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APR 04 2014

Volume I of II

SC Court of Appeals
STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Charleston County
J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRYL L. DRAYTON,

APPELLANT

APPELLATE CASE NO. 2012-213295

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON) CASE NO.: 2010-GS-10-8551

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 DARRYL L. DRAYTON,)
)
 DEFENDANT.)

JURY TRIAL

VOLUME 1 OF 5

held before the Honorable J.C. Nicholson, Jr.
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Charleston County Courthouse
 Charleston, South Carolina
 on Monday, October 1, 2012, Commencing at 12:12 p.m.

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PROCEEDINGS

- - - - -

MOTION TO SUPPRESS

THE COURT: Mr. Pennington, I believe it's your motion to suppress some cell phone records; is that correct?

MR. PENNINGTON: That's correct, Your Honor.

THE COURT: Be glad to hear you.

MR. PENNINGTON: Thank you.

This is State v. Darryl R. Drayton and it is case number 2010-GS-10-8551. The indictment is for murder. I've supplied the court reporter with a copy of a thirteen-page written motion and also given a copy to the clerk and the Court and the solicitor.

Your Honor, I'm moving under both the fifth amendment as well as Article I, Section 10, of the South Carolina Constitution as well as our search warrant statute, which is 17-13-140. And I would amend my motion to include, also, the Interception of Communications Act, which is 17-30-10.

THE COURT: Not the Federal Storage Communications Act?

MR. PENNINGTON: No, sir. This is a South Carolina --

THE COURT: What's the statute?

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1 MR. PENNINGTON: It is the 17-30-10.

2 THE COURT: Have you got a copy of it?

3 MR. PENNINGTON: I don't.

4 THE COURT: Is it similar to the Federal Storage
5 Communication Act --

6 MR. PENNINGTON: It is --

7 THE COURT: I believe -- it's very similar?

8 MR. PENNINGTON: It is.

9 THE COURT: Okay. That's what I thought.
10 That's why the rest of the state is doing that,
11 solicitor.

12 MS. SHEALY: Yes, sir.

13 MR. PENNINGTON: Yes, sir. It was passed in
14 July of 2002. And the revised specific limitations on
15 the interception of this kind of communication we
16 contend -- and so I'll address that in turn.

17 What I've done -- and I'm happy to approach this
18 however the Court wishes. I have, in my motion,
19 prepared a detailed memorandum of what I believe are
20 the agreed facts in this case in terms of the murder
21 of the victim, Alexis Lukaitis, and the subsequent
22 investigation.

23 THE COURT: Your stipulation of facts as to this
24 motion, we'll make it a Court's Exhibit? I read them,
25 but I don't have them up here with me.

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1 MS. SHEALY: The facts are not stipulated, as he
2 set out, Judge.

3 THE COURT: Well, as far as his stipulation of
4 facts is what I'm saying. He can mark them as a
5 Court's Exhibit, if he would like to.

6 MR. PENNINGTON: Do you have a copy of my
7 motion?

8 THE COURT: I've got a copy of your motion, but
9 I do not have a copy of that stipulation of facts that
10 you submitted. Okay?

11 MR. PENNINGTON: All right. There was the
12 stipulation that related to the witness.

13 THE COURT: Right. I had it, but I don't have
14 it up here on the bench. You're welcome to mark it as
15 Court's Exhibit Number 1.

16 And then, solicitor, you can tell me whatever
17 those facts you disagree with. Okay?

18 MS. SHEALY: Yes, sir.

19 Judge, Mr. Pennington has prepared a stipulation
20 and I told him the only reason I had not signed it --
21 this is not as to the facts that he asserts in the
22 stipulation, but the separate document that he
23 entitled stipulation --

24 THE COURT: Right. Right.

25 MS. SHEALY: The only language that I objected

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1 to in that stipulation was the final paragraph. He
2 refers to a conversation as a later conversation and I
3 would object to the use of the word later. So I'm
4 going to scratch out the word later and comment.

5 THE COURT: Okay. That's as to the motion. Be
6 Court's Exhibit Number 1 as to the motion to suppress.

7 MS. SHEALY: It's as to a component of the
8 motion that's entitled stipulation.

9 THE COURT: Right. Yes, sir?

10 MR. PENNINGTON: If Your Honor, please. I'll
11 summarize the facts to the Court --

12 THE COURT: I've read them.

13 MR. PENNINGTON: Okay.

14 THE COURT: If you want to mark it a Court's
15 Exhibit.

16 Now, you can summarize it for the record, if you
17 so desire.

18 MR. PENNINGTON: Well, I think that the
19 following are agreed facts in this case, Your Honor,
20 in that in 2010 the victim, Alexis Lukaitis, who is
21 the fiancé of Michael Bartley, lived in Bluffton,
22 South Carolina. And according to statements that we
23 have that were given to the detectives in the Beaufort
24 County Sheriff's Office, Mr. Bartley, the fiancé, said
25 that on Sunday, August 8th, 2010, that he asked the

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1 victim to go with him to his parents home for a Sunday
2 dinner. As they prepared -- as he prepared to leave,
3 she had a reaction to some new dryer sheets and
4 indicated that she wanted to stay at the apartment,
5 take benadryl, and go to sleep.

6 He, Bartley, left with the twins at 3:00 p.m.
7 and returned to the apartment at sometime around
8 7:30 p.m. The victim was not home at that time.
9 Around 8:19 p.m. the evidence would show that there
10 was a conversation between Mr. Bartley and the victim.
11 The victim called Mr. Bartley by phone to say that she
12 was on the road on the way home. Mr. Bartley heard
13 her speak to someone in the car but he could not
14 determine who was riding with her. Bartley reported
15 to the deputy that the victim had been talking to him
16 earlier Sunday afternoon about driving D, the initial
17 "D", to Charleston.

18 In the second of two interviews that same
19 Monday, which occurred after the Sunday night that she
20 went missing, Mr. Bartley reported to Deputy Reynolds
21 that the victim was a user and seller of prescription
22 medications. Mr. Bartley stated that the victim told
23 him by phone on the Sunday that she would be driving
24 "D" to Charleston because "D" was going there to pick
25 up a large quantity of prescription pills, and that he

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1 would give her some free pills for her efforts, and
2 "D" was paying for gas.

3 Approximately 7:00 a.m. the next morning, on
4 Monday the 9th, the body of Ms. Lukaitis was found in
5 Charleston County. She had been murdered and left on
6 the side of the road. Her white Grand Prix was
7 missing.

8 On the evening of Tuesday, the 10th, Detective
9 Kip Cooke, with the Charleston County Sheriff's
10 Office, sought and received a search warrant for my
11 client, Darryl Drayton's, cell phone records from
12 Magistrate Alvin Bligen at the evening bond court.

13 And I have supplied and attached to my motion
14 the warrant and affidavit of the -- of -- the warrant
15 specifically calls for my client's phone, 368-9422.
16 And the search warrant lays out essentially two
17 grounds for probable cause for this magistrate to
18 consider. First of all, that Mr. Bartley, the fiancé
19 of the victim, stated that he last spoke with the
20 victim on August the 8th -- that's the Sunday -- and
21 informed him, she informed him, that she was traveling
22 through Charleston, South Carolina, with a/k/a "D".

23 The warrant then goes on and further states: a
24 separate witness came forward and provided information
25 about a conversation between Darryl Drayton and a

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1 friend and neighbor of the victim named Shannon in
2 which they discussed the murder of the victim.

3 Bartley provided Darryl Drayton's cell number as
4 a contact number for Darryl and they indicate that it
5 is believed that this information will provide
6 information pertinent to the death investigation,
7 although there is no specificity as to any nexus in
8 terms of references to calls between these parties
9 that I've just described.

10 My argument, Your Honor, is that this is an
11 instance where my client has an expectation of privacy
12 and under our McKnight case a right to assert under
13 our search warrant statute -- McKnight is the 352
14 S.E.2nd 471 decision where in South Carolina citizens
15 always have standing to raise a violation of the
16 search warrant statute under South Carolina Code
17 17-13-140. And so in that case, that was a case where
18 there was a question as to whether the defendants had
19 standing over a search of a location. And the court
20 held under McKnight that they didn't have to show
21 standing because the standing was automatic under that
22 statute when the State intends to offer evidence
23 against that defendant.

24 I first of all will talk about the what's wrong
25 with the search warrant and then I'm going to talk

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1 about why in my view this is protected speech in South
2 Carolina and the decisions offered by the State in
3 which they indicate that this is not an area where
4 there's an expectation of --

5 THE COURT: Are you talking about protected
6 speech or are you talking about protected information
7 in reference to a cell phone? I don't think there's
8 any speech involved.

9 MR. PENNINGTON: Right. I think --

10 THE COURT: I would agree with you if it was
11 speech it would be a different -- entirely different
12 subject matter. And you said speech.

13 MR. PENNINGTON: I did. I'll correct it in
14 saying that the records with Verizon are protected in
15 our -- in my view, in South Carolina because they
16 contain not only a transaction record of calls in and
17 calls out by the subscriber Mr. Drayton, but they also
18 show specific information about cell tower locations
19 for each call which then can be used to triangulate
20 the location of the cell phone at the time that the
21 call is made.

22 And we contend that -- I'll just go ahead and
23 address this privacy question and whether or not --
24 and then I'll come back to the warrant.

25 THE COURT: Okay.

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1 MR. PENNINGTON: U.S. v. Allen was a case, Your
2 Honor, where -- well, let me back up.

3 The State has given you what is Smith v.
4 Maryland, a 1979 U.S. Supreme Court decision, which it
5 described where some officers had gotten a pen
6 register without getting a search warrant and the U.S.
7 Supreme Court said that that's not protected.
8 However, that decision was essentially statutorily
9 overruled by Congress, in which they passed a pen
10 register statute.

11 The South Carolina Legislature has done the same
12 thing in our state in 2002. Actually, there was
13 precedent even before that. But for our purposes, the
14 2002 Interception and Communications Act is a very
15 broad, explicit statement of protections for our
16 citizens on the issue of records where it is
17 specifically prohibited that a person who discloses or
18 attempts to disclose to any other person the contents
19 of any wire, oral, or electronic communications
20 knowing or have reason to know that the information
21 was obtained through the interception of a wire, oral,
22 or electronic communication in violation of the
23 subsection.

24 There are specific procedures where the
25 legislature created a prohibition under 17-30-65 where

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1 any wire, oral, or electronic communication has been
2 intercepted, no part of any contents of the
3 communication and no evidence derived therefrom may be
4 received in evidence in any trial, hearing, or other
5 proceeding, or in or before any court grand jury,
6 department, et cetera.

7 THE COURT: There they're talking about
8 eavesdropping with conversations itself, aren't they?

9 MR. PENNINGTON: Your Honor, my reading of it is
10 is that this also is for records of those kind of
11 communications.

12 THE COURT: Okay. All right.

13 MR. PENNINGTON: And I will tell you that our
14 courts have not specifically -- there are no case
15 decisions construing this Act. But you can see from
16 the explicit language that there is an expectation
17 that there would be a process by which a court order
18 was sought and that there is -- there are criminal
19 sanctions for failing to do so and there is an
20 explicit ground for a motion to suppress under
21 17-30-110 where there would be cause for a pre-trial
22 determination.

23 Of course, the State has the right to appeal an
24 adverse finding. But I believe that the legislature
25 clearly intended to make it explicit the idea that

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1 this is not just public -- in the public domain where
2 it's available upon request, but that there has to be
3 a showing of cause.

4 The orders that authorize interception under
5 17-30-70 provide that an application authorizing and
6 approving that -- I read somewhere the grounds. They
7 list in here, Your Honor, the situations where it
8 would be justified and they actually, in fact, mention
9 homicide investigations explicitly.

10 If I may have a moment.

11 [Whereupon, Mr. Pennington reviews documents]

12 MR. PENNINGTON: It's under 17-30-70, South
13 Carolina code, where for the investigation of an
14 offense the application may be made -- may provide for
15 or has provided evidence of the commission of the
16 offense of murder.

17 In addition to that, Your Honor, I believe that
18 putting aside that Act if you construe it as --

19 THE COURT: Before you leave the Act -- I
20 haven't looked at it in recent years, but I guess I'm
21 getting ready to -- what type of activity does it
22 cover, i.e. transmissions, phone numbers, location of
23 cell towers? Because in this case we're talking about
24 the location of cell towers, if I understand
25 correctly.

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1 MR. PENNINGTON: I believe it also includes
2 electronic storage, which means any temporary or
3 immediate storage of a wire or electronic
4 communication incidental --

5 THE COURT: Well, isn't that statute primarily
6 covering conversations? And I'm asking does the
7 statute -- does the statute give an indication of what
8 it covers?

9 MR. PENNINGTON: Not that I could find, Your
10 Honor. I see that it has extensive definitions -- it
11 does not have one of those preambles where it
12 describes its purpose.

13 THE COURT: Now, the Federal Storage
14 Communication Act does. You know, it does cover
15 towers.

16 MR. PENNINGTON: Well, and my reading of this is
17 that you have explicit reference to listening to
18 future calls -- that's clearly covered, no question
19 about it -- but that this reference to electronic
20 storage and any storage of wire or electronic
21 communications by electronic communications service
22 for the purposes of back-up protection of such
23 communications.

24 So in my view, this seems to talk about the same
25 exact situation that we're in. We've got someone that

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1 is a paid subscriber for electronic communications.
2 Clearly, they're coming in after the fact and they're
3 essentially -- the officers recognized that this was
4 something that they couldn't simply just call Verizon
5 and get. That's why they went and got a search
6 warrant. Arguably, they should have gone under this
7 Act. But clearly there is a recognition that this is
8 not something that's in the public domain simply by a
9 written request.

10 THE COURT: Let -- go ahead. I didn't mean to
11 interrupt you. I didn't -- go ahead and finish your
12 argument. I'll try to keep my questions until after
13 you finish your argument.

14 MR. PENNINGTON: Your Honor, I will also mention
15 that the cases that are -- the other Fourth Circuit
16 cases are dealing with other states who have different
17 statutory settings. One is a Maryland case, another
18 is a North Carolina case, a Virginia case. And so I
19 believe that it's not really as germane as they would
20 normally be, because I think the states have the
21 ability to create their own protections. And South
22 Carolina has done so, looking at what was done here,
23 which is is that I believe in good faith the officers
24 relied on the search warrant statute under our law.

25 What we have here, factually, is that the --

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1 normally we have to have what are facts which are
2 either immediately self-verifiable, authentic,
3 something that indicates the voracity and accuracy of
4 a liability, or there has to be some corroboration.
5 So the typical conundrum is do we have a confidential
6 and reliable informant that we can go by probable
7 cause or do we have external facts that corroborate
8 the unreliable informant?

9 I content in my argument, on page 4, that we're
10 dealing in a setting where we're dealing with someone
11 who's voracity as an informant is not being vouched
12 for. There is no claim that Mr. Bartley has provided
13 information in the past or that he has a track record.

14 THE COURT: Well, but aren't we dealing with a
15 citizen in this case? We're not dealing with a
16 confidential informant. Aren't we dealing with, as
17 you said in page 6 of your brief: where a citizen
18 come forward without potential gain of possible bias,
19 ways in favor of finding the informant reliable, State
20 v. Sullivan? I mean, that's what we're dealing with.
21 We're not dealing with a traditional confidential
22 informant concerning drugs.

23 MR. PENNINGTON: That is true.

24 THE COURT: I mean, we're dealing with a
25 citizen, i.e., even though he was the fiancé of the

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1 victim.

2 MR. PENNINGTON: That is the crux of my argument
3 on that point about his reliability. With hindsight,
4 twenty-twenty hindsight knowing where we are two years
5 later, I think that would make sense. But I'm going
6 on what they knew and what they told the magistrate in
7 obtaining this warrant, which I think is the
8 restrictions that we have to set in terms of
9 determining whether this warrant had probable cause as
10 it was presented to the magistrate.

11 If we were to go into a full, wide-ranging
12 exploration of what's been validated subsequently,
13 obviously we would be doing a whole different
14 conversation of what is probable cause.

15 But in this setting Mr. Bartley, like it or not,
16 was the fiancé of the victim, who had reported her
17 missing and who was not immediately forthcoming to the
18 law enforcement officers about the extent of her drug
19 use.

20 THE COURT: But then you're going outside the
21 affidavit. I mean, the affidavit --

22 MR. PENNINGTON: That is true.

23 THE COURT: The affidavit very clearly says
24 Mike Bartley, the fiancé of the victim, stated that he
25 last spoke with the victim on August the 8th, 2010,

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1 and she informed him that she was traveling to
2 Charleston with Darryl Drayton, also known as "D".

3 Now, is that sufficient? I don't think we can
4 go outside what's in the affidavit, can we?

5 MR. PENNINGTON: I think that if the officers
6 testify --

7 THE COURT: I mean, if that's your basis that
8 the affidavit is insufficient, we've got to go by the
9 affidavit.

10 MR. PENNINGTON: Well, let's do that, Your
11 Honor. I'll follow that logic with you. And I
12 believe that --

13 THE COURT: Well, do you agree with that or
14 disagree?

15 MR. PENNINGTON: I believe that what the
16 magistrate was told was what was on the warrant. And
17 I completely agree with you that we should restrict
18 ourselves to that. And what the -- what the warrant
19 does not say is is that they have found it in any way
20 reliable. They have a report, but they don't
21 corroborate --

22 THE COURT: They don't corroborate --

23 MR. PENNINGTON: -- they get to be involved --

24 THE COURT: -- the citizen, so to speak?

25 MR. PENNINGTON: That is correct.

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1 THE COURT: Okay.

2 MR. PENNINGTON: And so what we have is the
3 affiant, Kip Cooke, who's a sheriff's deputy in
4 Charleston County who appears in front of the night
5 bond magistrate in Charleston and who is not the lead
6 detective in the case and who is essentially taking
7 what he's given by the other detectives and presenting
8 it for a yes or no on the warrant. And the warrant
9 does not vouch that they verify what he said.

10 But they do go further to this extent. They
11 use false verification or inaccurate verification.
12 In an attempt to help the magistrate reach the finding
13 that this is trustworthy in terms of going into
14 Mr. Drayton's privacy with his phone, they go with the
15 statement that is utterly contradicted by the facts,
16 which is that there is a third-party separate witness
17 came forward and provided information about a
18 conversation between Darryl Drayton and a friend and
19 neighbor of the victim, named Shannon, in which they
20 discussed the murder of the victim.

21 That statement has several factual problems
22 because -- and I believe it is conceded --

23 THE COURT: Well, it doesn't really say anything
24 factually. It just said they had a conversation.

25 Doesn't say what it was.

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1 MR. PENNINGTON: Well, I'm going to contend --

2 THE COURT: It insinuates that they talked about
3 the murder, but it doesn't say that.

4 MR. PENNINGTON: Well, they discussed the murder
5 with --

6 THE COURT: Right. But it doesn't say what they
7 discussed.

8 MR. PENNINGTON: Correct.

9 THE COURT: So, I mean, it's really almost
10 innocuous.

11 MR. PENNINGTON: Well, I took that position
12 initially myself, in the sense of how -- what does
13 that statement mean. In the context of seeking
14 probable cause, it seems to me that it would have no
15 place in the warrant if the officers were not
16 contending that it wasn't incriminating. In other
17 words, the juxtaposition of this statement with the
18 claim of Mr. Bartley, it seems to be supporting Mr.
19 Bartley's claim that this is a reliable reason to go
20 forward with finding probable cause and searching Mr.
21 Drayton's phone. If it has no evidentiary weight, it
22 shouldn't have been in there. It's -- I mean, if it
23 has no weight, there's no reason to put it in there.

24 And I do have the magistrate present and we can
25 offer his testimony. I will proffer, as I did in

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1 chambers to the court, that last week I interviewed
2 him and simply presented him with a chance to read the
3 warrant and read that second sentence and ask him if
4 he -- how he knew that, did it -- did he infer that
5 that was to imply something incriminating --

6 MS. SHEALY: Your Honor, I would object at this
7 time. Because we did speak with the magistrate. He
8 indicated he did want to move to squash the subpoena.
9 And so I think that --

10 THE COURT: Okay. Well, we'll get --

11 MS. SHEALY: Okay.

12 THE COURT: -- we'll get to it in just a second.
13 Okay?

14 MR. PENNINGTON: And I'll contend that if Your
15 Honor views this as a critical question, then he will
16 be the best source of that and an essential witness.
17 And under the In Re: Whetstone decision of our court,
18 magistrates are perfectly available as subpoenaed
19 witnesses, as fact witnesses. And in that case -- it
20 was found that the judge, the circuit judge, in that
21 case was not needed for that PCR. In this setting,
22 the Court may determine that it does need the honest
23 appraisal of this magistrate.

24 THE COURT: Go ahead with your argument.

25 MR. PENNINGTON: Yes, sir.

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1 So what I was about to say is is that the
2 magistrate found that this was -- implied that this
3 was not just a discussion of the news or what was
4 going on but that these were incriminating remarks
5 which was essentially adding weight to the reason to
6 issue the warrant.

7 So what we know now is that there was no
8 separate person and that from my interview last week
9 with Detective Cooke, who was the affient -- and this
10 was after he had spoken with the lead detectives in
11 preparation for our meeting with the solicitor -- that
12 he admitted that the source of this information never
13 existed and that it was some sort of rouse to mislead
14 the defendant when he got the warrant to -- insofar as
15 judging how willing Ms. Shannon Sekanina was to
16 provide information to the police.

17 More dramatic is that the described conversation
18 did not contain anything that was not public
19 information coming from Mr. Bartley. Mr. Bartley had
20 been in touch with Shannon that morning, the morning
21 of August the 8th. He had relayed what he knew and he
22 continued throughout the day to relay information that
23 he knew and that there was no -- and there still is no
24 claim that Mr. Drayton had more information than what
25 had been provided to him by Sekanina, by Shannon

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1 Sekanina, and by Mr. Bartley when they spoke, et
2 cetera.

3 So what is troubling is that Franks v. Delaware
4 provides that while warrants are to be presumed valid,
5 that that presumption disappears when there is
6 materially false claims of facts that are essential to
7 probable cause. And we think we have that squarely in
8 this case where we have what is a materially
9 inaccurate, misleading, dare I say false claim, that
10 implies, at the very least, that there were
11 incriminating admissions by Mr. Drayton to Shannon
12 that would add weight to this claim of a need for a
13 warrant.

14 Given that, I then fall back to where we
15 started, which is is there -- if you redact -- if I
16 understand the process, the Court could choose to
17 redact the entire statement by referencing the
18 conversation between Drayton and Sekanina and look to
19 see whether or not Mr. Bartley's initial report is
20 sufficient. And we contend -- and I've supplied the
21 Court with the cases where our courts have said that
22 reliability is critical in making a determination.
23 People can make all kinds of claims. The question is
24 is there any real finding or reliability. And in this
25 setting, there is no claim for reliability. And there

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1 couldn't have been, because at that early stage of the
2 investigation, they were still evaluating everyone's
3 credibility.

4 As I have proffered to the Court, the same day
5 that the warrant was issued, which was the 10th, there
6 was a swab taken of Mr. Bartley's cheek to get his
7 DNA, from hair, to DNA at the crime scene. There
8 were, as I mentioned a moment ago -- in the initial
9 report to Detective or Officer Reynolds, there were --
10 there was partial disclosure about what had been going
11 on in subsequent interviews. Mr. Bartley decided to
12 tell about her history of using and selling drugs in
13 more detail.

14 So that I think under those circumstances, any
15 conscientious law enforcement officer would be saying,
16 standard operating procedure, we have a paramour who
17 goes missing. Until we rule out or we know more, the
18 paramour is always a suspect in those kinds of
19 settings.

20 So you're left with, on Tuesday night, which was
21 roughly -- was less than forty-eight hours later,
22 they're still swabbing his cheek, and they're going to
23 the magistrate and saying, let's do this warrant this
24 way; we'll report what he said reporting a
25 conversation about her going out of town with Drayton

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1 and we'll corroborate it with a claim that he talked
2 about the murder with Shannon. That's why that
3 statement is in there. It's materially misleading and
4 I believe based on their own formulation that it would
5 be necessary probable cause.

6 The last thing I would say about my argument is
7 the nexus necklace [phonetic] claim. And it's in
8 page --

9 THE COURT: Page 12.

10 MR. PENNINGTON: Yes, sir.

11 And there the idea is to give the magistrate
12 some reason to think that the information sought is
13 going to have some evidentiary value. And there is no
14 claim, hint, suggestion, or in any way, facts, given
15 to the magistrate that would help that magistrate know
16 that these phone calls would have some bearing. So it
17 becomes a kind of a, well, if the person's a suspect,
18 let's just look at their phone calls without any
19 probable cause, which, again, I find -- or I've argued
20 to the Court is deficient.

21 If there had been a further claim of some kind
22 that there had been telephonic communications between
23 the two, obviously that would have strengthened the
24 warrant. It's lacking in that regard.

25 This crime does not involve the use of a phone.

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1 It involves the claim of that they were together and a
2 murder occurred that would not have necessarily have
3 implicated phone use in any way on its face.

4 So that the -- I will go ahead and mark as a
5 Court's Exhibit the stipulation and then --

6 I guess you've seen a copy of the stipulation?

7 THE COURT: Yes, sir. You gave me a copy of it
8 and I read it. I just left it on my desk in the
9 office. I didn't bring it in.

10 MS. SHEALY: No objection.

11 [Whereupon, Court's Exhibit Number 1 is marked
12 by the court reporter]

13 MR. PENNINGTON: It's now Court's Exhibit 1.

14 THE COURT: As to the motion.

15 MR. PENNINGTON: As to the motion. Yes, sir.

16 THE COURT: Okay.

17 MR. PENNINGTON: And what it provides is that
18 you may accept as true that in the conversations
19 between Drayton and Shannon that Drayton denied ever
20 going to Charleston, denied any knowledge of the
21 involvement in the disappearance, and that --

22 Well, I think that covers what is the
23 stipulation. And I'll pass it up to the Court.

24 Might want to put a staple in this. Or you may
25 want to put a staple in it.

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1 [Whereupon, Mr. Pennington proffers documents to
2 the Court]

3 MR. PENNINGTON: What I think is also -- there's
4 one more relevant --

5 THE COURT: I'm sorry. What? Go ahead.

6 MR. PENNINGTON: There's one more, I believe,
7 relevant consideration. And you may disagree or you
8 may agree. But there was a level of indifference to
9 the responsibilities of accurate swearing, truthful
10 swearing, in this case, by this agency, that is bourne
11 out by the murder warrant that was signed two days
12 later, in which we don't contest the murder warrant as
13 probable cause but I use this as information to
14 provide to the Court that --

15 MS. SHEALY: I would object to the relevancy
16 again, Your Honor.

17 THE COURT: Overruled. Go ahead.

18 MR. PENNINGTON: The murder warrant provides the
19 statement that Shannon Johnson, a friend and neighbor
20 of Lukaitis, stated that she spoke to Ms. Lukaitis on
21 August 8th, which would have been the Sunday night,
22 and was informed that she was in Charleston with the
23 defendant, Darryl Drayton. Now, that is a whopping,
24 huge claim. That is essentially a statement that this
25 witness stated that the victim herself told this other

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1 person that she was in Charleston with the defendant.

2 What we've since learned in this setting is that
3 there is a Shannon Sekanina and there is a Tina
4 Johnson, both of whom have been interviewed, both of
5 whom cell records have been examined, and neither of
6 whom had any such conversation with the victim on
7 Sunday night. So that this is another illustration of
8 a reckless disregard for the accuracy of what were --
9 are the sworn facts going to provide probable cause.

10 My point is is that if the Court rules that this
11 is information that is protected, then -- as I believe
12 that it should -- the probable cause, we contend, is
13 absent both for lacking in nexus as to his phone calls
14 and as to providing reliable information that the
15 magistrate would need to be able to reach a
16 determination of probable cause.

17 THE COURT: Okay. Let me ask you a question.

18 MR. PENNINGTON: Yes, sir.

19 THE COURT: Now, other than conversations -- and
20 in this particular case we're not talking about
21 conversations other than a misuse of a cell phone,
22 harassment, or something to that extent. The standard
23 for the nexus is as follows: there's sufficient
24 reason to believe that evidence of criminal activity
25 will be found in the location specified.

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1 So please tell me how you could ever find
2 evidence of a murder through a phone record and phone
3 information. How could you ever meet that standard?

4 MR. PENNINGTON: I believe that the officers
5 would say that there were reasons to think that they
6 had been communicating and that those records would be
7 valuable in placing the parties.

8 THE COURT: Well, I mean, that just sort of
9 goes to the circumstantial evidence that there was
10 communication.

11 MR. PENNINGTON: Those facts were not supplied
12 to --

13 THE COURT: So your argument is --

14 MR. PENNINGTON: -- to the magistrate.

15 THE COURT: Your argument is that the evidence
16 that the parties had talked to each other would be
17 evidence or activity of the criminal activity? The
18 conversation between the parties would be evidence of
19 criminal activity, i.e., when they were together? All
20 it's going to show is they were together and they
21 talked together; right?

22 MR. PENNINGTON: I don't believe that the
23 warrant alleges a conversation between my client and
24 the victim.

25 THE COURT: It just alleges information trying

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1 to determine his location through the triangulation of
2 the cell towers; correct?

3 MR. PENNINGTON: It -- well, it does.

4 THE COURT: So that information alone, how would
5 that ever -- how could you ever show sufficient reason
6 of evidence of the activity without looking at the
7 cell towers first?

8 MR. PENNINGTON: By having some indication, some
9 evidence, that these people were talking on the phone
10 on a regular basis. And that material fact is not
11 included in this warrant. It's simply, again, the
12 ball that might have provided -- that might have put
13 them over the edge, in terms of the accuracy of the
14 warrant, had Mr. Bartley made that further assertion
15 and the officers chosen to include that as grounds for
16 probable cause. But we're confined, as you said, to
17 the four corners of the warrant. And this magistrate
18 didn't have the benefit of that information.

19 THE COURT: All right. Thank you very much.

20 MR. PENNINGTON: Yes, sir.

21 THE COURT: Ms. Shealy.

22 MS. SHEALY: Thank you, Your Honor. Beginning
23 first with the Act that Mr. Pennington --

24 THE COURT: Let me just put that to rest right
25 now. Okay? I think that Act is only on the

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1 interceptions. Okay?

2 MS. SHEALY: That's correct. And I have that --

3 THE COURT: It doesn't have anything to do with
4 the stored information that Verizon and Alltel have on
5 their customers. Okay?

6 MS. SHEALY: That's correct. It --

7 THE COURT: It's about intercepting
8 conversations, is what the statute was for. To
9 prohibit that.

10 MS. SHEALY: That's correct. That's --

11 THE COURT: And I don't think it has anything to
12 do with this particular case or this subject matter.

13 MS. SHEALY: Yes, sir.

14 THE COURT: Okay?

15 MS. SHEALY: Okay. Thank you.

16 Then if we could address McKnight. And as a
17 reminder, the State's position is that this is not a
18 search and that the defendant does not have standing.

19 In regarding McKnight, and I'm quoting from
20 McKnight, it does state that one who seeks to have
21 evidence suppressed on this basis must establish that
22 his own fourth amendment rights were violated. And it
23 also states: however, the primary benefit of the
24 statute -- that being the search warrant statute -- is
25 to the person arrested or searched.

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1 And what the factual situation in McKnight was,
2 it was a drug bust in a mobile home and several people
3 were searched and arrested. And it extended to those
4 people who were searched and arrested, but were not
5 the homeowners, the right to bring up the search in
6 court even though they were not the homeowners. That
7 is not analogous here. It is the phone company that
8 is searched in this case. So McKnight is not
9 applicable.

10 Regarding the statutes that I handed up -- and I
11 do want to put this on the record, Judge. Regarding
12 Smith v. Maryland, and it does relate to a pen
13 register, it sets out the CAT standard which sets out
14 the test that the first is whether the individual by
15 his conduct has exhibited an actual subjective
16 expectation of privacy, whether in the words of the
17 CAT's majority the individual has shown that he seeks
18 to preserve something as private. The second question
19 is whether the individual's subjective expectation of
20 privacy is one that society is prepared to recognize
21 as reasonable. It further states that even if the
22 petitioner did harbor some subjective expectation that
23 the phone numbers he dialed would remain private, this
24 expectation is not one that society is prepared to
25 recognize as reasonable. This court has consistently

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1 held that a person has no legitimate expectation of
2 privacy in information he voluntarily turns over to
3 third parties.

4 In the Miller case, for example, the court held
5 that a bank depositor has no legitimate expectation of
6 privacy in financial information voluntarily conveyed
7 to banks and exposed to their employees in the
8 ordinary course of business. The depositor takes the
9 risk, in revealing his affairs to another, that the
10 information will be conveyed by that person to the
11 government.

12 This analysis dictates that petitioner can claim
13 no legitimate expectation of privacy here. When he
14 used his phone, petitioner voluntarily conveyed
15 numerical information to the telephone company and
16 exposed that information to its equipment in the
17 ordinary course of business.

18 In United States v. Bynum: this is a case that
19 they were getting both internet information and phone
20 subscriber information. And the court quotes -- and
21 this is a fourth circuit court -- in this case -- I'm
22 sorry. It's Bynum. Bynum can point to no evidence
23 that he had a subjective expectation of privacy in his
24 internet and phone subscriber information, his name,
25 e-mail address, telephone number, and physical

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1 address, which the government obtained through an
2 administrative subpoena. Bynum voluntarily conveyed
3 all this information to his internet and phone
4 companies. In so doing, Bynum assumed the risk that
5 those companies would reveal that information to the
6 police. Even if Bynum could show that he had a
7 subjective expectation of privacy in his subscriber
8 information, such an expectation would not be
9 objectively reasonable. Indeed, every federal court
10 to address this issue has held that subscriber
11 information provided to an internet provider is not
12 protected by the fourth amendment's privacy
13 expectation.

14 And in United States District Court v. United
15 States of America: while the -- excuse me. Excuse
16 me, Judge. While the central issue presented, whether
17 a defendant's fourth amendment rights are violated
18 when the government requires historical cell data
19 location -- historical cell-site location to that data
20 without a warrant based on probable cause is one of
21 first suppression in this district and in the fourth
22 circuit, it is not altogether novel. In light of the
23 expanding use of cellular network information by law
24 enforcement, several courts have recently grappled
25 with the fourth amendment implications of cellular

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1 telephone technology that allows enforcement to
2 approximate the location of suspect cellular phones
3 and by implicating the location of the suspects
4 themselves. A majority of courts, on the other hand,
5 have concluded that the acquisitions of historical
6 site-location data pursuant to the Stored
7 Communications Act to specific and articulable fact
8 standard does not implicate the fourth amendment
9 regardless of the time period involved. These courts
10 have primarily relied on a line of Supreme Court cases
11 construing the scope of fourth amendment rights
12 relating to business records held by third parties.
13 More specifically, the courts have concluded that
14 because people voluntarily convey their cell site
15 location data to their cellular provider, they
16 relinquish any expectation of privacy over these
17 records.

18 So the State maintains that this is not a
19 search.

20 Your Honor, now regarding the examination of the
21 warrant. The language itself survives without that
22 cumbersome sentence that we've been addressing. I
23 wanted to point out, because Mr. Pennington pointed
24 out, that they took a buccal swab of Mike Bartley.
25 Michael Bartley voluntarily gave his buccal swab. He

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1 reported his fiancé missing. He told the police that
2 she said she was going to Charleston with Darryl
3 Drayton. She was found in Charleston County. He told
4 the police, and the police put in their search
5 warrant, she was going to Charleston County with
6 Darryl Drayton, her dead body was found in Charleston
7 County. He had spoken to her on the phone.

8 When they are investigating a murder case, it is
9 obvious to a magistrate, when they are seeking records
10 of telephone calls, cell tower information, he doesn't
11 -- they don't need to spell it out to the judge.
12 They're interested in knowing where he was traveling,
13 if they are asking for cell tower information. That's
14 obvious. The magistrate knows by the language in the
15 search warrant that she was traveling from Bluffton to
16 Charleston with Darryl Drayton. So the warrant
17 survives, even if that language of that sentence is
18 troublesome.

19 I disagree with Mr. Pennington's version of Kip
20 Cooke's saying that he was creating a ruse for the
21 magistrate. We jointly spoke to Mr. Cooke and, Judge,
22 he indicated that he can't explain why the sentence
23 was written that way.

24 When I look at that sentence, it looks like a
25 good example for an English teacher to try to have

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1 someone correct it, because you don't know -- it's
2 like who are you referring to when you say a separate
3 witness.

4 It's obvious that it's a separate witness from
5 Mike Bartley, but it's not obvious if the second
6 witness is also Shannon Hooper or Shannon Sekanina. I
7 don't remember which way she's referred to within the
8 paragraph. It's a poorly-written sentence. We've all
9 written poorly-written sentences.

10 And Mr. Cooke did not have a fresh memory of
11 what exactly he was trying to convey in the sentence.
12 He did say, I don't know, maybe I was trying to not
13 state that Shannon was the person giving the
14 information about the phone calls with Mr. Drayton.
15 But he didn't remember that specifically, because he
16 was looking at the sentence going, oh, my gosh.

17 But what is clear is never in that sentence does
18 it say Darryl Drayton told us he did it, Darryl
19 Drayton has given details about the murder, or
20 anything to suggest anything -- oh, my goodness, I
21 can't get the word out -- inculcating himself.
22 Nothing suggests that within that sentence. So even
23 if you took the sentence out, there is probable cause
24 to warrant the issuing of that search warrant.

25 Additionally, Judge, the officers acted in good

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1 faith in the getting the search warrant. The judge
2 signed it. The judge looked at it and signed it. He
3 signed several other search warrants that day that did
4 not have that sentence in it but had the other
5 language in it for other people's search -- other
6 people's cell phone records and the officers acted in
7 good faith. I don't think there's a problem anyway.
8 But it's not a search. I don't think the officers in
9 any way were trying to be dishonest with Judge Bligen,
10 someone that they work with. They're trying to
11 investigate a case and investigate it quickly.

12 And I do need to put in the record, just so
13 it'll be clear for the record, this is a case where
14 the investigation started out in Bluffton. He reports
15 it to the local Beaufort County officers that his
16 fiancé is missing, the last time he spoke with her was
17 when she was in Charleston with Darryl Drayton, that
18 she was going to be on her way back and thought she
19 would be back in about an hour. She never returned.
20 He fretted all night. In the morning, he started
21 looking for her. The night before, however, he's
22 calling jails, he's calling the hospital. The next
23 morning, he does go over to Shannon Hooper's house --
24 apartment, who's in the same apartment complex with
25 him. He goes over to Tina Johnson's house. And those

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1 three people are communicating with each other: Mike
2 Bartley, Tina Johnson, Shannon Hooper. And as you can
3 imagine, they're having phone conversations with each
4 other. So Tina is telling Shannon what Mike told her,
5 Shannon is telling Mike what Tina told her. In the
6 interim, Tina Johnson's child sees Darryl Drayton.
7 He's got an injured finger and scratches.

8 All of this is being relayed to the detective in
9 Bluffton. That detective is relaying it to the
10 detectives in Charleston and then they are relaying it
11 to Kip Cooke, who is drafting the warrant. So if
12 mistakes were made, they were not made purposefully,
13 they were not made to deceive, and they were not made
14 in an effort to contrive something to get this warrant
15 that they absolutely were entitled to get. I mean,
16 there was no reason to lie in a warrant to get his
17 records. Thank you.

18 THE COURT: Thank you.

19 MR. PENNINGTON: In reply, Your Honor, I'll be
20 brief.

21 First of all, I don't have copies but I can
22 provide copies for the Court for the search warrants
23 that the solicitor is referencing that were signed the
24 same evening, August 10th, 2010, by Magistrate Bligen.

25 THE COURT: If you want to mark it Court's

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1 Exhibit Number 2, that will be fine.

2 MR. PENNINGTON: I would. Although I would like
3 to do that after we adjourn, if I may.

4 THE COURT: That's fine. You can substitute a
5 copy if you don't have a copy.

6 MR. PENNINGTON: I don't have a copy.

7 The warrants were for Mr. Bartley's records,
8 which is obviously he -- said that Mr. Bartley
9 provided his own records. It is also for the victim's
10 cell records.

11 And then to correct perhaps a --

12 THE COURT: I've got a copy of it, if you want
13 me to mark it a Court's Exhibit.

14 MR. PENNINGTON: I don't believe that you have
15 copies of what are these other four -- three warrants.

16 THE COURT: Well, I don't. Just the affidavit
17 on this case. Do you want to mark that?

18 MR. PENNINGTON: It has been attached as part of
19 my -- it's an Exhibit A in my motion, Your Honor.

20 THE COURT: Okay.

21 MR. PENNINGTON: The warrant for Shannon
22 Sakanina's records does have the same offending
23 statement: a separate witness came forward and
24 provided information about a conversation between
25 Darryl Drayton and a friend and neighbor of the

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1 victim's, named Shannon, in which they discussed the
2 murder.

3 And so I want the record to be clear that, in
4 fact, they did use that when they were going outside
5 the nuclear-family subpoena request. They --

6 MS. SHEALY: Our apologies, Judge. Mr.
7 Pennington is correct about that.

8 MR. PENNINGTON: With regard to the talking with
9 the officers, I don't in any way mean to impugn that
10 these aren't vigorous, hardworking law enforcement
11 officers. What we're here to decide is whether or not
12 the magistrate was given probable cause on those four
13 corners of the warrant.

14 The solicitor's recitation of facts about other
15 information that was potentially known and was known
16 to Beaufort police officers didn't make it into this
17 search warrant. The magistrate did not have those
18 facts about seeing -- someone seeing Mr. Drayton with
19 a cut finger and all those things that are -- could
20 have perhaps provided additional probable cause but
21 which were not offered.

22 I would call Officer Cooke for the limited
23 purpose of clarifying what he's reported to us last
24 week and that I think it is probative on this issue
25 that he, last Wednesday, took the position that he had

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1 made up a third party who talked to the police to
2 shield Shannon from criticism.

3 THE COURT: That's fine, if you want to proffer
4 it.

5 But let me say this. As far as I'm concerned,
6 the separate witness paragraph or sentence, it's so
7 ambiguous and so confusing, as far as I'm concerned,
8 I'm going to redact it.

9 MR. PENNINGTON: Okay.

10 THE COURT: Okay?

11 MR. PENNINGTON: Okay.

12 THE COURT: All right. If you want to call him
13 for that purpose, that's fine.

14 MR. PENNINGTON: If you're going to do that --

15 THE COURT: But I think it's so ambiguous,
16 there's no way -- you could come up with a half a
17 dozen interpretations of that sentence. It's not even
18 a sentence. I don't know where he took English, but
19 it's not even a -- it's not even a -- I guess it's a
20 multi-compound sentence of some sort.

21 MR. PENNINGTON: Well, if the Court's position
22 is --

23 THE COURT: My position is I'm going to redact
24 it and look at the rest of the warrant and see if it's
25 sufficient. Okay?

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1 MR. PENNINGTON: That's where I wanted the Court
2 to go. If the Court is there, then --

3 THE COURT: Okay? I'm there.

4 MR. PENNINGTON: -- we don't need that
5 testimony.

6 THE COURT: I'm there.

7 MR. PENNINGTON: So, essentially, if my motion
8 is having eliminated or redacted that part that
9 Brighton -- that the Bartley claim was insufficient
10 and that all these other facts were not available to
11 the magistrate, and on its face it lacks probable
12 cause, and a nexus to my --

13 THE COURT: Correct.

14 MR. PENNINGTON: Thank you.

15 THE COURT: All right.

16 MR. PENNINGTON: One other thing I do want to
17 just state for the record, in terms of contrasting
18 some of these other courts, it's looking like we're
19 going to make law in this case in the sense that South
20 Carolina has never ruled --

21 THE COURT: We're getting ready to.

22 MR. PENNINGTON: We are getting ready to.

23 THE COURT: We're getting ready to.

24 MR. PENNINGTON: I would contend that the
25 privacy concerns that go to an individual supplying

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1 information to their internet service provider is not
2 the same thing as ones use of ones mobile phone. So I
3 would ask the Court not to consider binding them in
4 the same light.

5 In terms of the solicitor's recitation of the
6 1979 U.S. Supreme Court decision, Smith v. Maryland,
7 where she described the limits of expectation of
8 privacy, this is akin to this area where at that time
9 the Supreme Court said that. And then Congress came
10 back and said they disagreed and created an
11 expectation of privacy for those very records.

12 Just as in the death penalty arena where they
13 are changing trends of expectations of privacy, it
14 seems to me that the South Carolina Legislature's
15 decision to pass such a rigorous interception act
16 suggests that records are, in South Carolina, to be
17 viewed as private, personal matters and while there's
18 no -- if the Court reads it narrowly, then I suppose
19 you could say that these Verizon records don't apply.
20 We contend that they do. But that even if the Court's
21 view of it is correct, I think the Court has to make
22 the additional finding that my client had no
23 reasonable expectation of privacy. It seems to me
24 counterintuitive to what people really believe insofar
25 as their use of their cell phones and whether or not

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1 they believe that a third party can, on no probable
2 cause and no justification, simply get those records
3 because they wish to have them.

4 So I would ask the Court in its ruling to
5 specify whether it's going to find that the warrant
6 was sufficient or whether or not there is, in fact, no
7 expectation of privacy and no warrant would be
8 required.

9 THE COURT: Okay. As the State pointed out,
10 this warrant was against Verizon, not the defendant in
11 this particular case. Although it was subject to his
12 own records and I do think he has standing. And the
13 reason I point that out is is for this reason. Number
14 1, this Court finds -- and the Court is going to
15 follow the long line of federal cases that have stated
16 there's no expectation of privacy as to records. I'm
17 not talking about conversations, now. I'm not talking
18 about interception of conversation or storing those
19 conversations and obtaining conversations. I'm
20 talking about the records that specifically in this
21 case the Court is going to find that there's no
22 expectation of privacy.

23 Now, having said that and referring to the
24 Maryland case, the United States District Court case
25 and the Fourth Circuit cases, the Stored Communication

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1 Act, 18 U.S. -- I think it's -- I can't -- the
2 section. Anyhow, that communication Act affects all
3 of the carriers, i.e., Verizon, Alltel, AT&T, whoever
4 is providing the service.

5 So even though this has not been addressed in
6 South Carolina by the legislature or by case law, the
7 Stored Communication Act I think is persuasive
8 argument on this Court. And it's persuasive argument
9 to this extent: we're not talking about probable
10 cause in this search warrant, we're talking about
11 reasonable grounds to believe that the records and
12 other information sought are relevant and material to
13 an ongoing and criminal investigation. This Court is
14 going to review that warrant in that light primarily
15 because the provider of these records or the holder of
16 these records have to be protected from the federal
17 violation law, i.e., the Stored Communication law. So
18 you've either got to go with a warrant in South
19 Carolina or a court order.

20 There's no statute, there's no case, that
21 provides that mechanism whether it's a warrant or
22 whether it's an order so this Court is going to look
23 at this warrant as obtaining an order from the
24 magistrate to obtain the records to determine the --
25 I'll just read: the identification address of the

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1 cellular towers related to the use of the defendant's
2 cellular telephone is relevant to the ongoing and
3 criminal investigation as to this murder charge.

4 The language in the warrant that states Mike
5 Bartley, the fiancé of the victim, stated he last
6 spoke to the victim on August the 8th, 2010, and she
7 informed him that she was traveling to Charleston,
8 South Carolina, with Darryl Drayton, also known as
9 "D". Bartley provided the Verizon cellular telephone
10 number 84363689422 as a contact number for Darryl
11 Drayton. It goes on to say this -- it is believed
12 that the call or and information contained in here
13 will provide information as pertinent to the death
14 investigation. All evidence being sought will be
15 compared with evidence already obtained in this
16 investigation.

17 They were trying to investigate a murder and
18 with the persuasive argument of federal cases and the
19 persuasive argument of the Stored Communication Act.
20 The Court finds that the order obtained by the
21 magistrate was sufficient to obtain the records and
22 reasonable grounds were proven under that warrant.
23 And this Court specifically finds probable cause is
24 not necessary.

25 Anything else? Or any clarification on what I'm

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1 trying to say and do?

2 As I said -- as you said, you may be making some
3 law in this case. I don't know. I'm laying the
4 groundwork for you to do that.

5 MR. PENNINGTON: Yes, sir.

6 We would obviously just -- we contend that
7 probable cause is necessary. We've made that clear --

8 THE COURT: I understand.

9 MR. PENNINGTON: -- and we appreciate the
10 Court's --

11 THE COURT: There's no question that you made
12 that determination. I just disagree with you.

13 MR. PENNINGTON: Yes, sir.

14 THE COURT: And the problem is there's no
15 mechanism to protect the providers from the federal
16 law. And if they just give it to you willy-nilly,
17 it'll violate the federal law. We need a mechanism.
18 It's either going to have to be a warrant or a court
19 order. In this case I'm saying it's the warrant
20 obtained in the court order. Okay?

21 MR. PENNINGTON: Yes, sir.

22 THE COURT: That's as simple as I can put it.

23 - - -

24 - - -

25 - - -

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1 fiancé of the victim. I have asked that he not be in
2 here. He's our first witness. But even though --

3 THE COURT: I mean, I was just asking who do you
4 want to stay in here as the victim. Or do you?

5 MS. SHEALY: All other victims in the case are
6 not witnesses. So I'm going to ask Mike Bartley to
7 sit out. He's my first witness.

8 And then if we can get one more chair for our
9 law clerk to be at the table, if that's possible.

10 [Off the record momentarily]

11 THE COURT: Are we on the record, Mia? Are you
12 ready?

13 THE COURT REPORTER: Yes, sir.

14 THE COURT: All right. We're back on the record
15 in the case the State of South Carolina v. Darryl
16 Drayton, charged with murder, case number 2010-GS-10-
17 8551.

18 I understand the attorney on behalf of the
19 defendant, Mr. Pennington, would like to put something
20 on the record as a result of the Court's decision
21 yesterday. Is that correct?

22 MR. PENNINGTON: That is correct, Your Honor.

23 I in no way want to argue with the Court's
24 ruling.

25 THE COURT: I understand. I'm going to allow

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1 you to go -- go ahead.

2 MR. PENNINGTON: Thank you very much, Your
3 Honor.

4 What I wanted to clarify is several things.
5 First is is that I have marked as Court's Exhibits,
6 and they just need to be entered as Court's Exhibits,
7 what are the other search warrants that were issued
8 that afternoon by the officers. There were a total of
9 five warrants, as you -- as I've referred to. One of
10 the warrants was obviously for my client, his phone
11 calls, which was Court's Exhibit 1.

12 There is also now what I'm offering Court's
13 Exhibit 3, which is Michael Bartley's cell records;
14 Court's Exhibit 4, which is Alexis Lukaitis' phone
15 records; Shannon's phone records. This is the search
16 -- these are the -- this is the search warrant for
17 Verizon records for the victim and her fiancé. And
18 then there are -- there's Court's Exhibit 5, which is
19 for Shannon Sekanina or Shannon Cooper Sekanina. And
20 finally Court's 6, which is an alternate phone number
21 for the defendant.

22 And we -- I've made reference to these, but we
23 didn't formally mark them until now. I would ask the
24 Court to make that a part of the record.

25 THE COURT: That will be fine. Anything else?

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1 [Whereupon, Court's Exhibit Number 3 is marked
2 by Mr. Pennington]

3 [Whereupon, Court's Exhibit Number 4 is marked
4 by Mr. Pennington]

5 [Whereupon, Court's Exhibit Number 5 is marked
6 by Mr. Pennington]

7 [Whereupon, Court's Exhibit Number 6 is marked
8 by Mr. Pennington]

9 MR. PENNINGTON: Yes, sir.

10 On listening to the Court's ruling yesterday --
11 as you know, I submitted a thirteen-page memorandum of
12 law that really focused mostly on the South Carolina
13 right of privacy under our state constitution, Article
14 1, Section 10, where I contended that the warrant
15 requirement, the requirement of police showing
16 probable cause to a neutral and detached magistrate
17 was the standard for the issuance of the warrant.

18 And after the Court's ruling, I did go back last
19 evening and look more closely at what is the emerging
20 trends in our federal courts. And as the Court's
21 ruling explicitly noted when the Court made reference
22 to the Stored Communication Act of the federal courts,
23 that Congress, in effect, set up a barrier for the
24 dissemination of cellular records by requiring that
25 vendors not provide those with court order. And the

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1 federal courts have broadly construed this as
2 requiring a what I would call reasonable suspicion
3 standard.

4 THE COURT: I think the cases refer to
5 reasonable grounds. But --

6 MR. PENNINGTON: And what I have noted is that
7 today in the Fifth Circuit Court of Appeals there is
8 an opinion coming from the District Court of Houston,
9 -- written opinion which I've cited. In re:
10 application of the United States of America for
11 historical cell-site data, which is noted as
12 magistrate number H-10-998M, 990M and 981M, where the
13 magistrate judge, Steven Smith, in Texas, goes to
14 pains to review what is the -- what are the trends.
15 And what they're finding is that courts have commonly
16 been issuing -- district courts have been giving what
17 -- these court orders for reasonable suspicion or
18 reasonable grounds on a regular basis but that given
19 what has emerged in the U.S. Supreme Court lately in
20 terms of some of the concerns about protecting
21 particularly home privacy where the case that involves
22 the --

23 [Whereupon, Mr. Pennington reviews documents]

24 MR. PENNINGTON: Here. I have it right here.

25 The thermal imaging case in 2001, Kyllo v. U.S.

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1 533 U.S. 27, in 2001, where the Supreme Court struck
2 down the use of thermal imaging devices on a home as a
3 search, that would require a warrant, because of the
4 protection of privacy that's related to homes.

5 Then there was another case, U.S. v. Karo, 468
6 U.S. 705, a 1984 case, where the narcotics officers
7 had put a beeper into an ether can that they knew
8 would go out and likely be used in the commerce of
9 drugs and cocaine manufacturing. And while they
10 didn't find problems with doing that, providing that
11 beeper ended up in a warehouse, that they found that
12 when it was used to monitor its presence in a home,
13 that that violated the privacy of the resident unless
14 there had been some sort of probable cause.

15 Finally, the GPS tracking case from 2012,
16 earlier this year, U.S. v. Jones, where our Supreme
17 Court directly addressed that there is an expectation
18 of privacy when the level of surveillance gets so
19 high. In that case you are dealing with an alleged
20 narcotics trafficker where they were looking at the
21 movements of this individual through the use of his
22 phone, for what would have been months on end, and
23 would have directly implicated his presence and
24 absence in his home.

25 Those refinements in technology where more and

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1 more information is now being gathered are having what
2 the court contended in Texas as a decisive fourth
3 amendment consequence. And that decisive fourth
4 amendment consequence is is that we're beginning to be
5 able to map people's movements with tremendous
6 specificity and that that is beginning to cross over a
7 line where it's becoming a search as recognized by the
8 fourth amendment. And under the fourth amendment,
9 warrants must issue, in order to breach that privacy,
10 by a standard of probable cause --

11 THE COURT: Aren't those cases talking about the
12 GPS aspect of it, not the cellular --

13 MR. PENNINGTON: They really do.

14 THE COURT: -- the GPS aspect of the records,
15 not what we're talking about here today, the tower
16 information --

17 MR. PENNINGTON: I think the --

18 THE COURT: -- where you can cross-triangulate.

19 MR. PENNINGTON: I would concede that point,
20 Your Honor, in that I believe that those cases are
21 where officers have -- the level of specificity is
22 greater than what we have here where you're looking at
23 a couple of days of simply cell tower pinging data as
24 opposed to if he had had an iPhone and you could
25 somehow reconstruct movement by movement. Those cases

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1 do. And the judge does express that concern.

2 But I note that this is a -- apparently a trend
3 where magistrates across the country are now beginning
4 to reconsider. And so we have decision -- I've given
5 you a decision in New York, a decision from
6 Pennsylvania, and I understand that there are cited
7 decisions in here from Austin, Texas, and Indiana and
8 Massachusetts, all where a line can be crossed where
9 probable cause would be needed.

10 To make it more pertinent and now germane to our
11 case, what we have is that with the totality of
12 circumstances we look at not just federal law. And
13 that's what all the federal courts have been looking
14 at is what is required under the Stored Communications
15 Act and the fourth amendment.

16 I would simply say that we also have in South
17 Carolina a unique provision about the right of people
18 to be secure from unreasonable invasions of privacy,
19 which is in Article 1, Section 10, and that there is
20 no precedent. Up until now, there's no decision
21 that's been reached on this question in South Carolina
22 of looking at someone's cell towers.

23 We will be looking at this for the first time
24 and I would contend in South Carolina, based on that
25 right of privacy and our mandate for search warrants

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1 and the descriptions that are required under our
2 search warrant statute, that Mr. Drayton's right would
3 be that this be a probable cause finding, which we
4 contend is absent in this warrant, rather than a
5 reasonable ground or a reasonable suspicion standard.

6 THE COURT: Thank you very much.

7 Solicitor Shealy, anything you would like to
8 add?

9 MS. SHEALY: Your Honor, I think you touched on
10 it. Mr. Pennington did, as well.

11 But I would assert that the cases that
12 Mr. Pennington handed up: in contrast, ours is not
13 dealing with any home privacy, ours is not dealing
14 with thermal imagery, ours is not dealing with GPS
15 monitoring, ours does not deal with any type of
16 protracted period. They were seeking records from a
17 very limited time period, August 6th through August
18 10th. This is not dealing with an ether can with a
19 beeper. And that this is not something with a high
20 level of surveillance and that, therefore, the fourth
21 amendment's consequences do not exist.

22 Thank you.

23 THE COURT: Okay. Thank you very much.

24 All right. Anything else you need to --

25 MR. PENNINGTON: No, sir. That's my proffer for

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PROCEEDINGS

1
2 THE COURT: Let me see the lawyers up here real
3 quick.

4 [Whereupon, an off-the-record bench conference
5 is held]

6 THE COURT: All right. Anything from the State
7 before we bring the jury?

8 MS. SHEALY: No. I just need to get my folk, if
9 I can.

10 THE COURT: Anything from the defendant before
11 we bring the jury?

12 MR. PENNINGTON: Yes, sir. We're ready.

13 Oh. And I do have one matter, Judge, and this
14 is just a housekeeping chore. When you go to these
15 CLE conferences --

16 THE COURT: You're going to have a clean house,
17 when this is over, you've been doing so much house
18 cleaning.

19 MR. PENNINGTON: I'm telling you.

20 They just remind us to always renew our
21 objections --

22 [Off the record momentarily]

23 MR. PENNINGTON: We're just renewing the two
24 objections that we made that you've already ruled on,
25 which we've had a number of arguments on, dealing with

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1 the search warrant and dealing with the hearsay
2 objection. Would be made under 803.

3 THE COURT: You just wanted to make sure that
4 those issues were preserved; right?

5 MR. PENNINGTON: That's right.

6 THE COURT: Okay.

7 MR. PENNINGTON: And the assistant solicitor is
8 now going to make reference to that evidence. It
9 seemed like the time to do it.

10 THE COURT: Okay. Thank you so very much.

11 MR. PENNINGTON: Yes, sir. Thank you.

12 THE COURT: All right. For the record, I'm
13 going to appoint Lorne G. Walker, juror number 273, as
14 foreman.

15 Will you bring us the jury, please.

16 [Whereupon, the jury enters the courtroom at
17 9:18 a.m.]

18 THE BAILIFF: The jurors are all present, Your
19 Honor.

20 THE COURT: Okay. Thank you.

21 Madam Clerk, if you will swear the jury, please.

22 THE CLERK OF COURT: Raise your right hand to be
23 sworn.

24 [Whereupon, the jury is duly sworn by the clerk
25 of court as follows: do you swear or affirm that you

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OPENING STATEMENT

MR. PENNINGTON: Good morning.

Blood drops and cell phone records in this area where the death occurred are some pieces of evidence that have led the government in this case to rush to judgment, to leap to conclusions, about what happened to Alexis.

They will ask you to pretend that that answers the question of who killed Alexis. Other evidence, however, is going to show you that there are no fenestration products of Darryl Drayton, or any other perpetrator, in the car. There is a cigarette butt thirty-nine yards near the body on the same little road that we're talking about that belongs to, beyond doubt, some other unknown male. There are footprints around the body that the crime scene specialists looked at, examined, photographed, measured, studied, which do not match the shoes that Darryl Drayton had when he was taken into custody that week.

There are clothes that are collected from Darryl Drayton, my client, clothes that he had on, clothes that he -- were turned in by Stephen Edwards that were supposedly his clothes and there was no blood on those clothes, no blood of Alexis Lukaitis.

And the car in Bluffton which the solicitor

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1 referred to, it was, in fact, a white Grand Prix that
2 was Alexis' car, which was back in Bluffton in which
3 they went over with a fine-tooth comb. And you'll see
4 photographs and in those photographs there are
5 numerous spots of blood inside, outside, on the trunk,
6 on the panels. So many, in fact, that the SLED agent
7 will tell you that there were twenty -- that there
8 were fourteen -- well, actually, let me back up.
9 There were seven that were tested by the SLED agent.
10 Fourteen more were given to the sheriff's office. The
11 sheriff's office never sent those for testing.

12 After SLED got done, the Beaufort County police
13 were so concerned that they went back with their own
14 expert, Wendy Contant, and gathered six more swabs of
15 blood, took photographs. Those were submitted for
16 testing to the Charleston County Sheriff's Office, and
17 those were never sent for testing.

18 Ladies and gentlemen, the law says that in cases
19 where there's no witness to what happened and when the
20 jury is asked to rely just on circumstances, that mere
21 suspicion, mere suspicion, is never enough for a
22 finding of guilt. To convict, the law says that you,
23 as a juror, have to rule out every reasonable
24 alternative that explains the evidence other than
25 guilt before you -- and it's only when you can rule

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1 out innocent explanations that you can begin to rely
2 and conclude that this is true evidence of guilt of
3 murder.

4 The judge will instruct you at the end of the
5 case that there is -- in South Carolina and in the
6 United States, that every citizen is presumed innocent
7 until and unless they are proven guilty by competent
8 evidence. And that means that, as the State said,
9 they have the burden of removing every -- all
10 reasonable doubt from your mind as individual judges
11 of the facts of this case. The purpose of the trial,
12 the purpose of taking all that time Monday and Tuesday
13 and getting you here and taking you from your jobs is
14 because you individually, and then together as you
15 deliberate together collectively, are to test the
16 evidence, to evaluate it, and to avoid convicting
17 those that have not been proven guilty. That's your
18 job: to avoid mistakes.

19 Everyone in this room will feel throughout this
20 trial what a tremendous tragedy this case is, what a
21 tremendous loss that Mr. Bartley, that Alexis' father,
22 and other relatives have suffered as a result of this
23 killing. Nothing the defense has or can say can
24 change that. We all feel their loss. But the
25 important thing to remember with that oath that you

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1 took a few minutes ago is that you have to remain an
2 impartial judge of the facts, meaning that you cannot
3 decide a case to make somebody else feel better just
4 based on their suspicions. That's not enough. It
5 wasn't enough yesterday, it's not now, it's not going
6 to be enough tomorrow.

7 We look for what the Court calls moral certainty
8 of guilt. No one is going to come into this courtroom
9 and take an oath and say that they saw my client,
10 Darryl, kill anyone, much less kill Alexis Lukaitis.
11 No one is going to come in and testify and take an
12 oath and swear that they have firsthand knowledge of
13 who was there when she was killed. No one is going to
14 come in and take an oath and say that they're even
15 sure where she was when she was stabbed, or whether
16 her body was put into the trunk and moved. These are
17 going to be unanswered questions that give you an idea
18 of how much the State is going to rely on guesswork,
19 speculation, and suspicion.

20 So at the end of this case, at the end of
21 evidence, you're going to be left with just those
22 suspicions. The State can bring a charge, there can
23 be a rush to judgment to bring a case, but the law
24 does not let you jump to conclusions. At the end of
25 the evidence, you will see that there are reasons to

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1 doubt. We call those reasonable doubts. And the
2 judge will tell you that when you find a reasonable
3 doubt in cases like this, that the only true verdict
4 in a case like that is a verdict of not guilty.

5 THE COURT: Call your first witness, please,
6 ma'am.

7 MS. SHEALY: Thank you, Your Honor. Mike
8 Bartley.

9 [Whereupon, Mr. Bartley comes forward]

10 [Whereupon, Mr. Bartley is duly sworn by the
11 clerk of court as follows: do you swear or affirm
12 your testimony will be the whole truth and nothing but
13 the truth, so help you God]

14 THE WITNESS: Yes.

15 [Whereupon, Mr. Bartley takes the witness stand]

16 THE CLERK OF COURT: State your full name and
17 spell your last name.

18 THE WITNESS: Michael Bartley. B-A-R-T-L-E-Y.

19 MS. SHEALY: Your Honor, at this time -- I had
20 spoken with Mr. Pennington and without objection I
21 would like to offer into evidence State's Exhibits 1,
22 2, 105, 106, 128, 131, 133, 134, 135, 136, 138, 139,
23 140, 141, 142, 144, 151, 152, 153 and 154.

24 THE COURT: All right. No objection?

25 MR. PENNINGTON: No objection, Your Honor.

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1 THE COURT: All right. Admitted with objection.

2 [Whereupon, State's Exhibit Numbers 1 and 2 are
3 admitted into evidence by the Court]

4 [Whereupon, State's Exhibit Numbers 105 and 106
5 are admitted into evidence by the Court]

6 [Whereupon, State's Exhibit Number 128 is
7 admitted into evidence by the Court]

8 [Whereupon, State's Exhibit Number 131 is
9 admitted into evidence by the Court]

10 [Whereupon, State's Exhibit Numbers 133, 134,
11 135 and 136 are admitted into evidence by the Court]

12 [Whereupon, State's Exhibit Numbers 138, 139,
13 140, 141 and 142 are admitted into evidence by the
14 Court]

15 [Whereupon, State's Exhibit Number 144 is
16 admitted into evidence by the Court]

17 [Whereupon, State's Exhibit Numbers 151, 152,
18 153 and 154 are admitted into evidence by the Court]

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1 MICHAEL BARTLEY,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. SHEALY:

6 Q. Mr. Bartley, tell us a little bit about
7 yourself. Where are you from?

8 A. Originally from South Jersey. Moved down about
9 eight years ago to Bluffton, South Carolina.

10 Q. Okay. And how old are you?

11 A. Thirty-five.

12 Q. How far did you go in school?

13 A. High school. Graduated.

14 Q. And was that in Jersey?

15 A. Uh-huh.

16 Q. Okay. Tell us about your relationship with
17 Alexis Lukaitis. How old were you when you met her?

18 A. I was eighteen. You know, we had just -- well,
19 I was actually nineteen.

20 She was friends with a neighbor and we just
21 started hanging out and it grew from there. Years.

22 Q. And how long did y'all date before you became
23 engaged?

24 A. A long time. Seven years, eight years. Seven.

25 Q. How long were y'all engaged for before she died?

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1 A. Two and a half, three years.

2 Q. Okay. And when you became engaged did you, in
3 fact, give her a ring?

4 A. [Indicates affirmatively]

5 Q. Okay. Let me show you this and ask if you can
6 identify it for me.

7 A. Yeah.

8 Q. And is this -- this is the ring you gave her?

9 A. Uh-huh.

10 MS. SHEALY: Your Honor, I'm going to ask that
11 this just be marked for ID at this point, State's 173.

12 THE COURT: 173 marked for identification only.

13 Q. [Ms. Shealy] And how often would Alexis wear
14 this ring?

15 A. Every day.

16 Q. When did y'all move to Bluffton?

17 A. Quite a while ago. I mean, I -- seven, eight --
18 seven years ago at this point.

19 Q. And did y'all, in fact, have children together?

20 A. Yeah. We have twin boys.

21 Q. And what are your little boys' names?

22 A. Scott and Evan.

23 Q. And how old are your boys now?

24 A. Just turned four.

25 Q. And back in August of 2010, how old were they?

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1 A. One year, ten months.

2 Q. Where were you working in August?

3 A. In Savannah at a car dealership.

4 Q. What was the name of the car dealership?

5 A. Southern Motors.

6 Q. And where was Alexis working?

7 A. She was working at Polo at the Tanger Outlets
8 down the street.

9 Q. In Bluffton?

10 A. Uh-huh.

11 Q. And where were y'all living?

12 A. We were living in an apartment complex.

13 Q. What was the name of the apartment complex?

14 A. Lakes at Myrtle Park.

15 Q. Okay. Where did your parents live?

16 A. Down the street. Three miles down the road.

17 Q. Okay. Tell us about your work days during the
18 week that you had. What were your typical hours?

19 A. You know, I would leave the house at like 6:00,
20 6:15 and get home at 7:00 Monday through Friday. Saturday
21 I worked -- I would leave the house at 7:00, get home at
22 5:00, 6:00.

23 Q. And when Alexis was working, who would take care
24 of the boys?

25 A. My mom.

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1 Q. Now, would Alexis take prescription medication
2 that had not been prescribed to her?

3 A. Yes.

4 Q. And did she, in fact, get pills from "D"?

5 A. Yes.

6 Q. Do you see "D" in the courtroom?

7 A. Yes.

8 Q. Could you point him out, please, for the jury?

9 A. Right there [indicates].

10 Q. What color shirt does he have on?

11 A. Gray.

12 MS. SHEALY: Okay. If the record could reflect
13 that he has pointed out Darryl Drayton.

14 THE COURT: Yes, ma'am.

15 Q. [Ms. Shealy] Now, you know now that his name is
16 Darryl Drayton?

17 A. [Indicates affirmatively]

18 Q. You have to say yes.

19 A. Yes. Yes.

20 Q. Okay. At the time, did you know his full name?

21 A. You know, I knew it was Darryl. But "D".

22 Everybody -- all his friends called him "D".

23 Q. And did you know where he lived when you first
24 got to know him?

25 A. No.

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1 Q. Do you know whether he lived in the apartment
2 complex?

3 A. I knew he -- he lived with his girlfriend in the
4 very beginning but he moved out, you know.

5 Q. And you didn't know where he lived at that
6 point?

7 A. No.

8 Q. Did Alexis have other friends in the apartment
9 complex?

10 A. Yes.

11 Q. And who is Shannon Hooper?

12 A. She was the neighbor.

13 She -- her apartment was right behind -- kind of
14 next door to us.

15 Q. Okay. Did you have a relationship with Darryl
16 Drayton?

17 A. No. Huh-uh.

18 Q. You were aware that Alexis had a friendship with
19 him?

20 A. Yeah. Yeah.

21 He was always at Shannon -- you know, they would
22 be over in Shannon's apartment together.

23 Q. Okay. Now, did you know someone named Tina
24 Johnson, as well?

25 A. Uh-huh.

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1 Q. And who was she to you and who was she to
2 Alexis?

3 A. It was Shannon's cousin.

4 You know, that was really -- I didn't -- really
5 wasn't too friendly. I didn't, you know, hang out with
6 them. But, you know, that was their connection, you know.
7 Lexie would get pills from them.

8 Q. Okay. Now, I would like for you, if you would,
9 please, to focus your attention back to August 8th.

10 A. Uh-huh.

11 Q. That was a Sunday?

12 A. Yes.

13 Q. Could you describe for the jury what you were
14 doing that Sunday?

15 A. You know, we were getting ready -- I was getting
16 ready, getting the kids together, going to my mom's house
17 for dinner, you know. Alexis was getting a shower. And,
18 you know, she had a -- she had this fabric -- dryer sheets
19 that she got a little allergic reaction to, so she didn't
20 want to go.

21 Q. When you say she had an allergic reaction to it,
22 was it --

23 A. It was a little rash.

24 Q. -- something you could see?

25 A. Yeah. It was a little rash.

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1 She did it before and I told her to thrown them
2 out and she didn't, so she accidentally used it. And then
3 she said that she was just going to take some benadryl and
4 stay in bed and hang out. And I said, that's no problem.
5 Packed the kids up and took them to my mom's.

6 Q. And are your parents here today?

7 A. Uh-huh.

8 Q. Okay. So you went over to your parents' house?

9 A. Uh-huh.

10 Q. Were you communicating with Alexis when you --
11 you called her Lex?

12 A. Yeah.

13 Q. Were you communicating with her while you were
14 over at your parents'?

15 A. Yeah.

16 She called me at like 6:00, you know, and then I
17 started -- you know, and then we would always text. But
18 then I started, you know, texting her after that.

19 Q. Did she indicate to you whether she had plans
20 for later that day?

21 A. At first, no, but she --

22 MR. PENNINGTON: Your Honor --

23 THE COURT: Yes, sir. Do you have a legal
24 objection?

25 MR. PENNINGTON: Only to renew those that were

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1 made pretrial. We would renew them again at this
2 time.

3 THE COURT: Yes, sir. For the record, denied.

4 MR. PENNINGTON: Yes, sir. Thank you.

5 THE COURT: Or overruled. Excuse me.

6 MR. PENNINGTON: Yes, sir.

7 THE COURT: Go ahead.

8 Q. [Ms. Shealy] I had asked you did she indicate
9 to you some plans that she had.

10 A. When she called me, that was when --

11 Q. When she told you her plans?

12 A. Yes.

13 Q. Would you tell the jury, please, what her plans
14 were?

15 A. Plans were to take Darryl to get pills.

16 Q. Okay. And did she indicate to you where she was
17 going to take Darryl?

18 A. You know, at first it was down the road, and
19 then it was Charleston, you know.

20 Q. And what was she going to get in return for
21 taking him?

22 A. Prescription pills.

23 Q. Okay. Was she going to pay for the gas, or was
24 he going to pay for the gas?

25 A. He was going to.

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1 Q. After that phone call, when was the next time
2 that you talked to her?

3 A. After that, it was about -- it was 8:19 that I
4 talked to her last.

5 Q. Now, between those two times, did you have some
6 concern about whether she really would get her gas money?

7 A. Oh, yeah. I told her, I said, it -- you know, I
8 texted her -- it wasn't even going to -- get it beforehand
9 because you're --

10 Q. You texted her that?

11 A. Uh-huh.

12 Q. Now at 8:19, tell us about the conversation that
13 you had then.

14 A. Well, when I spoke with her she was, you know,
15 driving and she was on the road and she said that, you
16 know, I'm going to -- I'll be home soon.

17 I said, you know, are you with "D". She's like,
18 yeah. I said, everything okay. Yeah. And then it was
19 like she pulled the phone aside and said, you know, make a
20 right here. And some -- you know, you could hear somebody
21 saying something. And she was like, I love you, I'll, you
22 know, talk to you -- be home soon.

23 Q. So when she asked make a right here, who was
24 she -- was she speaking to you at the time?

25 A. No.

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1 She was speaking -- she said she was in the
2 vehicle with Darryl, and I could only assume that it was
3 him that she was speaking with.

4 Q. You couldn't hear who was talking?

5 A. No. It was muffled.

6 Q. Okay. Now, when you're saying Darryl now, at
7 the time you would have been --

8 A. It was "D".

9 Q. Okay. Did you try to call her after that?

10 A. Yeah.

11 Q. And did she indicate to you when she thought she
12 would get home?

13 A. About an hour.

14 Q. Okay. Did you hear from her again?

15 A. No.

16 Q. Could you describe to the jury your attempts to
17 try to get her back on the phone?

18 A. I called all night. Hospitals, jails, police
19 stations. Nothing.

20 Q. At any point that evening, do you try her again,
21 and does the phone seem to answer?

22 A. Ten o'clock I called and it was like muffled.
23 You know, like she was -- like I thought she was digging
24 her phone out of the purse.

25 And then it got quiet. And I was like hello,

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1 hello. And then it hung up, and that was it.

2 Q. Well, when you say that you were calling
3 hospitals and jails, why were you calling jails?

4 A. You know, I knew what they were going out for.
5 I just figured worse case scenario. You know, I just --
6 not hearing anything and hours were ticking by and it was
7 the only thing I could think of doing.

8 Q. And then what about the hospitals? Why were you
9 calling hospitals?

10 A. Just thinking they were in an accident,
11 something happened, you know. So it was like a next
12 logical choice, okay, hospitals, you know.

13 Q. And when you say hospitals --

14 A. Oh, yeah. I called --

15 Q. -- what do you mean by that?

16 A. -- Bluffton and MCU [phonetic].

17 I mean, I called everywhere from Bluffton to
18 Charleston. You know, I went online and I just grabbed
19 every number of every hospital, every police station, and
20 just started going through one by one.

21 Q. Did something happen to one of your children
22 later on in that evening or early in that morning?

23 A. Yeah.

24 About two o'clock, my son woke up and he was
25 crying so I gave him -- you know, gave him some water and

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1 put him in bed with me and I just laid there and ended up
2 falling asleep with him.

3 Q. Then what happened?

4 A. Woke up first thing in the morning and it was --
5 you know, it was -- I went next door and, you know, I told
6 Shannon, I said, you know, can you watch the boys real
7 quick. I ran to Tina's house and I said, have you seen --
8 you know, what's going on, you know. And she was like,
9 no, I haven't -- I haven't talked to her since Saturday.
10 But she was, you know -- so then I went back home, you
11 know, and I was -- called the police.

12 Q. Well, let me interrupt you for a second. When
13 you went over to Tina's, did you tell Tina --

14 A. She said that I guess that --

15 Q. Don't tell me anything about what Tina said.
16 Okay? What I'm asking you is what you told Tina about who
17 you believed Alexis was with.

18 A. Oh, yeah. I --

19 MR. PENNINGTON: Objection, Your Honor.
20 Irrelevant and just repetitive.

21 THE COURT: Overruled. Go ahead.

22 Q. [Ms. Shealy] Let's be careful about that. I'm
23 asking you what you told Tina.

24 A. I told Tina, I said, she was with -- you know, I
25 was told she was with "D".

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1 Q. Okay. And did Tina know where Alexis was?
2 Forget that question. I'm sorry.

3 Okay. So you told her that you thought she was
4 with "D"?

5 A. [Indicates affirmatively]

6 Q. And after you left Tina's, what did you do?

7 A. Then I called the police.

8 Q. Okay. And the first time you talked to the
9 police, could you tell the jury whether you told them
10 about the prescription pills?

11 A. No.

12 You know, and when it happened I didn't know
13 what was going on. So the police came. And they did the
14 same thing I did. They called the jail, the hospital.
15 And they were like, no. Then they left.

16 Q. Okay. What did you do next?

17 A. Started -- you know, I dropped the kids off at
18 my parents' house and then I just started driving, just
19 to -- driving up 17 just trying to think maybe the car's
20 on the side of the road, you know, it's -- I don't --

21 Q. And at that point did --

22 A. -- it was just doing something.

23 And then I ended up turning around, you know.
24 You know, my brother-in-law, I called -- you know, I
25 called him. He was just like, just go home. You know, he

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1 was --

2 Q. Well, let me interrupt you for a second, Mike.
3 I'm sorry.

4 When you said that you rode up 17, was anyone
5 with you at that point?

6 A. Shannon was.

7 Q. Okay. So you and Shannon were going down 17 for
8 what reason?

9 A. Just to -- just to look. Just to find
10 something. Maybe, you know, her car was on the side of
11 the road. I -- you know, it was just --

12 Q. Just to do something?

13 A. -- I had to do something.

14 Q. And when you say you called your brother-in-law,
15 what does your brother-in-law do for a living?

16 A. He was a police officer.

17 Q. And he was a police officer where?

18 A. Hardeeville.

19 Q. Okay. So when you called him, did you tell him
20 about the whole situation?

21 A. Uh-huh.

22 Q. When you and Shannon got back, do you talk to
23 the police again?

24 A. I went back online, you know, and I was just --
25 and then I saw like body found in Charleston, and that's

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1 when I called Charleston.

2 Q. Okay. Do you remember meeting with Officer
3 Raymonds?

4 A. There was so many. If he was the gentleman that
5 came at night to the house, to my parents' house, then
6 yeah.

7 Q. Okay. And do you remember describing Alexis --

8 A. Uh-huh.

9 Q. -- to the officers?

10 A. Uh-huh.

11 Q. Okay. Well, describe her to us. How tall was
12 she?

13 A. Five two.

14 Q. And about how much --

15 A. 105 pounds. You know, brown curly hair.

16 Q. Long hair or short hair?

17 A. Long hair.

18 Q. Tell us about her -- if she had any tattoos.

19 A. She had two tattoos, one in the back and one in
20 the front. Butterfly. And one was like a moon with a
21 star. It was small. Small one.

22 Q. So that day, that Monday the 9th, you talked to
23 one police officer in the morning and one in the evening?
24 Is that what you recall?

25 A. Yeah.

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1 Because when I called Charleston they were like,
2 well, we'll call you back in like three hours. And they
3 never called back. And then I had Bluffton knocking on
4 the door like -- you know, they wanted me to do a
5 statement and everything.

6 Q. Okay. And you gave them a statement?

7 A. Uh-huh.

8 Q. And that's when you told them about Darryl
9 Drayton?

10 A. Uh-huh.

11 Q. Okay. Do you also recall giving them your
12 telephone number, at the time, and Alexis' telephone
13 number?

14 A. Uh-huh. Yeah.

15 Q. Now, do you remember those numbers now or would
16 it help you to look at your statements from the time?

17 A. I would probably have to look at the statements.

18 Q. You've got new --

19 A. Everything is -- you type in the name and it
20 just goes to it. I --

21 Q. I'm sorry. What do you mean by that?

22 A. You know, on the phone I log in a number and I
23 never remember the number. You know, it was just speed
24 dial.

25 Q. Right. Do you have a new telephone number now?

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1 A. Uh-huh. Yeah.

2 Q. Okay. I'm showing you -- this is your statement
3 actually from August 10th.

4 THE COURT: Mr. Bartley, could I ask you instead
5 of saying uh-huh or huh-uh, say yes or no --

6 THE WITNESS: Yes, sir.

7 THE COURT: -- because that way it will be
8 clearer for the court reporter on whether you're
9 saying uh or huh or whatever you're saying. Okay?

10 THE WITNESS: Yes, sir.

11 THE COURT: All right. Thank you.

12 THE WITNESS: Thank you.

13 Q. [Ms. Shealy] I want you to take a look at that
14 and see if that refreshes your memory as to the numbers.

15 [Whereupon, the witness reviews documents]

16 A. Yeah. The [REDACTED].

17 Q. Is whose number? Or was whose number?

18 A. That was mine. And then hers was the [REDACTED].

19 Q. Okay. And you've told us that you had all of
20 that. Are you talking about in your contacts on your
21 phone?

22 A. Yeah. Yeah.

23 I mean, when the police came, I pulled my phone
24 out and just -- you know, because I had the times and
25 everything listed out. So they knew, you know, exactly

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1 what time was called and, you know, what it was.

2 Q. Okay. And regarding that, did you also have
3 Shannon's number and Darryl Drayton's number in your
4 phone, as well?

5 A. Yeah.

6 Q. Okay. I think a little bit of that Jersey is in
7 you and so we do need to make sure we know what --

8 A. Yes.

9 Q. -- you're saying.

10 A. Yes.

11 Q. When you said you handed them the phone, you let
12 them see the telephone numbers in your telephone --

13 A. Uh-huh.

14 Q. -- under your contacts?

15 A. Yes.

16 Q. And then you were telling us you also let them
17 see the times of your calls?

18 A. Yes.

19 Q. Okay. Now, so they've got your number, Alexis'
20 number, Shannon's number, and Darryl Drayton's number?

21 A. [Indicates affirmatively]

22 Q. Okay. Did you -- so you gave a statement to the
23 police, a written statement, on the 9th and then another
24 one on the 10th; is that correct?

25 A. Yes.

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1 Q. And you dealt with three different sets of
2 officers then?

3 A. Yes.

4 Q. And you told us that there was the early-morning
5 officer on the 9th?

6 A. Correct.

7 Q. And then the Bluffton officers on --

8 A. On the evening.

9 Q. -- the evening.

10 And then did you, in fact, go to Charleston?

11 A. Yes.

12 Q. And who accompanied you to Charleston?

13 A. My brother-in-law and my dad.

14 Q. And your father.

15 Okay. How did you learn about the body that was
16 found?

17 A. I saw it on the internet on Yahoo.

18 Q. And at that time, had the body been identified?

19 A. No.

20 Q. How did you react when you saw the body -- the
21 information about the body?

22 A. I called. I knew. I just called and gave them
23 everything, told them what she looked like and they said,
24 well, they'll call me back.

25 Q. Okay. When you went to Charleston, you shared

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1 the information about prescription pills and about Darryl
2 Drayton?

3 A. Uh-huh. Yes.

4 Q. And while you were there, did you learn that
5 they had made a positive identification?

6 A. That night, no.

7 Q. Okay. While you were there, did they ask you
8 whether they could swab your mouth --

9 A. Yes.

10 Q. -- for DNA purposes? And did you consent?

11 A. Yeah.

12 Q. Okay. And someone, in fact, stuck a Q-tip type
13 device in your mouth to get your DNA?

14 A. Yes.

15 Q. Now, you told us that she drove a white Grand
16 Prix?

17 A. Correct.

18 Q. I'm showing you what's been marked as State's
19 Exhibit Number 1.

20 MS. SHEALY: It will take a second for it to
21 come up. It's going to -- Mike, it's going to show up
22 right there behind you.

23 Q. [Ms. Shealy] Is that a picture of Alexis' car?

24 A. Yes.

25 Q. And then State's Exhibit Number 2. That's her

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1 license tag?

2 A. Yes.

3 Q. Okay. We looked at the ring itself.

4 State's Exhibit 105, just so the jury can see
5 the ring a little closer up. That's the ring?

6 A. Yes. Yes.

7 Q. And 106 is just a different angle?

8 A. Yes.

9 Q. Okay. Now, regarding the car itself: the
10 trunk, was it usually completely empty?

11 A. She had -- I mean, she always kept it clean.
12 But, I mean, there was like a diaper bag in there that she
13 would have the diapers and wipes. And, you know, a little
14 kit that had -- you know, for emergencies, you know,
15 flares and jump stuff like that.

16 Q. What about a spare tire?

17 A. Yeah. A spare tire, the jack, everything, you
18 know.

19 Q. Okay. I'm showing you, then, what has been
20 marked as State's Exhibit 128. Is that the emergency road
21 kit that was usually in the trunk?

22 A. Yeah. Yes.

23 Q. And showing you State's Exhibit 131.

24 A. That's a CD case of hers.

25 Q. That's hers?

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1 A. Yeah.

2 Q. And was that usually in her vehicle?

3 A. Yeah. Yes. It's either in the front or in the
4 trunk, depending.

5 Q. Okay. Showing you State's Exhibit 133. Is this
6 yours?

7 A. No.

8 Q. Okay. And showing you -- 134 shows you a little
9 bit better picture of that. Do those items appears to be
10 yours?

11 A. No.

12 Q. 135. Do those appear to be yours?

13 A. No.

14 Q. Showing you State's Exhibit 136.

15 A. That's a diaper bag.

16 Q. Is that y'all's diaper bag?

17 A. Yes.

18 Q. Where would Alexis usually keep that?

19 A. In the trunk.

20 Q. Showing you 138 and then 139. Are those the
21 contents that she would keep in the diaper bag?

22 A. Yeah. Yes.

23 Q. 140. Do you recognize those as being the
24 diapers and blanket of your children?

25 A. Yes.

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1 Q. 141. Does this appear to be the cover in your
2 trunk?

3 A. Yes.

4 Q. 142. Spare tire?

5 A. Yes.

6 Q. 144?

7 A. That's what all the jack and stuff was in.

8 Q. Okay. 151. Are those clothing items yours?

9 A. No.

10 Q. Is that CVS bag yours?

11 A. No.

12 Q. 152. Better picture of that clothing -- the
13 clothing items. Is that yours?

14 A. No.

15 Q. 153. Is that your speaker box?

16 A. I don't believe, no.

17 Q. And then 154, are those items y'all's?

18 A. Yes.

19 Q. Okay. And where were those usually kept?

20 A. At the house.

21 But she -- you know, she probably had put them
22 in the car. We moved and that was the stuff we had
23 outside, so I can only imagine she boxed that stuff up and
24 just threw it in the car.

25 Q. Okay. When Alexis left on August 8th, did she

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1 leave her pocketbook behind?

2 A. No.

3 Q. Have you seen her pocketbook since she left on
4 August 8th?

5 A. No.

6 Q. Have you had her car keys since she left on
7 August 8th?

8 A. No.

9 MS. SHEALY: I beg the Court's indulgence just a
10 moment.

11 [Whereupon, Ms. Shealy and Mr. Finch confer]

12 Q. [Ms. Shealy] Have you seen her cell phone since
13 then?

14 A. No.

15 MS. SHEALY: I have no further questions.

16 Please answer any that Mr. Pennington or Mr. Cooper
17 may have. Thank you.

18 THE COURT: Cross-examination?

19 MR. PENNINGTON: Please the Court.

20 CROSS-EXAMINATION

21 BY MR. PENNINGTON:

22 Q. Mr. Bartley, you told the jury that the police
23 got Darryl Drayton's phone number from your telephone?

24 A. Correct.

25 Q. Before her death, it's very clear that Alexis

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1 and Darryl knew each other?

2 A. Correct.

3 Q. And that you worked long hours, from morning to
4 early evening around 7:00 p.m. --

5 A. Correct.

6 Q. -- correct? Yes?

7 A. Yes. Correct.

8 Q. And from your communications with Alexis and
9 your knowledge of her activities, you knew that Darryl and
10 Alexis would go places together?

11 A. Not to the extent, you know, that -- you know,
12 afterwards you find out more. But I never thought it was,
13 you know, more than down the street.

14 Q. Well, you had known Darryl Drayton for
15 approximately a year?

16 A. About, yes.

17 Q. A year before Alexis' death?

18 A. Yes.

19 Q. And you had seen him numerous times?

20 A. Yes.

21 Q. And you knew that Darryl had even been inside
22 your residence?

23 A. Correct.

24 Q. And that you knew that you were not concerned,
25 when she told you that she was going to go get some pills

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1 with Darryl, because they had been friends?

2 A. Correct.

3 Q. And that Darryl had furnished Alexis with pills
4 in exchange for taking him places?

5 A. Yeah. Correct.

6 Q. Now, Alexis had the white Grand Prix that we
7 just looked at? That was --

8 A. Correct.

9 Q. -- the car that she used?

10 A. Correct.

11 Q. Mr. Bartley, I want to turn your attention to
12 talk a little bit about Alexis' drug problem. Alexis was
13 taking some prescription medications; correct?

14 A. Correct.

15 Q. There were -- what is rock or roxie?

16 A. It's a form of percocet.

17 Q. And that would be a prescription-type pain
18 killer?

19 A. Correct.

20 Q. A powerful drug?

21 A. Yes.

22 Q. And Alexis was known to take those not
23 prescribed by a doctor?

24 A. Correct.

25 Q. She would get those pills from off the street?

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1 A. Correct. Off of people she knew.

2 Q. Alexis had used cocaine in years past, hasn't
3 she?

4 A. Correct.

5 MS. SHEALY: Your Honor, I'm going to object to
6 the relevancy.

7 THE COURT: I'll sustain that objection.

8 Disregard the question about cocaine in years
9 past.

10 Unless you want to lay some foundation and make
11 it more current and relevant.

12 MR. PENNINGTON: Well, I'll just ask this.

13 Q. [Mr. Pennington] Mr. Bartley, she had a drug
14 problem, didn't she?

15 A. Yes.

16 Q. And Alexis even sometimes sold pills?

17 A. No.

18 Q. Do you recall talking to the detectives in
19 Charleston?

20 A. Yes.

21 Q. And you indicated that early in the process that
22 some of the Beaufort County sheriff's deputies were
23 involved in this case?

24 A. Correct.

25 Q. Do you recall talking to an Officer Reynolds

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1 from Beaufort County?

2 A. I'm sure I did.

3 Q. Okay. The first day when -- after she had gone
4 missing on Sunday night Monday morning you had contact
5 with and were interviewed more than once by an Officer
6 Reynolds from Beaufort County, weren't you?

7 A. Yes.

8 Q. Mr. Bartley, I'm going to ask you just to take a
9 look at this document, and particularly call attention to
10 this first paragraph. Just read it to yourself and then
11 I'm going to ask you a question.

12 [Whereupon, the witness reviews documents]

13 Q. [Mr. Pennington] Ready?

14 A. Yeah. Yes.

15 Q. Mr. Bartley, you told Officer Reynolds that
16 Alexis was a seller of prescription medications, didn't
17 you?

18 A. It was -- the context there it's not -- you
19 know, if she got it, she would sell maybe two to a friend,
20 you know. It's not -- she wouldn't go out --

21 Q. She wasn't in the commercial --

22 A. No.

23 Q. -- large --

24 A. No.

25 Q. -- amounts of drugs?

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1 A. No.

2 Q. She would exchange for --

3 A. If her friend wanted one or two if she -- and
4 she had some, she would sell them one or two. That was
5 all.

6 Q. Okay. You didn't feel good about the fact that
7 she had this drug problem, obviously?

8 A. No.

9 Q. Or that she was out on the street --

10 MS. SHEALY: Your Honor, I would object. Can we
11 approach, Your Honor?

12 THE COURT: Yes, ma'am.

13 [Whereupon, an off-the-record bench conference
14 is held]

15 THE COURT: For the record, the State's
16 objection is overruled.

17 Ladies and gentlemen, let me just explain
18 something very briefly. The attorneys during a trial
19 make certain objections. My obligation during the
20 trial, or my job during the trial, is to make sure
21 that the trial and the testimony abides by the rules
22 of court and the rules of evidence.

23 The rules of evidence are designed to bring to
24 you the most trustworthy testimony we can bring and
25 certain things are not admissible, such as hearsay and

1 some other items. Hearsay is someone else making a
2 statement outside of the court. So my job is to rule
3 on those objections. The attorneys are not trying to
4 hide anything from you. They just -- in their
5 opinion, it's not admissible under the rules of
6 evidence.

7 When I use the words overruled, I disagree with
8 the attorneys objection and you will hear it. If I
9 use the word sustained, that means that I agree it's
10 not admissible and you won't hear it. And then when I
11 instruct you to disregard a statement, I'm telling you
12 it's not admissible under the rules of evidence and
13 you are to disregard it and not consider it at all in
14 your deliberations or your thought process concerning
15 the facts of the case.

16 Please proceed.

17 MR. PENNINGTON: Thank you, Your Honor.

18 Q. [Mr. Pennington] Mr. Bartley, I want to turn
19 your attention to -- back to Sunday, August 8th, 2010.
20 You went to Sunday dinner at your parents' house?

21 A. Correct.

22 Q. And Lex stayed home?

23 A. Correct.

24 Q. And that was unusual in that Sunday was usually
25 your family day with your family and with Lex; correct?

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1 A. Correct.

2 Q. After you spoke to her at about 6:30 p.m., in
3 which she described that she was going to meet "D" and go
4 to Charleston to get some pills, you do not know of your
5 own knowledge where she went?

6 A. No.

7 Q. You do not know who she met after she hung up
8 and talked to you? Of your own knowledge.

9 A. At that point. But then I spoke with her at
10 8:19.

11 Q. All right. Well, let's talk about during the
12 period between 6:30 and 8:19 and then we'll talk about
13 8:19. All right?

14 A. Uh-huh.

15 Q. Before 8:19, you don't know who she met?

16 A. No.

17 Q. You don't know where she went first or what
18 her -- where precisely she drove?

19 A. No.

20 Q. You don't know who she had in her car that
21 night?

22 A. No.

23 Q. Let's talk about 8:19 p.m. This is Sunday
24 evening and you had that conversation that you recited on
25 direct. She said she was okay and that she was about an

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1 hour away from home?

2 A. Correct.

3 Q. And you testified that you did not hear a voice
4 of anyone else in the car?

5 A. Correct.

6 Q. And you cannot say how many people were in the
7 car other than Lex?

8 A. Other than her telling me that, you know she was
9 with -- she with "D". You know, you with "D". Yes.

10 Q. All right. But you don't know who else was in
11 the car?

12 A. No.

13 Q. And you cannot say, from what she said, exactly
14 where she was?

15 A. She was on 17 at that point, making a right
16 somewhere.

17 Q. And so where would that have been?

18 A. I have no idea.

19 Q. You don't know?

20 A. [Indicates negatively]

21 Q. And you cannot say who she met with after that
22 conversation?

23 A. No.

24 MR. PENNINGTON: Thank you very much,

25 Mr. Bartley.

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1 THE COURT: Redirect?

2 MS. SHEALY: Yes, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. SHEALY:

5 Q. Mr. Pennington was asking you about your not
6 being able to say of your own knowledge. But tell the
7 jury -- you've told us you called the jail, you told us
8 you called the hospitals. Who else were you calling that
9 night?

10 A. Her number.

11 Q. And did you call Darryl Drayton's --

12 A. Yeah.

13 Q. -- number?

14 A. Yeah.

15 Q. How often did you try to call Darryl Drayton?

16 A. I started -- I think at like 11:30 I started
17 calling. But I called her phone number every ten minutes.
18 At a certain point it was just, you know, call, call,
19 call.

20 Q. And when you went to see Shannon Hooper, you
21 were looking for Alexis. And who else were you looking
22 for?

23 A. Him.

24 Q. And when you went over to Tina Johnson's house,
25 you were looking for Alexis. And who else were you

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1 looking for?

2 A. Him.

3 Q. That morning, August 9th, did you go to anybody
4 else's house looking for Darryl Drayton?

5 A. There was another friend of theirs, but there
6 was -- you know, he had nothing to do with it. You know,
7 he didn't --

8 It was just to find something that had -- you
9 know, anybody that had information.

10 Q. Okay. And did you -- without saying what the
11 information was, did you learn some information from Tina
12 Johnson later that day?

13 A. Yes.

14 Q. Okay. Did you find out from anybody where
15 Darryl Drayton lived?

16 A. No. Not exactly.

17 Q. Okay. Did you go over to where you believed he
18 lived?

19 A. Yes.

20 MR. PENNINGTON: Objection, Your Honor.

21 At this point we've gone way beyond the scope of
22 my cross-examination. We're now into the next day.

23 THE COURT: Let me see the attorneys up here.

24 [Whereupon, an off-the-record bench conference
25 is held]

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1 THE COURT: At this point, the objection is
2 overruled.

3 Q. [Ms. Shealy] Mr. Bartley --

4 A. Yes.

5 Q. -- on August 9th, tell the jury whether or not
6 you went over to where you believed that Mr. Drayton
7 lived.

8 A. Yeah. I mean, we -- he had a -- he lived I
9 guess in a -- it was down the road, a neighborhood road,
10 so I went by -- you know, by his house, you know, that I
11 thought, trying to -- trying to find any kind of -- you
12 know, trying to find out what's going on.

13 Q. Did you ever get to see him?

14 A. I got ahold to him on the phone, you know. He
15 said she never came by.

16 Q. Did he deny going to Charleston with her?

17 A. Correct.

18 Q. Okay. So you kept calling him and you spoke to
19 him once?

20 A. Twice.

21 Q. And the person that you were looking for that
22 day was Darryl Drayton?

23 A. Yes.

24 Q. And that was based on what Alexis told you who
25 she was with?

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1 A. Correct.

2 MS. SHEALY: I have no further questions.

3 THE COURT: All right. Recross?

4 MR. PENNINGTON: No follow up, Your Honor.

5 THE COURT: Okay. You may step down. Thank you
6 very much.

7 [Whereupon, Mr. Bartley is excused and exits the
8 witness stand]

9 MS. SHEALY: Tina Johnson.

10 Your Honor, at this time we would ask that
11 Mr. Bartley be allowed to stay in the courtroom.

12 MR. PENNINGTON: I have no objection to that,
13 Your Honor.

14 THE COURT: Well, let me say this. If you're
15 going to possibly use him on reply down the road, do
16 you want him out of the courtroom?

17 MR. PENNINGTON: On that basis, Your Honor, then
18 I guess it would be best to have him out of the
19 courtroom.

20 THE COURT: Now, if you want to keep him, that's
21 fine. But, solicitor, what do you want to do?

22 MS. SHEALY: Well, I --

23 THE COURT: What we're talking about, ladies and
24 gentlemen, all the witnesses have been sequestered.

25 That means the witnesses that are going to testify in

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1 TINA JOHNSON,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. SHEALY:

6 Q. Ms. Johnson, would you please tell the jury
7 where you live.

8 A. [REDACTED] in Bluffton, South
9 Carolina.

10 Q. Okay. And how many children do you have?

11 A. Two.

12 Q. What are your children's names?

13 A. Bradley and Sarah.

14 Q. And how old is Bradley?

15 A. Bradley is thirteen.

16 Q. Would you tell the jury, please, if you know
17 Shannon Hooper.

18 A. Yes, ma'am. That's my ex-sister-in-law. My
19 niece and nephew, that's their mother.

20 Q. Okay. And you said she's your ex-sister-in-law?

21 A. Yes.

22 Q. How is it that y'all are related?

23 A. Well, my brother and her were common-law
24 married, not actually married, for about twelve years and
25 I have a fifteen-year-old niece and a thirteen-year-old

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1 nephew from my brother.

2 Q. Did you know Alexis Lukaitis?

3 A. Yes, ma'am.

4 Q. And how did you meet her?

5 A. I met her from Shannon. She was Shannon's
6 friend and she had brought her over to my house and we
7 became friends after that.

8 Q. Would you visit with Alexis over at the
9 apartment complex, as well?

10 A. Yes, ma'am.

11 Q. Okay. Did you know Alexis' husband Mike?

12 A. Yes, sir.

13 Q. Who were you closer to, Alexis or Mike?

14 A. Alexis.

15 Q. Okay. Now, your son Bradley, would he spend
16 time over at his Aunt Shannon's apartment?

17 A. Yes, ma'am.

18 Q. When was the last time that you saw Alexis?

19 A. The last time I saw Alexis was the Saturday
20 before she went missing.

21 Q. Okay. And on that Sunday that she -- no.

22 Excuse me.

23 On the Monday that she was missing, did you see
24 Mike Bartley?

25 A. Yes, ma'am.

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1 Q. Okay. Could you tell the jury about that event?

2 A. He had come to my house really early. I think
3 it was like seven o'clock. My dad told me someone was at
4 the door and I went and he was standing there and he asked
5 me if I had seen Alexis. And I told him, no, I hadn't
6 seen him -- or seen her since Saturday.

7 He was really upset, really worried. He told me
8 she had never stayed out like that before. He just seemed
9 really upset. And I hadn't seen or heard from her so when
10 I told him that then he said if I heard anything, to call
11 him.

12 Q. Okay. And did he indicate to you who he
13 believed that she was with?

14 A. Yes, ma'am.

15 Q. Okay. Now, did you have a conversation with
16 your son Bradley about why Mike came over?

17 A. Yes, ma'am.

18 Q. Okay. And could you tell the jury, please, what
19 you told Bradley?

20 A. I told Bradley that Alexis was -- had gone
21 supposedly with Darryl Drayton to Charleston. Bradley
22 knew who he was because he had seen him at his aunt's
23 house. I told him that she didn't come back, you know,
24 Mike had told me that she hadn't come back, that wasn't
25 like her because she had two little boys at home, and

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1 that, you know, we thought something had happened to her.

2 Q. Okay. Now, you referred to him as Darryl
3 Drayton. What did y'all call him at that time?

4 A. "D".

5 Q. Okay. Were you familiar with where "D" lived?

6 A. Yes, ma'am.

7 Q. Can you describe to the jury where he lived?

8 A. As far as I know, he lived in the brick house
9 next to the Bluffton self-help. When we had picked him
10 up, it was at that house.

11 Q. And when you say when we had picked him
12 up: meaning you and Alexis?

13 A. Yes, ma'am.

14 Q. Now, tell us what the Bluffton self-help place
15 is.

16 A. It's a community place that helps people when,
17 you know, you need food or any assistance like that.
18 Clothing or help with bills.

19 My dad had cancer so we went there because he,
20 you know, needed help.

21 Q. Okay. So when you and Alexis had picked him up,
22 it was from the brick house right next to the self-help --

23 A. Yes, ma'am.

24 Q. -- building?

25 Later that morning, Monday the 9th, did you and

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1 Bradley go somewhere?

2 A. Yes, ma'am.

3 We went with my dad. It was me, Bradley, and my
4 daughter Sarah and my dad went to the Bluffton self-help.
5 And my fiancé, D.J., was also there. And me and D.J.
6 walked in and Bradley and Sarah were walking behind us.
7 My dad stayed in the truck.

8 Q. And did y'all, in fact, get some items while
9 y'all were there?

10 A. Yes, ma'am.

11 Q. At some point did your son -- and you don't have
12 to tell me now what he said -- but did your son tell you
13 something about who he saw?

14 A. Yes, ma'am.

15 Q. Okay. And after he told you who he saw, did you
16 share that with Mike Bartley?

17 A. Yes, ma'am.

18 Q. Okay. Later, did you also share that with the
19 police?

20 A. Yes, ma'am.

21 Q. And do you -- did the police also interview your
22 son?

23 A. Yes, they did.

24 Q. Did you give a written statement to the police
25 about what your son had seen?

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1 A. Yes, ma'am.

2 MS. SHEALY: I have no further questions.

3 Please answer any that the defense may have.

4 THE COURT: Cross-examination?

5 MR. PENNINGTON: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. PENNINGTON:

8 Q. Ms. Johnson, you just testified, I believe, that
9 you and Alexis picked up Darryl Drayton in a car?

10 A. Yes, sir.

11 Q. That would have been in that white Grand Prix
12 automobile that she drove?

13 A. Yes, sir.

14 MR. PENNINGTON: No further questions, Your
15 Honor.

16 THE COURT: Okay. Any recross? I mean, excuse
17 me. Redirect?

18 MS. SHEALY: No, Your Honor.

19 THE COURT: All right.

20 MS. SHEALY: Bradley Vavro.

21 THE COURT: Ms. Johnson, you may step down.
22 Thank you very much.

23 [Whereupon, Ms. Johnson is excused and exits the
24 witness stand]

25 [Whereupon, Mr. Vavro comes forward]

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1 THE CLERK OF COURT: Place your left hand here
2 and raise your right hand.

3 [Whereupon, Mr. Vavro is duly sworn by the clerk
4 of court as follows: do you swear or affirm your
5 testimony will be the whole truth and nothing but the
6 truth, so help you God]

7 THE WITNESS: Yes.

8 THE CLERK OF COURT: Be seated. State your full
9 name and spell your last name.

10 THE WITNESS: Bradley Vavro. V-A-V-R-O.

11 MS. SHEALY: Bradley, have a seat.

12 [Whereupon, Mr. Vavro takes the witness stand]

13 MS. SHEALY: And you're kind of quiet-spoken so
14 go ahead and get comfortable and then scoot up and
15 then if you can just -- just talk loudly for us.

16 - - - - -

17 BRADLEY VAVRO,

18 Having Been First Duly Sworn,
19 was Examined and Testified as Follows:

20 DIRECT EXAMINATION

21 BY MS. SHEALY:

22 Q. Tell the jury how old you are, please.

23 A. Thirteen.

24 Q. And Tina Johnson, who just testified, is your
25 mother?

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- 1 A. Yes.
- 2 Q. Do you know "D"?
- 3 A. Yes.
- 4 Q. And do you see "D" in the courtroom?
- 5 A. Yes.
- 6 Q. Okay. Is he seated right over here?
- 7 A. Yes.
- 8 Q. How did you know him?
- 9 A. He used to come over to my aunt's house.
- 10 Q. Okay. And who is your aunt?
- 11 A. Shannon Hooper.
- 12 Q. Okay. Do you remember talking to the police
- 13 about him a couple of years ago?
- 14 A. Yes.
- 15 Q. Could you tell the jury what you told the
- 16 police?
- 17 A. I saw him in the self-help parking lot and he
- 18 had scratches on his face and a bandage on his finger and
- 19 a hospital bracelet.
- 20 Q. And a what?
- 21 A. A hospital bracelet.
- 22 MS. SHEALY: Oh. Excuse me. I'm sorry.
- 23 Q. [Ms. Shealy] And a hospital bracelet?
- 24 A. Yes.
- 25 Q. Okay. And when you say you saw him in the

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1 parking lot of the self-help, could you tell which way he
2 was walking?

3 A. Towards like that way [indicates]. He was
4 walking towards --

5 Q. Okay. Well, if you're looking at self-help, was
6 he walking towards -- if you're looking at self-help --
7 let's see. Well, stand up for me.

8 A. [Witness complies]

9 Q. Where is self-help? Point to self-help for me.

10 A. Where is self-help?

11 Q. Yeah.

12 A. It's right in front.

13 Q. Okay. So which way was he walking?

14 A. That way.

15 Q. Okay. And the day that you saw him with the
16 bandaged hand and the hospital bracelet and the scratches,
17 what had your -- had your mother told you about something
18 earlier that day?

19 A. Yes.

20 Q. And did that -- who did that involve?

21 A. Miss Alexis.

22 Q. Okay. And did you tell your mother about seeing
23 "D"?

24 A. Yes.

25 Q. Okay. And then did you tell the police what

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1 you've told us?

2 A. Yes.

3 MS. SHEALY: Okay. I have no further questions.
4 Thank you, Bradley.

5 Hold on just a second. The defense might have a
6 question for you. Okay?

7 THE WITNESS: Okay.

8 THE COURT: Cross-examination?

9 MR. PENNINGTON: Good morning, Bradley.

10 THE WITNESS: Good morning.

11 MR. PENNINGTON: I've just got a question or two
12 for you.

13 THE WITNESS: Uh-huh.

14 CROSS-EXAMINATION

15 BY MR. PENNINGTON:

16 Q. You said that you saw scratches on Darryl's
17 face?

18 A. Uh-huh.

19 Q. Whereabouts on his face?

20 A. Like right here.

21 Q. Okay. So you're gesturing to what would be
22 your -- the right side of your face?

23 A. Uh-huh.

24 Q. In the mouth area?

25 A. Well, towards like kind of like on his cheek a

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1 little bit.

2 Q. Okay. On the cheek area on which side of his
3 face? Right or left?

4 A. I can't remember.

5 Q. Okay. So you're not sure whether it was --

6 A. I think it was on this side.

7 Q. You think it was on what would be his right
8 side?

9 A. Yes.

10 Q. Okay. But you're not sure?

11 A. [Indicates affirmatively]

12 Q. And when you nod -- when I say you're not sure
13 does that mean, yes, you're not sure?

14 A. Yes.

15 Q. Okay. But you say you saw some scratches?

16 A. Yes.

17 Q. You didn't know where those occurred?

18 A. Well, they were near on one of his cheeks.

19 Q. Okay. You don't know how they got there, do
20 you?

21 A. No.

22 MR. PENNINGTON: Okay. That's all I have,
23 Bradley.

24 THE WITNESS: All right.

25 THE COURT: Any redirect?

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1 MS. SHEALY: Just one quick question.

2 REDIRECT EXAMINATION

3 BY MS. SHEALY:

4 Q. What was it about the scratches that drew your
5 attention?

6 A. They were pink.

7 MS. SHEALY: Okay. Nothing further.

8 THE WITNESS: Okay.

9 THE COURT: Any recross?

10 MR. PENNINGTON: No, Your Honor. Thank you.

11 THE COURT: You may step down. Thank you very
12 much.

13 [Whereupon, Mr. Vavro is excused and exits the
14 witness stand]

15 THE COURT: Solicitor -- let me see the
16 attorneys up here just a second.

17 [Whereupon, an off-the-record bench conference
18 is held]

19 [Whereupon, Mr. Seward comes forward]

20 THE CLERK OF COURT: Place your left hand here
21 and raise your right hand.

22 [Whereupon, Mr. Seward is duly sworn by the
23 clerk of court as follows: do you swear or affirm
24 your testimony will be the whole truth and nothing but
25 the truth, so help you God].

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1 THE WITNESS: Yes.

2 [Whereupon, Mr. Seward takes the witness stand]

3 THE CLERK OF COURT: State your full name and
4 spell your last name.

5 [No response]

6 MS. SHEALY: Will you state your full name and
7 spell your last name for us.

8 THE WITNESS: Jackie Seward. S-E-W-A-R-D.

9 MS. SHEALY: Your Honor, at this time I would
10 move into evidence, without objection, State's 3, 4
11 and 5.

12 MR. PENNINGTON: No objection, Your Honor.

13 THE COURT: All right. 3, 4 and 5 admitted
14 without objection.

15 [Whereupon, State's Exhibit Number 3 is admitted
16 into evidence by the Court]

17 [Whereupon, State's Exhibit Number 4 is admitted
18 into evidence by the Court]

19 [Whereupon, State's Exhibit Number 5 is admitted
20 into evidence by the Court]

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1 JACKIE SEWARD,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. SHEALY:

6 Q. Mr. Seward, tell the jury, please, where you
7 live and what you do for a living.

8 A. I reside in Hollywood, South Carolina, and I'm a
9 professional logger.

10 Q. Okay. And how long have you been in the logging
11 business?

12 A. Between thirty and forty years.

13 Q. Okay. And is it actually your family's
14 business?

15 A. Yeah, it was a family business.

16 Q. How long has your family had that business?

17 A. Forty years.

18 Q. Okay. Where is your business located?

19 A. 7983 Old Jacksonboro Road.

20 Q. And could you describe that road to us? What is
21 Old Jacksonboro Road like?

22 A. Well, coming from Charleston heading south it's
23 a paved road and about three -- maybe three-quarters of a
24 mile it's a dirt road.

25 Q. Okay. I'm going to show you State's Exhibit 3.

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1 MS. SHEALY: It's going to show up on this
2 television. And, Mr. Seward, I'm going to ask you --
3 let's see. Would you mind walking through this little
4 door right here and taking this pointer.

5 And it probably would be best if you stood over
6 on this side so the jury can see you.

7 Q. [Ms. Shealy] And kind of orient us. Can you
8 show us where Highway 17 is?

9 A. This is Highway 17 right here.

10 MS. SHEALY: Okay. And speak loudly for us,
11 because you don't have a microphone right now.

12 THE WITNESS: Okay.

13 A. This is Highway 17.

14 Q. [Ms. Shealy] Okay. And then what's that next
15 road over that's running parallel?

16 A. This right here is the railroad track and this
17 is Old Jacksonboro Road

18 Q. Okay. So take that pointer and run down Old
19 Jacksonboro for me.

20 A. Okay. [Witness complies]

21 Q. And where on that road, approximately, is your
22 family's business?

23 A. Right down in here.

24 Q. Okay. And you were telling us that part of it
25 is dirt. Can you show us what part is dirt?

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1 A. This part right here is a dirt road and it stop
2 about right here and the pavement begins.

3 Q. Okay. And which way were you driving on Monday,
4 August 9th?

5 A. This is Highway 162 coming from Hollywood, and I
6 made a right turn onto Old Jacksonboro Road.

7 Q. Okay. And where is Highway 174?

8 A. Highway 174, it branch off here.

9 Q. Okay. So tell me again the road that you were
10 coming in on.

11 A. Highway 162.

12 Q. Okay. And what time in the morning were you
13 turning onto Old Jacksonboro?

14 A. Between 7:00 and 7:15.

15 Q. Okay. And just another shot. State's Exhibit
16 4. That just shows you a different angle. Kind of orient
17 us on that photo.

18 A. This is Highway 17. This is the railroad track
19 running parallel with Highway 17. This is Old Jacksonboro
20 Road.

21 Q. Okay. And something draws your attention as you
22 traveled down that road that morning?

23 A. Yes, it did.

24 Q. What got your attention?

25 A. When I pulled on Old Jacksonboro Road, maybe

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1 about maybe a quarter of a mile on the right I saw
2 something that appeared -- looked like a mannequin. And I
3 wasn't sure. Then I left my parents' house and I came
4 back and that's when I discovered it was a body on the
5 side of the road up there.

6 Q. Okay. Now, when you traveled down the road, you
7 first thought it was a mannequin. When you got down to
8 your parents' house -- and when you say your parents'
9 house, is that where the employees report in the morning?

10 A. Yes.

11 Q. Okay. Did you pick up someone to go back with
12 you?

13 A. Yeah. One of my employees, Earl Ankrum.

14 Q. Earl Ankrum. Okay.

15 A. I picked him up, and me and him came back.

16 Q. And what kind of vehicle do you drive?

17 A. I was driving a 1984 Ford F-150.

18 Q. Okay. That's a truck?

19 A. Yeah.

20 Q. And when you went down to your parents' house
21 and came back, at any point did you get out of your truck?

22 A. No.

23 Q. Did Mr. Ankrum?

24 A. No.

25 Q. Did you see any other vehicles on that road when

1 you were traveling?

2 A. No.

3 Q. Okay. Showing you State's Exhibit 5. Is that
4 what you saw?

5 A. Yes.

6 Q. Well, when you and Mr. Ankrum drove back down
7 there and saw that, at that point did you realize it was
8 not a mannequin?

9 A. Right.

10 Q. And what did y'all do?

11 A. I drove to the -- headed -- headed home and
12 called 911 and told them there was a body beside the
13 highway.

14 MS. SHEALY: You can go ahead and have a seat
15 for me now.

16 [Whereupon, the witness complies]

17 Q. [Ms. Shealy] You called 911?

18 A. Yes.

19 Q. And did you wait there until the police came?

20 A. Yes.

21 Q. And when the police came, did you, in fact, give
22 them a statement?

23 A. Yes.

24 Q. And did Mr. Ankrum give them a statement?

25 A. Yes.

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1 Q. And it was actually a written statement; is that
2 correct?

3 A. Right.

4 MS. SHEALY: Okay. I have no further questions.
5 And I appreciate your coming. Answer any that the
6 defense attorney may have.

7 THE COURT: Cross-examination?

8 MR. PENNINGTON: None, Your Honor.

9 MS. SHEALY: Thank you.

10 THE COURT: Mr. Seward, you may step down.
11 Thank you very much.

12 Any reason he can't be excused?

13 MS. SHEALY: No, sir, Your Honor.

14 MR. PENNINGTON: No, sir.

15 THE COURT: Mr. Seward, you're welcome to stay;
16 otherwise, you can be excused. Thank you very much.

17 [Whereupon, Mr. Seward is excused and exits the
18 courtroom]

19 MS. SHEALY: Deputy Shepherd.

20 [Whereupon, Mr. Shepherd comes forward]

21 THE CLERK OF COURT: Place your left hand here
22 and raise your right hand.

23 [Whereupon, Mr. Shepherd is duly sworn by the
24 clerk of court as follows: do you swear or affirm
25 that your testimony will be the whole truth and

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1 nothing but the truth, so help you God]

2 THE WITNESS: I do.

3 [Whereupon, Mr. Shepherd takes the witness
4 stand]

5 THE CLERK OF COURT: State your full name and
6 spell your last name.

7 THE WITNESS: Deputy William Shepherd. S-H-E-P-
8 H-E-R-D.

9 - - - - -

10 WILLIAM SHEPARD,

11 Having Been First Duly Sworn,

12 was Examined and Testified as Follows:

13 DIRECT EXAMINATION

14 BY MS. SHEALY:

15 Q. Deputy Shepherd, tell the jury, if you would,
16 please, who are you employed by?

17 A. I'm employed with the Charleston County
18 Sheriff's Office.

19 Q. How long have you worked for the sheriff's
20 office?

21 A. Almost twenty-one years.

22 Q. Focusing your attention back to August 9th,
23 2010, what capacity were you working for the sheriff's
24 office at that time?

25 A. I was a patrol deputy in the south district,

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1 which included Hollywood, Edisto, Ravenel.

2 Q. Okay. And did you have the occasion to report
3 out to Old Jacksonboro -- Old Jacksonboro Road?

4 A. Yes, ma'am.

5 Q. What was the reason you were reporting there?

6 A. I believe the initial call came out that there
7 was a possibility -- we got a call that a citizen had
8 spotted something in -- off on the side of a dirt road
9 that looked like possibly a mannequin or a person.

10 Q. And when you arrived there, what was going on?

11 A. When I got there, the road was clear. I did
12 meet with the gentleman who called it in. At that time it
13 was a dirt road, complete dirt-road section. I parked my
14 vehicle and I proceeded to walk down to the area that he
15 had pointed out to me.

16 MS. SHEALY: Okay. Your Honor, at this time I
17 would move into evidence State's Exhibits 6 and 7.

18 MR. PENNINGTON: No objection, Your Honor.

19 THE COURT: 6 and 7 admitted without objection.

20 [Whereupon, State's Exhibit Number 6 is admitted
21 into evidence by the Court]

22 [Whereupon, State's Exhibit Number 7 is admitted
23 into evidence by the Court]

24 Q. [Ms. Shealy] Could you describe the area for
25 us?

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1 A. The area comes off of Savannah Highway onto 174,
2 Highway 174. And as you come up, there is a dirt road
3 which would be on my lefthand side. That dirt road is Old
4 Jacksonboro Road. It crosses, it intersects, with Highway
5 174. The dirt road extends for maybe somewhere between a
6 quarter mile to a half mile before it turns into a hardtop
7 again.

8 Q. What is of concern to you, as a first responder
9 from law enforcement, when you are approaching a scene
10 like that?

11 A. I want to be careful. I want to make sure that,
12 you know -- even though I don't know exactly what I have
13 at the time, I want to make sure that when I approach that
14 scene I don't contaminate or destroy any possible evidence
15 that could be there on the scene.

16 Q. Okay. And so what do you do in an effort to
17 preserve the scene?

18 A. Well, in this case here I stop -- I didn't allow
19 anyone else to go down there. My car was parked on one
20 end of the dirt road and I had another deputy go around
21 back down Savannah Highway onto the other end of Old
22 Jacksonboro Road and come up to the dirt road and stop --
23 block that part off.

24 And as I proceeded down to the area that was in
25 question, I stayed which would have been on my lefthand

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1 side of the road as I walked down.

2 Q. Okay. Showing you, then, State's Exhibits 5 and
3 6. Looking at 5 -- I'm sorry. 6 and 7. Looking at the
4 television there, could you describe what you did?
5 Looking at that.

6 A. Yes.

7 Where the vehicle is parked there, that -- to
8 me, that would have been my lefthand side of the road.
9 Actually, my vehicle -- this is -- I think this is a more
10 recent photo from when I got there.

11 But I walked down the entire lefthand side, as
12 close to the grass line as I could, and I made everyone
13 else, EMS who responded, also do the same so I could keep
14 track of where we had been so I could tell our TSU
15 [phonetic] guys where we had been, that they were our
16 footprints that were going up that road.

17 Q. Okay. And then the crime scene tape that we
18 see, is that part of what you did, as well?

19 A. No, ma'am. My crime scene tape was back in --

20 Q. Farther --

21 A. -- farther to the dirt -- to Highway 174.

22 Q. Okay. So you blocked it off even a farther area
23 so that people could not go --

24 A. Initially, ma'am, I blocked the entire dirt road
25 off. Yes, ma'am.

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1 Q. Okay. And then showing you State's Exhibit 7.
2 That just reflects the opposite end?

3 A. Yes, ma'am.

4 I believe that is the other end of Old
5 Jacksonboro Road.

6 Q. Okay. And, again, that's to assist the crime
7 scene technicians who will come out and process the scene?

8 A. Yes, ma'am.

9 MS. SHEALY: Okay. Very good. I have no
10 further questions. Please answer any that the defense
11 may have.

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. PENNINGTON:

15 Q. Deputy Shepherd, you indicated in that
16 photograph that at some point vehicles were allowed to
17 drive down there to where the body was?

18 A. No, sir, not while I was there. I let no one --
19 fire department, EMS, all stayed outside off of the dirt
20 road while I was there.

21 MR. PENNINGTON: Could we have State's 6 back
22 up, please.

23 Q. [Mr. Pennington] All right. Is that your
24 cruiser on the left?

25 A. Do not believe that's my cruiser. This is after

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1 THE CLERK OF COURT: If you would state your
2 full name and spell your last name.

3 THE WITNESS: Stephen Edwards. E-D-W-A-R-D-S.

4 MS. SHEALY: Beg the Court's indulgence just a
5 moment.

6 [Whereupon, Ms. Shealy reviews documents]

7 MS. SHEALY: Mr. Edwards, we need to make sure
8 that we can hear you clearly. Okay?

9 THE WITNESS: Yes.

10 MS. SHEALY: Okay.

11 - - - - -

12 STEPHEN EDWARDS,

13 Having Been First Duly Sworn,
14 was Examined and Testified as Follows:

15 DIRECT EXAMINATION

16 BY MS. SHEALY:

17 Q. Tell the jury if you would, please, where are
18 you from?

19 A. Bluffton.

20 Q. And where do you live now?

21 A. I'm at [REDACTED]

22 Q. Okay. I keep calling it Gothy Road. It's
23 Geothie?

24 A. Geothie.

25 Q. How do you spell it?

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1 A. I can't spell it too good, ma'am.

2 Q. Okay. I'm sorry. That's okay.

3 Do you know Darryl Drayton?

4 A. Yes, I do.

5 Q. And are you, in fact, related to Darryl Drayton?

6 A. Yes, I am.

7 Q. How are y'all related?

8 A. His grandmother and my grandfather are sister
9 and brothers.

10 Q. Do y'all consider yourself cousins?

11 A. Yes, ma'am.

12 Q. Now, I need to ask you about something. In
13 1999, were you convicted of criminal domestic violence of
14 a high and aggravated nature?

15 A. Yes, I was.

16 Q. And in 1999, were you convicted of threatening
17 the life of a police officer?

18 A. Yes, I was.

19 Q. Okay. Now, back in August of 2010, how often
20 did you see Darryl Drayton?

21 A. Pretty much maybe once or twice a week he'd come
22 by and ask me to take him to Wal Mart or Target. Or
23 sometimes I would take him out to the club and then I
24 would go back and pick him up.

25 Q. Okay. And so you had a car at the time?

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1 A. Yes, ma'am.

2 Q. And what kind of car was that?

3 A. 2000 Gold Pontiac.

4 Q. 2000 --

5 A. Gold Pontiac.

6 Q. Gold Pontiac?

7 A. Yes, ma'am.

8 Q. Okay. Let's focus in, then, on August 9th,

9 2010. Had you spent the night at your house?

10 A. Yes, ma'am.

11 Q. And tell us about waking up that day. What woke
12 you up that morning?

13 A. There was a knock at the door.

14 Q. Which door?

15 A. The back door.

16 Q. Okay.

17 A. Okay? And I asked who it was and Darryl said,
18 it's me, Cuz.

19 Q. Me, what?

20 A. Me, Cuz.

21 Q. Me, Cuz?

22 A. Yes, ma'am.

23 Q. Okay.

24 A. Okay. He said he needed a ride at the hospital.

25 I told him I didn't have any gas in the car and he said

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1 he'll be back.

2 Q. Okay. So hang tight for a second.

3 MS. SHEALY: Judge, at this time I would like to
4 move into evidence State's Exhibits 8, 9, 10, 11, 12,
5 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 --

6 THE COURT: 22, 23 and what?

7 MS. SHEALY: -- 24, 25, 26, 27, 28, 29, 30, 31,
8 32 and 33, without objection.

9 MR. PENNINGTON: That is correct, Your Honor.

10 THE COURT: So you're doing 8 through 33; is
11 that correct?

12 MS. SHEALY: Yes.

13 THE COURT: Okay. 8 through 33 admitted without
14 objection.

15 [Whereupon, State's Exhibit Numbers 8 through 33
16 are admitted into evidence by the Court]

17 Q. [Ms. Shealy] Stephen, on this television back
18 here, is that a photograph where you live at night?

19 A. Yes, ma'am.

20 Q. Okay. That's the front of your house?

21 A. Yes, ma'am.

22 This is the front of the house. Going through
23 the gate is the way we go to the back back there.

24 MS. SHEALY: Okay. Let me tell you what you're
25 going to have to do for me.

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1 THE WITNESS: Stand up?

2 MS. SHEALY: No. Well, not quite yet.

3 When you speak, come back towards the
4 microphone.

5 THE WITNESS: Oh. I'm sorry.

6 MS. SHEALY: That's okay.

7 THE WITNESS: I'm sorry.

8 A. Do you see where that yellow piece of tape at
9 where the red and black --

10 Q. [Ms. Shealy] The crime tape?

11 A. Yeah.

12 -- the crime tape is. That's where you go
13 inside the gate to get to the back.

14 Q. Okay. And then showing you State's Exhibit 9.
15 What side of the house is that?

16 A. This side of the house right here is when you go
17 into the driveway. It's on this side of the house --

18 Q. Okay. Showing you State's Exhibit 10.

19 A. Okay. This is the back door -- the back porch
20 to get to the back door that he knocked on.

21 Q. Okay. So when he knocked, he was on that porch?

22 A. Yes.

23 Q. Okay. So you told him you didn't have any gas
24 and you didn't have any money for gas?

25 A. Yes, ma'am.

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1 Q. So what happened at that point?

2 A. He said he'll be back. And I rolled back over
3 and went back to sleep. And maybe an hour and thirty
4 minutes or so he came back and knocked again. I asked who
5 the hell is it and he said, it's me, Cuz, and that he has
6 money. He had \$5.

7 Q. Okay. And what happened at that point?

8 A. Well, I got up and went outside. And he told me
9 that he needed a ride to the emergency room because he had
10 got in a fight with three guys from Beaufort and he got
11 cut on his finger.

12 Q. Did you see his hand at that point?

13 A. It was bandaged up.

14 Q. Could you tell whether it was bleeding or had
15 bled?

16 A. Oh. You could see some bloody tissues on the
17 outside of it.

18 Q. Okay. So what did y'all do?

19 A. I took him to the emergency room.

20 Q. And tell the jury, if you would, how far is --
21 what hospital were y'all going to go to?

22 A. Hilton Head hospital.

23 Q. And how far is Hilton Head hospital from where
24 you live?

25 A. Maybe two and a half miles or more. A lot more

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1 than that. Three miles at the most.

2 Q. Okay. Did y'all stop to get gas?

3 A. Yes, we did.

4 Q. Where did y'all stop to get gas?

5 A. We stopped at the station across from CVS,
6 because I wasn't too sure whether we were going to make it
7 or not because I wanted to go to Bluffton, make sure we
8 didn't run out of gas. But he didn't wanted to.

9 Q. He didn't want to stop in Bluffton --

10 A. No, he didn't want me --

11 Q. -- to get gas?

12 A. -- to go to Bluffton.

13 He wanted to go ahead and take a chance and get
14 to the station right there and maybe make it to Hilton
15 Head Island.

16 Q. Okay. And when y'all got to the hospital, did
17 you go in the hospital?

18 A. Yes, I did.

19 Q. And did he go back into a room to be seen?

20 A. Yeah.

21 He went into the emergency room and I was in the
22 waiting room.

23 Q. Okay. At the Hilton Head hospital, did you go
24 back where he was being treated?

25 A. Yes, ma'am.

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1 It was like two hours sitting -- I was sitting
2 out there.

3 Q. Okay. And when you went back where he was
4 treated, what was going on with his finger?

5 A. They had his thumb in a solution. They were
6 soaking his thumb.

7 Q. Did you get a look at the cut at that point?

8 A. It was visibly -- it was a gash on top of the
9 finger.

10 And the solution was soapy but you could also
11 see the dried blood rinsing in the water, also.

12 Q. Okay. After he got finished at the hospital,
13 did you drive him from there?

14 A. Yes, ma'am.

15 Q. And where did y'all go?

16 A. He wanted to stop at a jewelry store.

17 Q. And did you take him to the jewelry store?

18 A. Yes, ma'am.

19 Q. Did he say why he wanted to go to a jewelry
20 store?

21 A. He told me that he had a class ring that he
22 wanted to pawn.

23 Q. A class ring?

24 A. Yes, ma'am.

25 Q. Did he show you the ring?

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1 A. No, ma'am.

2 Q. Where was this jewelry store?

3 A. It was in the area where Food Lion was.

4 Q. Where Food Lion was?

5 A. Yes, ma'am.

6 Q. Okay. When you got to the jewelry store, did
7 you get out of the car?

8 A. No, ma'am.

9 Q. When he -- did he, in fact, go in the jewelry
10 store?

11 A. Yeah, he went inside the jewelry store.

12 Q. When he came out of the jewelry store, did he
13 tell you whether he pawned it?

14 A. No.

15 He didn't really say anything. He just said,
16 let's go. That was it.

17 Q. Okay. What did y'all do the rest of the day?

18 A. We went down to some friends of his house, at
19 Palmer's Raod [phonetic] in the Getty [phonetic], and we
20 went in there and played games and drank some beers.

21 Q. Okay. Where did y'all spend the night that
22 night?

23 A. Hardeeville.

24 Q. Hardeeville?

25 A. Yes, ma'am. At the Economy Lodge.

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1 Q. Now, why didn't -- why did you stay in
2 Hardeeville instead of at your own place?

3 A. Well, he said he was having problems with the
4 guy that he was staying with, that he was sleeping in his
5 car and the guy, you know, was having a problem with that.

6 So he told me to take him down to Hardeeville,
7 which is why I had to sign -- get the room for him. And
8 so instead of me coming back to Bluffton, he suggested I
9 stay over there.

10 Q. Okay. And so this was August?

11 A. Yeah.

12 Q. How did you feel about staying in a hotel?

13 A. It wasn't -- it wasn't that bad because I didn't
14 had any heat or air-conditioning in my house. And then it
15 would beat going all the way back to Bluffton to get up
16 early in the morning and pick him up, you know.

17 Q. Okay. Now, did you know -- when he said -- you
18 said he said that he was having a problem with his
19 roommate or whatever, where was he staying?

20 A. Yeah he -- I mean his car.

21 Q. Oh. He was having problems with his car?

22 A. Yeah.

23 But the guy's yard that he had his car parked
24 in, he was having a problem with him. You know, so the
25 guy didn't want him on the property --

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1 Q. Where was that? Where is that?

2 A. In Bluffton on the other side of self-help.

3 Q. On the other side of self-help?

4 A. Yes, ma'am.

5 Q. Okay. The next day, what did y'all do?

6 A. He had an appointment to go to the plastic
7 surgery. I took him to the plastic surgery office and
8 they made another appointment, which is why we stayed
9 there maybe two hours or something like that. They made
10 another appointment for him to come back a week later or
11 so. And after we left from there, he went back to his
12 friend's house. But we left his friend's house earlier,
13 because I was tired.

14 It was before sundown. So we went back to the
15 same motel again. I rented a room again. And he sent me
16 for a pack of cigarettes, a couple of beers. Which he
17 don't usually give nobody his money. But I went and got
18 it. And he was on the phone.

19 Q. Okay. Now, you were -- so on Tuesday night you
20 stayed in Hardeeville, as well?

21 A. Yes, ma'am.

22 Q. Okay. And did he ever say anything else about
23 those guys that jumped him?

24 A. No, ma'am.

25 Q. Okay. Anything else significant happen on

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1 Tuesday?

2 A. He wanted me to take him to Florida.

3 Q. Did you agree to take him to Florida?

4 A. No, ma'am.

5 He was talking to a friend of his in Florida and
6 she said if I bring him up there, they would take care of
7 him -- I didn't.

8 Q. You didn't take him?

9 A. No.

10 Q. Okay. What happened on Wednesday?

11 A. I think I went home.

12 Let me just make sure I get the dates right. I
13 don't want to get it confused.

14 After I did that, took -- I dropped him to the
15 library. I wasn't feeling good, so I went to the doctor.

16 Q. Let me interrupt you for a second. When you
17 said you went to the library: what did you like to do at
18 the library?

19 A. I usually go there, watch movies or whatever.
20 But that particular day I dropped him off. He wanted to
21 get dropped off.

22 Q. Okay. What else do people do at the library in
23 Bluffton?

24 A. Basically just watch movies or chitchat on the
25 computers and stuff like that.

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1 Q. You have internet access --

2 A. Yeah.

3 Q. -- there?

4 A. Yeah.

5 Q. Okay. And you were saying you didn't feel well?

6 A. No, I wasn't feeling good.

7 Q. So where did you go?

8 A. I went to the doctor.

9 Q. And what happened when you went to the doctor?

10 A. My sugar level was so high that they called the
11 ambulance and they took me to the emergency room.

12 Q. Okay. So let's slow down just a second.

13 When you say you went to the doctor, which place
14 was that and where was it?

15 A. Doctor Care in Bluffton.

16 Q. Okay. And then they sent you by ambulance
17 where?

18 A. To the Hilton Head hospital.

19 Q. Did anything significant happen while you were
20 at the hospital at Hilton Head?

21 A. Yeah.

22 I was sitting there. And the news came on and
23 they showed this female with two kids, you know. And,
24 basically, it didn't hit me right then and there. That
25 was just regular news, missing in Bluffton.

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1 So after I left, I went home. And for some
2 reason I had trash on the porch, you know, and somebody
3 didn't put the trash in the trash can. So I seen there's
4 a spare tire sitting on top of the trash can. And when I
5 pulled the spare tire out, there was a bunch of items in
6 there which I couldn't hardly really see. I took a few of
7 the items out --

8 Q. Let me interrupt you there.

9 A. Go ahead.

10 Q. When you say you couldn't hardly see them --

11 A. Right.

12 Q. -- what time of day was that?

13 A. It was like basically dark. But I had a night
14 lamp, you know, a light post, and you could really see --
15 vaguely see what was going on inside of it.

16 So I took the tire off, sit it on this side. So
17 there was a bunch of other stuff in there. So I grabbed a
18 couple of other stuff out of there. So I went in the
19 house and light the candle. And basically, at first when
20 the candle come on, it looked like a stain and then all of
21 a sudden you take a second look and it was blood.

22 So I went back outside, looked in the trash can
23 with the candle. Looked like there was a bunch of bloody
24 stuff in there. Took that same speed --

25 Q. Took that what?

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1 A. Same speed. Went and called 911.

2 Q. I'm sorry. I still didn't understand what you
3 were --

4 A. I went and took the same speed and went and
5 called 911.

6 Q. I'm sorry. I still didn't --

7 A. I left from home -- and went up to the same
8 speed. I left from home --

9 Q. I'm still not getting --

10 A. I left --

11 Q. Wait. Hold on one -- I took that same what?

12 A. Speed. It's I guess like if you leave -- not
13 pills or anything like that. It's like if you leave home.
14 That's what I mean by I took the same speed.

15 Q. The same speed?

16 A. Right. In fact, just like if you dropped
17 everything and you --

18 Q. Oh. It's an expression?

19 A. Yeah, it's an expression.

20 Q. Okay. Okay.

21 A. Yeah. No speed.

22 Q. I'm sorry. Go ahead. Go ahead.

23 A. So I went and called 911. And they wanted to
24 know why I was calling them. I said --

25 Q. Slow down. When you went to call 911, where did

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1 you call 911 from?

2 A. From a neighbor apartment in Bluffton.

3 Q. Okay. Now, did you drive that car down to the
4 neighbor?

5 A. Yes, I did.

6 Q. You drove your car down there?

7 A. Yes.

8 But I parked it in the church yard, because I
9 didn't have insurance on it. I did not have insurance on
10 my car and I didn't --

11 Q. You parked at the church parking lot?

12 A. Yeah. The church I attend, you know.

13 Q. Okay.

14 A. And I didn't want them to go ahead and run my
15 tag, because I did not have insurance on my car, because
16 they probably would have pulled it.

17 So a young guy was walking by. I used his cell
18 phone. And Nicklepumper was already closed. So I called
19 911 and they wanted to know why I was calling and I said,
20 I'm not going to tell you anything else on the phone. I
21 said, you need to come to Nicklepumper and pick me up;
22 I've got something to show you. I told them that several
23 times and finally an officer came up there.

24 So he called another Bluffton police officer.
25 They took me to my house. I took them to where the trash

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1 can was. And then that's when they called Beaufort
2 County. Beaufort County called the detective.

3 MS. SHEALY: And you have to slow down. You
4 talk faster than I do.

5 THE WITNESS: Oh. I'm sorry.

6 MS. SHEALY: Okay. Hold on a second.

7 Q. [Ms. Shealy] Let's go back to when you first
8 see the tire in the trash can. Okay?

9 A. Okay.

10 Q. Do you take some of the items out of the trash
11 can?

12 A. Yes, ma'am.

13 Q. Okay. And where do you put the items from the
14 trash can?

15 A. In the house.

16 Q. Okay. Do you remember what items you put in the
17 house?

18 A. It was a box with speakers in it, I think.

19 Q. Okay. Let me show you some photographs and walk
20 you through it. Okay? First of all, looking at that
21 photograph right there, do you see your trash can there?

22 A. It's right there.

23 Q. And that's that reddish trash can?

24 A. Yes, ma'am. It's brown, really.

25 Q. Okay. And showing you State's Exhibit 13. Are

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1 those the diapers that you saw?

2 A. That's what got my attention.

3 Q. Were the diapers?

4 A. The diapers.

5 Q. Because you didn't put any diapers in your trash
6 can?

7 A. No, ma'am.

8 Q. Showing you State's Exhibit 14.

9 A. That's the tire that was on top of the trash can
10 that I took off of it.

11 Q. And you put it there --

12 A. Yes, ma'am.

13 Q. -- on the ground?

14 Okay. Now showing you State's Exhibit 21.

15 First of all, where is this picture taken?

16 A. That's on the inside of my -- that's on the
17 inside of my house, which is junky.

18 Q. And is that how -- not trying to embarrass you.
19 But is that how you keep your house?

20 A. Basically. Sometimes, but not all --

21 Q. All right.

22 A. Yes, ma'am.

23 Q. You cleaned things up?

24 A. Yes, ma'am.

25 Q. Okay. But everything that's in that picture,

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1 did all of that come out of the trash can?

2 A. No, ma'am. Because I pulled it out.

3 MS. SHEALY: Your Honor, with the Court's
4 permission and the court reporter's permission, may he
5 step down?

6 THE COURT: Have you got a pointer?

7 A. It was -- it was --

8 THE COURT: Hold on just a second.

9 MS. SHEALY: Hang tight just a second. Let me
10 get you --

11 THE COURT: She's going to give you a pointer,
12 okay --

13 THE WITNESS: Okay. Thank you.

14 THE COURT: -- to make it easier for you.

15 THE WITNESS: Yes, sir.

16 THE COURT: Come over and stand by the picture.

17 MS. SHEALY: If you'll come over here. And,
18 look, I'm going to hand you this.

19 THE WITNESS: Uh-huh.

20 MS. SHEALY: We're going to take it item by
21 item. Okay?

22 Q. [Ms. Shealy] If you would point to the items
23 that you took out of the trash can.

24 A. This I took out of the trash can; this I took
25 out of the trash can.

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1 Everything else was not in there.

2 Q. Okay. Now, when you're pointing to those other
3 things like that can and the book and the cups --

4 A. -- the case.

5 Q. No. I know. Those you took out of the trash
6 can.

7 A. Right.

8 Q. But that can of food --

9 A. Right.

10 Q. Point to that for me.

11 A. Right there.

12 Q. And that book.

13 A. Okay. That's mine.

14 Q. All right. Now, what about that handle right
15 there? That white handle.

16 A. This is a knife. That's mine.

17 Q. That's a filet knife?

18 A. Right.

19 Q. And that's -- that was not in the trash can?

20 A. No, that was not in the trash can.

21 Q. And those cups of soup, whatever?

22 A. All that stuff is mine.

23 Q. All that was yours?

24 A. Yeah.

25 Q. And where in your house is all that?

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1 A. It's in the other side of the back bedroom -- by
2 the way that you come into the back door.

3 Q. Uh-huh.

4 A. That way.

5 Q. Okay. Stand up there for just a second.

6 Showing you State's Exhibit Number 11. Now, this is the
7 chair that was outside next to the trash can?

8 A. Right.

9 Q. Is that your bag?

10 A. No, ma'am.

11 Q. Showing you State's Exhibit Number 12. Point to
12 that -- first of all, point to that bluish-gray --

13 A. This.

14 Q. Okay. That: is that yours?

15 A. No, ma'am.

16 Q. And then that larger bluish-gray item?

17 A. None of this stuff right here is mine.

18 Q. Okay.

19 A. Okay? This was another indication that it just
20 seemed like this was a bag that was -- a bag where the
21 baby diaper was in.

22 Q. Okay. State's Exhibit 13: those diapers we've
23 talked about.

24 A. Right here.

25 Q. State's Exhibit 15. And this is a shed that's

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1 in your back yard; right?

2 A. Yes, ma'am.

3 That's a little tool house. I think you've got
4 another picture of it. But this thing wasn't in it.

5 Q. That was not there?

6 A. No.

7 Q. Here's another picture of the shed, just a
8 better picture of the shed and the hole, on State's
9 Exhibit 16.

10 A. This is the shed right here.

11 Q. Okay. And then State's Exhibit 17. Is that --

12 A. Yeah, this is the bottom of the shed.

13 Q. Okay. Now, what about that insert right there?

14 A. This wasn't supposed to be -- all this stuff was
15 not there. Nobody don't even go in that place.

16 Q. Okay. And a closer shot there on State's
17 Exhibit 18. Is that yours?

18 A. No.

19 Q. Okay. State's Exhibit 19. That bag?

20 A. No, ma'am.

21 Q. Now, had you even seen all this --

22 A. No, I haven't even --

23 Q. -- before you called the police?

24 A. No.

25 I haven't seen none of that because I remember

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1 them asking me about does anybody ever go in there or
2 anything, and I told them no.

3 But this stuff wasn't even supposed to be
4 underneath here.

5 Q. So when you walked down to call the police, you
6 hadn't even seen all this stuff?

7 A. No, I had not.

8 Q. State's Exhibit 20. It's a little bit better
9 picture of that bag.

10 A. Right.

11 Q. And that's what you put on your floor?

12 A. Right. This is it right here.

13 Q. And then this that was in the trash can, 22,
14 that is 22, that is not your --

15 A. No, ma'am.

16 Q. -- diaper bag?

17 A. No, ma'am.

18 Q. And we showed you this a minute ago, 23, that
19 was in the trash can.

20 A. Right.

21 Q. That's not yours?

22 A. No. None of them, either.

23 Q. Another shot of that 24.

24 A. No. All this got my attention.

25 Q. 25. The blanket and diaper?

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- 1 A. Right. That's not mine.
- 2 Q. 27. Is that your CVS bag?
- 3 A. No.
- 4 It don't look like it. It's got clothes in it
- 5 now.
- 6 Q. And those aren't your clothes?
- 7 A. No.
- 8 Q. Okay. Now, State's Exhibit 28. Are these items
- 9 that you removed?
- 10 A. That's the only thing that was in that box.
- 11 That's it. Remember I told you about the box? That was
- 12 it right there.
- 13 Q. That was where?
- 14 A. One of them that was in the trash can along with
- 15 that CVD player and that emergency --
- 16 Q. That was in the trash can, as well?
- 17 A. Right.
- 18 Q. You moved it out?
- 19 A. Yes, ma'am.
- 20 Q. And then what about that box to the right?
- 21 A. Yeah, I think that was in there, too, also.
- 22 Q. That hand soap --
- 23 A. Yeah.
- 24 Q. -- thing and the --
- 25 A. Yeah.

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1 Q. -- potted plant?

2 A. Yes, ma'am.

3 Q. So those two things you took out of the trash
4 can?

5 A. Right.

6 Q. This is a better picture of it? 29.

7 A. Yeah, that's it.

8 Because I remember me telling the detective
9 about it because I let them know that I took that stuff
10 that was in the house.

11 Q. Okay. Now, here's a larger picture of that
12 knife --

13 A. Uh-huh.

14 Q. -- 33, that was on your floor. And that's your
15 filet knife?

16 A. Yeah, this is my knife.

17 This is the one that I usually work with to
18 clean my fish and stuff with. I used to work at the
19 Oyster Factory. I also told the detective about that.
20 And I told them they could take anything out of there to
21 do with that knife.

22 They took everything out of that house,
23 including the house that I used to stay in the back, also.
24 I give them permission to take all that stuff out of
25 there.

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1 MS. SHEALY: Okay. You can go ahead and have a
2 seat again for a moment.

3 [Whereupon, the witness complies]

4 Q. [Ms. Shealy] So you walk down to Nicklepumpers.
5 And how do you get back to your house once you called 911?

6 A. Bluffton Police Department took me there.

7 Q. And then when you get there, you're waiting for
8 other officers to come?

9 A. Yes.

10 They called out -- two other officers from
11 Bluffton came to Nicklepumpers. So they decided to take
12 me back to the house. They called the sheriff department.
13 The sheriff department went to the back and also look at
14 the trash can. Then the sheriff department called the
15 detective.

16 Q. Okay. And that first officer that shows up, did
17 you tell him what you're telling us about the stuff?

18 A. Yes, I did.

19 Q. And then was it Todd Calhoun? Do you see --

20 A. Yes.

21 Q. -- Detective Calhoun?

22 A. Yes.

23 Q. And did some other deputies and detectives
24 from --

25 A. Right. They --

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1 Q. -- Beaufort County come?

2 A. Yes.

3 Q. And when they walked on your property and came
4 in your house, did they tell you they wanted to look at
5 everything?

6 A. That's right.

7 Q. Everything you had?

8 A. Yes.

9 Q. And did you give them permission to do so?

10 A. Yes, I did. I had nothing to hide.

11 Q. Did they ask you to sign a voluntary consent to
12 search?

13 A. Yes, they did.

14 Q. And did you, in fact, sign it?

15 A. Yes, I did.

16 Q. Is this the document reflecting your consent to
17 search?

18 A. Yes, ma'am. That's my signature.

19 MS. SHEALY: Your Honor, at this time I would
20 offer State's Exhibit 174 into evidence.

21 MR. PENNINGTON: No objection, Your Honor.

22 THE COURT: 174 admitted without objection.

23 [Whereupon, State's Exhibit Number 174 is
24 admitted into evidence by the Court]

25 Q. [Ms. Shealy] Now, while they were looking

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1 through all your stuff, where did they ask you to go sit?

2 A. I was sitting on the outside of the fence of
3 the -- I was outside the fence on top of the -- on the
4 side of the police car.

5 Q. Okay. And after you talked to those first
6 officers and then Detective Calhoun and then the
7 detectives that showed up that night, did they ask you
8 if -- later if they could come back and get that knife
9 from you?

10 A. Yes.

11 Q. And did you tell them to come on back?

12 A. Yes, I did.

13 Q. When they came back, did you tell them you had
14 found some other stuff?

15 A. Yes, I did.

16 Q. What had you found?

17 A. It was a pair of tennis.

18 Q. A pair of tennies?

19 A. Tennis.

20 Q. Tennis?

21 A. Yeah.

22 Q. Okay. Are you talking about shoes?

23 A. Yes, ma'am.

24 Q. And where did you find those?

25 A. They was underneath my car seat on the passenger

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1 side.

2 Q. Okay. First of all, let's show you State's
3 Exhibit 30. Looking at State's Exhibit 30, is that the
4 pair of shoes you're talking about?

5 A. Yes, ma'am.

6 Q. Okay. Showing you what's been previously marked
7 as State's Exhibit 172. This is the shoe?

8 A. Yes, ma'am.

9 Q. And this is a nine and a half. Do you wear nine
10 and a half?

11 A. No, ma'am.

12 Q. What size shoe do you wear?

13 A. Twelve and a half.

14 MS. SHEALY: I would move this into evidence
15 without objection.

16 MR. PENNINGTON: That's correct. No objection.

17 THE COURT: Any objection?

18 MR. PENNINGTON: No, sir.

19 THE COURT: State's Number 172 admitted without
20 objection.

21 [Whereupon, State's Exhibit Number 172 is
22 admitted into evidence by the Court]

23 Q. [Ms. Shealy] And State's 171. So you found
24 both shoes. Where were they?

25 A. Underneath the seat of the car.

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1 Q. Tucked under?

2 A. Yes.

3 MS. SHEALY: And 172 [sic], as well, Your Honor,
4 being the other --

5 THE WITNESS: Yes, ma'am.

6 MS. SHEALY: -- the matching.

7 MR. PENNINGTON: No objection, Your Honor.

8 Q. [Ms. Shealy] Who had been sitting --

9 THE COURT: All right. 171 admitted without
10 objection.

11 [Whereupon, State's Exhibit Number 171 is
12 admitted into evidence by the Court]

13 Q. [Ms. Shealy] Who had been sitting in that seat?

14 A. My cousin Darryl there.

15 Q. Okay. And showing you State's Exhibit 31 and
16 32.

17 A. That's my car.

18 Q. That was your car?

19 A. Yes, ma'am.

20 MS. SHEALY: Beg the Court's indulgence just a
21 moment.

22 [Whereupon, Ms. Shealy reviews documents]

23 Q. [Ms. Shealy] And there was a sock that was also
24 found with those shoes --

25 A. Yes, ma'am.

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1 Q. -- is that correct?

2 A. Yes, ma'am.

3 Q. And you gave that to the --

4 A. Deputy -- I mean, detective, also.

5 Q. Now, you told us about your involvement with the
6 Bluffton police, you told us about your involvement with
7 the Beaufort County police.

8 A. Yes, ma'am.

9 Q. Did you also get interviewed by the Charleston
10 County detectives?

11 A. Yes, I did.

12 Q. Okay. And that would have been detective James
13 Perkins and --

14 A. Yes, ma'am.

15 Q. -- Detective Derek Boyd?

16 A. Yes, ma'am.

17 Q. And they brought you over -- was it to Hilton
18 Head?

19 A. Hilton Head. Yes, ma'am.

20 Q. And that was a lengthy interview and they asked
21 you a bunch of questions?

22 A. Yes, ma'am.

23 Q. And did you tell them what you've told us today?

24 A. Yes, ma'am.

25 Q. Okay. They read you your Miranda warnings?

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1 A. Yes, ma'am.

2 Q. And you voluntarily --

3 A. Yes, ma'am.

4 Q. -- agreed to speak to them?

5 Let me ask you a little bit about where places
6 are in Bluffton so we can kind of get an idea.

7 A. Yes, ma'am.

8 THE COURT: Let's stop right there.

9 All right. Mr. Foreman, ladies and gentlemen of
10 the jury, it's twelve o'clock and as I told you this
11 morning, we're going to stop at twelve o'clock and
12 take a lunch break at this time.

13 The notepads leave in the chairs. The clerk
14 will collect them and give them to you after lunch.
15 The clerk keeps track of the pads. I will allow you
16 to take the pads into the jury room after the charge
17 at the end of the trial. But in the meantime, we'll
18 keep them in the courtroom.

19 Please don't talk to anybody, please don't
20 listen to anything about the case, during lunch.

21 If you'll be back in the jury room at 1:30,
22 we'll get started at that time. Have a good lunch.

23 If you'll follow the bailiffs.

24 [Whereupon, the jury exits the courtroom at
25 11:55 a.m.]

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1 THE COURT: All right. Bring us the jury,
2 please, sir.

3 [Whereupon, Mr. Edwards re-takes the witness
4 stand]

5 [Whereupon, the jury enters the courtroom at
6 1:36 p.m.]

7 THE BAILIFF: All jurors are present, Your
8 Honor.

9 THE COURT: Thank you very much.
10 If you will proceed with your direct
11 examination, please, ma'am.

12 MS. SHEALY: Thank you, Your Honor.
13 I just have a few more questions, Mr. Edwards.

14 THE WITNESS: Yes, ma'am.

15 CONTINUED DIRECT EXAMINATION

16 BY MS. SHEALY:

17 Q. I was getting ready to ask you a little bit
18 about where things were I relationship to each other in
19 Bluffton.

20 A. Yes, ma'am.

21 Q. Okay. If you would tell us: how far of a walk
22 is it from where the Oyster Factor is to your house?

23 A. I would say about maybe five, ten minutes for a
24 regular person. Fifteen for me because of the artificial
25 leg that I have.

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- 1 Q. You have an artificial leg?
- 2 A. Yes, ma'am.
- 3 Q. And how long have you had that?
- 4 A. Since I was three years old.
- 5 Q. About a fifteen-minute walk you said?
- 6 A. Yes, ma'am.
- 7 Q. And how far of a walk from the self-help place
- 8 to your house is it?
- 9 A. I would say about ten.
- 10 Q. Okay.
- 11 A. Yes.
- 12 Q. Now, did you know Alexis Lukaitis?
- 13 A. No, ma'am.
- 14 Q. Had you ever seen her?
- 15 A. No, ma'am.
- 16 Q. Tell the jury: on that Sunday night did you go
- 17 with Darryl Drayton to Charleston with Alexis Lukaitis?
- 18 A. No, ma'am. Not at all.
- 19 Q. And when you made that phone call that night,
- 20 why did you do that? Why did you go down to
- 21 Nicklepumpers?
- 22 A. I went down there to make sure that somebody
- 23 knew what was in my trash can, because I did not put it in
- 24 there. You know, I wanted them to know exactly what it
- 25 was and where it was at.

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1 MS. SHEALY: Okay. I have no further questions.
2 Please answer any that the defense may have.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Cross-examination

5 MR. PENNINGTON: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. PENNINGTON:

8 Q. Mr. Edwards, you live at [REDACTED] -- what's the
9 name --

10 A. Geothie Road.

11 Q. Geothie?

12 A. Geothie Road.

13 Q. Geothie Road?

14 A. Yes, sir.

15 Q. That's where you live?

16 A. Yes.

17 Q. This evidence, this spare tire, was where you
18 live? In your brown trash can?

19 A. Yes.

20 Q. And when you opened the trash can, the other
21 evidence that we saw was in your brown trash can?

22 A. Yes.

23 Q. At your house?

24 A. Yes.

25 Q. And it's your testimony today that you did not

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1 see who put those items in that trash can?

2 A. No, sir.

3 Q. And that you did not hear who put those items in
4 the trash can?

5 A. No, sir.

6 Q. Now, Mr. Edwards, behind your place there is the
7 shed that we talked about that you pointed out in the
8 photograph?

9 A. Yes.

10 Q. And is it common that people sit back there and
11 talk?

12 A. No, sir. The only person that came in that yard
13 is me.

14 The recent person been in that yard -- the last
15 -- the recent was him. Nobody else. And nobody come and
16 sit in that yard.

17 Q. There aren't chairs back up in there?

18 A. Sir, it's a chair. One chair. The only person
19 that came in that yard is him and me. That's it.

20 Q. And isn't there a place where a -- another place
21 where you can sleep back up in there?

22 A. There's a trailer in the back.

23 Q. Yes.

24 A. Yes, sir.

25 I moved from there because it's summer time.

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1 And the other house I sleep in in the winter time. It's
2 much cooler in there.

3 Nobody else be in that yard.

4 Q. All right. Now, you discovered these items the
5 day after -- or the evening of the time that you went to
6 the doctor for the high blood, the high blood sugar?

7 A. The sugar level.

8 Q. The sugar level?

9 A. Yes.

10 Q. Okay. So you had been in Hardeeville for two
11 nights with Darryl before finding these items?

12 A. Yes.

13 Q. And so in effect you don't know when, before
14 that Wednesday night, that those items got there?

15 A. No, I don't.

16 Q. And you described that this trailer had no
17 power?

18 A. Right.

19 Q. You were using candlelight?

20 A. Yes.

21 Q. Now, you acknowledged that you were convicted in
22 '99, 1999, of criminal domestic violence --

23 A. Yes, sir.

24 Q. -- of a high and aggravated nature?

25 A. Yes.

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1 Q. And threatening the life of a police officer?

2 A. Yes.

3 Q. And you did not like the penitentiary, did you?

4 You didn't like the penitentiary?

5 A. Excuse me. I did my time to society. I paid my
6 price.

7 Q. And you didn't like the penitentiary, did you?

8 A. I'm not going back for something I never did,
9 neither.

10 Q. You didn't like the penitentiary, did you?

11 A. No, sir.

12 Q. You didn't like the food?

13 A. I didn't even eat in the kitchen. They had a
14 canteen over there.

15 Q. You had money, so you could get it off --

16 A. Yes, sir.

17 Q. -- the canteen? You didn't like the cells?

18 A. I didn't have no choice but to live there.

19 Q. You didn't like the --

20 A. You get --

21 Q. -- cells?

22 A. -- used to it. No, sir.

23 Q. You certainly don't want to go back, do you?

24 A. Sure enough not planning on going back.

25 Q. When they interviewed you in this case, when the

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1 police interviewed you in this case, when you met with
2 Detective Perkins, the gentleman in the blue tie here, and
3 Detective Boyd from Charleston, you were at the Hilton
4 Head Sheriff's Office substation, weren't you?

5 A. Yes.

6 Q. All right. And they put you in a room and they
7 conducted a lengthy verbal interview with you, didn't
8 they?

9 A. Yes.

10 Q. At the beginning of that, they read you your
11 rights to remain silent?

12 A. Yes, sir.

13 Q. And you signed a waiver of your right to remain
14 silent?

15 A. Yes.

16 Q. Meaning that you agreed to talk to them?

17 A. Yes.

18 Q. And when they would leave out of the room, you
19 were locked in that room, weren't you?

20 A. Yes.

21 Q. And when you wanted to go to the bathroom, you
22 had to knock on the door and get permission to get out and
23 go to the bathroom?

24 A. Yes, sir.

25 Q. But then Boyd, Detective Boyd, came in and told

1 you that you were not a suspect in their eyes, didn't he?

2 A. Yeah.

3 Q. And they never took a swab of your mouth for DNA
4 purposes, did they?

5 A. No, sir.

6 Q. Now, that interview that you did at the Hilton
7 Head Police Station, or I should say the sheriff's
8 substation, you talked to them for at least an hour?

9 A. Yeah. Basically an hour.

10 And I laid on the floor for two hours until
11 somebody came back in there.

12 Q. Right. And you answered all the questions that
13 they had?

14 A. Every question possibly that I know of.

15 Q. And you were anxious to tell them everything
16 that you knew about this case?

17 A. I got nothing to hide, sir.

18 Q. Pardon?

19 A. I got nothing to hide.

20 Q. So you told them everything that you knew about
21 this case?

22 A. Yes.

23 Q. All right. And you didn't want to leave
24 anything out?

25 A. Tried not to.

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1 Q. And yet at no time during that entire interview
2 did you mention anything about Darryl saying that he was
3 pawning a class ring, did you?

4 A. I don't remember.

5 Q. And at no time during that interview with
6 Detective Perkins, and Detective Boyd from Charleston, did
7 you ever mention anything about Darryl saying that he
8 wanted to go -- you to take him to Florida, did you?

9 A. I don't recall.

10 Q. The filet knife --

11 MR. PENNINGTON: And if we could have picture
12 Number 21, please.

13 Q. [Mr. Pennington] Mr. Edwards, do you see the
14 filet knife up there?

15 A. Yes, I do. Right there.

16 Q. Do you see the handle of it?

17 A. Yes, I do.

18 MR. PENNINGTON: With the Court's permission,
19 Your Honor, may I have him use that pointer?

20 THE COURT: Yes, sir.

21 MS. SHEALY: I'm sorry. The pointer --

22 THE COURT: Just stand right there.

23 Where's the pointer?

24 Just stand right on the other side of the gate
25 there and use the pointer. He'll get it for you in

1 just a second. Okay? Move over against the wall so
2 the jury can see you --

3 THE WITNESS: Yes, sir.

4 THE COURT: -- if you would, and just use the
5 pointer.

6 A. This is the knife right here.

7 Q. [Mr. Pennington] Now, Mr. Edwards, what you've
8 got your hand -- or the pointer on is the handle of the --

9 A. Handle of the knife. Right here.

10 Q. And so the blade is underneath what would be
11 that CD case?

12 A. Right.

13 Q. Okay. And so that is on your back porch?

14 A. This is inside of the house.

15 Q. On the side of the house?

16 A. Inside of the house.

17 Q. Inside of the house?

18 A. Inside of the house where the rest of the items
19 was at.

20 Q. Sort of near that trash can?

21 A. It's not sort of near the -- the brown trash can
22 is way in the back, before you can get on the porch.
23 Okay? This item, this item, and this item was in the
24 trash can. This is my knife.

25 Q. And they didn't swab your cheek for your DNA?

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1 A. No, sir.

2 Q. You were unemployed at the time?

3 A. Yes, sir.

4 Q. Now, you described that you know the area over
5 there on Wharf Street where Ms. Lukaitis' car was found?

6 A. Yes.

7 Q. Over by the Oyster Factor parking lot?

8 A. Yes.

9 Q. It's a new little county park?

10 A. Yeah.

11 They already developed it a little bigger now.

12 Q. And it was next to some new bathrooms that they
13 had built over there?

14 A. Yes.

15 Q. You know the area?

16 A. Yes.

17 Q. Walking distance from your house?

18 A. Yes.

19 Q. Fifteen minutes on a -- on what is your new
20 prosthetic leg?

21 A. On my time basis, yes.

22 MR. PENNINGTON: That's all I have. Thank you,
23 Mr. Edwards.

24 THE WITNESS: Uh-huh.

25 THE COURT: Any redirect?

1 MS. SHEALY: Beg the Court's indulgence just a
2 second.

3 [Whereupon, Ms. Shealy reviews documents]

4 REDIRECT EXAMINATION

5 BY MS. SHEALY:

6 Q. Mr. Edwards --

7 A. Yes, ma'am.

8 Q. -- regarding the ring and going by --

9 Did you call it a jewelry store, or a gold
10 shop --

11 A. It was a gold shop --

12 Q. -- or do you remember?

13 A. Yes, ma'am.

14 Q. Okay. And where was that located?

15 A. Located right in the area by Food Lion.

16 Q. Okay. And when you were being interviewed by
17 the detectives, did you tell the detective where that was
18 located?

19 A. Well, you know, it's been a year now. I can't
20 really recall it. But I think it, and then again I think
21 I'm not.

22 But I'm pretty sure that the store -- I let the
23 detectives know that I did dropped him off and left him --
24 took him to the store.

25 MS. SHEALY: Very good. I have no further

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1. LUCA R. DELATORE, M.D.,
2. Having Been First Duly Sworn,
3. was Examined and Testified as Follows:

4. DIRECT EXAMINATION

5. BY MS. SHEALY:

6. Q. Dr. Delatore, tell us a little bit about your
7. background.

8. A. I went to undergraduate at University of
9. Kentucky. Graduated from there in 1997. Went to the
10. University of Toledo, what was called at the time Medical
11. College of Ohio, and graduated from there in 2001. And
12. from there went to residency at Mayo Clinic in Rochester,
13. Minnesota, for emergency medicine and completed a three-
14. year fellowship there.

15. Q. Okay. And where are you currently employed?

16. A. Hilton Head hospital in Hilton Head, South
17. Carolina.

18. Q. And you're practicing as an emergency --

19. A. Emergency medicine --

20. Q. -- physician?

21. A. -- physician. Correct.

22. Q. Were you employed there August 9th, 2010?

23. A. Yes.

24. Q. Could you tell the jury whether or not you
25. treated Darryl Drayton on that day?

1 A. Based on the records, yes, I did.

2 Q. And if you would please tell the jury what was
3 the nature of his complaint that day.

4 A. A finger laceration.

5 Q. A finger what?

6 A. Laceration.

7 Q. Okay. Have you had the opportunity to review
8 the records from that day?

9 A. I did, yes.

10 Q. If you would please tell the jury how his injury
11 appeared and what your notes reflect regarding it.

12 A. The injury was reported to be a cut to the right
13 index finger, if I remember correctly, and was from a saw,
14 reportedly.

15 And he was seen early in the morning. And I
16 can -- the exact time would be on the chart.

17 Q. Do you have the chart with you?

18 A. I don't have it with me.

19 Q. If I hand you the records, would that help you?

20 A. Sure.

21 MS. SHEALY: Get my notes out.

22 And, Your Honor, as I'm handing these up to
23 Dr. Delatore, I will move into evidence without
24 objection State's Exhibit 114 in just a moment.

25 MR. PENNINGTON: That is correct, Your Honor.

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1 THE COURT: Any objection?

2 MR. PENNINGTON: No, sir.

3 THE COURT: State's Number 114 admitted without
4 objection.

5 [Whereupon, State's Exhibit Number 114 is
6 admitted into evidence by the Court]

7 [Whereupon, Ms. Shealy proffers documents to the
8 witness]

9 THE WITNESS: Thank you.

10 A. Any specifics that you want me to address?

11 Q. [Ms. Shealy] Just if you could indicate what
12 time of day that Mr. Drayton came in.

13 A. The time of registration was listed at 7:47 in
14 the morning. So a.m.

15 Q. Okay. And when you told us that it reportedly
16 came from a saw injury --

17 A. Uh-huh.

18 Q. -- are you indicating that Mr. Drayton indicated
19 there was a saw injury?

20 A. Correct.

21 Q. And did he reflect what time the injury had
22 occurred?

23 A. Initially, in my documentation 10:00 p.m.,
24 approximately, is what he had mentioned.

25 Q. On the night before?

1 A. Correct.

2 Q. Was there anything about the injury that was
3 consistent with it not being a fresh injury having
4 happened that morning?

5 A. Yes.

6 Q. What was that?

7 A. With an acute laceration there are certain
8 changes to the skin that are not there. When he
9 presented, he had changes that were consistent with a
10 wound that had been open for quite some time.

11 We usually suture lacerations within six hours.
12 Beyond that, there's a significant risk of infection. And
13 unless -- in a very unusual situation do we actually close
14 a wound at that point because the risk of infection,
15 particularly in a digit, is very high.

16 Q. Okay. I'm going to show you what has been
17 marked as State's Exhibit 114 and ask you if you recognize
18 this.

19 [Whereupon, Ms. Shealy proffers documents to the
20 witness]

21 A. Correct. Yes.

22 MS. SHEALY: Okay. If you could bring that up?

23 Q. [Ms. Shealy] And describe for the jury, please:
24 is that a depiction of Mr. Drayton's injuries?

25 A. Yes.

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1 Q. Okay. So in that you could not put stitches or
2 suture it --

3 A. Uh-huh.

4 Q. -- the nature of the injury, did that cause you
5 to get an x-ray done?

6 A. Yes.

7 Q. And could you tell the jury, please, what the
8 x-ray reflected?

9 A. I can give you the exact report. I don't
10 remember specifically if there was a fracture, but that's
11 what we would look for with an injury of this type.

12 And there was an open fracture of the second
13 digit, which is the index finger, mentioned on that. And
14 that was read by the radiologist and we also review those,
15 as well.

16 Q. What is meant by the term fracture?

17 A. A broken bone. So a break in the bone.

18 Q. So he had both a laceration and a fracture to
19 that finger?

20 A. Correct.

21 Q. And while you were there -- while he was there,
22 did y'all clean the wound?

23 A. Yeah. Extensively.

24 Q. Did you refer him to someone else?

25 A. Yeah.

1 Much of the time that he was spent in the
2 emergency room was trying to arrange follow up.
3 Lacerations of this nature, with a delayed presentation
4 with an open fracture -- which means that the bone is
5 exposed -- have a very high risk for infection. And so
6 with that, you usually need a specialist.

7 The picture may not do enough justice, but when
8 a wound is swollen you can't close it because the tension
9 is too tight. So if you tried to suture it, it would pop
10 open.

11 And so in this case the wound was very swollen
12 and if we tried to suture it, it wouldn't have held.

13 Q. Okay. When he was leaving the hospital that
14 day, did you actually prescribe some medication for him?

15 A. Yes.

16 Q. What did you prescribe?

17 A. Usually we prescribe a pain medicine and an
18 antibiotic as a preventative measure. And that's usually
19 done in conjunction with the surgeon that we set up follow
20 up with.

21 In this case it was keflex, which is a cephalus
22 foreign antibiotic, and Lortab, which is a narcotic pain
23 medication.

24 MS. SHEALY: That's all I have. Please answer
25 any questions that the defense may have.

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1 THE WITNESS: Sure.

2 MR. PENNINGTON: Your Honor, I have no questions
3 for Dr. Delatore.

4 MS. SHEALY: Thank you, Your Honor. We would
5 ask that he be excused. Thank you.

6 THE COURT: Doctor, thank you very much. You
7 may be excused.

8 [Whereupon, Dr. Delatore is excused and exits
9 the witness stand]

10 MS. SHEALY: Maggie Furchak.

11 [Whereupon, Ms. Furchak comes forward]

12 THE CLERK OF COURT: Place your left hand here
13 and raise your right hand for me.

14 [Whereupon, Ms. Furchak is duly sworn by the
15 clerk of court as follows: do you swear or affirm
16 that your testimony will be the whole truth and
17 nothing but the truth, so help you God]

18 THE WITNESS: I do.

19 [Whereupon, Ms. Furchak takes the witness stand]

20 THE CLERK OF COURT: State your full name and
21 spell your last name.

22 THE WITNESS: Maggie Mae Furchak.

23 F-U-R-C-H-A-K.

24 - - -

25 - - -

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MAGGIE FURCHAK,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. SHEALY:

Q. Ms. Furchak, where do you live? What city?

A. Bluffton, South Carolina.

Q. Okay. And do you know the defendant, Darryl Drayton?

A. Yes.

Q. Okay. How do you know him?

A. Through my best friend.

Q. Who is your best friend?

A. Rayland Johnson.

Q. And did she and Mr. Drayton have a relationship?

A. Yes, they did.

Q. What was the nature of that relationship?

A. Boyfriend-girlfriend.

Q. And did they live in an apartment complex together?

A. She had the apartment complex. He stayed there a lot.

Q. Do you remember the name of the apartment complex?

A. The Lakes at Myrtle Park, I think.

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1 Q. But by August of 2010, he was no longer living
2 there with him [sic]?

3 A. Correct.

4 Q. In August, specifically August 9th or 10th of
5 2010, tell the jury where you were working.

6 A. I was working at Bluffton pharmacy on August
7 10th --

8 Q. Did you say Bluffton --

9 A. -- in Bluffton --

10 Q. -- pharmacy?

11 A. Bluffton pharmacy.

12 Q. And what was your job there?

13 A. Pharmacy technician.

14 Q. Now, did you know Alexis Lukaitis?

15 A. No.

16 Q. Okay. And as a pharmacy technician, what was
17 your role?

18 A. To fill prescriptions for patients and clients
19 that came in.

20 Q. Did you have the occasion to see Mr. Drayton?

21 A. Yes.

22 Q. And could you tell the jury, please, what was
23 the situation for you to see him?

24 A. He came in Monday, August 10th, to fill two
25 prescriptions that he received from the emergency room.

1 Q. Do you recall what those prescriptions were for?

2 A. One was for cephalexon, which is an antibiotic.

3 The other one was for pain medicine, hydrocodone tab 50.

4 Q. Okay. And could you explain to the jury,
5 please, how he was acting, how he appeared?

6 A. He seemed normal to me, because I knew him. He
7 seemed a little nervous, couldn't stand still, but the
8 conversation was normal.

9 Q. Did you notice anything about his hand?

10 A. It was wrapped up.

11 Q. And did he say anything to you about his hand?

12 A. That he had cut it that morning at work.

13 Q. That morning?

14 A. Yes, ma'am.

15 Q. And he said it happened where?

16 A. At work.

17 Q. Okay. Did he tell you how he hurt it?

18 A. On a piece of glass.

19 MS. SHEALY: Okay. Beg the Court's indulgence
20 just one moment.

21 [Whereupon, Ms. Shealy and Mr. Finch confer]

22 MS. SHEALY: I have nothing further. Please
23 answer any the defense may have.

24 THE COURT: Cross-examination?

25 MR. PENNINGTON: Thank you, Your Honor.

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CROSS-EXAMINATION

BY MR. PENNINGTON:

Q. Ms. Furchak, you mentioned that Darryl seemed nervous that morning?

A. Yes, sir.

Q. I think you also described it that he was fidgeting back and forth?

A. I did not state that.

Q. Couldn't stand still?

A. Correct.

Q. Did he describe to you that he was upset because his finger had been cut so deeply?

A. He seemed upset, yes.

Q. In fact, he said it looked like he had six fingers because it had been cut so deep?

A. He said that, yes. I didn't --

Q. Do you remember that?

A. Uh-huh.

Q. And so -- but he seemed upset about the injury to his hand?

A. Yes, sir.

MR. PENNINGTON: Thank you. That's all the questions I have.

MS. SHEALY: Just briefly, Your Honor.

- - -

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REDIRECT EXAMINATION

BY MS. SHEALY:

Q. Ms. Furchak, did he ask you if you would like to take a look at it?

A. Yes. Yes, ma'am.

Q. And did you take him up on that offer?

A. No, ma'am.

MS. SHEALY: Nothing further, Your Honor.

THE COURT: Any recross?

MR. PENNINGTON: No, Your Honor.

THE COURT: You may step down. Thank you very much.

[Whereupon, Ms. Furchak is excused and exits the witness stand]

THE COURT: Ma'am, you may be excused. Thank you.

MS. SHEALY: Chris Golis.

THE COURT: Who are you calling?

MS. SHEALY: Chris Golis.

[Whereupon, Mr. Golis comes forward]

THE CLERK OF COURT: Place your left hand here and raise your right hand.

[Whereupon, Mr. Golis is duly sworn by the clerk of court as follows: do you swear or affirm that your testimony will be the whole truth and nothing but the

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1 truth, so help you God]

2 THE WITNESS: Yes.

3 [Whereupon, Mr. Golis takes the witness stand]

4 THE CLERK OF COURT: State your full name and
5 spell your last name.

6 THE WITNESS: Christopher. My last name is
7 Golis, G-O-L-I-S.

8 - - - - -

9 CHRISTOPHER GOLIS,
10 Having Been First Duly Sworn,
11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MS. SHEALY:

14 Q. Mr. Golis, if you would please tell the jury
15 where you work.

16 A. Golis Family Jewelers.

17 It's a family-owned jewelry store in Bluffton,
18 South Carolina.

19 Q. How long have -- is that your business?

20 A. Yes, ma'am.

21 Q. How long have you owned that business?

22 A. About thirteen years.

23 Q. And do you sell jewelry there?

24 A. Yes.

25 Q. Do you also buy jewelry?

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1 A. Yes.

2 Q. And is there a part of your store that you sell
3 pocketbooks and some other --

4 A. Yes.

5 Q. -- accessories?

6 Focusing your attention back to August of 2010,
7 did you have the occasion to sell a ring to an individual
8 named Darryl Drayton?

9 A. You said sell.

10 Q. I'm sorry. Buy --

11 A. Yes, ma'am.

12 Q. -- a ring.

13 A. Yes.

14 Q. Well, first, let me ask you: had you ever seen
15 that gentleman before?

16 A. I had seen him once before.

17 Q. Okay. And when you saw him before, were you
18 buying something from him on that occasion?

19 A. Yes, ma'am.

20 Q. When he came into the store, do you remember
21 what day it was?

22 A. The date, no. I could say earlier in the week,
23 but I just couldn't pinpoint a specific date.

24 Q. Okay. If I showed you a statement that you
25 gave, would that help refresh your memory?

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1 A. [No response]

2 [Whereupon, Ms. Shealy proffers documents to the
3 witness]

4 THE WITNESS: I don't have my glasses.

5 MS. SHEALY: You need reading glasses?

6 THE WITNESS: Yes.

7 MS. SHEALY: We're all struggling.

8 THE WITNESS: Yes.

9 [Whereupon, the witness reviews documents]

10 A. That's for sure what I wrote.

11 Q. [Ms. Shealy] Okay. What date does it indicate
12 that he came in?

13 A. 8/9/10.

14 MS. SHEALY: Okay. I have to grab my glasses
15 back, too.

16 Q. [Ms. Shealy] If you would please describe to
17 the jury what had taken place. What happened?

18 A. He had come in sometime in the morning, offered
19 to sell an engagement ring to me.

20 Q. Okay. How did he appear when he came in?

21 A. Clean.

22 Q. And was there anything that drew your attention
23 as he came in?

24 A. Had an Ace -- not an Ace bandage, but a gauze --
25 had a gauze bandage around his hand.

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1 Q. Okay. And when you saw the ring, was there
2 anything about the ring that made you curious as to why he
3 wanted to sell it?

4 A. I had -- nothing specific. But I had told him
5 that it's worth substantially more than what I was
6 offering, because I'm only offering -- I'm only interested
7 in the metal.

8 Q. Okay. Well, let me show you what has been
9 previously marked as State's Exhibit 173 and ask you if
10 you can identify this. It's been marked for
11 identification. Is that the ring?

12 A. Yeah.

13 Q. Okay. How would you describe that ring to the
14 jury?

15 A. It's what would be called a past, present,
16 future ring. It's a three-stone diamond ring. It has
17 some pave' set stones on either side of it.

18 And it is quite unique. It's not -- it wouldn't
19 be a typical rope chain, or something that is quite
20 common. This is definitely more of a unique ring.

21 Q. Okay. And so tell us about the conversation you
22 had with him about what you thought you could pay and what
23 you thought he should do.

24 A. The value of the metal was only a couple, few
25 hundred dollars. And I had told him that the value of the

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1 ring and value of the stones are substantially more and he
2 would need to sell it to somebody else.

3 He could have easily have gotten 800 to \$1,000
4 for it and I was offering a few hundred, with the intent
5 on giving him the stones back.

6 Q. Where did he tell you he got the ring from?

7 A. Gas station. Found it in a gas station.

8 Q. Do you recall anything more specific about what
9 gas station?

10 MS. SHEALY: Let me just give you your statement
11 back --

12 A. Oh, yeah.

13 MS. SHEALY: -- in case you need to refer to it.
14 Or do you still have it up there?

15 THE WITNESS: Uh-huh.

16 MS. SHEALY: Okay.

17 [Whereupon, the witness reviews documents]

18 A. Well, that -- on the -- on that day, I wrote a
19 Chevron gas station.

20 Q. [Ms. Shealy] So he told you he found it at the
21 gas station?

22 A. Yes.

23 Q. Did you make any suggestion to him as to what he
24 might want to do regarding the gas station?

25 A. I said, bring it back to the gas station; if

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1 nothing else, you can make a phone call; I'm sure there
2 would be a reward more than what I'm willing to offer for
3 it.

4 But I just kept on instilling on that, that the
5 stones are more valuable than the metal and, as a whole
6 unit, substantially more.

7 Q. When you made those suggestions to him about
8 ways that he could get more money, what -- how did he
9 respond?

10 A. After a nothing-to-do conversation, he said
11 that, I don't care; I found it anyway.

12 Q. Okay. Now, did you inquire at all about how he
13 had injured his hand?

14 A. Yes.

15 Q. And what did he say?

16 A. With a saws-saw [phonetic] on a chainlink fence.

17 Q. With a saws-saw on a chainlink fence?

18 A. He had told me he worked for a fence company and
19 cut it on -- cut it with a saws-saw.

20 Q. Okay. Were you -- do you remember how much
21 money you gave him for it?

22 A. No more than 400. Now that I'm looking at it,
23 between two and four but no more than four.

24 Q. And were you later then either visited by or
25 contacted by the police in this matter?

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1 A. Had a phone call from a detective in homicide.

2 Q. And did someone come and see you at your store?

3 A. Yes, ma'am.

4 Q. Did you relay to that detective -- was it

5 Detective Calhoun, sitting in the courtroom?

6 MS. SHEALY: Can you stand up, Detective

7 Calhoun?

8 MR. PENNINGTON: Your Honor, I'm going to object

9 at this point about vouching, you know, prior

10 consistent statements.

11 THE COURT: I'm sorry. What, now?

12 MS. SHEALY: I'm not going to ask him --

13 THE COURT: What's your legal objection?

14 MR. PENNINGTON: Vouching --

15 THE COURT: Overruled. Go ahead. She just had

16 him identify him.

17 Go ahead. Please proceed.

18 Q. [Ms. Shealy] Was it Detective Calhoun that came

19 to --

20 A. I can't honestly say.

21 Q. Okay. Do you remember being shown a line-up?

22 A. Yes, ma'am.

23 Q. And let me ask you --

24 MS. SHEALY: Your Honor, I'm going to have

25 this witness identify this. But this is State's

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1 Exhibit 175 and I'm going to offer it, as I understand
2 without --

3 THE COURT: 175?

4 MS. SHEALY: 175.

5 Q. [Ms. Shealy] This is a two-page document. When
6 whichever detective came to talk to you, did they have you
7 read a sheet and then show you --

8 A. Yes.

9 Q. -- a set of photographs?

10 A. Uh-huh.

11 Q. And do you recognize these two documents?

12 A. Yes.

13 MS. SHEALY: Your Honor, I would offer 175.

14 Q. [Ms. Shealy] First, they show you --

15 THE COURT: Any objection?

16 MR. PENNINGTON: No, sir.

17 THE COURT: What's the number, solicitor?

18 MS. SHEALY: 175.

19 THE COURT: 175 admitted without objection.

20 [Whereupon, State's Exhibit Number 175 is
21 admitted into evidence by the Court]

22 Q. [Ms. Shealy] Could you read this out loud to
23 the jury?

24 A. You will be asked to look at a group of
25 photographs: The fact that the photographs are shown to

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1 you should not influence your judgment. You should not
2 conclude nor guess that the photographs contain the
3 picture of the person who committed the crime. You're not
4 obligated to identify anyone. It is just as important to
5 free persons from suspicion as to identify guilty parties.
6 Please do not discuss the case with other witnesses nor
7 indicate in any way that you have identified someone.

8 Q. Okay. And then showing you the second page.
9 Could you take a look at these photographs?

10 A. Uh-huh.

11 Q. Now, tell the jury, if you would, at any point
12 did the officer point to anybody and ask you to --

13 A. No.

14 Q. -- choose someone?

15 A. Huh-uh.

16 Q. Okay. And when you looked at the photographs,
17 there are some x marks. What do those reflect?

18 A. Persons that I said weren't him.

19 Q. That were not him?

20 A. Yes.

21 Q. And then did you find someone who was the man --

22 A. Yes.

23 Q. -- that came in that day? How did you indicate
24 who that was?

25 A. Put a circle.

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1 Q. I'm going to put this up on the television right
2 here. I call it a television. The screen.

3 So the ones that you have x'd were the ones that
4 you knew were not him; is that correct?

5 A. Yes.

6 Q. And then you circled this number; is that
7 correct?

8 A. Yes, ma'am. Number 4.

9 Q. Okay. When the officer was there that day, did
10 they ask you for the ring back?

11 A. Yes.

12 Q. And you obviously gave it back to the police
13 officer?

14 A. [No response]

15 MS. SHEALY: Thank you very much. Answer any
16 questions that the defense may have. Thank you.

17 THE COURT: Cross-examination?

18 MR. PENNINGTON: No questions, Your Honor.

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

20 Thank you very much. You may be excused. Thank you.

21 [Whereupon, Mr. Golis is excused and exits the
22 witness stand]

23 MR. FINCH: Robert Dicarlo.

24 [Whereupon, Mr. Dicarlo comes forward]

25 THE CLERK OF COURT: Place your left hand here

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1 and raise your right hand.

2 [Whereupon, Mr. Dicarlo is duly sworn by the
3 clerk of court as follows: do you swear or affirm
4 that your testimony will be the whole truth and
5 nothing but the truth, so help you God]

6 THE WITNESS: I do.

7 [Whereupon, Mr. Dicarlo takes the witness stand]

8 THE CLERK OF COURT: State your full name and
9 spell your last name.

10 THE WITNESS: Robert Dicarlo. D-I-C-A-R-L-O.

11 MR. FINCH: Good afternoon, Officer Dicarlo.

12 THE WITNESS: Good afternoon.

13 - - - - -

14 ROBERT DICARLO,

15 Having Been First Duly Sworn,
16 was Examined and Testified as Follows:

17 DIRECT EXAMINATION

18 BY MR. FINCH:

19 Q. If you would tell the Court where it is you're
20 employed.

21 A. Beaufort County Sheriff's Office.

22 Q. And how long have you been at the Beaufort
23 County Sheriff's Office?

24 A. Six and a half years.

25 Q. And what's your position with the sheriff's

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1 office?

2 A. Currently I'm a staff sargent right now, road
3 patrol supervisor.

4 Q. And was that your position in August, 2010?

5 A. I was actually a sargent at the time. I have
6 been promoted since.

7 Q. And what are some of the duties and
8 responsibilities of sargent at the sheriff's office in
9 Beaufort County?

10 A. I am the assistant supervisor to the road patrol
11 supervisor for the enforcement division. Respond to calls
12 for service from the general public, extra patrol of
13 neighborhoods and businesses, try to, you know, prevent
14 criminal activity.

15 Q. And did you respond to a call on Wharf Street in
16 Bluffton on August 10th, 2010?

17 A. I did.

18 Q. What was the nature of that call?

19 A. The Bluffton Police Department had located a
20 white 2001 Pontiac which was in the jurisdiction that was
21 listed in NCIC by the Beaufort County Sheriff's Office in
22 reference to an endangered person. I responded, met with
23 Officer Chandler [phonetic] from the Bluffton Police
24 Department, who pointed the vehicle out.

25 Q. And once you arrived on the scene, what did you

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1 do?

2 A. Walked up to the vehicle, ran the tag. As I was
3 approaching the vehicle I saw what may possibly have been
4 some type of red, you know, maybe blood near the trunk.

5 Circled the vehicle to do a security sweep to
6 make sure there was no one inside. No one was found. And
7 I immediately put crime scene tape up, about a fifty-foot
8 circumference of it, and began a crime scene log and
9 notified investigators to have them respond.

10 Q. I'm going to show you what's been previously
11 marked as State's Exhibit Number 41. Can you identify
12 that?

13 A. Yes.

14 That's the -- that's the vehicle in the parking
15 lot and the crime scene tape that I had put up.

16 Q. If you could -- up on the screen there, that's
17 what's been previously identified as State's 41. Can you
18 point out where the Oyster Factory is in relationship to
19 that vehicle?

20 A. It's actually down looking towards the right of
21 the screen.

22 Q. That photograph is a true and accurate depiction
23 of the scene as you -- after you had roped it off with
24 crime scene tape?

25 A. To the best of my recollection, yes.

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1 Q. I'm going to show you what's been previously --

2 MR. PENNINGTON: If Your Honor please, I have no
3 objection to these going in as evidence; however, I
4 think they need to be in evidence before they are
5 published.

6 THE COURT: What's the exhibit number?

7 MR. FINCH: 40 and 41.

8 THE COURT: No objection to 40 and 41; is that
9 correct?

10 MR. PENNINGTON: Yes, sir.

11 THE COURT: All right. 40 and 41 admitted
12 without objection.

13 [Whereupon, State's Exhibit Number 40 is
14 admitted into evidence by the Court]

15 [Whereupon, State's Exhibit Number 41 is
16 admitted into evidence by the Court]

17 Q. [Mr. Finch] And if you take a look at State's
18 40, does that depict the direction where the Oyster
19 Factory is?

20 A. That's correct.

21 MR. FINCH: Okay. No further questions for this
22 witness. Please answer any questions the defense may
23 have.

24 THE WITNESS: Certainly.

25 MR. PENNINGTON: No cross, Your Honor.

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

2 Thank you very much.

3 THE WITNESS: Thank you.

4 MS. SHEALY: Kim Dinh.

5 [Whereupon, Ms. Dinh comes forward]

6 THE CLERK OF COURT: Place your left hand here
7 and raise your right hand.

8 [Whereupon, Ms. Dinh is duly sworn by the clerk
9 of court as follows: do you swear or affirm that your
10 testimony will be the whole truth and nothing but the
11 truth, so help you God]

12 THE WITNESS: I do.

13 [Whereupon, Ms. Dinh takes the witness stand]

14 THE CLERK OF COURT: State your full name and
15 spell your last name.

16 THE WITNESS: My name is Kimberly Dinh. Last
17 name, D-I-N-H.

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KIM DINH,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. SHEALY:

Q. Ms. Dinh, if you would please tell the jury
where you are currently employed.

A. I am currently employed at the criminal justice
academy as a defensive tactile instructor.

Q. Okay. And where were you previously employed?

A. Previously I was employed at South Carolina Law
Enforcement Division, commonly known as SLED.

Q. What was your role at SLED?

A. I was assigned to the crime scene unit.

My duties were to process crime scenes, also
examine latents, footwear, tire wear, and blood pattern
analysis, as well as assisting local law enforcement
agencies around the state, state agencies and federal
agencies.

Q. Okay. Tell us a little bit about your
educational background.

A. Graduated with a four-year degree from
University of South Carolina in criminology. Shortly
after, I graduated from the criminal justice academy as a
class-one sworn law enforcement officer. And then at SLED

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1 I completed a two-year in-house training program, under
2 court-qualified examiners, as a crime scene agent.

3 Q. Okay. And you served as a special agent
4 assigned to the crime scene unit for how long?

5 A. For five years.

6 Q. Now, on August 11th, 2010, were you asked to go
7 to Bluffton?

8 A. Yes, ma'am.

9 Q. And for what purpose were you asked to go there?

10 A. I was asked to process a car in reference to at
11 that time was a missing persons case.

12 Q. Okay. And were you asked to go to Bridge Street
13 or Wharf Street in --

14 A. Yes, ma'am.

15 Q. -- in Bluffton?

16 What type of car was it that you were asked to
17 process?

18 A. It was a white Grand Prix.

19 MS. SHEALY: Beg the Court's indulgence just one
20 moment.

21 [Whereupon, Ms. Shealy reviews documents]

22 MS. SHEALY: Your Honor, at this time I would
23 move to admit State's Exhibit Numbers 42 through 91
24 into evidence. And I understand without objection.

25 MR. PENNINGTON: That is correct, Your Honor.

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1 THE COURT: All right. 42 through 91 admitted
2 without objection.

3 [Whereupon, State's Exhibit Numbers 42 through
4 91 are admitted into evidence by the Court]

5 Q. [Ms. Shealy] Okay. So if you would please
6 describe to the jury what is involved in processing a
7 vehicle.

8 A. Typically, when I arrive on scene the first
9 thing I do is to check and see if the scene is secured.
10 At this time the scene was secured by local law
11 enforcement agencies. I'll get some background
12 information in reference to what the car was involved with
13 to help me figure out exactly what I'm looking for.

14 The first thing I'll do is I'll take general
15 photographs three-sixty around the vehicle to document how
16 the car was when I arrived.

17 From there, if anything was on the outside, I'll
18 document that first to make sure no evidence gets lost
19 when I further enter the car.

20 From there, I'll document the inside of the car,
21 the driver's side, the passenger side, the backseat,
22 depending on what I'm looking for, as well as the trunk.

23 Q. And the goal of this is to do what? What is it
24 that you're trying to achieve when you process a vehicle?

25 A. I'm looking for any types of evidence that a

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1 particular crime has been committed, anything that's out
2 of place, anything that's been destroyed, any type of DNA
3 or biological evidence, any type of weapon, depending on
4 the nature of the crime.

5 MS. SHEALY: And you know what? I think when we
6 met, you asked me to put the pictures in a certain
7 order and I think I have not done it so --

8 THE WITNESS: That's okay.

9 MS. SHEALY: -- let's just -- if we can let them
10 flow in the order that we've got them --

11 THE WITNESS: Okay.

12 MS. SHEALY: -- it might be easier.

13 Q. [Ms. Shealy] Okay. So if we could begin with
14 photo number 42, State's Exhibit 42. And I think if we
15 could use the photos just to walk us through what you did.
16 If you could describe what you saw and what you collected.

17 A. This is the exterior of the car, the rear. This
18 is actually -- appears to be after I processed the car
19 with a chemical called leucocrystal violet. It's a
20 presumptive blood test. If it turns purple -- which in
21 those areas [indicates] you can kind of see the purple
22 area -- it's presumptive blood.

23 I also scaled off two areas, one on the corner
24 and one on the license plate, of blood that I wanted to
25 show exactly how big that area was to scale.

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1 MS. SHEALY: Okay. I'm going to hand up a
2 pointer for you. And if you need to stand and kind of
3 lean towards the screen to point things out for us,
4 you can do so. Just be mindful that the jury is going
5 to need to be able to hear what you're saying.

6 THE WITNESS: Okay.

7 Q. [Ms. Shealy] If you would describe for the jury
8 areas of interest in that photograph.

9 A. I can't really see on this photograph what
10 number that one is. But I believe it --

11 Q. Let me hand you up the actual photos and that
12 might be more helpful.

13 [Whereupon, Ms. Shealy proffers documents to the
14 witness]

15 Q. [Ms. Shealy] Can you see it on that photo?

16 A. Yes, ma'am, I think I can. Yeah. I'm going
17 to --

18 May I reference my notes --

19 Q. Certainly.

20 A. -- just to check?

21 [Whereupon, the witness reviews documents]

22 A. Okay. This area right here is area number --
23 sorry -- area number four, what I marked as marker four.
24 By the tag, that is marker five. That's two areas in the
25 back that I marked for presumptive blood.

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1 Q. [Ms. Shealy] Okay. And you're using that -- is
2 that tape that you're marking it off with?

3 A. Yes, ma'am.

4 It's scale tape. It's just a piece of tape with
5 a ruler on it so I can get an idea in reference to the
6 photograph approximately what the length and height of
7 this is.

8 Q. Okay. So you were seeing blood there and blood
9 on the license tag?

10 A. Yes, ma'am.

11 Q. Okay. And then showing you State's Exhibit -- I
12 think you'll be able to see this one better -- 43.

13 A. Yes, ma'am.

14 This is marker number five, showing a drop of
15 blood. Looks like a linear type of drop. Pretty much
16 means gravity has taken ahold of a drop of blood and
17 pulling it towards the ground, making contact with the
18 license plate first before it traveled.

19 Q. State's Exhibit 44.

20 A. This is a -- some spatter or transfer of blood,
21 along with a -- one strand of long dark hair.

22 Q. Okay. Did you actually collect that hair?

23 A. No, ma'am.

24 Typically, when hair is lost or just fallen out,
25 there's no bulb on the end of the hair. And the bulb is

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1 what they need to use for DNA collection. And then
2 there's no value in the actual strand of hair itself.

3 Q. So you let it remain on the car?

4 A. Yes, ma'am.

5 Q. Okay. State's Exhibit 45.

6 A. That is also another strand of hair. Appeared
7 below the license plate.

8 Q. Okay. And I'm going to hand you up the photo,
9 because you might be able to see it a little better up
10 close.

11 [Whereupon, Ms. Shealy proffers documents to the
12 witness]

13 Q. [Ms. Shealy] Anything else of interest in that
14 photo?

15 A. It appears to be a little bit of blood, as well.

16 Q. Okay. Then State's Exhibit 46.

17 A. This is the passenger side of the vehicle. This
18 would be markers number six, that small one is seven, and
19 those towards the bottom are going to be eight, nine, ten,
20 eleven, twelve. These are also areas that I found of
21 interest, particularly that could possibly be blood. Most
22 likely a free-flowing blood. Gravity pulls it. They're
23 drops of blood, not impact or any sort.

24 Q. Okay. And State's Exhibit 47.

25 A. This is a close-up, marker number six, two drops

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1 of blood.

2 Q. And that's -- it's calling one of those a left
3 and one a right. Showing you the photograph. Anything
4 else of interest on the right one?

5 A. There appears to be a small strand of hair that
6 actually travels through that right one. I'm not sure if
7 you can really see it. But just a piece of a hair in it
8 that --

9 Q. State's Exhibit 48.

10 A. This is marker number seven. It appears to be a
11 drop of blood.

12 Q. State's Exhibit 49.

13 A. This is marker number eight. It's also a drop
14 of blood that is traveling downward.

15 Q. State's Exhibit 50.

16 A. This is the passenger-side door of the Grand
17 Prix.

18 Q. And showing you the photograph itself. Is there
19 anything else of interest about the way that side of the
20 vehicle appears?

21 A. It appears to be something has moved across it.
22 You can kind of see some void areas or wiping kind of
23 motions where either dirt or something was -- has been
24 disturbed kind of in a linear motion.

25 Q. State's Exhibit 51.

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1 A. This would be markers nine, ten, eleven and
2 twelve. These are drops of blood on the passenger's side
3 of the Grand Prix.

4 Q. State's Exhibit 52.

5 A. This is marker number nine, a single drop of
6 blood.

7 Q. State's Exhibit 53.

8 A. This is marker number ten and it's a drop of
9 blood, got -- has a little bit of motion, downward travel.

10 Q. State's Exhibit 54.

11 A. This is marker number eleven. It's two drops of
12 blood. Direction of travel, slight low and right on these
13 two.

14 Q. State's Exhibit 55.

15 A. And this is marker number twelve. It's also a
16 drop of blood.

17 Q. Now, did you prepare a diagram, as well, in this
18 case?

19 A. Yes, ma'am, for the car.

20 Q. Okay. We will turn to that in just a moment.
21 State's Exhibit 56 reflects the front of the
22 vehicle?

23 A. Yes, ma'am.

24 Q. And then State's Exhibit 57 would be the
25 driver's side?

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1 A. Yes, ma'am.

2 Q. State's Exhibit 58, is that closer up on the
3 driver front-tire area?

4 A. Yes, ma'am.

5 Q. And then State's Exhibit 59.

6 A. This is the driver's side of the Grand Prix.
7 This is a post picture of after I process it with that
8 same chemical, LCV, for presumptive blood.

9 Q. And you have some tape on that window?

10 A. Yes, ma'am.

11 This is also -- that tape on the top is -- the
12 top right there is marker number one. That's the first
13 marker I laid down. It is a drop of blood that I've
14 marked.

15 MS. SHEALY: We really did put these pictures in
16 sort of a strange order.

17 Q. [Ms. Shealy] Okay. So State's Exhibit 61 is
18 showing the front -- I mean, the back of the driver's
19 side?

20 A. Yes, ma'am.

21 Q. And then State's Exhibit 62 --

22 MS. SHEALY: Go back -- go back one, please,
23 Shamekia.

24 Q. [Ms. Shealy] The rear of the driver's side --

25 MS. SHEALY: If you could use your pointer.

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1 Q. [Ms. Shealy] -- could you point out that area
2 that has -- right. Okay.

3 Then if we zoom in on State's 62, that reflects
4 that area closer up?

5 A. Yes, ma'am.

6 Q. And then going around the curve of the car, 63,
7 that's how the corner of the car looks there?

8 A. Yes, ma'am.

9 Q. And State's Exhibit 64 comes back to where we
10 started?

11 A. Yes, ma'am.

12 That's a post picture of LCV in the same
13 photograph.

14 Q. And 65 shows that light, a tail light --

15 A. Yes, ma'am.

16 Q. -- a little bit more fully.

17 And 66 zooms in that corner a little more
18 fully?

19 A. Yes, ma'am.

20 Q. And then 67 zooms in on that light?

21 A. Yes, ma'am.

22 Q. And what is that on -- what does appear to be on
23 that light?

24 A. That -- all that linear type of motion is kind
25 of a swiping motion. It's basically motion in blood. If

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1 there's blood on something, it moved across the surface
2 depositing blood in a linear pattern. Will be also called
3 a swipe.

4 Q. Okay. So we've done what you refer to as the
5 three-sixty around the outside --

6 A. Yes, ma'am.

7 Q. -- of the vehicle.

8 And then as a part of your analysis, you also
9 looked inside the trunk?

10 A. Yes, ma'am.

11 Q. Okay. And showing you, then, State's Exhibit
12 68. You opened the trunk. And could you tell the jury
13 how did the inside of the trunk look, as far as contents?
14 Was there --

15 A. There wasn't a lot of things in there. It was
16 mostly cleaned out. Just, as you can tell, one or two,
17 three things maybe and that was it. Normal things that
18 you would see, like a cover, there was -- there was
19 nothing like that in there.

20 You can also tell -- these pictures that when
21 I take them, I take them before entering the trunk. So
22 this is the trunk as I opened it, with the lefthand side
23 pulled down exposing that paint. That painted side, that
24 is all -- that was all done prior to me opening it.

25 Q. Okay. And then State's Exhibit 69. Does that

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1 focus in on the corner of the --

2 A. Yes, ma'am.

3 Q. -- facing the opening of the trunk?

4 A. Yes, ma'am.

5 Q. And then State's Exhibit 70.

6 A. That is the -- where the trunk meets that same
7 area where if you were to close the lid. That same side
8 of the trunk.

9 Q. And then State's Exhibit 71. What does that
10 reflect?

11 A. Originally we thought it was suspected blood,
12 but after we processed it we weren't sure what it was.
13 But it didn't react in a blood behavior.

14 Q. Okay. What are we looking at, though? What is
15 that?

16 A. This is the trunk-well where the spare tire
17 would be. That goes into the center of the tire. This is
18 the divot in the back of the trunk. It appears to be --
19 to have water in it of some sort. I don't know if it was
20 a leak or -- there was a decent amount of water inside of
21 that trunk-well.

22 Q. So was there a spare tire in the back?

23 A. No, ma'am, there was no spare tire.

24 Q. And when you said that you sprayed something on
25 it, that wasn't in your report but you think you remember

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1 doing that; right?

2 A. Yes, ma'am.

3 Q. And tell us what you mean by spraying something
4 on it.

5 A. Typically, as you notice in the other pictures,
6 when I spray LCV, the presumptive blood test, I get a
7 reaction that turns purple.

8 If I do have a positive reaction, I go back and
9 re-photograph that same area after it turns purple. So
10 the fact that there is not a secondary picture of this
11 area turning purple, it didn't behave in a blood-type
12 behavior. So there is no secondary picture of this trunk
13 area being purple.

14 Q. And had there been something covering that area
15 that was bloody, it could have absorbed the blood before
16 it got --

17 A. Absolutely.

18 Q. -- to that level?

19 Then did you go inside the vehicle?

20 A. Yes, ma'am.

21 Q. Showing you State's Exhibit 72. What does this
22 picture reflect?

23 A. This is the driver-side door as I opened it.
24 This is actually after I've marked it with scale tape on
25 the driver's side door right there. And that is marker

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1 number thirteen, I believe. Thirteen.

2 Q. And what are you marking over there with the
3 tape?

4 A. Presumptive blood or suspected blood.

5 MS. SHEALY: Beg the Court's indulgence just a
6 second.

7 [Whereupon, Ms. Shealy reviews documents]

8 MS. SHEALY: Okay. I'm sorry.

9 Q. [Ms. Shealy] Now, what did you say the tape
10 reflected?

11 A. It reflects of an area that I wanted to photo-
12 document closely. In this case it would be suspected
13 blood.

14 Q. Okay. And that is --

15 MS. SHEALY: Maybe I have a closer-up shot.
16 Let's see.

17 [Whereupon, Ms. Shealy reviews documents]

18 Q. [Ms. Shealy] Showing you State's Exhibit 73.
19 This is the steering wheel. Did you do something to the
20 steering wheel?

21 A. Yes, ma'am.

22 I collected two DNA swabs off the steering
23 wheel. We call it touch DNA. Whenever you have --
24 whenever you touch an object, you have the potential of
25 leaving skin cells behind. So what I do is I swab the

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1 steering wheel and potential -- for potential evidence of
2 if somebody grabs it, swabbing it, collecting that DNA, to
3 obtain a profile if anybody had touched that surface.

4 Q. Okay. Let's finish through the pictures and
5 then we'll talk about where all you actually swabbed.
6 Okay?

7 A. Yes, ma'am.

8 Q. So that's the steering wheel from inside the
9 car.

10 And then State's Exhibit 74, what is referred to
11 as a door pull?

12 A. It's the actual area that you use -- that bottom
13 portion.

14 Q. I don't think your --

15 A. Yeah.

16 Q. Your arms aren't quite long enough.

17 A. It's the bottom portion right there.

18 Q. Okay. Where you grab --

19 A. To grab the door physically --

20 Q. -- to put your hand in?

21 A. -- and put your hand and close the door.

22 It's where you're actually pulling the door to
23 close it, so I call that the door pull.

24 Q. Underneath the handle?

25 A. Yes, ma'am.

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1 Q. Okay. And State's Exhibit 75 is a little closer
2 in to that?

3 A. Yes, ma'am.

4 Q. Now, in this photograph, before you put the
5 tape, could you point out where you saw -- what you
6 thought was blood?

7 A. Presumptive or suspected blood in that area.
8 And right above it to the top and right of that,
9 too.

10 Q. And in State's Exhibit 76?

11 A. That's also suspected blood, in the door area,
12 on the frame.

13 Q. State's Exhibit 77?

14 A. Suspected blood here. And I'm also documenting
15 the floorboard, as well.

16 Q. And then State's Exhibit 78 is just a closer-up
17 shot?

18 A. Yes, ma'am. This is with the scale against it.

19 Q. State's Exhibit 79?

20 A. Suspected blood, also with a scale against it.
21 It's the driver doorframe.

22 Q. State's Exhibit 80?

23 A. It's a close-up of that same photograph.

24 Q. And State's Exhibit 81. Is this still your
25 photo?

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1 A. No, ma'am.

2 Q. Okay.

3 A. Probably not.

4 Q. Okay. I'll just hold that, then.

5 Did you also take some photos from the passenger
6 side?

7 A. Yes, ma'am.

8 Q. Okay. State's Exhibit 85.

9 A. This is the inside of the passenger door, as
10 well as the doorframe.

11 Q. And 86?

12 A. Scaled version of suspected blood on the
13 passenger doorframe.

14 Q. And 87?

15 A. A close-up of that same blood.

16 Q. 88?

17 A. Passenger-side seat with the rear and the front
18 floorboard, as well as an area scaled off on the
19 passenger-side seat.

20 Q. 90?

21 A. A baby seat in the back seat.

22 Q. And 91?

23 A. A close-up of that same area from the passenger
24 seat, marker number fourteen.

25 Q. Now, going back to 90 for a second. The back

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1 seat was full, pretty full, with the two baby seats;
2 right?

3 A. Yes, ma'am.

4 Q. Did you take any swabs from the back seat?

5 A. No, ma'am.

6 MS. SHEALY: Okay. You can have a seat again.

7 [Whereupon, the witness complies]

8 Q. [Ms. Shealy] Okay. So once you went through
9 and kind of eyeballed where it looked like there was blood
10 on the inside and on the outside, what's the next step in
11 the process?

12 A. The next step after that, after I photo-document
13 it, is to collect the physical evidence that I find. In
14 this case it would be swabbing the areas that I marked.

15 Q. And what is meant by the term swabbing?

16 A. Swabbing is taking two sterile swabs that are
17 prepackaged. I wet the swab with de-ionized water and
18 then I rub it across the surface that I'm collecting.

19 If I do a presumptive blood test, which is also
20 called phenol, it reacts to a purply color. I will test
21 one swab with the phenynol and then the second swab I will
22 leave untested and package it for the lab.

23 Q. And when you use the term swab, can you kind of
24 give us a description of what that looks like?

25 A. It looks like a standard Q-tip with just a

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1 longer end. It's just a cotton end on a stick.

2 Q. And once you have swabbed something, what
3 happens with those actual swabs?

4 A. The swabs will be submitted to the SLED DNA lab
5 for further analysis.

6 Q. Okay. The diagram that you mentioned earlier:
7 do you have your diagram with you?

8 A. Of the exterior of the car? Yes, ma'am.

9 Q. Just take a look at it for a second.

10 A. Yes, ma'am.

11 [Whereupon, the witness reviews documents]

12 Q. [Ms. Shealy] Do you have another copy if I mark
13 this into evidence?

14 A. I believe I do. Let me double check.

15 [Whereupon, the witness reviews documents]

16 A. Yes, ma'am, I do.

17 MS. SHEALY: Your Honor, at this time I would
18 like to mark this into evidence, without objection, as
19 State's Exhibit 218.

20 THE COURT: Any objection to 218?

21 MR. PENNINGTON: No, Your Honor.

22 THE COURT: 218 admitted without objection.

23 [Whereupon, State's Exhibit Number 218 is marked
24 by the court reporter]

25 [Whereupon, State's Exhibit Number 218 is

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1 admitted into evidence by the Court]

2 Q. [Ms. Shealy] Well, this may not do it quite as
3 clearly as we need to.

4 Tell us about the terminology you used. This on
5 the outside --

6 A. Yes, ma'am.

7 Q. -- of the driver's-side back window you refer to
8 as what?

9 A. Marker one.

10 Q. Marker one.

11 And where is marker thirteen?

12 A. Marker thirteen is actually on the inside of
13 that same door. This is -- this being the exterior of the
14 door, I don't put the inside markers on the inside of the
15 door on the exterior sketch.

16 Q. Okay. Showing you State's Exhibit 74, does that
17 picture depict?

18 A. Yes, ma'am.

19 Q. Marker thirteen?

20 A. Yes, ma'am.

21 Q. Okay. Could you point to the jury as to what is
22 marker thirteen?

23 A. Marker thirteen is this area right in here
24 inside the scale tape, inside the "L", suspected blood.

25 Q. Okay. Now, each spot that you taped, did it get

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1 assigned a label of a number?

2 A. Yes, ma'am.

3 Q. And each swab, then, had a number or either a
4 description --

5 A. Yes, ma'am.

6 Q. -- is that correct?

7 Okay. So you showed us marker one from the
8 outside of the back window. That's marker thirteen.

9 A. Yes, ma'am.

10 Q. Then the swab from driver doorframe at bottom.
11 Could you show us? State's Exhibit 78.

12 A. Yes, ma'am.

13 Q. Is that the driver doorframe at bottom?

14 A. That -- I actually -- there was two areas. That
15 is one of the areas. The second area is the one with the
16 six-inch-grade scale tape.

17 Q. State's Exhibit 79?

18 A. Yes, ma'am.

19 Q. Will you point that out to us with the pointer?

20 A. This is the six-inch-grade scale. That's my
21 scale, and the blood right in front of our suspected
22 blood. Right in front of it is the area that I swabbed
23 for collection.

24 Q. Okay. And then the swabs from the inside-door
25 driver pull, going back to State's Exhibit 74 --

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1 Or you can point it out there, as well.

2 A. Yes, ma'am.

3 Q. -- those come from the driver's pull?

4 A. Yes, ma'am.

5 Q. And then the swabs from the steering wheel. And
6 how do you -- how do you swab a steering wheel?

7 A. Basically, I take two swabs and I run it across
8 the entire steering wheel.

9 Different people will grip the steering wheel in
10 different areas, depending on how you drive, so I swab the
11 entire wheel because I don't know how they drive.

12 And I saved both of those swabs to go to touch
13 DNA -- to be analyzed for touch DNA. I don't test
14 anything on those two swabs.

15 Q. Okay. So as you have shown us today, when you
16 went three-sixty around the car, you were taking swabs
17 from each place that you had tape?

18 A. Yes, ma'am.

19 Q. Is that correct?

20 How many swabs -- how many different locations
21 did you take swabs from?

22 A. On the exterior of the car I took twelve swabs
23 or twelve areas of swabs: on the interior, the inside
24 driver's door, the passenger seat, which is markers
25 thirteen and fourteen respectively, as well as the driver

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1 door -- the driver doorframe on the bottom side [phonetic]
2 and the driver -- the doorframe on the passenger side. So
3 that's four more from the inside. And then two sets of
4 touch DNA swabs from the steering wheel, as well as the
5 driver door pull.

6 Q. So how many swabs is that all together?

7 A. It should be twenty.

8 Q. And when you're collecting all these swabs, do
9 you make a decision as to which swabs then get sent to
10 SLED for analysis?

11 A. No, ma'am.

12 That's typically a decision that's made on
13 scene, with the on-scene investigator, to prioritize which
14 swabs are the most important. The top five swabs would be
15 then submitted to SLED for further analysis.

16 Q. Now, when you say the top five swabs get sent to
17 SLED for analysis, could you explain what that means to
18 the jury?

19 A. If there is -- for example, areas eight, nine,
20 ten, eleven, twelve are all collectively in one area.
21 More likely than not, all of that blood is going to be
22 deposited by one source. So we would pick sources that
23 could have potentially different -- I'm sorry -- pick
24 areas that could have potentially different sources to
25 cover as much area of the car as possible.

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1 So I wouldn't pick five of the swabs from one
2 same area. I would pick, for instance, touch DNA from the
3 steering wheel, as well as the door pull, depending on
4 where they could touch. Blood that is separated from
5 another source of blood -- for instance, the driver-side
6 door is on the opposite side from the passenger-side
7 frame, possibly two completely different sources, so I
8 would swab in two different areas, as well.

9 Q. So here in this case, Detective James Perkins,
10 from Charleston County, is that who you spoke with about
11 what should be then sent to SLED?

12 A. Yes, ma'am.

13 Q. And in our case, then, the door pull for touch
14 DNA?

15 A. Yes, ma'am.

16 Q. The steering wheel for touch DNA?

17 A. Yes, ma'am.

18 Q. And then inside the driver's side?

19 A. Yes, ma'am.

20 Q. Outside the vehicle?

21 A. Yes, ma'am.

22 Q. Is that correct?

23 A. Well, the ones from the outside of the vehicle
24 would be markers one -- actually, marker one is the only
25 one from the outside.

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1 The rest of them are from -- marker thirteen is
2 the inside of the driver door, the driver doorframe at the
3 bottom, and then the two touch DNA from the steering wheel
4 and the two touch DNA from the driver-door pull.

5 Q. And, again, in differentiating between the blood
6 DNA and the touch DNA, could you just describe the
7 difference between those two?

8 A. When I do -- when I submit one for a blood DNA,
9 I've done a presumptive field test, it's come back
10 positive for presumptive blood which means -- I can't tell
11 if it's human blood or animal blood. I know it's some
12 source of blood.

13 Touch DNA just basically is a blind swab. I
14 swab it and -- in hopes that the source might have touched
15 this particular area.

16 MS. SHEALY: I beg the Court's indulgence just
17 one moment.

18 [Whereupon, Ms. Shealy reviews documents]

19 Q. [Ms. Shealy] With the swabs that you took that
20 day, did you give some to Detective Perkins and then take
21 same back with you to SLED?

22 A. Yes, ma'am.

23 Q. Okay. And the ones that you took back with you
24 to SLED, those were for the purposes of their getting
25 analyzed by the DNA expert at SLED?

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1 A. That is correct.

2 MS. SHEALY: I beg the Court's indulgence just a
3 moment.

4 [Whereupon, Ms. Shealy reviews documents]

5 [Whereupon, Ms. Shealy and Mr. Finch confer]

6 MS. SHEALY: I have no further questions.

7 Please answer any the defense may have.

8 THE COURT: Cross-examination.

9 MR. PENNINGTON: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. PENNINGTON:

12 Q. Is it Agent Dinh, Officer Dinh, or Ms. Dinh?
13 How do you prefer?

14 A. At that current capacity I was Agent Dinh, I'm
15 currently Officer Dinh, so I don't have a preference.

16 Q. Okay. We'll go with Agent Dinh, to put you in
17 the right context for this case --

18 A. Yes, sir.

19 Q. -- if that's all right.

20 A. Yes, sir.

21 Q. Agent Dinh, one of the standard processes of the
22 procedure is to count swabs, so you know how many are
23 done, when you're going over a vehicle; is that correct?

24 A. Yes, sir.

25 Q. Okay. And there was a search warrant that had

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1 been obtained from a magistrate in order to search this
2 vehicle. And then it's customary to have a search warrant
3 return on the number of swabs, isn't it?

4 A. Yes, sir.

5 Q. Okay. I'm going to show you this document and
6 see if it would refresh your memory. You said that you
7 thought there were twenty swabs that you took?

8 A. May I double check?

9 Q. Certainly. Go ahead.

10 [Whereupon, the witness reviews documents]

11 A. That is correct.

12 Q. [Mr. Pennington] All right. Agent Dinh, I'm
13 going to show you a document. You don't have to tell us
14 what it is. But see if it would refresh your recollection
15 about this particular search of this particular vehicle
16 that day by you.

17 A. It appears to be a search warrant inventory. It
18 actually says --

19 Q. You don't -- you don't want to publish the
20 document. It's not in evidence.

21 A. Oh. I'm sorry.

22 Q. I'm only asking you does it refresh your
23 recollection now as to the number of swabs that you took.

24 A. Yes.

25 Q. And that would be twenty-one swabs?

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1 A. Yes, sir.

2 Q. Okay. Now, turning to the what happened to the
3 twenty-one, five of them went back to Columbia with you
4 that day?

5 A. I believe seven did, sir.

6 Q. Well, let's go through them. It may be seven.
7 But it's the ones that you outlined just a moment ago and
8 that you described that there was the area number one,
9 which was the outside of the car on the driver's side by
10 the pull?

11 A. Yes, sir.

12 Q. That would have been one of the swabs?

13 A. Yes.

14 Q. All right. In that same way, there was the
15 inside of the what would be the driver's door above the
16 pull area. That was one of the touch DNA areas?

17 A. The touch DNA was the actual door pull.

18 Q. The door pull. Okay.

19 All right. So above that is number thirteen,
20 which is the -- which is the area that's on what I would
21 call the fabric part of the door; correct?

22 A. I believe it was leather. I'm not sure if that
23 makes a difference.

24 Q. All right. Well, let's look at the pictures so
25 that we're not guessing.

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1 MR. PENNINGTON: If we could have photograph 74,
2 please. There you go.

3 Q. [Mr. Pennington] So that was a leathery type
4 material?

5 A. Yes, sir.

6 Q. Okay. And so if we count as one -- number one
7 being on the outside of the car by the window, this would
8 be -- let's call this number two in terms of the numbers
9 of swabs; correct?

10 A. Yes, sir.

11 Q. Okay. Then you described that there was touch
12 DNA on the pull.

13 A. Yes, sir.

14 Q. Okay. And the pull would be -- if you would
15 point to that with your pointer again. That's actually
16 where you grab the car door?

17 A. Yes, sir.

18 Q. In that area? Okay. All right. So then we've
19 got three areas identified.

20 Then the fourth area that I'll turn to is at the
21 base of the where the door is on the driver's side like
22 you were getting in or out with the door open?

23 A. Yes, sir.

24 Q. Okay. That's number four.

25 And number five would be the steering wheel?

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1 A. Yes, sir.

2 Q. Okay. And I think that what's confusing about
3 five versus seven is is that you did on the steering wheel
4 two touch DNA swabs; right?

5 A. Yes, sir.

6 Q. And I think that's also true of the pull. So
7 there were two there; correct?

8 A. Yes, sir.

9 Q. So that's how we get the seven?

10 A. Yes, sir.

11 Q. All right. Now, you've described that normally
12 what you try to do when you're doing this effectively --
13 because you want to kind of get diverse sources of DNA.
14 That's one of the things that you indicated your training
15 indicates; right?

16 A. Yes, sir.

17 Q. Because you look at different areas of the
18 target area to see where different kinds of sources might
19 be; is that correct? Fair to say?

20 A. There's also other circumstances on why we would
21 take a specific area versus other areas.

22 If we know -- in this case the victim is
23 deceased. We know that the victim did not get back in the
24 car and drive off, so any type of DNA or blood in the
25 driver area is going to be more probative to the case than

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1 the blood that's in or on the trunk or in the area where
2 we suspect the victim could have been.

3 Q. Okay. So you focused on the driver area and
4 that's where we got those seven swabs?

5 A. Correct.

6 Q. Okay. But you also did take these same Q-tip
7 swabs basically all around the vehicle?

8 A. Different sets of swabs, yes, sir.

9 Q. Right.

10 And so we ended up with fourteen swabs that
11 didn't go to Columbia?

12 A. I believe so.

13 Q. Okay. And so that would include, for example on
14 the passenger side where there was that big droplet that
15 was right there at the base of that car-door entry point,
16 wasn't there? Do you remember that one?

17 A. Yes, sir.

18 MR. PENNINGTON: Let's see if we can get up a
19 picture of that one. Could we have 86, please.

20 Q. [Mr. Pennington] All right. So this would be
21 the passenger side of the same vehicle?

22 A. Yes, sir.

23 Q. And the black dot or kind of reddish-black dot
24 next to the tape that you have there would be the target
25 area that we're talking about?

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1 A. Yes, sir.

2 Q. And that area was swabbed by you?

3 A. Yes, sir.

4 Q. Okay. And it's customary to basically give
5 what's left over to the agency that's in charge of the
6 investigation?

7 A. Yes, sir.

8 Q. And then they maintain it in a safe, secure
9 manner?

10 A. I would -- I can't answer that question for
11 them, but I would imagine they would.

12 Q. Well, I'm talking about what is the customary
13 practice and procedure.

14 A. I think that varies from agency to agency on
15 their customary. But typically it would be secured in
16 some shape, form or fashion.

17 Q. All right. It could be put in a bag and put in
18 a refrigerator?

19 A. I assume so.

20 Q. Okay. And DNA can be tested not just, you know,
21 like -- DNA is not like milk where if you don't drink it
22 within a few days it's no good and it has to be thrown
23 out. You can test DNA years after the fact, can't you?

24 A. Absolutely.

25 Q. Okay. So if these swabs were held on to, at any

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1 point subsequently they could have been sent up to SLED
2 for further testing?

3 A. That is correct.

4 Q. Okay.

5 [Whereupon, Mr. Pennington reviews documents]

6 MR. PENNINGTON: The Court's indulgence, please,
7 Your Honor.

8 [Whereupon, Mr. Pennington and Mr. Cooper
9 confer]

10 Q. [Mr. Pennington] Agent Dinh, as part of your
11 training as crime scene analyst, you obviously look at
12 things like blood patterns, splatter patterns, those kinds
13 of things; right?

14 A. Yes, sir, I do.

15 Q. All right. And you look for any kind of signs
16 or indications of how blood gets where it gets and that
17 kind of thing?

18 A. Yes, I do.

19 Q. But ultimately you are not qualified or able to
20 say how long a drop of blood had been in a certain
21 location? That is not your expertise?

22 A. It actually is.

23 The correct answer for that would be that once
24 blood dries, you really cannot tell. It depends on the
25 weather conditions, how hot it is. Blood, being

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1 biological, does break down. So not stored properly, it
2 can break down. Blood is similar to latents in that
3 manner in that once it is deposited you really can't tell
4 how long it's been, once it's been dried.

5 Now, if it's still wet, we can get an
6 approximation of time depending on the volume of blood.
7 Blood will dry, like water, on the outside going in. We
8 could get an approximation as long as the blood is still
9 wet. But the blood being dry, we cannot.

10 Q. All right. In this case, on August the 9th of
11 2010, we're talking about dried blood on this car?

12 A. I believe it was August the 11th, sir. But,
13 yes, sir.

14 Q. On August the 11th you came down to Bluffton and
15 there was dried blood?

16 A. Yes, sir.

17 MR. PENNINGTON: Thank you. That's all I have.

18 THE COURT: Redirect?

19 MS. SHEALY: Nothing further.

20 THE COURT: You may step down. Thank you very
21 much.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: You may be excused. Thank you.

24 [Whereupon, Ms. Dinh is excused and exits the
25 witness stand]

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1 MR. FINCH: The State calls Wendy Conant.

2 [Whereupon, Ms. Conant comes forward]

3 THE CLERK OF COURT: Place your left hand here
4 and raise your right hand.

5 [Whereupon, Ms. Conant is duly sworn by the
6 clerk of court as follows: do you swear or affirm
7 that your testimony will be the whole truth and
8 nothing but the truth, so help you God]

9 THE WITNESS: I do.

10 [Whereupon, Ms. Conant takes the witness stand]

11 THE CLERK OF COURT: State your full name and
12 spell your last name.

13 THE WITNESS: Wendy Conant. C-O-N-A-N-T.

14 MR. FINCH: Your Honor, at this time I would
15 move to -- move for the admission of State's 81
16 through 84 and 92 through 104, my understanding
17 without objection.

18 MR. PENNINGTON: That is correct, Your Honor.

19 THE COURT: All right. 81 through 84.

20 STATE'S LAW CLERK: And 92 through --

21 THE COURT: And 92 through 102 admitted without
22 objection --

23 STATE'S LAW CLERK: 104, Your Honor.

24 THE COURT: -- 104 admitted without objection.

25 MR. FINCH: Thank you, Your Honor.

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1 [Whereupon, State's Exhibit Numbers 81 through
2 84 are admitted into evidence by the Court]

3 [Whereupon, State's Exhibit Numbers 92 through
4 104 are admitted into evidence by the Court]

5 MR. FINCH: Good afternoon, Ms. Conant.

6 THE WITNESS: Good afternoon.

7 - - - - -

8 WINDY CONTANT,

9 Having Been First Duly Sworn,
10 was Examined and Testified as Follows:

11 DIRECT EXAMINATION

12 BY MR. FINCH:

13 Q. If you would tell us where you're employed.

14 A. I work for the Beaufort County Sheriff's Office
15 in Beaufort, South Carolina.

16 Q. And what is your position with Beaufort County?

17 A. I am an investigator.

18 Q. And how long have you been with Beaufort County?

19 A. Five yeas and eight months.

20 Q. And what are some of the duties and
21 responsibilities as an investigator with the Beaufort
22 County Sheriff's Office?

23 A. Typically, you know, you get assigned a case to
24 follow up on. And you make contact with witnesses. You
25 might need to subpoena records, do any -- you follow up on

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1 any leads that you have available to try and pinpoint the
2 person that committed the crime that was reported.

3 Q. And on August 10th, 2010, did you have any
4 involvement regarding a 2001 Pontiac Grand P -- Prix, I'm
5 sorry, that was found in a parking lot near the Bluffton
6 Police Department?

7 A. Yes, I did.

8 Q. And what was your involvement with that?

9 A. My involvement with that vehicle was I obtained
10 a search warrant that allowed SLED to do a search of the
11 vehicle.

12 Q. And did SLED conduct the search?

13 A. Yes, they did.

14 Q. Do you recall who was involved in that search
15 from SLED?

16 A. I know Kim Dinh.

17 And if I can refer to my notes.

18 [Whereupon, the witness reviews documents]

19 A. The other two were Kiki Stanley and Sabrina
20 Zonizer [phonetic].

21 Q. [Mr. Finch] And do you know what they
22 collected? SLED.

23 A. I know they had twenty-one swabs, but I do not
24 recall exactly what each swab was.

25 Q. And did you then have any direct contact with

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1 the vehicle?

2 A. Subsequent to the search warrant being served,
3 it was towed to our impound lot over in Beaufort and I
4 responded to the impound lot and I collected an additional
5 six swabs.

6 Q. And did you also photograph the vehicle?

7 A. Yes, I did.

8 Q. If I could refer you to State's Exhibit Number
9 92. You'll see it on the screen behind you. Can you
10 identify that picture?

11 A. Yes, sir.

12 That is the vehicle that was in our impound lot
13 on which I did six swabs.

14 Q. And going on to 93, that's a close-up of the
15 door?

16 A. Correct.

17 Q. As it -- just as it arrived at your impound lot?

18 A. Yes.

19 It had already been processed by SLED, and what
20 you're seeing is a residue from them processing it.

21 Q. And 94. What are we looking at there?

22 A. In the upper right-hand corner of the door just
23 near the window, there's a -- that outer black piece, you
24 see a red spot right near where the window is open, and
25 that is a drop of blood. And that is one of the ones that

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1 I swabbed.

2 Q. And move on to State's 95. I just referenced --

3 A. Correct. That's to scale. Uh-huh.

4 Q. And moving on to 96.

5 A. That's just an overview of an area that I'm
6 about to process.

7 I usually start from far away and work my way in
8 with the photographs.

9 Q. All right. And then let's move on to 97. And
10 can you see from this photo you were zeroing in on?

11 A. On this one in particular, where the doorframe
12 starts to curve up heading towards the steering wheel,
13 there is a red spot. And that is a blood spot that I
14 swabbed.

15 Q. Okay. And then 98.

16 A. And that's just a closer photograph of that same
17 spot.

18 Q. And take a look, then, at State's 103.

19 A. That is another spot that is about midway on the
20 foot-runner of the car, right near the driver's seat, and
21 that is an area of dried blood that I did swab.

22 Q. And who directed you to take these swabs once
23 it's in the impound lot?

24 A. That came from my master sargent, Master Sargent
25 Riley.

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1 Q. And when you take these swabs, generally what's
2 the process?

3 A. We have sterile cotton swabs that are packaged
4 in a sealed paper container. And you open the container.
5 You have gloves on. And you put one or two drops of a
6 saline solution onto the swab, if you're swabbing
7 something that's dry. And so that will moisten a little
8 bit. And then you swab the whole area. And then you put
9 that swab into a sterile box and you seal the box and you
10 write on the box when you collected it, where you
11 collected it, put your initials, the date and time.

12 Q. And that was done in this case?

13 A. Correct.

14 Q. And do you recall what you did with the swabs, I
15 believe the six swabs, that you took from that vehicle?

16 A. I turned all six of them over to the case
17 officer, who was Staff Sargent Todd Calhoun.

18 Q. And did you have any other involvement with this
19 vehicle or any investigation of this case after that?

20 A. I did not.

21 [Whereupon, Mr. Finch and Ms. Shealy confer]

22 MR. FINCH: No further questions. Please answer
23 any questions the defense may have.

24 THE COURT: Cross-examination.

25 MR. PENNINGTON: Officer Conant, just a couple

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1 of questions, if you don't mind.

2 THE WITNESS: No, sir.

3 CROSS-EXAMINATION

4 BY MR. PENNINGTON:

5 Q. The date that you did this was the tenth day of
6 August, 2010; is that right?

7 A. That's correct.

8 Q. August 10th?

9 A. Yes.

10 Q. And so if Monday was the 9th, this would be
11 Tuesday the 10th? Does that sound right?

12 A. That does sound right.

13 Q. Okay. That's the same day that the SLED agent
14 was also there?

15 A. They were there, correct.

16 Q. The same day? The same Tuesday?

17 A. They were -- yeah.

18 I got the search warrant so that SLED, who was
19 there, could process the car.

20 Q. All right. So in effect, SLED had the first
21 opportunity to go around and take their swabs; is that
22 right?

23 A. That's right.

24 Q. And they did that where the car was found on
25 Wharf Street in Bluffton?

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1 A. That's correct.

2 Q. And then the car was transported to the Beaufort
3 County Sheriff's Office impound lot?

4 A. That's correct.

5 Q. And that's on Shankland Road [phonetic] in
6 Beaufort?

7 A. Yes.

8 Q. And then that's when you were directed to take
9 the six swabs that you took from the vehicle that you've
10 just shown photographs of?

11 A. That's correct.

12 Q. And so those were collected at about 3:45 p.m.
13 on the same day?

14 A. That's correct.

15 Q. And then they would have been turned over to the
16 case agent?

17 A. Yes.

18 Q. And that ended your involvement in this case?

19 A. Yes, it did.

20 MR. PENNINGTON: One moment, Your Honor.

21 [Whereupon, Mr. Pennington and Mr. Cooper
22 confer]

23 MR. PENNINGTON: That's all I have. Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Any redirect?

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1 TODD CALHOUN,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. SHEALY:

6 Q. Detective Calhoun, tell the jury where you're
7 employed.

8 A. I am employed with the Beaufort County Sheriff's
9 Office, Beaufort, South Carolina.

10 Q. And how long have you worked there?

11 A. A little over eight years.

12 Q. Eight years?

13 A. Yes, ma'am.

14 Q. And what was your employment history prior to
15 working there?

16 A. I had worked for the City of Courtland Police
17 Department in upstate New York and for Tideway County
18 Sheriff's Office in upstate New York.

19 Q. Okay. In August of 2010, what was your role at
20 the Beaufort County Sheriff's Department?

21 A. I was a sargent assigned to the southern
22 investigations division.

23 Q. On August 9th, 2010, did you have the occasion
24 to meet Mike Bartley?

25 A. Yes, ma'am.

MIA PERRON, CVR-CM-M

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1 Q. And could you describe for the jury the
2 circumstances of your meeting him?

3 A. As an investigator, I was assigned a follow-up
4 investigation to a missing report that Mr. Bartley had
5 made through Deputy Sheriff Seth Marantz [phonetic] with
6 the sheriff's office.

7 Q. And what was the nature of your meeting?

8 A. The nature of my meeting was to meet with
9 Mr. Bartley to ascertain any further information that he
10 could possibly give to aid us in locating Ms. Alexis
11 Lukaitis.

12 Q. Were you provided with a telephone number for a
13 Mr. Darryl Drayton?

14 A. Yes, ma'am.

15 Q. Okay. And would you advise the jury, please,
16 what that telephone number was?

17 A. The number that was provided was 843-368-9422.

18 Q. Did you, in fact, attempt to call Mr. Drayton?

19 A. Yes, ma'am.

20 Q. And were you successful in reaching him?

21 A. Eventually I was.

22 Not before -- in calling that number, it had
23 indicated to us to call another number, which was 843-227-
24 2706. And we had contacted that number and had eventually
25 been able to speak to him after multiple attempts.

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1 Q. Now, when you say you eventually were able to
2 speak to him, how do you know you were talking to Darryl
3 Drayton?

4 A. As a normal course of business, because I
5 actually can't see the person on the other end of the
6 phone to make a facial identification, I asked, you know,
7 is this Darryl Drayton. And he indicated that it was.

8 Q. Was there an arrangement made with Mr. Drayton?

9 A. Yes.

10 Actually, myself and Lance Corporal Pooler
11 [phonetic], who was working with me, also an investigator,
12 we were actually at Mr. Drayton's residence. And I had
13 asked if we could meet with him. He had indicated to us
14 that he was not there at the time and I, in return,
15 indicated to him that I was aware of that because I was
16 standing in his driveway.

17 Q. I'm sorry. I didn't hear that last part.

18 A. Because I was standing in his driveway.

19 Q. Did, in fact, Mr. Drayton ever show up there?

20 A. No.

21 We waited approximately thirty minutes for
22 Mr. Drayton to show up, that being the relative time to be
23 able to travel from one side of the southern part of the
24 county to the other side. Would have been ample enough
25 time for him to reach us and meet us there.

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1 Q. Okay. Were you assigned to this missing persons
2 case?

3 A. Yes, ma'am.

4 Q. And at some point do you have contact with the
5 Charleston County Sheriff's Office?

6 A. Yes.

7 I received a phone call from Investigator James
8 Perkins, of the Charleston County Sheriff's Office,
9 indicating that they had located the body of Ms. Alexis
10 Lukaitis.

11 Q. When you have two different agencies involved in
12 a singular investigation, could you describe to the jury
13 what type of coordination takes place?

14 A. Typically, the lead investigators keep an open
15 line of communication so that one hand kind of knows what
16 the other hand is doing, per se.

17 And leading up to this conversation we had at
18 that point, in Beaufort County, been working a missing
19 persons case. And then when Mr. Perkins had advised to us
20 that they had located the body and they were conducting a
21 homicide investigation, that kind of leads us to switch
22 gears, per se, and be of support to the primary
23 investigations office, which ended up being Charleston
24 County Sheriff's Office.

25 Q. That's because the body was found --

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1 A. That's correct. Because it was found --

2 Q. -- in Charleston County?

3 A. -- within the jurisdiction of Charleston County.

4 Q. Were you familiar with the fact that it was
5 found on Old Jacksonboro Road?

6 A. Yes, ma'am.

7 Q. And could you advise the jury what county that's
8 in?

9 A. And that is in Charleston County. That is not
10 inside of Beaufort County.

11 Q. Okay. Now, initially when you had contact from
12 Detective Perkins, had an identity been made on the body?

13 A. There had not been a positive identification
14 until after they had spoken and met with Mr. Bartley.

15 Q. Okay. And do you -- are you aware that dental
16 records were ordered and compared to the body?

17 A. I do not recall that.

18 Q. Okay. Did you interview witnesses in connection
19 with this case?

20 A. Yes, ma'am.

21 Q. And could you tell the jury the names of some of
22 the witnesses that you interviewed?

23 A. I interviewed Mr. Bartley, the complainant on
24 our missing persons report. I interviewed a Tina Johnson,
25 a Bradley Vavro, Shannon Hooper, had a brief telephone

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1 conversation with a lady by the name of Pearl Powell who
2 was the defendant's aunt.

3 Q. Okay. And then did you actually answer a call
4 to [REDACTED] -- how do you pronounce it? Is it --

5 A. It's actually pronounced Geothie Road. It's
6 G-E-O-T-H-I-E. Geothie Road.

7 Q. Geothie Road.

8 And what was the date that you went to Geothie
9 Road?

10 A. We went to Geothie Road on August 11th. The
11 evening of August the 11th.

12 Q. Now, before we go into that, let me ask you a
13 little bit about your dealings with Mike Bartley. Could
14 you describe for the jury, if you would, his level of
15 cooperation with the police and his demeanor when dealing
16 with the police.

17 MR. PENNINGTON: Your Honor, we're now vouching
18 and giving opinions.

19 MS. SHEALY: I'm not asking him to render a
20 vouch. I'm just asking for his demeanor and whether
21 he was cooperative.

22 THE COURT: All right. I'll sustain the
23 objection.

24 Rephrase the question. I think the question is
25 improper form. Okay?

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1 MS. SHEALY: As to demeanor, as well, Judge?

2 THE COURT: Just rephrase the question.

3 Q. [Ms. Shealy] When you met with Mr. Bartley,
4 could you indicate to the jury whether or not he seemed
5 concerned about Alexis' whereabouts?

6 MR. PENNINGTON: Leading, Your Honor.

7 MS. SHEALY: Your Honor, I don't think demeanor
8 is inappropriate, to ask just what his demeanor was.

9 THE COURT: Well, just -- come up here just a
10 second.

11 [Whereupon, an off-the-record bench conference
12 is held]

13 Q. [Ms. Shealy] Would you describe your dealings
14 with Mike Bartley and how he appeared?

15 A. Mr. Bartley, being the complainant of a missings
16 persons report, seemed to be very concerned with the
17 whereabouts of his fiancé, Alexis Lukaitis.

18 Q. Okay. So now going back to your reporting to
19 Geothie Road.

20 A. Yes, ma'am.

21 Q. Describe for the jury who went there and what
22 you found when you got there.

23 A. Myself, Lance Corporal Pooler, who -- and who
24 was working with me. And Sargent Alberton, she also
25 responded with us to 135 Geothie Road.

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1 And we had been requested to respond there
2 through the southern what we would refer to Bluffton as
3 area four patrol supervisor, who had been made contact
4 with through the Bluffton Police Department personnel that
5 was working that evening.

6 Q. Okay. And did you, in fact, speak with Stephen
7 Edwards?

8 A. Yes, ma'am.

9 Q. When you arrived, did you begin talking to
10 Stephen?

11 A. Yes.

12 In essence, being requested to respond at his
13 request, I met with Mr. Edwards to gather what information
14 he had pertaining while we were there.

15 Mr. Edwards seemed to be very cooperative and
16 concerned about some belongings --

17 MR. PENNINGTON: Objection as to what he's
18 concerned about. Hearsay, Your Honor.

19 THE COURT: Overruled. Go ahead.

20 A. He was concerned about some belongings that were
21 on his property that were not -- did not belong to him.

22 Q. [Ms. Shealy] Okay. If you would describe
23 Stephen Edwards' house to the jury.

24 A. Attempting not to be offensive. In approaching
25 his property, the grass is very overgrown. The exterior

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1 of the residence is in somewhat of disarray and in poor
2 condition as if it had not been well-maintained.

3 To go into further description, the interior of
4 the house was an extreme magnification of the exterior of
5 the house. There -- the back porch, which is the main
6 access to the interior of the home that's being used by
7 Mr. Edwards, is very well-dilapidated, somewhat cluttered,
8 and you have to be concerned where you step because of
9 different items that were laying around and the condition
10 that the floorboards were actually in. And that was
11 indicative of the interior of the residence.

12 It was very disorganized, dirty, conditions that
13 people typically shouldn't live in. There were buckets of
14 feces and urine throughout the residence. There clearly
15 was no power in the residence. And there were items that
16 were kind of stacked up and strewn throughout the
17 residence.

18 Q. Did you ask him or advise him that you would
19 like to search his whole property and his house and shed?

20 A. Yes, ma'am.

21 Q. And did he, in fact, give you consent to search
22 everything?

23 A. Yes, he did, ma'am.

24 Q. Your Honor, I would ask that Detective Calhoun
25 be able to step down so we could go through the items.

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1 THE COURT: Okay.

2 THE WITNESS: Your Honor, if I may, can I remove
3 my sport coat while we do this?

4 THE COURT: Yes, sir.

5 THE WITNESS: Thank you.

6 Q. [Ms. Shealy] Now, when you got there, had some
7 items already been moved into Mr. Edwards' house?

8 A. Yes, ma'am.

9 Q. Okay. If we could begin with what has been
10 previously marked as State's Exhibit 159.

11 [Whereupon, Ms. Shealy and Mr. Pennington
12 confer]

13 MS. SHEALY: Your Honor, at this time, with no
14 objection, the State would like to move in items
15 State's Exhibits 15 through 162, including 162-A, 163,
16 164, and 164-A, 165, 166, 167, 168, 169 and 170.

17 THE COURT: Any objection?

18 MR. PENNINGTON: No, sir.

19 THE COURT: All right. Admitted without
20 objection.

21 [Whereupon, State's Exhibit Numbers 159 through
22 162, 162-A, 163, 164, 164-A, and 165 through 170 are
23 admitted into evidence by the Court]

24 Q. [Ms. Shealy] Okay. So showing you what's been
25 marked as State's Exhibit 159.

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1 MS. SHEALY: If you could come stand in front of
2 the jury.

3 [Whereupon, the witness complies]

4 Q. [Ms. Shealy] Could you tell the jury where you
5 found that?

6 A. This was -- if you recall the picture that shows
7 the chair and the garbage can at the back step going to
8 the back porch, you basically walk into the back porch, go
9 almost the length of the back porch to another door that
10 enters the main area of the house. Right inside that
11 doorway to the right, this was sitting there in a pile of
12 debris.

13 MS. SHEALY: Okay. You can just sit that back
14 on top.

15 Q. [Ms. Shealy] And I'm showing you what's been
16 marked as State's Exhibit Number 60.

17 A. And this, as well, was in that same area right
18 next to the emergency roadside kit, right inside the main
19 door into the residence.

20 Q. 161?

21 A. This is a bag of clothing which was sitting --
22 again, if you remember the picture of the back of the
23 house there's the white chair, the garbage can, and then
24 the back porch. This was sitting on that white chair.

25 Q. 162?

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1 A. This was the diaper bag that was inside of the
2 brownish-colored garbage can that was at the back porch
3 right next to the white chair.

4 Q. 162-A? I mean not -- now, I'm not sure -- well,
5 did you take the contents out of any items?

6 A. This was stuff that was inside of the diaper bag
7 that we removed and photographed.

8 Q. Okay. Very good. That's 162-A. Let me show
9 you those items.

10 A. That's a cloth diaper, two disposable diapers,
11 and a blue child's clothing.

12 Q. 163?

13 A. This is a pair of two disposable diapers and a
14 child's blanket you would have seen on the photograph.
15 Looking into the garbage can, it was kind of down
16 underneath the spare-tire mat.

17 Q. State's Exhibit 164?

18 A. This is the spare tire that was located between
19 where the white chair and the garbage can was, over near
20 the porch kind of out in the grassy area, between those
21 items and the porch.

22 Q. 164-A?

23 A. This is the spare-tire well cover that was --
24 that you also saw inside of the brownish-red garbage can.
25 This would have been sitting over the top of the baby

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1 blanket and the diapers.

2 Q. 165?

3 A. This is the spare-tire jack insert that would
4 have -- it fits in the trunk of a vehicle in the well.
5 This was located underneath Mr. Edwards' back porch.

6 Q. 166?

7 A. This is the shed building, that Mr. Edwards'
8 alluded to in his testimony, depicted in the picture.

9 This was the bag of clothing that was located
10 underneath the back porch and under that shed out on his
11 property.

12 Q. This is the CVS bag?

13 A. Yes.

14 Q. Hold it up.

15 [Whereupon, the witness complies]

16 A. It's contents are a pair of socks, some
17 shoelaces, and then a yellow shirt.

18 Q. [Ms. Shealy] And if we can just turn around the
19 back of the bag, as well.

20 [Whereupon, the witness complies]

21 Q. [Ms. Shealy] 167?

22 A. This is the speaker box and its contents.

23 Now, this would have been where you walked into
24 the back door and to the right where there was the items
25 that were previously alluded to right inside the right

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1 door. You would have gone farther to the right to a
2 secondary room or an off-room, which would have appeared
3 to have been a bedroom of sorts, and this was sitting
4 right inside of that door.

5 Q. And then 168?

6 A. And this is the box of items that you would have
7 seen in the picture next to the speaker box in that same
8 room where the speaker box was located.

9 MS. SHEALY: Okay. You can have a seat again.

10 Q. [Ms. Shealy] Now, would you describe to the
11 jury when -- did y'all actually collect the evidence while
12 y'all were out there?

13 A. Yes, ma'am.

14 Q. Now, what happens with evidence once you collect
15 it from a scene?

16 A. We collect it from the scene, place it in
17 various and sundry containers, this being because the
18 majority of it had what we believed to be was blood with
19 possible DNA value.

20 It was packaged in -- excuse me -- in paper
21 bags, taken back to the Hilton Head Law Enforcement Center
22 where my office is located, and secured in a processing
23 room.

24 Q. Okay. What is a processing room?

25 A. It's a room that we use to -- that has a variety

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1 of different implements in it, such as what they're
2 referred to as commercial dryers, not your typical dryer
3 that you would throw something in that would tumble-dry.
4 It's actually a cabinet that circulates ambient air and it
5 helps aid in the process of drying. Cabinets such as
6 those, some refrigerators, some workspace areas that we
7 would use for processing latent evidence, and some glue
8 tanks that would also be used for processing latent
9 evidence. And it's literally across the hall from our
10 office.

11 Q. Now, who has access to the evidence processing
12 room?

13 A. Typically, in the use of the room, anybody has
14 access to it unless we use it to store evidence and then
15 the case officer who is responsible for the case and the
16 evidence will secure it there for processing.

17 In this case because we knew that Charleston
18 County was going to be, in essence, taking possession of
19 it, it was secured in this room. It's locked with a key.
20 And we use, as you can see on these bags, the red evidence
21 tape to tape the door so that everybody knows to stay out
22 and we know if it's been tampered with.

23 Q. Could you describe for the jury what SLED is?

24 A. State Law Enforcement Division. They basically
25 handle assisting other agencies in the process of

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1 evidence. In some cases they investigate other crimes.
2 And in this incident, they're an agency that we -- a State
3 agency that we used to assist us in the investigation,
4 whether it be processing the evidence and things of that
5 nature.

6 Q. Okay. Well, you told us about the corroborative
7 effort with Charleston. At some point, do -- these items
8 that you talked to us about, were they then turned over to
9 Charleston County's crime scene office?

10 A. Yes, ma'am.

11 Officer Mills, from Charleston County Sheriff's
12 Office, he responded to our office and he took possession
13 of all these items.

14 Q. Now, in that photograph that has the CD disk
15 stuff and the emergency bag --

16 A. Yes, ma'am.

17 Q. -- there was a filet knife?

18 A. Yes, ma'am.

19 Q. Why didn't y'all take that filet knife that day?

20 A. Could you pull that picture up so that I --

21 Q. Yes.

22 A. -- can explain that easier?

23 MS. SHEALY: Photograph 21.

24 A. Okay. As I alluded to previously, this is kind
25 of a very small micro picture of the way Mr. Edwards'

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1 house is.

2 There's piles of debris all throughout the house
3 and things of that nature. At the time, in collecting
4 this evidence and photographing this, Mr. Edwards
5 indicated to us that this was his knife, this was his
6 filet knife. And in the Bluffton area there's a lot of
7 waterfront, and a lot of people that have a lot of time on
8 their hands have a tendency of hanging out down fishing
9 and working at the Oyster Factory and things of that
10 nature. So there was no reason for me to believe that
11 this was not his knife.

12 Also, if you look -- and from our perspective,
13 in this situation we looked to see what to us kind of
14 looks out of place. And I know this kind of looks like a
15 mess of jumble. But you can clearly see that items that
16 are sitting on top are the emergency bag and the CD tapes
17 and, in fact, the knife -- the blade and the knife is
18 actually underneath this visor. And that black object and
19 the bottom of the knife is underneath this bag, which were
20 I believe items that he had -- the blue bags were food
21 products and things of that nature that he got from the
22 Bluffton self-help.

23 So we didn't collect it the night we went out
24 and collected all this evidence, because all indications
25 to us were that this didn't belong to him and it was not

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1 involved in the crime because of the way it was stacked
2 throughout the house.

3 Q. [Ms. Shealy] Now, in fact, though, you do go
4 back later and get the knife; is that correct?

5 A. Yes, ma'am.

6 After conferring with my master sargent who is,
7 in essence, my big supervisor over the investigations, he
8 felt that we should probably collect it and submit that as
9 well to Charleston County.

10 Q. Okay. And showing you what's been marked as
11 State's Exhibit 170: is this the -- this may not be the
12 container that you had it in, but is this --

13 A. No.

14 Q. -- the knife that you got from Mr. Edwards's
15 house?

16 A. Yes, this is the knife.

17 Q. Okay. And on the occasion that you went back to
18 get the knife, did --

19 MS. SHEALY: Let me just stick it back in there.

20 Q. [Ms. Shealy] When you went back to get the
21 knife, did Mr. Edwards point out some other items that he
22 had found?

23 A. Yes, ma'am.

24 He had indicated -- at this point in time,
25 his --

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1 THE COURT: Solicitor --

2 MS. SHEALY: I'm sorry. Go ahead.

3 MR. PENNINGTON: Objection. Hearsay, Your
4 Honor. He's describing what the witness pointed out
5 to the officer.

6 THE COURT: [No response]

7 Q. [Ms. Shealy] Did you collect some items?

8 A. Yes, ma'am.

9 I collected a pair of sneakers and a sock that
10 had been cut in half.

11 Q. And showing you what's already been marked into
12 evidence State's 172 and 171.

13 A. This is the left sneaker that had been located
14 in Mr. Edwards' car and this is the right sneaker that had
15 been located in Mr. Edwards' car.

16 Q. And showing you State's Exhibit Number 30, does
17 that picture depict from where you got the sneakers?

18 A. Yes, ma'am.

19 That's actually located in Mr. Edwards's car,
20 the rear-passenger compartment area.

21 Q. And was there a sock also found in that area?

22 A. Yes, ma'am, there was.

23 Q. And showing you State's Exhibit 169.

24 A. This is the sock that was recovered, as well, in
25 the same general area.

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1 Q. And all of these items that we've gone over,
2 they stayed in the evidence processing room until James
3 Mills from Charleston County came and picked them up?

4 A. That's correct.

5 Q. Now, what about the vehicle of Ms. Lukaitis?
6 Are you aware that he also picked up that vehicle?

7 A. I'm not familiar with that at all.

8 Q. Okay. Did you participate that evening in
9 interviewing Mr. Edwards?

10 A. Yes.

11 Q. And based on that, did you go to a jewelry
12 store?

13 A. We did go, based -- we did go to a jewelry
14 store, based on information that Mr. Edwards provided to
15 us.

16 Q. And where is that jewelry store located in
17 relationship to the Food Lion?

18 A. It's actually in what's called Kitty's Crossing,
19 which is a plaza that houses a variety of different
20 stores. And it is -- if you're -- from 278 were -- the
21 road in Bluffton, if you were looking at the complex from
22 the road, Food Lion is all the way to the right and Golis
23 Jewelers is right next door. I mean, it's two doors down
24 to the left.

25 Q. Okay. And did you have the occasion to speak to

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1 Mr. Golis when you went in there?

2 A. Yes, ma'am. I went to Mr. Golis and inquired
3 about a --

4 MR. PENNINGTON: Objection as to what Mr. Golis
5 said.

6 THE COURT: He said he inquired.

7 Don't testify to what Mr. Golis said to you.

8 THE WITNESS: Yes, sir.

9 Q. [Ms. Shealy] You were asking Mr. Golis?

10 A. I was asking Mr. Golis about a ring, an
11 individual that may have brought in a ring within
12 recent --

13 Q. Okay. And while there, did you show him a
14 photographic line-up?

15 A. Yes, ma'am.

16 Q. And did you in any way tell him who to choose
17 out of the line-up?

18 A. No, ma'am.

19 Q. Showing you what's been previously marked as
20 State's Exhibit 175. Is this the line-up that you showed
21 him?

22 A. Yes, ma'am.

23 Q. And did you read this admonition to him prior to
24 his looking at it?

25 A. Yes, ma'am.

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1 Q. Okay. And did he, in fact, give you a written
2 statement?

3 A. He did.

4 Q. And did he give you a ring?

5 A. Yes, he did.

6 Q. I'm showing you what's been marked as State's
7 173 for ID purposes. Is this the ring that he gave you?

8 A. Yes, ma'am, it is.

9 Q. Now, could you tell the jury whether Mr. Drayton
10 was arrested for the murder of Alexis Lukaitis?

11 A. Yes. He was picked up by our agency on an
12 unrelated incident and subsequently he was charged by
13 Charleston County Sheriff's Office for the murder of
14 Alexis Lukaitis.

15 Q. Okay. And what was the date that he was
16 arrested?

17 A. He was arrested on the 11th of August.

18 MS. SHEALY: Beg the Court's indulgence just a
19 moment.

20 [Whereupon, Ms. Shealy and Mr. Finch confer]

21 Q. [Ms. Shealy] The ring and the line-up that you
22 just showed me, you also gave those over to Mr. Mills?

23 A. That's correct.

24 MS. SHEALY: I have no further questions.

25 Please answer any that the defense may have.

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1 THE WITNESS: Yes, ma'am.

2 THE COURT: Cross-examination.

3 MR. PENNINGTON: Just a moment, Your Honor.

4 [Whereupon, Mr. Pennington reviews documents]

5 CROSS-EXAMINATION

6 BY MR. PENNINGTON:

7 Q. Sargent Calhoun, you mentioned that my client
8 was arrested on Wednesday, August the 11th. That was in
9 Bluffton, was it not?

10 A. Yes, I believe so. I was not present during
11 that process.

12 Q. Okay. And so -- and just so we get the dates
13 correct -- and I sometimes confuse numbers but I know the
14 days better. This would have been -- if Monday was August
15 9th, the 11th would have been Wednesday, the same week?

16 A. I believe so.

17 MR. PENNINGTON: Thank you.

18 THE COURT: Redirect?

19 MS. SHEALY: None, Your Honor.

20 THE COURT: You may step down. Thank you very
21 much.

22 THE WITNESS: Thank you, Your Honor.

23 [Whereupon, Mr. Calhoun is excused and exits the
24 witness stand]

25 MR. FINCH: The State calls John Adams.

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JOHN G. ADAMS,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. FINCH:

Q. If you would tell the Court where it is you're employed.

A. I'm employed with the Beaufort County Sheriff's Office.

Q. And how long have you been with Beaufort County?

A. I've been with Beaufort County since 2002.

Q. And what's your position there?

A. My current position is I'm an investigator with the southern division.

Q. And is that what you were doing in August, 2010?

A. Yes, sir.

Q. What are some of the duties and responsibilities of investigator?

A. Following up on cases, collecting fingerprints and other evidence, photographs, shoe impressions, tire impressions, interviewing witnesses, things like that.

Q. And did you have occasion to take some photographs of Mr. Drayton in August, 2010?

A. I did, sir.

Q. And what's generally the nature of just taking

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1 those photographs, if you recall?

2 A. I believe that Mr. Drayton was in one of our
3 interview rooms and I went in and took my camera and photo
4 scale and took some photographs of him.

5 Q. And what's the -- I'm going to show you what's
6 been marked and admitted as State's 107 through 113. If
7 you could identify those.

8 [Whereupon, the witness reviews documents]

9 Q. [Mr. Finch] And if we could, we'll just go
10 through them one at a time starting with 107. Can you
11 just tell us what that photo is of?

12 A. It's an overview shot of the defendant from the
13 waist up.

14 Q. And would that be for identification purposes?

15 A. Yes, sir.

16 Q. And then we go on to 108. And what are we
17 looking at here?

18 A. Noting tattoo, scars, marks, anything like that.

19 Q. And 109?

20 A. Just giving a more detailed shot of tattoos,
21 with the photo scale for reference.

22 Q. And anything else of note in that photograph?

23 A. I believe there are some scratches up around the
24 neck area right in the center of the chest.

25 Q. And going to the next one. I believe it's 110.

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1 A. Some scratch marks on the forearm.

2 Q. If you could, I believe there's a pointer up
3 here. There it is right there next to you. If you could
4 use that to indicate -- we'll go back one picture to 109.
5 If you could indicate areas of interest in that
6 photograph.

7 A. These appear to be scratches up in here.

8 Q. And you would have been photographing to
9 document those scratches?

10 A. The scratches and the tattoos.

11 Q. And going to the next; 110.

12 A. Some sort of scratch here and here.

13 Q. And 111?

14 A. It appears there's a scratch or a scar right
15 through the web of the hand.

16 Q. 112?

17 A. Just documenting the inside of the palm of the
18 hand.

19 Q. 113?

20 A. An injury to the finger that's been bandaged --

21 Q. And then 114 --

22 A. -- the right-hand index finger.

23 Q. And then 114?

24 A. And this is underneath the bandage.

25 MR. FINCH: Thank you. Take your seat.

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1 [Whereupon, the witness complies]

2 MR. FINCH: No further questions at this time,
3 Your Honor.

4 Please answer any questions the defense may have
5 for you.

6 THE COURT: Cross-examination.

7 MR. PENNINGTON: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. PENNINGTON:

10 Q. Sargent Adams, referencing these photographs
11 that you've just talked about, 107 through 111, let's back
12 up. The date that you took these photographs was on
13 Wednesday the 11th?

14 A. I believe that's correct, sir.

15 Q. Okay. And this was at the Hilton Head --

16 A. Substation.

17 Q. -- substation for the --

18 A. Yes, sir.

19 Q. -- Beaufort County --

20 A. -- Sheriff's Office --

21 Q. -- Sheriff's Office?

22 A. Yes, sir.

23 Q. Okay. And you were not part of any kind of --
24 you were just asked to come into the room and take some
25 photographs?

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1 A. Yes, sir, that's correct.

2 Q. And so you do not know how the marks on the
3 chest occurred? They didn't occur in your presence?

4 A. No, sir, they did not.

5 Q. Or the mark on the forearm, you don't know how
6 old that was or where it came from?

7 A. No, sir, I don't.

8 Q. Or the scratch or scar on the hand that you
9 referenced, you don't know how old that was or where it
10 came from?

11 A. That's correct, sir.

12 Q. But you were there to gather evidence; right?
13 You were there to photograph --

14 A. Took photographs, yes, sir.

15 Q. -- my client for evidentiary reasons?

16 A. Yes, sir.

17 Q. And, specifically, you were looking for any kind
18 of marks that you could find?

19 A. Yes, sir.

20 Q. Including recent injuries or scratches; correct?

21 A. I was told to photograph the defendant. And
22 just of general practice I would look for identifying
23 marks, scars, tattoos, or any sort of injury.

24 Q. All right. So if you had seen an injury you
25 would have zeroed on in and taken a picture, just like you

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1 did on these photographs?

2 A. To the best of my knowledge, yes, sir.

3 Q. Now, you've shown us some of the pictures you've
4 taken, but not all; isn't that correct?

5 A. I believe there are quite a few more pictures.

6 Q. Now, you had occasion -- let me back up and lay
7 a predicate for this. You had occasion to see my client's
8 face, did you not?

9 A. Yes, sir. I was in the room with him.

10 Q. Okay. And then as a consequence you not only
11 took the pictures you took, but you had a chance to
12 photograph him from both sides? From the right side and
13 from the left side?

14 A. Yes, sir.

15 Q. Okay. Without telling us what this is, since
16 it's not in evidence, I would ask you to just simply
17 indicate if you recognize what that depicts. Do you
18 recognize that?

19 A. I believe I do, yes, sir.

20 Q. All right. So you took -- you had a chance to
21 take pictures of my client from what would be the right
22 side of his face?

23 A. That appears to be his right side, yes, sir.

24 Q. And these are digital pictures, aren't they?

25 A. Yes, sir, they are.

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1 Q. And so we can blow them up?

2 A. [No response]

3 Q. Just take a look at that for me, sir. Is it
4 fair to say that there are no scratches on the right side
5 of his face?

6 A. I would say that's fair.

7 Q. Does that -- that particular view confirm that
8 there are no scratches on the right side of his face?

9 A. There don't appear to be any scratches on the
10 right side of his face in that photograph.

11 MR. FINCH: Your Honor, the State would object.
12 No one can see what he's referencing.

13 THE COURT: I'm sorry. What?

14 MR. FINCH: The State can't -- the State would
15 object because no one can see -- the jury can't see
16 what he's referencing. He's got to reference --

17 THE COURT: Well, he's just referencing it for
18 questioning. He's not introducing it. You can go sit
19 there and look, if you want, if you want to cross-
20 examine him on it -- or redirect on it, excuse me, you
21 may do that.

22 The objection is overruled.

23 Q. [Mr. Pennington] Now, I'm going to ask you if
24 you recall looking at what would be the left side of his
25 face. Did you look at the left side of his face, Officer

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1 Adams?

2 A. I took these photographs.

3 Q. Well, let's not talk about the photographs. I'm
4 really just trying to give you a chance to refresh your
5 recollection about what you saw.

6 So you did have an opportunity to see the left
7 side of his face, did you not?

8 A. I took these photographs, yes, sir.

9 Q. And is it fair to say that there were no
10 scratches on the left side of Darryl Drayton's face?

11 A. I do not see any scratches, in this photograph,
12 of the left side of his face.

13 Q. And, in fact, that's what you were looking for?
14 In other words, you were looking for all the marks or
15 artifacts that would be visible to you as a crime scene --
16 or as a detective?

17 A. Yes, sir. Photograph the defendant.

18 [Whereupon, Mr. Pennington and Mr. Cooper
19 confer]

20 MR. PENNINGTON: The Court's indulgence.

21 [Whereupon, Mr. Pennington and Mr. Cooper
22 confer]

23 MR. PENNINGTON: Thank you, Officer. There may
24 be some redirect. I'm not sure.

25 THE COURT: Any redirect?

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1 MR. FINCH: Yes, Your Honor, briefly.

2 REDIRECT EXAMINATION

3 BY MR. FINCH:

4 Q. If I may refer to the items Mr. Pennington was
5 showing you --

6 [Whereupon, Mr. Finch reviews documents]

7 Q. [Mr. Finch] Now, you say this is a photo that
8 you took?

9 A. I believe these are all photos that I took.

10 Q. And what date were those taken?

11 A. On the 11th, I believe.

12 Q. Okay. Did you see the defendant on August 8th?

13 A. No, sir.

14 Q. Did you see the defendant on August 9th?

15 A. No, sir.

16 Q. Did you see the defendant on August 10th?

17 A. No, sir.

18 Q. And the injuries that you photographed on the
19 11th, what was the condition of those injuries and
20 scratches?

21 A. I'm not sure of the question.

22 Q. Were they bleeding?

23 A. They were just as they were depicted in the
24 photos.

25 Q. So scabbed?

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1 A. Yes, sir.

2 Q. Healed?

3 A. Yes, sir.

4 MR. FINCH: No further questions, Your Honor.

5 THE COURT: Any recross?

6 MR. PENNINGTON: No, sir.

7 THE COURT: You may step down. Thank you very
8 much.

9 [Whereupon, Mr. Adams is excused and exits the
10 witness stand]

11 [Whereupon, Ms. Shealy and Mr. Pennington
12 confer]

13 MS. SHEALY: James Milz.

14 [Whereupon, Mr. Milz comes forward]

15 THE CLERK OF COURT: Place your left hand here
16 and raise your right hand.

17 [Whereupon, Mr. Milz is duly sworn by the clerk
18 of court as follows: do you swear or affirm that your
19 testimony will be the whole truth and nothing but the
20 truth, so help you God]

21 THE WITNESS: Yes, I do.

22 THE CLERK OF COURT: State your full name and
23 spell your last name.

24 THE WITNESS: James Thomas Milz. M-I-L-Z.

25

- - -

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JAMES MILZ,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. SHEALY:

Q. Officer Milz --

A. Ma'am?

Q. -- tell the jury where you work.

A. I work at the Charleston County Sheriff's
Office, forensic investigator.

Q. How long have you been a forensic investigator?

A. Going on five years now, ma'am.

MS. SHEALY: Judge, I'm going to admit, without
objection, photograph State's Exhibits 115 through
127, photographs 129 through 158.

THE COURT: 158?

MS. SHEALY: Yes, sir.

THE COURT: All right. Any objection?

MR. PENNINGTON: No, sir.

THE COURT: All right. 115 through 127, 129
through 158, admitted without objection.

[Whereupon, State's Exhibit Numbers 115 through
127 are admitted into evidence by the Court]

[Whereupon, State's Exhibit Numbers 129 through
158 are admitted into evidence by the Court]

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1 Q. [Ms. Shealy] Okay. You were one of the
2 forensic investigators pertaining to the investigation of
3 the case of the State vs. Darryl Drayton; is that correct?

4 A. Correct, ma'am.

5 Q. And that involved evidence from a variety of
6 places; is that correct?

7 A. Yes, ma'am.

8 Q. Okay. Now, was your first role in going to the
9 scene where the body was located?

10 A. It was, ma'am.

11 Q. And that was at Old Jacksonboro Road?

12 A. And 174. Yes, ma'am.

13 Q. Would you tell the jury whether or not that's
14 actually in Charleston County.

15 A. It is in Charleston County. Highway 174 and Old
16 Jacksonboro cross just near Savannah Highway.

17 Q. Okay. Tell the jury, please, if you would, when
18 you arrived there what do you do first when you get to a
19 scene and who did you go with.

20 A. I went with my sargent, Sargent Paul McManigal.
21 He is the sargent in charge of the forensic department.

22 One of the first things that we do when we come
23 on a scene is we talk to the officers that are already on
24 scene, just to get a little bit of the lay of the land,
25 what's going on.

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1 After that, I like to take a moment and look at
2 what I have, see -- in this case, since we had a victim,
3 to find the best route into this area that would not
4 disturb any evidence, an entry and exit pathway into the
5 area.

6 And then after that, then we will usually decide
7 what we're going to do next. Usually, that will consist
8 of starting to take photographs and video of the actual
9 incident location.

10 Q. Okay. And in that this was on a dirt road, were
11 there any tracks that you saw that were of particular
12 interest to you?

13 A. Yes, ma'am.

14 The tracks that we particularly liked where the
15 deceased was was footprints and also tire tracks that
16 swerved off of the road where the victim was at and then
17 it looked like it swerved in and out possibly --

18 MR. PENNINGTON: Objection to speculation.

19 THE COURT: Overruled. Go ahead.

20 A. -- possibly placing the victim near the apex of
21 the tire tracks off of the road.

22 Q. [Ms. Shealy] Okay. And when you arrived there,
23 was the body still there?

24 A. Yes, ma'am, it was.

25 Q. When you say that you saw both shoe -- possible

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1 shoe prints and tire prints, what level of care did you
2 have to take in the area?

3 A. Well, like I stated earlier, it was a dirt road
4 and it had rained I believe in the past forty-eight hours,
5 so we had good tracks in the dirt surface. So we took
6 care to make sure that we could photograph and possibly
7 gather this evidence.

8 Q. Okay. Now, so what do you do first when you see
9 possible tire impressions? What do you do?

10 A. The first thing I'm going to do, ma'am, is
11 photograph at all angles, look at the tire tracks, the
12 ones that I especially like best that show the best
13 detail. I'm going to photograph this from a birds-eye
14 view and then from all angles, left, right, front and
15 back. And then after that, we try to lift it with plaster
16 of paris molds to preserve it.

17 Q. Okay. And what is the reason for taking these
18 photographs? What purpose does that serve?

19 A. The purpose of the photographs is to -- later,
20 if we can establish possibly a motor vehicle, to try to
21 match them up to that vehicle.

22 Q. If I could get you to --

23 MS. SHEALY: Judge, with your permission, may I
24 have Mr. Milz step down in front of the jury?

25 THE COURT: Yes, ma'am.

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1 Q. [Ms. Shealy] Okay. Showing you State's Exhibit
2 176 -- I've collected all of these together -- could you
3 just kind of tell us what this means and what the orange
4 depicts and what you're depicting in these photographs?
5 If you would go through each one.

6 A. The orange -- my sargent and I, we put the
7 spray-paint, this orange marker paint, just so -- as a
8 reference point for visualization so we could come back to
9 it.

10 The scale right here is just a scale so -- just
11 for reference of the size of the track itself. Again --

12 Q. And do these pictures -- are these pictures in
13 the same place on the ground or are these -- are you
14 taking them as you go along a route?

15 A. Yeah, we -- we are going along taking pictures
16 of, like I said, the best pictures that we could see that
17 we had detail in the actual tire tracks itself.

18 Q. Okay.

19 A. So we are not just staying in one little
20 location. We are moving around in the area looking at the
21 best impressions in the dark.

22 Q. And is that because different tires have
23 different treads?

24 A. Yes, ma'am, they do.

25 Q. Now, would y'all, then, make the comparison

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1 between the tire impressions? Or is that sent somewhere
2 else?

3 A. No, ma'am. That would be sent to SLED itself.

4 Q. Okay. We don't need to go through each of
5 those. But you took a series of photographs based on the
6 impressions that were on the ground?

7 A. Yes, ma'am, we sure did.

8 Q. Now, when you were -- let's look at some of the
9 photographs regarding the tire tracks. Showing you what
10 has been previously marked as State's Exhibit 116 -- I'm
11 sorry -- 115.

12 MS. SHEALY: And I believe there's a pointer up
13 there.

14 THE WITNESS: Yes, ma'am.

15 Q. [Ms. Shealy] It's fairly obvious. But if you
16 can just show what y'all saw as possible relevant tire
17 tracks. Can you point those out?

18 A. Yes, ma'am.

19 Anywhere that you can see these blue and green
20 cones, we were -- we first put those down as reference
21 points for the tire tracks that I mentioned earlier that
22 curved in toward where the victim was laying.

23 Q. And can you show us --

24 MS. SHEALY: Your Honor, I don't know if he's
25 going to be able to reach far enough to show where the

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1 body was in that picture. Would you mind if he
2 stepped in just for a second to point that out?

3 THE COURT: That's fine.

4 MS. SHEALY: Be careful with that door. It's
5 going to swing.

6 THE WITNESS: Okay.

7 Q. [Ms. Shealy] The body has been removed in this
8 photograph; is that correct?

9 A. Yes, ma'am --

10 Q. Could you show --

11 A. -- but it would be off the -- this point --

12 Q. Just point with the pointer.

13 A. -- right here.

14 It would be almost to this location, off of the
15 apex of the tire tracks right here. It would be off-
16 screen.

17 Q. Okay. And you used different type of markers
18 for different type of evidence in this photograph?

19 A. Yes, ma'am.

20 In this scene, in this picture right here,
21 actual green and blue cones we use for tire tracks.

22 These right here, these little yellow placards,
23 we use those -- I believe -- I have to consult my notes,
24 but I believe those are for the footprints.

25 These white placards right here was for actual

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1 hard pieces of evidence that we found. I believe this was
2 a napkin that was near the deceased. That was also taken
3 just for evidentiary reasons --

4 Q. Okay. We'll go over those in just a second.

5 But each of those different types of markers
6 were for different types of evidence?

7 A. Yes, ma'am.

8 Q. Okay. Showing you what's been marked as State's
9 Exhibit 122. Can you show us the tire marks in those
10 pictures -- that picture?

11 A. Uh-huh.

12 I don't if the jury can actually see the -- but
13 there is a curve mark right here, going toward this area
14 right in here, where it appeared to us that a vehicle came
15 in and then came out.

16 Q. Okay. A little closer-up of that is 123.

17 A. Yes, ma'am. It's sideways, yes, ma'am, but
18 that's it.

19 Q. And 124?

20 A. Same view. Coming in from here, curving forward
21 where the remains were, and then going back out to the
22 road.

23 Q. And you have told us about the use of the orange
24 paint.

25 A. Yes, ma'am.

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1 Q. I'm showing you State's Exhibit 125. Can you
2 explain the use of the orange paint?

3 A. That was just to help us when we first started
4 before we put actually the blue and green markers, plastic
5 markers, down that -- the path that we really were really
6 interested in before we actually put the plastic markers
7 down now.

8 Q. Okay. And then from the opposite direction,
9 State's Exhibit 126. Does that show it coming from the
10 other area?

11 A. Correct. There is the curve right there, yes,
12 ma'am.

13 Q. Now, in that photo, as well as the previous one,
14 125, I notice there are no vehicles in the area. Were
15 y'all allowing vehicles to travel in the area that you
16 were working in?

17 A. Oh, no, ma'am.

18 Both ends of that road were -- had crime scene
19 tape up and actual deputies preventing anybody from coming
20 into that scene.

21 Q. Okay. Now, you told us that you actually took
22 some tire casts. Once you had taken your photographs, you
23 actually took some impressions of the tire area?

24 A. Yes, ma'am, we did.

25 MS. SHEALY: Okay. You can go ahead and have a

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1 seat again.

2 [Whereupon, the witness complies]

3 Q. [Ms. Shealy] And how is that accomplished?

4 A. We have a actual kit that is -- I get a metal
5 frame of an area that I want to cast. I'll put this metal
6 frame around this area. I'll make a slurry mix of plaster
7 of paris or dental stone with water. I will pour this
8 into the area. And pretty much because it was a hot day
9 that day, it takes about a half hour to make it as hard as
10 cement.

11 Q. Okay. Now, in this case, because of the types
12 of photographs that you took on the ground, you sent to
13 SLED the photographs; is that correct?

14 A. Yes, ma'am.

15 Q. Okay. For them to make their comparison?

16 A. Correct.

17 Q. And we'll get to what you took off the car in a
18 moment. Okay?

19 A. Yes, ma'am.

20 Q. But you've also told us that as part of what you
21 do, you look to see -- I think you told us there's a
22 certain type of marker to see if there's any type of
23 physical potential evidence on the ground?

24 A. Yes, ma'am.

25 Q. Okay. So in the area near where the body was or

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1 the body had been, were there some items around there that
2 you collected?

3 A. Yes, ma'am, there was.

4 Q. Okay. Showing you State's Exhibit 116. Could
5 you tell the jury what that depicts?

6 A. Yes, ma'am. That was a crushed Bud Lite beer
7 can.

8 Q. And did you actually collect that?

9 A. It was, ma'am. It was collected.

10 Q. And did you do any type of testing on them?

11 A. Yes, ma'am.

12 The item was subjected to Super-Glue fuming,
13 which will enhance latent fingerprints. And then we
14 dusted. And no fingerprints were developed on the can,
15 ma'am, of any use.

16 MS. SHEALY: Your Honor, at this time I would
17 admit into evidence State's 184.

18 MR. PENNINGTON: No objection, Your Honor.

19 THE COURT: 184 admitted without objection.

20 [Whereupon, State's Exhibit Number 184 is
21 admitted into evidence by the Court]

22 Q. [Ms. Shealy] And this is the beer can that was
23 found?

24 MS. SHEALY: Well, this is going to take
25 forever.

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1 Q. [Ms. Shealy] But you didn't find any
2 fingerprints on it?

3 A. No, ma'am. There was no usable fingerprints
4 observed on the can.

5 Q. You can just pull it out for the jury.

6 [Whereupon, the witness complies]

7 Q. [Ms. Shealy] And where was that in relationship
8 to the body?

9 A. Very close to the body, ma'am. No more than
10 five yards, possibly.

11 Q. Okay. And then you mentioned earlier a napkin
12 that you found?

13 A. Yes, ma'am. Also close to the body.

14 Q. Showing you State's Exhibit 117.

15 A. Yes, ma'am. Placard number three.

16 Q. And did you do anything to see if you could find
17 any evidence on the napkin?

18 A. Yes, ma'am.

19 That was also collected. Since it is a paper
20 product, I use another chemical to try to develop latent
21 prints on paper products, which is called menhydren
22 [phonetic], which if there is a print on there it will
23 turn it pink. There was nothing developed on that napkin.

24 MS. SHEALY: Okay. Your Honor, at this time I
25 would admit 185, the napkin.

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1 MR. PENNINGTON: No objection, Your Honor --

2 Q. [Ms. Shealy] And you can see --

3 THE COURT: Number 185 admitted without
4 objection.

5 Q. [Ms. Shealy] -- the napkin in there?

6 A. Yes, ma'am.

7 [Whereupon, State's Exhibit Number 185 is
8 admitted into evidence by the Court]

9 Q. Okay. So you found nothing on that?

10 A. No, ma'am.

11 Q. And then was there a wrapper from a -- is that a
12 case of Budweiser or something?

13 A. Yes, ma'am. The plastic wrapper from a case of
14 Budweiser beer.

15 Q. Okay. And showing you State's Exhibit 118.

16 A. Yes, ma'am. Number -- placard number four was
17 the plastic wrapper.

18 Q. Okay. Using your pointer, if you could stand on
19 that side, please, and show us where the body was in
20 relationship to that. Do you see the debris over on the
21 lefthand side?

22 A. Yes, ma'am.

23 If y'all can see this black area right here,
24 this is almost where -- if this photo was a little bit
25 bigger -- the victim was laying right here.

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1 Q. Okay. And, also, just a closer-up shot of that
2 is State's Exhibit 119. Did you do any kind of testing on
3 that?

4 A. Yes, ma'am.

5 The beer wrapper was also subjected to Super-
6 Glue fuming, to try to enhance any kind of latent prints,
7 and dusted also with black powder. Negative results on
8 anything usable.

9 Q. Okay. Showing you --

10 MS. SHEALY: State's Exhibit 179, Your Honor,
11 that we would move into evidence with no objection.

12 THE COURT: Did you say 179?

13 MS. SHEALY: 179.

14 THE COURT: Any objection?

15 MR. PENNINGTON: No, sir.

16 A. Yes, ma'am.

17 MR. PENNINGTON: No objection.

18 THE COURT: 179 admitted without objection.

19 [Whereupon, State's Exhibit Number 179 is
20 admitted into evidence by the Court]

21 Q. [Ms. Shealy] So you found nothing on that?

22 A. No, ma'am. Nothing usable, no, ma'am.

23 Q. Now, was there a cigarette butt?

24 A. Yes, ma'am. But farther up the road from that
25 area.

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1 Q. Okay. And when you say farther up the road,
2 could you tell the jury how much farther up the road? Do
3 you have that information, or did Sargent McManigal find
4 it?

5 A. From the actual where the deceased was -- and,
6 yes, I forgot my glasses -- 115 feet.

7 Q. 115 feet?

8 A. Yes, ma'am.

9 I found it when actually I was walking toward
10 where my vehicle was parked, collected it, and I -- and
11 collected it because it was a fresh cigarette butt, it had
12 not been weathered.

13 Q. Okay. And you found it as you were walking back
14 to your vehicle, you said?

15 A. Yes, ma'am.

16 Q. But you went ahead and collected it?

17 A. Yes, ma'am.

18 Q. And you identified that with the number five
19 placard? Showing you State's Exhibit 120.

20 A. Yes, ma'am, that is it. Yes, ma'am.

21 Q. Now, was this actually sent up to SLED?

22 A. Yes, ma'am. It was sent up for DNA testing.

23 Q. Okay. And is that inside this bag?

24 A. Yes, ma'am, it is.

25 MS. SHEALY: Okay. Your Honor, we would move

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1 into evidence State's Exhibit 178.

2 MR. PENNINGTON: No objection, Your Honor.

3 THE COURT: Admitted without objection.

4 [Whereupon, State's Exhibit Number 178 is
5 admitted into evidence by the Court]

6 Q. [Ms. Shealy] Now, you were telling us about
7 that area of debris -- I'm sorry -- the fire debris.

8 A. Yes, ma'am.

9 Q. I'm showing you what's been marked as State's
10 Exhibit 121.

11 Let me first ask you: could you describe how
12 the body appeared when you saw it?

13 A. The body was -- the deceased was laying on her
14 back, and right side, if I recall, in a slightly bent
15 shape. Rigor mortis had set in and her --

16 THE WITNESS: Can I consult my notes, please?

17 MS. SHEALY: Absolutely.

18 [Whereupon, the witness review documents]

19 A. She displayed signs of rigor mortis. And her
20 right arm and left leg were elevated off the ground,
21 indicating that the victim had died in a different
22 position.

23 Q. Okay. Was there anything unusual about her
24 clothing?

25 A. Yes, ma'am.

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1 The clothing was charred and the -- we took that
2 as a sign that the remains -- someone tried to set the
3 remains on fire.

4 Q. Okay. Could you tell us about what type of
5 clothing she had on?

6 A. Yes, ma'am.

7 She was wearing white Niki shoes, white shorts,
8 halter top.

9 Q. And was there an obvious wound to her?

10 A. Yes, ma'am.

11 There was a large laceration to the throat
12 area.

13 Q. And you told us that there was charring to her
14 shorts and her shirt. What about her arm and legs? Was
15 there any charring to her arms and legs?

16 A. Yes, ma'am.

17 Q. Now, that photograph that's being shown right
18 now, what does that represent? State's Exhibit 121.

19 A. In the debris field near the victim was this
20 pack of Marlboro cigarettes.

21 Q. And when you say the debris field, what do you
22 mean by that?

23 A. The charred debris that was right beside the
24 body. Burnt -- the burnt Marlboro pack, all -- leaves,
25 stick -- twigs, that -- to that effect.

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1 MS. SHEALY: Your Honor, at this time, without
2 objection, the State would offer State's Exhibit 177.

3 MR. PENNINGTON: No objection, Your Honor.

4 Q. [Ms. Shealy] And, Detective --

5 THE COURT: Admitted without objection.

6 [Whereupon, State's Exhibit Number 177 is
7 admitted into evidence by the Court]

8 Q. [Ms. Shealy] Does this include some of the
9 debris that was found in that area?

10 A. It was.

11 Q. Okay. And then in addition to that, other items
12 that were found in that area?

13 A. Yeah. This is the cigarette pack.

14 Q. Now, we talked about the tire marks. Tell us
15 about the footprint marks you came across.

16 A. Near also the deceased we found some footprints
17 marks that to us appeared fresh enough that -- to preclude
18 being washing out from the rain from several days ago. So
19 those were also photographed in detail, and plaster-casted
20 and collected.

21 Q. Okay. And showing you State's Exhibit 127. You
22 took several photographs of them; is that correct?

23 A. That is correct.

24 Q. Okay. And is this an example of the photographs
25 that you took?

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1 A. It is, ma'am. Without scale, yes, ma'am.

2 MS. SHEALY: Why don't you come step down in
3 front of the jury.

4 With the Court's permission?

5 THE COURT: Yes, sir. Yes, ma'am.

6 [Whereupon, the witness complies]

7 Q. [Ms. Shealy] I think you might can see the
8 tread on the bottom of them better here, the detail. Is
9 this a photograph --

10 A. It is, ma'am.

11 Q. -- of the bottom?

12 And when you say you took a cast of that print,
13 you did it a similar way that you did the tire tracks?

14 A. Exact same way, ma'am. Yes, ma'am.

15 Q. Okay. Showing you --

16 MS. SHEALY: Judge, we would move these in at
17 this time, State's 181 and 182.

18 MR. PENNINGTON: No objection, Your Honor.

19 THE COURT: 181 and 182 without objection.

20 [Whereupon, State's Exhibit Number 181 is
21 admitted into evidence by the Court]

22 [Whereupon, State's Exhibit Number 182 is
23 admitted into evidence by the Court]

24 Q. [Ms. Shealy] Show State's 181.

25 MS. SHEALY: Come stand right in front of them.

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1 A. This area right here, this is footprint one. We
2 took two plaster casts of the shoe impressions. You can
3 see there is some ridge detail matching the photos.

4 Q. [Ms. Shealy] And then this one might be a
5 little better.

6 A. Yeah, I believe so.

7 Q. State's Exhibit 182.

8 A. Okay. This is the plaster cast of the photo
9 that you see right there. Little bit better detail in
10 this one. Ridge detail in the actual tread pattern and
11 also length of the actual footprint itself.

12 Q. Okay. Now, while you were there, did -- when
13 the body was still there, did you notice anything about
14 the victim's ankle area?

15 A. There was blood transfer. It looked like, from
16 observing, that the body was moved by the ankle by someone
17 that maybe had blood on their hands possibly and grabbed
18 the ankle area.

19 Q. Why? How did the ankle look?

20 A. It looked like -- it looked like a hand print.

21 Q. Okay. And because of that, did y'all do
22 anything at the scene regarding that?

23 A. No, ma'am.

24 Q. Did you see anything regarding a tattoo on the
25 body while you were there?

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1 A. Yes, ma'am.

2 Once the coroner was on scene and we started
3 examining the victim in detail, one of the things that we
4 were told on a missing person -- possible missing person
5 report was a particular tattoo.

6 Q. Okay. And did you see one while you were there?

7 A. Yes, ma'am.

8 Q. And how did that tattoo appear?

9 A. What kind of tattoo was it, ma'am?

10 Q. Yes.

11 A. It was a butterfly tattoo. Yes, ma'am.

12 Q. It was a butterfly tattoo. Okay.

13 Now, anything else at the scene that you can
14 remember specifically that was -- anything else you
15 gathered or anything else eventful that occurred while you
16 were at the scene of the body?

17 A. No, ma'am.

18 Q. Okay. Now, did you actually travel to Bluffton?

19 A. I did.

20 Q. And what was the purpose of your traveling to
21 Bluffton?

22 A. I traveled to Bluffton to -- for -- to gather
23 evidence that was collected from the Beaufort County
24 Sheriff's Office.

25 Q. Okay. And when you were there, did you receive

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1 items that had been collected at Geothie Road?

2 A. Yes, ma'am.

3 MS. SHEALY: Okay. Your Honor, I think Mr.
4 Pennington and I have agreed that it's not necessary
5 for me to go through each item with Mr. Milz for
6 purposes of chain of custody, that he would --

7 Is that correct?

8 MR. PENNINGTON: That is correct.

9 MS. SHEALY: Okay.

10 Q. [Ms. Shealy] So you received all the items that
11 they had put in their evidence processing room and brought
12 those back to Charleston and did what with those?

13 A. They were brought back to Charleston to my
14 evidence compound and they were -- they were logged into
15 my evidence system.

16 Q. Okay. Now, we will need to go through some of
17 those items. Because you did some processing yourself of
18 those items; is that correct?

19 A. That is correct.

20 Q. But before we get to that, did you also pick up
21 a vehicle while you were there?

22 A. Yes, ma'am.

23 Q. Okay. If you would please tell the jury what
24 vehicle you picked up.

25 A. It was a -- just bear with me, please. Let me

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1 just get this correct.

2 Q. Yes. That's fine.

3 [Whereupon, the witness reviews documents]

4 A. 2001 Pontiac Grand P -- Grand Prix, South
5 Carolina Foxtrot, Nancy, -- Foxtrot, November, Yankee 718.

6 Q. [Ms. Shealy] And you're calling out the license
7 tag?

8 A. Yes, ma'am. I apologize.

9 Q. What was the purpose of bringing that vehicle
10 back to Charleston?

11 A. For further evidentiary research on the vehicle
12 itself.

13 Q. Okay. And what did you do with the vehicle when
14 you brought it back?

15 A. It was secured in our locked evidence compound
16 and awaiting a search warrant on the vehicle.

17 Q. Okay. And did you, in fact, gain -- or did
18 someone gain a search warrant for the vehicle?

19 A. Yes, ma'am.

20 Q. Did you participate in the processing of the
21 vehicle?

22 A. Yes, ma'am.

23 Q. And what did that include?

24 A. After -- the very first thing was pictures of
25 the vehicle itself, interior and exterior. Then my

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1 sargent and I sprayed it with a chemical called amido
2 black.

3 Amido black is a chemical that turns blood
4 black. Even if let's say I had touched this wall with a
5 bloody fingerprint, even if you could not see it to the
6 visible eye if I sprayed it with this chemical called
7 amido it will turn that area black. Reveals blood on
8 areas.

9 Q. Okay. And after you did that, what did y'all
10 then do?

11 A. Those areas were photographed and we also dusted
12 the -- I'm getting ahead of myself.

13 Before we amidoed, we dusted the vehicle with
14 latent powders to try to get any kind of fingerprints.

15 Q. And were you able to lift any potential prints?

16 A. Just two, ma'am.

17 Q. Okay. And where were those located?

18 [Whereupon, the witness reviews documents]

19 A. One was on the rearview mirror. That was
20 collected. And also --

21 [Whereupon, the witness reviews documents]

22 Q. [Ms. Shealy] Would it be helpful if I showed
23 you the search warrant?

24 A. I found it. I'm sorry, ma'am.

25 Q. Okay.

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1 A. I had to just read it.

2 The other one was the exterior passenger front-
3 door handle.

4 THE WITNESS: I'm sorry.

5 MS. SHEALY: That's okay.

6 Q. [Ms. Shealy] And after you received those, what
7 did you do with those two items?

8 A. They were collected and they were sent to the
9 North Charleston Police Department for a AFIS or Automated
10 Fingerprint Identification System. It's -- if your
11 fingerprint's on the record in the computer system, they
12 have an AFIS operator that will try to match --

13 Q. Well, let me just -- let me just ask you. I
14 could just ask you this way. Are you aware of whether any
15 identification was made?

16 A. There was no identification made on the two
17 fingerprints, ma'am.

18 Q. After you did that, were you -- did you make any
19 effort to get inked tire impressions from the vehicle?

20 A. Yes, ma'am.

21 The next step at the very end was inking the
22 actual tires that were on the vehicle.

23 Q. Okay. Tell us how you do that.

24 A. The vehicle is put on a jack one tire at a time.
25 And I actually get fingerprint ink and I just smear it all

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1 on the treads of the vehicle. Then I just put a long
2 sheet of cardboard paper down and slowly drive the vehicle
3 over the paper, making an impression on the paper.

4 Q. Okay. And what is the purpose of doing that?

5 A. This was done in the effort to try to match the
6 tires -- the tires that were on the vehicle to the
7 impressions that were recovered on scene.

8 MS. SHEALY: Okay. Let me ask you to come on
9 back down, if you could.

10 [Whereupon, the witness complies]

11 Q. [Ms. Shealy] Would you open this for us and
12 show the jury.

13 [Whereupon, the witness complies]

14 A. All the information on the tire itself is
15 recorded in that one corner, the maker of the -- all the
16 tread pattern -- well, not tread pattern, but
17 manufacturer. Also, the direction of travel when we start
18 driving the actual vehicle on the paper.

19 Q. [Ms. Shealy] Okay.

20 MR. PENNINGTON: What exhibit is this?

21 MS. SHEALY: Oh. I'm sorry.

22 MR. PENNINGTON: Is it in?

23 MS. SHEALY: Actually, I don't know if I have
24 mentioned it.

25 It's 180, Your Honor. At this time I would like

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1 to move --

2 THE COURT: 180?

3 MS. SHEALY: Yes. I'm sorry.

4 THE COURT: Any objection?

5 MR. PENNINGTON: No, sir. Nor to --

6 THE COURT: 180 admitted without objection.

7 [Whereupon, State's Exhibit Number 180 is
8 admitted into evidence by the Court]

9 MR. PENNINGTON: 180-A? Does that sound --

10 THE COURT: Is it A, 180, or 188?

11 MS. SHEALY: 180.

12 [Whereupon, Ms. Shealy and Mr. Pennington
13 confer]

14 THE COURT: 180 or 180-A?

15 MR. PENNINGTON: 180, Your Honor.

16 MS. SHEALY: 180.

17 THE COURT: Okay. Thank you.

18 Q. [Ms. Shealy] Okay. So this shows the car
19 moving?

20 A. Yes, ma'am.

21 That's the impressions of the inked tire on the
22 paper, yes, ma'am.

23 Q. And so what does -- what do we have all together
24 here?

25 A. All four tires.

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1 Q. And that's reflected on the impression itself?

2 A. Yes, ma'am.

3 MS. SHEALY: Okay. Put that right here --

4 Q. [Ms. Shealy] Now, did you go to the autopsy in
5 this case?

6 A. No, ma'am, I did not.

7 Q. What I would like to do, if we could, is walk
8 through some of the items that were -- that went to SLED
9 and if you did anything in-house before they went to SLED.

10 A. Yes, ma'am.

11 Q. Okay?

12 A. Uh-huh.

13 Q. First of all, would you describe for the jury:
14 when evidence is collected in a case, does every single
15 item that you collect go to SLED?

16 A. No, ma'am.

17 Q. And when there are multiple blood swabs, for
18 example, does every single blood swab go to SLED?

19 A. No, ma'am.

20 Q. Okay. How many do you typically send up?

21 A. There is a limit, I believe, on SLED.

22 I believe -- I'm not sure of the actual numeric
23 number, but I want to say ten at a time. I'm not sure of
24 that figure, though.

25 Q. But you think SLED has a limit?

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1 A. There is a limit, yes, ma'am.

2 Q. Okay. And so someone from SLED could better
3 answer that?

4 A. Correct.

5 Q. Okay. Now, regarding the items from Geothie
6 Road --

7 A. Yes, ma'am.

8 Q. -- and the emergency road kit: when you got the
9 items to Charleston County, you took some photographs of
10 the items; is that correct?

11 A. Yes, ma'am.

12 Q. And showing you State's Exhibit 128, which is
13 already in evidence -- it's up here on the screen -- you
14 took that photograph?

15 A. Yes, ma'am.

16 Q. Was anything further done with the emergency
17 road kit? Did it go -- did it go up? Or do you remember?

18 A. I would have to consult my notes.

19 Q. You can consult your notes.

20 [Whereupon, the witness reviews documents]

21 Q. [Ms. Shealy] Let me do it a different way.
22 Okay? Hang on just a second.

23 MS. SHEALY: Your Honor, while he's looking for
24 that, though, my law clerk said that I may not have
25 entered 176, the photographs of the tire impressions.

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1 If not, I would like to move those in at this time.

2 MR. PENNINGTON: No objection, Your Honor.

3 THE COURT: 176 admitted without objection.

4 [Whereupon, State's Exhibit Number 176 is
5 admitted into evidence by the Court]

6 A. The actual emergency road kit, ma'am, I do not
7 believe actually went up to SLED.

8 Q. [Ms. Shealy] Okay. Now, regarding the diaper
9 bag, which I believe you took a picture of, 136 --

10 A. Okay.

11 Q. -- that was sent to SLED?

12 A. Yes, ma'am.

13 Q. And the tire cover from the trunk --

14 A. Yes, ma'am, it did --

15 Q. -- 141. That went up to SLED?

16 A. Yes, ma'am.

17 Q. And the white-handled knife, 33, that went to
18 SLED?

19 A. Yes, ma'am.

20 Q. And 27. Did the CVS bag as a whole go, or did
21 you swab it?

22 A. It was swabbed, ma'am. Yes, ma'am, just a swab.

23 Q. Swabbed locally and then the swab was sent to --

24 A. Yes, ma'am.

25 Q. -- SLED?

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1 A. Uh-huh.

2 Q. Okay. And that was because blood appeared on
3 the bag?

4 A. Yes, ma'am.

5 Q. And then the spare tire insert?

6 A. Right. That went to SLED.

7 Q. And was it swabbed here and then sent to SLED?

8 A. Yes, ma'am. It was swabbed at my evidence
9 compound, yes, ma'am.

10 Q. Okay. Now, you told us that Sargent McManigal
11 actually went to the autopsy?

12 A. Yes, ma'am.

13 Q. And then he brought items back from the autopsy
14 that went to SLED; is that correct?

15 A. Yes, ma'am.

16 Q. And are you familiar with what went to SLED from
17 the autopsy?

18 A. Yes, ma'am.

19 Q. Okay. And you told us that -- the cigarette
20 butt from out at the scene, that was how -- how far away
21 from the body?

22 A. Over a hundred yards.

23 Q. Okay. That went to SLED?

24 A. Yes, ma'am.

25 Q. And then the fingernail clippings from

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1 Ms. Lukaitis went to SLED?

2 A. They did.

3 Q. And the swabs from Ms. Lukaitis, her oral,
4 vaginal, rectal --

5 A. They did.

6 Q. -- swabs all went?

7 And -- okay. What about a pair of tennis shoes?

8 A swab -- y'all received the clothing items from Ms.

9 Lukaitis; is that correct?

10 A. We did.

11 Q. And I'll go over those with Sargent McManigal.

12 But did you participate in swabbing the tennis shoes?

13 A. I actually did the procedure.

14 Q. You did the swabbing?

15 A. I did.

16 MS. SHEALY: Okay. Sargent, will you put on
17 your gloves while I'm walking over that way?

18 THE WITNESS: Uh-huh.

19 Q. [Ms. Shealy] So after Sargent McManigal got
20 back from the autopsy you then did what, as it related to
21 Ms. Lukaitis' tennis shoes that she had on?

22 A. They were -- the very first thing, that they
23 were logged into our evidence system.

24 MS. SHEALY: Okay. Your Honor, at this time I
25 would move in State's Exhibit 192, Ms. Lukaitis'

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1 tennis shoes.

2 MR. PENNINGTON: No objection, Your Honor.

3 THE COURT: Tennis shoes?

4 MS. SHEALY: And State's Exhibit 192-A, the swab
5 from the right shoe. And State's Exhibit 192-B, the
6 swab from the left shoe.

7 MR. PENNINGTON: No objection, Your Honor.

8 THE COURT: All right. 192, 192-A and 192-B
9 admitted without objection.

10 [Whereupon, State's Exhibit Number 192 is
11 admitted into evidence by the Court]

12 [Whereupon, State's Exhibit Number 192-A is
13 admitted into evidence by the Court]

14 [Whereupon, State's Exhibit Number 192-B is
15 admitted into evidence by the Court]

16 MS. SHEALY: Could you come down, Mr. Milz,
17 and --

18 THE WITNESS: Sure.

19 [Whereupon, the witness complies]

20 Q. [Ms. Shealy] When you say you swabbed the
21 tennis shoes, what does that mean?

22 A. That's -- when you're going for DNA, sterility
23 is very important.

24 Would you like me to explain the procedure?

25 Q. Yes. Uh-huh.

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1 A. Sure.

2 After I photograph the item in particular, I
3 will put on fresh gloves, sterile gloves. I will get a
4 sterile swab. It's almost like a Q-tip, cotton tip Q-tip.
5 That will also be moistened with sterile water.

6 So the area that I'm interested in collecting,
7 it'll be swabbed, it'll be put into a cardboard box
8 itself, which is also sterile, and then placed into
9 another envelope itself and then sealed with tape. From
10 there, it will go to SLED for the testing that we're
11 trying to accomplish.

12 Q. Okay. So when you were going through that
13 procedure, was there obvious blood on the shoes?

14 A. Yes, ma'am.

15 Q. Was there obvious blood on both shoes?

16 A. Yes, ma'am.

17 Q. And you went through that process as it related
18 to each of the shoes?

19 A. Yes, ma'am.

20 And I believe, if I remember right, we did a
21 presumptive blood test to one of the shoes just to make
22 sure that we were looking at blood itself. Presumptive
23 test, it just -- it tells me it's blood. It will not
24 specify if it's human or animal, but it'll just tell me
25 that this is a blood product.

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1 MS. SHEALY: Beg the Court's indulgence just a
2 moment.

3 [Whereupon, Ms. Shealy reviews documents]

4 MS. SHEALY: I have no further questions,
5 Mr. Milz. Thank you very much. Answer any that
6 the defense may have.

7 THE COURT: Cross-examination.

8 MR. PENNINGTON: Thank you, Your Honor. The
9 Court's indulgence just a moment.

10 [Whereupon, Mr. Pennington and Mr. Cooper
11 confer]

12 MS. SHEALY: Oh. I apologize. I may have
13 neglected to ask one question.

14 Q. [Ms. Shealy] Did you swab -- you swabbed the
15 spare-tire cover? Or was that done at SLED?

16 A. I did collect a swab from the spare-tire insert.
17 I swabbed that.

18 Q. Okay. Hold on just a second. And the CVS bag
19 you did?

20 A. Yes, ma'am.

21 MS. SHEALY: Your Honor, at this time I would
22 like to move 165-A in, the swab for the spare-tire
23 insert and --

24 THE COURT: Any objection?

25 MR. PENNINGTON: No, sir.

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1 THE COURT: Number 165-A without -- admitted
2 without objection.

3 [Whereupon, State's Exhibit Number 165-A is
4 admitted into evidence by the Court]

5 MS. SHEALY: So 165-A is the swab from the
6 spare-tire insert. 166-A is the swab from the CVS
7 bag. And I'm so sorry. I've got so much stuff up
8 here, Judge.

9 THE COURT: Do you have any objection to 166-A,
10 a CVS bag swab?

11 MS. SHEALY: And 164-B, which is the spare-tire
12 cover swab.

13 THE COURT: Any objection to 164-B, the tire --
14 swab on the tire cover and 166-A, the CVS bag swab?

15 MR. PENNINGTON: No objection to 164-B, the
16 spare-tire cover swab.

17 THE COURT: How about 166-A?

18 MR. PENNINGTON: I do not have an objection to
19 it, Your Honor.

20 THE COURT: All right. 164-A and 164-B admitted
21 without objection.

22 [Whereupon, State's Exhibit Number 164-A is
23 admitted into evidence by the Court]

24 [Whereupon, State's Exhibit Number 164-B is
25 admitted into evidence by the Court]

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1 [Whereupon, State's Exhibit Number 166-A is
2 admitted into evidence by the Court]

3 MS. SHEALY: Thank you, Your Honor.

4 THE COURT: Anything else before cross-
5 examination?

6 MS. SHEALY: Not at this time. Thank you.

7 THE COURT: Cross-examination.

8 [Whereupon, Mr. Pennington and Mr. Cooper
9 confer]

10 THE COURT: Ladies and gentlemen, while they are
11 conferring, why don't you stand up and take a stretch,
12 take a break. I'm not going to take a break out of
13 the courtroom, but we'll take one in the courtroom.
14 If you'll stand up and stretch and get the blood
15 moving again.

16 [Off the record momentarily]

17 THE COURT: Are you ready?

18 MR. PENNINGTON: I am, Your Honor.

19 THE COURT: Okay.

20 MR. PENNINGTON: And if Mr. Cooper can just
21 examine this while we're moving forward, I can exam on
22 other things and come back to this item.

23 THE COURT: That's fine.

24 - - -

25 - - -

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CROSS-EXAMINATION

BY MR. PENNINGTON:

Q. Sargent Milz --

A. No, sir. I'm just an investigator, not a
sargent.

MR. PENNINGTON: Okay. Sorry.

THE WITNESS: That's all right. I'll take the
money, though.

MR. PENNINGTON: I don't blame you.

Sargent Milz, earlier -- Sargent Milz. I'm
sorry. My brain is --

THE COURT: Unless you've got the money for a
raise, call him investigator.

MR. PENNINGTON: I don't have it in my budget,
Judge. Sorry.

Q. [Mr. Pennington] The week that this all
occurred is in August of 2010; correct?

A. 8/9/2010.

Q. Okay. So August of 2010?

A. [Indicates affirmatively]

Q. Yes?

A. Yes, sir. I'm sorry. Yes, sir.

Q. And so what we're talking about is is that you,
as a crime scene officer, also have to keep a log of all
this stuff that comes at you so that you can put it all

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1 together when we come to court like this; correct?

2 A. That is correct, sir.

3 Q. All right. And so you maintain a log of the
4 evidence you receive?

5 A. Yes, sir, I do.

6 Q. All right. And you know from consulting your
7 business records that you received on the 11th of August,
8 2010, fourteen swabs from Detective Perkins?

9 A. Let me find that record, sir, and I will tell
10 you the exact date.

11 [Whereupon, the witness reviews documents]

12 MR. PENNINGTON: If I may approach?

13 Q. [Mr. Pennington] Would it refresh your --

14 [Whereupon, Mr. Pennington proffers documents to
15 the witness]

16 [Whereupon, the witness reviews documents]

17 A. Yes, sir. From Detective Perkins, yes, sir.

18 Q. [Mr. Pennington] Okay. These were fourteen
19 swabs from the white vehicle down in Beaufort?

20 A. Yes, sir.

21 Q. And Detective James Perkins was one of the lead
22 detectives in this particular case?

23 A. He was, sir.

24 Q. And still is, of course.

25 A. Yes, sir.

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1 Q. And it was reported that that came from that
2 white vehicle from what they describe as Bridge Street in
3 Bluffton?

4 A. Yes, sir.

5 Q. All right. And that was put into evidence at
6 your locker at the sheriff's office in North Charleston?

7 A. It was, sir.

8 Q. It was put into a paper bag like this?

9 A. Correct, sir.

10 Q. And then put into a refrigerator?

11 A. Yes, sir, it was.

12 Q. Until it was brought here to court today?

13 A. Yes, sir.

14 Q. It never made the trip to SLED, did it?

15 A. If these are the fourteen swabs that was
16 collected by the SLED agents --

17 Q. To clarify things, just look and see. From your
18 chain on these items, were they ever checked out and sent
19 to SLED?

20 [Whereupon, the witness reviews documents]

21 A. No, sir.

22 Q. [Mr. Pennington] You also received six swabs
23 from detective -- well, from the Beaufort County Sheriff's
24 Office, didn't you? This would be ID 114585?

25 A. Let me find that.

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1 [Whereupon, the witness reviews documents]

2 A. I found that.

3 Q. [Mr. Pennington] Okay. These -- this describes
4 six swabs, from the driver's-side door and car frame, from
5 the Berkeley -- the Beaufort County Sheriff's Office?

6 A. Correct.

7 Q. And that was submitted into evidence from you?
8 You actually received it from their department?

9 A. Yes, sir.

10 Q. What date was that?

11 A. [No response]

12 Q. On or about August 19th, 2010?

13 A. Yes, sir.

14 [Whereupon, the witness reviews documents]

15 A. Just trying to make sure that I give the correct
16 date.

17 Yes, sir.

18 Q. That would have been as you went down to collect
19 all the evidence that they had down in Beaufort County?

20 A. Yes, sir.

21 Q. And as far as your records show, those items
22 were never sent by the lead detectives to SLED for
23 examination?

24 A. Correct, sir.

25 Q. Now, you mentioned that you know from your

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1 training and from your work that SLED will indicate that
2 they prefer not to receive more than some number of items
3 at any one time; is that correct?

4 A. At one time, yes, sir.

5 Q. But you also know from your training that the
6 agency, the submitting agency, can contact them and say
7 that they have additional items that need testing based on
8 what appears to be a relevant new perspective in the case?

9 A. That is correct.

10 Q. And, in fact, that was done in February of this
11 year? There was -- in February of 2012, a number of items
12 were submitted to SLED for testing?

13 A. That is correct.

14 Q. But that was not done with the six swabs from
15 the Beaufort County examination?

16 A. Correct.

17 Q. Or the fourteen that you have from Detective
18 Perkins?

19 A. Correct.

20 MR. PENNINGTON: Have the Court's indulgence a
21 moment.

22 [Whereupon, Mr. Pennington and Mr. Cooper
23 confer]

24 Q. [Mr. Pennington] Officer Milz --

25 A. Yes, sir.

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1 Q. -- let's talk about the footwear impressions
2 that you took and the photographs that you have.

3 MR. PENNINGTON: And if we could please put up
4 what would be I believe photograph 127.

5 Q. [Mr. Pennington] Okay. That is a photograph of
6 the actual footwear impression that you saw at the scene,
7 is it not?

8 A. It is.

9 Q. And you noticed that there were a number of
10 those kinds of impressions that were around the body?

11 A. Near the body, yes, sir.

12 Q. And that alerted you that that could have some
13 evidentiary importance or significance?

14 A. Correct, sir.

15 Q. Because they appeared to be relatively fresh
16 impressions that were, as you described, seemed to be
17 fairly recent? of recent origin?

18 A. Yes, sir.

19 Q. And this particular photograph is actually just
20 the best representation of what you saw in those various
21 photographs?

22 A. It was, sir.

23 Q. Okay. And is it fair to describe that in -- if
24 you look closely, that you'll see what is kind of a
25 circular impression, little ridges that are circular, both

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1 in the front of the foot and then sort of where the heel
2 is?

3 A. I see that, sir, yes, sir.

4 Q. Okay. And referring you to --

5 MR. PENNINGTON: Officer Milz, could you come
6 down for us again, please.

7 [Whereupon, the witness complies]

8 MR. PENNINGTON: Could you hold that for me,
9 sir?

10 [Whereupon, the witness complies]

11 Q. [Mr. Pennington] Now, you also had in your
12 custody some Niki tennis shoes that y'all have gone
13 through?

14 A. Yes, sir.

15 Q. What were these? State's Exhibit 172?

16 A. Yes, sir.

17 Q. Some black-and-red Niki footwear?

18 A. Yes, sir.

19 Q. All right. And did you have occasion to then
20 look at the tread of this Nike shoe and compare it to the
21 circular patterns that you see both in the picture and in
22 the what you can detect from looking at this footwear
23 impression?

24 A. Yes, sir.

25 Q. And is it fair to say that it does not match?

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1 A. That is correct.

2 MR. PENNINGTON: Thank you, sir. You can sit
3 down.

4 [Whereupon, the witness complies]

5 MR. PENNINGTON: One moment, Your Honor.

6 [Whereupon, Mr. Pennington and Mr. Cooper
7 confer]

8 MR. PENNINGTON: Thank you, Officer Milz.

9 No further questions, Your Honor.

10 THE COURT: Any redirect?

11 MS. SHEALY: Yes, Your Honor, just briefly.

12 REDIRECT EXAMINATION

13 BY MS. SHEALY:

14 Q. Mr. Milz, Mr. Pennington asked you about whether
15 some items had, in fact, been sent up to SLED; is that
16 correct?

17 A. Yes, sir [sic].

18 Q. Now, there weren't any other swabs from that
19 same car sent up; is that correct?

20 A. Yes, ma'am.

21 Q. But they were from different scene areas; is
22 that correct?

23 A. Yes, ma'am.

24 Q. In fact, from the Geothie Road area, the trunk-
25 cover swab got sent up?

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1 A. Yes, ma'am.

2 Q. And the swab from the insert got sent up?

3 A. Yes, ma'am.

4 Q. A hair from the victim's right hand got sent up?

5 A. Yes, ma'am.

6 Q. The knife got sent up?

7 A. Yes, ma'am.

8 Q. And a swab from her shoes got sent up?

9 A. Yes, ma'am.

10 Q. And the tire impressions got sent up?

11 A. Yes, ma'am.

12 Q. And the diaper bag got sent up?

13 A. Yes, ma'am.

14 Q. So all of those items were from different places
15 and different aspects of the case; is that correct?

16 A. That is correct.

17 Q. Not just more swabs from the same car; is that
18 correct?

19 A. That's correct.

20 Q. I have --

21 MS. SHEALY: Hold on just a second.

22 [Whereupon, Ms. Shealy and Mr. Finch confer]

23 MS. SHEALY: I have no further questions. Thank
24 you.

25 MR. PENNINGTON: Modest redirect [sic], Your

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1 Honor.

2 THE COURT: All right. Recross? Any recross?

3 MR. PENNINGTON: Yes, sir, please.

4 RECROSS-EXAMINATION

5 BY MR. PENNINGTON:

6 Q. Detective Milz -- Officer Milz --

7 MR. PENNINGTON: I am tired.

8 Q. [Mr. Pennington] -- no one called you and said
9 -- and asked you to send those to SLED, those -- the
10 fourteen swabs from the white vehicle; is that correct?

11 A. Correct.

12 Q. You're familiar with that there is no policy or
13 any rule that says that that couldn't have been done, is
14 there?

15 A. That is correct.

16 Q. The same with regard to the six swabs that were
17 taken by Beaufort County. No one asked you to send those?

18 A. Correct.

19 Q. If you had been asked, you would have?

20 A. Yes, sir.

21 Q. And if there had been any desire to get that
22 done, the evidentiary significance and importance could
23 have been explained to SLED; correct?

24 A. Yes, sir.

25 Q. And SLED is pretty good at working with the

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1 sheriff's office, especially in big cases like this, in
2 terms of testing important evidence?

3 A. They are. Yes, sir.

4 MR. PENNINGTON: That's all I have. Thank you.

5 THE COURT: Thank you very much. You may step
6 down.

7 [Whereupon, Mr. Milz is excused and exits the
8 witness stand]

9 THE COURT: Call your next witness.

10 MS. SHEALY: Paul McManigal.

11 [Whereupon, Mr. McManigal comes forward]

12 [Whereupon, Mr. McManigal is duly sworn by the
13 clerk of court as follows: do you swear or affirm
14 that your testimony will be the whole truth and
15 nothing but the truth, so help you God]

16 THE WITNESS: I do.

17 [Whereupon, Mr. McManigal takes the witness
18 stand]

19 THE CLERK OF COURT: State your full name and
20 spell your last name.

21 THE WITNESS: Paul David McManigal. M-C-M-A-N-
22 I-G-A-L.

23 - - -

24 - - -

25 - - -

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PAUL D. MCMANIGAL,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. SHEALY:

Q. Sargent McManigal --

A. Yes, ma'am.

Q. -- if you would tell the jury, please, where
you're employed and what you do.

A. I am currently employed with the Charleston
County Sheriff's Office. I am the supervisor of forensic
services.

Q. And does Investigator Milz work under you?

A. Yes, he works for me.

Q. Okay. And also Kathy Kjellman does?

A. Yes, she does.

Q. Is that correct?

Now, you were involved in the investigation of
this case; is that correct?

A. Yes, I was.

Q. And you reported to the scene at Old Jacksonboro
Road?

A. Yes, I did.

Q. And if I understand it, you and Mr. Milz worked
the scene together?

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1 A. Yes, ma'am.

2 Q. And y'all were looking at the tire tracks and
3 the footprints and collecting evidence while you were out
4 there; is that correct?

5 A. Yes, ma'am.

6 Q. Tell me what a Total Station is.

7 A. Total Station is a mapping system. It consists
8 of four basic components. The one section is a prism.
9 It's basically a reflector that's on a pole. The main
10 part of the unit is -- consists of a laser that is able to
11 calculate distance as well as elevation. The second part
12 is an angle encoder which determines the angle or
13 direction. And the last part is the data collector, which
14 gathers all the information and stores it as a numeric
15 database.

16 The way we use it is one person will hold the
17 reflector. The other person will aim the laser at the
18 reflector and then all data is collected by the data
19 collector as a series of points.

20 Q. Okay. And you, that afternoon, engaged in that
21 activity and prepared a map accordingly; is that correct?

22 A. Yes, we did.

23 MS. SHEALY: Okay. Your Honor, at this time I
24 would offer into evidence the Total Map -- Total
25 Station map that they prepared.

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1 THE COURT: What number?

2 MS. SHEALY: This would be number --

3 [Whereupon, Ms. Shealy and Mr. Finch confer]

4 MS. SHEALY: -- 219.

5 THE COURT: Any objection?

6 MR. PENNINGTON: I do, Your Honor.

7 THE COURT: Okay. What's your legal objection?

8 MR. PENNINGTON: The objection is is that it
9 does not accurately reflect -- true and accurately
10 reflect the circumstances as they existed at the
11 scene.

12 The basis is that -- I can go further, if you
13 would like.

14 THE COURT: All right. Lay some foundation.
15 Okay?

16 MS. SHEALY: Okay. I believe that --

17 THE COURT: I'll sustain the objection, based on
18 what I've heard so far. So lay the foundation.

19 MS. SHEALY: Okay. And I think I know, based on
20 my conversation with Mr. Pennington, what area he's
21 interested in.

22 Q. [Ms. Shealy] Sargent McManigal, regarding where
23 the cigarette butt was found --

24 A. Yes, ma'am.

25 Q. -- could you tell me where you diagramed that it

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1 was found? Are you indicating that it was found in the
2 ditch?

3 A. No, ma'am. It was on the roadway near the
4 ditch.

5 Q. Okay. And in the drawing itself where the dot
6 reflects where it was found, is that supposed to represent
7 that it was found in the ditch?

8 A. No, ma'am.

9 The map that you're looking at on that eight-
10 and-a-half-by-eleven sheet of paper is greatly reduced
11 from the actual scale of the image. When you blow it up
12 to actual size, you'll see there's actually a separation
13 between that dot and that -- the outer line of that ditch.
14 The actual point is on the outside of the ditch on the
15 edge of the road.

16 Q. So the cigarette butt was certainly not found in
17 the ditch?

18 A. It was not in the ditch, no, ma'am.

19 Q. Okay. It was found in the roadway?

20 A. Yes, ma'am.

21 Q. And it was found in the roadway how far from
22 where the body was found?

23 A. The distance I measured was a little over 115
24 feet.

25 MS. SHEALY: Your Honor, I would offer it at

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1 this time with that clarification.

2 THE COURT: Let me see what you're offering.

3 Do you still have an objection?

4 MR. PENNINGTON: I do, Your Honor.

5 THE COURT: All right. Let me see what you're
6 offering.

7 [Whereupon, an off-the-record bench conference
8 is held]

9 Q. [Ms. Shealy] Sargent McManigal, we're going to
10 wait until we get the blown-up version. Okay?

11 A. Yes, ma'am.

12 Q. So we're not going to show this to the jury
13 today. But so that they'll understand what it is when
14 they have the blown-up version: when you were depicting
15 things that were found at the scene, could you describe
16 for the jury what is depicted on the Total Station so that
17 when they get the larger version they'll know what they
18 are looking at.

19 A. The Total Station takes data as a series of
20 points. And we can tell the mapping software whether that
21 distance between the points is going to be a curve, a
22 circle, or a straight line.

23 In this case there were several objects of
24 interest that we were -- we had marked off with placards
25 as items number one, item number two. We had several

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1 prints in the dirt that we had marked off with letters as
2 A, B and C. So for those points of interest, we just put
3 the reflector over that particular spot and shot the
4 point, is what we call it. That places a point on the
5 map.

6 For other items, the tire marks that we found in
7 the roadway, we mark those off with a series of points and
8 then told it -- told the mapping software to make that a
9 continuous curve. So there's going to be some curve marks
10 that indicate where the tire tracks were.

11 And then last but not least we did mark the
12 edges of the roads, which we did as a series of points,
13 also. We told it to make that a straight line. So we did
14 the edge of the roads.

15 There was a ditch on either side of the road so
16 we marked the outside of the ditch, as well.

17 Q. Okay. And in looking at what you have labeled
18 in letters, do you have that information before you right
19 now what they represent?

20 A. Yes, I do. I just have to take a second to look
21 it up.

22 [Whereupon, the witness reviews documents]

23 A. The letters represent footprints that we found
24 in the soil.

25 Q. [Ms. Shealy] The letters are footprints. Okay.

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1 A. Yes, ma'am.

2 Q. And then what did the numbers represent? Which
3 items?

4 A. The numbers represent individual items of
5 evidence.

6 Do you want me to go into what each one is?

7 Q. If you could, because I think there are only
8 four.

9 A. Number one was a crushed Bud Lite beer can,
10 number two was a smaller pile of fire debris that we found
11 near the body, number three was a paper napkin, and number
12 four was a plastic wrapper from a Budweiser beer package.

13 Q. Okay. And then number five?

14 A. Number five would be the cigarette butt that we
15 found near the ditch.

16 Q. Okay. Now, did you also -- well, first of all,
17 regarding the position --

18 THE COURT: Let me interrupt. I'm going to
19 admit 219, subject to the blown-up being admitted.

20 MR. PENNINGTON: I understand. I --

21 THE COURT: Do you still object with the
22 blown-up map?

23 MR. PENNINGTON: I do because I haven't seen the
24 blown-up map. So I would like to reserve my objection
25 at this time. I --

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1 THE COURT: That's fine.

2 I'm going to admit 219 to the blown-up map over
3 your objection. Okay?

4 MR. PENNINGTON: Yes, sir.

5 [Whereupon, State's Exhibit Number 219 is
6 admitted into evidence by the Court]

7 THE COURT: All right. Please proceed. 219
8 admitted with objection once we get the blown-up map.
9 Not that little small thing.

10 MS. SHEALY: Right. I understand. Thank you,
11 Judge.

12 Q. [Ms. Shealy] Now, regarding the body when you
13 got there: could you describe how the body appeared when
14 you got there?

15 A. The body was partially clothes, partially
16 burned. It was a white female. She was wearing white
17 shorts, sneakers, and a blue shirt. Her clothing and her
18 skin were slightly charred.

19 She displayed signs of rigor mortis, which is
20 stiffening of the joints, on her right arm and her left
21 leg. Which of particular interest to us was that the
22 rigor mortis had set in a way where her right arm and her
23 leg were actually lifted up off of the ground, which
24 indicates to us that that is not the position the body
25 died in. It was moved later. The body died, rigor mortis

1 set in, then the body was moved.

2 The ground near her stomach was charred and
3 contained fire debris and ash, indicating that a fire was
4 started near the victim. The charring actually caught to
5 her clothes and her body.

6 And I observed blood transfer around her ankles,
7 which is just basically blood that had been smeared around
8 her ankles.

9 Q. Okay. Now, after your work at the scene, did
10 you actually also attend the autopsy?

11 A. I did.

12 Q. Okay. And regarding that blood transfer that
13 you have described, what if anything did you do about that
14 when you went to the autopsy?

15 A. When we went to the autopsy, we attempted to
16 collect latent fingerprints off of the body that may have
17 been left there by the person who moved her.

18 Tried actually two different techniques. First,
19 we just took photographs of the smears that we found
20 before we did anything. The first technique we tried is a
21 technique called ruthenium tetroxide. The short term is
22 RTX. And it is a chemical that will develop the latent
23 fingerprints, make them visible. We did apply that. We
24 did not observe any ridge detail, which is what we're
25 looking for in a latent fingerprint.

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1 So we went on to another chemical, which is
2 amido black. Amido black will actually stain traces of
3 blood purple. We did observe what we thought was visible
4 ridge detail, indicating that there may have been a latent
5 fingerprint visible, so we photographed that area.

6 Q. And, in fact, was anything ever concluded about
7 any types of prints on her ankle?

8 A. The ridge detail that we photographed was not
9 sufficient for any identification.

10 Q. Now, while you were at the autopsy, did you
11 receive from the pathologist a blood spot of Ms. Lukaitis?

12 A. Yes, we did.

13 Q. And that's for purposes of having her DNA?

14 A. Correct. We call that a victim standard.

15 Q. Okay. And that would have been sent to SLED?

16 A. That was.

17 Q. Along with that, did you also get right- and
18 left-hand fingernail clippings?

19 A. Yes, we did.

20 Q. Oral, rectal, and vaginal swab?

21 A. Yes, ma'am.

22 Q. The victim's clothing?

23 A. Yes, we did.

24 Q. And her shoes?

25 A. Yes, we did.

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1 Q. And was there a hair in her hands?

2 A. There was.

3 Q. Okay. And then you said that you got -- did you
4 get some fingerprints from her while you were there?

5 A. We did.

6 We collected postmortem fingerprints. That was
7 after the hair that you mentioned on her hand. We
8 photographed that in place, collected the hair, and then
9 we obtained fingerprints from her fingers.

10 MS. SHEALY: Your Honor, at this time I would
11 like to enter into evidence 189, the blood spot,
12 without objection.

13 MR. PENNINGTON: That is correct. No objection,
14 Your Honor.

15 THE COURT: Okay.

16 MS. SHEALY: 190, the right fingernail clippings
17 and the left fingernail clippings.

18 MR. PENNINGTON: No objection.

19 MS. SHEALY: 194, hair from the victim's right
20 hand.

21 191, the oral, vaginal and rectal swabs.

22 196, the postmortem inked fingerprints.

23 MR. PENNINGTON: No objections, Your Honor.

24 THE COURT: Okay. Is that it?

25 MS. SHEALY: Yes, sir.

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1 THE COURT: All right. 189, 190, 194, 191 and
2 196 admitted without objection.

3 [Whereupon, State's Exhibit Numbers 189, 190 and
4 191 are admitted into evidence by the Court]

5 [Whereupon, State's Exhibit Number 194 is
6 admitted into evidence by the Court]

7 [Whereupon, State's Exhibit Number 196 is
8 admitted into evidence by the Court]

9 Q. [Ms. Shealy] Did you take some photographs
10 while you were at the autopsy?

11 A. Yes, ma'am.

12 MS. SHEALY: Okay. 193 is the victim's
13 clothing, Your Honor.

14 THE COURT: Any objection?

15 MR. PENNINGTON: May I approach, Your Honor?

16 THE COURT: Yes, sir.

17 [Whereupon, an off-the-record bench conference
18 is held]

19 THE COURT: All right. 193 is admitted with
20 objection.

21 [Whereupon, State's Exhibit Number 193 is
22 admitted into evidence by the Court]

23 MS. SHEALY: And then also, Your Honor, without
24 objection, photographs of the victim's shoes that were
25 taken at autopsy.

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1 MR. PENNINGTON: No objection.

2 THE COURT: What numbers?

3 MS. SHEALY: Those will be 220, 221 and 222.

4 THE COURT: All right. 220, 221 and 222
5 admitted without objection.

6 [Whereupon, State's Exhibit Numbers 220, 221 and
7 222 are marked by the court reporter]

8 [Whereupon, State's Exhibit Numbers 220, 221 and
9 222 are admitted into evidence by the Court]

10 [Off the record momentarily]

11 Q. [Ms. Shealy] Now, Sargent McManigal, these are
12 the items that we've just called out that you received in
13 from autopsy; is that correct?

14 A. That's correct.

15 Q. And this is the victim's clothing that you
16 received?

17 And you can just leave it in the bag, please.

18 A. Yes, ma'am.

19 Q. Now, these are the photographs of the shoes as
20 they appeared at the time of the autopsy?

21 A. That's correct.

22 Q. And when you arrived at the autopsy and when you
23 arrived at the scene, they were on her feet?

24 A. They were.

25 Q. I'm showing you State's 220, that being her left

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1 shoe.

2 A. That's correct.

3 Q. That's how her shoe appeared that day?

4 A. Yes, it did.

5 Q. And 221?

6 A. That is the victim's right shoe.

7 Q. And another view of that shoe?

8 A. That's the victim's right shoe.

9 Q. Now, you also participated in the processing
10 of the vehicle, that came from Bluffton, that belonged to
11 Ms. Lukaitis; is that correct?

12 A. Yes, I did.

13 Q. And did you remove anything from the trunk area
14 of the outside of the vehicle?

15 A. The trunk area I observed a fiber, a hair, near
16 the keyhole of the trunk, which was photographed and
17 collected.

18 Q. And can you describe what the hair looked like?

19 A. One moment, please.

20 [Whereupon, the witness reviews documents]

21 A. It was a long curly hair.

22 Q. [Ms. Shealy] And where on the vehicle was it
23 found?

24 A. It was on the trunk, clinging to the keyhole.

25 MS. SHEALY: I have no further questions.

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1 Please answer any that the defense may have. Thank
2 you.

3 THE COURT: Cross-examination.

4 CROSS-EXAMINATION

5 BY MR. PENNINGTON:

6 Q. Detective McManigal, you said that the cigarette
7 was 115 feet away?

8 A. Yes, sir.

9 Q. Okay. So that's thirty-nine yards?

10 A. I haven't done the math, but I would assume so.

11 Q. I have my trustee --

12 A. Okay.

13 Q. -- calculator. You want to punch in 115 and
14 divide by 3?

15 A. Sure.

16 [Whereupon, the witness complies]

17 A. 38.33, or roughly thirty-nine yards.

18 Q. [Mr. Pennington] Thirty-nine yards. Okay.

19 You took photographs out there that day or there
20 were photographs taken by someone from your department?

21 A. Yes, sir.

22 Q. Okay. And they fairly and accurately depict the
23 -- where the location of items were?

24 A. Yes, sir.

25 Q. Do you recognize what's depicted?

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1 A. That is the roadway.

2 Q. Okay. Was there a picture taken of the
3 cigarette in relation to where the markers are where the
4 body is?

5 A. That picture you showed there showed the --

6 Q. Well, let's not get in -- we're not going to
7 publish this. It's not in evidence.

8 But is -- was there a picture taken like what
9 I've described? Yes or no.

10 A. Can you repeat what you described?

11 Q. Sure. Let's go back.

12 Was there a picture taken, from where the
13 cigarette butt laid, looking back toward where the body
14 was?

15 A. Yes, sir.

16 Q. Does it fairly and accurately depict the
17 distance between the cigarette butt and the location of
18 the body?

19 A. Yes, sir.

20 [Whereupon, Mr. Pennington and Ms. Shealy
21 confer]

22 MR. PENNINGTON: The Court's indulgence just a
23 moment.

24 [Whereupon, Mr. Pennington and Ms. Shealy
25 confer]

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1 Q. [Mr. Pennington] Detective -- or Sargent
2 McManigal, did you swab -- after you looked for that
3 fingerprint area for someone that touched Ms. Lukaitis'
4 ankle --

5 You were looking for fingerprints; correct?

6 A.. Correct.

7 Q. -- were you able to take a swab of that blood
8 for purposes of forensic testing from that spot?

9 A. From that spot? No, sir.

10 MR. PENNINGTON: That's all that I have, Your
11 Honor.

12 THE COURT: Any redirect?

13 MS. SHEALY: Very briefly.

14 REDIRECT EXAMINATION

15 BY MS. SHEALY:

16 Q. The picture that Mr. Pennington showed you --

17 THE COURT: Let me see y'all. Come up here just
18 a second, please.

19 [Whereupon, an off-the-record bench conference
20 is held]

21 THE COURT: All right. You want to offer the
22 picture; is that correct?

23 MS. SHEALY: Well, I'm going to ask Sargent
24 McManigal a question about it.

25 THE COURT: Well, he agrees with it.

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1 MS. SHEALY: No, I understand, but I want to ask
2 Sargent McManigal --

3 THE COURT: What number will it be?

4 STATE'S LAW CLERK: 223.

5 THE COURT: What?

6 MS. SHEALY: 223.

7 THE COURT: All right. 223, the picture of the
8 cigarette butt, admitted without objection.

9 Is that correct?

10 MR. PENNINGTON: That is correct, Your Honor.

11 THE COURT: As soon as we get it developed;
12 right?

13 MS. SHEALY: That's right.

14 [Whereupon, State's Exhibit Number 223 is
15 admitted into evidence by the Court]

16 Q. [Ms. Shealy] The photograph --

17 THE COURT: All right. Go ahead. Ask your
18 question.

19 Q. [Ms. Shealy] The photograph that Mr. Pennington
20 showed you --

21 A. Yes, ma'am.

22 Q. -- that picture shows where that cigarette butt
23 is in relationship to where Ms. Lukaitis's body was; is
24 that correct?

25 A. Yes, ma'am.

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1 MS. SHEALY: And, Your Honor, that's what I will
2 produce tomorrow.

3 THE COURT: Right.

4 MS. SHEALY: Okay. Very good. I have no
5 further questions. Thank you very much.

6 THE COURT: Any recross on the cigarette butt?

7 MR. PENNINGTON: No, sir.

8 THE COURT: Does anybody know what brand it was?

9 MR. PENNINGTON: Do not, Your Honor.

10 THE COURT: All right. Thank you very much.

11 [Whereupon, Mr. McManigal is excused and exits
12 the witness stand]

13 THE COURT: All right. Mr. Foreman, Ladies and
14 gentlemen of the jury, be back in the jury room at
15 9:30 in the morning and we'll get started.

16 Leave your notepads in the chairs. Please do
17 not talk to anybody about the case. Please do not
18 listen to anything on television or read anything in
19 the paper or get on the internet and do any research
20 on it. I want you to make a decision on what you hear
21 in the courtroom, not what some party puts on a blog
22 or somebody puts on a News [phonetic] and Courier blog
23 or the internet.

24 Have a good evening. See you in the morning at
25 9:30.

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VICKI HALLMAN,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. SHEALY:

Q. Ms. Hallman, if you would please tell the jury where you're employed.

A. I'm employed in the latent prints crime scene unit of the South Carolina Law Enforcement Division.

Q. And could you tell the jury what your role at SLED includes.

A. I'm a senior agent assigned to the latent prints crime scene department.

In that department we are often called by local agencies to assist in the processing of crime scenes. We also process evidence that's submitted to SLED from local agency crime scenes.

I am qualified to do footwear and tire-tread examinations. I process items for latent fingerprints. I do bloodstain-pattern analysis.

Q. Okay. And you say you work with tire impressions and footwear impressions; is that correct?

A. Yes, ma'am.

Q. Okay. Tell us a little bit about your training. How did you learn to be able to work in those areas?

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1 A. I actually have a bachelor's degree from the
2 University of South Carolina and a masters of criminal
3 justice. I'm an adjunct professor for South University,
4 which is also located in Columbia.

5 I did a two-year internship or training program
6 within SLED for the areas that I'm qualified in. I do a
7 yearly competency in order to maintain those credentials.

8 I attended several training classes specifically
9 designed to do footwear and tire-tread comparison. And
10 usually -- or I keep up with current articles as to things
11 that are changing in those fields.

12 And I'm a member of the International
13 Association for Identification, the International
14 Association of Bloodstain Pattern Analysts, and also a
15 member of the South Carolina Division of the International
16 Association for Identification.

17 Q. And I'm sorry. I may have asked you this
18 already. But if not: how long have you been with SLED?

19 A. I've been with SLED for approximately eight and
20 a half years. But I've been in law enforcement since
21 1991.

22 Q. And how many different impression analyses have
23 you participated in?

24 A. I've probably done several hundred analyses of
25 footwear and tire treads.

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1 Q. And have you testified before in court?

2 A. Yes, ma'am.

3 Q. Approximately how many times?

4 A. On footwear and tire tread, probably somewhere
5 between five and ten times.

6 MS. SHEALY: Your Honor, at this time I would
7 offer Ms. Hallman as an expert in the area of
8 impression evidence.

9 MR. PENNINGTON: I have no questions and no
10 objection, Your Honor.

11 THE COURT: Okay. The Court -- impression
12 evidence. The Court so finds.

13 MS. SHEALY: Thank you, Your Honor.

14 Q. [Ms. Shealy] Regarding SLED lab number L10-
15 09045, were you asked to make a comparison between some
16 inked-tire impressions and some photographs of tire
17 impressions?

18 A. Yes, ma'am, I was.

19 Q. If you would first -- when you're asked to make
20 comparisons between inked-tire impressions and
21 photographs, tell us how you go about doing that.

22 A. One of the first things that I do when I get --

23 And in this case I got like a compact disk with
24 the photographs.

25 And the inked impressions are usually fairly

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1 long boards, because we want to make sure we get a full
2 rotation of the tires. They're sent to our photograph
3 department at SLED so that they can make these impressions
4 one-to-one, which means that they are natural size, so
5 that I can do the comparison so that I have a nice view of
6 it and it's basically full size.

7 Q. Okay. So showing you what has been previously
8 marked as State's Exhibit 180, is that what you would have
9 received?

10 MS. SHEALY: May I, Your Honor?

11 THE COURT: Yes, ma'am.

12 MS. SHEALY: Do you want to -- why don't you
13 step down. You want to come down?

14 [Whereupon, the witness complies]

15 THE COURT: Could one of the bailiffs come help
16 them hold this stuff, if you would?

17 MS. SHEALY: I was going to get -- do you want
18 the bailiff --

19 THE COURT: It doesn't matter. Somebody come
20 help you. I've got the bailiffs available to help.

21 [Off the record momentarily]

22 MS. SHEALY: Does this help you a little bit?

23 THE WITNESS: Yes.

24 A. And, yes, they are, because when evidence comes
25 in, I mark it with a lab number, the item number, and my

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1 initials, which are marked here on this.

2 Q. [Ms. Shealy] Now, what are you saying y'all do
3 once you receive these items?

4 A. They're sent to our photograph department. And
5 basically what he just does is I divide the tires up into
6 sections and he actually just makes -- takes photographs
7 of those.

8 Q. Okay. Once he takes photographs of those, what
9 do you do with that?

10 A. At that point in time, then I would begin my
11 comparison.

12 I would use the photographs that were submitted,
13 also, and I'll basically make like a clear overlay. And
14 what I would do with the overlay is just lay it on these
15 impressions and see if I can find the areas that match up.

16 Q. Okay. Now, do you have an example of your
17 overlays with you?

18 A. Yes. They're in --

19 THE WITNESS: May I get my bag?

20 MS. SHEALY: Your Honor --

21 THE COURT: Yes, ma'am. Please.

22 [Off the record momentarily]

23 A. Basically, in this case, because the unknown
24 impression that I had was easier to deal with than the
25 known impression, what I did is I laid out my photographs

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1 and I just went and basically marked where the little --
2 the ribs and everything are.

3 And basically what I do is just start at one end
4 of the impression and slide it down and see if I can find
5 the areas that match. Because with tires, the
6 manufacturers make these elements large, small, with
7 different --

8 MS. SHEALY: Why don't we move this in a little
9 bit, because it might be a little bit easier if they
10 can see it.

11 A. They make them large and small for different
12 reasons. For one reason is to reduce the noise when you
13 drive down the road, so your tires won't make a lot of
14 noise.

15 So these elements aren't identical all the way
16 through the tire. There's different sections that are
17 spaced out differently. And that's basically what I'm
18 looking for for this.

19 Q. [Ms. Shealy] So you're using your overlay --

20 A. Yes, ma'am.

21 Q. -- the one -- the inked impression.

22 And then how does that compare to the
23 photographs that you get?

24 A. Well, which photographs? Of the unknown?

25 Q. Yes.

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1 A. Basically, this is my test impression from the
2 unknown so this would be the replicate or the duplicate of
3 my unknown impression.

4 Q. So in other words, you put the clear over the
5 unknown --

6 A. Yes, ma'am.

7 Q. -- and mark it?

8 A. Yes, ma'am.

9 And if we do shoes, basically what's easier to
10 do with shoes is I can put a red fingerprint powder on the
11 bottom of a shoe and step with the shoe, and that gives me
12 an overlay and I can overlay with the unknown in that
13 case.

14 I just kind of do it in reverse with these
15 because it's just easier because of the size difference
16 when it comes to dealing with tires.

17 Q. Now, in this case you were not asked to make any
18 shoe comparisons?

19 A. That's correct.

20 Q. You would agree if you have a pair of shoes and
21 you have markings on the ground and it's -- sometimes it's
22 relatively obvious that from the bottom of a shoe that it
23 doesn't match a shoe on the ground?

24 A. That's correct.

25 And you can do the same thing with tires, too.

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1 The first thing that I'll do is start counting the ribs,
2 which are these [indicates]. And if I have an unknown
3 impression that has say three ribs and I know this is a
4 one, two, three, four, five-rib tire, then I can
5 automatically eliminate my -- the known tire from making
6 the unknown impression.

7 Q. Would you tell the jury what type of conclusion,
8 if any, you were able to make in this case.

9 A. There are several different types of conclusions
10 I can render. Of course, the most obvious -- or the two
11 most obvious are yes it did or no it didn't.

12 You can also do what we call a class
13 characteristic, which means that it could have been made
14 by this tire but if there's another tire just like this --
15 because I don't have anything that is totally exclusive to
16 this tire, say like a nail or a cut in a specific area, I
17 could say it is a class characteristic, which means it
18 could have been made by this tire but it also could have
19 been made by another tire that's just like this one. And
20 that is what I found in this case.

21 Q. Okay.

22 A. I could include these as possibly making it but
23 I couldn't say for sure that they were the ones that made
24 these impressions.

25 Q. Because there was nothing unique like a nail or

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1 a tear or something that you saw in the pattern?

2 A. Correct.

3 And plus you have to think about the fact, too,
4 that the unknown impression is not basically a full
5 impression like the tire is. It's only a small section.
6 So there wasn't a random -- and we call it a random
7 identifying characteristic. There was not a random
8 identifying characteristic in the photographs or the
9 unknown impressions, that I was given, that allowed me to
10 match them up to the tires.

11 Q. Now, when you say the same class, is there a
12 better way to define that? What do -- what is included
13 when you say class?

14 A. When we talk about class, we talk about it's the
15 basic -- it's exactly the same size, it's the same shape,
16 and it's the same tread design.

17 Usually, shoes are a little bit easier to
18 understand. You know, if you have an impression -- and we
19 see a lot of Niki Air Force Ones, if you know what those
20 are, with the circles. So I could include a Niki Air
21 Force One as making an impression if I knew that that's
22 what that shoe was, but I could exclude everything else.
23 And we can basically do the same thing with tires.

24 Q. Okay. So when you say it's the same class,
25 you're saying it's the same tread, it's the same size, and

1 it's the same shape?

2 A. Yes, ma'am.

3 MS. SHEALY: I have no further questions. If
4 you could go take a seat on the stand.

5 MR. PENNINGTON: Cross-examination, Your Honor?

6 THE COURT: Are you finished?

7 MS. SHEALY: Yes, sir.

8 THE COURT: Yes, ma'am. Yes, sir. Cross-
9 examination.

10 MR. PENNINGTON: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. PENNINGTON:

13 Q. Agent Hallman, I note on this exhibit that we
14 have before the jury of the tire impressions that you
15 made, that it says Michelin Symmetry and it has a -- the
16 numbers twenty -- 225 -- and I think that's 60R16. And so
17 is that sort of the identifying quality of this, that this
18 was a Michelin tire?

19 A. To clarify: these were submitted to me. I did
20 not take these myself.

21 That -- the Michelin is the manufacturer,
22 Symmetry is the name on the tire, and the size is the
23 225/60, which denotes -- and the P in front of it denotes
24 that it's a passenger tire, and then the PSI basically
25 tells you how much air you're supposed to have in that

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1 tire for it to be properly inflated.

2 Q. Okay. So what I'm gathering is is that the
3 unknown impressions that you have are similar in the class
4 characteristics for a Michelin Symmetry tire?

5 A. Yes, sir.

6 Q. Is that correct?

7 A. Yes, sir.

8 Q. Okay. And from what we know, there -- certainly
9 there was no distinguishing characteristics that would say
10 that the unknown prints were different; correct? In other
11 words, there was nothing that made them different --

12 A. Correct.

13 Q. -- but there was nothing unique about the
14 impression, the unknown impression, that said that that
15 unique tire is the same tire that's on the car of the
16 victim in this case?

17 A. That's correct.

18 Q. And so we just know, in effect, that it appears
19 that someone that was driving with Michelin Symmetry tires
20 made the same impression as the unknown impressions?

21 A. Correct.

22 Q. Do we know how many of those Michelin Symmetry
23 tires are sold in the United States?

24 A. No, sir, I do not.

25 Q. Or sold in South Carolina?

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1 A. I'm unaware of that.

2 MR. PENNINGTON: I have no further questions,
3 Your Honor.

4 THE COURT: Any redirect?

5 MS. SHEALY: No, sir.

6 THE COURT: Okay. You may step down. Thank you
7 very much.

8 THE WITNESS: Thank you, sir.

9 THE COURT: Ms. Hallman, you may be excused.
10 Thank you very much. Have a safe trip back to
11 Columbia.

12 THE WITNESS: Thank you.

13 [Whereupon, Ms. Hallman is excused and exits the
14 witness stand]

15 MR. FINCH: Verona Gibson.

16 [Whereupon, Ms. Gibson comes forward]

17 [Whereupon, Ms. Gibson is duly sworn by the
18 clerk of court as follows: do you swear or affirm
19 that your testimony will be the whole truth and
20 nothing but the truth, so help you God]

21 THE WITNESS: I do.

22 THE CLERK OF COURT: State your full name and
23 spell your last name.

24 THE WITNESS: Verona Gibson. G-I-B-S-O-N.

25 MR. FINCH: Your Honor, may I start with two

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1 THE COURT: Okay. 197 admitted without
2 objection.

3 [Whereupon, State's Exhibit Number 197 is
4 admitted into evidence by the Court]

5 [Whereupon, State's Exhibit Number 208 is
6 admitted into evidence by the Court]

7 MS. SHEALY: Good morning, Ms. Leisy.

8 THE WITNESS: Good morning.

9 - - - - -

10 CATHERINE LEISY,

11 Having Been First Duly Sworn,

12 was Examined and Testified as Follows:

13 DIRECT EXAMINATION

14 BY MS. SHEALY:

15 Q. If you would please tell the jury where you work
16 and what you do there.

17 A. I work for the South Carolina Law Enforcement
18 Division, commonly known as SLED. I am a forensic
19 scientist assigned to the DNA and serology unit. My
20 responsibilities include processing forensic cases,
21 generating reports based on the results and conclusions
22 drawn, testifying to those reports as necessary. I also
23 assist in the supervision of newly-hired analysts and
24 assist in their training.

25 THE COURT: Let me interrupt you a second.

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1 Mr. Pennington, do you agree that she's a
2 qualified DNA examiner?

3 MR. PENNINGTON: I do.

4 THE COURT: All right. The Court so finds.

5 Go ahead and introduce her to the jury. Okay?
6 I'm not trying to stop you from doing that.

7 MS. SHEALY: Right. I do want to develop her
8 background just a little bit.

9 THE COURT: Pardon?

10 MS. SHEALY: I do want --

11 THE COURT: Yeah. I mean, go --

12 MS. SHEALY: -- to develop her background.

13 THE COURT: -- into her background --

14 MS. SHEALY: Yes, sir.

15 THE COURT: -- and do it.

16 I just wanted to get that out of the way. Okay?

17 MS. SHEALY: Yes, sir. Thank you. I appreciate
18 that.

19 THE COURT: All right. Go ahead.

20 Q. [Ms. Shealy] Just tell the jury a little bit
21 about your background, if you would. Your education and
22 where you worked previously.

23 A. Yes, ma'am.

24 I have a Bachelor of Science degree in genetic
25 engineering from Cedarcrest College in Allentown,

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1 Pennsylvania.

2 Following graduation, I spent two years working
3 as a research assistant at a gene cloning laboratory in
4 Germantown, Maryland.

5 I then spent four years as a forensic DNA
6 analyst at a private forensic testing facility known as
7 Fourth and Selmark [phonetic] where I performed the same
8 types of testing that I do now.

9 And I've been with SLED for six years. I've
10 received in-house training in all the different types of
11 testing and analysis that my job requires me to perform.
12 And I'm required to participate in annual continuing
13 education to make sure that I'm caught up with the latest
14 trends and the different types of techniques and analyses
15 that are currently available for forensic DNA testing.

16 Q. Would you tell the jury whether or not SLED is
17 accredited for DNA testing.

18 A. SLED is accredited by the American Society of
19 Crime Laboratory Directors, a laboratory accreditation
20 board, also known as ASCLB lab. That's a voluntary
21 program that forensic labs can choose to participate in to
22 show that they meet certain standards and guidelines that
23 help ensure quality and consistency in forensic testing.

24 Q. And how many times have you testified as a DNA
25 expert?

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1 A. On approximately forty occasions.

2 Q. Now, would you please describe for the jury what
3 is meant and -- what is DNA.

4 A. DNA stands for deoxyribonucleic acid. It's the
5 genetic material found in all our body cells, with the
6 exception of our red blood cells.

7 DNA is packaged into structures called
8 chromosomes, which contain our genes. And genes are
9 simply strands of DNA that code for our physical
10 characteristics, such as our height or our eye color. We
11 receive half of our DNA from our mother and half from our
12 father and we therefore have two copies of every gene.

13 Approximately 99.9 percent of an individual's
14 DNA is identical to that of everyone else's and it's the
15 variation in that remaining .1 percent that allows us to
16 tell different people apart.

17 Q. Is there any dispute in the scientific community
18 regarding the principles that you've discussed?

19 A. No, there's not.

20 Q. Now, generally, what are you trying to determine
21 through DNA identity testing for a criminal case?

22 A. Basically what I'm trying to do is determine
23 whether or not an unknown biological stain left at a crime
24 scene or on an item of evidence could or could not have
25 been contributed by a known individual whose DNA standard

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1 has been submitted for comparison purposes.

2 Q. What is meant by the term buccal swab?

3 A. A buccal swab is basically just a sterile cotton
4 swab, that looks very much like a Q-tip, that's rubbed
5 against the inside of someone's cheek in order to collect
6 cells from their mouth. We can then develop a DNA profile
7 from those cells and we use that DNA profile as that
8 individual's standard for comparison to profiles obtained
9 from evidence.

10 Q. Is what is known as PCR, STR testing performed
11 at your lab?

12 A. It is.

13 Q. Okay. And could you describe for the jury what
14 that type of testing means?

15 A. PCR stands for polymerase chain reaction. It's
16 a technique that allows us to make copies of the specific
17 locations in DNA that were -- those locations are known as
18 STR, or short tandem repeats.

19 An STR is just a specific location in our DNA
20 where a short core unit of DNA repeats a certain number of
21 times, and it's the number of times that unit repeats that
22 varies from person to person and allows us to tell
23 different people apart.

24 Q. What steps are involved in that type of testing?

25 A. The first step is DNA extraction, where we

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1 isolate and remove DNA from the particular item of
2 evidence that we're testing.

3 We then perform what's called amplification.
4 And this is the PCR step itself where we're copying the
5 STR locations that we're interested in testing. Once we
6 have those locations copied, we can count the number of
7 repeat units and assign DNA type.

8 So a specific STR location, let's say the copy I
9 received from my mom had eight repeat units and the copy I
10 received from my dad had ten. My DNA types at that
11 location are simply eight and ten. The number corresponds
12 to the number of repeat units.

13 And it's the overall collection of DNA types at
14 fifteen STR locations that gives us what we call an
15 individual's DNA profile.

16 Q. What safeguards and controls are used at SLED to
17 ensure the integrity of samples and reliability of the
18 testing procedure?

19 A. When evidence is brought into SLED, it is given
20 a unique SLED lab number and each particular item is given
21 a unique item number so that there will be no mistake as
22 to what item I'm working on at any given time.

23 Only one item will be processed at a time, to
24 prevent any type of sample switch or contamination. We
25 routinely clean all of our lab surfaces. And we wear what

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1 we call personal protective equipment, lab coats,
2 disposable gloves, eyeglasses, not only to protect
3 ourselves from anything potentially dangerous but also to
4 keep from introducing our DNA into the sample and causing
5 it contamination.

6 Q. Okay. Now, regarding this lab number involving
7 this case, were you given three known DNA samples?

8 A. Yes, I was.

9 Q. Okay. And -- just one moment.

10 If you would tell the jury whether you received
11 State's Exhibit 189.

12 A. I don't believe I received this exact container.
13 The SLED case and item number and my initials aren't
14 present.

15 Q. Okay. Did you receive a blood spot for Alexis
16 Lukaitis?

17 A. I did.

18 Q. Okay. And on 198, did you receive a buccal swab
19 from Mike Bartley?

20 A. Yes, I did.

21 Q. Okay. And 197, a buccal swab from Darryl
22 Drayton?

23 A. Yes, I did.

24 Q. Now, did you receive items, then, that were
25 unknown, that you were making comparisons with?

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1 A. I did.

2 Q. And would it be helpful to you if we took those
3 items one by one to discuss your conclusions?

4 A. That would probably be the most clear way, yes.

5 Q. Okay. Now, behind you is a dry-erase board.

6 MS. SHEALY: Your Honor, do you mind if I
7 approach that board?

8 THE COURT: Yes, ma'am, please do.

9 MS. SHEALY: And I think I put some markers
10 right up here.

11 Q. [Ms. Shealy] And in looking at your report from
12 April -- from October 27th, 2010, were you given a
13 cigarette butt from the scene, State's Exhibit 178?

14 A. I received two cigarette butts.

15 Q. The one that we're focusing on is a cigarette
16 butt from the scene Old Jacksonboro.

17 A. I did. That was identified as SLED item
18 number 3.

19 Q. Okay. And could you tell the jury whether you
20 made any comparison -- an analysis on that for DNA
21 purposes?

22 A. Yes, I did.

23 Q. And what was your conclusion regarding that
24 cigarette butt?

25 A. The DNA profile developed from the cigarette but

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1 collected from Old Jacksonboro Road is from an
2 unidentified male individual.

3 Q. Okay. So it did not match Mike Bartley, it did
4 not match Ms. Lukaitis, nor did it match Mr. Drayton?

5 A. That's correct.

6 Q. Okay. Now, were you given some right-hand
7 fingernail clippings from Alexis Lukaitis?

8 A. I was.

9 Q. And left fingernail clippings?

10 A. Correct.

11 Q. And that is State's Exhibit 190?

12 A. That's correct.

13 Q. Okay. Could you tell the jury what conclusion
14 you reached regarding those?

15 A. No DNA profile foreign to Alexis Lukaitis was
16 developed from the right-hand fingernail clippings tested.
17 And the DNA profile developed from the lefthand fingernail
18 clippings is a mixture of at least two individuals.

19 The DNA profile developed from the major
20 contributor to this mixture is consistent with the DNA
21 profile of Alexis Lukaitis. And the partial DNA profile
22 developed from the minor contributor to this mixture is
23 insufficient for reliable interpretation.

24 Q. Okay. So it's a mixture of two people and you
25 can't tell who the second person is?

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1 A. It's at least two, and the secondary contributor
2 is weak enough that I can't make a reliable comparison
3 between that minor profile and any known individual.

4 Q. Now, regarding the oral, vaginal and rectal
5 swabs, State's Exhibit 191, what type of analysis did you
6 do on those items?

7 A. On these particular items, before processing for
8 DNA I performed a preliminary test looking for the
9 presence of semen. There was concern, apparently, that
10 there may have been some type of sexual assault or sexual
11 contact.

12 Those tests were negative, so there was no semen
13 identified and as such I did not perform DNA testing on
14 those items as I didn't believe there was any probative or
15 informative results to be had.

16 Q. Okay. And then SLED number 11, swab from
17 marker one. You have in this package, which is State's
18 Exhibit --

19 MS. SHEALY: Your Honor, do you mind if I
20 approach the witness?

21 THE COURT: Please do.

22 Q. [Ms. Shealy] There were several packages within
23 this package; is that correct?

24 A. That's correct.

25 Q. And --

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1 THE COURT: What's the State's exhibit number?

2 MS. SHEALY: 217.

3 THE COURT: Thank you, ma'am.

4 Q. [Ms. Shealy] Regarding marker one --

5 And that's how you refer to it in your report;
6 is that correct?

7 A. That's correct.

8 Q. Could you tell the jury what conclusion you
9 reached regarding marker one?

10 A. The DNA profile developed from swab marker one
11 matches the DNA profile of Darryl Drayton.

12 The probability of randomly selecting an
13 unrelated individual having a DNA profile matching this
14 item is approximately one in 1.9 quadrillion.

15 Q. Okay. So mark -- the item identified as
16 marker --

17 And who identified it as marker one?

18 A. That's how it was identified.

19 When it was submitted to me, it was actually
20 identified as --

21 Q. Would you put that percentage beside marker one,
22 please.

23 [Whereupon, the witness complies]

24 A. That would represent 1.9 quadrillion.

25 Q. [Ms. Shealy] And what does that percentage

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1 mean?

2 A. It means that if you randomly selected an
3 unrelated individual, developed their DNA profile, the
4 probability that they would have this exact profile is
5 approximately one in 1.9 quadrillion.

6 Q. Okay. Regarding swab from what had been
7 identified as marker thirteen: could you tell the jury --
8 and this is a swab from marker thirteen?

9 A. Uh-huh.

10 Q. Could you tell the jury what your conclusions
11 regarding that were?

12 A. The DNA profile developed from the swab marker
13 thirteen is a mixture of at least two individuals.

14 The DNA profile developed from the major
15 contributor to this mixture matches the DNA profile of
16 Alexis Lukaitis. The probability of randomly selecting an
17 unrelated individual having a DNA profile matching the
18 major contributor to the mixture is approximately one in
19 50 quadrillion.

20 Darryl Drayton cannot be excluded as a possible
21 minor contributor to this mixture and the probability of
22 randomly selecting an unrelated individual who could have
23 contributed to the overall mixture is approximately one in
24 three million.

25 Q. Okay. So Drayton cannot be excluded?

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1 A. As a possible minor contributor. That's
2 correct.

3 Q. Tell us what you mean by that.

4 A. When we have a mixture, it simply means DNA
5 present from more than one individual on a particular
6 item. We can't always make an identification of all of
7 the individuals who contributed. But when I compare the
8 DNA profile developed for Mr. Drayton to the mixture from
9 this particular item, there is enough consistency in those
10 DNA types that I feel it's possible that he is a potential
11 contributor to this mixture.

12 Q. And then what did you tell us about the
13 percentage of -- how did you tell us that about his
14 percentage regarding that?

15 A. The probability of randomly selecting an
16 unrelated individual who could have contributed is
17 approximately one in three million. So the number really
18 works the same as the previous statistic. If you randomly
19 selected an unrelated individual, developed their DNA
20 profile, the probability that they could be included as a
21 possible contributor would be approximately one in three
22 million.

23 Q. Could you write that, please, by marker
24 thirteen.

25 [Whereupon, the witness complies]

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1 Q. [Ms. Shealy] Okay. Your next item on your
2 report refers to a swab from the driver doorframe at the
3 bottom. What were your conclusions there?

4 A. The DNA profile developed from the swab from the
5 doorframe also matches the DNA profile of Darryl Drayton.
6 And the probability, again, of selecting a -- randomly
7 selecting an unrelated individual who could have a profile
8 matching this item is approximately one in 1.9
9 quadrillion.

10 Q. So the same number as up here?

11 A. That's correct.

12 Q. Okay. And then swab from the inside driver-door
13 pull.

14 A. No human DNA was obtained from the swab from the
15 inside driver-door pull.

16 Q. And the swab from the steering wheel?

17 A. That was identified as SLED item 15. The DNA
18 profile developed from the steering wheel is a mixture of
19 at least two individuals. The DNA profile developed from
20 the major contributor to this mixture also matches the DNA
21 profile of Darryl Drayton. And Alexis Lukaitis cannot be
22 excluded as a possible minor contributor to this mixture.

23 Q. So regarding the steering wheel, Darryl Drayton
24 is the major contributor?

25 A. His DNA profile does match that as a major

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1 contributor, yes.

2 Q. He matches the -- as a major contributor.

3 A. Correct.

4 Q. You may need to explain that to us again. Why
5 is he not a match but just matches as a major contributor?

6 A. When we have a mixture with what we call a major
7 contributor, it just means that one individual who left
8 their DNA left significantly more than did the other
9 contributors. The significance of the signal that's given
10 off by that DNA is much stronger, so it's easier for us to
11 basically pull their profile out of this mixture. So I
12 can make a comparison between the major contributor to a
13 known individual and potentially make an identification,
14 but all I can really say is that their DNA profile matches
15 the DNA profile from this item of evidence.

16 Q. So how would you characterize it again regarding
17 the steering wheel?

18 A. That Mr. Drayton's profile does match that of
19 the major contributor to that mixture.

20 Q. So in the car, marker one, marker thirteen, the
21 driver doorframe at the bottom and the steering wheel,
22 this being the mixture?

23 A. That's correct.

24 Q. Okay. And that completed that report; is that
25 correct?

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1 A. Yes, it is.

2 Q. Okay. Now, did you do another report on April
3 12th of 2010?

4 A. I believe it was April 10th.

5 Q. I mean April 10th. I'm sorry. You're right.

6 A. So I have the right one?

7 Q. Now, again, were you still comparing the blood
8 spot of the victim and the two buccal swabs of Mike
9 Bartley and Darryl Drayton?

10 A. Correct.

11 Q. And on that occasion were you given cuttings
12 that had been generated at SLED regarding the diaper bag?

13 A. Yes, I was.

14 Q. Okay. Showing you what has been previously
15 marked as State's Exhibit 186-A. I ask you whether these
16 are the cuttings from the diaper bag that you received.

17 A. Yes, they are.

18 Q. And would you tell the jury, please, what your
19 findings were regarding your DNA analysis on the cuttings.

20 A. The DNA profile developed from the three
21 cuttings taken from the diaper bag matches the DNA profile
22 of Alexis Lukaitis. The probability of randomly selecting
23 an unrelated individual having a DNA profile matching
24 these items is approximately one in 50 quadrillion.

25 Q. Were you also given a cutting from a tire cover

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1 from a trunk?

2 A. Yes, I was.

3 Q. Okay. And showing you what's been marked as
4 State's Exhibit 164-B, I ask you whether this is the
5 cutting that you examined.

6 A. Yes, it is.

7 Q. Okay. Would you please tell the jury the
8 results of your analysis from that cutting.

9 A. The DNA profile developed from the cutting from
10 the tire cover also matches the DNA profile of Alexis
11 Lukaitis with the same statistic of approximately one in
12 50 quadrillion applying to that item.

13 Q. Were you given some swabs that had been
14 generated by Almon Brown, from SLED, on a filet knife?

15 A. Yes, I was.

16 Q. And did you perform an analysis on those swabs?

17 A. I did.

18 Q. Showing you what's been marked as State's
19 Exhibit 199, ask you whether those are the swabs that you
20 performed your analysis on.

21 A. They are.

22 Q. And could you tell the jury, please, what the
23 results of your analyses were?

24 A. No DNA profile was developed from the handle
25 from the knife and no human DNA was obtained from the

1 blade of the knife.

2 Q. Okay. And when you say no human DNA was
3 obtained from the blade of the knife, does that mean it
4 could have been animal DNA?

5 A. That's correct.

6 I did perform an initial test on that swab that
7 indicated the possible presence of blood.

8 The next test after -- once we've extracted DNA,
9 we then perform a quantitative test which gives us an
10 estimate of how much DNA may be present. That test is
11 specific to humans. That test was negative, indicating
12 that there may have been blood present but that there was
13 no human DNA present.

14 Q. Okay. So meat? It could have come from meat
15 from a knife?

16 A. That's possible, yes.

17 Q. Now, were you also provided with hair from the
18 victim's right hand?

19 A. Yes, I was.

20 Q. Showing you what's been marked as State's
21 Exhibit 194. I ask you whether that includes the hair
22 that you were provided with.

23 A. Yes, it does.

24 Q. Okay. And what were your results of that?

25 A. The DNA profile developed from the hair matches

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1 the DNA profile of Alexis Lukaitis. And, again, the
2 probability of randomly selecting an unrelated individual
3 having a DNA profile matching this item is approximately
4 one in 50 quadrillion.

5 Q. Now, were you provided with a swab from the
6 right shoe of the victim?

7 A. Yes, I was.

8 Q. And showing you what's been marked as State's
9 Exhibit 192-A, I ask you whether that's a swab that you
10 performed an analysis on.

11 A. It is.

12 Q. Okay. And what was the result of your analysis
13 on the right shoe of the victim?

14 A. The DNA profile developed from the swab from the
15 right shoe is a mixture of at least two individuals.
16 Alexis Lukaitis and Darryl Drayton cannot be excluded as
17 possible contributors to this mixture. And the
18 probability of randomly selecting an unrelated individual
19 who could have contributed to this mixture is
20 approximately one in 340 million.

21 Q. So Alexis and Darryl Drayton can't be excluded?

22 A. That's correct.

23 Q. And will you come, please and put the statistic
24 up here as to their not being able to be excluded?

25 A. [Witness complies]

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1 Q. Were you provided with a swab from the victim's
2 left shoe?

3 A. Yes, I was.

4 Q. And showing you State's 192-B. Is that the
5 swab?

6 A. It is.

7 Q. Would you tell the jury, please, what your
8 results were from analyzing the swab from the left shoe of
9 the victim?

10 A. The DNA profile developed from the swab from the
11 left shoe matches the DNA profile of Darryl Drayton.

12 The probability of randomly selecting an
13 unrelated individual having a DNA profile matching this
14 item is, again, approximately one in 1.9 quadrillion.

15 Q. So the same statistic again?

16 A. That's correct.

17 Q. Were you given a swab from a CVS bag?

18 A. I was.

19 Q. Showing you 166-A.

20 A. That is correct.

21 Q. Tell the jury if you would, please, what the
22 results of that analysis was.

23 A. The DNA profile developed from the swab from the
24 CVS bag is a mixture of at least two individuals. The DNA
25 profile developed from the major contributor to this

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1 mixture also matches the DNA profile of Darryl Drayton,
2 and the partial DNA profile developed from the minor
3 contributor to this mixture is insufficient for reliable
4 interpretation.

5 Q. Did you also look at a swab from a spare-tire
6 insert?

7 A. I did.

8 Q. And what were your conclusions? Showing you
9 165-A and ask you if that's what you looked at.

10 A. It is.

11 Q. And what were your conclusions?

12 A. No STR DNA profile was developed from the swab
13 from the spare-tire insert.

14 MS. SHEALY: Beg the Court's indulgence just a
15 moment.

16 [Whereupon, Ms. Shealy reviews documents]

17 MS. SHEALY: Your Honor, I'm looking to see if I
18 have a clean copy of Ms. Leisy's report. I would like
19 to offer her report into evidence. I don't know that
20 I have a clean copy. I may need to substitute that
21 later. It's just a lot of information that I'm unsure
22 they're going to be able to retain without a written
23 document.

24 THE COURT: What number?

25 MS. SHEALY: May I speak to Mr. Pennington for a

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1 second?

2 THE COURT: Yes, sir. Yes, ma'am.

3 Do you know the next number? What's the next
4 number?

5 STATE'S LAW CLERK: 234.

6 THE COURT: 234?

7 STATE'S LAW CLERK: Yes, Your Honor.

8 THE COURT: All right. Mr. Pennington, do you
9 have any objection?

10 MR. PENNINGTON: May I have the Court's
11 indulgence. I think I have one of the reports here.
12 This is the April report.

13 [Whereupon, Ms. Shealy and Mr. Pennington
14 confer]

15 MS. SHEALY: I can get that, Judge. I don't
16 know that we have two clean copies right now. I can
17 actually put them in after I get two copies.

18 THE COURT: I understand. But I'm just trying
19 to see if he's got an objection to it.

20 MR. PENNINGTON: I do not, Your Honor.

21 THE COURT: All right. 234 is admitted without
22 objection, subject to putting in a clean copy that
23 hasn't been written on.

24 [Whereupon, State's Exhibit Number 234 is
25 admitted into evidence by the Court]

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1 MS. SHEALY: Thank you, Judge.

2 MR. PENNINGTON: Just so we clarify: the only
3 report that I see here is the April 10th, 2012. So
4 are you going to put in --

5 THE COURT: She's going to put the others in,
6 but we're going to get clean copies.

7 [Whereupon, Ms. Shealy and Mr. Pennington
8 confer]

9 MS. SHEALY: There are actually two reports: an
10 October 27th, 2010; and an April 10th, 2012.

11 [Whereupon, Ms. Shealy and Mr. Pennington
12 confer]

13 MR. PENNINGTON: I have no objection to both
14 reports, including the chart of the identifying
15 characteristics, going in.

16 THE COURT: All right.

17 Q. [Ms. Shealy] In that we're going to do that --

18 THE COURT: And that's all under State's Exhibit
19 234; is that correct?

20 MS. SHEALY: Maybe we should do 234 and 235,
21 just so it'll be a little more simple.

22 THE COURT: Well, which one is 234? October?

23 MS. SHEALY: 234 should be the October 27th,
24 2010.

25 THE COURT: All right. And 235 will be the

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1 April; is that correct?

2 MS. SHEALY: Yes, sir, that's correct.

3 THE COURT: All right.

4 Q. [Ms. Shealy] Okay. Ms. Leisy --

5 THE COURT: All right. 234 and 235 admitted
6 without objection, subject to putting in clean copies.
7 Okay?

8 MS. SHEALY: Thank you.

9 [Whereupon, State's Exhibit Number 234 is
10 admitted into evidence by the Court]

11 [Whereupon, State's Exhibit Number 235 is
12 admitted into evidence by the Court]

13 Q. [Ms. Shealy] In that they will have your report
14 back there, let's discuss some aspects of the report
15 itself. Okay?

16 Now, you have discussed mixtures. And if you
17 would -- and I know you described it to us, but can you
18 describe it again what we're talking about when there are
19 mixtures of two people?

20 A. Again, mixture just means that you have DNA from
21 more than one individual found on a particular item. And
22 I can tell, when I look at a profile from a piece of
23 evidence, based on how many DNA types are present at each
24 location and the relative intensity of those DNA types,
25 how many people have -- at least how many people have

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1 contributed to a mixture.

2 Q. And when you have mixtures, do you always have a
3 major and a minor contributor?

4 A. Not always. If you have what's closer to maybe
5 fifty-fifty mix of material from multiple people, you
6 can't always determine a major contributor.

7 Q. But if your report reflects a major contributor,
8 that means what?

9 A. It means that one individual contributed
10 significantly more DNA than did the others and that the
11 intensity of the signal given off by their DNA was much
12 stronger so I was able to pull out their individual
13 profile from that mixture.

14 Q. And when you say that someone cannot be
15 excluded, will you describe that to us again.

16 A. To say that someone is not excluded from a
17 mixture means that I've compared their known DNA profile
18 to the profile developed from that piece of evidence, from
19 that mixture. When I compare the DNA types of each of
20 their STR locations, they are consistent with the DNA
21 types found at that location in the mixture from the
22 evidence. That tells me that it's possible that they are
23 the individual that contributed those types to that
24 mixture but I can't necessarily make an identification or
25 make a definitive match. It just means that it's possible

1 that they contributed.

2 Q. And the chart that accompanies your report, you
3 have told us about how you get one number from your mother
4 and one number from your father. Can you further describe
5 what we're looking at when we look at the table?

6 A. When you look at the table, the row that goes
7 across the top of the table includes the name of all the
8 STR locations that we use. The first column on the very
9 far left is a list of all the items that were tested. So
10 the first item on the table will be item -- SLED item
11 number one, which is the DNA standard for Michael Bartley.

12 MS. SHEALY: Okay. Hold on just a second and
13 let me see if this will show up on the device here.

14 Q. [Ms. Shealy] And this would be a part of --

15 MS. SHEALY: What were my last two numbers?

16 THE COURT: 234 is the October and 235 is April.

17 Q. [Ms. Shealy] Okay. So those would be the
18 back -- the last page of 234.

19 MS. SHEALY: But I'm not sure that this is going
20 to show up, but let's see.

21 Q. [Ms. Shealy] Okay. So this is the table that's
22 at the back of your report. And obviously we can't see
23 the numbers, but just to give the jury an idea of what
24 they're looking at.

25 This column indicates Michael Bartley, Alexis

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1 Lukaitis, Darryl Drayton.

2 A. Correct.

3 Q. And then these are items: cigarette butt,
4 Jacksonboro; right-hand fingernails; left-hand
5 fingernails; marker one; marker thirteen; driver
6 doorframe; steering wheel?

7 A. Correct.

8 Q. Now, what do these numbers across this table
9 mean? The numbers at the top.

10 A. The numbers, as you go across the row to the
11 right of item one, Michael Bartley, those are the DNA
12 types that I developed for Mr. Bartley's profile. If you
13 look at the first box just to the right of Mr. Bartley's
14 name, you'll see the numbers 12 and 14. That means that
15 one copy of Mr. Bartley's DNA had twelve repeat units at
16 that first STR location and the other copy had fourteen.
17 And it just goes on down the row. And the collection of
18 DNA types in that entire row of fifteen locations, plus
19 what we call amelogenin, which is a gender marker, gives
20 us an individual's DNA profile.

21 Once I have profiles from both known individuals
22 and evidence, I can compare the DNA types in each box for
23 a known individual to see if they're consistent with the
24 types in the boxes for the evidence.

25 Q. Okay. Now, Ms. Leisy, looking up here, can you

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1 walk us through -- I'm trying to see if there's a way we
2 could walk through an example. Can you find an example
3 for us to walk through?

4 A. The best example would probably be if we just
5 drop down to number four, right-hand fingernails, and
6 compared that to the profile of item nine from Alexis
7 Lukaitis.

8 Q. Okay.

9 A. So it would be the second item down and the
10 fifth.

11 THE COURT: Why don't we do this: Mr. Foreman,
12 ladies and gentlemen of the jury, why don't we take a
13 break at this time. If you need anything, let the
14 bailiffs know.

15 Please don't discuss the case amongst
16 yourselves. And leave your notepads in your chair.

17 We'll take the morning break. If you'll follow
18 the bailiffs to the jury room.

19 [Whereupon, the jury exits the courtroom at
20 11:06 a.m.]

21 THE COURT: See if you can't go get with the
22 clerk and get something blown up so she can stand in
23 front of the jury and explain it, during this break,
24 please.

25 MR. PENNINGTON: What we could do -- I was --

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1 a reference on that report, as number -- number 2, a
2 cigarette butt from Lagoon Road. The defense and the
3 State agrees that is irrelevant in this case, the one
4 from Lagoon Road. And a report from April 10th, 2012,
5 and that is State's Exhibit 235.

6 - - - - -

7 CATHERINE LEISY,
8 Having Been Previously Sworn,
9 was Examined and Testified as Follows:

10 CONTINUED DIRECT EXAMINATION

11 BY MS. SHEALY:

12 Q. Let's go back for a moment. When I showed you
13 State's Exhibit 189, you indicated you didn't think this
14 was the blood spot that you had gotten because you didn't
15 have any of your lettering on this package?

16 A. That's correct.

17 Q. Could you open it?

18 A. [Witness complies]

19 Q. Is that yours?

20 A. Yes, it is.

21 Q. Okay. It was just packaged differently?

22 A. That's correct.

23 I would have just received it in a heat-sealed
24 plastic pouch such as this.

25 Q. Okay. And that's the blood spot of?

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1 A. Of Alexis Lukaitis.

2 Q. Okay. Very good.

3 Now, also during the break -- instead of
4 struggling with that machine -- we made copies of the
5 chart that accompanies your report from October, and we're
6 going to hand those out to the jury.

7 THE COURT: Ladies and gentlemen, what we're
8 going to do is hand out to each one of you an
9 individual copy, since we couldn't get it blown up on
10 the screen sufficient for you to look at it, so you'll
11 have it -- so you can at least see it. Before lunch,
12 you couldn't even see it.

13 Q. [Ms. Shealy] And what I'm going to get you to
14 do, Ms. Leisy, looking up at the board --

15 THE COURT: Solicitor, they don't have them yet.
16 They're still passing them out.

17 MS. SHEALY: Okay. That's fine.

18 THE COURT: Give them a second to pass them
19 around.

20 Does everybody have a copy?

21 MS. SHEALY: Judge, would you like one?

22 THE COURT: No.

23 MS. SHEALY: Okay.

24 Q. [Ms. Shealy] And I won't belabor this. But
25 just so that the jury, when they have that report back in

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1 the jury room with them, if they care to engage in this.

2 Let's -- looking up at the board, number one,
3 where it says marker one, and looking at the graft on the
4 very back, will you just show the jury how you work with
5 marker one and what that means as it relates to Darryl
6 Drayton.

7 A. In terms of comparison?

8 Q. Yes.

9 A. I believe we went over it before, but now that
10 you have the chart I'll go over it again.

11 If you look at the very top row across the
12 table, that lists the fifteen STR locations that are
13 tested. So if you look at the second box in from the
14 left, in that top row, you see D8S1179. And that's the
15 specific or official term for that STR location. We just
16 sort of shorthand it and we just call it D8.

17 So if you look at -- if you go down to the box
18 marked 16, Darryl Drayton, if you go right across the
19 table from that Darryl Drayton box, that is Mr. Drayton's
20 profile. So if you move over one box, so now you are
21 under both Darryl Drayton. And under D8, you see the
22 number 15. That indicates that Mr. Drayton's type at that
23 location is fifteen. So both the copy from his mother and
24 the copy from his father was a fifteen and we just
25 indicate it once.

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1 The collection of DNA types going from left to
2 right across from Mr. Drayton, that overall collection is
3 his profile. I can then compare that profile to say the
4 profile from marker one, which you will find farther down
5 on the table under item eleven, SLED item eleven, marker
6 one.

7 Now that I have profiles from both the evidence
8 and Mr. Drayton, I can compare the two. So in that first
9 column, D8, you see that Mr. Drayton again is a fifteen.
10 If you go down to marker one, the box one over under D8 is
11 also a fifteen. It's possible that Mr. Drayton
12 contributed that fifteen, as they are consistent.

13 If you go across the table to the right, the
14 next box would be D21S11, or what we call location D21.
15 Mr. Drayton is a 29,30. If you look under D21 for marker
16 one, you also see a 29,30.

17 I would do that comparison all the way across
18 this table at all fifteen locations. If I see perfect
19 consistency at all of those locations with those types, I
20 would consider that to be a DNA match.

21 Q. Now, when you get the statistics, where do you
22 get the statistic from? How do you figure out the
23 statistic that matches the DNA?

24 A. To generate the statistic I would enter the DNA
25 profile, developed from the particular item of evidence,

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1 into a population database. This database is maintained
2 by the federal government. It consists of population
3 information of four different races: African American,
4 Caucasian, Southeastern Hispanic, and Southwestern
5 Hispanic. It uses the DNA profile that I enter in those
6 databases to determine how rare or how common a particular
7 profile is in those different genetic databases. So
8 that's where we would come up with the one in 1.95
9 billion. It generates different numbers for each of the
10 races, as there will be some slight differences, and we
11 report out what we consider to be the most conservative,
12 meaning the smallest number.

13 And, again, it's just an estimate of how common
14 or rare that particular profile is in the general
15 population.

16 Q. And how does that figure relate to the
17 population of the world, for example?

18 A. 1.9 quadrillion would be significantly larger
19 than the current population of the earth.

20 MS. SHEALY: I have no further questions.
21 Please answer any that the defense may have.

22 THE WITNESS: Yes, ma'am.

23 MR. PENNINGTON: If Your Honor please?

24 THE COURT: Yes, sir.

25 - - -

CROSS-EXAMINATION

BY MR. PENNINGTON:

Q. Agent Leisy, in terms of the ability of DNA typing to do comparisons with unknowns, it's fair to say, is it not, that what you're looking for is consistencies between the unknown sample and what is the known sample that you're comparing it to?

A. That's correct.

Q. And it's not that you ever arrive at a point where you can say with biological certainty that the DNA came from that person, what you're saying instead is that it's consistent with that person?

A. Well, when I have consistency between the profile of a known individual and an item of evidence, the strongest statement that I can make when I have a match is that within a reasonable degree of scientific certainty, it's my opinion that this individual is the contributor of the DNA obtained from that item of evidence.

Q. And you're basing that on the high number, the high -- the high statistics?

A. Based on the fact that at fifteen locations I have a match and the -- basically how large that number is. Correct.

Q. Okay. But there's not been a way to -- what you're doing is you're doing a statistical analysis and

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1 with those fifteen sites you begin to do the math of how
2 likely is it to have that same similarity; correct?

3 A. That's correct.

4 Q. Okay. Now, in some of these findings you've
5 described, I think that there were -- on four different
6 locations that were submitted to you, you found what you
7 found to be mixtures of DNA; correct?

8 A. That's correct.

9 Q. And so on the steering wheel, item 15, on the
10 driver's side door panel, item 12, on the victim's right
11 shoe and on the CVS bag, each of those you found that
12 there was a mixture of DNA? two people's DNA?

13 A. That's correct.

14 Q. Let's talk about that just a bit.

15 You've mentioned -- and the chart that the jury
16 has on the last page of this report has what are -- if you
17 look at Alexis Lukaitis' DNA profile, you'll see that
18 under marker D8 she is what you would call a 10,11; is
19 that correct?

20 A. Yes, sir.

21 Q. All right. And so what that is telling you is
22 is that at that low side on her DNA her father gave her
23 one of those what we call alleles or one of those
24 combinations and it was in the range of ten, and her
25 mother gave her the eleven, or vice versa. It would have

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1 been either parent. One gave one, one gave the other, at
2 those various links; is that correct?

3 A. Yes, sir.

4 Q. Approximately?

5 A. Yes, sir.

6 Q. All right. Well, let's jot this down.

7 All right. So if we're going to talk about
8 Ms. Lukaitis, for D8, which is on your chart, we've been
9 able to establish -- or you were able to establish that
10 she is what we would call a 10,11, in terms of the two
11 alleles she got from her parents?

12 A. Yes, sir.

13 Q. Okay. And then you were able to determine that
14 Mr. Drayton is a 15; is that correct?

15 A. Yes, it is.

16 Q. Now, that term 15 -- there's only one number
17 there because he's what we call homozygous?

18 A. That's correct.

19 Q. And that means that essentially he got an
20 identical strand or a different -- identical allele from
21 both parents?

22 A. Correct.

23 Both would have contributed a 15 to this
24 profile.

25 Q. Okay. It's 15 -- one 15 is sort of shorthand

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1 for 15,15, I suppose?

2 A. That's correct.

3 Q. Okay. Now, the unknown samples that you got,
4 the four samples that I mentioned that were mixed, each of
5 them had this characteristic, didn't they? They were 10,
6 11 and 15; correct?

7 A. Yes, that is correct.

8 Q. All right. And so you were able to say that, to
9 a degree, it could be consistent with a mixture of Alexis
10 Lukaitis' DNA with Darryl Drayton's DNA?

11 A. That's correct.

12 And with some of the mixtures there is a major
13 contributor, which allows me to make a more direct
14 comparison between those individuals and the major to that
15 mixture.

16 Q. Now, one of the great powers of DNA is also that
17 it has the ability to affirmatively exclude someone if one
18 of those sites is different. Am I right?

19 A. Not necessarily just at one site but in the
20 overall profile if there's not consistency, if the DNA
21 types found from that known individual's profile do not
22 occur in the mixture or from an item of evidence you can't
23 exclude, correct.

24 Q. All right. Now, if the contributor of this DNA
25 in this case was a 10,15, you would get that same result,

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1 would you not?

2 A. When you compared an individual with a 10,15 to
3 this particular location, they would not be excluded at
4 that location as a possible contributor.

5 Q. Okay. And if you knew that the contributor was
6 a 10,15 in my hypothetical that I'm giving you, then you
7 would get exactly that same result that you see there,
8 which is a mixed sample of 10 and 11 from Ms. Lukaitis and
9 15 from the contributor?

10 A. That would be possible, yes.

11 Q. Okay. And that would be -- that means that,
12 looking at that same result, it's consistent with it being
13 Mr. Drayton but it's also consistent with anyone who has
14 that DNA profile 10,15?

15 A. Anyone who had the 10,15 at that particular
16 locus would not be excluded as a possible contributor.
17 But, again, we have to consider the overall profile
18 because we include or exclude someone.

19 Q. Well, you could go through the same analysis
20 with all of the sites where you're dealing with a
21 homozygous situation; isn't that correct?

22 A. Well, really, with any combination of types, if
23 an individual has any of the types in that mixture at that
24 particular locus, they would not be excluded as a possible
25 contributor be they homozygous or heterozygous where they

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1 have two different types of locus.

2 Q. All right. So what we're saying here is is
3 that a different person with a different D8, clearly not
4 Mr. Drayton, could have all the same characteristics as
5 Mr. Drayton but the same D8 and you would get this result?

6 A. Based on this particular location, if someone
7 else had any combination of 10, 11 or 15, they would not
8 be excluded at that location as a possible contributor.

9 Q. Okay. Now, let's turn to -- you cannot say from
10 your vantage point, doing the research and the work that
11 you did on this case, when the DNA got to the location
12 that it was collected? You can't say when it was
13 deposited?

14 A. No, I cannot.

15 Q. And on the left fingernail of Ms. Lukaitis, item
16 5, that's one of the mixed samples?

17 A. That's correct.

18 Q. Okay. And that's clearly her blood?

19 A. It's not necessarily her blood.

20 I did perform preliminary testing on that item.
21 There was the possible presence of blood indicated. But
22 if the sample was taken directly from her body and as
23 scrapings taken from her fingernails, it could actually
24 just be her skin cells present on the sample and another
25 contributor of blood.

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1 Q. Okay. So what you find is an identifiable
2 amount of DNA that's consistent with Ms. Lukaitis?

3 A. That's correct.

4 She would be considered the major contributor to
5 that mixture, and it does match her profile.

6 Q. And then you find another contributor -- we're
7 now looking at what is --

8 MR. PENNINGTON: Get my chart.

9 Q. [Mr. Pennington] We're looking at the report
10 from October where it has left-hand fingernails that's
11 item 5. Do you see where I'm looking on the chart?

12 A. Yes, sir.

13 Q. And what you were able to determine is is
14 that it's clear that that is at least consistent with
15 Ms. Lukaitis?

16 A. Correct. The 10 and 11 that are the major types
17 at that location are consistent with Ms. Lukaitis.

18 Q. And you found more DNA, but it was insufficient
19 for reliable interpretation?

20 A. Correct.

21 Q. However, if you look at the far right-hand
22 corner, right-hand column, you'll see X's and Y's; is that
23 correct?

24 A. Yes, sir.

25 Q. This is the sex component or the gender

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1 component of DNA, is it not?

2 A. It is.

3 Q. And so for those of us like me, the males, you
4 would expect to see an X and a Y chromosome?

5 A. That's correct.

6 Q. And in this instance, all you see is an X
7 chromosome; is that correct?

8 A. Yes, sir.

9 Q. That would not be consistent with a male?

10 A. It would not.

11 The problem with this particular item is that
12 the minor contributor is very weak and when you have such
13 a low level of contribution, it's possible for certain
14 types to drop out. It's possible that there is a Y
15 present, it's just not strong enough to be detected.

16 All I can say in this particular case is that
17 there's not a detectable Y indicating male in this item.
18 It doesn't definitively prove that it's not a male
19 contributor.

20 Q. What further follow-up test did you use to
21 determine if there was this allelic drop-out, that you
22 just referred to, where the Y dropped out?

23 A. There was no further testing done on this
24 particular item.

25 I did what I could with the system that we used

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1 to test for the fifteen particular locations and it just
2 happened that that contributor was very weak and we do
3 have drop-out throughout the profile.

4 Q. But based on the best evidence that we have,
5 your own data came up with only the X chromosome for a
6 female?

7 A. That's correct.

8 I have no real indication of male in that
9 particular item.

10 Q. And then turning to item three, the cigarette
11 butt from Old Jacksonboro Road, that was determined as
12 being an unidentified male subject?

13 A. That's correct.

14 That particular profile did not match any of the
15 individuals that I had known standards for.

16 Q. Including Darryl Drayton?

17 A. That's correct.

18 MR. PENNINGTON: The Court's indulgence just a
19 moment.

20 [Whereupon, Mr. Pennington and Mr. Cooper
21 confer]

22 Q. [Mr. Pennington] Agent Leisy, can you show us
23 where you have compared the DNA from Steven Edwards?

24 A. No standard for a Steven Edwards was submitted
25 in this case.

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1 MR. PENNINGTON: Thank you.

2 THE COURT: Any redirect?

3 MS. SHEALY: Just briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. SHEALY:

6 Q. Regarding all the mixtures that you testified
7 to, you had Alexis and Drayton as being likely
8 contributors, except for the CVS bag; is that correct?

9 A. Correct. As possible contributors, yes.

10 Q. Okay. And when it came to the CVS bag, is it
11 possible that a clerk at a store could have deposited DNA
12 on a bag when handing it to a customer?

13 A. It is.

14 It's possible that there would have been enough
15 transfer of skin cells, or even bodily fluids, that anyone
16 who came in contact with the bag could have contributed.

17 Q. Describe to the jury just briefly the ways in
18 which DNA can be left on items.

19 A. The most obvious form of transfer is through the
20 transfer of bodily fluids.

21 If you leave your blood, saliva, semen,
22 typically you're going to leave large amounts of DNA on
23 whatever item you've left the bodily fluid.

24 It's also possible to have what we call transfer
25 of touch DNA. And that's just like it sounds. To touch

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1 any object, there will be some level of transfer of skin
2 cells to that object and it may be possible that you've
3 left enough cells on an inanimate object that your DNA
4 profile will be developed just simply from being in
5 physical contact with it.

6 Q. And regarding the fingernail clippings, what are
7 the variety of ways that DNA from another person can be
8 left in someone's fingernail clippings?

9 A. Oftentimes we see fingernail clippings collected
10 when we've had a physical alteration. But it can really
11 be a very limited contact.

12 I believe there have been studies that show that
13 very large percentages of the general population would
14 have someone else's DNA under their fingernails if you
15 randomly tested them, be it their spouse, their child,
16 someone they've shaken hands with during the day.

17 It can be very casual contact that causes skin
18 cells or blood to be transferred to underneath someone
19 else's fingernails.

20 MS. SHEALY: Thank you very much. I have no
21 further questions.

22 THE COURT: Any recross?

23 MR. PENNINGTON: Just a moment, Your Honor,
24 please.

25 [Whereupon, Mr. Pennington and Mr. Cooper

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1 confer]

2 RECROSS-EXAMINATION

3 BY MR. PENNINGTON:

4 Q. Alexis Lukaitis -- when you're looking at cases
5 where there's been an allegation fo clawing or scratching,
6 that can be a reason to look under people's fingernails
7 for DNA, can't it?

8 A. Yes, it can.

9 Q. You've had cases where you've been able to
10 identify suspect DNA from a decedent's fingernails,
11 haven't you?

12 A. That's correct.

13 MR. PENNINGTON: Thank you.

14 THE COURT: You may step down. Thank you very
15 much.

16 THE WITNESS: Thank you, sir.

17 THE COURT: You may be excused.

18 THE WITNESS: Thank you.

19 [Whereupon, Ms. Leisy is excused and exits the
20 witness stand]

21 MR. FINCH: The State calls Ken Aycock.

22 [Whereupon, Mr. Aycock comes forward]

23 [Whereupon, Mr. Aycock is duly sworn by the
24 clerk of court as follows: do you swear or affirm
25 your testimony will be the whole truth and nothing but

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1 the truth, so help you God]

2 THE WITNESS: I do.

3 THE CLERK OF COURT: State your full name and
4 spell your last name.

5 THE WITNESS: Kenneth Ray Aycock, Jr. Last name
6 is spelled A-Y-C-O-C-K.

7 MR. FINCH: Your Honor, may I start with two
8 stipulations?

9 THE COURT: Yes, sir.

10 MR. FINCH: Attorneys for the State and the
11 defense agree to stipulate to the following: that
12 Defendant Darryl Drayton's phone number was 843-368-
13 9422, during August 2010.

14 Attorneys for the State and defense agree to
15 stipulate to the following: phone records were sought
16 from the victim and the defendant in this case for
17 analysis of phone usage and cell-tower information.
18 The records were received from Verizon Wireless
19 corresponding to the telephone numbers of the victim
20 and the defendant in this case. The phone records
21 include incoming and outgoing calls, text messages,
22 tower position, and other related data. The records
23 are kept in the ordinary course of business. The
24 records custodian provided the phone records provided
25 by Verizon Wireless, of Alexis Lukaitis's phone, 843-

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1 368-6029 and Defendant Darryl Drayton's phone, 843-
2 368-9422, certified that they are true and accurate.
3 Both the State and the defense agree that the records
4 are true and accurate from the dates August 6, 2010,
5 to August 10th, 2010.

6 And offer this --

7 THE COURT: Mr. Pennington, by agreeing to that
8 stipulation, in no way does that waive your previous
9 objections to the phone records; is that correct?

10 MR. PENNINGTON: Yes, sir, that is correct.
11 Thank you, Your Honor.

12 We do renew our earlier objections, and that
13 stipulation is based on the notion that -- in respect
14 to Your Honor's earlier ruling. We would then just
15 preserve our objection and agree to that stipulation.

16 THE COURT: All right. Thank you very much.

17 MR. PENNINGTON: Thank you very much, Your
18 Honor.

19 THE COURT: Thank you. Please proceed.

20 MR. FINCH: Offer these into evidence, Your
21 Honor.

22 Your Honor, at this time the State would like to
23 offer into evidence State's 226, 227, 228, 229, 230,
24 231, 232, 233, 236, and 237, all without objection.

25 THE COURT: Is that correct?

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1 MR. PENNINGTON: Yes, sir, that is correct.

2 THE COURT: All right. Admitted without
3 objection.

4 [Whereupon, State's Exhibit Numbers 226, 227,
5 228, 229, 230, 231, 232, 233 are admitted into
6 evidence by the Court]

7 [Whereupon, State's Exhibit Numbers 236 and 237
8 are admitted into evidence by the Court]

9 MR. FINCH: Thank you, Your Honor.
10 Good afternoon, Mr. Aycok.

11 THE WITNESS: Good afternoon.

12 - - - - -

13 KENNETH R. AYCOCK, JR.,

14 Having Been First Duly Sworn,

15 was Examined and Testified as Follows:

16 DIRECT EXAMINATION

17 BY MR. FINCH:

18 Q. If you would tell the Court where it is that
19 you're employed.

20 A. I actually work for the army national guard
21 counter-drug task force and I'm assigned to the FBI safe
22 streets task force in Columbia, South Carolina.

23 Q. And in that capacity with the national guard
24 assigned to the FBI, what is it you do?

25 A. My actual title is I'm a criminal intelligence

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1 analyst and in that --

2 Do you want to go into what I actually do?

3 Q. Please.

4 A. Primarily what I do is cell phone analysis and
5 cell phone tracking for the FBI. I've been doing that for
6 about ten years now.

7 And part of what I do is -- and cases that I
8 work are drug related cases. I get individuals' phone
9 numbers and exploit those phone numbers to find out who
10 they're calling, when they're calling them, who they call
11 most or least, where they were when they made a phone
12 call, that type of information. And, also, I do in-depth
13 background checks to attempt to identify people.

14 MR. PENNINGTON: If Your Honor please, may I
15 interrupt us to, again, for purposes of the record,
16 renew the objections that I made earlier, just for the
17 record.

18 I realize the Court has ruled but I just want
19 to, as we get into the meat of this, restate that
20 objection.

21 THE COURT: Okay. As I've ruled earlier, your
22 motion to suppress is overruled.

23 MR. PENNINGTON: Okay. Thank you.

24 Q. [Mr. Finch] Mr. Aycock, as part of this
25 investigation, were you provided with some cellular phone

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1 records?

2 A. Yes, I was.

3 The records were provided to me through e-mail
4 from -- well, through your office, from Verizon, to
5 myself.

6 Q. And whenever you get -- in your capacity with --
7 on a special assignment to the FBI, et cetera, whenever
8 you get phone records, what are some of the analyses that
9 you go through when you get those to get the information
10 out of them?

11 A. Well, the first thing we do is identify who owns
12 that phone, what the subscriber is for that phone. And in
13 some cases, it might have someone else's name on there
14 because you can -- you know, I can go get my wife a phone
15 in my name or there might be a prepaid phone where it has
16 nobody's name in it. So we try to identify who that phone
17 belongs to. And then the phone records are going to
18 identify -- it's going to give you a date and time of the
19 call.

20 And the reason -- like when you get your phone
21 bill, they're billing you for usage. Okay? So the reason
22 they keep track of your phone calls is for billing. But
23 it will have the date and time of a call. It will tell
24 how long the call took place, whether it was an ingoing
25 phone call, outgoing phone call, the duration of the phone

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1 call, how long were you talking on the phone.

2 It will also give cell-tower data which will say
3 where were you when that phone -- that call started and
4 where were you when the phone -- when you finished your
5 phone call.

6 MR. FINCH: May I approach the witness?

7 THE COURT: Yes, sir.

8 MR. FINCH: Thank you.

9 Q. [Mr. Finch] Show you what's been marked and
10 admitted as State's Numbers 236 and 237. Can you identify
11 those items?

12 A. Yes, sir.

13 These are the phone records for -- one mobile
14 number is 843-368-6029, which I believe was identified as
15 the victim's number and the other is 843-368-9422, which
16 was identified as the defendant's number.

17 MR. FINCH: And do those spreadsheets have the
18 information you just discussed? Incoming and
19 outcoming?

20 A. Yes, sir.

21 And, again, they do come as an Excel spreadsheet
22 when they were -- when they are sent to a phone -- from
23 the phone company and the spreadsheets. I actually have a
24 database that I put this into, called Pin Link, which will
25 allow further analysis.

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1 But these spreadsheets give all the information.
2 It tells you what network. So all the commercials that
3 you see on TV, you know, you're a part of this network,
4 well, there's a network that your phone call has to go
5 through.

6 And like these show the Columbia network. It's
7 a rather -- it's a real large area. And then it shows the
8 mobile number, which is who -- the number who -- like if
9 it was your phone, it would show your phone number for
10 that mobile number. Dial digits numbers, the call
11 direction, whether it was an ingoing phone call, outgoing
12 call, whether it was voice mail. And sometimes there's
13 numbers and letters that will tell you what type of call
14 that was. There's the date and time of the call. It's
15 going to be -- they're going to have the duration. The
16 duration is in seconds.

17 And then it'll have the first serving cell site
18 and face and the last serving cell site and face. So when
19 you make a phone call -- when it talks about faces, of
20 course --

21 If I can go into the towers and how they work?

22 Q. Certainly. Of course.

23 A. The reason they call a cell phone cell phones is
24 because they break -- you know, a phone is like a radio
25 and it won't work -- you can't call long distances on it

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1 unless there's cell sites.

2 And if you've seen the towers with the big
3 mass -- you know, bit hunks of metal on top of them, those
4 are cell towers. And those cover 360 degrees. There's
5 three sides to those cell sites and each side of it covers
6 120 degrees.

7 So if you're traveling down the interstate and
8 you start making a phone call, it'll tell you you started
9 making this phone call on this side of the tower. And as
10 you move, it'll tell you that you're picking up a call on
11 this next tower on this side as you travel. So that's
12 what the first serving cell site and cell face would tell
13 you. It gives you that information.

14 Q. And then do you have the coordinates, then, for
15 those cell sites?

16 A. The coordinates are not located on your call
17 records.

18 What I have to do is the Verizon -- I have a
19 database at the FBI that I can go to for any phone
20 company, Alltel, T-Mobile, Verizon, it doesn't matter. I
21 can pull all the cell-tower data off of this database.

22 So for instance the -- it gives me a code. One
23 of the codes is seventy-four. So I look through a
24 spreadsheet of thousands of cell towers and look for the
25 number seventy-four and that number would tell me the

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1 physical location of that tower, latitude and longitude,
2 and it will also give you a street address. I like to use
3 the latitude and longitude because it places you right
4 there where that tower is.

5 And then it's also going to tell you if there's
6 three faces to it, one, two, or three, what side of the
7 tower was it on. And if you look at a compass, the tower
8 -- you know you have 360 degrees in a circle. And it
9 might tell me that face one, the center of that face, is
10 at thirty degrees, for instance. So sixty degrees to the
11 left and sixty degrees to the right is where -- an area
12 that you could have been in when you made that phone call.

13 So that's the information that you look for.

14 Q. Let me show you now what's been marked and
15 admitted as State's Numbers 227 through 233. And take a
16 look at those and identify those documents.

17 A. Yes, sir.

18 These are maps that I made, based on the data
19 that was provided to me through the call records and the
20 cell-tower data.

21 And I used the software called Microsoft Map
22 Point to create these maps.

23 Q. And so you created maps, using the tower
24 information to place those on on a geographical map, to
25 show where the towers are?

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1 A. Yes, sir.

2 Q. Okay. And we start with just State's Number
3 228. If you look at the screen behind you, if you can
4 tell us what we're seeing in this.

5 A. Okay. That came from the phone number 843-368-
6 6029, which was identified as Alexis Lukaitis.

7 And these show cell towers, those -- those are
8 actually in the Bluffton area. Those are the cell sites
9 491 and 494 located in the Bluffton area. And it shows
10 the calls that were made on August 8th of 2010.

11 Q. Up to a certain point in time?

12 A. Yes, sir.

13 Q. That's not all of them.

14 Okay. And as you are making these maps, did our
15 office provide you with some other information to include
16 in the maps?

17 A. Yes.

18 You provided the location that the victim's body
19 was located.

20 Q. And but the rest of the maps you generated how?

21 A. Again -- and the mapping software that I use,
22 I'm able -- I made a spreadsheet with the tower name and
23 the latitude and longitude of each tower. And the
24 software does all the work for me. I did an import of the
25 data into the map and it automatically plots the locations

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1 on the map where the tower is located.

2 And then from there, I have -- like if you look
3 at the -- the center of it are little tower icons. Then I
4 look at that and I use a -- basically use a protractor to
5 draw out the isthmus of what side of the tower was used
6 when the phone call was made.

7 Q. So for clarity, then: a phone call would be
8 made -- could be anywhere inside that isthmus, then --

9 A. Yes, sir. And --

10 Q. -- 120 degrees?

11 A. The green-shaded area --

12 THE WITNESS: If I may?

13 A. The green-shaded area is the side of the tower.
14 So for instance if a phone call was made off of tower 494,
15 sector one, then I would cross-reference that with the
16 data for the cell phone towers, which would tell me that
17 that sector one -- and the center of that sector one is --
18 just, you know, looking at it is probably around 120
19 degrees. So I would go sixty degrees in either direction
20 to tell me what side of that tower the phone call was made
21 of -- made from.

22 Q. [Mr. Finch] It'll tell you in that general area
23 that's where that phone was used at that time?

24 A. Yes, sir.

25 And those circles go out to three miles. The

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1 general area that a cell tower will cover will be three
2 miles. So all those circles go out to three miles.

3 And, again, the way a phone works is my phone is
4 looking for the strongest signal to work off of so it's
5 going to -- it's going to -- it's talking to a tower
6 trying to find out what the strongest signal is, you know,
7 for you to communicate off of.

8 Q. And for you to get information about where a
9 cell is being used, it has to be used; correctly -- right?

10 A. Yes.

11 Q. So that would be a call, generally?

12 A. Yes.

13 Your phone is always talking to a tower because,
14 you know, you're getting -- if you -- all the phones, the
15 smart phones with text messages, e-mails, all that stuff,
16 it's always talking to a tower. But the phone company
17 does not record any of your information until you make a
18 phone call because, again, it's for billing purposes. So
19 even though your phone is talking to it, unless you're
20 actually making a phone call it's not going to record the
21 information.

22 Q. Okay. And using this as the start of the day,
23 at least as far as Alexis Lukaitis's phone, can you walk
24 us through the usage that's reflected in this map here?

25 A. Yes, sir.

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1 And when I looked at it, I could tell all the
2 towers that she hit up until -- let me go to August the
3 8th here. So that phone started off on August the 8th in
4 the Bluffton area.

5 And actually, if you have another -- is there
6 another map, you should have, that shows her -- it goes
7 from where the phone -- it starts off in Bluffton, hitting
8 towers in Bluffton, to where the phone was hitting towers
9 in the Charleston area. So this is --

10 Q. Let me interrupt just briefly. This is State's
11 227 you're looking at now.

12 A. Okay. So if you look to the left there, there
13 is where the body was found, the victim's body, if you can
14 see it on the screen there.

15 Q. If you could indicate that with a pointer.

16 A. Yes, sir. Right there.

17 And that information was provided to me by your
18 office.

19 Q. And then you -- did you add that information in
20 the white box?

21 A. Yes.

22 Q. And what is that?

23 A. Okay. So this says calls made by Alexis
24 Lukaitis' phone, 843-368-6029, on August 8, 2010. Used
25 cell site 310 from 8:19 p.m. to 9:49 p.m. All remaining

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1 calls after 9:49 p.m. are unanswered calls or voice mail
2 and do not contain cell-site data.

3 So basically what that says is she goes from
4 being in Bluffton to being in the Ravenel area, hitting
5 off that tower, when she makes her phone calls. The
6 green-shaded area were the areas that her calls were made
7 from when she made those calls.

8 And I was able to determine that -- like the
9 codes on the list here show me that like "F", for
10 instance, is a voice mail. So those were all voice mail
11 calls. There's a *86 where she checked her voice mail on
12 here. And all of these calls were made using that cell
13 tower 310 and using those sides of the cell tower.

14 Q. Okay. So on this map you have a call at 8:19 is
15 received, then answered. And that's what creates the
16 information for the tower to receive for the billing --

17 A. Correct.

18 Q. -- to be recorded?

19 A. For instance, at 8:10 p.m. on August 8th, there
20 was an eighty-six second phone call -- so a minute and
21 twenty-six second phone call -- using cell tower 310. And
22 the one side is -- the dark-green area was the side of the
23 tower that phone call was made from.

24 Q. Okay. And then at 9:49 p.m. there's another
25 call. And that one had to be answered in order for it to

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1 register; is that correct?

2 A. The one at 9:49 p.m. is a -- actually, an
3 unanswered call that goes to voice mail. But it does
4 record the cell-site data.

5 Q. Okay. And, now, and that's -- is there anymore
6 other information -- well, all the other calls go
7 unanswered --

8 A. Correct.

9 Q. -- is that correct?

10 A. After 9:49 p.m., all -- everything after 9:49
11 p.m. does not have any cell-site data that would tell --
12 it was basically unanswered calls that went straight to
13 voice mail.

14 Q. And those won't give us tower information?

15 A. No.

16 Q. And those are just on the billing, it would
17 show, just on the spreadsheet you received, that somebody
18 tried to call somebody?

19 A. Yes.

20 Q. Let's switch now to the maps you made using the
21 information from Mr. Drayton's phone. And, again, let's
22 start chronologically. This is State's 229. Can you tell
23 us what we see in this map?

24 A. Just a moment, please.

25 [Whereupon, the witness reviews documents]

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1 A. Okay. Again, these are calls made on August 8th
2 from 9:08 a.m. to 6:36 p.m. And every call made during
3 that time period used the towers in the Bluffton area,
4 used these three towers, which are 74, 85 and 161.

5 Q. [Mr. Finch] Okay. And then as we get to later
6 in the day. This is State's Number 230. If you could
7 tell us what we see here.

8 A. Okay. As I described earlier, when you start
9 making a phone call, as you move you're picking up
10 different towers.

11 So I live in Columbia. So if I start driving
12 home to Columbia today and I call my wife and say, hey,
13 I'm on the way home, and she decides, hey, I'm going to
14 talk for fifteen or twenty minutes, well, the tower that
15 I've started the phone call on in Charleston is going to
16 be different. And it will start picking up towers as I'm
17 moving. So if I get up to Summerville or Orangeburg, I'll
18 -- and I make several different phone calls, then I would
19 be able to track -- I travel up I-26 to get to Columbia.
20 Okay?

21 So as I started going through these phone
22 records, I was able to map these towers. And the towers
23 show that -- probably the way that he traveled, because
24 the last phone call that he made, or that was made in the
25 Bluffton area --

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1 MR. PENNINGTON: Objection, Your Honor, to the
2 statement that "he made" rather than the phone.

3 There's no foundation that it was Mr. Drayton,
4 whether they were mapping his phone, Your Honor.

5 THE COURT: All right. Just disregard the
6 statement he made.

7 Limit the testimony to the particular phone.
8 You can refer to it as the defendant's phone or
9 Drayton --

10 THE WITNESS: Yes, sir.

11 THE COURT: -- phone, okay --

12 THE WITNESS: Yes, sir.

13 THE COURT: -- rather than he.

14 THE WITNESS: Yes, Your Honor.

15 A. When I look at the records -- it took about an
16 hour and a half for the number in question to go from
17 Bluffton to Charleston. And that's about how long it
18 takes to get from Bluffton to Charleston is an hour and a
19 half.

20 So looking at these phone calls, it would -- he
21 hit -- the number hit Highway 17 and all the way up into
22 Charleston. So that's what that map depicts is the towers
23 that were hit by that number.

24 Q. [Mr. Finch] Moving on, again, chronologically.
25 We now have State's 231. Can you tell us what we're

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1 seeing here?

2 A. Okay. What you're seeing there is the number --
3 or the phone in question entering the Ravenel area. And
4 every phone call, it shows the towers that are being hit
5 as it comes into the area at different times there.

6 Q. Okay. And what is the time range we're looking
7 at here?

8 A. Looking at 7:20 -- around seven o'clock, a
9 little after. Between 7:20 and 7:52 p.m. on August the
10 8th.

11 Q. And can you see what highway that -- those are
12 along to show travel? likely travel?

13 A. Likely travel: I believe that's Highway 17.

14 Q. Now show you State's 232. Could you tell us
15 what we're looking at here, please sir.

16 A. All right. Those are towers 310 and 4 -- it's
17 really hard to read -- 449, I believe. One is 31 and
18 one -- it's actually showing the phone calls as it comes
19 into the Bluffton -- or the Ravenel-Hollywood area.

20 Q. Okay. And on -- and as we look at the screen to
21 the far left, what else is noted in that picture?

22 A. The location that the victim's body was located.

23 Q. And if you could point that out with the pointer
24 for the jury, please.

25 A. Right here.

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1 Q. Again, that shows the tower usage by the
2 defendant's phone?

3 A. That's correct.

4 Q. And our final is Number 233. And tell us the
5 time range of the -- and the phone usage and any other
6 pertinent information.

7 A. It's August 8th at 9:03 p.m. And the towers
8 that are being used are 310, 410, 428, 344. And then from
9 9:40 until 11:38 p.m. on August the 8th, all those calls
10 are using tower 310.

11 Q. And can you just point out tower 310 for us,
12 please.

13 A. I believe it's over here in the far right of the
14 screen there.

15 Q. I'm moving it over. Is that the center we're
16 looking at there?

17 A. The far right. That one there. That's 310,
18 yes. And then you've got 410 and 344.

19 Q. And can you show us the location where the
20 victim's located?

21 A. Right here.

22 Q. If you could, Mr. Aycock, let's take another
23 look at State's 233. If you could just break down the
24 different towers and the different times for us. Here
25 again, which towers have been used and which, you know,

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1 sequence?

2 A. All right. At 9:03 --

3 THE WITNESS: Let me get -- look at the records
4 here.

5 [Whereupon, the witness reviews documents]

6 A. All right. At 9:03 p.m. on August the 8th,
7 2010, tower 310 is being used. So tower 310 is the far-
8 right corner over here.

9 Then at 9:13 p.m., tower 410 is used.

10 And 410 is right in the center there, right
11 above where the victim's body was located.

12 And then, let's see, 344 is used at 9:26 p.m.,
13 which is here.

14 And then every call after 9:26 p.m. goes back to
15 using the 310 over here.

16 Q. [Mr. Finch] And if you could help orient us.
17 Is that closer to Charleston or farther away from
18 Charleston?

19 A. That's closer to Charleston.

20 Q. And that -- tower 310, again, is used from what
21 time to what time? The last calls range from what time?

22 A. Let's see. At 9:40 p.m. until -- every call
23 made until 11:38 p.m.

24 And then if you look on August the 9th of 2010,
25 the phone shows back up in the Bluffton area.

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1 Q. At what time does it show up back in Bluffton?

2 A. 6:48 a.m.

3 So the last call in the Ravenel area is at 11:38
4 p.m. and the first call on the 9th is located in the
5 Bluffton area at 6:48 a.m.

6 [Whereupon, Mr. Finch and Ms. Shealy confer]

7 Q. [Mr. Finch] Can you tell what number called
8 Alexis Lukaitis' phone at 8:19 and at I believe it's 9:49?

9 A. At 8:19?

10 Q. Correct. On August 8th, 2010.

11 A. All right. August 8th, 2010, at 8:19 p.m.,
12 there was an incoming phone call from 843-368-6074. And
13 at the time that her phone would have received that call,
14 she was -- tower 31 was being used when that call was
15 being made.

16 Q. Okay. And is that the same number that calls at
17 9:49?

18 [Whereupon, the witness reviews documents]

19 A. Yes. And those are -- the calls made at 9:49
20 p.m. are incoming calls. So the call made at 8:19 is an
21 outgoing phone call and the call made at 9:49 p.m. is an
22 incoming phone call.

23 Q. [Mr. Finch] Are there a series of calls from
24 that number, incoming or inbound, to Alexis Lukaitis'
25 phone?

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1 A. Yes. Like over and over again.

2 At 8:20 -- let's see. Sorry. 8:58, 9:35, 9:36,
3 9:43, 9:48, 9:49, 9:50. And all those calls go to voice
4 mail.

5 Q. So turning back to Mr. Drayton's records, you
6 said that the last calls made in cell tower 310, 11:38,
7 and then the phone's next usage that's recorded is at 6:48
8 down in the Bluffton area?

9 A. That's correct.

10 Q. So there's a gap of seven hours or so?

11 A. Yes.

12 And I actually use that a lot in trying to
13 locate individuals to see where somebody might have spent
14 the night somewhere. So, I mean, that would tell me in
15 this -- 11:38 I was in Ravenel, an hour and a half away
16 from Bluffton, and the next morning at 6:48 I show up back
17 in the Bluffton area from Ravenel.

18 Q. And you also received text message information;
19 is that correct?

20 A. Yes, sir.

21 Q. And you've looked at text message from Ms.
22 Lukaitis's phone --

23 A. Uh-huh.

24 Q. -- correct?

25 A. Correct.

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1 Q. And Mr. Drayton's phone number?

2 A. Yes.

3 Q. If I could, let me show you what's been marked
4 and admitted as State's 226. Let me ask you about the
5 phone records, the tower records, specifically for the
6 next night, August 9th, 2010. Using Mr. Drayton's phone
7 information, were you able to plot a location for calls
8 made the evening of August 9th --

9 A. August 9th -- if I look at all of August 9th,
10 just being familiar with these numbers, all the calls made
11 on August 9th are in the Bluffton area. The majority of
12 those used tower 74 and go on until -- the only time --
13 like tower 499 and 494. All of these are in the Bluffton
14 area.

15 Q. Okay. I would like to turn your attention to --
16 and the text messages, how do those come in? What format
17 do those come in?

18 A. Those come in in a different type of document
19 that -- and, generally, cell phone companies either don't
20 keep text message -- the content of text messages and if
21 they do, they keep them for a very short period of time.

22 But when they provide them, and keep them, and
23 you can get them in time, you can get the information.
24 And it'll provide when the text was sent, who the text was
25 sent from, and who it went to, and the contents of that

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1 text message.

2 [Whereupon, Mr. Finch and Ms. Shealy confer]

3 Q. [Mr. Finch] Mr. Aycok, I'm going to show you
4 something. See if that would refresh your recollection
5 regarding August 9th, 2010.

6 A. Okay. On August 9th, the towers that are used
7 are in the Bluffton area. Again, they -- there's one that
8 is used that's in Hardeeville right off of Highway 17.
9 And this tower 461 is in the Hardeeville area.

10 Q. So the defendant's phone was -- recorded usage
11 in Hardeeville that evening?

12 A. Right.

13 And there's a call August 9th at 6:36 p.m., 6:40
14 p.m., 6:43. Pretty much all the calls made used that
15 tower in the Hardeeville area.

16 Q. Okay. And let me get back to the text messages.

17 The information, the data, that's provided by
18 Verizon in this case provides you with what information
19 regarding text messages?

20 A. Again, it's going -- it just -- it comes in a
21 different format than the phone records do. And because
22 text messages are like short blasts of information that go
23 out, they aren't reflected on the call records. And it's
24 going to give you a date and time that the text message
25 was sent. It's going to give you the who was the sender

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1 and who was the receiver of the text message. That's
2 pretty much it. There's more data in there --

3 Q. Will they give you the text, the actual
4 message --

5 A. Yes --

6 Q. -- sent?

7 A. -- it'll give you the content of the text
8 message, yes.

9 Q. And if I could turn your attention to August
10 10th, 2010, at 5:11 p.m., 5:11 and 25 seconds.

11 A. You're referring to August 10th, 2010, at 17:11,
12 which is 5:11 p.m.

13 Q. There's two -- the records reflect how many text
14 messages in that short time frame there?

15 A. There's one at 17:11:25, 5:11:25, and then
16 there's one at 5:11:26.

17 Q. And what's the content of those messages?

18 A. The one at 5:11:25 is -- the originator is 843-
19 368-9422, which is the defendant's phone, and it is sent
20 to 843-338-0397. It says, baby, do you have a credit or a
21 debit card to get me a room over the phone. I have eighty
22 bucks and I want to save that so I can get on the road in
23 the morning.

24 Q. And the next?

25 A. The next one is on August 10th at 5:11:26 and 26

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1 seconds. Come up there in the morning. I've got to get
2 away from here.

3 MR. FINCH: I have no further questions at this
4 time. Please answer any questions the defense may
5 have for you.

6 THE COURT: Cross-examination.

7 MR. PENNINGTON: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. PENNINGTON:

10 Q. Agent Aycock, I'm going to refer you to what has
11 been marked as State's Exhibit 232 again. You've already
12 dealt with this. This is the one that's entitled Verizon
13 records made by Drayton's phone, 843-368-9422, from 8:09
14 p.m. to 9:03 p.m. on August 8th, 2010. Do you have that?

15 A. What's the time again? 8:09 p.m.?

16 Q. This would be the 8:09 to 9:03 p.m.

17 A. Okay. Yes, sir.

18 Q. Do you have that chart? This is actually a
19 chart that you made up?

20 A. Right.

21 Q. Okay. And to orient the jury and orient you,
22 what you see right here is that this is the town of
23 Hollywood?

24 A. Uh-huh.

25 Q. And this highway right here is 162?

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1 A. Right.

2 Q. And then this highway right here is Highway 17,
3 as we know it, that's going from Charleston up here and
4 this would be going south to the Savannah direction?

5 A. Okay.

6 Q. Is that correct?

7 A. Yes, sir.

8 Q. That's the way you read it?

9 A. Uh-huh.

10 Q. And so what you see is this tower 310 is located
11 somewhere to the east of Hollywood and Ravenel; is that
12 correct?

13 A. That's correct.

14 Q. All right. And then there's this tower 449 and
15 it is on the other side of the water over on Johns Island;
16 is it not?

17 A. Yes.

18 Q. To get to that tower, you would have to go
19 back -- you would have to go up 17 to Main Road and then
20 cross over the island into Johns Island to reach that
21 tower. Am I right?

22 A. You are correct.

23 Q. Okay. What I'm going to turn your attention to
24 is that these green circles that we have, those are using
25 Map Point, Microsoft Map Point. That is a three-mile

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1 radius from those circles, is it not?

2 A. Yes.

3 Q. So if the tower is made --

4 MR. PENNINGTON: I'm going to use this thing
5 again.

6 Q. [Mr. Pennington] If the tower is right here,
7 and that's tower 31 --

8 A. Uh-huh.

9 Q. -- then this radius is three miles; correct?

10 A. Correct.

11 Q. And so the rule of thumb for cell phones is, of
12 course, that the -- it's roughly that they are -- they
13 serve that distance? the tower will serve that distance?

14 A. It can go farther, depending on how strong the
15 signal is on the tower.

16 Q. All right.

17 A. But it generally is.

18 Q. And if you're in a denser area, denser more
19 urban area, then you wouldn't expect that -- you would
20 expect it to jump towers quicker and so that the circle
21 would be smaller?

22 A. Yeah.

23 If you're in a large city like New York City or,
24 you know, a city with tall buildings, the signals get
25 blocked so you might have a tower every corner, you know,

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1 a city with buildings. If you get out into a rural area,
2 it's going to be more sparsely located.

3 Q. All right. Now, all the information you have is
4 relying on the records that you've received. You have to
5 rely on the data that's given to you by Verizon --

6 A. Yes.

7 Q. -- correct?

8 A. Uh-huh.

9 Q. So all the information is only as good as its
10 source, the Verizon company; right?

11 A. Right.

12 Q. Now, turn your attention to what is Mr.
13 Drayton's phone, the 9422 number, and specifically to
14 calls that are at 19:52 hours, which using non-military
15 time that would be 7:52 p.m.

16 A. Right.

17 Q. All right. Now, one of the other documents --
18 it hasn't been put into evidence. But you've, as you
19 said, mapped out where various towers are.

20 A. Right.

21 Q. And that particular 19:52 or 7:52 p.m, call from
22 Mr. Drayton's phone was at tower 89?

23 A. Yes.

24 Q. Okay. And is it fair to say that 89 is south on
25 17? Are you familiar with where 89 is?

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1 A. No, sir, I'm not, not without looking at --

2 Q. Would it refresh you to look at your map?

3 A. Yes, sir. Thank you.

4 [Whereupon, the witness reviews documents]

5 Q. [Mr. Pennington] You can hold onto that --

6 A. Yeah. It's on Highway 17 south of Ravenel, kind
7 of -- it's west of Ravenel.

8 Q. And the very next -- within five minutes of
9 that, to go from what is 7:52 p.m. to 19:57 p.m., which is
10 a five-minute span or what would be 7:57, five minutes
11 later, and the phone pings off of 428?

12 A. Yes, sir. Uh-huh.

13 Q. Now, where is tower 428?

14 A. All right. Now, tower 428 is in Folly Beach.

15 Q. In Folly Beach?

16 A. Uh-huh.

17 Q. More specifically, 510 East Erie Avenue on Folly
18 Beach?

19 A. I've got the latitude and longitude for it. I
20 don't have the street address for it:

21 Q. Did at one point you generate a document that
22 had the addresses of the towers?

23 A. I did.

24 Q. I'll refer this to you to refresh --

25 [Whereupon, the witness reviews documents]

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1 A. Okay. 510 East Erie Avenue.

2 Q. [Mr. Pennington] All right. So this would
3 suggest that you're not joking that four ninety -- 428 is
4 literally Folly Beach?

5 A. Yes.

6 Q. Okay. And then in that same call, it then says
7 that it begins at Folly Beach and it ends at 344, which is
8 in Ravenel?

9 A. Yes.

10 Q. How do we account for that anomaly?

11 A. Actually, sir, I've done some research on this.

12 Q. Okay.

13 A. That phone call is a routed phone call.

14 And if you look at the -- Verizon sends a
15 document that tells you how to interpret the records. So
16 if you look at that phone call at 19:57 where it shows
17 that the tower is in Folly Beach, the 428 and 344 --

18 Q. Right.

19 A. -- if you look at that phone call, the number
20 [REDACTED] is the defendant's number.

21 Q. Yes, sir.

22 A. The next number is [REDACTED].

23 Q. Right.

24 A. And then the number on the far right is [REDACTED]
[REDACTED].

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1 The document that Verizon provides tells me that
2 that is a routed number. And then if you look at it
3 further, because it is a routed number, it is not an
4 actual call.

5 Q. You're saying that [REDACTED] is not a real
6 call?

7 A. That is a real call, but it goes through -- and
8 I don't know why. I can't tell you this. But it is
9 a routed number. So the 803 number -- and a routing
10 number --

11 The towers have thousands of numbers that don't
12 necessarily belong to a person. It's a routing number and
13 it will route your phone call through that number to call
14 someone else. So that doesn't necessarily mean that you
15 were at tower 428 or 344 when you made that call.

16 Q. So the information on here about the tower
17 location could be misleading in terms of where the actual
18 location of the cell phone is?

19 A. Yes. Because it was a routed phone call.

20 Q. All right. And so I understand your testimony,
21 you are saying that [REDACTED], which is the calling
22 number in that sequence, that is a real phone number?

23 A. I can't say that without a doubt, sir, no.

24 Q. Okay. But you can see that that number is
25 calling repeatedly over the course of that afternoon and

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1 early evening?

2 A. Yes.

3 Q. Okay. And then the same phenomenon I guess may
4 apply in the next where it goes from where -- in a matter
5 of nine minutes, from what was 7:57 p.m. to what would be
6 8:06. So from 7:57 to 8:06 is nine minutes. In a nine-
7 minute span it shows that he went from Ravenel to the
8 St. Andrews area, cell tower 325?

9 A. Right. Uh-huh.

10 Q. But then within three minutes, he's back at cell
11 tower 310, which we've seen from the chart is actually
12 near Hollywood?

13 A. Yes.

14 Q. So, again, this is a routing --

15 A. This -- and going by how Verizon explains it in
16 their details, that call at 8:06 is not a routed call.

17 Q. So that would suggest that he actually was in
18 what we would call the St. Andrews area, which is 1109
19 Savannah Highway?

20 A. Okay.

21 Q. Would you like to see the chart again?

22 A. Yes, please.

23 Q. Sorry.

24 [Whereupon, the witness reviews documents]

25 A. Talking about 325 now; correct?

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1 Q. [Mr. Pennington] Correct.

2 A. 1109 Savannah Highway?

3 Q. Yes, sir.

4 A. Uh-huh. In Charleston.

5 Q. All right. So that is not a routed call?

6 A. And I need to look --

7 Q. At 8:06 p.m.

8 A. No.

9 Q. And so that would suggest that at least in
10 that -- at that time period, the phone call starts and
11 ends at a tower that's within three miles of 1109 Savannah
12 Highway?

13 A. That's what that -- it would suggest that, yes.

14 Q. And to depict that, that would show him being
15 pretty much the West Ashley area close to downtown?

16 A. Yes.

17 Q. Is it fairly safe to say that at times that you
18 can exceed the three miles in terms of your cell phone's
19 ability to operate beyond three miles?

20 A. It's going to depend on your -- the battery
21 strength of your phone, it's going to depend on how strong
22 the signal is on the tower that you're using.

23 As you get to the outside strength of that tower
24 and get closer to a new one, it's going to start picking
25 up the new tower.

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1 Q. I turn your attention to what would be later the
2 same evening, August the 8th, Mr. Drayton's cell phone,
3 where it appears that at 8:27 p.m. he's at that 310 --
4 that tower 310 that we talked about in Ravenel.

5 A. Yes, sir.

6 Q. That's where the phone would be?

7 A. [No response]

8 Q. And then is it safe to say that five minutes
9 later, at 20:32, he's pinging off of what is the John's
10 Island tower that we talked about?

11 A. The tower 449?

12 Q. Yes, sir.

13 A. Yes.

14 Q. But then two minutes later it's reverted back to
15 tower 310?

16 A. Yes.

17 And that call at 8:32 is a routed call, also.

18 Q. So that would be sort of one of those times
19 where it could use a different tower?

20 A. It would route the call through a switch to that
21 tower. And I don't know why it does that.

22 MR. PENNINGTON: Okay. If I may just have the
23 Court's indulgence a moment, Your Honor.

24 [Whereupon, Mr. Pennington and Mr. Cooper
25 confer]

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1 MR. PENNINGTON: Thank you, Mr. Aycock. That's
2 all I have.

3 THE COURT: Redirect?

4 MR. FINCH: Briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. FINCH:

7 Q. Mr. Aycock, is it fair to say that these routed
8 calls happen more often in island or rural areas?

9 A. I don't know, sir.

10 Q. Okay. But in the number of phone calls that you
11 plotted using Mr. Drayton's phone number -- I'm sorry.
12 One, two, three, four, five --

13 Can you look at that? By my count, close to
14 twenty phone calls. There were a couple of occasions
15 intermittently there where there's routed calls, that seem
16 to be outside the normal sphere of the travel you plotted,
17 that Mr. Pennington pointed out?

18 A. Okay. Could you repeat the question, please?

19 Q. Among the twenty-odd phone calls that you
20 plotted out --

21 A. Uh-huh.

22 Q. -- and created that map for, there's just those
23 few random circumstances that Mr. Pennington pointed out
24 of routing calls?

25 MR. PENNINGTON: Objection to the leading.

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1 THE COURT: [No response]

2 A. Yeah. I don't see maybe two or three routed
3 phone calls where the calls were routed through a
4 different tower.

5 Q. [Mr. Finch] And, again, the phone is going to
6 pick up the strongest signal?

7 A. The way the phone works, it's going to pick up
8 the strongest signal.

9 It's also going to use every -- if the
10 frequencies are being used up on that tower, which will
11 never happen unless you're like at a USC football game
12 in Columbia, you would lose all those frequencies, it
13 would go to different tower. But in a rural area, you're
14 generally going to pick up the strongest signal with the
15 most frequency available.

16 Q. And if you're on the edge of that radius, you
17 might be going from tower to tower?

18 A. Yeah.

19 As you go out -- and your phone is always
20 looking. It's like a handoff, I'm handing off a call to
21 another tower, so as you get to the -- as the tower you're
22 talking on gets weaker, it's going to -- your phone is
23 going to start searching for the next tower, the next
24 strongest signal, as you travel.

25 MR. FINCH: Thank you. No further questions,

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1 Your Honor.

2 THE COURT: Any recross?

3 MR. PENNINGTON: No recross, Your Honor.

4 THE COURT: Okay. Mr. Aycock, thank you so very
5 much. You may be excused.

6 THE WITNESS: Thank you, Your Honor.

7 [Whereupon, Mr. Aycock is excused and exits the
8 witness stand]

9 THE COURT: Call your next witness.

10 MS. SHEALY: Erin Presnell.

11 [Whereupon, Dr. Presnell comes forward]

12 [Whereupon, Dr. Presnell is duly sworn by the
13 clerk of court as follows: do you swear or affirm
14 your testimony will be whole truth and nothing but the
15 truth, so help you God]

16 THE WITNESS: Yes, ma'am.

17 THE CLERK OF COURT: State your full name and
18 spell your last name.

19 THE WITNESS: [No response]

20 [Whereupon, Dr. Presnell takes the witness
21 stand]

22 MR. PENNINGTON: Mr. Pennington, do you agree
23 that Dr. Presnell is a certified, qualified
24 pathologist, forensic pathologist?

25 MR. PENNINGTON: I certainly do.

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1 THE COURT: All right. Solicitor, the Court so
2 finds.

3 But I don't -- go ahead and introduce her
4 qualifications to the jury. Okay?

5 MS. SHEALY: Thank you, Your Honor.

6 - - - - -

7 SUSAN E. PRESNELL, M.D.,
8 Having Been First Duly Sworn,
9 was Examined and Testified as Follows:

10 DIRECT EXAMINATION

11 BY MS. SHEALY:

12 Q. Dr. Presnell, if you would please tell the jury
13 where you're employed.

14 THE WITNESS: First, I'm Susan Erin Presnell.
15 P-R-E-S-N-E-L-L.

16 I'm sorry. I forgot to do that.

17 A. I'm a forensic pathologist. I work at MUSC, the
18 Medical University, right up the road here.

19 Q. [Ms. Shealy] And what do you do at the
20 University?

21 A. I'm a forensic pathologist and also a teacher.

22 Q. And how long have you been with the Medical
23 University?

24 A. Well, I actually went to MUSC in 1989 for
25 medical school and I stayed on ever since. I stayed

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1 through a pathology residency, which is where I trained in
2 pathology. I stayed there for my forensic pathology
3 subspecialty. And then I was hired on as faculty in 1999.

4 And so I've been doing -- I've been board
5 certified and working at MUSC as a forensic pathologist
6 since 1999. Thirteen years.

7 Q. And what -- your teaching: what do you teach?

8 A. I'm involved with directing the medical school
9 curriculum for the second year. So pathology.

10 Q. What is the other term? Pathology.

11 A. Pathology: you know, more people are getting
12 used to what pathologists -- or at least forensic
13 pathologists do.

14 Pathology itself is a broad field. It's a
15 general field that means the study of disease. So
16 actually, most pathologists are anatomic pathologists,
17 meaning that if you go to your doctor and they like say do
18 a skin biopsy or a breast biopsy or you go to surgery and
19 they take out a gallbladder, if any of that tissue is sent
20 to a pathologist they examine it, look under the
21 microscope, and diagnose a disease, like it's cancer or
22 it's not cancer, it's infection or not infection.

23 So I'm trained in general pathology. But then I
24 did the subspecialty training in forensics where we're not
25 just looking at a piece of tissue or a gallbladder or

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1 something taken out. We're looking at, of course, a whole
2 entire individual, after they've passed, through the
3 process of autopsy. So an external exam, an internal
4 exam. And we'll ultimately -- we're looking for diseases
5 but we're also looking for trauma, evaluating the trauma,
6 and ultimately coming up with a cause and manner of death,
7 which we put together in an autopsy report.

8 Q. Okay. And approximately how many autopsies have
9 you performed?

10 A. Over 2,000.

11 Q. Now, you told us the purpose of autopsies is to
12 look for disease and cause of death; is that correct?

13 A. Yes.

14 And to interpret your findings. I mean, you may
15 know -- you may recognize a certain type of injury, but
16 it's the interpretation of it.

17 Q. And you say that's both an external examination
18 and an internal examination?

19 A. Correct.

20 Q. Did you have the opportunity to perform the
21 autopsy on Alexis Lukaitis?

22 A. Yes. I performed the autopsy on August 10th,
23 2010.

24 Q. And what I would like for you to do is to come
25 forward.

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1 [Whereupon, the witness complies]

2 Q. [Ms. Shealy] And if you could describe your
3 findings to the jury. I'm going to have you diagram them
4 for us, if you would.

5 A. Okay. In any particular order or --

6 Q. I think what we'll do is we'll just start with
7 the body injuries and save the neck and the hands for
8 later.

9 A. Okay.

10 MS. SHEALY: And I've got different-colored
11 markers if you would like to do different type of
12 injury. You've got some, too?

13 THE WITNESS: Well, I've got these in my bag.

14 MS. SHEALY: Okay. So whichever ones work
15 better.

16 And let me pull this up a little closer. Is
17 that comfortable for you or do you want me --

18 [Off the record momentarily]

19 A. This right here is an example of a diagram that
20 I -- a blown-up diagram that I would use on autopsy to try
21 to document injuries.

22 Now, I am not an artist and so we'll -- I'll
23 kind of draw in a general description -- or vague figure
24 of what the injury looked like.

25 Q. [Ms. Shealy] Let's start with this. How tall

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1 is she? Do you have that with you? Sorry.

2 A. She is fifty-one inches, which is just under
3 five foot one inch, and 107 pounds.

4 Q. Go ahead.

5 A. Now, there's three types of injuries that I'm
6 going to draw right now. One is called an abrasion. And
7 think of an abrasion as a scrape, you would scrape off
8 some skin if you fall and scrape your knee. One is a
9 contusion or a bruise. So that's some type of blunt
10 trauma that struck the skin and caused bleeding
11 underneath. So there'll be a bruise. Actually, there's a
12 combination of an abraded contusion. So something struck
13 that's actually caused a bruise but kind of scraped the
14 skin, as well. And then a couple of punctures, which I'll
15 get to later.

16 All right. So first there's several abrasions
17 or scrapes across the face. We have one over the right-
18 cheek area, one over the right-temple area. And that's a
19 little bit contused, as well as a bruise. Three over the
20 forehead, two over the left-temple area, one over the
21 left-cheek area. There's actually also one right here
22 along the left-chin area. I just have a diagram on that.
23 And the left cheek is also vaguely bruised.

24 This bruise kind of vaguely -- and also
25 perforate, I didn't -- really haven't explained that:

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1 which is a laceration. A laceration is caused by blunt
2 trauma, again, but instead of just bleeding under the skin
3 it causes the skin to split so you have a laceration. She
4 has a laceration on the upper and lower left lip.

5 We can get into petechia later.

6 Q. That's fine.

7 A. Then we have -- now, something else: when we're
8 looking at the injuries, sometimes it's really difficult
9 to say, oh, yes, this is a cut or this is a scrape. But
10 sometimes think of it as a cutting instrument just kind of
11 scrapes the skin. And it's difficult to say whether
12 that's just truly caused by scraping against something or
13 if there was a sharp injury -- or sharp instrument
14 involved.

15 And so we have a little aggregate of either
16 abrasions, little scrapes, or little cuts, it's hard to
17 tell which one, right there on the right -- excuse me --
18 the left upper-chest area. We have another abrasion right
19 on the chest area here. We have an area of contusion or
20 bruising around the left upper-arm here. There's also
21 another little bruise on the right forearm. This is right
22 and here is left. Another area -- this is more of a
23 purplish coloration, which kind of looks like a bruise but
24 it may have just been focal coloration but that -- around
25 the wrist area.

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1 On the knees we have a contusion or bruise on
2 both the right and left knee. And, in fact, on the right
3 one, the contusion is abraded. So it's kind of like a
4 hitting with scraping and causing bleeding beneath the
5 skin.

6 THE WITNESS: Am I speaking loud enough?

7 THE COURT: Yes, ma'am.

8 MS. SHEALY: The court reporter is saying no.

9 THE COURT: You're saying no, Mia? Does she
10 need to speak up?

11 MS. SHEALY: Why don't you --

12 THE WITNESS: I'll speak louder.

13 THE COURT: Speak up, if you would, Doctor.

14 THE WITNESS: Yes, sir.

15 THE COURT: If I could hear you, I figured she
16 could.

17 A. Four contusions or bruises on the front of the
18 right-lower leg. And then an area of bruising and
19 abrasion on the left-lower leg.

20 All right. Now, I was going to show you three
21 other injuries which we refer to as really more like
22 punctures. So, again, some kind of pointed object,
23 whether it's the point of a knife, the point of a
24 screwdriver, of an icepick or any -- some kind of pointed
25 object that can puncture the skin.

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1 And so we have that right on the lower chest
2 area here -- red. The right-lower chest there. And,
3 actually, we have a little bit larger one here which
4 actually looks like a cut, an actual cut. So two
5 punctures and a cut. These are both -- all three of them
6 are very superficial. They just go through the skin and
7 into the underlying soft tissue. They don't actually go
8 into the body cavity.

9 Q. [Ms. Shealy] Okay. Now, did you want to
10 discuss the petechia on this diagram?

11 A. Let's do that at the end.

12 Q. Okay. You want to go to the hands?

13 A. All right. So we did the arms, but now we're
14 going to go specifically to the hands.

15 Again, this is the left side. This is left.
16 And right. On the left there's two injuries. There's a
17 cut that goes through the skin right there on the thumb,
18 the web of the thumb. And so it continues on this side.
19 So it's like a cut right through the web of the thumb.
20 This goes down to the bone. Sorry -- kind of in this
21 direction. There's an actual very superficial cut just
22 going through the outer layers of the skin right along the
23 palm. And it really -- it lines up pretty well like it
24 might just be a continuation of this injury here. That's
25 it for the left hand.

1 On the right hand there's -- on the outside
2 there's a small cut on the thumb area. There is a little
3 abrasion on the right index finger. And then on the what
4 we call palmar surface or palm side, we have multiple
5 incisions. An incision is being cut, a cut from something
6 sharp.

7 And so there's multiple cuts across her -- so
8 most cuts are on the palmar surface of the right hand.
9 The deepest of these cuts -- most of them are pretty
10 superficial, just going through the outer layers of skin.
11 But the deepest cuts are right there on what we call
12 the -- or what I would call the proximal interphalangeal
13 joint, but that's -- it's really a first knuckle on the
14 inside of the finger.

15 It does not mean to say that she -- that she
16 sustained different types at different times. This could
17 easily have been sustained at one or two times, perhaps
18 grabbing the knife. The location of these injuries -- and
19 it's based on location -- are characteristic of defense
20 injuries.

21 Q. What do you mean by defense injuries?

22 A. Meaning that if someone was assaulting a person,
23 that they put their hands up, their arms.

24 If it's a sharp instrument, they might try to
25 grab it to defend themselves and cause -- and because of

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1 that, the injuries are in those characteristic locations.

2 Q. Is that all --

3 A. Concentrate right on this one. These are her
4 fatal injuries. She has three incisions or cuts to her
5 neck. And I'm not drawing them in any particular order.
6 Like I can't tell which came first, second and third. But
7 we actually number them and so --

8 Now, something I did not mention yet is that she
9 had some postmortal dermal injuries to her that caused
10 some shrinking of skin in certain areas. And so these
11 types to her neck were -- appeared gaping. They were
12 opened up. But, anyway, this is kind of what they looked
13 like at the time of autopsy.

14 This incision right here -- and I drew little
15 lines from it. That just means that there were scrapes
16 going -- like there's a path and then they continued on in
17 little superficial extension. Like maybe a knife was
18 drawn across the skin -- either as it's going out or going
19 in.

20 This injury here just goes into the underlying
21 soft tissue and muscle about a .8 inch, not quite an inch.

22 This injury right here also -- this is the right
23 side of the neck -- also went -- entered into the tissue
24 .8 inch, about. But it went through the neck muscle and
25 also through the carotid artery, completely through the

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1 carotid artery.

2 This injury right here goes about .125 inch to
3 one-quarter inch. It's right here. It goes through the
4 skin, through the neck muscles here, the thyroid gland,
5 which is right here over the trachea, through the trachea,
6 through the esophagus, which is behind the trachea, and to
7 the backbone, in that area.

8 Q. I think the term that you used in your report --
9 what is transect?

10 A. Transection means that it's completely cut in
11 half. It's not just cut and open, but completely severed.

12 Q. What all was severed in that one? The trachea?

13 A. The trachea, the esophagus and the carotid
14 arteries were all severed.

15 Not with -- the carotid artery injury is
16 associated with this incision right here. The other ones
17 are associated with this incision.

18 Q. Okay. So with these three injuries, could you
19 describe for the jury which ones caused her death?

20 A. Well, the most fatal would be the carotid
21 arteries being transected.

22 Would she survive a total tracheal transection,
23 esophageal transection? I don't know. I don't know. It
24 just depends on what kind of medical attention she could
25 have got.

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1 But the carotid artery is -- was on the top of
2 the list.

3 Should I explain about the petechia?

4 Q. Yes. Do you need the diagram back?

5 A. No.

6 MS. SHEALY: Your Honor, at this time I
7 would like to move these into evidence as State's
8 Exhibits -- as Exhibits 238, 239 and 240.

9 MR. PENNINGTON: No objection.

10 THE COURT: Which is which?

11 MS. SHEALY: Okay. 238 will be the body
12 diagram.

13 THE COURT: Okay.

14 [Whereupon, Ms. Shealy reviews documents]

15 MS. SHEALY: 239 is the diagram of the hand.
16 And 240 is the diagram of the neck.

17 THE COURT: Okay. 238, 239, 240 admitted
18 without objection.

19 [Whereupon, State's Exhibit Numbers 238, 239 and
20 240 are admitted into evidence by the Court]

21 Q. [Ms. Shealy] Dr. Presnell, you were going to
22 tell us about the petechia.

23 A. Yes.

24 So we went through all of the most obvious
25 injuries. One other type of injury she had were numerous

1 facial petechia. And petechia are little pinpoint
2 hemorrhages.

3 So across the face and kind of across her eyes
4 there are little tiny pinpoint hemorrhages. And we call
5 those petechia. To me, in this type of situation,
6 indicates some type of compression to the neck area.

7 And just to explain my reasoning, I'll back up.
8 I meant to say think of heart and what it does. It pumps
9 blood, oxygenated blood, away -- away from itself to the
10 rest of the body. It does that in arteries. So here's
11 your heart. Blood is going to your head in an artery.
12 The blood is used -- or the brain uses the oxygen and then
13 the blood comes back to the heart in the vein without
14 oxygen. It's coming back to go back to the lungs and get
15 oxygen. So you have arteries going away from the heart,
16 veins bringing the oxygenated blood back.

17 Arteries themselves are pretty elastic, pretty
18 -- they're not as easily compressible as the veins. The
19 arteries are on a high-pressure system, being pumped away
20 from the heart. The veins are very compressible. They're
21 easily compressed.

22 And so if you think of a situation where there's
23 pressure applied to the neck, what actually compresses
24 first? The veins. The veins are more easily compressed.
25 It closes off the blood flow. So what ends up happening

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1 when you close off blood flow from returning to the heart
2 -- you still have it going into the head, but not being
3 able to get out. And that pressure builds, builds,
4 builds, builds, builds until little tiny, tiny vessels
5 will rupture and cause those little pinpoint hemorrhages.

6 So, again, in this case that's what was present
7 and to me indicated some type of neck compression.

8 Q. When you say neck compression, what can you not
9 rule out, then?

10 A. When I say neck compression, I mean -- another
11 terminology is strangled.

12 You know, in her case I know -- felt pretty
13 comfortable that cause of death as actually being the
14 carotid artery transection from the sharp-force injury.

15 But there may or may not -- there was likely
16 some amount of neck compression or, quote, strangulation.

17 Q. Now, you had mentioned to us that there had been
18 some charring of her body, as well.

19 A. There were some thermal changes, right.

20 Q. Okay. Describe that for us. How did that
21 appear on her body?

22 A. Where on the body? Or what --

23 Q. And how did it look?

24 A. It's kind of darker, firmer, thicker skin. In
25 some areas the skin starts to slip off.

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1 Q. I mean, was it obvious that she had been burned
2 in some way?

3 A. Yes. Yes. Yes.

4 Q. And what did you notice around her ankle area?

5 A. Are you referring to the insect activity?

6 Q. No. To some blood that was -- I can show you a
7 picture to refresh your memory.

8 Do you recall Sargent Manigault having done some
9 work on Ms. Lukaitis before you started the autopsy,
10 looking at --

11 A. Yes.

12 The sargent examined the body for trace evidence
13 and also applied amido black substances to the body. So
14 this appears to be a picture taken --

15 Q. Let me move that into evidence first, please.

16 A. Well, I haven't seen this picture. And it
17 appears to have been taken before I actually examined the
18 body.

19 Q. Well, could you tell us whether or not that's
20 how her leg appeared when you saw it?

21 A. Well, no, because my -- when I saw it, it had --
22 the leg had blue staining all over it.

23 Q. Okay. Well, did you see -- did you see any of
24 the blood on her leg in that area?

25 A. Again, most of the leg area for us was stained

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1 blue with the material that the sargent was using to
2 process the body.

3 Q. Okay. You saw him there working on that?

4 A. Yes, I did.

5 Q. Okay. Very good.

6 Now, as part of your role, did you actually get
7 the fingernail clippings and the swab -- the vaginal,
8 rectal and oral swabs --

9 A. Yes.

10 Q. -- for us?

11 A. Yes, I did.

12 Q. And the blood spot?

13 A. Yes.

14 Q. And, in fact, was there a hair in her hand that
15 was also collected?

16 A. Let's see.

17 [Whereupon, the witness reviews documents]

18 MS. SHEALY: I can find your list.

19 [Whereupon, Ms. Shealy reviews documents]

20 Q. [Ms. Shealy] As a routine part of the autopsy,
21 though, do you usually get the clippings and the smears
22 and the blood spot?

23 A. With this type of autopsy, yes. We don't do
24 fingernail clippings on all types of autopsies.

25 If the hair -- if the hair was associated with

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1 the fingernail area, then it's probably just included in
2 the fingernail clippings.

3 MS. SHEALY: Okay. I think I have no further
4 questions of you right now. Answer any that the
5 defense may have.

6 THE COURT: Cross-examination.

7 MR. PENNINGTON: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. PENNINGTON:

10 Q. Dr. Presnell, just to sort of complete the
11 picture: in addition to the work that you do in examining
12 the body, you also do the test for any blood analysis that
13 might be relevant; correct?

14 A. Correct.

15 On all the cases we'll do toxicology on blood,
16 if we can get it, for drugs and alcohol.

17 Q. What is toxicology?

18 A. It's looking for drugs and alcohol, medicines
19 either legal or illicit, and ethanol or alcohols in the
20 blood.

21 Q. All right. What is buprenorphine?

22 A. It's a --

23 MS. SHEALY: Your Honor, I'm going to object to
24 the relevancy.

25 THE COURT: Let me see the attorneys up here.

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1 [Whereupon, an off-the-record bench conference
2 is held]

3 THE COURT: Mr. Foreman, ladies and gentlemen of
4 the jury, I'm going to send you out of the courtroom
5 so I can listen to some of the arguments of counsel on
6 the record.

7 And the reason I do that is I'm not permitted to
8 comment on the facts in the case and in making up my
9 mind or making a decision of whether it's relevant
10 testimony or it should be admissible or not, sometimes
11 I would like to ask questions about the facts and
12 comment on the facts; therefore, I send you out to the
13 jury room so I'll be free to comment on those facts as
14 I'm being appropriate in trying to make a decision
15 whether the evidence is admissible or not admissible.

16 And, also, we've been going for almost -- about
17 an hour and a half, an hour and thirty-five minutes,
18 and I try to take a break every hour and a half. So
19 we'll take our afternoon break.

20 Please don't discuss the case amongst
21 yourselves. Leave your notepads.

22 And the smokers can go to the appropriate
23 location. Thank you very much.

24 [Whereupon, the jury exits the courtroom at
25 4:04 p.m.]

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1 THE COURT: All right. Mr. Pennington, for the
2 record, if you would put on the record what the
3 toxicology report produced.

4 MR. PENNINGTON: The toxicology report yields
5 that she had a blend of different drugs that included
6 not just the kind of opiates that she was allegedly
7 going to look for, but that she had somehow acquired a
8 significant quantity of amphetamines that were in her
9 system at the time and other depressants like -- which
10 is Prozac and marijuana or the residual traces of
11 marijuana that we call THC.

12 The reason that it's relevant is certainly not
13 to impugn her character or her drug use. That would
14 be unfair and improper and prejudicial to the State
15 and also insulting to the family.

16 My purpose is is that the State's theory is
17 specifically that she had a drug habit, that she was
18 out looking for depressants. Their theory is is that
19 she goes up there to acquire those and it's a simple
20 matter that my client somehow kills her.

21 What's conflicting with that theory is the fact
22 that evidently she did not only -- she found drugs,
23 she found multiple kinds of drugs that were in her
24 system at the time of her death that are unexplained
25 and which conflict with the State's theory that it's a

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1 simple case of a woman who's hungry for drugs, hadn't
2 found them, and goes and puts herself in a situation
3 of harm's way.

4 I think that the circumstantial evidence that
5 undercuts the State's circumstantial evidence is
6 perfectly relevant to undercut the State's theory that
7 this is as simple -- as simple as they would like to
8 present it to this jury.

9 These are the findings, reliable findings, that
10 we've had since the beginning of the case, from the
11 medical examiner.

12 THE COURT: Solicitor?

13 MS. SHEALY: Your Honor, we take the position
14 that it's absolutely irrelevant.

15 The facts that are in the case at this point are
16 that she agreed to take her friend, who she thought
17 was her friend at the time, to go pick up some pills
18 and in return he would pay for her gas and give her
19 some.

20 There's nothing in the record at all that
21 suggests that she's dying for the pills, that she's
22 got to get them at that time, et cetera.

23 And the fact that she has pills in her system:
24 the only thing that that would do is it -- it's an
25 effort to turn this jury against the victim, who

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1 obviously was inflicted such great injury that
2 evening. The fact that she had some drugs in her
3 system is completely irrelevant. It's not a fact that
4 has anything to do with anything that happened to her
5 that night. And what it will do is make the jury
6 start trying to figure what that has to do with what
7 happened that evening. We have no idea where she got
8 those drugs from.

9 MR. PENNINGTON: Well, that's exactly my point,
10 Your Honor. They're not comfortable with the facts --

11 THE COURT: Well, wait a minute.

12 MR. PENNINGTON: I'm sorry.

13 THE COURT: I don't know if she's finished --

14 MR. PENNINGTON: I'm sorry.

15 THE COURT: I'll listen to you. I'll give you a
16 chance for rebuttal, okay --

17 MR. PENNINGTON: Yes, sir.

18 THE COURT: -- once she's finished.

19 Go ahead.

20 MS. SHEALY: I think what that does is that it
21 injects something in the record that will allow the
22 jury to speculate.

23 I mean, it is irrelevant. It is not anything
24 that applies to any facts that are in this record.

25 The fact that she has some drugs in her system has

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1 nothing to do with the facts at hand. What's in the
2 record simply is that she agreed to take her friend to
3 Charleston and that he was going to give her a few
4 pills for having driven him and he was going to pay
5 for her gas.

6 This is Sunday afternoon. There is nothing to
7 suggest that the pills that are in her system are the
8 product of that trip. There's nothing to suggest
9 that, in fact, he ever intended to actually pick up
10 drugs when he got there. We have nothing in the
11 record to suggest that they achieved that task or
12 that, in fact, that was ever his ultimate goal.

13 So I just think that all it does in impugn her
14 character and it's irrelevant.

15 THE COURT: Okay. Now, if you want to say
16 something, I'll be glad to hear you.

17 MR. PENNINGTON: Yes, sir.

18 THE COURT: I just --

19 MR. PENNINGTON: The standard of relevance --

20 THE COURT: I can't listen to both of you at the
21 same time, and I want to hear what you have to say,
22 nor can the court reporter take it down.

23 But I'll be glad to hear you now.

24 MR. PENNINGTON: Yes, sir. Thank you so much.

25 I agree with the solicitor that it would be

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1 unfair, foolish, and prejudicial if this relevance was
2 only to impugn her character. And that is in no way
3 my purpose.

4 The State's evidence that is relied on: the
5 first witness was Mr. Bartley who described that he
6 had a report from her that she was going to buy pills
7 and get some pills. And he admitted on cross-
8 examination that she had a drug problem and that she
9 had been using drugs from the street in the past. And
10 our contention is is that their theory was go buy
11 pills, and then something went wrong and she is killed
12 in that process.

13 These drugs suggest something very different:
14 that evidently she was able to actually obtain a
15 variety of drugs on -- in her system at that time at
16 high-dosage levels.

17 I believe the proffer would be that the -- both
18 the amphetamine and the opiates were high. She also
19 had a very high level of Prozac and detectable
20 metabolites of marijuana.

21 So, again -- and I would say that in the reality
22 of this courtroom, there is no way that this jury
23 could be prejudiced. If anything, there is an
24 overwhelming sense, in my view, that this woman was
25 obviously murdered in a cold, brutal, terrible way and

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1 there's no way that that's going to be undone or
2 undercut by my simply pointing out the objective facts
3 that conflict with the State's theory of their case
4 that she was someone that was making a quick drug run
5 and that that's all it was.

6 In terms of speculation, my contention and my
7 defense in this case is is that the State is the one,
8 through circumstantial evidence, that will be asking
9 this jury to speculate.

10 I think this jury is entitled to know the entire
11 picture. If they're going to be asking them to draw
12 conclusions based on their view of the circumstantial
13 evidence, I think I'm entitled to bring out the same
14 circumstances and show that there are conflicting
15 points of view about what this evidence points to.
16 And that's all I'm attempting to do.

17 THE COURT: Okay. Do you want to say something
18 else?

19 MS. SHEALY: One other thing.

20 THE COURT: One other shot. Okay.

21 MS. SHEALY: One other shot.

22 Your Honor, I know that in dealing with experts
23 how difficult it is to date and time when pills were
24 ingested. I don't know that even the pathologist
25 would be able to do so. It all depends on, you know,

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1 how frequently you take medication --

2 THE COURT: Well, if you want to ask her, you
3 can.

4 MS. SHEALY: Well, I -- we can attempt to do
5 that in a just a second.

6 But if you don't know when she took the pills,
7 how does that -- that even weakens any relevance that
8 it could have, you know, how long it stays in the
9 system, et cetera.

10 THE COURT: Do you want to ask --

11 MS. SHEALY: Dr. Presnell. Yes, I will.

12 - - - - -

13 PROFFER

14 BY MS. SHEALY:

15 Q. Dr. Presnell, do you feel comfortable in being
16 able to --

17 MR. PENNINGTON: Objection to leading.

18 THE COURT: Let her lead, okay? There's no jury
19 there. Let's get through it. Overruled. Please
20 proceed. You can lead, too. Okay?

21 MR. PENNINGTON: All right, sir.

22 Q. [Ms. Shealy] Dr. Presnell, would you feel
23 comfortable being able to testify as to when certain
24 medication had been ingested by a person, based on the
25 laboratory results that you have received in this case?

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1 A. No.

2 I -- if we start getting into pharmacokinetics,
3 I would plead that you call the toxicologist.

4 My interpretation of the toxicology before
5 me shows that there are very high levels of the drugs
6 Mr. Pennington was discussing. There's also a fair amount
7 of metabolite of many of the ones that they were
8 quantitated of those indicating -- and at levels higher
9 than the original drugs, indicating that they've been
10 there for a while.

11 Now, I don't know what that while is. Again,
12 you're getting into half-lives and pharmacokinetics and
13 whatnot.

14 Now, the one other thing I'll point out about
15 this is the toxicology was performed on cardiac blood. We
16 could only get blood from the heart. Blood from the heart
17 is subject to what we call postmortem redistribution,
18 meaning that you can get falsely elevated levels. And
19 there's no way to tell if that happened or not in that
20 instance.

21 So that's it in a nutshell.

22 THE COURT: Is there anything you would like to
23 ask the doctor on this subject matter?

24 MR. PENNINGTON: Yes, Your Honor.

25

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PROFFER

BY MR. PENNINGTON:

Q. Specifically on the buprenorphine, as I see it there appears to be that and then the metabolite. What I was asking you: what is buprenorphine?

A. It's an opioid.

Q. Meaning like a narcotic?

A. Right. Yes.

It's -- you know, and, again, it's just from reading about. It has pain -- or anti-pain or analgesic activity. And there's also actually some antagonists, opioid antagonists, meaning altered or opposite effects of some opioids. So that's why they use that to try -- to treat some of the more heavier opiate addictions.

Q. As part of the report that you get, there is -- there are reference points where they provide not only that it's present but that it has a certain level of -- a certain level, a measurable level, of presence in the blood. Is that correct?

A. Correct.

Q. And going back to this opioid that we just talked about, you find it both as buprenorphine and also as norbuprenorphine, which is the metabolite?

A. Yes. And it's an active metabolite.

Q. So that suggests that it's been in her system,

MIA PERRON, CVR-CM-M

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1 but that it's still present in her system and still active
2 in her system?

3 A. Correct.

4 Q. You have what is a high level of fluoxetine,
5 which is Prozac?

6 A. Yes. And its metabolite, as well.

7 Q. Which is the norfloxetine?

8 A. The norfloxetine, yes.

9 Q. Norafloxetine.

10 You also have something that could be either
11 adderall or dexedrine, an amphetamine --

12 A. Correct.

13 Q. -- is that correct?

14 A. Yes.

15 Q. And then you have the inactive metabolite of
16 marijuana, which is THC?

17 A. Correct.

18 Q. All those are -- were readily detectable using
19 the process that you used?

20 A. Correct. Or that the toxicologist used.

21 MR. PENNINGTON: That's it, Your Honor.

22 THE COURT: Okay. Thank you very much.

23 All right. I'm going to -- even though the
24 evidence may have some relative value, I think that
25 the probative value does not substantially outweigh

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1 the danger of an unfair prejudice. And the unfair
2 prejudice means the undue tendency suggests a decision
3 on an improper basis; i.e., the use of drugs.

4 And under 403 analysis, the Court is not going
5 to allow the testimony concerning the toxicology
6 report, especially in light of the fact that the
7 doctor said those values will be elevated as a result
8 of where the blood was taken from.

9 All right. Anything else before we take a
10 break? Anything you want to add or argue -- I mean,
11 put on the record? I'm not trying to present --
12 prevent you from saying something --

13 - - - - -

14 FURTHER PROFFER

15 BY MR. PENNINGTON:

16 Q. I would ask the doctor one more question, which
17 is can she say within a reasonable degree of medical
18 certainty which drugs would have been active in her system
19 in the sense of --

20 A. Well, other than the marijuana, they all were
21 active in the system.

22 I mean, I -- when I -- they have the potential
23 for a postmortem redistribution, but it's still there, the
24 active drug is still there.

25 Q. Okay.

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1 THE COURT: And the Court's point is that fact
2 alone takes away the possible value of the credibility
3 of the testimony or the evidence of -- and as to the
4 amount of the drugs. Okay?

5 All right. Anything else before we take a
6 break?

7 MS. SHEALY: Your Honor, just for planning
8 purposes, it's 4:20. She is our last witness. We'll
9 need -- I need to put in the Total Station --

10 THE COURT: Got to do what, now?

11 MS. SHEALY: She is our last witness.

12 THE COURT: Where is that big --

13 MS. SHEALY: That's --

14 THE COURT: -- that big map?

15 MS. SHEALY: I've got it. I've got it.

16 THE COURT: You've got it?

17 MS. SHEALY: I've got it. I need to put that
18 in. And we need a moment to make sure we've got all
19 our evidence.

20 THE COURT: Make sure the cigarette butt is on
21 it.

22 MS. SHEALY: It is on it.

23 MR. PENNINGTON: It's on there.

24 MS. SHEALY: But are you contemplating giving
25 that --

CONTINUED CROSS-EXAMINATION

BY MR. PENNINGTON:

Q. Dr. Presnell, I'm going to show you what has been marked as State's Exhibit 170 and admitted as evidence. If you would just take a look at that. You're welcome to touch it or not touch it. It's up to you. You have gloves right there.

A. Uh-huh.

Q. Referencing State's Exhibit 170, is it possible that that knife could have inflicted some of the wounds that you see on the body of Ms. Lukaitis?

A. Yes, it is.

The wounds that -- are themselves pretty non specific as far as relaying information about what instrument actually did it. They're consistent with a sharp force or sharp-object injury and the knife is -- qualifies as that, yes.

Q. All right. And you mentioned also that there was evidence of thermal shrinkage due to what were heat injuries to the body. Did you have a chance to study her windpipe and the area of her airways to determine whether or not those thermal injuries occurred before or after she stopped breathing?

A. Right. And so there are a couple of things that we look at to try to determine an injury that happened

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1 before death and after death. You know, now -- well,
2 typically, if something happens after death the heart is
3 not pumping anymore so you don't get bleeding into the
4 injury and so they look real -- a yellow type appearance.

5 Like for instance, she had some insect activity
6 on her, and those little injuries were yellow and were
7 after death.

8 The changes to her skin -- and of course you can
9 get a lot of thermal changes where it doesn't -- and you
10 won't be able to tell before or after. But, you know,
11 they were kind of yellowed. There was no reaction to the
12 injury.

13 And then the other part, component, to that is
14 we'll look in the airways and see if we see sooty type
15 material to indicate that person was breathing at the time
16 of a fire, if that's what the cause of the thermal injury
17 is. And there are -- there was no soot in her airways.

18 Q. And so no soot in the airways indicates that she
19 was not breathing at the time of the fire?

20 A. Correct.

21 MR. PENNINGTON: Thank you. That's all I have.

22 THE COURT: Any redirect?

23 MS. SHEALY: Just briefly, Your Honor.

24 - - -

25 - - -

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REDIRECT EXAMINATION

BY MS. SHEALY:

Q. Dr. Presnell, in your report I think you described the injuries as sharp-force injuries -- is that correct -- in the beginning of your report?

A. I probably did. That's what they -- that's what the injuries to her neck are.

Q. Okay. Well, when Mr. Pennington asked you could a knife like that have caused the injuries, you said -- you used the term nonspecific.

A. Well, I use the term about the cuts to the neck are nonspecific. It's just cuts. It could have been this knife or another knife or a really sharp piece of glass.

I mean, it's -- the injury itself doesn't impart -- like there's no pattern to it. It's not like, you know, showing like if somebody was stabbed with a screwdriver -- and I'm not saying in this case, but -- and it's a phillips head, you might see a nice star -- not nice -- a star pattern. There is no pattern to these cuts on the neck.

Q. I think you -- in fact, when you were in front of the jury earlier had said it could have been a screwdriver, it could have been an icepick?

A. Well, that was referring to the punctures, which were just, in fact, is a puncture.

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1 So, yes, it could have been anything -- the
2 punctures could have be -- be created by anything.

3 Sharp, I wasn't saying that -- what I was
4 getting at is I don't know if it was a knife that were the
5 same -- one instrument used and it was the same one used
6 on the neck and some of her punctures.

7 Q. Okay. So regarding the neck injuries, it could
8 have been a knife or it could have been something else
9 that was sharp?

10 A. Right. It was something sharp.

11 MS. SHEALY: Okay. Very good. Thank you very
12 much.. No further questions.

13 THE COURT: Any recross?

14 MR. PENNINGTON: No, sir.

15 THE COURT: Doctor, you may step down. Thank
16 you so very much. You may be excused. Nice seeing
17 you again.

18 [Whereupon, Dr. Presnell is excused and exits
19 the witness stand]

20 THE COURT: Call your next witness.

21 MS. SHEALY: Let me get you your knife.

22 THE COURT: Pardon?

23 MS. SHEALY: I'm going to give you your knife.
24 I'm going to give you your knife.

25 THE COURT: Going to get me my knife. You had a

MOTION FOR A DIRECTED VERDICT

THE COURT: All right. Any motions from the State?

MS. SHEALY: No, Your Honor.

THE COURT: Any motions from the defendant?

MR. PENNINGTON: Yes, sir.

At this time the defense would move for a directed verdict of not guilty.

Taking the evidence in the light most favorable to the State, we believe that the State has not been able to exclude or provide sufficient evidence, sufficient circumstantial evidence, that would point and exclude other reasonable hypotheses other than our client being involved in the murder of Ms. Lukaitis. We would also -- well, I'll stop there.

I would also add that based on our earlier objections, we would renew our objections to the search warrant, the hearsay objections, where the State was able to offer as evidence in their case in chief the testimony of Mr. Bartley that --

THE COURT: Is this in conjunction with your directed --

MR. PENNINGTON: Yes, sir.

THE COURT: -- verdict motion?

MR. PENNINGTON: Yes, sir, it is.

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1 THE COURT: All right.

2 MR. PENNINGTON: All one motion.

3 THE COURT: Okay. All right.

4 MR. PENNINGTON: -- that Mr. Bartley was
5 testifying that he heard Ms. Lukaitis tell him on
6 Sunday evening that she was going to Charleston with
7 "D" to acquire drugs.

8 In addition to that, my most recent objection to
9 the Court's refusal to allow me to bring out the drugs
10 that Ms. Lukaitis had on board, which are inconsistent
11 with that version of events.

12 And all the other objections made.

13 THE COURT: Anything else?

14 MR. PENNINGTON: The Court's indulgence.

15 THE COURT: Yes, sir.

16 [Whereupon, Mr. Pennington and Mr. Cooper
17 confer]

18 MR. PENNINGTON: That's it, Your Honor.

19 THE COURT: Motion denied.

20 MR. PENNINGTON: Your Honor, we also have --
21 will proffer to the Court a request for a limiting
22 instruction -- I do have it here -- on the relevance,
23 the limited relevance, of hearsay testimony. That
24 would be that --

25 THE COURT: Are you talking about a charge?

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1 THE COURT: All right. Ladies and gentlemen of
2 the jury, the State has rested, which means that they
3 have presented their case on direct.

4 The defense is going to offer some testimony at
5 this time.

6 MR. PENNINGTON: At this time, the defense calls
7 Michael Bartley.

8 THE COURT: All right. Mr. Bartley has been
9 sworn.

10 - - - - -

11 MICHAEL BARTLEY,

12 Having Been First Duly Sworn,

13 was Examined and Testified as Follows:

14 DIRECT EXAMINATION

15 BY MR. PENNINGTON:

16 Q. Mr. Bartley, you testified yesterday in this;
17 correct?

18 A. Yes.

19 Q. And yesterday you were also in this courtroom
20 when Stephen Edwards testified?

21 A. Yes.

22 Q. You were sitting right over here right behind
23 the solicitor's table?

24 A. Yes.

25 Q. Stephen Edwards was still on the witness stand

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1 when we broke for lunch yesterday, wasn't he?

2 A. Correct.

3 Q. And we were still waiting for the State to
4 finish their direct examination?

5 A. Yes.

6 Q. And then there would be, of course, my cross-
7 examination?

8 A. Correct.

9 Q. During the lunch -- or right immediately before
10 the lunch break, you heard the judge tell Stephen Edwards
11 not to talk to anyone about this case --

12 A. Correct.

13 Q. -- is that correct?

14 So yesterday when we broke, you went downstairs?

15 A. Yes.

16 Q. You went out into the courtyard?

17 A. Yes.

18 Q. And you approached Stephen Edwards?

19 A. Yes.

20 Q. And spoke to him?

21 A. Gave him \$20 and said, thank you.

22 Q. You knew you shouldn't talk to him?

23 A. Well, I told him to get lunch on me.

24 Q. You knew you shouldn't have talked to him?

25 A. And I didn't talk to him about the trial or

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1 anything.

2 Q. You spoke to him and you thanked him?

3 A. Uh-huh.

4 Q. You spoke to him?

5 A. Yes.

6 Q. Yes?

7 A. Yes.

8 Q. You knew you shouldn't have?

9 A. I was told not to talk about the trial --

10 Q. You did it anyway --

11 A. -- not to speak to individuals.

12 Q. More than that, as you approached him you
13 reached in your pocket and took something out, didn't you?

14 A. Yes.

15 Q. And you walked up to him and you spoke to him
16 and you shook his hand, didn't you?

17 A. Yes.

18 Q. And as you shook his hand, in your hand was
19 \$20 --

20 A. Yes.

21 Q. -- is that correct?

22 A. Correct.

23 Q. You live in Bluffton?

24 A. Yes.

25 Q. Stephen Edwards lives in Bluffton; correct?

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1 A. I wouldn't have known until today. I never met
2 him before in my life.

3 Q. Do you know where Geothie Road is?

4 A. Uh-huh.

5 Q. Do you know where [REDACTED] is?

6 A. No.

7 I mean, I know the road. I've never been down
8 there.

9 Q. Your apartment is about, what, five miles away?

10 A. Probably.

11 MR. PENNINGTON: No further questions, Your
12 Honor.

13 THE COURT: Cross-examination.

14 MS. SHEALY: Yes.

15 CROSS-EXAMINATION

16 BY MS. SHEALY:

17 Q. Mr. Bartley, back when this case was getting
18 investigated, did the investigators tell you early on that
19 Darryl Drayton's own cousin came forward and said that he
20 found bloody items in the trash can?

21 A. Yes.

22 Q. Were you appreciative that Stephen Edwards had
23 done the right thing?

24 A. Yes.

25 Q. Okay. And you knew he lived on Geothie Road; is

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CLOSING STATEMENT

MR. FINCH: Good morning.

Ladies and gentlemen, the defendant is charged with murder; therefore the State must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought.

Malice is hatred, ill will, hostility towards another. It's an intentional act -- intentionally doing a wrongful act, not just cause or excuse with the intent to inflict injury under circumstances that the law will infer an evil intent.

Malice aforethought does not require that malice exists for any particular time before the act is committed. Malice aforethought may be express or implied or inferred. You can infer that from the facts and circumstances which surround the event. One of the ways you can infer that is through the use of a deadly weapon. A deadly weapon can be a knife, dagger, or any of the things that -- any sharp instrument used to inflict injury, such as Ms. Presnell -- Dr. Presnell identified yesterday.

And the way the State can prove beyond a reasonable doubt that Mr. Drayton is guilty of murder is through two different types of evidence: direct evidence, circumstantial evidence. Direct evidence is

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1 testimony of witnesses about facts and things of that
2 nature. Circumstantial evidence is proof of a chain
3 of facts around an event that proves that event
4 happened or tends to prove that that event happened.
5 The law doesn't make any distinction between direct
6 evidence and circumstantial evidence. There's no
7 greater degree of certainty required of circumstantial
8 evidence than that of direct evidence.

9 I want to talk briefly just about reasonable
10 doubt. And what I'm doing now is just telling you a
11 little bit about the law. And at the end of this, as
12 the attorneys are finished talking, at the end of
13 argument, the judge is going to instruct you on the
14 law. And if there's any discrepancy from what I tell
15 you to what the judge tells you, go from what the
16 judge tells you. He's the judge of the law, just like
17 he's the judge of the facts.

18 But, briefly, on reasonable doubt. You'll hear
19 the judge's instruction that reasonable doubt is that
20 which causes a reasonable person to hesitate to act.
21 Hesitation, keep in mind, is different than
22 deliberation. That's your job, to deliberate, to take
23 the facts and the evidence as presented and testimony
24 and the exhibits and deliberate. Use that information
25 to help you make a decision. But beyond a reasonable

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CLOSING ARGUMENT

1
2 MR. PENNINGTON: This indictment is not a charge
3 of covering up a crime. It's a charge of murder.
4 When you look at the indictment, the charge is is that
5 Darryl -- Darryl -- stabbed Alexis.

6 When Ms. Shealy gets up in a few minutes and she
7 starts talking to you, you're going to hear a lot
8 about DNA on her shoes, DNA in her car, Darryl's cell
9 phone pinging off the same towers that her phone is
10 pinging off of. And that's all good, competent,
11 appropriate evidence for you to consider. The trouble
12 is is that all it proves is a cover up. And that's
13 not the charge in this case.

14 The law in our state is perfectly clear. If you
15 are a witness to a crime, you just use your common
16 sense that you had no part in. If you're a witness to
17 the crime and later make the stupid decision to
18 participate in a cover up, that does not make you
19 guilty of a crime that someone else committed. It
20 makes you guilty of a cover up. And under our law we
21 call that accessory after the fact. That's not what
22 Darryl is charged with. He could be charged with it,
23 but he's not. He could be in the future, but he's not
24 yet been.

25 And so you really have a very narrow

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1 responsibility. It's not to say whether or not Darryl
2 deserves a citizenship award for doing the right thing
3 or for being present or involved in this case. The
4 narrow question that your responsibility is is did the
5 State deliver on its burden of proving to you that
6 Darryl stabbed Alexis. That's what this case is
7 about, and that's all that this case is about.

8 I told you in the beginning that no one was
9 going to come into this courtroom and take an oath and
10 swear and testify that they saw Darryl kill someone.
11 The law doesn't require that. But the law does
12 require what we call competent evidence that excludes
13 every other reasonable possibility. If that hasn't
14 been done, if you cannot say that all the alternatives
15 that I'm going to show you today don't show reasonable
16 doubt then you must acquit, because our law protects
17 the innocent and protects those that are accused from
18 what are unproven charges.

19 The evidence in this case is perfectly
20 consistent with a cover up. You can only go along
21 with the evidence that you're given in this case.
22 That's all you have. You came here a few days ago.
23 You've been sitting in this box. You've heard two
24 days of testimony. It's been quick. It's been
25 focused. But I want to caution you that you're not

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1 here to use your imagination, you're not here to use
2 speculation, you're not here to use guesswork and to
3 fill in gaps where the evidence is not present.

4 So what are the reasons why you must find Darryl
5 not guilty? Well, let's go through some of them. The
6 truth is is that there are big reasons to doubt,
7 reasonable reasons to doubt, substantial reasons to
8 doubt. The judge is going to tell you that where
9 there is a real possibility -- listen to this language
10 very closely. The judge, as I understand it, gives
11 you a copy of the law. And he's going to tell you
12 that when you find there's a real possibility that the
13 defendant is not guilty, you must give him the benefit
14 of that doubt and find him not guilty. So I'm going
15 to talk to you about the real possibilities in this
16 case.

17 Think about Mr. Golis, our jeweler. Not a
18 friend of my client, not someone who has any kind of
19 relationship with him, someone who was actually very
20 suspicious and questioning: why do you want to sell
21 this ring so cheap. Kind of got his attention. He
22 paid attention and he noticed the injury on Darryl's
23 hand. But what did he tell you about Darryl's
24 appearance that day? He told you, when the solicitor
25 asked how did he appear, he appeared clean.

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1 Now, ladies and gentlemen, let's think about
2 what the sequence of events were in this case and see
3 how that shows you that Darryl is not the one who was
4 in a fight with Alexis. Let's think about it. What
5 is the State saying happened here, if you're going to
6 go with the theory that he was the one that stabbed
7 her? How does it fit? Well, it implies that he was
8 involved in that big fight you see the physical
9 evidence of. You saw the wounds on Alexis.

10 On Sunday night, sometime after 8:10 p.m.,
11 because that's when she last talked to Mr. Bartley and
12 she said that she was about an hour from home,
13 everything seemed to be fine, turn here. There is
14 this description that my client was scratched and
15 clawed. And we're going to talk more about that claim
16 and how it fell apart right here in this courtroom,
17 right in your presence, yesterday.

18 We do know that Darryl was cut. We do know that
19 he was bleeding. But not only was he cut and
20 bleeding, supposedly, but he was also, if you believe
21 the State's theory -- their theory -- is that he
22 literally was moving her body from point A to point B.
23 Because you remember the pathologist and the officer
24 said that her body was not in the same position in
25 which she had remained after death for a significant

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1 period. It had obviously been moved because her hand
2 was elevated. So it suggested -- and that and the
3 blood in the trunk suggests that there was some
4 movement from point A and point B. And you can look
5 at the photographs that you have that show that there
6 is signs that there's blood on the exterior of the
7 car, even kind of swipe motions, around the corner of
8 the car, would suggest that somebody was doing a lot
9 of lifting and moving. You would have to get filthy
10 doing that, and covered with blood, and DNA.

11 We talked about somebody at least partially set
12 her clothes on fire. And you've got some evidence
13 here of that charring, the dirt, that's connected with
14 that. You've got the version that after he gets his
15 car down to Bluffton, he's the one, according to the
16 State's theory, that then unloads all this nasty stuff
17 and puts it into the dumpster, somehow secretly and
18 quietly so that no one hears it, including Stephen
19 Edwards. We'll talk about that again. Unloading a
20 spare tire, the spare -- the spare tire cover. Then
21 the same person is supposed to have dumped the purse,
22 the cell phone, the car keys.

23 And then this person goes from Stephen Edwards'
24 house on Geothie Road over to Wharf Street, leaves the
25 car, and then walks back at 7:00 a.m. You remember

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1 the description was is that Stephen Edwards said he
2 was awakened at 7:00 a.m., because they got to the
3 hospital at 7:44 a.m. So we're dealing with a pretty
4 tight time frame here of between roughly 9:00 p.m. the
5 night before to 7:00 a.m. All of this is going on in
6 the dark.

7 And so you see Mr. Golis. And he's seeing this
8 fellow after he has been transported to the emergency
9 room to deal with the finger, and then no other stops
10 until they come back to the jewelry store. And he
11 describes Darryl as clean. Where's his clothes?
12 Where's all this hidden evidence? They describe him
13 as homeless and living in a car in the same area.

14 Stephen Edwards throws out that, well, look at
15 this pair of shoes, maybe it's the shoes. Not the
16 shoes. We looked at the shoes and they have a
17 completely different design than the foot impressions,
18 that were left by the perpetrator at the scene, which
19 were those circular designs. We're going to talk
20 about that again in a minute, too.

21 So if you're thinking about what are the reasons
22 why there's doubt in this case, big reasons,
23 substantial reasons, to make a finding of not guilty,
24 one of them is Mr. Golis where he says that Darryl is
25 clean.

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1 Let's move on. I want you to watch out during
2 the State's close. Ms. Shealy is a very honorable and
3 excellent attorney. But this case is not about
4 speculation.

5 And I want to go back to these shoes. There was
6 something that was said yesterday by the SLED agent on
7 the witness stand. Do you remember the lady who was
8 here to talk about tire tread and she talked about
9 footwear? And she just threw something out there.
10 She said, yeah, I see footwear and, you know, I'm
11 familiar with shoes like, you know, Air Force Ones,
12 they're kind of common. Did you hear that? She
13 talked about the Air Force Ones. Yeah, they have
14 those circular patterns. Circular patterns. Where
15 have we seen circular patterns?

16 Don't let the State ask you to speculate that
17 there is a certain brand of shoe that has a certain
18 pattern on the soles when they haven't produced one
19 shred of evidence for you to look at of accurately
20 being able to compare any kind of patterns that is out
21 there in the market place with the what we know is the
22 footwear pattern of the persons that were involved in
23 this. When you look at those big casts, or if you
24 look at the photographs, you'll see this kind of like
25 circle, circle, circle, circle, circle shoe.

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1 And if that is so common, so out there, wouldn't
2 you think that they would produce some evidence from
3 whoever makes Air Force One shoes to show that that's
4 a common tread pattern? You didn't hear that, did
5 you? Don't let them have you sit here and use
6 guesswork in a case where they've charged someone with
7 stabbing somebody to death. That's not what you're
8 here to do.

9 Now, sometimes we know that if you have sort of
10 an expectation that something's going to happen,
11 you'll see what you expect to see. Have you ever had
12 that happen to you? Well, we had this happen in this
13 case with Bradley Vavro. Do you remember young
14 Bradley, thirteen years old, came in and testified?
15 Son of Tina? His mother, she testified, as well.

16 And you remember the testimony was is that young
17 Bradley -- he was offered to show that my client had
18 these pink scratches on his face that show that he was
19 involved in this fight with Alexis. Do you remember
20 that? And then the way that came to be, ladies and
21 gentlemen, I'll contend, is quite simply this. He
22 told you that he had been told by his mom that Monday
23 morning, after the Sunday night when this occurred,
24 that Alexis was missing. And there was a lot of buzz
25 about it, and supposedly he was with -- she was with

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1 Darryl or "D". And he knew "D". They all knew each
2 other. And he saw "D" or Darryl at the self-help with
3 his bandaged finger. And he tells you that he saw
4 pink scratches on Darryl's face. He imagines he saw
5 pink scratches on his face.

6 Why do I say he imagines? Well, that was
7 Monday. On Wednesday, the crime scene officer from
8 the Beaufort County Sheriff's Office, Sargent Adams,
9 took photographs all over Darryl, up and down and
10 sideways. You'll see the pictures that they chose to
11 offer, the pictures that are kind of pulled back,
12 maybe a chest shot real close, maybe a hand shot real
13 close. I had to go up and show the pictures side this
14 way, side that way, to the officer. And you saw that
15 he had to admit that there was no scratch, not even a
16 single scratch, on the left or on the right of Darryl
17 Drayton's face.

18 That's a problem. But it's really just an
19 illustration of how dangerous cases like this can be
20 where there is so much concern, and legitimate
21 concern, for the crime that's occurred and the desire
22 to bring some sort of closure, some sort of answer, to
23 contain the evil, to identify it, to lock it up, to
24 put it into it. And we begin to see the simple
25 answers that fit so we can move on. And that's what's

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1 going to be -- you're going to be asked to do here.
2 Don't let them do it.

3 They brought you imaginary scratches as evidence
4 in this case. So reasons to doubt: Bradley,
5 imaginary scratches. I'm not a great speller.
6 Imaginary scratches. Totally refuted in this
7 courtroom right before your eyes.

8 Now, there's another phenomenon that can happen
9 in cases like this. Some people might call it tunnel
10 vision. Other people might call not seeing what's
11 right under your nose when you're not looking for it.
12 What am I talking about? You know, it's very, very,
13 very understandable, forgivable, completely justified,
14 that Mr. Bartley would focus entirely and exclusively
15 on "D". That's what he heard from Alexis. You would
16 expect him to just go right with that one thread of
17 this case and that that would be the beginning and the
18 end of the answer.

19 It's harder to understand how the police could
20 do the same thing. Think about what happened in this
21 case. Police are working, they're talking to
22 witnesses, and Stephen Edwards surfaces on Wednesday
23 night. Stephen Edwards calls them and he says, come
24 to my house, I'm going to produce evidence, contents
25 of the back end of the car, bloody items that he's

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1 fished out of his dumpster, his trash can, in his back
2 yard. But more than that, items that he's actually
3 carried into his house.

4 Now, think about what the police are looking at
5 here. Here's a fellow with a record. Here's a fellow
6 who lives, by his own description, even with a
7 handicap leg, a fifteen minute walk from where the car
8 is left, and he's got the stuff.. Fifteen minutes on
9 foot from Wharf Street, a park that he said he knew.
10 The police read him his rights: you have the right to
11 remain silent; anything you say can and will be used
12 against you in a court of law. But then you heard how
13 he acknowledged that Detective Boyd told him, well,
14 you're not really a suspect in our eyes. Why not?
15 Why not? The items are in his house. The speakers,
16 those Alpine or whatever kind of brand of speakers
17 they are in the blue box, they weren't still in the
18 trash, they weren't outside, they weren't on his
19 porch, they were in his bedroom. Tunnel vision.
20 Tunnel vision.

21 You see a bloody CD case. Look at that
22 photograph. A bloody CD case on -- in his stuff. And
23 right underneath the bloody CD case is a knife. But
24 Sargent Calhoun tells you, well, knife -- yeah, we
25 have a stabbing. A knife. Well, we don't really look

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1 for knives in Beaufort County, because people fish
2 here. Come on. Murder investigation, with a knife,
3 so they leave it behind. Leave it behind. Someone
4 later says -- two days later, we best go back and get
5 that.

6 In spite of that they never, ever say, Mr.
7 Edwards, you're so cooperative, you're so helpful, we
8 trust you so much, but let's go ahead and get a buccal
9 swab, a swab of the inside of his cheek to get his
10 DNA, so that we can compare it to all those blood
11 spots that you see on the car, to understand who
12 really was involved in this case. Never did it.

13 And so you saw in court, right here, this same
14 Stephen Edwards could have hardly sat into the witness
15 chair, hardly had been introduced by Ms. Shealy, when
16 he quickly protested: I didn't go to Charleston with
17 Alexis and Darryl. Did you hear that? No one had
18 asked him the question. Me thinks he doth protest too
19 much. He's getting his story out there for you right
20 away. Don't want you to be confused. No one asked
21 him that.

22 The same Stephen Edwards who let you know very
23 clearly that he doesn't like the penitentiary. His
24 words, I don't plan on going back. So when they argue
25 that this is a man who has no agenda, he told you his

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1 agenda. He doesn't plan on going back.

2 This is the same Stephen Edwards who, if you're
3 looking for an index of reliability, trustworthiness,
4 honor and integrity, you come into a courtroom, you
5 take an oath to tell the truth, and you would think if
6 the judge tells you not to talk to people when you're
7 leaving, during the middle of your testimony, before
8 you've been cross-examined. If you need just a little
9 glimpse of how he does business, he's taking \$20 from
10 Mr. Bartley.

11 No matter how well-intentioned it is by Mr.
12 Bartley, no matter how understandable it is that he
13 wants this poor man who's helping him make this case
14 against Darryl Drayton, no matter how understandable
15 it is from the victim's point of view, it is
16 inexcusable from Stephen Edwards' point of view. He
17 knows exactly what he's trying to do here.

18 He's in the courtyard, during a trial, during
19 the testimony, despite a court order, because the
20 rules really don't matter to him. It's all about, I
21 don't plan on going back to prison. And he's got the
22 perfect guy to do it for him.

23 This is the same Stephen Edwards who admitted on
24 cross-examination that he came up with this idea of
25 the class ring that he -- Darryl said it was a class

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1 ring that he was pawning, for the first time, right
2 here. You have to remember he's interviewed for hours
3 at the Beaufort County Sheriff's Office by detectives
4 from Beaufort County, detectives from Charleston
5 County. They listened to everything. And you know
6 they were asking about the ring because the ring was
7 what got this whole thing started: let's go to Mr.
8 Golis' and get the ring. The ring was important.
9 They talked about the ring. Not once did he mention
10 this idea that, oh, he said it was a class ring. This
11 is a fellow that comes up with whatever is convenient
12 to fit the facts. But the problem is is he forgot the
13 lies that he told. So you invent a new lie. Need
14 proof of that.

15 He told another whopper. He says, oh, and
16 Darryl said, I want you to take me to Florida. Again
17 he admits on cross-examination, well, maybe I didn't
18 say that; I don't remember saying that to the police
19 officers. Why not? Why not? Wouldn't that be very
20 important to say that Darryl was anxious to get out of
21 town? He didn't say it then, it wasn't true then,
22 it's not true now.

23 So what does the evidence -- the reasons to
24 doubt that I keep talking about? What does the
25 evidence tell you? Well, you saw for yourself that

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1 the shoes don't match. We've talked about that. You
2 think about all the effort that went into looking at
3 all the various pieces of evidence, all the scrupulous
4 cuttings and looking and looking and looking, and
5 there was this claim -- the CVS bag that was under the
6 shed at Stephen Edwards' house. You remember the one
7 where they identified that there was Darryl's blood on
8 the exterior part of the bag and it was a mixture of
9 his blood and somebody else's blood but it was
10 insufficient for any identification purposes. It was
11 dried blood. Don't know how long it had been there.
12 But they pulled it out and there are these dirty
13 clothes.

14 So you really don't know how long they've been
15 there. But you know perfectly well that if Alexis' or
16 Darryl's blood was on those clothes, that you would
17 know it. There's not a shred or ounce of testimony
18 that there were clothes in there, dirty, filthy
19 clothes, that had something to do with this crime.
20 Because the evidence doesn't show that. There's no
21 DNA. There's no blood on those items.

22 And you know what? If they are the clothes,
23 that's a reason right there to tell you he didn't do
24 it. There's no way you could commit this crime, on
25 God's green earth, without having blood all over your

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1 clothes. You know that, I know that, and the clothes
2 don't have any blood. No blood. They do that
3 presumptive blood first. You remember? And, no DNA
4 either from Alexis or from Darryl.

5 Sort of a side issue -- maybe a side issue. We
6 don't know. You notice the crime scene folks, when
7 they go to a scene they look for everything. They're
8 careful, they're scrupulous. They're trained to be
9 kind of keen observers and pick up on the little
10 things.

11 What did they do? One of the things that they
12 neglected thirty-nine feet -- thirty-nine yards away,
13 115 feet away, was what was viewed as a fresh
14 cigarette butt. Now, what does it mean? Well, we
15 know that it was an unidentified male. It wasn't
16 Darryl's cigarette butt. We know that for certain
17 because they took that little tiny piece of evidence
18 and sent it all the way through the process because
19 they wanted -- because if it had been Darryl's, then
20 we'd go, voila', see, we found him, proof.

21 The fact that it doesn't -- isn't Darryl's,
22 don't let them just dismiss it. They thought it was a
23 fresh cigarette butt. But more important, they
24 collected it. And it just means that you have to be
25 fair. You have to look at both sides of what things

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1 mean. You can't just look at the things that tend to
2 show guilt and then totally ignore those things that
3 point in a different direction. It just doesn't work
4 that way.

5 Fourteen swabs taken by the DNA -- by the DNA
6 expert. Fourteen swabs from around the car starting
7 at what would be the driver's-side back quarter panel
8 and kind of working your way around the car. You
9 remember the photograph of the blood droplet right
10 there at the license plate? Or if you go around the
11 other side you'll see photographs of the blood drops
12 that were on -- it's the right quarter panel. There
13 were several of them. There were two right above the
14 wheel, there was one down the side. Then you go and
15 you look on the passenger-side of the vehicle, open
16 the door, and there's another big blood -- red
17 droplet. All collected because it was important.
18 Because this case is important, because my client's
19 life and freedom are important. And they don't try
20 people and treat this stuff lightly. Do you know
21 where that evidence is? It's right there, after
22 sitting in the sheriff's office's refrigerator for two
23 years plus.

24 It was a big enough deal that even the Berkeley
25 crime scene folks went back over it again to make sure

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1 they had the evidence. And that never got sent.
2 Twenty swabs, different parts of the car. Do you
3 remember the crime scene analyst said, you go and look
4 at different places because you're trying to get the
5 whole picture.

6 I have reason to suspect, based on what we heard
7 yesterday, that you're going to hear about the text
8 that Darryl wrote on Tuesday afternoon at about five
9 o'clock, after this incident, in which he said, I've
10 got to get away from here. But think about it. What
11 was going on down in Bluffton at that time with
12 everybody buzzing and talking and talking about the
13 fact that Alexis went to Charleston with "D"?
14 Everybody was blaming Darryl, right or wrong. It does
15 not show that he killed Alexis that he's saying, I
16 want to get away from here. It just means that
17 everybody's talking, everybody's pointing the finger,
18 including Stephen Edwards.

19 The police were so busy dissecting everything
20 that Darryl was doing, that they completely blew past
21 the other evidence. And so you have them -- they're
22 going to talk to you about, well, look at the
23 different versions that Darryl gave for how he cut his
24 finger. But you really think about it, they're kind
25 of similar. The one that's different is Stephen's.

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1 the similar ones are you have Dr. Delatore on Monday
2 who says that he cut his finger with a saw. He told
3 Mr. Golis he cut it with a saws-saw [phonetic]. Ms.
4 Furchak at the Bluffton pharmacy, he said, well, I cut
5 it on a piece of glass. And he even said, do you want
6 to see it? If you're knowing that you've murdered a
7 woman and that the most prominent evidence that you
8 can't get rid of is your severed finger, do you go to
9 one of your shared friends and say do you want to see
10 it? Does that make sense? So you're going to be
11 asked to go back and use guesswork to fill in all the
12 holes to come up with where and how Darryl Drayton
13 killed Alexis, stabbed her. But I submit to you the
14 evidence is much more believable and much more
15 consistent of a cover up of her death.

16 And the law is also very, very, very, very
17 clear. This is something that I, as a human and as a
18 citizen, sometimes struggle with -- and it's normal
19 and natural for jurors to struggle with -- and that is
20 is that the law says that you shall never and can
21 never and must never consider the silence of the
22 defendant as evidence in any way. You can't talk
23 about it. You're not even supposed to think about it.

24 But I'm going to bring it up, because the judge
25 has to bring it up and tell you that you cannot

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1 consider the defendant's silence. The burden of proof
2 isn't on Darryl to come here and say he's guilty until
3 he convinces you and testifies and tells you what's
4 going on here. That's not the way it works. You may
5 wish that it worked that way. And you'll get back to
6 the jury room and be frustrated, perhaps, and say,
7 wouldn't it have been nice. If you do that, you are
8 violating the law of this land, the law of the state,
9 and the Court's instructions.

10 The burden is on the State to prove this
11 indictment by competent evidence, not by speculation,
12 guesswork, assumptions. And the law is perfectly
13 clear that if you're a mere -- merely present when a
14 crime occurs and then cover it up, you're not
15 responsible for that crime, you're responsible for
16 your cover up. Don't let them imply, don't let the
17 State imply, that somehow the burden moves away from
18 the solicitor's responsibility and the State's
19 responsibility of proving guilt and say that somehow
20 Darryl has to prove innocence. You never have to
21 prove your innocence in a court of law in the United
22 States.

23 I talked in opening statement to you about rush
24 to judgment and I asked you to consider that one of
25 the big questions in this case that's left completely

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1 vacant is that there was no motive presented to you by
2 Darryl Drayton of wanting to hurt Alexis at all. No
3 evidence that he was the one that did this horrible
4 crime.

5 You have a difficult job, because speaking as
6 somewhat the triers of the facts, the judges of the
7 facts, you're not here to make people happy or
8 unhappy. And when you come back out, the only safety
9 -- the only safe place for you as jurors is to come
10 back and say what the evidence proved and what the
11 evidence didn't prove. It's hard to come back out and
12 look at people and say, I know you'll be disappointed,
13 but the evidence is not there. But that is your oath,
14 that is your job, that is your responsibility.

15 The only verdict, based on the evidence that you
16 have, is that Darryl Drayton has not been proven
17 guilty -- and that's what it means -- not been shown
18 to be guilty of murder. No matter how much you may
19 speculate and think that he's guilty of other crimes
20 that are uncharged, like accessory after, covering
21 things up, that's not what this case is about. So my
22 simple request is that you do your duty.

23 THE COURT: Solicitor.

24 MS. SHEALY: May it please the Court. Mr.
25 Pennington, Mr. Cooper.

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CLOSING ARGUMENT

MS. SHEALY: Good morning.

I'm going to agree with Mr. Pennington about one thing. Darryl Drayton, oh, he covered up the murder. He covered up the murder he committed.

Let's look at this by beginning with Alexis Lukaitis. What was her intent on August 8th? She intended to drive "D" to Charleston because she thought he was going to be picking up some drugs. And he agreed to pay her gas and he agreed to give her some pills. That was her intent. But guess what we don't know. We don't know what Darryl Drayton's intent was. There may have never been any pills. He may have had something else in his mind the whole time, something that Alexis Lukaitis never bargained for.

What do we know from Mike Bartley? We know that he went over to his mama and daddy's house that day with the boys. And Alexis told him she was going with Darryl. And we know that when he had that phone call, the girl he had dated and been with for ten years, at 8:19 that night when she was in Charleston and when she told him that she was with "D" and when he heard her say, turn right here, and she said, I'll be home in about an hour. And he never spoke to her again.

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1 No one wears this case like Mike Bartley does on
2 his face. He told you how that evening, phone call
3 after phone call, after phone call, he tried to reach
4 her. He told you he called jails, he called
5 hospitals. It wasn't like her not to come home. And
6 he told you the next morning he immediately woke up in
7 that state of panic. He started calling her friend.
8 Told Tina Johnson that she was with "D": have you
9 seen "D", have you seen Alexis.

10 Now, Mr. Pennington, he wants to make a big deal
11 about little Bradley Vavro. We're the State. I have
12 a duty to y'all to present the evidence. I couldn't
13 care less if Darryl Drayton had scratches on his face.
14 Let's just say Darryl Drayton didn't have scratches on
15 his face. Okay? But Bradley Vavro, way back on
16 August 9th, said he had scratches on his face. He was
17 a ten-year-old kid. But what else did he tell his
18 mama that day? He saw him with a hurt finger and he
19 saw him with a hospital bandage. What was important
20 is he's telling that way before Stephen Edwards has
21 told anybody that Darryl Drayton is in town with a
22 hurt, bandaged finger. That's what's important.
23 That's why the police start looking at Darryl Drayton,
24 because when they find a girl on the side of the road
25 in Charleston and her throat has been cut and the last

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1 person she's with is Darryl Drayton, it all starts
2 connecting. So forget the scratches on the face.

3 I have a duty to you to tell you what's being
4 reported. But what's interesting about what John
5 Adams came in and told you about the scratches, he
6 sure had them on his hands, he sure had them on his
7 chest. So these imaginary scratches, Bradley Vavro, a
8 young boy that day said he saw some pink scratches.
9 Either they were on the face, they were on the chest,
10 or he got them confused. Forget that.

11 What else does Mike Bartley tell you? He tells
12 you that in the back of his wife's car there was a
13 spare tire. It had a cover. His wife kept the spare
14 diaper bag in there. He told you that in that box
15 with those terra cotta pots and the flashlight, that
16 those things used to be at his house, they were their
17 items. And that's important because when the police
18 find that car, none of that stuff is in there. Mike
19 Bartley tells you that.

20 He tells you that late that night, when he tries
21 to call his wife around ten o'clock, he heard a
22 shuffling noise. Interesting that that's at ten
23 o'clock. Because we'll talk about that in a few
24 seconds when we're talking about Dr. Delatore and what
25 Darryl Drayton tells him about what time it happened.

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1 Who else was Mike Bartley trying to call, based
2 on who Alexis said she was with? He's trying to call
3 "D". And what does "D" tell him? Oh, she never
4 picked me up. That's what "D" tells Bartley.

5 Let's talk a minute about what happened the
6 other day with Mike Bartley seeing Stephen Edwards.
7 Stephen Edwards testifies. Mike Bartley, with his
8 family, are heading out to go get a sandwich. They're
9 going together as a family. They've got money to buy
10 a sandwich. He's heard about Stephen Edwards for two
11 years. He knows how important Stephen Edwards has
12 been to this case. He knows the sacrifice that
13 Stephen Edwards has made within his family to rat out
14 his cousin. And he sees Stephen Edwards walking
15 alone. And what was said to Stephen Edwards? Thanks;
16 go get yourself some lunch. Stephen Edwards didn't
17 even say anything. Doesn't that say more about the
18 decency of Mike Bartley than any indecency?

19 And Mr. Pennington wants to think -- tell you
20 that that speaks volumes about Stephen Edwards? A man
21 who literally, literally, lives hand to mouth, who has
22 no electricity, and has no running water? How do we
23 judge a man accepting \$20 from lunch when he's out of
24 town in the same way that you may judge someone else?

25 The judge is going to tell you that each of you