

VOLUME ONE OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

RECEIVED

JUN 18 2015

S.C. Supreme Court

CARMEN LATRICE RICE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2011-199412

A P P E N D I X

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR PETITIONER

VOLUME ONE
PAGES 1-500

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
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
INDICTMENTS AND SENTENCING SHEETS.....	1158
APPLICATION FOR POST-CONVICTION RELIEF	1164
RETURN	1172
POST-CONVICTION RELIEF HEARING TRANSCRIPT	1180
COURT’S EXHIBIT #1, STATEMENT OF ARLETTA FRIERSON	1242
COURT’S EXHIBIT #2, STATEMENT OF ARLETTA FRIERSON	1243
ORDER OF DISMISSAL	1244

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF GENERAL SESSIONS

STATE)
)
V.)
)
CARMEN LATRICE RICE)
)
DEFENDANT.)

TRANSCRIPT OF RECORD

04-GS-40-8754
04-GS-40-8755

APRIL 4, 2005
COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE REGINALD I. LLOYD, JUDGE; AND
JURY.

A P P E A R A N C E S:

JOHN P. MEADORS, DEPUTY SOLICITORY
THEODORE N. LUPTON, ASSIST. SOLICITOR
ATTORNEYS FOR THE STATE

JOHN T. MOBLEY, ESQUIRE
CHRISTOPHER HART, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

STACY L. SHEPPARD
CIRCUIT COURT REPORTER

JEANETTE M. MCBRIDE
C.C.P. & G.S.

2010 JAN -5 AM 9:14

RICHLAND COUNTY
FILED

ORIGINAL

I N D E X

	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1	Opening Statements				
2	By Mr. Meadors	96			
3	By Mr. Mobley	112			
4	Tom Lyons				
5	By Mr. Lupton	127		139	
6	By Mr. Mobley		138		
7	Robert Kent Turnely, Jr.				
8	By Mr. Meadors	142		172	
9	By Mr. Hart		159		
10	Anna Elsey Clemens				
11	By Mr. Meadors	177		224	
12	By Mr. Mobley		199		
13	erry Russell				
14	By Mr. Lupton	225		268	
15	By Mr. Mobley		252		273
16	Alton Page				
17	By Mr. Lupton	280			
18	By Mr. Hart		292		
19	Heidi Rosemary Feagin				
20	By Mr. Lupton	297		313, 367, 392	
21	By Mr. Mobley		308	316, 371, 395	
22	Heidi Rosemary Feagin (In Camera)				
23	By Mr. Lupton	355			
24	By Mr. Mobley		356		
25	Amber Byrd				
26	By Mr. Meadors	430		483	
27	By Mr. Mobley		472		
28	Cynthia Michelle Parks				
29	By Mr. Lupton	485		495	
30	By Mr. Hart		492		
31	Iris Renee Bryant				
32	By Mr. Meadors	504		564, 569, 577	
33	By Mr. Mobley		530	569, 578	

RICH

SOLD JAN - 2 AM 2:14

C.C.P. & C.C.S.
JEWELL & CO. INC.
CHICAGO, ILL.

I N D E X cont.

	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	Teresa Rouse				
	By Mr. Lupton	581		589	
4	By Mr. Hart		585		
5	Falisha Hallmon				
	By Mr. Meadors	592		611	
6	By Mr. Hart		604		616
7	Dorothy Cronise				
	By Mr. Lupton	618		644	
8	By Mr. Mobley		629		646
9	Shawnetta Wise				
	By Mr. Lupton	651		667	
10	By Mr. Mobley		659		
11	Anthony Eric Stewart				
	By Mr. Lupton	672		687	
12	By Mr. Mobley		682		695
13	Chris Duke				
	By Mr. Lupton	697			
14	By Mr. Mobley		700		
15	Sarah Dennis				
	By Mr. Meadors	709		733	
16	By Mr. Mobley		723		
17	David J. Collins				
	By Mr. Lupton	735		761	
18	By Mr. Mobley		755		
19	Stan Smith				
	By Mr. Lupton	762		880	
20	By Mr. Mobley		824		889
21	Clay Allen Nichols				
	By Mr. Meadors	896			
22	Alicia Wilder				
23	By Mr. Mobley	950			
	By Mr. Meadors		953		
24	Gene Mincey				
25	By Mr. Hart	954			
	By Mr. Meadors		960		

I N D E X cont.

	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	Alana Sheray Quattlebaum				
	By Mr. Mobley	963		968	
4	By Mr. Meadors		966		971
5	Closing Arguments				
	By Mr. Lupton	997			
6	By Mr. Mobley	1011			
	By Mr. Meadors	1075			
7					
	Charge of the Court	1111			
8					
	Verdict of the Jury	1147			
9					
	Sentence of the Court	1156			
10					
	Certificate of Reporter	1157			
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

E X H I B I T S

1				
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	State's 1	Photograph	94	132
4	State's 2	Photograph	94	132
5	State's 3	Photograph	94	132
6	State's 4	Photograph	94	132
7	State's 5	Photograph	94	132
8	State's 6	Photograph	94	132
9	State's 7	Photograph	94	153
10	State's 8	Photograph	94	153
11	State's 9	Photograph	94	153
12	State's 10	Photograph	94	153
13	State's 11	Photograph	94	153
14	State's 12	Photograph	94	185
15	State's 13	Photograph	94	185
16	State's 14	Photograph	94	185
17	State's 15	Photograph	94	185
18	State's 16	Photograph	94	185
19	State's 17	Photograph	94	185
20	State's 18	Photograph	94	156
21	State's 19	Photograph	94	185
22	State's 20	Photograph	94	185
23	State's 21	Photograph	94	247
24	State's 22	Photograph	94	230
25	State's 23	Photograph	94	230

E X H I B I T S cont.

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	State's 47	Photo Lineup	465	466
4	State's 48	Photo Lineup	465	466
5	State's 49	List of Terminated Employees	617	620
6	State's 50	Payroll Check	617	622
7	State's 51	Payroll Check	617	622
8	State's 52	Employee Termination Form	617	623
9	State's 53	Weapon Qualification Form	617	624
10	State's 54	Personnel Action Form	617	626
11	State's 55	Housing Authority Form	617	627
12	State's 56	Letter To Sarah Dennis	706	718
13	State's 57	Subpoena For Bell South		735
14	State's 58	Phone Records From Bell South		735
15	State's 59	Firearms Analysis Report	752	753
16	State's 60	Mannequin	895	
17	State's 61	Diagram	895	914
18	State's 62	Autopsy Photograph	917	918
19	Defendant's 1	Forensic Examination Report	261	261
20	Defendant's 2	Photo Lineup	377	384
21	Defendant's 3	Officer Uniform Checklist	637	644
22	Defendant's 4	Consent Form	874	875
23	Court's 1	Stan Smith's		
24		Investigative Report	59	
25				

E X H I B I T S cont.

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Court's 2	Gene Mincey's		
	Investigative Report	61	
Court's 3	List of Terminated Employees	64	
Court's 4	Officer Uniform Checklist	65	
Court's 5	Forensic Examination Report	76	
Court's 6	Jury Note	175	
Court's 7	Subpoena	409	
Court's 8	Arrest Warrant	410	
Court's 9	Jury Note	1156	
Court's 10	Jury Note	1138	
Court's 11	Jury Note	1142	
Court's 12	Jury Note	1146	

15

16

17

18

19

20

21

22

23

24

25

Date:

7-4-05

County:

Redland

VOIR DIRE

04-MS-90-8754, 8755

Judge:

Lloyd

State:

State:

Atty:

John Meadows

Ted Lupton

Def:

Carmen Rice

Defense Atty:

John Mobley

Chris Hart

Reporter:

Stacy A. Sheppard

No.	Name	Sex	Race	Court	Strikes STATE	Defense	Accept
29	Thomas Henson, JR.	M	W			1	
45	Mary Molinari	F	W				1
8	Sandra Baker	F	B		1	1	
24	Claude Leitner	M	W			2	
98	Tebrey Tarrvin	M	W			3	
213	Christine Wallace	F	B				2
54	Linda Dickerson	F	B				3
190	Cynthia Simons	F	B				4
97	Carl Smith	M	B		2		
44	Christina Miller	F	W			4	
48	Althea Davis	F	B				5
100	Deborah Terriegen	F	W			5	
84	Jonja Hall Wilson	F	B			6	
132	Dionne Mancini	F	W				6
110	Alvin Kelly, JR.	M	W			7	
112	Michelle Simpson	F	B		3		7
85	Lisa Hanna	F	W				7
21	Dail Brazell	F	W				8

For the court column, please indicate who made the motion to strike the jurors "for cause"
with a "P" for Plaintiff or "D" for Defense.

No: 04 MS40-8754,8255 Judge: Lloyd
 State: - State: ... Accy: John Meadows
Leel Lepton
 Defense Accy: John Mabley
Chris Hart
 Reporter: Stacy L. Sheppard

For the court column, please indicate who made the motion to strike the jurors "for cause" or "for Plaintiff" or "D" for Defense.

1 (The following proceedings were held on
2 April 4, 2005.)

3 **THE COURT:** On the matter of Carmen Rice, I've
4 got copies of Defense's requested voir dire. As I
5 understand, the State has no objections to that as
6 long as the Court reciprocates on both sides.

7 **MR. MEADORS:** Yes, sir.

8 **THE COURT:** Anything else before we bring the
9 jury up?

10 **MR. MOBLEY:** Not from the defense, Your Honor.

11 **MR. MEADORS:** The State's ready.

12 **THE COURT:** Madame Clerk, we'll bring them up
13 then.

14 (The jury panel enters the courtroom.)

15 **THE COURT:** Good afternoon, ladies and
16 gentlemen of the jury panel. We're bringing you up
17 here because we're ready to pick a jury for a trial
18 of the State of South Carolina versus Ms. Carmen
19 Rice.

20 Ladies and gentlemen, you all were qualified
21 this morning. What we're going to do here in
22 selecting a jury will run pretty much like your
23 qualification this morning except the questions that
24 I'm going to ask you are going to be pretty much
25 tailored to this case. I'll ask you a couple

1 questions a little more specific to this case as
2 opposed to the general questions that you all heard
3 this morning which related to your qualifications to
4 serve.

5 But having told you that, I'm going to ask that
6 you pretty much do the same way you did during
7 qualification. If a question does apply to you or
8 if you think it applies to you, if you all will
9 stand, I'll come back to you one at a time. I know
10 it's going to probably be repetitive in some cases
11 because some of these questions may apply to more
12 than one -- to one of you more than once.

13 If a question does apply to you or if you think
14 it does and you do stand up, each time I'm going to
15 ask if you will give your name and your juror
16 number, if you remember your number. If not, just
17 give me your name for purposes of the court reporter
18 taking it down. We keep a record, obviously, as you
19 all know, of everything that goes on, so -- just so
20 there's no confusion about who's saying what, if
21 you'll give me your name each time you do stand,
22 we'll be able to get through these pretty quickly, I
23 think.

24 Ladies and gentlemen, several of the questions
25 initially are going to relate to whether you all are

1 related to or know any of the potential participants
2 in this trial, that might be the attorneys or
3 potential witnesses, for example. If I ask you if
4 you are related to somebody, by that I mean if
5 you're now related to somebody or if you used to be
6 related to somebody, if you will stand at one of
7 those questions.

8 I'm also going to ask if you know a potential
9 witness or party in this case. And by that, ladies
10 and gentlemen, I mean if you know that person in any
11 capacity whatsoever, it may be a social capacity, it
12 may be work related, it may be that you go to the
13 same grocery store and you just see the person in
14 line. I mean, if you believe you know that person

15 in any capacity whatsoever, if you will, please
16 stand and I'll have some follow-up questions for you
17 at that point.

18 Ladies and gentlemen, before I actually ask you
19 any questions, I'm going to ask if you will please
20 stand. The clerk is going to give you a short oath
21 to take and then I'm going to begin the question
22 process.

23 (Whereupon, the jury panel was duly sworn at

24 3:03 p.m.)

25 **THE COURT:** Thank you, ladies and gentlemen.

1 Ladies and gentlemen, let me explain to you
2 all, the defendant is charged under the indictments
3 with the crime of murder and armed robbery. I
4 always remind juries at this point, and I'll remind
5 you once you're actually seated, as well as at the
6 close of the case, that the indictments are merely
7 the documents that bring the case here to court.
8 They're not evidence to be considered by you as the
9 jury.

10 But I do tell you that the indictments do
11 charge a defendant with and we'll discuss that a
12 little bit more as we go through the question
13 process here as we select a jury. But I do tell
14 you, at this point, that the indictments charge the
15 defendant, Ms. Carmen Rice, with the crime of murder
16 and armed robbery.

17 Ladies and gentlemen, I'm going to introduce
18 you, first, to the defendant.

19 I ask if the defendant will rise and face the
20 jury pool.

21 Ms. Carmen Rice, ladies and gentlemen. And I
22 would ask if any member of the jury panel is related
23 by blood, marriage or otherwise knows Ms. Rice in
24 any capacity whatsoever, if you will, please stand?

25 (There was no response.)

1 **THE COURT:** Thank you, Ms. Rice.

2 Ladies and gentlemen, Ms. Rice is represented
3 by Mr. John Mobley and Mr. Christopher Hart. And
4 they are standing in front of you as well. And I
5 would ask if any member of the jury panel is related
6 by blood, marriage or otherwise knows either
7 Mr. Mobley or Mr. Hart or if you've ever been
8 represented by either of these attorneys, if you
9 will, please stand?

10 (Jurors stand.)

11 **THE COURT:** Yes, sir, if you'll give me your
12 name.

13 **JUROR:** Carl Smith, 197, I believe.

14 **THE COURT:** Yes, sir.

15 **JUROR:** I know Attorney Chris Hart in a social
16 capacity.

17 **THE COURT:** Do you see Mr. Hart very often?

18 **JUROR:** Yes.

19 **THE COURT:** Do you consider yourself friends?

20 **JUROR:** Yes.

21 **THE COURT:** Let me ask you, sir, Mr. Hart is
22 obviously defense counsel involved in this case.
23 Based upon your relationship with him and the amount
24 of time that you do spend with him in a social
25 capacity, do you believe that that would, in any

1 way, influence your ability to listen to the
2 evidence and testimony fairly in this case?

3 JUROR: No.

4 THE COURT: You would be able to set aside your
5 personal relationship with Mr. Hart and decide this
6 case purely based on the evidence and testimony
7 presented during the trial, as well as any
8 instructions on the law that I give you?

9 JUROR: Yes, sir.

10 THE COURT: Thank you, sir.

11 Yes, ma'am.

12 JUROR: Juror Number 112. And Attorney Chris,
13 I can't think of his last name, we attended the same
14 church at one time.

15 THE COURT: Ms. Kimpson?

16 JUROR: Yes.

17 THE COURT: How long ago was that?

18 JUROR: Maybe two, three years or three, four.

19 THE COURT: Based on -- is that the only
20 contact you would have had with him?

21 JUROR: Yes.

22 THE COURT: Based upon prior attendance of the
23 same church, ma'am, would you be able to set aside
24 that experience and relationship with Mr. Hart and
25 decide this case only on the evidence and testimony

1 presented during the trial and your prior
2 relationship would not influence your ability to
3 fairly consider the evidence for both sides?

4 JUROR: No.

5 THE COURT: Thank you, ma'am.

6 Yes, sir.

7 JUROR: Johnny Robinson, Juror Number 180. I
8 went to high school with Mr. Hart.

9 THE COURT: Again, sir, have you seen him
10 outside of that context?

11 JUROR: Maybe once or twice in the past three
12 years.

13 THE COURT: Based upon your prior experience
14 and relationship with Mr. Hart, would that, in any
15 way, play into your weighing of the evidence in
16 consideration of any of the evidence and testimony
17 in this case?

18 JUROR: No, sir.

19 THE COURT: And you'd be able to set aside your
20 prior relationship and view the evidence fairly for
21 both the State and the defense?

22 JUROR: Yes.

23 THE COURT: Thank you, sir.

24 Anyone else?

25 (There was no response.)

1 **THE COURT:** Ladies and gentlemen, the State of
2 South Carolina in this case is represented by two
3 members of the Fifth Circuit Solicitor's Office, and
4 the Fifth Circuit is obviously comprised of Richland
5 and Kershaw Counties, Deputy John Meadors, who's
6 standing in front of you, and Assistant Solicitor
7 Ted Lupton. And I would ask the same question, if
8 any member of the jury pool is related by blood,
9 marriage or otherwise knows either Mr. Meadors or
10 Mr. Lupton, if you will, please stand?

11 (Jurors stand.)

12 **THE COURT:** Yes, sir.

13 **JUROR:** Alvin Kelley, Number 110. And John and
14 I go to church together.

15 **THE COURT:** Let me ask you, sir, the same
16 question as I was asking previously. Based upon
17 your relationship with Mr. Meadors, sir, in
18 attendance of the same church, would that, in any
19 way, factor into your consideration of the evidence
20 and testimony in this case?

21 **JUROR:** No, sir.

22 **THE COURT:** You'd be able to set aside that
23 relationship and weigh the evidence fairly for both
24 the State and the defense?

25 **JUROR:** Yes, sir.

1 **THE COURT:** Thank you, sir.

2 Yes, sir.

3 **JUROR:** Jeff Janvrin, 98. I also attend church
4 with Mr. Meadors.

5 **THE COURT:** I would ask you the same question,
6 sir. Would that, in any way, factor into your
7 ability to fairly weigh all of the evidence and
8 testimony in this case?

9 **JUROR:** No, sir.

10 **THE COURT:** It wouldn't cause you to favor one
11 side over the other?

12 **JUROR:** No, sir.

13 **THE COURT:** Okay. Thank you, sir.

14 Ladies and gentlemen, I'm going to read to you
15 all a list of potential witnesses in this case. I'm
16 going to ask if you will listen to the entire list.

17 If any of these witnesses are present, I would
18 ask if you will stand as I call out your name.

19 Ladies and gentlemen, if you'll listen to the
20 entire list. At the end of that list, I'm going to
21 ask you the same question, if you're either related
22 to these people or if you know these people in any
23 capacity, I'm going to ask you to stand. So if
24 you'll listen to the entire list and then I'll ask
25 you to stand at the end if you know any of these

1 individuals:

2 Investigator David Bell with the Richland
3 County Sheriff's Department. He's not present right
4 now. Ken Bogan with the State Law Enforcement
5 Division; Steve Booth; Hilda Brennan. Ms. Brennan
6 is sitting up there. She's standing. Iris Bryant;
7 Amber Byrd; Investigator Anna Clemens; Investigator
8 Dave Collins; Investigator Trisha Collins; Dottie,
9 is it, Cronise?

10 MR. MEADORS: Cronise.

11 THE COURT: Cronise, C-r-o-n-i-s-e; Sarah
12 Dennis; Deputy Chris Duke of the Richland County
13 Sheriff's Department; Heidi Feagin, F-e-a-g-i-n,
14 Dorothy --

15 MR. MEADORS: Filiatreault.

16 THE COURT: Filiatreault with the State Law
17 Enforcement Division; Dana Fowler; Tina Goff of the
18 Richland County Sheriff's Department; Lonnie Gross
19 of the Richland County Sheriff's Department; Falisha
20 Hallmon; Nathaniel Hallman; Shelley Johnson; Agent
21 Dave Lawrence with the State Law Enforcement
22 Division; Wes Luther; Sergeant Tom Lyons of the
23 Richland County Sheriff's Department. Sergeant
24 Lyons is in the back, ladies and gentlemen. Bill
25 Mann of the Richland County Sheriff's Department;

1 Investigator McDaniels of the Richland County
2 Sheriff's Department; Agent Geri McKee of the State
3 Law Enforcement Division; Investigator Gene Mincey
4 of the Richland County Sheriff's Department; Cecil
5 Montgomery; Doctor Clay Nichols, Palmetto Richland
6 Memorial Hospital; Roy Pascell with the State Law
7 Enforcement Division; Alana Quattlebaum; Arletta
8 Frierson.

9 Ladies and gentlemen, there will also be,
10 potentially, a records custodian with Cingular
11 Wireless. I don't know who that individual would
12 be. And, obviously, we would have to make sure,
13 once we have that person here, that the sitting jury
14 is not related to or does not know that person, but
15 for the purposes of these questions, I would just
16 ask if anybody knows anybody who works for Cingular
17 Wireless, if you will stand.

18 Ladies and gentlemen, those are the list of
19 potential witnesses. And I tell you now, some or
20 all of them may be called during the course of this
21 trial.

22 **MR. MEADORS:** I apologize to the Court, page
23 two apparently did not -- got left off your copy.

24 **THE COURT:** Oh, I'm sorry.

25 I'm sorry, ladies and gentlemen, there were

1 some additional witnesses: George Nichols with Bell
2 South; Lieutenant Zane Padgett with the Richland
3 County Sheriff's Department; Alton Page; Cynthia
4 Parks; Agent Vello Pavell, P-a-v-e-l-l, with the
5 State Law Enforcement Division; Teresa Rouse;
6 Investigator J. Russell with the Richland County
7 Sheriff's Department; Stephanie Sanders; Lieutenant
8 Stan Smith, Richland County Sheriff's Department;
9 Anthony Stewart; Investigator Randy Strange with the
10 Richland County Sheriff's Department; Christy
11 Thompson; Investigator Rob Turnely with the Richland
12 County Sheriff's Department; and Shawnetta Wise.

13 All right, ladies and gentlemen, those are the
14 list of potential witnesses in this case. If
15 anybody believes that they're related to either by
16 blood or marriage or otherwise knows any of those
17 potential witnesses in this case, if you will,
18 please stand.

19 (Juror stands.)

20 **JUROR:** Alvin Kelley, Number 110. I know Randy
21 Strange from high school.

22 **THE COURT:** Again, sir, have you seen him in
23 any other capacity?

24 **JUROR:** It's been a while.

25 **THE COURT:** Having known him from high school,

1 sir, and he is a potential witness in this case, I
2 don't know whether he will definitely be called or
3 not, but the fact that he is a potential witness in
4 this case, would that, in any way, influence the
5 consideration of the evidence and testimony on your
6 part?

7 **JUROR:** No, sir.

8 **THE COURT:** You wouldn't, having gone to high
9 school with him, treat his testimony any differently
10 than any other witness?

11 **JUROR:** No, sir.

12 **THE COURT:** Thank you, sir.

13 Anyone else?

14 (There was no response.)

15 **THE COURT:** Is there any member of the jury
16 panel related by blood, marriage or is a close,
17 personal friend of anybody who is employed with any
18 civilian or military law enforcement agency, and by
19 that, I mean, any local, state or federal law
20 enforcement agency, as well as any military law
21 enforcement agency?

22 (Juror stands.)

23 **JUROR:** Tonja Hall Wilson, 84. My
24 brother-in-law is a state trooper.

25 **THE COURT:** He was one?

1 **JUROR:** He is one.

2 **THE COURT:** He is one now. Let me ask you,
3 ma'am, having -- the fact that -- your
4 brother-in-law is it?

5 **JUROR:** Yes.

6 **THE COURT:** Is a member of law enforcement,
7 obviously there are potential law enforcement
8 witnesses in this case, would the fact that your
9 brother-in-law is a member of the law enforcement
10 community, in any way influence your consideration
11 of the evidence and testimony in this case?

12 **JUROR:** No, sir.

13 **THE COURT:** You'd be able to set aside his
14 experience as a law enforcement agent and consider
15 the evidence fairly for both the defense, as well as
16 the State?

17 **JUROR:** Yes.

18 **THE COURT:** Thank you, ma'am.

19 Is there any member of the jury panel employed
20 by, themselves or related to anyone who is employed
21 by, or good friends with anybody who is employed by
22 either the Attorney General's Office, the
23 Solicitor's Office, any Solicitor's Office, it
24 doesn't have to be the Fifth Circuit, or any other
25 prosecuting attorney's office, anybody who is

1 themselves related to -- employed by rather or related
2 by blood or marriage or good friends with anybody
3 who is employed by a prosecuting office?

4 (Jurors stand.)

5 **JUROR:** Victoria Montgomery, 146. I have a
6 social relationship with Mr. Barney Giese.

7 **THE COURT:** Obviously, ma'am, this case is in
8 his jurisdiction. He is the Fifth Circuit
9 Solicitor. Based upon your social relationship with
10 Solicitor Giese and the fact that his office is
11 prosecuting this case, would that, in any way,
12 factor into your consideration of the evidence and
13 testimony?

14 **JUROR:** I can't be certain.

15 **THE COURT:** You don't believe you can set aside
16 your social interaction with Mr. Giese and view the
17 evidence and testimony fairly for both sides?

18 **JUROR:** I would try, but I consider them good
19 friends.

20 **THE COURT:** So you're not able to tell me
21 definitely you could do that?

22 **JUROR:** In all candor, no.

23 **THE COURT:** And that's fine. I appreciate
24 that. I'm going to set you aside. What was your
25 name again, ma'am?

1 **JUROR:** Victoria Montgomery.

2 **THE COURT:** I'm going to set you aside on this
3 particular case.

4 Yes, sir.

5 **JUROR:** Jeff Janvrin, 98. I apologize, I
6 didn't fully follow you. My brother-in-law
7 practices law here in Columbia. His name is Paul
8 Owen.

9 **THE COURT:** Is he in private practice?

10 **JUROR:** Yes, sir.

11 **THE COURT:** I hadn't asked that question yet,
12 but is he criminal defense firm?

13 **JUROR:** I don't know. He does bankruptcy and
14 -- I don't know what all he does.

15 **THE COURT:** It doesn't sound like he does.
16 He's not associated with any prosecuting office,
17 anything like the Solicitor's office, Attorney
18 General's Office, U.S. Attorney?

19 **JUROR:** Not that I know of.

20 **THE COURT:** Thank you, sir.

21 Yes, ma'am.

22 **JUROR:** I'm Mary Molinaroli, Number 145. I
23 don't have a relationship with any prosecuting
24 office, but I am employed by Collins and Lacy Law
25 Firm.

1 **THE COURT:** Do you all do any criminal defense
2 work?

3 **JUROR:** Dabble a little here and there, but not
4 a lot.

5 **THE COURT:** That's going to actually be my next
6 question, but you all are not associated, in any
7 way, or you don't know anybody who works for any
8 prosecuting --

9 **JUROR:** No, sir.

10 **THE COURT:** Thank you, ma'am. And, actually,
11 this next question will probably apply to you more.

12 Is there anybody in the jury panel who themself
13 works for or is related to or good friends with
14 anyone who is employed with a criminal defense firm
15 or is themself a criminal defense lawyer? Anybody
16 who either works for a firm -- a criminal defense
17 lawyer or a firm or related to or good friends with
18 anybody who is in a criminal defense firm?

19 (Jurors stand.)

20 **THE COURT:** Ma'am, I ask you if you can stand
21 on this one again. Your name again, ma'am?

22 **JUROR:** Mary Molinaroli. And I'm number 145.

23 **THE COURT:** You said -- Collins and Lacy does
24 do some criminal defense every now and then?

25 **JUROR:** Some.

1 **THE COURT:** Let me ask you, ma'am, the fact
2 that y'all do some criminal defense law, would that,
3 in any way, factor into your ability to fairly
4 consider the evidence and testimony for both the
5 State and the defense in this case?

6 **JUROR:** No, sir.

7 **THE COURT:** You wouldn't be swayed to favor one
8 side over the other because of your association with
9 that firm?

10 **JUROR:** No, sir.

11 **THE COURT:** Thank you, ma'am.

12 Yes, ma'am.

13 **JUROR:** My number is 226. I'm Ellen Yaghjian.
14 My brother works for a law firm in town, John
15 Emerson, works for Nexsen Pruet. I don't know what
16 he does to tell you the truth.

17 **THE COURT:** They --

18 **JUROR:** They don't do criminal law.

19 **THE COURT:** They don't do criminal -- you're
20 not aware of any criminal law firm association?

21 **JUROR:** No.

22 **THE COURT:** Thank you, ma'am.

23 Yes, ma'am.

24 **JUROR:** I'm Juror Number 146. My husband is an
25 attorney. He practices for Montgomery, Patterson,

1 Potts and Willard. They occasionally do criminal
2 law, very little. My office is located in the law
3 offices of --

4 **THE COURT:** I've already excused you on this
5 one. So I appreciate you letting me know that.

6 Yes, sir.

7 **JUROR:** My name is Wade Finklea, Juror Number
8 61. My brother has a law firm in Florence, City of
9 Florence. I don't believe he does any criminal
10 work. I believe it's mostly civil, real estate,
11 things like that.

12 **THE COURT:** All right. Thank you, sir.

13 Yes, ma'am.

14 **JUROR:** Michelle Kimpson, Juror Number 112. I
15 have two brothers-in-law who are attorneys. One
16 works -- I don't think they're criminal lawyers, but
17 just for the knowledge of the Court.

18 **THE COURT:** Who are they?

19 **JUROR:** Milton Kimpson, Junior, he was in
20 private, but now he works for the IRS or something.

21 **THE COURT:** Department of Revenue.

22 **JUROR:** And then I have a brother-in-law that
23 works in Charleston. And I don't know the name of
24 the company, but the last case I heard him talk
25 about was --

1 **THE COURT:** I believe Mr. Kimpson, anyway, may
2 have done some. I don't believe the second.
3 Mr. Kimpson does any criminal, but I believe the
4 first Mr. Kimpson may have done some prior to that.
5 And I would just ask you, ma'am, on the offhand that
6 he did do some and may have discussed criminal cases
7 with you at some point, would the fact that he
8 potentially did criminal defense law at any point,
9 in any way influence your consideration of the
10 evidence or testimony in this case?

11 **JUROR:** No.

12 **THE COURT:** Would you be able to be fair to
13 both the State, as well as the defense?

14 **JUROR:** Yes.

15 **THE COURT:** Thank you, ma'am.

16 Is there any member of the jury panel who is
17 themselves a member of or a contributor to any group
18 which has, as its primary purpose and concern, the
19 promotion of law enforcement or victim's rights? I
20 think most of you are familiar with some of those
21 organizations. Those groups would include but not
22 limited to groups such as CAVE, MADD, CADRE,
23 anything like that, any organization which has, as
24 its primary purpose, either the promotion of law
25 enforcement or promotion of victim's rights, crime

1 victim's rights. Anybody either a member of or a
2 contributor to any such organizations?

3 (There was no response.)

4 **THE COURT:** Ladies and gentlemen, the
5 indictments allege that this crime occurred here in
6 Richland County on or about October 25th of 2001.
7 The victim in this case, ladies and gentlemen, is
8 Mr. Bernard Brennan, B-r-e-n-n-a-n.

9 I would ask if any member of the jury panel
10 believes that they have any personal knowledge about
11 this case other than what you've heard here in court
12 today? Does anybody believe they've either heard
13 anything about this case either through the media or
14 somebody talking about it or any other means of
15 knowledge about this? Does anybody believe that
16 they have any facts or knowledge about this case
17 outside of what you've heard this morning?

18 (There was no response.)

19 **THE COURT:** Okay. Ladies and gentlemen, given
20 the nature of this case, I'm going to ask if you all
21 will listen to this question carefully. I'm going
22 to ask that you stand. After that, I'm going to
23 probably, if anybody does stand at this question,
24 I'm going to ask that you come down with just the
25 lawyers and myself to discuss the particulars of

1 your situation here close to the court reporter.

2 But I'm going to ask if anybody in the jury
3 pool, themselves, or a close, personal friend or any
4 relative of yours has ever been the victim of a
5 crime of violence, and by that I mean any crime such
6 as a robbery, kidnapping, any crime of violence, any
7 sort of assault or anything? Anybody either
8 themselves or had a relative or a close, personal
9 friend of which you're aware of the circumstances of
10 the crime been a victim of a crime of violence?

11 (Jurors stand.)

12 **THE COURT:** All right. I'm going to ask if you
13 all will line up right here -- actually, it probably
14 would be easier if you all line up on this wall over --
15 here and we'll bring you down one at a time.

16 (Whereupon, the following bench conferences
17 were held on the record, in the presence of the jury
18 panel, but out of the hearing of the jury panel.)

19 **THE COURT:** Yes, ma'am, if you'll just give me
20 your name for the record.

21 **JUROR:** My name is Evonne Ogwin, 161.

22 **THE COURT:** Yes, ma'am.

23 **JUROR:** My brother-in-law, Curtis Jones, his
24 name is Elbert Jones, for robbing, in Five Points,
25 some people on North Main.

1 **THE COURT:** He was a defendant?

2 **JUROR:** Yeah.

3 **THE COURT:** Was he prosecuted here in Richland
4 County?

5 **JUROR:** Yes, he has been prosecuted. He's
6 still in jail.

7 **THE COURT:** That raises a couple of questions
8 now. Obviously, one of the charges in this case is
9 armed robbery. I'm asking, having your relative go
10 through that experience being charged and convicted
11 on that charge, would that, in any way, influence
12 you in considering the evidence and testimony?

13 **JUROR:** No, it won't.

14 **THE COURT:** The other issue is that, obviously,
15 the Fifth Circuit Solicitor's Office prosecuted that
16 case, I assume. Do you know who prosecuted it?

17 **JUROR:** No, I don't.

18 **THE COURT:** More than likely it would have been
19 the Fifth Circuit Solicitor's Office. Would that,
20 in any way, factor into your consideration of the
21 evidence and testimony?

22 **JUROR:** No.

23 **THE COURT:** You won't hold any grudges against
24 them?

25 **JUROR:** No, I won't.

1 **THE COURT:** Thank you, ma'am.

2 Yes, ma'am.

3 **JUROR:** I'm Lauren Johnson, 103. I had a
4 friend from college murdered at his pawnshop.

5 **THE COURT:** How long ago was that?

6 **JUROR:** 1990.

7 **THE COURT:** Was that here in Richland County?

8 **JUROR:** No, it was in Spartanburg.

9 **THE COURT:** Do you know if that case was ever
10 prosecuted?

11 **JUROR:** It was and I don't remember the
12 outcome.

13 **THE COURT:** Let me ask you, ma'am, having gone
14 through that experience with a friend, would that,
15 in any way, factor into your ability to fairly
16 consider the evidence and testimony in this case?

17 **JUROR:** No, sir.

18 **THE COURT:** You wouldn't rely on that
19 experience at all in weighing the evidence in this
20 case?

21 **JUROR:** No, sir.

22 **THE COURT:** Thank you, ma'am.

23 Yes, sir. Let me get your name first.

24 **JUROR:** Cedric Gunter, Juror Number 81. My
25 brother was -- a few years ago my brother was shot

1 in the back while he was being robbed.

2 THE COURT: Is that here in Columbia?

3 JUROR: Uh-huh.

4 THE COURT: Do you know if that person was ever
5 caught and prosecuted?

6 JUROR: No, never been prosecuted.

7 THE COURT: Let me ask you, sir, having gone
8 through that experience with your brother given the
9 nature of these charges, would you, in any way, rely
10 on your family's experience in weighing the evidence
11 or testimony?

12 JUROR: No.

13 THE COURT: You would be able to set aside that
14 experience and weigh fairly for both sides in this
15 case the evidence and testimony?

16 JUROR: Yes.

17 THE COURT: Thank you, sir.

18 Yes, ma'am, your name.

19 JUROR: I'm Ellen Yaghjian, 226. My mother was
20 assaulted, raped, someone broke into her home here
21 in Columbia. It could have been in '79, it might
22 have been '80, but -- and that's what's happened in
23 my family.

24 THE COURT: Do you know if that person was ever
25 caught?

1 **JUROR:** They're in prison now.

2 **THE COURT:** Okay. So they were prosecuted?

3 **JUROR:** Yeah.

4 **THE COURT:** Let me ask you, ma'am, having gone
5 through that experience with a family member, these
6 are crimes of violence that the defendant is charged
7 with, would that experience factor into your
8 weighing of the evidence?

9 **JUROR:** Well, if it's not too messy, I would be
10 all right with it I guess, but I really would -- I'm
11 not, you know, it would probably bring some stuff up
12 for me.

13 **THE COURT:** Okay. You would have a hard time
14 setting aside your mother's experience?

15 **JUROR:** Yeah. I mean, I think I probably
16 would. I mean, just -- I would not be emotionally
17 stable, I don't think, if a lot of stuff was brought
18 up, but I don't know.

19 **THE COURT:** Is it the nature of the charges
20 here or is it how gory or --

21 **JUROR:** The gory stuff, yeah, just the -- I
22 mean, I know we're not talking about a rape here,
23 so, I mean, probably I'd be all right if he didn't
24 bring out a lot of horrible pictures and body parts
25 and such like that.

1 **THE COURT:** Let me ask you, ma'am, depending on
2 what the evidence is in this case, is it your
3 opinion that if there's some evidence that simply
4 because of that goriness or something, you -- I'm
5 not quite sure, you might be more inclined to --

6 **JUROR:** I would prefer to have been put on a
7 civil case rather than this case, but I'm willing to
8 serve. I mean, if it was a rape case, I definitely
9 would not want to be here.

10 **THE COURT:** Just by nature of the charges
11 against the defendant in this case, you have no
12 prejudices or biases?

13 **JUROR:** No, I don't have any prejudices.

14 **THE COURT:** You'll be able to set aside your
15 concern about whatever evidence might be presented
16 just on the nature of the charges, you feel like you
17 would be fair to both the defense and the State?

18 **JUROR:** Yes, I do.

19 **THE COURT:** Okay. Thank you, ma'am.

20 (Whereupon, a bench conference was held with
21 the attorneys off the record, in the presence of the
22 jury panel, but out of the hearing of the jury
23 panel.)

24 **THE COURT:** Madame Clerk, I'm going to strike
25 number 15.

1 Thank you, ladies and gentlemen. Ladies and
2 gentlemen, I'm going to ask again the same question
3 as it relates to the last one except a little bit of
4 a twist. I'm going to ask if any member of the jury
5 panel's ever had, either themselves or a member of
6 your family, and it may have just been a charge and
7 not a conviction, ever been accused of any crime of
8 violence? Either yourself, a family member or a
9 close, personal friend ever gone through the
10 experience of being accused of a crime of violence?

11 (Jurors stand.)

12 **THE COURT:** I'm going to ask if y'all will line
13 up and come down one at a time.

14 (Whereupon, the following bench conferences
15 were held on the record, in the presence of the jury
16 panel, but out of the hearing of the jury panel.)

17 **THE COURT:** Yes, ma'am.

18 **JUROR:** Wilma Morris, 151. My son, when he was
19 a teenager, was arrested for assault. There were
20 several other crimes added to it, but he was under
21 the influence of alcohol and drugs, so he was sent
22 to a facility for six weeks.

23 **THE COURT:** Was he ever convicted of it?

24 **JUROR:** No, he wasn't convicted.

25 **THE COURT:** Let me ask you, ma'am, having gone

1 through that -- how long ago was that?

2 JUROR: Oh, gosh. Well, he's 33 now, so
3 that's --

4 THE COURT: It's been a while?

5 JUROR: -- when he was 16.

6 THE COURT: Would that experience with your
7 son, in any way, factor into your consideration of
8 the evidence?

9 JUROR: No, it wouldn't.

10 THE COURT: You feel like you would be able to
11 ignore that experience and weigh this case solely on
12 what you hear in court?

13 JUROR: Yes.

14 THE COURT: Thank you, Ms. Morris.

15 Yes, sir, Mr. Gunter.

16 JUROR: I was -- a few years ago, I was accused
17 of criminal domestic violence.

18 THE COURT: Were you ever prosecuted for that?

19 JUROR: I went to court, but they dropped the
20 charges.

21 THE COURT: Let me ask you, sir, having gone
22 through that experience being that you were accused
23 of a crime, would that, in any way, factor into your
24 consideration of any evidence or testimony in this
25 case?

1 **JUROR:** No.

2 **THE COURT:** Would it cause you to lean more pro
3 State or pro defense in this case?

4 **JUROR:** Neither.

5 **THE COURT:** Okay. Thank you, sir.

6 Yes, ma'am.

7 **JUROR:** Juror 112. I have a cousin that was
8 convicted for some kind of crime he's serving now.
9 I don't know what it's for. It was a distant
10 cousin-- I mean, he's a first cousin, but he's
11 not --

12 **THE COURT:** Let me ask you, ma'am, and
13 obviously you don't know the details, but the fact
14 that you have a relative who was prosecuted and
15 convicted of a crime, would it, in any way, cause
16 you to be pro defense or pro State?

17 **JUROR:** No.

18 **THE COURT:** You would be able to set aside that
19 personal experience with your family and --

20 **JUROR:** Yeah.

21 **THE COURT:** -- view the evidence and testimony
22 fairly?

23 **JUROR:** Yes.

24 **THE COURT:** Thank you, ma'am.

25 Yes, sir.

1 **JUROR:** Juror 89, Thomas Henson. It nearly
2 slipped my mind, my wife's uncle was convicted of
3 murder or manslaughter or somewhere in that group.
4 And to my knowledge, he is currently incarcerated.
5 I've met him maybe three times in 12 or 13 years.

6 **THE COURT:** You don't know any personal facts
7 about --

8 **JUROR:** No.

9 **THE COURT:** Having -- obviously having that
10 situation with your wife's relative, sir, would
11 that, in any way, factor into your consideration of
12 the evidence in this case?

13 **JUROR:** No, sir.

14 **THE COURT:** It wouldn't weigh into you being
15 more favorable to the State or favorable to the
16 defense?

17 **JUROR:** No, sir.

18 **THE COURT:** Thank you, sir.

19 (The bench conferences were concluded.)

20 **THE COURT:** Ladies and gentlemen, just a few
21 more questions. You may hear during the course of
22 this trial, testimony regarding the Richland County
23 Cold Case Unit. Those of you who may watch T.V. on
24 Sundays know that obviously there's a T.V. show by
25 that name, but you may have also seen local media

1 coverage about the unit at the Richland County
2 Sheriff's Department, the Cold Case Unit. I would
3 ask if any member of the jury panel recalls seeing
4 any local media coverage about that unit here in
5 Richland County?

6 (There was no response.)

7 **THE COURT:** Ladies and gentlemen, let me ask
8 one final question. If any member of the jury
9 panel's aware of any reason whatsoever, whether it's
10 related to a question that I have asked here this
11 afternoon or something that's just been in the back
12 of your mind that has not come up thus far, why they
13 do not or are not sure that they could be fair and
14 impartial to both the State and the defense in this
15 case, considering and weighing only the evidence and
16 testimony presented during the trial and taking the
17 law as I would give it to you at the conclusion of
18 the trial and in weighing a verdict in this case, is
19 there anybody aware of any concerns or reasons
20 whatsoever they could not be fair to both sides?

21 (There was no response.)

22 **THE COURT:** Mr. Kelley, I think you were
23 raising your hand at one point as well about some
24 other matter, I'm not sure. Is there something
25 else?

1 **JUROR:** Yes, sir. I was just going to say that
2 I know Mr. Turner and his wife. Our children go to
3 school together, but that would not affect me in
4 either way.

5 **THE COURT:** Okay. Thank you, sir. I
6 appreciate that.

7 (Juror stands.)

8 **THE COURT:** Yes, sir.

9 **JUROR:** I'm Juror 39. I work for Colonial Life
10 and we have a close relationship with the city, the
11 county and the highway patrol on a daily basis on
12 sales and gifts and stuff like that. So I just want
13 to bring that up.

14 **THE COURT:** You said sales and gifts and stuff?

15 **JUROR:** Yeah. At Colonial Life, we do a lot of
16 solicitation for the city and the county and the
17 highway patrol.

18 **THE COURT:** Is that the law enforcement
19 agencies with the city and county?

20 **JUROR:** Yes.

21 **THE COURT:** Do you have, personally, contact
22 with the law enforcement agencies?

23 **JUROR:** Yes. We sell to them on a daily basis.

24 **THE COURT:** Let me ask you, sir, did the
25 witness list that I read out, you did not know any

1 of those individuals?

2 **JUROR:** I don't recall any of those personally.

3 **THE COURT:** Let me ask you, sir, in your
4 dealings with those agencies, obviously they are
5 involved in this case, at least the Richland County
6 Sheriff's Department and SLED, you may hear
7 witnesses with those organizations testify during
8 the course of this trial, would your business
9 experience with law enforcement agencies, sir, in
10 any way, factor into your weighing of the evidence
11 in this case?

12 **JUROR:** No.

13 **THE COURT:** You would have no problem setting
14 aside that business relationship or exposure to
15 those agencies and weigh the evidence fairly for
16 both the defense and the State.

17 **JUROR:** Give or take, it may weigh some way or
18 whatever because like I say we work with them on a
19 daily basis. Sometimes it may be a little hard.

20 **THE COURT:** And I appreciate your honesty, sir.
21 Let me get your name again.

22 **JUROR:** Conyers. My first name is Daniel,
23 Juror Number 39.

24 **THE COURT:** Mr. Conyers, and I appreciate your
25 honesty, sir, I'm going to set you aside on this

1 particular case, okay. If you have any doubt
2 whatsoever, I've got to give both the State and the
3 defense a fair and impartial jury, so I'm going to
4 set you aside on this one. But if you'll just have
5 a seat and we'll let you all go at one time.

6 **MR. MEADORS:** Your Honor, can we approach?

7 **THE COURT:** Yes, sir.

8 (Whereupon, a bench conference was held off
9 the record, in the presence of the jury panel, but
10 out of the hearing of the jury panel.)

11 **THE COURT:** Ladies and gentlemen, let me
12 introduce you to one other person in the courtroom,
13 Mr. John Taylor, who is not an attorney, but works
14 in the Fifth Circuit Solicitor's Office. He is
15 standing in front of you. And I would ask if any
16 member of the jury pool is either related by blood,
17 marriage or otherwise knows or believes they know
18 Mr. Taylor, if you will, please stand?

19 (Juror stands.)

20 **THE COURT:** Yes, ma'am.

21 **JUROR:** Lauren Johnson, 103. John was a day
22 care provider for my girls while they were at
23 Shannon Presbyterian.

24 **THE COURT:** Let me ask you, ma'am, how long ago
25 was that?

1 **JUROR:** Probably about four or five years ago.

2 **THE COURT:** So you haven't had any contact with
3 him since then?

4 **JUROR:** Other than seeing him in a couple of
5 theater plays, no.

6 **THE COURT:** Was he acting or was he just in
7 attendance?

8 **JUROR:** He's a great actor.

9 **THE COURT:** Let me ask you, ma'am, would the
10 fact that he did previously provide day care for
11 your children and obviously seeing him in some other
12 capacity after that a few times, would that, in any
13 way, weigh into your consideration of the evidence
14 and testimony?

15 **JUROR:** No, sir.

16 **THE COURT:** You would be able to set aside that
17 and the fact that he does work for the Solicitor's
18 Office and be fair to both the defense and the
19 State?

20 **JUROR:** Yes. I wasn't aware of who he worked
21 for.

22 **THE COURT:** I appreciate that. Thank you.
23 Counsel, anything else as to voir dire?

24 **MR. MEADORS:** No, sir, nothing from the State.

25 **MR. MOBLEY:** Nothing from the defense, Your

1 Honor.

2 **THE COURT:** Thank you, counsel.

3 Ladies and gentlemen, that concludes my
4 questions to you. I'm going to ask you, at this
5 point, as we begin the process of what we call
6 strikes, which just means selecting the jury, if
7 you'll listen to the clerk, she'll give you
8 instructions as to what to do once your names are
9 called.

10 Madame Clerk.

11 (During the jury selection process, the
12 jurors were called forward and peremptory strikes
13 were exercised as reflected by the attached voir
14 dire sheet made a part of this record at page 9.)

15 **THE COURT:** All right. Counsel, any matters we
16 need to take up as to jury selection?

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

18 **THE COURT:** Yes, sir.

19 (Pause.)

20 **MR. MEADORS:** Nothing from the State.

21 **THE COURT:** Thank you, sir.

22 Mr. Mobley, anything from the defense?

23 **MR. MOBLEY:** Nothing from the defense, Your

24 Honor.

25 **THE COURT:** Thank you, sir.

1 All right. Ladies and gentlemen who were
2 selected, I'm going to ask if you will accompany the
3 bailiff. He's going to show you the jury room that
4 you'll be using throughout the course of this trial.
5 I'm going to ask if you'll go back there while we
6 take up a couple of other matters and then we'll
7 bring you back out and we'll get you sworn in and
8 start this trial.

9 I'm going to ask, obviously you don't know any
10 facts about the case yet, but I'm just going to ask
11 that you not discuss anything related to the case.
12 I'm going to be telling you all that every time we
13 take a break. I'll remind you or try to remind you
14 of that fact, but I'll just tell you up front that
15 even when you take breaks or go to lunch or go home
16 for the evening, you shouldn't discuss anything
17 about the case.

18 To actually begin discussing the case, even
19 though it may seem innocent and not a big deal at
20 the time, it is actually deliberating the case.
21 Once you begin to discuss the evidence and testimony
22 you've heard or seen, you begin to form opinions
23 about that and impressions about it and that's why
24 we ask you and instruct you as part of your oath
25 that you take not to discuss anything about the case

1 until you've heard all of the evidence and
2 testimony, as well as the charge on the law that
3 I'll give you.

4 So I'll just remind you of that every time we
5 take a break, but for right now, I'll just ask if
6 you'll go to the jury room. We'll bring you back
7 out very shortly. Thank you.

8 (The jury retires to the jury room.)

9 **THE COURT:** Ladies and gentlemen who were not
10 selected on this jury, I appreciate your patience as
11 we went through this jury selection process. I
12 certainly appreciate your service this week. It's
13 very important, I know that whoever qualified you
14 all this morning probably told you the same thing,
15 but we can't do this, ladies and gentlemen, without
16 your service up here during this week. And we
17 certainly appreciate your attitude and willingness
18 to serve with the patience that you've shown as we
19 go through this process.

20 And I know sometimes we do try your patience.
21 It's not their fault. Blame those of us who wear
22 these things for any delays or keeping you down
23 there -- sitting down there, we don't intend to, but
24 sometimes those things do happen. But we certainly
25 appreciate your patience through this process and

1 this whole week and, hopefully, we'll get a chance
2 to see you again this week.

3 Y'all are probably getting close for getting
4 cut loose for today, but if you all will return
5 downstairs, they'll give you further instructions
6 down there. Thank you, again, folks.

7 (The remaining jury panel was excused.)

8 **THE COURT:** Counsel, do y'all need to break
9 before we start?

10 **MR. MEADORS:** I just would like a short one, a
11 bathroom break. Judge, could we approach?

12 **THE COURT:** Yes, sir.

13 (Whereupon, a bench conference was held off
14 the record.)

15 **THE COURT:** We'll bring the jury back out. I'm
16 going to let them go for the day and we'll take up
17 some pretrial matters.

18 (The jury returns to the courtroom.)

19 **THE COURT:** Ladies and gentlemen, I appreciate
20 your patience. Let me just tell you all, I'm not
21 going to swear you in right now. As normally
22 happens, we have some pretrial matters that I need
23 to take up with the attorneys. All of that has to
24 be done outside of your presence. Rather than
25 keeping y'all here this afternoon while we do that

1 and then start late, we'll just start back in the
2 morning.

3 I'll bring you back at nine o'clock in the
4 morning. I got a thumbs up back there in the back.
5 We'll bring you back at nine o'clock in the morning,
6 ladies and gentlemen. If y'all will return to the
7 jury room that you were in, we'll try to be ready to
8 go right then. Barring anything else coming up,
9 we'll try to start on time in the morning.

10 I'm not swearing you in yet. When we come back
11 in the morning, I'll swear you all in as the jury
12 sitting for this trial.

13 I'll also, at some point, ladies and gentlemen,
14 tomorrow, probably appoint a jury foreperson for
15 purposes of the trial. That won't mean anything
16 other than you'll have a reserved seat. You'll
17 actually have this seat right down here on the front
18 row in the corner. The only folks that have
19 reserved seats during the trial are the foreperson
20 and the two alternates, y'all are always there. The
21 rest of you can sit anywhere you want every time you
22 come in and out. And I'll go over the duties of the
23 foreperson at the close of the case once I charge
24 you all on the law.

25 But I just, overnight, once again, ask that you

1 not talk about anything related to the case. I know
2 you haven't heard any evidence or testimony at this
3 point, but I remind you once again not to even
4 really discuss the case. There's plenty of other
5 stuff to talk about. North Carolina getting beat
6 tonight probably will be one that you all can
7 discuss. And y'all remind my law clerk tomorrow
8 when you see her, she's a Chapel Hill grad, that if
9 North Carolina falls tonight, y'all have permission
10 to rub it in on her.

11 But y'all enjoy the evening, ladies and
12 gentlemen. We'll see y'all again in the morning at
13 nine o'clock. Thank you.

14 (The jury was excused for the day.)

15 **THE COURT:** Counsel, we'll stand down. I'll
16 give y'all about five minutes to do a restroom
17 break. We'll do the pretrial motions and everything
18 in this case. I think we had a few matters left
19 over from this morning that we'll do right after
20 that. I understand we don't have a lot in this one;
21 is that right?

22 **MR. MOBLEY:** Not at this time. A lot of the
23 pretrial is going to be so witness specific, I think
24 it will be premature to really raise those issues
25 until the witness is about to testify.

1 **THE COURT:** All right. That's fine. We'll
2 take it up and get that over with and then we'll
3 take up the rest of the matters we had this morning.
4 We'll stand down for five minutes.

5 (Brief recess.)

6 **THE COURT:** Defense motions?

7 **MR. MOBLEY:** Yes, Your Honor. May it please
8 the Court. My first pretrial motion is really to
9 the standards of motion for a sequestration of all
10 the witnesses in the case. And I will certainly
11 have no problem reciprocating that all of the
12 defense witnesses be sequestered as well.

13 Obviously, I understand that the chief
14 investigator, who I believe is Lieutenant Smith, and
15 perhaps the wife of Mr. Brennan will certainly be
16 allowed to stay in the courtroom throughout the
17 entire testimony, but I ask that any other witnesses
18 be sequestered from the trial of this case, Your
19 Honor.

20 **THE COURT:** Normally, I don't have a problem
21 sequestering the lay witnesses. Is there some
22 reason the law enforcement needs to be sequestered?
23 If there's some issue as to statement --

24 **MR. MOBLEY:** A lot of their testimony does
25 overlap, Your Honor. There are a number of

1 investigators on this case due to the nature of the
2 case, but often times one investigator might receive
3 information, another investigator might follow it
4 up. So I do think that inherently there are some
5 concerns I would have regarding that because there
6 is so much overlap. They're all conducting separate
7 investigations and interviewing separate witnesses,
8 but there's so much overlap and follow up, Your
9 Honor, I think there is a legitimate concern I would
10 have.

11 **THE COURT:** Mr. Meadors.

12 **MR. MEADORS:** Your Honor, May it please the
13 Court. I think we -- I'd offer a happy compromise
14 for Your Honor's consideration, Investigator Smith
15 and the victim's wife, but also, Your Honor, this
16 was kind of a dual investigation. There are
17 numerous investigators. Out of all of those, we
18 would just like for two to stay. Gene Mincey is
19 kind of in the Cold Case Squad and when it went to
20 him, he kind of led that investigation. Stan Smith
21 was kind of over all of it. So we'd just
22 respectfully ask for just those two. There are
23 about five or six others and hopefully that would
24 solve the problem.

25 **THE COURT:** Any objection to that, Mr. Mobley?

1 **MR. MOBLEY:** I still stand by my original
2 request, Your Honor, regarding -- I would ask only
3 the chief investigator, whoever it is, they be
4 allowed to stay in the trial during the course of
5 the testimony.

6 **THE COURT:** Is there anything as to those two
7 -- obviously, one of them would be allowed to stay
8 anyway. And I presume Investigator Smith was over
9 the entire investigation, so normally he would be
10 the one who would stay. Is there anything as to the
11 cold case?

12 **MR. MOBLEY:** Well, I mean, I guess as to what I
13 alluded to a moment ago, I mean, that's where a lot
14 of the overlap really took place between Lieutenant
15 Smith and Investigator Mincey in the investigation.
16 I mean, one would get information, the other one
17 would -- they might try to check out some initial
18 investigation, then get called to another murder
19 investigation and one investigator would follow it
20 up due to their schedules.

21 And I know they're both very hardworking
22 investigators, I don't mean to suggest otherwise,
23 but I think that significant overlap in not just the
24 investigation, but the witnesses they interviewed, I
25 mean, a number of witnesses were interviewed on

1 multiple occasions, Your Honor, so -- and that's why
2 I would ask that based on that, that both
3 investigators not be allowed in throughout the
4 entire case, Your Honor.

5 **MR. MEADORS:** I guess I'd just add is, there
6 really were kind of dual investigations, so we
7 really have two chief investigators in this case.
8 It was about a year or so after the initial
9 investigation, cold case got it, I think, August of
10 2003. This happened, the incident happened, October
11 25th, 2001. Excuse me, August 2002, the Cold Case
12 Unit got it then. So I guess there are, basically,
13 two different investigations.

14 **THE COURT:** Anything further?

15 **MR. MOBLEY:** Nothing else on that issue, Your
16 Honor.

17 **THE COURT:** Unless you can point to some issue
18 -- specific issue as to either of the two
19 investigators' testimony being influenced by any
20 other witnesses, what I'll do is let those two stay
21 in. I'll sequester everybody else on both sides.
22 Obviously, the victim's wife can stay in and we'll
23 sequester everybody else and try and have them T'd
24 up and ready to come in as we call them.

25 **MR. MOBLEY:** Thank you, Your Honor.

1 My next motion, Your Honor, as I alluded to
2 back in chambers, is a motion to exclude testimony
3 and evidence regarding the defendant's service
4 revolver. And I'm going to give the Court some
5 background so you can understand my motion first,
6 Your Honor.

7 The victim in this case was shot five times,
8 approximately, five times, Your Honor. That was the
9 manner of death. That's how he was killed. Based
10 on my review of the investigator reports in this
11 case and my conversations with my good friends, Mr.
12 Meadors and Mr. Lupton -- I'm sorry, background
13 wise, the defendant, Your Honor, was, for a short
14 time, employed as a security guard for America's
15 Best Security. And in her course of her employment,
16 she was issued a service revolver, Your Honor. A
17 Taurus .357, I believe, was the type that she was
18 issued.

19 Throughout the course of the investigation, the
20 investigators in this case were trying to establish
21 some link between the defendant's weapon and the
22 bullets that were found from the crime scene, Your
23 Honor. Ultimately, they're not able to recover any
24 weapon, any firearm, at all in this case, Your
25 Honor. And they did extensive -- they had extensive

1 interaction with America's Best Security trying to
2 find some records and documentation regarding the
3 defendant's service revolver as to whether or not
4 she'd turned it in or not.

5 And I'm going to give the Court some
6 documentation to support what I'm saying next, but,
7 apparently, America's Best Security was a failing
8 security company and later went bankrupt and was
9 bought by another company. When they went to
10 America's Best Security Company trying to find some
11 evidence or some information regarding the
12 defendant's service revolver, they determined that
13 the record keeping was just so horrible, they really
14 couldn't conclude either way whether or not she
15 turned the weapon in.

16 In fact, her weapon was -- there were about 33
17 weapons that were unaccounted for during that
18 transfer that America's Best Security Company could
19 not account for, not just -- and I will concede that
20 they cannot conclude either way, find any conclusive
21 evidence as to whether or not the defendant actually
22 turned in her firearm or did not.

23 As the report will indicate, and I'm going to
24 hand up -- I made copies for the relevant portions,
25 and I'm doing this, Your Honor, to give the Court

1 some understanding, without having me to -- without
2 having to call witnesses to the witness stand, just
3 I'm going to hand up to the Court various portions
4 of the investigator reports completed by Mr. Smith
5 and Mr. Mincey in this case. I'm going to give you
6 copies of the portions that I think document my
7 position. Let's go ahead and mark it just as a
8 Defense Exhibit.

9 **THE COURT:** I'll let you mark it as a Court's
10 Exhibit to the pretrial motion part.

11 (Court's Exhibit Number 1, Stan Smith's
12 investigative report, was marked for identification
13 purposes.)

14 **MR. MOBLEY:** And I'm going to read from Court's
15 Exhibit Number 1, which is a page from the
16 investigative report of Mr. Stan Smith. And I
17 highlighted a portion for the Court where it states
18 a conversation he had with the owner or the managers
19 of the America's Best Security Company. And he
20 states that the owner, Mel Newman, blamed shotty
21 management as a reason for the problem with the
22 company. He said the logistics person was
23 responsible for the firearms issuance and retrieval.
24 And the company went through several logistics
25 officers.

1 Next, Your Honor, and this is where I'm --
2 where I'm going, Your Honor, is that I believe
3 they're going to try to offer certain information
4 under the business record exception of the hearsay
5 rule where they have -- I believe, they have Ms.
6 Dottie Cronise listed. She's employed there. And I
7 believe she will be offered as a records custodian
8 to introduce certain records regarding the
9 defendant's firearm. And the implication would be
10 that it could have been or might have been the
11 defendant's weapon that was used in the robbery.

12 The basis of my motion, Your Honor, if you look
13 at 803 subsection 6 regarding the business record
14 exception, it does state that this information is
15 admissible, and I'm going to read verbatim, Unless
16 the source of information or the method or
17 circumstances of preparation indicate lack of
18 trustworthiness. And I'm trying to demonstrate to
19 the Court that although they have certain records
20 pertaining to the defendant's firearm, the record
21 keeping was, based on their own investigation, was
22 so shotty, so mismanaged, that the records do not --
23 do not have circumstances that indicate
24 trustworthiness.

25 Next, what I'm going to hand up to the Court,

1 pages I've copied from Investigator Mincey's report.

2 I'm going to mark this as Court's Exhibit Number 2.

3 (Court's Exhibit Number 2, Gene Mincey's
4 investigative report, was marked for identification
5 purposes.)

6 **MR. MOBLEY:** And I highlighted a portion for
7 the Court of Mr. Mincey's report where he states on
8 this first page when he's discussing his
9 conversation with Dottie Cronise with America's Best
10 Security. And they discuss, I will read it, We
11 discussed who may have some info as to the
12 whereabouts of 33 missing weapons. And he goes on
13 to list all of the different people, about eight
14 different people, they indicate might have
15 information on the weapons, Your Honor.

16 And on the next page, Your Honor, on the
17 Court's Exhibit -- on the next page, Your Honor,
18 page 20 -- the second page that I've handed to the
19 Court, which is page 23 of Mr. Mincey's report, he's
20 talking about a conversation with two of the
21 individuals that were in charge of the logistics
22 that might have information of the whereabouts of
23 the 33 missing weapons.

24 First, Mr. Ken McMurray, he indicated, once
25 again, based on Investigator Mincey's investigator

1 report, Their record keeping was horrible. Next,
2 after that, he talked to Mr. Chris Duke who also,
3 once again, relates to the investigator that the
4 record keeping was very disorganized.

5 So, Your Honor, what we have, and I believe we
6 have, Your Honor, is an investigation of this
7 company that the law enforcement investigators have
8 clear information that the record keeping was
9 disorganized all to the point of being -- are to the
10 point of being unreliable.

11 And I think what would be -- so the first basis
12 of my motion, Your Honor, is that, assuming, and I
13 do believe assuming, that Mr. Meadors and Mr. Lupton
14 plan to try to introduce testimony or evidence of
15 the status of Ms. Rice's service revolver, based on
16 these business records, that under the clear
17 language in 803 that the source of information or
18 the method or circumstances of preparation of these
19 records indicate a lack of untrustworthiness and
20 that's why that information should be excluded.

21 That's the first basis of my motion, Your
22 Honor, because the records they will be presenting
23 were -- proceed under the theory on are not reliable
24 based on the clear evidence of shotty record
25 keeping, which is indicated by a number of witnesses

1 they interviewed, all of which who had information
2 about the nature of the record keeping at that
3 facility.

4 And next, Your Honor, as I indicated, based on
5 Mr. Mincey's report, Ms. Rice's weapon was not the
6 only weapon that was unaccounted for. There were 33
7 weapons at least they could not account for in that
8 transition, Your Honor.

9 So, obviously, you know, the inference or the
10 problem is if the jury hears some testimony about,
11 you know, Ms. Rice's weapon not being clear whether
12 or not she turned it in or not, you know, there's a
13 significant risk of unfair prejudice to the
14 defendant, Your Honor. And there's no real
15 probative value because it's not like her's is the
16 only one they can't confirm.

17 And just so we're clear, their records aren't
18 saying that it was not turned in. The records are
19 saying, we can't tell whether it was turned in or
20 not, Your Honor. And I think when the Court
21 considers circumstantial evidence versus evidence
22 that is submitted speculative, I will certainly
23 concede to the Court and to my good friend,
24 Mr. Meadors, that if their information was clear
25 that the defendant's weapon had not been turned in

1 based on reliable records under the business records
2 -- under the business records exception, that would
3 be circumstantial evidence, Your Honor, but, in this
4 case, they can't determine one way or the other, so
5 it's speculative, Your Honor.

6 Also, Your Honor, I believe the document
7 they're going to use to support their basis that she
8 had not turned in her service revolver, once again
9 this is something I was provided in discovery, I'll
10 mark this also as Court's Exhibit Number 3.

11 (Court's Exhibit Number 3, list of employees
12 terminated from America's Best Security, was marked
13 for identification purposes.)

14 **MR. MOBLEY:** And based on my reading -- and,
15 obviously, everything I've said is subject to
16 Mr. Meadors' response, but based on my reading of
17 the report of Investigator Mincey and Investigator
18 Smith, one of the reasons -- or the reason they
19 believe there's a possibility that Ms. -- the
20 defendant did not turn in her service revolver is
21 the document I've handed to the Court, Number 3.
22 And it's, basically, a list of terminated employees,
23 one of which is Ms. Rice.

24 At the bottom, it states, and it's handwritten,
25 that highlighted names indicate that officers have

1 turned in their assigned equipment, which means if a
2 person's name was highlighted, they turned in all of
3 their equipment.

4 Now, according to Investigator Mincey's report,
5 I have not seen the original document, but the
6 original document does not have the defendant's name
7 highlighted. The inference would be since her name
8 was not highlighted, she did not turn in her
9 firearm.

10 But, however, Your Honor, this document, which
11 I believe the State is relying on, does not
12 specifically reference firearms. It references
13 equipment. And as you will see from Court's Exhibit
14 Number 4 that I'll be handing up to the Court, Your
15 Honor...

16 (Court's Exhibit Number 4, America's Best
17 Security Standard Officer Uniform Checklist, was
18 marked for identification purposes.)

19 **MR. MOBLEY:** This is also a document I received
20 during the course of discovery which appears to be,
21 America's Best Security Standard Officer Uniform
22 Checklist, and it has the defendant, Officer Carmen
23 Rice's, name at the top. It documents all of the
24 different equipment and items that a person's
25 assigned, shirt, pants, black belt, black boots or

1 shoes, black socks, black t-shirt, badge, name tag,
2 whistle, handcuffs, collar keys, Maglite holder,
3 holder for gun. It even has a spot for a weapon.

4 And I guess my point, Your Honor, is the
5 document I submitted to the Court, Number 3, only
6 reflects that the highlighted officers have not
7 turned in their equipment. It doesn't specify
8 firearms. So this document could mean the defendant
9 in this case didn't turn in her whistle or didn't
10 turn in her uniform or didn't turn in her cap or
11 didn't turn in her black T-shirt. It does not
12 specify or suggest that the defendant did not turn
13 in her firearm.

14 And the problem we have, Your Honor, is -- and
15 I will concede to the Court that if the State had
16 some evidence that, number one, if the records were
17 clear that the defendant did not turn in her firearm
18 and some memorandum regarding, or some documentation
19 regarding the defendant's or witnesses' or
20 employees' failure to turn in firearms, that would
21 be circumstantial evidence that the defendant did
22 not turn her firearm in.

23 However, everything you have is speculative.
24 And I don't think the jury should be allowed to be
25 given information that's speculative because what

1 you have is a significant, extreme risk of unfair
2 prejudice to the defendant under Rule 403. And when
3 you look at that versus the probative value --

4 **THE COURT:** How is that overly prejudiced to
5 the defendant? They put on a custodian from the
6 security company, says that we can't account for the
7 weapon, you all cross-examine her and say, y'all
8 can't account for 33 weapons, how is that -- I mean,
9 I'm not prejudging anything, I'm just saying, I mean
10 -- I mean, isn't that the beauty of trials that give
11 and take?

12 **MR. MOBLEY:** With all respect to the Court,
13 Your Honor, under Rule 403, you've got to balance
14 the probative value or the person's at risk of
15 unfair prejudice. The probative value of this
16 testimony is nothing. I mean, I would concede if it
17 proved or suggested pretty clearly that this
18 defendant did not turn her weapon in, it would have
19 some probative value, but they can't even meet that
20 test, Your Honor, it's only speculative.

21 And I think what the Court has to be concerned
22 about is them arguing in front of the jury, see, she
23 didn't turn the weapon in, she didn't turn the
24 weapon in, and granted I can make the argument
25 otherwise, but they still are giving the jury an

1 inference based on speculation, Your Honor, versus
2 circumstantial evidence. And that's where I think
3 the unfair prejudice or the extreme risk of unfair
4 prejudice comes in. I would ask the Court to
5 consider Rule 403.

6 **THE COURT:** Well, you would concede that
7 whether or not they could find her weapon would be
8 probative evidence?

9 **MR. MOBLEY:** No, Your Honor, with all respect
10 to the Court. I would concede if they had clear
11 records and the records were organized --

12 **THE COURT:** Set that aside for a second.
13 Whether or not, in this case, the State could
14 account for her weapon or the lack thereof would be
15 probative evidence.

16 **MR. MOBLEY:** Your Honor, I think the
17 circumstances in this case, the fact that they could
18 not account for it -- I think if they could indicate
19 that she had not turned the weapon in, that would be
20 probative, but saying that she -- they can't
21 determine whether she did or not doesn't prove
22 anything.

23 And I would respectfully disagree with the
24 Court, them saying, we can't determine whether or
25 not she turned them in or not because their records

1 are so bad, doesn't prove anything, but once again
2 they still are allowed to argue or make the
3 inference that she didn't turn it in and that was
4 the weapon that was used in the crime when the
5 documentation, as the investigators' reports
6 reflect, is shotty, disorganized, unreliable, there
7 are 33 weapons missing.

8 On top of that, Your Honor, the document
9 they're relying on does not specify weapon, it just
10 says equipment. So it could be a whistle, it could
11 be black boots or black socks, but they're going to
12 try to argue and try to let the jury speculate that
13 this is all a weapon and that's my concern, Your
14 Honor.

15 **THE COURT:** Well, it's not speculation. I
16 mean, the jury will hear in the State's case, as
17 well as in the Defense's cross of any of those
18 witnesses that her's isn't the only weapon they
19 can't account for, I mean, if that's the only thing
20 that they have to put up, and that just goes to the
21 weight of the evidence. I mean, the jury can say,
22 well, y'all can't find 33 weapons.

23 **MR. MOBLEY:** Okay. And I just, with all
24 respect to the Court, I'm not going to belabor the
25 issue, Your Honor, but, you know, the two bases of

1 my motion are obviously under Rule 403, the
2 probative value is exceeded by the extreme risk of
3 unfair -- or significant, substantial risk of unfair
4 prejudice. I think it's substantial, I've been
5 saying extreme, but I think it's substantial.

6 Second, Your Honor, under the business record
7 hearsay exception, I don't think the Court can find
8 that the record keeping in this case indicate a lack
9 of trustworthiness based on the preparation and the
10 record keeping. I mean, the investigators' report
11 say that.

12 And I think that to let in shotty business
13 record to try to establish some fact is unfair to
14 the defendant, Your Honor. And I don't think it
15 meets the requirement of the business record rule
16 under 803(6) or 803(7), Your Honor, which is the
17 converse, which is absence of information. That's
18 all I have, Your Honor, subject to any further
19 inquiry from the Court, Your Honor.

20 **THE COURT:** Okay. I'll come back to you.

21 **MR. LUPTON:** Your Honor, briefly, if I could
22 address these in reverse order. With regards to the
23 May document that was handed in, that's a separate
24 post she was working at the time that she left
25 America's Best Security. An unarmed post would not

1 have a firearm listed as equipment needed for that
2 post. So I believe that document is not relevant to
3 the question of whether or not she was issued a
4 weapon for an armed post, which was where she was at
5 when she was terminated from America's Best
6 Security.

7 Additionally, I will, if Mr. Mobley would like
8 to look at the original document that he showed, I
9 believe Court's Exhibit 3, he alluded that he's
10 never seen an original. We have that. It is --

11 **MR. MOBLEY:** And I'm not doubting the question
12 of that, just so we're clear. I was just making it
13 clear for background purposes. I'm not doubting
14 you --

15 **MR. LUPTON:** But I -- just for purposes of the
16 trial, if you would like to look at it, we have it
17 available. The highlights didn't photo copy. But
18 we have that available for him to look at. And her
19 name was not highlighted indicating that she had not
20 turned in her equipment. One of the pieces of
21 equipment that she had -- that had been issued to
22 her at that point was a firearm, so that would
23 indicate that she hadn't turned in her equipment.

24 The fact that there are 30 weapons that are
25 unaccounted for, 30 plus, along with the question of

1 whether or not gun is one of the things that was
2 missing in the lack of a highlight mark, Your Honor,
3 I believe both of those go to weight of evidence not
4 admissibility. It is a subject proper for
5 cross-examination. And I'm certain Mr. Mobley will
6 do a fine job at exploring that on
7 cross-examination. I believe that's the appropriate
8 place for it.

9 With regards to the business records not being
10 reliable, with regards to whether or not they're
11 missing a weapon, I believe that there is
12 reliability in that. The fact that there were some
13 problems as the company started to go bankrupt goes
14 towards weight that should be given to the
15 testimony. And, again, I believe he can point that
16 out in cross-examination. But we do have records
17 that indicate the weapon was not turned in, as well
18 as live testimony from individuals who specifically
19 would testify that they knew that she hadn't turned
20 her weapon in.

21 Given all of that, I believe that this is a
22 matter that is appropriate for the jury to consider.
23 And subject to cross-examination and pointing out
24 all of the things that Mr. Mobley has pointed out, I
25 believe that it is proper for the jury to hear

1 testimony on that, especially where there will be
2 testimony from a ballistics expert that the Taurus
3 .357 Magnum revolver that was issued to the
4 defendant was in a class of weapons that could have
5 fired the bullets that were used to kill the victim.
6 So we've got ballistics testimony that would suggest
7 a possible link.

8 Obviously, with no weapon recovered, no murder
9 weapon recovered, we can't do an exact ballistics
10 match, but we can confirm that the weapon that she
11 has had and that is unaccounted for was one of the
12 weapons that could have been used to kill the
13 victim.

14 All of that, I believe, makes this relevant
15 testimony. It makes it more probative than
16 prejudicial and any potential arguments against it
17 should go to weight not admissibility.

18 **THE COURT:** Thank you, sir.

19 Mr. Mobley, anything further as to Mr. Lupton's
20 comments?

21 **MR. MOBLEY:** Not on that issue, Your Honor.

22 **THE COURT:** I understand your argument,
23 Mr. Mobley. I'll -- as we go through the trial,
24 there may be some need for you to reargue your
25 motion at some point. Just based on what you all

1 have presented in terms of the Court's Exhibits and
2 argument, though, I think that -- I cannot find that
3 it's more prejudicial than probative.

4 I do think it's certainly fair game for
5 vigorous cross-examination in challenging any of
6 those records or any of those witnesses that are
7 brought forth, but I think it's certainly more
8 probative than prejudicial to the defendant to allow
9 the State to bring those subject matters up, but
10 I'll certainly be listening.

11 ~~If there's some need that you feel like you~~
12 ~~need to reargue that motion, you'll have grounds~~
13 ~~to --~~

14 **MR. MOBLEY:** Thank you. And I would just ask
15 the Court to rule on my argument regarding the lack
16 of trustworthiness as reflected in 803 subsection 6,
17 just to protect the record, Your Honor.

18 Part of my motion was that -- it was under 803
19 subsection 6 and 7 pertaining to records of regular
20 conducted activity or the absence of entry and
21 records kept in accordance with subsection 6, that
22 they both have the same provision that unless the
23 source of information or the method or circumstance
24 of preparation indicated lack of trustworthiness,
25 that was also a bases in which I moved to exclude

1 the testimony and the evidence, Your Honor. I would
2 just ask the Court to rule on that issue.

3 **THE COURT:** I'll deny it on that ground at this
4 point, at least to the document that you all have
5 marked as Court's Exhibit Number 3, indicated that
6 her's was not one of the individuals who turned in
7 their equipment. As you said, somebody's going to
8 have to testify as to what that means whether it
9 included a weapon and whether it was intended to
10 include a weapon. At this point, unless I hear
11 something else during the testimony from the
12 witness, I do find that it's reliable enough to meet
13 that exception should the State try to introduce it
14 under that exception.

15 **MR. MOBLEY:** Thank you, Your Honor. I guess
16 one of housekeeping things, I want to make sure I
17 give the Court's Number 1 and 2 since I kept
18 possession of those for my arguments, Your Honor.

19 **THE COURT:** I'll be glad to swap out.

20 **MR. MOBLEY:** My next motion, Your Honor, is
21 something that Mr. Lupton alluded to regarding the
22 ballistics report. I would move to exclude any
23 reference to the results of the ballistics report
24 and examination of Mr. Collins in this case. And
25 the basis of that is something that Mr. Lupton

1 alluded to in his argument to the Court, Your Honor.

2 And just for background purposes, as I
3 indicated, the weapon that was used during the
4 commission of the shooting and the weapon that was
5 Ms. Rice's service revolver were never recovered,
6 neither one of those two weapons were identified or
7 recovered. Various slugs or fragments were
8 recovered, Your Honor.

9 And what the ballistics examiner, Mr. Collins,
10 did was issue a report documenting characteristics
11 of the fragments and ultimately indicating the types
12 of different weapons that could have fired those
13 particular projectiles, Your Honor. And as you will
14 see -- I don't think I've given you a copy of it,
15 Your Honor. We can mark this as Court's Exhibit
16 Number 5.

17 (Court's Exhibit Number 5, forensic
18 examination report, was marked for identification
19 purposes.)

20 **MR. MOBLEY:** And as Mr. Lupton indicated, Your
21 Honor, they could not confirm whether any of those
22 fragments were fired from a particular firearm, Your
23 Honor. The specifics -- they could not confirm
24 whether or not the firearm -- the slugs or
25 projectiles were fired from the specific firearm

1 under which the defendant was issued, Your Honor.

2 In fact, in the report, Mr. Collins reflects
3 the projectile could have been fired from,
4 approximately, 20 or so different models of .38
5 specials and .357's, Your Honor. He lists about 18
6 of a .38 -- 18 different models of .38 specials and
7 five different models of .357 magnums, Your Honor.
8 And that is such a broad range of different firearms
9 that could have fired that projectile, Your Honor,
10 that, too -- once again, that's not circumstantial
11 evidence that it was fired from her weapon, that's
12 more speculation because it's so vague and
13 nonspecific, Your Honor.

14 And it kind of goes hand in hand. What they're
15 doing is they're building all of these inferences on
16 speculative evidence versus concrete, strong,
17 reliable evidence, Your Honor. And I think a report
18 that indicates that it could have been fired from
19 any number of 20 different models of .38's and
20 .357's, number one, has no probative value. It does
21 not prove or establish the fact that it was fired
22 from the Defendant's -- probably fired from the
23 Defendant's weapon.

24 Number two, Your Honor, when you look at 403,
25 the probative value versus the substantial risk of

1 unfair prejudice, once again, it's the cumulative
2 effect, Your Honor. It's the cumulative effect.

3 First, they depend on the inferences about the
4 weapon, which they can't confirm was either turned
5 in or lost or unaccounted for with bad record
6 keeping, and now this report is going to say it
7 could have been any one of about 20 different makes
8 or models of weapons that could have fired this
9 slug. And I think the cumulative effect,
10 prejudicial effect to the defendant is clear, Your
11 Honor. And based on that, Your Honor, I would ask
12 that the results of the testimony regarding the
13 ballistics report be excluded from the trial of this
14 case, Your Honor.

15 **THE COURT:** Well, it narrows it down to either
16 different models of -- or makes of .38 Special or
17 .357 Magnum. It, therefore, excludes a number of
18 other weapons, potential weapons, out there. Why
19 would that not be probative?

20 **MR. MOBLEY:** Because the number that includes
21 it is so high, Your Honor, there's over 20 different
22 makes and models that it includes. And I think when
23 the Court considers that broad range of weapons
24 along with the cumulative other evidence, I mean,
25 once again, there are 33 weapons that were missing,

1. you know.

2. **THE COURT:** These come in all the time, though.
3. I mean, these are, you know, when somebody is
4. qualified, if they can be qualified as an expert,
5. they say, well, it could have been fired from X, Y
6. or Z gun, I mean, the jury weighs whether or not
7. they believe it was the Defendant's gun.

8. **MR. MOBLEY:** With all respect to the Court,
9. Your Honor, I think if the evidence was put in a
10. vacuum that this is one of the different types of
11. weapons it could have been fired from, by itself, it
12. would be less prejudicial. But I think, once again,
13. with the cumulative, speculative evidence regarding
14. the America's Best Security records, the cumulative
15. effect of all this speculation evidence is where the
16. prejudice comes from, Your Honor.

17. And that would be my motion under 403. This
18. evidence in conjunction with all of the other
19. speculative evidence they have, Your Honor, the
20. total number of missing weapons, the shotty record
21. keeping, the not knowing whether it was turned in or
22. not, they now say, Well, it could have been one of
23. 20 different makes or models, the cumulative effect
24. of that speculative evidence, Your Honor, is where
25. the substantial -- unfair -- risk of unfair

1 prejudice to the defendant is.

2 Because what they're going to do now, Your
3 Honor, is they're going to try to sit there and
4 build a firearm case on speculative evidence, on a
5 lot -- not just one part, not just one portion, but
6 a lot of speculative evidence, Your Honor, but they
7 can't conclude anything either way. So that's the
8 basis of my motion, Your Honor.

9 **THE COURT:** You wouldn't disagree, the State
10 could come in here and just say, She, as part of her
11 job, was issued weapon X, right?

12 **MR. MOBLEY:** Well, I think the Court has to
13 consider based on the --

14 **THE COURT:** I mean, they can bring it in here
15 and say, You worked at a security company -- or she
16 worked at a security company, what kind of weapon
17 did she get issued, whatever it was, and as part of
18 their case talk about they never recovered a weapon,
19 right?

20 **MR. MOBLEY:** Well, I think, in the context of
21 all the circumstances, Your Honor --

22 **THE COURT:** I mean, set aside all of the stuff
23 about whether or not weapons were turned in, they
24 could -- if I ruled your way and tossed all of that
25 out, the jury never hears, Well she may or may not

1 have turned all of that in -- back into the company,
2 there's nothing to prevent the State from just
3 putting up somebody from the company and say she got
4 issued this weapon, investigators say we never
5 recovered a weapon; wouldn't that be way worse for
6 her than to --

7 **MR. MOBLEY:** Well, I think the same argument
8 would apply, Your Honor. Without some specific
9 evidence that that weapon was somehow tied to the
10 crime scene, that's where the prejudice comes from.
11 That's like, you know, if somebody got stabbed and
12 someone testified, Well, yeah, you know, this person
13 had all of these knives in this kitchen, well, you
14 know, those are not knives or weapons that are
15 related -- they can relate to the crime, you know,
16 and that's where the prejudice comes from.

17 **THE COURT:** But your assumption is that the
18 expert can't come in here and say, This wasn't a .22
19 Caliber -- this wasn't fired from a .22 Caliber gun.

20 **MR. MOBLEY:** No, Your Honor.

21 **THE COURT:** I mean, he can't come in here and
22 narrow that down for the jury and say only two types
23 of guns. I mean, there are different makes of these
24 guns, but it was either a .38 or a .357 that fired
25 this weapon. You all are going to cross him on his

1 qualifications and his opinions about that, but your
2 position is he can't come in here and sit on the
3 witness stand and tell the jury, Look, he wasn't
4 killed with a .22, he wasn't killed with a .32, it
5 was one of these two types of guns.

6 **MR. MOBLEY:** Well, Your Honor, I think, with
7 all due respect to the Court, Your Honor, if were
8 not for the other information the State tries to
9 plan to introduce the speculative evidence that this
10 weapon was not turned in, I would agree with the
11 Court that that testimony in a vacuum would be
12 certainly relevant and would be admissible, but I
13 think, once again, what I'm stressing to the Court,
14 because the Court has always got to be concerned
15 with the 403, you know, probative value versus
16 substantial risk for unfair prejudice and my
17 point --

18 **THE COURT:** So you would have -- I mean, if I'm
19 following your argument, I can keep out the document
20 saying that she never turned the weapon in, allow
21 them to put on witnesses to say, this is what she
22 had issued, you don't even think I could introduce
23 evidence saying she was ever issued a certain type
24 of weapon?

25 **MR. MOBLEY:** Because the inference, Your Honor,

1 would be -- the relevance of that would be they
2 would have to tie it to the crime, which they cannot
3 do by any means whatsoever, Your Honor.

4 **THE COURT:** Well, I was going to get there.
5 Your position is, is that they can't say, She was
6 issued this weapon, the investigators can't say, We
7 never located a weapon and then have the expert say,
8 It was one of these two types of weapons?

9 **MR. MOBLEY:** Correct, Your Honor. And the
10 reason is they cannot tie any weapon to the crime,
11 specifically, to the defendant. If we're talking in
12 general terms, I would agree that from a background
13 standpoint, correct, you know --

14 **THE COURT:** So we're talking about two
15 different things. There's a difference between
16 circumstantial and speculative. Circumstantial is
17 she got issued this weapon, we can't locate this
18 weapon. Now, you all can cross them as to whether
19 or not they lost the weapon at the security company.
20 But we never tried -- I mean, we would never be able
21 to try most cases up here that they can't locate the
22 weapon.

23 **MR. MOBLEY:** Well, I'm not saying -- once
24 again, Your Honor, I mean, the Court is often
25 saying, Well, let's take this part or let's take

1 that part out, I'm submitting to the Court, you
2 can't analyze the parts of this case in a vacuum. I
3 think you have to analyze all of the evidence
4 together to determine the prejudicial effect. But
5 the point, Your Honor, is they can't state that she
6 turned the weapon in or not turned the weapon in. I
7 would concede --

8 **THE COURT:** No, you all argued that they can't
9 say that. I mean, I haven't heard from their
10 witnesses, but you all argue, Look, there was shotty
11 paperwork here, nobody knows whether it was turned
12 in or not. That's an argument you all can make to
13 the jury.

14 **MR. MOBLEY:** But I think, Your Honor, since
15 they're presenting the evidence, they've got to be
16 able to demonstrate, at least by some level of proof
17 that the Court designed to -- considers appropriate,
18 that their record keeping is reliable. If they
19 can't -- I mean, that's the whole point of 803, that
20 if the record, you know -- I mean, what's the whole
21 point of having language about the record keeping
22 being -- having a lack of untrustworthiness because
23 the record's got to be reliable because the jury's
24 going to be relying on that to establish some fact
25 in the case.

1 But if the record keeping is unreliable and
2 that's what they're using to base those facts on,
3 that's the whole point about why it should not be
4 admitted under the business record exception, Your
5 Honor, because of the shotty record keeping, which
6 they all concede was horrible.

7 **MR. LUPTON:** Your Honor, are we rearguing the
8 prior motion or are we arguing the ballistics --

9 **THE COURT:** I led Mr. Mobley into that.

10 **MR. MOBLEY:** My whole point, Your Honor, is,
11 and I'll wrap it up for the Court because I
12 understand we have -- but my whole point, I don't
13 think the Court can sever all of these different
14 issues. I think we've got to take them in context
15 together and that's the whole point I'm making
16 regarding the prejudice, Your Honor. The prejudice
17 is coming from the cumulative effect. And the
18 Supreme Court often talks about the cumulative in
19 nature and the cumulative effect of evidence and how
20 it can be prejudicial because of the cumulative
21 nature of it.

22 **THE COURT:** That's on properly admitted
23 evidence.

24 **MR. MOBLEY:** Correct, Your Honor. Thank you,
25 Your Honor.

1 **THE COURT:** Thank you, Mr. Mobley. I'll come
2 back to you.

3 **MR. LUPTON:** Your Honor, I believe the very
4 fact that you shouldn't consider the ballistics
5 report in a vacuum increases its probative value.
6 As the Court alluded to, the State will present
7 testimony from witnesses who will testify that the
8 defendant was issued a .357 Magnum Taurus. It was
9 never recovered. And you've already ruled on that
10 motion.

11 But with that testimony, we now have a
12 ballistics report which would indicate that the
13 bullets that were recovered from the victim and from
14 the victim's car were most consistent with a .38
15 Caliber bullet that was fired from either a .38
16 Special or a .357 Magnum. And both of those types
17 of firearms will fire a .38 Special bullet. A .357
18 Magnum is commonly loaded with .38 Caliber
19 ammunition.

20 And, in fact, going beyond what we've already
21 talked about since it's now relevant, the witness
22 will testify that the defendant was issued a .357
23 Magnum loaded with .38 Special ammunition. And
24 given that, I think that the fact that we've never
25 recovered the specific murder weapon goes to weight

1 not admissibility.

2 And Mr. Mobley is certainly able to point out
3 to the jury the fact that there are 20 types of
4 weapons, approximately, makes and models, that could
5 have been used to fire that bullet. But the
6 ballistics expert will explain the general
7 characteristics of the bullet, as far as the
8 markings from the weapon and how those apply to him
9 determining what weapons could potentially fire that
10 bullet. I believe that any question about how many
11 weapons in the greater Columbia area could have
12 fired that bullet goes to weight not admissibility.

13 And going to what Mr. Mobley said, even if we
14 take it in a vacuum, I think that the State will
15 certainly be entitled to present that evidence under
16 any theory even if we didn't have the evidence
17 linking the defendant to a Taurus .357 Magnum loaded
18 with .38 Special ammunition just based on the fact
19 that that is the characteristics of the weapon that
20 was used to kill the defendant (sic). And the State
21 would be entitled to present that evidence
22 regardless of whether or not we could tie that to
23 any specific weapon. Just taking it in a vacuum,
24 the State would be entitled to have the jury told
25 that the defendant was killed with .38 Caliber

1 rounds fired from either a .38 or a .357 Magnum.

2 I think Mr. Mobley's argument is akin to having
3 the witnesses prohibited from saying that the
4 defendant -- the victim, on the night of the murder,
5 was seen with two black females under the theory
6 that there are thousands -- tens of thousands of
7 black females in the greater Columbia area and we
8 can't say that it was specifically these two without
9 testimony from other sources.

10 **THE COURT:** Again, I can't find that this would
11 be more prejudicial than probative. This is very
12 probative evidence. And the arguments, Mr. Mobley,
13 I think you raised as to those things, I think go to
14 issues that the defense can certainly bring out on
15 cross, as well as argue to the jury, but I think
16 they're admissible, certainly.

17 The last issue we were discussing was Court's
18 Exhibit Number 5 and the testimony from the expert
19 as to the types of weapons that might have fired
20 these bullets and I find that that would be
21 admissible.

22 **MR. MOBLEY:** Thank you, Your Honor.

23 My last motion is also regarding the ballistics
24 report. I assume the State intends to introduce the
25 document itself that the -- the redacted on page two

1 of the report. And I've got -- and I understand
2 that he's obviously going to give his scientific
3 opinions based on his tests, but the second to last
4 paragraph he states: It should be noted that .38
5 Special Caliber ammunition is often fired from .357
6 Magnum Caliber firearms.

7 That's not a fact from a test he performed,
8 Your Honor. That's some subjective opinion, the
9 inference being it was fired from the defendant's
10 weapon, Your Honor. And I think that that's an
11 objective part of his report, has no basis in the
12 report and submitted to the jury. And I move that
13 that portion be redacted, Your Honor, because that's
14 not a scientific test that was a result on an
15 analysis performed, anyway.

16 **MR. LUPTON:** Your Honor, if I can seek
17 clarification.

18 **THE COURT:** I'm not quite sure.

19 **MR. LUPTON:** Is he asking just that it be
20 redacted from the report itself and the witness is
21 allowed to still testify to that or is he trying to
22 keep the witness from testifying to it as well?

23 **THE COURT:** I'm not quite sure about that
24 either.

25 **MR. MOBLEY:** At this stage, Your Honor, I

1 haven't heard the witness testify and I couldn't, in
2 all candor, give an answer to that question at this
3 point.

4 However, my motion at this time is to have,
5 assuming the State intends to introduce it as a
6 document in its important evidence, that the portion
7 where he states that objective statement about it
8 should be noted that .38 Special ammunition is often
9 fired from .357 Magnum Caliber firearms be redacted
10 from the report.

11 **THE COURT:** Well, isn't that a part of how he
12 says that it's possible it could be fired from a
13 .357?

14 **MR. MOBLEY:** No, no, no, sir. With all respect
15 to the Court, I don't have any problem with him
16 indicating, based on his expertise, these -- these
17 particular type of projectiles can be fired from
18 these particular types of weapons. However, that
19 last statement seems to imply it was fired from this
20 particular weapon and he has no basis to indicate it
21 was fired from that particular weapon.

22 He states that they're often fired. Well, they
23 may or may not be often fired. It may be often
24 fired by some people and not by others, but that's
25 not a scientific or factual test result that he's

1 documenting there.

2 **THE COURT:** Well, then I assume you would want
3 to exclude him from testifying to that.

4 **MR. MOBLEY:** Well -- and I haven't gotten there
5 yet, Your Honor, but that was -- my first motion was
6 to exclude that from the report. And once we got to
7 that point during his testimony, I would, you know,
8 deal with that at that time.

9 **MR. LUPTON:** Your Honor, he's an expert in
10 firearms, tool marks examiner. I believe that it is
11 well within his expertise to testify and report on
12 this type of information. It goes to the whole
13 purpose of the expert opinion rules and the rules of
14 evidence, which is to have a person with -- who has
15 developed expertise based on training and experience
16 be able to present opinions on a subject that would
17 assist the jury.

18 A person who does not know much about firearms
19 would easily be confused by the fact that you're
20 talking about a .357 Magnum and a .38 Caliber round.
21 You know, I personally am very familiar with the
22 fact that .38 Caliber ammunition is often fired out
23 of .357 Magnum revolvers, but there's probably
24 people on the jury that don't know that and I think
25 it's certainly a proper topic for an expert to

1 testify on. And I think that --

2 **THE COURT:** I think this one's easy. I mean,
3 y'all are going to have to voir dire him as to his
4 qualifications, Mr. Mobley, give you a chance to
5 voir dire him as to that. We can possibly dispense
6 with this issue about where we're at in the
7 questioning before the report is actually, that part
8 anyway, is published to the jury. So we'll try to
9 take care of it that way and see if the foundation
10 is sufficiently laid as to your objection.

11 **MR. MOBLEY:** Thank you, Your Honor.

12 **THE COURT:** Anything else?

13 **MR. MEADORS:** Thank you very much, Judge.

14 **THE COURT:** Thank you, counsel.

15 **MR. MOBLEY:** I believe that's all I have at
16 this time, Your Honor.

17 **THE COURT:** I know you all possibly have some
18 exhibits you wanted to premark while we're doing
19 these other matters.

20 **MR. MEADORS:** We'll be happy --

21 **MR. LUPTON:** Is it my understanding then that
22 there's no challenge under Jackson v. Denno to
23 testimony about verbal statements made by the
24 defendant?

25 **MR. MOBLEY:** He's sure --

1 MR. LUPTON: I just wanted to make sure --

2 MR. MOBLEY: I just want to check with him.

3 I'm pretty sure -- that's not something I --
4 anticipated.

5 **MR. LUPTON:** I just wanted to make sure that we
6 placed on the record that that issue had been
7 considered and waived at least for the time being.

8 MR. MOBLEY: Correct.

9 **THE COURT:** Okay. Mr. Mobley, before we start,
10 though, we'll revisit that issue first thing in the
11 morning. If for some reason there's any question or
12 something y'all have not discussed, we may need to
13 do that in an abundance of caution in the morning
14 when we reconvene. I assume y'all have seen all of
15 the statements at this point and have made a
16 decision not to raise that, but, you know, unless
17 counsel waives that specifically and stipulates to
18 it -- the voluntariness of those statements, we may
19 need to deal with that in the morning.

20 MR. MOBLEY: All right.

21 **THE COURT:** We'll see y'all at nine o'clock.

22 **MR. MEADORS:** Thank you, Judge.

23 (Whereupon, the proceedings were concluded
24 for April 4, 2005.)

25 (The following proceedings were held on

1 April 5, 2005.)

2 (State's Exhibit Numbers 1 through 39 were
3 marked for identification purposes.)

4 **THE COURT:** Anything we need to take up before
5 we get started this morning?

6 **MR. MOBLEY:** Not at this time from the defense,
7 Your Honor.

8 **THE COURT:** Anything from the State before we
9 bring the jury out?

10 **MR. MEADORS:** No, sir. Thank you, Judge.

11 **THE COURT:** All right. We'll bring them out
12 then and swear them in.

13 (The jury enters the courtroom at 9:29 a.m.)

14 **THE COURT:** Thank you, ladies and gentlemen.

15 Ladies and gentlemen, we broke yesterday to
16 take up some matters that we needed to do outside of
17 your presence and get all of those done and we're
18 ready to start this morning.

19 Before we actually start, ladies and gentlemen,
20 we're going to have to swear you in as a jury for
21 this particular trial. I'm going to ask if you all
22 will stand and raise your right hands and repeat
23 after the clerk.

24 (The jury was duly sworn by the Clerk of
25 Court at 9:30 a.m.)

1 **THE COURT:** Thank you, ladies and gentlemen.

2 Ladies and gentlemen, we're going to start this
3 trial off. As you all probably know, trials start
4 off with opening statements from both sides. It's
5 an opportunity -- it's not evidence what they're
6 going to tell you. They're going to talk about
7 evidence and what they believe the evidence will
8 show you during the course of the trial, but that's
9 not evidence for you.

10 The evidence that you'll actually deliberate on
11 will come from the testimony from witnesses and any
12 exhibits that are allowed into evidence by the Court
13 and any exhibits you'll have back in the jury room
14 with you during the course of your deliberations.

15 But I do ask that you pay very close attention,
16 ladies and gentlemen, to the opening statements from
17 counsel. It's a chance for them to, as I said,
18 preview for you what they believe the evidence will
19 show you during the course of this trial and sort of
20 gives you an overview of what they believe will
21 happen during the course of the trial. Just like at
22 the end, ladies and gentlemen, they'll give you
23 closing arguments and that will be a chance for them
24 to argue to you what they believe the evidence has
25 shown you during the course of the trial.

1 I just ask that you pay close attention to
2 those. And after that, ladies and gentlemen, the
3 State will begin calling their witnesses at that
4 point.

5 Mr. Meadors.

6 **MR. MEADORS:** May it please the Court.

7 **THE COURT:** Yes, sir, certainly.

8 **MR. MEADORS:** Good morning.

9 One, two, three, four, five. One, two, three,
10 four, five. That's how many times Bernard Brennan
11 was shot on October 25th, 2001. Five times Bernard
12 Brennan was shot in the back. That's what this case
13 is about. It's about the life, it's about the
14 death, the murder of this man on October 25th, 2001.

15 Thank y'all for being here. I know His Honor
16 has introduced me. My name is John Meadors. I'm
17 the Deputy Solicitor for the Fifth Judicial Circuit.
18 This is Ted Lupton, Assistant Solicitor for the
19 Fifth Judicial Circuit. We work for Solicitor
20 Barney Giese. He's the elected Solicitor for
21 Richland and Kershaw County. That's what makes up
22 the Fifth Circuit. And we're here today
23 representing Richland County, the people of the
24 State of South Carolina against the defendant, Ms.
25 Carmen Rice.

1 Ms. Rice is represented by Mr. John Mobley,
2 Mr. Chris Hart, lawyers with the Richland County
3 Bar.

4 What we're doing right now, as His Honor, Judge
5 Lloyd, told you, is opening statements. It's a
6 chance for the lawyers to tell you briefly what the
7 case is about and what the evidence will show, what
8 we believe the evidence will show. It's also a time
9 for us to quickly outline evidence of the crime and
10 then give you an overview of what we think the case
11 will be about.

12 I want to thank you for being here. This jury
13 system is what makes our country great. It is what
14 separates us from all of those countries, where we
15 come in and you listen to facts and y'all listen to
16 the evidence from here and at the end, His Honor
17 will charge you on the law because he is the Judge
18 -- he is the law in this courtroom, Judge Lloyd's
19 the law. He'll tell you what the law is and you'll
20 take the law Judge Lloyd told you. You'll take the
21 facts you heard from here, take the law Judge Lloyd
22 told you and you'll come up with a verdict.

23 It's just a pure, beautiful system. And thank
24 y'all for being here and thank you for taking part
25 in it.

1 Our burden in this case is the same burden
2 across this country in every criminal courtroom.
3 Y'all know what it is, you hear it on T.V. and you
4 see it. We've got to prove the defendant, Carmen
5 Rice, guilty beyond a reasonable doubt, beyond a
6 doubt that makes reasonable folks hesitate to act.

7 I've tried to define it over the years. I've
8 gotten to where now I just don't define it. It's
9 kind of like you know it when you see it. It's like
10 common sense. You're not here looking for doubts.
11 You may doubt about the sun coming up or the river
12 flowing tomorrow, that's not a reasonable doubt.

13 We have to prove this defendant, as all
14 ~~defendants in every courtroom, guilty beyond a~~
15 reasonable doubt, beyond a doubt that makes
16 reasonable folks hesitate to act.

17 The defendant's charged in this case with two
18 crimes. I'm going to briefly tell you about them.
19 One is murder.

20 Now, another great protection that this country
21 has is that the defendant, Carmen Rice, sits there
22 presumed innocent, cloaked with innocence. And
23 that's beautiful and that's a great part of our
24 system. And that's right. That's the way it should
25 be.

1 She is presumed innocent unless and until the
2 State proves to you to your satisfaction beyond a
3 reasonable doubt of her guilt. And that's the way
4 it should be. And we submit that's what we'll do
5 with this evidence.

6 One of the crimes we're going to try to
7 convince you, and we believe the evidence will show
8 you she's guilty of, is murder. And please listen
9 to me, I -- we all know what murder is, but murder
10 is the unlawful killing of another living, breathing
11 human being with malice aforethought.

12 Malice is a term of art is the best way I can
13 describe it. It depicts, it describes an evilness,
14 a wickedness one person shows to another, a
15 meanness, spitefulness.

16 I respectfully submit I don't think there will
17 be any dispute in this courtroom at all that
18 shooting somebody in the back five times is malice.
19 There's no justification for this shooting. I don't
20 think that will even be argued to you at all.
21 That's not an issue here. Bernard Brennan was shot
22 five times in the back, that's malice.

23 Now, malice aforethought, aforethought doesn't
24 mean -- in this state, you don't have to -- there's
25 no premeditation in South Carolina. You don't have

1 to plan -- we don't have to prove a plan that's been
2 out there that some people put into action.

3 Aforethought, it can exist in an instance, as
4 you're pulling the trigger. Malice aforethought, it
5 doesn't have to exist for a long period of time, as
6 you're pulling the trigger.

7 Now, malice can be shown in several ways. I
8 tried a case recently where there was expressed
9 malice, somebody said, I'm going to kill you.
10 That's one way you can show malice.

11 It's also permissible, and we're going to ask
12 y'all in this case, to infer malice. It's
13 permissible to infer that evilness, that wickedness
14 that one person shows to another through the use of
15 a deadly weapon. It's permissible, the law says,
16 His Honor will instruct you at the end, that you can
17 infer malice with the use of a deadly weapon. Five
18 times in the back, we're going to ask you to infer
19 malice in this case.

20 The State must also show to you that Bernard
21 Brennan died as a result of these gunshot wounds.
22 Doctor Clay Nichols, a forensic pathologist is going
23 to come in here, perhaps tomorrow afternoon, maybe
24 Thursday, depending on how the trial goes, and
25 describe to you the injuries in Mr. Brennan's body,

1 where the shots were, how close he feels the person
2 who shot that gun was when Mr. Brennan received
3 those injuries. There won't be an issue about
4 proximate cause of Mr. Brennan's death. Unlawful
5 killing of another human being with malice
6 aforethought when the victim died as a proximate
7 result of those gunshot wounds.

8 The other indictment His Honor has told you
9 about is armed robbery. Take from the person or
10 presence of another, by means of force or
11 intimidation, the goods or moneys, in this case
12 cash, and I want y'all to remember that right there
13 (indicating), in this case cash, and that they took
14 this property from this person by means of force or
15 intimidation and in this case, as an armed robbery
16 indictment, and they were armed with a deadly
17 weapon, a pistol, a handgun, that's armed robbery.
18 Y'all know what armed robbery is.

19 That's what the Richland County Grand Jury has
20 indicted the defendant, Carmen Rice, of. And that's
21 just a process. That's a charging paper. That's
22 what she is before y'all on, murder and armed
23 robbery.

24 Folks, as in this case, and there's actually a
25 little more in this case, but there are types of

1 evidence, I'm going to briefly go over them with
2 you, different types of evidence you will hear. One
3 of them I've alluded to, direct evidence.

4 Direct evidence is the evidence that a witness
5 gathers with one of their senses, they hear it, they
6 see it, they smell it, they touch it. And they get
7 up here on the witness stand and they tell y'all,
8 this is what I heard, felt, saw, touched. Direct
9 evidence, somebody gathers with one of their own
10 things that comes in here and tells you about it.
11 You're going to hear them.

12 Circumstantial evidence, it's a proof of one
13 fact, then proof of another fact that leads to an
14 inference of this other fact. You go to bed at
15 night, this is an example, you wake up in the
16 morning, there's snow on the ground and you didn't
17 see it snow, but you know it snowed last night.
18 Circumstantial evidence, we're going to argue
19 there's some of that in this case.

20 There's also documentary evidence in this case,
21 some documents, phone calls we're going to present
22 to y'all and then try to tie in and argue to you,
23 this fits here, this fits here.

24 There's also, in this case, coconspirator
25 evidence. You're going to hear in this case from a

1 lady named Iris Bryant who was, I'll tell you in a
2 minute, was with Carmen Rice because the evidence is
3 going to show Carmen Rice fired those five shots.
4 And you're going to hear Ms. Iris Bryant tell you
5 what she saw what the defendant did, what Iris
6 Bryant did and she's going to come in here and tell
7 you. Coconspirator evidence.

8 Ladies and gentlemen, what happened? Hilda
9 Brennan is the wife of Bernard Brennan. I think she
10 was introduced to y'all yesterday. She's running
11 late. She's going to be here in a minute. She's
12 here representing Bernard Brennan. She'll be here
13 in a minute.

14 Bernard Brennan, the evidence will show, on
15 October 25th, 2001, was at the Varsity Pool Hall, I
16 call it. We're going to show y'all documents and
17 pictures, that's some other things, we've got some
18 aerial photos, types of evidence y'all are going to
19 hear. He was there with a fellow named Alton Page.

20 And the Varsity, if -- what I call -- the law
21 school is here, old coliseum is on the other side of
22 the street and the Varsity and the Domino's is right
23 here, it's on Devine street. We're going to -- some
24 of y'all may know where it is, but we'll show you a
25 picture.

1 It's about 6:29 on October 25th, 2001, a phone
2 call comes in. Shortly after that, two females come
3 in and go straight and meet with Bernard Brennan.
4 They stay there a while. Mr. Alton Page is going to
5 tell you what he saw, what he observed.

6 They then go, maybe go to some other places, I
7 don't know, maybe go to the Opening Break, which is
8 a pool hall. I don't know. They went to some other
9 places, but they ultimately end up at Calloways.
10 It's a place across the river, West Columbia. I
11 don't know if y'all have been there or not. But
12 Bernard Brennan is there with two females.

13 And we will have some witnesses from Calloways,
14 will tell you what they saw, what they observed.

15 And there's a document from there, around 8:18,
16 where some food was ordered. And we're going to tie
17 that, we believe, and the evidence will show that
18 Bernard Brennan and these people that he was there
19 -- the two females he was there eating with. Some
20 time after they ordered their food, they left, Iris
21 Bryant, Carmen Rice and Bernard Brennan.

22 I'm just going to tell you what I think the
23 evidence is going to show. I think they were going
24 -- they were heading out Fairfield Highway where it
25 crosses over I-20 -- Fairfield Road, excuse me,

1 heading toward Fairfield County, crossing over I-20.
2 I think there's a Flying J Truck Stop out there
3 maybe or a Hardee's, cross over I-20. And they turn
4 down, the evidence will show, Crawford Road, one of
5 the first roads to the right after you cross over
6 I-20, not many houses on that road. We're going to
7 show you an aerial photo of it, going to show you
8 some pictures of it for some officers.

9 Iris Bryant is going to get up here and tell
10 you, we thought we were going to rob him, not an
11 encounter as we believe the evidence will show Mr.
12 Brennan thought they were. Y'all know what I mean
13 by encounter.

14 They go down Crawford Road. And I believe the
15 evidence will show they were looking for a place to
16 rob him. And Iris Bryant, I believe the evidence
17 will show, that's what she thought they were going
18 to do is rob him.

19 As they go down this road, 600 Crawford Road,
20 testimony will be that Carmen Rice lit a cigarette.
21 Bernard Brennan told Iris to tell her don't light
22 the cigarette. As Iris turns around, she sees a gun
23 in the back seat. Iris Bryant's testimony is going
24 to be, I thought we were just robbing him. I didn't
25 know what else was going to happen. There's a gun

1 there.

2 She gets out of the car, hears two shots, boom,
3 boom. The car goes off Crawford down a little
4 embankment. You're going to see pictures of it.

5 Carmen Rice, the evidence will show, then gets
6 out of the back seat, comes around, opens the door,
7 fires at least two more, maybe three more shots,
8 there are five in him, either two came from the back
9 of three, two came from the side of three. But the
10 evidence will be she gets out, comes around to
11 Bernard and shoots him three more times.

12 The evidence will show when the police found
13 Bernard, he was slumped over in a silver Mercedes,
14 the engine running, pocket out, money missing. He
15 was robbed.

16 After they robbed him, the evidence will show,
17 Carmen Rice yelled at Iris Bryant, It's time to get
18 tough. It's your time now. It's time to get tough.

19 And after she robbed him, they ran down
20 Crawford road. They ran across the woods. They
21 went over I-20, went up to a convenient store, I
22 can't remember the name of it right now, and they
23 called a ride back to Braham, I believe, it's Braham
24 Street, which is off Two Notch Road. And I want to
25 tell you about that.

1 If you're heading out Two Notch, pass -- Taylor
2 and Two Notch are here, you're heading out Two Notch
3 to Columbia Mall, the evidence is going to show as
4 you head down there, there's Chestnut Street on your
5 right. If you take a right, there will be a place
6 called Anthony's right there on the left. If you're
7 going down Chestnut, the first street you'll come to
8 is Braham, take a right there, first house on the
9 left is where Carmen Rice was staying with her
10 father.

11 This thing went unsolved for a while. It went
12 unsolved for a while. Mr. Brennan had a book, had a
13 lot of people he knew, a lot of people he met. I
14 think it's fair to say he liked people. A lot of
15 leads to run down. They ran them down. They
16 checked on them, Stan Smith at the sheriff's
17 department, Turnely, back here, Rob Turnely from the
18 sheriff's department, now with the Attorney
19 General's Office.

20 The case was turned over to the Cold Case Squad
21 in August of 2002. It's Gene Mincey back there,
22 kind of the senior head, I understand Smith's over
23 the whole squad, but Gene Mincey does that
24 full-time. They were running down leads, checking
25 names, people who Mr. Brennan knew, people that are

1 in his book. A name that had come up was Iris
2 Bryant. They ultimately talked to Iris Bryant.

3 Iris Bryant, ladies and gentlemen, at first,
4 denied knowledge of this thing, scared. Gave
5 another statement, Yeah, I do know him. Talked
6 again, said, Yeah, I was there. Still wanted to
7 deny knowledge of what she's going on -- knew what
8 was going on. She's going to come in here and tell
9 y'all, I was scared. I thought we were going to rob
10 him. I didn't know she was going to kill him.

11 But didn't tell the truth to start with. I
12 want y'all to know that to start with. You evaluate
13 her credibility. You know what the truth is, watch
14 people as they testify. That's what's great about
15 this system. That's what's great about this system.

16 But it's not just Iris Bryant. On November
17 4th, 2003, somebody named Amber Byrd came into the
18 picture. Because of Stan Smith, Gene Mincey, Rob
19 Turnely, these other investigators, that name came
20 in the picture, November the 4th, 2003.

21 And the evidence will show -- y'all know who
22 Amber Byrd was? The evidence will show that Amber
23 Byrd knew Carmen Rice, that Amber Byrd was back at
24 Braham Street with Carmen Rice's son, Shawn, baby
25 sitting. And Amber Byrd had taken Carmen Rice to a

1 pay phone across from Anthony's on Two Notch. I
2 don't think it's there anymore now. It might have
3 been a liquor store back then in 2001. And going to
4 testify a phone call was made by Carmen Rice and the
5 evidence -- that's circumstantial evidence.

6 The evidence will then show, will then show
7 that Amber Byrd took Carmen Rice to the Varsity and
8 dropped her off there. And the evidence will show
9 Ms. Iris Bryant was at the Varsity. I'm not sure
10 how she got there, we'll see that, but Iris Bryant
11 was at the Varsity and that's where they hooked up
12 with Bernard Brennan.

13 And, remember, the evidence will also show when
14 they came back to Braham Street, Carmen Rice and
15 Iris Bryant, Amber Byrd was still there. She was
16 baby sitting. And Amber Byrd is going to get up
17 here and tell you, we think the evidence will show,
18 Carmen Rice told her she did it and said she'd
19 better not tell, but she told her she did it.

20 There's another person that was there that
21 night, Cynthia Parks. She's going to come up here
22 and testify what she remembers about Braham Street.
23 Cynthia Parks is a friend of Amber Byrd's.

24 After Amber Byrd dropped Carmen Rice off at the
25 Varsity, she went and picked up her friend, Cynthia

1 Parks, at Richland Mall where she works. And then
2 they went back with Shawn to Braham Street to wait
3 for Carmen Rice to get back and that's what they
4 did. Amber Byrd's going to testify.

5 All of this is developed in the investigation.
6 On November the 5th, 2003, Carmen Rice is arrested
7 for murder and armed robbery. Iris Bryant has
8 charges of murder and armed robbery. She's going to
9 testify and you'll be able to hear everything she
10 says. And Mr. Mobley and Mr. Hart are going to
11 cross-examine her and they will.

12 I'm almost through. After November (sic) the
13 25th, 2001, the evidence is going to show Carmen
14 Rice went to Florida. And through their
15 investigation, they'd come up with the name Sarah.
16 The evidence will show she only gave them the name
17 of Sarah with an H. They found out who Sarah was
18 and her last name was.

19 Sarah's going to come in here and testify. And
20 Sarah's going to present to you a letter she
21 received from that woman, Carmen Rice. And the
22 evidence will show that she asked her to say, Hey, I
23 was in Florida from October 17th down to the end of
24 the year. Wait till you hear Sarah Dennis'
25 testimony and when Carmen Rice got to Florida.

1 Ladies and gentlemen, after she was arrested,
2 Ms. Carmen Rice, she came in contact with some
3 individuals where she was hiding and made some
4 statements to those folks. And we're going to bring
5 those folks in so you can hear what Ms. Carmen Rice
6 told them about this incident. And the evidence
7 will show one of those folks said, I'm going to do
8 you like I did that man. And you'll have to decide
9 the credibility and believability of those
10 witnesses.

11 Ladies and gentlemen, I want to thank you for
12 being here. I want to thank you for the attention I
13 know you're going to give both the State of South
14 Carolina and the defense counsel for Ms. Rice. As I
15 said previously at the close of the evidence, His
16 Honor, Judge Lloyd, is going to charge you on the
17 law. And we're all going to ask you to come back
18 with a verdict.

19 Verdict simply means to speak the truth. And
20 we respect -- we think once you've heard all of the
21 evidence, that, respectfully, the verdict that will
22 be appropriate, that will be proper, that will
23 follow the law, will be that on October 25th, 2001,
24 Carmen Rice shot Bernard Brennan in the back five
25 times, he didn't deserve it, and that she's guilty

1 of murder and she's also guilty of taking his money,
2 which was the motive for the killing, and she's
3 guilty of armed robbery. Thank y'all.

4 **THE COURT:** Thank you, Mr. Meadors.
5 Mr. Mobley.

6 **MR. MOBLEY:** May it please the Court, Your
7 Honor.

8 **THE COURT:** Yes, sir.

9 **MR. MOBLEY:** Carmen Rice is not guilty of
10 murder. Carmen Rice is not guilty of armed robbery.
11 And I'm saying that to you first because that is the
12 most important thing that I can say to you
13 throughout the course of this trial.

14 As you may know, at this point, my name is John
15 Mobley. I'm an attorney for Ms. Carmen Rice, who's
16 seated at the table. To her immediate right is
17 Attorney Chris Hart. We're the attorneys for Ms.
18 Rice in this matter.

19 This is a case about low expectations. And
20 when I say that, you know, Mr. Meadors has talked to
21 you a lot about this case a little bit and I think
22 he's trying to get you to focus on the horrific
23 nature of the crime. But, ultimately, I think
24 Mr. Meadors is going to try to get you to lower your
25 expectations for what you will need to convict

1 someone in a charge, that's horrible, for murder.

2 And when I say that, I think we'd all agree
3 that along with the crime of betraying your county,
4 a crime like treason, murder is the most horrible
5 crime a person can be accused of. I mean, I don't
6 think anybody will dispute that.

7 That being the case, I think you all expect
8 and, quite frankly, entitled to demand that if
9 you're being able to -- if you're being asked to sit
10 in judgment of a person accused of a crime that
11 horrible, you have a right to demand the strictest
12 proof and the strongest evidence to convict someone
13 of a crime that horrendous. And I don't think
14 anyone can argue with your right to demand that
15 strong type of evidence, that kind of strict proof.

16 And when I say that, I think, for example, you
17 should be entitled to and demand and be entitled to
18 expect that if they're going to put up witnesses,
19 the witnesses they're going to put up are reliable,
20 honest and trustworthy witnesses, not witnesses of
21 questionable character, not witnesses of
22 questionable integrity, not witnesses that have lied
23 and lied and lied again.

24 And I want to stress to you, I don't take any
25 pleasure in saying anything disrespectful about

1 anyone. However, as you're going to see in this
2 case, that's what you're going to get. You've got a
3 right to expect strong, physical evidence linking an
4 accused person to a crime if there's a crime scene.
5 And these are things that I don't think anyone can
6 say these are unreasonable things to expect if
7 you're being requested to sit in judgment of someone
8 accused of murder.

9 And the bottom line is, ladies and gentlemen of
10 the jury, they're not going to give you either.
11 They're not going to give you any reliable,
12 trustworthy witnesses. They're not going to give
13 you any physical evidence that link Carmen Rice to
14 this crime.

15 And when I talk about lowering expectations, I
16 think, throughout the course of this trial,
17 Mr. Meadors is going to try to get you to lower your
18 expectations and get you to say, Well, you know,
19 this is all we have, we want you to convict her
20 anyway. Well, ladies and gentlemen of the jury, you
21 have the right to say, No, sir, to Mr. Meadors.

22 And I want to stress, I don't have any ax to
23 grind with Mr. Meadors or the investigators or Mr.
24 Lupton in this case, these are all fine men, because
25 they don't control that evidence. They can't baffle

1 these witnesses. All they can do is present what
2 they have. And the bottom line is, you've got a
3 right to say, No, sir, we cannot convict someone
4 based on this lack of reliable evidence that you
5 have given us in this case.

6 And I'm going to talk about some things. You
7 know, you've heard about the indictment process and
8 you've seen the indictment or heard about, you know,
9 the grand jury which issued an indictment in this
10 case. I want you to understand something, there's a
11 phrase a pretty well-known lawyer named Alan
12 Dershowitz that talks about grand juries. His
13 phrase is, A grand jury will indict a ham sandwich.
14 And that's how the process works.

15 You know, when they go to indict someone --
16 when they went to indict Carmen Rice of murder and
17 armed robbery, the grand jury didn't have an
18 opportunity to hear all of the witnesses testify
19 like you're going to have. The grand jury didn't
20 see those witnesses become subject to
21 cross-examination like you will during the course of
22 this trial.

23 When the grand jury indicted Carmen Rice, she
24 didn't have any representation at that hearing. In
25 fact, a grand jury is a secret proceeding. She

1 didn't even know when they were going to indict her.
2 I mean, that's how they got their indictment.

3 You see a judge in this case, there's no judge
4 in the grand jury. In this case, throughout the
5 course of this trial, there will be evidentiary
6 issues the lawyers object on and this Judge is going
7 to be deciding what evidence is admissible or
8 inadmissible. Well, when a person is indicted by
9 the grand jury, none of that process is there and
10 that's how they got their indictment.

11 You people are the first people to hear all of
12 the evidence in this case and that's why your role
13 is so important. And once again, I respectfully
14 submit to you when you have a full opportunity to
15 see these witnesses and to hear this evidence, you
16 will have to find Carmen Rice not guilty.

17 And I want to talk about some of these
18 witnesses like I said -- and I don't take any
19 pleasure of speaking of people in a disrespectful
20 manner, but you're going to see these witnesses, I
21 mean, they're convicted drug users, convicted
22 felons, they've got jailhouse informants.

23 I'm not talking about law enforcement. I'm not
24 talking about law enforcement witnesses or the
25 background witnesses, but anybody that implicates

1 Carmen Rice in this murder is going to, for the most
2 part, fall into that category, convicted felons,
3 drug users, convicted of theft crimes, liars,
4 thieves, jailhouse informants.

5 You know, Mr. Meadors puts so much faith, you
6 heard him talk about Iris Bryant, he put so much
7 faith in Iris Bryant because, you know, quite
8 frankly, he's got to because only one person puts
9 Carmen Rice in that vehicle, only one person puts
10 Carmen Rice as a shooter in this case and that's
11 Iris Bryant. And he's got to put -- he's got to
12 actually put faith in her because that's all he's
13 got. She is the only person.

14 And Iris Bryant lied. She lied so many times
15 to investigators during the course of the
16 investigation. She gave three or four, I can't even
17 count the different written statements she gave, I
18 know something, I don't know something, lied about
19 this, lied about that. And they just kept going
20 back to her. And every time they go back to her,
21 she gave them a different story till ultimately they
22 gave her -- she gave them enough that they felt
23 comfortable in charging Carmen Rice.

24 And I submit to you the story she tells you
25 today is going to be the first time she's told

1 anybody that story. My money says she's going to
2 tell you something different than she told them
3 already, different than all of her statements and
4 that's who he's going to be putting his faith in.

5 You heard him talk about her, Iris Bryant, Iris
6 Bryant, Iris Bryant. Iris Bryant says this, Iris
7 Bryant. That's his only witness that puts her in
8 that vehicle, that puts her as the shooter. And she
9 is the only person that they can conclusively put in
10 that vehicle by her own admission in this case. She
11 is the only person that has specific details about
12 the way the victim was shot in this case, not Carmen
13 Rice, Iris Bryant. And that's who they're putting
14 up, a lady facing life in prison trying to cut the
15 best deal she can for herself.

16 He didn't tell you about Falisha Hallmon. He
17 talked about these people that Carmen Rice gave
18 statements to, they're going to put this lady called
19 Falisha Hallmon, another jailhouse informant.
20 Falisha Hallmon wrote a long letter to one of the
21 investigators indicating that she, you know, she was
22 in jail with Carmen Rice, that Carmen Rice, you
23 know, admitted that she committed the crime and this
24 is what she did with the murder weapon and this is
25 where you can go find out.

1 Investigator Stan Smith does what he's supposed
2 to do. And Stan Smith is a major crimes
3 investigator and he's a good investigator, but all
4 he can do is interview somebody and take a statement
5 and follow up on it.

6 He gets a letter from this lady. He goes and
7 gets a search warrant to search somebody's house,
8 doesn't find anything, doesn't find the murder
9 weapon. He goes to talk to Falisha Hallmon again
10 and she goes, Okay, I lied about the whole thing, I
11 was just trying to get this guy in trouble.

12 They're going to put her up. Mr. Meadors is
13 going to ask you to believe her when she says Carmen
14 Rice committed the crime. Those are his witnesses.

15 You're going to hear about, in this case,
16 people were offered money for information. You're
17 going to hear about people coming forward and then
18 backing off information, people trying to get -- if
19 they're suspected of -- wanting to get some type of
20 benefit from existing charges by giving information.

21 I mean, these are the people they're putting
22 up. And all of these things happened during the
23 course of their investigation. And I'll submit to
24 you, ladies and gentlemen, you couldn't convict
25 Carmen Rice of a speeding ticket based on those

1 witnesses, let alone a charge as horrendous as
2 murder. But that's what they're giving you, that's
3 what he's putting on the witness stand, that is what
4 he is going to give you. And you do not have to
5 accept that. You do not owe them a guilty verdict
6 in this case.

7 They would love for you to focus on the
8 horrendous nature of the crime and put less weight
9 on the evidence and the quality of the evidence.
10 But your obligation in this case, if you're going to
11 do the right thing, is focus on the quality of
12 evidence in this case because that's what you've got
13 to base a conviction on and a verdict on if you're
14 going to give one.

15 Let's talk about the physical evidence in this
16 case. A botched crime scene. You're going to hear,
17 as he said, Bernard Brennan, in this case, was shot
18 in his Mercedes from behind. Blood, things along
19 those lines in the vehicle. They processed the
20 crime scene, about half a dozen people processed the
21 crime scene looking for evidence, fingerprints, hair
22 and fiber evidence, there's blood, DNA.

23 Well, one of the first investigators on the
24 scene gives a very, very detailed report of the
25 condition of the vehicle, the presence and location

1 of blood, fingerprints, things along those lines.
2 There's a portion of the report where the
3 investigator has an opportunity to note whether or
4 not hair or fiber evidence was in the vehicle. That
5 investigator says, No, no hair in the vehicle.
6 Well, later, another investigator takes a look at
7 the vehicle and does find hair.

8 And here's what's interesting, you know, Iris
9 Bryant is going to be telling you that she was in
10 the front seat of the car and that Carmen Rice was
11 in the back seat of the Mercedes behind Bernard
12 Brennan and shot him in the back and then opened the
13 door of the driver's side and shot him again.

14 Well, two things are significant in that case.
15 One, you're going to hear, they processed that
16 vehicle on this very same night and they found palm
17 prints and fingerprints all on the driver's -- on
18 the driver's door near the back where the shooter
19 would have been sitting. They took that palm print,
20 they took that print, tried to match it to Carmen
21 Rice and it came back not a match, not a match.

22 What's more interesting is this hair. They
23 found hair in the back seat of the Mercedes in the
24 position where, according to Iris Bryant, the
25 shooter would have been sitting at the time she shot

1 Bernard Brennan. Now, the first investigator says
2 no hair. Another investigator says, Oh, we do have
3 hair. We've got hair in the front seat, hair in the
4 back seat.

5 Now, here's the interesting thing. Why don't
6 you ask Mr. Meadors what the State did -- okay, this
7 case happened in October of 2001 about three and a
8 half years ago. Why don't you ask Mr. Meadors what
9 the investigators did with that hair between October
10 of 2001 and the rest of the year. And then I want
11 you to ask him what they did with that hair in all
12 of October of two -- I mean, all of 2002, the entire
13 year of 2002. Then I want you to ask Mr. Meadors to
14 explain what they did with that hair in all of 2003,
15 ask him again what they did with that hair in 2004.

16 And you're going to hear that until about a
17 week and a half ago, the answer to that question is
18 nothing, nothing. Hair, evidence that yielded, as
19 you will hear, a DNA result. It was sufficient to
20 take a DNA comparison, that hair sat in evidence for
21 all of -- for three and a half years. They did
22 nothing with that -- throughout the course of the
23 investigation, they did nothing with that hair.

24 And, finally, a week and a half before trial,
25 they decide they want to compare it to Carmen Rice,

1 who you will hear voluntarily submitted, she didn't
2 have to do that, voluntarily submitted to a DNA
3 sample to compare that hair. You're going to hear
4 -- and she didn't have to do that, she voluntarily
5 submitted to it.

6 And a week and a half before trial, they found
7 out that not only, as they knew from the beginning,
8 the fingerprint didn't match Carmen Rice, but the
9 DNA didn't match Carmen Rice and they're still going
10 forward on this case because Iris Bryant says Carmen
11 Rice did it.

12 Arguably, arguably, the physical evidence they
13 have in this case, which once again you would expect
14 and demand that they're going to have strong,
15 physical evidence linking Carmen Rice to this crime,
16 arguably, the physical evidence they have is
17 inconsistent with Carmen Rice being involved in this
18 case.

19 And once again, I think Mr. Meadors, throughout
20 the course of the trial, is probably going to
21 downplay that, the significance of the fingerprint
22 matching and downplay the significance of a hair,
23 DNA evidence not matching Carmen Rice. So they're
24 going to try to downplay it and say, Oh, that really
25 doesn't matter. It could have been anybody's.

1 Well, anybody is not on trial. Carmen Rice is
2 on trial. And the bottom line is they have no
3 physical evidence that links her to this crime
4 despite a very, very intensely prosecuted or
5 investigated crime scene.

6 Once again, he wants you to lower your
7 expectations. He wants you to say, We don't need
8 that. We don't need physical evidence. We don't
9 need a strong crime scene investigation. We don't
10 need reliable witnesses. As long as you have
11 something, as long as you get those up on the wall
12 and see if it sticks, that's what he wants you to do
13 and convict Iris -- Carmen Rice of murder.

14 I'm going to ask that you not lower your
15 expectations in this case. I'm going to ask that
16 you demand strict proof, strong evidence and
17 reliable witnesses. I don't think that's too much
18 to ask when a person is charged with a crime as
19 horrendous as murder. I don't think anyone would
20 say that's too much for you to ask. And I'm asking
21 you not to lower your expectations. I'm asking you
22 to find Carmen Rice not guilty of both charges.
23 Thank you very much, ladies and gentlemen of the
24 jury.

25 **THE COURT:** Thank you, Mr. Mobley.

1 Ladies and gentlemen, let me instruct you, not
2 to find fault with anything, you all heard, during
3 opening statements, some argument to you that may
4 have suggested to you possible sentences on these
5 charges. Let me instruct you that under your oath
6 in this case, ladies and gentlemen, your oath as
7 jurors in this case, you will consider the evidence
8 and testimony that's presented. You, and you alone,
9 will decide the facts in this case. You all will
10 reach a verdict -- you will reach a verdict solely
11 based on the evidence and testimony presented here.

12 I instruct you, at this point, that you're to
13 disregard, in your consideration and deliberations
14 on this case, anything as it relates to any possible
15 sentences should your verdict be one way or the
16 other. That is improper for you to consider.
17 You're to only consider questions of guilt or not
18 guilty on these charges. And I just ask that you
19 follow those instructions during the course of your
20 deliberations.

21 Ladies and gentlemen, let me also inform you
22 all that before witnesses start testifying, pursuant
23 to my order, witnesses will be sequestered in this
24 case who will testify before you. That's a fancy
25 way of just saying they will be outside the

1 courtroom until after they testify.

2 There will be a couple of folks who you will
3 see who will sit in the courtroom. Under our rules,
4 they're allowed to remain in as testimony goes on
5 and they may testify to you.

6 But, as you see, I'll just ask that you bear
7 with us as we bring witnesses in, they will be
8 outside the courtroom. And as we finish with a
9 witness, that next witness will be brought in from
10 outside the courtroom, but that's pursuant to my
11 order. And you're not to infer anything from that
12 or raise any inferences because of that, it's just
13 that that is my order and I'll ask that you be
14 patient with us as we do that.

15 Mr. Meadors, Mr. Mobley, any witnesses we need
16 to --

17 **MR. MEADORS:** Yes, sir. We're doing that now,
18 Judge. Thank you.

19 **THE COURT:** Thank you, sir.

20 (Pause.)

21 **MR. MEADORS:** That's it. Thank you, Judge.

22 **THE COURT:** Thank you, sir. Is the State ready
23 to call their first witness?

24 **MR. LUPTON:** Yes, Your Honor.

25 **THE COURT:** Mr. Lupton.

TOM LYONS - DIRECT BY MR. LUPTON

127

1 **MR. LUPTON:** Your Honor, the State calls
2 Sergeant Tom Lyons.

3 **THE COURT:** Sergeant, if you'll just come
4 around, we'll swear you in and let you take the
5 witness stand, sir.

6 TOM LYONS,
7 having been duly sworn, testified as follows:

8 **THE CLERK:** Please have a seat and state your
9 full name for the record.

10 **THE WITNESS:** I'm Tom Lyons.

11 DIRECT EXAMINATION

12 BY MR. LUPTON:

13 **Q** Sergeant Lyons, could you tell the jury where
14 you're employed?

15 **A** Richland County Sheriff's Department.

16 **Q** And how long have you been in law enforcement?

17 **A** I'm on my 13th year.

18 **Q** Tell the jury a little bit about your law
19 enforcement background, law enforcement experience.

20 **A** Yes, sir. I've been a deputy sheriff for,
21 approximately, 13 years. Nine of those years, I've
22 been with the Richland County Sheriff's Department.
23 Approximately, six of those, I've been a supervisor.

24 **Q** And were you working with the Richland County
25 Sheriff's Department the night of October the 25th

1 through the 26th of 2001?

2 A Yes, sir, I was.

3 Q And what were your duties back then?

4 A At that point, I was a corporal, a regional
5 supervisor.

6 Q And generally speaking, what did that entail?

7 A I ran the shift in the area of my assignment,
8 was responsible for all calls and things that
9 occurred during the 12 hours that I was on duty.

10 Q And what was your area that you were assigned?

11 A At that time, it was called Region Three. It
12 came from the Fairfield County line, down to the
13 City of Columbia, along the Broad River and then
14 over to Farrow Road, all the way out down through
15 Blythewood.

16 Q And did Crawford Road fall in your area?

17 A Yes, sir, it did.

18 Q And are you familiar with the Crawford Road
19 area?

20 A Yes, sir.

21 Q In fact, was that where you worked as a patrol
22 deputy?

23 A Yes, sir, it was.

24 Q For how long?

25 A I was a patrol deputy, approximately, two and a

1 half years prior to being promoted. I'd worked
2 that. I'd been in the area about six years, I
3 believe.

4 Q So you were familiar with Crawford Road?

5 A Very much, yes, sir.

6 Q And did you get a call to Crawford Road some
7 point after midnight on the night in question?

8 A Yes, sir. A call came out, it wasn't directed
9 to me. It was directed to two of my officers.

10 Q Could you tell the jury about that call?

11 A I can't recall the exact time of it. Over the
12 radio, I heard the call come out of a single car
13 accident, that the vehicle was off to the side of
14 the roadway in the ditch. Deputy Hardee, who is now
15 with the FBI in Louisiana, he responded. I believe
16 him and Deputy Duncan, just almost at the same time,
17 pulled up to the scene, advised --

18 Q And where is Deputy Duncan now?

19 A Deputy Duncan is, at this time, in Iraq. He's
20 in the Army.

21 Q And you say they got to the scene and you --
22 you said you didn't recall the specific time, but do
23 you recall, generally, what time it was?

24 A Around midnight, I'm thinking, between 11:00
25 and 12:30.

1 Q Some time after midnight?

2 A It was dark, yes, sir.

3 Q And what happened once they arrived?

4 MR. MOBLEY: Just so we're clear, Your Honor,
5 I'm not quite sure if he's reciting what someone
6 else did or what he did. I'd object to him
7 describing what anyone else who's not present did.
8 I'd have no problem with him describing his own
9 actions and observations, but --

10 MR. LUPTON: Your Honor, that's what he's
11 getting ready to do.

12 THE COURT: Okay. I'll let you rephrase the
13 question just to make sure the witness is clear
14 about that.

15 BY MR. LUPTON:

16 Q With regards to your involvement in the case,
17 what happened once they arrived?

18 A They advised over the radio that they had had a
19 gentleman in the vehicle that appeared to be, what
20 we call, 10-7 or deceased. At that time, I left the
21 location I was and proceeded to meet with them on
22 Crawford Road.

23 Q Would you normally respond to a one car
24 automobile accident as a shift supervisor?

25 A No, sir.

1 Q Did that change once you got word that it was
2 -- a person was dead in the car?

3 A Oh, absolutely. Yes, sir.

4 Q And what did you find once you arrived at the
5 scene?

6 A I observed that when I pulled up, a Mercedes
7 that was kind of kitty wampus off the side of the
8 road, approximately, 10, 15 feet in the tall brush.
9 I approached the vehicle and looked inside the
10 vehicle and observed a victim that was kind of
11 slouched over toward the right side in the vehicle.
12 It appeared that he had had some wounds to his back.
13 And then the windshield was -- had what appeared to
14 be bullet holes in it. At that time, I knew I had
15 had a crime scene.

16 Q All right. And I'd like to show you what's
17 been marked as State's Exhibits 1 through 6?

18 A (Witness reviewing photos.)

19 Q Do you recognize those photographs?

20 A Yes, sir, I do.

21 Q And can you explain for the jury what's in each
22 photograph? What's in State's Exhibit 1?

23 A This is Crawford Road going away from Fairfield
24 Road. This is the brushy area where the vehicle
25 apparently went straight off the roadway rather than

1 make the curve. There's a curve on Crawford Road.
2 And the vehicle just went straight off into the
3 brush.

4 Q And State's Exhibit 2?

5 THE COURT: Counsel, I know you all have
6 premarked a number of exhibits. I'm assuming that
7 there's no objection.

8 MR. MOBLEY: I don't have any objection to
9 these photographs, Your Honor, just so we're clear.

10 THE COURT: Okay. Thank you, sir.

11 MR. LUPTON: And, Your Honor, just to save
12 time, we move that all six be admitted into evidence
13 at this point.

14 MR. MOBLEY: No objection, Your Honor.

15 THE COURT: Without objection, they're all
16 admitted. Thank you, sir.

17 (State's Exhibit Numbers 1 through 6,
18 photographs, admitted into evidence.)

19 BY MR. LUPTON:

20 Q Can you explain what that is?

21 A This is the vehicle sitting off to the side of
22 Crawford Road, basically, taken from the curve of
23 the road, where the curve in the road was, to the
24 side of the vehicle.

25 Q And this next one, State's Exhibit 3?

1 **A** This is the front end of the vehicle where it
2 had run up into the bushes and obviously stopped the
3 momentum of the vehicle.

4 **Q** And 4, 5 and 6, can you explain what those are?

5 **A** The vehicle in this photograph has been
6 removed. It was sitting right here. This is a
7 daytime photograph. The vehicle was, you can see
8 where the road bends, it was right off to the side
9 right here. And, again, this is facing away from
10 Fairfield Road on Crawford Road.

11 **Q** And those last three depict the crime scene
12 during the day once the car's been removed; is that
13 correct?

14 **A** Yes, sir.

15 **Q** And getting back to when you arrived, once you
16 got there, you testified that line officers, Greg
17 Hardee and Perry Duncan, got there first?

18 **A** Yes, sir.

19 **Q** Did anybody get there after them before you?

20 **A** I believe EMS was on scene when I had pulled up
21 and they had advised me, at that time, he was
22 deceased.

23 **Q** So you had the three EMS personnel that were
24 there before you as well?

25 **A** At least two that I recall.

1 Q And, approximately, how long from the time that
2 the first officer got on the scene until you got on
3 the scene, approximately how long was that?

4 A I'd say six to eight minutes.

5 Q And was the crime scene in substantially the
6 condition that is depicted in the first three
7 pictures at the time you got there?

8 A Yes, sir.

9 Q What condition was the car in when you arrived?

10 A The condition?

11 Q Was it turned on, turned off?

12 A Yes, sir. The headlights were on. The vehicle
13 was running. I advised one of the officers to cut
14 it off because I was afraid that the exhaust and the
15 heat of the engine may start a grass fire.

16 Q And was the victim, in this case, what -- where
17 was he at this point?

18 A He was seated in the vehicle. I did observe
19 the seat belt was still on him, slumped to the
20 right-hand side toward the center of the vehicle.

21 Q And was any effort made to determine whether or
22 not he was living or dead?

23 A There was an effort. I know Deputy Hardee, who
24 is now with the FBI, was a certified paramedic prior
25 to coming to the sheriff's department and I had

TOM LYONS - DIRECT BY MR. LUPTON

135

1 known that when I rode up to the scene. And he also
2 advised me, along with EMS, that he was deceased.

3 Q So both Greg Hardee and EMS checked to see if
4 he was alive?

5 A That's correct, yes, sir.

6 Q And would they have had to touch the car in
7 order to do that?

8 A Yes, sir.

9 Q What did you do once you got there and once you
10 determined that the victim was deceased?

11 A At that time, I knew we had a crime scene and I
12 had everybody leave the immediate area of the
13 vehicle. And we roped off a crime scene tape in a
14 substantial -- substantial area around the vehicle.

15 Q And did you notify anybody?

16 A Yes, sir. It's common procedure for us, under
17 our policy and procedures, we notify lab units which
18 come out and process scenes, as well as the on-call
19 investigator.

20 Q And just to make sure -- to clarify the
21 pictures. We've got these two maps marked State's
22 Exhibit 35 and State's Exhibit 36, which I
23 believe --

24 MR. MOBLEY: No objection.

25 THE COURT: Thank you, sir.

1 **MR. LUPTON:** Move to admit into evidence.

2 **THE COURT:** Yes, sir, without objection.

3 (State's Exhibit Numbers 35 and 36, maps of
4 crime scene, admitted into evidence.)

5 **BY MR. LUPTON:**

6 **Q** Can you explain to the jury, just to orient
7 them, as to where this crime occurred?

8 **A** Yes, sir. This is I-20 (indicating). You can
9 just see a corner of it. It runs by, as the
10 Solicitor said earlier, the Flying J Truck Stop.
11 321, if you get off I-20, it runs up this way.
12 Crawford Road, you would make a right. Right at the
13 curve of the road, this would be the first bend in
14 Crawford Road, the vehicle had went straight off
15 right into the edge right there.

16 **Q** And State's Exhibit 36, is that just a further
17 out view of the same area?

18 **A** Yes, sir. This is the same area. Again, this
19 would be the curve in the road off of Crawford.
20 This is Fairfield Road right here. It goes towards
21 Winnsboro. Some folks call it Winnsboro Road.

22 **Q** And this road here?

23 **A** This would be I-20.

24 **Q** And on this, where would the Flying J Truck
25 Stop --

TOM LYONS - DIRECT BY MR. LUPTON

137

1 **THE COURT:** Mr. Lupton, I'm not quite sure some
2 of the jurors can see. The sergeant is free to step
3 down if you need him to.

4 **THE WITNESS:** The Flying J Truck Stop would be,
5 approximately, right here. This is I-20. This is
6 where 321 crosses with I-20. And this would be
7 towards Winnsboro. And this would be towards the
8 City of Columbia.

9 **BY MR. LUPTON:**

10 **Q** And I can observe a fair number of trees in
11 this picture. Can you describe how populated or
12 secluded is this area?

13 **A** At the time that this occurred, there was
14 probably four or five residences alone. There was
15 one at the very end of this road, another one just
16 prior to that. I don't know if they were relatives.
17 And then along the right side right here, there was
18 two or three.

19 **Q** But would you describe it as -- how would you
20 describe it in terms of its seclusion?

21 **A** It's pretty secluded. It's all wooded area.

22 **Q** And one last thing. What county is that area
23 in?

24 **A** That's located in Richland County, sir.

25 **MR. LUPTON:** No further questions, Your Honor.

1 **THE COURT:** Thank you, sir.

2 Mr. Mobley.

3 **MR. MOBLEY:** Thank you.

4 CROSS-EXAMINATION

5 BY MR. MOBLEY:

6 **Q** Investigator Lyons, good morning, sir.

7 **A** Yes, sir. Good morning.

8 **Q** Just a few questions, sir. Now, just so we're
9 clear, you never saw Carmen Rice at that crime
10 scene; is that correct?

11 **A** That's correct, sir.

12 **Q** And when you arrived at the crime scene, how
13 many people were there? From the time you arrived
14 to the time you left, how many different people
15 arrived?

16 **A** From my time of arrival till I left?

17 **Q** Yes, sir, approximately.

18 **A** Probably five or six.

19 **Q** Were any of those lay people or are they all
20 law enforcement?

21 **A** At least two were EMS. Everyone else was law
22 enforcement.

23 **Q** There were no lay persons on the scene?

24 **A** No, sir.

25 **Q** Okay. And just so we're clear, no one -- none

1 of the law enforcement or EMS personnel indicated to
2 you, at that time, they had seen a black female
3 matching Carmen Rice, a description at the scene; is
4 that correct?

5 **A** That's correct, sir.

6 **Q** Okay. And there were, you said, about four or
7 five -- approximately, four or five residents in
8 that area on Crawford Street?

9 **A** Yes, sir.

10 **Q** But did you go to those houses to interview the
11 owners of those homes to see if they had -- could
12 identify or suggest any person that was at that
13 crime scene?

14 **A** I didn't personally, no, sir.

15 **MR. MOBLEY:** Okay. That's all I have.

16 **THE COURT:** Anything on redirect?

17 **MR. LUPTON:** Briefly, Your Honor.

18 **REDIRECT EXAMINATION**

19 **BY MR. LUPTON:**

20 **Q** Could you tell whether or not this murder had
21 been freshly committed at the time you arrived?

22 **MR. MOBLEY:** I think he needs to lay a
23 foundation for that, Your Honor.

24 **THE COURT:** Okay. I'll let you rephrase it.

25 **MR. LUPTON:** Your Honor, I'll withdraw the

1 question and rephrase it.

2 BY MR. LUPTON:

3 Q Did you observe blood in the car?

4 A Yes, sir, I did.

5 Q Was it fresh, wet blood?

6 A Yes, sir, it was.

7 Q Could you tell, based on your observations, if
8 the defendant (sic) had been in that condition for a
9 while?

10 A I didn't believe that he was there very long,
11 no, sir.

12 MR. MOBLEY: Once again, I don't think he laid
13 a proper foundation.

14 MR. LUPTON: I'll withdraw the question.

15 MR. MOBLEY: Since he's withdrawing the
16 question that I objected to, I'd ask that answer be
17 stricken from the record, Your Honor.

18 THE COURT: Ladies and gentlemen, you're to
19 disregard the witness' last answer to the last
20 question.

21 Mr. Lupton.

22 BY MR. LUPTON:

23 Q There was a question asked about whether or not
24 you saw Carmen Rice on the scene. By the time you
25 arrived there, would a person have had time to leave

1 the scene as far as you know?

2 A Absolutely, yes, sir.

3 MR. LUPTON: Nothing further, Your Honor.

4 THE COURT: Anything on recross?

5 MR. MOBLEY: No, Your Honor. Thank you.

6 THE COURT: Sergeant, you may step down. Thank
7 you, sir.

8 Any objection to excusing Sergeant Lyons?

9 MR. MOBLEY: No objection, Your Honor.

10 THE COURT: Sergeant Lyons, you're free to come
11 and go as you please, sir. Thank you.

12 Mr. Meadors.

13 MR. MEADORS: May it please the Court. The
14 State would now call Investigator Robert Turnely.

15 ROBERT KENT TURNELY, JR.,

16 having been duly sworn, testified as follows:

17 THE CLERK: Please have a seat. State your
18 full name for the record.

19 THE WITNESS: Good morning, Your Honor. May it
20 please the Court.

21 THE COURT: Yes, sir.

22 THE WITNESS: Good morning, ladies and
23 gentlemen of the jury. My name is Rob Turnely. My
24 full given name is Robert Kent Turnely, Junior.

25 I am currently employed with the State Law

1 Enforcement Division here in Columbia. I'm assigned
2 to the Attorney General's Office to investigate
3 matters before the State Grand Jury.

4 DIRECT EXAMINATION

5 BY MR. MEADORS:

6 Q Tell them where you're from.

7 A I grew up in a little town down the coast
8 called Folly's Island, went to high school in
9 Georgetown, graduated in '82 from a small high
10 school called Winyah. It's a Indian name as are
11 many of the places down there.

12 From there, I went to the Citadel. And in
13 1986, earned a Bachelors of Arts Degree in history.

14 From there, I did several different things
15 before getting into law enforcement. I attended the
16 National Center for Paralegal Training in Atlanta,
17 Georgia, received a paralegal certificate and went
18 to work for a large law firm here in town called
19 Nelson, Mullins, Riley and Scarborough. I was there
20 for about three and a half, four years.

21 And from there went to Richland County to the
22 sheriff's department, worked my way up from Uniform
23 Patrol Division, became a field training officer and
24 then a master deputy on the shift and then went into
25 investigations. The last three and a half years I

1 was with the Richland County Sheriff's Department, I
2 was assigned to the Criminal Investigations Division
3 and I worked for the Major Crimes Unit, as well as
4 the White Collar Financial Crimes Unit.

5 Q And in addition to your background and
6 undergraduate training, did you also receive
7 specific training in law enforcement at the Criminal
8 Justice Academy?

9 A I did. I graduated from the Criminal Justice
10 Academy in 1997 with honors.

11 Q And when did you leave the sheriff's
12 department?

13 A I left the sheriff's department and I've been
14 at SLED for a little over a year now.

15 Q And you're assigned where with SLED?

16 A I'm actually -- I'm a SLED agent. And I'm
17 assigned to the Attorney General's Office to
18 investigate for the State Grand Jury. The Attorney
19 General's Office does not have full-time
20 investigators, criminal investigators, so SLED
21 provides investigators to investigate for the State
22 Grand Jury and that's currently where I'm assigned.

23 Q Let's go back in your mind, investigator --
24 what do I call you? Investigator?

25 A Agent.

1 Q Is agent okay?

2 A That's great.

3 Q Agent, on October 25th of 2001, you were
4 working with the sheriff's department?

5 A That's correct.

6 Q And you were working with Stan Smith?

7 A I was.

8 Q And were y'all on-call then, investigator
9 on-call?

10 A Yeah. If I can explain just so you'll have an
11 idea what was going on. As an investigator with the
12 county, and I think most police departments,
13 sheriff's departments do this same sort of thing,
14 you've got investigators that are assigned their
15 normal cases that they work day in and day out.

16 About every five or six weeks, we also have a
17 collateral duty, which is on-call, and that would be
18 in addition to the regular cases that we're working.
19 When you're on-call, your major responsibility is to
20 be available in the county to respond to anything
21 that has an immediate need for investigations and
22 typically that would be something that would be a
23 felony type offense.

24 Anyway, there are three different shifts at the
25 county that you would be on-call. There's typically

1 five -- within a 24-hour period, you've got five
2 investigators on-call. You've got two on the day
3 shift, two on the night shift and one on the
4 midnight shift. Day shift, I believe, runs from
5 basically 7:30 a.m. until 4:00 p.m., then there's a
6 overlap. The evening shift comes on at 3:30 and
7 they work until midnight. And then the one midnight
8 shift investigator comes on at 11:30 and works until
9 8:00 a.m. So, at this particular night, I was
10 assigned as the midnight shift investigator.

11 Q And did you receive a call to respond to this
12 incident location, Crawford Road?

13 A I did.

14 Q And we've seen the map. And that's off
15 Fairfield Road heading toward -- over I-20 on the
16 right?

17 A That's correct.

18 Q Can you describe to these ladies and gentlemen
19 your observations when you came up on the scene?

20 A Sure. Let me start by saying, when I was
21 on-call that night, I vaguely remember this call
22 being dispatched, I'm monitoring the radio. I
23 remember the call being dispatched as a motor
24 vehicle accident on Crawford Road.

25 When I was in uniform, I worked in that

1 particular region, so I was very familiar with
2 Crawford Road. And as you've already heard, it's a
3 road that's off of Fairfield Road, very close to the
4 Fairfield Road and I-20 intersection. It's a very
5 short road, maybe a mile, mile and a half long.

6 It's very desolate and isolated. There's not
7 much down there. There might be six, eight, ten
8 houses. Most of them are up to the front towards
9 the intersection of Fairfield and Crawford with one
10 or two houses towards the very dead end. Everything
11 in between is pretty isolated woods. So I remember
12 that because I was thinking it's kind of odd that
13 time of the morning to have an accident on Crawford
14 Road.

15 I continued doing my paperwork. Shortly
16 thereafter, I got a call from, I believe, Barry
17 Duncan, who was the master deputy shift supervisor
18 for that area that night. And he advised that he
19 had responded to the scene and that the victim
20 driver of the vehicle appeared to have been shot
21 several times and was deceased and requested that I
22 come out and begin the preliminary investigation.

23 At that point, I made several phone calls. I
24 notified the on-call homicide supervisor, who, at
25 the time, was Randy Strange, he was a sergeant, and

1 advised him of it, so he would be responding with me
2 as well. I also made a phone call to the desk
3 sergeant, who, I believe, at the time, was Chris
4 Baggott. And he made the appropriate command pages
5 to the appropriate sheriff's department hierarchy,
6 as well as I think he made the initial call to the
7 lab units to have them respond as well.

8 Q That would be Anna Ellzey (ph) now Clemens?

9 A That's correct.

10 Q And that person would have responded from the
11 sheriff's department crime scene?

12 A That's correct.

13 Q Now, did you have an occasion to meet with the
14 initial complainant in this case?

15 A I did briefly. When I came on the scene, I was
16 immediately briefed by Master Deputy Duncan on what
17 he had already observed. They had already begun to
18 establish the crime scene in order to -- and I won't
19 get into a lot of that detail, but that's where they
20 actually section off a large area so as to protect
21 the crime scene. They've already created a log
22 where they're controlling people that would come in
23 and out of this area. Barry identified a young man
24 -- do I need to identify him?

25 Q Sure.

1 **A** This is a -- at the time, was, I believe, a
2 16-year-old black male by the name of Lamar Ashford
3 who lived at 640 Crawford Road, which is one of
4 those houses at the very dead end of that road. And
5 Master Deputy Duncan advised that this individual, I
6 believe, worked at churches and was coming home from
7 work late that night.

8 **MR. MOBLEY:** Objection.

9 **THE COURT:** Yes, sir.

10 **MR. MOBLEY:** We're getting to double hearsay.

11 **THE COURT:** Is it being offered for the truth?

12 **MR. MEADORS:** It's not being offered for the
13 truth.

14 BY MR. MEADORS:

15 **Q** As a result of talk -- was this the first
16 person who called in?

17 **A** This was the complainant who initially called
18 the motor vehicle accident in as he passed it on his
19 way home.

20 **Q** As a result of his phone call seeing the
21 vehicle, law enforcement responded?

22 **A** That's correct.

23 **Q** Tell the jury your observations with your eyes
24 when you came up on the scene.

25 **A** Again, it was kind of strange having an

ROBERT KENT TURNELY, JR. - DIRECT BY MR. MEADORS

149

1 accident out there that time of night. When I first
2 approached, I'm already starting to take in -- as an
3 investigator, you already start -- as soon as you
4 come on the scene, you're starting to look at things
5 that, based on your experience, that you want to be
6 aware of. I immediately started looking for any
7 kind of skid marks on the road, any kind of tire
8 tracks. I didn't observe any.

9 Actually, I got out after I was -- after I was
10 briefed by Master Deputy Duncan, I started to survey
11 the area. Some of the things that, as an
12 investigator, based on my experience, that I found
13 very important to my investigation, and not
14 necessarily based on any sort of order, but things
15 that I found important were the vehicle appeared to
16 have rolled off the side of the road, to the right
17 side of the road.

18 At this part of Crawford Road, there's a slight
19 bend in the road going from right to left, so
20 there's kind of like an outside corner on the right.
21 This vehicle appeared to have rolled straight off of
22 that curve and then gone down under some heavy
23 underbrush. It didn't appear to have been
24 travelling very fast because it didn't -- it didn't
25 come to a stop at a tree or any large object like

1 that. Particularly, the underbrush and the pine
2 sapling, so to speak, kind of slowed this vehicle
3 down.

4 A couple of things that I realized right off
5 the bat is the vehicle was still running. The
6 lights were still on of the vehicle.

7 As I approached the car and looked inside, I
8 realized that the vehicle was still in gear. As
9 you've already heard, I believe the victim was
10 slouched over the center console. He's still seat
11 belted in.

12 And one of the most intriguing things that I
13 observed was the fact that his left pants pocket was
14 actually pulled out, as you've seen Mr. Meadors
15 demonstrate, which -- well, anyway, I'll leave that
16 to your assumption of what that would be, but,
17 anyway, his pants pocket was pulled out.

18 I also observed what appeared to be four to
19 five gunshot wounds to his upper left shoulder and
20 back area. I also observed what, based on my
21 experience, I know to be gun powder residue on his
22 shirt.

23 Now, to me, and based on my experience, gun
24 powder residue that clo -- on an object like that
25 indicates that a weapon has been fired at very close

1 range because what it's doing is when -- whenever a
2 weapon is fired, there's some residual, there's some
3 gun powder that actually exits the barrel with the
4 bullet in order for that, I'm not an expert on that,
5 but, you know, it has to be within fairly close
6 distance for that powder to accumulate on something.

7 So there was gun powder residue on the back of
8 the victim's shirt. And there was also gun powder
9 residue on the back of the driver's side seat as
10 well, which, at the time, I assumed, and based on my
11 experience, it appeared that a weapon had been fired
12 from the back seat area.

13 Q Did you make any other observations of the
14 interior of the vehicle? Was there any blood in
15 there?

16 A There was some blood. There was some blood
17 splatter appeared to be on the driver -- excuse me
18 -- the passenger's front seat, as well as the front
19 dash area and window. There were also, something
20 that I should have said up front, which one of my
21 initial observations was appeared to be two gunshot
22 wounds to the window. And when I first looked at
23 that, I was thinking maybe it had been -- something
24 had been fired through the window. As I looked a
25 little bit closer to that, I don't think that the

1 projectile actually penetrated the window, but there
2 were gunshot holes in the window.

3 Q I think you testified earlier, if you didn't, I
4 apologize, that, in your experience, it looked like
5 the car had rolled down there. Were there skid
6 marks?

7 A There were not skid marks. And, as I stated,
8 you know, if you can picture this in your mind,
9 there's -- Crawford Road is going straight and then
10 it starts bending around to the left ever so
11 slightly. What it looked like to me is this car had
12 been going -- had been straight on the right side of
13 the road, as it should have been, and, at some
14 point, it continued on. Instead of bending around
15 to the left, it continued straight on down this
16 short embankment into this heavy underbrush and pine
17 saplings and things of such.

18 Q Look at State's 1, which has already been
19 admitted. Does that describe what you've just
20 talked about?

21 A It does.

22 Q Could you point that out to the jury what you
23 were just saying?

24 A This is -- you can see it's ever so slight,
25 it's starting to bend around from right to left

1 here. In other words, it would have been over this
2 way (indicating) back here and it would have
3 continued straight on into the tree line there.

4 Q There's the back of the vehicle there?

5 A That's the back of the vehicle.

6 MR. MEADORS: With the Court's permission,
7 could I ask the investigator to step down?

8 THE COURT: Yes, sir.

9 (Witness leaves the witness stand.)

10 BY MR. MEADORS:

11 Q You've testified -- I'm going to show you
12 what's been marked 7, 8, 9, 10 and 11.

13 MR. MEADORS: And, Your Honor, I've shown these
14 to defense counsel. And we would move these in, I
15 believe, without objection.

16 THE COURT: Mr. Hart?

17 MR. HART: No objection, Your Honor.

18 THE COURT: Thank you, sir. Without objection,
19 they're admitted.

20 (State's Exhibit Numbers 7 through 11,
21 photographs, admitted into evidence.)

22 BY MR. MEADORS:

23 Q You've just described the interior of the
24 vehicle and I believe you said -- and you didn't
25 know who this was, did you?

1 A Did not.

2 Q Okay. And you described a body being slumped
3 over and gunshot residue. Pointing to number --
4 looking at State's 7, Investigator, is that the
5 description of the body you saw?

6 A That's correct.

7 Q That is the body?

8 A That is the body of the victim.

9 Q And his body is leaning which way, toward the
10 interior of the car?

11 A He's leaning toward the interior. This is the
12 center console, the gear shift.

13 Q And what would be these straps right here?

14 A This is his seat belt.

15 Q Okay. Was the seat belt fastened or
16 unfastened?

17 A He's still fastened in.

18 Q And you said the car was running?

19 A The car was running.

20 Q What was the condition of the lights?

21 A The lights were on.

22 Q And do you know where the stick shift was in
23 this Mercedes?

24 A It was right here.

25 Q Okay. Could you tell if it was in gear or in

1 neutral or do you know?

2 A It was still in gear.

3 Q And this dark, powdery stuff, what is that?

4 A This is what I described as gunpowder residue.

5 If you notice, there are several of the gunshot
6 wounds here. And this whole gray area is what is
7 consistent with gunshot residue. Again, when a
8 firearm is fired, there's a cone of powder that
9 comes out with the bullet due to the pressure. And
10 if I was to shoot over here, you know, the gunpowder
11 is going to dissipate between here and there, but
12 something up close, it's going to collect on.

13 Q And could you describe, in your just everyday
14 experience, what's that look like to you or what is
15 that?

16 A That's what I do when I pull everything out of
17 my pocket. My pants pocket has been turned inside
18 out.

19 Q So that's a pocket inside out?

20 A That is a pocket inside out.

21 Q And is State's 8 a close up of that?

22 A That's correct.

23 Q And State's 10, you mentioned was there gun --
24 based on your training and experience and your
25 observations that night, was there any other

1 gunpowder residue you saw in the vehicle?

2 A I did. As you notice here on the back of the
3 driver's side -- or, you know, the driver's door --
4 excuse me -- seat, this is also consistent with
5 gunpowder residue.

6 Q And does State's 11 also depict that?

7 A That's correct.

8 Q Did you look in the back seat?

9 A I did look in the back seat.

10 Q I'm just showing you now State's 18.

11 MR. MEADORS: Your Honor, again, without
12 objection, I'd move State's 18.

13 MR. HART: No objections, Your Honor.

14 THE COURT: Without objection, it's admitted.
15 Thank you, sirs.

16 (State's Exhibit Number 18, photograph,
17 admitted into evidence.)

18 BY MR. MEADORS:

19 Q What does that show?

20 A This is the driver's -- the back of the
21 driver's seat. And if you notice up here, there's
22 also what appears to be gunpowder residue --

23 COURT REPORTER: I'm sorry, I can't hear --

24 BY MR. MEADORS:

25 Q You need to speak up a little bit.

1 **A** I'm sorry. What it's depicting here is the
2 back of the driver's seat. And it actually shows
3 gunpowder residue -- what's consistent with
4 gunpowder residue on the actual back of the seat,
5 the back of the headrest, as well as underneath the
6 seat and the headrest.

7 **Q** Would this be consistent with somebody firing
8 from the back seat here?

9 **A** It would.

10 **Q** You can have a seat back.

11 **A** (Witness resumes the witness stand.)

12 **MR. MEADORS:** Your Honor, finally, for this
13 witness, State's 9, I believe, without objection.

14 **Q** You mentioned some, I believe, the glass?

15 **A** I did.

16 **Q** Is that what you were talking about?

17 **A** I was. That's the front of the -- the front
18 windshield with what appears to be several gunshot
19 holes in the window.

20 **Q** I believe you said you talked to the initial
21 complainant who called it in?

22 **A** I did.

23 **Q** The young man from the area. You didn't
24 process the scene itself? You're not an evidence
25 custodian?

1 **A** I did not and I am not.

2 **Q** Other officers were at the scene?

3 **A** They were.

4 **Q** Did you have an occasion to -- did you learn
5 whose car it was?

6 **A** I did.

7 **Q** And did you have an occasion to see Hilda
8 Brennan?

9 **MR. MEADORS:** Ms. Brennan, would you stand up,
10 please?

11 **THE WITNESS:** I did.

12 **MR. MEADORS:** Thank you, Ms. Brennan.

13 **BY MR. MEADORS:**

14 **Q** And did you meet her that morning of October
15 26th, 2001?

16 **A** I did.

17 **Q** And as a result of meeting with Hilda Brennan,
18 were you able to identify the car?

19 **A** I was.

20 **Q** Were you able to identify the body?

21 **A** I was.

22 **Q** And who was the body?

23 **A** Mr. Bernard Brennan.

24 **Q** And that vehicle belonged to whom?

25 **A** Mr. Bernard Brennan and his wife, Ms. Hilda

1 Brennan.

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

3 THE COURT: Yes, sir.

4 (Pause.)

5 MR. MEADORS: Your Honor, that's all we have.

6 Thank you very much.

7 THE COURT: Thank you, sir.

8 Mr. Hart.

9 MR. HART: Thank you, Your Honor. If it please
10 the Court.

11 CROSS-EXAMINATION

12 BY MR. HART:

13 Q Investigator Turnely, you've been an
14 investigator for how long?

15 A Probably about four years now. I've been in
16 law enforcement for about eight.

17 Q And you said when you first initially got the
18 call, you thought it was a motor vehicle accident,
19 right?

20 A That's correct. It was dispatched as a motor
21 vehicle accident.

22 Q And you later learned that it was a homicide --

23 A That's correct.

24 Q -- correct?

25 A Yes, sir.

1 Q So, at that point, you would agree that your
2 heightened antennas came up, correct?

3 A Correct.

4 Q When you -- you agree that murder and armed
5 robbery, those are very serious charges, right?

6 A I would.

7 Q Require a lot of time, correct?

8 A I mean, that's debatable what you consider a
9 lot of time. I mean, I would consider them very
10 serious crimes and I would consider the punishment
11 appropriate to the level of the crime.

12 Q It requires a lot of energy?

13 A Oh, yeah. Yes, sir.

14 Q A lot of details, correct?

15 A Are you talking about the investigations?

16 Q Correct.

17 A Yes, sir --

18 Q When you're investigating a murder, armed
19 robbery, it requires a lot of details?

20 A Yes, sir.

21 Q A very thorough investigation, correct?

22 A Yes, sir.

23 Q Now, when you investigate a crime, you carry
24 what you guys call incident reports, right?

25 A An investigator doesn't carry an incident

1 report. An incident report would be generated by
2 the responding officer, the uniform deputy, who
3 would take an initial incident report. And then an
4 investigator would go out and we would compile our
5 notes on what we call an investigative follow up.

6 Q But you carry a note pad to take notes?

7 A Some do, some don't.

8 Q The night you responded to the scene you
9 carried a note pad, correct?

10 A I don't believe I did.

11 Q So everything you've based off your memory
12 today?

13 A No. I'm basing it off of my memory, as well as
14 my investigative notes that I generated that evening
15 or that morning.

16 Q So while you were at the scene, you didn't
17 necessarily take any notes?

18 A I don't believe that I did.

19 Q Okay. So while you were there, everything that
20 you were doing you were processing with your memory,
21 correct?

22 A That, as well as what was already being
23 compiled by the lab investigators who were on the
24 scene. It's their job to document the physical
25 evidence. And it's based off of what I saw. That

1 information is corroborated through the evidence.

2 Q You agree that when you first arrived on the
3 scene, one of the first things you want to do is
4 secure the scene, right?

5 A Yes, sir.

6 Q And you want to secure the scene because you
7 want to make sure no evidence is lost, right?

8 A Absolutely.

9 Q You want to secure the scene to make sure no
10 evidence is damaged, correct?

11 A Certainly.

12 Q Okay. Your part in the investigation, did you
13 thoroughly investigate the scene?

14 A The scene?

15 Q Correct.

16 A My responsibility as the responding
17 investigator on-call was to determine what we
18 thought initially had taken place, I was the first
19 investigator on the scene, and to start the
20 preliminary investigation. We had several other
21 investigators that responded to the scene that would
22 have been assigned to the case and it would have
23 been their responsibility to more thoroughly
24 investigate the crime.

25 Q And you said you were the first investigator,

1 correct?

2 A That's correct.

3 Q Which means you were most important, right, at
4 that particular time?

5 A I wouldn't say that necessarily. I think
6 everybody's important because they all play a --
7 it's a team effort and everybody has very specific
8 responsibilities.

9 Q Now, when you respond to a scene, it also
10 requires you to locate witnesses, correct?

11 A Correct.

12 Q And one of the witnesses that you located was
13 Mr. Lamar Ashford?

14 A That's correct.

15 Q And you spoke with Mr. Lamar Ashford?

16 A I did.

17 Q And he told you that his mother was home at the
18 time the crime happened, right?

19 A I believe he told me his mother and his father
20 and his sister were home.

21 Q Okay. And their house is 640 Crawford Street?

22 A That's correct.

23 Q You didn't speak with his sister, Latisha
24 Ashford, that night, did you?

25 A I did not.

1 Q And you didn't speak with his mother that
2 night, did you?

3 A Did not.

4 Q And you didn't speak with the father that
5 night, did you?

6 A Did not.

7 Q You would agree that that's three possible
8 witnesses who could have seen what happened that
9 night, right?

10 A Yeah. I would say that was possible,
11 absolutely.

12 Q And you didn't talk to them, did you?

13 A That evening I did not.

14 Q Okay. Now, you'd also agree that -- let me
15 back up here a second. The Government was asking
16 you in particular to -- if you could step down off
17 the stand, please?

18 A (Witness leaves the witness stand.)

19 Q The Government was asking you in particular to
20 State's Exhibit Number 8, right?

21 A Yes, sir.

22 Q And they asked you about the victim's pocket;
23 isn't that right?

24 A That's correct.

25 Q And you said that could mean that someone

1 robbed him, right?

2 A I said that was consistent with pants pocket
3 being drawn out as if I took everything out of my
4 pocket and that would be consistent with something
5 -- everything being taken out of his pocket.

6 Q Do you see the victim's left wrist?

7 A I do.

8 Q What's on his wrist?

9 A It appears to be several bracelets.

10 Q You would agree that if they had time to take
11 something out of his pockets, they had time to take
12 the jewelry off the wrist, correct?

13 MR. MEADORS: Objection, speculation.

14 THE COURT: Sustained.

15 BY MR. HART:

16 Q Also, let's look at State's Exhibit Number 7.
17 You see the victim's right ankle?

18 A I do.

19 Q What's on his right ankle?

20 A Appears to be a anklet.

21 Q Thank you. You can go back.

22 A (Witness resumes the witness stand.)

23 Q Now, this area over in Crawford Road, that's a
24 very wooded area; you would agree, right?

25 A I would.

1 Q Now, the sheriff's department has something
2 called the Canine Unit, doesn't it?

3 A Yes, sir.

4 Q And you would agree that the Canine Unit is a
5 valuable asset to the sheriff's department, right?

6 A I would.

7 Q In particular because a dog can pick up on
8 scents that humans can't, right?

9 A That's correct.

10 Q And for some reason, a dog has a very trained
11 eye, a very trained scent that pick up on things
12 that humans just can't see, right?

13 A That's correct.

14 Q You would agree that if someone was inside of
15 the victim's car that night, it's possible they left
16 their scent in that car, right?

17 A I would.

18 Q And if they ran down the road or through the
19 woods, it's possible that they left their scent
20 along the trail of Crawford Road, right?

21 A It is possible.

22 Q Tell us what time did you call the Canine Unit
23 on that night.

24 A I don't believe that I actually called the
25 Canine Unit.

1 Q In fact, the Canine Unit was never called that
2 night, was it?

3 A I cannot respond to that because again that
4 wouldn't have been my responsibility necessarily to
5 do that. I can only say that I didn't. I believe
6 that canine was called to the best of my
7 recollection, but it wouldn't have been from me.

8 Q And you were the first investigator on the
9 scene, right?

10 A That's correct.

11 Q You never called the Canine Unit?

12 A I did not personally call the canine.

13 Q Let's talk for a second about fingerprint
14 analysis. You would agree, in this particular kind
15 of case, fingerprint analysis is very important?

16 A I think that anytime you've got fingerprint
17 evidence, it is very important.

18 Q It's important because fingerprint analysis is
19 used to place someone into a crime or take them out
20 of a crime, correct?

21 A It can absolutely place them in there. It
22 can't necessarily take them out. If they didn't
23 leave fingerprints, they wouldn't be there anyway,
24 so you can't take them out based on that.

25 Q But it is possible that you can eliminate a

1 suspect once you compare their fingerprints to the
2 ones found at the crime scene?

3 A Not necessarily because again if you have
4 someone that does not leave any fingerprint
5 evidence, that doesn't conclusively say that they
6 were not there. But, on the contrary, if there was
7 a fingerprint left on the crime scene and it did
8 match a certain individual, then you could say
9 without a doubt that they were there.

10 Q But you agree that it's possible to eliminate a
11 suspect if their fingerprints doesn't compare to the
12 ones found at the crime scene, right?

13 A You could eliminate a suspect if you matched
14 them up to a certain print, you can say that that
15 was not their print, but you cannot eliminate them
16 from not being at the crime scene based on the fact
17 that their fingerprint doesn't match a fingerprint
18 at the crime scene.

19 Q So is it possible to eliminate them or is it
20 not possible?

21 A It's not possible to eliminate them.

22 Q It's not possible. Actually, that night there
23 were some prints that were lifted from the victim's
24 car, correct?

25 A I'm not aware if there were or not.

ROBERT KENT TURNELY, JR. - CROSS BY MR. HART

169

1 Q And you were the first investigator on the
2 scene?

3 A I was the first investigator on the scene.

4 Q You don't have any knowledge of that?

5 A I don't specifically know if there were any
6 fingerprints lifted from that vehicle or not. The
7 vehicle was processed -- partially processed that
8 night and it was also processed -- that morning,
9 excuse me, and it was also processed the next day
10 and continuing.

11 My responsibility there was as a responding
12 investigator on-call, that's the first investigator
13 that arrives on scene to begin a preliminary
14 investigation. You have to understand that there
15 are other investigators that are on homicide call
16 that actually come over and take over that
17 investigation. My portion there was to be the first
18 responding investigator, to surmise the information
19 and to be there until the other individuals that
20 actually are handling that case would come on scene.

21 Q For today's testimony --

22 A Yes, sir.

23 Q -- you don't have any prints that match Carmen
24 Rice, do you?

25 A I personally don't have any information as to

1 whether we do or not.

2 Q Today, you can't testify that you have any
3 prints that match Carmen Rice?

4 A Today, I personally cannot testify to the fact
5 that the Richland County Sheriff's Department has or
6 has not any fingerprint evidence against or matching
7 Ms. Carmen Rice.

8 Q You're familiar with trace evidence also,
9 right?

10 A I am.

11 Q Such as hair?

12 A Correct.

13 Q Skin?

14 A Yeah.

15 Q Clothing, right?

16 A Yes, sir.

17 Q There's a process where you can analyze this
18 stuff that's called DNA analysis, right?

19 A That's correct.

20 Q And you would agree that if a suspect was
21 present at a particular crime scene, and,
22 specifically, Mr. Brennan's car, it's possible they
23 could leave some hair, correct?

24 A It's possible.

25 Q It's possible they could leave some skin,

1 right?

2 A Absolutely.

3 Q It's possible they could leave some clothing
4 fibers, correct?

5 A Certainly.

6 Q You don't have any hair that matches Carmen
7 Rice to that car, do you?

8 A Again, just like the last question along these
9 lines, I'm not a forensic investigator. It was not
10 my responsibility to collect any kind of evidence
11 related to any of that type of thing. I don't have
12 the expertise to do so and I don't have any
13 firsthand, personal knowledge whether there was any
14 collected or not. That would be for the forensic
15 investigator to respond to.

16 Q You aren't aware of any DNA that matches Carmen
17 Rice to that vehicle?

18 A I personally don't have any information as to
19 that, no, sir.

20 Q When you arrived at the scene, you never saw
21 Ms. Rice, did you?

22 A I did not.

23 Q And you talked to several witnesses that night,
24 correct?

25 A I did.

1 Q You never spoke with anyone that identified any
2 black females, correct?

3 A I did not.

4 MR. HART: Beg the Court's indulgence, Your
5 Honor.

6 THE COURT: Yes, sir.

7 (Pause.)

8 MR. HART: No further questions, Your Honor.

9 MR. MEADORS: Just a few brief ones, please.
10 May it please the Court.

11 REDIRECT EXAMINATION

12 BY MR. MEADORS:

13 Q Do you know if the Richland County Sheriff's
14 Department matched anybody's prints in this case?

15 A I do not.

16 Q Now, you made a report. He asked you about
17 your report; is that right?

18 A That's correct.

19 Q Typed report?

20 A Yes, sir.

21 Q Is jewelry more traceable than cash? Is it
22 easier to trace jewelry than cash if it's stolen?

23 A I would think so, yes.

24 Q And in the course of your investigation, did
25 you learn that the individual -- did you uncover, in

ROBERT KENT TURNELY, JR. - REDIRECT BY MR. MEADORS

173

1 the course of your investigation, if the individual
2 who saw the car's sister was asleep and the parents
3 wouldn't have heard anything?

4 A That's correct.

5 Q From that person you learned that?

6 A I did.

7 MR. MEADORS: Thank you. That's all.

8 THE COURT: Thank you, sir.

9 Mr. Hart.

10 MR. HART: No further questions, Your Honor.

11 THE COURT: Thank you.

12 Agent Turnely, you may step down. Thank you,
13 sir.

14 Any reason not to excuse, Agent Turnely?

15 MR. MEADORS: We'd so ask.

16 MR. MOBLEY: No objection.

17 THE COURT: Agent, you're free to come and go
18 as you please, sir.

19 Mr. Meadors, do you want to take a short break
20 at this point before you call your next witness?

21 MR. MEADORS: Yes, sir.

22 THE COURT: Ladies and gentlemen of the jury,
23 I'm going to let y'all take a short break and
24 stretch your legs. We'll take about five minutes
25 and then come back.

1 Obviously, I told y'all yesterday, y'all are
2 going to get sick of hearing me say it, but do not
3 discuss the evidence or testimony you've heard thus
4 far. We'll bring you back very shortly. Thank you.

5 (The jury retires to the jury room.)

6 **THE COURT:** We'll take about a five or so
7 minute break. We'll see y'all back in a little bit.
8 Thank you, everybody.

9 (Brief recess.)

10 **THE COURT:** Counsel, I have a note from one of
11 the jurors, Juror 132, Ms. Mancini. She says that
12 her son attends Cardinal Newman. And Mr. Giese's
13 children have attended school, she thinks, with her
14 son. I'll bring her back out and see if ~~--- voir ---~~
15 dire her and see if that causes any problem.

16 If you can bring out Juror 132, we'll bring her
17 out first.

18 (Juror Number 132, Dianne Mancini, enters
19 the courtroom.)

20 **THE COURT:** Ms. Mancini, you sent me a note.
21 You believe Solicitor Giese's children may have
22 attended school with your son; is that right?

23 **JUROR:** I don't know if he has children there
24 now at Cardinal Newman, but they have in the past.

25 **THE COURT:** Did you know his children while

1 they were attending there?

2 **JUROR:** I knew who they were, never spoke with
3 them or anything.

4 **THE COURT:** Let me ask you, ma'am, given the
5 fact that they did attend school with your son, do
6 you believe, in any way, that that would influence
7 your ability to consider --

8 **JUROR:** I don't think so.

9 **THE COURT:** You will be fair to both sides?

10 **JUROR:** Right.

11 **THE COURT:** Thank you, Ms. Mancini. I
12 appreciate you sending me that note.

13 (Juror Dianne Mancini retires to the jury
14 room.)

15 (Court's Exhibit Number 6, jury note, was
16 marked for identification purposes.)

17 **THE COURT:** Counsel, anything further as to
18 that juror?

19 **MR. MEADORS:** No, sir. Thank you.

20 **MR. MOBLEY:** No, Your Honor.

21 **THE COURT:** Thank you, sirs. Anything else
22 before we bring the jury back out?

23 **MR. MEADORS:** Nothing from the State.

24 **MR. MOBLEY:** Nothing from the defense, Your
25 Honor.

1 **THE COURT:** Thank you, counsel. We'll bring
2 the whole jury back out.

3 (The jury returns to the courtroom.)

4 **THE COURT:** Thank you, ladies and gentlemen.
5 Appreciate your patience. We're ready to continue
6 at this point.

7 Is the State ready to call their next witness?

8 **MR. MEADORS:** If it pleases, Your Honor.

9 **THE COURT:** Yes, sir.

10 **MR. MEADORS:** The State will now call Anna
11 Elsey Clemens.

12 **THE COURT:** Ms. Clemens, if you'll come around,
13 we'll swear you in.

14 ANNA ELSEY CLEMENS,
15 having been duly sworn, testified as follows:

16 **THE CLERK:** Please have a seat and state your
17 full name.

18 **THE WITNESS:** Anna Elsey Clemens,
19 C-L-E-M-E-N-S.

20 **THE COURT:** Thank you, ma'am.

21 Mr. Meadors.

22 **MR. MEADORS:** Thank you, Your Honor. May it
23 please the Court.

24 ****

25 ****

ANNA ELSEY CLEMENS - DIRECT BY MR. MEADORS

177

DIRECT EXAMINATION

BY MR. MEADORS:

Q Can you please tell the jury a little bit about yourself, specifically where you're from?

A I was born and raised in Columbia. I graduated from the College of Charleston with a degree in Psychology in May of '95 and a degree in Biology in December of '95. I came to work at the sheriff's department in July of 1996. I worked the road for a little over two years and moved into the laboratory October of 1998.

Q And other than your education, graduate and undergraduate work, do you have any specific training in law enforcement and if so, what was that?

A Initially, to be a uniform deputy, I attended the academy, graduated from the academy with honors and worked, like I said, on the road for a couple of years. There was some training on the road that was continuing education as far as defensive tactics in firearms.

Once I moved into the laboratory, it's a very specialized area. I went through a training period with the lab itself where I observed other people, learned certain techniques and then I went through a

1 period where they observed me before I was able to
2 process scenes of my own.

3 Part of that training requires formal training
4 put on by other agencies. One of those agencies is
5 the International Association for Identification.
6 I'm a member of the state and international chapters
7 of those two -- of that agency. They put on
8 different training programs to keep us up to date
9 with the techniques.

10 Some of the training that I went through was 40
11 hour courses in fingerprints, palm prints, foot and
12 tire wear impressions, basic blood pattern analysis,
13 advanced blood pattern analysis, crime scene
14 reconstruction, basic arson, crime scene processing
15 and I.D. tech.

16 Q And your role, your job at the sheriff's
17 department now is what?

18 A I'm now the sergeant over the crime scene,
19 latent print sections.

20 Q And you have numerous people underneath you,
21 working for you in your department?

22 A I do.

23 Q Now, how many crime scenes do you think you've
24 been on, Sergeant?

25 A Thousands.

1 Q And when you get on a crime scene, what's your
2 purpose? What are you trying to do when you get on
3 a crime scene?

4 A Our main purpose for responding to a scene is
5 to collect any type of physical evidence, that may
6 include hairs and fibers, fingerprints, documenting
7 the scene. So that when it does come to court, you
8 know, two, three, four, five years later, we can
9 present to you what we saw when we arrived on the
10 scene. The best way to do that is photographs. So
11 we start out with photographs, taking notes and then
12 trying to locate any evidence that may link the
13 suspect to the scene -- the victim to the scene or
14 the victim to the suspect.

15 Q Do you attempt to preserve or keep the scene as
16 best you can like it was when the incident happened?

17 A Yes, sir.

18 Q That's the goal?

19 A Yes, sir.

20 Q Now, you mentioned fingerprints a little bit.
21 Can you tell the jury what a latent fingerprint is?

22 A Another word for latent would be an invisible
23 fingerprint. If you -- just to give you just a
24 little background of fingerprints, if you'll look at
25 the palms of your hands, you'll see there's lines on

1 your fingers and those lines form a pattern. Now,
2 your fingers may have the same type of patterns, but
3 there are characteristics within that pattern that
4 make that fingerprint unique just to you, no one has
5 the same fingerprints. All of your -- each finger
6 is unique and different from every other finger.

7 So whenever you -- often times when you touch
8 certain objects, there are some other factors that
9 come into play. You can leave a fingerprint on that
10 object. Again, with latent, a lot of times you
11 can't see the fingerprint. I may look at a
12 particular object and not be able to see the
13 fingerprint right away. I may need to use some type
14 of chemical or powder to enhance the fingerprint so
15 that it will become visible and I can then lift it
16 or do what I need to or photograph it if it's unable
17 to be lifted.

18 Q And latent prints would be gathered at a scene,
19 if you will?

20 A Yes.

21 Q And what do you do once you have a latent
22 print? Do you try to compare it to something?

23 A We do. Often times we're comparing them to
24 what we call rolled inked finger impressions. We
25 also have what we call live scan.

1 Inked finger impressions are when we take your
2 finger and we roll it on a pad of ink and then roll
3 it on a card and we end up with all ten impressions
4 of your finger. The same concept is to use a
5 digital scan and do the same type thing, it's
6 inkless.

7 Q Is that also termed a known print? You have a
8 latent print and a print you know whose it is?

9 A Right.

10 Q And you try to compare those?

11 A That's correct.

12 Q And that comparison, how do you go about doing
13 that -- what are you looking for when you compare a
14 latent print with a known or rolled print?

15 A Again, we're looking for those identifying
16 characteristics within the pattern of the print in
17 relation to the overall pattern and location on the
18 person as to whether or not they have the same
19 characteristics. Now, if we come across one
20 characteristic that is not the same, then it's not a
21 match. So it's very detailed and very specific as
22 far as what we're looking for in doing that
23 comparison.

24 Q If I was to put my print on something and then
25 wipe it off, would you expect to find my print?

1 **A** Most likely not. And, again, another factor
2 that may come into play is if there's something on
3 that surface, a barrier between the finger and that
4 surface, again you might not get a print or you may
5 get what we call an insufficient print. You can
6 tell something was touched, but there's not enough
7 detail to be able to make that comparison I was
8 speaking of.

9 **Q** Is that like an insufficient...

10 **A** Correct.

11 **Q** Now, how many latent prints do you think you've
12 gathered in your career?

13 **A** Again, it's probably been a thousand or more.

14 **Q** And how many comparisons have you sent in from
15 a latent unknown, thousands?

16 **A** Thousands.

17 **MR. MEADORS:** Your Honor, at this time, we'd
18 offer Sergeant Anna Elsey Clemens as an expert in
19 the field of crime scene investigation and
20 fingerprints.

21 **MR. MOBLEY:** No objection, Your Honor.

22 **THE COURT:** Without objection, you're so
23 qualified. You may testify as such.

24 Ladies and gentlemen, I like to explain to
25 jurors, when folks -- y'all, at some point, will

ANNA ELSEY CLEMENS - DIRECT BY MR. MEADORS

183

1 hear us qualify, or one side attempt to qualify,
2 somebody as an expert. Ladies and gentlemen, that
3 just means normally a witness cannot testify to
4 their opinions or conclusions about anything. They
5 can only tell you about their own observations and
6 such.

7 There are some exceptions for that and one of
8 which is when we qualify somebody as an expert
9 witness, that just changes the way that they can
10 testify to you. In other words, they can give you
11 their opinions and conclusions about something.
12 I'll charge you at the very end you're to treat
13 their testimony just like any other witness. It's
14 just a way of allowing them to testify to their own
15 opinions and conclusions about stuff. Thank you.

16 Thank you, Mr. Meadors.

17 **MR. MEADORS:** Thank you, Your Honor.

18 **BY MR. MEADORS:**

19 **Q** On October 25th of 2001, in the early morning
20 hours of October 26th of 2001, Sergeant, were you
21 working with the Richland County Sheriff's
22 Department?

23 **A** I was.

24 **Q** In what capacity?

25 **A** I was their crime scene investigator.

1 Q And did you have an occasion to respond to this
2 scene we're talking about in this trial, Sergeant?

3 A I did. I was notified at 12:55 a.m. and I
4 arrived on the scene at 1:30 a.m.

5 Q And that's 12:55 on October 26th?

6 A 26th.

7 Q And it's 640 Crawford Road. Is that where you
8 responded?

9 A That's correct.

10 Q Now, I want you to tell the jury, and you've
11 kind of said it in your background, I think,
12 Sergeant, as you're coming up to this scene, what do
13 you usually do and, specifically, what did you do as
14 you walked up on the scene?

15 A The first thing I do when I arrive on the scene
16 is make contact with the investigators or deputies
17 that are on the scene to determine what has happened
18 prior to my arrival.

19 In this case, I made contact with Sergeant
20 Strange and he told me there had been numerous
21 people that had had contact with the vehicle prior
22 to my arrival, that being law enforcement officers
23 and EMS personnel. He also advised me that the car
24 was running when they first arrived, but it was
25 turned off prior to my arrival. I did an initial

1 just walk through of the scene.

2 When I arrived, they had crime scene tape
3 across the roadway blocking off the scene. I did an
4 initial walk through. And the first thing I would
5 have done was to start taking just general overall
6 photographs of what I saw when I first arrived.

7 Q And that's what you do?

8 A Yes.

9 Q And you actually took the photographs, some of
10 which have already been entered, like State's 18?

11 A Yes.

12 MR. MEADORS: Your Honor, I have 12 through 17,
13 19 and 20, which I'm going to go over. And I've
14 shown the defense counsel and they have no
15 objection.

16 MR. MOBLEY: Yeah, I don't have any objection
17 to those photographs.

18 THE COURT: Thank you, counsel. Without
19 objection, they are admitted.

20 (State's Exhibit Numbers 12 through 17, 19
21 and 20, photographs, admitted into evidence.)

22 MR. MEADORS: With the Court's permission, can
23 I ask the Sergeant to come down?

24 THE COURT: Yes, sir.

25 BY MR. MEADORS:

1 Q Will you step down?

2 A (Witness leaves the witness stand.)

3 Q You said you took some shots of the vehicle; is
4 that correct?

5 A Yes.

6 Q Photographs. And I'm going to go through
7 these, maybe, just in order. This is State's 12.
8 Did you take that? Obviously, you did. Tell the
9 jury what that is.

10 A I did. That's the driver's seat looking from
11 the driver's door into the vehicle. You can see the
12 seat belt here. And this is the headrest here
13 (indicating) and what appears to be gunpowder
14 residue on the actual headrest itself.

15 Q And that's -- based on your training in law
16 enforcement, that's what you believe that is,
17 correct?

18 A Correct.

19 Q State's 13, Sergeant, does depict the body of
20 Bernard Brennan. Did you take that shot?

21 A I did.

22 Q What other evidence is significant in there
23 that you see?

24 A Again, here you can see where he is slumped
25 over here. There's blood on the shirt here.

1 There's some blood in the seat here. And you can
2 see here where the keys are still in the ignition.
3 And the gear shift here is, I believe, in neutral,
4 neutral or drive, there.

5 Q Can you actually see that where it's not in
6 park?

7 A Yes.

8 Q And we've heard, is it blood spatter?

9 A Spatter.

10 Q Okay. And is there blood depicted on this seat
11 anywhere?

12 A There is. There's blood on the seat and on his
13 arm.

14 Q And, again, State's 14, is that another picture
15 of just a closer-up view of the neutral in there and
16 also the blood spatter?

17 A It is.

18 Q Now, State's 15, Sergeant, I see what I call
19 placards or something with number one and two. Can
20 you tell the jury what that is?

21 A These are evidence markers we used after the
22 victim was removed from the vehicle. Prior to
23 moving the vehicle, I saw that there were two
24 fragments in the floorboard, so I marked them as one
25 and two, photographed it and then collected the two

1 fragments there.

2 Q And this is -- can you actually see the
3 fragments in here?

4 A I can. There's actually a closer one that you
5 can see a little bit closer.

6 Q Here it is. State's 16 is it a close-up view
7 of what you were just talking about?

8 A It is. Again, a fragment here, number one, and
9 number two, you can see the seat here and that's the
10 driver's floorboard.

11 Q Does that appear to be a red marking there,
12 also?

13 A Here, yeah, that appears to be some type of
14 blood spatter.

15 Q Now, you're photographing this, were you
16 processing the car right then?

17 A No. At this time, again, it was -- I believe,
18 I was there from 1:30 until a little after 4:00 in
19 the morning. This was a dark area. There was no
20 lighting around. So my main goal was to photograph
21 the scene as it was, photograph the interior of the
22 vehicle with the victim in it and to have it towed
23 to a secure location where the vehicle would be
24 covered and can be processed in detail in better
25 conditions.

1 Q And did someone do that who worked for you?

2 A They did. Investigator Russell and I believe
3 several other investigators processed it later
4 during that day.

5 Q Would you describe where they processed it
6 later that day was in a more controlled environment
7 than where you were?

8 A Yes. We placed it in a shed so that they can
9 have all the equipment right there that they need.
10 Again, they're out of elements and they have better
11 lighting.

12 Q But you saw these two with your eyes?

13 A I did.

14 Q And went ahead and picked these up?

15 A I did.

16 Q Now, State's 17, Sergeant, can you tell the
17 jury what that's a picture of?

18 A That's just the -- a picture of the back seat,
19 how I found it, of the vehicle.

20 Q What's that on the other side over there, can
21 you tell?

22 A Appears to be some type of clothing hanging
23 from the hanger on the other side of the seat in
24 front of the door.

25 Q In going back to State's 17, appears to be some

1 type of substance there. Can you describe what that
2 is based on your training and experience and your
3 observations that night?

4 **A** Again, that's the other side of the seat that
5 you saw a picture of earlier. Again, that's what
6 appears to be gunpowder residue on the back of the
7 seat and headrest.

8 **Q** And is this a close-up view of what you've just
9 described, State's 19?

10 **A** It is.

11 **Q** And did you have an occasion to take a picture
12 of the trunk?

13 **A** I did. Again, I was just trying to --

14 **MR. MEADORS:** State's 20, Your Honor.

15 **A** -- document everything the way it was when I
16 was there. So we went ahead and opened up the trunk
17 and I photographed the inside of the trunk.

18 **Q** Do you know what these items are?

19 **A** I did not go through it. I believe that this
20 is some type of pool stick in the container there.

21 **Q** Pool stick?

22 **A** Uh-huh.

23 **Q** And are these buckets?

24 **A** Buckets with towels.

25 **Q** What time did you get there?

1 **A** I got there at 1:30 a.m.

2 **Q** Would that accurately describe the scene?

3 **A** It would. That would be as I approached the
4 scene with the vehicle here.

5 **MR. MEADORS:** And that's State's 1, Your Honor.

6 **Q** Let's look at State's 2, which is already
7 admitted into evidence. Would that --

8 **A** Again, that's just another view of the vehicle
9 soon after I arrived.

10 **Q** Have a seat back down.

11 **A** (Witness resumes the witness stand.)

12 **Q** And just showing you State's 7 and 8, the other
13 side of the car, is this Mr. Brennan's body?

14 **A** Yes, sir, it is.

15 **Q** And did you observe the seat belt whether it
16 was locked or unlocked or fastened?

17 **A** Yeah, the seat belt was still on Mr. Brennan
18 and that's just the view as I opened the door and
19 how he was located.

20 **Q** As you opened the door?

21 **A** Yes.

22 **Q** And here's a close-up view of the pocket,
23 correct?

24 **A** That's correct.

25 **Q** And the powder here, is that consistent with

1 gunshot residue in your opinion?

2 **A** Yes, sir.

3 **Q** And that's on his shirt?

4 **A** Yes, sir.

5 **Q** After you've taken these pictures, Sergeant --

6 **MR. MEADORS:** Beg the Court's indulgence.

7 **THE COURT:** Certainly.

8 (Pause.)

9 **MR. MOBLEY:** No objection.

10 **THE COURT:** Thank you, sir.

11 **MR. MEADORS:** Your Honor, this is State's 30,
12 31, 33 and 34, I believe, without objection.

13 **THE COURT:** Thank you, sir. They're admitted
14 without objection.

15 **MR. MEADORS:** And please tell His Honor and the
16 jury --

17 **THE COURT:** Give the court reporter time to
18 mark the exhibits.

19 (State's Exhibit Numbers 30, 31, 33 and 34
20 were admitted into evidence.)

21 **MR. MEADORS:** Your Honor, while she's looking
22 there, State's Exhibit 32 without objection, also.

23 **THE COURT:** Without objection, it's admitted.

24 (State's Exhibit Number 32, projectile,
25 admitted into evidence.)

1 **THE WITNESS:** This is the fragment that was
2 marked as number 1 in the photographs.

3 BY MR. MEADORS:

4 **Q** And that's State's 30 that you're referring to?

5 **A** Yes.

6 **Q** Is number one in the photograph, correct?

7 **A** Yes. And then this, marked two, is the one
8 that was marked number two in the photograph.

9 **Q** And what are those?

10 **A** Those are fragments, bullet fragments.

11 **Q** Bullet fragments. And that's one and two?

12 **A** Yes. These appear to be the -- these are the
13 two bullets that were removed from Mr. Brennan at
14 the autopsy and turned over to me by Investigator
15 Sanders who attended the autopsy.

16 **Q** Turned over to you. Did you take them to the
17 lab at Richland County?

18 **A** She brought them to the lab and turned them
19 over to me in the lab at Richland County.

20 **Q** And that's State's 33 and 34?

21 **A** Right.

22 **Q** From the body of Mr. Brennan?

23 **A** Yes, sir.

24 **Q** And I believe, finally, State's 32?

25 **A** I'm not positive about 32.

1 Q Was a projectile turned in later?

2 A I believe Mr. Brennan (sic) turned in a
3 projectile to Investigator McDaniels.

4 Q Ms. Brennan, Ms. Hilda Brennan?

5 A Yes, sir.

6 Q Now, did you have an occasion to check the
7 exterior of this vehicle? This was a Mercedes,
8 right?

9 A Yes, sir.

10 Q You talked to us about latent prints and what
11 you do when you go to a crime scene. Did you have
12 an occasion to look for latent prints on this
13 vehicle?

14 A I did. Again, I did very minimal processing
15 there because of the conditions and the lighting,
16 but I knew that the vehicle was going to be towed so
17 I wanted to do any areas that might possibly had
18 been touched by the tow truck driver in transporting
19 the vehicle. So what I did is I just processed just
20 the exterior of the door on the driver's side, the
21 two doors on the driver's side, using black powder.

22 Q And were you able to lift a latent print?

23 A I did. I lifted a partial latent print on the
24 driver's door on the frame around the window on the
25 side closest to the rear door.

1 Q And once you lifted that latent print, what did
2 you do with it?

3 A What we do is we lift the print, we document
4 where we got it from and we bring it back to the
5 office. And our first -- the first thing we do will
6 be to run it through AFIS, which is an Automated
7 Fingerprint System. Anyone who's been arrested in
8 the past is entered into the system and we try to
9 determine a match that way first.

10 In this instance, we entered it, did not
11 receive a match. It was entered, I believe, three
12 times total from that time until today without a
13 match. And we also compared it to numerous
14 individuals once their names came to us and we were
15 able to get what we call their known prints.

16 Q You ran it through AFIS, that's what you do,
17 right?

18 A Right.

19 Q You get unknown prints, you run it through AFIS
20 for samples that are out there, correct?

21 A Correct.

22 Q No match on that?

23 A That's correct.

24 Q You attempted to run it through how many other
25 subjects that you got known prints on?

1 A We compared it to 31 different subjects.

2 Q And was it compared to Ms. Carmen Rice?

3 A It was.

4 Q Ms. Iris Bryant?

5 A It was.

6 Q And the deceased, Mr. Bernard Brennan?

7 A Yes.

8 Q Did any of those match?

9 A No.

10 Q Did you find some more evidence at the scene
11 which may or may not be related to this?

12 A In doing a search of the scene, we tried to,
13 even in the dark, do the best we can as far as
14 searching for any type of evidence away from the
15 actual vehicle, which in this case is the scene. I
16 believe it's, approximately, 113 yards from the
17 vehicle, we found some shell casings, nine
18 millimeter shell casings, that appeared to have been
19 there for some time. They didn't appear to have
20 just been deposited there, but we went ahead -- I
21 went ahead and collected them also just as a matter
22 of procedure.

23 Q And you say they appeared to be there some
24 time. You could tell that from just your visual
25 observation of it?

1 **A** Yes.

2 **Q** You collected those because they were close to
3 the scene?

4 **A** I did.

5 **Q** You don't have any knowledge of whether they
6 were involved in this or not, correct?

7 **A** No. And I did process them for latent prints
8 and did not get any prints off of those either.

9 **Q** And that was my next question. You processed
10 those for fingerprints and didn't get any.

11 Can you process one and two, what's in your
12 pictures as one and two?

13 **A** No, that's not something we would process.
14 That's actually the bullet that comes out of the
15 shell casing.

16 **MR. MEADORS:** Beg the Court's indulgence.

17 **THE COURT:** Yes, sir.

18 (Pause.)

19 **MR. MOBLEY:** No objection.

20 **THE COURT:** Thank you, counsel.

21 (State's Exhibit Number 40, shell casings
22 and bullet, admitted into evidence.)

23 **BY MR. MEADORS:**

24 **Q** Sergeant, let me show you what's been entered
25 as State's 40. And are these the shell casings that

1 you described that you found, approximately, 113
2 feet, I think you said, from the scene, the vehicle?

3 **A** They are. They are the shell casings and one
4 bullet that was not fired.

5 **Q** And that was all 113.5 feet, I believe, because
6 I checked my notes, from this scene?

7 **A** 113 feet and five inches.

8 **Q** And can you open one of these?

9 **A** (Witness complies.)

10 **Q** And you testified earlier, due to the
11 condition, you thought they'd been there a while.

12 Was that just from looking at it?

13 **A** Yes, sir.

14 **Q** And you still say that today? That's your
15 opinion from looking at it again, right?

16 **A** Yes, sir.

17 **Q** Did you find any other prints on the exterior
18 of that car while you were making this initial
19 check, Sergeant?

20 **A** I did.

21 **Q** Did you find a wallet?

22 **A** No.

23 **MR. MEADORS:** Beg the Court's indulgence.

24 **THE COURT:** Yes, sir.

25 (Pause.)

1 **MR. MEADORS:** Judge, that's all we have.

2 **THE COURT:** Thank you, sir.

3 Mr. Mobley.

4 **MR. MOBLEY:** May it please the Court, Your
5 Honor.

6 **THE COURT:** Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. MOBLEY:

9 **Q** Investigator Clemens, good morning, ma'am.

10 **A** Good morning.

11 **Q** Now, a moment ago when you testified, you
12 testified that you received the call at 12:55?

13 **A** Yes, sir.

14 **Q** And the reason I ask you that is because I'm
15 looking at two different reports presumably
16 completed by you and I don't see -- I see arrived
17 time at 1:30 on one, but I don't see a documentation
18 of what time you received the call. Is there a
19 third report that you have or is that documented on
20 a third report or how do you understand -- how do
21 you know what time you received the call?

22 **A** Well, on that same report where it says
23 notified --

24 **Q** Mind if I approach you and take a look at what
25 you have versus what I have?

1 A Sure.

2 Q Thank you.

3 A This is on the call sheet.

4 Q Thank you. Now, two of the reports you
5 completed are called death scene investigation or
6 view points; is that correct?

7 A Yes, sir.

8 Q Did you do one or two?

9 A I did -- I did one on the scene, which is
10 pretty much my field notes, and then I put it in the
11 computer once I arrived. And then I also did a,
12 what we call, a call sheet that may give some
13 additional information that the death scene review
14 points might not have.

15 Q All right. Now, on your death scene
16 investigator review point report, that's a five page
17 report, correct?

18 A The actual document is five pages. All of it
19 did not pertain to what I did.

20 Q Correct. Now -- and I think there's a portion
21 for you to complete regarding the crime scene,
22 that's after the basic information, is that the
23 first section of the report, the crime scene?

24 A Yes, it is.

25 Q And did you state -- there's a place for you to

1 check off as to whether or not the crime scene is
2 properly secured, correct?

3 A It is.

4 Q All right. And did you check off yes that the
5 crime scene was properly secured?

6 A I put yes and that's based on the fact that
7 there was crime scene tape placed across the
8 roadway.

9 Q All right. Now, there's also a place, and I
10 think -- is there a space above the scene that gives
11 a brief instruction as to how to complete the form?

12 A It says, All items marked yes will be explained
13 in the narrative portion of the call sheet.

14 Q And the narrative portion of the call sheet,
15 would that be the line next to the question?

16 A Either the line or sometimes in the actual call
17 sheet that I referred to.

18 Q So with respect to the question where it asked
19 for you to fill out whether or not the scene was
20 properly secured, you put yes?

21 A I did.

22 Q There's a next line that says by who and how;
23 is that correct?

24 A Yes.

25 Q Okay. And in accordance with the instruction

1 on the form, as you indicated, All items marked yes
2 will be fully explained in the narrative portion of
3 the call sheet will be referenced by date, time and
4 item number, correct?

5 A Correct, where it's appropriate, where you have
6 the space on the form to do so.

7 Q Right. But did you document in that narrative
8 portion who and how they secured the crime scene?

9 A I put on there that crime scene tape was placed
10 across the roadway.

11 Q Okay. Did you document who secured the crime
12 scene?

13 A No, I didn't know who. I just knew the first
14 responding officers did it.

15 Q Okay. So when you arrived, you didn't know --
16 you never determined who actually secured the crime
17 scene?

18 A No, I did not, not which specific officer
19 actually placed the tape, but I knew that it was
20 there once I got there and it was secure once I got
21 there.

22 Q Now, did you document everyone that was present
23 or that arrived at the crime scene before you
24 arrived?

25 A There is a crime scene log.

1 Q Okay. Did you complete that?

2 A No, I did not. The officer that arrived
3 initially started that log.

4 Q Okay. But you, yourself, didn't document
5 everyone that was present at the crime scene that
6 arrived prior to you; is that correct?

7 A No. I wouldn't know who was there prior to my
8 getting there because I wasn't there yet.

9 Q Did you review that log?

10 A Yes.

11 Q Okay. And when did you review it? I mean, did
12 you review it before you processed the scene?

13 A No.

14 Q So you actually processed the scene prior to
15 reviewing the log sheet as to who had arrived at the
16 scene prior to you; is that correct?

17 A That's correct. But I did make contact with
18 the investigator on scene to determine who had been
19 in the scene prior to, but I did not actually look
20 at the log.

21 Q Okay. And you didn't document that, correct?

22 A No, because it was documented on the log
23 itself.

24 Q But you, yourself, didn't document who arrived
25 at the crime scene prior to you, correct?

1 A No, I did not.

2 Q And, once again, as you indicated, you didn't
3 find out or look at that list prior to you
4 processing the crime scene; is that correct?

5 A That's correct.

6 Q Okay. And did you go back and interview all of
7 the persons that were documented on that crime scene
8 list to determine or discuss any interaction they
9 had with the crime scene prior to you processing the
10 scene?

11 A I spoke with some of the deputies on the scene
12 and some of the investigators on the scene.

13 Q Okay. Ma'am, my question, respectfully, ma'am,
14 is did you look at the crime scene log and go back
15 and interview or talk to every person that arrived
16 at the crime scene prior to your arrival?

17 A The ones that were there I spoke to on the
18 scene. I did not speak to anyone after that as far
19 as anyone I had not spoken to prior.

20 Q Okay. So just so we're clear, you did not go
21 back and talk to everybody that arrived at the scene
22 prior to you getting there, correct?

23 A No, I did not.

24 Q So you don't know what, if any, interaction
25 they would have had with the crime scene prior to

1 your arrival, correct?

2 **A** I know some of the interaction because I talked
3 to them when I arrived on the scene itself.

4 **Q** Did you document the ones that you talked to
5 when you arrived on the scene?

6 **A** No, I didn't..

7 **Q** Okay. So you didn't document what they told
8 you and what you said to them?

9 **A** Not all of it, no, I did not.. I did document
10 some of my conversation with Investigator Strange on
11 my call --

12 **Q** But how many people did you talk to --

13 **MR. MEADORS:** Your Honor, objection. If he can
14 let her finish please.

15 **MR. MOBLEY:** I'm sorry.

16 **THE COURT:** I'll let you finish your answer.

17 **THE WITNESS:** As you can see, I did document
18 part of my conversation with Investigator Strange
19 who would have given me an overview of what had
20 happened prior to my arrival.

21 **BY MR. MOBLEY:**

22 **Q** But I'm looking at your report, did you put any
23 significant detail when you say -- I'm looking at
24 your report and if I'm misreading it, please let me
25 know, okay? The part I'm looking at states, Upon

1 arrival, I made contact with Sergeant Strange, was
2 advised the victim was located in the vehicle, the
3 vehicle was still running and in drive. EMS was on
4 the scene prior to arrival. But did you document
5 anything more specific than that?

6 A No, I did not.

7 Q Okay. Well, did you document who else you
8 talked to at the scene anywhere?

9 A No, I didn't.

10 Q Okay. So you didn't document who you --

11 A Because everyone that was on the scene prior to
12 my arrival was already placed on the crime scene
13 log, so I knew who had been in the scene prior to my
14 arrival.

15 Q Okay. But the people that you talked to
16 besides Investigator Strange, did you document who
17 they were in your report?

18 A No, I did not.

19 Q Okay. So you didn't document anything they
20 told you about the crime scene, correct?

21 A No, not if it wasn't significant.

22 Q But you didn't document it?

23 A No.

24 Q In fact, you didn't document you even talked to
25 them at all, correct?

1 **A** It wasn't relevant to the scene.

2 **Q** Okay. My question, ma'am, is did you document
3 who you talked to besides Investigator Strange?

4 **A** No, I didn't because through my investigation
5 when I got there and people that I spoke with, the
6 most important thing was what I spoke with
7 Investigator Strange about, that was that the
8 vehicle was still running when I got there, it was
9 in drive and that there were other personnel that
10 were there prior to my arrival, such as EMS.

11 **Q** Okay. But you never went back and talked to
12 those personnel, correct, about any interaction they
13 had with the crime scene?

14 **A** Not other than the people I spoke with that
15 night.

16 **Q** Does that crime scene log document the order in
17 which they all arrived?

18 **A** Yes, it should. Do you have a copy of that?

19 **Q** I don't have it in front of me. Do you have
20 it? Mind if I approach?

21 **A** It's got the time that they arrived in the
22 scene and the time that they left the scene and what
23 agency they were with.

24 **Q** Okay. So I'm looking at your list, and I
25 haven't seen that so please forgive me, this is my

1 first time seeing that. There are about 14 people
2 that arrived at the scene prior to your arriving,
3 correct?

4 A No. There were ten that were there prior to my
5 arrival. This is the coroner and fire removal after
6 my arrival.

7 Q Okay. Of the ten people on that list, how many
8 -- I mean, besides Investigator Strange, who can you
9 specifically recall talking to?

10 A I spoke with Investigator Turnely, Corporal
11 Lyons and Investigator Strange that I recall right
12 off the top of my head. These other personnel, EMS
13 and everyone from here, was already gone from the
14 scene prior to my arrival.

15 Q Okay. So Greg Hardee arrived first, correct?

16 A Yes.

17 Q Okay. And you didn't talk to Greg Hardee?

18 A These first five people, Hardee, Duncan and
19 these other three people, were all gone prior to my
20 arrival.

21 Q Okay. But you didn't talk to them later
22 either, correct?

23 A No, I did not.

24 Q Okay. And Barry Duncan arrived second at the
25 crime scene?

1 A Yes.

2 Q And you didn't talk to him later either,
3 correct?

4 A No.

5 Q And Joseph Wynn (ph), the third person that
6 arrived on the scene, you didn't talk to him at any
7 point, correct?

8 A He's EMS.

9 Q Okay. Did you talk to him at any point?

10 A No, I did not. Again, he was gone prior to my
11 arrival.

12 Q Okay. But you didn't talk to him after you got
13 that list either, did you, correct?

14 A There was no need for me to talk to him
15 afterwards.

16 Q But you didn't talk to him, correct?

17 A No.

18 Q Okay. And the fourth person, Neil, looks like,
19 Schmitz, you never talked to him either; is that
20 correct?

21 A There was no need for me to, I did not.

22 Q Okay. So you didn't talk to Mr. Schmitz
23 either. And the fifth person on the crime scene
24 prior to you, James Brigman?

25 A From CFD.

1 Q From CFD. What does that mean?

2 A Columbia Fire Department.

3 Q Okay. Did you ever talk to him?

4 A No, I did not.

5 Q And have you talked with Turnely -- Deputy
6 Alexander, did you talk to him?

7 A I don't recall a specific conversation with
8 him.

9 Q Okay. So you can't recall talking with Mr.
10 Alexander as well; is that correct?

11 A That's correct. He was on the scene, I'm sure
12 I did, but I don't remember the specific
13 conversation.

14 Q But you didn't document any kind of
15 conversation with that investigator, correct?

16 A I did not learn anything from him that I felt
17 needed to be documented.

18 Q Now, I want to talk about the blood -- I'm
19 sorry -- talk about your examination of the vehicle.
20 What were you looking for inside the vehicle?

21 A I did not search the inside of the vehicle. My
22 main goal there was to photograph the vehicle so
23 that it can be moved to another location.

24 Q You didn't search the vehicle?

25 A No, I did not. I did locate the two

1 projectiles just -- once the victim was removed from
2 the vehicle, I saw those two and went ahead and
3 collected those.

4 Q Now, on your report, it does have a portion
5 under 22 point 8 and 22 point 9 for hair and fiber
6 evidence; is that correct?

7 A It does.

8 Q Okay. And you checked off no under the hair
9 evidence portion, correct?

10 A I did. Again, as you can see throughout the
11 report, I did indicate that there would be -- that
12 it would be towed to the warehouse and that a
13 daytime investigator would process it. That is --
14 the no there is because this is my report and I did
15 not locate any. I also did not search for any,
16 that's why I indicated on here that it would be
17 searched in the daytime by a daytime investigator.

18 Q So you, yourself, did not search for hair and
19 fiber evidence on the scene, correct?

20 A No, I did not.

21 Q Now, I want to ask you about your observations
22 of things inside the vehicle. You took photographs,
23 but you weren't really searching -- are you saying
24 you weren't searching the vehicle? What were you
25 really doing?

1 **A** Again, I was documenting the vehicle on scene,
2 how it was when I arrived on the scene. And it was
3 to be secured and taken to the warehouse so it could
4 be processed. It was very dark outside and it was
5 late and the conditions were not optimal for
6 processing inside the vehicle.

7 **Q** But you did process a portion of the exterior,
8 correct?

9 **A** I did. Again, that was because I didn't --
10 there was a chance that that could possibly be
11 destroyed with the tow truck driver going in and out
12 of the door itself.

13 **Q** And you found the two latent fingerprints?

14 **A** I found one latent fingerprint.

15 **Q** And that was, I believe, on the driver's side
16 door?

17 **A** Yes.

18 **Q** Near the back or toward the rear --

19 **A** It was around the window frame area closest to
20 the rear door.

21 **Q** Now, you also had an opportunity to photograph
22 and look at the blood splatter inside the vehicle;
23 is that correct?

24 **A** I took general photographs of the inside of the
25 vehicle. I did not, specifically, analyze the

1 spatter in the vehicle or any of the blood.

2 **Q** But you can draw some conclusion of -- well,
3 let me ask you this. Do you have the ability and
4 the background to draw certain conclusions from
5 blood splatter?

6 **A** I can sometimes. I mean, I can, yes, if I have
7 enough documentation, if I'm on the scene and I have
8 the time to analyze it. I am qualified to do that,
9 yes, sir.

10 **MR. MOBLEY:** Beg the Court's indulgence, Your
11 Honor.

12 **THE COURT:** Yes, sir.

13 (Pause.)

14 BY MR. MOBLEY:

15 **Q** Did you document where you found blood splatter
16 in the vehicle?

17 **A** No, I did not. I documented there was blood in
18 the vehicle and that it would be -- further
19 determination would be done again once the vehicle
20 was moved.

21 **Q** I'm showing you State's Exhibit Number 13. Are
22 you comfortable basically describing for the jury
23 some of the blood splatter or other fragments or
24 material you might see on the passenger seat?

25 **A** There appears to be blood on the seat here and

1 blood on the victim's arm here.

2 Q But there appeared to be -- if you can maybe
3 step down.

4 A Sure.

5 THE COURT: Investigator Clemens, you can
6 certainly step down. I just ask that you speak loud
7 enough so the court reporter can hear.

8 (Witness leaves the witness stand.)

9 BY MR. MOBLEY:

10 Q And I want to point to something here in the
11 photograph. Do you see an item there?

12 A That appears to be blood or tissue.

13 Q Okay. After the person was shot?

14 A Yes.

15 Q All right. Now, based on your experience and
16 understanding how blood splatters, the fact that
17 there is blood not only on this portion of the seat
18 near the driver and some item or fragment that is on
19 the portion of the seat that's nearest to the door,
20 are you able to give an opinion as to whether or not
21 someone was actually in that seat at the time that
22 shot was fired?

23 A No, I can't. It would depend on where the
24 person was actually sitting, how big the person is,
25 whether or not this maybe came off of the door and

1 then came back on the seat, if it was on someone and
2 then they left it, if the blood spattered on them
3 and then they left it, you know, I don't know, not
4 based on this picture. I'd have to get more detail
5 and see if there's actually some type of spatter on
6 the seat. But just based on this and this, I can't
7 say.

8 Q You can't say either way?

9 A No.

10 Q And, I guess, my question is if someone was
11 actually sitting in the seat at the time he was
12 shot, is it likely there would be spatter -- I mean,
13 that person wouldn't catch the spatter instead of it
14 landing on the seat?

15 A Again, I'd have to look at the seat. I can't
16 see enough detail to know if there is any spatter on
17 the seat itself.

18 Q Okay. Well, I'm going to -- you see that --

19 A You understand with a spatter in reference to a
20 gunshot, residue is very, very, very small. I mean
21 -- so that I wouldn't be able to see it from just
22 this picture.

23 Q Well, do you see any spatter there? Do you see
24 what appears to be spatter in that photograph? I
25 mean, if you can't see it, you can't see it, but do

1 you see what appears to be spatter on that picture?

2 **A** Again, I don't want to guess. This is very,
3 you know, appears to be there's spatter here, here
4 and that appears to be something there. That's --
5 it's possible that is, but I can't say for sure.

6 **Q** Well, assuming that is spatter and assuming
7 that is spatter and assuming that is spatter, is it
8 likely someone was actually sitting in that seat at
9 the time the person was shot?

10 **A** Again, it would be the size of the person and
11 how they were sitting. I mean, could they have been
12 sitting with their legs open here or sitting on -- I
13 don't know.

14 **Q** I mean, for someone to have been -- I mean,
15 there's spatter in various portions of this seat, I
16 mean, could someone be sitting in this seat and not
17 cover all of the different portions at the exact
18 same time a person was shot?

19 **A** Again, the person was shot five times, so I
20 don't know if maybe this person was there and moved
21 or, you know, I don't know. I wouldn't want to make
22 a --

23 **Q** Okay. Well, I guess my question is this, okay,
24 and I understand you're going over different
25 possibilities, but I'm saying based on the fact that

1 there's spatter in various portions of this seat, I
2 mean, is it likely that a person was sitting in that
3 seat or not? I know you said anything is possible,
4 but is it likely someone was sitting in that seat or
5 not at the time he was shot based on the splatter in
6 various portions of the seat not just one portion?

7 **A** Without me looking at it in more detail, I
8 wouldn't feel comfortable making that call.

9 **Q** All right. Thank you.

10 **A** (Witness resumes the witness stand.)

11 **Q** As you indicated to Mr. Meadors, you actually
12 found a second set of shells at the crime scene as
13 well, correct?

14 **A** I did.

15 **Q** And I want to ask you about the fingerprints
16 for the projectiles you found inside the vehicle.
17 Did you find any type of fingerprints on those at
18 all?

19 **A** No.

20 **Q** Any latent prints at all?

21 **A** I did not process the fragments.

22 **Q** Now, once you did your preliminary process in
23 the vehicle, who else got the vehicle?

24 **A** The vehicle was towed to a warehouse. And I
25 believe it was processed by Investigator Russell,

1 Investigator Livingston, Investigator Sanders and
2 Lieutenant Padgett.

3 Q Did they do a more thorough process than you
4 were able to do at the crime scene?

5 A Yeah. Again, like I said, the interior was
6 processed and the exterior was processed under those
7 conditions in the warehouse.

8 Q Processed thoroughly?

9 A Yes.

10 Q Okay. Looking for physical evidence, anything
11 at all that might give some indication as to what
12 happened inside the vehicle?

13 A Yes.

14 Q Okay. And after they looked at it, what else
15 happen -- what happened to the vehicle then?

16 A I don't know for sure. It would have been
17 towed out of the warehouse for further disposition
18 by the investigators.

19 Q Was it ever given back to Hilda Brennan?

20 A I don't know that.

21 Q You don't know that. Well, a minute ago when
22 he asked you about a projectile, State's Number 32,
23 that was handed in by Hilda Brennan, do you recall
24 being asked about that?

25 A Yes, I do.

1 Q So based on your understanding that after you
2 looked at that vehicle, after Sergeant Russell --
3 Mr. Russell, Mr. Padgett and who else?

4 A Sanders and Livingston.

5 Q Looked at the vehicle and it was returned to
6 Ms. Brennan, she actually came back and found
7 another projectile that apparently everybody missed?

8 A That's correct. And if I can go back, this is
9 based on what I learned through the investigation
10 not on my doing it myself, but I was advised that
11 whenever she went to go -- the vehicle was returned
12 to her. And when she went to get the windshield
13 replaced, that the bullet was located in a place
14 that we would not have been able to get to it and
15 was not able to get -- was located until the
16 windshield was removed from the vehicle.

17 Q So you didn't look in the bottom of the
18 windshield?

19 A Again, that's based on what I've heard is that
20 it was at a place where we would not have been able
21 to locate it.

22 Q But you don't know that for a fact, correct?

23 A No. Like I said, I was just advised that.

24 Q Okay. You just know that, at some point, the
25 wife of Bernard Brennan, who's not a forensic

1 expert, who's not a crime scene expert, at some
2 point, found a projectile.

3 MR. MEADORS: Your Honor, objection. If he can
4 put it in the form of a question, I think he's
5 trying to testify.

6 THE COURT: Sustained. I'll let you ask her a
7 question.

8 BY MR. MOBLEY:

9 Q What you do understand is, based on your
10 understanding, that Hilda Brennan found this
11 projectile, correct?

12 A It is my understanding that the people who
13 replaced the windshield found it whenever they
14 removed the windshield.

15 Q But you didn't find the projectile, correct?

16 A It's my understanding -- I've already said I
17 didn't find it. I didn't look for it. And, again,
18 it was located once they removed the windshield.

19 Q And that's your understanding of where it was
20 located?

21 A That's correct.

22 Q You just know it was found in the vehicle
23 somewhere?

24 A All I know is that it's right here right now
25 and it was brought in by Ms. Brennan.

ANNA ELSEY CLEMENS - CROSS BY MR. MOBLEY

221

1 Q Okay. But you know that you didn't locate it
2 and you know that Mr. Padgett and Mr. Russell didn't
3 locate it, correct?

4 MR. MEADORS: Your Honor, objection, asked and
5 answered.

6 THE COURT: I think we've plowed this ground
7 several times with this witness. Unless you have a
8 different question as to this same topic, I'm going
9 to sustain the objection.

10 BY MR. MOBLEY:

11 Q And when you talk about different types of
12 evidence that can't be seen with the naked eye,
13 trace evidence, latent fingerprints, those are
14 things that cannot be seen by the naked eye for the
15 most part, correct?

16 A Trace evidence --

17 Q Well, some trace evidence?

18 A Some trace evidence you would need some
19 assistance.

20 Q Okay. But generally projectiles, bullet
21 fragments, things along those lines, those can be
22 seen with the naked eye, correct?

23 A Again, depending on where they're located.

24 Q But from a visible standpoint -- from a visible
25 standpoint an item the size of this bullet fragment

1 can be seen with the naked eye; is that correct?

2 A Again, depending on where it is. It could be
3 located behind a door, up under the windshield, we
4 wouldn't be able to get to it until the windshield
5 itself was removed.

6 Q But it was missed?

7 A No, I wouldn't say that based on what I know.

8 Q You wouldn't say it was missed?

9 A No. What I'm saying is we did not collect it,
10 but we were not able to know that it was there until
11 the windshield was removed.

12 Q That's assuming that's where it was?

13 A You're asking me to testify based on the --
14 what I was advised and that's what I was advised.

15 Q I understand. But it was in the vehicle?

16 A Yes, sir.

17 Q I think you would agree with me that a fragment
18 is pretty important evidence at a crime scene?

19 A It could be --

20 Q Bullet fragments?

21 A -- if -- yeah, depending on, you know, what
22 type of analysis might be able to be done with it,
23 but we would definitely collect it if we locate it.

24 Q Now, with respect to the fingerprint analysis,
25 as you indicated, the fingerprint that you took off

ANNA ELSEY CLEMENS - CROSS BY MR. MOBLEY

223

1 the driver's side door, you did compare that to the
2 fingerprint of Carmen Rice, correct?

3 A I did.

4 Q Okay. And the result was no match whatsoever;
5 is that correct?

6 A There was no match identified, that's correct.

7 Q Now, when you selected other people to compare
8 their fingerprint to, how did you select the people
9 to compare their fingerprint to?

10 A I did not select them, they were brought to me
11 by the investigators.

12 Q Okay. Different investigators that actually
13 would come in and -- would come and ask you to
14 compare the print to a particular suspect or a
15 particular individual?

16 A That's correct.

17 Q All right. Did anyone ever ask you to compare
18 that print to Amber Byrd?

19 A No.

20 MR. MOBLEY: That's all I have from this
21 witness, Your Honor.

22 THE COURT: Thank you, sir.

23 Mr. Meadors.

24 MR. MEADORS: A couple of brief follow-ups
25 please. If it please the Court.

REDIRECT EXAMINATION

BY MR. MEADORS:

Q Sergeant, he asked you about this crime scene log, and I may have misheard it. Were you aware this was turned over in discovery? And I think he said he had never seen it, but this was turned over in discovery, the crime scene log.

In State's 32, he's just been asking you, if the record will reflect, this was admitted without objection, is that the number five he was asking you about?

A Yes, item five.

Q And it's your understanding that came after a window was replaced on Hilda's -- the Mercedes; is that right?

A Yes, sir.

Q If you had talked to everybody who had been on the scene that night, would that have changed what you did that night with the car?

A No. Again, I would, you know, document -- by the crime scene log, I knew who had been in the scene and I documented what I thought was important, again, that the car was running. Initially, it was not running when I got there.

Q Are law enforcement officers in AFIS?

JERRY RUSSELL - DIRECT BY MR. LUPTON

225

1 **A** Yes.

2 **MR. MEADORS:** Thank you. That's all we have.

3 **THE COURT:** Okay. Mr. Mobley.

4 **MR. MOBLEY:** Nothing further from this witness,
5 Your Honor.

6 **THE COURT:** Thank you, sir.

7 Sergeant, you may step down. Thank you.

8 Any reason not to excuse Sergeant Clemens?

9 **MR. MOBLEY:** No objection.

10 **THE COURT:** Sergeant, you're free to come and
11 go as you please. Thank you.

12 **MR. LUPTON:** Your Honor, the State calls J.
13 Russell, Investigator J. Russell.

14 JERRY RUSSELL,

15 having been duly sworn, testified as follows:

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

18 **THE WITNESS:** My name is Jerry Russell.

19 DIRECT EXAMINATION

20 BY MR. LUPTON:

21 **Q** Could you tell the jury where you work?

22 **A** I'm a forensic investigator with Richland
23 County Sheriff's Department here in Richland County.

24 **Q** And could you tell the jury about your
25 experience in law enforcement, how long you've been,

1 what your training is?

2 **A** Yes. I've been in crime scene for a little
3 over three and a half years. I've been in law
4 enforcement just about ten years. My experience
5 involves crime scene investigation, processing crime
6 scenes from arrival on scene all the way up through
7 the -- court.

8 We go in, look for evidence, process for latent
9 fingerprints, take photographs, collect evidence.
10 Sometimes we have evidence we take back to the lab
11 and actually process it for prints or whatever might
12 need to be done to it in the lab just because the
13 environment's a little different. If something
14 can't be moved or taken back, then we do it there on
15 the scene.

16 **Q** And do you have any specialized training in
17 this -- these items, crime scene investigation,
18 fingerprints?

19 **A** Yes, sir. I've been qualified as a latent
20 print examiner. I've also been to basic fingerprint
21 and advanced fingerprint. As far as processing an
22 item, latent fingerprints are hidden fingerprints,
23 so to make them where you can see them, you've got
24 to be able to put powder on them or whatever
25 technique it may take to bring them out where you

JERRY RUSSELL - DIRECT BY MR. LUPTON

227

1 can see them and lift them and photograph them. And
2 so forth and so on with anything involved in a crime
3 scene, I've been to a lot of extensive training on
4 that.

5 Q And during the course of your employment as a
6 crime scene investigator, do you have experience
7 processing crime scenes and lifting fingerprints?

8 A That's correct.

9 Q And, approximately, how many crime scenes have
10 you processed, approximately, how many fingerprints
11 have you -- latent fingerprints have you lifted?

12 A I've processed probably a hundred or so crime
13 scenes or better. Latent fingerprints, literally
14 thousands.

15 MR. LUPTON: Your Honor, at this point, I move
16 to qualify this witness as an expert in crime scene
17 investigation and fingerprint analysis.

18 MR. MOBLEY: No objection, Your Honor.

19 THE COURT: Thank you, counsel. Without
20 objection, he's so qualified and may testify as
21 such.

22 BY MR. LUPTON:

23 Q What were your -- first of all, were you
24 working the morning after this murder, October 26th,
25 2001?

1 A Yes, sir.

2 Q And what were your duties at that time?

3 A I was on a day shift duty at that time.

4 Q Were you working in the Crime Scene
5 Investigation Unit?

6 A Yes, sir.

7 Q And were you involved in this particular case?

8 A Yes, sir, I was.

9 Q Could you tell the jury what you did in this
10 case?

11 A The morning after this incident took place,
12 Sergeant Clemens had left specific -- what we do
13 when someone's working on nights, we'll leave things
14 that can't be done for whatever reason during the
15 night, we'll leave detailed notes on what we need to
16 do the next day to complete processing a crime scene
17 or items from a crime scene to continue working on
18 it. Even though the night person is going home,
19 somebody else will pick up.

20 On that morning, I was advised that we would
21 have an autopsy on the victim, that someone would
22 need to attend the autopsy. And, also, there was a
23 vehicle that had been towed and secured that would
24 also need processing, it was involved in this
25 particular incident.

JERRY RUSSELL - DIRECT BY MR. LUPTON

229

1 Q And did you go to a location to process the car
2 in this case, the victim's car?

3 A That's correct.

4 Q And where was that location?

5 A It's located at 401 Powell Road. It's a
6 warehouse that's owned by the sheriff's department.
7 That's where we take vehicles that are going to need
8 extensive processing.

9 When you go through or have a warrant to go
10 through -- a search warrant for a vehicle, there's a
11 lot of things that the actual elements, sunlight,
12 rain, whatnot, may destroy fingerprints or any other
13 evidence, we put them in this, we call it, the shed.
14 It's actually a warehouse, kind of a garage that
15 they're kept in for us to do what we need to do in a
16 controlled environment instead of outdoors.

17 Q And you went to this warehouse and processed
18 the car; is that correct?

19 A That's correct.

20 Q And could you describe what you did, what that
21 involved?

22 A It involved photographing the vehicle, that's
23 usually the first thing we do is take complete all
24 around photographs of the outside of the vehicle.
25 We'll then take photographs of the inside. We want

1 to preserve in those photographs the scene just like
2 it is when I find it. And when I say scene, I'm
3 talking about the vehicle in this particular case.
4 But after I photograph everything in this particular
5 car, we --

6 Q Well, let me stop you there, interrupt you for
7 a moment. Show you what's been marked as State's
8 Exhibits 22, 23, 24, 25 and 26, ask you if you can
9 identify what those are?

10 A These are photographs I took of the victim's
11 vehicle located inside our garage there.

12 MR. LUPTON: And, Your Honor, I believe without
13 objection, 22 through 28.

14 MR. MOBLEY: No objection, Your Honor.

15 THE COURT: Thank you, sirs. Without
16 objection, those are admitted.

17 (State's Exhibit Numbers 22 through 28,
18 photographs, admitted into evidence.)

19 BY MR. LUPTON:

20 Q Could you explain what these pictures show,
21 State's Exhibit 22?

22 A This is the front of the vehicle taken from an
23 angle on the right side, or passenger side, across
24 the hood at the windshield there where the -- where
25 a projectile struck the windshield and obviously

JERRY RUSSELL - DIRECT BY MR. LUPTON

231

1 spider webbing a crack in the windshield of the
2 vehicle.

3 Q All right. And going from on the photograph as
4 you're looking at it far right, is there another
5 spot further over?

6 A Yes, sir.

7 Q And then one in the middle. And what's that?

8 A That's the same kind of indentation or just
9 crack in the windshield that was hit by -- struck by
10 some type of object.

11 Q Is it three cracks?

12 A Yes, sir.

13 Q And would those be consistent with being struck
14 by bullets?

15 A Yes, sir.

16 Q And there's been some talk about where a
17 particular bullet was found, State's Exhibit 32.
18 Did you process this car?

19 A Yes, sir.

20 Q Is there an area between the windshield and the
21 dash board where you would not have been able to
22 observe where a bullet could have been lodged --

23 A Yes, sir.

24 Q -- where it would not have been observable with
25 the windshield in?

1 **A** Yes, sir.

2 **Q** And you were not in here during Ms. Clemens'
3 testimony; is that correct?

4 **A** That's correct.

5 **Q** State's Exhibit 23?

6 **A** Close-up photograph with a scale in it of
7 the --

8 **Q** One of the bullet holes in the windshield?

9 **A** Yes, sir.

10 **Q** And State's Exhibit 24?

11 **A** This is the -- appears to be the right-hand or
12 passenger side door of the vehicle with a blood spot
13 here on the -- right below the window there above
14 the door handle.

15 **Q** And State's Exhibit 25?

16 **A** Another close-up of the cracked windshield just
17 right directly in front of the driver. You can see
18 the steering wheel in that one.

19 **Q** And these spots that are on the windshield?

20 **A** Those are on the inside. Those are -- that's
21 blood spatter on the inside of the windshield.

22 **Q** And would that be consistent with a person
23 having been shot from -- the person sitting in the
24 driver's seat having been shot from behind?

25 **A** Yes, sir.

JERRY RUSSELL - DIRECT BY MR. LUPTON

233

1 Q State's Exhibit 26?

2 A This is the left rear or driver's side back
3 door, right inside the door here, just -- the
4 driver's seat here, the door's open. That's just a
5 shot from that view showing that.

6 Q And if you look, there appears to be something
7 on the headrest of the driver's seat?

8 A That's correct.

9 Q And can you tell the jury what that was?

10 A That's where soot and material -- nitrate or
11 material from a gunshot was actually smudged up on
12 the seat, as well as some blood on the -- right
13 below the headrest there.

14 Q And what, if anything, would that indicate to
15 you?

16 A That somebody fired a weapon from the back seat
17 position through the front seat.

18 Q Where would the barrel be in location to the
19 soot?

20 A Right up against the seat. Usually, you don't
21 have that -- those type of materials aren't present
22 unless it's a close-in shot, something that's going
23 to be basically stuck up on top of something.

24 Q And was there a hole found in the seat, a
25 bullet hole?

1 **A** Yes. I believe there was. From that photo, I
2 don't see one and I'd have to look back at my notes
3 to be sure.

4 **Q** If there is no hole in the seat as indicated,
5 what would that indicate to you?

6 **A** That the bullet didn't go through the seat, it
7 went into something else.

8 **Q** That then would be consistent with somebody
9 firing over the seat?

10 **A** Yes, sir.

11 **Q** Between the seat and the headrest?

12 **A** That's correct.

13 **Q** Now, is there any blood depicted in the back
14 seat there?

15 **A** Not in this photo I don't see any back on the
16 back seat.

17 **Q** State's Exhibit 27?

18 **A** It's a shot from the inside of the driver --
19 the driver door. This is the gear shift and console
20 and the seat, the passenger seat, with some blood
21 over on the passenger seat, the front passenger seat
22 of the vehicle.

23 **Q** And, finally, on State's Exhibit 28?

24 **A** That's shooting from through the back --
25 sitting in the back seat, middle ways, just up

JERRY RUSSELL - DIRECT BY MR. LUPTON

235

1 towards the front of the vehicle showing the same
2 cracks on the windshield and whatnot.

3 Q Indicating that -- consistent with three
4 bullets having struck that windshield?

5 A That's correct.

6 Q Now, in the process of -- in the process of
7 processing the car, did you search for fingerprints?

8 A Yes, sir.

9 Q And were you able to find any -- well, first of
10 all, describe the process briefly about how you
11 would search for a latent fingerprint or how you
12 would search for latent fingerprints in --

13 A The outside of the vehicle, I use black
14 fingerprint powder to process the car. It's a real
15 fine powder. It adheres to the moisture that's left
16 by a fingerprint. If there's anything there, the
17 powder is so fine, it's going to adhere to it.

18 Q And that brings up something. Let's back up a
19 second before you go into that. Could you describe
20 for the jury briefly how is a latent fingerprint
21 left on an object?

22 A The moisture in your finger that's excreted
23 through the pores in your fingertip, friction ridge
24 skin is what it's called, the technical thing --
25 word for fingerprints, that moisture is about 90

1 percent water when it's left on an object, such as
2 me touching this, if it's left in direct contact,
3 it's going to leave something, sometimes it doesn't
4 leave anything. If there's dust there, the dust is
5 going to adhere to the moisture.

6 It's kind of like sticking your finger in a
7 sugar dish. When you're a kid, you lick your
8 finger, stick it in a sugar dish, pull it out,
9 you've got sugar on your finger, same thing's going
10 to happen on a fingerprint. Because you've touched
11 something, doesn't necessarily mean you're going to
12 leave a print.

13 If you do leave a print, the dust adheres to it
14 and makes that latent print, or hidden print, makes
15 that print visible and then it can be photographed
16 or lifted or whatever you need to do with it.

17 **Q** So it's possible for a person to touch an
18 object or be present in a location without leaving
19 fingerprints?

20 **A** That's correct.

21 **Q** And those fingerprints, once they are --
22 assuming that a fingerprint is left on something,
23 how hard would it be to wipe that off?

24 **A** Not hard at all. You can -- a fingerprint can
25 be wiped away from a surface.

JERRY RUSSELL - DIRECT BY MR. LUPTON

237

1 Q A person with a cloth could do that?

2 A Yes, sir.

3 Q As far as -- once you processed this car, and I
4 apologize for having interrupted you, please
5 continue with that.

6 A The outside of the vehicle, you use the powder
7 to, what we call, process, just painting the powder
8 on. You paint it on there with a fiber glass brush.
9 If there's any moisture there or anything like --
10 any moisture at all, anything sticky, the powder's
11 going to stick to it.

12 The inside of the vehicle, we used
13 cyanoacrylate fuming packets, simpler term of that
14 is you've heard of Super Glue fuming. These packets
15 are torn open. You heat them up. You can heat them
16 up rubbing them in your hands (indicating). You
17 tear them open.

18 The cyanoacrylate, when it's exposed like that
19 to the air in this form, it turns into a fume. You
20 put cups of water in there to create some humidity.
21 That's what we did to the inside of this vehicle.
22 It will adhere -- a cyanoacrylate fume will adhere
23 to moisture, amino acids or just plain water, it
24 will adhere to a fingerprint like on the inside of
25 the vehicle. That's what we do on the inside.

1 The outside, we didn't use that process, we
2 just used black fingerprint powder.

3 Q So you processed the car in this way for
4 fingerprints and did you find any latent
5 fingerprints?

6 A I did. I lifted a latent fingerprint from the
7 outside, I'm looking at my notes here, from the
8 outside, left rear door of the vehicle, also a palm
9 print from the inside, wood-grain panel of the
10 driver's door.

11 Q And were either of these fingerprints
12 sufficient for comparison?

13 A No, sir.

14 Q And could you explain to the jury what that
15 means?

16 A Lifting a print, once you make it visible, it's
17 no longer latent, it's a visible print. You lift it
18 with tape. It's kind of like Scotch tape or packing
19 tape, it's clear tape. You put it on the print, you
20 peel it back and lift it and you stick it on a card.

21 A lot of times the actual characteristics or
22 what some people call points, minutia points in
23 there, and whether it be a latent print or a palm
24 print, there aren't, what we call, insufficient
25 ridge detail. It's just not enough specific

JERRY RUSSELL - DIRECT BY MR. LUPTON

239

1 characteristics to make a match or to really
2 identify. Some of them aren't even -- they're just
3 somewhat of a smudge. I mean, to you, it's a
4 fingerprint, to me, it's just a smudge because
5 there's no characteristics there to identify or make
6 a match or not a match or whatnot.

7 Q So, basically, you lifted two smudges?

8 A Yes, sir.

9 Q And -- and these were not -- you couldn't run
10 these smudges against anyone; is that correct?

11 A That's correct.

12 Q And you were talking about the tape. What else
13 would you use that tape for?

14 A Fingerprint tape?

15 Q Well, was there trace evidence tape used in
16 this case?

17 A Yes, sir, I did use this trace evidence -- it
18 was a finer tape. It looks like masking tape, but
19 it's got a real stiff back on it. It's just used to
20 adhere to surfaces. You use kind of -- kind of like
21 the thing you get lint off your clothes with, same
22 concept. We use it on seats, carpet, whatever type
23 object it is to -- it will pick up hair, fiber,
24 anything that's on there and it just secures it to
25 that adhesion. You put it inside an envelope. And

1 that's how we collect hair, fiber, trace evidence.

2 Q And did you use the trace evidence tape in this
3 case?

4 A Yes, sir.

5 Q And what did you collect with that?

6 A I collected, to the visible eye, what appeared
7 to be several hairs on the tape. There again, trace
8 and fiber, all that stuff is microscopic. It's not
9 something you can -- the naked eye can just identify
10 what's on the tape. There could have been a hundred
11 different things on the tape.

12 Q Well, did you, specifically, did you find three
13 small hairs?

14 A Yes, sir.

15 Q And could you describe those hairs?

16 A They just appeared to be short body hairs.
17 Again, I'm not a trace and fiber expert, but it's --
18 common sense tells you it was just a hair from
19 somebody, I don't know who.

20 Q Consistent with like the hair on my arm, about
21 that size?

22 A That's correct, yes, sir.

23 Q So it was that small?

24 A Yes, sir.

25 Q And I understand you're not a DNA expert, but,

JERRY RUSSELL - DIRECT BY MR. LUPTON

241

1 based on your knowledge, were those hairs sufficient
2 to do normal DNA analysis on them?

3 A Yes, sir. The individuals that -- that's their
4 discipline or specific to that, they can identify
5 the type of hairs and also use what they call PCR
6 DNA. And those hairs did, to me, appear to be --
7 there was something there that they could use to do
8 some type of DNA work on.

9 Q Well, are you familiar, in this case, with what
10 was done with these hairs?

11 A Yes, sir.

12 Q And the DNA experts, did they look at these
13 hairs?

14 A Yes, sir.

15 Q DNA experts at SLED and Richland County?

16 A Yes, sir.

17 Q And did they determine that the hairs were
18 insufficient for regular or what's called PCR DNA
19 analysis?

20 A Yes, sir, that's correct.

21 Q So they said that they couldn't do it?

22 A Right.

23 Q Now, are you familiar with something called
24 mitochondrial DNA?

25 A Yes, sir.

1 Q And is that, when a lay person talks about DNA
2 analysis, something that can be done by SLED or
3 Richland County DNA lab, is mitochondrial DNA what
4 we would be talking about?

5 A No, sir.

6 Q And do you know is mitochondrial DNA different
7 or more difficult to process?

8 A Yes, sir. My knowledge as a crime scene
9 investigator, mitochondrial is a more extensive, not
10 the run of the mill, it's more extensive and more
11 expensive, something -- a little more detail has to
12 be done with the it.

13 Q And when you say extensive, are you talking
14 about the process to analyze it?

15 A Yes, sir.

16 Q Not the results you get, but the process to
17 analyze it?

18 A Right.

19 Q So it's more difficult and requires a different
20 process?

21 A Yeah, different instruments and a lot more than
22 what we do.

23 Q And are you familiar with the fact that, in
24 this case, the three hairs were eventually sent to a
25 laboratory in northern Virginia for analysis?

JERRY RUSSELL - DIRECT BY MR. LUPTON

243

1 A Yes, sir.

2 Q And why would they have to be sent off to
3 Virginia for analysis?

4 A To do the actual mitochondrial DNA. That's
5 something that we don't do here.

6 Q SLED and Richland County DNA labs do not have
7 that capability?

8 A That's correct.

9 Q And is that an expensive process?

10 A Yes, sir. From what I've been told, it's very
11 expensive.

12 Q And, in this case, that was eventually done?

13 A That's correct.

14 Q And the three hairs were sent off?

15 A Correct.

16 Q And are you aware of who was -- who the hairs
17 were tested against?

18 A In this particular case, they were tested, the
19 victim and the defendant and also another, I
20 believe, codefendant.

21 Q Iris Bryant?

22 A Yes, sir.

23 Q And do you know how much that process cost?

24 A Not the exact figure, I'm sure it was thousands
25 of dollars.

1 Q Do you know, approximately, how much it costs?

2 A Around \$20,000.

3 Q About \$20,000?

4 A Yes, sir.

5 Q But that was done in this case?

6 A Yes, sir.

7 Q Is that part of the standard procedure?

8 A No, sir.

9 Q And do you know the results of that DNA
10 analysis?

11 A They actually identified that one was the
12 victim -- was identified with the victim, an
13 unknown, and I believe one was insufficient to
14 actually -- an insufficient sample.

15 Q One of them -- well, it could even be, was too
16 small for DNA to be extracted even with
17 mitochondrial?

18 A That's correct.

19 Q And one came back as the victim's hair in the
20 victim's car?

21 A Correct.

22 Q And then one we just don't know who it was?

23 A Don't know who it was.

24 Q This car was towed?

25 A That's correct.

JERRY RUSSELL - DIRECT BY MR. LUPTON

245

1 Q There were several officers that inspected the
2 car. Anna Clemens processed it partially?

3 A Yeah. On the scene, yes, sir.

4 Q And based on your -- also, based on your
5 knowledge in processing crime scenes, is it uncommon
6 for people to leave hairs in a car that they've been
7 in?

8 A No, sir, that's common. You leave something
9 everywhere you go.

10 Q Is it possible for that hair to have been there
11 for any length of time?

12 A Yes, sir, that's very possible.

13 Q And, also, again, would that be the kind of
14 thing -- and I believe you've got pictures. Do you
15 recall what the upholstery was in this car?

16 A A leather upholstery or vinyl.

17 Q And if somebody were to wipe down that car,
18 would it be possible to remove any hairs that might
19 possibly have been there?

20 A Yes, sir, that is possible.

21 Q Now, the blood spatter picture, did you take
22 samples of the blood spatter for DNA analysis?

23 A Yes, sir, I did collect some blood samples in
24 this case in the vehicle.

25 Q And I believe you took them from three

1 different locations; is that correct?

2 A That's correct.

3 Q Plus a standard from the victim at autopsy?

4 A Yes, sir.

5 Q And was that sent off to SLED for a DNA
6 analysis?

7 A Yes, sir, it was.

8 Q And they were able to analyze blood through the
9 regular DNA analysis; is that correct?

10 A That's correct.

11 Q And are you familiar with the report in that
12 case?

13 A Yes, sir, I have a copy of that report.

14 Q And whose blood was the DNA analysis -- whose
15 blood did it come back as?

16 A As Bernard Brennan, the victim in this case.

17 Q So all of the blood that was in the car, all of
18 that blood spatter, was all his blood?

19 A Yes, sir.

20 Q And you also testified about the autopsy --

21 A That's correct.

22 Q -- and that you attended the autopsy?

23 A Yes, sir.

24 Q And you took photographs, some photographs of
25 that?

JERRY RUSSELL - DIRECT BY MR. LUPTON

247

1 **A** Yes, sir, took 35 millimeter color photographs
2 there at the autopsy.

3 **Q** And Doctor Clay Nichols is going to testify to
4 that later and he'll put in most of that evidence.
5 But I would like to show you State's Exhibit 21 and
6 29. Do you recognize those?

7 **A** Yes, sir.

8 **MR. LUPTON:** I believe this is also without
9 objection.

10 **MR. MOBLEY:** Without objection.

11 **THE COURT:** Without objection, it's admitted.

12 (State's Exhibit Numbers 21 and 29,
13 photographs, admitted into evidence.)

14 **BY MR. LUPTON:**

15 **Q** Could you explain what those were?

16 **A** Those are projectiles that were actually
17 collected at the autopsy. They were labeled with
18 the numbers one and five. That was the numbers I
19 assigned it for report writing purposes.

20 **Q** And what would those -- that numbers one and
21 five correspond with?

22 **A** The projectiles collected from the victim's
23 actual -- taken from his body.

24 **Q** Did the -- as part of the coroner's report and
25 the autopsy report, was there a chart made of the

1 victim's body and the bullet holes in his body?

2 A Yes, sir.

3 Q And in that, did they number one through five
4 bullet holes?

5 A I believe so. I don't have a copy in front of
6 me.

7 Q And would those one through five have
8 corresponded to the numbers they used?

9 A That's correct.

10 Q So they wouldn't be any relation to the one and
11 two that was used by Anna collecting at the scene?

12 A No, sir.

13 Q And -- and Doctor Nichols will testify about
14 the results of the autopsy.

15 MR. LUPTON: I apologize, Your Honor, if I
16 could have a moment.

17 THE COURT: Yes, sir.

18 (Pause.)

19 BY MR. LUPTON:

20 Q What kind of activity could result in a
21 fingerprint being smudged?

22 A There's numerous things that could cause a
23 fingerprint to smudge, the pressure that's applied
24 to the surface, how much moisture was actually on
25 the fingertip and that's controlled by the climate,

JERRY RUSSELL - DIRECT BY MR. LUPTON

249

1 how dry someone's hands will be. Also, a perfectly
2 good fingerprint could be wiped away using a cloth
3 or any old thing.

4 Q Somebody wiping away could smudge it?

5 A Yes, sir.

6 Q There's testimony about the gunshot residue.
7 Was that -- any test ever run on the gunshot
8 residue?

9 A Yes, sir, there was. Two different gunshot
10 residue samples were taken. On the vehicle, I took
11 some sticky tabs, as well as I completed a gunshot
12 residue kit on the victim there at the autopsy.

13 Q And why would the victim -- why would you do a
14 gunshot residue kit on the victim?

15 A To identify if they had been in the vicinity or
16 close up with a -- when you fire a weapon, a handgun
17 or whatnot or any weapon for that matter, the
18 gunshot residue, as it's called, it's microscopic,
19 but it comes out of the -- and here again, I'm not
20 an expert on it, but just common sense, it comes out
21 in the air and if you got it in your hand, it's
22 going to land on your hand. It's protocol at an
23 autopsy involving a shooting.

24 Q So gunshot residue on the victim's hands would
25 show that he was in the presence of a gun when it

1 was fired?

2 A It could or could not. That's the reason for
3 doing the test.

4 Q Well, if it was positive, if the gunshot
5 residue -- if there was gunshot residue present,
6 that would indicate --

7 A That he was near a gun when it was fired.

8 Q And, presumably, so would the five bullet holes
9 in his back?

10 A That's correct.

11 Q But is that part of your standard procedure?

12 A At an autopsy where the victim -- where it's
13 involving a gunshot, yes, that's something we do at
14 every autopsy.

15 Q And is that based on any belief that the victim
16 in this case may have fired a gun?

17 A No, sir. It's just a standard if -- the hands
18 are usually bagged on the scene to preserve the
19 evidence when we get to the autopsy. If a gun -- if
20 a gun was used in the crime --

21 Q Well, let me ask you, was that done in this
22 case, the bagging of the hands?

23 A Let me look at my notes here. Yes, sir, it
24 was. Both hands were bagged when the body bag was
25 opened that morning.

JERRY RUSSELL - CROSS BY MR. MOBLEY

251

1 Q Now, you took the gunshot residue kit samples?

2 A That's correct.

3 Q Were they sent off and analyzed?

4 A Yes, sir, sent to SLED for analyzing.

5 Q And were they positive for gunshot residue?

6 A Yes, sir.

7 Q Both on the victim and inside the car?

8 A Yes, sir, they were.

9 Q So the soot and powder that's shown in all of
10 the pictures that had been put into evidence that
11 everybody's been referring to as, apparently,
12 gunshot residue, that was confirmed through testing
13 as actual gunshot residue?

14 A Yes, sir.

15 MR. LUPTON: No further questions.

16 MR. MOBLEY: May we approach, Your Honor?

17 THE COURT: Yes, sir.

18 (Whereupon, a bench conference was held off
19 the record, in the presence of the jury, but out of
20 the hearing of the jury.)

21 THE COURT: Mr. Mobley.

22 MR. MOBLEY: Thank you. May it please the
23 Court.

24 *****

25 *****

1

CROSS-EXAMINATION

2

BY MR. MOBLEY:

3

Q Investigator Russell, good afternoon, sir.

4

A How are you, sir?

5

Q Very well. Just a few questions for you, sir.

6

Mr. Lupton asked you about whether or not wiping

7

down a surface can remove prints and things along

8

those lines; do you recall that?

9

A Yes, sir.

10

Q Is there any evidence, from your standpoint,

11

that indicate that anyone tried to wipe down any

12

surface inside that vehicle?

13

A I don't have any way of knowing that they did

14

or didn't. I don't look for wiping down...

15

Q But you were not given any information to

16

suggest that any person, at any time, tried to wipe

17

down any surface in that vehicle, correct?

18

A No, sir.

19

Q And, as you indicated, you did find a palm

20

print on the inside wood-grain panel portion of the

21

driver's side door, I believe?

22

A Yes, sir.

23

Q Okay. And you took that palm print and I think

24

you ran it through, is it AFIS?

25

A No, palm prints aren't run through AFIS.

JERRY RUSSELL - CROSS BY MR. MOBLEY

253

1 Q Okay. Just fingerprints?

2 A Yes, sir.

3 Q Okay. And you tried to compare that palm print
4 to Carmen Rice; is that correct?

5 A I didn't, someone did, but I didn't do that
6 myself.

7 Q Okay. Do you have that -- do you have that
8 report?

9 A Yeah, there was a report done where a
10 comparison was made to everybody involved in the
11 case.

12 Q Okay. But, based on your understanding, it was
13 not matched to Carmen Rice; is that correct?

14 A That's correct. It was insufficient to match
15 to anyone.

16 Q All right. And you also did a trace analysis
17 of the vehicle; is that correct?

18 A Yeah. I collected trace evidence.

19 Q And trace would be considered hair and fiber
20 evidence?

21 A Yes, sir.

22 Q And what can you tell me about fiber evidence?

23 A Fiber is just another word for thread, cloth,
24 fuzz, just any -- trace pretty much sums it up. It
25 could be hair, fiber, just about anything.

1 Q And what's the significance of finding trace
2 evidence? I mean, why do you want to try to find
3 trace evidence at a crime scene?

4 A To identify if -- like a hair, to identify if
5 someone had left something behind, just basically
6 leave something there. It could be a fiber, it
7 could be a fiber from clothing.

8 Q So, generally, once you find fiber evidence,
9 what's done with it?

10 A It's sent in to someone to analyze, usually a
11 chemist or one of the DNA doctors. And they
12 actually identify if it's something that's usable or
13 not. There are such things what I may find on there
14 is microscopic and I can't see and they find it and
15 realize that it's nothing that -- I mean, just like
16 a fingerprint, there's things that can't be used to
17 match or identify.

18 Q Okay. And was fiber ever identified?

19 A Say again.

20 Q Was fiber evidence ever identified?

21 A Apparently, they didn't find any fiber that
22 could be identified of, you know, they put in their
23 report.

24 Q I mean, did you see any kind of report of any
25 test done on fiber?

JERRY RUSSELL - CROSS BY MR. MOBLEY

255

1 A Yes, sir. Actually the -- all of that stuff
2 was sent in to SLED and they -- like I said, they
3 analyzed it. Also, one of our fiber -- trace and
4 fiber chemists looked at it, too, I believe.

5 Q Do you have any reports on that fiber?

6 A It's not going to say specific to fiber. Like
7 I said, I send this information in. They analyze it
8 and decide what's viable, what can and can't be, you
9 know.

10 Q So you sent the trace and fiber evidence, in
11 this case, to SLED is that what you're saying?

12 A Yes, sir.

13 Q Can I see your documentation of doing that?

14 A This is actually where it was sent right here.

15 Q So you collected this trace evidence in October
16 of 2001, correct?

17 A Yes, sir.

18 Q And this is your SLED inventory sheet which
19 reflects when you sent it to SLED, correct?

20 A Yes, sir. I -- no, I didn't send it to SLED.
21 I put it in and check it in. It could be any number
22 of individuals taking it to SLED. My evidence sheet
23 just checks off to SLED.

24 Q All right. Well, let me ask you this. Do you
25 have any SLED reports or analysis that were

1 completed on the hair and fiber evidence?

2 A Hang on just a second. This SLED report here
3 was the same samples that were sent --

4 Q Mind if I take a look at what you're referring
5 to?

6 A Yeah. This is the SLED report here on the
7 actual blood, the swabs that were taken, fingernail
8 scrapings. It was -- all of this analysis saying it
9 was identified as human blood. That was all one
10 packet. So it was sent to SLED. There again, you
11 would have to -- whoever analyzed it would have to
12 give you a report on if they identified fiber and if
13 so, what kind of fiber and all that. My job is to
14 collect it and send it.

15 Q I understand, but since you talked about some
16 other reports that you didn't complete, I'm asking
17 you about this based on your knowledge, okay?

18 A Right.

19 Q And what you were looking at was a DNA report,
20 correct?

21 A Yes, sir.

22 Q And in that report you looked at, I mean, did
23 they identify the items that they received?

24 A Yeah.

25 Q Okay. And sometimes I understand they can

JERRY RUSSELL - CROSS BY MR. MOBLEY

257

1 receive an item and identify it for what it appears
2 to be, I.E., hair or fiber?

3 A That's correct.

4 Q But they could also indicate an analysis is,
5 you know, that the item -- an item is unsuitable for
6 testing or insufficient for testing, correct?

7 A Right.

8 Q But they do document the result or their
9 inability to perform a test on the item, correct?

10 A That's correct.

11 Q Okay. On what you have there, I mean --

12 A No, I don't have a report documenting that, if
13 that's what you're asking.

14 Q Okay. I mean, have you seen any kind of
15 report, were any type of tests done on the fiber you
16 collected?

17 A No, sir, I don't have any in my possession.

18 Q I mean, have you been apprised of one or made
19 aware of one?

20 A I know that --

21 Q Regarding the fibers?

22 A -- that evidence was sent there. It was tested
23 and examined. I don't have a report on that.

24 Q So you --

25 A I'm very confident that they have a report if

1 they did an examination.

2 Q If they did an examination?

3 A Yes, sir.

4 Q Were you advised or apprised, to your
5 knowledge, whether or not there was any examination
6 done of the fiber evidence in the case?

7 A No, sir.

8 Q And you testified regarding the hair evidence
9 in the case, correct? Have you seen a report on
10 that?

11 A Not an actual paper report.

12 Q What kind of report have you seen?

13 A I haven't seen a report. I was telephoned that
14 the report was back and that's a result I was given
15 because I requested that.

16 Q You were telephoned by who the report was back?

17 A The Solicitor's office that they -- when we
18 met, they told me they would let me know what the
19 results were.

20 Q Okay. So the Solicitor will let you know what
21 the results of that -- I'm talking about the hair
22 right now.

23 A Yes, sir.

24 Q Now, you collected that hair when?

25 A On, I believe, it was the 26th, the day of the

1 26th.

2 Q Of what year?

3 A 2001.

4 Q Okay. And what do you expect to be done with
5 the hair when you collect it?

6 A When I collect it, the hair's actually placed
7 into evidence. It can or cannot be sent on to be
8 analyzed. A lot of times it's placed into evidence
9 until a suspect develops. There's nothing to --
10 it's not like a fingerprint with a DNA profile from
11 a hair. It's not -- you can't look at the hair
12 without a sample from somebody you're looking at to
13 make a comparison. A fingerprint I can run in AFIS
14 and find out who it is. DNA is not that way to my
15 knowledge.

16 Q Now, with respect to the hair, as you
17 indicated, obviously, if there's no person to make a
18 comparison to, there's no point in making any type
19 of test on it until you have a suspect, correct?

20 A Right, yeah. There's nothing they can do with
21 it.

22 Q But once you have suspect in custody or
23 multiple suspects in custody, at that point, can you
24 perform a comparison test?

25 A Yes, sir. The individuals that do that

1 particular thing, yeah, they can.

2 Q Okay. And you did expect that to be done,
3 correct?

4 A Yeah. It's something that goes on down the
5 line once a suspect develops.

6 Q All right. Now, you talked about the results
7 of this mitochondrial DNA test that was collected.

8 A Right.

9 Q What documents have you seen that pertain to
10 the collection of -- or the testing of the hair in
11 this case, have you seen any documentation
12 whatsoever regarding that the testing process --
13 when it was collected, when it was submitted,
14 anything along those lines?

15 A I collected it.

16 Q Okay. Since you collected it, I mean, based on
17 the results you testified to --

18 A Right.

19 Q I mean, have you seen any kind of
20 documentation? I know you got a verbal report from
21 the Solicitor.

22 A Right. No, I've not seen a actual -- a written
23 document, no, sir.

24 Q Mind if I -- mind if I approach you, sir?

25 A Yeah, that's fine.

JERRY RUSSELL - CROSS BY MR. MOBLEY

261

1 Q I'm going to show you that --

2 MR. MOBLEY: And I don't think I need to mark
3 it -- well, I better even though it's my only copy.

4 MR. LUPTON: Your Honor, may I approach?

5 THE COURT: Yes, sir.

6 MR. MOBLEY: I'll mark this as Defense Exhibit
7 Number 1 for identification purposes.

8 MR. LUPTON: Your Honor, without objection.

9 THE COURT: Thank you, sir. Without objection,
10 marked and admitted as Defense Exhibit 1.

11 (Defendant's Exhibit Number 1, forensic
12 examination report, marked and admitted into
13 evidence.)

14 BY MR. MOBLEY:

15 Q Take a look at the -- what I've shown you is
16 Defense Exhibit Number 1. Take a look at it and can
17 you tell me what that is?

18 A It's a Richland County Sheriff's Department,
19 DNA Department, forensics exam report by John
20 Barren.

21 Q And, basically, what's this report supposed to
22 demonstrate or signify?

23 A It tells you what the particular chemist, or
24 whoever is doing the examination, what they
25 received. They examine it or perform analysis on it

1 and then they print up the results.

2 Q All right. And do they have other information
3 on this report -- other identifying information on
4 this report, who the victim in the case is?

5 A Yes, sir, the victim's --

6 Q Okay. The incident date?

7 A Right.

8 Q Who apparently -- the case officer or who
9 turned it in or who the case officer is, is that on
10 there as well?

11 A I don't see -- I mean, it's sent to Solicitor
12 Lupton, but it could be any number, you know,
13 whoever sent it in.

14 Q Is there a date at the top of this form?

15 A Yes, sir.

16 Q Okay. What's that date signify?

17 A March 25th, 2005, the date it was -- the report
18 was done and probably the examination itself was
19 done.

20 Q Okay. So just so we're clear, you collected
21 these hairs on October 26th of 2001, correct?

22 A That's correct.

23 Q And they're in evidence. There's no question
24 about that, correct?

25 A Right.

JERRY RUSSELL - CROSS BY MR. MOBLEY

263

1 Q And which means -- based on the date we have of
2 this examination report, that means between October
3 2001 and March 2005, which means 2002, 2003, 2004
4 and March 25th, which is about two weeks ago --

5 A Right.

6 Q -- that there were no tests, no analyses done
7 on those items for about three and a half years; is
8 that correct?

9 A Correct.

10 Q You're aware, if you weren't, you can answer,
11 were you aware that Carmen Rice was arrested in
12 approximately two -- some time in 2003?

13 A No, sir.

14 Q Okay. But assuming that was the case, assuming
15 she was arrested in 2003 and assuming, you know, her
16 and the codefendant were arrested around the same
17 time in 2003, a significant amount of time had
18 lapsed, you would agree, before any kind of testing
19 got done?

20 A Yeah, there was quite some time between -- if
21 you're saying they were arrested in 2003 and it was
22 done -- yeah.

23 Q And just so we're clear on the hair samples
24 that you found, you found two that were useable,
25 correct?

1 A Yes, sir.

2 Q One in the front passenger seat?

3 A I'm not sure which ones were which. Again,
4 that would be something that's above my level of
5 what's useable and what isn't useable.

6 Q Okay. But you did find one in the front
7 passenger seat?

8 A Yes, sir.

9 Q And there was also another one in the rear
10 driver's side seat, correct?

11 A That's correct.

12 Q Okay. And based on your information, the hair
13 that was found on the front passenger seat was
14 compared to that of the defendant, Carmen Rice,
15 correct?

16 A Yes, sir.

17 Q Okay. And based on your knowledge, the hair
18 that was found in the front passenger seat did not
19 match Carmen Rice; is that correct?

20 A That's correct.

21 Q And, once again, there was also a hair that was
22 found in the rear passenger seat?

23 A Correct.

24 Q Okay. And based on your knowledge, the hair
25 that was found in the rear passenger seat, the DNA,

JERRY RUSSELL - CROSS BY MR. MOBLEY

265

1 mitochondrial DNA test, did not match that of Carmen
2 Rice, correct?

3 **A** Right. I believe one of them they didn't know
4 who it matched, meaning it wasn't her.

5 **Q** Okay, great. And you're aware that she
6 voluntarily submitted to the sample, a reference
7 sample, correct?

8 **MR. LUPTON:** Objection, Your Honor. He has no
9 knowledge of that.

10 **THE COURT:** I'll let you rephrase the question.

11 **MR. LUPTON:** I'll withdraw the objection.

12 **THE COURT:** You can rephrase the question
13 asked.

14 **BY MR. MOBLEY:**

15 **Q** Are you aware as to whether or not Ms. Rice
16 voluntarily submitted to a reference sample?

17 **A** Yes, sir.

18 **Q** You know that she did, correct?

19 **A** Yes, sir.

20 **Q** So the fingerprint that you -- okay, the palm
21 print that you lifted, you couldn't match to Carmen
22 Rice or anybody else, correct?

23 **A** Right. It was insufficient.

24 **Q** Okay. But it couldn't be matched to Carmen
25 Rice?

1 **A** That's correct.

2 **Q** And the two hairs that did have obtainable
3 samples of DNA, neither one could be matched to
4 Carmen Rice; is that correct?

5 **A** Yes, sir.

6 **Q** Okay. I mean, was anyone else given a
7 reference sample or asked to give a reference sample
8 to compare the hairs in the vehicle to, to the best
9 of your knowledge?

10 **A** To my knowledge, I don't -- it could have been
11 any -- I don't know.

12 **Q** I mean, do you have any knowledge about Amber
13 Byrd giving a reference sample or any kind of
14 testing comparison was done on her DNA with the hair
15 that was --

16 **A** No.

17 **Q** No, it was not or you don't know?

18 **A** No, sir, I do not know. Like I said, that's in
19 a different division or area or whatever. I
20 wouldn't know if she did unless I had a reason to
21 know.

22 **Q** But it did match Carmen Rice, correct -- but it
23 did not match Carmen Rice, correct, the samples --
24 the DNA samples?

25 **A** Yeah, none of them matched Carmen Rice.

1 **MR. MOBLEY:** Briefly, Your Honor.

2 **THE COURT:** Yes, sir.

3 (Pause.)

4 BY MR. MOBLEY:

5 **Q** But you would agree, sir, a significant amount
6 of time had lapsed between -- assuming the defendant
7 was arrested in 2003, a significant amount of time
8 had lapsed prior to, the sample was drawn from the
9 vehicle -- recovered from the vehicle, the defendant
10 was in custody and the sample was tested? And I
11 understand, from your perspective, the relevant time
12 period is when the defendant was in custody, right?

13 **A** If you could, explain significant. I've had
14 these things sit in evidence for five or six years.
15 It's just when you get good and ready to make a
16 comparison. I mean, it's not going to get old or
17 mold or any, you know, it's do it today or do it ten
18 years from now, it's going to have the same results.

19 **Q** Okay. However -- but from a time standpoint,
20 it could have been compared to more people, correct?
21 I mean, from a technical standpoint, if they had
22 other suspects in that time period, they could have
23 made comparisons to other suspects, correct?

24 **A** I guess, they could. Like I say, I'm not a DNA
25 expert, so I don't -- I know there's a difference in

1 the samples, they can only do so much --

2 Q Well, just like they compared to Carmen Rice's
3 sample, they could have compared to someone else's
4 sample, correct?

5 A Right.

6 Q And about a year and a half elapsed between the
7 time when the defendant was in custody in October of
8 2003 until the time the sample was tested, correct?

9 A That's correct.

10 Q Do you know who was the instigator of the
11 sample being tested?

12 A I don't quite understand what your question is.

13 Q It sat there for a significant time period.

14 A Right.

15 Q But do you know who finally pushed to get it
16 tested?

17 A I know the Solicitor's office asked that it be
18 sent to be tested.

19 Q About two weeks ago prior to the trial?

20 A Yes, sir.

21 MR. MOBLEY: That's all I have.

22 THE COURT: Mr. Lupton, anything further?

23 REDIRECT EXAMINATION

24 BY MR. LUPTON:

25 Q Now, first off, the palm print, you testified

JERRY RUSSELL - REDIRECT BY MR. LUPTON

269

1 that there was insufficient ridge detail to make a
2 comparison?

3 **A** Yes, sir.

4 **Q** And the defense wants to talk about, Oh, you
5 couldn't match it to Carmen Rice?

6 **A** That's correct.

7 **Q** Now, with the insufficient ridge detail, even
8 if that was Carmen Rice's palm print, assuming it
9 was her palm print, would you be able to match it to
10 her?

11 **A** No, sir.

12 **Q** So that could be her palm print?

13 **A** It could be, that's correct. It could be
14 anyone's.

15 **Q** The hair, and I believe you testified that it
16 was not sufficient, according to the DNA experts,
17 for a PCR DNA analysis?

18 **A** That's correct.

19 **Q** Now, you've got a report there that says that
20 in fact?

21 **A** Right.

22 **Q** That was generated this year?

23 **A** Yes, sir.

24 **Q** Do you know whether or not the SLED DNA expert
25 that tested the other items in evidence related to

1 this case -- first of all, was the hair sent to that
2 DNA expert, Ken Bogan with SLED, at the same time as
3 the blood spatter, the swabs?

4 **A** Yeah. All that evidence was sent at the same
5 time.

6 **Q** And he tested -- back in January of 2003, he
7 tested the blood; is that correct?

8 **A** Correct.

9 **Q** Do you know whether or not he had the hairs at
10 that time? Did he have the hair?

11 **A** Yes, sir. The hair, everything, like I say, it
12 was all packaged together, all that evidence, so
13 they --

14 **Q** And would it be reasonable to assume that if he
15 was asked to analyze this, that if that was subject
16 to being analyzed, if it was suitable for analysis
17 that --

18 **MR. MOBLEY:** Objection, Your Honor.

19 **THE COURT:** I think I'm going to sustain that
20 unless you tell me where you're going.

21 **MR. LUPTON:** I'll rephrase it.

22 **BY MR. LUPTON:**

23 **Q** Could he have tested it if it was suitable at
24 that time?

25 **MR. MOBLEY:** Objection again. Just so we're

JERRY RUSSELL - REDIRECT BY MR. LUPTON

271

1 clear, I don't have any problems stipulating to
2 certain, you know, giving a certain leeway and
3 stipulating to the results of certain things, but I
4 think we're getting to a point where it's outside
5 the expertise area and it's not within the
6 confinement of the report that I agreed to. So
7 that's my objection, Your Honor.

8 **THE COURT:** Y'all queried him about that area.
9 I think the second question was proper. I'm going
10 to allow him -- you can ask him the second question.

11 BY MR. LUPTON:

12 **Q** Could he have done it?

13 **A** Yes, sir.

14 **Q** And he didn't?

15 **A** That's correct.

16 **Q** And subsequent to that, when a DNA expert who
17 did a report was specifically asked to report on the
18 subject of whether or not it was testable, that
19 report that you have, that's been placed in evidence
20 by the defense, shows that it was not testable under
21 the standard PCR DNA analysis?

22 **A** That's correct.

23 **Q** And -- and you testified, and just to make sure
24 we're clear, neither SLED nor Richland County DNA
25 labs are able to do anything other than that; is

1 that correct? That neither of them are able --

2 **A** The PCR, that's the --

3 **Q** They cannot -- neither lab can do mitochondrial
4 DNA?

5 **A** That's correct.

6 **Q** You testified it is a much more complicated,
7 involved process and we don't have that capability?

8 **A** That's correct.

9 **Q** Does the sheriff's department analyze anything
10 for mitochondrial DNA?

11 **A** Not to my knowledge, we don't.

12 **Q** In this case, did the Solicitor's office decide
13 to spend the \$20,000 to do that?

14 **A** Yes, sir.

15 **Q** And there's talk about Carmen Rice voluntarily
16 submitting to the test. Did somebody else
17 voluntarily submit?

18 **A** To my knowledge --

19 **Q** A reference sample? Did Iris Bryant?

20 **A** She could have, I don't know specifically, but,
21 yes -- matter of fact, yes, I do know specifically
22 because the results stated that it wasn't her hair,
23 so obviously she did.

24 **Q** Now --

25 **MR. LUPTON:** Will you excuse me for a second?

JERRY RUSSELL - RECROSS BY MR. MOBLEY

273

1 **THE COURT:** Yes, sir.

2 (Pause.)

3 **MR. LUPTON:** Nothing further at this time, Your
4 Honor.

5 **THE COURT:** Thank you, sir.

6 Mr. Mobley.

7 **MR. MOBLEY:** Just briefly.

8 RECROSS-EXAMINATION

9 BY MR. MOBLEY:

10 **Q** Just so we're clear, with respect to the PCR
11 versus the mitochondrial DNA analysis.

12 **A** Yes, sir.

13 **Q** Okay. Two different tests. Now, are you
14 saying that in no case can a PCR test be conducted
15 on a hair sample?

16 **A** I'm not saying that because that's not my
17 expertise. I know we do not have the equipment and
18 everything that facilitates doing mitochondrial on
19 anything and I know that SLED doesn't have that
20 either.

21 **Q** I guess my question is can a PCR test be done
22 on a hair sample or does it have to be mitochondrial
23 DNA?

24 **A** Maybe it could be done on -- again, that's
25 beyond me. I'm not a DNA expert. It's obvious it

1 does. It says in the report, Insufficient for PCR.
2 So it's possible it could be done.

3 Q And I guess where I'm going with this is -- I
4 mean, Mr. Lupton was -- I guess the implication I
5 was gathering in the line of questions was that, you
6 know, they had the hair, but they couldn't test it
7 because there was insufficient sample for
8 mitochondrial, but they didn't do any test at all on
9 this hair until two weeks ago, correct?

10 A That's correct.

11 Q Okay. So it's not like it sat there and they
12 tested it when it first came in and said, we don't
13 have sufficient PCR capability, nothing got done to
14 it? I mean, this is all important --

15 A Right. There was obviously no request for it
16 to be done, so.

17 Q It just sat there?

18 A Right, in evidence.

19 MR. MOBLEY: That's all I have, Your Honor.

20 THE COURT: Thank you.

21 Investigator, you may step down. Thank you,
22 sir.

23 Any reason not to excuse this witness?

24 MR. MOBLEY: No, Your Honor.

25 THE COURT: Investigator Russell, you're free

1 to come and go as you please, sir. Thank you.

2 MR. MOBLEY: I want to move that in evidence.
3 I was using it for cross-examination purposes, but I
4 want to put that in evidence.

5 THE COURT: It was already admitted.

6 MR. MOBLEY: I thought I was marking it for
7 identification purposes.

8 THE COURT: We'll talk about it shortly.

9 Ladies and gentlemen, I'm going to let you all
10 go to lunch now. During the lunch break, I just ask
11 that you not talk about the case, don't discuss it
12 with anybody, don't let anybody try to talk about it
13 with you.

14 Occasionally, ladies and gentlemen, you may
15 see, particularly, certain witnesses or lawyers or
16 something while you're at lunch. They may be eating
17 in the same place, not with you directly, but
18 sometimes jurors don't understand that they run into
19 a lawyer or witness or something who's testifying in
20 the case and they may sort of shy away from you and
21 not really look at you, it's not that they're trying
22 to be rude or anything, they're not allowed to have
23 any contact whatsoever with you while you're sitting
24 on this jury. And nobody else is allowed to talk to
25 you about this case at all while you're sitting and

1 hearing evidence about it. So I just ask that you
2 not talk about the case during lunch.

3 Go enjoy lunch. I'll bring you back at 2:30.
4 If you'll be back in your jury room, we'll be ready
5 to go at that point. Thank you, ladies and
6 gentlemen. We'll see y'all then.

7 (The jury was excused for lunch.)

8 **THE COURT:** All right. Counsel, before we get
9 to that, we talked at side bar about I know our
10 first alternate had her head down at some point and
11 appeared to be possibly sleeping. I think there was
12 some reference to the lady in the green who's on the
13 second row. I'm going to question them about that
14 when we come back from lunch. I just didn't want to
15 do it right then and have them think either side was
16 picking on them or doing anything. I didn't want to
17 call attention to either side about that.

18 I did notice, though, that after it was brought
19 to my attention, the lady in the green on the second
20 row did appear -- she does appear to close her eyes
21 at times as she's listening to stuff, but does not
22 appear to be sleeping, at least, at that point. I
23 didn't see her prior to that. But we'll make an
24 inquiry at the time that they come back from lunch.

25 Mr. Mobley, at the time you marked Defense

1 Exhibit 1, Mr. Lupton said without objection and --

2 MR. MOBLEY: That's fine, Your Honor.

3 THE COURT: -- I said it was admitted.

4 MR. MOBLEY: That's fine.

5 THE COURT: Okay. Counsel, we'll see y'all at
6 2:30 then.

7 (Whereupon, there was a luncheon recess.)

8 THE COURT: All right. We're going to bring
9 out the two jurors, the first alternate and the
10 older lady in the green.

11 (Juror Number 29, Georgia Burton, and Juror
12 Number 191, Jeanette Simons, enters the courtroom.)

13 THE COURT: If y'all come on down, I'm going to
14 ask counsel to join me right in front of the court
15 reporter.

16 (Whereupon, a bench conference was held on
17 the record.)

18 THE COURT: You're Ms. Simons; is that right?

19 JUROR: Yes, sir.

20 THE COURT: And Ms. Burton?

21 JUROR: Yes.

22 THE COURT: I just wanted to check with y'all
23 and make sure, I don't want to embarrass you or
24 anything, you're not in any trouble, I just wanted
25 to check to make sure y'all were not asleep during

1 any part of the trial. I think, during that last
2 witness' testimony, there may have some points when
3 you had your eyes closed.

4 JUROR: I might have had my eyes closed. I
5 wasn't asleep.

6 THE COURT: Okay. You heard the direct
7 testimony?

8 JUROR: Yes, sir.

9 JUROR: My eyes water and I sort of close -- I
10 guess it's an allergy that makes my -- my tears.

11 THE COURT: You close your eyes, but you're
12 awake as counsel was moving around?

13 JUROR: Yeah.

14 THE COURT: I just wanted to make sure y'all
15 heard all of the testimony during that last witness.

16 JUROR: Uh-huh.

17 JUROR: Yes, sir.

18 THE COURT: Okay. Thank y'all. Appreciate it.

19 (The jurors retire to the jury room.)

20 THE COURT: Counsel, anything further as to
21 those two jurors?

22 MR. MOBLEY: Nothing from the defense, Your
23 Honor.

24 MR. MEADORS: It seemed like maybe I remember
25 it wrong, Your Honor.

1 Did you point out another one?

2 MR. MOBLEY: No, it was the lady in the red
3 stripe that I pointed out.

4 THE COURT: Who is the first alternate.

5 MR. MOBLEY: Yes, sir.

6 MR. MEADORS: Thank you very much.

7 THE COURT: Thank you, counsel. Anything
8 further before we bring the jury back in?

9 MR. MEADORS: Nothing from the State.

10 THE COURT: Mr. Mobley?

11 MR. MOBLEY: Nothing from the defense, Your
12 Honor.

13 THE COURT: All right. We'll bring them back
14 in. Can you let Ms. Mancini know that she's now
15 going to be the foreperson?

16 (The jury returns to the courtroom.)

17 THE COURT: Thank you, ladies and gentlemen of
18 the jury. I apologize for bringing you out a little
19 bit late. I appreciate your patience back there.

20 Ms. Mancini, I've appointed you as foreperson.
21 You'll sit through the remainder of this trial in
22 that seat. I promise you won't have to worry about
23 foreperson duties right now. I'll give you actual
24 instructions as to what to do at the conclusion of
25 the trial when I charge you all on the law, but I

1 promise you it's not a hard job. It will, a large
2 part, entail signing some stuff, but you don't have
3 to worry about it all right now.

4 And I appreciate y'all's patience. We're ready
5 to continue at this point.

6 State ready to call their next witness?

7 **MR. LUPTON:** Yes, Your Honor. Your Honor, the
8 State calls Alton Page.

9 **THE COURT:** Mr. Page, if you'll come down,
10 we'll swear you in and let you take the witness
11 chair.

12 ALTON PAGE,

13 having been duly sworn, testified as follows:

14 **THE CLERK:** Please have a seat, state your full
15 name for the record.

16 **THE WITNESS:** Alton Page.

17 DIRECT EXAMINATION

18 BY MR. LUPTON:

19 **Q** Mr. Page, could you tell the jury a little bit
20 about yourself, where you're from, what you do?

21 **A** I'm from West Columbia. I work at CSC,
22 computer programmer. And I've been doing that work
23 for about 30 years now.

24 **Q** And have you lived here all your life?

25 **A** No. I lived here ever since '74, '75.

ALTON PAGE - DIRECT BY MR. LUPTON

281

1 Q And did you know Alton -- excuse me --
2 Mr. Page, did you know the victim in this case,
3 Bernard Brennan?

4 A Yes, I did.

5 Q How did you know him?

6 A Just from the poolroom and I knew his wife.

7 Q How long did you know Mr. Brennan?

8 A I think I met him somewhere like '88, '87,
9 somewhere in that time frame.

10 Q And have you known him the whole time since
11 then to now?

12 A No. I think he -- for about eight or ten years
13 there, because I didn't see him again until about
14 some time around -- like around about the year 2000,
15 '99, he started coming back in the poolroom.

16 Q You say in the poolroom, is that how you knew
17 him?

18 A Yes.

19 Q And you talked about knowing his wife. How did
20 you know her?

21 A Once I found out who she was, we were -- we all
22 came from the same home town, place called Lake View
23 in Dillon County.

24 Q Did Bernard know how well you did or didn't
25 know his wife?

1 A No. Like I say, I hadn't seen her in about 30
2 years either, you know, from the time I met her.

3 Q Did you know that you knew his wife?

4 A No, not until one night he mentioned it and
5 then I told him where I was from and then he knew
6 that I knew her.

7 Q So by the time -- by the time, the night of
8 this murder, he knew you knew his wife?

9 A Yes, he did.

10 Q Now, did you play pool with him the night he
11 was murdered?

12 A Yes, I did.

13 Q Where were y'all at?

14 A At the Varsity.

15 Q And would you tell the jury where that is?

16 A The Varsity is right at -- next to USC
17 campuses, right across from the coliseum. I can't
18 think of the little street, but it's right there
19 behind it, you know, it used to be the Big Bird
20 restaurant that's down that hill.

21 Q And that's on Devine Street?

22 A Yes.

23 Q Is there a restaurant next door to it or a
24 pizza place?

25 A Domino's Pizza's right next to it and then the

ALTON PAGE - DIRECT BY MR. LUPTON

283

1 Holiday Inn.

2 Q And I'd like to show you a couple of aerial
3 photos, see if you can recognize Devine Street.

4 MR. LUPTON: And, Your Honor, this is State's
5 Exhibit 38 and 39. And I believe these are also
6 without objection.

7 MR. HART: No objection.

8 THE COURT: Okay. Thank you, sir. Without
9 objection, they're admitted.

10 (State's exhibit Numbers 38 and 39, aerial
11 photographs, admitted into evidence.)

12 THE WITNESS: Okay. The Varsity will be right
13 there, right in there (indicating), because there's
14 a -- this is Domino's -- this is Domino's Pizza
15 Place. And there's another little store there and
16 then right in there is the Varsity. Up here is, I
17 think, is Adams Bookstore now.

18 BY MR. LUPTON:

19 Q And this is Assembly Street?

20 A Yes.

21 Q Can you tell where, in relation to the Varsity,
22 where would the Holiday Inn be?

23 A This is the Holiday Inn right here.

24 Q And the coliseum would be over here?

25 A Right. Like say, if you go down that street,

1 you can look right straight into the coliseum.

2 Q Right by -- and this is just a close-up of the
3 Varsity and Domino's?

4 A Yes.

5 Q And that shows how close they are together?

6 A Right.

7 Q And what time did you get to the Varsity that
8 evening?

9 A It was probably around about six o'clock, about
10 ten to 6:00 or 6:00, somewhere in that neighborhood.

11 Q And was Bernard there when you got there?

12 A No, he wasn't.

13 Q About how long after you did he get there?

14 A Maybe about five or ten minutes.

15 Q Was he with anybody when he showed up?

16 A No, he was not.

17 Q He was alone when he showed up?

18 A He was alone.

19 Q What happened once he got there?

20 A Well, he said, Let's shoot some pool. And I
21 said, Okay. And we started shooting pool.

22 Q And did y'all shoot pool a lot?

23 A Yeah. Whenever -- like I say, I shoot pool
24 with anybody who was in there, so he was in there so
25 we shoot. I have shot with him before several

1 times.

2 Q And while y'all were shooting pool, did he get
3 any phone calls?

4 A He got one.

5 Q And do you know, specifically, how many he got?

6 A All I can remember is just that one.

7 Q And what do you remember, specifically, about
8 that one?

9 A Whoever he was talking to, he told them just
10 come on down. And after he hung up, he -- I asked
11 him who it was, you know, just out of curiosity
12 because he seemed like he, you know, he was ready
13 for them to come on down there. And then he started
14 to tell me about it was his cousin from New York.

15 Q And you said that he told whoever it was that
16 called to come on down?

17 A Right.

18 Q And you remember that specifically?

19 A Yeah.

20 Q And did anybody show up after that?

21 A About 20 minutes later, 20 or 25 minutes later,
22 two young ladies came in.

23 Q And do you know who those two ladies were?

24 A No, I did not.

25 Q Did he ever introduce them?

1 **A** No, he did not.

2 **Q** Did he ever say anything to you short of a
3 formal introduction as to who they were?

4 **A** He said one of them was his cousin from New
5 York and the other one was her friend from Beaufort.

6 **Q** And can you describe the two women?

7 **A** They were about my height and kind of slim
8 built. One of them had on a jacket, the one from --
9 he said was from Beaufort had on a jacket. And the
10 other one had on a bright orange top, I remember
11 that. And that was it.

12 **Q** And did they stay close to where you and
13 Bernard were playing pool?

14 **A** No. One of them sat at the counter and the
15 other one was playing one of the Pac-Man or some
16 kind of machine that they used to have in the
17 poolroom.

18 **Q** And --

19 **A** You know, after they'd sit there for a while,
20 like I say, I think they'd been there maybe about 15
21 or 20 minutes, the girl with the orange top did come
22 over by the table and sit down.

23 **Q** She was sitting down by the table?

24 **A** Sitting down on the bench near the pool table
25 where we play at.

1 Q Did either of them wear glasses?

2 A I can't remember that. I don't know. As far
3 as I remember, they didn't.

4 Q As far as you remember, neither one of them
5 wore glasses?

6 A No.

7 Q And the night or the next day or shortly after
8 this when you spoke with the police, did you report
9 glasses to them?

10 A I don't think I did.

11 Q And that would have been when it was fresh in
12 your memory?

13 A Yes.

14 Q And do you recall how -- the height you told
15 the police that they were?

16 A I said about up to here on me (indicating),
17 somewhere like that.

18 Q Could you come down?

19 A (Witness leaves the witness stand.)

20 Q And you say up to where on you?

21 A Right about here, somewhere up there
22 (indicating).

23 Q And about how tall are you?

24 A Five seven.

25 Q So two or three inches shorter than you and

1 you're five seven?

2 **A** Yes.

3 **Q** Thank you. You can have a seat.

4 **A** (Witness resumes the witness stand.)

5 **Q** And do you remember what kind of shoes that
6 either of them were wearing?

7 **A** Like I say, I didn't pay that much attention.

8 **Q** So you don't know whether they had any heels on
9 or if so, how high they were?

10 **A** No, I don't.

11 **Q** And you testified that he didn't introduce them
12 by name, he just said one was his cousin and one was
13 a friend of her's from Beaufort?

14 **A** Right.

15 **Q** And did you believe that?

16 **A** Not really.

17 **MR. HART:** Objection, Your Honor.

18 **THE COURT:** Yes, sir.

19 **MR. HART:** Speculation. He can't testify to
20 what Mr. Brennan believed at that time.

21 **THE COURT:** No. He asked him what he believed.

22 **MR. HART:** It's still not relevant, Your Honor.

23 **THE COURT:** Okay. I'll allow it. I overrule
24 the objection.

25 **BY MR. LUPTON:**

1 Q Did you believe that that was really his
2 cousin?

3 A No, I did not.

4 Q And why is that?

5 A The way they were dressed and the way they
6 acted.

7 Q And would he have any reason that you would be
8 aware of --

9 MR. HART: Objection, Your Honor.

10 THE COURT: The way it's starting off, I'll
11 sustain the objection. Let me hear the rest of the
12 question.

13 MR. LUPTON: I'll rephrase it, Your Honor.

14 BY MR. LUPTON:

15 Q Did he know that you knew his wife at that
16 time?

17 A Yes, he did.

18 Q Now, this happened a long time ago; is that
19 correct?

20 A Yes.

21 Q It happened in October of 2001. It's now April
22 of 2005. At the time this happened, did you have
23 any reason to pay any attention to those two women?

24 A No.

25 Q What were you doing that night?

1 A Shooting pool.

2 Q Does that take a certain amount of
3 concentration to do it well?

4 A Just about all you can.

5 Q Fair to say that you enjoy the game?

6 A Very much.

7 Q Can you get sort of absorbed in it?

8 A You can get carried away in it.

9 Q And would you -- based on that -- and fair to
10 say you didn't know he was going to be murdered that
11 night, did you?

12 A Had no idea of it.

13 Q Did you pay attention to the women?

14 A No.

15 Q And as a result of that, have you been able to
16 identify who those women were?

17 A No, I haven't.

18 MR. LUPTON: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 (Pause.)

21 BY MR. LUPTON:

22 Q Did you see any money loaned that night?

23 A Yes, I did.

24 Q And you testified that you've shot pool with
25 him previously. If you can, do you know whether he

1 usually carried a lot of cash?

2 A Usually, he did.

3 Q And you say you saw cash on him that night?

4 A Yes, I did.

5 Q Would you be able to say -- was it a lot of
6 cash?

7 A I'd say it was a good bit.

8 Q And how do you know that? What's your reason
9 for saying it was a good bit?

10 A Somebody asked him to borrow some -- a guy
11 walked in, asked him to borrow some money and he
12 told him he didn't have nothing but hundreds on him
13 and he --

14 Q He didn't have anything but hundreds on him?

15 A Yeah. And he took and folded them out, you
16 know, like you do a deck of cards and let him see
17 and put it back in his pocket.

18 Q So he had a wad of hundreds?

19 A I'd say, yeah. It looked like about a couple
20 thousand or maybe more.

21 Q And do you remember whether or not -- you
22 testified that you specifically remembered that one
23 call. Do you know if he got any other calls that
24 night?

25 A I don't know because, like I say, I can't

1 remember that. I know he went to the bathroom and
2 stayed --

3 Q Is it possible?

4 A Yeah. And stayed for a while and came back
5 out.

6 MR. LUPTON: Nothing further, Your Honor.

7 THE COURT: Thank you, sir.

8 Mr. Hart.

9 MR. HART: Thank you, Your Honor. If it please
10 the Court.

11 CROSS-EXAMINATION

12 BY MR. HART:

13 Q Mr. Page, you said you guys spent some
14 considerable time at the Varsity?

15 A I think it probably was about an hour and a
16 half.

17 Q Well, how often would you go to the Varsity and
18 play pool?

19 A Every chance I got.

20 Q Just about -- let's say during a weekly basis,
21 out of seven days a week, how many days would you
22 go?

23 A That year I had a lot of time off, you know, a
24 lot of free time. We weren't working as hard. I'd
25 probably go about three, four days a week.

ALTON PAGE - CROSS BY MR. HART

293

1 Q And out of those three or four days a week, how
2 often would you see Bernard?

3 A Probably two, three.

4 Q At least two?

5 A At least two or three.

6 Q And out of those two days a week possibly that
7 Bernard was there while you guys were playing pool,
8 you never saw Carmen Rice there, did you?

9 A I can't say.

10 Q And you've known Bernard since you say about
11 87, 88?

12 A Somewhere in that time frame.

13 Q Then you guys, you got reacquainted back in
14 2000?

15 A Somewhere like that.

16 Q You never heard him talking about a Carmen
17 Rice, have you?

18 A No.

19 Q You say you arrived around six o'clock and
20 Bernard arrived about ten minutes later?

21 A Yeah, five or ten minutes.

22 Q And you were able to see that two black females
23 had come in?

24 A Yes.

25 Q You were able to get the description of the

1 clothing, one had a bright orange shirt?

2 A Right.

3 Q One stayed up at the bar?

4 A Yeah.

5 Q One came back and played pool, correct?

6 A No. One went over to the -- it's a pinball
7 machine, like it was a Pac-Man or something like
8 that machine.

9 Q But you were able to notice that one stayed at
10 the bar and one of them went to the pinball, Pac-Man
11 machine?

12 A Right.

13 Q Now, Bernard talked to you about these two
14 girls. He said one was his cousin from New York,
15 right?

16 A That's what he told me.

17 Q Which wasn't true, right?

18 A That's what I guessed. Like I said, prior to
19 them arriving, he told me that that was his cousin
20 that called and that they were coming over and she
21 was down from New York to inherit a house. And when
22 they came in, just from the way they were dressed, I
23 didn't think that was his cousin.

24 Q And you said -- also, you said one of them had
25 a jacket on?

1 A Right.

2 Q So pretty much, you got a good look at them,
3 right?

4 A Just a glance.

5 Q But you were able to notice what they were
6 wearing?

7 A Yeah.

8 Q Also, you talked about the height. You were
9 able to get a good enough look at them to notice how
10 tall they were, right?

11 A Yeah.

12 Q Now, also, you said someone came in and asked
13 Bernard for some money, right?

14 A Yes.

15 Q And Bernard flashed a lot of cash?

16 A Right.

17 Q And, specifically, he said, I only carry
18 nothing but hundreds, right?

19 A Right.

20 Q And you said about a couple thousand dollars,
21 right?

22 A Could have been more.

23 Q You don't know who that person is, do you, who
24 asked him for the money?

25 A I only knew him as, he called his self

1 Cincinnati Kid.

2 Q Cincinnati Kid?

3 A Yeah, he's homeless.

4 Q He was homeless?

5 A Yeah.

6 Q And you don't know if Bernard ended up with
7 that guy later on that night, do you?

8 A No.

9 Q And this Cincinnati Kid, we don't know if that
10 Cincinnati Kid murdered Bernard, do we?

11 MR. LUPTON: Objection, Your Honor.

12 THE COURT: Sustained.

13 THE WITNESS: I don't know --

14 THE COURT: You don't have to answer that, sir.

15 THE WITNESS: Okay.

16 MR. HART: No further questions, Your Honor.

17 THE COURT: Thank you, sir.

18 Mr. Lupton, anything on redirect?

19 MR. LUPTON: No, Your Honor.

20 THE COURT: Mr. Page, you may step down. Thank
21 you, sir.

22 Any reason not to excuse this witness?

23 MR. LUPTON: No, Your Honor.

24 THE COURT: Sir, you're free to come and go as
25 you please, Mr. Page. Thank you, sir.

HEIDI ROSEMARY FEAGIN - DIRECT BY MR. LUPTON

297

1 The State may call their next witness.

2 **MR. LUPTON:** Your Honor, the State would call
3 Ms. Heidi Feagin.

4 **THE COURT:** Ms. Feagin, if you'll come around,
5 we'll swear you in and let you take the witness
6 chair.

7 HEIDI ROSEMARY FEAGIN,
8 having been duly sworn, testified as follows:

9 **THE CLERK:** Please have a seat, state your full
10 name for the record.

11 **THE WITNESS:** My name is Heidi Rosemary Feagin.

12 DIRECT EXAMINATION

13 BY MR. LUPTON:

14 **Q** Ms. Feagin, tell us a little bit about
15 yourself. Where are you from?

16 **A** I'm from San Diego, California, moved here
17 about six years ago. I'm a mother of four children
18 and, you know, I work and, you know.

19 **Q** Two of them are honor students?

20 **A** Yes, two of my children are honor roll
21 students.

22 **Q** And you're understandably proud about that?

23 **A** Yes, I am.

24 **Q** And, Ms. Feagin, did you work at Calloways back
25 in 2001?

1 **A** Yes, I did.

2 **Q** And when you were working there at Calloways,
3 did you know -- first of all, let's show you --

4 **MR. MOBLEY:** No objection to those.

5 **MR. LUPTON:** Show you what's been marked as 41
6 and 42, move to admit without objection, Your Honor.

7 **THE COURT:** Without objection, they're
8 admitted.

9 (State's Exhibit Numbers 41 and 42, aerial
10 photographs, admitted into evidence.)

11 BY MR. LUPTON:

12 **Q** And can you explain to the jury what these are?

13 **A** These are maps of the location where I worked.
14 This would be Calloways and this would be Sonic up
15 here.

16 **Q** And this is over in Lexington?

17 **A** This is over in West Columbia. And this would
18 be Augusta Highway right here and Wal-Mart would be
19 over here.

20 **Q** This would be U.S. 1, as it's also known?

21 **A** Yes.

22 **Q** And that's Sonic?

23 **A** Yeah.

24 **Q** And Jarvis Clapman would be up top?

25 **A** Yes.

HEIDI ROSEMARY FEAGIN - DIRECT BY MR. LUPTON

299

1 Q And I believe that this is -- Exhibit 41 is
2 just a larger view of the same location; is that
3 correct?

4 A Yes.

5 Q And this would be what?

6 A (No response.)

7 Q This -- the interstate?

8 A That's the interstate. I'm trying to -- and
9 then this would be Sonic right here and Calloways
10 would be here and that would be Number 1, Augusta
11 Highway.

12 Q And the Super Wal-Mart?

13 A Yeah, that's the Super Wal-Mart up there.

14 Q Way up there?

15 A Yes.

16 Q So that's where you worked back in October of
17 2001?

18 A Yes.

19 Q And, at the time, did you know the victim in
20 this case, Bernard Brennan?

21 A Yes, I did.

22 Q And how well did you know him?

23 A He was a customer that came in. I mean, I
24 didn't know him real well personally, but he came
25 in, you know, to shoot pool every now and then and

1 talk with people or whatever.

2 Q Was he an occasional customer or more
3 regular --

4 A He was a regular customer, but he didn't go in
5 on an everyday basis, but, you know, it was kind of
6 like a relaxing place, I guess, for him to go.

7 Q And did you see him on the night he was
8 murdered?

9 A Yes, I did.

10 Q And can you tell the jury about that? Where
11 was it that you saw him?

12 A He was at Calloways. I was his waitress. And
13 he had come in and ordered some food and some
14 drinks.

15 Q And the -- when he came in that night, was he
16 alone?

17 A No, he was not.

18 Q And do you recall who he was with?

19 A He was with two other people, which were two
20 females that were younger than he was.

21 Q And, at the time, did you have a chance to
22 observe those two women?

23 A A little bit. It was a little busy in there,
24 so, you know, but I did get a look at them. And,
25 you know, I was their server, so.

1 Q And did you have any special reason to pay
2 attention to them that night?

3 A No, I did not. You know, when you're a
4 waitress, you talk to a lot of people. And, you
5 know, you have conversations with certain people
6 that you waitress for, sometimes you don't, so.

7 Q And --

8 MR. MOBLEY: No objection to this next, Your
9 Honor.

10 THE COURT: Thank you, sir.

11 MR. LUPTON: I need to get this marked, Your
12 Honor.

13 (State's Exhibit Number 43, receipt from
14 Calloways, was marked for identification purposes.)

15 BY MR. LUPTON:

16 Q I'm going to show you what's been marked
17 State's Exhibit 43. Do you recognize what that is?

18 A That is the ticket that their order was that --
19 the stuff that they ordered while they were there.

20 Q Copy of a ticket?

21 A The receipt from their order.

22 Q And this time right here, October 25th, '01,
23 8:18 p.m., what time would that be?

24 A That's in the evening time.

25 Q Well, in relation to would that have been

1 generated when the order was placed or --

2 A Yes. The orders were placed on a computer,
3 which we wrote down the order and then I would go
4 back and put the order into the computer and then
5 I'd bring out the food and the drinks. So that is
6 the time that the order was placed.

7 Q And when they first came in, you said they
8 ordered fairly much right away?

9 A They had a seat. And then I asked them, you
10 know, what they would like and they ordered their
11 drinks and then they ordered what they wanted to
12 eat.

13 Q And the women that were with him, as best you
14 can recall, and I understand it's been a long time
15 and you had no reason to pay attention to them that
16 night, but as best you can recall, what did they
17 look like?

18 A Well, they were younger. One was more stocky
19 build, medium build. The other one was thinner and
20 very young looking.

21 Q And do you recall what they were wearing?

22 A The thinner one, I don't recall exactly what
23 she was wearing, but there was one sitting on the
24 left side of Bernard that was wearing a bright
25 colored shirt, I believe it was orange, and some

1 shorts, some baggy shorts, I believe she was
2 wearing.

3 Q And that was the --

4 A The stockier female.

5 Q The stockier one that was wearing the orange?

6 A Yes.

7 Q And do you recall anything about height?

8 A I believe maybe she was about five eight, five
9 eight and a half, that's about how tall she was.

10 She wasn't too tall, but, you know --

11 Q Well how tall are you?

12 A I'm five seven and a half, so.

13 Q Would you stand up?

14 A (Witness complies.)

15 Q And if you'll step down.

16 A (Witness leaves the witness stand.)

17 Q And based on how tall you are -- well, first of
18 all, did you even see them standing up much?

19 A Not the younger, thinner girl, but the stockier
20 one I did see get up every now and then. And she
21 looked like she was a little bit taller than me, but
22 not much.

23 Q Have a seat.

24 A (Witness resumes the witness stand.)

25 Q Is it possible that she was a different height

1 than that?

2 **A** It could be possible, but, you know, from just
3 trying to measure, you know, I don't know exactly
4 how tall she was, but just by trying to remember,
5 I'm thinking she was about five eight, five eight
6 and a half.

7 **Q** Did either of them smoke?

8 **A** Not that I know of. I didn't see either one of
9 them smoking that I could recall.

10 **Q** Did either of them ask for a cigarette from
11 somebody that you observed?

12 **A** There was another table behind them that was
13 sitting there and she was asking the gentleman
14 something, I don't know if she was asking him for a
15 cigarette, but she had leaned over to ask him for
16 something, spoke with him briefly.

17 **Q** Did Bernard ever introduce either of the two?

18 **A** No, sir.

19 **Q** And that night, did you know when Bernard came
20 in that night, that he was going to be murdered
21 later that evening?

22 **A** No, I did not.

23 **Q** Was there anything about that night that would
24 have caused you to pay particular attention to the
25 women that were with him?

HEIDI ROSEMARY FEAGIN - DIRECT BY MR. LUPTON

.305

1 A No.

2 Q And did you pay particular attention to those
3 women that night?

4 A No.

5 Q Now, when did you find out about the murder?

6 A The next day when I was coming into work.

7 Q And did -- who -- how did you find out about
8 it?

9 A I can't remember his name. One of the
10 investigators was there and he told me about it as I
11 was coming into work.

12 Q And he asked you some questions about it?

13 A Yes.

14 Q And in asking you those questions, you told him
15 what you knew?

16 A Yes.

17 Q And did you ultimately -- did you ultimately
18 assist police by trying to look at a photographic
19 lineup of one of the people that might possibly have
20 been involved?

21 A Yes.

22 Q In fact, did you -- were you able to identify
23 anybody in that lineup?

24 A I pointed somebody out, but I wasn't told if I
25 was, you know, if I had picked the right person out

1 or not. I just had pointed to someone.

2 Q And you said that it was somebody might -- that
3 might be the one, but you weren't certain?

4 A Yes.

5 Q And ultimately -- ultimately -- and,
6 ultimately, also, did you view a -- or did you go
7 out to SLED and assist a forensic artist in trying
8 to prepare sketches?

9 A Yes, I did.

10 Q And --

11 MR. MOBLEY: I'm going to object to this, Your
12 Honor.

13 THE COURT: Do y'all want to approach?

14 (Whereupon, a bench conference was held off
15 the record, in the presence of the jury, but out of
16 the hearing of the jury.)

17 THE COURT: Mr. Lupton, you may proceed.

18 MR. LUPTON: Your Honor, pursuant to the
19 objection, I'll mark this as State's Exhibit 44 for
20 identification purposes only.

21 (State's Exhibit Number 44, composite
22 sketches, was marked for identification purposes.)

23 BY MR. LUPTON:

24 Q Ms. Feagin, without explaining -- without
25 saying anything more than what this is, is this a

HEIDI ROSEMARY FEAGIN - DIRECT BY MR. LUPTON

307

1 fair and accurate representation of the composite
2 sketches that you did?

3 A Yes.

4 Q And the two composite sketches that are on this
5 document, those are the composites you did with the
6 SLED agent?

7 A Yes, they are.

8 Q And that was back in November of 2001?

9 A Yes.

10 MR. LUPTON: Your Honor, I'll leave this with
11 the clerk.

12 THE COURT: Thank you, counsel.

13 Mr. Mobley, when we take a break, I'll let you
14 put all of that on the record as well.

15 MR. LUPTON: Beg the Court's indulgence, Your
16 Honor.

17 THE COURT: Yes, sir.

18 (Pause.)

19 MR. LUPTON: Your Honor, may I approach the
20 bench?

21 Mr. Mobley.

22 THE COURT: Yes, sir.

23 (Whereupon, a bench conference was held off
24 the record, in the presence of the jury, but out of
25 the hearing of the jury.)

1 **MR. LUPTON:** Your Honor, pursuant to the same
2 ruling of the Court, I'm going to ask these be
3 marked as State's Exhibits for identification
4 purposes only.

5 **THE COURT:** Yes, sir.

6 (State's Exhibit Numbers 45 and 46,
7 composite sketches, were marked for identification
8 purposes.)

9 BY MR. LUPTON:

10 **Q** And show you 45 and 46, and do you recognize
11 those as larger versions of the sketches that you
12 did?

13 **A** Yes, I do.

14 **MR. LUPTON:** Thank you, Your Honor.

15 **THE COURT:** Thank you, sir.

16 Mr. Mobley.

17 **MR. MOBLEY:** Thank you.

18 CROSS-EXAMINATION

19 BY MR. MOBLEY:

20 **Q** Good afternoon, Ms. Feagin.

21 **A** Good afternoon.

22 **Q** Now, so you did know Bernard Brennan; is that
23 correct?

24 **A** Yes, I did, as a customer.

25 **Q** And I think you described him as somewhat of a

HEIDI ROSEMARY FEAGIN - CROSS BY MR. MOBLEY

309

1 regular?

2 A Yes.

3 Q And when he came, what would he do there
4 normally?

5 A He would shoot pool sometimes, but not all the
6 time, and he would just hang out and talk with some
7 people that he was friends with, but that's about
8 it.

9 Q Did he normally carry a lot of cash?

10 A That I'm not sure.

11 Q Now, when you saw him, who would he normally be
12 there with?

13 A A lot of times he came in by himself, so -- but
14 he'd usually just talk to people that were other
15 regular customers or so and just chat with them or
16 shoot pool.

17 Q Would he ever come in with women?

18 A I've never seen him come in with women.

19 Q So on this particular occasion we're talking
20 about when you saw him with the two women, that was
21 the first time you'd seen him --

22 A That's the first time I've seen him come in
23 with women.

24 Q And he came in with two women?

25 A Yes.

1 Q Did you think anything odd about that?

2 A A little, but it might have been for an
3 occasion, I thought maybe a special occasion.

4 Q And I guess I'm a little bit confused.

5 Mr. Lupton asked you about the degree of attention
6 you were paying and I think you were kind of saying
7 that you really -- I wasn't quite sure if he was
8 saying it or you were saying it, but you weren't
9 paying a whole lot of attention?

10 A I mean, I pay attention to the customers that
11 come in there because when I wait on them, I have to
12 make sure I remember what table to go to, what the
13 people look like. So, you know, you've got to pay
14 attention to them to an extent, but when you're a
15 waitress, you have other people that you got to help
16 and all that stuff. So, to me, it was just an
17 everyday, normal thing that I was doing. You know,
18 you don't, you know, pay particular attention to
19 just one set of people, you know, you've got
20 different people you've got to pay attention to.

21 Q Okay. But you testified you did recall -- you
22 were able to approximate their builds, correct?

23 A Yes.

24 Q Okay. And you paid enough attention that you
25 could recall and approximate their approximate

1 heights, correct?

2 A Somewhat. The younger one, the thinner one,
3 she didn't -- I didn't see her stand up, so she sat
4 down most of the time, so I can't really give you a
5 height on her.

6 Q Okay. But you paid attention enough to know
7 that one was younger than the other one, correct?

8 A Looked younger, yes.

9 Q Or looked -- appeared younger?

10 A Appeared younger.

11 Q And you paid enough attention to indicate that
12 one was -- appeared thinner than the other one,
13 correct?

14 A Yes.

15 Q Okay. And you paid enough attention to
16 remember that one was sitting down more than
17 standing up, correct?

18 A Right.

19 Q And I think you also even recalled what they
20 drank and what they ordered, correct?

21 A Yes. Well, I'm the one that took their order.

22 Q And I think you also told -- do you recall
23 having a conversation with Investigator Smith at
24 some point?

25 A Yes.

1 Q The gentleman, the very handsome gentleman in
2 the blue blazer?

3 A Yes.

4 Q And do you recall telling Investigator Smith
5 that you felt like you could probably identify them
6 if you saw them again?

7 A Yes.

8 Q So at the time you talked with him, you thought
9 you got a pretty good look at them?

10 A Yes, but, you know, after a period of time, you
11 know, you don't expect things like this to happen,
12 so.

13 Q I understand. So you were able to give some
14 statement about their approximate builds, about
15 their approximate heights, about one being seemingly
16 younger -- or older than the other, one being
17 thinner than the other, what they drank, what they
18 ate and you even told the investigator that you were
19 pretty sure you thought you could identify them if
20 you saw them again, correct?

21 A Yes.

22 MR. MOBLEY: That's all I have from this
23 witness, Your Honor.

24 THE COURT: Anything on redirect?

25

REDIRECT EXAMINATION

1

2

BY MR. LUPTON:

3

Q Do you think you could have identified them if

4

you had seen them the next day?

5

A Yes, I could have if I saw them the next day.

6

Q Did you see the person the next day?

7

A No, I did not.

8

Q Did you see the person the day after that?

9

A No, I did not.

10

Q The day after that?

11

A No, sir.

12

Q That was in October of 2001?

13

A Right. And that's the first time and the only

14

time I have seen them.

15

Q And, at that point, you said, I think I can

16

identify them if I see them again?

17

A Yes.

18

Q And you -- on cross-examination, you said that

19

as a waitress, you have to pay attention to people

20

for the purposes of knowing where they're sitting

21

and that sort of thing?

22

A Exactly.

23

Q Does -- as part of that, do you pay attention

24

well enough to retain a memory of them for months

25

and years?

1 A No. I mean --

2 Q Other than perhaps your regular customers?

3 A Right.

4 Q Somebody you've seen once, would you
5 necessarily recognize them even if you were in the
6 same room with them three and a half years later?

7 A Not necessarily.

8 Q And were you ever -- let me rephrase that. You
9 testified about being eventually shown some photos?

10 A Yes.

11 Q Was that the next day?

12 A No, it wasn't.

13 Q Or the day after or the day after?

14 A No.

15 Q In fact, was it in 2001?

16 A I don't think so, maybe a year or so later.

17 I'm not too sure. It was a little while after the
18 fact.

19 Q Did you --

20 A I was at a different job at the time.

21 Q And that was substantially later?

22 A Yes.

23 Q And do you remember whether or not it was in
24 2003?

25 A No, sir, I'm not sure.

HEIDI ROSEMARY FEAGIN - REDIRECT BY MR. LUPTON

315

1 Q Is it possible that in that amount of time that
2 you've forgotten details or mixed up details?

3 MR. MOBLEY: Objection, he's leading the
4 witness.

5 THE COURT: Sustained.

6 MR. LUPTON: I'll rephrase it.

7 BY MR. LUPTON:

8 Q You made a composite sketch in this case and
9 you looked at it for identification purposes?

10 A Yes.

11 Q At the time you made that composite sketch, was
12 it still relatively fresh in your mind?

13 A A little bit. It was kind of hard to recall
14 everything because, like I said, I've had several
15 customers and normally wouldn't think something like
16 that would happen. So I did the best I could with
17 those pictures as far as I could remember.

18 Q And that was in November of 2001, correct?

19 A Yes.

20 Q And would your memory have been fresher then
21 than it is now?

22 A Yes.

23 Q As to details?

24 A Yes, just a little bit. I mean, I still
25 remember a lot of the details now as I did then as

1 far as what happened. You know, the descriptions
2 may be a little off.

3 Q Your descriptions could be off now?

4 A Yes.

5 MR. LUPTON: Nothing further.

6 THE COURT: Mr. Mobley.

7 RECROSS-EXAMINATION

8 BY MR. MOBLEY:

9 Q And I guess, Ms. Feagin, ma'am, I'm trying to
10 reconcile all of your testimony, okay, because it
11 seems on one hand, and I'm trying to ask you a
12 question, but I'm trying to preface my question so
13 you'll understand what I'm trying to ask you, okay?

14 A Okay.

15 Q I mean, on one hand, you want to say or it
16 seems like you're able to give a lot of different
17 details about what happened, about, you know, how
18 they were -- their build, the height, the age --

19 MR. LUPTON: Your Honor, objection. If he's
20 got a question if he could go ahead and get to the
21 question.

22 THE COURT: I'll let him phrase his question.

23 BY MR. MOBLEY:

24 Q I'm trying to say that you paid some degree of
25 attention and you're trying to say -- I think you

1 indicated -- he asked you about a composite?

2 A Yes.

3 Q Okay. And you went to SLED and -- so you
4 didn't make a composite, you talked to someone else
5 who drew it, right?

6 A Yes.

7 Q You didn't draw this thing yourself, did you?

8 A No.

9 Q Okay. But you had to sit down with someone
10 else for the purpose of trying to put together a
11 profile of the person that you saw, correct -- or
12 the people that you saw?

13 A Yes.

14 Q Okay. And they didn't -- they didn't just --
15 and the information they used to put in that
16 composite came from where?

17 A From me.

18 Q From you, okay. So they had to ask you
19 questions about particularly identifying
20 characteristics of those people, correct?

21 A Yes.

22 Q Okay. And so I would assume the person asked
23 you about the shape of their head?

24 A Yes.

25 Q Okay. And you're able to give some answer

1 about the shape of their head of the two -- not just
2 one person, but two different people, correct?

3 A Yes.

4 Q Okay. And I'm assuming they asked you about
5 the eyes?

6 A Yes.

7 Q Okay. So you were able to give the person at
8 SLED a description of the eyes of two different
9 women, correct?

10 A Yes, from what I could remember.

11 Q From what you could recall. But you felt
12 comfortable giving some answer to that question?

13 A Yes.

14 Q And I think he probably also asked you about
15 the ears?

16 A Yes.

17 Q Okay. So when you went and gave this composite
18 or spoke with the SLED composite sketch artist, he
19 asked you about the -- to give a description of the
20 ears of the two separate women, right?

21 A Yes.

22 Q And you gave an answer to that, right?

23 A Well, he didn't ask me the questions. I had
24 picked out the eyes and the ears off of photographs.
25 I wasn't asked the questions. And then I would pick

HEIDI ROSEMARY FEAGIN - RECROSS BY MR. MOBLEY

319

1 out the photographs and tell him what I thought the
2 ears looked like and the eyes looked like and he
3 would draw it.

4 Q Okay. So you were able to look at a series of
5 pictures of just eyes alone?

6 A Yes.

7 Q And say, This woman had this kind of eyes and
8 this woman had this kind of eyes?

9 A Right.

10 Q And I'm assuming you did the same thing with
11 ears. You had a book of ears you were looking at?

12 A Right.

13 Q Okay. So you were able to look at a book of
14 ears and say, This woman had this kind of ears and
15 this woman had this kind of ears?

16 A Well, it wasn't exactly like that. I was just
17 trying to pick out the different features of these
18 females from what I could remember the best way that
19 I knew how.

20 Q But you clearly -- you were comfortable that
21 the ears and the eyes you were picking out were
22 consistent with the ears and eyes on the two
23 different females that you saw, correct?

24 A Yes.

25 Q I mean, you didn't pick -- you didn't just pick

1 random ears and eyes, right?

2 A No.

3 Q Okay. And if you had felt like none of the
4 ears or none of the eyes in those photographs or
5 whatever you looked at matched the two ladies that
6 you saw, you would have said so, right?

7 A Right.

8 Q Okay. So the fact that you actually picked
9 ears out reflects that you felt comfortable that the
10 ears you saw were consistent with the ears on the
11 two women, right?

12 A Right.

13 Q Okay. And the fact that you picked the eyes
14 out of a book of eyes is indicative of the fact that
15 you felt comfortable enough that the eyes you saw
16 were consistent with the eyes of the two women,
17 correct?

18 A From what I could remember.

19 Q From what you could remember. And if you felt
20 like that wasn't accurate, you would have said none
21 of these eyes --

22 A Well, it was hard to pick out each little
23 detail, so I did -- I picked out from what I thought
24 matched the description in my mind is what I picked
25 out on the pictures of their ears and the eyes and

1 stuff. It may not have been the exact, but I think
2 to myself it was close enough to the description I
3 had in my mind.

4 Q Okay. And as Mr. Lupton made it a point to say
5 that was -- I mean, at that point in time, it was
6 fresh in your mind, right?

7 A Yes.

8 Q Okay. So -- but I -- my point on the eyes is
9 the eyes you saw were consistent enough, based on
10 your memory of the two ladies that you saw, that you
11 were comfortable saying it looked like these eyes?

12 A Yes.

13 Q And not just on one person, but two different
14 females, correct?

15 A Yes.

16 Q Okay. And the same thing with the mouth,
17 right?

18 A Yes.

19 Q Okay. So did you see a book of mouths? Did it
20 have mouths on it or what did it have?

21 A Yes, of all the facial features.

22 Q Okay. So about how many different pictures of
23 mouths did you see in that book or that --

24 A A lot.

25 Q A lot, probably more than you can count?

1 A Uh-huh.

2 Q Okay. But despite the fact you saw a big just
3 blur of the different mouths or mouths, you know, in
4 some photographs of books, you still felt
5 comfortable enough saying that this kind of mouth
6 was on this woman and this kind of mouth was on this
7 woman?

8 A Yes.

9 Q Okay. Because if you felt like none of those
10 mouths matched the women, you would have said, None
11 of these are even close or none of these are it,
12 right?

13 A Right.

14 Q And he asked you about the hair, right?

15 A Right.

16 Q Okay. And you described the kind of hair of
17 the women?

18 A Yes.

19 Q Okay. That's where he got the hair from? Did
20 he show you a hair book?

21 A No. There were pictures of people with
22 different hairstyles.

23 Q Okay. So he showed you a picture -- a book of
24 people with different hairstyles and you would say,
25 This one had hair like this one, this one had hair

1 like this one?

2 **A** Yes.

3 **Q** Okay. Well, what I'm trying to understand, Ms.
4 Feagin, is how you can sit here and say you recall
5 the build, you recall the height of the women, you
6 recall that one was younger versus older, you recall
7 that one was thinner than the other one, you recall
8 that one was sitting down more than standing, you
9 recall what one drank and what they ordered. And
10 then you were able to go to a book which had a
11 picture -- a bunch of pictures of mouths in it and
12 say, This one had this kind of mouth, this one had
13 this kind of mouth, you were able to go to the eyes
14 and say, This one had this kind of eyes and this one
15 had this kind of eyes, and do the same with
16 somebody's nose and the head shape and the hair, but
17 now say you can't identify them because you didn't
18 get a good look at them. How could you say all of
19 those things if you didn't get a good look at them?

20 **A** I didn't say I couldn't identify them because I
21 couldn't get a good look at them. It's been a long
22 time, I'm sure I can still identify them, it's just
23 been a long time since I had a look at them.

24 **MR. MOBLEY:** I have no further questions of
25 this witness, Your Honor.

1 **MR. LUPTON:** Your Honor, I believe she just
2 said she could identify. I'd ask the Court for
3 permission to redirect this witness.

4 **THE COURT:** Well, I'm not going to -- we have a
5 matter of law to take up as to this witness which
6 we'll do during the break, so I'm not excusing this
7 witness yet.

8 Ladies and gentlemen of the jury, I am going to
9 let y'all take a short break. I understand that
10 there are some child care issues and trying to stay
11 on schedule so that you all can make those
12 appointments at the end of the day, I'm going to go
13 ahead and let you all take a break right now. I
14 have some matters I need to take up with the
15 attorneys outside of your presence. Obviously,
16 don't discuss the evidence or testimony you've heard
17 or seen thus far. And we'll bring you back out in
18 about ten minutes or so. Thank you.

19 (The jury retires to the jury room.)

20 **THE COURT:** Ma'am, I'll just remind you you're
21 still considered under oath and on the witness stand
22 and not to discuss your testimony during the break
23 at all.

24 **THE WITNESS:** Okay. Thank you.

25 **THE COURT:** Counsel, we had a discussion at

1 side bar as to the composite photos. And before we
2 excuse this witness -- and I know we had talked at
3 side bar about possibly the sketch artist coming in
4 to testify as well. Let me ask, Mr. Mobley, if you
5 can state your objection on the record and we'll
6 discuss that issue.

7 **MR. MOBLEY:** Certainly, Your Honor. My
8 objection is that the composites themselves are
9 hearsay and improper bolstering of the witness.

10 And just so we're clear, I don't have any
11 problem with the witness testifying to the
12 description of the females that she saw on the night
13 in question, but the composite was not something
14 that she generated. The composite was generated by
15 a sketch artist. And being allowed to introduce the
16 composite would be no different than her giving a
17 statement to an investigator, him writing down
18 everything she said, because that's basically what
19 he did except instead of using words, he used
20 pictures.

21 **THE COURT:** See, that's the thing that bothers
22 me. And I went back to look and I wanted you to
23 address 801(d)(1). I mean, it's not even hearsay,
24 is it? Her description would not -- her
25 identification -- her statement regarding her

1 identification wouldn't even be hearsay, would it?

2 MR. MOBLEY: I'm looking at -- are you looking
3 at subsection (c)?

4 THE COURT: And if the statement -- the
5 description wouldn't be -- yes, sir -- how would the
6 composite be any different?

7 MR. MOBLEY: No. And I guess, just so we're
8 clear, the description would be -- let me take a
9 look at the subsection we're referring to.

10 THE COURT: Those are the statements which are
11 excluded from the definition of hearsay.

12 MR. MOBLEY: Okay. And just so we're clear, I
13 mean, an identification -- I think, that can
14 accomplish an in-court identification, but, I mean,
15 if somebody -- if the investigator wrote down her
16 description of the suspect and put it in his
17 statement, he couldn't come back later and testify,
18 Well, she described the suspect as this and
19 described the suspect as this, unless certain things
20 took place during cross-examination of the witness.

21 THE COURT: If the statement is made, the
22 statement would fit the definition, not in court,
23 but an out of court statement made by this witness,
24 of perceiving somebody that constitutes an
25 identification. How is that -- under the definition

1 of (a), 801(a), as well as (d)(1), I mean, I'm not
2 quite sure how this even is hearsay.

3 MR. MOBLEY: It's clearly a written assertion.

4 THE COURT: I think, arguably, it's -- I guess
5 we could argue about whether it's a statement under
6 the definition of (a)(1) or (a)(2). I think, at the
7 very least, it comes in under (a)(2) as a statement.
8 It's a nonverbal rendition.

9 MR. MOBLEY: I think we can agree it's a
10 statement.

11 All right. Now, with respect to, Other than
12 one made by the -- while testifying at the trial,
13 offered in evidence to prove the truth of the matter
14 asserted. What's in the composite, they're trying
15 to offer that to establish that that's what the
16 suspects look like and that's the very definition of
17 it. They're trying to offer these --

18 THE COURT: That's the question I had. And I
19 don't mean to interrupt you and I want to hear your
20 argument as to this. The problem that I'm wrestling
21 with at side bar is, is that under (d), it's not
22 hearsay. (d) actually exempts it from the
23 definition of hearsay, doesn't it?

24 MR. MOBLEY: You mean under subsection (c)?

25 THE COURT: Yes, sir.

1 **MR. MOBLEY:** Well -- and once again, if this
2 was a photo lineup and a person was identified -- I
3 mean, so you're saying these are identifications?

4 **THE COURT:** Well, no, I guess what I'm
5 struggling with is your objection was as to this
6 being hearsay and I know there was a two part
7 objection. But the problem I have is, is that I'm
8 not sure that I understand how this is actually
9 hearsay.

10 **MR. MOBLEY:** Okay. Because this document was
11 written and generated by another person who is not
12 this witness. That's the first thing. I mean, she
13 didn't draw this composite. This composite is the
14 result of what she told a third person who's not
15 present right now. I mean, we can agree, from a
16 factual standpoint, that's what took place.

17 I mean, he says she made the composite. She
18 didn't make the composite. She talked to a SLED
19 sketch artist and he wrote down her description
20 about what she said and this is what he generated.
21 She didn't generate these.

22 **MR. LUPTON:** Your Honor --

23 **MR. MOBLEY:** So now to allow her to start, you
24 know, talking about and admitting and bringing in
25 evidence of something that she didn't generate, I

1 mean, that's the whole point of it. This is what
2 she told somebody else and they sketched and wrote
3 down, that's what I'm saying.

4 I don't have any problem to her testifying to
5 what she saw. And, you know, she can even --
6 technically, she could use that to refresh her
7 memory from the description. I don't think there's
8 anything wrong with that. But her putting in what
9 somebody else drew based on what she said is what
10 makes it improper and what makes it hearsay. She
11 didn't make these. Someone else wrote these
12 documents and produced these documents as a result
13 of what she told them.

14 **THE COURT:** If she says either that's what they
15 looked like or, no, they don't. I mean, if she says
16 that's what they looked like, how is that not her
17 assertion of an identification?

18 **MR. MOBLEY:** Because it's a composite. She's
19 not identifying the defendant, she's identifying the
20 accuracy of a --

21 **THE COURT:** I understand that, but I guess my
22 question is if somebody identifies -- if somebody
23 says, This is my identification. What do they look
24 like? They looked like Brittany Spears. I clipped
25 out a picture out of People magazine of Brittany

1 Spears and they said they looked like Brittany
2 Spears. She didn't take the picture, but she adopts
3 that as her assertion, this is what that person
4 looked like. That's her adoption of a statement to
5 identify somebody.

6 And what I keep wrestling with, and I did want
7 to give you a chance to argue this on the record
8 because -- while this witness was still on the stand
9 before we actually broke, but I'm having a hard time
10 understanding how that actually falls under the
11 definition of hearsay because the rule expressly
12 exempts it, as I see it and I may be wrong, exempts
13 it from the definition of hearsay.

14 No matter who -- I mean, she could pick a cave
15 drawing and say that's what I adopt. And I'm not
16 being facetious about it, but she can say that's
17 what I adopt as my assertion of what that person
18 looked like. And if that's the case, why does that
19 not fall under the definition of the exemption to
20 hearsay.

21 **MR. MOBLEY:** The exemption contemplates an
22 identification of a witness or a defendant. That's
23 just corroborating, bolstering her description.

24 I think -- if I tried to argue, you know, she
25 didn't, for example, I think if I tried to argue on

1 cross-examination that she didn't describe this and
2 she didn't do this or she didn't say they looked
3 like this, it certainly would be admissible from
4 that standpoint. But just to bolster her own
5 testimony about what she described, I mean, it's
6 improper --

7 **THE COURT:** Well, the identification itself is
8 not bolstering. The bolstering would be somebody
9 else or something else coming in to vouch for her
10 accuracy of identification. That's not what they're
11 -- I mean, she is saying, This is what I described
12 that person as looking like. The composite itself
13 doesn't bolster that. It just --

14 **MR. MOBLEY:** I think that's exactly what it
15 does.

16 **THE COURT:** -- identifies that person.

17 **MR. MOBLEY:** I think that's -- I mean, that's
18 my whole point. The composite was generated by a
19 third party and that's exactly what it's doing.
20 It's this other person bolstering her description
21 with his rendition of what she said.

22 I don't have any problem with her testifying,
23 describing what she saw, but letting someone else
24 write down what she saw and put it in to back up
25 what she's saying is what makes it hearsay and

1 improper bolstering, Your Honor. Because it's not
2 one of identification -- she's not identifying the
3 defendant. She's giving -- I mean, you know, and
4 what's funny, she really kind of goes back and forth
5 on the accuracy of it, Well, close -- this is close
6 -- I mean, I think she's trying to have it both ways
7 and say, Well, this is close, it was the best I
8 could do.

9 **THE COURT:** Those are issues I think you can
10 actually --

11 **MR. MOBLEY:** I understand that, but --

12 **THE COURT:** -- of cross-examine and direct
13 exam --

14 **MR. MOBLEY:** I understand. But, once again,
15 she's not identifying -- she's not identifying the
16 defendant in any one of those photographs. I mean,
17 I think if she's identifying the defendant, that
18 would be one of identification. This is not an
19 identification. This is just bolstering the
20 description she gave to somebody else.

21 **THE COURT:** The rule's not limited to the
22 defendant.

23 **MR. MOBLEY:** I don't -- I see --

24 **MR. LUPTON:** Your Honor, if I may. Your Honor,
25 I believe that this exactly falls under 80 --

1 801(d)(1)(c), One of identification a person made
2 after perceiving a person.

3 I don't believe that identification of a person
4 requires that you know their name. I think if you
5 see a picture and say that looks like the person who
6 did it, that is a statement of identification of a
7 person if it's made after perceiving that person. I
8 believe that that would fall under the exemption to
9 the hearsay rule. It would not be defined as
10 hearsay.

11 Additionally, I think that the fact that she
12 made that -- that she perceived the composite and
13 identified it as a fair and accurate representation
14 of what she saw, I see it as no different than a
15 picture.

16 For pictures to come in, there's no requirement
17 the person who made the photograph be the person
18 who's in court. We've got plenty of photographs in
19 this case that were not admitted through the person
20 that was the person who took the picture. And it's
21 very common in court. Anyone can identify a picture
22 as being a fair and accurate representation of what
23 was seen, what was perceived and that is all that is
24 required for admission.

25 In this case, as long as the witness can say

1 that's a fair and accurate representation of what I
2 saw, I see no difference, no distinction between the
3 fact that it's a drawing and the fact that it's a
4 photograph or a painting or a video tape. It is a
5 pictorial representation of what she saw. And she
6 made the assertion that it is a fair and accurate
7 representation and I believe it's admissible for
8 that purpose, in addition to the fact that it's
9 simply exempted from the hearsay rule.

10 **MR. MOBLEY:** And just so we're clear, the Court
11 talks about subsection C being one of
12 identification, I would ask the Court to keep in
13 mind there's a difference between a description and
14 an identification. This rule does not say
15 descriptions are exempt. It says one of
16 identification. And perhaps the Court doesn't see a
17 distinction, but they're two different things, a
18 description, identification. What she gave was a
19 description.

20 I would concede to the Court, Your Honor, if
21 these composites were identified as specific in --
22 as real, specific individuals, that would be one of
23 identification. I would -- I'm not saying it has to
24 be named Ms. Carmen Rice. I'm not saying she has to
25 know her name. But let's say, for example, these

1 composites, you know, were clearly matched with
2 specific individuals and she says, This is the
3 person right here, that would be one of
4 identification, but that's not what this is.

5 **THE COURT:** If that were true, then the issue
6 -- there wouldn't be any need to have the language,
7 After perceiving the person. What would be the
8 necessity of having that additional language?

9 **MR. MOBLEY:** I mean, I don't know. I could not
10 tell you that. I mean, obviously they can't make an
11 identification without --

12 **THE COURT:** I mean, the language, After
13 perceiving the person, arguably, would clearly
14 contemplate, I saw the person, I'm telling you what
15 they look like, not a, I saw Ted Lupton. I mean,
16 otherwise, there's no necessity to have that
17 additional language there, is it?

18 **MR. MOBLEY:** Well, the key word is
19 identification. And, once again, with -- and I
20 appreciate the Court allowing me to have, you know,
21 some dialogue with the Court about this issue.

22 **THE COURT:** That's all right. This is an
23 important issue.

24 **MR. MOBLEY:** But I just think the difference is
25 description versus identification. What these are

1 are descriptions versus identifications.

2 And Mr. Lupton talks about pictures versus
3 photographs. I do disagree with his position that
4 there's no difference between a picture and a
5 photograph. There's a big difference between a
6 picture and a photograph. And in this case -- but,
7 in particular, the language is clear, one of
8 identification, not one of description, Your Honor.

9 **THE COURT:** All right. We'll take a short
10 break. And my inclination, counsel, and I'll think
11 about it during the break, is to allow the witness
12 to be examined as to the composites. I think really
13 they fall under that exemption.

14 I'll look at it, Ms. Coats and I will look at
15 that a little bit during the break as well, but my
16 inclination at this point is allow her to be
17 examined as to the statements, if they can lay the
18 foundation and get it in with her, fine, and allow
19 you some cross-examination as to that. But I'll
20 limit both the direct and the cross as to that
21 specific topic which relates to the composite photos
22 that were identified.

23 **MR. LUPTON:** Your Honor, the State would ask to
24 have her identify, if she is able to, the person
25 that she says she saw that night. She stated -- it

1 was drawn out by cross-examination -- on recross, I
2 didn't go into it, but Mr. Mobley's questions
3 brought out new information. And I believe that the
4 State should be entitled to examine that
5 information.

6 **THE COURT:** I thought you did go into that
7 during your --

8 **MR. MOBLEY:** I believe he did, Your Honor. I
9 thought -- I mean, I think Mr. Lupton made it a big
10 part of his direct examination to try to lay some
11 foundation to explain why she couldn't make the
12 identifications, about how long it had been and how
13 -- did she see them the next day or the next day or
14 the next day and Oh, it's been so long and to
15 explain why she couldn't. I mean, that was the
16 whole point of that, Your Honor. That's what he
17 brought up on direct examination.

18 **MR. MEADORS:** Your Honor, respectfully, if I
19 might be heard, and I apologize.

20 **THE COURT:** Yes, sir. Certainly.

21 **MR. MEADORS:** If maybe we can go back to the
22 record, because I told Mr. Lupton to go ahead and
23 ask the question. He probably -- he asked Your
24 Honor, I think, is what he was saying he would like
25 to take it up outside. I specifically remember, in

1 response to several questions by Mr. Mobley to the
2 last witness, she said, I'm not saying I couldn't
3 identify them. It's at that point when I thought he
4 was going to go ahead and ask her, are you saying
5 you recognize that person. I think that's a new
6 matter brought up to the questions of Mr. Mobley.

7 Mr. Lupton, I think, was asking Your Honor --
8 asking her now, is that person in the courtroom that
9 you saw, based on the response he got specifically
10 from Mr. Mobley's question. If Your Honor wanted to
11 do that in camera first, I don't know what she's
12 going to say, that came up in response to his
13 questions. And she specifically said, I'm not
14 saying I couldn't pick them out if I saw them again.
15 I think that's specifically what she said and our
16 question would be in direct response to that.

17 **MR. LUPTON:** That is correct, Your Honor.

18 **MR. MOBLEY:** And just so we're clear, I mean,
19 the court reporter has the questions that were
20 asked.

21 **THE COURT:** I'm looking at them right now.

22 **MR. MOBLEY:** I mean, they went into some great
23 detail about -- trying to lay some foundation about
24 you weren't really paying that much attention and
25 they didn't show you a photo lineup so much later

1 and you were going to try to basically give some
2 reason or explanation for her inability to identify
3 them. That's why I didn't -- she indicated she saw
4 a photo lineup of the codefendant. I mean, I don't
5 think she knows who it was, but she did see a photo
6 lineup of the codefendant and didn't pick the
7 codefendant out either.

8 **MR. LUPTON:** She didn't pick the codefendant
9 out of a photo lineup, Your Honor. There's a
10 difference between a photo lineup and seeing a
11 person in the flesh.

12 I believe, Your Honor, this is extremely
13 relevant information. We don't know what she's
14 going to say. It could be exculpatory. It could be
15 inculpatory. But, Your Honor, the identification of
16 the person who was seen with the -- one of the two
17 people who were last seen with the victim while he
18 was alive is extremely relevant, extremely
19 probative. And whether exculpatory, inculpatory,
20 the jury should be allowed to know it.

21 **MR. MOBLEY:** And I don't mean --

22 **MR. MEADORS:** And, Your Honor, this would be,
23 and I apologize, this would be in direct response to
24 a question by Mr. Mobley.

25 **THE COURT:** I guess the only problem I have,

1 and I'm looking back at the direct, as well as the
2 redirect, and I remember when, Mr. Lupton, as you
3 were questioning the witness, I assumed it was on
4 purpose, I don't tend to get into trial strategy and
5 all, but I assumed that there was some reason you
6 didn't ask her that question directly. And I was
7 looking back at the direct, as well as the redirect,
8 there were times when I thought that's what the next
9 question you were going to ask and it wasn't. Why
10 shouldn't you be foreclosed at this point?

11 **MR. LUPTON:** Your Honor, because it's in direct
12 response to a new matter brought up by the defense
13 attorney during his recross. Your Honor, I never
14 asked her if she could identify them. He asked her
15 about that. And she responded that she could. The
16 jury heard it. I think that the jury is entitled
17 to, in the search for the truth, to know who that
18 person is.

19 And we don't know, none of us know in this
20 courtroom except for Ms. Feagin, who that person is.
21 I think that the fact that it's being so strongly
22 fought is indicative of the fact that we all have a
23 suspicion of who it's going to be. But this is
24 extremely relevant, extremely probative, extremely
25 important information in search for the truth and

1 that is what this trial is supposed to be about.
2 And we ask for the jury to be allowed to hear that
3 information.

4 **MR. MEADORS:** And, Your Honor, specifically,
5 and if I may and my colleague -- excuse me,
6 Mr. Mobley -- with the Court's permission, also the
7 reason I think it maybe wasn't asked in direct, we
8 didn't know what the answer would be and didn't
9 know. When it came out through Mr. Mobley's
10 questions and through her answer that I heard, I'm
11 not saying I couldn't pick that person if I saw them
12 again, that's what I heard at that point, that is
13 new. And the question back, respectfully, Judge,
14 would just be to say, Can you pick that person.

15 **MR. MOBLEY:** Two things, Your Honor. I think
16 -- we don't need to look at our memories, the court
17 reporter has all of the questions that Mr. Lupton
18 asked this witness. I mean, we need to review that
19 and look -- that was the exact line of questioning
20 even on direct examination to try to lay some
21 foundation as to her inability to identify anybody.
22 And they went in on the time and how you didn't see
23 her the next day and had you seen her sooner would
24 have made it, they went in all of that stuff for
25 that very purpose, Your Honor.

1 And I mean -- and next, Your Honor, this whole
2 in-court identification, we don't need a Neil v.
3 Biggers to know that some woman, who's never, ever
4 seen a photograph of this particular person or never
5 seen this person four years ago, come into court the
6 very first time seeing her on trial for murder
7 between her two lawyers, try to come to court and
8 say, Oh, yeah, that's her. We don't even need a
9 Neil v. Biggers hearing on that issue. That is so
10 highly -- that is such a process and procedure
11 that's riddled with a risk of prejudice and a strong
12 possibility of misidentification, that it doesn't
13 even need a hearing, Your Honor.

14 When you look at that kind of time lapsing and
15 then her come into court and seeing some lady on
16 trial for murder between her two lawyers and go,
17 Yeah, that's the lady I saw four years ago, having
18 never done that -- I mean, we don't even need a
19 hearing on that, Your Honor.

20 But I think we don't need to get there because
21 I think my line of questioning was not a new matter,
22 but all along the matters they addressed -- or Mr.
23 Lupton addressed on direct examination. And we can
24 read -- we can have the court reporter, you know,
25 read the questions on the record to clarify that,

1 but we all remember it the exact same way.

2 MR. MEADORS: Your Honor, with all due respect,
3 I don't think it matters what Mr. Lupton asked him
4 (sic) on direct.

5 With all due respect, I think -- and as far as
6 a Neil v. Biggers hearing, I don't think we need one
7 either. I've had it happen several times in my
8 career. When we come in, there's been an in-court
9 identification years later. In this specific case
10 -- that's what's the beauty about trials, it's live
11 in here, it's real.

12 And after cross-examination, she said, I'm not
13 saying I can't pick her out. That's just real live
14 testimony that came out in court. We didn't know
15 whether she could or not, that's why I think Mr.
16 Lupton didn't ask her.

17 But in direct response to his question when she
18 said, I'm not saying I can't pick her out, we just
19 want to ask her, is that person in the courtroom,
20 can you pick her out. Then he can cross-examine her
21 all day long.

22 MR. LUPTON: Your Honor, with respect to the
23 Neil v. Biggers issue, a case recently has decided
24 on that very point that an in-court identification
25 is not subject to Neil v. Biggers analysis, that it

1 is an identification that occurs in the jury's
2 presence with the defense attorney present and that
3 the jury and the defense attorney are able to see
4 the nature of the identification. The defense
5 attorney can cross-examine the witness on the
6 identification. The jury has the opportunity to
7 observe the identification and form their own
8 opinions after seeing the identification and seeing
9 the cross-examination.

10 So it is not something that is subject to a
11 Neil v. Biggers. It is something that is an
12 appropriate procedure. And that was a recent case.

13 **MR. MOBLEY:** I think this Court should always
14 be concerned about whether or not any type of
15 identification process, procedure identification
16 being made is conducted in a manner if there's a
17 significant risk or a substantial risk for
18 misidentification and how prejudicial that would be
19 in this trial, Your Honor. That's always a -- for
20 the Court.

21 And I think the factors of this case, it
22 happened October of 2001, here we are in March (sic)
23 of 2005, coming three and a half years later, seeing
24 the person for the very first time between two
25 lawyers on trial for murder saying -- trying to make

1 an identification based on that. I mean, I don't
2 see how any reasonable person can say that process,
3 that procedure, I mean, is not rife with a
4 significant risk and substantial risk of
5 misidentification, which, as we all know, is the
6 leading cause of wrongful conviction in the country.

7 **THE COURT:** I am listening to y'all. I promise
8 you. I'm rereading the testimony as it was through
9 the direct, cross and redirect and recross as y'all
10 are arguing. I'm listening to y'all on those
11 issues. I don't know, Mr. Mobley, that I would go
12 that far as to adopt your last statement. Anything
13 further?

14 **MR. LUPTON:** Your Honor, I believe it's a
15 matter that's in the Court's discretion. You have
16 the authority, as the trial Court, to allow that
17 line of questioning and I think it's appropriate.

18 **MR. MEADORS:** And, Your Honor, I think
19 Mr. Mobley opened the door. I mean, he basically
20 asked the question that she said, I'm not saying I
21 can't. I guess that's my basic point.

22 **MR. MOBLEY:** And maybe we ought to clarify
23 whether I opened the door or not. I was pretty
24 certain that on direct examination, that was the
25 entire implication of the direct examination trying

1 to lay some foundation as to why she couldn't. I
2 mean, I think we all heard the same testimony, we
3 all heard the same questions. I mean --

4 **MR. LUPTON:** Your Honor --

5 **THE COURT:** I've been reviewing all of that and
6 there was a great deal of discussion regarding the
7 composites. But there was nothing that I'm seeing
8 that related to whether she could make a -- there
9 was obviously some discussion about her looking at a
10 photo lineup or something, but there was no
11 discussion at all that I'm seeing that touched on
12 the issue of whether or not she could make an
13 identification here and now. I'm not seeing that at
14 all in direct or redirect.

15 **MR. MOBLEY:** I mean, just so we're clear, I
16 mean, I wasn't trying to say today -- I mean, when
17 he talked about the past and her being shown a photo
18 lineup, it was all in that same line of questioning.
19 He asked about the same photo lineup, if she wants
20 to look at the photo lineup again, I don't have any
21 problem with that if she's saying she can make an
22 identification from the photo lineup, but that was
23 what my question in response to. I'm sorry, not
24 response to, but along the same line of the question
25 that Mr. Lupton discussed.

1 **MR. LUPTON:** The photo lineup related to the
2 codefendant in this case not the defendant on trial.
3 So that line of questioning had nothing to do with
4 this defendant and that will be explained through
5 investigator witnesses as to what photo lineups she
6 saw.

7 **MR. MOBLEY:** Well, that's the line of questions
8 I was obviously referencing in my cross-examination.

9 **MR. LUPTON:** Your Honor, the door was opened on
10 redirect. The Court has the power, in its inherent
11 power in the overseeing of the trial, to allow a
12 fair opportunity to present relevant, probative
13 evidence.

14 There's nothing prejudicial to the defendant in
15 allowing the jury to hear evidence about whether or
16 not she can identify the defendant at trial.
17 There's no unfair prejudice. There may be prejudice
18 if she identifies her that she is, in fact, the one
19 who is with him that night when she says she isn't,
20 but that's not unfair prejudice. And that's what
21 the jury is supposed to be deciding is the truth of
22 this matter and I believe that they're entitled to
23 hear relevant, probative evidence on that.

24 **MR. MOBLEY:** And he's trying to couch that, the
25 jury's entitled to hear this, the jury's entitled to

1 hear that, but the unfairness comes in the procedure
2 in which this identification might possibly be made.
3 And just so we're clear --

4 **THE COURT:** Well, the issue of that, though, is
5 whether or not, you know, she'll be subject to
6 cross-examination and all of that about the
7 certainty of her identification.

8 As I've been sitting here listening to y'all,
9 one of the things that concerns me is that,
10 obviously, to the extent that there was examination
11 regarding these composites and then your last
12 question to her was as to, Can you make an
13 identification now or --

14 **MR. MOBLEY:** No, I didn't say now. And just so
15 we're clear, Judge, he asked her not just about the
16 composites, he talked about the photo lineup as
17 well.

18 **MR. LUPTON:** The photo lineup didn't refer to
19 this defendant.

20 **THE COURT:** But it wasn't as to --

21 **MR. MOBLEY:** He asked about the -- I mean --
22 and I didn't say whether it referred to this person
23 or anybody else, but he asked her about the photo
24 lineup, which, based on the investigator's notes,
25 and I know she didn't know the answer, but based on

1 Investigator Mincey's notes, she didn't pick out the
2 codefendant. So my line of questioning wasn't
3 related to this person, but to the areas he brought
4 up on direct examination about, you know -- and I
5 guess --

6 **THE COURT:** A little bit of my problem is your
7 last question to her directly challenges her where
8 it was never testified to. It directly challenges
9 what she had never testified to. In any of her
10 answers, just looking back at them, she never said,
11 I can't identify the person. And your last question
12 to her, well next to last, directly challenges her
13 ability to make an identification. And you do it,
14 as good defense lawyers do, I mean, you challenged
15 her on that specific issue, which was not an area
16 that had been brought up either on direct or
17 redirect.

18 **MR. MOBLEY:** Well, just so we're clear, Your
19 Honor, if you look at the direct questions asked by
20 Mr. Lupton, Mr. Lupton -- I mean, he appeared to be
21 going into great detail to explain or justify or lay
22 a foundation for her inability to identify the
23 codefendant when --

24 **THE COURT:** See, those questions -- and I
25 thought that that's where they were going, they

1 never did. Looking back at those questions related
2 to her recollection, really, at the time and it
3 related to her recollection for purposes of doing
4 the composite photos. Nobody ever brought up, at
5 any point, until your last question to her, whether
6 or not she could make an identification of the
7 person if she saw them. It just never got brought
8 up.

9 And then you, actually, in your questions, say,
10 you pick all of this stuff out of a book, blah,
11 blah, blah, now you can't make an identification,
12 can you tell us now that you can't make an
13 identification. Well, she never said that and that
14 was never brought up.

15 I understand the arguments on that. We'll take
16 a couple minutes break before we bring the jury back
17 out. Unless I see something in the next couple of
18 minutes, I'm going to allow her to certainly retake
19 the stand and if the foundation's laid, get into the
20 introduction of the composites. I think they do
21 fall under that exception to hearsay and there can
22 be direct and cross on that issue.

23 I'll come back and let you know as to this
24 issue of whether or not she can identify anybody in
25 person here today. That was not an area, though,

1 that was brought up at any point during her direct,
2 cross, redirect or recross.

3 **MR. MOBLEY:** And just so we're clear, you know,
4 in my questioning of the witness, I never talked
5 about an in-court identification or identifying
6 Carmen Rice or doing an identification today and I
7 stopped short.

8 But, obviously, you know, she had made -- she
9 had made an attempt to identify the codefendant from
10 the photo lineup, which I was aware of, Your Honor,
11 and that's what I was referencing because -- I mean,
12 once again, he was laying the foundation for --
13 because once Gene Mincey testifies, it's going to
14 come out she picked out -- she didn't pick out the
15 codefendant.

16 **THE COURT:** You said, What I'm trying to
17 understand, Ms. Feagin, is how you can sit here and
18 say you recall the build and you recall the height
19 and you recall that one was younger versus older,
20 you recall that one was thinner than the other one,
21 you recall that one was sitting down more than
22 standing, you recall what one drank and what they
23 ordered and then you were able to go to a book that
24 had a bunch of mouths in it and say this one had
25 this kind of mouth and this one with that kind of

1 nose and head shape and hair, but now say you cannot
2 identify them because you didn't get a good look at
3 them. And she basically answers you. She didn't
4 say I couldn't identify them.

5 **MR. MOBLEY:** Are you sure I said all of those
6 things?

7 **THE COURT:** Unless the court reporter's lying
8 on you.

9 I'll think about that, but that was not an area
10 covered on either direct, redirect, cross or recross
11 and that last question does introduce an issue in
12 front of the jury that might fairly be something
13 that both sides can get back into with this witness.
14 I don't know what she's going to testify to. It may
15 be all for nothing at the end of the day, but we'll
16 take a couple of minutes and I'll let --

17 **MR. MEADORS:** Your Honor, before we -- just for
18 time, the next witness, and I didn't realize it
19 until -- is a Mr. Steve Booth. Your Honor, he's got
20 some, I'm going to bring it out, he's got what I
21 think's impeachable, petty larceny two counts, a
22 resist -- I don't think the resisting is, another
23 petty larceny, breaking and entering, burglary and
24 assault and battery of a high and aggravated nature,
25 he got probation. I submit to you this is all I

1 think is impeachable in there. I wanted to put that
2 on the record and I'm going to ask him about that.

3 **MR. LUPTON:** And, Your Honor, for the record, I
4 have provided Mr. Mobley with the convictions,
5 impeachable and nonimpeachable, and pending charges,
6 which I know about, they're in the Fifth Circuit,
7 whether magistrate court or Kershaw County or
8 Richland County General Sessions, for all witnesses
9 that the State intends to call. And if --

10 **MR. MOBLEY:** That's correct.

11 **MR. LUPTON:** -- we call any additional
12 witnesses that were not anticipated, I will provide
13 him that information prior to them being called.

14 **MR. MOBLEY:** I don't have any problem with
15 that, that's something we discussed. And I've got
16 that.

17 **THE COURT:** Very well.

18 Counsel, what I intend to do is, just because
19 of some child care issues that some of the jurors
20 have, is break about 5:30. We'll finish up with
21 this witness and let you call your next one and try
22 to stay with that schedule. Tomorrow, we will
23 probably order in for the jury for lunch and squeeze
24 it in a little bit in terms of lunchtime, but we'll
25 probably try to break about 5:30 today as to this.

1 I don't know if there are any other matters we
2 need to take up with your office, Mr. Meadors, but
3 we'll see about that after we break on this trial.

4 **MR. MOBLEY:** Can we take a brief recess?

5 **THE COURT:** Yes, we'll take a couple of
6 minutes.

7 (Brief recess.)

8 **THE COURT:** Ms. Feagin, I'm going to ask if
9 you'll return to the witness stand. I just remind
10 you you're still under oath at this point. And
11 we'll bring the jury back in.

12 (Witness resumes the witness stand.)

13 **THE COURT:** Counsel, I'm going to stick with
14 what I said before we broke. I'm going to allow the
15 State to try to introduce the composite photos,
16 which were marked previously for I.D. purposes.
17 Obviously, there may be some other objection to
18 those, but as to the objection on hearsay grounds or
19 bolstering, I'm going to overrule that objection.

20 The question about whether or not she can make
21 an identification, I'll allow the State, as well as
22 the defense to get back into that. You can ask her
23 if she can and she may or may not say she can. I
24 don't know what she's going to testify to, but I'm
25 going to allow that question based on that last

1 colloquy between the defense and the witness.

2 **MR. MOBLEY:** Your Honor, are you going to allow
3 -- I'm sorry, I didn't mean to interrupt -- but are
4 you going to -- I mean, I would ask that we do that
5 outside the presence of the jury first before the
6 Court rules and hear the testimony in camera, out of
7 on an abundance of caution.

8 **THE COURT:** Is that to -- you want to raise an
9 objection as to the sufficiency of her
10 identification?

11 **MR. MOBLEY:** Correct, Your Honor.

12 **THE COURT:** I'll let Mr. Lupton ask her now.

13 (Whereupon, the following proceedings were
14 reported in camera.)

15 EXAMINATION

16 BY MR. LUPTON:

17 **Q** Ms. Feagin, in response to that last question
18 of Mr. Mobley's, can you identify the person or one
19 of the people that you saw with Bernard Brennan that
20 night?

21 **A** Yes.

22 **Q** And is that person in this room?

23 **A** Yes, I believe so.

24 **Q** Could you point her out?

25 **A** She's sitting over there (indicating).

1 Q Where specifically?

2 A She's sitting in between them two.

3 Q In between the two lawyers?

4 A Yes.

5 Q The person that -- could you step down and
6 point to her specifically?

7 THE COURT: She doesn't need to approach the
8 defendant.

9 MR. LUPTON: Let the record reflect, Your
10 Honor, that she has identified the defendant.

11 THE COURT: Yes, sir.

12 Mr. Mobley, anything, at this point, as to this
13 witness?

14 MR. MOBLEY: Excuse me, Your Honor.

15 (Pause.)

16 EXAMINATION

17 BY MR. MOBLEY:

18 Q Ms. Feagin, do you recall some questions
19 Mr. Lupton asked you on cross-examination?

20 A Yes.

21 Q Okay. And do you recall him asking you about
22 the time lapse between the time you had actually
23 seen the individuals?

24 A Yes.

25 Q And do you recall some of your responses to

1 some of those questions to kind of explain --
2 explain certain things? I mean, do you recall some
3 questions we talked about how you were able to give
4 a better identification or have a better memory if
5 you had seen them a lot sooner; do you recall those
6 kind of questions?

7 **A** I guess.

8 **Q** I'm sorry?

9 **A** I'm not sure.

10 **Q** Well, let's --

11 **MR. MOBLEY:** Can the court reporter -- I mean,
12 I would ask if you have the question, the court
13 reporter -- could the court reporter please find
14 those questions regarding the time lapse so I can
15 refresh this witness' memory of those questions and
16 her responses?

17 **THE COURT:** Let me ask -- I'm not quite sure
18 where we're going with this. I don't have a problem
19 with doing this outside of the jury's presence, but
20 it's going to take a while to do this. Is this to
21 raise an objection as to her in court --

22 **MR. MOBLEY:** Correct, Your Honor. But, I mean,
23 once again, she can't recall certain responses that
24 she made in response to some of the questions that
25 Mr. Lupton asked. They're in the record and I'm

1 trying to cross-examine her regarding her responses
2 to the questions. But, once again, they're there in
3 the court reporter's machine not in front of me, so
4 I'm trying to refresh her memory of the responses
5 she made a short time ago.

6 **THE COURT:** Is this a different objection than
7 the one you've already raised as to her?

8 **MR. MOBLEY:** At this point, Your Honor, I mean,
9 I'm trying to use her prior responses to have some
10 support so I can give a more specific basis --
11 factual basis for my objection, Your Honor.

12 I mean, I know, during the objection process or
13 during the discussion on this, you heard arguments
14 from counsel regarding what was said, what might
15 have been said and the rationale. I would, at this
16 point, in order to make specific objections
17 regarding this witness making an in-court
18 identification, I'm trying to cross-examine her
19 regarding an answer she gave a short time ago that
20 she cannot recall at this time.

21 **THE COURT:** Well, I guess my question is, is
22 the objection going to be different than what's
23 already been raised? Are you just -- you want to
24 cross her as to the time lapse between the time she
25 saw them and the time she may have talked to the

1 police, is that --

2 MR. MOBLEY: Not just the time lapse, but her
3 responses in regards to some of those questions, you
4 know, it discusses her inability to, you know, to be
5 more positive regarding the identification. And I
6 believe that's there.

7 And, once again, I know I'm going on memory
8 right now, Your Honor, because it's been a while, I
9 think we all are, to some extent, but, you know, I
10 mean, it's all right there and I'm trying to
11 cross-examine her about those. And if she can't
12 recall -- and she indicated she can't recall some of
13 the things that she said and I'll need to refresh
14 her memory with them. And I'd much rather -- I
15 think, it would be an interest to everybody if I'm
16 going to refresh her memory or remind her of her
17 answer, that we make sure that what I'm telling her
18 is accurate versus my rendition of what she said
19 because she can't recall.

20 THE COURT: I want to give you a chance if
21 there's an objection to be raised, before the jury
22 hears this, to make it if it's as to the time lapse
23 issue. I think those are fair issues for
24 cross-examination, but I'm not quite sure what other
25 objection --

1 **MR. MOBLEY:** Not just the time lapse, but that
2 was, you know, the time lapse was one of the
3 different reasons that the implication was -- the
4 implication of the time is one of the different
5 reasons that impaired her ability to make an
6 identification or to make a positive identification
7 or be certain about that identification, certain
8 details, that was one of the factors that was
9 discussed, you know, regarding that. And I wanted
10 to explore with this witness her answers in response
11 to direct examination questions where she responded
12 and gave answers that she described or suggested
13 would impair her ability to make a positive
14 identification, but, once again, those answers are
15 there. The time lapse is only one factor.

16 **THE COURT:** The issue of whether or not she can
17 make a positive identification is the issue that
18 we're dealing with now. I think those are fair
19 areas for cross, but I'm not quite sure how that
20 changes the objection that was previously made.
21 I'll certainly let you cross her about, you know,
22 the time issues involved in this case and all of
23 that.

24 **MR. MOBLEY:** And, once again, I mean, the time
25 was only one of the different factors that they

1 discussed would impair her ability. And she made
2 answers -- and she described other factors that
3 impaired her ability.

4 And just so we're clear, this is based on my
5 recollection, if we go through this and I'm
6 mistaken, you know, I'm going to apologize for
7 taking up the Court's time, but I recall, you know,
8 and I think we're all going to recall this
9 differently, but I think I can err on the side of
10 making -- if I'm going to give her -- confront her
11 with a fact or an answer she made, that, you know,
12 it's only fair to her that I'm making sure I have a
13 real fact not an incorrect memory of something she
14 said.

15 **THE COURT:** Well, the prior examination of this
16 witness related to the composites and there was this
17 one brief mention about the photo, which -- the
18 lineup, which I understand relates to the other
19 individual involved in this case and not this
20 defendant.

21 But in terms of any issues about time or
22 anything, I think those are fair issues to cross her
23 on, but not -- I don't think they are necessary in
24 terms of raising supportive arguments to your
25 previous objection. I think I've already dealt with

1 that issue in terms of allowing her to testify to
2 this because I think this whole issue about whether
3 or not she can make an in-court identification was
4 brought up anew in the last question to the witness
5 and that's the reason that I'm allowing both sides
6 to get back into that in the first place. But I'll
7 certainly let you cross her on that in front of the
8 jury.

9 I guess my question was, is there anything else
10 as to the identification itself?

11 **MR. MOBLEY:** No, and -- at this time, no, Your
12 Honor. And just so we're clear, and I don't mean to
13 split hairs with the Court, but, I mean, I never
14 asked her about making an in-court identification or
15 talk about her ability to make an identification,
16 you know. And obviously -- I mean, I didn't specify
17 in court or otherwise.

18 And I -- and I'm just going to indicate, just
19 for clarification, I said this earlier, you know, it
20 is clear from the investigator report, from
21 Investigator Mincey's report, that the witness was
22 shown a photo lineup of the codefendant in this case
23 and picked out two possible people, neither of which
24 was the codefendant, Your Honor. And, once again, I
25 stopped short of asking what kind of identification

1 I was talking about.

2 What I perceived Mr. Lupton was doing, and I
3 probably said some of this earlier, but what I
4 perceived Mr. Lupton was doing was trying to explain
5 or lay a foundation as to why she made a
6 misidentification there or two misidentifications
7 there or not be able to identify the person and I
8 was trying to counter that. But, you know, that's
9 fine, I know the Court has ruled, but I wanted to
10 clarify what I was doing on cross-examination, that
11 I was not asking about this particular witness -- or
12 this particular defendant or any type of in-court
13 identification.

14 But I would ask, you know, based on the
15 surprise of events that I have, you know, access to
16 the court reporter as she was going on a break like
17 everybody else to review the responses she made to
18 the direct examination questions, which I believe
19 were relevant to her discussion and statement about
20 her inability to make a more positive
21 identification.

22 And the Court uses time as an example, that was
23 only one of the different things they talked about
24 to lay that foundation to explain why she couldn't
25 make an identification, but she talked about, you

1 know --

2 **THE COURT:** See, I think sort of the problem
3 here is that there was a great deal of discussion
4 about the composites and everything that surrounded
5 that. That was just not the issue that was ever
6 brought up in front of the jury as to whether she
7 could identify anybody now in front of the jury and
8 tell the jury that's the person I saw. And, but for
9 that last question, the way it was framed, you know,
10 we'd be done. So I understand your objection. I
11 think you're protected.

12 **MR. MOBLEY:** I believe the witness was -- I
13 mean, what I gathered from her testimony, which is
14 why I would ask the Court to consider us reviewing
15 -- have the court reporter read some of these
16 questions and these answers in the record, what I
17 got from her testimony was she was implying an
18 inability to make a positive identification based on
19 all of those different factors, you know, and that's
20 what I was asking her about when I talked about her
21 inability to make an identification.

22 Now, if we read the questions and I'm
23 completely mistaken, that's fine. But I do believe,
24 you know, with all respect to the Court and granted
25 I'm going on memory, that, you know, that was the

1 line of questions that was basically the implication
2 was she couldn't make an identification based on all
3 of these different factors. And my question was to
4 challenge her, how can you say you couldn't do that
5 based on, you know, the questions that were raised
6 and answers by the witness in this case, Your Honor.

7 **THE COURT:** I understand. I think we've
8 already plowed that, though.

9 **MR. LUPTON:** With all respect to Mr. Mobley,
10 what he intended in the question and the way the
11 question actually came out, two different things.
12 And what's important is the way the question came
13 out and I believe by -- the question, the way it
14 came out, the door was opened.

15 **THE COURT:** I understand. I'm going to allow
16 her to testify as to in-court identification.

17 **MR. LUPTON:** Your Honor, very briefly on an
18 administrative matter. Officer provided me, on
19 State's Exhibit 45 and 46 that were marked
20 previously for identification, the larger sketches
21 that were done. He provided -- I don't know that
22 they would be the originals, but the better quality
23 of copies. And I've substituted, if there's no
24 objection, the better quality ones for the poor
25 quality ones if there's no objection to that

1 substitution by --

2 **MR. MOBLEY:** I don't have an objection on that
3 basis to the substitution.

4 **THE COURT:** Right, without waiving your other
5 objections to it.

6 **MR. MOBLEY:** I'll note my previous objection,
7 but correct, Your Honor.

8 **THE COURT:** Okay. We'll bring the jury back
9 in. Let them go over these two subject areas and
10 then we'll break.

11 Mr. Mobley, what I'll do is we won't excuse
12 this witness. I'll let you get with the court
13 reporter and review that portion of it. If we need
14 to recall her, I'll certainly entertain that issue
15 if we need to. I'm not going to cut you off on
16 something like that.

17 **MR. MOBLEY:** Thank you, Your Honor.

18 **THE COURT:** We'll bring the jury back out then.

19 (The jury returns to the courtroom.)

20 **THE COURT:** Thank you, ladies and gentlemen. I
21 apologize again for the delay in bringing you out.
22 The issue that we needed to take up took a little
23 longer than I thought. We are ready to continue. I
24 am going to allow some additional questioning of
25 this witness before she gets off the stand today.

HEIDI ROSEMARY FEAGIN - REDIRECT BY MR. LUPTON

367

1 Mr. Lupton.

2 MR. LUPTON: Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. LUPTON:

5 Q Ms. Feagin, I'd like to show you what was
6 previously marked as State's Exhibits 44, 45 and 46
7 for identification and I'd ask you to look at those
8 a little more closely.

9 A (Witness complies.)

10 Q Ma'am, are those the composite sketches that
11 you did with the SLED forensic artist back in
12 November of 2001?

13 A Yes, they are.

14 Q And could you describe, very briefly, the
15 process of how they were made?

16 A I had to look through different photographs and
17 pick out the eyes, the ears, all the facial
18 features, you know, to what I remember in my mind
19 what the picture looks -- what the two females look
20 like so that I could describe them to the gentleman
21 drawing the picture.

22 Q And based upon those recollections, based upon
23 your selecting features, were those sketches drawn?

24 A Yes, they were.

25 Q And did you review them after they were drawn?

1 A Yes, I did.

2 Q First of all, was that the first product, was
3 that the very first thing that the artist drew?

4 A Yes.

5 Q And that was based on the various pieces that
6 you put together?

7 A Yes.

8 Q And when you looked at those, did they fairly
9 and accurately represent the people that you saw
10 with Bernard Brennan that night?

11 A Mostly, yes.

12 Q And when you say mostly, what do you mean by
13 that?

14 A Well, they were close to what the people looked
15 like, but what I see in my head is what, you know,
16 what I remember, too, is a little different from
17 what's in the drawing.

18 Q But that was as close as you --

19 A It's the closest I could -- the best that I
20 could do from what I remember in my mind.

21 Q But does it -- does it fairly and accurately
22 represent what they generally looked like?

23 A Yes.

24 **MR. LUPTON:** Your Honor, based on the arguments
25 previously, I ask that these be admitted into

HEIDI ROSEMARY FEAGIN - REDIRECT BY MR. LUPTON

369

1 evidence at this time.

2 **MR. MOBLEY:** May we approach, Your Honor?

3 **THE COURT:** Yes, sir.

4 (Whereupon, a bench conference was held off
5 the record, in the presence of the jury, but out of
6 the hearing of the jury.)

7 **MR. LUPTON:** Your Honor, the State moves to
8 admit those composites into evidence.

9 **MR. MOBLEY:** Subject to my prior objection,
10 Your Honor.

11 **THE COURT:** Without waiving any prior
12 objections by the defense, the Court will allow 44,
13 45 and 46 into evidence.

14 (State's Exhibit Numbers 44 through 46,
15 composite sketches, admitted into evidence.)

16 BY MR. LUPTON:

17 **Q.** Ms. Feagin, the last question that Mr. Mobley
18 asked you before the break, you answered that you
19 believed you could identify somebody. Can you
20 identify somebody?

21 **A** Yes, I can.

22 **Q** And are you able, based on your recollections
23 from that night, to pick out one of the two people
24 that was with Bernard Brennan that night?

25 **A** Yes, I can.

1 Q And is that person in the courtroom today?

2 MR. MOBLEY: Subject to my previous objection,

3 Your Honor.

4 THE COURT: Yes, sir.

5 BY MR. LUPTON:

6 Q Is that person in the courtroom today?

7 A Yes, they are.

8 Q Ma'am, could you point out to the jury who that
9 person is?

10 A She's sitting over there at the table between
11 the two gentlemen.

12 MR. LUPTON: Your Honor, I'd ask that the
13 record reflect that the witness has identified the
14 defendant, Carmen Rice.

15 THE COURT: Yes, sir.

16 BY MR. LUPTON:

17 Q And, ma'am --

18 MR. LUPTON: No further questions.

19 THE COURT: Thank you, sir.

20 Mr. Mobley.

21 MR. MOBLEY: Thank you, Your Honor. Beg the
22 Court's indulgence briefly, Your Honor.

23 THE COURT: Yes, sir.

24 (Pause.)

25 *****

HEIDI ROSEMARY FEAGIN - RECROSS BY MR. MOBLEY

371

1 RECROSS-EXAMINATION

2 BY MR. MOBLEY:

3 Q Ms. Feagin, just so we're clear, now, this
4 incident happened -- do you recall when this
5 incident happened? The last night you saw Bernard
6 Brennan with those two women, do you recall when
7 that was?

8 A November 1st, 2001.

9 Q That was November 2001, correct?

10 A Yes.

11 Q And I think you indicated you moved between now
12 and then; is that what you said earlier? I can't
13 recall specifically. Did you move from California
14 and come back?

15 A No, I'm from California.

16 Q And what's the date right now?

17 A 2005.

18 Q March -- April. Well, let me ask you this.
19 The person you saw with Bernard Brennan on that
20 night in November of 2001, have you -- up until
21 today have you seen that person at all?

22 A No, I have not.

23 Q Okay. So the person or the two people you saw
24 with Bernard Brennan that night, the only time you
25 never -- is that the first time you had seen them

1 that night?

2 **A** Yes, it was.

3 **Q** Okay. So the first time you had seen them that
4 night and the only time you had seen them up until
5 today was November of 2001, which is approximately,
6 and I'm using an approximation, was three and a
7 half, four and a half years ago -- three and a half
8 years ago; is that correct?

9 **A** Yes.

10 **Q** And I think as you indicated --

11 **A** Four.

12 **Q** Four. Your math is better than mine. I
13 thought I was the only one confused. Let's see
14 here, November 2002 would be one year, 2003 would
15 be --

16 **A** Four.

17 **Q** -- two years, so four and a half?

18 **A** Almost four years.

19 **Q** So we got about a -- that was the only time
20 you'd ever seen that person or those two ladies,
21 correct?

22 **A** Yes.

23 **Q** Okay. And we can agree that's, approximately,
24 four and a half years ago; is that correct?

25 **A** Yes.

HEIDI ROSEMARY FEAGIN - RECROSS BY MR. MOBLEY

373

1 Q And about what -- how many -- how long did you
2 work at Calloways?

3 A For about a year, a little over a year.

4 Q How long had you been working there in November
5 of 2001?

6 A In November of 2001, almost a year because I
7 had left in December.

8 Q Okay. About how many other regulars were
9 there?

10 A How many other regulars were there?

11 Q Were there other people -- I mean, Bernard
12 Brennan was not the only regular at that bar,
13 correct?

14 A No, he was not the only regular.

15 Q Okay. How many other regulars would you say --
16 men came there?

17 A I don't know. I mean, it's quite a few.

18 Q Okay. And were some of the regulars that come
19 there were there the same night that Bernard Brennan
20 was there? Were there other regulars there the same
21 night he was there?

22 A Yes.

23 Q And do you recall the people that they were
24 with on that particular night?

25 A No.

1 Q Now, the next night you were working -- I mean,
2 you worked there for about a year. So,
3 approximately, how many days a week did you work?

4 A I worked five days a week.

5 Q Pretty long shifts? What time did you normally
6 go to work?

7 A It was from 11:00 till whenever they closed in
8 the evening.

9 Q 11:00 in the morning?

10 A 11:00 in the morning. Two days I worked from
11 11:00 and three days I worked from about 5:00 till
12 -- in the evening or 2:00, whenever they needed me
13 to come in.

14 Q About how many different people would you say
15 you saw there on an average work day?

16 A Between maybe -- depending on what day it was,
17 maybe 15 to 30, 40 people. In the evening, there
18 was a lot of people in there.

19 Q Okay. More in the evening, correct?

20 A Yes.

21 Q Some men, some women?

22 A Yes.

23 Q And you didn't see the same people everyday,
24 correct?

25 A No.

HEIDI ROSEMARY FEAGIN - RECROSS BY MR. MOBLEY

375

1 Q There were days that you saw different people
2 that you'd never seen before, correct?

3 A Right.

4 Q And then you probably never saw some of them
5 again, correct?

6 A Right.

7 Q Now, some of the other regulars that you've
8 seen in the year that you worked there -- I mean,
9 are you saying you can describe every person they
10 were with?

11 A No. I can describe some of the people they
12 were with.

13 Q Okay. But, in this particular case, the first
14 and only time you had seen -- prior to now, the
15 first and only time you'd ever seen the woman that
16 Bernard Brennan was with was on the night of
17 November of 2001, correct?

18 A Right.

19 Q Four and a half years ago?

20 A Right.

21 Q And you would concede that you had seen, I'm
22 certain, hundreds of women in Calloways during that
23 year, correct?

24 A There's a lot of different women and men in
25 there, yes.

1 Q Okay. And did you ever wait tables any place
2 else?

3 A Yes. I've waited tables at Ruby Tuesdays and
4 the Kingsman, also.

5 Q Okay. Did you wait tables at Ruby Tuesdays
6 after you worked at Calloways?

7 A Yes.

8 Q And were there regulars at Ruby Tuesdays that
9 came some time?

10 A Yes, there were.

11 Q Some men, some women?

12 A Yes.

13 Q All right. Can you recall all of their guests,
14 all of the people they came with?

15 A I can recall some of them still.

16 Q But not all of them?

17 A No.

18 Q Now, do you recall Investigator Gene Mincey
19 coming to talk to you at some point?

20 A Yes.

21 Q You're not sure? I mean, I'm not trying to put
22 words in your mouth. Do you recall --

23 A Well, there was an investigator the next -- the
24 next day when I came into work after it happened,
25 there was an investigator there to speak with me.

HEIDI ROSEMARY FEAGIN - RECROSS BY MR. MOBLEY

377

1 Q And what did he talk to you about?

2 A Well, he asked me -- he just asked me some
3 questions about Bernard and when I talked to him
4 last and stuff.

5 Q Did he show you anything?

6 A Not at the time.

7 Q Well, did he show you anything at some point
8 later?

9 A Yes. I was at Ruby Tuesdays. I was shown some
10 photographs of one of the females.

11 Q Okay. You were shown a photo lineup?

12 A Yes.

13 Q All right. Were you -- can you describe how
14 that photo lineup was set?

15 A Can I describe how it was set?

16 Q Yeah. I mean, describe the photo lineup, how
17 it was put together?

18 A It was on a sheet with several different levels
19 of pictures on it and I had to choose a picture out
20 of all of them.

21 MR. MOBLEY: And I'm going to need to make a
22 copy of this later because this is my only version.
23 I'll need to mark this as Defendant's Exhibit Number
24 2.

25 (Defendant's Exhibit Number 2, photo lineup,

1 was marked for identification purposes.)

2 MR. LUPTON: Your Honor -- Your Honor, I'd just
3 like to make sure we establish for the record which
4 defendant this identification is for.

5 THE COURT: Yes, sir. I'll let -- Mr. Mobley
6 can show you a copy.

7 (Pause.)

8 MR. LUPTON: Your Honor, just so the record's
9 clear, that this is a photo identification or
10 attempted photo identification of a codefendant.

11 MR. MOBLEY: I'm not asking -- just so we're
12 clear, I'm not trying to ask her to make an
13 identification. I'm asking if she recalls seeing
14 this document. I want to ask her about what took
15 place when she was shown these documents.

16 THE COURT: I understand.

17 MR. LUPTON: Your Honor, I just wanted the --
18 there not to be confusion on the record or with the
19 jury as to who was being identified --

20 THE COURT: I'll let y'all have an adequate
21 opportunity on both sides to question her about this
22 if they want to move this in.

23 BY MR. MOBLEY:

24 Q Now, I want to show you Defense Exhibit Number
25 2.

HEIDI ROSEMARY FEAGIN - RECROSS BY MR. MOBLEY

379

- 1 A Okay.
- 2 Q Take a look at that, please.
- 3 A (Witness complies.)
- 4 Q Do you recognize that?
- 5 A Yes, I do.
- 6 Q Okay. What's that?
- 7 A It's the photos the investigator brought in for
- 8 me to look at.
- 9 Q Are you sure those are the photos? Those are
- 10 the exact same photos or are you saying those are
- 11 just photos that are laid out in the exact same way?
- 12 A They look like the photos he brought in.
- 13 Q Okay. And do you recall, I think, he came to
- 14 you in March of 2003?
- 15 A I believe so.
- 16 Q And I'm not trying to trick you. That's when
- 17 he came, according to his investigative report, on
- 18 -- I'm sorry, I said March -- April 24th of 2003,
- 19 okay. I'm not trying to trick you. That's when --
- 20 according to his report, that's when he came to see
- 21 you.
- 22 A Okay. They came to see me. I'm not sure
- 23 exactly the date or the day, okay.
- 24 Q I think you would agree with me that April 2003
- 25 is a little -- comes before April 2005, right?

1 A Yes.

2 Q Okay. That was actually two years ago,
3 correct?

4 A Correct.

5 Q Okay. Which -- would you agree with me that
6 two years ago is a lot closer to the point in time
7 that you saw the two black females with Bernard
8 Brennan, correct?

9 A Yes, it was.

10 Q Much closer to the time and point than today
11 is, correct?

12 A Yes.

13 Q All right. And the investigator, and I'm
14 saying it was Mincey, I know you can't recall, but
15 Gene Mincey, that very handsome gentleman with the
16 glasses, they have such handsome investigators, but
17 Gene Mincey, he showed you a photographic lineup,
18 correct?

19 A Yes.

20 Q Okay. And do you understand the purpose that
21 he was showing that photographic lineup?

22 A Yes, I do understand the purpose.

23 Q Okay. And what was the purpose of that?

24 A To identify someone.

25 Q Not just someone, one of the two females --

1 A Yes.

2 Q -- that you saw with Bernard Brennan, correct?

3 A Yes.

4 Q Okay. And when he showed you the photo lineup,
5 he didn't tell you whether the person was in it, did
6 he?

7 A No. I don't -- I don't -- I'm not sure.

8 Q You're not sure?

9 A He just asked me if I could point out a picture
10 that looked like her.

11 Q Okay. Pick out one of the two ladies?

12 A Yes.

13 Q Okay. And you had a chance to look at that,
14 correct?

15 A Yes, I did.

16 Q And did you pick anybody out or did you point
17 to anybody?

18 A I did pick somebody out. I did point somebody
19 out, I believe.

20 Q As a matter of fact, you pointed out two
21 people, didn't you?

22 A I believe so.

23 Q You can't recall?

24 A I recall picking out some people. I do recall
25 picking out two people.

1 Q You recall now?

2 A Yes.

3 Q After thinking about it a little bit?

4 A Yes.

5 Q Which two people did you pick out; do you
6 recall that?

7 A No, I don't recall the two people I picked out
8 on there.

9 Q Well, take a look. I know you're good with
10 faces, take a look at all the faces. Take all the
11 time you want, okay?

12 A Well, who am I supposed to be picking out on
13 here?

14 Q I'm asking you to recall the people -- the two
15 people you picked out to Investigator Mincey when
16 you saw that photo lineup that was two years ago,
17 which is a lot closer to the point in time to the
18 night you saw Bernard Brennan to today. My question
19 is, do you recall the two people that you picked out
20 that you said looked like the two ladies or looked
21 like one of the ladies?

22 A I can recall one of them.

23 Q You can't recall two of them?

24 A I can recall one of them that I picked out.

25 Q Okay. You picked out -- he asked you to pick

1 out one, correct?

2 A Two.

3 Q He asked you to pick out two? Well, you tell
4 me, I'm not trying to put words in your mouth, Ms.
5 Feagin, but you tell me what he asked you to pick
6 out when you'd seen that photo lineup?

7 A He asked me to pick out a photo of one of the
8 girls that was with Bernard on this lineup. And I
9 picked out two because I wasn't sure exactly which
10 one, you know, they looked alike, so I picked out
11 two, I believe.

12 Q And that's the whole point, just so you
13 understand, I mean, that's the whole point of them
14 kind of looking alike, right, I mean, so you don't
15 just pick out the wrong person?

16 A Right.

17 Q And there's six photographs -- just so we're
18 clear, I'm asking you, but when he came to you and
19 showed you this --

20 THE COURT: Well, before we publish that to the
21 jury, is this to be admitted into evidence?

22 MR. MOBLEY: Yes, Your Honor.

23 THE COURT: Is there any objection?

24 MR. LUPTON: Without objection, Your Honor.

25 THE COURT: Okay. Without objection, it's

1 admitted as Defense 2.

2 (Defendant's Exhibit Number 2, photo lineup,
3 admitted into evidence.)

4 BY MR. MOBLEY:

5 Q Why don't you come down here, if you don't
6 mind?

7 A (Witness leaves the witness stand.)

8 Q So you saw these two ladies first and only time
9 November of 2001, correct?

10 A Yes.

11 Q Okay. Which is four and a half, I know we did
12 the math, we had to kind of put our heads together
13 on that, but we got four and a half years ago,
14 correct?

15 A Correct.

16 Q April of 2005 it is now. And you were shown
17 this -- and, once again, based on the investigative
18 report, you know, you were shown this photographic
19 lineup in April of 2003, correct?

20 A I'm not sure if it was in April. It was 2003
21 when I was working at --

22 Q Okay. You were working at Ruby Tuesdays in
23 2003?

24 THE COURT: Ms. Feagin, I'm going to ask if
25 you'll keep your voice up so the court reporter --

HEIDI ROSEMARY FEAGIN - RECROSS BY MR. MOBLEY

385

1 your back is to her and she can't always see. Thank
2 you.

3 **THE WITNESS:** Okay.

4 BY MR. MOBLEY:

5 **Q** Did you work at Ruby Tuesdays in 2003?

6 **A** I believe so. I worked at Ruby Tuesdays when I
7 left Calloways. I don't -- yes.

8 **Q** And I'm not trying to put words in your mouth,
9 Ms. Feagin. If you can't recall, you can't recall.
10 I'm trying to understand, based on your
11 recollection, whether you worked at Ruby Tuesdays in
12 April of 2003 or not?

13 **A** Yes, I worked at Ruby Tuesdays in 2003.

14 **Q** In April of 2003?

15 **A** In 2003.

16 **Q** Okay. You can't recall whether or not you
17 worked there in April of 2003?

18 **A** No, because I had -- I have had two jobs. I've
19 had several jobs. I'm trying to raise a family.

20 **Q** I understand. Like most of us. I understand
21 that. You're a hard working lady.

22 All right. So some time in 2003, you can't
23 recall when, but some time in 2003 when you worked
24 at Ruby Tuesdays, you recall Investigator Mincey
25 coming into Ruby Tuesdays and showing you this photo

1 lineup, correct?

2 A (Witness nodded head.)

3 Q And how many photos are on this photo lineup?

4 A There are six.

5 Q Okay. And when he came to you, he indicated he
6 wanted you to pick one of the people out because I
7 think you told him or indicated that if you saw the
8 ladies, you thought you could recognize them again,
9 correct?

10 A Yes.

11 Q That's what you told him, right?

12 A Yes.

13 Q Okay. And since you told him that you felt
14 like you could probably recognize them again, they
15 put together a photo lineup for you?

16 A Correct.

17 Q Now, did Investigator Mincey tell you why he
18 didn't just bring you just one picture? Did he tell
19 you -- explain that to you? Did he explain to you
20 why there are six different photos?

21 A He wanted to see if I would be able to point
22 them out to recognize them.

23 Q Okay. Well, what's the -- I mean, why would he
24 show you six instead of one?

25 A To make sure I could recognize them.

1 Q Okay. So I guess the whole point is if he
2 showed you just one, you might pick out the wrong
3 person without having different photographs or other
4 different people to compare it to, correct? Is that
5 what he -- he more or less implied that was the
6 concern, that's why they put six photographs on
7 this, correct?

8 A Well, he just asked me to pick somebody out.
9 He didn't, you know, go into a big, long
10 conversation about it.

11 Q But based on your answer, you seem to have some
12 understanding of why there's six different --

13 A Yes.

14 Q Okay. And what's your understanding of why
15 there's six different people instead of just one
16 person in this photo lineup?

17 A Why do I understand?

18 Q What's your understanding of why there was six
19 different people in the photo --

20 A My understanding is that there's six different
21 people in there so that you could -- make sure you
22 could remember to pick out the right one, that's why
23 it's like that.

24 Q Instead of making a mistake?

25 A Exactly.

1 Q Okay. And I think, basically, you understood
2 that if you were shown one single, solitary
3 photograph of one person, that would increase the
4 probability of you making a mistake?

5 A It could, yes.

6 Q Exactly. Which is why -- I mean, they don't
7 just show you -- and they don't show you two people
8 and they don't show you three people and they don't
9 show you four people, not five, but six, six
10 different people at the same time?

11 MR. LUPTON: Your Honor, at this point, I'm
12 going to object, asked and answered. He's
13 belaboring this point way more than --

14 THE COURT: I'm going to sustain it. I mean,
15 I'm -- we're going to break at about 5:30 due to
16 some issues the jurors have. I think we need to ask
17 a question, she gives an answer. Let's move on to
18 something new.

19 MR. MOBLEY: Thank you, Your Honor.

20 BY MR. MOBLEY:

21 Q All right, Ms. Feagin. So Mr. Mincey showed
22 you this photographic lineup with six different
23 people in it, correct?

24 A Correct.

25 Q Okay. And he asked you, based on your

HEIDI ROSEMARY FEAGIN - RECROSS BY MR. MOBLEY

389

1 statement, if you could probably identify one of the
2 ladies you saw, to pick somebody out, to pick out
3 the person that you saw with Bernard Brennan that
4 night, correct?

5 A Yes.

6 Q And that was two years ago, correct?

7 MR. LUPTON: Your Honor, again, asked and
8 answered. I've been giving him leeway, but, Your
9 Honor, if we could move on.

10 THE COURT: Mr. Mobley, I'm going to sustain
11 that. You really are going over the same things
12 over and over again with her.

13 MR. MOBLEY: I'm sorry, Your Honor. I'll try
14 to do better.

15 THE COURT: She's answered that.

16 MR. MOBLEY: My wife tells me the same thing
17 when she's talking to me.

18 BY MR. MOBLEY:

19 Q All right. So you were shown this photo
20 lineup. And how many people -- I mean, did you
21 identify the person that you saw with Bernard?

22 MR. LUPTON: Your Honor, we're on the same --
23 asked and answered. He's belabored this point way
24 longer than is proper.

25 MR. MOBLEY: Well, I only touched upon it

1 earlier. I mean, at this point, she's actually
2 having an opportunity -- I mean, she talked about,
3 at this point, she's actually having an opportunity
4 to describe what she did with the exhibit, which was
5 not what was done earlier, Your Honor, regarding the
6 identification process.

7 **THE COURT:** Well, let's just ask her -- I mean,
8 this isn't rocket science. If it was, I wouldn't be
9 doing it. Ask her -- I mean, just ask her about
10 what she picked out. I think you pretty much plowed
11 all the grounds of how many photos he showed her and
12 what he asked her to do and what she understood that
13 he asked her to do. I really do think that you need
14 to move on to something related to her picking out
15 the photos.

16 **MR. MOBLEY:** All right. I'll try to -- and
17 just to clarify one question I asked earlier and
18 then I'm going to move on.

19 **THE COURT:** Yes, sir.

20 **BY MR. MOBLEY:**

21 **Q** Did you pick out the person?

22 **A** I wasn't told if I picked them out or not. I
23 just picked out two people and then that was it.

24 **Q** Okay. Do you recall which two people you
25 picked out?

1 **A** I recall one that I picked out.

2 **Q** Okay. Which one did you pick out, based on
3 your memory?

4 **A** I recall her and that's it.

5 **Q** Okay. When you say her, you mean photo number
6 one?

7 **A** Yes.

8 **Q** Okay. And you can't recall the second one?

9 **A** No.

10 **Q** Okay. He never told you whether or not you got
11 the right person or the wrong person?

12 **A** I don't believe so.

13 **Q** You don't believe that you --

14 **A** I don't believe I was told.

15 **Q** Okay. You can take the stand.

16 **A** (Witness resumes the witness stand.)

17 **Q** So you don't believe, or you can't recall, the
18 investigator saying whether or not the two people
19 that you picked out were both mistakes, both wrong?

20 **A** No. I just picked out two people and then that
21 was it as far as I believe.

22 **MR. MOBLEY:** That's all I have at this time,
23 Your Honor, from this witness.

24 **THE COURT:** Thank you, sir.

25 Mr. Lupton, anything further of this witness?

1 **MR. LUPTON:** Yes, Your Honor.

2 **MR. MOBLEY:** I'm sorry. Just subject to
3 recross-examination, Your Honor, I'm going to ask
4 that this witness not be excused at this time.

5 **THE COURT:** I'm not going to excuse her at this
6 point, but we'll take up those issues later.

7 REDIRECT EXAMINATION

8 **BY MR. LUPTON:**

9 **Q** Did you ever have a customer murdered the same
10 night that you served them before?

11 **A** No.

12 **Q** Ever have one murdered the same night that you
13 served them since this time?

14 **A** No.

15 **Q** And the police came to your place of employment
16 the next day; is that correct?

17 **A** Yes.

18 **Q** So all that talk about whether or not you can
19 remember any of your other regulars and who they
20 were with, this is the only regular you've ever had
21 murdered?

22 **A** That's correct.

23 **Q** Now, in April of 2003 when Investigator Mincey
24 came and showed you a photo lineup -- first of all,
25 can you recognize someone easier by a photo or in

1 person?

2 **A** In person.

3 **Q** And you were shown that photo lineup that's in
4 evidence and you stated that one of the people
5 looked similar, but you're not saying that that's
6 she and that the other one --

7 **MR. MOBLEY:** Is that a question, Your Honor, or
8 is it a statement? I don't think he's asking a
9 question.

10 **MR. LUPTON:** Your Honor, I'll rephrase --

11 **THE COURT:** He's getting the question out.
12 I'll let you rephrase it or ask the same one.

13 BY MR. LUPTON:

14 **Q** Do you recall exactly what you told
15 Investigator Mincey when you were looking at the
16 photos?

17 **A** Not word by word, no.

18 **MR. LUPTON:** Your Honor, at this point, I'd
19 like to show the defendant -- or the witness rather,
20 an item to refresh her recollection.

21 **THE COURT:** Yes, sir.

22 BY MR. LUPTON:

23 **Q** Could you read this right here?

24 **A** (Witness complies.)

25 **Q** And after looking at that, does that refresh

1 your recollection of what you told Investigator
2 Mincey?

3 A Yes.

4 Q And what did you tell Investigator Mincey when
5 you pointed to the first photo?

6 A That the photo looked like her, but I wasn't
7 sure that it was her.

8 Q And when you looked at the third photo, what
9 did you say about that?

10 A That that photo looked like her, I wasn't too
11 sure.

12 Q So did you make positive that these two people
13 are the person that I saw that night? Did you

14 make --

15 A No, I didn't make that positive.

16 MR. LUPTON: Your Honor, beg the Court's
17 indulgence.

18 THE COURT: Yes, sir.

19 (Pause.)

20 BY MR. LUPTON:

21 Q And with regard to photos, is this -- were you
22 ever shown a photograph of this defendant?

23 A No.

24 Q And have you ever seen her before today?

25 A No, except at Calloways.

HEIDI ROSEMARY FEAGIN - RECROSS BY MR. MOBLEY

395

1 Q Well, the night of the murder?

2 A Yes.

3 MR. LUPTON: No further questions.

4 THE COURT: Mr. Mobley, anything on recross?

5 MR. MOBLEY: I know I've got five minutes,
6 Judge, I'll try to make it quick.

7 RECROSS-EXAMINATION

8 BY MR. MOBLEY:

9 Q All right. Just so we're clear, when you were
10 shown the photo lineup two years ago with more than
11 one person in it, you could not make a positive
12 identification, correct?

13 A Correct.

14 Q Even though you picked out two people, you
15 could not make it a positive identification, but
16 today, four and a half years later after seeing a
17 person --

18 MR. LUPTON: Your Honor, objection. It's three
19 and a half just to correct the math.

20 MR. MOBLEY: We agreed it was four.

21 THE COURT: I think the jury can read
22 calendars, as well as any of us. November of 2001
23 to April of 2005, they can figure out how long it
24 is. It is closer to three and a half.

25 MR. MOBLEY: Okay. Three and a half, myself

1 and -- I guess, myself and Ms. Feagin are mistaken
2 about the time.

3 BY MR. MOBLEY:

4 Q But now, three and a half years later after
5 seeing that person one time that night in Calloways
6 when you -- the only time you had ever seen that
7 person the first time, although you couldn't pick
8 someone out of the six person photo lineup two years
9 earlier, the very first time you see this woman
10 three and a half years later knowing she's on trial
11 for this offense sitting between two lawyers at the
12 defense table, that's when you're able to say, Oh,
13 yeah, that's the lady I saw that night, that's what
14 you're doing today, correct? Even though you
15 couldn't identify someone out of a photo lineup at a
16 time much point in -- closer in time to the time the
17 offense happened, correct?

18 A I'm not sure I understand.

19 THE COURT: He asked you two questions.

20 Pick one and ask her one of them and then let
21 her answer that one.

22 MR. MOBLEY: I'll withdraw the question, Your
23 Honor. I don't have anything else, subject to
24 recall of this witness, Your Honor.

25 THE COURT: Ma'am, you may step down. Thank.

1 you.

2 **MR. LUPTON:** And, Your Honor, to clarify is Ms.
3 Feagin released?

4 **THE COURT:** I'm not going to release her yet
5 until I hear any other argument that Mr. Mobley
6 needs to make as to what we discussed earlier.

7 Yes, sir, Mr. Meadors.

8 **MR. MEADORS:** It's just for my witness schedule
9 I've been working on and moving people back and
10 forth. Are we breaking now?

11 **THE COURT:** Yes, sir. I'm going to let the
12 jury go. They have -- a few of them have some
13 issues that they need to do this afternoon that we
14 need to break now in order to get them to do that.

15 Ladies and gentlemen, I'm going to -- just to
16 let you all know, tomorrow I'll probably order lunch
17 in for you and shorten lunch up a little bit. Not
18 any fault of your's, obviously, you all have been
19 very patient this afternoon, but because we did lose
20 a little bit of time outside the courtroom late this
21 afternoon, I'm going to shorten lunch up a little
22 bit, but we'll feed you for that, I promise you.

23 Y'all enjoy the afternoon. It's now Daylight
24 Savings Time, it will give you a little bit of
25 sunshine when you get out of here. Obviously, do

1 not discuss the evidence or testimony you've heard
2 or seen thus far. Enjoy the rest of the evening.

3 I told y'all yesterday that y'all could rub it
4 in on Ms. Coats here if North Carolina had lost last
5 night, but they didn't so we'll find something else
6 to pick at her about.

7 But y'all enjoy the rest of the evening, ladies
8 and gentlemen. Thanks again for your patience. And
9 we'll see y'all at nine o'clock in the morning.
10 Thank you.

11 (The jury was excused for the day.)

12 **THE COURT:** Counsel, anything else we need to
13 take up before we break for today?

14 **MR. MOBLEY:** Not at this time, Your Honor.

15 **THE COURT:** We'll reconvene at 9:00 in the
16 morning. Counsel, I say nine o'clock in the
17 morning, I think we have two short bond hearings
18 with the State Grand Jury at nine o'clock. And they
19 should take about ten minutes because we actually
20 dealt with codefendants on these already. So it may
21 be ten or 15 minutes after 9:00 before we actually
22 get started.

23 Mr. Mobley, I'm going to let you get with the
24 court reporter after we break today and you can go
25 back and review what you need to as to that witness.

1 And if you feel that there are some issues we still
2 need to take up, then we'll certainly take those
3 issues up again. And tomorrow morning I'll let you
4 put on the record as to your side bar conversation
5 that we had. I don't want to forget about that.

6 Counsel, we'll see y'all in the morning then at
7 nine o'clock.

8 **MR. LUPTON:** Your Honor, with regards to Ms.
9 Feagin, does she need to be here tomorrow morning at
10 9:00? She works and has children.

11 **THE COURT:** No, sir. We'll alert her as to
12 when or if she needs to come back. She's free to go
13 to work and finish her life away from us for a
14 little while at the very least.

15 We'll be back in touch if we need to get you
16 back here, Ms. Feagin. Thank you, ma'am.

17 (The proceedings were concluded for April 5,
18 2005.)

19 (The following proceedings were held on
20 April 6, 2005.)

21 **THE COURT:** Counsel, let me let y'all know that
22 the trial that we're doing, one of the jurors is
23 having a little problem with having locked his keys
24 in his car downstairs with the car running. We've
25 given him a phone and trying to give him a chance to

1 get somebody to come over and unlock his car and get
2 his keys out. So it may be a few minutes until we
3 see where his situation is.

4 **MR. MOBLEY:** Actually, I just wanted to go
5 ahead and, I guess, from a housekeeping standpoint,
6 I know we talked about some matters on the record
7 regarding Ms. Feagin's testimony.

8 **THE COURT:** Do you want to wait on your client?

9 **MR. MOBLEY:** Good question.

10 (Defendant enters the courtroom.)

11 **THE COURT:** All right. Mr. Mobley, yes, sir.

12 **MR. MOBLEY:** May it please the Court. I know
13 the Court has already made some preliminary rulings.
14 I just wanted to make sure the record is protected
15 with respect to certain arguments I made to the
16 Court.

17 From my recollection, and this is, you know,
18 from the Court's ruling, a large factor, and the
19 Court allowed me the testimony from Ms. Feagin
20 regarding the in-court identification attempt was,
21 and once again, based on my recollection, if I
22 misstated, if my memory is wrong, please, you know,
23 forgive me, Your Honor, was that, you know, that I
24 opened this door on the issue of identification
25 because that was not something that the State had

1 gone into on the direct examination of the witness
2 and that's how I recall the Court from being a big
3 factor in that.

4 What I've done, Your Honor --

5 **THE COURT:** Direct or redirect? Part of my
6 issue with it was that it wasn't brought up really
7 in direct, redirect or cross.

8 **MR. MOBLEY:** And I'd indicated to the Court
9 that, you know, it was my memory and my
10 understanding that it did come up in the manner of
11 the photo lineup identification. And I was -- at
12 that time, I didn't have benefit of the transcript
13 or reviewing the actual testimony, but my memory was
14 all I had at that time, which I think, you know, and
15 actually I, you know, and I indicated to the Court
16 that my memory may have been mistaken, I wasn't
17 certain. That was my -- and, I guess, what I've
18 done, Your Honor, I had an opportunity to get a
19 transcript of the portion of the testimony from the
20 court reporter, if I can approach, Your Honor?

21 **THE COURT:** Yes, sir.

22 **MR. MOBLEY:** And, obviously, you can see the
23 top page, Your Honor, this is partial transcript of
24 the record in this case, the case of Carmen Rice. I
25 would direct the Court to page five of the

1 transcript, Your Honor.

2 **THE COURT:** Yes, sir.

3 **MR. MOBLEY:** And as you see, the top page is,
4 Heidi Feagin Direct By Mr. Lupton, and -- which you
5 can see, Direct Examination By Mr. Lupton. And if
6 you look at the second question -- the first
7 question -- the question is: Did you ultimately
8 assist the police by trying to look at a
9 photographic lineup of one of the people that might
10 possibly have been involved?

11 Answer: Yes.

12 In fact, were you able to identify anybody in
13 that lineup?

14 Answer: I pointed somebody out, but I wasn't
15 told if it was, you know, if I had picked the right
16 person out or not. I had just pointed to someone.

17 Then you said that was somebody might -- that
18 might be the one, but you weren't certain.

19 And my point, Your Honor, is once again, you
20 know, the -- her inability to make an identification
21 was not something that I had raised for the first
22 time on cross-examination.

23 **THE COURT:** Well, all of that went to the
24 codefendant and that's what I was looking at
25 yesterday. Nothing in there went to, until that

1 last question on your recross, nobody ever said can
2 you identify the defendant, the defendant on trial
3 here today.

4 **MR. MOBLEY:** And I didn't ask that either, Your
5 Honor. And I'm not trying to belabor the issue, I
6 just wanted to make sure that I clarified what
7 margin was and what the testimony was with respect
8 to the Court's ruling. If you look at my question,
9 I didn't -- my question was about identification not
10 an in-court identification to the defendant.

11 **THE COURT:** No. Your question went directly to
12 whether or not she could identify here today the
13 defendant.

14 **MR. MOBLEY:** And, once again, I didn't pull
15 that part of the transcript. I didn't recall my,
16 you know, the Court, if you have it, the record
17 speaks for itself, you know.

18 And I'm not trying to be argumentative with the
19 Court, but from the standpoint what I recall my
20 question being, was her inability to make an
21 identification. I didn't say today, I didn't say
22 this defendant, but if the record reflects
23 otherwise, I would certainly stand corrected
24 obviously, but if that's part of the basis for the
25 Court's decision, that I, you know, suggested or

1 indicated it was an identification, an inability to
2 make an identification in this case of this
3 defendant, that's not what I think I said, Your
4 Honor.

5 But, once again, the record speaks for itself
6 on that. I just wanted to make sure that I had an
7 opportunity to review the transcript and relay that
8 to the Court if that was the basis for the Court's
9 decision.

10 **THE COURT:** I was looking at that as y'all were
11 arguing yesterday. And the issue that was brought
12 up, which sort of that last question may be one
13 question too many, but it did relate to her not
14 being able to identify the defendant. And she said
15 I never said that.

16 **MR. MOBLEY:** And, once again, does the record
17 reflect I said that? I'm just trying to clarify
18 what the record reflects that my last question was.

19 **THE COURT:** That was the one I read out
20 yesterday and that was the one that gave me some
21 concern because it was -- I know both sides have
22 sort of been talking about the time period and all
23 this sort of stuff and, you know, was her memory
24 better then and that sort of stuff, but nobody ever
25 raised the issue until your recross of her as to

1 whether she could come in here and tell the jury
2 that the defendant, I'm paraphrasing some because
3 the question wasn't obviously framed in that way,
4 but your last question to her was whether or not she
5 could make an identification. And she said, I never
6 said I couldn't. And that was the basis for the
7 ruling.

8 But I do want to make sure your record is
9 protected on that. I think there may have been some
10 other issue you wanted to raise yesterday.

11 **MR. MOBLEY:** From the standpoint of the
12 in-court identification, I mean, you know, the
13 reality of it is, you know, having, you know, the
14 law in this state on that is not particularly
15 favorable to defendants. So, I mean, I think the
16 law on that is clear that it's, you know, an
17 in-court identification is subject to the discretion
18 of the Court and doesn't require some of the same
19 protections that a out-of-court identification
20 would.

21 So, I mean, from that standpoint, I mean, I can
22 make my arguments that I've made already, but the
23 bottom line is it's in your discretion and I
24 recognize that. I don't think that I can make any
25 other significant arguments that, you know, are

1 significant to that, Your Honor. So, I mean, you
2 know.

3 **THE COURT:** Well, I wanted to make sure you had
4 a chance to cross her on that and had a chance to
5 review the transcript you --

6 **MR. MOBLEY:** And I still -- once again, I have
7 reserved my right to recall that witness to complete
8 my cross-examination, but I just wanted to make sure
9 I got this portion of my objection on the record.

10 **THE COURT:** Yes, sir.

11 **MR. MOBLEY:** And my motion would be to either
12 -- at this point, Your Honor, I wouldn't be asking
13 for a mistrial, but I would ask, you know, that the
14 Court instruct the jury to disregard that portion of
15 the testimony regarding the in-court identification.
16 That would be my motion, Your Honor. Thank you.

17 **THE COURT:** Thank you, sir.

18 Mr. Lupton.

19 **MR. LUPTON:** Your Honor, just briefly as
20 additional standing grounds, on the second issue,
21 the procedure of the in-court identification, I
22 would just cite State versus Gerard Lewis. That's
23 spelled G-e-r-r-o-d, Lewis. It's opinion number
24 25943. It's an opinion of the South Carolina
25 Supreme Court filed February 22nd, 2005. That's the

1 case that I eluded to yesterday. I didn't have a
2 cite then.

3 It just states that, We conclude, as the
4 majority courts have, that Neil v. Biggers does not
5 apply to in-court identifications and that the
6 remedy for an alleged suggestiveness -- for any
7 alleged suggestiveness of in-court identification is
8 cross-examination argument.

9 On the first issue, I would additionally submit
10 that the trial court, as I argued yesterday, has the
11 inherent power to direct the flow of the trial and
12 that whether or not ultimately an appellate court
13 agreed that Mr. Mobley's question opened the door,
14 and I submit it did open the door as the Court has
15 ruled, but even if it did not, the Court has the
16 discretion to allow the State or the defense to put
17 in additional testimony that is probative and
18 relevant as long as both sides have the opportunity
19 to be heard on it as long as there's opportunity for
20 cross-examination. So the Court's discretionary
21 ruling would be sustainable even if there was no
22 opening of the door.

23 **MR. MOBLEY:** There's another pretrial matter we
24 might need to take up. And this one -- as the Court
25 -- as I indicated, there are a lot of objections

1 that will be kind of witness specific. And
2 Mr. Meadors made an allusion yesterday to Amber Byrd
3 being called to the witness stand and if she is one
4 of your upcoming witnesses, I've got some motions I
5 want to make regarding her testimony.

6 **MR. MEADORS:** Now, would be the time, yes, sir.

7 **MR. MOBLEY:** Your Honor, my motion would be to
8 suppress Amber Byrd's testimony from the trial of
9 this case on the specific basis that the State
10 obtained the information regarding this Amber Byrd
11 from confidential records, DSS records pertaining to
12 the defendant with an invalid subpoena.

13 Your Honor, I'm going to read a portion, and
14 I've got documents I'll be presenting to the Court
15 as well, but on page 21, for the benefit of
16 Mr. Meadors and Mr. Lupton, on page 21 of
17 Investigator Smith's investigative report, he
18 states:

19 During the week of October 27th, investigator
20 attempted to contrive other ways to identify the
21 actual subject associated with this case.
22 Investigator learned that Rice was involved with the
23 housing authority when she resided at a particular
24 address. Based on that fact, investigator felt
25 there was -- there remained the possibility that she

1 was also on welfare and under DSS supervision.
2 Investigator contacted Ms. Doris Graham at DSS.
3 She's identified as the economic services program
4 director. Ms. Graham indicated that she would need
5 a court order. Investigator obtained a subpoena
6 from Pascoe for review of the records. That
7 subpoena was faxed to DSS.

8 What I have, at this time, Your Honor, there
9 are two documents, I think, for convenience, we can
10 make it one exhibit.

11 **THE COURT:** I'll let you mark it as a Court's
12 Exhibit.

13 (Court's Exhibit Number 7, subpoena, was
14 marked for identification purposes.)

15 **MR. MOBLEY:** All right. Your Honor, just so
16 we're clear, I'm going to identify these documents.
17 The first document I've handed Your Honor of the two
18 page exhibit it's titled:

19 Subpoena in criminal case duces tecum, South
20 Carolina General Sessions Court in the matter of
21 Bernard Brennan. To Doris Graham, Richland County
22 DSS, County of Richland. You're hereby commanded to
23 turn over all information pertaining to Carmen Rice,
24 you know, and it has her date of birth, social
25 security number -- well, not date of birth, but

1 social security number and things along those lines.
2 Signed by the Clerk of Court, attorney's name and
3 address David Pascoe, which is consistent with what
4 I relayed to the Court that's in the investigator's
5 report that apparently Investigator Smith contacted
6 Mr. Pascoe, indicated he could not obtain these
7 records without a court order. Mr. Pascoe had the
8 subpoena issued.

9 The problem, Your Honor, is that there is no
10 matter pending for a subpoena to be issued. At that
11 point -- and I'm looking at the warrants in this
12 case, Your Honor, I don't think I can make them a
13 part of the record. I don't think there's any
14 dispute as to when these warrants were issued.

15 All right. The arrest warrant for Carmen Rice
16 was signed on November 3rd in this case, Your Honor.
17 And, once again, I don't think there's any dispute
18 as to the date that it was signed, so I don't think
19 I need to make it part of the record. Well, maybe I
20 will just to kind of protect the record. I want to
21 go ahead and mark my copy of the warrant Court's
22 Exhibit Number 8.

23 (Court's Exhibit Number 8, arrest warrant,
24 was marked for identification purposes.)

25 **MR. MOBLEY:** I'll go ahead -- under the advice

1 of my good friend, Mr. Hart, I'll go ahead and mark
2 that.

3 The warrant is clear, it was not signed and
4 issued until November of 2003 in the very next
5 month, Your Honor.

6 I'm also going to cite for the Court 43-5-40
7 under the statutes pertaining to Public Assistance,
8 Public Aid and Relief under Social Services, which
9 states: It is unlawful for a person to illicit,
10 disclose, receive, make use of, authorize, knowingly
11 permit, participate in the use of a list, name of or
12 for any information, any information concerning a
13 persons applying for or receiving public aid or
14 assistance, directly or indirectly derived from the
15 records, papers, files or performance of official
16 duties. Which is why, once again, according to
17 Investigator Smith's report, the woman he spoke with
18 indicated she would need a valid court order to
19 disclose that information.

20 Well, he didn't get a valid court order. He
21 didn't get a search warrant. He went and had a
22 subpoena done. The problem with the subpoena, Your
23 Honor, was it was an invalid subpoena. There was no
24 case pending under which a subpoena could be validly
25 issued, Your Honor.

1 So what the State did, and I'm not pointing the
2 finger at either one, but for the purposes of this
3 argument, they're all -- it's all a State action,
4 Your Honor, whether it's law enforcement or the
5 prosecutors, what the State did was completely
6 circumvent the court order process, the search
7 warrant process, the Fourth Amendment process and
8 the protections in the -- under 43-5-40 to get this
9 information pertaining to the defendant, Carmen
10 Rice. And based on him getting that information
11 from Carmen Rice, he found out details about Amber
12 Byrd, which indicated to him that she would be
13 someone critical to talk to in this case, which is
14 how -- which led him to her, Your Honor.

15 So my motion would be to suppress her testimony
16 in it's fruit of the poisonous tree. It was
17 obtained illegally. It was obtained with an invalid
18 subpoena. And they shouldn't be allowed to benefit
19 from that type of conduct, Your Honor.

20 **THE COURT:** You want to exclude Ms. Byrd's
21 testimony, and I'm not quite sure what was in the
22 DSS file, but -- because it indicated to them that
23 she was somebody to go talk to.

24 **MR. MOBLEY:** Her testimony is fruit of the
25 poisonous tree, Your Honor. They got this

1 information with an invalid subpoena illegally and
2 that information led to Amber Byrd. I mean, I think
3 it's clear the subpoena's invalid.

4 MR. MEADORS: May it please the Court. Judge,
5 it's not clear. This was a matter under
6 investigation. Most of the subpoenas I do in this
7 manner do say a matter under investigation. That
8 just wasn't typed on this subpoena. I think that's
9 inferable and I would like the record to reflect the
10 State would ask Your Honor to infer that to this
11 subpoena. And if it is a matter under
12 investigation, we believe there is a law enforcement
13 exception, a pending investigation.

14 We're not trying to offer the records from DSS
15 involving this individual.

16 Investigator Smith, after apparently consulting
17 with, at that time, First Assistant Solicitor, David
18 Pascoe, determined that a -- under this situation, a
19 subpoena to determine any other contacts. None of
20 her information at all they're looking for is what
21 I've been told as far as DSS. We're looking for any
22 other names as a part of this ongoing investigation,
23 this cold case was involved in, to see if there were
24 any neighbors, anybody else that it might lead to
25 that might know her. It happened to lead to Amber

1 Byrd.

2 We're offering Amber Byrd and her testimony as
3 to what happened in October of 2001 if anything.
4 Nothing's going to come out about her personal
5 records or anything from DSS whatsoever. If we were
6 trying to get just that, I think there might be an
7 issue there.

8 I still think there's an exception for law
9 enforcement purposes, but, specifically, now to take
10 the leap from a case where clearly it was under
11 investigation, clearly she was an individual,
12 potentially, law enforcement felt she was involved,
13 to take that and then once we find another
14 individual, Amber Byrd, who knew her and try to
15 exclude her testimony, which has nothing to do with
16 the records itself, we just respectfully don't think
17 that's appropriate and proper and we would ask Your
18 Honor not to exclude her testimony.

19 And, Your Honor, my cocounsel would like to add
20 something if you don't mind.

21 **THE COURT:** Yes, sir.

22 **MR. LUPTON:** Your Honor, in addition to the
23 fact that -- under law enforcement exception and to
24 the statute, we don't believe there's a violation
25 and the fact that obviously you can issue subpoenas

1 on pending matters, otherwise you couldn't subpoena
2 anybody to a grand jury because until the grand jury
3 true bills a case, if it's not a case where there's
4 a warrant, grand jury investigations routinely
5 subpoena people. So you can obviously subpoena
6 without a pending criminal case.

7 However, even if Mr. Mobley were correct, and
8 we don't think he is, but even if he was, 44-5-40
9 that he has cited to the Court is a statute not a
10 constitutional violation, a statutory violation
11 under, I believe, it's the Shelton case, highway
12 patrol case where MAIT team investigated a highway
13 patrol accident. The Supreme Court held that, or
14 the Court of Appeals, I can't recall which, held
15 that violation of the statutory provision goes to
16 the weight not admissibility, that you don't
17 necessarily have to suppress evidence obtained as a
18 result of that where the evidence is reliable.

19 In this case, the reliability of Ms. Amber's
20 testimony is something for the jury to evaluate and
21 decide. Therefore, the remedy is for him to impeach
22 the State on violations of any alleged violations of
23 any statutory rights not suppression.

24 Even if this were a violation, additionally,
25 law enforcement relied upon the advice of the First

1 Assistant Solicitor for Richland County. They acted
2 under good faith. And under the good faith
3 exception, the evidence would be admissible,
4 especially since we've attenuated this. We're not
5 talking about the records. We're talking about a
6 name that was obtained from the records.

7 Additionally, law enforcement already had
8 Amber's name in identifying information in other
9 documents that they were running down various leads.
10 They had witnesses who knew Amber. They had a
11 mistake in her name, but they had a description of
12 Amber. Ultimately, she would have been discovered
13 and, therefore, the discovery document applies as
14 well. For all of these reasons, Your Honor, I think
15 that the jury should be allowed to hear Amber Byrd's
16 testimony.

17 **THE COURT:** Mr. Mobley, anything further?

18 **MR. MOBLEY:** Yes. Just so we're clear, Your
19 Honor, this is not a grand jury subpoena. I will
20 concede that if they wanted to subpoena individuals
21 or documents to appear before the grand jury, that
22 would certainly be something they would be entitled
23 to do.

24 But the rule for subpoenas is clear in criminal
25 cases, unless there's a matter pending or unless

1 it's a grand jury matter, they just can't sit back
2 in their office and decide to issue subpoenas and
3 get information, you know, doing an investigation.
4 They can get search warrants. They can certainly do
5 that, Your Honor. But this is an invalid subpoena,
6 you know.

7 Unless something's changed, you know, and I
8 want to stress, unless something's changed in the
9 last couple of years, the Supreme Court has express
10 -- in this state, has expressly said in prior
11 opinions, they do not -- they're not -- they've
12 never expressly adopted the good faith exception
13 that U.S. -- purports for the U.S. Supreme Court,
14 Your Honor.

15 And, you know, and the bottom line is, it is
16 very clear from this investigation, upon the
17 investigator's report, that, you know, the
18 information he got with this subpoena is what led
19 him to Amber Byrd, Your Honor. And once again, it's
20 clear that they got this information with an invalid
21 subpoena. The State used an invalid subpoena to
22 obtain confidential records on a suspect, Your
23 Honor. And based on that, they discovered a
24 witness. They want to use that information against
25 the suspect. And the only remedy, Your Honor, will

1 be to suppress that testimony because it's fruit of
2 the poisonous tree, Your Honor.

3 **THE COURT:** To suppress her testimony because
4 her name, I assume, was in -- I'm still not quite
5 sure what was in the records. I assume her name was
6 somewhere in the records.

7 **MR. MOBLEY:** Her name was in the record.

8 **THE COURT:** As a neighbor?

9 **MR. MOBLEY:** Apparently, Ms. Byrd's name was in
10 the records. And based on the name was listed in
11 the records, investigator inferred there was a
12 significant relationship between the two and made a
13 significant attempt to locate and had identification
14 information on this person so he could interview
15 her, Your Honor.

16 And what this is, is it's fruit of a poisonous
17 tree, Your Honor. And that's the entire point of
18 these type of motions that there's inappropriate or
19 invalid conduct or illegal conduct by the State and
20 they shouldn't be allowed to benefit from it because
21 that benefit is a fruit of the poisonous tree, Your
22 Honor. Without that information, there would be no
23 testimony from Amber Byrd today in the trial of this
24 case.

25 **THE COURT:** How do I know that?

1 **MR. MOBLEY:** I don't think that they've made a
2 showing of the -- discovery -- I don't think they've
3 made a showing on that. I think what we do know at
4 this point, Your Honor, you know, and I will concede
5 there are things that the Court can say and things
6 that I don't know -- I mean, you know, but what is
7 certain, Your Honor, because they got this
8 information with an invalid subpoena, that is
9 certain, Your Honor, and that's how they got this
10 woman, and that's in the investigative report, Your
11 Honor, that's -- because based on the information in
12 those records, the investigator determined there was
13 some significant relationship between the parties
14 and that's what he made this determination on, Your
15 Honor, and that would be the basis of my motion.

16 There's a similar case -- there's only one case
17 that I could find. I think it's State versus
18 Michael Williams, just from the standpoint of my
19 candor with the Court on the law in this, was a
20 felony DUI case where the highway patrol actually
21 did something very similar and got a defendant's
22 blood test before an arrest was made when there was
23 no case pending. And the -- but the difference in
24 that case, the motion was to quash the indictment
25 based on that, which is not my motion -- my motion

1 not to quash the indictment, but to suppress the
2 illegally obtained information.

3 But in that case, in State versus Michael
4 Williams, the State conceded, I mean, this was a
5 matter under investigation just cited by Mr. Meadors
6 and Mr. Lupton, but the State conceded that the
7 subpoena was invalid in that case.

8 **THE COURT:** But do you have anything to support
9 that -- figuring out the identity of a person and
10 then going to interview that person and collecting
11 evidence from that including testimony, even if your
12 argument about the subpoena and everything is
13 correct, that the remedy is to suppress that
14 person's ultimate testimony?

15 **MR. MOBLEY:** I mean, I could tell the Court in
16 all candor, obviously, I -- I mean, I don't have a
17 case on point to that specific issue. I mean, this
18 is a very, I think, novel issue that I don't see any
19 real law except for the one case I just cited to the
20 Court, which is I wanted to be -- make sure in
21 candor when I did cite it if the Court wanted to
22 review it and -- but I mean -- but is there a
23 specific case on point to this issue? No, there is
24 not, Your Honor.

25 But I think, once again, it's along the same

1 lines of fruits of the poisonous tree. They went to
2 a person's house without a search warrant and
3 obtained information illegally and that information
4 led to other information they wanted to use against
5 the person. It's the same -- it's the same line,
6 Your Honor. That's all I have, Your Honor.

7 **THE COURT:** Those usually apply to physical
8 evidence.

9 **MR. LUPTON:** Your Honor, I'm not familiar with
10 this Michael Williams case. I assume that
11 Mr. Mobley does not have a copy of it and I would --
12 however, I do know a little bit about DUI law. And
13 I understand that under the implied consent laws of
14 this state, there is specific provisions for how
15 blood is supposed to be obtained and if those
16 weren't followed, then that blood could not legally
17 be used for inference levels based on the statute.
18 The statute only allows inference levels to be -- to
19 be used for legal plan as it's called. So I'm not
20 sure that that case is going to be on point in any
21 event, but certainly a review of that case would
22 show --

23 **MR. MOBLEY:** And just so we're clear, you know,
24 just for the benefit of my good friend, Mr. Lupton,
25 I mean, the issue in that case wasn't the

1 admissibility of the blood test at trial. The issue
2 on appeal was whether or not the indictment should
3 have been quashed, because, apparently, the
4 defendant went to the hospital after being involved
5 in an accident and the highway patrolman went and
6 got a subpoena and got the medical records from the
7 hospital which had the blood levels and took that to
8 the grand jury to get an indictment. And the
9 defense is arguing that the indictment should have
10 been quashed based on that, okay?

11 And I'm telling the Court that the court ruled
12 the indictment should not have been quashed. But
13 just to clarify for my good friend, Mr. Lupton, and
14 I didn't bring the case, I'm just citing it from the
15 standpoint of there is something out there --

16 **THE COURT:** It appears, though, in there, the
17 court was at least implicitly implying that maybe
18 that evidence might have come in but for some
19 problems, obviously, that they had with chain of
20 custody issues.

21 **MR. MOBLEY:** The issue in that case was whether
22 or not the indictment should be quashed. And the
23 court's rationale was information that goes to a
24 grand jury is not subject to that. It's a secret
25 proceeding. The information in a grand jury that

1 goes to an indictment is technically not
2 challengeable on those grounds. And I would tend to
3 kind of incur that's based on the secrecy laws that
4 protect the grand jury decisions.

5 Oddly enough, I don't see that's something that
6 was raised at the trial. And I will -- from the
7 standpoint of admissibility, it would have certainly
8 helped things out today if that was the case.

9 But, once again, I'm just citing that that's
10 something that's out there, that, you know, and
11 certainly, I'm not conceding it was something that
12 was not decided favorable to the defendant, I mean,
13 but I wanted to make sure I was candid with the
14 Court with respect to any law that was out there.

15 But my issue -- my objection is different. I'm
16 not asking the Court to quash the indictment. What
17 I'm asking the Court to do is suppress the testimony
18 or any evidence that was, you know, obtained as a
19 result of illegally obtaining that information, Your
20 Honor.

21 **MR. MEADORS:** Judge, was that the case where
22 the trooper kept the blood in his refrigerator?

23 **MR. MOBLEY:** No, that's not that one.

24 **THE COURT:** No, sir, it appears to not -- not
25 that one. But it appears that the ultimate problem,

1 obviously, the court said it doesn't affect the
2 validity of the indictment, but ultimately seemed to
3 have a problem with the chain of custody issues.

4 **MR. MEADORS:** Judge, in this case, if I may,
5 respectfully, if we were trying to offer some of the
6 evidence that was in the defendant, Carmen Rice's,
7 records, I think that might be more of an issue.
8 We're not trying to do that at all. And that's
9 where, I think, his argument might have -- I'm not
10 conceding that if we're trying to -- for the record,
11 I'm not conceding that, but that, to me, would be
12 more problematic. We're not trying to do that at
13 all.

14 And, clearly, we're just -- there was a name
15 gathered from this. I think the name was already in
16 the investigation. We're now asking her to give
17 testimony, nothing about what's in the DSS file,
18 what her name pertained to in the DSS file. And I
19 think, actually, she, in there, may have signed for
20 some benefits at one time. We're not going to ask
21 her about that. We're going to ask her about what
22 happened on October 25th, 2001. Thank you.

23 **MR. LUPTON:** Briefly, also -- and what he's
24 saying, in Michael Williams, the state conceded
25 something that we're not conceding, which is a

1 different situation. We're not conceding there is a
2 violation. The state may have been wrong in that
3 case. I don't know the facts in that case.

4 But in any event, again, inevitable discovery,
5 in page 26 of Stan Smith's investigative report, he
6 refers to a CPD document that they had in their
7 possession at the same time that already had her
8 name and identifying information in it as well which
9 would have provided a separate, independent source,
10 which in addition to the inevitable discovery
11 doctrine, independent source doctrine also applies.
12 They had an independent source for it. And I
13 believe that good faith and inevitable discovery, as
14 well as independent source would all apply even if
15 there was a violation, but there was no violation.

16 **THE COURT:** I'm going to allow her to testify.
17 I'm going to note her objection to her testimony,
18 Mr. Mobley.

19 **MR. MOBLEY:** Thank you, Your Honor.

20 **THE COURT:** There may be some other objections
21 that you'll need to deal with, but I'll certainly
22 note your objection to her whole testimony, but I
23 don't find anything to support, based on what's been
24 argued, the exclusion of her testimony based on the
25 fact that her name may have been in those public

1 records.

2 I take it there was nothing related to this
3 case or anything in there --

4 **MR. MOBLEY:** That's correct, Your Honor.

5 **THE COURT:** -- other than just her name.

6 **MR. MOBLEY:** Her name and information that
7 suggests they had a close relationship because she
8 was allowed to sign for documents on behalf of the
9 defendant.

10 **THE COURT:** I'll note your exception to that.

11 As to your other motion to give a curative
12 instruction to the jury, I'll respectfully deny that
13 motion as well.

14 **MR. MOBLEY:** That was --

15 **MR. MEADORS:** Your Honor, can I just put one
16 final thing on the record? On page 22 of
17 Investigator Stan Smith's notes, there's also a
18 note: As investigating officer was later putting
19 together the case jacket, investigating officer
20 noted that Amber Byrd's name had already come up in
21 the case prior to discovery of her name in DSS
22 records. And that's in his report also. So they
23 already had the name. That's what I was so -- not
24 so eloquently -- we were trying to say earlier.

25 **THE COURT:** Thank you, counsel.

1 Counsel, if nothing else, I guess we'll stand
2 down and see what the status of our juror is and see
3 if we can get started soon. Thank you, counsel.

4 (Brief Recess.)

5 **THE COURT:** Counsel, I understand our juror
6 situation is taken care of.

7 **MR. HART:** Your Honor, we do have one
8 preliminary matter we need to address briefly.

9 **THE COURT:** Yes, sir.

10 **MR. HART:** A young lady came in, presented
11 herself, said she would like to give some stuff to
12 one of the jurors, Ms. Mary Molinaroli. I advised
13 Mr. Meadors of this. One of the substance looks
14 like a motion and a South Carolina Rules book. We
15 would object to any information going back to the
16 jurors, allow them to have that information to
17 observe while deliberations are going on and even
18 while testimony has been going on.

19 **THE COURT:** I looked at the motion. The clerk
20 brought it back to me. She obviously is a paralegal
21 at a civil firm. I'll be glad to bring her out here
22 and talk to her about it. I'm not going to do
23 anything until lunchtime.

24 I understand from the note from the juror, Ms.
25 Molinaroli, I don't mean to butcher her name, I'm

1 sorry, but the juror in question, I think is Juror
2 145, that she has some paperwork or something that
3 she has to send by the courier. She's given that to
4 the clerk to send, but she -- it all relates to a
5 civil matter. I'll be glad to talk to her about it
6 at the lunch break.

7 **MR. MEADORS:** Judge, I didn't even see the
8 motion previously. And, clearly, that's what --
9 she's just trying to fill out something for the
10 lawyers she works for want her to.

11 **THE COURT:** It appears to be a default motion.

12 **MR. MEADORS:** So we have no objection --
13 whatever Your Honor --

14 **THE COURT:** Okay. I'll talk to her about it at
15 lunch and see what it is she actually has to do with
16 it.

17 **MR. MEADORS:** Your Honor, I think one of their
18 employees is here who brought that.

19 **THE COURT:** Ma'am, the clerk is going to get
20 you whatever -- have you gotten it already?

21 **THE CLERK:** Yes, sir.

22 **THE COURT:** She's got the paperwork that has to
23 go back to your office. You'll get that.

24 All right. We'll take that matter up at
25 lunchtime during the break. She's a paralegal.

1 Apparently, she's got, looks like, proof of paper,
2 civil motion for default. I'll note your concern
3 and we'll take it up at lunchtime.

4 **MR. HART:** Thank you, Your Honor.

5 **THE COURT:** All right. I understand our juror
6 with the keys locked in the car has gotten his car
7 shut off and is ready to go. So we're ready to
8 bring them out.

9 (The jury enters the courtroom at 10:22
10 a.m.)

11 **THE COURT:** Thank you, ladies and gentlemen.
12 We're ready to continue at this point.

13 Mr. Meadors, the State's ready to call their
14 next witness?

15 **MR. MEADORS:** May it please the Court.

16 **THE COURT:** Yes, sir.

17 **MR. MEADORS:** Your Honor, at this time, the
18 State of South Carolina would call Ms. Amber Byrd.

19 **THE COURT:** Ms. Byrd, if you'll come on down.
20 We'll swear you and let you take the witness chair.

21 AMBER BYRD,
22 having been duly sworn, testified as follows:

23 **THE CLERK:** Have a seat in the witness box and
24 state your full name for the record.

25 *****

1 DIRECT EXAMINATION

2 BY MR. MEADORS:

3 Q Did you state your name and spell your last
4 name?

5 A First name Amber, last name Byrd, B-Y-R-D.

6 Q Ms. Byrd, I want you to tell these ladies and
7 gentlemen a little bit about you, okay? Where are
8 you from?

9 A I'm from Columbia, South Carolina. I'm 24
10 years old. I'm single. I was currently employed.
11 I used to work for a company called --

12 Q Slow down, please. The court reporter's got to
13 take everything down.

14 A I'm sorry.

15 Q Were you born and raised here?

16 A Yes.

17 Q Did you go to school here?

18 A Yes.

19 Q Where did you go to high school?

20 A Ridgeview High School.

21 Q And what did you do after high school?

22 A After high school, I currently -- I started
23 working at a company called Apex Teller Services.

24 Q Is that here?

25 A Yes, it's off of Broad River Road. It's MCI

AMBER BYRD - DIRECT BY MR. MEADORS

431

1 Corporation.

2 Q And what did you do after that?

3 A After that, they had a big lay off. I started
4 working for another customer service call center.

5 Q Here in Columbia?

6 A Yes.

7 Q And did you -- what did you do after that?

8 A Continued working.

9 Q You mentioned Bose a minute ago?

10 A Yeah.

11 Q When did you do that?

12 A I did that around October to about January, mid
13 January.

14 Q And what are you doing now?

15 A I'm currently looking for a job. I'm
16 unemployed at the time.

17 Q You got any brothers and sisters?

18 A Yes. I have a sister and I have two brothers.

19 Q Where do they live?

20 A They live in Columbia. I have a brother, he's
21 currently living in North Carolina. He goes to
22 North Carolina State.

23 Q Where are you living now, Ms. Byrd?

24 A As far as residence?

25 Q Yes, ma'am.

1 A I live off of Beltline.

2 Q And, I guess, I was saying in Columbia is --

3 A Okay. I'm sorry about that.

4 Q That's fine. I'm not asking you for a specific
5 address.

6 A All right.

7 Q Now, who do you stay with?

8 A I stay with my best friend, Cynthia.

9 Q What's Cynthia's last name?

10 A Parks.

11 Q Now, I want you to tell the ladies and
12 gentlemen if you know the defendant, Carmen Rice?

13 A Yes, I do.

14 Q Okay. Can you tell them, please, when you
15 first met Carmen Rice?

16 A I was currently -- I was living at a apartment
17 complex called the Bentley at Broad River. I stayed
18 on the third floor.

19 Q The Bentley at Broad River?

20 A Yes.

21 Q Is that near the Broad River?

22 A Correct.

23 Q You stayed on the third floor?

24 A Correct.

25 Q Go ahead.

1 **A** She stayed currently, let's see, on the first
2 floor, somewhere on the first floor, but it's in the
3 same complex.

4 **Q** Give me a time frame on that, Ms. Byrd?

5 **A** I moved there around in '99 -- yeah, around '99
6 and moved out around -- well, my lease ended around
7 July of 2001, approximately, around that time.

8 **Q** 2000 and...

9 **A** 2001.

10 **Q** Your lease ran out?

11 **A** Correct.

12 **Q** So from 1999 when you met the defendant, Carmen
13 Rice, until July of 2001 when you moved out, how
14 much did you see her during that time period?

15 **A** Frequently, we became friends.

16 **Q** Socialize together?

17 **A** Correct.

18 **Q** Cook out?

19 **A** Hum, I mean --

20 **Q** You socialized?

21 **A** Correct.

22 **Q** And you mentioned Ms. Cynthia Parks. Was she
23 staying there with you then?

24 **A** No, she wasn't staying -- actually, I didn't
25 meet Cynthia Parks until around 2001.

1 Q Describe your relationship with the defendant,
2 Carmen Rice. Specifically, you socialized -- y'all
3 were friends?

4 A Correct.

5 Q And did she have any children?

6 A Yes.

7 Q How many?

8 A Just one.

9 Q And what's that child's name?

10 A His name is Shawn.

11 Q How old is Shawn now; do you know?

12 A At the time, he was three. So he might be like
13 five or six now.

14 Q When is the last time you've seen Shawn?

15 A It's been years, four or five years. I mean, I
16 haven't seen him.

17 Q Have you seen him since this incident we're
18 going to talk about?

19 A Correct.

20 Q You have not seen him since this incident?

21 A Correct.

22 Q Now, how did you know Shawn?

23 A That was Carmen's son.

24 Q Okay. Did you ever have an occasion to stay
25 with Shawn when Carmen wasn't there?

AMBER BYRD - DIRECT BY MR. MEADORS

435

1 A Yeah. If she needed me to watch him, I would
2 watch him for her.

3 Q Baby sit?

4 A Yes.

5 Q After you moved from Broad River, where did you
6 go?

7 A Well, like I said, at the time, my lease was up
8 in 2001. I currently met Cynthia around that time.
9 We started to -- becoming friends, becoming close.
10 At the time, I had an option to actually stay with
11 my mother to save up a little bit of money. And
12 what I decided to do, I decided not to stay with my
13 mother and I started staying with Cynthia.

14 Q In Columbia?

15 A Correct.

16 Q And that was -- after your lease ran out, how
17 long did you stay with Cynthia?

18 A Maybe just like a couple of months. I can't
19 quite remember. It was a couple months, maybe like
20 six months, not even that much.

21 Q And you were trying to save money. You were
22 working where then?

23 A I was working at a place currently called
24 Intermedia Marketing, which is a customer service.

25 Q That was that time period?

1 A Yes.

2 Q After you quit living with Cynthia, where did
3 you go?

4 A I was actually back and forth from my mom's
5 house. She was at a friend's house. Around that
6 time -- Carmen's lease was up around that time as
7 well. We would go over there. So it was kind of
8 like --

9 Q Carmen Rice's lease was up?

10 A Correct.

11 Q Back at Broad River?

12 A Yeah. Around that time our lease was up around
13 the same time.

14 Q After you were going back and forth from your
15 mom's to Cynthia's, did there come a time where you
16 stayed somewhere else for a while?

17 A No.

18 Q Where did Carmen Rice move to after Broad
19 River?

20 A She moved off -- it was a house off of Two
21 Notch, like the end of Two Notch Road.

22 Q And did you have an occasion to go visit her
23 there?

24 A Correct.

25 Q And where generally was you mom -- where was

AMBER BYRD - DIRECT BY MR. MEADORS

437

1 your mom living?

2 A My mom lives off the Spring Valley area off of
3 Clemson Road.

4 Q And where was Cynthia staying?

5 A Cynthia was staying with a friend actually like
6 in Irmo. So we was going back and forth kind of.

7 Q And I'm going to show you what's marked as
8 State's 37. And I believe I can show you this
9 without you getting down.

10 MR. MEADORS: If it's all right with the Court,
11 if I can approach?

12 THE COURT: Yes, sir.

13 BY MR. MEADORS:

14 Q Are you familiar -- it says Two Notch. You
15 know where Two Notch is?

16 A Correct.

17 Q And this is Chestnut. Are you familiar with
18 that intersection?

19 A Correct.

20 Q Is there an establishment right here on the
21 corner?

22 A That's...

23 COURT REPORTER: I couldn't hear that.

24 THE COURT: Can you say that again?

25 THE WITNESS: Anthony's Dairy Bar.

1 BY MR. MEADORS:

2 Q Is that here?

3 A Correct.

4 Q And in relation to that, can you show us where
5 the defendant, Carmen Rice, was staying?

6 A Right...

7 MR. MEADORS: Judge, I'm sorry.

8 Q If you'd please speak up so the court reporter
9 can hear it.

10 A Right here, this area.

11 Q So you take a right off Two Notch?

12 A Correct.

13 Q And what's this street?

14 A Chestnut.

15 Q And what's this street?

16 A Braham.

17 Q It's Braham?

18 A Correct.

19 Q I was mispronouncing it earlier. I apologize.
20 And you're saying this is where Carmen Rice was
21 staying?

22 A Correct.

23 Q You've been to that house?

24 A Correct.

25 Q How many times?

AMBER BYRD - DIRECT BY MR. MEADORS

439

1 **A** Quite a few times. Like I said, we was, you
2 know, friends or whatever, so.

3 **Q** Had you ever baby sat Shawn at that house?

4 **A** Yeah, I watched him when she had to work or
5 whatever.

6 **Q** Who else stayed at that house with Carmen Rice,
7 if anybody? Did she have any relatives that were
8 staying there?

9 **A** No. Around -- at one point in time, her father
10 was here.

11 **Q** Okay. Her dad was here at some point in time?

12 **A** Correct.

13 **Q** And would that have been around the time all of
14 this was happening?

15 **A** Correct.

16 **Q** That we're here about?

17 **A** Correct.

18 **MR. MEADORS:** Your Honor, at this time, we
19 would offer State's 37, I think, without objection.

20 **MR. MOBLEY:** Without objection, Your Honor.

21 **THE COURT:** Okay. Thank you, counsel. Without
22 objection, it's admitted.

23 (State's Exhibit Number 37, aerial map of
24 scene, admitted into evidence.)

25 **BY MR. MEADORS:**

1 Q Did you know where Carmen Rice was working in
2 the fall, October of 2001?

3 A Yes, I did.

4 Q Tell them where that was.

5 A She was working at a security company.

6 Q And do you know if she, as a part of that job,
7 was issued a gun?

8 A Yes.

9 MR. MOBLEY: Objection, Your Honor.

10 THE COURT: What's the objection?

11 MR. MOBLEY: That's -- I believe, in this case,
12 it's improper character evidence, Your Honor. It is
13 not relevant in this case, Your Honor. There's no
14 murder weapon they can tie to this particular
15 offense. And those are my objections, Your Honor,
16 irrelevant, improper character evidence and under
17 403, that there's no probative value and it's
18 significantly outweighed by the substantial risk of
19 unfair prejudice to the defendant, Your Honor.

20 THE COURT: I'll overrule the objection. You
21 can answer the question.

22 BY MR. MEADORS:

23 Q Do you know, of your own knowledge, whether she
24 was issued a gun from the security -- where she
25 worked?

1 A Correct, yes.

2 Q And actually -- in fact, have you seen it?

3 A Yes.

4 Q Can you describe it to the jury?

5 A As far as I seen, it was heavy. I think it had
6 a brown -- it was like one of the ones you can spin.

7 Q You can spin it?

8 A Correct.

9 Q And did you ever see that at her home? Did she
10 bring the weapon home?

11 A Yeah. She had to bring it home to go to her
12 job.

13 Q And is that where you saw it?

14 A Yes.

15 Q Did she have a holster or a place where she
16 carried it?

17 A Yeah. I think they issued her one.

18 Q Issued a holster?

19 A Correct.

20 Q Did you know where she placed that holster?

21 A In the home, no.

22 Q On her, I'm sorry.

23 A I mean, you said as far as did she --

24 Q On her, where was the holster on her?

25 A Around her belt area.

1 Q Okay. And that's where the gun would be?

2 A Correct.

3 Q Do you know when she quit working for the
4 security company?

5 A It had to be around -- around October some
6 time.

7 Q And are we talking about October 2001?

8 A Correct.

9 Q And as a time frame, do you remember when the
10 twin towers got hit?

11 A Correct.

12 Q September 11th, 2001?

13 A Uh-huh.

14 Q Was this in that same time period, October
15 after the towers?

16 A Correct.

17 Q Okay. How often, in October 2001, were you
18 seeing the defendant, Carmen Rice?

19 A I would see her on occasions, then it all of a
20 sudden abruptly stopped.

21 Q And before it abruptly stopped, how long --
22 before this incident, how often were you seeing her
23 during the week?

24 A Very often. Like I said, we were friends. I
25 would stay over there. We -- I mean, go out, hang

1 out. So I would say maybe, as far as weekly, maybe
2 at least four or five times maybe.

3 Q Do you know, based on being there with her and
4 seeing her this often, was she seeing anybody, any
5 person?

6 A As far as around, what, the October time?

7 Q Yes. September or October time, in that time
8 period, was she seeing any individual, any men?

9 A Not -- I mean, as far as relationship wise,
10 would I see any is what you're saying?

11 Q Yes.

12 A Around September, October?

13 Q You would see any, did she tell you any, was
14 she hanging around with any men that you knew of?

15 A I mean, yes, occasionally -- I mean, yes, she
16 would hang with men.

17 Q Was she hanging around with any older men?

18 A Yes.

19 Q And, specifically, were you -- did you know of
20 a couple of them? Specifically, did you know
21 Bernard Brennan?

22 A Not specifically, no.

23 Q Were you ever shown a picture of Bernard
24 Brennan?

25 A Yes.

1 Q And was that the person you saw with Carmen
2 Rice?

3 A Yes, looks familiar, yes.

4 Q Any doubt about that in your mind?

5 A No. Like I said, there were a lot of older
6 men, but after I saw the picture, I knew who the
7 victim was.

8 Q And had she informed you, she being the
9 defendant, Carmen Rice, anything specific about the
10 victim, Bernard Brennan?

11 A I'm sorry. Could you repeat that again?

12 Q Did she tell you anything specific, she being
13 Ms. Rice, about Bernard Brennan?

14 A No. He's a pool player.

15 Q Told you he was a pool player?

16 A Yeah. There was a couple of guys that were
17 pool players. But he was a pool player. He had
18 special sticks and he was real good at what he did.

19 Q Did you know what kind of car Mr. Bernard
20 Brennan drove?

21 A It was a very nice car, might have been like a
22 Mercedes, not like a newer model, maybe.

23 Q And do you remember the color?

24 A No. It was a light colored car.

25 Q And you'd seen that car?

AMBER BYRD - DIRECT BY MR. MEADORS

445

1 A Yes.

2 Q And you said, potentially, there may have been
3 some other older, I may not consider them older, but
4 older men to y'all, correct?

5 A Correct. To me, yeah.

6 Q Did you know the name of any other older men
7 she might have been seeing at this time?

8 A Yes.

9 Q What was his name?

10 A His name was Dice.

11 Q Dice?

12 A Yes.

13 Q Have you ever seen Dice?

14 A Not as far as like how we are like up close.

15 Q Right.

16 A But I knew his -- I mean, knew like, you know,
17 how he looked as far as if he would come to the
18 apartment, et cetera.

19 Q Now, you said you were seeing Ms. Rice, I
20 think, several times a week during this time period,
21 correct?

22 A Correct.

23 Q Now, on October 25th, 2001, did you have an
24 occasion to see Carmen Rice?

25 A On that day exactly?

1 Q Yeah, around that time -- that day, yes.

2 A Yeah, it's possible.

3 Q You can't remember the exact day is that what
4 you're saying?

5 A It's so far -- yes, correct.

6 Q Do you remember -- would you ever take her to
7 work?

8 A Yes.

9 Q And do you remember an occasion, if you don't,
10 fine, do you remember an occasion taking her
11 downtown?

12 A Yeah. I mean, I would drive her. She didn't
13 have a car. She would -- she, you know, like I said
14 didn't have a car --

15 Q I'm sorry, respectfully, please slow down.
16 She's got to take down everything. I'm sorry, if
17 you would please, just talk a little slower.

18 A Yes, I would take her.

19 Q Okay. And, specifically, this day when you
20 took her downtown, can you tell the jury how you
21 came in contact with Ms. Rice that day?

22 A I was over there. She'd actually said that she
23 had to do --

24 Q You were over here?

25 A Correct.

AMBER BYRD - DIRECT BY MR. MEADORS

447

1 Q State's 37?

2 A Correct.

3 Q Okay.

4 A She had to do a job. She was going to take
5 Shawn. At the time, her father was there. So I
6 ended up watching Shawn for her.

7 Q You did what now? I'm sorry.

8 A Watched Shawn for her.

9 Q Did she pay you for baby sitting?

10 A No, I wouldn't ask for her to pay me.

11 Q You were doing it just to help her?

12 A Correct.

13 Q So what happened when she told you she had to
14 do a job?

15 A She, basically, told me where she had to go at.
16 I took her to exactly where she needed to go at. I
17 dropped her off.

18 Q And y'all left Braham?

19 A Correct.

20 Q Am I pronouncing that right?

21 A Braham.

22 Q I'm sorry. Like Graham, Braham?

23 A Yes.

24 Q Okay. Y'all leave Braham?

25 A Yes.

1 Q Who was driving?

2 A I was driving.

3 Q What kind car do you have?

4 A A four door Cavalier.

5 Q And was Shawn with you?

6 A Correct.

7 Q And was her dad still at the house; do you
8 remember?

9 A Yes.

10 Q After you left Braham, did you have an occasion
11 to stop anywhere after you left Braham?

12 A I took her to a pay phone across the street so
13 she can make a phone call.

14 Q And can you show the jury --

15 MR. MEADORS: And I apologize not showing that
16 to Your Honor.

17 Q But on State's 37, can you point on there where
18 the pay phone is?

19 A It's right over here. If you cross over
20 Chestnut, it's right across the street.

21 Q Now, what establishment was back here then?
22 And I don't know if it's there now or not.

23 A It's a liquor store and a small, little ABC
24 store and a small, little convenient store.

25 Q Liquor, ABC and convenient --

AMBER BYRD - DIRECT BY MR. MEADORS

449

1 A Yeah, like an ABC and convenient store all at
2 one time.

3 Q What's this, again, over here?

4 A Anthony's Dairy Bar.

5 Q Diagonal across from Anthony's?

6 A Correct.

7 Q So you took her there to make a phone call?

8 A Correct.

9 Q Did you know who she was calling?

10 A No.

11 Q What happened after that phone call, Amber?

12 A I took her downtown where she told me she
13 needed to be dropped off at and dropped her off.

14 Q Can you tell the folks where you took her?

15 A I took her off of Assembly Street and I dropped
16 her off where the Holiday Inn Express would be at.

17 Q Is that near the law school; do you know?

18 A Yeah. It should be like right across.

19 Q And is there an eating establishment that you
20 might be familiar of -- familiar with near there?

21 A I remember the Domino's Pizza that was there.

22 Q And the name of the place that you dropped her
23 off was what; do you remember?

24 A No. I dropped her like where the Holiday Inn
25 Express -- I didn't see like what establishment she

1 went into. So I dropped her off there.

2 Q And was Cynthia with you?

3 A No, not at the time I don't believe.

4 Q Where was Cynthia?

5 A She should have been at work by then.

6 Q Where did Cynthia work?

7 A She worked at Richland Fashion Mall and she
8 worked at Foot Locker.

9 Q And, again, Cynthia's last name is?

10 A Parks.

11 Q She's your friend?

12 A Correct.

13 Q So about what time was it that you took the
14 defendant to the Holiday Inn Express?

15 A Around 6:00 or so, maybe a little bit after
16 6:00.

17 Q What happened after that?

18 A I dropped her off. And I went ahead and did --
19 I had Shawn with me. I don't know exactly, like I
20 said, it's 2001, I could have went to plenty of
21 other places or my mom's house, whatever the case
22 may be, but I went to pick Cynthia up around, maybe
23 around 8:15 or 8:30. I usually go in the mall to
24 wait for her because --

25 Q Slow down a little bit. I'm sorry.

AMBER BYRD - DIRECT BY MR. MEADORS

451

1 **A** Sorry, I talk fast. She usually gets off
2 around 9:00 or so, 9:15, 9:30 or so.

3 **Q** So your memory is you dropped off Carmen Rice?

4 **A** Correct.

5 **Q** You still had Shawn --

6 **MR. MOBLEY:** He's leading the witness, Your
7 Honor. I object.

8 **THE COURT:** He's repeating what she's already
9 testified to at this point.

10 **MR. MEADORS:** I wasn't asking a question. I
11 was just trying to frame it.

12 BY MR. MEADORS:

13 **Q** You dropped her off, correct?

14 **A** Correct.

15 **Q** Was Shawn still with you then?

16 **A** Correct.

17 **Q** And what did you do after that?

18 **A** After I -- like I said, I rode around. I could
19 have went to a lot of places. Like I said, it was a
20 long time ago. I do remember going to the mall to
21 pick Cynthia up around 8:15, 8:30. Me and Shawn
22 walked around. She gets off around 9:00, 9:30.

23 **Q** Do you know a lady named Iris?

24 **A** Yes.

25 **Q** Iris Bryant?

1 A Correct.

2 Q How do you know Iris Bryant?

3 A I met her through Carmen, maybe seen her like
4 for maybe like three or four times. She's a friend
5 of Carmen's.

6 Q You met her through Carmen?

7 A Correct.

8 Q Specifically, do you remember where you met
9 her?

10 A At Carmen's house.

11 Q At Braham?

12 A Correct.

13 Q And how many times had you seen her prior to
14 this night we're talking about?

15 A Maybe like three or four times.

16 Q What you said a minute ago, I'm sorry.

17 A Uh-huh.

18 Q Did you see Iris that night?

19 A Yes.

20 Q Okay. Did you take her down to Holiday Inn
21 Express?

22 A If my memory is right, I didn't -- didn't take
23 her. It's a possibility I just -- I just -- it's
24 just been so long ago, but I do remember Carmen
25 being in the car with me and Shawn.

AMBER BYRD - DIRECT BY MR. MEADORS

453

1 Q And after that, you left to go see Cynthia?

2 A Correct.

3 Q And did you have an occasion to pick up
4 Cynthia?

5 A Yeah. I always picked up Cynthia, always.

6 Q And after you picked up Cynthia, what happened?

7 A After we picked up Cynthia, like I said, Shawn
8 was with me, went back to Carmen's house.

9 Q Why did you go back to Carmen's house?

10 A Well, we had Shawn.

11 Q You went back to her house?

12 A Correct.

13 Q Do you know what time you got there?

14 A It might have been a little bit after -- after
15 9:30 maybe to around 10:00 or so, maybe around that
16 time.

17 Q Was her dad still there?

18 A Yeah.

19 Q Anybody else there?

20 A Not that I can recall, no.

21 Q And you said Cynthia was with you at this
22 point?

23 A Correct.

24 Q After that, tell these folks did you have an
25 occasion, and I think you've already said you did,

1 I'm not sure, to see Carmen Rice?

2 A Yes, I did.

3 Q And about what time was that?

4 A Might have been after -- I think we waited
5 there maybe like an hour or so, so it could have
6 been around 11:00 or so.

7 Q You're not sure of the time?

8 A Yes, I'm not sure, but I know it was late or
9 whatever.

10 Q When you saw Carmen Rice at whatever time it
11 was, can you describe her demeanor to the jury?

12 A When she came in the house, she was very shaky
13 like something happened. It was, basically, kind of
14 like when somebody, they see something and they're
15 scared by a ghost. Something made -- she looked
16 like she was real, real scared.

17 Q Was Iris there with her?

18 A Yes.

19 Q Did Carmen tell you something that night?

20 A Yes.

21 Q Tell these folks what she told you.

22 A She, basically, told me that she did something
23 that she didn't think she was going to do. She,
24 basically, said that -- that they robbed a guy and
25 they -- she, basically, told me that Iris was in the

AMBER BYRD - DIRECT BY MR. MEADORS

455

1 front seat and she was in the back seat. And they
2 robbed a guy for a lot of money and that she didn't
3 think she was going to do it or whatever. She
4 didn't -- it wasn't supposed to happen, but she shot
5 the guy.

6 And she also told me that wherever they were
7 at, wherever it happened at, that they had to run.
8 And, at one point in time, she thought she was going
9 to have to kill Iris. And then later on after she
10 finished telling me -- after she finished telling me
11 the story or whatever, she made it clear not to tell
12 -- for me not to tell Cynthia. And she kind of
13 liked joked it off, shrugged it off like it was a
14 joke, she was just playing, she wouldn't do anything
15 like that.

16 Q When she's telling you this, you're in her
17 house?

18 A Correct.

19 Q This is your friend?

20 A Correct.

21 Q You're taking care of her baby?

22 A I was watching him.

23 Q And you said after she told you this, she kind
24 of shrugged it off like it was a joke?

25 A Yeah, like, no, you know, I wouldn't do

1 anything like that.

2 Q Based on the time you spent with Carmen Rice,
3 did she like to talk?

4 A Yeah. Yeah, she liked to talk.

5 Q Would it be fair, based on your experience and
6 the time you spent with her, did she brag?

7 A Yes. Occasionally, yes.

8 Q Was Iris there with her when Carmen Rice was
9 telling you she shot the person?

10 A She wasn't around us.

11 Q Did you see her gun then, Ms. Byrd?

12 A No, I did not.

13 Q Did she mention anything to you about the gun?

14 A No.

15 Q Do you know whether she still had it with her?

16 A No. Not if -- if she had it on her, no.

17 Q Did she or didn't she ever ask you to ever go
18 get rid of it?

19 A She actually -- later she was like she was
20 going to end up quitting her job. She wanted me to
21 help her turn in -- take her to turn in her uniform
22 and her stuff in, but after I heard the story, I
23 wasn't -- I was uncomfortable at the time, I told
24 her I couldn't take her anywhere.

25 Q Did you see any money?

AMBER BYRD - DIRECT BY MR. MEADORS

457

1 **A** No, I did not.

2 **Q** And, specifically, as to the gun, did she ever
3 tell you what she had done with it that night?

4 **A** No, she did not.

5 **Q** And when did you tell Cynthia what Carmen had
6 told you?

7 **A** As soon as I can get a chance -- me and
8 Cynthia, we're very close. We were actually so
9 close, at the time, we was having a relationship.
10 So I told her --

11 **MR. MOBLEY:** Objection, Your Honor. Approach.

12 (Whereupon, a bench conference was held off
13 the record, in the presence of the jury, but out of
14 the hearing of the jury.)

15 **THE COURT:** I'll let you put your objection on
16 the record when we take the next break, but your
17 objection is preserved as to the question and answer
18 that was just done. I'm going to overrule the
19 objection, but I'll certainly protect your record.

20 **MR. MOBLEY:** Thank you, Your Honor.

21 **THE COURT:** Thank you, sir.

22 Mr. Meadors.

23 BY MR. MEADORS:

24 **Q** You had gathered this information from Ms. Rice
25 you said, correct?

1 A Correct.

2 Q What did you do that night after she had told
3 you this?

4 A We left.

5 Q What did you do?

6 A We left.

7 Q You and who?

8 A Me and Cynthia.

9 Q And did you tell anybody about it then besides
10 Cynthia?

11 A No, not at the time.

12 Q Did you have an occasion to see something about
13 it in the news?

14 A Maybe like -- after we -- after we actually
15 found out about it, we may have like looked on T.V.
16 and try to find it on T.V. to see if we could see
17 anything, but then we went to the mall one day and I
18 think some ladies were talking about it in the
19 paper.

20 Q And did you tell the police about it then?

21 A No.

22 Q Why didn't you?

23 A I didn't know how true it was. Like I said,
24 she did tell me she had an occasion to brag, as well
25 as I didn't want to get involved. I was scared

AMBER BYRD - DIRECT BY MR. MEADORS

459

1 myself.

2 Q You didn't want to get involved?

3 A Correct.

4 Q Did you talk to Carmen Rice after you saw that
5 in the paper?

6 A No.

7 Q How many times after October 25th had you seen
8 her?

9 A None.

10 Q None?

11 A Correct.

12 Q Do you know whether or not Carmen Rice left
13 town after that?

14 A It's possible she could have -- well, yeah, I
15 did find out later.

16 Q Where had she gone?

17 A I think around -- after that time, I think she
18 went to Florida.

19 Q And do you know somebody name Twana Branham?

20 A Yes.

21 Q Did you tell Twana Branham what happened?

22 A Yes. At the time, I was concerned, someone who
23 I had no idea who actually knew me or my friend,
24 Cynthia, actually made it their business to let me
25 know, okay, you know, somebody's saying that --

1 **MR. MOBLEY:** Objection, Your Honor.

2 **THE COURT:** I'm going to sustain that
3 objection.

4 **BY MR. MEADORS:**

5 **Q** Don't go into what anybody else said.

6 **A** Okay. I'm sorry.

7 **Q** You told Twana Branham what happened?

8 **A** Yes.

9 **Q** And do you know a Sarah Dennis?

10 **A** Yes.

11 **Q** Who is that?

12 **A** Sarah was Carmen's friend. She lived in the
13 complex as well.

14 **Q** Okay. Sarah Dennis is a friend of Carmen Rice?

15 **A** Correct. I mean, I knew her, too, but, I mean,
16 she -- her and Carmen are close, closer than me and
17 her.

18 **Q** And how did you meet Sarah Dennis?

19 **A** Through Carmen.

20 **Q** Through Carmen?

21 **A** Correct.

22 **Q** Didn't know her before you knew Carmen?

23 **A** Correct.

24 **Q** And you said she was at the complex, too?

25 **A** Yes.

AMBER BYRD - DIRECT BY MR. MEADORS

461

1 Q At Broad River?

2 A Correct.

3 Q Okay. Where was she staying at Broad River?

4 A She was staying upstairs.

5 Q Was she staying with the defendant, Carmen
6 Rice?

7 A No.

8 Q Okay. And did -- during this time period,
9 October, November of 2001, where was Sarah Dennis;
10 do you know?

11 A No, I don't know.

12 Q Do you remember what Carmen Rice was wearing
13 this night?

14 A Not to my recollection.

15 Q Do you remember what Iris was wearing?

16 A No.

17 Q Did you get to talk with Iris, Iris Bryant, at
18 all that night?

19 A No.

20 Q Did you get to observe her?

21 A Yes.

22 Q Can you describe her to these folks?

23 A She was real -- she was very, very quiet. She
24 was kind of like staring off to space, staring off,
25 but she didn't say anything.

1 Q Do you know Peanut, Nathaniel Hallman?

2 A No, I think that was -- no, I didn't know him,
3 but I think I heard his name. I think that was one
4 of Iris' friends or something like that.

5 Q But you didn't know him?

6 A No.

7 Q Do you know Falisha Hallmon?

8 A No.

9 Q Teresa Rouse?

10 A No.

11 Q Shawnetta Wise?

12 A No.

13 Q Anthony Stewart?

14 A Anthony, that was the supervisor at the
15 security place. That's Carmen's supervisor at the
16 time.

17 Q At the security place?

18 A Correct.

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

20 THE COURT: Yes, sir.

21 (Pause.)

22 BY MR. MEADORS:

23 Q And I believe you testified you were shown a
24 picture of Mr. Brennan. I'm going to show you
25 State's 44. Did they show you that picture?

1 A Correct.

2 Q And that's Alfred B. Brennan and I think the
3 record will reflect we've been referring to as
4 Bernard Brennan. You may not know that. But is
5 that the one you know as -- pointed out as Bernard
6 Brennan?

7 A Correct.

8 Q And do you remember when you pointed that out
9 to the investigators?

10 A Yes.

11 Q And do you remember these -- them showing you
12 these two, also on State's 44, these composites?

13 A Yes.

14 Q And, specifically, if I could show you, too,
15 State's 45, which is -- can you tell the jury would
16 that be suspect two in State's 44?

17 A That's correct.

18 Q What, if anything, did you tell them about
19 State's 45?

20 A That that one looks most like Carmen because of
21 her lips. And, at the time, she had recently bought
22 some earrings like that.

23 Q In State's 46, could you recognize this?

24 A No, not as the other person, it doesn't look
25 like it to me.

1 Q Okay. And down here back in State's 44, had
2 you seen that car before?

3 A Yeah, this car looks familiar.

4 Q And how does it look familiar, from where?

5 A From being -- the only time it looks familiar,
6 as far as the color, I'm not quite sure, but over
7 there at the apartment complex.

8 Q What apartment complex?

9 A At the Bentley.

10 Q Okay. At the Bentley?

11 A Correct.

12 Q And where is that?

13 A Broad River.

14 Q Did you see this man with Ms. Rice?

15 A Yes, that man looks familiar.

16 Q How many times did you see him with her?

17 A I can't tell you that. As far as numbers of
18 times, I couldn't tell you that because it was a
19 lot.

20 Q Where did you see him with her, Mr. Brennan
21 with the defendant, Carmen Rice?

22 A The only time I would see him maybe is at the
23 apartment complex, so. Since I lived on the third
24 floor, there was no basic eye-to-eye contact like
25 how we are in the courtroom where I can plainly see

AMBER BYRD - DIRECT BY MR. MEADORS

465

1. exactly how you are.

2. Q Now, did you have an occasion -- did you have
3. an occasion to look at some lineups?

4. A Yes, they showed me some.

5. Q And, specifically, Investigator Stan Smith, did
6. he show you some?

7. A Correct.

8. Q And just tell me if you recognize this?

9. A Yes, I do.

10. Q And do you recognize that?

11. A Yes.

12. (State's Exhibit Numbers 47 and 48, photo
13. lineups, were marked for identification purposes.)

14. Q Showing you what's marked as State's 48, you
15. said you recognized it. Did Investigator Smith show
16. you that?

17. A Correct.

18. Q And were you able to pick out someone on there?

19. A Correct.

20. Q And State's 47, did Investigator Smith show you
21. that?

22. A Correct.

23. Q Were you able to pick out somebody on that?

24. A Correct.

25. MR. MEADORS: Your Honor, at this time, we will

1 offer State's 47 and 48.

2 MR. MOBLEY: No objection, Your Honor.

3 THE COURT: Thank you, counsel. Without
4 objection, it's admitted.

5 (State's Exhibit Numbers 47 and 48, photo
6 lineups, admitted into evidence.)

7 MR. MEADORS: State's 47 -- and, Your Honor, I
8 apologize, I can't find the originals. If we do, we
9 would like to substitute them with the
10 appropriate --

11 THE COURT: Yes, sir.

12 MR. MEADORS: These are copies.

13 Do you mind coming down here for a second, with
14 the Court's permission? I'm sorry, Judge, do you
15 mind?

16 THE COURT: Yes, sir.

17 (Witness leaves the witness stand.)

18 BY MR. MEADORS:

19 Q This is the photo lineup you said Investigator
20 Smith showed you?

21 A Correct.

22 Q Did they try to tell you who to pick out or
23 anything?

24 A No, he did not.

25 Q And what, if anything, did he tell you prior to

AMBER BYRD - DIRECT BY MR. MEADORS

467

1 looking at this?

2 A He just, basically, asked me did I know --

3 THE COURT: Ms. Byrd, if I can get you to speak
4 up just a little bit, okay?

5 THE WITNESS: He asked me did I know anybody.

6 THE COURT: Okay. You can talk to the jury. I
7 just want to make sure the court reporter can --

8 THE WITNESS: Okay. He asked me did I know
9 anybody on the papers.

10 BY MR. MEADORS:

11 Q You got this bottom, what I call, number three
12 down here at the bottom circled, correct?

13 A Correct.

14 Q And who do you know -- who is that?

15 A Iris.

16 Q You circled that and signed that?

17 A Correct.

18 Q 11/4/03?

19 A Correct.

20 Q And did you see Iris that night when this thing
21 happened?

22 A Yes.

23 Q And let me ask you about that. You said that,
24 earlier, that Carmen Rice had told you she might
25 have to shoot Iris?

1 **A** Yes. Iris was taking too long because they had
2 to run -- she said they had to run.

3 **Q** How did you take that?

4 **MR. MOBLEY:** Objection, Your Honor.

5 **THE COURT:** Yes, sir.

6 **MR. MOBLEY:** I mean, the defendant's statement
7 that she made to this person is certainly, you know,
8 admissible from that standpoint, but how she took it
9 is certainly not.

10 **THE COURT:** Mr. Meadors, unless you can
11 rephrase the question or there's some other issue,
12 I'm going to sustain it.

13 **BY MR. MEADORS:**

14 **Q** Can you describe her demeanor as she was
15 saying, I might have to shoot her?

16 **A** She was just, basically, saying, I thought -- I
17 thought I was going to have to leave her. I thought
18 I was going to have to actually shoot her.

19 **Q** And, based on your observations -- how close
20 were you to her?

21 **A** To as far as Carmen?

22 **Q** Yeah, when she's telling you that.

23 **A** We were -- we weren't close like this. We was
24 in a, you know, in a room when she was telling me.

25 **Q** Did you have any trouble understanding her?

AMBER BYRD - DIRECT BY MR. MEADORS

469

1 Could you understand her words?

2 A Yeah, exactly, yes.

3 Q Did you think she -- did it appear serious to
4 you?

5 A Yes, at the time.

6 Q Now, look at State's 48. You circled somebody
7 here?

8 A Uh-huh.

9 Q Who is that?

10 A That's Carmen Rice.

11 Q Is that the same person that told you they'd
12 shot somebody?

13 A Correct.

14 Q Now, describe what she's wearing here on her
15 head?

16 A A wig.

17 Q Based on the time you were with her, did she
18 wear wigs?

19 A Yeah, she wore wigs a lot, yes.

20 Q Did she have different types of wigs?

21 A Yes.

22 Q Is that, in your mind, that's Carmen Rice?

23 A Correct.

24 Q And you dated that November 4th, '03?

25 A Correct.

1 Q And whose signature is that?

2 A Mine.

3 Q And, also, these are photographic lineup forms.

4 Did you fill this out saying that's who these were?

5 A Correct.

6 Q You can have a seat.

7 A (Witness resumes the witness stand.)

8 MR. MEADORS: And then for time purposes,
9 Judge, I found it. We're now going to offer the
10 original pictures, as well as the lineup card that
11 she just identified that she signed.

12 MR. MOBLEY: No objection.

13 THE COURT: Thank you, counsel. Without
14 objection, it will be substituted.

15 MR. MEADORS: Your Honor, we would like to just
16 mark these as one and just staple it, if that's all
17 right with the Court.

18 THE COURT: Yes, sir.

19 (COURT REPORTER'S NOTE: The original photo
20 lineups and photo lineup forms were substituted for
21 the copies that were previously marked and admitted
22 as State's Exhibit Numbers 47 and 48.)

23 MR. MEADORS: Thank you for your patience,
24 Judge. I apologize.

25 BY MR. MEADORS:

AMBER BYRD - DIRECT BY MR. MEADORS

471

1 Q And is this the original you were shown?

2 A Yes.

3 Q And that's 48 and that shows the defendant,
4 Carmen Rice?

5 A Correct.

6 Q And this is 47 and that shows Iris Bryant?

7 A Correct.

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

9 THE COURT: Certainly.

10 (Pause.)

11 BY MR. MEADORS:

12 Q Just a couple more questions. Is the person
13 who told you she shot the man in the car in this
14 courtroom?

15 A Yes.

16 Q Please tell the jury who that is and point them
17 out, if you can.

18 A Carmen Rice (indicating).

19 Q The lady in the white shirt between Mr. Mobley
20 and Mr. Hart?

21 A Correct.

22 Q Any doubt in your mind?

23 A No doubt.

24 MR. MEADORS: I would like the record to so
25 reflect.

1 THE COURT: Yes, sir.

2 MR. MEADORS: That's all we have.

3 THE COURT: Thank you, sir.

4 Mr. Mobley.

5 MR. MOBLEY: May it please the Court, Your

6 Honor.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. MOBLEY:

10 Q Good morning, Ms. Byrd.

11 A Good morning.

12 Q Now, the events that you're describing took
13 place in 2001; is that correct?

14 A Correct.

15 Q And when you spoke with investigators and they
16 asked you to recall the events that took place in
17 that evening, that was about two years later,
18 correct?

19 A Correct.

20 Q So these investigators asked you to recall
21 these events two years after they occurred, correct?

22 A Correct.

23 Q And you talked about, do you recall, baby
24 sitting Carmen's son, Shawn, that night, correct?

25 A Correct.

AMBER BYRD - CROSS BY MR. MOBLEY

473

1 Q And did you baby sit Shawn often?

2 A Sometimes, yes.

3 Q About how many times you say you baby sat
4 Shawn?

5 A Not a whole lot, maybe four or five times.

6 Q You baby sat him a few times?

7 A Correct.

8 Q And that was also one of the nights you picked
9 up your friend, Cynthia, from work?

10 A Correct.

11 Q Okay. And do you often pick Cynthia up from
12 work?

13 A I always pick her up, yes.

14 Q Okay. That was a pretty regular thing as well,
15 too, correct?

16 A Correct.

17 Q Have you ever heard of something called a
18 filthy party?

19 A Excuse me?

20 Q Have you ever heard of something called a
21 filthy party?

22 A No.

23 Q Okay. And I want to ask you some questions --
24 I don't want to offend you, but I want to ask you a
25 couple of questions that may seem a little personal,

1 okay? I'm not trying to offend you, okay?

2 A Go ahead.

3 Q During that time period, were you using
4 anything called Ecstasy during that time period at
5 all?

6 A No.

7 Q You weren't using ecstasy?

8 A No.

9 Q Now, on the night this happened in 2001?

10 A Uh-huh.

11 Q What was Carmen wearing?

12 A I can't -- as far as that day that I took her?

13 Q Yes.

14 A I know she wasn't wearing her uniform.

15 Q But you can't describe the clothing that she
16 had on?

17 A She might have had on jeans.

18 Q I'm sorry?

19 A She might have had on jeans.

20 Q She might have?

21 A Correct. Like I said, she didn't have her
22 uniform on.

23 Q Okay. But from the standpoint of what she had
24 on, did she have on jeans or she might have had on
25 jeans?

AMBER BYRD - CROSS BY MR. MOBLEY

475

1 **A** It's possible.

2 **Q** Okay. So you're not saying she did have on
3 jeans. I'm trying to understand. Can you describe,
4 with any detail, what Carmen Rice was wearing that
5 night?

6 **A** No, I can't -- I mean, not from that time, I
7 mean.

8 **Q** Because of the time, you can't recall that
9 detail. You can't recall what she was wearing,
10 correct?

11 **A** Correct.

12 **Q** And from the standpoint of her hair, can you
13 recall what her hair was like that night?

14 **A** At the time, she could have been -- as far as
15 exactly that night, she could have had her hair
16 braided or wore a wig.

17 **Q** I guess the question, ma'am --

18 **A** From that exact time, that exact day from 2001,
19 no, I cannot.

20 **Q** Okay. So you can't specifically recall what
21 her hair was like because of the time frame,
22 correct?

23 **A** Correct, sir.

24 **Q** Now, you talked about her dating older men --
25 as you stated, she dated a number of different men,

1 correct?

2 A Yes.

3 Q Or you would see -- I'm using the word dating
4 quite broadly, all right, from that standpoint, but
5 you saw her with a number of different men from time
6 to time, correct?

7 A Correct.

8 Q And some of them were older, correct?

9 A Correct.

10 Q Okay. So she didn't -- there wasn't just one
11 older gentleman that you saw her with, correct?

12 A Correct.

13 Q And, in fact, one of the -- and I think some of
14 the men she dated often played pool, correct?

15 A Not a whole lot.

16 Q Some of them did?

17 A Yes.

18 Q More than one?

19 A Correct.

20 Q So she dated a number of different older men
21 that played pool?

22 A Okay. Correct.

23 Q And she even dated one in particular that drove
24 a very nice car, correct?

25 A Correct.

1 Q And that was Mr. Dice, correct?

2 A Correct.

3 Q So Mr. Dice is a -- is a man -- a older man
4 that she dated that drove a nice car like a Mercedes
5 that played pool, correct?

6 A Correct.

7 Q And he also had a lot of money, correct?

8 A From what she said, I guess, yes.

9 Q It was your understanding that this --

10 A Correct.

11 Q -- older man named Dice who drove a nice car
12 and played pool, also had a lot of money?

13 A Correct.

14 Q Now, how many times would you say you'd seen
15 Bernard Brennan?

16 A Not a lot, maybe -- like I said, maybe like one
17 time.

18 Q Just one time, correct. So you saw Bernard --
19 you saw this person, Bernard Brennan, you believe,
20 or a person you believed to be Bernard Brennan, on
21 one occasion, correct?

22 A Correct.

23 Q And what was he doing when you saw him?

24 A He was outside. He wasn't in the apartment.

25 Q What was he doing outside?

1 A Going to his car.

2 Q So he was getting in his car?

3 A Probably -- possibly getting to his car. He
4 was outside when I'd seen him.

5 Q About how long did you see him? I mean, were
6 you paying any particular attention to him on that
7 one time? Was there any reason you had to pay
8 attention to him at that time?

9 A Excuse me? I'm sorry.

10 Q On the time, or as you indicated, Carmen had a
11 number of different men that she was dating,
12 correct?

13 A Correct.

14 Q And did you have any particular reason to pay
15 attention to that -- to him on that one day that you
16 saw him?

17 A I mean, not for the time, I couldn't tell
18 exactly why I was paying attention.

19 Q But there was nothing specific or catastrophic
20 or climatic or signal about that particular -- on
21 the time you saw that person that made you pay more
22 attention to him more than anybody else, correct?

23 A Correct. I pay attention to every -- I mean, a
24 lot of things.

25 Q Okay. And did you have any conversation with

1 him?

2 A No.

3 Q Okay. So you saw him getting in his car or
4 going to his car?

5 A Correct.

6 Q Was that daytime or nighttime?

7 A It was probably most likely -- it wasn't -- it
8 might not have been day -- it was like mid -- like,
9 you know, where it's not dark yet, but it's around
10 7:00, 6:00, 7:00, so around --

11 Q Would you say dusk? Would that be a fair word,
12 dusk?

13 A Yeah.

14 Q Assuming dusk means that little transition
15 period when it's really not light and really not
16 dark?

17 A Correct.

18 Q Okay. So the one time you saw this person, you
19 believed to be Bernard Brennan, you didn't have a
20 conversation with him?

21 A Correct.

22 Q There was nothing in particular that made you
23 or would cause you to pay particular attention to
24 him and he appeared to be going to his car at around
25 dusk?

1 A Correct.

2 Q Do you recall when that was?

3 A As far as the month and time, no, I can't
4 recall that.

5 Q Well, do you recall when it was with respect to
6 October of 2001? I mean, how long before October of
7 2001 would you say you saw the man with Carmen?

8 A No, I couldn't. I couldn't tell you that
9 from --

10 Q You can say one month? I mean, could you say a
11 month or two months?

12 A Before that time?

13 Q Yeah.

14 A It could have been one or two or three months.
15 I mean, I couldn't really pinpoint the exact time
16 from 2001.

17 Q Because of the time frame?

18 A Correct.

19 Q Now, when you identified Bernard Brennan for
20 the very first time, was that to investigators?

21 A Correct.

22 Q And where was that? Where did that take place,
23 at the sheriff's department?

24 A Yes, I believe so.

25 Q Did they show you a photograph and say -- and

AMBER BYRD - CROSS BY MR. MOBLEY

481

1 indicate that was the person that got killed?

2 A No. They asked me did I recognize the person.

3 Q Okay. And how did they show -- did they show
4 you one photograph?

5 A They might have showed me one or two, I
6 believe.

7 Q How did they present it to you; do you recall?

8 A They presented a photo and asked me do I recall
9 seeing this person before.

10 Q And that's when you said that was Bernard
11 Brennan?

12 A I didn't know his name. I didn't say his name,
13 no.

14 Q That's when you said, That's the person that I
15 saw?

16 A Yeah.

17 Q When they showed you the photograph?

18 A Yeah.

19 Q Now, on the night in October of 2001, when you
20 recall this taking place, you didn't see Carmen Rice
21 with any particular firearms or weapons, did you?

22 A No, I didn't see anything on her.

23 Q You didn't see her with any large amounts of
24 cash, did you?

25 A No, she didn't show us any cash.

1 Q Did you see any blood on her?

2 A No.

3 Q Now, you have a friend named Twana Branham,
4 correct? Or you had a friend named Twana Branham?

5 A Correct.

6 Q And you talked to her -- I believe, at some
7 point, you saw some composites of the suspects that
8 were involved in this case, correct?

9 A Correct.

10 Q Okay. And you talked to Twana Branham about
11 that, correct?

12 A Correct.

13 Q And isn't it true that you told Twana Branham
14 that one of the composites actually looked like you?

15 A No.

16 Q You didn't tell Twana Branham that?

17 A No, I did not. The reason why me and Twana
18 Branham was even talking about it is somebody was
19 saying, Okay, that could be you.

20 Q So you didn't tell Twana Branham that one of
21 the composites looked like you?

22 A No.

23 Q Or resembled you?

24 A No.

25 Q Now, around the same time, you thought Carmen

AMBER BYRD - REDIRECT BY MR. MEADORS

483

1 was telling people that you and Cynthia killed that
2 person; isn't that correct?

3 A Correct. That's what someone -- yes.

4 Q And you didn't like that, correct?

5 A Did I -- I mean, no -- yeah, correct, because
6 it wasn't true.

7 MR. MOBLEY: I don't have anything further from
8 this witness at this time, Your Honor.

9 Thank you, Ms. Byrd.

10 THE WITNESS: You're welcome.

11 THE COURT: Thank you, sir.

12 Mr. Meadors, anything on redirect?

13 MR. MEADORS: Just two follow up.

14 REDIRECT EXAMINATION

15 BY MR. MEADORS:

16 Q Is Mr. Dice dead?

17 A Is who?

18 Q Is Dice dead?

19 A I don't think so.

20 Q And he asked you a couple of questions. Do you
21 remember Investigator Smith showing you a picture of
22 Dice?

23 A Yes.

24 Q Person like that, did you recognize that
25 person?

1 **A** Yes.

2 **Q** And can you describe Bernard Brennan's face to
3 us, anything that you remember about his face?

4 **A** All I saw was like he was older, had like -- he
5 was older looking than Dice would look. So he was
6 -- he had like gray hair. He did have on a hat, but
7 he had like a gray beard, mustache, goatee type.

8 **Q** Gray in the beard?

9 **A** Yeah, like a goatee.

10 **Q** Did you recognize that in the picture?

11 **A** Yes.

12 **MR. MEADORS:** That's all I have.

13 **THE COURT:** Mr. Mobley, anything on recross?

14 **MR. MOBLEY:** Just briefly, Your Honor, if I can
15 beg the Court's indulgence.

16 **THE COURT:** Certainly.

17 (Pause.)

18 **MR. MOBLEY:** Nothing further, Your Honor.

19 **THE COURT:** Thank you, sir.

20 Ma'am, you may step down. Thank you.

21 Any reason not to excuse this witness?

22 **MR. MOBLEY:** No, Your Honor.

23 **THE COURT:** Thank you, counsel.

24 Ma'am, you're free to come and go as you
25 please. Thank you.

CYNTHIA MICHELLE PARKS - DIRECT BY MR. LUPTON

485

1 The State's ready to call their next witness?

2 **MR. MEADORS:** Your Honor, the State calls
3 Cynthia Parks.

4 CYNTHIA MICHELLE PARKS,
5 having been duly sworn, testified as follows:

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

8 DIRECT EXAMINATION

9 BY MR. LUPTON:

10 **Q** Ms. Parks, could you tell the jury briefly a
11 little bit about yourself. Where you're from?

12 **A** My name is Cynthia Michelle Parks. I'm
13 originally from New York City and born in Chicago,
14 Illinois and raised in Saint Steven, South Carolina.

15 **Q** Now, do you know the defendant, Carmen Rice?

16 **A** Yes.

17 **Q** How do you know her?

18 **A** Through some friends and she also used to live
19 with me.

20 **Q** Where was it that you met her?

21 **A** In Bentley Court.

22 **Q** Is that near Broad River?

23 **A** Yes.

24 **Q** And when you say through friends --

25 **A** I met her through Amber Byrd.

1 Q Through Amber Byrd?

2 A Uh-huh.

3 Q Do you remember, approximately, when you met
4 her?

5 A 2001, if I'm not mistaken.

6 Q And do you know, at some point -- well, first
7 of all, you said you met her at Bentley Court. Is
8 that where she was living; do you know?

9 A Yes.

10 Q At the time you met her. Do you know if she
11 ever left there, if she ever left that place?

12 A Yes.

13 Q And moved somewhere else?

14 A Yes.

15 Q And do you know where that -- where it is that
16 she moved to?

17 A I don't know the name of the street, but it's
18 near Benedict College. I don't know the name of the
19 street -- on Two Notch, I think.

20 Q It was off of Two Notch?

21 A Off of Two Notch.

22 Q And I'd like to show you State's Exhibit 37 and
23 see if you can recognize that. Is that the area
24 where she lived?

25 A Yes.

CYNTHIA MICHELLE PARKS - DIRECT BY MR. LUPTON

487

1 Q And did you ever go over there with Amber?

2 A Yes.

3 Q And do you know where Carmen Rice was working
4 at the time she moved over to that house?

5 A All I know is she was a security officer.

6 Q Worked for a security company?

7 A Yes.

8 Q And at the time when she is living at that
9 house, where were you working?

10 A Foot Locker and Great Steak in Richland Fashion
11 Mall.

12 Q And during that time period, did Amber ever
13 pick you up from work?

14 A Yes.

15 Q Sometimes, often?

16 A All the time.

17 Q All the time. And do you remember what she
18 drove at that time?

19 A She drove a Chevy Cavalier, four door, '98.

20 Q Do you remember what color it was?

21 A Bluish, turquoise.

22 Q And do you remember the night in question in
23 this trial, the night of the murder; do you remember
24 that night?

25 A Yes.

1 Q Did you have -- first of all, did Amber pick
2 you up that night from work?

3 A Yes.

4 Q And did she have anybody with her?

5 A Shawn, which is Carmen's son.

6 Q And did she occasionally baby sit for Shawn,
7 Amber?

8 A Yes.

9 Q Do you remember about what time Amber and Shawn
10 got to the mall?

11 A If I recall, it was about 7:00 or 8:00.

12 Q And do you remember what time you got off that
13 night?

14 A No, about 9:00 or 10:00 because I closed that
15 evening.

16 Q And what time -- what's closing time?

17 A Closing time at the mall is nine o'clock and we
18 have to do things after like fold shirts and sort of
19 the nature and vacuum, so probably ten o'clock at
20 most.

21 Q Some point after 9:00 --

22 A Right.

23 Q -- some time maybe around 9:00 -- ten o'clock
24 you think?

25 A Right.

CYNTHIA MICHELLE PARKS - DIRECT BY MR. LUPTON

489

1 Q Is when y'all left where you work, Richland
2 Fashion Mall?

3 A Right.

4 Q Where did you go from there?

5 A To Carmen's house.

6 Q And what did you do once you got there?

7 A We sat around and waited.

8 Q You waited for Carmen to come home?

9 A Right.

10 Q And, at some point, did she come home that
11 night?

12 A Yes, she did.

13 Q And was she alone?

14 A Yes, she was.

15 Q Was there anybody -- was there anybody else
16 there at the house that night?

17 A Her father was there and Iris came in later.

18 Q Iris came in, also?

19 A Yeah, she was also there.

20 Q In relation to -- well, first of all, did you
21 see Carmen actually come in the door?

22 A Yes.

23 Q And in relation to that, how long after that or
24 what point after that or before that did Iris come
25 in?

1 A I have no idea.

2 Q Did you see Iris before or after?

3 A After.

4 Q So you know that Carmen came in the door and at
5 some point -- was it a short time after that?

6 A I can't recall.

7 Q But at some point after that, you saw Iris
8 there as well?

9 A Right.

10 Q Now, when Carmen came in, did you have a chance
11 to observe her?

12 A Somewhat, yes.

13 Q And can you describe how she was acting?

14 A She was -- she just had -- she was just
15 staring, like staring out in space, just, you know,
16 kind of jumpy, gibberish, but she wasn't, you know.

17 Q Acting jumpy you said?

18 A Yeah.

19 Q Now, did you have a chance to talk -- did you
20 talk with Carmen that night?

21 A No.

22 Q Do you know if Amber talked to Carmen that
23 night?

24 A She may have.

25 Q And now you're not allowed to -- I can't ask

CYNTHIA MICHELLE PARKS - DIRECT BY MR. LUPTON

491

1 you, specifically, what it is, if anything, that
2 Amber told you about any conversations with Ms.
3 Rice, but I will ask you, at some point after y'all
4 left, did Amber tell you Carmen Rice told her
5 something?

6 **A** Yes.

7 **Q** And was Amber with you that evening?

8 **A** Yes.

9 **MR. LUPTON:** Beg the Court's indulgence.

10 (Pause.)

11 **Q** Let me ask you this. You said you knew Carmen
12 and that Carmen was in the house that night. Can
13 you point out to the jury who it was that you know
14 as Carmen Rice?

15 **A** Right there (indicating).

16 **MR. LUPTON:** Your Honor, I'd ask the record to
17 reflect that she indicated the defendant, Carmen
18 Rice.

19 **THE COURT:** Yes, sir.

20 **MR. LUPTON:** No further questions, Your Honor.

21 **THE COURT:** Thank you, sir.

22 Mr. Hart.

23 **MR. HART:** Thank you, Your Honor. May it
24 please the Court.

25 **THE COURT:** Yes, sir.

CROSS-EXAMINATION

1

2

BY MR. HART:

3

Q Did you happen to see Carmen before you went to work?

4

5

A Yes.

6

Q You did. Do you know exactly what she was wearing?

7

8

A No.

9

Q You can't remember her hair? You've known Carmen to wear wigs?

10

11

A Yeah, sometimes, yeah.

12

Q Is it possible she could have had on a wig that night?

13

14

A I don't recall.

15

Q You've known her to wear -- her wigs is not a -- she wears blond wigs, right?

16

17

A Sometimes.

18

Q Sometimes red wigs, sometimes they're quite colorful?

19

20

A Right.

21

Q So if you were to see her wig, it would be very distinctive. You would know she had a colorful wig on, right?

22

23

24

A Right.

25

Q You said you got off about 9:00 or 10:00 that

CYNTHIA MICHELLE PARKS - CROSS BY MR. HART

493

1 night?

2 A Correct.

3 Q And Amber came to pick you up?

4 A Right.

5 Q And Amber was with Shawn?

6 A Right.

7 Q Which is Carmen's son?

8 A Right.

9 Q And then, from that point, you guys went over
10 to Carmen's house?

11 A Correct.

12 Q Now, how long were you at Carmen's house before
13 Carmen actually arrived?

14 A I can't recall.

15 Q Would you say ten minutes?

16 A I can't recall. It was probably -- I would
17 give it like 20, 30 minutes probably.

18 Q Twenty or 30 minutes?

19 A Give or take, uh-huh.

20 Q And you say you guys arrived there around
21 10:00?

22 A Right.

23 Q So you said, approximately, 10:30 is when
24 Carmen arrived?

25 A Correct.

1 Q Now, you say Carmen came in the house alone,
2 correct?

3 A Correct.

4 Q Iris didn't come in the house with her?

5 A Correct.

6 Q Iris came after Carmen?

7 A She was there at the house afterwards, yes.

8 Q Would you say more than ten minutes?

9 A I have no idea. I can't recall.

10 Q You said you also was able to observe Carmen.
11 You didn't notice any blood on Carmen, did you?

12 A No.

13 Q Didn't notice any grass stains on her clothing?

14 A No.

15 Q Didn't notice any mud on her clothing?

16 A No.

17 Q Didn't notice that her clothing was tattered or
18 torn?

19 A No.

20 Q You've never known Carmen to smoke cigarettes,
21 have you?

22 A No, not that I can recall.

23 Q Also, when she came into the house, you didn't
24 notice that Carmen had a weapon either, right?

25 A No.

CYNTHIA MICHELLE PARKS - REDIRECT BY MR. LUPTON

495

1 Q And you say you also saw her before you went to
2 work?

3 A Right.

4 Q You didn't notice that Carmen had a weapon
5 before she went to work, right?

6 A No.

7 MR. HART: No further questions, Your Honor.

8 THE COURT: Thank you, sir.

9 Mr. Lupton, anything on redirect?

10 REDIRECT EXAMINATION

11 BY MR. LUPTON:

12 Q You said that you don't remember how long you
13 were waiting for Carmen?

14 A Right.

15 Q And under prompting, you said, Ten minutes.
16 You said, I can't remember, maybe 20, 30.

17 A Correct.

18 Q Could it have been longer?

19 A It could have been. I can't recall at the
20 time.

21 Q You just know that it was some time?

22 A Right. It was some time after.

23 Q And as far as when Iris came in, you know she
24 did not walk in the door at the same moment?

25 A Right.

1 Q But you don't know if she was standing out on
2 the porch for a few minutes and then walked in?

3 A Right.

4 Q And as far as the wigs, you said -- you were
5 asked, specifically, she wore colorful wigs and you
6 said sometimes; is that correct?

7 A Correct.

8 Q Did she sometimes wear black wigs?

9 A No black.

10 Q Did she sometimes wear wigs that were not
11 colorful?

12 A All I remember is gold and a burgundy wig that
13 she had that she would wear.

14 Q All right. But that's what you recall. Do you
15 know if she had others?

16 A She probably had. I don't recall.

17 Q Probably had?

18 A Right.

19 Q Fair to say she liked wigs?

20 A Yes.

21 MR. LUPTON: Nothing further.

22 THE COURT: Mr. Hart?

23 MR. HART: Nothing further, Your Honor.

24 THE COURT: Thank you, sir.

25 Ma'am, you may step down. Thank you.

1 **MR. MEADORS:** Can we approach?

2 **THE COURT:** Yes, sir.

3 (Whereupon, a bench conference was held off
4 the record, in the presence of the jury, but out of
5 the hearing of the jury.)

6 **THE COURT:** Okay. Ladies and gentlemen, we're
7 going to go ahead and take a short break before we
8 call the next witness. And I just ask that you not
9 discuss the evidence or testimony that you've heard
10 or seen thus far. And we'll bring you back out in
11 about ten minutes. Thank you.

12 (The jury retires to the jury room.)

13 **MR. LUPTON:** Your Honor, just for the record,
14 can we release Ms. Byrd and Ms. Parks?

15 **THE COURT:** Yes, sir. No reason to keep Ms.
16 Parks either --

17 **MR. MOBLEY:** I might want to recall Ms. Byrd,
18 but I don't have any problem with her being
19 released.

20 **THE COURT:** They're free to go at this point.
21 Obviously, if you all decide to call her in your
22 case in chief, we'll take that up.

23 Any issues that we need to take up as to Ms.
24 Bryant's testimony before she comes out?

25 **MR. MEADORS:** Judge, I think as far as her

1 record...

2 **MR. LUPTON:** Your Honor, with regards to Ms.
3 Bryant, the only impeachable record that shows up on
4 her rap sheet is a distribution of crack cocaine
5 from 1998. It was a plea in 2003, which I believe
6 the defense is familiar with all the background on
7 that.

8 Your Honor, she had some pending charges which
9 I don't think are impeachable. They're not within
10 this circuit, but I informed Mr. Mobley of all of
11 that, everything that I'm aware of.

12 **THE COURT:** Mr. Mobley, anything we need to
13 take up?

14 **MR. MEADORS:** In addition to that, I guess the
15 issue that was already brought out in the opening,
16 which I think Your Honor cured then, that the issue
17 would become she is charged with murder and armed
18 robbery in this case. I know there's case law out
19 there. Obviously, she's looking at a certain
20 penalty. So the issue becomes whether that can come
21 out in this case. If Your Honor's going to allow
22 that, I would like to know and I'll certainly bring
23 it out before the defense will.

24 **THE COURT:** As I understand the case law, the
25 only way it comes out is if there's some deal that's

1 been made. If there's no deal on the table or offer
2 related to a certain plea down or either to a lesser
3 included or to a certain amount of time, then it's
4 not proper to bring it in before the jury.

5 **MR. MEADORS:** Judge, there has been -- I got
6 involved in this case recently, I've been informed
7 from Mr. Lupton, and I can certainly assure the
8 Court, since I've been involved in it, there have
9 been no deals whatsoever made with the codefendant.
10 She is charged with armed robbery and murder.

11 **MR. LUPTON:** Your Honor, for the record, I
12 spoke with Mr. Mobley about I was considering making
13 an offer to her, but that offer was never conveyed
14 to either the defendant or her attorney, Ms. Ahrens
15 in the public defender's office. And I conferred
16 with Mr. Mobley after that and I told him I just
17 can't do that. I'd considered making an offer with
18 regards to the murder charge and -- in this case, I
19 just -- I couldn't do that and I went back to Mr.
20 Mobley afterwards --

21 **MR. MOBLEY:** And that's correct.

22 **THE COURT:** I think it's certainly fair the
23 defense can ask if a deal has been made.

24 **MR. MOBLEY:** I think more than that, Your
25 Honor, I mean, if you consider the penalty this

1 woman is facing -- I mean, it's my understanding
2 that, you know, they say -- it's my understanding
3 that they've indicated, and I'm just going off the
4 basis of my conversation, if I'm mistaken, I'm
5 mistaken, but if they make the cooperation known to
6 the Court, but the point is she's still facing --
7 for the charge she's facing, Your Honor, she's
8 facing a maximum of life in prison.

9 And I think under the confrontation clause, I
10 mean, you know, and life in prison means exactly
11 that on a murder statute, Your Honor. So I think
12 under the confrontation clause, that's a pretty
13 significant bias and motive to assist the State,
14 Your Honor. I think under the confrontation clause,
15 I should be entitled to go into the penalty that she
16 is facing.

17 **THE COURT:** I mean, the case law is flat clear
18 on that. In fact, that precisely brings up an issue
19 in front of the jury that they're forbidden to even
20 consider.

21 The only way it comes in is if the State has
22 made some deal to plea her down to allow her
23 testimony to be pled down -- not her testimony, but
24 her charge to be pled to a lesser included which
25 obviously affects how much time she's facing, fair