

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

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SEP 14 2015

S.C. Supreme Court

KANDY GILLIARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001425

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
00-GS-10-2467
00-GS-10-2468

The State of)
South Carolina)
vs.)
Kandy L. Gilliard,)
Defendant.)

TRANSCRIPT OF RECORD
VOLUME I OF III

May 29th through June 1, 2001
Charleston, South Carolina

B E F O R E:

THE HONORABLE JAMES E. LOCKEMY; Judge and a jury.

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

Mr. Dale DuTremble, Assistant Solicitor
Mr. Damon Cook, Assistant Solicitor
Attorneys for the State

Mrs. Melissa W. Gay, Esq.
Attorney for the Defendant

Bonnie M. Britt
Official Court Reporter

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1 THE COURT: Good morning to you, ladies and gentlemen
2 of the jury, I could here in the room you all have gone
3 through an interesting process, already. So we're now
4 ready to complete the process of qualifying you as a jury.
5 So, please, listen carefully as I go over this information.
6 They have already asked you, basically, information about
7 what you do for a living and things of that nature, and
8 what your spouse does for a living.

9 But, now, I have to ask you some questions to make
10 sure that you qualify legally and constitutionally as
11 jurors. Now, this is a circuit court of the State of South
12 Carolina. There are no levels above this circuit court for
13 trials. This is the highest trial level. There are
14 forty-six circuit judges, and we travel all over the state,
15 holding court. I am from Dillon County, South Carolina. I
16 am not from Charleston. However, our constitution requires
17 that we as judges, travel throughout this state. And so
18 I'm here until the end of June. I've been here since
19 January, and then, I'll go somewhere else.

20 But you, as citizens of this state and as jurors, must
21 live in Charleston County. So I'm going to be asking that
22 of you in a minute. But before we do, Mr. Deputy Clerk,
23 could you put them under oath?

24 THE CLERK: Yes, sir.

25 Ladies and gentlemen of the jury panel, please, stand

1 and raise your right hand so that you can be sworn.

2 THE COURT: This is oath or affirmation. Either way
3 you choose.

4 THE CLERK: Do you swear or affirm that you shall
5 truthfully answer this Court's questions, so help you God?

6 (The jury panel answers in affirmative responses.)

7 THE COURT: All right. Now, if you did not take that
8 oath or affirmation, and you are a juror, please, stand up.

9 (No response.)

10 THE COURT: Okay. So, please, understand, now, ladies
11 and gentlemen, your responses to my questions are legal
12 responses after you have been put under a legal oath or
13 affirmation. So, please, understand that. Plus the lady
14 up here, who is working very hard right in front of me,
15 she's taking everything down that we say, now, that we're
16 in official court session.

17 Now, as I began to ask you, for you to be a juror, you
18 must be a resident of the county which you're called as a
19 juror. Is anyone here not a resident of Charleston County,
20 and you're here for jury duty; and you don't live in
21 Charleston County? If so, please, stand up.

22 (No response.)

23 THE COURT: All right. Is there anyone here who's been
24 a member of a circuit court jury panel in the last three
25 years?

1 (No response.)

2 THE COURT: Is there anyone who's been a member of the
3 grand jury in the last five years? And if you were a
4 member, you would understand what the grand jury is, so I
5 don't need to explain it to you. But if you've been a
6 member of the grand jury in the last five years, please,
7 stand up.

8 (No response.)

9 THE COURT: Okay. Is there anyone here who's a clerk
10 of court, deputy clerk of court, magistrate, constable,
11 courthouse employee, or someone who has a general power of
12 arrest, meaning a police officer of any type, sheriff,
13 police officer, or anybody else employed within the walls
14 of the courthouse? Anybody who is a constable?

15 (No response.)

16 THE COURT: All right. Ladies and gentlemen, to be on
17 jury duty, it does not require that you have any high
18 degree of education. But it does require that you have at
19 least the ability to have a basic understanding of the
20 english language, both in speaking and writing and reading
21 the english language. Does anyone not have a basic
22 understanding of the english language to write it and read
23 it and understand it?

24 (No response.)

25 THE COURT: What about education level by the way?

1 The statute says you must have at least a six grade
2 education or its equivalent. Equivalent means that through
3 life's experiences, or your own education, your own work,
4 you may have gotten what you would have gotten in six
5 grades of school, even if you didn't go through six grades.
6 So is there anyone here who does not have at least a
7 six-grade education or its equivalent?

8 (No response.)

9 THE COURT: All right. Ladies and gentlemen, there
10 are a couple of areas here, where we give options as far as
11 jury service. One, is the area of age. Once you have
12 reached the age of 65, we let you make the choice of
13 whether you wish to serve or not. We'd love to have you.
14 You would be a good juror. But at that age, we know you
15 have already served your community, your state, and your
16 nation; and so therefore, we let you make the choice. Is
17 there anyone out there 65 years of age or older, who does
18 not wish to serve on jury duty?

19 (No response.)

20 THE COURT: The other area is the area of school. And
21 many of you may be here, because you've already gotten
22 that, I guess, convenience to have your jury service when
23 school is not in session, but I need to ask the question
24 anyway. If you are in school, whether it be as a student
25 or a school employee, and this week of service -- it will

1 be a week of service -- will interfere with school, then
2 what we'll do, we'll try to see if we can arrange it for
3 jury service when you're not in school. It doesn't excuse
4 you. It just means we'll arrange it for another week.

5 Does anyone have a school problem this week?

6 (Juror stands.)

7 THE COURT: What is your name, sir?

8 PROSPECTIVE JUROR: Randy Crouse -- Jeffrey Crouse.

9 THE COURT: Mr. Crouse. Okay. Let me get my jury
10 list. What number is he, please?

11 THE CLERK: Forty-five.

12 THE COURT: Yes, sir. Mr. Crouse, are you a student?

13 PROSPECTIVE JUROR: I'm a professor.

14 THE COURT: And you all have school this week?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Okay. Have you been continued before
17 because of school?

18 PROSPECTIVE JUROR: No, I haven't.

19 THE COURT: All right. Mr. Crouse, step up here a
20 second. Let me discuss it with you, and see what you want
21 to do about this. You may want to stay with us or you may
22 not.

23 THE COURT: Where do you teach, Mr. Crouse?

24 PROSPECTIVE JUROR: Trident Tech.

25 THE COURT: All right. What do you teach?

1 PROSPECTIVE JUROR: Organic chemistry.

2 THE COURT: Organic chemistry. All right. You have
3 classes everyday?

4 PROSPECTIVE JUROR: I'm also have responsibilities for
5 setting up labs this week.

6 THE COURT: Well, what I'm trying to let you know -- I
7 mean, when will you be free to serve?

8 PROSPECTIVE JUROR: When the semester is over with.
9 We just started a new semester.

10 THE COURT: Okay. Well, just let me let you know
11 this, you know, that will be your break time. This will be
12 for four days. And it's probable that if you're not
13 selected in the first case, you won't have to come back
14 until Wednesday afternoon or Thursday. And it's improbable
15 that you'll be here Friday. So I'm just letting you know
16 this might be a good week to get it done, if you can make
17 arrangements. I don't start in the morning until around
18 9:30. We quit around 5:00 or 5:30.

19 PROSPECTIVE JUROR: It's still a bad time with budget
20 cuts.

21 THE COURT: Well, I know that, but that's going to be
22 the whole year.

23 PROSPECTIVE JUROR: This is the first week of classes.

24 THE COURT: It's up to you. You have a right to
25 transfer, I'm just trying to make sure you ---

1 PROSPECTIVE JUROR: I'd like to get some other time.

2 THE COURT: Well, have a seat over there. We'll work
3 out something. Just have a seat in the box. We'll try to
4 work out something.

5 Anyone else about school?

6 (No response.)

7 THE COURT: Ladies and gentlemen, being on jury duty
8 does not require any heavy lifting. In other words, it
9 doesn't require to have any strong physical proreus, or
10 anything of that nature. And most people have some element
11 of some sort. You know, you might not feel well, or
12 whatever else. You may have allergies or some people may
13 even have diabetes that requires certain food, and things
14 of that nature; or you may have, honestly, a back problem
15 that may require you to have stand up every once in a while
16 to stretch, and those things. And we'll accommodate you.
17 We will accommodate you.

18 However, if you have a physical or mental problem,
19 which you feel would make it difficult for you to pay
20 attention, to listen. Because that's what we want from
21 jurors, the ability to listen, to pay attention, and
22 therefore, from that information to make a decision. If
23 you have a physical or mental problem that you feel would
24 affect your ability to serve as a juror, please, stand up
25 now, and I'll talk with you about it.

1 (No response.)

2 THE COURT: Okay. Under the statute -- and, please,
3 know that I didn't write the statute -- but it says this:
4 The statute says that a woman with a child under the age of
5 seven, who's not employed, and who would be home with the
6 children if they were not here -- not employed outside of
7 the home -- is eligible to be excused from jury duty. If
8 it's your child, or you have a Family Court order giving
9 you custody of the child. Does that apply to anyone?
10 Children under seven, and you're not employed outside the
11 home?

12 (No response.)

13 THE COURT: Okay. It used to be, to be on jury duty,
14 you had to be registered to vote. However, some people
15 thought that if they didn't register to vote, they would
16 never be on jury duty. So, therefore, the law changed
17 about ten years ago. Now, to be on jury duty you can
18 either be registered to vote or have a driver's license or
19 an ID card from the highway department.

20 Is there anyone here who doesn't have at least one of
21 those three?

22 (No response.)

23 THE COURT: All right. Now, ladies and gentlemen, I
24 want you to listen very, very closely to the next question.
25 No. Let me ask you another question that I should have

1 asked you. Is anybody here not a citizen of the United
2 States?

3 (No response.)

4 THE COURT: Okay. Now, this next question I want you
5 to listen very, very closely, because if this question
6 applies to you, you cannot, and I repeat, you cannot serve
7 on jury duty if this question applies to you. You cannot
8 serve on jury duty if you have been convicted of a crime
9 for which you could have received more than one year in
10 jail or prison. It doesn't matter what you, actually, did
11 receive. You could have gotten a probationary sentence, a
12 fine, or a period of time less than a year, but if the
13 judge could have imposed more than one year, then you're
14 disqualified from jury service, unless you have had a
15 pardon or amnesty.

16 Now, a pardon or amnesty is not the fact that your
17 probation is over. A pardon or amnesty is something that,
18 generally, comes from the executive office, like the
19 Governor or from the President, something of that nature.
20 Now, it doesn't matter whether your conviction occurred in
21 South Carolina or in some other state, or in the Federal
22 system. It doesn't matter where it occurred. Also, it
23 doesn't matter how long ago it was. It could have been
24 this year, last year, twenty years ago, ten years ago,
25 thirty years ago. That doesn't matter. If you have been

1 convicted of a crime for which you could have received more
2 than year, then you're disqualified from jury service,
3 unless you have a pardon or amnesty.

4 And if you're not sure, the best thing is to come up
5 and talk to me about it. Because if you are selected for a
6 jury, then we'll find those things out. And then, I'm
7 going to wonder why you didn't talk to me about it. And
8 the fact that you weren't sure is not an excuse. So if you
9 are not sure or have any question at all, now is the time
10 to come talk to me about it; or if you know, now is the
11 time to come talk to me about it.

12 Any body at all, please, come on up.

13 (Juror stands.)

14 THE COURT: Come on up, ma'am.

15 I'll put this on the record, but counsels on the first
16 case are welcome to come up if they wish. All right. One
17 person at a time.

18 Okay. Come on up, sir.

19 THE CLERK: Number 134, Your Honor.

20 THE COURT: Number 134. Okay. What is your name,
21 sir?

22 PROSPECTIVE JUROR: Darrus Montgomery.

23 THE COURT: All right. Mr. Montgomery, what were you
24 convicted of?

25 PROSPECTIVE JUROR: I haven't been convicted. I mean,

1 I've got charges still pending.

2 THE COURT: You've got charges pending where? Here in
3 Charleston?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: What are they for?

6 PROSPECTIVE JUROR: Possession of marijuana and
7 unlawful possession of a handgun.

8 THE COURT: All right, sir. So you have pending
9 charges. Because of that, do you feel it would be
10 difficult you would be fair and impartial? Would you
11 rather be on a civil term of court, instead of a criminal
12 term?

13 PROSPECTIVE JUROR: I wasn't sure if I could still
14 serve.

15 THE COURT: You're not sure?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: You can serve, but I'm wondering would you
18 rather do a civil term rather than a criminal term, because
19 you've got your charges pending?

20 PROSPECTIVE JUROR: If I can serve, it doesn't matter.

21 THE COURT: All right. Have a seat out there if you
22 would. Mr. Montgomery, have a seat. That was Number 134.

23 PROSPECTIVE JUROR: I'm Juror Number 15, John Bishop.

24 THE COURT: Your last name is?

25 PROSPECTIVE JUROR: Bishop.

1 THE COURT: Yes, sir. What is your conviction, Mr.
2 Bishop?

3 PROSPECTIVE JUROR: It was assault and battery.

4 THE COURT: Simple or high and aggravated nature?
5 What kind of court did you go to?

6 PROSPECTIVE JUROR: Right here.

7 THE COURT: In this courtroom?

8 PROSPECTIVE JUROR: I don't know if it was this
9 courtroom or not.

10 THE COURT: What kind of sentence did you receive?

11 PROSPECTIVE JUROR: Nothing.

12 THE COURT: Were you convicted, or was it dismissed?
13 Mr. Solicitor, tell me.

14 MR. DUTREMBLE: It was dismissed.

15 THE COURT: Dismissed. So he's not been convicted.
16 All right. You're qualified, sir. Go have a seat.

17 All right. Next person.

18 PROSPECTIVE JUROR: Christopher Main, 120.

19 THE COURT: Is it Pervain?

20 PROSPECTIVE JUROR: Christopher Main. M-a-i-n.

21 THE CLERK: Juror Number 120.

22 THE COURT: Yes, sir, Mr. Main?

23 PROSPECTIVE JUROR: I had problems with domestic. Me
24 and my ex-fiance used to live together ---

25 THE COURT: Don't tell me anything other than -- were

1 you convicted of a crime, sir?

2 PROSPECTIVE JUROR: Well, I had went up ---

3 THE COURT: Were you convicted of a crime in front of

4 a judge?

5 PROSPECTIVE JUROR: Yeah.

6 THE COURT: A magistrate?

7 PROSPECTIVE JUROR: He put me on probation.

8 THE COURT: Was that the magistrate?

9 PROSPECTIVE JUROR: Yeah. The clerk of courts.

10 THE COURT: Was that in this state?

11 PROSPECTIVE JUROR: No. That was in Pennsylvania.

12 THE COURT: Do you have any convictions in this state?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Anything other than one time of criminal

15 domestic violence?

16 PROSPECTIVE JUROR: No.

17 THE COURT. What does your record show, Mr. Solicitor?

18 MR. DUTREMBLE: Burglary, Your Honor.

19 THE COURT: Were you convicted of burglary, sir?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Why didn't you tell me, sir?

22 PROSPECTIVE JUROR: What's that?

23 THE COURT: Why didn't you tell me, sir?

24 PROSPECTIVE JUROR: Why didn't I tell you?

25 THE COURT: Yes. I just asked you. Why did you not

1 tell me about the burglary?

2 PROSPECTIVE JUROR: Oh, I did tell you. I thought I
3 did.

4 THE COURT: Was that what it was about?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: You're disqualified, sir.

7 PROSPECTIVE JUROR: All right.

8 THE COURT: This juror is disqualified. You may
9 leave, sir.

10 Next person, please.

11 PROSPECTIVE JUROR: Rosetta M. Brown, Juror Number 25.

12 THE COURT: Okay. Come around, Ms. Brown. Yes, Ms.
13 Brown?

14 PROSPECTIVE JUROR: Shoplifting last year.

15 THE COURT: How many times?

16 PROSPECTIVE JUROR: One.

17 THE COURT: Just one shoplifting?

18 PROSPECTIVE JUROR: Uh-huh.

19 THE COURT: Did you go to the magistrate's court for
20 that?

21 PROSPECTIVE JUROR: Uh-huh.

22 THE COURT: Anything else?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: You're fine. You're qualified.

25 PROSPECTIVE JUROR: I qualify?

1 THE COURT: Yes. You may have a seat. Thank you,
2 ma'am. She's qualified. Next person.

3 PROSPECTIVE JUROR: Curtis Robinson, Number 154.

4 THE COURT: Yes, sir, Mr. Robinson, what were you
5 convicted of?

6 PROSPECTIVE JUROR: Conspiracy to traffic cocaine.

7 THE COURT: Were you convicted of it?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Anything else?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Any other record other than that
12 conviction, Mr. Solicitor?

13 MR. DUTREMBLE: Nothing.

14 THE COURT: Okay. You're disqualified, sir. You
15 don't have any pardon or amnesty, I assume. All right.
16 He's disqualified.

17 PROSPECTIVE JUROR: Joseph Helms, 82.

18 THE COURT: All right. Mr. Helms, yes, sir?

19 PROSPECTIVE JUROR: In 1976, I was convicted of grand
20 larceny and given a six-year sentence. I served one and
21 one half years.

22 THE COURT: All right. Did you ever get a pardon or
23 amnesty?

24 PROSPECTIVE JUROR: Not a pardon or amnesty, no, sir.

25 THE COURT: Okay. Well, you disqualify.

1 PROSPECTIVE JUROR: And I have not been in any trouble
2 since then.

3 THE COURT: And, you know, you could probably get a
4 pardon or amnesty. You ought to get that done. That's a
5 long time ago. That was twenty-five years ago. I'd do
6 something about that, seriously.

7 PROSPECTIVE JUROR: Who do I go see?

8 THE COURT: See a lawyer. They'll get it done for
9 you.

10 PROSPECTIVE JUROR: All right, sir. Thank you.

11 THE COURT: All right. See you later. He's
12 disqualified.

13 PROSPECTIVE JUROR: Juror Number 18, Ronald Blunt.

14 THE COURT: All right. Come around, sir. Is it
15 B-l-o-u-n-t?

16 PROSPECTIVE JUROR: B-l-u-n-t.

17 THE COURT: And what's that number, again?

18 PROSPECTIVE JUROR: Number 18.

19 THE COURT: Okay. Mr. Blunt?

20 PROSPECTIVE JUROR: Probation until August.

21 THE COURT: What are you on probation for?

22 PROSPECTIVE JUROR: Possession of cocaine.

23 THE COURT: Cocaine?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: All right. You're on probation, now?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: All right. You're disqualified. You may
3 leave. He's disqualified. He can leave.

4 PROSPECTIVE JUROR: Eleanor Fogler, 61 is my number.

5 THE COURT: Yes, ma'am, Ms. Fogler?

6 PROSPECTIVE JUROR: Good morning.

7 THE COURT: Good morning.

8 PROSPECTIVE JUROR: I was 90 days -- I did 90 days for
9 assault in New York City in 1972, I think.

10 THE COURT: When you were convicted of the assault,
11 was it like a simple type assault? Did the judge say how
12 much time he could give you?

13 PROSPECTIVE JUROR: Ninety days.

14 THE COURT: Ninety days was the max he could give you?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Okay. That's the max he could give you.

17 Anything else?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: All right. You're qualified then.

20 And, Mr. Solicitor, if you any other information, let
21 me know.

22 MR. DUTREMBLE: Yes, sir. I will.

23 THE COURT: Okay. Come around, ma'am.

24 PROSPECTIVE JUROR: Constance Magill, number 118.

25 THE COURT: What's your last name, ma'am?

1 PROSPECTIVE JUROR: Magill.

2 THE COURT: Yes, ma'am, Ms. Magill?

3 PROSPECTIVE JUROR: Years ago I had messed up my
4 checking account. I went -- I had to go to ---

5 THE COURT: You had a bad check?

6 PROSPECTIVE JUROR: Yes. But I had been working it
7 out ---

8 THE COURT: Did you get ten years, then?

9 PROSPECTIVE JUROR: No, sir. But I figured I better
10 ask about it.

11 THE COURT: Anything else?

12 PROSPECTIVE JUROR: No, sir.

13 THE COURT: You went to magistrate's court and paid
14 off the checks?

15 PROSPECTIVE JUROR: Actually, yes, because I have been
16 working with them anyway.

17 THE COURT: No problem. You're qualified.

18 All right. So far Mr. Main, Mr. Robinson, Mr. Helms,
19 Mr. Blunt -- those four people should have left.

20 Do you have any other people on your list?

21 PROSPECTIVE JUROR: Your Honor, Your Honor?

22 THE CLERK: Your Honor, this is Mr. Crouse, Your
23 Honor. He asked about a transfer earlier.

24 PROSPECTIVE JUROR: This is regarding the criminal. I
25 had four counts of assault and battery.

1 THE COURT: Here in this county?

2 PROSPECTIVE JUROR: Dorchester.

3 THE COURT: You went to high court for that?

4 PROSPECTIVE JUROR: General sessions.

5 THE COURT: And you were convicted?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: What was your number?

8 PROSPECTIVE JUROR: Number 45.

9 THE COURT: Do you have that information, Mr.
10 Solicitor, from Dorchester County?

11 MR. DUTREMBLE: Yes, sir.

12 THE COURT: All right. Are you on probation, now?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Okay. He's disqualified. We won't need
15 to bring him back. He's disqualified.

16 Anyone else? Now, I'll just let you all know, I do
17 have a list of other people. So if there's anyone out
18 there who wishes at this time -- because if you don't tell
19 me, and I have to find out, I'm going to be a little bit
20 concerned. Anybody else at all?

21 (No response.)

22 THE COURT: All right. Now, ladies and gentlemen, let
23 me give you some information before I asked you this last
24 question. Court is, in South Carolina, is normally a
25 week-long process. And, of course, yesterday was a holiday

1 and so the week-long process begins today, but it still
2 ends on Friday. And then we'll start a new court term next
3 week. Court usually runs from around 9:00 or 9:30 in the
4 morning until around 5:00 or 5:30 in the afternoon unless
5 for some reason, some particular situations apply that
6 requires us to come earlier or leave later.

7 For example, a jury may be considering a matter, or
8 something of that nature. And if so -- then, of course, we
9 may want to go later or we may want to, for some reason,
10 start testimony early to accommodate a witness, or because
11 we want to finish at a certain time. But those are the
12 general perimeters of our hours. If you are not here -- if
13 you are not needed for trial, for example, we're going to
14 draw a jury sometime today. And that case will last until
15 tomorrow afternoon or Thursday morning. We won't
16 necessarily keep you here. We're not going to hold you
17 here when we don't need you. So it's not like you're going
18 to have to sit here all week between now and Friday if
19 you're not on a case. We'll just be able to let you phone
20 in and get the information, or either give you another time
21 to report.

22 And so today is Tuesday. So you've got a shorter week
23 of jury service. But if for some reason this week as
24 opposed to other weeks is going to be unnecessarily
25 difficult for you or inconvenient, then I do have the

1 authority to transfer you to another week. But let me tell
2 you this: I understand, financially, being on jury duty is
3 not the best thing in the world. I know that. I know some
4 of you had to close your businesses down. I know some of
5 you need your employment check. Everybody does. We all
6 do. And being here is going to be a financial hardship.
7 But understand this: This system and our nation -- and I
8 can tell you for sure in South Carolina -- works such that
9 you make decisions; not I.

10 Once a trial begins, I become, generally, a manager to
11 make sure the rules apply. But the jury makes the
12 decision. So you are very, very important. I tell jurors
13 this all the time. When you go to a legislative chamber,
14 whether it be in Columbia or Washington, you sit in a
15 gallery and you watch what's going on. When you go and
16 visit the executive branch of government, you might tour
17 the office of a governor or the white house, or something
18 of that nature. But when you come as jurors to the third
19 branch of government, to the judicial branch of government,
20 you come as participants, active participants. And so
21 you're not just visitors here. In fact, your not visitors.

22 Now, once I qualify you as a jury, you're involved in
23 the judicial process. And so, ladies and gentlemen, you're
24 very important. And for that reason, I hope you take your
25 job important, and know that being here and you being here

1 is very important. But if for some reason this week is
2 really bad, and other weeks won't be bad, but this week is
3 for some particular reason bad, I'll be glad to talk with
4 you about seeing about transferring you, if you haven't
5 been transferred before; or if you still have some very,
6 very, serious reason, then I'll consider you anyway.

7 So, anybody wish to talk with me about it? If anybody
8 does they need to stand up and come up here, so I will
9 know.

10 (Juror Stands.)

11 THE CLERK: Name and juror number?

12 PROSPECTIVE JUROR: Number 76, Alverna Green.

13 THE COURT: Once again, I'll put this on the record,
14 but counsel is welcome to come up.

15 Number 76, and your last name is Green?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: All right. Yes, ma'am, Ms. Green?

18 PROSPECTIVE JUROR: I take care of my sick mother from
19 three until, like, eleven o'clock at night.

20 THE COURT: Well, how would that be different anyway?

21 PROSPECTIVE JUROR: Well, I need to be there to
22 relieve the nurse in the afternoon.

23 THE COURT: I know. But any week would be that;
24 wouldn't it?

25 PROSPECTIVE JUROR: True.

1 THE COURT: I can't excuse you for that. See if the
2 nurse can stay longer. This is a short week. See, you're
3 lucky. This is a short week. See, Ms. Green, you're a
4 lucky woman. And once again, if we don't need you, we'll
5 let you go, but try to make arrangements just for this
6 week. Now, you won't probably need it Friday, but today,
7 Wednesday and Thursday. Okay?

8 PROSPECTIVE JUROR: Okay.

9 THE COURT: She'll stay with us.

10 THE CLERK: Name and jury number?

11 PROSPECTIVE JUROR: Rosa Gadsden, 66.

12 THE COURT: G-a-s?

13 PROSPECTIVE JUROR: G-a-d-s-d-e-n. Gadsden.

14 THE COURT: What's your number?

15 PROSPECTIVE JUROR: Number 66.

16 THE COURT: That's a Charleston name. I know that
17 name. All right. Ms. Gadsden, yes, ma'am?

18 PROSPECTIVE JUROR: Well, Your Honor, my conscious is
19 bothering me with being a juror.

20 THE COURT: It's a religious thing or something?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: What faith are you?

23 PROSPECTIVE JUROR: Jehovah Witness. And I
24 don't want to become a juror. And I don't participate
25 much.

1 THE COURT: Well, ma'am, that does not qualify you to
2 be disqualified from jury service. So I'll have to keep
3 you with us, but I'll let the attorneys know; okay?

4 PROSPECTIVE JUROR: Okay.

5 THE COURT: I'll let the attorneys know your feelings,
6 but you still have to stay with us as a juror, and let them
7 make that decision on the case. All right. Have a seat.

8 Next person.

9 PROSPECTIVE JUROR: Rosetta M. Brown, Juror Number 25.

10 THE COURT: Yes, ma'am, Ms. Brown?

11 PROSPECTIVE JUROR: I have a handicap son at home, but
12 I just got this paper ---

13 THE COURT: How do you do your hair like that? That
14 must take hours to get that done.

15 PROSPECTIVE JUROR: About two hours.

16 THE COURT: It looks nice.

17 PROSPECTIVE JUROR: Thank you. I just got this
18 Saturday, because I moved into another area. This is the
19 wrong address. And the lady who had it, she catch me at
20 home and she gave it to me.

21 THE COURT: Well, let me ask you this: Remember this
22 is a short week.

23 PROSPECTIVE JUROR: Okay.

24 THE COURT: And if you are picked on the first trial,
25 I may consider letting you be released when that one is

1 over. And if you're not picked on the first trial, the
2 next one won't start until Wednesday afternoon or Thursday.
3 And this is a short week. We probably won't need you
4 Friday. So, really, it's probably best for you to make
5 some arrangements. Okay?

6 PROSPECTIVE JUROR: Okay.

7 THE COURT: Now, you do your best to make the
8 arrangements, if for some reason -- I won't endanger your
9 son -- if something, really, gets out of hand, let me know;
10 and I'll see if I can help you. And if not, I'll work it
11 out. I promise I won't endanger your son. Okay?

12 PROSPECTIVE JUROR: Okay. All right.

13 THE COURT: And you can teach me to do my hair like
14 that.

15 PROSPECTIVE JUROR: Okay.

16 THE COURT: She'll stay with us.

17 PROSPECTIVE JUROR: Christine Anderson.

18 THE CLERK: Juror Number 4.

19 THE COURT: What's your last name, again?

20 PROSPECTIVE JUROR: Anderson.

21 THE COURT: Yes, ma'am, Ms. Anderson?

22 PROSPECTIVE JUROR: Well, I wanted to -- I don't know
23 if I could be objective on case. You know, I don't feel
24 good doing it.

25 THE COURT: You say you couldn't make a decision?

1 PROSPECTIVE JUROR: No.

2 THE COURT: That's what you're telling me?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: I'll let the attorneys know that, and I'll
5 let them make the decision. Okay?

6 PROSPECTIVE JUROR: Okay.

7 THE COURT: Okay. You can have a seat. Just stay
8 with us. She'll stay with us.

9 PROSPECTIVE JUROR: Eleanor Fogler, 61.

10 THE COURT: Hello, again, Ms. Fogler. Yes, ma'am?

11 PROSPECTIVE JUROR: I've got a patient that I take
12 care of in the home. And I'm the only one that can stay
13 with her. Now, she's in the hospital. I stay in the
14 hospital with her, too. There is not another nurse. And,
15 now, I think, she's on her last days.

16 THE COURT: She's in the hospital, now?

17 PROSPECTIVE JUROR: Right now. Yes. She's in there,
18 now. I don't know if they're going to bring her home.

19 THE COURT: Yes. Just stay with us. I mean, if they
20 bring her home, they'll bring her home for somebody to take
21 care of her. I mean, is this person kin to you?

22 PROSPECTIVE JUROR: No. She's not kin to me.

23 THE COURT: Well, then, you have no duty -- I mean,
24 why do you take care of her?

25 PROSPECTIVE JUROR: I'm a home attendant. She's

1 disabled. She's ninety-five years old.

2 THE COURT: Does she pay you or something?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Her family pays you?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Well, if they bring her home, you need to
7 let them know that they'll need someone else this week.

8 All right? Just this week. Okay?

9 PROSPECTIVE JUROR: Okay.

10 PROSPECTIVE JUROR: Brenda Capers, Juror Number 30.

11 THE COURT: Juror Number 30?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: And your last name?

14 PROSPECTIVE JUROR: Capers.

15 THE COURT: Yes, ma'am, Ms. Capers?

16 PROSPECTIVE JUROR: I have a sick mother at home ---

17 THE COURT: The last lady, Ms. Fogler, will stay with
18 us.

19 Now, who is?

20 PROSPECTIVE JUROR: Okay. My mother.

21 THE COURT: Okay. But you have no other family
22 members, Ms. Capers?

23 PROSPECTIVE JUROR: Yes, sir. My sister. She is home
24 from out of town.

25 THE COURT: Well, see if you can get her to stay for

1 this week only. And, also, if you're not selected on this
2 case, you'll be back Thursday. I'm only going to
3 inconvenience you for two or three days. Okay?

4 PROSPECTIVE JUROR: Okay.

5 THE COURT: See if your sister can help out for two or
6 three days. I'm sorry about your mother. I hope it works
7 out.

8 She'll stay with us.

9 THE CLERK: Judge, we have a juror who has just
10 arrived, who was already on the transferred list. I didn't
11 know if you wanted to speak to her.

12 THE COURT: Yes. What happened?

13 THE CLERK: I'm not sure. She just came in.

14 THE COURT: Pulliam?

15 THE CLERK: Pulliam. Yes, sir. It's juror 207.

16 THE COURT: Ms. Tomlyn Pulliam? Ms. Pulliam, why are
17 you just arriving, ma'am?

18 PROSPECTIVE JUROR: I'm afraid I have not great
19 excuse, other than to say I simply forgot about it, until I
20 saw the notice on my refrigerator.

21 THE COURT: All right. Ms. Pulliam, step forward
22 here, if you would, so you don't have to be so far away.
23 Just right there. All right. Ms. Pulliam, since we're not
24 finished with the qualifications, for this one and only
25 time ma'am, I'm going -- just remember this, so you're,

1 hopefully, five minutes early the rest of this week -- Ms.
2 Pulliam, please, raise your right hand.
3 Go ahead and put her under oath, if you will.
4 THE CLERK: Ma'am, do you swear or affirm that you
5 shall truthfully answer this Court's questions, so help you
6 God?
7 PROSPECTIVE JUROR: I do.
8 THE COURT: Ms. Pulliam, what do you do for a living?
9 PROSPECTIVE JUROR: I'm a Marine Institute Consultant.
10 THE COURT: Are you married?
11 PROSPECTIVE JUROR: Yes, I am.
12 THE COURT: What does your husband do for a living?
13 PROSPECTIVE JUROR: He is in the machinery sales
14 business.
15 THE COURT: All right. What is your date of birth?
16 PROSPECTIVE JUROR: [REDACTED]
17 THE COURT: Okay. That was only to make sure they've
18 got the right juror. Okay.
19 And Ms. Pulliam's number is what, again?
20 THE CLERK: Number 207, Your Honor. She's on the
21 transfer list.
22 THE COURT: All right, Ms. Pulliam. That is her
23 number. All right.
24 Ms. Pulliam, do you live in Charleston County?
25 PROSPECTIVE JUROR: Yes, Your Honor.

1 THE COURT: Ms. Pulliam, I'm sure you have at least a
2 sixth-grade education? You can read and write?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: You don't work within the court system, or
5 have the power of arrest; do you?

6 PROSPECTIVE JUROR: No, I do not.

7 THE COURT: You are employed outside the home?

8 PROSPECTIVE JUROR: I am self-employed.

9 THE COURT: Okay. Self-employed. Do you have
10 children?

11 PROSPECTIVE JUROR: Yes, I do.

12 THE COURT: How old are they?

13 PROSPECTIVE JUROR: Four years old.

14 THE COURT: Okay. But you do work outside the home in
15 your self-employment?

16 PROSPECTIVE JUROR: I have an office in the home.

17 THE COURT: Do you wish to stay on jury duty in that
18 regard?

19 PROSPECTIVE JUROR: Yes, Your Honor. Provided that I
20 can pick up my child from school.

21 THE COURT: Well, we'll talk about that. Let me talk
22 about that in a second. All right. Ms. Pulliam, let me
23 ask you this, ma'am, you're not involved in school; are
24 you?

25 PROSPECTIVE JUROR: No, I'm not.

1 THE COURT: All right. And you're not over 65,
2 obviously. Ms. Pulliam, have you served on jury duty
3 before?

4 PROSPECTIVE JUROR: No. I have not.

5 THE COURT: Have you been on a grand jury before?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Do you have any mental or physical
8 problems that will affect your ability to be a juror?

9 PROSPECTIVE JUROR: I do not.

10 THE COURT: Have you ever been convicted of a crime
11 for which you could have received more than one year in
12 jail?

13 PROSPECTIVE JUROR: No, Your Honor.

14 THE COURT: Are you registered to vote?

15 PROSPECTIVE JUROR: Yes, I am.

16 THE COURT: Okay. Step up here, if you would, please,
17 ma'am.

18 All right. When you work -- when you get jobs, you
19 have to go outside to do your jobs?

20 PROSPECTIVE JUROR: Yes, I do. I travel quite
21 frequently.

22 THE COURT: Okay. So you travel outside the home
23 doing your job?

24 PROSPECTIVE JUROR: Yes, I do.

25 THE COURT: You just have your office there. But then

1 you go outside your home to do your job?

2 PROSPECTIVE JUROR: That's right.

3 THE COURT: All right. Well, then, you would qualify,
4 but you'll have to someone assist and take care of your
5 child this week. Now, this is a short week. This is
6 Tuesday, and if you're on a trial, you're only going to be
7 affected about two days.

8 PROSPECTIVE JUROR: I have an out-of-town business
9 trip where I leave Friday morning at 6:30.

10 THE COURT: Well, you were transferred before. So you
11 knew this week was coming up. Why were you transferred
12 before?

13 PROSPECTIVE JUROR: Because I was out of town on
14 business.

15 THE COURT: So therefore, I can't guarantee you that,
16 but it's unlikely. We'll know, probably, by Wednesday
17 afternoon how it looks. Okay?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: And you can arrange for something with
20 your children.

21 PROSPECTIVE JUROR: Yes, I can. My husband can.

22 THE COURT: Because when you travel, someone has to
23 pick them up anyway.

24 PROSPECTIVE JUROR: Right.

25 THE COURT: All right. Ms. Pulliam works outside the

1 home as far as doing her job. She just gets the job at her
2 office inside the home. And she has no reason to be
3 excused for this week, so she will stay with us. Have a
4 seat.

5 Anyone else wish to talk with me at all regarding jury
6 service? If you do, stand up.

7 Yes, sir? Come forward, sir. All right. You're Mr.
8 Bishop, I think. Right, sir?

9 PROSPECTIVE JUROR: Yes. Number 15.

10 THE COURT: Yes, sir?

11 PROSPECTIVE JUROR: One question was being in the
12 military. My state of legal residence is Florida. I
13 didn't know if that ---

14 THE COURT: You live here?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: You're fine. Have a seat.

17 Anyone else?

18 (No response.)

19 THE COURT: Okay. Ladies and gentlemen -- counsel,
20 Mrs. Gay and Mr. DuTremble, you all approach, please. Mrs.
21 Gay, if you would approach, please.

22 (The following was reported out of the hearing of the
23 jury panel.)

24 THE COURT: Now, do you all wish any of this
25 information or not, that I just got from people who came up

1 here, as far as in the jury selection process?

2 MRS. GAY: The reason why they wanted to leave? I
3 think, ultimately, if you concluded that they should stay,
4 that's fine, Your Honor.

5 THE COURT: Okay. Well, just so I told you, Ms. Green
6 says her mother needs a nurse, but she takes care of her
7 sometimes; but she can have someone take care of her this
8 week. That was Juror Number 76. If you want to write it
9 down, you can. Juror Number 66 and Juror Number 4, those
10 are Jehovah Witnesses, or both say they can't make
11 decisions in the case. That makes them feel very
12 uncomfortable. We all know the Jehovah Witness position.
13 Do either one of you have any objections to leaving those
14 out? If not, I'll just have to bring them up again.

15 So do you all have any objections of leaving number 66
16 and number 4 out, Jehovah Witnesses?

17 MR. DUTREMBLE: No, sir.

18 MRS. GAY: No, sir.

19 THE COURT: Okay. Number 25, Brown, she has a son who
20 is handicapped, but she can have her husband take care of
21 the son this week. Number 61, is employed to take care of
22 an elderly person who is in the hospital, who may come out,
23 but may not. I told her she'd have to tell the family
24 somebody else would have to take care of the child -- I
25 mean, the elderly person. And that was number 61. And

1 juror 30 takes care of her mother, but she'll work out
2 something this week. She had a letter from her doctor
3 telling me that she needed to be home with her mother, but
4 she has other sisters who can help with the mother this
5 week. Mr. Bishop came up and said, you know, he was a
6 military -- and me being prior in the military, they always
7 ask you for tax purposes, what your home of residence is.
8 Many people choose Florida. But anyway, I think, he said
9 he chose Florida. But in any event, he says he lives here.
10 In my mind, he's still qualified for jury service. Do you
11 have any ---

12 MRS. GAY: Does he have a South Carolina license or
13 ID?

14 THE COURT: He had to have. And Ms. Pulliam says
15 she's got to go out of town on business on Friday, and I
16 told her she was continued before because of business, so
17 therefore, I'm not going to continue her now. I think she
18 had a child. She travels a lot. Her husband can pick up
19 her child. So she has no problem there.

20 Okay. Any other objections to the jury as qualified
21 at this time before I start asking questions about this?

22 MR. DUTREMBLE: No, sir.

23 MRS. GAY: No, sir.

24 THE COURT: Okay. Are you ready to call your case?

25 MR. DUTREMBLE: Yes, sir.

1 THE COURT: Do you all want to do arraignment in front
2 of the jury, or do you want to do arraignment after we pick
3 the jury?

4 MRS. GAY: I would do it in front of the panel.

5 THE COURT: Right now?

6 MRS. GAY: Yes.

7 THE COURT: All right. Good. Are you ready?

8 MR. DUTREMBLE: Yes, sir.

9 THE COURT: Let's do the arraignment.

10 All right. Ladies and gentlemen, now, we're going to
11 call the first case. We're doing the arraignment, and then
12 we'll select the jury on that case.

13 Mr. Solicitor, after Mrs. Gay is seated, you may
14 proceed to call your case.

15 MR. DUTREMBLE: Thank you, Your Honor.

16 THE COURT: This jury, here, is qualified, by the way.

17 MR. DUTREMBLE: May it please the Court, Your Honor?

18 THE COURT: Yes, sir.

19 MR. DUTREMBLE: The State would call the case of the
20 State of South Carolina versus Kandy Latrice Gilliard,
21 indictment for murder, indictment number 2000-GS-10-2467.
22 We would, also, call the case of the State of South
23 Carolina versus Kandy Latrice Gilliard, indictment for
24 strong arm robbery, indictment number 2000-GS-10-2468, Your
25 Honor.

1 THE COURT: All right. Mrs. Gay, do you represent Ms.
2 Gilliard?

3 MRS. GAY: Yes, I do, Your Honor.

4 THE COURT: Are you ready, ma'am, to proceed?

5 MRS. GAY: Yes, I am.

6 THE COURT: All right. Mr. Clerk, let's plead your
7 arraignment, please.

8 THE CLERK: Yes, sir. Ms. Gilliard, please, come
9 forward to this table. Case numbers 2000-GS-10-2467, 2468,
10 State of South Carolina versus Kandy Latrice Gilliard,
11 indictments for murder, indictments for strong arm robbery.
12 Kandy Latrice Gilliard, if you answer to that name, hold up
13 your right hand.

14 (Defendant complies.)

15 THE CLERK: Put it down. You stand indicted by the
16 name of Kandy Latrice Gilliard. As to indictment
17 2000-GS-10-2467, at a Court of General Sessions, convened
18 on April 3, 2000, the grand jurors of Charleston County
19 present upon their oath that Kandy Latrice Gilliard did, in
20 Charleston County, on or about January 5, 2000, while
21 acting in concert with another, feloniously, willfully, and
22 with malice aforethought, murder one Dawn Russ, to wit, the
23 defendant did place a plastic bag over her head and or wrap
24 an electrical extension cord around the victim's neck. And
25 that Dawn Russ did die as a proximate result. This is in

1 violation of section 16-3-10 of the South Carolina code of
2 laws as amended.

3 As to indictment 2000-GS-10-2468, at a Court of
4 General Sessions, convened on April 3, 2000, the grand
5 jurors of Charleston County present upon their oath that
6 Kandy Latrice Gilliard did in Charleston County, on or
7 about January 5, 2000, while acting in concert with
8 another, feloniously, attempt to take from Dawn Russ and or
9 The Game Room, by means of force or intimidation, goods or
10 monies, such goods or monies being described: \$1,292 in
11 U.S. currency. This is in violation of the common law of
12 the State of South Carolina.

13 How say you? Are you guilty or not guilty?

14 DEFENDANT: Not guilty.

15 THE CLERK: How will you be tried?

16 DEFENDANT: By God and my country.

17 THE CLERK: May they send you true deliverance. Are
18 you ready for trial?

19 DEFENDANT: Yes, sir.

20 THE CLERK: Thank you, ma'am. Please, have a seat.

21 THE COURT: All right. Ladies and gentlemen of the
22 jury, you heard the indictment read or the allegations on
23 January 5, 2000. Ladies and gentlemen, let me remind you
24 that these matters called "indictments" these are not
25 evidence that the defendant has committed any crime. This

1 is a procedure to bring before a jury for a jury to decide.
2 The State has the burden of proof beyond a reasonable
3 doubt.

4 Now, ladies and gentlemen, does anybody know anything
5 about this case? If you're on jury duty and you know
6 anything about this case other than what you just heard the
7 clerk read, which, once again, is not evidence. If you
8 know anything about it, please, stand up.

9 (Juror stands.)
10 THE COURT: Anyone else?

11 (Juror stands.)

12 THE COURT: All right. Ma'am, if you would approach
13 this way, please. Both of you all. One at the time.

14 THE CLERK: This is Juror Number 46, Your Honor, Ms.
15 Cumbee.

16 BAILIFF: Juror Number 46.

17 THE COURT: Ms. Cumbee, I understand that your husband
18 is in law enforcement; is that how you know about this
19 case?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: So he's discussed it with you?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: All right. Well, I'm sure, ma'am, in that
24 regard you probably heard comments from him about it, and
25 all. It would be difficult for you to be fresh on the

1 jury, and make your decision based on the evidence in the
2 courtroom?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: All right. In this case only, I'm going
5 to have them take you out on this case only. Okay? Have a
6 seat.

7 BAILIFF: Juror Number 47.

8 THE COURT: What is your last name, sir?

9 PROSPECTIVE JUROR: My name is Cummings.

10 THE COURT: All right. Yes, sir, Mr. Cummings?

11 PROSPECTIVE JUROR: I didn't know that was the girl.
12 I know the young lady. My brother is married to her
13 sister.

14 THE COURT: Your brother is married to the defendant's
15 sister?

16 PROSPECTIVE JUROR: Yeah.

17 THE COURT: And you know her?

18 PROSPECTIVE JUROR: Yeah.

19 THE COURT: Do you know anything about this case?

20 PROSPECTIVE JUROR: I don't know nothing about the
21 case.

22 THE COURT: Your sister-in-law and no one's mentioned
23 it?

24 PROSPECTIVE JUROR: They mentioned it to me about the
25 case.

1 THE COURT: They have?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: All right.

4 PROSPECTIVE JUROR: I don't think I could be fair on
5 the case.

6 THE COURT: You don't think you can be fair on the
7 case?

8 PROSPECTIVE JUROR: No. I don't think I would be
9 fair.

10 THE COURT: All right. You're excused on this case
11 only, but don't discuss this case. Have a seat.

12 I'm going to excuse him, too.

13 Next person, please.

14 BAILIFF: Juror Number 86.

15 THE COURT: What is your name, ma'am?

16 PROSPECTIVE JUROR: Sharon Hopkins.

17 THE COURT: Ms. Hopkins? Yes, ma'am, Ms. Hopkins?

18 PROSPECTIVE JUROR: Well, first, I don't know anything
19 about it. I knew personally people that was in The Game
20 Room. I worked in The Game Room industry at the time.

21 THE COURT: So you heard about, because you work in
22 the industry.

23 PROSPECTIVE JUROR: Yeah. It comes to me, you know,
24 from different people.

25 THE COURT: Okay. Would you feel, ma'am, that what

1 you heard about it was such that you could not be fair and
2 impartial if you were on the jury.

3 PROSPECTIVE JUROR: Yes. Because I knew Dawn,
4 personally.

5 THE COURT: You knew the victim, personally?

6 PROSPECTIVE JUROR: Yeah.

7 THE COURT: So you don't think you could be fair and
8 impartial?

9 PROSPECTIVE JUROR: Right.

10 THE COURT: Please, ma'am, do not discuss this at all
11 out there. Okay? Don't discuss it with anyone at all; do
12 you understand?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: All right. She'll be excused on this
15 case.

16 Any objections?

17 MR. DUTREMBLE: No.

18 MRS. GAY: No objections, Your Honor.

19 THE COURT: All right. Those three are excused.

20 Ladies and gentlemen, I'm going to read a list of
21 names to you. And if any of these names, you know them or
22 have any relationship with them at all, then, please, let
23 me know.

24 Now, Mr. Bailiff and Ms. Bailiff, the people coming
25 in, if they're jurors, you need to let me know. Because --

1 in fact, if there is a juror don't let them be seated.
2 Make sure they're standing back there. I want to make sure
3 we have no other jurors come in. I assume that Ms. Pulliam
4 is the last juror that has come in; right?

5 BAILIFF: Yes.

6 THE COURT: Okay. No other jurors at this time.

7 All right. Read these things in groups of five -- and
8 by the way, the three people, Ms. Cumbee, Mr. Cummings, and
9 Ms. Hopkins, you do not have to respond to these questions.

10 Detective Scott Deckard of the North Charleston Police
11 Department; Demetrice "Cookie" Gilliard; Emily Gilliard;
12 Detective Ken Hagge of the North Charleston Police
13 Department; Al Hallman of the North Charleston Police
14 Department. I'll stop there for a second. Anybody know
15 these people here, or have any business, personal, or
16 social relationship with them? If so, please, stand up.

17 (No response.)

18 THE COURT: All right. Benjamin "B.J." Johnson; Brian
19 Johnson; Barbara Marcare; Sokha Meyer; Sheila Mitchell.
20 Anybody know these people, or have any connection with them
21 at all?

22 (No response.)

23 THE COURT: Grant Mizner; Dr. Clay Nichols; Bob
24 Rhodus; Sharon Rosenbaum. Anybody know these people at
25 all? Have any connection with them whatsoever?

1 (No response.)

2 THE COURT: Detective John Sloan of the North
3 Charleston Police Department; Detective Alan Williams of
4 the North Charleston Police Department; Scott Wyant of the
5 North Charleston Police Department. Anybody know these
6 people?

7 (No response.)

8 THE COURT: All right. Dr. Richard Leo; Dr. Martin
9 Wong; Dana Nelson. Anybody know these people?

10 (Juror raises his hand.)

11 THE COURT: Stand up if you would, sir. What is your
12 name, sir?

13 PROSPECTIVE JUROR: Michael Swindle.

14 THE COURT: Michael Swindler?

15 PROSPECTIVE JUROR: Swindle.

16 THE COURT: Mr. Swindle, who do you know here, sir.

17 PROSPECTIVE JUROR: I think that you're talking about

18 ---

19 THE COURT: No. Who do you know? Give me the name.

20 PROSPECTIVE JUROR: Marty Wong.

21 THE COURT: Okay. He's a PHD?

22 PROSPECTIVE JUROR: He's a psychologist for a
23 psychiatrist?

24 THE COURT: Yes, sir. And come forward, if you would,
25 sir.

1 (Juror complies.)

2 THE COURT: Okay. Counsel approach. Okay. Mr.
3 Swindle, how do you know Dr. Wong?

4 PROSPECTIVE JUROR: I'm in the Rotary Club with him.

5 THE COURT: Now, since you're in the Rotary Club, if
6 he were to testify, would that mean that you would look
7 upon him differently than you would any other witnesses in
8 the case?

9 PROSPECTIVE JUROR: No. I don't know him that well.
10 I know he's in the club. I've talked to him a few times,
11 but we're not personal friends.

12 THE COURT: So would your decision on his testimony
13 have anything to do with the fact that he's in the Rotary
14 Club?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Would you be fair and impartial to both
17 the State and to the defense?

18 PROSPECTIVE JUROR: Yes, I think I would.

19 THE COURT: Well, only you would know. Would you or
20 would you not?

21 PROSPECTIVE JUROR: I would. I don't see this as a
22 problem.

23 THE COURT: So you're telling me you would? You would
24 be fair?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: All right. Would the fact that he is in
2 the Rotary Club have anything to do with your decision in
3 this case?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Or any relation it would have had anything
6 to do with your decision in this case?

7 PROSPECTIVE JUROR: No.

8 THE COURT: All right. Thank you. You may be seated,
9 sir.

10 Anyone else? Anyone else know any of those names?

11 (No response.)

12 THE COURT: All right. If you would, please, Mrs.
13 Gay, ask your client to stand up, please. Turn and face
14 the jury, please, ma'am. This is Kandy Latrice Gilliard.
15 All right, Ms. Gilliard, you may have a seat.

16 Anybody on the jury panel know her, or have any
17 business, social, or personal relationship with her at all?
18 If so, please, stand up.

19 (No response.)

20 THE COURT: Anybody on the jury panel know or knew
21 Dawn Russ? D-a-w-n. Russ, R-u-s-s. Have any business,
22 personal, or social relationship with Dawn Russ? Other
23 than you, ma'am. You may be seated.

24 Anybody else?

25 (No response.)

1 THE COURT: Or a business called The Game Room, her in
2 Charleston County?

3 (No response.)

4 THE COURT: Ladies and gentlemen, you heard the
5 allegations of murder and robbery. Now, ladies and
6 gentlemen, we want to make sure whatever decisions you
7 make, you make based on the evidence in the trial, your
8 consideration of it, and my instructions on the law.
9 Therefore, any matters that you may have in your personal
10 life should not be involved in that. However, for
11 information purposes, I would like to know this: Does
12 anybody on the jury panel, you or someone in your family or
13 someone very, very close to you, been a victim of what you
14 would consider a violent crime? If so, please come up.

15 (Jurors stand.)

16 THE COURT: All right, Mr. Swindle, what crime was
17 that?

18 PROSPECTIVE JUROR: Attempted murder.

19 THE COURT: Okay. You were the victim, or you knew
20 someone?

21 PROSPECTIVE JUROR: I was the victim. I was attacked
22 by a group of Skinheads.

23 THE COURT: Okay.

24 MRS. GAY: Your Honor, may we approach?

25 THE COURT: Yes. You all may approach.

1 Were charges filed?

2 PROSPECTIVE JUROR: No. This was in Iceland. I was
3 attacked by a gang of boys.

4 THE COURT: Were you in the military?

5 PROSPECTIVE JUROR: No. I was not. This was only
6 three or four years ago.

7 THE COURT: Mr. Swindle says in Iceland -- while he
8 was in Iceland he was attacked by a group of people -- he
9 called them "skinheads," and that no charges were ever
10 brought.

11 PROSPECTIVE JUROR: No charges were ever brought.

12 THE COURT: And he feels it was attempted murder; is
13 that right, sir?

14 PROSPECTIVE JUROR: It was definitely attempted
15 murder.

16 THE COURT: All right, sir. The fact that occurred,
17 would that in any way affect your ability to be fair and
18 impartial in this case of these charges?

19 PROSPECTIVE JUROR: The charge of murder. I think, I
20 could go with the evidence, but, I mean, I am definitely
21 against violent crime. I don't know. I don't quite know
22 how to answer that.

23 THE COURT: Are you unsure?

24 PROSPECTIVE JUROR: I'm not sure whether it would
25 prejudice me or not.

1 THE COURT: Any other questions for me to decide?

2 MR. DUTREMBLE: No, sir.

3 THE COURT: Mrs. Gay, any other questions?

4 MRS. GAY: No. I would just ask that he be excused.

5 THE COURT: All right. You'll be excused, sir, on
6 this case.

7 PROSPECTIVE JUROR: I'm excused from this case?

8 THE COURT: Yes, but have a seat. Don't mention it to
9 anyone.

10 BAILIFF: Juror 132.

11 THE COURT: Your name, ma'am?

12 PROSPECTIVE JUROR: Caitlin Miller.

13 THE COURT: Yes, ma'am, Ms. Miller?

14 PROSPECTIVE JUROR: My car has been vandalized a
15 couple of years ago. Two years ago, I was raped.

16 THE COURT: Were charges brought on that?

17 PROSPECTIVE JUROR: I filed charges, but he wasn't
18 prosecute.

19 THE COURT: All right. Okay. Was that here in
20 Charleston County?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Would the fact those things occurred,
23 would that in any way affect your ability on the
24 allegations here, as far as making your decision on the
25 evidence in the case?

1 PROSPECTIVE JUROR: I don't think so.

2 THE COURT: Would you be fair to both sides?

3 PROSPECTIVE JUROR: Uh-huh. Yes.

4 THE COURT: And you would make your decision on the
5 evidence in this case and the law as I instruct it to you?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: With what I heard, would that have
8 anything to do with your decision in this case?

9 PROSPECTIVE JUROR: No.

10 THE COURT: All right. Have a seat.

11 BAILIFF: Juror Number 4.

12 THE COURT: Ma'am, you are Juror Number 4?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: I won't need to ask you any questions on
15 this particular case. Okay?

16 PROSPECTIVE JUROR: All right.

17 THE COURT: So have a seat.

18 BAILIFF: Juror 197.

19 THE COURT: Yes, ma'am. Your name, again?

20 PROSPECTIVE JUROR: Evangeline Williams.

21 THE COURT: And do you remember what your juror number
22 was?

23 PROSPECTIVE JUROR: Number 197.

24 THE COURT: All right. Yes, ma'am, Ms. Williams?

25 PROSPECTIVE JUROR: I had an uncle that was murdered

1 in April, a year ago.

2 THE COURT: Okay. Were charges ever brought about it?

3 PROSPECTIVE JUROR: No.

4 THE COURT: No one has ever been charged with it?

5 PROSPECTIVE JUROR: Well, the person that did it, they
6 said he was incapable of standing trial.

7 THE COURT: Okay. Now, would the fact that that
8 occurred, would that in any way affect your ability to be
9 fair and impartial in this case?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: It would? Why is that?

12 PROSPECTIVE JUROR: Because I feel like somebody
13 should be accountable for his murder, and no one was ever
14 accountable.

15 THE COURT: Okay. But would that affect the way you
16 would look at the evidence in this case in making your
17 decision about whether the person is proven guilty or not?

18 PROSPECTIVE JUROR: No.

19 THE COURT: So you're talking about somebody should be
20 held accountable for your uncle's murder. But in this
21 case, could you be fair and impartial in listening to the
22 evidence in this case?

23 PROSPECTIVE JUROR: I believe, I can.

24 THE COURT: Can you make your decision in this case
25 based on the evidence, and in no way think about what

1 happened to your uncle as far as how you decide this case?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Okay. And you can be fair both to the
4 State and the defense?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: All right. You're qualified. Have a
7 seat.

8 BAILIFF: Juror Number 21.

9 THE COURT: What's your last name, ma'am?

10 PROSPECTIVE JUROR: Brisbane.

11 THE COURT: Come forward, ma'am. Yes, ma'am, Ms.
12 Brisbane?

13 PROSPECTIVE JUROR: My name is Betty Brisbane.

14 THE COURT: Yes, ma'am. And what happened in your
15 situation?

16 PROSPECTIVE JUROR: I think, like, a murder.

17 THE COURT: What about it? Was somebody murdered in
18 your family?

19 PROSPECTIVE JUROR: No. My son. My son was charged
20 with some murder.

21 THE COURT: And what happened to those charges?

22 PROSPECTIVE JUROR: They got him in jail on these
23 charges.

24 THE COURT: So his charge is pending, now?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Would that in any way, ma'am, would that
2 affect how you would look at this case? Would it cause you
3 to think about him while you're considering this case?

4 PROSPECTIVE JUROR: Well, yes. But I know he didn't
5 do it. I know he didn't do it.

6 THE COURT: Well, I'm talking about on this case,
7 though. Would it affect how you look at this case?

8 PROSPECTIVE JUROR: The same.

9 THE COURT: What?

10 PROSPECTIVE JUROR: The same.

11 THE COURT: Well, I'm just trying to determine whether
12 or not what your son is charged with would it affect your
13 consideration of this case?

14 PROSPECTIVE JUROR: No, it wouldn't.

15 THE COURT: In other words, you could be fair to both
16 sides in this case?

17 PROSPECTIVE JUROR: Uh-huh.

18 THE COURT: And you could make your decision and not
19 even think about your son's charges?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Okay. Have a seat.

22 BAILIFF: Brenda Holliday.

23 THE COURT: Holliday. What number are you, Ms.
24 Holliday?

25 PROSPECTIVE JUROR: I'm not sure. I think it was 204.

1 THE CLERK: Number 203, Your Honor.

2 THE COURT: Yes, ma'am? What happened in your
3 situation?

4 PROSPECTIVE JUROR: About a month ago, I was a victim
5 of a sexual assault and stalking of a person that I knew.

6 THE COURT: Did you bring charges?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Are they pending, now?

9 PROSPECTIVE JUROR: He was arrested just recently.

10 THE COURT: Have you had anything else to do with it
11 other than when the charges were brought, and the bond
12 hearing? Have you had anything to do with it since then?

13 PROSPECTIVE JUROR: No.

14 THE COURT: So you're not working with them at this
15 time at all?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Would the fact that that occurred to you,
18 ma'am, would that in any way affect your ability as far as
19 considering this case?

20 PROSPECTIVE JUROR: I don't know. I really couldn't
21 say.

22 THE COURT: Well, could you sit on the jury and listen
23 to this case; and make your decision based on the evidence
24 in this case and the law as I instruct it to you, without
25 regards to the consideration of what happened in your

1 situation?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: You can? All right. Have a seat.

4 BAILIFF: Juror Number 133.

5 THE COURT: What is your last name, ma'am?

6 PROSPECTIVE JUROR: Mizell.

7 THE COURT: Yes, ma'am, Ms. Mizell?

8 PROSPECTIVE JUROR: I have been a victim of spousal
9 abuse in the past, in my prior marriage. Also, my present
10 husband was a victim of a robbery and attack, but I did not
11 know him at that time.

12 THE COURT: So this was years ago?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: And would the fact that he was in that
15 regard and the things that happened in your prior marriage,
16 would that have any affect on your consideration in this
17 case?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: You would be fair both to the State and
20 defense?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Make your decision on the evidence in this
23 case and the law as I instruct it to you?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: And you would not have any decision made

1 based on what happened to you or your husband's situation?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: All right. You may have a seat.

4 All right. Before you all leave, do you have any
5 comments you want to make about anyone I excused? I
6 excused only Mr. Swindle. And I excused one other, too.
7 Well, actually, that was before. Swindle was the only one
8 I excused in this case, because I qualified Miller,
9 Williams, Brisbane, Holliday, and Mizell.

10 MRS. GAY: Go through that again for me.

11 THE COURT: Jurors 132, 197 -- I only excused Swindle.
12 I don't know his number.

13 MRS. GAY: It was 176.

14 THE COURT: 176.

15 Mrs. Gay: Juror 132 was left.

16 THE COURT: And I'll be glad to hear from you all if
17 you want to make any ---

18 MRS. GAY: Your Honor, I would make a motion to excuse
19 some of these people for cause.

20 THE COURT: Which ones?

21 MRS. GAY: Number 132 said that the situation where
22 she was raped, and that charges were filed and the person
23 wasn't prosecuted. I think that she would be -- even
24 though she indicated she would be fair, I think, that it
25 would be very difficult for her, if not impossible for her

1 to be fair when she sees some glitch in the legal system.

2 THE COURT: Do you know any other questions you want
3 me to ask her I didn't ask her?

4 MRS. GAY: No, sir. The other person was ---

5 THE COURT: Let's just stop at 132 for a second.

6 MR. DUTREMBLE: With regards to 132, Your Honor, I
7 would want to know whether or not the fact that no one was
8 prosecuted in this case reflects upon the Solicitor's
9 Office and law enforcement.

10 THE COURT: Well, do you all want to make an
11 agreement?

12 MR. DUTREMBLE: We'll agree.

13 THE COURT: All right. Do you all want to excuse her?

14 MR. DUTREMBLE: Yes, sir.

15 THE COURT: I just want to make sure both sides want
16 her out.

17 MR. DUTREMBLE: Yes, sir.

18 MRS. GAY: And then, Evangeline Williams. Her uncle
19 was murdered, and no one was charged. She said, initially,
20 that it would affect her. She said that because no one was
21 held accountable. And in light of the fact that he was
22 murdered, I think, that she's having this no one
23 accountable feeling. That may affect law enforcement; that
24 may affect her view of the defendant.

25 THE COURT: Let's discuss 197 and 21 together.

1 MRS. GAY: And the other one is with her son being
2 charged. I think that becomes very difficult.

3 THE COURT: I was wondering if you could make an
4 agreement on 197 and 21 together.

5 MR. DUTREMBLE: Yes, sir.

6 MRS. GAY: Yes, sir.

7 THE COURT: All right. So you all agree 197 and 21
8 are out?

9 MR. DUTREMBLE: Yes, sir.

10 MRS. GAY: Yes, sir.

11 THE COURT: All right. Then we've got ---

12 MRS. GAY: With regards to the sexual assault.

13 THE COURT: Holliday and Mizell.

14 MRS. GAY: I would excuse her for cause in light of
15 the fact that she is a current victim in the Solicitor's
16 Office, and is, certainly, going to be working with some
17 member of the staff.

18 THE COURT: Well, let's concentrate on that for a
19 second; 133, we all agree there is no reason to take 133
20 out; right?

21 MRS. GAY: Her husband has been a victim of a robbery
22 before. She may not be able to differentiate these facts
23 from what she believed may have happened to her husband.

24 THE COURT: Okay. But any other questions you want me
25 to ask that I didn't ask her?

1 MRS. GAY: No.

2 THE COURT: Any other question you want me to ask on
3 133 I didn't ask?

4 MR. DUTREMBLE: No, sir.

5 THE COURT: I'm qualifying 133. Now, let's get down
6 to 203. I asked her about whether or not she had any
7 contact -- I was trying to determine whether the
8 Solicitor's Office had made a note of the case or not. Do
9 you have any idea?

10 MR. DUTREMBLE: I have no idea. If this happened a
11 month ago, we would not even be looking at it, yet. We
12 probably have it on file, but nobody would be assigned to
13 it, yet.

14 MRS. GAY: I'm sure she's had contact with law
15 enforcement and worked with detectives and things of that
16 nature. It may create a bias.

17 THE COURT: But she hasn't yet. She said the only
18 contact she's had was making the charges and the bond
19 hearing, and making the charges. Well, she had to have
20 contact with law enforcement. She hasn't had any contact
21 since the bond.

22 MRS. GAY: In light of the fact that she is a victim
23 of a violent crime, it may cause prejudice.

24 THE COURT: Any comment from the State?

25 MR. DUTREMBLE: I think, to be perfectly fair, she

1 ought to be excused.

2 THE COURT: All right. Good. Juror 203 is out.

3 All right. So that leaves 133 will be the only one
4 that can stay in.

5 MRS. GAY: Thank you, Your Honor.

6 MR. DUTREMBLE: Thank you.

7 THE COURT: So far, just to show you so far who I've
8 got excused, I've got 46, 47, 86, 176, 132, 197, 21, 203,
9 and 4, and 66.

10 MRS. GAY: Number 4 and Number 66 are Jehovah
11 Witnesses?

12 THE COURT: Yes. Is that what you had?

13 MRS. GAY: Yes.

14 THE COURT: Now, does anybody have any other matters
15 other than those general questions about your CAVE and
16 stuff. Does anybody else have anything else regarding
17 jurors in qualification?

18 MRS. GAY: One question that we usually like to have
19 answered are any members of their family, members of the
20 police.

21 THE COURT: I'm going to ask that.

22 MR. DUTREMBLE: One matter that may come up and may
23 not -- there is a juror who works for the same company as
24 the defendant's mom works for. The defendant's mom will be
25 called in my case. She has not stood up.

1 THE COURT: What company?

2 MR. DUTREMBLE: Health Force. So if she's called, I'm
3 going to asked to approach to find out whether or not.

4 THE COURT: I'll ask that, now. What's your client's
5 mother's name?

6 MRS. GAY: Emily Gilliard.

7 THE COURT: Emily Gilliard. I call her. I'll find
8 out. All right.

9 MR. DUTREMBLE: Thank you.

10 THE COURT: Now, ladies and gentlemen, just for
11 information purposes, when I say "family," I mean your
12 spouse, your parents, your parents-in-law, your brothers
13 and sisters, your brothers and sisters-in-law, your
14 children, someone who lives in your household, or someone
15 you feel very, very, very, very close to. Now, does
16 anybody on the jury panel, you or your family, or someone
17 you feel very, very close to, or lives in your household,
18 have some of those members employed by law enforcement?
19 That would be sheriff, police, SLED, FBI, highway patrol,
20 any type of law enforcement. If so, please, stand up.
21 Anybody have relatives in that regard that I mentioned?
22 Anybody else? You may be seated, Ms. Cumbee, on this case.

23 Just stand right up.

24 (Jurors stand.)

25 THE COURT: On this particular matter, Ms. Holliday,

1 you may be seated on this matter, Ms. Holliday.

2 Okay. What is your name, again, sir?

3 PROSPECTIVE JUROR: My name is Gregory Adams.

4 THE COURT: Yes, sir, Mr. Adams?

5 PROSPECTIVE JUROR: Juror Number 1.

6 THE COURT: Yes, sir?

7 PROSPECTIVE JUROR: My father is the Chief Public
8 Defender for Colleton County in Walterboro.

9 THE COURT: Windell Adams?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Yes. I know him. I know him very well.

12 All right. Thank you. Would that have any affect on your
13 fairness in this case?

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: You can have a seat, Mr. Adams.

16 Your name, again, ma'am, with the white on?

17 PROSPECTIVE JUROR: Patricia Clark.

18 THE COURT: Ms. Clark?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Who in your family is in law enforcement?

21 PROSPECTIVE JUROR: My sister is a customs agent.

22 THE COURT: Okay. Would that affect your ability to
23 be fair and impartial?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: Thank you, ma'am.

1 All right. Is it Ms. Fogler?

2 PROSPECTIVE JUROR: Eleanor Fogler.

3 THE COURT: Yes, ma'am, Ms. Fogler?

4 PROSPECTIVE JUROR: Just a close family member is a
5 North Charleston police officer.

6 THE COURT: Would that affect your ability to be fair
7 and impartial, Ms. Fogler?

8 PROSPECTIVE JUROR: No, it wouldn't.

9 THE COURT: Thank you, ma'am. You may be seated.

10 Ladies and gentlemen, there are certain organizations
11 -- and once again, these are for just information purposes
12 only. We just want to know if you're members of. Things
13 like Citizens Against Violent Crimes, Mothers Against Drunk
14 Driving, those type of things.

15 Anybody a member of an organization that focuses on a
16 certain crime situation? Anybody at all? If so, please,
17 stand up.

18 (No response.)

19 THE COURT: Okay. Anybody contribute more than a
20 hundred dollars a year to any organizations of that nature?

21 (No response.)

22 THE COURT: Okay. Does anybody on the jury panel live
23 anywhere in the vicinity of [REDACTED], close to
24 Alex's Restaurant, there or the Gas Lite shopping center
25 there? Anybody live close to there, or have a job close to

1 there, just for information purposes only?

2 (Juror stands.)

3 THE COURT: All right. What is your name, again,
4 ma'am?

5 PROSPECTIVE JUROR: Michaela McCormic.

6 THE COURT: Ms. McCormic?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: All right. Ms. McCormic, do you live or
9 work close to there?

10 PROSPECTIVE JUROR: Live, sir.

11 THE COURT: All right. Do you know anything about
12 this particular case, or anybody involved in this case?

13 PROSPECTIVE JUROR: No, sir.

14 THE COURT: All right. Thank you, ma'am. You may be
15 seated. Does anybody work at Health Force? Please, stand
16 up if you do.

17 (Juror stands.)

18 THE COURT: What is your name, again, ma'am?

19 PROSPECTIVE JUROR: Patricia Dickerson.

20 THE COURT: Ms. Dickerson, do you know at Health
21 Force, do you know an Emily Gilliard? Ma'am?

22 PROSPECTIVE JUROR: I don't believe so.

23 THE COURT: All right. Thank you, ma'am. You may be
24 seated. Other than attorney representation any other jury
25 qualification questions voir dire for the State?

1 MR. DUTREMBLE: None from the State, Your Honor.

2 THE COURT: From the defense?

3 MRS. GAY: No, Your Honor. You asked my specific
4 questions.

5 THE COURT: Did you have any other questions?

6 MRS. GAY: No, sir.

7 THE COURT: All right. If you would, Mr. DuTremble,
8 introduce yourself to the jury, please, sir.

9 MR. DUTREMBLE: Thank you, Your Honor. If it please
10 the Court. Ladies and gentlemen, my name is Dale
11 DuTremble. I'm one of the assistant solicitors here for
12 the 9th Judicial Circuit. I'll be prosecuting this case
13 along with Damon Cook, who's also seated at the counsel
14 table.

15 THE COURT: Any member of the jury panel, related by
16 blood or marriage to anyone in the Solicitor's Office of
17 the 9th Judicial Circuit? Anybody have any relatives, work
18 employees, friends, in that office, or these two
19 individuals here if you know them? If so, please, stand
20 up.

21 (Juror stands.)

22 THE COURT: Yes, sir?

23 PROSPECTIVE JUROR: Your Honor, I used to work in the
24 9th Circuit Solicitor's Office. I know a number of people
25 who are still there.

1 THE COURT: Yes, sir. Would that in any way affect
2 your ability to be fair and impartial?

3 PROSPECTIVE JUROR: No, sir. It would not.

4 THE COURT: Thank you. Be seated. Good to see you
5 again.

6 All right. Anybody else?

7 (No response.)

8 THE COURT: All right. Mrs. Gay, if you'll stand up,
9 please, ma'am.

10 MRS. GAY: Thank you. My name is Melisa Gay. I'm an
11 attorney in this community. I'm a private lawyer. I'm
12 assisted today by Robert Planter, who is an investigator in
13 my office. And we represent Kandy Gilliard.

14 THE COURT: All right. Anybody on the jury panel
15 related by blood or marriage to these individuals, or have
16 any business, personal, or social relationship; including
17 being represented by them now and in the past, or any type
18 other relationship with them or anyone in the law firm?

19 (No response.)

20 THE COURT: Okay. Now, ladies and gentlemen, they may
21 have explained to you how we do jury selection, but,
22 basically, your name is going to be drawn at random. Then
23 you will come forward, and then each side would have an
24 opportunity to make a decision upon you. If your name is
25 called, what we want you to do is walk all the way forward

1 into the front of the room. Stand in front of this table
2 here. The gentleman who, obviously, had something going on
3 with his hand here -- but stand in front of Mr. Wilson, and
4 turn and face that way, and then, each side will make a
5 decision in that regard. Please, remain standing, until
6 the clerk asks you to either take your seat back in the
7 audience or asks you to take a seat in the jury box. The
8 clerk will let you know one way or the other. So remain
9 standing until the clerk speaks to you in that regard.

10 Mr. DuTremble and Mrs. Gay, any objections to the
11 jurors being drawn by the clerk's office instead of blind
12 person or child -- are the names in capsules?

13 THE CLERK: Yes, they are, sir.

14 THE COURT: They are in capsules. So any objection to
15 the jury process being drawn by the clerk's office, instead
16 of a blind person or child? Any objection from the State?

17 MR. DUTREMBLE: None, Your Honor.

18 THE COURT: From the defense?

19 MRS. GAY: No, Your Honor.

20 THE COURT: All right at this point in time, we'll
21 begin the process of five and ten are the strikes. Five
22 for the State and ten for the defense.

23 And by the way, before we do that, any other
24 objections to the jury as qualified for this case?

25 MR. DUTREMBLE: None, from the State.

1 MRS. GAY: No, Your Honor.

2 THE COURT: All right. Good. We shall proceed.

3 (WHEREUPON, during the jury selection process, the
4 jurors were called forward and peremptory strikes were
5 exercised as reflected by the attached voir dire sheet made
6 a part of the record at the end of this transcript.)

7 (WHEREUPON, twelve jurors and two alternates were
8 seated in the jury box.)

9 THE COURT: Okay. Ladies and gentlemen of the jury,
10 what I want you to do at this time is I want you to go to
11 the jury room, please. Do not discuss this case at all.
12 I'll bring you back out in a short while, and give you some
13 further instructions. But at this time, just get to know
14 each other a little bit. Go to the jury room. Do not
15 discuss anything about this case at all. Please, proceed
16 to the jury room.

17 (The jury retires to the jury room.)

18 THE COURT: Okay. Any motions regarding about jury
19 selection from the State?

20 MR. DUTREMBLE: None from the State, Your Honor.

21 THE COURT: From the defense?

22 MRS. GAY: No, Your Honor.

23 THE COURT: All right. If you all would approach,

24 (WHEREUPON, there was an off-the-record bench
25 conference.)

1 (WHEREUPON, the Judge dismisses the remaining jury
2 panel.)

3 THE COURT: All right. As I understand it, Mr.
4 DuTremble, both of you all agreed that there are matters we
5 need to take up. So I can go ahead and let the jury go to
6 lunch. And, I think, we have a Jackson v. Denno?

7 MR. DUTREMBLE: I said we have a Jackson v. Denno, and
8 two guilty pleas, Your Honor.

9 THE COURT: All right. Well, let's bring them back
10 around 2:30, I guess. I'm going to take a break in a
11 minute, and then, we'll do that.

12 Let's wait until Mrs. Gay gets back.

13 Now, Ms. Gay, Mr. DuTremble says as far as matters
14 before we begin the jury presentation, as far as opening
15 statements and evidence, that he wants to do two guilty
16 pleas that are related somewhat to this case; as well as
17 there is as Jackson v. Denno consideration from me. And I
18 understand, you have a motion regarding continuance. Are
19 there any other matters that you know of that we need to
20 consider before we begin the trial?

21 MRS. GAY: Your Honor, with regard to the matter of
22 continuance, I know the Court is aware that at an earlier
23 time I had made a motion to continue this case from this
24 term to the week of June 18th, relating to an expert in
25 Lagoonal Beach, California, Mr. -- Dr. Richard Leo. We

1 were told my continuance was denied, and I was told to do a
2 video tape deposition, which I have done, of the expert.
3 We did that last Wednesday, and we have this to present.

4 One of the things that came to light after that
5 deposition, and between that time and now is that a new
6 report has been handed to me as of this morning that was
7 not provided before; though, I did file for discovery and a
8 continuing discovery request from Sargent Hagge, related to
9 incidents which, I believe, would have been helpful to the
10 expert in his review of the facts. This material was not
11 provided to me until this morning. It was not provided
12 until after this deposition was done. I believe that it
13 prejudiced my client to not allow the expert to be
14 physically present, to, one, review this material before he
15 testified, and, two, have the opportunity to hear the
16 testimony as presented by the police officers.

17 And I would just like to renew my motion to continue
18 this matter before we swear the panel, because I do believe
19 it was prejudicial to deny the motion.

20 THE COURT: All right. Two things. First is, why is
21 she just getting information, now, Mr. DuTremble?

22 MR. DUTREMBLE: Your Honor, please, it was first
23 raised last week, when she asked whether or not there were
24 any notes by this particular officer, who was working
25 another murder. I told her I would check. I checked with

1 the officer by telephone. I found out what he had in his
2 notes. I conveyed that to her telephonically, and told him
3 this is what he will have to say as soon as he is free up
4 from the murder.

5 THE COURT: So that's not, really, something under
6 Rule 5, that you need to give? Unless, you asked,
7 specifically, for it.

8 MRS. GAY: Well, Your Honor, I had asked,
9 specifically, for any information related to the
10 interrogation of Ms. Gilliard. That was, specifically,
11 discussed between the prosecutor and I before the
12 deposition, during the course of this trial. This has been
13 a major issue throughout this whole case. And, Your Honor,
14 we just received this police report as of today.

15 MR. DUTREMBLE: Which includes the exact information I
16 told her as soon as the detective told me. I picked up the
17 phone, and I called her and said this is what he will say.

18 THE COURT: Okay. And, well, once again, this is not
19 a, I guess, a basic Rule 5 requirement, but if she says
20 she, specifically, asked you for it long ago -- did you
21 long ago just tell her you didn't have it, or ignore her
22 question or what?

23 MR. DUTREMBLE: Long ago was last week when she asked
24 me. As soon as she asked me, I called ---

25 THE COURT: So she didn't ask for it until last week?

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2 video tape deposition, which I have done, of the expert.
3 We did that last Wednesday, and we have this to present.

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5 deposition, and between that time and now is that a new
6 report has been handed to me as of this morning that was
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25 another murder. I told her I would check. I checked with

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2 notes. I conveyed that to her telephonically, and told him
3 this is what he will have to say as soon as he is free up
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6 Rule 5, that you need to give? Unless, you asked,
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9 specifically, for any information related to the
10 interrogation of Ms. Gilliard. That was, specifically,
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12 deposition, during the course of this trial. This has been
13 a major issue throughout this whole case. And, Your Honor,
14 we just received this police report as of today.

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16 told her as soon as the detective told me. I picked up the
17 phone, and I called her and said this is what he will say.

18 THE COURT: Okay. And, well, once again, this is not
19 a, I guess, a basic Rule 5 requirement, but if she says
20 she, specifically, asked you for it long ago -- did you
21 long ago just tell her you didn't have it, or ignore her
22 question or what?

23 MR. DUTREMBLE: Long ago was last week when she asked
24 me. As soon as she asked me, I called ---

25 THE COURT: So she didn't ask for it until last week?

1 MR. DUTREMBLE: She asked in a general discovery
2 motion for documents. What I had in my file, I provided to
3 her. When she asked, again, is there anything else from
4 this particular man, I went back to him to him and said, Do
5 you have anything? He said, I think I have some notes.
6 This is what would be contained in them. I'm working this
7 murder case. When I have time to do this, I will get those
8 notes to you.

9 I got them this morning. In the meantime, I called
10 her up, and I said, I have spoken with him. This is the
11 information contained in his notes. As soon as I get it,
12 you will get it.

13 THE COURT: When you told her the information in the
14 notes, was that before or after the video deposition?

15 MR. DUTREMBLE: That would have been after the video
16 deposition.

17 THE COURT: What is in there that would affect the
18 video deposition of this individual, anyway?

19 MRS. GAY: Well, Your Honor, the expert was retained
20 to determine -- whether to assist in the determination of
21 voluntariness of the statement. And he reviewed my case
22 file. He interviewed Ms. Gilliard. He was not provided
23 this document, because this document was not provided to
24 me.

25 THE COURT: Well, how do we know that document would

1 affect anything he said?

2 MRS. GAY: Well, it was my understanding that somebody
3 -- that an officer was going to indicate that there had
4 been verbal Miranda given, and that she had waived verbal
5 Miranda, but there was no reference to it whatsoever in the
6 case file. This particular report is not only just a
7 reference, but a full scale description of the
8 interrogation and how it was supposed to have occurred.
9 And this was not provided to me before the expert ---

10 THE COURT: Well, what is in there, though, that in
11 your questioning of the expert is different than what you
12 understood happened?

13 MRS. GAY: Well, one of the questions to the expert,
14 which the Court will see, is that, did you see anything in
15 the file when you reviewed it, indicating that any verbal
16 Miranda was given? No. There is nothing in this police
17 file whatsoever that indicates any verbal Miranda was
18 given. But I did say to him, I said, You are aware that
19 somebody is going to testify that there was verbal Miranda?
20 He said, Yes, but there is nothing in the case file. This
21 report which is a, you know, document alleging ---

22 THE COURT: Well, why did you understand someone was
23 going to testify that Miranda was given?

24 MRS. GAY: Because it was my understanding at the
25 preliminary hearing that somebody said that Miranda was

1 given. However ---

2 THE COURT: Did you ask who?

3 MRS. GAY: Sir?

4 THE COURT: Did you ask who gave the Miranda?

5 MRS. GAY: It's my understanding that at the
6 preliminary hearing, Detective Deckard said that he had
7 given it. As I understand it, Sargent Hagge is indicating
8 it that he was giving it. Mr. DuTremble was not aware last
9 Wednesday which person, actually, was saying that they gave
10 it. He said he thought that it was Sargent Hagge, and he
11 was going to call him.

12 THE COURT: Well, whether it was Sargent Hagge or
13 Sargent Deckard or Officer Deckard, is there something in
14 there that would be other than the standard Miranda of
15 warnings?

16 MRS. GAY: Well, Your Honor, it's a full scale
17 description of an interrogation or an interview.

18 THE COURT: All right. But Miranda is -- we all know
19 Miranda. In fact, the U.S. Supreme Court's latest ruling
20 has almost said it's got to be straight down the line,
21 almost like a boiler plate. But what I'm asking is there
22 anything in there, though, other than Miranda, that you
23 feel would have been important for this person to know ---

24 MRS. GAY: Yes, sir.

25 THE COURT: --- since you already said Miranda was

1 going to be given.

2 MRS. GAY: Yes, sir. Kandy Gilliard described an
3 interview or an interrogation to the expert and to me that
4 had a good bit of coercion and inducements and threats, in
5 my opinion. And that's, certainly, how I'm going to
6 present it to the Court. There was no indication
7 whatsoever in the police file any record or any mention of
8 any type of an interview that occurred. So we were a
9 record devoid at that point, last Wednesday.

10 As of today, there is a page, almost, of an interview
11 that was supposed to have occurred, and things that were
12 supposed to have been said and things that she was supposed
13 to have said to them and things they said back to her. And
14 this was not provided to me before today.

15 THE COURT: But what I'm asking you is how do we know
16 that's going to in any way affect any comments your expert
17 would have made.

18 MRS. GAY: Well, Your Honor, he, certainly, would have
19 made mention of the fact that he had reviewed it, and that
20 they said the things ---

21 THE COURT: But how -- his ultimate opinion -- how
22 would that change his ultimate opinion?

23 MRS. GAY: Your Honor, I do know that what the
24 solicitor is going to try to say about the expert in
25 general is that at the time he evaluated the case, it was a

1 one-sided situation. That he only had information from Ms.
2 Gilliard. However, he did, in fact, review my case file,
3 which were all the reports from the police agency. And in
4 this case, there was an, actual, record, allegedly made of
5 this interview that was never provided to me until this
6 morning. I definitely believe that it affects what he's
7 going to -- he's going to attack the credibility of my
8 experts.

9 THE COURT: All right. The last question before I ask
10 Mr. DuTremble a question is this: Were you prevented from
11 going to the police files, or talking to the police
12 officers involved here?

13 MRS. GAY: I don't believe that I was prevented from
14 it, Your Honor. I believe that in this county, we have an
15 open-file policy. And it's my understanding that things
16 are provided to me. And when they're not provided, I can
17 assume, pursuant to ten years of working here, that they
18 don't exist. And I asked him, specifically, beforehand,
19 and he said, You have everything that I have. That was as
20 of last Wednesday.

21 THE COURT: All right. You knew this officer was
22 involved; did you not, in the case?

23 MRS. GAY: I did know that this officer was involved.

24 THE COURT: But you hadn't talked with him, and asked
25 him about any notes?

1 MRS. GAY: I had not talked to him, specifically, no.

2 THE COURT: Okay. Response, Mr. DuTremble?

3 MR. DUTREMBLE: Two responses, Your Honor. I didn't
4 attend the preliminary hearing. She has a transcript.
5 Allegedly, her expert got a copy of that transcript.
6 Verbal Miranda is discussed. I didn't know anything about
7 verbal Miranda, until Mrs. Gay brought it up to me. As
8 soon as she did, I inquired. When I found out what the
9 response was, I provided it to her. When I got the
10 document today. I provided it to her. It's the first time
11 I've seen it as well. But more importantly, Your Honor, I,
12 specifically, asked her expert in his deposition, What have
13 you done, Mr. Expert, to contact these police officers,
14 because you, Mr. Expert, have testified in the past, under
15 oath, that you could never take a defendant's statement
16 that, I didn't do it or I was coerced at face value. You
17 have to find the totality of the case; don't you, Mr.
18 Expert?

19 He agreed to that. My follow-up questions later on in
20 the deposition was: Well, then, tell this jury -- when the
21 tape is played -- what you have done to contact these
22 police officers? Nothing. What have you done, Mr. Expert,
23 to contact me -- to ask me any questions, so that I could
24 make arrangements to answer these questions? Nothing.
25 Prior to the deposition, he knew there was an issue of

1 verbal Miranda, yet he did nothing. He took no steps. He
2 asked Mrs. Gay to take no steps, and she did nothing to
3 talk to these officers.

4 I apologize to the Court for not finding out sooner
5 that this particular piece of information was available,
6 but as soon as I found out, I made it available to her
7 verbally; and I made it available to her today. There's
8 nothing in the rules, as I read it, that says it has to be
9 provided at any particular time. As Your Honor well knows,
10 in the Federal System there are some jurisdictions that do
11 not give it up until the witnesses testify, and then it's
12 provided to counsel; and a recess is taken. I've tried to
13 avoid that by providing the telephonic information.

14 But that guy in California didn't do anything prior to
15 the deposition. And all he did was to take this lady's
16 version of the facts, and did nothing to check up on it to
17 see if that would impact his decision making in any way.
18 And the most he can say, and the most Your Honor will hear
19 him say is: If everything this lady told me, then her will
20 could have been overborne, or she may have given an
21 untruthful statement, but I can't say that for a fact. And
22 the reason he can't say that for a fact is because he never
23 talked to the police officers.

24 THE COURT: Well, this matter that this officer has,
25 is this a statement he made or just his notes?

1 MR. DUTREMBLE: Just his notes.

2 THE COURT: Okay.

3 MR. DUTREMBLE: Just a report.

4 MRS. GAY: Your Honor, I'll present this document to
5 you. And, I guess, we, really, haven't gotten into but
6 it's from this point on and the next page.

7 THE COURT: Okay. I know. But there are two issues.
8 One, is you say it is a report. Then it is something that
9 is filed, and it would be a Rule 5 matter. But if it was
10 just his notes, then that's different.

11 MRS. GAY: No. It is a report.

12 MR. DUTREMBLE: It's a report. I stand corrected.

13 THE COURT: Did he file the report?

14 MRS. GAY: Obviously, not. He must have had it, and
15 that was my point, which goes into a different issue, Your
16 Honor. One of them is the motion to continue, because my
17 expert didn't have the opportunity to read this. He not
18 only spoke to Ms. Gilliard, he reviewed my entire case
19 file. I, Your Honor, believe, I asked the solicitor, Do
20 you have any other notes? Certainly, if this document had
21 been provided to me, I would have provided it to him. He
22 relied on me providing him my whole case file in order to
23 review it.

24 THE COURT: Well, one would wonder, though --
25 honestly, Mrs. Gay, one would wonder if you would not have

1 went and asked the officers, themselves, being an
2 experienced attorney that you are, if they had any notes or
3 any other information regarding this issue ---

4 MRS. GAY: I asked the prosecutor.

5 THE COURT: --- instead of just relying on Mr.
6 DuTremble. Why would you not have, also, asked the
7 officers, yourself. You went to the preliminary hearing.
8 You knew that Miranda ---

9 MRS. GAY: I did not go to the preliminary hearing.

10 THE COURT: Okay. Well, you knew from the preliminary
11 hearing that someone had discussed Miranda had been given,
12 and yet, you got nothing from the solicitor indicating a
13 Miranda; did you?

14 MRS. GAY: Your Honor, in the preliminary hearing,
15 Detective Deckard says that he gave verbal Miranda. There
16 is no document at this point whatsoever that Detective
17 Deckard gave verbal Miranda other than his testimony at the
18 preliminary hearing. Never was that provided even as of
19 today in document form. I was not aware whatsoever that
20 Sargent Hagge was alleged to have been the person that gave
21 the verbal Miranda, until the day after the deposition.
22 That document that I just provided to you, which in my
23 opinion is a full-blown report of this incident -- which I
24 have several others -- should have been provided to me in
25 Rule 5, because that is a significant document. Your

1 Honor, it's a significant account of the interview that
2 occurred that was not provided to me until this morning.

3 And in response to that, Your Honor, I believe, it's a
4 violation of Rule 5 regarding to not to have provided that
5 to me. And, also, I would ask that any information on that
6 particular document as to -- well, I guess, as to that
7 document, I guess, he ultimately could testify as to his
8 memory of it.

9 THE COURT: Well, the document is not necessarily
10 admissible, unless it's for impeachment purposes by you.
11 But it is permitted for him to look at it to refresh his
12 memory.

13 MRS. GAY: That information was never provided to me
14 at all. And, I guess, I would ask the Court to exclude any
15 reference to the actual interrogation and what occurred,
16 because they never told me ever what happened until this
17 morning.

18 THE COURT: Well, if you're asking me to exclude this
19 document, then, obviously, I would exclude the document.
20 But still, if a person needs something to help refresh
21 their memory, they can use whatever they need to help
22 refresh their memory. So what they are talking about is
23 from their memory. But the document, itself, is not
24 admissible by rules anyway.

25 MRS. GAY: Well, what I mean, Your Honor, is I would

1 ask that the officer be instructed not to testify as to
2 anything about it, because it was not provided to me in
3 discovery. They never told me those facts that were listed
4 in that.

5 THE COURT: Is there something in here that surprises
6 you?

7 MRS. GAY: I believe, there was a reference to it by
8 the solicitor, but it was very surprising to me that there
9 was a full page description of it. Yes, sir.

10 THE COURT: I know that. But what I'm saying is there
11 anything in here that you didn't already know that the
12 officers were going to testify to other than seeing this
13 document, now. Is there something in here that you didn't
14 anticipate them testifying to?

15 MRS. GAY: I believe, as of Friday, I think, we
16 discussed some of the facts that are listed in that
17 document. Yes, sir.

18 THE COURT: All right. Anything else before I rule on
19 this?

20 MR. DUTREMBLE: No, sir.

21 THE COURT: All right. The request for continuance is
22 denied. I don't, really, see where this document would
23 have affected anything. Also, I don't see where it
24 wouldn't have been available to the defense, if they had
25 sought it. Plus, it's stated by the defense, that the

1 information in here is not something that she wasn't aware
2 of through all other sources, anyway, that the officers are
3 going to testify to.

4 And, Mrs. Gay, do you want the document back? Or do
5 you want to mark it for Court's Exhibit, maybe.

6 MRS. GAY: Yes. I can do that. I'll make a copy of
7 it. This is the only copy I have.

8 THE COURT: All right. Make sure Mr. DuTremble agrees
9 it's a Court's Exhibit, and we'll go from there.

10 (Investigator's notes marked as Court's Exhibit 1.)

11 All right. Now, that motion was a motion for
12 continuance. I'm ready now to let the jury go to lunch,
13 and we can take a break and take some pleas and then do the
14 Jackson v. Denno hearing. If you all would have a seat.

15 Bring the jury in, please.

16 MRS. GAY: Your Honor, one more thing before you bring
17 the jury in.

18 THE COURT: Yes?

19 MRS. GAY: I have decided to make the motion to
20 sequester the witnesses, and I have notified the solicitor
21 of that. And I discussed with you in Chambers that I
22 wasn't sure, but I have discussed it with my client.

23 THE COURT: Well, we'll do that in a second.

24 Anybody here who is a witness, stay where you are for
25 right now. If you're a witness in this case, stay right

1 where you are.

2 Bring the jury in.

3 (The jury returns to the courtroom.)

4 THE COURT: All right. Now, ladies and gentlemen of
5 the jury, what I'm going to do at this time, I have some
6 matters that I need to handle in this case before we,
7 actually, begin the presentation of the case to you. To do
8 that, it would be unfair just to keep you all in the jury
9 room before then, because you all might get hungry. It's
10 lunchtime. So I'm going to let you all go to lunch, and
11 we'll do these matters. I'm going to give you a very long
12 lunch, so we can do the matters, plus then, we can have a
13 lunch, also. So at this time, I'm going to let you go to
14 lunch until 2:30. So when you return, I want you to return
15 to that jury room. Don't return to the audience. This
16 gentleman here, he'll show you how to get out and get back
17 in, so you can go back to the jury room.

18 Now, ladies and gentlemen, let me tell you a couple
19 more things. One, is that you have these blue badges on
20 that indicates you're jurors. You might see some other
21 people with green badges. They're jurors also. If that's
22 the case, their in civil court, some other courtroom. But
23 the reason you have these badges on, is to let people know
24 you're on the jury.

25 Now, I read a lot of names, so there might be several

1 witnesses in this case. It would be inappropriate for you
2 to talk to anybody who may be involved in this case
3 whatsoever, whether it be witnesses, officer, attorneys, or
4 whatever. And it may be inadvertently, because, honestly,
5 you might not know they're involved. They might not know
6 you're involved in the case. But if someone sees you, they
7 wouldn't know what was going on. And it's very important
8 to have justice, and to have the appearance of justice
9 also. Both of those things are important. For that
10 reason, it's best that when you're in this court area or
11 courthouse, or anywhere around the grounds, you not talk to
12 anyone -- anyone -- unless it's a court official, like this
13 bailiff, or the clerk's office, or if you want to talk with
14 me, unless it's your fellow jurors. You can talk in that
15 regard.

16 The best thing to do if you're around here is, unless
17 you're outside here engaging in that little habit some
18 people have, if you're doing that -- but if you're not,
19 come on back here and go to the jury room. I'd rather you
20 not be sitting around in the snack bar or anywhere else.
21 I'd rather you come to this jury room. If you need
22 something in that regard, the bailiffs will go get it for
23 you. I'd rather you not be in the snack room, hanging
24 around, unless you go in there, briefly, to get something.
25 And if you need to go get something, and bring it to the

1 jury room, that's fine during lunch hour; but don't stay
2 there. I'd rather you go away from the grounds of the
3 courthouse or be in the jury room.

4 So, please, if someone does approach you and talk with
5 you at all about anything. It doesn't matter. They might
6 talk to you about weather, sports, business, whatever, and
7 you don't know them, then come let me know. Come let me
8 know. Okay. So then we can look and see what's going on.
9 And if you don't, and then I find out from other sources
10 that someone talked with you, then, once again, I've got to
11 look into seeing your situation, to see whether you
12 violated my rules, because I'm instructing you not to. And
13 you have a duty to follow what I say, now that you're part
14 of this court system. So, please, understand that. Okay.

15 All right. Good. We'll see you at 2:30. Have a good
16 lunch. Do not discuss this case at all. Do not discuss
17 anything about the case with anyone or among yourselves.
18 Have a good lunch.

19 (The jury is excused for lunch.)

20 THE COURT: All right. Please, everyone in this
21 courtroom, please, know these jurors are walking out. So I
22 don't want anybody talking with them. Don't say, Hello.
23 Don't say anything in that regard.

24 Now, as far as sequestration, do you all know the
25 witnesses, and you all have a place to keep the various

1 witnesses?

2 MR. DUTREMBLE: We'll find a place to keep them.

3 MRS. GAY: Your Honor, one thing I would like to
4 notice, that there are two defendants that are incarcerated
5 -- I mean, two witnesses that are incarcerated. And I
6 would, definitely, like to have them sequestered from each
7 other. I don't know how complicated that is, but I do know
8 they have a private room.

9 THE COURT: Well, I'm sure once after the pleas are
10 done, they can determine who they want to call at what
11 particular time. And do it that way if you want to, Mr.
12 DuTremble. You all can handle that somehow. If he doesn't
13 handle it to your satisfaction, you let me know, and I'll
14 look at it and go from there. And I'll assume that if you
15 all don't have any other thing to say about it, you all
16 have agreed, and the sequestration process is fine for both
17 of you.

18 Now, is that a motion by you, also, Mr. DuTremble, as
19 far as sequestration?

20 MR. DUTREMBLE: Yes, sir.

21 THE COURT: All right. Mrs. Gay same thing.

22 MRS. GAY: Yes, sir.

23 THE COURT: Now, who have you planned to have with
24 you, Mr. DuTremble, as far as your investigating officer?

25 MR. DUTREMBLE: Detective Sloan, Your Honor.

1 THE COURT: Okay. Detective Sloan, obviously, can be
2 here throughout the trial. You have no objection to that,
3 Mrs. Gay?

4 MRS. GAY: No, sir.

5 THE COURT: All right. I'll take about ten minutes.
6 How about if you all would, just let me know, Mr.
7 DuTremble, when you've got your guilty pleas lined up.
8 I'll be right in this room here.

9 MR. DUTREMBLE: Yes, sir.

10 MRS. GAY: Thank you, Your Honor.

11 THE COURT: We'll take a break, until that's ready.

12 (WHEREUPON, there was a short break.)

13 (WHEREUPON, the co-defendants, Benjamin Lee Johnson
14 and Brian Allen Johnson, pled guilty.)

15 THE COURT: All right. Now, the other matter is the
16 Jackson v. Denno thing. And, obviously, I think, we need
17 to let the court reporter and all have lunch. We need to
18 take a break before we do that. Is there going to be any
19 matters other than that?

20 MR. DUTREMBLE: Not to my knowledge, Your Honor.

21 MRS. GAY: Your Honor, I just want to make a standing
22 motion -- we have admissibility of prior convictions. My
23 client has, as I understand it, one conviction of criminal
24 domestic violence, which is not a crime of moral turpitude.
25 Also, there is some difference ---

1 THE COURT: Well, obviously, 609 really controls these
2 matters. It was not one involving dishonesty, and it was
3 not one involving over a year possibility of sentence?

4 MRS. GAY: No, sir.

5 THE COURT: And it is not in any way related to this
6 under any type of Lyle stuff. So it, obviously, wouldn't
7 be admissible, unless she opens the door.

8 MRS. GAY: And that may be something we have to
9 discuss.

10 THE COURT: Well, I'm telling you now, it's not
11 admissible. I cannot imagine, unless the victim, Ms. Russ,
12 was a victim of the criminal domestic violence, it's not
13 admissible. All right.

14 Mr. DuTremble, do you understand that, sir?

15 MR. DUTREMBLE: I understand that, Your Honor. Unless
16 she opens the door.

17 THE COURT: And that would be, like, saying I've never
18 been convicted of a crime never in my life, something of
19 that nature.

20 MRS. GAY: Well, Your Honor, we can address the issue
21 right now. She has been a victim of criminal domestic
22 violence, herself. If she testifies -- and I discussed
23 with some other attorneys -- if she testifies on the stand
24 that she, herself, has been a victim of criminal domestic
25 violence, I would argue that that doesn't open the door.

1 THE COURT: It doesn't open the door like that. The
2 question is whether it is relevant or not, that would be
3 another issue but ---

4 MRS. GAY: It has to do with her state of mind.

5 THE COURT: Well, then, at this stage, I don't think
6 it would, but if you need to have an in camera hearing,
7 feel free to do so. But, unless she opens the door, no, it
8 won't be admissible. But if you need to have an in camera
9 hearing, let me know at some point in time. It doesn't
10 seem to me, to make it admissible, but it depends,
11 obviously, on what she would say about it which I have no
12 idea.

13 MRS. GAY: And the other one was any testimony of
14 prior bad acts, and you indicated Lyle. I don't think
15 there is anything. I would just put it on the record that
16 there is no Lyle or bad acts ---

17 THE COURT: Well, from the rendition of what he
18 alleges the facts to be here, I don't see anything at all,
19 other than someone may say it was improper to go into a
20 building that might have been closed or may not have been
21 closed. So, I mean, but that's part of the process of the
22 crime. But you had no Lyle matters to bring up; did you?

23 MR. DUTREMBLE: The only thing that could be remotely
24 considered Lyle would be, I think, when they got in the
25 cab, and went to see Mr. Benjamin Johnson. They talked

1 about the alibi, and they hid the money.

2 THE COURT: Well, all that's in the process of these
3 allegations. They would be admissible. But any acts that
4 occurred before that night, that may be considered to be
5 bad acts or crimes, would not be admissible, unless I first
6 make a ruling on it. So you understand that, Mr.
7 DuTremble?

8 MR. DUTREMBLE: Yes, sir.

9 THE COURT: All right. Anything else?

10 MRS. GAY: No, Your Honor, other than the Jackson v.
11 Denno.

12 THE COURT: All right. How many witnesses are you
13 going to need for the Jackson v. Denno? Two people?

14 MR. DUTREMBLE: Two people.

15 THE COURT: That would be Hagge and Deckard?

16 MR. DUTREMBLE: Yes, sir.

17 THE COURT: Okay. Do you think it would take about
18 half an hour for that?

19 MR. DUTREMBLE: I only need about twenty minutes,
20 probably.

21 THE COURT: All right. How long are you going to take
22 with that?

23 MRS. GAY: Well, Your Honor, my client will testify
24 and her mother.

25 THE COURT: All right. Are you planning on putting in

1 the video at all?

2 MRS. GAY: The video, which I would ask the Court to
3 consider before you make a ruling on it.

4 THE COURT: And the video is how long? I see two
5 tapes sitting there.

6 MRS. GAY: It's three hours long, Your Honor, but
7 there's a point of it -- which I think the first hour is
8 not necessary for your determination. It has to do with
9 his qualifications.

10 THE COURT: You want me to look at a video -- a
11 two-hour video, then?

12 MRS. GAY: Yes, sir.

13 THE COURT: I wish you all would have let me know that
14 -- if you all did let me know last week, I have forgotten
15 -- but I wish I had known that before I had the jury coming
16 back at 2:30.

17 MRS. GAY: We just got them on Friday, Your Honor, so
18 -- but I have a copy of his resume. Would you like to look
19 at that over lunch?

20 THE COURT: Yes. It is probable that once the jury
21 gets back, I may even tell them if they wish to go
22 somewhere, they can go. But, Mrs. Gay, in all due respect,
23 you feel that I need to review that thing for two hours --
24 two hours of testimony, and make a decision on the
25 voluntariness of the statements, and, also, whether or not

1 she was given her rights of Miranda?

2 MRS. GAY: Yes, sir. I would ask for you to, please,
3 review it before you make your determination. But there is
4 a part of it that, I think, that is not necessary.

5 THE COURT: To do that, do you have a problem with me
6 reviewing it over lunch here, as far as get an hour out of
7 the way?

8 MRS. GAY: No, sir.

9 THE COURT: Would you have any objections, Mr.
10 DuTremble, if I just review it, myself, in chambers while
11 you all have lunch?

12 MR. DUTREMBLE: No, Your Honor. You're, probably,
13 going to have to use our equipment, because it is a Super
14 VHS tape that we had to go out and buy special equipment to
15 play it.

16 THE COURT: Can that fit in there?

17 MR. DUTREMBLE: Can this fit in there? Yes, sir.
18 Well, if the screen comes down, you can, actually, project
19 it onto the screen. But if you want to do it in chambers,
20 I'll get somebody to help set it up for you.

21 THE COURT: No. I'll tell you what, we're going to
22 leave it here. I'm just going to make sure -- Bailiffs,
23 when everybody leaves, no one else comes in, until I say
24 they can come back in. And you can't come in before twenty
25 after 2:00.

1 All right. So when I break, no one else comes in,
2 until you check with me first until twenty after 2:00. And
3 you need to make sure, Mr. Bailiff, that this door is here,
4 and that the jurors can't walk in inadvertently, either.
5 Okay. And I'll, probably, just have lunch here, watching
6 the video. So you all go ahead and set that up so I can
7 review that anyway.

8 Now, anything else?

9 MR. DUTREMBLE: No, Your Honor.

10 THE COURT: All right. You all set it up. I'm going
11 to wait here until you all tell me it's set up at the point
12 you want to do it. And no one else is to come back in this
13 courtroom, until no earlier than twenty after 2:00; and
14 have no contact with jurors. I'm going to give to the
15 clerk these indictments on all of these individuals.

16 (The Court recessed for lunch.)

17 THE COURT: All right. Be seated. Let me just state
18 for the record on this matter over lunch, I reviewed the
19 video of Dr. Richard A. Leo. I have reviewed his
20 credentials that were handed up to me about his background.
21 I have not reviewed the entire video; just the first tape.
22 Then, I was given the copy of the transcript of the video,
23 and I have been looking over it, briefly; and I've almost
24 completed it in regard to this matter as far as the
25 admissibility of any statements that may have been made by

1 the defendant.

2 I would prefer at this stage, to continue to review
3 this. And at the same time, hear any live witnesses that
4 the State has. After reviewing this deposition and the
5 live witnesses, if I feel the need -- in making my ruling
6 -- to view the video any further, then, I'll just look at
7 it further; or if there's any particular segments that the
8 defense wishes for me to look at that she feels of the
9 written transcript will not make clear, if there's
10 something I need to look at. So I would rather do it that
11 way. In fact, I think, I'm right now, I'm just about on
12 about page 89 or so of this video and transcript.

13 What page was it, again, that they broke? Do you
14 remember, Mrs. Gay, where it was?

15 MRS. GAY: It was at the bottom of the page, Your
16 Honor. Page 305.

17 THE COURT: No. Not page 305.

18 MRS. GAY: It says 3:05 in the afternoon.

19 THE COURT: Oh, I'm sorry. Here it is right here.
20 It's on page 85. The bottom of page 85. But I reviewed
21 just four more pages of it since then, and then entire
22 deposition is 160-some pages. So that's over half. But
23 let me look at this, and then, if you feel there's other
24 matters you want me to look at on the video, I'll be glad
25 to review that. But I'd like to proceed on with the

1 Jackson v. Denno.

2 What I'm going to do, also, is I'm going to bring the
3 jury out, briefly, let them know we're going to take about
4 another forty-five minutes to go through these matters.
5 I'd love to get opening statements at the end of this
6 afternoon if we can, and maybe if there's a short witness.
7 I'd hate to have the whole afternoon wasted. We can stay
8 here until about 5:30. So we've got two more hours that we
9 can be here. So that should give us plenty of time to get
10 started with it.

11 You say you have two witnesses, Mr. DuTremble?

12 MR. DUTREMBLE: Yes, sir, Your Honor.

13 THE COURT: All right. So I'm going to do that. Now,
14 is there anyone -- well, no, I'd rather do that out in
15 their presence. Just so I'll know, is there anyone here
16 who are members of the press?

17 (No response.)

18 THE COURT: So nobody here is with the press? I heard
19 there was someone here earlier this morning.

20 BAILIFF: She just left out, Your Honor.

21 THE COURT: If the person comes back in, just let me
22 know, so I'll know them. I just want to be aware. Does
23 the State or defense, as we proceed, wish to put anything
24 on the record regarding negotiations?

25 MR. DUTREMBLE: No, Your Honor.

1 MRS. GAY: Your Honor, I think the Court's aware ---

2 THE COURT: No. I'm not worried about the Court being
3 aware. I just want to know does anybody need to make sure
4 that everyone's clear as far as what negotiations have been
5 discussed, and what's been communicated to the defendant.

6 MRS. GAY: Your Honor, at this point ---

7 THE COURT: Now, without saying it, I just want to
8 make sure does anybody want to put anything on the record
9 about it?

10 MRS. GAY: Not at this point, Your Honor.

11 THE COURT: All right. Well, at some point, I want to
12 have a hearing about that, so we have no misunderstandings.
13 If we have to do it in chambers, we'll do it in chambers,
14 but I want no misunderstandings about communications.
15 Okay. Now, Mrs. Gay, are you agreeable to proceeding in
16 that fashion that I mentioned?

17 MRS. GAY: Yes, sir. I will say just a few quick
18 things. I have a copy of Mr. Leo's resume that I would
19 like ---

20 THE COURT: I've already reviewed that. You can put
21 it as a Court's Exhibit.

22 MRS. GAY: Court's Exhibit. And I, also, have the
23 original and under seal of the videotape transcript.

24 THE COURT: Okay. And, in fact, you may want his
25 background. You may want to put in -- does he mention all

1 this on the record?

2 MRS. GAY: Yes, sir.

3 THE COURT: So we don't need to have it in written
4 form. Okay. That's a Court's Exhibit.

5 (Court's Exhibits 2 through 7 are marked for ID.)

6 MRS. GAY: Your Honor, I know this is inconvenient,
7 but I need to use the restroom for just a second.

8 THE COURT: All right. I'll continue reviewing this,
9 until you get back.

10 MRS. GAY: I'm sorry.

11 THE COURT: Do you have your first witness in the
12 courtroom?

13 MR. DUTREMBLE: They're in the hallway, Your Honor.

14 THE COURT: Have the witness come on in, so we'll have
15 it ready to go.

16 MR. DUTREMBLE: Okay.

17 THE COURT: Is anyone from the press here?

18 MS. MEACHUM: Yes, sir.

19 THE COURT: I just wanted to know. I just want to
20 have knowledge when you're here. And I wanted to make sure
21 that I let the jury know not to read the paper, tomorrow.

22 MS. MEACHUM: Right. I'm planning to be here
23 throughout the trial.

24 THE COURT: Okay. What is your name, ma'am?

25 MS. MEACHUM: It's Ellen Meachum.

1 THE COURT: Okay, Ms. Meachum.

2 Now, let's wait a second until Ms. Gay comes back.

3 Go ahead and bring them in.

4 (The jury returns to the courtroom.)

5 THE COURT: Ladies and gentlemen of the jury, I
6 brought you out only to give you kind of an update. I'm
7 handling some matters, here, of law that I need to continue
8 to handle. And for that reason, it's going to be a little
9 while longer. What I'm going to do is if you wish to go
10 outside -- it's going to be another forty-five minutes to
11 an hour. So if you wish to go outside or whatever else,
12 the Bailiff will go outside with you. I don't want to keep
13 you confined in the room there, if you don't want to be
14 confined in the room. If you want to go to the snackbar,
15 that's fine as long as the bailiff goes with you in that
16 regard.

17 Mr. Bailiff, you stay with them, now. And be in this
18 area. You can go outside, come back to the room and that
19 type of thing. But it should be forty-five minutes to an
20 hour before we get started. Okay.

21 Ms. Pulliam, I see you went home and changed clothes.
22 You look totally different. I didn't hardly recognize you.

23 Okay. So I just wanted to give you all an update.
24 So, if you would, step back to the room. If you need to go
25 outside or go to the snack bar, that would be fine.

1 (The jury retires to the jury room.)

2 THE COURT: All right. Now. At this time, I
3 understand, Mr. DuTremble, there are statements of the
4 defendant that you will wish to introduce into evidence in
5 the case?

6 MR. DUTREMBLE: That's correct, Your Honor.

7 THE COURT: And you have witnesses you wish to proceed
8 to show me that the statements were given voluntarily, and,
9 also, given after she was informed or understood her rights
10 under what we normally call Miranda?

11 MR. DUTREMBLE: Yes, sir.

12 THE COURT: All right. Well, I'll have the Jackson v.
13 Denno hearing to determine whether or not, in fact, in my
14 view, they're admissible as being voluntary, and given
15 after her knowledge of her rights including Miranda. So I
16 know part of the defense case in that regard is going to be
17 Dr. Leo, but you have the primary responsibility first, so
18 I'll hear from you while I'm reviewing Dr. Leo's
19 deposition. So, if you would, call your first witness.

20 MR. DUTREMBLE: Thank you, Your Honor, we'd call Scott
21 Deckard to the stand.

22 THE COURT: All right, Officer Deckard.

23 SCOTT DECKARD, being first duly sworn,
24 testified as follows:

25 THE CLERK: Please, state your full name for the

1 Court, and spell your last.

2 WITNESS: Thomas Scott Deckard. D-e-c-k-a-r-d.

3 THE COURT: Your witness, Mr. DuTremble.

4 MR. DUTREMBLE: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. DUTREMBLE:

7 Q. Detective Deckard, by whom are you employed?

8 A. The City of North Charleston Police Department.

9 Q. In what capacity?

10 A. I'm a Detective Supervisor in the Detective Division.

11 Q. And how long have you been so employed?

12 A. I've been employed with the City for eight years.

13 Q. How long have you been a detective?

14 A. For five years.

15 Q. And a Detective Supervisor?

16 A. For two years.

17 Q. Did you have the occasion, sir, to become involved in
18 the investigation of the murder of Dawn Russ, which took
19 place at The Game Room on Rivers Avenue?

20 A. Yes, I did.

21 Q. That murder took place on January 5th of the year
22 2000; did it not?

23 A. Yes, sir, if my memory serves me correctly.

24 Q. Did you have the occasion, in your capacity as a
25 detective, to become involved with the defendant, Kandy

SCOTT DECKARD - DIRECT EXAMINATION BY MR. DUTREMBLE 110

1 Latrice Gilliard, on or about January 9th of the year 2000,
2 which was approximately four days after the murder?

3 A. Yes, I did.

4 Q. And can you tell the Court where you first met with
5 her?

6 A. I met with her at the North Charleston Police
7 Department.

8 Q. And, approximately, what time of day did this take
9 place?

10 A. It was early morning. A little after 3:00 a.m.

11 Q. What time did, actually, arrive at the police station?

12 A. I arrived a little bit before 3:00 a.m.

13 Q. Was she already there, or did you have to wait on her?

14 A. She was already there.

15 Q. Was she under arrest at the time?

16 A. No.

17 Q. Was she in handcuffs?

18 A. No.

19 Q. Was she restrained in any fashion?

20 A. No.

21 Q. Did she go voluntarily to the police station to speak
22 with you?

23 A. To my knowledge, yes. She was approached by other
24 members of the police department from my understanding when
25 I got there.

1 Q. All right.. Was anybody else present?

2 A. At the police department? Sargent Hagge was there as
3 well as, also, the members of the PACT team. In the
4 interview, itself, it was just me and Kandy.

5 Q. Did you display any weapons at any time when you were
6 speaking with her?

7 A. No, I didn't.

8 Q. How were you dressed?

9 A. I was dressed, if I recall, in a Polo Police T-shirt
10 that has the badge on it, with my name on the left side or
11 the right side, and a pair of either jeans or khaki pants.
12 I don't recall exactly what color pants I was wearing.

13 Q. But you displayed no weapon?

14 A. No. I had one on my side that's issued, but it was
15 never removed from there.

16 Q. Never placed it on table?

17 A. No.

18 Q. Never handled it during the interview?

19 A. No.

20 Q. Now, did you explain to her why you wanted to speak
21 with her?

22 A. Yes. We had spoken to her before about the incident,
23 and we told her that it was -- we had gained additional
24 information that we needed to speak to her about.

25 THE COURT: Mr. DuTremble, can we just take one second

1 here.

2 (WHEREUPON, there was a short break.)

3 THE COURT: All right. Everyone keep your seats. Go
4 ahead, Mr. DuTremble.

5 BY MR. DUTREMBLE:

6 Q. I believe you said that when the interview began, it
7 was just you and the defendant, Kandy Gilliard; is that
8 correct?

9 A. Yes.

10 Q. At that point in time, was she under arrest?

11 A. No.

12 Q. Was she in custody in any fashion?

13 A. Not in any fashion.

14 Q. Did you explain to her that she was free to leave at
15 any time?

16 A. Yes.

17 Q. Did she indicate to you that she was willing to answer
18 your questions?

19 A. Yes.

20 Q. And what did you all talk about?

21 A. We talked about her background, her family, how she
22 started playing video poker, the different places she
23 played at, who she knew, who she met at the different video
24 poker places; basically, just background information, you
25 know, where she has been living, where she was employed,

1 and stuff to that nature.

2 Q. Now, when you were getting this background information
3 -- at any time that you were getting this information did
4 she indicate to you that she did not wish to speak to you,
5 and wanted to consult with a lawyer?

6 A. No.

7 Q. Did she indicate to you that she wanted to get up and
8 leave and go home?

9 A. She mentioned one time during the interview, that she
10 just wanted to leave, and asked, When can I leave? And I
11 said, Sure. You can leave anytime you want, but we're here
12 for your friend, and, you know, we would like to finish --
13 try to resolve the issues.

14 Q. And you say you indicated to her, you were here for
15 her friend. Who were you talking about?

16 A. I was talking about Dawn Russ.

17 Q. And why did you call Dawn Russ her friend?

18 A. Based on the first interview, and all of the
19 information we had obtained was that Kandy and the victim,
20 Dawn Russ, were very close.

21 Q. So they were, actually, friends?

22 A. Actually, friends. Yes.

23 Q. Now, when you indicated to her that she was free to
24 leave, but because you were there for her friend, and you
25 would like to get to the bottom of it, did she indicate to

1 you that she didn't want to speak anymore?

2 A. No. She stayed seated in her chair.

3 Q. Did she ever get up? Ever make any effort to go to
4 the door?

5 A. No.

6 Q. Did she ever ask to stop your interview and use the
7 bathroom, use the telephone, get a coke? Anything like
8 that?

9 A. No, sir.

10 Q. Were any of her family members present?

11 A. No, sir.

12 Q. Did she ask for any family members?

13 A. No, sir.

14 Q. Did she ask to make a telephone call to her family
15 members?

16 A. No, sir.

17 Q. And, approximately, how long would you estimate that
18 you spent talking with her after you arrived sometime after
19 3:00 in the morning?

20 A. I spent, approximately, three hours speaking with her.

21 Q. And during the course of that three-hour meeting, did
22 you ever make her any promises that indicated to her that
23 if she would confess to you, that you would do certain
24 things for her?

25 A. No, I did not.

1 Q. Did you ever threaten her in any way?

2 A. No, I did not.

3 Q. Did you ever make any reference to the fact that if
4 she didn't come forward and tell you what you wanted to
5 know that you would take away her children or have the
6 co-defendant, B.J. Johnson, harm her children?

7 A. No, I did not.

8 Q. During this particular time that you were speaking
9 with her on January the 9th, she, in fact, did not confess
10 to you; did she?

11 A. No, she did not.

12 Q. And isn't it true, Detective Deckard, that at
13 approximately 6 o'clock in the morning, she, actually,
14 wanted to speak to your supervisor?

15 A. Yes. She indicated that she would like to speak to my
16 supervisor.

17 Q. And who was that supervisor, sir?

18 A. Sargent Hagge.

19 Q. And Sargent Hagge is your supervisor at the North
20 Charleston Police Department; correct?

21 A. Yes, he is.

22 Q. And when she asked to speak to Sargent Hagge, did you
23 go out and, physically, bring Sargent Hagge back?

24 A. I exited the room, approached Sargent Hagge at his
25 desk, and told him that she would like to speak with him.

1 And at that time, I stayed in my work area, and he went in
2 the interview room.

3 Q. Okay. Did he close the door to the interview room?

4 A. Yes.

5 Q. So you have no idea what Sargent Hagge and the
6 defendant talked about?

7 A. No. Other than being told after they had finished
8 talking.

9 Q. Sure. But at the point that you turned the interview
10 over to Detective Hagge, she had not confessed to any crime
11 to you; had she?

12 A. No, sir.

13 Q. Now, how long was Sargent Hagge in the room with her
14 would you estimate?

15 A. I'd estimate between forty-five minutes to an hour.

16 Q. And did Sargent Hagge come back out?

17 A. Yes, he did.

18 Q. Did he provide you with any information?

19 A. Yes. He told me that he walked in; that she began
20 asking him questions, you know, to the point of knowing
21 something about the incident. He told me that he,
22 verbally, Mirandized her, and that she proceeded to tell
23 him, exactly, what had happened.

24 Q. And after Sargent Hagge advised you that the defendant
25 had, actually, confessed to him, did you take any actions

1 to take a written statement from the defendant?

2 A. Yes, I did. After he told me, basically, what had
3 occurred in his interview, I went back into the interview
4 room with a North Charleston Police Department Advisement
5 of Rights form. I advised her of her rights, at which time
6 she proceeded to tell me what had occurred, in the, basic,
7 general capacity that she had told Sargent Hagge; and I
8 reduced that to a written statement.

9 Q. Now, when you mentioned that you went back into the
10 interview room with the North Charleston Police Department
11 Advisement of Constitutional Rights form -- let me hand you
12 this document, Detective, and ask you if you can identify
13 this?

14 A. Yes. This is the Advisement of Rights form that
15 myself -- that I advised her of, and that she signed,
16 acknowledging her rights and her waiver of those rights.

17 Q. Her signature appears on that document?

18 A. Her signature appears on the document, and, also,
19 beside the numbers we ask them -- anybody who we advise of
20 their rights to initial beside the numbers as practice to
21 indicate that they do understand each individual one as we
22 read it to them.

23 Q. And does your signature appear on there?

24 A. Yes, it is. It's as a witness.

25 MR. DUTREMBLE: Your Honor, we would offer this into

1 evidence for purposes of this hearing at this time.

2 THE COURT: Any objection, Mrs. Gay?

3 MRS. GAY: No, Your Honor.

4 THE COURT: All right. At this time, mark it State's
5 Exhibit 1 for I.D. only, and I'll consider it in this
6 hearing.

7 (State's Exhibit Number 1 marked for identification.)

8 BY MR. DUTREMBLE:

9 Q. Now, Detective Deckard, with regards to State's 1 for
10 I.D. for purposes of this hearing, you indicated that you
11 had given the defendant her constitutional rights. Can you
12 tell the Court what constitutional rights are printed on
13 that form, sir?

14 A. Would you like me to read them, sir?

15 Q. I would like you to read them.

16 THE COURT: If you do, sir, be slow so she can take
17 down what you say.

18 WITNESS: Yes, sir. It begins at the top with her
19 full name Kandy Latrice Gilliard, her date of birth which
20 is [REDACTED], her age which is twenty-one, the grade she
21 completed in school which is the eleventh, and that came
22 from her. And then it further states, I, Kandy Latrice
23 Gilliard, have been advised by Detective Thomas Deckard of
24 the North Charleston Police Department; that I have the
25 absolute right to remain silent; do not have to answer any

1 questions or give a statement, and this fact cannot be used
2 against ---

3 THE COURT: That's slow reading, sir? Remember, she's
4 got to take down what you say, sir.

5 WITNESS: Yes, sir.

6 BY MR. DUTREMBLE:

7 Q. When you read the first right to her that you just
8 read off, did you have her initial ---

9 A. Yes, I did.

10 Q. --- that particular right?

11 A. Yes, I did.

12 Q. Do her initials appear beside number one?

13 A. Yes, they do.

14 Q. The second right that you read to her, can you read
15 that out loud, please, sir?

16 A. The second right on the form is: If I do answer
17 questions or give a statement, anything I say can and will
18 be used against me in a court of law.

19 Q. And, again, after reading her that particular
20 constitutional right, did you have her initial beside the
21 second constitutional right that you just read?

22 A. Yes, I did.

23 Q. Did you read her the third constitutional right, sir?

24 A. Yes, I did.

25 Q. And what is that?

1 A. Number three states, I have the right to consult with
2 a lawyer of my choice before I answer questions or give a
3 statement, and, also, have him present while I am being
4 questioned.

5 Q. And, again, did you have Kandy Gilliard initial beside
6 constitutional right number three?

7 A. Yes, I did.

8 Q. Did you, also, read her right number four?

9 A. Yes, I did.

10 Q. And what is that right, sir?

11 A. Number four states, If I wish to talk to a lawyer or
12 have him present, but am unable to afford to hire a lawyer,
13 one will be appointed to represent me free of charge.

14 Q. And, again, did you have Kandy Gilliard initial as to
15 constitutional right number four?

16 A. Yes, I did.

17 Q. Did you read her the 5th constitutional right, sir?

18 A. Yes, I did.

19 Q. And what was that, sir?

20 A. Number 5 states, if I decide to answer questions or
21 give a statement without having a lawyer present,
22 representing me, I have the absolute right during this
23 interview to stop answering questions and to remain silent.

24 Q. And, again, did you have Kandy Gilliard initial as to
25 right number 5 which you just explained to the Court?

1 A. Yes, I did.

2 Q. Now, below those five constitutional rights that you
3 testified to, sir, it says I fully understand each of these
4 rights explained to me. There is a space for the
5 witnesses, and there is a space for the defendant's
6 signature. Does the defendant's signature appear below
7 that statement?

8 A. Yes, it does.

9 Q. And does your signature appear below that statement?

10 A. Yes, it does.

11 Q. And does Sargent Ken Hagge's signature appear below
12 that statement?

13 A. Yes, it does.

14 Q. And it's also dated January 9, 2000; correct?

15 A. Yes, it is.

16 Q. But there is no time written down on this form; is
17 there?

18 A. There is no time written down on this form.

19 Q. Approximately, what time was this form filled out,
20 sir?

21 A. It was, approximately, 7:15, 7:30.

22 Q. This was after Sargent Hagge had come back out to you,
23 and you had gone in with this form; correct?

24 A. Yes.

25 Q. Now, below the signature spaces there is additional

1 writing. And could you read what appears on your form to
2 the Court?

3 A. Yes, I can. It states, Having these rights in mind, I
4 wish to waive these rights and answer questions concerning
5 the charge of murder. No threats, force, or promises of
6 any kind have been made to me by anyone to cause me to
7 waive these rights and or answer questions.

8 Q. And, again, there is a signature block. Did Kandy
9 Gilliard sign below that statement?

10 A. Yes, she did.

11 Q. Did you sign below that statement?

12 A. Yes, I did.

13 Q. And Sargent Ken Hagge signed below that statement?

14 A. Yes, he did.

15 Q. And, again, it's dated January 9th of 2000; is that
16 correct?

17 A. That's correct.

18 Q. Having read her her constitutional rights, did you
19 begin to take a statement from her concerning the murder of
20 Dawn Russ?

21 A. Yes, I did.

22 Q. At any time while you were taking that statement, did
23 Kandy Gilliard indicate to you that she did not want to
24 answer your questions?

25 A. No, she did not.

1 Q. At any time during the taking of that statement, did
2 she appear to be under the influence of any kind of
3 intoxicating liquors or drugs?

4 A. No, she didn't.

5 Q. Was she able to understand you to the best of your
6 knowledge?

7 A. To the best of my knowledge, yes.

8 Q. Were you able to understand her?

9 A. Yes.

10 Q. Did she speak in a coherent voice?

11 A. Yes.

12 Q. Did she ever indicate to you, sir, that she wished to
13 stop answering questions and go home?

14 A. She indicated that, while I was talking to her before
15 Sargent Hagge went in the room, that she just wanted to go
16 home. However, when I was taking her statement, she just
17 wanted to do it -- complete her statement.

18 Q. At first, when you were just interviewing her, and she
19 did not confess, she had made the statement that she wanted
20 to go home, and you talked about her friend; correct?

21 A. Right.

22 Q. But after you started taking the confession concerning
23 the murder, she never indicated that she wanted to leave;
24 correct?

25 A. No. That's correct.

1 Q. Did you threaten her ---

2 THE COURT: I'm not sure I understand. Explain to me
3 the procedure then. After you read her rights, she said
4 she wanted to go home?

5 WITNESS: No, sir. She wanted to complete the
6 statement.

7 THE COURT: Well, how did the I want to go home thing
8 come up?

9 WITNESS: That was when I had previously talked to her
10 before Sargent Hagge entered the room, and before she told
11 him about what had occurred.

12 THE COURT: Okay. That's what you talked about
13 earlier, about ten minutes ago?

14 WITNESS: Yes, sir.

15 THE COURT: And she said she wanted to go home, and
16 then you said that you were looking at something about her
17 friend, and then she said she wanted to see your
18 supervisor?

19 WITNESS: Yes, sir.

20 THE COURT: Okay. So when she said she wanted to go
21 home, she never said that again, or anything of that
22 nature?

23 WITNESS: No.

24 THE COURT: Okay. All right. Go ahead, Mr.
25 DuTremble.

1 BY MR. DUTREMBLE:

2 Q. While you're taking the statement concerning the
3 murder, did she ever ask to use the telephone to call a
4 family member?

5 A. Not to my knowledge.

6 Q. Did she ever ask to use the telephone to call a
7 lawyer?

8 A. No.

9 Q. Or a friend?

10 A. No.

11 Q. Did anybody, to your knowledge, come down to the
12 police station to ask about her while you were taking the
13 statement?

14 A. Not to my knowledge.

15 Q. Did you promise her anything to get her to talk to
16 you?

17 A. No, I did not.

18 Q. Did you tell her that if she gave you a confession
19 that you would come talk to the Solicitor's Office, and she
20 wouldn't have to worry about going to jail?

21 A. No, we didn't.

22 Q. Did anybody ever tell her -- you or anybody to your
23 knowledge, tell her that if she gave you a confession,
24 she'd only get six months probation?

25 A. Not to my knowledge. That's not common practice for

1 us to say anything like that.

2 Q. Was there any threats made to her or her family, if
3 she didn't confess, by you or anybody else ---

4 A. No, there were not.

5 Q. --- within the employment of North Charleston?

6 A. No, there were not.

7 Q. Did you use any coercive tactics to get her to speak
8 with you?

9 A. No, I did not.

10 Q. To the best of your knowledge, did she give you that
11 statement freely and voluntarily?

12 A. Yes, she did.

13 Q. And in reference to that particular statement,
14 Detective Deckard, let me hand you, I think, it's four
15 pages. Hold on. Bare with me. It looks like
16 approximately five pages. And ask you if you can identify
17 this particular document, sir?

18 A. This appears to be the original statement that I had
19 obtained from her on the night or early morning of January
20 9th.

21 Q. Now, at the bottom of each page, you do have -- the
22 defendant signed after you finished writing what she told
23 you?

24 A. Yes.

25 Q. And right above her signature line, there is a

1 statement that says, I have read the foregoing. Can you
2 read that to the Court and explain what that is, sir?

3 A. Yes. Above her signature line, there is a statement
4 that says, I have read the foregoing statement, or have had
5 it read to me, and is true and correct to the best of my
6 knowledge. I have given this statement freely and
7 voluntarily, and have been provided a copy of my statement.

8 Q. And that statement appears on each and every page of
9 the statement that you wrote for her; correct?

10 A. That's correct.

11 Q. And your signature appears at the bottom of each and
12 every page of that statement; correct?

13 A. That's correct.

14 Q. And am I correct, sir, that as she would tell you what
15 happened, you would write it down on that form?

16 A. That's correct.

17 Q. So that is her statement, basically, in your hand
18 writing?

19 A. That's correct. There were also a couple of places
20 where I misinterpreted what she said and scratched through
21 it. And she initialled those as well, indicating that she
22 understood that.

23 Q. All right. And that is the original document, sir?

24 A. This appears -- this is the original document.

25 MR. DUTREMBLE: Your Honor, we're going to offer this

1 as an exhibit for purposes of this hearing.

2 THE COURT: For purposes of this hearing, any
3 objection?

4 MRS. GAY: No, Your Honor.

5 THE COURT: Okay. State's 2 for I.D.

6 (State's Exhibit Number 2 marked for identification.)

7 BY MR. DUTREMBLE:

8 Q. Now, Detective Deckard, if you would turn to page four
9 of the statement. The last paragraph it appears to be
10 written in Kandy Gilliard's own hand; is that correct?

11 A. That's correct.

12 Q. Can you read that statement for the Court?

13 A. Yes. It states, This is my statement, truthfully and
14 honest. I am sorry. Please, forgive me. We -- and then
15 "I" in parenthesis -- never meant for it to happen like
16 this. I just only wanted the money.

17 Q. Did she sign below that statement?

18 A. Yes, she did.

19 Q. Did she, also, again at the bottom of that statement,
20 sign indicating that she had freely and voluntarily given
21 you that statement?

22 A. Yes, she did.

23 Q. And does her signature, also, appear on page four?

24 A. Yes, it does.

25 Q. And then, there is another page which is enumerated as

1 page one, and then in somebody's handwriting -- I assume
2 yours -- it says "second". Do you have that page, sir?

3 A. Yes, sir. And that is my handwriting at the top.

4 Q. What is that particular page, sir?

5 A. That is an additional part of her statement that we
6 took later after we had more information, where I had asked
7 four questions of her.

8 Q. And did she respond to those four questions in her own
9 handwriting?

10 A. Yes, she did.

11 Q. And the first question is: Where did you take the
12 money from? And is the response in Kandy Gilliard's
13 handwriting?

14 A. Yes, it is.

15 Q. And what does it indicate?

16 A. It states, I took the money from black file cabinet
17 and Dawn's pocket. And it is initialled by Kandy Gilliard.

18 Q. Those are her initials, K.G.?

19 A. Those are her initials, K.G.

20 Q. And your second question was: How much money was
21 taken? Did she respond in her own handwriting?

22 A. Yes, she does. She states, Around \$1200.

23 Q. And did she initial that statement as well?

24 A. Yes, she does.

25 Q. And the third question is: What did you do with the

1 padlock? What is her response?

2 A. Her response is: I dropped it.

3 Q. That is in her handwriting?

4 A. That is in her handwriting.

5 Q. And did she initial that statement?

6 A. She initialed that as well.

7 Q. And the last question is: What was the plan for
8 splitting up the money afterwards? And did she respond?

9 A. Yes, she did.

10 Q. And what did she say?

11 A. Half and half.

12 Q. Does she initial that response?

13 A. Yes, she does.

14 Q. And after writing those handwritten responses to those
15 four questions, does she also sign the bottom of page -- I
16 guess, it's page five. You've got it designated as page
17 second. Does she sign at the bottom?

18 A. Yes, she does.

19 Q. And do you sign at the bottom?

20 A. Yes, I did.

21 Q. And does the statement concerning giving you this
22 particular statement freely and voluntarily contained on
23 page five of this exhibit?

24 A. Yes, it is.

25 Q. What took place after she gave you this statement,

1 sir? Did you give her a copy of it?

2 A. Yes. She was issued a copy of it.

3 Q. At any time other than making the corrections that you
4 mentioned on the form and having her initial those, did she
5 indicate to you that she wanted to change anything?

6 A. No, she did not.

7 Q. At any time that you were interviewing her, did she
8 indicate to you that she wanted to stop and go back and
9 make corrections that you did not make?

10 A. No, she did not.

11 Q. And is this statement that she gave you on January 9th
12 of the year 2000, the actual statement that she gave you
13 concerning her involvement in the murder of Dawn Russ?

14 A. Yes, it is.

15 Q. Did you change it, add to it, delete from it in any
16 way shape or form that is not depicted on the face of the
17 document?

18 A. No, I did not.

19 Q. And has she ever indicated to you from January 9th of
20 the year 2000 until today that what she told you on that
21 day is not true and accurate and correct?

22 A. No.

23 Q. Never called you on the phone? She's never written
24 you a letter?

25 A. No.

1 MR. DUTREMBLE: Thank you. If you would, sir, please,
2 answer any questions Mrs. Gay might have for you.

3 THE COURT: All right. Mrs. Gay, cross-examination of
4 the witness?

5 MRS. GAY: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MRS. GAY:

8 Q. Detective Deckard, I believe, you indicated that you
9 have been a detective for about five or six years?

10 A. Five years.

11 Q. And that would have been in 1996 when you completed
12 the detective level testing and examination at the SLED?
13 Is that what ---

14 A. There is no detective examination that they give to
15 make detective.

16 Q. Well, I believe you took a course -- a detective
17 course in 1996?

18 A. I completed a detective course at the South Carolina
19 Criminal Justice Academy sometime after I was positioned in
20 a detective division.

21 Q. So that would have been sometime within about five
22 years ago?

23 A. Sometime within the past five years. I'm not sure of
24 the exact dates without my paperwork.

25 Q. And I believe your testimony is that your

1 communication with Ms. Gilliard or with Kandy started about
2 three o'clock in the morning?

3 A. Yes. A little after 3:00.

4 Q. But you're aware, before that she had been picked up
5 by another officer who brought her to the police station?

6 A. Yes.

7 Q. Before she talked to you?

8 A. Yes.

9 Q. And she was picked up by that other officer from her
10 aunt's house? Are you aware of that?

11 A. To my knowledge, that's where she was approached by
12 the officer.

13 Q. And then, she was brought to the police station, and
14 put in the interrogation or the interview room? I think
15 she was there by herself?

16 A. Yes.

17 Q. Before you got there, I believe, you testified that
18 you were the only person in the room with her?

19 A. Before I got there, I don't know who was in the room.
20 I was the only person in the room after I got there to
21 speak to her.

22 Q. But isn't it true, that there were a group of
23 officers, I think, even Sargent Hagge was one of them that
24 was standing outside of the room in close proximity to the
25 room where you were talking to her?

1 A. Well, the room is positioned in the detective
2 division, and I don't think that the detective division is
3 that big where you can't be in close proximity to the room.

4 Q. And there were, certainly, other people there?

5 A. There were other people in the detective office at the
6 time.

7 Q. But at the time, you were the only person talking to
8 her?

9 A. That's correct.

10 Q. And I believe you said that -- apparently, your
11 testimony is, is that she wasn't detained; that she was
12 free to leave at that point, at three o'clock in the
13 morning?

14 A. She was free to leave.

15 Q. And at that point at three o'clock in the morning at
16 the North Charleston Detective Division you said,
17 specifically, that at one point she said she wanted to go
18 home?

19 A. At one point, she said, When can I go home? And I
20 said, At anytime, but we're here to resolve this issue with
21 your friend, Dawn.

22 Q. I understand that. So at that point, I believe your
23 testimony is that you said, We're here to resolve your
24 friend -- and you didn't give her the opportunity to go
25 home at that point?

1 A. I explained to her -- the first words out of my mouth,
2 after she asked that, was "anytime." She asked when I can
3 leave.

4 Q. All right. But then you said -- I believe you said,
5 But we're here to talk about this. So "anytime" wasn't
6 then?

7 A. It could have been then if she would have stood up
8 from her chair and walked out the door.

9 Q. Well, certainly, if she would have stood up from her
10 chair and walked out the door, but you weren't at that
11 point, saying, Oh, let me get you a ride home. I mean, at
12 this point, you were still continuing to question her?

13 A. I advised her that she could leave at anytime, and
14 then continued with that response.

15 Q. But once she indicated to you that she wanted to go
16 home, or wanted to know when she could go home, there was
17 no effort made at that point to allow her to go home?

18 A. She could have gotten up from the chair. I never said
19 she couldn't get up from the chair, and walk out of the
20 room.

21 Q. I understand that. And you said that you were just
22 talking to her, and that she indicated a willingness to
23 answer your questions. So at no point at that time had you
24 advised her that she was a suspect, and had these rights
25 that we went over earlier, these Miranda rights. About the

1 right to remain silent, the right to have an attorney
2 present, etcetera. You had not done any of that at this
3 point at three o'clock in the morning at the Detective
4 Division?

5 A. Not at that point.

6 Q. So at that point, when you were saying to her, we're
7 going to talk about this situation with your friend, she --
8 you already knew that there had been a fingerprint of hers
9 found at the scene?

10 A. Yes.

11 Q. And you already knew that she was somebody that --
12 there had been a BOLO put out; that she was like a material
13 witness or a suspect in this case to some of the other
14 agencies in the area?

15 A. To my knowledge there was a BOLO out for her to
16 question her, because the results of our investigation, to
17 that point, were that she may have been the last person to
18 see the victim.

19 Q. Certainly, I understand that. And, I guess, what I'm
20 saying is is that with her -- with having a fingerprint at
21 the scene on a plastic bag that was found under the
22 deceased's body, and with a BOLO out that she's a person
23 that you're trying to talk to about the case, she's
24 considered a suspect at that point; isn't she?

25 A. We didn't know what her involvement was at that point.

1 We knew that at one point she had handled two trash bags.
2 At that point, that's what we knew. And that she was,
3 also, friends with the victim, and, also, spent time in
4 that video game room.

5 Q. So are you saying that at three o'clock in the morning
6 when you're interrogating her -- questioning her at the
7 Detective Division of North Charleston, that you don't have
8 any suspicion whatsoever that she's a suspect? Is that
9 your testimony, today?

10 A. There was some suspicion that she was involved.

11 Q. Involved?

12 A. However, as a primary suspect that we were focusing
13 on, I don't think that was the issue.

14 Q. Well, certainly, if she's involved in a crime that led
15 to a body and a person being killed, then she would be
16 somebody who would deserve to have Miranda read to her at
17 that point? To be told that she had a right to remain
18 silent, to not answer any questions, to have an attorney
19 present. She deserved to have those warnings given to her
20 at that point at three o'clock in the morning at the
21 Detective Division when you arrived; didn't she?

22 MR. DUTREMBLE: Objection, Your Honor. That's a legal
23 conclusion for Your Honor to determine.

24 MRS. GAY: Well, certainly, Your Honor, if he's
25 already ---

1 THE COURT: You can ask him if he felt she needed to.

2 BY MRS. GAY:

3 Q. Did you feel -- you've already said that you had some
4 belief that she was involved. Wouldn't that lead to a
5 situation where you believed she should be given Miranda at
6 that point?

7 A. Not at that point, because we didn't know her
8 involvement. We knew she spent time in the video game
9 room. We knew that she was very close to the victim, and
10 had stayed there. So her finger prints may have been
11 throughout the business. We didn't know if she helped her
12 clean up, empty trash bags. We didn't know any of that at
13 that point.

14 Q. I understand that. But at three o'clock in the
15 morning -- and, I guess, I keep going back to this time ---

16 THE COURT: And I really, think he's answered your
17 question as far as his view of it. I can hear and make my
18 determination from those things.

19 MRS. GAY: Thank you, Your Honor.

20 BY MRS. GAY:

21 Q. Specifically, you said that you talked to her about
22 background information. I believe that you asked her
23 things about herself?

24 A. That's correct.

25 Q. And you said that at one point, I believe, she was

1 crying; wasn't she?

2 A. Yes. Toward the end of when before she started
3 speaking to Sargent Hagge.

4 Q. So to start this questioning out, she's not
5 necessarily, in your opinion, a suspect. You're just
6 asking her background information. But somehow during the
7 course of this interview, isn't it fair to say that it got
8 pretty stressful or emotional in the sense that I said --
9 you said she started crying before Hagge came in?

10 A. That's correct.

11 Q. And that's a result of the questions that you were
12 asking her and the pressure and how she felt emotionally in
13 that room? She was afraid, and she was indicating to you
14 fear of the person or of the circumstances; wasn't she?

15 A. I can't make a determination of why people cry. I
16 don't know what makes each individual person cry, whether
17 it be fear, whether it be whether she's upset. I do know
18 that, obviously, something that was being talked about was
19 an issue with her, and that's why she started crying. But
20 I don't know exactly what the issue was.

21 Q. Well, did she ever -- did you ever say to her that she
22 was just a witness, and that you just wanted to find out
23 what had happened to her friend, and if she knew anything
24 about that?

25 A. That statement is very possible that it could have

1 been made. That is one -- when we're talking to them --
2 talking to people that, you know, we know may have seen
3 something, then we say, you know, you may be just a witness
4 to this. We need to know exactly what you saw or who you
5 saw, or other matters like that.

6 Q. Do you ever remember her asking to go to the bathroom?

7 A. Not that I recall.

8 Q. Do you ever remember her asking for anything to eat?

9 A. Not that I recall.

10 Q. Do you ever remember any occasion where she said, did
11 she need a lawyer -- did she need to talk to a lawyer?

12 A. Not to my knowledge.

13 Q. But you do acknowledge that you may have just told her
14 she was a witness?

15 A. May have during the course of the interview.

16 Q. And you said that at the point where she started
17 getting upset after you questioned her for an hour or so,
18 that's when she asked to speak to your supervisor?

19 A. It was approximately three hours later that she asked
20 to speak to Sargent Hagge.

21 Q. So for three hours you were in there discussing with
22 her things that were just informational?

23 A. For the most part. Yes.

24 Q. And so, it was when Sargent Hagge came in that you
25 said that she -- you had left the room at the point that he

1 came in?

2 A. I was out of the room. When she asked for Sargent
3 Hagge, I went out to get him, because there is no
4 communication devices in there to call him into the room
5 right then. So I had to leave and go get him. And I
6 stayed out of the room when she was talking to him.

7 Q. And that reminds me of something. In this case there
8 was not tape-recording done at this meeting with her at
9 three o'clock in the morning; was there?

10 A. No.

11 Q. There was no video tape done of her during this period
12 of time?

13 A. No.

14 Q. And pursuant to your involvement, just to jump ahead a
15 little bit, there were, actually, no notes that you took
16 down or a report that you created related to this
17 interview; was there?

18 A. I did not create a report based on this interview. I
19 did have some handwritten notes about what was said.

20 Q. But you didn't do a report to indicate ---

21 A. No.

22 Q. You wouldn't have done something called, like, an
23 interview log?

24 A. No.

25 Q. In the course of your training as an officer, were you

1 ever advised that the better policy when you're taking a
2 statement or an interview for somebody was to do an
3 interview log?

4 A. I don't know anything about an interview log.

5 Q. Well, would it be -- let me ask you a question. Isn't
6 it best to memorialize the event with the writing and the
7 times, dates, things that were said, impressions, things of
8 that nature?

9 A. I, of course, write things down when I'm speaking to
10 them, but I wouldn't say that that's an interview log per
11 say. I don't know what an interview log per say is.

12 Q. Well -- but you didn't write anything down about this?

13 A. The background information was written down. I don't
14 know that was not relevant. It wasn't logged, and it
15 wasn't recorded on a supplemental sheet or anything like
16 that.

17 Q. So it's your testimony that after Hagge came in the
18 room and had the conversations with Kandy, that it was at
19 that point that he brought you back in to actually write
20 down a written statement?

21 A. Yes. When he came out and told me what had occurred,
22 I went back in the room and completed the advisement of
23 rights form and completed a written statement.

24 Q. And it's your testimony that the advisement of rights
25 form -- you've looked at this form? I know you have. The

1 one that was shown to you. This is State's 1 for ID
2 purposes. Well, let me show you this.

3 Would you like to mark this for me?

4 THE COURT: How would you like her to mark it?

5 MRS. GAY: Defense 1 for ID purposes.

6 THE COURT: All right. We'll mark it Defense 1 for
7 ID. Courtesy-wise, do you want to show it to the Sate.

8 MRS. GAY: Yes.

9 (Defendant's Exhibit Number 1 was marked for
10 identification.)

11 BY MRS. GAY:

12 Q. This document which is Defendant's ID Number 1, was
13 provided to the defendant in discovery in this case.
14 You're familiar with the discovery that the material, the
15 police reports, etcetera have to be given to the defendant
16 by the solicitor?

17 A. Yes.

18 Q. Okay. Could you describe what this is?

19 A. This is her copy of the advice of constitutional
20 rights.

21 Q. Okay. And I believe it's your testimony, that this
22 form you completed before you actually wrote down any
23 written statement?

24 A. Yes.

25 Q. Okay. And your aware though -- and I believe the

1 solicitor brought this out -- that there is no time on this
2 particular form?

3 A. That's correct.

4 Q. Okay. I'm going to now show you what State's Exhibit
5 ID Number 1. Can you identify this?

6 A. Yes. That was what Mr. DuTremble just handed me.

7 Q. Okay. And could you look at this closely where it
8 says "witnesses," and tell me what the difference between
9 the document that was provided in discovery and the
10 document that's now been show to you is?

11 A. The difference is that Sargent Hagge signed that form
12 after she was issued her copy of that form.

13 Q. Okay. This was provided in discovery to me by the
14 Solicitor's Office. This wasn't given to me by the victim
15 -- by the defendant in this case. It was given to me by
16 the solicitor. And the difference is, is that Sargent
17 Hagge has signed one of these forms, but my copy doesn't
18 have Sargent Hagge's signature?

19 A. I don't know. I can't explain why his signature is
20 not on this copy. And I can't explain why he has a copy
21 like that. I know, to my knowledge, that has been in the
22 file since the very beginning of this case.

23 Q. I understand that. But you will acknowledge that my
24 copy does not have Sargent Hagge's signature?

25 A. I acknowledge that. Yes.

1 Q. And neither one of these copies have a date -- I mean,
2 a time? They're dated but no time?

3 A. That's correct.

4 Q. And with regard to her statement, your testimony is
5 that you were writing the statement as Ms. Gilliard was
6 giving you the information?

7 A. Yes.

8 Q. And, certainly, you have testified under oath that you
9 believe that what you wrote was accurate?

10 A. Yes.

11 Q. And that it was contemporaneous with what she said?

12 A. Yes.

13 Q. And that, I believe, you said that you signed the
14 bottom of the form on page four?

15 A. Yes.

16 Q. And, also, I believe, you said that you had her write
17 this section out in her own hand, at the bottom of page
18 four, or at the top of page four?

19 A. At the top of page four. Yes.

20 Q. And you said that you had actually penned or wrote up
21 some questions which is the second page of the defendant's
22 statement where there were four questions? I believe that
23 you said you wrote those yourself?

24 A. I wrote those questions myself. Yes.

25 Q. And, certainly, you acknowledge -- and I think that

1 it's written out in the beginning of this statement, that
2 you actually wrote this statement; and Ms. Gilliard didn't?

3 A. That's correct.

4 Q. And she came in and wrote the answers to these
5 questions which were her handwriting?

6 A. Yes.

7 Q. Do you recall her telling you -- when the question
8 was: What was the plan for splitting up the money
9 afterward? Do you recall her telling you that he gave her
10 half the money?

11 A. No. That question was asked of her, and she wrote
12 half and half.

13 Q. Your version is that there was no discussion
14 whatsoever about how that question should be answered?

15 A. No. She wrote down half and half. That's what she
16 wrote in her handwriting and initialed.

17 MRS. GAY: One moment, please, Your Honor.

18 THE COURT: All right.

19 BY MRS. GAY:

20 Q. Do you recall having a conversation with --
21 questioning Ms. Gilliard about before she's talked to
22 Hagge, before she said, I'm going to tell you anything, do
23 you recall telling her that you believed that she knew who
24 did it, and that you wanted her to help y'all figure out
25 who did it?

1 A. I may have made that statement.

2 Q. You may have made the statement that you believed that
3 she had knowledge of who committed the offense?

4 A. That's very possible.

5 Q. But she wasn't a suspect?

6 A. We didn't know what her involvement was.

7 MRS. GAY: Your Honor, I don't believe I have any
8 further questions.

9 THE COURT: All right. Redirect, Mr. DuTremble?

10 REDIRECT EXAMINATION

11 BY MR. DUTREMBLE:

12 Q. Sargent Deckard, you indicated when you -- when you
13 indicated to her during the initial interview, before
14 Sargent Hagge got involved, that you may be just a witness;
15 we need to know what you saw. Is that what you told the
16 defendant? Did I write that down correctly?

17 A. Yes.

18 Q. So you didn't tell her, you're only a witness, come on
19 and talk to me? You told her, you may be only a witness?

20 A. That's correct.

21 Q. And you had to determine that from your further
22 investigations; is that correct?

23 A. Right.

24 Q. Did you do anything -- strike that. Let me ask this
25 question: In your opinion, was the confession given to you

1 by the defendant, given freely and voluntarily and
2 truthfully to the best of your knowledge?

3 MRS. GAY: Your Honor, I would object.

4 THE COURT: Well, that would be my conclusion, or
5 however you can say, did he notice anything about it that
6 indicated to him that she was not doing this freely and
7 voluntarily? That's your question; isn't it?

8 MR. DUTREMBLE: That would be my question.

9 WITNESS: There was no indication that she wasn't
10 doing it freely and voluntarily. After I read each of the
11 bottom of every page, it says, you know, she has read the
12 foregoing statement or has had it read to her. And it goes
13 on to state that it is true and correct to the best of my
14 knowledge, and she gives this statement freely and
15 voluntarily. And she signed below that. So, I mean, that
16 was an indication to me that she had given it freely and
17 voluntarily.

18 BY MR. DUTREMBLE:

19 Q. And she did not recant any of that?

20 A. Not to my knowledge she hasn't recanted any of it

21 Q. Thank you, very much.

22 THE COURT: Mrs. Gay?

23 MRS. GAY: I have one set of questions

24 RECROSS-EXAMINATION

25 BY MRS. GAY:

1 Q. You admit on the stand that the first indication that
2 she had any Miranda was by Hagge in a verbal form when you
3 walked out of the room?

4 THE COURT: Ask your question, again?

5 BY MRS. GAY:

6 Q. Well, I guess, your testimony is that Hagge is the
7 first person who gave her any type of Miranda warnings that
8 were given verbally to her when you walked out of the room?

9 A. When I was outside of the room and he came out after
10 speaking to her, and told me what she said, he indicated to
11 me that he had Mirandized her when he was in the room with
12 her, and that's when she told him.

13 Q. And you admit this was some three hours after you had
14 been with her since at least three o'clock in the morning?

15 A. It was a little after three o'clock. It wasn't three
16 o'clock. I'm not exactly ---

17 THE COURT: Well, was it about three hours?

18 WITNESS: It was about three hours.

19 THE COURT: So it was after you had been with her
20 about three hours?

21 WITNESS: Yes, sir.

22 BY MRS. GAY:

23 Q. And you admit that this statement that she signed is
24 signed at 7:45 in the morning?

25 A. Yes. That's what time I had indicated on there that

1 it was written.

2 Q. And I believe your testimony is that this advisement
3 of rights happened shortly before this statement was
4 written and signed?

5 A. Yes.

6 Q. And I think you acknowledged, also, that some other
7 officers had actually picked her up at her aunt's house,
8 and brought her to the station. You don't know what
9 happened then, but you got there about 3:00 in the morning?

10 A. Yes. That's correct.

11 Q. So it's fair to say that sometime before 3:00 in the
12 morning, and you're not quite sure when, she had been with
13 police officers all night long, until 7:45 in the morning?

14 A. From what was told to me is that she was contacted by
15 other officers from the department. I don't know exactly
16 what time. It was shortly before 3:00, because I was paged
17 and responded and arrived a little after 3:00. I don't
18 believe she was picked up at ten o'clock at night. I
19 believe it was shortly after they picked her up was when I
20 was contacted to come to the station.

21 Q. And your personal knowledge is that it was sometime
22 around three o'clock in the morning when you started
23 talking to her?

24 A. When I started talking to her, it was sometime around
25 three o'clock.

1 Q. And you testified, specifically, on redirect that you
2 may have told her that she was only a witness during those
3 three hours before she actually turned around and told you
4 that she was involved?

5 A. That's correct.

6 Q. I have no further questions.

7 MR. DUTREMBLE: Nothing further, Your Honor.

8 THE COURT: In that three hour period of time, what,
9 generally, was she telling you?

10 WITNESS: Background information about herself, about
11 the video poker problem, about her family and friends. And
12 toward the later part of the interview it was more me
13 talking to her, you know, letting her know that, you know,
14 there was some evidence recovered, there may have been
15 other video cameras in the game room that she didn't know
16 about, and interview techniques such as that. That was
17 toward the end of the interview, and that's when she asked
18 to speak to Sargent Hagge.

19 THE COURT: You've done this, now, for several years,
20 talking to people who have been arrested for crimes?

21 WITNESS: Yes, sir.

22 THE COURT: Do you usually have three-hour discussions
23 with people, and you're talking about things other than
24 their involvement in this crime?

25 WITNESS: Well, Judge, we talk to people for however

1 long, you know, we feel necessary. We have spoken to
2 people for longer. We have spoken to people for shorter
3 amounts of time. You know, the whole three hours wasn't
4 all background information. Most of it was. Most of it
5 was, you know, about her activities at the video gameroom,
6 what games she played, how she got started, how her friend
7 ---

8 THE COURT: But there was no discussion about her
9 particular involvement in this crime, in that three-hour
10 period of time?

11 WITNESS: No, sir.

12 THE COURT: You never asked her anything and she
13 responded?

14 WITNESS: No, sir.

15 THE COURT: All right. And during the whole period of
16 time, that three hours, she said the thing about could she
17 go home one time?

18 WITNESS: Yes, sir

19 THE COURT: She never brought it up again?

20 WITNESS: She never brought -- she never said, When
21 can I go home, again. She indicated that she was tired at
22 several points, and she just wanted to go home and go to
23 bed at several points; however, that's all she said. She
24 would continue to be -- when I'd ask her a question. So.
25 And she never made any effort to get up. And the last time

1 is when she said, When can I go home, and that's when I
2 told her.

3 THE COURT: When you told her?

4 WITNESS: That's when I told her, Anytime, but we're
5 here for your friend Dawn, and we'd like to resolve this.

6 THE COURT: Okay. And, now, the time you were doing
7 all this, she was someone you were interested in, but not
8 necessarily your prime suspect?

9 WITNESS: That's correct. We knew that she may have
10 witnessed something based upon her closeness with Dawn. We
11 had narrowed down that she may have been one of the last
12 ones to leave from other people that had played there.
13 And, also, we had her fingerprint on the bag, so we don't
14 know if she, you know, cleaned up with her. We knew they
15 had a relationship. We didn't know whether Dawn, you know,
16 asked her to help her with doing the chores around the
17 business.

18 THE COURT: All right. I have no further questions.
19 Anybody else?

20 MR. DUTREMBLE: I have nothing further.

21 MRS. GAY: Your Honor, I just have one thing in
22 furtherance of that line of questioning.

23 THE COURT: All right. Go ahead.

24 FURTHER EXAMINATION

25 BY MRS. GAY:

1 Q. You said that you never talked to her about the
2 incident; however, you told me and admitted that you sat
3 there and said to her, We know you know something about
4 this. Try to help us figure out who do this to your
5 friend.

6 You admit that you said that to her?

7 A. Yeah. I mean, I wasn't asking her what her
8 involvement in it was. She may have seen something.

9 Q. Wasn't the intent for her to say something to you in
10 response to that statement, to get information from her?
11 That was your intent?

12 A. To get information from her. Yes.

13 Q. Right. And during that period of time, she was crying
14 at that point. Didn't you tell me she was crying?

15 A. She was crying during the interview.

16 Q. Right. She was crying. And I think you,
17 specifically, said that you were using interview techniques
18 to try to get her to tell you information that she may know
19 about this crime?

20 A. That's correct. She never did.

21 Q. Thank you. I have no further questions. She never
22 told you, but she told Hagge?

23 A. Never told me. That's correct.

24 THE COURT: All right. You can step down. I assume
25 they want you to go get Detective Hagge.

1 (The witness leaves the witness stand.)

2 MR. DUTREMBLE: Judge, before we do Detective Hagge,
3 can we take up one matter?

4 THE COURT: Sure.

5 MR. DUTREMBLE: Mrs. Gay has introduced into evidence,
6 Your Honor, that advice of constitutional rights form which
7 she indicated that she got from me through discovery, in
8 which Sargent Hagge has not signed. I didn't send out
9 discover, but when we send out discovery from the
10 Solicitor's Office, we stamp "Rule 5" on our discovery. I
11 have no such document in my file. My file says Rule 5.
12 Every copy of that particular document I have there is two
13 signatures.

14 THE COURT: Where is the document at this time?

15 MRS. GAY: Your Honor, I have it, and that was
16 something I was going to discuss, because I have received
17 discovery along the way. And I have never seen this one.

18 MR. DUTREMBLE: I have never seen that one. I do not
19 have that in my file. I have checked all of my -- I've
20 checked my file; I've checked the case file; and I've
21 checked with Mr. Cook's file. The only thing we have in
22 our file is stamped Rule 5 on all of our copies. Before it
23 was stamped Rule 5, there are two signatures. I don't
24 where she got that thing with one signature, but I'm
25 telling the Court, as an Officer of the Court, I don't have

1 such a document in my file.

2 THE COURT: All right. Then, Mrs. Gay, as far as if
3 and when this matter comes before a jury, you're not to
4 refer to it as something you got from the Solicitor's
5 Office. At this time it's marked "ID", and as I recall,
6 the detective did say that was his signature on it, and it
7 does look like the same signature. So as to your comments
8 regarding whether she can say she got it from you, unless
9 she becomes a witness in this case she can't do that. But
10 as far as to it's admissability, it is something that seems
11 to be relevant to the case with the signature of the
12 detective on it. And it does seem to be the same thing
13 except for the fact that the signature of Detective Hagge
14 is not on it. So I'm not sure what else you want me to
15 decide.

16 MRS. GAY: Your Honor, I don't create that thing.
17 That came in my file.

18 THE COURT: Well, whether you did or not, he tells me
19 as an Officer of the Court he didn't give it to you. So,
20 therefore, you can't make a comment that he did. Now, if
21 you want to get on the stand and testify in that regard,
22 then that makes you a witness, and then we've got a
23 different point of view. But if you're using as an
24 attorney, then you cannot refer that you got it from him is
25 all I'm saying.

1 MRS. GAY: I will go back through -- you know, after
2 the evening, I will go back through my entire file and look
3 in it, and see if I have ever received that, Your Honor.
4 Because nothing that I have ever received in this file --
5 and I know Ms. Gilliard and I have discussed this on many
6 occasions -- has Sargent Hagge's signature on it. But I
7 will look again and see if I've overlooked ---

8 THE COURT: Okay. You can. But, please, understand
9 my ruling. My ruling is ---

10 MRS. GAY: I understand that, Your Honor.

11 THE COURT: --- that if you say anything you want the
12 jury to believe, then you got to be on the stand, as far as
13 you becoming a witness on the matter.

14 MRS. GAY: I'm much more concerned about the time,
15 Your Honor, than the signatures. But I'm going to look,
16 and if I believe that I need to redress that with the
17 Court, I will let you know.

18 THE COURT: Now, that does not mean this document is
19 not admissable, because it could very well be admissable.
20 It is a document that does seem to be the exact same
21 document as the one that's been introduced for this hearing
22 as State's Exhibit 1, without the signature of Detective
23 Hagge. So, it doesn't mean it might not be admissible, but
24 all it means is that you can't make comments that become
25 comments that are really not ones that both agree are

1 correct.

2 MRS. GAY: Yes, sir.

3 THE COURT: Unless you become a witness. All right.

4 You ready?

5 MR. DUTREMBLE: We call Detective

6 KEN HAGGE, being first duly sworn,

7 testified as follows:

8 THE COURT: If you would, sir, give us your full name.

9 WITNESS: Sargent Ken Hagge. H-a-g-g-e.

10 THE COURT: All right. Your witness, Mr. DuTremble.

11 MR. DUTREMBLE: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. DUTREMBLE:

14 Q. Sargent Hagge, by whom are you employed?

15 A. The City of North Charleston Police Department.

16 Q. And in what capacity, sir?

17 A. I am the supervisor over the major case unit and
18 general investigations.

19 Q. And how long have you been so employed?

20 A. Thirteen years with the City of North Charleston.

21 Q. And how long have you been a supervisor?

22 A. Since 1994.

23 Q. Did you have occasion in the early morning hours of
24 January 9th of the year 2000 to become involved with Kandy
25 Gilliard, the defendant in this case?

- 1 A. Yes, sir. I did.
- 2 Q. And were you also working on the Dawn Russ murder
3 case?
- 4 A. Yes, sir. I was.
- 5 Q. And in conjunction with your work on the Dawn Russ
6 murder case, did you have occasion to go to the North
7 Charleston Police Department in the early morning hours of
8 January the 9th?
- 9 A. Yes, sir. At approximately 3:30.
- 10 Q. And what was your purpose for arriving there at
11 approximately 3:30?
- 12 A. A specialty team, called a PACT team, had me paged,
13 and related that they had found Kandy Gilliard. And I
14 asked them if she would voluntarily come to the station for
15 questions, and they related that she had. So I told them
16 to bring her to the station, and I would meet them there.
- 17 Q. And you arrived at approximately what time?
- 18 A. I got the call around 3:30 or a quarter 'til 4:00.
- 19 Q. And when you arrive, was Kandy Gilliard at the
20 station?
- 21 A. Yes, sir. She was.
- 22 Q. Was she in handcuffs?
- 23 A. No, sir. She was not.
- 24 Q. Was she in belly chains?
- 25 A. No, sir.

1 Q. Was she being physically restrained in any way, shape
2 or form?

3 A. No, sir. When I got there, I believe, she was sitting
4 at the big table, the conference table, in the bay.

5 Q. Did you have occasion, sir, to speak with her?

6 A. Yes. Actually, I, on my way in, had Corporal Deckard
7 paged, so he could actually do the interview on Ms.
8 Gilliard. I arrived, spoke with the PACT team member,
9 spoke with Corporal Keys, asked that she be moved to the
10 main interview room, interview room 1. They did that, and
11 when Corporal Deckard arrived, he began speaking with her.
12 At about 6:15, Corporal Deckard came to my desk and advised
13 me that Kandy or Ms. Gilliard wanted to speak with me. I
14 entered the main interview room, and began speaking with
15 Ms. Gilliard.

16 Q. And why did Ms. Gilliard want to talk to you?

17 A. Initially, I didn't know. Once I entered the
18 interview room, I entered it by myself, with her.
19 Initially, I didn't know. She did strike up conversation.
20 She asked me if she told the truth could she go home. She
21 asked several questions to which I answered.

22 Q. And at this point in time, were you interrogating her
23 in any form?

24 A. No. I was just simply answering her questions.

25 Q. And when you were answering her questions, did you

1 make her any promises?

2 A. No. I did not.

3 Q. Did you tell her that if you talked to you, you would
4 see that she only got six months probation on a murder
5 case?

6 A. No. I did not.

7 Q. Did you tell her that if she spoke to you, you would
8 make sure that the co-defendant, B.J. Johnson, didn't do
9 any harm to her children?

10 A. No. I did not.

11 Q. Did you indicate to her that if she talked to you,
12 that you would come to my office and ask me to be light on
13 her in this particular case?

14 A. No. I did not.

15 Q. Did you threaten her in any fashion?

16 A. No, sir.

17 Q. Did you threaten to take away her kids, have DSS come
18 in, or anything like that?

19 A. No, sir.

20 Q. And the questions that she was asking you, do you
21 recall what kind of questions those were?

22 A. Yes, sir. Can I look at my notes?

23 Q. Sure.

24 MRS. GAY: Can you repeat the question?

25 MR. DUTREMBLE: The questions that Ms. Gilliard was

1 asking. Can you relate to us what kind of questions those
2 were?

3 WITNESS: Initially, she asked me if she told the
4 truth, could she go home. And to that, I related,
5 depending on what the truth was. I advised her that if she
6 was, in fact, involved, she would not be going home. She
7 then asked if she told the truth, what kind of deal would
8 she get. I told her that those sort of things were done at
9 the Solicitor's Office, and we had no control over that.
10 She then asked me how much time she would do in jail if she
11 was involved. And I related that if she was involved, it
12 was not "if" she was going to jail, but "how long" she was
13 going to jail. And I explained that a judge would make the
14 determination on how long she went to jail. I explained
15 that the Courts would look upon her statement as
16 cooperation, but I didn't know how much that would help
17 her. And at that point, she related she did want to tell
18 me the truth.

19 BY MR. DUTREMBLE:

20 Q. She told you she wanted to tell you the truth. Now,
21 when Kandy Gilliard told you that she wanted to talk to you
22 and tell you the truth, what if anything did you do?

23 A. At that point, not knowing what Corporal Deckard had
24 done -- this was probably after about fifteen minutes,
25 about 6:30 -- I pulled out a rights card that I do carry,

1 and verbally advised Kandy of her rights.

2 Q. Do you have that rights card that you carry?

3 A. Yes, sir. I do.

4 Q. And can you tell the Court what rights you advised her
5 of?

6 A. You have the right to remain silent. Anything you say
7 can and will be used against you in a court of law. You
8 have the right to an attorney, and to have your attorney
9 present while you are being questioned. If you want an
10 attorney and cannot afford one, one will be appointed for
11 you before you answer any questions.

12 And then I asked, Do you understand each of these
13 rights as they were explained? Understanding these rights,
14 do you still wish to talk to me?

15 Q. Did she indicate that she wanted to talk to you?

16 A. She did.

17 Q. Did she ask for an attorney?

18 A. No. She did not.

19 Q. Did she tell you she would not speak to you until she
20 got an attorney?

21 A. No. She did not.

22 Q. And what did she tell you after she indicated that she
23 wanted to talk to you?

24 A. After she indicated that she did understand her
25 rights, she told me that she had robbed Dawn. And she went

1 into a brief story about what had happened. That she had
2 robbed Dawn; that Dawn had fallen asleep when she was there
3 at the game room; that she had gotten a hold of her
4 boyfriend's brother, B.J.; that he had come over to the
5 game room, and that the actual door was locked; and that
6 B.J. initially scared her, because he had a wolfman mask
7 on. She let him in. She related that they went to the
8 back office where she placed the plastic bag over Dawn's
9 head. She related that they got the keys to the money.
10 They took the money, and then they left. They left the
11 game room.

12 Q. About how long did it take for her to explain the
13 scenario?

14 A. Roughly, about a half hour. The in and out crying,
15 stopping, roughly, about a half hour from when I read her
16 her rights to I, actually, said -- asked her to stop. I
17 felt like Corporal Deckard, knowing more about the case,
18 needed to take a written statement. So I had Corporal
19 Deckard come into the room.

20 Q. And when Corporal Deckard came into the room, what
21 took place then, sir?

22 A. It was around seven o'clock. I advised him, walking
23 to the interview room, that she had confessed; that I had
24 verbally advised her of her rights, but we needed to do a
25 written Miranda. He grabbed that form on the way to the

1 interview room. And I would say, roughly, around seven
2 o'clock, we both entered the interview room with Ms.
3 Gilliard where he filled out the Miranda warning. I
4 observed this, and I signed it.

5 Q. And were you present when she gave the written
6 statement to Detective Deckard?

7 A. No. I was not.

8 Q. Were you present after she gave the written statement
9 to Detective Deckard?

10 A. I was present in the Detective Division, but I was not
11 in the interview room. After she acknowledged her rights
12 and everybody signed the rights form, I departed the
13 interview room.

14 Q. Now, after she gave Detective Deckard the written
15 statement that has already been marked in evidence for this
16 particular hearing, did you have occasion to read that
17 particular statement, sir?

18 A. I'm sure I did. I don't recall. But I'm sure I did.

19 Q. Have you had occasion since then to read that
20 statement?

21 A. Not that I know of. No.

22 Q. And at any time while you were with Kandy Gilliard,
23 did she ever indicate to you that she did not want to speak
24 with you?

25 A. No.

1 Q. Did she ever indicate to you that she wanted a lawyer?

2 A. No.

3 Q. Did you display any weapons or make any threat of any
4 kind to get her to talk to you?

5 A. No.

6 Q. Did you coerce her in any way, shape or form to get
7 her to talk to you?

8 A. No.

9 Q. And at anytime since she gave you her verbal
10 confession, did she come back to you and recant anything
11 that she told you on January 9th of 2000?

12 A. No. She has not.

13 Q. Thank you, sir. If you would, please, answer any
14 questions Mrs. Gay might have.

15 THE COURT: All right. Mrs. Gay?

16 CROSS-EXAMINATION

17 BY MRS. GAY:

18 Q. Sargent Hagge, you are aware from the earlier
19 proceedings in this matter, and from discussions with the
20 solicitor, that there is a report that you created that was
21 not given to me until this morning? You're aware of that;
22 right?

23 A. I'm aware that my investigator notes were turned over
24 to you this morning.

25 Q. Right. And until this morning, I did not have your

1 investigator notes on this particular interview or any of
2 your involvement with Ms. Russ's case? You're aware of
3 that?

4 A. Right.

5 Q. And I believe that what you just testified to is what
6 is pretty much verbatim written in your report, in your
7 notes; right?

8 A. That's correct.

9 Q. And so it's your testimony that you were there at 3:00
10 or so in the morning, around the time -- I think, you said
11 you got there at 3:45 in the morning?

12 A. Roughly. I was at home in bed and received a page.

13 Q. And I think you said that Corporal Keys is the person
14 who initially had brought Ms. Gilliard to the station?

15 A. It was Corporal Keys's team. I'm not exactly sure
16 which officer brought her, but Corporal Keys is the
17 supervisor of that specialty team.

18 Q. So you're aware that some other officer, other than
19 you, had some involvement with Ms. Gilliard earlier in the
20 evening, before 3:45 in the morning?

21 A. Yeah. They paged me and told me.

22 Q. And so they told you that they were bringing her down
23 to the station, and then you, I believe, said that you had
24 Deckard talk to her. You paged him; had Deckard come in
25 and talk to her?

1 A. Correct.

2 Q. And you, specifically, said that at the point that
3 you're in the interview area, but he's the one speaking to
4 her, initially?

5 A. Yes.

6 Q. And could you hear anything that was going on? Could
7 you hear Kandy crying in there?

8 A. No. I was at my desk.

9 Q. Okay. And then you said that at sometime, I think,
10 around six o'clock in the morning, something like that, you
11 said that he came and got you at your desk, and said that
12 she wanted to talk to you?

13 A. About 6:15. Yes, ma'am.

14 Q. And you said that not knowing exactly what Deckard had
15 done, you decided that it was best to do your own version
16 of the Miranda?

17 A. Well, not initially. I didn't even know what she
18 wanted when I first went in there.

19 Q. Okay. You know that Deckard's been there with her for
20 a couple of hours, maybe two or three hours, interviewing
21 her before you walked in there -- a couple of good solid
22 hours?

23 A. He had been with her. I knew that. Yes.

24 Q. Interviewing her about the incident where Ms. Russ was
25 found dead?

1 A. Correct.

2 Q. And that pursuant to -- you were lead investigator in
3 this, so you knew that there was a fingerprint of hers on
4 the plastic bag?

5 A. I'm the supervisor. Yes.

6 Q. Supervisor. You knew that there was that there was a
7 fingerprint of hers on the plastic bag that was found under
8 the body?

9 A. Yes.

10 Q. You knew that Deckard, as well as maybe even you,
11 believed that she had information that could lead to who
12 actually committed the crime?

13 A. No. I believed that she had information. Whether or
14 not it connected her or anybody else to the crime that
15 remained to be seen.

16 Q. Okay. But, certainly, during the course of your
17 discussion with her, you said that she told you that she
18 wanted to talk?

19 A. She was talking to Deckard, and at 6:15 Corporal
20 Deckard came over to my desk and said that Ms. Gilliard
21 wanted to speak with me. He then went toward the bathroom.
22 I went to the interview room. That's when we began our
23 discussion and to what I earlier testified to.

24 Q. And do you recall telling her that you had actually
25 gone to her grandparents house and seen her children, or

1 talked to them about her children; that she had children?

2 A. I don't even recall that she has children.

3 Q. You don't recall talking to her about that?

4 A. No.

5 Q. Do you recall telling her or having a conversation
6 with her at all about her children?

7 A. No, ma'am.

8 Q. You don't recall that either?

9 A. No, ma'am.

10 Q. Do you recall telling her that she may be a witness,
11 and that y'all just wanted to know what happened and who
12 did what?

13 A. No, ma'am.

14 Q. You don't remember that?

15 A. I don't recall that.

16 Q. So you don't really remember very specifically what
17 was said between you and her, other than what's written in
18 the report?

19 A. Correct.

20 Q. You do remember -- do you recall telling her that they
21 had fingerprints of hers at the crime scene?

22 A. I didn't mention that to her. No.

23 Q. Do you recall showing her pictures of Ms. Russ?

24 A. No, ma'am. I didn't have any pictures.

25 THE COURT: We're still talking about that morning;

1 are we not? At 6:00 or so in the morning?

2 MRS. GAY: Right. Between 6:00 and 7:25.

3 One moment, Your Honor. I just want to ask my client
4 one thing.

5 THE COURT: Okay.

6 BY MRS. GAY:

7 Q. Do you remember her specifically talking about it, and
8 not being about to say the person's name, and feeling the
9 need to actually write the name down? Do you remember
10 that? That she was crying? She was really upset. She

11 said, I can't say it. And you said, Can you write it down?

12 A. I know she was upset. But once we began talking about
13 it, she said Dawn. She said the word, "Dawn." But I don't
14 recall. That very well ---

15 Q. I meant the person who strangled Dawn or killed Dawn.
16 Do you remember her writing down on a piece of paper that
17 it was Benjamin Johnson, or that it was B.J. or something
18 like that?

19 A. No.

20 Q. Okay. After she told what had occurred, did you then
21 go contact some other people to go get warrants for Brian
22 and Benjamin Johnson?

23 A. Not after I spoke with her.

24 Q. Not until after the signed statement -- the written
25 statement was done?

1 A. Yeah. I went -- after I spoke with her and Deckard
2 went back in and finished the statement and came back out,
3 and him being a supervisor as well, he advised me at this
4 point, we did have enough for warrants for two other
5 people. And he explained the situation for accessory after
6 the fact of murder, and then the actual murder charge on
7 the other one.

8 Q. Certainly, you would agree that by the time you came
9 in there at six o'clock in the morning, you said she was
10 crying. She was upset. And had she told you that she
11 hadn't been able to go to the bathroom or had anything to
12 eat?

13 A. I'm not ---

14 Q. I believe there was an occasion where she went to the
15 bathroom and you went with her? Not in the bathroom, but
16 down the hall?

17 A. Right. She very well may have. I don't recall. I
18 really don't.

19 Q. Do you recall after Ms. Gilliard went to the restroom
20 that on the way back to the interview room, that you took
21 her and showed her pictures of your children and your
22 family on your desk? Do you keep pictures of your children
23 or your family -- I don't know if you have children -- your
24 family on your desk?

25 A. Yes. I don't know if I had any then. But, yeah, I do

1 have a picture of my son and daughter.

2 Q. Do you recall showing them to Ms. Gilliard?

3 A. I don't recall her being over in that area. I can't
4 think that I would have taken the pictures of my family
5 into the interview room. I don't recall. No. Unless the
6 whole situation was completely over, and she came over and
7 sat at my desk waiting to be transported. I don't recall.
8 She very well could have seen them.

9 Q. She could have seen pictures of your children?

10 A. Sure.

11 Q. Y'all could have discussed that there were pictures of
12 your children on the desk?

13 A. Sure.

14 Q. But you don't recall discussing Ms. Gilliard's
15 children with her?

16 A. No, ma'am. Like I said, I didn't even know she had
17 children.

18 Q. I have no further questions.

19 THE COURT: Redirect?

20 MR. DUTREMBLE: Nothing further, Your Honor.

21 THE COURT: Okay. All right. You may step down.

22 (The witness leaves the witness stand.)

23 THE COURT: Any other witnesses from the State?

24 MR. DUTREMBLE: No further witnesses, Your Honor.

25 THE COURT: Now, Mrs. Gay, do you plan to put

1 witnesses up in regard to this issue?

2 MRS. GAY: Yes, sir.

3 THE COURT: Just so I know, about how many do you plan
4 to put up?

5 MRS. GAY: I plan to put my client up and her mother.
6 Her mother will be very short.

7 THE COURT: It looks like really as far as the
8 evidentiary portion of the case, we're not going to get
9 started today. I don't want to just get -- I'd rather not
10 -- I'm not one to just do opening statements. I would
11 rather have something more other than that. I think I'm
12 going to bring the jury in, and let them go home until nine
13 o'clock tomorrow morning; and let them know that we might
14 have to stay late tomorrow, because we're going to go a
15 long way tomorrow. So stay put where you are.

16 Bring the jury in, please.

17 (The jury returns to the courtroom.)

18 THE COURT: Ladies and gentlemen, I'm still handling
19 matters. As I'll explain to you further tomorrow, as a
20 jury, you make decisions on the facts and I have to
21 instruct you on the law. And many times with legal
22 matters, I must decide before you being your considerations
23 of the facts. I'm still in the process of that. So it
24 won't be that much longer. However, it would be a point in
25 time that would not be appropriate to begin the trial at

1 five o'clock or 5:15, because we wouldn't get that much in
2 and it would be time to go home.

3 So I'm going to let you all go now. And we should be
4 ready start in the morning. Now, here's what I'm going to
5 let you do. We're going to start at 9:00 tomorrow morning.
6 I do not want you to discuss this case or anything about
7 it, anything you've heard at all today, with anyone at home
8 tonight. And tomorrow, once we begin the case, we're going
9 to put you under oath again, and you're subject to being
10 asked by me or anyone else about any discussions you may
11 have had with anyone, including your family members,
12 friends, or whatever. Just forget about it for this
13 evening, and just go home and enjoy yourselves and relax.

14 Now, tomorrow -- I'm giving you sort of an advanced
15 notice -- we may stay a little longer tomorrow night. We
16 may stay to around 6:00 or 6:15. So just depending on how
17 things go, so you'll know. I don't plan to keep you until
18 8:00 or 9:00, but it could be as late as 6:00 or 6:15, or
19 it may be 6:30; but not too much longer than that. But
20 we're going to start so we can get some things in and
21 before you on this case. So just to give you some advance
22 notice. But if you would, go home, and come back to that
23 jury room tomorrow at 9:00 am. You may leave at this time.
24 We will stay.

25 Oh, yeah. I forgot one other thing. Bring that juror

1 back. One other thing I forgot. I need to mention to you
2 that this matter may be in the press. And as I told you
3 all when you were qualified, you're to decide this case on
4 what you hear in the courtroom. For that reason, I am
5 instructing you in no way to read any local newspapers.
6 Any local newspapers will be any newspapers that are
7 published in Charleston, in Dorchester County, or in
8 Berkeley County. So any newspaper published in those
9 counties, including the Post In Courier. Don't read those
10 papers at all. If you want to read USA Today, if you want
11 to read a book, or something of that nature, fine. But
12 don't look at those newspapers.

13 If for some reason, somehow something falls in front
14 of you and you see something there, let me know tomorrow.
15 Let me know tomorrow. But do not read any local papers at
16 all tomorrow. Okay. We'll see you later. Bye bye.

17 (The jury leaves the courtroom for the evening
18 recess.)

19 THE COURT: Mr. Bailiff, make sure no one leaves the
20 courtroom, so the jurors will have time to leave. So they
21 won't see each other in the hallway as far as witnesses or
22 parties or families.

23 All right. Now, at this time, Mrs. Gay, you have
24 witnesses?

25 MRS. GAY: Yes. Your Honor, I would like to call

1 Emily Gilliard. She's sequestered and is in the hall.

2 THE COURT: Okay. Would you ask someone to get her
3 for us, please.

4 EMILY GILLIARD, being first duly sworn,
5 testified as follows:

6 THE CLERK: Please, state your full name for the
7 Court, and spell your last.

8 WITNESS: Emily Gilliard. G-i-l-l-i-a-r-d.

9 THE COURT: All right. Mrs. Gay, your witness.

10 MRS. GAY: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MRS. GAY:

13 Q. Mrs. Gilliard, what is your relationship to the
14 defendant, Kandy?

15 A. That's my second daughter.

16 Q. And I'm just going to take you back to a time frame
17 when there -- this hearing is about the statement that
18 Kandy gave. And you remember the night that Kandy was
19 taken to the police station?

20 A. It was on the afternoon of the 9th, I received a phone
21 call saying that the detectives, they picked her up and
22 took her for questioning.

23 Q. And who was this phone call from?

24 A. My brother girlfriend.

25 Q. And how did she know that this had occurred. I don't

1 want you to tell me what she said, but, you know, what was
2 your understanding?

3 A. Okay. She said that the detectives followed Kandy at
4 her house, and waited until she got out of the car. And
5 they told her that they wanted she -- Kandy to come with
6 them down to the policemen station.

7 Q. Did she indicate to you how many of them there were or
8 how many cars there were?

9 A. No. She didn't.

10 Q. So it was your understanding that the police had come
11 to the house, and had taken her to the police station. Do
12 you have any idea about what time you got this phone call?

13 A. It was about 9:00 or 9:30 p.m.

14 Q. P.m.?

15 A. Yes.

16 Q. And how do you know that that was about the time?

17 A. Because it wouldn't have been long before I got off at
18 eleven o'clock.

19 Q. Okay. And how do you know that you got off at eleven
20 o'clock on the 9th?

21 A. Because I worked from 3:00 'till 11:00.

22 Q. And you were working that day?

23 A. Yes. Night. Yes, ma'am. Evening.

24 Q. Working evening?

25 A. Yes, ma'am.

1 Q. Where did you work at that time?

2 A. At the -- it's a nursing home. Ashley Crossing --
3 that's the name of it -- Nursing Home.

4 Q. Do you remember what day of the week this occurred?

5 A. I think it was on a Sunday, Sunday afternoon.

6 Q. And so your understanding was that this woman --
7 what's her name?

8 A. Dana Nelson.

9 Q. That Dana Nelson had told you that some police
10 officers had come and taken Kandy to the police station?

11 A. Right.

12 Q. And at what time did you say this occurred, again?
13 That you got the call?

14 A. About 9:30 something.

15 Q. Did you ever have occasion to see Kandy that evening
16 at the police station?

17 A. No, ma'am.

18 Q. Did you make any attempts to see Kandy that evening at
19 the police station?

20 A. Well, I called so I could find out what was going on,
21 and I spoke to a Sargent Hagge. And I asked him if anybody
22 could tell me where Kandy Gilliard was, and he said Kandy
23 is here sleeping.

24 Q. He told you that Kandy was sleeping?

25 A. That's what he said.

1 Q. Did he tell you whether or not they were asking her
2 any questions?

3 A. No. He didn't mention any questions. So I told
4 Sargent Hagge -- I said, Well is she sleeping on her own?
5 And he said, What do you mean if she's sleeping on her own?
6 I said, Okay. Well, when Kandy wakes up, tell her to call
7 her mama, and tell her that I love her. And he said,
8 Okay.

9 Q. And then what happened?

10 A. Okay. About thirty minutes went by, thirty-five to
11 forty minutes went by and Kandy didn't call me. So I
12 called back down at the police station, and I spoke to
13 Sargent Hagge again. And I asked him if he could tell me
14 where Kandy was, and he said Kandy had already walked --
15 gone home. And I said, Walked -- gone home? And he said,
16 Yes. I said, Nobody couldn't give her a ride back home?
17 He said, No.

18 THE COURT: What time did you say that was about?

19 WITNESS: About 9:30 or 10:00.

20 THE COURT: 9:30 or 10:00?

21 WITNESS: Yes, sir.

22 THE COURT: All right. Go ahead.

23 BY MRS. GAY:

24 Q. And you say that during the period of time that Kandy
25 was at the station, did she ever come home?

1 A. No, ma'am.

2 Q. Did you actually go to the station?

3 A. No. I called, because I was on my job. I was still
4 on my job.

5 Q. And what time would you have gotten off work?

6 A. Eleven o'clock.

7 Q. Where were you calling from?

8 A. Ashley Crossing Nursing Home.

9 Q. And would you have gone to the police station, if you
10 thought Kandy had been there?

11 A. Yes. I would have.

12 Q. What was your intent when you asked him where Kandy
13 was?

14 A. I really wanted to find out what was going on. So
15 after he told me that Kandy had already walked -- gone
16 home, so I said, Well, okay.

17 Q. And you didn't call back?

18 A. I didn't call back since.

19 MRS. GAY: I have no further questions, Your Honor.

20 THE COURT: All right. Mr. DuTremble?

21 MR. DUTREMBLE: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. DUTREMBLE:

24 Q. Ms. Gilliard, when did you tell Mrs. Gay about this
25 story?

1 A. When I first hired her. I can't remember.

2 Q. How long ago?

3 A. I can't remember exactly when I hired her.

4 Q. How long ago was it?

5 A. Maybe four or five months.

6 Q. Okay. Four or five months ago. So in any event, it
7 was before she went and hired Professor Richard Leo out in
8 California; wasn't it?

9 A. This was before she hired Richard?

10 Q. Leo. You know, your expert?

11 A. Yes, I believe. Yeah.

12 Q. And can you give any reason to the Court, why a story
13 like this wasn't provided to Richard Leo, so he could use
14 it when he made his determinations?

15 A. I have no knowledge why.

16 Q. Have you listened to the tape of Richard Leo?

17 A. No, sir.

18 Q. Well, when you listen to it during the trial, would
19 you be surprised if I tell you that nowhere on that
20 four-hour tape is this story ever mentioned by the good
21 professor? Just don't know?

22 A. Just don't know.

23 Q. Thank you, ma'am. I don't have any further questions.

24 THE COURT: Anything else, Mrs. Gay?

25 MRS. GAY: No, sir.

1 THE COURT: You may step down, now.

2 WITNESS: All right.

3 (The witness leaves the witness stand.)

4 MRS. GAY: Your Honor, I would call Ms. Gilliard,
5 Kandy Gilliard.

6 THE COURT: Before we do that, Ms. Gilliard, stand up
7 right where you, please, ma'am. Ms. Gilliard, I want to
8 make sure, ma'am, that you understand the nature of the
9 proceedings that we are in.

10 And by the way, are any jurors or friends or families
11 of jurors in this courtroom?

12 (No response.)

13 THE COURT: Now, Ms. Gilliard, she's calling you at
14 this time in regard to my ruling on the admissibility of
15 any statements you made to the police officer, written or
16 oral in regard to this case, admissibility. Just because I
17 admit them doesn't mean that the jury has to believe them
18 or anything of that nature. The only question is whether
19 I'm going to admit them in evidence or not. And that's
20 where we are at this stage.

21 Now, you do not have to testify at this stage at all
22 about this. The burden is on the State to prove to me that
23 they are admissible. And it's not upon you to prove to me
24 that they are not admissible. They have a burden of
25 proving that they are admissible for the jury's

1 consideration. So I want to make sure you understand that.
2 If you do testify, you will be subject to cross-examination
3 by the State about the admissibility of these statements.
4 However, I want to make sure you understand that if for
5 some reason in your questioning, either by your attorney or
6 by the State, you have some concern about the answer, that
7 it may tend to incriminate you otherwise, stop for a
8 second; and say you're concerned about answering the
9 question, and I'll make some ruling about it or whatever
10 else. So, please, know -- and, also, at any time that you
11 wish to stop, you can stop at any time.

12 DEFENDANT: Yes, sir.

13 THE COURT: And you can step back down any time you
14 want to stop. We'll just stop this proceeding at that
15 time. Do you understand that?

16 DEFENDANT: Yes, sir.

17 THE COURT: No one can make you testify here in regard
18 to this. Now, do you want to testify in regard to this
19 issue?

20 DEFENDANT: Yes, sir.

21 THE COURT: All right. And you do understand that if
22 you wish to stop at any time, you can do so?

23 DEFENDANT: Yes, sir.

24 THE COURT: And if you have any questions or you're
25 confused or if you're concerned that some question, either

1 by your attorney or by the State, may tend to incriminate
2 you, if you wish not to answer, you don't have to answer.
3 Do you understand?

4 DEFENDANT: Yes, sir.

5 THE COURT: And you can stop and look to me, and ask
6 for me to talk to the attorneys if you want to.

7 DEFENDANT: Okay.

8 THE COURT: Okay. Do you understand all that?

9 DEFENDANT: Yes, sir.

10 THE COURT: All right. Now, Mrs. Gay and Mr.
11 DuTremble, you both understand that we're not here into the
12 issues of what occurred on the evening in question as far
13 as the allegations. We're only here on the discussion of
14 her discussions and presences and proceedings involving
15 these two police officers, and maybe shortly leading up to
16 that. But nothing else.

17 Do you understand that, Mr. DuTremble?

18 MR. DUTREMBLE: I understand, Your Honor.

19 THE COURT: And, Mrs. Gay, I don't want you to open
20 the doors in that regard, either.

21 MRS. GAY: Yes, sir.

22 THE COURT: All right. Come around, please, ma'am.

23 KANDY GILLIARD, being first duly sworn,
24 testified as follows:

25 THE CLERK: Please, give your full name for the Court,

1 and spell your last.

2 WITNESS: Kandy Latrice Gilliard. G-i-l-l-i-a-r-d.

3 THE COURT: Mrs. Gilliard, can you tell me how you
4 spell your first name?

5 WITNESS: Kandy with a "K", a-n-d-y.

6 THE COURT: K-a-n-d-y?

7 WITNESS: Yes, sir.

8 THE COURT: All right. You may proceed, Mrs. Gay.

9 DIRECT EXAMINATION

10 BY MRS. GAY:

11 Q. Ms. Gilliard, as the Judge instructed, we're sort of
12 specifically concentrating on this night of the 9th. And
13 if you don't mind telling the Court, please, what you can
14 remember about that night. And if you could start with
15 when this all sort of started happening.

16 THE COURT: Now, when you say that, what do you mean,
17 Mrs. Gay? This all started happening? You mean, when the
18 officers called her?

19 BY MRS. GAY:

20 Q. When the officers -- okay. When you were first
21 approached by the officers, what time of day or evening was
22 it?

23 A. You mean from January 5th, or do you mean the day of
24 January the 9th?

25 Q. All we're talking about right now is January 9th.

1 A. Okay. It was about 11:30. I would say, about 11:00,
2 11:30 when I was pulling up inside the yard at Oakwood
3 Avenue where my uncle and his girlfriend lives. And four
4 police cars were parked on the right-hand side -- which her
5 trailer sits on the left-hand side. They were parked with
6 all their cars heading toward the fence of another
7 residential home. And they didn't have lights on or
8 anything. They didn't have their blue lights on or
9 anything, but they had their headlights on.

10 And when I pulled up inside the yard, they came in
11 behind me. So I got out the car, and I went inside the
12 house; and they were calling my name, Kandy, Kandy. And I
13 went inside the house to tell Dana -- to let Dana know that
14 police officers were out there, but she didn't get up out
15 her bed. And I can hear them coming around -- walking
16 around the trailer, and talking on the telephone or their
17 ---

18 Q. Radios?

19 A. Yeah. So I went back to the door. I told Dana that I
20 was going to talk to the police. And when I went back to
21 the front door -- he's a tall white male with a bald --
22 he's going bald up in here, and he told me -- he asked me
23 why did I run from him. And I told him I wasn't running
24 from him; I wanted to know why they were harassing me. And
25 he told me that someone had given him orders to come and

1 get me, because they wanted to question me, and I would be
2 helpful to them.

3 Q. So they initially told you that they -- you were told
4 that they had come to get you?

5 A. Yes.

6 Q. Okay. And what did you say?

7 A. And I asked him did I need my stuff, and he told me
8 no. And he told me -- the black officer that was with them
9 -- he told me to make sure that all the car doors were
10 locked, and all I needed was the keys. And I asked him if
11 he was going to bring me back to where he picked me up
12 from, and he told me, yes.

13 Q. Okay. And where did they take you?

14 A. To the North Charleston City Police Department.

15 Q. And about what time did you get there?

16 A. I don't know exactly what time I got there. I do know
17 that it's about a seven minutes drive from where my aunt
18 lives -- from where my uncle and his girlfriend lives.

19 Q. So when you first got to the police department, where
20 did they put you? Where did you go?

21 A. At first, they had me sitting at a table inside the
22 big room. I don't know what you call it. But they had me
23 sitting at that table, and then the tall guy with the kind
24 of -- he was going bald -- he told me that I can go and
25 have a seat inside the conference room, I guess, where they

1 had this glass mirror at. But before I went inside there,
2 I asked him what was taking so long, and he told me that he
3 had paged someone. And I asked him if it was Perry, and he
4 told me, no, Perry couldn't make it. And he told me that
5 he had paged someone, and they were coming down to talk to
6 me.

7 Q. Okay. And so he said that somebody -- they had paged
8 somebody, and somebody was coming down to talk to you?

9 A. Yes.

10 Q. And, eventually, did somebody come and talk to you?

11 A. Uh-huh.

12 Q. And which somebody was that?

13 A. At first, it was Detective Deckard. He spoke to me.

14 Q. And Detective Deckard is the first person who was --
15 the dark haired gentlemen who first talked to you?

16 A. Uh-huh.

17 Q. And when you first started talking to Deckard, what
18 was he telling you?

19 A. He started out by asking me things about the gameroom,
20 and then he switched to my children and my background,
21 where I worked at; and have I ever sold my body or my kids
22 for the same person; and how long was I resident of the
23 Charleston County; and where my parents were from; and how
24 long -- if my parents were together; and stuff like that.

25 Q. And before he asked you anything, even this

1 information about your background, did he tell you anything
2 about why you were there?

3 A. He told me that I was there because he thought that I
4 was a witness with what had happened with Dawn. He told me
5 that they wanted to talk to me, because they thought that I
6 would be helpful to them.

7 Q. And when he said that he thought you were a witness
8 and that you would be helpful, did he ever tell you that
9 they had evidence, fingerprints of yours in the place?

10 A. No, ma'am.

11 Q. Did he ever tell you -- did he ever tell you -- what
12 did he indicate to you about whether you could be helpful
13 to them?

14 A. When he said that to me, my gatherings were that he
15 knew that I was a regular customer of the poker parlor,
16 because he had already spoken to me about that before he
17 had even started questioning me and talking to me. And
18 that is true. I was a regular customer at the poker
19 parlor.

20 Q. And before -- you now know, and you've heard a lot of
21 discussions about these rights that you have. They're
22 called Miranda rights. The right not to give a statement,
23 you know, the right to remain silent, and things of that
24 nature. Did he ever at any point when he started talking
25 to you, tell you any of these rights?

1 A. No, ma'am.

2 Q. Did he ever verbally say to you, By the way, you don't
3 have to talk to me?

4 A. No. And as I matter of fact, the paper that he --
5 that my initials are on, I did put my initials there, but
6 when ---

7 Q. Before you go there, I want to still talk about the
8 beginning when you and Deckard first started talking.

9 A. Okay.

10 Q. We'll get to the form, but at the time when he first
11 started talking to you, did he ever verbally tell you that
12 you didn't have to talk to him?

13 A. No. He didn't tell me I didn't have to talk to him.

14 Q. Did he ever tell you that you had a right to remain
15 silent?

16 A. No, ma'am.

17 Q. Did he ever tell you that you had a right to consult
18 an attorney?

19 A. No, ma'am.

20 Q. Or that you could stop the interview at any point?

21 A. No.

22 Q. Do you recall a point where you said to him that you
23 wanted to go home?

24 A. Yes.

25 Q. And what did he say?

1 A. He told me -- he started yelling at me, and he said,
2 You know who did this to your friend, Dawn. She's supposed
3 to be your friend. Tell us who did this to Dawn.

4 And I told him that I didn't know. I was crying, and
5 as I was crying he said -- he was chewing tobacco and
6 spitting it inside this cup. And as he was saying that,
7 all his face started getting red, and I was scared. And, I
8 mean, by seeing stuff on television and different things,
9 all type of things were going through my mind. I was
10 tired. And I was speaking to him. I was talking to him,
11 but I didn't want to tell him. And I asked him if I could
12 speak to Perry, Detective Perry, because I was comfortable
13 with talking to Perry, because he was the first detective
14 that actually spoke to me.

15 Q. And in the process of talking to him, you said that
16 you had told him you wanted to go home. Did he ever say to
17 you: Okay, that's fine, you can leave?

18 A. No, ma'am.

19 Q. What was your thoughts at that time? Did you think
20 you had any ability to leave that place?

21 A. No. Because -- no. I didn't think that I can just
22 get up and walk out the place, because cops -- I mean, they
23 brought me there. So, I mean, in other words, I thought I
24 was being detained.

25 Q. And did you ever have -- did you ever believe that you

1 had a right to tell them: Don't ask me anything else?

2 A. No. I didn't. No, ma'am.

3 Q. Did you ever tell them you wanted a lawyer?

4 A. Yes. I told Detective Deckard that, and he told me
5 that I didn't need an attorney present.

6 Q. Did you say, specifically, I want a lawyer, or how did
7 you say it?

8 A. I said, Do I need an attorney? And he said, No.

9 Q. And what else did he say after that?

10 A. He said that I was just a witness.

11 Q. So did he ever tell you that he thought that you were
12 involved?

13 A. No, ma'am.

14 Q. And, I think, at one point you said that he was asking
15 you all this background information. Did he ever talk to
16 you about your children?

17 A. Not him. But Detective Hagge did.

18 Q. Okay. We're going to get to him in a minute. During
19 the process ---

20 A. He knew -- Detective Deckard, he did know that I have
21 children, because I had told him that I had two kids, and
22 he asked me were they from the same guy. And I told him,
23 No. And he asked me how many men have I ever sleep with --
24 slept with; did I have the same kids father, and stuff like
25 that.

1 Q. That type of stuff?

2 A. Yes.

3 Q. And did he tell you that -- at what point did he start
4 -- did you start getting scared? What was being said to
5 you at that point?

6 A. When Detective Hagge told me that he had been to my
7 kids' grandmother house. And he knew that I had kids, and
8 he didn't want my kids to be like -- he didn't want
9 Christopher and Katanya to be like Babs, which is Dawn
10 Russ's daughter, the deceased. He said, I don't want
11 Christopher and Katanya to be like Babs, questioning about
12 their mother.

13 Q. And, I believe, you said that you had -- Detective
14 Hagge or Sargent Hagge had taken you to his desk?

15 A. Yes. He was asking me -- he kept asking me, who had
16 done this to Dawn. After Deckard had left out, Detective
17 Hagge came inside the room, and he was talking to me.
18 Well, he was trying to get me to tell him who had done it
19 before I went to the bathroom. And I asked him, I said,
20 Can I use the restroom, like that. And he said, Why don't
21 you tell me who did it, first? And I was crying, and I
22 said, Can I, please, use the bathroom? I have to use the
23 bathroom. And he said, Well, if I let you use the
24 bathroom, are you going to tell me who did this to Dawn?
25 And I shook my head "yes," and he let me use the restroom.

1 He walked with me out the conference room, and he took me
2 to the restroom. When we came back in, he said, I want to
3 show you something. And he took me to his desk -- which
4 when you go inside, it's to the left-hand side. He said,
5 This -- he showed me the picture of his family, and he
6 said, See my beautiful family. He said, I don't want
7 Christopher and Katanya to be missing their mother like
8 Babs is. Can you, please, help us out and tell us who did
9 this to Dawn?

10 Q. Now, what was your understanding when he said, I don't
11 want Christopher and Katanya to be like Babs? What was
12 your understanding of what that would mean?

13 A. That he probably knew that if I knew who had done this
14 to Dawn, that the person probably would have harmed my
15 kids, also.

16 Q. So it was your understanding at that point, that this
17 person who you might have known did it, could have harmed
18 your children?

19 A. Yes.

20 Q. Did he ever tell you that the police would harm your
21 children?

22 A. No, ma'am. He, actually, at one point told me that he
23 would put me in some type of protective custody witness
24 program, or something like that, where my kids can come
25 with me, also.

1 Q. And this was before or after he showed you the
2 pictures of his own children?

3 A. This was before.

4 Q. And so what did he tell you about you being a witness
5 versus a suspect?

6 A. He never told me anything about being a suspect.
7 After he had -- after I wrote down B.J.'s name, he said,
8 And what part did you play inside of it?

9 And I told him what had happened. I told him that
10 B.J. came there, and I had opened the door. Go ahead?

11 Q. Go ahead.

12 THE COURT: You want her to go ahead ---

13 WITNESS: Into detail?

14 MRS. GAY: No, Your Honor. I think that she's saying
15 ---

16 THE COURT: Well, let's not think. Let's make sure
17 you know. What is your question going to be?

18 MRS. GAY: My question was one of the things ---

19 THE COURT: I don't mean, let's not think. What I'm
20 saying is let us not only just think. Let's know what
21 we're going to ask her, before we ask the question of this
22 area here.

23 BY MRS. GAY:

24 Q. Well, in this specific point, you said that you wrote
25 down B.J.'s name. Can you describe to the Court, why you

1 wrote down B.J.'s name instead of said it? I'm taking you
2 backwards. Don't go where you were going.

3 A. He said, Who did this to Dawn? Who did this to Dawn?

4 And I was still crying. I was upset. And at one
5 point, I was leaning over, and he said -- he rubbed me on
6 my back, and he said, Come on. Tell me who did this to
7 Dawn. This is your friend. We want you to help us out
8 with who did this to your friend.

9 And he said, Well, if you don't want to say it, just
10 write it on this paper. And it was a piece of yellow legal
11 paper, which Detective Deckard had already started writing
12 up little -- jotting down notes when he was questioning me.
13 I wrote it on there, and when I got to B-e-n, and then he
14 said, Benjamin Johnson?

15 And I said, Yes. I shook my head. And he said, I
16 knew it. He said, Thank you, thank you.

17 And when he was saying, thank you, thank you, I took
18 it in as he was saying, thank you, you helped us solve this
19 crime.

20 Q. I understand. And before when you -- I believe that
21 when Hagge first came in and started talking to you, did
22 you ever recall an occasion where Hagge read you or
23 verbally told you that you had a right to remain silent;
24 had a right to have an attorney present; pulled out a
25 little card from his pocket and read anything to you?

1 A. No. No, ma'am. Actually, they did that after they
2 gave me -- they told me to sign the statement and put my
3 initials by the paper that you had, the Miranda rights.

4 Q. During the period of time when Hagge was in the room
5 with you, Sargent Hagge, did he ever ---

6 A. No, ma'am.

7 Q. --- say anything to you verbally?

8 A. Huh-Huh.

9 Q. So I'm going to show you what's been marked as State's
10 Exhibit Number 1 for ID, and ask if you can identify this?

11 A. Yes.

12 Q. And what is this?

13 A. Advice of constitutional rights.

14 Q. Now, your signature is on this form?

15 A. Yes, ma'am.

16 Q. And it's on this form in two different places?

17 A. Yes, ma'am.

18 Q. And, I believe, your initials are also on that form?

19 A. Yes, ma'am.

20 Q. Can you describe to the Court what you remember about
21 this form, and how your name ended up on it?

22 A. I remember Detective Deckard walking inside the room.
23 And he put this on the table and he put the statement on
24 the table. And he told me, he said, I need you to sign
25 these. I said, Sign it? And he said, Yeah. He said, Sign

1 this and I'm going to let you go home.

2 And after I signed it, then they brought two warrants
3 inside the room, and said that I was being charged with
4 robbery and murder. And I said, How I'm being charged with
5 robbery and murder?

6 And he said, Because in the State of South Carolina
7 there is a law called hand of one, hand of all.

8 Q. And so when you first saw that form, had they already
9 written -- had Deckard already written up this statement
10 for you?

11 A. He had written it, and then he went back -- he left me
12 in the room by myself, and then he went on the outside. I
13 don't know who he spoke to or what was said or whatever.

14 Q. And when he came back, you said he handed you some
15 paperwork?

16 A. Yes.

17 Q. And he handed you that form?

18 A. Yes.

19 Q. Did he hand you this written statement as well?

20 A. Yes. And he told me to sign it.

21 Q. This written statement?

22 A. Yes. Along with this.

23 Q. And that was, I believe, you said when they also
24 handed you some warrants?

25 A. Yes.

1 Q. And was there some discussion -- did you ask them why
2 you were having warrants given to you?

3 A. Uh-huh.

4 Q. And what did they say to you?

5 A. Because in the State of South Carolina there is law
6 called hand of one, hand of all. And he said being that I
7 knew about it and didn't report it to the police, that I
8 had to go to jail. Well, before any of that was said,
9 Detective Hagge told me, he said, If I was to tell him who
10 had done this, that he would recommend that I get six
11 months probation; and he would be there at the -- when I go
12 to court he would be there. And when they was -- after
13 they had given me this, and I signed this paper, and I had
14 my warrants, they handcuffed me. And that's when they read
15 me my rights. And it wasn't even detectives; it was guys
16 dressed in black that read me my rights. And when they
17 walked me out, Detective Hagge said, Stop her. And I
18 looked up at him. I was crying. And he said, Remember
19 what I said.

20 And when he said that, I took it in as he was saying,
21 remember what I said that when you go to court that I will
22 be there, and I will recommend to the judge that you get
23 six months probation.

24 Q. So first of all, when you first met with Deckard, you
25 never heard him say anything about verbal rights?

1 A. No, ma'am.

2 Q. You never heard him say that you had a right to remain
3 silent ---

4 A. Huh-huh.

5 Q. --- have an attorney present? Though, you said you
6 did ask to go home?

7 A. Yes.

8 Q. And that you said you asked for an attorney, and he
9 said you didn't need one?

10 A. Yes.

11 Q. And then you said, I believe, that at some point he
12 got very nasty with you?

13 A. Yes.

14 Q. And he was yelling at you, because he was telling you
15 that you knew who did this?

16 A. Yes. And he was showing me pictures. And he said,
17 Who did this? Tell me who did this to Dawn.

18 And I was crying, and I said, I didn't leave her like
19 that. I told him that I didn't leave her like that. And
20 he said, Tell us who did that.

21 And when all of that was going on, I can hear coughing
22 at the door. And when he walked out, Detective Hagge
23 walked inside.

24 Q. And then he walked out, Detective Hagge walked inside,
25 you had to go to the bathroom?

1 A. Yes.

2 Q. Had they ever given you any food?

3 A. No, ma'am.

4 Q. And at this point when Detective Hagge had ---

5 A. Not then, but before they brought me to jail, they did
6 get me Burger King.

7 Q. And what time did you to the jail?

8 A. I'm not sure what time I came to -- I went to jail.

9 Q. And pursuant to your conversation with Detective
10 Hagge, you said you needed to go to the bathroom. Did you
11 have any idea how much time had passed between the time
12 that Deckard got there, and the time Hagge walked in?

13 A. No, ma'am. I don't know how much time had passed, but
14 I knew that it was a while, because I kept falling asleep
15 and nodding off. And, I think, like, twice they had to
16 wake me up.

17 Q. And had they given you any occasion to sleep during
18 this period of time?

19 A. When you say...

20 Q. Had they said why don't you rest for a while, and
21 we'll come back or anything like that?

22 A. Oh, yeah. They left me inside the room for a long
23 period of time, and then one would come back and then the
24 other one would go and then come.

25 Q. So after -- when Hagge came in and he said -- after he

1 showed you the pictures of his children, and after he said
2 that B.J. could hurt your children, or the person who did
3 this could hurt your children, what did you say to him
4 about your involvement, not necessarily, specifically, but
5 did you tell him that you wanted to tell him about it and
6 give a statement?

7 A. No, ma'am.

8 Q. How did the statement come about?

9 A. He told me that if I had given them a statement that
10 he would let me go home.

11 Q. Okay. If you gave them a statement, he would let you
12 go home?

13 A. Uh-huh. Uh-huh.

14 Q. And then what happened?

15 A. And I was crying, and I was talking to him. And he
16 said, So -- he asked me if it was okay for him to take down
17 the statement, and I told him, yes. And that's when he
18 left out the room. And he said, I'll be right back.

19 He left out the room and he went and got the papers to
20 take down the statement.

21 Q. And you say, "he". Is this Sargent Hagge or Deckard?

22 A. Deckard.

23 Q. So Deckard is the person we know that wrote this
24 statement?

25 A. Uh-huh.

1 Q. And you've actually had an occasion to look at this
2 statement; haven't you?

3 A. Yes, ma'am.

4 Q. And in the process of looking at this statement, are
5 the -- and I don't want you to be specific, but is
6 everything in this statement accurate? True?

7 A. No, ma'am.

8 Q. No?

9 A. Huh-huh.

10 Q. And pursuant to having reviewed this statement, how
11 did things end up in this statement that are not true?

12 A. Detective Deckard wrote the statement. And as I was
13 talking to him, he was writing the statement, but I don't
14 know what he actually wrote down. He didn't read it back
15 to me, and I never read over it. He just told me to sign
16 the statement. He said, Sign this and you can go home.

17 Q. Okay. And when he said -- as you -- so you said that
18 as you spoke, he's writing?

19 A. Yes, ma'am.

20 Q. And you said that he never read it back to you?

21 A. No, ma'am.

22 Q. Did you ever have the occasion or take the time to
23 read it?

24 A. After I got to jail. But during that time, after he
25 wrote the statement, he was talking to me. And I do

1 remember him saying certain things, and I said, Huh-huh.
2 And he marked through, and he said, Well, just initial
3 here.

4 But I don't remember initialling a whole lot of stuff.
5 I do remember initialling, like, one or two things.

6 Q. Now, do you recall signing your name to the bottom of
7 it?

8 A. Yes, ma'am.

9 Q. And do you recall writing this portion out here that
10 has your name on it, this last portion of the statement?

11 A. Yes, ma'am. After they spoke to me -- well, Detective
12 Deckard and Hagge was in the room after that was written.
13 And Detective Hagge was talking to me, and as he was
14 speaking he said, All you wanted was the money; right?

15 Well, he said that, I indicated that -- not that I had
16 planned the robbery, but after ---

17 THE COURT: Ma'am, do you really want her to tell me
18 all that? It's up to you.

19 MRS. GAY: Your Honor, I think that she's just going
20 to explain that ---

21 BY MRS. GAY:

22 Q. Is this accurate, this statement? This last statement
23 in your own handwriting, is this accurate?

24 A. It's accurate to the extent of what the detective had
25 me to -- how he had me thinking at the time. I wrote down

1 what -- he was saying that it wouldn't ---

2 Q. So at this point in time, I think, you said that he
3 had you thinking a certain way, and that's why you wrote it
4 that way?

5 A. Yes.

6 Q. Okay. And, also, those last questions that were on
7 the last page of this statement, the four questions ---

8 A. Uh-huh.

9 Q. --- these answers -- how come these answers got put
10 there?

11 A. The answers got put there because the detective --
12 when he was questioning me, he said, Oh, I have some other
13 questions that I need to ask you. And he wrote down the
14 questions, and I answered the question. He said, Well, you
15 can write it in your own handwriting.

16 Well, why he wanted me to write it in my own
17 handwriting for that part of the statement and not the
18 rest, I don't know. But he asked me about the money and
19 how it was split. And I told him that B.J. had given me
20 half of it.

21 Q. Let me ask you a question, Kandy. When you put "half
22 and half" on that, is that how the money was split?

23 A. When B.J. gave it to me. Yes.

24 Q. After B.J. gave it to you?

25 A. Yes.

1 Q. When you initially went to visit, you know, when they
2 picked you up and took you to the police station ---

3 A. Uh-huh.

4 Q. --- the statement that you gave at seven o'clock in
5 the morning, can you tell the Court why you signed that
6 statement and why you signed that waiver form, and why you
7 talked to them about this incident, based on the night
8 before?

9 A. Because the detectives had told me that I was a
10 witness, and he told me that he wanted me to help them.
11 And I was scared. I was scared to the point where I didn't
12 know where B.J. mind was. My mind was thinking different
13 things, because he was inside the house with my mom and my
14 sister. And then he knew where my children went to school
15 at daycare, and Christopher was inside pre-school at the
16 time. And the reason why I gave it to them, because I knew
17 that B.J. had done something wrong, and I knew that it was
18 the right thing to do was to tell them. And that's what I
19 told the detective.

20 Q. Was your decision to ultimately give this statement,
21 influenced in any way by what they told you?

22 A. You mean, did they actually...

23 Q. Did they promise you anything? I mean, you described
24 them?

25 A. Yes, ma'am.

1 Q. And they told you -- ultimately, Hagge told you that
2 he would say good things about you in court ---

3 A. Yes.

4 Q. --- and try to get you six months?

5 A. Yes.

6 Q. And, certainly, they never told you that you were a
7 suspect?

8 A. No, ma'am.

9 Q. I don't believe I have any further questions.

10 THE COURT: Let me know when you've decided, Mrs. Gay.

11 MRS. GAY: One moment, please.

12 I have no further questions.

13 THE COURT: All right. Mr. DuTremble,
14 cross-examination.

15 MR. DUTREMBLE: Thank you, Your Honor. May it please
16 the Court.

17 CROSS-EXAMINATION

18 BY MR. DUTREMBLE:

19 Q. Ms. Gilliard, you testified that Dana Nelson is the
20 person that advised you that the police were looking for
21 you; right?

22 A. No, sir. She didn't tell me that the police were
23 looking for me. When I came to her house, they pulled in
24 behind me, and I went in the house and told her that the
25 police was out there.

1 Q. Okay. I misunderstood you. And that took place about
2 11:00 or 11:30 at night; right?

3 A. I don't remember the exact time.

4 Q. Now, wait a minute. Didn't you just testify when your
5 lawyer asked you that question, that it was 11:00 or 11:30?

6 A. Around that time. Approximately, around that time. I
7 didn't know that I have to have a direct answer. That's
8 why I didn't say, specifically, 11:00. I didn't say 11:30.
9 I didn't say 12:00. I don't know the exact time.

10 Q. Ms. Gilliard, would you like us to have the court
11 reporter ---

12 THE COURT: No. Let's go on to another question.
13 Next question. Do you want to ask your question again?

14 WITNESS: I understand that ---

15 THE COURT: Wait a minute, ma'am.

16 Do you want to ask your question again?

17 BY MR. DUTREMBLE:

18 Q. Didn't you tell your lawyer that you arrived home at
19 Dana Nelson's house between 11:00 and 11:30 that evening?

20 THE COURT: Answer "yes" or "no," ma'am, if you
21 remember.

22 WITNESS: Yes. I did say that to my attorney.

23 THE COURT: All right. Next question.

24 BY MR. DUTREMBLE:

25 Q. And this is the same Dana Nelson that called your

1 mother between 9:00 and 9:30, some two hours before you
2 even got home; right?

3 A. To her house? Yes, sir. Well, I don't know that
4 anybody could remember the exact time. I wasn't working
5 with time. When I got to the police department, I didn't
6 even know what time it was, like I told my attorney.

7 Q. But when you got there, to Dana Nelson's house, there
8 were four police cars there, no blue lights; right?

9 A. No, sir.

10 Q. All right. And you were able to get out of the
11 vehicle and go into your house ---

12 A. Into Dana's house.

13 Q. Right.

14 A. Yes.

15 Q. Talk to Dana?

16 A. Dana was asleep.

17 Q. Okay. But you talked to her. You testified that you
18 tried to talk to her?

19 A. Yes. Uh-huh.

20 Q. And then you went to the door, and you talked to a
21 police officer, the tall white guy?

22 A. Yes. Uh-huh.

23 Q. And he asked you if you would come down to the police
24 station, because they wanted to talk to you because you
25 could be helpful to them; right?

1 A. Uh-huh.

2 Q. All right. And the black police officer that you
3 mentioned, indicated that you should lock the doors, and
4 that he would bring you back when you were finished; right?

5 A. The car doors and stuff. Yes.

6 Q. And you did that; right?

7 A. Yes.

8 Q. All right. Now, when you went out and you locked your
9 car doors, nobody put you in handcuffs; did they?

10 A. No, sir.

11 Q. And nobody put you in belly chains; did they?

12 A. No, sir.

13 Q. And nobody searched you before they put you in the
14 police car; did they?

15 A. No, sir.

16 Q. So you went on down -- it was just like it was on
17 January the 5th when they came and asked you to come down
18 and talk; right?

19 A. Yes, sir.

20 Q. Same thing happened. They asked you if you would come
21 down to the police station and talk with them. They didn't
22 handcuff you, and they didn't belly chain you, and they
23 didn't search you; did they?

24 A. No, sir.

25 Q. They took you to the police station, and you were free

1 to go ---

2 THE COURT: January 5th?

3 MR. DUTREMBLE: January 5th, Your Honor.

4 THE COURT: Has that been brought up before?

5 MR. DUTREMBLE: No, sir.

6 WITNESS: On January 5th, sir ---

7 THE COURT: Wait a second. Okay. I'm sorry. I just
8 wanted to make sure there wasn't a misnumber, as far as
9 that you didn't state a wrong date.

10 MR. DUTREMBLE: No, sir.

11 THE COURT: Okay. So go ahead. Ask your further
12 questions.

13 BY MR. DUTREMBLE:

14 Q. And on that day, January 5th, they asked you some
15 questions, you gave them some answers, and then you went
16 home; right?

17 A. Yes, sir.

18 Q. Okay. That's what the policeman told you you would do
19 on this occasion. He would bring you back home; right?

20 A. Well, on January 5th ---

21 Q. No, ma'am. The policeman on the 9th, told you to lock
22 your car doors, and he would bring you back home; right?

23 A. Yes, sir.

24 Q. Okay. And when they brought you to the police
25 department you were put at a table, you testified; right?

1 A. Uh-huh.

2 Q. Okay. They didn't put you in a cell; did they?

3 A. No, sir.

4 Q. And they didn't handcuff you to the table or anything
5 like that; did they?

6 A. No, sir.

7 Q. They didn't put any guns out on the table or anything
8 like that; did they?

9 A. Huh-huh.

10 Q. Nobody was yelling at you; were they?

11 A. Yes.

12 Q. When you were sitting at the table when they brought
13 you in, they were yelling at you?

14 A. Oh, no, sir.

15 Q. No. I didn't think so.

16 A. Okay.

17 Q. Everybody was nice to you; right?

18 A. Right.

19 Q. And then they asked you to come with them to the
20 conference room, and you went with them to the interview
21 room, I guess that is?

22 A. They had me sitting at the table inside the big area,
23 and I asked the tall guy that was going bald, I asked him
24 what was taking so long. And he said that whoever it was
25 that he had paged had to come from home. Well, I asked him

1 if it was Detective Perry, and he told me that Detective
2 Perry wasn't coming.

3 Q. Right.

4 A. Uh-huh.

5 Q. And so Detective Deckard showed up?

6 A. Yes.

7 Q. And he was the first one you talked to?

8 A. Yes.

9 Q. And you talked about some background, you talked about
10 the game room, you talked about your kids, talked about
11 your parents, talked about just general type things about
12 you; right?

13 A. Yes.

14 Q. Okay. And, basically, what he told you was that at
15 that point in time, you were a witness to what had happened
16 to your friend Dawn, and they were looking for your help;
17 right?

18 A. He didn't actually say that I was a witness. He said,
19 I could have been a witness. And he wanted to know what I
20 knew, and when I was last there, and who did I see when I
21 left and stuff like that.

22 Q. Sure. Because he's investigating a murder; isn't he?

23 A. Uh-huh.

24 Q. And he wants to know what you know, if you know
25 anything that could help them; right?

1 A. Uh-huh.

2 Q. All right. And so you told him what you knew, and you
3 told him you were a regular customer there; right?

4 A. Yes.

5 Q. And because you could have been a witness, he was just
6 trying to find out what you might know about the thing, he
7 didn't give you any Miranda warnings; did he?

8 A. No, sir.

9 Q. All right. And that came later on in the interview;
10 right?

11 A. At the end of it.

12 Q. At the end of it. That's right.

13 A. Uh-huh.

14 Q. But you say at some point in time, you said you wanted
15 to go home, and he started yelling at you; right?

16 A. I told him -- I asked him if I needed an attorney, and
17 he told me, no.

18 Q. Before we get to that part -- we're going to talk
19 about that. What asked you was: At some point in time,
20 you said you wanted to go home, and he started yelling at
21 you; right? That's what you told your lawyer?

22 A. When I asked him if I can go home, he didn't start
23 yelling at me right then. He told me that he wanted to
24 speak to me about what had happened to Dawn. What had
25 happened at the game room, did I know anything.

1 Q. Okay.

2 A. And then, when I told him -- when I started crying, he
3 was showing me pictures and told me -- he was yelling at me
4 and telling me, Who did this to Dawn? Tell him who did
5 this.

6 Q. Okay. So even at that point in time, he was never
7 saying "you" did this; he was saying "who" did this; right?

8 A. Yes.

9 Q. Okay. So he wasn't accusing you of committing the
10 crime. He was asking you to tell him who had done it, if
11 you knew; right?

12 A. Uh-huh.

13 Q. Okay. And so at that point in time, you hadn't given
14 Detective Deckard any indication that you were involved in
15 this crime at all; had you?

16 A. No, sir.

17 Q. No. Of course, not. So what he was trying to find
18 out from you, if you knew, was whether or not you had any
19 information about who might have done this terrible crime.
20 And he was asking you to share that with him; right?

21 A. Uh-huh.

22 Q. Okay. And you asked him at some point in time, while
23 you were talking with him for that three-hour period that
24 he described, Do I need an attorney? And he said,
25 according to you, No. You're just a witness.

1 Correct?

2 A. Uh-huh.

3 Q. And that's true; isn't it? At that point in time, you
4 were no more than a witness who might have some information
5 that would lead the police to the killer of Dawn Russ;
6 correct?

7 A. Yes, sir.

8 Q. Okay. And then at some point in time, as you
9 testified, Ken Hagge -- Detective Hagge, he spoke with you,
10 and he showed you pictures of his children as you've
11 testified; correct?

12 A. Yes, sir.

13 Q. And he indicated that he didn't want your kids to be
14 like Dawn's kids; correct? Meaning without a mother?

15 A. Well, he didn't say, Dawn's kids; he said, Babs.

16 Q. Babs?

17 A. Which is Dawn's daughter.

18 Q. Babs is Dawn's sixteen-year-old daughter at the time;
19 right?

20 A. Uh-huh.

21 Q. And so what he said was he didn't want your kids to be
22 like Babs, meaning without a mom?

23 A. Uh-huh.

24 Q. And he let you use the bathroom; right? Took you down
25 and came back; right?

1 A. Uh-huh.

2 Q. And when you came back, after using the bathroom, he
3 asked you -- "he" being Ken Hagge -- asked you -- and I
4 wrote it down -- Can you tell us who did this to Dawn?
5 That's what he said; right?

6 A. Uh-huh.

7 Q. And he never said, You did this to Dawn. Tell me
8 about it. He said, Can you tell us who did this to Dawn;
9 right?

10 A. Uh-huh.

11 Q. And he never accused you; did he?

12 A. No, sir.

13 Q. And he also said, according to you, that he would put
14 you in the witness protection program; right?

15 A. Yes, sir.

16 Q. So at that point in time, you were just a witness who
17 might have information; correct?

18 A. Yes, sir.

19 Q. All right. And at some point in time, because he
20 asked you to tell him who did this to Dawn, you provided
21 him with a name of B.J. Johnson; correct? Benjamin Lee
22 Johnson?

23 A. Yes, sir.

24 Q. And you wrote it on the piece of paper as you've
25 testified; right?

1 A. Uh-huh.

2 Q. Okay. And still at that point in time when you gave
3 them B.J.'s name, you had not implicated yourself in the
4 murder; had you?

5 A. No, sir.

6 Q. You didn't tell them, I committed the murder, or I
7 committed the robber; did you?

8 A. No, sir.

9 Q. Okay. And then, at some point in time, you testified
10 that the Miranda warnings were given to you on this sheet
11 of paper which is State's Exhibit Number 1 for purposes of
12 this hearing; right?

13 A. Yes, sir.

14 Q. And that is your signature; isn't it?

15 A. Yes, sir.

16 Q. And it lays out all your constitutional rights;
17 doesn't it?

18 A. Yes, sir.

19 Q. And you initialed each and every one of those
20 constitutional rights; correct?

21 A. Yes, sir.

22 Q. And you signed at the bottom; right?

23 A. Yes, sir.

24 Q. Okay. Now, I may have misunderstood your testimony,
25 but as I wrote it down, what you're telling the Court is,

1 that Detective Deckard left the room, got the paper to
2 write this confession on, and he came in there and wrote it
3 himself; right?

4 A. Uh-huh.

5 Q. So he made all this up; correct?

6 A. He wrote it.

7 Q. He wrote it.

8 A. Uh-huh.

9 Q. So he made up all the facts in it; right?

10 A. As he was questioning me and talking to me, I was
11 speaking to him and telling him what had happened. And he
12 was writing down -- what he wrote down was the result of
13 that, and he never read it back to me. And I never read
14 over it before I signed the statement.

15 Q. Okay. So as I understand it, the two of you are
16 sitting in the room, and as you're speaking with him, he's
17 writing; correct?

18 A. Uh-huh.

19 Q. And then at the end, he asked you to sign each and
20 every page; doesn't he?

21 A. Okay. He's writing, writing, yes. And then he did
22 all four of them or five, whatever, and he told me to sign
23 the bottom of them, and he will let me go home.

24 Q. All right. And it says, I have read the foregoing
25 statement or have had it read to me, and it is true and

1 correct to the best of my knowledge. I have given the
2 statement freely and voluntarily, and have been provided a
3 copy of my statement. And you signed that; don't you?

4 A. I did not read that, sir. I did sign it, and I did do
5 something careless, and I signed a paper without reading
6 it. Yes. I did sign it.

7 Q. And not only did you sign page one, but you also
8 signed page two ---

9 A. Uh-huh.

10 Q. --- which contains the same statement of
11 voluntariness. You signed page three, did you not, which
12 contains the same statement of voluntariness; did you not?

13 A. Oh, yes. I signed all of the papers.

14 Q. And then at the end on page four in your own
15 handwriting -- Detective Deckard isn't writing anymore --
16 you write, This is my statement, truthfully and honest. I
17 am sorry. Please, forgive me. We -- and then in
18 parenthesis "I" -- never meant for it to happen like this.
19 I just only wanted the money.

20 And you signed that; didn't you?

21 A. Okay. How that became like that -- the detective,
22 Detective Hagge, was talking to me after Detective Deckard
23 had written that out. The state of mind that I was in, I
24 was doing what he told me to do. And he told me that --
25 okay. After all that was over and B.J. had given me the

1 money, that's when he told me, You just wanted the money?
2 And I said, Yeah.

3 The money that B.J. -- not saying that I had planned
4 the robbery with B.J., just saying that, yeah, B.J. gave me
5 money, and I accepted it. And that's how that got at the
6 bottom of there, because the detective told me to write it
7 like that.

8 Q. And this is in your handwriting; correct?

9 A. Yes, sir. It is in my handwriting.

10 Q. And that is your statement; correct?

11 A. Yes, sir.

12 Q. It doesn't say a thing about B.J. giving you the
13 money; does it?

14 A. No, sir. The detective didn't tell me to write that.
15 I had never been in trouble. I don't know what to say. I
16 don't know ...

17 Q. Well, you knew enough to write it and sign it?

18 A. He told me to. The detective told me to. And prior
19 to that, he told me he would let me go home had I signed
20 that paper.

21 Q. We're going to talk about that in a minute?

22 A. Yes, sir.

23 Q. And then, several hours later -- now, this one is
24 taken at 7:45; correct? The statement?

25 A. That's what the statement says.

1 Q. Okay. And then at eleven o'clock they call you back,
2 and they say, We've got a couple of more questions.

3 And they write down three questions for you; don't
4 they?

5 A. No, sir. That was not done hours later. This was done
6 right after he did this.

7 Q. All right. But in any event, they write down some
8 questions for you; don't they?

9 A. Yes, sir.

10 Q. And you handwrite the answers; don't you?

11 A. Yes, sir.

12 Q. Okay. And the first question is: Where did you take
13 the money from? And what do you write?

14 A. I took the money from black file cabinet and Dawn's
15 pocket.

16 Q. And that's your handwriting; isn't it?

17 A. Yes, sir.

18 Q. And those are your initials, K.G.; right?

19 A. Yes, sir.

20 Q. And then they ask you the second question: How much
21 money was taken? And this is in your handwriting; isn't
22 it?

23 A. Yes, sir.

24 Q. And your response is what?

25 A. Around twelve hundred dollars, being that the

1 detective told me that it was around that amount. I didn't
2 know how much money it was.

3 Q. Okay. And you initial it, again; don't you?

4 A. Yes, sir.

5 Q. Okay. And they ask you the third question: What did
6 you do with the padlock? And your response is what?

7 A. I dropped it.

8 Q. Okay. And you initialed that; correct?

9 A. Yes, sir.

10 Q. And the fourth question: What was the plan for
11 splitting up the money afterwards? And your response is?

12 A. Half and half, because the detective -- when he was
13 talking to me, as that was sitting in front of me, I asked
14 him what he meant by that, and he told me that when I got
15 the money from B.J., what did B.J. give me? And that was
16 half and half from my understanding.

17 Q. And you initialled it, "K.G."?

18 A. Yes, sir.

19 Q. Okay. Now, what you're, basically, telling the Court
20 under oath is that Detective Deckard made up that
21 statement, and had you sign it without reading it. And you
22 just went ahead and signed where he told you to sign. And
23 all of that in that statement is a bunch of lies; right?

24 A. Yes, sir.

25 Q. Now, let me ask you this: You are aware, are you not,

1 that you were the first person to be interviewed and to
2 give a confession in this case? You know that; don't you?

3 A. Oh, yes. Yes, sir.

4 Q. And you know that B.J. Johnson was not interviewed
5 until, approximately, eight hours later on January the 9th;
6 don't you?

7 A. I don't know when B.J. was.

8 Q. Well, you've read his statement; haven't you?

9 A. I didn't read B.J.'s statement in my motion of
10 discovery.

11 Q. But your lawyer showed it to you; hadn't she?

12 A. Oh, yeah. I had it in my possession. Yes, sir.

13 Q. And you've got it in your possession and you know that
14 he was interviewed about five o'clock in the afternoon on
15 the same day that you were interviewed; wasn't he?

16 A. Are you speaking on the 5th or are you speaking on the
17 9th?

18 Q. On the 9th.

19 A. I knew that on the 5th he was interviewed; that they
20 took him down to North Charleston Police Department, after
21 they took me back home.

22 Q. Listen to my question, ma'am. You know from the
23 discovery ---

24 A. Uh-huh.

25 Q. --- that you were interviewed about seven o'clock in

1 the morning, and he was interviewed about five o'clock in
2 the afternoon; don't you?

3 A. Well, no, sir. I don't know that. I don't know what
4 time B.J. was interviewed.

5 Q. Have you seen a copy of his statement?

6 A. No, sir. I had it in my possession, but I didn't read
7 over B.J.'s statement, nor Bryan's.

8 Q. Okay. Let's take a look.

9 THE COURT: What are you looking for, Mr. DuTremble?

10 MR. DUTREMBLE: Just the time, Your Honor.

11 THE COURT: Maybe you all can agree, you and Mrs. Gay.

12 MR. DUTREMBLE: I think we would agree that it was
13 about five o'clock in the afternoon.

14 MRS. GAY: It's timed 5:20 p.m.

15 THE COURT: All right. The time on Mr. Johnson's
16 statement -- everyone agrees the time on the statement is
17 5:00 p.m. on January the 9th.

18 MR. DUTREMBLE: That's correct.

19 THE COURT: All right, Mrs. Gay?

20 MRS. GAY: Yes, sir.

21 THE COURT: Okay. Go ahead.

22 BY MR. DUTREMBLE:

23 Q. Now, Ms. Gilliard, if you would, explain to the Judge,
24 why if Detective Deckard wrote all theses lies up in a
25 five-page statement at seven o'clock in the morning, how

1 come B.J.'s statement eight hours later says the very same
2 thing yours does. And B.J. ain't saying nothing about
3 anybody coercing him, or making up any lies about him?

4 MRS. GAY: Your Honor, I would object to ---

5 THE COURT: I sustain it. I sustain it. Go ahead.
6 Next question. As far as, I sustain it in regard to this
7 hearing. Do you understand, Mr. DuTremble?

8 MR. DUTREMBLE: I understand, Your Honor.

9 BY MR. DUTREMBLE:

10 Q. You never read this statement. You never had it read
11 to you, but yet it contains corrections. And the
12 corrections are initialled by you?

13 A. Just like I told -- I said it before, and I told my
14 attorney -- I explained to my attorney, I do remember
15 correcting one or two places, but I don't remember
16 correcting all of those places.

17 Q. Well, are all those your initials? Kandy Gilliard,
18 Kandy Gilliard, Kandy Gilliard, Kandy Gilliard? That's
19 you; isn't it? Kandy Gilliard?

20 A. Those could be my initials, but I don't remember
21 writing them.

22 Q. But you don't deny those are your initials; do you?

23 A. My initials are K.G.

24 Q. Yes.

25 A. Yes, sir.

1 Q. And that's exactly what's on this paper; isn't it?

2 A. Okay. Yes.

3 Q. In your handwriting; right?

4 A. I don't know. Let me see.

5 Q. You don't know.

6 A. They could be my handwriting.

7 Q. Could be your handwriting?

8 A. Uh-huh.

9 Q. And when did you first finally get around to reading
10 the five-page statement?

11 A. After my attorney -- well, my first attorney was Peter
12 Brown. And he did me preliminary hearing. And he took my
13 copies of my statement at bond hearing in front of Judge
14 Gaidillia. And then when Lisa Gay became my attorney, she
15 gave me a motion of discover that came from Peter Brown and
16 her with the statements inside of it.

17 Q. That's the first time you read it?

18 A. Yes, sir.

19 Q. How long after that statement was dated, did you read
20 yours?

21 A. I'll say about four months later, because Peter Brown
22 -- my parents dismissed Peter Brown, and hired Lisa Gay.
23 And he never gave me a copy of my statement. I never had a
24 copy of my original statement with me at the jail.

25 Q. And have you ever told Detective Hagge or Detective

1 Deckard that what they have written down there and you have
2 signed is not the truth, and it's something they made up?

3 A. No, sir. I never told them that.

4 Q. Thank you, ma'am.

5 MR. DUTREMBLE: Beg the Court's indulgence for one
6 moment, Your Honor.

7 Nothing further.

8 THE COURT: Redirect, Mrs. Gay?

9 REDIRECT EXAMINATION

10 BY MRS. GAY?

11 Q. When the solicitor refers to another occasion on
12 January 5th where you were questioned, that was during the
13 daytime; wasn't it?

14 A. Yes, ma'am.

15 Q. And that didn't last very long; did it?

16 A. No, ma'am.

17 Q. And nobody yelled at you; did they?

18 A. No, ma'am.

19 Q. And nobody accused you of anything, or said that you
20 had knowledge of anything that you weren't willing to say;
21 did they?

22 A. No, ma'am.

23 Q. And would you agree after having lived through this
24 one interview on the 5th that was like that, and this
25 incident or interview on the 9th, that they were very

1 different?

2 A. Yes.

3 Q. And would you agree ---

4 A. And, in fact, on the 5th, they offered me a ride back
5 home. Detective ---

6 Q. Well, they let you leave?

7 A. Detective Perry gave me a ride back home. He's the
8 one that even said that he was about to take me back home,
9 because they were finished talking to me.

10 Q. But they let you leave that day?

11 A. Yes.

12 Q. And, I believe, you said, specifically, in your
13 testimony that you did not believe that you could leave at
14 three o'clock or so in the morning?

15 A. No.

16 Q. I think you referred to it as you were detained?

17 A. Yes.

18 Q. And they had never told you that you had the right to
19 remain silent; that you could have an attorney; or that you
20 could end the conversation or questioning when you wanted
21 to, or anything like that?

22 A. No. It was just the way that they had swamped me,
23 that I thought that I had to stay there. I didn't know.
24 They didn't tell me that I can leave or whatever, because
25 when I asked if I can go home ---

1 Q. And, ultimately, you now know what Miranda rights are:
2 The right to remain silent, and things of that nature. And
3 nobody ever said that to you when they started talking to
4 you about this incident?

5 A. Huh-huh.

6 Q. And they initially told you that you were a witness,
7 and you could go in the witness protection program before
8 you gave them a statement?

9 A. Yes.

10 Q. And the statement that you gave was after hours and
11 hours of being in police custody?

12 A. Yes.

13 Q. And, I believe, that you said that your state of mind
14 was that you thought if you signed that statement, you
15 could go home?

16 A. Because that's what the detective had told me. Yes.

17 MRS. GAY: I have no further questions, Your Honor.

18 THE COURT: Anything else?

19 MR. DUTREMBLE: Nothing further.

20 THE COURT: You may step down, ma'am.

21 (The witness leaves the witness stand.)

22 THE COURT: Any other witnesses? I know you wish to
23 introduce Dr. Leo, but anything other than that?

24 MRS. GAY: No, sir.

25 THE COURT: Any other testimony from the State?

1 MR. DUTREMBLE: I can call Detective Hagge, but to
2 save time, he would, basically, deny the allegations made
3 by the defendant. I can call him and put him up right
4 quick and do that for purposes of this hearing.

5 THE COURT: Well, he's already testified. Is there
6 anything additionally he would testify to?

7 MR. DUTREMBLE: No. Just that he didn't do any of
8 these things that she said.

9 THE COURT: Well, I mean, I can't accept you're
10 telling me he said that; but as far as what he's testified
11 to, I mean, I can consider what he's testified to. Well,
12 if you wish to do that, let me first consider Leo, and then
13 if you want to put him up tomorrow morning, you can do it
14 tomorrow morning.

15 MR. DUTREMBLE: Thank you.

16 THE COURT: So the only thing left in this matter is
17 me considering Dr. Leo's deposition, as well as any reply
18 you may have or rebuttal regarding the statement from Mr.
19 Hagge. And I will consider that tonight. I will take this
20 deposition home with me and read the portions I haven't
21 read, and make my ruling on this matter tomorrow; and hear
22 arguments from you all before we start with the jury.

23 Anything else on this issue or any other issues? If I
24 decide to let the statement in, or whether I do or not, the
25 trial, I assume, would go forward. Anything else regarding

1 this case before we start with the jury?

2 MR. DUTREMBLE: Your Honor, if it please, I have some
3 research that I've done as to this particular issue that
4 I'd like to leave with you before the evening.

5 THE COURT: Yes. Give it to me, now.

6 MRS. GAY: I'd like to have a copy of it.

7 THE COURT: Why don't you all just bring those back in
8 chambers. Anything else?

9 MR. DUTREMBLE: No, Your Honor.

10 THE COURT: Okay. I assume -- is the defendant in
11 custody?

12 MR. DUTREMBLE: Yes.

13 MRS. GAY: Yes.

14 THE COURT: All right. Good. We'll start back
15 tomorrow at nine o'clock -- nine o'clock tomorrow morning.

16 MR. DUTREMBLE: Thank you.

17 MRS. GAY: Thank you, Your Honor.

18 (The following was reported on May 30, 2001.)

19 THE COURT: I have briefly talked with counsel this
20 morning to go over -- to make sure everybody was on the
21 same understanding of what the testimony was yesterday.
22 And I can do that again, or we can proceed into the
23 arguments of each side concerning the admissibility of the
24 statement.

25 The State indicated yesterday that it may want to

1 produce other evidence in rebuttal. The State's position
2 at this time?

3 MR. DUTREMBLE: We will not present any other
4 witnesses.

5 THE COURT: All right. Mrs. Gay, are you ready to
6 proceed? The State will proceed first, but I want to make
7 sure that you're ready for the State to proceed with it's
8 argument of the admissibility of the statement.

9 MRS. GAY: Your Honor, at this time, you would like
10 for me to present my motion? Is that what you're asking
11 me?

12 THE COURT: To suppress it?

13 MRS. GAY: Yes, sir.

14 THE COURT: Yes. I just assume on a Jackson v. Denno
15 whether you make a motion or not, I've got to have a
16 Jackson v. Denno hearing; but if, now, you wish to, also,
17 add to that your motion to be suppressed, it won't surprise
18 me, but I'll be glad for you to put it on the record. And
19 we'll then, hear and discuss this matter

20 MRS. GAY: Your Honor, in light of the circumstances
21 in this case -- I know that we've gone over some of it --
22 in reviewing the situation, of course, there's two aspects
23 that we need to consider. One of them is the
24 constitutional right to Miranda, because, ultimately, when
25 a person is in a situation and they're questioned by

1 police, they have the constitutional right to remain
2 silent; they have the constitutional right not to
3 incriminate themselves.

4 And pursuant to the Miranda ruling which, though, it's
5 recently been under attack, has been significantly upheld.
6 The Court had determined -- the Supreme Court of the United
7 States has said that people have a right to not incriminate
8 themselves -- a right against self-incrimination. And if
9 the police go to the effort of trying to obtain
10 incriminating information against -- that can be used
11 against them without giving them -- advising them of their
12 constitutional rights and advising them of the fact that
13 they can have a protection against this right to
14 self-incriminate; that it is a violation of their
15 constitutional. And so ultimately, in this case, based on
16 the facts that we have presented at this hearing, we would
17 -- I would assert that Ms. Gilliard was not provided the
18 constitutional protections that are required under this
19 case.

20 Once we've discussed Miranda, then we, of course, also
21 have to discuss voluntariness. But before we do that, Your
22 Honor, I would like to talk to you more about Miranda.

23 THE COURT: Well, let's do this, Mrs. Gay. I don't
24 want to throw you off your argument. I think before we
25 discuss Miranda, we need to discuss the custody issue; do

1 we not?

2 MRS. GAY: That's what I was going to say, Your Honor.

3 THE COURT: Okay. Let's discuss whether or not she
4 was in custody at the time.

5 MRS. GAY: Your Honor, custody has been determined
6 either in the case law that's been presented by Mr.
7 DuTremble, as well as the case law that's been presented by
8 us, on Ms. Gilliard's behalf. We know that Ms. Gilliard
9 was not under arrest. She was not handcuffed; she was not
10 shackled; she was not in a jail cell. So we have -- when
11 reviewing this situation there are always two different
12 possibilities.

13 One possibility is the actual arrest setting, where
14 she has been arrested. We know that is not the case here.
15 The other setting that the courts have often referred to is
16 that she was -- or otherwise deprived of the freedom of
17 action in any significant way. And, I believe, that the
18 court, specifically, said -- and several courts from
19 Miranda down have stated that there are circumstances or
20 situations where detention or custody can be inferred from
21 the factual scenario.

22 Certainly, with regard to this scenario taken in a
23 whole, the totality of the circumstances in this case,
24 certainly, show that she was deprived of her freedom of
25 action. Specifically, I'm citing from the case of State v.

1 Evans, the recent South Carolina case from 2000.

2 THE COURT: The Supreme Court case, not the -- because
3 you handed me at one time -- somebody handed me an
4 appellate case, but the Supreme Court case, of course, it
5 just came down January 2nd -- filed January 2nd.

6 MRS. GAY: Is this the one you gave me? But it says
7 Court of Appeals?

8 THE COURT: Well, it came from the Court of Appeals to
9 the Supreme Court.

10 MRS. GAY: Yes, sir. But in this case from January
11 2001, it says, specifically, Your Honor, that the custody
12 is determined by an objective analysis ---

13 THE COURT: I'm sorry. You're right. It is a Court
14 of Appeals case. Excuse me.

15 MRS. GAY: Thank you. I was just confused. I thought
16 maybe there was something else I didn't have.

17 As I understand it, Your Honor, in June of 2000, the
18 Court of Appeals first ruled that a court -- a previous
19 court determined that the person was in custody, and that
20 the statement could be suppressed. And that was affirmed.
21 And pursuant to this most recent ruling from 2001 in
22 January from the Court of Appeals, they said, specifically
23 that they were remanding the case to determine more
24 factors, what the Court's determination is on the factors
25 of detention.

1 This is a situation where a person, as you know, was
2 not arrested. They weren't arrested until after they
3 provided the incriminating information. And so this is a
4 situation where our courts have determined that custody or
5 detention, which warrants the constitutional protections in
6 Miranda, can be determined in a case where there is no
7 arrest. In this case what it said was that the subject of
8 nature of voluntariness was an inquiry. However, the
9 objective analysis of whether a reasonable man in the
10 suspect's position would understand himself to be in
11 custody is what is also reviewed.

12 And in this particular case, the case of Evans, they
13 determined that the woman -- that it was the functional
14 equivalent of interrogation and custody, and had remanded
15 it for some additional information. In Ms. Gilliard's
16 case, Your Honor, after you look at all the cases that have
17 been presented by the State in this case, and, also, the
18 cases that were presented to you by us, what you see, Your
19 Honor, is that this interrogation -- and I know that you
20 have read the deposition from Mr. Leo. And in that
21 deposition, the things that I would like to bring to the
22 Court's attention are the difference between interviewing
23 and interrogating. This situation was not an interview.
24 This situation was not a situation that was designed to
25 just elicit general information.

1 THE COURT: Now, Mrs. Gay, you say that, but he says
2 interview is when you're talking to someone who they feel
3 is a witness, and they're trying to learn information about
4 the crime. Doesn't he discuss that?

5 MRS. GAY: He does say that, Your Honor.

6 THE COURT: Interrogate is when you're focussing on
7 someone as a suspect, and you're trying to, maybe,
8 determine, you know, how much involvement they had. Does
9 he sort of differentiate in that regard?

10 MRS. GAY: I believe that he differentiates it, Your
11 Honor, in the sense that if a person is being questioned to
12 elicit incriminating information about themselves or about
13 a crime or about a certain set of facts, that that by
14 definition is interrogation.

15 THE COURT: Okay. Well, that means that when they're
16 getting information, they may tend to incriminate that
17 individual.

18 MRS. GAY: Well, I believe, that it's -- Your Honor, I
19 would broaden that out to say, if they were trying to
20 elicit incriminating information about a crime. Because,
21 as I said before ---

22 THE COURT: Well, when would the police being doing
23 interviews and not discussing a crime, Mrs. Gay?

24 MRS. GAY: Well, I'm talking about incriminating
25 information. Certainly, incriminating information, and

1 this is a perfect example, Ms. Gilliard had given a
2 statement on the 5th where she had told the police she
3 didn't know anything about this. Detective Deckard,
4 specifically, testified -- and if we need to read back
5 through the testimony -- when you questioned him, he said
6 that they believed that she had information about this
7 case. They believed that she knew more than she was
8 telling. They believed that she was involved -- well, they
9 believe that she could have been a suspect. They weren't
10 quite sure at that point, but they ---

11 THE COURT: Oh, did he say that?

12 MRS. GAY: Yes, he did. And if you want to have the
13 transcript read back ---

14 THE COURT: Okay. Mr. DuTremble, did he say that they
15 believed she was a suspect?

16 MR. DUTREMBLE: No, sir. It was my understanding that
17 Detective Deckard testified that he believed that she had
18 information.

19 THE COURT: Well, that's key. If he said -- I may
20 need to play it back -- if he said that they believed she
21 was a suspect, then that does change the custodial
22 situation, for sure.

23 MRS. GAY: Your Honor, I would ask you to review it.

24 THE COURT: Okay. We can do that, but before we do
25 that, let me make sure you and I are on the same agreement

1 on the interview, from -- if we accept Dr. Leo's view of
2 it. Dr. Leo says an interview is when the police are
3 discussing and getting information from someone that
4 they're not necessarily seeking to get incriminating
5 information from that individual they're talking with. An
6 interrogation is when police are focussing on the
7 individual that they're talking with to see if, in fact,
8 there is some incriminating information that that
9 individual has that may incriminate him or her. And I
10 thought that was his difference of interview or
11 interrogation. An interview is where they're just trying
12 to get information.

13 But, obviously, when they're discussing things, the
14 police are always trying to get information about a crime.
15 That's their job. They're involved with crime
16 investigations. So whoever they're talking with it's
17 almost always something about a crime.

18 MRS. GAY: Yes, sir.

19 THE COURT: So the question is when they're talking
20 with the individual about a crime, whether they're talking
21 with the individual trying to get information about the
22 crime, itself, and not really looking at the person they're
23 talking with as a perpetrator or involved with the crime,
24 as far as involved with it to the sense of being a
25 perpetrator to the crime or being someone who is -- that

1 could be indicted or charged with committing the crime or
2 involved around the crime. The other situation is where
3 they are focussing on that individual to see what
4 involvement that person has with the crime.

5 MRS. GAY: Your Honor, specifically, in this factual
6 scenario, we know that she had given a statement. So if
7 nothing else, discussing with her facts having to do with a
8 situation that would have been different than what she had
9 told them before, in this particular case, could have been
10 implicating herself in a crime.

11 For one, it could have been false information to the
12 police, because she provided a statement that said, I don't
13 know anything about it.

14 And when you provide false information to the police,
15 that in itself is a crime if they can come back later and
16 prove that you provided false information. In this case,
17 because of the charge and the seriousness of the crime,
18 itself, we have accessory after the fact, which we know one
19 of the defendants in this case was actually charged with.
20 We have misprision of a felony, which is a charge that one
21 of the co-defendants in this case is actually pleading
22 guilty to. Both of these crimes, which are in our statute
23 book, have to do with having information about a
24 significant felony; that you did not provide to the police
25 in furtherance of their investigation.

1 THE COURT: Well, then, is it your position when
2 Detective Deckard or Officer Deckard was talking with her,
3 he -- do you submit then, that he was not focussing on her
4 as a person who killed someone here, but as someone who
5 knew more about it than she was telling him? And that he
6 thought she knew who may have done the crime, and that's
7 what he was doing? Is that what you're submitting?

8 MRS. GAY: Your Honor, I believe if you read back the
9 testimony, you will find that he says, specifically, that
10 they believed that she had information about this crime;
11 that she had -- that they were saying to her throughout
12 this whole time, We know you know who did this. We have
13 your fingerprint. We know you have information about this.
14 We know you can help us. You can help us. Don't let this
15 happen to your friend. You know, Tell us who did this to
16 your friend.

17 THE COURT: So are you submitting, then, that they
18 were focussing on the fact that she knew who did it, but
19 didn't think she did it, as far as the murder?

20 MRS. GAY: I would say that, Your Honor, they were
21 focussing on the fact that she had information about that
22 crime, and that that information, ultimately -- if she
23 provided information -- the information that they were
24 eliciting, We know you know about it. You haven't told us
25 about it. Tell us who it is.

1 THE COURT: Yes. You've told me that five times.
2 What I'm asking is are you saying, then, that they were,
3 then, focussing on the fact that she may have known who did
4 it, but weren't focussing on the fact that she did it, or
5 that she knew who did it?

6 MRS. GAY: Your Honor, I think at that minute, they
7 might have been focussing on the fact that they thought she
8 knew who did it; but in my argument, I would say that that
9 in itself is a crime. To have information about who
10 committed a crime, not provide that information to police
11 ---

12 THE COURT: I understand your position. I'm just
13 trying to say, then, or maybe understand then your position
14 is that they felt she was committing the crime of
15 withholding evidence, obstruction of justice, misprision of
16 a felony; that was the crime they were focussing on whether
17 she had committed, but not the crime that she, ultimately,
18 was charged with, which was murder?

19 MRS. GAY: Your Honor, I believe that, certainly, as
20 he stated in his testimony, that they -- he even admits
21 that they told her she was probably, you know, she might
22 have been a witness and things of that nature. That has to
23 do, I believe, also, with the theme that, going back to Mr.
24 Leo's testimony, and how she's described the incident that
25 there was this whole process of convincing her that she may

1 have just been a witness, which led to a forbearing of her
2 will, which led to the ultimate confession of, Yes, I do
3 know what happened.

4 And in the process of saying what happened, it turned
5 out that it was incriminating to her as well. There is no
6 doubt that information she provided to them was
7 incriminating to her. She is here charged today. She
8 signed a statement, Your Honor, that, specifically, states
9 that she was involved in that crime. She signed a
10 statement that was a product of having people interrogating
11 her for over three and a half hours, take her into custody
12 two or more hours before that.

13 THE COURT: Well, you've gone beyond my question, but
14 I'll just continue to listen to this. Go ahead.

15 MRS. GAY: Your Honor, I understand, specifically, I
16 would say that the information that they were asking her,
17 the questioning, the interrogation that they had at that
18 point was designed to elicit incriminating information,
19 whether it was incriminating her in the murder, whether it
20 was incriminating her in false information to the police,
21 whether it was incriminating her to misprision of a felony,
22 whether it was incriminating her to some type of accessory
23 or charge, it was eliciting incriminating information ---

24 THE COURT: I'm not sure that -- I'm discussing that
25 with you, though, Mrs. Gay. What I'm asking, are you

1 saying that you're not sure which it was?

2 MRS. GAY: I would say that at that point, they may
3 been sure which one it was. Certainly, as the evening
4 progressed and into the fact that she's falling apart,
5 crying, becoming hysterical, indicating that, you know,
6 what about if this person hurts my children, things of that
7 nature -- I think, once, they realized that she may have
8 information, they just squeezed on her even harder, which
9 led to her giving up this information.

10 When Detective Hagge came in, he said that she said at
11 that point, I want to tell you what happened. He claims
12 that she said, Can I have a deal?

13 She claimed that they said, If you tell us what
14 happened, we can give you a deal. After they've seen her
15 state of mind at this point and her level of
16 uncomfortableness with this process and her duress at this
17 point, her emotional state, they, I think, began to realize
18 that she ---

19 THE COURT: Mrs. Gay, you're not submitting to the
20 Court that she testified that they told her, If you tell us
21 you killed this person, and confess to killing her, we'll
22 give you a six-month sentence? Are you saying she
23 testified to that?

24 MRS. GAY: No, Your Honor. I think they told her if
25 she would tell them what happened that she would get the

1 six-month sentence. I think the confusion is is that even
2 when Hagge comes in and gives Miranda, Your Honor -- and I
3 know this -- I got from reading Mr. Leo's testimony -- I
4 think, you'll understand what I'm saying. If he just
5 believed that she was a witness at that point, he probably
6 would have never given her Miranda at all. It was only
7 after he went in there and realized that she had something
8 incriminating in her tone and in her appearance and how she
9 was talking to him that he believed that it was appropriate
10 to give Miranda, and to have Deckard come back in.

11 The problem that I have, Your Honor, and the
12 constitutional violation occurred two and a half, three
13 hours before when Detective Deckard started interrogating
14 her about crime and about this incident and about things
15 that could implicate her, intentionally, without providing
16 her any of those constitutional protections. He,
17 specifically, stated that he did not Mirandize her. He,
18 specifically, stated -- and I would ask that you read back
19 -- that he was using technique on her; that he was working
20 toward the goal of obtaining incriminating information from
21 her, and that in the process ---

22 THE COURT: Well, when you say, "incriminating
23 information," you mean, he was working toward the goal of
24 obtaining information incriminating against her?

25 MRS. GAY: Yes.

1 THE COURT: That what his goal?

2 MRS. GAY: Yes.

3 THE COURT: Okay. So his goal was not to find who
4 committed the murder, which you agree he was focussing on
5 someone else, you think his goal was finding incriminating
6 information on her, the defendant?

7 MRS. GAY: Yes. And, I think, if you read back the
8 testimony, he said, Well, we already had the fingerprints,
9 we knew she was probably -- knew something about it. And
10 there is a specific quote ---

11 THE COURT: But did he not, also, testify he thought
12 that she was -- he knew she was the last person to see her
13 alive, and that she may have been helping them clean up, or
14 whatever was his testimony.

15 MRS. GAY: Your Honor, let's do it this way. If he
16 was willing -- if the position of Detective Deckard was, or
17 even Detective Hagge with the North Charleston Police
18 Department, was that she was a very important witness to
19 this case, why did they come to her house or wherever at
20 11:30 or 12:00 at night? Why did they take her to the
21 police station, and leave her there for two hours or so
22 under their version -- though, she has no idea how long it
23 took, just knew it took a long time -- why did they start
24 this interview and or interrogation at three o'clock in the
25 morning, which they've all acknowledged that they believe

1 it was three o'clock in the morning? Why did Detective
2 Hagge stay there until six o'clock in the morning outside
3 of the room, just sort of hanging around? Why did he then
4 go in there and say to her at six o'clock in the morning,
5 Oh, you want to talk to us, now?

6 Whatever version of it is, whether it's her version or
7 his version, pull out a Miranda card and say, Well, let's
8 get this written down.

9 Why at 7:30 in the morning, which might have been some
10 seven and a half hours later, did they provide her with a
11 written statement and Miranda form, when she hadn't had any
12 food, gone to the bathroom only one time, and hadn't slept
13 hardly at all? Why would all of that occurred, Your Honor,
14 if they didn't believe that she had incriminating
15 information that could potentially involve her?

16 THE COURT: All right. Well, let me ask you -- and I
17 see where, I think, you've got a good point, Mrs. Gay, and
18 I'm going to consider that. But when she left the house
19 that night, the Nelson's house, when she left with the
20 officer and got in the car to leave, do you submit that was
21 custody or not custody?

22 MRS. GAY: When she walked out of the door with the
23 police officers, Your Honor, at that point, that's where
24 custody or detention began.

25 THE COURT: All right. So you're saying ---

1 MRS. GAY: Now, certainly ---

2 THE COURT: Now, let's just go down the steps, if we
3 have to stop where we are. So you're saying that when she
4 got in the car with the officer, and she says that he told
5 her that he would bring her back and lock the door or
6 whatever else, you're saying she didn't go willingly; she
7 was the custody?

8 MRS. GAY: Your Honor, I think, at that point, her
9 walking out the door, speaking to the police officers and
10 sitting in the police car may have been a willing move.
11 Yes, sir.

12 THE COURT: All right. So that was not custody.

13 MRS. GAY: However, I will say that at that point, she
14 did not believe she had a choice, because she had been told
15 that they were coming looking for her. And she thought
16 that she was supposed to do that. That's what she was
17 supposed to do. And so she willingly got in the car.
18 However, at that point, I think, is when everything from
19 that point on becomes detention.

20 THE COURT: Well, let me make sure I get -- so walking
21 to the car was not detention, but just getting in the car
22 was?

23 MRS. GAY: Yes.

24 THE COURT: Okay. And, now, you felt she got in the
25 car, because she had no choice but to go with them at that

1 point?

2 MRS. GAY: I believe at twelve o'clock or 11:30 at
3 night when four police officers showed up, she believed
4 that she didn't have a choice but to go with them. There
5 is another point down the way, where one of the things that
6 Detective Deckard said about when he arrived, which is the
7 first real conversation she had with an officer ---

8 THE COURT: When do you submit he arrived at the
9 police station?

10 MRS. GAY: I don't think she has any idea what time he
11 actually arrived.

12 THE COURT: Well, what do you submit the evidence
13 indicates in the hearing I had yesterday?

14 MRS. GAY: That he arrived sometime around three
15 o'clock in the morning.

16 THE COURT: She said she left at 11:30 or 12:00 or
17 11:00, 11:30. What do you submit in the evidence indicated
18 to me what occurred between the time she left the Nelson's
19 home, arrived at the police station, and when Officer
20 Deckard arrived?

21 MRS. GAY: I believe, she testified, Your Honor, that
22 the tall bald guy took her into the station.

23 THE COURT: Yes.

24 MRS. GAY: That at one point, they said, We've got to
25 page somebody to come down and talk with you.

1 THE COURT: Right.

2 MRS. GAY: That she was put into another room, and
3 then a long time passed. I don't believe she,
4 specifically, knew what time that time frame was, but that
5 a long time passed.

6 THE COURT: Well, did she testify that she was locked
7 in that room?

8 MRS. GAY: I believe she testified, Your Honor, that
9 she was told to wait there.

10 THE COURT: Okay. So she was put in a waiting room.
11 All right. Now, did she testify in that three-hour period
12 of time when nobody was there that she had to go to the
13 restroom, or anything of that nature, and was stopped from
14 going to the restroom?

15 MRS. GAY: I don't believe that there's any testimony
16 at this point as to what occurred during that period of
17 time other than she was waiting.

18 THE COURT: All right.

19 MRS. GAY: Without information, I would say. But she
20 was waiting.

21 THE COURT: But you submit to me, though, that she was
22 in custody at that point, because she was in custody, in
23 your view, the minute she got in the police car?

24 MRS. GAY: Your Honor, I believe, under the
25 circumstances of picking somebody up with four police cars

1 at twelve o'clock at night, and saying, Yes, you need to
2 come talk with us. We have somebody you need to talk to
3 about this. We've been looking for you.

4 Yes. However, taking it a step further to Deckard,
5 even if the Court were to determine that that period of
6 time may not have been custody, once Detective Deckard got
7 there he specifically -- we know he never gave her Miranda.
8 We know that.

9 THE COURT: Right.

10 MRS. GAY: We know he never told her that she had the
11 right to remain silent. Anything she said could be used
12 against her. We know he never told her she had the right
13 to an attorney, and if she couldn't have one that one would
14 be provided for her. We know that she was never told that
15 she had a right to terminate the questioning at any point.
16 We know those things, because he testified that he did not
17 go through any type of verbal or written Miranda at that
18 point. At that point, he testified that she asked him to
19 go home. Can I go home?

20 So he's not Mirandized her, he's started questioning
21 in violation of her constitutional rights, in my argument.
22 Further down the process, where he's never told her she has
23 the right to terminate the interview, but when she says, I
24 want to go home, he, specifically, testified -- and if you
25 need to review the record, he said, I said to her, no. I'm

1 going to ask you some more questions about this. No. I'm
2 going to ask you some more questions. So at that point ---

3 THE COURT: Are you telling me he said, "no" when she
4 said, I want to go home? He said, I said, no?

5 MRS. GAY: There was a point in his testimony where he
6 said that she said that she wanted to go home, and he,
7 specifically, said, I have more questions for you.

8 THE COURT: I thought he said, Yes, you can, but don't
9 you want to help me find the person who killed your friend?

10 MRS. GAY: Maybe, what he actually said, Your Honor --
11 and, certainly, we need to read it back -- is not until we
12 get or not until -- there was some point where he said to
13 her, the inference to her, a reasonable man inference to
14 her ---

15 THE COURT: All right. Go ahead.

16 MRS. GAY: --- was that she was not free to leave.
17 She wanted to go home. She told him she wanted to go home.
18 She asked him, specifically, if she needed an attorney. He
19 said on testimony that -- or she testified that he said,
20 You don't need an attorney at this point, which I believe
21 was totally inappropriate. What she's done, Your Honor, is
22 she is a classic example of why Miranda exists. She is a
23 classic example of not understanding her constitutional
24 rights, which she has. A classic example of when you don't
25 tell somebody what their rights are, they then try to

1 assert what they believe to be their rights, having not
2 been given the terminology or the legal grounds to assert
3 them. And then, have them yanked away from her, because
4 they didn't think they had to give them to her.

5 And, I think, in this case, Your Honor, not only has
6 she asserted her right -- she's tried to invoke her right
7 to terminate the interview, which he will not let her do.
8 She's tried to invoke questioning about whether she needs
9 an attorney, which he will not let her do. At that point,
10 I believe, pursuant to every case I've read -- even though
11 it was maybe not clear exactly what her intent was with an
12 attorney -- they should have, in good police procedure,
13 said, Oh, you want to speak with an attorney?

14 Maybe, at this point at four o'clock in the morning,
15 why don't we terminate this for a while, because, maybe, in
16 light of where we're going here, maybe, you should talk to
17 somebody. That was proper police procedure, or decent.
18 And they didn't do that in this case. What they did is
19 they continued to question her; they continued to scare
20 her. She testified that he was yelling at her about, I
21 know you know information about this. I know you know who
22 did this. And so what happened, Your Honor, in this
23 classic violation of her constitutional right, as the time
24 goes on and she says, I want to go home. Do I need an
25 attorney? He, specifically, said in his testimony that he

1 did not let her leave.

2 Now, Your Honor, under a reasonable man's, in this
3 person's position, certainly, she understood she was in
4 custody. She testified that she was detained or in
5 custody. Certainly, she can't make that legal assertion.
6 That's what you have to make. If all of these other cases
7 that I've read -- all of these other cases that the
8 solicitor has presented in this case had to do with daytime
9 interrogations. I've not seen one of these cases that has
10 anything to do with a three o'clock in the morning to 7:30
11 in the morning interrogation, questioning, any type of
12 thing like that.

13 If this person was just a witness, and if this person
14 was not somebody that they were trying to get information
15 which, ultimately, is incriminating -- whether they were
16 eliciting it as incriminating, or whether it was,
17 ultimately, incriminating, it is incriminating. And as I
18 said before, it's incriminating even in the fact that she
19 had provided some false information before. In doing that
20 at three o'clock in the morning. They're paging all these
21 detectives to come. They have Detective Hagge coming from
22 his bed. They have Detective Deckard coming from his bed.
23 They are out there looking for this person, and they say
24 that they kept her there until such time as she provided
25 this written statement and signed this form.

1 Your Honor, she, specifically, testified -- the
2 conclusion of all of this is that she has -- they have this
3 written statement, and they have a form. She,
4 specifically, said that at 7:30 in the morning or whenever
5 when they brought her all this paperwork, she signed
6 anything they said, because she thought she was going home.
7 Now, whether that makes any sense to you or I, or any sense
8 to what a reasonable person should have thought, that's
9 what she thought after having sat there for seven hours
10 with them beating on her to get to the point where she no
11 longer had a will. She would have done anything they said
12 at that point, because she wanted to try to get through it.
13 She wanted to try to get through this, what she believed to
14 be torturous situation where they were screaming at her and
15 yelling at her, and telling her that they knew she was
16 involved or knew she knew something.

17 And, Your Honor, I think, that, ultimately, she did
18 not have the protections of the constitution on her side at
19 that point. They didn't give her that opportunity. They
20 took that opportunity away from her. And at the point
21 where she was trying to come in and say, But do I need a
22 lawyer? Can I go home?

23 I mean, she never actually said, Do I have a right
24 just to shut up and say, get out of my face?

25 But, you know, ultimately, she was never told that she

1 has those rights. And she does have those rights.
2 Everybody in America has those rights. And so, ultimately,
3 those two and a half to three hours worth of intense
4 technique, interrogation, however you want to describe it,
5 totally got her to a point where she said, Can I talk to
6 someone else?

7 And Hagge walked in as the knight in shining armor and
8 said, Sure. I can promise you some things. I can tell you
9 that I'll talk on the Court's behalf. I can tell you that
10 you might get six -- you know, I'll try to see if you can
11 get six-months probation.

12 Who knows -- she believed that that's what he was
13 telling her. She believed that in providing information in
14 that statement that she was being induced by some promises
15 of leniency. And she believed that she had been threatened
16 about what could happen to her children, and what could
17 happen to her if this person didn't come -- you know, if
18 this person who did this didn't get charged or arrested.
19 She believed that she was being induced by promises of
20 leniency. She was fearful and scared. And everything that
21 she said to Hagge -- and he pulled out his card, because,
22 obviously, at that point he believed that it could have
23 been incriminating and it could have been important to have
24 these rights read. Everything that she gave at that point
25 that was incriminating, it was a product, a direct product,

1 a fruit of everything that went on between her and
2 Detective Deckard for three hours or two and a half hours
3 when there were no warnings at all. I think, if he says it
4 started around 3:00, she didn't sign that statement until
5 7:20 in the morning. And, I believe, that Hagge testified
6 that shortly after he talked to her and did his warnings is
7 when that statement was done.

8 Now, one problem that we have with the whole Miranda
9 form just in general is that the form is actually supposed
10 to be done before the statement. She's testified that they
11 did it all at the same time. Certainly, I can understand
12 in the process of providing paperwork to her, that they
13 might have had her sign things all at one time when they
14 put the paperwork in front of her. But it isn't timed. We
15 don't know whether it occurred after. She says it occurred
16 after the statement. They say it occurred before. But
17 there is no dispute whatsoever that her only waiver of any
18 constitutional rights that she was given happened around
19 7:20 in the morning after she had been, basically, with
20 these police officers since midnight.

21 So not only does she have the absolute denial of her
22 constitutional right to have Miranda, which, I think, is
23 undisputed by the police. Some attempt to try to correct
24 the situation at about six o'clock in the morning where
25 they said, Oh, well, we might should do this at this point.

1 Not only do we have all of that, but we have no evidence
2 whatsoever that she waived or knowingly or intelligently
3 gave up her rights. We don't have them. She says we don't
4 have them. She said she never had them until the very end,
5 but there is no evidence whatsoever from the State
6 presented at any point before six o'clock in the morning
7 that she knowingly, intelligently, waived or gave up those
8 rights. As I said, Your Honor, I think it's significant
9 that at the point where she's trying to assert what she
10 believed to be some layman view of her right to leave, or
11 some layman view of her right to have an attorney if she
12 needed it. They totally denied that. They said, You don't
13 need an attorney. No. You're not going home. We're going
14 to get to the bottom of this.

15 And so, Your Honor, first of all, I do believe she was
16 detained. I believe that it was -- though, it wasn't an
17 arrest, she was deprived of her freedom of action in a
18 significant way. I believe that any reasonable man in a
19 suspect's position as hers at three o'clock in the morning,
20 after she's been picked up, having been told she couldn't
21 have an attorney or didn't need one, having been told that
22 she couldn't leave -- and she, specifically, stated that
23 she believed she was in custody. I think any reasonable
24 man at that point would believe that they were in custody,
25 and could not leave.

1 Your Honor, I believe, that she's detained. She made
2 the statement that she's detained; that they have not
3 provided any evidence that her constitutional rights were
4 protected. They have provided no evidence whatsoever that
5 they gave her the opportunity to invoke those
6 constitutional rights. And I believe, ultimately, they
7 show nothing that she knowingly, intelligently, waived
8 them. And voluntary? How could it be voluntary? None of
9 it's voluntary after that point. Not only is it not
10 voluntary just in the assessment of what you have to decide
11 to determine if it's admissible, but it's not voluntary,
12 because it violates Miranda.

13 And, Your Honor, I think, the totality of ---

14 THE COURT: She needs to change her paper, Mrs. Gay.
15 Hold on one second, please.

16 COURT REPORTER: Okay. I'm ready.

17 THE COURT: Okay. Continue on. Finish up, if you
18 would, because I need to hear from Mr. DuTremble.

19 MRS. GAY: I understand that, Your Honor. I don't
20 think there's any way that this statement can be
21 determined voluntary, even in light of the fact -- if there
22 is a point where the Court would feel that, okay, whatever
23 happened with Detective Deckard is some type of background
24 information, but whatever happened with Detective Hagge
25 after he was Mirandizing her, I would argue there is no way

1 to separate them. However, Your Honor, even at that point,
2 nothing that she did at that point was voluntary, because
3 her will was overborne.

4 This confession, this statement, this Miranda form is
5 not a product of her free will. It's not a product of
6 something that she just chose to do, because, you know, she
7 just made that decision at four o'clock in the afternoon
8 one day just decided that, you know, it was an unrestrained
9 and free decision to talk to them. There is absolutely no
10 way that it was a product of -- it was made with compulsion
11 or inducement. It was not essentially free. It was not a
12 choice by her at that point to make this statement.

13 And, ultimately, I know that you've reviewed the
14 testimony of Mr. Leo. And Mr. Leo's whole discussion is
15 based on the fact that confessions or statements are good
16 things, but they should be freely and voluntarily given.
17 They should be admissible in court. They should not come
18 with inducements or threats. And, ultimately, it's in
19 societies best interest to have statements and things that
20 are done correctly. This is not a statement that was done
21 correctly. This is a situation where they absolutely
22 denied this woman her constitutional right. And there is
23 absolutely no way that we can determine that this statement
24 is voluntary.

25 THE COURT: All right. And, Mr. DuTremble?

1 MR. DUTREMBLE: Thank you, Your Honor. May it please
2 the Court? I think Your Honor put your finger on the
3 central issue right at the beginning of the hearing. You
4 said that you have to determine whether or not this young
5 lady was in custody. And, basically, custody is an
6 objective determination to be made by the Court since Mrs.
7 Gay has accurately described it. It's whether or not a
8 reasonable person ---

9 THE COURT: Did you say an objective?

10 MR. DUTREMBLE: Yes, sir.

11 THE COURT: Okay. Go ahead.

12 MR. DUTREMBLE: Whether a reasonable person, in the
13 defendant's position, would think that she was in custody.
14 So we need to look at the surrounding factors. Mrs. Gay
15 makes a big deal of the fact that there are no cases cited
16 in which a confession was obtained during the nighttime or
17 the early morning hours. Why did we pick her up at the
18 time we did? Because that's when she came home. That's
19 what she testified to. I didn't get home until 11:00 or
20 11:30.

21 And this is after a murder has been committed. Your
22 Honor has been provided with Officer Hagge's ---

23 THE COURT: Well, four days after.

24 MR. DUTREMBLE: Four days after. That's right.

25 What's she been doing for these four days? Your Honor was

1 provided with Detective Hagge's notes, and you will notice
2 on Detective Hagge's notes that on the 8th he asked the
3 various police units to start looking for her. We didn't
4 find her until the 9th. If you believe her, we found her
5 hat 11:00 or 11:30 at somebody else's house. Well, that's
6 where they found her, and that's why we approached her at
7 the hour that we did.

8 And what happened when we approached her? Ken Hagge
9 testified that when he was paged he asked the paging
10 officer to ask her whether or not she would voluntarily
11 come down to the police station and talk with him. That's
12 also reflected in his notes. The response he got back was,
13 yes, she was, if she would. And so they asked her to come.
14 And they said, Please, lock up your belongings. We're
15 going to bring you back home. Just like they had done four
16 days, previously, on the 5th.

17 THE COURT: By the way, am I to believe that Hagge was
18 in communication with the officers at midnight or eleven
19 o'clock that night?

20 MR. DUTREMBLE: Yes, sir. He was paged. He was paged
21 at about three o'clock in the morning and came on into the
22 police station. When he was paged, his testimony was he
23 asked the paging officer to inquire of the defendant
24 whether she would voluntarily come down.

25 THE COURT: And what time did he say that was?

1 MR. DUTREMBLE: About 3:00 in the morning. At least
2 he got there at 3:00 in the morning. So it had to be
3 sometime prior to that, obviously.

4 THE COURT: All right. So Hagge did not say what time
5 he was paged?

6 MR. DUTREMBLE: That's correct. I believe it's in his
7 notes.

8 THE COURT: The only evidence we have about when she
9 left to go to the station with the officers is her
10 testimony that it was 11:30 or 11:00, other than the
11 testimony of her mother that said she was called by Dana
12 Nelson about 9:00 or so?

13 MR. DUTREMBLE: Yes, sir.

14 THE COURT: But the only testimony we have about the
15 time she was picked up by the officers, as you say, is from
16 her or her mother?

17 MR. DUTREMBLE: Yes, sir.

18 THE COURT: We have nobody else to testify as to when
19 she actually rode with the police to the police station?

20 MR. DUTREMBLE: That's correct.

21 THE COURT: So then the evidence I have is it was
22 either 11:00 or 11:30 or it was 9:30?

23 MR. DUTREMBLE: Yes, sir. One of the two.

24 THE COURT: And the only evidence we've got about when
25 someone actually talked with her, is both Officer Deckard

1 and her about three o'clock?

2 MR. DUTREMBLE: That's correct. Now, when she leaves
3 her house, Your Honor, she admits she doesn't leave in
4 handcuffs, she doesn't leave in belly chains, and she's not
5 searched. She was given a ride to the police station by
6 the officer just like had taken place on the 5th. They
7 gave her a ride to the police station. And by her own
8 testimony, when she gets there, she is placed at a table.
9 She's not placed in a cell. And she waits, and she asked
10 what's taking so long. And she's advised that somebody has
11 been paged to come in and talk with her.

12 Now, when Detective Deckard arrives ---

13 THE COURT: Mr. Bailiff, see if any of the jurors want
14 to go outside. You walk outside with them.

15 Go ahead. Continue on, Mr. DuTremble.

16 MR. DUTREMBLE: When Detective Deckard arrives
17 sometime after three o'clock in the morning, he testifies
18 that he begins to talk with her about background
19 information, about the game room, about Dawn Russ, about
20 her children, her family, her parents, her home life,
21 things of that nature. And she, basically, corroborates
22 it. Because when I asked her on cross-examination, she
23 admits that at no time, whether it was Deckard or whether
24 it was Hagge, was she ever accused of being the murderer.
25 What she testified is that she was told that she could be a

1 witness who has information that would be helpful to the
2 police. That's all she's ever told. She's never accused
3 of being a murderer. She's never accused of being a
4 robber. And at some point when she's talking with Deckard,
5 she testified she asks, When can I come home?

6 His testimony is he told her, You can go home anytime,
7 but we would like to find out what happened to your friend,
8 Dawn.

9 She never picks up her belongings and stands up. She
10 never goes to the door. She never asks for a ride. She
11 stays there, and he continues to ask her questions just
12 like on the 5th when she's taken to the police station, is
13 interviewed by a detective, she's asked questions; nothing
14 has changed. She's never accused on the 5th of being a
15 murderer. She's never accused of being a robber. And by
16 her own testimony, neither of the two interviewing officers
17 ever accuse her of any crime, no crime whatsoever, whether
18 it be lying to them on the 5th, whether it be lying to them
19 on the 9th, or whether it was a murder.

20 So, clearly, when you look at the surrounding
21 circumstances, there's no indicia of any custody. What the
22 case law says if you want to terminate questioning, you
23 have to do so unequivocally. The case law, also, says if
24 you ask for a lawyer, you have to do so unequivocally. And
25 what she testified on cross-examination was: I asked them,

1 do I need a lawyer? Which is a question. And if you
2 believe what she has to say further, she was told, No,
3 you're only a witness. But she never says, Get me a
4 lawyer. I want a lawyer. I want to stop speaking to you
5 until I get a lawyer.

6 None of that. So any request, even if it existed at
7 all, Your Honor, at face value what she had to say, doesn't
8 reach the level required by the law.

9 THE COURT: What does Officer Deckard or Hagge say?
10 How do they respond to her question about a lawyer?

11 MR. DUTREMBLE: Their testimony is, by both, she never
12 requested a lawyer of any kind. Never even mentioned one.
13 But I'm taking it at face value for purposes of this
14 argument what she has to say about the case. And her
15 testimony is that the best she did was to say, Do I need an
16 attorney?

17 Because as she was testifying, I'm writing it down.
18 That's what I've written down.

19 Now, Judge, if you take a look at the totality of the
20 circumstances, which is what I think we have to do, taking
21 what she says at face value, assuming that she's picked up
22 at eleven o'clock and they don't get there until 3:00. And
23 so she's there for several hours, and nobody ever talks to
24 her. She testifies they sat her down at the table, and
25 she, simply, waited there. She never asked -- never

1 testified that she asked to use the telephone to call her
2 mama, call a friend, call anybody, call a cab. She never
3 asked to leave. She never testified that she needed to use
4 the bathroom and it was denied to her. At the most, we
5 know, taking at face value, she was simply seated in a
6 chair in a room, while she waited for whoever was being
7 paged to come. So that's not coercive. She's not in
8 custody. She's not in chains. She's not in a cell.

9 When Detective Deckard gets there, she's never
10 accused. She's not threatened by him in any way. And even
11 if we take at face value that he yelled at her at some
12 point in the discussion he was having with her, by her own
13 mouth she said, I never told him anything incriminating. I
14 never said anything incriminating.

15 And it's not until she makes the request to talk to
16 another detective, and Detective Hagge comes in that she
17 starts to say -- play the game, Let's Make A Deal, and he
18 advises her, I can't make deals. So she wants you to
19 believe, Your Honor, that he told her, Well, give me a
20 confession as to this murder, and I'll see to it that you
21 only get six months probation.

22 Well, maybe, in California she could get six months
23 probation for murder, but this ain't California. And this
24 ain't Mayberry, either, Judge. Now, these detectives would
25 not make a recommendation of six months probation to Your

1 Honor or to my office in a murder case, and we all know
2 that. That's something Your Honor needs to consider, the
3 fact that these officers would make some sort of outlandish
4 comment like that in a case of murder that they have been
5 investigating for four days.

6 What she wants you to believe, Judge, is that even
7 after Miranda warnings are given to her, both verbally and
8 in writing, that the police made up everything that Your
9 Honor reads in her statement. But yet we know that can't
10 be true, Your Honor, and that goes to her credibility,
11 because she testifies that those corrections written on
12 that statement bear her initials. And, Judge, if they bear
13 her initials in their corrections, how can you correct
14 something unless you know what it says?

15 So her statement that, I never read it, they never
16 read it back to me, does not ring true. Because she could
17 not correct a mistake if she didn't know what was on the
18 paper. And it goes, also, to the questions and her
19 handwritten responses on the other pages where they ask the
20 questions, and she writes in her own hand what happened.
21 So while Mrs. Gay makes a big deal about this lady having
22 to be Mirandized, she was Mirandized on two occasions.
23 Once, by Detective Hagge, and once in writing by Detective
24 Deckard, which she initialed and signed.

25 So the initial determination, and, really, the only

1 determination Your Honor has to decide before we move on
2 is: Was this a custodial interrogation from the time
3 Detective Deckard was there? And I believe the case law is
4 clear. Even if they thought she was a suspect, even if
5 they took her to the station house, unless it's custody it
6 doesn't make any difference.

7 THE COURT: Well, let's objectively look at it for a
8 second. Because we must look at it from an objective
9 standard as opposed to what she or the officers thought.
10 That's the law. I'm sure you'll agree.

11 MR. DUTREMBLE: I agree.

12 THE COURT: All right. So let's just look at what
13 occurred. At some time around midnight, in my view, in my
14 findings, she goes to the -- gets to the county jail or to
15 whatever the police agency is called. She's there for
16 about three hours. At that point in time she's in the
17 police station. Nobody says anything very much to her at
18 all, other than she has brief conversations with one
19 officer that was there. But I don't think, to my mind,
20 there is not any significant testimony going on or
21 discussions going on about this incident.

22 About three o'clock in the morning, an officer arrives
23 who is investigating this crime. For over three hours this
24 officer talks with her about this crime, about what she
25 knows about this crime. And from the view -- I have heard

1 from both sides. It appears that the focus was that she
2 knew something about it that she wasn't telling them. I
3 think that there is no way that at the very least this
4 Court cannot find that they at least thought that she knew
5 something about it that she wasn't telling them. So there
6 was questioning over and over.

7 During the course of that discussion, for three and a
8 half to four hours, there is no doubt she said, Can I go
9 home -- or referenced something about going home. That's
10 unrefuted; both sides mentioned that. The response of the
11 officer he says was, Yes, but don't you want to tell us who
12 did this to your good friend? And then discussions about
13 the daughter of the victim, did she want somebody else to
14 be -- some other child to be left without a mother. Those
15 things were going on.

16 Now, the Court wants to be objective. But we, also,
17 want to think, how in the world can for three and a half to
18 four hours this thing revolve around that? And you're
19 telling me that during that entire time, your view is,
20 there was no focus on her as the perpetrator to the crime?

21 MR. DUTREMBLE: By her own mouth, Your Honor. When I
22 asked her, specifically, did those police officers ever
23 accuse you of being the murderer or the robber, she said,
24 No.

25 THE COURT: Well, what do you submit is why Detective

1 Hagge decided I think I better give her Miranda?

2 MR. DUTREMBLE: Because Detective Hagge testified that
3 when he went in the room, he had no idea what they had
4 talked about before. And he had no idea what she wanted to
5 talk to him about. He had no idea what she was going to
6 say to him. And it wasn't until she made some indication
7 to him that she wanted to tell him what had happened, that
8 he decided that he would pull out his card and give her the
9 Miranda warnings, because she had just told him that she
10 wanted to tell him what happened. He didn't know whether
11 she was going to confess to it, whether she was going to
12 tell him somebody else did it; he didn't know what she was
13 going to say. So as a precaution, he verbally gave her her
14 Miranda warnings, which was the proper thing to do.

15 THE COURT: But we know that this was given after she
16 had been to the police station for about seven hours.

17 MR. DUTREMBLE: Yes, sir. But she had been talking to
18 the police for about three ---

19 THE COURT: I know. But whoever's version we take,
20 she was there at least seven hours at this time.

21 MR. DUTREMBLE: Yes, sir. But we, also, have to
22 consider what was she doing for those seven hours? Only
23 for about three hours was she talking to a police officer.

24 THE COURT: Only for three hours?

25 MR. DUTREMBLE: Yes, sir.

1 THE COURT: So she's talking with the police officers
2 for three hours, she's there for seven. There's no
3 testimony that she was sleeping at all, which is the, we
4 must accept, that's the normal time people sleep, for those
5 periods of time. And she's up all night long. And during
6 the course of that night she says she has asked, Do I need
7 a lawyer? Every side agrees she said, Can I go home? And
8 then at 7:00 he comes in.

9 Suppose I accept everything you say there. You don't
10 consider the fact that once he comes in, he gives her the
11 Miranda warnings, you feel she could fully understand the
12 Miranda warnings after seven hours of being at the police
13 station, three hours of questioning -- whether it be
14 interview or interrogation, it was questioning -- that
15 there is an understandable, intelligent, knowing waiver of
16 Miranda at that time?

17 MR. DUTREMBLE: Absolutely, Your Honor. Not only the
18 verbal one, but she's given the opportunity in writing on
19 the form that they give her before they take the written
20 statement, where she indicates I fully understand my
21 rights. She could have taken the pen and written, I'm too
22 tired to understand my rights. She doesn't do that. She
23 doesn't testify that she's too tired to understand what the
24 police officers are saying to her. And when I asked the
25 police officers, Did she understand your questions? Did

1 you understand her replies? Did she appear to understand
2 her rights when you gave them to her? Did she appear to
3 understand her questions? The testimony was, Yes, she did.
4 She doesn't dispute that.

5 And on the form it clearly states, in bold letters, I
6 have been read my rights, and I fully understand them.
7 There is no notation on there by her or by anybody else.
8 That is not the case. She signed it and she initials it.
9 So, yes, Your Honor. I believe, in answer to your
10 question, I can truthfully tell Your Honor that based upon
11 the evidence, as I view it, she did understand what she had
12 been told.

13 THE COURT: Because when we get down to cases, it
14 seems to me that the main consideration here, is that
15 Detective Hagge must have thought she was in some custodial
16 situation, because he gave Miranda rights. So then, the
17 question then becomes, did she fully understand her Miranda
18 rights? And if this Court accepts that at least by 7:00 in
19 the morning she was in custody, she was given the Miranda
20 rights, did she at that point in time, understand the
21 Miranda rights, and make a knowing waiver of the rights?
22 Her position is no, I didn't, and I didn't give statement,
23 which is another issue. It was written down by him, and I
24 was so tired, everything happening all night, I just signed
25 anything he gave to me. Their position is they gave her

1 the rights. He says -- Hagge says she understood them, and
2 then she told him what occurred; and then he brings in
3 Deckard who, then, has her say it, again, and he writes it
4 down. I think it was two times they are saying; right?
5 The first time Hagge said she told it to him, and then he
6 brings Deckard in and she repeats it. According to their
7 testimony, he writes it down, and has her make what ever
8 corrections, and then answer these four questions.

9 So in my mind, the view then becomes when she was
10 given the Miranda rights. Because there is no doubt, she
11 was given the rights. The testimony is complete that at
12 least she was given this form that she initialed. Whether
13 she understood what was on the form or not is the question
14 that I'm looking at here. But once she was given the
15 rights, did she understand them, and did she make a knowing
16 waiver of those rights? Because if she didn't, I feel that
17 the statement was not voluntary when you look at the
18 voluntariness of all that was involved, as well as the
19 seven o'clock in the morning situation. And that's where
20 I'm focussing at, really.

21 I think that if she wasn't in custody, she was around
22 7:00, because Hagge determined to give her the Miranda
23 rights, and he made that determination. He knew that she
24 had been there all night, because he was the that radioed
25 that said, if she would agree to come in. So at seven

1 o'clock in the morning, he was not then just interviewing,
2 just someone who may have been involved -- not someone who
3 may have been involved -- he was not interviewing someone
4 who they were just trying to see what information they had.
5 He gave her the Miranda rights. So for seven hours after
6 he was radioed -- it might have been more or less, but
7 several hours -- he decided I'm going to give her the
8 Miranda rights. And it's not like he was an officer that
9 was brand new to this matter, just coming in and didn't
10 know who he was talking with. He's the one that the
11 officers on the street had talked with before they picked
12 her up. So when he gave them to her, did she understand
13 it, and did she make a knowing waiver?

14 What is your response to that?

15 MR. DUTREMBLE: My response is, Judge, he gave her the
16 Miranda rights, because of what she told him when he came
17 in the room, I want to tell you what happened.

18 At that point in time he determined that he didn't
19 know what she was going to say; that because he didn't know
20 what she was going to say, he decided to give her the
21 Miranda warnings. He wasn't interviewing her.

22 THE COURT: But before there, Mr. DuTremble, they
23 brought her in for her tell them what she knew about what
24 happened. That's why they brought her in; isn't it?

25 MR. DUTREMBLE: Yes, sir.

1 THE COURT: So, therefore, when they brought her in
2 and said, What do you know? What do you know about what
3 happened? They didn't give her Miranda rights when they
4 asked her that question. So, therefore, when she says, I'm
5 going to tell you what happened, why did that change the
6 need for Miranda rights, from her saying it or them asking
7 it?

8 MR. DUTREMBLE: Because Miranda only applies, Judge,
9 as we all know, if the lady is in custody. They asked her
10 to come in voluntarily as a witness. She was not in
11 custody. Now, eventually, once she tells Detective Hagge
12 what happened ---

13 THE COURT: Mr. DuTremble, I know that. Once she told
14 him, yes. But suppose when they brought her in sometime in
15 that midnight hour, they brought her in -- suppose
16 Detective Deckard got there at 12:00, or even at 3:00 when
17 he got there, he walks in the room, and she says, All
18 right. I'm going to tell you what happened.

19 Is it your view, then, he was supposed to give Miranda
20 rights?

21 MR. DUTREMBLE: Yes, sir.

22 THE COURT: Well, what if the difference is he says,
23 Will you tell me what happened?

24 Which is what he asked her about; isn't it? Did he
25 need to give the Miranda rights, then?

1 MR. DUTREMBLE: If he had -- no. No. Absolutely not,
2 Judge. I mean, the situation doesn't change. You only
3 have to give her Miranda if she's in custody. And if she
4 comes out and says, I did the murder, then you've got to
5 give her the Miranda warnings.

6 THE COURT: But Detective Hagge says he gave them the
7 rights before she said that.

8 MR. DUTREMBLE: He did, Judge. He did. Because he
9 came in there. She said, Let's make a deal. He said, I
10 can't make a deal.

11 THE COURT: Well, now, you just said that. So her
12 testimony was she said, Let's make a deal, or I'm going to
13 tell you what happened?

14 MR. DUTREMBLE: If you recall the testimony, Judge, he
15 came in there and spoke with her for about ten or fifteen
16 minutes. She wanted to know if she could make a deal. He
17 said, I can't make a deal. That's up to the Judge. It's
18 up to the Solicitor's Office.

19 She then wanted to know -- and to be accurate, let me
20 refer to this.

21 THE COURT: Let's make sure what he's got written in
22 those notes are also what he testified to.

23 MR. DUTREMBLE: Yes, sir. That's what I'm looking
24 for.

25 Quote, the lady testified -- she asked how much time

1 she would get. He told her that was not for him to
2 determine. She then tells him at some point during that
3 colloquy that she wants to tell him what happened. At that
4 point in time, he does not know. But based upon her
5 previous two statements that how much time will I get and
6 what kind of deal can I get. When she says, I want to tell
7 you what happened, he's got some indication that she's
8 about to tell him something that may require her to be
9 Mirandized; and so he does.

10 THE COURT: And you feel after seven hours there, she
11 was alert enough, understood enough of her rights, and once
12 he told her her rights that she was able to understand it.

13 MR. DUTREMBLE: Yes, sir. There's no testimony that
14 the lady was punch drunk or couldn't understand their
15 questions. And if she wasn't, as I pointed out already, if
16 she wasn't, the proper time to let the world know is when
17 she fills out this form. And it asks her -- I fully
18 understand each of these rights explained to me. The time
19 to let the world know is just to write "No" across it. I'm
20 too punch drunk; I'm too tired. But she doesn't do that.
21 She takes the time not only to sign it, but to initial each
22 and every one.

23 No person in their right mind, Your Honor, would sign
24 a five-page confession and an advice of rights form, and
25 initial all the corrections and initial all the rights that

1 are read to them if they don't, in fact, understand.
2 There's no testimony that she's mentally ill or that she's
3 mentally defected. The only testimony is that they
4 understood her, she understood them; and she acknowledges
5 that in writing. And I think that's the strongest evidence
6 that we could possibly find that she did understand what
7 they had read to her. And they're pretty simple things.
8 You know, if you watch t.v., Judge, Law and Order's got
9 them all the time.

10 THE COURT: What's that got to do with this, Mr.
11 DuTremble? I'm not a t.v. ---

12 MR. DUTREMBLE: Well, what I'm trying to tell you,
13 Judge, is she didn't get these Miranda warnings in a
14 vacuum. She's not a person who's never heard of it.
15 Everybody in America knows what Miranda warnings are.

16 THE COURT: Well, I can't -- there's no testimony to
17 that, Mr. DuTremble. I can't assume in my discussions
18 she's observed t.v. or something of that nature. And if
19 you and I watch t.v., I'm sure you don't always agree with
20 those situations. This is a real situation. It's not a
21 fictional situation.

22 MR. DUTREMBLE: Yes, it is, Judge.

23 THE COURT: This is a real situation. I have to apply
24 real constitutional principles and real decisions by our
25 Court as well as the U.S. Supreme Court.

1 Okay. I've got your position. Now, I'm going to ask
2 you a question in a minute, but I will give you about three
3 minutes to reply, then I need to make my decision here.
4 Three minutes.

5 MRS. GAY: Thank you, Your Honor. One thing that he
6 specifically said that no person in their right mind would
7 sign these things. Pursuant to Mr. Leo, he said
8 specifically, Your Honor -- he does this for a living.
9 This is his area of research. He said that hundreds of
10 cases that he's reviewed, many that he's testified in, he
11 said specifically in his testimony that every single one of
12 them have been people that have been given Miranda, have
13 waived their Miranda, and, yet, he still has this position
14 that he believes that there was coercion or an inducement
15 that caused them for their will to be overborne.

16 Not only that, but he specifically says about this
17 case that Miranda isn't even done correctly. He believes
18 he calls it sloppy police work, because he said that they
19 don't time it. Now, certainly, if we, just based on what
20 he says -- she says that it happened at the same time that
21 they hand her the statement. That is undisputed by the
22 police that they actually brought that Miranda form to her,
23 the written form, some time around the same time that they
24 did the statement. Even if we assume that it was some time
25 right before she signed the statement, it's still well into

1 seven o'clock in the morning, Your Honor.

2 He says, Your Honor, in his argument, that as a
3 precaution, Hagge gives her Miranda because he isn't sure
4 what he's supposed to say -- what she's going to say. I
5 think the Court picked up on the real problem here. Is
6 that every thing that she said to him at that minute was a
7 product of what had been said to her by Deckard over the
8 three hours before that about the need to help them, and
9 the fact that she was a witness, and, Tell us who did this.
10 No. I don't want to go -- she said, I want to go home.
11 No. We want to get this information.

12 I would really as the Court, before you make a
13 decision, to listen back to his testimony, because he
14 specifically said, Yeah. We were pretty sure that she knew
15 something about this, and that there was something going
16 on. I can't remember if he used the word "suspect" or not,
17 but I almost think he did, Your Honor. But he specifically
18 inferred that based on her questioning, he was pretty sure
19 that she knew something that was going on. And so as a
20 precaution, he should have given her Miranda at three
21 o'clock in the morning, Your Honor, which he did not.

22 And, Your Honor, I think this reference to her being a
23 person not in a vacuum and having some idea of what her
24 rights may be is evident in what she said to them. Can I
25 go home? Do I need a lawyer?

1 Those rights, those constitutional rights against your
2 right to not self-incriminate are designed to create an
3 opportunity to let people know that they do have those
4 rights, to tell them how to articulate those rights, to
5 tell them that they have a right to invoke those rights.
6 Her meager attempts to invoke a right that she may in her
7 head think that she had, was evidence of the fact that at
8 that point if they had given her her actual Miranda rights,
9 she very well may have said, No. I don't want to talk to
10 you. No. I want a lawyer present. No. I don't want to
11 be here at three o'clock in the morning.

12 She was indicating to them in her meager attempts to
13 say, I don't want to talk to you. I want to know if I need
14 a lawyer.

15 They specifically deprived her of the right to know
16 that she had the right to terminate that interrogation;
17 that she had the right to have an attorney; that she had
18 the right to remain silent. They didn't tell her that. In
19 her attempts to say, I don't want to talk anymore. I want
20 to go home. She's trying to invoke something that they
21 didn't even bother to tell her that she had, which they are
22 required to do.

23 THE COURT: Well, once they did tell her, Mrs. Gay,
24 why did she initial the document?

25 MRS. GAY: Well, I think, Your Honor, certainly, at

1 seven o'clock in the morning -- and I believe you indicated
2 this. Miranda is one issue, I believe, we have a very
3 flaring constitutional violation. The voluntariness of the
4 statement as taken in the totality, is that at seven
5 o'clock in the morning she, specifically, said that that
6 statement and that signing of that statement was because
7 that's what they were telling her to do, because she
8 thought she could go home.

9 THE COURT: Well, now, we must admit there's nothing
10 that was -- there was no information that was given to them
11 before Officer Hagge says he gave her Miranda warnings that
12 the State's really trying to introduce.

13 MRS. GAY: Well, Your Honor ---

14 THE COURT: The State's only trying to introduce
15 something that was given after today, but Hagge says he
16 gave her orally the Miranda warnings; and then later on
17 Deckard with the signed document. So as far as what they
18 want to bring into evidence before the jury is what was
19 given after the Miranda warnings. Of course, I think, your
20 position is that their discussions with her and the
21 presence with her for seven hours overbore her will; and it
22 wasn't a voluntary waiver.

23 MRS. GAY: Yes, sir. I think that's definitely the
24 case. Not only is there not -- there is no preponderance
25 of an evidence to even show that she established that she

1 voluntarily, knowingly and intentionally waived those
2 rights after Hagge said it. She says, for one, she never
3 even heard them. But, specifically, with regard to the
4 fact that she signed the statement, there's no doubt that
5 her will was totally overborne at that point. She was
6 under duress. She had been threatened. She'd been
7 coerced.

8 THE COURT: Using Dr. Leo's words. Overbore her will,
9 I think, he said it in his deposition.

10 MRS. GAY: Well, I think, Your Honor, constitutionally
11 or legally what we have to determine at the voluntariness
12 is whether or not under the totality there was a free and
13 willing statement in this case; and there was not. I
14 think, specifically, Your Honor, the law establishes that
15 she, with all of these objective factors involved and even
16 the subjective factors which we cannot ignore -- I mean,
17 her subjective factors in this case, what she believed the
18 situation to be, the duress and coercion that she felt as a
19 subjective factor, before the Court, would also have to be
20 taken into consideration here.

21 She totally felt that if she said something to them,
22 if she told them what happened, if she gave them a
23 statement, that they would help her; that her children
24 might not be harmed by this person; that they had not told
25 her she was a suspect; that she was going to be -- that she

1 was induced by some type of promise of leniency. Things
2 that are just totally inappropriate. And, certainly, Your
3 Honor, if you look at the two different time frames, and
4 say, No. Nothing she said to Deckard is necessarily what's
5 going to come out.

6 Her demeanor at that point. Her demeanor is what
7 ultimately led to Hagge coming in there. Her needing to
8 talk to somebody else. Her -- how he -- and he says it.
9 How he basically convinced her, you know, that it was in
10 her best interest to tell them all this extremely
11 incriminating stuff. It was not in her best interest.

12 THE COURT: All right. Mrs. Gay, your time limit is
13 up, but you do agree that the decision about whether she
14 was told about the various deals is the way she recites it
15 or the way they recite it, is a matter of credibility for
16 me to determine in that regard?

17 MRS. GAY: Yes, sir. I understand that, but, I think,
18 that certainly ---

19 THE COURT: But objective -- and when you say
20 "subjective standard", see, the problem with that is they
21 become matters of credibility. Objectively, though, things
22 that the Court can look at and the case law says we're
23 supposed to look at, we look at the things that are clear
24 here, and then determine from that; not necessarily from
25 what she thought or they thought. And then when it comes

1 to issues of credibility, I do have to make certain
2 findings in regard to that. For example, if I made a
3 finding that they promised her that if she talked, they
4 would give her probation, or six months probation. If I
5 found that, we wouldn't be here very long. If I make that
6 finding, that's it, obviously. And I'm sure Mr. DuTremble
7 would agree to that, if I ended up believing that the
8 officer said, If you tell us you did this, we'll give you
9 six months probation.

10 Then, obviously, the matter would not have been freely
11 given. It would have been given in return for some sort of
12 inappropriate promise from the police. So those issues
13 become credibility issues.

14 MRS. GAY: The only thing I would say, Your Honor, is
15 that I think pursuant to the -- my position is pursuant to
16 the three or so hours worth of interrogation by Deckard,
17 and what Hagge said to her, all the things that she
18 testified, she was convinced, at the point that she gave
19 that statement, that that statement was going to help her
20 in some way. And there is no doubt that that statement
21 does not help her. And there is no doubt that that
22 statement is incriminating to her. And so at that point,
23 her understanding of the entire process was totally and
24 completely wrong. And her understanding of the entire
25 process ---

1 THE COURT: Well, I know that, but the fact that she
2 may have had a wrong understanding of the process is not
3 the key. Unless the reason she had the wrong understanding
4 is because of some inappropriate behavior of the police, or
5 something of that nature. The fact that she may have
6 thought telling them this information may help her -- of
7 course, she says she didn't say that to them. But whether
8 she thought that would help her or not is not the key,
9 unless she had that thought, and it was an inappropriate
10 that thought, because of her will being overborne through
11 the hours of being present there at the police station.

12 MRS. GAY: Yes, sir. And not being told ---

13 THE COURT: All right. Do you want one minute in
14 reply or not? Do you have everything?

15 MR. DUTREMBLE: I'm just going to make one statement,
16 Your Honor.

17 THE COURT: All right. Yes, sir.

18 MR. DUTREMBLE: Your Honor asked me a question about
19 whether or not she understood the Miranda warnings when
20 they were given to her. In addition to the comments I
21 made, I will also point out that if this lady was so
22 browbeaten, so distraught, and so unable to understand what
23 the police were saying, how did she have the presence of
24 mind at six o'clock in the morning to ask for a supervisor
25 to talk about making a deal.

1 She had the presence of mind to know that the officer
2 she was talking to couldn't make any deals. She had the
3 presence of mind to ask for a supervisor, and ask him about
4 making a deal.

5 THE COURT: Okay. Thank you.

6 (WHEREUPON, there was a short recess while the Judge
7 reviewed some previous testimony in chambers.)

8 THE COURT: Okay. Thank you. Be seated. I have
9 further reviewed testimony that was given in the hearing.
10 And after, also, reviewing the exhibits introduced in the
11 hearing, again including Defense Exhibit 1 for purposes of
12 the hearing, State's Exhibit 1, State's Exhibit 2 -- and
13 the piece of paper where the State purports she wrote out
14 answers was not marked as an exhibit. It was attached to
15 State's Exhibit 1. And I reviewed those matters as well as
16 the case law presented in the matter, as each side has
17 submitted the Evans case. I have reviewed the reasoning
18 and the law in regard to that. I've also reviewed -- which
19 is cited at -- has not put in the reporter, yet -- but 2001
20 W.L. 10603, January 2, 2001, Court of Appeals case.

21 Also, a U.S. Supreme Court case, California v.
22 Beheler. B-e-h-e-l-e-r, 463 U.S. 1121, 1983 case. I have
23 also reviewed a South Carolina Supreme Court case way back
24 in '79, State vs. Doby 258 South East 2nd 896. I have
25 reviewed State v. Kennedy in regard to certain issues in

1 this case, which is a Court of Appeals case back in 1997,
2 479 South East 2nd 838. Somewhat I've reviewed the
3 Register case, which is State v. Register, 476 South East
4 2nd 153. And I have, also, reviewed the case of State v.
5 Aleksey, A-l-e-k-s-e-y, 538 South East 248. Those are the
6 ones I'm using as well as my own understanding of the law.

7 In doing that, there are two things here, obviously,
8 when you look at the custody issue in determination of
9 custody and Miranda, you normally review and you should
10 review objectively the evidence presented to make a
11 decision of whether or not the person was in custody. I
12 use that objective standard. And then when you review the
13 voluntariness of everything, you look and you can, then,
14 consider more subjective situations.

15 I make the following findings here: That, in my
16 review of this matter, that the defendant came in the
17 custody of the police some time during her discussions with
18 Officer Hagge, which occurred some time after 6:00 a.m. It
19 wasn't really 7:00. His testimony was after 6:00, around
20 6:15 or so. But during her conversation with him, she
21 evolved from being there for an interview into being in
22 custody. I do not find she was in custody when she left
23 the Nelson home at whatever hour that was. And I do not
24 that find she was in custody during the discussions with
25 Deckard, the initial discussions with Deckard.

1 I find further, that she was given her Miranda
2 warnings by Officer Hagge, orally, some time around 6:30 in
3 the morning -- 6:15 to 6:30 in the morning. That after she
4 was given the Miranda warnings by Officer Hagge, that she
5 then made a free and voluntary waiver of those Miranda
6 warnings, or she made a waiver of those Miranda warnings at
7 this time. Later, she was given the Miranda warnings, I
8 find, after 7:00 a.m., some time around 7:00 or 7:15 by
9 Officer Deckard in writing. I find that she was given
10 those Miranda warnings in writing; that she, then, made a
11 waiver of those Miranda warnings; and the waiver was made
12 knowingly and voluntarily of the Miranda warnings.

13 Now, as to the statements that were given. There, I
14 need to look at the fact and determine -- not determine,
15 look at the various issues. One, is I have -- even if she
16 was given the Miranda warnings, even if she was in custody
17 when -- if custody began when Officer Hagge came in, and
18 began talking with her. And the issue and discussion of
19 the deal process evolved into -- and not knowing what
20 Deckard had talked with her about -- evolved into suspicion
21 upon her. Therefore, he gave her Miranda warnings. That
22 looking at the totality of the circumstances, was her
23 statement given voluntarily even if she did waive the
24 Miranda warnings.

25 Her mother says that she was called by the Nelsons

1 sometime around 9:00 p.m. I don't find that credible,
2 because nobody testifies in that regard to corroborate that
3 at all. And it does seem rather unusual that she had been
4 there from 9:00 p.m. The defendant testifies that the
5 police were waiting there at the home of the Nelson's some
6 time around 11:00 or 11:30 or so when she got to the
7 Nelson's home. The testimony of Hagge is that he was
8 radioed by the police; that he had dispatch to try and find
9 her; that they had found her; and that he had talked with
10 them about bringing her in if she -- would she volunteer to
11 come in; and they said that she would, according to his
12 testimony. And he said to bring her on in. He testifies
13 that was somewhere around 3:30 in the morning.

14 So I do have, you know, a difference of Hagge and the
15 defendant. But that being as it is, I'm not sure it's
16 necessary for the Court to make a finding whether it was at
17 3:30 she was brought in, or whether it was 11:30. From the
18 period of time until around 3:30 or 4:00 in the morning, no
19 one has talked with her. There is no indication that she
20 couldn't have walked out of the police station. There is
21 no indication otherwise. And she was just there to be
22 talked with by Officer Deckard.

23 Deckard then begins talking with her at around 3:30,
24 4:00 in the morning. There is a disagreement between the
25 two, the defendant and Deckard, as to what was discussed.

1 There is no disagreement that she one time mentioned about
2 can she go home. So the question is: During that period
3 of time, that discussion, which really lasted around two
4 hours or so, whether the two hours of discussion -- whether
5 or not that was such to, as Dr. Leo talks about, bore down
6 someone's will; wear them down. So that when she did waive
7 her rights, did she do it freely and voluntarily. And was
8 it something that, to them, would lead to a statement that
9 wasn't voluntarily given.

10 Well, looking at that, I'm going to look at the
11 various things I see here. I find in my discussions for
12 the purpose of this hearing and this hearing only,
13 obviously, that I find more credible the discussions of the
14 rendition of the event as testified to by Officer Deckard,
15 and the only discussion about home was when she said --
16 discussed home, and he said, Yes, but don't you want us to
17 find out more about this incident regarding your friend?

18 And then, as is mentioned in one of the cases, after
19 that was said, she then goes into discussing it further.
20 Similar to the State v. Kennedy situation, where there they
21 talk about an attorney as opposed to going home. But then
22 she begins to talk on her own, and further discusses the
23 matter. And she's there for two hours. So then Hagge
24 walks in and begins talking with her. She then, and I find
25 that what he says is more credible as to what occurred when

1 he talked with her; that she begins to ask things about
2 what type of a deal could she make, what would happen to
3 her in this situation that situation.

4 He then discusses and tells her what would happened,
5 that ultimately a judge will decide what type of time she
6 received, depending on what involvement she had in the
7 case. And he tells her her rights. She then discusses
8 with him what occurred. He then decides it's better at
9 this time to get a written statement. Looking at that, he
10 brings Deckard in. Deckard, according to his testimony,
11 which I find more credible, does not even have a written
12 form with him. He asks Deckard to pick a written form up
13 to go into the room with them. They go into the room, and
14 then, Deckard advises her, again, of her rights. She
15 agrees that it's her signature or her initials on each one
16 of these five points of the Miranda rights.

17 I recall the testimony of, initially, her saying, that
18 is K.G., which I then thought we might be concerned about
19 whether or not it was her signature or initials. She then,
20 didn't deny that it was her initials. And I do find that
21 those are her initials. She then, signs a waiver of her
22 rights. And then, after that, Deckard writes down what is
23 related to him. I find through the standard, I have
24 reviewed this matter on the hearing purposes -- and she
25 signs it and she initials certain cross-outs and

1 corrections. But then, more importantly in my decision in
2 regard to this, there are then certain questions written
3 out -- oh, in addition, by the way, she at the end of it
4 writes in her own handwriting, that looks clear, that's
5 even on the lines, as if someone had written it after ten
6 hours of sleep. It's so clear how she wrote it. And then
7 after that, she's given four written questions, which she
8 then writes out clearly, and initials each one of her
9 answers. All of this indicates to me that she was in full
10 awareness of what she was doing; that she understood the
11 situation of what she was discussing with them; and that
12 she honestly hoped that was going to get favorable
13 consideration because of it, as far as cooperation as
14 Officer Hagge had said he had informed her, as far as
15 cooperation. At least the Court would know about that.
16 That in and of itself doesn't make it not voluntary, her
17 seeking of the benefits of telling what had occurred.

18 Further, I had a little concern with the issue of the
19 State's Exhibit 1 and Defense Exhibit 1. One has the
20 signature of Hagge on it; the other does not. Hagge says
21 he signed it. It doesn't say when. I can't resolve that
22 issue. It could very well be he signed it later after a
23 copy was given to her of the Miranda rights by Deckard, or
24 something of that nature. But I'm not sure that's
25 significant in the decision here. He says he witnessed it.

1 She even says they were there.

2 So, therefore, after reviewing, objectively making a
3 decision that, for the purposes of this hearing -- of
4 course, a jury will look at this, too -- that the Miranda
5 rights were given; that she was in custody during their
6 conversation with Hagge that occurred some time around 6:15
7 or so in the morning; that he then gave her Miranda rights;
8 that she understood her rights, and made a free and
9 voluntary waiver of those rights; that she later was given
10 written warnings by Officer Deckard. She made a free and
11 voluntary waiver of those, after understanding those
12 rights.

13 And then I find, using the totality of looking at all
14 the circumstances here, that the statement made after the
15 waiver of the rights, that that statement was a voluntary
16 statement of her rendition of the events of on or around
17 January 5th of, I think, the year was 2000. So that is my
18 finding and my decision. The motion to suppress is denied.
19 Of course, these issues will be presented to the jury for
20 the jury's consideration, also.

21 (State's Exhibits 1 and 2 received in evidence.)

22 All right. Now, matters further before we bring the
23 jury in? State?

24 MR. DUTREMBLE: Your Honor, the State has two issues.
25 There are going to be certain photographs offered into

1 evidence in opening statement. We would like the Court's
2 ruling as to whether or not we could use any of those
3 photographs prior to introducing them into evidence.

4 THE COURT: Have you shown them to the defense?

5 MR. DUTREMBLE: We have.

6 THE COURT: Are these photographs you had planned to
7 introduce in evidence in your case in chief?

8 MR. DUTREMBLE: They will. Yes, sir.

9 THE COURT: Well, the question would be whether to let
10 them into evidence in chief.

11 MR. DUTREMBLE: Yes, sir.

12 THE COURT: Do you object to the photographs, Mrs.
13 Gay?

14 MRS. GAY: Your Honor, there is two photographs of the
15 deceased. I know that there is some law that says that the
16 photographs of the deceased should be considered and
17 suppressed. I believe ---

18 THE COURT: Only if they have something to do with the
19 helping the jurors finding a fact, instead of being
20 emotional. I wouldn't let them in if they are just for
21 emotional purposes.

22 MR. DUTREMBLE: Yes, sir. We wouldn't use those in
23 opening, Your Honor. And we would offer it later on. The
24 deceased is faced down. There is no gruesome ---

25 THE COURT: Well, what photographs do you have? Let

1 me see the photographs you plan to use.

2 MRS. GAY: I would object to any introduction of any
3 pictures in the opening, because, ultimately ---

4 MR. DUTREMBLE: This is what we would like to use in
5 opening.

6 MRS. GAY: I mean, they can describe it, Your Honor,
7 and, ultimately, admit the pictures pursuant to the chain
8 of custody in the normal course of the trial.

9 THE COURT: Wait a minute. This photograph doesn't
10 show the deceased.

11 MR. DUTREMBLE: No, sir. We don't want to use that in
12 opening. We just want to show where it happened and use
13 the definitions there.

14 MRS. GAY: Definition is fine.

15 THE COURT: You see the photograph they want to use in
16 opening? It's just the picture of the building.

17 MRS. GAY: Your Honor, I would just say there is no
18 need to do it at this point.

19 THE COURT: I'll permit that.

20 MR. DUTREMBLE: Thank you, Your Honor.

21 MRS. GAY: And with regard to the pictures of the
22 body, Your Honor, I'll show you them. That is something
23 that ---

24 THE COURT: Well, are those the ones they plan to
25 introduce?

1 MRS. GAY: Yes.

2 MR. DUTREMBLE: Yes, sir. In the trial.

3 MRS. GAY: This is what they have provided to me, Your
4 Honor. There's actually two of them.

5 THE COURT: Well, let's discuss that later, but I'll
6 review those and make a decision on that. Obviously, they
7 seem to be cumulative at the very least. I know that one
8 has a sheet, the other does not, but I'll discuss that with
9 you later. You're going to have to tell me why you need
10 two as opposed to one. Then, if you need one, why the one
11 is going to help you.

12 Anything else?

13 MR. DUTREMBLE: One other matter, Your Honor, because
14 of the length of time it's taken us ---

15 THE COURT: Yes, sir.

16 MR. DUTREMBLE: I would ask the Court's permission to
17 call the medical examiner out of order. He had to come all
18 the way from Columbia, and he needs to get back to his
19 practice.

20 THE COURT: Why is it when I have cases in Columbia
21 they come from Charleston? Isn't that amazing?

22 MR. DUTREMBLE: I don't know what happened, Judge.
23 But it used to be down here, and now they've scattered to
24 the four winds.

25 THE COURT: Well, the clerk has talked with the jury

1 as far as getting them lunch. And so we've ordered them
2 lunch already. So they're going to have lunch here. But
3 that's up to Mrs. Gay. You haven't laid the foundation,
4 so, obviously, if she wants to object then I'm afraid we
5 can't do that.

6 MR. DUTREMBLE: What I would like to do, Judge, is
7 call the first witness who found the body, and then call
8 the medical examiner so we would have some lead in.

9 THE COURT: All right. Do you have an objection to
10 that?

11 MRS. GAY: No, Your Honor.

12 THE COURT: Okay. Let's do that. Let's make sure if
13 you all need to go to the restroom or get a drink of water,
14 and we'll call this jury in here at a quarter til, and
15 start with your opening statements at that time.

16 MR. DUTREMBLE: Thank you, Your Honor.

17 MRS. GAY: Thank you.

18 THE COURT: Quarter til 12:00 we're going to have the
19 jury come in.

20 (WHEREUPON, there was a short break.)

21 THE COURT: Okay. Be seated.

22 The exhibits that you all introduced purpose of the
23 hearing, I prepare at this time to admit them into
24 evidence. I have already had, really, the hearing on
25 those. I assume that the State wants its exhibits

1 introduced changed from ID to evidence.

2 MR. DUTREMBLE: We do, Your Honor.

3 THE COURT: Does the defense want the one that you
4 have in from ID to evidence?

5 MRS. GAY: Not at this time, Your Honor.

6 THE COURT: Okay. Well, it will stay ID, then. The
7 only ones that will be in -- do you want the matters still
8 marked as Defense Exhibit 1? All it had was two sheets to
9 it. It had one as the waiver of rights form, and then it's
10 the question that the defendant wrote the answers to. Do
11 you want those as one exhibit, two pages?

12 MR. DUTREMBLE: One exhibit, please, Your Honor.

13 THE COURT: All right. Since they can be discerned
14 easily; and it's not like a bunch of pages. Two pages.
15 I'll let you do that.

16 Okay. If you would, as to the jury that we have out
17 there, Ms. Pulliam will be the Foreperson.

18 BAILIFF: Sir?

19 THE COURT: Ms. Pulliam. All right tell them to come
20 on in. Tell Ms. Pulliam she's the Foreperson.

21 (The jury returns to the courtroom.)

22 THE COURT: Ladies and gentlemen of the jury, one has
23 a tendency at this stage to say I'm sorry you had to wait
24 so long and that type of situation; but however, ladies and
25 gentlemen, remember, many times these things do take a

1 while to make decisions on things of law. I did not
2 anticipate them taking as long as they did, but it was all
3 my doing as far as the time. Don't think of the attorneys
4 in that regard. It was what I thought I needed to make
5 certain decisions. Those decisions have now been made, and
6 the case, now, is ready to be presented to you at this
7 time.

8 Now, ladies and gentlemen, my role now is going to
9 become a little less, now. I'm going to be sort of a
10 manager, like I say, and make sure each side obeys and
11 follows our court rules in the presentation of this case.
12 You, though, now become very very important.

13 Ladies and gentlemen, I told you when the case began
14 that I had two indictments charging the defendant, Kandy
15 Latrice Gilliard, with the crime of murder and the crime of
16 strong arm robbery. As you recall, I'll tell you again,
17 that these indictments are not evidence. These indictments
18 are not evidence she's committed any crime whatsoever.
19 These indictments are basically just the procedure to
20 present the matters to a Court to a jury for a jury to
21 decide.

22 And in that regard, the State, the prosecution, has
23 the burden of proving guilt beyond a reasonable doubt. The
24 defendant does not have to prove herself innocent. The
25 State has to prove her guilty of these crimes. Now, ladies

1 and gentlemen, you as a jury, you will decide what's been
2 proven beyond a reasonable doubt. How you will decide
3 that? By paying attention and listening both to the
4 evidence presented in the case as well as to my
5 instructions on the law.

6 Now, the case will begin, initially, by each side
7 giving you opening statements, a brief overview of what
8 they feel the case is about. After that, you have a
9 presentation of testimony, people in this witness stand
10 under oath responding to questions. And then, you will
11 have the closing statements of the attorneys.

12 Now, ladies and gentlemen, what the attorneys tell you
13 in their opening or closing is not evidence. They're
14 permitted to give you that brief overview, and at the end
15 of the case to give you their summation, their arguments,
16 their statements, as to what the case has shown or has not
17 shown. What they say is not evidence. Evidence that you
18 will have will be testimony as well as any exhibits
19 introduced in the case. And in this case, there maybe,
20 also, be a deposition, and I'll tell you more about that
21 later. I will then tell you the law. Do not make any
22 conclusions. Do not make any decisions until after you
23 have heard everything including my instruction on the law
24 which comes at the end of the case. After the attorneys
25 have finished their closing statements, I will, then, tell

1 you the law. So don't make any decisions. Don't even
2 discuss it among yourselves.

3 And by the way, this case -- although, it's been
4 several hours, now -- will not take a whole week, like,
5 five, ten days. This case will be in your hands this week.
6 So there is no need for you to take notes. I'm afraid if
7 you took notes, some of you may rely on others. Some of
8 you may not take notes, and start relying on those who do
9 take notes. Or you may somehow be so involved with taking
10 notes you may not pay attention to the evidence. So I
11 would rather you not take notes. Just listen and pay
12 attention. Plus, this lady here, she's taking the best
13 notes you know how, that is verbatim. Every word that's
14 being said she's taking down. So she has those. And if
15 you need those after the trial while you're deliberating,
16 if you need her to play back something for you, she will.
17 So she's doing that.

18 Ladies and gentlemen, I've asked and appointed Ms.
19 Pulliam as the Foreperson. That does not mean she has any
20 more authority, any more power than any other juror; other
21 than the fact, she is going to be the administrative
22 spokesperson of the jury. Also, she'll be the one signing
23 the verdict form. If you have any questions while you're
24 in the jury room, she'll write the questions out, or she'll
25 ask one of you to do it and send it to me for any response

1 there may be.

2 Ms. Pulliam, if you would, if you will always sit in
3 that chair there. The rest of you can sit anywhere you
4 wish except for the two alternates. My two alternates, you
5 all will sit in the two alternate chairs. You always sit
6 there. If we need you, we'll use you. If for some reason
7 we lose a juror during the course of the trial, one of the
8 two of you will take their place. If we lose another, the
9 other will take their place. You all pay attention,
10 because you could very well be on the primary jury. It's
11 happened many times before in deciding a case.

12 And by the way, when you decide this case, it has to
13 be a unanimous decision. So all of you need to pay
14 attention. All of you need to listen closely as we go
15 through this case. All right. Now, I'm going to at this
16 time swear you as a jury, but before I do, I want to make
17 sure there is no objections to my opening comments to you
18 from the State or defense.

19 Any objection to my opening comments to the jury from
20 the State?

21 MR. DUTREMBLE: No, Your Honor.

22 THE COURT: From the defense?

23 MRS. GAY: Your Honor, may we approach one minute,
24 please?

25 THE COURT: Sure.

1 (WHEREUPON, there was an off-the-record bench
2 conference.)

3 THE COURT: All right. Any objection from the
4 defense?

5 MRS. GAY: No, Your Honor.

6 THE COURT: All right. If you would, swear the jury,
7 please.

8 THE CLERK: Please have the defendant stand.

9 (The defendant stands.)

10 (The jury is duly sworn by the clerk.)

11 THE CLERK: Please, be seated.

12 THE COURT: Now, ladies and gentlemen, yesterday I
13 told you not to discuss this matter. That if someone came
14 up and discussed it with you, or if you heard anything
15 about it you need to let me know. Plus, I told you not to
16 look at any local newspapers. You're now under oath.

17 Did anybody hear anything about this case since you've
18 been selected on this jury? If so, let me know, now, other
19 than what I have told you in the courtroom. Anybody hear
20 anything at all from anyone, or discuss it with anyone?

21 (No response.)

22 THE COURT: All right. Did anybody see any articles
23 in the paper about this case? If so, please, let me know
24 now.

25 (No response.)

1 THE COURT: Okay. Any polling in that regard
2 requested by the State?

3 MR. DUTREMBLE: No, Your Honor.

4 THE COURT: Any polling requested by the defense?

5 MRS. GAY: No, Your Honor. But I don't know if there
6 was something on t.v., also.

7 THE COURT: Anybody see anything on t.v. about this
8 matter? Anybody at all?

9 (No response.)

10 THE COURT: Okay. All right. Any other polling
11 requested? Mrs. Gay?

12 MRS. GAY: No, Your Honor.

13 THE COURT: Mr. DuTremble?

14 MR. DUTREMBLE: No, Your Honor.

15 THE COURT: All right. Mr. DuTremble, you may begin
16 for the State with your opening statements, sir.

17 MR. DUTREMBLE: Thank you, Your Honor. I defer to Mr.
18 Cook.

19 THE COURT: All right. If you would, sir.

20 MR. COOK: Thank you, Your Honor. May it please the
21 Court, counsel?

22 THE COURT: Yes, sir.

23 MR. COOK: My name is Damon Cook as you've heard
24 earlier. I'm an assistant solicitor here in Charleston
25 County, assisting the prosecuting attorney, Mr. Dale

1 DuTremble. He is a deputy solicitor here in Charleston.
2 Now, I want to warn you before we get into it. I know you
3 have been sitting back there for a while. And you kind of
4 had time to just stew. But we're going to be mentioning a
5 lot of names and various incidents in this case. This is
6 not a terribly complicated case, but I want you to try to
7 be sure to keep up as we go through the opening. And I'm
8 sure you'll still have some questions after I finish. But
9 those questions will be filled in by the witnesses that
10 take the stand. So try to keep up as I go through. I know
11 it's terribly confusing because you don't know the people
12 who we're speaking about.

13 Now, as you've heard, this is a case of murder and
14 strong arm robbery. This is also a case about betrayal. I
15 say "betrayal" because the defendant, Kandy Gilliard, knew
16 her victim, Ms. Dawn Russ. See Dawn Russ worked at The
17 Game Room which was a video poker parlor. If you'd turn
18 your attention to the screen. The Game Room is located at
19 [REDACTED], just right up the street by Alex's.

20 Now, the defendant had visited this particular game
21 room 40 or 50 times. She was a regular. Dawn Russ was a
22 woman who worked nights there. Now, the defendant would
23 come play games, chat with Dawn. And Dawn was someone the
24 defendant befriended, and back and forth. They would talk
25 sometimes hang out in the cashier's office and watch

1 television.

2 Now, in the early morning hours on January 5th of
3 2000, the defendant, Kandy Gilliard, and her accomplice,
4 Mr. Benjamin Johnson or B.J. Johnson, robbed and killed
5 Dawn Russ in the cashier's office of The Game Room by
6 strangling her with an electrical extension cord and
7 smothering her at the same time with a plastic trash bag.
8 This is from someone who she considered a friend, the
9 defendant seated at that table.

10 Now, Ms. Gilliard had been talking to Benjamin Johnson
11 or B.J. about this crime for some time. Now, B.J. was her
12 sister's boyfriend. And you'll get a chance to hear from
13 B.J. And you'll see he's what we call kind of slow. He's
14 got an I.Q. of about 66. But the defendant used her
15 influence over him to get him to help her with this crime.
16 Now, on the night of January the 4th, the preceding night,
17 the defendant as usual went up to The Game Room. She rode
18 B.J.'s bike to The Game Room. Now, she lives only about
19 two blocks behind this game room off of Rivers Avenue.
20 Now, when she rode B.J.'s bike to the game room, Dawn was
21 there as usual because she worked the night shift. And
22 this was around 11:30, 12 o'clock at night.

23 Now, so she rode B.J.'s bike up to The Game Room, and
24 there was Dawn there as usual, along with one other
25 customer. Now, the customer stayed for a while. Kandy was

1 there with Dawn, and they were playing games and chatting
2 for a little bit. And about 12 o'clock or 12:30 in the
3 morning on the 5th, that customer went home, leaving only
4 the defendant and Dawn Russ in that game room.

5 Now, what happened after that is that they played
6 games together, played video poker. They also chatted for
7 a while. They went back into the cashier's office to watch
8 television for a little while. At about 2 o'clock that
9 morning, the victim, Dawn Russ, began dozing off. And when
10 this happened, the defendant thought she had her
11 opportunity, the one that she had been talking about,
12 waiting on. So what did she do? She went -- she left this
13 game room, went to her house two blocks behind the game
14 room, got B.J. who was there with her sister.

15 B.J. put on dark clothes, like they had talked about,
16 put on a mask, a gorilla mask, went back up to the game
17 room. Now, once there, B.J. waited around this corner, so
18 the defendant could go inside and make sure the coast was
19 still clear and Ms. Russ was still asleep. Once she did
20 this, and saw that she was asleep, she came outside the
21 game room, and got B.J. to come in.

22 Now, once inside, B.J. went into a room right off the
23 entrance of the game room. And while in this room, he saw
24 a trash bag that the owner had left there. And that trash
25 bag or trash can was filled with extension cords and other

1 type of electrical cords such as this. So he picked one
2 up, doubled it. While he was doing that the defendant went
3 to the break room behind the cashier's office, and got the
4 plastic bag, the black plastic bag, to use to cover Dawn's
5 face with. Her fingerprints are still on that roll of
6 bags.

7 Now, once they did this, they went into that office
8 where Dawn Russ was still asleep, defenseless, and they
9 ambushed her. B.J. snuck up behind Ms. Russ with that
10 extension cord, draped it around her neck. And when she
11 began to wake up to turn around, the defendant got that
12 bag, and put it over her face, suffocating her. Now, while
13 they began choking Ms. Russ -- the defendant had that bag
14 over her face -- she fell out of the chair, and they
15 continued choking her.

16 And as B.J. stood over Ms. Russ, choking her, the
17 defendant went in her pockets -- her friend's pockets. She
18 took her personal money. She took the keys to the cash
19 drawer, because she knew where the money was kept. She had
20 been there often enough. She knew where the money was
21 kept. It was kept in a black file cabinet right next to
22 that desk. And as she was on the floor getting strangled,
23 the defendant went in her pockets, took some of her money,
24 her keys, and then opened that black file cabinet and got
25 The Game Room's money.

1 Now, they made off with about \$1292. After she got
2 the money, and after it was apparent that Dawn Russ could
3 no longer put up a fight, they left. They went back to the
4 defendant's house where they divided up the money. She
5 gave B.J. \$500, and for her part she kept \$700 for being
6 the mastermind. Now, at about four o'clock the same
7 morning, January 5th, the defendant got her mom's car, and
8 went up to Alex's to get something to eat. You'll hear
9 from a witness who saw her at Alex's, and who knows that
10 she was at The Game Room earlier. Now, at four o'clock in
11 the morning while the defendant was getting breakfast at
12 Alex's, her friend was on that same floor, dead, for \$1200.

13 Now, the next morning Ms. Gilliard, B.J., still at her
14 house, woke up. They went to B.J.'s grandmother's house in
15 Goose Creek. Now, at this house B.J.'s brother, Brian --
16 he also lives there -- they went out there. It's there
17 that they elicited Bryan's help to help them cover up their
18 crime. Brian took B.J.'s clothes and hid them in a trash
19 can. He, also, took the money and hid it in the back yard.

20 Now, that same morning at about 7:30, the woman who
21 was scheduled to replace Dawn Russ at The Game Room, works
22 the morning shift, got a call at her house from the owner,
23 saying that he had been trying to call Dawn the night
24 before and early that morning and had gotten no answer. So
25 could she please go The Game Room and check on her. When

1 she got there, she arrived a little bit after Dawn's ride
2 to and from work. And when she got there, she found Dawn's
3 friend hysterical. They walked back to that clerk's office
4 and found Dawn on the floor with that extension cord still
5 wrapped around her neck, laying on top of that same black
6 plastic bag.

7 Now, ladies and gentlemen, you're going to hear the
8 testimony of various individuals during the course of this
9 trial. You're going to hear from Shelia Mitchell, Dawn's
10 co-worker, the woman that found her that morning. You're
11 going to hear from Ms. Sokha Meyer, the woman who was in
12 the video arcade when the defendant walked in -- the woman
13 who left the two, the defendant and Dawn Russ, together at
14 12:30 that morning. You're also going to hear the
15 testimony of the owner of The Game Room, as well as the
16 police officers who responded to the scene, and who
17 conducted the follow-up investigation. But most
18 importantly, you're going to hear from her accomplice, B.J.
19 who can tell you how it all went down.

20 Now, we know that it's not going to be easy, and it's
21 not an easy job sitting through a case like this, hearing
22 horrible details of a terrible crime. But, ladies and
23 gentlemen, Dawn Russ never got a chance to decided whether
24 or not she wanted to be involved in this case. She was
25 ambushed, she was betrayed, for what? \$1200 was the cause

1 -- and her life.

2 Now, at the end of this trial, we're going to ask you
3 to find the defendant, Kandy Gilliard, guilty of murder and
4 strong arm robbery. Now, the Judge is going to instruct
5 you on the law. I just wanted to go over the elements of
6 murder and robbery. So you'll have something to look for
7 in the course of this trial. Okay. Now, murder is defined
8 as the willful, felonious killing of a human being by
9 another human being with malice aforethought. That malice
10 being either expressed or implied. And during the course
11 of this trial, we're going to prove to you that Dawn Russ
12 was killed by the defendant and B.J. Johnson for that \$1200
13 located in that cash drawer.

14 Robbery is a felonious taking away of the goods of
15 another against the owner's will, and without his consent
16 by force, intimidation, or violence; or stealing something
17 by force, larceny by force. We're going to prove this to
18 you by showing that the defendant and B.J. Johnson stole
19 Dawn's keys, stole the money, stole the money from the cash
20 drawer by force and with violence. That will become very
21 clear to you.

22 Now, another thing I want to go over is in South
23 Carolina, we say the hand of one is the hand of all. And
24 what that means is, ladies and gentlemen, if a crime is
25 committed by two or more persons acting together in the

1 commission of that offense, the act of one is the act of
2 all. That if two or more people are together, like Kandy
3 and B.J. were, acting together, assisting each other in the
4 commission of an offense, the law says that under these
5 circumstances the act of one is the act of all or both.
6 Even if you find that it was B.J. and that extension cord
7 wrapped around Dawn Russ' neck, you treat it as if it was
8 the defendant's. The act of one, or the hand of one is the
9 hand of all.

10 Now, at the close of this case we're going to be
11 asking you to find the defendant guilty of strong arm
12 robbery and murder. And we're confident that after you've
13 listened to the evidence presented on that witness stand,
14 judge each and every witness' credibility. You will have
15 no other choice. There will be no other answer. No other
16 verdict but guilty as charged of murder and strong arm
17 robbery. Thank you.

18 THE COURT: Okay. Thank you, Mr. Cook.

19 Opening statements from the defense, Mrs. Gay?

20 MRS. GAY: Thank you, Your Honor.

21 Ladies and gentlemen, I'd like to thank you for coming
22 today. As I said to you when we first started this
23 process, I represent Kandy Gilliard. And Brooks Blanchard
24 from my office is with me today. This is the most
25 important day of Kandy's life. She has been charged with

1 two very serious charges to which she has pled not guilty.
2 You saw her stand before the Court in a formal arraignment,
3 and say that she was not guilty. And you know that
4 throughout this process she has said that she is not
5 guilty.

6 Pursuant to how the State described the facts, they're
7 acknowledging that someone else killed this woman. They're
8 acknowledging that Mr. Brian Johnson, actually, came there,
9 robbed this woman, and strangled her. And the dispute here
10 is whether or not Ms. Gilliard was involved in that. He
11 says she is. She says she was not. The Judge has
12 instructed you, and he will instruct you again that he is
13 the trier of law.

14 As you know, you've sat here for a day or so in the
15 back while he made decisions about the law. One thing I
16 want you to understand is those decisions about the law and
17 my actions here can be reviewed at a later date at some
18 other time. But you are the triers of fact. And he will
19 tell you that your decision about the facts in this case
20 will always stand. You are the group of people who will
21 here the evidence on the witness stand. You are the group
22 of people who will determine the credibility of these
23 people and the type of information that's presented and you
24 will make the decision about the facts. Because that's
25 what we have here is a factual dispute. If we didn't have

1 a factual dispute, we wouldn't be having this process. But
2 as I said, she has pled not guilty to these charges and
3 says she wasn't involved.

4 The Judge will also tell you that we have a
5 fundamental right in this country to have a trial by jury.
6 And you, the jury, is a trial by her peers. You were
7 specifically chosen. You sat through the process. Some
8 people were excused. Some people were asked to be seated.
9 And this jury -- you have been picked, because you all come
10 to this process with your common sense, with an individual
11 group of experiences; that pursuant to looking at a list,
12 and seeing people, you're chosen to be a jury of her peers.

13 The Judge will also tell you that she is a defendant
14 in this process that is presumed innocent. That in our
15 country, every person is presumed innocent. They come to
16 this process cloaked in the presumption of innocence. And
17 that not until the State has met it's burden of proof, can
18 that presumption of innocence be taken away. And pursuant
19 to that, the Judge will also instruct you that in the
20 burden of proof in this case as being on the State, that
21 it's beyond a reasonable doubt.

22 Now, we all understand and hear that term. And we
23 have a general idea. But what the Judge is going to
24 instruct you is that reasonable doubt is a doubt which
25 would cause a reasonable person to hesitate to act. Not

1 only is it a doubt which would cause a reasonable person to
2 hesitate to act, but you have to go beyond that. You have
3 to step beyond the fact that there is reasonable doubt, and
4 that a reasonable person would hesitate to act to convict
5 in this case. Not only that, but in this particular case
6 with the charges of strong arm robbery and murder, these
7 are the most serious cases and the most serious charges
8 that are imaginable. Not only, I submit, that you have to
9 go beyond a reasonable doubt, a doubt which would cause a
10 reasonable person to hesitate to act, but this is a
11 situation where even the bar is higher. This is a murder
12 case. This is a person that says she was not involved in
13 someone's death.

14 What we have in this case is the most serious case.
15 And we have in this case a situation where your gut
16 reaction may be to say they've arrested somebody, they've
17 charged somebody. This is a serious charge, and I believe
18 that this person is involved. But you as jurors in this
19 case, will be instructed that your duty is to review every
20 single piece of evidence in this case; to not make a gut
21 reaction; to look at everything before you make your
22 decision, because you reasonable people have to decide if
23 you want to hesitate to convict in this case.

24 The facts in this case as somewhat stated by the
25 solicitor, is that there is this person named B.J., and the

1 history on him is that he's low intelect, has an I.Q. of in
2 the mid 60's to 70's. He also has a mental illness. He is
3 now taking some very very seriously heavy psychotic drugs.
4 He takes Haldol. He's been taking this medication since
5 he's been in the jail. The evidence will say that he was
6 not on this type of medication at the time that this
7 incident occurred, but he does have a mental illness. He
8 is also limited intellectually.

9 The evidence will show that he is going to come into
10 court, and tell you that he went there; that he
11 intentionally robbed this woman; and that he strangled this
12 woman. He is going to come to court and stand at the
13 witness stand and tell you that he killed this lady. Not
14 only that, but he's going to tell you that he's a killer;
15 that he's a robber, and he killed her. But what he's also
16 going to do is he's going to come in and say, Oh, but by
17 the way, Kandy Gilliard told me to do it. Kandy Gilliard
18 planned it.

19 And in exchange for that, what you're going to hear is
20 that he has pled guilty, but has not been sentenced until
21 after this trial. That pursuant to his testimony at this
22 trial, he has a negotiated sentence to receive a lesser
23 sentence, because he's going to come in here and tell you
24 that Kandy was involved. Now, the evidence will also show
25 that there are some things that Kandy Gilliard did do

1 during the course of this incident. There are some things
2 that she did. Her fingerprints are on a trash bag. She
3 did admit to certain things that occurred in this incident,
4 but what she will tell you from the stand is that she only
5 did that, because this crazed person came in with a mask
6 and said, I'm going to rob this lady and you're going to
7 help me. And that pursuant to her experiences at that
8 point in her life and pursuant to how she felt at that
9 minute, which we now have to go try to recreate, she did
10 not believe she had any choice but to help him. And that
11 pursuant to that, I believe, that you will find that she
12 was under duress; that her participation in this was only
13 as a product of her will being overborne; that she was
14 convinced that she could be hurt; that she was going to
15 have serious bodily injury to herself; that it might even
16 involve death, because he was so crazed, he had a tool in
17 his hand. He was indicating that he was going to hurt this
18 woman, kill this woman, rob this woman. And then, in the
19 process of doing that, she determined after she turned
20 around and he was strangling this lady, that she better
21 cooperate with him or she was going to get seriously hurt.
22 And she only helped him in the sense, or acquiesced to him
23 in the sense that she did not have any choice at that
24 point. And that is going to be her testimony to you.

25 Pursuant to this, she is also going to tell you that

1 she knew Dawn; that they were friends.. That she was
2 appalled by what he was doing. That she was screaming out
3 to him for him to stop, to leave her alone. That she was
4 throwing up; that she was physically throwing up at the
5 sight of him strangling this woman. But only after she saw
6 him strangling her and her struggling did she say -- did
7 she acquiesce, did she say in her mind, Whatever, maybe I
8 can get out of this; maybe I can help myself; maybe I can
9 help her; maybe if I do this he will leave her alone. Only
10 after she saw him strangling her in the actual occasion of
11 him strangling her did she say, Okay. Whatever.

12 But she will tell you that she was scared; that she
13 was scared of him; that she was scared that she didn't know
14 what to do. And she will also tell you that her actions
15 after that were totally irrational. Yes, she did go get
16 some food from Alex's. No, she didn't tell the police what
17 happened. But she will tell you that she had absolutely no
18 idea what she was supposed to do; that she was scared. She
19 was scared of him. She was scared of what he would do to
20 her family members. She has children that he knows about.
21 She has a mother and a sister that live in a house with all
22 of them together. And that she was scared because she
23 didn't know what he would do to her or her family.

24 But I think the evidence will show at this case, after
25 the review of all this that she was acting only under

1 duress; that she is only a witness in this case. She is
2 not a participant -- a knowing participant of a robbery and
3 a murder. She's only a witness.

4 One thing that the evidence will also show is that
5 several days later she gave a statement to the police. A
6 statement that was a product of about a seven-hour
7 interrogation, where they told her all types of things
8 involving: Helping her with what they would tell the
9 solicitor, things about the fact that they had tried to
10 work this out with her if she would tell them the truth.
11 All of these things that they coerced her into giving a
12 statement.

13 And in that statement she will tell you that she told
14 the officers what was happening; that the officer was
15 writing the statement himself. At no point did she read
16 that statement; that she only signed the statement because
17 she was going to go home. And low and behold, the
18 statement is an extremely incriminating statement that says
19 that she was involved. But she will tell you on the stand
20 that that statement isn't accurate, and that she never read
21 that statement, because after seven hours, at seven o'clock
22 in the morning she was tired, and she signed whatever they
23 put in front of her.

24 And at this point what I ask you to submit is that
25 when she gets on this stand -- she was not under oath

1 during that statement; she didn't read that statement. But
2 when she gets on the stand and she takes the oath, and she
3 tells you what occurred, I submit to you that after you
4 hear all the evidence in this case, you will find that she
5 was only a witness; that she was not a knowing participant.
6 You will find out.

7 And pursuant to your duty as jurors in this case, you
8 will hesitate to act; you will hesitate to believe; and you
9 will hesitate to convict.

10 THE COURT: Thank you, Mrs. Gay.

11 All right. Is the State ready for the first witness.

12 MR. COOK: Yes, Your Honor. At this time the State
13 would like to call Ms. Sheila Mitchell to the stand.

14 THE COURT: Is someone arranging Ms. Mitchell to come
15 in?

16 MR. COOK: Yes, sir.

17 THE COURT: We have them in another room, so it takes
18 a minute to get them in here.

19 SHEILA MITCHELL, being first duly
20 sworn, testified as follows:

21 THE CLERK: Please, be seated. Please, state your
22 full name for the Court, and spell your last.

23 WITNESS: My name is Sheila Mitchell.

24 M-i-t-c-h-e-l-l.

25 THE COURT: All right. You may proceed. Your

1 witness, Mr. Cook.

3 DIRECT EXAMINATION

4 BY MR. COOK:

5 Q. Ms. Mitchell, where were you employed in January of
6 2000?

7 A. The Game Room on Rivers Avenue. Video...

8 Q. Video poker?

9 A. It was a video poker place.

10 Q. Okay. And how long, exactly, had you been employed
11 there?

12 A. About three years.

13 Q. Three years. And could you just tell the jury about
14 your normal duties?

15 A. I just took care of the machines. It wasn't a whole
16 lot to it.

17 Q. Okay. So were you acquainted with Ms. Russ?

18 A. Yes, I was.

19 Q. And for how long had you known her?

20 A. For maybe about a year and a half.

21 Q. Okay. And when did she normally work there at The
22 Game Room?

23 A. She worked in the evening. She was supposed to work
24 11:00 to 7:00, but a lot of times she worked, like, 8:00 to
25 7:00.

1 Q. Is that a.m.?

2 A. A.m.

3 Q. So 7:00 or 11:00 at night until 7:00 or 8:00 in the
4 morning?

5 A. Yes.

6 Q. Can you, please, tell the jury what happened on the
7 morning of January 5, 2000, as you were beginning to go to
8 work?

9 A. Okay. I went in a little bit early. I got there
10 between 7:30 and 7:40. I found Ms. Russ face down on the
11 floor with an extension cord around her neck. And a file
12 cabinet door was pulled out where money was kept. And the
13 chair was turned over in the floor.

14 Q. Now, was anybody there when you got there to The Game
15 Room?

16 A. Yes. The lady that she rode with. The lady that give
17 her ride back and forth to work. She was there. She had
18 just arrived there.

19 Q. Okay. Who was that?

20 A. Her name was Margaret Beard.

21 Q. Okay. And did you notice anything unusual as you went
22 inside The Game Room as you approached?

23 A. No. The door was opened. And the windows were tinted
24 so I couldn't see in, but the door was not locked.

25 Q. Was it normally locked, or was it normally opened?

1 A. Most of the time it was locked.

2 Q. Okay. Even during the day?

3 A. Right. Yes.

4 Q. Okay. What was the policy on the door? I mean, how
5 did people move in and out of The Game Room with the door
6 being locked?

7 A. We had a buzzer on the door. And they would ring the
8 buzzer, and we would let them in. And then when they left,
9 we would lock the door after them.

10 Q. So would you say after each player left The Game Room,
11 no matter what time of the day, would the door be locked?

12 A. Yes. The door would be locked.

13 Q. Okay. Now, you stated earlier that the cash drawer
14 was open.

15 A. Uh-huh.

16 Q. Can you describe the contents of that cash drawer?

17 A. It just had a till in it, the little drawer with
18 money, and there was no money in it. It was just pulled
19 open. And we always kept it pad locked, and the lock was
20 thrown on the couch and the drawer was open.

21 Q. And there was no money in the drawer?

22 A. No. There was no money in it.

23 Q. Do you know how much -- and this is only if you know
24 -- how much money there would have usually been or should
25 there have been in that drawer?

1 A. We didn't have any certain amount. It just depended
2 on how well it paid out during the day. We adjusted our
3 bank to that.

4 Q. Okay. And, now, you said you had been working there
5 at The Game Room for about three years?

6 A. Yes.

7 Q. Had you ever come in contact with Kandy Gilliard?

8 A. Yes, I did.

9 Q. Could you describe that contact?

10 A. She was a player there. And, you know, I talked to
11 her concerning the machines and everything. You know, just
12 a little bit of conversation -- pass the time away. But I
13 didn't know her real good.

14 Q. Did she come in frequently when you were working or
15 other times of the day?

16 A. She come in some time when I was working. But she
17 came in most of the time during the night.

18 Q. So do you know if she knew Dawn Russ?

19 A. Yes, she did. Her and Dawn had got kind of friendly
20 with each other.

21 Q. Okay.

22 MR. COOK: Beg the Court's indulgence.

23 BY MR. COOK:

24 Q. Ms. Mitchell, let me back up to when you first entered
25 The Game Room on that morning. Now, you said you found

1 Ms. Russ on the floor. Could you describe her condition
2 and the surroundings?

3 A. It looked like there might have been a little bit of
4 struggle. The chair was turned over, and she was laying on
5 the floor, face down with her arms at her side. And that
6 was the only thing that was out of order.

7 Q. Okay. Was there anything else around her, or that you
8 could see?

9 A. Like what? I'm sorry.

10 Q. Was there a cord?

11 A. Yes. There was an extension cord wrapped around Ms.
12 Russ's neck. And there was also a trash bag I could see
13 that stuck out from under her.

14 Q. Okay. Was it tightly around her neck?

15 A. No, sir. It was not tight. It was loose. You know,
16 like, lightly looped around it.

17 Q. Okay. And you said she was faced down ---

18 A. Yes, she was.

19 Q. --- on the floor. So would the cord have been under
20 her, or was it thrown out away from Ms. Russ's
21 body?

22 A. It was just loosely around her neck. It wasn't laying
23 on the floor or anything.

24 Q. Okay. And the trash bag?

25 A. The trash bag was underneath her body. I could see it

1 sticking out in her shoulder area.

2 Q. Did you do any accounting or any bookkeeping maybe for
3 The Game Room?

4 A. I took care of the paperwork.

5 Q. And did you ever come to find out exactly how much
6 money was missing from that cash drawer?

7 A. Yes, sir, I did.

8 Q. How much was that?

9 A. It was \$1298.

10 MR. COOK: Okay. Can you, please, answer any
11 questions Ms. Gay might have.

12 THE COURT: All right. Cross-examination.

13 MRS. GAY: I have no questions for this witness, Your
14 Honor.

15 THE COURT: You may step down.

16 MR. COOK: Your Honor, may this witness be excused, or
17 be allowed to stay in the courtroom?

18 THE COURT: Any objection?

19 MRS. GAY: No, Your Honor.

20 THE COURT: All right, ma'am. You may stay in the
21 courtroom or be excused, either one. It's your choice.

22 (The witness leaves the witness stand.)

23 MR. DUTREMBLE: Your Honor. If it please, we call Dr.
24 Clay Nichols.

25 THE COURT: All right.

1 I, the undersigned Bonnie M. Britt, Official Court
2 Reporter for the Ninth Judicial Circuit of the State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of record of all
5 the proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Circuit
7 Court for Charleston County, South Carolina, on the 29th,
8 30th, 31st days of May and the first day of June 2001.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11 August 30, 2002

12
13 Bonnie M. Britt

14 Official Court Reporter
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1 CLAY NICHOLS, being first duly sworn,

2 testified as follows:

3 THE CLERK: Please, be seated. Please, give your full
4 name to the Court, and spell your last.

5 WITNESS: Clay Allen Nichols. N-i-c-h-o-l-s.

6 THE COURT: Your witness.

7 MR. DUTREMBLE: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. DUTREMBLE:

10 Q. Dr. Nichols, can you tell us how your employed, sir?

11 A. I'm currently a forensic pathologist at Palmetto
12 Richland Memorial Hospital in Columbia.

13 Q. And how long have you been doing that kind of work,
14 sir?

15 A. Since -- oh, the entire work as forensic pathologist?

16 Q. If you can.

17 A. Since December of 2000.

18 Q. Okay. And back in January of 2000, were you
19 physically located in Charleston?

20 A. Yes, I was. I worked at the Medical University of
21 South Carolina as a forensic pathologist. I was, also, a
22 Deputy Medical Examiner for the County of Charleston.

23 Q. And are you licensed to practice medicine in South
24 Carolina, sir?

25 A. Yes, I am.

1 Q. And could you give us the benefit of your educational
2 background, please?

3 A. I received my Bachelors of Science degree from the
4 University of Oklahoma in 1981. Following that, I entered
5 medical school, also at the University of Oklahoma. I
6 graduated in 1985. In 1985, I entered a residency program
7 in anatomic and forensic pathology at the Medical
8 University of South Carolina, completing that in 1990. For
9 the next ten years I was on the faculty at MUSC where I was
10 an associate professor, teaching pathology to residents and
11 medical students. I was also a medical examiner for
12 Charleston County during that period of time.

13 I currently, as was mentioned, hold an unrestricted
14 license to practice medicine in the State of South
15 Carolina. I am board certified by the American Board of
16 Pathology in both anatomic and forensic pathology.

17 Q. So would it be safe to say that pathology is your
18 specialty?

19 A. Yes, it is.

20 MR. DUTREMBLE: If Your Honor, please, we would offer
21 him as an expert witness in the area of pathology.

22 MRS. GAY: Without objection.

23 THE COURT: All right. Ladies and gentlemen of the
24 jury, what that means is normally a witness cannot come in
25 a court, and give their opinion about matters. However, if

1 a witness is qualified through education or experience in
2 certain fields, then the Court can permit the person to
3 give opinion testimony. That does not mean you must accept
4 the opinion. What it means is the opinion becomes evidence
5 along with all other evidence in the case for you to reach
6 your own conclusions. So the fact the Court does permit a
7 person to give opinion testimony does in no way have the
8 Court endorse the testimony. It just means it's presented
9 to you like any other evidence for you to make your own
10 decision.

11 I'll permit this person to give opinion testimony in
12 the are of forensic pathology. You may proceed.

13 MR. DUTREMBLE: Thank you, Your Honor.

14 BY MR. DUTREMBLE:

15 Q. Dr. Nichols, you indicated you were the Deputy Medical
16 Examiner for Charleston back in January of 2000; is that
17 correct?

18 A. Yes, sir.

19 Q. Did you have occasion on January 5th, sir, to
20 physically go to The Game Room on Rivers Avenue?

21 A. Yes, I did.

22 Q. And can you tell the members of the jury why you went
23 to The Game Room?

24 A. We were notified at the office that there was a death
25 of a suspicious or unnatural nature. And we respond as

1 medical examiners to investigate the scene, and
2 subsequently perform an autopsy.

3 Q. And can you explain to the members of the jury what
4 you found when you got to The Game Room?

5 A. We found Ms. Dawn Russ, who was deceased, at The Game
6 Room. It was reported to us that she was found dead.
7 There was also reported a plastic bag over her head and a
8 cord wrapped around her neck.

9 Q. Did you find a cord at the scene?

10 A. Excuse me?

11 Q. Did you observe a cord at the scene?

12 A. Yes, sir.

13 Q. Did you observe a plastic bag?

14 A. Yes, I did.

15 Q. And Ms. Russ was dead at the time of your arrival?

16 A. Yes, she was.

17 Q. Was she subsequently transported to the Medical
18 University for an autopsy?

19 A. Yes, she was.

20 Q. And did you perform that autopsy?

21 A. Yes, I did.

22 Q. Have you performed autopsies in the past?

23 A. Several thousand.

24 Q. And have you testified in court concerning those
25 autopsies?

1 A. Several hundred times.

2 Q. Can you explain to the members of the jury what your
3 findings were as you examined the body of Dawn Russ?

4 A. On the autopsy report, under Evidence of Injury --
5 particularly, head and neck -- there is a pink-purple head
6 and neck cyanosis present, which means a discoloration of
7 the head and face. And bilateral periorbital hemorrhages on
8 the palpebral and malar regions (phonetic). And what
9 that means is when you look at the eyes -- in the whites of
10 the eyes -- there were small hemorrhages about the size of
11 pinpoints which are very characteristic of someone dying
12 from asphyxiation; either the result of smothering, or
13 perhaps ligature or manual strangulation. Multiple
14 purple-red periorbital hemorrhages are on the anterior neck
15 with a faint superficial two-inch linear red abrasion on
16 the right anterior neck. These hemorrhages were not only
17 found in the eye, but also around the anterior neck. And
18 there was a scrape mark or an abrasion located on the right
19 side of the neck, approximately two inches in length.
20 Right about here. There was no external evidence of injury
21 on the posterior neck. So the back of the neck was intact.
22 Internal examination of the neck organs reveal focal
23 hemorrhages within the right strap muscles. The strap
24 muscles are these muscles that run from your jawline down
25 to your collarbone. And when you make a face like that,

1 these muscles become very prominent. So not only was
2 hemorrhage found on the skin, but also on the deeper
3 muscles underneath the skin. There are also focal
4 hemorrhages on the subglottic mucosa. And what that means
5 is that on the bottom of the tongue. And the muscles
6 underneath the tongue we found hemorrhages as well. The
7 hyoid bone was intact. And that is a small bone
8 underneath your chin, and above the Adam's apple area.
9 That was not fractured, and the Adam's apple was, also, not
10 fractured. And as far as the upper extremities were
11 concerned, a linear zero point five inch, superficial red
12 abrasion is on the dorsal right forearm, adjacent to the
13 elbow. So there was a scrape about a half inch on the
14 backside of her elbow, approximately here. On the lower
15 extremities, there are two oblique linear, two-point-five
16 inch, red healing abrasions on the left inguinal area; both
17 on the proximal and anterior left thigh. So we found some
18 scabbed over abrasions, scrape marks, which were not
19 contemporaneous with this assault.

20 A white extension cord was brought in by Officer Dusty
21 Pool to the autopsy. Several areas of dried bloody fluid
22 were found on the extension cord. Photographs of the
23 extension cord were taken at the time of autopsy; plus the
24 black plastic garbage bag that was presently seen. That
25 was not sent for our examination.

1 Q. And based upon your findings, Dr. Nichols, do you have
2 an opinion to a reasonable degree of medical certainty as
3 to the cause of death of Dawn Russ?

4 A. Yes, I do.

5 Q. Can you give us the benefit of your opinion, sir?

6 A. Ms. Dawn Russ died as a result of asphyxiation due to
7 strangulation. And, essentially, that means her body was
8 robbed of oxygen because she was strangled.

9 Q. And can you explain to the members of the jury what
10 would be happening to her body as the extension cord was
11 wrapped around her neck, depriving her of oxygen?

12 A. One of the first things that happen when people start
13 being starved of oxygen is they become very anxious and
14 panicking. And most people have already experienced this
15 type of phenomenon -- maybe not, hopefully, in this
16 situation -- but any time you're in a pool or a water
17 situation, and maybe you're playing around with somebody
18 and somebody decides to hold your head under water
19 unexpectedly. And over a period of time, very shortly, you
20 start to panic and flounder about. After a short period of
21 time after that, depending on how much oxygen is left in
22 your blood system, and how much oxygen you're actually
23 using during a period of time, unconsciousness will set in,
24 at which point if the suffocating event continues on, death
25 will occur within several minutes after that. Although you

1 will be technically unresponsive during that period of
2 time.

3 Q. Do you have an opinion, sir, as to how long it would
4 be before the onset of unconsciousness?

5 A. Several seconds. Certainly, less than a minute in
6 this individual. Probably closer to thirty seconds.

7 Q. Thirty seconds she was at least conscious while this
8 was happening to her?

9 A. As an estimate, yes, sir.

10 Q. Now, Dr. Nichols, as you're being strangled, manually
11 with an extension cord around the neck, are you still able
12 to get oxygen from your mouth and your nose?

13 A. You may get some oxygen in from -- through the neck,
14 but at the same time you're also blocking off oxygen to
15 your brain because your carotid arteries and jugular veins,
16 which run in your neck, major vessels here are being
17 included by the ligature -- or in this particular case, the
18 extension cord. So even though if you were breathing, the
19 oxygen still is not getting to the vital organs,
20 particularly your brain.

21 Q. And what effect, if any, would be placed on the body
22 of Dawn Russ, who is being manually strangled with a cord,
23 and a black plastic bag is placed over her face, covering
24 her nose and her mouth?

25 A. That would just complicate the problem. And with a

1 plastic bag, whether or not it actually contributed to her
2 death is a matter of speculation, but having a plastic bag
3 placed over her head, certainly, assured that death would
4 occur.

5 Q. So with the combination of the plastic bag and the
6 manual strangulation with the cord, there was no way that
7 that lady could survive that attack?

8 A. That is correct.

9 Q. And in your professional medical opinion, that's what
10 killed her?

11 A. Yes, sir, it is.

12 Q. Thank you, very much, Dr. Nichols. If you would,
13 please, answer any questions defense counsel has for you.

14 THE COURT: All right. Mrs. Gay, cross-examination?

15 CROSS-EXAMINATION

16 BY MRS. GAY:

17 Q. Pursuant to your review, you were asked to determine
18 if anything of toxicological significance was in Ms. Russ's
19 body; weren't you?

20 A. Yes, I was.

21 Q. And toxicological significance has to do with any type
22 of either medicines or drugs or anything like that that are
23 in her system?

24 A. Yes, sir -- ma'am. I'm sorry.

25 Q. Isn't it true that the only thing that was in her

1 system was acetaminophen?

2 A. That's correct, which is Tylenol.

3 Q. Tylenol or something like that. No -- nothing more
4 stronger than Tylenol?

5 A. That's correct.

6 Q. And, I believe, you said that -- and if I'm saying
7 this wrong -- on your direct, you said that a matter of
8 speculation as to any involvement of the plastic bag, but,
9 certainly, the strangulation around the ligatures of her
10 neck is what cut off the oxygen flow to her brain, and,
11 ultimately, killed her?

12 A. Yes, ma'am.

13 MRS. GAY: No further questions, Your Honor.

14 THE COURT: Redirect?

15 MR. DUTREMBLE: Nothing further, Your Honor. Thank
16 you.

17 THE COURT: Do you want to ask if the doctor can be
18 excused?

19 MR. DUTREMBLE: May he be excused?

20 THE COURT: Any objection?

21 MRS. GAY: I have no objection, Your Honor.

22 THE COURT: You may be excused to return to Columbia,
23 Doctor.

24 WITNESS: Thank you. I appreciate it, Your Honor.

25 (The witness leaves the witness stand.)

1 THE COURT: All right. Next witness. Do you have the
2 next witness?

3 MR. DUTREMBLE: Yes, sir.

4 MR. COOK: Your Honor, the State would now call Sharon
5 Rosenbaum to the stand.

6 SHARON ROSENBAUM, being first duly
7 sworn, testified as follows:

8 THE CLERK: Please, be seated. Please, state your
9 full name for the Court, and spell your last. And speak
10 loud so the court reporter can hear you.

11 WITNESS: Sharon Rosenbaum. R-o-s-e-n-b-a-u-m.

12 THE COURT: All right. Your witness, Mr. Cook.

13 MR. COOK: Thank you.

14 DIRECT EXAMINATION

15 BY MR. COOK:

16 Q. Ms. Rosenbaum, could you tell the jury where it is you
17 were employed in January of 2000?

18 A. Alex's on Rivers Avenue.

19 Q. Alex's is a ...

20 A. Restaurant.

21 Q. Restaurant. Okay. And did you know exactly where The
22 Game Room, located at [REDACTED], was?

23 A. Yes, sir.

24 Q. And where exactly was that in relation to Alex's?

25 A. Right next door to it.

1 Q. Okay. Now, how long had you worked at Alex's?

2 A. Off and on for thirteen years.

3 Q. Okay. And did you ever frequent The Game Room next
4 door?

5 A. Yes, sir.

6 Q. About how often?

7 A. About two or three times a week, maybe more.

8 Q. Were you familiar with the employees over there?

9 A. Yes, sir.

10 Q. Were you familiar with Ms. Dawn Russ?

11 A. Yes, sir.

12 Q. How familiar were you with Ms. Russ?

13 A. Since she had been working there. I go early in the
14 mornings when she was working.

15 Q. Okay. Were you working in the early morning hours of
16 January the 5th of 2000?

17 A. Yes, sir.

18 Q. And did you happen to come in contact with the
19 defendant, Ms. Gilliard, on that night?

20 A. Yes, sir.

21 Q. And could you describe for the jury what that contact
22 consisted of?

23 A. She come in and ordered some hashbrowns to go.

24 Q. About what time was that?

25 A. Around 5:00 or 5:30, somewhere around in there. I'm

1 not exactly sure of the time.

2 Q. Okay. And did you have occasion -- did you know who
3 Ms. Gilliard was? Were you familiar with her?

4 A. Yes, sir.

5 Q. Did you have an occasion to speak with her?

6 A. Yes, sir.

7 Q. And what was the context of that conversation?

8 A. Well, I asked her if she had been over to The Game
9 Room; she said, Yeah. I said, Did you win? And she said,
10 No. I said, Man, too bad. You know, just casual.

11 Q. Did she have -- I'm sorry. Continue.

12 A. Just, you know, anytime I ever seen her, you know. I'd
13 say, You been to The Game Room lately? Yeah. Win; lose?
14 You know, just casual conversation.

15 Q. So you asked her if she had been to The Game Room
16 earlier that night?

17 A. Yes, sir.

18 Q. And what was her reply?

19 A. Yes.

20 Q. Yes. Did she happen to say what time?

21 A. No, sir.

22 Q. Just earlier that night?

23 A. Uh-huh.

24 Q. Now, when was it that you found out what happened to
25 Dawn Russ?

1 A. I guess, around 8:30, because I live right behind The
2 Game Room.

3 Q. Okay.

4 A. And I was coming over to play. And when I found out
5 when all the police officers was out there.

6 Q. So you were coming over to play from your house ---

7 A. Yes, sir.

8 Q. --- behind The Game Room that morning?

9 A. Yes, sir.

10 Q. And what time did you say, about 8:30?

11 A. About 8:30.

12 Q. Okay. And what happened when you went to The Game
13 Room?

14 A. There was a bunch of police officers up there, and
15 they said that they had found ---

16 MRS. GAY: Your Honor, I would object to her stating
17 what the police officer said.

18 THE COURT: Yes. Don't tell what the police officer
19 said. You may say what you observed, but just don't tell
20 us what they said. Okay?

21 WITNESS: Okay.

22 THE COURT: Okay. Next question, please.

23 Please, disregard anything she may have said anyone
24 said.

25 BY MR. COOK:

1 Q. I just want to ask you one more thing, Ms. Rosenbaum.
2 Do you recall, since you did frequent The Game Room, what
3 were the procedures? Could you tell the jury the
4 procedures with letting people in and out of that game
5 room?

6 A. Well, it's locked, and you have to ring the doorbell;
7 and they let you in.

8 Q. Okay. Now, Ms. Rosenbaum, did you happen to wait on
9 the defendant that night at Alex's when she came in?

10 A. Yes, sir.

11 Q. And that was on January the 5th, the morning of
12 January 5th.

13 MR. COOK: Your Honor, may I approach?

14 THE COURT: Well, not unless the defense counsel comes
15 with you.

16 MR. COOK: I'm sorry. I was just going you to show
17 you State's Exhibit ---

18 MRS. GAY: He was telling me he's just marking this
19 for ID for this purpose. I would have an objection to it
20 coming in as evidence, but not an objection to marking it
21 as ID.

22 THE COURT: Let me see what you've got there. You may
23 ask questions about it, and I'll make a decision. It's
24 marked as ID as State's what for ID?

25 COURT REPORTER: Three.

1 (State's Exhibit Number 3 marked for identification.)

2 THE COURT: State's 3 for ID. You may proceed, Mr.

3 Cook.

4 BY MR. COOK:

5 Q. Do you remember -- I know it's been over a year ago,
6 but do you remember what the defendant might have had that
7 morning?

8 A. Hashbrowns with cheese. Sometimes she got sausage
9 patties; sometimes she didn't. I know she always got
10 hashbrowns with cheese, but I don't remember if she got the
11 sausage patties or not that morning.

12 Q. Okay. And you did wait on her that morning; correct?

13 A. Yes, sir.

14 Q. Do you recognize this?

15 A. Yes, sir. That's my handwriting.

16 Q. And what do you recognize that as being?

17 A. Her order.

18 Q. And what was that order?

19 A. Two orders of hashbrowns with cheese and sausage
20 patties.

21 Q. Is the time marked on that receipt?

22 A. Yes, sir.

23 Q. And what is that time?

24 THE COURT: Well, wait a minute, now. You can ask her

25 ---

1 WITNESS: The time ---

2 THE COURT: Ma'am. Ma'am.

3 You can ask her on testimony. But if she wants to
4 publish something from the document, then if Mrs. Gay
5 objects, I have to make a decision.

6 So he asked her to publish something off the document.
7 Do you object, Mrs. Gay?

8 MRS. GAY: Yes, sir.

9 THE COURT: Looking at the document as a whole, I'm
10 going to sustain the objection at this time. I'll be glad
11 to have a hearing off the record -- I mean, out of the
12 presence of the jury later, and make a decision of
13 admissibility. But because looking at the document with
14 various other things on there not involved in this case, I
15 sustain the objection.

16 MR. COOK: Yes, sir.

17 Thank you, Ms. Rosenbaum. Please, answer any
18 questions defense counsel may have.

19 THE COURT: Cross-examination.

20 You need to leave that up here for ID. I can take up
21 your motion to admit it, later on.

22 MR. COOK: Thank you, Your Honor.

23 MRS. GAY: I have no questions for this witness, Your
24 Honor.

25 THE COURT: Okay. You may step down, ma'am.

1 (The witness leaves the witness stand.)

2 THE COURT: Any objection to her being excused from
3 the trial?

4 MRS. GAY: No, sir.

5 MR. COOK: No, Your Honor.

6 THE COURT: Ma'am, you may stay in the courtroom or
7 leave. Your choice.

8 Do you have another witness that would be about
9 fifteen or twenty minutes?

10 MR. COOK: Yes, Your Honor. Even shorter than that I
11 anticipate.

12 THE COURT: All right.

13 MR. COOK: At this time the State would like to call
14 Mr. Bob Rhodus.

15 THE COURT: Ladies and gentlemen of the jury, whenever
16 the lunch arrives, Mr. Wilson is going to let us know.
17 We'll let you take a break for lunch at that time. We'll
18 try to get as many witnesses as we can before then.

19 BOB RHODUS, being first duly sworn
20 testified as follows:

21 THE CLERK: Please, be seated. Watch your step.
22 Please, give your full name to the Court, and spell your
23 last.

24 WITNESS: Bobby Earl Rhodus. R-h-o-d-u-s.

25 THE COURT: Your witness.

1 MR. COOK: Thank you, Your Honor.

2 DIRECT EXAMINATION.

3 BY MR. COOK:

4 Q. Mr. Rhodus, what is your occupation?

5 A. My occupation at this time is retired.

6 Q. Okay. And what was your occupation in January of
7 2000?

8 A. I was manager of The Game Room on Rivers Avenue.

9 Q. Okay. And how long had you been so employed?

10 A. About four years.

11 Q. Okay. And how long had that game room been opened?

12 A. Well, at that point, I guess, about four years. I was
13 the one that opened it.

14 Q. Okay. So were you acquainted with Dawn Russ?

15 A. Yes, sir.

16 Q. And how did you come to know Ms. Russ?

17 A. Dawn worked for us. Dawn was employed with us at
18 another location on Ashley Phosphate, and we had a vacancy
19 on Rivers Avenue. She came to work at Rivers Avenue.

20 THE COURT: Mr. Rhodus, if you would, please speak
21 louder for us. So everyone can hear you on this way.

22 WITNESS: All right, sir.

23 THE COURT: Continue on, sir.

24 BY MR. COOK:

25 Q. So how long had Ms. Russ worked for you?

1 A. Probably twelve to fifteen months.

2 Q. Okay. And did she have a set shift or normal hours
3 that she would work?

4 A. The shift that she was working at the time of the
5 incident was: She worked from six o'clock in the evening
6 until eight o'clock in the morning.

7 Q. And had she always worked that shift?

8 A. Yes. That's pretty much the shift that she worked.

9 Q. Okay. Can you tell the jury about the safety
10 precautions procedures that your employees followed there?

11 A. We have a front door, and, of course, had a lock on
12 the inside, which the employees was always instructed to
13 make sure it was locked at night. Only let people in that
14 you felt comfortable with or if you knew them. And then we
15 had -- the next room was a game room which had games. And
16 then behind that, we had an employee room. And it
17 contained a door, a thick solid-core door with two locks
18 with reinforcements on them. And had a window with a very
19 small slot. And I made it particularly for that, so no one
20 could get a gun barrel or anything under it. You could
21 slide change, like dollar bills through.

22 Q. So would it be safe to say that the building was set
23 up or designed very safety consciously?

24 A. Yes, sir. We had -- you know, I had panic buttons. I
25 had panic buttons that the employees wore around their

1 neck. And I had cameras and a VCR in the building.

2 Q. Now, did all the employees wear those panic buttons
3 that you just referred to all the time?

4 A. Well, all the time -- I had caught them sometimes
5 without one. It was really -- you know, I stayed on them
6 all the time about them, because, you know, it's just a
7 matter of pushing a button. Because we did that a couple
8 of times on accident and because of other things. And we
9 had police protection in just a matter of minutes. But
10 some of the employees would sometimes not wear them. I
11 would, of course, talk to them about that, and express the
12 importance on having it physically around their neck. I
13 even bought the dog-tag chain in order to put it on. So
14 they would have it regardless of where they went; even if
15 they went to the bathroom or went anywhere, that they would
16 have it with them at all times.

17 Q. Okay. And the door -- would it be safe to say that
18 when the door was not in use, like, someone wasn't going in
19 and out of the door, was it pretty much locked at all
20 times, or were there hours that it was opened?

21 A. Well, there were hours that it was opened. I did it,
22 basically, for the night -- well, I did it for everyone. I
23 was concerned about everybody's safety, certainly. But at
24 daytime during a time where you would have more than one
25 person or several people, and all of them knew each other,

1 the attendant tend not to keep it closed. But at
2 nighttime, I had instructed them to keep the door closed;
3 keep it locked, and operate through the window.

4 Q. And to your knowledge, were those instructions always
5 followed?

6 A. No, sir.

7 Q. So there were times when the door was open at night?

8 A. There was times.

9 Q. Okay. As a regular practice, was the door locked and
10 the buzzer used?

11 A. The front door?

12 Q. Yes.

13 A. The door would be locked, and the buzzer would be
14 used.

15 Q. At night?

16 A. Well, not buzzer. We didn't have a buzzer. The
17 employee would have to physically get up out of her seat
18 and go unlock it.

19 Q. All right. So was it common practice, if you know, to
20 let people enter The Game Room that the employees might not
21 have been too familiar with?

22 A. I would recommend that if they were not familiar with

23 ---

24 MRS. GAY: Your Honor, I would object.

25 THE COURT: Yes. I will sustain the objection.

1 That's not responsive to the question.

2 Do you want to ask the question again, or do you want
3 to ask another question?

4 MR. COOK: I'll ask the question, again.

5 BY MR. COOK:

6 Q. To your knowledge, did employees let strangers in at
7 night?

8 A. Not to my knowledge.

9 Q. Thank you. Could you, please, tell the jury what you
10 were doing on the morning of the 5th, and how you came to
11 be at The Game Room?

12 A. Well, always in the morning, you know, I was always
13 concerned about all my employees. And I tried to do
14 everything possible to make them safe as possible. And I
15 would always at six o'clock in the morning, I would always
16 -- that's about the time I get up -- and at six o'clock in
17 the morning, I'd call all the stores. And I called that
18 particular store that morning; and at six o'clock in the
19 morning, I didn't get a telephone answer. The telephone
20 was not answered that morning. And I continued to try to
21 call, and I got no answer. And, of course, it always
22 concerned me when I didn't get answers. So I called Sheila
23 Mitchell -- Ms. Mitchell which relieved Dawn on the night
24 shift -- and I asked her to, please, get dressed as quickly
25 as possible, and go in as early as she could to see about

1 Dawn, and see if everything was, in fact, okay.

2 Q. And did she do that?

3 A. She did that. She did that.

4 Q. And do you know what, if anything, happened after
5 that?

6 A. She called me back and said that Dawn ---

7 MRS. GAY: Your Honor, I would object.

8 THE COURT: Yes.

9 BY MR. COOK:

10 Q. I don't want you to say what she said to you. Can you
11 tell us what you did as a result of her call to you?

12 THE COURT: What you did, sir, what you did.

13 WITNESS: What I did when I called and got no answer?
14 I called Ms. Mitchell.

15 BY MR. COOK:

16 Q. When Ms. Mitchell called you back?

17 A. What I did is got -- slipped in my clothes, and went
18 immediately to The Game Room.

19 Q. And what did you find when you got to The Game Room?

20 A. I found a crime scene. And, of course, the crime
21 scene was carded off with yellow tape, and nobody could get
22 in. So I was not able to get in The Game Room that day,
23 until later that afternoon when it had been released.
24 Then, of course, I was able to get in.

25 Q. Okay. Did you see Ms. Rosenbaum from Alex's outside

1 of The Game Room?

2 A. I saw her outside of The Game Room. Yes. I saw her
3 outside of The Game Room.

4 Q. And did you have any conversation with her?

5 A. I had a conversation with her, and I had asked Sharon,
6 Ms. Rosenbaum -- because a lot of times Dawn, my operator,
7 would order food next door at Alex's. And if there was
8 nobody in the room, she would walk over there and pick it
9 up. And if there was somebody there, she would ask Ms.
10 Rosenbaum to bring it to her to the door. And I asked her
11 if she had talked ---

12 THE COURT: Now, sir, don't tell us what Ms. Rosenbaum
13 told you, sir.

14 Do you have another question, sir?

15 MR. COOK: Yes, Your Honor.

16 BY MR. COOK:

17 Q. Mr. Rhodus, were you familiar at all with Kandy
18 Gilliard, the defendant?

19 A. I'm familiar with her, just seeing her play the games.

20 Q. And do you know how often she was in there, how many
21 times you observed her?

22 A. I've observed her seven or eight times, but it would
23 be at nighttime. A lot of times I would have to go down
24 there at one, two, three, four, or five o'clock in the
25 morning. And the times I have observed her, most of them

1 would be in the middle of the night, like, at that time in
2 the early mornings.

3 Q. Now, did you have an opportunity to call the defendant
4 after the morning of the 5th or on the morning of the 5th
5 of January?

6 A. I did call her, because I knew that she had been there
7 that night. And I called her house and got no answer.

8 Q. What did you do after that?

9 A. When I didn't get an answer, I left on her machine
10 that she needed to talk to me. It was very very important.
11 That was about 9:30, I guess. About 11:00 -- 10:30 or
12 11:00 she called me back, and said, yes she had been there,
13 and that she had also been over to Alex's; and she ate
14 breakfast and had gotten some cigarettes and went back
15 home.

16 Q. Mr. Rhodus, I'm showing you what, actually, is a
17 diagram -- let's mark it.

18 THE COURT: Subject to the identification status, does
19 defense have any objection to this diagram, subject to
20 identification by him?

21 MRS. GAY: No, I don't, Your Honor.

22 (State's Exhibit Number 4 marked for identification.)

23 THE COURT: All right

24 BY MR. COOK:

25 Q. Do you recognize this diagram, Mr. Rhodus?

1 A. Yes, I recognize that.

2 Q. And what do you recognize this as being?

3 A. I recognize that as being The Game Room in question on
4 Rivers Avenue.

5 Q. And is this the way the layout of The Game Room was in
6 January -- on or about January 5, 2000?

7 A. That's correct. That's exact, as far as I can tell.

8 Q. Okay. And could you describe to the jury -- and I'll
9 bring it over here and set it up -- exactly, what the
10 layout was, and what was in each room?

11 MR. COOK: If that's okay, Your Honor.

12 THE COURT: He's your witness, sir.

13 MR. COOK: Could you please step down.

14 (The witness complies.)

15 THE COURT: State's 4 is in evidence without
16 objection.

17 (State's Exhibit Number 4 received in evidence.)

18 THE COURT: Now, Mr. Rhodus?

19 WITNESS: Yes, sir?

20 THE COURT: Please, understand, sir, this lady right
21 here has got to hear you as well as the jurors and myself
22 and the defense. So make sure you speak loud enough so we
23 all can hear you. I'm sure Mr. Cook is going to make it
24 such that you won't totally have your back to the court
25 reporter.

1 WITNESS: Now, what is the question here?

2 BY MR. COOK:

3 Q. If you could, just through out -- just kind of lay out
4 the rooms for us, and what each one was used for; and maybe
5 some of the contents. And you can use this pointer here?

6 A. This is the main door, here, the main entrance. And
7 over here is a storage unit which has chairs tables, just
8 general storage.

9 THE COURT: For purposes of the record, could you have
10 him mark where the main entrance is, because I don't see
11 that on your diagram.

12 WITNESS: No, sir. It's not marked. It does have a
13 door opening there. That's why I know it's the front
14 entrance.

15 BY MR. COOK:

16 Q. Can you mark that as you go through, maybe, with "A"
17 or "B" or subsequent letters.

18 A. Do you want me to mark the "A" like an "Exhibit A"?

19 Q. Just an "A".

20 THE COURT: So "A" means main entrance; is that right,
21 Mr. Cook?

22 MR. COOK: Yes, Your Honor.

23 THE COURT: All right.

24 WITNESS: So the "A" is the main entrance. And once
25 you get in that main entrance, you've got a storage area.

1 On the right-hand side there's a door, which is just
2 storage. There's chairs, tables, whatever, just general
3 storage.

4 BY MR. COOK:

5 Q. Okay. Could you mark a "B" right there?

6 A. The next area would be an open storage without a
7 partition on the left side without a door. It would just
8 be an open storage. And what that was used for at the time
9 is general -- just general storage that we had closed from
10 other stores. And when we closed those stores, we put
11 those supplies like tables, chairs, trash cans, just
12 anything there was; and we put it in that open area right
13 here.

14 Q. Now, were there any -- that would be here?

15 A. That's correct.

16 Q. You said open storage?

17 A. Well, it's not closed in. It does not have a wall on
18 the side here.

19 Q. Okay. Just mark that with an "S", please.

20 A. I'll put a "C".

21 Q. Okay, "C". "C" is for open storage. And you
22 mentioned trash cans in there?

23 A. There was trash cans, there was extension cords, like
24 for connecting up games or lamps or lights or whatever.
25 There was two or three trash cans. And one of them at

1 least was full of extension cords -- electrical extension
2 cords that you would plug in the wall to hook a lamp to or
3 a game to or something of that nature.

4 Q. And could you -- just one more, actually, two more --
5 could you describe this room and what was contained in the
6 break room?

7 A. The break room here was just that. It was a break
8 room with a table -- with a fold-up table. It had a coffee
9 pot, a microwave, and there was a refrigerator in it. And
10 that's what was there. That's what we used to go in and
11 get coffee, and get a cold drink; and occasionally, we
12 would make a sandwich.

13 Q. Could you put a "BR" there where the break room is?

14 A. Now, the next room ---

15 Q. Well, actually, if we come down here, could you tell
16 us what this is, what is labeled as "cashier"?

17 A. When we come in the front door, there is a lounge area
18 immediately on the left. It had a couch and a love seat.
19 And you walk into a roll-up door into the game room part,
20 which had the games and the chairs and the stools for the
21 games. And they were against the wall which allowed the
22 players to sit there and play. There was five of them
23 against the wall right here. The next room you walk into
24 is cashier's room, which had a door here in this opening
25 and, also, had a window right in this area. Right there.

1 It had a window all the way from the wall almost to the
2 door. Back of this wall there was a desk.

3 Q. Was that the desk that the cashier always sat at?

4 A. That's the desk where the cashier sat at. And she sat
5 behind her desk where she could see through the window.
6 And she could see all the way down through the game room,
7 and see everybody, all five players, if there was five
8 playing. She could see everything happening down through
9 the game room.

10 Q. Where was -- and could you just mark that with a "P"?
11 Where was the money kept in The Game Room?

12 A. The money was kept -- we had a -- on the desk, itself,
13 we had a top right drawer. The desk was a metal desk. And
14 we had a lock on the top drawer. Plus, we had a file
15 cabinet to the right of the desk with a large lock on it.
16 And what we tried to do -- well, what I instructed the
17 cashier's to do is to divide their money. And keep some
18 monies in the desk drawer, some monies in the file cabinet,
19 some monies on their person.

20 Q. Where was the till located?

21 A. The till -- we had no till. We had just a drawer that
22 the money was laying in.

23 Q. Okay. And was it this room that the cashiers spent
24 most of their time?

25 A. This is where the cashiers spent most of their time.

1 And it had a couch; it had a chair; and it had a little
2 t.v. over there. When nobody was there, of course, they
3 could watch t.v. or do whatever they wanted to.

4 Q. Okay. Thank you, sir. You can go ahead and have a
5 seat.

6 A. Also, this cashier had this large window here. You
7 could sit here -- the people sitting there at these seats,
8 especially the one by the window, could look in on top of
9 the desk, and they could see the money. They could see
10 everything.

11 Q. Thank you, Mr. Rhodus. You can have a seat.

12 (The witness complies.)

13 THE COURT: Other questions?

14 MR. COOK: Not at this time, Your Honor. Mr. Rhodus,
15 please, answer any questions of Mrs. Gay.

16 THE COURT: Whenever you're ready, Mrs. Gay, you may
17 cross-examine.

18 CROSS-EXAMINATION

19 BY MRS. GAY:

20 Q. Mr. Rhodus, pursuant to your four years that you
21 worked in The Game Room, you've kept these game rooms open
22 all night and all day long?

23 A. That's correct.

24 Q. I believe, the only time they were closed was, I
25 believe, they had to close at 12:00 p.m. on Saturday nights

1 until 12:00 p.m. or a.m., I guess, on Sunday night?

2 A. Yes, ma'am.

3 Q. So that they were, actually, closed during Sunday?

4 A. They were closed during the Sunday.

5 Q. Other than that, they were open all the time?

6 A. Yes, ma'am.

7 Q. And ---

8 A. Except it be a holiday, and we might decide that we'll
9 take the day off. But, generally, yes, it was open.

10 Q. And you're aware that the people who work for you, the
11 attendants, periodically had friends or people come back
12 into the office area or the cashier area with them?

13 A. Yes, ma'am.

14 Q. And that despite the fact that you may not have agreed
15 with that, they often times did that?

16 A. That's correct.

17 Q. And, I believe, you said there was a t.v. back there
18 in the cashier area?

19 A. That's correct.

20 Q. And you said that there was windows where people could
21 see through, and they often times stayed in the cashier
22 area?

23 A. The cashier often stayed in the cashier area?

24 Q. The attendant would stay in the cashier area?

25 A. Yes. That's correct.

1 Q. Back with the t.v. and across the way from the snack
2 area or the coffee machine?

3 A. Yes, ma'am. That's correct.

4 MRS. GAY: I don't believe I have any further
5 questions for this witness, Your Honor.

6 THE COURT: Anything else?

7 MR. COOK: Not at this time, Your Honor.

8 MRS. GAY: I don't have a problem with him being
9 excused.

10 THE COURT: Okay. You may be excused from further
11 service of the trial, sir.

12 (The witness leaves the witness stand.)

13 THE COURT: All right. Ladies and gentlemen of the
14 jury, at this time it might be good to take a break. Your
15 lunch may be here; it may not. If it is here, then you may
16 proceed to enjoy your lunch.

17 What I'm going to do -- let's take forty-five minutes.
18 If for some reason you need a longer period of time, let me
19 know. But if not, at two o'clock let's get started back,
20 or a few minutes after 2:00. If you need to run somewhere
21 or whatever, you can do that. And if you need more time
22 than that forty-five minutes, let the bailiff know, and let
23 him talk with me about it so I can decide. But if not, I'd
24 like to take about forty-five minutes, and get started back
25 at that point in time. Your lunch should be in there.

1 We'll get drinks and everything else for you.

2 Please, do not discuss this case. It is not yours at
3 this time. Please, go to your jury room.

4 Everyone else, please, remain seated. Please,
5 everyone, stay in your seats until the jury leaves, please.

6 (The jury retires to the jury room for lunch.)

7 THE COURT: Okay. Now, Counselors, as far as you all
8 breaking and everything else, if you all want to go get a
9 sandwich or whatever else, do that; but let's try, say
10 around five after 2:00 they're ready to start back. Their
11 lunch is here. So at five after 2:00, I'm going to come
12 back on the bench; and let's get started at that time.

13 MR. DUTREMBLE: Yes, sir. Thank you.

14 (WHEREUPON, the court is in recess for lunch.)

15 (State's Exhibit Numbers 5 through 27 are marked for
16 identification.)

17 THE COURT: Let's get started back. Is the State
18 ready to proceed?

19 MR. DUTREMBLE: The State is ready, Your Honor.

20 THE COURT: Defense, ready?

21 MRS. GAY: Yes, sir.

22 THE COURT: The defendant is in the room.

23 All right. Bring the jury in, please.

24 Do you have everything worked out, now, so the
25 witnesses will be coming in in an even keel?

1 MR. DUTREMBLE: They're all out in the hallway, Your
2 Honor.

3 THE COURT: Okay.

4 (The jury returns to the courtroom.)

5 THE COURT: Okay. Ladies and gentlemen, before we
6 begin back, did anyone discuss anything with anybody about
7 this case, hear anything about it from anyone at all? If
8 so let me know, now.

9 Any polling requested by the State or by the defense?

10 MR. DUTREMBLE: Nothing from the State, Your Honor.

11 MRS. GAY: No, Your Honor.

12 THE COURT: All right. Next witness for the State.

13 MR. COOK: Thank you, Your Honor. The State would now
14 like to call Ms. Sokha Meyer to the stand.

15 SOKHA MEYER, being first duly sworn,
16 testified as follows:

17 THE CLERK: Please, be seated. Please, state your
18 full name for the Court, and spell your last. Speak loudly
19 so the court reporter can hear you.

20 WITNESS: My first name Sokha. My last name Meyer.
21 S-o-k-h-a is my first name. My last name M-e-y-e-r.

22 THE COURT: All right. Your witness, Mr. Cook.

23 MR. COOK: Thank you.

24 DIRECT EXAMINATION

25 BY MR. COOK:

1 Q. Ms. Meyer, if you could, please, speak a little
2 louder so the jury can hear you.

3 A. Okay.

4 Q. Ms. Meyer, are you familiar with The Game Room that
5 used to be at [REDACTED]?

6 A. Yes, sir.

7 Q. And how were you familiar with The Game Room?

8 A. I worked part-time with Mr. Bob Rhodus.

9 Q. Bob?

10 A. Yes. And sometime I deliver the money cash to The
11 Game Room.

12 Q. Okay. Did you ever play the video games there?

13 A. Yeah. I play.

14 Q. How often did you go into The Game Room?

15 A. I go sometime two time a week. Sometime one time a
16 week when I had to work.

17 Q. Are you familiar with Ms. Dawn -- Dawn Russ that
18 worked at The Game Room?

19 A. Yes, sir.

20 Q. And how well did you know her?

21 A. I know her a little -- well, for three or four months.
22 And any time I talked to her, I feel very close to her,
23 because we both single parents; and she like to eat
24 oriental food. And I go to the restaurant at night and I
25 bring it to her sometimes.

1 Q. And you said she was a single parent and she liked
2 oriental food. And you brought that food to her sometimes?

3 A. Yes, sir.

4 Q. Okay. Now, did you have occasion to go to The Game
5 Room on January 4th of 2000?

6 A. Yes, sir.

7 Q. Okay. And about what time did you get to The Game
8 Room?

9 A. I get in The Game Room -- I'm off at 11:00, and I go
10 in The Game Room at 11:30 or 35, something like that.

11 Q. So around 11:30?

12 A. Yes.

13 Q. Okay. And was there anybody there when you got there?

14 A. No, sir.

15 Q. Who was working there?

16 A. Ms. Dawn.

17 Q. Ms. Dawn. That was Dawn Russ?

18 A. Yes.

19 Q. Okay. And what did you do after you got to The Game
20 Room, and how long were you there?

21 A. I sat there and talked -- I rang the doorbell, and she
22 opened the door for me, because she have a key and it
23 locked inside. And I go to her and I asked her if she want
24 an egg roll, and she said she had tacos that night.

25 Q. Okay. So you said you got there, rang the doorbell,

1 and she opened it?

2 A. Yes.

3 Q. Was the door usually locked when you went to The
4 Game Room?

5 A. Yes, sir.

6 Q. Okay. Now, after they opened it for you, did she
7 leave it unlocked, or did she lock it back?

8 A. She locked behind me. I watched her lock the door.

9 Q. Was that normal?

10 A. Yes. Normal when I go there.

11 Q. When you go there. Okay. Did anyone come in while
12 you were at The Game Room that night?

13 A. The time I go in there nobody there come in after me.
14 And after I stay for a little while, yes, I see the young
15 lady come in.

16 Q. The young lady? Which young lady is that?

17 A. Ms. Kandy.

18 Q. Ms. Kandy?

19 A. Yes.

20 Q. And is she in the courtroom, today?

21 A. Yes.

22 Q. And could you point her out, and describe an article
23 of her clothing?

24 A. She's over there.

25 Q. And what is she wearing, shirt-wise?

1 A. That nice -- see the little jacket. I'm sorry.

2 MR. COOK: Your Honor, could you please let the record
3 reflect that the witness has identified the defendant,
4 Kandy Gilliard, as the woman who was inside The Game Room
5 that night?

6 THE COURT: Any objection from the defense on
7 identification in the court, here?

8 MRS. GAY: No, Your Honor.

9 THE COURT: All right. The record shall so reflect.

10 MR. COOK: Thank you, Your Honor.

11 BY MR. COOK:

12 Q. Now, what time if you know, what time did the
13 defendant come into The Game Room, if you can recall?

14 A. I believe it have been twelve o'clock.

15 Q. Twelve o'clock?

16 A. It been 12:00 or 12:05 or something like that. I
17 really believe that, because I'm not looking at time or
18 something, but I know what time I get out from there.

19 Q. Okay. And do you know how she got to The Game Room,
20 if you know?

21 A. She come to -- she ring the doorbell, and Ms. Dawn
22 opened the door for her with the key. And she come in, and
23 I say hi to her and she say hi to me, like, a normal inside
24 The Game Room.

25 Q. Did she seem to know Ms. Dawn?

1 A. I'm sorry?

2 Q. Did the defendant and Ms. Dawn seem to know each
3 other?

4 A. Yes. They know -- Ms. Dawn said they know each other.

5 Q. At what time did you leave The Game Room?

6 A. I leave The Game Room at 12:45.

7 Q. Okay, 12:45. Okay. And when you left The Game Room,
8 who stayed behind? Who did you leave in The Game Room when
9 you left?

10 A. The night I leave The Game Room, Ms. Dawn open the
11 door for me, and I walk out; I almost step on a bicycle
12 outside.

13 Q. What was that, again? I'm sorry.

14 A. The time I left and she open the door -- Ms. Dawn open
15 the door for me, and I saw the bicycle outside.

16 Q. There was a bicycle outside?

17 A. Yes, sir. And I asked Ms. Dawn, I said, Who left a
18 bike by the front door?

19 Q. Okay. And did you happen to find out whose bike was
20 it?

21 A. Yes.

22 Q. And whose bike was it?

23 A. Ms. Kandy claims, say that her bike.

24 Q. Okay. Ms. Kandy?

25 A. Yes.

1 Q. Did you see what color the bike was, or anything about
2 it?

3 A. That outside kind of a little dark, and my eye -- I
4 don't have glasses with me, but I believe it dark blue
5 bike. Dark blue or some little scratch on there, but I not
6 pay much attention, you know, it was a little bike.

7 Q. Okay. And you said you left at 12:45?

8 A. Yes.

9 Q. Okay. And you left The Game Room and it was Dawn and
10 Ms. Kandy in The Game Room. Were they alone?

11 A. Yes, sir. They were alone. Nobody in there.

12 Q. Okay. Now, Ms. Meyer, you said when you left you
13 almost tripped over the bike?

14 A. Yes, sir.

15 Q. Did anything happen to the bike after that?

16 A. I'm sorry?

17 Q. Did anything happen to the bike after that? Did you
18 trip over it?

19 A. No. I not trip. I almost step on it. I put my foot
20 out. I almost step on it, because one back wheel close to
21 the door.

22 Q. Now, did the defendant or Ms. Russ, Ms. Dawn, do
23 anything as a result of you almost tripping over the bike?

24 A. Yes. She said -- she turned around and asked Ms.
25 Kandy say, that her bike? And Ms. Kandy say, yes.

1 MRS. GAY: Your Honor, I would object to hearsay at
2 this point. I think she's trying to say what all these
3 different people said.

4 THE COURT: Well, of course, she can state what she
5 may have heard the defendant say. But as to anyone else,
6 unless there is an exception.

7 Let's go on to something else. You may proceed, Mr.
8 Cook.

9 BY MR. COOK:

10 Q. Did the bike remain in the doorway, or was it moved?

11 A. When Ms. Dawn asked me ---

12 THE COURT: No, ma'am. All he asked you: Was it
13 moved or did it stay there?

14 WITNESS: It moved. It moved inside

15 BY MR. COOK:

16 Q. They moved the bike inside The Game Room?

17 A. Yes.

18 Q. Okay. Thank you, Ms. Meyer. Please, answer any
19 questions defense counsel may have.

20 THE COURT: All right. Mrs. Gay?

21 MRS. GAY: Your Honor, I have no questions for this
22 witness. She can be excused.

23 THE COURT: All right. You may step down. Ms. Meyer,
24 you can stay here or go home. It's your choice.

25 (The witness leaves the witness stand.)

1 THE COURT: All right. Next witness, please.

2 MR. DUTREMBLE: Thank you, Your Honor. We'd call
3 Officer Scott Wyant.

4 SCOTT WYANT, being first duly sworn
5 testified as follows:

6 THE CLERK: Please, be seated. Please, state your
7 full name for the Court, and spell your last.

8 WITNESS: Detective Scott Cameron Wyant. W-y-a-n-t.

9 THE COURT: W-y-a-n-t?

10 WITNESS: Yes, sir.

11 THE COURT: All right. Your witness.

12 MR. DUTREMBLE: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. DUTREMBLE:

15 Q. Officer Wyant, by whom are you employed?

16 A. North Charleston Police Department.

17 Q. What do you do for the North Charleston Police
18 Department?

19 A. I'm a crime scene investigator.

20 Q. And how long have you been with the department?

21 A. Approximately six and a half years.

22 Q. And how long have you been doing crime scene work?

23 A. Approximately three and a half years.

24 Q. Okay. Explain to the members of the jury what is
25 crime scene investigator does?

1 A. We go to major scenes, burglaries, murders, rapes,
2 violent scenes. We photograph the scene, document it, take
3 fingerprints, collect evidence.

4 Q. On January the 5th of the year 2000, were you called
5 to go to a crime scene on Rivers Avenue at a place known as
6 The Game Room?

7 A. That's correct.

8 Q. And did you respond to that area?

9 A. Yes, I did.

10 Q. And did you go to The Game Room?

11 A. Yes, I did.

12 Q. And can you explain to the members of the jury what
13 you found when you got to The Game Room?

14 A. I was summoned there by my supervisor, Sargent
15 Garrison. When I arrived there the body had already been
16 removed from the scene. The break room, to the right as
17 you walk in the front door, had a whole roll of trash bags
18 there. There's also the back room with a trash can full of
19 electrical extension cords.

20 Q. Let me ask you this -- my last question wasn't very
21 good. Did you have occasion as a crime scene technician,
22 sir, to paragraph the scene that day?

23 A. Yes, I did.

24 Q. That would have been on January 5th; correct?

25 A. That's correct.

1 Q. Let me hand you a stack of photographs that have been
2 marked with State's Exhibits 5 through 17, sir, and ask you
3 if you can identify these? Don't tell me what they are
4 yet. Just look through them, and tell me if you recognize
5 them?

6 A. Okay. Yes. I do recognize them.

7 Q. Are those the photographs that were taken at the crime
8 scene, sir?

9 A. Yes, they are.

10 Q. Do they fairly and accurately depict the scene of the
11 crime?

12 A. Yes, they do.

13 MR. DUTREMBLE: If Your Honor please, I would like to
14 offer them into evidence at this time.

15 MRS. GAY: I'd like to see them.

16 THE COURT: Let her see them, first.

17 (The attorneys confer.)

18 MR. DUTREMBLE: Your Honor, I'm going to remove
19 Exhibit 14 at this particular time. I'll offer it at a
20 later time. Bu I would offer 5 through 15, with the
21 exception of 14 at this particular time.

22 THE COURT: Any objection?

23 MRS. GAY: Without objection, Your Honor.

24 THE COURT: All right. Is 5 the correct next number,
25 or is it 6?

1 COURT REPORTER: Five.

2 THE COURT: So that drawing is 4?

3 COURT REPORTER: Yes.

4 THE COURT: All right. Exhibit Numbers 5 through 15,
5 with the exception of 14, is hereby admitted into evidence
6 without objection.

7 (State's Exhibit Numbers 5 through 13 and 15 are
8 received in evidence.)

9 THE COURT: You may proceed.

10 BY MR. DUTREMBLE:

11 Q. Officer Wyant, with respect to State's Exhibit Number
12 5 which is in evidence, can you explain to the members of
13 the jury what that is? And that photograph will be
14 depicted on this screen there, if it helps you, sir.

15 A. Okay.

16 THE COURT: And, Mr. DuTremble, you're saying the
17 photographs depicted are exactly the ones 5 through 15, and
18 he knows not to show 14?

19 MR. DUTREMBLE: That's Correct.

20 THE COURT: All right. You may proceed.

21 WITNESS: Yes, sir. This is a photograph of the front
22 of the business, cornered off with crime scene tape.

23 BY MR. DUTREMBLE:

24 Q. Is this the crime scene tape you're talking about?

25 A. Yes, sir, it is.

1 Q. It's put up there by the police?

2 A. Yes, sir, it is.

3 Q. With relationship to State's Exhibit Number 6, let me
4 ask you if you can describe what this area is, sir? And if
5 you need the pointer all you have to do is press this
6 little button here?

7 A. Okay. This is the interior of the business when you
8 walk inside, with the poker machines here. And this is the
9 back office where the body was found.

10 Q. With respect to State's Exhibit Number 7, let me ask
11 you if you can explain to the members of the jury what we
12 see here, sir?

13 A. This is the back office that I previously spoke of.
14 As soon as you walk in this door, this door that we're
15 looking at -- this photograph is kind of inside of the
16 office, shot out. This is where the body was. This is the
17 desk in the office where we found a pill bottle and other
18 stuff on the desk.

19 Q. All right. And let me hold the pointer for a moment,
20 if I might?

21 A. Sure.

22 Q. Can you explain to the members of the jury what this
23 object is here in the corner?

24 A. Yes. That's a black filing cabinet. Inside that
25 filing cabinet was a cash drawer in the very top drawer of

1 the filing cabinet.

2 Q. All right. And with respect to State's Exhibit Number
3 8 -- you had mentioned the pill bottle -- let me ask you if
4 you can identify this?

5 A. Yeah. This is a pill bottle on that same desk that we
6 looked at earlier. It's got the name Kandy Gilliard on the
7 pill bottle, sitting on the desk.

8 Q. Did you confiscate that pill bottle and take it into
9 evidence?

10 A. Yes, we did.

11 Q. And did you turn it into the evidence room?

12 A. Yes.

13 Q. With respect to State's Exhibit Number 9, sir, can you
14 explain to the members of the jury what we're looking at
15 here?

16 A. This is just another photograph of that same pill
17 bottle right here, just from a different angle.

18 Q. Okay. And let me ask you, sir, the item next to the
19 pill bottle with the chain on it, did you confiscate that
20 as any evidence in this particular case?

21 A. I don't recall off hand.

22 Q. I don't have it. So...

23 A. I don't believe we did. I think it was some sort of
24 emergency button or something. I don't recall collecting
25 that.

1 Q. With respect to State's Exhibit Number 10, sir, can
2 you explain to the members of the jury what were looking at
3 here?

4 A. This is a back storage room. This is the trash can
5 that I spoke of that had -- was full of all of these
6 extension cords.

7 Q. All right. And with respect to State's Exhibit Number
8 11, can you tell us what we're looking at?

9 A. Yeah. That's another picture of that same trash can
10 full of the extension cords. It's just a closer paragraph,
11 a closer view.

12 Q. And with respect to State's Exhibit 12, sir, can you
13 tell us what we're observing?

14 A. This is the break room, and that's the roll of trash
15 bags that we collected from the scene and eventually
16 processed for fingerprints.

17 Q. Okay. And that was taken into evidence as well?

18 A. Yes, sir. Yes, it was.

19 Q. And with respect to State's Exhibit Number 13...

20 A. That's the same picture, but a closer view of the
21 trash bags that was sitting on the same table where we got
22 them.

23 Q. And those are the same trash bags you took into
24 evidence?

25 A. Exactly.

1 Q. And with respect to State's 17, sir ---

2 MRS. GAY: Did you say 17?

3 MR. DUTREMBLE: It will be State's 15. I handed you
4 the wrong one out of order.

5 WITNESS: That's all right.

6 BY MR. DUTREMBLE:

7 Q. Can you tell us what we're looking at there, sir?

8 A. This is the lock with key and a key chain that come
9 off of the file cabinet that we observed earlier in the
10 back office where the body was found.

11 Q. And was that lock and key taken into evidence as well?

12 A. Yes, it was.

13 Q. With respect to State's 16, can you tell us what we're
14 looking at?

15 A. This is a view inside of that ---

16 MRS. GAY: Your Honor ---

17 THE COURT: We only had 5 through 15.

18 MRS. GAY: --- I thought we had 5 through 15. So I
19 just want to get clear on that.

20 MR. DUTREMBLE: I'm sorry. Have I gone too far? I
21 would offer as well, Your Honor, State's 16 and 17.

22 THE COURT: Show those to her.

23 MRS. GAY: No objection, Your Honor.

24 THE COURT: All right. Then, 16 and 17 are in
25 evidence, also.

1 (State's Exhibit Numbers 16 and 17 received into
2 evidence.)

3 MR. DUTREMBLE: I'm sorry, Your Honor. I'm bad with
4 math.

5 BY MR. DUTREMBLE:

6 Q. Can you tell us what we're looking at?

7 A. That's the cash drawer that we found in top of the
8 file drawer. It's like a picture -- this is the front of
9 the top drawer of the file cabinet. And this is kind of
10 like a cabinet pulled out, and a photograph looking in at
11 the cash drawer inside that top file cabinet.

12 Q. Did you find any cash bills or anything like that in
13 there?

14 A. No. I believe there is a little bit of change in
15 there, but other than that, no.

16 Q. And, lastly, with respect to State's 17, sir, can you
17 tell us what we're looking at?

18 A. This is a picture of the front door of the business
19 looking out toward the parking lot. So if you're standing
20 inside the business, and you're looking out into the
21 parking lot, that's the front door. It's got bells on it.

22 Q. All right. Now, you mentioned that you took certain
23 items that you found at the crime scene into evidence. And
24 let me hand you some items, sir, and ask if you can
25 identify these? With reference to what has been marked as

1 State's 20, can you identify this object, sir?

2 A. This was the extension cord that was used to
3 strangulate the victim's body.

4 Q. Has that been brought back to the North Charleston
5 Police Department, and put in the evidence locker?

6 A. Yes, it was.

7 Q. And has it been removed by my request for trial
8 purposes?

9 A. That's correct.

10 MR. DUTREMBLE: The State would offer the extension
11 cord.

12 MRS. GAY: Without objection, Your Honor.

13 THE COURT: And, of course, it's in an enclosed
14 packet?

15 MR. DUTREMBLE: It is, Your Honor.

16 THE COURT: Okay. In evidence as what exhibit number
17 is it?

18 MR. DUTREMBLE: Exhibit 20, Your Honor.

19 THE COURT: Exhibit 20 in evidence without objection.
20 (State's Exhibit Number 20 received in evidence.)

21 MRS. GAY: It also has a Biohazard sticker on it, so I
22 don't believe it should be opened.

23 THE COURT: Okay. That's fine. Exhibit 20 in
24 evidence. And unless somebody wants them to, I'm going to
25 instruct the jury not to open the bag.

1 MR. DUTREMBLE: That's fine, Your Honor.

2 THE COURT: Okay?

3 MRS. GAY: Yes, sir.

4 BY MR. DUTREMBLE:

5 Q. Officer Wyant, with respect to what's been premarked
6 as State's Exhibit Number 21, it appears to be a bottle of
7 pills. Can you identify that particular object?

8 A. This is the bottle of pills that we saw earlier on the
9 screen. That was found on the desk in the back office with
10 the name "Kandy Gilliard" on it.

11 Q. And that was collected and put into the evidence
12 locker in North Charleston?

13 A. That's correct.

14 Q. It was brought to court today for trial purposes?

15 A. Trial purposes.

16 MR. DUTREMBLE: We would like to offer the bottle of
17 pills.

18 MRS. GAY: Can I look at it?

19 (The attorneys confer.)

20 BY MR. DUTREMBLE:

21 Q. Well, let me ask you this, sir: You were working in
22 conjunction with Officer Garrison who is your supervisor?

23 A. Sargent Garrison, yes.

24 Q. And he is also a crime scene technician?

25 A. That's correct.

1 Q. Okay. There's ---

2 A. I was there as a whole.

3 Q. I'm sorry?

4 A. I was there during, you know, like I said, he called
5 me to the scene. When I got there, the body was removed.
6 But aside from that, I assisted in photographing, lifting
7 fingerprints, and collecting evidence.

8 Q. So if Officer Garrison's name appears on the bag, you
9 were working in conjunction with him. And this is what he
10 put in this bag?

11 A. Exactly.

12 MRS. GAY: No objection, Your Honor.

13 MR. DUTREMBLE: Without objection, Your Honor, State's
14 Exhibit Number 21.

15 THE COURT: Number 21 in evidence without objection.

16 (State's Exhibit Number 21 received in evidence.)

17 BY MR. DUTREMBLE:

18 Q. Officer Wyant, let me hand you what's been marked as
19 State's 24, and ask you if you could tell me what's in that
20 bag? You can open it.

21 A. That's a roll of trash bags that we saw in that
22 picture in the break room standing up on the table.

23 Q. And those trash bags were collected and brought back
24 to North Charleston and placed in the evidence locker?

25 A. That's correct.

1 Q. And they returned here, today, for trial?

2 A. Yes, sir.

3 MR. DUTREMBLE: We would offer the roll of trash bags.

4 MRS. GAY: Without objection, Your Honor.

5 THE COURT: Number 24 in evidence without objection.

6 (State's Exhibit Number 24 received in evidence.)

7 BY MR. DUTREMBLE:

8 Q. Officer Wyant, let me hand you what's been previously
9 marked as State's 23, and ask you if you can identify the
10 contents of that package?

11 A. This is the lock with the key still in it and the key
12 chain that we found in the back office that came off the
13 file cabinet where the money was stored.

14 Q. And that was collected and turned into evidence?

15 A. That's correct.

16 Q. And brought today for court purposes?

17 A. That's correct.

18 MR. DUTREMBLE: Your Honor. I believe, I'm going to
19 offer the lock and key as evidence.

20 (The attorneys confer.)

21 BY MR. DUTREMBLE:

22 Q. This also was packaged by Officer Garrison; correct?

23 A. Yes, sir. That's correct.

24 MRS. GAY: No objection, Your Honor.

25 MR. DUTREMBLE: It appears to be State's Number 23,

1 Your Honor.

2 THE COURT: All right, 23 in evidence without
3 objection.

4 (State's Exhibit Number 23 received in evidence.)

5 BY MR. DUTREMBLE:

6 Q. Officer Wyant, let me show you what's been marked as
7 State's 22, and ask you if you can identify what's enclosed
8 in that package?

9 A. This is a black trash bag with a biohazard sticker on
10 it. This was the bag that was found underneath the upper
11 part of the victim's body when she was found on the floor.

12 Q. And it was collected and taken to the evidence locker
13 in North Charleston?

14 A. That's correct.

15 Q. Brought here today for court purposes?

16 A. That's correct.

17 Q. And this was also collected by your supervisor?

18 A. Sargent Garrison, yes.

19 Q. Sargent Garrison.

20 MR. DUTREMBLE: We would offer the trash bag at this
21 time, Your Honor.

22 MRS. GAY: No objection, Your Honor.

23 THE COURT: Twenty what?

24 MR. DUTREMBLE: Number 22, Your Honor.

25 THE COURT: Number 22 without objection.

1 (State's Exhibit Number 22 received in evidence.)

2 BY MR. DUTREMBLE:

3 Q. And, lastly, sir, let me show you what's been marked
4 as State's 25. I ask you if you can identify the contents
5 of that package?

6 A. Yes. This is the cash drawer that was found in the
7 top drawer of the file cabinet. The cash drawer has
8 apparently been fumed for fingerprints.

9 Q. Is that the same cash drawer we have previously seen
10 the photograph of?

11 A. Yes, sir.

12 Q. And it was collected at the scene and taken to North
13 Charleston evidence locker?

14 A. That's correct.

15 Q. And brought today for court purposes?

16 A. Yes, sir.

17 MR. DUTREMBLE: Your Honor, we would offer the cash
18 drawer.

19 (The attorneys confer.)

20 BY MR. DUTREMBLE:

21 Q. This was also collected by Sargent Garrison?

22 A. That's correct.

23 Q. At the scene of the crime?

24 A. Yes.

25 MRS. GAY: Without objection.

1 MR. DUTREMBLE: State's 25, Your Honor.

2 THE COURT: All right. Number 25 in evidence without
3 objection.

4 (State's Exhibit Number 25 received in evidence.)

5 BY MR. DUTREMBLE:

6 Q. Now, Officer Wyant, I believe you testified that the
7 contents of State's Exhibit Number 24, a roll of trash
8 bags, was processed for fingerprints; is that correct?

9 A. That's correct.

10 Q. And to whom did you give these bags for fingerprint
11 analysis?

12 A. Sargent Garrison.

13 Q. And also with reference to State's 22, the trash bag
14 found on the victim's body, was that also submitted for
15 fingerprint analysis?

16 A. Yes, sir.

17 Q. Also, Sargent Garrison?

18 A. Yes, sir. Sargent Garrison.

19 MR. DUTREMBLE: I beg the Court's indulgence.

20 Thank you, sir. I believe that's all the questions I
21 have for you. Please, answer any questions Mrs. Gay has
22 for you.

23 THE COURT: Cross-examination?

24 CROSS-EXAMINATION

25 BY MRS. GAY:

1 Q. Sargent Wyant, when you went there and took the
2 pictures and processed the crime scene, the intent was to
3 try to find incriminating information about people that
4 might have been in the room during the commission of this
5 crime?

6 A. That's correct.

7 Q. And pursuant to that, I believe, you said that you
8 found evidence which you have collected and pictures which
9 you have taken?

10 A. Yes, ma'am. That's correct.

11 Q. And did you, actually, do the processing for the
12 prints -- the type of prints that were in the room say on
13 the file cabinet or some of the things that you couldn't
14 take, actually, out of the room?

15 A. Can you ask me the question, again? Did I process?

16 Q. When you go there and you're looking for fingerprints,
17 did you fume the file cabinet or anything of that nature?

18 A. No. Not the file cabinet.

19 Q. That's not your job?

20 A. I do lift fingerprints. I do process for
21 fingerprints. But an object as big as a file cabinet is
22 very difficult to try to fume. So the smaller items, like
23 the cash drawer and the trash bags and stuff -- the
24 extension cord, we can take that back to the lab after we
25 fume it.

1 Q. Did you fume it?

2 A. Yes. Yes, I did.

3 Q. Okay. So when you say that you took these items, the
4 trash bags etcetera, and gave it to someone else for
5 analysis, you had already fumed it and determined that
6 there potentially could be fingerprint evidence?

7 A. Yes, ma'am.

8 Q. And so pursuant to this, you're familiar with the fact
9 that fingerprints are actually something that your finger
10 leaves from the grease and dirt that's accumulated on
11 people's fingers?

12 A. That's correct.

13 Q. And I don't want you to get into how a comparison is
14 made, but, certainly, when people leave prints around,
15 that's what you're fuming for, to see if you can determine
16 who was there?

17 A. Exactly in a round about way.

18 Q. And, certainly, people who have their fingers covered,
19 they wouldn't be leaving any fingerprints on anything;
20 would they?

21 A. It depends on what they're covered with.

22 Q. Okay. What about if they were covered in a pair of
23 gloves? When they put their hand on a surface, there is
24 not going to be any ridge detail, or anything that could be
25 determined to be someone's fingerprint?

1 A. Well, I found through my experiences that the thinner,
2 cheaper, latex gloves, you can get fingerprints through
3 them, if you're sweating enough. But, like, the gloves
4 that I wear when I do my fingerprint processing, they're
5 thicker latex gloves, don't leave fingerprints. Also,
6 like, leather or cloth.

7 Q. Or cloth or wool or some substance that's not one of
8 those really tight fitting latex substances?

9 A. Exactly.

10 Q. So the average glove a person's going to wear if it's
11 cold outside or something like that, is going to cover
12 their fingers such that they don't leave any type of
13 fingerprint.

14 A. That's correct.

15 MRS. GAY: Thank you, Your Honor. I have no further
16 questions.

17 THE COURT: Redirect?

18 MR. DUTREMBLE: None, Your Honor. Thank you.

19 THE COURT: You may step down.

20 Any objection to him returning to his duties or
21 staying in the courtroom?

22 MRS. GAY: No, Your Honor.

23 THE COURT: Now, you may return to your duty or stay
24 here, your choice.

25 WITNESS: Thank you, sir.

1 (The witness leaves the witness stand.)

2 THE COURT: Okay. Next witness.

3 MR. DUTREMBLE: I call Al Hallman to the stand, Your
4 Honor.

5 MRS. GAY: Who is this?

6 MR. DUTREMBLE: Hallman.

7 ALBERT HALLMAN, being first duly sworn,
8 testified as follows:

9 THE CLERK: Please, be seated. Please, give your full
10 name for the record, and spell your last.

11 WITNESS: Albert R. Hallman. H-a-l-l-m-a-n.

12 THE COURT: Okay. Your witness, Mr. DuTremble.

13 MR. DUTREMBLE: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. DUTREMBLE:

16 Q. Officer Hallman, by whom are you employed?

17 A. City of North Charleston Police Department.

18 Q. And in what capacity?

19 A. I'm assigned to the crime scene investigations unit.

20 Q. And how long have you been doing crime scene work?

21 A. Approximately eight years, now.

22 Q. And can you explain to the members of the jury what
23 you do as a crime scene investigator?

24 A. We do all phases of crime scene work. We respond to
25 initial crime scenes, ranging from a simple burglary case

1 to the most serious of it being a murder. And we collect
2 evidence, document the location and types of evidence,
3 secure the scenes, preserve evidence through photography
4 and then collect that evidence, and transport it back to
5 the police department for processing and securing, things
6 of that nature.

7 Q. Also, when you're processing the evidence collected at
8 the crime scene, do you also attempt to do any kind of
9 analysis on certain types of evidence, such as
10 fingerprints?

11 A. Yes, we do.

12 Q. And how long have you been doing that kind of work,
13 sir?

14 A. I've been working with latent prints for over seven
15 years.

16 Q. And can you explain to the members of the jury what
17 your training has been in the area of latent print
18 examination?

19 A. Yes. I have attended numerous advanced schools and
20 training seminars, dealing with fingerprint comparisons,
21 development, and identification. I've also received a
22 degree from the American Institute of Applied Sciences,
23 which deals with forensic science in law enforcement. And
24 I'm also a certified latent print examiner with the
25 International Association for Identification.

1 Q. And what do you do, sir, to keep current in the field
2 of latent print identification?

3 A. There is really no requirements other than the steady
4 work or steady comparison of latent prints. And there's
5 never an end supply of latent prints. We've always got
6 latent prints to compare, and I'm usually the one who is
7 comparing them.

8 Q. All right. Do you attend seminars and talks, and
9 things of that nature?

10 A. Yes, I do.

11 Q. What kind of equipment do you use to be able to
12 determine, or to be able to analyze a latent print?

13 A. Well, we've got several different processings that we
14 can enhance and develop fingerprints with. There's a
15 number of chemical processes that deals with the type of
16 surface, or the type of print that we're trying to develop
17 and lift. We, also, use numerous phosphorous powders, and
18 we use superglue fuming that adheres and turns a print that
19 you can't see, makes it white. And it also affixes it to
20 the surface of whatever you're processing, permanently.
21 And it cannot be removed unless you use an acetone base
22 substance to remove it.

23 Q. In the past, during your seven years working with
24 latent print analysis and examination, have you had
25 occasion, sir, to compare a known print from a person with

1 an unknown print found at the scene of a crime?

2 A. Numerous times.

3 Q. And do you have any idea how many times "numerous"
4 would be?

5 A. I could not even fathom how many times I've compared
6 unknown prints to known prints.

7 Q. And have you ever been qualified as an expert in
8 latent fingerprint examination and identification in the
9 courts over this State?

10 A. Yes, sir, I have.

11 Q. And approximately how many times has that happened?

12 A. Twenty, plus or minus. I'm not sure exactly how many.

13 Q. Have you ever testified as an expert in identifying a
14 person who is suspected of a crime based on comparison of
15 their known inked fingerprint with an unknown print found
16 at the scene?

17 A. Yes, I have.

18 Q. How many times have you done that?

19 A. The same as I previously stated. Twenty, plus or
20 minus times. That's basically what have ---

21 Q. Basically, what you do when you testify?

22 A. Yes, sir.

23 MR. DUTREMBLE: If, Your Honor, please, at this time
24 we'd offer Officer Hallman as an expert in latent
25 fingerprinting comparison and analysis.

1 THE COURT: All right. Any objection from the
2 defense, or any questions about his qualifications?

3 MRS. GAY: No, sir.

4 THE COURT: All right. I'll permit him to give
5 opinion testimony in that area, ladies and gentlemen,
6 remembering what I told you this morning regarding that
7 type of testimony.

8 You may proceed.

9 MR. DUTREMBLE: Thank you, Your Honor.

10 BY MR. DUTREMBLE:

11 Q. Officer Hallman, can you explain to the members of the
12 jury what a latent fingerprint is?

13 A. Yes. A latent fingerprint -- the word "latent" means
14 invisible to the naked eye -- and a latent finger print is
15 an impression on a given surface that is left when the
16 palms or fingers of your hand touches a given item. You
17 can't see that print by looking at it with the naked eye,
18 but it's there. And it can be made visible by one of the
19 enhancement processes that I stated earlier.

20 Q. Can you explain to the members of the jury what we
21 mean when we talk about an inked fingerprint?

22 A. An inked fingerprint is an impression, an inked
23 impression from a person that is obtained by either myself
24 or another investigator for the purposes of comparisons and
25 or eliminations. You'll take a person's finger and you'll

1 roll it what we call nail to nail. And you'll transfer
2 that impression onto a piece of paper or a fingerprint
3 card.

4 Q. And you use ink to transfer the print; is that
5 correct?

6 A. That's correct. Usually, Indian Printer's Ink or
7 something of the like.

8 Q. And can you explain to the members of the jury how
9 it's possible for somebody to leave their fingerprints on
10 an item?

11 A. You can leave your fingerprints on an item by simply
12 touching it. I mean, you can handle an item -- now, a lot
13 of times you can handle an item, and you won't leave a
14 fingerprint if there is some kind of surface between your
15 hand and the actual item that we're talking about. But if
16 you simply touch an object, chances are you're going to
17 leave a fingerprint, because your hands are constantly
18 secreting oils and sweat and stuff like that. And that's
19 the material that is left. And it creates an impression on
20 a surface once you touch it.

21 Q. And how do you actually physically prepare a latent
22 print, which you described as being invisible to the naked
23 eye, and an inked print?

24 A. Once we process that latent fingerprint and make it
25 visible, then we take that print -- and we call it an

1 unknown impression or an unknown print -- and we start
2 comparing it to known impressions or inked impressions, as
3 I stated earlier.

4 Personally, me, I look for what we call a target area
5 within this latent print, or an area within this print
6 impression that kind of stands out, kind of just jumps out
7 at you, and I go from there. I'll spot that area on the
8 latent fingerprint, itself. Then, I'll go to the inked
9 impression and see if it's there. Naturally, if it's not
10 there, then that print is totally excluded, and there is no
11 possible way that this unknown impression could belong to
12 that impression.

13 Once I find that area in an inked impression, then I
14 go from latent to ink, latent to ink, you know, finding
15 each point, or a point of identification; that being an
16 ending ridge, or a bifurcation which is where a ridge comes
17 up and splits like this. Those are points of
18 identification that we refer to. And I'll find one in the
19 inked -- or the latent impression; I'll go to the inked
20 impression and find that, back and forth and back and forth
21 until I'm satisfied that that is a positive identification.

22 Q. In your experience, have you ever found any two people
23 to have the same fingerprints?

24 A. No, sir.

25 Q. And have you had occasion, sir, to examine prints

1 taken off of State's Exhibit Number 24, the roll of plastic
2 bags and prints taken off of State's Exhibit Number 22,
3 which is a single plastic bag, and compared the two with
4 the inked fingerprints of the defendant, Kandy Gilliard?

5 A. On May 14th of this year, I was presented with two
6 photographs from Sargent Ray Garrison. He's a sargent in
7 our unit. What he did was he located prints on that bag or
8 on those items as you just stated. And he took
9 photographic -- photos of it using our fingerprint machine
10 at work. And he presented these to me along with the ink
11 major case prints or ink finger and palm prints of a person
12 by the name of Kandy Gilliard. And I conducted comparisons
13 using these as the unknowns versus the inked impressions as
14 the knowns, and I was able to conclude that there was an
15 identification.

16 Q. So the photographs of the fingerprints are the
17 unknowns, and the fingerprint card with her inked
18 impressions are the known prints?

19 A. That's correct.

20 Q. And can you explain to the members of the jury how you
21 conducted your analysis?

22 A. Can I show them? I've got charts of the actual
23 identification.

24 THE COURT: Well, before you show charts, make sure
25 the defense has seen these charts.

1 MR. DUTREMBLE: Have you seen these?

2 MRS. GAY: Yes, sir.

3 THE COURT: The way to do it, Mr. Hallman, if you
4 would, hand them to Mr. DuTremble. He'll discuss it with
5 Counsel. You're under oath. We need to have everything
6 you say on the record.

7 (The attorneys confer.)

8 MRS. GAY: No. I don't have an objection if you show
9 them.

10 BY MR. DUTREMBLE:

11 Q. Which one do you need, first?

12 A. It doesn't matter; either one.

13 MR. DUTREMBLE: Can everyone see this?

14 THE COURT: Any objection from the defense of these
15 matters being used -- are they going to be used as
16 demonstrative, or put in evidence?

17 MR. DUTREMBLE: I'm going to put them in evidence,
18 Your Honor.

19 THE COURT: Okay. Before you do, why don't you go
20 ahead and mark it? Then we'll get the court reporter to
21 mark it if it's not marked already.

22 Do you have any objection to the admissibility?

23 MRS. GAY: Your Honor, I understand that he's got some
24 smaller pictures of it. I didn't get a chance to look
25 that.

1 (State's Exhibit Numbers 28 and 29 marked for
2 identification.)

3 MRS. GAY: I would ask that ---

4 THE COURT: Wait one second. Let her finish marking
5 these.

6 All right. Your request, ma'am?

7 MRS. GAY: I would ask that these be marked as well
8 and put into evidence also, Your Honor.

9 THE COURT: Mr. DuTremble, do you wish to do that?

10 MR. DUTREMBLE: I would be happy to, Your Honor.

11 THE COURT: All right.

12 (State's Exhibit Numbers 30 and 31 marked for
13 identification.)

14 MR. DUTREMBLE: If Your Honor pleases, we have now
15 marked State's Exhibit 28 and 29, which are the two
16 displays of the photograph exhibits. And we, also, have
17 marked State's 30 and 31, which are the actual smaller
18 photographs.

19 THE COURT: All right. With all four of those been
20 marked, and with the request of the State to put them in
21 evidence, any objection from the defense?

22 MRS. GAY: No, Your Honor.

23 THE COURT: All right. All four of those are in
24 evidence.

25 (State's Exhibit Numbers 28, 29, 30 and 31 are

1 received in evidence.)

2 MR. DUTREMBLE: Thank you.

3 THE COURT: All right. You may proceed.

4 MR. DUTREMBLE: Come down here, if you would, sir.

5 (The witness complies.)

6 WITNESS: Can everyone see that okay? This print
7 here, as is stated as the "latent fingerprint", this is the
8 unknown impression. This is the impression that was lifted
9 off of the roll of bags that was just previously showed to
10 you. This is a photograph enlargement of the inked
11 impression of Ms. Gilliard. These are also photographed to
12 a one to one -- and they're relatively identical sizes of
13 each other, just enlarged. Okay.

14 First thing I did when I took these two photographs at
15 the beginning to compare them, to see if they were one in
16 the same, I started right there where you can see where
17 that one ridge splits, right in here. I came over and I
18 located that same splitting ridge, right there. That's
19 called a bifurcation or just -- we term it as a "splitting
20 ridge" as well. Then, what I do from that point, I just
21 start counting out. I count one down and over, there's
22 another splitting ridge. Right here. One down and over,
23 there's a splitting ridge, right here.

24 And I went all the way around this unknown impression
25 or this latent print until I was able to find these twelve

1 points of identification or ridge characteristics that were
2 present inside -- in the known impression as well as the
3 latent impression. Be advised, that not every point in
4 that impression is marked. I just marked twelve points,
5 because that's what I'm comfortable with in testifying.

6 As I said, this was the unknown impression off the
7 roll of the bag that the solicitor showed you a minute ago.
8 This, also, a one to one photograph enlargement of an
9 unknown impression versus a known impression of Ms.
10 Gilliard. This impression was taken off of the garbage bag
11 that was found underneath the victim's head. Okay. And,
12 once again, I looked into this print before I started
13 beginning my comparisons. And I found, right in here,
14 number three and four -- I've got number three is a ridge
15 ending right. And number four is a ridge ending to the
16 left. And they're both separated by a continuous ridge.
17 That is a characteristic within a print that kind of jumps
18 out at you. And I classify that as a "target area."

19 I found that same impression, right there, within the
20 known or inked impression of Ms. Gilliard. And then, once
21 again, I started counting out until I found twelve points
22 of identification that were present in both prints. At
23 that point, I was able to call both positive
24 identifications of Ms. Kandy Gilliard.

25 MR. DUTREMBLE: Thank you, sir. You can resume your

1 seat.

2 (The witness complies.)

3 BY MR. DUTREMBLE:

4 Q. Officer Hallman, based on your comparison, is it your
5 professional opinion that the defendant, Kandy Gilliard,
6 and no one else made the fingerprint that was lifted off
7 the roll of bags found in State's Exhibit Number 24, as
8 well as the bag found under the victim's head in State's
9 Exhibit 22?

10 A. That is correct.

11 Q. And you were able to make that -- I'm sorry. Excuse
12 me. You were able to make that conclusion to a reasonable
13 degree of scientific certainty; are you not?

14 A. Absolutely.

15 Q. And there is no question in your mind that Kandy
16 Gilliard made the prints that were found on the bags?

17 A. None whatsoever.

18 Q. Thank you, very much, Officer Hallman. Answer any
19 questions Mrs. Gay has for you.

20 THE COURT: Okay. Cross-examination, Mrs. Gay, of
21 this witness?

22 MRS. GAY: Just one moment.

23 CROSS-EXAMINATION

24 BY MRS. GAY:

25 Q. I believe you testified that your mission when you go

1 to a crime scene is to obtain information, preserve
2 evidence, collect evidence, that type of thing?

3 A. That's correct.

4 Q. And you did not, actually, go to this crime scene?

5 A. No, ma'am. I did not.

6 Q. But you did do an evaluation on the fingerprints,
7 which you have testified to this afternoon?

8 A. That's correct.

9 Q. And if you had gone to this crime scene, you would
10 have been looking -- I think, they fume things to try to
11 find fingerprints?

12 A. Well, that's one process that we use. I can't say
13 that I would go to that crime scene to fume something. It
14 all depends on what type of surface you're dealing with,
15 what type of print you're dealing with, what substance the
16 print was left by, whether it be sweat or oils, or some
17 other substance. You have to go to the scene, and
18 physically examine each piece of evidence before you can
19 determine what kind of process to develop the print with.

20 Q. And prints, I believe your testimony is, are left
21 because of substances and things that get on the fingers.
22 And when they touch certain types of surfaces, they leave
23 latent prints, or invisible-to-the-eye prints, that you
24 later can bring up?

25 A. That's correct.

1 Q. And if a person has something on their fingers, like a
2 cloth glove, a wool glove, some type of covering on their
3 hands, they are not going to leave fingerprints on any type
4 of surface; are they?

5 A. Chances are highly likely that they will not.

6 Q. They will not?

7 A. Right.

8 MRS. GAY: I have no further questions, Your Honor.

9 MR. DUTREMBLE: No further questions, Your Honor.

10 THE COURT: Okay. You may step down. You may return
11 to your duty, unless there is some requirement that you
12 stay.

13 MRS. GAY: No, Your Honor.

14 THE COURT: You're released.

15 (The witness leaves the witness stand.)

16 THE COURT: Next witness, please.

17 MR. DUTREMBLE: We call Detective Alan Williams to the
18 stand, Your Honor.

19 ALAN WILLIAMS, being first duly sworn,
20 testified as follows:

21 THE CLERK: Please, be seated. Please, give your full
22 name for the record, and spell your last.

23 WITNESS: It's Detective Alan, A-l-a-n, Williams,
24 W-i-l-l-i-a-m-s.

25 THE COURT: Okay. Your witness, Mr. DuTremble.

1 MR. DUTREMBLE: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. DUTREMBLE:

4 Q. Detective Williams, by whom are you employed?

5 A. I'm employed by the City of North Charleston Police
6 Department.

7 Q. And in what capacity, sir?

8 A. I'm a detective in the Person's Crimes Unit.

9 Q. And how long have you been a detective in that unit,
10 sir?

11 A. Since October of 1999.

12 Q. Were you on duty, sir, on the morning of January 5th
13 of the year 2000?

14 A. Actually, I was on my way to work.

15 Q. Did you have the occasion, sir, to respond to a place
16 called The Game Room on Rivers Avenue?

17 A. Yes, I did.

18 Q. Can you explain to the members of the jury what you
19 found when you arrived at The Game Room?

20 A. I was paged by dispatch in reference to a -- what they
21 said was a homicide call at The Game Room. And when I
22 arrived there, I was the first detective on the scene.
23 There was several uniform units there and crime scene unit.
24 I talked with the uniform units, and I observed a white
25 female laying face down on the floor in the rear office

1 area of The Game Room. She was laying on top of a plastic
2 bag, and a white extension cord was laid near the body.
3 The door to the office was open. The filing cabinet doors
4 were open. And the only light in the room was from a lamp
5 that was on top of a desk.

6 Q. Now, you are not a crime scene investigator; are you?

7 A. No, sir.

8 Q. Was crime scene called for?

9 A. They were already there when I arrived on the scene,
10 sir.

11 Q. And let me hand you what's been marked as State's 14,
12 sir, and ask you if you can identify this photograph?
13 Don't tell me what it is; just let me know if you can
14 identify it.

15 A. Yes, sir. I can identify that photograph.

16 MR. DUTREMBLE: If Your Honor please, at this time
17 we'll attempt to offer this into evidence.

18 THE COURT: All right. Ladies and gentlemen of the
19 jury, if you would, I need a few minutes on this.

20 If you would, remove the screen for us; and let the
21 jury step in the jury room for a minute.

22 (The jury retires to the jury room.)

23 THE COURT: I have no problem with everybody who
24 wishes to come in the courtroom, come in the courtroom, but
25 if you're in the courtroom, you should be seating

1 appropriately and being appropriately. Please, sit up. If
2 you don't feel you can sit up, then you need to go outside.
3 In addition, please, remove your sunglasses from the top of
4 your head, sir. Thank you, very much.

5 Now, at this time, 14, I see, is a photograph of the
6 body; is that right?

7 MR. DUTREMBLE: Yes, sir, it is.

8 THE COURT: Now, is that the only photograph you wish
9 to introduce?

10 MR. DUTREMBLE: It's the only one, Your Honor.

11 THE COURT: All right. Tell me why you feel this
12 photograph would at all help the trier of fact deciding
13 this case, and would not just appeal to their emotions or
14 passions?

15 MR. DUTREMBLE: If Your Honor, please. Not only does
16 it place the position of the body in the area in which
17 customers are not normally allowed to enter, which would be
18 the cashier's room where the television was. I believe the
19 testimony has been that from time to time some of the
20 people let their friends come back into that area. But it,
21 also, places the location of the trash bag, which was used
22 to -- which was placed over her face in a position. And
23 it, also, depicts the extension cord in the location where
24 it was found when the crime-scene people arrived to take
25 the photographs.

1 What we have not attempted to do is to inflame the
2 passions of the jury by offering any photographs of the
3 victim when she had been turned over. Those photographs
4 are most unpleasant. Here you cannot even see her face
5 and what happened. I believe, Your Honor will recall the
6 pathologist testifying as to the condition of the eyes and
7 the face, and the marks on the neck. These photographs
8 depict none of that. It, merely, goes to show the fact
9 that she is found deceased in the area in which only
10 certain people are allowed to come, with the evidence of
11 the bag and the evidence of the cord.

12 THE COURT: All right. Mrs. Gay?

13 MRS. GAY: Your Honor, I would move to have this
14 picture excluded. I'm not exactly sure which picture it
15 is, because I was provided with two of them.

16 THE COURT: It's the one with the sheet on it.

17 MRS. GAY: The one with the sheet on it. Okay.

18 THE COURT: Let me see it.

19 MRS. GAY: Your Honor, there has been testimony from
20 the stand about the positioning of the body. There has
21 been testimony as to the location of the body. There has
22 been testimony as to the bag and the extension cord. I
23 would say that this picture is cumulative to that. And
24 this is a picture that is just placed in here -- this could
25 insight the emotions of the jury, and I would ask that you,

1 please, exclude this picture.

2 THE COURT: Is there going to be any testimony of
3 these pieces of paper or whatever around there? What those
4 are?

5 MR. DUTREMBLE: No, sir. Just pieces of paper found
6 on the floor, which I have over here in the box, but have
7 no relevance to the case.

8 THE COURT: And is this the position the cord was
9 found in, according to the testimony?

10 MR. DUTREMBLE: No, sir. I don't believe so.

11 MRS. GAY: That's true, Your Honor. There was a
12 witness that specifically said that it was not in this
13 position when she came in. And, I believe, it was moved by
14 her. So this isn't even the position of the cord as it was
15 found in the beginning.

16 THE COURT: Well, other than people testifying to
17 this, Mr. DuTremble, how would this help the trier of fact?
18 I mean, people have testified to it. It hasn't been
19 contested, really, about how the body was found and where
20 it was found. I'm just trying to determine how this in any
21 way helps the trier of fact.

22 MR. DUTREMBLE: It helps the trier of fact to see,
23 Your Honor, exactly what the position of the bag was when
24 she was laying on the ground. The anticipated testimony of
25 the defendant is going to show -- I believe, she's just

1 going to testify that she, merely, placed the bag over her
2 face, and then let go and went in and got the key. At
3 least that's going to be the -- she admits to that much.
4 Here we have -- we're able to show the jury that the bag,
5 itself, is placed under the victim's face, which indicates,
6 to me, that somebody is still holding onto the bag.

7 THE COURT: Is there going to be testimony that this
8 is where the bag was found, and the bag has not been moved?

9 MR. DUTREMBLE: That is what Detective Williams is
10 testifying to. The body has not been moved.

11 THE COURT: Well, the cord has been moved.

12 MR. DUTREMBLE: The cord has been moved. And the
13 witness that we previously had testified, Ms. Mitchell -- I
14 may need to recall her, because we didn't ask that question
15 -- what she should have testified to was that she removed
16 the cord to see if she was still breathing and requested
17 EMS. She didn't do that.

18 MRS. GAY: Your Honor, even in the removing of the
19 cord, there is no guarantee that the bag and all of that
20 part around here is in the same position that it was in at
21 the time that she actually found the body.

22 THE COURT: Well, of course, that would be up to
23 testimony for the jury to believe it or not believe it. But
24 there was no testimony how the cord, I recall, got to where
25 it is. Because the testimony was: The cord was found

1 around her neck. In fact, I thought someone testified,
2 loosely. I thought it was somebody other than Ms..
3 Mitchell.

4 Proffer what he's going to say about this bag, if you
5 would, Mr. DuTremble.

6 (WHEREUPON, proffer testimony was taken out of the
7 presence of the jury.)

8 BY MR. DUTREMBLE:

9 Q. Officer Williams, with regard to this particular
10 photograph, which has been marked as State's 14, was that
11 the position you found the body in when you arrived?

12 A. Yes, sir, it is.

13 Q. Were you the first officer on the scene?

14 A. I was the first investigator on the scene, sir.

15 Q. And who else was present at the time you found the
16 body?

17 A. Present on the scene when I got there was Sargent
18 Garrison, who was just getting ready to take these
19 photographs at the crime scene. And Patrolman Simmons,
20 Hodges, Corporal Roper, and Lt. Cummings were in the outer
21 area of the building. They weren't in the back office
22 area.

23 Q. Did any of those officers indicate that they had moved
24 the body in any way, shape, or form?

25 A. No, sir.

1 Q. And was that plastic bag as depicted in State's 14, in
2 the same position as you see it there in the photograph?

3 A. Yes, sir.

4 Q. Did you or anybody else, while you were present at the
5 scene, attempt to move that plastic bag until the
6 photographs were taken?

7 A. No, sir.

8 Q. How about the cord? Did anybody touch the cord after
9 you got there and found it in that particular location?

10 A. No, sir. In fact, we, specifically, prohibited
11 anybody from going into the rear area where Sargent
12 Garrison was working. In fact, the people that were in the
13 front part of the building, we had go outside.

14 Q. All right. And was crime-scene tape placed around the
15 building?

16 A. Yes, sir. There was crime-scene tape placed around
17 the building, and Officer Hodges maintained the crime-scene
18 log at the front door.

19 Q. And so the crime scene was preserved until photographs
20 were taken and evidence was collected?

21 A. Yes, sir. For quite a while.

22 Q. At that point in time, the body was then removed?

23 A. After the coroner arrived, and made her
24 determinations.

25 Q. Thank you.

1 MR. DUTREMBLE: That would be our proffer, Your Honor.

2 THE COURT: Questions, Mrs. Gay?

3 CROSS-EXAMINATION

4 BY MRS. GAY:

5 Q. Certainly, you testified that there were several other
6 officers there before you got there?

7 A. Yes, sir.

8 Q. And in your personal knowledge, you don't believe that
9 anybody else did anything to the body, but you wouldn't
10 have actually known what they did before you got there?

11 A. Standard thing for an investigator when they arrive on
12 the scene is what I did in this case ---

13 Q. I understand that, but your personal ---

14 A. --- which is discussed our actions.

15 Q. --- knowledge is that you don't know what they may
16 have done beforehand? Personal knowledge?

17 A. No one reported to me that they had done anything.

18 Q. And, I believe, that you are aware that there were two
19 other people, civilians, that were there?

20 A. Ms. Mitchell I'm aware of. I'm not familiar with
21 another party.

22 Q. Margaret Beard, maybe?

23 A. Unless she was with Ms. Mitchell.

24 Q. And you have no knowledge of anything that might have
25 been done to the body or to this area by those people who

1 are not officers?

2 A. I spoke with Ms. Mitchell. She told me what she did
3 when she arrived.

4 Q. She told you that she took the cord off of the lady's
5 neck?

6 A. Yes, ma'am.

7 Q. And so, certainly, there had been some disturbance of
8 this body and this scene before you arrived by Ms.
9 Mitchell?

10 A. Other than her taking the cord off her neck, that's
11 the only reported thing that was reported to me by
12 everybody that I spoke to, including the medics on the
13 scene, to the body.

14 Q. But there was some movement of the body, some
15 disturbance at the scene?

16 A. If Ms. Mitchell touched the body, yes, ma'am, there
17 was a disturbance to the body.

18 Q. And that she touched the cord?

19 A. Yes, ma'am. That's what she reported.

20 MRS. GAY: Your Honor, I would just continue with my
21 objection.

22 THE COURT: Based on the testimony that I've heard,
23 that there's admitted movement of this body and the cord,
24 and I don't have a full chain of those who touched this
25 body before he did, at least one other person, Mr.

1 DuTremble, I wouldn't permit this photograph in without a
2 full chain of information as to who touched the body, as to
3 what it looked like at the time the body had been found.

4 MR. DUTREMBLE: I'll be happy to recall Ms. Mitchell.

5 THE COURT: That's up to you, sir. But as far as --
6 I'm not going to admit it with just his testimony.

7 MRS. GAY: Your Honor, one thing about Ms. Mitchell.
8 She's sitting in the courtroom.

9 THE COURT: Oh, I didn't know she was.

10 MRS. GAY: She's here. And this is a
11 sequestered-witness trial. So, certainly, I would say that
12 her testimony at this point has been tainted. She's been
13 sitting in here during this whole period of time. I would
14 argue that she is inadmissible at this point.

15 THE COURT: What is your response to that, Mr.
16 DuTremble?

17 MR. DUTREMBLE: Judge, I've tried the best I can.
18 There is no evidence that this body has been tampered with.
19 There is no evidence that anybody has removed anything from
20 the crime scene.

21 THE COURT: And, Mr. DuTremble, no one is trying to
22 tamper with -- sir, your comment was that you needed this
23 photograph in. You felt you needed it in to show the
24 position of the body and the face on the plastic bag.

25 MR. DUTREMBLE: That's correct.

1 THE COURT: Okay. Now, with the proffer you had, I
2 felt that seemed to be a reasonable request. But then, I
3 have admitted testimony that someone did remove the cord.
4 The cord was around the neck. I don't know if they pulled
5 the head up, they removed the cord, and the head went that
6 way or that way, or what. I have no idea of that. So
7 that's my concern.

8 The only thing I'm concerned about right now is, I'll
9 be glad to hear from you about, whether or not you feel Ms.
10 Mitchell would be tainted because she's in the courtroom.
11 Now, if you feel she wouldn't, tell me why you don't think
12 she wouldn't be. If you want to bring her up to testify
13 about how she found the body, and if that's -- other than
14 the cord over here, that's exactly how the body was, then
15 I'm prepared to rule; if she testifies to that.

16 MR. DUTREMBLE: I believe she'll testify to that, Your
17 Honor, but I don't believe I can get over the first hurdle
18 of the taint, because Your Honor ordered all the witnesses
19 to be sequestered. I had no idea she was sitting in the
20 back. I paid no attention.

21 THE COURT: Well, just because she's sitting in here,
22 doesn't necessarily mean she can't testify. The fact that
23 she's sitting there is not in violation of the order,
24 because, obviously, after she testified, she was permitted
25 to stay here. So if you want to call her up, and me make a

SHEILA MITCHELL - PROFFER DIRECT EXAMINATION BY MR. DUTREMBLE420

1 determination of finding whether it's been tainted or not,
2 I'll be glad to do that.

3 MR. DUTREMBLE: I'd be happy to do that, Your Honor.

4 THE COURT: About whether she's made prior statements
5 and that type of thing before today about what happened.

6 MR. DUTREMBLE: Yes, sir. I'd be happy to. And I
7 would like to call Ms. Mitchell, now.

8 THE COURT: Step down, if you would, sir.

9 (The witness leaves the witness stand.)

10 (WHEREUPON, additional proffer testimony was taken out
11 of the presence of the jury.)

12 SHEILA MITCHELL, having been previously
13 sworn, testified as follows:

14 THE COURT: Ms. Mitchell, I'll remind you, you're
15 still under oath, ma'am. So if you would, have a seat.

16 DIRECT EXAMINATION

17 BY MR. DUTREMBLE:

18 Q. Ms. Mitchell, I believe, your earlier testimony was
19 that you arrived at The Game Room around 7:30 in the
20 morning?

21 A. Yes, I did.

22 Q. And when you went in the establishment, I believe, you
23 testified you found Dawn lying face down on the floor?

24 A. Yes, I did.

25 Q. And what was the condition of her body when you found

1 her lying on the floor?

2 A. She had an extension cord around her neck. It was
3 wrapped loosely. And I could see a trash bag protruding
4 from her right side.

5 Q. All right. And when you saw that, did you have
6 occasion to call EMS?

7 A. I called EMS.

8 Q. And after speaking with EMS, what actions, if any, did
9 you take?

10 A. They told me to go ahead and remove the extension cord
11 -- I think they were thinking that she was alive -- and to
12 give her CPR.

13 Q. Now, did you remove that extension cord?

14 A. I did remove the extension cord. I just picked her
15 head up, only by her hair. And I laid it back down.

16 Q. How did you take the cord off?

17 A. I picked her head up. You know, I just held her head
18 up, and undone it like that. And I laid her head down. I
19 didn't touch -- and I touched her wrist to check for a
20 pulse.

21 Q. Okay. And what did you do with the cord when you
22 removed it?

23 A. I laid it right beside the body there.

24 Q. All right. Now, when you laid her head down, did you
25 put it back in the same place?

1 A. I put it back in the same position. I believe, her
2 head was, like, to the left.

3 Q. Have you ever seen what's been marked as State's
4 Exhibit 14 before?

5 A. Yes.

6 Q. Okay. Is that the same position that you found Dawn
7 in?

8 A. Exactly the same way.

9 Q. Is that the location of the bag that you saw?

10 A. Yes, it is.

11 Q. And the cord that is moved away from the side of her
12 body?

13 A. That was around her neck. And like I say, right
14 there, it shows it was loosely. And that's the way it was.
15 It wasn't wrapped tight.

16 Q. Now, the location of the cord, is that where you
17 placed the cord?

18 A. That's right.

19 Q. Were you able to find a pulse?

20 A. No. Oh, on her right arm?

21 Q. Yes, ma'am.

22 A. No. I didn't find a pulse, so I just left the body
23 and went in another room.

24 Q. Did you have to move her arms or anything?

25 A. No.

1 Q. Okay. So you just checked for a pulse?

2 A. That was it.

3 Q. Did you do anything else to the body?

4 A. No, I didn't.

5 Q. And did anybody else have anything to do with Dawn's
6 body until the police arrived?

7 A. No.

8 Q. Did anybody else come in the room and check her pulse?

9 A. No, they didn't. No, they didn't.

10 Q. Did anybody else come in the room and move the plastic
11 bag in any way?

12 A. No, they didn't.

13 Q. Did anybody come in and move the cord from where you
14 had placed it?

15 A. No.

16 Q. And is this the same cord that was wrapped around her
17 neck loosely as you've described?

18 A. That's the same one.

19 Q. Thank you, ma'am. Please, answer any questions Mrs.
20 Gay has for you.

21 THE COURT: Mrs. Gay?

22 MRS. GAY: One moment, Your Honor.

23 CROSS-EXAMINATION

24 BY MRS. GAY:

25 Q. Do you recall when you got there that Margaret Beard

1 was already there?

2 A. Yes, she was.

3 Q. And do you recall -- was it your understanding that
4 she had gone to Ms. Russ's aid when she saw her on the
5 ground?

6 A. She said she just called for her, and told her -- she
7 said she was on the floor, and that she didn't know why she
8 was there; that she had called for her, but she didn't get
9 up. But she didn't -- she said she didn't touch her or
10 anything.

11 Q. So it was your understanding that she hadn't touched
12 her?

13 A. Yes, ma'am.

14 Q. And you said that you picked her head up?

15 A. Yes, I did. I picked it up kind of by the forehead
16 like that. I just raised it up.

17 Q. But I believe you said that you took the pulse of her
18 hand?

19 A. Yes, ma'am.

20 Q. And that's her right hand?

21 A. Yes, ma'am.

22 Q. And you removed the cord?

23 A. Yes, I did.

24 MRS. GAY: One moment, please. I have no further
25 questions, Your Honor.

1 THE COURT: You may step back down.

2 (The witness leaves the witness stand.)

3 THE COURT: Based on the testimony of both witnesses
4 and especially of Ms. Mitchell, I'll permit the photograph
5 to come in for whatever weight the jury wishes to give it.
6 Of course, the jury can consider those issues about how far
7 the body was moved or not moved, in that situation. But I
8 think there's sufficient evidence now to get it admitted.
9 Because I find that it's not one that's going to be
10 admitted just for passion or prejudice or emotion. It
11 doesn't in any way show any gruesome photograph other than
12 the fact that, obviously, a deceased body in and of itself
13 is unfortunate to she. But I will permit it to be
14 introduced in evidence. Based on the testimony of both
15 witnesses together.

16 Let's take two minutes for a glass of water.

17 (WHEREUPON, there was a short recess.)

18 (State's Exhibit Number 32 marked for identification.)

19 THE COURT: Okay. Are you all ready to proceed?

20 MR. DUTREMBLE: If Your Honor please, I need one point
21 of clarification. Your Honor had indicated that based upon
22 the testimony of both witnesses, you would allow this in.
23 What I propose to do with Officer Williams is to get him to
24 identify it, mark it for identification, recall the other
25 witness, and then move it into evidence.

1 THE COURT: That would be the correct procedure.

2 MR. DUTREMBLE: Thank you.

3 THE COURT: All right. Are you ready?

4 MR. DUTREMBLE: Yes, sir.

5 THE COURT: Bring the jury in. And by the way, before
6 you do that -- by the way from hearing the testimony of Ms.
7 Mitchell, observing her testimony, considering it, I find
8 that the testimony she gave was not tainted by any
9 testimony she had heard in this courtroom. I make that
10 finding.

11 You may proceed. Bring the jury in.

12 (The jury returns to the courtroom.)

13 THE COURT: All right. You may proceed, Mr.
14 DuTremble.

15 MR. DUTREMBLE: Thank you, Your Honor.

16 CONTINUED DIRECT EXAMINATION

17 BY MR. DUTREMBLE:

18 Q. Officer Williams, when we took the break, I asked you
19 whether or not you could identify State's 14. And without
20 telling me what it is, let me ask you if you can identify
21 that photograph?

22 A. Yes, sir, I can.

23 Q. And does that photograph fairly and accurately depict
24 the scene as you found it when you got there?

25 A. Yes, sir, it does.

1 Q. And you were the first officer on the scene; is that
2 correct?

3 A. I was the first detective.

4 Q. I mean, detective.

5 A. Yes, sir

6 MR. DUTREMBLE: If Your Honor please, at this time
7 we'd mark for identification purposes only ---

8 THE COURT: Okay. I think it's marked already; is it
9 not?

10 MR. DUTREMBLE: Yes, sir. But it's not for ID.

11 THE COURT: Well, what number is it, 14?

12 MR. DUTREMBLE: Number 14.

13 THE COURT: All right. Number 14, I'll call it ID at
14 this time.

15 MR. DUTREMBLE: Thank you, Your Honor.

16 BY MR. DUTREMBLE:

17 Q. Officer Williams, after arriving at the scene and
18 describing the condition that you have already described to
19 the jury, did you continue to investigate this particular
20 case?

21 A. Yes, sir, I did.

22 Q. And did you have occasion, sir, on January 9th, to go
23 to Ms. Gilliard's residence on West Boland Circle?

24 A. Yes, sir, I did.

25 Q. And let me hand you what's been marked as State's

1 Exhibit Number 32, and ask you if you can identify this
2 photograph, sir?

3 A. Yes, sir. That's Ms. Gilliard's residence at 5601
4 West Boland Circle.

5 MR. DUTREMBLE: If Your Honor please, we'd offer the
6 photograph of the residence in evidence.

7 MRS. GAY: Without objection, Your Honor.

8 THE COURT: All right. What number was it?

9 MR. DUTREMBLE: It's Number 32, Your Honor.

10 THE COURT: Number 32 in evidence without objection.

11 (State's Exhibit Number 32 received in evidence.)

12 BY MR. DUTREMBLE:

13 Q. Now, sir, can you tell us what your purpose was for
14 going to the residence of Ms. Gilliard on West Boland?

15 A. I was there assisting in the execution of a search
16 warrant.

17 Q. And did you, in fact, enter the residence of Ms.
18 Gilliard pursuant to the search warrant?

19 A. Yes, sir, we did.

20 Q. And did you recover any items of evidence pursuant to
21 the search warrant from that residence?

22 A. There was a pair of green tennis shoes that were
23 recovered as a result of the search warrant.

24 Q. Well, why were you looking for a pair of green tennis
25 shoes?

1 A. Based on the investigation and statements that had
2 been obtained.

3 Q. And in reference to those green tennis shoes, which
4 have been marked as State's Number 26, and ask you if you
5 can identify this item, sir?

6 A. Yes, sir. Those are the green tennis shoes that we
7 recovered from the residence of 5601 West Boland.

8 MR. DUTREMBLE: Thank you.

9 We'd offer the tennis shoes in evidence.

10 MRS. GAY: I have no objection, Your Honor.

11 MR. DUTREMBLE: It will be State's 26, Your Honor.

12 THE COURT: Number 26 in evidence without objection.

13 (State's Exhibit Number 26 received in evidence.)

14 MR. DUTREMBLE: Thank you, Officer Williams. I don't
15 believe I have any other questions for you. Please, answer
16 Mrs. Gay's questions.

17 THE COURT: All right. Mrs. Gay, questions?

18 MRS. GAY: One moment, please, Your Honor.

19 THE COURT: Okay.

20 MRS. GAY: Your Honor, I have no questions for this
21 witness.

22 THE COURT: Okay. You may step down.

23 WITNESS: Thank you, Your Honor.

24 THE COURT: Any requirement that he remain available?

25 MR. DUTREMBLE: Not from the State, Your Honor.

1 MRS. GAY: No, Your Honor.

2 THE COURT: You are released from further service of
3 the trial, Officer.

4 WITNESS: Thank you , Your Honor.

5 (The witness leaves the witness stand.)

6 MR. DUTREMBLE: If Your Honor please, at this time we
7 would recall Sheila Mitchell to the stand.

8 SHEILA MITCHELL, having been previously
9 sworn, testified as follows:

10 THE COURT: Ms. Mitchell, I remind you, you're still
11 under oath, ma'am.

12 WITNESS: Okay.

13 FURTHER DIRECT EXAMINATION

14 BY MR. DUTREMBLE:

15 Q. Ms. Mitchell, I believe, you previously testified, you
16 got to The Game Room about 7:30 in the morning?

17 A. Yes, I did.

18 Q. And can you describe for the members of the jury where
19 you found Dawn when walked into The Game Room?

20 A. I found Dawn in the office of -- face down on the
21 floor with an extension cord around her neck and trash bag
22 protruding from the right-hand side of her.

23 Q. And based upon your observations of the body, did you
24 take any actions to call anybody?

25 A. Yes, I did. I dialed 911.

1 Q. Did you speak with 911?

2 A. Yes, I did.

3 Q. Okay. And based upon your conversations with the
4 operator at the 911 location, did you take any actions
5 after you hung up with them?

6 A. Yes. She asked me ---

7 THE COURT: No. They asked you what you did, ma'am,
8 not what someone told you. He asked you what you did as a
9 result of the conversation, not what they told you.

10 WITNESS: Oh, okay. Well, I took the extension cord
11 from around her neck. I picked her head up by the top of
12 it. I took the cord and placed it to the right, and I
13 checked her pulse.

14 BY MR. DUTREMBLE:

15 Q. Did she have a pulse?

16 A. No, she didn't.

17 Q. When you lifted her head and took the cord away, did
18 you put her head back in the same position that you found
19 it?

20 A. Yes, I did.

21 Q. Did you disturb the plastic bag that was under her
22 head in any way?

23 A. No, I didn't.

24 Q. And when you took the cord off from around her neck,
25 where did you place the cord?

1 A. To the right of her body.

2 Q. And let me show you this photograph which has
3 previously been marked as State's 14 for identification,
4 and ask you if you can identify this photograph?

5 A. Yes. That's Dawn Russ.

6 Q. And is the ---

7 A. The extension cord is right where I placed it.

8 Q. And is the plastic bag in the same position that you
9 had seen it?

10 A. Yes, it is.

11 Q. And did you move that plastic bag in any way, shape,
12 or form?

13 A. No. No, I didn't.

14 Q. Did you do anything else other than check for a pulse?

15 A. No, I didn't.

16 Q. And she was dead?

17 A. She was dead.

18 MR. DUTREMBLE: If Your Honor please, we would offer
19 State's 14 for ID into evidence.

20 MRS. GAY: Your Honor, pursuant to my previous
21 objection.

22 THE COURT: All right. Noting the objection, I will
23 still at this time, over the objection of the defense, let
24 it come into evidence as State's Exhibit 14.

25 (State's Exhibit Number 14 received in evidence.)

1 MR. DUTREMBLE: Thank you, Your Honor.

2 THE COURT: For whatever weight the jury wishes to
3 give it.

4 MR. DUTREMBLE: Thank you.

5 BY MR. DUTREMBLE:

6 Q. Now, Ms. Mitchell, when you walked in and you found
7 Dawn with the plastic bag under her head, is that the same
8 position the plastic bag was in when you found her?

9 A. That's the same position.

10 Q. All right. And the extension cord that we find to the
11 right of the body as you've described, where was that
12 located?

13 A. That was around her neck.

14 Q. All right. And then you had to move her head to take
15 that ---

16 A. I just lifted the top of her head and pulled the cord
17 off and laid it to the side.

18 Q. All right. And when you placed her head back on the
19 bag, did you place it in the same position that you found
20 it?

21 A. Yes, I did.

22 Q. And did you do anything else to the body other than
23 check the pulse?

24 A. No, I didn't. I went into another room and stayed
25 there until EMS came.

1 Q. And after you went into the other room, did anybody
2 else go into the room and disturb the body in any fashion?

3 A. No.

4 Q. And so that body stayed as it was until the police
5 arrived and EMS arrived?

6 A. Yes, sir, it did.

7 Q. And does this photograph fairly and accurately depict
8 Dawn as you found her that day with the exception of the
9 cord having been moved by yourself?

10 A. Yes. That's the same way it was found.

11 Q. Thank you, Ms. Mitchell. I appreciate it. Please,
12 answer any questions that Mrs. Gay might have for you.

13 THE COURT: Questions, Mrs. Gay?

14 FURTHER CROSS-EXAMINATION

15 BY MRS. GAY?

16 Q. The only question that I have is: Your testimony is
17 that this particular picture but for the extension cord is
18 the same as it was when you arrived?

19 A. Yes.

20 Q. So that bag was not over her head, it was actually
21 under the body?

22 A. It was under the body. It was protruding through the
23 right.

24 Q. But not over her head?

25 A. No.

1 MRS. GAY: I have no further questions, Your Honor.

2 MR. DUTREMBLE: I'm sorry. I neglected to ask one
3 question that I should have asked.

4 REDIRECT EXAMINATION

5 BY MR. DUTREMBLE:

6 Q. This white sheet here, that, of course, was not on the
7 body when you found it?

8 A. No, it wasn't.

9 Q. That's something that was placed there by EMS or one
10 of the doctors?

11 A. Yes, sir.

12 Q. Okay. Thank you, ma'am.

13 THE COURT: Other questions?

14 MRS. GAY: No, Your Honor.

15 THE COURT: Okay. You may step down, now.

16 (The witness leaves the witness stand.)

17 THE COURT: Okay. Next witness.

18 MR. DUTREMBLE: Thank you, Your Honor. I'm going to
19 call Benjamin Lee Johnson to the stand.

20 BENJAMIN LEE JOHNSON, being first duly
21 sworn, testified as follows:

22 THE CLERK: Please, have a seat. Please, state your
23 full name for the Court, and spell your last.

24 WITNESS: Benjamin Lee Johnson. J-o-h-n-s-o-n.

25 THE COURT: Your witness.

1 MR. DUTREMBLE: Thank you, Your Honor

2 DIRECT EXAMINATION

3 BY MR. DUTREMBLE:

4 Q. Mr. Johnson, I'm going to ask you to speak up, because
5 all the members of the jury would like to hear what you
6 have to say. Now, you are the same Benjamin Lee Johnson
7 that was charged with this crime, with the offense of
8 murder and the offense of strong arm robbery; are you not?

9 A. Yes, sir.

10 Q. And you have pled guilty to the crime of murder have
11 you not?

12 A. Yes, sir.

13 Q. And you have pled guilty to the crime of strong arm
14 robbery; have you not?

15 A. Yes, sir.

16 Q. And do you know the defendant in this case, Kandy
17 Gilliard?

18 A. Yes, sir.

19 Q. How long have you known Kandy Gilliard?

20 A. About six months, I believe.

21 Q. And how do you know her?

22 A. Through her sister.

23 Q. And who is her sister?

24 A. Demetrice Gilliard.

25 Q. Demetrice Gilliard. Is she also known as "Cookie"?

1 A. Yes, sir.

2 Q. Did you have a relationship with Cookie?

3 A. Yes, sir.

4 Q. And where does Cookie live, or where did she live on
5 January 5, 2000?

6 A. [REDACTED] Circle.

7 Q. [REDACTED] Circle. Let me show you a
8 photograph, sir, that's already been marked into evidence
9 as State's Exhibit Number 32. Do you recognize that house?

10 A. Yes, sir.

11 Q. What house is that?

12 A. That Demetrice Gilliard's house.

13 Q. All right. That's Cookie's house?

14 A. Uh-huh.

15 Q. Does Kandy Gilliard live in this house?

16 A. Yes, sir.

17 Q. Okay. Did you stay at this house from time to time?

18 A. Once every blue moon.

19 Q. Once every blue moon. Okay. Now, when they charged
20 you with murder and when they charged you with strong arm
21 robbery, they did so after you gave them a confession;
22 didn't they?

23 A. Yes, sir.

24 Q. Police came and picked you up and asked you questions,
25 and you told them what happened; right?

1 MRS. GAY: Your Honor, I would objection to the
2 leading nature of the questions.

3 THE COURT: Sustained.

4 MRS. GAY: I mean, he's got answer his own questions.

5 THE COURT: Sustained.

6 MR. DUTREMBLE: Thank you, Your Honor.

7 BY MR. DUTREMBLE:

8 Q. Tell the members of the jury what happened on the
9 early morning hours of January 5th of the year 2000 between
10 yourself and Kandy Gilliard.

11 A. On January 5, 2000, around about 2:00 or 2:30 that
12 morning, Kandy had come to the house and come wake me out
13 of my sleep. And she tell me to come on the lady's asleep.
14 I know what she was talking about.

15 Q. Now, wait a minute. You said the lady was asleep? Is
16 that what you said?

17 A. Yes, sir.

18 Q. Which lady?

19 A. Dawn Russ.

20 Q. Did you know Dawn Russ?

21 A. Not at the back of my head, sir. I know her from just
22 going to pick up Kandy -- meet Kandy at The Game Room.

23 Q. Did Dawn Russ work at The Game Room?

24 A. Yes, sir.

25 Q. Okay. She said, Come on; she's asleep.

1 Please, continue.

2 A. Then I got up and put on my clothes. And I grabbed a
3 gorilla mask, a mask I had. I grabbed it off of the chair.
4 Then, that's when me and Kandy -- we ran out to The Game
5 Room.

6 Q. All right. Let me stop you right there. When she
7 came to you and woke you up, and said, Come on; she's
8 asleep, did you know what she was talking about?

9 A. Yes, sir.

10 Q. How did you know what she was talking about?

11 A. Because we were talking about it for a long time.

12 Q. What were you talking about for a long time?

13 A. On January -- after Christmas, I had -- when I first
14 -- I believe, after Hurricane Floyd went by, I had meet --
15 Kandy had called the house, and Cookie asked me, Will you
16 meet my sister at The Game Room? I said, I ain't never
17 knew where The Game Room was. She lead me to The Game
18 Room, how to get there. And I went out there. And then I
19 had asked -- I went in. I had asked Dawn Russ, Is Kandy
20 Gilliard here?

21 You know what I'm saying? And then, we left The Game
22 Room. I asked Kandy, Do you know that lady in The Game
23 Room? And she said, Yeah. She asked me, Why? I'm going
24 to rob the lady -- rob The Game Room. Then, I changed my
25 mind. Then I go back to the house.

1 Q. Whose house?

2 A. Kandy house.

3 Q. Okay. Did you talk about it again after Hurricane
4 Floyd?

5 A. About two times -- two or three times.

6 Q. What were you talking about on those two or three
7 times?

8 A. I was going to go ahead and rob the lady for the money
9 she had.

10 Q. How did you know she had money?

11 A. It was a game room. And a game room got a lot of
12 money in there, inside the game room.

13 Q. So after Kandy came and woke you up, and you put your
14 clothes on and you put the gorilla mask on, where did you
15 go?

16 A. To The Game Room.

17 Q. How far is The Game Room from Kandy's house?

18 A. I can't even tell you how far it is.

19 Q. How long did it take you to get there?

20 A. I'd say about -- if we ran, about three or four.

21 Q. Three or four what?

22 A. Three or four minutes.

23 Q. Three or four minutes. Did you talk about anything on
24 the way?

25 A. Yeah.

1 Q. What did you talk about?

2 A. How we going to rob the lady.

3 Q. And how were you going to rob the lady?

4 A. We were going to knock the lady out.

5 Q. I'm sorry?

6 A. We were going to knock the lady out.

7 Q. You were going to knock her out?

8 A. (The witness nods his head in the affirmative
9 response.)

10 Q. How were you going to do that?

11 A. I had got my grip pliers, and I was going to knock her
12 out with my grip pliers.

13 Q. What happened when you got to The Game Room?

14 A. I was standing on the side of The Game Room, and Kandy
15 had give me her pager, because my pager was turned off; and
16 Kandy had give me her pager. And she paged me to give me
17 the signal to come on in. And instead, I ain't get no
18 page. She came out The Game Room and come and got me.
19 Then, when I went in there, I slipped on the mask. And go
20 on in. I went in the room with all the furniture in it.
21 And I hesitate for a while, because I ain't never did this
22 type of crime before.

23 And after that, then I got the extension cord out the
24 bucket, and Kandy got the trash bag. And we went in there
25 and Kandy had put the trash bag over the lady face, and I

1 put the extension cord around the lady neck. And I started
2 choking her until she passed out.

3 Q. All right. What was Kandy doing while you were -- you
4 had the extension cord; right?

5 A. (The witness nods his head in the affirmative
6 response.)

7 Q. And Kandy had the trash bag?

8 A. (The witness nods his head in the affirmative
9 response.)

10 Q. And while you're choking the lady with the cord, what
11 is Kandy doing?

12 A. Getting money.

13 Q. Getting money. Explain to the jury how she did that?

14 A. She went in the lady pocket and get the keys and the
15 money she had inside of her pocket. And she had opened up
16 the file cabinet. She got all the money and stuck it in
17 her purse. And she left, and I left behind her. That's
18 when I see vomit on the sidewalk.

19 Q. You saw vomit on the sidewalk?

20 A. Uh-huh.

21 Q. Who was vomiting?

22 A. Kandy.

23 Q. Okay. And where did y'all go after you strangled the
24 lady and took the money?

25 A. Back to 5601 West Boland Circle.

1 Q. Okay. And how did you get back there?

2 A. We ran and she ride the bicycle.

3 Q. Where was the bicycle?

4 A. Bicycle been at The Game Room.

5 Q. Okay. Now, when you left The Game Room with the
6 bicycle and you went back to West Boland Circle, what
7 happened?

8 A. We started splitting the money.

9 Q. How did you split it?

10 A. Half and half.

11 Q. How much money did you get?

12 A. Five.

13 Q. Five what?

14 A. Hundred.

15 Q. Five hundred dollars. How much money did Kandy get?

16 A. Seven hundred.

17 Q. Seven hundred what?

18 A. Dollars.

19 Q. Dollars. And where did all that money come from?

20 A. The Game Room.

21 Q. Okay. What did you do when you got home and you split
22 up the money?

23 A. After we finished splitting up the money, I went back
24 in my bed until that next morning, until the morning came.
25 And I got up and I washed up in the sink. And after that I

1 asked Cookie if she want to go with me to my grandma's
2 house, because my grandpa, my grandfather had went back in
3 the hospital. Then, after that, Cookie say she'll stay.
4 Then, I asked Kandy if she want to go with me to my
5 grandmama house. And Kandy said, Yeah. Then, that's when
6 we had catch a cab and everything in front of Gas Lite
7 Square. Then we went to the mall and stole some clothes.
8 And then, after that I went to McDonald's and got me
9 something to eat. Then we catch a cab from the Food Court
10 back to West Boland Circle. Then, from West Boland Circle
11 we went to my grandmama house.

12 Q. Where does your grandma live?

13 A. In Goose Creek.

14 Q. Goose Creek. And how did you get to Goose Creek?

15 A. A cab.

16 Q. Who went with you?

17 A. Kandy.

18 Q. And why did you go to your grandmama's house in Goose
19 Creek?

20 A. There were two reasons I had went to my grandmama
21 house. One, I was going to see my grandfather before he
22 went back in the hospital. And after that, plus, I had
23 want to leave from where the crime scene happened at. I
24 had want to go get away from that area.

25 Q. Okay. Now, when you went to your grandma's house in

1 Goose Creek, who was there?

2 A. My brother, Brian, and my niece -- no. My little
3 cousin.

4 Q. And how old is your brother, Brian?

5 A. He was nineteen.

6 Q. Okay. And what did y'all do when you got to your
7 grandmama's house in Goose Creek?

8 A. We started -- we were playing cards, and my brother
9 called the weed man. And I got an ounce of weed from him.

10 Q. And weed is what?

11 A. Marijuana.

12 Q. Marijuana. Do you smoke marijuana?

13 A. Yes, sir.

14 Q. Did you buy it with the money you stole from the lady
15 at The Game Room?

16 A. Yes, sir.

17 Q. Okay. Did you tell your brother what you had done?

18 A. Yes, sir.

19 Q. What did you tell him you had done?

20 A. I told him we had did a crime at -- by Gas Lite
21 Square.

22 Q. And did Kandy tell him what she had done?

23 A. Yeah.

24 Q. What did Kandy tell your brother what she had done?

25 A. She tell him, she had robbed the lady and that I had

1 killed the lady.

2 Q. Did she call her a lady?

3 A. Yeah.

4 Q. What did she call her?

5 A. Oh. A "B" word.

6 Q. A "B" word? What is a "B" word?

7 A. A bitch.

8 Q. A bitch. That's how she described the lady at The
9 Game Room?

10 A. (The witness nods his head in the affirmative
11 response.)

12 Q. What did your brother say when ---

13 THE COURT: Mr. Solicitor, I need to make sure if you
14 call that someone gives you an answer. I didn't hear an
15 answer.

16 MR. DUTREMBLE: Pardon me, sir?

17 THE COURT: I didn't hear the answer to the last
18 question.

19 MR. DUTREMBLE: Oh. I'm sorry. I asked him what the
20 "B" word was.

21 WITNESS: Bitch.

22 BY MR. DUTREMBLE:

23 Q. Bitch. And that's what you called the lady at The
24 Game Room?

25 A. Uh-huh

1 THE COURT: Did you get the answer, Madam Court
2 Reporter?

3 COURT REPORTER: Yes, sir.

4 THE COURT: Okay. Madam Court Reporter got it. Fine.

5 MR. DUTREMBLE: Thank you.

6 BY MR. DUTREMBLE:

7 Q. Okay. Now, after you talked to your brother, as you
8 described to the jury, did anything else happen while you
9 were at your grandmama's house?

10 A. A man at The Game Room had paged Kandy. And Kandy had
11 called back. And that's when the detective got on the
12 phone. What I understand, a detective get on the phone and
13 tell -- asked her can she meet him.

14 MRS. GAY: Your Honor I would object to what the
15 detective said.

16 THE COURT: I sustain. Rephrase your question.

17 MR. DUTREMBLE: I will.

18 BY MR. DUTREMBLE:

19 Q. After the detective called, what did Kandy do, if
20 anything?

21 A. We -- my brother had got a little zip lock bag, and I
22 had put the money in the bag, all the money in the bag.
23 And my brother hide it behind a stump behind my grandmama
24 yard.

25 Q. Did he just hide your money?

1 A. Hide Kandy money, too.

2 Q. Kandy's money, too. And did you leave the money
3 there?

4 A. No, sir.

5 Q. What did you do with the money?

6 A. When the detective came and picked up Kandy, that
7 night came around about -- I'd say about 10:00, 10:30, me
8 and Brian catch a cab right back to 5601 West Boland
9 Circle. Then, well, we had to catch a cab to there. When
10 we got there, we jumped out of the cab, and the detective
11 rolled up. Then, I tell Brian put the bookbag in Cookie
12 room. And then, I went behind Brian and emptied out all my
13 pockets. And I put the money in Brian bookbag. Then,
14 after that the detective had called Brian out the house. I
15 ain't know what the detective asked Brian. Then they had
16 called me out the house. They asked me do I know anything
17 about a homicide. I tell them, No.

18 Q. What did you do with the money, eventually, that you
19 took from the lady at The Game Room?

20 A. I spent it.

21 Q. Now, you indicated that when you -- well, let me ask
22 you this question: How were you dressed when you went to
23 The Game Room that night to rob the place?

24 A. Dressed in all black.

25 Q. Okay. Describe your clothes.

- 1 A. I had black pants with a white stripe on side of the
2 pants. I had on a black sweater and a black Scully hat.
3 It's a pull-on.
- 4 Q. A black Scully hat?
- 5 A. Yeah.
- 6 Q. Pull-on?
- 7 A. Yes, sir.
- 8 Q. And what was Kandy wearing?
- 9 A. I know she had on lime green Reeboks high top. I
10 can't picture what she was wearing.
- 11 Q. But you know her shoes; correct?
- 12 A. (The witness nods his head in the affirmative
13 response.)
- 14 Q. Let me let you take a look at what's been mark into
15 evidence as State's Exhibit Number 26. Can you identify
16 these?
- 17 A. Yes, sir.
- 18 Q. What are these?
- 19 A. Reeboks.
- 20 Q. Is it Kandy's Reeboks?
- 21 A. Yes, sir.
- 22 Q. Was she wearing these Reeboks the night Dawn Russ was
23 murdered?
- 24 A. Yes, sir.
- 25 Q. You were wearing a black sweat-shirt?

1 A. Yes, sir.

2 Q. With a hood?

3 A. Yes, sir.

4 Q. Is that your sweat-shirt?

5 A. Yes, sir.

6 Q. Did you have this hood pulled up over your head?

7 A. No. It been down.

8 Q. It was down. And a black pair of pants with a white
9 stripe?

10 A. Yes, sir.

11 Q. Are these your pants?

12 A. Yes, sir.

13 Q. Were you wearing these when Dawn Russ was murdered?

14 A. Yes, sir.

15 Q. This is a black Scully cap?

16 A. Yes, sir.

17 Q. Is this your hat?

18 A. Yes, sir.

19 Q. You were wearing this when she was murdered?

20 A. Yes, sir.

21 Q. You wear this on your head?

22 A. Yes, sir.

23 Q. These are your clothing?

24 A. Yes, sir.

25 MR. DUTREMBLE: Your Honor, we would offer all the

1 clothing in evidence.

2 THE COURT: Any objection?

3 MRS. GAY: No, Your Honor.

4 THE COURT: What number are we on Madam Court
5 Reporter?

6 COURT REPORTER: Number 33.

7 THE COURT: Okay. Give her a minute to mark it.

8 MR. DUTREMBLE: Yes, sir.

9 (State's Exhibit Number 33 marked for identification
10 and received in evidence.)

11 MR. DUTREMBLE: This is State's Exhibit 33 in
12 evidence, Your Honor.

13 THE COURT: In evidence.

14 BY MR. DUTREMBLE:

15 Q. Let me show you what's been previously marked as
16 State's Exhibit Number 27. Do you recognize this?

17 A. Yes, sir.

18 Q. What is this?

19 A. The gorilla mask.

20 Q. Is this the mask you were wearing when you went in The
21 Game Room?

22 A. Yes, sir.

23 Q. Is this your mask?

24 A. Yes, sir.

25 Q. What did you do with this mask after you killed that

1 lady?

2 A. I tossed it in Cookie closet.

3 Q. You tossed it in Cookie's closet. And who's Cookie?

4 A. Demetrice.

5 MR. DUTREMBLE: If Your Honor please, we're going to
6 mark the mask for ID at this time.

7 THE COURT: All right. That will be Number 34 for ID.

8 MR. DUTREMBLE: Oh. I'm sorry, Your Honor. It's
9 Number 27.

10 THE COURT: Oh. It's already been marked?

11 MR. DUTREMBLE: Yes.

12 THE COURT: Okay. Number 27 for ID.

13 BY MR. DUTREMBLE:

14 Q. Did you ever see that mask again after you tossed it
15 in Cookie's closet?

16 A. No, sir.

17 Q. Okay. Now, let me show you what's been marked into
18 evidence already, sir, as State's Exhibit Number 20. Have
19 you seen this before?

20 A. Yes, sir.

21 Q. What is this?

22 A. The extension cord.

23 Q. Is this the extension cord you used to kill that lady?

24 A. Yes, sir.

25 Q. Now, I want you to explain to the members of the jury

1 how you put this cord around her neck?

2 A. Extension cord was long, and I put it -- I folded it
3 in half. Then I wrapped the lady around -- I wrapped the
4 extension cord around the lady neck, and I went across.
5 And I started choking.

6 Q. All right. Now, what was the lady doing?

7 A. She had -- when she had wake up, she had her hands on
8 the extension cord, so I wouldn't kill her.

9 Q. Where was she?

10 A. She was sitting right there, leaning back in the
11 chair, sleeping in The Game Room, beside the office.

12 Q. All right. Come on down, please.

13 A. (The witness complies.)

14 Q. This is the plastic bag. This is the extension cord.
15 We can't open these up.

16 I'm Dawn Russ. Show the jury what you did with that
17 extension cord.

18 A. I had it wrapped around her neck and went across with
19 it.

20 Q. And went crossways with it?

21 A. Yeah.

22 Q. And what was she doing?

23 A. She was still laying back there. When she had wake
24 up, she had her hand on the extension cord trying to gasp
25 for air.

1 Q. What did Kandy do?

2 A. Kandy put the plastic bag on her face, and then Kandy
3 went inside her pockets.

4 Q. This plastic bag went over her face?

5 A. Yeah.

6 Q. And Kandy went into her pockets?

7 A. Yes, sir.

8 Q. And what happened after the bag went over her face and
9 you had the cord around her neck; what happened to that
10 lady?

11 A. The lady, Dawn Russ, had fallen on the ground. I was
12 still holding the extension cord.

13 Q. She fell on the ground?

14 A. Yeah. The chair had tip over.

15 Q. Which way?

16 A. This way.

17 Q. This way. And Dawn Russ falls on the ground -- right
18 -- face down?

19 A. Yeah. Yes, sir.

20 Q. And what did you do?

21 A. I been on her back steady choking her.

22 Q. You're still choking her?

23 A. Yes, sir.

24 Q. Well, get on my back, and show the jury how you choked
25 her .

1 A. I had my knee right here, and started choking her.

2 Q. And where was the bag?

3 A. It been underneath her.

4 Q. And how did it get underneath her?

5 A. The bag had fall along with her.

6 Q. All right. And has she still got her face on the bag?

7 A. Yes, sir.

8 Q. What's Kandy doing?

9 A. Kandy was getting the money out of the file cabinet.

10 Q. Getting the money out of the file cabinet. What
11 happened after she got the money out of the file cabinet?

12 You can go back up to the witness stand.

13 (The witness complies.)

14 A. After Kandy got the money out of the file cabinet, she
15 put it in her purse. After that, she started -- went out
16 The Game Room and got the bicycle and ride off. And I had
17 meet up with her right there in the street -- like, facing
18 her house, I had meet up with her right there. I told her
19 just don't worry about it. You know what I'm saying?
20 Everything's going to be all right.

21 Q. Everything would be all right for who?

22 A. For both of us.

23 Q. What about for the lady?

24 A. Know what I'm saying, I had tell Kandy when we were
25 inside the room -- I tell Kandy, I said, I think the lady

1 is dead.

2 Q. Let me hand you what's depicted in State's Exhibit
3 Number 8. (Photo) Have you seen that pill bottle before?

4 A. Yes, sir.

5 Q. Where did you see that pill bottle?

6 A. On the desk in the office.

7 Q. On the desk in the office. Whose pill bottle was it?

8 A. Kandy's.

9 Q. Referring to State's Exhibit Number 21, the pill
10 bottle. Is that the pill bottle you saw on that desk?

11 A. Yes, sir.

12 Q. With Kandy Gilliard's name on it?

13 A. Yes, sir.

14 Q. You know how the pill bottle got there?

15 A. Huh?

16 Q. Do you know how that pill bottle got there in The Game
17 Room?

18 A. No, sir.

19 Q. Do you know what Kandy did with her money?

20 A. No, sir.

21 Q. Did you ever give any money back to the police?

22 A. No, sir.

23 Q. Did you ever give any money to your brother, Brian?

24 A. Two hundred dollars.

25 Q. You gave him two hundred dollars. Was that money that

1 you had taken from The Game Room?

2 A. Yes, sir.

3 Q. And when the police came and asked you questions, did
4 you tell them the same thing that you told the jury?

5 A. Yes, sir.

6 Q. You put your hand on that bible. Is what you're
7 telling the jury, the truth?

8 A. Yes, sir.

9 Q. Is that how that lady died?

10 A. Yes, sir.

11 Q. Is that what Kandy Gilliard did to help you?

12 A. Yes, sir.

13 Q. No doubt about it, that lady's dead; right?

14 A. Yes, sir.

15 Q. Both of y'all took that money; right?

16 A. Yes, sir.

17 Q. You wore those clothes and that mask.

18 A. Yes, sir.

19 Q. And you talked about it before you did it?

20 A. Yes, sir.

21 Q. All right. Mr. Johnson, I'm going to let you answer
22 any questions that Mrs. Gay has for you.

23 THE COURT: All right. Cross-examination, Mrs. Gay?

24 MRS. GAY: I'm just going to take a minute, Your
25 Honor, to get organized.

1 THE COURT: Sure. No problem.

2 CROSS-EXAMINATION

3 BY MRS. GAY:

4 Q. Mr. Johnson, you've had some problems before, some
5 behavioral-type problems; haven't you?

6 A. Yes, sir -- yes, ma'am.

7 Q. And I think that you described yourself as an easily
8 get upset -- get mad easily?

9 A. Yes, ma'am.

10 Q. And I believe that you said that you told Kandy a
11 couple of times that you were going to rob this lady?
12 That's what you testified to?

13 A. Yes, ma'am.

14 Q. I believe you said -- you testified to it -- that you
15 told her you were going to rob this lady sometime around
16 Hurricane Floyd?

17 A. Yes, ma'am.

18 Q. And, certainly, you did rob this lady? You came in
19 with the mask, with the dark clothes, with gloves to rob
20 this lady? That was your intent?

21 A. Yes, ma'am.

22 Q. And in the process of doing that, you killed this
23 lady; didn't you?

24 A. Yes, ma'am.

25 Q. And you strangled her?

1 A. Yes, ma'am.

2 Q. And y'all did this whole thing on the floor where Mr.
3 DuTremble was on the ground, and you were showing this jury
4 how you got up and strangled this lady with the extension
5 cord?

6 A. Yes, ma'am.

7 Q. And you took the extension cord -- and I believe your
8 testimony is that you had to double it, because it was so
9 big. And you put it around her neck and you pulled it
10 tight until she choked and died?

11 A. Yes, ma'am.

12 Q. And that's something you did?

13 A. Yes, ma'am.

14 Q. And you admit that?

15 A. Yes, ma'am.

16 Q. And in the process, you said that she fell on the
17 ground and the bag fell down, and she fell on top of it?

18 A. (The witness nods his head in the affirmative
19 response.)

20 Q. So the bag wasn't over her head, it was on the ground?

21 A. No. It was on her face.

22 Q. And then it fell off?

23 A. And it went all the way on. The back of her head was
24 showing. And it was on her face part.

25 Q. And so when you actually stood there, and she started

1 gagging, you had to actually pull the string tighter for
2 her to stop gagging and stop moving?

3 A. Yes, ma'am.

4 Q. And that's how she died when she was laying on the
5 ground with the string tied around her head?

6 A. Yes, ma'am.

7 Q. And when you got up that night, you said you put on
8 dark clothes?

9 A. Yes, ma'am.

10 Q. And you got a wrench or some grip pliers?

11 A. Grip pliers.

12 Q. And what are they, about this big?

13 A. No, ma'am.

14 Q. What size -- little small pair of grip pliers or a big
15 pair of grip pliers?

16 A. Like a medium size grip pliers.

17 Q. A tool?

18 A. Yes, ma'am.

19 Q. A metal tool?

20 A. (The witness nods his head in the affirmative
21 response.)

22 Q. And I believe that you said, you grabbed the mask out
23 of Cookie's cabinet?

24 A. Cookie chair. The chair been in Cookie room, and I
25 grabbed the mask off of there.

1 Q. And that was so she wouldn't see you?

2 A. Yes, ma'am.

3 Q. And you grabbed your pair of gloves?

4 A. Yes, ma'am.

5 Q. And you put the gloves on?

6 A. Yes, ma'am.

7 Q. And you wore dark clothes?

8 A. Yes, ma'am.

9 Q. And the gloves were so that your fingerprints wouldn't
10 get on anything; right?

11 A. Yes, ma'am.

12 Q. So you had the gloves on so that you would not leave
13 any fingerprints in that place while you were robbing and
14 killing this lady?

15 A. Yes, ma'am.

16 Q. And you wore the dark clothes so that she wouldn't
17 recognize you? And I believe that you had the hood pulled
18 over the mask?

19 A. No, ma'am. I had the hood down. I had the Scully on
20 top of the mask. Then, when I got inside The Game Room, I
21 gave the Scully to Kandy to put on.

22 Q. And I believe that you said that the mask was on your
23 face the whole time?

24 A. Yes, ma'am.

25 Q. But she was trying to rip it off your face; wasn't

1 she?

2 A. Kandy?

3 Q. No. The lady. The lady was trying to rip it off your
4 face?

5 A. No, ma'am.

6 Q. Trying to see you?

7 A. No, ma'am.

8 Q. You've said that before in statements that the lady

9 ---

10 A. I been saying Kandy had ripped the mask.

11 Q. What?

12 A. Kandy had ripped my mask when I got on top of the
13 lady. Kandy had ripped my mask.

14 Q. And there's no doubt that the mask has been ripped?

15 A. Yeah. The mask is ripped.

16 Q. Right. So this is the mask you were wearing?

17 A. Yes, ma'am.

18 Q. And after you did this act, and after you ran out of
19 there, I believe you said that Kandy stuck the money in her
20 pocketbook?

21 A. Yes, ma'am.

22 Q. And when you left the place, you said that there was
23 vomit outside the place?

24 A. Yes, ma'am.

25 Q. And Kandy was actually throwing up during the process

1 of this event; wasn't she?

2 A. Yes, ma'am.

3 Q. And in the process of doing this, the pocketbook with
4 the money in it actually got thrown on the ground outside
5 The Game Room, between The Game Room and the house; wasn't
6 it?

7 A. I don't know.

8 Q. You don't remember picking up the pocketbook that the
9 bicycle -- because the bicycle had a flat tire?

10 A. I ain't had no bicycle. I been on my foot. When I
11 ran out there, then I ran back, Kandy had a bicycle with a
12 flat tire.

13 Q. So when you were going in there, you had the mask and
14 the gloves and you had the wrench?

15 A. Yes, ma'am.

16 Q. You were wearing the mask, and you were, basically,
17 there robbing this woman so that she couldn't see you --
18 with the mask?

19 A. Yes, ma'am.

20 Q. And you had gloves on so that you wouldn't leave any
21 prints?

22 A. Yes, ma'am.

23 Q. And, you know, when you strangle someone, basically,
24 they lose air. And I think that's why she started gagging.
25 And I think -- didn't you testify that when she started

1 gagging, she jumped up out of the chair, lifted up, because
2 she was gagging and struggling?

3 A. Yes, ma'am.

4 Q. And that's when she fell to the ground, and you pushed
5 her on the ground and pulled tighter to actually make it so
6 that she died?

7 A. Yes, ma'am.

8 Q. Now, you testified that you bought some herb or bought
9 some marijuana with the money afterward? On the night this
10 happened, you were, also, high; weren't you?

11 A. Yes, ma'am.

12 Q. You had been smoking marijuana before you came over
13 there?

14 A. Yes, ma'am.

15 Q. And that night when you were there, had you smoked
16 some right before you came?

17 A. No, ma'am.

18 Q. Earlier that evening you were smoking?

19 A. Yes, ma'am.

20 Q. And so when you came there that night, one thing is
21 that you said you had some problems. And I think that you
22 are supposed to take medicine; aren't you?

23 A. Yes, ma'am.

24 Q. Mental illness medicine?

25 A. Yes, ma'am.

1 Q. And now you take medicine, since you have been in the
2 jail?

3 A. Yes, ma'am.

4 Q. And you have been taking medicine for some fifteen,
5 seventeen months since you were arrested?

6 A. Yes, ma'am.

7 Q. And I believe that medicine is Haldol?

8 A. Yes, ma'am.

9 Q. And I'm sure you have had occasion to discuss with
10 your doctors why you take Haldol?

11 A. No. When they had locked me up, I had owed the County
12 some time in lock-up. Then, when I had went in lock-up, I
13 been feeling sick, because of the crime I had did. I was
14 feeling sick. And I try to commit suicide inside lock-up.

15 Q. So they put you on Haldol which is antipsychotic
16 medicine?

17 A. Yes, ma'am.

18 Q. And you have been taking it ever since?

19 A. Yes, ma'am.

20 Q. But on the day that this happened, you were supposed
21 to be taking medicine then, but you weren't taking any;
22 were you?

23 A. No, ma'am.

24 Q. Matter of fact, you received medicaid and social
25 security for your problems?

1 A. Yes, ma'am.

2 Q. And part of that was that you -- or you get money to
3 be able to pay for that medicine that you're supposed to
4 have been taken?

5 A. Medicaid pay for my medication.

6 Q. Right. But you weren't taking any medicine that day;
7 were you?

8 A. No, ma'am. I had stopped taking my -- when I came
9 back home in '97, my older brother took me off that
10 medication. I ain't take no medication since '97.

11 Q. But you take Haldol now, and you've taken it ever
12 since you went to jail?

13 A. Yes, ma'am.

14 Q. And do you recall when you were interviewed about this
15 case, about this night, do you recall telling them that
16 you'd been hearing voices a couple of days before this
17 incident occurred?

18 A. Yes, ma'am.

19 Q. Okay. When you hear voices -- you occasionally even
20 still hear voices, now; don't you?

21 A. Yes, ma'am.

22 Q. And that's people and things talking in your head,
23 psychotic stuff going on in your head?

24 A. I be seeing people who not there.

25 Q. People who are not there?

1 A. Yes, ma'am.

2 Q. And so at the time that you told them about this, you
3 said that a couple of days before this incident, you were
4 hearing voices, and seeing things, and hearing things in
5 your head; right?

6 A. Yes, ma'am.

7 Q. And even now, even so you have been taking medicine,
8 you still occasionally hear those things and see those
9 things in your head?

10 A. Yes, ma'am.

11 Q. And you know that Haldol is for psychotic people,
12 mentally ill people?

13 A. Yes, ma'am.

14 Q. You know that; right?

15 A. Yes, ma'am.

16 Q. And before -- I think you said in the beginning that
17 you easily get upset. You got a bad temper; don't you?

18 A. Yes, ma'am.

19 Q. And there have been occasions where you have assaulted
20 people; isn't there?

21 A. One person.

22 Q. You assaulted a staff member at a placement that you
23 were at one time; didn't you?

24 A. Yes, ma'am.

25 Q. And you've assaulted Cookie, who's Kandy's sister;

1 didn't you?

2 A. Yes, ma'am.

3 Q. Matter of fact, the police were called on you, because
4 you tried to strangle her; didn't you? Do you remember the
5 police coming?

6 A. Yes, ma'am.

7 Q. And do you remember her telling the police that you
8 tried to strangle her in the bedroom on the bed?

9 A. Yes, ma'am.

10 Q. And that was Cookie Gilliard, who is Kandy's sister?

11 A. Yes, ma'am.

12 Q. And there were other occasions where you would get
13 real mad at Cookie and scream at her; and tried to hit her
14 with a bat one time; didn't you?

15 A. It been a plastic bat. It ain't been no steel bat.

16 Q. But it was a plastic bat that you tried to hit Cookie
17 with?

18 A. Yes, ma'am.

19 Q. And Kandy knew that; didn't she? She was there then;
20 wasn't she?

21 A. I ain't know if she been there or not.

22 Q. But, certainly, she lived in the house, and she could
23 have known about it?

24 A. She know about I had choke her sister and her sister
25 called the police on me ---

1 Q. She knew that?

2 A. There only been Cookie and her best friend been there.

3 Q. Cookie and her best friend were there when you tried
4 to choke her, Cookie, on the bed?

5 A. Yes, ma'am.

6 Q. And Kandy lived in the house and was Cookie's sister,
7 and knew that you tried to choke her sister?

8 A. Yes, ma'am can.

9 Q. And this was before this night, obviously?

10 A. Yes, ma'am.

11 Q. And I believe that you have even been arrested in the
12 past for criminal sexual conduct with a minor?

13 A. (No response.)

14 Q. For raping a child?

15 A. No, ma'am.

16 Q. You were arrested for that charge?

17 A. It ain't been no rape charge.

18 Q. Criminal sexual conduct with a minor, that's what you
19 were arrested for; wasn't it?

20 A. Yes, ma'am. When I went to court, they had dropped
21 that to assault and battery of a high and aggravated
22 nature.

23 Q. I understand that, but you were actually arrested for
24 criminal sexual conduct with a minor?

25 A. Yes, ma'am.

1 Q. And you were convicted of assault and battery of a
2 high and aggravated nature?

3 A. Yes, ma'am.

4 Q. Right?

5 A. (The witness nods his head in the affirmative
6 response.)

7 Q. And you said, specifically, that when you went to
8 court that they dropped that charge, they plea bargained
9 with you on that charge?

10 A. Yes, ma'am.

11 Q. You understand what a plea bargain is?

12 A. Yes, ma'am.

13 Q. You understand that that's less than what the charge
14 would actually be?

15 A. Yes, ma'am.

16 Q. And before, not this time, but on a different occasion
17 -- you had an occasion to plea bargain a charge down;
18 hadn't you? To plea bargain to a lesser offense, not
19 criminal sexual conduct with a minor, but assault and
20 battery of a high and aggravated nature?

21 A. Yes, ma'am.

22 Q. Okay. And in this case when you were arrested -- you
23 had an attorney; don't you?

24 A. Yes, ma'am.

25 Q. And you had a bunch of conversations with that

1 attorney; haven't you?

2 A. Yes, ma'am.

3 Q. And pursuant to his conversations with you and what
4 you know now, you were told what the charge ---

5 MR. DUTREMBLE: Objection, Your Honor. We're going to
6 get into attorney-client privilege, and I would object on
7 his lawyer's behalf.

8 MRS. GAY: Well, I'll ask to his understanding.

9 THE COURT: I'll permit her to on the understanding.
10 I was going to listen to the whole question, but what his
11 understanding is, you can ask him that.

12 BY MRS. GAY:

13 Q. Pursuant to your understanding of having been charged
14 of strong arm robbery and murder, you know what the penalty
15 for those charges would carry; don't you?

16 A. Yes, ma'am.

17 Q. And those penalties include life, possibly up to
18 fifteen years in jail; don't they?

19 A. Yes, ma'am.

20 Q. And you know on the strong arm robbery charge you
21 could get from zero to fifteen years in prison? You know
22 that?

23 A. Yes, ma'am.

24 Q. And you know that on the murder charge you can get
25 either thirty years, or you can get life? You know that;

1 right?

2 A. Yes, ma'am.

3 Q. And you know if you got life that that would be your
4 natural life in jail? You know that; right, B.J.?

5 A. Yes, ma'am.

6 Q. Okay. And how old are you, twenty-two?

7 A. Yes, ma'am.

8 Q. And you know that your natural life in jail would put
9 you in jail from the time you're twenty-two until the time
10 you die in jail? You know that; right?

11 A. Yes, ma'am.

12 Q. Okay. And you know that that was a possible
13 punishment for you in this charge; didn't you?

14 A. Yes, ma'am.

15 Q. And you, also, know that you could have got even an
16 extra fifteen years thrown on the end of that? You know
17 that?

18 A. Yes, ma'am.

19 Q. That's called a consecutive sentence; right?

20 A. Yes, ma'am.

21 Q. So you know that you could have gotten life plus
22 fifteen years on this charge?

23 A. Yes, ma'am.

24 Q. Okay. And that if you got life, that you would never
25 be getting out of jail? You knew that?

1 A. Yes, ma'am.

2 Q. You know that right now?

3 ~~A.~~ Yes, ma'am.

4 Q. And pursuant to knowing that, and after you had
5 occasion to know your charge and to understand your
6 situation, you chose to plead guilty; didn't you?

7 A. Yes, ma'am.

8 Q. And right now, this minute, sitting in this courtroom,
9 you pled guilty to the charge of strong arm robbery and
10 murder?

11 A. Yes, ma'am.

12 Q. And pursuant to that, you know, believe that concept,
13 that thing that you did, the plea process occurred
14 yesterday?

15 A. Yes, ma'am.

16 Q. But you haven't been sentenced, yet; have you?

17 A. No, ma'am.

18 Q. And your sentence is not going to be until after you
19 testify in this trial; is it?

20 A. Yes, ma'am.

21 Q. Okay. And it's your understanding -- isn't it -- that
22 your sentence will be thirty years?

23 A. Yes, ma'am.

24 Q. And that your sentence of thirty years is what we call
25 a negotiated sentence, which means it is negotiated and the

1 judge has to give it to you that way. He has to give you a
2 thirty-year sentence. You know that; right?

3 A. Yes, ma'am.

4 Q. And he can't change that. If he chooses not to give
5 that to you, you got to be sentenced possibly in front of
6 another judge on a different day? You understand that;
7 right?

8 A. Yes, ma'am.

9 Q. Okay. And you know, right now, sitting here in this
10 courtroom, that your testimony about Kandy Gilliard being
11 involved is tied to you getting this thirty-year sentence;
12 isn't it?

13 A. Yes, ma'am.

14 Q. So as you sit here right now, your thirty-year
15 sentence is dependant on you saying that Kandy Gilliard
16 planned this robbery and participated in this robbery with
17 you; isn't it?

18 A. Yes, ma'am.

19 Q. It's dependant on that. If you got up here, under
20 oath, and said, No, I changed my mind, Kandy really didn't
21 have anything to do with it, you understand that you won't
22 get that thirty-year sentence; will you?

23 A. Yes, ma'am.

24 Q. You won't get that thirty-year sentence; will you?

25 A. No, ma'am.

1 Q. What did you say?

2 A. No, ma'am.

3 Q. No, ma'am. So no matter what, you know that your
4 thirty-year sentence, sitting right here today, depends on
5 you saying that Kandy Gilliard was involved in this robbery
6 and this murder; isn't it?

7 A. Yes, ma'am.

8 Q. Yes, it is; isn't it?

9 A. Yes, ma'am.

10 Q. And so knowing all of that, you've taken an oath and
11 you've come in here and you say that she's involved; right?

12 A. Yes, ma'am.

13 Q. And after this, you're going to get your thirty years;
14 aren't you?

15 A. Yes, ma'am.

16 Q. Not life; right?

17 A. No, ma'am.

18 Q. Not life plus fifteen?

19 A. No, ma'am.

20 Q. But thirty years. So when you're 52 years old, you'll
21 be getting out of jail for strangling that lady like you
22 showed this jury on the floor with Mr. DuTremble; right?

23 A. Yes, ma'am.

24 Q. So at 52, you'll get out of jail; right?

25 A. Yes, ma'am.

1 Q. And if you had not come in here and made this deal
2 with the State, there was always the possibility that you
3 could have gotten life plus fifteen; isn't there?

4 A. Yes, ma'am.

5 Q. And this deal that you made with them to come in and
6 say that Kandy had something to do with it in the
7 pre-planning of this robbery, was a knowing participant of
8 this robbery, is why you get to get thirty years; isn't it?

9 A. Yes, ma'am.

10 MRS. GAY: One moment, Your Honor. I have no further
11 questions, Your Honor.

12 THE COURT: Okay. Redirect?

13 MR. DUTREMBLE: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. DUTREMBLE:

16 Q. Mr. Johnson, you pled guilty to the charges that Mrs.
17 Gay talked to you about, yesterday; correct?

18 A. Yes, ma'am -- yes, sir.

19 Q. Okay. And yesterday you found out that you were
20 facing a thirty-year sentence; correct?

21 A. Yes, sir.

22 Q. Actually, you probably found out a couple of days
23 before that; didn't you?

24 A. Yes, sir.

25 Q. Do you remember when the police came and talked to you

1 way back on January 9, 2000?

2 A. Yes, sir.

3 Q. Do you remember talking to them about what happened?

4 A. Yes, sir.

5 Q. Do you remember they took down your statement -- they
6 wrote it down?

7 A. Yes, sir.

8 Q. It's a confession that you signed?

9 A. Yes, sir.

10 Q. Did you have a thirty-year deal back then?

11 A. No, sir. They tell me if I gave a statement that the
12 truth will set you free. That's why I gave a statement.

13 Q. The truth will set you free. It doesn't always work
14 that way; does it?

15 A. You tell me.

16 Q. Let me ask you this, Mr. Johnson: When you told the
17 police back on January 9, 2000, in your confession that
18 Kandy Gilliard did it with you, was that the truth?

19 A. Yes, sir.

20 Q. Did you have a deal from the Solicitor's Office for
21 thirty years when you told the truth?

22 A. No, sir.

23 Q. And when Mrs. Gay suggested that your testimony is
24 tied to the thirty years, because it's a negotiated
25 sentence, do you know what that means?

1 A. I'm going to be in jail until I'm 52.

2 Q. Okay. Did your lawyer also tell you that it's up to
3 the judge whether you get thirty years or not?

4 A. Yes, sir.

5 MRS. GAY: Your Honor, isn't that objectionable in
6 light of what he said?

7 THE COURT: It would be, but then, both of you have
8 gone into it. I don't want to go into that. And I think
9 we need to just go with the fact that you all put in
10 evidence that he pled guilty in front of me yesterday with
11 a negotiated thirty-year sentence. Let's go from that.
12 Next question.

13 MR. DUTREMBLE: Thank you, Your Honor.

14 BY MR. DUTREMBLE:

15 Q. Now, Mrs. Gay asked you whether or not, sir, when you
16 got up that night and you put on these clothes -- you
17 admitted that these were your clothes; right?

18 A. Yes, sir.

19 Q. Okay. And how did you wake up that night?

20 A. Kandy had shake me and get me up.

21 Q. Kandy had shaken you and woke you up?

22 A. Yes, sir.

23 Q. And when you went into The Game Room, I believe, you
24 told Mrs. Gay that you gave this Scully cap to Kandy?

25 A. Yes, sir.

1 Q. Now, what did she do with it?

2 A. She put it on her head.

3 Q. She put this cap on her head. And you put on this
4 mask?

5 A. Yes, sir.

6 Q. And this is your mask, no doubt about it?

7 A. Yes, sir.

8 Q. And I think you mentioned that Kandy had thrown up
9 outside The Game Room?

10 A. Yes, sir.

11 Q. But not inside The Game Room?

12 A. No, sir.

13 Q. But there was no vomit where the body lay; right?

14 A. No, sir.

15 Q. And there was no vomit over there where the cash
16 drawer was; right?

17 A. No, sir.

18 Q. Just outside The Game Room?

19 A. (The witness nods his head in the affirmative
20 response.)

21 Q. I believe you, also, told Mrs. Gay that while you were
22 choking her, she was busy putting this bag over her face?

23 A. Yes, sir.

24 Q. And that was Kandy that was doing that; right?

25 A. Yes, sir.

1 Q. And you told the police that she did that back on
2 January 9th; right?

3 A. Yes, sir.

4 Q. And you told the police about this mask on January
5 9th; right?

6 A. Yes, sir.

7 Q. And you told them about these clothes on January 9th?

8 A. Yes, sir.

9 Q. So way before you had your deal, you told the police
10 what happened in this case?

11 A. Yes, sir.

12 Q. And that's the same story you told these jurors,
13 today?

14 A. Yes, sir.

15 Q. The day after you pled guilty?

16 A. Yes, sir

17 Q. Thank you, sir

18 THE COURT: Recross?

19 MRS. GAY: Just real quick.

20 RECROSS-EXAMINATION

21 BY MRS. GAY:

22 Q. Mr. Johnson, you were aware a long time ago that you
23 were going to get thirty years to come in and testify in
24 this case; weren't you?

25 A. Yes, ma'am.

1 Q. It wasn't yesterday when you found this out, it was
2 months ago that you found this out?

3 A. No. It ain't been months ago. It been about ---

4 Q. A while ago?

5 A. --- a month ago.

6 Q. Okay. And you, certainly, understood that -- he keeps
7 referring to a statement that you've made. You've never
8 ever mentioned before that you gave a Scully cap for Kandy
9 Gilliard to put on her head; did you? Never in any of your
10 statements have you ever mentioned this before?

11 A. No, ma'am.

12 Q. I can't hear you. No?

13 A. No, ma'am.

14 Q. Is the answer "no"?

15 A. Yes, ma'am.

16 Q. Okay. And, certainly, you've given three other
17 statements in this case, and never before have you said
18 that she tried to put anything over head?

19 A. I ain't gave no three statements.

20 Q. I believe you talked to them on May 1st; you talked to
21 them on January 5th; and you talked to them on January 9th.
22 I have the documents if you'd like to refresh your
23 recollection.

24 THE COURT: And I think since you've got all those
25 months, what years are we talking about, ma'am?

1 MRS. GAY: 2000 on -- 1/5/2000, 1/9/2000, and
2 5/1/2000.

3 BY MRS. GAY:

4 Q. So I have the documents if you'd like to refresh your
5 recollection. You've spoken to the police a number of
6 times about this?

7 A. I ain't spoke to the police officer one -- two times.
8 I gave a statement on January 5th and January 9th. I gave
9 them a verbal statement on January 5th, and I gave a
10 statement, I tell the truth on January 9th. That's why I'm
11 locked up. I admit to the part I did.

12 Q. I understand that. But you definitely came and spoke
13 with the prosecutor, with your attorney present, one other
14 time; right?

15 A. Yes, ma'am.

16 Q. And you never mentioned you gave any kind of hat or
17 anything like that for Kandy to put on her head; did you?

18 A. No, ma'am.

19 Q. Would you like to look at them?

20 A. I can't read, ma'am.

21 Q. And you, certainly, didn't bring her any gloves to put
22 on during the course of this incident; did you?

23 A. She had give me the gloves to put on. She had put the
24 medical tape around her tips, her fingers.

25 Q. Okay.

1 A. She had put medical tape around her fingers, and
2 that's how they got fingerprints on the bag.

3 Q. I understand that. But you've never mentioned
4 anything about medical tape on any fingers before? Would
5 you like to refresh your recollection by looking at your
6 statements?

7 A. I can't read, ma'am.

8 Q. But do you ever recall telling them anything about
9 medical tape on fingertips before?

10 A. No, ma'am.

11 MRS. GAY: I have no further questions, Your Honor.

12 THE COURT: Anything else from anyone?

13 MR. DUTREMBLE: Nothing further, Your Honor.

14 THE COURT: All right, sir. You may step down,
15 please, sir.

16 You may remove him from the courtroom.

17 (The witness leaves the witness stand.)

18 MR. DUTREMBLE: We'll need Brian Johnson, next.

19 THE COURT: All right. Ladies and gentlemen, the next
20 witness is going to take about, I would think, a half an
21 hour. Do you all need to go to the restroom? Anybody need
22 a break?

23 (No response.)

24 THE COURT: Everybody's fine?

25 (Jurors indicate they're fine.)

1 THE COURT: All right. Bring the next witness in.

2 BRIAN JOHNSON, being first duly sworn,
3 testified as follows:

4 THE CLERK: Please, be seated. Please, give your full
5 name for the Court and spell your last name.

6 WITNESS: Brian Alan Johnson. J-o-h-n-s-o-n.

7 THE COURT: Your witness, Mr. DuTremble.

8 MR. DUTREMBLE: Thank you.

9 DIRECT EXAMINATION

10 BY MR. DUTREMBLE:

11 Q. Mr. Johnson, you're going to need to speak up, because
12 the members of the jury have to hear what you say?

13 A. Yes, sir.

14 Q. Do you know B.J. Johnson?

15 A. Yes, sir.

16 Q. Also, known as Benjamin Lee Johnson?

17 A. Yes, sir.

18 Q. Who is he?

19 A. Me brother.

20 Q. How old are you?

21 A. Twenty-one.

22 Q. Are you older or younger than he is?

23 A. Younger.

24 Q. Younger. What can you tell the members of the jury,
25 if anything, about your brother?

- 1 A. He's kind of slow. He ain't all there.
- 2 Q. How long has he been that way?
- 3 A. Since, I guess, about '80 -- '88.
- 4 Q. About '88?
- 5 A. Yes, sir.
- 6 Q. Now, where do you live, Mr. Johnson?
- 7 A. 1245 Redbank.
- 8 Q. Redbank?
- 9 A. Yes, sir.
- 10 Q. What town?
- 11 A. Goose Creek.
- 12 Q. And whose house is that?
- 13 A. That's my grandmother's house.
- 14 Q. You live there with your grandmother?
- 15 A. Yes, sir.
- 16 Q. Were you living there on January 5th of the year 2000?
- 17 A. Yes, sir.
- 18 Q. Did you have occasion on January 5th of the year 2000
- 19 to see your brother and Kandy Gilliard?
- 20 A. Yes, sir.
- 21 Q. Do you know Kandy Gilliard?
- 22 A. Yes, sir.
- 23 Q. How do you know her?
- 24 A. Just the recent times we have met.
- 25 Q. Pardon me?

1 A. The recent times we have met.

2 Q. The times you have met.

3 A. Four times.

4 Q. How many times?

5 A. Four times.

6 Q. Four times. What were you doing on January 5th of the
7 year 2000?

8 A. Getting high.

9 Q. Pardon me?

10 A. Getting high.

11 Q. Getting high?

12 A. Yes, sir.

13 Q. Smoking marijuana?

14 A. Yes, sir.

15 Q. Did they come to your house?

16 A. Yes, sir.

17 Q. When I say, "they," I'm talking about your brother,

18 B.J. and Kandy Gilliard?

19 A. Yes, sir.

20 Q. What did y'all do when they got to your house?

21 A. Bought some more drugs and got high.

22 Q. Did you do anything else?

23 A. No, sir.

24 Q. Did you have occasion while they were at your house,
25 to talk with your brother and talk with Kandy Gilliard?

1 A. Yes, sir.

2 Q. Did your brother tell you what he had just done in the
3 early morning hours of January 5th?

4 A. Yes, sir.

5 Q. Did Kandy Gilliard tell you what she had done in the
6 early morning hours of January 5th?

7 A. Yes, sir.

8 Q. What did they tell you they did?

9 A. They stated they had killed someone

10 MRS. GAY: Your Honor, I would object to what Mr.
11 Johnson told them what he did.

12 THE COURT: Well, then, amend your question, Mr.
13 DuTremble.

14 MR. DUTREMBLE: I will, Your Honor. Thank you.

15 BY MR. DUTREMBLE:

16 Q. What did Kandy Gilliard tell you she had done?

17 A. They gave the girl a pill.

18 Q. Gave the girl a pill?

19 A. Yeah. The woman.

20 Q. And what did they give her a pill for?

21 A. To make her sleep.

22 Q. Okay. Did it make her sleep?

23 A. I don't know. I wasn't there.

24 Q. What did they do after it made her sleep?

25 A. Huh?

1 Q. What did they do after they gave her the pill?

2 A. My brother said he put ---

3 THE COURT: No, sir. Tell us only what Kandy told
4 you.

5 WITNESS: Oh. That's it.

6 BY MR. DUTREMBLE:

7 Q. What's it?

8 A. Kandy only gave her a pill.

9 Q. Kandy didn't tell you anything else?

10 A. No. That's it.

11 Q. That's it? Are you sure about that?

12 A. Yes.

13 Q. Do you recall talking to the police on January 9th of
14 the year 2000?

15 A. Yes.

16 Q. Do you recall giving them a statement?

17 A. Yes, sir.

18 Q. Do you remember what you put in your statement?

19 A. Yes. Yes, sir.

20 Q. When was the last time you saw your statement?

21 A. Not too long.

22 Q. Not too long. Let me hand you this document, and ask
23 you if you can identify this?

24 A. Yeah.

25 Q. That's your signature at the bottom of that page?

1 A. Yes, sir.

2 Q. Did you give that statement to the police?

3 A. Yes, sir.

4 Q. Did he give you a copy of it?

5 A. Yes, sir.

6 Q. Okay.

7 THE COURT: Mrs. Gay wants to look at what you're
8 handing him.

9 MRS. GAY: Okay. No problem.

10 BY MR. DUTREMBLE:

11 Q. Having looked at your statement, do you recall what
12 Kandy told you?

13 A. Yes, sir.

14 Q. What did Kandy tell you?

15 A. That they did some dirt at Gas Lite Square.

16 Q. What kind of dirt did they do?

17 A. They had killed a woman.

18 Q. A woman. How did they describe that woman? How did
19 Kandy describe that woman?

20 A. As a bitch.

21 Q. As a bitch. You told the police that on January 9th;
22 correct?

23 A. Yes, sir.

24 Q. Now, before you told them that, on January 5th, when
25 they were out at your house, tell the jury what you did to

1 get yourself in trouble?

2 A. I gave false testimony to the police.

3 Q. What did you tell them?

4 A. That I was -- spoke with Kandy on the phone between
5 2:10 and 4:10.

6 Q. Of what day?

7 A. On January 4th.

8 Q. That wasn't true; was it?

9 A. No, sir.

10 Q. What else did you do?

11 A. I hid the money that they had given me. I hid it.

12 Q. How did you hide it?

13 A. I emptied it and put it in a plastic bag, a plastic
14 zip lock bag. And we put it in my backyard.

15 Q. Where did you put it in the backyard?

16 A. Underneath some straw, boxed up in my backyard.

17 Q. Why did you hide the money in your backyard?

18 A. I was scared.

19 Q. You were scared?

20 A. Yes, sir.

21 Q. Why were you scared?

22 A. Because I've never known my brother to do anything
23 like that.

24 Q. Have you ever done anything like that before?

25 A. No, sir.

- 1 Q. Have you got a prior record?
- 2 A. Just two simple misdemeanors.
- 3 Q. Two simple misdemeanors?
- 4 A. Yeah.
- 5 Q. Did you have anything to do with the murder?
- 6 A. No, sir.
- 7 Q. Were you down there at The Game Room that night?
- 8 A. No, sir.
- 9 Q. Did you have anything to do with strangling the lady?
- 10 A. No, sir.
- 11 Q. Did you have anything to do with robbing the lady?
- 12 A. No, sir.
- 13 Q. Did your brother give you any money from that robbery?
- 14 A. Yes, sir.
- 15 Q. How much money did he give you?
- 16 A. Two hundred dollars.
- 17 Q. And what did you do with that two hundred dollars?
- 18 A. Bought a pair of sneakers.
- 19 Q. Did you know that money had come from that robbery?
- 20 A. No. Not then.
- 21 Q. When did you find out?
- 22 A. Afterwards.
- 23 Q. How long afterwards?
- 24 A. About like two or three hours afterwards.
- 25 Q. And you have pled guilty in this case; have you not?

1 A. Yes, sir.

2 Q. The police originally charged you with being an
3 accessory after the fact?

4 A. Yes, sir.

5 Q. What did you plead guilty to?

6 A. Misprision of felony.

7 Q. Misprision of felony?

8 A. Yes, sir.

9 Q. You're going to be sentenced sometime after the trial;
10 correct?

11 A. Yes, sir.

12 Q. Have you had any deals from me?

13 A. No, sir.

14 Q. Do you know what your sentence is going to be?

15 A. No, sir.

16 Q. It's up to the Judge; isn't it?

17 A. Yes, sir.

18 Q. You told the jury the truth, today?

19 A. Yes, sir.

20 Q. Did you tell them what you told the police back on
21 January 9th?

22 A. Yes, sir.

23 Q. Is that the way it went down?

24 A. Yes, sir.

25 Q. Okay, Mr. Johnson. Please, answer any questions Mrs.

1 Gay has for you.

2 THE COURT: All right.

3 Cross-examination, Mrs. Gay?

4 MRS. GAY: One moment, please.

5 THE COURT: Yes, ma'am.

6 CROSS-EXAMINATION

7 BY MRS. GAY:

8 Q. Mr. Johnson, the solicitor, specifically, asked you
9 you don't have any personal knowledge whatsoever about what
10 went down in that poker parlor; do you?

11 A. No, sir -- no, ma'am.

12 Q. And I believe that you -- what you were initially
13 charged with was accessory after the fact of murder. And
14 you're aware and you have knowledge that that actually
15 carries the same penalty as murder; doesn't it?

16 MR. DUTREMBLE: Objection, Your Honor. That's not an
17 accurate statement of the law.

18 MRS. GAY: Accessory after the fact?

19 THE COURT: No. It is not an accurate statement of
20 law. And if you all need law, maybe, you should ask me
21 about it.

22 MRS. GAY: I'm sorry, Your Honor. I'll withdraw the
23 question.

24 BY MRS. GAY:

25 Q. You have been charged with accessory after the fact of

1 murder, but you're being allowed to plead to misprision of
2 a felony?

3 THE COURT: Do you all want to approach?

4 (WHEREUPON, there was an off-the-record bench
5 conference in the presence of the jury but out of the
6 hearing of the jury.)

7 THE COURT: All right. Everyone agrees that accessory
8 after the fact of murder carries up to fifteen years. Does
9 the State stipulate and the defense stipulate and agree to
10 that as a fact?

11 MRS. GAY: Yes.

12 MR. DUTREMBLE: The State will so stipulate, Your
13 Honor.

14 MRS. GAY: I apologize, Your Honor, I was looking at
15 something inaccurately.

16 THE COURT: Let's proceed on.

17 BY MRS. GAY:

18 Q. With regarding to your charge, you were initially
19 charged with something that carried up to fifteen years?

20 A. Yes, ma'am.

21 Q. And now, you're able to plead to something that only
22 carries up to ten years?

23 A. Yes, ma'am.

24 Q. And though, you don't have a deal, you do believe that
25 your testimony here, against Ms. Gilliard, is going to help

1 you in your sentencing?

2 A. Yes, ma'am.

3 MRS. GAY: I have no further questions.

4 THE COURT: Anything else?

5 MR. DUTREMBLE: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. DUTREMBLE:

8 Q. Mr. Johnson, back on January 9th, when you told the
9 police what happened and when you signed this confession
10 that you gave to them, did you have any kind of deal with
11 the Solicitor's Office?

12 A. No, sir.

13 Q. Is what you told them the truth?

14 A. Yes, sir.

15 Q. Without a deal?

16 A. Yes, sir.

17 Q. Thank you, sir

18 THE COURT: Any other questions?

19 MRS. GAY: No, sir.

20 THE COURT: You may step down, sir.

21 All right. Let's take a few minutes.

22 (The witness leaves the witness stand.)

23 Ladies and gentlemen of the jury, if you would,
24 please, don't discuss the case. Step to your jury room for
25 a few minutes.

1 (The jury retires to the jury room.)

2 THE COURT: Looking at 16-1-55 it says if it's felony
3 A, B, C, or murder, then it's up to fifteen years.

4 MRS. GAY: That's what it is, Your Honor. When I was
5 looking at it, I was confused, because it's the same as the
6 substantive offense unless it's murder. And I apologize
7 for that, Your Honor.

8 THE COURT: Well, I thought, it's not the same as
9 substantive offense as A, B, C, or murder is fifteen years
10 -- of a felony A, B, or C.

11 MRS. GAY: Right. In any other case, an accessory
12 after the fact other than those. I apologize. I'm sorry.
13 I wrote it down wrong.

14 THE COURT: Okay. Well, I think everybody's clear --
15 it's clear.

16 Mr. DuTremble, I'm trying to get sort of a handle on
17 the rest of your witnesses. I've got the ones you list,
18 I've got one, two, three, four, five, six, seven -- seven
19 that you have not called. You've called two, four, six,
20 eight, ten witnesses. So the remaining seven which -- are
21 you going to call them all, or not all?

22 MR. DUTREMBLE: No, sir. I'm down to three. And I
23 may be able to get rid of one after conferring with Mrs.
24 Gay, Your Honor.

25 THE COURT: All right. The ones you're definitely not