON THAT COWART PICKED UP EARLIER?

6 A I DID NOT.

7 Q AND HOW DID YOU LEARN?

8 A WHEN HE IDENTIFIED HIM, THAT IS HOW I LEARNED.

9 Q IF I COULD REFER YOU TO PAGE THREE OF YOUR
10 INVESTIGATIVE REPORT. CAN I GET YOU TO READ THREE
11 SENTENCES STARTING ON THE THIRD LINE.

12 MS. VAN GINHOVEN: OBJECTION, YOUR HONOR, HE IS NOT
13 ASKING QUESTIONS AND HE IS LEADING.

14 THE COURT: SUSTAINED.

15 Q AND IF YOU CAN CLARIFY, AT WHAT POINT WAS THE
16 DEFENDANT UNDER ARREST FOR ANY CHARGES?

17 A WHEN THE GUN FELL OUT OF HIS PANTS THERE WOULD BE A
18 CHARGE ON THAT FOR UNLAWFUL OR HE WAS CHARGED WITH THAT
19 FOR CARRYING A CONCEALED WEAPON OR SOMETHING ALONG THOSE
20 LINES. AND HE HAD THE MARIJUANA.

21 Q THANK YOU.

22 A THAT WOULD OF BEEN OUT THERE ON THE SCENE IN
23 SOUTHWOOD SUBDIVISION.

24 Q IN SOUTHWOOD SUBDIVISION.

25 MR. JOPHLIN: I BEG THE COURT'S INDULGENCE.

1 Q BASED ON YOUR INVESTIGATIVE REPORT WHO DID YOU
2 CONTACT ON YOUR WAY BACK TO HEADQUARTERS?

3 A MR. CONNELL, THE HOMEOWNER.

4 Q AND ONCE YOU ARRIVED AT HEADQUARTERS WHO DID YOU
5 SPEAK WITH?

6 A MR. CONNELL, HE MET ME THERE, ROE SPOKE WITH
7 INVESTIGATOR RICHARDS.

8 Q THAT IS ALL I HAVE.

9 THE COURT: RECROSS.

10 MS. VAN GINHOVEN: I HAVE A FEW QUESTIONS, YOUR
11 HONOR.

12 THE COURT: YOU ARE LIMITED THIS TIME AROUND.

13 RECROSS-EXAMINATION

14 BY MS. VAN GINHOVEN:

15 Q INVESTIGATOR RICHARDS, WHEN YOU SAW THAT THE NEPHEW
16 DIDN'T MATCH THE DESCRIPTION, IT SAYS IN HERE HE HAD A
17 WHITE LONG SLEEVE SHIRT ON?

18 A CORRECT.

19 Q BUT HE WAS A BLACK MALE OR YOU DON'T KNOW?

20 A HE WAS A BLACK MALE, IN OUR MIND WE WERE LOOKING FOR
21 THE LONG SLEEVE DARK SWEATSHIRT. SO, WHEN HE HAD THE
22 WHITE BUTTONED DOWN SWEATSHIRT, AND I DON'T RECALL THE
23 PARTICULARS BUT I RECALL IN MY MIND THAT THAT WAS NOT HIM.

24 Q AND IT WAS DIFFERENT BECAUSE OF THE WHITE SHIRT AND
25 WHEN YOU FOUND MR. HAYWARD HE HAD ON A WHITE T-SHIRT ON

1 TOO, RIGHT, HE DIDN'T HAVE A SWEATER ON, IS THAT RIGHT?

2 A WHAT I REMEMBER AT THE SCENE IS AND I SAY THE SCENE,
3 I AM TALKING ABOUT WHEN WE ARE TALKING TO THE BOSS LADY
4 TRYING TO FIGURE OUT WHO IS LEFT OF HER SALES CREW, WHEN
5 SHE IS DESCRIBING HER NEPHEW AND I HAD DOCUMENTED THE
6 WHITE T-SHIRT THAT IT IS VERY POSSIBLE THAT THERE WERE
7 OTHER THINGS, OTHER DESCRIPTIONS TO THAT THAT WOULD RULE
8 HIM OUT. BUT HER DESCRIPTION OF JERENE FIT THAT
9 DESCRIPTION THAT WE WERE LOOKING FOR.

10 Q RIGHT.

11 A AND WHEN YOU ASKED THE QUESTION IN REFERENCE TO HIS
12 WHITE T-SHIRT AT THE SCENE, I DON'T RECALL THE SHIRT HE
13 WAS WEARING, I THINK THAT WAS MY TESTIMONY ON DIRECT. HE
14 POSSIBLY HAD A WHITE T-SHIRT, I AM NOT SAYING THAT IS NOT
15 IT BUT HE DID NOT HAVE THE BLUE SWEATSHIRT.

16 Q ALL THIS COULD BE CLEARED UP REGARDING THE NEPHEW AND
17 WHAT HE LOOKED LIKE IF YOU HAD WRITTEN IT DOWN, SOMEONE
18 HAD WRITTEN DOWN THE DESCRIPTION OF THE OTHER MALES WHO
19 WERE IN THE AREA AT THE SAME TIME AND WHO WORKED WITH THE
20 SAME CLEANING COMPANY?

21 A WHILE WE ARE INTERVIEWING THEM AND TALKING TO THEM
22 THAT IS CLEARED UP AT THE TIME, TALKING ABOUT THE
23 INVESTIGATIVE STANDPOINT IS CLEARED UP IN THE MINDS OF THE
24 INVESTIGATORS AND THE OFFICERS WHO ARE LISTENING TO THAT
25 AT THE SCENE.

1 Q NOW, AGAIN WE WENT BACK TO THE SHOES. YOU WERE WITH
2 OFFICER ROE, YOU SAW HIM TAKE THE SHOES TO THE CAR BUT
3 THAT IS ALL YOU SAW. YOU DON'T EVEN RECALL THAT, YOU KNOW
4 THAT YOU LOOKED AT THE BOTTOM OF THE SHOES AND THEN
5 OFFICER ROE TOOK THE SHOES IN CUSTODY?

6 A I RECALL SEEING THE BOTTOM OF THE SHOE, I RECALL
7 SEEING THE BLOOD, I RECALL SEEING THE TREAD AND LOOKED
8 SIMILAR TO WHAT WAS AT THE SCENE, I DO NOT RECALL IF I
9 ACTUALLY TOOK THE SHOES OFF, I DO RECALL ROE HAVING THE
10 SHOES AT THAT POINT AND SECURING THEM WHILE I CONTINUED TO
11 TALK TO MR. HAYWARD.

12 Q BUT YOU DIDN'T SEE HOW HE SECURED THEM?

13 A NO.

14 Q OKAY. AND WHEN YOU SAY YOU SAW THE BLOOD ON THE SHOE
15 YOU SAW WHAT APPEARED TO BE BLOOD, BROUGHT IT BACK, DID A
16 PRESUMPTIVE TEST AND NEEDED TO GO DO FURTHER TESTING TO
17 DETERMINE IF THERE WAS BLOOD ON THAT SHOE?

18 A CORRECT.

19 Q I HAVE NO FURTHER QUESTIONS.

20 THE COURT: REDIRECT?

21 MR. JOPHLIN: NOTHING FURTHER.

22 THE COURT: YOU MAY STEP DOWN.

23 MR. JOPHLIN: THE STATE CALLS GRAY AMICK.

24 MS. VAN GINHOVEN: YOUR HONOR, WE HAVE A MATTER.

25 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN,

1 STEP OUT FOR A FEW MINUTES AND I WILL DEAL WITH THIS AND
2 HAVE YOU BACK IN A FEW MINUTES, PLEASE. DON'T DISCUSS THE
3 CASE.

4 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

5 THE COURT: ALL RIGHT, MS. VAN GINHOVEN.

6 MS. VAN GINHOVEN: YOUR HONOR, AT THIS TIME WE ARE
7 MOVING FOR A MISTRIAL. I BELIEVE THAT THIS GOES BACK TO
8 WHAT WE WERE TALKING ABOUT BEFORE WITH THE--

9 THE COURT: WAIT JUST A MINUTE. GO AHEAD.

10 MS. VAN GINHOVEN: YOUR HONOR, WE WOULD MOVE FOR A
11 MISTRIAL AT THIS TIME. THE SHOES THAT WERE TAKEN INTO
12 CUSTODY BY OFFICER ROE, NO ONE KNOWS HOW THEY WERE
13 SECURED. OFFICER ROE'S ONLY TESTIMONY WAS THAT HE TOOK
14 THE SHOES AND HE PUT THEM IN THE TRUNK OR THE FLOORBOARD
15 OF A CAR. AFTER INVESTIGATOR BARNES TESTIMONY IT IS CLEAR
16 THAT HE LOOKED AT THE BOTTOM OF THE SHOES AND CAN'T
17 REMEMBER IF HE IS THE ONE WHO ACTUALLY TOOK THEM OFF BUT
18 THAT OFFICER ROE TOOK THEM AND SECURED THEM. HE DOES NOT
19 KNOW HOW HE SECURED THEM, HE TESTIFIED THAT WHEN HE GETS
20 BACK HE HAS ADMITTED THAT ALTHOUGH ROE DID COME IN WITH
21 THE SHOES THAT HE DIDN'T ACTUALLY LOOK AT THOSE SHOES OR
22 THE CONDITION THEY WERE IN. AND THAT THEN WENT TO
23 INVESTIGATOR RICHARDS. AND SO WE WOULD BE MOVING TO, FOR
24 A MISTRIAL AT THIS POINT.

25 THE COURT: SOLICITOR.

1 MR. JOPHLIN: YOUR HONOR, OFFICER BARNES WASN'T SURE
2 WHO TOOK OFF THE SHOES, I BELIEVE ROE WAS THERE AND HE
3 OBSERVED ROE TAKE THEM OFF. ONCE AGAIN, THE STATE FEELS
4 THAT THIS GOES TO THE WEIGHT OF THE EVIDENCE, NOT AS TO
5 ITS ADMISSIBILITY. I REFER TO STATE V. MATHIS, 597, S.E.
6 2ND, 872 WHICH DOES DEAL WITH DNA. AND AS I TALKED ABOUT
7 BEFORE, IT IS A WEAK LINK IN THE CHAIN OF CUSTODY AS
8 OPPOSED TO A MISSING LINK. AND THEREFORE IT WOULD BE AN
9 ~~ISSUE~~ OF CREDIBILITY, NOT ADMISSIBILITY. THE HANDLING OF
10 THE SPECIMEN, THE EVIDENCE REGARDING ITS CARE GOES ONLY TO
11 THE WEIGHT OF THE SPECIMEN AND THAT IS CREDIBLE EVIDENCE.
12 NOT AS TO THE ADMISSIBILITY OF THAT EVIDENCE. AND ALSO I
13 BRING TO THE COURT'S ATTENTION TO THE TWO OTHER CASES THAT
14 I BROUGHT TO YOUR ATTENTION, TO THE COURT'S ATTENTION
15 EARLIER. THE STATE V. TAYLOR AND THE STATE V. GOVERNOR.

16 THE COURT: MS. VAN GINHOVEN.

17 MS. VAN GINHOVEN: YOUR HONOR, I JUST DON'T BELIEVE
18 THAT THEY CAN ESTABLISH THE CHAIN AFTER INVESTIGATOR
19 BARNES HAS TESTIFIED. AGAIN, IT IS EVEN MORE IMPORTANT IN
20 THIS CASE BECAUSE IT IS DNA EVIDENCE THAT IS SO SENSITIVE.
21 CLEARLY IN THIS CASE WE HAVE SHOES GOING INTO A TRUNK OR A
22 FLOORBOARD BY AN OFFICER WHO HAD ALREADY BEEN AT THE CRIME
23 SCENE, THERE COULD BE POSSIBLE CROSS CONTAMINATION.
24 CLEARLY, NO ONE KNOWS HOW IT WAS SECURED. ONCE IT GOES TO
25 INVESTIGATOR RICHARDS WE DO KNOW THAT WHEN IT GOES TO

1 INVESTIGATOR RICHARDS THAT THE SHOES ARE TOGETHER, THAT
2 THEY ARE NOT SEPARATED AND THAT INVESTIGATOR RICHARDS WAS
3 THE ONE WHO ACTUALLY HAD TO DO THAT WHICH WOULD SUGGEST
4 THAT IT WAS IMPROPERLY SECURED IN THE FIRST PLACE. AND WE
5 WOULD ARGUE THAT SINCE IT IS DNA EVIDENCE THAT IT IS SO
6 EXTREMELY SENSITIVE. THAT CLEARLY THEY CAN'T ESTABLISH
7 THE CHAIN AFTER CALLING THEIR LAST WITNESS, THAT WE WOULD
8 BE MOVING FOR A MISTRIAL. AND ALSO CLEARLY THERE HAS BEEN
9 TESTIMONY, THE SAME TYPE OF CONTACT BY TWO DIFFERENT
10 OFFICERS, ABOUT CONFISCATING THE SHOES, THAT INVESTIGATOR
11 BARNES REPORT AND THEN OFFICER ROE TESTIFIED TO IT. I
12 DON'T UNDERSTAND HOW TWO PEOPLE CAN DO THE SAME THING.
13 AND WE WOULD JUST MOVE FOR A MISTRIAL OR AND ALSO ASK THAT
14 THE EVIDENCE BE EXCLUDED BECAUSE THEY CAN'T PROPERLY SHOW
15 HOW, I KNOW THAT THEY HAVE TO PROVE WHO THE PERSON IS WHO
16 HANDLED IT AND HOW IT WAS REASONABLY HANDLED, THEY HAVE TO
17 DEMONSTRATE THAT, I DON'T THINK THEY HAVE DEMONSTRATED
18 THAT.

19 THE COURT: THE DEFENSE MOTION FOR A MISTRIAL IS
20 DENIED. THE EVIDENCE IS THIS, IT IS NOT A PERFECT CHAIN
21 BY ANY STRETCH BUT THE EVIDENCE TAKEN IS WHAT HAS BEEN
22 PRESENTED AT THIS TIME AS WHETHER ROE OR BARNES PHYSICALLY
23 TOOK THE SHOES OFF, THEY WERE THEN SECURED AND TRANSPORTED
24 TO THE SHERIFFS OFFICE WHERE THEY WERE, WENT ON FOR
25 FURTHER ANALYSIS. ANY DEFECTS AS TO WHAT HAPPENED WILL GO

1 TO THE WEIGHT OF THE EVIDENCE AND NOT TO THE ADMISSIBILITY
2 AND THE COURT DENIES THE MOTION FOR THE MISTRIAL AND ALSO
3 THE MOTION TO SUPPRESS. AS FAR AS THE FACT THAT THERE MAY
4 BE CONFLICTING TESTIMONY THAT IS IN NEARLY EVERY TRIAL.

5 YOU CAN ARGUE ABOUT CREDIBILITY ALL DAY LONG. ALL RIGHT,
6 LET'S PROCEED, LET'S GET THE JURY BACK IN, PLEASE.

7 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
8 APPROXIMATELY 3:30 P.M.)

9 THE COURT: SOLICITOR, CALL YOUR NEXT WITNESS,
10 PLEASE.

11 MR. JOPHLIN: THE STATE CALLS DR. GRAY AMICK.

12 THE COURT: DR. AMICK, YOU HAVE ALREADY BEEN SWORN,
13 YOU ARE STILL UNDER OATH. IF YOU WILL TAKE YOUR SEAT,
14 PLEASE, SIR.

15 CONTINUE DIRECT EXAMINATION

16 BY MR. JOPHLIN:

17 Q INVESTIGATOR AMICK, I BELIEVE THAT WHEN WE LEFT OFF
18 LAST, I HAD ASKED YOU IF YOU HAD THESE SAMPLES IN YOUR
19 POSSESSION PER YOUR REQUEST OF TESTING, THAT IS STATE'S
20 EXHIBIT NUMBER 5, NUMBER 2, NUMBER 55, NOT NUMBER 1.
21 THESE THREE ITEMS?

22 A LET ME SEE. YES, THAT IS CORRECT.

23 MR. JOPHLIN: YOUR HONOR, AT THIS TIME WE WOULD MOVE
24 STATE'S EXHIBITS NUMBER 2, 5 AND 55 INTO EVIDENCE.

25 THE COURT: THE SAME OBJECTIONS?

1 MS. VAN GINHOVEN: YES, YOUR HONOR.

2 THE COURT: OVERRULED, THOSE EXHIBITS, STATE'S 2, 5
3 AND 55 ARE NOW ADMITTED INTO EVIDENCE.

4 (WHEREUPON, STATE'S EXHIBIT NOS. 2, 5 AND 55 WERE
5 ADMITTED INTO EVIDENCE.)

6 Q AND WHAT KIND OF REQUEST DID YOU RECEIVE, REQUEST FOR
7 TESTING WHEN YOU RECEIVED THESE THINGS?

8 A PRETTY MUCH LIKE ANY OTHER CASE, TO PROCESS THEM FOR
9 ANY SEROLOGY THAT WE DEEM NECESSARY AND THEN TRY TO
10 DEVELOPE ANY PRINTS FROM THE ITEMS.

11 Q AND IN YOUR NOTES DO YOU LIST WHAT ITEMS YOU
12 RECEIVED?

13 A I DO.

14 Q AND WHAT ITEMS TO YOU LIST RECEIVING?

15 A I LIST ITEMS, MY NUMBERS ARE 1, 3 AND 1CE.

16 Q AND WHAT IS ITEM 1?

17 A ITEM 1, THE DESCRIPTION THAT I HAD WAS A BLOOD SWAB.

18 Q AND ITEM 3?

19 A ITEM 3 IS A SWAB FROM A SHOE WHICH I NOTATED ITEM
20 3.2.1 FROM SLED.

21 Q AND ITEM 1CE?

22 A ITEM 1CE WAS A BUCKLE SWAB FROM ANTONIO LOURDES.

23 Q AND BUCKLE SWAB, IS THAT ANOTHER TERM FOR AN ORAL
24 SWAB?

25 A THAT'S CORRECT, A SWAB FROM THE MOUTH.

1 Q OKAY. AND IF YOU CAN REFER, ON THE TOP OF THE PAGE
2 ON THE CHART. I AM SORRY, WELL WHICH EVIDENCE CAME TO YOU
3 FROM SLED?

4 A THE ITEM, THE SLED ITEM NUMBER ON IT WAS MY ITEM
5 NUMBER 3 WHICH IS A SWAB FROM THE SHOE.

6 Q AND DID ANY OTHER ITEM COME TO YOU VIA SLED?

7 A I HAD A NOTE THAT ITEMS 1 AND 3 WERE PROCESSED AT
8 SLED SO ITEMS HAD 1 AND 3, BOTH PROCESSED AT SLED.

9 Q AND THAT WOULD BE THE BLOOD SWAB?

10 A THE BLOOD SWAB OF THE SHOE.

11 Q OKAY. AND BEFORE WE GET INTO ANY KIND OF RESULTS OF
12 YOUR TESTING CAN YOU SORT OF DESCRIBE HOW YOU TAKE THESE
13 ITEMS, WHAT SORT OF ENVIRONMENT YOU ARE IN, IS THERE A
14 CHANCE FOR CONTAMINATION IN YOUR ENVIRONMENT THAT YOU TEST
15 IN. HOW DO YOU DEVELOPE DNA FROM TEST AND COMPARE?

16 A SURE, I GO DOWN TO THE EVIDENCE ROOM AND RECEIVE ANY
17 ITEMS THAT I WAS REQUESTED TO DO A TEST ON. PERSONLLY I
18 RECEIVE THESE ITEMS AND WHEN I OPEN THEM TO ANALYZE THEM,
19 IF THERE WAS ANYTHING UNUSUAL ABOUT THE WAY THEY WERE
20 SEALED OR PACKAGED, I WOULD NOTATE THAT.

21 Q DID YOU NOTATE THAT ANYWHERE?

22 A I DID NOT, THE ONLY NOTATION I MADE WAS CONSIDERING
23 ITEM NUMBER 3 THAT I NOTATED A SLED ITEM NUMBER 3.2.1. FOR
24 MY CLARIFICATION. AND THAT WAS PROCESSED FROM THE NIKE
25 SHOE AT SLED. SO I WOULD GET THESE ITEMS AND I WOULD DO

1 SEROLOGY IF I DEEM APPROPRIATE. I THINK ON ITEM 1 I DID
2 SOME SEROLOGY TESTING, SOME PRESUMPTIVE TESTING. THE
3 OTHER ONES I WOULD SIMPLY CUT WITH SCISSORS AND USE THE
4 FORM OF A SWAB ON A QUE TIP, CUT THE TOP PART OFF AND DO
5 MY ANALYSIS WITH THAT UPON THE ITEM.

6 Q AND WE HAVE HEARD SOME TESTIMONY THAT INVESTIGATOR
7 RICHARDS HAD DONE PRESUMPTIVE TEST FOR BLOOD, JANET BRYSON
8 AT SLED DID A PRESUMPTIVE TEST FOR BLOOD. AND I BELIEVE
9 YOU TESTIFIED THAT YOU WOULD DO A PRESUMPTIVE TEST?

10 A THAT IS CORRECT. AND THE REASON I WOULD DO THAT IS
11 TO VERIFY THAT THERE MAY BE BLOOD THERE. THE REASON THAT
12 I MAY NOT DO THAT IS BECAUSE THERE IS NOT ENOUGH SAMPLE.
13 I WOULDN'T WANT TO CONSUME SAMPLE TESTING PRESUMPTIVE TEST
14 FOR BLOOD, I WANT TO GET, ULTIMATELY FIND OUT WHAT IS ON
15 THE SWAB DNA WISE. SO, I DID DO A PRESUMPTIVE TEST FOR
16 BLOOD ON ITEM 1 AND THE OTHER 2 I DID NOT DO THE
17 PRESUMPTIVE TESTING.

18 Q NOW, PRESUMPTIVE TESTING, DO THEY HAVE AN EFFECT ON
19 YOUR TEST RESULTS?

20 A NO, WHAT I WOULD DO IS CUT EACH OF THE SWABS AND DO A
21 TEST ON THAT AND BASICALLY CONSUME THAT PIECE THAT I CUT.
22 THEN WHEN I GO BACK TO DO THE DNA I WOULD CUT ANOTHER PART
23 OF THE SWAB FOR THE DNA TESTING.

24 Q SO, IT IS A SEPARATED LITTLE THING THAT YOU TEST?

25 A THAT IS CORRECT, IT IS A SEPARATE TEST.

1 Q FROM THE WHOLE?

2 A YES.

3 Q AND WERE YOU ABLE TO COME UP WITH AN OPINION, WHEN
4 YOU WERE ASKED TO PREPARE THE SWAB FROM THE SHOE TO SOME
5 OF THE VICTIMS KNOWN DNA WERE YOU ABLE TO COME UP WITH AN
6 OPINION TO A REASONABLE SCIENTIFIC CERTAINTY AS TO ANY
7 RESULTS?

8 A YES, I WAS.

9 Q AND WHAT WERE THOSE RESULTS?

10 A THE RESULTS, I DID OBTAIN A DNA PROFILE FROM ITEM 1,
11 THE BLOOD SWAB AND THE ITEM 3, THE SWAB FROM THE SHOE.
12 AND I ALSO GOT A PROTOFILE FROM ANTONIO LOURDES MOUTH
13 SWAB. SO, MY RESULTS WERE THAT THE DNA PROFILE DEVELOPED
14 FROM ITEM 1, THE BLOOD SWAB, MATCHED ANTONIO LOURDES AND
15 THEN THE SECOND CONCLUSION THAT I DREW WAS THAT THE
16 PARTIAL DNA PROFILE THAT I DEVELOPED FROM ITEM 3 WHICH IS
17 THE SWAB FROM THE SHOE ALSO MATCHED ANTONIO LOURDES.

18 Q AND WHEN YOU SAY, PARTIAL DNA, I MEAN, PARTIAL
19 PROFILE, I AM SORRY. PARTIAL DNA PROFILE, DID THAT MAKE
20 ANY DIFFERENCE, DOES THAT MEAN IT IS LESS THAN DNA, WHAT
21 IS PARTIAL DNA PROFILE?

22 A WHAT IT MEANS IS THAT IN THAT CASE, FOR THAT PIECE OF
23 EVIDENCE THERE WASN'T AS MUCH OF DNA ON THAT SWAB
24 BASICALLY. THERE WASN'T AS MUCH MATERIAL ON THAT SWAB SO
25 WHEN I TESTED IT I GOT WHAT WAS A PARTIAL DNA PROFILE. I

1 TESTED 13 DIFFERENT SPOTS ON THE DNA MOLECULE FOR EACH
2 PIECE OF EVIDENCE. WHEN I GET LESS THAN ALL OF THOSE
3 RESULTS I CAN STILL, WHETHER IT MATCHES OR NOT BUT I
4 DIDN'T GET A RESULT IN EACH ONE. I JUST GOT A NO RESULT,
5 I CAN STILL DRAW A CONCLUSION WHETHER IT MATCHES OR NOT
6 BUT IT IS LESS THAN A FULL PROFILE. SO, IT JUST MEANS
7 ~~THERE WAS NOT ENOUGH DNA THERE TO GET A FULL PROFILE.~~

8 Q BUT YOU WERE STILL ABLE TO, ACCORDING TO YOUR
9 CONCLUSIONS, MAKE A MATCH?

10 A YES.

11 Q FROM THAT?

12 A YES.

13 Q AND WHAT IS THE DATE OF, YOU ISSUED TWO REPORTS IN
14 THIS MATTER, CORRECT?

15 A THAT IS CORRECT.

16 Q WHAT IS THE DATE OF YOUR FIRST REPORT?

17 A THE FIRST REPORT IS DATED NOVEMBER THE 29TH OF 2004.

18 Q AND WHEN DID YOU ACTUALLY DO THE TESTING ON THIS
19 CASE?

20 A IT LOOKS LIKE I HANDLED THE EVIDENCE OCTOBER THE 25TH
21 OF 2004.

22 Q CAN YOU EXPLAIN FOR US WHY THERE IS A MONTHS
23 DIFFERENCE BETWEEN THOSE DATES FROM WHEN YOU TESTED IT AND
24 WHEN YOU ISSUED THAT REPORT?

25 A YES, IT IS NOT UNUSUAL FOR ANY CASE, ACTUALLY, THIS

*No full
profile*

1 CASE WAS A CASE THAT WE DID AND WHAT HAPPENS IS YOU HAVE
2 TO WRITE THE CASE US, GET EVERYTHING TOGETHER IN THE CASE,
3 ALSO THE REPORT. AND IT IS PART OF THE LABORATORY THAT
4 YOU TECHNICALLY REVIEW SO ANOTHER QUALIFYING ANALYSIS, I
5 HAVE TO LOOK AT THE RESULTS AND AGREE WITH YOUR
6 CONCLUSIONS AND THE WAY YOU DID YOUR TEST AND I HAVE TO
7 SIGN OFF ON IT. AND THEN THERE IS ANOTHER REVIEW AFTER
8 THAT. AFTER YOU DO THE EXAMINATION THERE IS SEVERAL
9 REVIEWS THAT THE FINAL RESULTS WILL GO BEFORE IT IS
10 ISSUED.

11 Q AND WAS THE LAB, RICHLAND COUNTY SHERIFFS DEPARTMENT,
12 WERE THEY IN THE PROCESS OF BEING CERTIFIED AT THIS TIME
13 PERIOD?

14 A YES, IN THIS CASE WE WERE GOING, THIS IS THE POINT
15 AND TIME WE FIRST SET UP AND WE WERE BEING INSPECTED BY
16 THE FBI TO BE A PART OF THE NATIONAL DATA BASE AND YOU
17 NEED CERTAIN LEVELS OF QUALITY STANDARDS, ETCETERA. AND
18 THIS CASE WAS, FELL INTO THAT WHERE IT ACTUALLY GOT
19 INSPECTED BY THIS GROUP OF AUDITORS AS WELL.

20 Q SO, IT WAS AUDITED BY THE FBI?

21 A THAT IS CORRECT, ACTUALLY FROM THE FBI STANDARDS,
22 THERE ARE NOT FBI. BUT THIS CASE GOT LOOKED AT BY THOSE
23 INDIVIDUALS AS WELL AS PART OF OUR WHOLE TECHNICAL
24 LABORATORY AND AUDIT.

25 Q AND WHEN YOU ARE TALKING ABOUT PEOPLE SIGNING OFF ON

1 THE REPORTS AND RESULTS WAS THAT GROUP PART OF THAT GROUP
2 VIEWING?

3 A WHAT THEY DO IS THEY ISSUE A REPORT ON THE ENTIRE
4 LABORATORY AND THAT IS WHAT WAS DONE. THE NORMAL CASE
5 WORK REVIEW HAPPENS ON EVERY CASE BETWEEN THE ANALYSIS IN
6 THE LABORATORY ITSELF.

7 Q AND DID YOU ISSUE A SECOND REPORT IN THIS CASE?

8 A I DID.

9 Q AND WHAT IS THE DATE ON THAT?

10 A THE DATE IS MAY 25TH OF 2005.

11 Q AND IS IT LABELED SUPPLEMENTAL REPORT?

12 A YES, IT IS.

13 Q BETWEEN THESE TWO REPORTS WHAT IS THE ONE DIFFERENCE?

14 A THE DIFFERENCE WAS, THE FIRST REPORT IS THE SAME
15 RESULTS, THAT IS ITEM 1 MATCHED TO ANTONIO LOURDES. AND
16 ITEM 3 ALSO MATCHED ANTONIO LOURDES. IN THE FIRST REPORT
17 INCLUDES THE STATISTICAL STATEMENT WITH THE FIRST MATCH.

18 Q WHAT DO YOU MEAN BY STATISTICAL?

19 A STATISTICAL STATEMENT WAS THE DNA PROTOCOL DEVELOPED
20 FROM ITEM 1 MATCHED ANTONIO LOURDES. THE PROBABILITY OF
21 RANDOMLY SELECTING UNRELATED INDIVIDUAL HAVING THE DNA
22 PROFILE MATCHING ITEM 1 IS APPROXIMATELY 1 IN 458
23 QUADRILLION.

24 Q BUT THAT WAS BETWEEN THE BLOOD SWAB AND HER ORAL
25 SWABS?

1 A THAT IS CORRECT. THE MATCH STATEMENT I MADE FOR ITEM
2 3, I DID NOT HAVE A STATISTICAL STATEMENT. I WAS TOLD
3 THAT, WHILE I WAS INFORMED THAT THAT PIECE OF EVIDENCE WAS
4 BASICALLY THE PROBATIVE PIECE OF EVIDENCE FOR THIS CASE, I
5 WASN'T AWARE OF IT WHEN I FIRST SAW THE FIRST REPORT. SO,
6 I WAS ASKED TO DEVELOPE A STATISTIC FOR THAT SECOND MATCH
7 AS WELL AND THAT IS WHAT THE SUPPLEMENTAL REPORT HAS.

8 Q AND CAN YOU READ THAT STATISTICAL SECTION.

9 A YES. BASICALLY, PARTIAL DNA PROFILE DEVELOPED IN
10 ITEM 3 ALSO MATCHES ANTONIO LOURDES. THE PROBABILITY
11 RANDOMLY SELECTING A UNRELATED INDIVIDUAL HAVING A DNA
12 PROFILE MATCHING ITEM 3 IS APPROXIMATELY 1 IN 24 MILLION.

13 Q THANK YOU. BRIEFLY LETS TOUCH ON ANOTHER SUBJECT.
14 AS AN EXPERT IN SEROLOGY, DO YOU HAVE EXPERIENCE OR
15 EXPERTISE IN EVALUATING THE TRANSFER OF BODILY FLUIDS FROM
16 ONE PLACE TO ANOTHER?

17 A I DO.

18 Q AND IN YOUR YEARS OF EXPERTISE IN THAT AREA DO YOU
19 HAVE EXPERIENCE EVALUATING WHETHER FLUIDS ON AN OBJECT ARE
20 A RESULT OF SPATTER OR A TRANSFER?

21 A I HAVE EXPERIENCE, I AM NOT, I AM NOT QUALIFIED, I
22 CAN'T BE QUALIFIED AS AN EXPERT IN THAT. I HAVE NEVER
23 BEEN QUALIFIED AS A BLOOD SPATTER EXPERT, NO.

24 Q CAN YOU IDENTIFY A TRANSFER?

25 A I CAN WITH MY EXPERIENCE LOOKING AT EVIDENCE AND

1 PROCESSING EVIDENCE, I HAVE KNOWLEDGE OF WHAT A TRANSFER
2 STAIN LOOKS LIKE.

3 Q WHAT IS TRANSFER--

4 MS. VAN GINHOVEN: YOUR HONOR, I DON'T KNOW WHERE WE
5 ARE GOING WITH THIS BUT HE HAS NOT BEEN QUALIFIED AS AN
6 EXPERT IN BLOOD SPATTER OR ANYTHING LIKE THAT.

7 THE COURT: RIGHT NOW HE IS NOT QUALIFIED IN THE
8 AREA.

9 Q IN YOUR YEARS OF EXPERTISE HAVE YOU BEEN TRAINED OR
10 STUDIED WITH WHAT IS KNOWN AS TRANSFER?

11 A I HAVE NOT BEEN TRAINED IN IT, NO. I HAVE
12 EXPERIENCED SEEING IT WHEN I PROCESS EVIDENCE.

13 Q AND HOW MUCH EXPERIENCE DO YOU HAVE IN SEEING IT IN
14 EVIDENCE?

15 A WELL, I PROCESS THOUSANDS OF PIECES OF EVIDENCE, NOT
16 ALL OF WHICH HAS TRANSFER SO I CAN'T QUANTITATE HOW MANY
17 TRANSFER STAINS I HAVE SEEN.

18 Q OKAY. AND CAN YOU BRIEFLY EXPLAIN WHAT IS TRANSFER?

19 A BASICALLY WHEN A WET STAIN TOUCHES ANOTHER ITEM AND
20 IT IS TRANSFERRED FROM THAT EVIDENCE OR THAT ITEM TO THE
21 OTHER.

22 Q AND NOT ONLY IN YOUR EXPERIENCE OF RICHLAND COUNTY
23 SHERIFFS DEPARTMENT BUT DO YOU ALSO HAVE EXPERIENCE WITH
24 THIS AT SLED WHILE YOU WERE THERE?

25 A YES, I DID.

1 Q AND HOW LONG WERE YOU AT SLED AS AN ANALYST?

2 A I WAS AT SLED FOR 11 YEARS.

3 Q OKAY.

4 MR. JOPHLIN: AND, YOUR HONOR, AT THIS TIME WE WOULD
5 OFFER HIM AS AN EXPERT IN TRANSFER.

6 MS. VAN GINHOVEN: YOUR HONOR, I WOULD OBJECT TO
7 THIS. HE HAS ALREADY ADMITTED HE HAS HAD NO TRAINING IN
8 BLOOD SPATTER OR TRANSFER, HE HAS HAD NO TRAINING IN THAT
9 FIELD.

10 THE COURT: COME UP FOR A MINUTE.

11 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
12 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
13 JURY.)

14 THE COURT: OBJECTION SUSTAINED.

15 MR. JOPHLIN: THANK YOU, YOUR HONOR. I BEG THE
16 COURT'S INDULGENCE. NOTHING FURTHER FROM THE STATE, YOUR
17 HONOR.

18 THE COURT: ALL RIGHT, CROSS-EXAMINE.

19 MS. VAN GINHOVEN: THANK YOU, YOUR HONOR.

20 CROSS-EXAMINATION

21 BY MS. VAN GINHOVEN:

22 Q GOOD AFTERNOON, DR. AMICK.

23 A YES.

24 Q NOW, I THINK THAT YOU JUST TESTIFIED THAT YOU HAD A
25 REPORT WHERE, LET'S START WITH THIS. THE BLOOD SWAB, ITEM

1 NUMBER 1 THAT YOU TESTED IS A BLOOD SWAB FROM THE SCENE,
2 IS THAT RIGHT?

3 A MY DESCRIPTION IS A BLOOD SWAB. YOU HAVE TO ASK TO
4 POINT TO WHERE IT CAME FROM.

5 Q OKAY. AND THEN THERE IS NUMBER 3 AND THAT IS THE
6 SWAB FROM THE SHOE.

7 A THAT IS CORRECT.

8 Q NOW, ORIGINALLY YOU CAME UP WITH THE OR YOU
9 CALCULATED THE PROBABILITY OF RANDOMLY SELECTING A
10 UNRELATED INDIVIDUAL, THE DNA PROFILE MATCHING ITEM 1 IS
11 APPROXIMATELY IS 1 IN 458 QUADRILLION. IS THAT RIGHT?

12 A THAT IS CORRECT.

13 Q AND THAT IS REFERRING TO THE BLOOD SWAB?

14 A ITEM 1, CORRECT.

15 Q AND THEN YOU WERE ASKED BY THE STATE TO DO A NUMBER
16 ON, NUMBER 3, THE SWAB FROM THE SHOE?

17 A THAT IS CORRECT.

18 Q ORIGINALLY YOU DIDN'T DO A NUMBER ON THAT ONE?

19 A THAT IS CORRECT.

20 Q NOW, YOU SAID THAT THE NUMBER FOR BLOOD SWAB IS 1 IN
21 458 QUADRILLION?

22 A THAT IS RIGHT.

23 Q AND QUADRILLION HAS WHAT, FIFTEEN ZEROS IN IT?

24 A YES, I BELIEVE SO, I WILL DOUBLE CHECK MY NOTES.

25 Q THAT IS THE NUMBER THAT WE ARE TALKING ABOUT, THE

1 BLOOD SWAB, QUADRILLION, FIFTEEN?

2 A THAT IS CORRECT.

3 Q OKAY. AND THE NUMBER OF THE BLOOD SWAB FROM THE SHOE
4 IS 24 MILLION, SO THAT IS ONLY SIX ZEROS, RIGHT?

5 A YES.

6 Q SO, THOSE NUMBERS ARE PRETTY DIFFERENT, AREN'T THEY?

7 A YES.

8 Q ONE IS EXTREMELY LARGE AND ONE ISN'T AS LARGE
9 ALTHOUGH THEY SOUND LARGE.

10 A THEY ARE BOTH PRETTY BIG.

11 Q SO, THE LIFE IN TRYING TO FINDING SOMEONE TO MATCH
12 THE BLOOD SWAB IS 1 IN 458 QUADRILLION, THAT IS A BIGGER
13 NUMBER. AND FOR MATCHING SOMEONE WITH NUMBER 3, THAT IS 1
14 IN 24 MILLION WHICH IS A SMALLER NUMBER?

15 A I WOULDN'T STATE IT THAT WAY, I WOULD STATE THAT IT
16 IS A MATCH, THEY ARE BOTH MATCHES.

17 Q I AM LOOKING AT YOUR REPORT. NUMBER 1, THE
18 PROBABILITY OF RANDOMLY SELECTING AN UNRELATED INDIVIDUAL
19 HAVING A DNA PROFILE MATCHING ITEM 1 IS APPROXIMATELY 1 IN
20 458 QUADRILLION, RIGHT?

21 A CORRECT.

22 Q THE PROBABILITY OF RANDOMLY SELECTING AN UNRELATED
23 INDIVIDUAL HAVING A DNA PROFILE ITEM 3 IS APPROXIMATELY 1
24 IN 24 MILLION?

25 A THAT IS CORRECT.

1 Q NOW, IN THIS CASE, FIRST OF ALL LET ME ASK YOU THIS.
2 WHEN YOU TEST AN ITEM WHO PROVIDES THOSE ITEMS TO YOU?

3 A WELL, MOST OF ALL OF THE ITEMS I GET COMES FROM THE
4 EVIDENCE ROOM SO THEY ARE LOGGED IN THERE BY DEPUTIES OR
5 INVESTIGATORS OR CRIME SCENE INVESTIGATORS, DIFFERENT
6 PEOPLE.

7 Q SO, THE STATE OR THE GOVERNMENT IS THE PERSON THAT
8 BRINGS THE ITEMS THAT YOU TEST?

9 A I DON'T KNOW ABOUT THE GOVERNMENT BUT PEOPLE WHO WORK
10 THE SCENES, PEOPLE WHO COLLECT EVIDENCE FOR THE COUNTY.

11 Q OKAY, PEOPLE WORKING FOR THE STATE, WORKING FOR THE
12 COUNTY?

13 A RIGHT.

14 Q OKAY. AND NORMALLY WHEN YOU TEST, WHEN YOU ARE
15 TESTING DNA YOU ARE TRYING TO EITHER INCLUDE OR EXCLUDE,
16 IS THAT RIGHT?

17 A THAT IS CORRECT.

18 Q NOW, SO NORMALLY YOU GET A STANDARD FROM THE VICTIM,
19 RIGHT?

20 A IN SOME CASES, YES.

21 Q AND STANDARD FROM THE SUSPECT?

22 A SOMETIMES, YES.

23 Q THE REASON YOU NEED THE STANDARD FOR THE SUSPECT IS
24 SO YOU CAN EITHER INCLUDE HIM OR EXCLUDE HIM, IS THAT
25 RIGHT?

1 A IF THERE IS A SUSPECT OR FOUND IDENTIFIED.

2 Q AND IF THE SUSPECT IS IDENTIFIED THEN YOU WOULD GET
3 THE STANDARD FROM HIM NORMALLY?

4 A NOT ALL THE TIME, NO.

5 Q BUT YOU DON'T HAVE A STANDARD IN THIS FROM THE
6 SUSPECT?

7 A NO, I DIDN'T TEST THE SUSPECT.

8 Q NOW, I AM BREAKING THIS DOWN KIND OF VERY ELEMENTARY
9 BUT WHEN YOU TESTED THE BLOOD SWAB YOU TESTED FOR THE
10 SITE, RIGHT, THE LOCUST?

11 A THAT IS CORRECT.

12 Q SO, WHEN YOU TESTED THE BLOOD SWAB YOU HAD NUMBERS
13 FOR EACH OF THE SIXTEEN DIFFERENT NUMBERS?

14 A THAT IS CORRECT.

15 Q AND, OF COURSE, WITH THE STANDARD YOU HAVE THE SAME
16 AMOUNT OF SIXTEEN BECAUSE THAT IS THE, THE VICTIM IS
17 STANDARD?

18 A WELL, THAT IS NOT THE REASON THAT THE NUMBERS ARE
19 THERE BUT THERE, I HAVE A FULL PROFILE FOR THE VICTIM AS
20 WELL, CORRECT.

21 Q SO, YOUR SIXTEEN MATCHES?

22 A I HAVE RESULTS AT SIXTEEN DIFFERENT LOCATIONS I
23 TESTED.

24 Q YOU HAVE RESULTS OF SIXTEEN DIFFERENT LOCATIONS THAT
25 MATCH EACH OTHER?

1 A ARE YOU TALKING ABOUT THE BLOOD SWAB AND THE VICTIM,
2 ITEM 1 AND ITEM 1CE?

3 Q CORRECT.

4 A YES, THEY MATCH.

5 Q SIXTEEN DIFFERENT PLACES WHERE YOU TESTED?

6 A THAT IS CORRECT.

7 Q AND ON THE SWAB FROM THE SHOE THAT IS NOT THE CASE?

8 A YES, IT MATCHES, ITEM 1C MATCHES ITEM 3, THE SWAB
9 FROM THE SHOE.

10 Q OKAY. LET ME JUST, I THINK WE ARE ON THE SAME PAGE
11 FOR A MINUTE. YOU HAVE SIXTEEN DIFFERENT PLACES THAT YOU
12 LOOK AT?

13 A CORRECT.

14 Q AND THE BLOOD SWAB AND THE STANDARD, THEY ALL MATCH
15 ON EACH SIXTEEN PLACES, RIGHT?

16 A THAT'S CORRECT.

17 Q ON THE SWAB FROM THE SHOE YOU HAVE FIVE PLACES WHERE
18 YOU GOT NO RESULTS?

19 A THAT IS CORRECT.

20 Q AND THERE ARE TWO PLACES WHERE YOU GOT RESULTS BUT
21 YOU COULDN'T USE THEM IN YOUR ANALYSIS BECAUSE THERE JUST
22 WASN'T ENOUGH?

23 A NO, THAT IS NOT ACCURATE. I CAN USE THEM, I CAN USE
24 THEM IN STATISTICAL CALCULATIONS BUT I CAN SEE THAT WHAT
25 THE RESULT IS AND THAT IT DOES MATCH.

1 Q YOU COULD NOT USE THEM IN THE STATISTICAL
2 CALCULATION?

3 A THAT IS CORRECT, THAT IS WHY THE NUMBERS, THAT IS WHY
4 ALL THE NUMBERS ARE DIFFERENT. ONE IS A PARTIAL PROFILE
5 AND ONE IS A FULL PROFILE.

6 Q IN THE STATISTICAL ANALYSIS, BECAUSE IT WASN'T GOOD
7 ENOUGH FOR THE STATISTICAL ANALYSIS?

8 A WE DON'T SAY THAT IT IS NOT GOOD ENOUGH, WE JUST, IT
9 IS A DIFFERENT STATEMENT. IT MATCHES AND HERE IS THE
10 STATISTICS BASED ON THE RESULTS THAT WE HAVE.

11 Q AND THIS IS BECAUSE OF THE, THE REASON THAT YOU
12 DIDN'T USE THOSE TWO IS BECAUSE OF THE RELEVANT UNIT?

13 A CAN YOU REPEAT THAT.

14 Q YOU DID A PRESUMPTIVE TEST FOR THE BLOOD ON THE SHOE?

15 A ON THE SHOE, NO, I DON'T KNOW.

16 Q YOU DIDN'T DO A PRESUMPTIVE TEST?

17 A NO, I DID NOT.

18 Q SO, YOU CAN'T SAY FOR SURE THAT IT IS BLOOD ON THE
19 SHOE?

20 A THAT IS CORRECT, I DID NOT REPORT SEROLOGY RESULT ON
21 THE SWAB ON THE SHOE.

22 Q BECAUSE DNA CAN COME IN DIFFERENT FORMS, IS THAT
23 RIGHT?

24 A THAT IS CORRECT.

25 Q IT COMES FROM YOUR SALIVA?

1 A YES.

2 Q SKIN CELLS, WE HAVE ALREADY DISCUSSED SEMEN, I
3 BELIEVE YOU MENTIONED THAT BEFORE, AND BLOOD. AND I
4 THINK, WELL, DNA TESTING IS EXTREMELY SENSITIVE, IS IT
5 NOT?

6 A YES, IT IS.

7 Q YOU HAVE TO WEAR GLOVES IN THE LAB BECAUSE IF YOU
8 TOUCHED THE SAMPLE YOUR DNA COULD GET ON THAT SAMPLE?

9 A THAT'S CORRECT.

10 Q AND EVEN SKIN CELLS LEAVE DNA?

11 A CORRECT.

12 Q NOW, ARE YOU AWARE THAT THERE WAS A BLOODY SHOE PRINT
13 THAT WAS FOUND AT THE CRIME SCENE?

14 A NO, I AM NOT AWARE OF THAT.

15 Q YOU ARE NOT AWARE OF THAT. ARE YOU AWARE THAT THERE
16 WAS NO BLOOD FOUND ON THE BOTTOM OF THE SHOE?

17 A NO, I AM NOT.

18 Q YOU ARE NOT AWARE OF THAT EITHER. AND THE DNA
19 MATCHED THAT YOU SAY WITH THE NUMBERS, THE DNA DOESN'T
20 TELL YOU THE WEIGHT OF THE DONOR, DOES IT?

21 A NO, IT DOES NOT.

22 Q AND IT DOESN'T TELL YOU THE AGE?

23 A NO, IT DOES NOT.

24 Q AND IT DOESN'T TELL YOU WHEN THAT SAMPLE GOT ON THE
25 SURFACE?

1 A NO, IT DOES NOT.

2 Q I HATE TO BEAT A DEAD HORSE, BUT THE BLOOD SWAB IS
3 458 QUADRILLION AND THE ONE FROM THE SHOES, 24 MILLION.
4 SO, THERE IS ONE, TWO, THREE SETS OF ZEROES THAT ARE
5 DIFFERENT BETWEEN THOSE TWO?

6 A NO, IT IS NOT BETTER, A COMPLETELY DIFFERENT NUMBER,
7 THEY ARE BOTH MATCHES, THEY BOTH MATCH THE VICTIM IN THIS
8 CASE OR ANTONIO LOURDES. ONE HAS A DIFFERENT NUMBER
9 BECAUSE OF THE FULL PROFILE AND ONE HAS A 24 MILLION
10 BECAUSE IT IS A PARTIAL PROFILE.

11 Q FOR THE BLOOD SWAB, ONLY ONE PERSON IN 458
12 QUADRILLION WOULD MATCH IT, RIGHT?

13 A NO, YOU ARE FLIPPING IT AROUND. YOU CAN'T, YOU CAN
14 PROBABLY ONLY SAFELY SAY THAT THE REPORT, THAT IS THE
15 PROBABILITY RANDOMLY SELECTING AN UNRELATED INDIVIDUAL
16 HAVING THAT DNA PROFILE THAT MATCHES THE EVIDENCE, ITEM 1,
17 IS 1 IN 458 QUADRILLION.

18 Q PROBABILITY OF FINDING SOMEONE ELSE WHO MATCHED THAT
19 PROFILE IS 1 IN 458 QUADRILLION?

20 A THAT IS ACCURATE.

21 Q SO, THAT IS AMAZING ODDS?

22 A WELL, IT IS NOT ODDS, A FREQUENCY.

23 Q AN AMAZING FREQUENCY?

24 A YES.

25 Q AND THEN FROM YOUR REPORT, YOU SAY THE EXACT SAME

1 WORDS BUT IT IS 1 IN 24 MILLION?

2 A YES, BEFORE THAT IT IS STILL A MATCH, IT MIGHT BE IN
3 24 MILLION IS A PRETTY DARN HIGH NUMBER AS WELL.

4 Q IT IS HIGH, IT IS, BUT IT IS NOT NEARLY AS HIGH AS
5 QUADRILLION, IS IT?

6 A NO, IT IS NOT BUT IT IS STILL A MATCH AND IT IS 1 IN
7 24 MILLION.

8 Q AND, AGAIN, YOU ORIGINALLY ONLY HAD THE 458
9 QUADRILLION NUMBER?

10 A THAT IS CORRECT. MY ORIGINAL REPORT DID NOT HAVE THE
11 STATISTIC ON THE SECOND RESULT.

12 Q AND THAT NUMBER ONLY CAME UP AFTER THE STATE TOLD YOU
13 THAT THAT WAS A STATE'S PIECE OF EVIDENCE?

14 A THAT'S CORRECT. DIDN'T HAVE THE KNOWLEDGE OF THESE
15 TWO SWABS AND I DIDN'T HAVE KNOWLEDGE OF THE CASE SO TO
16 SPEAK. SO I REFER TO MY REPORT, THAT FIRST RESULT ON THE
17 STATISTICS AND THE SECOND IS OUT AND THEN THEY TOLD ME
18 THEY NEEDED A STATISTIC ON THE SECOND ONE, I OFFERED A
19 SUPPLEMENTAL REPORT.

20 Q I HAVE NOTHING FURTHER.

21 THE COURT: ANY REDIRECT.

22 MR. JOPHLIN: YES SIR, YOUR HONOR.

23 REDIRECT EXAMINATION

24 BY MR. JOPHLIN:

25 Q DR. AMICK, ACCORDING TO YOUR NOTES WHERE DID THE

1 SAMPLE NUMBER 1, DO YOU HAVE ANY NOTES TO WHERE SAMPLE 1
2 CAME FROM?

3 A ITEM 1 CAME FROM?

4 Q ITEM 1, I AM SORRY.

5 A I HAVE ITEM 1, THE DESCRIPTION OF A BLOOD SWAB AND ON
6 A LOGIN SHEET I BELIEVE ITEM 1, INTEGRA SWAB, BLOOD SWAB
7 BUT I DON'T HAVE IN MY NOTES WHERE IT CAME FROM.

8 Q IF I WERE TO TELL YOU HYPOTHETICALLY, THE BLOOD SWAB
9 WERE FROM A STAIN OR A POOL OF BLOOD ON THE FLOOR FROM
10 WHERE THE VICTIM WAS FROM--

11 MS. VAN GINHOVEN: YOUR HONOR, HE IS PRESENTING A
12 HYPOTHETICAL WHEN HE HAS ALREADY TESTIFIED THAT HE DOESN'T
13 KNOW THE ANSWER. I MEAN, IT IS NOT WITHIN HIS KNOWLEDGE
14 WHERE THE BLOOD SWAB CAME FROM, I THINK HE HAS TESTIFIED
15 TO THAT A COUPLE OF TIMES.

16 THE COURT: HE IS ASKING HIM A HYPOTHETICAL QUESTION,
17 IT IS WITHIN THE REALM OF HIS EXPERTISE, OVERRULED, GO
18 AHEAD.

19 Q IF ITEM 1 IS THE INTEGRA SWAB, BLOOD SWAB, TAKEN FROM
20 A POOL OF BLOOD FROM THE SCENE WHERE THEY KNEW THE VICTIM
21 WAS INJURED AND YOU COMPARE THAT TO ITEM 1CE WHICH WOULD
22 BE A STANDARD OR ANY STANDARD FROM THE KNOWN VICTIM, WOULD
23 THIS RESULT BE SOMEWHAT SPECULATIVE?

24 A I WOULD EXPECT A SWAB, YOU COMMONLY GET SWABS FROM
25 BLOOD RIGHT NEAR THE VICTIM, WHETHER IT IS HOMICIDE OR

1 ASSAULT. AND A SWAB THAT HAS VISIBLE QUANTITIES OF BLOOD
2 I WOULD EXPECT IT WOULD BE A FULL DNA PROFILE AND
3 THEREFORE A NUMBER LIKE THAT.

4 Q SOMEWHAT SPECULATIVE?

5 A I WOULD EXPECT TO GET A FULL DNA PROFILE FROM A SWAB
6 LIKE THAT.

7 Q AND DO YOU KNOW APPROXIMATELY HOW MANY PEOPLE,
8 AMERICANS ARE IN THE UNITED STATES?

9 A ON THE PLANET EARTH THERE ARE 6 BILLION PEOPLE.

10 Q AND DO YOU KNOW HOW MANY PEOPLE ARE IN RICHLAND
11 COUNTY?

12 A I DO NOT KNOW.

13 Q WOULD IT BE SAFE TO SAY MORE THAN 24 MILLION?

14 A MORE THAN 24 BILLION IN RICHLAND COUNTY?

15 Q I AM SORRY, LESS THAN 24 MILLION?

16 A YES, LESS THAN 24 MILLION.

17 MS. VAN GINHOVEN: YOUR HONOR, AGAIN, HE DOESN'T KNOW
18 THE ANSWER TO THE QUESTION.

19 THE COURT: LET'S MOVE ON.

20 Q THE BOTTOM LINE THAT I THINK YOU TRIED TO CONVEY IS
21 ITEM 3, THE SWAB OF THE SHOE COMPARED TO ITEM 1CE, THE
22 SWAB FROM LOURDES ANTONIO, DO THEY MATCH?

23 A YES, THEY DO MATCH.

24 Q AND ALSO, IF ANY OF THESE ITEMS, TO CLARIFY, YOU
25 DIDN'T DO A PRESUMPTIVE TEST ON THIS SHOE?

1 A NO.

2 Q YOU DIDN'T DO A PRESUMPTIVE TEST ON THIS SWAB?

3 A NO, I DIDN'T.

4 Q WHAT SWAB DID YOU DO A PRESUMPTIVE TEST?

5 A I DID A PRESUMPTIVE TEST ON ITEM 1.

6 Q ITEM 1?

7 A YES.

8 Q YOU DID A PRESUMPTIVE TEST ON THIS?

9 A THAT'S CORRECT.

10 Q THE BLOOD SWAB, STAN RICHARDS PUT INTO EVIDENCE?

11 A CORRECT.

12 Q AND IF THERE IS ANY CONTAMINATION OF ANY SORT, SAY TO
13 ANY OF THESE ITEMS WOULD YOU GET AN AMOUNT OF RESULTS OR
14 WOULD YOUR RESULTS INDICATE THERE HAS BEEN SOME KIND OF
15 CROSS-CONTAMINATION BETWEEN, OF DNA?

16 A I CAN TELL, WHEN I GET THE RESULTS OF AN ITEM WHETHER
17 THERE IS A MIXTURE THERE OR NOT, WHETHER THERE IS MORE
18 THAN ONE PERSON THERE OR NOT, I CAN TELL, YES.

19 Q AND DID YOU DETECT THAT IN ANY OF THIS?

20 A NO, THESE ARE ALL WHAT WE CALL SINGLE SOURCE ITEMS.

21 Q I HAVE NOTHING FURTHER.

22 THE COURT: ANY RECROSS?

23 MS. VAN GINHOVEN: NO, YOUR HONOR.

24 THE COURT: YOU MAY STEP DOWN.

25 MR. JOPHLIN: CAN DR. AMICK BE EXCUSED, YOUR HONOR.

1 THE COURT: WITHOUT OBJECTION HE IS EXCUSED. CALL
2 YOUR NEXT WITNESS.

3 MS. COOPER: YOUR HONOR, THE STATE CALLS WES TYLER
4 FROM THE CLIMATE CENTER.

5 WES TYLER, AFTER BEING DULY SWORN, TESTIFIED AS
6 FOLLOWS:

7 DIRECT EXAMINATION

8 BY MS. COOPER:

9 Q MR. TYLER, CAN YOU TELL THE JURY WHERE YOU ARE
10 EMPLOYED?

11 A I AM EMPLOYED WITH THE SOUTH CAROLINA STATE
12 CLIMATOLOGY OFFICE WHICH IS WITH THE SOUTH CAROLINA
13 DEPARTMENT OF NATURAL RESOURCES.

14 Q AND WHAT ARE YOUR DUTIES THERE, SIR?

15 A I AM THE ASSISTANT STATE CLIMATOLOGIST.

16 Q AND AS PART OF YOUR DUTIES, DOES YOUR AGENCY KEEP
17 TRACK AND RECORDS OF WEATHER IN THE STATE OF SOUTH
18 CAROLINA?

19 A YES, WE DO.

20 Q AND MORE SPECIFICALLY IN THE COLUMBIA METROPOLITAN
21 AREA?

22 A YES, WE DO.

23 Q COULD YOU PLEASE TELL THE JURY WHAT THE WEATHER
24 CONDITIONS WERE IN THE MORNING HOURS BETWEEN WHATEVER AS
25 EARLY AS YOU CAN TELL UNTIL NOON ON APRIL 13TH OF 2004?

1 A ON APRIL 13TH OF 2004 THESE OBSERVATIONS WERE MADE AT
2 THE COLUMBIA METROPOLITAN AIRPORT, THE NATURAL WEATHER
3 SERVICE OFFICE. DURING THE MORNING HOURS THERE WERE
4 PERIODS OF LIGHT RAIN, AND THIS CONTINUED UNTIL ABOUT
5 11:30 THAT MORNING. THE TEMPERATURE WAS IN THE LOW TO MID
6 60'S AND RISING THROUGH THE PERIOD. AFTER MIDDAY, NOON
7 TIME, THE RAIN HAD STOPPED AND THE TEMPERATURES CLIMBED TO
8 THE LOWER 70'S. VISIBILITY WAS 10 MILES, SKY CONDITIONS
9 WAS DESCRIBED AS SCATTERED CLOUDS AND THEY WERE ABOUT
10 5,000 FEET.

11 Q AND WHAT ABOUT THE WIND?

12 A THE WIND DURING THAT PERIOD, DURING THE EARLY MORNING
13 HOURS, EARLY MORNING DAYLIGHT HOURS GENERALLY LESS THAN 10
14 MILES AN HOUR INCREASING LATE MORNING AND INTO THE
15 AFTERNOON AND BECOMING STEADY AT ANYWHERE FROM 12 TO 20.
16 THE GENERAL DIRECTION WAS WEST, SOUTHWEST.

17 Q AND SPECIFICALLY AROUND 3:00 O'CLOCK, 3:30 IN THE
18 AFTERNOON, WHAT WERE THE WIND CONDITIONS THEN?

19 A THE OBSERVATION MADE AT 2:56, CORRECTION, YES, AT
20 2:56, THE WINDS WERE 19 MILES AN HOUR, BLOWING OUT OF THE
21 WEST, SOUTHWEST.

22 Q OKAY. AND AT 14:56 HOURS AND THAT WOULD BE 2:56
23 HOURS?

24 A THAT WOULD BE, THESE TIMES ARE EXPRESSED IN LOCAL
25 STANDARD TIME WHICH REPRESENTS THE TIME THAT WE NORMALLY

1 USE AT THE AIRPORT. ON THIS PARTICULAR DAY WE HAD TO USE
-2 AN HOUR BECAUSE WE ARE USING DAYLIGHT SAVINGS TIME. SO, A
3 14:56 TIME STAMP WHICH NORMALLY WOULD MEAN 2:56 IS
4 ACTUALLY 3:56. DO YOU WANT THE 3:56.

5 Q I NEED TO KNOW THE WIND CONDITIONS AROUND 3:00
6 O'CLOCK IN THE AFTERNOON, SO WE WOULD ADD AN HOUR?

7 A WE WOULD HAVE TO USE THE 13:56 TIME STAMP AND THE
8 WIND WAS 19 MILES AN HOUR.

9 Q OKAY, GREAT. THANK YOU AND NO FURTHER QUESTIONS.

10 THE COURT: CROSS-EXAMINE.

11 CROSS-EXAMINATION

12 BY MS. MOBLEY:

13 Q NOW, THESE CONDITIONS ARE AT THE COLUMBIA
14 METROPOLITAN AIRPORT, RIGHT?

15 A THAT'S CORRECT.

16 Q WOULD THESE CONDITIONS AT ALL VARY OVER THE COUNTY,
17 WIND SPEEDS, ANYTHING LIKE THAT?

18 A WE WOULD EXPECT SOME DIFFERENCE, YES MA'AM.

19 Q YOU ARE HERE SOLELY TO TELL US ABOUT THE WEATHER THAT
20 DAY, RIGHT?

21 A YES, MA'AM.

22 Q YOU DON'T KNOW LOURDES ANTONIO?

23 A NO, MA'AM.

24 Q THIS IS JUST ABOUT WEATHER?

25 A CORRECT.

1 Q I HAVE NO FURTHER QUESTIONS.

2 THE COURT: ANYTHING FURTHER.

3 MS. COOPER: NO, YOUR HONOR, AT THIS TIME THE STATE
4 WOULD REST ITS CASE.

5 THE COURT: SIR, YOU MAY STEP DOWN. MR. FOREMAN AND
6 LADIES AND GENTLEMEN, IF YOU WILL STEP BACK TO YOUR JURY
7 ROOM WE WILL TAKE A BREAK AND HAVE YOU BACK IN A FEW
8 MINUTES. DON'T DISCUSS THE CASE AT THIS TIME, EVERYONE
9 ELSE STAY SEATED, PLEASE.

10 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

11 THE COURT: ANY MOTIONS FROM THE DEFENSE?

12 MS. MOBLEY: YES SIR, YOUR HONOR, WE WOULD FIRST LIKE
13 TO PUT ON THE MOTION FOR A DIRECTED VERDICT. I WOULD LIKE
14 TO START SPECIFICALLY WITH THE CHARGE OF KIDNAPPING, THAT
15 WAS PRESENTED AT A LATER DATE OF THE CASE. YOUR HONOR,
16 THE TESTIMONY IN THE RECORD IS THAT MS. ANTONIO WAS
17 ASSAULTED AND THAT SHE WAS PUSHED DOWN AND THAT SHE WAS
18 KICKED, WHAT HAVE YOU. SHE RAN OUT AND I THINK SHE WAS, I
19 BELIEVE, I DON'T WANT TO MISQUOTE BUT I BELIEVE SHE WAS
20 PUSHED DOWN AGAIN, KICKED SOME MORE AND THEN WAS ABLE TO
21 FLEE AWAY TO A NEIGHBORS HOUSE TO SEEK HELP. YOUR HONOR,
22 THE CHARGE OF ASSAULT AND BATTERY WITH INTENT TO KILL FOR
23 THAT CONDUCT. THEY HAVE ALSO CHARGED A KIDNAPPING CHARGE
24 FOR THE SAME CONDUCT. YOUR HONOR, I THINK, I GUESS
25 STARTING WITH A COMMON SENSE ARGUMENT. I UNDERSTAND THAT

State Rest

DV Kidnapping

1 THE KIDNAPPING STATUTE READS, UNLAWFUL FOR SOMEONE TO
2 SEIZE, ENVEIGLE, DEPLOY, KIDNAP AND I BELIEVE THERE IS
3 ANOTHER ADJECTIVE OR TWO IN THERE, OF ANOTHER PERSON
4 WITHOUT THE AUTHORITY OF LAW -- YOUR HONOR, THE CONDUCT
5 THAT THEY HAVE STACKED CHARGES ON HERE WHICH I SUBMIT THIS
6 IS EXACTLY WHAT THIS IS, THE ASSAULT AND BATTERY WITH
7 INTENT TO KILL AND THE KIDNAPPING. THE CONDUCT IS PART
8 AND PARCEL, THEY ARE ONE IN THE SAME. ESSENTIALLY, YOUR
9 HONOR, THIS IS KIND OF A DOUBLE JEOPARDY ISSUE. AND I
10 THINK IT IS AN EXAMINATION OF THE BLOCKBURGER TEST AT THIS
11 POINT WOULD BE HELPFUL. YOUR HONOR, THE BLOCKBURGER TEST,
12 I THINK AND LET ME SEE IF I HAVE A COPY OF THIS, YOUR
13 HONOR, I BEG THE COURT'S INDULGENCE. YOUR HONOR, I DIRECT
14 YOUR ATTENTION TO STATE V. HALL WHICH IS 280, SC 74.
15 ESSENTIALLY IT IS A SEXUAL ASSAULT CASE AND THE SEXUAL
16 ASSAULT FACTS ARE THAT A WOMAN IS ABDUCTED, I BELIEVE FROM
17 A PHONE BOOTH. SHE IS TAKEN TO VARIOUS PLACES AROUND THE
18 POOL AREA AND MADE TO PERFORM VARIOUS SEXUAL ACTS. AND
19 THE SAME MOTION WAS MADE IN THAT CASE AND DENIED BY THE
20 SUPREME COURT BECAUSE SHE WAS TAKEN FROM PLACE TO PLACE.
21 AND I DON'T KNOW IF SHE WAS MURDERED OR NOT BUT EVENTUALLY
22 WAS FOUND, I THINK, IN AN ALLEY WAY BACK BEHIND THIS POOL
23 AREA. SO, WE HAVE SOME MOTIONS HERE, TAKEN FROM PLACE TO
24 PLACE. YOUR HONOR, IN THIS CASE I WOULD SUBMIT THAT WE DO
25 NOT HAVE THAT SAME CONDUCT, WE HAVE AN AGGRAVATED ASSAULT

1 OR ASSAULT AND BATTERY WITH INTENT TO KILL. HOWEVER, YOUR
2 HONOR, THE CONDUCT IS THE EXACT SAME CONDUCT THAT IS
3 GIVING RISE TO THE KIDNAPPING CHARGE. AND IF I WERE TO
4 ANALOGIZE, THE WAY THAT THIS IS CHARGED, UNFORTUNATELY WE
5 HAVE BEEN SEEING THIS OVER AND OVER AND OVER WITH
6 KIDNAPPING CHARGES. ESSENTIALLY EVERY SIMPLE ASSAULT THAT
7 INVOLVES A GRAB MUST ALSO BE A KIDNAPPING. IF YOU TORTURE
8 THE READING OF THE KIDNAPPING STATUTE TO THAT LINK AND I
9 SUBMIT TO YOU THAT THAT IS WHAT THE STATE IS DOING HERE.
10 THEY HAVE STRETCHED THIS STATUTE SO THINLY THAT IT IS
11 TRANSPARENT. SO, WHAT WE HAVE HERE IS A DOUBLE PUNISHMENT
12 FOR THE EXACT SAME CONDUCT. AND I WOULD GO OUT ON A LIMB
13 TO SAY THAT THE AVERAGE CITIZEN OF THIS STATE WOULD AGREE
14 THAT IT WOULD INDEED BE A TORTURE RESULT THAT IF I
15 ASSAULTED SOMEONE BY GRABBING THEM AND I WAS CHARGED WITH
16 A SIMPLE ASSAULT THAT I MUST ALSO SAY A VIOLENT FELONY
17 CARRIES UP TO 30 YEARS IN PRISON FOR THE SAME CONDUCT
18 BECAUSE ESSENTIALLY THAT IS THE PATTERN THAT HAS DEVELOPED
19 IN CHARGING CASES IN THIS COUNTY. YOUR HONOR, I THINK
20 THAT HERE WE HAVE THE EXACT SAME SITUATION. I UNDERSTAND
21 THAT, DECEIVE, ENVEIGLE, DECOY, LANGUAGE AND STATUTE CAN
22 BE STRETCHED TO THAT LIMIT. BUT, YOUR HONOR, I WOULD
23 SUBMIT TO YOU THAT IT IS DOUBLE PUNISHMENT AND DOUBLE
24 JEOPARDY WITH THIS CASE. YOUR HONOR, WE HAVE NOTHING MORE
25 THAN THE AGGRAVATED ASSAULT FACTS TO WORK FROM. HE DID

1 NOT ATTEMPT TO LOCK LOURDES ANTONIO INTO A ROOM, HE DID
2 NOT ATTEMPT TO DRIVE HER AWAY, HE DID NOT BIND HER WITH
3 TAPE OR SOMETHING LIKE THAT, SOME THINGS THAT WOULD INCUR
4 THE AVERAGE PERSON OF ORDINARY COMMON SENSE TO THINK,
5 THEIR MOVEMENTS REALLY WERE RESTRICTED ABOVE AND BEYOND
6 THE ASSAULT. YOUR HONOR, AND I WOULD SUBMIT TO YOU THAT
7 IT WOULD BE DOUBLE JEOPARDY TO CHARGE BOTH OF THESE
8 THEREFORE WE MOVE FOR A DIRECTED VERDICT OF THE KIDNAPPING
9 BECAUSE THERE IS NOTHING IN SUFFICIENT FACTUAL BASIS TO
10 SHOW AND I UNDERSTAND THAT IN THE LIGHT MOST FAVORABLE TO
11 THE STATE, EVEN THEN, EVEN THEN, LISTENING TO THE
12 TESTIMONY OF THIS CASE WE DO NOT HAVE A KIDNAPPING, WE
13 HAVE AN ASSAULT. DO YOU WANT TO HEAR ALL OF OUR DV
14 MOTIONS AT ONE TIME OR DO YOU WANT TO TAKE ONE AT A TIME.

15 THE COURT: NO, LET ME TAKE THAT ONE ONE AT A TIME.

16 MS. MOBLEY: YES, SIR.

17 THE COURT: ALL RIGHT, SOLICITOR.

18 MS. COOPER: THANK YOU, YOUR HONOR. THE EVIDENCE IN
19 LIGHT MOST FAVORABLE TO THE STATE CONCERNING THE
20 KIDNAPPING, YOU HEARD TESTIMONY FROM THE VICTIM, LOURDES
21 ANTONIO, THAT WHEN SHE OBSERVED THE DEFENDANT COMING DOWN
22 THE HALLWAY SHE STARTED WALKING BACKWARDS TOWARDS THE
23 KITCHEN TO HEAD TOWARDS THE EXIT TO GET OUT THE WAY SHE
24 CAME IN. THEN THE DEFENDANT THEN CUT THROUGH THE LIVING
25 ROOM AND GRABS HER ON THE ENTRANCE WAY TO THE KITCHEN BY

1 THE ARM AND THAT SHE CONTINUED WALKING AWAY FROM THAT AND
2 HE WAS HOLDING ONTO HER ARM AND SHE STARTED PULLING AWAY
3 HARDER AND HE HELD ON TO HER HARDER. THEY EVENTUALLY MADE
4 IT INTO THE FOYER WHERE HE THEN PUSHES HER DOWN TO THE
5 GROUND WHERE SHE FALLS ONTO THE FLOOR ON THE FOYER WHERE
6 SHE FALLS ONTO HER BACK AND ELBOW. YOUR HONOR, THAT VERY
7 INSTANCE IS WHEN SHE WAS TRYING TO GET OUT OF THERE, THE
8 ACTUAL ABWIK CONDUCT DOESN'T OCCUR UNTIL HE STARTS
9 STOMPING HER ON HER CHEST THREE DIFFERENT TIMES AND ON HER
10 BACK, IT WAS TWICE IN THE CHEST AND ONCE IN THE BACK. AND
11 THAT THIS CONDUCT, SHE WAS NOT FREE TO LEAVE, SHE WAS
12 BEING HELD AGAINST HER WILL FOR APPROXIMATELY 15 TO 20
13 MINUTES. SO, THE CONDUCT THAT WE ARE RESTING THE
14 KIDNAPPING DEFENSE ON IS COMPLETELY MISSTATED, THE CONDUCT
15 THAT WE GAVE ON THE ABWIK CHARGE. THE ABWIK CHARGE STEMS
16 FROM THE FACT THAT IT WAS NOT APPARENT TO INVESTIGATOR
17 BARNES AT THE TIME BEFORE THE CHARGES WERE PRESSED AGAINST
18 THE DEFENDANT. FIRST OF ALL IT WAS UNAPPARENT HOW LONG
19 THE ACTUAL INCIDENT OCCURRED, WHEN HE FOUND OUT IT WAS 15
20 TO 20 MINUTES, THESE CHARGES WERE DIRECTLY PRESENTED TO
21 THE GRAND JURY. WHEN HE THEN FOUND OUT THAT SHE HAD
22 ACTUALLY BLACKED OUT FROM BEING STOMPED IN THE CHEST AND
23 THE BACK AND THAT SHE HAD INDEED SUFFERED, WELL, - HE
24 LEARNED ABOUT THE TWO BROKEN RIBS AT THE TIME. AS A
25 RESULT OF THE INJURIES THE VICTIM SUSTAINED THROUGH THE

1 ABWIK, IT IS DIFFERENT CONDUCT, YOUR HONOR. ALSO THERE IS
2 NO SPECIFIC INTENT TO KILL FOR ABWIK, THERE IS SIMPLY A
3 CRIMINAL INTENT TO CAUSE GREAT BODILY INJURY TO THE
4 VICTIM. SO, FOR BOTH CHARGES THERE IS SUFFICIENT EVIDENCE
5 TO GO FORWARD IN FRONT OF THE JURY, FOR THEM TO DETERMINE
6 THE GUILT OF THE DEFENDANT.

7 THE COURT: MS. MOBLEY.

8 MS. MOBLEY: YOUR HONOR, I BEG THE COURT'S
9 INDULGENCE. YOUR HONOR, I WOULD JUST REITERATE THAT,
10 FIRST OF ALL, YOU KNOW, YOU ARE NOT FREE TO LEAVE WHEN
11 SOMEONE ASSAULTS YOU, YOU ARE NOT FREE TO LEAVE IF SOMEONE
12 ROBS YOU AND IS POINTING A GUN AT YOUR HEAD, YOU ARE NOT
13 FREE TO LEAVE IF I GRAB ONTO TO JERENE'S ARM LIKE HE WAS
14 GRABBED ONTO BY THE POLICE IN THE VAN, HE WAS NOT FREE TO
15 LEAVE. YOUR HONOR, I WAS LOOKING BACK THROUGH MY NOTES
16 AND THEY HAVE TO ASK HER, DO YOU FEEL LIKE YOU WERE FREE
17 TO LEAVE AND OF COURSE SHE IS GOING TO SAY NO, YOUR HONOR.
18 THAT IS NOT, THAT IS NOT A KIDNAPPING BASE, OKAY. WHAT WE
19 HAVE HERE IS AN AGGRAVATED ASSAULT OR ASSAULT AND BATTERY
20 WITH INTENT TO KILL, WHATEVER THEY WANT TO CALL IT. YOUR
21 HONOR, OBVIOUSLY THAT IS AN ISSUE FOR THE JURY. BUT WE DO
22 NOT HAVE A SEPARATE KIDNAPPING. AND AGAIN, IF THIS IS A
23 SEPARATE KIDNAPPING THEN SO IS EVERY SIMPLE ASSAULT IN
24 MAGISTRATE COURT WHERE SOMEONE WAS GRABBED OR WHAT HAVE
25 YOU.

Denied

1 THE COURT: UNDER THE FACTS OF THIS CASE, QUITE
2 FRANKLY I HAVE CONCERNS IN SEEING SO MANY KIDNAPPING
3 CHARGES HERE, BUT UNDER THE FACTS OF THIS CASE I THINK THE
4 COURT HAS TO GIVE SOME MEANING TO THE WORD, SEIZE, AND
5 DEFINE THE STATUTE. THERE IS SOME EVIDENCE, TAKEN IN THE
6 LIGHT MOST FAVORABLE TO THE STATE, THAT WOULD BE THE
7 VICTIM IN THE CASE WAS SEIZED AND CONFINED FOR A
8 SUBSTANTIAL PERIOD OF TIME. AND FOR THAT REASON THAT
9 MOTION IS DENIED.

10 MS. MOBLEY: THANK YOU, YOUR HONOR.

11 THE COURT: I WILL GO AHEAD AND PUT ON THE RECORD
12 THAT THERE WOULD NOT BE, IF THE DEFENDANT IS KIDNAPPED IT
13 WOULD NOT BE DOUBLE PUNISHMENT FOR THESE TWO EVENTS. I
14 KNOW THAT THAT WOULD VIOLATE THAT RULE. GO AHEAD.

15 MS. MOBLEY: THANK YOU. YOUR HONOR, WE WOULD MOVE ON
16 POINTING AND PRESENTING A FIREARM. YOUR HONOR, THE
17 ELEMENTS ARE PRETTY MUCH STATED IN THE STATUTE. YOUR
18 HONOR, THE ONLY TESTIMONY IN THE RECORD IS THAT SHE LOOKS
19 OVER AND SEES A GUN LYING ON THE FLOOR.

20 THE COURT: WHAT ABOUT THAT, SOLICITOR.

21 MS. COOPER: YOUR HONOR, THE STATUTE SAYS POINTING OR
22 PRESENTING, WHEN THE VICTIM IS LAYING ON THE FLOOR--

23 THE COURT: POINTING AND PRESENTING AT ANOTHER
24 PERSON.

25 MS. COOPER: RIGHT, SHE IS IN THE ROOM, YOUR HONOR,

1 AND HE, AFTER HE HAD JUST STOMPED ON HER HE GOES OVER TO
2 HIS BOOK BAG AND THAT IS WHEN SHE OBSERVES HIM WITH THE
3 GUN AND PLACES IT ON THE FLOOR. THE STATE SUBMITS THAT
4 THERE IS SUFFICIENT EVIDENCE FOR A JURY TO CONCLUDE THAT
5 THAT WAS DONE IN AN INTIMIDATING MANNER TOWARDS THE VICTIM
6 WHILE HE WAS RUMMAGING--

7 THE COURT: SHE DIDN'T TESTIFY TO THAT. MOTION IS
8 GRANTED.

9 MS. MOBLEY: THANK YOU, YOUR HONOR.

10 MS. VAN GINHOVEN: AND, YOUR HONOR, AT THIS TIME WE
11 WOULD ALSO BE MOVING A DIRECTED VERDICT MOTION ON THE
12 BURGLARY FIRST DEGREE CHARGE, THE ASSAULT AND BATTERY WITH
13 INTENT TO KILL CHARGE, THE PETTY LARCENY AND THE
14 POSSESSION OF MARIJUANA CHARGE. IN THAT, THE LIGHT MOST
15 FAVORABLE TO THE STATE, THERE HAS BEEN INSUFFICIENT
16 EVIDENCE IN THE CASE FOR THE JURY. AND THESE ARE, OF
17 COURSE, FOR THE RECORD.

18 THE COURT: THAT MOTION IS DENIED, THERE IS
19 SUFFICIENT EVIDENCE IN THE RECORD IF BELIEVED BY THE JURY
20 TO SUPPORT A CONVICTION ON THOSE CHARGES. GO AHEAD.

21 MS. VAN GINHOVEN: AND AT THIS TIME, YOUR HONOR, WE
22 WOULD ALSO LIKE TO RENEW OUR MOTION AND OBJECTIONS
23 SPECIFICALLY THAT WOULD APPLY TO THE ID BY THE VICTIM OF
24 THE DEFENDANT. THE IDENTIFICATION BY THE WITNESS OF THE
25 DEFENDANT, ALLOWING THE STATEMENT OF THE DEFENDANT TO COME

1 IN AT TRIAL. OF COURSE, ALL OF OUR OBJECTIONS TO THE
2 EVIDENCE THAT WE HAVE OBJECTED TO, SPECIFICALLY TO THE
3 ADMISSION OF THE SWAB DUE TO FAILURE TO ESTABLISH THE
4 MANNER IN WHICH, TO ESTABLISH HOW THE CHAIN, THE LINK OF
5 THE CHAIN HAS HANDLED THE EVIDENCE. ANY AND ALL
6 OBJECTIONS THAT WE HAVE MADE, WE WOULD JUST ASK TO RENEW
7 THEM AT THIS TIME.

8 THE COURT: THOSE RENEWED, THE RULINGS WOULD REMAIN
9 THE SAME ON THOSE.

10 MS. VAN GINHOVEN: AND, YOUR HONOR, I BELIEVE THAT MY
11 CLIENT, MR. HAYWARD, HAD DECIDED NOT TO TESTIFY IN THIS
12 CASE.

13 THE COURT: ALL RIGHT, MR. HAYWARD, IS THAT CORRECT?

14 MR. HAYWARD: YES, SIR.

15 THE COURT: HAVE YOU HAD ENOUGH TIME TO TALK TO YOUR
16 LAWYERS ABOUT THAT?

17 MR. HAYWARD: YES, SIR.

18 THE COURT: YOU HAVE HAD ENOUGH TIME TO DISCUSS,
19 WHETHER OR NOT TO EXERCISE YOUR RIGHT OR GIVE IT UP AND
20 YOU HAVE DECIDED NOT TO TESTIFY?

21 MR. HAYWARD: YES, SIR.

22 THE COURT: YOU HAVE MADE THAT DECISION OF YOUR OWN
23 FREE WILL?

24 MR. HAYWARD: YES, SIR.

25 THE COURT: I DON'T HAVE TO GO OVER IT WITH YOU, HE

1 HAS EXERCISED THE RIGHT THAT HE HAS GOT. THANK YOU, VERY
2 MUCH. WE ARE NOT GOING TO ARGUE AND CHARGE THIS
3 AFTERNOON, I AM GOING TO LET THE JURY GO. I AM ASSUMING
4 YOU DON'T HAVE ANYTHING ELSE?

5 MS. VAN GINHOVEN: NO, SIR.

6 THE COURT: YOU RESTED ON THE RECORD AT THIS TIME?

7 MS. VAN GINHOVEN: YES, YOUR HONOR.

8 THE COURT: I WILL ADVISE THE JURY OF THAT AND SEND
9 THEM HOME FOR THE DAY AND THEN WE WILL TAKE A SHORT BREAK
10 AND WE CAN HAVE A CONFERENCE AND TALK ABOUT CHARGES FOR A
11 LITTLE WHILE. GET THE JURY BACK IN, PLEASE.

12 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
13 APPROXIMATELY 4:20 P.M.)

14 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WHEN WE
15 BROKE THE STATE HAD RESTED, THE DEFENSE HAS ALSO RESTED ON
16 THE RECORD DURING THE BREAK. AND FOR THAT REASON, ALL OF
17 THE TESTIMONY AND EVIDENCE IN THE CASE HAS BEEN PRESENTED
18 TO YOU. IF YOU WILL THINK BACK TO WHEN THE CASE STARTED
19 AT THE FIRST OF THE WEEK I TOLD YOU THAT THE ATTORNEYS,
20 AFTER YOU HAVE HEARD ALL OF THE EVIDENCE, THEY WILL COME
21 BACK AND MAKE THEIR CLOSING ARGUMENTS AND THEN I WILL
22 INSTRUCT IN THE LAW. THAT IS WHERE WE ARE IN THE TRIAL,
23 WE ARE NOT GOING TO DO THAT UNTIL TOMORROW MORNING. WE
24 HAVE HAD A LONG DAY, I AM REQUIRED BY LAW TO HAVE A
25 CONFERENCE WITH THE ATTORNEYS AND GO OVER WITH THEM THE

1 INSTRUCTIONS THAT I WILL BE GIVING YOU. AND THAT IS WHAT
2 WE WILL BE DOING AND I AM GOING TO LET YOU GO FOR THE DAY.
3 I NEED TO HAVE YOU BACK AT 9:15 IN THE MORNING AND YOU
4 WILL HEAR FROM THE ATTORNEYS AND THE INSTRUCTIONS FROM THE
5 COURT. AGAIN, DO NOT DISCUSS THE CASE WITH FAMILY OR
6 FRIENDS OR ANYONE ELSE. IF YOU WILL PLEASE BE HERE AT
7 9:15 AT THAT TIME. YOU ARE EXCUSED FOR THE DAY, EVERYONE
8 ELSE STAY SEATED, PLEASE.

9 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

10 THE COURT: ALL RIGHT, WE WILL STAND IN RECESS UNTIL
11 TOMORROW.

12 (WHEREUPON, THE CASE WILL CONTINUE THE NEXT DAY AT
13 9:15 A.M.)

14 THE COURT: THE ONLY THING THAT I RECALL THAT I
15 NEEDED TO DEAL WITH OTHER THAN MAYBE SOME OTHER REQUESTS
16 TO CHARGE IS WHETHER TO INCLUDE BURGLARY SECOND AS A
17 LESSOR INCLUDED, I DO INTEND TO DO THAT.

18 MS. VAN GINHOVEN: THANK YOU, YOUR HONOR, ALSO I WAS
19 WONDERING IF I COULD GO AHEAD AND PUT ON THE RECORD, JUST
20 FOR PRESERVATION PURPOSES, SINCE WE DID REST YESTERDAY,
21 THAT I AM RENEWING MY DIRECTED VERDICT MOTION AND ANY
22 PRIOR OBJECTIONS THAT I HAVE MADE.

23 THE COURT: ALL RIGHT.

24 MS. VAN GINHOVEN: AND AS TO THE CHARGES, WE WOULD
25 ASK, I BELIEVE YOUR HONOR PROBABLY HAS A BASIC CHARGE ON

1 CONFESSIO WITH STATEMENTS?

2 THE COURT: YES.

3 MS. VAN GINHOVEN: AND THE IDENTIFICATION EVIDENCE.

4 THE COURT: YES.

5 MS. VAN GINHOVEN: THANK YOU, YOUR HONOR.

6 THE COURT: ANYTHING FROM THE STATE?

7 MR. JOPHLIN: NOTHING, YOUR HONOR.

8 THE COURT: LET'S BRING THE JURY IN, PLEASE.

9 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
10 APPROXIMATELY 9:20 A.M.)

11 THE COURT: COUNSEL, YA'LL STEP UP WHILE THE JURY IS
12 COMING IN, PLEASE.

13 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
14 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
15 JURY.)

16 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN, AS
17 I INDICATED YESTERDAY, AT THIS TIME YOU ARE GOING TO HEAR
18 THE CLOSING ARGUMENTS FROM THE ATTORNEYS. LET ME REMIND
19 YOU THAT THE ATTORNEYS, WHEN MAKING THEIR ARGUMENTS, THE
20 ATTORNEYS ARE NOT TESTIFYING. I AM SURE THAT THEY ARE
21 GOING TO GO OVER AND REVIEW WITH YOU THEIR MEMORY OF WHAT
22 THE TESTIMONY HAS BEEN. THEY HAVE A RIGHT TO DO THAT, IF
23 YOUR MEMORY HAPPENS TO DIFFER WITH THEIRS YOU RELY ON YOUR
24 MEMORY. ONCE THE ATTORNEYS HAVE COMPLETED THEIR CLOSING
25 ARGUMENTS THEN I WILL INSTRUCT YOU IN THE LAW AND THEN YOU

1 WILL BE SENT BACK TO DELIBERATE AND TO REACH A VERDICT IN
2 THE CASE. WE WILL PROBABLY AT SOME POINT TAKE A SHORT
3 BREAK, JUST DEPENDING ON HOW LONG THE ARGUMENTS GO. BUT
4 THAT IS THE PROCEDURE THAT WE WILL BE GOING THROUGH THIS
5 MORNING. I WOULD PLEASE ASK YOU TO GIVE YOUR FULL
6 ATTENTION TO THE ATTORNEYS. YOU WILL FIRST HEAR FROM THE
7 SOLICITORS OFFICE AND THEN THE DEFENSE WILL HAVE THE RIGHT
8 TO MAKE THE FINAL ARGUMENT TO YOU. AND AGAIN THEN I WILL
9 CHARGE YOU OR INSTRUCT YOU IN THE LAW. SO, PLEASE GIVE
10 THE ATTORNEYS YOUR FULL ATTENTION WHILE THEY DO MAKE THEIR
11 ARGUMENTS. ALL RIGHT.

12 MR. JOPHLIN: THANK YOU, YOUR HONOR. GOOD MORNING,
13 LADIES AND GENTLEMEN. I AM AARON JOPHLIN, THIS IS THE
14 FIRST OPPORTUNITY THAT I HAVE HAD TO ADDRESS YA'LL. I
15 WANT TO THANK YOU FOR YOUR TIMELY ATTENTION THIS WEEK, IT
16 HAS BEEN A LONG WEEK BUT IT IS A VERY IMPORTANT CASE.
17 FIRST YOU WILL HEAR FROM ME, I WILL EXPLAIN TO YOU THE LAW
18 AND THE FACTS OF THE CASE AND THEN YOU WILL HEAR FROM THE
19 DEFENDANT. IF I MISQUOTE THE LAW, IT IS NOT INTENTIONAL.
20 AND THE JUDGE WILL CHARGE YOU ON THE LAW AND YOU WILL TAKE
21 THE LAW AS HE GIVES IT TO YOU AND WE WILL ALSO TALK ABOUT
22 THE FACTS. AND IF ANY OF THE FACTS ARE MISQUOTED, ONCE
23 AGAIN IT IS NOT INTENTIONAL. AND YA'LL WILL KNOW, YOU
24 TOOK NOTES THIS WEEK, YOU PAID ATTENTION, REFER TO THOSE
25 NOTES, SEE WHAT YOU REMEMBER HEARING DURING THE TESTIMONY.

1 YOU HAVE HEARD AND HAVE SEEN ALL THE EVIDENCE IN THIS CASE
2 THAT WE ARE ALLOWED TO PRODUCE. AND YOU MUST BASE YOUR
3 VERDICT ON THAT EVIDENCE AND NOTHING FURTHER. YOU HEARD
4 FORM NUMEROUS WITNESSES, YOU HAVE SEEN SEVERAL EXHIBITS
5 AND ALL OF THAT IS UP TO YOU TO BASE YOUR VERDICT ON. IT
6 IS NOT BASED ON ATTORNEYS AND THEIR QUESTIONS AND SOME
7 KIND OF FISHING EXPEDITION, IT IS NOT BASED ON
8 SPECULATION, ON WISHFUL THINKING OR ANYTHING ELSE, IT MUST
9 BE BASED ON THE EVIDENCE THAT WAS PRESENTED TO YOU. I
10 WOULD ALSO LIKE TO TAKE THIS TIME TO APOLOGIZE TO ANY OF
11 YA'LL IF EITHER I OR MS. COOPER HAS OFFENDED ANYONE DURING
12 THIS TRIAL. SOMETIMES AS ATTORNEYS, WE GET CAUGHT AND WE
13 ARGUE BACK AND FORTH, SOME EVIDENCE, SOME TESTIMONY IS
14 ADMISSIBLE, SOME IS NOT ADMISSIBLE. BUT WE HAVE TO DECIDE
15 THAT OUTSIDE OF YOUR PRESENCE, IF AT ANY TIME I HAVE BEEN
16 INARTFUL OR CLUMSILY OR TRIPPING OVER MY WORDS WHEN I AM
17 ASKING QUESTIONS, DON'T HOLD THAT AGAINST THE STATE AND
18 DON'T HOLD THAT AGAINST MS. LOURDES ANTONIO. BECAUSE JUST
19 AS IT IS THE DEFENDANT'S DAY IN COURT, IT IS ALSO HERS.
20 NOW, A CRIMINAL CASE IS UNIQUE, IT IS NOT LIKE A CIVIL
21 CASE WHERE YOU GET DEPOSITIONS, WHERE YOU GET EXHIBITS, TO
22 ENTER INTO EVIDENCE REPORTS OR FORMS. IN A CRIMINAL CASE
23 THE DEFENDANT HAS THE ABSOLUTE CONSTITUTIONAL RIGHT TO
24 CONFRONT ALL OF ITS WITNESSES AS THEY TESTIFY ON THIS
25 STAND. AND YOU HAVE THE RIGHT TO SEE ALL OF THOSE

1 WITNESSES ON THAT STAND, TO HEAR WHAT THEY HAVE TO SAY, TO
2 SEE WHAT THEY HAVE PUT INTO EVIDENCE SO YOU CAN JUDGE
3 THEIR CREDIBILITY. AND IN THIS CASE YOU HAVE HEARD FROM A
4 LOT OF WITNESSES, YOU HAVE HEARD FROM OFFICERS THAT WENT
5 OUT TO THE SCENE, OFFICERS WHO CANVASED THE AREA, WHO
6 ARRESTED THE DEFENDANT. YOU HEARD FROM THE VICTIM IN THIS
7 CASE, YOU HAVE HEARD FROM NEIGHBORS WHO SAW JUST BRIEFLY
8 SAW SOMEONE IN THE STREET, TALK ABOUT WHAT HAPPENED IN
9 THEIR NEIGHBORHOOD. AND YOU HAVE HEARD SOME OTHER
10 WITNESSES THAT WEREN'T ON THE STAND. YOU HEARD ABOUT A
11 COUPLE OF WORKERS THAT RON COWART HAD WITH HIM, A COUPLE
12 OF THE DEPUTIES THAT YOU DIDN'T SEE ON THE STAND. THAT IS
13 BECAUSE YOU CAN'T CALL EACH AND EVERY SINGLE WITNESS, THAT
14 WOULD BE CUMULATIVE AND THERE IS NO PROBATIVE REASON TO
15 PUT THEM ON THAT STAND JUST TO TELL YOU THE SAME THING
16 THAT SOMEBODY ELSE HAS TOLD. BECUASE OF WHAT HE DID THAT
17 DAY TO LOURDES ANTONIO, THE DEFENDANT HAS BEEN CHARGED,
18 YOU WILL BE CONSIDERING FIVE INDICTMENTS TODAY. BURGLARY
19 FIRST DEGREE, PETTY LARCENY OF THE GUN, KIDNAPPING FOR
20 GRABBING A HOLD OF LOURDES ANTONIO, KEEPING HER FROM
21 LEAVING, ASSAULT AND BATTERY WITH INTENT TO KILL FOR
22 THROWING HER DOWN ON THE GROUND, FOR STOMPING HER, FOR
23 SIMPLE POSSESSION OF MARIJUANA FOR THE MARIJUANA THAT WAS
24 FOUND ON HIM. AND I WILL BRIEFLY GO OVER EACH OF THOSE
25 CRIMES SO YOU CAN SORT OF THINK ABOUT THE ELEMENTS AS I AM

1 GOING THROUGH WHAT HAPPENED WITH THE FACTS.

2 THE FIRST CHARGE WE MENTIONED WAS BURGLARY FIRST
3 DEGREE AND THIS IS A COPY OF THE STATUTE AS IT IS WRITTEN
4 IN THE CODE OF LAWS OF SOUTH CAROLINA. A PERSON IS GUILTY
5 OF BURGLARY IN THE FIRST DEGREE IF THE PERSON ENTERS THE
6 DWELLING WITHOUT CONSENT, THAT MEANS WITHOUT THE
7 HOMEOWNERS PERMISSION AND WITH THE INTENT TO COMMIT A
8 CRIME IN THE DWELLING. AND, A, EITHER WHEN IN AFFECTING
9 ENTRY OR WHILE IN THE DWELLING OR IMMEDIATE FLIGHT IS
10 ARMED WITH A DEADLY WEAPON. THAT DOESN'T MEAN THEY HAVE
11 TO COME IN THE HOUSE, IT DOESN'T MEAN THAT HAVE TO USE
12 THAT GUN, IF ANY TIME THEY BECOME ARMED WHILE IN THAT
13 DWELLING THEY ARE GUILTY OF BURGLARY FIRST DEGREE OR, B,
14 CAUSES PHYSICAL INJURY TO A PERSON WHO IS NOT A
15 PARTICIPANT IN THE CRIME. IT IS EITHER A OR B. IF YOU
16 CAUSE INJURY TO SOMEONE SUCH AS THE NANNY OF THE HOUSE
17 WHILE THEY ARE IN THERE COMMITTING A CRIME THEY ARE GUILTY
18 OF BURGLARY FIRST DEGREE, USES OR THREATENS TO USE OF A
19 DANGEROUS INSTRUMENT. AND, D, DOESN'T APPLY, IT IS NOT IN
20 OUR INDICTMENT, AND EITHER 2 OR 3 APPLY. AND WE DON'T
21 CONTEND THAT HE ENTERED INTO THE NIGHTTIME. BUT YOU ONLY
22 HAVE TO DEFINE ONE OF THESE REASONS TO BASE A CONVICTION
23 ON BURGLARY FIRST DEGREE, NOT ALL, JUST ONE.

24 AND THE DEFENDANT IS ALSO CHARGED WITH PETTY LARCENY
25 WHEN HE STOLE JEFF CONNELL'S GUN OUT OF HIS NIGHT SIDE

1 TABLE. THIS AGAIN IS FROM THE CODE OF LAWS. PETTY
2 LARCENY IS THE TAKING AND THE CARRYING AWAY OF PERSONAL
3 PROPERTY VALUED LESS THAN \$1,000.00 DOLLARS. DO YOU
4 REMEMBER THAT JEFF CONNELL TESTIFIED IT IS WORTH ABOUT
5 \$500 OR \$600, BELONGING TO ANOTHER, WE KNOW IT BELONGED TO
6 HIM, HE BOUGHT IT FROM A FRIEND OF HIS IN KENTUCKY. BUT
7 WITH THE INTENT TO PERMANENTLY DEPRIVE THE OWNER OF
8 POSSESSION. SO, WHEN YOU TAKE IT AND STICK IT IN YOUR LEG
9 AND WALK OUT OF THE HOUSE.

10 THE DEFENDANT IS ALSO CHARGED WITH KIDNAPPING. IT IS
11 UNLAWFUL TO SEIZE, CONFINED, ENVEIGLE, DECOY, KIDNAP,
12 ABDUCT OR CARRY AWAY ANY OTHER PERSON BY ANY MEANS
13 WHATSOEVER WITHOUT THE AUTHORITY OF LAW TO DO SO. ANOTHER
14 WAY OF LOOKING AT IT, LADIES AND GENTLEMEN, THE UNLAWFUL
15 SEIZURE OF A PERSON, IF YOU UNLAWFULLY CONFINED A PERSON OR
16 LIMIT THEIR ABILITY TO MOVE FOR ANY PERIOD OF TIME IT IS
17 KIDNAPPING. AS MS. COOPER TOLD YOU IN HER OPENING,
18 KIDNAPPING, WHAT YOU SEE ON THE TABLE, TAPPING SOMEONE UP
19 WITH DUCT TAPE, THROWING THEM IN THE TRUNK OF YOUR CAR,
20 GOING ACROSS THE STATE LINE. IN THIS STATE THAT IS NOT
21 THE THRESHOLD OF THE KIDNAPPING, IF YOU LIMIT SOMEONE'S
22 ABILITY TO MOVE FOR ANY PERIOD OF TIME, ONE SECOND, ONE
23 MINUTE, HALF AN HOUR, AN HOUR, A DAY, A WEEK, ANY PERIOD
24 OF TIME SUCH AS WHEN YOU GRAB SOMEONE'S ARM, WON'T LET
25 THEM LEAVE. WHEN YOU PROHIBIT THEM FROM LEAVING TOWARDS

1 THE DOORWAY, CONFINE THEM INTO A CERTAIN AREA, THAT IS
2 KIDNAPPING. THESE WORDS, SEIZE AND CONFINE, WHAT DO THEY
3 MEAN LEGALLY. SEIZE MEANS TO HOLD UP SUDDENLY OR
4 FORCEFULLY SUCH AS GRABBING SOMEBODY'S ARM. CONFINE MEANS
5 TO LIMIT, RESTRICT OR ENCLOSE, IMPRISON, SHUT OR KEEP IN
6 SUCH AS WHEN SOMEBODY BLOCKS A DOORWAY TO KEEP YOU FROM
7 LEAVING.

8 THE DEFENDANT IS ALSO CHARGED WITH ASSAULT AND
9 BATTERY WITH INTENT TO KILL. WHEN HE THREW LOURDES
10 ANTONIO ON THE GROUND AND WHEN HE STOMPED HER ON HER WITH
11 HIS FOOT, BREAKING HER RIBS. ASSAULT AND BATTERY WITH
12 INTENT TO KILL IS AN UNLAWFUL ACT OF VIOLENT PHYSICAL
13 INJURY TO THE PERSON OF ANOTHER, WITH MALICE AFORETHOUGHT,
14 EXPRESSED OR IMPLIED. AND THERE ARE A COUPLE OF WORDS IN
15 THERE LIKE MALICE, WHAT IS MALICE EXACTLY. MALICE IS NOT
16 NECESSARILY A PART OF ILL WILL TOWARDS THE INDIVIDUAL
17 INJURED, IT SIGNIFIES RATHER A GENERAL RECKLESSNESS OF THE
18 LIVES AND SAFETY OF OTHERS OR A CONDITION OF MIND WHICH
19 SHOWS A HEART REGARDLESS OF SOCIAL DUTY AND FATAL EVENT ON
20 MISCHIEF. YOU DON'T HAVE TO HAVE ACTUALLY A SPECIFIC
21 INTENT TO KILL THAT PERSON, JUST A GENERAL INTENT OF ILL
22 WILL TOWARDS THE INDIVIDUAL INJURED. I AM SORRY, A
23 GENERAL RECKLESSNESS OF THE LIVES AND SAFETY OF OTHERS,
24 JUST A RECKLESS GENERAL INTENT. A SPECIFIC INTENT TO KILL
25 IS NOT AN ELEMENT OF ASSAULT AND BATTERY WITH INTENT TO

1 KILL BUT THERE MUST BE A GENERAL INTENT TO COMMIT SERIOUS
2 BODILY INJURY. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF
3 THE DEFENDANT AND OTHER CIRCUMSTANCES WHICH YOU MAY
4 NATURALLY AND REASONABLY INFER INTENT. EVIDENCE OF THE
5 CHARACTER OF THE ASSAULT, THE CHARACTER OF THE INSTRUMENT
6 USED, THE MANNER IN WHICH IT WAS USED, THE PURPOSE TO BE
7 ACCOMPLISHED AND THE RESULTING WOUNDS OR INJURIES MAY BE
8 CONSIDERED IN DETERMINING THE INTENT WITH WHICH THE
9 ASSAULT WAS COMMITTED. INTENT MAY BE INFERRED WHEN IT IS
10 DEMONSTRATED THAT THE DEFENDANT VOLUNTARILY AND WILLFULLY
11 COMMITS AN ACT, THE NATURAL TENDENCY OF WHICH TO DESTROY
12 ANOTHERS LIFE. NOTICE, A SPECIFIC INTENT TO KILL IS NOT AN
13 ELEMENT OF ASSAULT AND BATTERY WITH INTENT TO KILL BUT
14 GENERAL INTENT TO COMMIT SERIOUS BODILY INJURY. SUCH AS
15 WHEN SOMEONE TAKES THEIR FOOT AND STOMPS REPEATEDLY ON
16 SOMEONE'S CHEST. AND AGAIN, OUTSIDE ON THEIR BACK. NOW,
17 IF YOU DON'T BELIEVE THAT THE DEFENDANT IS GUILTY OF
18 ASSAULT AND BATTERY WITH INTENT TO KILL, IF YOU DON'T
19 BELIEVE THE STATE HAS PROVED BEYOND A REASONABLE DOUBT
20 THAT HE DID THAT CRIME, THE JUDGE WILL INSTRUCT YOU ON
21 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE WHICH
22 IS A LESSOR INCLUDED OFFENSE OF ASSAULT AND BATTERY WITH
23 INTENT TO KILL. IT IS AN UNLAWFUL ACT OF VIOLENT,
24 PHYSICAL INJURY TO THE PERSON OF ANOTHER ACCOMPANIED BY
25 CIRCUMSTANCES OF AGGRAVATION. THAT CIRCUMSTANCE BEING THE

1 USE OF A DEADLY WEAPON DURING THE ATTACK, THE INFLECTION
2 OF SERIOUS BODILY INJURY, THE INTENT TO COMMIT A FELONY,
3 THE DIFFERENCE BETWEEN THE SEXES BETWEEN THE VICTIM AND
4 THE DEFENDANT, THE DIFFERENCE IN THE SIZE AND THE AGE OF
5 THE PARTIES OR INDECENT FAMILIARITY WITH A FEMALE OR OTHER
6 CIRCUMSTANCES SUCH AS THE VICTIM'S PHYSICAL CONDITION, IF
7 YOU WERE DISABLED IN SOME WAY. I WILL CONTEND TO YOU THAT
8 THIS CRIME, IT DOESN'T NEED THAT, YOU HEARD THE VICTIM'S
9 TESTIMONY.

10 THE JUDGE WILL ALSO GIVE YOU THE LESSOR INCLUDED
11 OFFENSE OF BURGLARY SECOND DEGREE. AS I WENT OVER THE
12 BURGLARY FIRST CHART WITH YOU, REMEMBERED THE TWO ELEMENTS
13 I POINTED OUT, CAUSE PHYSICAL INJURY TO SOMEONE WHO IS A
14 MEMBER OF THE HOUSE OR WHO IS IN THE HOUSE, OR HAD A
15 WEAPON ON THEM EITHER WHEN THEY CAME IN OR WHILE THEY ARE
16 THERE THEY TOOK A WEAPON. IF YOU DON'T BELIEVE HE DID
17 THOSE THINGS WE DIDN'T PROVE BEYOND A REASONABLE DOUBT
18 THAT HE DID THOSE THINGS THEN THE JUDGE WILL GIVE YOU A
19 CHARGE ON THE LESSOR INCLUDED OFFENSE OF BURGLARY SECOND
20 DEGREE.

21 AND FINALLY THE DEFENDANT IS CHARGED WITH SIMPLE
22 POSSESSION OF MARIJUANA. IT IS UNLAWFUL FOR ANY PERSON TO
23 KNOWINGLY OR INTENTIONALLY POSSESS 28 GRAMS OR LESS OF
24 MARIJUANA. AND YOU HEARD HIS STATEMENT TO ERIC BARNES
25 THAT HE KNEW HE HAD THAT MARIJUANA ON HIM. AND YOU HEARD

1 INVESTIGATOR TRISH COLLINS GIVE YOU THE WEIGHT OF THAT
2 MARIJUANA WHICH WOULD BE LESS THAN 28 GRAMS.

3 THE STATE HAS TO PROVE ALL OF THOSE CRIMES, BURGLARY
4 FIRST DEGREE, PETTY LARCENY, KIDNAPPING, ASSAULT AND
5 BATTERY WITH INTENT TO KILL AND SIMPLE POSSESSION OF
6 MARIJUANA, ALL OF THOSE, ALL ELEMENTS OF THOSE IS PROOF
7 BEYOND A REASONABLE DOUBT. AND YOU HEARD WHAT MS. COOPER
8 TALKED A LITTLE BIT ABOUT REASONABLE DOUBT WAS, THE DOUBT
9 COULD BE A FINDING OF GUILT LEAVES YOU, THE JURY, FIRMLY
10 CONVINCED OF YOUR DECISION. BUT HERE IS A MORE DETAILED
11 EXPLANATION. PROOF BEYOND A REASONABLE DOUBT IS PROOF
12 THAT LEAVES YOU, THE JURY, FIRMLY CONVINCED OF THE
13 DEFENDANTS GUILT. THERE ARE VERY FEW THINGS IN THIS WORLD
14 THAT WE KNOW WITHOUT CERTAINTY. IN A CRIMINAL CASE THE
15 LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE
16 DOUBT. IF BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU
17 ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE
18 CRIMES CHARGED YOU MUST FIND HIM GUILTY. IF ON THE OTHER
19 HAND YOU THINK THERE IS A REAL POSSIBILITY THAT HE IS NOT
20 GUILTY YOU MUST GIVE HIM THE BENEFIT OF THAT DOUBT AND
21 FIND HIM NOT GUILTY. NOTICE WE DON'T HAVE TO GO ABSOLUTE
22 PROOF, WE DON'T HAVE TO PROVE THAT THAT OVERCOMES EVERY
23 POSSIBLE DOUBT BUT PROOF THAT LEAVES YOU FIRMLY CONVINCED
24 THAT HE COMMITTED THOSE FIVE CRIMES.

25 IN THIS CASE, WELL IN EVERY CASE THERE ARE TWO TYPES

1 OF EVIDENCE, THERE IS DIRECT EVIDENCE AND THERE IS
2 CIRCUMSTANTIAL EVIDENCE. WHAT IS DIRECT EVIDENCE, IS WHAT
3 A PERSON EXPERIENCES, WHAT THEIR FIVE SENSES, WHAT THEY
4 SEE, WHAT THEY SMELL, WHAT THEY TASTE, WHAT THEY HEAR,
5 WHAT THEY FEEL. THERE IS ALSO CIRCUMSTANTIAL EVIDENCE,
6 AND IS THERE ANY WEIGHT THAT SHOULD BE GIVEN TO EITHER ONE
7 MORE THAN THE OTHER, NO. AND WHAT IS CIRCUMSTANTIAL
8 EVIDENCE, AS IT IS EXPLAINED, THERE ARE TWO TYPES OF
9 EVIDENCE WHICH ARE USUALLY PRESENTED DURING A TRIAL,
10 DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. DIRECT
11 EVIDENCE IS THE TESTIMONY OF A PERSON WHO ASSERTS OR
12 CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT SUCH AS AN
13 EYEWITNESS. CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN
14 OF FACTS IN CIRCUMSTANCES INDICATING THE EXISTENCE OF A
15 FACT. THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE
16 WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR
17 CIRCUMSTANTIAL EVIDENCE. NOR IS THERE A GREATER DEGREE OF
18 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF
19 DIRECT EVIDENCE. YOU SHOULD WEIGH ALL THE EVIDENCE IN A
20 CASE, AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT
21 CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A
22 REASONABLE DOUBT YOU MUST FIND THE DEFENDANT NOT GUILTY.
23 IF ON THE OTHER HAND YOU ARE CONVINCED OF THE DEFENDANTS
24 GUILTY BEYOND A REASONABLE DOUBT YOU SHOULD FIND HIM
25 GUILTY. NOW, WHAT IS AN EXAMPLE OF CIRCUMSTANTIAL

1 EVIDENCE, ONE EXAMPLE THAT YOU HEARD IN THIS CASE IS THE
2 DNA EVIDENCE. DNA EVIDENCE SHOWS THE CHAIN OF EVENTS OR
3 IT CAN HELP PROVE A CHAIN OF EVENTS SUCH AS FINDING
4 SOMEONE'S BLOOD ON SOMEONE ELSE'S SHOE, IT CAN PROVE
5 CIRCUMSTANTIAL EVIDENCE, THAT PERSON'S SHOE WAS AROUND
6 THAT OTHER PERSON WHOSE BLOOD IS ON IT.

7 LET'S GO OVER CRIMINAL INTENT. CRIMINAL INTENT IS
8 THE STATE OF THE MIND OF THE DEFENDANT AT THE TIME HE
9 COMMITTED THESE INJURIES, FROM THE TIME HE COMMITTED THESE
10 CRIMES AGAINST LOURDES ANTONIO. HOWEVER, WE CAN'T SEE IN
11 A PERSON'S MIND, NO ONE IS A MIND READER. SO, WHAT WE DO
12 TO FIGURE OUT SOMEONE'S INTENT, YOU LOOK AT THEIR ACTIONS,
13 YOU LOOK AT WHAT THEY DID THAT DAY, YOU LOOK AT WHAT THE
14 DEFENDANT DID THAT DAY, WHEN HE BROKE INTO THEIR HOUSE,
15 STOLE HIS GUN AND BEAT LOURDES ANTONIO. LADIES AND
16 GENTLEMEN, IN THIS CASE I DON'T BELIEVE THERE IS ANY WAY
17 THAT THE DEFENDANT DIDN'T HAVE CRIMINAL INTENT TO DO THOSE
18 CRIMES.

19 THERE IS ALSO, THE JUDGE WILL CHARGE YOU ON LAWS OF
20 IDENTIFICATIONS BEING MADE THAT A PERSON GOTTEN COERCED OR
21 THE POLICE WAS SUGGESTIVE IN A WAY THEY PRESENTED
22 IDENTIFICATION. AND WE WILL TALK MORE ABOUT THAT A LITTLE
23 BIT LATER ON WHEN WE TALK ABOUT LOURDES ANTONIO'S
24 IDENTIFICATION OF THE DEFENDANT. AND THE IDENTIFICATION
25 OF RON COWART WAS THE PERSON HE PICKED UP THAT DAY. YOU

1 WILL ALSO HEAR ABOUT STATEMENTS THAT HAVE TO BE VOLUNTARY
2 FROM THE PERSON THAT GAVE THEM. THEY CAN'T BE COERCED,
3 THEY CAN'T GET THREATS TO GET THEM, YOU CAN'T WITHHOLD ANY
4 NECESSITIES FROM THE INDIVIDUAL IN ORDER TO OBTAIN A
5 STATEMENT. THE DEPUTY READ THE MIRANDA RIGHTS WHICH YOU
6 HEARD A LOT IN THIS TRIAL. AND YOU ALSO HEAR THE JUDGE
7 EXPLAIN TO YOU SOME LAW REGARDING EXPERT WITNESSES. YOU
8 HAVE HEARD FROM A FEW EXPERT WITNESSES IN THIS CASE, YOU
9 HAVE HEARD TRISH COLLINS, STAN RICHARDS, BOTH THE
10 FORENSICS DEPARTMENT IN THE SHERIFFS DEPARTMENT. YOU HAVE
11 HEARD DNA EXPERT, DR. GRAY AMICK, THEIR OPINIONS, THEIR
12 CREDIBILITY IS WEIGHED JUST AS MUCH AS EVERY OTHER WITNESS
13 IN THIS CASE. AND THEIR QUALIFICATIONS, WHEN THEY GOT ON
14 THE STAND AND THEIR DISPUTE, WE KNOW THEY HAVE GOT THE
15 EDUCATIONAL BACKGROUND, THEY LISTED THEIR EXPERIENCES,
16 THEY AREN'T IN DISPUTE.

17 AND HOW DO YOU, FROM ALL THE WITNESSES THAT THE STATE
18 PUT UP, HOW DO YOU JUDGE THE CREDIBILITY OF THOSE
19 WITNESSES. WE LOOK AT THE DEMEANOR OF THE WITNESS ON THE
20 WITNESS STAND, HOW DO THEY ACT, HOW DO THEY TESTIFY, WERE
21 THEY FORTHRIGHT WITH THEIR TESTIMONY, WERE THEY GIVING OR
22 WERE THEY HESITANT, WERE THEY HOLDING BACK, WERE THEY
23 HOLDING BACK SOMETHING. WAS THE TESTIMONY OF A WITNESS
24 CONSISTENT, WAS IT CONSISTENT FROM THE TIME THEY FIRST
25 WROTE A REPORT, WHERE THEY FIRST TALKED TO AN OFFICER,

1 WHEN THEY FIRST GAVE A WRITTEN STATEMENT TO THE TIME WHEN
2 THEY SAT ON THAT WITNESS STAND AND TOLD YOU THEIR STORY.
3 WAS THE WITNESS'S TESTIMONY CORROBORATED THROUGHOUT THE
4 COURSE OF INVESTIGATION, WAS THE WITNESS'S TESTIMONY
5 CORROBORATED BY ANOTHER WITNESS. DID THE WITNESS HAVE A
6 REASON TO BE BIASED OR PREJUDICED IN ANY WAY IN GIVING
7 THEIR TESTIMONY ON THE STAND, WERE THEY BIASED OR
8 PREJUDICED IN ANY WAY IN GIVING THEIR TESTIMONY.

9 BRIEFLY GOING OVER SOME OF THE WITNESSES, WE HAVE,
10 YOU HEARD FROM THE HOMEOWNER, JEFF CONNELL. HE TALKED
11 ABOUT RECEIVING A PHONE CALL THAT SOMETHING HAD HAPPENED
12 TO HIS HOUSE, EVERYTHING WAS VERY FRANTIC, VERY HECTIC, HE
13 DIDN'T KNOW WHAT HAPPENED, HE HAD A SMALL ONE-YEAR-OLD
14 CHILD THERE, HE RAN HOME AND SAW HIS HOUSE KEEPER LYING ON
15 THE GROUND, BLEEDING, SAW HER GET INTO EMS AND DRIVEN
16 AWAY. THE ONLY THING HE HEARD IS THERE WAS A BLACK MALE
17 IN THE HOUSE. HE WENT RUNNING OVER THERE, HE DIDN'T KNOW
18 WHAT WAS GOING ON, TRYING TO FIND HIS GUN AND IT IS NOT
19 THERE. THE POLICE SHOW UP AND HE IS ABLE TO TELL THEM A
20 LITTLE BIT HE KNEW AT THAT TIME. TALKED ABOUT THE VALUE
21 OF HIS GUN, \$500 OR \$600 DOLLARS. THE FACT THAT IT WAS IN
22 THAT DRESSER DRAWER, NOBODY ELSE HAD BEEN IN THERE, HE
23 KNEW IT WAS IN THERE THE WEEK BEFORE, NOBODY HAD BEEN IN
24 HIS BEDROOM EXCEPT HIM AND HIS WIFE FOR THAT WEEK. YOU
25 HEARD FROM THE VICTIM, LOURDES ANTONIO. YOU HEARD HER GET

1 UP HERE ON THE STAND AND TESTIFY, GIVE YOU THE STORY WHICH
2 BY THE WAY WAS CONSISTENT WITH WHAT SHE TOLD HOLLY WAGNER
3 AT THE HOSPITAL, IT WAS CONSISTENT WITH WHAT SHE TOLD ERIC
4 BARNES THAT AFTERNOON, THE 22ND OF APRIL WHEN SHE WENT
5 BACK IN AND TOLD HIM HER STORY. YOU HEARD HOW SHE TOOK
6 LITTLE CHANEY OUT FOR A STROLL, A DAILY STROLL THROUGH THE
7 NEIGHBORHOOD, WAS APPROACHED, NO THANK YOU FOR THE
8 CLEANING SUPPLIES, SHE HAS NO CHECKS. AND THEN THIRTY
9 MINUTES LATER SHE WALKS IN AND SHE IS BEATEN. YOU HEARD
10 FROM ANDY MCMAHON AND EMME DELL MCMAHON, TWO NEIGHBORS,
11 THEY DON'T HAVE ANY DOG IN THIS FIGHT, THEY HAVE NO REASON
12 TO GET UP THERE AND LIE. THEY GET UP HERE, MR. MCMAHON
13 SAID I WAS DRIVING TO AN APPOINTMENT DOWNTOWN AND I
14 NOTICED MY FRIEND, I NOTICED HIS NANNY IN THE ROAD TALKING
15 TO A STRANGE GENTLEMAN. YOU HEARD HER LIVE TESTIMONY
16 ABOUT WHERE THEY LIVE, THEY ARE NOT DOWNTOWN COLUMBIA,
17 THERE ARE NOT PEOPLE WALKING UP AND DOWN THEIR STREET
18 EVERY DAY. HE NOTICED SOMETHING OUT OF THE ORDINARY,
19 YOUNG BLACK MALE, BACKPACK, DARK BLUE COAT OR SWEATER
20 TALKING TO MS. ANTONIO, DIDN'T SEE ANYBODY ELSE AROUND
21 THAT DAY. LIKE I SAY, THERE ARE NOT A LOT OF FOOT TRAVEL
22 ON THAT ROAD, HE WOULD OF NOTICED. THEN EMME DELL
23 MCMAHON, YOUNG BLACK MALE WITH A BACKPACK COME TO HER DOOR
24 TRYING TO SELL SOMETHING AND SHE WASN'T INTERESTED. SEE
25 ANYBODY ELSE THAT DAY, NO. TERRY WRIGHT, TALKED ABOUT

1 WHEN LOURDES CAME RUNNING OVER THERE, HANDED HER THE BABY,
2 GOT ON THE GROUND, SHE IS ROLLING AROUND WITH PAIN, BLOOD
3 ON HER SHIRT, TRIED TO UNDERSTAND WHAT WAS GOING ON,
4 CALLED EMS, DIDN'T HAVE A CLUE, CALLED FOR EMERGENCY
5 SERVICES, AN AMBULANCE, SHE DIDN'T KNOW ANYTHING HAPPENED.
6 ALL SHE KNEW WAS THAT THIS WOMAN WAS HURT, SHE NEEDED TO
7 CALL JEFF, SHE NEEDED TO CALL THE AMBULANCE. YOU HEARD
8 FROM RONALD COWART, RONALD COWART WAS JUST DOING HIS JOB
9 THAT DAY, BEING A GOOD GUY, SAW SOMEBODY JUMP OUT IN THE
10 FRONT OF HIS TRUCK, SCARED HIM HALF TO DEATH, THOUGHT HE
11 WAS GOING TO RUN OVER THE GUY. DO YOU NEED A RIDE, ASKED
12 FOR A RIDE, HE GAVE HIM A RIDE. TOLD HIM TO JUMP IN THE
13 BACK. BY THE WAY, IF YOU WILL REMEMBER HE IS RIGHT AROUND
14 THERE, THERE IS TAM-O-SHANTER. THIS IS JUST AND HE SAID
15 RIGHT AROUND 4:00 O'CLOCK IT WAS. THE INCIDENT, LOURDES
16 TESTIFIED THE ATTACK ON HER WAS PROBABLY AROUND 3:30. HE
17 DROVE HIM DOWN TO THE NEXT WORK SITE, GOT OUT TO WORK, HE
18 HAD A CONVERSATION WITH THE INDIVIDUAL HE JUST PICKED UP,
19 WITH THE DEFENDANT. AS IN THREE OR FOUR MINUTES, CAN I
20 GET SOME WORK, FIRST HE WAS TOLD THAT I WAS BEING CHASED
21 BY A WHITE GUY, BLACK GUY TRYING TO BEAT ME UP. YOU KNOW,
22 GET IN THE TRUCK AND I WILL GIVE YOU A RIDE AND GET YOU
23 OUT OF HERE. ASKED FOR, YOU KNOW, SOME WORK. HE ONLY HAD
24 \$2.00 DOLLARS, A HALF OF A PACK OF CIGARETTES. GREEN PACK
25 MUCH LIKE THIS PACK OF NEW PORTS THAT WAS FOUND ON THE

1 DEFENDANT WHEN HE WAS ARRESTED IN HIS BOOK BAG. WHERE IS
2 THE CLOSEST STORE I CAN GO TO, POINTS HIM ON DOWN THE ROAD
3 A LITTLE BIT. HE IS CALLED OUT LATER ON TO THE SCENE JUST
4 ASKING, IS THIS THE GUY YOU PICKED UP. WELL, LADIES AND
5 GENTLEMEN, THINK TO YOURSELF, WHAT IS RON COWART'S BIASED
6 OR PREJUDICED, FOR WHAT REASON WOULD HE HAVE TO LIE ABOUT
7 THE DESCRIPTION THAT HE GAVE ERIC BARNES, HE PICKED UP A
8 YOUNG BLACK MALE AROUND 23, BAGGY BLUE JEANS, DARK BLUE
9 SWEATER, BACKPACK, HALF PACK OF GREEN CIGARETTES. FOR
10 WHAT REASON WOULD HE HAVE TO LIE TO THE INVESTIGATORS
11 ABOUT THE DESCRIPTION THAT HE GAVE. FOR WHAT REASON WOULD
12 HE HAVE TO LIE TO GO OUT TO THAT SCENE AND SAY THAT IS THE
13 GUY THAT I PICKED UP. AND I ASKED HIM ON DIRECT, HE
14 TALKED ABOUT A TATTOO ON THIS GUYS NECK. HE DIDN'T REALLY
15 THINK TO PUT IT IN HIS WRITTEN STATEMENT AT THE TIME. HE
16 DON'T REALLY SEE TATTOOS THAT OFTEN IN HIS LIFE. WHEN HE
17 GOT THERE HE SAW THAT TATTOO, HE SAW THE GUYS FACE, HE HAD
18 A CONVERSATION WITH HIM FOR THREE OR FOUR MINUTES. WHAT
19 REASON WOULD HE HAVE TO LIE TO GO OUT THERE AND SAY, I AM
20 GOING TO MAKE THIS UP, YEAH, I WILL MAKE IT UP. YOU HEARD
21 FROM DEPUTY ROE, FIRST ON THE SCENE, HE IS ABLE TO
22 COORDINATE THINGS AND FIGURE OUT WHAT HAPPENS AND SEND
23 HOLLY WAGNER TO THE HOSPITAL, SECURED THE SCENE, MADE SURE
24 NO ONE CAME IN OUR OUT. HE WAS AT THE ARREST, READ THE
25 DEFENDANT HIS MIRANDA RIGHTS, HE ALWAYS HAS A LITTLE CARD

1 AND HE PULLED OUT THE CARD AND HE READ WHAT WAS ON THAT
2 CARD, HE ALWAYS DID THAT. HEARD HOW HE GOT THE SHOES,
3 FOUND MARIJUANA, WENT BACK TO HELP INVESTIGATOR BARNES GO
4 THROUGH THE PROCESS OF ALL OF THE EVIDENCE AT
5 HEADQUARTERS. HEARD FROM DEPUTY HOLLY WAGNER, SHE
6 RESPONDED TO THE HOSPITAL, SHE WAS HAVING A HARD TIME
7 TALKING TO THE VICTIM WHO IS SPANISH SO SHE IS ABLE TO GET
8 THE BASICS, GET THE DESCRIPTION AND CALL IT OUT SO WE CAN
9 FIGURE OUT WHAT IS GOING ON. YOU HEARD HER THAT WHEN THEY
10 LATER FOUND A CLEANING CREW, GOT INTO THE VAN, GOT OUT,
11 HER AND LIEUTENANT TYLER APPROACHED THE DEFENDANT. SHE IS
12 ABLE TO HANDCUFF HIM BECAUSE THEY WERE AFRAID HE WAS GOING
13 TO RUN. HE CONTINUES TO TRY TO PULL AWAY FROM HER, SPIN
14 HER AROUND IN CIRCLES. HEARD FROM LIEUTENANT TYLER, HE
15 FOUND THE CLEANING CREW WITHIN THE AREA, HE FOUND THEM AT
16 LONGCREEK RIGHT AROUND COLUMBIA CLUB DRIVE, RIGHT HERE AT
17 TAM-O-SHANTER. HE WAS ABLE TO MAKE CONTACT WITH THEM AND
18 FIGURE OUT WHO WAS STILL MISSING, WHO WAS THERE, WAS ABLE
19 TO GET DESCRIPTIONS FROM THE SUPERVISOR THAT DAY AND ONCE
20 AGAIN HE WENT OUT WITH HOLLY WAGNER IN THAT VAN TO TRY TO
21 APPREHEND THE SUSPECT WHO MATCHED THE DESCRIPTION.
22 CORROBORATING EVIDENCE OF LOURDES ANTONIO'S DESCRIPTION OF
23 THE INDIVIDUAL WHO ATTACKED HER. CORROBORATES RONALD
24 COWART'S DESCRIPTION WITH THE INDIVIDUAL THAT HE PICKED
25 UP. YOU HEARD FROM MARK MCCOLMAN, SERGEANT MARK MCCOLMAN.

1 HE DID BRING DOWN THE DEFENDANT, ROE TOOK THE LEFT SIDE,
2 MARK MCCOLMAN TOOK THE RIGHT SIDE, FOUND A GUN, HE
3 UNLOADED IT AND FOUND FOUR LOADED CLIPS IN THAT GUN,
4 UNLOADED IT FOR SAFETY FOR EVERYBODY, GET IT AWAY FROM THE
5 SUSPECT, THE DEFENDANT. YOU ALSO HEARD FROM THE EMT,
6 EMERGENCY WORKER, RUSSELL REDD, HE TALKS ABOUT THE
7 INJURIES THAT THE VICTIM SUSTAINED WHEN HE GOT THERE,
8 WHICH IS STANDARD PROCEDURE IF SOMEBODY IS HAVING A
9 HORRIBLE TIME BREATHING RELATED TO CHEST INJURIES, THEY
10 ARE GOING TO GET OXYGEN. YOU ALSO HEARD HIM SAY ON THE
11 STAND THERE, IT WAS AN EMERGENCY CALL, HE HAD SIRENS AND
12 LIGHTS GOING. AND YOU REMEMBER RONALD COWART, HE JUST
13 THOUGHT SOMETHING WAS FISHY THAT DAY, HE GOT OUT THERE
14 WORKING AND HE HEARD SIRENS WHEN HE GOT TO HIS WORK SITE,
15 SAW A BUNCH OF DEPUTIES ROAMING AROUND THE NEIGHBORHOOD.
16 THAT WAS RUSSELL REDD IN THE EMS ON THAT AFTERNOON. YOU
17 HEARD FROM DR. RICHARD BOYER WHO CAME IN AND EXPLAINED
18 THAT THE TRIAGE NURSE, WHEN LOURDES ANTONIO CAME ON WROTE
19 DOWN IT WAS A SINGLE ASSAILANT ATTACKER, ONE ASSAILANT
20 THAT THE VICTIM COMPLAINED OF TO THEM. AGAIN,
21 CORROBORATION, CONSISTENCY, AND OF THE INJURIES THAT
22 LOURDES ANTONIO SUSTAINED. SMALL PUNCTURE WOUND ON THE
23 ELBOW, SAW WHERE SHE HAD SOME PAIN RIGHT HERE ON THE BACK
24 OF HER RIBS, PAIN RIGHT HERE IN HER STERNUM THAT IS
25 CONSISTENT WITH BEING STOMPED ON ON THE CHEST. LOURDES

1 EXPLAINED TO YOU SHE WENT OUTSIDE AND SHE GOT PUSHED DOWN
2 ON THE GROUND FACE DOWN, STARTED STOMPING IN THE MIDDLE OF
3 HER BACK. CONSISTENCY, LADIES AND GENTLEMEN,
4 CORROBORATION.

5 NEXT YOU HEARD FROM INVESTIGATOR STAN RICHARDS. STAN
6 RICHARDS EXPLAINED HOW HE WENT OUT TO THE SCENE THAT DAY,
7 THE TIME HE GOT THERE TO SECURE, NO ONE BE ALLOWED IN OR
8 OUT. HE EXPLAINED THAT HE OBSERVED A FOOTPRINT IN SOME
9 BLOOD, HE OBSERVED THREE BLOOD PUDDLES, A BROKEN HAIR
10 BARRETTE, THERE IS NO INFLECTION, THAT WAS THE VICTIM'S
11 BARRETTE. HE PROCESSED A COUPLE OF FINGERPRINTS, ONE FROM
12 THE NIGHTSTAND. HE TRIED TO TAKE A JELL MOLD OF THE
13 FOOTPRINT BUT COULDN'T, WOULDN'T LIFT. HE ALSO WENT OUT
14 TO RON COWART'S TRUCK AND PROCESSED FOR POSSIBLE
15 FINGERPRINTS AND WHERE HE MIGHT OF TOUCHED THEM, SOMEONE
16 MIGHT OF TOUCHED THAT TRUCK. AND YOU ALSO HEARD FROM STAN
17 RICHARDS OF THE RESULT OF ALL OF THAT EVIDENCE THAT WE
18 PRESENTED TO YOU. THAT FOOTPRINT DOESN'T MATCH, THAT
19 FINGERPRINT DOESN'T MATCH. YOU ALSO HEARD JEFF CONNELL,
20 AS SOON AS HE HEARD WHAT HAPPENED HE WENT RUNNING THROUGH
21 THAT HOUSE, THE VICTIM'S HUSBAND POSSIBLY WENT THROUGH THE
22 HOUSE WITH HIM. AND ONCE AGAIN YA'LL HAVE THAT EVIDENCE
23 TO LOOK AT YOURSELF. INVESTIGATOR WAS ON THE STAND
24 TALKING ABOUT HOW HE TOOK THE VICTIM'S ORAL SWAB, TALKED
25 ABOUT THE WAY HE TOOK IT, LET THE AIR DRY, SECURE. YOU

1 HEARD FROM INVESTIGATOR CHRIS COLLINS, SHE TALKED ABOUT
2 THE FINGERPRINT DIDN'T MATCH ON THE DRESSER, SHE DIDN'T
3 COMPARE ANYBODY ELSE'S BUT SHE COMPARED THE DEFENDANT AND
4 IT WASN'T A MATCH. AND SHE EXPLAINED TO YOU SOME OF THE
5 WAYS THAT YOU CAN LEAVE A FINGERPRINT, SOME OF THE WAYS
6 YOU CAN TAKE A SWEATER, GRAB SOMETHING, YOU AREN'T GOING
7 TO LEAVE A FINGERPRINT. YOU ALSO HEARD FROM TRISH
8 COLLINS, HOW YOU LOOK AT MARIJUANA AND HOW YOU DETERMINE
9 THAT IT IS REALLY A PLANT LIKE SUBSTANCE, REALLY IS
10 MARIJUANA AND THAT THIS PIECE OF EVIDENCE RIGHT HERE IS
11 MARIJUANA. YOU HEARD FROM GRAY AMICK, YOU HEARD FROM HOW
12 HE DETERMINES IF SOMETHING IS BLOOD, HOW HE DETERMINES AND
13 HOW HE LOOKS AT DNA, HOW HE COMPARES DNA AND WE WILL GO
14 INTO THAT A LITTLE BIT LATER. AND FINALLY YOU HEARD FROM
15 ERIC BARNES, YOU HEARD LENGTHY TESTIMONY FROM ERIC BARNES
16 OF THE WHOLE INVESTIGATION PROCESS IN THIS CASE, HOW HE
17 RESPONDED TO THE HOSPITAL, GOT A DESCRIPTION, THAT ONCE
18 AGAIN MATCHED EVERY OTHER DESCRIPTION THAT THE VICTIM GAVE
19 IN THIS CASE. CONSISTENCY, LADIES AND GENTLEMEN. YOU
20 HEARD HOW HE WENT OUT TO THE SCENE AND TALKED WITH THE
21 OFFICERS AND HE IS TRYING TO CANVAS THIS NEIGHBORHOOD.
22 YOU HEARD HOW HE FOUND THE SUPERVISOR'S TRUCK, REACHED A
23 DESCRIPTION OF THE REST OF THE EMPLOYEES, THEY WERE THERE,
24 HE KNEW THEY DIDN'T MATCH THE DESCRIPTION. THERE WERE
25 ONLY TWO PEOPLE THAT WERE MISSING, ONE OF WHICH WAS THE

1 DEFENDANT WHO MATCHED THE DESCRIPTION THE VICTIM HAD JUST
2 GIVEN THEM. HEARD HOW HE DIRECTED AND ORCHESTRATED THE
3 ARREST OF THE DEFENDANT WHEN THEY WERE TRYING TO FIND OUT
4 WHO THIS PERSON WAS, THE PERSON WHO ATTACKED LOURDES
5 ANTONIO. YOU HEARD HOW WHEN HE GOT THERE ROE ADVISED HIM,
6 I HAVE ALREADY MIRANDIZED THIS GUY, I PUT HIM IN MY CAR,
7 HE IS SECURE. TALKED TO HIM, SAW THE SHOE PRINT, YOU
8 KNOW, HE IS NOT AN EXPERT IN SHOE OR ANYTHING. BUT BASED
9 ON HIS YEARS OF INVESTIGATION, HIS GUT FEELING, IT IS LIKE
10 THAT IS THE SAME SHOES. LET'S GO AHEAD AND COLLECT THIS,
11 SECURE IT AND LET'S GO BACK TO HEADQUARTERS AND SEND IT ON
12 ITS WAY TO PROCESS. YOU HEARD HOW ONCE HE GOT BACK, YOU
13 HEARD ABOUT THE STATEMENTS THAT THE DEFENDANT MADE WHILE
14 THEY WERE AT THE SCENE. ONCE THEY GOT BACK TO
15 HEADQUARTERS YOU HEARD ABOUT THE DISCUSSION WITH THE
16 DEFENDANT, EVASIVE, NOT EVEN BEING TRUTHFUL OR OPEN ABOUT
17 THOSE BASIC FACTS OF HIS LIFE, HIS BACKGROUND. AND THE
18 STATEMENTS THAT HE ULTIMATELY MADE THERE AT HEADQUARTERS
19 ABOUT THE INTERVIEW. THEN YOU HEARD ABOUT HIS LENGTHY
20 DISCUSSION WITH THE VICTIM ABOUT A WEEK LATER, THE
21 STATEMENT SHE GAVE WHICH MATCHED THE STATEMENT SHE GAVE TO
22 HOLLY WAGNER THERE AT THE HOSPITAL. YOU ALSO HEARD ABOUT
23 THE PHOTO LINEUP THAT HE GAVE TO THE VICTIM. THIS PHOTO
24 LINEUP AND YA'LL WILL HAVE THIS BACK THERE WITH YOU. YOU
25 HEARD HOW HE SHOWED IT TO HER, THIS 1, 2, 3, 4, 5 6. HE

1. GAVE IT TO HER, TURNED AWAY AND LET HER PICK OUT ONE
2 WITHOUT HESITATION. THAT ONE. NOW, LET ME NUMBER IT AND
3 YOU TELL ME WHICH ONE IT IS. THAT ONE. LET'S DO IT ONE
4 MORE TIME, I WANT YOU TO PUT YOUR INITIALS NEXT TO WHICH
5 ONE IT IS. THAT ONE. YOU OBSERVED THE HUSBAND TRYING TO
6 INFLUENCE HER IN ANY WAY, NO. AND YOU HEARD A LOT ABOUT
7 MS. LOURDES ANTONIO, SHE DOES NOT SPEAK ENGLISH, YOU HAVE
8 HEARD HER SAY A FEW PHRASES BUT SHE DOESN'T SPEAK FLUENTLY
9 TO TRY TO EVADE HER STORY. YOU HAVE HEARD THAT HER
10 HUSBAND AND HOSPITAL INTERPRETER HAD TO SORT OF HELP HOLLY
11 WAGNER THERE AT THE HOSPITAL. YOU HEARD HOW HER HUSBAND
12 AND A SECRETARY WHO HAPPENED TO BE FLUENT IN SPANISH AT
13 HEADQUARTERS, INTERPRETED FOR HER IN THE INTERVIEW. THINK
14 TO YOURSELVES, WHAT BIASED OR PREJUDICED WOULD THOSE
15 INTERPRETERS HAVE TO MISINTERPRET ANYTHING SHE TOLD TO ANY
16 OF THOSE PEOPLE. THEY ARE TRYING TO HELP HER AT THE
17 HOSPITAL, THEY ARE TRYING TO GET HER HELP, THEY ARE TRYING
18 TO FIGURE OUT WHAT IS GOING ON, WHAT REASON WOULD THEY
19 HAVE TO MISINTERPRET WHAT SHE SAYS. WHEN SHE GIVES HER
20 STATEMENT, WHAT REASON WOULD THEY HAVE TO MISINTERPRET OR
21 LIE ABOUT WHAT SHE IS TALKING ABOUT. AS MENTIONED IN THIS
22 CASE, LOURDES ANTONIO WAS ABLE TO DO AN EYE WITNESS OF
23 WHAT HAPPENED, SHE WAS THERE, SHE LIVED THROUGH IT, SHE
24 WAS ABLE TO LOOK AT HER ASSAILANT IN HIS FACE AS HE IS
25 STOMPING ON HER CHEST, HE STOMPED HER BODY, AS HE IS

1 PUSHING HER DOWN, HE IS GRABBING A HOLD OF HER, NOT
2 LETTING HER LEAVE. YOU ALSO HEARD FROM RON COWART, HE IS
3 NOT AN EYE WITNESS TO THE CRIME. HE PICKED UP SOMEBODY
4 RIGHT AROUND THERE AT THE SAME TIME, THOUGHT SOMETHING WAS
5 FISHY.

6 WHEN YOU ARE LOOKING AT AND DETERMINING THESE EYE
7 WITNESSES TESTIMONY A FEW THINGS YOU SHOULD CONSIDER. THE
8 OPPORTUNITY TO VIEW THE CRIMINAL AT THE TIME OF THE CRIME,
9 AND RON COWART DIDN'T SEE THE CRIME. BUT LOURDES ANTONIO,
10 A VICTIM AND HER ATTENTION IS VERY ACUTE AT THAT TIME.
11 THEY WANT TO SEE WHO IS DOING THIS TO ME, WHY ARE THEY
12 DOING THIS TO ME. HOW LONG DO THEY HAVE, HOW CLOSE WERE
13 THEY WHEN THEY WERE LOOKING AT EACH OTHER, WHAT WAS THE
14 WITNESSES DEGREE OF ATTENTION. ONCE AGAIN, VERY ACUTE WHEN
15 YOU ARE THE VICTIM OF A CRIME. ACCURACY OF A WITNESS'S
16 PRIOR DESCRIPTION OF THE CRIMINAL, YOU HEARD HER MULTIPLE
17 DESCRIPTIONS DURING THE WEEK THAT WE HAVE HAD AND YOU SAW
18 ERIC BARNES AND HE TOOK DOWN ALL OF THE INFORMATION, THE
19 BACKGROUND INFORMATION AND YOU ARE LOOKING AT THE
20 DEFENDANT YOURSELF. DOES THAT MATCH THE DESCRIPTION THAT
21 LOURDES ANTONIO GAVE, DOES IT MATCH THE DESCRIPTION THAT
22 RON COWART GAVE THAT AFTERNOON. THE LEVEL OF CERTAINTY IS
23 DEMONSTRATED BY THE WITNESS OF THE TIME AND THE
24 CONFRONTATION. HOW QUICK WAS IT WHEN LOURDES ANTONIO,
25 ERIC BARNES TURNS HIS HEAD, SHE SAYS THIS ONE. HOW SURE

1 WAS RON COWART WHEN HE DROVE OUT THERE WHERE HE WAS
2 ARRESTED AND THAT RON COWART KNEW, DIFFERENT CLOTHES BUT
3 HE IS LIKE THE FACE, THAT IS THE VOICE THAT I HEARD, THAT
4 IS THE TATTOO THAT I SAW. THE LENGTH OF TIME BETWEEN A
5 CRIME AND CONFRONTATION. AND GOING INTO THE DESCRIPTIONS
6 THAT THEY GAVE, WHAT WAS LOURDES ANTONIO DESCRIPTIONS?
7 BLACK MALE, 23 YEARS OF AGE, ABOUT 5'8", SLIM, DARK SKIN,
8 NO MUSTACHE, LONG SLEEVE DARK BLUE SWEATER WITH WHITE
9 LETTERS ON IT. LONG SLEEVE DARK BLUE SWEATER WITH WHITE
10 LETTERS ON IT, BAGGY BLUE JEANS, TENNIS SHOES, A DARK
11 BACKPACK, GRAY PISTOL, SHORT CURLY HAIR AND CLEANING
12 SUPPLY PRICE LIST. DARK BACKPACK, LADIES AND GENTLEMEN,
13 CLEANING SUPPLY LIST. WHAT DID RON COWART TELL YOU, BLACK
14 MALE, ABOUT 6', SLENDER, DARK COLORED BACKPACK, ONCE
15 AGAIN. BAGGY BLUE JEANS, CLOSE HAIRCUT, I SHOWED YOU THE
16 HALF OF A PACK OF GREEN CIGARETTES, BLACK LONG SLEEVE
17 SHIRT AND A TATTOO ON THE NECK. YES, HE DID SAY BLACK.
18 JERENE HAYWARD'S ACTUAL DESCRIPTION, 5'9", 165 POUNDS, 24
19 YEARS OF AGE, BLACK MALE, TATTOOS ON THE NECK, UNKNOWN
20 ADDRESS, BORN IN MISSISSIPPI WITH SHORT HAIR. HIS
21 CLOTHING UPON ARREST, DRAGGY BLUE JEANS, NIKE AIR TENNIS
22 SHOES, BLUE SWEATER WITH WHITE WRITING, DARK BOOK BAG,
23 CLEANING SUPPLIES AND OTHER PAPERWORK, NEWPORT CIGARETTES
24 AND THE VICTIMS GRAY IN COLORED, ACTUALLY SILVER, GUN.
25 CONSISTENCY.

1 NOW, THERE ARE A LOT OF PEOPLE TESTIFYING AND IT IS
2 SORT OF HARD TO MAP OUT WHAT EXACTLY HAPPENED THAT DAY.
3 YOU HEARD THE VICTIM TESTIFY AROUND 2:45, 3:00 O'CLOCK,
4 SHE GOES FOR A WALK WITH CHANEY IN HIS STROLLER LIKE SHE
5 DOES EVERYDAY OR TRIES TO EVERYDAY. ABOUT FIVE MINUTES
6 AFTER SHE STARTS HER WALK SHE IS ENCOUNTERED BY THE
7 DEFENDANT ON THE STREET WHO SPEAKS TO HER ABOUT TWO OR
8 THREE MINUTES, TRYING TO SELL HER SOME CLEANING SUPPLIES,
9 YOU CAN WRITE A CHECK, NO CHECKS, I DON'T HAVE CHECKS.
10 ABOUT 3:00 O'CLOCK OR 3:05. ABOUT 3:00 OR 3:08 THE VICTIM
11 WALKS AWAY FROM THE DEFENDANT, KEEPS WALKING THE BABY,
12 TURNS THE CORNER, STILL SEES HIM THERE, HE HAS TOOK OUT
13 SOMETHING TO SHOW HER REGARDING THE CLEANING SUPPLIES, SHE
14 KEEPS WALKING THE BABY ABOUT 30 MINUTES. 30 MINUTES LATER
15 THE VICTIM RETURNS TO THE HOUSE AND ENCOUNTERS THE
16 DEFENDANT. SHE SEES HIM COMING OUT OF THE HALLWAY, WELL,
17 FIRST SHE WALKS AND SHE HEARS THE DOOR OPEN, WHY IS THE
18 DOOR OPEN, SHE SHUTS IT. IT WAS WINDY, MAYBE SOME WIND.
19 SHE WASN'T TO GO AND CHECK ON THINGS, SHE WALKS IN AND SHE
20 HEARS SOMEBODY. SHE IS CONFRONTED BY THE DEFENDANT AS HE
21 IS WALKING DOWN THE HALL. HE IS WALKING OUT OF THIS HALL,
22 SHE IS COMING OVER HERE, SHE SEES HIM. YOU ARE NOT
23 SUPPOSE TO BE HERE, LEAVE. SHE IS BACKING AWAY TOWARDS
24 HOW SHE COMES IN, SHE IS BACKING AWAY AND HE COMES OVER.
25 RIGHT HERE, HE GRABBED HER, DON'T CALL THE POLICE, ARE YOU

1 GOING TO CALL THE POLICE, YES. YES, SHE IS GOING TO CALL
2 THE POLICE, SHE SAYS, YES I AM. HE TOLD HER, DON'T CALL
3 THE POLICE. SHE IS STILL TRYING TO BACK OUT, TRYING TO
4 LEAVE FROM WHERE SHE CAME, STILL HOLDING ON TO HER,
5 RETRAINING HER FREEDOM, SHE EVEN TOLD YOU THAT.
6 RETRAINING HER FROM LEAVING HER HOUSE, GETS TO RIGHT HERE,
7 HE PUSHES HER DOWN, BUST HER ELBOW. AT THAT POINT HE HURT
8 HER ABOUT THREE TIMES, STOMP ON HER CHEST. HE BACKS AWAY,
9 HE GOES, STANDS IN FRONT OF THIS DOOR RIGHT AROUND HERE,
10 MESSING WITH HIS BOOK BAG, PULLED OUT A GUN, PUTS IT ON
11 THE GROUND. AGAIN, RIGHT IN FRONT OF THE DOOR, THE DOOR
12 SHE IS TRYING TO LEAVE THROUGH TO CONFINED HER IN THAT
13 AREA. COMES BACK OVER, SHE FINDS A CURTAIN ROD BOX, HITS
14 HIM, ONCE AGAIN, STOMPS HER ON HER CHEST. HE GOES IN THIS
15 BATHROOM AND SHE IS ABLE TO ESCAPE RIGHT HERE, TO GO OUT
16 THIS BACK DOOR OF THE GARAGE, HE IS RIGHT BEHIND HER. SHE
17 RUNS AROUND THE GARAGE TO THE GARDEN BETWEEN HER AND THE
18 NEIGHBORS HOUSE. WHAT DOES HE DO, HE CATCHES HER, HE
19 THROWS HER DOWN FACE FIRST IN THE GROUND, WHAT DOES HE DO.
20 HE STOMPS HER ON HER BACK. SHE IS TRYING TO COVER HERSELF
21 AND ROLLS OVER TO HER FRONT, HE IS NOT DONE. ONCE AGAIN,
22 HE STOMPS HER ON HER CHEST AGAIN. AT THIS POINT HE CAN'T
23 BREATHE, IT IS HARD TO BREATHE, SHE CLOSES HER EYES, PRAYS
24 AND BLACKS OUT. AND ONLY THEN DID THE DEFENDANT LEAVE.
25 GENERAL INTENT, LADIES AND GENTLEMEN, TO DO HARM TO

1 ANOTHER, RECKLESS DISREGARD. THAT WOULD BE ABOUT 3:50,
2 3:53 EMS WAS DISPATCHED, THAT IS DOCUMENTED TO A NEXT DOOR
3 NEIGHBORS HOUSE, THEY ARE USING SIRENS IN ROUTE THAT RON
4 COWART HEARS AFTER HE ARRIVED TO CRESCENT LAKE
5 SUBDIVISION. AND THEN A FEW HOURS LATER YOU HEAR RON
6 COWART SAYING, I POINTED OUT THE STORE THIS WAY, RON
7 COWART WAS HERE AND THEY FIND HIM HERE. THERE IS PUBLIX
8 AND THERE IS THE NEIGHBORHOOD RIGHT AROUND PUBLIX. YOU
9 HEARD FROM A LOT OF INDIVIDUALS FROM SLED, THE EVIDENCE
10 CUSTODIAN FROM RICHLAND COUNTY, AND I APOLOGIZE TO YA'LL
11 FOR PUTTING YOU THROUGH THAT BUT IT IS THE STATE'S BURDEN
12 OF PROOF TO PROVE THAT EACH AND EVERY PIECE OF EVIDENCE,
13 THESE SHOES, THESE SWABS, IT IS OUR BURDEN TO SHOW YOU
14 THAT NONE OF THESE ITEMS WERE TAMPERED WITH, THEY WERE NOT
15 CONTAMINATED IN ANY WAY AND THEY ARRIVED IN THE SAME
16 CONDITION THAT THEY WERE TAKEN, THEY ARRIVED TO THE PERSON
17 THAT WAS TESTING THEM IN THE SAME EXACT CONDITION. AND
18 YOU HEARD FROM ALL OF THOSE WITNESSES UP THERE, DID YOU
19 TAMPER WITH IT, NO. DID YOU CONTAMINATE IT IN ANY WAY,
20 NO. DID YOU PUT IT IN A SECURE ENVIRONMENT, YES. YOU
21 HEARD THAT WITH THE MARIJUANA. YOU HEARD EVERY PERSON AND
22 WHERE IT WENT FROM THAT SWAB OF BLOOD FROM THE SCENE, FROM
23 STAN RICHARDS WHO COLLECTED IT, FROM GRAY AMICK WHO TESTED
24 IT. THE DEFENDANTS SHOES, YOU HEARD EVERY PERSON FROM
25 ERIC BARNES AND DEPUTY ROE WHO COLLECTED IT TO TENA GOFF

1 WHO ALSO COLLECTED IT AFTER JANICE BRYSON DID A
2 PRESUMPTIVE TEST FOR BLOOD ON IT AND TOOK THOSE BLOOD
3 SWABS WITH THE DNA ON THEM. YOU HEARD ABOUT THE SWABS OF
4 BLOOD ON THE TENNIS SHOES THAT JANICE BRYSON CREATED IT
5 AND GRAY AMICK TESTED IT. AND FINALLY YOU HEARD ABOUT THE
6 VICTIM'S ORAL SWABS, DETECTIVE ROE WHO TOOK IT TO GRAY
7 AMICK WHO TESTED IT. LADIES AND GENTLEMEN, WE SHOWED YOU
8 ALL OF THIS EVIDENCE, ALL THE PEOPLE, YOU HEARD THEIR
9 TESTIMONY. WHEN YOU HEARD GRAY AMICK'S RESULTS, HIS
10 SCIENTIFIC STUDIOUS RESULTS YOU COULD COUNT ON IT, YOU CAN
11 BANK ON THOSE RESULTS. AND THOSE RESULTS ARE 1 IN 24
12 MILLION, THAT THE BLOOD ON THE DEFENDANTS SHOE, THIS SPOT
13 OF BLOOD ON THE HEEL OF HIS SHOE, AND YOU WILL HAVE THE
14 SHOES BACK THERE TOO TO LOOK AT THEM WHERE JANICE BRYSON
15 WHO PUT A LITTLE MARK WHERE EXACTLY WHERE THAT BLOOD WAS.
16 THAT BLOOD MATCHED THE VICTIM 1 IN 24 MILLION, I AM SORRY,
17 I DON'T NEED TO COUNT THE ZEROS, 24 MILLION. THAT IS THE
18 SAME AS A QUADRILLION NUMBER, NO, IT IS NOT THE SAME. BUT
19 WHAT DID YOU HEAR, IT IS STILL A MATCH. SO, THIS NUMBER
20 IS NOT AS BIG AS THIS NUMBER, STILL MATCH. THERE ARE 16
21 POINTS LOOKED AT BUT HE DIDN'T PUT ANYTHING FOR 5, STILL A
22 MATCH, STILL A PRETTY BIG NUMBER.

23 AND THE DEFENDANT GAVE SOME STATEMENTS IN THIS CASE.
24 MORE OUTBURSTS RATHER, AS YOU HEARD FROM ERIC BARNES AND
25 OTHERS. THE JUDGE IS GOING TO TELL YOU ABOUT THE LAW IN

1 VOLUNTARY STATEMENTS AFTER YOU HAVE READ THE MIRANDA
2 RIGHTS, YOU HAVE HEARD WHAT ERIC BARNES READ TO HIM
3 VERBALLY, YOU HEARD WHAT DEPUTY ROE READ TO HIM VERBALLY.
4 HE WAS READ HIS MIRANDA RIGHTS BY ROE. HE MAY OF
5 SOLICITED STATEMENTS TO THE POLICE, HE IS CONFRONTED WITH
6 THE BLOOD ON HIS SHOES, HE CHANGES HIS STORY. THEN ONCE
7 BACK AT HEADQUARTERS HE WAS REMIRANDIZED BY BARNES, THE
8 SECOND TIME HEARD THOSE RIGHTS. BUT HE IS STILL TALKING,
9 HE IS BEING EVASIVE TO THE QUESTIONS BETWEEN THE CRIME AND
10 DISCUSSING HIS LIFE AND BACKGROUND. THE LENGTH OF
11 QUESTIONING, IT WASN'T ALL NIGHT, LADIES AND GENTLEMEN, IT
12 WASN'T UNTIL THE WEE HOURS OF THE MORNING. THERE IS NO
13 COERCION USED, NO PROMISES OF LENIENCY MADE, NO THREATS OF
14 HARM MADE, HE WAS NOT DEPRIVED OF USING THE BATHROOM OR
15 WATER OR ANYTHING ELSE. LADIES AND GENTLEMEN, THOSE ARE
16 NECESSITIES OF LIFE. YOU HEARD ERIC BARNES TESTIFY TO
17 THAT, AND BEING LENIENT ON HIM IN ANY WAY. AND WHERE IS
18 THE DIFFERENT STORIES THAT WE HAVE HEARD THROUGHOUT THIS
19 TRIAL THAT HE HAS TOLD DIFFERENT PEOPLE. RON COWART, TWO
20 MEN, ONE BLACK AND ONE WHITE WERE TRYING TO CATCH HIM AND
21 BEAT HIM UP. THEY ARE THE SAME TWO MEN FROM THE DAY
22 BEFORE. ERIC BARNES HEARD THAT STORY FROM RON COWART BUT
23 DID YOU HEAR ERIC BARNES TESTIFY THAT HE EVER HEARD THAT
24 STORY. BUT THEN IT CHANGED, IT WASN'T INVOLVED WITH
25 ANYTHING, HE BOUGHT THE GUN FROM SOME GUY EARLIER. LOOK

1 AT THOSE TWO, LADIES AND GENTLEMEN, HE BOUGHT THE GUN A
2 LITTLE BIT EARLIER. WHY IS HE WORRYING ABOUT BEING CHASED
3 BY TWO GUYS. AND THEN CONFRONTED WITH THE SHOES, THE
4 BLOOD ON THE SHOES, OH, HE WAS IN THE HOUSE, I WAS IN THE
5 HOUSE BUT SOME OTHER PERSON HIT THE LADY, IT WASN'T ME.
6 THEN BACK TO HEADQUARTERS, DENIED OF ANYTHING, ANYTHING HE
7 SAID, COMPLETE DENIAL.

8 FINALLY, WHEN ERIC BARNES TELLS HIM THE CHARGES AND
9 WHAT HE IS CHARGING HIM WITH AT THAT TIME, WHAT DOES HE
10 SAY. AGAIN, UNPROVOKED, YOU HAVE GOT EVERYTHING YOU NEED,
11 YOU HAVE GOT MY SHOES, YOU HAVE GOT MY CLOTHES,
12 EVERYTHING, YOU HAVE GOT WHAT YOU NEED. THE SHERIFFS
13 DEPARTMENT DIDN'T NEED ANYTHING ELSE TO DO THEIR JOB.
14 NOW, THE DEFENSE WILL GET UP HERE AND SAY, NO, THESE SHOES
15 WEREN'T COLLECTED PROPERLY. YOU HEARD FROM ERIC BARNES
16 AND DEPUTY ROE, ONE OF THEM COLLECTED THE SHOES, ERIC
17 BARNES, ROE. ROE EITHER TESTIFIES THAT HE EITHER PUT THEM
18 IN THE FLOORBOARD OR IN THE TRUNK. HE WENT STRAIGHT TO
19 THE SCENE, HE WENT TO THE HEADQUARTERS, FROM THERE HE WAS
20 INSTRUCTED BY ERIC BARNES TO TAKE THEM DIRECTLY TO STAN
21 RICHARDS WHO TESTIFIED THAT HE RECEIVED THEM IN A BAG AND
22 HE REBAGGED THEM IN THESE TWO SEPARATE BAGS RIGHT HERE.
23 LADIES AND GENTLEMEN, THEY ALSO SAID THAT THERE WAS NO
24 TAMPERING, THEY ALSO SAID THAT DEPUTY ROE'S VEHICLE IS A
25 SECURE AREA. THEY MIGHT TRY TO SAY THERE IS

1 CROSS-CONTAMINATION IN THESE SHOES, THEY WERE PUT IN THE
2 SAME BAG. LADIES AND GENTLEMEN, THERE IS ONLY BLOOD ON
3 ONE SHOE, IF THERE IS CROSS-CONTAMINATION THEY WOULD BE ON
4 BOTH SHOES. THEY MIGHT TRY TO SAY, DEPUTY ROE, HE WAS AT
5 THE SCENE FIRST, HE COULD OF STEPPED IN THAT BLOOD. AND
6 WHILE HE IS PADDING DOWN THE DEFENDANT, TAPPED HIS SHOE
7 AGAINST THE SHOE, HIS REAL SHOE AGAINST THE DEFENDANTS
8 SHOE. AND IF YOU REMEMBER WHAT WAS TESTIFIED TO, THIS
9 BLOOD IS ON THE RIGHT SHOE, MCCOLMAN, RIGHT SIDE. ROE,
10 LEFT SIDE, MCCOLMAN, NEVER AT THE SCENE. HE COULD HAVE
11 BLOOD ON HIS SHOE AND THEN--

12 MS. VAN GINHOVEN: YOUR HONOR, I AM OBJECTING TO
13 STATING FACTS THAT ARE NOT IN THE RECORD.

14 MR. JOPHLIN: THEY ARE, YOUR HONOR.

15 THE COURT: I CAN'T COMMENT ON WHAT IS AND IS NOT IN
16 THE RECORD. I WOULD SIMPLY INSTRUCT THE JURY THAT YOU
17 MUST RELY ON YOUR OWN MEMORY AS TO WHAT THE TESTIMONY AND
18 THE EVIDENCE HAS BEEN. YOU MAY CONTINUE WITH YOUR
19 ARGUMENT, COUNSEL.

20 MR. JOPHLIN: THANK YOU, YOUR HONOR. AND I WANT TO
21 REMIND THE JURY, YA'LL TOOK NOTES DURING THIS, IF I
22 MISQUOTE ANYTHING YA'LL TOOK NOTES, REFER TO THEM. AND
23 ACTUALLY THOSE SHOES EITHER WENT INTO THE FLOORBOARD OR
24 THE TRUNK. WOULD DEPUTY ROE, IF HE STEPPED IN THAT BLOOD,
25 WHICH HE DIDN'T TESTIFY TO, THERE WASN'T ANY TESTIMONY

1 THAT ANYBODY AT THE SCENE STEPPED IN THAT BLOOD. WOULD HE
2 GO AND SIT WITH HIS FEET IN THE TRUNK TO TRANSFER BLOOD IN
3 THAT TRUNK SO THEY COULD LATER GO ON THE SHOES WHEN HE SIT
4 IN THE PASSENGER SEAT AND RIDE IN HIS OWN VEHICLE.
5 FURTHERMORE, ROE HAD NO CONTACT WITH THE VICTIM, MCCOLMAN,
6 NO CONTACT WITH THE VICTIM. THE DEFENSE MIGHT GET UP HERE
7 AND SAY THEY GOT THE WRONG GUY, IT WASN'T THIS DEFENDANT,
8 IT WAS SOME OTHER GUY THAT DID IT. WRONG. YOU HAVE THE
9 VICTIM'S ID WHICH MATCHES, YOU HAVE RON COWART'S ID, SAME
10 TIME, SAME PROXIMITY, MATCHES. CONTAMINATION OF THE
11 SHOES, WRONG. WE DON'T KNOW THE AGE OF THE BLOOD ON THAT
12 SHOE, THAT BLOOD COULD BE A DAY OLD, IT COULD BE A WEEK
13 OLD, IT COULD BE TWO WEEKS OLD. HOWEVER, THE VICTIM HAD
14 NEVER MET THIS DEFENDANT BEFORE. THEY MIGHT GET UP HERE
15 AND SAY THE INVESTIGATION WASN'T COMPLETE. YOU HEARD FROM
16 THE OFFICERS UP HERE SAYING, NO, I DIDN'T WRITE A CRIME
17 REPORT, ONE OF MY DEPUTIES UNDER ME WROTE THE REPORT. I
18 REFERRED TO THEIR REPORT, THE OTHER PERSON WITH ME
19 REFERRED TO MY REPORT. YOU HEARD ERIC BARNES COME IN HERE
20 AND TESTIFY TO SORT OF MOST EVERYBODY'S ACTIONS THAT DAY.
21 YOU ALSO HEARD HIM TALK ABOUT, THIS IS A VERY MEMORABLE
22 MOMENT IN THEIR CAREERS, IT IS A MEMORABLE MOMENT TO GET
23 INTO A WHITE VAN TO GO APPREHEND SOMEBODY, VERY MEMORABLE
24 MOMENT THAT STUCK OUT IN THEIR MINDS. AND IT IS ALSO
25 INTERESTING THAT WHILE ALL OF THESE OFFICERS ARE UP ON THE

1 STAND, THE DEFENSE ATTACKS EVERY LAW ENFORCEMENT OFFICER
2 EXCEPT THOSE THAT ARE FAVORABLE TO THEM. THEY EMBRACE THE
3 TESTIMONY OF THAT OFFICER, THAT OFFICIAL OF THE STRONGEST
4 GOVERNMENT IN THE WORLD, WHICH LADIES AND GENTLEMEN, WE
5 ARE IN RICHLAND COUNTY. BUT THOSE WHO ARE UNFAVORABLE TO
6 THEM, ATTACK EVERYTHING THEY SAY. THE DEFENSE SAID IN
7 THEIR OPENING, MS. MOBLEY TOLD YOU IN THEIR OPENING, WE,
8 THE STATE WANTS YOUR EMOTIONS TO OVERRIDE YOUR JUDGMENT.
9 BUT WHAT DID MS. COOPER TELL YOU IN HER OPENING. SHE
10 WANTS YA'LL TO USE YOUR EVERY DAY COMMON SENSE COLLECTED
11 FROM YOUR LIVES AT HOME, FROM YOUR LIVES AT WORK, YOUR
12 PAST EXPERIENCES, WE WANT YOU TO USE THOSE. WE DIDN'T SAY
13 ANYTHING ABOUT YOUR EMOTIONS. AND ONCE AGAIN MS. MOBLEY
14 WAS RIGHT, THIS WAS A HEINOUS CRIME, COMMITTED BY THAT
15 DEFENDANT. FINALLY, THE DEFENSE MIGHT GET UP HERE AND SAY
16 THIS IS ALL A TERRIBLE COINCIDENCE THAT THE DEFENDANT, HE
17 JUST HAPPENS TO BE WEARING THE SAME CLOTHES DESCRIBED BY
18 BOTH THE VICTIM AND THE PERSON THAT SHE POSITIVELY ID'D
19 FROM, AS HIS FACE FROM THE PHOTO LINEUP. A HORRIBLE
20 COINCIDENCE, LADIES AND GENTLEMEN, TERRIBLE. THEY MIGHT
21 GET UP HERE, THIS IS A TERRIBLE COINCIDENCE THAT RON
22 COWART PICKS UP THE DEFENDANT IS SWEATING, OUT OF BREATH,
23 FROM CLOSE PROXIMITY TO THE VICTIM'S HOUSE AND CLOSE IN
24 TIME. SO CLOSE IN TIME THAT HE HEARS EMS SIRENS GOING
25 THERE. TERRIBLE COINCIDENCE, LADIES AND GENTLEMEN. THE

1 DEFENDANT HAPPENED TO HAVE JEFF CONNELL'S GUN AND FOUR
2 MAGAZINES ON HIS PERSON, STUFFED UP IN HIS LEG, THAT IS
3 JUST A HORRIBLE COINCIDENCE THAT HE HAD THE VICTIM'S GUN
4 ON HIM. THAT THE DEFENDANT HAPPENS TO HAVE THE VICTIM'S
5 BLOOD ON HIS SHOE, ON THE RIGHT SHOE. IF YOU NOTICED WHEN
6 LOURDES CAME DOWN HERE TO DEMONSTRATE FOR YA'LL, CAN YOU
7 SHOW US HOW HE KICKED YOU, HIS RIGHT FOOT, THAT IS WHAT
8 SHE USED. I SHOWED YOU HOW FAR IT IS FROM THE
9 NEIGHBORHOOD TO THE PUBLIX. THAT IS A HORRIBLE
10 COINCIDENCE THAT HIS BLOOD IS ON HER SHOE. THE DEFENSE
11 MIGHT SAY THAT THE DEFENDANT HAPPENED TO BE WEARING THE
12 SAME CLOTHES DESCRIBED BY HIS SUPERVISORS, HE ONLY HAS
13 \$2.00 DOLLARS AND A HALF OF A PACK OF CIGARETTES YET HE
14 CAN AFFORD A \$500.00 OR \$600.00 DOLLAR GUN AND HAPPENS TO
15 BUY IT WITHIN A TWO HOUR PERIOD OF IT MISSING.
16 COINCIDENCE, JUST A TERRIBLE SET OF COINCIDENCES, THIS
17 WILL ALL LEAD UP TO. THAT DEFENDANT NEVER TELLS
18 INVESTIGATOR BARNES HE HAD BEEN CHASED BY A WHITE MALE OR
19 BLACK MALE. SO, WHY IS HE WORRIED ABOUT IT. AND AGIN IT
20 IS A TERRIBLE SET OF COINCIDENCES THAT HE IS RESISTING THE
21 COPS WHEN HE IS SUPPOSEDLY INNOCENT OF THESE CHARGES.

22 LADIES AND GENTLEMEN, THE STATE HAS SHOWN YOU THE
23 WITNESSES, YOU HAVE HEARD THE TESTIMONY ON THE STAND, YOU
24 HAVE SEEN THE EVIDENCE, YOU HAVE SEEN PICTURES, YOU HAVE
25 GOT SHOES, MAPS, WE HAVE PROVED BEYOND A REASONABLE DOUBT

1 THAT THAT MAN BROKE INTO THEIR HOUSE, STOLE JEFF CONNELL'S
2 GUN, HELD LOURDES ANTONIO AGAINST HER WILL, KEPT HER FROM
3 LEAVING, HE BEAT HER NUMEROUS TIMES, AND THEN HE WAS LATER
4 FOUND WITH MARIJUANA IN HIS POSSESSION. FOR THAT REASON
5 WE ASK YOU TO RETURN A VERDICT OF GUILTY ON BURGLARY FIRST
6 DEGREE, ON PETTY LARCENY, ON KIDNAPPING, ASSAULT AND
7 BATTERY WITH INTENT TO KILL, ON SIMPLE POSSESSION OF
8 MARIJUANA. THANK YOU.

9 THE COURT: DOES ANYONE NEED A SHORT BREAK BEFORE WE
10 HEAR THE NEXT ARGUMENT.

11 (NO RESPONSE.)

12 THE COURT: MS. VAN GINHOVEN.

13 MS. VAN GINHOVEN: THANK YOU, YOUR HONOR. JERENE
14 HAYWARD IS NOT GUILTY AND I WILL TELL YOU WHY HE IS NOT
15 GUILTY. BECAUSE THE PHYSICAL EVIDENCE THAT IS IN THE
16 RECORD DOES NOT SHOW THAT HE IS GUILTY. THE SOLICITOR
17 JUST TOLD YOU THAT THERE IS NO TESTIMONY ANYWHERE THAT
18 ANYONE AT THE CRIME SCENE STEPPED IN THE BLOOD, THE
19 VICTIM'S BLOOD. YOU HAVE HEARD THROUGH TESTIMONY THAT THE
20 BLOOD PRINT FOUND AT THE SCENE DOES NOT MATCH THESE SHOES.
21 THESE SHOES DO NOT MATCH THE BLOOD, THE PRINT IN THE
22 VICTIM'S BLOOD. NOW, YOU ARE RIGHT, WE ARE GOING TO TALK
23 ABOUT THE FACT THAT THERE IS NO BLOOD ON THE BOTTOM OF
24 THESE SHOES. DR. AMICK TOLD YOU HOW SENSITIVE, HOW
25 SENSITIVE DNA IS. YOU HAVE TO WEAR GLOVES IN ORDER TO

1 TEST THEM BECAUSE IF YOU DON'T YOUR SKIN CELLS CAN
2 CONTAMINATE IT, THAT IS HOW SENSITIVE IT IS. AND YOU ARE
3 GOING TO TELL ME THAT THAT SHOE PRINT THAT IS IN THE BLOOD
4 ON THE FLOOR WITH THESE GROOVES ON THE SHOE, YOU ARE GOING
5 TO TELL ME THAT THEY COULDN'T FIND ANYTHING ON THESE
6 SHOES. THEY DIDN'T. THAT IS BECAUSE THIS SHOE WAS NEVER
7 IN THAT BLOOD. THE PRINT DOES NOT MATCH. NOW, THE STATE
8 BROUGHT YOU IN ALL OF THESE WITNESSES BUT THEY HAVEN'T
9 REALLY TALKED ABOUT THIS. THEY HIT IT HERE AND THERE,
10 THEY HIT IT A LITTLE BIT HERE. THE PROBLEM IS THEY CAN'T
11 EXPLAIN IT. NOT ONLY DOES THE PRINT IN THE BLOOD, IN THE
12 VICTIM'S BLOOD NOT MATCH THESE SHOES THAT MR. HAYWARD HAD
13 ON BUT THEY ALSO DON'T MATCH THE SHOES THAT THE VICTIM HAD
14 ON, MS. ANTONIO. THEY TEST THESE SHOES, LADIES AND
15 GENTLEMEN, THEY DO NOT MATCH THE PRINT IN THE BLOOD, THEY
16 THEN TEST HERS TO SEE IF THEY CAN EXPLAIN IT, IT IS NOT
17 HERS, IT IS SOMEBODY ELSE'S SHOE PRINTS. AND YOU HEARD THE
18 SOLICITOR TELL YOU THAT THERE IS NO TESTIMONY IN THE
19 RECORD THAT ANYONE ELSE STEPPED IN THAT BLOOD. BECAUSE
20 THERE ARE NOT, EVERY ONE OF THE OFFICERS TOLD YOU THAT
21 THEY GOT THERE TO SECURE THE SCENE SO THAT NO ONE WOULD
22 CONTAMINATE THE SCENE.

23 AS TO THERE BEING BLOOD ON THE SHOE I WOULD LIKE FOR
24 EVERYONE TO REMEMBER THAT EVERYONE WHO TESTIFIED UP HERE
25 SAID THAT THEY DID PRESUMPTIVE TEST FOR BLOOD. WHAT THAT

1 MEANS IS THAT IT MAY BE THERE BUT YOU HAD TO DO FURTHER
2 TESTING TO DETERMINE WHETHER THERE WAS BLOOD ON THE SHOE
3 AND NO ONE KNEW THAT. NO ONE DID THAT. THEY ALSO TOLD
4 YOU, AGAIN WE HAVE BEEN THROUGH HOW DNA BY DR. AMICK COMES
5 IN MANY DIFFERENT FORMS. IT COMES FROM CELLS, IT CAN COME
6 FROM SALIVA, IT CAN COME FROM MANY DIFFERENT FORMS. THEY
7 HAVE NEVER TESTIFIED, THEY HAVE NEVER SHOWN YOU WITNESSES
8 THAT COULD SAY THAT THERE WAS BLOOD ON THAT SHOE. COULD
9 THEY HAVE DONE A TEST, YES. DID THEY, NO. THE DNA ON THE
10 SHOE, THE BLOOD AT THE SCENE IS THE VICTIM'S, YES IT IS.
11 IT IS HER BLOOD. AND WHEN YOU DO A DNA TEST YOU HAVE 16
12 MATCHES AND THAT BLOOD, THE BLOOD AT THE SCENE, HER BLOOD
13 OF COURSE MATCHES HER STANDARD 1 IN 458 QUADRILLION. ON
14 THE SHOE IS 1 IN 25 MILLION. WE CAN ARGUE ALL DAY LONG,
15 THESE ARE DIFFERENT NUMBERS, IT MEANS SOMETHING. IF IT
16 DIDN'T MEAN ANYTHING WHY WOULD THEY PUT IT IN THEIR
17 REPORT. IF THESE NUMBERS MEANS THE EXACT SAME THING, WHY
18 ARE THEY DIFFERENT, IT MAKES NO SENSE. I THINK YOU CAN
19 USE YOUR COMMON SENSE THERE, THERE IS NO SENSE THERE.
20 FURTHER, DR. AMICK TOLD YOU THAT THAT WAS A PARTIAL MATCH,
21 HE TOLD YOU THAT THAT WAS A PARTIAL MATCH BECAUSE THERE
22 WERE FIVE DIFFERENT PLACES THAT THEY COULD NOT MATCH, THEY
23 DIDN'T GET A READING FOR IT AT ALL. AND THERE WERE TWO
24 THAT THEY COULDN'T USE BECAUSE THEY COULDN'T USE IT IN
25 THEIR CALCULATIONS. SO THAT IS SEVEN, 16 MINUS 7, 9. AND

1 YOU ARE GOING TO TELL ME THERE IS NOT A DIFFERENCE BETWEEN
2 THOSE TWO THINGS. DR. AMICK ALSO TOLD YOU, HE TOLD YOU HE
3 COULDN'T SAY FOR SURE WHETHER THAT DNA MATERIAL WAS THE
4 BLOOD AND HE ALSO TOLD YOU THAT HE COULDN'T BE SURE THAT
5 THE DNA MATERIAL ON THESE SHOES WERE NOT JERENE HAYWARD'S.
6 BECAUSE THEY NEVER TESTED JERENE HAYWARD, THE GOVERNMENT
7 IS THE ONE WHO IS RESPONSIBLE FOR GETTING THEM THE ITEMS
8 TO TEST. THEY NEVER DID A TEST ON THAT. THEY TESTED THE
9 VICTIM'S BLOOD AT THE SCENE, THEY TESTED THE DNA FROM THE
10 VICTIM AND THEY TESTED THE SWABS FROM THE SHOES. NEVER
11 DID THEY GET MR. HAYWARD'S DNA PROFILE. AND THEY COULD OF
12 EITHER INCLUDED HIM OR EXCLUDED HIM AND THEY DIDN'T DO IT.
13 AND AS WE TOLD YOU IN THE BEGINNING, WE DON'T HAVE TO
14 PROVE ANYTHING.

15 NOW, LET'S GO TO THE ACTUAL SCENE BECAUSE THIS IS
16 ALSO QUITE INTERESTING. I WANT YA'LL TO TAKE THESE
17 PICTURES, ALL OF THESE PICTURES OF THE HOUSE, PLEASE LOOK
18 AT THEM. MOST OF THESE ARE THE WAY IT LOOKS NOW. LOOK
19 THROUGH THEM ALL BECAUSE LADIES AND GENTLEMEN, HERE IS THE
20 PROBLEM. AND MR. CONNELL TESTIFIED TO THIS, HE TESTIFIED
21 THAT YOU WOULDN'T OF KNOWN THAT SOMEBODY WAS IN THAT HOUSE
22 EXCEPT THAT THE GUN WAS GONE, THAT IS WHAT HE SAID. THERE
23 IS NO RUMMAGING THROUGH, THERE IS NO DRAWERS OPEN, THERE
24 IS NO JEWELRY BOXES THROWN AROUND, THERE IS NOTHING.
25 THERE IS A DRAWER OPEN ON THE DRESSER BY THE BED. WHAT

1 DID INVESTIGATOR BARNES TELL YOU, HE TOLD YOU THAT WHEN
2 MOST PEOPLE DO BURGLARIES IS WHAT THEY ARE LOOKING FOR IS
3 TO GET IN, GET SOMETHING THAT THEY CAN CARRY, EXAMPLE,
4 JEWELRY, WEAPONS. A BURGLAR WANTS ITEMS THAT CAN EITHER
5 BE SOLD ON THE STREET AND THEN THEY ARE SOLD ON THE
6 STREET, LADIES AND GENTLEMEN, THEY ARE NOT SOLD FOR THE
7 MARKET VALUE OR THEY ARE SOLD AT A PAWN SHOP. NOW, YOU
8 LOOK AT THESE PICTURES, THIS IS THE ONLY DISTURBANCE, THE
9 ONLY DISARRAY TO THAT HOUSE. SO, THEIR CONTENTION IS, MR.
10 HAYWARD WHO NOBODY KNEW, MS. ANTONIO DIDN'T KNOW AND MR.
11 CONNELL DIDN'T KNOW CAME INTO A STRANGE HOUSE, WALKED
12 THROUGH THIS DOOR, WENT STRAIGHT BACK TO THE BEDROOM,
13 STRAIGHT BACK TO THE BEDROOM, OPENED THIS ONE DRAWER AND
14 REMOVED A GUN. THAT IS IT, HE DIDN'T GO THROUGH THE
15 JEWELRY BOX, HE DIDN'T GO THROUGH THE DRAWERS, HE DIDN'T
16 DO ANY OF THAT. AND WHAT IS EXTREMELY INTERESTING ABOUT
17 THIS. THERE IS A FINGERPRINT ON THE DRAWER, THE DRAWER
18 WHERE THE GUN WAS TAKEN FROM. THAT FINGERPRINT, THEY
19 CAN'T STAND IT, THAT FINGERPRINT DOES NOT MATCH MR.
20 HAYWARD EITHER. NOR DOES IT MATCH THE HOMEOWNERS,
21 INVESTIGATOR BARNES TOLD YOU THAT. WHOSE FINGERPRINT IS
22 IT, WHOSE SHOE PRINT IS IT. WELL, WE KNOW FOR SURE THAT
23 IT IS NOT MR. HAYWARD'S, THAT IS WHAT WE KNOW.

24 I HAVEN'T TALKED TOO MUCH ABOUT THESE. BAGGY BLUE
25 JEANS, EVERYONE SAYS HE HAS GOT ON BAGGY BLUE JEANS. EVEN

1 THOSE MR. HAYWARD, I AM SURE HE WEARS THEM LOW, EVERYBODY
2 DOES THESE DAYS. BAGGY BLUE JEANS, ARE YOU GOING TO TELL
3 ME THAT MR. HAYWARD WAS IN THAT HOUSE, STEPPED IN THAT
4 POOL OF BLOOD WITH ALL THE OTHER BLOOD AROUND HIM, THAT HE
5 STEPS IN THOSE AND THAT THERE IS NO BLOOD ON THE HEM OF
6 HIS PANTS. BECAUSE THERE ISN'T ANY BLOOD ON THESE PANTS,
7 LADIES AND GENTLEMEN, THERE IS NOT. THE SWEATER, THERE IS
8 NO BLOOD ON THIS SWEATER.

9 NOW, I AM NOT ABOUT TO SIT HERE AND TELL YA'LL THAT
10 MS. ANTONIO DID NOT GET ASSAULTED BECAUSE SHE DID. THE
11 PROOF IS THERE, SHE DID. BUY MY CLIENT, MR. HAYWARD DID
12 NOT DO IT. CAN SHE BE MISTAKEN IN HER IDENTIFICATION,
13 YES. WHEN YOU HEARD THE POLICE OFFICERS UP HERE THE
14 DESCRIPTION, IT WAS A BLACK MALE WITH A DARK SWEATER. OR
15 MR. COWART, IT WAS A BLACK MALE WITH A BLACK LONG SLEEVE
16 SHIRT. NOW, MS. ANTONIO, IT IS A DARK SWEATER. WHEN SHE
17 CAME HERE AND TESTIFIED THAT IS WHEN THE LETTERS CAME UP
18 WITH THE WRITING ON THEM. WHAT ABOUT THE BIG DOG IN THE
19 MIDDLE, THAT HAS NEVER BEEN MENTIONED, THAT IS WHAT IS ON
20 THIS SWEATER. THE DESCRIPTIONS THAT WERE GIVEN TO ALL OF
21 THE POLICE OFFICERS WAS A BLUE SWEATER. NOTHING ABOUT
22 GRAY, NOTHING ABOUT WHITE, NOTHING ABOUT LETTERS. AND
23 THERE IS NOTHING ABOUT THE DOG ON THERE. HOW COULD SHE BE
24 MISTAKEN ON THE IDENTIFICATION. WELL, I THINK THIS HORSE
25 HAS BEEN BEATEN TO DEATH AS WELL. CLEARLY THE DESCRIPTION

1 EARLY ON WAS NO MUSTACHE, THIS IS THE PHOTO LINEUP THAT
2 THEY SHOWED HER. AND IT IS NOT BLACK AND WHITE. AFRICAN
3 AMERICAN JUST AS WELL AS CAUCASIAN COMES IN DIFFERENT SKIN
4 TONES. I AM WAY MORE DARKER THAN MS. MOBLEY OVER THERE.
5 THESE ARE JUST AN ARRAY OF THE DIFFERENT TYPES OF SKIN
6 TONE. AND THEY WANT HER TO LOOK AT THIS PICTURE, THESE
7 PICTURES TO DETERMINE WHY DIDN'T THEY GIVE THEM TO HER IN
8 COLOR, WOULDN'T THAT HAVE MADE MORE SENSE. COULDN'T SHE
9 SAY HE WAS A BLACK MALE WITH DARK SKIN, WOULDN'T IT OF
10 BEEN BETTER IF YOU COULD SEE THOSE PICTURES IN COLOR. NOT
11 TO MENTION THE FACT THAT THERE IS TWO PEOPLE IN HERE WITH
12 MUSTACHES THAT YOU CAN ALREADY EXCLUDE BECAUSE SHE CLEARLY
13 SAID THAT SHE DIDN'T HAVE ONE. AND THEN WHAT DID SHE SAY,
14 I CAN'T REALLY TELL IF THERE ARE SHADOWS OR NOT. AND THIS
15 IS WHAT SHE IS PICKING HIM OUT OF. NOW, WHAT THEY
16 BROUGHT, LADIES AND GENTLEMEN, WHAT THEY HAVE DONE IN THIS
17 TRIAL IS THEY HAVE BROUGHT YOU WITNESS AFTER WITNESS AFTER
18 WITNESS AFTER WITNESS. ONLY ONE, MS. ANTONIO, CAN TALK
19 ABOUT WHAT HAPPENED AT THAT TIME. MR. COWART CAN'T, HE
20 CAN IDENTIFY, I GUESS THE PERSON THAT WAS ON THE STREET.
21 BUT EVEN THAT IDENTIFICATION, LADIES AND GENTLEMEN, HE
22 GETS A CALL. HE TESTIFIES TO THIS, HE GETS A CALL FROM
23 THE INVESTIGATOR THAT SAYS, WE HAVE GOT SOMEBODY IN
24 CUSTODY, WE WANT YOU TO COME IDENTIFY HIM. SO, HE DRIVES
25 DOWN THERE, MR. HAYWARD IS HANDCUFFED UP AGAINST THE CAR,

1 POLICE OFFICERS ALL OVER THE PLACE, IF I GOT THAT CALL I
2 WOULD SAY IT WAS HIM, HE IS THE ONLY ONE IN CUSTODY. AND
3 WHAT MAKES THIS SO INTERESTING, WHAT MAKES IT SO
4 INCREDIBLY INTERESTING IS LIEUTENANT TYLER'S TESTIMONY.
5 HE IS THE ONE THAT WAS DEALING WITH THE OTHER SALESMAN
6 THAT DAY, HE TOLD YOU THAT THERE WERE SOME YOUNG BLACK
7 MALES. WE KNOW THAT THERE WERE OTHER YOUNG BLACK MALES IN
8 THAT AREA SELLING CLEANING PRODUCTS AND THAT SOMEONE HAD A
9 BLUE SWEATER, HOW DO WE KNOW THAT, BECAUSE THE VAN THAT
10 THE COPS GET IN AND THAT THE SALES PEOPLE HAVE BEEN IN AND
11 OUT OF HAS A BLUE SWEATER IN IT. LIEUTENANT TYLER PUTS IT
12 ON TO DISGUISE HIMSELF AS A POLICE OFFICER. WOULD IT BE
13 TOO HARD TO ASK TO TAKE THE BLACK MALE SALESMAN WHO ARE IN
14 THE AREA, PUT THEM IN A LINEUP WITH MR. HAYWARD AND THEN
15 SEE IF HE CAN BE IDENTIFIED. IS THAT TOO MUCH TO ASK.
16 YOUR WITNESSES, MR. COWART DIDN'T SEE WHAT HAPPENED IN THE
17 HOUSE, MS. WRIGHT DIDN'T SEE WHAT HAPPENED IN THE HOUSE,
18 THE MCMAHON'S SAW A BLACK MALE WITH DARK CLOTHES.
19 COULDN'T SAY IT WAS MR. HAYWARD, IT WAS A BLACK MALE WITH
20 DARK CLOTHES.

21 LET'S GO BACK TO THE PHYSICAL EVIDENCE FOR A BRIEF
22 MINUTE. I DID MAKE A BIG DEAL ABOUT THEY ARE NOT TESTING
23 THE GUN AND THE BAG THAT THE GUN WAS FOUND IN. WHY IS
24 THAT IMPORTANT, I THINK IT IS IMPORTANT BECAUSE THEY MIGHT
25 OF FOUND A PRINT THAT WAS ALSO FOUND IN THE HOUSE. WE

1 WON'T KNOW BECAUSE THEY NEVER DID IT.

2 NOW, WHY WOULD MR. HAYWARD MAKE ANY POSSIBLE
3 INCRIMINATING STATEMENT. WELL, HE IS IN THE NEIGHBORHOOD
4 WORKING, HE IS WALKING BACK TO HIS VAN TO GET IN THE VAN,
5 SOMEONE GRABS HIM FROM ONE SIDE AS HE IS GETTING INTO THE
6 CAR, GRABS HIM FROM THE OTHER, THEY THROW HIM DOWN ON THE
7 GROUND, THEY HANDCUFF HIM, THEY THEN PUT HIM OVER A CAR,
8 THEY ARE TELLING HIM, HIM HE THINKS, I AM NOT INVOLVED.
9 THEY SEARCH HIM AND THEY FOUND A GUN. HE SAYS, I BOUGHT
10 IT FROM A GUY ON THE STREET, THEY ARE NOT LISTENING TO
11 HIM, THEY DON'T BELIEVE HIM. THEY THEN HAUL HIM DOWN TO
12 HEADQUARTERS, THEY TAKE HIM BACK OUT AND THEY START
13 TALKING TO HIM. AGAIN, WHAT DOES HE SAY, I AM NOT
14 INVOLVED, I BOUGHT THE GUN FROM SOMEBODY ON THE STREET.
15 THEY DON'T WANT TO HEAR THAT, THEY WANT TO HEAR HIM SAY
16 THAT HE DID IT, HE WON'T DO IT, HE DIDN'T DO IT AND HE
17 GIVES UP. BY THIS TIME THEY TOLD HIM HE HAS GOT BLOOD ON
18 HIS SHOES, HOW IS HE GOING TO EXPLAIN THAT, WE HAVE THE
19 CLOTHES. SO, YES, WHEN THEY TAKE HIM OUT AND TELL HIM
20 WHAT HE IS CHARGED WITH HE SAYS, YOU GOT WHAT YOU NEED AND
21 I AM NOT GOING TO SAY ANYTHING ELSE, THEY ARE NOT
22 LISTENING TO HIM. THE OFFICER TOLD YOU THAT, SAID, ONCE I
23 KNEW HE WASN'T GOING TO TELL ME THE TRUTH AS HE THOUGHT IT
24 WAS I DIDN'T NEED TO GET A STATEMENT FROM HIM. AS A
25 MATTER OF FACT, I DIDN'T EVEN NEED TO GO OVER THE MIRANDA

1 RIGHTS WITH HIM, THAT PIECE OF PAPER. I JUST WANT YA'LL TO
2 REMEMBER THAT THROUGH THIS WHOLE TRIAL, ALL THE WITNESSES
3 THAT YOU HAVE HEARD OF, I THINK YOU HAVE HEARD A LOT OF, I
4 DON'T RECALL, I DON'T REMEMBER, NO, IT IS NOT IN MY
5 REPORT. AND THE REASON THE REPORT IS SO IMPORTANT IS
6 BECAUSE, LADIES AND GENTLEMEN, THESE OFFICERS GO OUT
7 THERE, THEY GO TO THE SCENE, IT IS ALMOST TWO YEARS LATER
8 AND THEY HAVE BEEN INVESTIGATING NUMEROUS BURGLARIES,
9 NUMEROUS OTHER ASSAULTS. HOW CAN THEY SPECIFICALLY
10 REMEMBER. THAT IS WHY IT IS IMPORTANT TO PUT IT IN THERE
11 AND THROUGHOUT THIS TESTIMONY, THROUGHOUT THIS TRIAL THAT
12 YOU HAVE HEARD THROUGH TESTIMONY, WELL, I DON'T RECALL
13 THAT, WELL, I REMEMBER IT FROM MEMORY. AND THE PART THAT
14 MAKES THE LEAST SENSE TO ME AND I ASK YA'LL TO THINK ABOUT
15 THIS AS WELL. THEY GET UP HERE AND THEY SAY MR. HAYWARD
16 IS TRANSIENT, HE MOVES FROM PLACE TO PLACE. IF THAT MAN
17 RIGHT THERE HAD GONE AND ASSAULTED SOMEBODY AND HE CAN GET
18 FROM PLACE TO PLACE WHY WOULD HE STAY IN THE AREA. WHY
19 WOULD THEY GO TO A NEIGHBORHOOD AND HE IS THERE
20 DEMONSTRATING A PRODUCT. WHY WOULDN'T HE LEAVE. WHY, YOU
21 ARE GOING TO TELL ME HE DID ALL THAT, HE ASSAULTED THAT
22 WOMAN AND HE STAYED IN THAT AREA AND STILL SELLING
23 CLEANING PRODUCTS, DOES THAT MAKE SENSE. AND YOU ARE
24 RIGHT, WE DID MAKE A BIG DEAL ABOUT THE SHOES BECAUSE I
25 TELL YOU ONE THING, OFFICER ROE, HE WASN'T THE ONE WHO WAS

1 INVESTIGATING. HE WENT TO THE SCENE FIRST, HE MADE IT
2 VERY CLEAR ABOUT THAT. HE WENT TO THE SCENE FIRST, HE OR
3 INVESTIGATOR BARNES, WHICHEVER YOU BELIEVE, CONFISCATED
4 THE SHOES. AND THIS IS EXACTLY, I REMEMBER THIS, WELL, I
5 PUT THEM IN MY CAR, I AM NOT SURE IF I PUT THEM IN THE
6 TRUNK OR IF I PUT THEM IN THE FLOORBOARD, I DON'T KNOW.
7 IS THERE A POSSIBILITY THAT YET THAT DNA MATERIAL, IF IT
8 IS EVEN BLOOD, GOT ON THAT SHOE IN THAT WAY, YES. THE
9 WHOLE POINT IS WE DON'T KNOW.

10 LADIES AND GENTLEMEN, I AM JUST ASKING YOU TO USE
11 YOUR COMMON SENSE IN THIS CASE AND BELIEVE ME, IF THE
12 STATE HAS THE PHYSICAL EVIDENCE THEY WOULD OF BEEN WAIVING
13 IT UP HERE DURING THIS WHOLE TRIAL. THAT IS WHAT THEY
14 WOULD OF BEEN DOING WITH IT. THEY HAVEN'T, THEY HAVE BEEN
15 PUTTING WITNESS, AFTER WITNESS, AFTER WITNESS WHO CAN'T
16 TESTIFY TO EXACTLY WHAT HAPPENED. PUT UP A WEATHER MAN
17 BUT THEY CANNOT GET AROUND THE FACT THAT THE PHYSICAL
18 EVIDENCE PROVES THAT MR. HAYWARD IS NOT GUILTY. WE ASK
19 YOU TO PAY ATTENTION TO THAT, WE ASK YOU TO LOOK AT
20 EVERYTHING AND WE ASK YOU TO BRING BACK A VERDICT OF NOT
21 GUILTY. THANK YOU.

22 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, WE
23 WILL TAKE ABOUT TEN MINUTES AND THEN I WILL GIVE YOU THE
24 INSTRUCTIONS IN THE LAW, PLEASE DON'T DISCUSS THE CASE AT
25 THIS TIME. STEP BACK TO YOUR JURY ROOM, EVERYONE ELSE

1 STAY SEATED, PLEASE.

2 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

3 THE COURT: WE WILL TAKE TEN MINUTES.

4 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

5 THE COURT: BRING THE JURY IN, PLEASE.

6 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT

7 APPROXIMATELY 11:05)

8 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN, AT
9 THIS TIME IT DOES BECOME MY DUTY TO INSTRUCT YOU OR CHARGE
10 YOU WITH WHAT THE LAW IS THAT APPLIES IN THIS CASE. IN
11 SOME PLACES, IN SOME STATES THE JURY IS GIVEN A COPY OF
12 THE LAW, YOU ARE NOT GOING TO GET A COPY, WE DON'T DO THAT
13 IN SOUTH CAROLINA. WHAT YOU ARE GOING TO DO IS TO SIT AND
14 LISTEN AND THEN IF YOU HAVE QUESTIONS ABOUT THE LAW LATER
15 ON, IN MOST INSTANCES I CAN RESPOND TO QUESTIONS THAT DEAL
16 WITH THE LAW, I CANNOT RESPOND TO ANY QUESTIONS THAT DEAL
17 WITH THE FACTS. THAT IS A DETERMINATION THAT ONLY YOU CAN
18 DECIDE. BUT I JUST DON'T WANT TO START GIVING YOU THESE
19 INSTRUCTIONS AND SOMEBODY MAY NOT PAY CLOSE ATTENTION
20 BECAUSE THEY THINK THEY ARE GOING TO GET A COPY OF IT WHEN
21 THEY GET TO THE JURY ROOM, THAT WILL NOT OCCUR. IT DOES
22 BECOME THE DUTY OF THE COURT UNDER THE CONSTITUTION OF
23 THIS STATE TO CHARGE YOU, WHICH SIMPLY MEANS TO INSTRUCT
24 YOU OF THE LAW THAT APPLIES IN THIS CASE. IT IS YOUR DUTY
25 AS JURORS TO ACCEPT AND APPLY THE LAW AS THE COURT IS NOW

1 GOING TO EXPLAIN IT TO YOU. AND AS JURORS IT IS YOUR
2 EXCLUSIVE DUTY TO DECIDE ALL OF THE ISSUES OF FACTS IN
3 THIS CASE. AND FOR THAT PURPOSE TO DETERMINE THE EFFECT,
4 THE VALUE, THE WEIGHT AND THE TRUTH OF THE EVIDENCE THAT
5 HAS BEEN PRESENTED DURING THE TRIAL FOR BOTH THE STATE OF
6 SOUTH CAROLINA AND THE DEFENDANT, MR. HAYWARD, HAVE A
7 RIGHT TO EXPECT THAT YOU WILL INDIVIDUALLY AND
8 COLLECTIVELY, CONSCIENTIOUSLY CONSIDER AND EVALUATE THE
9 EVIDENCE IN THIS CASE AND APPLY THE LAW OF THE CASE
10 THERETO TO THE END THAT BOTH THE STATE OF SOUTH CAROLINA
11 AND THE DEFENDANT WILL RECEIVE AND OBTAIN A FAIR AND
12 IMPARTIAL TRIAL IN THIS CASE.

13 NOW, I AM GOING TO REVIEW WITH YOU IN JUST A MOMENT
14 THE CHARGES THAT ARE MADE IN THE INDICTMENTS IN THIS CASE.
15 AGAIN, I WOULD INSTRUCT YOU THAT THE INDICTMENTS IN THE
16 CASE ARE NOT EVIDENCE OF CHARGES THAT THEY CONTAIN AND
17 CANNOT BE CONSIDERED BY YOU AS EVIDENCE IN THE CASE. IN
18 THIS CASE THERE ARE FIVE INDICTMENTS THAT YOU ARE GOING TO
19 BE ASKED TO RENDER A VERDICT ON. AND I WILL GO OVER THESE
20 WITH YOU. 05-GS-40-2824, THE STATE VERSUS JERENE HAYWARD,
21 THE CHARGE IS BURGLARY IN THE FIRST DEGREE. IT IS ALLEGED
22 OR CHARGED IN THIS INDICTMENT THAT JERENE HAYWARD DID IN
23 RICHLAND COUNTY ON OR ABOUT APRIL 14TH OF 2004 WILLFULLY
24 AND UNLAWFULLY ENTER THE DWELLING OF JEFFREY CONNELL
25 WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A CRIME

1 THEREIN. AND THE DEFENDANT WAS ARMED WITH A DEADLY WEAPON
2 WHILE THEREIN AND OR CAUSED PHYSICAL INJURY TO A PERSON
3 WHO WAS NOT A PARTICIPANT IN THE CRIME AND OR USED OR
4 THREATENED TO USE A DANGEROUS INSTRUMENT ALL IN VIOLATION
5 OF CODE SECTION 16-11-311 OF THE SOUTH CAROLINA CODE OF
6 LAWS AS AMENDED.

7 THE NEXT INDICTMENT IS 05-GS-40-5073. THE STATE
8 VERSUS JERENE HAYWARD. THE CHARGE IN THIS INDICTMENT IS
9 ASSAULT AND BATTERY WITH INTENT TO KILL. IT IS ALLEGED IN
10 THIS INDICTMENT THAT JERENE HAYWARD DID IN RICHLAND COUNTY
11 ON OR ABOUT APRIL THE 13TH OF 2004 WITH MALICE
12 AFORETHOUGHT COMMIT AN ASSAULT AND BATTERY UPON ONE
13 LOURDES ANTONIO WITH THE INTENT TO KILL THE SAID VICTIM.
14 ALL IN VIOLATION OF SECTION 16-3-620 OF THE SOUTH CAROLINA
15 CODE OF LAWS. THAT IS THE CHARGE THAT IS MADE IN THAT
16 INDICTMENT.

17 THE NEXT INDICTMENT, 05-GS-40-5072, THE STATE VERSUS
18 JERENE HAYWARD. THE CHARGE MADE IN THIS INDICTMENT IS
19 THAT OF KIDNAPPING. IT IS ALLEGED IN THIS INDICTMENT THAT
20 JERENE HAYWARD DID IN RICHLAND COUNTY ON OR ABOUT APRIL
21 13TH OF 2004 UNLAWFULLY, SEIZE, CONFINE, ENVEIGLE, DECOY,
22 KIDNAP, ABDUCT OR CARRY AWAY THE VICTIM, LOURDES ANTONIO
23 BY ANY MEANS WHATSOEVER WITHOUT THE AUTHORITY OF LAW. ALL
24 IN VIOLATION OF SECTION 16-3-910 OF THE SOUTH CAROLINA
25 CODE OF LAWS.

1 THE NEXT INDICTMENT IS 05-GS-40-2825, THE STATE
2 VERSUS JERENE HAYWARD. THE CHARGE IN THIS INDICTMENT IS
3 PETTY LARCENY. IT IS ALLEGED IN THIS INDICTMENT THAT
4 JERENE HAYWARD DID IN RICHLAND COUNTY ON OR ABOUT APRIL
5 13TH OF 2004 FELONIOUSLY TAKE AND CARRY AWAY PROPERTY FROM
6 THE VICTIM, JEFFREY CONNELL. THE VALUE OF LESS THAN
7 \$1,000.00 DOLLARS DESCRIBED AS FOLLOWS: A PISTOL, WITH
8 INTENT TO DEPRIVE THE OWNER PERMANENTLY OF SUCH PROPERTY
9 IN VIOLATION OF SECTION 16-13-30 OF THE SOUTH CAROLINA
10 CODE OF LAWS.

11 AND 05-GS-40-4570, THE STATE VERSUS JERENE HAYWARD,
12 INDICTMENT FOR POSSESSION OF MARIJUANA. IT IS ALLEGED IN
13 THIS INDICTMENT THAT JERENE HAYWARD DID IN RICHLAND COUNTY
14 ON OR ABOUT APRIL THE 13TH OF 2004 POSSESS OR ATTEMPT TO
15 POSSESS A QUANTITY OF MARIJUANA, A CONTROLLED SUBSTANCE
16 UNDER THE PROVISIONS OF SECTION 44-53-370 SECTION OF THE
17 SOUTH CAROLINA CODE OF LAWS. THOSE ARE THE CHARGES THAT
18 ARE MADE IN THE INDICTMENT. I DO NEED TO EXPLAIN TO YOU
19 THAT WHEN THE CASE BEGIN THERE WAS A SIXTH INDICTMENT,
20 THAT INDICTMENT HAS BEEN DISPOSED OF BY THE COURT. YOU
21 DON'T NEED TO BE CONCERNED WITH THAT INDICTMENT.

22 OF COURSE, THROUGHOUT THESE INSTRUCTIONS WHEN I USE
23 THE WORD, DEFENDANT, I AM REFERRING TO JERENE HAYWARD.
24 AND TO THE CHARGES THAT ARE MADE IN THESE INDICTMENTS THE
25 DEFENDANT, MR. HAYWARD, HAS ENTERED A PLEA OF NOT GUILTY.

1 THIS PLEA OF NOT GUILTY BY THE DEFENDANT PLACES THE BURDEN
2 OF PROOF ON THE STATE TO PROVE THE GUILT OF THE DEFENDANT
3 BEYOND A REASONABLE DOUBT BEFORE YOU, THE JURY, CAN FIND
4 THE DEFENDANT GUILTY. THE DEFENDANT IS PRESUMED UNDER THE
5 LAW INNOCENT OF THE CHARGES THAT IS MADE IN THESE
6 INDICTMENTS. IT IS A CARDINAL AND A FUNDAMENTAL RULE OF
7 THE LAW OF EVIDENCE OF THIS STATE THAT A DEFENDANT
8 REGARDLESS OF THE CHARGE OR CHARGES AGAINST HIM WILL
9 ALWAYS BE PRESUMED INNOCENT OF THE CRIMES FOR WHICH HE HAS
10 BEEN INDICTED UNLESS AND UNTIL THE GUILT OF THE DEFENDANT
11 HAS BEEN PROVEN BY EVIDENCE THAT SATISFIES YOU, THE JURY,
12 OF HIS GUILT BEYOND A REASONABLE DOUBT. THIS PRESUMPTION
13 OF INNOCENCE IS NOT A MERE LEGAL THEORY, IT IS NOT A MERE
14 LEGAL PHRASE BUT THE PRESUMPTION OF INNOCENCE IS A
15 SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT INCLUDING MR.
16 HAYWARD IS ENTITLED. THE SUPREME COURT OF THIS STATE HAS
17 DECLARED THAT THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE
18 OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE
19 DEFENDANT. AND IT REMAINS WITH THE DEFENDANT AND ASSIGNED
20 TO THE DEFENDANT THAT CLASS, THE INNOCENT, UNTIL THAT
21 PRESUMPTIVE ROBE OF RIGHTEOUSNESS HAS BEEN STRIPPED FROM
22 THE DEFENDANTS PERSON BY EVIDENCE SATISFYING YOU, THE
23 JURY, OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
24 DOUBT. THE PRESUMPTION OF INNOCENCE ACCOMPANIES THE
25 DEFENDANT FROM THE TIME OF HIS ARRAIGNMENT, FROM THE TIME

1 OF HIS APPEARANCE IN THIS COURT AND THROUGHOUT EVERY STAGE
2 AT THE TRIAL AND CONTINUES WITH THE DEFENDANT EVEN AFTER
3 YOU HAVE RETIRED INTO THE JURY ROOM TO CONSIDER YOUR
4 VERDICT IN THIS CASE. THE PRESUMPTION OF INNOCENCE
5 CONTINUES TO EXIST TO THE BENEFIT OF THIS DEFENDANT UNTIL
6 YOU, THE JURY, REACH THE CONCLUSION THAT THE STATE HAS
7 PROVEN THE GUILT OF THIS DEFENDANT BEYOND A REASONABLE
8 DOUBT.

9 I WOULD INSTRUCT YOU, MR. FOREMAN AND LADIES AND
10 GENTLEMEN, THAT THE FACT THAT A DEFENDANT IN THE TRIAL OF
11 A CRIMINAL CASE DOES NOT TESTIFY IN HIS OWN BEHALF IS NOT
12 A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR
13 DELIBERATION AND IN YOUR CONSIDERATION ON THE QUESTION OF
14 THE GUILT OR THE INNOCENCE OF THE ACCUSED. IT MUST NOT BE
15 CONSIDERED BY YOU IN ANY MANNER AGAINST THE DEFENDANT OR
16 MITIGATE AGAINST HIM IN ANY RESPECT. A DEFENDANT HAS THE
17 CONSTITUTIONAL RIGHT TO REMAIN SILENT AND THE ASSERTION OF
18 THAT CONSTITUTIONAL RIGHT CANNOT AND MUST NOT BE
19 CONSIDERED BY YOU IN YOUR DELIBERATIONS. UNDER YOUR OATH
20 YOU ARE TO REACH NO INFERENCE AND DRAW NO CONCLUSION FROM
21 THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY
22 HIMSELF. THE FACT THAT THE DEFENDANT DOES NOT TESTIFY
23 SHOULD NOT BE EVEN DISCUSSED IN THE JURY ROOM. THE BURDEN
24 OF PROOF, AS I STATED TO YOU IS UPON THE STATE. IT IS NOT
25 INCUMBENT UPON AN ACCUSED TO PROVE HIS INNOCENCE. THE

1 BURDEN OF PROOF REMAINS UPON THE STATE TO PROVE GUILT
2 BEYOND A REASONABLE DOUBT. AND THE FACT THAT A DEFENDANT
3 DOES NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU
4 IN DETERMINING THE GUILT OR THE INNOCENCE OF THE
5 DEFENDANT.

6 THE STATE IS NOT REQUIRED TO PROVE THE GUILT OF THE
7 DEFENDANT BEYOND ALL DOUBT OR BEYOND EVERY DOUBT BUT
8 BEYOND A REASONABLE DOUBT. WHEN WE SAY THAT PROOF MUST BE
9 ESTABLISHED BEYOND A REASONABLE DOUBT THOSE WORDS SHOULD
10 BE GIVEN THEIR PLAIN AND ORDINARY MEANING. A REASONABLE
11 DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE
12 PERSON TO HESITATE TO ACT. A REASONABLE DOUBT CAN ARISE
13 FROM THE EVIDENCE PRESENTED IN THE CASE OR THE LACK OF
14 EVIDENCE IN THE CASE. TO THINK THAT A DEFENDANT IS
15 PROBABLY GUILTY OR THAT THE CIRCUMSTANCES ARE SUSPICIOUS
16 IS NOT ENOUGH. PROOF BEYOND A REASONABLE DOUBT IS PROOF
17 THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANTS GUILT.
18 THERE ARE FEW THINGS IN THIS WORLD THAT WE KNOW WITH
19 ABSOLUTE CERTAINTY AND IN CRIMINAL CASES THE LAW DOES NOT
20 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF
21 BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY
22 CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME OR
23 CRIMES CHARGED YOU MUST FIND HIM GUILTY. IF ON THE OTHER
24 HAND YOU THINK THAT THERE IS A REAL POSSIBILITY THAT HE IS
25 NOT GUILTY YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND

1 FIND HIM NOT GUILTY. YOU ALONE MUST MAKE THE
2 DETERMINATION OF WHETHER OR NOT REASONABLE DOUBT EXIST AS
3 TO THE GUILT OF THIS DEFENDANT. I WILL INSTRUCT YOU THAT
4 THE DEFENDANT IS ENTITLED TO EVERY REASONABLE DOUBT
5 ARISING IN THE WHOLE CASE. SO UPON ANY ISSUE OF FACT THAT
6 IS ESSENTIAL TO A CONVICTION AND A VERDIT OF GUILTY, IF
7 YOU HAVE A REASONABLE DOUBT AS TO HOW THAT ISSUE SHOULD BE
8 RESOLVED IT WOULD BE YOUR DUTY TO RESOLVE THAT REASONABLE
9 DOUBT IN FAVOR OF THE DEFENDANT. THE DEFENDANT, MR.
10 FOREMAN AND LADIES AND GENTLEMEN, IS NOT REQUIRED TO PROVE
11 HIS INNOCENCE BUT THE STATE IS REQUIRED UNDER THE LAW TO
12 PROVE EVERY ESSENTIAL ELEMENT OF THE OFFENSES CHARGED
13 AGAINST HIM BY EVIDENCE THAT SATISFIES YOU, THE JURY, OF
14 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT
15 BEFORE YOU CAN CONVICT THE DEFENDANT AND FIND HIM GUILTY.
16 IF THEN UPON THE WHOLE CASE YOU HAVE A REASONABLE DOUBT AS
17 TO THE GUILT OR THE INNOCENCE OF THIS DEFENDANT HE IS
18 ENTITLED TO THAT REASONABLE DOUBT AND WOULD BE ENTITLED TO
19 AN ACQUITTAL AND A VERDICT OF NOT GUILTY. ON THE OTHER
20 HAND, IF UPON THE WHOLE CASE YOU FIND THAT THE STATE HAS
21 PROVEN BY EVIDENCE THAT SATISFIES YOU OF THE GUILT OF THIS
22 DEFENDANT BEYOND A REASONABLE DOUBT THEN IN THAT
23 CIRCUMSTANCE IT WOULD EQUALLY BE YOUR DUTY TO CONVICT THE
24 DEFENDANT AND FIND HIM GUILTY. IF YOU FIND THE DEFENDANT
25 GUILTY BUT YOU HAVE A REASONABLE DOUBT AS TO WHETHER THE

1 DEFENDANT IS GUILTY OF A GREATER CRIME CHARGED OR A LESSOR
2 CRIME CHARGED THEN YOU WOULD RESOLVE THAT REASONABLE DOUBT
3 IN FAVOR OF THE DEFENDANT AND WRITE A VERDICT OF GUILTY
4 ONLY AS TO THE LESSOR CHARGE. BUT, OF COURSE, YOU COULD
5 NOT WRITE A VERDICT OF GUILTY TO ANY CHARGE UNLESS AS TO
6 THAT PARTICULAR CHARGE YOU FIND THAT ALL OF THE ELEMENTS
7 OF THE CHARGE HAVE BEEN PROVEN BY THE STATE BEYOND A
8 REASONABLE DOUBT.

9 I WOULD AGAIN INSTRUCT YOU THAT THE INDICTMENTS IN
10 THIS CASE IS NOT EVIDENCE IN THE CASE AND CANNOT BE
11 CONSIDERED BY YOU AS EVIDENCE OF THIS CASE. AGAIN, THE
12 INDICTMENTS ARE SIMPLY THE FORMAL WRITTEN INSTRUMENTS THAT
13 CONTAINS THE CHARGE OR CHARGES MADE AGAINST A DEFENDANT
14 AND THEY SERVE AS THE FORMAL DOCUMENT BY WHICH THE CASE
15 HAS BEEN PROCESSED OR BROUGHT INTO THE COURT.

16 NOW, DURING THE TRIAL, MR. FOREMAN AND LADIES AND
17 GENTLEMEN, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS A
18 TRIAL JUDGE IT IS MY RESPONSIBILITY TO PRESIDE OVER THE
19 TRIAL OF THE CASE, I ALSO HAVE THE DUTY TO RULE UPON OR
20 PASS UPON THE ADMISSIBILITY OF THE EVIDENCE THAT WAS
21 OFFERED DURING THE TRIAL. YOU ARE TO CONSIDER ONLY THE
22 COMPETENT EVIDENCE BEFORE YOU AND YOU ARE TO DISREGARD AND
23 DISABUSE FROM YOUR MIND ANY TESTIMONY ORDERED STRICKEN
24 FROM THE RECORD IN THIS CASE DURING THE PROGRESS OF THE
25 TRIAL IF THERE WAS ANY. AND YOU ARE TO CONSIDER ONLY THE

1 TESTIMONY THAT HAS BEEN PRESENTED FROM THE WITNESS STAND
2 ALONG WITH ANY EXHIBITS THAT HAVE BEEN MADE A PART OF THE
3 RECORD IN THIS CASE. I DO HAVE THE ADDITIONAL DUTY TO
4 CHARGE YOU THE LAW THAT APPLIES IN THIS CASE. AND AS A
5 PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THE
6 CASE. IT IS YOUR DUTY UNDER THE OATH THAT YOU TOOK WHEN
7 THIS CASE BEGIN TO ACCEPT AND APPLY THE LAW AS IT IS NOW
8 STATED TO YOU. IF YOU HAD A PRECONCEIVED IDEA AS TO WHAT
9 THE LAW IS OR WHAT YOU THOUGHT THE LAW OUGHT TO BE AND
10 THAT PRECONCEIVED IDEA DOES NOT AGREE WITH WHAT I AM NOW
11 EXPLAINING TO YOU YOU ARE OBLIGATED UNDER YOUR OATH TO
12 ABANDON THAT PRECONCEPTION BECAUSE YOU HAVE SWORN TO
13 ACCEPT AND APPLY THE LAW AS THE COURT EXPLAINS TO YOU BY
14 THE COURT.

15 IN EVERY CASE THAT IS TRIED IN THIS COURT BEFORE A
16 JURY, THE JURY BECOMES THE SOLE AND THE EXCLUSIVE JUDGE OF
17 THE FACTS IN A CASE AND YOU, THE JURY, ARE THE JUDGE OF
18 THE FACTS OF THIS CASE. THE COURT IS THE JUDGE OF THE LAW
19 OF THE CASE. THE CONSTITUTION OF THIS STATE DECLARES THAT
20 A TRIAL JUDGE SHALL NOT INTIMATE, STATE, COMMENT UPON OR
21 MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A
22 CASE. AND SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE
23 FACTS OF THIS CASE YOU ARE NOT TO INFER FROM ANYTHING THAT
24 I HAVE SAID DURING THE PROGRESS OF THE TRIAL AND RULING
25 UPON THE ADMISSIBILITY OF EVIDENCE OR OTHERWISE OR

1 ANYTHING THAT I SAY NOW DURING THESE INSTRUCTIONS TO YOU
2 THAT I HAVE ANY OPINION ABOUT THE FACTS OF THIS CASE. THE
3 LAW DOES NOT PERMIT ME TO HAVE AN OPINION ABOUT THE FACTS
4 OF THE CASE. THIS IS A MATTER SOLELY FOR YOU, THE JURY,
5 TO DETERMINE. AS JURORS THEN IT IS YOUR DUTY AS I HAVE
6 INSTRUCTED YOU TO DETERMINE THE EFFECT, THE VALUE, THE
7 WEIGHT AND THE TRUTH OF THE EVIDENCE PRESENTED DURING THE
8 TRIAL.

9 BY NECESSITY YOU MUST ASSESS THE CREDIBILITY OF THE
10 WITNESSES WHO HAVE TESTIFIED IN THE CASE. CREDIBILITY IS
11 SIMPLY A LEGALISTIC TERM THAT MEANS BELIEVABILITY. IT
12 BECOMES YOUR DUTY AS JURORS TO ANALYZE AND EVALUATE THE
13 EVIDENCE AND DETERMINE THAT EVIDENCE WHICH CONVINCES YOU
14 OF ITS TRUTH. I WOULD INSTRUCT YOU THAT IN DETERMINING
15 THE QUESTION OF THE CREDIBILITY OR BELIEVABILITY OF
16 WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE
17 ONE WITNESS AS AGAINST SEVERAL OR SEVERAL WITNESSES AS
18 AGAINST ONE. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A
19 WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF
20 THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A
21 WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A
22 WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER ANY
23 WITNESS HAS EXHIBITED TO YOU ANY INTEREST, ANY MOTIVE, ANY
24 BIASED, ANY PREJUDICE IN THE CASE. YOU MAY CONSIDER THE
25 DEMEANOR OF A WITNESS, THAT IS THE APPEARANCE OF A WITNESS

1 FROM THE WITNESS STAND. AND YOU MAY OF COURSE CONSIDER
2 THE OPPORTUNITY FOR KNOWLEDGE CONCERNING THOSE THINGS
3 ABOUT WHICH A WITNESS HAS TESTIFIED. YOUR OBJECTIVE, MR.
4 FOREMAN AND LADIES AND GENTLEMEN, IS TO SEEK THE TRUTH
5 REGARDLESS OF ITS SOURCE AND IN DOING SO AND EXERCISING
6 YOUR MENTAL PROCESSES AND DETERMINING WHAT YOU CONSIDER TO
7 BE TRUE THE LAW SIMPLY REQUIRES THAT YOU EXERCISE YOUR
8 GOOD JUDGMENT AND YOUR COMMON SENSE, YOUR SENSE OF LOGIC
9 AND REASON AND YOUR EXPERIENCES IN LIFE. AND YOU THEN
10 APPLY THESE ATTRIBUTES OF ABILITY TO THE EVIDENCE AND
11 DETERMINE WHAT YOU, THE JURY, CONSIDER TO BE TRUTHFUL
12 EVIDENCE. AND TO THIS STATE OF FACTS AS DETERMINED BY
13 YOU, THE JURY, YOU THEN TAKE AND APPLY THE LAW AS I NOW
14 STATE IT TO YOU AND THUS ARRIVE AT A TRUE VERDICT IN THE
15 CASE.

16 THERE ARE TWO TYPES OF EVIDENCE THAT ARE GENERALLY
17 PRESENTED DURING A TRIAL. DIRECT EVIDENCE AND
18 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY
19 OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE
20 OF THE FACTS SUCH AS AN EYEWITNESS. CIRCUMSTANTIAL
21 EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES
22 INDICATING THE EXISTENCE OF A FACT. THE LAW MAKES
23 ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR THE VALUE
24 TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE
25 NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF

1 CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU
2 SHOULD WEIGH ALL THE EVIDENCE IN THE CASE, AFTER WEIGHING
3 ALL OF THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT
4 OF THE DEFENDANT BEYOND A REASONABLE DOUBT THEN YOU MUST
5 FIND THE DEFENDANT NOT GUILTY.

6 THERE HAS BEEN IDENTIFICATION EVIDENCE IN THIS CASE.
7 AND APPRAISING THE IDENTIFICATION TESTIMONY OF A WITNESS
8 YOU SHOULD CONSIDER THE FOLLOWING: ARE YOU CONVINCED THAT
9 THE WITNESS HAD THE CAPACITY AND AN ADEQUATE OPPORTUNITY
10 TO OBSERVE THE OFFENDER. WHETHER THE WITNESS HAD AN
11 ADEQUATE OPPORTUNITY TO OBSERVE THE OFFENDER AT THE TIME
12 OF THE OFFENSE WILL BE AFFECTED BY SUCH MATTERS AS HOW
13 LONG OR SHORT OF TIME WAS AVAILABLE. THE CIRCUMSTANCES
14 UNDER WHICH THE ACCUSED IS PRESENTED FOR IDENTIFICATION,
15 HOW FAR OR HOW CLOSE THE WITNESS WAS, HOW GOOD THE
16 LIGHTING CONDITIONS WERE, WHETHER THE WITNESS HAD AN
17 OCCASION TO SEE OR KNOW THE PERSON IN THE PAST. WHAT WAS
18 THE STRENGTH OF THE IDENTIFICATION OR WHAT WAS THE LENGTH
19 OF TIME BETWEEN THE CRIME AND ANY LATER IDENTIFICATION. I
20 WILL AGAIN EMPHASIZE THAT THE BURDEN OF PROOF IS ON THE
21 STATE TO PROVE EVERY ELEMENT OF THE OFFENSES CHARGED AND
22 THIS SPECIFICALLY INCLUDES THE BURDEN OF PROOF BEYOND A
23 REASONABLE DOUBT, THE IDENTITY OF THE DEFENDANT AS A
24 PERPETRATOR OF THE OFFENSES FOR WHICH HE STANDS CHARGED.
25 IF AFTER EXAMINING THE TESTIMONY IF YOU HAVE A REASONABLE

1 DOUBT AS TO THE ACCURACY OF THE IDENTIFICATION YOU MUST
2 FIND THE DEFENDANT NOT GUILTY.

3 I WOULD FURTHER CHARGE YOU THAT EVIDENCE IN THIS
4 CASE, AN ALLEGED STATEMENT OR STATEMENTS. WHILE THE COURT
5 DETERMINES THE ADMISSIBILITY OF EVIDENCE YOU, THE JURY,
6 MUST DETERMINE THE EXISTENCE, THE VOLUNTARINESS AND THE
7 WEIGHT OF ANY ALLEGED STATEMENT MADE BY THE DEFENDANT.

8 YOU MUST MAKE THE ULTIMATE DETERMINATION OF WHETHER OR NOT
9 THE DEFENDANT IN FACT MADE THE ALLEGED STATEMENT. IF YOU
10 DETERMINE THAT THE DEFENDANT MADE THE STATEMENT YOU MUST
11 THEN DETERMINE WHETHER THE STATEMENT WAS MADE VOLUNTARILY.

12 FINALLY, YOU WILL DECIDE WHAT WEIGHT, IF ANY, SHOULD BE
13 GIVEN TO ANY ALLEGED STATEMENT. IF YOU DETERMINE WHETHER
14 THE ALLEGED STATEMENT AS A PRODUCT OF AN ESSENTIALLY FREE
15 AND UNCONSTRAINED CHOICE BY ITS MAKER THE STATE MUST PROVE
16 THE VOLUNTARINESS OF THE STATEMENT BEYOND A REASONABLE
17 DOUBT. IF YOU DETERMINE BEYOND A REASONABLE DOUBT WHAT
18 THE STATEMENTS WAS GIVEN FREELY AND VOLUNTARILY THEN YOU
19 MAY GIVE THE STATEMENT SUCH FURTHER CONSIDERATION AS YOU
20 DEEM PROPER. IF YOU DETERMINE THE ALLEGED STATEMENT WAS
21 NOT FREELY AND VOLUNTARILY WILLED EXPRESSION OF THE
22 DEFENDANT THEN YOU SHOULD NOT CONSIDER THE STATEMENT AS
23 EVIDENCE. IN DETERMINING WHETHER A DEFENDANT'S WILL WAS
24 OVERCOME IN OBTAINING THE STATEMENT THE LAW REQUIRES YOU
25 TO CONSIDER WHAT IS KNOWN AS THE TOTALITY OF THE

1 CIRCUMSTANCES. YOU SHOULD CONSIDER BOTH THE
2 CHARACTERISTICS OF THE DEFENDANT AND THE CIRCUMSTANCES
3 SURROUNDING ANY QUESTIONING OR INTERROGATION. SOME OF THE
4 FACTORS THAT THE LAW SAYS THAT YOU MAY CONSIDER ARE THE
5 AGE OF THE DEFENDANT, THE DEFENDANTS EDUCATIONAL
6 BACKGROUND, THE DEFENDANTS MENTAL ABILITY OR CAPACITY AND
7 THE DEFENDANTS BACKGROUND ALONG WITH ALL OF THE OTHER
8 FACTS AND CIRCUMSTANCES SURROUNDING THE MAKING OF THE
9 ALLEGED STATEMENT. IN DETERMINING THE VOLUNTARINESS OF
10 ANY ALLEGED STATEMENT YOU SHOULD CONSIDER WHETHER THE
11 DEFENDANT WAS ADVISED OF AND UNDERSTOOD HIS CONSTITUTIONAL
12 RIGHTS. THE LAW REQUIRES THAT BEFORE ANY INTERROGATION OR
13 QUESTIONING OF A PERSON IN CUSTODY MAY BEGIN, THAT LAW
14 ENFORCEMENT MUST ADVISE THE ACCUSED OF HIS MIRANDA RIGHTS.
15 THIS MEANS THAT THE AUTHORITIES MUST ADVISE THE ACCUSED
16 THAT THE ACCUSED HAS THE RIGHT TO REMAIN SILENT. THAT ANY
17 STATEMENT COULD BE USED AGAINST THE ACCUSED IN A COURT OF
18 LAW. THAT THE ACCUSED HAS THE RIGHT TO HAVE A LAWYER
19 PRESENT AND THAT IF THE ACCUSED CANNOT AFFORD A LAWYER
20 THEN A LAWYER WOULD BE APPOINTED TO REPRESENT HIM WITHOUT
21 ANY COST AND THAT THE ACCUSED CAN STOP MAKING A STATEMENT
22 AT ANY TIME. OTHER FACTORS THAT MAY BE CONSIDERED ARE THE
23 PLACE AND THE LENGTH OF ANY DETENTION AND THE NATURE OF
24 THE QUESTIONING. YOU SHOULD SCRUTINIZE ALL OF THE
25 SURROUNDING CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO AN

1 ALLEGED STATEMENT. YOU MUST BE SATISFIED BEYOND A
2 REASONABLE DOUBT THAT THE STATEMENT WAS MADE BY THE
3 DEFENDANT UNINFLUENCED BY PROMISE OR REWARD OR THREAT OR
4 HARM. IF YOU FIND THAT BEYOND A REASONABLE DOUBT THAT ANY
5 ALLEGED STATEMENT WAS GIVEN VOLUNTARILY THEN YOU MUST
6 DECIDE WHAT WEIGHT, IF ANY, SHOULD BE GIVEN TO THE
7 STATEMENT. IF YOU FIND THAT THE STATEMENT WAS NOT
8 VOLUNTARY THEN IN THAT EVENT YOU MUST NOT CONSIDER THE
9 STATEMENT AS EVIDENCE FOR ANY PURPOSE.

10 MR. FOREMAN AND LADIES AND GENTLEMEN, DURING THE
11 COURSE OF THIS TRIAL WE HAVE HAD WHAT WE CALL EXPERT
12 TESTIMONY AND I GAVE YOU SOME BRIEF INSTRUCTIONS ABOUT
13 THAT DURING THAT TIME. IN CONNECTION WITH EXPERT
14 TESTIMONY I WILL TELL YOU THAT ORDINARILY WITNESSES CAN
15 NOT TESTIFY AS TO THEIR OPINION OF A PARTICULAR MATTER.
16 AN EXCEPTION TO THIS RULE IS WHEN A WITNESS QUALIFIES AS
17 AN EXPERT. IN THAT EVENT THAT WITNESS IS ALLOWED TO GIVE
18 HIS OR HER OPINION. NOW, AS FAR AS OPINION EVIDENCE IS
19 CONCERNED, THAT IS TO SAY, THE EFFECT OF ANY EXPERT THAT
20 IS A MATTER OF OPINION, YOU ARE NOT TO PLACE ANY OPINIONS
21 AS ABOVE THE IDEA OF YOUR OWN OPINIONS ON THE SUBJECT.
22 YOU ARE TO CONSIDER THE OPINIONS ALONG WITH ALL THE OTHER
23 EVIDENCE IN THE CASE IN FORMING YOUR OWN CONCLUSIONS.
24 AS I HAVE INDICATED TO YOU THERE ARE FIVE INDICTMENTS
25 IN THIS CASE. EACH INDICTMENT CONTAINS A SEPARATE AND

1 DISTINCT OFFENSE, YOU MUST FIND THE CHARGE IN EACH
2 INDICTMENT SEPARATELY ON THE EVIDENCE AND THE LAW THAT
3 APPLIES TO IT UNINFLUENCED BY YOUR DECISION AS TO ANY
4 OTHER INDICTMENT. THE DEFENDANT MAY BE CONVICTED OR
5 ACQUITTED ON ANY OR ALL OF THE OFFENSES CHARGED. YOU WILL
6 BE ASKED TO WRITE A SEPARATE VERDICT AS TO EACH INDICTMENT
7 AND I WILL GO OVER THAT WITH YOU AT THE CONCLUSION OF
8 THESE INSTRUCTIONS.

9 NOW, I AM GOING TO TALK TO YOU SPECIFICALLY ABOUT THE
10 LAW THAT APPLIES TO THE CHARGES THAT ARE MADE IN THE
11 INDICTMENT. I AM NOT GOING OVER THEM IN ANY PARTICULAR
12 ORDER. I WILL START WITH THE INDICTMENT, THE CHARGE THAT
13 ALLEGES FIRST DEGREE BURGLARY. I HAVE GOT ABOUT THREE
14 DIFFERENT PLACES THAT I AM LOOKING SO YA'LL JUST BEAR WITH
15 ME FOR JUST A MOMENT, PLEASE. LET ME START BY TELLING YOU
16 THAT CRIMINAL INTENT IS A NECESSARY ELEMENT OF EACH CRIME
17 THAT MUST BE PROVEN BY THE STATE BEYOND A REASONABLE
18 DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE
19 DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING
20 THE SITUATION. THERE IS NO WAY TO PROVE INTENT TO A
21 MATHEMATICAL CERTAINTY, THERE IS NO WAY THAT MEDICAL
22 SCIENCE CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT HE
23 OR SHE HAD IN MIND. SO THE LAW SAYS THAT CRIMINAL INTENT
24 MAY BE INFERRED FROM THE CIRCUMSTANCES THAT ARE SHOWN TO
25 HAVE EXISTED AT THAT TIME. AND THIS IS HOW THE JURY MAKES

1 THE DETERMINATION OF WHETHER OR NOT THE ELEMENT REQUIRING
2 INTENT WAS PRESENT. CRIMINAL INTENT IS A STATE OF MIND
3 WHICH OPERATES JOINTLY WITH AN ACT IN THE COMMISSION OF A
4 CRIME. CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS
5 WRONGDOING, SO IT IS UP TO YOU, THE JURY, WHAT THE
6 DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES THAT
7 ARE SHOWN TO HAVE EXISTED. I WILL TELL YOU THAT THE STATE
8 MUST PROVE CRINAL INTENT BEYOND A REASONABLE DOUBT JUST AS
9 THE STATE MUST PROVE EVERY ELEMENT BEYOND A REASONABLE
10 DOUBT AS I HAVE PREVIOUSLY EXPLAINED THAT TO YOU.

11 BURGLARY IN THE FIRST DEGREE IS A STATUTORY OFFENSE
12 FOUND IN SECTION 16-11-311 WHICH READS IN PART AS FOLLOWS:
13 A PERSON IS GUILTY OF BURGLARY IN THE FIRST DEGREE IF THE
14 PERSON ENTERS A DWELLING WITHOUT CONSENT AND WITH THE
15 INTENT TO COMMIT A CRIME THEREIN AND EITHER WHEN AFFECTING
16 ENTRY OR WHILE IN THE DWELLING OR IN IMMEDIATE FLIGHT
17 THEREFROM HE OR ANOTHER PARTICIPANT IN THE CRIME IS ARMED
18 WITH A DEADLY WEAPON OR EXPLOSIVE OR CAUSES PHYSICAL
19 INJURY TO ANY PERSON WHO IS NOT A PARTICIPANT IN THE CRIME
20 OR WHO USES OR THREATENS THE USE OF A DANGEROUS INSTRUMENT
21 OR DISPLAYS WHAT IS OR APPEARS TO BE A KNIFE, PISTOL,
22 REVOLVER, RIFLE, SHOTGUN, MACHINE GUN OR OTHER FIREARM.
23 THE ELEMENTS THAT MUST BE PROVEN BY THE STATE BEYOND A
24 REASONABLE DOUBT TO ESTABLISH BURGLARY IN THE FIRST DEGREE
25 ARE THAT A PERSON ENTERS A DWELLING WITHOUT CONSENT AND

1 WITH THE INTENT TO COMMIT A CRIME THEREIN AND WHEN
2 AFFECTING ENTRY OR WHILE IN THE DWELLING OR IMMEDIATE
3 FLIGHT THEREFROM THAT PERSON OR ANOTHER PARTICIPANT IN THE
4 CRIME IS ARMED WITH A DEADLY WEAPON OR CAUSES PHYSICAL
5 INJURY TO ANY PERSON WHO IS NOT A PARTICIPANT IN THE CRIME
6 OR USES OR THREATENS THE USE OF A DANGEROUS INSTRUMENT OR
7 DISPLAYS WHAT IS OR APPEARS TO BE A KNIFE, PISTOL,
8 REVOLVER, RIFLE OR OTHER WEAPON OF THAT NATURE. PROOF OF
9 A BREAKIN IS NOT REQUIRED. THOSE ARE THE ELEMENTS THAT
10 MUST BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT
11 BEFORE THE DEFENDANT COULD BE CONVICTED OF BURGLARY IN THE
12 FIRST DEGREE. NOW, UNDER A PRINCIPAL OF LAW IN THIS STATE
13 THAT A GREATER CRIME CHARGED AUTOMATICALLY INCLUDES ANY
14 LESSOR CRIME CHARGED. THERE IS INCLUDED IN THE INDICTMENT
15 FOR BURGLARY IN THE FIRST DEGREE, A LESSOR CHARGE FOR
16 BURGLARY IN THE SECOND DEGREE. BURGLARY IN THE SECOND
17 DEGREE, IN ORDER TO PROVE ONE GUILTY OF BURGLARY IN THE
18 SECOND DEGREE IT IS A STATUTORY OFFENSE FOUND IN SECTION
19 16-11-312 AND LET ME READ PART OF THAT STATUTE TO YOU. A
20 PERSON IS GUILTY OF BURGLARY IN THE SECOND DEGREE IF THE
21 PERSON ENTERS A DWELLING WITHOUT CONSENT AND WITH INTENT
22 TO COMMIT A CRIME THEREIN AND WHEN AFFECTING ENTRY OR
23 WHILE, EXCUSE ME, HOLD ON ONE SECOND. THAT IS THE
24 DEFINITION OF BURGLARY IN THE SECOND DEGREE, LET ME READ
25 THAT AGAIN TO YOU. A PERSON IS GUILTY OF BURGLARY IN THE

1 SECOND DEGREE IF THE PERSON ENTERS A DWELLING WITHOUT
2 CONSENT AND WITH THE INTENT TO COMMIT A CRIME THEREIN.
3 THOSE ARE THE ELEMENTS OF THE OFFENSE OF BURGLARY IN THE
4 SECOND DEGREE AND MUST BE PROVEN BY THE STATE BEYOND A
5 REASONABLE DOUBT BEFORE THE DEFENDANT COULD BE CONVICTED
6 OF BURGLARY IN THE SECOND DEGREE. AFTER EXAMINING THE
7 EVIDENCE IF THE JURY DETERMINES THAT THE DEFENDANT IS
8 GUILTY BUT HAS A REASONABLE DOUBT AS TO WHETHER THE
9 DEFENDANT IS GUILTY OF BURGLARY IN THE FIRST DEGREE OR
10 BURGLARY IN THE SECOND DEGREE THE DEFENDANT IS ENTITLED TO
11 THAT REASONABLE DOUBT AND COULD BE CONVICTED OF ONLY
12 BURGLARY IN THE SECOND DEGREE. BUT, OF COURSE, AS TO ANY
13 OFFENSE THE DEFENDANT CANNOT BE CONVICTED OF THAT
14 PARTICULAR OFFENSE UNLESS THE STATE HAS PROVEN ALL OF THE
15 ELEMENTS OF THAT OFFENSE BEYOND A REASONABLE DOUBT.

16 LET ME NOW EXPLAIN AND DISCUSS WITH YOU THE LAW THAT
17 PERTAINS TO THE NEXT INDICTMENT WHICH IS ASSAULT AND
18 BATTERY WITH INTENT TO KILL. IN GOING OVER WITH YOU AND
19 EXPLAINING THE LAW THAT APPLIES TO ASSAULT AND BATTERY
20 WITH INTENT TO KILL, UNDER THE SAME PRINCIPAL OF LAW THAT
21 I HAVE PREVIOUSLY EXPLAINED TO YOU, THAT A GREATER CRIME
22 CHARGED. AUTOMATICALLY INCLUDES ANY LESSOR CRIME CHARGED
23 INCLUDED IN THE CHARGE OF ASSAULT AND BATTERY WITH INTENT
24 TO KILL IS A LESSOR CRIME OF ASSAULT AND BATTERY OF A HIGH
25 AND AGGRAVATED NATURE. AND I WILL EXPLAIN BOTH OF THOSE

1 OFFENSES TO YOU. AS I BEGIN LET ME INSTRUCT YOU THAT A
2 SPECIFIC INTENT TO KILL IS NOT AN ELEMENT OF ASSAULT AND
3 BATTERY WITH INTENT TO KILL BUT THERE MUST BE A GENERAL
4 INTENT TO COMMIT SERIOUS BODILY INJURY. INTENT MAY BE
5 SHOWN BY ACTS OF CONDUCT OF THE DEFENDANT AND OTHER
6 CIRCUMSTANCES FROM WHICH HE MAY NATURALLY AND REASONABLY
7 INFER INTENT. EVIDENCE OF THE CHARACTER OF THE ASSAULT,
8 THE CHARACTER OF THE INSTRUMENT THAT WAS USED, THE MANNER
9 IN WHICH IT WAS USED, THE PURPOSE TO BE ACCOMPLISHED AND
10 THE RESULTING WOUNDS OR INJURIES MAY BE CONSIDERED IN
11 DETERMINING THE INTENT FOR WHICH THE ASSAULT WAS
12 COMMITTED. INTENT MAY BE INFERRED WHEN IT IS DEMONSTRATED
13 THAT THE DEFENDANT VOLUNTARILY AND WILLFULLY COMMITS THE
14 ACT. A NATURAL TENDENCY OF WHICH IS TO DESTROY THE OTHER
15 PERSONS LIFE. NOW, IN ORDER FOR YOU TO EXPLAIN TO WHAT IS
16 MEANT BY BOTH ASSAULT AND BATTERY WITH INTENT TO KILL AND
17 ASSAULT AND BATTERY WITH A HIGH AND AGGRAVATED NATURE I AM
18 GOING TO FIRST DEFINE FOR YOU THE WORDS ASSAULT AND THEN
19 BATTERY AND THEN THE WORDS, ASSAULT AND BATTERY AND THEN
20 THE DIFFERENT ASSAULT AND BATTERIES BOTH WITH INTENT TO
21 KILL OR OF A HIGH AND AGGRAVATED NATURE. NOW, WHAT IS AN
22 ASSAULT. AN ASSAULT IS THE UNLAWFUL ATTEMPT TO OFFER WITH
23 FORCE OR VIOLENCE TO DO CORPORAL HURT OR INJURY TO THE
24 PERSON OF ANOTHER WHERE THERE IS THE PRESENT ABILITY TO
25 COMPLETE THE INTENT TO OFFER BY A BATTERY. WHAT IS A

1 BATTERY. A BATTERY IS THE UNLAWFUL TOUCHING OF A PERSON
2 OF ANOTHER BY THE PARTY COMMITTING THE ASSAULT HIMSELF OR
3 BY ANY OBJECT PUT IN MOTION BY THE PARTY COMMITTING THE
4 ASSAULT. A BATTERY MAY BE FURTHER DEFINED AS THE CARRYING
5 INTO EFFECT AN ASSAULT BY USING OR APPLYING FORCE TO THE
6 PERSON OF ANOTHER HOWEVER SLIGHT IN A RUDE, ANGRY OR
7 RESENTFUL MANNER WITHOUT LEGAL JUSTIFICATION. IN THIS
8 CASE THERE ARE TWO DIFFERENT DEGREES OF ASSAULT AND
9 BATTERY THAT WERE ALLEGED. THE LESS SERIOUS IS ASSAULT
10 AND BATTERY OF A HIGH AND AGGRAVATED NATURE. THE MOST
11 SERIOUS IS ASSAULT AND BATTERY WITH INTENT TO KILL. THE
12 MOST SERIOUS OF ASSAULT AND BATTERY IS ASSAULT AND BATTERY
13 WITH INTENT TO KILL WHICH IS DEFINED AS AN UNLAWFUL ACT OF
14 VIOLENT INJURY TO THE PERSON OF ANOTHER ACCOMPANIED WITH
15 MALICE AFORETHOUGHT. MALICE IS AN ESSENTIAL ELEMENT OF
16 THE OFFENSE OF ASSAULT AND BATTERY WITH INTENT TO KILL.
17 MALICE DOES NOT NECESSARILY IMPORT ILL WILL TOWARDS THE
18 INDIVIDUAL INJURED BUT SIGNIFIES RATHER A GENERAL,
19 MALIGNANT AND RECKLESS DISREGARD OF THE LIVES AND THE
20 SAFETY OF OTHERS OR A CONDITION OF THE MIND WHICH SHOWS A
21 HEART REGARDLESS OF SOCIAL DUTY AND FATALLY BENT ON
22 MISCHIEF. MALICE IS AN ESSENTIAL ELEMENT OF THE CRIME OF
23 ASSAULT AND BATTERY WITH INTENT TO KILL. AS I STATED
24 MALICE IS A TERM OF ART, A TECHNICAL TERM IMPORTING
25 WICKEDNESS AND EXCLUDING JUST CAUSE OR LEGAL EXCUSE.

1 MALICE IN ANY FORM DESIGNED FOR DOING MISCHIEF RATHER IT
2 ARISES FROM HATRED, ILL WILL OR OTHERWISE IS STILL MALICE.
3 MALICE SPRINGS FROM DEPRAVITY, FROM A HEART DEVOID OF
4 SOCIAL DUTY AND FATALLY BENT ON MISCHIEF. MALICE MUST BE
5 AFORETHOUGHT, THE LAW DOES NOT REQUIRE THAT MALICE SHOULD
6 EXIST FOR ANY PARTICULAR TIME BEFORE THE COMMISSION OF THE
7 ACT. BUT MALICE MUST EXIST AFORETHOUGHT. THAT IS MALICE
8 MUST EXIST IN THE MIND OF THE ACCUSED JUST BEFORE AND AT
9 THE TIME OF THE COMMISSION OF THE ACT. MALICE
10 AFORETHOUGHT MAY BE EXPRESSED OR INFERRED. THESE WORDS,
11 MALICE AFORETHOUGHT, EXPRESSED OR INFERRED DO NOT MEAN
12 DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER IN WHICH
13 THE ONLY KIND OF MALICE KNOWN TO THE LAW MAY BE SHOWN TO
14 EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR BY NECESSARY
15 INFERENCE FROM THE FACTS AND CIRCUMSTANCES THAT ARE
16 PROVEN. EXPRESSED MALICE IS SHOWN BY WHERE ONE BY WORD OF
17 MOUTH EXPRESSES HIS HATRED OR ILL WILL FOR ANOTHER OR
18 WHETHER THE STATE SHOWS THAT HE MADE PREPARATION
19 BEFOREHAND TO DO THE DEED WHICH WAS LATER ACCOMPLISHED.
20 LYING IN WEIGHT FOR A PERSON IN ANY ACT OF PREPARATION
21 GOING TO SHOW THAT THE DEED WAS AN INTENT IN MIND WOULD BE
22 EXPRESSED MALICE. WHAT IS INFERRED MALICE. THE
23 IMPLICATION OF MALICE MAY ARISE WHEN A DEED IS DONE WITH A
24 DEADLY WEAPON SUCH AS A KNIFE, PISTOL OR DAGGER OR SOME
25 WEAPON OF THAT NATURE WHICH WHEN USED WITH THE INTENT TO

1 INJURE ANOTHER IS CALCULATED TO PRODUCE THAT OF SERIOUS
2 BODILY HARM. A DEADLY WEAPON IS DEFINED AS ANY OBJECT,
3 ARTICLE, INSTRUMENT OR SUBSTANCE WHICH IS LIKELY TO
4 PRODUCE DEATH OR GREAT BODILY HARM IN A MANNER IN WHICH IT
5 IS USED. IN OTHER WORDS, ORDINARY OBJECTS MAY ALSO BECOME
6 DEADLY WEAPONS WHEN THE FACTS IN THE CASE THAT THEY HAVE
7 BEEN USED TO INFLICT SERIOUS BODILY HARM OR DEATH. IT IS
8 UP TO YOU TO DETERMINE WHETHER A DEADLY WEAPON OR ARTICLE
9 WAS USED IN THIS CASE. IF FACTS ARE PROVEN BEYOND A
10 REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF
11 MALICE TO YOUR SATISFACTION THIS INFERENCE OF MALICE WOULD
12 SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN INTO
13 CONSIDERATION BY YOU, THE JURY, ALONG WITH ALL THE OTHER
14 EVIDENCE IN THE CASE AND YOU MAY GIVE IT SUCH WEIGHT AS
15 YOU DETERMINE IT SHOULD RECEIVE.

16 AS I HAVE INDICATED THE CHARGE OF ASSAULT AND BATTERY
17 WITH INTENT TO KILL INCLUDES A LESSOR CHARGE OF ASSAULT
18 AND BATTERY OF A HIGH AND AGGRAVATED NATURE. ASSAULT AND
19 BATTERY OF A HIGH AND AGGRAVATED NATURE IS DEFINED AS THE
20 UNLAWFUL AND INTENTIONAL INFLECTION OF A VIOLENT INJURY ON
21 THE PERSON OF ANOTHER ACCOMPANIED BY CIRCUMSTANCES OF
22 AGGRAVATION SUCH AS THE USE OF A DEADLY WEAPON, THE
23 INFLECTION OF SERIOUS BODILY INJURY, THE INTENT TO COMMIT
24 A FELONY, A GREAT DISPARITY BETWEEN THE AGES OR PHYSICAL
25 CONDITION OF THE PARTIES OR THE DIFFERENCE BETWEEN THE

1 SEXES. THIS IS AN ASSAULT ACCOMPANIED BY CIRCUMSTANCES OF
2 AGGRAVATION. NEITHER SERIOUS BODILY HARM NOR THE USE OF A
3 DEADLY WEAPON IS AN ESSENTIAL ELEMENT OF ASSAULT AND
4 BATTERY OF A HIGH AND AGGRAVATED NATURE. BUT THERE MAY BE
5 CIRCUMSTANCES OF AGGRAVATION. THE DIFFERENCE WITH ASSAULT
6 AND BATTERY WITH INTENT TO KILL AND ASSAULT AND BATTERY OF
7 A HIGH AND AGGRAVATED NATURE IS THAT MALICE IS AN
8 ESSENTIAL ELEMENT OF ASSAULT AND BATTERY WITH INTENT TO
9 KILL. AGAIN, AS I HAVE PREVIOUSLY INSTRUCTED YOU IF AFTER
10 EXAMINING THE EVIDENCE YOU DETERMINE THAT THE DEFENDANT IS
11 GUILTY WHICH YOU HAVE A REASONABLE DOUBT AS TO WHETHER THE
12 DEFENDANT IS GUILTY OF THE GREATER CRIME CHARGED IN THIS
13 INDICTMENT, ASSAULT AND BATTERY WITH INTENT TO KILL, OR A
14 LESSOR CRIME CHARGE, ASSAULT AND BATTERY WITH A HIGH AND
15 AGGRAVATED NATURE, THE DEFENDANT WOULD BE ENTITLED TO THAT
16 REASONABLE DOUBT AND WOULD BE CONVICTED ONLY OF THE LESSOR
17 CHARGE. BUT OF COURSE YOU CANNOT CONVICT THE DEFENDANT OF
18 ANY CHARGE UNLESS AS TO THAT PARTICULAR CHARGE YOU FIND
19 THAT THE STATE HAS PROVEN ALL OF THE ELEMENTS OF THAT
20 CHARGE BEYOND A REASONABLE DOUBT.

21 THE NEXT INDICTMENT IS THE CHARGE OF KIDNAPPING.
22 THIS IS A STATUTORY OFFENSE WHICH IS FOUND IN SECTION
23 16-3-910 OF THE SOUTH CAROLINA CODE OF LAWS. THAT
24 STATUTORY SECTION READS IN PART AS FOLLOWS: WHOEVER SHALL
25 UNLAWFULLY SEIZE, CONFINED, ENVEIGLE, DECOY, KIDNAP, ABDUCT

1 OR CARRY AWAY ANOTHER PERSON BY ANY MEANS WHATSOEVER
2 WITHOUT THE AUTHORITY OF LAWS IS GUILTY OF THE OFFENSE OF
3 KIDNAPPING. AGAIN, THE DEFENDANT IS CHARGED IN THIS
4 INDICTMENT FOR KIDNAPPING. THE STATE MUST PROVE BEYOND A
5 REASONABLE DOUBT THE DEFENDANT KNOWINGLY AND UNLAWFULLY
6 SEIZED, CONFINED, ENVEIGLED, DECOYED, KIDNAPPED, ABDUCTED
7 OR CARRIED AWAY ANOTHER PERSON WITHOUT THE AUTHORITY OF
8 LAW. TO DO A THING UNLAWFULLY IS TO DO IT WILLFULLY
9 AGAINST THE LAW. KNOWINGLY MEANS WITH KNOWLEDGE OR
10 CONSCIENTIOUSLY, NOT ACCIDENTALLY. SEIZE MEANS TO TAKE
11 HOLD OF SUDDENLY OR FORCEABLE. CONFINE MEANS TO LIMIT,
12 RESTRICT OR ENCLOSE WITHIN BOUNDS OR IMPRISON OR SHUT OR
13 KEEP IN. ENVEIGLE MEANS TO LURE, ENTICE OR LEAVE ASTRAY
14 BY FALSE REPRESENTATION, PROMISES OR OTHER DECEITFUL
15 MEANS. DECOY MEANS TO LURE BY OR AS IF BY A DECOY. A
16 DECOY IS SOMETHING TO ENTICE A PERSON INTO A TRAP. KIDNAP
17 IS TO REMOVE A PERSON AGAINST HIS OR HER WILL BY UNLAWFUL
18 FORCE FROM A FRAUD. ABDUCT MEANS TO CARRY OFF SECRETLY OR
19 BY FORCE OR AN ILLEGAL PURPOSE. AND TO CARRY AWAY MEANS
20 TO REMOVE. THE STATE DOES NOT HAVE TO PROVE THAT THE
21 DEFENDANT DID ALL OF THESE THINGS INSTEAD IF YOU FIND
22 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DID ANY OF
23 THESE THINGS THEN YOU MAY FIND THE DEFENDANT GUILTY OF
24 KIDNAPPING. SOMETHING DONE WITHOUT AUTHORITY OF LAW IS
25 SOMETHING WHICH THE LAW DOES NOT SANCTION, PERMIT, ALLOW,

1 CONDONE OR PROVIDE JUSTIFICATION FOR. AND I WILL FURTHER
2 CHARGE YOU THAT KIDNAPPING DOES NOT HAVE TO BE FOR ANY
3 PERSONAL OR MONETARY GAIN OR FOR ANY ILLEGAL PURPOSE, THAT
4 IT MAY BE FOR ANY REASON WHATSOEVER.

5 THE NEXT INDICTMENT IS THE CHARGE OF PETTY LARCENY.
6 LARCENY IS DEFINED AS THE TAKING OR THE CARRYING AWAY THE
7 PERSONAL PROPERTY OF ANOTHER WITH THE FELONIOUS INTENT TO
8 PERMANENTLY DEPRIVE THE OWNER OF HIS PROPERTY AND CONVERT
9 THAT PROPERTY TO THE USE OF THE TAKER. THE ELEMENTS OF
10 THE CRIME OF LARCENY ARE AS FOLLOWS: THERE MUST BE A
11 TAKING AND A CARRYING AWAY OF THE PERSONAL PROPERTY OF
12 ANOTHER. THE PROPERTY MUST BE TAKEN FROM THE ACTUAL OR
13 CONSTRUCTIVE POSSESSION OF THE OWNER BY A TRESPASS AND THE
14 TAKER MUST HAVE ABSOLUTE DOMINION AND CONTROL OF THE
15 PROPERTY TAKEN BUT SUCH ABSOLUTE DOMINION AND CONTROL EVEN
16 FOR A MOMENT IS SUFFICIENT. NEXT THERE MUST BE AN
17 ASPIRATION OR A CARRY AWAY OF THE PROPERTY BY THE TAKER.
18 BUT THE SLIGHTEST REMOVAL OF THE PROPERTY FROM THE PLACE
19 THAT IT OCCUPIED IS SUFFICIENT AND FINALLY THE PROPERTY
20 MUST BE THE PERSONAL PROPERTY OF ANOTHER PERSON. THE
21 PERSON TAKING THE PROPERTY OF ANOTHER AT THE TIME OF THE
22 TAKING MUST HAVE THE INTENT TO STEAL THE PROPERTY, THAT IS
23 FELONIOUSLY, UNLAWFULLY AND PERMANENTLY DEPRIVE THE OWNER
24 OF HIS PROPERTY AND TO CONVERT IT TO THE USE OF THE TAKER.
25 EACH OF THOSE ELEMENTS MUST BE PROVEN BY THE STATE BEYOND

1 A REASONABLE DOUBT BEFORE THE DEFENDANT COULD BE CONVICTED
2 OF PETTY LARCENY.

3 AND THEN THE FINAL CHARGE THAT IS MADE IN THE OTHER
4 INDICTMENT IS THAT OF POSSESSION OF MARIJUANA. IT IS
5 UNLAWFUL FOR ANY PERSON TO KNOWINGLY OR INTENTIONALLY
6 POSSESS A CONTROLLED SUBSTANCE. THE INDICTMENT CHARGES IN
7 THIS CASE THAT THE DEFENDANT DID ON OR ABOUT THE DATE IN
8 THE INDICTMENT KNOWINGLY AND INTENTIONALLY POSSESS A
9 QUANTITY OF MARIJUANA, A CONTROLLED SUBSTANCE. THE
10 ELEMENTS OF THIS OFFENSE THAT THE STATE MUST ESTABLISH AND
11 PROVE BEYOND A REASONABLE DOUBT BEFORE THE DEFENDANT COULD
12 BE CONVICTED AND FOUND GUILTY OF THIS CHARGE ARE THAT THE
13 DEFENDANT DID KNOWINGLY AND INTENTIONALLY POSSESS A
14 CONTROLLED SUBSTANCE AT THE TIME AND PLACE ALLEGED IN THE
15 INDICTMENT. THE STATE MUST PROVE BY THE REQUISITE MEASURE
16 OF PROOF, AGAIN THAT THE ACCUSED DID KNOWINGLY AND
17 INTENTIONALLY POSSESS A CONTROLLED SUBSTANCE. KNOWINGLY
18 IS DEFINED AS WITH KNOWLEDGE OR CONSCIOUSLY OR WILLFULLY.
19 INTENTIONALLY IS DEFINED WITH A PURPOSE OR AIM OR DESIGN.
20 AND UNDER THE LAW IT IS THE STATE OF A PERSON'S MIND AND
21 DIRECTS HIS ACTIONS TOWARDS A SPECIFIC OBJECT. POSSESSION
22 REQUIRES A PERSON IN ACTUAL OR CONSTRUCTIVE POSSESSION OF
23 A CONTROLLED SUBSTANCE WITH THE ACTUAL KNOWLEDGE OF ITS
24 PRESENCE. ACTUAL POSSESSION OF A CONTROLLED SUBSTANCE
25 EXIST WHEN THE CONTROLLED SUBSTANCE IS FOUND IN THE ACTUAL

1 PHYSICAL CUSTODY OF THE PERSON CHARGED WITH POSSESSION.
2 CONSTRUCTIVE POSSESSION OF A CONTROLLED SUBSTANCE EXIST
3 WHEN A PERSON, ALTHOUGH NOT IN ACTUAL PHYSICAL POSSESSION
4 OF A CONTROLLED SUBSTANCE EXERCISES DOMINION AND CONTROL
5 OVER THE CONTROLLED SUBSTANCE OR HAS THE RIGHT TO EXERCISE
6 DOMINION AND CONTROL OVER THE CONTROLLED SUBSTANCE.
7 SECONDLY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
8 THAT THE SUBSTANCE WAS MARIJUANA WHICH I CHARGE IS A
9 CONTROLLED SUBSTANCE UNDER THE LAW OF THIS STATE. I WILL
10 AGAIN CHARGE YOU THAT IT IS UNLAWFUL FOR ANY PERSON TO
11 KNOWINGLY OR INTENTIONALLY POSSESS A CONTROLLED SUBSTANCE
12 IN THIS STATE. AND EACH OF THOSE ELEMENTS MUST BE PROVEN
13 BY THE STATE BEYOND A REASONABLE DOUBT BEFORE THE
14 DEFENDANT COULD BE CONVICTED OF THIS OFFENSE.

15 NOW, MR. FOREMAN AND LADIES AND GENTLEMEN, WHATEVER
16 YOUR VERDICT IN THIS CASE, YOUR VERDICT MUST BE UNANIMOUS.
17 YOU ARE GOING TO BE ASKED TO WRITE A SEPARATE VERDICT AS
18 TO EACH CHARGE IN THE INDICTMENT. I AM GOING TO GO OVER
19 WITH YOU THE POSSIBLE VERDICTS IN THIS CASE. YOU ARE GOING
20 TO HAVE THESE FORMS WITH YOU BACK IN THE JURY ROOM AND
21 THESE ARE THE FORMS UPON WHICH YOU WILL RETURN YOUR
22 VERDICTS. AGAIN, I AM NOT GOING OVER THEM IN ANY
23 PARTICULAR ORDER OTHER THAN I THINK THEY ARE IN THE SAME
24 ORDER THAT I WENT THROUGH THE CHARGES MADE IN THE
25 INDICTMENT. ON THE CHARGE OF BURGLARY IN THE FIRST

1 DEGREE, THERE ARE THREE POSSIBLE VERDICTS. WE, THE JURY,
2 FIND THE DEFENDANT GUILTY OF BURGLARY IN THE FIRST DEGREE;
3 WE, THE JURY, FIND THE DEFENDANT GUILTY OF BURGLARY IN THE
4 SECOND DEGREE; WE, THE JURY, FIND THE DEFENDANT NOT
5 GUILTY. THOSE ARE THE POSSIBLE VERDICTS ON THAT CHARGE.

6 ON THE INDICTMENT CHARGING ASSAULT AND BATTERY WITH
7 INTENT TO KILL. WE, THE JURY, FIND FOR THE DEFENDANT
8 GUILTY FOR ASSAULT AND BATTERY WITH INTENT TO KILL. WE,
9 THE JURY, FIND THE DEFENDANT GUILTY OF ASSAULT AND BATTERY
10 OF A HIGH AND AGGRAVATED NATURE. WE, THE JURY, FIND THE
11 DEFENDANT NOT GUILTY. THOSE ARE THE POSSIBLE VERDICTS ON
12 THAT CHARGE.

13 ON THE NEXT INDICTMENT CHARGING KIDNAPPING THERE ARE
14 TWO POSSIBLE VERDICTS. WE, THE JURY, FIND THE DEFENDANT
15 GUILTY OF KIDNAPPING OR WE, THE JURY, FIND THE DEFENDANT
16 NOT GUILTY.

17 ON THE CHARGE OF POSSESSION OF MARIJUANA. TWO
18 POSSIBLE VERDICTS. WE, THE JURY, FIND THE DEFENDANT
19 GUILTY OF POSSESSION OF MARIJUANA. WE, THE JURY, FIND THE
20 DEFENDANT NOT GUILTY.

21 AND ON THE FINAL INDICTMENT CHARGING PERRY LARCENY.
22 TWO POSSIBLE VERDICTS. WE, THE JURY, FIND THE DEFENDANT
23 GUILTY OF PETTY LARCENY. WE, THE JURY, FIND THE DEFENDANT
24 NOT GUILTY. PLEASE DON'T ATTACH ANY SIGNIFICANCE TO THE
25 ORDER THAT I GIVE YOU THE POSSIBLE VERDICTS, I HAVE TO

1 GIVE THEM TO YOU IN SOME ORDER.

2 NOW, MR. FOREMAN AND LADIES AND GENTLEMEN, AGAIN,
3 YOUR VERDICT, WHATEVER VERDICT IS ON THESE CHARGES MUST BE
4 UNANIMOUS, MEANING ALL TWELVE OF YOU MUST AGREE ON THE
5 VERDICT. IT CANNOT BE 10 TO 2, 11 TO 1, 7 TO 5. IT MUST
6 BE A UNANIMOUS VERDICT. NOW, IN JUST A MOMENT I AM GOING
7 TO SEND YOU BACK TO YOUR JURY ROOM BUT YOU STILL CANNOT
8 BEGIN YOUR DELIBERATIONS. I WILL GO OVER WITH THE
9 ATTORNEYS THE LAW THAT I HAVE INSTRUCTED YOU AND IF I HAVE
10 OMITTED ANYTHING OR SOMETHING NEEDS CLARIFICATION THEN I
11 WILL BRING YOU BACK IN THE COURT ROOM AND DEAL WITH THAT
12 IMMEDIATELY. IF THAT IS NOT NECESSARY THEN WHEN THE
13 BAILIFF OR THE CLERK BRINGS YOU THE EXHIBITS AND THE
14 VERDICT FORMS THAT IS YOUR SIGNAL TO GO AHEAD AND BEGIN
15 YOUR DELIBERATIONS. LOTS OF TIMES JURIES DO NOT HAVE
16 QUESTIONS. SOMETIMES JURIES DO HAVE QUESTIONS, IF YOU
17 HAPPEN TO HAVE A QUESTION WRITE IT OUT AND HAND IT TO THE
18 BAILIFF AND HE WILL BRING IT TO ME. IF I CAN RESPOND TO
19 IT, SOMETIMES I CAN RESPOND IN WRITING, SOMETIMES I HAVE
20 TO BRING YOU BACK INTO THE COURTROOM TO RESPOND TO A
21 QUESTION. I WILL AGAIN REMIND YOU THAT I CANNOT RESPOND
22 TO ANY QUESTIONS DEALING WITH FACTS, THAT IS A
23 DETERMINATION THAT THE JURY HAS TO DETERMINE. I MAY OR
24 MAY NOT BE ABLE TO RESPOND TO QUESTIONS OF LAW, JUST
25 DEPENDING ON WHAT THE QUESTION MAY BE. I HAVE HAD SOME

1 JURIES SOMETIMES WHEN THEY GET BACK IN THE JURY ROOM WILL
2 SEND ME A NOTE OUT AND SAY, WE WOULD LIKE THIS PARTICULAR
3 CHART OR THIS PARTICULAR DOCUMENT, SOMETHING THAT THEY MAY
4 OF USED TO REFRESH A WITNESS'S MEMORY OR SOMETHING THAT
5 WAS NOT ACTUALLY PUT INTO EVIDENCE. IF IT IS NOT AN
6 EXHIBIT I CANNOT SEND IT TO YOU. REST ASSURE ALL THE
7 EXHIBITS IN THE TRIAL WILL BE WITH YOU IN THE JURY ROOM.
8 NOW, WITH THOSE INSTRUCTIONS I WILL ASK YOU TO STEP BACK
9 IN THE JURY ROOM, DON'T BEGIN DELIBERATIONS UNTIL THESE
10 ITEMS ARE BROUGHT TO YOU, PLEASE. EVERYONE ELSE STAY
11 SEATED.

12 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
13 APPROXIMATELY 11:55 A.M.)

14 THE COURT: ALL RIGHT, EXCEPTIONS OR ADDITIONS?

15 MS. COOPER: YES SIR, YOUR HONOR. I MAY OF MISSED
16 THIS BUT WHEN YOU WERE DISCUSSING THE LAW OF KIDNAPPING I
17 DON'T RECALL HEARING THE COURT INSTRUCT THE JURY
18 CONCERNING THE LENGTH OF DURATION OF A KIDNAPPING. THAT
19 IT CAN BE FOR HOWEVER PERIOD OF TIME. I THINK YOU MAY OF
20 SAID IT, YOUR HONOR, I JUST DON'T RECALL HEARING IT.

21 THE COURT: ALL RIGHT, ANYTHING ELSE?

22 MS. COOPER: NOTHING FURTHER FROM THE STATE, YOUR
23 HONOR.

24 THE COURT: FROM THE DEFENSE?

25 MS. VAN GINHOVEN: NO, YOUR HONOR.

1 THE COURT: I KNOW THAT ON KIDNAPPING, AS A MATTER OF
2 FACT I HAVE GOT UP HERE A CHARGE CONCERNING THAT IT IS A
3 CONTINUING OFFENSE, MENTIONED WHEN ONE IS WRONGFULLY
4 DEPRIVED OF FREEDOM CONTINUES UNTIL THAT FREEDOM IS
5 RESTORED. I HAVE ACCURATELY CHARGED THE LAW AND I KNOW
6 THERE IS A CASE TO THAT EFFECT AND I THINK THAT THAT MAY
7 OF BEEN AN ISSUE THERE. I DON'T KNOW THAT IT IS AN ISSUE,
8 I AM NOT GOING TO RECHARGE OR BRING THEM IN AND EXPLAIN
9 THAT. IF THEY ASK A QUESTION ABOUT IT I WILL RESPOND TO
10 IT.

11 MS. COOPER: THANK YOU, YOUR HONOR.

12 THE COURT: TAKE A LOOK AT THE VERDICT FORMS AND WE
13 WILL STAND IN RECESS UNTIL WE HEAR FROM THE JURY.

14 (WHEREUPON, DELIBERATIONS BEGIN AT APPROXIMATELY
15 12:05 P.M.)

16 THE COURT: I HAVE ADVISED COUNSEL THAT WE HAVE
17 RECEIVED A NOTE FROM THE JURY. DEAR JUDGE JOHNSON, WE,
18 THE JURY WOULD LIKE A DEFINITION OR A CLARIFICATION OF
19 WHAT THE LAW SAYS ABOUT KIDNAPPING. SIGNED BY THE
20 FOREMAN. I WILL GO BACK OVER THE LAW OF KIDNAPPING WITH
21 THE JURY. LET'S GET THEM IN, PLEASE.

22 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
23 APPROXIMATELY 1:20 P.M.)

24 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN, I
25 HAVE RECEIVED YOUR NOTE ASKING FOR A DEFINITION OR A

1 CLARIFICATION OF WHAT THE LAW SAYS ABOUT KIDNAPPING. I
2 WILL GO BACK OVER THE LAW OF KIDNAPPING WITH YOU. IN
3 ORDER TO PROVE KIDNAPPING THE STATE MUST PROVE BEYOND A
4 REASONABLE DOUBT THAT THE DEFENDANT UNLAWFULLY AND
5 KNOWINGLY SEIZED OR CONFINED OR ENVEIGLED OR DECOYED OR
6 KIDNAPPED OR ABDUCTED OR CARRIED AWAY ANOTHER PERSON
7 WITHOUT THE AUTHORITY OF LAW. AND NOW I WILL GIVE YOU
8 SOME DEFINITIONS AS THEY PERTAIN TO THIS OFFENSE. TO DO A
9 THING UNLAWFULLY IS TO DO IT WILLFULLY AGAINST THE LAW.
10 KNOWINGLY MEANS WITH KNOWLEDGE OR CONSCIOUSLY, NOT
11 ACCIDENTALLY. SEIZE MEANS TO TAKE HOLD OF SUDDENLY OR
12 FORCEABLE. CONFINEMENT MEANS TO LIMIT, RESTRICT OR ENCLOSE
13 WITHIN BOUNDS OR IMPRISON OR SHUT IN OR KEEP IN.
14 ENVEIGLED MEANS TO LURE, ENTICE OR LEAD ASTRAY BY FALSE
15 REPRESENTATION, PROMISES OR OTHER DECEITFUL MEANS. DECOY
16 MEANS TO LURE BY OR AS IF BY A DECOY. A DECOY IS
17 SOMETHING TO ENTICE A PERSON INTO A TRAP. KIDNAP IS TO
18 REMOVE A PERSON AGAINST HIS OR HER WILL BY UNLAWFUL FORCE
19 OR BY FRAUD. ABDUCT MEANS TO CARRY OFF SECRETLY OR BY
20 FORCE OR AN ILLEGAL PURPOSE. CARRY AWAY MEANS TO REMOVE.
21 THE STATE IS NOT REQUIRED TO PROVE THAT THE DEFENDANT DID
22 ALL OF THESE THINGS, INSTEAD IF YOU FIND BEYOND A
23 REASONABLE DOUBT THAT THE DEFENDANT DID ANY OF THESE
24 THINGS THEN YOU MAY FIND THE DEFENDANT GUILTY OF
25 KIDNAPPING. SOMETHING DONE WITHOUT THE AUTHORITY OF LAW

1 IS SOMETHING WHICH THE LAW DOES NOT SANCTION, PERMIT,
2 ALLOW, CONDONE OR PROVIDE JUSTIFICATION FOR. AND I WILL
3 INSTRUCT YOU THAT KIDNAPPING DOES NOT HAVE TO BE FOR ANY
4 PERSONAL OR MONETARY GAIN OR FOR ANY ILLEGAL PURPOSE, BUT
5 MAY BE FOR ANY REASON WHATSOEVER. I WOULD FURTHER CHARGE
6 YOU THAT KIDNAPPING IS A CONTINUING OFFENSE WHICH
7 COMMENCES WHEN ONE IS WRONGFULLY DEPRIVED OF HIS OR HER
8 FREEDOM AND CONTINUES UNTIL THAT FREEDOM HAS BEEN
9 RESTORED. NOW, I HAVE GONE BACK OVER WITH YOU THE LAW
10 THAT PERTAINS TO KIDNAPPING, TRIED TO RESPOND TO YOUR
11 QUESTION. AND I WILL ASK YOU TO PLEASE STEP BACK TO YOUR
12 JURY ROOM AND CONTINUE TO DELIBERATE AND YOUR LUNCH SHOULD
13 BE HERE SHORTLY. EVERYONE ELSE STAY SEATED, PLEASE.

14 (WHEREUPON, THE JURY CONTINUED DELIBERATIONS AT
15 APPROXIMATELY 1:25 P.M.)

16 (WHEREUPON, COURT'S EXHIBIT NO. 6 WAS MARKED FOR
17 IDENTIFICATION ONLY.)

18 THE COURT: EXCEPTIONS OR ADDITIONS FROM THE STATE?

19 MR. JOPHLIN: NOTHING, YOUR HONOR.

20 THE COURT: FROM THE DEFENSE?

21 MS. VAN GINHOVEN: NO, YOUR HONOR.

22 THE COURT: WE WILL STAND AT EASE UNTIL WE HEAR FROM
23 THE JURY.

24 (WHEREUPON, BREAK UNTIL DELIBERATIONS ARE COMPLETED.)

25 THE COURT: I AM INFORMED THAT THE JURY HAS REACHED A

1 VERDICT. I WILL REMIND THOSE IN THE COURTROOM THAT I DO
2 NOT PERMIT ANY KIND OF EMOTIONAL OUTBURSTS WHEN THE
3 VERDICT IS ANNOUNCED. LET'S GET THE JURY IN, PLEASE.

4 (WHEREUPON, THE JURY CAME INTO OPEN COURT WITH THE
5 VERDICT AT APPROXIMATELY 2:35 P.M.)

6 THE COURT: MR. FOREMAN, I HAVE BEEN ADVISED THAT THE
7 JURY HAS REACHED A VERDICT IN THE CASE, IS THAT CORRECT?

8 MR. FOREMAN: YES, SIR.

9 THE COURT: IS IT UNANIMOUS?

10 MR. FOREMAN: YES, SIR.

11 THE COURT: WOULD YOU HAND IT TO THE BAILIFF, PLEASE,
12 SIR.

13 ALL RIGHT, I WILL GO OVER THE VERDICTS AND AS TO EACH
14 OF THE FIVE INDICTMENTS. AS TO THE CHARGE OF BURGLARY IN
15 THE FIRST DEGREE, WE THE JURY FIND THE DEFENDANT GUILTY OF
16 BURGLARY IN THE FIRST DEGREE. SIGNED BY THE FOREMAN.

17 ON THE NEXT CHARGE OF ASSAULT AND BATTERY WITH INTENT
18 TO KILL, WE THE JURY FIND THE DEFENDANT GUILTY OF ASSAULT
19 AND BATTERY OF A HIGH AND AGGRAVATED NATURE. SIGNED BY
20 THE FOREMAN.

21 ON THE CHARGE OF KIDNAPPING, WE THE JURY FIND THE
22 DEFENDANT NOT GUILTY.

23 ON THE CHARGE OF PETTY LARCENY, WE THE JURY FIND THE
24 DEFENDANT GUILTY OF PETTY LARCENY.

25 AND ON THE CHARGE OF POSSESSION OF MARIJUANA, WE THE

1 JURY FIND THE DEFENDANT GUILTY OF POSSESSION OF MARIJUANA.
2 SIGNED BY THE FOREMAN.

3 MR. FOREMAN AND LADIES AND GENTLEMEN, IF THIS IS YOUR
4 VERDICT WOULD YOU PLEASE ALL INDICATE BY RAISING YOUR
5 RIGHT HAND.

6 (WHEREUPON, ALL JURORS RAISED THEIR RIGHT HAND.)

7 THE COURT: ALL TWELVE JURORS HAVE RESPONDED.
8 COUNSEL, DO YOU WANT THE JURY POLLED?

9 MS. VAN GINHOVEN: YES, YOUR HONOR.

10 THE COURT: ALL RIGHT, MR. FOREMAN AND LADIES AND
11 GENTLEMEN, THE JURY WILL BE POLLED, THAT SIMPLY MEANS THAT
12 EACH OF YOU WILL BE ASKED WHETHER THIS WAS YOUR VERDICT
13 AND WHETHER IT IS STILL YOUR VERDICT AND IT WOULD PERTAIN
14 TO ALL FIVE OF THE INDICTMENTS. MADAME CLERK, YOU MAY
15 POLL THE JURY.

16 (WHEREUPON, THE JURY WAS POLLED AND ALL ANSWERED YES
17 AS WAS THIS YOUR VERDICT AND IS IT STILL YOUR
18 VERDICT.)

19 THE COURT: THE JURY HAS BEEN POLLED, ANYTHING
20 FURTHER FOR THE JURY?

21 MR. JOPHLIN: NO, YOUR HONOR.

22 THE COURT: MR. FOREMAN AND LADIES AND GENTLEMEN,
23 THAT WILL CONCLUDE YOUR SERVICE ON THIS CASE, THERE IS
24 SOME OTHER MATTERS THAT I WILL BE DEALING WITH, SOME
25 MOTIONS AND THINGS OF THAT NATURE. YOU ARE CERTAINLY

1 WELCOME TO BE PRESENT FOR THAT, BUT YOU ARE NOT REQUIRED
2 TO BE PRESENT FOR THAT. AND THEN I WILL BE SENTENCING IN
3 THE CASE WHICH YOU ARE ENTITLED TO STAY FOR IF YOU WOULD
4 LIKE TO BUT YOU ARE NOT REQUIRED TO. WHAT I AM GOING TO
5 DO AT THIS TIME, IF YOU WOULD LIKE TO COME IN YOU CAN COME
6 BACK IN, THE CLERK NEEDS TO TALK TO YOU IN THE JURY ROOM
7 FOR JUST A MOMENT. AND THEN IF YOU WOULD LIKE TO BE
8 EXCUSED BUT THANK YOU VERY MUCH. THIS HAS BEEN A LONG
9 TRIAL. YOU ARE EXCUSED AND EVERYONE ELSE STAY SEATED,
10 PLEASE.

11 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)
12 THE COURT: MOTIONS, ANY MATTERS OF LAW AT THIS TIME.

13 MS. VAN GINHOVEN: YOUR HONOR, AT THIS TIME WE WOULD
14 JUST RENEW ALL OF OUR PRIOR MOTIONS AND OBJECTIONS AND WE
15 WOULD ASK THE COURT FOR A NEW TRIAL BASED ON THE FACTS
16 THAT THE VERDICT WAS NOT SUPPORTED BY THE EVIDENCE.

17 THE COURT: THAT MOTION IS DENIED, THOSE MOTIONS ARE
18 DENIED, I THINK THERE WAS SUFFICIENT EVIDENCE BELIEVED BY
19 THE JURY AND OBVIOUSLY AS TO THE CHARGES THAT THEY
20 CONVICTED THE DEFENDANT AND HOWEVER THEY DID BELIEVE THAT
21 EVIDENCE, THE SUFFICIENT EVIDENCE TO SUPPORT THE VERDICTS
22 THAT THEY RENDERED ON ALL FIVE CHARGES. SO THE MOTIONS
23 WILL BE DENIED.

24 MS. VAN GINHOVEN: THANK YOU, YOUR HONOR.

25 THE COURT: LET'S PROCEED WITH SENTENCING AT THIS

1 TIME, PLEASE. ALL RIGHT, SOLICITOR.

2 MR. JOPHLIN: THANK YOU, YOUR HONOR. YOU HAVE HEARD
3 THE FACTS OF THE CASE, I AM NOT GOING TO ELABORATE ANY
4 LONGER ON THAT. THE VICTIMS, BOTH MR. JEFF CONNELL AND
5 MS. LOURDES ANTONIO WOULD LIKE TO ADDRESS THE COURT AT THE
6 APPROPRIATE TIME.

7 THE COURT: I WILL BE GLAD TO HEAR FROM THEM AND WE
8 WILL START WITH MR. CONNELL, PLEASE.

9 MR. CONNELL: DUE TO THE NATURE OF THIS CRIME AND THE
10 SEVERITY OF IT AND WHAT IT HAS CAUSED OVER THE LAST TWO
11 YEARS WITH MY FAMILY I WOULD ASK THAT MR. HAYWARD BE
12 PUNISHED TO THE FULLEST EXTENT, PLEASE.

13 THE COURT: ALL RIGHT, THANK YOU, SIR. AND MR.
14 CAMPUSANO, IF YOU WILL INTERPRET FOR THE VICTIM, PLEASE, I
15 WILL BE GLAD TO HEAR ANY STATEMENTS THAT SHE WOULD LIKE TO
16 MAKE.

17 (WHEREUPON, MR. CAMPUSANO INTERPRETS FOR MS. LOURDES
18 ANTONIO.)

19 MS. ANTONIO: WELL, THIS CASE CHANGED MY LIFE, FILLED
20 ME UP WITH FEAR, I CANNOT BE ALONE IN MY HOUSE BY MYSELF
21 BECAUSE I CONSTANTLY, I AM FULL OF FEAR. I DON'T KNOW HOW
22 LONG IT WILL TAKE ME TO GET USE TO THIS NEW LIFE BUT I AM
23 TRYING TO KEEP ON WITH MY LIFE AND I HOPE THAT ANY TIME I
24 WILL BE ABLE TO SURVIVE THIS.

25 THE COURT: ALL RIGHT, THANK HER FOR ME, PLEASE.

1 ANYTHING FURTHER, SOLICITOR.

2 MR. JOPHLIN: THE DEFENDANT DOES HAVE A PRIOR RECORD,
3 HE HAS A ROBBERY, SECOND FROM ALABAMA FROM APRIL 3RD OF
4 1998. AND HE ALSO STILL HAS PENDING CHARGES IN ALABAMA.

5 THE COURT: CAN YOU TELL ME WHAT KIND OF SENTENCE HE
6 RECEIVED ON THAT ROBBERY CHARGE?

7 MR. JOPHLIN: I BELIEVE IT WAS A 10 YEAR SENTENCE,
8 FROM WHAT I CAN TELL FROM THE PAPERWORK THAT YOUR HONOR
9 SAW AS WELL, IT LOOKS LIKE AN ORDER WAS ENTERED ON JUNE
10 THE 13TH OF 1998.

11 THE COURT: ANYTHING FURTHER FROM THE STATE AT THIS
12 TIME?

13 MR. JOPHLIN: NOTHING, YOUR HONOR.

14 THE COURT: MR. MOBLEY, MS. VAN GINHOVEN.

15 MS. VAN GINHOVEN: YES, YOUR HONOR, MY CLIENT IS 26
16 YEARS OLD. I BELIEVE HE DID GO TO THE FIFTH GRADE, HE HAS
17 WORKED IN THE PAST AT WENDYS AND A PACKAGING PLANT. YOUR
18 HONOR, HIS WHILE FAMILY DOES LIVE IN ALABAMA, HE DOES NOT
19 HAVE FAMILY HERE. YOUR HONOR, HE HAS BEEN INCARCERATED, I
20 AM NOT GOING TO GO INTO THE FACTS, WE WOULD JUST ASK THAT
21 YOU CONSIDER SOMETHING OF COURSE UNDER THE LIFE SENTENCE
22 ON THE BURGLARY FIRST. AND WE WOULD ASK YOU TO, JUST BEG
23 THE MERCY OF THE COURT FOR A MINIMUM AMOUNT OF TIME.

24 MS. MOBLEY: YOUR HONOR, PERSONALLY MY EXPERIENCE
25 WITH JERENE HAS BEEN VERY PLEASANT THROUGHOUT THIS TRIAL.

1 HE HAS KEPT A POSITIVE ATTITUDE, HAS BEEN SUPPORTED OF US
2 AS TO WHAT WE HAVE DONE. THERE HAS NEVER BEEN A MOMENT
3 WHERE THERE HAS BEEN ANY BLAME OR THERE HAS BEEN ANY
4 UNHAPPINESS OR ANYTHING ELSE AND HE HAS REALLY BEEN SORT
5 OF THE MODEL CLIENT THROUGHOUT THIS ENTIRE TRIAL. AND I
6 THINK THAT REALLY SPEAKS TO HIS CHARACTER. I UNDERSTAND
7 HE HAS BEEN FOUND GUILTY OF A BAD THING, YOUR HONOR, I AM
8 NOT TRYING TO DIMINISH THAT, I AM JUST TRYING TO EXPLAIN
9 THAT THAT IS ONE DAY AND THE FIVE DAYS THAT I HAVE BEEN
10 WITH HIM THROUGHOUT THE COURSE OF THIS TRIAL HAS BEEN A
11 PLEASURE, IT HAS BEEN A PLEASURE TO REPRESENT HIM.

12 THE COURT: MR. HAYWARD, ANYTHING THAT YOU WOULD LIKE
13 TO SAY, YOU DON'T HAVE TO SAY ANYTHING BUT I WILL GIVE YOU
14 THAT OPPORTUNITY IF YOU WOULD LIKE TO GIVE ANY STATEMENT.

15 MR. HAYWARD: YES, SIR.

16 THE COURT: ALL RIGHT, SIR.

17 MR. HAYWARD: I WANT TO APOLOGIZE TO THE VICTIMS AND
18 THE VICTIMS FAMILY AND UNDERSTAND THAT MR. CONNELL HAD A
19 KID AT THE HOME, I HAVE GOT A TWO YEAR SON THAT I HAVEN'T
20 EVER SEEN AND DON'T REALLY KNOW HIS NAME BUT I KNOW HE
21 EXIST. A RESPONSIBILITY THAT I MADE BEFORE I LEFT THE
22 STREETS, BEFORE I GOT INCARCERATED. I AM STILL BURNED ON
23 MY ENERGY BUT I CAN'T PROVE AND I ACCEPT MY RESPONSIBILITY.

24 THE COURT: ALL RIGHT. THANK YOU, SIR. I, OF
25 COURSE, HAVE HEARD ALL OF THE EVIDENCE IN THE CASE AND

1 WILL IMPOSE THE PENALTY THAT I FEEL IS APPROPRIATE. ON
2 BURGLARY FIRST DEGREE CHARGE IT DOES CARRY A POSSIBLE LIFE
3 SENTENCE, A MINIMUM OF 15 YEARS. THE SENTENCE OF THIS
4 COURT IS THAT MR. HAYWARD BE CONFINED FOR A PERIOD OF 30
5 YEARS WITH CREDIT FOR TIME SINCE APRIL THE 13TH OF '04.
6 ON THE ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE
7 THE SENTENCE OF THIS COURT IS THAT MR. HAYWARD BE CONFINED
8 FOR 10 YEARS, THAT WILL RUN CONSECUTIVELY. ON THE OTHER
9 TWO CHARGES, 30 DAYS TO RUN CONCURRENTLY AND THAT WILL
10 TAKE CARE OF THE FOUR CHARGES ON WHICH HE HAS BEEN
11 CONVICTED TODAY. GOOD LUCK TO YOU.

12 MR. JOPHLIN: THANK YOU, YOUR HONOR.

13 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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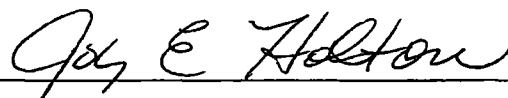
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CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

I, JOY E. HOLSTON, OFFICIAL COURT REPORTER FOR THE
EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
RICHLAND COUNTY, SOUTH CAROLINA, ON THE 13TH DAY OF MARCH,
2006.

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

SEPTEMBER 6, 2006



JOY E. HOLSTON, COURT REPORTER

MY COMMISSION EXPIRES: MARCH 13, 2016

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

State of South Carolina, Respondent,

v.

Jerene Markwell Hayward, Appellant.

Appeal from Richland County
James W. Johnson, Jr., Circuit Court Judge

Unpublished Opinion No. 2008-UP-088
Submitted February 1, 2008 – Filed February 8, 2008

AFFIRMED

Aileen P. Clare, of South Carolina Commission on
Indigent Defense, Division of Appellate Defense, of
Columbia, for Appellant.

Attorney General Henry D. McMaster, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy
Attorney General

Salley W. Elliott; and Solicitor Warren B. Giese, all of
Columbia, for Respondent.

PER CURIAM: Jerene Markwell Hayward (Hayward) was convicted of first-degree burglary, the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN), petit larceny, and possession of marijuana. He was sentenced to consecutive terms of thirty (30) years for first-degree burglary and ten (10) years for ABHAN, plus concurrent terms of thirty (30) days each for the remaining convictions. Hayward argues the trial court erred in: (1) admitting an impermissibly suggestive show-up identification; and (2) denying his motion for mistrial after a witness for the State commented on Hayward's exercise of his Fifth Amendment right to remain silent. We affirm. [1]

FACTS

Hayward was accused of burglarizing the home of Jeffrey Connell and assaulting Connell's domestic employee on April 13, 2004. On that same afternoon, Ronald Cowart, a landscaper, was in route to Crescent Lake Subdivision when Hayward ran out in front of Cowart's truck, exclaiming two people were in pursuit of him. Cowart talked with Hayward and gave him a ride. Cowart observed Hayward was a tall, slender black male, with close-cut hair and a mark or tattoo on his neck. Hayward was

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wearing baggy blue jeans and a dark, long-sleeved shirt. He was carrying a backpack. Hayward eventually left Cowart's vehicle to find a store and a phone. Cowart alerted the police in response to conduct he believed was "out of the ordinary" and the noticeable police activity in the area.

Police arrested Hayward, informed him of his Miranda rights, and summoned Cowart several hours later to identify Hayward. At the site of arrest Hayward was handcuffed and surrounded by police cars and uniformed officers. Cowart positively identified Hayward as the man he had spoken with and picked up earlier. He testified, "I said yes this is him, I know him."

Eric Barnes, an investigator with Richland County Sheriff's Department, was responsible for directing the investigation. As he arrived on the scene where Hayward was detained, he recalled Hayward was shouting that he was innocent. Barnes introduced himself to Hayward and looked at Hayward's shoeprint to determine if it was similar to one left at the crime scene. Barnes observed what he thought was blood on Hayward's shoes, removed them, and secured them as evidence.

Barnes continued talking with Hayward, commenting that Hayward "was going to have a hard time explaining how the victim's blood got on the shoe." Hayward said "he was in the house but it was the other guy that kicked her or hit the lady, not him."

At headquarters, Barnes verbally informed Hayward of his Miranda rights, asked Hayward if he understood, and attempted to obtain information from him. Barnes testified Hayward denied he made the statement at the arrest site claiming he was not the one who kicked the lady. Hayward continued to deny everything about the case at that point, becoming louder and louder as the discussion progressed. When Barnes realized it was futile to continue, he decided to adjourn the session, concluding, "it became apparent in my mind that [Hayward] didn't want to give a statement."

Hayward was indicted for first-degree burglary, petit larceny, kidnapping, assault and battery with intent to kill, and possession of marijuana.

In a hearing pursuant to Jackson v. Denno, 378 U.S. 368, (1964), Hayward challenged the suggestiveness of Cowart's identification of him at the arrest site. The trial court ruled Cowart's identification was admissible.

Additionally, Hayward moved for a mistrial on the ground Barnes impermissibly commented on Hayward's constitutional right to remain silent. The trial court denied Hayward's motion and ruled Hayward had not invoked his right to remain silent at the time Barnes decided it was futile to continue the session. Therefore, Barnes' comment that Hayward's statement was not forthcoming did not reflect on Hayward's invocation of his Fifth Amendment right.

The jury found Hayward guilty of first-degree burglary, the lesser-included offense of ABHAN, petit larceny, and possession of marijuana. The trial court sentenced Hayward to consecutive terms of thirty years (30) for first-degree burglary and ten (10) years for ABHAN, plus concurrent terms of thirty days (30) each for the remaining convictions.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id. at 48, 625 S.E.2d at 220. This same standard of review applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases. State v. Preslar, 364 S.C. 466, 472, 613 S.E.2d 381, 384 (Ct. App. 2005).

I. Admissibility of Show-Up Identification

Hayward contends Cowart's identification of him at the arrest site should be suppressed because it was so suggestive that Cowart's objectivity was compromised. We disagree.

Generally, the decision to admit an eyewitness identification is at the trial court's discretion and will not be disturbed on appeal absent an abuse of discretion, or the commission of prejudicial legal error. State v. Moore, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000); State v. McCord, 349 S.C. 477, 481, 562 S.E.2d 689, 691 (Ct. App. 2002). However, an eyewitness identification which is unreliable because of suggestive police procedures is constitutionally inadmissible as a matter of law. Moore, 343 S.C. at 288, 540 S.E.2d at 448.

A criminal defendant may be deprived of due process of law by an unnecessarily suggestive identification procedure conducive to irreparable mistaken identification. State v. Roach, 364 S.C. 422, 429-30, 613 S.E.2d 791, 795 (2005); State v. Brown, 356 S.C. 496, 503, 589 S.E.2d 781, 785 (Ct. App. 2003); State v. Mansfield, 343 S.C. 66, 79, 538 S.E.2d 257, 264 (Ct. App. 2000); State v. Blessingame, 338 S.C. 240, 251, 525 S.E.2d 535, 541 (Ct. App. 1999).

The United States Supreme Court and the South Carolina Supreme Court have established a two-prong inquiry to determine the admissibility of an out-of-court identification. Neil v. Biggers, 409 U.S. 188, 196 (1972); Moore, 343 S.C. at 287, 540 S.E.2d at 448. A court must determine whether the identification process was unduly suggestive. Moore, 343 S.C. at 287, 540 S.E.2d at 448. Only if the identification procedure was unduly suggestive does the court need to consider the next step, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. Id.

Single person show-ups have been sharply criticized as unnecessarily suggestive. Mansfield, 343 S.C. at 79, 538 S.E.2d at 264. However, suggestiveness alone does not require the exclusion of evidence. State v. Stewart, 275 S.C. 447, 450, 272 S.E.2d 628, 629 (1980). The central question is whether, under the totality of the circumstances, the identification was reliable even though the confrontation procedure was suggestive. Id.; Mansfield, 343 S.C. at 79, 538 S.E.2d at 264. Reliability is the "linchpin in determining the admissibility of identification testimony." Mansfield, 343 S.C. at 79, 538 S.E.2d at 264. To determine whether identification is reliable, we must consider the factors set forth in Biggers. 409 U.S. at 199. The factors to be considered are:

- 1) the opportunity of the witness to view the criminal at the time of the crime; 2) the witness's degree of attention; 3) the accuracy of the witness's prior description of the criminal; 4) the level of certainty demonstrated by the witness at the confrontation; and 5) the amount of time between the crime and the confrontation.

Biggers, 409 U.S. at 200; Mansfield, 343 S.C. at 79, 538 S.E.2d at 264.

At the arrest site, Hayward was presented in handcuffs, surrounded by police cars and uniformed officers. Notwithstanding the somewhat suggestive nature of the setting, Cowart's identification of Hayward was reliable in light of the totality of the circumstances.

Cowart had opportunity to observe Hayward in close proximity, during daylight hours, on the day the crimes were committed. Cowart's attention was focused on Hayward because of his unusual behavior. He was suspicious of Hayward to the point he removed his keys and cell phone from Hayward's view, and he ultimately alerted the police about his contact with Hayward.

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Coward described Hayward in accurate detail to the police as a tall, slender black male with close cut hair. He noted Hayward's clothing, observed the backpack he carried, and identified a green cigarette package that Hayward pulled out of the bag. Coward unequivocally and without hesitation confirmed Hayward was the man he picked up in the victim's neighborhood on the afternoon of April 13, 2004. Moreover, the amount of time between Coward's afternoon encounter with Hayward and the show-up identification at the arrest site was approximately three hours.

The trial court concluded:

Case law indicates that even if the identification is unnecessarily suggestive the evidence need not be excluded if the totality of the circumstances indicates that the identification is reliable. And I find that there is sufficient evidence that has been shown to this court that the identification is reliable.

In reviewing Coward's identification for indicia of reliability, the trial court considered the factors required under Biggers. The trial court did not abuse its discretion when it denied Hayward's motion to suppress Coward's identification.

II. Failure to Grant Motion for Mistrial

Hayward contends the trial court erred in denying his motion for a mistrial when Barnes allegedly commented on Hayward's exercise of his Fifth Amendment right to remain silent. We disagree.

The decision to grant or deny a mistrial is within the sound discretion of the trial court. State v. Stanley, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005). The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law. Id.; State v. Rowlands, 343 S.C. 454, 458, 539 S.E.2d 717, 719 (Ct. App. 2000). A mistrial should only be granted when "absolutely necessary," and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial. Stanley, 365 S.C. at 34, 615 S.E.2d at 460. Whether a mistrial is manifestly necessary is a fact specific inquiry. Id.

Hayward asserts Barnes' comment, "it became apparent in my mind that [Hayward] didn't want to give a statement," was an impermissible reference to Hayward's right to remain silent under Doyle v. Ohio, 426 U.S. 610 (1976). In Doyle, the Supreme Court held:

'[W]hen a person is informed, as Miranda requires, that he may remain silent, that anything he says may be used against him, ... it does not comport with due process to permit the prosecution during the trial to call attention to his silence at the time of arrest and to insist that because he did not speak about the facts of the case at that time, as he was told he need not do, an unfavorable inference might be drawn as to the truth of his trial testimony.'

Id. at 619 (quoting U.S. v. Hale, 422 U.S. 171, 182-83 (1975)).

The courts of South Carolina have consistently recognized the significance of Doyle on post-arrest, post-Miranda silence. "Doyle holds that the Due Process Clause prohibits the government from commenting on an accused's post-Miranda silence." State v. Simmons, 360 S.C. 33, 39, 599 S.E.2d 448, 450 (2004); Payne v. State, 355 S.C. 642, 645, 586 S.E.2d 857, 859 (2003) (holding "The state may not directly or indirectly comment on the defendant's right to remain silent."). Our appellate courts have warned solicitors against violation of the Doyle prohibition. State v. Myers, 301 S.C. 251, 258-259, 391 S.E.2d 551, 555 (1990); State v. Arther, 290 S.C. 291, 350 S.E.2d 187 (1990); State v. Holliday, 333 S.C. 332, 509 S.E.2d 280 (Ct. App. 1998); State v. Gray, 304 S.C. 482, 405 S.E.2d 420

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(Ct. App. 1991). However, "[t]he underpinnings of Doyle, and the need for its application, are diminished where a defendant waives his right to silence. Simmons, 360 S.C. at 40, 599 S.E.2d at 451.

In the instant case the trial court concluded the State made a sufficient showing that Hayward was advised of his rights under Miranda. The trial court found after being advised of those rights, Hayward essentially waived them by voluntarily making statements and utterances. "I find based on what has been presented that the defendant had not at that point and [sic] time invoked his right to remain silent. For that reason I will permit the testimony to continue. I deny the motion for a mistrial."

Police informed Hayward of his Miranda rights at the arrest site. Nevertheless, Hayward continued to shout about his innocence and professed the acts were committed by other perpetrators. After hearing his Miranda rights again during the discussion with Barnes at headquarters, Hayward persisted in talking about his innocence, disclaiming things he had allegedly said earlier. In the context of ending the session because of its futility, Barnes' comment was not in response to Hayward's silence, because Hayward was not silent, and had not yet invoked his right to remain silent. The trial court did not err in denying Hayward's motion for mistrial.

AFFIRMED.

ANDERSON, SHORT, and THOMAS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

2008CP400-0780

STATE OF SOUTH CAROLINA

County of RichlandJerene Martwell Hayward #314451
Full name and prison number (if any) of Applicant,

vs.

The State of South Carolina
Name of Respondent.

In the Court of Common Pleas

APPLICATION FOR
POST-CONVICTION RELIEFFEB - 1 AM 11:15
BARBARA A. SCOTT
C.C.C.C. & G.S.**INSTRUCTIONS — READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee Correctional Institution 990
Wisacky Hwy Bishopville, SC 29010

2. Name and location of Court which imposed sentence
Richland county

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

- (a) 1st degree burglary 05-65-40-2824; 05-65-
(b) 40-5074; 05-65-40-5073; 05-65-40-4570;
(c) 05-65-40-2802; 05-65-40-2825

4. The date upon which sentence was imposed and the terms of the sentence:

- (a) 12/3/06 - 17/7/06 Approximate
(b) _____
(c) _____

0870-004998115
5. Check whether a finding of guilt was made

(a) after a plea of guilty _____

(b) after a plea of not guilty trial

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Attorney Appeals

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. S.C. Appeals Court

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) see Attached

(b) _____

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) see Attached

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? Appeal in Appellate Court file
 (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Appellate brief was filed by McAtleen P. Clare
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. S.C. Appeals Court
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. Affirmed
 ii. _____
 iii. _____
 iv. _____

(d) the date of each such disposition:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
 ii. _____
 iii. _____
 iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Mr. Jeanette Van Ginhoven; Ms. Lauren Mobley
- (c) your sentencing? same above
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Ms. Aileen P. Clare
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. _____
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. _____
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

new trial, vacate sentence w- conviction or
other relief.

19. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA

County of

Richland

VERIFICATION

I, Jerene Markwell Hayward #31445, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jerene M. Hayward

SWORN to and subscribed before me this 14th

day of

January19 2008

Janice L. Melton
Notary Public

(L.S.)

My Commission Expires:

4-24-2014

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Jerene Markwell Hayward #31445, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Jerene M. Hayward
Applicant

SWORN or affirmed to and subscribed before me this

14th

day of

Jan.19 2008

Janice L. Melton
Notary Public

My Commission Expires:

4-24-2014



Leon Lott
Sheriff

**Richland County Sheriff's Department
Forensic Science Division
Report of Footwear / Tire Examination**

To: Inv Barnes

**Date of Report: 04/16/04
Offense: Home Invasion
Case Number: 04041318
Victim(s): Lourdes Antonio**

Subject(s) Jerene Hayward

Items Submitted:

L-1 Photographs of blood shoeprints taken at the scene by Inv Richards with and without scale.

K-1 Nike Air tennis shoes collected from subject Jerene Hayward; B/M

Results of Examination:

I/O compared L-1 (photographs of blood shoeprints) to K-1 (Nike Air tennis shoes of Jerene Hayward) with the following results:

I/O determined that L-1 was not a match to K-1

Comparison Conducted By:

Inv. Stan Richards
Forensic Science Division

ALL COMPARISONS CONDUCTED BY THIS DIVISION ARE CONFIDENTIAL AND FOR USE IN CRIMINAL INVESTIGATIONS. NO INFORMATION CONTAINED HEREIN SHALL BE RELEASED UNLESS APPROVED BY THE SHERIFF.

Trial 838 Trial Counsel was ineffective

9(A)(1) Trial Counsel was ineffective when he failed to object at crucial points in Trial. Failed to explore defenses. Failed to challenge indictments. Failed to suppress evidence. Trial counsel also failed to strike Jurors or bring to court attention that the Jurors was bias and unsuitable for the case. Counsel, also failed to Turn Over to Client Entirely Rule 5 Discovery, to prepare for Defence. Failed to challenge 85% law truth in Sentencing Bill 3096, That violates the Single Subject clause also enacted statute by legislature.

9(A)(2) Prosecutorial Misconduct

10(A)(2) The Prosecutor was calling witnesses to stack the deck, and Build a case not one of the state's witnesses Produced no evidence to convict Applicant. Solicitor on tried to build case among other things (See Record).

9(A)(3) The Prosecutor Added Additional Evidence / Charges, such as Home Invasion to upgrade or strengthen his case and the charges Mainly the Burglary Charge.

9(A)(3) There is reports that unseen by Applicant of a Home invasion Applicant received sled reports that got Applicant aware of his extra that Prejudice Applicant (See Exhibit) Also See Entire Record, issues could change outcome of Trial.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Jerene M. Hayward

☒ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

08 FEB -7 AM 8:55

CASE NO.

2008-CP-40-0780

BARBARA A. SCOTT
C.C.C. & G.S.MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Jerene M. Hayward, Bar No.
Address:
LCI
990 Wisacky Highway
Bishopville, South Carolina 29010
phone: fax:
e-mail: other:

Defendant's Attorney:
Brian T. Petrano, Bar No.
Address:
Post Office Box 11549
Columbia, South Carolina 29211
phone: 803-734-3737 fax: 803-734-4113
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

February 6, 2008

Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT:
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
 (check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	2008-CP-40-0780
Jerene Markwell Hayward, 314451	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED
08 FEB -7 AM 8:55
CLERK OF COURT
& G.S.

In response to the post-conviction relief application filed February 1, 2008, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was convicted of burglary 1st, ABHAN, petit larceny, and possession of marijuana, 05-GS-40-2824-2826; 4570, 5072-5073; 2802, 5074. He was sentenced to confinement for forty (40) years.

Applicant subsequently filed a timely notice of appeal. The matter is presently pending on appeal.

II.

Respondent contends that this matter is currently on appeal before the South Carolina Court of Appeals. Respondent submits that, pursuant Rule 227, SCACR, and S.C. Code Ann. § 17-27-20(b) (2003), post-conviction relief is not available to the Applicant at the present time because the Applicant's direct appeal is pending in the appellate courts. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Therefore,

Respondent submits that this application for post-conviction relief must be summarily dismissed without prejudice until such time as the direct appeal is resolved.

III.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

WHEREFORE, Respondent moves to dismiss the application without prejudice because the Applicant's pending appeal is directly connected to his conviction and sentence.

Respectfully submitted,

HENRY DARGAN MCMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By:



Attorneys for the Respondents

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

February 5, 2008

2008CP4003834 05-2802 24+5
4570

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Richland)Jerene-Markwell Hayward) 314451

Full name and prison number, if any, of applicant)

v.)

The State of S.C.)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

BARBARA A. SCOTT
C.C.C. & G.S.

2008 MAY 29 AM 10:26

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee Correctional Institution;
990 W. Sackville Hwy Bishopville, S.C. 29010

2. Name and location of Court which imposed sentence
Richland County

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 1st degree Burglary - 05 - 65 - 40 - 2824; 05 -

(b) 05 - 40 - 5074; 05 - 65 - 40 - 5073; 05 - 65 - 40 -

(c) 4570; 05 - 65 - 40 - 2802; 05 - 65 - 40 - 2825

4. The date upon which sentence was imposed and the terms of the sentence:

(a) 13/3/06 - 17-1/7/06 Approximately

(b) _____

(c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty trial
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? _____

Attorney Appealed

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. S.C. Appeals Court
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. Affirmed
- ii. _____
- iii. _____

(c) the date of each such result:

- i. —
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. —
- ii. _____
- iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
- (b) _____
- (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) see Attached
- (b) _____
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) see Attached

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

Appeal in Appellate Court filed

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) _____

(d) any other petitions, motions or applications in this or any other Court?

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Appellate brief was filed by Mr. Aileen P.

ii. Clare

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. S.C. Appeals Court

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Affirmed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? no

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented: _____

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? —
- (b) your trial, if any? Mr. Jeannette Van Gidover, Ms. Laurel Mobley
- (c) your sentencing? same above
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Ms. Aileen P. Clare
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. _____
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. _____
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

new trial, vacate sentence & conviction or
other relief.

19. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)

COUNTY OF Dorchester)

VERIFICATION

I, Jerene M. Hayward, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jerene M. Hayward

Sworn to and subscribed before me

This 10th day of April, 2008.

Opus L Walker L.S.

Notary Public for South Carolina

My Commission Expires 4/4/2011

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Jerene M. Hayward, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Jerene M. Hayward
Applicant

Sworn to and subscribed before me

This 10th day of April, 2008.

Opus L Walker L.S.

Notary Public for South Carolina

My Commission Expires: 4/4/2011

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2008CP4003854

Hayward, Jerene, 00314451,)

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

The Applicant filed a PCR application on February 1, 2008 (2008CP4000780) prior to the resolution of his direct appeal. Following the denial of the direct appeal, Remittitur date February 26, 2008, the Applicant filed a second PCR Application on May 29, 2008 (2008CP4003854). Because counsel has been appointed for the second PCR, the first PCR should be merged into the second PCR with the second PCR (2008CP4003854) being the surviving action.¹ The Respondent, now making its Return to the [2nd] Application for Post-Conviction Relief, filed May 29, 2008, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was represented by Jeanette Van Ginhoven and Lauren Mobley. On March 16, 2006, after a jury trial with the Honorable James W. Johnson Jr., the Applicant was convicted and sentenced to the following:

¹ The Respondent recognizes that this is the reverse of the normal procedure, however because counsel was appointed per the second PCR application it would be too troublesome to merge the second application into the first and then have to reappoint counsel (the same counsel) for the originally filed application. The Respondent filed a Return and Motion to Dismiss the original PCR on February 7, 2008.

RICHLAND COUNTY
FILED
2008 MAR 25 AM 11:52
JEANETTE W. McBRIDE
C.C.P. & G.S.

Grand Jury Term	Indictment Number	CDR - S.C. Code §	Charged Offense: "Potential Sentence" Offense Description	Sentence Received	Sentenced to Lesser Offense?
6-05	2005GS405074	2384 16-23-0050(A)(1) * 5	Weapons / Sale or delivery of pistol to, and possession by, certain persons unlawful	QUASHED	No
4-05	2005GS402802	0122 16-23-0410 * 5	Weapons / Pointing and presenting firearms at a person (motion for DV granted)	Directed	No
4-04	2005GS402824	0079 16-11-0311 * 15-L	Burglary / Burglary (After June 20, 1985) - First degree (Victim: Jeffrey Connely)	30	No
4-05	2005GS402825	0480 22-03-0550 * 5	Larceny / Petit or Simple Larceny (Victim: Jeffrey Connely)	30days	No
8-05	2005GS405073	0014 16-03-0620 * 20	Assault / Assault and battery with intent to kill (ABWIK) (Victim: Lourdes Antonio)	10 Cons	Yes
Sentenced to: 0013 17-25-0030 * 10				Assault / Assault and battery of a high and aggravated nature (ABHAN) : as a lesser offense.	
4-05	2005GS404570	0659 44-53-0370(d)(4) * 30days	Drugs / Simple Possession of Marijuana 1st offense	30days	No
NOTES: The weapon charge was quashed at pretrial, the pointing and presenting was negated after a successful directed verdict motion. The ABHAN is consecutive to the Burglary sentence.				TOTAL 40	POSSIBLE Life + 25

A timely Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Jerene Markwell Hayward, Op. No. 2008-UP-088 (S.C. Ct. App. filed February 8, 2008, Remittitur date February 26, 2008).

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

18. State clearly the relief you seek in filing this application. <u>new trial, vacate sentence w/ conviction or</u> <u>other relief.</u>

9(A)(1) trial counsel was ineffective

10(A)(1) Trial Counsel was ineffective when he failed to object at crucial points in trial, failed to explore defenses, failed to challenge indictments, failed to suppress evidence. Trial counsel also failed to strike jurors or bring to court attention that the jurors was bias and unsuitable for the case. Counsel also failed to turn over to client entirely Rule 5 Discovery, to prepare for defense. Failed to challenge 85% law truth in Sentencing Bill 3096, that violates the Single Subject clause also enacted statute by legislature.

9(A)(2) Prosecutorial Misconduct

10(A)(2) The Prosecutor was calling witnesses to stack the deck, and build a case not one of the state's witnesses produced no evidence to convict Applicant. Solicitor on tried to build case among other things (See Record).

9(A)(3) The Prosecutor Added Additional evidence/charges, such as Home Invasion to upgrade or strengthen his case and the charges mainly the Burglary charge.

9(A)(3) There is reports that unseen by Applicant of a Home invasion Applicant received Sted reports that got Applicant aware of his extra that Prejudice Applicant (See Exhibit) Also See Entire Record, issues could change outcome of trial.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as

having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Subject Matter Jurisdiction – Defect in the Indictment(s)

Applicant claims defects in the indictments. The Respondent concedes a defendant in a criminal case is entitled to be tried only upon the charges in the indictment against him. State v. Tabor, 262 S.C. 136, 202 S.E.2d 852 (1974). A defendant must be convicted, if at all, of the particular offense charged in the bill of indictment. State v. Watts, 321 S.C. 158, 467 S.E.2d 272 (1996).

The well settled test for judging the sufficiency of criminal indictments is whether "the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he has called upon to answer, and acquittal or conviction may be pleaded in bar in bar to any subsequent prosecution." State v. Wade, 306 S.C. 79, 409 S.E.2d 780 (1991). Quoting, State v. Adams, 277 S.C. 115, 283 S.E.2d 582 (1981). The State is not required to plead its evidence in the indictment. State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952); State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (S.C. App. 1991).

When reviewing the sufficiency of indictments, the above cited test "must be viewed with a practical eye; all the surrounding circumstances must be weighed before an accurate determination of whether a defendant was or was not prejudiced can be reached. [citations omitted]." State v. Adams, 283 S.E.2d at 588.

While the failure to allege certain circumstances of the crime may be grounds to quash an indictment for insufficient notice, such a defect does not necessarily implicate the court's subject matter jurisdiction which is satisfied so long as the elements of the offense are sufficiently stated.

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45 and -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 610 S.E.2d 494; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

IV.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 18, 2009

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Jerene Hayward

☒ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2008-CP-400-3854

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Bryan Jeffries, Bar No. Address: 1250 Amelia Street Orangeburg, South Carolina 29116 phone: fax: e-mail: other:	Defendant's Attorney: Brian T. Petrano, Bar No. Address: Post Office Box 11549 Columbia, South Carolina 29211 phone: 803-734-3737 fax: 803-734-3737 e-mail: other:
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type	
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant March 20, 2009 Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions ☐ State Agency v. Indigent Party ☒ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP) Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Hayward, Jerene, 314451)

2008CP4000780

2008CP4003854

Applicant,)

v.)

MOTION FOR MERGER

State of South Carolina,)

Respondent.)

RICHLAND COUNTY
 FILED
 2008 MAR 25 AM 11:52
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

The applicant in the above-captioned matter has filed two applications for post conviction relief, one that was filed February 1, 2008 (2008CP4000780) and another filed May 29, 2008 (2008CP4003854). The Respondent filed a Return and Motion to Dismiss the original PCR application because it was filed while the Applicant's direct appeal was still pending.

The second PCR application was filed after the direct appeal had been resolved and counsel has been appointed for the Applicant based on the second PCR application; therefore, the Respondent submits that the second PCR application should be the surviving action in order to preclude any confusion regarding the order of appointment of counsel. An applicant is not generally allowed to have two post-conviction relief proceedings in regard to the same conviction (See, Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. § 17-27-90). The State therefore moves to merge the two cases – that the original PCR application filed February 1, 2008 (2008CP4000780) should be merged into the second PCR application, filed May 29, 2008, with docket number (2008CP4003854) being the surviving case.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

March 19, 2009

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

) 2008CP4000780

) 2008CP4003854

Hayward, Jerene, 00314451,)

Applicant,)

vs.)

) ORDER OF MERGER

State of South Carolina,)

Respondent.)

RICHLAND COUNTY
FILED
2009 MAR 25 PM 3:01
JEANETTE W. McBRIDE
C.C.P. & G.S.

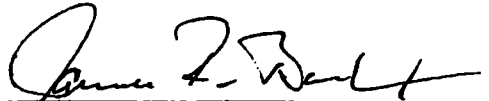
The applicant in the above-captioned matter has filed two applications for post conviction relief, one that was filed February 1, 2008 (2008CP4000780) and another filed May 29, 2008 (2008CP4003854). The Respondent filed a Return and Motion to Dismiss the original PCR application because it was filed while the Applicant's direct appeal was still pending.

The second PCR application was filed after the direct appeal had been resolved and counsel has been appointed for the Applicant based on the second PCR application; therefore, the second PCR application should be the surviving action in order to preclude any confusion regarding the order of appointment of counsel. An applicant is not generally allowed to have two post-conviction relief proceedings in regard to the same conviction (See, Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. § 17-27-90). The original PCR application filed February 1, 2008 (2008CP4000780) should be merged into the second PCR application, filed May 29, 2008, with docket number (2008CP4003854) being the surviving case.

The Clerk of Court is therefore ordered to merge the two cases, with docket number (2008CP4003854) being the surviving case being the surviving case.

IT IS THEREFORE ORDERED that the Richland County Clerk of Court merge docket number 2008CP4000780 into docket number 2008CP4003854, with file 2008CP4003854 being the surviving file and all future pleadings bearing docket number 2008CP4003854. Docket number 2008CP4000780 will be dismissed upon the merger.

AND IT IS SO ORDERED this 24 day of March, 2009.


The Honorable James R. Barber, III
Administrative Judge
5th Judicial Circuit

Columbia, South Carolina.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2008-CP-40-780
	)	
JARENE HAYWARD, #314451,	)	
	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT,	)	

May 13, 2009
Columbia, South Carolina

BEFORE:

THE HONORABLE ALISON RENEE LEE, JUDGE.

APPEARANCES:

CHARLIE J. JOHNSON, JR., ESQ.
Attorney for the Applicant

BRIAN PETRANO, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KAREN AMBROZIAK
Official Court Reporter

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(No exhibits were introduced).

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1 THE COURT: Okay.

2 MR. PETRANO: May it please the Court. This is
3 2008-CP-40-00780, a Richland County case. This was a --
4 Mr. Jarene Hayward.

5 Am I saying that right?

6 THE APPLICANT: Yes, sir.

7 MR. PETRANO: It was a PCR application filed
8 February 1st, 2008. This was a jury trial before Judge
9 James W. Johnson. The trial ended on March 16th, 2006.
10 The Applicant was indicted -- and I hope I get all of
11 this correctly -- by the June 2005 term of the Richland
12 County grand jury. That's 2005-GS-40-5074 for sale or
13 delivery of a pistol, unlawful sale or delivery of a
14 pistol. That indictment was quashed at that preliminary
15 hearing.

16 The Applicant was also indicted by the April 2005
17 term of the Richland County grand jury. That's
18 2005-GS-40-2802. That's pointing and presenting a
19 firearm.

20 That was ultimately -- a motion for a directed
21 verdict following the trial was granted, so that was -- I
22 guess -- I'm not sure what the term is, but there's no
23 conviction on that.

24 Again, the April term 2005-GS-40-2824, that's a
25 burglary first degree, the victim named Jeffery Connolly.

1 That was a conviction, 30 years for that. That's the
2 primary sentence.

3 Then there's 2005-GS-40-2825, that's a petit larceny,
4 again the victim is Jeffery Connoly, thirty days for that.
5 That's, I believe, concurrent.

6 Then we have 2005-GS-40-5073, assault and battery
7 with intent to kill. The victim is Lourdis (phonetic)
8 Antonio. That was sentenced to assault and battery of a
9 high and aggravated nature, the lesser-included offense.
10 That was a ten-year sentence consecutive to the first
11 degree burglary.

12 And then there is 2005-GS-40-4570, and that was a
13 simple possession of marijuana, a first offense. That was
14 30 days, and that was concurrent.

15 There was a direct appeal. The South Carolina Court
16 of Appeals affirmed the convictions and sentence,
17 2008-UP-088. The remitter date was February 26th, 2008.

18 On that, I will turn it over to Mr. Charlie J.
19 Johnson, Jr., the Applicant's current counsel of record,
20 and I'm sorry. I left out one other thing from the
21 record.

22 The Applicant's trial attorneys were Jeanette van
23 Ginhoven and Ms. Lauren Mobley. Both, my understanding,
24 are located somewhere in Eastern Europe and are outside of
25 this Court's jurisdiction and are not able to testify.

1 Thank you, Your Honor.

2 MR. JOHNSON: Your Honor, at this time, I'd like to
3 call Jarene Hayward to the stand.

4 THE COURT: Does that mean they're not coming back to
5 this country?

6 MR. PETRANO: Well, Your Honor, Ms. Mobley, my
7 understanding --

8 THE BAILIFF: Place your left hand on the Bible.

9 MR. PETRANO: -- is never going to be available again
10 in the sense that she is in the Peace Corps. and is all
11 over the place. I think she is in --

12 THE COURT: Mobley or van Ginhoven?

13 MR. PETRANO: Mobley I'm talking about now.

14 THE COURT: Okay.

15 MR. PETRANO: And I think she's either in North
16 Africa or one of the old Soviet Bloc countries. I don't
17 know the specifics.

18 Then Ms. van Ginhoven lives in one of the
19 Scandinavian countries, Denmark or Holland or one -- maybe
20 that's the same thing, I'm sorry -- or Norway, and I don't
21 know when, and if she comes back, is available. That's
22 all I have got, Your Honor.

23 THE COURT: Okay.

24 MR. PETRANO: I've had no contact with them recently,
25 and in -- not in this case at all or any recent case.

1 That's all I have.

2 JARENE HAYWARD, after being duly
3 sworn, testified as follows:

4 THE COURT: Thank you. If you'll have a seat in the
5 witness box and --

6 THE BAILIFF: Have a seat.

7 THE COURT: -- and state your full name, please

8 THE WITNESS: Jarene Hayward.

9 DIRECT EXAMINATION:

10 BY MR. JOHNSON:

11 Q Mr. Hayward, are you presently incarcerated?

12 A Yes, sir.

13 Q Where are you being held?

14 A Lieber Correctional Institution.

15 Q And what was your sentence as a result of your
16 conviction in this case?

17 A Forty years.

18 Q Forty years?

19 A Yes.

20 Q Who were the attorneys that represented you in this
21 case?

22 A Jeanette van Ginhoven, Lauren Mobley.

23 Q Now, prior to -- you went to trial in this; is that
24 correct?

25 A Yes, sir.

1 Q Prior to going to trial -- let me give you a
2 synopsis. You tell me if this is correct. You were
3 basically charged with breaking into a house, beating or
4 hitting -- kicking a domestic servant that worked in the
5 house and robbing the house of some items, had a gun; is
6 that correct?

7 A That's correct.

8 Q And then you were subsequently arrested and charged
9 away from the scene; is that correct?

10 A State that again.

11 Q I mean, it was that was later on arrested by the
12 police at a --

13 A Yes, sir.

14 Q -- different location other than the house --

15 A Yes, sir.

16 Q -- correct?

17 A Yes, sir.

18 Q And allegedly, you was identified as being the person
19 by the victim, the domestic servant?

20 A Yes, sir.

21 Q Okay. Now, how often did you meet with your attorney
22 prior to the trial?

23 A I think like every two months or something like that.

24 Q How long was you -- from the time you were arrested
25 to the time you came to trial, what was the time period?

1 A What you mean [sic], as far as --

2 Q How long was it, was it a year?

3 A Two years.

4 Q Two years?

5 A I spent two years with no bond in Richland County.

6 Q Okay. And you say you saw them about every two
7 months or so?

8 A I only saw her like probably every two months or so.

9 Q When you say "her", who are you referring to?

10 A Jeanette van Ginhoven when she picked up the case.
11 My case had been picked up and put down so many times by
12 so many public defenders.

13 Q So how many public defenders do you say you had
14 before you got your final attorney?

15 A Some I ain't never meet [sic]. I was just told by
16 her that I was picked up, but I had like two, I know two,
17 two or three.

18 Q So she was at least the third, the third or fourth
19 attorney that you had?

20 A Yes, sir.

21 Q Did they go over the discovery and everything with
22 you?

23 A You mean the warrants prior to her or after her?

24 Q Well, referring to her, did anybody go to --

25 A No, sir. I didn't get it until like seven or eight

1 months later when I was incarcerated.

2 Q After you was convicted?

3 A No. You mean my -- you mean my --

4 Q You mean discovery?

5 A I didn't get that until like seven or eight months,
6 but she -- when I got her again, then we went over it.

7 Q Okay. What was your defense to this matter?

8 A She...

9 Q I mean, what was your -- was your defense that it
10 wasn't you?

11 A Yes. Yes, sir. That's what I was saying.

12 Q And I --

13 A Basically, telling her, though, but you know, I
14 wasn't guilty, number one thing, and that got quashed. So
15 the rest of that stuff, I was innocent on. That's
16 basically what I was stating, telling her. She kept
17 coming at me with this, this time.

18 Q So you basically told her that you were guilty of one
19 thing, but everything else that you had nothing to do
20 with; is that correct?

21 A Yes, sir.

22 Q What was the one thing that you told her that you
23 were guilty of?

24 A Possession of a firearm.

25 Q And how did you become in possession of the firearm?

1 A Well, I had bought it on the street, but I guess
2 right out of the people that took the gun or stole it or
3 whatever, I got -- I was -- came in contact with it
4 secondly. I got caught with it, so put it like that.

5 Q Okay. Now, you was identified as the suspect by the
6 victim in this case; is that correct?

7 A The victim that was assaulted, not the person that
8 was...

9 Q Not the owner of the house --

10 A Yeah.

11 Q -- but the victim that was assaulted?

12 A Yeah.

13 Q But that was a show up lineup; is that correct?

14 A Yeah, a photo lineup.

15 Q It was a photo -- they did not bring her to the scene
16 and point you out for her?

17 A No, sir. She was in the hospital. From what I --
18 that's what the reports say.

19 Q Okay.

20 A The police reports say, investigative report, but I
21 never seen no hospital reports or nothing like that. None
22 of that was in my discovery, none of that.

23 Q Okay. Now, did anybody else identify you as being
24 present --

25 A No, sir; no, sir.

1 Q -- at the scene?

2 Now, what -- we discussed this matter before we came
3 here today; is that correct?

4 A Yes, sir.

5 Q Now, you understand that if your -- if your PCR is
6 granted, that all of the charges could be placed back on
7 you, and you could be facing even more time than you
8 already had?

9 A Yes, sir.

10 Q And you still are willing to go forward; is that
11 correct?

12 A Yes, sir.

13 Q Now, what is the main fact -- I explained to you what
14 ineffective assistance of counsel is, and you understand
15 that --

16 A Correct.

17 Q -- right?

18 A Correct.

19 Q And you understand that, correct?

20 A Yes, sir.

21 Q And you understand it's a two-prong test?

22 A Correct.

23 Q So what is the main issue that you have with your
24 lead attorney in this case?

25 A Okay. One is ineffective counsel.

1 Q Based on what?

2 A Well, one of my jury -- well, the people that was
3 on -- one of the members of the jury, they was a member of
4 the country club, same as the victim's --

5 Q Okay.

6 A -- house it was. They was two members of the country
7 club --

8 Q All right.

9 A -- but the judge brought back and notified that we
10 had -- they was a victim -- I mean, a witness, but they --
11 so she didn't object to that.

12 MR. JOHNSON: Your Honor, I call your attention to
13 page 222 of the transcript. I think that line starts
14 at -- looks like line 11 to 17.

15 BY MR. JOHNSON:

16 Q Now, what -- there was a note given to the judge or
17 something?

18 A Well, me and my attorney?

19 Q Uh-huh.

20 A We didn't see that note. That was just going off the
21 judge's word but at the same token, she didn't object to
22 it whether it was -- she didn't ask to see it, request to
23 see it or nothing. She just went off face value as far as
24 word wise.

25 Q So you was not -- so that individual was already

1 placed on a jury when he gave -- and the trial was going
2 on when he made the Court aware of that, correct?

3 A Correct.

4 Q So when the question was asked earlier by the
5 Court -- did they -- was they familiar with anybody or
6 things of that nature, that person didn't stand up and
7 say, "I'm a member of the country club"?

8 A Not to my knowledge, not to my knowledge or hers as
9 far as she was saying. I didn't see her object or say,
10 "Hey, whoa," none of that. She didn't do none of that.

11 Q So when she became aware during the trial, she didn't
12 object to it?

13 A She didn't object to it. Even the Court asked her
14 whether...

15 Q Whether she wanted to object, and she said no?

16 A Asked her was this okay. She said it was fine.

17 Q Okay.

18 A That's what the record says.

19 Q Now, you feel that that was ineffective assistance of
20 counsel?

21 A I feel that was ineffective counsel, that was.

22 Q And that prevented you from bringing that issue up on
23 appeal; is that correct?

24 A That also prevented me from taking the stand because
25 I ain't -- I kind of felt there was some type of conflict

1 of interest or some type of inside work going on or
2 entrapment. That's how I kind of -- that's how I felt. I
3 wouldn't have took [sic] the stand.

4 Q So that had some effect on your decision to take the
5 stand or not to take the stand; is that correct?

6 A 100 percent.

7 Q Is there any other issue you want to make the Court
8 aware of?

9 A Well, the photo lineup, I mean everybody in the photo
10 lineup, they got on street clothes. I got on jail
11 clothes, and it's after I was arrested. This wasn't when.
12 It was after I was arrested, and some of those dudes
13 wasn't even -- people that was in there, they ain't even
14 my complexion. They darker [sic] than me.

15 Q Was that brought up during the trial or objected to
16 by your counsel?

17 A I can't -- I can't recall, but at the same token, I
18 don't -- I don't think so, to my knowledge. I could be
19 mistaken, but you know, the record, transcript is right
20 there.

21 Q Okay. Now, is there any other issues that you have?

22 A Nothing right now.

23 Q But those are the two main issues that you have
24 concerning her?

25 A (Nods in the affirmative).

1 Q Now, I've made you aware that this is a one-time
2 grasp that you have to get all your issues out. These are
3 the only two issues you wanted to bring forth, correct?

4 A Correct.

5 MR. JOHNSON: I have nothing else, Your Honor.

6 CROSS-EXAMINATION:

7 BY MR. PETRANO:

8 Q Ms. van Ginhoven -- how do I say it?

9 A (Pause).

10 Your Honor, I may -- I think -- I got another issue.
11 I -- it just hit me.

12 THE COURT: He has an issue.

13 MR. JOHNSON: Is that okay with the Court?

14 THE COURT: Yes.

15 MR. JOHNSON: Yes. Yes. What's your issue?

16 THE WITNESS: A lot of -- well, I mean -- it really
17 ain't ineffective, but I want to put it on the record,
18 though. I mean, people said I had blood on my shoes.
19 They said it.

20 In the police report, it was the victim, when I got
21 arrested. For my -- I ain't get me my Miranda right
22 rights read to me then [sic]. I was attacked by the
23 police.

24 They said I had blood on my shoes. My motion of
25 discovery said I had -- the police report said I had the

1 victim's blood on my shoes, and they said I had
2 fingerprints.

3 They uplifted fingerprints that allegedly supposed to
4 have been mines [sic] shoe prints. That's why they
5 confiscated my shoes, had more in my possession, but the
6 SLED report came back and verified me, cleared all of
7 that.

8 The blood wasn't my blood. It wasn't the victim's
9 blood neither.

10 BY MR. JOHNSON:

11 Q All right. So the fingerprints did not match you?

12 A The shoe prints did not match.

13 Q The shoe prints did not match, and the blood did not
14 match?

15 A No. No, it did not.

16 Q So basically, the only evidence that really connected
17 you to the crime was the gun that was found --

18 A That's -- that's it.

19 Q -- and the victim's...

20 A Photo.

21 Q Photo lineup.

22 A Oh, yeah, the photo lineup.

23 Q Okay..

24 A Oh, they said I had blood on my sweater and my jeans,
25 too, which they had brought them and make them into

1 exemption [sic], and SLED cleared me on that.

2 I mean, that's -- that's what they said. They had
3 probable cause to confiscate, take it and bringing this
4 into play but they never...

5 Q Did your attorney make -- make the Court aware of
6 that or make the jury aware of that during the trial?

7 A I mean, I don't -- I think she did to a certain
8 extent. I know I got to back to read it because I been
9 going to mental health.

10 Q But you feel she didn't sufficiently. Is that what
11 your --

12 A Critical, that was a critical stage for me and my
13 trial.

14 Q Now, you also had one other issue that I remembered.
15 It was concerning how long she spent on the case, or was
16 she prepared?

17 A Oh, yeah. I don't -- I don't think she was capable
18 of handling my trial. She wasn't prepared for my trial
19 because she had to go to a class before she...

20 Q Before the trial started?

21 A Before she could go into trial, she had to go take a
22 class in Atlanta. I remember she was telling me that.
23 She did bring that to my attention, but I still had filed
24 for her -- I wanted to dis--- you know, I did not want
25 nobody in Richland County Department to represent me in my

1 trial because I kind of felt like a conflict. It was a...

2 Q I understand.

3 A I didn't want her to represent me, but they still
4 denied that and overlooked that. I got it in my motions I
5 filed when I was in jail before that mental health crept
6 up on me.

7 Q Okay. Only concerning mental health, you made her
8 aware that you had some mental health issues?

9 A Yeah. I've been mental health since 1986.

10 Q When you was in Special Ed or school, something like
11 that?

12 A ADA, all that. All that.

13 Q Well --

14 A Took medications and all of that.

15 Q But did you ask to be examined or have --

16 A I requested to her to be examined, but she never --
17 she never had me evaluated. She spoke a bunch, but she
18 never had me evaluated.

19 Q Since you have been at the Department of Corrections,
20 have you been evaluated?

21 A Yeah, I take -- I'm mental health now.

22 Q And what type of medications do you take now?

23 A I take Tegretol. I don't know how to basically spell
24 it but you -- it's Tegretol.

25 Q Okay. And how often do you take it a day?

1 A I take -- I was taking it -- taking it three times a
2 day, six pills, but now I take four, take in the morning
3 time and in the evening time.

4 Q Now, what does it do? It kind of like calms you
5 done?

6 A Yeah. I be -- you know, I might spaz out and come
7 back. I can't remember why I did it or -- you know, it
8 keeps me calm, cool, collected.

9 Q So you're okay today?

10 A Yeah. I'm cool today.

11 MR. JOHNSON: Just checking.

12 Thank you, Your Honor.

13 CROSS-EXAMINATION:

14 BY MR. PETRANO:

15 Q Ms. van Ginhoven, is how you say her name?

16 A Yes, sir.

17 Q Was she easy to work with? Was she a nice person?

18 A Yes, sir.

19 Q Did you have any trouble communicating with her?

20 A I mean, as far as her not doing what I asked her, you
21 know, get me a private investigator, doing this and that
22 for me, but other than that, as far as her personality,
23 she was okay as far as a human being.

24 Q And you're saying you asked her to get an
25 investigator and check something out? I don't understand.

1 What was it she was supposed to do?

2 A A couple of things. I mean, an investigator, private
3 investigator, could have, you know, made sure that my
4 pants got tested and, you know, tire tracks that she did
5 say -- they say my foot was in her, the victim's blood on
6 the ground. They lost chain of custody of the gun.
7 That's why the gun was quashed.

8 Q Okay.

9 A It wasn't that --

10 Q And she revealed all of that at the trial. That's
11 why that was quashed, correct? I mean, that's fair to
12 say. She did address that?

13 A Yeah, but I had to coerce her to do that, though. I
14 mean, not the -- I didn't know if they were going to quash
15 it or not, but I had to let her know that hey, that's a
16 key factor in the case, too. I mean, because this was one
17 key that they used, factor they used to arrest me.

18 Q And you'll agree, and it's fair to say, that in her
19 closing, she did illustrate the difference between the one
20 in 21 million or whatever the -- whatever the match was on
21 the blood. She certainly did go through that with the
22 jury, right? I mean, that's fair to say, right?

23 A You know, it's on record. She had to do that.
24 That's plain. It was in my file, you know, the blood
25 didn't match. SLED -- she didn't have to do that. It was

1 already black and white. She didn't prove that before we
2 -- before I was locked up six months, it was already
3 orchestrated and proven that I'm not the one that
4 assaulted this lady, and I'm not the one -- the blood that
5 was on me, it wasn't hers or mines [sic].

6 Q And she covered all that, right?

7 A I mean, the record did that. She had -- I mean --

8 Q Right.

9 A She didn't even have to bring that into play because
10 it's already in black and white. SLED did it for me.
11 SLED came and testified on my behalf, so she didn't have
12 to really cover that, but she did it anyway.

13 Q Right. She asked the SLED agents questions and
14 brought all of that out, right?

15 A She didn't bring it out. It was already on file.
16 SLED that -- was subpoenaed to come and testify on either
17 my behalf or for the State.

18 Q All right.

19 A The State subpoenaed them. I also subpoenaed them.

20 Q Okay. But you or she?

21 A I did because I got it. I got it. It's in -- it's
22 in record. If you look at my police report and all my
23 motions I filed to her --

24 Q Okay.

25 A -- you'll see it.

1 Q And there was a kidnapping, too, and you were not
2 guilty of that right, right?

3 A Yeah. I noticed you said a lot of things, a lot was
4 quashed.

5 Q Did I get all of them right?

6 A Nah. Yeah. I was found like not guilty on four
7 charges, so they had to reach a verdict.

8 Q And now -- I mean, you had to admit she did a good
9 job on those, right?

10 A I mean, I didn't kidnap nobody.

11 Q And that's what the jury found, right?

12 A The lady that -- the alleged victim cleared me on
13 that. I didn't kidnap nobody.

14 Q Right. And you're -- it's fair to say that Ms. van
15 Ginhoven flushed all that out, right?

16 A I wouldn't say she flushed it out. She just went
17 over what they said.

18 Q Well, now --

19 A I understand people testified against me.

20 Q Well, now wait a second. She tried to, even at the
21 beginning, get the kidnapping knocked out before they even
22 tried you, before the trial even started, right?

23 A I mean, I was indicted on it, but what -- what in my
24 record, what in my file stated that I kidnapped somebody?

25 Q And that's exactly what she argued before the trial

1 even started, right? She argued that. Yes or no?

2 A It's plain and simple. I mean, I'm not being
3 difficult. I'm just telling you, you're trying to get me
4 to say that she flushed this out, but everything is in
5 black and white, though.

6 Q Yes. Right.

7 A Either I did or I didn't.

8 Q I'm just trying to ask you whether she did flush out
9 the kidnapping, yes or no. I'm not trying to trip you up.
10 If you don't want to --

11 A I don't feel that she flushed it out because it's in
12 black and white that I didn't kidnap nobody. Even the
13 victim stated that I didn't kidnap them.

14 Q And I'll agree with that. The jury said that, so
15 okay. Thank you. And...

16 I've got nothing else. Thank you.

17 (Pause.)

18 Oh, I'm sorry. If it's okay, I did forget something.

19 THE COURT: Yes.

20 BY MR. PETRANO:

21 Q You said that you did have possession of a firearm.
22 That was quashed. I'm not trying to bring that up or
23 anything like that. I just want to make it clear, and I
24 want to make sure I wrote this down right. You bought
25 that off people off the street?

1 A To bring that -- gun charge was quashed because
2 somebody made a -- the grand jury made a mistake. It has
3 two suppression day hearing dates on it, so Ms. Jehoven
4 [sic] did bring that out, and I had to tell her that. I
5 was like, I didn't -- I remember appearing at one
6 suppression hearing day. I don't remember going to two.

7 Q Okay.

8 A It's impossible, so she -- I got her to do that for
9 me.

10 Q Right. I'm not asking about that. I'm asking about
11 what you just testify to.

12 A You asked me about the gun.

13 Q You just said five minutes ago that you bought the
14 gun off the street.

15 A I did. I got caught with the gun. I'm not going to
16 lie about that. That's something I did. I was willing to
17 get punished for that later on down the line.

18 Q Did the police try to get you to explain who you
19 bought the gun off of?

20 A No, they did not. They immediately attacked me and
21 started accusing me.

22 Q And that's how the blood got on your feet?

23 A Well -- well, it wasn't mines.

24 Q Okay.

25 A I got -- I asked Ms. Jehoven [sic] to -- let's get a

1 blood sample on that, but she did not do that. It wasn't
2 the victim's, so I can't really say who [sic] blood that
3 was. It wasn't mines. It wasn't the victim's.

4 MR. JOHNSON: Your Honor, I have nothing further.

5 THE COURT: You may step down.

6 THE BAILIFF: Watch your step, over there.

7 THE COURT: Anything further?

8 MR. JOHNSON: Your Honor, we have nothing further.
9 It's just our position that one of the main issues --
10 there were a number of things where he was found not
11 guilty of -- due to lack of evidence that it appears to
12 have been a question for the jury to determine the
13 credibility of the one victim who identified.

14 And that there appears to be at least one person on
15 the jury that could have possibly had some bias that if
16 that had been objected to, it could have been an
17 appealable issue as to whether that person should have
18 been left on the jury or not.

19 And by the -- my client's defense attorney not
20 objecting to it, then it prevented him from making that an
21 appealable issue; and therefore, resulting in a negative
22 outcome.

23 THE COURT: Yes, sir.

24 MR. PETRANO: Just real briefly. The State submits
25 that trial counsel did an excellent job. I read the

1 transcript, and I think it speaks for itself.

2 Regarding the juror, though, I think it's conclusive,
3 and it's obvious from the record that one member of the
4 jury -- and I don't even think it's clear as to which
5 juror number that was -- did send back a note indicating
6 that they were a country club -- member of the same
7 country club of the -- well, not the victim, but it's the
8 victim's employer. I guess the person who owned the
9 house, the actual victim of the ABWIK or the ABHAN, which
10 was the victim was, I guess, the nanny I want to say, but
11 the guy who -- the fellow who owned the house, the father
12 of the child, did belong to the same country club.

13 Now, the reason why I'm getting to all of that is
14 when asked at the beginning of -- on the jury if they had
15 any bias or they knew any of these people, that everyone
16 was listed. They didn't know that person. At least they
17 didn't stand up.

18 There was no mention of the country club until I
19 think the police were testifying -- or someone was
20 testifying as to how the father was contacted. He said he
21 called the country club, and the name of the country club
22 came up.

23 I don't think there was anything to indicate that the
24 juror and the homeowner actually knew each other, other
25 than being members of same country club. I just wanted to

1 put that out there.

2 I think that the record is clear that trial counsel
3 fully addressed all of the blood evidence issues. I think
4 she did a great job.

5 The record speaks for itself as far as how she tried
6 to reflect that -- how the blood got on the applicant
7 during the arrest. She illustrated that quite well. Oh,
8 and also well through all the photo ID issues.

9 I think if there's a question as far as the
10 reliability of the photo ID, I think we should introduce
11 that as part of the record.

12 I think it's number 17, but I don't have a copy of
13 it, and I'll just put it out there. If it is that
14 important, we should probably put it in the record but
15 thank you.

16 THE COURT: Do you happen to have a copy of it?

17 MR. JOHNSON: No, Your Honor. I could not find a
18 copy of it, as well, in none of my material. But I -- if
19 it's possible to have it made a part of the record, I
20 would like to have it made part of the record.

21 MR. PETRANO: And I know the ID was an appeal issue,
22 but I think that was a courtroom ID, not a photo ID. I'm
23 assuming we could check the General Sessions file, but
24 once again, let's say if the testimony was that he was
25 wearing a jail outfit and everyone else was wearing street

1 clothes; is that right? That was the problem with the
2 photo ID?

3 The six-person lineup is either going to reflect that
4 or not, and I think that either way, it was addressed
5 adequately at the trial. But I'll be more than willing to
6 go to the General Sessions file and see if I can find
7 that.

8 MR. JOHNSON: Your Honor, it's possible that the
9 public defender file might would have that, if they have a
10 file, but I was unable to contact anybody on where the
11 file was.

12 THE COURT: It's probably down in storage some place.

13 MR. PETRANO: It was my understanding that it was
14 pulled, and is available down there.

15 THE COURT: Oh, is it?

16 MR. PETRANO: But I didn't go look at it. I don't
17 have the record.

18 THE COURT: Either that or check with the clerk's
19 office downstairs and see if they have it.

20 MR. PETRANO: Yeah. I was going to call Mr. Truitt.

21 THE COURT: That was Exhibit No. 6 at the trial?

22 MR. PETRANO: I'm sorry, Your Honor. I said 17. It
23 was six or seven, yeah. You're correct, six.

24 MR. JOHNSON: I think it was six, Your Honor.

25 THE COURT: I have not had a chance to review the

1 transcript in this case, and so I would like to do that
2 before I make any ruling, obviously, because of the issues
3 that are involved.

4 What I will do is ask that the parties prepare an
5 order, proposed orders, and if I can get them by June 3rd,
6 which would give you enough time. If you will just e-mail
7 them to me in Word format.

8 Anything further?

9 MR. JOHNSON: I have nothing further, Your Honor.

10 MR. PETRANO: I have nothing further, Your Honor.

11 THE COURT: Thank you.

12 (Whereupon, the proceedings were concluded.)
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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Jerene Hayward, 00314451,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2008-CP-40-00780 **3854**

ORDER OF DISMISSAL

JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 APR -9 PM 3:16

RICHLAND COUNTY
FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 1, 2008 (2008-CP-40-00780). Following the denial of the direct appeal, Remittitur date February 26, 2008, the Applicant filed a second PCR Application on May 29, 2008 (2008-CP-40-03854). The Respondent made its Return on March 25, 2009.¹ An evidentiary hearing into the matter was convened on May 13, 2009 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Charlie J. Johnson, Jr., Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Jeanette Van Ginhoven is, according to the Respondent, currently living in Europe and was not available for the hearing. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, the records from the direct appeal, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted by the Richland County Grand Jury during the April or the June 2005 term for first-degree burglary (Indictment No. 05-GS-40-2824), petit larceny (Indictment No. 05-GS-40-2825), kidnapping (Indictment No. 05-GS-40-5072), assault and battery with intent to kill

¹ In their Return, the Respondent suggested that because counsel has been appointed for the second PCR, the first PCR should be merged into the second PCR with the second PCR (2008-CP-40-03854) being the surviving action. The Respondent filed a Return and Motion to Dismiss the original PCR on February 7, 2008. This Court agrees.

(Indictment No. 05-GS-40-5073), and possession of marijuana (Indictment No. 05-GS-40-4570)². The Applicant was represented by Jeanette Van Ginhoven and Lauren Mobley. On March 16, 2006, after a jury trial with the Honorable James W. Johnson Jr., the jury found Hayward guilty of first-degree burglary, the lesser-included offense of ABHAN, petit larceny, and possession of marijuana. The trial court sentenced Hayward to consecutive terms of thirty years (30) for first-degree burglary and ten (10) years for ABHAN, plus concurrent terms of thirty days (30) each for the remaining convictions. He was found not guilty of the kidnapping charge.

A timely Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Jerene Markwell Hayward, Op. No. 2008-UP-088 (S.C. Ct. App. filed February 8, 2008). The Court of Appeals recited the facts as follows:

Hayward was accused of burglarizing the home of Jeffrey Connell and assaulting Connell's domestic employee on April 13, 2004. On that same afternoon, Ronald Cowart, a landscaper, was in route to Crescent Lake Subdivision when Hayward ran out in front of Cowart's truck, exclaiming two people were in pursuit of him. Cowart talked with Hayward and gave him a ride. Cowart observed Hayward was a tall, slender black male, with close-cut hair and a mark or tattoo on his neck. Hayward was wearing baggy blue jeans and a dark, long-sleeved shirt. He was carrying a backpack. Hayward eventually left Cowart's vehicle to find a store and a phone. Cowart alerted the police in response to conduct he believed was "out of the ordinary" and the noticeable police activity in the area.

Police arrested Hayward, informed him of his Miranda rights, and summoned Cowart several hours later to identify Hayward. At the site of arrest Hayward was handcuffed and surrounded by police cars and uniformed officers. Cowart positively identified Hayward as the man he had spoken with and picked up earlier. He testified, "I said yes this is him, I know him."

Eric Barnes, an investigator with Richland County Sheriff's Department, was responsible for directing the investigation. As he arrived on the scene where Hayward was detained, he recalled Hayward was shouting that he was innocent. Barnes introduced himself to Hayward and looked at Hayward's shoeprint to determine if it was similar to one left at the crime scene. Barnes observed what he thought was blood on Hayward's shoes, removed them, and secured them as evidence.

Barnes continued talking with Hayward, commenting that Hayward "was going to have a hard time explaining how the victim's blood got on the shoe."

² Applicant was also indicted for unlawful possession of a pistol (Indictment No. 05-GS-40-5074) which was quashed by the trial court and pointing and presenting a firearm (Indictment No. 05-GS-40-2802) upon which the trial court directed a verdict at the conclusion of the State's case at trial.

Hayward said "he was in the house but it was the other guy that kicked her or hit the lady, not him."

At headquarters, Barnes verbally informed Hayward of his Miranda rights, asked Hayward if he understood, and attempted to obtain information from him. Barnes testified Hayward denied he made the statement at the arrest site claiming he was not the one who kicked the lady. Hayward continued to deny everything about the case at that point, becoming louder and louder as the discussion progressed. When Barnes realized it was futile to continue, he decided to adjourn the session, concluding, "It became apparent in my mind that [Hayward] didn't want to give a statement."

In a hearing pursuant to Jackson v. Denno, 378 U.S. 368, (1964), Hayward challenged the suggestiveness of Cowart's identification of him at the arrest site. The trial court ruled Cowart's identification was admissible.

Additionally, Hayward moved for a mistrial on the ground Barnes impermissibly commented on Hayward's constitutional right to remain silent. The trial court denied Hayward's motion and ruled Hayward had not invoked his right to remain silent at the time Barnes decided it was futile to continue the session. Therefore, Barnes' comment that Hayward's statement was not forthcoming did not reflect on Hayward's invocation of his Fifth Amendment right.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons: "Trial counsel was ineffective when she failed to object at crucial points in trial, failed to explore defenses, failed to challenge indictments, failed to suppress evidence. Trial counsel also failed to strike jurors or bring to court attention that the jurors was bias and unsuitable for case.[sic] Counsel, also failed to challenge 85% law truth in Sentencing Bill 3096, that violates the single subject clause also enacted statue by legislature." Additionally, Applicant alleges prosecutorial misconduct.

At the evidentiary hearing, Applicant proceeded only on the allegations of ineffective assistance of counsel stated in the application. No evidence was presented regarding allegations of prosecutorial misconduct. Those claims are therefore waived or abandoned.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (Rev. 2003).

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The Applicant testified that he was represented by Lauren Mobley and Jeanette Van Ginhoven, and that Ms. Van Ginhoven represented him at trial. He met with his attorney(s) every two (2) months for approximately two (2) years leading up to the trial. Trial counsel was easy to deal with and he had no problems communicating with her. Applicant testified that he never received a copy of the discovery, but he did review it with trial counsel. His defense was that he was falsely identified. Applicant testified that if anything he was only guilty of possession of a firearm because he bought it from the people who must have done this crime. He testified that he was improperly identified out of a photographic lineup by the victim. In the photographic lineup the Applicant was wearing different clothing. The Applicant testified that trial counsel was ineffective because a juror was a member of the same country club as the owner of the property that was burglarized. The State claimed during the trial that Applicant had the victim's blood on his shoes; however, the Applicant claimed that was erroneous because "SLED cleared me."

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that,

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but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds Applicant's testimony is not credible and that he has not carried his burden of proof. Accordingly, this Court finds that his applicant must be denied and dismissed.

Regarding the jury note, this Court finds no arguable claim for relief. Specifically, during the trial a note from the jury indicated that a juror was a member of the same county club as the owner of the property that was burglarized. The property owner also testified as a witness for the State. The trial court inquired if this would affect the juror's ability to be fair and impartial in the case. The juror informed the court that it would not. The juror indicated that he did not know the witness. (Trial transcript p. 222). Presumably, the Applicant's claim is that trial counsel should have objected and/or moved for a mistrial regarding the jury note. This court finds that the Applicant failed to demonstrate how the note from the juror warranted such a response by trial counsel. "The trial court has broad discretion in assessing allegation of juror misconduct The determination of whether extraneous material received by a juror during the course of the trial is prejudicial is a matter for determination by the trial court." State v. Sparkman, 358 S.C. 491, 596 S.E.2d 375 (2004).

Regarding the photographic lineup and the difference in clothing, this Court finds that the Applicant's claim that trial counsel failed to challenge the photographic line-up is without merit. The record reflects that during pretrial, trial counsel specifically challenged the identification by the victim and pointed out that the Applicant's clothing was different. (Trial transcript p. 93, p. 152-156, p. 161-162). Also, during the victim's testimony before the jury, trial counsel again challenged her identification and the photographic lineup. (Trial transcript p. 285-286). Accordingly, this Court finds that the Applicant has failed to satisfy his burden of proof and demonstrate the trial counsel failed to challenge the photographic lineup.

Regarding the blood on the Applicant's shoes, the Applicant claims that SLED analysis results cleared him. Trial counsel was able to bring out during cross examination that the Applicant's shoe tread did not match the bloody shoeprint found at the scene. (Tr. pp. 680-681). While this evidence appears to clear Applicant, the serological expert from SLED who performed the chemical tests on the swabs testified that there was blood on the shoe and it matched the victim's. Trial counsel thoroughly challenged the State's witness regarding the blood matching. (Trial transcript p. 711-719). In addition, trial counsel challenged the blood

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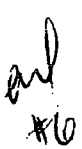
matching and serology during her closing arguments. (Trial transcript p. 774-776, 780-782). Accordingly, this Court finds that the Applicant has failed to satisfy his burden of proof and demonstrate trial counsel was ineffective – the Applicant made only general allegations, nothing specific was presented to criticize trial counsel performance and the Applicant failed to demonstrate any resulting prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate



Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.
3. The Applicant's second PCR Application, filed on May 29, 2008 (2008-CP-40-03854) is merged into the original PCR Application (2008-CP-40-00780). The surviving case number is 2008-CP-40-00780.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge
Fifth Judicial Circuit

April 9, 2010
Columbia, South Carolina.

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STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NO: 2008CP4003854

Jerene Markwell #314451 Hayward

vs.

State of South Carolina

Plaintiff

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried and heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP;
 SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order;

☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2010.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this 12th day of April, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Jerene Markwell #314451 Hayward
 Bryan S. Jeffries
 Jerene Markwell #314451 Hayward

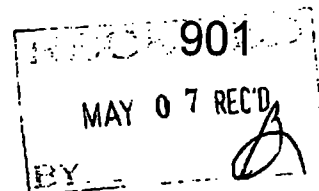
State of South Carolina
 Brian T Petrano
 State of South Carolina

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

TERENE M. HAYWARK #314451
LCI. A-147#
P.O. Box 205
Ridgeville, SC 29472



11/9/11

Honorable Judge Alison Lee
of the Fifth Circ. Ct.
Richland Co. Jud. Center.
1701 Main St.
Columbia, SC 29201

Re: PCR. 2008-CP-40-0018C

Dear Honorable Lee,

Please be advised that, this is PCR. Applicant J.M.H #314451, down here at Leiber Inst. And that this letter isn't a grievance or designed to anger or cause you to become hostile or encourage you to be bias with your Authority while deciding the verdict on my PCR. hearing b/c that's scold not the purpose of this letter your Honor! Ms. Honorable Lee, I'm not a Lawyer, nor Jail House Lawyer & not from the STATE of SC. So, I would like for someone to finally hear me out, for once, with some Legal Understanding & well as Justice. Ms. Honorable Lee, On May 13th 09 I appeared before you with my PCR. counselor Mr. Charlie J. Johnson, for a PCR. hearing. My case was the one where my Trial Counsel refused to show up for the proceedings, so you therefore proceeded on with the PCR. hearing. (Thanking you for that!) But, you stated that you weren't able to ~~reach~~ ^{reach} a decision b/c you wasn't familiar with my case & hadn't viewed my Trial Transcript. Ms. Honorable Lee,

P.1073

You also told Mr. Charlie Johnson, that your next PCR. check was scheduled
 for June 2nd 2009 & that by then you'll have my PCR. order ready & that
 you would either mail it, or fax it to Mr. Johnson. Ms. Honorable Lee, I'm
 forwarding you these attached Documents that'll show & prove alot
 of my accusations, dealing with The ineffectiveness & the Misconductive
 of the Prosecutor & Trial Lawyer. These attached Documents are coming
 from my Rule 5 Discovery Package that took me 8 mos. to receive.
 Also if you view my Rule 5 Discovery Package, you'll find & see that
 it was incomplete, b/c the Alleged Victim well as the Doctors report
 are not ^{of Rule 5 Discovery} updt, & hasn't been viewed by Applicant But, the Alleged Vic.
 & Doctor testified in Trial. Also, My Miranda & Custodian Rights were
 violated. I was Attacked by Police officers, who a few who was & had their
 badges & Uniform covered up intently, who also Testified to this, in Trial
 (SEE Trial Transcript). I was physically Assaulted/Abused & my clothes
 & shoes was stripped off me, saying that I had the ^{alleged} Victim's DNA on
 them, which in Trial the Sledge agents/Evidence Processing Department testified
 in Trial that NO DNA was found on NONE of the physical items that
 was confiscated of me in the Middle of a Neighborhood (SEE Trial Transcript)
 & The attached Documents Pages 4, 5, 6, 7.) Also, Ms. Honorable Lee,
 The Sled Agents came to my Trial & testified that My shoe Prints
 were NOT a match, to the Shoe Prints that was Photoed & uplifted
 at the ^{alleged} crime scene. Also (See Trial Transcript & the attached Documents)
^{pages} 7, 8, Ms. Honorable Lee. My finger prints were taken & they were
 not a match, to the finger prints, that was uplifted off the Alleged
 crime scene (Night stand) & or the (Truck) I allegedly was given a ride
 in. The Truck owner, also testified that I didn't have NO gloves on &
 in order for a person to get in, or on a Truck/CAR Ms. Honorable Lee,
 without gloves, they'll leave some type of print getting on or getting off.
 The Sledge agents Testified on my behalf all the way around 360°
 (PCR. Applicant)

Although, Your Honor they were the STATES witnesses Not the Applicants.
 But, Ms Honorable Lee, I have more Argument & Serious issues, that I
 did put on record & some I didn't. But, Ms Honorable Lee, I sat in jail
2 yrs with a NO BOND for these Alleged ^(accusations) evidences, that was fabricated
 against me, that turned out in TRIAL I WAS innocent of & NOT TRUE. Also
 Your Honor, if you would Please view my original PCR. Application 2008CP40-
00780, you'll see that my Trial Lawyer was very ineffective, when she
didn't object to the Victim & the Jury was members of the SAME
COUNTRY Club in Richland Co. Some County were the Applicants TRIAL
 was held in/at. (SEE TRIAL TRANSCRIPT) Applicants, Trial Counsel was
 extremely ineffective & Un Professional when she didn't object to
 to that & OR Show up for the PCR Proceedings. Ms Honorable
 Lee, It took me 5 yrs., to be able to say anything on my
 behalf & that was at your PCR hearing. I was sentenced 30 yrs. V.
& 10 yrs. NV I'm going on 8 yrs. of incarceration, in less than 5 mos.
 Your Honor, & I just want some (Justice) fairly installed, with-in this
 case, B/c my Family & Moral Supporters are Worried & asking me continuously
 about my status with the Courts concerning my case & Ms Honorable Lee, I'm not
 lawyer/counselor & really don't know what to say to them, but have patience.
 B/c this is a waiting process. But, I'm asking you to view all that I've
 said & make a decision rather it's in my favor or not B/c I gotta keep
 moving & pushing forward, or get out into Society & start over in a Positive
manner Ms Honorable Lee, Rather you acknowledge & Respect this letter or not
 I'm still thanking you in Advance, for your time, concern, Professionalism
 well as decision Mm.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 18th DAY OF Nov

2011

Sylvia Jones
 NOTARY PUBLIC
 STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES 1/29/2013

R. B. Greene M. H. Jones
ERNE M. H. Jones
314451
11-9-11

RICHLAND COUNTY SHERIFF'S DEPARTMENT**INTERROGATION: ADVICE OF RIGHTS**

NAME: Jaqueline Hayward PLACE: 5623 Two Notch Rd.
Investigator: E.K. Barnes
DATE: 04 13 04 TIME: 2125

YOUR RIGHTS

- ☐ Before we ask you any questions, you must understand your rights.
- ☐ You have the right to remain silent.
- ☐ Anything you say can be used against you in court.
- ☐ You have the right to talk to a lawyer for advice before we ask you any questions, and to have a lawyer with you during any questioning.
- ☐ If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.
- ☐ If you decide to answer questions now, without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WITNESS: _____ SIGNED: _____

WITNESS: _____

WAIVER OF RIGHTS

☐ I have read this statement of my rights and understand what my rights are. I am willing to talk and answer questions. I understand and know what I am doing. No promises have been made to me and no pressure or coercion of any kind has been used against me.

WITNESS: _____ SIGNED: _____

WITNESS: _____

P1

-41 Barre 905

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor

RECEIVED
OCT -7 AM 8:52
RCSO



ROBERT M. STEWART
Chief

EVIDENCE PROCESSING DEPARTMENT

Inv. Ivan S. Richards
Richland County Sheriff's Office
5623 Two Notch Road
Columbia, SC 29223

August 30, 2004
SLED Lab No: L04-04126
Your Case No: 04041318
Incident Date: 04/13/04
(S) Hayward, Jerene
(V) Antonio, Lourdes

Please File

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item 1: "Blood swab"

RESULTS:

Item sent to the DNA Department.

Item 2: Sweater

RESULTS:

No blood detected.

Item 3: Pair of tennis shoes

Item 3.1: Left shoe

RESULTS:

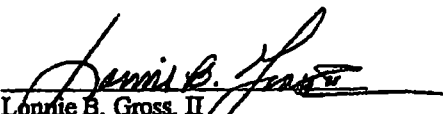
No blood detected.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

P. 4

The above examination(s) / conclusion(s) were verified on 01/17/06 by:


Lonnie B. Gross, II
Latent Print Examiner

**Richland County Sheriffs Department****DNA Department****Forensic Examination Report**

November 29, 2004

Inv. E.K. Barnes
Richland County Sheriffs Department
5623 Two Notch Road
Columbia, SC 29223

RCSD EIN: 04-1342
Case Number: 04041318
Incident Date: 4-13-04
(V) Antonio, Lourdes
(S) Heyward, Jerene

Items Submitted:

1 blood swab
3 swab from shoe
1-cc buccal swab standard from Antonio, Lourdes

Examinations and Results:

DNA was extracted from all items above. The extracted DNA was amplified and typed using the AmpFISTR Identifier kit (Applied Biosystems). The results are listed in Table 1.

P-5



Leon Lott
Sheriff

**Richland County Sheriff's Department
Forensic Science Division
Report of Footwear / Tire Examination**

To: Inv Barnes

**Date of Report: 04/16/04
Offense: Home Invasion
Case Number: 04041318
Victim(s): Lourdes Antonio**

Subject(s) Jerene Hayward

Items Submitted:

L-1 Photographs of blood shoeprints taken at the scene by Inv Richards with and without scale.

K-1 Nike Air tennis shoes collected from subject Jerene Hayward; B/M

Results of Examination:

I/O compared L-1 (photographs of blood shoeprints) to K-1 (Nike Air tennis shoes of Jerene Hayward) with the following results:

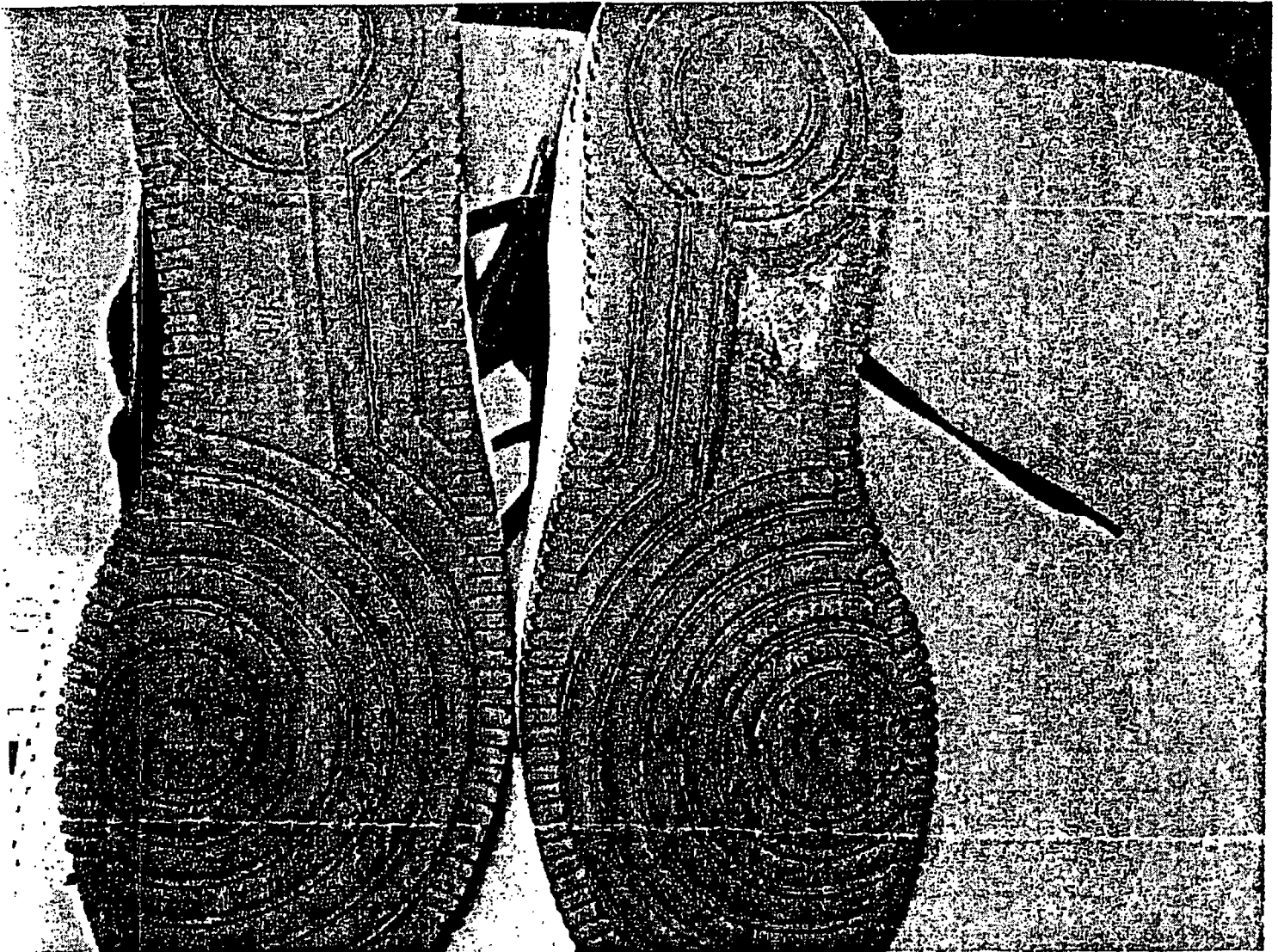
I/O determined that L-1 was not a match to K-1

Comparison Conducted By:

**Inv. Stan Richards
Forensic Science Division**

ALL COMPARISONS CONDUCTED BY THIS DIVISION ARE CONFIDENTIAL AND FOR USE IN CRIMINAL INVESTIGATIONS. NO INFORMATION CONTAINED HEREIN SHALL BE RELEASED UNLESS APPROVED BY THE SHERIFF.

P6

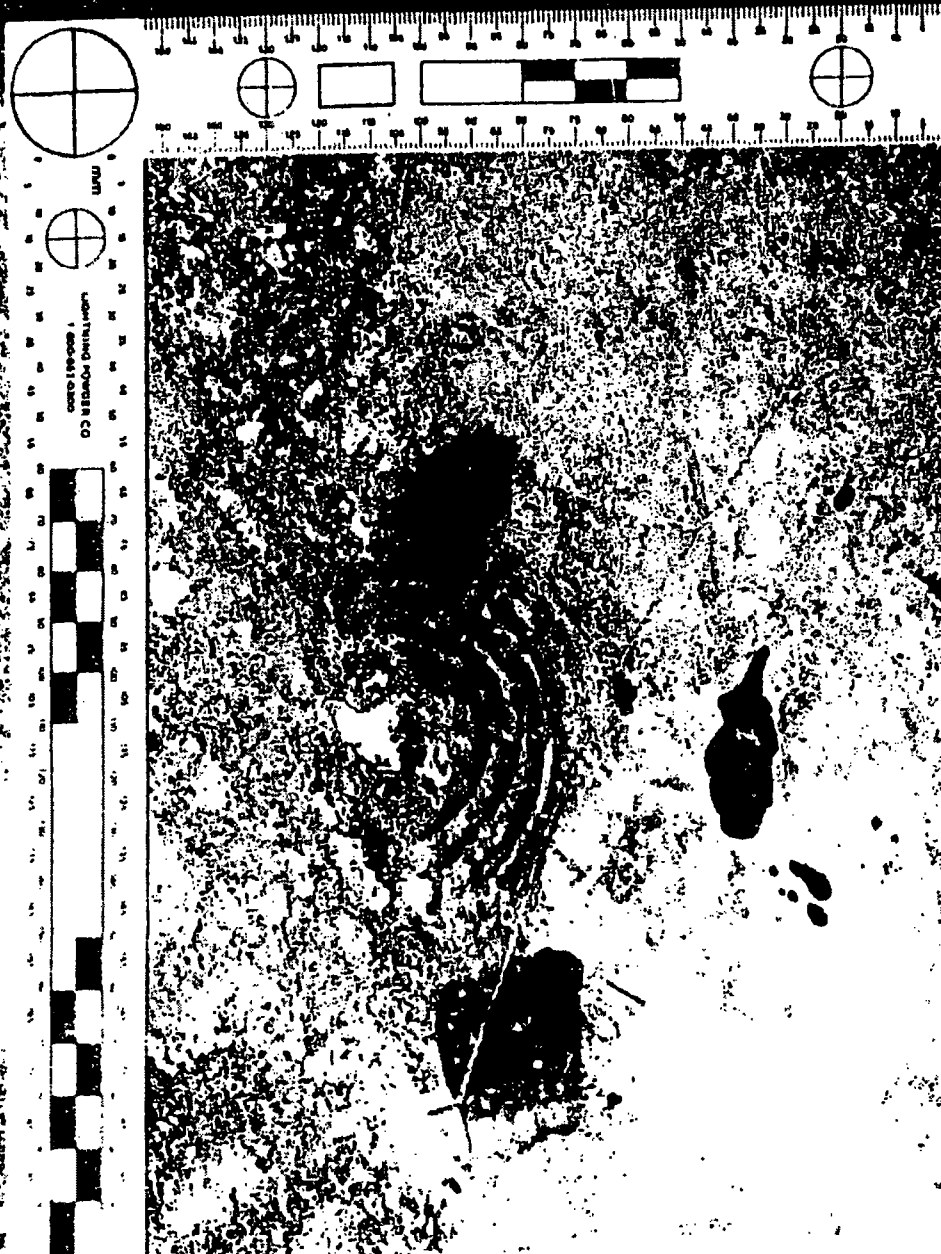


DSCN06260452DSCN0626.JPG

2010

P-7

28



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD

Governor

RECEIVED
ON SEP 17 AM 10:58
RCSU

ROBERT M. STEWART

Chief

Department of Forensic
Serology and DNA Analysis

September 10, 2004

SLED Lab No.: L0404126

Your Case No.: 04041318

Incident Date: 04/13/04

(V) Antonio, Lourdes

(S) Hayward, Jereme

INV I S RICHARDS
 RICHLAND CO SHERIFF'S DEPT
 5623 TWO NOTCH ROAD
 COLUMBIA, SC 29223

Dear Officer:

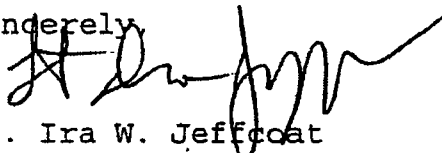
The evidence in the above referenced case was received from your agency and has been inventoried and processed for biological stains. These stains have been preserved. No further serological analysis will be conducted until blood standards from the victim and subject are submitted.

If serological analysis is needed prior to submission of victim and subject standards or if additional information becomes available, please contact the Department of Forensic Serology and DNA Analysis at (803) 896-7383.

After six months from the date the evidence was preserved by this department, if the case remains inactive, the evidence will be returned to your agency. If additional examination is needed, the evidence should be resubmitted.

Your cooperation in this matter is appreciated.

Sincerely,


 Lt. Ira W. Jeffcoat
 Supervisor

jmj

cc: Richland County Solicitor's Office



An Accredited Law Enforcement Agency

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

912 COUNTY OF FULTON,
CITY OF COLUMBIA,
NORTH VS.
JERENE M. HAYWARD, #81556
DEFENDANT,

WARRANTS# H-1-7-083
H-6-70084
H-6-70085
H-6-70086

IN THE COURT OF GENERAL

FIFTH JUDICIAL CIRCUIT

DATE: NOVEMBER 8, 2005

RE: MOTION FOR A SPEEDY TRIAL

Sealed

MOTION FOR A SPEEDY TRIAL

NOW COMES THE DEFENDANT, JERENE M. HAYWARD, & RESPECTFULLY MOVES THE HONORABLE JUDGE
OF COURT, REQUESTING THE USE OF MY RIGHTS TO A SPEEDY TRIAL TO BE APPLIED TO THE DEFENDANT
WARRANTS #H-6-70083, #H-6-70084, #H-6-70085, & #H-6-70086,

J.M.H.
MORE OVER, IN PURSUANT TO THE UNITED STATES CONSTITUTION, THE AMENDMENT
FOR THE RIGHT TO A SPEEDY TRIAL, THE STATE MAY NOT OVERULE PROCEDURAL DECISIONS MADE BY
DEFENDANT, ALSO THE STATE MAY NOT RETROACTIVELY DEPRIVE LITIGANT OF HIS CONSTITUTIONAL AND
SUBSTANTIVE RIGHT FOR A SPEEDY TRIAL UPON DEFENDANTS REQUESTS IN A PENDING CASES. THE
USE OF A SPEEDY TRIAL TO ESTABLISH A RECORD IN SUCH A CASE IS A WELL RECOGNIZED TECHNIQUE
AVAILABLE TO ANY PARTY IN APPELLANT POSITION.

IN ADDITION, PURSUANT TO STATE VS COLE 403 SC 2.2117 (1997) I REQUEST
THAT YOU SUPPLY ME WITH A CLOCK STAMPED COPY OF THIS MOTION CONFIRMING IT
WAS FILED.

WITH KIND REGARDS,

x Jerene M. Hayward
DEFENDANT,

COUNTY OF MICHIGAN
CITY OF COLUMBIA,
PLAINTIFF VS.
JERENE M. HAYWARD, #1556
DEFENDANT.

WARRANTS# H-6-0283
H-6-0284
H-670085
H-670086

913

IN THE COURT OF GENERAL SESSIONS

FIFTH JUDICIAL CIRCUIT

WED. NOVEMBER 8, 2005

^{BOND}
RE: BOND REDUCTION

MOTION FOR A BOND/BOND REDUCTION

I, BELOW: ABOVE JERENE M. HAYWARD, AM A INDIGENT DEFENDANT, IN THE ABOVE
GENERAL SESSIONS CASES CONCERNING THE WARRANTS ABOVE AS PENDING.

I JERENE M. HAYWARD, WOULD LIKE TO ^{RESPECTFULLY MOVE THE} ~~PLEASE~~ HONORABLE JUDGE
TO GRANT ME THE PRIVILEGE OF A REASONABLE BOND ON THE STRENGTH;

- 1.) I'VE BEEN INCARCERATED (19 MONTHS) WITH A NO BOND ON THE ABOVE SAID CHARGES
- 2.) I HAVE REHABILITATED MYSELF SINCE THE TIME OF MY INCARCERATION
FEEL LIKE I CAN GO BACK OUT TO SOCIETY & BE A MODERN PRODUCTIVE TAX PAYING
CITIZEN & BE PRODUCTIVE TOWARDS THE COMMUNITY.
- 3.) I'VE ESTABLISHED A WORKING ADDRESS & PHONE NUMBER, I'M NOT A FLEECHTRICK,
& I HAVE A 15 MONTH OLD SON & SPOUSE THAT DESPERATELY NEEDS MY SUPPORT MENTALLY
WELL AS FINANCIALLY.

RESPECTFULLY:

Jerene M. Hayward
DEFENDANT.

914

COUNTY OF RICHLAND,
CITY OF COLUMBIA,
PLAINTIFF VS.
JERENE M. HAYWARD, #15516
DEFENDANT,

WARRANTS* H-6 083
H-6 084
H-67008 5
H-67008 6

IN THE COURT OF GENERALSES

FIFTH JUDICIAL CIRCUIT

Motion: FOR COURT APPOINTED

ATTORNEY, NOTICE: TERMINAT

ALL LEGAL REPRESENTATION WITH

RICHLAND COUNTY.

DATE: NOVEMBER 8, 2005

MOTION FOR TERMINATION OF ALL LEGAL
REPRESENTATION WITH RICHLAND COUNTY

I BELOW & ABOVE JERENE M HAYWARD, AM A INDIGENT DEFENDANT, IN THE ABOVE
GENERAL SESSIONS CASES CONCERNING THE WARRANTS ABOVE AS PENDING.

I WOULD LIKE TO HEREBY NOTIFY THAT: AND THE RICHLAND COUNTY PUBLIC DEFENDERS
OFFICE HAS BEEN TERMINATED AS MY LEGAL REPRESENTATION

I'M REQUESTING, MOTIONING FOR AN ~~PROBONO~~ ATTORNEY BECAUSE, I'M UNABLE
TO DEFEND MYSELF & ON THE STRENGTH I'M INDIGENT TO HIRE ONE FOR MYSELF.

IN ADDITION, PURSUANT TO STATE-VS-COLE 403 SE 2D
11T (1991) I REQUEST THAT YOU SUPPLY ME WITH A CLOCK
STAMPED COPY OF THIS MOTION (CONFIRMING IT WAS FILED)
THANK YOU!!!

RESPECTFULLY,

Jerene M. Hayward
DEFENDANT,

COUNTY OF RICHMOND,
CITY OF COLUMBIA,
PLAINTIFFS VS.

JERENE M. HAYWARD, #81556

DEFENDANT,

WARRANTS# H-670083

H-670084

H-670085

H-670086

915

IN THE COURT OF GENERAL SESSION

FIFTH JUDICIAL CIRCUIT

DATE NOVEMBER 8, 2005

RE: MOTION TO SUPPRESS ^{SUBPENA} ~~WARRANT~~

ALL EVIDENCE & WITNESSES TO

TRIAL.

NOW COMES THE DEFENDANT, JERENE M. HAYWARD, & RESPECTFULLY WOULD LIKE TO
MOVE THE HONORABLE JUDGE & COURTS, REQUESTING A COURT ORDERED SUBPENA
FOR ALL WITNESSES & EVIDENCE TO APPEAR BEFORE THE COURTS ON THE WARRANTS
#H-670083, #H-670084, #H-670085, #H-670086, ON THE TIME AS SCHEDULED TRIAL
DATE WHEN ITS CONFIRMED & SET BY THE HONORABLE JUDGE

I'M RESPECTFULLY REQUESTING THE HONORABLE JUDGE & COURTS TO DO SO
IN ATTEMPT TO PREVENT A DELAY OR FLAW IN MY TRIAL.

MORE OVER, ^{JMH} PURSUANT TO STATE VS COLE, 403 S.E 2D 117 (1991)

I RESPECTFULLY REQUEST THAT YOU SUPPLY ME WITH CLOCK STAMPED
COPY OF THIS MOTION CONFIRMING IT WAS FILED FOR MY PERSONAL RECORDS.

THANK YOU!

(WITH KIND REGARDS)

Jerene M. Hayward
DEFENDANT,

9/16
SERENE M. HAYWARD #31-31

Lieber Correctional Institution AA-29

P.O. Box 205

Ridgeville, SC 29472

RECEIVED

APR 9 2008

SC Court of Appeals

Honorable KENNETH A. RICHSTAD

P.O. Box 11629

Columbia, SC 29211

RE: LETTER/Notification

Dear Honorable Richstad,

I'm respectfully asking that you please take into consideration that I'm fully aware that I'm late on filing the 10-day brief hearing & that I've been trying since Feb. 2nd 2008, to get all my Motions/Letters Notorized by one of the notaries on Lee County Cor. Inst. & unfortunately hasn't had any type of successfully attempts/luck, in doing so while being in solitary confinement, since OCT. 26, 07. If you check at that Institution for as the (Internal Mail) ^{Dept.} you'll see that, I've done filled out numerous inmate request to start to have my Motions/Letters Notorized A.S.A.P. & that I've informed them that I have a 10-day brief Hearing that needs to be notorized. But, No Help or Assistant was offered, due to this matter. Also, Mr. Honorable K.R., I have been transferred to the above said address. Mr. Honorable K. Richstad, I have been up under the 23/1 guidelines since Oct. 26th 07. & it's been a severe strain to comply with the SCACP, due to the Neglect & ignorance of the institutional C/O's. Thanking you in Advance Sir.

S/ Serene M. Hayward
Serene M. Hayward
#314457



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 11, 2008

Jerne Markwell Hayward # 314451
Lee Correctional Institution
990 Wasacky Highway
Bishopville, SC 29010

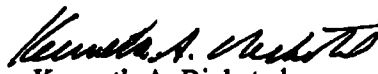
Re: The State v. Hayward, Jerene Markwell

Dear Mr. Hayward :

Enclosed is your 10 Day Rehearsing Brief, Part Pro Se Brief.

The remittitur in the above case was filed and sent to the lower court on February 26, 2008. Therefore, your case has ended at the Court of Appeals and the Court of Appeals no longer has jurisdiction.

Sincerely,


Kenneth A. Richstad
Clerk of Court

KAR/rj

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Richland County
Honorable James W. Johnson TR, Circuit Court Judge

THE STATE,

Respondent,

vs.

TERENCE MARKWELL HAYWARD,

Subject;

10 Day Rehearing Brief Part Prose Brief

TERENCE M. Hayward,
#314451

THE SC. COURT OF APPEALS

MOTION For A DIRECTED VERDICT

RE: Unpublished Opinion No. #
 - 2008-UP-088; Submitted
 Feb. 1 2008 - Filed Feb. 8, 2008

I do by herein, therein, come before this Honorable Court, with a
 MOTION For A DIRECT VERDECT PURSUANT TO -THE ALLEGE states case facts
 presented (before - after allege trial).

IN Addition Pursuant To State vs. Cole
 403 SE 2D 117 (1991) I Request that you
 supply Me With a Clock Stamped Copy
 of this Motion Confirming it was filed.

Thank you !!!

S/ Jerene M. Hayward,
Jerene M. Hayward,
 #314451

SWORN to and Subscribed before me this _____
 day of _____, 20____
 _____ Notary Public
 My Commission Expires _____

MOTION FOR RETRIALRE: Opinion No-here..

I do by herein, therein come before this Honorable Court with a Motion for a Retrial as trial being a Miscarriage to JUSTICE - See TRANSCRIPT/INDICTMENTS if possible Grand Jury minutes; Also, the door was open to ask the relevant pertinent question on recross examination pertaining to certain crucial points in trial /alleged case to include, the false coached testimony of Lourdes Antonio - during Lourdes testimony not once was a Hospital report introduced or Dr. report from a Hospital, (Not a spec on subject), the Dr. can clear subject /reports - pursuant to the South Carolina Rules of Civil-N-Criminal Procedure

Lourdes testimony should've been stricken from the record & challenged regularly with applicable law; etc. even upon the description of a subject being (Slender) is off balance (Suprema ducetecum), any & all Dr. reports/examinations to include examiner Amick - in there to if a report is not available, subject request for a opinion/narrative/summary/ - of it's rare/ impossible at least 10 to 20 Dr. examine different fields & negative results appeared allegedly, Also, if a report of this nature is within record then forward, if possible, even as to off the record discussions/evidence

MOTION TO THE COURTS

RE: Unpublished Opinion No. 2008

- UP-088; Submitted Feb. 1, 2008

- Filed Feb. 8, 2008

- Where allegations of ineffective assistance of counsel are made, the question becomes, whether counsel's conduct so undermined the proper functioning of the adversarial process, that the trial cannot be relied on as having produced a just result Strickland v. Washington 466 U.S. 668 — 104 S.Ct. 2052, 2064, 80 L.Ed. 2d 674, 692 [1984].

The resolution of this questions involves the subject of the two prong test in Strickland.

First, the Subject must show ~~that~~ that counsel's performance was deficient. This requires showing that the counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. Second, the subject must show that the deficient performance prejudiced the defense. This requires showing that the counsel's errors were so serious as to deprive the subject of a fair trial alleged.

Subject here alleges Failure of subject Attorney to.

(1) Discover and present witnesses to testify to Home owners' Character allegedly supposedly owned 4 fully loaded clips, with young child and visitors coming by allege house etc; (Character evidence) - (2) Counsel failed to discuss the theory of defense. (3) Counsel failed to challenge a erroneous reasonable doubt instruction during allege trial

Serene M. Hayward
 Serene M. Hayward,
 #314451

In Addition, Pursuant To State-Us-Cole
 403 SE 2D 117 (1991) I Request that you
 supply me with a clock stamped copy of
 This Motion Confirming it was filed Thank you!!!

SWORN to and Subscribed before me this _____
 day of _____, 20____
 Notary Public
 My Commission Expires _____

2012

MOTION TO DISMISS

RE: Unpublished Opinion No. 2008

- UP-088- Submitted Feb. 1, 2008

- Filed Feb 8, 2008.

I do by herein, therein, come before this Honorable Court with a MOTION TO DISMISS case pursuant to allege facts & Briefs/MOTIONS) in subject Tador - here with that's details is insufficient allegedly with allege evidence presented nobody ^{could} call viewing this subject on allege TAMO SHANTER RD. Also, neither from the Elgin dream up (NOBODY TO SUPPORT ID-IDENTIFICATION ALLEGED testimony story; Unconstitutional - mistaken identity) Actual INNOCENCE; etc. (Single allege show ups disfigured) therefore:

Mexicans don't believe in the same culture beliefs as some Americans - as to the Bible practicing, - Kuran, etc. This Unbelief could lead to a unsworn allege witness; etc; also interpreter should of been registered with the S.C. Supreme Court

In Addition Pursuant to STATE vs. Cole
403 SE 2D 117 (1991) I request that you
supply me with a clock stamped copy of
This Motion Confirming it was filed Thank you!!!
SWORN to and Subscribed before me this _____
day of _____, 20____

Notary Public
My Commission Expires _____

S/ Jerene M. Hayward,
Jerene M. Hayward
#34451

MOTION TO PRODUCERE: Indictment # 2005-GS-40-2824

Dear Solicitor,

I do by herein, therein, come before this department here to that (1) Brady violation - exculpatory evidence was not disclosed by the prosecution - See Brady v. Maryland, 373 US 83 (1963) ~~purjured~~ (purjured testimony see Naupre v. Illinois, 360 US 264 (1954), Evidence indicating subject is innocent, the notice of intent to seek a life sentence wasn't disclosed to subject, ~~forward~~ also, if possible - infer alibi, nor was pertinent allege Doctor/Hospital reports. Unique allege Doctor/Hospital reports Unique allege facts disposed of; requesting for all call/transcript if possible

/Jerene M. Hayward,
Jerene M. Hayward,
#314451

In addition, Pursuant To State Us. Code 403 SE, 2D. 117 (1991) I Request That you supply me with A Clock Stamped Copy of this Motion Confirming it was Filed. Thank you!!!

SWORN to and Subscribed before me this _____
day of _____, 20____
Notary Public
My Commission Expires _____

MOTION TO DISMISS

RE: Opinion NO:

I do by herein, there in come before this Court with a Motion To Dismiss, Pursuant to the record didn't reflect that the Subject was allegedly sentenced to 40 years 85%. Sentenced placed on record or prejudicial - see case law and constitution.

/ Terene M. Hayward,
 Terene M. Hayward,
 # 314451

In Addition Pursuant to State vs. Cole,
 403 SE, 2D 117 (1991) I Request that you
 supply me a clocked stamped copy of
 this Motion Confirming it was filed. Thank you!!!

SWORN to and Subscribed before me this _____
 day of _____, 20____
 Notary Public
 My Commission Expires _____

IN THE COURT OF APPEALSMOTION TO PRODUCE

RE: Unpublished opinion No.[#]
 2008-UP-088; Submitted Feb.
 1, 2008 - Filed Feb. 8, 2008

I do by herein, therein, come before this Honorable Court, to produce any & all Doctor Reports, etc. Because, if a allege subject is supposedly under continuous observation. There is no logic, that a Dr's report has a clear onto face of report (presuming), allegedly after a allege story of this sort according to documents / transcript.

Also, if possible, forward copy of Dr's reports allegedly, if possible
 - Also see Hospital reports etc; (subpoena) documents / persons)

In Addition Pursuant To State vs. Cole 403
 SE 2D 117 (1991) I Request that you supply
 Me with A Clock Stamped Copy of this Motion
 Confirming it was Filed Thank you!!!

SWORN to and Subscribed before me this _____

day of _____, 20____

Notary Public
 My Commission Expires _____

S/ Terene M. Hayward
Terene M. Hayward,
 #314451

IN THE COURT OF COMMON
PLEAS

MOTION IN RETURN
TO STATES DISMISSAL

RE: 2008-CP-40-0780

I do by herein, therein, come before the Administrative/And
or Judge appointed to this instance - that pursuant the record the Return and
MOTION TO Dismiss didn't stipulate 40 years 85% nor does the record of
transcript(s) etc;

In Addition Pursuant To state vs. Cele
403 SE, SE, 2D 117, (1991) I request that
you supply Me With a clock stamped copy
of this motion Confirming it was Filed
Thank you!!!

s/ Terene M. Hayward
Terene M. Hayward,
#314451

SWORN to and Subscribed before me this _____
day of _____, 20____
Notary Public
My Commission Expires _____

MOTION TO QUASH

RE: Unpublished Opinion No. # 2008
 -UP-088; Submitted Feb. 1, 2008
 Filed Feb. 8, 2008

I do hererin, therein, come before this Honorable Court, with a Motion to Quash subject charges based upon illegal photo(s) by a witness/person viewing a photo-line up the allege pictures being viewed is innocent persons) - In this instance photo alleged subjects #1, 2, 3, 4, 5, had on streets clothes allegedly

S/ Jerene M. Hayward.
 Jerene M. Hayward,
 #314451

In Addition Pursuant to State vs. Cole,
 403 SE. 2D 117 (1991) I Request that you
 supply me a clocked stamped copy of this Motion
 Confirming it was filed. Thank you!!!

SWORN to and Subscribed before me this _____
 day of _____, 20____
 Notary Public
 My Commission Expires _____

MOTION TO DISMISS

RE:

I do by herein, therin, come before this Honorable Court
 - MOTION TO DISMISS INDICTMENT. - (Incorrect dates on face of indictment,
 May 15, 2005, June 15, 2005, thus could of hampered petit jurors/etc.
 deliberations also - jurisdictional - inter alia, in which the body of indictment
 states -- June 15, 2005 - (Before Grand Jurors).

/ Jerene M. Hayward
Jerene M. Hayward,
 #314451

In Addition Pursuant To state vs Cole
 403 SE, SE, 2D 117, (1991) I request that
 you supply me with a clock stamped
 copy of this Motion Confirming it was filed
 Thank !!!

SWORN to and subscribed before me this _____
 day of _____, 20____

 Notary Public
 My Commission Expires _____

930

Terene Markwell Hayward

Lee Correctional Institution Ch. N. #1152

990 Wisacky Hwy.

Bishopville, SC. 29010

Mr. Jean R. Indriago

Office of The Attorney General

P.O. Box 11549

Columbia, SC. 29211

RE: Indictment No. # 2005-GS-40-2824

Dear Mr. Jean R. Indriago,

I'm Respectfully requesting a

Copy of any & all Dr. Reports/ Hospital Reports, with in Connection with the above case.

Also if possible forward me a copy of any & all photographs in connections with the alleged case above, & if available within this department forward subject a copy of Bill 3096 of the TRUTH IN SENTENCING LAW at your earliest possible convenient. Thanking you in advance for your time & assistance in these matters.

Terene M. Hayward
Terene M. Hayward
314451

SWORN to and Subscribed before me this _____

day of _____, 20_____

Notary Public
My Commission Expires _____

Motion of LAW/RETIRE

Re: Unpublished Opinion No. 2008
 -40-088- Submitted Feb 1, 2008
 Filed Feb. 8, 2008

I do by herein, therein, come before this agency. that the passing of the 86% law wasn't ~~not~~ altered within the files & provisions of code & laws in part - such as title 16-11-311 etc. the Statute doesn't apprise a subject of a no parole, nor the depths of 3096, in part was passed by the legislature, House of Representatives, the Code of laws Subjection sections) title(s)/Books etc; is null-n-void in it's entire Jurisdictional

S/ Jerene M. Hayward,
 Jerene M. Hayward,
 # 314451

In Addition, Pursuant to STATE vs. COLE
 403 SE 2D 117 (1991) I Request that you
 Supply me With a clock stamped Copy of
 this Motion Confirming it was filed Thank you!!!

SWORN or Affirmed to and Subscribed before me this _____
 day of _____, 20____

 Notary Public
 My Commission Expires _____

RE: Indictment No# 2005
-GS-40-2824-5073

Dear Honorable Schott,

I'm respectfully
requesting that you file this P.C.R. Post Conviction Relief Application within
above captioned case, forward copy to me for my files, if possible. Thanking
you in advance

S/ Jerene M. Hayward,
Jerene M. Hayward,
314481

SWORN to and Subscribed before me _____
this day _____, 20____

Notary Public

My Commission Expires _____

RE: Indictment No. *05-GS-40-5073
 Mistaken identity. / The Scales of justice
 would be tilted if America relied on
 identification / testimony / easy / law - over-
 riding Mansfield do away with reuamp
 etc. in most instances

Dear Ms. Clare,

A 10 day hearing brief has been filed within
 this case, in that subject as for that, the court revisit their decision within opinion field.
 From subject's analysis actual innocence is a strong arguments from a picture being painted
 stories & the allege transcript it's impossible that the subject was at a allege crime scene, the
 states / solicitor / witness versions cannot explain that subject is clean / negative examiner results
 of tests, if possible amend or add to brief filed because according to the SC ACR the subject
 has 10 days to file a Rehearing Petition.

Terene M. Hayward
 Terene M. Hayward
 #314451

Sworn to and Subscribed before me this _____
 day of _____ 20____

 Notary Public

My Commission Expires _____

934

TERENE M. HAYWARD #314451

LEE CORRECTIONAL INSTITUTIONAL CHASE D. #1152

990 Wisacky Hwy.

Bishopville, SC. 29010

Honorable KENNETH A. RICHSTAD

P.O. Box 11629

Columbia, SC. 29211

Re: Unpublished Opinion No. 2008-
Up-088- Submitted February
1st, 2008 Filed Feb. 8th 2008.

Dear Honorable Richstad,

I'm respectfully requesting that
you file this 10 day Rehearing Brief with the Court pursuant to the SCACR
& forward me a copy to me for my files. Thanking you in advance.

S/Terene M. Hayward,
Terene M. Hayward,
#314451

SWORN to and Subscribed before me this _____
day of _____, 20____

Notary Public

My Commission Expires _____

Jerene M. Hayward #314451

Lee Correctional Institution Ches. D. #1152

990 Wissett Hwy.

Bishopville, SC. 29010

Ms Kay W. Thompson

Richland County, Attorney At Law Office

1701 Main St.

P.O. Box 192

Columbia, SC. 29201

RE: Indictment No. 2005

- GS-40-2824

Dear Ms. Thompson,

I'm respectfully requesting a copy of any & all photographs Dr. Reports/Hospital reports within connection with the above case.

Also, if possible forward me a copy of any & all photographs in connection with alleged case above & if available within this department forward subject a copy of Bill 3096 of the TRUTH - IN SENTENCING LAW at your earliest possible convient. Thanking you in advance for your time & assistance in these matters

Subscribed to and Subscribed before me this _____
day of _____ 20____

Notary Public

My Commission Expires _____

/s/ Jerene M. Hayward,
Jerene M. Hayward,
#314451

936

Jerene M. Hayward #314451

Lee Correctional Institution Ches. N. #1152

990 Wisacky Hwy.

Bishopville, SC. 29010

Honorable Rosalyn Frierson

South Carolina Court Administration

SC Supreme Court

1015 Sumpter St. Suite 200

Columbia, SC. 29201

Re: 2005-GS-40-2824-5074

Dear Honorable Frierson,

I'm respectfully responding
to a request ~~for~~ (for documents) as to, The judge that presided within case is Honorable
James W. Johnson Jr. Circuit Court Judge, the county case was heard in Richland
County, The name of the case is Jerene Markwell Hayward, vs. State of South
Carolina- see Indictment # 05-GS-40-2824-5074 also direct presented charges.
The trial allege date is ~~12/13/06~~^{13, 3, 06} - 17/7/06 approximately. Thanking you in advance.

SWORN to and Subscribed before me this _____

day of _____, 20_____

Notary Public

My Commission Expires _____

S/ Jerene M. Hayward,
Jerene M. Hayward,
314451

RE: Indictment No. # 2005-GS-40-2824

Dear Dr.

I'm respectfully requesting as to a copy of any $\frac{1}{2}$ all Medical records to be requested from the Richland County Hospital in reference to the above case or any other reports allegedly made in absence of subject. I'm also requesting as to the condition subject appeared to be in allegedly, alleged day of above said allege crime. Thanking you in Advance.

SWORN to and Subscribed before this _____
day of _____, 20____

Notary Public
My Commission Expires _____

/ Jerene M. Hayward
Jerene M. Hayward,
#314451

938

Terene M. Hayward #314451

Lee Correctional Institution Ches. N #1152

990 Wisacky Hwy.

Bishopville, SC. 29010

Dr. / Richland County Hospital

Richland County Hospital

Columbia, SC. 29202

RE: Indictment No. #2005-GS
- 40-2824

Dear Dr. / Richland County Hospital,

I'm respectfully requesting a copy of any & all medical
reports / Hospital reports in connection with the above captioned case.

SWORN to and Subscribed before this _____
day of _____, 20_____

Terene M. Hayward,
Terene M. Hayward,
#314451

Notary Public

My Commission Expires _____

STATEMENT OF THE CASE

Richland County grand jurors allegedly indicted subject for First Degree Burglary, Petit larceny, Kidnapping, Assault & Battery with intent to kill, & Possession of Marijuana - also direct presented charges, ect; 05-GS-40-2824-5074; Unpublished opinion No. 2008-UP-88 - Submitted February 1, 2008 Filed February 8, 2008

940

RICHLAND COUNTY SHERIFF'S DEPARTMENT
SUPPLEMENTARY REPORTAGENCY I.D.
RI 400000

C NUMBER

04041318-13

NCIC

INQ

ENTO

☐ ORIGINAL REPORT☐ SUPPLEMENTAL REPORT☒ INVESTIGATIVE FOLLOW UP☐ ADDITIONAL STOLEN
PROPERTY

PAGE 1 OF 1 PAGES

☐ MODIFIES ORIGINAL☐ CASE STATUS CHANGE☐ ADDITIONAL RECOVERED
PROPERTY

ON APRIL 13, 2004 WHILE ASSISTING IN THE SEARCH OF A BURGLARY SUSPECT, WE (CPL. HOLT, M/D ROE, AND MYSELF) WERE GIVEN A DESCRIPTION OF THE SUBJECT. WE RECEIVED INFORMATION WHERE THE SUBJECT WAS GOING TO BE. WE RESPONDED TO THE SOUTHWOOD SUB-DIVISION TO ASSIST LT. TYLER AND DEPUTY HOLLY WAGNER. IN THE APPREHENSION OF THE SUBJECT, LT. TYLER AND DEPUTY WAGNER CALLED FOR ASSISTANCE ON NIGHT HERON CT. IN THE SOUTHWOOD SUB-DIVISION, THAT THEY HAD A SUBJECT DETAINED, MATCHING THE DESCRIPTION OF OUR SUSPECT. UPON OUR ARRIVAL OFFICERS WERE ATTEMPTING TO HANDCUFF THE INDIVIDUAL. ONCE THEY HANDCUFFED THE INDIVIDUAL, DEPUTY ROE AND I STARTED A PAT DOWN OF THE SUBJECT AND FOUND A PLASTIC GROCERY BAG IN HIS LEFT PANTS LEG. THE BAG CONTAINED A STAINLESS STEEL RUGER P-90 .45 CALIBER HANDCUFF SERIAL # 660-71518 AND 4 MAGAZINES FULLY LOADED. THE GUN MATCHED THE DESCRIPTION OF THE VICTIMS GUN THAT WAS STOLEN. DEP. ROE AND I CHANGED OUT HANDCUFFS AND PLACED THE SUBJECT IN A PATROL CAR. DURING THIS TIME THE INDIVIDUAL STARTED YELLING "THEY'RE SETTING ME UP."

SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER			
REASON FOR EXCEPTIONAL CLEARANCE:		1. ☐ OFFENDER DEATH		2. ☐ NO PROSECUTION		3. ☐ EXTRADITION DENIED		4. ☐ VICTIM DECLINES COOPERATION		5. ☐ JUVENILE - NO CUSTODY	
REPORTING OFFICER(S)		DATE		DEPT. NO.		APPROVING OFFICER		DATE		DEPT. NO.	
M.A. MCCOLMAN		041304		568		SGT. MCCOLMAN		041304		568	
M. ROE		041304				FOLLOW UP INVESTIGATION OFFICER					

D-10

1) THE SUBJECT REQUEST

D) The subject request that the S.C. Appeals Court revisit the decision of Courts in this alleged case/ Appeal - also allege evidence, as to their is no evidence of entering a dwelling or presence of subject at so call scene - see expert reports - negative - subject contends that shoeprint should clear/exonerate subject of false accusation allegedly of any alleged crime of any sort, revisit Briefs/Motions etc. A Affiant (Person/inmate) out of state alleged citizen can't constitute probable cause for a Warrent being issued nor is a word alone from person/accuser is sufficient enough to place a subject at a alleged crime scene - this would tilt the scales of justice - also upfrack the solicitor's versions of the alleged story/case. Also the distance of any alleged trial in which violated subject due process rights, constitutional rights, also legal errors etc;

Also, the subject request that subject(s) Appellate Attorney amend in part of this case or add to, etc; in which subject is in area of 10 day deadline pursuant to Appellate Court Rules/SCACR in which all of the states/solicitors witnesses (36 Approximately) can clear subject.

In Addition Pursuant To state vs. Cole
403 SE.2D 117 (1991) I Request that
you supply Me with a clock stamped
copy of this Motion Confirming it was
Filed Thank you!!!

Jereme M. Hayward
JEREME M. HAYWARD, #314451
Jereme M. Hayward,

SWORN to and subscribed before me this 8
day of April, 2018
Wm. R. B.
Notary Public
My Commission Expires 8/10/2016

Motion To Inspect

RE: Unpublished Opinion No. 2008-
UP-088; Submitted Feb. 1, 2008.
- Filed Feb. 8, 2008

I do by here in, there in come before this Honorable Court. That attached exhibit, is crucial to subject(s) allege case (fully loaded clips) - allegedly

/Jerene M. Hayward
Jerene M. Hayward,
#3144/S1

In Addition Pursuant To STATE-VS-COLE
403 SE 2D 117 (1991) I Request That you supply
Me With a clocked stamped copy of this Motion
Confirming it was filed. Thank you!!!

SWORN to and Subscribed before me this _____
day of _____, 20____

Notary Public
My Commission Expires _____

P10F2

- after a allege fustle of this sort then the state's version should be contested thrown out, as to subject assists for reports stating in part:

That it is impossible for subject being at the allege scene after a allege accusation of this sort.

/Jerene M. Hayward
Jerene M. Hayward,
#314451

In Addition, Pursuant to STATE VS COLE 403 SE 20 117 (1991) I Requesting that you Supply Me with a Clocked STAMPED COPY of This Motion Confirming it Was Filed. Thank you!!!

SWORN to and Subscribed before me this _____
day of _____, 20____
Notary Public
My Commission Expires _____

IN THE COURT OF APPEALSFebruary 1st 2008LETTER TO THE COURTSRE: Indictment #s - 2005-GS-40-2824

Dear Courts,

I'm respectfully requesting that this Honorable Court inspect the record in the above case, in which a Arrest Warrant was obtained only on the basis of a report/no Evidence making probable cause non existence. the Court of Appeals ruled that a Arrest Warrant can't be obtained on just the Affiant/person story or word alone. The Person/Affiant would also have to have physical evidence, a Affiant version alone without physical evidence is, unconstitutional null-n-void, Lack probable cause? doesn't give a officer, grounds to take the subject into custody. A officer, investigating the case, would be lacking probable cause, to Arrest based on case law Alleged Key eye - witness, statements alone, without physical evidence, is insufficient to obtain probable cause, for a Arrest Warrant to be issued. A allege eye witness word

/statements), doesn't out weigh an allege subject credibility. A officer(s) investigation alone, didn't suffice probable cause - see case law. The Appellants shoes were allegedly tested (Negative Results) Presence didn't exist. (SEE Transcript of Trial)

Please, forward me a Copy of this letter, for my files/Paper Trail
Thanking, you in Advance.

S/ Jerene M. Hayward,
Jerene M. Hayward, #314451

STATE OF SOUTH CAROLINA

County of Richland

JERENS S HAYWARD

Full name and prison number (if any) of Applicant

V.

State of South Carolina

IN THE COURT OF COMMON PLEAS

AUSTIN V. STATE

APPLICATION FOR

POST-CONVICTION RELIEF

Appeal

MIDLAND COUNTY
FBI EDJ
2013 JUL 17 PM12:13
JEANETTE HARRIS
C.R. & G.S.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Heber Ct.
2. Name and location of Court which imposed sentence General Session
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 5073, 2824, 2802
(a) 2005-ES-40-5072 ~~2802~~ 2825
(b) Burglary First, ABH, Kidnapping, Petit Larceny

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

(a) MARCH 13, 2006

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. SC COURT OF APPEALS

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. REVERSED

ii. _____

iii. _____

(c) the date of such result:

i. 2-1-2008

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. St. v. Hayward 2008-CP-088

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) NR

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) BELETED AUSTIN Appeal of FIRST
 (b) PCR, INEFFECTIVE ASSISTANCE of
 (c) PCR, TRIAL, AND APPELLATE COUNSEL

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) SEE ATTACHED

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

i. PCR
 ii. _____
 iii. _____
 iv. _____

- (b) the name and location of the Court in which each was filed:

i. Richland County Prison
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. DENIED
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. APRIL 9th, 2010
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. 2008-CP-40-3854
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

THIS IS A AUSTIN V. STATE APPEAL
OF FIRST PCR COUNSEL FAILURE TO FILE APPEAL

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. NR
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. FIRST PCR OF CP 40 3854
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) NO
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? J. V. Hoover, L. Medley
 (b) your trial, if any? Richland Co. Public Defender
 (c) your sentencing? SAME
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Dale P. Clane
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

Charlie Johnson Jr. (ESQ) PCR

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Richland Co. Public Defender
 ii. SC Appellate Defense
 iii. Law office Charles Johnson

(b) the proceedings at which each such attorney represented you:

i. TRIAL
 ii. APPEAL
 iii. First PCR subject to this
subsequent appeal.

19. State clearly the relief you seek in filing this application:

NEW PCR HEARING w/ EFFECTIVE ASSISTANCE
of PCR COUNSEL, in addition to
AD Austral Appeal

20. Are you now under sentence from any other court that you have not challenged?

0

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Steven M. Hayward

SWORN to and subscribed before me this 10th
 day of July, 2013.

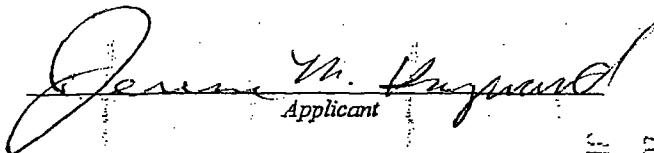
Quachuan Bryant (L.S.)
 Notary Public

My Commission Expires: May 26, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
10th day of July, 2013.


Notary Public

My Commission Expires: May 26, 2020

RICHLAND COUNTY
FILED
2013 JUL 17 PM 12:13
JEANETTE W. NOBSON
C.C.P. & G.S.

ATTACHMENT B P.C.R.

THE APPLICANT WOULD HEREBY PETITION THIS COURT TO GRANT HIS AUSTIN V. STATE APPEAL WHERE FIRST PCR. COUNSEL CHARLIE J. JOHNSON JR. WAS ~~INEFFECTIVE~~ FOR THE FAILURE/REFUSAL TO FILE A NOTICE OF APPEAL FROM THE DENIAL OF APPLICANT'S FIRST P.C.R. WHICH WAS DENIED APRIL 9th 2010. BUT APPLICANT WAS NOT ADVISED OF THIS TERMINATION OF HIS FIRST PCR. UNTIL MAY 6, 2013 IN WHICH HE RECEIVED ORDER OF DISMISSAL VIA JUDGE ALISON RENEE LEE OFFICE.

SEE EXHIBIT A

PURTAINING TO ODOM V. STATE (SC 1999) AND AUSTIN V. STATE (SC 1991), APPLICANT PCR COUNSEL FAILURE TO FILE A APPEAL CAN BE ADDRESSED THROUGH BELATED APPEAL OF THE FIRST PCR BY SUPREME COURT.

II

IN ADDITION THE APPLICANT THAT PURSUANT TO HOLDING IN MARTINEZ V. RYAN (U.S. CT. 2012) PCR COUNSEL DENIED APPLICANT OF EFFECTIVE ASSISTANCE OF COUNSEL ON HIS FIRST APPEAL ON GROUNDS OF I. A. C. OF TRIAL COUNSEL AT FIRST PCR. SEE THALER V. TREVINO (US SCT FEB 2013)

(SAME) 1 PCR. IS FIRST VENUE TO RAISE I.A.C. CLAIMS IN
 SC COURTS THUS PERTAINING TO ENITIS V. LUCY (US SCT.
 1985). APPLICANT HAS A RIGHT TO EFFECTIVE ASSISTANCE AT
 HIS 1ST PCR. WHICH HE ~~DID~~ NOT RECIEVE.

THUS APPLICANT WOULD ASK COUNSEL BE APPOINTED AND A EVIDENTARY
 HEARING INTO AUSTIN/MARTINEZ CLAIMS CAN BE PRESENTED BY
 COUNSEL

RELIEF

EVIDENTARY HEARING 3 NEW TRIAL

SO MOVES APPLICANT

R/S Gerene Maskeil



EXHIBIT (A) 955

State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

ALISON RENEE LEE
JUDGE

1701 MAIN ST., ROOM 324
POST OFFICE BOX 182
COLUMBIA, SOUTH CAROLINA 29202-0182
TELEPHONE: (803) 576-1765
FAX: (803) 576-1768

May 6, 2013

Jerene M. Hayward #314451 E-A-20
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

Re: Case No. 2008-CP-40-3854

Dear Mr. Hayward:

I am in receipt of your letter dated May 2, 2013 and received in my office on May 6, 2013. I issued an Order in this matter on April 9, 2010. Copies would have been sent to the attorneys. Therefore, your attorney, Charlie T. Johnson, Jr., would have received a copy of the Order. I have attached a copy of the Order for your reference.

Sincerely,

A handwritten signature in cursive script that reads "Alison Renee Lee".

Alison Renee Lee

ARL/kkl

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Jerene Hayward, 00314451,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2008-CP-40-00780

ORDER OF DISMISSAL

JEANETTE W. GINHOVEN
CLERK OF COURT

2010 APR -9 PM 3:16

ALCOCK AND COURT
FILED

3854

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 1, 2008 (2008-CP-40-00780). Following the denial of the direct appeal, Remittitur date February 26, 2008, the Applicant filed a second PCR Application on May 29, 2008 (2008-CP-40-03854). The Respondent made its Return on March 25, 2009.¹ An evidentiary hearing into the matter was convened on May 13, 2009 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Charlie J. Johnson, Jr., Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Jeanette Van Ginhoven is, according to the Respondent, currently living in Europe and was not available for the hearing. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, the records from the direct appeal, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted by the Richland County Grand Jury during the April or the June 2005 term for first-degree burglary (Indictment No. 05-GS-40-2824), petit larceny (Indictment No. 05-GS-40-2825), kidnapping (Indictment No. 05-GS-40-5072), assault and battery with intent to kill

¹ In their Return, the Respondent suggested that because counsel has been appointed for the second PCR, the first PCR should be merged into the second PCR with the second PCR (2008-CP-40-03854) being the surviving action. The Respondent filed a Return and Motion to Dismiss the original PCR on February 7, 2008. This Court agrees.

BOOK 'SE' 153

(Indictment No. 05-GS-40-5073), and possession of marijuana (Indictment No. 05-GS-40-4570)². The Applicant was represented by Jeanette Van Ginhoven and Lauren Mobley. On March 16, 2006, after a jury trial with the Honorable James W. Johnson Jr., the jury found Hayward guilty of first-degree burglary, the lesser-included offense of ABHAN, petit larceny, and possession of marijuana. The trial court sentenced Hayward to consecutive terms of thirty years (30) for first-degree burglary and ten (10) years for ABHAN, plus concurrent terms of thirty days (30) each for the remaining convictions. He was found not guilty of the kidnapping charge.

A timely Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Jerene Markwell Hayward, Op. No. 2008-UP-088 (S.C. Ct. App. filed February 8, 2008). The Court of Appeals recited the facts as follows:

Hayward was accused of burglarizing the home of Jeffrey Connell and assaulting Connell's domestic employee on April 13, 2004. On that same afternoon, Ronald Cowart, a landscaper, was in route to Crescent Lake Subdivision when Hayward ran out in front of Cowart's truck, exclaiming two people were in pursuit of him. Cowart talked with Hayward and gave him a ride. Cowart observed Hayward was a tall, slender black male, with close-cut hair and a mark or tattoo on his neck. Hayward was wearing baggy blue jeans and a dark, long-sleeved shirt. He was carrying a backpack. Hayward eventually left Cowart's vehicle to find a store and a phone. Cowart alerted the police in response to conduct he believed was "out of the ordinary" and the noticeable police activity in the area.

Police arrested Hayward, informed him of his Miranda rights, and summoned Cowart several hours later to identify Hayward. At the site of arrest Hayward was handcuffed and surrounded by police cars and uniformed officers. Cowart positively identified Hayward as the man he had spoken with and picked up earlier. He testified, "I said yes this is him, I know him."

Eric Barnes, an investigator with Richland County Sheriff's Department, was responsible for directing the investigation. As he arrived on the scene where Hayward was detained, he recalled Hayward was shouting that he was innocent. Barnes introduced himself to Hayward and looked at Hayward's shoeprint to determine if it was similar to one left at the crime scene. Barnes observed what he thought was blood on Hayward's shoes, removed them, and secured them as evidence.

Barnes continued talking with Hayward, commenting that Hayward "was going to have a hard time explaining how the victim's blood got on the shoe."

² Applicant was also indicted for unlawful possession of a pistol (Indictment No. 05-GS-40-5074) which was quashed by the trial court and pointing and presenting a firearm (Indictment No. 05-GS-40-2802) upon which the trial court directed a verdict at the conclusion of the State's case at trial.

Hayward said "he was in the house but it was the other guy that kicked her or hit the lady, not him."

At headquarters, Barnes verbally informed Hayward of his Miranda rights, asked Hayward if he understood, and attempted to obtain information from him. Barnes testified Hayward denied he made the statement at the arrest site claiming he was not the one who kicked the lady. Hayward continued to deny everything about the case at that point, becoming louder and louder as the discussion progressed. When Barnes realized it was futile to continue, he decided to adjourn the session, concluding, "It became apparent in my mind that [Hayward] didn't want to give a statement."

...
In a hearing pursuant to Jackson v. Denno, 378 U.S. 368, (1964), Hayward challenged the suggestiveness of Cowart's identification of him at the arrest site. The trial court ruled Cowart's identification was admissible.

Additionally, Hayward moved for a mistrial on the ground Barnes impermissibly commented on Hayward's constitutional right to remain silent. The trial court denied Hayward's motion and ruled Hayward had not invoked his right to remain silent at the time Barnes decided it was futile to continue the session. Therefore, Barnes' comment that Hayward's statement was not forthcoming did not reflect on Hayward's invocation of his Fifth Amendment right.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons: "Trial counsel was ineffective when she failed to object at crucial points in trial, failed to explore defenses, failed to challenge indictments, failed to suppress evidence. Trial counsel also failed to strike jurors or bring to court attention that the jurors was bias and unsuitable for case.[sic] Counsel, also failed to challenge 85% law truth in Sentencing Bill 3096, that violates the single subject clause also enacted statue by legislature." Additionally, Applicant alleges prosecutorial misconduct.

At the evidentiary hearing, Applicant proceeded only on the allegations of ineffective assistance of counsel stated in the application. No evidence was presented regarding allegations of prosecutorial misconduct. Those claims are therefore waived or abandoned.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (Rev. 2003).

ad
#3

BOOK SE 153

The Applicant testified that he was represented by Lauren Mobley and Jeanette Van Ginhoven, and that Ms. Van Ginhoven represented him at trial. He met with his attorney(s) every two (2) months for approximately two (2) years leading up to the trial. Trial counsel was easy to deal with and he had no problems communicating with her. Applicant testified that he never received a copy of the discovery, but he did review it with trial counsel. His defense was that he was falsely identified. Applicant testified that if anything he was only guilty of possession of a firearm because he bought it from the people who must have done this crime. He testified that he was improperly identified out of a photographic lineup by the victim. In the photographic lineup the Applicant was wearing different clothing. The Applicant testified that trial counsel was ineffective because a juror was a member of the same country club as the owner of the property that was burglarized. The State claimed during the trial that Applicant had the victim's blood on his shoes; however, the Applicant claimed that was erroneous because "SLED cleared me."

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that,

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but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds Applicant's testimony is not credible and that he has not carried his burden of proof. Accordingly, this Court finds that his applicant must be denied and dismissed.

Regarding the jury note, this Court finds no arguable claim for relief. Specifically, during the trial a note from the jury indicated that a juror was a member of the same county club as the owner of the property that was burglarized. The property owner also testified as a witness for the State. The trial court inquired if this would affect the juror's ability to be fair and impartial in the case. The juror informed the court that it would not. The juror indicated that he did not know the witness. (Trial transcript p. 222). Presumably, the Applicant's claim is that trial counsel should have objected and/or moved for a mistrial regarding the jury note. This court finds that the Applicant failed to demonstrate how the note from the juror warranted such a response by trial counsel. "The trial court has broad discretion in assessing allegation of juror misconduct The determination of whether extraneous material received by a juror during the course of the trial is prejudicial is a matter for determination by the trial court." State v. Sparkman, 358 S.C. 491, 596 S.E.2d 375 (2004).

Regarding the photographic lineup and the difference in clothing, this Court finds that the Applicant's claim that trial counsel failed to challenge the photographic line-up is without merit. The record reflects that during pretrial, trial counsel specifically challenged the identification by the victim and pointed out that the Applicant's clothing was different. (Trial transcript p. 93, p. 152-156, p. 161-162). Also, during the victim's testimony before the jury, trial counsel again challenged her identification and the photographic lineup. (Trial transcript p. 285-286). Accordingly, this Court finds that the Applicant has failed to satisfy his burden of proof and demonstrate the trial counsel failed to challenge the photographic lineup.

Regarding the blood on the Applicant's shoes, the Applicant claims that SLED analysis results cleared him. Trial counsel was able to bring out during cross examination that the Applicant's shoe tread did not match the bloody shoeprint found at the scene. (Tr. pp. 680-681). While this evidence appears to clear Applicant, the serological expert from SLED who performed the chemical tests on the swabs testified that there was blood on the shoe and it matched the victim's. Trial counsel thoroughly challenged the State's witness regarding the blood matching. (Trial transcript p. 711-719). In addition, trial counsel challenged the blood

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BOOK PAGE 180

matching and serology during her closing arguments. (Trial transcript p. 774-776, 780-782). Accordingly, this Court finds that the Applicant has failed to satisfy his burden of proof and demonstrate trial counsel was ineffective – the Applicant made only general allegations, nothing specific was presented to criticize trial counsel performance and the Applicant failed to demonstrate any resulting prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BML, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate

and
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Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.
3. The Applicant's second PCR Application, filed on May 29, 2008 (2008-CP-40-03854) is merged into the original PCR Application (2008-CP-40-00780). The surviving case number is 2008-CP-40-00780.

AND IT IS SO ORDERED.



ALISON RENEE LEE

Presiding Judge

Fifth Judicial Circuit

April 9, 2010
Columbia, South Carolina.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Jerene Hayward, #314451,	)	2013-CP-40-4135
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO
	)	DISMISS (<u>AUSTIN</u> REVIEW ONLY)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed July 17, 2013, Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the April 2005 term of the Richland County Grand Jury for Burglary First Degree (2005-GS-40-2824), Petit Larceny (2005-GS-40-2825), Kidnapping (2005-GS-40-5072), Assault and Battery with Intent to Kill (2005-GS-40-5073), and Possession of Marijuana (2005-GS-40-4570). He was represented by Jeanette Van Ginhoven and Lauren Mobley, Esquires. On March 16, 2006, Applicant was found guilty by a jury of burglary first degree, the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN), petit larceny, and possession of marijuana. He was sentenced by the Honorable James W. Johnson Jr. to confinement for thirty (30) years for burglary first degree and ten (10) years for ABHAN, to be served consecutively. Also Applicant was sentenced to concurrent terms of thirty (30) days for the larceny and possession charges.

A timely Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Hayward, No. 2008-UP-088 (Ct. App. February 8, 2008). The Remittitur was issued on February 26, 2008.

Applicant subsequently filed for post-conviction relief on February 1, 2008 (2008-CP-40-0780). Following the denial of the direct appeal, Applicant filed a second PCR application on May 29, 2008 (2008-CP-40-3854). In his application, Applicant asserted:

1. Ineffective Assistance of Counsel.
2. Prosecutorial Misconduct.

The State made its Return on March 25, 2009, asking the two PCR applications be merged, which was agreed to by the court. An evidentiary hearing was convened on May 13, 2009 at the Richland County Courthouse. Applicant was present at the hearing and was represented by Charlie J. Johnson, Jr., Esquire. The Honorable Alison Renee Lee dismissed the application with prejudice in an order dated and filed April, 9, 2010.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the prior post-conviction relief and habeas petition records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Belated Austin Appeal
2. Ineffective Assistance of PCR, Trial, and Appellate Counsel

For the purpose of this Return, the Respondent incorporates the Richland County Clerk of Court records, the South Carolina Department of Corrections' records, appellate records, and the prior

post-conviction relief records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. The Respondent lacks sufficient information to admit or deny this allegation. The Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.; Austin, 305 S.C. 453, 409 S.E.2d 395.

IV.

Applicant has filed a successive state post-conviction relief action alleging ineffective assistance of previous collateral counsel. Martinez v. Ryan, ___ U.S. ___, 132 S. Ct. 1309 (2012), sets forth a narrow exception to the procedural default rules imposed on federal habeas corpus petitions when considered under the so-called “cause and prejudice” standard. See Coleman v. Thompson, 501 U.S. 722, 750, 111 S. Ct. 2546, 2565 (1991) (“In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice.”). The Martinez Court used this standard as the foundation for its decision, finding that attorney error amounting to ineffective assistance of counsel during an initial-review collateral proceeding may be sufficient “cause” to excuse a prisoner’s procedural default in a federal habeas corpus proceeding. See Martinez at ___, 132 S. Ct. at 1315.

(“Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner’s procedural default of a claim of ineffective assistance at trial.”).

With this framework in mind, it is clear Martinez has no application to successive state post-conviction relief actions, as the fundamental “cause and prejudice” standard on which Martinez relies is exclusive to federal habeas corpus actions. Further, the Martinez Court specifically noted that their decision was **not** addressing ineffective assistance of counsel claims raised in subsequent state post-conviction relief actions, opining “[t]his is not the case, however, to resolve whether [an exception to the constitutional rule that there is no right to counsel in collateral proceedings] exists as a constitutional matter.” Id. at ___, 132 S. Ct. at 1326. Therefore, Applicant’s contention that Martinez allows him to bring this untimely and successive state post-conviction relief application is misguided and erroneous.

Additionally, Martinez’s interpretation of federal laws applicable to federal habeas corpus actions has no effect on South Carolina’s interpretation and application of its Post-Conviction Relief statute. S.C. Code Ann. § 17-27-10 to -160. Therefore, the South Carolina Supreme Court’s opinion in Aice v. State is still applicable to a claim raised in a subsequent state post-conviction relief action alleging ineffective assistance of prior collateral counsel. See Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) (“The contention that prior PCR counsel was ineffective is not *per se* a ‘sufficient reason’ warranting a successive PCR application under 17-27-90.”). Aice went on to note that such a holding was in accord with the United States Supreme Court’s opinion in Pennsylvania v. Finley, 481 U.S. 551, 107 S. Ct. 1990 (1987) (there is no constitutional right to counsel for collateral review of a conviction). Accordingly, Respondent asserts that Applicant’s claim regarding the application of Martinez is without merit.

Finally, because Applicant has failed to set forth any reason he could not have raised the current allegations in his previous application other than to allege post-conviction relief counsel was ineffective in failing to raise them; the current application is in fact successive in nature. Accordingly, Respondent asserts that this application must be summarily dismissed for a failure to state a claim entitling Applicant to relief, for being successive in nature and for failing to file the action within the statute of limitation as set forth in S.C. Code Ann. § 17-27-45(a).

V.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of

showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

VI.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on September 2, 2003. The Court of Appeals' remittitur was issued, after the Applicant's unsuccessful appeal, on February 28, 2005. This application was filed on April 17, 2013; seven years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to

"grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

VII.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VIII.

WHEREFORE, Respondent moves to summarily dismiss the application because fails to state a claim entitling Applicant to relief, for being successive in nature and for failing to file the action within the statute of limitation as set forth in S.C. Code Ann. § 17-27-45(a).

Respectfully submitted,

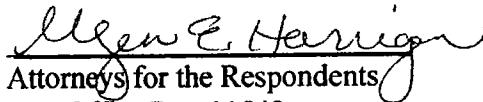
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By:


Attorneys for the Respondents
Post Office Box 11549
Columbia, South Carolina 29211

September 26, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2013-CP-40-4135
	)	
JERENE HAYWARD, #314451	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss without Prejudice** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Kristy G. Goldberg, Esquire
 Law Office of Kristy Goldberg, LLC
 1720 Main Street, Suite 301
 Columbia, South Carolina 29201**

DATED this 26th day of September, 2013.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

State of South Carolina)
)
 County of Richland)

In the Court of Common Pleas
 Fifth Judicial Circuit
 2013-CP-40-4135

Jerene Hayward,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)
)
 _____)

Transcript of Record

November 20, 2013
 Columbia, South Carolina

B E F O R E:

The Honorable Robert E. Hood, Judge

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

Kristi G. Goldberg, Esquire
 Tara D. Shurling, Esquire
 Attorney for the Applicant

Megan E. Harrigan, Esquire, Assistant Attorney General
 Attorney for the Respondent

Elizabeth B. Harris, CVR-M
 Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Agreement..	3
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>

No Exhibits Introduced.

1 MS. HARRIGAN: May it please the court? Your Honor,
2 this is the matter of *Jerene Hayward vs. The State of South*
3 *Carolina*, 2013-CP-40-4135. Mr. Hayward was true-bill
4 indicted during the April 2005 term of the Richland County
5 grand jury for burglary in the first degree, petit larceny,
6 kidnapping, assault and battery with intent to kill, and
7 possession of marijuana. He was represented by Jeanette
8 VanGinhoven and Warren Mobley on March 16, 2006.

9 Mr. Hayward was found guilty by a jury of burglary in
10 the first degree, the lesser-included offense of assault
11 and battery of a high and aggravated nature, petit larceny,
12 and possession of marijuana. He was sentenced by the
13 Honorable James W. Johnson, Jr., to confinement for thirty
14 years for burglary in the first degree, and to a
15 consecutive ten years for assault and battery of a high and
16 aggravated nature. He was also sentenced to concurrent
17 terms of thirty days for larceny and possession of
18 marijuana charges.

19 A timely notice of appeal was filed on his behalf in
20 South Carolina. The Court of Appeals affirmed his
21 convictions and sentence. Remittitur was sent down on
22 February 26, 2008. He subsequently filed an application
23 for post-conviction relief on February 1, 2008. Filing was
24 -- direct appeal was still pending. Following the denial
25 of his direct appeal, applicant filed a second application

1 for post-conviction relief on May 29, 2008; these two
2 applications were merged together.

3 An evidentiary hearing was convened on May 13, 2009,
4 at this courthouse. He was present at the hearing and
5 represented by Charlie J. Johnson, Jr., who is in the
6 courtroom today. The Honorable Alison Renee Lee dismissed
7 the application with prejudice in an order dated and filed
8 April 9, 2010.

9 Thereafter, he filed this current application for
10 post-conviction relief seeking an *Austin* review of his
11 first post-conviction relief action, and at this time there
12 is a consent agreement. He's represented in this current
13 action by Kristy Goldberg, and there is a consent between
14 the state and applicant and his counsel that he is entitled
15 to a belated appeal or an *Austin* review of his first
16 post-conviction relief application after speaking with Ms.
17 Goldberg and Mr. Johnson, and the state can consent to
18 that. And I'll let Ms. Goldberg put more information on
19 the record regarding that.

20 MS. GOLDBERG: Thank you, Your Honor. It appears that
21 Judge -- I'm sorry?

22 (A PAUSE.)

23 MS. GOLDBERG: The hearing in this case was May 2009.
24 The dismissal by Judge Lee was not until April 9, 2010,
25 almost a year later. The judgment filed with the clerk of

1 court shows that when the final disposition was filed, it
2 was not sent to Charlie Johnson. He never received the
3 disposition; therefore, he did not file an appeal in this
4 matter.

5 Mr. Hayward, there's documentation that on multiple
6 occasions he attempted to contact the court to find out
7 what the disposition was. He never did until he actually
8 received a letter from Judge Lee's chambers May 6th of 2013
9 with a copy of that order of dismissal. Soon thereafter,
10 Your Honor, he filed this PCR requesting that he be given
11 the right to appeal his original PCR decision.

12 I believe the consent order between the state and
13 defense is that he will now be given that right, that
14 opportunity to file notice of appeal. I believe after Your
15 Honor signs an order with the court granting that, then I
16 will need to file notice of appeal for his prior PCR with
17 that order as well as this order.

18 MS. HARRIGAN: That is the consent agreement that the
19 state has reached. And to further elaborate on that a bit,
20 it seems that the time the order was signed and filed by
21 Judge Lee, Mr. Johnson had gone to the solicitor's office
22 in Orangeburg, and Bryan Jeffries had taken over a number
23 of his cases. And it appears that Bryan Jeffries was
24 served with the order of dismissal a year after the hearing
25 even though he had no involvement in the case. That did

1 not come to the state's attention until very recently. So,
2 we will consent based on those grounds.

3 And I'd also like to note for the record that we
4 already have a copy of the first post-conviction relief
5 action, and so we don't foresee any reconstruction issues
6 with the time delay since the first post-conviction relief
7 action.

8 THE COURT: All right. Do you want to change my mind?
9 Who wants to prepare it?

10 MS. HARRIGAN: I can prepare a proposed order and
11 submit it to Ms. Goldberg and submit it to your chambers.

12 THE COURT: Have a good day.

13 MS. HARRIGAN: Thank you, Your Honor.

14 MS. GOLDBERG: Thank you, Your Honor.

15 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 20TH DAY OF NOVEMBER, 2013.

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

S/ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

AUGUST 8TH, 2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Jerene Hayward, #314451,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2013-CP-40-4135

CONSENT ORDER GRANTING AN
APPEAL PURSUANT TO AUSTIN V.
STATE¹

RICHLAND COUNTY
FILED
2014 MAR -4 PM 1:38
JEANETTE VAN GINHOVEN
C.C.P. & G.S.

This matter comes before the Court by way of an application for post-conviction relief filed July 17, 2013. Respondent made its Return on September 26, 2013, requesting an evidentiary hearing solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. An evidentiary hearing on the matter was convened on November 20, 2013, at the Richland County Courthouse. Applicant was present at the hearing and represented by Kristy G. Goldberg, Esquire. Assistant Attorney General Megan E. Harrigan of the South Carolina Office of the Attorney General represented the Respondent. Also present was Charlie J. Johnson, Jr., Esquire.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the April 2005 term of the Richland County Grand Jury for Burglary in the First Degree (2005-GS-40-2824), Petit Larceny (2005-GS-40-2825), Kidnapping (2005-GS-40-5072), Assault and Battery with Intent to Kill (2005-GS-40-5073), and Possession of Marijuana (2005-GS-40-4570). He was represented by Jeanette Van Ginhoven, Esquire, and Lauren Mobley, Esquire. Applicant proceeded to a jury trial before the Honorable James W. Johnson, Jr., where

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

he was convicted of burglary in the first degree, the lesser-included offense of assault and battery of a high and aggravated nature, petit larceny, and possession of marijuana. Judge Johnson sentenced Applicant to thirty years imprisonment for burglary in the first degree, ten years imprisonment for assault and battery of a high and aggravated, to be served consecutively, and to concurrent terms of thirty days for the larceny and possession charges.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Hayward, No. 2008-UP-088 (Ct. App. February 8, 2008). The Remittitur was issued on February 26, 2008.

Applicant subsequently filed for post-conviction relief on February 1, 2008 (2008-CP-40-0780). Following the denial of the direct appeal, Applicant filed a second application on May 29, 2008 (2008-CP-40-3854). In his application, Applicant asserted:

1. Ineffective Assistance of Counsel.
2. Prosecutorial Misconduct.

The State made its Return on March 25, 2009, asking the two post-conviction relief applications be merged. The applications were subsequently merged. An evidentiary hearing was convened on May 13, 2009, at the Richland County Courthouse before the Honorable Alison R. Lee. Applicant was present at the hearing and was represented by Charlie J. Johnson, Jr., Esquire. Judge Lee dismissed the application with prejudice by written Order dated and filed April, 9, 2010. No direct appeal was taken.

ALLEGATIONS

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Belated Austin Appeal
2. Ineffective Assistance of PCR, Trial, and Appellate Counsel

Respondent made its Return on September 26, 2013, requesting an evidentiary hearing solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. An evidentiary hearing was held to solely address whether or not the Applicant freely and voluntarily waived his right to appeal the denial of his application for post-conviction relief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application.

After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of allegations in the Applicant's post-conviction relief application, both parties have consented to the granting of an appeal pursuant to Austin v. State of the Applicant's first post-conviction relief application. The parties agree that the Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of the Applicant's application for post-conviction relief. Counsel for the Applicant has indicated the Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief and that Counsel failed to file a timely Notice of Appeal of the application.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first post-conviction relief action pursuant to Austin v. State is warranted.

IT IS THEREFORE ORDERED:

1. That the Applicant be granted an appeal of case 2008-CP-40-0780 pursuant to Austin v. State;

2. Counsel for Applicant, Kristy G. Goldberg, Esquire, shall file and serve the Notice of Appeal on all necessary parties; and
3. That the Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 4th day of March, 20 14.



Robert E. Hood
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JERENE HAYWARD, #314451,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Consent Order Granting an Appeal Pursuant To Austin v. State** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Kristy G. Goldberg, Esquire
Law Office of Kristy Goldberg, LLC
1720 Main Street, Suite 301
Columbia, South Carolina 29201

This 13th day of March, 2014.


MEGAN E. HARRIGAN
ATTORNEY FOR RESPONDENT

SWORN to before me this 13th day of March, 2014.


Notary Public for South Carolina.
My Commission Expires: 5/11/2014

WITNESSES

983

(S) Eric Barnes (RCSD)

ARREST WARRANT NUMBER

DP05107

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: APR 20 2005

VERDICT

Motion for directed verdict

is granted

[Signature]

3-16-06

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-40-2802

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2005

73

THE STATE
vs.

JERENE HAYWARD

Indictment for

POINTING AND PRESENTING A
FIREARM

SC Code: 16-23-410

CDR Code: 0122

Class FEL-F

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 20, 2005, the Grand Jurors of Richland County present upon their oath:

POINTING AND PRESENTING FIREARM

That Jerene Hayward did in Richland County on or about April 13, 2004, knowingly point and/or present a firearm at Lourdes Antonio, all in violation of Section 16-23-410, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLICITOR



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 26, 2008

REMITTITUR

The Honorable Barbara A. Scott
1701 Main St
PO Box 2766
Columbia, SC 29202-2766

Re: The State v. Hayward, Jerene Markwell
2005-GS-40-02802 2005-GS-40-02824 2005-GS-40-02825 2005-GS-40-02826
2005-GS-40-04570 2005-GS-40-05072 2005-GS-40-05073 2005-GS-40-05074

Dear Ms. Scott:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

Renee S. Johnson
Administrative Specialist

KAR
KAR/rj

cc: Appellate Defender Aileen P. Clare
Senior Asst. Atty General Harold M. Coombs, Jr.
Warren Blair Giese, Esquire

WITNESSES

(S) Eric Barnes (RCSD)

ARREST WARRANT NUMBER

H-670883

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: APR 20 2005

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-40-2824

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2004

73

THE STATE

vs.

JERENE HAYWARD

Indictment for

BURGLARY/(AFTER 6/20/85)
1ST DEGREE

SC Code: 16-11-311

CDR Code: 079

Class FEL-EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 20, 2005, the Grand Jurors of Richland County present upon their oath:

BURGLARY/(AFTER 6/20/85) - 1ST DEG

That JERENE HAYWARD did in Richland County on or about April 13, 2004, willfully and unlawfully enter the dwelling of Jeffrey Connell, without consent and with the intent to commit a crime therein and the defendant ~~(entered during the hours of darkness and/or)~~ was armed with a deadly weapon while therein and/or caused physical injury to ^{a person who is not a participant in the crime} the victim and/or used or threatened to use a dangerous instrument ~~(and/or the defendant had a prior record of two or more convictions for burglary or housebreaking or a combination of both)~~ all in violation of Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
 Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATERichland
VS.
Jerome Hayward

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Burglary 1stin violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0, 0, 7, 9☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. since 4/13/04

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§ 35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

686

ARREST WARRANT

H-670883

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 RICHLAND COUNTY

 THE STATE RCO#04041318
 against

JERENE MARKNELL HAYWARD

 Address: DETROIT MI - 0000

 Phone: SSN: [REDACTED]
 Sex: M Race: B Height: 5 9 Weight: 165

 DL State: MI DL #: [REDACTED]
 DOB: [REDACTED] Agency ORI#: [REDACTED]
 Prosecuting Agency: RICHLAND COUNTY SHERIFF'S
Prosecuting Officer: ERIC K BARNESOffense: BURGLARY - 1ST DEGREEOffense Code: 0079Code/Ordinance Sec. 16-11-0311
 This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge (LS.)

Date: _____

RETURN

 A copy of this arrest warrant was delivered to
 defendant JERENE MARKNELL HAYWARD

 on [Signature]
 Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO:
 RICHLAND COUNTY BOND COURT
 201 JOHN MARK DIAL DRIVE
 COLUMBIA SC 29209 - 0000

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 RICHLAND COUNTY

AFFIDAVIT

 Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 618

 Personally appeared before me the affiant ERIC K BARNES who
 being duly sworn deposes and says that defendant JERENE MARKNELL HAYWARD
 did within this county and state on 4/13/04 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)
 in the following particulars:
DESCRIPTION OF OFFENSE: BURGLARY - 1ST DEGREE

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:
 THAT ON OR ABOUT APRIL 13, 2004 WHILE AT [REDACTED] IN THE
 PONTIAC MAGISTERIAL DISTRICT OF RICHLAND COUNTY, ONE
 JERENE M HAYWARD DID COMMIT THE CRIME OF BURGLARY 1ST IN THAT HE
 DID WHILE POSING AS A DOOR TO DOOR SALESMAN, UNLAWFULLY ENTER THE
 RESIDENCE DURING THE DAY-TIME HOURS AND STEAL AND ARM HIMSELF
 WITH A RUGER .45 CALIBER HANDGUN (SERIAL #660-71518). WHEN THE
 HOUSEKEEPER CAME HOME HE THEN ASSAULTED HER TO THE POINT SHE
 NEEDED MEDICAL ATTENTION FOR CUTS AND A BROKEN RIB. THE DEFENDANT
 WAS IDENTIFIED BY WITNESSES WHO OBSERVED HIM FLEEING THE AREA.
 THE STOLEN RUGER PISTOL WAS FOUND ON HIS PERSON AT THE TIME ARREST.

Signature of Affiant

 Affiant's Address RICHLAND COUNTY SHERIFF'S DEPT
COLUMBIA SC 29223 - 0000
 Affiant's Telephone 803 576-3000

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 RICHLAND COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 4/13/04 defendant JERENE MARKNELL HAYWARD
 did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: BURGLARY - 1ST DEGREE
THE DEFENDANT MADE A UNSOLICITED ADMISSION THAT HE WAS IN THE HOUSE, BUT DID NOT
ASSAULT THE WOMAN. AFFIANT AND OTHERS ARE WITNESSES TO PROVE THE SAME.

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

 Sworn to and subscribed before me
 on 4/14/04
 (LS.)
 Signature of Issuing Judge
 Judge Code: GS

 Judge's Address JUDICIAL CENTER
COLUMBIA SC 29201 - 0000
 Judge's Telephone 803 576-1800
 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

05/05/2004 14:49

8035761925

RC CRIMINAL RECORDS

PAGE 02/02

WITNESSES

(S) Eric Barnes

ARREST WARRANT NUMBER

H670884

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: APR 20 2005

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-40-2825

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2005

73

THE STATE
vs.

JERENE HAYWARD

Indictment for

PETIT LARCENY

SC Code: 16-13-30(A)

CDR Code: 0480

Class MIS/UNC

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 20, 2005, the Grand Jurors of Richland County present upon their oath:

PETIT LARCENY

That JERENE HAYWARD did in Richland County on or about April 13, 2004, feloniously take and carry away property of the victim, Jeffrey Connell, of the value of less than one thousand dollars, described as follows, a pistol, with intent to deprive the owner permanently of such property. All in violation of S.C. Code of Laws § 16-13-30 (1976) (as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

GS-

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☐ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: Petit Larcenyin violation of § 16-13-30(H) of the S.C. Code of Laws, bearing CDR Code # 0, 4, 8, 0☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____; provided that upon the service of _____ days/months/years and/or payment of \$_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 3-17-06☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$_____ plus 20% fee: \$_____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$_____ beginning

\$_____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

99

ARREST WARRANT

H-670884

STATE OF SOUTH CAROLINA

County/ Municipality of
RICHLAND COUNTY

THE STATE OF SOUTH CAROLINA
against

TERRENE MARQUELLE HAYWARD

Address: 4000 - 0000

Phone: SSN: [REDACTED]

Sex: Race: Height: Weight:

DL State: DL#:

DOB: Agency OR#:

Prosecuting Agency: RICHLAND COUNTY SHERIFF'S

Prosecuting Officer: ANDREW BARNES

Offense: PETIT LARCENY

Offense Code: 0480

Code/Ordinance Sec. 16-13-0120(A)

This warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant TERRENE MARQUELLE HAYWARD
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

RICHLAND COUNTY SHERIFF'S
4000 - 0000

STATE OF SOUTH CAROLINA
County/ Municipality of
RICHLAND COUNTY

AFFIDAVIT

Form Approved by
G.S. Attorney General
April 21, 2003
SCCA 018

Personal appeared before me the affiant [REDACTED] who
being duly sworn deposes and says that defendant [REDACTED]
did within this county and state on 4/13/04 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of)
in the following particulars:
DESCRIPTION OF OFFENSE: PETIT LARCENY

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
THAT ON OR ABOUT APRIL 10, 2004 WHILE AT 1111 S. SHARPLEY ST. IN
PONTIAC MAGISTRATE DISTRICT OF RICHLAND COUNTY, ONE
JEROME M. HAYWARD DID COMMIT THE CRIME OF PETIT LARCENY IN THAT
HE DID WHILE POSING AS A DOOR TO DOOR SALESMAN, UNLAWFULLY ENTERED A
RESIDENCE BEHIND THE DAY TONS BROS. AND TART. STORE AND THERE
WAS A RUGER .44 CALIBRE PISTOL (COP 884-1111). THE PISTOL
WAS IDENTIFIED BY WITNESSES WHO OBSERVED HIM FLEEING FROM THE
AREA. A SHORT TIME LATER THE CRIMINAL PISTOL WAS FOUND ON THE
PERSON AT THE TIME OF ARREST. THE DEFENDANT MADE AN UNCOLLATERAL
ADMISSION THAT HE WAS IN THE HOUSE. AFFIANT AND OTHERS ARE WITNESSES
TO PROVE THE SAME.

STATE OF SOUTH CAROLINA
County/ Municipality of
RICHLAND COUNTY

Affiant's Address: RICHLAND COUNTY SHERIFF'S
COLUMBIA SC 29201-0000
Affiant's Telephone: 803-737-1200

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 4/13/04 defendant [REDACTED]
did violate the criminal laws of the State of South Carolina (or ordinance of
County/ Municipality of) as set forth below:
DESCRIPTION OF OFFENSE: PETIT LARCENY

Under the probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 4/14/04

Signature of Issuing Judge

Judge Code: 05

Judge's Address: RICHLAND COUNTY
COLUMBIA SC 29201-0000

Judge's Telephone: 803-737-1200

Issuing Court: [] Magistrate [] Municipal [] Circuit

ORIGINAL

WITNESSES

(S) Eric Barnes - RCSD

ARREST WARRANT NUMBER

DP05348

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: JUN 15 2005 MAY 15 2005

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2005-GS-40-5073

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2005

73

THE STATE
vs.

JERENE HAYWARD

Indictment for
ASSAULT AND BATTERY
WITH INTENT TO KILL

SC Code: 16-3-620
CDR Code: 0014
Class FEL-C(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on June 15, 2005, the Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That JERENE HAYWARD did in Richland County on or about April 13, 2004, with malice aforethought commit an assault and battery upon one Lourdes Antonio with intent to kill the said victim. All in violation of §16-03-620 of the Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATERichland
VS.
Jerene Hayward

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: ABANDON

in violation of § 17-25-30 of the S.C. Code of Laws, bearing CDR Code # 0, 0, 1, 3

☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____; provided that upon the service of _____ days/months/years and/or payment of \$_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 3-17-06☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$_____ plus 20% fee: \$_____

Payment Terms:

☐ set by SCDPPPS

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$_____ beginning

\$_____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2006 15 15
3-17-06

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
§ 35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

Clerk of Court/Deputy Clerk

Court Reporter:

The State of South Carolina
COUNTY OF RICHLAND

THE STATE VS.

Warrant/Ind. #

Charge:

2005-1540-5072

Kidnapping

Terene Hayward

By BARBARA A. SCOTT, Clerk of Court in and for the County and State aforesaid. To the Keeper of the Jail for said County, GREETING:

FORASMUCH as Terene Hayward
is in your custody on the above noted charge only, The Defendant
was found not guilty.

THESE ARE, THEREFORE, to authorize and require you that if the said do remain in jail for no other cause, then you forbear to detain him any longer, but suffer him go at large; herein fail not, upon the pain of penalty which will fall therein.

GIVEN under my Hand and Seal, this
day of

17th March

A.D. 1920

Barbara A. Scott (L.S.)
Clerk

WITNESSES

(S) Eric Barnes - RCSD

ARREST WARRANT NUMBER

DP05347

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: JUN 15 2005

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2005-GS-40-5072

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2005

73

THE STATE
vs.

JERENE HAYWARD

Indictment for
KIDNAPPING

SC Code: 16-3-910
CDR Code:0095
Class FEL/A(V)

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CEB 11-17-05
JUN 15 2005
MAY 15 2005
SOL 11-17-05

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on June 15, 2005, the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That JERENE HAYWARD did in Richland County on or about April 13, 2004, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Lourdes Antonion, by any means whatsoever without authority of law. All in violation of § 16-3-910, Code of Laws of South Carolina (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
Warren B. Giese, SOLICITOR

WITNESSES

(S) Eric Barnes (RCSD)

ARREST WARRANT NUMBER

H670886

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: APR 20 2005

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-40-4570

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2005

73

**THE STATE
vs.**

JERENE HAYWARD

Indictment for

DRUGS/POSS OF MARIJUANA

SC Code: 44-53-370(d)(3)

CDR Code: 659

Class UNC

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 20, 2005, the Grand Jurors of Richland County present upon their oath:

DRUGS/POSS OF MARIJUANA

That JERENE HAYWARD did in Richland on or about April 13, 2004, possess or attempt to possess a quantity of Marijuana, a controlled substance under provisions of Section 44-53-370 et. Seq., Code of Laws of South Carolina (1976, as amended), such possession not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

AKA:

Race:

DOB:

City, State, Zip

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: 3 PMin violation of § 4-53-310(a)(3) of the S.C. Code of Laws, bearing CDR Code # 0, 6, 5, 9☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 3-17-06☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Barbara A. Scott
Clerk of Court, Deputy Clerk

Court Reporter:

Jay E. Holston

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2005-135-15
3-17-06

THE UNITED STATES OF AMERICA

IN SENATE
January 10, 1903

REPORT
OF THE

COMMISSIONERS OF THE GENERAL LAND OFFICE
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE
JANUARY 10, 1903

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1903

THE UNITED STATES OF AMERICA

REPORT
OF THE
COMMISSIONERS OF THE GENERAL LAND OFFICE
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE
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JANUARY 10, 1903

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1903

ARREST WARRANT

H- 670886

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 RICHLAND COUNTY

 THE STATE RCSO#04041318
 against

JERENE MARKNELL HAYWARD

 Address: DETROIT MI - 0000

 Phone: [REDACTED]
 Sex: M Race: R Height: 5 9 Weight: 165
DL State: MI DL #: [REDACTED]DOB: [REDACTED] Agency ORI#: [REDACTED]Prosecuting Agency: RICHLAND COUNTY SHERIFF'SProsecuting Officer: ERIC K BARNESOffense: SIMPLE POSSESSIONOF MARIJUANA/HSB Offense Code: 0659Code/Ordinance Sec. 44-53-0370(d)(3)
 This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

Date: _____

RETURN

 A copy of this arrest warrant was delivered to
 defendant JERENE MARKNELL HAYWARD
 on _____

Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO:
 RICHLAND COUNTY BOND COURT
 201 JOHN MARK DIAL DRIVE
 COLUMBIA SC 29209 - 0000

 STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
 RICHLAND COUNTY)

AFFIDAVIT

 Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 618

 Personally appeared before me the affiant ERIC K BARNES wt
 being duly sworn deposes and says that defendant JERENE MARKNELL HAYWARD
 did within this county and state on 4/13/04 violate the criminal laws of th
 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____
 in the following particulars:

DESCRIPTION OF OFFENSE: SIMPLE POSSESSION OF MARIJUANA/HSB

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:
 THAT ON OR ABOUT APRIL 13, 2004 WHILE AT [REDACTED] IN THE
 PONTIAC MAGISTERIAL DISTRICT OF RICHLAND COUNTY, ONE JERENE M HAYWARD DID COMMIT THE CRIME OF SIMPLE POSSESSION OF
 MARIJUANA IN THAT HE DID WHILE UNDER ARREST FOR OTHER CHARGES
 HE WAS SEARCHED INCIDENT TO ARREST. DEPUTY ROM FOUND A SMALL
 BAGGIE OF GREEN LEAFY MATERIAL CONSISTENT WITH MARIJUANA. THE
 DEFENDANT ADMITTED THAT THE MATERIAL WAS MARIJUANA AND THAT IT
 WAS HIS. AFFIANT AND OTHERS ARE WITNESS TO PROVE THE SAME.

Signature of Affiant

D. Watson for E.K. Barnes
 STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
 RICHLAND COUNTY)

 Affiant's Address RICHLAND COUNTY SHERIFF'S DEPT
COLUMBIA SC 29223 - 0000
 Affiant's Telephone 803 576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe
 on 4/13/04 defendant JERENE MARKNELL HAYWARD
 did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of _____) as set forth below.

DESCRIPTION OF OFFENSE: SIMPLE POSSESSION OF MARIJUANA/HSB

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered
 the defendant at the time of its execution, or as soon thereafter as is practicable.

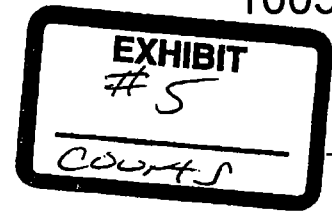
Sworn to and subscribed before me

on 4/14/04

Signature of Issuing Judge

Judge Code: 926
 Judge's Address PONTIAC MAGISTERIAL
ELGIN SC 29045 - 000
Judge's Telephone 803 576-2520
 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Cir

ORIGINAL



I William Austin Smith am a member
of Columbia Country Club of which Mr. Cannell
is employed — Do not know him personally
however —

WASms