

VOL II OF III

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Robert E. Hood, Circuit Court Judge

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S.C. Supreme Court

CHRISTOPHER COMMANDER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002690

APPENDIX

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BARRON DANIEL -- DIRECT BY MS. CAMPBELL:

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1 THE WITNESS: I do.

2 (Barron Daniel, after
3 being duly sworn, testified as follows:)

4 THE CLERK: Please have a seat and state your
5 full name for the record.

6 THE WITNESS: (No response.)

7 MS. CAMPBELL: Beg the Court's indulgence.
8 (Pause.)

9 DIRECT EXAMINATION

10 BY MS. CAMPBELL:

11 Q Mr. Daniel, where are you employed?

12 A Excuse me?

13 Q Where are you employed?

14 A I work for American Express under their Security
15 Department out of Atlanta, Georgia.

16 Q How long have you been employed there, sir?

17 A 29 years.

18 Q What do you do there?

19 A I'm in their Security Department. We investigate all
20 financial crimes that occur against American Express.

21 Q And as part of your duties as a security officer in
22 the Atlanta office of American Express, do you often
23 provide information if law enforcement requests it or
24 sends a search warrant?

25 A Yes, ma'am.

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1 Q And are those records that are kept in the normal
2 course of business by American Express?

3 A Yes, ma'am.

4 Q And you have custody over those records?

5 A Yes, I do.

6 Q Did you bring certain records relating to this case to
7 court today?

8 A I did.

9 Q Do you have those with you?

10 A I do.

11 Q Can I see them?

12 A (Witness complies.)

13 Q And are these records that were provided to the
14 Richland County Sheriff's Department back I believe on
15 January -- sometime after January 13th?

16 A Uh-huh, yes, ma'am.

17 MS. CAMPBELL: Your Honor, at this time we would
18 offer them into evidence.

19 MR. STRICKLER: Beg the Court's indulgence, Your
20 Honor.

21 THE COURT: Sure.

22 (Pause.)

23 MR. STRICKLER: Thank you. It's without
24 objection.

25 THE COURT: It will be State's -- is that 82?

BARRON DANIEL -- DIRECT BY MS. CAMPBELL:

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1 COURT REPORTER: 82.

2 THE COURT: 82, State's 82 is in evidence without
3 objection.

4 (WHEREUPON, State's Exhibit Number 82,
5 American Express Records, was admitted into
6 evidence.)

7 Q I want to show you what's been marked as State's
8 Exhibit Number 83. Have you had an opportunity to
9 review this document?

10 A Yes, ma'am, I did.

11 Q And does that fairly and accurately, relating it to a
12 calendar, reflect the information in State's Exhibit
13 Number 82?

14 A Yes, ma'am, it does.

15 MS. CAMPBELL: Your Honor, at this time we would
16 offer State's Exhibit Number 83 also.

17 MS. STRICKLER: That's without objection.

18 THE COURT: All right, without objection, State's
19 83 is admitted.

20 (WHEREUPON, State's Exhibit Number 83,
21 Chart - American Express Records, was
22 admitted into evidence.)

23 Q Sir, when were you first contacted by the Richland
24 County Sheriff's Department in relation to this case
25 involving Gervonya Goodwin?

1 A On the morning of January the 13th, 2005.

2 Q And who actually contacted you?

3 A Detective McDonald.

4 Q McDonald?

5 A Yes, ma'am.

6 Q And you can't say what he said, but based on the
7 information he gave you, whose accounts were you
8 looking into?

9 A Into the accounts of Gervonya Goodwin.

10 Q And did she have an account with American Express?

11 A Yes, ma'am, she actually has two American Express
12 cards.

13 Q And, specifically, were they requesting to find out if
14 there had been any activity on either of those
15 accounts?

16 A Yes, ma'am, that was correct.

17 Q That morning were you able to access that account, one
18 of those accounts or both of those accounts?

19 A Yes, ma'am, I was actually able to access both of
20 those accounts, which composes these records here.

21 Q And once you had accessed those accounts, did you
22 immediately notice that the card had been used
23 recently?

24 A Yes, ma'am, I did.

25 Q And which card was that?

1 A It was the American Express card beginning with 3715
2 684. It is on the second -- actually Page Number 3,
3 but it's the second page of this -- attached to this
4 exhibit, the bottom of Page Number 3. And the
5 transaction begins with the initials C.M., it's the
6 last transaction next to 70112 at the bottom of Page
7 3.

8 Q Okay. And what did that information that you
9 retrieved on the morning of January 13th -- what
10 information were you able to retrieve and give to the
11 investigators?

12 A These first two pages are credit authorization logs of
13 the American Express cards of Ms. Goodwin. And it
14 shows whenever the card presented, it shows when the
15 card is swiped through an electronic terminal and it
16 is read, it reads the card number, the card member's
17 name, and it records the date and time of that
18 transaction that is swiped through that terminal.

19 And in this instance, I saw that the card had
20 been presented to the Holiday Inn on Loyola Avenue in
21 New Orleans on the morning of -- excuse me, the
22 afternoon of January the 11th, and that there was an
23 authorization for \$273.00.

24 Q In addition to that, had there been any additional
25 authorizations as far as that hotel went on the 12th or

1 the 13th?

2 A No, this was all I saw at that time. There were other
3 authorizations. All these authorizations began on
4 January 1st. The card actually started being used on
5 January 1st.

6 Q And that's when the activity on that card started?

7 A Yes, ma'am. And it goes up through the 11th, which was
8 last transaction that had been authorized at the time
9 I was contacted by the Richland County Sheriff's
10 Department.

11 Q After the Sheriff's Department contacted you that
12 morning, did you make a phone call following up on the
13 information you were able to retrieve?

14 A Yes, I called the Holiday Inn to see if the card
15 member was still registered there as a guest because
16 the authorization amount looked like it was for more
17 than a one day stay.

18 Q Okay.

19 A And I thought the person might still be staying in the
20 hotel.

21 Q And you spoke to someone at the Holiday Inn in New
22 Orleans?

23 A Yes, ma'am.

24 Q And you can't say what they told you, but based on
25 that conversation you had with the people in the hotel

BARRON DANIEL -- DIRECT BY MS. CAMPBELL:

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1 in New Orleans, did you then contact Investigator
2 McDonald again?

3 A Did I contact who?

4 Q Investigator McDonald?

5 A Oh, yes, ma'am, I did. I called him.

6 Q And what information did you give him at that point?

7 A I told him the series of transactions beginning on
8 January the 11th and that I just checked with the
9 Holiday Inn and the person was still registered there
10 at the Holiday Inn in New Orleans.

11 Q And do you recall the person's name you were checking
12 on?

13 A It was Gervonya Goodwin.

14 Q So the registration was in the name of Gervonya
15 Goodwin?

16 A Yes, ma'am.

17 MS. CAMPBELL: Your Honor, may the witness step
18 down?

19 THE COURT: All right. Keep your voice up,
20 please, so the court reporter and everyone can hear
21 you.

22 (The witness steps down from the witness stand.)

23 Q Using State's Exhibit Number 83 -- sir, if you could
24 come over on this side, the court reporter might can
25 hear you better.

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1 (Complied.)

2 THE COURT: Solicitor, there's a pointer right
3 there. I don't know if you need it or not.

4 MS. CAMPBELL: Thank you.

5 THE COURT: If he needs that.

6 Q Basically just to review, she had two different
7 accounts, but you only found activity on this account?

8 A Actually they used both cards at different times.

9 Q At different times. But the activity you were able to
10 retrieve recently was starting January 1st, is that
11 correct?

12 A That's correct.

13 Q And starting with the activity you were able to draw
14 up, when was the first transaction on the American
15 Express card?

16 A This transaction here on the card.

17 Q And that was at what type of establishment?

18 A Holiday Inn. All the hotels were Holiday Inns.

19 Q And referring to this, that was in Coral Gables,
20 Florida?

21 A Yes, ma'am.

22 Q And how much was the transaction amount there at the
23 Holiday Inn?

24 A It was -- the amount was \$20.00 and then the -- that's
25 correct, \$20.00.

1 Q \$20.00 on that day?

2 A Yes, ma'am.

3 Q Moving on to the next day, which would have been
4 January 2nd of 2005, were there multiple purchases on
5 that card?

6 A There were.

7 Q And where did those take place?

8 A Again at the Holiday Inn at Poinciana Boulevard.

9 Q That would be in Miami, Florida?

10 A Miami, Florida, yes, ma'am.

11 Q And then how much was that charge for?

12 A There was one for \$48.00 and one for \$20.00.

13 Q Is there also a Holiday Inn at Lauderdale by the Sea?

14 A Lauderdale by the Sea, yes, ma'am.

15 Q How much was that?

16 (Pause.)

17 A I don't see that.

18 Q All right. Is everything accurately reflected on
19 there?

20 A Yes, ma'am.

21 Q Let me back up. Prior to coming into court, did you
22 review this?

23 A Yes, ma'am.

24 Q Does this fairly and accurately represent where
25 transactions were made by that card?

- 1 A Yes, ma'am.
- 2 Q Okay. The final transaction that was made on the date
- 3 of the 2nd was where?
- 4 A On the 2nd?
- 5 Q That is reflected on this chart?
- 6 A On January the 2nd?
- 7 Q Uh-huh.
- 8 A That's this transaction here.
- 9 Q This one?
- 10 A Yes, ma'am, T.G.I. Friday's, yes, ma'am.
- 11 Q At Fort Lauderdale?
- 12 A Uh-huh.
- 13 Q Moving on to the next transaction date would be
- 14 January the 7th, is that correct?
- 15 A Yes, ma'am.
- 16 Q And that's the Holiday Inn in where?
- 17 A It's Holiday Inn --
- 18 Court Reporter: I'm sorry?
- 19 A Excuse me, South Dixie Highway, Coral Gables, Florida.
- 20 Q And was there another transaction made that day?
- 21 A Holiday Inn in Miami, Collins Avenue.
- 22 Q Moving your attention to the 10th, which we actually
- 23 blocked that date out. To the 11th -- the 10th, Monday
- 24 the 10th, was there another transaction?
- 25 A Yes, ma'am, it's at the Holiday Inn, 1350 South Dixie

1 Highway.

2 Q Okay. Moving your attention, and you've already
3 testified to this, on the 11th?

4 A Yes, ma'am.

5 Q That is when -- was the first transaction at the New
6 Orleans Holiday Inn?

7 A Yes, ma'am, that's correct.

8 Q Again he renewed on the 12th and 13th?

9 A Yes, ma'am.

10 Q Thank you, sir.

11 (The witness returns to the witness stand.)

12 Q And the amounts are all reflected in State's Exhibit
13 Number 82?

14 A Excuse me, repeat that question?

15 Q The amounts, the money amount is all reflected in
16 State's Exhibit Number 82, those records?

17 A Yes, ma'am. These -- these amounts are even dollar
18 authorizations amounts. The actual charge amounts
19 would be different, which are on the following pages,
20 because there would be incremental cents involved.

21 Q And, again, these were two American Expresses, but
22 these were her American Express cards, is that
23 correct?

24 A Yes, ma'am. They both have different unique numbers.

25 Q Was anyone's name on that account other than Gervonya

1 Goodwin?

2 A No, ma'am. American Express cards are issued to each
3 -- like if there was more than one cardholder on the
4 account, each cardholder would have a card in their
5 name with a different number. This particular card
6 was -- these two cards were both issued to Ms.
7 Goodwin.

8 Q In the name of Gervonya Goodwin?

9 A In the name of Gervonya Goodwin.

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

11 THE COURT: All right. Cross examine?

12 MR. STRICKLER: Thank you, sir. Just a couple of
13 things.

14 CROSS EXAMINATION

15 BY MR. STRICKLER:

16 Q Good afternoon, Mr. Daniel.

17 A Good afternoon.

18 Q My name is Doug Strickler. I'm one of the attorneys
19 representing Mr. Commander.

20 Now, you've got the records here. Your records
21 can't tell us who used those cards on the various days
22 they were used, right?

23 A No.

24 Q They can tell you that the cards were used, right?

25 A Correct.

1 Q Assuming that the cards were not used by Ms. Goodwin,
2 your records can't tell us how the person who used
3 those cards came into possession of them, can they?

4 A No.

5 Q And certainly you would agree that your records can't
6 tell us anything about the facts and circumstances
7 surrounding Ms. Goodwin's death, correct?

8 A Correct.

9 MR. STRICKLER: Thank you very much.

10 THE COURT: Any redirect?

11 MS. CAMPBELL: No, sir.

12 THE COURT: Sir, you may step down. Watch your
13 step, please.

14 (The witness leaves the witness stand.)

15 MS. CAMPBELL: The State calls George Nicholson.

16 THE BAILIFF: Place your left hand on the Bible,
17 raise your right hand, and face the clerk.

18 (Witness complies.)

19 THE CLERK: Do you swear or affirm that the
20 testimony you are about to give in this case will be
21 the truth, the whole truth, and nothing but the truth,
22 so help you God?

23 THE WITNESS: I do.

24 (George Nicholson, after
25 being duly sworn, testified as follows:)

1 THE CLERK: Please have a seat and state your
2 full name for the record.

3 THE WITNESS: (No response.)

4 DIRECT EXAMINATION

5 BY MS. CAMPBELL:

6 Q Mr. Nicholson, where are you employed?

7 A BellSouth.

8 Q And what do you do there, sir?

9 A I'm manager of corporate security.

10 Q And as the manager of corporate security, do you often
11 -- or do you receive search warrants and provide
12 information to law enforcement on certain occasions?

13 A Mostly those records are provided by our office in
14 Atlanta, but when the court testimony is required, I
15 do that.

16 Q And are those records that are provided, you have
17 access to those, they are in your custody?

18 A Yes, ma'am.

19 Q And they're kept in the normal course of business, is
20 that correct?

21 A They are.

22 Q I want to turn your attention in this case back on
23 January the 18th of 2005, did your -- I believe your
24 Atlanta office provided certain records to the
25 Sheriff's Department?

1 A Approximately that time, yes.

2 Q And do you have those records with you?

3 A I do.

4 Q Can I see your records, sir?

5 MR. STRICKLER: Without objection, sir.

6 THE COURT: That would be State's 84, is that
7 correct?

8 COURT REPORTER: Yes, sir.

9 THE COURT: State's 84 is admitted without
10 objection.

11 (WHEREUPON, State's Exhibit Number 84,
12 BellSouth Phone Records, is admitted into
13 evidence.)

14 Q And looking at State's 84, I believe those are records
15 reflecting -- you tell -- whose account is that?

16 A The telephone account is, or was at the time, assigned
17 to a Gervonya Goodwin? I'm not pronouncing the name,
18 I'm sure, but that is the name, Gervonya Goodwin.

19 Q Gervonya Goodwin?

20 A Yes.

21 Q And what was the address where the account was?

22 A The service address was Drive in
23 Hopkins, South Carolina.

24 Q And the number that was assigned, BellSouth, was this
25 -- I call it a land line. Is this not a cell phone or

1 is it a regular phone?

2 A I would call it a land line as well.

3 Q Okay. And this was a land line?

4 A Yes, ma'am.

5 Q And what was the phone number associated with her
6 account that she had?

7 A Area Code 803-M.J. -1423.

8 Q 1423?

9 A Yes, ma'am.

10 Q And the activity that you provided to them started --
11 I believe you were requested from November the 30th of
12 '04?

13 A That's correct.

14 Q Through January the 8th of '05, is that correct?

15 A Yes, ma'am, that's correct.

16 Q And during that time period I believe there were
17 almost 300 calls?

18 MR. STRICKLER: Objection to the leading.

19 MS. CAMPBELL: I'll rephrase, Your Honor, I'm
20 sorry.

21 THE COURT: Sustained. Go ahead. Rephrase.

22 Q How many calls were there?

23 A There are 290 records here.

24 Q And in the first column --

25 MS. CAMPBELL: Your Honor, may the witness step

1 down in front of the jury?

2 THE COURT: Sure.

3 MS. CAMPBELL: Thank you.

4 THE COURT: Keep your voice up, please, sir, so
5 everyone can hear you.

6 (The witness steps down from the witness stand.)

7 Q These are records basically -- below the date, what
8 does that mean?

9 A That is the date of the call.

10 Q And the time?

11 A The time of the call in military time.

12 Q Okay. And then the first number would be the -- which
13 number?

14 A The first column is the calling number, the one
15 originating the call.

16 Q So in this case if it was the ^{M.J.}-1423 number, that
17 would have been initiating at that address, is that
18 correct?

19 A By that telephone number, yes.

20 Q And then the second number is the number that was
21 called?

22 A Correct.

23 Q And down here it would reflect incoming and outgoing
24 calls, is that correct?

25 A Well, you can tell that by which line this -- which

1 column this is in. If it's the originating number you
2 can see it in the column.

3 Q Okay. And these go through January the 7th, is that
4 correct?

5 A January the 8th.

6 Q The 8th, I'm sorry. In the next column it says,
7 "duration." What does that mean?

8 A That's in even minutes, the duration of the call.

9 Q And in your review of these records -- I notice that
10 they're all ones and zeros. What would that indicate?

11 A One would be a one minute call or less, and a zero
12 would be usually a call that is not answered.

13 Q And if an answering machine picks up, typically would
14 that -- could that reflect a one minute call?

15 A Yes, it would.

16 Q Whether or not it is answered, yes or no, it means
17 just what it says?

18 A Exactly, yes.

19 Q And then over here in the call type?

20 A I have a selection of those. If you want to look them
21 up on the web, you can. They are machine entries that
22 tell you what type of call it was, long distance call

23 --

24 Q That's fine.

25 A -- cell phone call or whatever.

1 Q Thank you.

2 (The witness returns to the witness stand.)

3 Q In your review of these records, are they consistent
4 with someone having checked voicemail?

5 A Yes, they are.

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

7 (Pause.)

8 MS. CAMPBELL: Thank you, sir. I don't have
9 anything further.

10 THE COURT: All right. Cross examine?

11 MR. STRICKLER: No, sir. Thank you very much.

12 THE COURT: All right, sir, you may step down.

13 (The witness leaves the witness stand.)

14 MS. CAMPBELL: The State calls Valerie Mabry.

15 (Pause.)

16 MS. CAMPBELL: I apologize, Your Honor.

17 MR. MEADORS: Beg the Court's indulgence.

18 (Pause.)

19 MS. CAMPBELL: She stepped out. We can go with
20 Pam Sehnert.

21 THE BAILIFF: Place your left hand on the Bible,
22 raise your right hand, and face the clerk.

23 (Witness complies.)

24 THE CLERK: Do you swear or affirm that the
25 testimony you are about to give in this case will be

1 the truth, the whole truth, and nothing but the truth,
2 so help you God?

3 THE WITNESS: I do.

4 (Pamela Jean Sehnert, after
5 being duly sworn, testified as follows:)

6 THE CLERK: Please have a seat and state your
7 full name for the record.

8 THE WITNESS: My name is Pamela Jean Sehnert.

9 DIRECT EXAMINATION

10 BY MS. CAMPBELL:

11 Q Ms. Sehnert, where are you employed?

12 A AmSouth Bank.

13 Q And where is AmSouth Bank located?

14 A The office I'm in is in Orlando, Florida, but our
15 headquarters is in Birmingham.

16 Q Alabama?

17 A Uh-huh.

18 Q And how long have you worked for AmSouth?

19 A 16 years.

20 Q And what are your duties there?

21 A I am an investigative assistant, which involves
22 assisting for investigators in fraud cases, and also
23 includes liaison with police when they need
24 assistance. And I maintain -- not maintain, but
25 supervise maintenance of our video system.

1 Q So you often provide information to law enforcement?

2 A Yes, ma'am.

3 Q I want to turn your attention to this case involving
4 an ATM card involving Ms. Gervonya Goodwin. Was there
5 a transaction that took place on December the 14th of
6 2004 at AmSouth Bank?

7 A Yes, ma'am.

8 Q And did the police request a copy of actually an ATM
9 video or some stills from that?

10 A Yes, ma'am.

11 Q I want to show you what has been marked as State's
12 Number 85.

13 A Uh-huh.

14 Q Were those the items that were provided to law
15 enforcement?

16 A Yes, ma'am.

17 Q And I believe that was on January the 21st of 2005?

18 A I believe so.

19 Q And these are kept in your normal course of business?

20 A Yes.

21 MS. CAMPBELL: Your Honor, at this time we would
22 offer State's Exhibit 85.

23 MR. STRICKLER: Without objection, sir.

24 THE COURT: Without objection, State's 85 is
25 admitted.

1 (WHEREUPON, State's Exhibit Number 85,
2 AmSouth Bank ATM Photographs, is admitted
3 into evidence.)

4 Q And you can refer to this, but what is that? Can you
5 explain to the jury where is that bank and what does
6 it reflect? What do those pictures reflect?

7 A The bank is located on South Orange Blossom Trail in
8 Orlando, Florida.

9 Q Uh-huh.

10 A And our video system takes periodic still pictures
11 approximately every 13 seconds. And these pictures
12 would be taken from a camera inside the ATM -- inside
13 the ATM machine pointing out towards the customer.
14 And it's a drive-up ATM, so the customer remains in
15 the car.

16 MS. CAMPBELL: And, Your Honor, may she step down
17 in front of the jury?

18 THE COURT: Yes. Keep your voice up so we can
19 all hear, please, but you can step down, and watch
20 your step.

21 (The witness steps down from the witness stand.)

22 Q Come over here so the court reporter can hear you
23 better.

24 A Okay.

25 Q The date here at the bottom, does that reflect -- what

1 does that reflect?

2 A That would be the time and the date that was on the
3 digital image when I pulled it off of the system.

4 Q And sometimes the date may be reflected -- like in the
5 bank a transaction made and the date on a video may be
6 slightly different?

7 A Yes, there could be posting differences.

8 Q And turning to these, are these all reflecting the
9 same transaction?

10 A It -- I believe there was actually two transactions,
11 one was successful and one was unsuccessful. But
12 there would be -- it was a continuous time frame.

13 Q Continuous time frame?

14 A Uh-huh.

15 Q So these would be the two separate transactions, is
16 that correct?

17 A I believe so.

18 Q And, again, both of these occurred --

19 A On December 14th of 2004.

20 Q In what city?

21 A In Orlando, Florida.

22 MS. CAMPBELL: Thank you. You can take your
23 seat.

24 (The witness returns to the witness stand.)

25 MS. CAMPBELL: And, Your Honor, may I publish

1 these to the jury?

2 THE COURT: All right.

3 MS. CAMPBELL: Thank you.

4 (Complies.)

5 MS. CAMPBELL: Thank you. I don't have any
6 further questions. Please answer any questions the
7 Defense may have.

8 THE COURT: All right. Cross examine?

9 MR. STRICKLER: Your Honor, beg the Court's
10 indulgence one moment.

11 THE COURT: Sure.

12 (Pause.)

13 MR. STRICKLER: No, sir. Thank you.

14 THE COURT: All right, ma'am, you may step down.
15 Watch your step, please.

16 (The witness leaves the witness stand.)

17 MS. CAMPBELL: Your Honor, may we approach?

18 THE COURT: Sure.

19 (WHEREUPON, a bench conference was held in
20 the presence of the jury but out of the
21 hearing of the jury.)

22 THE COURT: Mr. Foreman and ladies and
23 gentlemen, it would be a good point for breaking
24 for lunch. We will start back at 2 o'clock. If
25 you'll be back in the jury room at 2, we'll

1 start then.

2 Again, don't discuss the case with anyone.

3 Have a good lunch, and be back at 2, please.

4 Everyone else stay seated. The jury is
5 excused.

6 (WHEREUPON, the jury retires for lunch
7 at approximately 12:30 p.m.)

8 THE COURT: We'll break until 2.

9 (WHEREUPON, the court was in recess.)

10 MS. CAMPBELL: May it please the Court?

11 THE COURT: Yes, ma'am.

12 MS. CAMPBELL: Your Honor, we were going to take
13 Sergeant McDonald next, but over the lunch hour he
14 scratched his eye and had to go home to get some
15 Visine, and we didn't know if he'd be back, so I went
16 ahead and got the pathologist here. So we would like
17 to do him.

18 THE COURT: You can take whoever you want.

19 MS. CAMPBELL: One thing that we might want to
20 take up before the jury comes in, I spoke to Mr.
21 Strickler earlier, and in Sergeant McDonald's follow-
22 up, there are references to, and I think it is
23 essential, the way the police were able to make entry
24 to the room in New Orleans was the fact there was an
25 outstanding unrelated warrant that was outstanding

1 that is integral to the facts of how the arrest was
2 made.

3 I don't know how to refer to that except as
4 generically as a warrant. There was not a warrant in
5 this case yet at that point is the actual factual
6 background.

7 In addition to that, he also made contact with
8 his -- he's on federal probation. He had also made
9 contact with his federal probation agent. Since that
10 has been a problem with me in the past, I just wanted
11 to bring it to the Court's attention. I don't intend
12 on going into any mentioning of federal probation
13 agent, and I just wanted to advise the Court that I
14 had advised Sergeant McDonald we don't intend to do
15 that unless it's elicited somehow on cross.

16 THE COURT: All right. As to that particular
17 problem, I mean, it should not be mentioned, federal
18 probation or anything like that.

19 Now, what about the fact that they went in -- as
20 I remember the pretrial testimony, there were, I
21 think, a couple of outstanding warrants or something.

22 MS. MOBLEY: That's right. Your Honor, I had
23 actually been wondering a little earlier. I mean,
24 obviously our position is that none of the other
25 matters are admissible in any way at this point. I

1 understand the problem they have of getting to the
2 point of them getting in the room, what have you.

3 You know, the bottom line appears to me from the
4 prior testimony is that they were going in this room
5 essentially because Mr. Commander was a suspect in a
6 homicide. I understand they went in on a warrant --
7 beg the Court's indulgence.

8 MR. STRICKLER: If I remember the testimony
9 during the in-camera hearing at the beginning of the
10 case, they just indicated they went in to go ahead and
11 pick up someone on outstanding warrants.

12 MR. MEADORS: Right, check, that is exactly
13 right.

14 MR. STRICKLER: And I don't have any problem with
15 that. I mean, that --

16 THE COURT: As long as there is no discussion or
17 mention of what the warrant was for -- I really, as a
18 practical matter, I don't think to the jury it's going
19 to make a whole lot of difference whether they think
20 it's a warrant in this case or whether they think it's
21 a warrant for something else if it's not emphasized or
22 pointed out and the testimony is that: We went in, we
23 had been notified by South Carolina that there was an
24 outstanding warrant, and that's why we went to arrest
25 him.

1 MR. STRICKLER: And I agree completely. I think
2 that was the way the testimony was structured at
3 pretrial.

4 THE COURT: And if it comes out the way it came
5 out in-camera, I don't think there's any problem with
6 it.

7 MR. MEADORS: And, Your Honor, that's the --
8 Jerome Laviolette actually talked to me just a little
9 earlier. He was concerned about that issue. I told
10 him Your Honor would instruct all of us, but I thought
11 it would be the same way he did. So we certainly
12 would not go beyond that.

13 Thank you.

14 THE COURT: Any other matters we need to take up
15 before we resume?

16 MS. CAMPBELL: No, sir.

17 THE COURT: All right, any other --

18 MR. STRICKLER: No, sir.

19 THE COURT: All right, let's get the jury in,
20 please.

21 while they're coming in, let me see you folks.
22 (WHEREUPON, a bench conference was held in
23 the presence of the jury but out of the hearing
24 of the jury.)

25 THE BAILIFF: Your Honor, the jury is present.

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DR. CLAY L. NICHOLS -- DIRECT BY MS. CAMPBELL:

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1 THE COURT: All right, Mr. Foreman and ladies and
2 gentlemen, we will continue.

3 solicitor, you may call your next witness.

4 MS. CAMPBELL: Thank you, Your Honor. The State
5 calls Dr. Nichols.

6 THE BAILIFF: Place your left hand on the Bible,
7 raise your right hand, and face the clerk.

8 (Witness complies.)

9 THE CLERK: Do you swear or affirm that the
10 testimony you are about to give in this case will be
11 the truth, the whole truth, and nothing but the truth,
12 so help you God?

13 THE WITNESS: I do.

14 (Dr. Clay L. Nichols, after
15 being duly sworn, testified as follows:)

16 THE CLERK: Please have a seat and state your
17 full name for the record.

18 THE WITNESS: Clay L. Nichols, N-i-c-h-o-l-s.

19 DIRECT EXAMINATION

20 BY MS. CAMPBELL:

21 Q Dr. Nichols, where are you employed?

22 A I'm in private practice at the Richland Memorial
23 Hospital, the Department of Pathology, and I'm also
24 the Chief Medical Examiner for Richland County.

25 Q And can you tell the jury a little bit about your

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1 training and your education as a forensic pathologist?

2 A I received my Bachelor of Science degree from the
3 University of Oklahoma in 1981. Four years later I
4 received my medical degree also from the University of
5 Oklahoma.

6 Following that I entered a residency program in
7 both anatomic and forensic pathology at MUSC. Upon
8 completion of that, I was on the faculty at MUSC for
9 ten years where I taught pathology to medical
10 students, fellows, other residents.

11 In 2000 I left academics and came here to
12 Columbia to be in private practice and act as a
13 medical examiner. I'm board certified by the American
14 Board of Pathology in both anatomic and forensic
15 pathology. I hold an unrestricted license to practice
16 medicine and surgery in the State of South Carolina.

17 Q Can you explain to the jury, what's the difference
18 between forensic pathology and anatomical pathology?

19 A Anatomical pathology is the study of diseased tissues.
20 Any time you have something removed at the time of
21 surgery, it is sent to a pathologist where it's looked
22 at both grossly, which means with the naked eye,
23 sometimes underneath with a microscope, looking for
24 the presence or absence of disease. Any time you have
25 a biopsy or pap smear, that's sent to a pathologist

1 for interpretation.

2 Anatomical pathologists do get training
3 performing autopsies, which is the dissection of a
4 person after, of course, the person dies.

5 The goal usually in those cases are to discover
6 the cause of death.

7 Forensic pathology has additional training
8 dealing with people who died suspicious and unnatural
9 deaths.

10 Q And you are board certified as a forensic pathologist
11 as well as anatomical?

12 A That's correct.

13 Q And you are the Chief Medical Examiner for Columbia?

14 A That's correct, Richland County.

15 Q And you've testified before as an expert in the field
16 of forensic pathology?

17 A Yes, I have.

18 Q And do you know approximately how many times you've
19 been qualified in that area?

20 A Many times.

21 MS. CAMPBELL: Your Honor, at this time we would
22 offer him as an expert in forensic pathology.

23 THE COURT: Any cross examination or objection?

24 MR. STRICKLER: No, sir, I would stipulate to his
25 qualifications as an expert in anatomical and forensic

1 pathology.

2 THE COURT: All right, his credentials are
3 stipulated to. He is determined by the Court to be an
4 expert in the field of both anatomical and forensic
5 pathology.

6 You may continue, Solicitor.

7 Q Doctor, I want to refer back to an autopsy you
8 performed I believe on January the 8th of 2005?

9 A That's correct.

10 Q And the night before, January the 7th, did you actually
11 respond to a crime scene over on Tilting Rock Road?

12 A Yes, I did.

13 Q And can you tell the jury why you went to that crime
14 scene?

15 A I was asked by the Coroner's Office who responded to
16 the scene to come out and provide additional opinion
17 and information in the case of the death of Gervonya
18 Goodwin.

19 Q And when you got to the scene, can you describe to the
20 jury what you found?

21 A Essentially Ms. Goodwin was lying supine on the sofa.
22 She had her clothes on. She was decomposing though
23 mummified, and apparently she was pregnant at the
24 time. The fetus, due to decomposition, was expelled
25 between her legs.

1 Q And the fetus, were you able to make a determination,
2 before getting further, was the fetus expelled from
3 the body before death or after death?

4 A It was after death. That's a situation where during
5 decomposition gases are produced and the gas over a
6 period of time actually forces the uterus and the
7 fetus out between the legs.

8 Q What if any examination of the body did you do there
9 at the scene?

10 A Essentially just looked at the body and looked at the
11 fetus. The autopsy was done the next day.

12 Q And, in fact, was that body transported to the morgue
13 at Richland Memorial Hospital that evening?

14 A Yes, it was.

15 Q The next day, approximately what time did you start
16 your examination or your autopsy?

17 A 8 o'clock.

18 Q And in doing an autopsy, what is the first thing you
19 do in performing an autopsy?

20 A Actually, the first thing an autopsy involves is
21 getting a phone call. And a phone call not only
22 alerts the pathologist that an autopsy needs to be
23 performed, but there is also the exchange of
24 information called the history. Depending on the
25 situation, there might be a lot of history, or there

1 may be very little history.

2 After that, the body is examined with the clothes
3 on and the clothes off. Then a dissection is
4 performed looking at the tissues, both with the naked
5 eye and then during this process small pieces of
6 tissue are removed for microscopic examination.

7 Also during the course of the autopsy, pertinent
8 tissues are harvested for a toxicologic evaluation
9 later on.

10 Within a couple of days, a preliminary report is
11 issued and then hopefully within the month the final
12 report is issued.

13 Q You then got a history as far as what the police knew
14 at that point prior to doing your examination?

15 A Yes, I did.

16 Q When you started your examination, did you basically
17 observe the body externally first --

18 A Yes --

19 Q -- to note any kind of trauma or anything like that?

20 A Yes, I did.

21 Q How -- just before we go any further, how big was Ms.
22 Goodwin?

23 A Ms. Goodwin was 63 inches, which is 5 foot 3, and her
24 weight in that condition was estimated at
25 approximately 100 pounds.

1 Q At the time that you were examining her, did you note
2 any rigor of any sort?

3 A No, in order to have rigor mortis, which is the
4 stiffening of the muscles after a person dies, you
5 have to have muscle tissue to be stiff. After the
6 person decomposes, the muscle no longer has the
7 ability to remain stiff, so the rigor mortis had
8 passed by then.

9 Q When you do your initial examination externally, are
10 you looking for signs of trauma?

11 A Yes.

12 Q And can you tell this jury what your observations of
13 the body were?

14 A The skin surfaces were in good condition, everything
15 considered. The body surfaces could be evaluated for
16 the presence of injury, such as gunshot wounds, stab
17 wounds, beating. There was no evidence of trauma in
18 this particular case.

19 Q And you examined her face, her body, everywhere,
20 correct?

21 A That's correct.

22 Q And there was no indication of any kind of violence or
23 trauma to the body?

24 A That's correct.

25 Q You mentioned that she's in a mummified state. Can

1 you explain to the jury how a person becomes -- it's
2 fairly rare to be mummified, is it not?

3 A In this part of the country, yes.

4 Q Can you explain that to the jury?

5 A When a person dies, over a period of time they start
6 to decompose if not properly embalmed and taken to the
7 funeral home. And after a couple of days, depending
8 on the situation and the humidity and several other
9 factors, decomposition starts taking place where
10 fluids actually start seeping from the body. Often
11 times there is a foul odor. And I think most people
12 are familiar this type of odor dealing with dead
13 animals, cats, dogs or things of that nature. The
14 same thing happens with a person.

15 However, given a lower humidity and the correct
16 temperature, rather than having a liquefied state, the
17 body becomes mummified and dried out. So the skin
18 surfaces are relatively maintained. The internal
19 organs, although certainly are decomposed, maintain
20 their shape in the normal anatomic relationships.

21 Q And in this case, say if the body was kept in a house
22 that was heated over several weeks, could the body
23 become mummified?

24 A Yes, given the right temperature and humidity
25 conditions.

1 Q Did you also call in a Dr. Tim Close for a consult as
2 far as the fetus was concerned?

3 A Yes, I did.

4 Q And what was purpose in that, sir?

5 A One of the concerns when we're dealing with a pregnant
6 woman is whether or not the fetus was viable meaning
7 that the child could be born and be maintained in a
8 relatively healthy state and expected to live. That
9 would be a double homicide, if the child was viable.

10 However, with x-ray examination, it was
11 determined that the fetus was less than 20 weeks,
12 which is a pre-viable fetus. So essentially we only
13 had one death that we were trying to evaluate.

14 Q Once you had completed your external examination, did
15 you then do an internal examination?

16 A Yes, I did.

17 Q Please tell the jury how that was done.

18 A The skin is essentially cut into, it's opened up, the
19 chest plate is removed and the organs are removed one
20 by one and examined, and that's when small pieces of
21 tissue or taken for a microscopic examination.

22 Q And once you do your internal examination, do you
23 actually go through and examine each and every organ
24 internally to make sure that - to see if they
25 contributed to the cause of death?

1 A That's correct. The organs are subsequently dissected
2 down into smaller portions.

3 Q In your examination of the heart, the lungs, the liver
4 and all the internal organs, did you find any evidence
5 of any trauma or disease that would have contributed
6 to her death?

7 A No. And that goes into no fractures and the hyoid
8 bone, which is a small u-shaped bone above your Adam's
9 apple, it's right at the base of your tongue. If you
10 kind of feel up there, you can feel where your Adam's
11 apple is. And right above that is this tiny bone up
12 there. That was intact as well.

13 Q Intact?

14 A Intact, not fractured, not broken.

15 Q Did you also do an examination of the head for any
16 possible injury there as far as any fracture or trauma
17 to the head area?

18 A Absolutely. In the same way that the main body is
19 opened up, the scalp is looked at both on top and then
20 underneath. The scalp is actually flipped inside out
21 looking for any evidence of bruising and there was
22 none. The skull wasn't fractured. The brain and it's
23 coverings were removed and examined and there was no
24 evidence of hemorrhage or additional injury.

25 Q Once you completed your examination, your actual

1 physical examination of the internal organs, did you
2 also collect certain parts of internal organs to be
3 tested later?

4 A Yes, I did. Since there was no blood to be collected
5 because the blood, being liquid tissue, had already
6 been absorbed and expelled, the liver was used for a
7 toxilogic evaluation.

8 Q Once you completed your examination, was there any
9 evidence of any trauma to this woman's body in any
10 way?

11 A No.

12 Q Did you come -- after your examination and prior to
13 getting the toxicology reports back, did you come to a
14 preliminary conclusion as the cause of death in this
15 case?

16 A Yes, I did.

17 Q And what was that, sir?

18 A Given the fact that this woman died under suspicious
19 circumstances, that the history I was given was that
20 her -- she was already in her house, no one had talked
21 to her for a period of time, her car was missing, her
22 purse was missing, there was some indication that
23 somebody was sending text messages to family members
24 indicating that the dead woman, Gervonya Goodwin, was
25 still alive, this indicated an extremely suspicious

1 circumstance, and I felt that we were dealing with a
2 homicide.

3 MR. STRICKLER: I object. I have a matter of
4 law.

5 THE COURT: All right, Mr. Foreman and ladies and
6 gentlemen, I need to take this matter up outside your
7 presence. Don't discuss the case. Please step back
8 to the jury room, please.

9 (WHEREUPON, the jury retires to the jury
10 room.)

11 THE COURT: All right, Mr. Strickler?

12 MR. STRICKLER: Yes, sir. I just have no
13 problems with the doctor's rendering an opinion as to
14 the cause of death. He has just passed the point of
15 rendering an opinion as to the cause of death and he
16 is now rendering an opinion as to the manner of death
17 in this case.

18 One, my understanding is that he is rendering an
19 opinion on the issue that the jury has to decide. And
20 that is what I have a problem with. Homicide is a
21 legal term. It is precisely what the jury in this
22 case -- precisely one of the issues that the jury in
23 this case will have to address in the course of its
24 deliberations in this trial, and I would submit that
25 that is not permitted.

1 If I may, Your Honor?

2 THE COURT: Yes, sir.

3 MR. STRICKLER: I have a series -- two, four,
4 five cases here, Your Honor. They are not from South
5 Carolina. To the best of my ability, the research we
6 have conducted, this would be a case of first
7 impression in this state. I passed up to the Court
8 and to Ms. Campbell cases from Maine, New Jersey,
9 Montana, Kentucky and Minnesota.

10 Now, what I have done -- what the situation is
11 here, Judge, it involves the interplay between Rule
12 702 and 704 of our Rules of Evidence.

13 704 indicates that testimony in the form of
14 opinion or inference otherwise admissible is not
15 objectionable because it embraces the ultimate issue
16 to be decided by the trier of fact. I understand
17 that. The question is, otherwise admissible.

18 702 relates to testimony by experts. If
19 scientific, technical or other specialized knowledge,
20 -- and there's no question, I stipulated to the fact
21 that Dr. Nichols is an expert -- will assist the trier
22 of fact to understand the evidence and determine the
23 fact in issue, a witness qualified as an expert by
24 knowledge, skill, experience, etcetera, may testify
25 thereto in the form of an opinion or otherwise.

1 So, the predicate to being able to render an
2 opinion as to the ultimate issue is if it is based
3 upon specialized knowledge on the part of the expert
4 testifying.

5 Now, no question he has specialized knowledge as
6 to his findings in conducting the post-mortem autopsy
7 in this case. He has just testified to his findings
8 as a result of that.

9 With all due respect to the good doctor, he is no
10 more situated to determine whether this is a case of
11 homicide than the people who have been listening --
12 sitting here for the last several days listening to
13 the facts surrounding the case.

14 And, in essence, the cases I passed up to you and
15 Ms. Campbell in various shapes and fashion stand for
16 that proposition. They all involve deaths.

17 If I can -- and, Your Honor, the cases I have
18 pulled have been from jurisdictions that have the same
19 rules of evidence as we have. There are some that
20 have adopted different rules of evidence and I have
21 looked at jurisdictions that we could compare the
22 evidence rules with those we employ here in South
23 Carolina.

24 Now, in Maine, State v. Young, turn to Note 4 in
25 that regard. To recite it for the Court: We

1 acknowledge that the testimony of medical examiners
2 when the death was a homicide may in some cases give
3 rise to confusion among the jury as to the meaning of
4 the term. As Young maintains, the jury might
5 mistakenly conclude the term homicide implies some
6 degree of criminal culpability. We then carefully
7 point out the danger - quote -- the danger inherent in
8 allowing a medical expert to testify in terms which
9 express legal conclusions rather than conclusions
10 which are clearly within the specialized knowledge of
11 the expert. The testimony from the medical examiner
12 as to the Defendant's state of mind at the time of the
13 crime will cross the line between proper expert
14 testimony and testimony in the form of a legal
15 conclusion.

16 From New Jersey, the case of the State v.
17 Jameson, as cited by some other cases that we found in
18 our research. And, Your Honor, in that case you've
19 got the headnotes. This is a case involving a
20 reckless homicide, or it was alleged to be a reckless
21 homicide, and the doctor in that particular case
22 testified actually as to an opinion regarding the
23 facts and circumstances surrounding the alleged
24 accident. And I just turn to Page 12 of my printout -
25 - I'm sorry, I'm trying to see, this is Page 708 --

1 all I'm getting is the cite here, Page 12, Headnote
2 13: We are also satisfied that Dr. Speth should not
3 be permitted to testify this was a reckless homicide
4 rather than an accidental killing. The first
5 question, it's ultimately for the jury to decide.
6 Second, under the evidence case, was the issue on
7 which an expert could not be of assistance to the
8 jury. Here there were no wounds to analyze. There
9 were circumstances leading up to the accident that
10 were within the understanding of the average juror, as
11 we have here. The jury was as competent as Dr. Speth
12 to analyze the facts and determine whether Ballard's
13 death was the result of an accident or the Defendant's
14 recklessness.

15 From the State of Montana, the State v. Howard.
16 This is an attempted homicide and kidnapping and
17 sexual intercourse without consent and convicted of
18 the lesser included offenses.

19 The conviction in this case is affirmed and
20 findings in a number of situations, but affirmed on
21 the basis of harmless error.

22 However, if we turn to Page 3 of the printout,
23 Headnote 1, the first of the appeal: Howard raises
24 three issues: w=whether the District Court erred in
25 allowing the doctor to testify as to the intent of the

1 victim's assailant. The objection made by the Defense
2 counsel to the question calling for the doctor's
3 opinion of intent was that it invades the province of
4 the jury. This objection is not adequate. It is
5 merely another way of saying the testimony embraces
6 the ultimate issue.

7 Under Rule 704, turn to Headnote 2 now: The
8 testimony must be otherwise admissible. Admissibility
9 of expert testimony is governed by 702, just as we
10 discussed in South Carolina. According to this rule,
11 Dr. Elliott was clearly qualified to testify as to the
12 nature and extent of the victim's injuries, as the
13 good doctor has done here. Whether he could then
14 extrapolate from this data and give an opinion is
15 determined by whether the opinion would assist the
16 trier of fact. Stated another way, the test is
17 whether the subject is one of such common knowledge
18 that men of ordinary education could reach a
19 conclusion as intelligently as the witness, or whether
20 the matter is sufficiently beyond common experience
21 that the opinion of an expert would assist the trier
22 of fact. Dr. Elliott inferred from the nature of the
23 injuries that the person who inflicted them did so
24 with an intent to murder. We find that under the
25 circumstances of this case, the jury was as qualified

1 as the doctor to draw an inference from the
2 circumstantial evidence as to the intent, and
3 therefore the doctor's opinion on intent was
4 inadmissible under 702.

5 I would submit such is the case here. I mean,
6 what the doctor has relied on in expressing an opinion
7 that the case is a homicide is not what he's found
8 about the condition of the body, but rather what he
9 has been informed of as to the facts and circumstances
10 surrounding the facts and circumstances preceding the
11 discovery of the body.

12 State of Kentucky, Baraka V. Commonwealth. Now,
13 this case affirms the Court of Appeals' conclusion.
14 However, if you look at Page 6 of my printout here,
15 and its concurring opinion is informal in discussing
16 precisely this issue, citing a series of cases.

17 In fact, the case -- it comes down to -- the
18 cases holding the contrary are easily explained under
19 the facts. And it cites Maxwell v. State, a Georgia
20 case. I pulled Georgia cases, but they do not share
21 an exact code with our Rules of Evidence. I'm not
22 relying on them, but the Georgia case: Error to
23 permit medical examiner to testify that the manner of
24 death was homicide where the witness could not
25 determine the cause of death relied solely on evidence

1 of other lay witnesses and admitted opinion was based
2 on factors the jury could determine themselves,
3 precisely the point I'm trying to make at this point.

4 It cites the State v. Pinero, Hawaii: Error to
5 permit the forensic pathologist to express the opinion
6 the victim's death was a homicide and not an accident
7 where the Defendant admitted he fired the fatal
8 gunshot.

9 The State v. Vining, Maine: Medical examiner's
10 opinion the manner of death was homicide should have
11 been excluded where opinion was based solely on
12 information received from police not on physical
13 evidence adduced during the autopsy, thus not a
14 product of the witness's expertise.

15 State v. Flick, again out of Maine: Upholding
16 exclusion of medical testimony as to the Defendant's
17 state of mind at the time of the crime.

18 This also cites State v. Jameson I just -- out of
19 New Jersey that I discussed with you: Concluding, the
20 consensus of the cases is that an expert medical
21 examiner or forensic pathologist can express an
22 opinion not only as to the cause of death, but also
23 the manner of death, i.e., by the omission of another
24 person where such would not be readily and
25 ascertainable by a lay person, thus would assist the

1 trier of fact in determining the fact in issue.
2 However, the expert cannot express an opinion as to
3 the mental state of the accused which would constitute
4 an expression as to the innocence.

5 And then lastly, I believe there are two cases
6 out of Minnesota, State v. Chambers. The discussion
7 is found in Headnote 3, a short opinion: This
8 reasoning also applies to opinions rendered by a
9 pathologist. The pathologist may appropriately
10 testify to things such as the number and extent of the
11 wound, the amount of bleeding, whether the wounds were
12 caused by a knife or blunt instrument, were there
13 gunshot wounds or contact wounds, whether the wounds
14 could or could not have been the result of an accident
15 and cause of death, and so forth. The pathologist
16 should not be allowed to make expert inference of an
17 intent to kill from this matter.

18 And this goes beyond an expression of opinion as
19 to whether or not the situation is a homicide and goes
20 to specific -- specifically as to the intent that was
21 present or not present at the time of the incident.

22 And lastly, State v. Bauer, out of Minnesota, the
23 pertinent portions are found at Page 12 of the
24 opinion.

25 THE COURT: Page what, 12?

1 MR. STRICKLER: 12, yes, sir, in Headnotes 6, 7
2 and 8: Appellant's second claim of error concerns Dr.
3 McGee's testimony that he believes Ms. Bauer's
4 assailant attempted to kill rather than merely assault
5 her. Appellant contends this was a prejudicial error
6 to admit such testimony. The Defense, however, failed
7 to make a timely objection to the testimony, etcetera.

8 And skip a paragraph: The State argues that it
9 is controlled by some other cases. Contrary to the
10 state's assertions, however, resolution of this case
11 is governed by the decision stated in Chambers, which
12 is this first case that I provided Your Honor, out of
13 Minnesota. There we held that it was error to allow a
14 pathologist to give an expert opinion that the killing
15 was intentional, reasoning that the determination of
16 the requisite mens rea should be left to the jury.

17 Your Honor, if I could, by way of analogy, submit
18 that we're now permitted to give expert testimony as
19 to the existence or as to the -- as to the presence of
20 behavior that is consistent with battered woman's
21 syndrome. The expert is not allowed to then go
22 forward and express an opinion as to whether the
23 Defense has met in that situation.

24 So I'm not sure if I'm being clear in what I'm
25 arguing to the Court, presenting to the Court. I can

1 be clear in that -- in stating we've looked where we
2 can for jurisdictions that share our Rules of Evidence
3 in regard to this proposition. And I presented to
4 Your Honor those cases from those jurisdictions that
5 we've been able to find where the issue has been
6 raised on appeal. I have a number that could have
7 been raised on appeal, but not something that was
8 argued. So the cases don't address it.

9 So in short, Your Honor, I would submit that the
10 doctor is not in the position to go ahead and provide
11 information as to the manner of death, in this
12 particular circumstance anyway, simply because the way
13 he arrives at the manner of death, of the facts and
14 the circumstances surrounding the death of this woman,
15 as opposed to the medical findings on his part at the
16 time of the autopsy.

17 THE WITNESS: Your Honor? Your Honor?

18 THE COURT: No, no, don't let me hear from you at
19 this point in time. I'm going to hear from the
20 lawyers. I may have a question for you in just a
21 minute.

22 THE WITNESS: Yes, sir.

23 THE COURT: Let the lawyers argue for a minute.
24 All right, Solicitor.

25 MS. CAMPBELL: Your Honor, I think under 704 he

1 does have a right, and he was going into his opinion
2 as to the cause of death, and I think he got
3 interrupted, he got stopped, and I understand why
4 before he got there.

5 My next question to him was, you know, could this
6 or was this -- could she have just dropped dead of
7 natural causes, and gone into further explanation.
8 Perhaps I was a little clumsy in getting up to my
9 point.

10 Your Honor, I do think he has the right and had
11 the right to give his expert opinion as to the cause
12 of death as well as, you know, whether or not if it
13 was accidental or not. I think as an expert, as long
14 as he has a basis for it, he is a forensic pathologist
15 and he has a right to give his opinion as to what
16 happened in this case as long as he bases it on his
17 expertise as a medical examiner and a forensic
18 pathologist.

19 He has already explained to the jury that it is
20 important to get history and to understand the
21 circumstances surrounding that. I think he was just
22 making an attempt to explain to the jury why he came
23 to this conclusion.

24 THE COURT: Where a question like this is one of
25 first impression, I wish I had had the benefit of

1 being able to read all of these cases in detail. I've
2 got to make a call right now. But I've tried to go
3 through these cases. And I think this first case that
4 you went over, Mr. Strickler, probably is -- it's the
5 Maine case, Maine versus -- James V. Young, and
6 Headnote Number 5 I think deals with sort of where we
7 are.

8 when the objection was made, I think the doctor
9 had just opined -- he had been asked if he had reached
10 a preliminary conclusion. He had said, yes, that he
11 felt it was a homicide, and that's where the objection
12 was made.

13 I think the key to the motion and to whether or
14 not it's admissible and whether or not he has crossed
15 the line that you're talking about. It's clear a line
16 has been established by these cases, although not
17 recognized in South Carolina, is what this witness's
18 definition of homicide is. And that's what I'm going
19 to ask at this point in time, is what is your
20 definition of homicide. That is the term that you
21 used?

22 THE WITNESS: Yes, sir. Homicide is someone who
23 died as a result of the actions of another individual.

24 THE COURT: As opposed to?

25 THE WITNESS: An accidental cause where somebody

1 unintentionally caused death to another individual.

2 May I add one thing, Your Honor?

3 THE COURT: Go ahead.

4 THE WITNESS: That there is some confusion as to
5 what the history actually plays in the part of the
6 autopsy. Many people feel the autopsy is nothing more
7 than the dissection of a person and looking at the
8 tissues underneath the microscope. The history is
9 vital and a mandatory part of all autopsies. It's
10 such a mandatory part that I must document in every
11 autopsy I do where the history came from and who gave
12 it to me. And without a history, the autopsy, in and
13 of itself, is invalid. The two are not separable,
14 they are part of one another. The autopsy includes
15 the history as well as all the other anatomic and
16 laboratory findings.

17 THE COURT: The reason -- and I will let you
18 respond. This -- the discussion in this Maine case
19 says: In response to an appropriate request, which
20 was not made in this case, the trial court could
21 prevent any potential prejudice by briefly explaining
22 that the term homicide merely distinguishes a death
23 caused by another human being from accidental and
24 natural deaths and suicide.

25 As I understand the testimony of this witness,

1 that is the definition that he was using. As I read
2 this case, that is what they are saying, and he has
3 not said in his opinion it was a murder, which gets to
4 intent and malice and whether or not there was malice,
5 but whether it was a homicide, in other words, a death
6 caused by someone else as opposed to an accidental or
7 a natural death. That's where I see the line being
8 drawn. And at this point in time, I don't believe
9 this witness has crossed that line.

10 But, that definition -- that question needs to be
11 asked, or either the Court needs to explain it to the
12 jury.

13 MS. CAMPBELL: With the Court's permission, I
14 would just ask him if he means it was accidental or a
15 natural death or a suicide.

16 THE COURT: That it was -- I mean, it's almost
17 like what the doctor testified to his definition of
18 homicide meaning came right from this language that
19 the Maine Supreme Court put in their opinion. That's
20 where I see it.

21 MR. STRICKLER: He employed the term intent.

22 THE COURT: I did not hear intent.

23 MR. STRICKLER: In his definition of homicide.
24 It just seems to me, Your Honor -- and I agree with
25 the doctor, that the history surrounding the case is

1 an integral part of the investigation done by the
2 pathologist.

3 I had the opportunity to spend several days
4 several years ago with the late Dr. John Smialek, the
5 Chief Medical Examiner for the State of Maryland. I
6 got pretty up to speed on what a -- a very
7 professional man regarding this and proper actions on
8 his part in investigating the cause of death.

9 Your Honor, you know, an instruction on the part
10 of the Court that homicide -- well, as is explained in
11 the opinion which Your Honor just referenced, the
12 opinions from Maine and beyond, perhaps could clear
13 that up.

14 And, Your Honor, I apologize to the Court for not
15 providing this ahead of time. I didn't know --

16 THE COURT: I understand.

17 MR. STRICKLER: I didn't know if the doctor was
18 going to express that opinion or not.

19 THE COURT: And I'm not fussing. I'm just sort
20 of thinking out loud that I wish that in cases where
21 these issues come up that I could now take a week and
22 do research. I don't have that luxury, and a lot of
23 times counsel doesn't either. But that is neither
24 here nor there.

25 MR. STRICKLER: Yes, sir. Well, I guess all I

1 can say, Your Honor, is I've provided the Court with
2 what I have found, provided the State with what I have
3 found, in regards to this. I mean, this is an unusual
4 case.

5 THE COURT: I understand.

6 MR. STRICKLER: You know, the usual case is the
7 good doctor gets up there and testified the cause of
8 death, gunshot wound to the head. Okay? And you've
9 got facts and circumstances surrounding the issue of
10 -- in front of the jury that makes it clear exactly
11 what it is as far as homicide goes.

12 This is an unusual case. And my concern is, in
13 this case where there is a complete dearth of evidence
14 at the scene to support homicide in any of its
15 degrees, that the jury then substitutes the doctor's
16 judgment for theirs. And I think that's the line that
17 we can't cross under our rules.

18 THE COURT: Well, what I'm going to do, I'm going
19 to permit the State to continue questioning. They can
20 ask the doctor to define -- we probably need to go
21 back to the last question that was asked. And if the
22 doctor defines homicide as he defined it to this Court
23 when I inquired and it is in compliance with the
24 suggestion in the Maine opinion, I will permit him to
25 testify to what he had testified to previously.

1 If there is a request that said -- in this case
2 that said that it was not an abuse of discretion for
3 the Court to fail to give such an instruction sua
4 sponte, I'm sure that there would be a request at the
5 appropriate time for that instruction, although it may
6 not be. We'll just see where we go with it.

7 MR. STRICKLER: Yes, sir.

8 MS. CAMPBELL: May I just clarify for the Court,
9 the language was that it was death caused by another
10 human being versus not accidental or natural death.

11 THE COURT: My understanding is that is what --

12 MS. CAMPBELL: What he testified to.

13 THE COURT: -- Dr. Nichols indicated.

14 MS. CAMPBELL: I just wanted to make sure I
15 understood.

16 THE COURT: I can't tell him what his definition
17 is, he has to tell the Court what his definition is,
18 but I believe that's the way he defined it earlier.

19 MS. CAMPBELL: Yes, sir.

20 THE COURT: The objection would be overruled.

21 MR. STRICKLER: Thank you, sir.

22 THE COURT: All right. Let's get the jury back
23 in, please.

24 MS. CAMPBELL: Just for clarification, you want
25 me to ask him what his definition of homicide is at

1 this point?

2 THE COURT: I think you need to do that.

3 MS. CAMPBELL: Yes, sir.

4 THE COURT: Bring the jury in, please.

5 (WHEREUPON, the jury came into open court
6 at approximately 2:58 p.m.)

7 THE BAILIFF: Your Honor, the jury is present.

8 THE COURT: All right. Mr. Foreman, ladies and
9 gentlemen, we

10 will continue. Solicitor, you may continue your
11 examination.

12 MS. CAMPBELL: May it please the Court?

13 THE COURT: All right.

14 DIRECT EXMAMINATION

15 BY MS. CAMPBELL CONTINUES:

16 Q Doctor, I'm sorry. Doctor, what is your definition of
17 homicide?

18 A A person that has died as a result of another person's
19 actions.

20 Q And in your opinion in this case, was this or could
21 this have been a natural death?

22 A No, I don't believe so.

23 Q Or an accidental death?

24 A No, I do not believe so.

25 Q Or a suicide?

1 A No, I don't believe so.

2 Q And that is your expert opinion?

3 A Yes, it is.

4 Q During the course of your examination, were there any
5 signs of any kind of disease or anything else that
6 could have caused her death?

7 A No.

8 Q And as to the cause of death, what was your opinion?

9 A Once again, not stabbed, not shot, not beaten, not
10 strangled with hands. And as a result of looking at
11 the body of Ms. Goodwin and reviewing the
12 circumstances of her death, I was looking for a cause
13 of death that would leave no marks, no evidence of
14 injury. And as such, I feel that Ms. Goodwin died as
15 a result of asphyxiation.

16 Q And what is asphyxiation?

17 A Asphyxiation is where your body has been deprived of
18 oxygen. A common way would be smothering, such as
19 putting a pillow over somebody's head or a plastic bag
20 over their head. There may be other ways of
21 asphyxiating people, such as applying force to their
22 chest so their chest cannot breathe -- move, and you
23 can no longer breathe.

24 Q And, Doctor, in your expert opinion, would this be
25 consistent with, say, someone laying on top of someone

1 covering their head?

2 A That's entirely possible.

3 Q And how long would it take to asphyxiate someone?

4 A A couple of minutes. It depends on how much oxygen is
5 in your system and how effectively you can breathe
6 during the period that someone is trying to asphyxiate
7 you. But it's not only one type of death that happens
8 within minutes.

9 Q Did you -- after making that preliminary diagnosis --
10 or determining the cause of death preliminarily, did
11 you then get some toxicology results back that also
12 weighed into your opinion?

13 A Yes, I did.

14 Q And as far as the toxicology reports, what is
15 toxicology?

16 A Toxicology is looking for illicit substances, alcohol,
17 things of that nature. There were no significant
18 substances identified in the liver analyzed.

19 Q So drugs or alcohol did not contribute to her death,
20 either one?

21 A That is correct.

22 Q And did that confirm your earlier opinion?

23 A It supported that, yes.

24 Q As far as her condition when she was found, to have a
25 body get mummified such as this, can you put an exact

1 time period on it?

2 A No. Everybody watches television. I watch
3 television, you watch television. They have people go
4 out to the scene and say a person has been dead 48
5 hours. It doesn't work that way. For somebody who
6 has been dead for a prolonged period of time,
7 lifestyle clues are more important to determine the
8 cause of death. Such things as when was the last time
9 the paper was picked up, when was the last time the
10 mail was collected, when was the last bill paid. Or
11 even in this circumstances, when did phone calls start
12 being made from the cell phone where Ms. Goodwin could
13 no longer make them.

14 Q And in this case, you can't put an exact time period
15 on it, but would it have been more than a week?

16 A It would be weeks.

17 Q weeks?

18 A weeks.

19 Q would it be consistent with a five to six week period?

20 A Sure.

21 Q I notice on your autopsy you put date of death was
22 November the 8th of 2004. Was that just an outside
23 parameter?

24 A It was an outside range, plus the initial indication
25 of when she was last talked to or confirmed alive.

1 Q But it would be consistent with, say, five to six
2 weeks earlier or the end of November?

3 A Yes.

4 MS. CAMPBELL: Beg the Court's indulgence.
5 (Pause.)

6 MS. CAMPBELL: Thank you, sir. I don't have
7 anything further.

8 THE COURT: All right. Mr. Strickler?

9 MR. STRICKLER: Thank you, sir. May it please
10 the Court?

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION

13 BY MR. STRICKLER:

14 Q Good afternoon, Doctor.

15 A How are you doing, Mr. Strickler? Nice to see you
16 again.

17 Q Good to see you. Now, may I take a look quickly at
18 your report you have with you?

19 (Complied.)

20 Q I guess we go last things first at this point. And I
21 think one of the last things Ms. Campbell went over
22 with you was asking you as to time of death. We
23 talked about that between the two of us on a previous
24 occasion. That is something that is from the medical
25 -- just solely based on medical findings, often, if

1 not usually, impossible or very hard to determine?

2 A That is correct.

3 Q At least in anything more than a very approximate
4 fashion?

5 A That's correct.

6 Q And your statement I believe to her was that usually
7 the circumstances surrounding the case, the last time
8 the person was seen alive, when the mail was picked
9 up, etcetera, etcetera, are more -- provide better --a
10 better estimate of the time of death than anything you
11 can find from the body itself?

12 A That's correct.

13 Q Now, I'm looking at very front page of your report.

14 A Yes, sir.

15 Q Where you list name, the autopsy number. You list as
16 a date of death, or there is listed on the front page
17 of the report a date of death of 11/8/2004.

18 A Yes, sir.

19 Q And is that your best estimate on the date of death?

20 A That was not my estimate. That is when I was told
21 initially at the scene that that was when she was last
22 seen alive.

23 Q Okay. And you indicated that you responded to the
24 scene and you got some history regarding the case at
25 that time, is that correct?

1 A That is correct.

2 Q Was that there at the scene or on your way to the
3 scene, do you remember?

4 A At the scene.

5 Q At the scene. Do you remember with whom you were
6 speaking?

7 A Representatives of the Coroner's Office.

8 Q And I reference the second page of your report where
9 you have clinical summary?

10 A That's correct.

11 Q Top of the page. According to reports, the deceased
12 has not been heard of since approximately November,
13 2004. That's based on information provided to you by
14 the Coroner's --

15 A That's correct.

16 Q Representatives of the Coroner's office, correct?

17 A Yes, sir.

18 Q The evening of January 7th, asked the locksmith to open
19 the door of the house since he has not heard from her
20 for an extended period of time. Found dead on the
21 sofa with moderate decomposition, mummification.

22 Those additional facts regarding the events of
23 January the 7th, those were also provided to you by
24 members of the Coroner's Office?

25 A Yes. They were at the scene as well.

1 Q Okay. And do you know whether they received that
2 information or do you know from whom they received
3 that information?

4 A No, I do not.

5 Q You've testified regarding the condition of the body
6 when you found it, decomposing and partially
7 mummified, I think were your terms?

8 A Yes, sir.

9 Q Would it be fair to say that it takes some period of
10 time for a body under the appropriate environmental
11 circumstances to begin to mummify?

12 A Yes, sir.

13 Q Same deal with -- to begin to decompose, correct?

14 A Yes, sir.

15 Q Would I be off base in saying that giving the precise
16 dates or precise lengths of time for those processes
17 to occur is a hard thing to do?

18 A Yes.

19 Q Decomposition, and I assume mummification, would be
20 affected by a variety of environmental factors which
21 would either speed up or slow down the process, is
22 that correct?

23 A That's correct.

24 Q So I take it you would not be comfortable -- right
25 back to what we were talking about at the beginning,

1 you would not be comfortable at arriving at any kind
2 of estimate as to how long the body had taken to
3 arrive at that state of partial mummification,
4 correct?

5 A That's correct.

6 Q Now, as to your examination of Ms. Goodwin's body, you
7 testified as to the procedure that you go through, and
8 this is not a procedure unique to this particular
9 case, you do things pretty much the same way every
10 time, is that correct?

11 A That's correct.

12 Q External examination of the body clothed, external
13 examination of the body unclothed, and proceed to the
14 internal examination of the body?

15 A That's correct.

16 Q Dissection, internal examination. And on your
17 external examination of the body, to summarize your
18 findings, you found no indication of trauma, correct?

19 A That's correct.

20 Q Found no gunshot wound?

21 A That's correct.

22 Q Found no knife wounds?

23 A Correct.

24 Q Despite the fact the body was in this partially
25 mummified state, I take it from reviewing your report

1 that it was in sufficient condition that you could
2 analyze it and evaluate it for indicia of manual
3 strangulation, correct?

4 A That's correct.

5 Q Okay. In a manual strangulation situation, you can
6 get bruising to the neck?

7 A Correct.

8 Q You could get underneath the skin, blood accumulations
9 under there?

10 A Correct.

11 Q That you could find. And your testimony, as I
12 understand it, is the body was in sufficient condition
13 that you could rule out that as having happened,
14 correct?

15 A That's correct.

16 Q Okay. The other form of strangulation, the one
17 usually encountered, would be termed, I believe what,
18 ligature strangulation?

19 A That's correct.

20 Q Where some necktie, something's wrapped around the
21 neck and tightened to the point the person is
22 strangled, correct?

23 A That's correct.

24 Q Okay. And typically you'll find the marks from
25 whatever was used to -- as a ligature to effect that

1 strangulation, correct?

2 A That's correct. You'd find the pattern imprinted on
3 the skin.

4 Q And, again, the body was in such a condition that you
5 would have been able to see that had that been
6 present, correct?

7 A That's correct.

8 Q And additionally you testified -- I don't think it was
9 followed up on, though -- that when you testified
10 about internal trauma, you said to include the hyoid
11 bone. The hyoid bone, you described what it was, the
12 small bone in the throat. That was not broken, right?

13 A That's correct.

14 Q And that, the breaking of the hyoid bone, is one of
15 the classic signs of a manual or ligature
16 strangulation?

17 A Mainly manual, yes.

18 Q Okay. So you feel comfortable in ruling out
19 strangulation as a cause of death, correct?

20 A Yes, sir.

21 Q All right. And you feel comfortable in ruling out
22 cause of death of -- well, then you go to the head.
23 You observe it externally. You don't see any signs of
24 bruises or contusions, abrasions, lacerations to the
25 scalp, correct?

- 1 A That's correct.
- 2 Q Externally?
- 3 A Correct.
- 4 Q That could be associated with some form of trauma, be
5 it fist or blunt force?
- 6 A That's correct.
- 7 Q Okay. You reflect the scalp?
- 8 A Yes.
- 9 Q And you check for what, is it subgaleal hemorrhaging?
- 10 A Subgaleal, yes.
- 11 Q That is bleeding underneath these -- in the space
12 between the scalp and the crania?
- 13 A That's correct.
- 14 Q The skull, correct?
- 15 A The skull.
- 16 Q Okay. And I take it from your testimony that the
17 condition of the body was such that had that occurred,
18 had there been some beating that didn't leave a mark
19 on the outside for some reason but did cause bleeding
20 between the scalp and the skull, you would have been
21 able to detect that, correct?
- 22 A That's correct.
- 23 Q All right. And you found nothing like that?
- 24 A That's correct.
- 25 Q All right. You removed the top of the skull and you

1 looked for any evidence of trauma inside the head?

2 A That is correct.

3 Q All right. You look for -- between the skull and the
4 brain itself, there is a thick membrane called the
5 dura, correct?

6 A That's correct.

7 Q All right. And on head injuries as a result of blunt
8 trauma, and it can show up for other reasons, but you
9 find what are called subdural, or may find what are
10 called subdural hematoma?

11 A That's correct.

12 Q And that's bleeding between this dura, this tough
13 membrane that encompasses the brain and the skull
14 itself, the crania itself?

15 A That's correct.

16 Q Okay. And I take it from your description as I read
17 here, that despite the condition of the body, had that
18 been present, you would have been able to recognize
19 it, correct?

20 A That's correct.

21 Q All right. And then after that -- there are several
22 more layers to the brain, but you noticed nothing
23 internally in the brain to indicate any injury, trauma
24 to the head, correct?

25 A That's correct.

1 Q And you're comfortable in those --

2 A Yes, sir.

3 Q Opening up the body, you take -- I take it you look
4 for -- even if you don't see bruising on the exterior
5 of the body, you look for the signs of bruising that
6 could appear underneath the skin itself, correct?

7 A That's correct.

8 Q All right. And that is not just of the head, but that
9 is throughout the body, correct?

10 A That's correct.

11 Q All right. And you noted no such injuries?

12 A That's correct.

13 Q Now, as I understand it, you then rule out gunshot --
14 oh, later on the toxicology comes back and there is no
15 indication that poison was involved or there was a
16 poisoning in this case?

17 A That's correct.

18 Q So if you ruled out gunshot, knife wound, poisoning,
19 blunt force trauma, you've ruled out those as methods
20 that could have caused the death, correct?

21 A That is correct.

22 Q So you're left with the dead body, and you need to
23 explain how this death came about?

24 A Yes, sir.

25 Q From your explanation -- and, you know, I may have

1 this wrong.

2 A Uh-huh.

3 Q You arrived at your conclusions as to cause of death
4 through a process of elimination and interpolation
5 with the facts and circumstances surrounding the case?

6 A Yes.

7 Q By elimination you have eliminated all these other
8 possible causes of death. And in your opinion, based
9 on information provided to you by the representatives
10 of the Coroner's Office, the death appeared to have
11 occurred under suspicious circumstances, correct?

12 A Yes, sir.

13 Q Okay. So, since you don't have another explanation,
14 the only explanation you're left with is suffocation,
15 correct?

16 A Yes, sir.

17 Q Now -- and I believe you indicated suffocation would
18 take a matter of minutes to occur?

19 A Yes, sir.

20 Q You also indicate that it would be consistent or could
21 have been caused by someone lying on top of the
22 individual?

23 A Yes, sir.

24 Q Obstructing their nose?

25 A Yes, sir.

1 Q How about compressing the chest just through body
2 weight?

3 A Well, that would be sitting on somebody or laying on
4 somebody.

5 Q So -- I'm sorry, would it be necessary -- and I just
6 don't know.

7 A Uh-huh.

8 Q Would it be necessary to actually cover the person's
9 nose/mouth or could the weight of a heavy person on
10 what you described as a fairly small person, could
11 just the weight compressing the chest be sufficient to
12 keep that person from breathing?

13 A Oh, certainly, just sitting on somebody's chest or
14 adding weight or force certainly could suffocate
15 somebody. The classic example would be having a car
16 slip off of the jack and an unfortunate person pinned
17 under the jack or the car after the jack slipped.
18 Other situations where somebody could be impinged upon
19 a rock or something of that nature. It causes the
20 same effect where your chest can't move and you will
21 suffocate.

22 Q Now, true or false: Sometimes people die and you just
23 can't determine the cause of death?

24 A True.

25 Q Okay. They could just drop dead and you conduct an

1 autopsy, it's not a stroke and it's not a heart
2 attack, and it's nothing else, they just die
3 sometimes, unfortunately, correct?

4 A That is true.

5 Q Other than the facts and circumstances surrounding
6 this case, the information provided you by
7 representatives of the Coroner's Office that led you
8 to believe in the case the death occurred in
9 association with some very suspicious circumstances,
10 okay?

11 A Yes.

12 Q Other than that, how can you rule out her just dying?

13 A Well, that is the whole point of the autopsy is that
14 everything gets interpreted by the history. By
15 artificially separating the facts from an autopsy, you
16 can make a homicidal gunshot wound, a suicidal gunshot
17 wound or an accidental gunshot wound. Or maybe it
18 wasn't a bullet that caused the hole after all.

19 But, once again, I do have those facts. I
20 interpreted the autopsy. In regards to that fact, I
21 believe Ms. Goodwin died of unnatural causes. And as
22 a result of elimination and, like you mentioned, the
23 interpolation of the facts of the case, that being her
24 purse is gone, her car is gone, the house is locked up
25 and somebody went through an awful lot of effort to

- 1 cover up this death, that I feel that Ms. Goodwin died
2 as a result of a homicide due to asphyxiation.
- 3 Q That is what you feel?
- 4 A That's my opinion here today, yes, sir.
- 5 Q What -- and I understand and I'm with you completely
6 as far as I think how you base your opinion and the
7 effect of circumstances around the case lend to your
8 arriving at that opinion. From a medical point of
9 view, from the condition of the body itself, okay?
- 10 A Yes, sir.
- 11 Q What is there to support homicide as opposed to
12 natural cause of death?
- 13 A The lack of findings.
- 14 Q The lack of findings?
- 15 A Yes.
- 16 Q Lack of any other reason to explain it?
- 17 A That is correct.
- 18 Q If, you know, I swallow a piece of food, it gets
19 caught in my air pipe, no one is around to Heimlich
20 me?
- 21 A Uh-huh.
- 22 Q That is asphyxiation at that point, right?
- 23 A That's correct.
- 24 Q It is entirely possible that if that were to happen
25 and then I were to lie someplace for several weeks

1 anyway?

2 A Yes.

3 Q Sufficient to getting to the state that Ms. Goodwin
4 was found, the body was found in?

5 A Uh-huh.

6 Q Is there any indication if there had been something
7 lodged in my airway would also then decompose?

8 A Not in that particular case. - In fact, meat being
9 muscle, that is just like the muscles in her thigh and
10 in her chest and everything else, those were intact.

11 Q Now, someone falls on Ms. Goodwin and she suffocates?

12 A Yes, sir.

13 Q Okay. And then reaction to that is panic and actions
14 involving taking her things and leaving town, okay?

15 A Uh-huh.

16 Q You can't rule that out as a possible sequence of
17 events?

18 A Well, I'm not claiming intent. I'm claiming that she
19 died as a result of somebody else's actions.

20 Q Okay.

21 (Pause.)

22 Q Just a couple more things, Doctor.

23 A Uh-huh.

24 Q As I -- and I'm back to the front page --

25 A Yes, sir.

DR. CLAY L. NICHOLS -- CROSS BY MR. STRICKLER: 577

1 Q -- of your report, under final anatomical diagnoses?

2 A Yes, sir.

3 Q And the final anatomical diagnoses are -- and perhaps
4 just because I have read a number of these, are fairly
5 sparse, history of suspicious death, right?

6 A Yes.

7 Q Moderate decomposition and post-mortem expulsion of a
8 pre-viable fetus, is that correct?

9 A Yes.

10 Q And as to cause of death, you list probable
11 asphyxiation, correct?

12 A That is correct.

13 Q Doctor, I always enjoy this.

14 A Thank you, I'm glad I could entertain you.

15 Q I didn't mean it in that sense.

16 A Okay.

17 THE COURT: Redirect?

18 MS. CAMPBELL: Yes, sir.

19 REDIRECT EXAMINATION

20 BY MS. CAMPBELL:

21 Q In your expert opinion today, what was cause of death?

22 A Probable asphyxiation.

23 Q And he asked you some questions about trauma to the
24 brain, there was no sign of bruising or anything. If
25 someone is suffocated, whether it be crushed from

1 someone on their chest, hand over their mouth, is it
2 going to leave bruising necessarily?

3 A No. For cases where a hand is placed over the nose
4 and mouth, sometimes there is enough force involved
5 where the teeth will be forced into the inside of the
6 upper lip. That was not present in this particular
7 case. So really I'm looking at something like a
8 pillow over the head which would be soft and not leave
9 an impression. Perhaps, once again, a plastic bag or
10 the possibility of some sort of force being applied to
11 the chest.

12 Q To the chest?

13 A The chest.

14 Q He asked you also about someone falling on someone and
15 then just leaving town. Would she die if somebody
16 fell on her and stayed on her for a minute?

17 A It would be longer than a minute.

18 Q It would be -- and I think your testimony was up to
19 ten minutes?

20 A Well, less than that. But it certainly takes a period
21 of time to apply enough force in order to get somebody
22 to pass out. And once they pass out, you have to
23 continue the action until they quit breathing. So
24 there is an interval between when the person is in
25 distress to when they are panicking to where they pass

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1 out to when there is no more. And that takes several
2 minutes.

3 Q Finally, he asked you about a natural death. Did you
4 have an opportunity to review her medical records in
5 this case, sir?

6 A Yes, I did.

7 Q Was there anything indicating she was suffering any
8 health problems?

9 A I think the main thing she had was sickle cell trait,
10 which in this case is a non-significant problem.

11 Q And why is that, sir?

12 A Sickle cell trait would not kill somebody in this
13 situation. I would be more concerned if she went to a
14 high altitude like Denver or the mountains where lack
15 of oxygen could precipitate a sickle cell crisis.

16 Q And, again, your opinion, based on the autopsy and the
17 history, is asphyxiation?

18 A Yes.

19 MS. CAMPBELL: Thank you. That's all.

20 THE COURT: Recross?

21 MR. STRICKLER: Very briefly.

22 RECROSS EXAMINATION

23 BY MR. STRICKLER:

24 Q Doctor, as part of the procedure in this case and in
25 almost every case, I guess, you did scrapings from Ms.

1 Goodwin's fingernails?

2 A The scrapings are usually done by law enforcement,
3 yes.

4 Q And that was done in this particular case?

5 A I believe so. But since I didn't do it, I can't
6 testify, but that is usually the situation.

7 Q And that is done to see if there is any material that
8 is deposited by an alleged assailant under the
9 fingernails from scratching, you get the skin under
10 there --

11 A Correct.

12 Q -- and you can do DNA testing on it, etcetera,
13 etcetera, etcetera?

14 A Right.

15 Q And taking fingernail scrapings is very much a
16 standard procedure?

17 A It's standard, but I'd also like to add that after
18 doing this 25 years, I've only had one positive
19 fingernail scraping.

20 Q Yes, sir.

21 A Yes.

22 Q However, what you would have, whether you get a
23 positive or not, --

24 A Uh-huh.

25 Q -- if you get someone struggling, if you get someone

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1 scratching, such as you get a fingernail -- debris
2 under the fingernail or whatever, what you may very
3 well find are marks on the assailant associated with
4 that?

5 A If they are there, yes.

6 MR. STRICKLER: All right. Thank you.

7 THE COURT: Anything further, Solicitor?

8 MS. CAMPBELL: No, sir.

9 THE COURT: You may step down, Doctor.

10 THE WITNESS: Thank you, Your Honor. Thank you
11 for your time.

12 (The witness leaves the witness stand.)

13 THE WITNESS: May I be excused, Your Honor?

14 THE COURT: Yes, sir.

15 (The witness is excused.)

16 (Pause.)

17 THE COURT: I tell you what, before you call your
18 next witness, let's have a short break. I know you
19 folks had one. We didn't have one in here. We'll
20 take about a ten minute break and then we'll resume.
21 Please don't discuss the case while you're in the jury
22 room.

23 Everyone else stay seated, please.

24 (WHEREUPON, the jury retires to the jury
25 room at approximately 3:27 p.m.)

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1 THE COURT: Yes, sir?

2 MR. MEADORS: What is Your Honor's pleasure about
3 how long we're going today?

4 THE COURT: 9 o'clock?

5 MR. MEADORS: Excuse me, sir? I actually
6 wouldn't mind finishing; that might suit me.

7 THE COURT: Probably around 5 or 5:30, just sort
8 of depending on where we are, where you are with your
9 witnesses, how many more you've got, and all that's
10 going to play into it. Why don't we talk about that?
11 We'll take -- we're in recess for ten minutes. Let's
12 talk about that.

13 (WHEREUPON, the court was in recess.)

14 (WHEREUPON, State's Exhibit Numbers 86
15 through 88, Charts, were marked for
16 identification.)

17 MR. MEADORS: Judge, we're trying to -- I think
18 we have made a decision now, we're going to call John
19 Presley, because of our time constraints with our New
20 Orleans folks we've got to get out, some stuff we just
21 have to do tonight. If we run late, then we could do
22 McDonald last. I don't know how else to handle it.

23 THE COURT: That's fine.

24 MR. MEADORS: Judge, I've got his records and it
25 might even be that Mr. Presley may have to help us.

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1 THE COURT: Go ahead.

2 MR. MEADORS: My understanding is from talking to
3 him and reviewing a rap sheet, with him being John
4 Fitzgerald Presley, he has a -- four forgeries in
5 1986. Obviously that would not come in, would be our
6 argument. He got seven years on that. Seven years --
7 11 years confinement, excuse me.

8 He tells me that after that he had some other
9 forgery convictions, I believe in Orangeburg, and that
10 he got a sentence of ten years run consecutive to
11 that. I think it might have been Luke Brown, I'm not
12 sure.

13 In addition to that, Your Honor, there are a
14 couple of receiving stolen goods from Bamberg where he
15 got 18 months consecutive to the ten year sentence.

16 THE COURT: When were those?

17 MR. MEADORS: '98. Suffice it to say, his
18 testimony is that he is going to show more than the
19 rap sheet even shows, and I will show that to
20 Mr. Strickler. He got a total of approximately 20
21 years on those charges and was not paroled until 1998.
22 which I think that being the case, that should be
23 allowed to come out.

24 THE COURT: It sounds like they all come in, even
25 the forgery.

1 MR. MEADORS: I'm conceding that, yes, sir.

2 THE COURT: All right.

3 MR. MEADORS: In addition to that, Your Honor,
4 there was an arrest I think in Richland, Orangeburg,
5 and somewhere else. The Feds adopted it, it was a
6 conspiracy charge, and he pled guilty to that, and
7 he's sentencing -- serving that time now, which of
8 course I'll bring that out.

9 And there is one other charge that I do need to
10 question him about. It's a charge from New York, but
11 it appears --

12 MR. STRICKLER: I don't care about it.

13 MR. MEADORS: Okay. Then I think we're okay.

14 MR. STRICKLER: Can I take a look at that?

15 MR. MEADORS: Sure.

16 MR. STRICKLER: Thank you. I don't have a copy.
17 One moment, please.

18 (Pause.)

19 MR. MEADORS: In addition, Your Honor, there is a
20 Page 1 of the rap sheet which is coming which I think
21 has some older charges which are clearly out, maybe a
22 failure to stop for a blue light. I'm bringing it in
23 right now, and I'll show that to Mr. Strickler.
24 They're running it right now.

25 Other than that, I think they're all coming in

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1 except that other charge from New York.

2 MR. STRICKLER: Okay. I just --

3 MR. MEADORS: And the ones that clearly say no,
4 if it was dismissed or -- and one was PTI and
5 obviously that wouldn't.

6 MR. STRICKLER: Okay, I'm just trying to do a
7 count here. What would you propose on the forgery?
8 It looks like four counts of forgery in 1986, and then
9 receiving stolen goods and 17 counts of forgery in
10 1988?

11 (Pause.)

12 MR. STRICKLER: Yes, 16. The receiving stolen
13 goods in 1988 and he gets ten years, then 16 or 17
14 counts of forgery and he gets seven years on each
15 concurrent.

16 MR. MEADORS: That may have been Luke Brown,
17 receiving stolen goods -- Judge Luke Brown, I'm sorry.

18 (Pause.)

19 THE COURT: As I understand it, the State will
20 not be objecting to any offenses shown on there for
21 impeachment purposes, is that right?

22 MR. MEADORS: Well --

23 THE COURT: Convictions?

24 MR. MEADORS: Well, there is an '82 possession of
25 stolen property, we had written "no" by that. I don't

1 think Mr. Strickler will go into that. Clearly that
2 is outside.

3 THE COURT: All right, the ones that have been
4 discussed here on the record --

5 MR. MEADORS: Yes, sir.

6 THE COURT: -- the State does not object to any
7 of those being used, even though they are outside the
8 ten years, his release date was within the ten years,
9 under the rule they would come in.

10 MR. MEADORS: And I think that is correct. In
11 reviewing it and discussing it with the client, he
12 actually clarified it more than this did as far as him
13 clearly being --

14 MR. STRICKLER: They are also crimes involving
15 dishonesty.

16 THE COURT: Pardon me?

17 MR. STRICKLER: They are also crimes involving
18 dishonesty. So just so we know the numbers. I mean,
19 I don't know whether you're going to go through this
20 or not because --

21 MR. MEADORS: I don't know how I'm going to do
22 it, quite frankly. I think I'm going to let him
23 explain it.

24 MR. STRICKLER: But '86, four counts of forgery,
25 '88 receiving stolen goods, and 17 counts of forgery.

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1 And then was it 2000 --

2 MR. MEADORS: 16 counts of forgery.

3 MR. STRICKLER: 16, I'll go with the 16. And
4 then conspiracy to distribute Oxycodone or Oxycontin,
5 however you want to pronounce it, in 2005.

6 MR. MEADORS: Sentenced by Judge Seymour July
7 18th, 2005. That's when he was in the Alvin S. Glenn
8 Detention Center. I promise you I will bring it all
9 out. If we don't -- I'm getting him a new rap sheet
10 right now too, Your Honor.

11 THE COURT: You don't have to tell me. It is
12 just between you folks. I just have to decide whether
13 it comes in or not, and right now I don't hear much
14 disagreement about what comes in.

15 MR. MEADORS: No, sir.

16 THE COURT: All right. Are you ready to proceed?

17 MR. MEADORS: The State's ready.

18 MR. STRICKLER: Yes, sir.

19 THE COURT: Get the jury back in, please.

20 (WHEREUPON, the jury came into open court
21 at approximately 3:52 p.m.)

22 THE BAILIFF: Your Honor, the jury is
23 present.

24 THE COURT: All right. You can call your next
25 witness, solicitor.

1 MR. MEADORS: If it pleases, Your Honor? The
2 State of South Carolina would call John Fitzgerald
3 Presley.

4 THE COURT: All right.

5 THE BAILIFF: Place your left hand on the Bible,
6 raise your right hand, and face the clerk.

7 (Witness complies.)

8 THE CLERK: Do you swear or affirm that the
9 testimony you are about to give in this case will be
10 the truth, the whole truth, and nothing but the truth,
11 so help you God?

12 THE WITNESS: I do.

13 (John Fitzgerald Presley,
14 after being duly sworn, testified as follows:)

15 THE CLERK: Please have a seat and state your
16 full name for the record.

17 THE WITNESS: (No response.)

18 DIRECT EXAMINATION

19 BY MR. MEADORS:

20 Q The first thing I'm going to ask you -- if you
21 wouldn't mind scooting up a little bit. Be sure you
22 just talk into that microphone, okay? Scoot up a
23 little bit more, please, sir.

24 would you state your name?

25 A My name is John Fitzgerald Presley.

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1 Q Okay. Again, if you don't mind, just for the -- just
2 be sure to speak into that, we would appreciate it.

3 Mr. Presley, have you ever testified before?

4 A No, sir, I haven't.

5 Q Tell these folks where you're from.

6 A I'm originally a native of Bamberg, South Carolina.

7 Q Did you go to school in Bamberg?

8 A Yes, sir, Bamberg Ehrhardt.

9 Q Bamberg Ehrhardt?

10 A Yes, sir.

11 Q You can just sit still, and I'll move this. I want
12 you to tell them about your background. After Bamberg
13 Ehrhardt, what did you do?

14 A I got married. I got married, in fact, when I was 17
15 years old. I got married in 1982. I got married. I
16 got a job at Ropers in Orangeburg, South Carolina.

17 Q What do they do?

18 A They made riding lawnmowers. And I worked there for a
19 while. And in 1984, I -- well, I was separated from
20 my first ex-wife and I met my second ex-wife. And I
21 went to -- back to New York, Queens, New York, and I
22 was working for Dundy's Mirror and Glass. I was a
23 glass cutter.

24 Q Dundy's?

25 A Dundy's. It's a Jewish family. And after I left

1 there I started on a new job driving semi-tractor
2 trailers for Gandy's Tires in Brooklyn.

3 Q Gandy's?

4 A Gandy's.

5 Q Yes, sir.

6 A With a "g," yes, sir.

7 Q Gandy's Tires?

8 A Yes, a tire company, right.

9 Q Before I move on, you said, "I went back to New York."
10 Had you been to New York at some time growing up?

11 A Yeah, I been there off and on as a child. I first
12 went to New York when I was 10 years old. I went to
13 Syracuse, New York. My Aunt Vister, she lived across
14 from the University of Syracuse on Henry Street, and I
15 was there for a few months. I was 10 years old at the
16 time.

17 I was -- and afterwards when I came back and I
18 was like a teenager, I was back and forth to St.
19 Albans, Queens, in New York. And afterwards, when I
20 got married when I was 17, and I separated from my
21 first ex-wife and I met my second ex-wife, she's from
22 Columbia, Belvedere, I went back to St. Albans, to my
23 aunt and uncle's house in St. Albans, Queens, and
24 that's when I started working for Dundy's Mirror and
25 Glass. And after I left there I went Gandy's Tire

1 Company driving semi-tractor trailers.

2 Q After Gandy's, did you come back to South Carolina?

3 A Yes, I did come back to South Carolina. I came back
4 to Bamberg, South Carolina. And I -- my grandfather,
5 in fact, he worked at the textile mill in Bamberg on
6 301 South. And he was my supervisor. It's a place
7 where they make fabric. And I worked there for
8 awhile, and then I transferred over to Roc-lon. It's
9 an annex part of the --

10 Q Say it again, Roc what?

11 A Roc-lon.

12 A It's still there, in fact. It's still there. It's on
13 Calhoun Street, I believe it is, on the back side of
14 301. And that's where we basically put the prints and
15 things on the fabric there.

16 Q Prints?

17 A Print, like the prints on the fabric.

18 Q What year was that?

19 A That was around -- that was in '84, I believe. Right.

20 Q Somewhere in that time period did you get in trouble
21 with the law?

22 A Absolutely, yes, I did.

23 Q Just generally tell me, and I'm going to go back
24 specifically later, but what trouble did you get in?

25 A Well, basically I -- I was arrested for forgery. I

1 was arrested for forgery in 19 -- I was arrested for
2 -- in '84 I believe it was -- was for -- I think it
3 was for burglary. I think in '84 it was for burglary.
4 It was for a burglary in '84. And then in '88 it was
5 for forgery and receiving stolen goods. Right.

6 Q And what you pled to was forgery and receiving stolen
7 goods?

8 A Yes, sir, right.

9 Q Not the burglary?

10 A No, because '84 it was a third degree burglary. It
11 was a third degree burglary. We went into a building,
12 some friends and I, friends of mine, we went into a
13 building in '84.

14 Q And you pled to some forgeries and receiving stolen
15 goods?

16 A Right, yes, sir, in 1988, right.

17 Q And when did you get out of prison?

18 A I got out of prison in 1998.

19 Q What did you do after that?

20 A Well, I went back to New York. I was in South
21 Carolina for only a few months and I went back to New
22 York. And when I was in prison I learned how to sew
23 and make my own apparels by hand. So I came up with
24 an idea, I wanted to design and engineer my own
25 clothing.

1 So I went back to New York and that is when I was
2 introduced to a clothing company called Fubu at the
3 Empire State Building.

4 Q Fubu?

5 A F-u-b-u.

6 Q What did you do there?

7 A Well, actually I was -- I had a friend of mine that I
8 made at F-I-T, The Fashion Institute of Technology on
9 West 27th Street in Manhattan, 7th Avenue, where they
10 had a lot of interns and a lot of people there that
11 were designers and artists. And I didn't have the
12 ability to really draw, so I met Ran Quanda, she was
13 from Korea, so she did professional sketches of the
14 apparels that I wanted to disclose to Fubu.

15 So I went to Fubu by an appointment. I was going
16 to meet Bobby Joseph, the head designer, and when I
17 got there, the CEO, Daymond Johns, he was there. And
18 I -- he asked who I had the appointment with. I said
19 Mr. -- with Bobby.

20 So he said, "Okay. What do you have?"

21 So I said, "Well, first I'm waiting for someone
22 to sign a disclosure contract."

23 So he signed it and he liked what I had, and we
24 never could come through with an agreement because I
25 wanted to license my designs, I didn't want to sell it

1 to Fubu because they were a franchise company.

2 So afterwards I decided that I wanted to find an
3 independent company. So I went with Burlington's Coat
4 Factory. They gave me a contract. I designed a
5 trench coat for Burlington Coat Factory.

6 Q So you're an independent contractor?

7 A Yeah, Burlington was an independent contractor because
8 they were basically buyers. I didn't have to worry
9 about the franchising.

10 Q How long were you in that business?

11 A Well, I think I got that contract with Burlington, I
12 want to say in the year 2001 because that's when I --
13 yes, I got married in 2002 again with my third ex-
14 wife. I met her on Staten Island and -- so I had the
15 contract about for a year. And the contract was --
16 well, we lost the contract.

17 Q And with no disrespect, but you lost it because of
18 your own --

19 A Well, actually, I'm a recovering addict, and at that
20 time I had a relapse, and so I was not going into the
21 factory. They did a mass production. I wasn't there
22 to make sure that they were meeting the specifications
23 in the contract. And I was basically hanging out, you
24 know, getting high, you know, and trying to recuperate
25 myself, and it didn't work out.

1 So Burlington, when they finished the contract,
2 the coats were over -- way oversized, the wrong color,
3 the wrong ounces and everything. So Tara Newhall, she
4 was the CEO of the Men's Outerwear Department, she
5 snatched the contract, you know, so --

6 Q So because of your drug abuse you lost the job?

7 A Drug abuse. I lost the --

8 Q That's the bottom line, isn't it?

9 A Right.

10 Q And after that, did you get in trouble and plead
11 guilty to conspiracy in the federal system?

12 A Yes, that's true.

13 Q And conspiracy to what?

14 A Writing bogus prescriptions for Oxycontin pills.

15 Q That is pretty strong, Oxycontin?

16 A Yeah.

17 Q And when were you sentenced on that?

18 A July the 18th of 2005.

19 Q July the 18th of 2005?

20 A Yes.

21 Q Who was the judge that sentenced you?

22 A Judge Margaret Seymour.

23 Q Judge Seymour?

24 A Right.

25 Q And your sentence on that was what?

- 1 A Five years, three months, sir.
- 2 Q Five years, three months. And you've been serving
3 that since?
- 4 A Right. I already have 32 months in.
- 5 Q I'm sorry?
- 6 A I already have 32 months in.
- 7 Q After you had been sentenced by Judge Seymour, where
8 were you housed?
- 9 A At the Alvin S. Glenn Detention Center.
- 10 Q Here in Richland County?
- 11 A Yes, sir.
- 12 Q And just for these purposes, you had been sentenced --
13 you weren't going to serve your time at a state
14 facility, were you?
- 15 A No, sir.
- 16 Q And at that point after you were sentenced, did you
17 know where you were going?
- 18 A No, sir.
- 19 Q But it would have been in the federal system?
- 20 A It would have been in the federal system, of course,
21 yes.
- 22 Q After you were sentenced, did you have an occasion at
23 some point to meet one Christopher Commander?
- 24 A Yes, sir, I did.
- 25 Q And can you tell the ladies and gentlemen of the jury

1 where you met Christopher Commander?

2 A I met him at the Alvin S. Glenn Detention Center in
3 Unit G -- G Unit. I was in Cell 3 and he was in Cell
4 9. I was there before he arrived there.

5 Q Prior to this time, did you know Christopher
6 Commander?

7 A Never laid eyes on him.

8 Q And can you tell the ladies and gentlemen of the jury
9 how this meeting came about, the first time that you
10 met and/or talked with Christopher Commander? Tell
11 them.

12 A well, I was what they call a jailhouse lawyer. I
13 assisted people because I had some -- a lot of insight
14 on the law. And Commander had an issue with his bond.
15 He said that it was way excessive. And he wanted to
16 know how could I assist him. And I told him that it
17 would be in violation of his 8th Amendment right.
18 Protected under the constitution you have a right not
19 to receive an excessive bail.

20 And I told him this is a constitutional right
21 issue and I could file a writ of Habeas Corpus for
22 him. And in return I would want him to give me some
23 items, small items like canteen, not very much, for my
24 work.

25 And this is what I did. I wrote a writ of Habeas

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1 Corpus and we filed it with the Clerk of Court and
2 also we sent a copy to the Attorney General, Henry
3 McMaster, I believe. We sent him a copy of the same
4 thing.

5 Q So in exchange for you doing the Writ of Habeas
6 Corpus, he paid you in --

7 A Canteen, yes.

8 Q Canteen what?

9 A Like chips and things, cookies and things like this.
10 I don't remember specifically what it was, but it was
11 canteen.

12 Q Looking at what is marked as State's 89, just tell me
13 if you recognize it. Does it relate to what you're
14 talking about?

15 A Right.

16 Q Do you recognize it and does it relate to what you're
17 talking about?

18 A Yes, it does.

19 Q Yes?

20 A Yes.

21 MR. STRICKLER: Beg the Court's indulgence, Your
22 Honor.

23 THE COURT: Sure.

24 (Pause.)

25 Q Do you recognize this handwriting?

1 A Yes, that's my handwriting.

2 Q Did you prepare this document?

3 A Yes.

4 Q And is that the Writ of Habeas Corpus you said you
5 prepared for Christopher Commander?

6 A Yes.

7 Q At his request?

8 A Right.

9 Q And it's stamped on here "Barbara Scott." Is that our
10 own Clerk, Barbara Scott?

11 A Yes.

12 Q So had you sent it -- and was it sent to Ms. Scott in
13 the Clerk's Office here?

14 A Yes.

15 MR. MEADORS: Your Honor, we'd offer State's 89.

16 THE COURT: Any objection?

17 MR. STRICKLER: No, sir.

18 THE COURT: State's 89 is admitted.

19 (WHEREUPON, State's Exhibit Number 89, Writ
20 of Habeas Corpus, is admitted into
21 evidence.)

22 Q Now, after you prepared this document at his request,
23 did you have an occasion to talk to him?

24 A Yes, I did. On several occasions I did speak with
25 him.

1 Q Did he tell you anything about the case that he was
2 at Alvin S. Glenn Detention Center on?

3 A Yes, he did tell me things about his case, right.

4 Q Do you remember and can you tell us in sequence, if
5 you remember, if not, however you remember, what if
6 anything did he tell you about the victim?

7 A well, he told me that she and I -- that he -- that the
8 victim and he had constant fights, that they would
9 fight a lot. And he said that they were receiving
10 counseling. And I could not remember the counselor's
11 name. He did tell me the name and the place they were
12 receiving the counseling, but I could not remember.

13 And --

14 Q What if anything about the name did he tell you?

15 A He told me the victim's name, and I said that is a
16 funny name for an African American. It sound more or
17 less like Russian or something.

18 Q Did he say to you whether or not he had done this
19 incident to you, initially?

20 A Excuse me, can you repeat it?

21 Q Did he admit it to you initially?

22 A No, no, he did not.

23 Q Did he tell you about anything about where he was
24 arrested and how he was arrested?

25 A He said that he was arrested by some detectives or

1 investigators. I believe it was -- was it in New
2 Orleans, I believe? I believe it was in New Orleans
3 he was arrested, and he said he made some statements
4 to these arresting officers that he had killed his
5 girlfriend. And he said that he tried to kill
6 himself.

7 And he asked me, because he made that statement,
8 in other words, did -- would that damage his case.

9 And I said, well -- I asked him was it in
10 writing, and he said no.

11 So I said, well, in fact they violated your
12 Massiah rule, right to the Massiah rule, you know,
13 that you had to have your lawyer present when they
14 questioned you.

15 And I said I don't believe that it's, you know,
16 really any validity to that because there wasn't
17 written statement that you gave to them.

18 Q Did he admit to you whether or not he made that
19 statement to the police?

20 A Yes, that is what he said, he made that statement. He
21 did said he made that statement.

22 Q And then were you still in the capacity as his lawyer
23 then? I mean, you got canteen fees?

24 A Well, I was assisting him, yes, I was still assisting
25 him, right.

1 Q well, and you said he asked you -- did he say whether
2 or not he had messed up in giving that statement?

3 A Yes, that is what he asked me, the question did my --
4 my opinion, did I think that he screw up actually by
5 giving -- making that verbal statement to these
6 investigators.

7 Q And what if anything did you tell him about whether or
8 not it could be used?

9 A Excuse me?

10 Q what did you tell him if anything about whether or not
11 it could be used?

12 A I said I don't believe that it had any real validity
13 because it wasn't in writing.

14 Q what if anything -- did you talk to him one day or did
15 you talk to him over a course of days? How did that
16 go?

17 A well, it was like over a course of days that I spoke
18 to Chris. It was over a course of days. We would
19 speak about matters about his case.

20 And one day he called me into his cell and he
21 said, "Usuph," because that's what the inmates called
22 me, by Usuph.

23 Q Say that again?

24 A He called me Usuph. That's my legal name. I had my
25 name recently changed in '91.

1 And he said, "what do you think if I told my
2 attorney to tell them that she, the victim, hit me in
3 the head with a stick, we had an argument and she hit
4 me in the head with a stick and I fell unconscious and
5 fell on top of her, and when I regained consciousness
6 she had died from being suffocated?"

7 And I said, "well, no one is going to believe
8 that."

9 Q So he came to you and told you, what if I told this?

10 A He called me into his room, in Cell 9, right. And I
11 said no one would believe that.

12 Q Did he come back to you later and say anything else
13 about the crime he was charged with?

14 A Well, either later that day or the next day, I spoke
15 to Chris again. And I asked him the question, was she
16 cheating on him, and he denied that she was cheating
17 on him. And I asked him was he cheating on her, and
18 he said he had friends like on the side, but it wasn't
19 nothing serious.

20 And I asked him then, I said, well, what really
21 happened then, you know, what really went on.

22 And he said that he and she had an argument, she
23 hit him with a stick, and in other words he -- she
24 pissed him off and he fell on her and suffocated her.

25 And I asked him were you unconscious, and he

1 said, no, he wasn't unconscious, he suffocated her.

2 Q But at this time he said she still hit him with a
3 stick to start with?

4 A That is what he said.

5 Q Did you ask him if she had provoked him?

6 A Well, I mean, when -- I mean, of course, it's common
7 sense if someone hit you with a stick that is enough
8 to provoke anyone. Did she actually hit him with a
9 stick? In my opinion, I mean, I don't believe -- you
10 know, I don't believe that she hit him with a stick.
11 I believe that he was -- he just made this up to lead
12 me on, you know. I don't believe that is true at all
13 about the stick part.

14 Q What if anything did he tell you he did with her body
15 after he had suffocated her?

16 A He said that he wrapped her body in sheets and placed
17 her body on the sofa somewhere in the house. He
18 placed her body on the sofa and left her there. And
19 he said he took her credit cards and her car. And he
20 went to various states. I believe one state was North
21 Carolina, Florida and also St.(sic) Orleans, that's
22 what he said he did.

23 Q Where is Road?

24 A Excuse me?

25 Q Where is Road?

- 1 A Road?
- 2 Q Yes, sir.
- 3 A Never heard of it.
- 4 Q Where are you from?
- 5 A Me?
- 6 Q Yes, sir.
- 7 A I'm originally from Bamberg, South Carolina.
- 8 Q You said he took the credit card?
- 9 A Right, that's what he said. He took -- he had -- he
- 10 used her credit cards and he had her car.
- 11 Q Did you ever ask him if there could have been another
- 12 explanation for her death, like an overdose or
- 13 anything?
- 14 A Yes. He mentioned also that she was taking
- 15 antidepressant medicine.
- 16 And I asked him, I said, "Well, do you believe,
- 17 Chris, that she could have possibly have taken an
- 18 overdose and OD'd?"
- 19 And he said, "No". He said, "She didn't OD."
- 20 This is what he told me. Affirmative, he said that
- 21 she didn't OD.
- 22 Q He said she died how?
- 23 A He said that he -- she died from suffocation, right.
- 24 Q Can you -- as Chris Commander is talking to you, as
- 25 capacity as an inmate and kind of counsel inside jail,

1 can you describe his demeanor as he is telling you
2 this?

3 A Well, I -- he -- he never - he never swayed away from
4 me. He looked me dead into my eyes, and I could tell
5 that he was serious. And I believe what happened was
6 that he trust me. And he was serious about what he
7 was telling me because he never -- he never -- I use
8 the term flinch, he never turned away, swayed away as
9 he was telling me, you know. Like sometimes you are
10 talking with someone and they are holding their head
11 down or they're turning from side to side. He never
12 did this. He was straight, centered, looked me in my
13 face and told me this, that he had suffocated her.

14 Q And did he tell you how he did it?

15 A He said he fell on top of her and suffocated her,
16 that's what he said.

17 Q Did he ever mention anything to you about the cause of
18 death?

19 A Yes, he said that she was -- she died from
20 suffocation.

21 Q Did he ever express to you his feelings about the
22 case?

23 A Well, I mean, actually I could tell, you know, in his
24 speech, like I mentioned, that he was remorseful. I
25 mean, I could tell that he was remorseful. But he

1 said that they didn't have any evidence because they
2 didn't know -- they couldn't prove the cause of death.
3 This is what he said, they couldn't prove the cause of
4 death.

5 And so he said in fact that -- I said, well,
6 manslaughter, I said it carries --

7 MR. MEADORS: Object. Stop right there. Stop
8 right there. Don't go into that.

9 A All right.

10 MR. MEADORS: And we can approach if you want to.

11 (WHEREUPON, a bench conference was held in
12 the presence of the jury but out of the
13 hearing of the jury.)

14 Q Go ahead and say what you were going to say.

15 A I told Chris, I said, manslaughter -- I said it
16 carries 30 years.

17 And so he said, well, what does he have to lose,
18 he might as well take it to trial, you know, what does
19 he have to lose. This is what he said, he might as
20 well take it to trial.

21 Q Did he say anything else about the -- what else did he
22 tell you about the -- his history with the victim?

23 A As to what?

24 Q As to whether or not he had -- you mentioned earlier
25 they might strike each other every now and then. Did

1 he say anything else?

2 A Yeah, he mentioned that they had fights, you know. On
3 occasions they had fights, and he said that she would
4 lash out at him. And one time when he hit her, that
5 he was arrested for domestic violence, and that she
6 later dropped the charges and they discharged him,
7 they released him.

8 Q When was this that you got this information from Chris
9 Commander?

10 A It was in the year 2005, around the month of October.

11 Q After you had talked -- obviously you contacted law
12 enforcement, correct?

13 A Right, I did.

14 Q Do you remember who you contacted?

15 A Not actually, but Mr. Stan Smith, he was the detective
16 that came to Alvin S. Glenn and he picked me up and
17 took me back to the Richland County Sheriff Department
18 and his assistant was there, the gentleman that I
19 actually wrote the letter to.

20 Q Would you dispute you wrote a letter to Holdorf on
21 October 24th?

22 A No. That is his name in fact. That is his name,
23 Holdorf, that is his name.

24 Q And was that letter saying, hey, I've got some
25 information, come talk to me?

- 1 A Basically, yes.
- 2 Q It was basically saying I'll help you, you can maybe
- 3 help me?
- 4 A Right.
- 5 Q Is that the bottom line?
- 6 A Right.
- 7 Q And then did you send a letter to Stan Smith after
- 8 that --
- 9 A Right.
- 10 Q -- asking him -- well, the next thing, did they come
- 11 talk to you after you sent this letter to Holdorf?
- 12 A Yes, they -- Mr. Stan Smith picked me up in fact and
- 13 he took me to his office, and they asked me would I
- 14 make a statement, and I cooperated with them. I told
- 15 them that I would.
- 16 Q And did you give a statement?
- 17 A Yes, sir.
- 18 Q After that, did you send a letter to Stan Smith, the
- 19 same person who had interviewed you --
- 20 A Uh-huh.
- 21 Q -- wanting acknowledgement of the fact you helped?
- 22 A Right.
- 23 Q I mean, that is the bottom line?
- 24 A Right.
- 25 Q Now, currently -- not currently. You're in another --

- 1 I won't say where you are now, but you're in a
2 detention facility, correct, here in the Midlands?
- 3 A Right.
- 4 Q Prior to that, were you housed in the federal unit?
- 5 A Yes, sir, I was.
- 6 Q Where?
- 7 A Butner, North Carolina.
- 8 Q I misheard you?
- 9 A Butner, North Carolina.
- 10 Q Butner?
- 11 A Right, Butner.
- 12 Q And your sentence you are serving there is five years
13 what?
- 14 A Three months.
- 15 Q Are you in any kind of program in there?
- 16 A I'm in a 500 hour drug program. It takes 500 hours to
17 complete it. And after I complete it, they would
18 remove 18 months from my sentence.
- 19 Q Did you successfully complete it?
- 20 A No, I'm currently in the program.
- 21 Q Okay, my apology. If you complete that program, when
22 will you be out?
- 23 A When will I max out?
- 24 Q Yes, sir.
- 25 A Around March of 2007.

- 1 Q If you don't complete that program --
- 2 A Uh-huh.
- 3 Q -- and I don't even know the requirements, when would
- 4 you max out?
- 5 A Around May of 2008.
- 6 Q Max out the sentence you're on?
- 7 A Right.
- 8 Q And tell the ladies and gentlemen of the jury, have
- 9 you asked either Stan Smith, Holdorf or McDonald or me
- 10 if we would let your cooperation be known to the
- 11 federal authorities from whom you are serving, is that
- 12 what you have asked of us?
- 13 A Yes, absolutely.
- 14 Q And have I told you that on behalf of those officers
- 15 and myself that I would let the federal authorities
- 16 know that you've cooperated in this case?
- 17 A Right.
- 18 Q And I have told you that I think week before last?
- 19 A Yes, sir, you did.
- 20 Q Did I tell you today?
- 21 A Right.
- 22 Q And I'm telling you now I will?
- 23 A Right, you are.
- 24 Q And as a result of that -- I'm not nothing special,
- 25 but as a result of me or anybody saying you cooperated

- 1 here, what could happen as a result of that?
- 2 A They could depart -- further depart with my sentence
- 3 and it would max me out and I would be released from
- 4 the Federal Bureau of Prisons.
- 5 Q You've served time in the past for forgeries?
- 6 A Right.
- 7 Q Receiving stolen goods?
- 8 A Yes.
- 9 Q Did your time for that?
- 10 A Yes.
- 11 Q And there were a bunch of counts, weren't there?
- 12 A Yes, sir.
- 13 Q You had four counts of forgeries in '88?
- 14 A Yes, sir.
- 15 Q Is that about right?
- 16 A That's about right.
- 17 Q If I'm off a year, I'm sorry.
- 18 A Right.
- 19 Q After that did you have some other forgeries?
- 20 A Yes, sir.
- 21 Q And what sentence did you get on that?
- 22 A The 1988 sentence?
- 23 Q Tell us the sentence you got.
- 24 A I got two years -- I mean, ten years for one
- 25 receiving stolen goods charge, and another ten years

1 ran concurrent, 18 months for forgery consecutive to
2 18 months consecutive --

3 Q Was that Judge Luke Brown?

4 A Luke Brown. 36 months for forgery together
5 consecutive to the ten years. And the Department of
6 Correction, I had a seven year sentence from
7 Orangeburg County for the same forgeries. It was --
8 they calculated my time to be 20 years versus 13 years
9 because lawfully the seven years should have been
10 concurrent with the 13 years.

11 Q That was your view of it?

12 A Right.

13 Q But you maxed out that sentence?

14 A I maxed it out, right.

15 Q Is the person that you saw in the Alvin S. Glenn
16 Detention Center in October of 2004, the person that
17 told you he was hit on the head with a stick --

18 A Right.

19 Q -- fell on --

20 A The victim.

21 Q -- the victim, initially told you he was unconscious
22 and then told you, well, I wasn't unconscious --

23 A wasn't unconscious.

24 Q -- and that she suffocated from me being on top of her

25 --

1 A Right.

2 Q -- is that person in this courtroom?

3 A Yes, he's this gentleman, Christopher Commander here.

4 Q Sitting between Ms. Mobley and Mr. Strickler?

5 A Yes. Yes.

6 Q Is there any doubt in your mind of that?

7 A No, that's him. He just had a beard. The last time
8 when I saw him he had a beard.

9 Q Has he changed in any other way physical --

10 A He gained some weight. I believe he gained some
11 weight.

12 MR. MEADORS: Beg the Court's indulgence.

13 THE COURT: All right.

14 (Pause.)

15 MR. MEADORS: Judge, thank you. That's all.

16 THE COURT: All right. Cross examine?

17 MR. STRICKLER: Thank you, sir. May it please
18 the Court?

19 CROSS EXAMINATION

20 BY MR. STRICKLER:

21 Q Good afternoon, Mr. Presley.

22 A Good afternoon. How are you?

23 Q I'm fine, thank you, sir. My name is Doug Strickler.

24 Along with Ms. Mobley, I am representing

25 Mr. Commander, okay?

The State versus Christopher Sam Commander

1 I want to ask you some questions, if I may.

2 Now, you have testified in talking with
3 Mr. Meadors about your prior criminal history?

4 A Uh-huh.

5 Q And it looks like you had four convictions for forgery
6 in '86, and then receiving stolen goods and a bunch of
7 other forgeries, 16 it looks like from the rap sheet,
8 best we can do, in '88. Most of these all kind of
9 dovetailed together at the time you were doing all
10 this, right?

11 A Yes.

12 Q And then you've got this current sentence that you are
13 doing now, conspiracy to distribute Oxycontin?

14 A Correct.

15 Q Right? And you got out of the prison on those earlier
16 sentences when, 1998?

17 A 1998, I was paroled out.

18 Q Paroled out. You didn't max out on those sentences?

19 A No.

20 Q How long were you on parole?

21 A I'm currently still on parole. I max out in a few
22 months, next year in April, I believe.

23 Q You max out?

24 A In April.

25 Q In April, parole for the South Carolina charges?

- 1 A Yes, sir.
- 2 Q Well, isn't this conspiracy to distribute Oxycontin in
3 the federal system, wouldn't that be a violation of
4 your state parole?
- 5 A Not if it's ran concurrent, no.
- 6 Q Has your state parole been revoked?
- 7 A Excuse me?
- 8 Q Has your state parole been revoked?
- 9 A No, sir.
- 10 Q You're not doing state time and federal time at the
11 same time?
- 12 A Excuse me?
- 13 Q You're not doing state time and federal time at the
14 same time? I'm sorry if I'm mumbling.
- 15 A It hasn't been revoked, no.
- 16 Q So your state parole has not been revoked. This is --
17 the parole that you are on is for these offenses back
18 in '86 and '88?
- 19 A Yes, sir, for '88, not '86.
- 20 Q For '88?
- 21 A For '88.
- 22 Q Okay. So state parole has not been revoked despite
23 subsequent conviction on these federal charges.
- 24 Now, forgery, did you get convicted of forgery or
25 forgery by utterance?

1 A Forgery.

2 Q Forgery?

3 A Signing the signature.

4 Q So you -- forgery by utterance is presenting something
5 that you know was forged --

6 A Right, I did do that, right.

7 Q Did that too?

8 A Right.

9 Q You also signed the name?

10 A Signed the name and presented it.

11 Q So, when you forged something, whether it is signing
12 the name or whether you're presenting rather than
13 signing a name, knowing that the name is false, okay?

14 A I knew it was. I knew at the time.

15 Q So either one of those situations, whether it is
16 forgery or forgery by uttering a forged instrument,
17 those both involve lying, don't they?

18 A Absolutely, you are right.

19 Q And they both are crimes involving dishonesty on your
20 part, right?

21 A Yes, sir, that's true.

22 Q And what you have been convicted of then in 1986 would
23 be four counts of lying and dishonesty in relation to
24 those forgeries, right?

25 A At the time when I committed the forgeries, yes.

1 Q And then in '88, it looks like 16 counts of forgery
2 again, and those are all crimes involving lying and
3 dishonesty, correct?

4 A Forgery.

5 Q Forgery, yes, sir.

6 A Right.

7 Q 16 counts?

8 A Yes.

9 Q Yes, sir.

10 A Uh-huh.

11 Q That is lying and dishonesty. And then at the same
12 time I believe you caught two counts -- I think you
13 said two counts of receiving stolen goods?

14 A Receiving stolen property, yes.

15 Q Now, receiving stolen goods means that you received
16 stolen property knowing that it was stolen, knowledge
17 is an element of the offense?

18 A Actually, no, the charge was grand larceny. And they
19 allowed me to plead guilty to receiving stolen goods.

20 Q Okay. So you were actually charged with actually
21 stealing the property?

22 A Right.

23 Q But they let you plead guilty to just receiving it
24 knowing that it was stolen?

25 A Right.

1 Q Right. And then this last beef with the feds is
2 conspiracy to distribute Oxycontin. How long -- first
3 of all let me ask you this. You were housed at Alvin
4 S. Glenn on this federal charge?

5 A Yes, sir.

6 Q Pretrial?

7 A Yes, sir.

8 Q And then for some period of time after you had entered
9 your plea, right?

10 A Excuse me, can you repeat that?

11 Q Sure. You were housed at Alvin S. Glenn Detention
12 Center on the federal charge prior to this disposition
13 and then for some period of time after you had already
14 been sentenced?

15 A Yes, sir.

16 Q Is that correct?

17 A Right.

18 Q Okay. So my question is when did you first go into
19 Alvin S. Glenn on this federal beef that you're
20 currently doing five years and three months on?

21 A I believe that was February 27th of 2004. My Co-
22 Defendant, my ex-girlfriend and I were apprehended in
23 Orangeburg County reporting for roll call, acting in
24 good faith. And we were apprehended for -- detained
25 us here in Richland County for the synonymous offenses

1 for bogus prescriptions for Oxycontin pills.

2 Q So you originally -- if I understand your testimony
3 correctly, you originally were charged in state court?

4 A Yes.

5 Q With this Oxycontin charge?

6 A And the federal government picked the charges up after
7 they were dismissed by the State.

8 Q Okay. And you were originally charged in more than
9 one county in South Carolina on these -- on this
10 Oxycontin stuff?

11 A That's correct.

12 Q And how many different counties charged you?

13 A Walterboro, Orangeburg and Richland County.

14 Q Walterboro --

15 A Orangeburg and Richland County.

16 Q Charged with conspiracy in those places?

17 A No, not at the time, it wasn't conspiracy. It was
18 obtaining by fraud.

19 Q Obtaining Oxycontin by fraud?

20 A Well, prescription medicine, right, right.

21 Q Okay. When you obtain something by fraud, that means
22 you misrepresent things in order to get it, right?

23 A Absolutely, you're right.

24 Q Okay. Misrepresenting is not telling the truth,
25 right?

- 1 A That's correct.
- 2 Q Misrepresenting is another way of saying "lying,"
- 3 right?
- 4 A Absolutely.
- 5 Q you are just doing time on one count on this
- 6 conspiracy?
- 7 A Yes. They dismissed all the other counts and allowed
- 8 me to plead to count one.
- 9 Q Dismissed all the other counts?
- 10 A Yes. I believe it was 26 counts.
- 11 Q Now, you were in the Richland County Detention Center,
- 12 the Alvin S. Glenn Detention Center, I believe your
- 13 testimony is February 27th, 2004, correct?
- 14 A Excuse me?
- 15 Q You were incarcerated at the Richland County Detention
- 16 Center on these federal charges beginning, I think
- 17 your testimony was, February 27th, 2004?
- 18 A 23rd, I said.
- 19 Q 23rd?
- 20 A Yes.
- 21 Q Okay. And you remained housed there continuously
- 22 until what time?
- 23 A I was bond out on a pro se motion I filed with the
- 24 federal government myself. I was bond out on February
- 25 29th or 27th of 2005.

1 Q Okay, 27th, February 27th, 2005?

2 A Right.

3 Q And then when did you go back into the Alvin S. Glenn
4 Detention Center?

5 A Well, I -- March the 10th of 2005, I was -- my bond was
6 revoked. I self-surrendered to the government.

7 Q And then you remained at the Alvin S. Glenn Detention
8 Center until you were transferred into a federal penal
9 institution?

10 A No. When I self-surrendered I was housed at Lexington
11 County.

12 Q Okay. And then you were housed in Lexington County.
13 The feds have some kind of deal with Lexington County
14 about housing pretrial detainees there, right?

15 A I believe so. I believe that is correct.

16 Q If Richland catches --

17 A I'm not a part, I mean, to the administrative part.

18 Q Richland catches the overflow. How long were you in
19 the Lexington County Detention Center?

20 A Only for a few weeks. I filed a writ of Habeas Corpus
21 before Judge Seymour based on the conditions there.
22 They had no law library. It was way overcrowded. It
23 was a lot of bad conditions there. And I was brought
24 to court and I made a complaint and requested that I
25 be transferred back to Richland County. And my Co-

1 Defendant, she was there in fact too. So all of a
2 sudden I was transferred back to Richland County.

3 Q And that would be what, March or April of 2005?

4 A No, it was later than that, I believe. I'm not
5 actually sure. Maybe in May, I want to say, I'm not
6 positive.

7 Q Okay. And then you remained in the Alvin S. Glenn
8 Detention Center, Richland County Detention Center,
9 until such time as you were transferred to a federal
10 penal institution?

11 A Yes, that's correct.

12 Q The first place you went with the feds was Butner?

13 A No, the first place I went when I left Alvin S. Glenn
14 Detention Center, I went to Spartanburg for about six
15 days. The transportation CO's from the Federal Bureau
16 of Prisons picked me up from Spartanburg, took me to
17 Atlanta. I stayed there. I was there for
18 Thanksgiving. I'm sure I was there for Thanksgiving
19 because I remember them serving the turkey and the ham
20 there. And I don't eat pork. And then afterwards I
21 was transferred to Butner, North Carolina.

22 Q Okay, let me ask you this. To the best of your
23 knowledge, when was it that you left Alvin S. Glenn?

24 A It was sometime, I believe, in November.

25 Q Okay.

1 A It had to be in November.

2 Q And I guess your testimony is that while you were at
3 Alvin S. Glenn, I guess this last time when you went
4 back in May of 2005, you were placed in G Dorm?

5 A G Unit.

6 Q G Unit. Goff is what they call it, Goff Unit?

7 A Goff, absolutely, that's correct.

8 Q Okay. And that is where you met Mr. Commander?

9 A Right, that's correct.

10 Q This would have been in sometime May, 2005, is that
11 correct?

12 A No, it couldn't be correct. It had to be around
13 October. It wasn't in May.

14 Q I'm sorry, when you went to Goff?

15 A When I went to Goff?

16 Q G Dorm, right.

17 A No, I was in -- what unit was that? Was it -- was it
18 A Unit. It was C Unit, Charlie Unit. I had a verbal
19 confirmation (sic) with another detainee there, and so
20 they placed me in lockup because they alleged that I
21 was the aggressive one. And afterwards, after they
22 decided to drop the disciplinary, they placed me in
23 Goff Unit.

24 Q Okay, first you were in Charlie when you went there?

25 A Yeah, I believe it was Charlie unit.

- 1 Q Then you were locked up there at Zulu?
- 2 A Yeah, Zulu.
- 3 Q That's solitary confinement, right?
- 4 A Yeah, right.
- 5 Q How long were you in Zulu?
- 6 A Only for a few days.
- 7 Q And then to G or Goff Dorm, right?
- 8 A Right. Right.
- 9 Q And so after you get to Goff, whenever that was, is
- 10 when you meet Mr. Commander?
- 11 A Yes, that is when I met Chris.
- 12 Q Did you meet him right off the bat when you got there?
- 13 A Excuse me?
- 14 Q Did you meet him right off the bat when you got to
- 15 Goff, right away?
- 16 A No -- well, he approached me about assisting him with
- 17 some legal issues. I believe Chris had spoken to some
- 18 other people maybe that was there because he wasn't
- 19 the only one that I was assisting. I assisted several
- 20 other people there. Kenneth Harrison, I assisted him,
- 21 and two other people, I believe, prior to meeting
- 22 Christopher Commander.
- 23 Q So how long -- well, let me drop back. When you were
- 24 transferred from Lexington to Alvin S. Glenn --
- 25 A Okay.

1 Q All right, about May of 2005?

2 A Around May of 2005.

3 Q Went to Charlie, C Unit?

4 A Right.

5 Q Okay. That is in Phase One, right?

6 A Right.

7 Q And you spent, I believe you said, a few weeks there?

8 A No, I didn't say a few weeks, I said I was in Charlie
9 Unit.

10 Q Okay. How long did you stay in Charlie?

11 A I don't remember.

12 Q Weeks, months?

13 A I was there. If you calculate at the time when I got
14 there, I was there and then I went to Zulu to my max.

15 Q You spent a few days in Zulu?

16 A Yes, it was only a few days in Zulu. And I wasn't
17 charged.

18 Q And you went to Zulu because there was some trouble
19 between you and another person that was housed in
20 Charlie?

21 A Yes. And he -- in fact, he was a dissension maker.
22 He was a bully, he and his homeboys.

23 Q Yes, sir. And how long after you hit Goff Dorm was it
24 before you had your first encounter with
25 Mr. Commander?

1 A well -- what is your name again, sir?

2 Q My name is Douglas Strickler.

3 A Mr. Strickler, I want to say maybe the next day he was
4 there. I'm not absolutely sure because, you know, I
5 have a whole lot of things on my mind and I'm not
6 really absolutely sure to put my centrlicity solely
7 only Christopher Commander.

8 Q And you talked with him?

9 A Right.

10 Q Right? And he wanted you to do something about his
11 bond situation?

12 A Yes.

13 Q Okay. And that is when you -- that is when you
14 prepared this document entitled State's Exhibit
15 Number 89?

16 A Right.

17 Q So I guess that would be within just a short period
18 after you got into Goff Dorm?

19 A Yes.

20 Q And you're acquainted with documents that inmates
21 typically refer to as a Motion for Discovery, aren't
22 you?

23 A Rule 5.

24 Q Right. Typically referred to by the folks on the
25 inside as their Motion for Discovery?

1 A Absolutely.

2 Q That's evidence in a case?

3 A I know what it is, absolutely.

4 Q You get them to file a Discovery Motion, supplied to
5 them, their attorney, by the State, right?

6 A Right.

7 Q People have it down at the -- in their dorms at the
8 county jail, not everyone, some of them, right?

9 A Right.

10 Q I take it that you would deny that you picked up any
11 details regarding Chris Commander's case from
12 reviewing his discovery, correct?

13 A I never saw Mr. Commander's discovery in my life. The
14 only document that I had access to was the arrest
15 warrant. And whatever was disclosed in the arrest
16 warrant, the State already had knowledge of. That is
17 the only document I ever had access to.

18 Q And that is the truth, right?

19 A That is the truth.

20 Q Absolute truth. What your testimony is is that -- as
21 I understand it, is in sum, is you talked him, you
22 prepared this Habeas Corpus motion and that later he
23 confided in you regarding his case?

24 A Yes, that's correct.

25 Q How much later?

1 A It was -- it wasn't that long, it wasn't that long.
2 In fact, he called -- I remember very plain, he called
3 me into his room. And he was still dressed in the
4 orange like this, in fact. He was not in the navy
5 blue, because when you come from lockup you have to
6 wait a certain period of time and they will change the
7 uniform over.

8 I remember he called me in his cell. He was in
9 Cell 9 and I was in Cell 3. And he asked me a
10 question, what did I think, he wanted my opinion. If
11 he had this lawyer, Ms. GinHovin, I think was his
12 lawyer at the time, if the name is correctly
13 pronounced, what did I think if he told his lawyer to
14 tell the State that his girlfriend, the victim, hit
15 him in the head with a stick and he fell unconscious
16 and fell on her and when he was -- when he regained
17 consciousness that she had died from suffocation
18 because he was on her, he fell on top of her.

19 And I told him, no one is going to believe this.

20 Q Okay. Now, you initially contacted Investigator
21 Holdorf with the Richland County Sheriff's Department?

22 A You say initiative(sic)? No. It was afterwards, not
23 in the beginning, not at all. If you are trying to
24 entertain a thought that I premeditated, no. If you
25 even look at the writ of Habeas Corpus, you will see

1 the details that I mention about the family and
2 community ties. It doesn't seem like I was an enemy
3 towards Chris, not at all.

4 Q Okay. Let me ask you this. Referring to what is
5 marked as State's Exhibit Number 89, this is in your
6 handwriting, correct?

7 A Absolutely.

8 Q And that's your testimony. What is the date that you
9 wrote on that, upper right-hand?

10 A October the 19th.

11 Q Okay.

12 A 2005.

13 Q And can you read the date that it was actually clocked
14 in at the Clerk of Court's Office, that stamp date
15 right there?

16 A 26th of October.

17 Q 2005?

18 A Right.

19 Q Now, do you recognize this document?

20 A Okay, October the 24th.

21 Q Do you recognize the document, sir?

22 A Yes, this is a letter --

23 MR. MEADORS: Your Honor, I have no objection to
24 him putting that in if he's offering that --

25 A This is a letter to --

1 THE COURT: Wait, wait, wait a minute. It hasn't
2 been offered. Don't say you do or don't object. Just
3 go ahead.

4 MR. MEADORS: We would object to any questions
5 off of it without it being offered.

6 THE COURT: All right. The question is right
7 now, do you recognize it, and the witness has
8 indicated he does.

9 Ask your next question.

10 MR. STRICKLER: Thank you, sir.

11 A Yes, I do, I recognize it.

12 Q Okay. What is it?

13 A Excuse me?

14 Q What is it?

15 A Oh, this is a letter that I wrote to Mr. Holdorf.

16 Q And when did you write that to him?

17 A October the 24th.

18 Q October the 24th?

19 A Right.

20 Q 2005?

21 A Right.

22 Q Isn't it true on October 24th, 2005, you contacted
23 Mr. Holdorf regarding Mr. Commander indicating that
24 you knew he had killed his girlfriend?

25 A Absolutely, I did.

1 Q Okay. So now you filed this, what is marked as
2 State's 89 here?

3 A Okay.

4 Q Filed that or sent it in October 19th, right? It is
5 clocked in by the Clerk's Office, I believe you read
6 that, testified, October 26th, right?

7 A What date was October 19th on?

8 Q I have no idea.

9 A You have no idea? Because normally I would -- okay.

10 Q The date that's on this document?

11 A Okay, all right.

12 Q Now, by October 24th you contacted Mr. Holdorf with the
13 Richland County Sheriff's Department, correct?

14 A I sent a letter to him. I dated the letter. It
15 wasn't any verbal conversation between he and I. I
16 didn't meet him until afterwards, I think on
17 October 31st.

18 Q That's fine.

19 A Right.

20 Q On October 24th --

21 A Uh-huh.

22 Q -- five days after filing that or after preparing that
23 document and sending it off to be filed --

24 A Right. And this was between the time when he had
25 already made admission to me that he did commit the

1 murder, you're absolutely right.

2 Q Sure, that was --

3 A Right, absolutely.

4 Q He admitted to you that he committed the murder and
5 you hadn't gleaned that information from reviewing his
6 discovery?

7 A No --

8 Q Because you're telling the truth today?

9 A Never saw discovery in my life.

10 Q Yes, sir, but you are telling the truth today, right?

11 A Yes, sir, I'm telling the truth.

12 MR. MEADORS: That's been asked and answered.
13 Objection.

14 THE COURT: Sustained.

15 Q Now, on October 24th when you sent this letter, you
16 already told -- you tell them you're looking for a
17 downward departure in the federal sentencing then,
18 right?

19 A Yes, I did at that time, I did.

20 Q So within five days of having, I guess, your first
21 conversations with Mr. Commander about his case that
22 led to the filing of this -- preparation of this
23 document, you were already contacting the Richland
24 County Sheriff's Department indicating you've got
25 information and you want a downward departure on your

1 federal sentence?

2 A If you count, that was afterwards. It was not during
3 the time that I filed this. This was on the 19th, so
4 it was in between this when he had made admission to
5 me that he actually did commit the murder, that he did
6 kill his girlfriend. So it was not an after -- not
7 until after he admitted that he did do it.

8 Q Yes, sir.

9 A Right.

10 Q Then I believe you testified that you then at some
11 point later on -- excuse me, sir -- at some point
12 later on you went -- I guess you transported from the
13 county jail to the Sheriff's Department with Mr.
14 Smith?

15 A Yes, Detective Stan Smith, yes.

16 Q Do you remember when that was?

17 A I believe it was October 31st, I believe it was.

18 Q And initially -- your claim is that initially
19 Christopher told you he hadn't killed her, right?

20 A Yes. First of all, I never even questioned him, did
21 he kill her or not, in the beginning. I never
22 questioned him.

23 Q All right. He just starts voluntarily giving this
24 information?

25 A He volunteered, was no coercion.

1 Q No coercion on your part?

2 A Absolutely not. I believe more or less it was God's
3 will.

4 Q Yes, sir.

5 A It was inevitable.

6 Q Are you a deeply religious person, sir?

7 A Yes -- not that -- we all are --

8 MR. MEADORS: I didn't hear him, Your Honor, I'm
9 sorry.

10 THE COURT: The question was --

11 Q Are you a deeply religious person, sir?

12 A I believe in God. I'm not an atheist.

13 Q Okay. And he seeks your advice about whether he made
14 a mistake in making some statement?

15 A Now, this part is in the beginning. You're like
16 breaking -- you're breaking your questions and the
17 statements up into like units. This was like in the
18 beginning, you know. The part about him actually
19 admitting that he killed her was after -- after the
20 Writ of Habeas Corpus, see.

21 Q Now -- and then you indicate you told Mr. Smith that
22 -- well, he came to you and asked you what you thought
23 about if he said she hit him in the head and made him
24 fall out and he was unconscious, right?

25 A No, he said how if he tells -- told his lawyer to tell

1 the State that she had hit him -- they had an argument
2 and she hit him in the head with a stick and he fell
3 unconscious on top of her and when he regained
4 consciousness she was dead, he had suffocated her. In
5 other words, he was saying that he was un -- he fell
6 unconscious and he was unaware of the fact that he had
7 suffocated her.

8 And I said, well, no one is going to believe
9 this, you know.

10 Q And then he said that she hit him in the head with a
11 stick and --

12 A This was maybe -- which part is it, which statement,
13 the part when he lied and said that he fell
14 unconscious on her and suffocated her or the part when
15 he openly overtly admitted that he did in fact
16 suffocate her consciously?

17 Q She hit him and he got mad and --

18 A Which part?

19 Q -- suffocated her?

20 A Excuse me?

21 Q She hit him with the stick, he got mad and suffocated
22 her?

23 A That is the part that you want? This was the second
24 statement.

25 Q Right.

1 A Okay, that was the second statement.

2 Q First is unconscious?

3 A Right.

4 Q Second -- both of them were hit with stick, right?

5 A So he says.

6 Q Right.

7 A God knows best. So he said.

8 Q Right, sir, yes. Hit with a stick, unconscious? Hit
9 with a stick, and suffocated her?

10 A He said she hit him with the stick and he fell on her
11 and suffocated her.

12 And I asked, "Were you unconscious?"

13 And he said, "No."

14 And in fact I mentioned, I said, "Well, did you
15 go to the emergency room?"

16 He said, no, he didn't go to the emergency room.

17 Q Yes, sir. How many times did you speak to him?

18 A Excuse me?

19 Q How many times did you speak with him about this
20 situation?

21 A About what, which part?

22 Q About the various versions of his story that you claim
23 he told you?

24 A Well, when I first spoke to Chris, this is when he
25 mentioned about did I believe that he screwed up when

1 he made the verbal admission to these investigators,
2 I believe they were from St. Orleans, about that he
3 did in fact kill his girlfriend and he said he tried
4 to kill himself, and he asked did I believe that did
5 he screw up.

6 And I said basically they have violated your
7 Massiah rule and I don't see where there is really any
8 validity when there wasn't a written statement. And
9 that was on that issue.

10 And then after preparing the Writ of Habeas
11 Corpus, you know, I asked him various questions like
12 about was he a native of South Carolina, did he have
13 good family and community ties, status and that sort.

14 And then afterwards this is when he called me to
15 Cell 9 and asked me my opinion if he told his lawyer
16 to disclose to the State --

17 Q That is my question, afterwards. When was that? How
18 long afterwards?

19 A Well, I don't know actually a date. Like I said, that
20 I have my own issues, you know, and I don't have a
21 photographic memory, but I -- I know that he did make
22 the statement. I have a pretty fair memory, but dates
23 and days, I mean, I'm not so good with that, but he
24 did make the statement.

25 Q Okay. So as I understand what you are saying is that

1 you don't remember how long afterwards it was when he
2 calls you into his cell to talk?

3 A Now, when he made the first statement, it was after I
4 had filed the Writ of Habeas Corpus, I had completed
5 it. Now, with the second statement, that he was not
6 unconscious, it was probably later that day or the
7 next day.

8 Q So when you spoke with Mr. Smith --

9 A Stan Smith.

10 Q Stan Smith?

11 A Yes, sir.

12 Q What did he promise you then?

13 A What did he promise me?

14 Q Yes, sir.

15 A Nothing, that I recall.

16 Q And by spoke with him, I mean at the time you gave
17 this written statement, right?

18 A Excuse me?

19 Q That is what I mean. At the time you spoke with him
20 and gave the written statement about this?

21 A Okay.

22 Q Right? Okay. Did you ever meet with Mr. Smith other
23 than at that point in time?

24 A Never met him in my life.

25 Q You haven't met with him subsequent to that time?

1 A Never.

2 Q And he didn't promise you anything? You asked for
3 something, right?

4 A No.

5 Q Downward departure?

6 A No, the downward departure comes from the Federal
7 District Court, not from the State.

8 Q You asked for assistance in getting a downward
9 departure?

10 A Yes, sir, I did.

11 Q Right?

12 A Not from Mr. Smith.

13 (Pause.)

14 MR. MEADORS: Your Honor, can we approach?

15 (WHEREUPON, a bench conference was held in
16 the presence of the jury but out of the hearing
17 of the jury.)

18 THE COURT: Go ahead, Mr. Strickler.

19 MR. STRICKLER: Thank you, sir.

20 Q Let me show you this document, sir, and ask if you
21 recognize that?

22 A Okay, this is the letter that I did to Mr. Smith.

23 Q Okay.

24 A Right. Yeah, this letter in fact is --

25 MR. MEADORS: Your Honor, if he is going to ask

1 questions off of it, I ask that it be admitted.

2 THE COURT: He hasn't asked any question at this
3 point in time. I don't know -- you folks anticipate.
4 You know lots more about it than I do. I can't rule
5 until I hear.

6 MR. MEADORS: The question hasn't been asked.
7 I'll wait until the question has been asked.

8 A Yes, that's a letter I believe that I wrote to
9 Mr. Smith. I needed something for the record.

10 THE COURT: Wait, wait, wait, wait, wait. The
11 only question that has been asked is do you recognize
12 the document, and the answer is yes.

13 THE WITNESS: Yes, I recognize it.

14 THE COURT: Okay, stop right there. If there's
15 another question, you can answer it.

16 Go ahead, Mr. Strickler.

17 MR. STRICKLER: Thank you, sir.

18 (Pause.)

19 Q Isn't it true that subsequent to speaking with
20 Mr. Smith and giving this written statement, you wrote
21 a letter to Mr. Smith?

22 A Yes, I did.

23 Q And in that letter you requested a number of things,
24 correct?

25 MR. MEADORS: Your Honor, objection. We would

1 ask that it be admitted.

2 THE COURT: Overruled. Go ahead.

3 Q You asked for a number of things, correct?

4 A If you read the letter it would refresh my memory.

5 Q And you have written the Solicitor's Office in April
6 of this year regarding the status of this case,
7 correct?

8 A Yes, I believe so, yes.

9 Q Following the status of the case, right?

10 A Yes, sir, I'm very -- I was very tied up at the time
11 with my own legal issues. I have my own personal life
12 just as well.

13 Q Yes, sir. And a downward departure would help loosen
14 the ties that are binding you on your legal issues,
15 wouldn't they?

16 A Yes.

17 Q And we're probably speaking Greek to a bunch of people
18 --

19 A Excuse me?

20 Q We're probably speaking Greek to a bunch of people in
21 this courtroom, sir. A downward departure, that's a
22 term that's used in the federal system, right?

23 A I mean, yes, yes, it is.

24 Q Right. That means to go below the supposed minimum
25 sentence for some reason or another, right?

1 A Yes, that is what it is. Yes, in that sense, yes.

2 Q Is basically as I can put it.

3 A Right.

4 Q So the downward departure would basically get you done
5 with the time?

6 A No, not necessarily.

7 Q No?

8 A Whatever the judge felt as though was suitable; not
9 necessarily.

10 Q And the State, through Mr. Meadors here, has indicated
11 that they will put in a good word for you. In other
12 words, convey to the federal authorities the
13 assistance that you have been in this case, in this
14 courtroom today, correct?

15 A That's correct.

16 Q Okay. That's part of any deal, correct?

17 A Well, if they hadn't -- first of all, I highly oppose
18 murder. I have never murdered anyone, I have no
19 intentions of doing so. If it were my own son, I
20 would not uphold him. And I would have been here
21 today if they did or did not put in a good word for me
22 because, first of all, the victim and the victim's
23 family.

24 Q Now, when you first contacted -- wrote a letter to
25 Investigator Holdorf, where did you get his name from?

1 A I don't remember. Don't remember.

2 Q I mean --

3 A Maybe from the arrest warrant, maybe. Maybe from the
4 arrest warrant, maybe, I think.

5 Q From the arrest warrant?

6 A Maybe. I'm not positive.

7 Q When you first contacted him, you didn't contact him
8 and say, "I've got word about this murder and I don't
9 care what happens to me, I want to be of assistance to
10 the State," right? You didn't do that?

11 A And whatever is in --

12 Q I'm sorry, you didn't do that, did you?

13 A No.

14 Q You contacted him and you said, "I got a word about
15 this murder, I want some help in a downward
16 departure," right?

17 A I don't think -- no. I don't think that's what is in
18 the letter to Mr. Holdorf. I don't think it is. I
19 don't think so. You have the letter. Read the
20 letter.

21 Q No?

22 A I don't think so.

23 Q Your first interest, your first expressed desire to
24 Mr. Holdorf, to representatives of the State of South
25 Carolina, was that you are looking for a further

1 downward departure?

2 A If that is in the letter, then that is what I said, if
3 it is in the letter.

4 Q But your testimony here today is that if you hadn't
5 been offered any assistance at all you would be here
6 anyway out of the goodness of your heart?

7 A Yes, I would have.

8 Q And you'd be here anyway telling the truth?

9 A Yes, sir.

10 Q Because you're a truth teller?

11 A I would not lie on Christopher Commander and knowing
12 the consequences of my perjury if I were to tell a lie
13 in this matter. I have no reason to lie on him. I
14 know cases of other individuals in the State of New
15 York, this state, and I have mind my business. This
16 is totally different. This is an innocent person
17 here. It is an entirely different thing.

18 Q You would have no reason to lie other than obtaining a
19 downward departure from the sentence you are currently
20 under?

21 A The sentence I have is only five years. It's not like
22 it is a real big stressful deal. I mean, it's not a
23 real big deal. I mean, I could -- when I complete
24 this program, I am out in March. It is no big deal,
25 no real big deal.

1 Q Five days in jail is a big deal.

2 A Excuse me?

3 Q Five days in jail is a big deal.

4 A well, sir, I have done 12 years --

5 Q I understand --

6 A -- almost day for day.

7 Q I understand that, sir.

8 A Right.

9 MR. STRICKLER: That's all I have. Thank you.

10 THE COURT: Any redirect?

11 MR. MEADORS: No, sir.

12 THE COURT: Sir, you may step down.

13 (The witness leaves the witness stand.)

14 THE COURT: Call your next witness.

15 MR. MEADORS: Beg the Court's indulgence. Just
16 give me a few moments.

17 (Pause.)

18 MR. MEADORS: Thank you, Your Honor. The State
19 of South Carolina would now call Captain Laviolette.

20 THE COURT: Come up and be sworn, please.

21 THE BAILIFF: Place your left hand on the Bible,
22 raise your right hand, and face the clerk.

23 (Witness complies.)

24 THE CLERK: Do you swear or affirm that the
25 testimony you are about to give in this case will be

1 the truth, the whole truth, and nothing but the truth,
2 so help you God?

3 THE WITNESS: I do.

4 (Jerome Laviolette, after
5 being duly sworn, testified as follows:)

6 THE CLERK: Please have a seat and state your
7 full name for the record.

8 THE WITNESS: (No response.)

9 DIRECT EXAMINATION

10 BY MR. MEADORS:

11 Q Captain, if you would just please speak in there so
12 everybody can hear you, we would appreciate it.

13 A Yes, sir.

14 Q Can you tell these ladies and gentlemen, sir -- and
15 you did pronounce your name?

16 A No. Jerome Laviolette.

17 Q Laviolette?

18 A Laviolette, yes.

19 Q Could you tell these ladies and gentlemen about
20 yourself, your background, your training, your
21 education and particularly and specifically here today
22 your experience and training in law enforcement?

23 A A little over 21 years in law enforcement with the New
24 Orleans Police Department. I started off as a patrol
25 officer out of the academy. Working in Tactical

1 Division, Major Case Narcotics. I was promoted to
2 Sergeant, full-time platoon. I assumed command of a
3 District Investigative Unit. I was promoted to
4 Lieutenant, which I kept the District Investigative
5 Unit. And then recently, right after the storm,
6 promoted to Captain.

7 Q And what area are you over in New Orleans?

8 A Currently I'm Commander of the New Orleans East Area,
9 which is the 7th District.

10 Q And where is -- what is that?

11 A It is New Orleans East, it is the largest district in
12 Orleans Parish. It's a hundred square miles.

13 Q Back in January of 2005?

14 A Yes.

15 Q What were your duties with the New Orleans Police
16 Department?

17 A I was a Detective Lieutenant assigned to the French
18 Quarter in the downtown development area.

19 Q And as a Detective Lieutenant, what was your job?

20 A Review all reports, compile crime stats, strategies
21 for apprehending armed robbers, so on. I was in
22 charge of the task force, float the hours of people to
23 pretty much manage the crime in that area.

24 Q Okay. Let me take you right now, if I could, to
25 January the 13th of 2005?

1 A Yes, sir.

2 Q Then Lieutenant, now Captain?

3 A Uh-huh.

4 Q Were you working that day?

5 A Yes, I was.

6 Q Did you have occasion on that -- let me start over.

7 Did you have an occasion on that day to get a phone
8 call from Investigator Scott McDonald?

9 A Yes, I did.

10 Q What was that about?

11 A He called me about 10 o'clock in the morning and
12 advised me that there was an individual by the name of
13 Christopher Commander wanted for outstanding warrants
14 in South Carolina. He supplied me with a detailed
15 description of Mr. Commander, and also that he had
16 information that an American Express card in the name
17 of Ms. Gervonya Goodwin was being used at the Holiday
18 Inn Hotel, which is located at 330 Loyola Avenue,
19 which is about a mile or a half mile away from our
20 station.

21 Q And did he give you any -- give you any other
22 information about Chris Commander or anything else
23 about this case?

24 A Yes, he also said that the individual may be using the
25 victim's vehicle, which was a 1999 gray Chrysler LHS

1 with South Carolina plates, I believe it was .

2 Q Did he supply you with any other information about any
3 activity in South Carolina in reference to this case?

4 A He did say that he was a suspect in the death of Ms.
5 Goodwin.

6 Q This is 10 o'clock on January 13th, 2005?

7 A That's correct.

8 Q Were you dressed like you are now or you were in a
9 uniform or what?

10 A I was in plain clothes, jeans and a polo shirt.

11 Q You got this information from Scott McDonald?

12 A That's correct.

13 Q What did you do after that?

14 A I enlisted the help of Sergeant Rick Pari and
15 Detective Ernest Crayton, and we traveled to the
16 hotel, and myself and -- I drove. Sergeant Pari and
17 myself exited the vehicle and instructed Detective
18 Crayton to take my car and search the parking lot for
19 the vehicle in question. And I went in met with the
20 Chief of Security there.

21 Q You went in where?

22 A Inside the Holiday Inn.

23 Q Showing you what is marked State's 52, do you
24 recognize it and does it relate to what you're
25 testifying to?

JEROME LAVIOLETTE -- DIRECT BY MR. MEADORS:

651

1 A That is Holiday Inn located 330 Loyola Avenue.

2 MR. MEADORS: Beg the Court's indulgence.

3 (Pause.)

4 THE COURT: State's 52, without objection, is
5 admitted.

6 (WHEREUPON, State's Exhibit Number 52 is
7 admitted into evidence.)

8 Q 52, is that where you responded to after you got the
9 information from Scott McDonald?

10 A Yes, sir.

11 Q It says Downtown Superdome. How close is that to the
12 Superdome?

13 A Pretty close. Right around the corner. Not far.

14 Q You, Rick Pari and Detective Ernest Crayton responded,
15 correct?

16 A Correct.

17 Q And what if anything -- you said Detective Crayton
18 went where?

19 A He took my car and he searched the parking lot for the
20 vehicle described by Detective McDonald.

21 Q I believe you said you went in and talked to whom?

22 A With the Security Director with Sergeant Pari.

23 Q And what if anything happened as a result of that?

24 A He checked the registration and learned that the
25 credit card in the name of Ms. Gervonya Goodwin was

1 being used to rent Room 1116, I believe, or 1114. I
2 think it was 1114.

3 Q 1-1-1-4?

4 A Yes.

5 Q So you were able to confirm a room using her name was
6 rented there?

7 A Correct.

8 Q Had you heard back from Detective Crayton or, if not,
9 did you hear back from him about the car search?

10 A Yes. Well, I asked -- before that I asked for them
11 for a master key to open the door in case that we
12 needed to let ourselves in to search the room. And
13 then Detective Crayton came down, returned and said
14 that he had in fact located the car with that
15 description and that license plate.

16 Q Do you remember what car it was -- what the
17 description was?

18 A A '99 Chrysler LHS black with a gray roof with South
19 Carolina plate

20 Q You had a description --

21 A of the car.

22 Q -- of this person?

23 A Yes.

24 Q And the car?

25 A Yes.

1 Q Confirmed he was at the motel there or a room was
2 checked in under Gervonya Goodwin?

3 A That's correct.

4 Q What if anything did you and/or Detective Pari and
5 Detective Crayton do after that?

6 A I requested assistance over the radio for a uniform
7 team so we could knock on the door and do a wanted
8 check for whoever was in the room.

9 Q A wanted check?

10 A A wanted check.

11 Q Why did you call for uniform?

12 A To let them know that we are the police. I was in
13 plain clothes and so was Detective -- Sergeant Pari
14 and Detective Crayton.

15 Q Who were the uniform officers?

16 A It was Lieutenant Henry Hines, and it was Sergeant
17 Jack Buzali and Juan Rodriquez, Officer Rodriquez.

18 Q Hines, Buzali and Rodriquez?

19 A That's correct.

20 Q And did you end up hooking up with there on the floor
21 of 1-1-1-4?

22 A We met in the lobby and then we took the elevator up
23 and I instructed -- we had a master key, so we checked
24 the room next door, 1116, to make sure nobody was in
25 there.

1 Q why?

2 A Just in case. We didn't want anything to happen to
3 anybody -- any occupants of the room. Plus, there is
4 a door, we knew there was a door that connected the
5 rooms. We didn't want anybody from 1114 to run
6 through there and come in behind us.

7 Q Is it safe to say -- or did y'all clear Room 1-1-1-6?

8 A Yes, we did. And Lieutenant Hines stayed at the
9 adjoining door to make sure no one came through it.

10 Q That same room?

11 A Yes.

12 Q Okay. 1-1-1-6?

13 A Right.

14 Q what happened after that?

15 A I knocked on the door.

16 Q And the door of?

17 A 1-1-1-4.

18 Q what happened next?

19 A A voice from behind the door asked who it was.

20 I said, "New Orleans Police".

21 And I didn't hear anything after that. I got no
22 response.

23 I asked him to open the door, and no response,
24 but I could hear movement in the room.

25 Q Your could hear what in the room?

1 A I could hear movement in the room, but no one opened
2 the door.

3 Q what happened after that? what did you do after that,
4 if anything?

5 A well, I had reason to believe that somebody was in the
6 door -- inside the room. So I instructed Officer
7 Rodriquez to swipe the door, and I pushed the door
8 open and said, "Police."

9 It was pitch black. It was dark in there. So
10 Officer Rodriquez used his flashlight and illuminated
11 the front part of the room. And there was a light
12 switch right when you came in, so I hit the switch,
13 and that's when I made entry.

14 Q Entry into the motel room?

15 A I went in, Sergeant Pari is right behind me, and
16 Detective Crayton right behind Sergeant Pari.

17 Q All right. And the uniform officers, where were they?

18 A They stayed outside the room to overlook our safety.
19 The way the room was configured --

20 Q You're coming into 1-1-1-4 right now, --

21 A Uh-huh.

22 Q -- Lieutenant now Captain.

23 A Uh-huh.

24 Q what happens next?

25 A As soon as I flip on the switch, you could see into

1 the bathroom. Mr. Commander was standing right by the
2 tub or shower and just reached up with a gun in his
3 hand and he clicked it and said, "Get out the room" --

4 MS. MOBLEY: Objection, Your Honor, as said at
5 the prior hearing.

6 THE COURT: Overruled. Go ahead.

7 Q Go ahead. You come -- what happened when go into the
8 bathroom?

9 A Mr. Commander put a gun to his head, cocked it and
10 said, "Get out the room, I'm going to kill myself like
11 I killed Vonnie," at which time we pointed our weapons
12 at him. I ordered him to drop the gun, which he
13 dropped it into the tub. Then I ordered him to lay
14 down, which we pulled him forward and laid him down,
15 and Officers Buzali and Rodriguez came in, handcuffed
16 him. Detective Crayton and Sergeant Pari swepted the
17 rest of the room to make sure no one else was in the
18 room.

19 Q "Get out of the room or I'm going to kill myself like
20 I killed Vonnie"?

21 A Correct.

22 Q Did you know who Vonnie was?

23 A No, sir.

24 Q And could you see him then?

25 A Yes, sir.

1 Q See the Defendant?

2 A Yes, sir.

3 Q How close were you?

4 A Seven to ten feet, about right where that wooden thing
5 is, about right there.

6 Q Did you have any trouble hearing him?

7 A Absolutely not. He was echoing -- he was standing in
8 bathroom. It was echoing.

9 Q After you heard that and you -- did you have your guns
10 drawn?

11 A Yes. Yes.

12 Q Where did the gun fall?

13 A In the tub.

14 Q Could you hear it?

15 A Yes. Yes.

16 Q And I believe you said after that he was -- was he
17 handcuffed?

18 A I ordered him to come forward away from the gun and
19 kind of pulled him down. And he laid down flat like
20 this, and that is when Officers Buzali and Rodriguez
21 came in and handcuffed him. And then Crayton and Pari
22 cleared the rest of the room.

23 MR. MEADORS: Beg the Court's indulgence.

24 (Pause.)

25 (WHEREUPON, State's Exhibit Number 91,

1 Layout of Motel Room, was marked for
2 identification.)

3 (WHEREUPON, State's Exhibit Number 92,
4 Blow-up of State's Exhibit Number 91, was
5 marked for identification.)

6 Q Do you recognize what is marked as State's 91?

7 A That's --

8 Q Just do you recognize it?

9 A Yes.

10 Q Does it relate to this?

11 A Yes.

12 Q Did you prepare it?

13 A Yes, I did.

14 Q Is State's 92 a blow-up of State's 91?

15 A Yes, sir.

16 Q What is State's 91 and State's 92?

17 A It's a rough sketch of the hotel room that I prepared
18 when I did my police report.

19 MR. MEADORS: Your Honor, we would offer State's
20 91 and 92.

21 MS. MOBLEY: Without objection.

22 THE COURT: Without objection. Was that both of
23 them?

24 MR. MEADORS: Yes, sir, 91 and 92.

25 THE COURT: 91 and 92 are admitted.

1 (WHEREUPON, State's Exhibit Numbers 91 and 92 are
2 admitted into evidence.)

3 MR. MEADORS: With the Court's permission, we
4 would ask that the Major come down -- Captain come
5 down.

6 THE COURT: All right, sir, you can step down.
7 Please keep your voice up so the reporter and everyone
8 can hear what you're testifying to.

9 THE WITNESS: Yes, sir.

10 (The witness steps down from the witness stand.)

11 Q It might be better. Would you stand over here so
12 Madam Court Reporter can hear you? And I know -- if
13 you don't mind speaking up, sir.

14 A Okay.

15 THE COURT: Have you got that pointer, Mr.
16 Meadors?

17 MR. MEADORS: Somebody took it from me, Judge.

18 THE COURT: Well, it was at the desk while ago.
19 You've got it?

20 MR. MEADORS: Yes, sir.

21 Q Before we get to that, you said you came in room
22 1-1-4 (sic). I'm going to show you what is marked
23 State's 53. Do you recognize that?

24 A It's the front door of the hotel room.

25 MR. MEADORS: Your Honor, we would offer State's

1 53. I believe these are without objection.

2 THE COURT: Any objection?

3 MS. MOBLEY: 53 is without objection.

4 THE COURT: State's 53 is admitted without
5 objection.

6 (WHEREUPON, State's Exhibit Number 53 is admitted
7 into evidence.)

8 Q And is this where y'all gathered first before you went
9 in?

10 A We gathered in the lobby, then went up.

11 Q Okay. Looking at State's 92, can you show on here to
12 the jury -- you said this is a diagram of Room 1-1-4
13 (sic)?

14 A Yes, yes, sir.

15 Q Not to scale?

16 A Not to scale.

17 Q You have got little lines here and little --

18 A These represent us, the officers that were on the
19 scene. Lieutenant Hines positioned himself in the
20 adjoining room here. There is no room here. This was
21 an alcove area for, you know, ice and snacks and Coke
22 machines. So we didn't have anybody here.

23 So once we opened the door, this is the way we
24 went, and this is where Mr. Commander was standing.

25 Q This would be room what?

1 A 1-1-1-6.

2 Q Okay. And is this the order you went in?

3 A Yes. Yes.

4 Q Now, Rodriquez and Buzali --

5 A Uh-huh.

6 Q -- you said that they -- were they inside or outside?

7 A The stayed outside, stayed out here.

8 Q So they did not come in initially?

9 Q They were in the hallway.

10 Q Looking at State's 54, do you recognize that?

11 A That is the angle of the hallway. If you look
12 straight down here, that is that angle right here,
13 straight here.

14 MR. MEADORS: And, Your Honor, State's 54, I
15 believe without objection.

16 THE COURT: Is that correct?

17 MS. MOBLEY: Without objection, Your Honor.

18 THE COURT: State's 54 is admitted without
19 objection.

20 (WHEREUPON, State's Exhibit Number 54 is admitted
21 into evidence.)

22 Q Where did you go?

23 A Right here. We got an angle where we could see him
24 standing there and he cocked the gun and put it to his
25 head. And he dropped the gun right here.

1 Q And what light -- you said when you came in -- I think
2 your testimony was Rodriguez shined a light in there.
3 Where was --

4 A There was a light switch right here. I flipped the
5 switch and then -- lit up all this area right here.

6 Q Looking at State's 55, what is that?

7 A That is the bathroom area. And the tub is right back
8 here.

9 Q How close did you go to this door when you saw -- your
10 testimony is you saw Christopher Commander with a gun?

11 A About seven feet, I was about.

12 MR. MEADORS: Your Honor, we would offer State's
13 55, I believe without objection.

14 THE COURT: Without objection?

15 MS. MOBLEY: Yes, sir.

16 THE COURT: State's 55 is admitted.

17 (WHEREUPON, State's Exhibit Number 55 is admitted
18 into evidence.)

19 Q You said this is where you were standing?

20 A That is correct.

21 Q Looking at State's 56, what does that depict?

22 A That's where he dropped the handgun.

23 Q Was he in the tub?

24 A No, was on the outside of the tub.

25 MR. MEADORS: Your Honor, we would offer State's

1 56, without objection, I think.

2 THE COURT: Is that correct?

3 MS. MOBLEY: Yes, sir.

4 THE COURT: Without objection, State's 56 is
5 admitted.

6 (WHEREUPON, State's Exhibit Number 56 is admitted
7 into evidence.)

8 Q State's 57, does that kind of show another view of the
9 bathroom?

10 A Yes, sir.

11 Q And State's 58, what is that?

12 A The position where the gun landed when he dropped it
13 into the tub.

14 MR. MEADORS: 57 and 58 we would now offer, Your
15 Honor.

16 THE COURT: Any objection?

17 MS. MOBLEY: Without objection, Your Honor.

18 (WHEREUPON, State's Exhibit Numbers 57 and 58 are
19 admitted into evidence.)

20 Q Where were Pari and Crayton in relation to you as you
21 went in here? How far behind were they?

22 A They were stacked up right behind each other.

23 Q And after -- where is Mr. Commander handcuffed?

24 A When he drops the gun, I ordered him to step - come
25 forward, and he did, and we kind of pulled him, laid

1 him out like this, and then these two officers came in
2 and handcuffed him while Sergeant Pari and Detective
3 Crayton cleared the rest of the room.

4 Q Pari and Clayton cleared the rest of the room?

5 A Made sure no one else was in the room.

6 Q That's what I was going to ask, is that what cleared
7 means?

8 A Yes, made sure no one else was in the room.

9 Q All right, State's 90, do you recognize that?

10 A That's -- when we entered the room, a suitcase and a
11 little travel bag was right there.

12 Q Where would State's 90 be on State's 92?

13 A On here?

14 Q Yes.

15 A This would be about right here, and then the bag was
16 right here.

17 MR. MEADORS: Offer State's 90, Your Honor, I
18 believe without objection.

19 THE COURT: Is that correct?

20 MS. MOBLEY: Without objection, Your Honor.

21 THE COURT: State's 90 is admitted.

22 (WHEREUPON, State's Exhibit Number 90,
23 Photograph of Hotel room, is admitted into
24 evidence.)

25 Q What happens to Christopher Commander, right now,

1 right after he was handcuffed, what did you or one or
2 your men do with him at that point in time?

3 A Officers Buzali and Rodriquez take him to the 8th
4 District Police Station and prepare the paperwork for
5 the outstanding warrants.

6 Q All right. As a result of your conversation initially
7 with that man back there, Scott McDonald, did he want
8 you to talk to him?

9 A He did not want us to question or mention the homicide
10 at all.

11 Q And at this point did you -- when you came in, was
12 that your intent to comply with his instructions?

13 A Absolutely.

14 Q After Mr. Commander is taken into custody, what if
15 anything do y'all -- and I say y'all, you and your
16 men, do in the room?

17 A Once we learned it was secured, there was no danger to
18 us, I instructed Sergeant Pari to contact one of his
19 detectives and prepare an Order of Search so we could
20 seize all the property that was in the room.

21 And there was a suitcase -- stuff all over the
22 room, and I didn't know what was evidence and didn't
23 know.

24 So I called the investigator up and I told him
25 what we had, we have a room with all kind of stuff in

1 it and we're going to seize everything until which
2 time they could come get it.

3 And at that time I advised him of the statement
4 that Mr. Commander had made, and he said --

5 MS. MOBLEY: Objection to hearsay.

6 THE COURT: I'm going to permit it. Go ahead.

7 Q What did Investigator McDonald tell you after you had
8 advised him of the statement the Defendant had made?

9 A He said, "Our guys aren't going to get there in time,
10 can you have a homicide detective interview him."

11 Q And I'll get back to that in a minute. Was this scene
12 secured until you got a search warrant?

13 A Correct.

14 Q Did you end up getting a search warrant and collect
15 these items?

16 A That's correct.

17 Q Now, I'm going to show you -- you've already said you
18 recognized these, State's 63, State's 62, State's 61
19 and State's 59. What are all those pictures of?

20 A Just pictures of the hotel room, how it was when --
21 after we secured it.

22 MR. MEADORS: And, Your Honor, we would offer
23 these, I believe without objection. That is 59, 61,
24 62 and 63.

25 THE COURT: Without objection?

1 MS. MOBLEY: Without objection.

2 THE COURT: All right, those four are
3 admitted.

4 (WHEREUPON, State's Exhibit Numbers 59, 61,
5 62 and 63 were admitted into evidence.)

6 Q Thank you. You can sit back down at this point.

7 (The witness returns to the witness stand.)

8 Q And, Captain, the gun that's depicted in State's 58 --

9 A Uh-huh.

10 Q -- and the gun that you saw when you testified
11 Christopher Commander, the person near the tub had,
12 was that collected?

13 A Yes, it was.

14 Q Look at this right now and just tell me if you
15 recognize that. If you need to pull it out.

16 A This is the handgun that he had in the bathtub when we
17 made entry into the tub.

18 (Pause.)

19 MS. MOBLEY: Mr. Meadors?

20 MR. MEADORS: Your Honor, we would offer State's
21 93.

22 MS. MOBLEY: Your Honor, I would object to
23 everything except for the handgun to be marked
24 separately.

25 MR. MEADORS: That's fine. I'll get to these

1 later. I didn't realize those were in there, quite
2 frankly. Can you put that sticker on this one?

3 THE COURT: State's 93 is admitted without
4 objection, which is the firearm.

5 (WHEREUPON, State's Exhibit Number 93,
6 Firearm, is admitted into evidence.)

7 Q Is this the firearm you saw who you've said is
8 Christopher Commander when you went into the motel
9 room, he had this firearm?

10 A Yes, he did.

11 Q Any doubt in your mind?

12 A No doubt in my mind.

13 Q Was this collected in the motel Room 1-1-1-4?

14 A Yes, it was.

15 Q Captain, looking in State's 90, do you see some bags
16 there?

17 A Yes.

18 Q Did you find anything -- did you collect something --
19 did you collect the bags?

20 A We collected the bags, but we went through the bags
21 before we collected them to see if there were any
22 credit cards or anything in the name of Ms. Goodwin,
23 any of her property.

24 Q And looking at State's 94, were you able to collect
25 that from Room 1-1-1-4 -

1 A Yes, sir.

2 Q -- of the Holiday Inn Superdome?

3 A Yes, sir.

4 Q Where did you get it from?

5 A From that bag that was right in front of the closet.

6 MR. MEADORS: Your Honor, we would offer State's
7 94.

8 MS. MOBLEY: Your Honor, I have no objection to
9 the wallet being admitted. I have an objection to the
10 items inside the wallet being admitted.

11 MR. MEADORS: We're offering it all, Your Honor.

12 THE COURT: Was whatever is inside the wallet
13 inside the wallet when it was found in the room?

14 Q Was what's inside the wallet what was in the wallet
15 when it was found inside the room?

16 A Yes, sir.

17 MR. MEADORS: We would offer it as State's 94.

18 THE COURT: The objection is overruled.
19 State's 94 is admitted.

20 (WHEREUPON, State's Exhibit Number 94,
21 wallet, is admitted into evidence.)

22 Q Inside State's 94, can you describe what you found?

23 A Yes, sir. It is several credit cards in the name of
24 Ms. Goodwin, her social security card. I've got an ID
25 card.

1 Q That is actually -- you're referring to an ID card.
2 who is on that one?

3 A I can't see without my glasses.

4 Q Having trouble seeing?

5 A I can't see.

6 Q would you dispute that says Michael Brown?

7 A Okay, Michael Brown, right.

8 Q Was there a birth certificate in here with the name
9 Gervonya Goodwin?

10 A Yes, there -- yes.

11 Q Was there a Fort Jackson Federal Credit Union Card in
12 there?

13 A Yes, in the name of Ms. Goodwin.

14 Q In the name of Gervonya Goodwin?

15 A Yes.

16 Q Do you recognize that? And did you also find that in
17 that suitcase?

18 A Yes, I did.

19 MR. MEADORS: We would offer State's 95.

20 MS. MOBLEY: Without objection.

21 THE COURT: Without objection, State's 95 is
22 admitted.

23 (WHEREUPON, State's Exhibit Number 95, Baby
24 Ultrasound, is admitted into evidence.)

25 Q Can you see this?

1 A Yes.

2 Q Do you know what that is?

3 A It is a -- appears to be an ultrasound. I have two
4 daughters, so I know what those are.

5 MR. MEADORS: Beg the Court's indulgence.

6 (Pause.)

7 Q I am going to ask if you would look at this and tell
8 me if you recognize anything.

9 A It is a checkbook in Ms. Goodwin's name. It's got her
10 name and address and the bank over here.

11 Q What bank is that?

12 A AllSouth. And that's her driver's license, State of
13 South Carolina driver's license.

14 Q Where did you find this?

15 A That was in that bag right in front of the closet.

16 Q Can you actually see it in the picture?

17 A You may be able to. You can see the bag. I don't
18 know if you can see how it was packed. It was --

19 MR. MEADORS: We would offer State's 96.

20 THE COURT: What's the number?

21 MR. MEADORS: 96.

22 THE COURT: Any objection?

23 MS. MOBLEY: No objection.

24 THE COURT: State's 96 is admitted.

25 (WHEREUPON, State's Exhibit Number 96,

1 Checkbook, is admitted into evidence.)

2 Q And looking at what is State's 64, is that a picture
3 of the checkbook?

4 A Yes, it is.

5 MR. MEADORS: Your Honor, we would now offer
6 State's 64.

7 MS. MOBLEY: Your Honor, I would just argue that
8 it's cumulative. We've got the actual checkbook, it's
9 just been admitted.

10 THE COURT: Does it add anything to what you've
11 already --

12 MR. MEADORS: It shows that it was collected, a
13 picture of where it was collected. I'll withdraw it.

14 Q Were there a lot of documents in Room 1-1-1-4?

15 A Yeah, they were spread out on tables and dressers all
16 throughout the hotel room.

17 Q Just look at these three and tell me if you recognize
18 them.

19 A They are just Holiday Inn room receipts that were in
20 the room, came from the room.

21 Q Were these taken from the room?

22 A Yes.

23 Q Who took these?

24 A I did, and - well, when the Detective Dejean, we
25 turned it over to him so he could log it into the

1 evidence room.

2 Q You saw this in the room?

3 A Yes.

4 Q Was this collected from the room?

5 A Yes, it was.

6 Q And these are three Holiday Inn -- two Holiday Inn
7 receipts and a Crown Plaza?

8 A That's correct.

9 MR. MEADORS: Your Honor, we would offer 97 as
10 three -- two Holiday Inn receipts and a Crown Plaza,
11 as State's 97.

12 THE COURT: Any objection to 97?

13 MS. MOBLEY: Without objection.

14 THE COURT: All right, are those either stapled
15 or fastened together?

16 MR. MEADORS: They're folded right now. We'll
17 staple them, sir.

18 THE COURT: All right, we need to get them
19 together if they're coming in as one exhibit.

20 (WHEREUPON, State's Exhibit Number 97,
21 Motel Receipts, is admitted into evidence.)

22 Q Were these items also collected, some of these cards,
23 from Room 1-1-1-4?

24 A Yes, sir.

25 Q Brought to y'all here today?

1 A Yes.

2 Q By y'all here today?

3 A Uh-huh.

4 MR. MEADORS: Your Honor, we would offer this as
5 State's 98.

6 THE COURT: Any objection?

7 MS. MOBLEY: Without objection.

8 THE COURT: State's 98 is admitted, which will be
9 admitted as one. How many documents or whatever are
10 there? I mean, it is several?

11 MR. MEADORS: Yes, sir.

12 THE COURT: In the big package?

13 MR. MEADORS: Yes, and they're in one package and
14 I'll have to seal them.

15 THE COURT: All right.

16 (WHEREUPON, State's Exhibit Number 98,
17 Items Collected in Search, is admitted into
18 evidence.)

19 Q Captain, did some or your other officers, specifically
20 Detective Pari and/or Dennis Dejean collect some other
21 items of evidence from the room and the car?

22 A Yes.

23 Q After you had gotten a search warrant and searched
24 1-1-1-4 --

25 A Yes.

- 1 Q -- what happened next or what did you -- you said you
2 talked with Investigator McDonald?
- 3 A Yes. I phoned him and I told him that we made entry
4 into the room, we made the apprehension.
- 5 Q Right. As a result of that, he said, "Go ahead and
6 y'all try to question him"?
- 7 A And that the statement that Mr. Commander made, and he
8 said, "Could you have a homicide detective talk to
9 him, one of your homicide detectives."
- 10 Q Now, Mr. Commander had gone from Holiday Inn Superdome
11 initially to where?
- 12 A To the 8th District Police Station, which is in the
13 French Quarter on Loyola Street.
- 14 Q Did you take any part in that transportation?
- 15 A No.
- 16 Q After you talked within Investigator -- and who
17 transported Mr. Commander from the Holiday Inn to the
18 8th District?
- 19 A It was Officer Jack Buzali and Officer Rodriquez.
- 20 Q Rodriquez.
- 21 A Rodriquez.
- 22 Q who transported the Defendant, Mr. Commander, from 8th
23 District to Cold Case Homicide Squad, I think as y'all
24 call it?
- 25 A Yes. It is Officer Rodriquez and Officer Buzali.

1 Q Did you have any more contact with Christopher
2 Commander after he left 1-1-1-4?

3 A No, sir.

4 Q Now, what about the car? What happened to the car? I
5 think you said Detective Crayton had identified it?

6 A Right. As soon as we secured the room, I asked
7 Detective Crayton to go and secure the car. So he
8 took my car and went up there and stayed with the car
9 while the warrants were being prepared, while each
10 warrant was being prepared.

11 Q And that's the search warrants for the room and the
12 car?

13 A That's correct.

14 Q And did y'all also get a search warrant to search the
15 car, the Chrysler that was identified at the Holiday
16 Inn?

17 A Yes, we did.

18 Q And where was that found, do you remember?

19 A I believe it was the 4th floor parking garage.

20 Q And how and where, if anywhere, did the car go after
21 it left the Holiday Inn that night or that day?

22 A We -- because the tow truck couldn't get up the
23 parking garage because of the height, I instructed --
24 I brought -- I actually found the keys to the car, I
25 believe on the dresser. I brought them to Detective

1 Crayton and he drove that car down where the tow truck
2 was and I took my car down behind him. And then he
3 followed the tow truck that had the vehicle with my
4 car to Police Headquarters where it was secured in the
5 impound, we have a little impound cage is what we call
6 it, until we execute the search warrants. So it was
7 put there until the next day when Detective Dejean and
8 his partner searched the car.

9 MR. MEADORS: Beg the Court's indulgence.

10 (Pause.)

11 Q When you got this gun, was it loaded or unloaded?

12 A It was loaded.

13 Q And how was this evidence -- did y'all hold the
14 evidence until it was shipped back to Richland County?

15 A Yes.

16 Q And what happened -- how many bullets were in there,
17 do you know?

18 A Five.

19 Q And what happened to those bullets?

20 A I couldn't ship them out through the mail. So I was
21 going to hold onto them until we were able to bring
22 them, but since the storm we lost our evidence room
23 and we lost the bullets.

24 Q The rest of the evidence you shipped to Richland
25 County previously?

1 A Prior to the storm, yes.

2 Q And you didn't want to ship or weren't going to ship
3 bullets in the mail?

4 A Correct.

5 Q The person that made the statement in Room 1-1-1-4
6 that, "Stop or I'm going to kill myself just like I
7 killed Vonnie," look at these ladies and gentlemen of
8 the jury and tell them, is the person who made that
9 statement in this courtroom?

10 A Yes, he is. He's about 80 to 100 pounds lighter, but
11 that's him sitting there with the brown suit and the
12 green tie, sitting at the Defense bar.

13 Q Any doubt in your mind about that?

14 A No doubt.

15 MR. MEADORS: We would ask the record to reflect
16 he's picked Christopher Commander. And that's all we
17 have. Thank you.

18 THE COURT: All right. We'll start with cross
19 examination tomorrow morning. This is a good breaking
20 point.

21 Mr. Foreman and ladies and gentlemen, again
22 please don't read or watch or listen to anything about
23 the case or discuss it with anyone.

24 I can't make any guarantees on what time we will
25 leave tomorrow, but we won't go quite this late

1 tomorrow. I told you the case would probably go into
2 next week, and it looks like it will.

3 But have a good night. Be back -- I've got a
4 hearing at 9 o'clock. I will be done by 10, so you
5 can wait until 10 o'clock to be here, but please be
6 here promptly at 10.

7 You're excused. Everyone else stay seated,
8 please.

9 (WHEREUPON, the jury retires for the day.)

10 THE COURT: Captain, you will be back on the
11 stand in the morning. You cannot discuss your
12 testimony during this break. We'll start back at 10
13 o'clock in the morning.

14 (WHEREUPON, the court was in recess.)

15 FRIDAY, OCTOBER 13, 2006

16 (WHEREUPON, State's Exhibit Number 99,
17 Black wallet, is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit Number 100,
20 Identification, is marked for
21 identification.)

22 (WHEREUPON, State's Exhibit Number 101,
23 Identification of Defendant and Credit
24 Cards, is marked for identification.)

25 (WHEREUPON, State's Exhibit Number 102,

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1 Room Service Receipts, is marked for
2 identification.)
3 (WHEREUPON, State's Exhibit Number 103,
4 Purse, is marked for identification.)
5 (WHEREUPON, State's Exhibit Number 104, OB-
6 GYN Appointment Card, is marked for
7 identification.)
8 (WHEREUPON, State's Exhibit Number 105,
9 Checks in the name of Gervonya Goodwin, is
10 marked for identification.)
11 (WHEREUPON, State's Exhibit Number 106,
12 Medical Slip for Pastoral Counseling, is
13 marked for identification.)
14 (WHEREUPON, State's Exhibit Number 107,
15 Cracker Barrel Receipt, is marked for
16 identification.)
17 (WHEREUPON, State's Exhibit Number 108,
18 Note on Hotel Stationary, is marked for
19 identification.)
20 (WHEREUPON, State's Exhibit Number 109,
21 Cash, is marked for identification.)
22 THE COURT: All right, anything we need to take
23 care of on the record before we resume? Anything from
24 the State?
25 MR. MEADORS: No, sir.

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1 THE COURT: From the Defense?

2 MR. STRICKLER: Yes, Your Honor. If it please
3 the Court? I'm really not trying to delay things at
4 all, but just relating back to the -- my motion
5 regarding the doctor's testimony yesterday.

6 THE COURT: Yes.

7 MR. STRICKLER: I had made reference to a bunch
8 of case names, supplied them to you and the State. I
9 haven't supplied the cites for the record, if I could
10 just get those on the record with the Court.

11 THE COURT: That's fine. That's fine.

12 MR. STRICKLER: Your Honor, as to that, I
13 supplied the Court --

14 THE COURT: Was that the five cases you handed
15 up?

16 MR. STRICKLER: Yes, sir.

17 THE COURT: Why don't I just mark those and make
18 them a part of the record?

19 MR. STRICKLER: That would be fine, sir.

20 THE COURT: And make them a Court Exhibit.

21 MR. STRICKLER: That would be fine, Your Honor.

22 THE COURT: I think I've got them.

23 MR. STRICKLER: I supplied Rules of Evidence and
24 Maine -- or State versus Young --

25 THE COURT: I'll just take these five cases,

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1 we'll bundle them together, and they'll be a Court's
2 Exhibit.

3 MR. STRICKLER: Thank you very much, sir. That's
4 all I have, Your Honor.

5 (WHEREUPON, Court's Exhibit Number 1, Five
6 Cases submitted by Defense, were marked for
7 identification.)

8 THE COURT: All right, is the captain in the
9 courtroom? If not, let's get him in here so he can
10 take the stand. And time he gets in here, we can
11 bring the jury back.

12 THE BAILIFF: All right.

13 THE COURT: I tell you, go ahead and get the jury
14 in. He can be coming in all at the same time.

15 (Pause.)

16 THE COURT: Sir, you can come on back and take
17 the stand as the jury is coming in.

18 (The witness returns to the witness stand.)

19 (WHEREUPON, the jury came into open court
20 at approximately 10:15 a.m.)

21 THE BAILIFF: Your Honor, the jury is present.

22 THE COURT: All right, ladies and gentlemen, I'm
23 going to continue. I believe we were at cross
24 examination.

25 Ms. Mobley?

1 MS. MOBLEY: Thank you, Your Honor. May it
2 please the Court?

3 THE COURT: All right.

4 CROSS EXAMINATION

5 BY MS. MOBLEY:

6 Q Good morning, Captain Laviolette.

7 A Good morning.

8 Q Now, we'll just sort of get right to it. On
9 January 13th, I believe it was your testimony that you
10 received a call from the Richland County Sheriff's
11 Department, Scott McDonald, regarding a wanted person,
12 regarding Christopher Commander, correct?

13 A Yes, ma'am.

14 Q And during the course of your conversation with him,
15 it is your understanding that Christopher Commander
16 was wanted in a homicide, correct?

17 A He was a suspect in a homicide.

18 Q Suspect in a homicide?

19 A Yes.

20 Q And you were then told the name of the victim,
21 Gervonya Goodwin, correct?

22 A Yes.

23 Q Okay. And you were told that Ms. Goodwin's car may be
24 present at this particular location, correct?

25 A Yes.

- 1 Q And that would be the Holiday Inn -- I don't remember
2 the street address.
- 3 A 330 Loyola Avenue.
- 4 Q Okay, thank you. And it's at that point that you
5 gathered Detectives Pari and Crayton to assist you in
6 this wanted check, correct?
- 7 A Yes.
- 8 Q Did y'all ride in the same car over there together?
- 9 A Yes.
- 10 Q And I believe it was your testimony that you don't
11 tell them at that point that the person that you were
12 going to do the wanted check on was wanted in a -- a
13 suspect in a possible homicide, correct?
- 14 A Yes.
- 15 Q So y'all arrived at the hotel, at which point you
16 determined to call uniformed officers to the scene,
17 and I believe those would be Officers Buzali and
18 Rodriquez, is that right?
- 19 A And Lieutenant Hines.
- 20 Q And Lieutenant Hines. So there are six of you there,
21 correct?
- 22 A Correct.
- 23 Q And I believe it is reflected in the report -- you did
24 a report in this case, right?
- 25 A Yes, I did.

1 Q And I believe it's reflected in your report that y'all
2 had a meeting in the lobby of the Holiday Inn,
3 correct?

4 A Correct.

5 Q So you met, made a plan of action, and I think you
6 called it a plan of entry, is that right?

7 A Correct.

8 Q And you -- I believe it is your testimony that you
9 still do not instruct the five other men with you that
10 you are about to do a wanted check on a person
11 possibly wanted in a homicide, is that correct?

12 A Correct.

13 Q So you brief the officers, no mention of that. Now,
14 moving your attention up to Room 1-1-1-4, which is the
15 room that you discovered through your conversation
16 with security guard that the card was used, correct?

17 A Yes, ma'am.

18 Q Okay. You have your plan of action, your plan of
19 entry at this point, right?

20 A (Nods affirmatively.)

21 Q Okay. You are outside the door of Room 1-1-4 (sic).
22 Do you have your guns drawn?

23 A Not at that point.

24 Q Not at that point. Okay. well, I believe you
25 testified that you knocked on the door and you hear an

1 answer from inside the room, is that correct?

2 A First of all, I sent Lieutenant Hines into the
3 adjoining room to make sure there was no guest in that
4 room.

5 Q Sure.

6 A And he secured the adjoining door.

7 Q Okay.

8 A Then that is when I knocked.

9 Q So the room -- the room next door was secured, and
10 that is when you are -- now, how are y'all lined up at
11 that point when you knocked? I believe you testified
12 before that it was you and then I think Detective Pari
13 then Detective Crayton and then you've got -- did
14 Lieutenant Hines stay in Room 1-1-6 (sic)?

15 A Yes.

16 Q Okay. So then you've got Officers Buzali and
17 Rodriquez out here as well?

18 A Right.

19 Q So y'all are in formation. Okay. You knock, you hear
20 a voice inside, correct?

21 A Yes.

22 Q So you know there is someone in the room?

23 A Correct.

24 Q At this point you draw your weapons?

25 A After we knock and open the door, yes.

1 Q Okay. So you use the key card that you mentioned that
2 you got from downstairs. You open the door, you have
3 weapons drawn, is that correct?

4 A Yes.

5 Q Okay. And I believe it was your prior testimony that
6 no one said anything at that point, there was no
7 shouting, there was no yelling, it was just silence,
8 correct?

9 A Right.

10 Q So you've got a lineup here, I believe it is your
11 prior testimony, with you, now Sergeant Pari, and
12 Sergeant Crayton behind you, your weapons are drawn,
13 no one says anything, at which point Officer Rodriguez
14 flashed a flashlight beam into the room, correct?

15 A Yes, sir.

16 Q Okay. You flip on the light, correct?

17 A Yes.

18 Q Okay. You're still not saying anything into the room
19 at this point, right?

20 A Right.

21 Q Turn on the light?

22 A (Nods affirmatively.)

23 Q You see someone is in the room, right?

24 A In the bathroom, yes.

25 Q In the bathroom. You see this person in the bathroom

1 holding a gun, correct?

2 A Yes.

3 Q Still no one is saying anything at this point from
4 your end, correct?

5 A Correct.

6 Q None of the officers?

7 A Right.

8 Q Silent. And it is at that point -- now Officer
9 Rodriquez -- where exactly -- I understand the
10 formation that y'all went in, I think we do, the three
11 of you, going down the hallway. The two other
12 officers -- Officer Rodriquez, was he still sort of
13 behind, I guess it would be Detective Crayton?

14 A He was behind me.

15 Q Okay. Now, you see a gentleman standing in this hotel
16 room with a gun. He puts the gun to his head?

17 A (Nods affirmatively.)

18 Q Cocks the trigger. No one says anything at that
19 point, correct?

20 A He says.

21 Q He said something, but none of you say anything at
22 that point, right?

23 A Well, at that point we told him to drop the gun, after
24 he spoke.

25 Q After he spoke?

1 A Right.

2 Q He has time to say an entire statement, but it was
3 your prior -- do you remember testifying in the prior
4 hearing of the case?

5 A Yes.

6 Q Okay. It was your testimony then that he puts the gun
7 to his head, cocks the hammer, says his entire
8 sentence before anyone says a word --

9 A Yes.

10 Q -- right?

11 A Yes.

12 Q Okay. And you heard that statement clear as a bell
13 because the room was quiet at that point, right?

14 A Yes.

15 Q Guns are drawn. It is at that point that you say, put
16 down your weapon, whatever it is that you say, right?

17 A Right.

18 Q And he drops it in the tub, is that correct?

19 A Yes. Yes.

20 Q So it was completely dead silent while Mr. Commander
21 put the gun to his head, made his statement, that is
22 your testimony, right?

23 A Yes.

24 Q I just want to make sure I have it correct.

25 A All right.

1 Q Now, you are -- you did a report in this case, right?

2 A Yes, ma'am.

3 Q Okay. You are the only person who did an -- what we
4 call in South Carolina an incident report about this
5 case, basically describing, detailing the facts of
6 what went on, is that correct?

7 A On the actual wanted check, I was the only one that
8 wrote the report. I believe Officers Buzali and
9 Rodriquez prepared the fugitive warrant from South
10 Carolina report.

11 Q Right. But as far as an incident report about what
12 actually happened in the hotel room, you are the only
13 one who wrote a report, correct?

14 A Yes, ma'am.

15 Q Was the report -- and I don't know the ranking system
16 -- was the report signed off on by anyone?

17 A It was actually signed off by another sergeant at work
18 that worked with us in the Investigative Unit.

19 Q Okay. And when did you distribute copies of that
20 report to the other officers involved in the incident?

21 A I don't recall that. When I gave them copies?

22 Q Yes.

23 A I don't know.

24 Q You didn't give them copies?

25 A I sent a copy back to South Carolina and we just sent

1 the copies up and then we pulled copies when we got
2 subpoenaed to come here, I know that, we all got
3 copies then.

4 Q Okay. So after this incident report where y'all are
5 taking down a man with a gun, who is making all these
6 statements, no one gets a copy except for you at that
7 point of the incident report because you are one that
8 did the incident report, right?

9 A Right.

10 Q Okay. And you all have been to Columbia, South
11 Carolina before for prior matters, hearings, regarding
12 this case, correct, before this particular week?

13 Q Before this particular week?

14 A One.

15 Q Once?

16 A Yes, once.

17 Q How did you travel from New Orleans here?

18 A We flew on a plane.

19 Q You flew. I didn't know if you drove. You flew?

20 A Right.

21 Q Because different people like to do different things.

22 A Okay.

23 Q Did y'all fly together?

24 A Yes.

25 Q Did you discuss the case?

1 A We went over the report, yes, we did.

2 Q Went over the report together?

3 A Yes, we did.

4 MS. MOBLEY: That's all. Thank you.

5 MR. MEADORS: Just a couple of follow-ups.

6 REDIRECT EXAMINATION

7 BY MR. MEADORS:

8 Q Captain, this prior hearing she talked about, that was
9 this Tuesday of this week, right?

10 A I'm sorry?

11 Q The prior hearing she was asking you about, that was
12 just this past Tuesday, right?

13 A Yes, sir.

14 Q In reference to the statement?

15 A Yes, sir.

16 Q You have never been in another prior hearing in this
17 case at all, have you?

18 A No, sir.

19 Q And the prior time she talked about when y'all came
20 down here, the case just got continued for other
21 reasons, right?

22 A Correct.

23 Q How quick did this happen when you went in the room?

24 A We weren't -- by the time we made entry and
25 Mr. Commander was escorted out, less than 30 seconds.

1 Q And when you went in -- when she said statements he
2 was making, when you walked in and saw him, where was
3 the gun, his gun?

4 A He put it up to his head and cocked the hammer and
5 said, "Get out, I'm going to kill myself like I killed
6 Vonnie."

7 Q Did you engage in a conversation with him before that?

8 A I ordered him to drop the gun, and he complied, and we
9 took him down, we ordered him down.

10 Q Did you have time to even talk to him before you heard
11 that statement?

12 A No.

13 Q Is there any doubt in your mind you heard him say that
14 statement?

15 A No, sir.

16 Q Did you know who Vonnie was?

17 A No, sir.

18 Q Have you ever heard the word "Vonnie" in relation to
19 this case prior to going in that courtroom -- prior to
20 going in that hotel room?

21 A No, sir.

22 MR. MEADORS: That's all.

23 THE COURT: Anything further?

24 MS. MOBLEY: Beg the Court's indulgence.

25 (Pause.)

1 MS.. MOBLEY: No thank you, Your Honor. Thank
2 you.

3 THE COURT: All right, you may step down, sir.
4 (The witness leaves the witness stand.)

5 MR. MEADORS: Rick Pari.

6 THE BAILIFF: Place your left hand on the Bible,
7 raise your right hand, and face the clerk.

8 (Witness complies.)

9 THE CLERK: Do you swear or affirm that the
10 testimony you are about to give in this case will be
11 the truth, the whole truth, and nothing but the truth,
12 so help you God?

13 THE WITNESS: I do.

14 (Richard Pari, after
15 being duly sworn, testified as follows:)

16 THE COURT: If you'll have a seat in the witness
17 stand and state your full name, please.

18 THE WITNESS: My name is Richard Pari.

19 DIRECT EXAMINATION

20 BY MR. MEADORS:

21 Q Spell your last name, please.

22 A P-a-r-i.

23 Q And what is your rank?

24 A I'm a Sergeant out of the New Orleans Police
25 Department.

The State versus Christopher Sam Commander

1 Q Sergeant, speak right into there. If you need to pull
2 up this way so everybody can hear you. You are a
3 Sergeant with the New Orleans Police Department?

4 A Yes, sir.

5 Q Can you tell the ladies and gentlemen of the jury your
6 background, and specifically as it relates to law
7 enforcement, Sergeant?

8 A I've been in law enforcement approximately 13 years.
9 I worked in New Orleans almost nine years. Prior to
10 that I worked in the State of Wisconsin as a police
11 officer.

12 Q So where are you from?

13 A Milwaukee, Wisconsin.

14 Q So you were a police officer there?

15 A Yes.

16 Q Okay. So came to New Orleans when?

17 A Late '97, early '98.

18 Q Where -- have you worked in different divisions or
19 departments within the New Orleans Police Department?

20 A Yes, I have a background with the narcotics units,
21 street crimes units, investigative units in three
22 different districts.

23 Q Where are you assigned right now?

24 A Currently I'm the Commander of the Property Crimes
25 Investigations Unit in the 8th Police District, which

1 consists of the Central Business District and the
2 French Quarter of New Orleans.

3 Q Back in January of 2005, specifically January 13th,
4 2005, Sergeant, what district or area were you working
5 in?

6 A Same assignment, 8th District.

7 Q And did you have an occasion to respond to the Holiday
8 Inn Superdome on 330 Loyola Avenue in New Orleans?

9 A I did.

10 Q And who did you go with?

11 A Then Lieutenant, he's now a Captain, Laviolette and
12 Detective Ernest Crayton.

13 Q And why did y'all go there?

14 A We were to assist Captain Laviolette on a wanted
15 check. Apparently there was somebody wanted for some
16 South Carolina warrants possibly staying in the hotel.

17 Q Possibly staying in the hotel?

18 A Correct.

19 Q Had you been to that hotel before?

20 A I may have been there before --

21 Q I'm not saying to stay, but I'm saying are you
22 familiar with the motel?

23 A Yeah, we've had some disturbances and whatnot there.

24 Q And once you got -- you yourself got to the motel,
25 what if anything did you do?

- 1 A I went to the lobby with Captain Laviolette. He had a
2 conversation with the Security Director about the room
3 that was checked, possibly checked with a credit card,
4 at which time we ultimately ended up on the 11th floor.
- 5 Q Do you remember the room number?
- 6 A I believe it was 1114.
- 7 Q And who is on the 11th floor, Sergeant?
- 8 A At that point?
- 9 Q Yes, sir.
- 10 A Oh, I believe it would have been myself, Captain
11 Laviolette, Ernest Crayton, Officer Jack Buzali,
12 Officer Juan Rodriquez and Lieutenant Henry Hines.
- 13 Q And was there a room next to 1-1-1-4?
- 14 A Yes, 1116.
- 15 Q What if anything did y'all do with that room?
- 16 A Lieutenant Hines entered that room to see if it was
17 occupied, which it was not, it was a vacant room. It
18 is an adjoining room to 1114 with a door inside of the
19 wall.
- 20 Q And why do he do that?
- 21 A I believe he was checking for occupants that would
22 prevent any kind of harm to anybody.
- 23 Q Was that standard procedure?
- 24 A Correct.
- 25 Q Now, were you in plain clothes or a uniform?

1 A Plain clothes.

2 Q And these other officers, Rodriguez, Hines and Jack
3 Buzali, I think you said, were they in plain clothes
4 or uniforms?

5 A Full New Orleans Police Department uniform.

6 Q You are now at the front of 1-1-1-4. Tell these folks
7 what happened.

8 A At that point, Captain Laviolette devised a plan to
9 see if anybody was in the room by simply knocking on
10 the door, at which point he did.

11 A voice came from behind the other side of the
12 door said, "Who is it?"

13 Captain Laviolette identified, "It's the New
14 Orleans Police Department," at which point there was
15 no further conversing with anybody on the other side
16 of the door.

17 At that point, one of the uniform officers had a
18 card key that was presented I believe from the
19 Security Director, placed it in the door, at which
20 time -- I can't tell you, I don't know who exactly
21 opened the door, I believe it was the same officer.
22 We proceeded to enter the door.

23 Q What happened after that?

24 A We observed that the room was completely dark, total
25 blackness, at which point one of the officers had a

1 flashlight. He illuminated the front entry. As we
2 entered and Captain Laviolette observed the light
3 switch and turned on the foyer light at the front of
4 the hotel room.

5 Q Did that illuminate the room or the --

6 A It illuminated the front portion of the hotel room.

7 Q What happened after that, if anything?

8 A As we entered, Captain Laviolette was in front of me,
9 Detective Crayton was behind me. We went into the
10 room. We observed a black male in the bathroom to the
11 immediate right standing with a gun on his head, like
12 this (indicated).

13 Q Any doubt about that?

14 A No doubt about it.

15 Q What happened after that?

16 A He proceeded to scream, "Get out" --

17 MS. MOBLEY: Your Honor, I will object, subject
18 to my prior objection.

19 THE COURT: It is overruled. Go ahead.

20 Q He proceeded to say, "Get out, I'm going to kill
21 myself like I killed Vonnie."

22 Q "Get out, I'm going to kill myself like I killed
23 Vonnie"?

24 A That's correct.

25 Q Did you hear that with your ears?

1 A My ears.

2 Q what happened after that?

3 A We proceeded to give him verbal commands, "Drop the
4 weapon, drop the weapon," at which point he did. He
5 was ultimately secured by Officer Buzali and his
6 partner, Juan Rodriquez.

7 Q Did you know Chris Commander?

8 A No, sir.

9 Q Did you know Gervonya Goodwin?

10 A No, sir.

11 Q Did you know Barbara Jones?

12 A No, sir.

13 Q After he was secured, did you have an occasion to --
14 there has been testimony that a search warrant was
15 gotten and y'all searched 1-1-1-4, correct?

16 A That's correct.

17 Q And did you help take part in that search?

18 A I did.

19 Q And I'm going to show you -- I don't think these are
20 in yet, State's 60. Do you recognize that?

21 A This is the hotel room, Room 1114.

22 MR. MEADORS: Your Honor, we would offer State's
23 60. I don't --

24 MS. MOBLEY: Without objection.

25 THE COURT: Without objection, State's 60 is

1 admitted.

2 (WHEREUPON, State's Exhibit Number 60 is
3 admitted into evidence.)

4 Q Now, Sergeant, did you locate some -- particularly
5 locate some items when you were looking through after
6 the search warrant had been executed?

7 A I did.

8 Q State's 99, just tell me if you recognize them.

9 A His wallet.

10 Q Just do you recognize them as they relate to the
11 search?

12 A Yes.

13 Q And are the in fact what you retrieved?

14 A Yes.

15 Q 100? 102?

16 A Yes.

17 Q 101?

18 A Yes.

19 Q And 109?

20 A Yes.

21 (Pause.)

22 MS. MOBLEY: Without objection, Your Honor.

23 THE COURT: Without objection, State's 99, 100,
24 101, 102 and 109, I believe, is that right?

25 MR. MEADORS: Yes, sir.

1 THE COURT: All right, those are admitted without
2 objection.

3 (WHEREUPON, State's Exhibit Numbers 99,
4 100, 101, 102 and 109 were admitted into
5 evidence.)

6 MR. MEADORS: Can I approach? I didn't ask
7 last time, I'm sorry.

8 THE COURT: Go ahead.

9 Q State's 99, State's 100, State's 101 and State's 109,
10 can you tell the jury where you got these?

11 A The wallet, the identification card in the name of
12 Christopher Commander, along with several credit cards
13 were located on a dresser when you walked into the
14 room, they were on the front left portion of the room
15 near the balcony. The money was also in the wallet.

16 Q And how much money is in here?

17 A I believe it was \$23.00.

18 Q And you've said Number 101, is that an ID card
19 identifying Christopher Sam Commander?

20 A Yes, it is.

21 Q And you said these credit cards were -- looking in
22 State's 60, can you show them where these were located
23 in 60?

24 A The dresser over here, that is where those items were
25 located.

1 Q And showing you what is State's 66, do you recognize
2 that?

3 A Yes, that's the same credit cards.

4 MS. MOBLEY: Your Honor, the credit cards were
5 admitted, so --

6 MR. MEADORS: I would offer this to show, this is
7 where they photographed them in the chair right beside
8 this, where they got them.

9 THE COURT: That's where it was found?

10 MR. MEADORS: Right beside -- they photographed
11 them in the chair beside the table.

12 THE COURT: The objection is overruled. Go
13 ahead. That's State's 66?

14 MR. MEADORS: 66.

15 (WHEREUPON, State's Exhibit Number 66 is
16 admitted into evidence.)

17 Q Did you photograph these eight after you --

18 A Yes, sir.

19 Q -- or they were photographed?

20 A Or the Crime lab Technician photographed them.

21 Q And were they -- is this the chair they were
22 photographed in right by the dresser?

23 A Yes. Yes, it is.

24 Q Included in State's 101 are eight credit cards --
25 excuse me -- eight credit cards. who do they belong

1 to?

2 A Gervonya Goodwin.

3 Q In addition, there is this Holiday Inn -- what is
4 that, do you know?

5 A It appears to be a room key for the hotel room.

6 MR. MEADORS: Your Honor, we offer 111, the room
7 key to the Holiday Inn,

8 MS. MOBLEY: No objection.

9 THE COURT: Without objection, State's 111 is
10 admitted.

11 (WHEREUPON, State's Exhibit Number 111,
12 Holiday Inn Room Key, is admitted into
13 evidence.)

14 Q Look at State's 102 for me, please, Sergeant. I don't
15 know if this came from a keg or what. What does that
16 say as far as -- what is this, the second on number
17 102? What is that a receipt for?

18 A Room service receipt, Holiday Inn Superdome, 330
19 Loyola.

20 Q And what was ordered?

21 A Seafood platter, two Heinekens, one Hennessies,
22 totaling \$45.89.

23 Q Can you see the date up there towards the top?

24 A Yes.

25 Q What is that date?

- 1 A January 11th, 2005, 7:02 p.m.
- 2 Q January 11th, 2005. whose name is signed at the
3 bottom?
- 4 A Gervonya Goodwin.
- 5 Q Looking on the first document of State's 102 that is
6 stapled together, can you tell me what that is?
- 7 A Room service receipt, Holiday Inn Superdome, 330
8 Loyola Avenue.
- 9 Q What date was that room service ordered?
- 10 A January 12th, 2005, 10:55 a.m.
- 11 Q What was ordered then?
- 12 A One club sandwich, one bowl of gumbo, one iced tea,
13 totaling \$22.03.
- 14 Q What signature appears on there?
- 15 A Gervonya Goodwin.
- 16 Q And the final one on State's 102, what's that -- where
17 is that receipt from?
- 18 A Holiday Inn, University, Coral Gables, Florida.
- 19 Q And what was that a receipt for?
- 20 A Appears to be room service again.
- 21 Q What was ordered on that?
- 22 A Two imported beers, two super premiums, totaling
23 \$24.15.
- 24 Q Who signed this room service check? What signature is
25 on that check?

- 1 A It appears to be Gervonya Goodwin.
- 2 Q And you retrieved these from 1-1-1-4?
- 3 A Correct.
- 4 Q Holiday Inn Superdome?
- 5 A Yes.
- 6 Q Now, Dejean, that's another fellow that works with
- 7 y'all?
- 8 A Detective Dejean.
- 9 Q Dejean?
- 10 A Yes.
- 11 Q He also helped take part in the search of the room
- 12 and/or the car?
- 13 A He prepared the search warrants.
- 14 Q Now, tell these ladies and gentlemen, the person that
- 15 you saw when you went into 1-1-1-4 -- and I think you
- 16 said it, but the Captain went in first?
- 17 A Captain went in first.
- 18 Q Who was second?
- 19 A Myself.
- 20 Q And who was third?
- 21 A Detective Ernest Crayton.
- 22 Q The person that you saw in the bathroom with a gun to
- 23 his head and said, "I'm going to -- stop, I'm going to
- 24 kill myself like I killed Vonnie," is that person in
- 25 this courtroom?

RICHARD PARI -- DIRECT BY MR. MEADORS:

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1 A Yes, sir.

2 Q Would you point him out for these ladies and
3 gentlemen?

4 A He is seated at the Defense table wearing a blue
5 sports coat and a multi-colored tie.

6 MR. MEADORS: We'd like the record to reflect he
7 has pointed to the Defendant, Christopher Commander.

8 THE COURT: All right.

9 MR. MEADORS: Sergeant, thank you. That's all we
10 have.

11 THE COURT: All right. Cross examine, Ms.
12 Mobley?

13 MS. MOBLEY: Thank you, Your Honor. May it
14 please the Court?

15 CROSS EXAMINATION

16 BY MS. MOBLEY:

17 Q Good morning, Sergeant Pari.

18 A Good morning.

19 Q Now, on the 13th of January 2005, you were collected by
20 Lieutenant, now Captain, Laviolette to go do a wanted
21 check, correct?

22 A That's correct.

23 Q You and Detective -- excuse me, Sergeant Ernest
24 Crayton, correct?

25 A Correct, uh-huh.

- 1 Q Did y'all ride in the same car together to the hotel?
- 2 A Yes.
- 3 Q And at no point during that car ride are you informed
- 4 that you are going to pick up a suspect in a possible
- 5 death case, correct?
- 6 A No.
- 7 Q You all arrive, call in a uniform team, correct?
- 8 A Ultimately, yes.
- 9 Q And I'm skipping the conversation at the desk where
- 10 you got the room card, that's fine. And that would be
- 11 Lieutenant Hines, Officers Buzali and Rodriquez,
- 12 correct?
- 13 A They responded, correct.
- 14 Q Okay. So there are six of you down in the lobby at
- 15 this point, correct?
- 16 A At one point, yes, uh-huh.
- 17 Q Okay. And the report by Lieutenant Laviolette, you
- 18 have a copy of this, right?
- 19 A I had a copy, yes.
- 20 Q Did you do what we call in South Carolina an incident
- 21 report which details the step by step of the incident
- 22 on this case?
- 23 A Captain Laviolette authored the report.
- 24 Q Okay. So you didn't do a report?
- 25 A No.

1 Q In his -- or in your understanding, y'all have a
2 meeting in the lobby about a plan of entry into the
3 room, sort of what is going on, is that right?

4 A Yes.

5 Q And at no time are you or in your presence were any of
6 the other officers informed that you are going to pick
7 up a suspect in a possible homicide case, correct?

8 A No, ma'am.

9 Q So taking you up to Room 1-1-1-4, Lieutenant Hines
10 sweeps the next door room, and is it Lieutenant --
11 excuse me, Captain Laviolette, he knocks on the door,
12 someone knocks on the door?

13 A Yes, uh-huh.

14 Q And you hear a voice from inside the room, correct?

15 A Yes.

16 Q You could hear that through the door?

17 A Uh-huh.

18 Q Clearly?

19 A Clearly.

20 Q So you could tell someone was in the room?

21 A Yes.

22 Q Okay. I was always under the impression the hotel
23 doors were kind of heavy, but there was no problem in
24 hearing out in the hallway what was going on in the
25 room, correct?

- 1 A No, ma'am.
- 2 Q Could you hear moving around?
- 3 A I don't think I heard any moving around, I just heard
- 4 a voice initially.
- 5 Q Heard a voice clearly say something to the effect of
- 6 who is there, who is it?
- 7 A who is it, uh-huh.
- 8 Q Okay. Now, it's at this point that the key card is
- 9 used to open the door. The guns are drawn at this
- 10 point?
- 11 A Yes, we pulled weapons, correct.
- 12 Q Pulled weapons?
- 13 A Uh-huh.
- 14 Q Okay. Guns up. Not pointing them at anyone yet,
- 15 right?
- 16 A No.
- 17 Q Just out and up. Okay. You make entry into the room
- 18 -- well, let me take a step back. It was dark in the
- 19 room when you went in, right?
- 20 A Pitch black.
- 21 Q Pitch black?
- 22 A Uh-huh.
- 23 Q None of the officers were saying anything at that
- 24 point, correct?
- 25 A No.

- 1 Q That is not correct or it is correct?
- 2 A Nobody said anything at that point.
- 3 Q I believe it is Officer Rodriguez shined a flashlight
- 4 in the room, is that correct?
- 5 A Correct, uh-huh.
- 6 Q To see sort of what is going on. No one says
- 7 anything at that point, correct?
- 8 A No.
- 9 Q Captain Laviolette flips on the light switch. No one
- 10 says anything at that point, correct?
- 11 A No.
- 12 Q Now, is this a standard size hotel room?
- 13 A I would say so. I mean, it's not a suite, if that's
- 14 what you're asking.
- 15 Q Okay. So it's just a regular room at Holiday Inn?
- 16 A Uh-huh.
- 17 Q You know, it's a bathroom, a bedroom, that's
- 18 essentially all it is, correct?
- 19 A Yes, that's correct.
- 20 Q So it's not a wide open space, it's not a huge area
- 21 that you are dealing with here, right?
- 22 A Not huge.
- 23 Q Okay. Now, your guns are drawn at this point?
- 24 A Uh-huh.
- 25 Q Making your way down the hallway. And it is quiet?

- 1 A It wasn't even a hallway, it was pretty much the
2 bathroom --
- 3 Q Wasn't even a hallway?
- 4 A There was no hallway, I don't think. It was more or
5 less the bathroom. We took a few steps in and the
6 bathroom was right to the right.
- 7 Q Okay. So you --
- 8 A There was a hallway to the left that went into the
9 bedroom area, the sleeping area where the balcony was.
- 10 Q Okay. So you're in formation, you're behind Captain
11 Laviolette, Detective Crayton is behind you and at
12 some point back here are Officers Rodriguez and
13 Buzali, right, because --
- 14 A They never entered the room. It was just the three.
15 It was myself -- excuse me, Captain Laviolette, myself
16 and Crayton.
- 17 Q Right --
- 18 A Yeah, they would have been --
- 19 Q -- the hallway --
- 20 A -- the promenade, the main promenade, the hallway.
- 21 Q Okay. And Lieutenant Hines is over there?
- 22 A I'm not sure where he was at that point, I can't tell
23 you.
- 24 Q All right. And that is when y'all -- the lights were
25 on at this point and your guns are drawn, no one is

1 saying anything. And that is when you observe who you
2 believe to be Mr. Commander standing either in or
3 beside the bathtub, is that correct?

4 A He was beside the bathtub, correct.

5 Q Beside the bathtub. He -- and it's all detailed in
6 this report -- cocks the hammer, makes his statement,
7 which is a full sentence, would you agree with that?

8 A Yes.

9 Q And you hear it clear as a bell because no one is
10 saying anything at that point, right, except for him?

11 A Crystal.

12 Q He is crystal clear because he is the only person
13 speaking at that point after you see him with the gun
14 making the statement?

15 A Yes, ma'am.

16 Q And it is at that point that Lieutenant Laviolette
17 tells him to put down the weapon, is that correct?

18 A Laviolette initially -- and I did too. I mean, there
19 is a man standing there with a gun. Of course,
20 absolutely.

21 Q Absolutely. You would expect some yelling, wouldn't
22 you?

23 A "Put the gun down, put the gun down!"

24 Q Now, we have already established that you didn't write
25 a report for this incident. It was only Lieutenant

- 1 Laviolette. Just -- and when I say a report, I know
2 there was paperwork done on a fugitive warrant or
3 something.
- 4 A Uh-huh.
- 5 Q But I'm talking about an actual -- what we call an
6 incident report detailing the steps through what
7 happened in the hotel room at the hotel, right?
- 8 A That's correct.
- 9 Q When did you receive a copy of that report?
- 10 A I don't know.
- 11 Q Well, y'all had been here before when the case had
12 been continued for various matters?
- 13 A Uh-huh.
- 14 Q Did you receive one before then?
- 15 A I believe I reviewed it then.
- 16 Q You reviewed it then?
- 17 A Uh-huh.
- 18 Q And y'all flew over from New Orleans together,
19 correct?
- 20 A Yes.
- 21 Q All on the same plane?
- 22 A Yes.
- 23 Q Did y'all have an opportunity to discuss the case at
24 that point?
- 25 A We didn't talk about the case.

1 Q You didn't talk about the case?

2 A (Nods negatively.)

3 MS. MOBLEY: That's all I have. Thank you.

4 MR. MEADORS: Just a couple of follow-ups.

5 THE COURT: All right, redirect.

6 MR. MEADORS: Beg the Court's indulgence.

7 (Pause.)

8 REDIRECT EXAMINATION

9 BY MR. MEADORS:

10 Q Sergeant, there is a picture in here, and I can't find
11 it. I'll just use this diagram. Referring to State's
12 92, I think she asked you about when you came into the
13 room, I think your answer was the bathroom was off to
14 the right?

15 A That's correct.

16 Q Was there some room off to the right? Does this
17 fairly and accurately depict the motel room?

18 A Yes, this depicts it. As far as the actual scale
19 measurements, I don't know.

20 Q Okay. So when you came in -- show me where you were,
21 show them where you were in this.

22 A I would be the second.

23 Q And how close to the bathroom door did you get?

24 A I would say about eight feet myself --

25 COURT REPORTER: I'm sorry, you need to speak up.

1 A Seven or eight feet. Excuse me.

2 Q The Captain was where?

3 A He was in front of me.

4 Q And who was behind you?

5 A Sergeant Crayton.

6 MR. MEADORS: That's all. Thank you.

7 THE COURT: Any recross?

8 MS. MOBLEY: No, sir.

9 THE COURT: All right, you may step down, sir.

10 (The witness leaves the witness stand.)

11 MR. MEADORS: Detective Ernest Crayton.

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

14 (Witness complies.)

15 THE CLERK: Do you swear or affirm that the
16 testimony you are about to give in this case will be
17 the truth, the whole truth, and nothing but the truth,
18 so help you God?

19 THE WITNESS: I do.

20 (Ernest Crayton, after
21 being duly sworn, testified as follows:)

22 THE CLERK: Please have a seat there, sir, and
23 state your full name for the record and spell your
24 last.

25 THE WITNESS: Ernest Crayton, III, C-r-a-y-t-o-n.

1 DIRECT EXAMINATION

2 BY MR. MEADORS:

3 Q Good morning.

4 A Good morning.

5 Q What is your rank, sir?

6 A Presently a Sergeant with the New Orleans Police
7 Department.8 Q Tell these folks a little bit about yourself, where
9 you're from, and particularly your training and
10 experience in law enforcement.11 A I joined the Police Department in 1987. In 1989, I
12 was assigned to the SWAT team, New Orleans Police
13 Department. From there I did two years SWAT team.
14 From there transferred over to the Narcotics, Major
15 Narcotics Division. I was there for about two years
16 doing undercover work. Then I went back to the 3rd
17 District Patrol. Then I went back to the TAC Unit as
18 a Hostage Negotiator. From there I went to the
19 Regional Transit Authority as a Transit Police Officer
20 for seven years. From there I went to the 4th District
21 as a Patrol Officer and a District Investigator.

22 Q How many years do you have in, sir?

23 A Twenty years. I then recently was transferred from
24 the 4th District to 8th District, which is the French
25 Quarter Area of New Orleans. I did district

1 investigative work over there as a detective. I have
2 been recently promoted to the rank of Sergeant in
3 August of this year. And I'm presently assigned to
4 the 7th District, which is the eastern part of New
5 Orleans.

6 Q And you're a Sergeant for that district?

7 A Yes, sir.

8 Q Back in -- on January 13th, 2005, Sergeant, where were
9 you assigned?

10 A I was assigned to the 8th District Investigative Unit.

11 Q And, again, that covers what?

12 A The French Quarter Area.

13 Q You were a detective?

14 A Yes, sir.

15 Q On January 13th, 2005, did you have an occasion to
16 respond to the Holiday Inn Superdome?

17 A Yes, I did.

18 Q And tell these folks who you went with.

19 A I was summoned by my District Commander, who was
20 Lieutenant Laviolette. He is now captain of the 7th
21 District. He summoned myself and Sergeant Pari to his
22 office and said that we were going to the Holiday Inn
23 to do a warrant subject check. He provided a name and
24 a description of a vehicle.

25 Lieutenant Laviolette and Sergeant Pari, at that

- 1 time, they contacted the Security Officer. In turn, I
2 took Lieutenant Laviolette's vehicle, went up into the
3 parking area and located the vehicle in question.
- 4 Q Do you remember what vehicle you were looking for,
5 Sergeant?
- 6 A Yes, I do. It was a 1999 Chrysler LHS. It beared
7 South Carolina license plate .
- 8 Q Where was that located?
- 9 A It was located on the 4th floor parking garage at the
10 Holiday Inn Hotel.
- 11 Q Did you inform then Lieutenant now Captain Laviolette
12 that you had found this vehicle?
- 13 A Yes, I did.
- 14 Q Now, you mentioned that they were talking to -- I
15 don't know what you said, security or something there?
- 16 A Security Director.
- 17 Q Do you know him?
- 18 A Yes, I do.
- 19 Q Jeff -- what's his name?
- 20 A Jeff Granyea (phonetic).
- 21 Q And he is security for Holiday Inn Superdome?
- 22 A Yes, he is. The reason that I am familiar with
23 Mr. Granyea is because I handle a lot of white collar
24 crime in the French Quarter Area, and we have a lot of
25 white collar crimes dealing with a lot of the major

1 hotels in that area. So I was on a first name basis
2 with all the Security Directors in that area.

3 Q You found the car. You reported it to the Captain?

4 A Yes, I did.

5 Q He talked to security. Do you know whether or not it
6 was verified that a room had been rented in the name
7 of Gervonya Goodwin?

8 A At that time, no. When I came back down and met the
9 Captain and Sergeant Pari in the lobby area with Mr.
10 Granyea, Lieutenant Laviolette at the time, he told me
11 that we were going to do a wanted check on one of the
12 rooms.

13 Q And that is what you knew when you went up there?

14 A Yes.

15 Q What room did you go to?

16 A If I'm not mistaken, it was 1114.

17 Q Street clothes or uniform, you?

18 A I was in street clothes at that time.

19 Q And were any uniform officers called for?

20 A Yes, we did.

21 Q And who all was outside Room 1-1-1-4?

22 A It was myself, Sergeant Pari, Lieutenant Laviolette,
23 Lieutenant Hines -- he was in uniform -- Officers Juan
24 Rodriguez and Jack Buzali, they were in uniform.

25 Q And is it procedure to get uniform there when you are

1 going to do a wanted check?

2 A Yes, especially on this occasion because myself,
3 Sergeant Pari and Lieutenant Laviolette, we were in
4 plain clothes at that time.

5 Q what happened outside 1-1-1-4?

6 A We knocked on the door and a voice inside the door
7 said, "Who is it?"

8 Lieutenant Laviolette at that time stated, "This
9 is the New Orleans Police Department."

10 Q Is that standard procedure?

11 A That is standard procedure.

12 Q what happened next?

13 A At that time, no one responded to the door. We then
14 used -- Lieutenant Laviolette then used a master key
15 and opened the door. As we entered, it was dark
16 throughout the room. One of the uniform officers had
17 a flashlight. He illuminated the room. And at that
18 time, Lieutenant Laviolette and myself and Sergeant
19 Pari heard someone say, "Get out" --

20 MS. MOBLEY: Your Honor, I object based on my
21 prior objection.

22 THE COURT: All right. Overruled. Go ahead.

23 A We heard someone in the room say, "Get out, I'm going
24 to kill myself like I killed Vonnie."

25 At that time --

- 1 Q And is that something -- I mean, you remember that,
2 don't you?
- 3 A Yes.
- 4 Q Is there any doubt in your mind that's what he said?
- 5 A No doubt in my mind whatsoever.
- 6 Q What did he have in his gun -- what did he have in his
7 hand, I'm sorry? What did he have in his hand if
8 anything?
- 9 A In his right hand he had a gun which was pointed
10 directly to his head at that time.
- 11 Q And was that consistent with the statement, "I'm going
12 to -- get out or I'm going to kill myself like I
13 killed Vonnie"?
- 14 A Yes, it was.
- 15 Q How far were you from him, then Detective Sergeant?
- 16 A We were stacked where it was Lieutenant Laviolette,
17 Sergeant Pari and myself, so I would have to say I was
18 approximately ten feet away.
- 19 Q What happened after you heard that statement? What
20 did y'all do?
- 21 A We immediately drew our weapons. Lieutenant
22 Laviolette at that time said, "Drop the gun." And at
23 that time the subject dropped the gun, which fell into
24 a bathtub.
- 25 Q Looking at State's 56, do you recognize that?

ERNEST CRAYTON -- DIRECT BY MR. MEADORS:

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1 A Yes, I do.

2 Q Is that the bathtub?

3 A That is the bathtub.

4 Q Does that look like the gun?

5 A That looks -- appears to be the gun.

6 Q What happened after that?

7 A At that time, he dropped the gun, which Lieutenant
8 Laviolette ordered him to lie on the floor. At that
9 time, two uniform officers came into the room,
10 handcuffed the subject, and walked him out of the
11 room.

12 At that time Lieutenant Laviolette advised me to
13 take his car, go back up to the 4th floor and block in
14 the vehicle which was -- that was in question until we
15 were able to get an auto search to search that
16 vehicle.

17 Q Which you eventually did, correct?

18 A I didn't do it.

19 Q When I say we, I mean y'all as in the police, down in
20 the New Orleans Police Department?

21 A Correct.

22 Q How did the car -- and you have given us the car and
23 the license plate -- how did that get from the Holiday
24 Inn to wherever it went?

25 A Well, once the Order of Search was signed, Lieutenant

1 Laviolette brought me the keys from the room. In
2 turn, I drove the car down from the 4th floor to the
3 ground level because a tow truck was unable -- wasn't
4 able to go up to the 4th floor level to bring the car
5 down. I drove the car down to the ground level. The
6 New Orleans Police Department tow truck hooked up to
7 the vehicle. I in turn followed that vehicle directly
8 to the evidence cage at the New Orleans Police
9 Department.

10 Q Detective Sergeant, did you have any other contact
11 with the Defendant Christopher Commander besides there
12 in the motel room?

13 A No, sir.

14 Q Is the person that you -- that you heard and saw with
15 the gun say, "Get out, I'm going to kill myself like I
16 killed Vonnie," is that person in the courtroom?

17 A Yes, he is.

18 Q Please, if you can, point him out for these folks.

19 A He is seated at the Defense table with the blue jacket
20 and striped tie.

21 MR. MEADORS: I'd like the record to reflect he
22 has pointed out Christopher Commander.

23 THE COURT: All right, sir.

24 MR. MEADORS: Thank you. That's all.

25 THE COURT: All right. Cross examine?

ERNEST CRAYTON -- CROSS BY MS. MOBLEY:

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1 MS. MOBLEY: Thank you, Your Honor. If it please
2 the Court?

3 CROSS EXAMINATION

4 BY MS. MOBLEY:

5 Q Good morning, Sergeant Crayton.

6 A Good morning.

7 Q Now, on the 13th -- I know we've been through this, one
8 more time. On the 13th of January, 2005, you were
9 collected essentially by the Captain, excuse me,
10 Laviolette and he gathered up Detective now Sergeant
11 Crayton -- I mean, excuse me, Pari, and y'all rode
12 over to the Holiday Inn with him, correct?

13 A Correct.

14 Q Now, during that drive, Captain Laviolette never told
15 you that you were going to possibly be picking up a
16 possible suspect in a homicide case, is that correct?

17 A No, he didn't.

18 Q You get to the hotel, and I'm not sure whether you
19 were present for the meeting or not, but there was
20 some sort of meeting to formulate a plan of entry into
21 the room. Were you present for that?

22 A As far as formulating a plan --

23 Q Uh-huh.

24 A -- to go up into the room --

25 Q Yes, sir.

1 A -- myself and Lieutenant Laviolette, we were on the
2 SWAT team together.

3 Q Yes, sir.

4 A We were able to have the uniform personnel in
5 positions where we wanted them once they got there.

6 Q Yes, sir. So there wasn't -- so all six of you didn't
7 meet in the hotel lobby to kind of like make a plan to
8 figure out what is going on?

9 A No, ma'am.

10 Q Okay. Now, up on I guess on the 11th floor, whatever
11 floor it is, Room 1-1-1-4, send Lieutenant Hines or
12 someone sends Lieutenant Hines in to sweep the next
13 door room. Y'all are standing outside of this door,
14 Room 1-1-1-4. And I believe State's 53 would be that
15 door, correct?

16 A Yes, it would.

17 Q Y'all are standing outside the hotel door, and I
18 believe it is Lieutenant Laviolette knocks on the
19 door, is that correct?

20 A Correct.

21 Q Okay. Knocks, voice answers from inside the room.
22 Could you hear the voice?

23 A Yes, I could.

24 Q Clearly?

25 A Yes, I could.

- 1 Q What did he say?
- 2 A He asked who was it.
- 3 Q Who was it. Okay. But so you didn't have any trouble
- 4 hearing that through this big door?
- 5 A No, ma'am.
- 6 Q Okay. So y'all identify yourself, "The New Orleans
- 7 Police Department." Did you hear any like shuffling
- 8 inside the room or anything after that?
- 9 A Slight shuffling.
- 10 Q Some shuffling. Okay. Lieutenant Laviolette or
- 11 someone one uses the -- those key things that I can
- 12 never get to work, in the door, open the door, right?
- 13 A Correct.
- 14 Q Okay. And it is dark in there at this point, right?
- 15 A Correct.
- 16 Q Okay. Now, y'all have your guns drawn at this point,
- 17 correct?
- 18 A That is correct.
- 19 Q Okay. So you are entering the room with your weapons
- 20 drawn, which I assume is out like this? Someone
- 21 shines a flashlight and then y'all are able to locate
- 22 a light switch at which point you are able to turn on
- 23 the light, right?
- 24 A Correct.
- 25 Q Okay. Now, I believe you testified at a prior hearing

1 that y'all were easing down the hallway, right?

2 A I didn't say that.

3 Q You are denying saying that at a prior hearing on
4 Tuesday of this week that you said that you were
5 easing down the hallway with Captain Laviolette and
6 Sergeant Pari?

7 MR. MEADORS: What is the question, the word
8 easing?

9 MS. MOBLEY: Easing.

10 A I didn't say easing.

11 Q You didn't say easing. So it is not the word you
12 used?

13 A I don't think that is the word I used.

14 Q So the testimony has changed at this point, so --

15 MR. MEADORS: Objection, Your Honor, to her --

16 THE COURT: Sustained. Disregard the last
17 comment by counsel. Ask a question, counsel.

18 Q Your guns are out at this point, right?

19 A Yes, ma'am.

20 Q And at this point y'all see someone standing in the
21 bathroom, which is right next to -- essentially
22 there's not much of a hallway, so the bathroom is
23 fairly quickly -- y'all come up on it quickly,
24 correct?

25 A The bathroom is -- as you walk in, walk into the room

1 there is about four or five -- it is about four to
2 five feet of wall. So you can't see anything until
3 you continue to walk. Once a light was shined into
4 the room, Captain Laviolette flipped on the light
5 switch.

6 At that time, that is when the statement was made
7 from Mr. Commander.

8 Q That is when y'all saw Mr. Commander, correct?

9 A Correct.

10 Q Standing in the bathroom?

11 A In the bathroom.

12 Q Next to, I think it was the tub?

13 A Next to the tub.

14 Q Okay. And he puts the gun to his head, cocks the
15 hammer, and then makes a complete sentence, a
16 statement, correct?

17 A Well, the gun was already to his head.

18 Q Okay.

19 A When he made the statement, the gun was to his head.

20 Q Okay. But he cocks the hammer, correct?

21 A It was already cocked.

22 Q It was already cocked?

23 A From my -- from my vantage point, it was already
24 cocked.

25 Q Okay. And you were the third person down the hallway

1 at this point, right?

2 A Correct, we were --

3 Q Behind.

4 A We were basically stacked. We weren't like parallel.
5 We were basically stacked.

6 Q Okay. And you had -- now, no one is saying anything
7 during this entire time, correct, from y'all's end?
8 None of the police officers are speaking at the point
9 of which y'all are coming in the hotel room to which
10 point you see Mr. Commander in the bathroom, correct?

11 A Correct, no one is saying anything.

12 Q So complete silence until he makes a statement, right?

13 A I don't think he made a statement until the light
14 switch was turned on.

15 Q Okay. But up to that point it was silent?

16 A Up to that point it was silent.

17 Q And Lieutenant Laviolette is the person who instructed
18 him to drop his weapon, what have you, correct?

19 A Correct. What you have to understand is that we
20 received the information from another jurisdiction.

21 Q Uh-huh.

22 A So we're dealing with another person from another
23 jurisdiction. So we don't know what type of
24 individual this is that we're dealing with. So we
25 have to be very careful. So we're not going to say

1 anything. we're not going to alert our presence.

2 Okay, we're going to do what we have to do to get the
3 job done.

4 Q And that -- your understanding at this point is that
5 the Captain -- I keep trying to call him Lieutenant --
6 Captain Laviolette had actual information prior to
7 y'all going in the room that this was indeed a suspect
8 in a homicide case, right?

9 A He may have had the information.

10 Q But y'all didn't?

11 A But he did not relay it to us.

12 Q Okay, fair enough. Now, did you write what we call in
13 South Carolina an incident report? It is a report
14 that kind of details what happened up on the 4th floor.
15 Did you write your own version of events? Did you --

16 A No, ma'am.

17 Q -- make a report? Okay. So Lieutenant Laviolette is
18 the one who wrote the report for all three of you,
19 correct?

20 A Yes, he authored the entire report.

21 Q And when did you get a copy of that report?

22 A I received a copy of the report at the pretrial
23 conference that we had on Monday night of this week.

24 Q So that there was a pretrial conference this week,
25 that is when you got the copy of the report?

- 1 A Yes, ma'am.
- 2 Q Okay. And y'all had been here -- y'all had flown from
3 New Orleans to Columbia, South Carolina before for a
4 prior event where the case was continued for various
5 reasons, right?
- 6 A Correct.
- 7 Q Okay. And y'all didn't have an opportunity to discuss
8 the case at that point, did you?
- 9 A No, not really, because it was moot at that time.
- 10 Q Okay.
- 11 A Because it was continued.
- 12 Q Okay.
- 13 A And --
- 14 Q So the first time you saw the report was the pretrial
15 conference Monday night?
- 16 A Right. We flew in one day, flew out the next.
- 17 Q Okay. Oh, I meant this week.
- 18 A No, not this week. The first -- the first time we
19 came and it was continued, we flew in one day and flew
20 out the next.
- 21 Q Okay. And I was referring -- and maybe I
22 misunderstood you. You said there was a pretrial
23 conference on Monday night. Are you referring to this
24 Monday, this past Monday?
- 25 A Yes, ma'am.

1 Q Or a different Monday? Okay. So you get the report
2 at that point. Hadn't discussed it before this,
3 right?

4 A Correct.

5 Q Okay.

6 MS. MOBLEY: Beg the Court's indulgence.

7 THE COURT: All right.

8 MS. MOBLEY: That's all. Thank you.

9 REDIRECT EXAMINATION

10 BY MR. MEADORS:

11 Q That pretrial conference Monday night was with me?

12 A Yes, sir.

13 Q Thank you.

14 THE COURT: All right, sir, you may step down.

15 (The witness leaves the witness stand.)

16 MR. MEADORS: Dennis Dejean.

17 THE BAILIFF: Place your left hand on the Bible,
18 raise your right hand, and face the clerk.

19 (Witness complies.)

20 THE CLERK: Do you swear or affirm that the
21 testimony you are about to give in this case will be
22 the truth, the whole truth, and nothing but the truth,
23 so help you God?

24 THE WITNESS: I do.

25 (Dennis Dejean, after

1 being duly sworn, testified as follows:)

2 THE CLERK: Please have a seat there, sir. Speak
3 into the microphone. State your full name for the
4 record, and please spell your last.

5 THE WITNESS: My name is Dennis Dejean. It's
6 spelled D-e-j-e-a-n.

7 DIRECT EXAMINATION

8 BY MR. MEADORS:

9 Q I've been having trouble all week, but is that like
10 the mustard Dijon? Is that how you pronounce it?

11 A Similar. Similar.

12 Q Dijon?

13 A Yes, sir.

14 Q What is your rank?

15 A Detective.

16 Q And tell these folks about yourself, where you're from
17 and your background in law enforcement.

18 A Well, I'm from St. Charles Parish in New Orleans --

19 Q I'm sorry, if you'll just speak into that.

20 A Right outside of New Orleans, Louisiana. I've been on
21 the New Orleans Police Department since 1981, and I've
22 served in various units up to the present time, in
23 which I'm working the 8th District, which is the French
24 Quarter Area of the Central Business District.

25 Q What do you do there?

- 1 A I do various investigations, primarily -- currently
2 I'm doing Property Crimes and Fraud Investigations.
- 3 Q And back in -- on January 13th, 2005, sir, where were
4 you working?
- 5 A I was working in the same place, the 8th District
6 Investigative Unit.
- 7 Q Now, were you at 1-1-1-4 when there has been testimony
8 officers went in the room and saw Christopher
9 Commander?
- 10 A No.
- 11 Q Did you come there at a later date?
- 12 A Yes.
- 13 Q What was your purpose for coming there?
- 14 A I delivered a search warrant for the room, which had
15 been requested by the detectives on the scene.
- 16 Q And is it fair to say you collected a large amount of
17 -- did you get a lot of stuff, including suitcases,
18 clothes, various documents from the room?
- 19 A Yes, sir.
- 20 (Pause.)
- 21 Q You've reviewed 108 previously?
- 22 A Yes, sir.
- 23 Q And are these some of the items that you collected
24 from 1-1-1-4 Holiday Inn Superdome in New Orleans?
- 25 A Yes, sir.

1 MR. MEADORS: Your Honor, we would offer State's
2 108.

3 MS. MOBLEY: Without objection.

4 THE COURT: Without objection, State's 108 is
5 admitted.

6 (WHEREUPON, State's Exhibit Number 108 is
7 admitted into evidence.)

8 MR. MEADORS: Beg the Court's indulgence.

9 THE COURT: All right.

10 (Pause.)

11 Q In addition to the room, Detective Dejean, did you
12 have occasion to inspect and collect some items from a
13 1999 Chrysler LHS bearing South Carolina plate number
14 1 ?

15 A Yes, I did.

16 Q And I want you to look at State's 103, State's 105,
17 104, 106 and 107. Do you recognize these? Did you
18 get them from the Chrysler we just talked about?

19 A Yes, I did.

20 MR. MEADORS: Your Honor, at this time we would
21 offer State's 103, State's 106, 107, 104 and 105.

22 THE COURT: Any objection?

23 MS. MOBLEY: Without objection.

24 THE COURT: State's 103, 104, 105, 106 and 107
25 are admitted.

- 1 (WHEREUPON, State's Exhibit Numbers 103
2 through 107 are admitted into evidence.)
- 3 Q You got 103 out of the Chrysler?
- 4 A Yes.
- 5 Q Inside 103, I want to show you -- can you tell us what
6 State's 104 is, or appears to be to you?
- 7 A This is a card, an appointment card for the Lexington
8 Medical Center dated Thursday, December 2nd, 9 o'clock.
- 9 Q Does it appear to have some doctors' names? It looks
10 the sticker is over them, but Midland's OB-GYN?
- 11 A Yes, sir.
- 12 Q And that was in this purse?
- 13 A Yes.
- 14 Q In the car?
- 15 A Yes.
- 16 Q In New Orleans?
- 17 A Yes.
- 18 Q Looking at State's 105, can you just tell the folks
19 what that is?
- 20 A It is checks in the name of Gervonya Goodwin with the
21 address.
- 22 Q Does it have what bank or anything it is with there,
23 where the checks are --
- 24 A American Express Bank.
- 25 Q And that's State's 105. State's 106, what is that?

1 A It is a medical slip for the Pastoral Counseling
2 Services bearing the name of Gervonya Goodwin as a
3 client.

4 Q And State's 107, Detective Dejean, if you can read
5 this, can you make out the date on that, and if you
6 can, can you tell the folks what that -- where that
7 receipt is from?

8 A It is November 29th, 2004. It looks like a receipt
9 from the Cracker Barrel, Store Number 44, from
10 Columbia, South Carolina.

11 Q Thank you. Does it have a time on there besides
12 November 29th?

13 A 9:55 a.m.

14 Q And these were in here?

15 A Yes, sir.

16 MR. MEADORS: Beg the Court's indulgence.

17 (Pause.)

18 MR. MEADORS: Thank you, sir. That's all. Thank
19 you.

20 THE COURT: All right. Cross examine?

21 MS. MOBLEY: Thank you, Your Honor. May it
22 please the Court?

23 CROSS EXAMINATION

24 BY MS. MOBLEY:

25 Q Detective -- I'm going to massacre your name, Dejean,

DENNIS DEJEAN -- CROSS BY MS. MOBLEY:

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1 Dejean?

2 A Dejean.

3 Q Dejean, okay. The stuff you collected was all after
4 the fact of this incident, you weren't upstairs in
5 Room 1-1-1-4 with your gun drawn with any of the other
6 detectives when they entered the room initially, were
7 you?

8 A No, I wasn't.

9 MS. MOBLEY: Thank you, Your Honor. That's all I
10 have.

11 THE COURT: All right, sir, you may step down.

12 (The witness leaves the witness stand.)

13 THE COURT: We'll take a short break at this
14 time. Mr. Foreman, ladies and gentlemen, don't
15 discuss the case. We'll probably start back in about
16 10 or 15 minutes. You're excused.

17 Everyone else stay seated, please.

18 (WHEREUPON, the jury retires to the jury room.)

19 THE COURT: Okay, we'll break for about 10 or 15
20 minutes.

21 MR. MEADORS: Thank you, Your Honor.

22 (WHEREUPON, the court was in recess.)

23 THE COURT: Mr. Strickler?

24 MR. STRICKLER: In an attempt to go ahead and
25 avoid having to break possibly immediately after the

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1 next witness, I think the State probably only has one
2 more witness from New Orleans and then Mr. --
3 Investigator McDonald.

4 Ms. Campbell and I have been talking for a day or
5 so, I think she is going introduce or attempt to
6 introduce through him a number of items, at least two
7 of which I believe I'll have objections to. If they
8 lay the foundation, that's fine. But I think in order
9 to deal with the objections, we'll have to go -- may
10 have to go in camera. I thought we would go ahead and
11 address those at this point in time rather than have
12 to send the jury out again, or not. We may have to
13 deal with them when they arise.

14 THE COURT: Can you identify the two so that we
15 can go ahead and talk about them?

16 MR. STRICKLER: Yes, sir. And maybe I can
17 explain whatever problems I might have, and maybe she
18 can tell me how she is going to do it and I'm just
19 dumb and haven't figured it out.

20 THE COURT: That's fine.

21 MS. STRICKLER: Got State's 87, this map with
22 locations. I'm not going to have any objection to
23 that. I know where all that information comes from,
24 okay?

25 We have -- these are ID at this point in time,

The State versus Christopher Sam Commander

1 Judge. And we have what's marked as State's 88, which
2 is a chart of phones called, to and from I guess, and
3 frequencies that they were called.

4 And you also had some notes that you were --

5 MS. CAMPBELL: I'm not going to introduce those
6 at this point. Are you talking about the notes from
7 the numbers that were taken in New Orleans.

8 MR. STRICKLER: Okay.

9 MS. CAMPBELL: I'll just use the actual notes.

10 MR. STRICKLER: As to these numbers, some of them
11 have been testified to at trial. Some of them I don't
12 think they have been testified to. By testified to, I
13 mean identified by number and as to whose numbers they
14 are. I don't have problems with the frequencies to
15 particular numbers. I know where those come from.
16 The identity of people reflected on the numbers that
17 haven't been testified to and identified here in trial
18 I do have a problem with, because they will have been
19 obtained -- they would be hearsay. I have no doubt
20 that Mr. McDonald came up with them from somewhere,
21 but that's a problem.

22 So that's the problem I have with the chart. I
23 don't have problems with the phone numbers listed or
24 the frequencies listed. There are a number of them --
25 we have an identification here, for example, 24 calls

1 to 704-451-8989, Cingular voicemail, okay? I'm sure
2 those were reflected on the call sheets.

3 THE COURT: All right.

4 MR. STRICKLER: But the identity of the place is
5 not reflected on the call sheets. Numbers reflected,
6 the fact that that is Cingular voicemail is not
7 reflected.

8 So in a nutshell, that is the problem I have.

9 THE COURT: All right. Solicitor?

10 MS. CAMPBELL: May it please the Court, Your
11 Honor? These are all numbers that Sergeant McDonald
12 was able to get during the course of his
13 investigation. Some of them he got from actually
14 talking with people, some of them he got -- I believe
15 the majority of them he got just off of the internet,
16 it's public knowledge, basically just went on the
17 internet, went to -- what is that?

18 MR. McDONALD: Anywho.com is one. There are
19 several out there.

20 MS. CAMPBELL: I believe there's a
21 WhitePages.com, Anywho.com.

22 MR. McDONALD: Accurate (phonetic) is a search
23 database we use, a pay database.

24 MS. CAMPBELL: And was able to get this
25 information. And basically, Your Honor, I think he

1 will just testify that that's how he identified it.

2 of course, I think it would go more to its weight
3 than its admissibility, but he would also testify
4 that, you know, I mean, on some of these he doesn't
5 have personal knowledge other than what he gained on
6 the internet. But it is public -- it's public in its
7 access of this information.

8 THE COURT: Hand me -- hand me the charts,
9 please.

10 (Complied.)

11 (Pause.)

12 MS. CAMPBELL: Just for the record, there is one
13 on there that is actually handwritten on there --

14 THE COURT: Right, that is --

15 MS. CAMPBELL: -- that we did get from subscriber
16 information, and we would agree that that did not come
17 from his research on the internet, so I would have to
18 redact that one.

19 THE COURT: Barbara Jackson, is that the one
20 you're talking about?

21 MS. CAMPBELL: Because that came from information
22 we just got. I need to redact that one.

23 (Pause.)

24 THE COURT: As I understand your objection, Mr.
25 Strickler, the one such as Keyonna Goodwin, Barbara

1 Jones, Sivonna Hunt, you wouldn't have any particular
2 problem with. But the --

3 MR. STRICKLER: Exactly, Your Honor.

4 THE COURT: But the Debbie Funderburk, these
5 credit cards, any number that haven't been identified
6 through testimony or through the records is what you
7 would have a problem with, is that right?

8 MR. STRICKLER: Yes, sir, precisely.

9 THE COURT: Solicitor, the difference in the
10 numbers on here, one is showing calls going out and
11 the other showing calls coming in, is that correct?

12 MS. CAMPBELL: Yes, sir, that's the reason for
13 the two different numbers in the middle.

14 MR. STRICKLER: And, again, I have no problem
15 with those. Those are derived from records that are
16 in.

17 MS. CAMPBELL: And a couple of these Sergeant
18 McDonald actually called the numbers and then made
19 contact with the people. Like Daquana (phonetic)
20 Atkins, I believe is one, as well as getting the
21 information from the internet.

22 (Pause.)

23 THE COURT: All right. You'd have the same
24 objection, Mr. Strickler, if an individual simply went
25 to a public phone book and then wanted to testify

1 according to the phone book this number is for A, B,
2 C, whoever?

3 MR. STRICKLER: Yes, sir.

4 (Pause.)

5 THE COURT: Under Rule 803, Subsection 17, this
6 says:

7 The following are not excluded by the hearsay
8 rule even though the declarant is available as a
9 witness: Market quotations, tabulations, lists,
10 directories or other published compilations generally
11 used and relied upon by the public or by persons in
12 particular occupations.

13 If the testimony is that they fall within that
14 category, whatever the source is for these numbers,
15 then I'll overrule the objection.

16 MR. STRICKLER: Thank you.

17 THE COURT: All right, anything further before we
18 proceed?

19 MS. CAMPBELL: No. If I can just get that
20 redacted.

21 THE COURT: All right, let's get the jury in,
22 please.

23 THE BAILIFF: Yes, sir.

24 (WHEREUPON, the jury came into open court.)

25 THE BAILIFF: Your Honor, the jury is present.

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1 THE COURT: Thank you. Ladies and gentlemen,
2 there was one matter that came up that I had to deal
3 with, and we're ready to proceed.

4 Call your next witness, please.

5 MR. MEADORS: May it please, Your Honor? The
6 State would call Jack Buzali.

7 THE BAILIFF: Place your left hand on the Bible,
8 raise your right hand, and face the clerk.

9 (Witness complies.)

10 THE CLERK: Do you swear or affirm that the
11 testimony you are about to give in this case will be
12 the truth, the whole truth, and nothing but the truth,
13 so help you God?

14 THE WITNESS: I do.

15 (Jack Buzali, after
16 being duly sworn, testified as follows:)

17 THE CLERK: Please have a seat there, sir, and
18 state your full name for the record, and please spell
19 your last.

20 THE WITNESS: My name is Jack Buzali. My last
21 name is spelled B-u-z-a-l-i.

22 DIRECT EXAMINATION

23 BY MR. MEADORS:

24 Q What do I refer to you as, sir? What is your rank or
25 role?

The State versus Christopher Sam Commander

1 A I'm a police officer in the New Orleans Police
2 Department.

3 Q And, Officer, would you please tell the ladies and
4 gentlemen just a little bit about yourself, where
5 you're from, your background, your education and
6 training and how long you've been in law enforcement.

7 A I have been in law enforcement about nine and a half
8 years and I was born and raised in New Orleans and
9 that's where I currently am employed.

10 Q During those nine and a half years, have you worked
11 the whole time in the Police Department?

12 A Yes.

13 Q Have you worked in different sections, regions?

14 A Correct.

15 Q Okay. Can you tell us, you know, generally the
16 different places you've worked or -- in New Orleans or
17 different type roles you've had, if any?

18 A I was -- I'm currently a patrolman now. I did a
19 little detective work a couple of years back, a little
20 task force work. I'm currently on patrol in the
21 French Quarter, the Downtown Development District.

22 Q Was your dad a police officer?

23 A No.

24 Q Back in June -- January 13th of 2005, where were you
25 working?

- 1 A I was in the 8th District.
- 2 Q And your job then was what?
- 3 A Patrol officer.
- 4 Q What does that mean versus an investigator? Tell
- 5 them.
- 6 A Basically it is I deal with street crimes and any
- 7 calls for service that come over the radio.
- 8 Q Did you have an occasion to go to 330 Loyola Avenue at
- 9 the Holiday Inn Superdome on January the 13th --
- 10 A Yes --
- 11 Q -- 2005?
- 12 A Yes.
- 13 Q And why did you go there?
- 14 A My lieutenant at the time required a Uniform Patrol
- 15 Unit to assist him in a wanted person check at that
- 16 location.
- 17 Q And do you remember what -- were you working the day
- 18 shift that day?
- 19 A Day shift, correct.
- 20 Q What other Uniform Officers responded, if anybody?
- 21 A My partner at the time, Officer Juan Rodriguez, and my
- 22 lieutenant who was Lieutenant Henry Hines.
- 23 Q When you got to Holiday Inn Superdome, what did you
- 24 do?
- 25 A We met up with Lieutenant Laviolette, who was a

1 detective, and several other detectives and we
2 proceeded to go to the room to execute the wanted
3 person check.

4 Q You may actually be talking too close, I apologize.
5 That's fine. What room did you go to?

6 A We went to Room 1114.

7 Q And what did you do there? What was your role there,
8 if anything?

9 A My role was to stay outside with my partner, Juan
10 Rodriquez, for safety reasons for the officers who
11 were about to enter the room and just to basically
12 cover them.

13 Q You said another, I call them Uniform Police, was
14 there. Was that Hines?

15 A We had a Lieutenant Henry Hines there, correct.

16 Q Lieutenant, and I apologize. And what did he do?

17 A He went to other room, I believe it was 1116, to make
18 sure that, you know, the subject could not flee that
19 way if need be. And he was there to prevent that from
20 happening.

21 Q And take us there right now in your mind or through
22 your testimony. You're at 1-1-1-4. What happened?

23 A Well, we were standing outside the door, at which
24 point Lieutenant Laviolette at the time, he knocked on
25 the door, to which an answer came back from inside the

1 room stating, "who is it?"

2 Lieutenant Laviolette identified himself, "New
3 Orleans Police Department," at which time the subject
4 didn't respond any further.

5 Q You and Rodriquez outside?

6 A Correct.

7 Q What happens after there was no verbal response from
8 inside?

9 A My partner, Juan Rodriquez, he used one of the
10 electronic keys to get inside the door and he opened
11 the door.

12 Q What happened after that, Detective -- Officer, excuse
13 me?

14 A After that, I was standing behind them outside. He
15 illuminated the room because it was pitch black, at
16 which point Lieutenant Laviolette hit the light
17 switch.

18 Q And you say he illuminated with his flashlight --

19 A Flashlight. He just did that in the room, turned --

20 Q Who is he?

21 A Officer Juan Rodriquez.

22 Q Rodriquez, okay.

23 A Just to provide some kind of light inside the room.

24 Q Did you go inside the room?

25 A At that time, no.

- 1 Q Who else was -- who else didn't go inside the room,
2 maybe I should say?
- 3 A Officer Juan Rodriguez.
- 4 Q And who -- what other detectives were there with
5 Lieutenant Laviolette?
- 6 A They had Lieutenant Laviolette, Sergeant Rick Pari and
7 Detective Ernest Crayton.
- 8 Q And where did they go after the door was open?
- 9 A They proceeded inside the room.
- 10 Q Showing you what has been marked and entered as
11 State's 92, do you recog -- does this look -- is this
12 a fair, if it is not accurate, drawing of the Room 1-
13 1-1-4 at the Holiday Inn Superdome?
- 14 A Yes, it is.
- 15 Q And down here it has actually got Buzali. That is
16 you, correct?
- 17 A Correct.
- 18 Q And can you show the jury -- show them, it's got this
19 going in here. Did you actually go in prior to --
- 20 A At that time, no, I did not.
- 21 Q Okay. So where were you stationed?
- 22 A I was standing -- stationed right outside the door
23 frame, right here in this area.
- 24 Q The detectives go inside?
- 25 A Correct.

1 Q what happened after that? Was Mr. Commander taken
2 down?

3 A Okay, what happened after that, I immediately heard
4 Lieutenant Laviolette say, "Drop your gun."

5 Q What happened next?

6 A At which point I believe the subject complied, and at
7 that point me and my partner took one step inside the
8 room and found the subject laid out on the floor.

9 Q Now, look at -- I don't think you've got to get up.
10 Look at State's 90. Do you recognize that?

11 A I really didn't search the room or check it out. We
12 just got one foot inside.

13 Q So you didn't go into the bathroom at all?

14 A No, sure didn't.

15 Q State's 54, do you recognize that?

16 A Not really.

17 Q Okay. Do you eventually go in the room to come in
18 contact with Mr. Commander?

19 A Yes, me and my partner, Juan Rodriquez, stepped inside
20 the room, at which point we found the subject laid out
21 on his stomach like that (indicated) with his hands
22 extended. At which point me and my partner collected
23 the subject, walked him right outside the door,
24 handcuffed him and advised him of his Miranda rights
25 in the hallway.

JACK BUZALI -- DIRECT BY MR. MEADORS:

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- 1 Q Did you actually advise him of his Miranda or did
2 Rodriquez?
- 3 A No, my partner Juan Rodriquez at the time did.
- 4 Q Did you hear him?
- 5 A Yes, it was done in my presence.
- 6 Q You lead him, Holiday Inn south -- well, what did you
7 do?
- 8 A We relocated the subject back to the 8th District
9 Police Station.
- 10 Q You and Rodriquez?
- 11 A Correct.
- 12 Q What happens from there with this person, who I will
13 ask you to identify it in a minute, if you can, where
14 if anywhere does he go from the 8th District?
- 15 A We were instructed to go ahead and relocate the
16 subject to the Homicide Cold Case Division.
- 17 Q And, again, we is you and who?
- 18 A Me and my partner, Juan Rodriquez.
- 19 Q Was the Defendant handcuffed?
- 20 A Yes, he was.
- 21 Q Describe -- what car did you go in from the 8th
22 District to the Cold Case Unit?
- 23 A We went in a marked police unit.
- 24 Q And where was the Defendant put?
- 25 A In the rear of the police vehicle.

The State versus Christopher Sam Commander

1 Q As you are arriving from the 8th District to the Cold
2 Case Unit, tell these folks what happened, if
3 anything.

4 A Basically the subject inquired, "where are you taking
5 me?"

6 At which point I replied, "We're taking you to
7 the Homicide Cold Case Division."

8 Q He asked you where you are taking him?

9 A Correct.

10 Q You responded what?

11 A "Homicide Cold Case Division."

12 Q After that, what if anything did he say?

13 A Basically he just stated, "I just did what I had to
14 do."

15 MS. MOBLEY: Your Honor, I object.

16 THE COURT: Wait just a minute. Overruled.
17 Repeat your question, Solicitor.

18 Q "Where are you taking me" was his question?

19 A Correct.

20 Q "I'm taking you to the Cold Case Homicide Unit" was
21 your answer?

22 A Correct.

23 Q And what if anything did this person say after that?

24 A The subject basically stated, "I just did what I had
25 to do."

JACK BUZALI -- DIRECT BY MR. MEADORS:

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1 Q "I just did what I had to do"?

2 A Correct.

3 Q Did you have any trouble hearing that?

4 A No, I did not.

5 Q How far were you from this individual when he said
6 that?

7 A He was in the rear of the police vehicle. I was in
8 the front seat.

9 Q Now, when you were -- when the other three officers
10 went inside, your testimony is you stayed outside?

11 A Correct.

12 Q Do you know what transpired in the bathroom?

13 A No, I do not.

14 Q The person that told you, "I just did what I had to
15 do," is that person in this courtroom?

16 A Yes, he is.

17 Q Would you please point him out for the ladies and
18 gentlemen of the jury?

19 A He's sitting in the middle of the desk wearing a blue
20 suit with a tie and a white shirt.

21 MR. MEADORS: I would ask the record to reflect
22 he has pointed to Christopher Commander.

23 THE COURT: All right, sir.

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

25 (Pause.)

The State versus Christopher Sam Commander

1 MR. MEADORS: Thank you, sir.

2 THE COURT: All right. Cross examine,
3 Ms. Mobley?

4 MS. MOBLEY: Thank you, Your Honor. May it
5 please the Court?

6 CROSS EXAMINATION

7 BY MS. MOBLEY:

8 Q Afternoon, Officer Buzali.

9 A Afternoon.

10 Q All right, so on this day, January 13th, 2005, I
11 believe you said it was your Lieutenant, so would that
12 be Lieutenant Hines?

13 A Yes.

14 Q Asked that you respond to the Holiday Inn?

15 A Correct.

16 Q Okay. At which point you had occasion to meet up with
17 the detectives who were there, Lieutenant, now
18 Captain, Laviolette and then Detectives Pari and
19 Crayton, correct?

20 A Correct.

21 Q Okay. Y'all had a meeting in the lobby to determine
22 how you were going to make entry into this room?

23 A Yes, basically we all met in the lobby of the hotel.

24 Q Okay. And they needed y'all there because you have on
25 your uniforms, makes sense, right?

JACK BUZALI -- DIRECT BY MR. MEADORS:

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- 1 A Yes, that is procedure down in New Orleans.
- 2 Q Okay. So at this point you are briefed and y'all
- 3 develop a plan of action, is that correct?
- 4 A Correct.
- 5 Q Never told, though, at any point that y'all were going
- 6 up to deal with -- who their information was it was
- 7 possibly a suspect in a homicide, though, right?
- 8 A No.
- 9 Q Okay. Now, upstairs, Room 1-1-1-4, Lieutenant Hines
- 10 sweeps the next door room, correct?
- 11 A Correct.
- 12 Q And my understanding is that while you remained
- 13 outside, all of you are outside the room at this
- 14 point, and Lieutenant -- excuse me, Captain Laviolette
- 15 knocks on the door, correct?
- 16 A Correct.
- 17 Q And he gets a response, right?
- 18 A Correct.
- 19 Q Something about "who is it," whatever?
- 20 A Yes.
- 21 Q Could you hear that?
- 22 A Yes, I did.
- 23 Q Okay. But you could hear that clearly?
- 24 A Yes.
- 25 Q Okay. Now, at this point they use the key card to

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- 1 enter the room, correct?
- 2 A Correct.
- 3 Q And y'all have your guns drawn at this point, right?
- 4 A Correct.
- 5 Q Okay. So the guns are out. But no one -- none of the
- 6 officers are saying anything at this point, correct?
- 7 A Correct.
- 8 Q So everything is silent. And your testimony is that
- 9 you don't hear anything transpire inside the room,
- 10 correct?
- 11 A No. The only thing I heard was when Laviolette
- 12 stated, "Drop your gun."
- 13 Q Okay. So he makes a statement -- so Laviolette is the
- 14 only person you hear say, "Drop your gun," correct?
- 15 A I believe his voice is the one I heard, yes.
- 16 Q Okay. Because otherwise up until that point it had
- 17 been perfectly quiet, right?
- 18 A Correct.
- 19 Q Now, y'all come in, handcuff Mr. Commander, do your
- 20 things, take him out, take him to the car, what have
- 21 you. He spends about -- y'all arrived at the 8th
- 22 District Police Station first, correct?
- 23 A Correct, that is where we relocated to.
- 24 Q Okay. You and Officer Rodriguez are there with
- 25 Mr. Commander at that point, right?

- 1 A Correct.
- 2 Q Okay. And at which point you have some paperwork to
- 3 deal with, right?
- 4 A Yes, we had to complete the fugitive attachment
- 5 paperwork --
- 6 Q Right.
- 7 A -- which the subject was wanted on.
- 8 Q Did all the paperwork, right?
- 9 A Right.
- 10 Q So you are doing that. Mr. Commander meanwhile is
- 11 handcuffed, I believe, to a wall, is that right?
- 12 A He's handcuffed. And what we do is, we have a wire
- 13 that goes through the handcuffs and just goes to the
- 14 back wall while he's sitting on a bench. It's a long
- 15 wooden bench. It can fit about four to six subjects.
- 16 Q Okay. So it's -- and I'm just trying to get this
- 17 straight in my head. So here's the bench?
- 18 A Right.
- 19 Q So the wire would be like here?
- 20 A Behind him on the wall, yes.
- 21 Q Okay. I think I got it. All right. And at that
- 22 point you are instructed to take him elsewhere to
- 23 another unit, right?
- 24 A Yes, we are.
- 25 Q Okay. Now, other than --

1 MS. MOBLEY: Beg the Court's indulgence.

2 (Pause.)

3 Q You do your fugitive paperwork. And did you write an
4 incident report about what transpired up at that hotel
5 room, up on I guess it was the 11th floor at the
6 Holiday Inn?

7 A No, we did not.

8 Q Okay. Were you -- when were you provided with a copy
9 of Lieutenant Laviolette's report?

10 A His report was given to me prior to the flight up
11 here.

12 Q Now, I know this case had gotten continued for
13 whatever reason at some point before. Are you talking
14 about the first time y'all came up or the second time?

15 A The first time.

16 Q First time?

17 A Uh-huh.

18 Q Okay. And did you ever discuss this case with them?
19 Did y'all have an opportunity -- I'm assuming y'all
20 flew over together, right?

21 A Yes, we did.

22 Q Okay. Y'all flew over on the same plane, right?

23 A Right.

24 Q Okay. Did y'all have an opportunity to discuss this a
25 little bit on the plane?

1 A I personally did not discuss it. However, I did
2 review the report while I was on the plane.

3 Q Did you discuss it at all with anyone?

4 A When we arrived here we discussed it with the District
5 Attorney -- Solicitors in the office out here.

6 Q Okay. So that would have been what day?

7 A I believe that would have been Monday.

8 Q Monday, okay.

9 MS. MOBLEY: Thank you. I have nothing further.

10 THE COURT: All right. Redirect?

11 MR. MEADORS: Just very briefly.

12 REDIRECT EXAMINATION

13 BY MR. MEADORS:

14 Q Detective Officer, the statement, "I just did what I
15 had to do," that was just you and Rodriquez in the
16 car, correct?

17 A Yes, it was.

18 Q And you informed somebody else about that statement
19 back then close to when it was made, correct?

20 A Yes, we did.

21 Q And that is how it got in the report back then,
22 correct?

23 A Yes, we had to transferred the information over back
24 to Lieutenant Laviolette.

25 MR. MEADORS: Thank you very much. That's it.

1 THE COURT: Anything further?

2 MS. MOBLEY: No, sir.

3 THE COURT: All right, sir, you may -- anything
4 further?

5 MR. MEADORS: No, sir. Thank you.

6 THE COURT: You may step down.

7 (The witness leaves the witness stand.)

8 THE COURT: All right, Solicitor?

9 MS. CAMPBELL: May it please the Court? The
10 State calls Sergeant Scott McDonald.

11 THE BAILIFF: Place your left hand on the Bible,
12 raise your right hand, and face the clerk.

13 (Witness complies.)

14 THE CLERK: Do you swear or affirm that the
15 testimony you are about to give in this case will be
16 the truth, the whole truth, and nothing but the truth,
17 so help you God?

18 THE WITNESS: I do.

19 (Scott McDonald, after being
20 duly sworn, testified as follows:)

21 THE CLERK: Please have a seat, sir, and state
22 your full name for the record.

23 THE WITNESS: Scott McDonald.

24 DIRECT EXAMINATION

25 BY MS. CAMPBELL:

The State versus Christopher Sam Commander

1 Q Sergeant McDonald, where are you employed?

2 A With the Richland County Sheriff's Department.

3 Q And how long you worked there?

4 A Eighteen and a half years now.

5 Q And what is your current rank?

6 A I'm a sergeant in the Major Crimes Division.

7 Q And as a sergeant in the Major Crimes Division, can
8 you tell this jury basically what your duties entail?

9 A I'm responsible for supervising the investigation of
10 all homicides, armed robberies, aggravated assaults,
11 carjackings, that type of violent crimes against
12 persons.

13 Q And were you working in that capacity back in January
14 of '05?

15 A Yes, I was.

16 Q I want to turn your attention back to January the 7th
17 of 2005. Did you become aware of a body being found
18 at Drive?

19 A Yes, I did. Sergeant Robinson, who was the on-call
20 evening shift supervisor, contacted me. I was on the
21 homicide on-call. We have a week long period where
22 we're on call. Sergeant Robinson needed to work
23 evening shift that week for some things around the
24 house he needed to do. And I was originally scheduled
25 to be on evenings. However, I told him I would

1 continue with homicide call.

2 So he contacted me when they got out to the scene
3 and things were looking suspicious.

4 Q Drive, is that here in Richland
5 County?

6 A Yes, it is. It's I believe outbound on Leesburg Road,
7 the Green Lakes Subdivision.

8 Q Did any investigator other than Sergeant Robinson,
9 specifically Investigator Holdorf, go out to the scene
10 that night?

11 A Investigator Holdorf was, I believe, the first
12 responding investigator to the scene.

13 Q Did you go to the scene that night?

14 A No, I did not.

15 Q Did you actively become involved in the investigation
16 on January 8th of '05?

17 A That's correct.

18 Q And basically tell this jury what initially -- who did
19 you initially meet with?

20 A I made plans with Investigator Holdorf and we
21 contacted the second -- we also have a on-call
22 homicide team. If we have a homicide they would be
23 activated. And the partner for Mr. Holdorf during
24 that week was going to be Investigator Gallegos.

25 Q Okay.

1 A So he was contacted and plans were made to meet late
2 that morning, Saturday morning, at headquarters so I
3 could be briefed.

4 Q Okay. And did you -- without saying what was told to
5 you, did you get briefed on basically what information
6 they had at that point?

7 A That is correct.

8 Q Did you become aware that there was a white car
9 located at the residence?

10 A Yes, I did.

11 Q After having a conversation with them, did you take
12 any further steps in the investigation of this case,
13 specifically as to drafting search warrants?

14 A Yes, I did. I drafted search warrants for the
15 Cingular cell phone belonging to the victim and to the
16 residential home telephone number with BellSouth.

17 Q And January 8th, what day of the week was that?

18 A That was a Saturday.

19 Q And when you drafted a search warrant, were you able
20 to get in touch with anyone in order to get some phone
21 records?

22 A Yes, I was. Cingular has an exigent circumstance line
23 for emergencies and homicides, things like that. I
24 was able to get a hold of a representative on that
25 line and she was able to assist me in getting the most

1 recent phone calls sent to me within a matter of about
2 20 to 30 minutes probably.

3 Q And did you also contact BellSouth?

4 A We sent them the search warrant. However, there was
5 some delay. They don't have an exigent circumstance
6 type situation where I can get records immediately.

7 Q I show you State's Exhibit 79, the Cingular phone
8 records. Were those provided to you on that Saturday,
9 January the 8th?

10 A Yes, they were. They were actually faxed to me over
11 the fax machine in the interest of time. The back
12 part of these with a little bit different printing was
13 actually mailed to me a little bit later, they had
14 additional records.

15 Q Okay. So the first few pages -- first how many pages
16 were information you had actually received on
17 January 8th?

18 A The first six pages appears was faxed to me.

19 Q Okay. And Investigators Holdorf and Gallegos, were
20 they supposed to make contact with certain people?

21 A Yes, I assumed to try to locate family members of the
22 Defendant, a father also named Christopher, I believe
23 Sam Commander, and the mother of Mr. Commander.

24 Q Was there an additional person they were supposed to
25 make contact with?

1 A I think they were trying to -- let me refer to my
2 notes. Yes, someone that had been identified as one
3 of Mr. Commander's best friends, Mr. Alonzo Jazz
4 Humphrey.

5 Q Alonzo Jazz Humphrey?

6 A Uh-huh.

7 Q During that evening did you also receive additional
8 information about where the phone, the cell phone --
9 tell this jury first, you are looking at cell phone
10 records, right?

11 A That's correct.

12 Q And why are you looking for cell phone records and how
13 can that aid you in your investigation?

14 A We knew at this point the victim's cell phone was
15 missing, and a text message had come in to the family
16 while we were actually out with the body that night.
17 It was very suspicious. So at this point we're using
18 the cell phone as a tracking mechanism to try to
19 identify whoever has this phone and where they may be.

20 Q And when you say a tracking mechanism, how is it that
21 you can track where someone is through a cell phone?

22 A Every time that phone is used, whether it receives a
23 call or places a call, it is marked by the tower it
24 hits, the closest tower to where that phone is.

25 Q Were you able to determine where the phone was hitting

1 -- and this would be the evening of the 8th, is that
2 correct, that Saturday evening?

3 A Right. It appeared to be in the Miami area from the
4 phone records. I'm sorry, on the 8th -- well, there
5 was --

6 Q Looking -- you're looking at --

7 A -- some voicemail, yes.

8 Q And you're looking at activity from that first week in
9 January, is that correct?

10 A Right.

11 Q And that week, where did the activity seem to be?

12 A In the Miami area.

13 Q Thank you. At that point, once you received the
14 records, did you try to cross reference some numbers
15 from those?

16 A Yes, I did. Typically in these type investigations,
17 there are several search engines on the internet that
18 you can go to and put in these numbers. We have a
19 couple of services we subscribe to actually at the
20 Sheriff's Department as well where we have --

21 Q What kind of services -- what are they called?

22 A Accurate (phonetic) is one of them that we use pretty
23 prevalently where you can put in a number and the
24 subscriber information comes back unless it's an
25 unlisted number.

1 Q And are there additional ones on the internet that are
2 accessible?

3 A Yeah, there's -- every day there's more and more
4 search engines out there that you can put these
5 numbers in.

6 Q What are the names of some of them?

7 A Google, you can actually use, Anywho.com,
8 whitePages.com, you know, a large number of them.

9 Q And in trying to identify some of the phone numbers in
10 the phone records you received, are those some of the
11 services you used?

12 A That's correct.

13 Q And those are accessible to the public?

14 A Yes, they are.

15 Q That evening were you able to identify a residential
16 phone number to Gainesville, Florida?

17 A Yes, I was.

18 Q And that phone number?

19 A The phone number was --

20 (Pause.)

21 Q Are you referring to the actual records?

22 A The actual phone number is 352-2053.

23 Q And who did that phone number come back registered to?

24 A That was a Ms. Glovine Smith.

25 Q And later down did you find out she had a relationship

1 with a Sivonnia Hunt?

2 A Yes, she did.

3 Q And what was that relationship?

4 A I believe that was her granddaughter.

5 Q That evening, did you also try to call that number?

6 A Yes, I did. About 9:20 in the evening I did call this
7 number and spoke with a subject by the name of Andre
8 Hunt. I asked him if he knew anyone at the target
9 number, which was 803- -5816, if he had talked to
10 anyone the previous night.

11 Q Okay. And without saying what he said to you, you
12 can't say that, did you ask him to give someone a
13 message?

14 A I asked him to give his sister Sivonnia a message to
15 call me please.

16 Q And that was based on information he provided to you?

17 A That's correct.

18 Q Later that evening did you receive a call from
19 Sivonnia Hunt?

20 A Yes, about one 11:25 that evening I did get a call on
21 my cell phone from Ms. Hunt, who identified herself.

22 Q Did she indicate whether or not she knew anyone
23 associated with the number 803- -5816?

24 A She did recognize the number and knew a subject at
25 that number by the name of Chris.

1 Q And without going further into that, did she give you
2 additional information about the person she knew as
3 Chris?

4 A Yes, she said she had met him on a chat line. She had
5 seen him a couple of times recently, before Christmas
6 and after Christmas.

7 Q And you talked to her around 11:25 that evening?

8 A That's right. It wasn't a real lengthy conversation.
9 I told her I would get back in touch with her in the
10 morning. I had actually gone home after working on
11 this all day and was in the bed and just talked to her
12 briefly.

13 Q I want to turn your attention to January 9th of 2005.
14 At around 12:15 did you continue to try to identify
15 people whose numbers showed up on those records?

16 A Yes, I did. I called the number of 561-863-3417,
17 which was a Daquana Atkins.

18 Q And without saying what she said to you, did you
19 inquire of her -- what did you ask her?

20 A I asked her if she knew anybody by the name of Chris.

21 Q Without saying what she said, did she provide you with
22 information?

23 A Yes, she did.

24 Q After talking to Ms. Atkins, did you call another
25 number that was on the records?

- 1 A Yes, I did. I called a 305 exchange, 779-3200, which
2 was the Holiday Inn South Beach in Miami, Florida.
- 3 Q What did you ask -- did you make contact with them?
- 4 A I spoke with a desk clerk requesting to know if they
5 had a Christopher Commander staying at the hotel or
6 the motel at this time.
- 7 Q Without saying what she said, did she indicate whether
8 or not he was staying there?
- 9 A Yes, she did.
- 10 Q Around 12:50 that afternoon did you make another phone
11 call?
- 12 A Yes, I did. It was to a 239 exchange, -7680.
- 13 Q The 239 exchange, where is that located?
- 14 A That was in the Fort Myers, Florida area.
- 15 Q Okay.
- 16 A I spoke with a Ms. Shawn Williams at that number.
- 17 Q And without saying what she said, what did you ask
18 her?
- 19 A I asked her if she knew a Chris, or a Chris Commander.
- 20 Q Did she -- without saying what she said, did she give
21 you some information?
- 22 A Yes, she did.
- 23 Q I missed one thing, let me back up. The Ms. Atkins'
24 number, that comes back to a 561 area code. What part
25 of the country is that?

1 A That would be in Riviera Beach, Florida.

2 Q That afternoon did you have an occasion to call
3 Sivonnia Hunt again?

4 A Yes, about 1:10 that afternoon I called back for Ms.
5 Hunt after looking at the phone records further and
6 seeing numerous phone calls being placed back and
7 forth between the target number, Ms. Goodwin's number,
8 and Ms. Hunt.

9 Q Did you initially make contact with her?

10 A No, I did not. I had to leave a message.

11 Q Did she get back in contact with you that day?

12 A She did. About 2:30 she called me back and we had a
13 little longer conversation.

14 Q Later that afternoon did you have another meeting with
15 your Investigators Holdorf and Gallegos?

16 A Yes, we sat down to brief each other on what we had
17 done to this point in the day.

18 Q And at that point did you come up with a list of
19 things y'all needed to do in this investigation?

20 A Yes, I did.

21 Q And at this point -- it is now January the 9th -- has
22 anyone found Christopher Commander?

23 A No.

24 Q And when you called her that afternoon, what did y'all
25 determine needed to be done or followed up on?

1 A One of things we came up with to check the memory on
2 the victim's home phone number as we were still
3 awaiting BellSouth phone records, which ended up
4 taking quite a lot time to get in --

5 Q Uh-huh.

6 A -- to see the most recent calls. I believe those
7 numbers on the caller ID were actually photographed as
8 well.

9 Q And those were later photographed I believe by
10 Lieutenant Padgett, is that correct?

11 A I believe so, yes. We were going to try to obtain a
12 list of all the credit cards the victim had and check
13 on their use.

14 We learned that there had been a check deposited
15 at AllSouth Credit Union on Parklane Road on
16 December 21st, and we wanted to follow-up on that
17 further for any other ATM uses or any other checks
18 that had been used on this account.

19 Q How did you come into the information that a check had
20 been deposited into her account on the 21st?

21 A I believe it was the victim's daughter had brought it
22 to either Holdorf or Gallegos' attention with some
23 mail that they had collected. They subsequently made
24 contact with AllSouth and AllSouth actually came in on
25 a Saturday to assist them in the investigation,

1 providing them with the actual check. And they were
2 able to get the ATM records at that time as well.

3 Q Okay. And that day also did you come in contact --
4 did you make contact with AllSouth Bank and come into
5 some photos?

6 A The photos came -- didn't come Saturday, they came
7 either Monday or Tuesday, I believe --

8 Q Okay.

9 A -- once normal business hours. They had to order them
10 and get them sent to us.

11 Q And that was from the Parklane branch?

12 A That's correct.

13 Q What were you able to tell from the surveillance
14 photos from the ATM at the Parklane Branch from that
15 December 21st?

16 A From what I could see on the surveillance photos, it
17 appeared to be the description I had been given of Ms.
18 Goodwin's car, which later was confirmed once I did
19 actually see the car.

20 Q Were you able to actually see who was in the car?

21 A No, you couldn't. Due to the way cameras were aimed,
22 focused, whatever, you were not able to get a clear
23 picture of who was in the car.

24 Q Turning your attention to January 10th of '05, was your
25 investigation ongoing?

1 A Yes, it was.

2 Q And at that point did you and Lieutenant Smith meet
3 and discuss plans to go to Miami?

4 A Yes, we had. We sat down and discussed the
5 investigation to this point. We realized the phone
6 had been hitting in Miami with the most recent records
7 we had. We felt whoever had the phone, presumably Mr.
8 Commander, was in Miami. We wanted our detectives to
9 be there, you know, if he could be located for an
10 interview.

11 Q Did you also make contact with Randy Hough's
12 secretary, I believe Ms. Trish Blendowski?

13 A I didn't personally make contact with her. I learned
14 from Mr. Holdorf about that information.

15 Q And based on that information, did you get the
16 Coroner's Office to follow-up as far as the hospital?

17 A Right, they did subpoena the records from the area
18 hospitals, and they did not show any Gervonya Goodwin
19 being admitted or visiting the hospital.

20 Q Later that day did you also get search warrants on the
21 Monte Carlo?

22 A Yes, I did.

23 Q And, again, which car is that?

24 A This would be the white Chevrolet Monte Carlo that we
25 had been told that Mr. Commander may have driven.

1 Q Did you also -- you were provided some mail from the
2 family members?

3 A Yes, they had been collecting the mail and they
4 brought it to our attention when they came in to meet
5 with us, I believe it was on that Sunday, we became
6 aware through that is where we got the idea about, you
7 know, additional credit cards, things like that.

8 Q And specifically were you provided with an American
9 Express bill?

10 A Yes.

11 Q And some other credit cards?

12 A Right.

13 Q And at that point you already had the information on
14 the AllSouth account?

15 A Yes, we did.

16 Q And when we say AllSouth account, did it used to be
17 called something else?

18 A It used to be the Fort Jackson Credit Union. I'm not
19 sure of the exact date, but it has changed over to
20 AllSouth now.

21 Q And why did you think the credit cards would be
22 significant?

23 A Because they're also a tracking mechanism. A good
24 many ATM's do have video cameras on them. When they
25 work properly and are focused properly, they, you

1 know, give us valuable evidence of who is using those
2 cards. So we were using that to try to identify who
3 was using the cards and the locations.

4 Q During the course of the -- as this investigation
5 progressed over the course of the next several days,
6 weeks and months, did you actually try to pursue to
7 see if you could get any video tapes from the AllSouth
8 transactions --

9 A That is correct.

10 Q -- from the ATM card?

11 A Yes, we did.

12 Q And I show you State's Exhibit 85. Is that stills
13 from one of the videos?

14 A Yes, it is.

15 Q Did you obtain other videos from other banks?

16 A We received, yes, other videos from other banks.

17 Q Were you able to get video from every bank?

18 A No.

19 Q And why is that?

20 A Oftentimes the VHS tapes, depending on the bank, they
21 tape over ever so many days. So, you know, if we're
22 talking several weeks later, they would already have
23 been taped over. Some of the banks just didn't
24 respond to our request for one reason or another.
25 Others didn't have photos at the ATM.

1 Q And what I just showed you, State's Exhibit Number 85,
2 that was actually one you were able to recover?

3 A Yes, this is from the AmSouth Bank in Orlando, Florida
4 at the Florida Mall.

5 Q And of the videos -- and do you know approximately how
6 many videos or still shots you actually recovered from
7 different banks?

8 A From all the different banks?

9 Q (Nods affirmatively.)

10 A Usable ones or just videos in general?

11 Q In general.

12 A Probably eight to ten, twelve in that range maybe.

13 Q And of those, were you able to -- was this the
14 clearest one --

15 A This was the clearest one, yes.

16 Q And approximately how many of those were usable, that
17 you could see anything?

18 A Two.

19 Q I want to turn your attention to January 12th of '05.
20 At that point on that date you were just continuing to
21 follow up and trying to get videos and things of that
22 nature?

23 A That's correct.

24 Q Had Investigator Gallegos actually gone to the North
25 Carolina are in an attempt to retrieve --

1 A Yes, we sent him to Charlotte. There were several ATM
2 transactions in Charlotte. We sent him up there and
3 he met with a detective to kind of assist him in
4 getting around Charlotte and finding these locations,
5 getting with the banks and hotels, trying to see if
6 there was any video available.

7 Q And, again, as of January 12th of 2005, had Christopher
8 Commander been located?

9 A No, he had not.

10 Q At that point had anyone made contact with Jazz or Mr.
11 Humphrey?

12 A It is not reflected in my notes. It is probably in
13 Holdorf's notes. I believe they had by this point.

14 Q He had been contacted. You were the lead investigator
15 in the case?

16 A Yes.

17 Q Turning your attention to the morning of January the
18 13th of 2005, tell the jury what you were checking on
19 that day, credit cards.

20 A That morning I started calling several of the credit
21 card companies. The first one I called ended up being
22 the American Express.

23 Q Who did you talk to at American Express?

24 A Mr. Barron Daniel.

25 Q And he is the gentleman that testified, I believe,

1 yesterday?

2 A That's correct.

3 Q And when you contacted Mr. Daniel, what were you
4 asking him?

5 A I was asking about any usage of Ms. Goodwin's two
6 cards.

7 Q And was he able to pull up any information that was
8 useful to you?

9 A Yes, he was.

10 Q And what was that?

11 A Several hotels had been -- the credit cards had been
12 used at several hotels in the Miami area, the Coral
13 Gables area, and most recently in New Orleans.

14 Q And did he actually stop the conversation so he could
15 follow up on some more information?

16 A Yes, he said, "Let me check on a couple of things and
17 I'll call you back."

18 Q And did he call you back shortly thereafter?

19 A Yes, he did.

20 Q And what information was he able to provide you then?

21 A That it appeared that the Defendant could possibly
22 still be at the Holiday Inn next to the Superdome. It
23 looked like he had re-upped on the transaction.

24 Q And, again, when you said the Defendant, would he --
25 the information that you gave Mr. Daniels, did you

1 indicate he would be registered under the name
2 Christopher Commander or another name?

3 A Gervonya Goodwin.

4 Q And, again, the account you were checking on with
5 American Express was whose account?

6 A Gervonya Goodwin's. She had two accounts.

7 Q Did you also make contact with an investigator from
8 New Orleans that morning?

9 A Yes, I did. At that time he was Lieutenant
10 Laviolette, now Captain Laviolette.

11 Q And did you inform him that there were outstanding
12 warrants and that he was a suspect in a murder?

13 A Yes, I did.

14 Q Specifically, did you give him the name of the victim
15 in the case?

16 A Gervonya Goodwin.

17 Q And did you ever tell him what her nickname was?

18 A No, I did not.

19 Q What additional information did you give him about the
20 Defendant?

21 A I told him that through my research with American
22 Express that morning that we believed that
23 Mr. Commander may be in that hotel room, and if they
24 could please check, and there was an outstanding
25 warrant on Mr. Commander. Mr. -- Lieutenant

1 Laviolette agreed to assist.

2 Q Did you receive -- after speaking to him initially,
3 did you receive a phone call back from him 30 or 40
4 minutes later?

5 Q Yes, he told me that they did have Mr. Commander.

6 A And at that point did he inform you about any
7 statements made?

8 A He did tell me that he made a statement upon them
9 entering the room.

10 Q And did he specifically ask you a question about a
11 name?

12 A He mentioned -- he asked me, "Vonnie", you know, "who
13 is Vonnie."

14 Q And what was the statement he related to you that was
15 made by the Defendant when he was arrested?

16 A "Get out, I'm going to kill myself like I did Vonnie."

17 Q Did you also learn the victim's vehicle had been
18 located?

19 A Yes, I did. They notified me it was, I believe, in
20 the parking garage there right at the Holiday Inn.

21 Q And did the New Orleans Police then agree to do a
22 search of the room as well as the car?

23 A Yes, we discussed the matter with them, and due to the
24 time constraints and it would take us extended period
25 to get there, they agreed to assist us in getting a

1 search warrant for both the vehicle and the room.

2 Q Turning your attention to January the 14th, did you
3 have an opportunity to interview Alonzo or Jazz
4 Humphrey?

5 A Yes, myself and at the time Lieutenant Smith, went to
6 meet with Mr. Humphrey, trying to follow up and see if
7 he had talked to -- he had spoken with Mr. Commander
8 recently.

9 Q And as the days progressed after Mr. Commander was
10 arrested, did you continue to receive some information
11 as far as phone records and things of that nature?

12 A That's correct.

13 Q Turning your attention to January the 19th of 2005, did
14 you start looking into the records you received, say,
15 from American Express, from BellSouth, Cingular and
16 things of that nature?

17 A Yes, I did.

18 Q And what was the purpose of looking at all those and
19 trying to look at them as a whole?

20 A To kind of correlate the travels through the month of
21 December mainly, usage of the cell phone, credit
22 cards, trying to show the corroboration, you know, the
23 phone was used here and he's staying in a motel here
24 with this credit card, that type of thing.

25 Q I want to show you what has been marked as State's

1 Exhibit Number 87. Do you recognize that?

2 A Yes, I do.

3 Q And what is that?

4 A A chart or map I prepared showing ATM transactions
5 during this time on the victim's credit card, ATM card
6 from the Fort Jackson Credit Union.

7 Q And State's Exhibit Number 86, do you recognize that?

8 A That's basically just a calendar showing each day
9 where those transactions were occurring.

10 MS. CAMPBELL: Your Honor, at this time I would
11 offer into evidence 87 and 86.

12 THE COURT: Any objection?

13 MR. STRICKLER: That's without objection.

14 THE COURT: Without objection, those two
15 exhibits, 87 and 86, are admitted.

16 (WHEREUPON, State's Exhibit Numbers 86 and
17 87 are admitted into evidence.)

18 Q Also, Sergeant, did you prepare a chart outlining some
19 phone activity on the Cingular phone?

20 A Yes, I did.

21 Q And I show you State's Exhibit Number 88. Does that
22 fairly and accurately reflect the chart you prepared?

23 A Yes, it does.

24 MS. CAMPBELL: Your Honor, at this time we would
25 offer 88.

1 MR. STRICKLER: Subject to my previously stated
2 objection.

3 THE COURT: All right, let the -- there was one
4 matter that was going to be -- has that been taken
5 care of?

6 MR. STRICKLER: Yes, sir.

7 THE COURT: All right. The ruling on the
8 objection is overruled based on my previous ruling.
9 That will be admitted. And what number is that?

10 MS. CAMPBELL: State's 88, Your Honor.

11 (WHEREUPON, State's Exhibit Number 88 is
12 admitted into evidence.)

13 THE COURT: Solicitor, before you continue your
14 questioning, we're going to breaking around 1, it's
15 five till now. I don't want you to get in the middle
16 of something. It may be a good breaking point, I
17 don't know.

18 MS. CAMPBELL: It would be good breaking point.

19 THE COURT: Mr. Foreman and ladies and gentlemen,
20 we will break for lunch. If you will be back at 2:15,
21 we will resume at that time. Don't discuss the case
22 with anyone. Have a good lunch. We will see you back
23 at 2:15.

24 Everyone else stay seated, please.

25 (WHEREUPON, the jury retired for lunch.)

SCOTT McDONALD -- DIRECT BY MS. CAMPBELL:

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1 THE COURT: All right, we'll resume at 2:15.
2 Sergeant, you cannot discuss your testimony during
3 break.

4 (The witness leaves the witness stand.)

5 (WHEREUPON, the court was in recess.)

6 (The witness returns to the witness stand.)

7 THE COURT: Is the State ready to proceed?

8 MS. CAMPBELL: State's ready.

9 THE COURT: Defense ready?

10 MR. STRICKLER: Yes, sir.

11 THE COURT: All right, let's get the jury in,
12 please.

13 (WHEREUPON, the jury came into open court
14 at approximately 2:22 p.m.)

15 THE BAILIFF: Your Honor, the jury is present.

16 THE COURT: All right, ladies and gentlemen,
17 we'll continue. I believe, Ms. Campbell, you were in
18 the midst of direct. Go ahead.

19 MS. CAMPBELL: May it please the Court?

20 THE COURT: All right.

21 MS. CAMPBELL: Your Honor, may the witness step
22 down?

23 THE COURT: Yes, just keep your voice up, please,
24 sir.

25 DIRECT EXAMINATION CONTINUED

The State versus Christopher Sam Commander

1 BY MS. CAMPBELL:

2 Q Come on this side. Showing you State's Exhibit 86 --
3 If you would come over here. Before we broke, I
4 believe you identified this -- what is this?

5 A This is a chart of the ATM usage during the month of
6 December, 2004.

7 Q Okay. And I notice this stops on the 29th of December.
8 Was there any more usage of that ATM card after then?

9 A I don't believe there was, no.

10 Q And can you just briefly go through and show what is
11 on this chart?

12 A Well, starting on December 2nd at 4:11 -- 16:11 is
13 military time for 4:11 in the afternoon -- at this
14 location of North Miami Beach, Florida, the card was
15 used. Friday, also in Miami, 800 Miami Beach
16 Boulevard the card was used again. Subsequently the
17 following early morning hours, 3:54 a.m. it was used
18 again at the same location.

19 Do you want me to go through the whole month?

20 Q Just highlight where it changes.

21 A We're in my Miami. We start moving up to Fort
22 Lauderdale. As time goes by, several days, Oakland
23 Park, Florida. Oakland Park up into Orlando, up into
24 Ocala, which is up near Gainesville. A couple of days
25 of no activity, then back down towards Orlando, down

1 to Tampa.

2 Q And the date when he used the ATM at Tampa, Florida,
3 what was that date?

4 A That was on December 19th.

5 Q December 19th?

6 A Right.

7 Q Okay.

8 A Nothing on the 20th. And then the early morning hours
9 of December 21st he's in Columbia making a deposit on
10 Parklane Road of the AllSouth checkbook.

11 Q Then it goes where?

12 A Over to Atlanta, Georgia, several days, up in
13 Charlotte. Charlotte, and then back down to Orlando
14 towards the end of the month.

15 Q I show you what has been marked State's Exhibit Number
16 87. Do you recognize that?

17 A Yes, I do. It is a chart I made up using Streets and
18 Trips common to the Microsoft program. And you put in
19 the address and it zeros it in on the map for you.
20 And this is kind of an illustration of the travels
21 that we talked about during the month there, how it
22 starts in the Miami area, comes up, through Columbia,
23 Atlanta, Charlotte, and then how he transfers back
24 down to Florida. You can see the actual dates of the
25 transactions here.

1 Q The dates of the transactions are actually on the
2 line?

3 A Right.

4 Q And I'll show you what has been marked as State's
5 Exhibit Number 88. Is this a document you also
6 generated?

7 A This is a frequency analysis. It's called a spoke
8 chart. It shows the number of calls coming in and
9 going out of the target number, which would be the
10 803- -5816, which was Cingular telephone number of
11 Gervonya Goodwin, the phone we were tracking.

12 This chart illustrates, for like this particular
13 person Barbara Jones here, 66 calls went in to that
14 number, zero calls came back.

15 Q And I wanted to ask you that. Here at the end are the
16 phone numbers and the person, and how -- some of these
17 how did you -- some of them you couldn't, some of them
18 you could?

19 A Right.

20 Q You actually got that information from the internet or
21 from the people in certain cases?

22 A That's right --

23 Q Ms. Jones was the grandmother?

24 A That's right. Several of these people, I had these
25 numbers from phone records and I actually spoke --

1 like Ms. Atkins, I spoke with her. That's how I
2 confirmed whose number that was. You see some of the
3 credit card companies, those are readily accessible
4 over the internet. So we go to AmericanExpress.com
5 and they have contact numbers.

6 Q And I notice that on some of these bills there are
7 many 800 numbers.

8 A Uh-huh.

9 Q Typically those are credit cards?

10 A Typically those are going to be credit cards or some
11 type of business.

12 Q While we're talking about that, the phone records for
13 the house on State's Exhibit Number 84, I notice on
14 the date of 11/30 the first two calls, and there's
15 actually -- can you explain those calls to the jury,
16 please?

17 A Well, the first two calls was the -- there's a call in
18 to the home number of M.J. -1423, a residential number.
19 When that call came in, it was answered by the
20 voicemail, it went to voicemail.

21 Q And how is that distributed, because it goes through -
22 - as you go through those, that same sequence of
23 numbers where it says the calling number is M.J. -1423
24 --

25 A Uh-huh.

1 Q -- and then it says -- it goes to M.J. -3450?

2 A That is calling the residential number and it going to
3 voicemail.

4 Q Okay. So it's actually calling from outside the
5 residence?

6 A Into the residence.

7 Q Even though --

8 A Another telltale sign is many of these have the exact
9 same times. 08:58, the 727 number calls in and, you
10 know, to that residence and then 08:58 it goes right
11 into the voicemail, you see.

12 Q And in your review of the records, on State's Exhibit
13 Number 84, after and including November 30th, '04,
14 other than someone checking the voicemail, are there
15 any outgoing calls from that number?

16 A It doesn't appear to be, no.

17 Q Getting back to your chart, State's Exhibit Number 88,
18 again, there are two numbers here. Which one is
19 incoming and which one is outgoing?

20 A This one -- zero calls coming in. The outside numbers
21 all the way around are the calls going in.

22 Q That would be the person who is labeled here?

23 A Right.

24 Q Making that call?

25 A Right.

- 1 Q This first number goes to -- say American Express
2 called this number how many times?
- 3 A Zero.
- 4 Q How many times was American Express called by this
5 number?
- 6 A Twelve times.
- 7 Q And that reflects the two numbers there?
- 8 A That's right.
- 9 Q Okay. For the next one, Capital One Credit Card, how
10 many times did Capital One Credit Card call into 414,
11 the cell phone?
- 12 A Zero times.
- 13 Q And how many checks were done from the cell phone?
- 14 A Fourteen times.
- 15 Q Moving on to E. Williams.
- 16 A Right.
- 17 Q Is that information you were able to get?
- 18 A That's correct.
- 19 Q How many calls going to the 414?
- 20 A Three.
- 21 Q Okay. How many calls coming out?
- 22 A Thirteen.
- 23 Q And one other thing too, there were many more phone
24 numbers on the records, is that right?
- 25 A These are -- there were so many numbers, we kind of

1 had to limit the scope or parameter or the listing
2 would be so tight you wouldn't be able to read it. We
3 did anything with ten or more phone calls to a number,
4 and this is what it produced. We have software that
5 we plug that in and it spits it out.

6 Q Going to the next number, it is identified as who?

7 A Michael Brown.

8 Q And who is Michael Brown?

9 A That is going to be the former husband of our victim,
10 Ms. Goodwin.

11 Q How many phone calls came from Michael Brown's phone
12 to 414?

13 A Sixteen.

14 Q And how many times did the cell phone of Gervonya
15 Goodwin call back to Mr. Brown?

16 A Zero.

17 Q And, again, does this chart reflect any text
18 messaging?

19 A No, that information isn't available.

20 Q Moving on, here is Cingular voicemail?

21 A Uh-huh.

22 Q And how many times does the Cingular voicemail happen?

23 A Twenty-four times.

24 Q Debbie Funderburk?

25 A The conversation is going both ways. She called that

1 number 17 times, that number called her 14 times.

2 Q And did you attempt to locate her?

3 A I did, but the line was no longer in service.

4 Q This number, 352- -0788, is belonging to?

5 A Sivonnia Hunt, who testified earlier today -- or
6 yesterday.

7 Q How many times did she call the cell phone of Gervonya
8 Goodwin?

9 A She called 23 times.

10 Q And how many times did the cell phone of Gervonya
11 Goodwin call her?

12 A Thirty-seven times.

13 Q At that number?

14 A That's correct.

15 Q This number belongs to whom?

16 A Keyonna Goodwin. That's the victim's daughter.

17 Q And how many times did she attempt to get -- to call
18 her mother's cell phone?

19 A Sixty-five times.

20 Q And, again, these records came from -- the records you
21 actually have start on what date?

22 A Let me refer to my notes. It is -- 12/19 through 1/11
23 of '05.

24 Q And did you go back and get the rest of the month of
25 December, the cell phone numbers?

1 A We only got up through December 19th.

2 Q Okay. From December 19th forward?

3 A Right.

4 Q Through January?

5 A The most important numbers on this ended up being kind
6 of working it backwards, trying to locate the suspect.

7 Q Sixty-five times to this number?

8 A That's correct.

9 Q Barbara Jones -- and who is Barbara Jones?

10 A That is the mother of Ms. Goodwin.

11 Q And how many times did she attempt to get her
12 daughter's cell phone?

13 A Sixty-six times.

14 Q And how many times did her daughter's cell phone call
15 her?

16 A Zero.

17 Q You mentioned Daquana Atkins?

18 A Daquana Atkins. She called the number 52 times. The
19 number called her back 38 times.

20 Q And where did she call from?

21 A Riviera Beach, Florida, I believe.

22 MS. CAMPBELL: Beg the Court's indulgence one
23 moment.

24 THE COURT: All right.

25 (Pause.)

1 Q I want to ask you while you are standing there -- you
2 can take the stand actually.

3 (The witness returns to the witness stand.)

4 Q I hand you what has been marked State's Exhibit 79 and
5 ask you to look at the cell phone records for
6 December 21st.

7 (Pause.)

8 A Any particular time?

9 Q December 21st, on that day, are there any phone calls
10 reflected going to the residence, on December 21st of
11 the date the deposit was made?

12 (Pause.)

13 Q I don't guess there's an easier way to do it.

14 A All right, I'm going through all these numbers.

15 Q Are these -- I'm showing you State's Exhibit
16 Number 49. What are those? Do you recognize that?

17 A These are the photographs of the home cell phone, the
18 home residential line. And there is one on 12/21 at -
19 - looks like 8:56 a.m. coming from the target number
20 of -5816.

21 Q And the target number, you said that would be the
22 number calling in?

23 A That would be the Cingular cell phone belonging to Ms.
24 Gervonya Goodwin.

25 Q Actually called the residence were Ms. Goodwin was on

1 that day?

2 A That's correct. It also coincided with the deposit on
3 Parklane Road.

4 Q Moving your attention to January 24th of 2005, did you
5 receive certain evidence in the case from New Orleans?

6 A Yes, I did. All the evidence from New Orleans arrived
7 Federal Express.

8 Q And did you have an opportunity to review all that
9 evidence as it was shipped to you?

10 A Yes, I did. Myself, Lieutenant Smith, Investigators
11 Holdorf and Goff, we all examined the evidence.

12 Q And I'm going to show you what has been marked as
13 State's Exhibit 108. Is that some of the evidence
14 that was sent to you at that time?

15 A Yes, it is.

16 Q Tell the jury what that is.

17 A These are notes, looks likes stationary is probably
18 from different hotels, Holiday Inn, El Palacio Hotel
19 and Conference Center in Fort Lauderdale. And on
20 these notes there's numerous phone numbers, names,
21 those type of things.

22 Q And in a review of those phone numbers, did you have
23 an opportunity just to compare at least some of them
24 to the phone records from the cell phone, -5816?

25 A Yes, I did.

1 Q And, again, was that part of the evidence sent from
2 New Orleans?

3 A Yes, it was.

4 Q And when you compared, were you able to match some of
5 the names and numbers on there to numbers that were
6 actually dialed on the cell phone?

7 A Yes, I did. One of the names -- and some of these are
8 just nicknames. Mink was one, 12/19 at 02:53 in the
9 morning. The target number calls this Mink person,
10 which is one of the numbers that's on here. Several
11 more times we find Mink. There's a Shawn subject, who
12 I believe I spoke to. That's going to be Shawn
13 Williams, the same number.

14 Q And where is that number? what city?

15 A Fort Myers, Florida.

16 Q And that was a man or a woman?

17 A That was a female, a black female.

18 Q Okay.

19 A And a few others. The name Juicy you see several
20 times in the phone records. One time on the 19th at
21 10:19 at night. Then again it looks like at 8:24. A
22 Jennifer subject, 12/20/04 at 9 at night. Jennifer is
23 in here a few more times. And a girl named Alexis,
24 12/24/2004 at 12:18:49 p.m., several more times that
25 same day.

1 Q And then more of them?

2 A Yes, just kind of repeats, some of these.

3 Q Did they also send you -- had they also taken some
4 photographs of the car they recovered from New
5 Orleans? I show you what has been marked as State's
6 Exhibit 72 and 73.

7 A Yes, they did.

8 Q And are those photographs you received from New
9 Orleans of the car as they impounded it?

10 A That is correct.

11 MS. CAMPBELL: Your Honor, at this time we would
12 offer 72 and 73 into evidence.

13 MR. STRICKLER: Without objection.

14 THE COURT: Without objection, State's 72 and 73
15 are admitted.

16 (WHEREUPON, State's Exhibit Numbers 72 and
17 73 are admitted into evidence.)

18 Q And, again, did y'all take these or were they taken
19 somewhere --

20 A No, these were taken by New Orleans.

21 Q One thing I forgot. Going back to State's Exhibit
22 108, I believe it was.

23 A Uh-huh.

24 Q I show you this Holiday Inn pad. Is it significant?

25 A Yes, it is. When I became aware of this, I saw my

1 name on it, "Detective McDonald" it says.

2 Q And, again, that was sent to you from the evidence as
3 collected from the Defendant in New Orleans?

4 A That's correct.

5 Q Did you also get an opportunity to look through
6 State's Exhibit Number 94 and what has been marked as
7 101?

8 A Yes, I did.

9 Q And if I hand you 101 -- I'm taking it apart -- are
10 there any Americans Express cards in there?

11 A Yes, there are two of them.

12 Q And you also received the records from American
13 Express?

14 A Yes, I did.

15 Q And whose American Express cards are those?

16 A Gervonya Goodwin.

17 Q And at least one of those, does that correspond to the
18 records that are already in from American Express,
19 State's Exhibit Number 82?

20 A That's correct.

21 Q Handing you State's Exhibit Number 94, did you become
22 aware there was an ATM card recovered?

23 A Yes, I did. There's a Fort Jackson ATM card here.

24 Q And, again, this says Fort Jackson, not AllSouth -- is
25 it AllSouth?

- 1 A That's correct.
- 2 Q And why is that?
- 3 A She would have gotten that before the new name.
- 4 Q And, again, the rest of the credit cards that are in
- 5 that, whose name are on there?
- 6 A Gervonya Goodwin. There is a Michael R. Brown on a
- 7 Companion Health Care card, Partners for Health in the
- 8 name of Michael Brown, but other than that,
- 9 everything, I believe, is Gervonya Goodwin. It's got
- 10 her son's ID card.
- 11 Q You also received, I believe, a gun and other evidence
- 12 that was collected?
- 13 A That is correct.
- 14 Q Specifically do you remember -- did you receive some
- 15 car keys?
- 16 A Yes, we did. The car keys went to the white Chevy
- 17 Monte Carlo that we had towed in and done the search
- 18 warrant on. And there were keys to the Chrysler as
- 19 well.
- 20 Q Okay. But one set of car keys actually belonged to
- 21 the white car that had been left in the driveway?
- 22 A That's correct.
- 23 Q And that was collected in New Orleans?
- 24 A That's correct.
- 25 Q You actually checked also with Department of Motor

1 Vehicles about the ownership on the car that was found
2 in New Orleans?

3 A Yes, I did.

4 Q In this case you are also aware there were fingernail
5 scrapings that were taken?

6 A Yes, I am.

7 Q And did it indicate that Chris Commander's DNA was
8 underneath the fingernails?

9 MR. STRICKLER: I object.

10 MS. CAMPBELL: I'll withdraw it.

11 THE COURT: Sustain the objection. The question
12 is withdrawn.

13 MS. CAMPBELL: Just a couple more questions, Your
14 Honor.

15 (Pause.)

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

17 (Pause.)

18 Q In a review of the Cingular records, again State's
19 Exhibit 79, when is the last significant activity on
20 the phone, the cell phone?

21 A According to these records, the 8th. I did get
22 slightly more records taking me up through the 18th of
23 January.

24 Q But as far as any calling back and forth, anything
25 significant other than somebody trying to call that

1 number, was there any significant activity after the
2 8th?

3 A I don't believe so, no. No, they were all incoming
4 calls.

5 Q And the Defendant's height and weight at the time of
6 his arrest?

7 A 6 foot 2, 240 pounds.

8 MS. CAMPBELL: Beg the Court's indulgence.
9 (Pause.)

10 MS. CAMPBELL: Thank you, Sergeant. Please
11 answer any questions the Defense may have.

12 THE COURT: All right. Mr. Strickler?

13 MR. STRICKLER: Thank you, sir. May it please
14 the Court?

15 CROSS EXAMINATION

16 BY MR. STRICKLER:

17 Q Good afternoon, Sergeant.

18 A Good afternoon.

19 Q I really just have a couple of questions. On --
20 pardon me. On March 17th, 2005, you met with the judge
21 here in Richland County and obtained a search warrant
22 for the body of Christopher Commander, correct?

23 A Let me check my records.

24 Q Page 13 in your notes.

25 A Yes, I did. I met with Judge Surles and got a search

1 warrant.

2 Q And on March 22nd, you and Lieutenant -- then
3 Lieutenant Smith got Chris Commander, brought him to
4 the Sheriff's Department and got samples from him
5 pursuant to the search warrant, right?

6 A That is correct.

7 Q Samples in this particular circumstance, for instance,
8 were buccal swabs, is that correct?

9 A That is correct.

10 Q That's a cotton swab that you rub inside of your
11 cheek, inside your mouth, is that correct?

12 A That's correct.

13 Q And the purpose for that is to collect skin cells that
14 can be used for DNA testing, right?

15 A That is correct.

16 Q You used to have to go ahead and get blood samples to
17 get that done, you don't have to do that anymore,
18 right?

19 A No, we don't.

20 Q Okay. So on March 22nd, 2005, you executed the search
21 warrant, obtained the samples to be used for DNA
22 testing, and you wanted to do the DNA testing in this
23 case to compare with the fetus that had been recovered
24 and preserved after the autopsy, right?

25 A Originally, yes, we believed we could possibly have a

1 second murder here.

2 Q Right. And actually compare with the fetus to
3 determine if in fact Chris Commander was the father of
4 that fetus, is that correct?

5 A That is correct.

6 Q Now, that testing was never done, correct?

7 A Not on the fetus, no, it wasn't.

8 Q Yes, sir. And indeed you're aware that fingernail
9 scrapings in this plastic -- well, I don't think the
10 glove itself is in evidence unless I missed it, there
11 are pictures of the glove and there has been testimony
12 about the glove from the trash can --

13 A Right.

14 Q -- at the residence, right?

15 A Correct.

16 Q Fingernail scrapings and the glove from the trash can
17 were sent off for DNA testing, correct?

18 A I'm not aware of that, but I'm searching. Fingernail
19 scrapings were compared.

20 Q The glove was compared too, is that so?

21 (Pause.)

22 A Do you have the report?

23 Q Yes, sir. A lot of paperwork.

24 MS. CAMPBELL: Your Honor, is he offering that
25 into evidence?

1 MR. STRICKLER: No, I'm not.

2 A Yes, it was compared to the rubber gloves.

3 Q That comparison was done by the Richland County
4 Sheriff's Department DNA Lab on June 29th, the report
5 was issued on June 29th of 2005 --

6 MS. CAMPBELL: Objection, Your Honor. If he's
7 going to testify to the document we would ask that it
8 just be put into evidence. We have no objection.

9 THE COURT: There hasn't been a question other
10 than as to dates and whatnot at this point in time.
11 The objection is overruled.

12 MR. STRICKLER: Thank you.

13 Q Those items, nail scrapings and the glove, were
14 submitted to your DNA lab and a report was generated
15 with the results of the findings from those items on
16 June 29th, 2005, correct?

17 A That is correct.

18 Q All right. Thank you, sir.

19 Q John Barron with the lab did the testing, right?

20 A I don't have it before me now, but --

21 Q well, that's okay. Y'all have a lab, you don't have
22 to send it off any place other than --

23 A We do it in-house, yes.

24 Q -- Richland County, right? Okay. Those items were
25 tested and there is a report of the results regarding

1 those items?

2 A That's correct.

3 MR. STRICKLER: Thank you, sir. That's all we
4 have.

5 THE COURT: All right. Redirect?

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

7 THE COURT: All right.

8 (Pause.)

9 MS. CAMPBELL: Nothing further, Your Honor.

10 THE COURT: All right, sir, you may step down.

11 (The witness leaves the witness stand.)

12 THE COURT: All right. Solicitor?

13 MR. MEADORS: Beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 (Pause.)

16 MS. CAMPBELL: Your Honor, at this time the State
17 would rest.

18 THE COURT: All right, Mr. Foreman and ladies and
19 gentlemen, the State has rested, meaning that they
20 have presented their evidence in the case in chief.
21 There may be some matters of law for the Court to take
22 up that I'm required to take up outside of your
23 presence. I'm going to send you to your jury room.
24 Please don't discuss the case at this time.

25 Everyone else stay seated while the jury is

1 excused.

2 (WHEREUPON, the jury retires to the jury
3 room at approximately 2:50 p.m.)

4 THE COURT: All right, Mr. Strickler, Ms. Mobley,
5 any motions?

6 MS. MOBLEY: Yes, sir, Your Honor. At this time
7 the Defense would move for a directed verdict on the
8 charge of murder.

9 Your Honor, understanding what has been presented
10 before the Court during the course of this trial and
11 understanding that obviously it is, you know, in the
12 light most favorable to the State, Your Honor -- and
13 one of the main elements of murder is malice. And the
14 State has completely failed to prove that in this
15 case.

16 Malice can be expressed or implied, but it cannot
17 be innuendoed after the fact by other evidence.

18 Your Honor, we have basically a couple of main
19 groups of evidence in this case. We have cell phone
20 records. All that proves is that the Defendant had
21 the cell phone after -- at some point after
22 Ms. Goodwin died. Credit cards are the same thing.
23 Text messages leave us nowhere in the State's case to
24 prove malice, which they must prove to make a charge
25 of murder.

1 Your Honor, the New Orleans Police Department
2 came in and testified about a statement that was
3 supposedly given by Mr. Commander. Even if this Court
4 takes that statement at face value and as had been
5 given under the circumstances that they said it was
6 given, Your Honor, if I remember the evidence
7 correctly, it is a gun to his head, "I'm going to kill
8 myself like I killed Vonnie."

9 He didn't shoot her. The State -- there has been
10 no evidence that Ms. Goodwin died of a gunshot wound.
11 And, again, this statement leaves us nowhere but with
12 an -- some sort of inference or innuendo about malice,
13 if you can even take it that far.

14 Your Honor, then we move on to Mr. Presley's
15 statements, plural. He has supplied some various
16 scenarios that he says he got from Mr. Commander.
17 Your Honor, none of those are -- can be used to prove
18 malice in this case, which leaves us at the bottom
19 with Dr. Nichols, who couldn't even conclusively tell
20 how Ms. Goodwin died. The diagnosis or the conclusion
21 on his report of the final anatomical diagnosis for
22 this case was probable asphyxiation.

23 It is tempting -- tempting, excuse me, I
24 understand, to look at the facts and circumstances
25 after the fact to look at, oh, well, he had her credit

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1 cards and he had her purse. None of these things --
2 none of these things can be supplied or can be used by
3 the jury to make a finding of fact that there was
4 malice in this case. The State has provided no
5 evidence that there was malice in this case.

6 Your Honor, suspicion of guilt is not enough to
7 go the jury. And that, frankly, is all the State has
8 raised.

9 Beg the Court's indulgence.

10 (Pause.)

11 MS. MOBLEY: In order for this jury to find this
12 man guilty of murder, they would have to base that on
13 either suspicion or basically innuendo or speculation.
14 And none of those are permissible inferences to be
15 made by the jury. There has to be some level of
16 proof.

17 And I understand at this stage almost everything
18 goes to the jury. I understand that. But this is a
19 unique case, Your Honor. There has been no evidence
20 as to malice. We would therefore respectfully
21 request that the Court grant a directed verdict on the
22 charge of murder.

23 Thank you.

24 THE COURT: All right.

25 MR. MEADORS: May it please the Court?

1 THE COURT: Mr. Meadors?

2 MR. MEADORS: Your Honor, I guess we heard the
3 evidence differently. I think the record is full of
4 examples of malice. Malice can be expressed, it can
5 be inferred. It can be inferred by brutal conduct,
6 excessive force, attempt to mislead police as to
7 killer's ID, State v. Ballington. It can be inferred
8 from John Fitzgerald Presley's testimony when he said
9 initially, "She hit, me I fell on her, I was
10 unconscious," and then said, "Well, no, she hit me, I
11 fell on her."

12 "Were you unconscious?"

13 "No, I just laid on her and suffocated her."

14 That is malice, Judge. That is in the record.
15 And we think it is abundant evidence of malice.

16 And, again, I guess we'll argue, how we're going
17 to argue if we get there, but all the other
18 circumstances, showing "I'm alive," which we think
19 circumstantially would show that he not only killed
20 her but did know it, does go to malice. Certainly
21 we'll be arguing that.

22 We think the record is clear and we respectfully
23 -- there's prior difficulties, Your Honor. There's a
24 note. Clearly I think there's evidence the jury can
25 infer malice from that.

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1 We just ask to let the jury hear it. We think
2 there's plenty of evidence of malice.

3 THE COURT: All right. Ms. Mobley?

4 MS. MOBLEY: Very briefly, Your Honor. Going
5 over the examples just cited of malice by the
6 Solicitor, the note doesn't tell us anything. The
7 text messages, unless they are arguing that the text
8 messages were sent while Ms. Goodwin was still alive,
9 cannot, under the law, be a basis for malice.

10 Brutal force I believe was the first example he
11 gave. The clinical testimony is that there was no
12 sign of trauma to the body whatsoever, none. And John
13 Presley's statements, again, do not supply us with a
14 situation in which malice can be inferred.

15 That's all from the Defense.

16 MR. MEADORS: Your Honor, brutal or excessive
17 force, the State -- State v. McLemore clearly states
18 that he just laid on her and suffocated her, and that
19 would be an example of excessive force.

20 In addition to the statements, Your Honor, I
21 didn't follow up, but, "I did kill her like I" -- the
22 statement he made to the police officer, "I'm going to
23 kill myself like I killed Vonnie," and also, "I
24 didn't" -- "I just had to do it," the last statement
25 he made I think to Buzali, "I did what I had to do."

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1 That would be another example we believe of malice
2 directly from the Defendant's mouth.

3 MS. MOBLEY: If I may respond just --

4 THE COURT: All right.

5 MS. MOBLEY: -- very briefly.

6 MS. MOBLEY: Your Honor, the McLeMore case that
7 Mr. Meadors is citing, that gentleman was found to
8 have used excessive force because he repeatedly struck
9 someone with his fists. I just wanted to clear that
10 up -- in the head with his fist.

11 THE COURT: All right, I have heard the testimony
12 and the evidence here. There is sufficient evidence
13 in the record, not only through the statements or the
14 testimony of Mr. Presley, but other circumstantial
15 evidence that would, if believed by the jury, tend to
16 establish the element of malice, which is required on
17 a charge of murder, malice being defined as a heart
18 devoid of social duty fatally bent on mischief.

19 The testimony of Mr. Presley that one of the
20 statements by the Defendant was that he did fall on or
21 lay on top of the victim and that she suffocated and
22 he was not unconscious would be evidence of malice.

23 For that reason, that motion is denied.

24 MS. MOBLEY: Thank you, Your Honor.

25 THE COURT: All right. All right, is the Defense

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1 ready to proceed?

2 MR. STRICKLER: Yes, Your Honor.

3 THE COURT: Do you need a few minutes?

4 MR. STRICKLER: No, sir.

5 THE COURT: Okay.

6 MR. STRICKLER: If the Court desires to inquire
7 of Mr. Commander as to whether or not he wishes to
8 exercise his constitutional right to testify, now
9 would be an appropriate time to do so. I have
10 conferred with him sufficiently.

11 THE COURT: At this time, is it your
12 understanding that he is going to exercise his right
13 or not?

14 My understanding is that I don't have to go
15 through that colloquy if he is exercising his right,
16 he obviously understands it and exercises it. If he's
17 not, then I've got to be sure that he does understand
18 it.

19 MR. STRICKLER: Yes, sir, and it would certainly
20 be silly if he were going to exercise it, to do
21 colloquy. That's why I'm standing down --

22 THE COURT: And if you need a few minutes, I'll
23 be glad to take a break.

24 MR. STRICKLER: I just checked out to see if his
25 decision is the same as it was. And he is ready to

1 talk to Your Honor in that regard. He does not wish
2 to testify, as I understand it.

3 THE COURT: Is that correct?

4 THE DEFENDANT: Yes, sir; no.

5 THE COURT: And your attorney has been over with
6 you your right to remain silent, it cannot be used
7 against you? I will instruct this jury that they
8 cannot even discuss that in the jury room, you
9 understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you do intend to exercise your
12 Fifth Amendment right to remain silent, is that
13 correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right, sir, that is fine. I
16 think that's all I need to do.

17 MR. STRICKLER: That is fine, Your Honor. And we
18 will rest.

19 THE COURT: All right, I'm going to get the jury
20 in and dismiss them for the weekend, and then we can
21 have a conference and do whatever we need to do at
22 this point in time.

23 Let's bring the jury in, please.

24 (WHEREUPON, the jury came into open court
25 at approximately 3:01 p.m.)

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1 THE BAILIFF: Your Honor, the jury is present.

2 THE COURT: All right. Mr. Foreman and ladies
3 and gentlemen, before we took that break, as you
4 heard, the state had rested. I can now advise you the
5 Defense has also rested, which means that all the
6 testimony and other evidence that will be presented in
7 this case has been presented.

8 If you'll think back to Tuesday when the trial
9 started and I gave you a few comments and explained to
10 you procedurally how the trial would proceed, I did
11 indicate to you that after all the evidence had been
12 presented, then the attorneys would come back and make
13 closing arguments to you and then I would explain and
14 charge you with the law.

15 That is where we are in the trial. There are
16 some other matters I need to take up with the
17 attorneys. And I told you yesterday we would not go
18 till 6 o'clock today.

19 So what we're going to do at this time is stop as
20 far as you're concerned. We'll continue working on a
21 few things that I need to tend to. But we'll stop now
22 as far as the trial is concerned. And when you come
23 back on Monday you'll hear the closing arguments and
24 then the instructions of law.

25 We've got five courts going on next week, and one

1 thing that I have to tend to, we've got two General
2 Sessions judges and three Civil judges. I have to
3 deal with some motions, not in anything in this case,
4 but in other cases that have been scheduled for
5 several weeks. I have to do that first thing on
6 Monday.

7 I'm going to ask you folks to delay coming in
8 until 12:30. And when you come, please already have
9 had your lunch. We won't be taking a lunch break.
10 when you get here, you'll hear the arguments. I can
11 get these other matters that I have to deal with dealt
12 with, and we should be in a position to immediately go
13 into the closing arguments and the instructions of
14 law.

15 Now, I've told you repeatedly, and I'm going to
16 tell you again and order you, not to discuss the case
17 over the weekend with family or friends or anyone else
18 inside or outside the courthouse. Again, do not read
19 or watch or listen to anything about the case. You're
20 the only folks that will be making a decision in this
21 case. It has to be based only on the evidence that
22 has been presented here, and I don't want you to read
23 or listen or have any conversation with anyone that
24 may in any way influence your decision in the case.

25 So have a good weekend. Be back in your jury

1 room at 12:30 on Monday and we'll continue at that
2 time.

3 You're excused. We'll see you on Monday.

4 Everyone else state seated, please.

5 Oh, one other thing before you leave. I got your
6 note, and I will take care of those distractions
7 you're talking about.

8 Thank you very much.

9 (WHEREUPON, the jury retires for the
10 weekend at approximately 3:04 p.m.)

11 THE COURT: I'll make this a Court Exhibit, but
12 the jury -- this is signed by the jurors. So I guess
13 it is from all the jurors. It says: Judge, we want
14 to bring to your attention that we are becoming
15 extremely distracted by people sitting immediately
16 behind the attorneys for both sides. Another issue is
17 the constant traffic flow in and out of the courtroom
18 during testimony.

19 I just give that to counsel for your advice with
20 those who sit behind you, and I feel certain that
21 they're not talking about the witnesses in the
22 courtroom, it's probably your other folks.

23 (WHEREUPON, Court's Exhibit Number 2,
24 Note from the Jurors, is marked for
25 identification.)

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1 THE COURT: Let's meet in chambers and discuss
2 charges for a few minutes, and then we'll be done.
3 We'll recess until 12:30 on Monday.

4 (WHEREUPON, the Court was in recess for the
5 weekend.)

6 TUESDAY, OCTOBER 16, 2006:

7 THE COURT: We have discussed charges and
8 considered requests for charges. And I have advised
9 counsel what I would intend to charge, and of course
10 you still, as I had indicated, I think need to take
11 exception after the charge has been given. And the
12 Court will be charging murder and the lesser included
13 offenses of voluntary and involuntary manslaughter. I
14 will not be charging either self-defense or accident.

15 I think the only other thing I need to put on the
16 record is we had some discussion about whether the
17 Defense was requesting that I define homicide, and Mr.
18 Strickler has advised that that request is not being
19 made, is that correct?

20 MR. STRICKLER: That's correct, sir.

21 THE COURT: All right. Is there anything else
22 you want to put on the record at this time, Mr.
23 Strickler?

24 MR. STRICKLER: Just briefly, Your Honor. As I
25 indicated in chambers, I did request that you charge

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1 resolution of doubt. I'm passing this to the court
2 reporter and ask that she make it a Court's Exhibit.

3 (WHEREUPON, Court's Exhibit Number 3,
4 Defendant's Request to Charge Number 1, is
5 marked for identification.)

6 MR. STRICKLER: The resolution of any doubt as a
7 lesser included --

8 THE COURT: That's the King charge, is that
9 right?

10 MR. STRICKLER: State v. King. This is my
11 understanding of the appropriate language, the
12 Defendant's Request, Instruction Number 1.

13 And, Your Honor, I will except at the appropriate
14 time Your Honor's denial to charge self-defense and
15 accident. I just have to ask the record to reflect I
16 did not submit written charges in that regard because
17 I was not asking for any particular language --

18 THE COURT: Right.

19 MR. STRICKLER: -- just for the charge, Your
20 Honor.

21 THE COURT: Does the State need to put anything
22 on the record?

23 MR. MEADORS: Are you charging this, Your Honor,
24 reckless without favor?

25 THE COURT: That is a standard King charge. When

1 I go through and talk about reasonable doubt, I talk
2 about the whole case and then I talk about if you've
3 got any reasonable doubt as to the charge in the
4 indictment or a lesser included charge -- lesser
5 included offense, they could return a verdict of
6 guilty only as to the lesser included. And of course
7 all the elements of that charge have to be proven
8 beyond a reasonable doubt.

9 MR. MEADORS: That's included in your general
10 charge?

11 THE COURT: Yes. I won't be charging this
12 separately, it will be incorporated. And if you're
13 not satisfied with the way it is, there will be time
14 to ask me about that.

15 MR. MEADORS: Thank you.

16 THE COURT: And I believe Ms. Campbell indicated
17 you will be making the full argument for the State, is
18 that right, Mr. Meadors?

19 MR. MEADORS: That's correct.

20 THE COURT: And, Mr. Strickler, you will be going
21 for the Defense?

22 MR. STRICKLER: Yes, sir.

23 THE COURT: The final argument. All right, let's
24 get the jury in, please.

25 THE BAILIFF: Yes, sir.

1 THE COURT: Wait, wait one second. Wait one
2 second. Let me talk to counsel in chambers one
3 second. There's one issue that I'm still sort of up
4 in the air about. Let me talk to y'all in chambers
5 one minute, please. We'll take a brief recess.

6 (WHEREUPON, the court was in recess.)

7 THE COURT: All right, Solicitor, are you ready?

8 MR. MEADORS: The State is ready.

9 THE COURT: Is the Defense ready?

10 MR. STRICKLER: Yes, sir.

11 THE COURT: All right, let's get the jury in,
12 please.

13 THE BAILIFF: Yes, sir.

14 (WHEREUPON, the jury came into open court
15 at approximately 12:55 p.m.)

16 THE BAILIFF: Your Honor, the jury is present.

17 THE COURT: Mr. Foreman and ladies and gentlemen,
18 I appreciate you being here on time. Before we
19 proceed with the closing arguments, I do know that
20 there was at least one article in one paper over the
21 weekend about the case simply because I happened to
22 see the headlines as I was going through. I do need
23 to inquire if any member of the jury has read or seen
24 or heard or had any discussions with anyone about the
25 case during the weekend break? If so, would you just

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1 raise your hand for me.

2 (No response.)

3 THE COURT: All right, we will -- we are to the
4 point -- if you'll think back to Friday, I told you
5 when you came back you would hear the closing
6 arguments from the attorneys. Procedurally you will
7 first hear from the State, from the solicitor's
8 office, and then the Defense attorney will make the
9 final argument.

10 The attorneys, I am sure, are going to go over
11 and review with you their recollection of what the
12 testimony and other evidence has been. They have a
13 right to do that. I would simply point out to you
14 that if your memory differs with theirs, you rely on
15 your memory.

16 Once they have made their closing arguments to
17 you, then I will instruct you or charge you with what
18 the law is in this case and then you'll be sent back
19 to deliberate and to reach a verdict in the case.

20 I will ask you to please give both attorneys your
21 full attention as they make their arguments to you.
22 whether we take a short break either between the
23 arguments or before I give you the charge, I'll just
24 play that by ear and then see how the time goes.

25 Please give both attorneys your full attention as

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1 they make their arguments.

2 All right, Mr. Meadors?

3 MR. MEADORS: May it please the Court?

4 THE COURT: All right, sir.

5 CLOSING ARGUMENT ON BEHALF OF THE STATE

6 BY MR. MEADORS:

7 Ms. Campbell, Mr. Strickler, Ms. Mobley. We
8 don't have to prove motive in this state. We don't
9 have to. Motive is not an element of the offense of
10 murder. But it is there in this case. We did prove
11 it. When you get right down to it, it is what this
12 case is all about. If he can't have her, nobody can.
13 That is what it boils down to. If he is not going to
14 be with her, nobody is going to be with her. And that
15 is what this case is about.

16 Mr. Foreman, ladies and gentlemen of the jury,
17 you've been introduced -- I've been introduced to you.
18 My name is John Meadors. I am the Deputy Solicitor
19 for the Fifth Judicial Circuit. The First Assistant
20 Solicitor is Ms. Luck Campbell. We work for Solicitor
21 Barney Giese, the elected Solicitor of the Fifth
22 Judicial Circuit. As y'all probably know, the Fifth
23 Circuit is made up of Kershaw and Richland Counties.

24 We are here today representing -- this is an
25 important day of court. We are here today

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1 representing Gervonya -- Vonnie Goodwin, her family,
2 as representatives of the State of South Carolina in
3 Richland County.

4 We have all got roles here. Mr. Strickler
5 represents the state and is also representing the
6 Defendant Christopher Commander. His Honor has an
7 extremely important role. He is the judge of the law.
8 Judge Johnson is the law in this case. He is the law,
9 the law books sitting up there, he will tell y'all
10 what the law is after this.

11 And I have heard it recently described as a team.
12 It's not a game, it's the furthest thing from a game.
13 But it's a team. And we're basically the same players
14 week in and week out. Everybody in here loves their
15 job. We're the same players week in and week out.

16 But the most important player comes in every
17 week, and it is a new player. It is a franchise
18 player. That's y'all. You are the franchise player
19 that makes the team every time a case is called.

20 And do you know why? It is why our system is the
21 best system in the world, why this is the best country
22 we live in. Because you 14, and you 12 that will go
23 back to that jury, are judges too. You're judges of
24 the facts. And that is why you are the franchise
25 player.

1 You listen to the evidence, the testimony that
2 came from this witness stand, the documents, the phone
3 tolls. You review all those, you apply the law that
4 His Honor, Judge Johnson, is going to give you, you
5 decide which of those facts are credible, believable.
6 You determine that based on what you heard up here and
7 what was entered into evidence and you come back with
8 the beautiful, beautiful word -- the verdict -- which
9 means to speak justice. Y'all decide that. That's
10 why it is a beautiful system in our country, y'all
11 decide.

12 How do you do it? Well, there really will be
13 another -- actually will be 24 people in that room
14 back there, 24. Ms. Scott doesn't have a class on how
15 to be jurors. Y'all go into that real quick right
16 before you are qualified on Monday. Well, I think
17 when Judge Lee qualified you and all that, but Ms.
18 Scott does not have a little class to go in, but
19 you've been going to class to learn how to be a juror
20 for your whole life and you bring it in here with you.
21 There will really be 24 of you in there because each
22 one of you will bring your common sense. That is what
23 this case boils down to, like most cases. Bring your
24 common sense in there with you as you evaluate this
25 evidence, as you go over this evidence.

1 This part of the proceeding -- this part of the
2 proceeding is called closing arguments. It is a
3 terrible name for it. Y'all can't -- we can't sit in
4 here and argue. Y'all can't say, John -- you may not
5 want to call me John, but you can't say, John, what
6 about this, what about that, and I can't say, juror,
7 what about -- we don't get to interact back and forth.

8 So it's not a good name for it. But it's a
9 chance for the lawyers, Mr. Strickler and myself, to
10 come up here and tell you what we think the evidence
11 showed, what our ears heard, what these documents mean
12 to us, the reasonable inference from it. That is what
13 we're allowed to argue to y'all, that's what we're
14 allowed, we can't go beyond that. It has got to be a
15 reasonable inference. And we're going to do that. He
16 is a fine attorney. We're both going to try to do
17 that. It is your ears and your eyes that decide what
18 the evidence is.

19 I'm going to start off -- the State has the
20 burden of proof. I'm going to argue, Mr. Strickler is
21 going to then have the final argument. I'm now going
22 to briefly go over with you what I believe the law in
23 this case is. Again, y'all know who the law is, and
24 he is going to instruct you in a minute. But I'm
25 going to go over what I believe the law is in a very

1 condensed version of the judge's charge.

2 Every case is a law case. This case is a fact
3 case. The facts drive the law on this case if there
4 ever was.

5 What is he indicted with? Y'all heard to start
6 with when the judge said it. Christopher Commander
7 has been indicted by the Richland County Grand Jury,
8 which is just the charging paper, with the offense of
9 murder. Y'all know what murder is. It's the unlawful
10 killing of another person with malice. Remember the
11 word malice -- and somebody remind me at the end of my
12 closing argument where I added a different additional
13 definition of malice. I'm going to call Mr. Webster
14 and I'm going to ask for his relatives and say, sir,
15 there's a new definition of malice that needs to go
16 under, it's number three in your dictionary.

17 The unlawful killing of another person with
18 malice aforethought either expressed or inferred. In
19 it's popular sense, the term malice conveys the
20 meaning of hatred, ill-will or a hostility towards
21 others. It's a meanness, an evilness, a wickedness
22 one person shows to another. A heart so totally bent
23 on social injustice, devoid of any social injustice.
24 It's a term importing wickedness and excluding just
25 cause or excuse. It's something that springs from a

1 wickedness, from depravity, from a heart devoid of
2 social duty fatally bent upon mischief.

3 It can be inferred from the willful, deliberate
4 and intentional doing of an unlawful act. You can
5 infer it. Two ways to infer malice: expressly -- it
6 can be expressed malice, I'm going to kill you; it can
7 be inferred malice from the use of a deadly weapon,
8 from the circumstances surrounding the crime.

9 Let's look at expressed. We've got expressed
10 malice in this case. "I'm going to kill myself like I
11 killed Vonnie," "I just did what I had to do," that is
12 expressed malice.

13 Use of a deadly weapon. Well, there is no deadly
14 weapon used here, which goes to how we know it is
15 suffocation. Can a body be a deadly weapon? A hand
16 can be under certain circumstances. 6 foot 2, 6 foot
17 3, 230 pounds over a 5 foot 3, 100-pound woman. A
18 body is a deadly weapon. We've got expressed malice,
19 we've got inferred malice, inferred from the use of
20 his body, or hand, however he suffocated her.

21 Inferred malice, expressed malice. Malice may be
22 inferred from the conduct showing a total disregard of
23 human life. That sums up this case right here, ladies
24 and gentlemen.

25 Malice aforethought. Malice aforethought is a

1 term of art. You don't have to plan. Just like we
2 don't have to prove motive in this state, we don't
3 have to prove any premeditation. You don't have to
4 prove somebody planned something, decided they were
5 going to do that and carried it out.

6 Malice aforethought -- and remember this, and the
7 judge will instruct you in this -- all it has to do is
8 exist at the time and right as the event is happening,
9 as he is either laying over her body suffocating her
10 to death or putting her hand over or putting her
11 pillow over, who knows how he suffocated her. That's
12 malice aforethought as he's doing it. As the doctor
13 said, it takes two, maybe a couple or three minutes
14 for her to die. Malice aforethought.

15 I've got to do -- what I want to do -- what I'm
16 going to do right now, I don't want to, but I've got
17 to. And I respectfully submit based on the evidence -
18 - I hope you don't spend any more time on it than I'm
19 doing it right now. The judge is also going to charge
20 you and you'll be able to consider voluntary
21 manslaughter. I'm asking you don't do it. I'm saying
22 the evidence doesn't show it, but you've got a right
23 to hear it.

24 Voluntary manslaughter. The Defendant took the
25 life of another in the sudden heat of passion based on

1 sufficient legal provocation. They must exist at the
2 same time, the sudden heat of passion, the sufficient
3 legal provocation.

4 Classic examples of that, if one is to come in a
5 room and sees your wife or your husband engaging in an
6 adulterous affair and you see them doing that and you
7 (indicating) strike the fatal blow. You don't get
8 off. You can't just -- you know that's not a good
9 thing to do. You don't get off, but the law says that
10 isn't -- that is an example of sufficient heat of
11 passion, sufficient legal provocation if you kill.
12 You're still not -- you still don't get away with it.

13 Another example, if you were to get in a fight
14 with someone much bigger, you get beat with a baseball
15 bat, let's say, and you fight back. That's an example
16 of voluntary manslaughter. Both must exist at the
17 time of the killing to constitute voluntary
18 manslaughter.

19 The heat of passion had cooled or there was
20 enough time between the provocation, if any, and the
21 killing for the passion of a reasonable person to
22 cool, then it would not be voluntary manslaughter.

23 In the previous examples, if you came in and
24 caught your wife cheating and you then left and went
25 back -- went home and started thinking about it and

1 came back and killed them, well, that wouldn't be
2 voluntary manslaughter then, wouldn't it?

3 But the point being in this case, that's got
4 nothing to do with this case - respectfully. The only
5 evidence -- and I'm going to put it up here -- the
6 only evidence that you might have of voluntary
7 manslaughter would be the first statement, I guess,
8 the Defendant gave to John Fitzgerald Presley when he
9 said, well, she hit me with a stick, I went
10 unconscious. Well, no, the next statement, she hit me
11 with a stick, I wasn't unconscious. But is that
12 sufficient legal provocation, the stick? Where's the
13 stick? There's no stick.

14 And you've got to judge all this by the
15 credibility of the person that is telling this,
16 through John Fitzgerald Presley. There's no evidence
17 of sudden heat of passion. None. No stick. He's 6
18 foot 3, 230. She's 5-3, 100.

19 You've got a right to come back with that. I
20 almost say come back with not guilty if you were going
21 to do that.

22 Involuntary manslaughter. The killing of another
23 without malice, no hatred, no ill-will, no conduct
24 showing a total disregard to the rights of others, no
25 expressed malice, inferred malice, unintentional. The

1 difference between voluntary and murder is that there
2 is no malice in voluntary manslaughter. Involuntary
3 says it's just unintentional. An unlawful act not
4 amounting to a felony and not tending to cause the
5 death or great bodily harm. A lawful act with
6 reckless disregard for the safety of others.

7 You know, he threw this out of the window in the
8 second statement, didn't he, to John Fitzgerald
9 Presley? We'll, as he went to his lawyer who paid in
10 the campaign -- canteen fees, he said, what about this
11 if I tell my lawyer, she hit me with a stick, I went
12 unconscious, I fell on her and she died.

13 Guess what Mr. Presley said? Nobody is going to
14 believe that. And he is right.

15 And the next day he said, well, what happened.
16 Well, she didn't hit me with a stick, I did fall on
17 her, but I wasn't unconscious.

18 And then the final statement. Do you remember
19 when his lawyer approached him and asked him again,
20 and I may mention this two or three times, maybe his
21 lawyer, he said, you said she was on medication, could
22 she have taken an overdose?

23 And what does -- he finally said, no, I
24 suffocated her.

25 That does away with involuntary and voluntary.

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1 And we're left with murder.

2 If he can't have her, nobody's going to have her,
3 nobody is going to be with her, nobody is going to
4 share her, nobody else is going to raise that baby.

5 There are different types of evidence -- and I'm
6 about through with this law. The different types of
7 evidence you have heard and the judge will charge you.

8 The first is direct evidence, evidence somebody
9 gathers with one of their senses. It's common sense,
10 good old common sense just all throughout this trial.
11 It's something a person hears with their ears, sees
12 with their eyes, smells with their nose, tastes,
13 touches, and they come in here and tell y'all, hey, I
14 heard this, I smelled this, I touched it, I felt it.
15 That's direct evidence.

16 There's also something called circumstantial
17 evidence. And this is a circumstantial evidence case
18 to an extent. Two types of evidence are generally
19 presented. Direct, as I've just told you, is a person
20 asserts or claims to have knowledge of a fact such as
21 eyewitness. Circumstantial evidence is proof of a
22 chain of facts -- proof of a chain of facts and
23 circumstances indicating the existence of a fact.
24 Isn't that beautiful? Circumstantial evidence is
25 proof of a chain of facts and circumstances indicating

1 the existence of a fact.

2 Phone call made from 4 -5816, comes through
3 Keyonna. A phone call was made to Trish Blendowski,
4 she hit *69 back to a number that just called her and
5 said that Gervonya was in the hospital, but she
6 wasn't. What number shows up? -5816.

7 Circumstantial evidence.

8 The law makes absolutely no distinction between
9 the weight or value to be given to either direct or
10 circumstantial evidence. Nor is there a greater
11 degree of certainty required to circumstantial
12 evidence than of direct evidence.

13 You should weigh all the evidence in the case,
14 and after weighing all the evidence, if you are not
15 convinced of the guilt of the Defendant beyond a
16 reasonable doubt, you must find the Defendant not
17 guilty. If, on the other hand, you are convinced of
18 the Defendant's guilt beyond a reasonable doubt, then
19 you must find him guilty.

20 I'm about through with the law. Please listen to
21 this. The burden on the State in this case today in
22 Columbia, South Carolina is the same burden that is on
23 every prosecution that is trying a case this week and
24 last week. And y'all know what it is. We have to
25 prove Christopher Commander guilty of murder beyond a

1 reasonable doubt. Everybody's heard it. We hear it
2 on the TV all the time.

3 Beyond a reasonable doubt. It is proof that
4 leaves you firmly convinced of the Defendant's guilt.
5 There are very few things, very few things, in the
6 world that we know with absolute certainty. And the
7 law does not require that in criminal cases. They
8 don't require in criminal cases proof that overcomes
9 every possible doubt. If based on your consideration
10 of the evidence you are firmly convinced that the
11 Defendant is guilty of the crime charged, you must,
12 under your oath, find him guilty.

13 If on the other hand you think there is a real
14 possibility that he is not guilty, you must give him
15 the benefit of the doubt and find him not guilty.
16 Beyond a reasonable doubt, beyond a doubt that would
17 make reasonable folks hesitate to act. I can tell you
18 the sun is not going to come up in the morning or the
19 river is not going to run tomorrow, but that's not
20 reasonable.

21 As I've gotten older, as I am getting older, and
22 trying to explain this, it has come back to -- I think
23 it's almost like common sense. I think it's almost
24 like common sense. And there may be questions out
25 there. We can question anything. There may be one or

1 two questions out there. Well, was this done, did
2 that phone go to there? As a result of this, what
3 about that? But sometimes questions are just
4 questions. Just because you may have a question here
5 or a question there, it doesn't mean the State hasn't
6 proved his guilt beyond a reasonable doubt. I dare
7 submit we have almost proved beyond all doubt. Hold
8 us to our burden. But you can't, as the law says,
9 prove everything. I think we've come close.

10 Let's get to the facts. How do we know he did
11 it? And we've got to prove that Chris Commander on or
12 about November 30th, 2004, with malice aforethought,
13 killed one Gervonya Goodwin and that she died as a
14 proximate as a result thereof. And that he killed her
15 we've alleged by asphyxiation, suffocation.

16 How did we do that? If I can't be with her,
17 nobody is going to be with her. We established a
18 timeline, an incredible timeline, incredible timeline.

19 Keyonna, back there on the front row, Keyonna
20 Goodwin, daughter, said in the summer of 2004, I
21 talked to my mama, we talked, we talked on the phone,
22 we visit, we communicate, mama/daughter, we talked.

23 On August 18th, 2004, August 18th, 2004, mama takes
24 her to the airport to go where? The University of
25 Toledo, Ohio. She didn't know that would be the last

1 time she saw her mama, but she takes her. She goes to
2 school. They call. They communicated. They talked
3 with each other. She says she thinks, she thinks it's
4 the day after Thanksgiving is the last time she talked
5 to her.

6 When did she expect to hear from her again?
7 Remember this date, December 2nd. A lot of folks were
8 waiting for that phone call on December 2nd from
9 Gervonya, a lot of people were. It didn't come. It
10 didn't come.

11 Pamela Taylor, a timeline is set up by family, by
12 friends, by business acquaintances, by records. Pamela
13 Taylor, she spent the night with her the 28th.

14 What was her state of mind, Ms. Campbell asked
15 her. She was uneasy. Was she still staying with
16 Christopher Commander? No, sir -- no, ma'am.

17 Who sees her on the 29th? Latisha Pratt from 3:30
18 to 6 on the 29th. It is a timeline. It is incredible.
19 3:30 to 6. How did she feel? She was uneasy,
20 restless. When were you supposed to see her again?
21 She was supposed to baby-sit for me the next morning
22 after her appearance.

23 You want a timeline, ladies and gentlemen?

24 The 29th. And Michael Brown, bless him for being
25 here. That tells you something about a person who

1 knew how to get along with an ex, doesn't it? He
2 said, you know, I can't remember the last time I seen
3 her -- seen her or talked to her. I know I didn't see
4 her after the 29th. I may have taken some stuff over
5 there for Keyonna, taken to Barbara, over to another
6 relative's. Didn't see her after the 29th.

7 Latisha Pratt was waiting, she was supposed to
8 come back to pay baby-sit. Timeline, a timeline.

9 And this, ladies and gentlemen -- Sheryl, her
10 sister, has talked to her that summer. She has
11 communicated with her. She's talked to her on the
12 phone. She talked to her at least a couple of times
13 in the summer of 2004. Thinks she came to the fair
14 -- knows she came to the fair. Took Christopher with
15 her. He didn't say much, but Christopher is with her.
16 Is there any doubt about that? She knows too when she
17 talked to her in November that Christopher is no
18 longer in the home. She thinks the last time she
19 talks to her is November 20th or 23rd, I think. Does
20 not hear from her after that.

21 But on the night of November 29th, she goes home,
22 the last time Latisha Pratt sees her. Barbara Jean,
23 her mama, sitting right up there, had seen her, seen
24 her on the 29th, the last time she saw her. Timeline,
25 family friends, the last time we see her on the 29th,

1 there's no doubt about that, ladies and gentlemen.

2 And what happened on the 30th? At 10 o'clock on
3 the 30th she's got a pretrial conference. Lawyers get
4 a bad name. There's a lot of jokes about us lawyers.
5 I'm going to recommend a lawyer to you right now. And
6 we're not supposed to do that. I know y'all wouldn't
7 ever get in trouble, but if you ever need a lawyer,
8 call Randy Hough. You call Randy Hough. And I'll
9 tell you why.

10 Gervonya Goodwin doesn't show up for court. She
11 calls -- he calls Trish Blendowski. She's not here,
12 try to find her. Trish, have you ever had trouble
13 getting her? Never. She's always on time. She's
14 always here. She starts calling, calling the number
15 that she has always gotten her. Can't get her, can't
16 get her, leave a message, trying to get her.

17 Well, a short while later, I think she said 20
18 minutes, I don't know, a short while later a phone
19 call comes in. What did that phone call say? Not
20 offered for the truth of the matter asserted because
21 it is not true. It says Gervonya is in the hospital,
22 stomach pains. Click. Who was it? Gervonya? No,
23 I've talked to Gervonya, it's not Gervonya. Was it
24 even a female? No, sir, it was a male.

25 *69. You want circumstantial evidence? It comes

1 back -5816. Guess what folks? That's where she's
2 been trying to get Gervonya. You want a timeline?

3 This is why you need to hire Randy Hough. He
4 goes to the area hospitals. He goes to the area
5 hospitals to look for Gervonya. She's not there. And
6 he asked Trish to go check. She went and checked a
7 few days later, called, checked. Was she there the
8 30th, had she been there now? No, she wasn't there.

9 Even old Bill Stevens, Scott McDonald told us, he
10 went and checked and tried to pull a record from the
11 coroner's office. She wasn't there, it was a lie.

12 Sometime on or about November 30th, late the 29th,
13 early morning hours of the 30th, I don't know when,
14 that's when Gervonya Goodwin departed this world. The
15 evidence said there's no question about it. A
16 timeline.

17 Let's go back. December 2nd comes. The call to
18 share the joy and excitement of what the sex of the
19 new baby. What sex is it? We don't know, because the
20 call never comes, because she's dead.

21 What does Keyonna do? She is dialing. She's
22 dialing. She's dialing. Mama, you're supposed to let
23 me know what the sex of the baby is. She's dialing.
24 And she gets -- she gets -- if this isn't malice,
25 malice doesn't exist. She gets the first text message

1 back. And do you remember, by the way, mama's an
2 inference --

3 MR. STRICKLER: I object to his inference -- to
4 infer malice from statements made after the fact.

5 MR. MEADORS: I think that's clearly the law,
6 Judge.

7 THE COURT: Come up -- come up.

8 (WHEREUPON, a bench conference was held in
9 the presence of the jury but out of the
10 hearing of the jury.)

11 THE COURT: The objection is overruled. Go
12 ahead.

13 MR. MEADORS CONTINUES:

14 You can take statements and actions made after
15 the events have happened and infer malice existed at
16 the time this happened, and I'm begging y'all to do
17 that, because that is what it was.

18 December 2nd, the first was after the phone calls
19 come in. I don't know if he knew about that doctor's
20 appointment then or not. He should have. I'm going
21 to show you it was in this purse, in her purse, in her
22 purse he's got. So maybe he knows he's finally got to
23 respond.

24 I think where I left off before, how many times
25 has she text messaged before? Never. Never to

1 Sheryl, Barbara didn't have a cell phone, never to
2 Keyonna.

3 well, after these phone calls she gets the first
4 text messages, Keyonna does, it goes -- and you
5 remember the way she described it up here? She said
6 it was broken up, did you, and I think she said it had
7 the "y" and maybe some letters missing, or missing an
8 "o" and did you get mess -- message. In an area, a
9 bad signal. Did that make sense to you? No. I know
10 you can't even text message without a signal.

11 A few days later, she's calling, she's calling.
12 I believe on the 5th, a few days after that, she says
13 she gets another message, I'm at the beach, be back
14 Monday. The inference is, quit bothering me, quit
15 bothering me, I'll be back Monday. It doesn't say
16 where. It doesn't say where, it says I'm at the
17 beach.

18 Now, Sheryl, her sister Sheryl says, mom's not
19 doing well -- I am supposed to give her some --
20 supposed to give Gervonya some baby furniture too, I
21 think she said. But she says in here, mom's not doing
22 good. Anytime mom wasn't doing good we contacted each
23 other. I couldn't be with her, you need to come back
24 and stay with mom. Go stay with Barbara Jean, our
25 mama.

1 So she's calling, she's calling, she's calling
2 also. She gets a text message she's never gotten
3 before. Background in government, some kind of
4 training, she knows how to work with computers. Her
5 message said, she said, I'm at the beach, leaves a
6 number but not a whole number, so she can't figure out
7 what it is, 843, maybe a few numbers missing. I'm in
8 room so and so, doesn't even say the motel. Inference
9 of malice that existed back when this happened? Yes,
10 sir, yes, ma'am.

11 You can infer flight. You can infer flight as
12 guilty. He's fleeing, he's trying to cover up, don't
13 want people to know where he is.

14 Sheryl starts looking. Uses her computer skills,
15 I guess she's got in the government. I guess that's
16 okay to do it. She starts looking. She looks in the
17 Myrtle Beach area, tries to track down the phone
18 number of the motel. She can't do it.

19 Where has he been this whole time? He's got her
20 ATM. Go back and look. Getting money out in Tampa.
21 Getting money out in Orlando, Miami, December 2nd. The
22 21st, I'm coming back to that. That's when the money
23 is starting to run out so he had to forge another one
24 of her checks, put into a bank to start drawing out
25 some more money.

1 Look what he's doing all this time as they're
2 calling, as they're calling, as they're calling.

3 Christmas rolls around. Mama's not there. And
4 by the way, another reason Keyonna was trying to get
5 her was because mama was supposed to come get her,
6 first semester in college. Her godmama had to end up
7 sending a flight, I think, to come home and get her.

8 And on the 20th, on the 20th -- by the way, before
9 I forget, Barbara Jean Jones did say, you know, I got
10 these keys here, let's go see if they'll work. Prior
11 to the 20th they went over there. They wouldn't work.
12 Wonder why she changed those locks? And she told
13 Barbara Jean earlier when she talked to her, Barbara
14 Jean said she was restless. Well, what did you tell
15 her? I told her to kick him out. She did.

16 If he wasn't going to have her, nobody was going
17 to have her. That's all this is. That's all this is.

18 Those locks had been changed. They even tried to
19 get the police to come over there before Christmas.
20 Where's mamma? They couldn't get in.

21 Christmas comes and Christmas goes. Look at the
22 phone calls on the phone toll. Christmas comes and
23 Christmas goes. If you don't remember anything else,
24 remember my next two sentences. She's calling,
25 Keyonna's calling. She's calling, she's calling,

1 she's calling. Look at the phone calls. And one of
2 those phone calls gets picked up. And what does she
3 say she hears? She hears a sigh -- a sigh.

4 Inference right in front of you. A sigh from
5 that number, her mama's number.

6 December 26th, all these phone calls. We've got
7 the tolls right here. All these phone calls. All
8 these phone calls. It's Christmas, mama, where are
9 you, where are you, where are you, where are you?
10 Connection. That's the sigh. That's incredible,
11 incredible. And that's at 11:12 (indicating).

12 From mommy, 11:15, Sunday the 26th, I'll be home
13 January 1st. Don't bother me. I'm down here. I'm
14 talking with Sivonnia, I'm talking with some other
15 women. Leave me alone. Let me get through and have a
16 good time. Quit calling me. Is that malice that
17 relates back to existence of the time? That wasn't
18 mama. Getting hopes up it's mama, though, isn't it?

19 January 1st comes and goes. Getting hopes up it's
20 mama. As you heard Dr. Nichols say, the fluid is
21 seeping from her body. And she -- he wants her to
22 quit bugging her -- quit bugging him so he can party
23 on.

24 Y'all know what happens next. M. J. s
25 birthday, January ^h. She didn't come home the 1st

1 like the message says. Look at the phone calls -- I
2 meant to do a blow-up on this, but I didn't. And by
3 the way, on December 2nd when that baby -- she was
4 supposed find out what the sex is, he's down there
5 getting \$202.00 out in Miami Beach, Florida, her ATM.
6 M.J. 's birthday comes and goes. Michael Sr.,
7 I'm going in that house.

8 January 7th, the mail had been forwarded to
9 Keyonna. Goes and checks, sees a copy. Finally we
10 get the original through great law enforcement, Scott
11 Mcdonald, who tracked this, let me talk about him in a
12 minute.

13 Looks at the check. It's not my mama's
14 signature. She knows her mama's signature. Probably
15 signed it a bunch. Looks on the back, that's not her
16 middle initial.

17 Look at the picture of the car, of Vonnie's car
18 at the ATM on 2/21 when he's making this deposit.
19 That's incredible evidence. She shows that to law
20 enforcement.

21 It's now decided from Barbara Jean, Keyonna,
22 Michael, we're going in the house the next day. We're
23 going in the house January 7th, we're going into
24 Tilting Rock, we're calling law enforcement; we're
25 getting a locksmith, we're going in the house.

1 We're at the house. They try to get in I think
2 before the locksmith gets there. Locksmiths come.
3 And I'm not good at this. I don't -- sometimes the
4 facts speak for themselves, don't they? The door is
5 open and Barbara Jean walks in that house. And I
6 submit to you she wants to believe it is the trash.
7 Mama wants to think that smell is the trash. She
8 wants to believe it. And her instinct is, let's get
9 this out of her. This is weird.

10 And she takes it out. But it's not the trash.
11 Think about what's in that trash can, though.
12 Cleaning fluid. The cleaning fluid which he used to
13 clean up.

14 You heard Trish Collins say, you know, a lot of
15 times you don't find fingerprints even in your own
16 house. I know why we didn't find anything here. He's
17 cleaning up. He's cleaning up.

18 Dr. Nichols said only one time in my 25 years
19 have we found something underneath fingernails. He's
20 cleaning up. There are gloves in there. If he tries
21 to make any issue about why anything wasn't else
22 there, DNA his client, may try to get, they're
23 cleaning, he cleaned it up.

24 That's a question that's got nothing to do with
25 this case. There's no doubt who killed Vonnie.

1 cleaning fluid, it kind of sealed the case, but it
2 wasn't the cleaning fluid.

3 Michael tries to keep Barbara out, but she goes
4 in. I'm not going to show you the picture. You've
5 got it back in there. She goes in and looks. My
6 daughter kept a good house, the blanket shouldn't have
7 even been over there. And she goes to look -- and she
8 goes to look and -- it was no accident, no voluntary
9 manslaughter. He tucked her into her tomb right there
10 after he killed her. She pulls it apart. And does a
11 mamma know her daughter's foot, does a mamma know her
12 daughter's sock? Keyonna screams.

13 The police come. They start putting together
14 this murder. All this is going on, the timeline, the
15 family, the friends, the lawyer. Y'all know what I
16 forgot? while they get there, they find a note. Your
17 stuff is on the back. If you're missing anything, you
18 can come back and get it. That's all this case is
19 about. She did kick him out.

20 Four prints stamped on here. Trish Collins says
21 two of them wasn't either one of them. One of them
22 wasn't identifiable. And the other print clearly
23 wasn't the victim's, can't say if it was the
24 Defendant's or not. I'm not going to come here and
25 say it was, I'm not going to say it wasn't. There

1 just wasn't enough there.

2 And I will tell you something, I don't know if
3 he's going to argue this. Sometimes I argue stuff
4 that they don't even think about. But if he's going
5 to say, why didn't you test Michael, why didn't they
6 test Barbara or somebody else? Then they'd be up here
7 arguing they weren't so sure it was someone else, they
8 had to go fingerprint other people. You know who put
9 these notes.

10 All this time is going on, he's using her
11 American Express, he's using her ATM, he's forging
12 her, getting more money in there. He's traveling.

13 And here's the new definition of malice -- here's
14 the new definition of malice. After they find the
15 Vonnie's 5-3, 100-pound body that's mummified, at some
16 point Keyonna talks to a fellow named Jazz, Alphonso
17 Humphrey, a friend of the Defendant's.

18 After law enforcement's there, after her body has
19 been discovered, after Barbara has been calling all
20 day on the th, go look at the tolls on the th,
21 Barbara's phone, trying to find out, why did you miss
22 M.J. 's birthday. Keyonna said, why did you miss
23 her (sic) birthday, mamma? It was his birthday. You
24 never miss M.J. 's birthday.

25 They find the body. At 7:25 p.m., after the body

1 is found: I'm alive. Is that malice that relates
2 back to the time it happened? I'm alive. Who would
3 do something like that? That is not right. That is
4 at 7:25 p.m.

5 I tell you who would do something like that. It
6 came from that phone call too, no doubt about it,
7 5816. I'll tell you who did something like that,
8 somebody who would 40 something minutes -- odd minutes
9 later, called Sivonnia Hunt, somebody they had just
10 met, trying to hook up with her. That's somebody who
11 would do something like that.

12 And Sivonnia said -- and isn't this incredible
13 circumstantial evidence? How do we know that was him
14 using the phone? Not just through Trish, not through
15 all the text messages back. Lo and behold, out of
16 this whole world, somebody named Sivonnia Hunt. How
17 could you make that up? I met him on the chat line.
18 Here is the number I had. Oh, he told me that woman
19 on the phone was his secretary. Yeah, we talked. He
20 came to see me before Christmas, after Christmas.
21 They showed me a lineup, there's no doubt that's him.
22 That's him.

23 And she says, you know he told me the police
24 might be calling me. That's real. That's real. Is
25 that why maybe if you can look in this stuff back

1 there, the stuff in the motel where he had Detective
2 McDonald's name on here? That's when he left Florida,
3 he knew something was up and he heads to New Orleans,
4 that's incredible circumstantial evidence. You either
5 learn it from her or you learn it from Jazz.

6 Investigator Holdorf, at this point in the
7 investigation, you've got calls that are hitting in
8 Florida, heads to Florida to see if they can get Chris
9 Commander there. He's learned of this, he's talked to
10 Sivonna, he heads to the New Orleans Police
11 Department (sic). They go ahead and go and talk to
12 Sivonna while they're there, get a statement from
13 her, as I said, show her the photo lineup.

14 We now go to New Orleans. When he's in the
15 United States' home of Mardi Gras or partying, Vonnie
16 was back in her home mummified.

17 Scott McDonald talked to Captain James
18 Laviolette. We've got this American Express card
19 that's hitting down there at the Holiday Inn Superdome
20 about 10 o'clock. Can y'all assist us, assist us with
21 a warrant check? He told Laviolette he might be a
22 suspect also, but said we got a warrant check. He
23 says sure.

24 Y'all know what happens then. He gets with Pari,
25 Crayton, Rick Pari and Ernest Crayton, and they head

1 over there to the Holiday Inn. Crayton said he knew
2 the security guy. They had a description of the car,
3 a Chrysler LHS,

4 Crayton goes to look for it and finds it on the
5 4th floor, finds her car on the 4th floor. Is that
6 incredible in and of itself too? They go check with
7 the security guy, yeah, somebody signed in as Gervonya
8 Goodwin in 1-1-1-4. No, they didn't, she's dead. Oh,
9 yeah, they did. It's not her.

10 They go up and check 1-1-1-4, clear 1-1-1-6 to
11 make sure nobody's in there. I think it's Hi -- I
12 can't remember the guy's name. It starts with an "H"
13 that did that. They're in front of 1-1-1-4. And Your
14 Honor is going to tell you and instruct you the
15 initial admissibility of the statements made by him,
16 what weight is to be given, he's giving it to you by
17 law.

18 They're at the front of the motel room. They
19 knock, New Orleans Police Department. That's what
20 they do. They knocked and they went in, Laviolette,
21 Pari and Crayton. And they see the Defendant standing
22 right there with the gun, this gun -- this gun to his
23 head. Stop or I'm going to kill myself like I killed
24 Vonnie. That's real. They didn't know who Vonnie
25 was. They don't know where Tilting Rock is. They

1 know when somebody has got a gun to their head and
2 what they say, spontaneous statements as they came in.
3 He wasn't going to kill himself. I'm going to kill
4 myself like I killed Vonnie. Is he going to get up
5 here and say they're lying, are they in some
6 conspiracy with Sivonnia, the ATM, the American
7 Express? I hope not. If they were cheating him why
8 didn't they say, you know, I'm going to kill myself
9 like I suffocated Vonnie? It's real.

10 They come out. Jack Buzali and I think Rodriquez
11 were outside. What do you hear? I hear Captain
12 Laviolette say drop your gun after they went in. If
13 he was cheating, why didn't he say the other
14 statement? He was outside. That makes it real.

15 Takes him into the hallway and read him his
16 Miranda rights and go back to the 8th District. At
17 that point the decision was made to take him down to
18 the Cold Case Homicide Unit.

19 Oh, by the way, on January 7th when he's saying,
20 I'm alive, go up here and look at -- I've got my board
21 out of place. Room service, January 7th, he's ordering
22 two imported beers for -- for 7 bucks and two Super
23 Premiums, 14 bucks, and signing Gervonya's name.

24 Get out, I want to kill myself like I killed
25 Vonnie. That's expressed malice from his mouth to

1 people who knew nothing about this case.

2 You hear from Jack Buzali, their head of the Cold
3 Case Unit. what does he say? Where am I going,
4 initiated by him. Again, Your Honor has determined
5 the admissibility of these, the weight is with y'all.
6 I say weight. what are you doing, where are you
7 going? He said it, where are we going. To the Cold
8 Case Homicide Squad.

9 what's his response? I just did what I had to
10 do, because nobody else is going to have her. If I
11 can't have her, nobody's going to. That's expressed
12 malice. That's real. That is what this case is all
13 about.

14 Is Jack Buzali part of some conspiracy too?

15 Go look at the tolls too from the 7th and 8th and
16 see how many times he's calling other folks
17 afterwards. I mentioned he called Sivonnia after the
18 -- after 7:25, I'm alive -- if I didn't, I'd mention
19 that.

20 what happens next? We go to -- and I'm about
21 through -- we go to -- well, I don't know, about ten
22 more minutes, I don't know. We go through -- when he
23 goes into the Alvin S. Glenn Detention Center. And he
24 comes in contact with a fellow named John Fitzgerald
25 Presley. You saw Mr. Presley in here. Mr. Presley

1 came to us. He went to Mr. Presley. He got his
2 services as a jailhouse lawyer, paid him in canteen
3 fees.

4 Initially, is this incredible or credible
5 evidence? He does a motion for him. Is it in your
6 handwriting? Yes. There's no dispute about that.
7 Presley did a motion for him, for bond.

8 What happens next? He starts telling him about
9 his case. He said, well, listen, what if I tell my
10 lawyer this? We got in a fight and we've had some
11 problems before. I had a CDV, but she dropped it
12 before, didn't have to go through with it. We get in
13 an argument. She hits me with a stick. I'm
14 unconscious, I fall on her.

15 What does her lawyer tell you? They're not going
16 to believe that. That's a good lawyer. The next day
17 he says, tell me what happened.

18 He said, well, she did hit me with a stick. I
19 fell on her.

20 And he said, were you unconscious. No, I wasn't
21 unconscious.

22 And then he says -- and they've talked about the
23 counseling and he says, what about, when you said
24 she's on the medication -- that ain't right -- what is
25 it, did she overdose. And what did he say? He said,

1 no, I suffocated her. That's intentional or
2 malicious, no sudden heat of passion. I suffocated
3 her. Giving him various alternatives I couldn't use
4 but now I'll say it, 6-3, 230; 5-3, 100.

5 Dr. Nichols, the stipulated expert, forensic
6 pathologist, Chief Medical Examiner for this county,
7 no evidence of trauma to the body, no gunshot, no stab
8 wound, no accident, no suicide, no disease. Looked in
9 the brain, no hemorrhage, no bruising.

10 well, Doctor, what do you consider? I consider
11 all the surrounding facts of what's happened, the
12 injuries, the lack of injuries, probably asphyxiation,
13 suffocation. Well, the doctor was right. Nothing
14 else it could have been. The proximate cause is that
15 a person caused that person's injury, the immediate
16 injuries. There's no question about proximate cause.
17 Nothing. 5-3, 100; 6-2, 230.

18 well, what happened, Doctor? The fetus was
19 expelled after death. Gases forced the fetus out
20 post-mortem. Less than 20 weeks, so it wasn't a
21 double. It wasn't viable then. Rigor mortis, way
22 past rigor mortis, the muscles had gone.

23 Folks, Scott McDonald, Travis Holdorf, put this
24 all together through the phone tolls, the American
25 Express records, the timeline, an incredible

1 circumstantial evidence case. Direct evidence case,
2 I'm going to kill myself like I killed Vonnie, I had
3 to do what I had to do, the text messaging.

4 I wrote down the "C-S" -- board in case I forgot
5 anything, common sense. A lady or gentleman doesn't
6 leave anywhere without the purse. He's got her purse.
7 And if you look in there you'll see the last meal she
8 had at Cracker Barrel that morning. You can see that.
9 You can also see her appointment at 12/2 at the OB-
10 GYN. She never made it. You can also see her baby .
11 You can also see her baby in that purse. Her driver's
12 license, her keys to her car, her credit cards, her
13 checking, ultrasound, counseling receipt.

14 Well, John Presley said -- he said they were
15 having trouble, this confirms it. Mr. Presley, do you
16 believe him? No, these other stories and it wasn't
17 credible, he just suffocated her. I knew he wasn't
18 telling the truth about that stick. He suffocated her
19 -- OB-GYN, Cracker Barrel.

20 Ladies and gentlemen, if you walk up to this
21 courthouse and you look at the first two gates, you'll
22 see a little Scales of Justice, and I don't know, you
23 might have seen them. As you come in on the first
24 floor to the elevator, you'll see a sign that says
25 "JUSTICE WILL DIRECT OUR COURSE". That's all

1 anybody's asking from you is justice. That's all,
2 justice. Justice for Gervonya, Vonnie, her family.

3 I've got dyslexic thinking sometimes. It
4 happened here in this courtroom. I think I called out
5 47 when it was 74. I got corrected by the judge. I
6 think even asked a question one time and I said, that
7 gun that was in the -- and I meant to say the hand
8 that had a gun in it. And it started clicking to me
9 then. He wrote the right words in there on 7:25, the
10 right letters.

11 (Pause.)

12 MR. MEADORS: He just got them mixed up. He just
13 got them reversed. (Writing on board.) Evil am I.
14 And it's pure evil that calls back and says, I'm
15 alive, when you know the family has found her body.
16 That's evil. That's malicious. That's malicious.

17 Thirty-nine days they had waited to find out what
18 happened to Vonnie. Thirty-nine days. Phone tolls
19 from December the 19th until January 11th. We don't
20 have those tolls before that, didn't bring them in
21 here. That's not a reasonable doubt.

22 But go look at the number of times they called.
23 Go look at the number of times on this chart. That's
24 the phone number. Look at the number of times that
25 Barbara's calling. It's 66 times. That mama wants

1 her baby back. Look at Keyonna, 65 times. Isn't
2 that amazing, no question. How many times did they
3 call back? How many times did they get calls? None.
4 Text messages don't register. Calling Sivonna back.
5 Bless Sivonna for coming in here and straightening
6 that out. He's calling the credit card finding out
7 how much money he's got.

8 Thirty-nine days they waited to find out she had
9 been mummified after being asphyxiated. Don't make
10 them wait too long for justice.

11 You've heard the evidence. You evaluate it. I
12 respectfully on behalf of Scott McDonald, Ms.
13 Campbell, Mr. Holdorf and the family ask you to return
14 a verdict that speaks with justice, that is justice
15 that's pure, that says on or about November 30th, 2004,
16 Christopher Commander killed, asphyxiated, suffocated
17 vonnie because he couldn't have her and nobody was
18 going to have her. He took her cell phone and her
19 credit cards and used her money. Ran it out and put
20 some other money in, gets some more money to spend.
21 Goes to partying. Doesn't want them bothering him.
22 Tried to evade them, put them on the wrong course.

23 And that is malicious, ladies and gentlemen, and
24 that's murder. And we would ask your verdict to so
25 reflect.

1 Thank you.

2 THE COURT: All right, Mr. Strickler?

3 MR. STRICKLER: May it please the Court, sir?

4 THE COURT: All right.

5 CLOSING ARGUMENT ON BEHALF OF THE DEFENSE

6 BY MR. STRICKLER:

7 Mr. Foreman, ladies and gentlemen of the jury, at
8 the beginning of this case Ms. Mobley, on our behalf,
9 told you a couple of things. One, Chris Commander was
10 not guilty of murder. And, two, what you will hear
11 during the course of this trial is testimony regarding
12 almost anything under the sun other than what happened
13 on or about November 30th.

14 And as I stand before you at the end of this
15 case, what she told you at the beginning is true.
16 what the State has proven in this case is that
17 Ms. Goodwin died and that Chris Commander had her car,
18 her cell phone, her credit cards, used them after the
19 fact. Period. That is what they have proven.

20 Now, what Chris Commander did with her goods
21 after her death is deplorable. It is morally
22 reprehensible. It is legally prosecutable in and of
23 itself as forgery for the check, as financial
24 transaction card fraud for the using the credit cards,
25 etcetera.

The State versus Christopher Sam Commander

1 what it is not is any evidence of murder. And
2 that's the point. That's testimony and we've sat for
3 days listening to this sort of stuff and these charts
4 and these records. And that's not what he's charged
5 with. I sat and listened to the better part of an
6 hour of Mr. Meadors referencing what he did afterwards
7 as indicative of malice on his part at the time of her
8 death.

9 Now -- and I may get in trouble for this because
10 I get in trouble for it every time I'm going to apply
11 logic to the situation. That is logically absurd is
12 what it is. It's logically absurd to say because he
13 had a beer or used the credit cards, that means that
14 he acted with malice in his heart at the time she
15 died. That's absurd. That is an invocation to you
16 all to convict him because he did reprehensible things
17 with her credit cards after the death. It misdirects
18 your attention away from the facts and circumstances
19 as they existed and as they had been proven by the
20 State beyond a reasonable doubt on or about
21 November 30th at the time Ms. Goodwin died.

22 It asks you to infer from something that has got
23 nothing to do with what happened on the 30th, guilt for
24 actions on the 30th. That is logically absurd and that
25 is a request that you convict based on passion and

1 prejudice.

2 MR. MEADORS: Your Honor, I'm going to object.

3 THE COURT: Yes, sir.

4 MR. MEADORS: Saying it's logically absurd. That
5 is the law.

6 THE COURT: I will instruct the jury on what the
7 law is. These are arguments from the attorneys. And
8 I'll emphasize that at the appropriate time.

9 Go ahead, Mr. Strickler.

10 MR. STRICKLER: Thank you, sir.

11 It's asking that you convict based on passion and
12 prejudice for actions taken after the fact, and I
13 submit to you -- well, I would submit to you, the law
14 says that is not what you're here for. The law says
15 that you are here to hold the State to its burden of
16 proof, that means beyond a reasonable doubt, and
17 arrive at a determination as to Chris Commander's
18 guilt or lack of guilt for the charge of murder.

19 Murder doesn't mean he had the car, it doesn't
20 mean he had her purse, it doesn't mean he had her
21 credit cards. It doesn't mean he used them, it
22 doesn't mean he used her cell phone. Murder means
23 that he, with malice aforethought, on or about
24 November 30th, 2004, killed her and she died as a
25 proximate result thereof. That's murder.

1 So I submit there is no evidence of murder. I'm
2 going to talk about the evidence in this case. Okay?
3 And there are really only three pieces of evidence,
4 the bodies of evidence; I submit you need to consider
5 in this matter: the New Orleans Police, John Presley,
6 and Dr. Clay Nichols -- pieces of evidence that relate
7 to the events on or about November 30th, 2004, as
8 opposed to all this other stuff.

9 I mean, as a Defense attorney I am often accused
10 of trying to put up smoke screens. Well, I take issue
11 with that, but I know one when I see one, and that's
12 what's been put up so far by the State.

13 Now, the New Orleans Police say that the sequence
14 of events occur, they enter the room, they see him
15 cock the gun, put it to his head, say, stop, I'm going
16 to kill myself like I killed Vonnie, or words to that
17 effect. Okay?

18 Take a look at this. Mr. Laviolette gets a call
19 or speaks on the phone with Investigator McDonald. He
20 knows he's going to pick up someone that's a suspect
21 in a murder case. The testimony from all the folks
22 you heard from in New Orleans is to the effect that,
23 he never told us that we were going to try to pick up
24 someone that is a suspect in a murder case.

25 Now, this is Mr. Pari -- well, all the officers

1 who testified. There were uniformed in that regard.
2 He knew he was going to go try to pick someone up that
3 is a suspect in a murder case, and their testimony is
4 that he didn't tell them that. Now, is that credible
5 testimony or incredible testimony?

6 The testimony from the folks who came into the
7 room -- well, first, knock on the door. Could you
8 hear through the door? Who is it? Police. Nothing
9 happened after that. Credit (sic) card swipe, into
10 the room.

11 Now, the testimony from the folks entering the
12 room is that they are just tip-toeing in. They are
13 tip-toeing into the room. See him -- with their guns
14 drawn, all right? See him with the gun either cocked,
15 as one of them said, or see him cocking the gun.

16 Now, that is incredible too. You are going to
17 pick up someone who is a suspect in a murder case and
18 after they don't respond at the door or they respond
19 and then don't open the door, you tip-toe into the
20 room. Of course, you can hear anything they're
21 saying. You don't come in going, police, police, show
22 me your hands, get down. You don't do that. You are
23 only going to pick up someone who is a suspect in
24 murder case. Oh, oh, but I didn't tell the other guys
25 who are with me that he is a suspect in murder case.

1 Sure. Sure. That's how business is done.

2 Now, of course, if you go in screaming all that
3 stuff, you don't hear him say anything. Now, what you
4 have is five people that you heard from, only one of
5 whom made a written record of what happened, that
6 being Mr. Laviolette. And all of whom review his
7 written record of what happened prior to getting
8 together or contemporaneously with getting together
9 with the prosecutors back on Monday of last week.

10 So, I submit to you that that testimony is
11 incredible.

12 You were asked to bring your common sense here.
13 I ask you to bring your common sense too. I am the
14 chief, head honcho with, I don't know, 20 years of
15 experience, however much, and I'm going to drag five
16 other police officers with me to pick up a murder
17 suspect, I'm not going to give them a heads-up that
18 it's a murder suspect. Don't you think you would
19 react a little differently if you're going to pick up
20 someone who is a murder suspect than if you're going
21 to go find someone that's got an outstanding
22 shoplifting warrant? No. And then you enter the room
23 just quiet as can be. Yes, that's how it works.
24 That's incredible.

25 Because you all are judges of the credibility of

1 witnesses in the case. All credibility is it's a
2 legal work that means believability. That is an
3 unbelievable story to which is attached this alleged
4 statement, which Mr. Meadors has just referenced as
5 being evidence of expressed malice: I'm going to kill
6 myself like I killed Vonnie. No, that's a statement.
7 If you choose to believe it, then that's an admission,
8 I killed Vonnie. That's not expressed malice. I hate
9 you and I'm going to kill you, that is expressed
10 malice. No, that's a statement as to what are you
11 going to do then, and if you choose to believe it,
12 it's an admission. All right?

13 The other admission in New Orleans -- one person
14 they didn't call. That would be Mr. Rodriquez.
15 Remember, he's the officer who had the flashlight
16 outside the door, shone it in so they could flip the
17 switch, according to what they testified to? And
18 Mr. Buzali, those two were outside the door.

19 Now, Buzali, interestingly, who could hear the
20 response from inside with the door closed, doesn't
21 testify to hearing any statement on the part of John
22 Presley inside the room. Standing right outside the
23 door. I mean, this is a Holiday Inn room. It's not
24 like we've got a suite. You've got a little entrance,
25 got a bathroom on the side and then there is a bed

1 back there. And he doesn't hear anything. Okay?

2 So, if you chose to believe them, I'm going to
3 kill myself like I did Vonnie, okay, there's the
4 evidence who was involved in the killing, all right?

5 Now, he didn't say, I murdered Vonnie. He
6 doesn't say anything about the facts and circumstances
7 surrounding her death. And that's what we're here for
8 today.

9 The other statement in New Orleans is from
10 Mr. Buzali as he is taking him in the car, and this
11 conversation is, I just did what I got to do.

12 Well, I don't know what that means, and neither
13 do you. I just did what I had to do. What, I didn't
14 have any money and I wanted to get out of town and I
15 took the car and used her credit cards? I don't know.
16 Killed her? I don't know.

17 Does he say anything about what happened or
18 didn't happen on or about November 30th, 2004 at Ms.
19 Goodwin's residence? Absolutely unequivocally not.
20 That is what it tells you, nothing about that.

21 So the other evidence in the case, Mr. Presley.
22 Well, you can choose to believe or not believe what
23 you want to on behalf of Mr. Presley. You can choose
24 to believe what you want to believe or what you don't
25 believe as to any witness. You're the judges of the

1 credibility of the witnesses. You're the judges of
2 the believability of the witnesses. The law even says
3 you can believe everything a witness says, nothing the
4 witness says, some of what they say, and not other
5 things of what they say. That's your job, to sit here
6 and access the credibility of their testimony, the
7 believability of their testimony, and arrive at some
8 conclusions regarding that.

9 You know, a couple of things we know. Mr.
10 Presley may be a jailhouse lawyer, but, you know, his
11 advice as far as Massiah goes, those statements don't
12 come in. Well, wrong about that. Didn't have a
13 lawyer when I made the statements in New Orleans,
14 those don't come in. Wrong about that. The witness
15 you heard from was Lieutenant, or Captain Laviolette
16 about the statements.

17 What else do we know about Mr. Presley? Well,
18 he's a liar. Convicted multiple, multiple, multiple
19 occasions for forgery and forgery is -- it's this sort
20 of thing right here, it was a check, wherever it is.
21 It's a lie saying this is mine, presenting, this is
22 signed by the person who is supposed to sign it,
23 presenting it, that's not true, that's lying. Made a
24 professional career of lying.

25 His testimony is that he hooks up with Chris

1 down at the county jail, does this motion for him, and
2 before the motion has even gotten to the courthouse
3 and gotten filed here, he is already contacting the
4 police about providing information about Chris
5 Commander. Okay? Before it even makes its way from
6 the county jail up to the courthouse, he is providing
7 information or seeking to contact the police and
8 provide information about Chris.

9 And of course he was acquainted with the concept
10 of discovery, the books aren't up here, he holds
11 stacks of documents relating to the case. He knows
12 about that. But of course he didn't sit down and go
13 over Chris's discovery with him, ease into his room
14 while Chris wasn't there and take a look at it, pick
15 out some facts, go ahead and -- who knows at this
16 point.

17 Hopefully -- well, I'm sure, you're sitting on
18 the jury -- none of y'all has any idea of what goes on
19 down in Goff Dorm at the Alvin S. Glenn Detention
20 Center. Clearly there are some sharks down there who
21 are looking out for themselves, and one of their names
22 is John Presley.

23 The first letter to Mr. Holdorf that provokes or
24 causes the contact between Mr. Presley and Mr. Smith
25 at the Sheriff's Department -- Mr. Smith didn't

1 testify, but he's the person Presley said, I spoke
2 with.

3 The first letter, I need a downward departure on
4 my federal charges. Got information. So the first
5 thing he wants is help for himself in exchange for
6 what he has to say about Chris Commander. First he
7 wants the pieces of silver, the guarantee of the
8 pieces of silver, and then he has information to
9 supply. But of course by the end of his testimony he
10 doesn't endorse murder, so that's why he would provide
11 the information anyway.

12 The first contact he had said, scratch my back,
13 I'll scratch yours. And his back is being scratched,
14 he's cooperated. Mr. Meadors can go ahead and supply
15 information to the feds that he is cooperating, let
16 them know what assistance he was, and maybe he gets
17 some help by way of a downward departure on his
18 sentence.

19 So, that is Presley. What Presley does give you
20 is a couple of different versions according to him, if
21 you choose to believe him, a couple of different
22 versions from Chris as to what happened at the house.

23 First, she hit me, I fell on top of her, she's
24 dead. The second, hit me, on top of her and
25 suffocated her. Okay?

1 So, as to any information about what happened on
2 or about November 30th, 2004 at Ms. Goodwin's
3 residence, that is it. That is it.

4 Now, Dr. Nichols, what can he tell us? What did
5 he tell us? One of the last things he told us is, I'm
6 not saying it was intentional, I'm saying it occurred
7 as a result of someone else's action. I'm saying her
8 death occurred as a result of someone else's actions.
9 I'm not saying it was an intentional killing. That
10 was said.

11 As to cause of death, you are going to have to
12 take New Orleans Police and John Presley for cause of
13 death. What Dr. Nichols said in his report, cause of
14 death, probable, probable, probable asphyxiation --
15 probable.

16 Well, I mean, cause of death. Probable heart
17 attack? I don't think so, heart attack. Probable
18 stroke? No, he had to find all the damage from that.
19 No, stroke. Probable gunshot wound to the head? No.
20 Cause of death, gunshot wound to the head. Cause of
21 death, strangulation? No. Asphyxiation as a result
22 of strangulation. No, I mean, not probable. This
23 case, probable.

24 What else has he told you? Yes, he agreed with
25 me. Sometimes people just die. There is no cause

1 that you can determine.

2 How did he arrive at probable asphyxiation? From
3 the facts and circumstances surrounding case. He had
4 been filled in by some guys from the Coroner's Office
5 on a little bit of what you've heard her. So if it is
6 suspicious to him, it becomes probable asphyxiation.

7 Now, where does that leave us? It leaves us with
8 her death and with him using credit cards, car,
9 etcetera, after her death.

10 If you choose to believe the police and/or
11 Mr. Presley, it puts him as being responsible for her
12 death in some fashion. Of course, I would submit you
13 shouldn't believe them, but I have to deal with the
14 situation that arises if perhaps you do believe the
15 New Orleans Police or Mr. Presley.

16 So what can the New Orleans Police tell us about
17 the facts and circumstances surrounding the death?
18 Nothing. So we're left with Mr. Presley as far as the
19 facts and circumstances surrounding the death and what
20 he has to say regarding the facts and circumstances
21 surrounding the death, those two statements: She hit
22 me, I passed out, came to, she is dead; she hit me, I
23 suffocated her by lying on her. Okay? I think those
24 were the two versions ended up coming through cross.

25 All right, how does either of those work? Now,

1 I've gone past the point if you all choose to believe
2 those, those folks, and I've gone past the point, and
3 if you have come past the point and you need to need
4 to deal with the decision or the question, well, if
5 it's homicide, is it murder or is it voluntary
6 manslaughter or is it involuntary manslaughter.

7 Now, murder is the unlawful killing of another
8 human being with malice aforethought, either express
9 or implied. And Mr. Meadors can get up here and steer
10 you one way and steer you the other and stir you up
11 over buying beers and calling women, and that doesn't
12 supply malice because malice must exist
13 contemporaneously with the act that causes the death,
14 something around, on or about November 30th, 2004.
15 Not buying beer on whatever dates you find there or
16 talking with Sivonnia Hunt, whatever. Malice must
17 have existed at that point in time, expressed or
18 inferred.

19 What evidence do we have of malice at that point
20 in time? None.

21 Voluntary manslaughter is also an unlawful
22 killing of another human being without malice. There
23 is a difference between murder and manslaughter,
24 presence or absence of malice. Getting struck with a
25 -- I don't believe it was a stick, I believe it was a

1 broom, according to the testimony, but I might be
2 wrong, maybe a stick. Being struck, being assaulted
3 by another person is grounds, is sufficient for you to
4 find sufficient legal provocation.

5 The law says that the provocation need not be
6 such as which would -- as that which would dethrone
7 reason entirely. You don't have to go temporarily
8 insane as a result of it. You have to snap, you have
9 to do something in that heat of passion. You cannot
10 have long enough time to cool down and reflect about
11 what you are going to do because then you're busy
12 forming the malice to accompany the murder.

13 You have to have the legal provocation, was out
14 there - it was out there that says to kill someone's
15 horse that could be sufficient legal provocation to
16 reduce the charge of murder to manslaughter. The law
17 is clear that being struck is sufficient legal
18 provocation or may be found by you to be sufficient
19 legal provocation, you know.

20 His Honor is required to charge the law
21 applicable to the case. If the facts are not
22 presented sufficient to raise the possibility of
23 voluntary manslaughter as the verdict, then you would
24 not be allowed to consider it. He is struck, snapped
25 and killed her, voluntary manslaughter.

1 Presley's other statement or first statement,
2 hit, pass out, lying on top of her. How about being
3 struck, falling on her and staying on top of her to
4 keep her quiet. There's involuntary manslaughter.
5 Now, that could be regarded as an assault and battery
6 or even an aggravated assault and battery where there
7 was no intent to kill, there is an action that doesn't
8 rise to the level of a felony, in light of what those
9 offenses is, and the victim died.

10 I don't have all the charts or anything that
11 Mr. Meadors has, but it's the Public Defender's
12 office.

13 Involuntary. One of two ways. Killing of
14 another without malice and unintentionally while
15 engaged in either, one, an unlawful act not amounting
16 to a felony and not naturally tending to cause death,
17 lying on someone, doesn't naturally tend to cause
18 death; or, two, a lawful act with reckless disregard
19 for the statements of others.

20 So, clearly not murder if you choose to believe
21 either New Orleans or Mr. Presley or some combination
22 of both, then perhaps voluntary, perhaps involuntary.

23 The problem with Mr. Presley's statement is what
24 you believe. Do you cherry-pick out this part and
25 this part and what leads you to believe one part is

1 more credible than another, from a man who is a
2 confessed life-long liar with something to gain?

3 Because that is one of the things you can
4 consider when evaluating the credibility of someone
5 who testifies. You can consider whether they have
6 something to gain from their testimony. You can
7 consider that.

8 well, that's it for evidence in the case. The
9 rest of the stuff is evidence of other things, as
10 Ms. Mobley told you at the beginning of this case.

11 Here is what I will submit to you. You are being
12 asked to convict on suspicion. You are being asked to
13 convict maybe because you think he probably is guilty,
14 just like Dr. Nichols says, probable asphyxiation.
15 You are being asked to convict -- well, I submit that
16 what is going on is an attempt to convict by innuendo.

17 You dealt with some of it during the trial.
18 There's testimony regarding Ms. Goodwin having federal
19 counterfeit charges. And we went to some lengths to
20 go ahead and elicit testimony that did not involve
21 Chris at all. And it didn't. Investigator Holdorf,
22 don't deal with that. Then the innuendo out there is
23 there's another motive.

24 This inconclusive fingerprint, you know, if I
25 want to establish exactly how inconclusive it is and

1 what the State didn't bother to do, go ahead and put
2 anything up for your consideration regarding it, then
3 I submit you would be hearing about, oh, it might be
4 his fingerprint too.

5 The DNA, I objected when they started talking
6 about DNA. I want to know exactly what the State did
7 in regard to their DNA. Here's baby. Well, no, they
8 kept the fetus at the time of the autopsy with Mr.
9 McDonald, kept that thinking we would compare it with
10 his DNA, which they got. Remember the buccal swabs.
11 We'll compare that and establish completely that that
12 indeed was his child. And then promptly did nothing
13 of that sort. They did nothing. Zip, nada, nil,
14 nothing, they did nothing. They had the evidence from
15 him March 22nd, 2005, they had the buccal swabs, had
16 the fetus from the time of the autopsy. And March
17 22nd, 2006, October 16th, 2006, so a year and a half
18 after the fact they had done nothing.

19 So, if you want to say, if I can't have her, no
20 one can, as a motive, and you don't even bother to
21 establish that that indeed was his child, when you
22 have all you need to do it. It is just a murder
23 charge. We're only accusing him of murder.

24 Gloves in the trash can. You heard testimony,
25 they didn't introduce them, testimony, gloves in the

1 trash can. Took them into evidence. I asked
2 Mr. McDonald, after I showed him the report.

3 Now, submitted fingernail scrapings and the glove
4 for DNA testing to the Richland County Sheriff's
5 Department DNA Lab. Got a report back with the
6 results on it. I mean, he didn't do the testing, I
7 can't ask him about that. Got a report back with the
8 results on it.

9 Now, ask yourselves this. If there had been
10 anything under the fingernails, if there had been
11 anything to indicate that Chris Commander had those
12 gloves on when he was cleaning up the scene with these
13 cleaning products, do you think the State would have
14 brought that in? Oh, yes. At the very least, at the
15 absolute minimum what you say about the fingernail
16 scrapings and the glove is they don't hook him into
17 it. And you may be able to say more than that. We
18 just won't know. They didn't bring the people in from
19 their own lab to go ahead and tell you what they found
20 because they'd rather just have that floating out
21 there. Well, it's not floating out there. It is
22 something that they do and something that they did and
23 they don't like the results of them, they don't want
24 you to know about it. They didn't bring people in to
25 testify. Innuendo.

1 You know, they ask you to convict based on
2 suspicion as to what happened. I'm going to go beyond
3 being not guilty and take the lead and say that y'all
4 decide even because Mr. Presley here and the New
5 Orleans Police say he's responsible in some fashion
6 for her death.

7 I don't know what all this deal is about a
8 timeline in the case because the only time that
9 matters in the case is on or about November 30th, 2004.
10 So what with the rest of the stuff. What do we know
11 about that? Still precious little.

12 The State of South Carolina has charged Chris
13 Commander with the most serious offense known to the
14 laws of this state. There is nothing more serious
15 than murder, as it should be. The State of South
16 Carolina has the burden of proving to each and every
17 one of your satisfaction beyond a reasonable doubt
18 Chris Commander is guilty of murder -- beyond a
19 reasonable doubt.

20 Now, the State -- the law says what the law says
21 about beyond a reasonable doubt. A reasonable doubt
22 is a doubt you can give a reason for. Okay? I doubt
23 that they have proven malice because I doubt they've
24 proven him guilty, beyond a reasonable doubt.

25 Now, beyond a reasonable doubt, here is what it

1 is, is the highest standard known to the law of this
2 state. Any case that comes in any court in this
3 state, nothing is required to be proven more strongly
4 than beyond a reasonable doubt. You have a case
5 involving millions of dollars in damages in some civil
6 case. Well, you know, the standard there is probably
7 more likely than not. Think one side is just proving
8 things a little bit better than the other side, they
9 win. There's a medium level of proof called proof by
10 clear and convincing evidence. And that sounds pretty
11 high to me. Proof by clear and convincing evidence.
12 That's the medium level of proof.

13 In a criminal case, a case such as this, the
14 proof must be beyond a reasonable doubt. And you're
15 right, you don't have to prove, you know, the sun
16 won't rise tomorrow, something silly like that. You
17 might want to have to prove what happened on or about
18 November 30th, 2004. I submit to you, that's too much
19 to ask. As I'm walking away, that's why we're here.
20 You might need to prove that beyond a reasonable
21 doubt.

22 The law says if you're considering the case and
23 you have a doubt as to whether the State has proven
24 murder or whether they have proven voluntary
25 manslaughter, then you resolve that doubt in the favor

1 of the Defendant and find for the lesser charge. Or
2 if you are considering whether to convict him of
3 murder or voluntary or involuntary and you've got a
4 doubt as to whether they've proved the greater
5 charges, you always resolve the doubt in favor of the
6 lesser charge. And you always resolve the doubt in
7 favor of the Defendant. I mean, that's not done in
8 the law, that's the law. This is not some game we're
9 playing here.

10 Ms. Goodwin is dead, be it by natural causes or
11 at the hands of Mr. Chris Commander in some fashion.
12 There is no joy to be taken from that. If you are to
13 believe Mr. Presley, he said even Mr. Chris Commander,
14 I could tell he was remorseful that way. So there is
15 no joy to be taken in that. There is no joy to be
16 taken in convicting another human being, branding him
17 a murderer on evidence that doesn't satisfy you.

18 That's not what you're here for either. You're
19 here to well and truly try and true deliverance make
20 between the State of South Carolina and Christopher
21 Commander, whom you shall have in your charge, and a
22 true verdict render. That is what you're here for.

23 The law says that you're not to be governed by
24 passion or prejudice. The law says you have no
25 friends to reward, nor enemies to punish. That's not

1 what you're here for. The law says that you are to
2 decide what has been proven beyond a reasonable doubt
3 and arrive at a verdict, if you can. The law says you
4 are to resolve any and all doubts you have regarding
5 what has been proven in favor of the Defendant.
6 Because, after all, the government of this state, with
7 whatever resources they want to bring to bear, align
8 against one fellow citizen of this state. You're not
9 to convict based on passion or prejudice. You're to
10 analyze the evidence and decide.

11 Well, have they proven malice and how? How have
12 they proven malice? I would submit there is nothing
13 in this record that says a thing about malice. The
14 burden is out there. Have they proven heat of passion
15 or is heat of passion present? Well, you know,
16 arguably it is, according to the New Orleans
17 statement, Mr. Presley's statement. Is unlawful
18 action not amounting to a felony present so that
19 involuntary is possible? Yes, yes, it is, if you
20 decide that those are the statements that you can rely
21 on.

22 In order to convict of anything you have to
23 decide that you rely on John Presley in some way,
24 shape or form or fashion. The murder is right out the
25 window. You need to decide what is appropriate.

1 Now, I'm going to quit. I've taken about half
2 the time Mr. Meadors did. You always wonder when you
3 get to this stage -- and, you know, it's not a game,
4 it's not a popularity contest. It doesn't matter,
5 without a fine attorney who can't walk and chew gum at
6 the same time. That's not what you're here about
7 here. It doesn't matter if I'm the person who defends
8 it. That's not what you're here about. You're here
9 to determine what's been proven by the State because
10 they have the burden of proof.

11 I submit to you that if you are not taken in by
12 the pleas to convict based on prejudice, passion on
13 your part because of what he did after the fact, if
14 you don't fall for that, if you hold the State of
15 South Carolina to their burden of proof, which is what
16 you're sworn to do, all I'm doing is ask that you
17 uphold your oath, hold them to the burden of proof in
18 this state in this case, then you will return a
19 verdict that speaks the truth, and that is what the
20 word means, it is from the ancient Latin, veredicto,
21 to speak the truth. The verdict you return that
22 speaks the truth clearly will say one thing: he is
23 not guilty of murder. He has not been proven guilty
24 of murder.

25 I owe it to the law of this state, begrudgingly I

1 owe it to Mr. Meadors, but most importantly I owe it
2 to myself not to sign off and come here to be a rubber
3 stamp for the government of the State of South
4 Carolina. I'm not signing off on a verdict like this
5 on the evidence, or, more properly put, the lack of
6 evidence in this case. I refuse to do it.

7 You're doing justice now because you're applying
8 the highest rules in this state, and that is holding
9 the prosecution to their burden of proof in this case.
10 And I ask that you do that, return a verdict in this
11 matter that finds Chris not guilty of murder.

12 Thank you very much.

13 THE COURT: All right, Mr. Foreman and ladies and
14 gentlemen, we'll take about a ten minute recess and
15 then I'll give you the instructions of the law.

16 Please do not discuss the case while you're in
17 the jury room. We'll take ten minutes.

18 Everyone else stay seated, please, while the jury
19 is excused.

20 (WHEREUPON, the jury retires to the jury
21 room at approximately 2:33 p.m.)

22 THE COURT: All right, ten minutes.

23 MR. MEADORS: Your Honor?

24 THE COURT: Yes, sir.

25 MR. MEADORS: My question earlier, I think you

1 answered it, but there is no longer a King charge, per
2 se. I think that was overruled by Brightman versus
3 State. So now it's just in your regular -- reasonable
4 doubt, if you have any -- if you have any -- if they
5 have any doubt as to guilt of the greater offense, it
6 is no longer necessary because of the modern
7 reasonable doubt charge which tells the jury to
8 resolve any doubts in favor of the Defendant.

9 I think it was Brightman v. State, and my
10 understanding there is not a King charge, per se,
11 anymore, and that's what that case says. And that's
12 what I was alluding to earlier.

13 THE COURT: You got a copy of the case?

14 MR. MEADORS: I'll have it for you momentarily.
15 I have a summary of it. I don't know if Mr. Strickler
16 is familiar with Brightman versus State, I think he
17 is.

18 THE COURT: I think that it is -- what is first
19 word in that case?

20 MR. MEADORS: Brightman.

21 THE COURT: Brightman. That's on your
22 circumstantial, that's where the circumstantial
23 evidence charge comes from also?

24 MR. MEADORS: I think so. It specifically talked
25 about the King charge, though, and I'll get you a

1 copy. I think it did away with the language, per se,
2 you must resolve any doubt or if you have -- whether
3 or not guilty of the greater or the lesser, this says
4 you just resolve any doubt in favor of the Defendant.

5 THE COURT: I'll take a look at it.

6 MR. MEADORS: Thank you, Your Honor.

7 THE COURT: I think there have been some cases
8 overruled where a King charge was not given, and I
9 think they may have come since that case. I do have a
10 note -- is that August 23rd of '99? Do you have a date
11 on that case?

12 MR. MEADORS: '99 it is, but there's been a case
13 after that, 2003.

14 THE COURT: Get them to me. I'll be right back
15 here in the hallway.

16 MR. MEADORS: Thank you.

17 MR. STRICKLER: My only response to that is two-
18 fold, Your Honor. I don't need to look at the cases.

19 One, my understanding is that you were going to
20 charge not charge but interwoven with the same
21 principal interwoven in your charge, and I relied on
22 that during my closing.

23 THE COURT: Right, I understand.

24 MR. STRICKLER: Two, as I understand the quote he
25 just gave, it says it is no longer necessary. It

1 doesn't say you're a bad person if you do.

2 THE COURT: That's why I want to see the case.

3 MR. MEADORS: And I think we may get a happy
4 medium. I'm not saying we aren't. If you --

5 THE COURT: I'm just -- what I had indicated in
6 chambers is that I would charge what I always charge
7 when it comes to reasonable doubt. And it includes
8 this statement: If you find the Defendant guilty but
9 have a reasonable doubt as to whether the Defendant is
10 guilty of a greater crime charged or a lesser crime
11 charged, then you would resolve that reasonable doubt
12 in favor of the Defendant and write a verdict of
13 guilty only as to the lesser charge, but of course you
14 cannot write a verdict for guilty to any charge unless
15 as to that particular charge you find all the elements
16 have been proven by the State beyond a reasonable
17 doubt.

18 I've used that in every case. I've been in
19 Columbia since January the 3rd. That is not saying it
20 is right.

21 MR. MEADORS: I'm fine with Your Honor.

22 THE COURT: And I have got Mr. Strickler's
23 request as a Court Exhibit, but this -- that's what
24 I'm going to be using.

25 MR. STRICKLER: Yes, sir, and thank you, sir.

1 THE COURT: All right. We'll take ten minutes.

2 (WHEREUPON, the court was in recess.)

3 THE COURT: Bring the jury in, please.

4 (WHEREUPON, the jury came into open court
5 at approximately 2:52 p.m.)

6 THE BAILIFF: Your Honor, the jury is present.

7 THE COURT: All right.

8 CHARGE BY THE COURT:

9 THE COURT: All right, Mr. Foreman and ladies and
10 gentlemen, during the course of the arguments made by
11 the attorneys in the case, they have discussed with
12 you their understanding of the law and its
13 applicability to the facts as you determine them to
14 be, and I will charge you that an attorney does have a
15 right and a duty to do that.

16 I will charge you now, however, that regardless
17 of anything said by any attorney during the course of
18 their arguments regarding or stating what the law of
19 this state is, that you must apply the law only as I
20 explain it to you.

21 Now, this is not to imply that I disagree with
22 anything that any counsel may have made as to any
23 argument they may have made as to what the law is, but
24 simply is made to emphasize to you that you take the
25 law applicable as I instruct it to you.

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1 It does at this time of the trial become my duty
2 to charge you or explain to you the law that applies
3 in this case. In some states the jury is given a copy
4 of the law. We don't do that in South Carolina, so I
5 don't want you to think that you don't need to listen
6 because you will have a copy of it when you go back in
7 the jury room. You need to listen to the instructions
8 that the Court is now going to give you. There will
9 not be a written copy of these instructions going with
10 you to the jury room.

11 It is your duty as jurors to accept and apply the
12 law as the Court is now going to explain it to you,
13 and as jurors it is your exclusive duty to decide all
14 the issues of fact in this case, and for that purpose
15 to determine the effect, the value, the weight and the
16 truth of the evidence presented during this trial for
17 both the State of South Carolina and the Defendant,
18 Mr. Commander, have a right to expect that you will
19 individually and collectively conscientiously consider
20 and evaluate the evidence in this case and apply the
21 law of the case to that evidence to the end that both
22 the State of South Carolina and the Defendant,
23 Mr. Commander, will receive and obtain a fair and an
24 impartial trial in this case.

25 I have given the indictment to the clerk. Can

1 somebody see if it is lying here on the table because
2 I do need to go over the indictment. I don't know
3 what Jackie did with it. Jackie, do you know where
4 the indictment is?

5 (Pause.)

6 THE COURT: Fine. Thank you. I am going to read
7 in part to you the charge that is made in the
8 indictment.

9 Again, the indictment in this case, the written
10 document that I'm holding, contains the charge or the
11 allegation that is made in this case. It is not
12 evidence of that charge and it cannot be considered by
13 the jury as evidence of the charge that it contains.

14 This is Indictment 05-GS-40-3186 entitled The
15 State versus Christopher Sam Commander. It is an
16 indictment for the charge of murder. It is alleged in
17 the indictment that Christopher Sam Commander did in
18 Richland County, on or about November 30th, 2004,
19 feloniously, willfully and with malice aforethought
20 kill one Gervonya Goodwin by means of asphyxiation,
21 and that the said victim died as a proximate result
22 thereof, all in violation of South Carolina Code of
23 Laws Section 16-3-10. That is the charge that is made
24 in the indictment.

25 Of course, throughout these instructions when I

 The State versus Christopher Sam Commander

1 use the word Defendant, I am referring to Christopher
2 Sam Commander.

3 Now, to the charge that is made in this
4 indictment, the Defendant has entered a plea of not
5 guilty. This plea of not guilty by the Defendant
6 places the burden of proof on the State to prove the
7 guilt of the Defendant beyond a reasonable doubt
8 before you the jury can find the Defendant guilty.

9 The Defendant is presumed under the law innocent
10 of the charge that is made in this indictment. It is
11 a cardinal and a fundamental rule of the law of
12 evidence of this state that a Defendant, regardless of
13 the charge or charges against him, will always be
14 presumed innocent of the offense to which he has been
15 indicted unless and until the guilt of the Defendant
16 has been proven by evidence that satisfies you the
17 jury of his guilt beyond a reasonable doubt.

18 This presumption of innocence is not just a mere
19 legal theory or a legal phrase. The presumption of
20 innocence is a substantial right to which every
21 Defendant, including Mr. Commander, is entitled.

22 The Supreme Court of this state has declared that
23 the presumption of innocence is like a robe of
24 righteousness placed about the shoulders of the
25 Defendant, and it remains with the Defendant and

1 assigns the Defendant to that class, the innocent,
2 until that presumptive robe of righteousness has been
3 stripped from the Defendant's person by evidence that
4 satisfies you the jury of the guilt of the Defendant
5 beyond a reasonable doubt.

6 This presumption of innocence accompanies the
7 Defendant from the time of his arraignment, from the
8 time of his appearance in court and throughout every
9 stage of the trial and continues with the Defendant
10 even after you retire into the jury room to consider
11 your verdict in the case.

12 The presumption of innocence continues to exist
13 for the benefit of the Defendant until you the jury
14 reach the conclusion that the State has proven the
15 guilt of the Defendant beyond a reasonable doubt.

16 I would instruct you at this time, Mr. Foreman
17 and ladies and gentlemen, that the fact that the
18 Defendant in the trial of a criminal case does not
19 testify in his own behalf is not a factor to be
20 considered by you in any way in your deliberation and
21 in your consideration on the question of the guilt or
22 the innocence of the accused. It must not be
23 considered by you in any manner against the Defendant
24 or mitigate against him in any respect. A Defendant
25 has a constitutional right to remain silent, and the

1 assertion of that constitutional right cannot and must
2 not be considered by you in your deliberations.

3 Under your oath you are to reach no inference and
4 draw no conclusion from the fact that the Defendant in
5 this case did not testify. Again, the fact that a
6 Defendant does not testify should not even be
7 discussed in the jury room.

8 The burden of proof, as I have explained to you,
9 is upon the State. It is not incumbent upon the
10 accused to prove his innocence. The burden of proof
11 remains upon the State to prove guilt beyond a
12 reasonable doubt, and the fact that a Defendant does
13 not testify is not a factor to be considered by you in
14 determining the guilt or the innocence of the
15 Defendant.

16 The State is not required to prove the guilt of
17 the Defendant beyond all doubt or beyond every doubt,
18 but beyond a reasonable doubt.

19 When we say that proof must be established beyond
20 a reasonable doubt, those words should be given their
21 plain and ordinary meaning.

22 A reasonable doubt is the kind of doubt that
23 would cause a reasonable person to hesitate to act.

24 A reasonable doubt can arise from the evidence
25 presented in the case or the lack of evidence of the

1 case. To think that a Defendant is probably guilty or
2 that the circumstances are suspicious is not enough.

3 Proof beyond a reasonable doubt is proof that
4 leaves you firmly convinced of the Defendant's guilt.
5 There are a few things in this world that we know with
6 absolute certainty, and in criminal cases the law does
7 not require proof that overcomes every possible doubt.

8 If based on your consideration of the evidence
9 you are firmly convinced that the Defendant is guilty
10 of the crime charged, you must find him guilty.

11 If on the other hand you think there is a real
12 possibility that he is not guilty, you must give him
13 the benefit of the doubt and find him not guilty.

14 You alone must make the determination of whether
15 or not reasonable doubt exists as to the guilt of this
16 Defendant.

17 I would instruct you that the Defendant is
18 entitled to every reasonable doubt arising in the
19 whole case. If then upon any issue of fact that is
20 essential to conviction and a verdict of guilty, if
21 you have a reasonable doubt as to how that issue
22 should be resolved, it would be your duty to resolve
23 that reasonable doubt in favor of the Defendant.

24 A Defendant, Mr. Foreman and ladies and
25 gentlemen, is not required to prove his innocence, but

1 the State is required under the law to prove every
2 essential element of the offense charged against him
3 by evidence that satisfies you the jury of the guilt
4 of the Defendant beyond a reasonable doubt before you
5 can convict a Defendant and find him guilty.

6 If then upon the whole case you have a reasonable
7 doubt as to the guilt or the innocence of this
8 Defendant, he is entitled to that reasonable doubt and
9 would be entitled to an acquittal and a verdict of not
10 guilty.

11 But on the other hand, if upon the whole case you
12 find that the State has proven by evidence that
13 satisfies you of the guilt of this Defendant beyond a
14 reasonable doubt, then in that circumstance it would
15 equally be your duty to convict the Defendant and find
16 him guilty.

17 If you find the Defendant guilty but you have a
18 reasonable doubt as to whether the Defendant is guilty
19 of a greater crime charged or a lesser crime charged,
20 then you would resolve that reasonable doubt in favor
21 of the Defendant and write a verdict of guilty only as
22 to the lesser charge. But of course you cannot write
23 a verdict of guilty to any charge unless as to that
24 particular charge you find that all the elements of
25 that charge have been proven by the State beyond a

1 reasonable doubt.

2 I would instruct you again that the indictment in
3 this case is not evidence of the charge that it
4 contains and cannot be considered by you as evidence
5 in this case.

6 Again, the indictment, ladies and gentlemen, is
7 simply the formal written instrument that contains the
8 charge made against a Defendant and it does serve as
9 the formal document by which the case has been
10 processed or brought through the court system.

11 Now, during the trial, Mr. Foreman and ladies and
12 gentlemen, you and I have certain duties to perform.
13 As the trial judge, it is my responsibility to preside
14 over the trial of the case and I also have the duty to
15 rule upon or pass upon the admissibility of evidence
16 that has been offered during the trial. You are to
17 consider only the competent evidence before you and
18 you are to disregard or disabuse from your mind any
19 testimony that may have been ordered stricken from the
20 record in this case, if there was any, and you are to
21 consider only the testimony that has been presented
22 from the witness stand, together with any exhibits
23 that have been made a part of the record in this case.

24 I do have the additional duty to charge you the
25 law that applies in this case. As the presiding

1 judge, I am the sole judge of the law of the case.
2 And it is your duty as jurors to accept and apply the
3 law as I am now going to explain it to you.

4 If you did have a preconceived idea as to what
5 the law is or what you thought the law ought to be and
6 that does not agree with what I am now explaining to
7 you, then you are obligated under your oath that you
8 took when this trial began to abandon that
9 preconception on your part because you have been sworn
10 and have agreed to accept and apply the law precisely
11 as the Court explains it to you.

12 In every case that is tried in this court before
13 a jury, the jury does become the sole and the
14 exclusive judge of the facts in a case. You the jury
15 are the judge of the facts of this case. The Court is
16 the judge of the law of the case.

17 The constitution of this State has declared that
18 a trial judge shall not intimate, state, comment upon
19 or make any statement to a trial jury about the facts
20 in a case.

21 Since you are the sole judge of the facts of this
22 case, you are not to infer from anything that I have
23 said during the progress of this trial in ruling upon
24 the admissibility of evidence or otherwise or anything
25 that I say now during the course of these instructions

1 to you that I have any opinion about the facts in this
2 case.

3 Again, the law does not permit me to have an
4 opinion about the facts of the case. This is a matter
5 solely for you the jury to determine.

6 As jurors, then, it is your duty as I have
7 instructed you to determine the effect, the value, the
8 weight and the truth of the evidence presented during
9 the trial. By necessity you must assess the
10 credibility of witnesses who have testified in this
11 case. Credibility is simply a legalistic term that
12 means believability. It becomes your duty as jurors
13 to analyze and to evaluate the evidence and determine
14 that evidence which convinces you of its truth.

15 I would instruct you that in determining the
16 question of the credibility or the believability of
17 the witnesses who have testified in this case, you may
18 believe one witness as against several witnesses, or
19 several as against one. You may believe a part of the
20 testimony of a witness and reject the remaining part
21 of the testimony of that same witness. You may
22 believe the testimony of a witness in its entirety, or
23 reject the testimony of a witness in its entirety.
24 You may consider whether any witness has exhibited to
25 you any interest, any motive, any bias, any prejudice

1 in the case. You may consider the demeanor of a
2 witness, that is, the appearance of a witness on the
3 witness stand. And you may of course consider the
4 opportunity for knowledge concerning those things
5 about which a witness has testified.

6 Your objective, ladies and gentlemen, is to seek
7 the truth regardless of its source, and in doing so in
8 exercising your mental processes and in determining
9 what you considered to be true, the law simply
10 requires that you exercise your good judgment, your
11 common sense, your sense of logic and reason and your
12 experiences in life, and you then apply these
13 attributes and ability to the evidence and determine
14 what you the jury consider to be the truthful
15 evidence, and to this state of facts as determined by
16 you, you then take and apply the law as I now explain
17 it to you and thus arrive at a true verdict this case.

18 There are two types of evidence that are
19 generally presented during a trial: direct evidence
20 and circumstantial evidence.

21 Direct evidence is the testimony of a person who
22 asserts or claims to have actual knowledge of a fact,
23 such as an eyewitness. Circumstantial evidence is
24 proof of a chain of facts and circumstances indicating
25 the existence of a fact.

1 The law makes absolutely no distinction between
2 the weight or the value to be given to either direct
3 or circumstantial evidence, nor is a greater degree of
4 certainty required of circumstantial evidence than of
5 direct evidence. You should weigh all the evidence in
6 the case.

7 After weighing all the evidence, if you are not
8 convinced of the guilt of the Defendant beyond a
9 reasonable doubt, then you must find the Defendant not
10 guilty.

11 There has been admitted into the record a
12 statement or statements allegedly made by the
13 Defendant. I would instruct you that while the Court
14 determines the admissibility of evidence, what weight
15 if any to give any such statements is a matter solely
16 for you the jury to determine.

17 I will further instruct you, Mr. Foreman and
18 ladies and gentlemen, that during the course of this
19 trial we have had what we call expert testimony. In
20 that connection, I will tell you that ordinarily
21 witnesses cannot testify as to their opinion of a
22 matter. An exception to this general rule is where a
23 witness has been qualified as an expert. In that
24 event, such a witness may voice his or her opinion.

25 Now, insofar as expert or opinion evidence is

1 concerned, that is to say the effect of any expert
2 that is a matter of opinion, you are not to place any
3 opinions above the idea of your own opinions on the
4 subject, but you are to consider these opinions along
5 with all the other evidence in the case in forming
6 your own conclusions.

7 I will further instruct you, Mr. Foreman and
8 ladies and gentlemen, that there was admitted into the
9 record of this case evidence of an alleged prior
10 record of a witness or witnesses. This evidence was
11 admitted for a limited purpose. This evidence was
12 admitted and may be considered by you the jury if you
13 conclude it true only for the purpose of evaluating
14 the credibility or the believability of that witness.
15 You may give to this evidence such weight and such
16 value if any to which you find it is entitled on the
17 sole issue of the credibility or the believability of
18 the testimony offered by that witness, himself or
19 herself.

20 The charge that is made in this indictment, as I
21 have indicated to you, is a charge of murder. That
22 offense is found in the South Carolina Code of Laws at
23 Section 16-3-10.

24 Murder is defined as the killing of any person
25 with malice aforethought, either expressed or

1. inferred.

2. Now, upon the principle and theory of the law in
3. this state that a greater offense does include any
4. lesser offenses, the charge of murder in this case
5. would also include the lesser offenses of voluntary
6. manslaughter and involuntary manslaughter, even though
7. those charges are not written into the body of this
8. particular indictment.

9. So let me first talk to you and explain to you
10. the law that applies to the charge of murder, and then
11. I will move on to voluntary manslaughter and
12. involuntary manslaughter.

13. The Defendant is charged with murder. The State
14. must prove beyond a reasonable doubt that the
15. Defendant killed another person with malice
16. aforethought.

17. Malice is hatred, ill-will or hostility towards
18. another person. It is the intentional doing of a
19. wrongful act without just cause or excuse and with an
20. intent to inflict an injury or under circumstances
21. that the law would infer an evil intent.

22. Malice aforethought does not require that the
23. malice exist for any particular time before the act is
24. committed, but malice must exist in the mind of the
25. Defendant just before and at the time that the act is

1 committed. Therefore, there must be a combination of
2 the previous evil intent and the act.

3 Malice aforethought may be expressed or inferred.
4 Now, these terms expressed and inferred do not mean
5 different kinds of malice, but merely the manner in
6 which malice may be shown to exist; that is, either by
7 direct evidence or by inference from the facts and
8 circumstances which are proven.

9 Expressed malice is shown when a person speaks
10 words which express hatred or ill-will for another or
11 when the person prepared beforehand to do the act
12 which was later accomplished.

13 For example, lying in wait for a person or any
14 other acts of preparation going to show that the deed
15 was within the Defendant's mind would be express
16 malice.

17 Malice may be inferred from conduct showing a
18 total disregard for human life. Inferred malice may
19 also rise where a deed is done with a deadly weapon.

20 A deadly weapon is any article, instrument or
21 substance which is likely to cause death or great
22 bodily harm. Whether an instrument has been used as a
23 deadly weapon depends on the facts and circumstances
24 of each case.

25 So, again, the definition and what the State must

1 prove beyond a reasonable doubt is that the Defendant
2 killed another person with malice aforethought.

3 As I have explained to you, the charge of malice
4 -- excuse me, the charge of murder includes the charge
5 as a lesser included offense voluntary and involuntary
6 manslaughter.

7 Let me first talk to you about voluntary
8 manslaughter. What is voluntary manslaughter?
9 Voluntarily manslaughter is the felonious killing --
10 excuse me, the felonious taking of a life of another
11 human being in sudden heat and passion upon a
12 sufficient legal provocation. The law recognizes the
13 fact that sudden heat and passion may, for the time
14 being, affect one's self-control, temporarily disturb
15 the sway of reason, and thus reduce the crime of
16 murder to voluntary manslaughter where the homicide
17 was done in sudden heat and passion, provided there
18 was a sufficient legal provocation.

19 Sufficient legal provocation must be such as
20 would be calculated to cause a person of ordinary
21 reason and prudence, sometimes described as an average
22 person, to become enraged. That is, to experience
23 sudden heat and passion and thus lose control of
24 himself or herself temporarily.

25 And merely by way of illustration, and

1 illustration alone, I would instruct that when an
2 unjustifiable assault is made with violence or the
3 circumstances of indignity upon a man or a woman's
4 person and the party so assaulted kills the aggressor,
5 then the crime will be reduced to manslaughter if it
6 appears that the assault was resented immediately and
7 the aggressor was killed in the heat of blood where it
8 will be observed that the killing must be in sudden
9 heat and passion.

10 If in fact passion had cooled or if there was
11 sufficient time between the provocation and the
12 killing for passion to cool, the killing would not be
13 attributed to the heat of passion, but to malice. The
14 sufficiency of cooling time would depend upon whether
15 there was time, all the circumstances being
16 considered, for a person of ordinary reason and
17 prudence to cool.

18 You will note that malice is an essential
19 element of the offense of murder. Malice is not an
20 essential element of the crime of voluntary
21 manslaughter. The presence of malice in murder and
22 the absence of malice in voluntary manslaughter is
23 what distinguishes these two offenses.

24 There is another lesser included offense included
25 in the charge of murder, and that would be in

1 involuntary manslaughter. I will charge you that
2 involuntary manslaughter is the unintentional killing
3 of another without malice but while engaged in an
4 unlawful activity not naturally tending to cause death
5 or great bodily harm; or, it is the unintentional
6 killing of another without malice while engaged in a
7 lawful activity with reckless disregard for the safety
8 of others.

9 To constitute involuntary manslaughter there must
10 be a finding of criminal negligence, which is defined
11 under the statutes as a reckless disregard for the
12 safety of others.

13 So while the indictment contains the charge of
14 murder, it automatically includes lesser included
15 offenses of voluntary manslaughter and involuntary
16 manslaughter.

17 And I would instruct you that if you determine
18 that the Defendant is guilty but have a reasonable
19 doubt as to whether or not the Defendant is guilty of
20 the greater crime charged or one of the lesser crimes
21 charged, then you would resolve that reasonable doubt
22 in favor of the Defendant and write a verdict of
23 guilty only as to the lesser charge, whichever one you
24 determine it to be based on the facts as you determine
25 them to be. But you cannot write a verdict of guilty

1 to any charge unless as to that particular charge you
2 find that all the elements of that charge have been
3 proven by the State beyond a reasonable doubt.

4 Mr. Foreman and ladies and gentlemen, whatever
5 your verdict is in this case, it must be unanimous,
6 which means that all 12 of you must agree on it. It
7 cannot be 8 to 4 or 10 to 2 or anything less than a
8 unanimous verdict.

9 Once the jury has deliberated and reached a
10 verdict, Mr. Foreman, I'm going to send this verdict
11 form with you, and it has got the four possible
12 verdicts in this case. I'm going to go over these
13 with you. Don't attach any significance to the order
14 that I go over the possible verdicts with you. I have
15 to give them to you in some order.

16 The possible verdicts: we, the jury, find the
17 Defendant guilty of murder; we, the jury, find the
18 Defendant guilty of voluntary manslaughter; we, the
19 jury, find the Defendant guilty of involuntary
20 manslaughter; we, the jury, find the Defendant not
21 guilty.

22 Under each one of those possibilities, Mr.
23 Foreman, there is a line for you to sign your name.
24 Once the jury has deliberated and reached a unanimous
25 verdict, you would simply sign your name under

1 whichever verdict the jury has agreed upon. Again, it
2 must be unanimous.

3 In just a moment I am going to send you to your
4 jury room. I would ask you at this time not to
5 beginning deliberating. I will go over with the
6 attorneys the instructions that I have given you. If
7 I have omitted anything or feel like I need to explain
8 anything in more detail, I will bring you right back
9 in the courtroom to take care of that. If that is not
10 necessary, when the bailiffs or the clerk bring you
11 the verdict form and the exhibits, that's your signal
12 to go ahead and begin deliberating.

13 Once you have completed the verdict form and
14 reached a unanimous verdict, simply knock on the door,
15 tell the bailiff you have a verdict. Don't tell them
16 what it is. We will bring you back in the courtroom
17 and take your verdict here in the courtroom.

18 Many times, Mr. Foreman and ladies and gentlemen,
19 there are no questions from the jury once you get back
20 and begin deliberating. If you have a question, I
21 would ask you to write it out on a slip of paper and
22 hand it to the bailiff.

23 I would again remind you that I am not permitted
24 to comment or have any -- any say in what the facts
25 are, so I probably cannot respond to any question that

1 would deal with facts. That's a matter solely for the
2 jury to determine. If your question dealt with a
3 matter of law, I may or may not be able to respond to
4 it. In some instances I may be able to write an
5 answer and others I will bring you back in the
6 courtroom and attempt to respond to whatever your
7 question might be.

8 Also, from time to time when juries go back,
9 particularly in cases where there have been a large
10 number of exhibits, I will get a note out, send me
11 such and such, or send me this, send me that. We will
12 insure that every exhibit that has been admitted into
13 the record is with you in the jury room, and I can't
14 send you anything else.

15 With those instructions, if you will step back
16 to your jury room. I need my alternates, ladies, if
17 you will stay with me here in the courtroom, please.
18 The rest of you are excused to the jury room.

19 Everyone else stay seated, please.

20 (WHEREUPON, the jury retires to the jury
21 room at approximately 3:18 p.m.)

22 THE COURT: It is unusual for us to have a case
23 that goes for a full week and not have somebody get
24 sick or something happen to one of the jurors or some
25 emergency come up and not have to use one of my

1 alternates. And usually I only get one alternate.
2 Because I knew the case was going to take at least a
3 week, I went ahead and got two. So I'm surprised that
4 neither one of you have been seated on the jury.

5 But now that the case is going to the jury and
6 you will not be going back to assist them and
7 deliberate with them and help them make a decision, so
8 I can excuse you at this time. And what I am going to
9 do is ask you to have a seat right out here in the
10 hallway and the lady from the Clerk of Court's Office
11 is going to talk to you for just a second. Once she
12 has done that, your jury service is concluded, and I
13 really appreciate your being here.

14 So you can step out in the hallway right here.
15 Thank you very much.

16 (WHEREUPON, the alternate jurors exit the
17 courtroom.)

18 THE COURT: All right, exceptions or additions
19 from the State?

20 MR. MEADORS: Your Honor, just as to malice. I
21 didn't know if Your Honor left it out or just like a
22 lot of the evidence that was argued afterwards that
23 came in could, if you believed it, indicate malice at
24 the time, a depraved or malignant heart, intent to do
25 serious bodily harm. I just request something coming

1 out to cover that since a large part of my closing was
2 on it. Mr. Strickler even called it illogical or
3 ludicrous, or whatever, if they believe that. And I
4 even objected, I said, well, that's the law. I think
5 at the side bar Your Honor said that is the law, if
6 you phrase it a certain way. So we would certainly
7 like that presented to the jury.

8 THE COURT: Tell me again what it is specifically
9 that you are requesting.

10 MR. MEADORS: Your Honor, specifically if they
11 believe acts by the Defendant after the event, if they
12 believed that they showed malice, they could be --
13 that could be an inference of malice if they felt that
14 that was his state of mind at the time of the
15 incident. I believe that is roughly what Your Honor
16 told us at side bar, and I guess that would be a
17 depraved or malignant heart, it can be inferred from
18 that, from actions and/or inactions after the crime,
19 if the jury finds that they do relate back to the
20 incident itself. I think that is what we were
21 instructed at side bar. I don't know how eloquently I
22 just put that, but -

23 THE COURT: All right, let met hear from Mr.
24 Strickler in response.

25 MR. STRICKLER: Your Honor, I know of no case

1 that says that drinking beer after the incident, using
2 credit cards after the incident, using the cell phone
3 after the incident, supplies or tend to supply malice
4 necessary to convict of murder. I haven't heard one.
5 I don't know of one. I think your charge on malice
6 was sufficient in and of itself.

7 THE COURT: All right, let me think about that.
8 Is that all the State is asking for at this point?

9 MR. MEADORS: Yes.

10 THE COURT: From the Defense, Mr. Strickler?

11 MR. STRICKLER: Your Honor, nothing as to the
12 charge as given. I would except to Your Honor's
13 decision not to -- to not charge self-defense and
14 accident in this case.

15 I would ask the record to reflect, Your Honor,
16 that during the off-the-record charge conference we
17 had, and I think that is reflected by my brief
18 comments prior --

19 THE COURT: Well, both of those were requested,
20 that is correct.

21 MR. STRICKLER: Yes, sir. And as I said, I
22 didn't submit written requests because I just wanted
23 your normal charge in that regard. So I would except
24 to Your Honor's decision to not charge those
25 instructions.

1 THE COURT: All right. The -- I had already
2 indicated I would not be charging those. I don't
3 believe the evidence supports a charge on either one.

4 Do you have that case you mentioned up here at
5 the bench conference, Mr. Meadors, concerning what
6 you're asking about?

7 MR. MEADORS: I'm sorry, you're not talking about
8 the previous King one?

9 THE COURT: Pardon?

10 MR. MEADORS: You're talking about what I just
11 requested?

12 THE COURT: Yes, not the King one. When we had
13 the bench conference you said it is the law, there's a
14 case. And my understanding is that if the conduct
15 post-event shows what the state of mind was at the
16 time of the event, then it's admissible.

17 MR. MEADORS: Yes, sir.

18 THE COURT: And to be quite honest with you, I'm
19 not sure that I need -- I almost get to the point of
20 charging on the facts if I do what you're asking me to
21 do right now. And I think it has been covered. I
22 went back over what I explained. I'll note your
23 exception, but I'm not going to change anything.

24 MR. MEADORS: Thank you.

25 THE COURT: All right, let's be sure we have got

1 all the exhibits and the verdict form. You need to
2 take a look at the verdict form and be sure you don't
3 object to it.

4 We'll stand in recess until we hear from the
5 jury.

6 (WHEREUPON, the exhibits and verdict form were
7 sent to the jury at approximately 3:24 p.m. and
8 the court was in recess awaiting a verdict.)

9 THE COURT: All right, we've got everybody, is
10 that right? I've been advised the jury has reached a
11 verdict.

12 For the benefit of those here in the courtroom,
13 the Court does not and cannot tolerate any kind of
14 emotional outburst when the verdict is announced. If
15 you are unsure whether you can control your emotions,
16 you need to excuse yourself from the courtroom.
17 Otherwise, you'll find yourself being held in contempt
18 of court.

19 All right, let's bring the jury in, please, sir.

20 THE BAILIFF: Yes, sir.

21 (WHEREUPON, the jury came into open court
22 at approximately 4:10 p.m.)

23 THE BAILIFF: Your Honor, the jury is present.

24 THE COURT: All right, thank you. Mr. Foreman,
25 I've been advised that the jury has reached a verdict

1 in this case. Is that right?

2 MR. FOREMAN: Yes, sir, Your Honor.

3 THE COURT: Is it unanimous?

4 MR. FOREMAN: Yes, sir.

5 THE COURT: Would you hand the verdict form to
6 the bailiff, please, sir.

7 (Court views the verdict form.)

8 THE COURT: All right, Madam Clerk, if you'll
9 publish the verdict, please.

10 Mr. Strickler, if you and your client and Ms.
11 Mobley would stand, please.

12 VERDICT OF THE JURY:

13 THE CLERK: Indictment Number 2005-GS-40-3186,
14 The State of South Carolina versus Christopher Sam
15 Commander: We, the jury, find the Defendant guilty of
16 murder. This is signed William Peel, October 16th,
17 2006.

18 Mr. Foreman, is this your verdict and the verdict
19 of the entire jury?

20 MR. FOREMAN: yes, it is.

21 THE COURT: Mr. Strickler, do you wish to have
22 the jury polled?

23 MR. STRICKLER: Please, sir.

24 THE COURT: All right. Mr. Foreman and ladies
25 and gentlemen, you will be polled. The Clerk of Court

The State versus Christopher Sam Commander

1 is going to ask you one at a time whether this was
2 your verdict and whether it is still your verdict. If
3 you'll answer her question as she calls your name,
4 please. When she calls your name, raise your hand so
5 we can be sure and locate you.

6 All right. We'll do it by number. Does
7 everybody know their number? All right.

8 POLLING OF THE JURY BY THE CLERK:

9 THE CLERK: Mr. Foreman, was this your verdict?

10 JUROR: Yes.

11 THE CLERK: Is it still your verdict?

12 JUROR: Yes.

13 THE CLERK: Juror Number 36, was this your
14 verdict?

15 JUROR: Yes, ma'am.

16 THE CLERK: Is it still your verdict?

17 JUROR: Yes, ma'am.

18 THE CLERK: Juror Number 62, was this your
19 verdict?

20 JUROR: Yes, ma'am.

21 THE CLERK: Is it still your verdict?

22 JUROR: Yes, ma'am.

23 THE CLERK: Jury Number 41, was this your
24 verdict?

25 JUROR: Yes, ma'am.

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1 THE CLERK: Is it still your verdict?
2 JUROR: Yes, ma'am.
3 THE CLERK: Juror Number 2, was this your
4 verdict?
5 JUROR: Yes, ma'am.
6 THE CLERK: Is it still your verdict?
7 JUROR: Yes, ma'am.
8 THE CLERK: Juror Number 25, was this your
9 verdict?
10 JUROR: Yes, ma'am.
11 THE CLERK: Is it still your verdict?
12 JUROR: Yes, ma'am.
13 THE CLERK: Juror Number 65, was this your
14 verdict?
15 JUROR: Yes.
16 THE CLERK: Is it still your verdict?
17 JUROR: Yes, ma'am.
18 THE CLERK: Juror Number 67, was this your
19 verdict?
20 JUROR: Yes, ma'am.
21 THE CLERK: Is it still your verdict?
22 JUROR: Yes, ma'am.
23 THE CLERK: Juror Number 102, was this your
24 verdict?
25 JUROR: Yes, ma'am.

The State versus Christopher Sam Commander

1 THE CLERK: Is it still your verdict?

2 JUROR: Yes, ma'am.

3 THE CLERK: Juror Number 69, was this your
4 verdict?

5 JUROR: Yes, ma'am.

6 THE CLERK: Is it still your verdict?

7 JUROR: Yes, ma'am.

8 THE CLERK: Juror Number 101, was this your
9 verdict?

10 JUROR: Yes, ma'am.

11 THE CLERK: Is it still your verdict?

12 JUROR: Yes, ma'am.

13 THE CLERK: Juror Number 79, was this your
14 verdict?

15 JUROR: Yes, ma'am.

16 THE CLERK: Is it still your verdict?

17 JUROR: Yes, ma'am.

18 THE CLERK: The jury has been polled, Your Honor.

19 THE COURT: The jury has been polled and all have
20 answered in the affirmative.

21 Anything further from the jury, Mr. Strickler?

22 MR. STRICKLER: Of the jury, Your Honor? No,
23 sir.

24 THE COURT: All right. All right, any motions at
25 this time?

The State versus Christopher Sam Commander

1 MR. STRICKLER: Yes, sir. At this point in time,
2 Your Honor, I would move that the Court grant a new
3 trial in this matter.

4 I would refer back to our previously stated
5 motion for directed verdict at the end of the State's
6 case.

7 I would submit that under the facts of this
8 particular case, there was a complete dearth of
9 evidence regarding specifically the element of malice,
10 that submitting the case to the jury, with all due
11 respect, sir, invited a verdict based on speculation
12 and conjecture on their part as opposed to a verdict
13 founded on facts supporting legal principles.

14 So I would ask Your Honor to revisit your
15 previous motion in that regard and reverse yourself
16 and grant a new trial in this matter.

17 Additionally, with all due respect, of course, to
18 the jury in this case, I would submit that the length
19 of time taken in arriving at the verdict, half an
20 hour, 35 minutes, given the length of the case and
21 nature of the evidence in this case, not due time was
22 given to consider the evidence in this matter at
23 arriving at their decision.

24 I would also, Your Honor, of course at this time,
25 in support of my motion for a new trial, I would also

1 ask Your Honor to revisit your decision in declining
2 my request to charge both self-defense and accident in
3 this matter. And, again, on those bases ask that Your
4 Honor grant a new trial in this matter.

5 THE COURT: All right, thank you.
6 Motion for new trial on the grounds stated by counsel,
7 all of the grounds, including the issue concerning
8 malice, speculation, conjecture, the length of time,
9 would be denied, as well as the motion for any trial
10 based on the Court's declining to charge either
11 self-defense or malice (sic) or both. But your
12 position is noted.

13 MR. STRICKLER: Thank you, Your Honor. That's
14 all I have.

15 THE COURT: All right. Ready to go forward,
16 solicitor?

17 MR. MEADORS: Yes, sir.

18 THE COURT: All right.

19 MR. MEADORS: Beg the Court's indulgence.

20 (Pause.)

21 MR. MEADORS: Your Honor, I think most of the
22 family members are not going to speak, but with the
23 Court's permission, Michael Brown, Sr. is here and
24 would like to address the Court.

25 THE COURT: Mr. Brown?

1 MR. BROWN: Your Honor, if I may, I'd like to
2 speak on behalf of my son, M. J. . At the
3 current time he is 14 years old. If I may give you a
4 little bit of background on my son.

5 He came to live with me when he was in the 6th
6 grade. He was attending W.G. Sanders Middle School
7 where he was an honor student maintaining a 4.3 grade
8 point average. In the 7th grade he attended Pineridge
9 Middle School. He was a member of the basketball
10 team, a member of the track team. At that time he
11 also maintained a 4.3 grade point average. In the 8th
12 grade he also attended Pineridge Middle School. He
13 was elected president of the student body. He was
14 also inducted into the National Junior Honor Society.
15 He was also Murdick Walker (phonetic) Scholar. He
16 also maintained a 4.3 grade point average.

17 At this time, Your Honor, my son is a 9th grader
18 at Airport High School. He is vice president of the
19 freshman class.

20 Your Honor, this has taken a toll on not only my
21 family, the Brown family, but also the Goodwin family,
22 the Pratt family as well.

23 At the time of the death, my son was just turning
24 13, Your Honor. It has great impact on our lives, but
25 I just thank God that he has maintained to keep his

PAGE 925 IS MISSING FROM THE ORIGINAL TRANSCRIPT

1 like a possession with intent to distribute marijuana,
2 a criminal domestic violence conviction in April of
3 '96. Some other minor convictions relating to
4 vehicles, I think. And then the federal conviction
5 for conspiracy, Your Honor, a court date of -- pled
6 guilty on 1/6/03, sentenced on 2/4/04 to conspiracy.
7 Got five years probation and ordered to pay
8 restitution involving -- in the amount of \$10,544.00.
9 And I do think that dealt with some automobiles and/or
10 stolen parts of vehicles. If I'm wrong, I certainly
11 would be happy to be corrected.

12 Judge, I think that's all we have. The facts
13 kind of speak for themselves. Thank you.

14 THE COURT: All right. Mr. Strickler?

15 MR. STRICKLER: Your Honor, first of all, of
16 course, I'd like to just ask Your Honor to exercise
17 whatever mercy you can in this particular situation.

18 As Your Honor knows, I came into this case as
19 lead counsel fairly late in the process, a couple of
20 weeks ago, as a matter of fact.

21 I have had the opportunity to meet with Chris on
22 occasions prior to the trial and during the trial. I
23 can't speak to anything other than this matter that I
24 have dealt with. That person has been a pleasure to
25 deal with and a gentlemen in every regard. I, better

1 or worse, have a substantial basis for comparison with
2 other folks I have represented. All I can say is, as
3 a person, I wish that every client I represented
4 presented himself and acted as Chris has. He's a good
5 fellow.

6 THE COURT: All right, Ms. Mobley, anything?

7 MS. MOBLEY: Your Honor, I would just -- I
8 completely and utterly agree. I came on the case late
9 as well. And Chris has just been a pleasure to
10 represent.

11 we would ask you to exercise whatever mercy Your
12 Honor can.

13 THE COURT: Does he wish to speak?

14 THE DEFENDANT: No, sir.

15 THE COURT: Okay.

16 MR. STRICKLER: I would just add, Your Honor,
17 just so the Court doesn't think he is alone here, his
18 family has been here. His family was here earlier
19 today. They left at the time the jury went out to
20 deliberate, I imagine expecting them to come back
21 later on this afternoon.

22 SENTENCE OF THE COURT:

23 THE COURT: All right, the sentence of this Court
24 is that Mr. Commander be committed to the South
25 Carolina Department of Corrections for life without

1 the possibility of parole.

2 MR. STRICKLER: Thank you, sir. The record
3 should reflect that I have already advised
4 Mr. Commander --

5 THE COURT: His right to appeal?

6 MR. STRICKLER: Right. And I will go ahead and
7 initiate that process.

8 THE COURT: He will get credit -- he's been in
9 since January the what of '05?

10 MR. STRICKLER: January -- well, he was arrested
11 January 13th.

12 THE COURT: He was arrested the 13th. He'll get
13 credit for the time since then.

14 MS. MOBLEY: Thank you, Your Honor.

15 THE COURT: Mr. Foreman and ladies and gentlemen,
16 that concludes this case. Many times when the jury
17 has reached a verdict, right after the verdict we'll
18 send you back and let the clerk come talk to you and
19 dismiss you. You've got a week of your life invested
20 in the case, so I thought you might be interested in
21 seeing what goes on during the sentencing portion of
22 the case.

23 This will conclude your jury service. Let me
24 thank all of you. I told the two alternates when I
25 released them earlier, number one, it's unusual to

1 have a case that goes this long without someone having
2 some emergency where I have to seat one of the
3 alternates. And you have all been here. We haven't
4 had to wait on you I don't think a single minute for a
5 week or a week and a day. You've had to wait on us
6 sometimes, I know that.

7 But this will conclude your jury service. Thank
8 you very much for your hard work. The clerk will come
9 speak to you about getting paid, and things of that
10 nature, and then you're excused.

11 Thank you very much.

12 Everyone else stay seated, please, while the jury
13 is excused.

14 (WHEREUPON, the jury is excused at approximately
15 4:25 p.m.)

16 THE COURT: We will stand in recess until 9:30 in
17 the morning.

18
19 (WHEREUPON, the trial was concluded.)
20

21
22
23 END OF REQUESTED TRANSCRIPT
24
25

The State versus Christopher Sam Commander

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

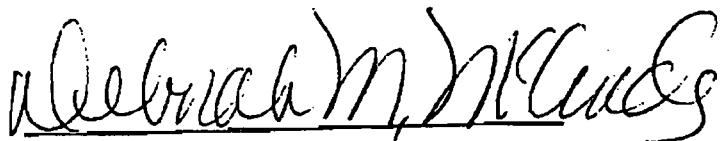
)

COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and Complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 10th, 11th, 12th, 13th and 16th days of October, 2006.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 25, 2007



Deborah M. McCurdy, Court Reporter

My Commission Expires: 5/24/09

The State versus Christopher Sam Commander

FORM 5

STATE OF SOUTH CAROLINA

County of Richland2012CP4003816
IN THE COURT OF COMMON PLEASChristopher Commander #318173

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEFJEANNETTE W. MCBRIDE
C.C.P. & C.S.

2012 JUN -1 PM 4:50

RICHLAND COUNTY
FILEDINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Corr. Inst., P.O. Box 205, 136 Wilborn Ave., SC. 29472
2. Name and location of Court which imposed sentence Richland County Court of Common Pleas
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 05-GS-40-3186 (murder)

- (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) October 15, 2005 (life w/o parole)
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty _____
 (b) after a plea of not guilty trial by jury
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. South Carolina Court of Appeals
 ii. South Carolina Supreme Court
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. affirmed conviction and sentence
 ii. XXXXXXXXXXXXXXXXXXXXXXXXXXXX
 iii. granted cert. but denied relief
 (c) the date of each such result:
 i. heard 3/18/09 filed 6/11/09
 ii. _____
 iii. heard 6/21/11 filed 10/31/11
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. St. v. Commander, 384 S.C. 66, 681 S.E.2d 31 (2009)
 ii. _____
 iii. affirmed as modified
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) n/a

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel
- (b) failure to investigate
- (c) denial of 5th, 6th and 14th Amends. U.S. Const.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) counsel did not render reasonable proff. assistance
- (b) Applicant reserves the right to amend this application to
- (c) include all issues available and does not waive any
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. n/a
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

first filing for post conviction relief

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. n/a

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. n/a

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) first filing for post conviction relief
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Douglas Strickler and Lauren Mobley, Esqs.
- ii. _____
- iii. Robert Dudek, Esq.
- (b) the proceedings at which each such attorney represented you:
- i. trial and sentencing
- ii. _____
- iii. direct appeal and certiorari review

19. State clearly the relief you seek in filing this application:

vacate sentence and conviction and remand for new trial

20. Are you now under sentence from any other court that you have not challenged?

no

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Christopher Commander, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

CC 313173

SWORN to and subscribed before me this 16th
day of March, 2012.

Richard Bryant (L.S.)
Notary Public

My Commission Expires: May 21, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Christopher Commander, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Chc 318173

Applicant

SWORN or affirmed to and subscribed before me this

16th day of March, 2012.

Ludrian Bryant
Notary Public

My Commission Expires: May 26, 2020

RICHLAND COUNTY
FILED
2012 JUN -1 PM 4:50
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)
FOR THE FIFTH JUDICIAL CIRCUIT)

COMMANDER Christopher -)
00318173,)

2012CP4003816)

Applicant,)

v.)

RETURN)

State of South Carolina,)

Respondent.)

The Respondent, making its Return to the application for post conviction relief (PCR) filed June 1, 2012, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was true bill indicted at the April 2005 term of the Richland Grand Jury for Murder (2005-GS-40-3186).² He was represented by Doug Strickler, Esquire, and Lauren Mobley, Esquire, on the charge(s). Applicant proceeded to jury trial before The Honorable James W. Johnson, Jr., on October 10, 2006. After a six day trial, Applicant was found guilty as indicted and sentenced to life imprisonment without the possibility of parole.

¹<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2012Cp4003816&CourtType=G&CaseType=Civil&CourtAgency=40002>

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00318173>

Direct Appeal

A timely Notice of Appeal was filed and an appeal perfected on Applicant's behalf by LaNelle DuRant, Esquire, of the South Carolina Commission on Indigent Defense, Appellate Defense Division. After the submission of briefs, the matter proceeded to oral argument on March 18, 2009. By order on or about June 11, 2009, the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Commander, Op. No. 4560 (S.C. Ct. App. filed June 11, 2009).

A Petition for Writ of Certiorari was then filed in the South Carolina Supreme Court on Applicant's behalf. After the submission of briefs, the matter proceeded to oral argument on June 21, 2011. The Supreme Court affirmed the convictions and sentences as modified in an order filed October 21, 2011. State v. Commander, Op. No. 27062 (S.C. filed October 31, 2011). The Remittitur was issued November 17, 2011.

The application for post conviction relief (PCR) was filed June 1, 2012.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) ineffective assistance of counsel
 - (b) failure to investigate
 - (c) denial of 5th, 6th and 14th Amends. U.S. Const.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) counsel did not render reasonable proff. assistance
 - (b) Applicant reserves the right to amend this application to
 - (c) include all issues available and does not waive any

IV.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability

is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. **The Respondent requests an evidentiary hearing to fully resolve this issue.** See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Kristy Grafton Goldberg, Esquire regarding when the hearing should be set.⁴

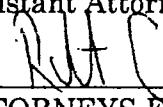
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney
General

ROBERT D. CORNEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
rcorney@scag.gov

June 25, 2012

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>
COMMANDER Christopher - State's Return - (2012Cp4003816)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

COMMANDER Christopher -
00318173,

) 2012Cp4003816
)
)
)

) Applicant,
)

) v.
)

) CERTIFICATE OF SERVICE
)

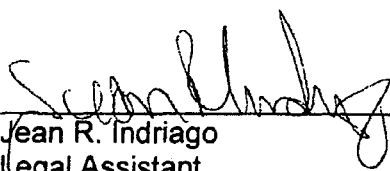
) State of South Carolina,
)

) Respondent.
)
_____)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

Kristy Grafton Goldberg, 1720 Main Street, Suite 301 , Columbia, SC 29201

DATED June 26, 2012.



Jean R. Indriago
Legal Assistant

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2012-CP-40-03816
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
CHRISTOPHER COMMANDER,	)	
	)	
RESPONDENT,	)	

September 2, 2014
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

SUZANNE WHITE, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KRISTY GOLDBERG, ESQ.
Attorney for the Respondent

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S
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> > > < < <

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PLAINTIFF'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Letter, 6/29/14	10	11
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COURT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	CV - Collins	9	

1 THE COURT: All right. We're on the record
2 in 2012-CP-40-3816, Christopher Commander vs. The State of
3 South Carolina.

4 Mr. Commander is present. In the courtroom
5 representing the State is Ms. White. Representing the
6 Applicant is Ms. Goldberg. The witness in the case,
7 Mr. Strickler, was notified that we were going to do part
8 of this prior to lunch and chose not to come up and watch.

9 We may take this a little bit out of order. My main
10 concern is getting the witness out of here so that she
11 doesn't have to sit around and wait for us all to go to
12 lunch and then come back in the afternoon.

13 So I understand -- I'm not trying to confuse the
14 presentation of evidence, but I'll be able to put it all
15 together.

16 Okay. Go ahead, Ms. White.

17 MS. WHITE: Your Honor, if I can approach I'm going
18 to bring you the packet.

19 THE COURT: Okay. All right. Ms. White, do you want
20 to give an overview?

21 MS. WHITE: Thank you, Your Honor. This is case of
22 Christopher Commander vs. the State. It's case number
23 2012-CP-40-3816.

24 Mr. Commander was arrested and indicted for murder.
25 In this case he proceeded to trial October of 2006 at

1 which time he was convicted. He was represented at the
2 time by Mr. Doug Strickler.

3 The actual sentence, I don't know why I blinked on
4 that.

5 MS. GOLDBERG: Life.

6 MS. WHITE: He did receive a sentence of life, and he
7 filed an appeal, Your Honor. His convictions and sentence
8 were affirmed by both the Court of Appeals and the Supreme
9 Court following oral argument and briefing, and he has
10 alleged several things.

11 We have an amended application, in fact, a second
12 amended application, I believe, that should be in your
13 file alleging about seven different allegations. I can
14 detail those or I believe that because they're listed we
15 assume we're going forward on all seven of the
16 allegations.

17 MS. GOLDBERG: Your Honor, I can clarify that, the
18 second amended application was filed June 20th, 2014. So
19 Your Honor should have a copy of that. If not let me
20 know.

21 THE COURT: Okay.

22 MS. GOLDBERG: We are going to withdraw issue F and
23 issue H.

24 THE COURT: Okay. All right. Do you want to go
25 ahead and start with Dr. Collins?

1 MS. GOLDBERG: Yes, Your Honor. I can do that now.

2 THE COURT: Okay.

3 MS. GOLDBERG: At this time, the Applicant would call
4 Dr. Kim Collins to the stand.

5 THE COURT: All right.

6 KIMBERLY COLLINS, after being duly
7 sworn, testified as follows:

8 THE COURT: All right.

9 DIRECT EXAMINATION:

10 BY MS. GOLDBERG:

11 Q Thank you, sir.

12 All right. Doctor, state your full name for the
13 record, please.

14 A Dr. Kimberly Ann Collins, C-O-L-L-I-N-S.

15 Q And what is your current employment?

16 A I'm currently a forensic pathologist and medical
17 director of Life Point Organ and Tissue Service Donations
18 for South Carolina.

19 Q Can you tell the court about your training and
20 education as a forensic pathologist?

21 A I attended college at the University of Georgia,
22 received my BS, and then I received my medical degree at
23 Medical College of Georgia.

24 After medical school, I complete a five-year
25 residency in anatomic and clinical pathology. After the

1 -- that was at Wake Forest University at Bowman Gray in
2 North Carolina.

3 I then completed a forensic fellowship at the
4 University of South Carolina in Charleston where I stayed
5 on staff as professor of pathology and laboratory
6 medicine, director of forensics autopsies and hospital
7 autopsies, and when we had a medical examiner system, I
8 was chief medical examiner.

9 Q What is the difference between a forensic pathologist
10 and an anatomical pathologist?

11 A Well, an anatomical pathologist is one that looks at
12 tissues and certain cells to make -- diagnose diseases and
13 help with treatments. A forensic pathologist uses that
14 information and uses it to investigate unnatural death or
15 trauma.

16 Q Are you a board certified forensic pathologist?

17 A Yes.

18 Q Are you a board certified anatomical pathologist, as
19 well?

20 A Yes, and clinical pathologist.

21 Q Have you worked as a medical examiner for a
22 municipality or governmental entity before?

23 A Well, the State was Medical University of South
24 Carolina, and then for five years I worked at Fulton
25 County Medical Examiner's Office which is this Atlanta.

1 Q Have you ever been -- have you ever testified or been
2 qualified as an expert in forensic pathology?

3 A Yes, I have.

4 Q How many times?

5 A Including depositions, trial and deposition about
6 200, 220.

7 Q Have you ever been disqualified as an expert?

8 A No.

9 MS. GOLDBERG: Your Honor, at this time I do have the
10 witness's CV. I'd like to make that a Court's Exhibit
11 just for the record. I would also like to offer this
12 witness as an expert in forensic pathology.

13 THE COURT: Voir dire?

14 MS. WHITE: No, Your Honor, we would agree that she
15 is qualified.

16 THE COURT: All right.

17 MS. GOLDBERG: Thank you, Your Honor.

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

20 BY MS. GOLDBERG:

21 Q Dr. Collins, you've been retained to consult in this
22 case on behalf of Christopher Commander; is that right?

23 A Yes.

24 Q What documents have you reviewed in preparation for
25 this case?

1 A I reviewed the post mortem records which included the
2 autopsy report, the death certificate, the coroner report,
3 the activity log, evidence transfer and incident report,
4 toxicology report, the trial transcript of Clay Allen
5 Nichols, MD, a CD of the entire complete trial transcript,
6 handwritten notes from defense counsel regarding a
7 conversation with Dr. Sinja Condinati, a CD with
8 photographs which included 39 scene perhaps and 14 autopsy
9 photographs, investigative records from law enforcement,
10 and medical records from Dravania D. Goodwin (phonetic).
11 Q Have you prepared a written report in preparation for
12 this case today?

13 A Yes, I have.

14 MS. GOLDBERG: Beg the Court's indulgence.

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

17 BY MS. GOLDBERG:

18 Q Dr. Collins, will you look at Applicant's Exhibit 1
19 and describe to me what that document is.

20 A This is an opinion letter that I wrote on June 29th,
21 2014. It's an opinion of my review of the case concerning
22 those materials that I just read.

23 Q Is that I guess the most recent version, the most up
24 to date, accurate version of your opinion letter?

25 A Yes, it is.

1 Q At this time, the Applicant would ask to offer this
2 document into evidence.

3 MS. WHITE: No objection, Your Honor.

4 THE COURT: Applicant's 1 without objection.

5 (WHEREUPON, Applicant's Exhibit No. 1 was admitted
6 into evidence.)

7 BY MS. GOLDBERG:

8 Q And Dr. Collins, do you have another copy of that
9 document with you right there?

10 A Yes.

11 Q Identical?

12 A Yes.

13 Q If there's no objection, I'll hand the exhibit to the
14 court, of Dr. Collins'.

15 MS. WHITE: No objection.

16 BY MS. GOLDBERG:

17 Q All right. Dr. Collins, in reviewing all of these
18 documents, can you first just give the Court a really
19 brief idea of the facts as far as the condition the victim
20 was found in?

21 A Okay. The victim was a woman age 34, and she was
22 found moderately to markedly decomposed in her home on
23 couch, and an autopsy was performed and a scene
24 investigation at that time.

25 So she was decomposed. The autopsy was performed, as

1 I mentioned. However, looking through the various organs,
2 each one is mentioned in the report as decomposed, it's
3 decomposed, decomposed.

4 On top of that, there was microscopic examination of
5 those organs which even when there is some decomposition,
6 you can get a great of detail when you do look at the
7 various organs under the microscope.

8 Q Okay. May I approach, Your Honor?

9 (WHEREUPON, Applicant's Exhibit No. 2 was marked for
10 identification only.)

11 BY MS. GOLDBERG:

12 Q Dr. Collins, can you look at Applicant's Exhibit
13 Number 2 and describe to me what that is?

14 A Yeah. This is the final autopsy report on Goodwin.

15 Q And that was one of the documents you consulted in
16 this case?

17 A Yes; that's correct.

18 Q At this time, the Applicant would offer the autopsy
19 report as -- into evidence?

20 MS. WHITE: No objection, Your Honor.

21 (WHEREUPON, Applicant's Exhibit No. 2 was admitted
22 into evidence.)

23 BY MS. GOLDBERG:

24 Q And do you have another copy of that in front of you
25 right now?

1 A Yes, I do.

2 Q Is it identical from what you can tell?

3 A I believe so.

4 (Pause).

5 Yes.

6 MS. GOLDBERG: If there's no objection, I'll hand
7 that to the Court, as well.

8 MS. WHITE: Let me make sure I have got the exact
9 same page.

10 (Pause).

11 Yes.

12 BY MS. GOLDBERG:

13 Q All right. Dr. Collins, what were the autopsy
14 findings and cause of death in this case?

15 A Well, the other thing that was note at the scene
16 beside the decomposed body was the body of a decomposed
17 fetus that was between Ms. Goodwin's legs. You asked what
18 were the final -- okay.

19 The final anatomic diagnosis by the end of the
20 autopsy by Dr. Nicols was history of the suspicious death,
21 moderate decomposition, post mortem expulsion of a
22 previable fetus and toxicology pending, which later turned
23 out to be negative. The cause of death was listed as
24 possible asphyxiation.

25 Q Based on your review of all of the documents, what is

1 your opinion as to cause of death?

2 A You can -- this is an undetermined cause of death.
3 You've got two things that are taking place. One is
4 you've got a decomposed body and a decomposed fetus.

5 The adult body was not even x-rayed, which all
6 decomposed bodies should be x-rayed looking for any types
7 of fractures, any projectile pads, any sharp wound
8 injuries.

9 The fetus should have been fully x-rayed also. When
10 you get a mother that dies, and you have decomposition,
11 you entertain a very different list of differential
12 diagnoses with a maternal death.

13 So you could have a blood clot to the lung. You
14 could have preeclampsia, seizures. Most women will have a
15 cardiomyopathy when they're pregnant, which is a natural
16 response of being pregnant.

17 You could have infections. The list goes on with
18 maternal deaths, and none of those were able to be ruled
19 out or even considered or attempted to be ruled out at the
20 time of autopsy.

21 Q Was there any -- as to the cause of death that was
22 determined possible asphyxia, from the review of the
23 records, was there any medical basis to back that up?

24 A No. There was trauma to the neck. There was no
25 ligature that was found at the scene. Of course, we do

1 have decomposition, so we have some absence of skin
2 findings and eye findings that you look for, but with a
3 homicidal or inflicted strangulation, you often will see a
4 broken thyroid cartilage which is a voice box or a hyoid
5 bone, and there was no trauma to the neck region.

6 So there was nothing in the autopsy report at all to
7 point one person in the direction of asphyxia as opposed
8 to a heart attack, as opposed to a pulmonary
9 thromboembolus, as opposed to eclampsia with seizure.
10 There is nothing in this autopsy report that can allow you
11 to conclude a definite cause of death.

12 Q Could these other possible causes of death you
13 mentioned, cardiac arrest, preeclampsia, other maternal
14 issues, could those have been ruled out? Was there no
15 effort made, or is it just the case that sometimes they
16 can't be ruled out?

17 A In the time -- with decomposition, a lot of times
18 they cannot be ruled out. There wasn't an effort made.
19 Like I mentioned, there wasn't an effort with the x-rays,
20 with the radiologist.

21 As far as the scene goes, we don't know about the
22 blood at the scene. Another common cause of death is
23 maternal hemorrhage at the time of delivery.

24 It's a previable fetus, but there should have been a
25 placenta. The placenta can help us tell a lot about the

1 fetal death and about the mom's death.

2 So a lot of steps were not taken, but even if we have
3 decompensation which is more advanced in this stage, which
4 we have. Sometimes we have full skeletons.

5 You come down with an appropriate cause of death, and
6 it is appropriate to say undetermined. An appropriate
7 manner of death, one of the five is undetermined. That is
8 how this should have been signed out.

9 Q What are the five typical causes of death?

10 A There's natural. There's suicide, homicide, accident
11 and undetermined.

12 Q And homicide and accident are separate.

13 A Correct.

14 Q What is the definition of homicide?

15 A Homicide is the death of one person at the hand of
16 another.

17 Q But not being an accident?

18 A Correct. Now, I -- there are some -- there is some
19 confusion in certain scenarios -- for instance, I will
20 give you this, a hunting accident, in quotes, is a
21 homicide.

22 So there's some scenarios that we consistently take
23 across the country and really across Canada, Australia, et
24 cetera to help with the odd issues with the manner of
25 death.

1 Q How do you determine whether something like that
2 should be classified as a homicide, an accident or I guess
3 in that particular case?

4 A In this particular case.

5 Q Well, in the example you gave with the hunting
6 accident.

7 A With a shooting death, the gun is pulled on purpose
8 whether or not you're aiming at another individual.
9 However, the victim would not have been shot but for the
10 other individual pulling the trigger.

11 Q So --

12 A And many times these scenarios do turn out to be a
13 different story when the investigation is completed.

14 Q So the underlying important factor in determining
15 whether it's a homicide is there is some sort of
16 intentional act versus an accidental act?

17 A That's part of it, yes.

18 Q Now, you mentioned that the victim in this case was
19 pregnant. Did she have any other medical conditions that
20 you're aware of?

21 A She had sickle cell trait, and she had
22 gastroesophageal reflux disease which wouldn't have
23 anything to do with her cause of death or contribute to
24 her death, but she did have sickle cell trait.

25 Q Is it possible that could have contributed to her

1 cause of death?

2 A It's more known to contribute to the cost of death of
3 the fetus, but now a lot of research has looked into the
4 causes of death with the mothers.

5 We have found there is a slight increase in maternal
6 death, morbidity and morality with sickle cell trait just
7 as we found with our athletes, with our people in the
8 military that there is increased morbidity and mortality
9 with these individuals.

10 Q In reviewing the documents in this case, you did
11 mention x-rays already, but is there anything else that
12 you noted, tests, procedures, documents that were not done
13 in this case that are typically done or should be done?

14 A Well, I mentioned the full autopsy, the finding of
15 the placenta, the fetus should have been autopsied. They
16 did the identification based on dental, and what you're
17 trying to do is actually rule out every other potential
18 cause of death.

19 Q From your review, there was no autopsy done of the
20 fetus at all?

21 A That's correct.

22 Q For asphyxia -- and you generally went through this a
23 minute ago -- but there are typically physical signs
24 present, correct?

25 A Depending on the type of asphyxia whether it's a

1 strangulation or a smothering, you can have different
2 signs, yes.

3 Q Is it possible for there to be a finding of asphyxia
4 with no signs?

5 A Yes.

6 Q How would you, as a forensic pathologist, know
7 whether to classify a death as asphyxia or possible
8 asphyxia versus undetermined?

9 A If the body had no signs of asphyxia?

10 Q Uh-huh.

11 A Sometimes you would leave undetermined or pending
12 further investigation. You leave it open for law
13 enforcement.

14 Q If there is no scientific basis?

15 A Exactly.

16 Q And in your opinion, you mentioned this previously,
17 but what should the cause of death have been certified as?

18 A Undetermined.

19 Q It's true that pathologists do use anecdotal history,
20 information law enforcement in making a decision, correct?

21 A Oh definitely. I sign out my reports in light of the
22 history, scene investigation, toxicology, ancillary
23 studies, autopsy findings, the microscopic findings.

24 The cause of death is blank, so you definitely don't
25 work in a vacuum. But in this type of a situation where

1 all you're looking at is a decomposed individual, there is
2 nothing medically or scientifically to give you the cause
3 of death.

4 Now, you can have an opinion that you think this is
5 homicidal violence, for instance, but to come down and say
6 this is asphyxia as opposed to another cause of death,
7 that is just not scientific or medical.

8 Q There is no scientific basis for that cause of death?

9 A Exactly.

10 Q Did you review Dr. Nichols' testimony in the
11 transcript?

12 A Yes, I did.

13 Q Based on that testimony in the records, did he rule
14 out all the other possible causes of death?

15 A He did not list what he thought were the possible
16 causes of death in a pregnant woman, but he said he ruled
17 out other causes of death. He ruled out natural death. I
18 don't know how he ruled out natural death, but he says he
19 did.

20 Q You didn't see any basis for that in his report?

21 A That's correct.

22 Q Did his testimony change your opinion in any way? A
23 review of his testimony, does that change your opinion
24 today?

25 A No.

1 Q Did you review -- I believe you said you did -- the
2 notes from trial counsel's discussion with Dr. Condrati?

3 A Yes.

4 Q Based on that, what are you able to understand from
5 the notes, was the information they got from Dr. Condrati,
6 was it in line and with what you're saying? Was it
7 different?

8 A It was pretty -- it was very, just sketchy notes, but
9 it was in alignment. She mentioned the lack of radiology
10 x-rays. She mentioned undetermined. She mentioned the
11 lack of any physical findings or scientific findings of
12 strangulation or ligature and -- or you know, came down to
13 the same almost dead end because you do have lack of
14 evidence after about a month has gone by after
15 decomposition.

16 Q So it appears her testimony would have been along the
17 lines as the one you're presenting today?

18 A Yes.

19 Q Is there anything else that's a part of your opinion
20 that you need to present to the court today?

21 A I'll review my letter just to make sure I didn't omit
22 anything.

23 Q Thank you.

24 A I will just say that one organ that was not looked at
25 was the uterus which is very important in a pregnant

1 woman, and the uterus is, in fact, the last organ to
2 decompose besides bone in a woman.

3 So the uterus wasn't even examined. There could have
4 been some type of bleeding, perforation, and I disagree
5 with -- you mentioned that the transcript that Dr. Nichols
6 had in court -- and I quoted in the opinion letter,
7 "Everything gets interpreted by the history." That's
8 something that law enforcement or the jurors can
9 interpret, but as far as your medical interpretation, you
10 cannot -- everything in the medical interpretation in the
11 autopsy does not get in -- does not bring in the history.
12 It's not solely based on the history.

13 Q The forensic pathologist's decision may consider the
14 history?

15 A Exactly.

16 Q But the basis would still be -- should have a
17 scientific basis to it?

18 A Yes.

19 MS. GOLDBERG: No further questions.

20 THE COURT: Cross?

21 MS. WHITE: Thank you, Your Honor.

22 CROSS-EXAMINATION:

23 BY MS. WHITE:

24 Q Dr. Collins, in regards to the determination -- I'm
25 going to make sure I got these correct. You said there's

1 five different causes of death: Natural, suicide,
2 homicide, accident, and what was the fifth one?

3 A Manners, and it's undetermined.

4 Q I'm sorry, manners, undetermined. That is what you
5 said that you believed should have been the finding in
6 this case?

7 A Yes.

8 Q Okay. Out of the other ones: Natural, suicide,
9 homicide, or accident, in this situation, Dr. Nichols
10 ruled it a homicide; is that right?

11 A Yes.

12 Q In your professional opinion, could he have ruled it
13 any of the other of those three manners of the death?

14 A No.

15 Q So our options in this situation were essentially
16 homicide or undetermined based on the --

17 A Oh, I'm sorry, I misunderstood your question then.
18 You said --

19 Q Based on the facts of this case and what you
20 reviewed?

21 A Uh-huh.

22 Q Are you thinking -- you're saying it should have been
23 undetermined versus his homicide. So you saw no signs of
24 suicide either or natural causes of death?

25 A I saw no signs of homicide, suicide or natural.

1 Q Okay.

2 A Or accident.

3 Q Or accidental, so -- but in this situation because
4 the finding was homicide and you're saying undetermined,
5 those are essentially the two options for manner of death
6 that we're primarily looking at in this situation?

7 A It's -- not that I'm looking at because I only look
8 at undetermined --

9 Q Right.

10 A -- but I understand with the trial that has taken
11 place.

12 Q Right. And that's what I'm saying, you as an expert
13 are saying undetermined. The expert at trial said
14 homicide, so those are the two that were looked at in
15 regards to this situation?

16 A Yes.

17 Q Okay. So had you testified at trial, you're
18 testifying that you would have ruled this an undetermined?

19 A Yes.

20 Q Okay. In regards to a couple of the things you
21 mentioned not being able to rule things out, you did
22 testify that -- that strangulation and other things can
23 show via neck trauma, wasn't it testified to that there
24 was a fractured hyoid bone?

25 A Yes.

1 Q So that was reviewed to determine if there was any
2 kind of strangulation; is that right?

3 A Yes.

4 Q Okay. They also reviewed her medical records pretty
5 extensively and had those to look at and ruled that there
6 was no natural causes that stood out as something that
7 could have happened; is that right?

8 A There was nothing that she went into the pregnancy
9 with but just being pregnant, she has accumulated
10 conditions that can be a cause of death.

11 Q And in your review of the records, did it appear that
12 she had gone to the doctor since she had been pregnant and
13 been seeing a doctor regularly?

14 A I can't say regularly, but I did see some of her
15 prenatal checks ups.

16 Q Okay. So she had gone since she had been determined
17 to be pregnant. She had gone to the doctor for some
18 checks?

19 A Correct.

20 Q And there was no finding at that point yet of
21 preeclampsia or anything in the records?

22 A Not that I saw.

23 Q Okay. In regards to working, you said within kind of
24 a vacuum and, obviously, scientifically, you said you're
25 looking at certain things, but then you also have to look

1 at situations and other reports. The fact that the victim
2 was found on the sofa covered up with a blanket face to
3 feet, does that not add to the possibility that this was
4 not something that was a spontaneous maternal death?

5 A I wouldn't say just the blanket, but all the details
6 that came out and the history with the police report, you
7 know, are going to lead them down a certain road, but
8 unfortunately, the autopsy is not going to be a piece of
9 evidence that's going to help.

10 Q If you were looking at the autopsy itself minus any
11 other additional, it would still be considered
12 undetermined; is that right?

13 A Yes.

14 Q But Dr. Nichols testified that he looked at the
15 autopsy in addition to the investigative reports how her
16 body was found and other things; is that right?

17 A Yes, and he came up with asphyxia.

18 Q Okay. And you mentioned also talking about the
19 smothering and the strangulation, are you aware that they
20 had argued, the State argued, that they believe perhaps he
21 had -- Mr. Commander had sat on the victim's chest?

22 A Yes, and that she was a smaller frame, yes.

23 Q Who weighed about 100 pounds versus his 200-something
24 pounds.

25 A Yes.

1 Q Okay. And the testimony there was that because of
2 that possibility, there would not have been any physical
3 signs of anyone strangling someone around the neck or
4 bruising or contusions on the face or head; is that right?

5 A You can still have the ocular petechia, and the
6 petechia can hemorrhages on the face.

7 Q I got you.

8 A But then she is decomposed, so you couldn't see that.

9 Q So in this situation because of the decomposition of
10 the body, we're kind of at a point where there is nothing,
11 no other signs unless a bone was broken or something like
12 that that you would be able to make that determination?

13 A Correct or a ligature found at the scene, correct.

14 Q Right, okay. Had there been situations where someone
15 has died, no obvious signs of trauma, you know, no medical
16 history of any kind of trauma, and it can be ruled not
17 just undetermined but asphyxia or smothering or homicide
18 by asphyxia?

19 A You're saying if there is no signs on the body?

20 Q If -- you know, if there's any other opportunity
21 where they have a victim -- and I guess I'll --
22 specifically, I was asking you about the case that you
23 recently testified in regarding a child in New York.

24 This situation was similar in that she was found
25 dead, no signs of trauma, no medical history of anything.

1 Based on the finding of the mother and some testimony, she
2 was determined to be cause of death homicide by
3 asphyxiation?

4 A But she had floor petechia, and she had them in her
5 eye. She had congestion around her neck and her face. So
6 she did have physical findings. She was partially
7 dressed. The room was in disarray. Her hair was in
8 disarray.

9 So not only was the scene a very suspicious scene,
10 but she had physical findings of asphyxia.

11 Q Right. So in this case, obviously, she was
12 decomposed, as we have no physical findings, but you have
13 a body that's been covered up.

14 You have someone that's been missing or not -- you
15 know, saying anything for a week -- for a month, excuse
16 me, and the fetus was actually birthed or released post
17 mortem, is that not correct?

18 A We don't know. It could have been. It could have
19 been that it was a premature labor and bleeding, and that
20 was the cause of death.

21 Q Okay. So you disagree with the finding that it was
22 expelled post mortem based on the build up of gases?

23 A I don't disagree that can happen, but I'm not saying
24 that it did in this case. There are other reasons for the
25 fetus to be there, and we don't have the placenta to look

1 at.

2 MS. WHITE: Okay. All right. Thank you. That's all
3 I have at this time, Your Honor.

4 MS. GOLDBERG: Your Honor, briefly.

5 REDIRECT EXAMINATION:

6 BY MS. GOLDBERG:

7 Q Dr. Collins, you testified the fetus -- we don't have
8 the fetus to look at because it wasn't autopsied; is that
9 correct?

10 A That's correct.

11 Q You testified that if you had been called at trial
12 like you were today, you would have testified it was an
13 undetermined death?

14 A Yes.

15 Q But you also would have testified as to several other
16 possible causes of death?

17 A Yes.

18 Q And you listed some earlier. How -- do you have any
19 kind of guess, recollection, as to how many there could
20 possibly be out there, possible causes of death in this
21 case?

22 A If you look at like, let's say, the top 20, the top
23 15. There are several that are -- fortunately, we don't
24 see them every day, but we do see them. Especially in my
25 job, my profession, we see them. Usually they're

1 associated with at the time of delivery.

2 Q And based on your review of the transcript, nobody
3 ever brought any of those up, correct?

4 A That's correct.

5 MS. GOLDBERG: All right. Thank you. No further
6 questions.

7 MS. WHITE: Nothing, Your Honor.

8 THE COURT: Have a good day.

9 All right. 2:30.

10 MS. GOLDBERG: Thank you, Your Honor.

11 MS. WHITE: Thank you, Your Honor.

12 (WHEREUPON, a lunch break was taken.)

13 (WHEREUPON, Applicant's Exhibit No. 3 was marked for
14 Identification only.)

15 THE COURT: All right. We're back on the record in
16 Christopher Commander vs. the State of South Carolina,
17 2012-CP-40-3816.

18 Before the lunch break, we took testimony from
19 Dr. Collins as presented by Mr. Commander. That may have
20 been out of order. So I just did that to aid her in
21 getting out of here.

22 So Ms. Goldberg, I'm happy to hear from you or call
23 your next witness. How ever you want to proceed.

24 MS. GOLDBERG: Thank you, Your Honor. I'll go ahead
25 and call our witnesses so we can get them all squared

1 away, and then I can argue at the end. At this time, the
2 Applicant would call Mr. Commander.

3 THE COURT: All right. Come on up.

4 CHRISTOPHER COMMANDER, after being
5 duly sworn, testified as follows:

6 THE COURT: Okay. Have a seat.

7 Yes, ma'am.

8 DIRECT EXAMINATION:

9 BY MS. GOLDBERG:

10 Q Thank you, Your Honor.

11 Mr. Commander, state your name for the record.

12 A Christopher Commander.

13 Q Where are you housed?

14 A At Lieber Correctional in Ridgeville, South Carolina.

15 Q What sentence are you serving?

16 A Life sentence.

17 Q For what charge?

18 A Murder.

19 Q Did you -- were you convicted of that by a plea or
20 trial?

21 A Trial.

22 Q And who was your attorney?

23 A Doug Strickler.

24 Q Who was your original attorney assigned to your case?

25 A Lanette VanGinhoven [sic].

1 Q And do you remember about what day you were arrested?

2 A January of 2005, seven days, something like that. I
3 can't remember exactly the date.

4 Q Early January?

5 A Right.

6 Q 2005?

7 A Right.

8 Q You were arrested in Louisiana?

9 A Right, new Orleans.

10 Q And then brought to South Carolina?

11 A Right.

12 Q And Jeanette VanGinhoven was appointed to your case?

13 A Right, yes.

14 Q How long did she represent you?

15 A Maybe -- I'm going to say close to a year or so. I
16 can't remember exactly that.

17 Q And why did she stop representing you at one point?

18 A Because she wanted to work for the Attorney General's
19 Office.

20 Q She got a new job?

21 A Right.

22 Q When she left, who was your new attorney?

23 A Doug Strickler.

24 Q And how -- do you remember when your trial was?

25 A October of 2006. Yeah, I this it -- Uh-huh.

1 Q How long prior to your trial was Mr. Strickler your
2 attorney?

3 A A couple of months.

4 Q A couple?

5 A Yeah.

6 Q Do you think it was six months?

7 A Yeah, yeah.

8 Q About?

9 A About six months, yeah.

10 Q With your attorneys, either Ms. VanGinhoven or
11 Mr. Strickler, did anyone ever discuss notice of death
12 penalty in your case?

13 A No.

14 Q That never came up?

15 A No.

16 Q So as far as you know, that wasn't a threat?

17 A No.

18 Q And you received a life sentence?

19 A Right, uh-huh.

20 Q Do you understand that if we are successful in this
21 PCR hearing, that your case will be overturned altogether,
22 and you'll have to start all over?

23 A Right.

24 Q Your case will still be pending again. Do you
25 understand that?

1 A Yes.

2 Q You'll have to decide whether to have a guilty plea
3 or to have a trial again?

4 A Yes.

5 Q All right. How long were you in jail waiting on your
6 trial, about?

7 A About a year-and-a-half.

8 Q Were you aware if any of your attorneys consulted an
9 expert forensic pathologist?

10 A Yes, Dr. Condrati. I think she said that VanGinhoven
11 had a discussion with her.

12 Q Do you know anything about that?

13 A As far as the findings of it?

14 Q Uh-huh.

15 A She basically told me that the -- that the
16 pathologist was going to testify to asphyxiation the same
17 as the State's -- State's -- okay pathologist was going to
18 testify to, uh-huh.

19 Q And just to make sure I understand you correctly --

20 A Uh-huh.

21 Q -- you thought the expert that was hired was going to
22 testify the same as the State?

23 A Right, right.

24 Q That they didn't find anything helpful?

25 A Right.

1 Q Did you ever receive a copy of the notes from that
2 discussion?

3 A No. No, I didn't.

4 Q Did you ever receive -- did any attorney give you a
5 copy of your discovery?

6 A Yes. She gave me a -- probably about 50 pages of
7 discovery to work on.

8 Q Was it complete?

9 A No, no, it wasn't complete.

10 Q Do you know what you were missing?

11 A A bunch of stuff.

12 Q Specifically?

13 A Okay. Specifically, I was missing a copy of
14 Ms. Condrati's notes. I was missing a copy of the DNA --
15 the DNA that they did. What else?

16 (Pause).

17 Okay. Various statements from different people that
18 testified.

19 Q Was your -- to your knowledge, there was DNA that was
20 involved in your case, correct?

21 A Right.

22 Q Did they ever take your DNA?

23 A Yeah.

24 Q Did they have a Schmerber hearing?

25 A No.

1 Q Did you consent to give your DNA?

2 A Right, I did.

3 Q Okay. Did the DNA test issue ever cause your
4 attorney to request a continuance?

5 A Yes.

6 Q Tell me what happened.

7 A We went up for a hearing. I can't remember the name
8 of the hearing, and something about DNA came out. It was
9 my first time hearing about it. She was saying that it
10 was exculpatory.

11 At the time, I didn't know what that meant, so I was,
12 you know, in a limbo with it. So I didn't really know --

13 THE COURT: Don't say "she". I don't know what she
14 is.

15 THE WITNESS: Oh, Ms. VanGinhoven.

16 THE COURT: Okay.

17 THE WITNESS: Yeah, yeah.

18 BY MS. GOLDBERG:

19 Q Did she know the results of the DNA at that time?

20 A Yeah.

21 Q Okay.

22 A Yeah, she did.

23 Q Okay. But then the case was continued?

24 A Right.

25 Q Did you ever get a copy of the DNA results?

1 A Yes, I did.

2 Q Prior to your trial?

3 A No.

4 Q After your trial?

5 A After, yeah.

6 Q Did you know what the DNA results were?

7 A Like I said, I was told that they were exculpatory.

8 That's what Ms. VanGinhoven told me, so I didn't really

9 know what it meant.

10 Q When you went to trial, did you and Mr. Strickler

11 talk about the DNA?

12 A Yeah, yeah.

13 Q And what did you know at that time?

14 A At that particular time, I found out that it was
15 basically DNA found, and it wasn't mine. He was supposed
16 to present it at trial.

17 Q Okay.

18 A All right.

19 Q DNA found where?

20 A On a pair of gloves inside of the house.

21 Q At the crime scene?

22 A Right, and it was the victim's and some other dude's
23 DNA on it.

24 Q Someone else's DNA?

25 A Right.

1 Q And Mr. Strickler told you what about this? What was
2 he going to do?

3 A That it was going to be presented at trial into
4 evidence. That was my understanding.

5 Q And did that happen?

6 A No.

7 Q Why not?

8 A I have no idea.

9 Q Did he ever tell you why he didn't introduce it?

10 A I can't recall. I can't remember.

11 Q Did the two of you --

12 A Oh, I know what it was.

13 Q Okay. Go ahead.

14 A He told me the last closing.

15 THE COURT: What?

16 THE WITNESS: He wanted the final argument.

17 THE COURT: If I say something back to you --

18 THE WITNESS: Right.

19 THE COURT: -- it's so I make sure I hear you.

20 THE WITNESS: I got you.

21 THE COURT: Does that make sense?

22 THE WITNESS: Yeah.

23 THE COURT: Okay.

24 BY MS. GOLDBERG:

25 Q Did he get your input on that decision?

1 A I mean, he was my lawyer, so I thought he was doing
2 the best thing in my interest.

3 Q So you trusted him?

4 A Right.

5 Q What's your opinion on the DNA now?

6 A I'm thinking that it should have been put into
7 evidence because -- you know, from getting more brushed up
8 on the law, it was exculpatory evidence that was -- it was
9 -- it was cumulative evidence, so it should have been
10 brought into evidence.

11 Q Do you think if the jury had known that there was DNA
12 evidence of someone else at the crime scene, that would
13 have changed the outcome of your trial?

14 A Yes, I do, uh-huh.

15 Q Have you gotten a copy of your trial transcript?

16 A Yes.

17 Q Have you read it?

18 A Yes.

19 Q Do you remember a witness named John Presley?

20 A Yes, ma'am.

21 Q Who was that?

22 A He was a guy that was at the county with me, and I
23 confide with him with some legal work.

24 Q You said a guy that's at the county. What do you
25 mean?

- 1 A He was at Richland County with me in the same dorm.
- 2 Q He was another inmate?
- 3 A Right, another inmate.
- 4 Q Did he testify in your trial?
- 5 A Yes, ma'am.
- 6 Q Why did he testify in your trial?
- 7 A Because I let him look at my discovery, and he was
- 8 supposed to be helping me with it. And he testified at my
- 9 trial.
- 10 Q Do you recall his testimony that you had been
- 11 arrested for a domestic violence in the past against
- 12 Ms. Goodwin?
- 13 A Yes, I do.
- 14 Q And Ms. Goodwin is the victim here, correct --
- 15 A Right.
- 16 Q -- in the murder. Was that true information that
- 17 Mr. Presley said?
- 18 A No. I was never arrested for a domestic violence
- 19 case against her.
- 20 Q Okay.
- 21 A But my lawyer didn't -- okay, didn't object to it
- 22 when, you know, he said it.
- 23 Q Did you appeal your case after the jury trial?
- 24 A Yes, I did.
- 25 Q What happened with your appeal?

1 A It was denied, denied.

2 Q Beg the Court's indulgence.

3 A Uh-huh.

4 (Pause.)

5 MS. GOLDBERG: No further questions.

6 THE WITNESS: All right.

7 THE COURT: Yes, ma'am.

8 CROSS-EXAMINATION:

9 BY MS. WHITE:

10 Q Thank you, Your Honor.

11 Mr. Commander, a couple of questions. You said that
12 you were originally arrested in January 2005 and went to
13 trial in October of '06. That entire time you were in
14 jail awaiting trial, or were you ever out on bond?

15 A I was in -- yeah, the county jail the whole time,
16 uh-huh.

17 Q So from January of '05 until October of 2006?

18 A Right.

19 Q A little over almost two years?

20 A Uh-huh.

21 Q And during that time, you said Jeanette VanGinhoven
22 represented you, and then Mr. Strickler came in. Did you
23 ever meet with an investigator that the PD's office had
24 hired on your behalf?

25 A Yes.

1 Q And was that Ms. Lee Connelly?

2 A Right.

3 Q Okay. Were you able to talk to her about witnesses,
4 things that you wanted her to do and things that you
5 thought would help in your case?

6 A Right, uh-huh.

7 Q Okay. And to your knowledge, she did investigate a
8 lot of things that you told her to, is that right, as far
9 as you know?

10 A Yeah, as far as I know.

11 Q Okay.

12 A Uh-huh.

13 Q In regards to the statements by Dr. Condrati, you
14 said that you were informed by Ms. VanGinhoven that
15 Dr. Condrati's opinion was that it was going to be death
16 resulting because of asphyxia?

17 A Right.

18 Q Okay. In regards to the DNA, you said that you felt
19 that it was exculpatory. It was found in the gloves. Was
20 that the gloves that were found with some cleaning
21 supplies in the home?

22 A Right.

23 Q Now, you said that Mr. Strickler told you that he
24 didn't want to present that at trial because he wanted
25 last argument, so the State did not introduce that DNA

1 evidence at trial; is that right?

2 A No.

3 Q So you would have had to introduce that in your
4 defense case to be able to have it presented to the court?

5 A Right.

6 Q Okay. Did you ever talk with Mr. Strickler about
7 third-party guilt and how that evidence would play a part
8 as to if you were trying to say someone else was there?

9 A No.

10 Q Okay. And you are aware, obviously, your appeal went
11 to the Court of Appeals and then to the Supreme Court; is
12 that right?

13 A Yes, ma'am.

14 Q Okay. And the issues raised on appeal had to do with
15 expert testimony, and I believe some jury charge or some
16 other things like that; is that right?

17 A Right.

18 Q And the court denied your appeal and affirmed your
19 conviction; is that right?

20 A Right.

21 Q And I just want -- I want to ask -- and I don't need
22 you to say whether or not this is true or not. I'm asking
23 you about what evidence the State was putting forward, so
24 the State was putting forward evidence that they claimed
25 indicated that you were guilty, and that included

1 testimony about a statement that they alleged you made; is
2 that right?

3 A There was evidence that, you know, I presented at
4 trial.

5 Q Right. And that's what the State was presenting.
6 They presented something about a statement. You did have
7 a Jackson vs. Denno hearing on the statement, did you not?

8 A Right.

9 Q Okay. You also had several other pretrial hearings;
10 is that right? Do you recall a Batson motion having to do
11 with the jury?

12 A Right.

13 Q Okay. And your attorney, Mr. Strickler, made that
14 motion and argued that, did he not?

15 A Right.

16 Q Okay. You also had a Neil vs. Biggers hearing about
17 the identification from a Ms. Hunt from -- in Florida; is
18 that right?

19 A Right.

20 Q Okay. And that was argued and ruled upon by the
21 court below?

22 A Uh-huh.

23 Q And do you recall how long the jury was out before
24 they came back with a verdict?

25 A Thirty minutes or so, an hour or so.

1 Q So less than an hour, between 30, 45 minutes maybe?

2 A Right, right.

3 MS. WHITE: Thank you.

4 That's all I have at this time, Your Honor.

5 MS. GOLDBERG: Nothing further.

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

7 Call your next witness.

8 MS. GOLDBERG: At this time, the Applicant would call
9 Doug Strickler.

10 THE COURT: All right. Mr. Strickler.

11 DOUGLAS STRICKLER, after being duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION:

14 BY MS. GOLDBERG:

15 Q Good afternoon.

16 A Good afternoon.

17 Q All right. Mr. Strickler, the Applicant testified he
18 was arrested January of 2005.

19 A Yes.

20 Q Do you know when your office got an open file?

21 A The first note in the file notes for the office is
22 from March 29th which would have been within a couple days
23 of us opening a file, I think.

24 Q Probably after he was brought to South Carolina.

25 A Right.

1 Q Do you know when you personally became involved in
2 Mr. Commander's defense?

3 A No. I've taken a look through the file notes which
4 are almost exclusively by Ms. VanGinhoven, and she
5 references speaking with me about the case on a number of
6 occasions which would not be unusual.

7 I can find my trial notes. I can find very little by
8 way of notes on my own part as far as involvement on the
9 case. Ms. VanGinhoven's notes indicate August 15th she
10 met with Mr. Commander, informed him that I would now be
11 the first seat on the case.

12 Ms. VanGinhoven was going to Holland immediately
13 preceding the scheduled trial date for, I think her
14 brother-in-law's wedding, something like that.

15 Now, I had -- the notes also reflect me,
16 Ms. VanGinhoven and Ms. Mobley, who I think ended up being
17 the second seat on the case, meeting with Dr. Nichols on
18 August 9th. So I was involved regarding that.

19 At that point in time, I wasn't first seat on the
20 case. Typical -- typically, at that point in time if I
21 were involved as a second seat, it would be on some fairly
22 specialized issues.

23 So I had some involvement with it. I certainly
24 communicated with Ms. VanGinhoven over the course of
25 several months regarding it. I would say beginning

1 probably in the spring of 2006, we had communications back
2 and forth about various aspects, the DNA.

3 I talked with her about fingerprints on the case. I
4 talked with her about the forensic pathology on the case.
5 Involvement beyond that prior to shortly before the trial,
6 I might not -- I don't think I had much involvement other
7 than that.

8 Q In speaking Ms. VanGinhoven and reviewing the file
9 preparing for the trial, were you aware that she had
10 consulted Dr. Condrati?

11 A Yes.

12 Q Had you reviewed her notes and talked with her about
13 it?

14 A I'm sure I discussed with Ms. VanGinhoven her
15 findings, and she gave me access to it, definitely.

16 Q What was your understanding of what Dr. Condrati's
17 opinion would be?

18 A If I had the notes, I'd consult them. I'll tell you
19 what my understanding was. I briefly looked at the copies
20 that you had earlier today, can't find those myself in
21 those three boxes. They're obviously there since that's
22 where you got your copies from, but I can't find them.

23 Q All right. I'll go ahead and enter this.

24 Beg the Court's indulgence. Mark this, make
25 complete, for the record.

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

3 BY MS. GOLDBERG:

4 Q Mr. Strickler, I'm going to hand you Applicant's
5 number 4. Can you just look over that document and tell
6 me what that is or what it appears to be?

7 A These appear to be some of the notes kept by
8 Ms. VanGinhoven in relation to this trial, this case.

9 Q And to be fair, you weren't available to locate them
10 yourself in your file. There may be more. You wouldn't
11 know.

12 A I know there are more. I don't think there are --
13 well, if there are any more regarding Ms. Condrati, I
14 couldn't find these. She definitely had more notes on
15 other aspects of the case --

16 Q Right.

17 A -- which I did find.

18 Q That's fair. Do you have an understanding of what
19 Dr. Condrati's opinion would have been?

20 A Well, about six lines down, it says the cause of
21 death would have been undetermined or homicide. Then
22 immediately thereafter it says, "Nichols would have all
23 police report. He doesn't work in a vacuum. Autopsy
24 alone, undetermined cause of death." Then she says "she
25 going to testify against him [sic]." I don't know what

1 that means which is consistent with what I remember.

2 I took a look through the appellate opinions because
3 that is one of the things I was involved in. What
4 Dr. Nichols would be allowed to testify to. I did some
5 research on that which I also can't find, but I did
6 remember that I raised the issue at trial.

7 Dr. Nichols, in my opinion, if he were left to his
8 own device would term the incident a murder. This is
9 based on my experience with the good doctor in the past.

10 I moved to preclude him from using that term. He was
11 restricted to referring to it as a homicide and was
12 further restricted to defining a homicide to not involve
13 any finding on his part regarding intent on the part of
14 the person who did the killing defining homicide as the
15 killing of a human by a human okay.

16 So he also testified in discussing that, that is
17 consistent with my understanding of forensic pathology
18 that he as a forensic pathologist does not rely solely on
19 the findings of the postmortem examination.

20 He actually responded to the scene in this case, I
21 believe, so viewed the decedent in situ and evaluated the
22 scene himself and also had access to whatever police
23 reports he wanted. He was aware of Mr. Commander's
24 alleged actions after the case and relied on those.

25 I believe his testimony was that he relied on those

1 at least in part in making a determination that the case
2 was a homicide as opposed to suicide, accident or
3 undetermined which was consistent with -- appears to me to
4 be consistent with Dr. Condrati had said to
5 Ms. VanGinhoven.

6 Q Did you ever -- or do you remember if you ever
7 specifically talked to Dr. Condrati yourself?

8 A No, I don't.

9 Q You don't remember or you didn't?

10 A I don't remember. I don't think I did, but I don't
11 remember.

12 Q Since she had been retained as a consultant, did you
13 ever consider asking her to be present during trial to
14 assist in cross-examination?

15 A No.

16 Q Did you think that her -- that she would offer
17 testimony at trial that would be harmful to his case?

18 A "Autopsy alone, undetermined cause, she going to
19 testify against him [sic]".

20 Q Okay.

21 A I believe that --

22 Q You believe?

23 A I believe that means exactly what Mr. Commander
24 testified to earlier today; that she would testify that it
25 wasn't undetermined. It was a homicide. She even used

1 the term asphyxia to him which is precisely what
2 Dr. Nichols, I believe, testified to as the cause of
3 death.

4 It gob smacks me that you can arrive at asphyxia with
5 a scene to no injuries to the body. I hope I conveyed
6 that to the jury during my talk with them.

7 Q Did you or Ms. VanGinhoven, to your knowledge, go
8 through alternate causes of death with Dr. Condrati?

9 A I didn't.

10 Q Did --

11 A Ms. VanGinhoven may.

12 Q To the best of your recollection, did you present to
13 the jury alternate possible cause of death in trial?

14 A I glanced through notes I had from my closing
15 argument, and I made reference to my note -- in my notes
16 to myself regarding alternate causes of death. Whether I
17 managed to convey those to the jury, I'd have to look at
18 the transcript. I don't know. I didn't present any
19 testimony in that regard.

20 Q You were previously speaking about the arguments you
21 made and those -- that were appealed. One being that the
22 doctor's cause of death should be limited to scientific
23 findings. Would that be relatively accurate?

24 A That he should not be able to stray over -- I mean,
25 cause of death can be construed as a mixed question of

1 fact and law, and my opinion was that to term something --
2 arrive at manner of death was invading the jury's
3 province, and he couldn't be allowed to do that.

4 Q Related to that same issue, a second argument was
5 really the definition of the word homicide.

6 A Correct.

7 Q And what that actually meant or should be defined as
8 to the jury.

9 A Correct.

10 Q In the transcript, the judge stated that he would
11 give in instruction as to the definition to homicide if
12 requested idea?

13 A Right.

14 Q One was not requested, and no instruction was ever
15 given by the court. Do you have any recollection as to
16 why you did not request one?

17 A No. I saw that in the appellate opinion. I couldn't
18 begin to tell you what moved me to not ask for it at that
19 time. I thought about it prior to not asking for it, but
20 I can't tell you why.

21 Q Okay. And you, again, said that Dr. Nichols defined
22 homicide how?

23 A You know, it's going to be reflected in the
24 transcript exactly how I define homicide, and my memory is
25 what was -- what was set forth in the appellate opinions,

1 but he defined homicide as not involving any conclusions
2 on his part regarding intent.

3 Q Okay.

4 A Homicide, indeed, is defined in the medical legal
5 field as merely the killing of a human by another human.

6 Beg the Court's indulgence.

7 (Pause.)

8 Q Mr. Strickler, I'm handing you a copy of
9 Mr. Commander's appellate opinion just to refresh your
10 recollection.

11 A This is from the Supreme Court, yes, ma'am.

12 Q There is a marked notation where the Supreme Court
13 defines homicide.

14 A Right.

15 Q Can you read that for the Court?

16 A In this context, the testimony that an individual
17 died from homicide means simply that he or she died, quote
18 by the act, procurement or omission of another, closed
19 quote, without regard to the criminality of the killing of
20 the culpability of the killer.

21 Q And where does it say that definition arises from?

22 A Black's Law Dictionary.

23 Q Do you think an instruction by the court as to the
24 definition of homicide in that would have differed from
25 how Dr. Nichols described it?

1 A It may have. I don't remember precisely how
2 Dr. Nichols defined it.

3 Q Do you think it may have assisted in your defense, a
4 definition instruction according to those lines?

5 A It may have.

6 Q Do you recall in trial when John Presley testified?

7 A Do I have an independent recollection of it, no. Do
8 I remember that based on the review of the appellate
9 opinions that John Presley testified, yes. Did I actually
10 find one set of notes where I worked on something
11 regarding Mr. Presley pretrial, yes.

12 Q Mr. Strickler, I'm going to direct you to the
13 transcript beginning on page 607 line 21, and if you could
14 read there to yourself and briefly to the next page.

15 A Yes, ma'am.

16 Q Do you see where Mr. Presley testified that
17 Mr. Commander had been previously arrested for domestic
18 violence against this victim?

19 A Yes.

20 Q And did you object?

21 A It appears I did not.

22 Q Any -- do you have any reason why you would not
23 object?

24 A Absolutely not. Should I have, yes.

25 Q Did the State ever make any intention that they were

1 going to attempt to elicit that information under Lyle as
2 proper bad character evidence?

3 A Not to my recollection, no.

4 Q And you said you should have objected?

5 A Yes, ma'am.

6 Q And on page 604, beginning on page -- on line eight
7 through the remainder of that paragraph.

8 A Yes, ma'am.

9 Q Do you see where Mr. Presley testified that he did
10 not believe Mr. Commander was truthful?

11 A Yes.

12 Q Any particular reason why you didn't object to that
13 one witness testifying about another witness's --

14 A Truthfulness, no.

15 Q Truthfulness. No particular reason you didn't
16 object?

17 A No, should have.

18 Q Thank you, sir.

19 All right. Page 803.

20 All right. Before we do this, Your Honor, at this
21 time, let me -- I'm going to hand Mr. Strickler
22 Applicant's number 3. That's the DNA report.

23 Mr. Strickler, can you describe what that is?

24 A This is a DNA report from the Richland County
25 Sheriff's Department relating to this case.

1 Q Do you recognize that document?

2 A Yes.

3 Q Does that appear to be the document provided to you
4 in discovery for Mr. Commander's case?

5 A Yes. Provided -- if my review of the case notes is
6 correct, very, very, very belatedly to us in discovery
7 seeing as how the document is dated June 29th, 2005. We
8 got it some time over a year after the fact.

9 Q After the results were actually finalized?

10 A If I read Ms. VanGinhoven's notes correctly, that's
11 correct.

12 Q What were the results of the DNA testing in that
13 document?

14 A The DNA testing was on right hand nail scrapings and
15 left hand nail scrapings which were consistent from the
16 same female individual and then from swabs from rubber
17 gloves which were found to be a mixture.

18 The female profile developed in item one and two is
19 included as a contributor in this case, which you are.
20 The other contributor is a male. Chris Commander is
21 excluded as contributor to the mixture.

22 Q Thank you, sir.

23 A Yes.

24 Q Now, on page 803 the solicitor asked Sergeant
25 McDonald if he is aware that fingernail scrapings were

1 A Yes, ma'am.

2 Q Okay. And in representing folks, you have done a
3 variety of cases from shoplifting to murder, I suppose?

4 A Sometimes in the same couple of weeks.

5 Q Right, okay. Now, what is your current position?

6 A I'm the circuit public defender for the Fifth
7 Judicial Circuit.

8 Q And is that the position you were in, in 2006 when
9 you had this?

10 A No. In 2006, I was the Richland County Public
11 Defender.

12 Q So were you Jeanette VanGinhoven's supervisor?

13 A Correct.

14 Q So you said it wasn't uncommon for you to discuss
15 sometimes a case prior to -- even if you weren't going to
16 be the main attorney on the case?

17 A I spent a good deal of time doing that with the
18 attorneys not just then but now.

19 Q Okay. In regards to Dr. Condrati's notes and our
20 testimony about the forensic pathologist, when we're
21 looking at the manners of death, essentially the options
22 for this situation were homicide or undetermined; is that
23 right?

24 A That was what Dr. Condrati said, and I agree with
25 that, yes.