

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THEODORE MANNING,

APPELLANT

RECORD ON APPEAL

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*****THE FOLLOWING EXHIBITS WILL BE TRANSPORTED TO THE COURT OF APPEALS: STATE'S EXHIBIT'S 2 (STATEMENT), 3 (STATEMENT), AND 133 (CD AND TRANSCRIPT), 226 (PHOTO) AND 227 (PHOTO); DEFENDANT'S EXHIBIT'S 1 (SEARCH WARRANT) AND 2 (SEARCH WARRANT); COURT'S EXHIBITS 1 (MOTIONS LIST) AND 6 (DEFENDANT'S REQUEST TO CHARGE).**

1 Charlotte/Mecklenburg Police Department investigators
2 go up to him.

3 They say "Hey, we're just executing a search warrant
4 on your nephew's house." He said, "Why?"

5 They said, "Well, this is a missing person's case.
6 We're trying to find evidence of a missing person."

7 So even the people who constructed the search warrant
8 were saying, "This is a missing person's case. The fact
9 of the matter is they obtained a search warrant for murder
10 is what the search warrant was when the affiant, Tommy
11 Croxton, cited in front of the magistrate.

12 Your Honor, I'll go ahead and anticipate that
13 they're going to say the good faith exception would have
14 allowed this evidence in. Well, I mean, hey, we messed
15 this up under -- U.S. v. Leon would let this in.

16 U.S. v. Leon does not allow a good faith exception
17 when the magistrate who signed the search warrant did not
18 have probable cause to sign it. U.S. v. Leon would say
19 this does not apply.

20 Additionally, Your Honor, when we look at State v.
21 Austin, 306 S.C. 9, holding that, "Where the magistrate
22 could not have found probable cause for the affidavit,
23 the good faith exemption does not apply," and emphasizing
24 that the South Carolina constitution has additional
25 protections that are not found in the federal

1 constitution.

2 We have a more broad protection for our citizens.

3 In fact, Austin goes further to say that we have the
4 expectation of privacy. This was a complete invasion of
5 his privacy as they went into his home and executed a
6 search warrant without probable cause.

7 I beg the Court's indulgence.

8 (Pause)

9 Your Honor, finally for the point being, Your Honor,
10 that we do look at Investigator Hopkins' notes and they
11 are as clear as they can be that the first thing she did
12 in her notes is that -- now, these were typed up when she
13 had fresh memory.

14 She said the first thing they did was to knock on
15 the door and advise the defendant that they had a search
16 warrant to search the residence, doesn't even -- Your
17 Honor, through her testimony right here, she -- she said
18 that they did not get the search -- the consent to search
19 form signed because Don Robinson was going ahead to
20 execute the search warrant they had because there was no
21 reason to because the search warrant trumped whatever
22 consent they had. They were going to execute the search
23 warrant, so it didn't matter.

24 Your Honor, under North Carolina v. Bumper -- or
25 Bumper v. North Carolina, 391 U.S. 543, consent need not

1 be obtained through the showing of force of a search
2 warrant.

3 Your Honor, that's what she wrote in her statement,
4 which is provided in the table of contents provided in
5 the exhibits. It's Exhibit Number F or letter F.

6 In letter F, it states that the first thing they did
7 was they knocked on the door and said, "We have a
8 search warrant."

9 Your Honor, this goes purely to the fact that they
10 went there to serve a search warrant. A search warrant
11 was served. The search warrant is wholly defective. For
12 that result, the defense moves to suppress any fruit of
13 such search warrant.

14 THE COURT: All right. We're going to take about a
15 five-minute break, then I'll hear from the State. You
16 all come on back.

17 (WHEREUPON, a short break was taken.)

18 THE COURT: What's the State's position? You say
19 you have a memorandum on this issue?

20 MS. McDUFFIE: No, sir, Your Honor.

21 THE COURT: I might ask for one, but let me hear you.

22 MS. McDUFFIE: Your Honor, first we would argue
23 that consent was giving to search by Mr. --

24 THE COURT: Well, let's take it's in the order in
25 which they were -- it was presented, that is the

1 jurisdictional issue first. Do you have one of these?

2 MS. McDUFFIE: Yes, sir, Your Honor.

3 Your Honor, the State asserts that there is no
4 jurisdictional issue here. A search warrant was
5 obtained from a Richland County magistrate for a place
6 to be searched in Richland County.

7 The search warrant was obtained based on an
8 affidavit by a Richland County officer. Your Honor, it
9 was executed by officers with the Richland County
10 Sheriff's Department, and it was returned to a Richland
11 County magistrate by an officer of the Richland County
12 Sheriff's Department.

13 We don't believe that there is a jurisdictional
14 issue with the execution of the search warrant, Your
15 Honor.

16 THE COURT: All right.

17 MS. McDUFFIE: Your Honor, the defendant submits
18 that -- relies or alleges that because they allege that
19 Tommy Croxton had no personal knowledge of the basis of
20 this affidavit -- Your Honor, if you'd like to, we'd be
21 glad to put Investigator Croxton on the stand.

22 Your Honor, during this investigation, and as
23 courts have held in the cases that the defense themselves
24 cite that affidavits are allowed to be made based -- on
25 the basis of hearsay, even double, triple or quadruple

1 hearsay.

2 Your Honor, further that the affidavits are allowed
3 to be made on information given to law enforcement
4 officers by other law enforcement officers.

5 Your Honor, here information from the Charlotte/
6 Mecklenburg Police Department was relayed to the Richland
7 County Sheriff's Department. It was relayed to
8 Investigator Don Robinson, Stan Smith, Kevin
9 Isenhoward. They then determined -- or they then went
10 to go get a search warrant.

11 Investigator Robinson typed up a search warrant based
12 on the information that was relayed to him by officers
13 of the Charlotte/Mecklenburg Police Department and also
14 by the information that Richland County had up until that
15 point, Your Honor.

16 He then called Investigator Tommy Croxton who was
17 already at bond court, Your Honor.

18 THE COURT: He was what? I didn't hear you.

19 MS. CAMPBELL: We called Investigator Tommy Croxton
20 who was at bond court already, Your Honor. Investigator
21 Croxton is an investigator with the Richland County
22 Sheriff's Department.

23 He briefed Investigator Croxton on the basis of
24 their investigation thus far on what Charlotte had done,
25 on Richland County's role in the investigation, and also

1 on what probable cause that the State was going to offer
2 for the issuance of the search warrant was.

3 Investigator Croxton, a search warrant was faxed to
4 the magistrate's office. Investigator Croxton, based on
5 the information that he had gotten from Don Robinson,
6 which was also contained in the affidavit signed the
7 affidavit as the affiant, Your Honor.

8 His basis of knowledge was from law enforcement
9 officers. The case that the defense relies on heavily
10 talking about personal knowledge and crediting the hearsay,
11 Your Honor -- in that case, the officer that went to go
12 sign the search warrant had no basis of knowledge of
13 anything other than the one item of information that was
14 contained in the search warrant.

15 He could not tell the issuing judge, the issuing
16 magistrate, whether the information was correct or
17 whether it had been relayed to him in any way. In fact,
18 Your Honor he testified that he had no knowledge of the
19 contents of the affidavit that he signed attesting to it.
20 Your Honor, that's clearly not the case here. Further --

21 THE COURT: What's the name of that case?

22 MS. McDUFFIE: That's State v. Dunbar, which the
23 defense relies heavily on, Your Honor. Further, in that
24 case, another officer had called the magistrate. There
25 is no indication that that testimony that the other officer

1 gave him for the search warrant was sworn, and that also
2 relied on a confidential informant whose credibility was
3 never -- or the liability was never relayed to the Court,
4 which is, as all law enforcement officers know, must be
5 done when relied on by an informant.

6 Here, there is no issue with an informant. The
7 individuals that gave this information are clearly named
8 as witnesses, coworkers, friends.

9 There are no confidential informants. There is no
10 issue with credibility of individuals supplying this
11 information.

12 This information was supplied from law enforcement
13 to law enforcement, Your Honor. Therefore, we believe
14 that Investigator Croxton can rely on the information
15 from law enforcement and that credibility of that
16 information is not an issue in this case, Your Honor.

17 Your Honor, the defense --

18 THE COURT: Well, you suggested you call Officer
19 Croxton. Do you think for the record that would be a good
20 idea?

21 MS. McDUFFIE: Your Honor, the State would call
22 Investigator Tommy Croxton.

23 MR. SHEALEY: Your Honor, at this point we have to
24 object. In terms of this evidentiary hearing regarding
25 a suppression motion, at the argument phase, our

1 awareness of the hearing was closed.

2 All we wanted was everybody to be sequestered
3 throughout pretrial, as well. That was not -- you
4 know -- Ms. McDuffie has previously testified as to what
5 Tommy Croxton is going to say. Now he's supposed to get
6 up here to testify to that. It's backwards, Judge.

7 As far as we're concerned, the taking of evidence
8 on this matter is closed by the arguments.

9 THE COURT: You brought it up. You said that he has
10 no -- he cannot provide probable cause.

11 MR. SHEALEY: It's not anywhere in the record. You
12 know, Ms. McDuffie has testified a lot as to what Tommy
13 Croxton is going to say.

14 THE COURT: Can you stipulate to what she said?

15 MR. SHEALEY: No, sir. It's nowhere --

16 THE COURT: Take the stand. Raise your right hand.
17 Go ahead.

18 TOMMY CROXTON,
19 after being duly sworn, testified as follows:

20 THE CLERK: Thank you. Have a seat in the witness
21 stand, please, and give the court reporter your name.

22 THE WITNESS: My name is Tommy Croxton.

23 DIRECT EXAMINATION:

24 BY MS. McDUFFIE:

25 Q Investigator Croxton, where are you employed?

1 A The Richland County Sheriff's Department.

2 Q And what are your duties with the sheriff's
3 department?

4 A I'm a criminal investigator.

5 Q On May 22nd, 2009, were you employed at the Richland
6 County Sheriff's Department?

7 A I was.

8 Q And on May 22nd of 2009, did you have a conversation
9 with Don Robinson?

10 A I did.

11 Q And where did that conversation take place?

12 A He -- I was already at the jail doing arrest warrants.
13 He contacted me and advised me that he needed to obtain
14 a search warrant.

15 He advised me that he was working with Charlotte/
16 Mecklenburg County, the police department, and it was
17 about a young lady who was missing.

18 He had some information on a -- the search warrant
19 was for a residence on Bluff Road in Gaston, and he advised
20 me what information that Charlotte/Mecklenburg had, and
21 he faxed the one affidavit down there. I went to the
22 magistrate.

23 THE COURT: He faxed what? I can't quite understand
24 you. He faxed something.

25 THE WITNESS: He faxed me a copy of the search warrant,

1 yes, sir.

2 BY MS. McDUFFIE:

3 Q And -- so Investigator Robinson had prepared the
4 affidavit and then faxed it to you at the jail?

5 A That's correct.

6 Q And when he called you, he informed you of what the
7 basis was that he was requesting the search warrant?

8 A He did.

9 Q And y'all discussed this matter?

10 A We did.

11 Q And you had an opportunity to review the affidavit?

12 A I did. I read it.

13 Q And what you attested to was consistent with what
14 you were told by Investigator Don Robinson?

15 A That's correct.

16 Q And the basis of Investigator Robinson's knowledge
17 that he relayed to you was what?

18 A He relayed to me that he had obtained information from
19 the Charlotte/Mecklenburg Police Department.

20 Q And do you have a copy of the search warrant in front
21 of you?

22 A I do.

23 Q Where it says in the warrant that there was an order
24 for her phone records and things of that nature, he
25 informed you of all this over the phone?

1 A That's correct.

2 Q And based on that, you went to the magistrate and
3 presented this affidavit in support of a search warrant?

4 A That's correct.

5 Q And was the search warrant signed --

6 A It was.

7 Q -- by the magistrate? The magistrate found that
8 there was probable cause to issue the warrant?

9 A That's correct.

10 Q After the warrant was issue by the magistrate, what
11 did you then do?

12 A I met Sergeant Robinson and some other police
13 officers on the -- at the location on Bluff Road.

14 Q And what did you do when you arrived at 8047 Bluff
15 Road?

16 A I gave Sergeant Robinson the search warrant.

17 Q And were you present when the search warrant was
18 executed?

19 A I was outside, yes.

20 MS. McDUFFIE: Beg the Court's indulgence.

21 (Pause)

22 No further questions.

23 THE COURT: Cross-examination?

24 MR. MAY: Beg the Court's indulgence.

25 (Pause)

CROSS-EXAMINATION:

2 BY MR. SHEALEY:

3 Q Just briefly. So you were at the jail, right?

4 A That's correct.

5 Q And you got a call from Don Robinson?

6 A That's correct.

7 Q And he told you that he was going to fax you his
8 probable cause affidavit for the search warrant, right?

9 A And he also advised me of what the search warrant was
10 about.

11 Q Okay. And he got this from Charlotte/Mecklenburg?

12 A That's correct.

13 Q Okay. And that's all you were provided, right?

14 A I was provided with an affidavit on that, and then
15 he faxed me the --

16 Q He faxed to it you, right?

17 A That's correct.

18 Q And what they gave him, right?

19 A What they gave and what the investigation revealed.

20 Q Okay. What Charlotte had for their probable cause
21 was. They gave it to Don Robinson. He faxed that to you.

22 A He faxed me the information he had; that's correct.

23 MR. SHEALEY: Okay. That's it.

24 THE COURT: I'm still -- I'm still not clear. Who
25 did the affidavit? Who did the affidavit?

1 THE WITNESS: Sergeant Robinson.

2 THE COURT: All right. So he typed it? He typed this
3 all up? This is all...

4 THE WITNESS: That's correct.

5 THE COURT: All right.

6 MR. SHEALEY: Based on --

7 THE COURT: And -- just let me finish.

8 MR. SHEALEY: Yes, sir.

9 THE COURT: That's the affidavit describing the
10 property, and then his affidavit for the probable
11 cause. This is all done on a Richland County computer?

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay. So this -- the information that
14 he had, he put in this affidavit?

15 THE WITNESS: That's correct.

16 THE COURT: It's not something that they just --

17 THE WITNESS: This is the form --

18 THE COURT: -- had?

19 THE WITNESS: This is the form that we used, and this
20 is the form he faxed to me, yes, sir.

21 THE COURT: Right. What I'm trying to find out, did
22 Charlotte/Mecklenburg type this all up and just send it
23 to you all and you reprinted it on a Richland County form,
24 or did Officer Robinson type this up from information that
25 he had learned from Charlotte/Mecklenburg? Do you see

1 the difference?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay.

4 THE WITNESS: Sergeant Robinson advised me and he
5 faxed me this form. It was on our -- our --

6 THE COURT: So you don't know who prepared it?

7 THE WITNESS: I do not know who prepared it.

8 THE COURT: That's what I thought, okay.

9 Well, I understand his -- his position even he
10 doesn't know where it came from, except that it came from
11 Mr. Robinson, right?

12 MS. McDUFFIE: Your Honor, he was independently
13 advised of the information. His testimony was that he
14 was independently advised of the information by
15 Sergeant Robinson.

16 THE COURT: Okay.

17 MS. McDUFFIE: Based on what Sergeant Robinson
18 advised him of, he affirmed to the magistrate that this
19 was the basis of their probable cause in seeking the
20 search warrant.

21 The magistrate then found that probable cause to be
22 sufficient and issued a search warrant based on that.
23 Your Honor, the --

24 THE COURT: This witness never -- didn't know
25 anything other than what he was told.

1 MS. McDUFFIE: By Sergeant Robinson.

2 THE COURT: And what -- he probably didn't even
3 read -- I don't know. Did you read the affidavit?

4 THE WITNESS: I did.

5 THE COURT: Okay. Okay. It still doesn't tell me
6 where this information comes from.

7 MS. McDUFFIE: Your Honor, I'd be happy to call
8 Sergeant Robinson who...

9 THE COURT: Well, I just think it's important.

10 MS. McDUFFIE: Your Honor, we have no further
11 questions of this witness.

12 THE COURT: You may come down. Thank you very much.
13 Yes, sir.

14 MR. SHEALEY: Your Honor, if I can refer you to
15 Exhibit F, Camilla Hopkins' report, she testified and
16 verifies in her report that Sergeant Robinson
17 was advised -- you know, that Fitch is the one who completes
18 this search warrant; that she testified on my cross that,
19 you know, Fitch constructed this. That this was given
20 to Sergeant Robinson.

21 Sergeant Robinson didn't create this. Charlotte/
22 Mecklenburg came down and gave this -- they already had
23 it typed up. He then gave it to them in the form. It's
24 in evidence. It's in G, Exhibit G, Judge. I highlighted
25 it for your copy because I thought it was important.

1 That's Keith Martin's report on G.

2 THE COURT: It's not highlighted on my copy.

3 MR. SHEALEY: Well...

4 THE COURT: It's highlighted on somebody's copy.

5 MR. SHEALEY: All right. At that time bottom of G,
6 where it says, "19:04 hours, Detective Fitch, Hopkins,
7 and I arrived in Richland County. We made contact with
8 Charlotte" --

9 THE COURT: All right.

10 MR. SHEALEY: "19:04 hours, Detective Fitch
11 constructed a search warrant narrative that was entered
12 into a Richland County form." And in the prior --

13 THE COURT: In Richland County?

14 MR. SHEALEY: They came down here, yes, sir,
15 with -- they already had it.

16 THE COURT: How do you know that?

17 MR. SHEALEY: It was --

18 THE COURT: It said, "We arrived in Richland
19 County, and Detective Fitch constructed the warrant."
20 Now --

21 MR. SHEALEY: Well, if you'll look at Camilla
22 Hopkins' report, which is Exhibit F, that first paragraph.
23 While they're still in Charlotte, the last sentence says,
24 "Detective Fitch advised that he completed a search
25 warrant of Theodore Manning." And it's only at --

1 THE COURT: That's not what mine says.

2 MR. SHEALEY: The first paragraph, Exhibit F.

3 THE COURT: First paragraph?

4 MR. SHEALEY: First paragraph, Exhibit F, last
5 sentence.

6 "Detective Fitch advised that he completed a search
7 warrant for the Theo Manning residence." If you go down
8 a couple paragraphs, it's only at 19:00 hours that they
9 even go to Richland County.

10 At that point at the bottom of that paragraph, that's
11 when Sergeant Robins -- who she advised Sergeant Robinson,
12 was provided with R.P.C. to obtain a search warrant for
13 searching Manning's residence, his vehicle, his D.N.A.

14 THE COURT: All right. That answers my question.

15 Yes, ma'am?

16 MS. McDUFFIE: Your Honor, the State's contention is
17 that Investigator Robinson was advised by Charlotte the
18 basis of this information that is contained in the
19 affidavit.

20 THE COURT: By Fitch?

21 MS. McDUFFIE: Yes, sir, by Fitch and other officers
22 of the Charlotte/Mecklenburg Police Department.

23 Fitch prepared, on his own, a Charlotte search warrant.
24 That was never executed and that was not the search warrant
25 that was used that evening. Investigator Robinson, based

1 on the knowledge that he acquired from Charlotte/
2 Mecklenburg Police Department --

3 THE COURT: He acquired it because they typed it up
4 and handed it to him; is that right?

5 MS. McDUFFIE: Yes, and that he had discussed that
6 they had come to Richland County prior to that. They met
7 with other officers with the Richland County Sheriff's
8 Department earlier that morning, Captain Stan Smith, and
9 Kevin Isenhoward had gone out and talked to the defendant,
10 Your Honor.

11 Investigator Robinson was apprised of the status of
12 the investigation, and he then typed up the affidavit,
13 called --

14 THE COURT: Who?

15 MS. CAMPBELL: Investigator Robinson.

16 THE COURT: Typed -- he typed the entire affidavit?
17 I thought you said it was prepared by somebody else.

18 MS. McDUFFIE: Fitch provided him with a template,
19 and then he used that wording from Fitch in...

20 THE COURT: Just hit the button, put it on our scanner,
21 something?

22 MS. McDUFFIE: Your Honor, I don't know if he scanned
23 it or retyped it or what his method of reproducing this
24 was --

25 THE COURT: Well, the point is was there any input

1 of his independent knowledge, or his knowledge in the
2 affidavit.

3 MS. McDUFFIE: Your Honor, he --

4 THE COURT: Or is he just a transmitter of somebody
5 else's written form?

6 MS. McDUFFIE: Your Honor, he did transmit the
7 written form, but he also had knowledge from discussing
8 it with them and based on Richland County's investigation.

9 THE COURT: So he then could believe what the
10 affidavit said based on other evidence that he was told.

11 MS. McDUFFIE: Absolutely, Your Honor, and the
12 affidavit --

13 THE COURT: Why don't you put him up and let him
14 testify to that.

15 MS. McDUFFIE: The State would call Investigator Don
16 Robinson.

17 DONALD ROBINSON,
18 after being duly sworn, testified as follows:

19 THE CLERK: Thank you. Have a seat in the witness
20 stand. Give the court reporter your name.

21 THE WITNESS: My name is Donald Robinson.

22 DIRECT EXAMINATION:

23 BY MS. McDUFFIE:

24 Q Investigator Robinson, where are you currently
25 employed?

1 A The Richland County Sheriff's Department.

2 Q And were you employed there on May 22nd, 2009?

3 A I was.

4 Q On May 22nd, 2009, were you participating in the
5 investigation of the victim of the case, the victim, Nikki
6 McPhatter?

7 A I was.

8 Q And were you tasked to obtain a search warrant to
9 search Theodore Manning's residence at 8047 Bluff Road?

10 A I was.

11 Q Please explain for the Court how you prepared the
12 search warrant in this case.

13 A Okay. The way I became involved in this case on
14 that day was I was the evening shift supervisor for our
15 evening shift. We came into work. We were advised of the
16 case. I was apprised by Captain Smith. I was apprised
17 by Charlotte/Mecklenburg, who they were already in our
18 office. They were continuing with the investigation,
19 along with Sergeant Isenhoward and Sergeant McDaniels.

20 Our entire crew was there assisting with the
21 investigation. While we were there, we devised a plan
22 of how to proceed with the case.

23 We decided to acquire a search warrant. Then I sat
24 down in my office with Investigator -- or Detective Fitch.
25 Detective -- I'm not sure of the other name, but all three

1 of them were there in my office.

2 We had been dealing with the case all day long
3 throughout the day going through the details laying out
4 the investigation.

5 So what I had done is -- I think Detective Fitch,
6 I'm not sure which one, which name it was, but he had a
7 flash card drive with a prepared document that he had.
8 I plugged it in my computer. I got the description of
9 the house on my own because I independently was at the
10 house doing surveillance on it earlier anyway.

11 I knew where we were going. I knew what was going
12 on about the case. I knew all the intimate details of
13 the case. After going and doing my surveillance and what
14 we were doing, I went back to my office, engaged in the
15 remainder of the conversation with them, went through the
16 search warrant process on my computer.

17 I typed up the address location, all that directly
18 on my own. On the search warrant, I used his -- I would
19 just copy and paste a little section of it.

20 I went back through it, edited one or two little
21 things to my satisfaction and transmitted a document,
22 called Investigator Croxton who was working on my evening
23 shift.

24 Our evening shift started taking over working on
25 this case. Investigator Croxton was already down at the

1 bond court in front of the judge handling other warrant
2 matters.

3 So then as I completed the preparation of the rest
4 of the remaining search warrant, I printed it out, faxed
5 it over to the magistrate there, called and talked to
6 Investigator Croxton over the phone extensively, went
7 through every detail of the case, explained it all to him,
8 made sure he understood the case well enough to -- in case
9 he had to explain it to the magistrate over, you know,
10 verbally outside of the warrant, he would be able to
11 explain it.

12 We did. We went entirely through that, and then he
13 presented the magistrate with the warrant. He came
14 through -- he was through with that, I left my office and
15 went straight back to the house and had him meet me at
16 the house.

17 We did this in this manner to be expeditious about
18 it, so we went to the house location. He brought the
19 search warrant to me.

20 We went to that house. Then we met up with all the
21 investigators and our whole team, formulated a plan, went
22 there, executed the search warrant. I was there while
23 they started the execution of the search warrant.

24 Later on, subsequently, I had to leave to handle
25 another matter. I had to handle that as a supervisor

1 working that night. I left Investigator Whirter
2 (phonetic) with that information with the search warrant
3 to continue the execution of the warrant.

4 Q The information that you supplied to Investigator
5 Croxton, as well, in the affidavit of the search warrant
6 was information that you had gathered from what sources?

7 A Well, I gathered from the Charlotte/Mecklenburg
8 detectives, which numerous of those detectives, I think
9 four of them, three of them, were there in my office.

10 I had also spoken to Sergeant Isenhoward. I knew
11 about his participation, what he was doing, and Sergeant
12 McDaniels. I also was continuously being briefed by
13 Captain Smith throughout the whole entire event.

14 So between, I guess, those six persons, I would have
15 had full -- pretty much full details of every single thing
16 that was going on in this case.

17 Q And you also based it on your own knowledge of your
18 prior investigation of this matter?

19 A Independently, as well. I did my own research on it,
20 helped with them a lot. I did my own surveillance on
21 there, so I knew what was going on with the case.

22 MS. McDUFFIE: No more questions, Your Honor.

23 THE COURT: Cross?

24 CROSS-EXAMINATION:

25 BY MR. SHEALEY:

- 1 Q All right. So like you said, Charlotte was in your
2 office that day; correct?
- 3 A Yes.
- 4 Q Hopkins, right?
- 5 A Yes.
- 6 Q Detective --
- 7 A If you give me names, I can explain to you who they
8 are on it.
- 9 Q I know their names.
- 10 A Okay.
- 11 Q The woman, Investigator Hopkins.
- 12 A Yes.
- 13 Q You testified --
- 14 A She was there.
- 15 Q Detective Martin?
- 16 A Yes.
- 17 Q You testified earlier was --
- 18 A Yes.
- 19 Q -- there looking at you?
- 20 A Yes.
- 21 Q Detective Fitch who hasn't testified yet?
- 22 A Yes.
- 23 Q You said that Fitch came down with a flash drive.
- 24 A Yes.
- 25 Q Right? At this point, you've been briefed by Stan

1 Smith that Charlotte -- you know, they're looking for
2 someone named Teddy in Columbia, right?

3 A Yes.

4 Q That this was a missing person's case and they
5 needed y'all's help, right?

6 A Yes.

7 Q You hadn't talked to Theodore Manning at that point?

8 A I had never spoke with him at all.

9 Q Right. And Detective Fitch took his flash drive and
10 put it in your computer.

11 A Uh-huh.

12 Q You pull up the search warrant document; correct?

13 A All I saw was the text of the affidavit --

14 Q Right.

15 A -- from that point?

16 Q Copy and paste the affidavit. So --

17 A Well, I copied and pasted it to be edited.

18 Q So I'm going to give you Exhibit 2 here. This part
19 is what you saw, this affidavit from Charlotte, right?

20 A I saw the affidavit. I don't understand this whole
21 entire document.

22 Q Well, that's the affidavit. That's what you had seen,
23 right.

24 A There's other stuff, too, but yes.

25 Q Okay. And you took that, and you testified that you

1 put it into the Richland County form, right?

2 A Yes.

3 Q And if you'll read and compare, they're identical

4 until you get to the last bit, right? You've got both

5 of them already?

6 A I have a --

7 Q This is -- this is -- oh, you've got you're own?

8 A Well, I'll take this one.

9 Q Sure, okay. All right.

10 A Okay.

11 Q You'll agree that they're virtually identical.

12 A I'll hand it back to you.

13 Q Okay.

14 A Okay.

15 (Pause)

16 That's pretty close.

17 Q Okay.

18 A I think this section right here might be a little

19 bit different.

20 Q All right. And I'll talk to you about that section.

21 A Okay.

22 Q The thing is, you told Ms. McDuffie you added -- was

23 the second-to-last paragraph about, "And a court order

24 was obtained regarding Ms. McPhatter's cellular tower

25 information," right?

1 A It looks like that's what's different.
2 Q There's that section in the Richland County form,
3 right? That wasn't in the Charlotte form?
4 A No. You took it from me, keep taking it from me.
5 Q Well, I thought you had you're own copy.
6 A Well, this is the one I'm testifying to.
7 Q All right.
8 A All right. What was your question?
9 Q The part about the cell phone tower records, right?
10 That's in -- that's what you added at that point.
11 A Okay. I think -- standby.
12 (Pause)
13 Are you referring to the line that starts out, "A
14 court order was obtained...", this section?
15 Q Yes; yes; yes, sir.
16 A Okay.
17 Q And then --
18 A That was in there.
19 Q That was already in there?
20 A Yeah, that one is in there.
21 Q Okay. So --
22 A The section that I added is this section here.
23 Q Okay. The very last one?
24 A The last, yes.
25 Q Okay. And -- okay. And that is that, "Based on these

1 facts, and the facts and stuff that was already in there
2 from Charlotte" --

3 A Uh-huh.

4 Q -- "that we believe there is probable cause to believe
5 the evidence of murder is contained within the
6 residence, 8047 Bluff Road. Therefore, I request a search
7 warrant on these affidavits and these facts."

8 A Right.

9 Q That's part that you added, right?

10 A Yes.

11 Q Okay. At this point, you didn't have any reason to
12 believe -- you didn't know that Ms. McPhatter was
13 deceased at this point, right? Nobody knew that?

14 A No.

15 MR. SHEALEY: All right. Okay. Beg the Court's
16 indulgence.

17 (Pause)

18 All right. I don't have anything further.

19 THE COURT: All right. Just hold on a minute.

20 THE WITNESS: Oh, I'm sorry.

21 THE COURT: Anything further?

22 MS. McDUFFIE: Nothing further, Your Honor.

23 THE COURT: All right. You may come down.

24 THE WITNESS: Okay. Thank you, Your Honor.

25 THE COURT: All right, sir. Ms. McDuffie, you may

1 continue.

2 MS. McDUFFIE: Your Honor, in State v. Dunbar, which
3 is cited at 361 S.C. 240, the South Carolina court cites
4 the U.S. Supreme Court in U.S. v. Bentresca -- I'll spell
5 it, B-E-N-T-R-E-S-C-A, which is cited at 3 U.S. 102, which
6 states that, "Probable cause for a search warrant can be
7 supported by information given to the affiant by other
8 officers."

9 Your Honor, that is the case here. Law enforcement
10 officers in Charlotte conducted an investigation. They
11 combined that information with the information
12 through -- of Richland County that they had obtained
13 through their own investigation.

14 Based on that, they presented that information to
15 a magistrate, Your Honor, and the magistrate determined
16 that based on the information presented, there was
17 probable cause.

18 Your Honor, I don't believe that there is an issue
19 of crediting the hearsay, Your Honor, because
20 there's -- well, Your Honor, there's no informants, and
21 so the reliability of those statements is not at issue.

22 And further, Your Honor, each officer, and the
23 magistrate by reading the affidavit, could conclude that
24 this was based on observations of the officers,
25 investigation done by the officers, eyewitness

1 testimony, and records obtained through other warrants,
2 Your Honor.

3 Each bit of hearsay in this is credited based on
4 the -- based, Your Honor, on what the information is and
5 who was presenting it in this case, Your Honor.

6 So, therefore, Your Honor, we would say that -- their
7 argument that Tommy Croxton had no personal knowledge,
8 therefore, could not do this is not an argument with
9 merit, Your Honor, because he did have knowledge based
10 on his briefing by Investigator Robinson, and that was
11 based on their investigation, and he had a substantial
12 basis from which to rely on the information presented to
13 him by Investigator Robinson.

14 THE COURT: All right. Does it really matter that
15 the initial investigating officers were from Charlotte?

16 MS. McDUFFIE: Your Honor, I don't believe that it
17 does. I believe that Richland County had a substantial
18 basis on which to rely on the information presented to
19 them that was being presented based on their
20 investigation.

21 THE COURT: To law enforcement?

22 MS. McDUFFIE: Correct, Your Honor, and that they are
23 law enforcement.

24 THE COURT: Regardless of what badge was on their
25 sleeve.

1 MS. McDUFFIE: Correct, Your Honor. This is -- it's
2 often the case that, you know, when a crime is committed
3 or when they need to search another county, you know,
4 Richland needs to search Lexington or vice versa,
5 officers rely on information provided to each other by
6 other law enforcement officers.

7 To say that only Richland County information can be
8 used to get a search warrant in Richland County is
9 just -- Your Honor, it's not logical.

10 This investigation, you know, spanned two states
11 and multiple counties, and all information should be
12 presented so that the judge can make a determination
13 for probable cause based on the investigation up to that
14 point, Your Honor.

15 THE COURT: Okay. Move on to the affidavit that
16 provides probable cause.

17 MS. McDUFFIE: Your Honor, the State asserts that
18 there is probable cause. The magistrate, who was neutral
19 and detached, found that there was probable cause based
20 on the contents of the affidavit.

21 Your Honor, the cases that defense counsel relied
22 on were cases in which the information that was
23 provided to the magistrate had some -- some misleading
24 on the part of saying, "Oh, the affidavit was not complied
25 with at all," or for some reason the affidavit itself will

1 be insufficient, Your Honor.

2 For example, identifying information was obtained
3 from a law enforcement officer, when really, it was
4 obtained from a confidential informant, or cases where
5 there was no affidavit at all and a warrant was issued.

6 Law enforcement Officers in those cases should know
7 that the search warrant they're executing is not valid,
8 and that the affidavit is not valid. However, there was
9 none of that in this case.

10 Officers presented what they believed to be probable
11 cause to a neutral and detached magistrate, and the neutral
12 and detached magistrate will view that information and
13 made a finding that there was a probable cause based on
14 the affidavit, Your Honor.

15 THE COURT: He -- I know, but he goes beyond that.
16 He says the magistrate did not have a substantial basis
17 for concluding that the affidavit was sufficient.

18 I mean, I think that's his argument. Regardless of
19 the fact that the magistrate issued it, the defense says
20 there was insufficient evidence -- the affidavit was
21 insufficient to support it regardless of whether the
22 magistrate issued it or not.

23 MS. McDUFFIE: And, Your Honor, we would argue that
24 the affidavit is sufficient to support a finding of
25 probable cause based on the contents of the affidavit.

1 THE COURT: Are you relying on the magistrate?

2 MS. McDUFFIE: Your Honor, I don't think it's --

3 THE COURT: Well, I'm just reading their memo, search
4 warrant for murder. That's not an allegation that the
5 defendant committed a crime or that the deceased was even
6 deceased.

7 MS. McDUFFIE: Your Honor, the affidavit itself
8 does --

9 THE COURT: How do you -- how do you presume
10 murder from a missing persons if you don't have any
11 evidence?

12 MS. McDUFFIE: Your Honor, the fact that there is no
13 evidence leads to a conclusion of murder. The fact that
14 the victim was seen on May 6th -- she was last seen in
15 the defendant's company, there have been no -- no phone
16 calls made from her phone except for towers that hit the
17 defendant's house.

18 Your Honor, she has made no contact with anyone.
19 No -- her -- there has been no trace whatsoever, and that
20 her credit cards were used by an unknown black male in
21 Columbia, South Carolina, on the same day that she was
22 last seen by the defendant, Your Honor.

23 Would all -- and then further the next day, Your
24 Honor, by what the State would allege would be the same
25 black male would all lead to the determination that there

1 has been a crime committed, Your Honor. I mean...

2 THE COURT: Okay, move on.

3 MS. McDUFFIE: Your Honor, we would say that the
4 affidavit is sufficient. If Your Honor would determine
5 that the affidavit is insufficient, we would argue that
6 the good faith exception would apply.

7 There is nothing in this affidavit that would alert
8 the police for that -- that there was some misconduct on
9 the part of the police so they would know that the
10 affidavit was insufficient.

11 They would rely on the magistrate's determination
12 that the affidavit was sufficient and there was probable
13 cause to issue a search warrant.

14 The purpose of the exclusionary rule is to deter
15 police misconduct, Your Honor. There was no misconduct
16 on the part of the police.

17 In cases where the court has found that affidavits
18 are insufficient, it has been because there was no
19 affidavit or because the police misled or portrayed
20 evidence that -- as one thing when it actually was another.
21 Here, Your Honor, that's not the case.

22 The police relied on the magistrate's determination
23 that there was probable cause, and Your Honor, we would
24 argue that South Carolina has adopted the good faith
25 exception most recently in State v. Herring, and that the

1 good faith exception would apply if you do find that the
2 affidavit was not issued on sufficient probable cause.

3 THE COURT: All right. Section E, consent.

4 MS. McDUFFIE: Your Honor, we would argue that he did
5 consent if you find, based on the testimony that you heard,
6 that when Officers Martin and Hopkins went to the door,
7 they asked for him to consent. He did consent.

8 His uncle then was called, asked if there was a
9 warrant. He said that yes, they did have a warrant. While
10 that was happening, Investigator Hopkins was informing
11 Don Robinson that he had consented. Don said no, he was
12 going to execute a search warrant anyway.

13 Your Honor, further, in his recorded statement that
14 was made a few minutes after this occurred when they got
15 to the substation, Investigator Hopkins clearly said right
16 now they're executing a search warrant at your house, but
17 prior to that, he consented to the search.

18 He said yes, Your Honor, he acknowledges that prior
19 to them informing him of the search warrant, he did consent
20 to the search of his home. That conversation is recorded.

21 At no point during that does he revoke consent in
22 any way or does he say that they don't have consent to
23 search.

24 After that, he did leave with his family members,
25 Your Honor, and go to work. There is no issue that he

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1 was ever -- that he ever did not consent, Your Honor, we
2 would argue, or that his consent was produced by a threat
3 of a search warrant or threatening to go get a search
4 warrant.

5 THE COURT: All right. Mr. Shealey?

6 MR. SHEALEY: Yes, sir. Your Honor, at this -- just
7 quite simply, as it was very evident from Tommy Croxton's
8 testimony, he doesn't know anything about this.

9 Even if he does, the case law, as Ms. McDuffie
10 stated, allows for hearsay upon hearsay, but it also states
11 that that must be credited. That must be credited to the
12 judge within the affiant, within the affidavit, about where
13 Don Robinson learned from Charlotte and how it got to Tommy
14 Croxton.

15 Nowhere in the affidavit does it say, "I learned this
16 from Don Robinson who learned this from Charlotte/
17 Mecklenburg's investigation."

18 Not only -- that's the only way that it can -- it
19 can stand that someone like Tommy Croxton would know
20 nothing about it and be allowed to go forward.

21 Now -- now, did he state that in his affidavit that
22 Don Robinson said, "Tommy, I got this from Charlotte. Put
23 it in the affidavit. Write it with a pencil." Where I
24 learned it, where you learned it, that would be something,
25 but it's not there at all.

1 The magistrate has to know that, because all the
2 magistrate thinks is that if Tommy Croxton knows what's
3 going on is this solemn oath or affirmation that this is
4 a probable cause he personally knows, but that's -- that's
5 not the case. It fails for that argument.

6 You know, there is no probable cause -- I'll let
7 Mr. May address that, Your Honor. He brought it up.

8 MR. MAY: Your Honor, respectfully, there is no
9 probable cause for murder whatsoever.

10 Sergeant Don Robinson just said he didn't know if
11 the girl was dead, didn't have reason to believe that she
12 was dead, but they obtained a search warrant for murder.

13 That mere fact, that they obtained a search warrant
14 for murder, and nowhere in there is there a single
15 allegation that there is a decedent. Nowhere in there
16 is there a single allegation that the defendant procured
17 that person from being a decedent.

18 Ms. McDuffie went on further and said that there
19 was mention about a financial transaction card being used
20 in there. From my reading of the affidavit, I don't see
21 that. I don't see that at all, much less a black man in
22 Columbia, South Carolina. That's not in the affidavit
23 of the search warrant.

24 Your Honor, as far as the good faith exception, if
25 I may read you the case law as plainly as it says, South

1 Carolina, State v. Weston, "Precluding the application
2 of a good faith exception when an affidavit fails to
3 provide a magistrate with a substantial finding -- a
4 substantial basis for finding probable cause, State v.
5 Weston, 329 S.C. 287.

6 State v. Weston, I believe -- beg the Court's
7 indulgence for one second.

8 (Pause)

9 State v. Weston, the affidavit -- I'm quoting, "The
10 affidavit failed to set forth any facts as to why the police
11 believe Weston committed the Crumlin crime." That was
12 an armed robbery, murder crime that the South Carolina
13 Supreme Court reversed due to the fact the affidavit
14 contained no probable cause.

15 Quoting State v. Austin, "Holding where the
16 magistrate would not have found probable cause from the
17 affidavit, the good faith exception does not apply," and
18 emphasizing that South Carolina's constitution has more
19 in protections afforded to its citizens.

20 Your Honor, a circular argument which the State would
21 like the Court to rely is, well, the police officers gave
22 the magistrate probable cause, and then they relied on
23 the probable cause that they gave to the magistrate is
24 completely circular. It just fails in the present case.

25 Your Honor, regarding the consent issue, Detective

1 Hopkins said the consent was trumped. That was her exact
2 quote, trumped, by the service and execution of the search
3 warrant.

4 The search warrant is what gave the police the
5 authority to go into that house, search it, and seize the
6 materials. Quitesimply, YourHonor, basedonthese facts,
7 the defense says, moves, that all evidence and fruits of
8 such evidence must be suppressed.

9 THE COURT: All right. All right. I'm going to look
10 at this issue. I'm going to read your cases tonight, and
11 I'll let you know first thing in the morning.

12 Now, any other motions pretrial?

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

14 (Pause)

15 MR. MAY: Your Honor, just for the record, we'd just
16 like to reinstate that we objected and asked for the
17 sequestration of all witnesses during pretrial.

18 Just so the record reflects that Camilla Hopkins,
19 Don Robinson, and Tommy Croxton were all present during
20 the entire proceedings before they went and testified in
21 her prosecution's arguments before they went and
22 testified to what they testified to.

23 THE COURT: All right. How about your discovery
24 motion?

25 MR. SHEALEY: Well, we would like to renew Rule 5 and

1 Brady. You know, I don't -- at this point, I
2 don't -- nothing is jumping out at me that I don't have.
3 I don't -- I don't have any report from Detective Fitch.
4 I don't know whether he wrote one or not, but maybe -- the
5 notes on Don Robinson, I don't believe we have. If it's
6 out there, I'd like to have it, please.

7 There is a Riddle motion that I've talked to -- you
8 could call it a Riddle motion, but it's --

9 THE COURT: I've got it.

10 MR. SHEALEY: I discussed that with Ms. McDuffie.
11 The only thing that she could put me on notice about
12 that would change in terms of any of her witness's testimony
13 or within discovery is the codefendant, Kendra Goodman,
14 could change her story again.

15 She has told me about how -- that she's been -- instead
16 of being home sick that day from the dry cleaners, she
17 then -- and then going to Mr. Manning's house, she claims
18 now to the solicitors, I guess verbally, that she was
19 always en route from the dry cleaners to Mr. Manning's
20 house the day of the alleged crime and that he called her
21 en route.

22 That's something that has changed. That was never
23 in any of her statements. Another thing that changed,
24 Ms. McDuffie will correct me if I'm wrong is that, you
25 know, throughout the statements there's been something

1 about whether Ms. Goodman saw a body or not that day at
2 Mr. Manning's house, whether she assisted him in getting
3 the body in the car.

4 I think her last version to the Solicitor's Office
5 was that she didn't see a body, and it was just maybe a
6 pile of clothes or something like that near the trunk.
7 I believe that's all the changes that we would expect from
8 Ms. Goodman. If there's any of those out there, I
9 could -- according to Riddle, we should know about them
10 now. I believe that's everything on Riddle, if there's
11 something that we know of...

12 THE COURT: What's the status of Brady/Riddle
13 evidence?

14 MS. McDUFFIE: Your Honor, we have turned over
15 everything to the defense that we know exists. We have
16 searched Richland County's files. We have met with
17 Charlotte and searched their files.

18 Mr. Shealey stated that he did not have notes from
19 Detective Fitch. Those were sent to him on Friday,
20 September 10th, 2010, at 6:19 p.m. Those were e-mailed
21 to him as an attachment.

22 Your Honor, I believe that we did turn over Detective
23 Fitch's notes to Mr. Shealey -- both Mr. Shealey and to
24 Mr. May.

25 Your Honor, then one item I do know of that I made

1 the defense aware of is that Scott McDonald, in
2 preparation for his testimony in court, is preparing a
3 PowerPoint presentation. He has done a draft of it. He
4 has, however, not completed it.

5 I informed the defense last week that they were
6 welcome to come look at the draft, but I didn't want to
7 give them a copy of it until they had finished it. To
8 date, Your Honor, they have not availed themselves of the
9 opportunity to come.

10 THE COURT: What is it, just a geographic
11 presentation?

12 MS. McDUFFIE: Yes, sir. I informed them of that
13 last week. To date, they have not come to view that draft
14 that is in my possession.

15 Your Honor, I did provide him the information he just
16 relayed to the Court about our conversation with Kendra
17 Goodman.

18 Your Honor, to my knowledge, based on conversations
19 with her, Your Honor, that is all that I know that exists
20 based on that issue.

21 I also provided him the substance of the conversation
22 that we had with another individual by the name of Lane
23 Washington. Your Honor, I provided to him the substance
24 of her statement to us. Your Honor, we know of no other...

25 THE COURT: All right.

1 MR. SHEALEY: So just out of an abundance of caution,
2 that means there aren't any notes from Don Robinson? I
3 mean, that testimony that everything he did in the case
4 that day? There's no notes from Don Robinson?

5 MS. McDUFFIE: That's correct, Your Honor.

6 MR. SHEALEY: Okay.

7 THE COURT: All right. I'll be here at nine. If you
8 know of anything else that needs to be handled, the jury
9 will be here at 9:30. Let's reconvene at 9:15 just to
10 address the suppression motion.

11 All right.

12 MR. SHEALEY: Yes, sir.

13 THE COURT: All right, 9:15. Thank you very much.

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

16 (WHEREUPON, State's Exhibits Nos. 4 - 8 were marked
17 for identification only.)

18 (The defendant was brought into the courtroom.)

19 THE COURT: All right. Is the State ready to proceed?

20 MR. GIESE: The State is ready.

21 THE COURT: Is the defense ready to proceed?

22 MR. MAY: Yes, Your Honor. At the appropriate time,
23 we'd just like to put three things -- just try to supplement
24 the record from the motion to suppress, at the
25 appropriate time.

1 THE COURT: Well, go ahead.

2 MR. MAY: Yes, sir. Thank you very much. May it
3 please the Court, Your Honor.

4 THE COURT: I haven't ruled on it yet.

5 MR. MAY: Yes, sir. I agree. I just wanted to
6 supplement the record. Just addressing three things that
7 popped out at us, the jurisdictional -- if there is no
8 jurisdictional issue, then the consent given to
9 Charlotte/Mecklenburg is invalid because if they're not
10 the searching party, then the consent would have to be
11 given to the searching party.

12 The searching party -- there was no consent ever
13 given to the Richland County Sheriff's Department to do
14 a search. Furthermore, I think it was -- it was clearly
15 testified that the legal authority which they searched
16 the house was the search warrant. The legal authority
17 which they entered the house where they searched it and
18 seized everything was the search warrant signed by the
19 Richland County magistrate.

20 THE COURT: I agree.

21 MR. MAY: And that the Solicitor testified that the
22 lack of evidence supports probable cause for murder, that
23 just is not -- that's not in conformity with any piece
24 of South Carolina law that I can find.

25 THE COURT: All right. Well, as I said, I tend to

1 agree with you. I'm not going to -- I'm don't think
2 I'm -- I'm not going to base my ruling on the consent
3 issue.

4 I'm going to base my ruling on the validity of the
5 warrant, and I believe there is -- thinking back, I hate
6 to -- I am hesitating to use the word totality of the
7 circumstances, but that does come to mind in this
8 instance.

9 We've got what appears to be a joint agency decision
10 here to obtain a search warrant. Charlotte
11 contacted -- and I'm just going by your chronology,
12 Mr. May -- May 19th, Charlotte contacts Columbia Police
13 Department.

14 In other words, they didn't just swoop in to another
15 jurisdiction and attempt to conduct an investigation.
16 They contacted the Columbia Police Department. Columbia
17 contacted Richland, and as your chronology indicates, a
18 joint agency briefing was conducted.

19 Richland County identified the defendant through
20 phone records, so it wasn't just Charlotte/Mecklenburg
21 doing all of the work on this thing.

22 Again, just moving in to another agency's
23 jurisdiction, then the interview, interrogation takes
24 place, but in all, these preliminary type actions before
25 law enforcement went to the magistrate, it seemed to be

1 sort of a joint effort on the part of both agencies.

2 Now, when you come to the warrant itself, again, I'm
3 just overlooking the consent issue because I don't think
4 that's determinative of whether or not the warrant is
5 valid.

6 The fact that it was transmitted, transcribed or
7 passed from one officer to the other does not invalidate
8 the warrant, and I find there is sufficient facts stated
9 in the warrant from the investigation. The things that
10 have been done prior to the time that the warrant was
11 sought were enough to give the magistrate enough evidence
12 to convince him that a crime had been committed.

13 That goes to the identification of the defendant,
14 the knowledge by law enforcement that there had been an
15 A.T.M. transaction.

16 The -- I'm just reading the affidavit, the fact that
17 it appeared to the author that -- and law enforcement that
18 the defendant was the last one to see the deceased. I
19 think all of those facts could lead a reasonable
20 magistrate to believe that a crime had been committed.

21 If I had to cite the basis for my ruling, I could
22 certainly go to the recent case of State v. Herring in
23 which the Supreme Court says, "The search warrant is
24 issued upon -- only upon the finding of probable cause.

25 "The duty of the reviewing court is to ensure the

1 issuing magistrate had the substantial basis upon which
2 to conclude that probable cause existed.

3 "The totality of the circumstances test is utilized
4 in probable cause of determination. Passed to the issuing
5 magistrate simply to make a practical common sense
6 decision whether given all the circumstances set forth
7 in the affidavit before him, including the veracity and
8 basis of knowledge of the person supplying hearsay
9 information, there is a fair probability that contraband
10 or evidence of a crime will be found at a particular
11 residence."

12 I, therefore, find that the affidavit is sufficient
13 to establish probable cause to enter the defendant's
14 premises, and therefore, will allow any evidence that
15 was -- if I find any evidence that was secured as a result
16 of the search warrant I think it is admissible.

17 Now, for your information, juror number 307 is the
18 foreperson of the jury.

19 All right. Anything further before we bring the jury?

20 MS. McDUFFIE: Your Honor, before we begin with
21 openings for the motion for sequestration, we would
22 just ask that Sergeant Isenhoward, as well as Stan Smith
23 of the Richland County Sheriff's Department and then the
24 three lead officers from Charlotte: Investigator
25 Martin, Fitch, and Hopkins be allowed to stay in the room,

1 as well as the only lay witness that is also, Your Honor,
2 in our opinion would be a victim, would be the victim's
3 sister, Latoya McPhatter. We'd ask that she be allowed
4 to remain in the courtroom, was well.

5 THE COURT: All right.

6 MR. MAY: Your Honor, we would object to the three
7 Charlotte. We have no problem with Sergeant Isenhoward
8 and Captain Smith, as they are part of the Richland
9 County Sheriff's Department and that's the agency --

10 THE COURT: What's the basis?

11 MR. MAY: Your Honor, I mean, I believe the reason
12 for sequestration is so that people don't start matching
13 up stories.

14 THE COURT: I understand that.

15 MR. MAY: And --

16 THE COURT: What's the difference between Isenhoward
17 and somebody from Charlotte?

18 MR. MAY: We're in South Carolina.

19 THE COURT: That's not a good enough reason.

20 MR. MAY: Then I'd ask them to select one person from
21 Charlotte as opposed to all three.

22 THE COURT: I'm not going to do that.

23 Anything further?

24 MS. CAMPBELL: Let me get them, Your Honor.

25 THE COURT: Now, the testifying witnesses will have

1 to leave, other than the designated officer. And from
2 the defense, testifying witnesses.

3 MR. SHEALEY: Yes, sir. We don't have any testifying
4 witnesses in the courtroom.

5 THE COURT: All right.

6 MR. SHEALEY: None that we're going to call.

7 THE COURT: Okay. What's the situation of the press
8 right now?

9 MEDIA: Your Honor, I don't know where the W.C.N.C.
10 reporter and photographer are. I'm here ready to go.

11 THE COURT: Well...

12 MEDIA: I don't know if they're coming here today or
13 not. We're competitors, so I don't know.

14 THE COURT: Go ahead and set up, if you wish to set
15 up.

16 MEDIA: Thank you, sir.

17 (Pause)

18 MEDIA: Ready, Your Honor.

19 THE COURT: Is the State ready for the jury?

20 MR. GIESE: The State is ready.

21 THE COURT: Is the defense ready?

22 MR. MAY: Yes, sir, Your Honor.

23 THE COURT: All right. Bring in the jury, please.

24 THE BAILIFF: Yes, sir.

25 (WHEREUPON, the jury came into open court at

1 approximately 9:36 a.m.)

2 THE BAILIFF: The jury is all present, Your Honor.

3 THE COURT: All right. Good morning, ladies and
4 gentlemen.

5 THE JURY: Good morning.

6 THE COURT: We're now ready to begin the trial of this
7 case.

8 Let me just say one -- I'm going to give you a little
9 preliminary instruction, but before I do that, I just
10 want to say one thing. You may or may not have noticed
11 when you entered the courtroom that there are two cameras
12 back here, and you can see them. Those are news media
13 stations and they -- in South Carolina, they have a right
14 to broadcast and take film, however they do it, of trials.

15 It's not true in the federal court. It's not true
16 in some states, but it is true in South Carolina. It's
17 a very -- our courtrooms are open to the public, and our
18 courts have decided that that is a reasonable intrusion.
19 Provided, however, that the cameras in no way disrupt
20 the proceedings, and most important is that they never
21 will focus on you. Your pictures will never be shown on
22 any media presentations of any sort.

23 So, I just wanted to make you feel comfortable with
24 the fact that there are cameras in the courtroom, and if
25 they disrupt the proceedings in anyway, out they go.

1 So -- and they know that. They're experienced people,
2 and they have done this before. I wanted to mention that
3 before we get started. It should not be of any concern
4 to you.

5 All right, Madam Clerk. Will you swear the jury,
6 please?

7 THE CLERK: Yes, Your Honor. Ladies and Gentlemen
8 of the jury, will you please stand and raise your right
9 hand to be sworn.

10 Do you swear or affirm that you shall well and truly
11 try and true deliverance make, between the State of South
12 Carolina, and the defendant at bar, whom you shall have
13 in charge, and a true verdict give, according to the law
14 and the evidence, so help you God. If so, please say I
15 do.

16 (All responded affirmatively.)

17 THE CLERK: Thank you.

18 THE COURT: First of all, Mr. Foreman, I'd like to
19 thank you for agreeing to serve as foreperson of the jury.

20 Before we begin this trial, I'm going to just take
21 a few minutes to talk with you. This trial may be
22 different from what you might expect.

23 Pretrial Charge

24 Many people have not had a chance to attend actual
25 court sessions as you are doing. They may think from

1 We'll now begin with the opening statements.
2 Solicitor?

3 MR. GIESE: May it please the Court, Your Honor.

4 OPENING STATEMENT:

5 MR. GIESE: On May the 6th, 2009, the victim in this
6 case, Nikki McPhatter, was a 30 year old who worked for
7 U.S. Air and lived in Charlotte.

8 On that day, Nikki got in her Honda and drove down
9 to Columbia to see someone that she had a relationship
10 with. She never returned. Day after day, day after day,
11 day after day for 23 days.

12 No one except one man, one other person, knew where
13 Nikki McPhatter was. For 23 days, for most of the 23 days,
14 Nikki McPhatter's family lived the worst nightmare you
15 can live.

16 Their daughter, their sibling, their child, did not
17 come home. For most of those 23 days, the community that
18 she lived in, Charlotte, North Carolina, frantically,
19 frantically searched for Nikki McPhatter.

20 For 23 days, her friends searched frantically for
21 Nikki McPhatter. Twenty-three days after she drove down
22 to Columbia, South Carolina, on May 29th, 2009, Nikki
23 McPhatter's body was found on a road, a dirt road, off
24 of I-77 just in Fairfield County.

25 Nikki McPhatter's car was found by law enforcement

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1 burned to its shell, and in the trunk, unrecognizable to
2 anyone because it was so burned, was Nikki McPhatter.

3 All this, her death, her desecration, all of what
4 this family went through because of one man and one man
5 only, and that's the defendant, Theodore Manning.

6 Because you see, ladies and gentlemen, on May 6th,
7 the State submits, Theodore Manning took a high caliber,
8 a high caliber pistol, and shot an unarmed, defenseless
9 woman in the back of the head in his own home.

10 Then to cover himself and to cover his tracks and
11 to try to get away with this crime that in his mind, the
12 State submits, he knew he committed, he took her lifeless
13 body, stuck it into the trunk of her car, drove her car
14 up I-77 back toward where she lived, got off the
15 interstate, pulled it up a dirt road and attempted to burn
16 it.

17 But the State submits he didn't have enough
18 gasoline, so he had a friend follow him there, get into
19 the car, went to a gas station, got the gas he needed and
20 then lit her body and that car up, all to cover his crime.

21 Ladies and gentlemen, my name is Barney Giese. I'm
22 the Solicitor in the Fifth Judicial Circuit. The fifth
23 circuit is made up of Richland and Kershaw Counties.

24 It's my job today, in the next couple days, to
25 prosecute this case. Now -- against Mr. Manning because

1 of the indictment that the grand jury sent down.

2 That's Mr. Manning seated with his defense attorneys
3 at the defense table. Seated at the State's table is
4 Sergeant Isenhoward with the Richland County Sheriff's
5 Department, one of the lead investigators of the case here
6 in Richland County; Ms. Luck Campbell, who is my Deputy
7 Solicitor. She will be assisting in the prosecution of
8 this case, and Joanna McDuffie, who is also an Assistant
9 Solicitor will be assisting in the prosecution of the
10 trial of this case.

11 As I said, it's our job to charge Mr. Manning with
12 these charges. Because of this indictment, we have the
13 ability to do that. I'm going to read it to you all.

14 "At a Court of General Sessions, convened on
15 September 16th, 2009, the grand jurors of Richland County
16 present upon their oath that Theodore Manning did in
17 Richland County on or about May 6th, 2009, feloniously,
18 willfully, and with malice aforethought kill one Nikki
19 McPhatter by means of a gunshot wound and that the said
20 victim died as a proximate result thereof all in violation
21 of South Carolina code of laws, section 16-3-10 against
22 the peace and dignity of the State and contrary to the
23 statute of such case made to prove."

24 As His Honor told you, it's up to the State to prove
25 all of the elements of this indictment. So what does the

1 State have to prove?

2 Well, very simply, the State has to prove that
3 Theodore Manning on or about May 6th, shot and killed Nikki
4 McPhatter. It's pretty simple, and that the killing was
5 done -- and the shooting caused her death and that killing
6 and shooting was done with malice aforethought.

7 Now, His Honor at the end of the trial is going to
8 tell you what malice aforethought is. Suffice it to say
9 that in our law, malice aforethought is a darkness of the
10 heart. It's an evil heart. It's a heart that fatally bent
11 on mischief and devoid of all social duty. It's a
12 malignancy in the heart when he pulls the trigger.

13 Well, now, obviously, you can't cut open Theodore
14 Manning and look at him, inside of him and go, "Oh, clearly,
15 he had malice when he fired the shot." Clearly, you can't
16 do that.

17 What the law allows is for you, the jurors, to look
18 at his actions. What was his actions before the shooting?
19 What was his actions during the shooting? And what were
20 his actions after the shooting?

21 Those are all things that you, as the jury, can take
22 into account to see whether or not it was a malicious
23 killing.

24 Well, the State submits in this case, in this case,
25 this case literally drips with malice, drips with it. You

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1 shoot an unarmed woman in the back of the head, take her
2 body, stuff it in a trunk and burn it.

3 The State submits it's not much more malicious than
4 that if the State proves that. Now, to prove it, the State
5 is going to present witnesses. They're going to swear
6 an oath to tell the truth.

7 They're going to tell you exactly what they know about
8 this case, what they heard, what they saw, what they did.

9 The State submits what they're going to tell you is
10 this: That on May 6th -- well, actually before May 6th,
11 that the victim and the defendant struck up a relationship,
12 a physical relationship, and it started on the internet
13 on a chat site; that they had at some point for several
14 months seen each other; that that relationship terminated
15 and that Nikki McPhatter was coming down from Charlotte
16 to pick up some jewelry that she had left at Theodore
17 Manning's on the 6th.

18 As I told you before, on the 6th in his home, the
19 State submits that witnesses will tell you that he took
20 a gun, shot her in the back of the head and watched her
21 die. He doesn't call 911. He doesn't call law
22 enforcement.

23 In fact, the State submits there will be evidence
24 from this witness stand that will tell you that he took
25 her body, stuck it in the trunk and drove off with the

1 express purpose of covering his crime.

2 The State submits there's nothing more malicious than
3 that; that he called another girlfriend, Kendra
4 Goodman, and that this girlfriend came over to the house
5 and assisted him by following him in that car.

6 He was driving the Honda, the victim's car, and she
7 followed him and they drove all the way out off I-77, as
8 I told you, before down a dirt road. She stops. He goes
9 further down the dirt road.

10 The State submits he then came out, said "I don't
11 have enough gasoline." They go to a store in that area,
12 a gas station, buy the gas, get back into the codefendant's
13 car and drive back to near where the car was, where the
14 victim was in.

15 Theodore Manning then takes the gasoline, pours it
16 all over the car, lights it up, but the story doesn't end
17 there and the malice doesn't really end there.

18 He gets back into the car, drives home. They clean
19 up with bleach inside his house where the blood was,
20 covering his crime, and then for the next 23 days, he lies,
21 tells untruth after untruth after untruth after untruth
22 minutes and hours of lies to law enforcement about what
23 he knows about Nikki McPhatter and how she is missing.

24 I ask you as jurors, listen to all the times Theodore
25 Manning had the ability to say, "Stop. Wait. I can put

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1 an end to this pain to Nikki McPhatter's family and
2 friends are going through. I know where her body is."

3 Ladies and gentlemen, I want you to look and listen
4 minutes after minutes after minutes, chance after chance
5 after chance that he lies.

6 The State submits it's only after her body is found
7 does he give any semblance of the truth to law enforcement
8 as to what happened, because as I told you, 23 days later
9 because of good law enforcement, Nikki's family's
10 nightmare ended. Part of it ends, part got worse because
11 she was never coming back.

12 I ask you, ladies and gentlemen, watch, listen, time
13 after time this man, the State, submits maliciously,
14 purposefully lied to law enforcement to cover his sins.
15 The State submits it drips of malice.

16 Now, as His Honor told you, first off, the defense
17 is going to get up here, and they're going to talk to you.
18 They can, they don't have to -- about what their -- they
19 think the issues are going to be in this case.

20 I'm not exactly sure what they're going to say, but
21 I ask you, whatever it is that they say, in your mind,
22 challenge them to explain.

23 MR. MAY: Objection, Your Honor, burden shifting.

24 THE COURT: Sustained.

25 MR. GIESE: For the next days, whatever they tell you,

1 whatever they say, I just ask that you listen closely to
2 what the defendant did for those -- that one day, and those
3 23 days, because the State submits that it is, as the judge
4 told you, up to the State to prove all the elements. The
5 State submits we will do that. We will do that, but even
6 more importantly, as I said, it's our burden.

7 In this case, it's a burden that the state gladly
8 accepts, because the State submits when the evidence is
9 in and the judge tells you what the law is in South
10 Carolina as to what a murder is, the State submits there
11 will be no doubt in your mind at all that this killing,
12 this burning, is murder and is malicious.

13 Thank you.

14 THE COURT: Mr. May.

15 MR. MAY: Yes, sir. May it please the Court, Your
16 Honor.

17 Good morning, y'all.

18 THE JUROR: Good morning.

19 OPENING STATEMENT:

20 MR. MAY: I hope y'all are doing well today. It's
21 a beautiful day outside. It's personally my favorite
22 time of the year: Football, hunting, fishing. The
23 weather feels good. It's pretty outside, and every other
24 year, we have politics.

25 I love politics. I love to watch it. I love to watch

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1 politicians. Well, it all started back in 1992 when
2 Bill Clinton ran against George Herbert Bush. The first
3 day I ever saw it, Bill Clinton was asked a question
4 about, "Well, Mr. Governor, can you please explain the
5 fact that your state is 49th in education and 50th in teen
6 pregnancy?"

7 Bill Clinton said, "That's a good question. I feel
8 your pain, but what we need to talk about is the economy."
9 The entire election was based on the economic downturn
10 of the United States.

11 I was 12 years old. I looked at my dad and said, "He
12 didn't answer the question."

13 My dad said, "He answered the question he wanted to
14 answer."

15 Ladies and gentlemen, that's what this trial is
16 going to be about, at least from the prosecution. They're
17 going to answer the question that they want to answer.

18 They'll answer the question about 23 days.
19 Twenty-three days have nothing to do with the malice
20 aforethought that must be required when the trigger was
21 pulled.

22 For the 23 days they're going to make you hate Theo
23 Manning. For those 23 days, they're going to make you
24 hate his actions.

25 Much like politics have smear ads or negative attack

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1 ads, the idea is to make you make a decision that is not
2 based on reason, not based on the facts, not based on
3 rationale, but based on pure emotion.

4 The idea of their prosecution, and I ask you to look
5 at everybody they put up, look at everybody they put up,
6 they're going to talk about everything but the one issue
7 that matters.

8 The one issue that matters in this case is what was
9 in Theo Manning's mind when he pulled the trigger,
10 because ladies and gentlemen, he pulled the trigger. He
11 killed Nikki McPhatter. Theo Manning killed Nikki
12 McPhatter.

13 Now, the thing that we have to realize is that not
14 every killing is a murder. Not every killing is a murder
15 in South Carolina, but he killed Nikki McPhatter, and
16 that's something that you have to understand.

17 That's something that you have to come to grips
18 with. That's something that has to factor into your
19 decision in the jury room. Now, they're going to want
20 you not to think about what occurred in the house.
21 They're going to want you to think about the burning of
22 the body. They're going to want you to think of the 23
23 days.

24 Ladies and gentlemen, Mr. Giese in his opening
25 mentioned the shooting twice, and he mentioned the

1 disposal of the body nine times.

2 They have the ability to right now charge him with
3 at least four crimes that I could think of that go to the
4 desecration and the burning of the body, but they haven't.

5 They're going to ask y'all to convict him of murder
6 due to those four crimes they haven't charged him with.
7 I ask you to give a just verdict.

8 MR. GIESE: Your Honor, I have to object to that.

9 THE COURT: Overruled.

10 Go ahead.

11 MR. MAY: I ask you to give a just verdict, a verdict
12 on the indictment that is presented, not in the crimes
13 they chose not to pursue. They still can.

14 Ladies and gentlemen, their goal is to shift the
15 focus from the occurrence on May 6th at 8047 Bluff Road
16 elsewhere. Their goal is to make you hate him.

17 I ask you to guard your heart because there's a good
18 chance you're going to. I ask you if you hate him, to
19 put that hatred aside and make the decision based on the
20 evidence, not on emotion.

21 There's a judge from the federal court that said,
22 "Next to perjury, passion of a jury, the inflammation and
23 passion of the jury, is the greatest miscarriage of
24 justice;" that when a solicitor, a prosecutor, is allowed
25 to inflame the passions and prejudice of a jury, a lot

1 of times, they disregard the facts.

2 That's what their case is going to try to be, and
3 you know what, it's effective.

4 When you make somebody mad, they don't think, "All
5 right."

6 I've done it before. I went to college by playing
7 football. I was not the fastest. I was not the
8 strongest. I wasn't the biggest. I sure as heck had no
9 athletic ability.

10 I started 45 games in the S.E.C. I gave up two stats
11 because I could make the guy across from me more mad at
12 me than anybody else. It's a tactic, and they're good
13 at it.

14 But, ladies and gentlemen, this is not a game. This
15 is a young man's entire future. This young man is named
16 Theo Manning.

17 Theo Manning is 30 years old. He is a resident of
18 Richland County. He's the father of a ten-year-old
19 daughter, a son, and a grandson. He served three years
20 in the Air Force, and he was working at Westinghouse
21 when this killing occurred.

22 Along with my co-counsel of Luke Shealey and Fielding
23 Pringle, it is our honor and privilege to defend this
24 young man.

25 The issue is what occurred at 8047 Bluff Road when

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1 he pulled the trigger. The facts will show that the
2 following occurred: That Nikki McPhatter drove down from
3 Charlotte seeking a more intense relationship.

4 She calls her friend, Makenda Bradley. She drives
5 to Columbia, says, "I'm driving to Columbia. I'm almost
6 out of gas. I don't have no money in the bank. Can you
7 give me some money?" She comes down here with no gas.

8 She goes to Mr. Manning's house. She rings the
9 doorbell. He greets her. There's a hug. There's a kiss.
10 They go upstairs to have sex. You have to understand
11 that that's what their entire relationship was based on,
12 was sex.

13 They met on the internet on a website named
14 tagged.com. He met -- he went on that website for the
15 sole purpose of finding sexual partners.

16 Now, ladies and gentlemen, I know that might
17 conflict with some of y'all's feelings. He had several
18 girlfriends, and he made each one of them feel like they
19 were the only one.

20 I know that's probably going to make y'all not like
21 him even more, but I ask do you put aside those feelings.
22 Recognize that you have them. Put them aside and make
23 a judgment on the facts.

24 She drove down here with no gas. They have sex. He
25 takes her to a filling station on Bluff Road, fills her

1 up with gas. They return back. He says that he thinks
2 she is going to leave. She decides to come in. They have
3 sex again.

4 After this last sexual encounter, he goes in the
5 bathroom -- and he will testify. He is going to take the
6 stand. He's going to look you in the eye, and he's going
7 to tell you the facts of what occurred that day: The
8 same facts that he told the sheriff's department on
9 May 29th.

10 Now, when you look at the sheriff's department's
11 statement, you're going to say, "Well, there's just not
12 that much in there."

13 The sheriff's department interrogated him for
14 seven-and-a-half hours, and their final product is
15 two-and-a-half pages.

16 Theo Manning will tell you he told them everything.
17 They chose not to record it. They chose to type it up
18 themselves because hey, this is the prosecuting agency.

19 Look at what the sheriff's department did in
20 opposition to what Charlotte did. Charlotte tapes
21 everything; everything is recorded. The sheriff's
22 department purposely and willfully chose not to preserve
23 all of the evidence.

24 After they had sex that second time, he goes in the
25 restroom. He comes out, and she is talking about, "Hey,

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1 this is going to be a -- we're going to make this work."

2 He goes -- she goes into the opposite room where he
3 is planning to make it into his daughter's room. She
4 starts talking about, "Hey, we can do this. We can do
5 this with this room," talking about how to design it
6 for -- how to decorate it for his daughter. At that time,
7 it was a storage room.

8 He will tell you and testify under oath that he
9 starts getting in an argument with her and says "No.
10 That's not for me."

11 He will tell you the facts that occurred that day,
12 which is she wanted a more in-depth relationship, while
13 he was just looking for a tryst.

14 This made her upset, and his way of dealing with
15 the confrontation was he left the room. He left the room
16 and went and put on a T-shirt.

17 He comes back. He finds her standing in the doorway.
18 The argument progresses, and she pulls out a .380 caliber
19 pistol. The .380 caliber pistol was his, and it was kept
20 in that storage room. She pulls it out and levels it at
21 him and says, "We've got to make this work. We've got
22 to make this work."

23 She was crying. He's scared to death. He
24 eventually gets the gun, takes it from her and levels it
25 against her. He says, "Are you fucking crazy? Leave."

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1 At which time, she starts hitting the gun. She goes
2 for him. He pulls the trigger. She is hit. You will
3 hear from a firearms expert named Kelly Fite. He spent
4 31 years with the Georgia Bureau of Investigation. He's
5 testified in hundreds of trials.

6 He will tell you that the injuries sustained are the
7 same -- or consistent with the story he gave the police,
8 as well as the testimony that he will give.

9 Nikki McPhatter sat down. Theo drops the gun, kneels
10 down, starts shaking her, "Are you okay? Are you okay?"
11 He realizes that she is dead. He will testify that he
12 sat down in shock, in awe, and reached into his pocket
13 and pulled out his phone and just started pushing "talk."

14 The first name that came up was Kendra Goodman, a
15 codefendant in this trial. He says, "I need help." She
16 came over, and he made the worst decision in his life.
17 His decision was not -- he did not call 911.

18 Ladies and gentlemen, from that point on, he had to
19 have malice aforethought when the gun went off, not
20 later.

21 Did he screw up? Without a doubt, but for murder,
22 murder is the unlawful killing of another with malice
23 aforethought. Malice aforethought is evil.

24 The intention has to be evil, not fear, not anger,
25 not passion, not any other conceivable human emotion but

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1 evilness. That just didn't happen.

2 Manslaughter is the unlawful killing of another
3 without malice aforethought. Self-defense, they have to
4 disprove self-defense occurred.

5 Ladies and gentlemen, this is not an easy case, and
6 I do not envy any of y'all. I really don't. I would not
7 want to be where y'all are sitting at all, because I
8 believe y'all have an extremely hard choice. Now, I think
9 that choice is between manslaughter and self-defense.

10 I don't believe there is going to be a single piece
11 of testimony or evidence entered that at the time the gun
12 went off he had evil desires for Nikki McPhatter, not a
13 single piece of evidence will be introduced for that.
14 And that is the key to murder.

15 We often think murder is just somebody killing
16 somebody else. That's not it. Not every killing is murder.
17 In fact, most aren't.

18 It's not malice as an afterthought. It's malice as
19 an aforethought, but the Solicitor is going to try to make
20 you focus on the actions afterwards, not at the snapshot
21 which the law requires.

22 Now, in doing research for this trial, I came across
23 different cover-ups throughout history. It's always
24 interesting, you know. In the '90s and 2000s, the Miami
25 S.W.A.T. team was investigated for covering up different

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1 killings in the line of duty: Two of the killings, they
2 played with evidence. The third, they made the body
3 disappear.

4 In none of those three were those officer ever
5 prosecuted for the killings. They were prosecuted for
6 the cover-up, because at the time of the killing is when
7 the intent has to be there, not afterwards.

8 And often -- I mean Shakespeare talks about what a
9 tangled web we weave when we practice to deceive. What's
10 the burden in this case?

11 One lie begets against lie, begets another lie, and
12 all of the sudden, it gets out of control. Had he dialed
13 911, we would not be here, but he didn't, and they're going
14 to focus on the actions of what he didn't do.

15 Now, those Miami police officers are trained. Those
16 Miami police officers have dealt with that before. You
17 will hear from Theo Manning that he had never dealt with
18 that, most of us will never deal with such a horrendous
19 happening in our own home.

20 God willing, none of us, God willing, will ever deal
21 with somebody pulling a gun on us. None of us will ever
22 deal with having took a life, the life of somebody that
23 we cared about.

24 Now, it's their burden to prove their theory, which
25 is malice aforethought, beyond a reasonable doubt.

000569

1 Reasonable doubt is a very hard term to explain. It's
2 very nebulous. It's something really hard to get your
3 hands on.

4 The judge is going to instruct you that beyond a
5 reasonable doubt means -- a reasonable doubt is what
6 makes a reasonable person hesitate to act, hesitate to
7 act.

8 What does that mean? Does it means that when my buddy
9 calls me to go fishing that I check the weather first.
10 Is that a hesitation? I think it's easier really to
11 deconstruct the word. A reasonable doubt is a doubt with
12 a reason.

13 He was scared. He was angry. He was fearful. These
14 are all things that you will think at the end of this case
15 when he pulled that trigger.

16 Of course, on the opposite, converse of a reasonable
17 doubt is certainty. Are you certain that it was with
18 malice aforethought? And the answer is going to be,
19 there's no way.

20 As I said, they are going to try to stir your
21 emotions, your prejudices. That's what they're going to
22 target. I ask you to guard yourself and recognize that
23 yeah, you're going to not like him, but I ask you to judge
24 it and give a just verdict.

25 Ladies and gentlemen, Aristotle, the Greek

1 philosopher, stated that the law is reason without
2 passion. I ask you in this case, apply the law and give
3 a just verdict for what he's charged with, not the actions
4 which they willfully decided not to charge him with.

5 Give him a just verdict. I think you're going to have
6 a hard decision. I'm going to wish you all the best of
7 luck, and I look forward to working with you all the next
8 few days.

9 THE COURT: All right, Solicitor. Call your first
10 witness.

11 MS. McDUFFIE: The State would call Akilah Weaver.

12 THE BAILIFF: Place your left hand on the Bible,
13 raise your right hand.

14 AKILAH WEAVER,
15 after being duly sworn, testified as follows:

16 THE CLERK: Thank you. Have a seat in the witness
17 stand, please. Give the court reporter your name.

18 THE WITNESS: My name is Akilah Leona Weaver.

19 DIRECT EXAMINATION:

20 BY MS. McDUFFIE:

21 Q Good morning, Ms. Weaver.

22 A Good morning.

23 Q Ms. Weaver, where do you currently reside?

24 A I live in Charlotte, North Carolina.

25 Q And where are you currently employed?

000571

1 A I am employed by Bank of America.

2 Q And is -- do you know the victim in this case, Nikki
3 McPhatter?

4 A I do.

5 Q Please tell the jury how you know Ms. McPhatter?

6 A I met Nikki McPhatter the early part of 2006. She
7 was introduced to me by a mutual friend. Nikki was
8 interested in being a part of my sorority, and so our
9 mutual friend introduced us. And ever since then, we
10 kicked it off really well, and she has been a part of my
11 life ever since then.

12 Q And how would you describe your relationship with
13 Ms. McPhatter?

14 A Nikki -- you know, you have a best friend; you have
15 a good friend. Nikki was my sister friend. Nikki was one
16 of those friends that could -- would be honest with you,
17 even if you liked it or not, kind of like a sister.

18 A sister would be honest with you regardless of
19 how you felt, and that's how Nikki was for me. She was
20 talented in every aspect.

21 She was -- the days I had bad hair days, I could call
22 Nikki, "Hey Nikki, hey girl, you know, I can't make it
23 to the cosmetologist. Can you come and hook my hair up?"

24 "Sure girl."

25 And her -- her thing was always calling people

000572

1 punkin. "Hey Punkin. What's up? How are you doing?
2 Haven't talked to you in a long time. You know, what's
3 going on with you?"

4 MR. SHEALEY: Your Honor, objection, may we
5 approach?

6 THE COURT: What's the objection?

7 MR. SHEALEY: Hearsay, Judge.

8 THE COURT: All right. Caution her about hearsay.

9 MR. SHEALEY: And relevance, Judge.

10 THE COURT: Overruled on relevance.

11 BY MS. McDUFFIE:

12 Q Ms. Weaver, when -- how often in the early part of
13 2009 would you speak with Ms. McPhatter?

14 A We would talk once a week, but we would text
15 throughout the week because she had a -- she was a
16 workaholic. So she would work several hours at U.S.
17 Airways, because she didn't believe in having debt.

18 So she would work a lot of hours at U.S. Airways.
19 She volunteered so if she wasn't working with U.S.
20 Airways, she was volunteering. She was always doing
21 something, so we would always at least try to make it a
22 point to speak at least once a week.

23 Q And prior to the first part of May of 2009, would you
24 speak with her at least once a week?

25 A I would.

000573

1 Q And do you remember what day the last time you talked
2 with her was?

3 A I reported Nikki missing that Monday or Tuesday, so
4 I recall talking to her that Monday or Tuesday before.
5 I had texted her on that Saturday because there was an
6 event that my sorority was having. I texted her to see
7 if she wanted me to purchase her a ticket. When U.S.
8 Airways called me and told --

9 Q Let me stop you right there.

10 A Okay.

11 Q On May 11th, 2009, you reported her missing?

12 A I did.

13 Q And why did you become concerned, or what caused you
14 to become concerned?

15 A U.S. Airways called me and said that Nikki had not
16 reported to work.

17 MR. SHEALEY: Objection, Judge, hearsay again.

18 THE COURT: Overruled.

19 BY MS. McDUFFIE:

20 Q Why would U.S. Airways call you?

21 A I was listed as the emergency contact for Nikki
22 McPhatter.

23 Q And then after U.S. Airways called you and said
24 that she had not reported to work, what did you then do?

25 A I immediately tried to call her. After that, I called

1 a friend of mine so that we could go to her house to see
2 if, you know, some -- if her car was there or if anything
3 strange in her living environment didn't look normal. I
4 called --

5 Q Did you --

6 A So --

7 Q I'm sorry to interrupt.

8 A Okay.

9 Q Did you then go to her house that day?

10 A I did.

11 Q And when you arrived at her house, what, if
12 anything, did you observe?

13 A The only thing I remember observing is one of her
14 back windows, the screen was off. So I -- that was the
15 only thing I observed.

16 Once we walk around in her house and didn't see
17 anything, we made a couple of phone calls to make sure
18 that no other friend had talked to her, and then I
19 immediately went to the Charlotte/Mecklenburg police to
20 file a report.

21 Q And prior to that, had you been over to her house
22 recently?

23 A No. It probably had been a couple of weeks prior to
24 that where she did my hair. That was it.

25 Q So did you have any way of knowing if that screen would

000575

1 come off that day --

2 A I do not.

3 Q -- months, weeks, years prior?

4 A No.

5 Q And after you went to her house and observed that
6 everything appeared to be in order, what did you then
7 do?

8 A I went -- I called friends to make sure no one else
9 had talked to her, made sure that, you know, she didn't
10 fly somewhere because being a U.S. agent, they would have
11 let her fly for free, making sure that -- you know, maybe
12 she forgot to tell me that she was flying where ever.

13 Once I made those phone calls and no one had talked
14 to her, I then went to the Charlotte/Mecklenburg Police
15 Department to file a missing pepper's report.

16 Q And you did file a missing person's report --

17 A I did.

18 Q -- with the Charlotte/Mecklenburg Police
19 Department?

20 A I did.

21 Q And over the next several weeks, did they keep you
22 updated and continue to keep you involved in what was
23 happening in the case?

24 A They did.

25 Q And after May 6th, 2000, did you ever speak with Nikki

000576

1 McPhatter again?

2 A I did not.

3 MS. McDUFFIE: Beg the Court's indulgence.

4 (Pause)

5 Nothing further from this witness, Your Honor.

6 THE COURT: Cross-examination?

7 MR. SHEALEY: Your Honor, we have no questions for
8 this witness.

9 THE COURT: All right. Thank you very much. May this
10 witness be excused?

11 MR. MAY: Without objection.

12 THE COURT: You may come down, ma'am, without
13 objection. Thank you very much.

14 THE WITNESS: Thank you.

15 THE BAILIFF: Watch your step.

16 THE COURT: Next witness.

17 MS. CAMPBELL: Thank you, Your Honor.

18 The State would call Mekenda Bradley.

19 (Pause)

20 I apologize, Your Honor. The witnesses are
21 sequestered.

22 (Pause)

23 THE BAILIFF: Place your left hand on the Bible,
24 raise your right.

25 MEKENDA BRADLEY,

000577

1 after being duly sworn, testified as follows:

2 THE CLERK: Give court reporter your name.

3 THE WITNESS: Mekenda Bradley.

4 THE JUROR: We couldn't hear that.

5 DIRECT EXAMINATION:

6 BY MS. CAMPBELL:

7 Q If you could say it a little bit louder, and let me
8 push this microphone a little bit closer to you. It's
9 hard to hear. You have to get close to the microphone.
10 Can you state your name?

11 A Mekenda Bradley.

12 Q Ms. Bradley, how old are you?

13 A Thirty-seven.

14 Q And where do you live?

15 A Columbia, South Carolina.

16 Q And how long have you been living in the Columbia
17 area?

18 A About two-and-a-half years.

19 Q Are you employed?

20 A Yes.

21 Q And where do you currently work?

22 A With U.S. Airways.

23 Q And how long have you been working with the U.S.
24 Airways?

25 A Fifteen years.

000578

1 Q And which branch of U.S. Airways do you actually -- are
2 you actually employed?

3 A Customer service in Charlotte.

4 Q In Charlotte?

5 A Yes.

6 Q So you actually commute from here in the Columbia area
7 up to Charlotte?

8 A Correct.

9 Q And was there ever an occasion -- and typically what
10 shift do you work for U.S. Air or does it just depend?

11 A It varies. Our schedule changes about every three
12 months.

13 Q And is there ever a time when you have to work what's
14 a double shift or a longer shift than other days?

15 A Yes.

16 Q And at any time -- well, let me ask you this: Do you
17 know Nikki McPhatter?

18 A Yes.

19 Q And how did you know Ms. McPhatter?

20 A She was a coworker and friend.

21 Q She also was employed at U.S. Air?

22 A Correct.

23 Q And back in May of 2009, were both of you working at
24 U.S. Air?

25 A Yes.

000579

1 Q Prior to that, in the months prior to that, would you
2 ever occasionally stay with Ms. McPhatter?

3 A Yes.

4 Q And tell the jury why you would stay with her in her
5 residence in Charlotte, North Carolina?

6 A Because of my commute, and sometimes I would work 16
7 hours a day. So for safety reasons, as opposed to driving
8 back to Columbia, I would overnight at her home.

9 Q Would you describe your relationship? You would
10 stay with her occasionally, and you all were friends or
11 acquaintances?

12 A Yes. Once a week I would stay with her, and we were
13 friends.

14 Q I want to turn your attention back to May 6, 2009.
15 Were you working that day?

16 A Yes.

17 Q And had you seen Ms. McPhatter in the days going up
18 to that at work?

19 A Yes.

20 Q And was Ms. McPhatter working on May 6th?

21 A No.

22 Q That morning while you were working -- and what's
23 your job at U.S. Air?

24 A Customer service at the ticket counter.

25 Q And was that also Nikki's job?

- 1 A Yes, but she didn't work at the ticket counter.
- 2 Q She also was in customer service?
- 3 A She was.
- 4 Q That day, she wasn't working, was she?
- 5 A No.
- 6 Q When you were working that morning, did you receive
- 7 a phone call while you were at work?
- 8 A Yes, ma'am.
- 9 Q And who was calling you?
- 10 A It was Nikki.
- 11 Q And do you remember what time that was?
- 12 A It was around 11:44, 11:45. It was right before my
- 13 break.
- 14 Q And you actually looked at your watch?
- 15 A Yes.
- 16 Q And noted the time?
- 17 A I did.
- 18 Q And was it unusual for her to call you at work?
- 19 A It was.
- 20 Q That day when she was calling you, what was her
- 21 demeanor like when you received the phone call, could you
- 22 tell?
- 23 A Yeah. She didn't seem like her normal bubbly self,
- 24 just kind of very quiet and reserved.
- 25 Q And what did she say to you when she called you on

000581

1 the phone that day?

2 A She asked me was I working, and I told her that I was --

3 MR. SHEALEY: Objection, Judge. Calls for hearsay.

4 MS. CAMPBELL: Present sense impression, Your
5 Honor.

6 THE COURT: Overruled.

7 BY MS. CAMPBELL:

8 Q Thank you.

9 Go ahead.

10 A She asked me was I working, and I told her I was. I
11 asked her was everything okay and she said --

12 Q Let me stop you there. Why did you ask her was
13 everything okay?

14 A Because she just didn't sound like herself.
15 Typically, she never calls me at work.

16 Q After you asked her was everything okay, what did she
17 say?

18 A She said no.

19 MR. SHEALEY: Objection, hearsay again.

20 THE COURT: I'm not sure it's offered for the truth.
21 Overruled.

22 BY MS. CAMPBELL:

23 Q Thank you, Your Honor.

24 Go ahead. You can answer that.

25 A She said no, that she was in Columbia. I asked her

1 was everything okay, and she said no; it wasn't a good
2 situation.

3 Q She said, no, it wasn't a good situation?

4 A Yes, ma'am.

5 MR. SHEALEY: I have to object again, Judge.
6 Continuous hearsay.

7 THE COURT: All right. It's a continuing objection.
8 Overruled.

9 BY MS. CAMPBELL:

10 Q I'm sorry.

11 A That's okay.

12 Q When she said -- what did she say?

13 A She said it wasn't a good situation.

14 Q At that point, what was said between the two of
15 you?

16 A Well, I just asked her, you know, what was wrong or
17 was there anything I could do. She said she had run out
18 of gas. I offered to put money in our U.S. Airways account
19 to get her back from Columbia to Charlotte.

20 Q And did she take you up on your offer to put money
21 in her account -- it was through U.S. Airways?

22 A No.

23 Q In fact, what did she say to you?

24 A I told her I would have to call her back because I
25 was working in about 15 minutes, which was my scheduled

1 break time, and after that, I never heard from her again.

2 Q So at 11:44, she made this phone call to you, gave
3 you this information about it not being a good situation.
4 Her demeanor was different than normal?

5 A Yes.

6 Q And at that point, she asked you for gas money?

7 A She didn't ask me. I offered.

8 Q You offered?

9 A Yes, ma'am.

10 Q She said she ran out of gas and you offered?

11 A Yes.

12 Q And at that point, you indicated you had to hang up
13 on her and call her back?

14 A Right. I told her I would call her back on my break.

15 MR. SHEALEY: Objection to the leading. Judge, we
16 had a pretrial ruling on this.

17 THE COURT: Don't lead your witness.

18 BY MS. CAMPBELL:

19 Q Thank you, Your Honor.

20 Did you call her back that day?

21 A I did.

22 Q And when did you call her back?

23 A I called her back on my scheduled break and
24 throughout the entire day, and I never spoke with her
25 again.

1 Q How long after your scheduled break did you call her
2 back the first time?

3 A I mean --

4 Q I mean, after the phone call.

5 A Well, after the phone call, I called her back at
6 12 o'clock, which was my scheduled break. Then after
7 that, I called her several times throughout the day and
8 in that evening when I got home up until about 10:30,
9 11:00.

10 Q And were you ever able to get back in touch with her
11 that day?

12 A No, ma'am.

13 Q What would the phone do when you made the phone
14 call?

15 A Initially it would ring as if, you know, someone just
16 didn't pick it up. It would just ring and ring and ring,
17 and then it would eventually go to her voice mail.

18 Q After speaking to her at 11:44 that day in the phone
19 call you just described, did you ever speak to Nikki
20 McPhatter again?

21 A No.

22 Q That day, did you continue to try to call her?

23 A Yes.

24 Q Did you continue to try to call her as the days went
25 by?

000585

- 1 A Yes, periodically.
- 2 Q Were you ever able to find her?
- 3 A No.
- 4 Q Did you know why she was in Columbia?
- 5 A I did not.
- 6 Q Were you aware that Ms. McPhatter would go to
7 Columbia periodically?
- 8 A Sometimes, yes.
- 9 Q And were you aware of who she was going to see?
- 10 A I was not.
- 11 Q Did you know a man she referred to as Teddy?
- 12 A I heard her mention it, but I didn't know details.
- 13 Q A couple months prior to this, did you have an
14 occasion to talk to her about -- or did she show you some
15 text messages?
- 16 A She did show me a text, yes, ma'am.
- 17 Q And what was she -- tell the jury the situation when
18 she showed you the text messages several weeks before
19 this happened.
- 20 A She had just showed me a text about a gentleman named
21 Teddy, and the text was kind of argumentative about some
22 things that she had wanted him to do personally. And I
23 guess, to my understanding, it look like it was at the
24 end of a relationship.
- 25 MR. SHEALEY: Objection, Judge. She can't --

1 THE COURT: Sustained.

2 BY MS. CAMPBELL:

3 Q And other than that text message, you didn't know
4 anything else about Teddy?

5 A Correct.

6 Q You mentioned that you never saw her again after
7 that phone call on the 6th; is that correct?

8 A Yes.

9 Q And when did you find out that she had been killed?

10 A Mother's day weekend. I was out of town, and when
11 I came back home, I had received a phone call that she
12 was missing.

13 Q That she was missing.

14 A Yes.

15 Q And then several weeks later, you found out that she
16 had been killed?

17 A Yes.

18 MS. CAMPBELL: Thank you.

19 THE COURT: Cross-examination?

20 MR. SHEALEY: Beg the Court's indulgence.

21 (Pause)

22 Your Honor, I don't have any cross-examination, but
23 I would move to strike the testimony that you
24 sustained on my objection.

25 THE COURT: A little late.

1 All right. The part about the -- I -- ladies and
2 gentlemen of the jury, I ruled that that testimony was
3 inadmissible. The thing about the text message, I'm going
4 to ask you to ignore that, strike that from your mind.
5 It was improper hearsay testimony, and I'll ask the
6 court reporter to strike that.

7 All right. Cross-examination.

8 MR. SHEALEY: We have no questions for this
9 witness, Judge.

10 THE COURT: You may come down, ma'am. Thank you
11 very much.

12 May this witness be excused?

13 (There was no response).

14 Without objection?

15 MS. CAMPBELL: None, Your Honor.

16 THE BAILIFF: Watch your step.

17 MS. CAMPBELL: The State would call Ann Harwood.

18 ANN HARWOOD,
19 after being duly sworn, testified as follows:

20 THE CLERK: Thank you. Have a seat in the witness
21 stand, please.

22 THE BAILIFF: Watch your step.

23 THE CLERK: State your name for the record.

24 THE WITNESS: Sharon Ann Harwood.

25 DIRECT EXAMINATION:

- 1 BY MS. CAMPBELL:
- 2 Q Ms. Harwood, where are you employed?
- 3 A U.S. Airways.
- 4 Q And where do you work for U.S. Airways, what city?
- 5 A Charlotte, North Carolina.
- 6 Q What do you do at U.S. Airways?
- 7 A Corporate security.
- 8 Q And as part of your duties with U.S. Airways, do y'all
- 9 keep certain records in the normal course of business?
- 10 A Yes, we do.
- 11 Q Do those include employee records?
- 12 A Yes, they do.
- 13 Q I want to turn your attention back to May of 2009.
- 14 Was a Nikki McPhatter working for U.S. Airways back in
- 15 2009?
- 16 A Yes, she was.
- 17 Q And what was her job there, ma'am?
- 18 A She was a gate agent, customer service agent.
- 19 Q Customer service agent?
- 20 A Uh-huh.
- 21 Q And as part of the agent's -- did y'all keep a regular
- 22 schedule about when she was supposed to show up for work
- 23 and things of that nature?
- 24 A Yes, a computerized work schedule.
- 25 Q Let me back up. I'm going to show you what's been

1 marked as State's Exhibit Number 4. What was the last
2 date that Nikki McPhatter ever worked for U.S. Airways?

3 A Her last date was May 4th, 2009.

4 Q And I want to show you what's been marked as State's
5 Exhibit Number 4. Does that reflect the dates that
6 she -- the times that she worked on that day?

7 A Yes, it does.

8 Q And what time did she actually check out from work,
9 the last day she worked, on May 4th, 2009?

10 A 23:02.

11 Q And that's military time?

12 A Yes, it is.

13 Q And that would be what time, for those of us that
14 don't do military time?

15 A 11:00 p.m., 11:02.

16 Q 11:02 p.m.?

17 A Uh-huh.

18 Q And that was the last time she ever worked -- showed
19 up for work at U.S. Airways?

20 A That was the last time she reported to work.

21 MR. MAY: Your Honor.

22 MR. SHEALEY: May we approach?

23 (WHEREUPON, a bench conference was held in the
24 presence, but not within the hearing of the jury.)

25 MS. CAMPBELL: Again, Your Honor, we'd offer

1 State's Exhibit Number 4.

2 THE COURT: Any objections?

3 MR. MAY: If she -- if she is -- under 803(6), then
4 those are.

5 THE COURT: It's admissible.

6 MS. CAMPBELL: Thank you, Your Honor.

7 (WHEREUPON, State's Exhibit No. 4 was admitted into
8 evidence.)

9 BY MS. CAMPBELL:

10 Q At our request, did you also check the records -- when
11 was the next time after May 4th that Nikki McPhatter was
12 supposed to be at work?

13 A She was due back at work on May 7th. She did not show
14 for work that day.

15 Q What time was she supposed to work that day?

16 A She was due in at 18:00 hours, which would have been
17 six p.m.

18 Q And after May 7th, what was the next day she was
19 supposed to show up for work?

20 A May 8th, same time.

21 Q Did she show up?

22 A Did not show up.

23 Q And when was the next day she was supposed to work?

24 A She was off May 9th. She was scheduled back in
25 May 10th, and May 11th, did not show.

1 Q At some point, did you personally follow-up with the
2 fact that she wasn't showing up for work?

3 A I did not personally, no.

4 Q All right.

5 A Her manager would have done that.

6 Q And was that brought to your attention?

7 A Yes.

8 Q And what would be the normal course as far as if a
9 person doesn't show up for work for a number of days? Was
10 this unusual for her?

11 A Absolutely.

12 Q And when she didn't show up on the 7th or the 8th or
13 the 10th or the 11th, who did y'all contact?

14 A Then it would have been her emergency contact
15 numbers who would have been called.

16 Q And that would have been Ms. Weaver in this case?

17 A I believe that's who it was.

18 Q And as a result of conversations with her
19 coworkers -- you can't say what they said. That would
20 be hearsay -- but conversations from her coworkers,
21 people that knew her and contact information from her
22 emergency contact, what did your company do as far as
23 reporting her missing?

24 A The police would have been called at that point, and
25 the emergency contact numbers were called.

000592

1 Q And that was done in this case?

2 A Yes.

3 Q And again, you said as far as what her normal routine
4 and habits were, was it unusual for her not to show up?

5 A Yes, it was unusual.

6 Q After May -- she got off work on May 4th of 2009, did
7 she ever show up for work again, or did you all, as far
8 as corporate, ever hear from her again?

9 A We did not.

10 MS. CAMPBELL: Thank you, ma'am. I don't have
11 anything further.

12 THE COURT: Cross-examination?

13 MR. MAY: Yes, sir. I've just got one brief question.

14 CROSS-EXAMINATION:

15 BY MR. MAY:

16 Q Just so we're clear, when we're saying May 4th, it
17 was almost midnight of the next day? It was at about
18 11:50. Is that what it says?

19 A I have her clocking out at 23:02 which would have
20 been --

21 Q All right. So 11:0---

22 A -- 11:02 p.m. --

23 Q Yes, ma'am.

24 A -- on the 4th.

25 MR. MAY: Nothing further of this witness, Your

1 Honor.

2 MS. CAMPBELL: May she be excused?

3 THE COURT: You may come down, ma'am.

4 May the witness be excused?

5 (There was no response).

6 No objection.

7 You may step down. Thank you.

8 MS. CAMPBELL: The State would call Tom Hudson.

9 May we approach, Your Honor?

10 THE COURT: Yes.

11 (WHEREUPON, a bench conference was held in the
12 presence, but not within the hearing of the jury.)

13 THE BAILIFF: Place your left hand on the Bible.

14 Raise your right hand.

15 TOM HUDSON,

16 after being duly sworn, testified as follows:

17 THE CLERK: Thank you. Have a seat in the witness
18 stand, please.

19 THE BAILIFF: Watch your step.

20 THE CLERK: State your name for the record.

21 THE WITNESS: Tom Hudson.

22 DIRECT EXAMINATION:

23 BY MS. CAMPBELL:

24 Q Mr. Hudson, where are you employed?

25 A Wachovia bank.

000594

1 Q And what do you do there, sir?

2 A I'm a fraud investigator.

3 Q How long have you been employed at Wachovia bank?

4 A A little over 25 years.

5 Q As part of your -- or describe for this jury, what
6 do your duties include?

7 A I investigate fraud activities that involve the
8 bank either by people inside the bank or external crimes,
9 people outside the bank, including counterfeit checks,
10 forged checks, A.T.M. fraud, credit card fraud, all of
11 those.

12 Q I want to turn your attention back to May of 2009.
13 Were you contacted, I believe, by the Charlotte Police
14 Department to -- about certain transactions that occurred
15 at one of your A.T.M. machines?

16 MR. MAY: Your Honor, at this time, we'd renew
17 objections to this entire line of questioning under Rule
18 401, 403, 404(b), res gestae, 14 -- sixth -- 14th and 6th
19 amendment of the United States Constitution. All of that
20 and the South Carolina constitutional amendments.

21 THE COURT: Overruled.

22 All right.

23 BY MS. CAMPBELL:

24 Q I'm sorry. You can go ahead.

25 A Yes, ma'am, I was on May 19th.

1 Q And on May 19th, who actually contacted you, do you
2 recall?

3 A Yes. It was a fellow Wachovia employee from Rock
4 Hill who contacted me.

5 Q And at that point, were you asked to retrieve certain
6 information from your records?

7 A I was asked to get information around an A.T.M.
8 that's located at 8800 Farrow Road in Columbia, Richland
9 County.

10 Q Okay. That's 8800 Farrow Road?

11 A Yes, ma'am.

12 Q And that's here in Richland County?

13 A Yes, ma'am.

14 Q And specifically, what information were you given?

15 A I was told that the person who had been reported
16 missing's bank card may have been used at that A.T.M.
17 around 6:52 p.m. on May 6th. I was asked to get those
18 records checked to see if, in fact, there was any
19 photograph that would be available from that machine.

20 Q And just for clarification, this would be on May 6th?

21 A Correct.

22 Q At what time?

23 A Around 6:52 p.m.

24 Q P.M. So that would have been the evening of May 6th?

25 A Correct.

000596

1 Q And tell this jury what, if anything, you did in order
2 to try to retrieve that information for the police.

3 A I drove out to the branch. It's called our Gateway
4 branch on Farrow Road. I picked up the videotape that
5 would have been in the recorder on May 6th at that time.
6 I brought it back to my office in Columbia on Greystone
7 Boulevard. I pulled the A.T.M. journal report, the
8 report of activity from that A.T.M.

9 I viewed the A.T.M. video and saw some images there,
10 and contacted -- the police were ultimately contacted in
11 Charlotte and later that day forwarded that videotape to
12 the Charlotte police.

13 Q And would that videotape fairly and accurately
14 reflect any ongoing activity around that A.T.M. machine
15 right there on Farrow Road?

16 A Yes, ma'am.

17 Q And was it altered or changed in any way when it was
18 retrieved?

19 A No, ma'am.

20 Q So it would have been actual footage of what it
21 could -- what the camera actually focused on; is that
22 correct?

23 A Correct.

24 Q And when you reviewed the video, what did you
25 observe?

000597

1 A I saw a gold colored vehicle, appeared to be a
2 General Motors car that was parked, saw a subject walk
3 up to the drive-up A.T.M. and appeared to be using the
4 machine to conduct a transaction.

5 Q And what did the person look like that walked up to
6 the machine, do you recall?

7 A It was a black male. I could not identify any further
8 than that.

9 Q Your Honor, at this -- and have you had an
10 opportunity to review the video that you turned over to
11 the police, and is it still in the same condition as it
12 was when you turned it over?

13 A Yes, ma'am.

14 Q Your Honor, at this time, we would offer the video
15 into evidence and ask permission to publish it.

16 THE COURT: All right. Over the objection of the
17 defendant.

18 (WHEREUPON, State's Exhibit No. 6 was admitted into
19 evidence.)

20 MS. CAMPBELL: Your Honor, it will take just a
21 second for the machine to warm up and boot up, as I
22 indicated.

23 (Pause)

24 Your Honor, for the record, that's State's 6.

25 THE COURT: Okay.

000599

1 (Pause)

2 BY MS. CAMPBELL:

3 Q While this is warming -- is it ready? Oh, it is.

4 What did -- before you play this, what area of the
5 bank does this show in State's Exhibit Number 6?

6 A This is the drive-in lanes where the drive-up
7 A.T.M. is located.

8 Q And there were a number of accounts that you were
9 asked to retrieve the video that corresponded with the
10 transactions that occurred around 6:52, I believe you
11 said.

12 A That's correct.

13 Q Is that correct?

14 A Yes.

15 Q And does this video actually show those -- the
16 transactions or attempted transactions in some cases?

17 A Yes, ma'am. Those show the activity that was
18 occurring at that machine at that time.

19 Q And down here, as far as the A.T.M. machine itself,
20 can you actually see it in this video before we play it?

21 A Yes, ma'am.

22 MS. CAMPBELL: And -- Your Honor, may the witness
23 step down?

24 THE COURT: Yes, ma'am.

25 BY MS. CAMPBELL:

000600

1 Q Be careful of all this stuff. If you can actually
2 stand on the other side so the jury can see, and use this
3 pointer, if you don't mind.

4 Where was the A.T.M. machine --

5 A In the --

6 Q -- in this video?

7 A Right here.

8 Q And I noticed down in the bottom, there appears to
9 be something in that lane leading up to the machine. What
10 is that?

11 A This is a vehicle that's parked back away from
12 where the machine would be.

13 Q Pause it.

14 At that point, were you able to see anyone actually
15 exit the car?

16 A Yes. The door opened right here, and this subject
17 got out of the car and walked up towards the machine.

18 Q And at that point, what is the subject doing as far
19 as what you observed?

20 A The subject appears to be using the A.T.M. machine.

21 Q At this point, what do you see the person doing?

22 A He left the A.T.M. machine and walked back to the
23 vehicle.

24 Q And which side of the vehicle does he walk back to?

25 A It appears to be the passenger side, the opposite

000601

- 1 side from the side he got out on.
- 2 Q And at this point, what's the vehicle doing?
- 3 A Drives out of the lane past the A.T.M.
- 4 Q And that's the footage you were asked to retrieve?
- 5 A Yes, ma'am.
- 6 Q Thank you. You can sit back down.
- 7 There was also another transaction where, I believe,
- 8 you retrieved some video?
- 9 A Yes, ma'am.
- 10 Q And I apologize. I thought it was on a separate disc.
- 11 Again, is this the same A.T.M. machine?
- 12 A Yes, ma'am.
- 13 Q And the time period is it different from the first
- 14 attempt?
- 15 A I --
- 16 Q Is it reflected on the bottom accurately?
- 17 A Yes, ma'am.
- 18 Q Thank you. At that point, what do you see?
- 19 A The vehicle is sitting in the lane, and the subject
- 20 is standing in front of the A.T.M. machine.
- 21 Q Is that the extent of that transaction?
- 22 A Yes, ma'am.
- 23 Q The person that you saw in the first transaction as
- 24 well as the person you saw in the second transaction, all
- 25 you can tell about them is that it appeared to be a black

000602

1 male?

2 A That's correct.

3 Q And did the clothing appear to be consistent on both
4 of them?

5 A Yes, ma'am.

6 Q This was turned over to law enforcement?

7 A Yes, ma'am.

8 Q In addition to providing law enforcement with this
9 video from the A.T.M. machine, were you also
10 requested -- your bank, Wachovia, requested to turn over
11 some information about the victim's account or attempts
12 to use the victim's account prior to that?

13 A Yes, ma'am.

14 Q At the A.T.M.?

15 A Yes, ma'am.

16 Q And I want to show you what's being marked as State's
17 Exhibit No. 5.

18 (Pause)

19 State's Exhibit Number 5, do you recognize these?

20 A Yes, ma'am.

21 Q And at law enforcement's request, did you actually
22 retrieve these records as far as the transactions that
23 occurred around 18:52 at the A.T.M. on Rabon Road?

24 A Farrow Road, yes, ma'am.

25 Q Farrow Road, excuse me, the corner of Rabon and

000603

1 Farrow?

2 A Yes.

3 Q Do those fairly and accurately reflect the
4 transactions that were requested of you?

5 A Yes, ma'am.

6 Q And what transactions were those requested?

7 A These were A.T.M. withdrawals, and balance inquiries
8 were done with other bank cards at the Wachovia A.T.M.
9 at 8800 Farrow Road.

10 Q And those would be bank cards belonging to whom?

11 A Belonging to the victim in this case.

12 Q The victim, Nikki McPhatter.

13 Your Honor, at this time, we would offer State's
14 Exhibit Number 5.

15 MR. MAY: Your Honor, my only objection would be
16 803(6). I don't believe that they...

17 THE COURT: Lay the foundation.

18 BY MS. CAMPBELL:

19 Q Are these bank records kept in the normal course of
20 business?

21 A Yes, ma'am.

22 Q And were these records accurate?

23 A Yes, ma'am.

24 MS. CAMPBELL: Your Honor, at this time we'd offer
25 them.

000604

1 MR. MAY: Without -- well, subject to our
2 objections.

3 THE COURT: All right.

4 (WHEREUPON, State's Exhibit No. 5 was admitted into
5 evidence.)

6 BY MS. CAMPBELL:

7 Q On State's Exhibit number 5, there's some other
8 balance inquiries, and those are marked through at the
9 top. Explain to the jury why you marked through those.

10 A This is a record of all the activity that occurred
11 at the A.T.M. during the time period, and those
12 transactions at the top that were done earlier were by
13 different customers and different card numbers. We
14 blacked out the card numbers that are not related to this
15 case.

16 Q To protect?

17 A To protect whoever the customers are that belong to
18 those cards.

19 Q On this one, starting with the first ones that would
20 be applicable as far as Nikki McPhatter's accounts that
21 was used at the Wachovia A.T.M. on May 6th at 18--- what
22 time does it start?

23 A It starts at 18:47.

24 Q And as far as the times that are reflected on there,
25 it may be a second or two off from the video; is that

000605

1 correct?

2 A That's correct. There are two different clocks. The
3 time on this report is the clock in the computer in
4 Charlotte where this record is recorded, and the time on
5 the V.C.R. tape, that's a clock on the V.C.R. that is at
6 Farrow Road.

7 Q But just for the record, those correspond to the video
8 that you pulled?

9 A Yes, ma'am.

10 Q Those transactions, and what's the first time?

11 A 18:47, 53 seconds.

12 Q And what type of transaction was attempted at that
13 point?

14 A It was a balance inquiry on the checking account,
15 checking the balance on the checking account.

16 Q And did it reflect what the balance was on the
17 account?

18 A Yes, ma'am, it did.

19 Q How much?

20 A \$546.23.

21 Q What's the next transaction that's reflected on
22 State's Exhibit No. 5?

23 A The next transaction is at 18:48 and 13 seconds.
24 It's a \$500 withdrawal from that checking account.

25 Q Was that on the same account on the first inquiry?

000606

1 A Yes, ma'am.

2 Q And that would be an account belonging to Nikki
3 McPhatter?

4 A Yes, ma'am.

5 Q And there was \$500 withdrawn around 6:48 that
6 evening?

7 A That's correct.

8 Q What's the next transaction that's reflected that has
9 to do with this case?

10 A The next transaction is an inquiry on a different
11 checking account.

12 Q On a different checking account?

13 A Yes.

14 Q Did that checking account also belong to the victim
15 in this case?

16 A Yes, it did.

17 Q And what time did that inquiry happen?

18 A At 18:50:57.

19 Q And so this is the first -- these are all together;
20 is that correct?

21 A That's correct.

22 Q And at 18:50:57, what does this show?

23 A It showed the balance in this account as being
24 \$188.32.

25 Q So it was another balance inquiry?

000607

1 A Correct.

2 Q And for the record, what is a balance inquiry? I mean,
3 is that something you can do at an A.T.M.?

4 A Yes, ma'am. You can ask for the balance on whatever
5 account you're asking about.

6 Q It was 188, I'm sorry?

7 A \$188.32.

8 Q And on that same account, what is the next --

9 A The next transaction --

10 Q Transaction.

11 A -- is --

12 Q What time?

13 A 18:51:12.

14 Q Uh-huh, and what is that?

15 A \$180 withdrawal.

16 Q What is the next transaction that has to do with this
17 victim, any of her accounts?

18 A The next transaction is at 18:51.

19 Q Let me back up. And just for the record then, after
20 each of these, it also reflects what her balance would
21 have been after that?

22 A That's correct.

23 Q Okay. And then what's the next transaction that
24 occurs?

25 A 18:51:36.

000608

- 1 Q And is that on the same account or a different
2 account?
- 3 A It's on a savings account.
- 4 Q These two were checking, and now we're into savings?
- 5 A Correct.
- 6 Q Okay. And what was that?
- 7 A It's a balance inquiry on savings.
- 8 Q And what was the result of that?
- 9 A It was a zero balance, it was...
- 10 Q And why would it reflect a zero balance?
- 11 A There was no money in the savings account.
- 12 Q Okay.
- 13 A None available.
- 14 Q And in that same time period, what's the next
15 relevant...
- 16 A The next transaction is a different card number, but
17 also one of Ms. McPhatter's cards, a different bank.
- 18 Q So this would have been the fourth card or fourth
19 account?
- 20 A Correct.
- 21 Q Okay.
- 22 A It's at 18:52:51.
- 23 Q And what was that?
- 24 A A balance inquiry for checking.
- 25 Q And what was the result of that?

000609

1 A There was no result. There was no balance
2 indicated. Either there was no account, no money, or there
3 was some problem with that card.

4 Q Could it have been like an incorrect A.T.M. pin
5 number?

6 A It could have been, but it appears that the pin number
7 was correct because it was a balance inquiry, but for
8 whatever reason, the account was not accessed.

9 Q Account not accessed, okay. So it was an attempt to
10 get to that account?

11 A Attempt to check the balance in there, yes.

12 Q Were there any more that have to do with this case?

13 A There was one other, same -- same transaction at
14 18:53:02.

15 Q Same checking account?

16 A Same account.

17 Q Uh-huh.

18 A Same card, another balance inquiry that was -- had
19 the same results, no results.

20 Q At 18?

21 A 18:53:02.

22 Q Those transactions would be what took place, what's
23 shown on the video?

24 A That's correct.

25 Q The first balance inquiry was \$546, and then there

000610

1 was a withdrawal of \$500?

2 A That's correct.

3 Q The next was a balance inquiry of \$188 in her account,
4 and then the next transaction was a withdrawal of \$180?

5 A That's correct.

6 Q And then he wasn't able to withdraw anything from the
7 other two accounts?

8 A That's right.

9 Q I beg the Court's indulgence.

10 (Pause)

11 All the accounts we're referring to up there belong
12 to the victim in this case, Nikki McPhatter?

13 A Yes, ma'am.

14 MS. CAMPBELL: Thank you. I don't have anything
15 further.

16 THE COURT: Cross-examination?

17 MR. MAY: No, Your Honor.

18 THE COURT: All right. You may come down, sir. Thank
19 you very much.

20 May this witness be excused?

21 MR. MAY: Without objection.

22 THE COURT: Without objection.

23 MS. CAMPBELL: Thank you, Your Honor.

24 THE COURT: Next witness?

25 MS. McDUFFIE: The State would call Roxanne --

1 THE BAILIFF: Your Honor.

2 THE COURT: The jury needs a break?

3 THE BAILIFF: Yes, sir.

4 THE COURT: All right, fine.

5 All right. Ladies and gentlemen, the bailiff has
6 indicated you need a break. We'll take a break at this
7 time. I'll ask you to go to the jury room. Just relax
8 for a few minutes, and most important, don't talk about
9 the case. Thank you very much.

10 (WHEREUPON, the jury left open court at
11 approximately 11:15 a.m.)

12 THE COURT: Counsel, approach the bench, please.

13 (WHEREUPON, there was a bench conference.)

14 (WHEREUPON, State's Exhibits No. 9 - 62 were marked
15 for identification only.)

16 THE COURT: Is the State ready for the jury?

17 MS. McDUFFIE: The State's ready.

18 MR. MAY: Your Honor, just for the record, regarding
19 the prior objection to the -- starting with any
20 information relating to the financial transaction card
21 incident, again, we objected under all the pretrial
22 motions.

23 Just so we can be in compliance with the Rule 103,
24 we'd just ask for your ruling as to how to be amended.

25 THE COURT: Say it again. I'm sorry. What?

000612

1 MR. MAY: Yes, sir. Just to be -- just trying to be
2 in compliance with Rule 103, as far as rulings on evidence,
3 we're just wondering how the piece -- with the evidence
4 is coming in? I mean, under 404(b), which exception?

5 THE COURT: I overruled your objection.

6 MR. MAY: Thank you.

7 THE COURT: Bring the jury, please.

8 (WHEREUPON, the jury came into open court at
9 approximately 11:32 a.m.)

10 THE BAILIFF: The jury is all present, Your Honor.

11 THE COURT: All right. Solicitor, call your next
12 witness.

13 MS. McDUFFIE: The State calls Roxanne
14 Hollingsworth.

15 ROXANNE HOLLINGSWORTH,
16 after being duly sworn, testified as follows:

17 THE COURT: Have a seat in the witness stand, please.

18 THE WITNESS: Thank you.

19 THE CLERK: State your name for the record.

20 THE WITNESS: I didn't hear you. I'm sorry.

21 THE CLERK: State your name, please.

22 THE WITNESS: Roxanne Hollingsworth.

23 DIRECT EXAMINATION:

24 BY MS. McDUFFIE:

25 Q Goods morning, Ms. Hollingsworth. Where are you

1 currently employed?

2 A Bank of America.

3 Q And what are your duties with Bank of America?

4 A I am part of the legal audit processing team. I'm
5 a custodian of records for the bank.

6 Q And what does that mean to be a custodian of records
7 for Bank of America?

8 A I authenticate the accuracy of our records.

9 Q And I'm going to show you what's been marked as
10 State's Exhibit No. 8. Do you recognize that?

11 A Yes, ma'am.

12 Q What is State's number eight?

13 A These are bank records. They are the signature cards
14 and transactions.

15 Q And are those records maintained in the ordinary
16 course of business for Bank of America?

17 A Yes, they are.

18 MS. McDUFFIE: Your Honor, at this time we'd offer
19 State's Exhibit 8 into evidence.

20 THE COURT: Any objection?

21 MR. SHEALEY: Can I look at it first, please?

22 (Pause)

23 Your Honor, I don't have an objection except subject
24 to prior objections you've already ruled on.

25 THE COURT: All right.

000614

1 (WHEREUPON, State's Exhibit No. 8 was admitted into
2 evidence.)

3 BY MS. McDUFFIE:

4 Q Ms. Hollingsworth, using State's Exhibit 8, whose
5 records are those, or what records are those?

6 A Well, these are signature cards for Nikki M.
7 McPhatter.

8 Q And how many accounts did Ms. McPhatter have with the
9 Bank of America?

10 A I'm seeing that she has two accounts.

11 Q If we could flip to her checking account, please.

12 A Okay. The personal account?

13 Q Yes, ma'am.

14 A Okay. Oh, I'm sorry. She -- I want to change that.
15 She has three accounts, an expense account, a savings
16 account, and a personal checking account.

17 Q If we could start with the personal checking account,
18 please.

19 A Yes, ma'am. Okay.

20 Q On May 6, 2009, was there a withdrawal from that
21 account?

22 A Yes, there was.

23 Q And what was the amount of that withdrawal?

24 A \$503.

25 Q Were there also fees associated with that

000615

- 1 withdrawal?
- 2 A Yes, there were.
- 3 Q Please tell the jury what those fees associated with
- 4 that withdrawal were.
- 5 A First, there was a balance inquiry in the amount of
- 6 \$2.00.
- 7 Q That was the fee that Bank of America charged -- or
- 8 fee for using that A.T.M. service?
- 9 A I believe it's for the A.T.M. because it says
- 10 Gateway, and then there is an address.
- 11 Q And please tell the jury what is the address is.
- 12 A 8800 Farrow Road.
- 13 Q Does it give a city or state?
- 14 A It says Columbia, South Carolina.
- 15 Q And these records are maintained in the ordinary
- 16 course of Bank of America's business?
- 17 A Yes, ma'am.
- 18 Q Was there another fee associated with that
- 19 transaction?
- 20 A Yes, ma'am. There was a withdrawal fee in the amount
- 21 of \$2.00 also.
- 22 Q Going to her expense account --
- 23 A Yes, ma'am.
- 24 Q -- is that also associated with a checking account?
- 25 A Yes, it is.

000616

1 Q And what was the beginning balance on that account?

2 A The beginning balance as of 4/23/09, it was \$208.75.

3 Q And that was the balance as of her last statement?

4 A Yes.

5 Q And were there -- on May 6, 2009, were there any
6 transactions made on this account?

7 A Yes, there were.

8 Q Please tell the jury what transactions occurred on
9 May 6, 2009, on this account.

10 A There was a withdrawal in the amount of \$183.

11 Q And where was that withdrawal made?

12 A 8800 Farrow Road, Columbia, South Carolina.

13 Q And were there fees associated with that
14 withdrawal?

15 A Yes, ma'am.

16 Q Please tell the jury about those fees.

17 A Balance inquiry of \$2 and a withdrawal fee for \$2,
18 as well.

19 Q And if you could turn to Ms. McPhatter's savings
20 account.

21 A Okay.

22 Q Can you please tell the jury if there were any
23 transactions on that account on May 7th, 2009.

24 A Yes, there were.

25 Q And please the tell the jury what that transaction

000617

1 on May 7th, 2009 was.

2 A On May 7th, there was a balance inquiry fee.

3 Q And where was that balance inquiry done on May 7, 2009?

4 A That was done at a Wal-Mart at 1326 Bush River Road.

5 Q And was any money taken from her savings account on
6 that day?

7 A On the 6th?

8 Q On the 7th.

9 A On the 7th, I'm sorry. Give me a moment, please.

10 (Pause)

11 It doesn't look like it.

12 Q And so the only transaction on the 7th was the A.T.M.
13 fee of \$2 at the Wal-Mart on Bush River Road?

14 A Yes, ma'am.

15 Q And there were no withdrawals made on that account
16 on the 6th or the 7th?

17 A It does not look like it.

18 MS. McDUFFIE: Thank you very much. Beg the Court's
19 indulgence.

20 THE WITNESS: Thank you.

21 (Pause)

22 Your Honor, we have no further questions for this
23 witness.

24 THE COURT: Cross-examination?

25 MR. SHEALEY: Nothing for this witness, Judge.

1 THE COURT: All right. You may come down, ma'am.

2 THE WITNESS: Thank you.

3 THE COURT: May this witness be excused?

4 THE WITNESS: Thank you.

5 THE COURT: You're free to go, ma'am. Thank you very
6 much.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Next witness.

9 MS. McDUFFIE: The State would call Jeffrey Strohm.

10 THE BAILIFF: Raise your right hand. Place your left
11 hand on the Bible.

12 JEFFREY STROHM,
13 after being duly sworn, testified as follows:

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

16 THE WITNESS: Jeff Strohm, J-E-F-F, S-T-R-O-H-M, as
17 in Mary.

18 DIRECT EXAMINATION:

19 BY MS. McDUFFIE:

20 Q Good afternoon, Mr. Strohm.

21 A Good afternoon.

22 Q Where are you currently employed?

23 A Sprint Nextel Telecommunications.

24 Q And what are your duties with Sprint Nextel?

25 A I am a custodian of records.

000619

1 Q And please the jury what you do as a custodian of
2 records for Sprint Nextel at the present time.

3 A As a custodian of records, I am responsible for going
4 out and testifying, for all the records produced in
5 Sprint's legal compliance department. When I'm not on
6 the road testifying, I'm responsible for responding to
7 legal demands providing various types of phone records.

8 Q And are these phone records kept in the ordinary course
9 of Sprint Nextel's business?

10 A Yes.

11 Q I'm showing you what's been marked as State's
12 Exhibit 7. Do you recognize that?

13 A Yes, I do.

14 Q Can you please tell the jury what is contained in
15 State's Exhibit 7?

16 A This is subscriber information and a call detail
17 record report for phone number (803)476-2563.

18 Q Are those records, are they -- those records kept in
19 the ordinary course of business?

20 A Yes.

21 MS. McDUFFIE: Your Honor, at this time, we'd offer
22 State's Exhibit 7.

23 THE COURT: Any objection?

24 MR. MAY: No objection, Judge.

25 THE COURT: Without objection.

000620

1 (WHEREUPON, State's Exhibit No. 7 was admitted into
2 evidence.)

3 BY MS. McDUFFIE:

4 Q Can you please tell the jury the subscriber
5 information for phone number (803)476-2563?

6 A Sure. The name under the account is Theodore
7 Manning, and it is registered to an address of 1518 Jerome
8 Drive, Columbia, South Carolina.

9 Q And when was that account established?

10 A January 26th of 2007.

11 Q And if you could, please flip through the records
12 and tell the jury the dates these phone records cover.

13 A Sure. The call detail record reports encompasses a
14 date range of May 3rd of 2009 through May 10th of 2009.

15 Q And contained in those records, those records show
16 incoming and outgoing calls?

17 A Yes.

18 Q And what else in those records -- what other
19 information is contained within those records?

20 A The date and time of the particular phone calls, the
21 number, that (803)476-2563 was communicating with. You
22 mentioned the type of phone call, whether it was inbound
23 or outbound and it also indicates the cell phone tower
24 that 2563 is using at the beginning of the phone call and
25 at the end of the phone call.

000621

1 Q Okay. Explain to the jury what a cell phone tower
2 is.

3 A A cell phone tower is the physical mechanism that is
4 responsible for fielding the radio frequency waves that
5 come to and from our cell phones. It's what allows us
6 to communicate.

7 Q And please explain how a call hits onto a tower.

8 A What your cell phone is doing is constantly searching
9 for the cell phone tower that is emitting the strongest
10 signal.

11 There are different factors that go into deciphering
12 what tower is emitting the strongest signal, those
13 factors being proximity or how phone -- how far away you
14 are from a particular cell phone tower, the overall cell
15 phone tower's strength, other radio frequency activity
16 that the tower may be fielding at a given time, and your
17 line of sight to a cell phone tower.

18 Q And all of that is contained within those records?

19 A Yes.

20 MS. McDUFFIE: Thank you, Your Honor. Beg the
21 Court's indulgence.

22 (Pause)

23 No further questions of this witness, Your Honor.

24 THE COURT: Cross-examination?

25 MR. SHEALEY: We have nothing for this witness, sir.

1 THE COURT: All right. You may come down.

2 May this witness be excused?

3 MS. McDUFFIE: Yes, sir.

4 MR. SHEALEY: Without objection.

5 THE COURT: All right. Thank you very much.

6 MS. CAMPBELL: State calls Detective Flagg.

7 RON FLAGG,

8 after being duly sworn, testified as follows:

9 THE CLERK: Thank you. Have a seat in the witness
10 stands, please.

11 THE BAILIFF: Watch your step.

12 THE CLERK: State your name for the record.

13 THE WITNESS: Ron Flagg.

14 DIRECT EXAMINATION:

15 BY MS. CAMPBELL:

16 Q Detective Flagg, where are you employed?

17 A I'm employed by the Charlotte/Mecklenburg Police
18 Department.

19 Q And how long have you been in law enforcement, sir?

20 A Nearly twelve years.

21 Q Back in May of 2009, what unit were you assigned to?

22 A The Missing Persons Unit.

23 Q And can you tell this jury generally, as being
24 assigned to the Missing Persons Unit, what your duties
25 included?

000623

1 A Investigation of the -- into any of the circumstances
2 regarding the disappearance of persons. Basically, any
3 time somebody is not where they're expected to be, we
4 were -- we would be informed by friends, family, or
5 coworkers and then proceed to figure out where that
6 person might be and attempt to recover that person.

7 Q And were you actually assigned as the -- one of the
8 detectives assigned to the missing person's case
9 involving Nikki McPhatter?

10 A As far as the missing persons, I would be the lead
11 detective in that part of the case.

12 Q And when was she actually reported missing?

13 A She was reported missing on May 11th at 21:36 hours
14 or 9:36 p.m.

15 Q And on that day on May the 11th of 2009, what, if
16 anything, was done about her status as far as what your
17 department did?

18 A As in every missing person's case, we receive about
19 3,000 per year. The -- what would happen is the
20 officer -- in this case it was Officer Pickler -- he would
21 do what we always do.

22 He would collect basic information regarding the
23 circumstances, in other words, such things as has she
24 been to work, is she receiving phone calls, is she
25 communicating with relatives.

000624

1 How long has it been? In this case, it's four days
2 that she has not reported to work. He gives certain
3 information regarding associates, family members, phone
4 numbers.

5 Then what is done in every case the person is entered
6 into this N.C.I.C. That's the National Criminal and
7 Information Database so that should anyone encounter her,
8 they would be immediately alerted that she has been
9 reported missing.

10 Q And you actually became actively involved in this
11 case, I believe on the next day, on the 12th?

12 A That's correct. The morning of the 12th about 07:00
13 hours, I arrived at work. My sergeant, Sergeant Sloop,
14 discussed this case because it is unique for adults to
15 be gone from work without explanation. We immediately
16 began working on the case.

17 Q And in every case, I guess, you follow up with friends
18 and family as to whether or not this would be unusual
19 behavior?

20 A Absolutely. The first thing you want to do is
21 identify the lifestyle of the missing person to figure
22 out what do they normally do. Are they normally missing
23 from work? Will they take trips without notifying
24 somebody? Do they contact their relatives? Do they speak
25 to them often?

000625

1 Those types of questions are the things that you're
2 going to immediately try to figure out.

3 Q And you did that in this case?

4 A Absolutely I did. I began the morning of the 12th
5 and continued on that. Again, I just want to reiterate,
6 this person normally talked to people frequently during
7 the day, so it is that lack that causes us more concern
8 and to continue on.

9 Q And as far as her missing work and not reporting, was
10 that unusual?

11 A Each person I spoke to said exactly the same thing.

12 MR. MAY: Objection, Your Honor.

13 THE WITNESS: It's not normal for her to be missing --

14 MR. MAY: Objection --

15 THE WITNESS: -- from work.

16 MR. MAY: -- Your Honor.

17 THE COURT: Overruled.

18 MR. MAY: Pardon me, Your Honor, but it is also a
19 confrontation issue.

20 THE COURT: Approach the bench.

21 (WHEREUPON, a bench conference was held in the
22 presence, but not within the hearing of the jury.)

23 BY MS. CAMPBELL:

24 Q I'm sorry. You were interrupted before you had a
25 chance to finish. You can finish your answer.

1 A I would just repeat that each person I spoke to told
2 me the same piece of information and that is that she is
3 not normally missing from work.

4 Q On the morning of the 12th, did you personally make
5 any attempts to contact the victim in this case yourself?

6 A Actually, it -- that is one of the first things you
7 do, and the first line indicates in my narrative that I
8 called, and her mailbox was full.

9 Q Over the course of your investigation, were you ever
10 able to make contact with Nikki McPhatter in any way?

11 A No.

12 Q Then without going to specifically what was said, did
13 you also that day contact various family members, friends
14 of the victim, as well?

15 A Absolutely, the grandmother, the reporting person,
16 Akela Weaver, Lucy Phearson, Tooky Walker -- Sharon
17 Andrews, and then I attempted to contact -- I'm sorry,
18 Victoria Prince. I overlooked her, as well.

19 Q Okay.

20 A And then I attempted to contact Latoya, but I did not
21 have a phone number for her.

22 Q And when you say Latoya, what is Latoya's last name?

23 A I'm sorry, McPhatter.

24 Q And what is the relationship with the victim in
25 this case?

000627

- 1 A She is the sister.
- 2 Q That day on the 12th, did Latoya McPhatter, the
3 victim's sister, show up in Charlotte?
- 4 A Yes, she did, at about 22:00 hours.
- 5 Q And just for the record, she lived out of town?
- 6 A My -- I'm sorry, I --
- 7 Q She lives in another town in North Carolina.
- 8 A Yes, she does. I need to correct myself. I
9 apologize. At 21:00 hours, or nine o'clock p.m., I was
10 informed by Sergeant Faulkenberry of the north division
11 that she has arrived from Raleigh.
- 12 Q And where did she actually go in --
- 13 A She went to the victim's -- to the victim's residence.
- 14 Q About an hour later, were you actually able to make
15 contact with Ms. McPhatter, Latoya McPhatter, the
16 sister?
- 17 A That's correct.
- 18 Q Without relating what it was, but was she able to
19 relay any information to you?
- 20 A She gave me some information that she had discovered
21 from the home.
- 22 MR. MAY: Objection, Your Honor. It's hearsay and
23 confrontational.
- 24 THE COURT: All right. I'll sustain that.
- 25 BY MS. CAMPBELL:

000628

1 Q Without going into what it was, was she able to give
2 you some information?

3 A Yes, she was.

4 Q And were you aware of whether or not there had
5 actually been a search of the victim's home that day?

6 A I was.

7 Q And was there a search?

8 A It was done by --

9 MR. MAY: Objection, Your Honor. He's relying upon
10 hearsay information.

11 THE COURT: Overruled.

12 BY MS. CAMPBELL:

13 Q Thank you.

14 Was there a search?

15 A Officers on the scene reported to me that Latoya
16 had entered the home --

17 MR. MAY: Objection, Your Honor.

18 THE COURT: Overruled. Go ahead.

19 BY MS. CAMPBELL:

20 Q That day, did you also follow up on a vehicle -- or
21 more than one vehicle that may have belonged to the
22 victim in this case, contacting the Department of Motor
23 Vehicles?

24 A Oh, that's correct. We did some searches with
25 Mecklenburg County records for the property and also

1 D.M.V. records. That's actually the morning of the next
2 day at 08:00 hours.

3 Q I apologize, yes, the next day. Did you continue to
4 try to get information about the whereabouts of the
5 victim?

6 A Yes. We continued on the next day, on the 13th, with
7 moving into what would be the next phase of what you want
8 to do, which is start to look for information that you
9 might find in various financial institutions or other
10 institutions that may have information, such as
11 employers, this type of thing.

12 Q And did you actually contact people in regards to
13 that?

14 A As part of the first day's investigation, Mary
15 Miller called me back on the morning of the 13th and gave
16 me specific information related to Wachovia.

17 Q To Wachovia?

18 A That's correct.

19 Q And finally that day, did you also prepare any court
20 orders in reference to the victim's phone?

21 A Yes, I did.

22 Q And tell the jury why you wanted to get phone
23 records.

24 A Again, what we're looking for is phone calls coming
25 in and out. At this point in the investigation, we have

000630

1 no evidence of any criminal activity, so we're not able
2 to get specific locational information, but we can get
3 billing records, in and out phone calls to try to figure
4 out who was the last person that she spoke to, or the last
5 people that she spoke to.

6 Q And were you able to get a court order for her records?

7 A Yes, I was.

8 Q And was that forwarded to the appropriate --
9 what -- who did you send that to?

10 A To the police attorney's office and then ultimately
11 to this county.

12 Q Okay. Ultimately to whom?

13 A I don't seem to have the -- I believe it was Sprint,
14 but I'll need to check.

15 Q Okay. But that was done in this case?

16 A Yes.

17 Q Did you continue over the next several days to
18 follow-up on the court order trying to get information
19 about the victim?

20 A During this day, I -- before I leave this day, I
21 contacted several institutions attempting to locate
22 where she banked in addition to Wachovia. So actually,
23 from the 14th to the 17th, I was not in the office.

24 Q Uh-huh.

25 A Other detectives in the unit continued to follow-up

1 on those leads as those institutions called back. So I
2 returned on the 18th, and I am fully briefed and made
3 aware of the efforts that they had engaged in during the
4 time.

5 Q On the 18th, did you continue to follow-up as far as
6 contacting people that might have information about her
7 whereabouts?

8 A Since I had been out of the office, my first thing
9 that I did was begin to call -- to return phone calls and
10 to contact the people involved to make sure that the victim
11 had not made contact with them.

12 Q And without saying what they said, did you do that
13 in this case?

14 A Yes, I did. Do you wish me to read their names?

15 Q Yes.

16 A Okay. Shirley Concurrence or Currence.

17 Q Uh-huh.

18 A Latoya McPhatter, Everett Andrews, the uncle of the
19 victim, and Ms. Weaver, the reporting person; Celine
20 Weathers, and then Mekenda Bradley.

21 Q Mekenda Bradley?

22 A Correct.

23 Q During that time period, did you also -- been provided
24 with information about another possible banking
25 institution of the victim?

000632

1 A That's correct. Again, in my absence, we had
2 received information to the unit that there were these
3 attempted A.T.M. transactions at the Navy Federal Credit
4 Union here in Columbia, South Carolina.

5 Q The Navy Federal Credit Union?

6 A Yes.

7 Q And during the time period when you were gone, as far
8 as the investigation, had the investigation expanded
9 beyond just Charlotte, the Charlotte area?

10 A It -- and again, because I'm not allowed to comment
11 on the context of the various conversations, but if I may
12 just mention it, several people mentioned that she had
13 planned to travel to Columbia.

14 MR. MAY: Objection, Your Honor.

15 THE COURT: Overruled.

16 BY MS. CAMPBELL:

17 Q At that point, did you then feel it prudent to
18 forward a missing person's alert flier to the Columbia
19 Police Department?

20 A Actually, that was done on May 15th, on Friday, in
21 my absence.

22 Q Friday.

23 A Detective Tuttle filed, contacted our public
24 information office and had it forwarded to Columbia,
25 South Carolina.

000633

1 Q I'm going to turn your attention to around 16:35.

2 Did y'all have a meeting in the airport?

3 A Yes, we did.

4 Q And what was the purpose of that meeting that
5 evening?

6 A There were numerous coworkers, friends, who wanted
7 information about the case and who were willing to share
8 their information about the case.

9 Q And who actually accompanied you to the meeting at
10 U.S. Air?

11 A Sergeant Slooth.

12 Q And who all did you meet with that day, do you remember?

13 A It was 20 people. I don't have the full list.

14 Q During the course of that meeting, without saying
15 what was told to you, did you also continue to gather
16 information about the victim and whether anyone had seen
17 her?

18 A Absolutely.

19 Q The next day, did you make contact with the Richland
20 County Sheriff's Department?

21 A (There was no response).

22 Q Without going into anything, for the record, you
23 were continuing to follow-up with any other possible leads
24 or anything of that nature?

25 A Absolutely. We were continuing to receive Crime

1 Stoppers tips and such things. I was working on those
2 issues, as well as pursuing the other information coming
3 in. The first contact that I make officially with them
4 is on the 19th --

5 Q Yes, sir.

6 A -- with Richland County. I spoke to a Sergeant Frick
7 and asked him to check for any vehicle towing reports.

8 Q And why were you doing that?

9 A Because several people told me she had traveled to
10 Columbia.

11 Q Okay. That day, did you also try to obtain a court
12 order for some financial records?

13 A Yeah. The next step was to receive the corrected
14 finalized version of the court order and motion to be
15 transmitted to Navy Federal Credit Union for the A.T.M.
16 transaction at 8800 Farrow Road, I believe, in Columbia
17 South Carolina.

18 Q And specifically the 8800 Farrow Road A.T.M.?

19 A Yes.

20 Q You were trying to get records from those?

21 A Correct.

22 Q And what banking institutions of the victims, were
23 you trying to get records from?

24 A Wachovia.

25 Q During -- did you also meet with an attorney for

000635

1 the -- the police attorney that day?

2 A Yes, I did.

3 Q And as a result of her conversation with you, did
4 you seek some additional information about the phone
5 records?

6 A Yes, she did -- and I must correct myself. It's
7 Verizon wireless.

8 Q Verizon.

9 A And what she tells me at this point is that since we
10 have --

11 MR. MAY: Objection, Your Honor.

12 THE COURT: I sustain that.

13 BY MS. CAMPBELL:

14 Q As a result of your conversation with her, what did
15 you do?

16 A I made a new search warrant to obtain the
17 geographical information of where the individual might
18 have been.

19 Q Did you transmit any court orders to any other
20 financial institutions that day for the victim's
21 records?

22 A No. The -- no.

23 Q Did you make contact with anyone at the Navy Federal
24 Credit Union?

25 A Yeah, the legal department, a Nicole Phillips of the

000636

1 Navy Federal Credit Union.

2 Q And what were you asking Ms. Phillips for?

3 A Just confirmation that the -- that she had the photo
4 evidence to show that there were two attempts on May 6th
5 at 18:52 and 18:53 hours.

6 Q And that would have been on the victim's account?

7 A That's correct.

8 Q At the Navy Federal Credit Union?

9 A That's correct.

10 Q Were those successful attempts on May 6th?

11 A Those were unsuccessful.

12 Q And those would have been two separate accounts?

13 A Yes.

14 Q Did you then make contact with Wachovia?

15 A Yes, I did.

16 Q And what information were you trying to get from
17 Wachovia?

18 A The actual photos of the transactions.

19 Q And that would be the Wachovia Bank located
20 where -- the A.T.M. located where, excuse me.

21 A 8800 Farrow Road, Columbia, South Carolina.

22 Q Did you then contact Verizon wireless to get -- to
23 see if they could get a location on the victim's phone?

24 A I did.

25 Q And were they able to give you any useful

000637

1 information, or were they able to deliver?

2 A No. They advised that because the phone was off, they
3 could not try to obtain it or determine its exact location.

4 MR. MAY: Objection, Your Honor.

5 THE COURT: Overruled.

6 MR. MAY: Move to strike.

7 THE COURT: Overruled.

8 BY MS. CAMPBELL:

9 Q Thank you, Your Honor.

10 Did you then make contact, again, following up with
11 Richland County Sheriff's Department?

12 A I did.

13 Q And who did you make contact with?

14 A I then went and contacted Sergeant Frick.

15 Q Was he able to give you any information about the
16 vehicle?

17 A No, but he directed me to Detective Terry Downey
18 who investigates missing persons and told me I should
19 contact him directly.

20 Q And did you make contact with Mr. Downey or forward
21 some information to him?

22 A I sent him one of our missing person's flier and
23 contacted him by telephone.

24 Q And he is with the Richland County Sheriff's
25 Department here in Columbia, South Carolina?

000638

- 1 A It's my understanding, yes.
- 2 Q That day -- and this is what date are we on now?
- 3 A We are still on the 19th.
- 4 Q The 19th, did you make contact with Wachovia again?
- 5 A I did.
- 6 Q And were you advised whether or not they were able
- 7 to secure some video from the A.T.M. transactions on the
- 8 evening of May 6th?
- 9 A I was.
- 10 Q And was that information forwarded to you?
- 11 A I'm not sure I'm going to be allowed to answer. It
- 12 would be her telling me what she told me about the phone.
- 13 Q Okay. Ultimately, did you receive a video of the
- 14 A.T.M. transaction from the Wachovia on Farrow Road?
- 15 A I did.
- 16 Q And when did you receive that information?
- 17 A Not until the 20th.
- 18 Q The next day?
- 19 A That's correct.
- 20 Q But they're the inquiry you were making on the 19th
- 21 from Wachovia?
- 22 A Actually, I wanted to know what was on the video before
- 23 she sent it to me.
- 24 Q Without saying what it was, did she relay that
- 25 information to you?

000639

1 A Yes, she did.

2 Q Did that affect this investigation?

3 A Yes, it did.

4 Q And how did that affect this investigation?

5 A She said that the tape contained --

6 MR. MAY: Objection, Your Honor.

7 BY MS. CAMPBELL:

8 Q Without saying what she said, did you review the video
9 the next day?

10 A Yes, I did.

11 Q And that information would have been related to you
12 the day before, on the 19th. You received it on the 20th?

13 A Yes.

14 Q When you reviewed the video, did it confirm what
15 information had been relayed to you by the Wachovia people
16 when they reviewed the video?

17 A It did.

18 Q And why was that information -- what did you observe
19 when you saw the video?

20 A That it was not the victim using -- attempting to use
21 her -- it was not the victim at the A.T.M. attempting to
22 make the transactions.

23 Q As a result of getting that information on the
24 evening of the 19th, which was then confirmed when you
25 saw the video on the 20th, did you all think it prudent

1 to get a search warrant?

2 A Yes, we did.

3 Q And what were you getting a search warrant for?

4 A We were getting a search warrant for the crime of
5 murder.

6 Q And whose residence were you attempting to search
7 that evening?

8 A The victim's.

9 Q And what kind of evidence were y'all looking for?

10 A Any evidence related to her disappearance and
11 possible location of the suspect related to the case.

12 Q Were you able to secure a warrant, a search warrant
13 for that purpose that evening on the 19th?

14 A We were.

15 Q And it was signed off on by a neutral magistrate?

16 A It was.

17 Q And did you execute that search warrant that
18 evening?

19 A We did.

20 Q And who all participated in the execution of the
21 search warrant, just generally?

22 A Several detectives from the homicide unit, as well
23 as Detective Faulkner from the Missing Person's Unit,
24 Sergeant Sloop, Sergeant Magnum from the homicide unit.
25 At this point, we were both working jointly together.

000641

1 Q And when you say, "We're both working jointly," what
2 units are working jointly together?

3 A The homicide unit and the missing person's unit.

4 Q So they were brought in on the 19th as a result of
5 your conversation with Wachovia and what they --

6 A Exactly.

7 Q What time was it actually that y'all got there and
8 started searching her house for signs of murder?

9 A 23:05 hours or 11:05 p.m.

10 Q And was Sergeant Sloop also there?

11 A Yes, he was.

12 Q And other officers from the homicide unit?

13 A As I said, yes.

14 Q And did that include Sergeant Magnum and her team?

15 A It did, as well as crime scene personnel to
16 photograph the residence, as per our standard policy.

17 Q Okay. So the residence was photographed, and there
18 was a search --

19 A Correct.

20 MR. MAY: Your Honor, I object. She has been leading
21 for the last ten minutes.

22 THE COURT: You haven't said anything.

23 Don't lead your witness.

24 BY MS. CAMPBELL:

25 Q Yes, sir.

1 As a result of your search, did you develop anything
2 significant to this investigation at the victim's house,
3 any additional leads?

4 A We searched -- we seized various computers. Those
5 items were later searched.

6 Q That evening, though, at the search of the residence,
7 did you -- you participated in the search?

8 A I did.

9 Q And you were one of the lead investigators of the
10 missing person's case?

11 MR. MAY: Objection, Your Honor.

12 MS. CAMPBELL: I don't know how else to say that, Your
13 Honor.

14 MR. MAY: She is testifying.

15 THE COURT: Ask the question.

16 BY MS. CAMPBELL:

17 Q What was your role?

18 A I searched one of the rooms in the home. That was
19 specifically the garage area and a car that was inside
20 the garage.

21 Q What were the results of your search, as far as
22 evidence of the murder?

23 A I did not find anything significant in either of
24 those areas.

25 Q Did anyone else in the search find anything

1 significant?

2 A I believe the homicide detectives secured some
3 evidence. I am not able to testify to what they found.

4 Q But as far as being the lead -- you were the lead
5 investigator at that point?

6 A At this point, we were working jointly.

7 Q Okay.

8 A So I...

9 Q Are you aware of anything of significance found in
10 her home?

11 A There were some items, I believe taken from the
12 second floor bedroom that may have been important.

13 Q The next day -- I believe you testified on the 20th
14 you received the video?

15 A That's correct.

16 Q And at that point, was this entire investigation
17 turned over to your homicide unit, the Charlotte/
18 Mecklenburg Police Department?

19 A Shortly thereafter, we -- shortly later on that day,
20 that's correct.

21 Q Okay. And once you turned this case over to them,
22 they took over?

23 A That's correct.

24 Q And you didn't have any further involvement.

25 A I did not other than forward any new emails or

000644

1 anything I had received.

2 MS. CAMPBELL: Thank you, sir. I don't have anything
3 further.

4 THE COURT: Cross-examination?

5 MR. MAY: Beg the Court's indulgence.

6 CROSS-EXAMINATION:

7 BY MR. MAY:

8 Q How are you doing, Detective Flagg?

9 A Sir?

10 Q How are you doing, sir?

11 A Very well.

12 Q Just have a real brief question. When you all are
13 interviewing people, in -- is it normal practice to tape
14 record conversations with potential witnesses?

15 A I don't conduct criminal interviews.

16 Q All right.

17 A So normally not.

18 Q All right. So you don't conduct interviews. Are
19 they the --

20 A I don't normally conduct criminal interviews.

21 Q Okay.

22 A So no, I do not usually do that.

23 MR. MAY: Usually do that, all right. Beg the
24 Court's indulgence.

25 (Pause)

000645

1 No other questions, Your Honor?

2 THE COURT: Thank you. Any redirect?

3 MS. CAMPBELL: No, sir.

4 THE COURT: All right. You may come down. May this
5 witness be excused?

6 MS. CAMPBELL: Yes, thank you.

7 THE COURT: Without objection.

8 MS. CAMPBELL: The State would call Sergeant Sloop.

9 MICHAEL SLOOP,

10 after being duly sworn, testified as follows:

11 THE CLERK: State your name for the record, please.

12 THE WITNESS: Michael Sloop.

13 DIRECT EXAMINATION:

14 BY MS. CAMPBELL:

15 Q Sergeant Sloop, where are you employed?

16 A With the Charlotte/Mecklenburg Police Department.

17 Q How long have you worked there, sir?

18 A A little over 20 years.

19 Q What do your duties include at the Charlotte/
20 Mecklenburg Police Department?

21 A I'm currently assigned to internal affairs.

22 Q Back in May of 2009, were you assigned to a different
23 unit?

24 A I was.

25 Q And who -- what unit were you -- you were the sergeant

000646

1 of what unit?

2 A The missing persons unit.

3 Q And was one of the investigators in the missing
4 persons unit a Detective Flagg?

5 A It was.

6 Q As a sergeant over that unit, what did your duties
7 include?

8 A I assigned the cases to the detectives for follow-up
9 investigation, provided guidance, reviewed supplements,
10 just supervised all aspects of their investigations.

11 Q Okay. And at times would you actually become a little
12 bit involved or somewhat involved in the investigations
13 themselves?

14 A I would.

15 Q If it's appropriate.

16 A Yes.

17 Q I want to turn your attention back to May 11th of
18 2009. Were you aware -- or did you actually assign
19 Detective Flagg a case involving a missing person, Nikki
20 McPhatter?

21 A I believe May 11th was the day the report was...

22 Q Made --

23 A Made. It would have been assigned the following
24 morning.

25 Q That's right. On May 12th he would have actually

000647

- 1 been assigned to it?
- 2 A Correct.
- 3 Q Generally, in a missing person's case, what are
4 the first things that are done -- that were done in this
5 case when a person is reported missing?
- 6 A They would -- you know, they would attempt to contact
7 the person through the numbers listed. They would try
8 to contact the person that filed the report. There's a
9 lot of times that the person actually comes back before
10 the report is even assigned.
- 11 Q In this case, as a supervisor, as far as you're
12 aware, are all the appropriate attempts to contact the
13 victim or whoever else were done in this case?
- 14 A Correct.
- 15 Q As far as your participation in this case, on May the
16 18th, did you have an occasion to go to the airport and
17 meet with the people at U.S. Air?
- 18 A I'd have to refer to my notes as far as the date.
- 19 Q Yeah. Do you have your -- do you want your notes?
- 20 A Please.
- 21 Q As far as the date.
- 22 A That's correct, May 18th.
- 23 Q May the 18th. And did -- who did you go with?
- 24 A Detective Flagg.
- 25 Q And without going into -- what was the purpose in

000648

1 y'all meeting there that day?

2 A If I'm not mistaken, he was contacted by one of the
3 employees there and was asked to come out and speak with
4 her and some other employees.

5 Q And did y'all speak with a number of employees that
6 day?

7 A We did.

8 Q And were they able to give you some information about
9 the victim's habits and things of that nature?

10 A They did. Pretty much -- I believe that day,
11 Detective Flagg obtained contact information from
12 everybody that was out there so we could follow-up with
13 them individually.

14 Q And I want to turn your attention to May 19th, 2009.
15 You actually, I believe, left work that day, but some
16 information came in that caused you to come back in to
17 work?

18 A Correct.

19 Q And what was that information?

20 A That two people were observed attempting to get
21 money with Ms. McPhatter's bank cards.

22 Q And are you aware of where that A.T.M. was located?

23 A I believe it was on Farrow Road, at a location on
24 Farrow Road.

25 Q In what city?

000649

- 1 A Columbia.
- 2 Q Here in Columbia?
- 3 A Yes.
- 4 Q As a result of the information that you were provided,
5 did y'all pursue a search warrant that evening?
- 6 A We did.
- 7 Q And what was that search warrant for, sir?
- 8 A Her residence.
- 9 Q And did you actually participate in the search of
10 that residence?
- 11 A I did.
- 12 Q I want to show you what's been marked -- you were
13 actually there that evening?
- 14 A I'm sorry?
- 15 Q You were actually there that evening?
- 16 A Yes.
- 17 Q Did you also do a rough diagram that was ultimately
18 translated into this diagram of the house?
- 19 A Yes.
- 20 Q The material? I'm going to show you what's been
21 marked as State's Exhibit numbers 61 and 62. Do you
22 recognize these?
- 23 A I do.
- 24 Q And do those fairly and accurately reflect, not to
25 scale, the interior of the victim's house in Charlotte,

000650

1 North Carolina?

2 A Correct; correct, not to scale, but they do.

3 MS. CAMPBELL: Your Honor, at this time, we'd offer
4 61 and 62 into evidence.

5 THE COURT: Any objection?

6 MR. SHEALEY: Without objection.

7 (WHEREUPON, State's Exhibits Nos. 61, 62 were
8 admitted into evidence.)

9 BY MS. CAMPBELL:

10 Q State's Exhibit Number 61, can you tell the jury just
11 generally what this shows?

12 A That's the ground floor of Ms. McPhatter's home in
13 Charlotte.

14 Q Okay. And this is the general layout of that?

15 A It is, yes.

16 Q And then State's Exhibit Number 62 shows what?

17 A That's the top floor, the second floor --

18 Q Okay.

19 A -- the same residence.

20 Q In executing the search warrant that evening, were
21 there any other units within the Charlotte/Mecklenburg
22 Police Department that joined in y'all's search that
23 night?

24 A There were.

25 Q And what unit was that?

000651

1 A The homicide unit, crime scene. I believe there was
2 a patrol officer from the division who was also there.

3 Q The next day, was this investigation turned over to
4 another unit in Charlotte?

5 A Yes.

6 Q And what unit was that?

7 A The homicide unit.

8 Q Why was that, sir?

9 A Generally speaking, a missing person's unit works
10 closely with homicide on any cases that look like there
11 could be suspicious circumstances, foul play involved.
12 We met with them on the night of the 19th and briefed them
13 on the case.

14 Q Yes, sir.

15 A And it was ultimately turned over to them based on
16 the totality of all the circumstances involved.

17 Q And when did you actually -- you received the
18 information about the video on the 19th. When did you
19 actually see the video itself from the A.T.M. at the
20 Wachovia A.T.M. in Columbia?

21 A I believe Detective Flagg received that.

22 Q And that would have been the next day?

23 A I'm not sure.

24 MS. CAMPBELL: I don't have anything further.

25 THE COURT: Cross-examination?

000652

1 MR. SHEALEY: I don't have any questions for this
2 witness, Judge. If he could be excused.

3 THE COURT: You may come down, sir. This witness may
4 be excused without objection.

5 You're free to go. Thank you very much.

6 THE BAILIFF: Watch your step.

7 THE COURT: Next witness?

8 MS. McDUFFIE: Your Honor, may we approach?

9 THE COURT: Sure.

10 (WHEREUPON, a bench conference was held in the
11 presence, but not within the hearing of the jury.)

12 THE COURT: All right. Ladies and gentlemen of the
13 jury, the counsel tells me the next witness is likely to
14 be lengthy, so I think it would be the best use of our
15 time to go ahead and take our lunch break at this time.

16 I'm going to ask you to be back in the jury room at
17 15 -- 1:45, a quarter till 2:00. That will give you a
18 little over an hour for lunch. Again, don't discuss the
19 case among yourselves when you return to the jury room
20 or with anyone else over the lunch hour.

21 Have a pleasant lunch, and we'll see you at 1:45.
22 Thank you very much. We'll continue the trial at that
23 time.

24 (WHEREUPON, the jury left open court at approximately
25 12:21 p.m.)

000653

1 MS. PRINGLE: Your Honor, may we approach just for
2 a second?

3 (WHEREUPON, there was a bench conference.)

4 THE COURT: All right. I'm going to ask you to turn
5 the cameras off during the lunch break.

6 Thank you.

7 (WHEREUPON, a lunch break was taken.)

8 (WHEREUPON, State's Exhibits 63 - 132 were marked
9 for identification only.)

10 THE COURT: Call your witness.

11 MS. CAMPBELL: The State would call David Collins.

12 DAVID COLLINS,

13 after being duly sworn, testified as follows:

14 THE CLERK: Have a seat in the witness stand.

15 THE BAILIFF: Do you want me to get the jury?

16 THE COURT: No.

17 DIRECT EXAMINATION:

18 BY MS. CAMPBELL:

19 Q Investigator Collins, where are you employed?

20 A I'm employed with the Richland County Sheriff's
21 Department.

22 Q What do you do there, sir?

23 A I am a firearms and tool marks examiner in the
24 forensics laboratory.

25 Q For purposes of this hearing, do I need to go into

000654

1 his qualifications?

2 MR. SHEALEY: I... I...

3 MS. CAMPBELL: Just to expedite things?

4 MR. SHEALEY: No.

5 MR. MAY: No.

6 THE COURT: Okay.

7 BY MS. CAMPBELL:

8 Q Okay. Did you receive certain evidence in this --

9 THE COURT: You said no or not sure?

10 MR. SHEALEY: I said I wasn't sure why we were doing
11 the motion.

12 THE COURT: Well, because you made a motion in
13 limine to exclude reference to other crimes, wrongs, or
14 specifically any reference to an additional gun found.

15 My notes on that motion say, "Subject to more
16 foundation," but I am probably going to grant it. They're
17 going to challenge that. Here you go.

18 BY MS. CAMPBELL:

19 Q Thank you, Your Honor.

20 Did you receive certain items of evidence in this
21 case, including some projectiles collected from the
22 victim's head --

23 A I did.

24 Q -- at autopsy. And did you have an occasion to examine
25 those items?

1 A I did.

2 Q In addition to that, did you also receive at least
3 one gun in this case?

4 A I did.

5 Q And what type of gun was that, sir?

6 A I received a Highpoint nine millimeter
7 semiautomatic caliber pistol. If I can refer to my notes
8 for a moment.

9 THE COURT: Nine millimeter semiautomatic.

10 BY MS. CAMPBELL:

11 Q And you also received, I believe, some additional
12 cartridges and ammunition in this case, but for purposes
13 of this hearing, we're focusing on those two items, okay?

14 A Yes.

15 Q The fired bullet jacket fragments, tell this judge
16 what, if anything, you were able to determine from your
17 examination of that, that was collected at the autopsy?

18 A My physical examination of that projectile fragment
19 revealed that it was a fired jacket fragment consistent
20 with having come from or originating from a .38 caliber
21 projectile.

22 By .38 caliber, that could include any number of
23 specific calibers to include nine millimeter Luger, .380
24 auto, et cetera.

25 Further examination of that projectile fragment

000656

1 revealed that it had been fired through a barrel that had
2 nine rifling grooves with a left-hand twist.

3 Through my experience and training and through
4 comparison of that data with information provided by a
5 database that we use in the laboratory, I was able to
6 determine that the fragment was most consistent with
7 having been fired from a nine millimeter Luger or .380
8 auto caliber Highpoint brand firearm.

9 THE COURT: All right. Say that again.

10 THE WITNESS: The number of rifling grooves on the
11 projectile and their direction of twist, which was nine
12 and left, were specifically most consistent with having
13 come from a Highpoint brand firearm of nine millimeter
14 Luger or a .380 auto caliber.

15 Q And the gun that was actually provided to you, it's
16 been marked as...

17 State's Exhibit 69?

18 THE COURT REPORTER: Yes.

19 BY MS. CAMPBELL:

20 Q Okay. Is that the actual weapon that was provided
21 in addition to the...

22 A Yes. This is the firearm that I examined. It has
23 markings I placed on it in the laboratory so that I can
24 identify it.

25 Q And you just mentioned that this would be most

000657

1 consistent with a -- fired from a Highpoint brand
2 firearm or a nine millimeter Luger or a .380 auto caliber?

3 A That is correct.

4 Q And what type of gun was this that was provided to
5 you in State's Exhibit Number 69?

6 A It's a Highpoint brand firearm in nine millimeter
7 Luger caliber.

8 Q Were you able to make any conclusions as to whether
9 or not it fired the actual projectile that was recovered
10 from the victim's head?

11 A I was able to reach a conclusion. I test fired this
12 firearm. I determined through microscopic comparisons
13 that it was inconclusive.

14 The damaged condition of the projectile fragment and
15 my inability to determine what brand or type of
16 ammunition that projectile came from precluded me from
17 making an identification in this particular case.

18 However, the -- I was able to determine that the land
19 and grooves dimensions on the evidence projectile were
20 similar to those produced by the test firings in this
21 particular firearm.

22 Q So in your opinion, were you able to exclude -- well,
23 let me put it his way: Could this have been fired by this
24 weapon, or were you able to exclude it?

25 A I was not able to exclude this firearm as a possible

1 source for the projectile in question.

2 Q And, of course, with the projectile in question, as
3 far as the -- it was a .38 caliber type?

4 A Well, a .38 caliber, I'm referring to the general
5 diameter of the projectile. The .38 caliber here would
6 refer to a projectile of approximately .357 inches in
7 diameter, which is the same diameter projectile as fired
8 by a .380 auto, a .357 Magnum, .38 Special, et cetera.

9 That in itself is a fairly broad range of potential
10 firearms. However, when you look at the rifling
11 characteristics of nine grooves with a left twist, and
12 in doing a search on all .38 caliber firearms that would
13 have those rifling characteristics, the only firearms that
14 are produced on that list are Highpoint brand firearms
15 in .380 auto or nine millimeter Luger.

16 Q And State's Exhibit number 16 fits in that category?

17 A It fits in that list, yes.

18 Q But it's a Highpoint?

19 A Yes.

20 Q And what caliber is it?

21 A Nine millimeter caliber Luger.

22 Q And in addition to that, were you also asked about
23 another -- I think you said a .380?

24 A I did not have a .380 auto caliber firearm submitted
25 to me in the laboratory. I did examine briefly some

1 documentation that documented the sale or purchase of
2 a .380 auto caliber Highpoint firearm.

3 Q And were you able to do any research or make any
4 determination as to whether any documentation that went
5 with the gun that wasn't found could have fired this
6 projectile that was provided to you?

7 A Yes. What I did was I actually contacted the
8 manufacturer of the firearm, gave him the serial number
9 and asked him to provide me the information as to what
10 the rifling characteristics of that firearm would have
11 been when it left the factory, and it also would have been
12 a nine left, rifle to barrel.

13 Q So were you able to eliminate it as the possible gun
14 that shot, or would it be included in that list?

15 A It would be included in that list. I could not
16 eliminate it until or unless I had the opportunity to
17 actually have that firearm and test fire it.

18 Q So either of the guns that were brought up in this
19 question, the .380 Highpoint or the nine millimeter
20 Highpoint, could not be eliminated as having shot this
21 bullet?

22 A I could not eliminate either one of them.

23 Q And, in fact, the rifling characteristics, the nine
24 grooves I believe you referred to, were those consistent
25 with having been fired with these two guns?

000660

1 A It's the same --

2 Q Either one of these guns --

3 A -- rifling characteristics of these -- of either of
4 these two firearms or other Highpoint brand firearms
5 manufactured in the same time period.

6 Q And why were you not able to make a more definitive
7 answer as far as in your comparison of the actual
8 projectile that was recovered to this gun?

9 A The projectile was badly damaged. It had been
10 subjected to fire, to heat. It had been exposed to body
11 fluids for an extended period of time, and that tends to
12 render the projectile less suitable for identification
13 purposes, although there were some characteristics
14 present.

15 That, in addition to -- in addition to that, we try
16 to, in any case possible, duplicate the type of ammunition
17 that was used in the case, as different brands of ammunition
18 may mark differently when fired through a barrel.

19 As I was unable to determine exactly what brand of
20 firearm -- excuse me, of ammunition the projectile
21 originated from, I was unwilling to eliminate the nine
22 millimeter Luger caliber firearm that I received.

23 Q So in addition, either gun could have possibly fired
24 this?

25 A I could not. I could not eliminate either as

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1 possible source for this projectile.

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

4 THE COURT: Briefly?

5 MR. MAY: Sure.

6 CROSS-EXAMINATION:

7 BY MR. MAY:

8 Q All right. Nine millimeter -- a nine millimeter and
9 a .380 are -- pretty much fire the same projectile,
10 correct?

11 A Approximately the same diameter --

12 Q Yeah.

13 A -- but they will be slightly different sizes.

14 Q Slightly different.

15 Now, we're talking about two Highpoint pistols here
16 that are in question. We have the Highpoint .380 auto
17 and a nine millimeter Highpoint. They have the same nine
18 grooves with the left twist, correct?

19 A That is correct.

20 MR. MAY: All right.

21 THE COURT: Just -- let me ask you. What is this?

22 MR. MAY: This is nine millimeter Highpoint.

23 The --

24 THE COURT: Where is the other one you're talking
25 about?

000662

1 MR. MAY: It -- the codefendant got rid of it.

2 THE COURT: Okay. Everybody is talking about two
3 guns, and I only see one.

4 BY MR. MAY:

5 Q Correct.

6 All right. So it's inconclusive. So pretty much,
7 there are a lot of Highpoint nine millimeters and .380s.
8 These are cheap guns; correct?

9 A They're very inexpensive.

10 Q They're cheap guns, and they're the modern day
11 Saturday night special.

12 A I would hesitate to give it that characterization,
13 but there are a lot of them around.

14 Q There are a lot of them around, so pretty much any
15 Highpoint nine millimeter or a .380 would have -- could
16 not be excluded from this because of the condition of the
17 bullet?

18 A There are some earlier manufacturing ones I could
19 exclude based on the period of manufacture, because the
20 manufacture did change their rifling characteristics.

21 Q Okay.

22 A But --

23 Q But in recent memory.

24 A Recently, virtually all of the Highpoints made in
25 nine millimeter Luger or .380 auto would have the same

000663

1 rifling characteristics.

2 MR. MAY: All right. Thank you.

3 THE COURT: All right.

4 MS. CAMPBELL: Nothing further of this witness, Your
5 Honor.

6 THE COURT: All right. Thank you very much. You may
7 come down.

8 MS. CAMPBELL: For the record, Your Honor, during the
9 search of the defendant's house, there was paperwork
10 found where the defendant purchased each one of these
11 guns.

12 We were able to recover this gun in the search also.
13 However, we got the paperwork from the .380, which is the
14 gun he said he shot her with in his confession. The .380
15 itself was never recovered, just for clarification.

16 THE COURT: So he bought this gun and the other gun?

17 MS. CAMPBELL: Yes, sir. And we found the paperwork
18 where he bought both of those guns. We actually
19 recovered this gun, but we didn't recover the .380, which
20 is the gun in his statement that he says he used.

21 THE COURT: Okay. Motion?

22 MR. MAY: Pardon?

23 THE COURT: What's your motion?

24 MR. MAY: Your Honor, we move to exclude this gun.
25 In his own statement, he says that he used the .380

000664

1 Highpoint.

2 There's nothing in -- and the statement is coming
3 in. This is merely cumulative evidence to show that he
4 is some kind of -- I guess, a gun person or prone to violent
5 tendencies. As a result, there is really no purpose,
6 absolutely no purpose, but the fact that this could be
7 one of the guns.

8 As Collins from the Richland County Sheriff's
9 Department just testified to, there are a lot of guns with
10 these characteristics.

11 We know which gun it was because the defendant
12 says so, and that statement is coming in. Therefore, there
13 is absolutely no purpose to admit this.

14 THE COURT: All right. What's the State's position?

15 MS. CAMPBELL: Your Honor, our position is it is
16 relevant in this. It cannot be excluded as the gun that
17 actually shot her and killed her. It's in his possession.
18 They searched --

19 THE COURT: Well, he says that there are hundreds of
20 guns that could have shot her and killed her.

21 MS. CAMPBELL: Yes, sir, but the fact that he had
22 access to one or more would be relevant. And the fact
23 that this could not be eliminated as the gun that shot
24 her is also relevant.

25 We don't have to rely just on what the defendant says

000665

1 as to which gun he used.

2 THE COURT: I understand that. I'm not basing any
3 ruling on what he says or might say, but it does give me
4 concern that these results are inconclusive and you seek
5 to introduce a gun that even the expert can't -- because
6 of the badly damaged slug, he can't tie it to anything
7 other than the lands and grooves.

8 MS. CAMPBELL: I can eliminate that. I can put him
9 back up to eliminate 99 percent of the guns in the world.

10 THE COURT: Oh, sounds like John Caton.

11 MS. CAMPBELL: I'm just saying, Your Honor. I mean,
12 there are a number -- there are a large number of these
13 guns around, but this is the gun that happens to be in
14 this defendant's possession that we can't eliminate as
15 being the one.

16 Because of the damage to the bullet, which is not
17 unusual, Your Honor, we aren't going to be able to tie
18 it to any specific gun.

19 THE COURT: Well, let's put it this way --

20 MS. CAMPBELL: The caliber of the bullet and the
21 grooves both tie it to this gun.

22 MR. MAY: The defense stipulates it's a .380.

23 THE COURT: Just a minute.

24 (Pause)

25 All right. Where was the gun found?

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1 MS. CAMPBELL: The gun was found in the defendant's
2 car at his residence.

3 THE COURT: By whom?

4 MS. CAMPBELL: By Investigator -- Detective Fitch
5 from Charlotte.

6 THE COURT: All right. What's the objection to --
7 him finding the gun, this being the gun he found?

8 MR. MAY: Pardon me? I'm sorry? Can you rephrase
9 that?

10 THE COURT: Is there an objection to the State
11 introducing this gun as the gun that was found at the
12 defendant's residence?

13 MR. MAY: Yes, sir.

14 THE COURT: What is that?

15 MR. MAY: The first objection, of course, has
16 already been -- you've already ruled that it's coming in.
17 Our first objection is we would renew our objection to
18 the search warrant. Second --

19 THE COURT: All right.

20 MR. MAY: What probative value --

21 THE COURT: If it's relevant, it comes in.

22 MR. MAY: Then can we still have a 403 balancing
23 test, probative versus --

24 THE COURT: If it's relevant. If you want me to do
25 a 403, I'll do it, but without this officer's testimony,

000667

1 it's merely a gun found at the residence. In other
2 words, no -- I don't believe the scientific evidence is
3 sufficient to link this gun to anything to do with this
4 killing.

5 MR. MAY: Your Honor, then its relevance is in
6 404(b).

7 THE COURT: 404(b)?

8 MR. MAY: Yes, sir, 404(b).

9 THE COURT: What does 404(b) have to do with it? He
10 has a gun in his residence.

11 MR. MAY: Your Honor, there's other -- there's other
12 crimes, wrongs, or acts.

13 THE COURT: Hold it, hold it, hold it. Is it a crime
14 to have a gun in your residence?

15 MR. MAY: No, sir, but it's an act. It says "or acts".
16 I mean, I think that -- I -- the defense is willing to
17 stipulate that the killing weapon was .380. We're
18 willing to stipulate to that on the record that the
19 gun that was used to kill Nikki McPhatter was a .380
20 Highpoint.

21 THE COURT: Okay.

22 MR. MAY: Besides the propensity evidence, there is
23 no other reason this is coming in.

24 THE COURT: Other than the fact it was found at his
25 residence.

1 MR. MAY: Had a pound of heroin been found at his
2 residence, it wouldn't have come in.

3 THE COURT: I agree with that.

4 MR. MAY: But -- or homosexual pornography, that
5 would not have come in because it's too prejudicial.

6 There is -- he can't link this gun to the shooting.
7 Therefore, what relevance does it have to the case,
8 especially what the defense is willing to concede and to
9 stipulate that a .380 Highpoint was used.

10 THE COURT: All right. How about that,
11 Ms. Campbell?

12 MS. CAMPBELL: Your Honor, I don't think we're bound
13 by any stipulations by the defense. We aren't bound by
14 what the defendant says he used either. We know that we
15 have an actual gun that was recovered at his residence --

16 THE COURT: Well, ask him --

17 MS. CAMPBELL: -- but cannot be eliminated as
18 shooting. It has grooves -- nine grooves to the left --

19 THE COURT: What's the probative value of it?

20 MS. CAMPBELL: The probative value is to show that
21 he had access to the gun and he killed her.

22 THE COURT: I thought you just said that this is not
23 the gun that killed her.

24 MS. CAMPBELL: This could be the gun. We cannot
25 eliminate it, just as we can't eliminate the .380.

1 THE COURT: All right.

2 MS. CAMPBELL: It is relevant, because, I mean -- if
3 it had certain grooves that went to -- I mean, six grooves
4 instead of nine -- I may not be phrasing this
5 correctly -- but there are certain rifling
6 characteristics that were, in fact, on the gun that would
7 eliminate this gun, then I would agree it's not relevant.

8 But this gun is included in the group of guns that
9 could have killed him (sic), and it happens to be found
10 at the defendant's residence.

11 THE COURT: Well, as he said, he said many, many,
12 many guns could be -- could be the murder weapon.

13 I don't see any reason for offering it other than
14 it was found at the residence, but the purpose in offering
15 it is merely to show that he had guns.

16 MS. CAMPBELL: No, sir. That's not the purpose.

17 THE COURT: Tell me what it is.

18 MS. CAMPBELL: The purpose is to show that he had
19 access to a gun that could not be eliminated, and is
20 consistent with the rifling grooves and everything from
21 the gun that shot the bullet that killed her, and it was
22 at his residence where he claims...

23 THE COURT: All right. I'm going to grant the
24 defendant's motion.

25 MR. MAY: Your Honor.

000670

1 THE COURT: It's out. The gun is out.

2 Next witness.

3 MR. MAY: Beg the Court's indulgence, so that way we
4 can just make sure we eliminate any pictures of the
5 gun.

6 THE COURT: What?

7 MR. MAY: They were -- Ms. McDuffie had gone
8 through some pictures with me, and the gun was in those
9 pictures.

10 THE COURT: Let's get the jury in here.

11 MR. MAY: Do you want me to grab the gun?

12 THE COURT: We can work on that some other time.

13 All right. Bring in the jury.

14 (WHEREUPON, the jury came into open court at
15 approximately 2:06 p.m.)

16 THE BAILIFF: The jury is all present, Your Honor.

17 THE COURT: Thank you, ladies and gentlemen. I hope
18 you had a pleasant lunch. I had to take up a matter with
19 the attorneys before we reconvened.

20 Solicitor, call your next witness.

21 MS. McDUFFIE: The State would call Kevin Gardner.

22 KEVIN GARDENER,

23 after being duly sworn, testified as follows:

24 THE BAILIFF: Watch your step.

25 State your name for the record.

1 THE COURT: Any further questions?

2 MR. SHEALEY: No questions of this witness, Judge.

3 THE COURT: Thank you very much. You may come down.

4 Next witness?

5 MS. McDUFFIE: The State would call Detective Fitch.

6 BLAIR FITCH,

7 after being duly sworn, testified as follows:

8 THE CLERK: Thank you. Have a seat in the witness
9 stand.

10 THE BAILIFF: Watch your step.

11 THE CLERK: State your name for the record, please.

12 THE WITNESS: Blair Fitch.

13 DIRECT EXAMINATION:

14 BY MS. McDUFFIE:

15 Q Investigator Fitch, where are you currently
16 employed?

17 A The Charlotte/Mecklenburg Police Department.

18 Q And what are your duties with the Charlotte/
19 Mecklenburg Police Department?

20 A I am a homicide detective.

21 Q And how long have you been with the Charlotte/
22 Mecklenburg Police Department?

23 A A little over 10 years.

24 Q And please describe for the jury your background,
25 education and training in the field of law enforcement.

000672

1 A I received my formal education, a master's in
2 public administration, as well as a bachelor's degree in
3 criminal justice, and psychology with a minor in political
4 science.

5 I am -- have been in law enforcement for over ten
6 years. I've been certified by the State of North Carolina
7 as a general instructor. I've also been a patrol
8 training officer for approximately six years. In
9 addition to that, I also teach law enforcement at community
10 colleges and that type of thing around the State of North
11 Carolina.

12 Q And how long have you been in the homicide unit at
13 the Charlotte/Mecklenburg Police Department?

14 A Approximately a year-and-a-half.

15 Q And prior to that, what were your duties with
16 Charlotte/Mecklenburg?

17 A I was a follow-up investigator for assault with a
18 deadly weapon type injuries, also a training officer, as
19 well as a patrol officer.

20 Q And on May 20th, 2009, were you employed as
21 Charlotte/Mecklenburg Police Department?

22 A Yes, ma'am, I was.

23 Q And were you a member of the homicide division at that
24 time?

25 A Yes, ma'am, I was.

000673

1 Q Drawing your attention to May 19th of 2009, were you
2 briefed on the missing person's case involving Nikki
3 McPhatter?

4 A Yes, I was.

5 Q And please tell the jury your involvement prior to
6 May 19th of 2009 in this matter.

7 A Prior to that briefing, I had no knowledge or
8 information about anything in regards to the case.

9 Q Explain for the jury how a case goes from a missing
10 persons investigation to a homicide investigation.

11 A Basically, when the initial missing person's unit
12 responds, they conduct their initial investigation.
13 From that point when it is determined, based on their
14 investigation, that there are suspicious circumstances,
15 things that -- and their investigation has concluded
16 that the investigation warrants a more thorough
17 investigation because of the fact that there may be
18 criminal activity that's involved, at that point, it will
19 transition to our unit. That is something that happens
20 before this case and has also happened after this case.
21 It's a routine procedure for our agents.

22 Q And when beginning a homicide investigation, what
23 are the first things you like to do? Or what did you do
24 in this case?

25 A At this -- the earlier stages of the investigation,

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1 what we like to do is find out what was basically Ms.
2 McPhatter's last point of contact. We like to determine
3 either where she was, who she last spoke to, generally
4 we'll use that as a starting -- starting point to begin
5 the investigation and go from there.

6 Q And were you provided with bank records and phone
7 records from other detectives within your agency?

8 A Yes, ma'am, I was.

9 Q That had been previously obtained?

10 A That's correct.

11 Q And you were provided those in that briefing on
12 May 19th?

13 A That's correct.

14 Q And on May 19th, what was the focus of the
15 Charlotte/Mecklenburg Police Department investigation?

16 A At that point, it was a meeting with the missing
17 persons unit and the homicide unit. We were briefed over
18 the course of their investigation up to date. Basically,
19 what we had been advised was that she had been missing
20 and had failed to show up for work.

21 We also were advised that she had told her friends
22 that she was en route to South Carolina to meet an
23 individual who had been identified as Teddy. Based on
24 that, they also advised me that the purpose of this trip
25 was to --

000675

1 MR. MAY: Objection, Your Honor, hearsay.

2 THE COURT: Overruled.

3 THE WITNESS: The purpose of this trip was to
4 allegedly pick up some jewelry and -- in the course of
5 terminating a relationship with this individual named
6 Teddy.

7 They went to -- initially had -- she had dropped this
8 jewelry off to be repaired, as it had been damaged. And
9 this Teddy individual was supposed to be responsible for
10 taking this jewelry to be repaired. Also --

11 Q Let me stop you right there. Were you informed of
12 what vehicle Ms. McPhatter was driving at the time?

13 A Yes, that's correct. She -- I'm sorry, yes, it was
14 a black 2003 Honda Accord with a personalized tag of
15 PHATTAH, and that's spelled P-H-A-T-T-A-H. That
16 vehicle -- I was also advised at that time that that
17 vehicle was, in fact, missing.

18 Q After being briefed and learning the focus of the
19 investigation, obtaining records and things that other
20 investigators had done, did you then proceed to Ms.
21 McPhatter's home?

22 A Yes. In -- in conjunction with the missing persons
23 unit who had, you know, ultimately obtained a search
24 warrant for her residence, I did, in fact, respond to her
25 place of residence and assisted in the execution of that

000676

1 search warrant.

2 Q And in responding to her residence and searching the
3 residence, did you also talk to neighbors in the area?

4 A Yes, I did.

5 Q And did you learn any information of value at that
6 time?

7 A I did. I conducted a -- what we typically call a
8 neighborhood canvas. What that is, is basically talking
9 to all the neighbors within either eyeshot of the house
10 or in the vicinity of where her residence was located.
11 During that time, I spoke to an individual --

12 Q Let me stop you there. I don't want you to tell the
13 jury what they said.

14 A Okay.

15 Q But had the neighbors seen anything suspicious?

16 A Well, they had not seen anything suspicious other than
17 just, you know, central vehicles and that type of things,
18 but they had not observed anything suspicious.

19 Q After your canvas of the neighbors and then your
20 processing of the home, how did your investigation -- or
21 what did you do after that?

22 A After we concluded the search of the residence, we
23 then exited the residence and returned back to our
24 headquarters and continued to start to research the case
25 and enter information that we had obtained.

000677

1 What I initially did at that point was begin to
2 contact some of the agencies down in South Carolina, down
3 here, and that included the coroner's office and that
4 type of thing and had to see if they had, in fact -- had
5 a deceased victim that might have matched the description
6 of our missing person.

7 Q Did --

8 A I also, in fact, then called several of her coworkers
9 and -- specifically Ms. Bradley. I did speak to her, and
10 she explained, you know, her version of what had happened
11 or what she -- information she had in reference to the
12 investigation.

13 Q Based on your conversation with Ms. Bradley, did
14 anything change about your focus being on Columbia, South
15 Carolina?

16 A No. No, it did not.

17 Q And you mentioned that you contacted agencies in
18 Columbia like the coroner's office.

19 A Yes, that's correct. I contacted the coroner's
20 office, like I said, and did end up receiving a call back
21 from the deputy coroner who advised that they did not have
22 any deceased persons in their facility that matched the
23 description that I had provided.

24 She also advised that she was going to put a
25 communication out to the surrounding areas with the

000678

1 information that we were seeking and would contact me back
2 if, in fact, any of the other neighboring or surrounding
3 county coroners and if they had anything that matched,
4 they would contact us.

5 Q I want to take you to May 21st of 2009. Did you go
6 to -- or did you come to Columbia, South Carolina, on
7 May 21st, 2009?

8 A Yes, I did.

9 Q And who did you come to Columbia with?

10 A Myself and Detective Kay Martin responded to...

11 Q And where did you go when you got here?

12 A We met with, initially, Columbia Police Department.
13 We responded to that location. Upon our arrival, we
14 began to brief them, and during that briefing, we were
15 also joined by several of the deputies from the Richland
16 County Sheriff's office.

17 Q And do you recall who from the Richland County
18 Sheriff's Department joined you in that briefing?

19 A Yes. It was Sergeant Isenhoward and Captain Smith.

20 Q And what was the purpose of this meeting?

21 A At this point, we were contacting them and
22 requesting their assistance in our investigation because
23 based on the cell phone activity and based on the video
24 surveillance and the bank records, the activity appeared
25 to be centralized around the City of Columbia in this

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1 general area in South Carolina.

2 We contacted the Richland County and Columbia and
3 explained to them that based on the phone records that
4 had more or less ceased during the area down here, that
5 we had reason to believe that Ms. McPhatter may have had
6 some kind of harm done to her as a result -- as a result
7 of those records in this specific location.

8 Q And while you were at the Columbia Police
9 Department headquarters with officers from the
10 sheriff's department, did y'all begin to go through her
11 phone records?

12 A Yes, ma'am, we did.

13 Q And did you begin to research some of those phone
14 numbers in her phone records?

15 A Yes, ma'am, we did.

16 Q And please tell the jury what, if anything,
17 significant the three agencies, that y'all discovered
18 together.

19 A Basically, what we did is accessed several different
20 databases, law enforcement databases. As a result of
21 looking at that, those phone records from Ms. McPhatter
22 and those law enforcement databases, we were able to
23 positively determine that Mr. Manning's telephone number
24 was the last telephone number or had communication with
25 Ms. McPhatter on her phone records.

000680

1 Q And that would have been on May 6, 2009?

2 A That's correct.

3 Q And you said you came up with possible -- name of an
4 individual, Theodore Manning.

5 A We did. Based on the search of that, we were then
6 able to access D.M.V., and we were able to determine that
7 the individual that we were looking to speak with was
8 Theodore Roosevelt Manning IV. His date of birth was
9 10/10/1979.

10 Q And did you come up with potential addresses for this
11 individual?

12 A We did. We came up with approximately -- I'd say
13 approximately four separate addresses or potential
14 addresses for the individual that we were looking to speak
15 with.

16 Q One of those being 1518 Jerome Drive.

17 A That's correct.

18 Q And another of them being 8043 Bluff Road.

19 A That's correct.

20 Q Did you also, through your research, come up with a
21 potential employer for Mr. Manning?

22 A Yes, we did.

23 Q Who was that?

24 A Cisco is the potential employer that we had been able
25 to locate.

000681

1 Q Based on this information, what did you then do jointly
2 with Richland County?

3 A We then -- after briefing, we -- Captain Smith had
4 actually assigned an investigator with us, and that was
5 Investigator Wagner. She, in coordination with us,
6 assisted us in the entire investigation, more or less,
7 while we were down there, you know, at that time.

8 We then responded to Cisco, attempted to locate
9 the -- you know, the individual that we were looking to
10 speak with. We also responded to several other locations
11 in an attempt to locate the Mr. Manning.

12 Q Let me stop you right there. The first address that
13 y'all responded to or that you go to look for the defendant
14 is where?

15 A The first address that we go to is actually -- it's
16 8043 Bluff Road is the address that we had based on our
17 information. We responded to that location, and we were
18 unable to locate the actual number, house number, of 8043.

19 We went and knocked on an address, which was 8047
20 Bluff Road, and we did not receive an answer at that time.
21 We spoke to the neighbors on either side of the residence
22 to see if they knew who the people were that lived at that
23 address. They said that they did not know who they were.

24 Q And after you went to this Bluff Road address, where
25 did you then go?

1 A At that point, we then responded to the Cisco located
2 at 131 Cisco Court in Columbia, South Carolina.

3 Q And based on your trip to Cisco, how did your
4 investigation then proceed?

5 A We talked to the manager there who advised us
6 ultimately that Mr. Manning no longer worked there. He
7 stated that he believed that Mr. Manning worked at a place
8 called Westinghouse, which was located on Bluff Road.

9 He advised that he thought that he lived in an
10 apartment on a street called River Drive. We also talked
11 to several of his coworkers and friends at that location.
12 They provided a phone number for Mr. Manning of
13 (803) 673-7378.

14 He, that employee, contacted Manning, left a message.
15 Then we also were provided by the human resources manager
16 additional information on trying to contact Mr. Manning.
17 Lastly, we spoke to his coworker again about any vehicles
18 that he drove.

19 The only thing that he was able to provide is that
20 it was a white sedan that he drove and provided some
21 additional contact numbers.

22 Q And specifically, in terms of additional contact
23 numbers, did -- what other contact numbers were provided
24 to you?

25 A He gave us a total of, I guess, three or four. It

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1 was (803)381-8396. He gave us (803)309-3779. He gave us
2 (803)476-2563, and those were the -- those were the numbers
3 that he had provided.

4 Q And then after you -- after this, what did you then
5 do?

6 A We then responded to one of the other addresses that
7 we had located through our law enforcement database,
8 which was 551 Riverhill Circle, apartment 728 in the Broad
9 River Trace Apartment complex.

10 Q And were you able to locate the defendant there?

11 A We were not. We spoke to a resident who advised that
12 she and her daughter had resided there for approximately
13 three weeks, and they had no knowledge of who Mr. Manning
14 was.

15 Q What did do you after you left that address?

16 A At that point, we then responded to another address
17 that we has on our list, which was 1518 Jerome Drive. We,
18 at that point, learned this was, in fact, Manning's
19 mother's residence. We spoke to Ms. Samuels. She
20 identified herself as Manning's mother. She said she had
21 not --

22 MR. MAY: Objection, Your Honor. This is hearsay,
23 as well as confrontation issues.

24 THE COURT: All right.

25 MS. McDUFFIE: Don't say what --

1 THE COURT: Don't say what somebody else said.

2 MS. McDUFFIE: Don't say what --

3 THE COURT: Tell us what you found --

4 BY MS. McDUFFIE:

5 Q As a result of that, did you gain any other information
6 that proved to be useful in your investigation?

7 A Only a phone number that was provided.

8 Q And the phone number being?

9 A (803) 476-2563 was the number that I was provided at
10 that time.

11 Q And had you previously been provided with that
12 number?

13 A Yes. That was the same number that we had been
14 previously provided.

15 Q And based on that information, what did you and the
16 other detectives you were with then do?

17 A At that point, we then left and started toward
18 another address of Sharon Acres. While we were enroute
19 to this location, which was another address that we had
20 obtained from our law enforcement database, Detective
21 Martin placed a call in my presence to Mr. Manning for
22 that number, which we were now able to confirm was a good
23 number, from his mother.

24 We did not receive an answer and left a message
25 requesting that Mr. Manning contact us back. We then

000685

1 proceeded to that location again, at which point
2 Mr. Manning had called Detective Martin back and agreed
3 to meet with us.

4 Q And where did you go to meet with Mr. Manning?

5 A Detective Martin requested Mr. Manning to name a
6 location, wherever he wanted to meet.

7 He told him that we were available to meet wherever
8 he would like, and he requested that we respond to a post
9 office on Bluff Road, which that address is 7731 Bluff
10 Road.

11 That is -- that's where we then, in turn, then
12 started toward that direction after advising Investigator
13 Wagner, who was with us also from the Richland County
14 Sheriff's office.

15 Q And this is on May 21st, 2009?

16 A That's correct.

17 Q And approximately what time did you arrive at the post
18 office?

19 A We arrived at 10:42 p.m., and we were in that parking
20 lot there.

21 Q And did Mr. Manning show up at that location?

22 A Yes, ma'am, he did.

23 Q And how did he arrive there?

24 A He was in the -- in a 2001 Toyota Avalon four-door
25 vehicle. He was also accompanied with a -- accompanied

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1 by a black female who we later determined to be an
2 individual named Candace Jackson, and we were also advised
3 that that was his fiancée.

4 Q And this was at what time at night?

5 A This was at 10:42 p.m.

6 Q And did you have a conversation -- did you have a
7 conversation with Mr. Manning at that location?

8 A Yes.

9 Q And where did that conversation take place?

10 A It took place in Detective Martin's unmarked city
11 vehicle.

12 Q And why did it take place in the vehicle?

13 A At that point, we were trying to speak with
14 Mr. Manning, and there was a loud train. We were unable
15 to hear him speak outside of the vehicle because of the
16 background noise. So we requested Mr. Manning to have
17 a seat with us in the vehicle, which he agreed to meet
18 with us. He sat in the front seat while detective Martin
19 spoke to him, and I sat in the back of the vehicle.

20 Q And how was this conversation with Mr. Manning
21 memorialized?

22 A When we sat down in the car, I activated what's
23 called a D.V.R., a digital voice recorder, and that recorder
24 captured our entire conversation there in the vehicle.

25 Q And why do you record -- or why did you record this

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1 conversation with Mr. Manning?

2 A We -- we record conversations based on some of our
3 North Carolina law, but also, we record conversations in
4 the event that the interview is needed at trial or anything
5 like that.

6 We'll have a transcript of it and that type of thing,
7 but based on the North Carolina law, we're required to
8 record certain types of conversations such as this.

9 Q And did you record this conversation with
10 Mr. Manning?

11 A Yes, ma'am, I did.

12 Q And have you previously had the opportunity to view
13 and listen to State's Exhibit 133?

14 A Yes, ma'am, I have.

15 Q And is that a copy of your recorded conversation with
16 Mr. Manning?

17 A Yes, ma'am, it is.

18 MS. McDUFFIE: Your Honor, at this time, we would
19 offer State's Exhibit 133.

20 MR. MAY: Subject to our prior objections.

21 THE COURT: Subject to the defense objections, it's
22 admitted.

23 (WHEREUPON, State's Exhibit No. 133 was admitted
24 into evidence.)

25 BY MS. McDUFFIE:

000688

1 Q And again, please tell the jury who was present during
2 this conversation?

3 A It was myself, Detective Martin, and Mr. Manning.

4 Q Play the conversation for the jury, please.

5 (WHEREUPON, State's Exhibit Number 133 was played
6 for the jury.)

7 Is the Charlotte/Mecklenburg police policy -- do you
8 also transcribe these statements?

9 A Yes, ma'am, we do.

10 MS. McDUFFIE: Your Honor, may we approach?

11 THE COURT: Sure.

12 (WHEREUPON, a bench conference was held in the
13 presence, but not within the hearing of the jury.)

14 BY MS. McDUFFIE:

15 Q Detective Fitch, do you recognize that document?

16 A I do.

17 Q And who prepared the transcript of that document or
18 that document?

19 A We have a transcriptionist that works for us. What
20 our procedure is, is we submit the file to our
21 transcriptionist. They, in turn, transcribe the entire
22 interview. Then they send the file back to us, the
23 transcription back to us.

24 Then what happens from there is the detective that
25 took the statement then reviews the entire transcript and

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1 makes sure that there's not any obvious errors or anything
2 like that in the transcript. Then we actually indicate
3 the date and time that we reviewed that transcript and
4 make sure that it is a correct version of what our
5 interview was.

6 Q And does this document bear your initials signifying
7 that you have done, followed that procedure?

8 A It does. Up at the top, I wrote "corrected" and the
9 date and time and then my signature, as well as my badge
10 number is on the top of the transcript.

11 MS. McDUFFIE: Your Honor, at this time, we'd ask
12 that the jury be provided with copies of the transcript
13 to follow along with.

14 THE COURT: All right. That's sufficient.

15 MR. MAY: Yes, Your Honor, we'd like to object and
16 put it on the record at a later time.

17 THE COURT: That's fine.

18 BY MS. McDUFFIE:

19 Q Would you please publish State's Exhibit, play it for
20 the jury?

21 (WHEREUPON, the exhibit was played for the jury.)

22 Based on your conversations with -- your conversation
23 with Theodore Manning, did any of the things that he was
24 telling you about Ms. McPhatter on the 6th, did any of
25 that have significance for you?

1 A Yes. Specifically he discussed going to get some gas
2 and that type of thing. So after that, we ended up actually
3 going to that location to attempt to locate that
4 information.

5 Q And where did you go?

6 A It was the -- the store that he talked about -- it
7 was actually like a gas or convenience store called
8 Freeman's, which was located adjacent to where
9 Mr. Manning resided. So after we concluded our interview,
10 we then immediately responded to that location.

11 Q And what were you looking for when you got there?

12 A We were attempting to locate any video surveillance
13 of the transaction with Ms. McPhatter or Mr. Manning or
14 any of the vehicle that are might have been there at that
15 location.

16 We spoke to the clerk, and after talking to them,
17 they said that, you know, they -- at that point, they
18 weren't sure if they had any video system working or
19 anything along those lines, so we were unable to obtain
20 any video surveillance at that time.

21 Q The next -- this was late on the evening on May 21st?

22 A Yes, ma'am. We ended up leaving South Carolina at
23 approximately 11:38 p.m. that evening.

24 Q And then on Friday, May 22nd, 2009, did you return
25 to South Carolina?

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1 A Yes, ma'am, we did.

2 Q And did you also have -- or in conjunction with the
3 Richland County Sheriff's Department, were y'all
4 continuing to investigate this matter on the 22nd?

5 A Yes, we are did.

6 Q Please describe your involvement on the 22nd.

7 A Well, at that point, we had determined, for the most
8 part, that -- you know, Mr. Manning did have, in fact,
9 telephone conversations with Ms. McPhatter.

10 Prior to coming down to South Carolina, I actually
11 responded to our technical services unit within our
12 department. Their sole responsibility, basically, is
13 assisting us or anyone else in the agency with
14 determining cell phone activity, proximity to where cell
15 phone towers are to the use of a phone or where the phone
16 may have actually been located or where the cell tower
17 that it was actually hitting off of and that type of thing.

18 We, at that point, were reviewing the cell phone
19 records from Ms. McPhatter, and we were able to determine
20 that based on those cell phone records, that it was last
21 used at 3:06 p.m. and it was to check her voice mail -- or
22 at that time.

23 Based on the phone records that we had received, the
24 physical address for the tower was 2522 Old Eastover Road
25 located in South Carolina.

000692

1 So what I did then was basically based on the physical
2 location of the tower, I ran a check and requested the
3 assistance of running a check to the location of that
4 tower to Mr. Manning's residence that he had given us the
5 evening prior during that interview that you just heard.

6 I was able to determine that that address was
7 approximately 3.63 miles from the tower to Mr. Manning's
8 residence. Based on that, we then contacted Captain Smith
9 with the Richland County Sheriff's Office.

10 I requested that he assist us with his aerial unit,
11 a helicopter, to attempt to locate Ms. McPhatter's
12 vehicle anywhere in the proximity of that cell phone tower.
13 He, at that time, advised me that he had already had his
14 aerial units conduct an aerial search once.

15 I then advised him that based on the phone records
16 that we had received, and gave him the physical location
17 of the cell phone tower and requested a secondary search
18 just to make sure he, in fact, was searching the right
19 area, which at that point, he said he would be able to
20 handle.

21 So at that point, we also then discussed the video
22 images that I had obtained -- that we had obtained from
23 the bank surveillance, and in speaking to Captain Smith,
24 we were discussing the vehicle, a possible vehicle type,
25 that was in the video on the A.T.M. surveillance.

000693

1 At that time, Captain Smith advised me that he and
2 his team of investigators had determined that they
3 believed the vehicle was a 1992 Chevrolet Lumina. So I
4 notated that in my notes.

5 I also advised them that we would be requesting their
6 assistance in applying for a search warrant for
7 Mr. Manning's residence, and he at that point agreed to
8 allow us to come down and work with his agency again.

9 We were then put in touch with Sergeant Robinson with
10 the Richland County Sheriff's Office and provided his
11 contact number.

12 Q And you viewed the bank -- the video of the bank
13 transactions that were made on Ms. McPhatter's card on
14 the 6th?

15 A Yes, that's correct.

16 Q And you had also met with the defendant?

17 A Yes, that's correct.

18 Q The images that you viewed on the video, were those
19 consistent with the build of the defendant, based on your
20 observations?

21 A Yes, that's correct.

22 Q And you came down to Richland County, and ultimately
23 a search warrant was obtained by the Richland County
24 Sheriff's Department?

25 A Yes, that's correct.

000694

1 Q And approximately what time did you go to
2 Mr. Manning's residence that evening on the 22nd?

3 A We arrived at his address at approximately 8:55 p.m.
4 that evening.

5 Q And when you arrived at the residence, that was with
6 officers with the Richland County Sheriff's Department?

7 A That's correct.

8 Q And who else was with you from the Charlotte/
9 Mecklenburg Police Department?

10 A It was myself, Detective Martin, and Detective
11 Hopkins, and we brought one of our C.S.I. units along with
12 us, as well.

13 Q C.S.I. is Crime Scene Investigation?

14 A Correct.

15 Q And when you approached the residence, what, if
16 anything, did you do?

17 A We approached the residence and Mr. -- Mr. Manning
18 was inside. Detective Martin and Detective Hopkins
19 initially approached and made contact with Mr. Manning.

20 They then spoke to him and escorted him or walked
21 with him away from where I was standing, so I just kind
22 of remained in the front yard area of the residence.

23 I wasn't aware of what that conversation was that
24 they were having, but ultimately, I was advised that
25 Mr. Manning agreed to go with Detective Martin and

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1 Detective Hopkins to be voluntarily interviewed.

2 Q And Mr. Manning left and went to be interviewed by
3 Detective Martin and Detective Hopkins?

4 A That's correct. He --

5 Q Let me stop you right there. You stayed at the
6 residence to perform the search along with the Richland
7 County Sheriff's Department?

8 A That's correct.

9 Q And, you were searching this residence in conjunction
10 with Richland County?

11 A That's correct.

12 Q And when you search a residence, what -- do you have
13 a method that you like to follow, or what do you do when
14 you enter a residence to search it?

15 A Typically when we conduct our searches in Charlotte,
16 we would usually divide up a residence and more or less
17 assign a particular area within that residence. That
18 officer or that detective is responsible for searching
19 that particular room or location within the house, so
20 that's what we more or less tried to do with searching
21 Mr. Manning's residence at that time.

22 Q And before you searched -- before you actually start
23 searching and while you're searching the residence, are
24 photographs taken of what you're finding?

25 A Yes, that's correct. What we do is prior to us

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1 beginning any type of search, before we basically even
2 enter the home, we have our -- our crime scene investigator
3 will actually enter the home and take pictures of the
4 entire residence, how it was as soon as we found it without
5 us even disturbing anything that was inside. So yes, they
6 will enter the house and take pictures of everything just
7 as it was.

8 Q And based on your investigation thus far in this
9 case, were there any items that you were looking for,
10 specifically, or any items -- you know, while you were
11 searching the house that you were looking for?

12 A Yes, there was.

13 Q And what were you looking for?

14 A Basically, any evidence of murder that would consist
15 of anything from cleaning supplies or firearms or, you
16 know, evidence of a clean up or evidence of a -- of Ms.
17 McPhatter's property that may have been located inside
18 the residence, anything along those lines is what we're
19 searching for inside a residence.

20 Q And were you aware of any specific items, based on
21 your investigation of Ms. McPhatter's property, that you
22 were looking for?

23 A I was.

24 Q And please tell the jury what those specific items
25 that you were looking for were?

000697

1 A During my investigation in -- with prior interviews
2 with Ms. McPhatter's coworkers and friends, I had been
3 advised that there were several items of jewelry that were
4 supposed to have gone down to -- or were supposed to have
5 been at Mr. Manning's residence that he had been requested
6 by Ms. McPhatter to have repaired.

7 They specifically described a necklace and
8 some -- several watches. They went into detail to describe
9 the watches as having like characters on the watch, like
10 either a Disney character, a cartoon character, that type
11 of thing.

12 I was also interested in locating the item that
13 Mr. Manning had discussed in his prior interview that
14 was given to him by Ms. McPhatter, which he specifically
15 discussed as an air marshal pin that she had provided to
16 him.

17 Q Let me show you what's been marked State's Exhibits 70
18 through 117 and 120 through 131 and ask if you recognize
19 those.

20 A Yes. These are the photographs that were taken by
21 our crime scene unit while we were there.

22 Q And do those photographs fairly and accurately
23 depict what you observed at 8047 on that evening on
24 May 22nd, 2009?

25 A Yes, ma'am, they do.

1 Q Your Honor, at this time, we would offer State's
2 Exhibit 70 through 117, 120 through 131.

3 THE COURT: Any objection?

4 MR. MAY: Besides our prior objection, we have an
5 issue and we're more than happy to approach.

6 THE COURT: All right.

7 (WHEREUPON, a bench conference was held in the
8 presence, but not within the hearing of the jury.)

9 THE COURT: The objection is overruled.

10 (WHEREUPON, State's Exhibits Nos. 70 - 117; 120 - 131
11 were admitted into evidence.)

12 BY MS. McDUFFIE:

13 Q Showing the jury State's Exhibit 71 and 72, can you
14 please tell the jury what's depicted in these
15 photographs?

16 A That's the residence that we responded to located at
17 8047 Bluff Road.

18 Q And this is whose residence?

19 A Mr. Manning's residence.

20 Q And within the residence, you said you were looking
21 for specific items?

22 A Yes, ma'am.

23 Q And tell the jury what those specific items again
24 were.

25 A Based on the interviews that I had already previously

1 conducted, I was specifically looking for some of
2 Ms. McPhatter's jewelry, watches, you know, a necklace,
3 that type of thing, as well as the air marshal pin that
4 Mr. Manning had discussed with us in the prior interview.

5 Q Let me show you what's been marked as State's
6 Exhibit 64 and ask if you recognize that.

7 A Yes.

8 Q Please tell the jury what's contained in State's
9 Exhibit 64.

10 A It's two wristwatches, one with a cartoon dog and one
11 with Coca-Cola emblem from the top dresser drawer in the
12 master bedroom.

13 Q Of what location?

14 A Of Mr. Manning's residence.

15 MS. McDUFFIE: Your Honor, at this time, we'd offer
16 State's Exhibit 64.

17 MR. MAY: Subject to prior objections.

18 THE COURT: Okay. It's admitted over defendant's
19 objection.

20 MS. McDUFFIE: Can you --

21 THE COURT REPORTER: I need just one moment, please.

22 (WHEREUPON, State's Exhibit No. 64 was admitted into
23 evidence.)

24 BY MS. McDUFFIE:

25 Q If you could please show that to the jury, what's

1 contained in State's Exhibit 64.

2 A It's two women's silver watches, one has a blue face
3 with a cartoon character of -- it's a Disney character
4 on there.

5 MS. McDUFFIE: Your Honor, permission to publish
6 these to the jury.

7 THE COURT: You may publish.

8 BY MS. McDUFFIE:

9 Q And those were found where within the residence?

10 A They was located inside Mr. Manning's bedroom.

11 Q And were there any other items of jewelry that you
12 were looking for?

13 A Yes, there were.

14 Q And please tell the jury what those were.

15 A A pin and a necklace that had apparently been broken
16 previously.

17 Q I show you what's been marked as State's Exhibit 68.
18 Do you recognize that?

19 A Yes.

20 Q Can you please tell the jury what's contained in
21 State's Exhibit 68.

22 A A white paper that's been stapled and labeled "broken
23 necklace".

24 MS. McDUFFIE: Your Honor, at this time, we'd offer
25 State's Exhibit 68.

1 THE COURT: Any objection?

2 MR. MAY: Prior objection.

3 THE COURT: Prior objection, overruled.

4 MS. McDUFFIE: And please open --

5 THE COURT REPORTER: I'm sorry. One moment, please.

6 (WHEREUPON, State's Exhibit No. 68 was admitted into
7 evidence.)

8 (Pause)

9 Thank you.

10 BY MS. McDUFFIE:

11 Q Please open 68 and show the jury what's contained
12 within it.

13 A It's a piece of paper that's been stapled, folded and
14 stapled. On the front it says "broken necklace, send thank
15 you card," and then it says "Ronnie -- looks like it says
16 Ronnie Wynns" (phonetic).

17 Q And I'm going to show you State's Exhibit 123. Is
18 that the necklace as you found it in 8047 Bluff Road?

19 A Yes, that's correct.

20 Q And the package that it's in, the -- this is how you
21 found it on May 22nd?

22 A Yes, that's correct.

23 Q Thank you. If you could return that to the envelope.

24 Q You also mentioned that you were looking for
25 cleaning -- I'm sorry, you also mentioned that you were

1 looking for an air marshal pin?

2 A That's correct.

3 Q I show you what's been marked as State's Exhibit 65
4 and ask if you recognize that.

5 A Yes, that's correct.

6 Q And is that the air marshal pin?

7 A Yes.

8 MS. McDUFFIE: Your Honor, at this time we'd offer
9 State's Exhibit 1 -- I'm sorry, State's Exhibit 65.

10 THE COURT: Is there any objection?

11 MR. MAY: Yes, sir.

12 THE COURT: Overruled.

13 (WHEREUPON, State's Exhibit No. 65 was admitted into
14 evidence.)

15 BY MS. McDUFFIE:

16 Q Detective Fitch, I'm going to show you State's
17 Exhibit 121 and 122. Is that the air marshal pin as you
18 found it in the residence?

19 A Yes, that's correct.

20 Q If you could, please show the contents of the State's
21 Exhibit 65 to the jury.

22 A (The witness complies.)

23 Q Thank you. You also mentioned that cleaning supplies
24 were something that you were looking for?

25 A Yes. Typically, we look for cleaning supplies,

1 evidence of cleaning supplies, evidence of a clean up
2 within the home, that type of thing.

3 Q And Ms. McPhatter was last seen on what date?

4 A May 6th was the last -- I believe it's May 6th was
5 the last contact.

6 Q And you were conducting the search on May 22nd?

7 That's correct.

8 Q State's Exhibit 93, can you please tell the jury
9 what's depicted in this photo?

10 A It's a gallon of Value brand bleach.

11 Q And State's Exhibit 92?

12 A A mop bucket located immediately adjacent to a gallon
13 of bleach.

14 Q And State's Exhibit's 94?

15 A A sponge mop inside of a mop bucket.

16 Q And State's Exhibit 91?

17 A A mop bucket and a -- it would be a broom.

18 Q And State's Exhibit 97?

19 A A mop that's inside of a bucket.

20 Q Were you also looking for any paperwork or
21 documentation while you were searching the home?

22 A I was. The room that you actually just showed the
23 photographs of was inside of a bathroom on the downstairs
24 level of the actual home.

25 The counter where the sink is located within that

1 bathroom had several drawers, and I completed the search
2 of that drawer and located a Wal-Mart receipt within that
3 drawer.

4 Q I show you what's been marked as State's Exhibit 66.
5 Is that the Wal-Mart receipt you located in the bathroom
6 drawer?

7 A It is.

8 Q And I believe it's already opened at the top.
9 Your Honor, at this time, we'd offer State's Exhibit
10 66.

11 THE COURT: Any objection?

12 MR. MAY: Yes, Your Honor.

13 THE COURT: Overruled.

14 (WHEREUPON, State's Exhibit No. 66 was admitted into
15 evidence.)

16 BY MS. McDUFFIE:

17 Q Can you please show the jury the contents of the State's
18 Exhibit 66?

19 A (The witness complies.)

20 Q And can you please tell the jury the date on that
21 Wal-Mart receipt?

22 A It's dated May 7th, 2009.

23 Q And State's Exhibit 116 and 117, is that the Wal-Mart
24 receipt as you found it on May 22nd, 2009?

25 A Yes.

1 Q And did you locate any other paperwork that was
2 significant in your investigation?

3 A I did, just inside the residence. I also located in
4 the bedroom of Mr. Manning on the top level, the second
5 level, a receipt from Freeman's, the convenience store,
6 the gas station that Mr. Manning had discussed in his
7 previous interview.

8 Q Is that contained in State's Exhibit 67?

9 A Yes, it is.

10 MS. McDUFFIE: Your Honor, at this time, we would offer
11 State's Exhibit 67.

12 THE COURT: Is there any objection?

13 MR. MAY: Yes, sir, I believe so.

14 THE COURT: Overruled.

15 MS. McDUFFIE: And is that depicted in --

16 THE COURT REPORTER: I'm sorry, one moment, please.

17 (WHEREUPON, State's Exhibit No. 67 was admitted
18 into evidence.)

19 BY MS. McDUFFIE:

20 Q Is that depicted in State's Exhibit 120?

21 A Yes, it is.

22 Q And that is a receipt for what location?

23 A Freeman's.

24 Q And that is what kind of store?

25 A It's a gas station and convenience store that's

1 located near Mr. Manning's residence.

2 Q Did you also search the garage area of his home?

3 A I did.

4 Q Could you please tell the jury what's depicted in
5 State's Exhibit 129 and 130.

6 A It's two containers of gasoline or containers of what
7 would be used to store gasoline.

8 Q And these were found where, at 8047 Bluff Road the
9 defendant's home?

10 A That's correct.

11 Q What location of the home?

12 A Oh, inside the garage of the residence.

13 Q And while you were searching the -- this residence,
14 the defendant, Mr. Manning, was being interviewed by
15 Detectives Martin and Hopkins?

16 A Yes, ma'am; that's correct.

17 Q After your search of the residence, what did you then
18 do?

19 A As I'm finding these items, I'm in communication
20 with Detective Martin and Detective Hopkins. What I'm
21 doing is sending them text messages of what I've located
22 inside of the house.

23 I'm specifically, you know, discussing the receipt
24 that I had located for the cleaning supplies, the
25 Freeman's receipt and those types of things, as well as

1 the jewelry.

2 Q And then after you exited the house, it was turned
3 back over to Mr. Manning?

4 A That's correct.

5 Q And then you do not come to Columbia again until
6 May 25th of 2009?

7 A Yes; that's correct.

8 Q And please tell the jury about your investigation on
9 May 25th of 2009.

10 A Our purpose then was to -- I responded along with
11 Detective Hopkins to Columbia, South Carolina, and we were
12 attempting to locate Ms. Jackson and interview her at that
13 time.

14 Q And please tell the jury again who Ms. Jackson is.

15 A This was Mr. Manning's fiancée.

16 Q And did you also make some efforts to obtain the video
17 for the Wal-Mart store that corresponds to the date and
18 time on that receipt?

19 A Yes, we did.

20 Q On that date, were you able to obtain that Wal-Mart
21 video?

22 A Yes. I believe it was the 25th, yes.

23 Q And did you actually collect the video at that time?

24 A We attempted to collect it. The security personnel
25 at the Wal-Mart said that their computer had crashed.

1 They had some kind of technical problem with that video
2 system.

3 So they advised us at that time that they were going
4 to attempt to burn the video, get it on to a disk, and
5 they would contact us when they were ready for pick up.

6 Q So you could view the video but not burn it to a copy
7 that you could actually take with you?

8 A Correct.

9 Q And are you aware of whether or not Richland County
10 had obtained that video at some point later in time?

11 A Yes, they did.

12 Q Based on Detective Martin and Hopkins, were any other
13 names of persons of interest developed through their
14 investigation?

15 A No. Not that I can recall, other than what
16 Mr. Manning had said during his interview in regards to
17 a female.

18 Q And that female's name being?

19 A Kendra Goodman.

20 Q And did you then, along with Richland County, make
21 efforts to identify and interview Kendra Goodman?

22 A We did.

23 Q And were those numerous attempts and numerous
24 interviews of Ms. Goodman?

25 A Correct.

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1 Q Now, I want take you up to May 29th of 2009. Were
2 you present at the Richland County Sheriff's Department
3 when Kendra Goodman was being interviewed?

4 A I was.

5 Q As a result of that interview, where, if anywhere,
6 did you then go?

7 A Based on the interview and the results of that
8 interview, I then accompanied Captain Smith and Sergeant
9 Isenhoward from the Richland County Sheriff's Office to
10 a location off of I-77.

11 And once -- once there, we began searching the area
12 for Ms. McPhatter's vehicle. At that point, we then were
13 advised that they had potentially located a vehicle that
14 was down an unmarked dirt road immediately off of the
15 exit.

16 This location -- it was adjacent to a church, which
17 I researched the address later on. It was 2815 East Peach
18 Road. It was in Ridgeway, South Carolina. It was a
19 Calvary Baptist church.

20 Then, you know, we were advised by telephone that
21 they had possibly located the vehicle. I then ended up
22 turning down that dirt road and proceeding towards the
23 location.

24 As I traveled down the road, I was able to observe
25 on the left-hand side of the road going into the woods

1 a vehicle that had been severely burned. It appeared to
2 be a Honda Accord.

3 I was able to observe that the gas tank to the vehicle
4 was still open, and also, as I was able to approach, I
5 was able to notice the distinct odor coming -- apparently
6 coming from the vehicle.

7 At that point, as I approached, I looked into the
8 right tail light assembly of the vehicle. The actual
9 plastic from the tail light had been apparently burned
10 by the fire. I was able to see into the trunk of the
11 vehicle.

12 When I looked inside of the area, I was able to
13 immediately recognize what appeared to be a human skull
14 inside the trunk of the vehicle.

15 So at that point, we then backed out, and the Richland
16 County Sheriff's Office then began requesting their
17 forensic units to respond to that location. So we just
18 stood by until that was -- had been completed.

19 Q And while you were present on East Peach Road, was
20 the vehicle or the scene tampered with or disturbed in
21 any way?

22 A No. We remained on that scene until the -- Captain
23 Smith had secured enough units and assistance that he
24 needed at that location, so that we were able to protect
25 that crime scene until the evidence had been secured

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1 sufficiently.

2 Q A short while later, around seven o'clock that
3 evening, did you again return to 8047 Bluff Road to the
4 defendant's home?

5 A I did.

6 Q And what was the purpose of that return visit?

7 A We were advised that the Richland County Sheriff's
8 Department had obtained a warrant on Mr. Manning at that
9 time.

10 After conducting a briefing with them, we followed
11 them to the residence and arrived at that location to
12 observe them take Mr. Manning into custody.

13 Q And the warrant was for what crime?

14 A Murder.

15 Q And please describe what you observed when
16 Mr. Manning was taken into custody.

17 A Basically, we had conducted what we called an
18 operational briefing prior to actually going to that
19 location, and basically, it was where the Richland County
20 Sheriff's Office was discussing what they were going to
21 do and that type of thing.

22 So after they had done that, we kind of followed in
23 with their caravan. They had several vehicles that were
24 going to that location. As we are turning into the
25 driveway, I was able to observe the Richland County

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1 Sheriff's Department, what we call breaching the front
2 door or basically making entry into the front door of the
3 residence.

4 Several of the deputies went inside. I then exited
5 my vehicle and proceeded through the front door. I was
6 able to observe Mr. Manning standing in a foyer with his
7 hands in the air.

8 I observed him as he got -- he got down on the ground.
9 He laid down on the ground and was taken into custody by
10 the sheriff's department.

11 Q If I can stop you right there. How was he taken into
12 custody? Please describe it for the jury.

13 A When Mr. Manning laid down, he laid down on his
14 stomach with his -- kind of like with his chest on the
15 floor. The deputies then placed him in handcuffs with
16 his hands behind his back while he was laying on the
17 floor.

18 Then after they did that, they did a -- I believe
19 they did like a cursory search or a search of his person
20 to make sure he didn't have a gun or anything like that
21 on him. Then they assisted him with standing up and then
22 walked him out the front door.

23 Q And he was placed into a patrol vehicle?

24 A Yes. He was placed into a -- I believe it was an
25 unmarked S.U.V. of Richland County Sheriff's Department.

1 Q And after he was taken into custody, your role became
2 more limited in this investigation?

3 A That's correct.

4 Q Did you follow up with some Bank of America records
5 of Ms. McPhatter's Bank of America account?

6 A I did. During the course of my investigation prior
7 to this point, I had been in contact and requested, you
8 know, records of any activity on the bank account and that
9 type of thing.

10 On that Friday after, after that, I received an email
11 from Bank of America advising that there had been no
12 activity on the card and -- other than what they had
13 provided on the 6th and that type of thing. So I
14 forwarded that information directly to, I believe, the
15 lead investigator with the Richland County Sheriff's
16 Office, was Sergeant Isenhoward.

17 Q And the last transactions on her Bank of America
18 account were made on 5/6 and 5/7?

19 A That's correct.

20 Q And where were the transactions made on 5/6?

21 A The address of the Farrow Road, 8800 Farrow Road, in
22 Columbia, South Carolina.

23 Q And the attempted transactions on May 7th, 2009,
24 where did those occur?

25 A At the Wal-Mart at the -- I believe it was the Bush

1 River address.

2 Q And the receipt for the Wal-Mart that you found in
3 the defendant's home, was that the same Wal-Mart as these
4 transactions were attempted?

5 A Yes, it was.

6 Q Beg the Court's indulgence.

7 (Pause)

8 The individual that you spoke with in the
9 Charlotte/Mecklenburg police car on May 21st, 2009, and
10 in whose home you participated in searching on May 22nd,
11 2009, do you see him in the courtroom today?

12 A Yes, I do.

13 Q Can you please identify him for the jury?

14 A He's the gentleman wearing the long sleeved brown
15 sweater at the table to my left.

16 MS. McDUFFIE: Your Honor, please let the record
17 reflect he has identified the defendant.

18 THE COURT: The record so reflects the witness has
19 identified the defendant.

20 MS. McDUFFIE: Your Honor, I have no further questions
21 of his witness.

22 THE COURT: Cross-examination.

23 MR. MAY: Thank you, Your Honor.

24 CROSS-EXAMINATION:

25 BY MR. MAY:

1 Q Beg the Court's indulgence.

2 (Pause)

3 How are you doing, sir?

4 A Good. How are you doing, sir?

5 Q I'm doing well. All right. Now, first off, is it
6 your normal policy, because you work in homicide, to
7 record conversations with people?

8 A That's correct.

9 Q All right. And can you tell -- and you just start
10 recording anytime you're talking to somebody?

11 A Generally, depending on if we are doing a video
12 interview or an audio interview, depending on where we're
13 at.

14 Q So sometimes you actually videotape the people?

15 A That's correct.

16 Q When you're doing an interrogation at the station
17 house, would you videotape it?

18 A Yes, that's correct.

19 Q And that's so that the jury members can see what
20 happens, right?

21 A Well, we're also required by state law.

22 Q But does it not give the entire evidence of what
23 occurred in that room?

24 A Yes, I would --

25 Q I mean, there's nothing -- there's no swearing

1 contests. I mean, it is what it is, for the lack of a
2 better term, and we get nice transcripts like the one
3 that's printed out. So I mean, is it fair to say that
4 every word that is said in that car, or that interview
5 room or wherever an interview takes place, is
6 memorialized?

7 A Correct.

8 Q And I'm not saying that you'd ever do it, but
9 there's -- I mean, it's -- you have to play within the
10 rules, everybody does, because it will always be reviewed,
11 correct?

12 A Correct.

13 Q I mean, there's no slamming people's -- there's
14 nothing improper, because if there is something improper,
15 you're going to get caught, correct?

16 A If I did something like that.

17 Q Right. If you did something improper. I'm not saying
18 that you would.

19 A Okay.

20 Q But if you did, I mean, it would be right there. There
21 would be evidence by either video or an audio tape?

22 A Correct.

23 Q And I mean, I can give it to you, but this is actually
24 very helpful in preparing for trial because we can see
25 what occurred the entire time, and I thank you.

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1 Now, during the interview, we're hearing that Theo
2 was talking to you.

3 A Correct.

4 Q And he came voluntarily. He didn't try to avoid you,
5 did he?

6 A No, sir.

7 Q As soon as you got a telephone number, he came and
8 talked to you.

9 A Correct.

10 Q And then he agreed to meet with you at a neutral
11 location because y'all said, "Hey, where do you want to
12 meet?" And he said Bluff Road, Gaston post office.

13 A Correct, yes, sir.

14 Q He didn't try to evade you, did he?

15 A No, sir.

16 Q And he told you that he was given keys to Nikki
17 McPhatter's house?

18 A Yes, that's correct; yes, sir.

19 Q Told you that they had sex and that their
20 relationship was based on sex?

21 A Yes, sir.

22 Q And that she confided in him that she was seeing a
23 psychiatrist.

24 A Yes, sir.

25 Q Now, in your direct examination, Ms. McDuffie

1 skipped about three days, and those three days you were
2 still in Columbia, weren't you?

3 A Yes.

4 Q Specifically, on May 26th, you were in Columbia.

5 A Correct.

6 Q And on May 26th, the evening hours of May 26th, you
7 were trying to find a Kendra Goodman; correct?

8 A Yes, sir.

9 Q All right. So the first time you find Kendra
10 Goodman, is it fair to say you first located the wrong
11 Kendra Goodman?

12 A Correct.

13 Q And then you were able -- through Theo Manning, he
14 was able to give you a telephone number, and you were able
15 to find the correct Kendra Goodman, correct?

16 A No, sir.

17 Q That's not correct?

18 A No, sir.

19 Q All right.

20 A We had called Mr. Manning and requested that he
21 provide us additional information on Ms. Goodman to
22 locate her.

23 Q Yes, sir.

24 A And he refused to provide a telephone number or any
25 other additional contact information --

1 Q All right.

2 A -- for Ms. Goodman.

3 Q So you find Kendra Goodman at 18 Berryhill Road?

4 A I'm sorry?

5 Q Y'all find Kendra Goodman at 18 Berryhill Road?

6 A Well, we had to go to a leasing office, and that was
7 based on a report that we had obtained from one of our
8 law enforcement databases.

9 Q Yes, sir.

10 A We went to that location, and we were unable to locate
11 an address initially. So we responded to a leasing
12 office.

13 Q Yes, sir.

14 A I met with the leasing manager. He then provided us
15 a specific address for Ms. Goodman. We then went to that
16 location and attempted to speak with her that evening,
17 but we were unable to locate her. So we were able to
18 obtain some contact information from the leasing agent.

19 Detective Hopkins then made a phone call to
20 Ms. Goodman and left a voice mail message. She then
21 ultimately returned that phone call --

22 Q Yes, sir.

23 A -- and agreed to meet us at that address that we had
24 obtained from the leasing office manager.

25 Q All right. Now, I'm going to refer you to page 16

1 just to respond to something you just said.

2 A Okay.

3 Q Turn -- you just said that he refused to. Can you
4 please look at page 16 of your report? Do you have it
5 with you?

6 A Yes, sir.

7 Q All right. Page 16 of your report at 20:02 hours.
8 Do you see that.

9 A 20:02?

10 Q Yes, sir. These are important, correct?

11 A What?

12 Q These are your notes, page 16?

13 A I think I have a different --

14 Q All right. Well, let me give you a copy of your
15 report.

16 All right. Let me -- may I approach the witness, Your
17 Honor?

18 THE COURT: Yes, sir.

19 BY MR. MAY:

20 Q All right. Does that look familiar to you?

21 A Yes.

22 Q All right. Now, is it fair to say that's your
23 report?

24 A Page 16?

25 Q Yes, sir.

1 A Okay.

2 Q Is that fair to say that's your report?

3 A Yes.

4 Q And that you kept this and you wanted it to be
5 accurate; correct?

6 A Correct.

7 Q All right. Now, you just said he refused to give any
8 information. Actually, look at 20:02.

9 A Yes, sir.

10 Q "Hopkins then called Manning and requested any
11 assistance in attempting to locate Goodman. Manning only
12 advised that she was a black female, 27 years of age, lived
13 in Irmo, possibly worked at a laundry cleaner.

14 He also advised that she had two children, age three
15 and five." I'm not going to put their names in the record,
16 but that's what it says, correct?

17 A Correct.

18 Q All right. So he did give you information; correct?

19 A He gave us that information but no specific
20 information to contact her.

21 Q All right. But you were given information. It's not
22 like he just refused to talk to you about the incident,
23 correct?

24 A Right. He gave us --

25 Q All right.

1 A -- very peripheral information, yes.

2 Q So once you find Kendra Goodman on 5/26, you and -- is
3 it Detective Hopkins?

4 A Correct.

5 Q Find her in the evening hours of May the 26th, is that
6 fair?

7 A Correct. We actually -- when we get to her apartment,
8 Detective Hopkins actually made -- as she was there
9 speaking to Ms. Goodman, she was actually in telephone
10 contact with Mr. Manning while we were arriving at the
11 apartment.

12 Q Okay. Now, y'all at that -- y'all get to Kendra
13 Goodman and y'all start trying to get a statement, and
14 you actually record a statement; correct?

15 A Correct, after she has spoken to Mr. Manning on the
16 telephone, yes.

17 Q Correct. And now -- now in her statement she gives
18 you -- she lies; correct. She lies, correct?

19 MS. McDUFFIE: Your Honor. Objection.

20 MR. MAY: She lies. I mean, she says she doesn't know
21 what in the world you're talking about.

22 MS. McDUFFIE: Your Honor, may we object to this?

23 THE COURT: What's your objection?

24 MS. McDUFFIE: Your Honor, may we approach?

25 THE COURT: Yes.

1 (WHEREUPON, a bench conference was held in the
2 presence, but not within the hearing of the jury.)

3 THE COURT: All right. Ladies and gentlemen, let's
4 take a short break. Let me take this matter up with the
5 attorneys. I did tell you at the beginning there were
6 a couple -- there would be a few times when this would
7 become necessary.

8 Just go to your jury room. Relax for a few minutes.
9 We'll call you when we're ready, it's a good time for an
10 afternoon break anyway.

11 (WHEREUPON, the jury left open court at approximately
12 3:47 p.m.)

13 THE COURT: All right. Come to order, please.
14 All right. Solicitor, what's your objection?

15 MS. McDUFFIE: Your Honor, first, we object to
16 Mr. May's characterization of these statements being a
17 lie. Second, Your Honor, we would object on the grounds
18 of hearsay and him trying to elicit the substance of the
19 statement through Detective Fitch made by Kendra
20 Goodman, a witness who is available to testify.

21 THE COURT: All right.

22 MR. MAY: Your Honor, I did not ask what she said.
23 I'll be happy to clean -- I'll be happy to clean it up
24 and say you spoke with her and the investigation later
25 proved out that what she told you was untrue.

1 THE COURT: Why didn't you do that the first time?

2 MR. MAY: Well, it got objected to. I didn't get an
3 opportunity to correct it.

4 THE COURT: Proffer your questions.

5 MR. MAY: Yes, sir. You talked to Kendra Goodman on
6 May 26th; correct?

7 THE COURT: You can answer.

8 THE WITNESS: Yes, sir.

9 BY MR. MAY:

10 Q All right. She gave you a statement. Don't go into
11 what the statement says, but she gave you a statement;
12 is that correct?

13 A Correct.

14 Q Through later investigation, you find out that
15 statement is incorrect.

16 A That's correct.

17 Q Or untruthful. That's probably the word I'll use.

18 THE COURT: Any objection?

19 MS. McDUFFIE: Your Honor, we would still object to
20 him trying to back door this in through that line of
21 questioning.

22 THE COURT: Well, I'm going to allow that. Is there
23 anything further on...

24 MR. MAY: On Ms. Goodman?

25 THE COURT: Well, I don't know. I mean, any more

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1 objectionable...

2 MR. MAY: I --

3 THE COURT: Do you know what you're going to ask?

4 MR. MAY: Yes, sir. I believe that they also have
5 a piece of evidence that they're going to attempt to
6 introduce.

7 Beg the Court's indulgence.

8 (Pause)

9 Your Honor, we're also seeking to introduce this as
10 found during its execution of the search warrant at the
11 codefendant's house by the detective that is on the
12 stand.

13 THE COURT: Any objection?

14 MR. MAY: We can just take a few minutes; I'll be
15 happy to get everything in order.

16 THE COURT: All right. Let's try to clean it up
17 before we bring the jury back. Otherwise, the rest of
18 the courtroom can stand at ease, including the court
19 reporter, for about ten minutes.

20 Sir, you can -- we're going to take a break and you
21 can...

22 THE WITNESS: Just use the restroom, Your Honor?

23 THE COURT: That's what I mean. I was trying to get
24 it out.

25 THE WITNESS: Thank you, sir.

1 THE COURT: Just don't talk with anybody during the
2 break.

3 THE WITNESS: No, sir.

4 (WHEREUPON, a short break was taken.)

5 MR. MAY: Mark this.

6 MS. PRINGLE: Can we just discuss the schedule? I'm
7 trying to determine for my own purposes picking up
8 children.

9 They indicated their next witness is about an
10 hour-and-a-half. I don't know how much longer Mr. May
11 has or what redirect will be. If they are ready to
12 proceed -- if you want them to put their next witness up,
13 I believe that will be a lengthy witness.

14 THE COURT: Who is the next witness?

15 MS. CAMPBELL: Detective Martin.

16 THE COURT: My experience is when lawyers want to
17 get out of the courtroom, they always overestimate the
18 amount of time the next witness is going to take. Now,
19 it will take at least two hours. Okay. Well, we'll quit
20 early. An hour-and-a-half?

21 MS. McDUFFIE: Your Honor, the audiotape that we
22 intend to offer --

23 THE COURT: Oh, okay.

24 MS. McDUFFIE: -- is 79 minutes.

25 THE COURT: Which audio statement is that?

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1 MS. McDUFFIE: The one with Detective Martin, the
2 second one.

3 THE COURT: Okay. Well, then do you have a short
4 witness? Mr. May is not going to be more than ten
5 minutes.

6 MR. MAY: Do you want me to draw this out, Your Honor?

7 THE COURT: What's your schedule? What time do you
8 have to be out?

9 MS. PRINGLE: I can do either. I just was going to -- if
10 I know, then I can plan to let my husband know, but I can -- it
11 does not need to -- I'm not taking a position.

12 THE COURT: Well, I hate to -- I don't like to quit
13 at four o'clock, five, 5:30ish usually is about quitting
14 time, but if you need -- if you need for us to stop, we'll
15 stop.

16 MS. PRINGLE: If that's --

17 THE COURT: I mean, it's like a juror. I mean, if
18 a juror has to pick up a kid at 5:30, we've got to -- we've
19 got to stop.

20 MS. PRINGLE: Well, I can have my husband pick them
21 up. It's fine. I just thought if they were going to
22 stop -- I was really just asking for information so that
23 I could make a decision.

24 I don't -- I don't want to be the one to decide it
25 for everybody. I can do either. I just was really...

1 THE COURT: Why don't you make a phone call and see
2 if that's available.

3 MS. PRINGLE: It's available. I know it's available.

4 THE COURT: Then e-mail.

5 MS. PRINGLE: Okay.

6 THE COURT: I mean, I'll try to have you out of here
7 at six at the latest.

8 Yes? Because I'm considering the jurors, too.

9 MS. McDUFFIE: I have no opinion or nothing to do.
10 I have a separate issue, Your Honor. We'll bring it up
11 later.

12 THE COURT: All right. Dealing with this witness?

13 MR. MAY: Did you mark that?

14 THE COURT REPORTER: I haven't had a chance to.

15 MS. McDUFFIE: I believe Mr. May is intending to
16 introduce through this witness some photocopies of some
17 fake ID's or fraudulent ID's found in Kendra Goodman's
18 apartment, which is being marked for evidence.

19 Your Honor, we would object to -- to the entry of
20 that evidence.

21 THE COURT: Did he have a search warrant for
22 that -- for that residence?

23 MS. McDUFFIE: Yes, they did. But, Your Honor, we
24 would argue that there is no relevance whatsoever in
25 Kendra Goodman having fake ID's in her home or ID's in

1 other names, variants of her name in her home.

2 THE COURT: Sort of like the other gun?

3 MS. McDUFFIE: Exactly, Your Honor.

4 THE COURT: What's -- what's the defense position?

5 MR. MAY: Yes, sir, Your Honor. It's not a fake -- it's
6 not merely a fake I.D. It's a fake I.D. of using
7 Mr. Manning's ex-wife's South Carolina driver's license
8 and then Ms. Goodman superimposes her picture onto that
9 driver's license, so it goes to --

10 THE COURT: There's just one?

11 MR. MAY: There's actually a couple of copies of it.
12 I'll be happy to give them to you. Ms. Tracy has them.

13 THE COURT: Well, are there more copies of the same
14 thing?

15 MR. MAY: Yes, sir.

16 THE COURT: Why do you need more than one?

17 MS. McDUFFIE: Your Honor.

18 MR. MAY: Your Honor, there's a color one. Then
19 there's different blown up -- I believe one of the
20 enlarged ones and the color one would be -- that would
21 suffice, but all of them were obtained through a search
22 warrant that --

23 THE COURT: Well, it makes it appear that she is in
24 the counterfeiting business if you've got a whole slew
25 of them. I mean, I can see the relevance, perhaps, of

1 one that's linked to the defendant.

2 MR. MAY: Yes, sir.

3 THE COURT: But...

4 MR. MAY: I'll be happy to show Your Honor.

5 THE COURT REPORTER: Do you want me to mark it first?

6 MR. MAY: Yes; yes, please.

7 (WHEREUPON, Defendant's Exhibit Nos. 8, 9 were marked
8 for identification only.)

9 THE COURT: Anything else on this?

10 MR. MAY: No, sir.

11 THE COURT: Now, who is this?

12 MR. MAY: The picture is that of Kendra Goodman.

13 THE COURT: This is Ms. Goodman?

14 MR. MAY: Yes, sir. And that's on Mr. Manning's
15 ex-wife's South Carolina driver's license or is using
16 the information of Mr. Manning's ex-wife's driver's
17 license.

18 MS. CAMPBELL: I think you have it backwards, Jim.

19 MR. MAY: I don't have the actual driver's license
20 out.

21 MS. CAMPBELL: I think it's Kendra driver's license,
22 and she just puts on the name.

23 MR. MAY: Okay. It's Ms. -- and I apologize. I never
24 had a fake driver's license.

25 INVESTIGATOR ISENHOWARD: Sure, right.

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1 MR. MAY: But it's evidently Ms. Goodman's driver's
2 license with Mr. Manning's ex-wife's information
3 superimposed on it.

4 THE COURT: Well, it says Ms. Manning.

5 MR. MAY: Correct. It's Ms. Manning's information
6 that's superimposed onto Ms. Goodman's I.D.

7 THE COURT: Who -- who understands this?

8 MR. MAY: It's --

9 THE COURT: I mean, you say it's Ms. Goodman's
10 picture from --

11 INVESTIGATOR ISENHOWARD: It's her -- it's her
12 driver's license.

13 THE COURT: It's Ms. Manning's picture. It's on
14 Ms. Manning's license plate -- I mean, license.

15 INVESTIGATOR ISENHOWARD: If you were to take your
16 personal driver's -- your driver's license and you put
17 my name over just your name portion of your driver's
18 license, that's what's going on there. Do you see what
19 I'm saying? It's just the name on her driver's license.

20 THE COURT: So it's gives her a different address?

21 INVESTIGATOR ISENHOWARD: No. That is what
22 I'm -- no.

23 THE COURT: It gives her Ms. Goodman's address?

24 INVESTIGATOR ISENHOWARD: No. It gives them just the
25 name. It just changes her name with her picture.

1 THE COURT: Well, the picture is of Ms. Manning.

2 MS. McDUFFIE: The picture is of -- of Kendra
3 Goodman. The address is Kendra Goodman, and the name on
4 it is not Kendra Goodman.

5 THE COURT: Well, that's what I said the first time,
6 and you said that's not right. I said that's Kendra
7 Goodman and you said no.

8 MR. MAY: No. It's the picture with Shameka
9 Manning's name.

10 THE COURT: All right. Do you want that one or this
11 one? You're only going to get one.

12 MR. MAY: I'm only going to get one? If I may.

13 THE COURT: Anything else?

14 MS. McDUFFIE: Your Honor, we just ask that he lay
15 a foundation before attempting that.

16 THE COURT: I understand, and you understand the
17 ruling on the "you lied" question.

18 MR. MAY: I do, Your Honor.

19 THE COURT: All right. Bring the jury.

20 (WHEREUPON, the jury came into open court at
21 approximately 4:13 p.m.)

22 THE COURT: All right. Mr. May, you may continue.

23 MR. MAY: Thank you, Your Honor.

24 BY MR. MAY:

25 Q All right. Detective Fitch, on 5/26, you spoke with

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1 Ms. Goodman; is that correct?

2 A Yes, sir.

3 Q And through your investigation, you found that what
4 she told you was untruthful?

5 A That's correct.

6 Q That's correct. All right. Now, did you have a -- at
7 some point, was it on the 28th or the 29th when you had
8 the -- when you were a part of a search warrant; is that
9 correct?

10 A Yes, sir.

11 Q And the search warrant was for Ms. Kendra Goodman's
12 residence; is that correct?

13 A Correct.

14 Q And you actively participated in the search warrant,
15 correct?

16 A Correct; yes, sir.

17 Q I'm going to show you piece of evidence that's been
18 marked as Defense Exhibit 8. I ask you to look at it and
19 tell me if you recognize it.

20 A Yes, sir. It's a photocopy of an item that I located,
21 had requested the Richland County Sheriff's office to
22 seize out of the vehicle.

23 Q Okay. So you found that in Ms. Goodman's residence;
24 is that correct?

25 A Actually, it was located in her vehicle.

1 Q It was in her vehicle, I apologize.

2 A Yes, sir.

3 Q All right. And -- may I see it? And this is a South
4 Carolina driver's license with Ms. Goodman's picture; is
5 that correct?

6 A Yes, sir.

7 Q With the name Shameka Manning.

8 A Yes, sir.

9 Q All right. Did you find out who Shameka Manning was
10 through your --

11 MS. McDUFFIE: Your Honor, we would just ask that he
12 enter this into evidence if he's going to publish it to
13 the jury.

14 THE COURT: Over the State's objection.

15 (WHEREUPON, Defendant's Exhibit No. 8 was admitted
16 into evidence.)

17 BY MR. MAY:

18 Q Did you find out who Shameka Manning was?

19 A Yes, we did.

20 Q Shameka Manning was the defendant's ex-wife,
21 correct?

22 A Yes. That's correct.

23 Q So what we have here is a driver's license with
24 Kendra Goodman's picture, Kendra Goodman's information
25 and Shameka Manning's name; is that correct?

1 A That's correct.

2 Q Now, on that same day, you had the occasion to speak
3 with Ms. Goodman for another statement; is that correct?

4 A No, sir. I only spoke to Ms. Goodman one time.

5 Q Beg the Court's indulgence.

6 (Pause)

7 All right. I'm going to ask do you look at page 22
8 of the statement I provided to you.

9 A Yes, sir.

10 Q Now, you were with Captain Stan Smith; correct?

11 A Correct.

12 Q And y'all were speaking to Ms. Goodman a second time;
13 is that correct?

14 A Captain Smith was. I never --

15 Q All right. But you were present, correct?

16 A I was present during their conversation, yes.

17 Q And she was confronted that time with information
18 about her car?

19 A Yes, sir.

20 Q And she was evasive again?

21 A She advised -- Captain Smith had shown her a picture
22 of the A.T.M. surveillance --

23 Q Correct.

24 A -- footage, and her statement was, "It looks like my
25 car."

1 Q But then she started giving explanations; correct?

2 A She -- well, she stated that there was one individual
3 who is allowed to drive her car and who the father of her
4 children was.

5 MR. MAY: Beg the Court's indulgence.

6 (Pause)

7 No other questions at this time, Your Honor.

8 THE COURT: Redirect?

9 MS. McDUFFIE: Briefly, Your Honor.

10 REDIRECT EXAMINATION:

11 BY MS. McDUFFIE:

12 Q Detective Fitch, on May 21st when the defendant,
13 Theodore Manning, voluntarily gave you and Detective
14 Martin -- he voluntarily gave you and Detective Martin
15 a statement?

16 A Yes, sir -- yes, ma'am.

17 Q And did you later determine that statement was -- to
18 be not true?

19 A Yes, ma'am.

20 Q And what -- through your investigation, what did you
21 learn was the relationship between Kendra Goodman and
22 Theodore Manning?

23 A We later learned that there was a physical
24 relationship between the two.

25 Q What do you mean by physical?

1 A They -- during the course of our investigation, we
2 had learned that -- and this is coming from information
3 that we had received also from other officers, but we
4 learned that during the course --

5 MR. MAY: Objection, Your Honor. This is hearsay.

6 THE COURT: Overruled.

7 THE WITNESS: We learned that during the course of
8 the taking Ms. McPhatter to a location where she was
9 ultimately found, during our -- my initial interview
10 with Ms. Goodman, we had asked her if she ever had any
11 kind of a relationship with Mr. Manning. She at that
12 time, in fact, indicated that no, she did not.

13 We learned later on that after Mr. Manning had taken
14 this -- had taken the vehicle to the area where we had
15 located it, I was advised -- and I learned that he then
16 at that point, in fact, returned home and then had sex
17 with Ms. Goodman at his residence.

18 MR. MAY: Your Honor, I object at this time.

19 THE COURT: All right.

20 MR. MAY: We have a matter of law.

21 THE COURT: Approach the bench.

22 (WHEREUPON, a bench conference was held in the
23 presence, but not within the hearing of the jury.)

24 MR. MAY: Your Honor, I'll --

25 THE COURT: All right. Ladies and gentlemen, I'm

1 going to sustain the last objection. I'm going to ask
2 you to disregard that comment and strike it from the
3 record, Madam Clerk, the answer -- the question and the
4 answer.

5 BY MS. McDUFFIE:

6 Q Based on your investigation, did you learn that there
7 was a romantic relationship between the two of them?

8 A Yes, ma'am.

9 Q And Mr. May asked you about the statement that Kendra
10 Goodman gave to you, that being an untrue statement?

11 A Yes, ma'am.

12 Q Immediately preceding her giving you that statement,
13 who was she on the telephone with?

14 A As we approached the apartment, prior to us even
15 speaking with Ms. Goodman, she was in direct telephone
16 contact with Mr. Manning.

17 MS. McDUFFIE: Thank you, Your Honor. No further
18 questions.

19 THE COURT: Any recross?

20 MR. MAY: No.

21 THE COURT: You may come down.

22 May the witness be excused? Without objection?

23 MR. MAY: Your Honor, hold on just a second, please,
24 Your Honor.

25 (Pause)

1 Your Honor, seeing as he's going to be here probably
2 through the duration, we'd ask that he not be released
3 from his subpoena.

4 THE COURT: All right. Fine. Is he here on your
5 subpoena, as well?

6 MR. MAY: Yes, sir.

7 THE COURT: All right. I'll ask him to stay.

8 MR. MAY: Thank you, Your Honor.

9 THE COURT: Next witness?

10 MS. CAMPBELL: The State calls Detective Keith
11 Martin.

12 KEITH MARTIN,
13 after being duly sworn, testified as follows:

14 THE WITNESS: My name is Keith Martin, M-A-R-T-I-N.

15 DIRECT EXAMINATION:

16 BY MS. CAMPBELL:

17 Q Detective Martin, where are you employed?

18 A With the Charlotte/Mecklenburg Police Department.

19 Q And what do you do there, sir?

20 A I'm a homicide detective.

21 Q Can you tell this jury a little bit about your
22 duties as a homicide detective with the
23 Charlotte/Mecklenburg Police Department?

24 A Well, in addition to investigating homicides, we
25 investigate suicides, overdoses, accident -- accidental

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1 deaths that may happen, on the workplace, for example,
2 and basically any medically unattended death where
3 there's not a doctor available to sign off on the death
4 certificate we'll investigate.

5 Q And if, say there's a missing person report made to
6 the Charlotte Police Department, can that sometimes
7 develop into an investigation you would participate in?

8 A Yes. Sometimes we will become involved in missing
9 persons cases, and I forgot to mention serious shootings
10 where the injuries are severe enough that the person might
11 die or may not. We become involved in those, as well.

12 Q In order to become involved in a missing persons
13 investigation, generally, there may be some sign of foul
14 play?

15 A Yes, ma'am.

16 Q In this case, specifically, the victim, Nikki
17 McPhatter, when did you been involved?

18 A The first day I became involved was May 19th, 2009.

19 Q And about 6:40 that evening, I believe you were brought
20 in there on a meeting?

21 A That's correct.

22 Q And what type of meeting was that? What was the
23 purpose of it?

24 A It was with the missing person's unit. They were
25 just kind of updating us on what they had been going on

1 from that point, from the point where she was -- the victim
2 was initially reported missing, what they had done up
3 until the 19th.

4 Q And were you actually fully -- without going through
5 everything such as Detective Fitch just testified
6 to -- given a list of the information they had been able
7 to get specifically up until that evening on the 19th?

8 A Yes, I was. I was briefed by Detective Flagg.

9 Q Specifically that day, was there certain information
10 developed that brought it from the missing person's unit
11 over into the homicide unit, the murders?

12 A Yes, there was.

13 Q And what information was that, sir?

14 A The attempted bank transactions were suspicious in
15 nature. They were using her cards and that her cell
16 phone was off and wasn't being used and the absence from
17 work were all uncharacteristic of her.

18 Q And at that point, had there been some video that had
19 been developed from an A.T.M. on -- here in Richland County
20 on the corner of Rabon and Farrow Road?

21 A Yes, there had been.

22 Q And were you able to determine -- was anyone able to
23 determine just prior you being brought in whether or not
24 that was the victim on the video on May 6th using that
25 A.T.M.?

1 A It appeared not to be the victim.

2 Q And, in fact, what could you tell from the video?

3 A It appeared to be a male.

4 Q During that meeting, did y'all decide to execute a
5 search warrant?

6 A Yes, we did.

7 Q And what search warrant did y'all execute that
8 evening?

9 A Of the victim's residence in Charlotte where Nikki
10 McPhatter lived.

11 Q And was a lawful search warrant secured that evening?

12 A Yes, it was.

13 Q And, in fact, were you present when that search
14 warrant was executed at the victim's residence? And
15 where was that in Charlotte?

16 A The address was 8618 Rozumny Drive in Charlotte.

17 Q And did you actually participate in that search
18 warrant?

19 A I did. I assisted the missing persons unit.

20 Q And was Detective Fitch also there?

21 A Yes, he was.

22 Q As well as Detective Hopkins?

23 A Yes. She was, as well.

24 Q What time was that search warrant executed that
25 evening?

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1 A We arrived at the house at 10:28 p.m. that night of
2 the 19th.

3 Q Specifically, what kind of evidence were you
4 looking for in the execution of that search warrant?

5 A Anything that may be related to the crime of
6 murder or something leading us to locate her in her
7 disappearance to see if something had happened in her
8 house and she was taken elsewhere. We were looking for
9 any evidence of clean up or that a crime had taken place
10 in her house.

11 Q And was a crime scene unit actually brought in?

12 A Yes, they were. Crime scene technicians were used.

13 Q Did they actually search the house with an alternate
14 light source?

15 A Yes, they did.

16 Q And what's an alternate light source searching for?

17 A An alternate light source can illuminate. You turn
18 off the lights in the residence. You can use this
19 alternate light source with a pair of glasses. It can
20 illuminate bodily fluids, blood, semen, things of that
21 nature that are -- wouldn't be visible to the naked eye
22 in a regular light source.

23 Q And in that search warrant of the victim's house in
24 Charlotte, North Carolina, was there any evidence of any
25 foul play?

1 A No, there was not.

2 Q Once you were able to eliminate any evidence of foul
3 play there -- what time did you all actually complete that
4 search warrant on that evening on the 19th?

5 A We left that house shortly after midnight at
6 12:49 a.m., that night, morning.

7 Q The next day, on May 20th around 7:15 that evening,
8 did you meet with Detective Flagg and Detective Hopkins?

9 A Yes, I did. I met with them again.

10 Q And was there another search warrant drawn up to
11 examine any possible evidence that had been collected the
12 night before from the victim's house?

13 A Yes, specific --

14 Q What evidence was that?

15 A A computer and an S.D. card, a card that you would
16 put inside a digital camera and store pictures on. The
17 laptop computer and that card were collected out of her
18 house.

19 We wanted to execute search warrant to determine
20 what if -- what was on there.

21 Q And was that evidence, the computer and the card you're
22 taking about, sent to your technical department?

23 A It was. We have a computer forensic team in our
24 department that handles electronic evidence such as
25 that.

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1 Q And did they actually examine the computer, as well
2 as the card. You called it a memory card or something?

3 A I believe it's called an S.D. memory card, ScanDisk.

4 Q Okay.

5 A They were able to examine it.

6 Q And was any information relevant from this
7 investigation developed from those two items?

8 A I don't believe they were.

9 Q And again, those were collected from the victim's
10 residence in Charlotte?

11 A That's correct.

12 Q Did you also make contact that evening with an
13 Akilah Weaver, without saying what she said?

14 A I did, yes.

15 Q Was the focus -- once you had searched the victim's
16 house and there was no evidence of foul play, did the focus
17 of your investigation turn to another city?

18 A Yes, it did.

19 Q And explain to the jury why you were focusing on South
20 Carolina.

21 A Based on the information we had gained during the
22 investigation from friends and coworkers and the cell
23 phone information that we had had.

24 Q And at that point on the 20th, you had also come into
25 possession -- had actual possession of the video from the

1 A.T.M. on Farrow Road in Columbia?

2 A That, as well; correct.

3 Q Based on the information you were able to get from
4 friends, were you trying to -- did you make contact with
5 the Savannah River Plant?

6 A Yes, I did.

7 Q Why was that?

8 A Based on the investigation, we had learned that the
9 person named Teddy had possibly worked at a nuclear
10 power plant in South Carolina, which one we weren't sure,
11 so we contacted Savannah.

12 Q And the next day on the 21st, did you actually make
13 contact with the head of security for the Savannah plant?

14 A Yes, I did.

15 Q And were you able to eliminate anyone there being
16 involved in this case as your investigation progressed?

17 A Yes. As the investigation progressed, we were.

18 Q That day, did you also become aware that there had
19 been some withdrawals from the victim's bank, the A.T.M.
20 on Farrow Road?

21 A Yes.

22 Q And specifically in -- the amounts approximately
23 were how much, do you remember?

24 A Approximately \$500.

25 MR. SHEALEY: Objection, Judge. This is cumulative.

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1 THE COURT: Overruled.

2 MS. CAMPBELL: Thank you, Your Honor.

3 BY MS. CAMPBELL:

4 Q Did you also get information that day about bank
5 accounts that the victim had specifically as to two banks
6 involved in this case?

7 A Yes.

8 Q And what two banks were those?

9 A They were the Navy Federal Credit Union and Wachovia,
10 I believe.

11 Q After meeting and discussing that information, did
12 you make contact with the Columbia Police Department?

13 A Yes, I did.

14 Q Specifically the homicide unit?

15 A Yes.

16 Q And what information did you give them at that point
17 as to what y'all intended to do?

18 A I told them about the name we had of Teddy and that
19 we had a phone number, (803)476-2563.

20 Q And were you -- once you made contact with the
21 Columbia Police Department, where did you go?

22 A After speaking with Columbia, we linked up with the
23 Richland County Sheriff's Department.

24 Q Okay. Did you actually come to Columbia, was my
25 point?

1 A Oh yes, we did.

2 Q Okay. Who came with you that day?

3 A Detective Fitch.

4 Q Once you got down to the Columbia Police Department,
5 were they able to assist you as far as getting some
6 information about that phone number?

7 A Yes, they were.

8 Q Specifically, did you make contact with Sergeant
9 Isenhoward and an investigator at the Columbia Police
10 Department named McCracken?

11 A Yes, I did.

12 Q And what information were you able to develop in
13 relation to the phone number? I don't want to write it
14 down wrong. The number you just said was what?

15 A It was (803)476-2563.

16 Q What information were you able to develop once you
17 got to the Columbia Police Department as far as an
18 affiliation with that phone number?

19 A The -- Detective McCracken was able to link that
20 number to a Theodore Manning IV in that jurisdiction.

21 Q Once you had developed the name Theodore Manning IV
22 in this jurisdiction, were you able to, in some database,
23 get several addresses?

24 A Yes, we were.

25 Q And tell the jury exactly what information you got

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1 as far as addresses goes and then what you did.

2 A There was an address on 8043 Bluff Road. There was
3 an address for 194 Sharon Acres Road in Gaston, and an
4 additional address at 551 Apartment 738 River Hills
5 Circle, and then an address on Jerome.

6 Q On Jerome Street?

7 A Yes.

8 Q Once you got that information, where did you proceed
9 first?

10 A The first place we went was the Bluff Road address.

11 Q Once you got to the Bluff Road address, were you
12 able -- what happened?

13 A Well, we weren't able to find an 8043. The address
14 didn't exist. We knocked on the door of 8047 and couldn't
15 get an answer. We checked with the houses on both sides
16 to talk to the neighbors to see if they knew of anybody
17 named Manning and they didn't.

18 Q At that point did you then pursue some more
19 information you were able to develop with the Columbia
20 Police Department about where Mr. Manning worked?

21 A Yes, we were.

22 Q Where did you go?

23 A We went to Cisco on 131 Cisco Court across from
24 Garner's Ferry Road.

25 Q And while there, did you talk to the manager?

1 A We did. We spoke with a guy named Daniel Provost.
2 He was the night manager that was working that shift at
3 that time.

4 Q And were you able to determine whether or not
5 Mr. Theodore Manning still worked at the Cisco?

6 A We were able to determine that, yes, he did not work
7 there anymore.

8 Q He did not work there?

9 A No, ma'am.

10 Q And had been gone for approximately how long?

11 A Approximately eight months.

12 Q While there, were you able to make contact with a man
13 named Michael Jones who knew the defendant?

14 A Yes, I was.

15 Q And was he able to give you information about
16 possible employment of Theodore Manning?

17 A Yes, he was. He was -- he provided us with the
18 Westinghouse on Bluff Road.

19 Q Was he also able to provide you with a number of
20 numbers that might be associated with Mr. Manning with
21 his knowledge of him?

22 A He gave us three known contact numbers for
23 Mr. Manning.

24 Q And was one of those numbers (803)476-2563?

25 MR. SHEALEY: Objection, Your Honor. This is

000751

1 leading the witness.

2 THE COURT: Sustained.

3 BY MS. CAMPBELL:

4 Q What was the last number he gave you?

5 A (803) 476-2563.

6 Q 2563?

7 A Yes, ma'am.

8 Q And was that the number -- did you already have
9 knowledge of this number?

10 A Yes.

11 Q And how would you have knowledge of that number?

12 A From the victim's cell phone records.

13 Q After going to the Cisco plant and getting that
14 information, did you follow up on some of the addresses
15 that had been provided to you that were associated with
16 Mr. Theodore Manning?

17 A Yes, we did.

18 Q Where did you go next?

19 A At 8:31 p.m. on that day, we went to the 551 River
20 Hill Circle address, apartment 738.

21 Q Did you make contact with the resident of that
22 apartment?

23 A Yes, I did. I spoke with a Carlissa Hayward and
24 she -- yes, I did. I contacted her.

25 Q Did he have any information about Theodore Manning?

1 A She did not.

2 Q After going there, did you proceed to another
3 location or address that had been provided to you?

4 A Yes. At 9:18 p.m. that day we arrived at 1518 Jerome
5 Street.

6 Q Who did you make contact with there that day?

7 A A lady by the name of Mrs. Samuels.

8 Q Were you able to determine what her relationship was
9 to Theodore Manning?

10 A His mother.

11 Q Was she able to tell you where he was currently
12 living?

13 MR. SHEALEY: Objection, calls for hearsay.

14 THE COURT: Sustained.

15 BY MS. CAMPBELL:

16 Q What, if any, information was she able to give you
17 hadn't the whereabouts of --

18 MR. SHEALEY: Objection, calls for hearsay.

19 THE COURT: Rephrase your question.

20 BY MS. CAMPBELL:

21 Q What, if any, information was she able to give you?

22 MR. SHEALEY: Objection, Your Honor. She is not
23 rephrasing the question.

24 THE COURT: Sustained.

25 BY MS. CAMPBELL:

- 1 Q Did you speak to Mrs. Samuels on the date in question?
- 2 A I did, yes.
- 3 Q Were you able to determine what her relationship was
- 4 to Theodore Manning?
- 5 A I was able to determine, yes.
- 6 Q Based on the information she gave you, did you -- were
- 7 you able to learn anything new about the whereabouts of
- 8 Theodore Manning?
- 9 A No, I was not. She was not able to help us with an
- 10 address.
- 11 Q After speaking with Mrs. Samuels, did you then make
- 12 a phone call?
- 13 A I did.
- 14 Q And who did you then call?
- 15 A I called Mr. Manning.
- 16 Q What time was that that you made the phone call?
- 17 A I called him at 9:20 p.m. from my cell phone.
- 18 Q And this is still on May 21st, I believe?
- 19 A Yes, it is.
- 20 Q And what phone number did you use to reach him?
- 21 A I called him on his cell phone, (803)476-2563.
- 22 Q Were you able to make contact with him?
- 23 A No, I was not. I left him a voice mail.
- 24 Q Did you pursue another address that had been
- 25 provided to you in association with Theodore Manning?

1 A We were en route to another one before we were
2 interrupted.

3 Q Okay. Where were you headed before you were
4 interrupted?

5 A We were going to a Sharon Acres location.

6 Q And you said you were interrupted. How were you
7 interrupted?

8 A I received a phone call from Mr. Manning.

9 Q And when you received the phone call, what was the
10 gist of your conversation with him? Did he identify
11 himself?

12 A He did.

13 Q And what was the gist of your conversation?

14 A That I told him I needed to speak with him about
15 Nikki McPhatter, and that I understood that they were
16 friends of some sort, to what extent I wasn't sure, and
17 I wanted him to speak with me about that. He was able
18 to tell -- to confirm that they were in a relationship
19 at some point.

20 Q Did he agree to speak with you that day?

21 A Yes, he did.

22 Q Was there any kind of time restraints as far as
23 Mr. Manning was concerned?

24 A I'm sorry, as far as? I didn't hear you.

25 Q Was there any sort of time constraint as far as

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1 Mr. Manning was concerned?

2 A Yeah. He had to be at work that night at, I believe,
3 11:00 or 11:30 p.m. He worked third shift.

4 Q And did you make arrangements to meet with him that
5 night?

6 A Yeah, we didn't really know where we were. We asked
7 him where would be a good spot to meet. He suggested the
8 post office on Bluff Road.

9 Q Were you able to get to the post office?

10 A Yes, we were.

11 Q Were you actually able to make contact with
12 Mr. Manning that night?

13 A Yes, I did, ultimately.

14 Q Approximately what time was it that you made contact
15 with him?

16 A We arrived at the post office at 10:42 p.m. that
17 night.

18 Q Was there anyone with him?

19 A He was with Candace Jackson.

20 Q And were you able to determine the relationship with
21 Candace Jackson?

22 A That was his fiancée at the time.

23 Q Did you have a conversation with Mr. Manning that
24 night?

25 A Yes, I did.

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1 Q Was Detective Fitch there?

2 A Yes, he was.

3 Q And where did the conversation take place?

4 A It took place in my unmarked Chevy Malibu. It's a
5 city vehicle that they issued us to drive. It was inside
6 in the passenger's area of that car.

7 Q And at that point, what kind of information were you
8 trying to get?

9 A Anything that I could about the victim and their
10 relationship and when he last saw her. Anything I can
11 get.

12 Q Without going through it all at all again, was that
13 statement recorded?

14 A Yes, it was.

15 Q And is that the statement that's already been put into
16 evidence?

17 A Yes.

18 Q And again, it was you and Detective who?

19 A Fitch.

20 Q Based on information you got from the defendant during
21 that interview, did you go anywhere else that night?

22 A No, we did not.

23 Q Do you remember going by Freeman's?

24 A Yeah. Well, yeah, at 11:33 p.m. that night.

25 Q That night?

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1 A We stopped by Freeman's convenience store to check
2 on the surveillance video based on information we had
3 gained from him during his interview.

4 Q Were you able to get the video?

5 A No, we weren't.

6 Q The next day on the 22nd, May 22nd, what was the first
7 thing you did that morning?

8 A 7:30 that morning on the following day I gave a phone
9 call to Captain Smith with the Richland County Sheriff's
10 Department and asked him if he could send an investigator
11 over to Freeman's to see if they could get the surveillance
12 video, maybe a receipt or something of the transaction
13 that had allegedly taken place.

14 Q At this point, where are you?

15 A I'm in Charlotte.

16 Q You're back in Charlotte?

17 A Yes, ma'am.

18 Q Later that morning, did you make contact with another
19 investigator from the sheriff's department?

20 A Yes, I did. At about 10:45 that morning, I called
21 Investigator Isenhoward with the Richland County
22 Sheriff's Department.

23 Q And was he able to give you information about
24 Freeman's store?

25 A Yes. He said that they weren't able to --

1 MR. SHEALEY: Objection, hearsay.

2 THE COURT: Sustained.

3 BY MS. CAMPBELL:

4 Q That morning in speaking with Investigator
5 Isenhoward, was he also -- without saying what he said
6 about what was said, had he made contact with the defendant?

7 A Yes.

8 Q That day, did you return back to Richland County in
9 Columbia?

10 A Yes.

11 Q And approximately what time was it when you got back
12 to Columbia or the Richland County Sheriff's Department,
13 actually?

14 A 7:04 p.m. that night on the 22nd, we went back down
15 to -- came back down to Columbia.

16 Q And why did you return to Columbia on the evening of
17 the 22nd?

18 A A couple of reasons: One was to conduct a more
19 thorough interview with Mr. Manning, because I wasn't
20 comfortable with the first one that I had; and the second
21 was to execute a search warrant on his residence.

22 Q That night, was the Richland County Sheriff's
23 Department actually able to secure a search warrant for
24 Mr. Manning's residence?

25 A Yes, they were.

1 Q Is that following protocol that they would get the
2 search warrant and y'all would...

3 A Yes, it is. It's their jurisdiction.

4 Q Did y'all assist in the search?

5 A Yes, we did.

6 Q And approximately what time -- what residence were
7 you searching?

8 A 8047 Bluff Road.

9 Q You mentioned earlier that the information you had
10 gotten was different on Bluff Road. What was that number?

11 A 8043.

12 Q Were you able to determine what Theodore Manning's
13 actual residence was?

14 A Yes, we were.

15 Q And what was that number again?

16 A 8047 Bluff Road.

17 Q And is that one of the houses you had been to earlier?

18 A Yes.

19 Q The day before?

20 A I had knocked on that door the day before.

21 Q And was there any answer the when you knocked on the
22 door?

23 A No, there was not.

24 Q Once you got -- and what time was it when y'all got
25 to the residence at 8047 Bluff Road?

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1 A It was at 8:50 p.m. on that night on the 22nd.

2 Q When you got there, who was present?

3 A Mr. Manning.

4 Q And did you make contact with him?

5 A I did, yes. I knocked on the door. He came and he
6 answered it.

7 Q Explain to the jury what happened next.

8 A Myself and Detective Hopkins spoke with him
9 briefly, told him what we were there for, what we would
10 like to do and asked him for his permission to search his
11 house. And didn't -- at that point didn't mention
12 having a search warrant, just wanted to get his
13 cooperation, which we got, and also asked him if he would
14 be willing to accompany us to a nearby police station to
15 conduct a more thorough interview than what we had taken
16 the day before.

17 Q While you were initially talking to Mr. Manning, did
18 he receive a phone call?

19 A Yes, he did. He -- he got a call from his -- an uncle,
20 Mr. Samuels.

21 Q And during the course -- tell me what happened when
22 he got the phone call.

23 A He got the phone call. We were talking. He and I
24 were talking, and he received this phone call from -- or
25 he said his uncle and said that his uncle wanted to talk

1 to me. So he handed me his cell phone, and I spoke with
2 his uncle on the cell phone.

3 Q And without saying what the uncle said, what did you
4 tell the uncle?

5 A I told him that we had a search warrant for the
6 residence and that we would like to speak with Mr. Manning
7 in further detail.

8 Q And once you terminated the phone call with the
9 uncle, did y'all then immediately leave or did you have
10 to wait?

11 A No. The uncle asked that we wait, so we did. We
12 waited for him to get to the address on Bluff Road because
13 he want to be there. So we waited for him to get there.

14 Q Once the uncle arrived at 8047 Bluff Road, Theodore
15 Manning's residence, did y'all then proceed to another
16 spot to actually interview him?

17 A Yes. It wasn't until 10:16 p.m. that night that we
18 arrived at the Richland County Sheriff's Department
19 Region 1 headquarters on Lower Richland Road to conduct
20 our interview.

21 Q And this was a substation at the sheriff's
22 department?

23 A I believe so, yes.

24 Q And why was the reason you were going to a different
25 location?

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1 A To -- it's just a better environment to speak with
2 someone face-to-face. A person sitting in a car, it was
3 dark outside, it's just not a good environment, as you
4 can tell from the -- the bad audio on the previous recording.
5 It's just not a good environment to do in a car.

6 Q How did Mr. Manning get to the substation?

7 A He rode with his uncle.

8 Q And how did you get there?

9 A We followed. I don't know if we followed them or they
10 followed us, but there was a Richland County sheriff's
11 deputy that showed us where to go, because again, we didn't
12 know where we were going.

13 Q And who all accompanied Mr. Manning to the Region 1
14 substation?

15 A His uncle, Candace Jackson again, and she had a young
16 girl with her, maybe four or five years old, her daughter
17 I guess.

18 Q That evening did you take a recorded statement from
19 the defendant?

20 A Yes, I did.

21 Q Have you had an opportunity over the course of this
22 investigation to listen to that statement since it was
23 taken?

24 A Yes.

25 Q And does it fairly and accurately represent the

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1 conversation?

2 A Yes, it does.

3 Q And ultimately, there was actually a transcript
4 prepared as far as what the conversation was?

5 A Yes.

6 Q And you've had an opportunity to review that?

7 A Yes, I have.

8 MS. CAMPBELL: Your Honor, at this time we'd
9 offer -- it's already in evidence? It's on the same disc
10 with the other one.

11 Your Honor, at this time, we'd ask permission to
12 publish the statements and to hand out transcripts.

13 THE COURT: It's on the same disc?

14 MR. MAY: Your Honor.

15 MR. SHEALEY: The audio is subject to the same
16 objection, though, pretrial.

17 THE COURT: Yes, sir.

18 MR. SHEALEY: We have a similar objection as to the
19 publishing but...

20 THE COURT: I understand. Why don't you take up the
21 prior...

22 MS. CAMPBELL: The prior transcripts? I'll do
23 that.

24 THE COURT: Take up the prior transcripts. Make sure
25 you've got 14.

1 Ladies and gentlemen, before you start looking at
2 those transcripts, I've been informed by counsel that
3 this audiotape will take -- runs for about an hour and
4 twenty minutes. It's now five o'clock.

5 So let me just, with a show of hands, ask you if you'd
6 rather stay here tonight and hear this or -- we've got
7 to come back in the morning anyway. If you'd rather just
8 hold it until in the morning. All those who want to stay
9 here tonight and listen to it, raise your hand.

10 (Indicating)

11 Dadgumit.

12 I know it's interesting.

13 And those who do not wish to -- would prefer to hear
14 it in the morning.

15 I think -- let's do that again.

16 Those who prefer to do it in the morning, raise your
17 right hands.

18 (Indicating)

19 Okay. All right. That's -- that -- we're going to
20 do this democratically. The nays have it, so we're going
21 to do it in the morning.

22 All right. Just go ahead. Just put them in your seat.
23 I'm going -- anything further for today other than this?

24 MS. CAMPBELL: No, sir.

25 THE COURT: All right. All right, ladies and

1 gentlemen, we're going to take our evening break at this
2 time. I'll ask you to be back at -- let's try to start
3 tomorrow at nine. See if we can get in a pretty hard full
4 day. Any problem with that?

5 (Indicating in the negative).

6 THE COURT: All right, sir. I'll ask you to be back
7 in the jury room at nine o'clock in the morning.
8 Again, do not discuss the case among yourselves when you
9 return to the jury room or with anyone else over the
10 evening hours.

11 I caution you again about availing yourself of any
12 kind of press reports, media reports, television,
13 newspapers and/or the internet. From time to time, I may
14 ask you that question that I asked you yesterday. So I'll
15 ask you again to please honor my instructions in that
16 regard.

17 Have a pleasant evening, and we'll see you at nine
18 o'clock in the morning.

19 THE BAILIFF: Leave your note pads.

20 THE COURT: Leave them in your seat, please.

21 THE BAILIFF: Leave them in your seat.

22 (WHEREUPON, the jury left open court at approximately
23 4:55 p.m.)

24 THE COURT: All right, sir.

25 Mr. Martin, you can come down.

1 I just wanted to make a comment for the record.
2 Ms. Pringle, you indicated somewhat -- well, you
3 indicated at the bench that you felt I was being unfair
4 in overruling your -- the defense objections to hearsay.

5 I just wanted to explain that it's my understanding
6 of the law that investigations conducted by police
7 authorities, agencies, frequently depend on what people
8 tell them.

9 Although I think I tried to sustain your objections
10 when direct comments were sought to be introduced by a
11 witness from a witness that they -- so and so said so and
12 so, but it's a very fine line when that same officer can
13 say, "I learned as a result of talking to this person"
14 or "I learned as a result of my investigation" such and
15 such and such.

16 I think those are the occasions when I have
17 overruled your objections, not yours, but counsel's
18 objections, and I -- I think that principle is supported
19 by case law. And I don't -- I mean, that's -- that's just
20 the way I try cases.

21 I generally let law enforcement tell what they
22 learned as a result of having discussions with numerous
23 people and what their investigations lead to.

24 In one sense, it could be argued that it's all
25 hearsay, but I also have to try to determine whether the

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1 statements that are made are offered for the truth of the
2 matter. That's the way I judge these statements and these
3 objections.

4 I told you I would tell you the basis for my rulings.
5 I don't know that I need to go much further than that,
6 but you can put your objection on the record.

7 MS. PRINGLE: Yes. If I may respond, Your Honor.

8 Specifically, I think the cases that you're referring
9 to are State v. Danny Lee Thompson and State v. Brown,
10 that line of cases -- I think both of those came out of
11 Richland County.

12 THE COURT: And State v. Rice, a 2008 case.

13 MS. PRINGLE: That line of cases says that
14 investigators may testify to limited hearsay when they
15 want to explain why they turn an investigation in a
16 specific direction. Things like, "We got a tip to go to
17 this neighborhood."

18 We actually would argue that Crawford v. Washington
19 overrules those two cases, that line of cases in South
20 Carolina, and had we been given the opportunity, we would
21 have made that argument throughout this trial.

22 We have been trying to make objections to hearsay,
23 but we are getting overruled and clearly asked to sit
24 down before we have a chance to find out what the State's
25 grounds are for eliciting that. What the -- you know,

1 it's very tricky when they ask you -- when they ask these
2 questions. We don't know what the witness is going to
3 say.

4 So I know that it's irritating when we're objecting
5 constantly. I know it's irritating to the Court and to
6 the State and it interrupts and interferes with the
7 process, but we don't know what they're going to say.

8 All we can do is the best we can to try to anticipate
9 what they're going to say and protect our client. We
10 would disagree that that line of cases is even still good.
11 This --

12 THE COURT: Well, the courts of this state have not
13 said that.

14 MS. PRINGLE: That is true, but we -- I'd like to make
15 that a part of record at this point, Your Honor. That
16 would have been the basis for all of these objections.

17 I assumed that for much of that, it would have been
18 a Danny Lee Thompson or a State v. Brown kind of
19 argument, but there was so much of it. It just -- you
20 know, it just went on and on.

21 It would be our position that when a witness says,
22 "I learned something as a result of it," that is
23 absolutely no different than saying what the person said.
24 Hearsay is hearsay.

25 If they're explaining information that they got, they

1 can say it. I think she can't ask, "What did you do next?"

2 As long as they don't use information and say what
3 was said to them, it's okay, but what -- refashioning it
4 to "what I learned as a result of that conversation" is
5 the exact same thing. It's incorporating that statement
6 into his testimony, which is hearsay.

7 Your Honor, with respect specifically to this issue
8 about Kendra having -- Kendra Goodman having sex with
9 Theo Manning after this crime, we objected to this
10 pretrial. We had quite a lengthy hearing on all matters
11 pretrial involving acts that took place after the actual
12 shooting.

13 We specifically were objecting to that testimony
14 thinking that it would -- anticipating that it would come
15 in through -- only through the testimony of Kendra
16 Goodman. As if it were ruled to be admissible, it could
17 only come in through the testimony of Kendra Goodman.

18 It is a statement that she gave to law enforcement.
19 It was the expressed purpose of prosecuting Theo
20 Manning, so that is without question something that is
21 a Crawford kind of problem, could not have come out through
22 that witness even if it were admissible.

23 It is our position, however, that it is not
24 admissible. I renewed that prior to Solicitor Giese's
25 opening statement. He stayed completely away from it.

1 It did not come out during opening.

2 As this testimony is going on with Detective Fitch,
3 right before this happened, Mr. May objected to hearsay.
4 He was immediately overruled, as he's been over and over
5 and over throughout this trial. The immediate next thing
6 that this detective says is that they had sex that evening
7 after committing these crimes together.

8 THE COURT: Well, there was a subsequent question.

9 MS. PRINGLE: I'm sorry?

10 THE COURT: There was a subsequent question.

11 MS. PRINGLE: Yes. And then the response was this
12 very, very damaging inadmissible testimony.

13 You did sustain the objection at that time. I
14 believe Mr. May moved to strike at that point in time.
15 I am moving for a mistrial as a result of this.

16 Your Honor, it would be our position, and it was our
17 position pretrial, that that testimony is inadmissible
18 under 401. It has zero probative value.

19 If you read the very rule, I mean, I would like to
20 know what fact them having sex after this is all over --
21 it makes it more or less probable than not.

22 I would say to you, Your Honor, there is zero
23 probative value in that. It doesn't come in under 401,
24 and if it does, it is hard to imagine anything more
25 prejudicial, anything that might come close to 403 in

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1 saying these two committed these horrible crimes, he
2 commits this malicious act is their position, and then
3 they come home and have this celebratory sex.

4 (A cellphone rings.)

5 (Pause)

6 So I don't -- I don't -- I don't know why it's
7 relevant -- why it's relevant.

8 Part of the problem in even articulating this
9 objection, and the problem of this evidence, is that I
10 don't even know -- we don't have any understanding for
11 what theory any of the post-crime acts are coming in.

12 So even if I could argue this in the context of
13 distinguishing it from why, you know, it's not res
14 gestae or why it doesn't fit within all of, you know, the
15 parameters of all the other post-crime acts, we
16 haven't been able to secure a ruling.

17 We have asked for a ruling. We have been told that
18 our objection and our motions are denied in that regard.
19 So I don't really know how to distinguish it or how to
20 explain why it doesn't fit in with the grounds that all
21 of the post-crime acts have been admitted because I don't
22 know what theory that they're proceeding under that all
23 of those other post-crime acts come in.

24 I do know that this testimony should be excluded.
25 It absolutely should not have come in through that

1 witness. I think it's grounds for a mistrial. I'd ask
2 you to consider granting a mistrial.

3 If you won't do that, I'd ask you for a curative
4 instruction, and as I am bound to do, I'll have to object
5 to any curative instruction as insufficient.

6 THE COURT: What's the State's position?

7 MS. CAMPBELL: Your Honor, we disagree with her.
8 You did strike the statement from the record. If she
9 wants a curative instruction, we have no problem with
10 doing a curative instruction, but now she's objecting to
11 the curative instruction. I --

12 THE COURT: But she said it would be insufficient.

13 MS. CAMPBELL: Insufficient?

14 THE COURT: To cure it. It would be insufficient to
15 cure the damage that she says. That's the position.

16 MS. CAMPBELL: Your Honor, I think a curative
17 instruction would be more than sufficient to cure any
18 damage. In addition to that, Kendra Samuels -- I mean
19 Kendra Goodman, excuse me, is testifying in this case.

20 THE COURT: Well, all right. I just wanted your
21 position on the record.

22 MS. CAMPBELL: Thank you.

23 THE COURT: How about your position as to a
24 mistrial?

25 MS. CAMPBELL: Your Honor, we don't think this any

1 where nearly rises to the level of a mistrial in any way.
2 You've already given -- as you've stricken it from the
3 record.

4 In addition to that, you can give a curative
5 instruction that they have requested to cure any possible
6 damage that this could have caused at this point.
7 Subsequent to that, it should be moot once Ms. Goodman
8 testifies.

9 THE COURT: All right. All right. Ms. Pringle, I
10 understand your concern about the objections. I think
11 I put on the record what my position is on the notice of
12 the hearsay objections, and I respectfully decline or
13 deny your motion for a mistrial.

14 MS. PRINGLE: Thank you, Your Honor.

15 We have a couple of other bench conferences that
16 need to be put on the record that I kept notes of.

17 THE COURT: Okay.

18 MS. PRINGLE: There -- there was a bench conference
19 when Ms. McDuffie sought to provide transcripts to the
20 jurors. That was actually, I think, only done up at the
21 bench.

22 They -- the grounds were stated by Mr. May. Mr. May
23 could repeat those.

24 MR. MAY: Your Honor, I believe there is the best
25 evidence rule. It's Rule -- I believe it's 102 -- uh,

1 1002.

2 The best evidence of that is actually the recording
3 itself. It's also a hearsay because the detective whose
4 words they were did not transcribe that. It was
5 transcribed by somebody else, and it's also cumulative
6 evidence, Your Honor.

7 It's just merely reinforcing the evidence that is
8 being played in front of them.

9 THE COURT: Okay.

10 MS. PRINGLE: Do you want me to keep going?

11 THE COURT: Are you -- what are you asking me to do
12 at this point?

13 MS. PRINGLE: We're just -- just putting it on the
14 record.

15 THE COURT: Okay. Well, go ahead and put it on the
16 record. That's what I thought you were doing.

17 MS. PRINGLE: All right. And then, obviously, we
18 were overruled on that.

19 There was an objection to a photograph that was taken
20 during the initial search of Mr. Manning's home. That
21 was dealt with at the bench.

22 MR. MAY: I believe that was either number 86 or
23 number 87. That's number 86 of the -- of the defendant's
24 home. There were -- on the mantle piece -- now, there
25 were over 100 pictures introduced.

1 We had an objection with one of them. Outside of
2 the other objections which we had stated already for the
3 search warrant, but outside of that original objection,
4 we had for one.

5 On the mantle piece, there are three what appear to
6 be swords. I don't know why that would be relevant.
7 They had over 100 other pictures, and it just looks like
8 it's a propensity to violence.

9 I don't know why they come in. I would argue 404(b),
10 as well as just argue just sheer cumulative. I mean,
11 they've introduced 120 pictures, and they -- I mean,
12 there's no reason for it.

13 THE COURT: Okay.

14 MS. PRINGLE: And finally, I'm not sure if this
15 -- this may have been obvious, but State's Exhibit
16 Number 66, the Wal-Mart receipt, State's Exhibit Number
17 67, the Freeman's receipt, those were both objected to.

18 I don't think Mr. May went into why, but obviously,
19 that's connected to the search warrant suppression issue.
20 I think everybody knows that, but I just wanted to make
21 it clear for the record.

22 THE COURT: Is the State ready to proceed?

23 MS. CAMPBELL: Your Honor, there are a couple of
24 matters to take up before the jury comes back.

25 THE COURT: All right.

1 MS. CAMPBELL: Your Honor, present in the courtroom
2 is Kendra Goodman's lawyer, Mr. Dessasure. For the
3 record, we just wanted to put on that as far as she was
4 charged with accessory after the fact in this case.

5 THE COURT: Mr. Dessasure, can you come forward?

6 He's not going to be sworn. He's not. I just want
7 him to understand what the State's position is.

8 MS. CAMPBELL: Your Honor, in regard to any promises
9 that have been made to Ms. Goodman by us, there have
10 been none.

11 I think, of course, she is testifying in hopes that
12 somewhere down the road, you or some other judge or
13 someone will consider it as far as, you know, her
14 culpability in this case, but we have made no promises
15 to her of any kind as far as any sentence reduction or
16 anything like that. There isn't anything like that.

17 MR. DESSASSURE: That is correct, Your Honor.

18 THE COURT: All right.

19 MS. CAMPBELL: Your Honor, in addition, she was also
20 given a polygraph during the course of her statements.
21 We would just ask the Court -- with the Court's permission,
22 since the polygraph information is not admissible, we
23 would just ask Mr. Dessasure to instruct her not to mention
24 the polygraph.

25 MR. DESSASSURE: I'll certainly do that, Your Honor.

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1 MR. SHEALEY: I -- I do have an issue regarding that
2 matter. She references it specifically in her own
3 statement, Kendra Goodman does, a polygraph.

4 They ask her, "Why are you changing your story
5 today?" She goes, "Well, because of the polygraph."

6 To me, it's almost like I can't get the complete story
7 of her statement out without at least saying, "Well,
8 Kendra, why didn't you?"

9 I don't want to say she failed it or passed it. It's
10 almost like res gestae. I can't get the whole story out
11 of her statement because it's in there. It's in print
12 as to why the police are asking her why she changed her
13 story. She'll say because of the polygraph. So I feel
14 like I'm kind of being prevented from crossing her in a
15 way that provides my client a complete and full defense
16 without trying to ignore it completely. I would never
17 say, "You failed the polygraph."

18 THE COURT: What -- what if she -- somebody said she
19 didn't tell the truth the first time or -- I don't know.

20 MR. SHEALEY: Well, I don't know either, Judge, but
21 just -- I think it prohibits me from getting her full
22 story out per each statement when it's referenced there
23 by her. I think I should be allowed to at least question
24 her on why she changed her statement.

25 THE COURT: Well, that brings the polygraph front and

1 center.

2 MR. SHEALEY: But -- but she brings it in because
3 that -- those are her words, between herself and
4 Isenhoward.

5 THE COURT: Well, it doesn't matter whose words they
6 are, does it?

7 MR. SHEALEY: Well, if I'm questioning her on what
8 she said in response to the questioning, and I'm doing
9 that repeatedly throughout her statement to -- to impeach
10 her, the point when she says, "Well, I'm saying this now
11 because of the polygraph," do I have to admit that? I
12 mean, it's -- I can't tell the whole story.

13 THE COURT: Well, you'll have to figure out a way to
14 do it.

15 Thank you, Mr. Dessasure.

16 MR. DESSASSURE: Thank you, Your Honor.

17 MS. CAMPBELL: Your Honor, while Mr. Dessasure,
18 before he leaves, also, as I've informed Mr. Shealey and
19 the Court, there were some specific instances of violence
20 that Ms. Goodman talked about to us.

21 They are vaguely referenced in her statement. We
22 are not intending on eliciting any instances -- specific
23 instances of violence with the defendant prior to this.

24 THE COURT: All right.

25 MR. DESSASSURE: All right.

1 MS. CAMPBELL: Your Honor, as far as her prior record,
2 she has none.

3 THE COURT: Okay. Anything else?

4 MR. SHEALEY: No, Your Honor.

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

6 (Pause)

7 Your Honor, the final thing that came to light last
8 night when we were reviewing these statements is that you
9 ruled specifically that the nine millimeter gun would
10 not be admissible into evidence.

11 I would just note that in this next statement that's
12 about to come in, as well as his third or fourth statement,
13 I'm not sure which, he references that the police took
14 his nine millimeter gun.

15 THE COURT: All right.

16 MR. MAY: Your Honor, we would respectfully ask the
17 State to redact that part.

18 MS. CAMPBELL: How? It's a recorded statement.

19 MR. MAY: Stop, fast forward, play.

20 THE COURT: It's his gun he admitted that he --

21 MR. MAY: Ms. Kendra Goodman admitted that she took
22 the polygraph. I mean, I think it's --

23 THE COURT: It's not the same thing.

24 MR. MAY: The gun can't come in, it's been ruled by
25 the Court, and --

1 THE COURT: It's not going to be in evidence, that's
2 right.

3 MR. MAY: Pardon me, sir?

4 THE COURT: It's not going to be evidence, that's
5 correct.

6 MR. MAY: And I believe the reference of the gun
7 would be inappropriate at this time.

8 THE COURT: I'm not going to order the State to
9 redact it.

10 Are you ready for the jury?

11 MS. CAMPBELL: The State is ready, Your Honor.

12 THE COURT: Is the defense ready?

13 MR. MAY: Yes, Your Honor.

14 THE COURT: Bring in the jury.

15 (WHEREUPON, the jury came into open court at
16 approximately 9:24 a.m.)

17 MS. CAMPBELL: Judge, do you want him back on the
18 stand?

19 THE COURT: Sure.

20 THE BAILIFF: The jury is seated, Your Honor.

21 THE COURT: All right. Thank you. Good morning
22 ladies and gentlemen.

23 JUROR: Good morning.

24 THE COURT: I hope you had a pleasant evening. We're
25 now ready to continue with the trial.

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1 Solicitor, you may proceed.

2 MR. SHEALEY: Your Honor, may we approach?

3 MS. PRINGLE: Very quickly, Your Honor. I
4 apologize.

5 (WHEREUPON, a bench conference was held in the
6 presence, but not within the hearing of the jury.)

7 THE COURT: All right. Ladies and gentlemen, just
8 return to the jury room, please. I thought we were ready
9 to go. Apparently we're not, just for a minute. Leave
10 the statements.

11 (WHEREUPON, the jury left open court at approximately
12 9:27 a.m.)

13 THE COURT: All right. Ms. Pringle?

14 MS. PRINGLE: Do you have it?

15 MS. CAMPBELL: The statement?

16 MS. PRINGLE: Yes.

17 MS. CAMPBELL: If you read the statement, it's on page
18 35.

19 Your Honor, may I approach, just so you have
20 reference?

21 THE COURT: What's the motion?

22 MS. CAMPBELL: Your Honor, I think there's also a
23 single reference to it on page 46, or to a firearm
24 generally.

25 (There was no response).

1 THE COURT: Ms. Pringle, are you going to argue
2 this?

3 MS. PRINGLE: I was waiting for you to be ready.

4 THE COURT: I'm ready.

5 MS. PRINGLE: This piece of evidence has been ruled
6 inadmissible. The State now seeks to introduce his
7 recorded statement in which there are two references, one
8 on page 35 in a statement dated 5/22/09.

9 THE COURT: That says, "I have a five -- I have a nine
10 millimeter."

11 MS. PRINGLE: Yes, sir. That's the gun that was
12 recovered that they sought to introduce that was received
13 during the search warrant. That is a gun that it is our
14 position has no relevance to this case.

15 Retrieving that gun and putting that gun in his
16 possession has absolutely no probative value in this
17 case whatsoever.

18 It has been ruled inadmissible. So now to bring it
19 up to the jury, there's, obviously, a negative implication
20 that this is a guy that has more than one gun --

21 THE COURT: All right.

22 MS. PRINGLE: -- would be the implication.

23 THE COURT: What about the -- where is the firearm
24 that was involved in the incident?

25 MS. PRINGLE: Not recovered.

1 MS. CAMPBELL: Specifically, Your Honor, that's a
2 good point because when they asked him specifically, "Do
3 you have a firearm," he mentions the --

4 THE COURT: "Do you have any firearms?"

5 MS. CAMPBELL: The nine millimeter, but he
6 deliberately does not admit to having the .380. Of
7 course, as you're aware, I think it's probative data. I
8 mean, each and all of his lies add up.

9 THE COURT: Well, I think that the 46 reference is
10 more relevant to this discussion, or 46 and 47: "Is it
11 loaded?" "Yes."

12 "When did you fire it?" "A couple months, a couple
13 years."

14 "Where's your ammunition?" "It's in my backpack."

15 "Is it on the floor?" "Is it loaded?"

16 I mean, all of that, I think, follows the gun. I
17 mean, if the gun goes out, that goes out. But I don't
18 know -- I don't know, based on counsel's objection
19 that it leads to confusion to say that he had a nine
20 millimeter, that seems somewhat innocuous until you get
21 to the point, "I keep a loaded gun in my house in a blue
22 backpack."

23 So I would -- how are you going to do it? I'd ask
24 the State to redact page 46, the last two lines, and the
25 first, about 12 lines of page 47.

1 THE COURT: All right.

2 MS. CAMPBELL: I'm sorry, Your Honor. Your ruling
3 is to --

4 THE COURT: I just said it.

5 MS. CAMPBELL: Did you get it?

6 (Pause)

7 How -- I'm just trying to -- that is redacted.

8 And as far as the redacting the audio, I guess he
9 just stops it at that point, and you send the jury out
10 until he can tee it up to the right point. Because he's
11 not going to be able to do that.

12 THE COURT: That will work.

13 The other problem is the handouts.

14 MS. CAMPBELL: The other problem and other issue,
15 Your Honor, and I don't mean to -- for their part, if they
16 wanted this redacted and everything, wouldn't that have
17 been an appropriate pretrial motion --

18 THE COURT: Well, it --

19 MS. CAMPBELL: In addition to that, it's already in
20 evidence in full.

21 THE COURT: What is?

22 MS. CAMPBELL: Without their objection, the tape is.

23 THE COURT: Well, yes. It should have been brought
24 up before now if they knew about it, but I'm trying to
25 be consistent with my rulings.

1 MS. CAMPBELL: And Your Honor --

2 THE COURT: Just do it.

3 MR. SHEALEY: Your Honor, would it make sense for
4 her assistant to figure out exactly the point that he would
5 need to stop and fast forward it while the jury is out
6 right now instead of sending them out?

7 MS. CAMPBELL: He's already ruled.

8 THE COURT: You know, I'm not so technically
9 inclined.

10 MR. SHEALEY: Okay. I was just trying to see what
11 would be best.

12 MS. CAMPBELL: The transcript.

13 MS. McDUFFIE: Give us a few minutes.

14 THE COURT: We'll stand at ease.

15 (WHEREUPON, a short break was taken.)

16 THE COURT: Is the State ready to proceed?

17 MS. CAMPBELL: Yes, sir, Your Honor. We did have
18 Mr. Shealey review the redaction pursuant to your
19 ruling.

20 THE COURT: Do you have a redaction? Is this an
21 extra?

22 MS. CAMPBELL: Yes, sir, but if you want to see what
23 we redacted, I'll show you.

24 THE COURT: Well, I trust you, this time.

25 MS. CAMPBELL: I was going to say -- thanks, Judge.

1 THE COURT: Is the State ready for the jury?

2 MS. CAMPBELL: Yes, sir.

3 THE COURT: Is the defense ready?

4 MR. SHEALEY: Yes, sir, Judge.

5 THE COURT: Bring the jury, please.

6 (WHEREUPON, the jury came into open court at
7 approximately 9:56 a.m.)

8 THE BAILIFF: The jury is seated, Your Honor.

9 THE COURT: All right. Thank you.

10 Thank you very much for your patience, ladies and
11 gentlemen. We're now ready to continue with the trial.

12 Solicitor?

13 BY MS. CAMPBELL:

14 Q May it please the Court.

15 Yesterday we were talking about a second interview
16 that was done with the defendant in this case.

17 A Yes, ma'am, we were.

18 Q And that took place on May 22nd?

19 A Yes, ma'am.

20 Q State's Exhibit 133 is the tape recording of the
21 statement?

22 A Yes, it is.

23 Q And why did you feel it necessary to take a second
24 statement?

25 A The first one that you heard was short and had to be

1 rushed because he had to be at work and we wanted to be
2 more detailed and speak with him more in depth about the
3 relationship.

4 MS. CAMPBELL: Your Honor, at this time I'd ask
5 permission to publish the statement.

6 THE COURT: You may publish.

7 MS. CAMPBELL: Thank you.

8 (WHEREUPON, State's Exhibit Number 133 was played
9 for the jury.)

10 (The audio was stopped.)

11 THE COURT: Approach the bench, please.

12 (WHEREUPON, a bench conference was held in the
13 presence, but not within the hearing of the jury.)

14 THE COURT: All right. Ladies and gentlemen of the
15 jury. We need to take a short break. There's a thing on
16 the tape we need to get straight. It might be a good time
17 to take a morning break.

18 Just go to your jury room for a few minutes. Relax.
19 We'll call you in about ten minutes. Don't discuss the
20 case among yourselves while you're in the jury room. You
21 can leave the transcripts in your chairs.

22 (WHEREUPON, the jury left open court at approximately
23 11:01 a.m.)

24 THE COURT: We'll stand at ease for about ten
25 minutes.

1 (WHEREUPON, a short break was taken.)

2 THE COURT: Is the State ready to proceed?

3 MS. CAMPBELL: The State is ready.

4 THE COURT: Is the defense ready to proceed?

5 MR. MAY: Yes, sir.

6 THE COURT: Bring the jury in, please.

7 (WHEREUPON, the jury came into open court at
8 approximately 11:15 a.m.)

9 THE BAILIFF: The jury is seated, Your Honor.

10 THE COURT: All right. You may continue with the
11 tape.

12 (WHEREUPON, the tape was continued to be played for
13 the jury.)

14 BY MS. CAMPBELL:

15 Q Detective, during the course of this interview, was
16 a search being conducted of the defendant's house?

17 A Yes, it was.

18 Q And were you given any information -- don't say what
19 it was -- about what they were finding?

20 A Yes. I received text messages from Detective Fitch.

21 Q And in the recorded statement, it refers to a Wal-Mart
22 receipt. Is that part of the information that you got
23 during the course of the investigation that was forwarded
24 to you?

25 A Yes, it was.

- 1 Q And where was that receipt found?
- 2 A In his house.
- 3 Q What was the date on the receipt?
- 4 A The 7th of May, 2009.
- 5 Q And when you asked him about the receipt from the
- 6 Wal-Mart on May 7th of 2009, did he say who he was with?
- 7 A Yes, he did.
- 8 Q And who was that?
- 9 A Kendra Goodman.
- 10 Q Had you ever heard her name before?
- 11 A I had not.
- 12 Q This statement, as well as the statement the day
- 13 before on May 21st, what date was this one on?
- 14 A This was on the 22nd.
- 15 Q Had the victim's body been found yet?
- 16 A No, it had not.
- 17 Q After taking that statement from the defendant,
- 18 what did y'all do?
- 19 A We went back to Mr. Manning's residence on Bluff
- 20 Road. We followed him back. He rode with Candace and
- 21 myself, and Detective Hopkins followed him back to his
- 22 house.
- 23 Q During the statement, towards the end, you also asked
- 24 him if he would consent to giving you what's called a buccal
- 25 swab?

1 A Yes, I did.

2 Q Can you tell the jury why you were seeking that
3 evidence?

4 A To use for comparison or elimination of any evidence
5 that we may have found in his house during the search.
6 Naturally, he lives there, so his D.N.A. is going to be
7 there, but we can use his to compare with others that we
8 may find to eliminate his versus a foreign one that we
9 may find in the house.

10 Q Because it may be used for D.N.A. comparisons down
11 the road?

12 A That's correct.

13 Q He's --

14 A It's a known standard from a known source. It's
15 something that we have done.

16 Q And when you followed the defendant -- and did he
17 ride with you or did he ride with somebody else?

18 A He rode with Candace back to the house.

19 Q That was his fiancée?

20 A Yes, it was.

21 Q And when they got back to the house, did they consent
22 to give you a buccal swab?

23 A Yes, both of them.

24 Q And when you got those two swabs, did you package
25 them properly?

1 A Yes, I did.

2 Q And ultimately, were they turned into evidence in the
3 proper form?

4 A Yes. I turned them in when I returned to Charlotte
5 that night.

6 Q During the time period you had them in your
7 possession, were they contaminated, tampered with or
8 altered in any way?

9 A No, they were not.

10 Q I want to turn your attention to May 25th. Did you
11 make a phone call back to Sergeant Robinson at Richland
12 County?

13 A Yes, I did.

14 Q And what were you asking him to obtain for you?

15 A I asked if he could go to the Wal-Mart on Bush River
16 Road and try to get the surveillance video from the
17 purchase of the receipt.

18 Q Over the next several days, did you continue your
19 investigation?

20 A Yes, I did.

21 Q And I believe on the 27th, did you meet with certain
22 family members?

23 A Yes, I did.

24 Q And that would be May 27th; is that correct?

25 A Yes, May 27th in Charlotte, met with some family

1 members.

2 Q On May 28th, what did you do?

3 A I returned to Columbia again with Detective Fitch,
4 Detective Hopkins and Sergeant Mann, my supervisor.

5 Q And around 1:30 that afternoon, did you actually
6 arrive at the sheriff's department?

7 A Yes, we did.

8 Q And at that point, what was the purpose of your
9 going to the sheriff's department, and what did you
10 obtain then?

11 A At that point, we were obtaining a search warrant for
12 the apartment of Kendra Goodman and using -- getting it
13 in this jurisdiction, applying for a search warrant in
14 this jurisdiction.

15 Q And over the days from when the defendant originally
16 supplied you information, were y'all able to develop
17 identifying information as far as the Kendra Goodman he
18 was referring to?

19 A Yes, we were.

20 Q From other sources?

21 A Yes.

22 Q That afternoon, was a search warrant executed
23 lawfully at Kendra Goodman's residence?

24 A Yes, it was.

25 Q And where was that residence located?

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- 1 A It was in the Stone Creek Apartments, and I do not
2 recall the actual apartment number.
- 3 Q That day, did you also make contact with a Brian
4 Bookert?
- 5 A Yes, I did.
- 6 Q Did he live in the same apartment complex?
- 7 A He did. I do have his apartment number.
- 8 Q And what was the purpose of you interviewing Brian
9 Bookert?
- 10 A We had learned that Mr. Bookert was a friend of
11 Ms. Goodman's and that he would sometimes borrow her
12 car. We wanted to speak to him about that based on the
13 information that we had observed on the Wachovia A.T.M.
14 video.
- 15 Q As part of your investigation, you became aware that
16 Ms. Goodman had been interviewed and provided the name
17 of Brian Bookert?
- 18 A Yes, that's correct.
- 19 Q And what item of hers did he sometimes use that y'all
20 were interested in?
- 21 A Her Chevy Lumina, the car.
- 22 Q That day, did you go and interview Brian Bookert?
- 23 A Yes, I did.
- 24 Q As a precaution, did you also obtain a buccal swab
25 from him?

1 A I did.

2 Q During the course of your investigation, were you able
3 to eliminate him as having anything to do with this
4 incident?

5 A Yes, I was.

6 Q Later that day, did you go to a Wal-Mart here in town?

7 A I did, on Bush River Road.

8 Q On Bush River Road? And who did you make contact with
9 that day?

10 A With Joe McCown, the loss prevention officer.

11 Q And at that point, what kind of information were you
12 requesting from Mr. McCown at the Wal-Mart?

13 A I was requesting a copy of the video for the store
14 surveillance cameras at Wal-Mart.

15 Q Was that provided to you?

16 A Yes, it was.

17 Q And were you able to review that?

18 A Yes, I was.

19 Q And did you actually obtain a copy of that video
20 then?

21 A I did. I collected a copy from him at that time.

22 Q Generally, what's shown in the video?

23 A The store cameras are interior and exterior. When
24 I was watching it at the Wal-Mart store with Mr. McCown,
25 I observed Mr. Manning pull into the parking lot in his

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1 vehicle and come into the store and shop.

2 He goes out of the view of the cameras within the
3 store, but ultimately, I see him check out at a register
4 and then go to an A.T.M. within Wal-Mart, appeared to
5 make a couple of attempts at that A.T.M. Then he meets
6 with a female who I recognized to be Kendra Goodman.

7 There is an exchange of groceries or bags between
8 the two of them, and then they go their separate ways to
9 their cars, put their items in their cars and leave.

10 Q And what time of day was this on May 7th?

11 A He first arrived at the store at 11:44 a.m., and he
12 checked out at approximately 1:15 p.m. and was at the
13 A.T.M. about 1:16, 1:17 p.m.

14 MS. CAMPBELL: Your Honor, at this time, we'd ask
15 permission to publish the video to the jury. It's
16 already into evidence.

17 MR. SHEALEY: Over the previous objection, Judge.

18 THE COURT: Over the previous objection, you may
19 proceed.

20 (WHEREUPON, the video was played for the jury.)

21 MS. CAMPBELL: Your Honor, may the witness step
22 down?

23 THE COURT: Yes, ma'am.

24 MS. CAMPBELL: Thank you. Come over on this side.

25 BY MS. CAMPBELL:

1 Q Detective, what does this show on the screen right
2 now? You might take this (indicating)..

3 A This is the -- these are the registers where you
4 would check out respectively in Wal-Mart, and then your
5 exits would be here and up here.

6 Q At this point, do you see Theodore Manning?

7 A Yes, I do.

8 Q And where is he? We paused it.

9 A Right here (indicating).

10 Q At that point, he's talking to someone, checking out
11 at the second -- that third register?

12 A Appears to be, yes.

13 Q And were you able to identify who that was?

14 A Yes, Kendra Goodman.

15 Q Can you point to her?

16 A (indicating).

17 Q At this point, where is he proceeding?

18 A To the A.T.M.

19 Q What does he appear to be doing?

20 A He appears to be making or attempting to make a
21 transaction.

22 Q At that point, can you see Ms. Goodman moving?

23 A Yes, I can.

24 Q In which direction is she going?

25 A Towards the exit at the top of the screen.

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- 1 Q At this point, what appears to be going on?
- 2 A It appears there's an exchange of merchandise.
- 3 Q At this point, where is Mr. Manning?
- 4 A Mr. Manning is right here.
- 5 Q Where did Ms. Goodman go?
- 6 A She went out towards the other exit.
- 7 Q Are there also other angles of the parking lot that
- 8 you got in your possession that day?
- 9 A Yes, there were.
- 10 Q And what can you actually see in the parking lot
- 11 videos?
- 12 A You could see that she was driving her Lumina, her
- 13 Chevy Lumina. He was driving his white Toyota.
- 14 MR. SHEALEY: Objection, Your Honor. I think what
- 15 he's testifying to is not in evidence.
- 16 MS. CAMPBELL: Yes, it is. Yes, it is.
- 17 THE COURT: What's his opinion?
- 18 BY MS. CAMPBELL:
- 19 Q Pull it up.
- 20 (Pause)
- 21 Is this the angle where you can actually see?
- 22 A I believe so, yes.
- 23 Q For the record, without belaboring it, it's on here
- 24 and you can see the other two cars?
- 25 A I don't believe this camera angle shows the other

1 car.

2 Q It shows them exiting. Does it show one of the
3 cars?

4 A It does.

5 Q Are there several different angles on the video
6 footage of the parking lot?

7 A Yes, there were.

8 Q Included in this exhibit, it shows where the white
9 Toyota, I believe --

10 A Yes.

11 Q -- of the defendant's and then the gold Lumina of
12 Ms. Goodman's?

13 A That's correct.

14 Q Okay. You can have a seat.

15 MS. CAMPBELL: Your Honor, may this witness step back
16 down?

17 THE COURT: Yes.

18 BY MS. CAMPBELL:

19 Q I apologize.

20 Is there also a close up shown on the A.T.M. showing
21 who is at the A.T.M.?

22 A Yes.

23 Q Who is that?

24 A That's Mr. Manning.

25 Q What does he appear to be doing?

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1 A He appears to be swiping a card and typing in on the
2 screen.

3 Q What does that appear to be?

4 A It appears to be a receipt.

5 Q What does he appear to be doing right there?

6 A Swiping the card again and typing it in again.

7 Q And again, what did it appear he just got?

8 A It appears he has another receipt from the
9 machine.

10 Q At any point, did he appear to get any money from that
11 machine?

12 A It didn't appear to.

13 Q Thank you. You can have a seat.

14 During the course of your investigation, in
15 addition to receiving the video from the Wal-Mart,
16 including the use of the A.T.M., did you all also request
17 some of the victim's bank records from Bank of America?

18 A Yes. I believe they were requested.

19 Q And I show you State's Exhibit No. 8 specifically.
20 It's already in evidence.

21 A Okay, yes.

22 Q And I want to refer you to the third to the last page
23 of this document. Were y'all trying to get some
24 corroboration as to the use of the A.T.M. that day?

25 A Yes.

1 Q And that occurred around what time?

2 A The A.T.M. transaction, approximately 1:16,
3 1:17 p.m.

4 Q And were you able to get information from the Bank
5 of America as to whose card was used at that A.T.M. that
6 day by Theodore Manning?

7 A Yes, we were.

8 Q And whose was it?

9 A Nikki McPhatter.

10 Q Nikki McPhatter's?

11 A Yeah; that's correct.

12 Q And what actual transaction was he trying to do that
13 day? I'll lay this down here at this point. Does it
14 indicate where it was used?

15 A 1326 Bush River Road.

16 Q At what business?

17 A Wal-Mart.

18 Q And does it indicate what type of transaction was
19 attempted?

20 A B-A-L-I-N-Q, which means a balance inquiry.

21 Q Does it indicate it was not a successful transaction?

22 A That's correct.

23 Q And again, that was Nikki McPhatter's card that he
24 was using?

25 A That's correct.

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1 Q And the date this happened?

2 A May 7th, 2009.

3 Q And later that day, did you return to Charlotte and
4 log in all your evidence?

5 A I did.

6 Q Including the buccal swab from Mr. Bookert, I think,
7 who you eliminated?

8 A I logged it in at 10:29 that night after I got back
9 to Charlotte.

10 Q You participated in the interview of Mr. Manning on
11 how many occasions?

12 A On two occasions.

13 Q The first time you made contact with him was on what
14 date?

15 A On the 21st of May.

16 Q And the second time you made contact with him was
17 when?

18 A On the 22nd of May.

19 Q And at that point, did you have any idea where Nikki
20 McPhatter's body is?

21 A No, we had no idea.

22 Q When you first talked to him -- and I want you
23 just -- this can refresh your memory, the first three or
24 four lines. Is that a --

25 MR. MAY: Objection, Your Honor. I think from what

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1 the witness said, his memory is being refreshed at this
2 point.

3 MS. CAMPBELL: It -- I'll rephrase.

4 THE COURT: Rephrase.

5 BY MS. CAMPBELL:

6 Q If you need to refresh your memory, you can do so.

7 A Okay.

8 Q When you first made contact with the defendant on
9 May 21st, was that the first contact with any law
10 enforcement, as far as you know, at that point?

11 A As far as I know.

12 Q And when you contacted him, did you tell him what you
13 were looking into?

14 A Yes, I did.

15 Q And what's the first question he asked you in the
16 transcript?

17 A May I refer to it?

18 Q Yes. To refresh your memory, you may.

19 A "What's wrong with Nikki?"

20 Q And that's what he asked you?

21 A Yes.

22 MS. CAMPBELL: I don't have anything further, Your
23 Honor.

24 THE COURT: Cross-examination?

25 MR. SHEALEY: Thank you, Your Honor. May it please

1 the Court.

2 CROSS-EXAMINATION:

3 BY MR. SHEALEY:

4 Q All right, Detective Martin. Let's start by
5 turning your attention to the night of the search
6 warrant, okay.

7 A Which one, sir?

8 Q The search warrant of Mr. Manning's house on
9 May 22nd.

10 A Okay. Yes, sir.

11 Q I believe you testified that you spoke to Mr. Manning
12 and were there with Detective Hopkins and a few other
13 officers with Charlotte, right?

14 A Yes. And Richland County, as well.

15 Q Right. Richland County was there, as well. He was
16 aware of the search warrant, and y'all talked to him a
17 little bit outside, right?

18 A Yes, sir.

19 Q He didn't try to run or anything, right?

20 A No, he did not.

21 Q He didn't try to fight you or anything like that,
22 right?

23 A Not at all.

24 Q I believe you said that he was -- y'all were speaking
25 to him and allowed him to call his Uncle Randy, right?

000804

1 A I believe he received a call. Either way, he was
2 allowed to use his cell phone, yes.

3 Q You didn't restrict him on anything like that?

4 A No, we wouldn't have. He wasn't under arrest.

5 Q Right. But you said you did want to talk to him,
6 right?

7 A Absolutely.

8 Q Okay. And he agreed to come talk to you, right?

9 A He did.

10 Q Now, I guess it was kind of a chaotic scene there
11 searching the house. It was nighttime, right?

12 A It was getting dark if it wasn't already dark, yes.
13 I wouldn't describe it as chaotic, though.

14 Q Okay. But there are people in the house, right,
15 people searching it?

16 A Ultimately, yes.

17 Q And he's outside, right?

18 A Yes, sir.

19 Q At first he's not fully dressed, but you let him go
20 inside and get his jeans and things, right?

21 A That's right.

22 Q But there wasn't a great place to really talk right
23 there, right?

24 A In my opinion, it wasn't a good environment to have
25 a conversation.

000805

1 Q Right. So you -- y'all were looking for a better
2 place to talk?

3 A Yes.

4 Q And you suggested that he come with y'all to a local
5 Richland County substation?

6 A Yeah. We asked him if he would come with us.

7 Q And you let him ride with his Uncle Randy.

8 A He asked -- yes, he rode with his uncle.

9 Q He didn't have to ride with y'all. Okay. He
10 wasn't under arrest, you said?

11 A Yes, that's correct.

12 Q Okay. Let's take you where y'all get to the
13 substation. He rode with his uncle there voluntarily,
14 and I guess his fiancée Candace Jackson came, as well?

15 A Yes.

16 Q And it's basically you and Detective Hopkins, right?

17 A Yes, sir.

18 Q And I guess you get into this substation, and you
19 get -- you sit down in a conference room or something like
20 that, right?

21 A Yes, sir.

22 Q You didn't see any videotaping equipment there in that
23 conference room set up, did you?

24 A I didn't see any, no.

25 Q There wasn't any audiotape capabilities there set up

1 for you to use either, was there?

2 A No. We brought our own.

3 Q Okay. You brought your own -- you call it a D.V.R.?

4 A Digital Voice Recorder, an Olympus, a small Olympus
5 voice recorder.

6 Q Is that something you wear on your belt or is it
7 just...

8 A Just have it, keep it with you in your briefcase or
9 in the car.

10 Q Okay. And these digital voice recorders are
11 something that you always tape interviews of any felony
12 investigation, right?

13 A Yes, suspect interviews.

14 Q Right, and this was an interview. You're with a
15 suspect at this time, right?

16 A Essentially, yes.

17 Q And you taped Mr. Manning. The day before he was
18 taped, right?

19 A Yes, he did.

20 Q He was taped here. We listened to it the past couple
21 of hours. We know exactly what he said to y'all, right?

22 A Yes. We were able to hear it.

23 Q And we know exactly what you said to him, as well,
24 right?

25 A That's correct.

000807

1 Q But you didn't see any of that type of set up that
2 was already there in the Richland County substation, did
3 you?

4 A I didn't see one, but again, it wasn't an interview
5 room. It was a conference room.

6 Q Now, I want to talk to you about some of the
7 things -- well, a few things that were said, a couple of
8 things you learned as part of your investigation. Did
9 you learn that they met on something called tagged.com,
10 right?

11 A Yes, I did.

12 Q Okay. You learned that the first time she came down
13 to see him in Columbia, they had sex, right?

14 A That's correct.

15 Q You learned that he had key to her house; that she
16 gave that to him?

17 A Yes.

18 Q You learned that she had given him some jewelry and
19 things, watches to have looked at, right?

20 A Yes.

21 Q Because those are some things you actually found in
22 his house. He told you that, right?

23 A Yes.

24 Q You learned that, basically, they had sex on every
25 encounter they saw each other, right?

000808

1 A Yes.

2 Q He told you that they never used condoms, right?

3 A I don't know about never, but on the last visit, they
4 didn't.

5 Q Okay. I mean, he also shared with you about her
6 being molested as a child and seeing a psychiatrist;
7 correct?

8 A He did.

9 Q And he told you about some of the financial
10 troubles she was in with Fanny Mae and her house had
11 perhaps -- she was moving; correct?

12 A Correct.

13 Q Okay. And all this we heard, and it was all taped
14 and we just listened to it, right?

15 A Yes, we did.

16 Q And just your agency, this is how y'all operate,
17 right?

18 A That's correct.

19 Q You know, and the purpose is so that a
20 year-and-a-half later what we're talking about today,
21 what is said is not in question at all, is it?

22 A I image that's one of the purposes.

23 Q Right. The purpose is that it helps your
24 investigation, right? You have a transcript that's
25 printed that you can refer to, right?

1 A Yes.

2 Q Ms. Campbell can walk up and show you particularly
3 what was said, when and where?

4 A Yes.

5 Q It can be played for the benefit of the jury, right?

6 A Yes.

7 Q The purpose is no lawyer can come in and say you
8 screamed and yelled at my client, right? What would you
9 do, you would show them the tape and say, "Listen, that
10 didn't happen"?

11 A That's correct.

12 Q No lawyer can say, "You -- you hit my client. I could
13 hear, you know, your fist hit his face." They couldn't
14 say that because it's not in there, is it?

15 A Right.

16 Q No lawyer could say that, you know, you only
17 captured some of what he said, not the whole truth, because
18 what he said is all there in its entirety, right?

19 A Yes.

20 MR. SHEALEY: Okay. All right. Beg the Court's
21 indulgence.

22 (Pause)

23 I don't have any further questions. I just want to
24 thank you for how thorough and how you documented this.

25 THE WITNESS: You're welcome.

1 THE COURT: Approach the bench, please.

2 (Indicating.)

3 Yes.

4 (WHEREUPON, a bench conference was held in the
5 presence, but not within the hearing of the jury.)

6 THE COURT: I've been informed the jury needs a
7 break, so we'll take a short break at this time. We'll
8 take a very short break, all right.

9 Don't discuss the case among yourselves while
10 you're in the jury room.

11 (WHEREUPON, the jury left open court at
12 approximately 12:03 p.m.)

13 THE COURT: I got a note.

14 (WHEREUPON, State's Exhibit No. 134 was marked for
15 identification only.)

16 THE COURT: Bring the jury.

17 MR. MAY: Your Honor, real quick we have an objection
18 to all photos.

19 THE COURT: Are the photos going up now?

20 MS. McDUFFIE: They may, Your Honor.

21 THE COURT: All right. It's too late.

22 (WHEREUPON, the jury came into open court at
23 approximately 12:10 p.m.)

24 THE BAILIFF: The jury is seated, Your Honor.

25 THE COURT: All right. Ms. Campbell, you may

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1 proceed.

2 MS. CAMPBELL: Thank you, Your Honor.

3 REDIRECT EXAMINATION:

4 BY MS. CAMPBELL:

5 Q Detective, Mr. Shealey went through a series of
6 things you learned about from your interview with the
7 defendant.

8 A Yes, he did.

9 Q And that was information that he was telling you; is
10 that correct?

11 A Yes.

12 Q And specifically, he is the one that provided you that
13 information, right?

14 A Yes.

15 Q And did he ever bring up Kendra Goodman's name?

16 A No.

17 Q All right. How did he actually come through? What
18 did you tell him prior to him talking about Kendra
19 Goodman?

20 A We had to challenge him with the Wal-Mart receipt
21 issue.

22 Q And specifically, the defense attorney asked you
23 about that they had sex the first time they met. Whose
24 words are those? Whose story is that?

25 A Mr. Manning's.

1 Q And specifically, the defense asked you about how she
2 had a troubled childhood and was suicidal. Whose story
3 was that?

4 A Mr. Manning's.

5 Q Ultimately, in the statement that you took on
6 May 21st and May 22nd, during the course of your
7 investigation, were his stories the truth or a lie?

8 A They were --

9 MR. SHEALEY: Objection.

10 BY MS. CAMPBELL:

11 Q Were his stories truthful or not the truth?

12 A Not the truth.

13 MS. CAMPBELL: Thank you, sir.

14 THE COURT: Any re-cross?

15 MR. SHEALEY: I don't have any re-cross there.

16 THE COURT: You may come down.

17 May this witness be excused?

18 (There was no response.)

19 Without objection?

20 MR. SHEALEY: No objection.

21 THE COURT: What?

22 MR. SHEALEY: Without objection, Judge.

23 MR. MAY: Without objection.

24 THE COURT: All right. Next witness?

25 MS. McDUFFIE: The State would call Latisha Tyler.

1

LATISHA TYLER,

2

after being duly sworn, testified as follows:

3

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

5

THE BAILIFF: Watch your step. Speak into the microphone.

7

THE CLERK: State your name for the record.

8

THE WITNESS: Latisha Tyler.

9

DIRECT EXAMINATION:

10

BY MS. MCDUFFIE:

11

Q Good afternoon. Ms. Tyler, where are you currently employed?

12

13

A I work for the Department of Veterans Affairs in St. Louis.

14

15

Q What are your duties with the Department of Veterans Affairs?

16

17

A I am the chief of customer service. We deal mainly with service treatment records and claim folders, V.A. claim folders.

18

19

20

THE COURT: You'll going to have to speak up a little.

21

MS. MCDUFFIE: Let me move...

22

THE WITNESS: I am the chief of customer service, and we deal, basically, with service treatment records and plan folders, providing copies of those to veterans and individuals on their behalf.

23

24

25

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1 BY MS. McDUFFIE:

2 Q And as part of your duties, are you a custodian of
3 those records?

4 A Yes, I am.

5 Q And at the request of the Richland County Coroner's
6 Office, did you send dental records on Nikki McPhatter
7 to the Richland County Coroner's Office?

8 A We did.

9 Q If I can show you what's been marked State's Exhibit
10 Number 134 and ask if you recognize those documents.

11 A I do.

12 Q And are those documents kept in the normal and
13 ordinary course of business?

14 A Yes, they are.

15 MS. McDUFFIE: Your Honor, at this time, we'd offer
16 State's Exhibit 134.

17 THE COURT: Any objection?

18 MR. MAY: It's without objection.

19 THE COURT: Without objection.

20 (WHEREUPON, State's Exhibit No. 134 was admitted into
21 evidence.)

22 BY MS. McDUFFIE:

23 Q And can you tell the jury who those records are?

24 A These are dental x-rays of Ms. Nikki McPhatter.

25 Q And how did those dental records come to be in the

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1 Veterans Administration's office's possession?

2 A Part of the Department of Veteran Affairs
3 responsibilities is adjudicating claim folders. We
4 request service treatment records and dental records from
5 the Department of Defense or the Department of the Army
6 in helping with the claims.

7 Q And was Ms. McPhatter in the military?

8 A Yes, she was.

9 Q Do you know which branch of the military she was in?

10 A That I do not, but I could look at the records and
11 see.

12 (Pause)

13 It appears here from the records that she was part
14 of the Navy.

15 Q And those are her dental records from when she was
16 enlisted with the Navy?

17 A Right.

18 Q And those records have not been altered with or
19 tampered with or manipulated in any way?

20 A No.

21 MS. McDUFFIE: Your Honor, we have no further
22 questions of this witness.

23 THE COURT: Cross-examination?

24 MR. SHEALEY: No, Your Honor.

25 THE COURT: All right. Ma'am, you may come down.

1 Thank you very much.

2 May this witness be excused?

3 MR. MAY: No objection, Your Honor.

4 THE COURT: All right. Next witness?

5 MS. McDUFFIE: The State would call Detective
6 Hopkins.

7 CAMILLA HOPKINS,

8 after being duly sworn, testified as follows:

9 THE CLERK: State your name for the record.

10 THE WITNESS: Camilla Hopkins.

11 DIRECT EXAMINATION:

12 BY MS. McDUFFIE:

13 Q Detective Hopkins, where are you employed?

14 A Charlotte/Mecklenburg Police Department.

15 Q And in May of 2009, what were your duties with the
16 Charlotte/Mecklenburg Police Department?

17 A Assigned to the homicide squad.

18 Q And within the homicide squad, what were your
19 duties?

20 A To investigate death investigations.

21 Q On May 19th, did you become familiar with the case
22 of -- a missing person's case involving Nikki McPhatter?

23 A Yes.

24 Q And how did you become aware of that?

25 A Sergeant Magnum and our squad met with members of the

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1 missing person's unit, particularly Detective Flagg was
2 briefed on the particulars of the case that he was working
3 on and he was assigned.

4 Q And after you were briefed on the missing person's
5 report investigation, did you participate in conducting
6 a search of Ms. McPhatter's home?

7 A Yes, I did.

8 Q And when did you do that search?

9 A That search was done on the 19th.

10 Q And what was the purpose --

11 A Excuse me, yes.

12 Q And what was the purpose of searching Ms. McPhatter's
13 home on the 19th?

14 A To search for any evidence of foul play, try to find
15 out more information about her social circle, look for
16 things that might yield information.

17 Q I'm going to show you what's been marked as State's
18 Exhibits 9 through 60 and ask if you recognize these
19 documents, and if you've had the opportunity to view them.

20 A Yes. I've had an opportunity to view them. They are
21 of the exterior and interior of Nikki McPhatter's
22 residence.

23 Q And that -- those were taken on May 19th, 2009?

24 A Correct.

25 Q Your Honor, at this time we'd offer State's 9 through

1 60?

2 MR. MAY: Without objection. May we approach?

3 THE COURT: Sure.

4 THE COURT: Nine through 16?

5 MS. McDUFFIE: Sixty.

6 THE COURT: Sixty?

7 (WHEREUPON, a bench conference was held in the
8 presence, but not within the hearing of the jury.)

9 MR. MAY: Thank you, Your Honor.

10 THE COURT: The objection is overruled.

11 With regard to -- what are the numbers?

12 MS. McDUFFIE: State's Exhibits 9 through 60, Your
13 Honor.

14 THE COURT: 9 through 60, with the exception of photo
15 number 40.

16 MR. MAY: Thank you, Your Honor.

17 (WHEREUPON, State's Exhibits Nos. 9 - 39, 41 - 60
18 were admitted into evidence.

19 BY MS. McDUFFIE:

20 Q Please tell the jury what's depicted on State's
21 Exhibits 9 and 10.

22 A That's the front of Nikki McPhatter's residence.

23 Q And when you went to Ms. McPhatter's residence, did
24 there appear to be any signs of forced entry or anything
25 out of the ordinary on the exterior of the home?

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1 A No.

2 Q And once you entered her residence, what did you then
3 do?

4 A We had a crime scene technician -- a couple of crime
5 scene technicians with us, and our procedure is to do
6 -- first, overall photos prior to disturbing anything
7 inside the residence, then from there we assigned
8 ourselves rooms to search.

9 If we found anything in any room, we kind of left
10 it as is and had the crime scene technicians come in and
11 then photograph it in place, then photograph it in kind
12 of an isolated photograph, and then collect it.

13 Then upon our exit, after completing our search, we
14 would do, again, overall photos. From there, we would
15 secure the residence back, and the items that were took
16 we would package properly and turn in to evidence.

17 Q And how would you describe the overall condition of
18 Ms. McPhatter's home to the jury?

19 A It was a nice residence. It was clean, a little bit
20 of clutter. You know, I wouldn't think any more than
21 anybody else's house.

22 Q Showing you State's Exhibit 18, can you please tell
23 the jury what's depicted in this photo?

24 A That's her kitchen table with a couple of like
25 cloth-type coolers and some jewelry and hand lotion and

1 body spray.

2 Q Based on your training and experience and
3 investigation of homicide cases, did you find anything
4 out of the ordinary in this?

5 A Inside her residence, no. There were some things
6 that were collected.

7 Q Did it appear that she had gone on vacation or had
8 packed to go away for a long time?

9 A Nothing that we could clearly tell, no, I don't
10 believe.

11 Q And you mentioned the items of -- or you collected
12 items of evidence from her home?

13 A Correct.

14 Q And were those things like a computer?

15 A Yes.

16 Q I'm showing you State's Exhibit 34.

17 A Correct.

18 Q And what was the purpose of collecting that item of
19 evidence?

20 A Just to see if there were any e-mails or photos that
21 were stored on the camera, anything that could broaden
22 our ability to get further in her social circle.

23 Q And were you able to tell if there was anything
24 missing from the residence?

25 A Her vehicle.

1 Q And other than her vehicle, were you able to tell if
2 there was anything else missing from the residence?

3 A (There was no response).

4 Q After the --

5 A Not that I could tell.

6 Q After the search of her home, your investigation had
7 proceeded, and you came down to South Carolina on
8 multiple occasions with Detectives Fitch and Martin. The
9 three of you worked this case together?

10 A Correct.

11 Q I don't want to go back over everything that the jury
12 has already heard, but if I could draw your attention to
13 when you first spoke to Ms. Kendra Goodman. Do you have
14 your notes in front of you?

15 A Yes. Well, I have my statement.

16 Q Do you recall what day that was on?

17 A I believe that was on May 26th.

18 Q And approximately what time was that?

19 A When I first spoke to her, that was -- well, 22:16,
20 I had called and left a message and got no answer. I got
21 no answer and left a message. Then at 22:20, she called
22 me back. Then five minutes later, we met at her
23 apartment.

24 Q And when you were at her apartment, did you receive
25 any telephone calls from anyone once you were already at

1 her apartment?

2 A Well, I had -- yes. I had stepped out, I believe to
3 go get my camera from my vehicle. At that time, I had
4 received a phone call from Mr. Manning.

5 I had called him earlier that day requesting him to
6 provide us with some information that we could narrow
7 down our search and contact her. He provided us with some
8 information, but not a physical address and not a phone
9 number.

10 So we still had to rely on our paperwork from our
11 search engine, which I guess was accurate at the time.
12 Just going through the process of elimination going to
13 that apartment complex and spoke to the manager there and
14 got her information from the manager.

15 I talked with Mr. Manning, and I told him -- he
16 called me asking -- or trying to tell me that he had been
17 in phone contact with her, and that she was at her apartment
18 now and that she was willing to talk with us, and I would
19 pretty much like to say we had already gotten in contact
20 with her.

21 Q So it was only after you had already located
22 Ms. Goodman that Mr. Manning then offered to provide
23 information about her whereabouts?

24 A Yes, that's correct.

25 MS. McDUFFIE: Thank you. That's all.

1 THE COURT: Cross-examination?

2 MR. MAY: Yes, sir.

3 May it please the Court, Your Honor.

4 CROSS-EXAMINATION:

5 BY MR. MAY:

6 Q Hello.

7 A Hi.

8 Q All right. Just -- just start very basically. Back
9 on May 19th was the first time you became involved in
10 this case; is that correct?

11 A Correct.

12 Q And then after the searching warrant -- well, you
13 did -- by the next two days, you checked leads. There
14 are leads coming from all over the State of North
15 Carolina because y'all put out a missing person alert;
16 is that correct?

17 A Correct, immediately.

18 Q And people that were on the missing person's alert,
19 there was a black female, and there was a very unique
20 license tag that made a lot of people call in; is that
21 correct?

22 A That's correct.

23 Q It was McPhattah, correct?

24 A It was P-H-A-T-T-A-H.

25 Q Yes, sir -- yes, ma'am, I'm sorry.

1 So you're checking these leads, then on May 21st,
2 right before midnight you learned that Detectives
3 Martin and Fitch had obtained a recorded statement from
4 Theo Manning; is that correct?

5 A That's correct.

6 Q All right. Now, they recorded a statement. That's
7 a good practice, correct?

8 A That's our policy.

9 Q That's your policy because when you record a
10 statement, it allows a jury to hear everything that
11 occurred.

12 A Correct.

13 Q It allows -- it allows you -- because you're the lead
14 investigator on this case, correct?

15 A That's correct.

16 Q It allows you to make sure that your detectives are
17 following the rules. Is that fair to say?

18 A We always follow policy.

19 Q But I mean, especially if there's a recorder there,
20 they can't take any shortcuts, right?

21 A They're following policy.

22 Q Because I mean, if they're not, you're going to know
23 it because you can hear it, correct?

24 A (There was no response).

25 Q You can push play if there's anything improper.

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1 A The recording is going to be the statement.

2 Q I agree. And if there's any kind of improper
3 interrogation method, it's going to be caught on that
4 recording. Is that fair to say? I mean --

5 A That's fair to say.

6 Q I mean, it's a picture of everything that occurs in
7 their interactions, and it's very helpful in instances
8 such as this when you have to do to court, is that fair?

9 A It's our policy.

10 Q Now, on May 22nd, you checked out more tips in the
11 morning; is that correct?

12 A Yes. We had a lot of tipster information coming in,
13 yes.

14 Q And then on -- well, later in the afternoon, y'all
15 came down to Columbia, South Carolina.

16 A That's correct.

17 Q Y'all obtained a search warrant with the help of
18 Richland County.

19 A Correct.

20 Q And then let's talk about the service of the search
21 warrant.

22 Beg the Court's indulgence for one second.

23 (Pause)

24 Do you have a copy of your statement with you?

25 A I do.

1 Q All right. I'm looking at page 11, all right. So
2 when you came to Mr. Manning's residence, you knocked on
3 the door; correct?

4 A That's correct.

5 Q It's you and Fitch -- y'all knocked -- I'm -- is that
6 right? Yes, you and Fitch. Y'all approach. You knock
7 on the door. You say, "Hey, we have a search warrant."
8 Is that what happened?

9 A Also Detective Martin was with us.

10 Q So you all three went there. You said, "Hey, we have
11 a search warrant"?

12 A No, they're not what happened.

13 Q All right. Well, let's go through your statement.
14 Now, I'm just reading from your statement. You see at
15 20:50 hours. Do you see what I'm referring to?

16 A Correct.

17 Q Now, statements such as these are very important
18 because it chronicles everything that you did in a case,
19 right?

20 A Right.

21 Q And you have training on how to write these so they're
22 accurate, right, and you even went through this and you
23 made sure it was accurate before it was ever being typed
24 up because you wanted to make sure that you presented a
25 complete, accurate account of what occurred throughout

1 this entire investigation; is that fair to say?

2 A That's fair to say.

3 Q Because this happened now 17 months ago, and you want
4 to be able to rely on what happened without just having
5 to say, I think this occurred. Is that an accurate
6 statement?

7 A I would say so.

8 Q All right. So your notes -- I mean, you want to be
9 as accurate as possible, so in your notes, you said
10 Detective Martin, Detective Fitch, C.S.S. Flanders and
11 I arrived at Manning's residence. It says that, right?

12 A Correct.

13 Q We knocked on the door, and Detective Martin and I
14 spoke with him, explained to him that we had obtained a
15 search warrant, and you're saying that didn't occur?

16 A That did occur.

17 Q That did occur?

18 A It qualified below --

19 Q It's qualified --

20 (Talking over each other.)

21 COURT REPORTER: I'm sorry.

22 THE WITNESS: It's qual---

23 THE COURT: You both can't talk at a same time.

24 Let the witness answer the question.

25 MR. MAY: Yes, sir. I apologize.

1 THE COURT: The court reporter can't do both.

2 Ma'am, you can answer the question.

3 THE WITNESS: That is said in the statement, and it's
4 qualified below in the other paragraphs.

5 BY MR. MAY:

6 Q Okay. Now, had you had a video or a recording device,
7 there would be no doubt about it, would there?

8 A (There was no response).

9 Q Had you recorded this and you hear (indicating) --

10 A Right.

11 Q -- then all of the sudden you say, "Hey," and you
12 started talking to them and there was no mention of a
13 search warrant, that would have been recorded, right?

14 A I wouldn't have recorded in that situation.

15 Q Okay. But had you recorded, we would have known
16 exactly what occurred.

17 A Correct.

18 Q And then there would be no -- well, it's qualified
19 later. There would be no mistake through a later typing
20 of a transcription error or a misphrasing of words. Is
21 that fair to say?

22 A It's neither. It's --

23 Q Well --

24 A -- qualified below.

25 Q There would be no reason to explain it because you

1 could just push play, and you could hear everything that
2 occurred.

3 A True.

4 Q So a recording is always more beneficial than a
5 summary of what occurred. Is that fair to say?

6 A Correct, but I would not have recorded the
7 conversation --

8 Q I understand that.

9 A -- at the door.

10 Q I understand that.

11 Now, Mr. Manning at this time, asked you to contact
12 his supervisors at Westinghouse?

13 A That was a little -- a little later out in the -- when
14 we were standing out in the yard.

15 Q All right, when you were standing out in the yard,
16 but he asked you to contact his supervisor because
17 he -- because y'all said it was going to take some time
18 to go through his house. Is that fair to say?

19 A Well, that and the interview he agreed to.

20 Q He agreed to, but I mean --

21 A And he didn't --

22 Q -- he didn't want to be late for work.

23 A Correct.

24 Q And you agreed to contact his supervisor?

25 A And I did.

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1 Q Now, you and Detective Martin again took him to the
2 Richland County substation?

3 A Correct.

4 Q And at the substation, you took him into a room, had
5 him sit down at a conference table. The first thing he
6 did, we just heard it, you said, "We're recording this.
7 This is May 22nd. This is Detective Hopkins, and this
8 is Detective Martin." We just heard it, right?

9 A Correct.

10 Q And then from that interview, we have a 55-page
11 statement from that 79 minutes, correct?

12 A Correct.

13 Q And if there's any question, I mean, all you have to
14 do is push play. Now, I'm on page 19, if you'd like to
15 follow along.

16 Now, after the -- you were not in contact with
17 Mr. Manning again after the 22nd, were you?

18 A No.

19 Q All right. So then on the 27th -- I apologize. I'm
20 just trying to find the date on this. You're not in
21 contact with Mr. Manning again. You come down. You try
22 to find Kendra; is that right?

23 A Right.

24 Q Now, once you locate her -- now, Mr. Manning is not
25 with you, is he?

000831

1 A I'm sorry. Say it again.

2 Q Theo Manning is not riding along with you, is he?

3 A No.

4 Q And this is over a good distance from his house,
5 right? He calls you up. He says, "Hey, I got in touch
6 with Kendra, and I'm going to get her to call you." Is
7 that what happened?

8 A (There was no response).

9 Q If you'll refer to the bottom of page 19 to the top
10 of page 20.

11 A I had called him earlier in the day.

12 Q Okay. But then he says, "Prior to taking Goodman's
13 statement, I exited Goodman's apartment and retrieved my
14 D.V.R." Now, that's the digital voice recorder, right?

15 A Correct.

16 Q The digital voice recorder supports -- I mean, I know
17 we're belaboring the point, but it's important to make
18 sure that you're accurate. You're going to record
19 Ms. Goodman's statement, right?

20 A Correct.

21 Q And that outside, you receive a call from Theo
22 Manning, and he's saying, "Hey, I found her. I'm going
23 to get her to call you." That's pretty much what he said.
24 You're like, "Ah, I've already got her."

25 A Right.

000832

1 Q Now, when you talked to Brian Bookert, that was in
2 response to when you started questioning Ms. Goodman
3 regarding her car.

4 A Correct.

5 Q Right. And she said --

6 A He was the one that drove her car.

7 Q During April and May because you started saying that
8 a car that looks like this was used and caught on video
9 surveillance.

10 A Correct.

11 MR. MAY: I beg the Court's indulgence, Your Honor.

12 (Pause)

13 No further questions at this time.

14 THE COURT: Redirect?

15 MS. McDUFFIE: No, Your Honor.

16 THE COURT: All right. You may come down, ma'am.

17 Thank you very much.

18 May this witness be excused?

19 MS. McDUFFIE: We have none.

20 MR. MAY: None.

21 THE COURT: Without objection.

22 Approach the bench, please.

23 (WHEREUPON, a bench conference was held in the
24 presence, but not within the hearing of the jury.)

25 THE COURT: All right, ladies and gentlemen, I'm

1 just checking with counsel. They tell me that the next
2 witness may be somewhat prolonged, so we're going to take
3 our lunch break at this time.

4 It's 20 minutes until one. I'll ask you to be back
5 in the jury room at 1:45, quarter to two. Hopefully we'll
6 be ready to start promptly at 1:45.

7 Again, do not discuss the case among yourselves when
8 you return to the jury room or with anyone else over the
9 lunch hour. Have a pleasant lunch. We'll see you at 1:45.

10 (WHEREUPON, the jury left open court at
11 approximately 12:38 p.m.)

12 THE COURT: Approach the bench one more time,
13 counsel.

14 (WHEREUPON, there was a bench conference.)

15 THE COURT: All right. We'll stand although ease
16 until 1:45.

17 (WHEREUPON, a lunch break was taken.)

18 (WHEREUPON, State's Exhibits Nos. 135 - 190 were
19 marked for identification only.)

20 THE COURT: Is the State ready to proceed?

21 MS. CAMPBELL: The State ready, Your Honor.

22 THE COURT: Is the defense ready to proceed?

23 MR. SHEALEY: Yes, sir.

24 MS. McDUFFIE: Your Honor, our next witness would be
25 Kendra Goodman.

1 THE COURT: All right. We've changed courses?

2 MR. GIESE: No.

3 MS. CAMPBELL: I'm sorry?

4 THE COURT: I thought you said there was some officer
5 that was going to testify next.

6 MR. GIESE: After we rested, we had two potential
7 witnesses, both were lengthy.

8 THE COURT: All right. Just hold the jury.

9 MS. PRINGLE: Your Honor, we intend to object to the
10 issue -- if they're going to go into post-crime sex acts,
11 obviously, before they ring that bell, we want to know
12 they're going to ask the question and have the
13 opportunity to address it at that time.

14 It's my understanding right now at this time it has
15 not been ruled.

16 THE COURT: That's correct. Give me a chance to
17 address it. I will do it..

18 (Pause)

19 All right. In chambers this morning before the jury
20 was brought in, the Court convened and counsel -- I told
21 all counsel that I was concerned about this subject
22 matter, that is the post-killing sexual activity of the
23 defendant if, indeed, there was such a thing, because I
24 have no evidence other than what's been told to me that
25 occurred.

000835

1 I told counsel for the State that I did not believe
2 that was an issue that could be used to prove malice since
3 the defendant has admitted to the shooting, and the death
4 of the victim and has admitted by way of a stipulation
5 that the defendant's pistol, a .380 pistol, was used to
6 kill the victim, the deceased.

7 I have previously ruled that evidence of the burning
8 vehicle and the use of a credit card at an A.T.M., the
9 victim's credit card at the A.T.M., that that evidence
10 is admissible over the defense objection.

11 I now find that evidence of sexual activity post the
12 death of the deceased is not admissible, but I'll hear
13 arguments from the State if you wish to argue that issue.

14 MS. CAMPBELL: Your Honor, and I would hand up at this
15 time -- I believe you read in chambers, possibly, you read
16 this statement because you said you were not aware of how
17 this fit back in.

18 THE COURT: All right. I have reviewed Exhibits
19 number -- the two statements.

20 (Pause)

21 What are they, 2 and 3?

22 COURT REPORTER: Those were statements, yes, two and
23 three.

24 MS. CAMPBELL: Two and three, Your Honor.

25 THE COURT: Two and three. I have reviewed 2 and 3

1 and find only that that the defendant admits having sexual
2 relations with Ms. Goodman sometime in early February,
3 which is not at all specific as to post killing.

4 MS. CAMPBELL: I apologize, Your Honor. I must have
5 misread it. I thought it said early May.

6 THE COURT: I'm sorry, May. You're right. What did
7 I say?

8 MS. CAMPBELL: February.

9 THE COURT: My birthday is in February. May,
10 correct.

11 MS. CAMPBELL: Your Honor, we feel that it is
12 essential for the jury to understand the full picture of
13 what happened that day.

14 As in every case, evidence of such things as flight,
15 behavior afterwards, admission, non-admissions, lies, all
16 that is generally admissible for purposes of proving the
17 defendant's state of mind on that day.

18 Specifically, though, Your Honor, we're limiting it
19 to what happened on that day. That was afterwards, he
20 takes her body. He puts it into the trunk of her car.
21 He then enlists the aid of a codefendant. He then
22 drives the body up to Fairfield County. He drives it into
23 a remote part of Fairfield County.

24 THE COURT: I'm familiar with those facts.

25 MS. CAMPBELL: Hides the --

1 THE COURT: I'm familiar with those facts.

2 MS. CAMPBELL: Leading that continuous course of
3 conduct -- I have to put this on the record -- he then
4 goes and cleans out her bank accounts.

5 He then returns to his home with the codefendant,
6 at which point, her testimony would be his mood changed.
7 He became more playful and wanted to have sex and then
8 proceeded to have sex with her.

9 Your Honor, their defense, as they stated in their
10 opening argument, I think there is a chance -- for purposes
11 of this argument, we can rely on that, is this is either
12 a self-defense and/or a voluntary manslaughter case.

13 It is then our burden to prove malice. If they are
14 willing to stipulate that his actions that day amounted
15 to malice, then it would not be necessary for us to prove
16 all those actions that day.

17 THE COURT: We wouldn't be here.

18 MS. CAMPBELL: Another good one.

19 THE COURT: Go ahead.

20 MS. CAMPBELL: Or there, but anyway, in addition to
21 that, Your Honor, I think we have a right to show to this
22 jury all his behavior that day because it goes directly
23 to what was in his -- what his state of mind was that day.
24 That's part of malice.

25 Whether it's criminal intent, state of mind, malice,

1 I mean, the fact that he does these actions, which are
2 all the same continuing course of events with the same
3 codefendant, we feel like it is probative to show malice,
4 and we feel like it would be our right to show his actions
5 just that day.

6 We aren't trying to go into all of his sex acts on
7 the week before this. We aren't trying to go
8 into -- although though he has.

9 THE COURT: What if they had gone to a restaurant and
10 had a nice meal and a glass of wine?

11 MS. CAMPBELL: That would be extremely probative.
12 Just like this is that -- I mean, this is what he chose
13 to do that day. The fact -- and the burden is even
14 greater, Your Honor.

15 It's not that he's saying he didn't do it. He's saying
16 that he did it, but it's in self-defense and/or he did
17 it not heat of passion. I'm not quite sure.

18 THE COURT: Well, let's be clear. He has never
19 admitted this sex act after the killing, has he?

20 MS. CAMPBELL: That's not the -- the level of proof
21 we have to show. He had right before --

22 THE COURT: Well, yes or no?

23 MS. CAMPBELL: He admits to having sex with her in
24 early May, yes, sir. He doesn't specify it was that day.

25 THE COURT: All right.

1 MS. CAMPBELL: I think he admits to having an
2 ongoing sexual relationship with her in the past is, I
3 think, how he puts it.

4 Clearly, Your Honor, I think it's very probative
5 whether he goes and goes home and takes a nap, whether
6 he goes to work that day, all of those matters, including
7 whether or not he chooses to have sexual relations with
8 the codefendant, are very relevant as to what was in his
9 state of mind just as evidence of flight after a crime
10 can be argued, and we have the right to put up in front
11 of a jury this is the same thing.

12 What he chooses to do after supposedly, according
13 to his statement, he is assaulted by the victim, and then
14 he has to kill her in self-defense. Then at that point,
15 according to him, he is bullied into this codefendant
16 into burning her in a remote part of Fairfield County.
17 This is just one of those continuing course of events that
18 would be very probative as to what was in his mind. That's
19 our only burden.

20 THE COURT: This is the only event that you have
21 selected other than the two -- what I would agree with
22 you are, may be, evidence of malice of acts.

23 MS. CAMPBELL: No, sir. We're also going to put into
24 the fact that he went to work that night. We feel like
25 that's probative as to malice, to show his state of mind

1 that entire day.

2 THE COURT: Let me hear from the defense.

3 MS. PRINGLE: Thank you, Your Honor. We objected
4 previously on not having any stated grounds for the
5 State on what are the principles that they have had to
6 answer.

7 Now that they have articulated in their grounds, but
8 it sounds to me, and if I'm misspeaking, they may correct
9 me, that they are there seeking to admit this under 404(b)
10 as evidence of intent or motive is the best that I could
11 get. There's also something about the state of mind.

12 I have been reviewing the case. I think it goes
13 without saying that this would fit within the purview of
14 other crimes, wrongs or acts.

15 The reason they want it in is this, it shows some
16 evil state of mind. As she -- her words, it shows malice.
17 Malice from hours earlier, but that's the State's
18 theory. So I don't think there's any question that that's
19 how they're seeking to get it in. It would qualify as
20 other crimes, wrongs or acts.

21 If you look at -- I have been looking at these intent
22 cases because that seems to be the only way for them to
23 offer this.

24 I can't find a single case, and I don't know if it's
25 out there, and if it is, then hopefully someone will direct

1 me to it.

2 I can't find a single case where actions that a
3 defendant took post crime were offered pursuant to 404(b)
4 to the intent subsection that were -- that were post crime,
5 that were post offense.

6 Everything that I've been able to find, and I can
7 run through some of them very quickly, involve acts that
8 took place prior to the event.

9 I think that it's significant because it -- I do
10 recognize that for 404(b) analysis, prior acts can be
11 prior or post, but with intent, you're looking at the
12 person's state of mind at the time that the trigger was
13 pulled, at the time that he shot.

14 So I think it is significant. When you look at all
15 of the cases that you can find on intent, specifically,
16 you can't -- I can't find any where you would have this
17 kind of scenario.

18 Couple that with the fact that this is just -- if
19 you do a prejudice versus probative analysis, I don't
20 know what else I can say.

21 It is -- it is so offensive that it really, I think,
22 just makes you stop thinking about everything else. It
23 is something that he disabused. He contends it didn't
24 take place.

25 The standard for admission would be clear and

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1 convincing evidence. This is a witness who has given four
2 different statements. She admitted to -- when she is
3 finally finished giving her final statement to them, she
4 says, "And actually, the last several things I said were
5 lies, too."

6 I mean, so if her standard is clear and convincing,
7 I'm not going to even need it for this witness. Her
8 credibility is going to be severely compromised.

9 So there are a number of problems. We have perhaps
10 narrowed down the focus here on the grounds that they're
11 claiming as admissibility, but that does nothing but
12 bolster our argument.

13 MS. CAMPBELL: If I may just address a couple of
14 points?

15 THE COURT: Sure.

16 MS. CAMPBELL: This is not a 404(b) argument I'm
17 making. This is a (c), actions around, during, subsequent
18 to and him getting rid of the evidence of his crime, Your
19 Honor.

20 I'm just, as in flight, we were ready to go through,
21 you know, what his state of mind was. We should be able
22 to get into what he did that day.

23 The fact that he went to work later that day is
24 probative as to his state of mind on that day. I don't
25 know what she's talking about, and she is trying to make

1 this into a 404(b) argument. We have not made it into
2 a 404(b) argument.

3 This is an actual argument about that we have the
4 right to show his state of mind through his actions around
5 the time of the crime itself, and we are limiting it to
6 the -- what happened on that day.

7 Just like -- and she talked about credibility of the
8 codefendant. That's not at issue here. Because, I mean,
9 her client gave four or five different statements also.
10 The point is what we can corroborate and what we can't.

11 Your Honor, I think this clearly goes to his state
12 of mind around and after the -- and at the time that he
13 committed this offense, just as all the other acts do.

14 THE COURT: Any response?

15 MS. PRINGLE: If I need to, Your Honor.

16 THE COURT: No. I -- the floor is open here.

17 MS. PRINGLE: Well, it's just -- I think part of the
18 problem here is it's very awkward and difficult to argue
19 this. It is horrible. It is a bad act, him going to work
20 is not. I mean, that wouldn't even be an issue. This
21 isn't -- I mean, this is a bad act.

22 The -- saying that it's not a 404(b), but it's just
23 like flight, it's not just like flight. The cover-up,
24 the burning, those things, the burning of the car, the
25 body, evading, telling untruths or whatever it is their

1 position is regarding the numerous statements,
2 that -- that's different.

3 This is going home and having some kind of -- I don't
4 know. I mean, first, it's -- foremost, it's irrelevant.
5 I don't know why him having consensual sex with this
6 woman would tell you what his state of mind was six hours
7 earlier. It's not flight. It's not a cover-up. I don't
8 know how to respond to it's just like everything, we have
9 the right to show his state of mind.

10 Well, they do, but not with him having sex hours
11 later consensually was with this woman, even assuming it
12 occurred. The reason that the clear and convincing
13 standard is applicable has nothing to do with my client's
14 statements is that it -- I contend it is bad. That's why
15 they want it in.

16 If she testifies to it, I don't think they can meet
17 the clear and convincing standard that it happened because
18 her credibility is so compromised, and I think that will
19 come out as she testifies.

20 MS. CAMPBELL: For clarification, Your Honor,
21 there's nothing criminal about what he did as far as
22 having consensual sex with one of his girlfriends.

23 I don't know how she characterizes that as a bad act.
24 It just goes to show, just like going to work which is
25 legal, goes to show his state of mind and as far

1 as -- especially in this case when he is asserting a
2 defense of self-defense.

3 THE COURT: Well, you know, the definition of
4 relevance says that it has to have -- make -- has to have
5 a tendency to make the existence of any fact that is of
6 consequence to the determination more probable or less
7 probable, and I don't see that this act makes any fact
8 that's in determination here, which is the issue of
9 malice, more probable or less probable. I just can't link
10 the two. I just can't -- I cannot get them together.
11 That's -- that's my feeling on this matter.

12 MS. CAMPBELL: Well --

13 THE COURT: All right. Yes?

14 MS. CAMPBELL: Just finally, Your Honor, obviously,
15 if they think that it does have some measure, or otherwise
16 I don't think they would be seeking to throw it out if
17 it weren't probative, to some degree, of him having
18 malice that day.

19 THE COURT: I don't see that. I don't even agree with
20 that.

21 MS. CAMPBELL: Well.

22 THE COURT: So I'm going to grant the defendant's
23 motion to preclude the witness from talking about any
24 sexual activity post that day or any time after the
25 killing.

1 MS. CAMPBELL: Your Honor, and I'd ask her lawyer to
2 advise her of that.

3 MR. DESSASSURE: I have, Your Honor.

4 THE COURT: You have?

5 MR. DESSASSURE: Yes, Your Honor.

6 THE COURT: Clearly?

7 MR. DESSASSURE: Yes, Your Honor. She understands
8 she is not to talk about that in anyway.

9 MS. CAMPBELL: Your Honor, however, I think we are
10 still allowed to get into the fact that their
11 relationship was sexual in nature, just not as specific
12 to that day.

13 MR. MAY: Beg the Court's indulgence.

14 (Pause)

15 MS. CAMPBELL: Obviously.

16 THE COURT: Well --

17 MR. SHEALEY: We don't have a problem with that.

18 THE COURT: -- he has described it as that. This is
19 the only thing he denies.

20 MS. CAMPBELL: He minimizes it.

21 THE COURT: Well, bring the jury.

22 (WHEREUPON, the jury came into open court at
23 approximately 2:10 p.m.)

24 THE BAILIFF: The jury is seated, Your Honor.

25 THE COURT: All right. Thank you very much.

1 Ladies and gentlemen, I hope you had a pleasant
2 lunch. We're now ready to continue with the trial.

3 Solicitor, call your next witness.

4 MS. CAMPBELL: May it please the Court. The State
5 calls Kendra Goodman.

6 KENDRA GOODMAN,
7 after duly affirming, testified as follows:

8 THE CLERK: Thank you. Have a seat in the witness
9 stand, please.

10 THE BAILIFF: State your name.

11 THE CLERK: State your name for the record.

12 THE WITNESS: Kendra Goodman.

13 DIRECT EXAMINATION:

14 BY MS. CAMPBELL:

15 Q Ms. Goodman, how old are you?

16 A Twenty-nine.

17 Q And did you grow up here in the Columbia area?

18 A Yes, ma'am.

19 Q Where did you do to high school?

20 A Dutch Fork.

21 Q Dutch Fork High School?

22 A Yes, ma'am.

23 And did you graduate?

24 A Yes, ma'am, I did.

25 Q And what year did you graduate from high school?

- 1 A 2000.
- 2 Q Do you know a man named Theodore Manning?
- 3 A Yes, ma'am.
- 4 Q And tell this jury how you met Theodore Manning.
- 5 A I met him online.
- 6 Q You met him online?
- 7 A Yes, ma'am.
- 8 Q And how long have you -- ago was it when you met
- 9 Theodore Manning?
- 10 A About three or four years.
- 11 Q And what was your relationship at first when you met
- 12 him online?
- 13 A We were just chatting.
- 14 Q And when you say "just chatting", what types of
- 15 things would you talk about?
- 16 A Very general, life, kids, family, work.
- 17 Q Do you have any children?
- 18 A Yes, ma'am.
- 19 Q And how old are your children?
- 20 A Four and six.
- 21 Q And did you meet him before or after you had your
- 22 children?
- 23 A After.
- 24 Q After your first child or your second child?
- 25 A After my first child.

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1 Q Did y'all consider it -- continue to chat online for
2 a period of time before you actually met in person?

3 A Yes, ma'am.

4 Q And how long was it while y'all were chatting
5 online was it before you actually met him in person?

6 A About three years.

7 Q About three years?

8 A Yes, ma'am.

9 Q Would you ever talk on the phone?

10 A Very rarely.

11 Q And your main form of communication was through the
12 internet?

13 A Yes, ma'am.

14 Q And do you remember what chat room y'all were meeting
15 on? Or am I using the right terms? I'm not real good at
16 that stuff.

17 A Yahoo Messenger.

18 Q Yahoo Messenger?

19 A Yes, ma'am.

20 Q How did it come about that y'all started meeting in
21 person?

22 A We finally decided one day just to meet.

23 Q And where did y'all meet?

24 A At a Waffle House.

25 Q And after the first meeting, did y'all continue to

1 see each other in person?

2 A Yes, ma'am.

3 Q And did your relationship change when you started
4 meeting in person?

5 A It was more of a friendship at the beginning, and it
6 gradually changed.

7 Q And what did it change into?

8 A To a relationship.

9 Q And when you say a relationship, and I don't mean to
10 be intrusive, but was -- did y'all have a sexual
11 relationship?

12 A Yes, ma'am, we did.

13 Q And as time passed, into the spring of 2009 before
14 this happened, what did you consider your relationship
15 with him to be?

16 A Exclusive.

17 Q You and him?

18 A Yes, sir.

19 Q And how often would you see him?

20 A Once a week, maybe every other week.

21 Q Would he come to your house? Would you go to his house?
22 How would that happen? Did you go on dates?

23 A He would come to my house.

24 Q And how would you know he was coming?

25 A He would call.

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- 1 Q Would you just go over to his house ever?
- 2 A No, ma'am.
- 3 Q Did you know in the early part of 2009 where he was
- 4 living?
- 5 A Yes, ma'am.
- 6 Q And what part of town was he living in?
- 7 A Gadsden.
- 8 Q Gadsden?
- 9 A Yes, ma'am.
- 10 Q Was it an apartment, a house? What was he living in?
- 11 A A house.
- 12 Q Did you ever go over to that house prior to what we're
- 13 getting ready to talk about, prior to what happened on
- 14 that day on May 6?
- 15 A Yes, ma'am.
- 16 Q And why did you go over to his house?
- 17 A I helped him clean up when he first moved in.
- 18 Q And prior to what happened, and I'm going to get to
- 19 May 6th in a minute, how many times had you actually been
- 20 over to his house?
- 21 A Maybe twice.
- 22 Q And on both occasions, what did you do?
- 23 A The first time I helped him clean up. The second time
- 24 was just to do laundry.
- 25 Q How often would y'all talk on the phone or e-mail,

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- 1 whatever you would do?
- 2 A We would talk on the phone about every day.
- 3 Q At the time in the spring up until May, were you
- 4 working?
- 5 A Yes, ma'am.
- 6 Q And were you working full-time or part time or what?
- 7 A Part time.
- 8 Q You didn't have a full-time job?
- 9 A No, ma'am.
- 10 Q Why not?
- 11 A I just couldn't find one at the time.
- 12 Q Where were you working?
- 13 A Lexington Dry Cleaners.
- 14 Q And up until May 6th, you still thought your
- 15 relationship with him was what?
- 16 A Exclusive.
- 17 Q But you'd only see him once every week or every other
- 18 week?
- 19 A Yes, ma'am.
- 20 Q And why was that?
- 21 A He lived so far. He worked and had a busy schedule.
- 22 Q You didn't think that was unusual?
- 23 A Yes, ma'am, but that's just how it went.
- 24 Q So up until May 6th, you thought y'all were
- 25 exclusive?

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- 1 A Yes, ma'am.
- 2 Q In a sexual relationship with each other?
- 3 A Yes, ma'am.
- 4 Q That was your -- what you thought was going on?
- 5 A Yes, ma'am.
- 6 Q Before I go any further, do you have a lawyer?
- 7 A Yes, ma'am.
- 8 Q And is he here in the courtroom?
- 9 A Yes, ma'am.
- 10 Q And can you point him out for the jury?
- 11 A He is right back there (indicating).
- 12 Q Sitting on the back row?
- 13 A Yes, ma'am.
- 14 Q That's Mr. Dessasure?
- 15 A Yes, ma'am.
- 16 THE COURT: Stand up.
- 17 MS. CAMPBELL: Thank you, Your Honor.
- 18 BY MS. CAMPBELL:
- 19 Q May 6th, did you go to work that day?
- 20 A Yes, ma'am, I did.
- 21 Q And where was the dry cleaner you worked at? Where
- 22 was it located?
- 23 A It's in Irmo.
- 24 Q In Irmo, South Carolina?
- 25 A Yes, ma'am.

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- 1 Q Do you remember approximately what time of the day
2 it was when you got there?
- 3 A Around two o'clock.
- 4 Q And when you got to work that day, how long did you
5 actually stay at work?
- 6 A No more than about 20 minutes.
- 7 Q And why did you leave work early that day?
- 8 A I wasn't feeling well that day.
- 9 Q Did you have an automobile? Did you drive
10 yourself?
- 11 A Yes, ma'am, I drove myself.
- 12 Q What kind of automobile do you have?
- 13 A A Chevy Lumina.
- 14 Q And what color is that Chevy Lumina?
- 15 A Gold.
- 16 Q Is that your car?
- 17 A Yes, ma'am.
- 18 Q Does it belong to you?
- 19 A That's my father's, ma'am.
- 20 Q Your father's. You were driving that car that day?
- 21 A Yes, ma'am.
- 22 Q And you left work because you weren't feeling well.
23 How long were you supposed to work that day, do you
24 remember?
- 25 A Until seven o'clock.

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- 1 Q When you left work, where did you go?
- 2 A I rode around.
- 3 Q What was making you not feel well, do you know?
- 4 A I was stressing about bills.
- 5 Q About bills?
- 6 A Yes, ma'am.
- 7 Q Would anybody ever help you out with your bills
- 8 sometimes?
- 9 A My parents.
- 10 Q Would Theodore Manning ever help you out with your
- 11 bills?
- 12 A No, ma'am.
- 13 Q That day as you were riding around, tell this jury
- 14 what happened.
- 15 A I was riding trying to clear my head, just taking the
- 16 long way. I didn't want to go home and...
- 17 Q Where were your children that day?
- 18 A They were in daycare.
- 19 Q What happened?
- 20 A I just started riding around town. I got a phone
- 21 call sometime that afternoon, about maybe an hour after
- 22 I left work from Theo.
- 23 Q As far as times, you weren't sure of the exact time?
- 24 A No, ma'am.
- 25 Q Okay.

000856

1 A But I got a phone call from Theo, and he was in a
2 joking mood. He was saying, "Why are you playing sick
3 from work?"

4 I told him, "I'm not playing sick. I don't feel good."

5 He said, "Oh. Well, where are you?"

6 I said, "I'm not that far from your house on your
7 side of town."

8 He said, "Well, come on over. I'll see you in a few
9 and hangs up the phone."

10 Q Where did you go then?

11 A I headed to his house.

12 Q And at that point, other than him asking you to come
13 over, did you know what was going to go on when you got
14 there?

15 A No, ma'am.

16 Q What did you think you were going over to do?

17 A He told me just to come over.

18 Q Was that unusual?

19 A Yes, ma'am.

20 Q Once you got to his house, where did you -- where did
21 you go? What happened?

22 A I pulled up in front of the garage --

23 Q Uh-huh.

24 A -- as I usually do the few times I had went out there,
25 and the garage doors were down. He was moving around in

000857

1 the garage. I heard a bunch of tools. He yelled out
2 through the garage, "I can't open the door. Go to the
3 back door and move the car." So I just moved the car to
4 the back door.

5 Q Moved the car?

6 A Yes, ma'am.

7 Q And whose car were you supposed to move?

8 A Mine.

9 Q Were there any other cars on the outside of the
10 residence?

11 A His white Avalon was parked in the yard, and there
12 was a red car that was parked in front of the other garage
13 door.

14 Q Was it unusual for Theodore Manning to work on cars?

15 A He would do it from time to time, just not that often.

16 Q Okay. Did you actually move your car?

17 A Yes, ma'am.

18 Q And around to what area of the yard?

19 A The back of the house.

20 Q At that point, what did you do?

21 A I went to the back door and waited for him to open
22 it.

23 Q And did he come to the back door?

24 A Yes, ma'am.

25 Q What happened next?

000858

1 A He opened the door, was kind of sweaty. He said, "Oh,
2 sweetie. What's wrong?"

3 I said, "I'm not feeling well." He gave me a hug,
4 walked in the house, and we were sitting in the
5 kitchen -- the back door leads to the kitchen.

6 Q All right.

7 A And he said, "Well, just try to calm down," and he
8 started to walk toward the garage.

9 Q What happened next?

10 A I started to walk behind him, but he turned around.
11 He said, "Wait. Don't come in the garage."

12 I asked him why. He was saying that he's working on
13 a car in the garage. He said, "Wait, it's a surprise,
14 but it's a surprise."

15 He was really in like a hyper mood, a giddy mood.
16 He -- he said -- I said, "Okay. Well, what are you doing?"

17 He said, "I'm working on a car. I'm working on a
18 car."

19 I was getting a little upset because I asked him to
20 work on my car before. He wouldn't. So he wouldn't let
21 me look in the garage.

22 I said, "Okay. What's going on?"

23 He kept saying, "It's a surprise. It's a surprise."

24 "Okay. You're working on a car, but what's going on?"

25 He said, "Do you trust me?"

1 I said, "What do you mean do I trust you?"

2 He said, "Do you trust me?"

3 I said, "Yeah, okay."

4 Q Did you go into the garage?

5 A He still wouldn't let me into the garage.

6 Q And what did you do then?

7 A He walked back into the garage. He still wouldn't
8 let me in. I went to the restroom. I wasn't feeling well.
9 I went into the restroom.

10 As I came back out the restroom, I guess he heard
11 me open the door, and he came back and met me in the house.
12 He led me into the living room, sat down for a little bit.

13 He's moving back and forth. Then he asked, "Sweetie,
14 can you do me a favor?"

15 I said, "What is it?"

16 He asked me if I could mop for him.

17 Q Okay. Had you cleaned up his house before?

18 A Yes, ma'am.

19 Q And he was asking you on this day to mop for him?

20 A Yes, ma'am.

21 Q And specifically where did he want you to mop?

22 A He pointed out an area in the upstairs bedroom that
23 led downstairs and into the sitting room area.

24 Q Pointed to an area that started where?

25 A Upstairs bedroom.

000860

- 1 Q Upstairs bedroom --
- 2 A Yes, ma'am.
- 3 Q And whose bedroom was upstairs?
- 4 A His.
- 5 Q What area did he want you to mop?
- 6 A Just the front doorway.
- 7 Q And then did he indicate any other areas on the
- 8 upstairs?
- 9 A No, ma'am.
- 10 Q And did he tell you to mop anywhere downstairs?
- 11 A Just down the stairs, that led down the stairs, and
- 12 the sitting area.
- 13 Q So he wanted you to mop the stairs. Are there only
- 14 one set of stairs there?
- 15 A Yes, ma'am.
- 16 Q He wanted you to mop those stairs and then
- 17 downstairs in the sitting area?
- 18 A Yes, ma'am.
- 19 Q Is that at the bottom of the stairs?
- 20 A Yes, ma'am.
- 21 Q Did he tell you why he needed those areas mopped that
- 22 day?
- 23 A No, ma'am.
- 24 Q Did he indicate -- did he ever tell you how -- what
- 25 he wanted you to mop with?

000861

- 1 A He wanted me to use a little bit of water and as much
2 bleach as I could stand.
- 3 Q Did he have any bleach in his house that day?
- 4 A Yes, ma'am.
- 5 Q Did he get it for you, or did you get it?
- 6 A He got it.
- 7 Q And did you then proceed to mop?
- 8 A Yes, ma'am.
- 9 Q And where did you get the bucket? Where did you get
10 the mop?
- 11 A He got the mop, the bucket and the bleach out of the
12 garage.
- 13 Q At that point, did you fill up the bucket?
- 14 A Yes, ma'am.
- 15 Q In what areas did you mop that day?
- 16 A I barely mopped upstairs, down the stairs, and the
17 sitting area.
- 18 Q When you were finished -- where was he while you were
19 mopping?
- 20 A In the garage still.
- 21 Q When you finished mopping, what did you do?
- 22 A I stood in the doorway of the garage.
- 23 Q What happened next?
- 24 A He was sitting on the ground in the back of the garage
25 in between the -- a black car. I just saw it as black

000862

- 1 car at the time and his other car.
- 2 Q Had you ever seen the black car before?
- 3 A No, ma'am.
- 4 Q And when you said his other car, what other car was
- 5 that?
- 6 A It was his Camry.
- 7 Q That was his Camry?
- 8 A Yes, ma'am.
- 9 Q Do you remember what color it was?
- 10 A I think it was red.
- 11 Q Those were both in the garage?
- 12 A Yes, ma'am.
- 13 Q Were the doors still down?
- 14 A Yes, ma'am.
- 15 Q And when you went to the doorway, did you say
- 16 anything, or did you just go in the garage?
- 17 A I said, "Where did this car come from?" He was joking
- 18 and saying it fell off a truck.
- 19 Q Fell off a truck?
- 20 A Yes, ma'am.
- 21 Q Did you go into the garage?
- 22 A No, ma'am.
- 23 Q Why not?
- 24 A He still wouldn't let me into the garage.
- 25 Q Did you think that was odd?

000863

- 1 A Yes, ma'am.
- 2 Q Well, why didn't you go ahead and go into the garage?
- 3 A You don't argue with Theo. It's...
- 4 Q That day, how -- did you stay at the entrance to the
- 5 garage?
- 6 A Yes, ma'am.
- 7 Q And then what happened next?
- 8 A He was trying to take the tires off of the black car.
- 9 Q The tires?
- 10 A The tires, because of the rims.
- 11 Q The rims?
- 12 A Yes, ma'am, and put it onto his car.
- 13 Q Was he successful?
- 14 A No, ma'am. Then he asked if they could fit onto my
- 15 car, asking about the lugs, if they would fit on my car.
- 16 I told him I didn't think so, so he just put them back
- 17 on the black car.
- 18 Q He flipped them where?
- 19 A He put them back on the car.
- 20 Q What happened next?
- 21 A I walked off back to the living room. He came
- 22 behind me, and he had asked how much gas did I have in
- 23 my car. I told him I filled up before I came out there.
- 24 He then said, "Good." He was, "Good girl." He said, "I
- 25 need to go drop this car off."

000864

1 So he was walking back and forth making calls
2 because he was also saying he had to pick up something
3 from a coworker and work on that. When he came back, he
4 said, "Go ahead and pull your car around so we can go drive
5 the car."

6 Q What did you do?

7 A I got up, went out the back door, made sure it was
8 locked, got in the car, cranked it, had to wait for it
9 to be able to shift into gear. When it finally did, I
10 pulled on around the house.

11 Q And when you pulled around the house, were you
12 pulling around to the part of the house where the garage
13 is opened up?

14 A Yes, ma'am.

15 Q As when you got out to where the garage was opened
16 up, as you pulled around the house, where was he?

17 A He was -- already had the black car pulled out, and
18 he was walking from the garage back to the car, back to
19 the garage.

20 Q So did y'all leave the residence with you driving
21 your car and him driving the black car?

22 A Yes, ma'am.

23 Q And where did you think you were going?

24 A I was following him.

25 Q So where did you go?

1 A We headed up Bluff Road and ended up on 77 North and
2 just rode. We went past Killian Road. He was calling me.
3 I would ask him where we're going, and he said, "We're
4 going to drop the car off."

5 Past Blythewood, we ended up on Peach Road.

6 Q At some point, did you become concerned about your
7 children?

8 A Yes, ma'am.

9 Q And what arrangements did you make about your
10 children?

11 A I had Theo call -- well, when he called me, I had him
12 call a friend of mine.

13 Q Why didn't you just call your friend?

14 A My phone was -- my service was suspended, so I couldn't
15 make any outgoing calls.

16 Q Could you get incoming calls?

17 A Yes, ma'am.

18 Q But couldn't make outgoing calls?

19 A Yes, ma'am.

20 Q And who did you want him to call for you?

21 A A friend of mine named Laine.

22 Q And what's the last name?

23 A Washington.

24 Q So you asked him to make those calls?

25 A Yes, ma'am.

000866

1 Q You mentioned that y'all are driving up 77, and you
2 got off on what road?

3 A Peach Road.

4 Q What happened next?

5 A When we got off the exit, we made a left. As we were
6 getting off the exit, he said, "Welcome to my neck of the
7 woods."

8 Q Do you know what he meant by that?

9 A Winnsboro, he tells me he's from Winnsboro, so he was
10 saying we were in the Winnsboro area.

11 Q Okay.

12 A We drove down the street a little ways and came up
13 on a white church, and he pulled into the church parking
14 lot. He said, "Wait here. I see the street back there,"
15 and he pulled off and headed back in the direction toward
16 the interstate.

17 Q And could you tell if he stayed on the road, Peach
18 Road, or if he pulled off onto any other road?

19 A I couldn't tell.

20 Q You just know he went back behind you?

21 A Yes, ma'am, back towards the interstate.

22 Q Towards the interstate?

23 A Yes, ma'am.

24 Q What happened next? Where were you?

25 A I was in the church parking lot.

000867

- 1 Q Was anybody else in the parking lot that the point?
- 2 A No, ma'am.
- 3 Q As you're in the church parking lot, did you just wait
- 4 there?
- 5 A Yes, ma'am.
- 6 Q Why?
- 7 A Just waiting for him to get back.
- 8 Q What happened?
- 9 A He called me, and he said, "I need to go to the gas
- 10 station," and he walked back to the car. He drove to the
- 11 gas station. He had a gas can in his hand.
- 12 Q Okay. He had a gas can in his hand?
- 13 A Yes, ma'am.
- 14 Q And you're waiting in the parking lot, and he shows
- 15 up and he's got a gas can in his hand, and that's after
- 16 he says he has to go get gas?
- 17 A Yes, ma'am.
- 18 Q Did you ask him what for?
- 19 A No, ma'am.
- 20 Q You mentioned then you drove to a gas station?
- 21 A Yes, ma'am.
- 22 Q Who drove?
- 23 A Theo drove.
- 24 Q Do you recall where you went to the gas station?
- 25 A It was an exit down.

000868

1 Q An exit down?

2 A Yes, ma'am.

3 Q When you pulled off of that exit, did y'all go to a
4 gas station?

5 A Yes, ma'am.

6 Q Do you remember what kind it was?

7 A No, ma'am.

8 Q When you got to the gas station, what happened?

9 A He gave me a couple of dollars to go in and pay for
10 the gas and to grab him a couple of beers.

11 Q A couple of what?

12 A Beers.

13 Q Beers?

14 A Yes, ma'am.

15 Q So did you go inside the gas station?

16 A Yes, ma'am.

17 Q Did you pay for the gas?

18 A Yes, ma'am.

19 Q Did you pay for the beer?

20 A Yes, ma'am.

21 Q What kind of beer did you get him?

22 A Miller High Life.

23 Q How did you know what kind to get?

24 A I had to yell back out the door and ask him what kind
25 he wanted.

000869

1 Q What was he was doing while you were in the store?

2 A He was putting gas in the gas can.

3 Q Did you have to go back in the store when you
4 initially paid for everything?

5 A Yes, ma'am. When I walked back out, he said that there
6 wasn't enough gas, "Get me a couple more dollars," and
7 had me walk back in and pay for more.

8 Q Did you go back and get in the car with him?

9 A Yes, ma'am.

10 Q And where was the gas can?

11 A It was in the backseat.

12 Q And this is your car, right?

13 A Yes, ma'am.

14 Q Who was driving?

15 A Theo.

16 Q Where did y'all go?

17 A We went back to Peach Road.

18 Q Once you got on Peach Road, where did you go?

19 A We went back to the church parking lot.

20 Q What happened then?

21 A He was getting out of the car. He grabbed the gas
22 can. He took the keys. He said, "Wait here. I'll be
23 back."

24 Q Had he taken the keys the first time?

25 A No, ma'am.

000870

1 Q But he took the keys the second time?

2 A Yes, ma'am.

3 Q And did you wait in the parking lot?

4 A Yes, ma'am.

5 Q Could you tell where he went with the gas can? Was
6 he on foot at that point?

7 A He was on foot.

8 Q Could you tell where he went?

9 A No, ma'am. He walked. He just walked off.

10 Q Walked off?

11 A Yes, ma'am.

12 Q And -- so you could tell the general direction --

13 A Yes, ma'am.

14 Q -- down the road, and at that point, were you just
15 waiting in the parking lot?

16 A Yes, ma'am. I was sitting there. I had grabbed a
17 cigarette and a lighter since I was just sitting there.
18 I grabbed a cigarette and my lighter.

19 Theo didn't like me smoking, so he came around on
20 the passenger's side and snatched my cigarette and my
21 lighter out of my hand. He said, "I thought I told you
22 stop smoking. You're not supposed to be smoking," and
23 then he walked off.

24 Q Do you know approximately how long he was gone?

25 A No, ma'am.

000871

1 Q What happened next?

2 A I was sitting there. I got a phone call that came
3 in, and it was friend of mine. I was talking to her just
4 for a few minutes, and then Theo beeped in.

5 He said, "Is the car running?"

6 I said, "No. You have the keys."

7 He said, "Well, I'm on my way back."

8 While I was talking to him, I heard an explosion in
9 the background.

10 Q What's going through your mind?

11 A At the time, I -- I wasn't sure what to think. I
12 heard the explosion. I asked him, "Was that just a boom
13 I heard?"

14 His comment was, "Don't worry about it."

15 He just was out of breath, panting, and walking back
16 to the car.

17 Q Did he get back in the car?

18 A Yes, ma'am. He -- well, he stood outside for a second.
19 There was another car in the parking lot.

20 Q There was another car in the parking lot?

21 A Yes, ma'am, on the other side of the church. And when
22 he got back up to the car, he looked at it. He said, "How
23 long has that car been sitting there?"

24 I said, "Not long. Why?"

25 He said, "I should have brought my pistol with me.

000872

1 No witnesses." And I'm looking at him --

2 MR. SHEALEY: Objection, Judge.

3 THE COURT: Overruled.

4 BY MS. CAMPBELL:

5 Q Thank you.

6 I'm sorry. He said what?

7 A He said, "I should have brought my pistol with me."

8 I'm going, "What are you talking about?"

9 He said, "No witnesses." Then he gets in the car.

10 MR. SHEALEY: Objection, Judge.

11 THE COURT: Approach the bench.

12 (WHEREUPON, a bench conference was held in the
13 presence, but not within the hearing of the jury.)

14 MS. CAMPBELL: Thank you, Your Honor.

15 THE COURT: Overruled.

16 BY MS. CAMPBELL:

17 Q Once he said that about the witnesses, what happened
18 next?

19 A He got back in the car.

20 Q Where did he get in the car?

21 A He got in on the driver's side.

22 Q And where were you?

23 A I was in the passenger's side.

24 Q What's going through your mind at this point?

25 A That something isn't right.

- 1 Q What happened next?
- 2 A He was smelling like gasoline when he got back in
3 the car.
- 4 Q He smelled like gasoline?
- 5 A Yes, ma'am.
- 6 Q Where was the gas can?
- 7 A He put it in the backseat.
- 8 Q Who was driving?
- 9 A He is.
- 10 Q Did y'all get back on the road?
- 11 A Yes, ma'am. We pulled out of the church parking
12 lot, and as we're pulling out, a Fairfield County officer
13 pulls behind us.
- 14 Q On Peach Road?
- 15 A Yes, ma'am. So he's driving the speed limit, and we
16 get back on the interstate. He's looking in the rearview
17 watching the police.
- 18 Q Uh-huh.
- 19 A As we get on the interstate, the officer -- I guess
20 Theo was driving too slow for him, so the officer swerves
21 around us and drives on off.
- 22 Q Okay. So as you get back on the interstate, what
23 direction are you going? Are you going back towards
24 Charlotte or towards Columbia?
- 25 A Back towards Columbia.

000874

- 1 Q And the officer pulls around you and passes you?
- 2 A Yes, ma'am.
- 3 Q What does he say, anything?
- 4 A He doesn't say anything.
- 5 Q Where do y'all drive to, or where is he driving to?
- 6 A He keeps driving. I keep asking him what was wrong.
- 7 Eventually he said, "I need to go to an A.T.M."
- 8 Q Did y'all get off of I-77?
- 9 A Yes, ma'am, we got off.
- 10 Q Do you remember what exit you got off on?
- 11 A Farrow Road.
- 12 Q Farrow Road?
- 13 A Yes, ma'am.
- 14 Q Where did he proceed to drive?
- 15 A He went to the Wachovia bank off Farrow Road.
- 16 Q Once you got to the Wachovia bank, what happened?
- 17 A He pulled up but not all the way to the A.T.M.
- 18 Q Uh-huh.
- 19 A He got out of the car. He said, "You drive. My back
- 20 is hurting," and he walked up to the A.T.M.
- 21 Q Did you get out of the car?
- 22 A No, ma'am.
- 23 Q And you were sitting in the passenger's seat at
- 24 that point?
- 25 A Yes, ma'am.

000875

- 1 Q Did you stay in the passenger's seat?
- 2 A No, ma'am. I slid over.
- 3 Q Why?
- 4 A Because he had told me to drive.
- 5 Q When he went to the A.T.M., could you see what he was
- 6 doing?
- 7 A Making a withdrawal.
- 8 Q Did you know whose card he was using?
- 9 A No, ma'am.
- 10 Q Did he come back to the car?
- 11 A Yes, ma'am.
- 12 Q And he told you to move over?
- 13 A I had already slid over. He told me to drive, but
- 14 I had already slid over.
- 15 Q He told you to drive already?
- 16 A Yes, ma'am.
- 17 Q Okay. And so then he got back in on what side of the
- 18 car?
- 19 A He got in on the passenger's side.
- 20 Q What happened next, you're driving?
- 21 A We headed back towards his house. He was quiet for
- 22 most of the ride.
- 23 Q Did y'all actually pull up to the A.T.M. one time,
- 24 two times, three times or do you remember?
- 25 A I don't remember.

000876

- 1 Q He told you to head back to the house?
- 2 A Yes, ma'am.
- 3 Q And what road did you get back on?
- 4 A We got back on 77.
- 5 Q And where did you go?
- 6 A Back to Bluff Road.
- 7 Q Once you got back to the house, did you go back in
- 8 the house with him?
- 9 A Yes, ma'am.
- 10 Q And don't say what you did, but at that point, did
- 11 you eventually leave?
- 12 A Yes, ma'am.
- 13 Q Did you leave him there?
- 14 A Yes, ma'am.
- 15 Q Did he say anything about having to go to work that
- 16 night?
- 17 A Yes, ma'am.
- 18 Q What did he say?
- 19 A He still had to get some rest so that he could be
- 20 able to go to work.
- 21 Q And once you left his house, did you talk to him
- 22 anymore that day?
- 23 A No, ma'am.
- 24 Q During the entire time you were with him that day,
- 25 did he ever mention a woman named Nikki McPhatter?

- 1 A No, ma'am.
- 2 Q Did you know who a woman named Nikki McPhatter was
- 3 that day?
- 4 A No, ma'am.
- 5 Q Had you ever heard of her before?
- 6 A No, ma'am.
- 7 Q Once you left his house, where did you go?
- 8 A I was headed home.
- 9 Q When you got home -- when you say home, where did you
- 10 do?
- 11 A Back down 26.
- 12 Q Okay. And where were you living at the time?
- 13 A Stoney Creek Apartments.
- 14 Q And where were your children that evening?
- 15 A They were brought home with the baby sitter.
- 16 Q And what was her name again?
- 17 A Laine Washington.
- 18 Q So she actually, once you got home, brought your kids
- 19 to you?
- 20 A Yes, ma'am.
- 21 Q When she came and dropped the kids off, did you say
- 22 anything about what had happened that day?
- 23 A I told her, thank you for watching my kids, of course.
- 24 I took her in the bathroom, and I said, "I don't know what's
- 25 wrong with Theo. I think he may have just" --

1 MR. SHEALEY: Objection, Judge, hearsay.

2 THE COURT: No. She is saying what she said.

3 MR. SHEALEY: I agree, Judge. May we approach?

4 THE COURT: Sure.

5 (WHEREUPON, a bench conference was held in the
6 presence, but not within the hearing of the jury.)

7 BY MS. CAMPBELL:

8 Q Let me back up for a minute. Were you able to see,
9 when you were at the A.T.M., whether or not he got any
10 money out?

11 A When he walked away from the A.T.M., he was just
12 stuffing everything back in his pocket.

13 Q And that day -- or that way, on the way back, did you
14 have a conversation about money?

15 A Yes, ma'am.

16 Q What was that conversation?

17 A He had -- since I was stressing about my rent, he had
18 asked me if I figured out what I was going to do about --

19 Q About your rent?

20 A Yes, ma'am.

21 Q Okay. I see.

22 A And I told him that I could work something out if need
23 be. I ask my parents everything, and he tried to pass
24 me some money. He said, "What's -- what's half of 180?"
25 I said, "It's \$90."

1 He said, "Well, I don't have any tens on me."
2 He passed me the money. I pushed his hand back
3 saying, "I can't take this. You have your rent to worry
4 about also," and that was the brunt of the conversation.
5 Q Okay. Once you talked to Ms. Washington about your
6 concerns about the burning of the car, did you talk to
7 him any more that day?
8 A No, ma'am.
9 Q The next day, May 7th, did you go to a Wal-Mart?
10 A Yes, ma'am.
11 Q And who did you go with? Who did you meet there?
12 A Theo.
13 Q And what car did you drive?
14 A I drove my Lumina.
15 Q What car did he drive?
16 A His Avalon.
17 Q And why were you meeting that the Wal-Mart the next
18 day?
19 A I was doing some grocery shopping. He said he had
20 some things he needed to pick up.
21 Q He needed to pick up?
22 A Yes, ma'am.
23 Q Did you have an arrangement about grocery shopping?
24 A Not really. I asked him when I went if there was
25 anything he may have needed.

000880

1 Q Okay. And why were you offering to pay for his
2 groceries?

3 A He had helped me out with watching my kids, things
4 like that.

5 Q And how were you going to pay for your groceries?

6 A An E.B.T.

7 Q What is an E.B.T. card?

8 A Food stamps.

9 Q Would he purchase items that you couldn't purchase
10 with your E.B.T. card for you?

11 A He did.

12 Q And that day, did he purchase some items?

13 A Yes, ma'am.

14 Q What items did he purchase?

15 A He got a mailbox. I told him I needed to get some
16 cleaning supplies, so he bought my bleach for me.

17 Q Did you see him using an A.T.M. that day at the
18 Wal-Mart?

19 A Yes, ma'am.

20 Q Do you know whose card he was using?

21 A No, ma'am.

22 Q Did y'all exchange some groceries back and forth
23 there in the Wal-Mart?

24 A Yes, ma'am.

25 Q When you left the Wal-Mart that day, did y'all have

000881

- 1 any more contact?
- 2 A Not for the rest of that day.
- 3 Q Not this rest of that day.
- 4 A (Nods in the affirmative).
- 5 Q Did you ever ask him what had happened up there?
- 6 A No, ma'am.
- 7 Q Did you ever ask him what had happened in his
- 8 garage?
- 9 A No, ma'am.
- 10 Q Why not?
- 11 A You don't ask Theo questions.
- 12 Q Over the next week or two, did you continue to have
- 13 contact with Theodore Manning?
- 14 A He would call me every day, as usual.
- 15 Q At some point did your phone number change?
- 16 A I can't remember, but I believe it did.
- 17 Q Two, two-and-a-half weeks later, did the police get
- 18 in contact with you?
- 19 A Yes, ma'am.
- 20 Q What police department, do you know?
- 21 A Charlotte.
- 22 Q Charlotte?
- 23 A Yes, ma'am.
- 24 Q And did you know they were going to get in contact
- 25 with you?

000882

1 A Yes, ma'am.

2 Q How did you know that the Charlotte police
3 department was going to make contact with you?

4 A Theo had called me right before they actually called
5 me.

6 Q Okay. Right. Before they called?

7 A Yes, ma'am.

8 Q And in that phone conversation -- let me actually
9 back up a minute. Up until the day the police contacted
10 you and make contact with you, had y'all discussed what
11 had gone on in his garage or on Peach Road when you heard
12 the boom?

13 A No, ma'am.

14 Q Why didn't you ask him?

15 A You don't ask Theo questions.

16 Q The day the police got in touch with you, prior to
17 them getting in touch with you, you got a phone call
18 from Theodore Manning?

19 A Yes, ma'am.

20 Q Was it before?

21 A Yes, ma'am.

22 Q And tell the jury what the phone call was about.

23 A He told me that the police had been talking to him
24 about a friend of his that happened to be an ex that came
25 up missing.

1 Q An ex?

2 A Yes.

3 Q That's how he described it?

4 A Yes, ma'am.

5 Q And when he said a friend of his that happened to be

6 an ex, an ex what did you think it was?

7 A Ex-girlfriend.

8 Q That happened to come up missing. What else did he

9 say?

10 A He said that they searched his house. They found the

11 bleach receipts, and they'll probably be coming and

12 talking to me asking about his character.

13 Q Did he specifically tell you to tell them anything

14 about your relationship with him?

15 A He said if they asked if our -- about our relationship,

16 just tell them that we're friends.

17 Q Did you ask him why he wanted you to say that?

18 A No, ma'am.

19 Q Did he give you any other details about what was

20 going on?

21 A No, ma'am.

22 Q And did you do what he told you?

23 A Yes, ma'am.

24 Q And that was actually on, I believe, May 26th that

25 they came and talked to you?

000884

- 1 A Yes, ma'am.
- 2 Q Did they record your statement?
- 3 A Yes, ma'am.
- 4 Q And did you talk to them that day?
- 5 A Yes, ma'am.
- 6 Q Where did this conversation take place?
- 7 A At my house.
- 8 Q And at that point, did they ask you some questions
9 about Theodore Manning?
- 10 A Yes, ma'am.
- 11 Q And did you tell them the truth?
- 12 A No, ma'am.
- 13 Q Why not?
- 14 A Because Theo had already coached me on what to say.
- 15 Q When did you find out -- or when did you first hear
16 the name Nikki McPhatter?
- 17 A The day that Charlotte came to my house.
- 18 Q And was it the police that actually told you her
19 name?
- 20 A Yes, ma'am.
- 21 Q After they left, what did you do?
- 22 A I believe I tried to contact Theo, but he was already
23 at work.
- 24 Q Over the next couple of days, did you get any
25 additional information about a Nikki McPhatter?

- 1 A I went online and did some -- just looked it up,
2 noticed that she had been missing; that the last person
3 to have contact with her was Teddy.
- 4 Q Teddy?
- 5 A Yes.
- 6 Q And Teddy as you're referring to?
- 7 A It's Theo.
- 8 Q Manning?
- 9 A Yes, ma'am.
- 10 Q That was his nickname?
- 11 A Yes, ma'am.
- 12 Q Once you went online and saw that he was the last
13 person that had seen her and the timeframe, what's going
14 through your mind?
- 15 A When I -- when I finally got in touch with
16 him -- because I -- I kept begging and pleading him to,
17 you know, work with the police. "If you know more, you
18 need to tell them more," because I didn't know what to
19 think at the time. I didn't make connection between the
20 two.
- 21 Q Did the police make contact with you again?
- 22 A Yes, ma'am.
- 23 Q Where?
- 24 A At my job.
- 25 Q And that would have been, I believe, on the 29th of

1 May, some two or three days later?

2 A Yes, ma'am.

3 Q What time of day was it when they made contact with
4 you?

5 A I don't remember.

6 Q The Richland County Sheriff's Department deputies
7 actually came and talked to you?

8 A Yes, ma'am.

9 Q And when they came and talked to you, were you
10 cooperative?

11 A Yes, ma'am.

12 Q But prior to talking with them, did you make some
13 phone calls?

14 A Yes, ma'am.

15 Q Who did you call?

16 A I called my lawyer.

17 Q Mr. Dessasure?

18 A Yes, ma'am.

19 Q And why were you calling your lawyer?

20 A I had seen the surveillance video, and I wanted to
21 know what was going on and if I should talk to them.

22 Q At this point, you're starting to put things
23 together?

24 A Yes, ma'am.

25 Q That day when you talked to them, I believe you talked

000887

1 to a Captain Smith here?

2 A Yes, ma'am.

3 Q And eventually, you talked to Sergeant Isenhoward?

4 A Yes, ma'am.

5 MR. SHEALEY: Objection, leading.

6 THE COURT: Did -- rephrase your question.

7 BY MS. CAMPBELL:

8 Q Do you know who you talked to?

9 A Yes, ma'am.

10 Q Did you tell them what had happened?

11 A No, ma'am.

12 Q What did you tell them?

13 A I told them that I did talk to Theo on the day that

14 they questioned, but I still wasn't forthcoming.

15 Q Why not?

16 A I was scared.

17 Q Scared of what?

18 A I was scared of Theo.

19 MR. SHEALEY: Objection, Judge, 404(b).

20 THE COURT: Overruled.

21 BY MS. CAMPBELL:

22 Q Thank you.

23 What did you -- and that's what you told them at

24 first?

25 A Yes.

- 1 Q That evening, did you ever tell them all the truth?
- 2 A No, ma'am.
- 3 Q That evening, though, did you take them somewhere?
- 4 A Yes, ma'am.
- 5 Q Did your father actually come and talk to you?
- 6 A Yes, ma'am, he did.
- 7 Q And did you take your father's advice?
- 8 A Not fully.
- 9 Q Did you take the police up to the place on Peach
- 10 Road?
- 11 A Yes, ma'am.
- 12 Q But you just didn't tell them all the truth about
- 13 what had happened?
- 14 A No, ma'am.
- 15 Q Where did you take them?
- 16 A I took them to the church where Theo had me park.
- 17 Q And do you remember who you rode with?
- 18 A Captain Smith and Sergeant Isenhoward.
- 19 Q And when you got up there, where did you take them?
- 20 A I took them to the church.
- 21 Q Uh-huh.
- 22 A In this parking lot where Theo had me park. I just
- 23 pointed them in the direction of where he had drove off.
- 24 Q Eventually, did they drive you up a dirt road?
- 25 A Yes, ma'am.

- 1 Q Were you able to see what was up that dirt road?
- 2 A Not fully. They -- after everyone had drove off,
3 someone radioed in saying they got a car, and I believe
4 Captain Smith was driving. So he drove up the dirt
5 road, and I was just looking trying to see if I saw
6 anything.
- 7 Q Did you see anything?
- 8 A They stopped just shy of where the burnt car was.
- 9 Q Did you find out what was up there?
- 10 A They said that the car was there and that there was
11 a body in it.
- 12 Q What was your reaction?
- 13 A I went in shock. I got sick.
- 14 Q You say you got sick. What do you mean?
- 15 A I had to step outside of the car. I was nauseous,
16 about to throw up.
- 17 Q That day, did they take a written statement from
18 you?
- 19 A Yes, ma'am.
- 20 Q Back at police headquarters or where did they take
21 it?
- 22 A Back at police headquarters.
- 23 Q And you still were not fully forthcoming?
- 24 A No, ma'am, I wasn't.
- 25 Q Why not?

000890

1 A I was still scared bec--- I was -- I was still
2 scared.

3 Q That was the statement on 5/29. A weekend elapsed.
4 Over the weekend did you make any attempts to try to get
5 in touch with law enforcement?

6 A Yes, ma'am.

7 Q Who were you trying to call?

8 A Captain Smith.

9 Q Why?

10 A To tell him that I wanted to talk to him.

11 Q When you came back, I believe it was on June 1st, about
12 that Monday maybe?

13 A Yes, ma'am.

14 Q Monday or Tuesday?

15 A Yes, ma'am.

16 Q Did you meet with Captain Smith?

17 A Yes, ma'am.

18 Q And did you tell him everything?

19 A No, ma'am, I still didn't.

20 Q You gave him more details, but you still were
21 holding back?

22 A Yes, ma'am.

23 Q And finally, the next day did you come and tell them
24 what had happened?

25 A Most of it, yes, ma'am.

000891

- 1 Q But you also said the next day --
- 2 MR. SHEALEY: Objection, leading.
- 3 BY MS. CAMPBELL:
- 4 Q What did you say that wasn't true on that final
- 5 statement?
- 6 A In that final statement, I told them that I had
- 7 saw -- for sure saw her body and saw blood and I didn't.
- 8 That was...
- 9 Q But everything else?
- 10 A (Nods in the affirmative.)
- 11 Q So you admit that you lied to the police?
- 12 A Yes, ma'am.
- 13 Q On at least four different occasions?
- 14 A Yes, ma'am.
- 15 Q Did you get charged?
- 16 A Yes, ma'am.
- 17 Q What did you get charged with?
- 18 A Accessory after the fact of murder.
- 19 Q Of what?
- 20 A Accessory to murder after the fact.
- 21 Q Accessory to murder after the fact?
- 22 A Yes, ma'am.
- 23 Q And that can carry up to 15 years?
- 24 A Yes, ma'am.
- 25 Q And Mr. Dessasure become your lawyer?

- 1 A Yes, ma'am.
- 2 Q You've talked to him about testifying?
- 3 A Yes, ma'am.
- 4 Q Has anyone offered you any deal --
- 5 A No, ma'am.
- 6 Q -- to testify here today?
- 7 A No, ma'am.
- 8 Q Are you hoping it will help you?
- 9 A Yes, ma'am.
- 10 Q Truthful testimony?
- 11 A Yes, ma'am.
- 12 Q Why -- why are you testifying?
- 13 A Because I want her family to get the closure that
- 14 they need, and I want apologize to them for what had
- 15 happened; that this was not right, and this could have
- 16 happened to me also, but her -- her family has the right
- 17 to know what happened on that day.
- 18 Q Did you love Theo Manning?
- 19 A I had a love for him.
- 20 Q The person you knew as Teddy -- at some point after
- 21 you went to the A.T.M. and everything else, did you come
- 22 in possession of a Coach bag?
- 23 A Yes, ma'am.
- 24 Q When did you get that?
- 25 A The same day Theo tried to give me the money.

- 1 Q And was there any money in that bag when you got it?
- 2 A Yes, ma'am.
- 3 Q How much money?
- 4 A Eighty dollars.
- 5 Q Who gave you that bag?
- 6 A Theo.
- 7 Q What did you end up doing with it?
- 8 A I ended up throwing it away.
- 9 Q When?
- 10 A After Richland County came and talked to me.
- 11 Q Why?
- 12 A Because a connection made -- it turned out to be
- 13 Nikki's.
- 14 Q Had you ever met Nikki McPhatter?
- 15 A No, ma'am.
- 16 Q The person that you know as Teddy, Theodore
- 17 Manning, do you see him here in the courtroom?
- 18 A Yes, ma'am.
- 19 Q Can you point him out for the jury?
- 20 A He's right there.
- 21 Q Is he standing or sitting or what?
- 22 A He's sitting.
- 23 Q At that table with his lawyers?
- 24 A Yes, ma'am.
- 25 MS. CAMPBELL: Your Honor, may the report reflect she

1 has identified the defendant?

2 THE COURT: The record reflects the witness has
3 identified the defendant.

4 MS. CAMPBELL: Thank you, Your Honor.

5 THE COURT: Cross-examination?

6 MR. SHEALEY: Your Honor, may we approach?

7 THE COURT: Sure.

8 (WHEREUPON, a bench conference was held in the
9 presence, but not within the hearing of the jury.)

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

11 THE COURT: Yes, sir.

12 MS. CAMPBELL: Your Honor, may we approach?

13 (WHEREUPON, a bench conference was held in the
14 presence, but not within the hearing of the jury.)

15 MS. CAMPBELL: I'm sorry, Your Honor. I
16 misunderstood.

17 (Pause)

18 THE COURT: Mr. Shealey?

19 CROSS-EXAMINATION:

20 BY MR. SHEALEY:

21 Q Now, you've told us quite a bit of information
22 today, haven't you?

23 A Yes, sir.

24 Q And before you told us all of this information, you
25 got up here, put your hand on the Bible. You said that

1 you would tell the truth, the whole truth, and nothing
2 but the truth so help you God, right?
3 A Yes, sir.
4 Q And everything you told us today is the truth, isn't
5 it, Kendra?
6 A Yes, sir.
7 Q So help you God, right?
8 A Yes, sir.
9 Q Now, Ms. Campbell brought it up that you are charged
10 in this case, right?
11 A Yes, sir.
12 Q You're charged with accessory after the fact to
13 murder; isn't that right?
14 A Yes, sir.
15 Q That carries 15 years, right?
16 A Yes, sir.
17 Q Your lawyer, Mr. Dessasure, told you that, right?
18 A Yes, sir.
19 Q He's here to protect you, right?
20 A Yes, sir.
21 Q You told Ms. Campbell that you hope to get some
22 benefit from being here today, right?
23 A Yes, sir.
24 Q You met with her a few times, right?
25 A Yes, sir.

000896

1 Q In preparation for what you'd be saying today, you
2 spoke with Ms. Campbell?

3 A Yes, sir.

4 Q Probably here in her office or somewhere in the
5 building, right?

6 A Yes, sir.

7 Q How many times did you meet with her?

8 A Just twice.

9 Q And you got figured out what you'd be saying here
10 today, right?

11 A Yes, sir.

12 Q Because you are the star witness in this case,
13 correct?

14 A So I've been told.

15 Q You've never been to prison?

16 A No, sir.

17 Q You don't want to do 15 years in prison, do you?

18 A No, sir.

19 Q You will do and say anything to prevent that from
20 happening.

21 A No, sir.

22 Q Now, you said some very bad, damaging things for
23 your own criminal case today, haven't you? You realize
24 that.

25 A Yes, sir.

1 Q You're at the mercy of Ms. Campbell, correct?

2 A (There was no response).

3 Q And her office, Mr. Giese's office, is prosecuting
4 you. You're at their mercy, and you're going to do
5 everything you can to hope they look favorably on you
6 today, right?

7 A Yes, sir.

8 Q Yes?

9 A Yes, sir.

10 Q Now, we've heard your version of events today.
11 Ms. Campbell has kind of walked you through your
12 interactions with law enforcement. She has pointed out
13 some of your omissions, right?

14 A Yes, sir.

15 Q Some of the ways you've lied, and you admitted to
16 her that you didn't tell the police the truth, right?

17 A Yes, sir.

18 Q And she talked to you about that before you came into
19 the courtroom the past two times you saw her, right?

20 A Yes, sir.

21 Q I want to talk to you about these two instances
22 with law enforcement real specifically so the jury can
23 understand.

24 Now, you talked to Ms. Campbell about the first time
25 the police ever talked to you. That would have been

- 1 May 26th, right?
- 2 A Yes, sir.
- 3 Q That was a Tuesday at your home, Charlotte/
4 Mecklenburg came to see you, didn't they?
- 5 A Yes, sir.
- 6 Q You talked to Detectives Hopkins, the lady with the
7 jet black hair right there, right?
- 8 A Yes, sir.
- 9 Q You talked to Detective Fitch, correct?
- 10 A I believe so.
- 11 Q Sitting next to her?
- 12 A Yes, sir.
- 13 Q Okay. Now, you know now that they recorded
14 everything you told them that day.
- 15 A Yes, sir.
- 16 Q Ms. Campbell told you that, and they actually made
17 a transcript of everything that was said that day, didn't
18 they?
- 19 A Yes, sir.
- 20 Q You know that, you're aware of that. If I tried to
21 tell you, ask you right now what was everything you said
22 that day, you wouldn't be able to remember exactly what
23 you said, would you?
- 24 A No, sir.
- 25 Q Okay. But a transcript would help you, wouldn't it?

000899

1 A Yes, sir.

2 Q Okay. I've got one that they gave me. I'm just going
3 to -- may I approach the witness, Judge?

4 THE COURT: Yes.

5 BY MR. SHEALEY:

6 Q That looks like the transcript of May 26th, doesn't
7 it?

8 A Yes, sir.

9 Q And it's quite lengthy, you'll agree?

10 A Yes, sir.

11 Q Now, on that day, let's start talking about what they
12 are wanting to talk about. They are wanting to talk about
13 Theo, right?

14 A Yes, sir.

15 Q Okay. Now, they questioned you about Mr. Manning,
16 and you said y'all were -- y'all were just friends,
17 right?

18 A Yes, sir.

19 Q You just told us that you had been dating him, or
20 had been dating at that time for several years, right?
21 You met online.

22 A Yes, sir.

23 Q Okay. Now, at that time, your telling them that you
24 were just friends, that would be a lie, correct?

25 A Yes, sir.

000900

1 Q That would be a lie because y'all had been dating for
2 several years. Now, you also told them a couple of other
3 things. They started questioning you about your Chevy
4 Lumina, right?

5 A Yes, sir.

6 Q And you told them that other people had been
7 driving it. Sometimes it moves around in your parking
8 lot. You remember that, right?

9 A Yes, sir.

10 Q You told them that Brian Bookert, a neighbor of
11 yours, actually drives it sometimes, too?

12 A Yes, sir.

13 Q All right. You were trying at that point to deflect
14 attention from your car, correct?

15 A No, sir.

16 Q If it had been -- it could turn up missing a little
17 bit, and it might not be you driving it, right? That was
18 the point, right? You will agree?

19 You knew they were interested in your car, the car
20 that went to the A.T.M. You wanted to let them know that
21 sometimes other people drive it. That's what you told
22 them, right?

23 A Yes.

24 Q Mr. Bookert didn't have anything to do with this,
25 right?

000901

1 A Yes, sir.

2 Q That was a lie. You agree?

3 MS. CAMPBELL: Objection, Your Honor. She said that

4 wasn't a lie. Mr. Bookert does drive the car.

5 THE COURT: Then go ahead.

6 BY MR. SHEALEY:

7 Q Now --

8 THE COURT: Sir. There is an objection.

9 MR. SHEALEY: Yes, sir. I...

10 THE COURT: All right. Just wait awhile.

11 I'm going to overrule the objection.

12 You may proceed.

13 MR. SHEALEY: Yes, sir. I --

14 THE COURT: Don't proceeded before I rule on the

15 objection.

16 MR. SHEALEY: I'm sorry. I thought you had ruled.

17 BY MR. SHEALEY:

18 Q Now, you did tell them a couple of things that were

19 true that day. You were stressed about money that time,

20 right?

21 A Yes, sir.

22 Q You told Ms. Campbell that. You were only working

23 part time at the cleaners, right?

24 A Yes, sir.

25 Q You've got two children, young children, right?

- 1 A Yes, sir.
- 2 Q Now, it let's turn our attention to the next
3 statement. Let's see. The next time you came into the
4 police was after they searched your house?
- 5 A Yes, sir.
- 6 Q And they came to your work. Do you remember that?
- 7 A Yes, sir.
- 8 Q All right. Captain Stan Smith, the nice gentleman
9 over there would come to your work and want to talk to
10 you about what's going on, right?
- 11 A Okay. Yes, sir.
- 12 Q You didn't want to talk to him at first. You talked
13 to -- called your lawyer, Mr. Dessasure there, right?
- 14 A Yes, sir.
- 15 Q Now, eventually, you do start talking to him. I
16 mean, after consulting with your lawyer.
- 17 A Yes, sir.
- 18 Q And you tell them some things just there on the
19 scene, but they end up not being exactly right, right?
- 20 A Yes, sir.
- 21 Q So you came to Richland County Sheriff's
22 Department the next day, and you started talking a little
23 bit more, correct?
- 24 A Yes, sir.
- 25 Q All right. This would have been now been Friday,

000903

1 May 29th that you would come to Richland County. Does
2 that sounds about right?

3 A Yes, sir.

4 Q Richland County Sheriff's Department, May 29th,
5 talking to Captain Smith.

6 Do you remember everything that was said that day
7 verbatim?

8 A No, sir.

9 Q Okay. Well, I've got a copy for you if you'd like.
10 We're going to go through it a little bit.

11 Q Does that look like your statement from that day?

12 A Yes, sir.

13 Q Does it say May 29th on the top?

14 A Yes, sir.

15 Q Now, you start out telling him that you hadn't
16 been completely honest, isn't that true?

17 A Yes, sir.

18 Q That you had lied to him when you talked to him the
19 day before, right?

20 A Yes, sir.

21 Q Now, one of the lies you had told him was that Theo
22 came to your house after work that day and picked you up.

23 A Yes, sir.

24 Q That was a lie, correct?

25 A Yes, sir.

000904

1 Q And, in fact, you were driving your car, and you drove
2 to Theo's house.

3 A Yes, sir.

4 Q Okay. Now, you said this because they confronted you
5 with your car on the video at the bank, right?

6 A Yes, sir.

7 Q You had nowhere to go with this. You had to tell the
8 truth at this point. Your car is on video. They showed
9 to it you, right?

10 A (There was no response).

11 Q And you told them, "I want to tell you the whole
12 truth," and you begin to tell them a version of events,
13 correct?

14 A Yes, sir.

15 Q Now, you tell them how you came over that day. You
16 start to tell them the story about -- somewhat similar
17 to what you told us today, that you were sick, right?

18 A Yes, sir.

19 Q And he invited you over to relax a little bit.

20 A Yes, sir.

21 Q Right? You had been invited you over there a few
22 times. You told us that, right?

23 A (There was no response).

24 Q Now, you told us that you got there, and he was in
25 the garage, right?

000905

1 A Yes, sir.

2 Q You saw a black Honda that day, right?

3 A Yes, sir.

4 Q You never saw any body, did you?

5 A No, sir.

6 Q You never saw the body of anybody?

7 A No, sir.

8 Q Right? Nothing suspicion about that, much like you

9 told us today. You told us that he said he had to drop

10 this car off, correct?

11 A Yes, sir.

12 Q That it fell off the truck or something like that,

13 right?

14 A Yes, sir.

15 Q You didn't question that, did you?

16 A No, sir.

17 Q You told us that he wanted to know if you had gas in

18 your car. You said you did, right?

19 A Yes, sir.

20 Q That he said, "Follow me." You blindly followed him

21 up I-77 without a question in the world, right?

22 A Yes, sir.

23 Q Now, you told him that you drove a while. You talked

24 on the phone and you get to a random exit, Peachtree Road,

25 I believe you said.

000906

- 1 A Peach Road.
- 2 Q Peach Road. You told the police that this time, and
3 that he ran down the road, right?
- 4 A Yes, sir.
- 5 Q He comes back a little while later with a gas can,
6 asks for -- he says he needs to get some gas, right?
- 7 A Yes, sir.
- 8 Q Y'all go to the gas station, much like you told
9 Ms. Campbell and the whole wide world today and that you
10 get gas. He's asking you to buy him beer, right?
- 11 A Yes, sir.
- 12 Q Okay. You go back. He runs off again. You come
13 back, don't think anything of it, right?
- 14 A Yes, sir.
- 15 Q All right. Now, this is after telling police on
16 page two, if I can refer you to that statement, at the
17 bottom, "I finally told the complete truth," right?
- 18 A Yes, sir.
- 19 Q You told them again how you were stressing over
20 bills. The bottom line is you told the police you had
21 no idea what was going on at all, right?
- 22 A Yes, sir.
- 23 Q You told them how he wanted to go to an A.T.M.; that
24 he parked away from the A.T.M., right?
- 25 A Yes, sir.

000907

1 Q Because he didn't want to invite you into this
2 business, right?

3 A Yes, sir.

4 Q That wouldn't be because it was your car, and you didn't
5 want your car on surveillance, right?

6 A No, sir.

7 Q That wouldn't be it at all, would it?

8 A No, sir.

9 Q Now -- because you didn't know what was going on at
10 the time, right?

11 A No, I didn't.

12 Q Okay. Now, he gets that money. You don't get any
13 money, right?

14 A At that time, no.

15 Q Right. And that's what you told the police. You
16 were stressing out about bills, but you don't get any -- you
17 don't want any money. Why would you want money, right?

18 A (There was no response).

19 Q Right?

20 A Yes, sir.

21 Q Now, this is what you tell police. I believe you
22 finished up your statement. If I can refer you to page
23 five. Now, you told them at the bottom, "Stupid me I
24 simply thought" -- you know, you thought he was taking
25 the car to somebody, right?

1 A Yes, sir.

2 Q Very bottom, last answer, page six, "I had no idea
3 what was going on at all," right? That's your statement?

4 A Yes, sir.

5 Q Now, at the very bottom of every page of this, you
6 see that last clause, every page has the same -- it says,
7 "I make this statement of my own free will and accord
8 without reward or intimidation. All of the above is the
9 truth, the whole truth, and nothing but the truth," right?

10 A Yes, sir.

11 Q You signed every page of this knowing that that said
12 that, right?

13 A Yes, sir.

14 Q That's -- this is what they call a sworn statement,
15 correct?

16 A Yes, sir.

17 Q They had somebody notarize it, as well. That's a lot
18 like what you told today when you put your hand on this
19 Bible and promised to tell these ladies and gentlemen
20 the truth, the whole truth, and nothing but the truth,
21 right?

22 A Yes, sir.

23 Q So that was that statement. Now, very soon later you
24 talk to the police again, don't you?

25 A Yes, sir.

000909

1 Q Because that was a Friday. In fact, like you told
2 Ms. Campbell, you called Captain Smith over the weekend,
3 didn't you?

4 A Yes, sir.

5 Q And you apologized for lying to him, right?

6 A Yes, sir.

7 Q But now you want to come in and tell the real truth.

8 A Yes, sir.

9 Q That's what you told them.

10 A Yes, sir.

11 Q Even after at the bottom of that statement we just
12 referred to, you promised there that you told the truth.
13 Do you remember reading that?

14 A Yes, sir.

15 Q At the end of that statement, you told them this was
16 the whole truth, right?

17 A Yes, sir.

18 Q But now you want to tell them the real truth at the
19 Richland County Sheriff's Department on June 1st to
20 Captain Smith again. You wanted to tell him the real truth
21 again, right?

22 A Yes, sir.

23 Q This is Monday. Now, you remember giving a written
24 statement, as well, don't you?

25 A Yes, sir.

1 Q Do you have a copy of it with you?

2 A No, sir.

3 Q Would it help you if I gave you a copy of it? That
4 looks like your statement from that day?

5 A Yes, sir.

6 Q Now, on this day, you wanted to memorialize some of
7 the things you said to Captain Smith or some of the
8 reasons why you wanted to come in, why you called him
9 over the weekend. You wanted to talk to him and put that
10 to writing.

11 Now, everything is pretty much the same in terms of
12 going to work, right?

13 A Yes, sir.

14 Q But you left sick, right?

15 A Yes, sir.

16 Q You were driving your car, the Lumina, right?

17 A Yes, sir.

18 Q And you went to Theo's house, correct?

19 A Yes, sir.

20 Q But now, you say he's talking about mopping, right?

21 A Yes, sir.

22 Q Kind of like what you told us today, part of that
23 same -- same theme. Now, you're saying there he said he
24 wanted you to mop around the house, right?

25 A Yes, sir.

000911

1 Q Now, you didn't really feel like doing it, but you
2 at least poured a mop bucket, right?

3 A Yes, sir.

4 Q This was the first time anybody had ever heard about
5 this, right?

6 A (There was no response).

7 Q Right?

8 A Yes, sir.

9 Q And you talked to law enforcement three times
10 already. You talked to Fitch and Hopkins at Charlotte,
11 right?

12 A Yes, sir.

13 Q I didn't put it here, but you talked to Stan Smith
14 at your work --

15 A Yes.

16 Q -- early. You had to change that story and tell him
17 the whole truth then, come in the next day. You talked
18 to him at Richland County one time, right?

19 A Yes, sir.

20 Q And now you're back again. Now, he's talking about
21 mopping, and much like you told us today, he was hyper
22 and happy, right?

23 A Yes, sir.

24 Q And I bet you talked to your lawyer a few times in
25 between, right?

000912

1 A Yes, sir.

2 Q Now, you talked about him wanting you to mop. Now,
3 this time, though, you still maintain that you never see
4 any body, right?

5 A Yes, sir.

6 Q That was your position then on the third story.
7 They asked you directly, page two, if I can refer you.
8 Do you see that, page two?

9 A Yes, sir.

10 Q In the middle. "Kendra, on that day, did you know
11 there was a body in the trunk of that Honda?" You tell
12 them "no."

13 They asked you about the Coach purse, as well, and
14 a pair of large-framed sunglasses right after. You tell
15 them "no," right?

16 A Yes, sir.

17 Q Well, we just heard about the Coach purse, so that
18 was a lie, right?

19 A Yes, sir.

20 Q Now, I think I missed a couple of lies over here, but
21 we'll give you the benefit of the doubt.

22 Now, you talk about never knowing Ms. McPhatter's
23 body was in the trunk. You only realized this after the
24 fact, after all of this has come about, correct?

25 A Yes, sir.

1 Q And at this point -- at this point, if you look at
2 the bottom of your statement, they don't have that same
3 sentence they had before about wanting you to swear to
4 tell the truth, the whole truth, and nothing but the
5 truth. Do you see that on any of those pages?

6 A No, sir; no, sir.

7 Q They know your lying, so they're not going to put
8 that there.

9 Now, let's talk about your very final statement.
10 This was Monday, but things change again, things change
11 again. You feel the need to come to Richland County one
12 more time, don't you?

13 A Yes, sir.

14 Q And did you talk to your lawyer, Mr. Dessasure,
15 again?

16 A Yes, sir, I did.

17 Q And y'all felt the need to come in and make sure that
18 your best interests were protected, right?

19 A No, sir; that wasn't the case.

20 Q That wasn't the case, okay, but this time Captain
21 Smith wouldn't talk to you. You talked to Isenhoward?

22 A Yes, sir.

23 Q This was a Tuesday. Do you have a copy of that
24 statement?

25 A No, sir.

1 Q Let me give you a copy of that statement. We'll go
2 over it a little bit. That's your statement, right?

3 A Yes, sir.

4 Q So June 6th, correct?

5 A The 2nd.

6 Q I'm sorry, the 2nd, advised you of your rights,
7 correct?

8 A Yes, sir.

9 Q Now, on this last statement, the first question
10 they ask you if you'd like to make some changes to your
11 original statement. Do you see that on page one? Do you
12 see that?

13 A Yes, sir.

14 Q They ask you if it's true that you were not completely
15 honest before. What do you tell them?

16 A Yes.

17 Q You say, "That's true. I wasn't completely honest
18 with you." And this last time you say you saw a body,
19 don't you?

20 A Yes, sir, I do.

21 Q You told them you saw blood, as well, didn't you?

22 A Yes, sir, I did.

23 Q You told them how you mopped it up, right?

24 A Yes, sir.

25 Q And you saw a body in the trunk, correct?

000915

1 A Yes, sir.

2 Q Now, you go on again a little further, and most of
3 the rest is the same, but they repeat on page three. If
4 you'll turn with me, after that big paragraph:
5 Question, "When you left Theodore Manning's house, did
6 you know that there was a dead body in the trunk of that
7 black Honda he was driving?" And what is your response?

8 A I told them yes.

9 Q You told them yes.

10 Now, you came in today, you told Ms. Campbell, told
11 all 14 of these jurors, that you never saw a body, right?

12 A Yes, sir.

13 Q While I'm at it, you never saw any blood, right?

14 A Yes, sir.

15 Q You also admit that he gave you money is what you
16 say --

17 A Yes, sir.

18 Q -- right. Before you say even though you're
19 stressing about bills, that you never -- you wouldn't
20 take any money. You didn't even know about the money,
21 but now you say, "I got the money," right?

22 A Yes, sir.

23 Q That was something you never told them before,
24 right?

25 A (There was no response).

000916

1 Q You told them you got a Coach purse, right?

2 A Yes, sir.

3 Q You're a woman. Every woman likes a Coach purse,
4 right?

5 A Yes, sir.

6 Q That's a nice brand, right?

7 A Yes, sir.

8 Q Now, I'm counting nine lies on my lie count. I
9 know I missed a couple in there when we were talking and
10 got carried away. You will agree you lied a lot during
11 the course of the investigation?

12 A I admit I lied.

13 Q Right?

14 A Yes, sir.

15 Q Nine times that I can tell to law enforcement
16 when you told them you were telling the truth so help you
17 God, right?

18 A Yes, sir.

19 Q But today, you want them to believe that you're
20 telling the truth.

21 MS. CAMPBELL: Objection, Your Honor. I think he has
22 to ask her questions.

23 MR. SHEALEY: This is -- I'm...

24 THE COURT: Overruled, go ahead.

25 BY MR. SHEALEY:

- 1 Q You want them to believe you're telling the truth,
2 don't you?
- 3 A Yes, sir.
- 4 Q You want Ms. Campbell to believe that you're
5 telling the truth today, don't you?
- 6 A Yes, sir.
- 7 Q All right. You don't want to go to prison for 15
8 years, do you?
- 9 A No, sir.
- 10 Q Who wants to go to prison? I know I don't.
11 You mentioned how you thought you were in an
12 exclusive relationship with Theo Manning, right?
- 13 A Yes, sir.
- 14 Q How you had been online for a while before you even
15 met, right?
- 16 A Yes, sir.
- 17 Q You would have gotten to know each other pretty well
18 chatting, right?
- 19 A It stayed general.
- 20 Q As you began to meet each other, you began to get
21 intimate, romantic, right?
- 22 A Yes, sir.
- 23 Q Sometimes he would help watch your kids. He knew
24 them, right?
- 25 A Yes, sir.

000918

1 Q He was a big part of your life at this time, wasn't
2 he?

3 A Yes, sir.

4 Q You told Ms. Campbell that you loved him.

5 A I had a love for him.

6 Q Right.

7 A Yes, sir.

8 Q And that day when he called you, you went to his house,
9 right?

10 A Yes, sir.

11 Q That's not a lie, is it?

12 A No, sir.

13 Q I don't believe that's a lie.

14 That day when you went to his house -- and now is
15 your time to tell the truth. You put your hand on this
16 Bible, didn't you?

17 A Yes, sir.

18 Q This is a real Bible. That time you went to his
19 house that day you, you saw Nikki McPhatter's body.

20 A No, sir.

21 Q You got there. Theo was panicked.

22 A No, sir.

23 Q Right? You just told us you loved him. You got
24 there and the man that you loved, the man that helped
25 take care of your children, was freaking out, wasn't he?

000919

1 A No, sir.

2 Q You did the only thing you knew to protect the one
3 you loved. You tried to help him in your way, didn't
4 you?

5 A No, sir.

6 Q You told him you would take care of everything, didn't
7 you?

8 A No, sir.

9 Q You told him, "Just let me handle it, Theo. We're
10 going to take care of this. We're going to get through
11 this," didn't you?

12 A No, sir.

13 Q You started mopping, right?

14 A Yes, sir.

15 Q You told us that.

16 A Yes, sir.

17 Q You told us that.

18 MS. CAMPBELL: Objection, Your Honor. She has
19 answered the question.

20 THE COURT: Overruled, go ahead, cross-examine.

21 BY MR. SHEALEY:

22 Q You started mopping, right?

23 A Yes, sir.

24 Q You wanted to take care of Theo Manning that day,
25 the man you loved, didn't you?

000920

1 A No, sir.

2 Q You had an idea, let's get rid of the body, didn't

3 you? That was your idea.

4 A No, sir.

5 Q He was shocked. He's got a woman in his house. She

6 is dead. He was in shock, wasn't he?

7 A No, sir.

8 Q You took care of things. You decided to drive the

9 car, where to take Ms. McPhatter, didn't you?

10 A No, sir.

11 Q You took care of everything.

12 A No, sir.

13 Q Is that the truth?

14 A No.

15 Q Oh, is what you're telling me the truth?

16 A What I'm telling you, yes, sir, is the truth.

17 Q And we should believe you?

18 A I admit I lied in the beginning.

19 Q We should believe you? Kendra, I count nine lies

20 right here that you agree with me on. You want us to

21 believe you now when you're looking at 15 years. Is

22 that it? Right?

23 A (There was no response).

24 Q With your lawyer standing right there, right?

25 MS. CAMPBELL: Objection, Your Honor. I think she

1 has a right to answer the questions you ask her.

2 MR. SHEALEY: I'd like her to answer the question.

3 MR. GIESE: What's the question? What's the
4 question?

5 BY MR. SHEALEY:

6 Q You want us to believe you now is the question.

7 A Yes, sir.

8 Q Do you expect that we're going to believe you now?

9 MS. CAMPBELL: Objection, Your Honor, improper
10 question.

11 THE COURT: Sustained.

12 BY MR. SHEALEY:

13 Q I'm almost done, Kendra.

14 I want to direct your attention back to your
15 statement on June 2nd. I'll give you a moment.

16 (Pause)

17 Are you back with us?

18 A Yes, sir.

19 Q On page -- on the June 2nd statement.

20 A Uh-huh.

21 Q If I can direct your attention to page two.

22 Now, again, you just told me again what I alleged
23 was not what occurred, right?

24 A Yes, sir.

25 Q If I can turn your attention to page two. Right

1 there in the middle, you say, "I saw a leg and a foot on
2 the ground behind the car." Those are your words, right?

3 A Yes, sir.

4 Q If you'll go down a few sentences. You refer to -- how
5 you saw little red droplets. I mopped it up.

6 A Yes, sir.

7 Q Right? It's pretty specific, isn't it?

8 A Yes, sir.

9 Q And all the while today you're telling us that you
10 never knew anything about Nikki McPhatter that day,
11 right?

12 A Yes, sir.

13 Q You are aware that they found her identification card
14 in your car, aren't you?

15 A No, sir.

16 Q You're not aware of that.

17 Beg the Court's indulgence.

18 (Pause)

19 Now, I want to talk to you again about your love for
20 Mr. Manning, that what's required of you was to really
21 protect him that day, right?

22 A No, sir.

23 Q Now, do you recognize this?

24 A Yes, sir.

25 Q It's a letter you wrote to Theodore Manning, isn't

1 it?

2 A Yes, sir.

3 Q On May 13th, right?

4 A Yes, sir.

5 Q 2009. It's a love letter, isn't it?

6 A Yes, sir.

7 Q You start with a poem, don't you?

8 A Yes, sir.

9 Q You sign the final page, Kendra?

10 A Yes, sir.

11 Q You talk about how you can't imagine your life

12 without him, don't you?

13 A Yes, sir.

14 Q You loved Theo, right?

15 A Yes, sir.

16 Q May I have that back?

17 Can I mark this?

18 (WHEREUPON, Defendant's Exhibit Nos. 10 was marked

19 for identification only.)

20 MR. SHEALEY: Your Honor, at this time I'd like to

21 mark this into evidence or enter into evidence Defense

22 10.

23 MS. CAMPBELL: Your Honor, we've provided him with

24 all of our discovery. We have never seen this letter.

25 I would just like to have an opportunity to look at it,

1 at least for a moment.

2 (Pause)

3 Thank you, Your Honor.

4 Can we get a copy when you get a chance?

5 MR. SHEALEY: Sure.

6 THE COURT: Any objection?

7 MS. CAMPBELL: No objection.

8 (WHEREUPON, Defendant's Exhibit No. 10 was admitted
9 into evidence.)

10 BY MR. SHEALEY:

11 Q I'll hand this back to you.

12 This is your love letter, right?

13 A Yes, sir.

14 Q From May 13th of last year, right?

15 A Yes, sir.

16 Q Now, a couple of things you say on the back side of
17 page one, you say at the first paragraph that you're,
18 "Not going to lie. There's a huge part of me that wants
19 you always to be a part of my kid's lives," right?

20 A Yes, sir.

21 Q And the second paragraph is, "The real reason I won't
22 move yet is because of you," right?

23 A Yes, sir.

24 Q And the next paragraph at the top, "But you believe
25 you know God put me into your life for a reason," right?

1 A Yes, sir.

2 Q And on the next page in the middle, you write to him
3 how, "I am feeling you deeper than I thought I could ever
4 feel anyone in my life." You tell him, "You are so close
5 to the area in my soul where my children and God only
6 lives," right?

7 A Yes, sir.

8 Q Down a little further, you "Don't know what other way
9 to tell you what I'm feeling." Then you tell him, "I don't
10 know what other way to show you other than what I've been
11 doing," right?

12 A Yes, sir.

13 Q And at the very last paragraph, you tell him, "Just
14 know that I love you so very much, and you have brought
15 so much joy into my life. When I tell you I love you,
16 I mean it."

17 Your love for Theo is a little more than you told
18 Ms. Campbell, wasn't it?

19 A No, sir.

20 Q No?

21 A No, sir.

22 Q So that letter is a lie, as well?

23 A That letter was written well before it was actually
24 dated.

25 Q So the date is a lie, okay.

1 Beg the Court's indulgence.

2 (Pause)

3 Your Honor, I don't have any further questions at
4 this point.

5 THE COURT: Redirect?

6 MS. CAMPBELL: No, sir.

7 THE COURT: All right. Thank you very much.

8 All right. Ma'am, you may come down.

9 THE BAILIFF: Watch your step. Watch your step for
10 me.

11 THE COURT: May this witness be excused?

12 (There was no response).

13 Without objection?

14 MR. SHEALEY: Without objection, Judge.

15 MS. CAMPBELL: The State would call Captain Stan
16 Smith.

17 THE COURT: Let me do one thing. Is the jury okay?

18 STAN SMITH,

19 after being duly sworn, testified as follows:

20 THE JUROR: I need a break.

21 THE BAILIFF: She would like to go to the restroom
22 (indicating).

23 THE COURT: Well, we don't have to point fingers at
24 who wants to go. Don't embarrass anybody. Let's just
25 let the whole jury go.

1 It's four o'clock, ladies and gentlemen. Let's take
2 a ten minute break. It's time for an afternoon break.

3 You have been sworn.

4 THE WITNESS: Yes, sir, thank you.

5 (WHEREUPON, the jury left open court at approximately
6 3:48 p.m.)

7 (WHEREUPON, a short break was taken.)]

8 THE COURT: Is the State ready?

9 MS. CAMPBELL: Yes.

10 THE COURT: Is the defense ready?

11 MR. MAY: No.

12 MS. CAMPBELL: We have filed a reciprocal Rule 5 in
13 this case. We have been provided with no other documents
14 other than a phone call from the jail of the defendant
15 talking to his mother.

16 The letter that they just introduced into the
17 evidence in their case, we have never seen before. We
18 would just ask if there are any documents they plan on -- or
19 may introduce, that we be privy to those.

20 THE COURT: Is there anything else?

21 MR. SHEALEY: Judge, just as to the rule, it simply
22 states that even if I get a reciprocal rule, I have to
23 turn over anything, I would enter my case in chief. I'm
24 in compliance with the rules. I'm not really sure what
25 the issue is.

1 THE COURT: That's splitting hairs.

2 MR. SHEALEY: Well, I'm just following, trying to
3 follow the rule, Judge. So, I -- you know, if we get to
4 our case in chief, which we're going to put up, certainly
5 anything that we're going to introduce it there, but we'll
6 certainly comply with the rule, give them copies of it.

7 MR. GIESE: Your Honor, could I be heard just briefly
8 on that?

9 THE COURT: Yes.

10 MR. GIESE: You can handle that part but, you know,
11 we know what the rules say. We know what fairness is,
12 and we know what real trials are and what fair trials are,
13 and it's reprehensible, as the prosecutor, to turn
14 everything we have over prior to when we have to turn it
15 over. Because if we followed the rule, we wouldn't have
16 to turn the statement over until the witness make it
17 through, until he testifies, but in good faith, we turn
18 all of that over.

19 But yet, in situations like this when, you know,
20 clearly, something is entered into evidence that the
21 defense has had since, I don't know, May 13th, 2009, you
22 know, they just all of the sudden spring it on us and say,
23 "Oh, we're just following the rules."

24 THE COURT: Well, I'm not sure that's the rules.

25 MR. GIESE: Well, that's my point, but they just

1 claim that. That, to me, is just not why we're here.

2 That's not why we're here.

3 THE COURT: It says which the defendant intends to
4 introduce as evidence in chief. It doesn't say in his
5 case in chief, and of course, I have the authority to
6 prohibit the introduction of that evidence if you don't
7 comply with the rule. You read that part, didn't you?

8 MR. SHEALEY: Yes, sir.

9 THE COURT: All right. Thank you.

10 Are there any other -- is there any other evidence
11 in the possession of the defendant which the defendant
12 plans to use which has not been turned over to the
13 Solicitor?

14 This is not a trial by ambush. That's the purpose
15 of the rule.

16 MR. SHEALEY: Yes, sir. We don't -- I can't think
17 of...

18 THE COURT: Why don't you answer the question,
19 Mr. Shealey.

20 MR. SHEALEY: Your Honor, I'm not going to ambush
21 anybody.

22 THE COURT: What?

23 MR. SHEALEY: You know, I have had to file a motion
24 to compel in this case. I received two-thirds of my
25 discovery within the last three weeks before trial,

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1 so --

2 THE COURT: So why didn't you give yours to them three
3 weeks before trial?

4 MR. SHEALEY: Your Honor, I felt truly that I was
5 complying with the rule. As -- my understanding is that
6 it was before my case in chief. I don't believe that was
7 the case. I felt I was complying with the rule. I'm not
8 trying to ambush anybody.

9 THE COURT: What if you never put up a case in chief?
10 Do you think you could put all your evidence in the
11 State's case and not disclose it?

12 MR. SHEALEY: No, sir, but I thought it was proper
13 impeachment at the time. She was denying --

14 THE COURT: Sure, sure.

15 MR. SHEALEY: I just thought it was appropriate. I
16 thought it was in compliance with the rule, Judge. We
17 said previously in our case, and I thought this would be
18 an appropriate witness to put that letter in, and she --

19 THE COURT: I don't argue with that, you're absolutely
20 right.

21 MR. SHEALEY: Yes, sir.

22 THE BAILIFF: But it's still -- it's not a
23 technical -- hyper-technical violation of the rule. It's
24 certainly a violation of the spirit.

25 MR. SHEALEY: I never had an intention to violate the

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1 spirit of the rule, Judge. That's the way I understand
2 the rule.

3 THE COURT: All right. So there's nothing else?

4 MR. SHEALEY: Not that I can think of right now,
5 Judge. All I have -- you know...

6 THE COURT: I mean, you've got witnesses, we
7 understand that.

8 MR. SHEALEY: Sure; yes, sir. I can't think of
9 anything else that...

10 THE COURT: That's covered by the rules?

11 MR. SHEALEY: No, sir.

12 THE COURT: All right. Does that suit you? That's
13 the answer.

14 MS. CAMPBELL: Thank you, Judge.

15 THE COURT: Bring the jury.

16 (WHEREUPON, the jury came into open court at
17 approximately 4:10 p.m.)

18 THE BAILIFF: The jury seated, Your Honor.

19 STAN SMITH,

20 Having previously been sworn, testified as follows:

21 THE COURT: All right. Thank you very much.

22 All right. Solicitor, you may continue.

23 DIRECT EXAMINATION:

24 BY MS. CAMPBELL:

25 Q May it please the Court.

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1 Captain Smith, where are you employed?

2 A The Richland County Sheriff's Department.

3 Q What do you do there, sir?

4 A I'm in the Criminal Investigative Division. I have
5 ranked to Captain, and I'm primarily by himself at the
6 major crimes, homicides, and armed robberies.

7 Q How long have you been in law enforcement, sir?

8 A I started in June of 1984.

9 Q And currently, you hold the rank of captain in the
10 investigative section?

11 A Yes, ma'am.

12 Q And what are your duties there?

13 A I supervisor the -- primarily, the major crimes,
14 although I am involved in a lot of supervision for
15 property crimes, as well, but the primary focus is on
16 major crimes.

17 Q You also actively participate in the investigation
18 of some of the violent offenses?

19 A I do.

20 Q Including murder?

21 A Yes, ma'am.

22 Q When did you first been involved in the case
23 involving the missing person, ultimately homicide, of
24 Nikki McPhatter?

25 A May 21st, 2009.

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1 Q The what is the first piece of evidence that came to
2 your attention in this case?

3 A We went to -- myself and Sergeant Isenhoward were
4 summoned to the Columbia Police Department. We met with
5 Detectives Fitch and Martin at that location, a couple
6 of C.P.D. detectives. They had in their possession an
7 A.T.M. video, some still shots. I viewed those.

8 Q And when viewing the A.T.M. still shots, just tell
9 this jury what you were able to observe from A.T.M.
10 at -- that was the Wachovia A.T.M., I believe?

11 A Yes. It was a Wachovia on Farrow Road near Rabon
12 Road in northeast Columbia. We observed a vehicle. It
13 appeared to be a General Motors type car. It pulled up
14 part of the way into the lane.

15 A black male got out that had a shirt that had the
16 word ""STAFF"" on the back of it. He apparently made some
17 transactions with the machine on foot as opposed to
18 pulling up all the way to the lane.

19 Q I'm going to show you what's been marked for I.D.
20 purposes at this point, State's Exhibit Number 138 and
21 ask you if you've seen this item?

22 A Yes, I have.

23 Q And you've mentioned that you noticed in the A.T.M.
24 video, some writing on the back of the shirt?

25 A Yes, ma'am.

1 Q And what was writing you mentioned?

2 A "STAFF", the word "STAFF".

3 Q "S-T-A-F-F"?

4 A Yes.

5 Q And the shirt that I showed you, State's Exhibit
6 Number 138, what does that have on the back of it?

7 A It has ""STAFF"".

8 MR. MAY: I object, Your Honor. This has not been
9 entered into evidence.

10 THE COURT: All right. Don't publish it.

11 BY MS. CAMPBELL:

12 Q And that was an item of evidence that was recovered
13 later in this investigation, is that true?

14 A It was.

15 Q But as far as your observations of what's on the video,
16 as well as your observations of this shirt, do they match?

17 A Yes, they do.

18 Q Were you also briefed by the Charlotte/Mecklenburg
19 Police Department as to their investigation up to that
20 point on the 21st?

21 A I was -- or we were, I should say.

22 Q And what was the main purpose of them coming down
23 here that day and meeting with you all? What were they
24 looking for?

25 A They had some information about an individual who

000935

1 Nikki McPhatter had been dealing with in Columbia, a lover
2 that she talked about, an individual named Teddy, had some
3 specific information about where he was employed,
4 something to do with a nuclear power plant or something
5 of that nature and supposedly resided in a rural area.
6 Q Was there a phone number that had came up from her
7 phone records?
8 A Yes, the phone number was 803-479---
9 Q Wait, wait, wait, 479?
10 A 26--- 2563.
11 Q And did you assist -- I believe actually, you were
12 at the Columbia Police Department trying to track down
13 who that phone was associated with?
14 A I did.
15 Q And who did that phone belong to?
16 A It actually belonged to Theodore Manning.
17 Q And to your knowledge, is that the first time that
18 Theodore Manning's name came up in the investigation of
19 this person on May 6th?
20 A The full name; yes, ma'am.
21 Q Full name. The nickname had already been?
22 A That's correct.
23 Q Once you had gotten that information of Theodore
24 Manning being associated with that phone number, did
25 you then try to follow up and get some additional

000936

1 identifying information about this person?

2 A Yes. We contacted some utilities, got some utility
3 records, got some addresses. We actually got a forwarding
4 address from a previous account, and that wound up being
5 the correct address.

6 Q And without going through all the addresses, did
7 Charlotte actually follow up on some physical
8 addresses and then go see if he was actually at one of
9 those locations?

10 A Yes. It was late in the day, and I got one of my evening
11 shift detectives, Holly Wagner, to come to the Columbia
12 Police Department and meet with the Charlotte detectives.
13 She went out with them, and they went to several of the
14 locations before they ultimately got the right
15 location.

16 Q Okay. And that location would have been on what road?

17 A Bluff Road.

18 Q Is the actual correct address?

19 A Yes, ma'am. I believe it's 8047.

20 Q And that next morning on the 22nd, I believe, did you
21 get briefed by Investigator Wagner as far as their
22 progress the night before?

23 A I did.

24 Q And what, if any, information as part of your
25 investigation did you become aware of that you wanted to

000937

1 follow up on?

2 A She indicated, Ms. Wagner, indicated that they had
3 made contact with Theodore Manning the night before and
4 that Charlotte had interviewed him briefly, but they were
5 a little bit rushed due to the fact he had to go to work.

6 Sergeant Isenhoward and I decided to proceed back
7 to Gadsen and to try to interview him a little bit
8 further that morning.

9 Q Beg the Court's indulgence.

10 (Pause)

11 When you made contact with Mr. Manning, where are
12 did this take place?

13 A At his residence at 8047 Bluff Road.

14 Q Approximately what time of day was it?

15 A It was around ten in the morning.

16 Q When you got there, was anyone else present in the
17 house, as far as you knew?

18 A Not when we initially got there. Before we left,
19 someone else came.

20 Q And I'll get back to that.

21 And at that point, what was your purpose of talking
22 to him?

23 A I just want to interview him a little bit further.
24 You know, being that Charlotte had contacted us and
25 Charlotte had interviewed him, we wanted to interview him

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1 ourselves and wanted to have a little bit more time to
2 talk to him.

3 Q And as far as the investigation that the point, had
4 you become aware that he had admitted to seeing Nikki
5 McPhatter the last time she had ever been talked to by
6 any of his friends?

7 A Yes. May 6th was the key date. He had acknowledged
8 to the Charlotte detectives that he had, indeed, seen her
9 on May 6th.

10 Q When you went to Mr. Manning's house, did you explain
11 why you were there?

12 A Yes.

13 Q And did he agree to talk to you?

14 A Yes. He was calm and collected and agreed to talk
15 to us.

16 Q And at that point, as well in the case, was he a witness
17 or a suspect or what?

18 A Just a possible link, just to determine where Nikki
19 McPhatter was.

20 Q At that point, you didn't have an arrest warrant?

21 A No.

22 Q And you weren't taking him into custody?

23 A No, ma'am.

24 Q So did you advise him of his Miranda rights?

25 A No, ma'am. We interviewed him there at his house.

000939

1 Q You were trying to get information?

2 A That's correct.

3 Q What information did he provide to you that
4 morning?

5 A He indicated that, as I said before, on May 6th, that
6 she had come to his house. He told us that --

7 Q When you say "she", who is that?

8 A Nikki McPhatter.

9 Q Okay.

10 A That he did work the midnight shift at Westinghouse,
11 and that he did, indeed, work with nuclear rods, which
12 was -- that sort of corroborated the information that we
13 had gotten from Charlotte.

14 He said that he had been to Charlotte several times
15 before and had seen her. She had also come to Columbia
16 previously.

17 He said that that morning of the 6th, that they
18 actually had sex twice, and that she had mentioned that
19 she was low on gas. So they used his All South debit card
20 to get some gas at the nearby Freeman's 4-in-1 there at
21 Bluff Road.

22 He said they laid down for a while after they
23 returned to his house, and then ultimately, he put her
24 in the car around 1:30. As far as he knew, she went back
25 to Charlotte.

000940

1 Q Did he indicate whether or not he had heard from Nikki
2 since he put her in the car at 1:30 on May 6th and sent
3 her to Charlotte?

4 A He indicated that he had not heard from her. He made
5 the remark to us that he figured that she was tired of
6 him and simply wanted to move on.

7 I asked him if he had a computer and if he had instant
8 messaged her or e-mailed her. He said he had gotten rid
9 of his computer, but he tried to communicate with her
10 through his cell phone. He said he had sent her messages
11 to her computer from his cell.

12 Q Did you ask him anything else about his
13 relationship with Nikki McPhatter?

14 A I did. And he -- that's the first time he used the
15 phrase with us that he considered her to be a friend with
16 benefits, and that was basically just sort of -- sort of
17 nonchalant about the relationship.

18 Soon after that while we were there, some sort of
19 technician came there to do some work. I believe he was
20 getting an alarm or something put in his house.

21 Q An alarm system?

22 A Yes, ma'am.

23 Q And the person that was actually installing it came
24 in at that point?

25 A He came in and diverted Mr. Manning's attention away

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1 from us. He had to go deal with that gentleman for awhile,
2 and that sort of -- kind of ended the interview, so to
3 speak.

4 Q And so how long did your actual interview with him
5 last?

6 A We were probably there no more than 30 -- 30, 45
7 minutes at the most.

8 Q After that, did you proceed to a local convenience
9 store?

10 A Yes. We went to Freeman's 4-in-1. Mr. Garrick, who
11 I was familiar with from some other investigations, said
12 he didn't have any cameras. He said he didn't have any
13 way at that time to verify Manning's transaction from his
14 store.

15 Q That afternoon, and I believe this was Friday
16 afternoon?

17 A Yes.

18 Q Did you get some information from one of your
19 detectives as far as the search warrant went?

20 A Sergeant Robinson was my evening shift supervisor,
21 and he was familiar with this case from the night
22 before. He had gotten a call from Charlotte, indicated
23 they wanted to come back and do a search warrant at
24 Theodore Manning's home that evening.

25 Q Are you aware of with whether any significant receipt

000942

1 was found during that search?

2 A I later learned that during that search, they did -- the
3 Charlotte detectives and our people had actually
4 recovered a receipt dated the 7th of May from Wal-Mart
5 involving the purchase of some bleach. Actually, if you're
6 a homicide detective person, bleach, you know, interests
7 you.

8 Q And why is that, sir?

9 A For purposes of clean up, that kind of thing.

10 Q During the course of the weekend into the next week,
11 did you receive further briefings in this case?

12 A Yes. Robinson followed up a little bit more on the
13 Wal-Mart purchase over that weekend. That Monday was
14 Memorial Day. We were out that day.

15 On Tuesday morning, I learned that some of the
16 Charlotte detectives had also begun to focus on that
17 transaction.

18 I believe they had come back from that Monday, and
19 we -- Lieutenant Ballen (phonetic) at the time, one of
20 my supervisors was busy researching what he now believed
21 the car to be, as a Chevrolet Lumina. He got in touch
22 with the Fusion Center here at S.L.E.D. He was running
23 that down.

24 Q How did y'all develop that information?

25 A Just by studying of the vehicle. We had a lot of

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- 1 surveillance videos, and we have done this before.
2 Sometimes we'll consult body shop people, then we'll
3 narrow it down, use the internet. Ballen determined in
4 all probability that was a Chevrolet Lumina.
- 5 Q The one at the A.T.M. video --
- 6 A That's right.
- 7 Q -- from the Wachovia out on Farrow Road?
- 8 A That's right.
- 9 Q Was he assigned to follow up on that?
- 10 A He was.
- 11 Q That day, as a part of your investigation, did you
12 learn the identity of a person that may have been involved
13 in the Wal-Mart purchase?
- 14 A Yes. We learned that in an interview with Theodore
15 Manning that night, he had indicated in response to a
16 question about the receipt, he identified Kendra Goodman.
- 17 Q And that was on the evening of the 26th?
- 18 A That was that Monday evening before I came back in
19 on the -- I believe it was on Monday. It may have been
20 on Tuesday.
- 21 Q Okay. And you all didn't actually receive that
22 information until that Wednesday?
- 23 A About Kendra Goodman?
- 24 Q Yes.
- 25 A Yes.

000944

1 Q Okay. That Wednesday the 27th, what was your team's
2 focus on?

3 A We had not been informed. It was just an
4 oversight, I think, between agencies that Kendra Goodman
5 drove a Lumina. So we spent that entire day running down
6 possible Luminas that we had been provided with by the
7 S.L.E.D. Fusion Center.

8 Q I want to turn your attention to Thursday, the 28th
9 of May. Did the Charlotte/Mecklenburg Police Department
10 make contact with y'all again?

11 A Yes. At this time, they wanted to do a search warrant
12 at Kendra Goodman's apartment.

13 Q And did you actually sign -- or did you actually
14 participate in that investigation yourself?

15 A I met with the detectives. I assigned Sergeant
16 Isenhoward at that time to accompany Investigator
17 Hopkins from Charlotte to secure the search warrant. I
18 actually went to the apartment initially.

19 Q And when you went to the apartment, what were you
20 looking for?

21 A Evidence of a crime scene or anything to further this
22 investigation.

23 Q Prior to going into the apartment, did you -- were
24 you looking for anything outside of the apartment?

25 A Yes.

000945

1 Q As far as --

2 A Well, we actually went to the apartment to spot a
3 search warrant initially that morning, I believe is what
4 you're referring to.

5 We had -- Sergeant Isenhoward and myself actually
6 saw the Chevrolet Lumina. That's when it came full circle
7 for us that she, indeed, had a gold Chevrolet Lumina, and
8 it appeared to be the vehicle, consistent with the
9 vehicle from the A.T.M. on Farrow Road.

10 Q That afternoon around 1:30, did y'all meet with
11 officers from the Charlotte/Mecklenburg Police
12 Department?

13 A Yes. That's when we actually went to the apartment.

14 Q Did you have to enlist the aid of anyone else in order
15 to execute the search warrant that day --

16 A Yes.

17 Q -- to make it legal?

18 A Because her apartment is actually in Lexington
19 County, so we involved the Lexington County Sheriff's
20 Department.

21 Q And what time was it when you actually got
22 Ms. Goodman's apartment?

23 A Around 2:30 p.m., 14:30 hours.

24 Q And when you got there, was anything missing from the
25 parking lot?

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- 1 A The car was gone by this time.
- 2 Q Was the search warrant initiated by Lexington County?
- 3 MR. MAY: Objection, Your Honor, leading.
- 4 THE COURT: Rephrase your question.
- 5 BY MS. CAMPBELL:
- 6 Q Who initiated the search warrant?
- 7 A Charlotte and Lexington initiated the search
- 8 warrant.
- 9 Q Where did you go?
- 10 A I actually went to try to find Kendra Goodman.
- 11 Q Did you have any knowledge of where she worked?
- 12 A Yes. The Charlotte detectives had learned that she
- 13 was employed by Lexington Dry Cleaners on Broad River
- 14 Road. I went to two of those locations. There are
- 15 actually two on Broad River. I could not find her car
- 16 there.
- 17 Q You went to two of the locations?
- 18 A Yes.
- 19 Q And that was the Lexington Dry Cleaners location?
- 20 A Yes.
- 21 Q And she was not at either of those?
- 22 A That's correct.
- 23 Q Where did you proceed then?
- 24 A We also by that time had learned that her parents -- we
- 25 knew where her parents lived in Friarsgate. We went to

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1 her parents' house. I believe it was Bolters Lot Road
2 in Friarsgate.

3 Q Who was the car actually registered to?

4 A The car was actually registered to her father,
5 Maxwell Goodman.

6 Q And when you got to Mr. Goodman's home, was the car
7 there that you were looking for?

8 A No.

9 Q Did you make contact with anyone there?

10 A I made contact with Kendra's parents. They were very
11 cooperative. They actually were able to get Kendra on
12 the phone when I explained to them the situation.

13 She had actually run an errand when I had gone by
14 the cleaners. She had, by that time, returned to the
15 cleaners. She was back at the Lexington Dry Cleaners.
16 It winded up being the one on Kennerly Road near the
17 Publix, Kennerly and Broad.

18 Q Did you then proceed yourself to the Lexington Dry
19 Cleaners just to talk to her?

20 A Yes. I asked Mr. Goodman to actually accompany me
21 to the dry cleaners.

22 Q And again, Mr. Goodman, her father, was being very
23 cooperative?

24 A He was very cooperative.

25 Q Around 5:30 that afternoon, did y'all make it to the

1 dry cleaners?

2 A We did.

3 Q What happened?

4 A We actually talked to Kendra at that time.

5 Mr. Goodman talked to her first, and --

6 Q Was he allowed to talk to her by myself?

7 A He wanted to talk to her by himself a few minutes.

8 That lasted for several minutes, about 15 minutes.

9 Q Then what happened?

10 A He motioned for me to come inside. When I went inside
11 to talk to Kendra, she was not being cooperative at that
12 time.

13 Q What happened next?

14 A She asked -- she asked to speak to her attorney.

15 Q And she asked to speak to her attorney?

16 A Yes.

17 Q What did she do?

18 A I allowed her, of course, to make a call. She wasn't
19 in custody. So she called Mr. Dessasure from the car near
20 the cleaners.

21 I'm about to lose my voice, excuse me.

22 Q I understand.

23 At one point, while she was on the phone with
24 Mr. Dessasure, did you actually communicate directly
25 with him yourself?

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1 A Yes. She came out at one point in time. I asked to
2 speak to Mr. Dessasure. I explained the situation to
3 him; that we felt like she had significant information
4 about this case.

5 We have did not have any information that she was
6 directly involved in a possible homicide, but possibly
7 involved peripherally, and we'd like to talk to her.

8 Q And did she agree to talk to y'all?

9 A She agreed at that point in time to talk to us on a
10 limited basis as far as the information she gave. At
11 that time, she still -- she denied knowledge of anything
12 having to do with Nikki McPhatter.

13 Q Could you tell whether or not she was being
14 forthcoming?

15 A I felt like she was holding back based on her
16 demeanor and the limited bit of information that she was
17 providing and primarily the car. The car was the
18 biggest thing at that point in time.

19 It appeared that it was her car that was in that
20 video. If it was her car, we obviously, felt like she
21 had to have some knowledge, at least, of how her car
22 happened to be at that A.T.M. that day or who had her car.

23 Q That day, did y'all take custody of the Lumina? Did
24 y'all have it towed?

25 A Yes. It was actually on the search warrant to be towed

1 from her residence which was in Lexington County. We
2 didn't have to tow it. The dry cleaners were in Richland
3 County, so then we had to tow it and change the search
4 warrant for service to Richland County.

5 Q While you were there, did you also ask Kendra for any
6 type of evidence?

7 A I asked for a -- what we call a buccal swab, a buccal
8 swab. It's just a Q-tip that you put inside your cheek
9 and gum to collect the D.N.A.

10 Q Once you had collected the buccal swab from Kendra
11 Goodman -- and what's the purpose in doing that?

12 A You know, in a murder investigation when we think
13 we're going to have physical evidence, you never know when
14 you may need to eliminate someone's D.N.A. from a scene
15 or a car. You just never know where it's going. We do
16 that routinely.

17 Q The buccal swab that you collected from her, while
18 it was in your custody prior to being submitted into
19 evidence, did you alter with it --

20 A No.

21 Q -- or contaminate it in any way?

22 A No, ma'am.

23 Q The next morning, Friday the 29th, that morning, did
24 you make a phone call?

25 A Yes.

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1 Q Who did you call?

2 A I followed up on -- during -- we needed to talk to
3 her. She had mentioned that she had gotten sick one day
4 and had to leave early. She couldn't remember the day.

5 I suspected that the day might be the 6th. I just
6 had a feeling that could be the truth. I called the
7 supervisor. Lo and behold, it was the 6th that she got
8 sick and had to leave early.

9 Q And you confirmed that with her supervisor?

10 A Yes.

11 Q Based on that information, did you then make contact
12 with Kendra Goodman again?

13 A I called Kendra again that day, and she was in the
14 presence, I believe, with her mother at that point in time.
15 I talked to her mother and expressed the need to talk to
16 her again. She said she would talk to her.

17 Q At that point, did you talk with her?

18 A Yes.

19 Q And did Mrs. Goodman, Kendra's mother, make contact
20 with you again that day?

21 A Within about 30 minutes, Ms. Frankie Goodman
22 called me back. She said we needed to come back and talk
23 to Kendra. She had some information.

24 About 11:15 that morning, we proceeded, I believe
25 myself and Sergeant Isenhoward, back to the dry cleaner,

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1 and we picked up Kendra.

2 Q And at that point, was she voluntarily going with
3 y'all?

4 A Yes.

5 Q What happened next?

6 A We went to the sheriff's department, and at that
7 point in time, it is the first time she admitted that the
8 gold Lumina was the -- indeed, it was her car; that she
9 had been with Teddy at that A.T.M. on that afternoon.

10 She indicated that she had left work and gone to his
11 house. They initially went to go get something to eat,
12 used her car because his Avalon, Toyota, was low on gas,
13 went up on I-77. Teddy told her he needed to use the
14 A.T.M.

15 MR. MAY: Objection, Your Honor. This is cumulative.
16 It's been testified to.

17 MS. CAMPBELL: I'll move on.

18 THE COURT: Move on.

19 BY MS. CAMPBELL:

20 Q As far as -- is this the first time she admitted it
21 was her car?

22 A Yes.

23 Q Later that day, did you continue to talk to her?

24 A Yes.

25 Q And did she eventually give you more information?

1 A She did.

2 Q About what really happened that day?

3 A She did.

4 Q Based on that information, without saying what she
5 said to you, did you then proceed to take her somewhere?

6 A Yes.

7 Q Explain to the jury what you were doing.

8 A We learned that she could take us to a location
9 where Theodore Manning had driven a car, which would be
10 consistent with Nikki McPhatter's car, in Fairfield
11 County up I-77.

12 So we proceeded with her in my vehicle. Sergeant
13 Isenhoward was with me in my vehicle. I secured a team
14 of detectives, because I anticipated a possible search.
15 We went up I-77 until she told us the exit. We exited
16 on Peach Road in Fairfield County.

17 Q Okay. And who all went with you?

18 A Lieutenant McDonald, Sergeant McDaniels, Holly
19 Wagner, Chris Cowan, Sergeant Ellis, and John Baker.
20 Charlotte/Mecklenburg was back that day. Two or three
21 of them went with us, and we had different -- probably
22 four or five cars.

23 Q Who did Kendra ride with?

24 A Myself and Sergeant Isenhoward.

25 Q Once you got on Peach Road, did she direct you to go

1 a certain direction?

2 A We went left as we took the exit.

3 Q Going towards Charlotte?

4 A Beg your pardon?

5 Q You were going out 77 towards Charlotte?

6 A Yes. As we exited Peach Road, we went left, I believe,
7 across the bridge. I guess it would be back towards
8 Winnsboro, and she directed us to a church. She
9 remembered there was a church there.

10 Q Once you got to the church, what information did
11 y'all rely on as far as where you went next?

12 A It was an indication as to which direction Mr. Manning
13 had walked when she -- when he exited her car that day.
14 So I sent detectives in that direction to fan out. It's
15 a wooded area that's around that church.

16 Q Where were you staying at that point with Kendra?

17 A I stayed in the car myself with Kendra, myself and
18 Sergeant Isenhoward.

19 Q And where was your car parked that morning?

20 A In the church parking lot, I believe.

21 Q Shortly thereafter, did you get some information?

22 A Lieutenant McDonald called within just a few
23 minutes. He indicated he had a car in the woods burned.
24 You know, it was a little dirt -- it was a logging type
25 road back towards the interstate, just a few yards on the

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1 same side of the road as the church. He was back up there
2 on the dirt road. We actually proceeded to that location,
3 probably less than 200 yards.

4 Q Once the car had been located, and you then relayed
5 that information, what did you do?

6 A I drove to that location.

7 Q And what did you observe when you got out of your car?

8 A I observed the burned shell of a sedan, a car, small
9 car.

10 Q Were you able to notice anything within the car due
11 to the burning?

12 A I exited my car and walked up to the rear of the car
13 where Lieutenant McDonald was. I was able to look
14 through the burned out tail lights, and I saw the remains
15 of a human.

16 Q At that point, were any steps taken to secure the
17 scene?

18 A Yes. We immediately kept the area, as best we could,
19 from people who had already been there clear. We
20 summoned the appropriate personnel, our crime scene
21 people.

22 We made the proper notifications, and that would
23 include the fact that we were in Fairfield County. We
24 had to contact the Fairfield County Sheriff's Department,
25 my coroner. That's all.

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1 Q After you observed what you did, was Kendra informed
2 of what had been found?

3 A I told her.

4 Q And what was her reaction?

5 A She started throwing up outside the back of my car.

6 Q Did you instruct any of the investigators that were
7 with you to get any warrants at that point?

8 A Yes, ma'am. As soon as -- as soon as we discovered
9 the body, that gave us an immediate or a probable cause
10 at that point to get a murder warrant for Theodore
11 Manning and a search warrant for his residence.

12 I instructed Sergeant McDaniels, I believe, who was
13 there, one of the Major Crime sergeants, to proceed and
14 to get that done as soon as possible and to get people
15 involved with that arrest team and search team.

16 Q You mentioned the lab that you had called out there.
17 Would that be the C.I.D.?

18 A Yes, ma'am.

19 Q The crime scene people, C.S.I., were called out. Was
20 the scene turned over to them so they could process the
21 car?

22 A Yes, ma'am. Lieutenant Elsey and some of her folks
23 arrived and took control of the scene.

24 Q And at that point, what did you do?

25 A At that point, myself and Sergeant Isenhoward took

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1 Kendra back to the sheriff's department so we could -- to
2 get her story down on paper to get this version down on
3 paper, and we typed out her statement.

4 Q And again, after you informed of what was in the car,
5 what was her demeanor?

6 A She became visibly, physically ill.

7 Q Were other investigators or sergeants with your
8 department actually tasked with serving the arrest
9 warrant and the search warrant at the defendant's house?

10 A Sergeant McDaniels was leading that operation, and
11 I believe some of the Charlotte detectives went with him.

12 Q Once you go back to headquarters, did you then take
13 a written statement from Kendra Samuels (sic)?

14 A I did, Kendra Goodman.

15 Q Excuse me, Goodman.

16 That evening, did you become aware, as a part of your
17 investigation, that the defendant had been placed under
18 arrest by Sergeant McDaniels?

19 A Yes, ma'am. By seven p.m. I received notification
20 that Mr. Manning was under arrest. We had Nextel's, and
21 we communicate on them frequently. I got word initially
22 that he was making some verbal admissions.

23 Q That night after you took Kendra Goodman's
24 statement, was she then taken back to her residence?

25 A Yes. We allowed her to leave that night. I believe

1 possibly Lieutenant McDonald lives near her. He might
2 have transported her.

3 Q At that -- approximately what time was it when you
4 left the office?

5 A I left about 9:15, according to my notes, and
6 McDaniels and I think Holly Wagner were interviewing
7 Theodore Manning.

8 Q During the course of that evening, did you remain in
9 touch with the other detectives, and were you briefed
10 about what was -- the defendant was saying?

11 A Yes. I was briefed further that a couple of
12 statements were collected from the defendant.

13 Q Over the course of a weekend, did you have contact
14 with either of the defendants in this case?

15 A Yes. Kendra Goodman actually called me twice. I
16 guess I had interacted with her most at that point in time,
17 so she had my cell phone number. I believe she had it
18 from that first night when I met her at the dry cleaner
19 with her father. She called me that Saturday and Sunday.

20 Q She indicated she wanted to give you --

21 A She indicated --

22 Q -- information?

23 A -- she wanted to give me additional information. We
24 made arrangements, I think on that Sunday, to meet back
25 with her on Monday morning.

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- 1 Q That Monday morning, did you make contact with her?
- 2 A Yes.
- 3 Q Where?
- 4 A I actually went to her parents' house in Friarsgate.
- 5 Q And was she able to give you additional information?
- 6 A She was.
- 7 Q At this point, based on the information you had, did
- 8 you advise her of her rights?
- 9 A I went back to the sheriff's department, and at that
- 10 point in time, around a quarter to one that afternoon,
- 11 I actually advised her of her rights. We took another
- 12 statement.
- 13 Q And had you advised her of her rights the Friday
- 14 night before?
- 15 A No, ma'am.
- 16 Q And did she give you a statement at that point?
- 17 A She did.
- 18 Q The next day, on that Tuesday, did she come back in
- 19 and give another statement, I believe, to Sergeant
- 20 Isenhoward?
- 21 A She came back in on Tuesday, was reinterviewed, and
- 22 Isenhoward collected another statement.
- 23 Q You've been in investigations since 1984?
- 24 A I started in investigations in '87.
- 25 Q '87, excuse me. And have you had an opportunity to

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1 review Kendra Goodman's statements?

2 A Yes.

3 Q Is it unusual what happened here?

4 A No, ma'am, it's very common. It's very common for
5 witnesses, and defendants for that matter, to minimize
6 their involvement or knowledge, try to keep it from being
7 as bad as it could be.

8 MR. MAY: Objection, Your Honor. I'd ask the State
9 if they're trying to introduce expert testimony at this
10 point.

11 THE COURT: Overruled.

12 MR. MAY: He hadn't been qualified.

13 THE COURT: I'll allow him to testify.

14 BY MS. CAMPBELL:

15 Q I'm sorry.

16 A That's fine.

17 It's been my experience it's human nature to
18 minimize when something bad has happened, to not quite
19 tell it the worst way it could be.

20 An example of that is, "Well, you know, I shot
21 somebody, but I didn't mean to," or in a sexual assault
22 case, you know, "I didn't go all the way," things of that
23 nature. You minimize, you know, the truth.

24 You just want to make it sound not quite as bad as
25 it is. Witnesses will do that sometimes and defendants

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1 will do that.

2 Q And during the course of your investigation, were you
3 able to figure out the relationship between Kendra
4 Goodman and Theodore Manning?

5 A Yes. I learned that they were lovers and had a
6 relationship of that nature.

7 Q They also asked some questions about -- are there
8 different forms that y'all take statements on?

9 A Yes.

10 Q And is the wording different on the end of them?

11 A Yes. We have a statement template that we use for
12 witnesses, and then we have a statement template we use
13 for defendants or somebody that is, you know, possibly
14 going to be changed with criminal charges.

15 Q And so as far as any difference in the wording on the
16 statement, it's not that you believe them or don't believe
17 them?

18 A No. It's based on the situation involving custody
19 and the way the investigation is going and whether
20 they're going to charge them or think you're going to
21 charge them. One of the biggest things I see is custody.

22 Q There's also been a question about Nikki McPhatter's
23 I.D. card. Was that ever found in Kendra Goodman's car?

24 A I'm not aware of that being found in Kendra Goodman's
25 car.

1 Q Finally, as far as in this case, Theodore Manning was
2 arrested for what charge?

3 A Murder.

4 Q Kendra Goodman, was she arrested?

5 A She was arrested for accessory after the fact of
6 murder.

7 Q And as far as your knowledge of this investigation,
8 that accurately reflects their involvement in the case?

9 A I believe they were charged very appropriately.

10 MS. CAMPBELL: Thank you, Your Honor. Nothing
11 further.

12 THE COURT: Cross-examination?

13 MR. MAY: Yes, Your Honor. Beg the Court's
14 indulgence.

15 CROSS-EXAMINATION:

16 BY MR. MAY:

17 Q Hello, Captain Smith. How are you doing?

18 A Hello, Mr. May.

19 Q All right. Let's just go right through your
20 chronological notes. You have a copy of it, right?

21 A I do.

22 Q All right. All right. You first learned about this
23 investigation sometime on the 21st of May?

24 A Yes, sir.

25 Q All right. And you were -- you and Isenhoward met

1 with Charlotte and Columbia Police Department at the
2 Columbia Police Department headquarters on Washington
3 Street; is that correct?

4 A That's true.

5 Q And you -- as all of this is going on, you asked
6 Investigator Wagner to go with, or to accompany,
7 Charlotte/Mecklenburg so they can have somebody who
8 has an idea of the lay of the land, or so that one of your
9 people can always be with them. Is that fair to say?

10 A Maybe a little bit of both.

11 Q Okay. Now, that's about all you know. Then on the
12 22nd, you get a phone call and learn that that night
13 that Investigator Wagner and the Charlotte/Mecklenburg
14 Police Department were able to obtain a -- at least some
15 kind of contact from Mr. Manning; is that correct?

16 A Yeah. Backing up, that's wasn't all I knew. I
17 mean, they briefed me about Teddy, and they briefed me
18 about the nuclear rods thing and the "STAFF" shirt. I
19 saw the A.T.M. pictures and all that.

20 Q I got you. But on the morning of the 22nd, you were
21 briefed from Investigator Wagner that they made
22 contact with this Teddy?

23 A Yes.

24 Q And this person ended up being Theo Manning?

25 A Yes, sir.

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Cross of Smith by May

1 Q All right. Now, about ten o'clock that morning, you
2 and Sergeant Isenhoward went to Mr. Manning's house,
3 correct?

4 A That's correct.

5 Q He answered the door. You identified yourself,
6 "Hey, we're Richland County." Did he invite you into his
7 house?

8 A Yes, sir.

9 Q He invited you into his house. He didn't fight you,
10 did he?

11 A No, sir.

12 Q You began to interview him, correct?

13 A Yes, sir.

14 Q And you said this interview lasted about 20 minutes?

15 A Give or take. The guy came in doing the electrical
16 stuff, the alarm stuff, and I would guess we were there
17 about 30, 40 minutes.

18 Q Okay. Can you refer to your -- to the transcript from
19 that conversation so we can talk about it.

20 A I have my notes from that conversation.

21 Q We don't have a transcript?

22 A No, sir.

23 Q All right. From your notes, it appears there were
24 about 15 sentence fragments?

25 A Yes, sir.

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1 Q Not a transcript that would have had everything. So
2 you didn't tape this statement?

3 A No, sir.

4 Q Then from Friday through -- to Tuesday morning, that
5 was Memorial Day weekend, correct?

6 A Yes.

7 Q So, of course, barring an emergency, you weren't at
8 work, and you had a fun time, I hope. So your only
9 involvement --

10 A From what I recall, I hope so.

11 Q So your involvement in the investigation really
12 ramped up on Thursday the 28th, correct?

13 A Well, I had -- Sergeant Robinson was working all
14 weekend, and I think he was involved with it. I believe
15 some of the Charlotte detectives actually worked on
16 Memorial Day.

17 Q Okay.

18 A My personal involvement, yes.

19 Q Yes, sir.

20 And when you had Investigator Robinson involved in
21 there, I believe you just testified to Ms. Campbell that
22 the day that you and Mr. Isenhoward went there, he was
23 just a possible link; is that correct?

24 A He was a -- yes, he was link that we needed to...

25 Q He was a possible link.

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1 A Yes.

2 Q He wasn't a suspect at this time, was he? You just
3 testified he was a possible link?

4 A It could be described both ways, yes.

5 Q Okay. So on Thursday the 28th, everything kind of
6 ramped up. You contact -- you found out about Kendra
7 Goodman; is that correct?

8 A Yes, sir.

9 Q The first thing you did is you contacted her
10 parents, per your notes when you couldn't find her
11 immediately.

12 A We went to her -- we went to her apartment.

13 Q Yeah. You couldn't find her, so you contacted her
14 parents, right?

15 A Right.

16 Q When y'all did find Kendra, she refused to talk to
17 you.

18 A That's correct.

19 Q So what you did is you got her father, and you
20 actually took her father to her to try to have him impart
21 some kind of knowledge or try to encourage her to talk
22 to you?

23 A That's true.

24 Q All right. He begged his daughter is what your notes
25 say, correct?

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1 A I recall him pleading with her. He wanted her to
2 cooperate.

3 Q Now, you just testified -- when Ms. Campbell asked,
4 she said that she said -- did you allow her to call her
5 attorney, Mr. Dessasure. Your exact quote -- now, this
6 is what you said, "Yes. I allowed her to make a call.
7 She wasn't in custody at the time."

8 A I couldn't stop her from making a call. I said
9 that -- I didn't mean it wasn't in my authority to keep
10 her from making a call, no, sir. She made a call. She
11 was in her workplace. I couldn't stop her from making
12 a call. I wouldn't have tried to.

13 Q Okay. But it was your testimony that you allowed her
14 to make a call because she wasn't in your custody. So
15 because she wasn't in your custody, she could call her
16 attorney?

17 A Yes.

18 Q All right. And you actually talked to him.

19 A Yes.

20 Q All right. And you explained the situation, and then
21 you gave it back.

22 A Yes, sir.

23 Q And still, your words, Kendra was stonewalling.

24 (Pause)

25 I'm looking at approximately 17:30, about three lines

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1 down, "Kendra was still stonewalling."
2 A Yeah, but that was before the call with Mr. Dessasure.
3 Q I apologize.
4 A That's what had me confused.
5 Q I apologize, sir.
6 A After she talked to Dessasure --
7 Q I got you.
8 A She talked to us.
9 Q Okay. All right. But actually, did she because it
10 looks like after you got off the phone with Dessasure,
11 you gave the phone back to Kendra who talked to him a few
12 more minutes. She came out of the cleaners, and your
13 quote, she maintained that she knew nothing"?
14 A I said, "She emerged from the back of the cleaners
15 and agreed to talk to the investigators and officers
16 further." Is that what --
17 Q And agreed to talk -- she related that Dessasure had
18 told her that it was simply up to her whether --
19 A Yeah, it --
20 Q -- she wanted to talk with us --
21 A She agreed --
22 Q Talk to --
23 A -- to talk with --
24 Q -- another investigating officer --
25 (Talking over each other.)

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1 -- attempted to get Kendra to explain what she knew
2 about all of this at once. She maintained that she knew
3 nothing?

4 A But as -- but keep on going.

5 Q Well, we're going to get there.

6 A Okay.

7 Q We're going to get there. Don't worry about that.

8 A I don't want to mislead the jury. I mean...

9 Q Okay. Now, you say that you -- you sensed that Kendra
10 knew more than what she was letting on. You told that
11 to Ms. --

12 A Yes.

13 Q -- Campbell and you testified to that -- you wrote
14 that in your report; is that right?

15 A Yes, I believe that because of the A.T.M. photos and
16 the car primarily.

17 Q All right. So what you did is you gave her one of
18 your cards, and you said you wanted her to think about
19 it, correct?

20 A Yes. But in between there, she had given some
21 information to me.

22 Q All right. You obtained the buccal swab?

23 A Yes.

24 Q All right. And you left --

25 A Yes, sir --

- 1 Q -- after the buccal swab.
- 2 All right. Now, on the 29th, you initiated the
- 3 contact. You called Kendra on her cell, correct?
- 4 A Yes, sir.
- 5 Q Now, these are your words. You said that the
- 6 investigating officer confronted Kendra -- you
- 7 confronted her with evidence, correct?
- 8 A How about helping me out? Where are we now?
- 9 Q Do you see the telephone number, actually the
- 10 553-2351?
- 11 A Yes, sir. I'm with you.
- 12 Q All right. Now, do you see where it says,
- 13 "Investigating officer confronted Kendra," about three
- 14 sentences later?
- 15 A Yes, yes.
- 16 Q So you confronted Ms. Goodman --
- 17 A Yes.
- 18 Q -- correct?
- 19 A By that time I had talked with the dry cleaners, knew
- 20 she had left on the day in question, the 6th.
- 21 Q All right. It goes on further to say that she was
- 22 disturbed about the search warrant being executed at
- 23 her house, correct?
- 24 A Yes, sir; yes.
- 25 Q Now, it goes on further, and it says that she remains

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1 steadfast on her denials, correct?

2 A Yes.

3 Q Your words not mine, "steadfast".

4 A Yes, sir.

5 Q You then went to get her father to talk to her again,

6 correct?

7 A Her mother.

8 Q I apologize. I thought it says Frankie Goodman?

9 A Well, Frankie is her mother's name. Maxwell would

10 be daddy.

11 Q I apologize. I saw Frankie, and I assumed that was

12 her dad.

13 A That's okay.

14 Q So the mother called back and said that she would

15 meet you, correct?

16 A Say that again.

17 Q So the mother got her to call you back to meet with

18 you. This is on the 29th?

19 A Yeah, the mother, the mother called back.

20 Q Okay.

21 A And said, "Come on and talk to her."

22 Q You and Isenhoward went to pick her up?

23 A Yes, sir.

24 Q You took her to the Richland County Sheriff's

25 Department headquarters, correct?

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1 A That's correct.

2 Q That's where your office is?

3 A That's right.

4 Q And you got there, and she maintained her same story,
5 your words, right?

6 A I said she initially maintained the same story.
7 You're leaving a little bit out now, Mr. May.

8 Q Okay. You began to interrogate her, and her story
9 began to change, correct?

10 A . The story changed, yes.

11 Q Yes, sir. At some point as -- in the interrogation
12 process, you got Jimmy White use a common interrogation
13 tactic which is employed by the Richland County
14 Sheriff's Department to try to get her story to change
15 again, correct?

16 A I have no idea what you're talking about.

17 Q Jimmy White.

18 MS. CAMPBELL: Your Honor, may we approach?

19 (WHEREUPON, a bench conference was held in the
20 presence, but not within the hearing of the jury.)

21 THE COURT: All right, ladies and gentlemen, just go
22 to your jury room just for a minute. This will be the
23 last witness for the day. Let me straighten this out with
24 the attorneys. It will be just be a minute, so just relax.
25 Thank you. Don't discuss the case among yourselves while

1 you're in the jury room.

2 (WHEREUPON, the jury left open court at approximately
3 4:54 p.m.)

4 THE COURT: What's the -- what was the question?

5 MR. MAY: Yes, sir. Beg the Court's indulgence one
6 second.

7 The question was, "And then Jimmy White began his
8 interrogation where he used a common interrogation
9 tactic employed by Richland County Sheriff's Department,
10 and her story changed."

11 THE COURT: What's the objection?

12 MS. CAMPBELL: The objection, Your Honor, is that he
13 was -- I'm surprised it does not mention anything about
14 the polygraph and we have not gone near it because it's
15 not admissible. As far as, if he wants to say that Jimmy
16 White talked to her, and she changed her story, that would
17 be, I think plausible, but I mean, I just feel like he's
18 trying to get him to say "polygraph", and that's not
19 admissible.

20 THE COURT: He says a common interrogation tactic.
21 Is that what you're referring to?

22 MR. MAY: Yes, sir. It's -- I was trying to word it
23 in a method because polygraph is a common interrogation
24 tactic that the Richland County Sheriff's Department
25 employs.

1 MS. CAMPBELL: It makes it sound like they hung her
2 up by the thumbs, but I mean...

3 THE COURT: Waterboarding.

4 MS. CAMPBELL: Waterboarding would be a good one.
5 Thank you, Your Honor.

6 If he wants to ask, you know, if Jimmy White talked
7 to her and she changed her story...

8 MR. MAY: Your Honor.

9 MS. CAMPBELL: That would be admissible.

10 MR. MAY: Your Honor, it is in detailed in his notes,
11 especially in Ms. Goodman's statement that the reason
12 why she changed her story was due to the polygraph.

13 Now, you --

14 THE COURT: Yeah, but we've been through that.

15 MR. MAY: And Your Honor, it's -- instructing Mr.
16 Shealey, he said he didn't figure out how to ask it without
17 asking it, that's what I was trying to do. I was trying
18 to abide by the Court's instructions without mentioning
19 the words, "polygraph, truth machine, lie detector" or
20 any kind of thing besides an interrogation tactic.

21 THE COURT: All right. Go ahead with your question.
22 Proffer the question and the answer. We'll see if
23 that's -- that's as far as you're going.

24 MR. MAY: All right. Yes, sir.

25 Then Jimmy White began.

1 THE COURT: There is from his notes?

2 MR. MAY: Yes, sir. It's in his notes that she was
3 polygraphed twice. I was going to ask in this line
4 that -- and the person employed with the Richland County
5 Sheriff's Department, Jimmy White, began to question her
6 using a common interrogation tactic which is employed by
7 the Richland County Sheriff's Department.

8 A That's my -- my response was I didn't know what you
9 were talking about.

10 Q Yeah.

11 A Because I wouldn't refer to that as a common
12 interrogation tactic.

13 Q Well, did he?

14 A He used polygraph.

15 Q Yes, okay. So when I'm -- that's what I'm trying to
16 say is that -- I'm not trying to elicit you to say the
17 word "polygraph". I'm trying to ask it.

18 A It -- your Honor, if I may.

19 When I -- when he asked me the question, I thought
20 he was implying if Jimmy White tricked her in some way
21 or did some kind of interrogation technique to -- that's
22 what I took when he asked me the question.

23 THE COURT: Well, I don't know if you were in here,
24 but I ruled the polygraph could not be -- the polygraph
25 results are -- the implication would not be presented to

1 the jury.

2 THE WITNESS: Yes, sir.

3 THE COURT: You and he got freaked out on the way the
4 answers -- the question were asking.

5 THE WITNESS: I --

6 THE COURT: I mean, I don't want to put words in
7 anybody's mouth, which...

8 THE WITNESS: Could he just ask me, Your Honor, if
9 Jimmy White became involved in the interview?

10 THE COURT: Well, the point is that allegedly, she
11 changed her story as a result of something.

12 THE WITNESS: Yes, sir.

13 THE COURT: And that's what he's trying to -- for
14 whatever reason, that's what he's trying to elicit from
15 you; that she changed her story as a result of her
16 interrogation by Jimmy White.

17 Now, what's a common interrogation tactic? Maybe
18 you can agree that it's not an unusual interrogation
19 tactic.

20 THE WITNESS: I want to move this along, Your Honor,
21 so I'll do the best I can.

22 THE COURT: You understand?

23 THE WITNESS: Yes, sir.

24 MS. CAMPBELL: Your Honor, is she -- is he going to
25 use the term "common interrogation tactic"?

1 THE COURT: I don't know what he's going to say.

2 MS. CAMPBELL: That would be the question.

3 THE COURT: Ask the question.

4 MS. CAMPBELL: That makes it --

5 THE COURT: I don't know what the answer is.

6 MS. CAMPBELL: -- sound like you as you mentioned,
7 waterboarding.

8 THE COURT: Well, you phrase it then.

9 MS. CAMPBELL: I mean, even you thought that, just
10 based on his questions.

11 THE COURT: No. I didn't think that for a minute.
12 No. I was being facetious.

13 MS. CAMPBELL: Well, Your Honor, I think there's a
14 clear inference that there's some kind of illegal or
15 unorthodox technique going on.

16 THE COURT: Well, then I don't -- if it's a common
17 interrogation tactic, I would not think that the
18 Richland County Sheriff's Office would be involved in
19 anything illegal or inappropriate.

20 MS. CAMPBELL: As long as you instruct the jury on
21 that.

22 (Pause)

23 Or could he just say, "Did Jimmy White confront her
24 with being untruthful and she changed her story?" I
25 think that would resolve it.

1 THE COURT: How about that?

2 MR. MAY: Your Honor, I believe that it's not
3 Mr. White's dazzling personality that makes people change
4 their stories.

5 THE COURT: All right. If you're not going to agree,
6 I'll write the darn question.

7 MR. MAY: Okay.

8 THE COURT: How long do you want to keep this jury
9 here over this minor issue?

10 (There was no response).

11 (Pause)

12 All right. The question of sergeant -- Captain
13 Smith is, "Did Kendra Goodman change her story during the
14 interview, her interview with Jimmy White?"

15 Do you understand that question?

16 THE WITNESS: Yes, sir.

17 THE COURT: Bring the jury.

18 (WHEREUPON, the jury came into open court at
19 approximately 5:02 p.m.)

20 THE BAILIFF: The jury is seated, Your Honor.

21 THE COURT: Thank you very much.

22 You may continue, Mr. May.

23 MR. MAY: Thank you, Your Honor.

24 BY MR. MAY:

25 Q All right. Then at some point Jimmy White, who

1 works at the sheriff's department, correct --

2 A Yes.

3 Q -- began to talk to Kendra?

4 A Yes, sir.

5 Q My question to you is did Kendra change her story
6 during her interview with Mr. White?

7 A Yes, sir.

8 Q All right. And you were actually observing this
9 interview from where elsewhere, correct?

10 A Yes.

11 Q And as you're observing it is when she gives the
12 story that's similar to what she testified to, correct?

13 A Yes, sir.

14 Q At least in just basic structure?

15 A Right.

16 Q At this point, y'all went up to Fairfield County?

17 A Yes, sir.

18 Q Now, I'm going to ask you a quick question. I see
19 that once the car was identified, that Kendra made it to
20 your S.U.V. while all events transpired, correct?

21 A Yes.

22 Q You didn't mention that she got out to throw up at
23 any time, did you?

24 A Not in the follow-up, but I observed it.

25 Q Okay. Now, after all this, you went back to the

- 1 sheriff's department, correct?
- 2 A Yes, sir.
- 3 Q And you typed out a written statement at about
- 4 6:05 while Sergeant Isenhoward observed, right?
- 5 A That's correct, uh-huh.
- 6 Q Then eventually, Lieutenant McDonald drove her
- 7 home?
- 8 A That's correct.
- 9 Q All right. Now, this was a Friday evening, correct?
- 10 A Yes, sir.
- 11 Q Throughout that Friday evening, you were given
- 12 more and more details of the interrogation of Theo
- 13 Manning.
- 14 A Yes, sir.
- 15 Q And without going into the actual what was said,
- 16 it's a very different picture than was -- what Ms. Goodman
- 17 was talking about, correct, as far as who is --
- 18 A They were different, yes.
- 19 Q Now, you received two telephone calls.
- 20 A Yes, I did.
- 21 Q One of the telephone calls was apologizing for lying
- 22 so much?
- 23 A Yes, sir.
- 24 Q From Ms. Goodman?
- 25 A Well, I got on my notes for lying.

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- 1 Q The other one was she called again because she wanted
2 to talk to you.
- 3 A Yes.
- 4 Q Now, she came back to the Richland County
5 Sheriff's Department, and you asked her if she would talk
6 to Mr. White again?
- 7 A Yes.
- 8 Q So she did and with -- confronted with the results
9 of that conversation with Mr. White, she changed her
10 story again?
- 11 A Yes.
- 12 Q She gave another statement, and at the end of this
13 statement, she changed it again.
- 14 A She reverted back to --
- 15 Q Yes.
- 16 A -- the former statement.
- 17 Q Now, you charged Kendra with accessory after the
18 fact of murder, correct?
- 19 A Yes, sir.
- 20 Q That means that she had to know about the killing
21 before helping with the aftermath?
- 22 A Or she had to do certain things that were
23 unreasonable. I mean, she didn't have to know details
24 about the killing.
- 25 Q But she had to know the killing occurred.

1 A She had to know that -- or we would allege that her
2 actions were indicative of somebody that -- that should
3 know.

4 Q So --

5 A Yes, sir.

6 Q -- you charged her with something and --

7 A Or should know that there's foul play afoot.

8 Q One of the requirements was that she had to know -- she
9 just got up there and testified that she didn't know
10 anything.

11 A She also testified that she knew something wasn't
12 right.

13 Q She said she didn't know anything about a Nikki
14 McPhatter.

15 A Yeah, but she also testified that she realized
16 that something wasn't right.

17 Q Right. Again, do you have all her statements
18 recorded?

19 A Yes, sir, they were recorded.

20 Q All her statements are recorded. Can we see the
21 transcripts and the tapes?

22 A No.

23 Q Because they haven't been provided --

24 A They were recorded in --

25 Q -- in discovery.

- 1 A -- the written statements.
- 2 Q Oh, okay. You are probably the most senior person
3 that the prosecution is going to call in this case.
- 4 A Unfortunately --
- 5 Q All right. Your senior --
- 6 A -- that is probably true.
- 7 Q You're in charge of the Major Crimes Unit.
- 8 A Yes, sir.
- 9 Q You're the head honcho for the actual people on the
10 ground doing the investigations?
- 11 A In homicide investigations, that's generally true.
- 12 Q And in this State, homicide investigations are
13 generally -- I mean generally, that's the top of the crime
14 that people get charged with, correct? I mean, it's the
15 most major crime.
- 16 A That's true.
- 17 Q Outside of genocide, it's homicide.
- 18 A That's true.
- 19 Q All right. So you're charged with this. You
20 supervise these detectives who are going to be up there
21 who are out -- from the Richland County Sheriff's
22 Department, correct?
- 23 A I do.
- 24 Q You supervise them because you're the main guy in
25 investigations of major crimes in Richland County. Now,

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- 1 the Richland County Sheriff's Department, y'all are
2 well funded, correct?
- 3 A I'm not sure how you -- how to answer that.
- 4 Q You drive a real nice Tahoe.
- 5 A We have a lot of personnel.
- 6 Q You have a lot of personnel and a lot of equipment,
7 correct?
- 8 A Well, we have equipment, yes, sir.
- 9 Q You have cars. You have trucks. You have S.U.V.s,
10 am I correct?
- 11 A We do.
- 12 Q I mean, you have a brand -- I mean, you have a nice
13 building on Two Notch Road. You have different
14 substations, correct?
- 15 A Yes, sir.
- 16 Q You have your own crime lab.
- 17 A We do.
- 18 Q Heck, y'all even have your own tank, "The
19 Peacemaker", correct?
- 20 A I'm not sure if it's called a tank.
- 21 Q An armored vehicle.
- 22 A It's an armored vehicle.
- 23 Q With a .50-Caliber machine gun on it.
- 24 A I'm not sure about that.
- 25 Q So y'all spend all this money on this. My question

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1 is a \$5.00 recorder, we can know everything that
2 happened. We spend money on all this stuff, but you can't
3 spend money on a \$5.00 recorder.

4 A Everything that happened when?

5 Q Through the interrogation of Theo Manning, through
6 any of your talks with Kendra Goodman.

7 A We know what his statement is.

8 Q Her people who have a vested interest.

9 A We know what her statement is.

10 Q We -- what I'm going to show you is marked as State's
11 Exhibit 3. I'm going to hand this to you and ask if you
12 recognize what that is.

13 A It's a written statement.

14 Q Okay. It's three pages, correct?

15 A Yes, sir.

16 Q Three pages after seven hours of an interrogation.

17 A I wouldn't --

18 Q -- by your people?

19 A I believe there's another one that's 11 pages.

20 Q This is the ultimate product.

21 A But in that seven hours was the 11 pager.

22 Q Fourteen pages, and we just saw that 55 pages come
23 from a 79-minute conversation. So there's a lot left on
24 the cutting room floor, a lot left on the editing room
25 floor; is that correct? Because not everything is in

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1 those three pages.

2 A What was intended to be forwarded by the defendant,
3 I believe, is in those pages, what he wanted forwarded
4 to this Court to this day for the record is in those
5 pages.

6 Q We don't know what's on that cutting room floor because
7 \$5.00. Y'all have a tank.

8 A I know that --

9 Q But you don't have a \$5.00 recorder.

10 A I know that those -- I wasn't there for those interviews,
11 but that's what the defendant intended to be forwarded
12 to this proceeding.

13 MR. MAY: No further questions at this time, Your
14 Honor.

15 MS. CAMPBELL: Just a couple, Your Honor.

16 THE COURT: Yes.

17 REDIRECT EXAMINATION:

18 BY MS. CAMPBELL:

19 Q Just for the record, Captain Smith, the tank was
20 actually donated to your department, wasn't it?

21 A I believe it was.

22 MR. MAY: Objection, leading.

23 BY MS. CAMPBELL:

24 Q How did your department happen to have a tank?

25 A I believe the military actually donated it. I

1 believe it's an armored personnel carrier. I'm not sure
2 they call it a tank.

3 Q Okay. Just one other question. You mentioned at
4 the point when you were talking to Ms. Goodman, she asked
5 for a lawyer. You immediately helped her find a lawyer?

6 A Yes.

7 Q If a person is in custody and asks for their lawyer --

8 MR. MAY: Objection, Your Honor. She is testifying.

9 MS. CAMPBELL: I'm just making a reference.

10 THE COURT: Ask the question.

11 BY MS. CAMPBELL:

12 Q What do you do?

13 A We stop the questioning and allow that to happen.

14 THE COURT: Anything further?

15 MS. CAMPBELL: No, sir.

16 THE COURT: You may come down, sir. Thank you very
17 much.

18 THE WITNESS: Thank you.

19 THE COURT: May this witness be excused?

20 MR. MAY: No, Your Honor. He is still under our
21 subpoena.

22 THE COURT: All right.

23 All right. Ladies and gentlemen of the jury, that
24 will complete the testimony for today. It's 5:15.

25 I'm going to ask you to be back in the jury room

1 Thank you very much. Ten o'clock in the morning, and
2 leave the transcripts on your chairs.

3 (WHEREUPON, the other jurors left open court at
4 approximately 5:13 p.m.)

5 THE COURT: Ms. 318, I have your note, I mean, your
6 letter and your request to be excused from this jury next
7 week.

8 I'm just afraid I can't do that.

9 THE JUROR: I understand, sir. It was an order.

10 THE COURT: If you -- you can blame it on me. Tell
11 your First Sergeant to call me if he has any problem
12 with it, but this is an important matter, and it's
13 just -- it's just not going to work out.

14 I know we have an alternate, but over the weekend,
15 things happen. I'm just going to have to ask you to stay
16 with us.

17 THE JUROR: Yes, sir.

18 THE COURT: All right. Thank you very much, ma'am.
19 I'm going to ask you to stay with us.

20 (WHEREUPON, juror 318 left the courtroom.)

21 THE COURT: All right. State's 40, I'll return that
22 to you, Ms. McDuffie.

23 MS. CAMPBELL: Your Honor, I believe since it was
24 objected to, it goes -- stays with the court reporter.

25 THE COURT: I'm sorry. All right. Turn it in to the

1 court reporter.

2 Let's see. I need to see Ms. Campbell on another
3 case for just a minute, scheduling, scheduling purposes.

4 Otherwise, ten o'clock in the morning. Thank you.

5 MS. PRINGLE: I have something for the record, Your
6 Honor.

7 THE COURT: All right. All right. Well...

8 MS. PRINGLE: Your Honor, it took me a moment to come
9 up with the document that I was looking for to respond
10 to the Court's most recent scolding of Mr. May and
11 Mr. Shealey, the last one being a request --

12 THE COURT: I -- by the way, I take a little bit of
13 umbrage with the term "scolding". I don't agree with
14 that, but you may proceed.

15 MS. PRINGLE: Respectfully, Your Honor, I would
16 characterize it as scolding and admonishment. I think
17 it's been happening throughout the trial, both out of the
18 presence of the jury and in the presence of the jury.

19 The most recent one that I want to respond to, because
20 we do know that they are likely to be reviewing, authorities,
21 appellate --

22 THE COURT: Why don't you let them speak.

23 MS. PRINGLE: I'm sorry?

24 THE COURT: Why don't you let them speak about it,
25 to what your --

1 MS. PRINGLE: Because while they were busy, I was
2 pulling these documents. So I'm the one with the knowledge
3 of it.

4 Your Honor, if we are concerned with technical
5 compliance with the rules, the solicitor's response was
6 that key evidence in chief was not evidence used by a
7 party making its case in chief. It lacks quality to carry
8 actions as evidence in chief, as evidence used by a party
9 in making its case in chief. So therefore, they are
10 correctly in technical compliance with the rule.

11 If we are concerned with the spirit of the rule, and
12 that causes concern with the spirit of the rule, I would
13 like the record to reflect that Mr. Shealey received
14 discovery on September 23rd, 2010, 481 pages of text
15 messages from Mr. Manning's cell phone that was taken
16 from him on the date of his arrest. That is, by my count,
17 approximately 7,215 text messages on September 23rd,
18 which was one business day before counsel left for a
19 Public Defender's Conference which began on Sunday,
20 concluded on Wednesday.

21 That gave them two days, two business days, two weekend
22 days, to cope with that evidence before they came back
23 to court on that Monday.

24 They did not request a continuance. They have not
25 done anything to cope with that evidence, and they haven't

1 made an issue of it, but I think the appropriate -- and
2 I would like to make that a Court's Exhibit, showing that's
3 when we got that discovery.

4 MS. McDUFFIE: Your Honor, may I respond to that,
5 please?

6 THE COURT: If you care to.

7 MS. McDUFFIE: Yes, Your Honor.

8 When Mr. May and Mr. Shealey requested to view the
9 evidence, they were not able to make it on the day that
10 they specifically requested, so we had to reschedule for
11 that Thursday.

12 While we were there, the phone was viewed. The
13 sheriff's department had the phone in evidence. They
14 viewed it.

15 They asked if we could dump the messages from it.
16 We got Scott McDonald to it that afternoon. I came back
17 to the office and left it for them that afternoon at their
18 request, Your Honor.

19 THE COURT: Ten o'clock in the morning.

20 MR. SHEALEY: Judge.

21 THE COURT: What?

22 MR. SHEALEY: I could speak to that.

23 THE COURT: What?

24 MR. SHEALEY: I could speak to that.

25 THE COURT: Well, you -- I'm through for the day.

1 MR. SHEALEY: Okay. I don't want to put anything
2 else on the record but...

3 THE COURT: That's the answer.

4 Ten o'clock in the morning.

5 MR. SHEALEY: Sure.

6 (There was an overnight recess.)

7 (WHEREUPON, State's Exhibits Nos. 191 - 357 were
8 marked for identification only.)

9 THE COURT: Is the State ready to proceed?

10 MS. CAMPBELL: Yes, sir.

11 THE COURT: Is the defense ready to proceed?

12 MR. SHEALEY: Yes, sir.

13 THE COURT: Anything that needs to be taken up before
14 the jury comes?

15 MR. SHEALEY: None from us.

16 THE COURT: All right. Bring the jury.

17 (WHEREUPON, the jury came into open court at
18 approximately 10:41 a.m.)

19 THE BAILIFF: All jurors are presently, Your Honor.

20 THE COURT: All right. Thank you very much.

21 Good morning, ladies and gentlemen.

22 (The jurors responded.)

23 THE COURT: Again, I want to thank you for your
24 patience.

25 As I told you yesterday, I had to set bonds on

1 numerous defendants this morning who were arrested in
2 the last several days in a very complicated heroin
3 trafficking ring enterprise, and a number of the
4 defendants didn't speak English.

5 So I pushed as hard as I could, but it took a little
6 longer than I thought in the end.

7 I want to thank you for your patience.

8 All right. Solicitor, call your next witness.

9 MS. CAMPBELL: Your Honor, may we approach for a
10 second?

11 (WHEREUPON, a bench conference was held in the
12 presence, but not within the hearing of the jury.)

13 THE COURT: The juror with the white shirt on, do you
14 have -- you, sir, do you have a problem hearing?

15 THE JUROR: I have a hearing aid. My hearing aid is
16 pretty loud.

17 THE COURT: Okay, sir. So do you feel comfortable
18 there?

19 THE JUROR: Yeah, that's fine.

20 THE COURT: Okay.

21 THE JUROR: I'm fine. I don't need to do it this time.
22 I'll just get up there next time.

23 THE COURT: All right. Thank you very much.

24 Call your next witness.

25 MS. McDUFFIE: The State would call Bill Stevens.

1 WILLIAM STEVENS,
2 after being duly sworn, testified as follows:

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

5 THE WITNESS: William Stevens.

6 DIRECT EXAMINATION:

7 BY MS. McDUFFIE:

8 Q Ms. Stevens, where are you currently employed?

9 A At the Richland County coroner's office.

10 Q And what are your duties with the coroner's office?

11 A I'm a deputy coroner, death investigator and
12 forensic anthropologist.

13 Q And please describe for the jury a little bit about
14 your educational background and training in the field of
15 forensic anthropology?

16 A Okay. I have 13 years experience in forensic
17 anthropology, a master's degree and trying to complete
18 my doctorate within a year.

19 Q Please describe for the jury some of the course work
20 you've done in the efforts to complete your doctorate in
21 the field of forensic anthropology.

22 A I'm currently involved in a study and starting my
23 dissertation. I have a lot of experience with forensic
24 case work through the county also, so...

25 Q And approximately how many cases have you handled a

1 your working with the coroner's office?

2 A Probably between 20 and 30.

3 Q And are you a promoter -- or have you had the
4 opportunity to deal with dental records and
5 identification through dental records through your
6 education and your training?

7 A I have.

8 Q In this case particularly, when did you get involved?

9 A I got involved on May 30th, 2009.

10 Q And on May 30th, 2009, what did you do?

11 A I was contacted by another member of our office
12 saying that Dr. Marcus, the pathologist, requested that
13 I come assist with recovering remains and exam a burned
14 body in the morgue.

15 Q And what did that mean to help -- assist in
16 recovering remains?

17 A The condition of the remains were very fragmentary,
18 broken up, burned badly, so one of my specialties is
19 dealing with recovering and assembling, reconstructing
20 what happens after remains are burned.

21 Q And in response to that request, what did you do?

22 A I went to the morgue at Richland hospital at 8:30 in
23 the morning -- I'm sorry, 9:30. I got there and assisted
24 Dr. Marcus and some other representatives with trying
25 to reassemble parts of the remains and recovery of a bullet

1 and taking some x-rays, as well.

2 Q And after that was completed, did you go to the Richland
3 County Sheriff's Department the next day?

4 A I did, on the 1st of June, to the compound where the
5 sheriff's department keeps their vehicles.

6 Q Why did you do that?

7 A To recover additional remains from the trunk of the
8 vehicle.

9 Q And were you able to recover additional remains
10 from the trunk of the vehicle?

11 A I was.

12 Q And after you did that, what did you then do?

13 A I collected that and logged it into the evidence at
14 the Richland County Coroner's Office.

15 Q And at some point in time, did you and Dr. Marcus
16 examine the remains that you recovered from the trunk of
17 the vehicle and had previously recovered?

18 A We examined the remains that were recovered
19 previously. Mainly, the remains I recovered from the
20 trunk of the vehicle were highly burned in small
21 fragments, like a cremation, so they were not very
22 significant to determining much. Nothing could be
23 determined from them.

24 Q So the remains that you were able to examine, please
25 describe for the jury what you and Dr. Marcus did.

1 A Okay. We separated and laid out dental fragments.
2 The jaws of the individual were highly burned and broken
3 into pieces, so we laid them out and tried to identify
4 which teeth belonged where. So we laid out for x-ray
5 purposes for comparison and identification.

6 Q And were x-rays of those dental -- were dental x-rays
7 taken?

8 A They were.

9 Q At some point, did you receive the dental records of
10 Nikki McPhatter from the United States Navy?

11 A Yes, I did.

12 Q Was a comparison done between the remains taken from
13 the trunk of the vehicle and Nikki McPhatter's known
14 dental records?

15 A Yes, they were.

16 Q In preparation for trial, did you put those images
17 on a C.D. so you could show the jury what y'all were
18 looking at?

19 A I did.

20 Q Have you had the opportunity to previously view
21 State's Exhibit 200?

22 A Yes, I have.

23 MS. McDUFFIE: Your Honor, at this time we'd offer
24 State's Exhibit 200.

25 THE COURT: What is it?

1 MS. McDUFFIE: It's --

2 THE COURT: Just for the record, what is it?

3 MS. McDUFFIE: Photographs of the dental x-rays, Your
4 Honor.

5 THE COURT: Dental x-rays?

6 MS. McDUFFIE: Yes, Your Honor.

7 MR. SHEALEY: Subject to our prior objection judge.
8 We stipulated them in.

9 THE COURT: I'll allow it.

10 (WHEREUPON, State's Exhibit No. 200 was admitted
11 into evidence.)

12 BY MS. McDUFFIE:

13 Q Mr. Stevens, if you could step down.

14 A Okay.

15 THE BAILIFF: Watch your step.

16 MS. McDUFFIE: If I could get to speak into the
17 microphone, keep your voice up for the court reporter.

18 THE WITNESS: Where?

19 MS. McDUFFIE: Just right there.

20 (Pause)

21 BY MS. McDUFFIE:

22 Q Please describe for the jury what's depicted in
23 State's Exhibit 200.

24 A Okay. These are anti-mortem photos from x-rays
25 that we got from the Veterans Administration.

1 Q Anti-mortem is?

2 A It's the x-rays that were taken when she was alive
3 by her dentist. These are post mortem x-rays, those we
4 took in the morgue after her death that show fragmentary
5 jaws, and we are looking at comparative points because
6 the teeth are as unique as your fingerprints.

7 Q And what do you mean by comparative points?

8 A Okay. Well, the root structure is unique here, as
9 well as parts of the bone that are between the teeth. You
10 can see matching points between the -- this is called
11 trabecular bone. This is the bone that's kind of spongy
12 and holds your teeth in place.

13 It's laid out. It's got similar points between
14 these two teeth which are molars but on the lower jaw.

15 Q I'm sorry. I didn't mean to interrupt. What are the
16 two main things you're looking for when you are making
17 a known comparison?

18 A Similarities. The more you can find the better to
19 make it a strong identification. Here we're looking at
20 the shape of the roots and the shape and the patterns of
21 these lines and bone.

22 Q So you're looking at the root and the bone between
23 the roots?

24 A Right.

25 Q Go ahead.