

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of General Sessions

DEC 08 2015

The Honorable Alison Renee Lee
Circuit Court Judge

SC Court of Appeals

Case No. 2011-GS-4003359

Appellate Case No. 2013-002531

The State, ... Respondent,

v.

Joshua William Porch, ... Appellant.

RECORD ON APPEAL
VOLUME II

Michael J. Anzelmo
SC Bar No. 72933
E-Mail: michael.anzelmo@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201
803.799.2000

Mervin Ashley Alexander Garry
SC Bar No. 100088
E-Mail: ashley.garry@nelsonmullins.com
101 Constitution Avenue, NW / Suite 900
Washington, DC 20001
202.712.2800

Robert M. Dudek
Chief Appellate Defender
South Carolina Commission on Indigent
Defense
Post Office Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorneys for Appellant

Alan Wilson
Attorney General
John W. McIntosh
Chief Duputy Attorney General
Donald J. Zelenka
Senior Assistant Deputy Attorney General
Anthony Mabry
Assistant Attorney General
S.C. Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305

Daniel E. Johnson
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, SC 29202

Attorneys for Respondent

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1 testified as follows:

2 THE CLERK: Have a seat on the witness stand,
3 please.

4 State your name for the record.

5 THE WITNESS: Sherry Tribble.

6 MR. GOINGS: If it please the court?

7 THE COURT: Yes, sir.

8 DIRECT EXAMINATION BY MR. GOINGS:

9 Q. Good morning, Ms. Tribble.

10 How are you?

11 A. Good morning.

12 Q. If you would, please tell the jury where you are
13 currently employed.

14 A. Marathon Staffing.

15 Q. Are you married?

16 A. I am.

17 Q. Whom are you married to?

18 A. Ace Tentyon. Dennis Tentyon.

19 Q. Dennis Tentyon?

20 A. Dennis Tentyon.

21 Q. You call him Ace?

22 A. Right.

23 Q. In 2006, were you and Ace together?

24 A. Yeah.

25 Q. Okay. Were you married at the time?

1 A. No, we were just dating.

2 Q. Okay. When did y'all start dating, do you recall?

3 A. 2005.

4 Q. Okay. So in -- well, I mean--

5 Let me ask you this. You testified twice about what
6 you observed the night and early morning hours of May 14th,
7 2006, correct?

8 A. Right.

9 Q. Okay. You also gave a statement to law enforcement?

10 A. Yes, I did.

11 Q. Okay. Let's first go back to what you can actually
12 recall without looking at your statement. If you need your
13 statement, just let me know, okay?

14 A. Okay.

15 Q. What time did you get home the night of May 13th, or
16 the morning of May 14th, do you recall that?

17 A. To Ace's place, or -- I was just coming back into town,
18 so it was after one.

19 Q. It was after one o'clock in the morning?

20 A. Yes.

21 Q. Was it before two, or --

22 A. It was definitely before two that I got there, yes.

23 Q. All right.

24 A. It was about one.

25 Q. You said that you were coming back into town?

1 A. Into town, yes.

2 Q. From where -- where were you?

3 A. DC. Washington DC.

4 Q. All right. Did you drive up to Washington?

5 A. I did.

6 Q. What time -- do you know what time you left Washington
7 DC?

8 A. No.

9 Q. Okay. But from what you can recall, you arrived to
10 Ace's home or apartment after one o'clock?

11 A. About one o'clock, yes.

12 Q. Okay. Now, Ace lives where at the time?

13 A. He lives in an apartment. I don't remember the -- I
14 don't recall the name of it, but he lives in an apartment --

15 Q. Okay.

16 A. -- off of Alpine.

17 Q. I'm just going to hand you your statement.

18 A. Okay.

19 Q. If you can just review that?

20 A. Okay.

21 Q. Is that the statement that you gave law enforcement?

22 A. Yes.

23 Q. And when is that statement dated, or do you recall when
24 you gave it to law enforcement?

25 A. It says May 16th, so I guess a few days after the

1 incident.

2 Q. And they were asking you what you observed the night or
3 the morning of May 14th, correct?

4 A. Right.

5 Q. Okay. Do you have in that statement the apartment that
6 Ace was living at?

7 A. Right, 314-B.

8 Q. Okay. In relation to the apartments where you observed
9 the activities later on in that morning, give the jury a
10 description of where Ace's apartment is related to that
11 other apartment.

12 A. He lived in the end unit right across from the
13 Mallory's. So going down the street to end units, he lived
14 on the right side. If you were coming into the complex, he
15 lived on the right end unit.

16 Q. Are y'all directly across from the apartment, or --

17 A. Yeah, it's across the way, yeah.

18 Q. Okay. But they are not side by side?

19 A. No, they are not side by side.

20 Q. So there is parking spots --

21 A. Right.

22 Q. -- that separate them?

23 A. Uh-huh.

24 Q. Okay. And just tell the jury what you can recall or
25 what you observed that night.

1 A. We started hearing sounds, muffled sounds at first.
2 They stopped for a few minutes. They started up again.
3 Then it was crying, and then it stopped, and then you heard
4 it again, and then we didn't hear anything, and then you
5 heard a guy's voice. And -- I mean, I'm just giving it
6 really quick. Then you heard a guy's voice. Couldn't
7 understand what he was saying, but then you actually heard
8 him again, and at this point, I mean, I was looking out the
9 window. And -- I mean, you saw someone. You saw a guy run
10 out, and then the van was turned different, but, I mean, it
11 was all, you know, kind of like in succession, but if you
12 were asking like different time frames, then, yes, there
13 were periods of times and gaps.

14 Q. Well, let's break it down.

15 You said the first time that you remember recalled
16 hearing something was a muffled sound?

17 A. It was muffled. I mean, crying, whining, but it was
18 muffled. You couldn't -- I mean, no verbal -- no words
19 coming out, so yes.

20 Q. Okay. Could you tell the gender of the individual?

21 A. I figured female. We figured female. It sound female.

22 Q. And when you say we, who are you talking about?

23 A. Ace, Dennis.

24 Q. Ace and yourself?

25 A. Right.

1 Q. And where are y'all at in Ace's apartment?

2 A. By this time we were in his bedroom. There is a window
3 right there.

4 Q. Okay. And let's go back. When you got to Ace's
5 apartment at one o'clock, was Ace home?

6 A. Yeah, Ace had just gotten there. We had gotten there
7 about the same time, so, yeah, he was home.

8 Q. How long did you stay up before you went to the
9 bedroom?

10 A. We were up -- the bedroom, I'm going to say like thirty
11 minutes later after I got there. So we were in there and
12 then maybe thirty, forty-five minutes later is when I
13 started hearing the sounds, because, you know --

14 Q. Okay. So you started hearing a woman's muffled
15 sound --

16 A. Yes.

17 Q. -- based on the timeline you just gave this jury maybe
18 an hour, hour and a half, after you got home?

19 A. Yeah, about -- yeah -- well, it was like two something,
20 then a few minutes after that, after I looked at the clock,
21 a few minutes later. Not much. I would say within a five
22 minute window gap of looking at that -- the last time I
23 looked at the clock, and then you start hearing the muffled
24 sounds.

25 Q. Do you remember the exact last time that you looked at

1 the clock?

2 A. 2:15, 2:18, something around there.

3 Q. Would it help you if you review your statement?

4 A. Yeah. I just looked at it, yeah.

5 Q. What did you tell law enforcement back then?

6 A. I told them about 2:18.

7 Q. So you told law enforcement the last time that you
8 remember looking at the clock it was 2:18?

9 A. Uh-huh.

10 Q. And how long after that did you hear the woman's
11 muffled moaning sounds, as you described to the jury?

12 A. The first time, just a few minutes. Maybe, you know,
13 two or three minutes. Not long. I mean, I'm just
14 guesstimating now a time, but it wasn't long. It was a very
15 short period of time afterwards.

16 Q. And is that what you relayed to law enforcement?

17 A. Yes.

18 Q. Then you said that there was a break --

19 Or let me ask you this. Did you get out of the bed at
20 that point in time?

21 A. I did, because I was looking out of the window. It
22 sounded like it was right outside the window, but I couldn't
23 see anyone. We didn't see anyone, so -- you know -- and
24 that was the first time.

25 Q. Okay. That was first time?

1 A. That was the first time that I heard it, yes.

2 Q. Okay.

3 A. Yeah.

4 Q. Okay. And then -- I think you just previously
5 described when you gave the brief rundown that there was a
6 break?

7 A. Well, after the first time that I heard it, I didn't
8 see anybody.

9 Then the second time, that's when you actually heard
10 the crying. It definitely was a female then. So then I
11 looked, didn't see anyone, because, again, it sounded like
12 it was someone standing right outside of the apartment. It
13 just sounded too close, so I was looking.

14 I mean, Ace goes to the door and looked outside his
15 actual apartment door. He didn't see anyone. And then you
16 start -- there is a brief silence and then, again, just a
17 few minutes and then you hear another -- her crying, asking
18 questions, but, like I said, I -- we didn't see anybody,
19 so --

20 Q. All right. So you get up, hear a woman's muffling
21 sound that you described for the first time a little bit
22 after 2:18, according to what you can recall in your
23 statement, correct?

24 A. Correct.

25 Q. Okay. There is a break. How long is the break, do you

1 think, before you hear the woman's voice again?

2 A. The second time?

3 Q. Yes.

4 A. It was just a few minutes. Each time in between her
5 speaking was only a few minutes in between her -- actually
6 the muffled groans and then when she was actually crying,
7 and then the third time, you know, there is little break,
8 maybe like two or three minutes, just in between each little
9 period --

10 Q. Okay.

11 A. -- for her speaking now.

12 Q. For her?

13 A. For her..

14 Q. And these first two times, did you ever hear a male's
15 voice?

16 A. No, we just heard her.

17 Q. Okay. And you said that you got up out of the bed the
18 second time that you heard her as well, is that correct?

19 A. Right.

20 Q. So you get up, you hear the muffling --

21 If anything I'm saying is wrong, I'm just trying to
22 paraphrase what you just told us.

23 You get up, you hear the muffling -- I mean you hear
24 the muffling sounds from the woman, you get up, check the
25 windows and didn't see anything?

1 A. Didn't see anything.

2 Q. Okay. Then a couple minutes later, according to your
3 testimony, you hear her again, you get back out of bed?

4 A. Right.

5 Q. What did you do after that?

6 A. Went back to bed after I didn't see anyone the second
7 time.

8 But then when she started saying -- the third time when
9 she started asking "why", then I went back to the window,
10 but I was -- the side that I was on was right there by the
11 window, so it was just a step for me to get up, and, you
12 know, peek out the window.

13 Q. So you were looking out window the bedroom window?

14 A. Right.

15 Q. Okay. And did you observe anything a third time that
16 you got out of bed?

17 A. I didn't see anything. I didn't see anyone. I just
18 heard it.

19 Now, when she started actually asking "why" the third
20 time, I still didn't see anyone.

21 Q. Okay. How long was the break between the second and
22 third time?

23 A. Again, a few minutes. When she was speaking, it was a
24 few minutes. So the first time she started speaking, maybe
25 two or three minutes, then you heard the crying. Then after

1 that another silence for another two or three minutes.
2 Everything was less than five minutes, because I kept
3 getting back up in quick succession. So to tell you exactly
4 two minutes and thirty seconds on the dot, that -- that's
5 crazy, I wouldn't know that, but they were -- you know, they
6 were quick. But after the third time I didn't hear her
7 again and then there was a break in time. I'd call it a
8 short period of time, but, I mean, it was at least a thirty
9 minute time period from the last time I actually heard her
10 asking "why", there was a gap, but you heard her no more
11 after that.

12 Q. Okay. And, in fact, you told law enforcement --

13 How long was the break after the last time that you
14 heard the female voice until you heard another sound?

15 A. I said half an hour to forty-five minutes.

16 Q. Okay. That's contained within your statement?

17 A. Yes.

18 Q. And what did you hear next?

19 A. Then you heard a male voice. It was a grumbling, so --
20 it sounded male, so we assumed it was a male's voice.

21 Q. Okay.

22 A. But, again, at that point I didn't see anybody. You
23 just heard the grumbling or male voice.

24 Q. Coming from the same location?

25 A. Right outside -- yeah, everything sounded like it was

1 right outside. I want to say everything would be on the
2 sidewalk right outside the window, because Ace's bedroom at
3 the time was right there end unit. The sidewalk was right
4 there, so I'm thinking this stuff was going on right
5 outside.

6 Q. And when you got -- did you get out of bed this time?

7 A. Yeah, but I didn't see anybody. Not at that point I
8 didn't see anybody.

9 Q. So even on this occasion when you went to the window
10 you didn't see anybody?

11 A. Not at that time. Just the first grumbling male voice
12 I didn't see anybody.

13 Q. Okay. So you don't know whose voice that was?

14 MR. LUKE SHEALEY: Objection to leading.

15 BY MR. GOINGS:

16 Q. Do you know whose voice that you were hearing?

17 A. No.

18 Q. What's the next thing that you put in your statement or
19 that you can recall?

20 A. Went through this. Yeah, that's exactly what I said.

21 Then you hear -- there is a silence and then there
22 is -- again, I hear a guy talking. This time when I look
23 out I do see somebody.

24 Q. Where do you see this person at?

25 A. They are on the sidewalk, on the opposite sidewalk.

1 Q. In relation to the apartment where the murder took
2 place, where is it?

3 A. It's right in front of the Mallory residence. So their
4 end unit, that whole apartment.

5 Our apartment -- well, Ace's apartment was across from
6 theirs, so this is us on our side, that's them on their
7 side.

8 Q. Okay. And where do you -- you said you saw this
9 individual specifically?

10 A. Right. It was under the lamp post. There is a lamp
11 post right there.

12 Q. Now, what was this person doing?

13 A. Now, at this time they were --

14 Well, let me start at the beginning from when I first
15 saw them. When I looked out of the window they were I guess
16 I want to say jogging or walking over to and then they
17 stopped. They just stopped, but -- as if -- you know, they
18 were just -- I don't know. Like you have been running and
19 you are out of breath and you just kind of hunched over a
20 little bit. They were breathing and then they were, you
21 know, just hysterical. They were just, you know, talking,
22 saying -- at first you couldn't -- I couldn't understand,
23 but then he just kept saying "look what you," and "see what
24 you", and, you know, just crying and hysterical. So he was
25 up underneath the lamp post. He was saying that. Then he

1 went to the driver's side.

2 And at this time a van was parked -- the van was open
3 and parked differently than what it was, because at first
4 when I looked out, again, I didn't see anybody. I never saw
5 anything. Everything looked in order. But this time when
6 he came out, the van was parked already sideways
7 catty-corner and the doors were open, the driver's side and
8 the passenger side --

9 Q. Okay.

10 A. -- doors were open.

11 Q. Let's break that down a little bit. All right.

12 After one's muffled or break, you hear it again,
13 another break, you hear it for a third time and then there
14 is a long break, according to your testimony, until you hear
15 the man, is that correct?

16 A. Right. Well, thirty minutes until you hear the guy's
17 voice, yeah. It's a significant break, yeah.

18 Q. All right. And then there is another break and you
19 hear the male again?

20 A. Right.

21 Q. Or a male again?

22 A. A male again.

23 Q. You look out the window and you see a person under the
24 street light?

25 A. Right. They had just jogged out and stopped right

1 there, yes.

2 Q. And you described that the van was catty-corner with
3 the doors open?

4 A. Right.

5 Q. Okay. Did you see the man ever move or drive the van
6 up?

7 A. No. After we first heard the grumbling, everything
8 was -- like I said, I looked outside and nothing was out of
9 order, or nothing seemed out of order. When I saw him
10 actually running out, the van had been moved and the doors
11 were open.

12 Q. Okay. And you said that he was out of -- it looked
13 like he was out of breath?

14 A. I mean, he was hysterical, crying, but, you know,
15 without knowing what that looks like, he's hysterical, he's
16 crying. He just jogged from I'm guessing the doorway,
17 because all I saw him was jogging. And with the van right
18 there, I can't tell if it -- it was dark in the doorway. He
19 jogged out and he stopped in the stop light -- I mean under
20 the lamp light, and then he was crying. He was "uhh," and
21 "look what you made me" -- you know, he was just doing that,
22 so --

23 Q. And you testified at the first trial for Mallory --
24 against Mallory, is that correct?

25 A. Yes, sir.

1 Q. Do you remember being questioned by Solicitor Meadors?

2 A. Yes.

3 Q. And he specifically asked you the comments that you
4 heard the individual, the male, that you observed at the van
5 making?

6 A. Right.

7 Q. What did you tell the court at that time?

8 A. He was asking like -- well, at first they were
9 incomplete sentences. He was like "look what you", and "see
10 what you did," or "see what you made me do," and "look", and
11 "why." And then the last statement was "look what you made
12 me do," or -- and that was it. He just stopped. Like I
13 said, he was crying. He was hysterical and he just -- that
14 was it.

15 Q. Okay. And that's what you testified to?

16 A. That's what I told him.

17 Q. Is that what you remember hearing?

18 A. Because that's what I heard, yeah.

19 Q. And I don't believe in your statement you ever
20 identified the person that --

21 MR. LUKE SHEALEY: Objection as to the leading.

22 THE COURT: Rephrase the question.

23 Sustain the objection.

24 BY MR. GOINGS:

25 Q. When law enforcement first spoke with you, did you ever

1 identify the individual that you saw?

2 A. No. At the time I didn't -- no.

3 Q. Were you later able to identify?

4 A. Later, yeah, but not -- initially not -- I didn't
5 identify anybody because I didn't know anything.

6 When I left that morning, I saw the cops there, but we
7 still had no clue, no idea what happened. It wasn't until a
8 few hours later that we were actually told that situation
9 happened, so we didn't even know it at the time.

10 Q. Okay. And I believe you identified him at the trial,
11 is that correct?

12 A. Later, yeah, that's right.

13 Q. And who did you identify as the individual that you
14 saw?

15 A. Justin Mallory.

16 Q. Okay. And that would be the individual by the white
17 van?

18 A. That would be, yes.

19 Q. When -- okay. Where was the van at the time that you
20 were able to actually see the person and base your identity
21 off of that?

22 A. Well, now, the first time I saw him like when he jogged
23 out and I actually got a clear view.

24 Q. Uh-huh.

25 A. The van was turned already and that was him.

1 Q. Okay. And on this particular occasion is that the only
2 time that you saw that male?

3 A. I had seen him before. I just didn't know them. I
4 didn't know of any of his neighbors.

5 Q. That morning?

6 A. That morning, yeah, that was the only time that I saw
7 him when he jogged out.

8 Q. Okay. Did you see him take anything to the van?

9 A. I didn't see him take anything, no.

10 Q. Okay.

11 A. I just saw him walk from one side of the van to the
12 other, and, of course, jog out -- well, jog out right in
13 front of the lamp post. That was it.

14 Q. Okay. And what color was the van?

15 A. The van was white.

16 Q. Okay. Now, obviously you gave a bunch time frames.
17 You gave the time frame to law enforcement in your first
18 statement, is that correct?

19 A. Yeah, initially he just told me to run through it and
20 then he would go back, stop, start, stop, start.

21 Q. You just testified about the time frame to this jury,
22 is that correct?

23 A. Yes.

24 Q. Is that the time frame that you best can remember?

25 A. As best I can remember, yeah, but --

1 Q. And I'm asking you this, because I just want to know.
2 When you are with Ace in the bedroom, I know you said the
3 last time that you remember looking at the clock was 2:18,
4 correct?

5 A. Right.

6 Q. When you are getting up and down out of the bed, do you
7 have a stopwatch on it or anything?

8 A. No.

9 Q. Do you remember looking at the clock any more that
10 morning while these incidents are taking place?

11 A. No, the last time was probably actually going to bed,
12 and that was like briefly, because I knew I had to be up in
13 a few hours, so no.

14 Q. Okay. So even those times that you gave to law
15 enforcement, are these exact times?

16 A. No, just approximations, as I told him this happened
17 between this time. And like I said, I could be a few
18 minutes off here or there, but I didn't want to, you know,
19 to just say oh, it was definitely five minutes, because I
20 wasn't timing it. You know, I didn't think anything of it
21 at the time, so --

22 Q. So when you gave a statement to law enforcement, your
23 testimony is that those are just estimations?

24 MR. LUKE SHEALEY: Objection to leading.

25 THE COURT: Sustained.

1 BY MR. GOINGS:

2 Q. Are they exact times?

3 A. They are not -- no, I wouldn't say they are exact
4 times, because they are estimations.

5 Q. Okay.

6 MR. GOINGS: Beg the court's indulgence.

7 (Off the record).

8 (Back on the record)

9 MR. GOINGS: I believe that is all the questions
10 that I have, Your Honor.

11 THE COURT: Any cross?

12 MR. LUKE SHEALEY: Yes, ma'am.

13 May it please the court?

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION BY MR. LUKE SHEALEY:

16 Q. Good morning, Ms. Tribble.

17 How are you?

18 A. Good morning. Good.

19 Q. I'm Luke Shealey with the Shealey Law Firm. I'm one of
20 the lawyers for Mr. Porch, and I just want to thank you for
21 being here and responding to our subpoena and the
22 government's subpoena.

23 Like you said, you have testified twice already to
24 this, correct?

25 A. Given a statement, yes.

1 Q. And that was at the direction of Mr. John Meadors. Do
2 you remember that?

3 A. Yes.

4 Q. And he was the deputy solicitor for this Richland
5 County solicitor's office, right?

6 A. Yes, sir.

7 Q. And he would have met with you numerous times about
8 your testimony and you reviewed your statements and all
9 that, right?

10 A. I reviewed my statements, yes.

11 Q. Okay. And did you meet with Mr. Cary Goings at all to
12 talk about your testimony today?

13 A. No, I just talked with Cary over the phone.

14 Q. Now, do you still have a copy of your statement up
15 there that Mr. Goings gave you?

16 A. From the police, yes.

17 Q. Okay. I want to talk to you about that, and I'm going
18 to hand you this. This is a copy of your sworn transcript
19 from your last trial.

20 A. Uh-huh.

21 Q. And if you don't need it, you don't need it, but
22 sometimes we might go through it, if it can help you, okay?

23 Now, a little bit about yourself, and I think it's
24 important so the jury can know a little bit about who you
25 are.

1 Tell the jury where you are from. You are from
2 Columbia, right?

3 A. I am from Columbia, yes.

4 Q. And I think you mentioned now that you are married to
5 Mr. Tentyon?

6 A. Yes.

7 Q. You now have a child, correct?

8 A. Two.

9 Q. Two children.

10 Tell them about your education. You are a pretty smart
11 lady, right?

12 A. I did go to school, yes.

13 Q. Well, what struck me is -- tell them where you went
14 want to college.

15 A. Embry-Riddle Aeronautical University.

16 Q. Okay. And what degree did you get?

17 A. Aerospace engineering.

18 Q. Okay. Aerospace engineering.

19 A. Yes.

20 Q. All right, that's just what impressed me, so I wanted
21 to know that.

22 And at some point you moved back to --

23 A. Columbia, yes.

24 Q. And you have been living here and working ever since?

25 A. Yes.

1 Q. And you are current job is what?

2 A. I'm HR coordinator for Marathon Staffing. I handle HR
3 for Columbia.

4 Q. Okay. But back on the early morning hours of Mother's
5 Day, 2006, at that time Mr. Tentyon was just your fiance?

6 A. Right. Well, boyfriend.

7 Q. Boyfriend, okay.

8 And I believe that you were spending the night at his
9 apartment, correct?

10 A. Yes.

11 Q. You had just come from out of town, I think Washington
12 DC you said?

13 A. Yes.

14 Q. And his apartment, I think you just testified to, was
15 in the Hunters Mill Apartment Complex?

16 A. Okay, yes.

17 Q. It was building 314, and I think you said it was B?

18 A. B, yes.

19 Q. Okay. And so --

20 Now, this is real important, because the jury needs to
21 understand this timeline, and I know it's been seven years
22 since you witnessed all this, right?

23 A. Yes.

24 Q. Okay. You got a statement in front of you that you
25 gave to law enforcement two days after it happened, right?

1 A. Right.

2 Q. So that statement, you agree, it was fresh in your
3 mind, you are trying to help police as best as you
4 absolutely could, correct?

5 A. Yes.

6 Q. That statement is the truth, right?

7 A. Yes.

8 Q. Okay. And then -- and then later you testified at two
9 trials. And every time you testified, you put your hand on
10 the Bible and swore to tell the truth there as well?

11 A. Yes.

12 Q. Okay. So that that testimony that I presented you as
13 well, that's the truth, right?

14 A. Yes.

15 Q. Okay. Now, I think what I heard, which I want to
16 question you about, was a little bit about the timeline, and
17 it will be relatively brief, about when you started hearing
18 these argument-type voices.

19 A. Right.

20 Q. Okay. If you will look at the vary top of your
21 statement, it says "I was over at my boyfriend's apartment,"
22 correct?

23 A. Correct.

24 Q. You stayed at his apartment 314-B. His name is Dennis,
25 right?

1 A. Right.

2 Q. I noted it was after 2:18 a.m. was the last time that
3 you looked at the clock, right?

4 A. Right.

5 Q. "We were up talking in bed for about a half an hour to
6 forty-five minutes later I heard a female's voice," right?

7 A. That's what it says, but not like that. We were up
8 talking in bed for about a half an hour or forty-five
9 minutes later. That's why when he asked me what time did we
10 go to the back of the bedroom, he just told me to talk. He
11 just -- lay out my statement. So it wasn't half an hour,
12 forty-five minutes later I heard the female's voice. It
13 says "I was in bed talking for about a half an hour,
14 forty-five minutes. Later I heard the female's voice."

15 Q. Just correct me if I'm wrong, it's a statement --

16 A. Right, but it's all run together reading what I said.
17 When he read it back to me, I said correct, because that is
18 what happened.

19 Q. It says "we were up talking in bed about a half hour --

20 A. Forty-five minutes.

21 Q. -- forty-five minutes later I heard a female's voice."

22 A. It says "later I heard a female's voice," yes.

23 Q. So we are talking about later from the 2:18 mark?

24 A. No, no, no. From the 2:18 mark it's just a few
25 minutes. We were up in bed talking. About a half hour,

1 forty-five minutes later I heard a female's voice.

2 Q. Okay.

3 MR. LUKE SHEALEY: Your Honor --

4 BY MR. LUKE SHEALEY:

5 Q. May I see this statement, please?

6 A. Right there.

7 MR. SHEALEY: Can I have this marked, please?

8 (Sherry Tribble's Written Statement marked as
9 Defendant's Exhibit No. 9 for identification)

10 BY MR. LUKE SHEALEY:

11 Q. But you agree this is your statement?

12 A. Yes, that's my statement.

13 Q. That's your signature there?

14 A. That is.

15 MR. LUKE SHEALEY: Your Honor, at this time I
16 would seek to introduce this prior inconsistent statement
17 into evidence under Rule 613, prior statements of witness,
18 (b), under extrinsic evidence, and that provision does not
19 apply to admissions of a party-opponent. So I think she
20 isn't a party opponent put up by the State. This is now a
21 prior inconsistent statement. She says she disagrees with
22 the statement.

23 A. I don't disagree with it. I think just the way you
24 said it, or read it, or whatnot, but I have never been asked
25 about that.

1 BY MR. LUKE SHEALEY:

2 Q. This is just argument to the judge.

3 A. Oh, okay.

4 THE COURT: Counsel approach, please.

5 (Whereupon, the lawyers approached the bench for
6 an off-the-record discussion)

7 MR. LUKE SHEALEY: Thank you, judge.

8 BY MR. SHEALEY:

9 Q. I will give this back to you.

10 A. Thank you.

11 Q. Again, just to touch on that point.

12 Right at that same sentence, you agreed that the words
13 that are in this statement, which you signed -- and you
14 agree you signed this statement?

15 A. Uh-huh.

16 Q. And at the very bottom, right here, it says "I make the
17 statement of my own free will and accord without reward or
18 intimidation," right?

19 A. Right.

20 Q. "And all the above is the truth, the whole truth, and
21 nothing but the truth," correct?

22 A. Right, I talked and he typed.

23 Q. Okay.

24 A. Then he read it back to me and I signed it.

25 Q. Right.

1 So you got a chance to read over it before you signed
2 it?

3 A. No, he read it to me and I signed it, yes.

4 Q. And if he had read something to you that you disagree
5 with, you would have told him, right?

6 A. Right.

7 Q. So, again, getting back to that second sentence, "we
8 were up -- "we were up talking in bed about -- "we were up
9 talking in bed about a half hour - forty-five minutes later
10 I heard a female's voice"?

11 A. Right.

12 Q. That's what this statement says, correct?

13 A. Right, but when I'm talking and I'm saying that, we
14 were up in bed talking, because he just asked me to speak
15 and he typed and then he read it back to me, so, yes.

16 Q. Right.

17 So you agree with that?

18 A. Right, yeah, I agreed with that.

19 Q. Looked at a clock 2:18, thirty minutes to forty-five
20 minutes later you hear the voices?

21 A. No, I did not hear voices half an hour or forty-five
22 minutes later.

23 Maybe it's because of the way I was talking and he read
24 it, but when he said it back to me, it was like I told it to
25 him, so -- but you are just reading what's typed, and I'm

1 telling you I remember, because we didn't go back to the
2 bedroom right away. It was like 1:30. 2:18, that puts it
3 in that time frame, but I know 1:30 is when we went -- about
4 that time is when we went back, because I was showing him
5 all the things that I had brought back, so we didn't go
6 directly back to the bedroom right away.

7 Q. Okay. We can set that part aside where you and I can
8 disagree on that one.

9 A. Yes, we will.

10 Q. All right. Let's keep going.

11 I want to talk to you about your past testimony.

12 Now, you agree, and you agreed with Mr. Goings, that at
13 some point you hear some type of argument and some type of
14 female crying, correct?

15 A. Crying, yes. A mumbling and groaning, yes.

16 Q. And you look outside in this bedroom window that you
17 are looking out in your boyfriend-at-the-time's apartment is
18 directly across from the Mallory's?

19 A. Right.

20 Q. Okay. Now, you agree that it sounded very close,
21 right?

22 A. I do, yes.

23 Q. And when you look outside and you see it sounding very
24 close, you noticed a few things outside, correct?

25 A. Like what?

1 Q. Well, you noticed a white van outside?

2 A. Yes, I noticed that van, yeah, because it was parked.

3 Q. And this is when you hear the female being upset?

4 A. Well, at this time everything, like I said, was in
5 order. I didn't see anything out of order when I started
6 hearing the cries. I just kept looking outside.

7 Q. But while you were looking you see the van there?

8 A. Yeah, the van was there, yes.

9 Q. Okay. And --

10 MR. LUKE SHEALEY: May I approach, judge?

11 THE COURT: Yes, sir.

12 BY MR. LUKE SHEALEY:

13 Q. This is what's been marked as Defendant's Exhibit 5.

14 That's the white van that you saw, right?

15 A. Well, from the back, I guess. I'm going to say yes.

16 It's been a long time, but I'm guessing it's the van.

17 Q. Right.

18 And you probably have been shown pictures of the white
19 van before in the past trials?

20 A. In the past trials, one picture, yeah.

21 Q. Okay. And that looks like the white van to you that
22 you saw that night?

23 A. I will say yes.

24 Q. Okay.

25 MR. LUKE SHEALEY: Permission to publish, judge?

1 THE COURT: Yes.

2 BY MR. LUKE SHEALEY:

3 Q. And while the arguments first started and the van was
4 there. You told us that, correct?

5 A. Yes..

6 Q. All right. Now, this van -- I think you said you
7 recognized this van. You have seen it before from your time
8 at Ace's place?

9 A. Right.

10 Q. Okay. Now, let me ask you about this. Right after you
11 hear this female voice crying --

12 A. Uh-huh.

13 Q. -- you hear a male voice, not distinct words, but a
14 gruffled male voice at the same time in that crying?

15 A. No, not when she was crying. They never -- they never
16 talked and grumbled at the same time. It was always her
17 initially, and then there was a period of silence, and then
18 it was him. It was never at the same time.

19 Q. All right..

20 Turn, please, in your transcript, a page of your sworn
21 testimony --

22 A. Yes.

23 Q. -- to page 762. Let's go to line 16.

24 And correct me if I'm wrong, and I'll just run through
25 this. "You started hearing some sounds, muffled sounds at

1 first. Then it was a female's voice. She was crying. I
2 personally couldn't tell what it was, but it sounded like
3 she was crying and then it stopped periodically."

4 That's your testimony, correct?

5 A. Right.

6 Q. "Then you heard it again. We thought it was like right
7 outside the bedroom. Well, somebody right outside. It was
8 just -- the sound was just that close," right?

9 A. Right.

10 Q. "We looked outside. There was no light that we saw.
11 We heard it again, the same voice crying, and didn't know
12 who it was," right?

13 A. Right.

14 Q. "But after that stopped periodically, then we heard a
15 male's voice," correct?

16 A. Right, after the female's voice, yeah, but it was never
17 at the same time.

18 Q. Right.

19 "And from that point on we never heard the female's
20 voice again," correct?

21 A. Correct.

22 Q. Okay. And we have already established it was all the
23 while while that white van was there, correct?

24 A. Right.

25 Q. And you remember specifically the female voice and you

1 testified saying "why? How could you?"

2 A. "Why," right, that was it.

3 Q. Correct.

4 And you also testified to Mr. Meadors and to those
5 juries about the context of that argument, right?

6 A. Well, he asked me what I thought it was, yes.

7 Q. Right.

8 And your -- we have already talked about your training
9 and education. You are a very smart woman, right?

10 A. (No response).

11 Q. But you agree that you are a smart woman?

12 A. I would say decently so, yes.

13 Q. And you have life experience, right?

14 A. Yes.

15 Q. And, in your opinion, the argument was about cheating,
16 correct?

17 A. Yeah, I thought something -- something domestic,
18 boyfriend-girlfriend squabble. You know, that's what I
19 thought it was.

20 Q. Right.

21 And you put that in your statement, correct?

22 A. Right.

23 Q. That's in your statement. It's now in evidence as
24 cheating, and you testified about that at the last trials?

25 A. Right.

1 Q. Okay. I would like you to turn to page 765. We will
2 get to some more stuff.

3 So, after the female's voice and then the gruffled
4 male's voice, and the female voice saying "how could you,"
5 there was a period of time when all that stopped?

6 A. No, no. He never talked initially when she -- it was
7 all her. It was just grumbling. It was still a female,
8 thought. Then she was sobbing. And then the third time is
9 when she was asking the question "why? How could you?"
10 Then later it was the male's voice. It was never male or
11 female, male female, it would go like that.

12 Q. All right.

13 A. Once I heard her no more, later you heard him.

14 Q. Okay. Later you hear him --

15 And, I'm sorry, I was just looking at this transcript.

16 If you will turn with me to the top of page 765?

17 A. Uh-huh.

18 Q. You might want to look at the bottom of 764. The
19 bottom of 764, line 22.

20 A. Uh-huh.

21 Q. "I'm referring to the male voice."

22 And actually 18, "he's ranting and raving and saying
23 'look what you made me and see why.' And then finally comes
24 out 'look what you made me do'," right?

25 A. Right. That was his last statement.

1 Q. And you testified that was the only complete sentence
2 that you heard of that person?

3 A. Right.

4 Q. And you are asked by Mr. Meadors on line 25, "that was
5 the male voice?"

6 And on the next page you say "yes."

7 And that was shortly after five or ten minutes after
8 the first incident, correct?

9 A. The first incident of him grumbling, yeah. When you
10 just heard the male voice, but you didn't -- I didn't see
11 anybody the first time, because that's my second time seeing
12 him. Well, that's the second time when I saw him. The
13 first time I looked, you just heard the male voice, but I
14 didn't see anybody. When I looked out again, that's when he
15 had run and he was under the lamp post. That's when he was
16 making that comment.

17 Q. Okay. And, again, you mentioned the lamp post. You
18 had -- your vision was not obscured that night?

19 A. (Shaking head no).

20 Q. This was kind of taking place under a lamp post, so you
21 could see the white van?

22 A. Right.

23 Q. Where you then heard the female voice and the muffled
24 male voice, the female saying "how could you," right?

25 A. Right.

1 Q. And the argument that you described as about cheating,
2 right?

3 A. Well, he asked me what my opinion of what they were
4 discussing was and I said domestic -- or domestic issues,
5 cheating, boyfriend-girlfriend stuff. "You know, how could
6 you do that?" I was just thinking, you know.

7 Q. That's all I'm asking you for.

8 A. Right.

9 Q. Just from your life experiences.

10 And then you hear a noise, right?

11 A. At which point? Which one?

12 Q. You are looking out the window and you hear a noise and
13 you are worried about your car. Do you remember saying
14 that?

15 A. Well, yeah, because I'm thinking it was right outside.
16 But once I heard that noise, that's what I'm thinking, okay,
17 I don't want anybody damaging my car. You know, if I'm
18 thinking they are squabbling, then yeah.

19 Q. At first the white van was parked kind of in a normal
20 parking place, right?

21 A. Right, it was in a parking space.

22 Q. Where you had seen it parked in the past?

23 A. Right.

24 Q. Okay. But now after hearing that noise and you looked
25 out, it's pulled up catty-corner?

1 A. Yeah, it was --

2 Q. Right?

3 A. Yeah, when I actually looked out, that's when I saw
4 him, yes.

5 Q. Kind of closer to that area near the Mallory's
6 apartment?

7 A. Right.

8 Q. And the door is wide open?

9 A. Both sides, yes.

10 Q. Okay. And it's at this point that you look out and you
11 see a man running out to the van?

12 A. Right.

13 Q. And he is saying "look what you made me do?"

14 A. "Well, look what you", "see what you". He wasn't -- he
15 wasn't finishing any particular statement. It was just like
16 he was out of breath saying things and then the last actual
17 complete statement was "look at what you made me do." That
18 was his only actually complete sentence.

19 Q. Okay. Just so we are clear, and so the jury is clear,
20 page 766, lines 3 and 4, when you were asked about the
21 phrase "look what you made me do," and then the answer
22 "yeah. He had just said that, yeah."

23 A. Right.

24 Q. Right?

25 A. That's his last statement, yes.

1 Q. There is no disputing that that man that you saw run to
2 that car said "look what you made --

3 A. Right.

4 Q. -- me do."

5 A. Yeah, that's the only complete sentence after, yes.

6 Q. Right.

7 And the rest was ranting and raving?

8 A. Yeah.

9 Q. All right. Now, you testified in the past two trials,
10 and in the last one, in particular, we got an idea of who
11 this man was, right?

12 A. Right.

13 Q. And like you said, there was a light out there, so you
14 had a good unobscured vision, correct?

15 A. Right.

16 Q. And you testified that you recognized that man out
17 there as well?

18 A. I did.

19 Q. Okay. And the person that you recognized running to
20 his van and saying "look what you made me do," you testified
21 was Justin Mallory?

22 A. Right, after learning that it was who he was, yes.

23 Q. Right.

24 And at some point during the whole investigation,
25 that's a long time ago, you had lots of police, private

1 investigators, everybody is coming to talk to you, right?

2 A. Yes.

3 Q. And you are aware that you are an important witness in
4 this case, right?

5 A. I didn't think so, but apparently.

6 Q. Okay. At some point Mr. Mallory's investigator came
7 and talked to you, right?

8 A. Yes.

9 Q. And do you remember his name being Sydney Graham?

10 A. That was -- Sydney Graham was Finney's investigator.

11 Q. Right. Do you remember Mr. Finney being the lawyer for
12 Mr. Mallory?

13 A. Right.

14 Q. And Mr. Graham being Mr. Finney's investigator?

15 A. Investigator, yeah.

16 Q. Do you remember talking to him a couple of times,
17 right?

18 A. Yeah. Yeah, different times.

19 Q. And you told him as well that you recognized the man
20 out there that night being Justin Mallory?

21 A. Right.

22 Q. Then that came out at trial -- at the last trial in
23 2008, right?

24 A. Yeah.

25 Q. Okay. And there is couple of things as well that you

1 remembered that I want to get to about the man that night
2 that you ID'd as Justin Mallory.

3 A. Uh-huh.

4 Q. Just for the record, do you see him in court today?

5 A. Yes.

6 Q. Is that him right there?

7 A. Yes, that's Justin.

8 Q. Okay. The man that you saw that night saying "look
9 what you made me do"?

10 A. The same guy, yes.

11 Q. The man whose van was there the whole time during this
12 argument?

13 A. Yes.

14 Q. Okay. And you remembered a couple of things about what
15 he was wearing that night?

16 A. Right.

17 Q. Correct?

18 A. Yes.

19 Q. Do you remember him wearing a hat?

20 A. Yes.

21 Q. Do you remember him wearing a dark colored jacket?

22 A. Correct.

23 Q. And you are not friends or family with Justin Mallory,
24 right?

25 A. No.

1 Q. You are not friends or family with Josh Porch, are you?

2 A. No.

3 Q. You are just the girlfriend at the time who happened to
4 be in a position to observe something terrible, right?

5 A. Right.

6 Q. Okay.

7 MR. LUKE SHEALEY: Beg the court's indulgence.

8 (Off the record)

9 (Back on the record)

10 BY MR. LUKE SHEALEY:

11 Q. Thank you, Ms. Tribble.

12 MR. LUKE SHEALEY: Nothing further at this point.

13 THE COURT: Any redirect?

14 MR. GOINGS: Yes, ma'am, Your Honor.

15 If it please the court?

16 REDIRECT EXAMINATION BY MR. GOINGS:

17 Q. Ms. Tribble, I want to go over a few things that you
18 were asked on cross, okay?

19 A. Okay.

20 Q. And specifically you were crossed on your statement
21 about the part where you put thirty to forty-five minutes
22 later, is that correct?

23 A. Right.

24 Q. Do you have it?

25 A. Yes.

1 Q. Okay. Your testimony here today, though, is that
2 thirty to forty-five minutes means what?

3 A. That was from the time that when I say we were up
4 talking in bed, because I went back there I want to say
5 about a half an hour after I got to his apartment. So
6 thirty, forty-five minutes later. I didn't know exactly
7 what time, but I do know after the 2:18 time is when -- a
8 few minutes after that is when I started hearing the voices.
9 It wasn't a whole thirty, forty-five minutes from 2:18 that
10 the voices started, no.

11 Q. And, again, you are not back there with a stopwatch
12 clocking each of these things that you are hearing that
13 night?

14 MR. LUKE SHEALEY: Objection to the leading,
15 judge.

16 THE COURT: Don't lead.

17 BY MR. GOINGS:

18 Q. Do you have a stopwatch --

19 A. No.

20 Q. -- marking down the time as you go?

21 A. No.

22 Q. Do you even know it was going to be this serious when
23 you were observing it?

24 A. No.

25 Q. And you had just gotten home from DC with your

1 boyfriend?

2 A. Well, I was the only one there.

3 Q. You came to your boyfriend's house when you returned
4 home from DC?

5 A. Right.

6 Q. And your testimony here today is that after 2:18, it
7 was short thereafter that you first heard something?

8 A. Right.

9 Q. Then a break, you hear the woman again?

10 A. Yeah, a very short break, a few minutes, then you hear
11 her again. Another short break, you hear her again. We
12 only heard her three times.

13 Q. And at no point in time are you hearing the --

14 MR. LUKE SHEALEY: Objection to the leading.

15 BY MR. GOINGS:

16 Q. Do you ever hear a male's voice while you are --

17 MR. LUKE SHEALEY: Objection to the leading.

18 MR. GOINGS: How is it leading?

19 MR. LUKE SHEALEY: I haven't heard a ruling on my
20 objection.

21 THE COURT: Rephrase the question.

22 The second question is not leading, so I'll allow
23 him to ask the question.

24 MR. LUKE SHEALEY: Thank you.

25 BY MR. GOINGS:

1 Q. Do you ever hear a male's voice with the woman?

2 A. No. Not with the woman, no.

3 Q. Then what happens next after the woman?

4 A. After the woman, a period of silence, and then you hear
5 a male's voice later. It's grumbling. We took it as a
6 male. Then after you hear grumbling, another silence and
7 then that's when I heard the noise and I went looking out
8 the window again and that's when I actually saw the male
9 this time.

10 Q. Where was the van at that point in time?

11 A. The van was turned catty-corner. It wasn't parked
12 pulled into the space any more. It was turned and the doors
13 were open.

14 Q. And that's when you identified Justin Mallory?

15 A. That is.

16 Q. And prior to that you didn't see Mr. Mallory?

17 A. No, I didn't see anybody.

18 Q. Okay. And prior to that, the times that you were
19 looking out the window, was the van in front of the
20 apartment?

21 A. Yeah, it was pulled into a space, yes, parking space.

22 Q. Was it this catty-corner, like you described it?

23 A. No.

24 Q. So the time that you only seen Mallory, where is the
25 van?

1 A. The time that I seen him, the van is already turned
2 with the doors open. That's the -- that's the time that I
3 saw him.

4 Q. Okay. Did you ever see the van leave?

5 A. Well, I saw it -- as it was pulling off and gone, yes,
6 but I didn't see anybody cranking it up or doing any of
7 that. I just --

8 After I saw him ranting and raving, I turned back to
9 Ace and I was telling him "oh, look, you know, some other
10 drama," and I was relaying the information to Ace, so I had
11 to turn back to the window. When I turned back to the
12 window, the van had pulled off, so I didn't see who got in
13 the car and drove off, no, but I saw the taillights as it
14 was leaving the end of it.

15 Q. So my next question to you is are we talking about
16 seconds, minutes, or longer that you see Mr. Mallory --

17 A. Uh-huh.

18 Q. -- and then the van drives off?

19 A. I don't want to tell you it was ten seconds.

20 After I saw him saying what he was saying and the doors
21 opened, I turned around and I was talking to Ace. I can't
22 tell you it was thirty seconds. I wouldn't guess it was a
23 long period of time, because I was still standing at the
24 window and then I peeked right back out and the van had
25 pulled off, so I'm guessing very -- seconds to a few

1 minutes, I don't know.

2 Q. And during this observation with Mr. Mallory, you are
3 assuming he's making these statements?

4 A. Right.

5 Q. That you were asked about?

6 A. Right.

7 Q. And I believe your testimony he appeared to be upset,
8 is that correct?

9 A. Yeah, he definitely looked upset.

10 Q. Okay. You were also asked about where you saw the van
11 the first time that you looked out the window, is that
12 correct?

13 A. Right.

14 Q. And what was your testimony with regard to that?

15 A. It was parked. It was pulled into a space.

16 Q. Now, did you notice that van prior to the woman, the
17 muffled sounds from the woman?

18 A. Well, when I looked out, you just surveyed the few cars
19 in the parking lot, like I said, everything looked fine,
20 normal. I saw the van. It was pulled in, I mean, but I
21 didn't have any reason to suspect anything was out of order,
22 so -- it was pulled in.

23 Q. Okay.

24 MR. GOINGS: Beg the court's indulgence.

25 (Off the record)

1 (Back on the record)

2 BY MR. GOINGS:

3 Q. Let me ask you, where was your car in relation to the
4 van? Not when it was catty-corrner, but where it was
5 parked?

6 A. My car was -- where the window is, there are a few
7 spaces that go beyond I guess Ace's apartment building down
8 in -- mine was parked at the very -- not the very end, but
9 where his window is, parked right in front.

10 Q. So very -- and I don't have a picture, but it's at the
11 very end of the apartment?

12 A. Well, yes, a few spaces -- I want to say maybe they
13 were like -- where his building ends, where that window I
14 was looking out, where it is, I was parked right in front of
15 that, but there was some additional spaces --

16 Q. Okay.

17 A. -- in there.

18 Q. And just for the jury, and I don't know if it is -- is
19 these two-story buildings, or is this one story?

20 A. No, they were -- I mean, each apartment was just one
21 level, but I think they were two stories.

22 Q. Was ace was on the bottom or the top?

23 A. Ace was on the bottom.

24 Q. So when you look out the window, you could see your
25 car?

1 A. Right.

2 Q. Okay. And you saw the van when you looked out for the
3 first time?

4 A. I know when I looked out and the van was parked. I
5 can't tell you what time it came there, if it was there. I
6 know when I looked out the window it was there.

7 Q. But the first time that you saw Mr. Mallory with the
8 van, it was catty-corner to the apartment?

9 A. Right, that's the only time I saw him, when he came
10 running out and I could see him underneath the lamp, yes.

11 Q. And that was shortly before the van left?

12 A. That was shortly before the van left.

13 Q. Okay.

14 (Off the record)

15 (Back on the record)

16 MR. GOINGS: No further questions, Your Honor.

17 MR. LUKE SHEALEY: Just briefly, judge.

18 THE COURT: Yes, sir.

19 RECROSS EXAMINATION BY MR. LUKE SHEALEY:

20 Q. I know this seems like we are asking a lot of the same
21 stuff, but, again, you looked out your window that night
22 because of the domestic something going on, correct?

23 A. Right.

24 Q. And when you did take that first look, this van was out
25 there parked in the usual spot?

1 A. Well, yeah, there were a couple of usual spots, but,
2 yeah, pulled up behind me, yes.

3 Q. And you testified that you recognized this van from
4 your time out there at those apartments?

5 A. Right, I knew that was their van, yes.

6 Q. And then you began to hear the argument, the "how could
7 you", and then later Mr. Mallory saying "look what you made
8 me do?"

9 A. I mean, it was parked. Once I heard a noise and I kept
10 peeking out of the window, it was there since I started
11 peeking out. Let's just say that.

12 Q. It was there. We have established that.

13 And then after the argument continued to progress, we
14 heard a female saying "how could you," right?

15 A. Uh-huh.

16 Q. And then you identified Mr. Mallory running out saying
17 "look what you made me do?"

18 A. Right, at the end, yeah.

19 Q. Okay. All the while while the van has been there the
20 entire time?

21 A. Once we looked out, yes.

22 Q. Thank you, ma'am.

23 THE COURT: You may step down.

24 She is excused?

25 MR. LUKE SHEALEY: Yes, she's excused from my

1 subpoena.

2 MR. GOINGS: And the State's subpoena, Your Honor.

3 THE COURT: You may be excused. Thank you.

4 You may call your next witness.

5 MR. PAULING: The State would call Dennis Tentyon.

6 DENNIS TENTYON, having been first duly sworn,

7 testified as follows:

8 THE CLERK: Thank you. Have a seat on the witness
9 stand, please.

10 State your name for the record.

11 THE WITNESS: Dennis Paul Tentyon.

12 THE COURT: Would you spell your last name,
13 please?

14 THE WITNESS: Sure. T-E-N-T-Y-O-N.

15 THE COURT: And if you will pull yourself just a
16 bit closer to the microphone, please. Thank you.

17 Yes, sir.

18 MR. PAULING: Thank you, Your Honor.

19 If it please the court.

20 DIRECT EXAMINATION BY MR. PAULING:

21 Q. Mr. Tentyon, how are you doing, sir?

22 A. I'm fine.

23 Q. Tell this jury where you are from. Are you from
24 Columbia?

25 A. Not originally, but I have been here since '87. I'm

1 originally from New Jersey.

2 Q. Originally from New Jersey.

3 And you currently have family here in Columbia?

4 A. Yes, a wife and two kids.

5 Q. Wife and two kids.

6 Who is your wife,

7 A. My wife is Sherry Tribble.

8 Q. And how long have the two of y'all been married?

9 A. About four years.

10 Q. And whereabouts do you live in Columbia now?

11 A. Lincolnshire.

12 Q. And back in 2006, where were you living at?

13 A. Hunters Mill Apartments.

14 Q. Okay. And that was in May of 2006?

15 A. Yes.

16 Q. And at that time -- were you dating your wife at that
17 time?

18 A. At that time my wife was my girlfriend, yes.

19 Q. Your wife was your girlfriend?

20 A. Yeah.

21 Q. And where were you working at the time? I see you have
22 on a Waffle House shirt. Where were you working at that
23 time?

24 A. Blue Cross Blue Shield.

25 Q. Okay. And there at Hunters Mill Apartments,

1 whereabouts is that in Columbia?

2 A. Off of Alpine Road, closer to the Alpine, Two Notch
3 side.

4 Q. Okay. Do you remember which apartment that you were
5 living in at the time?

6 A. 314, I think B.

7 Q. Okay. And back in May of 2006, do you recall an
8 incident happening out there around Mother's Day?

9 A. I do.

10 Q. And why do you recall that, sir?

11 A. One, because it was a traumatic situation.

12 And, two, it was kind of nicknamed the Mother's Day
13 Massacre, because it took place basically on Mother's Day.

14 Q. Okay. And now that Saturday, that May 13th, 2006, do
15 you recall that day or that evening?

16 A. The evening?

17 Q. Yes, sir.

18 A. Yes.

19 Q. Okay. And were you -- you said that you were working
20 at Blue Cross Blue Shield, but did you work on a Saturday,
21 or not?

22 A. I didn't work on Saturday.

23 Q. Okay. That evening, what did you do, or what did you
24 have plans to do? What was going on that particular
25 evening?

1 A. My now wife and then girlfriend was coming -- she would
2 have been coming back in town from visiting family in DC and
3 came to visit me that evening.

4 Q. Okay. And do you recall what time she came home? Do
5 you recall what time you got home?

6 A. I was already there, so she probably got there late
7 that evening around about, I don't know, somewhere
8 between -- close to midnight.

9 Q. Okay. And that particular evening -- what did you do
10 that particular evening?

11 A. We talked about her trip, I think, and how it was
12 coming back.

13 Specific conversation I couldn't tell you, because we
14 were talking about something that was seven years ago.

15 Q. Yes, sir, I understand that.

16 Now, at some point during that night --

17 Well, let me ask you this. Did you go to sleep, or did
18 something alert you that particular night?

19 A. We weren't asleep when we started to hear the noises.
20 We were actually awake, so --

21 Q. And you said started to hear the noises. What -- can
22 you tell jury what type of noises did you hear?

23 A. You heard -- you heard a female's voice that sounded
24 like -- like a -- like a scream, if you will, and you heard
25 some beating on the walls or the doors, whatever, solid

1 object. I know it was across the way from where my
2 apartment is, so --

3 Q. And you say across the way. You are at 314-B, is that
4 correct?

5 A. Uh-huh.

6 Q. All right. Now, when you hear these noises, what room,
7 what location are you in in your --

8 A. In the bedroom.

9 Q. -- apartment?

10 All right. Now, is this a top level or this is a
11 bottom level apartment?

12 A. It's a first floor apartment.

13 Q. First floor apartment?

14 A. Uh-huh.

15 Q. And when you say across the way, you are talking
16 directly across the way?

17 A. Right, the last apartment. My building is the last
18 apartment building, and the building that the incident took
19 place in is the last apartment building. The only thing
20 that's in between us is the parking lot.

21 Q. Okay. And did you know any of your neighbors at that
22 time?

23 A. I did know them.

24 Q. Okay. And as far as from where you heard these sound
25 coming from, do you know who lived at least in that area?

1 A. Yes, I do.

2 Q. And who were they?

3 A. It was Nakia and Justin Mallory. And Dawn Kennedy
4 lived in front of them.

5 Q. Okay. And, now, as far as Justin and Nakia Mallory,
6 other than them being your neighbors, how did you know them?
7 Did you --

8 A. Justin and my brother actually went to school together,
9 so we had had, you know, a conversation or two because they
10 used to have like little cookouts, or whatever, on their
11 patios at night. And Nakia worked at Blue Cross Blue Shield
12 as well, and Dawn and I were friends way before I even knew
13 who Justin and Nakia were.

14 Q. And this brother of yours, was this an older brother,
15 younger brother?

16 A. Younger brother.

17 Q. Okay. And, now, did you ever socialize -- I understand
18 that you knew them. Did you ever socialize with Justin and
19 Nakia? You mentioned these get-togethers that they had.

20 A. Not like an in-depth get to know one another or ended
21 up hanging out. We knew each other from, of course,
22 passing; one, from being neighbors; and, two, maybe once or
23 twice I came over and, you know, shot the breeze for a
24 minute and then went home, so nothing in-depth.

25 Q. Okay. And you had mentioned these sounds that you

1 heard. Did it cause you to be concerned at that point?

2 A. At first I just thought it was the typical them being
3 loud when they are having their cookouts, or maybe talking
4 about whatever, game, debate, so on and so forth, so at
5 first I didn't think that it was anything major. And then
6 it did start to sound kind of odd. But at first, like I
7 said, it just sounded like they were just doing their usual
8 outside patio, have some drinks, type thing.

9 Q. And do you recall approximately what time that was when
10 you heard those sounds that you described?

11 A. Specifically, no, but I know it was after midnight,
12 because of what happened happened after my wife came, which
13 was -- so, yeah, after midnight it happened.

14 Q. Well, let me ask you this, Mr. Tentyon. Do you recall
15 giving a statement to law enforcement the following morning,
16 Mother's Day morning?

17 A. Yeah.

18 Q. Would reviewing that statement help refresh your
19 recollection of those matters?

20 A. I'll try.

21 Q. Okay.

22 MR. PAULING: May I approach the witness, Your
23 Honor?

24 THE COURT: Yes, sir.

25 BY MR. PAULING:

1 Q. Mr.. Tentyon, I'll show you -- I'm going to ask you do
2 you recognize that particular document, sir?

3 A. Yes.

4 Q. And what is that?

5 A. It was a statement written by me that the officer gave
6 me to fill out -- or the investigator, I should say.

7 Q. Did you sign that statement?

8 A. Yes, I did.

9 Q. And when did you give that statement?

10 A. I gave this statement on the 14th of May, 2006, at
11 10:30.

12 Q. Okay. Can you just take the time just to review that
13 statement?

14 A. Okay.

15 Q. And then I'll continue asking you questions, once you
16 are ready.

17 A. (Witness reviewing document).

18 Okay.

19 Q. Okay. Now, I know you testified just now it was
20 sometime after midnight. Do you recall when you first heard
21 those sounds look you described, a scream, or something
22 knocking?

23 A. Right. Based on my statement that the sounds were
24 first heard, we -- excuse me, we first laid down at 2:35.
25 It was 3:08 when I last looked at the clock. And the sounds

1 were heard somewhere around 03:15, 03:20 a.m..

2 Q. Okay. Now, as far as -- you said that you checked the
3 clock at 2:35?

4 A. Right, when we last laid down -- when we laid down, it
5 was 2:35. When I last looked at the clock, based on my
6 statement, was 3:08.

7 Q. Okay. Now, had you heard anything in sounds, as you
8 recall, during that time frame, from 2:35 and the 3:08 time?

9 A. Not that I can recall --

10 Q. Okay.

11 A. -- at that time, no.

12 Q. But at 3:15 you heard these sounds?

13 A. Right.

14 Q. And what do you do at that pint?

15 A. Like I said, I thought it was typically at first just
16 them being loud and doing their usual thing. And because my
17 now wife, then girlfriend, had just come back in town, I was
18 really more focused on her, but I could still hear.

19 Q. Okay. Well, let me ask you this. You said being loud
20 and the usual thing. What do you mean by that?

21 A. Just the -- you know, they had barbecue or they cook
22 out and have some drinks and talk about whatever they talk
23 about and laugh about whatever they laugh about.

24 Sometime they can get into an intense conversation,
25 depending upon what they were talking about, whether it's

1 sports, a person, so I didn't really take it to be at their
2 first time that much different.

3 Q. And did you go to see what was going on outside? What
4 did you do?

5 A. I did not. My wife actually got up and -- after awhile
6 she got up, because I think it started to annoy her to hear
7 the sounds, so she got up and looked out the window. And I
8 vaguely remember her describing --

9 Q. Don't -- don't tell me what she said. I'm just trying
10 to understand from your perspective what was going on.

11 Did you look out the window at all?

12 A. No.

13 Q. And at that 3:15 time --

14 A. Uh-huh.

15 Q. -- what happened after that?

16 A. Like I said, there was noises, the screams or the
17 yelling, if you will. The beating on the door. Things kind
18 of I think got quiet for a moment. Then you hear a car pull
19 up, or pull in, and you just hear a male's voice sounding
20 kind of muffled, or muttered, or whatever. I don't really
21 remember what my wife was trying to tell me at that moment
22 in time to describe it, but then shortly after that you
23 heard a car pull off, or as in leave, relatively quickly.

24 Q. Okay. And now you had indicated, the last time that
25 you looked at the clock was three o'clock, is that correct?

1 A. 3:08.

2 Q. 3:08, I'm sorry.

3 But you estimated when you heard the knocking on the
4 door it was around 3:15?

5 A. About that.

6 Q. Well, from the time that you actually --

7 MR. AIKEN: Your Honor, I object to that. The
8 witness said ten to fifteen minutes after 3:08, so, you
9 know, he didn't -- he didn't testify to --

10 THE COURT: He can ask the question and you can
11 cover it on cross-examination.

12 MR. AIKEN: All right. Thank you, judge.

13 BY MR. PAULING:

14 Q. Mr. Tentyon, from the time that you heard the knocking
15 on doors and the time that you heard the car pull up --

16 A. Uh-huh.

17 Q. -- were you timing that?

18 A. Not to sound sarcastic, but I didn't look at the clock
19 any more after that.

20 Q. Yes, sir.

21 A. I wasn't copying. I was gauging approximates, not
22 really figuring out exactly. I didn't know specifically. I
23 was just guesstimating what time -- or how much time,
24 rather.

25 Q. So you told law enforcement that that was an estimate

1 of time, that ten to fifteen minutes, right?

2 A. Correct.

3 Q. It could have been longer?

4 A. It could have been.

5 Q. Could have been shorter?

6 A. Yes.

7 Q. And you said that you heard a car pull up?

8 A. Yes.

9 Q. Okay. Did you at any point go outside -- or go outside
10 and look outside and observe the vehicle?

11 A. No, sir.

12 Q. And after the car pulled up -- and you say pulled up,
13 so could you tell where it was in relation to your
14 apartment, just from hearing?

15 A. Because he wasn't actually like -- the parking lot
16 space is but not so big, and when a car pulls in or pulls
17 out, you can tell, one, when a car turns your way, their
18 headlights are going to be coming through window; or, if
19 they turned the opposite way, their brake lights are going
20 to come. I didn't see either one of those lights, so I'm
21 assuming it was in the middle.

22 Q. Okay. I understand.

23 And after you heard the car pull up, what happened
24 next?

25 A. I think there was some more muffled noise. You heard a

1 car door open and then close and then leave. How much time
2 I couldn't really tell you.

3 Q. And as far as the car pulling off, did it pull off
4 slowly, you said, and leave?

5 A. No, it pulled off kind of quickly, as if it was in a
6 hurry.

7 Q. Okay.

8 A. The tires screeching would indicate that.

9 Q. Okay. Now, at any point did you see who was driving
10 that vehicle?

11 A. I didn't see anything.

12 Q. Okay. Did you see what type of vehicles it was?

13 A. Once again, I didn't see anything.

14 MR. PAULING: Beg the court's indulgence.

15 (Off the record)

16 (Back on the record)

17 BY MR. PAULING:

18 Q. Mr. Tentyon, I just want to clarify for the jury.

19 A. Uh-huh.

20 Q. When you said that you heard sounds, okay, the banging
21 on the doors, was that the only sound that you heard at that
22 time?

23 A. The banging was not the only sound. You also heard, I
24 don't want to say scream or yelling, either one, whichever
25 way you choose to phrase it, but there was a female's voice

1 and a male's voice that was heard along with the beating.

2 Q. Along with the beating on the doors?

3 A. Right.

4 Q. Okay. Now, had you heard any other sounds prior to
5 that?

6 A. Prior to the beating?

7 Q. Yes.

8 A. Not that I can recall at this time.

9 Q. You last looked at the clock at 3:08?

10 A. Uh-huh.

11 Q. Okay. And then about ten, fifteen minutes, by your
12 estimate, you hear beating on the doors, as well as --

13 A. Yelling.

14 Q. As well as --

15 A. As well as yelling, which if I'm not mistaken, based on
16 my statement at that time, which says -- which says -- which
17 says "ten, fifteen minutes later I heard yelling for a
18 period of about twenty minutes. Then I heard a car drove
19 off."

20 And I almost can't read my own handwriting.

21 "Someone was yelling help and knocking on doors very
22 hard." That's what my statement says from that time.

23 Q. Thank you, Mr. Tentyon.

24 MR. PAULING: I have no further questions.

25 A. Thank you.

1 THE COURT: Any cross?

2 MR. AIKEN: Yes, Your Honor.

3 CROSS EXAMINATION BY MR. AIKEN:

4 Q. Hello, Mr. Tentyon.

5 A. How are you?

6 Q. My name is Art Aiken and I'm one of Mr. Porch's
7 attorneys. I just have a couple of questions for you.

8 A. Okay.

9 Q. The last time that you looked at the clock before you
10 heard these things was 3:08 in the morning, right?

11 A. Correct.

12 Q. And then shortly after that is when you started hearing
13 things, right?

14 A. Correct.

15 Q. And I think in your statement, which the government
16 went through with you, you said that between the time you
17 looked at the clock at 3:08 and the time you heard those
18 noises was about ten to fifteen minutes, right?

19 A. "Ten to fifteen minutes later I heard them for about
20 twenty minutes." Of course, these are estimates.

21 Q. Yeah, it's an estimate, but if it's ten minutes, you
22 first start hearing things at 3:18, right?

23 A. That would be correct, yeah.

24 Q. And then if it's fifteen minutes, you first started
25 hearing things at 3:23?

1 A. Yes.

2 Q. All right. And that was your recollection as of the
3 morning after this happened, right?

4 A. Correct.

5 Q. Now, you heard voices too, right?

6 A. Correct.

7 Q. And first you heard a female voice, right?

8 A. (Shaking head yes).

9 Q. And then you heard a male voice?

10 A. Correct.

11 Q. And they were hollering?

12 A. Yes.

13 Q. Both the female and the male, right?

14 A. So it sounded, if I recall, yeah.

15 MR. AIKEN: If I could have just one moment,
16 please, Your Honor?

17 THE COURT: Yes.

18 (Off the record)

19 (Back on the record)

20 BY MR. AIKEN:

21 Q. Thank you, Mr. Tentyon. I appreciate it.

22 THE COURT: Any redirect?

23 MR. PAULING: Just briefly, Your Honor.

24 REDIRECT EXAMINATION BY MR. PAULING:

25 Q. Mr. Tentyon, as I understand, were these time estimates

1 just estimates that you can give at that time, the ten to
2 fifteen minutes?

3 A. Yes, I didn't use a stopwatch, a clock, or anything
4 like that. I was just estimating.

5 Q. Now, as far as the sounds that you heard, okay, what
6 was the sequence of the sounds that you heard? What did you
7 hear first? What sound did you hear first?

8 A. The first sound I heard was yelling of help, and then
9 the beating on the doors.

10 Q. Okay. Thank you.

11 MR. PAULING: No further questions, Your Honor.

12 THE COURT: You may step down. Thank you.

13 The witness may be excused?

14 MR. GOINGS: From the State's subpoena, yes,
15 ma'am.

16 MR. AIKEN: Your Honor, we don't have any
17 objection.

18 THE COURT: You may be excused. Thank you.

19 You may call your next witness.

20 MR. GOINGS: Your Honor, may we approach?

21 THE COURT: Yes.

22 (Whereupon, the attorneys approached for an
23 off-the-record discussion)

24 MR. GOINGS: Your Honor, the State would call
25 Shaheed Hargraves.

1 SHAHEED HARGRAVES, having been first duly sworn,
2 testified as follows:

3 THE CLERK: Have a seat on the witness stand,
4 please.

5 State your name for the record.

6 THE WITNESS: Shaheed Hargraves.

7 THE COURT: Would you spell your first name,
8 please?

9 THE WITNESS: S-H-A-H-E-E-D.

10 THE COURT: Thank you.

11 DIRECT EXAMINATION BY MR. GOINGS:

12 Q. Good afternoon, Mr. Hargraves.

13 How are you?

14 A. All right.

15 Q. Mr. Hargraves, where are you currently employed right
16 now?

17 A. At Mick's Gyros at Two Notch.

18 Q. Okay. And where do you live at?

19 A. Blythewood.

20 Q. Was there a time where you lived over in an apartment
21 off of Pinelane Road?

22 A. Yeah.

23 Q. And what time frame did you live there?

24 A. 2006 to 2010.

25 Q. Okay. And do you remember your apartment number?

1 A. I stayed in like three apartments over there.

2 Q. Did you?

3 Well, the incident that you are here about today, do
4 you remember that incident?

5 A. 311-A.

6 Q. All right. And in regards to the Mallory residence,
7 which was 311-C, describe to the jury where those two
8 apartments are in relation to each other.

9 A. Mine is in the front and his was in the back.

10 Q. Okay. When you say the front and back, where are we
11 talking about?

12 A. Mine was in the front. It was one next to mine. And
13 his was across from the one next to mine.

14 Q. Okay. So you would have to cross a hall to get to your
15 apartment from his?

16 A. Yeah. Yeah.

17 Q. And who did you live with at the time that you were
18 living there in 2006?

19 A. My wife.

20 Q. What's your wife's name?

21 A. Anna Hargraves.

22 Q. Anna Hargraves.

23 And if you could just speak up to make sure the jury
24 can hear you, okay?

25 A. All right.

1 Q. Okay. Do y'all have any kids?

2 A. We have two kids.

3 Q. Did y'all have the kids back in '06 too?

4 A. Yeah.

5 Q. Okay. Now, you gave a statement from what you could
6 recall about what you observed that night, correct?

7 A. Yes.

8 Q. Do you remember when you gave that statement to law
9 enforcement?

10 A. The same night it happened.

11 Q. I'm going to hand you this. Do you recognize that
12 document?

13 A. Yeah..

14 Q. Now, Mr. Hargraves, I know that the incident was seven
15 years ago, okay, but what do you recall happening at that
16 time?

17 A. I was asleep in my living room and I heard my neighbor
18 banging on all the doors on that section and when I came out
19 I went to his apartment and that's where he found his wife
20 at.

21 Q. Well, let's go back. And you say your neighbor, who is
22 the neighbor that you are referring to?

23 A. Justin.

24 Q. Justin Mallory?

25 A. Yeah.

1 Q. Prior to --

2 Let's go back before. What time do you think that you
3 got home the night of May 13th?

4 A. What time I got home?

5 Q. Yeah.

6 A. It was around seven -- seven, eight.

7 Q. Do you remember what time you might have gone to sleep?

8 A. No, I couldn't tell you.

9 Q. Were you watching television in the living room?

10 A. Say again?

11 Q. Were you watching television in the living room?

12 A. Yeah.

13 Q. You said you fell asleep in the living room, is that
14 correct?

15 A. Yes.

16 Q. When you got up, was the TV still on?

17 A. No, I don't think so.

18 Q. Now, had you heard anything the night of May 13th, or
19 going into the morning hours of May 14th, prior to Justin
20 Mallory knocking on your door?

21 A. No.

22 Q. That's the first sounds that you heard?

23 A. Yes.

24 Q. And what was his -- can you describe to him -- to the
25 jury how he was acting?

1 A. It was like a cry for help.

2 Q. And did you hear him beat on other doors before he got
3 to yours?

4 A. Yeah, that's what woke me up. He was beating on the
5 doors?

6 Q. All right. Beating on your doors, or --

7 A. All the neighbors. It was like he went from apartment
8 to apartment like "help".

9 Q. Okay. So your apartment wasn't the first one he came
10 to?

11 A. If I heard him beating on the other doors, my apartment
12 wasn't the first one.

13 Q. Did you know it was Justin Mallory before you opened
14 the door?

15 A. Did I say what?

16 Q. Did you know it was Justin Mallory who was beating on
17 the doors?

18 A. No.

19 Q. And you said that he was -- it was a cry for help?

20 A. Yes, he was saying "help, help". That's when I opened
21 the door.

22 Q. Was he emotional?

23 A. Yeah.

24 Q. Was he on the phone with anybody?

25 A. No.

1 Q. And what exactly did Mr. Mallory --

2 Well, actually -- after you opened the door and found
3 Mr. Mallory, what did you do next?

4 A. He said "help me. Something happened to my wife."

5 We went to his apartment. That's when we saw him wife
6 on the ground in the living room.

7 Q. And was 911 called?

8 A. That's when he was calling them.

9 Q. All right. Who was calling them?

10 A. He was calling them. He was on the phone trying to
11 call them.

12 Q. And do you recall what time of night that was?

13 A. No, sir.

14 Q. And what did you see once you walked into the
15 apartment?

16 A. She was laying in the living room on the floor and
17 there was blood everywhere. She was laying in like a pool
18 of blood.

19 Q. And what did you do at that point in time, once you got
20 into the apartment?

21 A. We was trying -- he was trying to get her up and get
22 her in the van and take her to the hospital. Like when we
23 went down to pick her up, I couldn't do it, so I went in
24 there and grabbed the children to go to my apartment and he
25 carried her to the hospital.

1 Q. When you say you couldn't do it, why couldn't you do
2 it?

3 A. It was too much blood around. I just seen her in the
4 morning and she was alive. I came in and seen her like
5 that, it was too much for me.

6 Q. Is it safe to say you were in an emotional state at
7 that point?

8 A. Yeah, yeah, they was friends of mine.

9 Q. And you said that you next went and got the children.
10 Where were the children?

11 A. In the room in the back.

12 Q. Do you remember how old they were?

13 A. I couldn't tell you.

14 Q. We are not talking about teenagers, though, are we?

15 A. No, no, little babies.

16 Q. And what did you do with the children?

17 A. Took them to my house.

18 Q. And did you observe Mr. Mallory's -- I mean, was he
19 able to get his wife in the car?

20 A. Yeah.

21 Q. Did you see him drive off?

22 A. I didn't see him drive off because I was taking the
23 children to my apartment. I wasn't watching all that.

24 Q. And you said that you were there when Mr. Mallory
25 called 911, is that correct?

1 A. Yes, sir.

2 Q. And I don't want to hear what he said, but -- I mean,
3 was he talking in a steady calm voice?

4 A. No.

5 Q. Describe his demeanor for us.

6 A. It was somebody who just found his wife murdered.

7 Q. Was he screaming?

8 A. He wasn't screaming, but he was like shaking. He
9 couldn't even dial the numbers on the phone he was shaking
10 so much.

11 Q. And that's what you personally remember?

12 A. Yeah.

13 Q. Let me ask you this. When he came to your apartment
14 and knocked on your door and you opened the door, did he
15 have any blood on his clothes, that you could tell?

16 A. No.

17 Q. On his arms, or anything?

18 A. No.

19 MR. GOINGS: Beg the court's indulgence.

20 (Off the record)

21 (Back on the record)

22 MR. GOINGS: I have no further questions, Your
23 Honor.

24 THE COURT: Any cross?

25 MR. AIKEN: Just briefly, Your Honor.

1 CROSS EXAMINATION BY MR. AIKEN:

2 Q. Hello, Mr. Hargraves.

3 A. How are you doing?

4 Q. My name is Art Aiken and I'm one of Mr. Porch's
5 lawyers.

6 You went over your statement with the government's
7 lawyers, and I think on page one of your statement you
8 indicate that the time when you were awoken by the banging
9 on your door was 3:30 a.m., or four o'clock a.m., is that
10 correct.

11 A. You said that I told them that?

12 Q. Yes. It's in your statement. I think you went over
13 your statement with the government's lawyer.

14 A. Yeah, that was like six, seven years ago. I can't tell
15 you now right now what time it was.

16 Q. Well, you -- you were interviewed by some officers on
17 the morning of May the 14th of 2006, is that right?

18 A. Yes.

19 Q. That would have been the morning of the incident, okay?

20 And they took your statement and you signed it, I
21 believe, and this is a copy of your statement. Is your
22 signature on that statement?

23 A. Yes.

24 Q. Okay. It's on page one, it's on page two, and it's on
25 page three, right?

1 A. Yeah.

2 Q. Okay. And this is -- this -- the officer recorded on
3 this paper what you said, okay?

4 A. Okay.

5 Q. And one of the questions the officer had was "what time
6 was that?" In other words, what time was it when the
7 beating on the door woke you up.

8 And I think your answer, if you look at it with me
9 here, is "3:30 a.m. or four o'clock a.m.," is that correct?

10 A. That's what I said, right.

11 Q. That's what you said then, and that was the morning
12 this happened, right?

13 A. Yes.

14 Q. So your memory would be a lot better then the morning
15 when it happened --

16 A. Of course.

17 Q. -- than it would be six or seven years later, right?

18 A. Yes.

19 Q. Now, you -- you're a -- you're a pretty heavy sleeper,
20 aren't you?

21 A. No, not that heavy.

22 Q. You are not?

23 A. No.

24 Q. You testified at the second trial of Justin Mallory,
25 didn't you?

1 A. I think it was the first.

2 Q. Was it the first trial or the second trial?

3 A. (No response).

4 Q. But, in any event, you testified at one of his trials,
5 didn't you?

6 A. Yeah.

7 Q. And during that trial you were examined by or
8 questioned by the government's lawyer, weren't you?

9 A. Yes.

10 Q. The lawyer for the government?

11 A. Yes.

12 Q. Okay. Well, I have a transcript of that trial.

13 A. Okay.

14 Q. This gentleman right here is the court reporter. He
15 takes down everything that gets said during this trial.

16 A. Okay.

17 Q. And they put it on a piece of paper, on papers, and
18 they call it a transcript, okay? And I have a transcript of
19 your testimony at that trial. And this was under the
20 questioning of Mr. Meadors, who was the government's lawyer
21 at that hearing, and he asked you "I don't mean anything bad
22 by that, you're a pretty heavy sleeper?"

23 That's the question, right?

24 A. Yeah, and I am not a --

25 Q. And your answer --

1 A. -- deep sleeper or a heavy sleeper.

2 Q. But your answer at that time was "yeah"?

3 A. Yeah, it was just like I told you, not that heavy. I
4 didn't say no.

5 Q. Could you fall asleep with the television on?

6 A. Yes.

7 Q. So that didn't keep from you falling asleep?

8 A. Uh-uh.

9 Q. That doesn't wake you up?

10 A. The TV?

11 Q. The TV.

12 A. No, that doesn't wake me up.

13 Q. So you can fall asleep with the TV on, and the TV stays
14 on and it doesn't wake you up, does it?

15 A. No.

16 Q. Okay. Hold on just a second, please.

17 MR. AIKEN: May I have a moment, Your Honor?

18 THE COURT: Yes, sir.

19 (Off the record)

20 (Back on the record)

21 MR. AIKEN: Thank you, judge.

22 MR. GOINGS: No redirect, Your Honor.

23 THE COURT: You may step down.

24 Is this witness excused?

25 MR. GOINGS: Yes, ma'am.

1 (Back on the record)

2 A. Sorry. Excuse me.

3 BY MR. GOINGS:

4 Q. Do you need a cup of water or anything?

5 A. Please. I have some crackers in my purse, if I could
6 eat one of them?

7 THE COURT: Yes, ma'am.

8 (Off the record)

9 (Back on the record)

10 MR. GOINGS: If it please the court?

11 BY MR. GOINGS:

12 Q. You were at one time married to the defendant, is that
13 correct?

14 A. (Shaking head yes).

15 Q. You need to speak louder to make sure the --

16 A. Correct.

17 Q. How long were you married?

18 A. We were married March of 2004.

19 We are still married now. We've been separated since
20 2009, March or April of 2009.

21 Q. All right. So you were married -- you are still
22 married, but you have been separated since March of 2009?

23 A. I think April. March or April. I can't remember.

24 Q. Okay. Do you have any children together?

25 A. Yes, sir, we have four children together.

1 Q. And I want to get straight to it.

2 Do you remember the day of May 14th, 2006?

3 A. Yes, sir.

4 Q. Okay. When was the first time that you had learned
5 that Nakia Mallory had been -- had passed away?

6 A. An officer came in the morning and told us that Justin
7 Mallory had been arrested for murder and -- you know, and
8 she was murdered. That's when we found out.

9 Q. Okay. And you say we, who are you referring to?

10 A. Me and Joshua.

11 Q. All right. And where did the officer come to?

12 A. To our home.

13 Q. And where was that at?

14 A. We were living in Meredith Square Townhomes.

15 Q. Meredith Square Townhomes?

16 A. Yes.

17 Q. At one point in time had y'all lived over at the
18 apartment complex on Pinelane Road?

19 A. Yes.

20 Q. And were y'all familiar with Justin and Nakia Mallory?

21 A. Yes.

22 Q. And how long do you think that you knew Justin and
23 Nakia Mallory?

24 A. From -- you mean like up until that date that he came?

25 Q. Yes.

1 A. About two years, or a year or two.

2 Q. Okay. Take me back to the night of May 13th, 2006.

3 I think -- I remember reading in your statement you had
4 a newborn baby, is that correct?

5 A. Uh-huh, that's correct.

6 Q. How old was the child?

7 A. He was about -- about three months.

8 Q. Three months old?

9 A. Yeah, I was breast feeding at the time.

10 Q. All right. Now, take us through that night what you
11 can recall on May 13th, into the early morning hours of May
12 14th, 2006.

13 A. I don't remember much. I -- I was sleeping a lot. I
14 just had a newborn baby. I remember the TV being on in the
15 living room and I was in the bedroom. You could, you know,
16 like see like the TV lights, but the lights were off because
17 the TV screen. That was early hours.

18 I don't -- I don't remember earlier that day. I
19 remember he was gone and that I thought that he had came
20 home and then I went to sleep.

21 Q. When you say he, who are you referring to?

22 A. Joshua. I remember Joshua had left -- I remember he
23 said something about going to his friend Marcus' house.

24 Q. Marcus who?

25 A. I don't remember his last name.

1 Q. Do you remember when he told you that he was going to
2 go over to Marcus' house?

3 A. I don't remember what time. I don't want to make up a
4 time and then not be right.

5 Q. Did he actually leave?

6 A. Yes.

7 Q. All right. Did you actually see him return home?

8 A. I'm -- I believe so. I can't say yes or no, but I
9 believe so, because I -- I remember I thought he was home.

10 Q. Why did you think he was home?

11 A. Because the TV was on. I remember it was like really
12 late and I figured someone had to be watching the TV.

13 I remember my nephew had spent the night and he was
14 about seven or eight then, and, you know, he would have been
15 out. He would have been asleep by then, so I assumed that
16 someone was watching the TV.

17 Q. Did you happen to go into the living room --

18 A. No.

19 Q. -- to see?

20 A. Uh-uh.

21 Q. Did you ever look at the clock to determine what time
22 this was that you saw the TV on?

23 A. I don't remember if I did or not.

24 Q. And you said that you were breast feeding at the time,
25 is that correct?

1 A. That's correct.

2 Q. That you were sleeping a lot?

3 A. Yeah.

4 Q. Was the baby in the bedroom with you?

5 A. Yes, he slept in the bed with me.

6 Q. And obviously you wouldn't have to go and fix him a
7 bottle and take it to bed --

8 A. Uh-uh.

9 Q. -- with you, correct?

10 A. That's correct.

11 Q. So it's not your testimony, of course, here that you
12 know for sure that Joshua Porch was home --

13 A. No, I don't know.

14 Q. -- during the early morning hours?

15 A. Yeah, I don't know for sure.

16 Q. Okay. Do you remember talking with detectives on June
17 27th, 2007?

18 A. Yes.

19 Q. And, again, and correct me if I'm wrong, you stated
20 that the first time that you learned about the death of
21 Nakia Mallory was the day it happened, is that correct?

22 A. That's correct.

23 Q. And the first officer came to y'all's residence and
24 took a statement -- or Mr. Porch indicated information to
25 him, is that correct?

1 A. Yes.

2 Q. All right. Prior to that you didn't have any
3 information?

4 A. No, sir.

5 Q. All right. Were you present when Mr. Porch was talking
6 to the officer?

7 A. The first -- the first time?

8 Q. First time.

9 A. Yes.

10 Q. And what did he tell the officers about his knowledge
11 of what happened at the Mallory residence?

12 A. I don't remember that he said any -- like that he knew
13 anything about it.

14 I remember that I immediately said "oh, no, he was
15 home," because, you know, I thought he was home. And I
16 believe he like agreed with me, and, you know, he indicated
17 he didn't know anything about it.

18 Q. So the first time law enforcement approaches Mr. Porch,
19 he didn't volunteer any information about the knowledge he
20 had of what occurred at the Mallory residence?

21 A. That's correct.

22 Q. And that was in your presence?

23 A. Yes.

24 Q. And you actually said you verified that with officers
25 because you thought he was home?

1 A. Yes.

2 Q. Okay. But your testimony here today is that you never
3 actually saw him?

4 A. That's correct, I -- I didn't get up and, you know,
5 leave the room.

6 Q. Now, the day -- or the morning of the killing, did you
7 notice any -- whether or not Mr. Porch had any injuries on
8 him?

9 A. I do remember it's like a slight cut on his hand. Just
10 a small tiny little cut.

11 Q. Do you remember what hand it was?

12 A. I -- I don't want to say. I don't remember. I don't
13 know.

14 Q. Did you ask Mr. Porch about that cut?

15 A. Yes, I did.

16 Q. Did you ask him that day?

17 A. I believe so. I believe I did.

18 Q. And what was the information that Mr. Porch relayed to
19 you about how he received that cut on May 14th, 2006?

20 A. He told me that he had -- at his friend Marcus' house,
21 like they were just, you know, goofing around outside and he
22 grabbed onto a banister and it cut his hand.

23 Q. Okay. So on the morning when you questioned him about
24 the cut, he indicated that he cut it at Marcus' house?

25 A. Yes.

1 Q. There was no mention of cutting it at the Mallory
2 residence?

3 A. No.

4 Q. And I believe you gave a statement to law enforcement
5 later on in July. Do you remember that statement of July,
6 2009?

7 A. I believe so.

8 Q. Okay. Do you recall --

9 Let me ask you this. Do you recall ever going to the
10 Jeep that Mr. Porch drove at the time back on May 14th,
11 2006?

12 A. On the date of? Yes, I do.

13 Q. So describe the vehicle he had at the time. What was
14 it?

15 A. It was a Jeep, beige color. I don't remember what year
16 it was.

17 Q. So a Jeep Cherokee, a Wrangler, or what are we talking
18 about?

19 A. I don't remember. I'm sorry, I don't remember car
20 names like that.

21 Q. That's fine. But you know it was some type of Jeep?

22 A. It was -- yeah, it was a Jeep. You know, a big SUV
23 type. It was an older Jeep. It wasn't like the newer
24 model.

25 Q. I got you.

1 But you specifically remember going to that Jeep on May
2 14th, 2006, correct?

3 A. Yes.

4 Q. And what did you observe inside the Jeep?

5 A. On the door handle, like where you would shut -- you
6 know, grab the door to shut it, just a tiny bit of blood,
7 like as if he were -- like as if he would have closed it
8 from where his wound was to where the blood was.

9 Q. Did you ask him about that?

10 A. No, because it was such a tiny amount, I didn't -- I
11 just assumed it was from his hand.

12 Q. Now -- so let me get this straight. May 14th, the
13 night and the morning hours, you never saw your husband?

14 A. Uh-uh.

15 Q. You were in bed with the baby?

16 A. Uh-huh.

17 Q. And I say -- was he in the bedroom with you at any
18 point in time during those morning hours?

19 A. I don't -- I don't want -- well, we woke up, so he
20 would have come in, but I don't remember like the times, I'm
21 sorry.

22 Q. Okay. When you woke up that morning, he was --

23 A. He was there, yeah.

24 Q. But you don't know what time he got there?

25 A. No, I don't.

1 Q. And based on your testimony here today, when the
2 officer first approached him about any information he had,
3 he denied having any information about the murder?

4 A. Yes.

5 Q. And you asked him about the cut on his hand that you
6 personally observed that morning, correct?

7 A. Uh-huh.

8 Q. And he told you he cut it at Marcus' house on the
9 banister?

10 A. Yes.

11 Q. Did he maintain that story with you?

12 How long -- how long did you believe that he cut his
13 hand on the banister?

14 A. I don't remember when it was. I just remember later
15 on. I mean, it could have been a year, a couple -- I don't
16 remember the timelines, but I do remember that he told me
17 that after that, that our daughter Genesis was at Justin's
18 house, Justin and Nakia's house, earlier that day with him,
19 you know, before Mother's Day, and he was getting her a
20 snack -- well, he was like cutting an apple and he cut his
21 hand. And that's, you know, what he said was -- yeah,
22 that's what he said.

23 Q. So he is changing his story to you about how his hand
24 was cut?

25 A. Yes.

1 Q. And was this at the time that law enforcement
2 approached him about being -- about, A, being at the crime
3 scene?

4 A. I'm not sure.

5 Q. Okay. But you are --

6 A. It's been a while.

7 Q. I'm sorry?

8 A. I would just say it's been a while. I'm sorry, I don't
9 remember.

10 Q. But you are aware that sometime in June of 2007 --

11 MR. AIKEN: Objection, leading.

12 THE COURT: Rephrase.

13 BY MR. GOINGS:

14 Q. Did law enforcement come back out and talk with you and
15 Joshua?

16 A. Yes.

17 Q. Do you recall when that was?

18 A. It had to be the summertime, I believe. I don't
19 remember when it was.

20 Oh, you know what? I do. I was pregnant with my
21 daughter and I gave birth to her in 2007, so it had to be
22 the summer. Yeah, I was early on pregnant.

23 Q. And that day they came out and spoke with you, you
24 wrote a statement?

25 A. I believe so, I think.

1 Q. Okay. If you would review that document.

2 Is that your signature there at the bottom?

3 A. (Witness reviewing document).

4 Okay.

5 Q. Have you reviewed it?

6 A. Yes.

7 Q. Is that the statement that you gave to law enforcement?

8 A. Yes.

9 Q. What's the date on that statement?

10 A. June 27th.

11 Q. Of what year?

12 A. '07.

13 Q. Is that the time law enforcement approached Joshua
14 about DNA?

15 A. Yes.

16 Q. And what did Joshua tell law enforcement at that time
17 about whether his DNA would be found?

18 MR. AIKEN: Your Honor, I will object. There is
19 not a proper foundation for this, and I think he's getting
20 into hearsay, but I can't really tell from his question.

21 BY MR. GOINGS:

22 Q. Were you present when the officers were discussing DNA
23 with Josh, or Joshua?

24 A. Is this on the -- I don't remember. I -- I think so.

25 I mean, I remember hearing it, but I don't know if, you

1 know, it was the first time it was discussed, or -- because
2 I remember them talking to him about it, but they -- because
3 they came out to our home frequently, you know, and talked
4 with him about it, but I don't remember if it was --

5 Q. Well, let's just go from what Joshua told you, not from
6 what law enforcement had interjected.

7 A. Okay.

8 Q. You said that Mr. Porch indicated to you that he cut
9 his hand on -- originally on Marcus' grill -- Marcus'
10 banister --

11 A. Yes.

12 Q. -- correct?

13 A. Uh-huh.

14 Q. Then he changed his story, correct?

15 A. Yes.

16 Q. And what was his second story that you heard?

17 MR. AIKEN: Your Honor, I object. He's led the
18 witness throughout this examination.

19 THE COURT: I'll overrule the particular objection
20 as to this question.

21 BY MR. GOINGS:

22 Q. What's the second story that Mr. Porch told you?

23 A. You said what was it?

24 Q. What's the second story Mr. --

25 A. The apple -- cutting his hand cutting an apple.

1 Q. And what did he tell you?

2 A. That he was cutting an apple for our daughter to eat at
3 Justin Mallory's house and cut his hand.

4 Q. Did he indicate what time of day he was cutting this
5 apple?

6 A. I remember it had to be like during the afternoon. I
7 remember we were going to sleep, you know, with the baby and
8 asked him to take her out for the day, so it had to be
9 during the -- you know, during the day and in the afternoon.

10 Q. Did you know that he had took --

11 A. No.

12 Q. -- Genesis over there?

13 A. No, I did not.

14 Q. This was the first time that you were hearing it?

15 A. Well, I do -- the first time that I heard it was when
16 the first officer came to the house and he was like "well,
17 were you there at all?" And he said "I was there earlier
18 that day with my daughter Genesis." And I do remember
19 hearing it that day that he was there.

20 Q. But still there is nothing mentioned about being there
21 at night?

22 A. No, we didn't talk about that with him.

23 Q. Did you ever ask Mr. Porch why he lied to you?

24 A. No, I -- I didn't really question him that much about
25 this stuff. You know, I didn't -- I never really asked him.

1 Q. So that's the second story that you had heard from your
2 husband, is that correct?

3 A. Yes.

4 Q. Then there was a third story that you heard from Mr.
5 Porch, is that correct?

6 A. Yes.

7 MR. AIKEN: Objection, leading.

8 THE COURT: I'll sustain that objection.

9 Rephrase.

10 BY MR. GOINGS:

11 Q. Was there a third statement or story?

12 A. About how he got the cut, or --

13 Q. About his knowledge.

14 A. Oh, about him being there. Yes.

15 Q. Okay. And did you discuss -- or did Mr. Porch indicate
16 to you -- let me ask you this.

17 A. Do you mean like did he tell me the story?

18 Q. What did Mr. Porch tell you on the third time about his
19 involvement?

20 A. That he was there when, you know, like that Justin and
21 Nakia had a fight and, you know, he was there during their
22 fight.

23 Q. And how did you take that information?

24 A. That he was there when, you know, she was murdered.

25 Q. Okay. Did that surprise you?

1 A. Yes.

2 Q. Had he -- and do you remember when he made those
3 statements to you?

4 A. He first told law enforcement about it, so I'm not sure
5 if he told me or if they told me, because I remember him
6 talking for a really long time. And I remember I kept
7 calling, you know, to find out what was going on, because my
8 little brother was watching the kids at the time.

9 Q. But, nevertheless, at some point in time you had a
10 conversation with Mr. Porch about this --

11 A. Yes.

12 Q. -- new revelation?

13 MR. AIKEN: Objection, leading.

14 THE COURT: Rephrase.

15 BY MR. GOINGS:

16 Q. At some point in time did you and Mr. Porch discuss
17 this situation?

18 A. Yes.

19 Q. All right. And he relayed what to you? What exactly
20 did Mr. Porch tell you about what happened?

21 A. He didn't really go into full detail, because I didn't
22 ask that many questions about this, but I just remember him
23 telling me that they had had a fight -- well, that he came
24 over he said to visit Justin and then it was -- Nakia was
25 just there. And then shortly after Justin came home and

1 they had a fight. And I remember he said he was in between
2 them and he had a hands up and that's how he got cut. That
3 Justin was like, you know, fussing with her and that's how
4 he got cut on his hand.

5 Q. How many times did Mr. Porch lie to you about the cut
6 on his hand?

7 A. Twice.

8 Q. That you know of?

9 A. Yes, that I know of.

10 MR. GOINGS: Beg the court's indulgence.

11 (Off the record)

12 (Back on the record)

13 MR. GOINGS: That's all questions that I have at
14 this time, Your Honor.

15 THE COURT: Any cross?

16 MR. AIKEN: No, ma'am.

17 THE COURT: You may step down. Thank you, ma'am.

18 May this witness be excused?

19 MR. GOINGS: Yes, ma'am.

20 THE COURT: You may be excused. Thank you.

21 MR. PAULING: The State would call Investigator
22 Randy Strange.

23 INVESTIGATOR RANDY STRANGE, having been first duly
24 sworn, testified as follows:

25 THE CLERK: Have a seat on the witness stand,

1 please.

2 State your name for the record.

3 THE WITNESS: Randy H. Strange.

4 DIRECT EXAMINATION BY MR. PAULING:

5 Q. How are you, sir?

6 A. Fine.

7 Q. Tell this jury, sir, where you are employed.

8 A. With the Richland County Sheriff's Department.

9 Q. And what's your title, your rank?

10 A. I carry the rank of first sergeant and I'm the
11 administrative sergeant of investigations.

12 Q. Okay. And how long have you been with the Richland
13 County Sheriff's Department?

14 A. Twenty-four and a half years. I retired and have my
15 twenty-five years in May of 2014.

16 Q. Okay. As far as being the administrative sergeant, how
17 long have you maintained that position?

18 A. I have been in this current position for two years.

19 Q. And in 2006, what was your position with the sheriff's
20 office?

21 A. I was the sergeant over the Special Victims Unit.

22 Q. Okay. And as the sergeant of the Special Victims Unit,
23 what do -- or at least at that time, what did your duties
24 entail?

25 A. I supervised the investigation of sexual assaults,

1 child abuse, and missing persons. I also rotated every
2 eight weeks as the evening shift on-call supervisor.

3 Q. Okay. And as the evening shift on-call supervisor, how
4 many investigators do you supervise, or were you supervising
5 at that time, back in May of 2006?

6 A. As far as the Special Victims Unit, we had
7 approximately six full-time and two part-time investigators.

8 Every eight weeks you would rotate as evening shift
9 supervisor and you would have up to five investigators
10 working with you from seven -- excuse me, from five p.m.
11 until seven a.m. every day.

12 Q. And typically if you have got the on-call supervising,
13 if you are on that night shift, a call comes in, what are
14 your duties at that point?

15 A. If the uniform officer has an incident that he needed
16 assistance on, he'd contact the desk sergeant, and the desk
17 sergeant would contact the on-call CID supervisor and you
18 would determine if you would send an investigator to the
19 scene or not.

20 Q. And, again, back in May of 2006, you were working in
21 that capacity?

22 A. Yes.

23 Q. And, Sergeant Strange, did you have the opportunity to
24 work or participate in the death investigation of Nakia
25 Mallory?

1 A. Yes, I did.

2 Q. Was that back in May of 2006?

3 A. Yes, sir.

4 Q. And specifically it's May 14th of 2006?

5 A. May 14th, yes, sir.

6 Q. If you could tell the jury how did it come about that
7 you became involved in the investigation?

8 A. I was contacted by the desk sergeant who received a
9 call from uniform division that a female arrived at the
10 hospital dead on arrival. They contacted me. I would have
11 to contact several people and notify them, at which time I
12 respond to the scene, along with two other investigators, to
13 begin an investigation into the case.

14 Q. And you said respond to the scene. The crime scene or
15 the hospital?

16 A. Well, one investigator responded to the crime scene and
17 two investigators responded to the hospital, that being
18 Investigator Holdorf and myself.

19 Q. Okay. And once you got to the hospital, what did you
20 do, or what was your plan at that point you got to the
21 hospital?

22 A. When I get to the hospital, my position is to
23 coordinate what's going to take place, as far as the
24 forensics lab being contacted. You go to the crime scene.
25 We have to contact the victim's assistance to get a victim

1 advocate en route to the hospital for the family of the
2 victim. Make sure that Investigator Holdorf, since he was
3 on the scene, was making contact with Mr. Mallory trying to
4 find out what had happened, since he's the one that took her
5 to the hospital.

6 Q. Okay. And did you, in fact, make contact with Justin
7 Mallory?

8 A. Later on that morning I did, yes.

9 Q. Okay. And did you have a discussion with him --
10 Well, did you talk to him at length about his
11 whereabouts that particular evening, or that early morning?

12 A. Yes. Investigator Holdorf made primary contact with
13 Mr. Mallory at the hospital, escorted him back to the
14 sheriff's department on Two Notch Road and began
15 interviewing Mr. Mallory.

16 I was coordinating several things and touched base with
17 Mr. Holdorf every few minutes to get an update on what Mr.
18 Mallory was telling him.

19 Q. And what did you do, based on the information that Mr.
20 Mallory had provided to Investigator Holdorf?

21 A. I would make sure that it was followed up on. Some of
22 it I followed up on myself. We had investigators at the
23 scene following up on leads there, making contact with
24 neighbors, and I was trying to coordinate all of that.

25 Q. Okay. Now, at that time, based on the information that

1 Mr. Mallory was providing Investigator Holdorf, did you come
2 to learn of where of his whereabouts earlier that evening?

3 A. Yes, Mr. Mallory gave an alibi that he had been with a
4 female prior to that evening before arriving home.

5 Q. And did you have information as to when he had last had
6 contact with that female?

7 A. Yes, he had actually taken us back to an apartment
8 complex to assist us in locating the female that he was with
9 and I made contact with her at the apartment which he left
10 her at.

11 Q. And who was that? Who was that individual?

12 A. Ricki Cook.

13 Q. And so were you able to verify that he indeed had been
14 with Ricki Cook?

15 A. Yes, sir.

16 Q. Now, as far as -- did he provide information as to when
17 he arrived back home?

18 A. They're all estimated times, because most people at
19 night don't keep up with a specific time, they actually
20 leave, but based on the information that we had from the
21 cell phones and information from Ricki Lake (sic) and her
22 sister, I was able to develop a timeline that I went by that
23 night and early that morning.

24 Q. Ricki Cook?

25 A. Yes.

1 Q. Now, you said you were able to develop a timeline?

2 A. Yes, sir.

3 Q. Now, was that -- what was that timeline -- what
4 information was that based upon?

5 A. When she got home, she looked at the clock in the
6 apartment, her sister's apartment, and that's what I was
7 basing the approximate time when she got into the apartment.

8 Q. Now, did you get any information from Justin Mallory to
9 help facilitate that timeline?

10 A. He pretty much corroborated the times in the ballpark
11 figure. It's hard to be exact, because, you know, when you
12 come and go, people don't write down exact times when they
13 leave someone's house, unless something specific happens.

14 Q. But as far as him arriving back home -- and what was
15 the residence again, his home?

16 A. His home was on Pinelane Road, Richland County.

17 Q. 1103 Pinelane Road?

18 A. Yes, sir.

19 Q. And did you actually go out to that location?

20 A. Yes, sir. We tried to corroborate the times from
21 information we had from neighbors of a possible domestic
22 dispute between residents at the apartment, and I was trying
23 to see if there was a timeline that would be consistent with
24 the timeline that Mr. Mallory left Ms. Cook's apartment and
25 arrived home. And I actually went back and drove it and

1 wrote down the mileage that it took me and the time that it
2 took me to drive from Ms. Cook's residence to where she was
3 staying until the crime scene on Pinelane Drive -- on
4 Pinelane Drive.

5 Q. And what was the route that you took?

6 A. Ms. Cook was staying at some apartments off Bush River
7 Road near I-26, so I left -- I left that apartment at 7:55
8 in the morning and drove approximately sixty-five miles on
9 the interstate from I-20 to Alpine Road, left on Alpine
10 Road, and then onto Pinelane Road, and the distance took me
11 nineteen minutes to drive in my vehicle on that morning.

12 Q. Now, when you drove that particular route, was this
13 after talking with Justin Mallory?

14 A. Yes, sir.

15 Q. Now, did he provide you the route that he took home?

16 A. No, sir.

17 Q. Let me ask you this. You said you took 20 all the way
18 to Alpine Road?

19 A. Yes, sir.

20 Q. Would you agree that there are a variety of ways to get
21 from that apartment on Bush River Road to 1103 Pinelane
22 Road?

23 A. Based on the fact that I had been working for the
24 sheriff's department for that time, over twenty years, I --
25 almost twenty years, I felt I knew the quickest way to get

1 there and I felt sure that he would have drove the quickest
2 way home he could have possibly got from leaving one
3 female's residence and going home.

4 Q. Is it possible he could have taken a different route?

5 A. Yes, sir.

6 Q. Now, just during the course of your investigation, did
7 you ever run the route Bush River Road on I-20, I-20 east,
8 then taking the Two Notch Road exit and then heading off
9 Alpine Road?

10 A. No, sir.

11 Q. Why didn't you do that, sir?

12 A. Again, I felt he would have traveled the shortest way
13 possible and that was the shortest way I knew to get from
14 one location to the next.

15 Q. Now, if you were traveling I-20 and got off on the Two
16 Notch Road exit, how would you get to Alpine Road -- or how
17 would you get to the apartments, if you took that route?

18 A. I-20, Two Notch Road, you would have to take a left and
19 you go outbound Two Notch Road. You would have to go
20 through several lights, intersections, and I bypassed all of
21 that on the route that I took.

22 Q. Okay. You say several lights. Approximately how many?

23 A. Probably six to eight stop lights.

24 Q. And as far as Two Notch Road is concerned, do you know
25 what the speed limit is on Two Notch Road?

- 1 A. Forty-five minutes an hour.
- 2 Q. But, again, I believe you told the jury the route that
3 you actually drove, how long was that?
- 4 A. Nineteen minutes.
- 5 Q. At sixty-five miles an hour?
- 6 A. Yes, sir.
- 7 Q. Did you ever have a discussion with Justin Mallory
8 about some alternate route?
- 9 A. Not my knowledge, no, sir.
- 10 Q. And now this was --
11 Again, when did you run this route?
- 12 A. The morning of the 14th at 7:57 a.m..
- 13 Q. Now, at that particular time -- had anybody been
14 charged at that point?
- 15 A. No, sir.
- 16 Q. After you ran that route, though, who did you report
17 back to, or what did you do with that information?
- 18 A. I contacted Captain Smith, who is now Major Smith, who
19 was in contact with John Meadors with the solicitor's
20 office.
- 21 Q. And you relayed the information to him?
- 22 A. Yes, sir.
- 23 Q. What else did you do at that point?
- 24 A. I returned back to headquarters where Investigator
25 Holdorf was still speaking with Justin Mallory and made

1 contact with them.

2 Q. Now, at that particular time did you have any other
3 suspects?

4 A. No, sir. While we were speaking with Justin Mallory,
5 interviewing him, he was asked a question "who do you think
6 could have done this to your wife?" And he came up with the
7 maintenance man, and that we needed to speak with Joshua
8 Porch.

9 I personally asked him "why would we need to speak with
10 Joshua Porch," because I didn't know the maintenance man's
11 name, and he said "you just need to speak with Joshua
12 Porch."

13 Q. And based on that information what did you do?

14 A. Well, it was going to be a lead or something in the
15 case that had to be followed up on at some point.

16 I went and checked on the in-house search engine and
17 located a Joshua Porch living about five minutes from the
18 sheriff's department. And later that morning I told
19 Investigator Holdorf on my home I would stop by and try and
20 make contact with a Joshua Porch.

21 Q. And were you able, in fact, to make contact with Mr.
22 Porch?

23 A. Yes, sir, I did.

24 Q. And when and where did that occur?

25 A. I made contact with him that morning at his apartment

1 at Meredith Square Apartments off Decker Boulevard.

2 Q. Okay. Now, in relation to 1103 Pinelane Road, where
3 the Mallory's were living, how far was that -- how far was
4 the Porch residence from that particular location?

5 A. I would have to estimate. I didn't make that drive and
6 time it, but I would estimate between ten and fifteen
7 minutes.

8 Q. And when you arrived at the Porch residence, who all
9 was there?

10 A. I went to the door and identified myself, knocking on
11 the door. A male subject opened the door. I identified
12 myself again as Sergeant Strange of the sheriff's department
13 and I was trying to make contact with Joshua Porch. He
14 identified himself as Joshua Porch. I said "I need to speak
15 with you for a moment, if I can," and he invited me into his
16 home. Once in his home, his wife was there and he
17 introduced me to his wife. So it was Mr. Porch, his wife,
18 and one or two small children, that I remember.

19 Q. And did you speak with both of them at that point, or
20 were they both standing there?

21 A. Yes, sir, they were both in the kitchen, living room
22 area of the apartment.

23 Q. And what, if anything, did you tell them?

24 A. I explained to them that I was there investigating the
25 death of Nakia Mallory, that someone had killed her. I was

1 trying to get some type of response, if I could, for any
2 reason from Mr. Porch, at which I really didn't. They both
3 looked at each other in shock and the first thing he asked
4 about were the children okay that were in the home.

5 Q. Sergeant Strange, do you remember approximately what
6 time it was when you had actually made contact with them?

7 A. I would say it would have been around ten o'clock a.m.,
8 because that's about the time I left the office heading
9 home.

10 Q. And at that particular time had anybody been charged
11 with her murder?

12 A. Yes, sir.

13 Q. Who was that, sir?

14 A. Justin Mallory.

15 Q. Do you recall whether or not you informed Mr. And Mrs.
16 Porch about who had been charged at that time?

17 A. Yes, sir, I did. After I advised Mr. Porch that Nakia
18 had been murdered, his wife told me that she had actually
19 had a dream that night about Nakia and that when she woke
20 up, that Joshua was home in bed with her at two a.m..

21 I later advised him that we charged Justin with the
22 murder, but Justin told us that we needed to speak with Mr.
23 Porch.

24 MR. BRIAN SHEALEY: Your Honor, at this we are
25 going to object, subject to the pretrial objections, along

1 those lines.

2 MR. PAULING: May we approach, Your Honor?

3 THE COURT: Yes.

4 MR. BRIAN SHEALEY: Maybe I'll clarify that he
5 said that he did talk about what Josh said.

6 THE COURT: Yes, sir, based upon previous pretrial
7 hearings I would overrule your objection for the reasons
8 stated at those hearings.

9 BY MR. PAULING:

10 Q. Let me ask you this. While you were there speaking
11 with Mr. And Mrs. Porch, did you notice any injuries to Mr.
12 Porch?

13 A. No. I do recall specifically that Mr. Porch had on a
14 white tank top T-shirt and it wasn't very well lit in the
15 apartment, but I tried to look the best I could to make sure
16 he didn't have any scratches on his face, his arms, or any
17 type of injuries that would be consistent with getting into
18 an altercation with someone a few hours earlier and I was
19 not able to identify any marks on his body.

20 Q. Based on the conversation that you had with Mr. Porch,
21 what was your understanding of any information he had about
22 her?

23 A. He did not have any information. He told me that -- I
24 left him my business card and asked him that if he had heard
25 of anything, or knew anything, or if anything would come to

1 his mind, please contact me, and that was pretty much the
2 extent of our conversation that morning.

3 MR. PAULING: Beg the court's indulgence.

4 (Off the record)

5 (Back on the record)

6 BY MR. PAULING:

7 Q. Thank you.

8 MR. PAULING: Your Honor, there is no further
9 questions at this time.

10 THE COURT: Any cross?

11 MR. BRIAN SHEALEY: May it please the court?

12 THE COURT: Yes, sir.

13 CROSS EXAMINATION BY MR. BRIAN SHEALEY:

14 Q. Hello, sergeant.

15 A. Hello.

16 Q. This is the third time that you have testified in
17 regard to the death of Nakia?

18 A. Yes, sir.

19 Q. The first few times it was for the prosecution of
20 Justin Mallory?

21 A. Yes, sir.

22 Q. And you are a sergeant?

23 A. Yes, sir.

24 Q. Okay. You also have experience with investigating and
25 as assisting in the prosecution of serious cases?

- 1 A. Yes, sir.
- 2 Q. Homicides?
- 3 A. Yes, sir.
- 4 Q. Approximately how many homicides have you investigated
- 5 in all your time with Richland County?
- 6 A. I would say I have been involved in over twenty
- 7 investigations of adults and juvenile deaths.
- 8 Q. This ain't your first rodeo?
- 9 A. No, sir.
- 10 Q. Okay. And you sat there and swore on that Bible and
- 11 testified twice before?
- 12 A. Yes, sir.
- 13 Q. Now again?
- 14 A. Yes, sir.
- 15 Q. To what you did in this case?
- 16 A. Yes, sir.
- 17 Q. All right. And you were part of a team of
- 18 investigators in this case?
- 19 A. Correct.
- 20 Q. Y'all were on the ground as soon as this thing
- 21 happened, right?
- 22 A. Yes, sir.
- 23 Q. Talking to witnesses?
- 24 A. (Shaking head yes).
- 25 Q. Taking statements?

1 A. (Shaking head yes).

2 Q. Tracking down leads?

3 A. (Shaking head yes).

4 Q. And you, as this case progressed, became very familiar
5 with all the angles of this, of the prosecution of Mr.
6 Mallory?

7 A. My involvement in the case was the first probably ten
8 hours, and then I assisted Investigator Holdorf with two
9 additional statements, because part of being a CID
10 supervisor, it's hard to get tied down in one case because
11 you still have several other days to work, so I was there
12 for him and gave a hundred percent the first eight or ten
13 hours, and then assisted him as I could as the case went on.

14 Q. Okay. You mentioned these two statements that you
15 assisted in, who were those?

16 A. Ricki Cook was one of the statements that I have taken,
17 and -- I'm sorry, I can't remember -- oh, Andelyn
18 Rodriguez --

19 Q. Okay.

20 A. -- was the other young lady I spoke with.

21 Q. So those were the two women that you spoke to I guess
22 at the behest of Investigator Holdorf?

23 A. Yes, sir.

24 Q. Okay. And you were assisting him in this
25 investigation?

1 A. Yes, sir.

2 Q. Okay. Did you ever go to the crime scene?

3 A. Yes, sir, I did.

4 Q. Okay. So you know that this is a crime scene that had
5 no forced entry?

6 A. Yes, sir.

7 Q. Okay. And you know that this was a domestic situation
8 that you investigated at that time?

9 A. It was treated that morning and this stage of the
10 investigation as a domestic, yes, sir.

11 Q. And the first two trials you testified to it as
12 domestic?

13 A. Yes, sir.

14 Q. Okay. Now, you talked a little bit about -- I think
15 Mr. Pauling may have said alibi. This is not an alibi case
16 for Mr. Mallory, right?

17 A. Well, he gave an alibi where he was that night earlier
18 and where he was coming from. I consider that an alibi that
19 where he was and that he could be confirmed.

20 Q. Sure. But I think in the prosecution of the first two
21 trials, you know, he gave a version of events about where he
22 was earlier in the night, but not at the time of the
23 incident.

24 An alibi would preclude someone from being able to do
25 something, correct?

1 A. Well, in my opinion, that alibi was where he was right
2 before. I guess I'm not using the same definition of the
3 term you are --

4 Q. That's fine.

5 A. -- but I used it "where were you at when this happened,
6 or right before it happened, or during this," and he said
7 with Ms. Ricki Cook.

8 Q. Okay. And Ricki Cook was an affair he was having?

9 A. Yes.

10 Q. He was cheating on his wife?

11 A. Yes, sir.

12 Q. And you spoke to her?

13 A. Yes, sir.

14 Q. And she told you all about that?

15 A. Yes, sir.

16 Q. She told you that he told her that he didn't have a
17 wife then? You found that out in the course of your
18 investigation?

19 A. To best of my knowledge, that is correct, in her
20 statement.

21 Q. And through the course of your investigation to her in
22 this case, you learned that they went out to eat at
23 Applebee's?

24 A. Yes, sir.

25 Q. And they were in a motel?

1 A. Yes, sir.

2 Q. And they went to a gas station at that time?

3 A. Yes.

4 Q. Dropped her off at her apartment?

5 A. Yes.

6 Q. Her sister's apartment?

7 A. Sister's apartment.

8 Q. I think you testified earlier these are estimates. No

9 one is looking at their watch when things are happening?

10 A. Yes, sir.

11 Q. Right?

12 A. Yes.

13 Q. And Ricki is from Greenville, correct? You had to

14 e-mail her statement to --

15 A. That is correct.

16 Q. And go up there and get it again from her?

17 A. Yes, sir.

18 Q. Now, the whole time that you are driving this path

19 between her sister's apartment, Ricki's sister's apartment,

20 going back to the Mallory's, you are taking the route that

21 you thought was quickest?

22 A. Yes, sir.

23 Q. And I think you have already testified that while you

24 are doing this, that right before eight in the morning, of

25 that morning, Mr. Mallory is being questioned by

1 Investigator Holdorf?

2 A. Yes.

3 Q. And you testified that you and Investigator Holdorf
4 were having phone conversations about the interview?

5 A. Yes, sir.

6 Q. In part, that's where you are knowing where to go and
7 who to talk to?

8 A. Yes, sir.

9 Q. So he is communicating to Mallory and that information
10 is being relayed to you?

11 A. Yes, sir.

12 Q. And then based on that information, you are taking --
13 you are driving this route, right?

14 A. Yes, sir.

15 Q. Now, you agree with me that eight o'clock in the
16 morning there will be more traffic than at 3:30 in the
17 middle of the night, early morning hours? Do you agree with
18 that?

19 A. On Mother's Day on I-20, maybe slightly, but there was
20 very little traffic at all at eight o'clock that morning on
21 I-20.

22 Q. But --

23 A. Because I was actually in the far inside lane, because
24 some of the vehicles were passing me on the outside lane and
25 I never had to stop.

1 Q. But in your experience you would agree, generally
2 that --

3 A. Generally.

4 Q. -- traffic is going to be lighter at 3:30, when people
5 are asleep, than at eight o'clock when people are awake?

6 A. On certain days, yes, sir, I would agree with you.

7 Q. Okay. Certain days?

8 A. Yes, sir.

9 Q. All right. Now, you are being -- you are in
10 communication with Investigator Holdorf, you are doing
11 things, tracking down leads he's telling you. You are
12 talking to Ricki, and you come to find out -- you are
13 talking to Holdorf that Mallory is saying, kind of
14 inexplicably, "you just need to talk to Joshua."

15 A. I was already back at the office at that time.

16 Q. He didn't give you any reason, he just said you needed
17 to talk to him?

18 A. Yes, sir.

19 Q. And at this time he's letting people know that he
20 thought that maybe his wife had been raped as well? Do you
21 understand that from the course of your investigation in
22 this case?

23 A. I have no direct knowledge of that, no, sir.

24 Q. But you have gone through two trials and this is your
25 third time, testifying about it and you were an investigator

1 in this case?

2 A. I was never allowed in the courtroom during the other
3 testimony, so --

4 Q. But you came to understand that that's what Justin
5 Mallory was saying, raped and murdered?

6 A. I -- I'm not familiar with that, no, sir, to my
7 knowledge.

8 Q. Okay. All right.

9 Now, let's talk about two statements that you took.
10 You are tracking down leads. Andelyn Rodriguez, you talked
11 to her as well?

12 A. Yes, sir.

13 Q. Now, you came to understand through the course of your
14 investigation --

15 MR. PAULING: Objection, Your Honor. It's
16 hearsay.

17 MR. BRIAN SHEALEY: Your Honor, I haven't said
18 anything yet.

19 THE COURT: To the extent that your question is
20 going to elicit hearsay, I'll sustain the objection.

21 MR. BRIAN SHEALEY: May we approach?

22 THE COURT: Yes, sir.

23 (Whereupon, the lawyers approached the bench for
24 an off-the-record discussion).

25 THE COURT: Ladies and gentlemen, we have a matter

1 comes in as admission. And I'm going to say that Judge
2 Cooper allowed it, because she certainly testified. She was
3 called.

4 And that was your question and then Mr. Goings
5 responded to something different, but, yes, to answer your
6 question, she was called as a witness.

7 THE COURT: No, that -- and I know I asked that
8 question. My question was on what basis was the testimony
9 elicited? So you answered that too.

10 MR. LUKE SHEALEY: It went right to that, Your
11 Honor.

12 MR. GOINGS: And, Your Honor, my thoughts in
13 whether it should have been admitted, in fact, is not for
14 what here or what we are dealing with here, but obviously I
15 believe the rules Judge Cooper was admission from a party
16 opponent. They can't get that exception here because Mr.
17 Mallory is not the party opponent any more. He's a
18 character -- I mean witness. And when we look at character
19 and traits of witnesses and how they can be included in the
20 Rules of Evidence, when you already said that it didn't
21 really go to the third-party guilt defense, because it's
22 based I mean 2002 to 2006, they can't get beyond 608(b).

23 MR. LUKE SHEALEY: And the overriding thing, Your
24 Honor, we are talking a lot about the Rules of Evidence, and
25 they are important, but my brother continually stresses when

1 you are the defendant, you have greater protections and
2 abilities to provide a complete and full defense. Those are
3 the Constitutional principles. The Constitution --

4 THE COURT: They still have restrictions on them.

5 MR. LUKE SHEALEY: They do have limits. They are
6 not limitless, but they also are not bound by Rule 608 in
7 the right context, and that's why Brian is continually
8 citing Crane v. Kentucky and Kyles v. Whitley, Chambers v.
9 Mississippi, you are allowed to delve into the decision
10 making of law enforcement.

11 And so based on that conversation with Ms.
12 Rodriguez, Sergeant Strange went back to his superiors and
13 they decided this is a sound prosecution.

14 If she had said "no, he was the nicest guy in the
15 world," they might go "uh, that's interesting. What do we
16 have here? Now we are just stuck. That satisfied them.
17 And then you don't just stop when someone is arrested. You
18 continue and build the prosecution as much as you can before
19 trial.

20 MR. GOINGS: And, Your Honor, it didn't go into
21 the decision to arrest Mr. Mallory, because he was arrested
22 long before the statement was taken from Ms. Rodriguez.

23 Prosecutorial decisions at that point in time,
24 once an arrest was, it's within the prosecutor.

25 Again, I don't even think they get that far. I

1 don't think the third-party guilt defense in the
2 Constitution requires for -- I mean, the Rules of Evidence
3 are there. It's a -- we all know what it is. It's a
4 character trait to prove Mr. Mallory had the propensity for
5 violence to commit the crime. It happened in 2002, so it
6 doesn't go to third-party guilt.

7 This particular witness is not the prosecutor in
8 the case and I don't know how you can testify to the
9 prosecutorial decisions. That's Mr. Meadors. Even if they
10 brought Mr. Meadors here, I don't think he can testify about
11 the statements from Ms. Rodriguez.

12 MR. LUKE SHEALEY: Every officer involved in this
13 is an agent of the prosecution, all gathering, looking,
14 being tasked by Stan Smith, who Stan Smith may be in turn
15 being tasked by John Meadors. So certainly this was his
16 role at that time.

17 And I don't understand the logic behind saying
18 well, Mr. Mallory was already charged, so what's the point
19 of this information. Every prosecution we ever see in this
20 court, they are -- after someone is charged, especially in a
21 murder, they are continuing to investigate. Just as if Mr.
22 Mallory had made a phone call, a jail phone call, that was
23 evidenced two weeks prior to trial, long after he had been
24 arrested, that would have been admissible in court against
25 him. And that would continue to convince the officers on

1 that case and the solicitor prosecuting it that this is a
2 sound prosecution. So that is what this piece of evidence
3 is, something that they are asking in the context of
4 domestic violence situation, and by all accounts that is
5 what it was at the time, and they continued to confirm their
6 beliefs in going in that direction. So even when they got
7 an inconsistent statement from Joshua Porch "that I'm not
8 there", or even when they got an inconsistent statement that
9 why there is blood, his blood was there, because of this
10 eventual information, they ignored that and continued to
11 plow forward with Mr. Mallory because of this background
12 information as well.

13 THE COURT: Well, I have heard enough argument.

14 MR. LUKE SHEALEY: Yes, ma'am.

15 (Off the record)

16 (Back on the record)

17 THE COURT: This is what I'll allow. I'll allow
18 there to be testimony about those facts and circumstances
19 leading to the State's prosecution of Mallory.

20 I would allow that to include information relating
21 to -- as was elicited from the witness about the fact that
22 this was considered to be a domestic dispute and the
23 circumstances in the prosecution's eyes that would have
24 supported that belief.

25 I will allow not specific descriptions of what --

1 of what they were told and as relates to statements from
2 this -- from that particular witness, and I believe her name
3 was Rodriguez, I would allow -- I won't allow her name to be
4 used in conjunction with it, and I won't allow her to -- I
5 won't allow the statements as to what she specifically said.

6 I will allow then in the context of deciding to
7 prosecute Mr. Mallory that they had gathered evidence
8 indicating that it was a domestic matter and that evidence
9 in which would have supported that would have included a
10 prior domestic incident between Mr. Mallory and Nakia
11 Mallory in which there were threats made by Mr. Mallory
12 against her. And I won't allow to go in beyond that and I
13 won't allow specific witness.

14 I think in the context of third-party guilt, that
15 certainly allows -- I think some of it is relevant. I think
16 it's really on the -- it's really on the outside of the
17 relevance in this case in terms of being able to establish
18 that at a certain time and place that Mr. Mallory committed
19 this offense and not Mr. Porch. But to the extent that a
20 prior domestic situation is relevant, I'll allow that in
21 terms of the relevance, without going into specific details
22 of what occurred and the specifics of that particular
23 offense, or that particular situation.

24 I will allow there to be claims that there was a
25 domestic situation in which threats were made, and I think

1 that's as far as you can go with it. And I think that's
2 appropriate under Burgess, Holmes, Rice, Kentucky v. Crane,
3 Chambers v. Mississippi -- or Crane v. Kentucky, rather, and
4 I think that's sufficient.

5 Anything else we need to take up?

6 MR. GOINGS: Your Honor, I understand your ruling.
7 I just want to make sure if it's not elicited on
8 cross-examination, that we have the right to at least
9 ascertain the date.

10 Obviously you said they could go in -- it's my
11 understanding law enforcement testified that they had
12 information concerning a prior domestic situation where
13 threats were made by Mr. Mallory to Ms. Mallory. I just
14 want to make sure that we are able to ask the witness
15 concerning the dates -- or the dates of the --

16 THE COURT: You can elicit what year.

17 MR. GOINGS: That's all, Your Honor.

18 THE COURT: Are we clear?

19 MR. BRIAN SHEALEY: Yes, sir.

20 THE COURT: You may ask the jury to come in.

21 Does the witness understand as well?

22 THE WITNESS: Yes, ma'am.

23 THE BAILIFF: Ready for the jury?

24 THE COURT: Yes.

25 (The following takes place in the presence of the

1 jury panel)

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

3 THE COURT: You may continue.

4 MR. BRIAN SHEALEY: Thank you, Your Honor.

5 BY MR. BRIAN SHEALEY:

6 Q. Sergeant Strange, I think you testified earlier this
7 was initially investigated in the context of a domestic
8 situation?

9 A. Yes, sir.

10 Q. I think you testified that you were one of the
11 investigators on the ground investigating initially?

12 A. Yes, sir.

13 Q. A team of investigators, including yourself,
14 Investigator Holdorf, and also Captain Smith, now --

15 A. Yes.

16 Q. -- Major Smith?

17 A. Yes.

18 Q. Okay. And you came to find out through the course of
19 your investigation that this was a crime scene where there
20 was no forced entry?

21 A. Yes.

22 Q. The door wasn't kicked in?

23 A. Correct.

24 Q. The sliding glass door, the glass wasn't shattered?

25 A. Correct.

1 Q. Essentially there was no information at all at the
2 crime scene of any kind of forced situation?

3 A. No, sir.

4 Q. Lending someone to believe, in your vast experience I
5 think of twenty-five years, this very well could be a
6 domestic homicide?

7 A. Yes, sir.

8 Q. And when your team were investigating Mr. Mallory and
9 conferring with the prosecution, that was the context of
10 your investigation from day one?

11 A. Yes, sir.

12 Q. Okay. And you were in constant communication from the
13 offset with your other investigators -- investigator, excuse
14 me. I think you said that you were on the phone with
15 Investigator Holdorf --

16 A. Yes.

17 Q. -- as he was questioning Mr. Mallory?

18 A. Yes.

19 Q. You are in contact with other people that are feeding
20 you information to help you do your job?

21 A. Yes.

22 Q. In turn, you are giving other people information that
23 you had received? I think you said that you were in charge
24 of crime scene, that kind of stuff?

25 A. Yes, sir.

1 Q. Telling people what to do, when to do it, and how to do
2 it?

3 A. Yes, sir.

4 Q. And you had yourself into that crime scene?

5 A. Yes.

6 Q. Thinking about things in the context of investigating a
7 domestic situation?

8 A. (Shaking head yes).

9 Q. You were aware of through the course of your
10 investigation an eyewitness that talked about domestic
11 chatter?

12 A. Yes.

13 Q. That kind of stuff. You had information about that.

14 You had information, as you, from day one, being a
15 ground investigator, and continuing through with your
16 investigation of kind of weird things going on at the
17 hospital where Mr. Mallory brought Nakia's body to the
18 hospital?

19 A. Yes.

20 Q. You learned about that through your own investigative
21 efforts, as well as your team, your on the ground
22 investigators?

23 A. Correct.

24 Q. Okay. And does your investigation just stop on day one
25 when you have someone that's unfortunately passed away, or

1 does it continue until everything is exhausted?

2 A. We continued the investigation as far as we can.

3 Q. Okay. And in this case you were tracking down leads
4 for weeks and months?

5 A. Yes, sir.

6 Q. Okay. And your experience of twenty-five years --

7 A. Yes, sir.

8 Q. -- with the Richland County Sheriff's Department.

9 In the context of a domestic homicide, is it important
10 to follow up with people that knew the victim and the
11 husband?

12 A. Yes, sir.

13 Q. Okay. So you knew to do this, but you are also
14 instructed to talk to friends and family and relatives?

15 A. Yes, sir.

16 Q. Okay. And you did that?

17 A. Yes.

18 Q. Okay. And other investigators did more of the same for
19 weeks and months, even after Mr. Mallory was arrested?

20 A. Correct.

21 Q. Okay. Because the investigation doesn't just stop?

22 A. Correct.

23 Q. Okay. And in the context of a domestic homicide, you
24 know, you are conferring with the prosecution, Mr. Meadors,
25 your team is?

1 A. Yes.

2 Q. As well as your superior officers to whom you report
3 to, like Major Smith?

4 A. Yes.

5 Q. As well as people that have had direct conversations
6 with witnesses and the defendant at that time, Mr. Mallory,
7 so you are speaking to Investigator Holdorf?

8 A. Yes.

9 Q. And he, in fact, asked you with speaking to some of
10 these witnesses we have been talking about that are friends
11 and family and that kind of thing?

12 A. Correct.

13 Q. Okay. And did you have on occasion an opportunity to
14 speak to a witness that did let you know that there was a
15 past domestic incident between Nakia Mallory and Mr.
16 Mallory?

17 A. Yes, sir, I did.

18 Q. And that threats were made?

19 A. Yes, sir.

20 Q. Okay. And at that time did that support your theory of
21 prosecution at that time?

22 A. Yes, it did.

23 Q. Now, I think we talked about you doing this route and
24 you were driving back from Ricki Cook's sister's apartment?

25 A. Yes.

1 Q. Okay. And you testified that you were also on the
2 phone with Investigator Holdorf right when he was speaking
3 to Mr. Mallory?

4 A. Yes.

5 Q. And you were doing the route. We talked about that.
6 It was almost eight o'clock that same morning?

7 A. Correct.

8 Q. You didn't get any kind of call back -- excuse me, I
9 take that back a little bit.

10 You relayed that information, as far as the time frame,
11 the nineteen minutes, or whatever, to your other team of
12 investigators?

13 A. Yes.

14 Q. You didn't just keep that to yourself?

15 A. Yes.

16 Q. I think you again said that simultaneously Investigator
17 Holdorf was speaking to Mr. Mallory?

18 A. Yes.

19 Q. And that wasn't a short conversation? That was a
20 lengthy conversation?

21 A. Yes.

22 Q. Okay. And you didn't get any calls back saying
23 "listen, you went the wrong route. We got new information
24 from Mr. Mallory about the route that you should be
25 driving." You didn't get that from Investigator Holdorf,

1 did you?

2 A. No, sir.

3 Q. So you told him the route that you took. That was
4 fine, as far as Investigator Holdorf was concerned?

5 A. As far as Investigator Holdorf was concerned, yes.

6 Q. He didn't instruct you to "hold up, we have new
7 information, let's let you drive another route."

8 A. No, sir.

9 Q. While he was speaking to Mr. Mallory?

10 A. No, sir.

11 Q. Okay. And, again, I think you testified that a lot of
12 these times when you are speaking to Ms. Cook and her
13 sister, I think you testified that these are approximate
14 times?

15 A. Yes, sir.

16 Q. Okay.

17 MR. BRIAN SHEALEY: Beg the court's indulgence.

18 (Off the record)

19 (Back on the record)

20 BY MR. BRIAN SHEALEY:

21 Q. Thank you, Sergeant Strange. Please answer any
22 questions that Mr. Pauling has, if he has any.

23 THE COURT: Any redirect?

24 MR. PAULING: Just briefly, Your Honor.

25

1 REDIRECT EXAMINATION BY MR. PAULING:

2 Q. Sergeant Strange, you testified about this information
3 about this domestic dispute?

4 A. Yes, sir.

5 Q. When did that occur, sir? What was the information
6 that you were given, as far as when it occurred?

7 A. To the best of my knowledge, it was in 2002.

8 Q. 2002?

9 A. Yes, sir.

10 Q. And you were asked earlier on cross regarding the route
11 that you took from Ms. Cook's home to the Mallory residence?

12 A. Yes.

13 Q. Okay. Again, why did you take that route?

14 A. From the many years of working in Richland County, that
15 was the shortest route I knew from point A to point B.

16 Q. You took it because it was the shortest route?

17 A. That I was aware of, yes.

18 Q. But at that time were you aware of the route that
19 Justin Mallory took?

20 A. No, sir.

21 Q. Did you speak personally to Justin Mallory about the
22 route that you took?

23 A. No, sir.

24 Q. Now, you were in communication with Investigator
25 Holdorf, is that correct?

1 A. Yes.

2 Q. But did you ever ask Justin Mallory the route that he
3 took from leaving Ricki Cook's sister's apartment to his
4 residence?

5 A. No, sir.

6 Q. Okay. Why is that, sir?

7 A. Well, you have to come across Broad River Road and
8 there is only one way to come across Broad River Road
9 without going through the city limits or town. And, again,
10 the shortest route that I knew to take was I-20 to Alpine
11 Road, which puts you off right beside the apartment complex.

12 Q. Thank you, Sergeant Strange.

13 MR. PAULING: No further questions, Your Honor.

14 THE COURT: You may step down.

15 THE WITNESS: Thank you.

16 THE COURT: Is the officer excused?

17 MR. GOINGS: Yes, ma'am.

18 THE COURT: You may be excused. Thank you.

19 You may call your next witness.

20 MR. PAULING: The State would call Jimmy White.

21 CAPTAIN JAMES WHITE, having been first duly sworn,
22 testified as follows:

23 THE CLERK: Have a seat on the witness stand,
24 please.

25 State your name for the record.

1 THE WITNESS: Captain James Edward White with the
2 Richland County Sheriff's Department.

3 DIRECT EXAMINATION BY MR. PAULING:

4 Q. How are you doing, captain?

5 A. Good.

6 Q. Okay. Sir, can you tell the ladies and gentlemen of
7 the jury where you are currently employed?

8 A. With the Richland County Sheriff's Department.

9 Q. And how long have you been with the sheriff's
10 department?

11 A. Since October or November of '93.

12 Q. Okay. And what division do you work in currently?

13 A. I'm currently in the Professional Standards Division
14 dealing with recruiting and processing applicants.

15 Q. Okay. Back in 2006, actually 2007, what division were
16 you in?

17 A. I was assigned to the Criminal Investigative Division
18 of the sheriff's department upstairs. I was sergeant.

19 Q. Okay, sir. And in 2007, the summertime of 2007, did
20 you have an occasion to participate in the matter of the
21 investigation regarding Nakia Mallory's death?

22 A. I participated in a couple of interviews.

23 Q. Okay. And as far as those interviews were concerned,
24 who were the interviews of?

25 A. Mr. Porch.

1 Q. Joshua Porch?

2 A. Yes, sir.

3 Q. Okay. And you say a couple. When was that first
4 interview?

5 A. The first, from what I recall, was on July 2nd, and the
6 second one was on July 3rd.

7 Q. Okay.

8 A. They were back to back days.

9 Q. Okay. And prior to that -- where did that interview
10 take place?

11 A. At the Richland County Sheriff's Department.

12 Q. Okay. And who was present during that interview?

13 A. On the 2nd?

14 Q. Yes.

15 A. On July 2nd, it would have been myself initially in the
16 interview room.

17 Q. Okay.

18 A. And Investigator Holdorf would have been viewing the
19 interview for a period of time, but then he would have come
20 in at the final, the end portion of it.

21 Q. Okay. Prior to the interview, was Mr. Porch advised of
22 his rights?

23 A. He was.

24 Q. And how was that done, sir?

25 A. I read each one to him and it was -- he affixed his

1 signature, you know, stating that he understood them and
2 waived them.

3 Q. Was there a particular form that you used?

4 A. It was.

5 Q. Okay. And what is that form called?

6 A. It's an advisement of rights form.

7 Q. Okay.

8 (Advisement of Rights Form marked as State's
9 Exhibit No. 38 for identification)

10 MR. PAULING: May I approach the witness, Your
11 Honor?

12 THE COURT: Yes, sir.

13 BY MR. PAULING:

14 Q. Captain White, I'm going to show you what's been marked
15 State's 38 for ID purposes and ask you if you recognize that
16 particular document?

17 A. It is. It's the original advise of rights that I went
18 over with Mr. Porch.

19 Q. Okay. And you said that you advised him of his rights.
20 And how did you do that? Did you read it to him, or what
21 did you do?

22 A. Yes, sir, I read each one of them and checked it off to
23 include the full rights advisement and the waiver and then
24 he signed both of them.

25 Q. So his signature is there as well?

1 A. Yes, sir.

2 Q. Was there anyone else present when you advised him of
3 his rights?

4 A. Investigator Holdorf would have been in the next room,
5 the adjacent room where there is a two-way mirror.

6 Q. Okay. Now, did he waive those rights?

7 A. He did.

8 Q. Okay. And was he threatened or coerced or promised
9 anything --

10 A. No, sir.

11 Q. -- to waive his rights or to give a statement?

12 A. No, sir.

13 Q. What was his -- what was his condition when he sat down
14 with you? I mean, did he seem to understand his rights?

15 A. Yes.

16 Q. Did he have any physical infirmity that would cause him
17 not to understand what those rights were?

18 A. No, sir.

19 Q. And at that particular time --

20 Well, let me ask you this. Prior to interviewing him,
21 had you been finding out information about the case?

22 A. Yes, sir.

23 Q. And as you advised him of his rights, was there
24 anything in particular that you noted about Mr. Porch?

25 A. Not on this particular circumstance.

1 Q. Okay.

2 A. On July 3rd I noticed that he was left handed.

3 Q. Okay.

4 MR. PAULING: Beg the court's indulgence.

5 (Off the record)

6 (Back on the record)

7 BY MR. PAULING:

8 Q. Captain White, you indicated that you interviewed Mr.
9 Porch, is that correct?

10 A. I participated -- I participated in the interview in
11 the aspect of I did interview him for a period of time, but
12 then Investigator Holdorf came in as well.

13 Q. Okay. Was -- I guess at that time was Captain Stan
14 Smith ever present at that particular time?

15 A. He was not.

16 Q. Okay. Did you have another occasion to interview Mr.
17 Porch?

18 A. On July 3rd.

19 Q. Okay. And was Captain Smith present at that particular
20 time?

21 A. He was.

22 Q. Okay.

23 MR. PAULING: Beg the court's indulgence.

24 (Off the record)

25 (Back on the record)

1 MR. PAULING: Beg the court's indulgence.

2 (Off the record)

3 (Back on the record)

4 BY MR. PAULING:

5 Q. And you had indicated that you had interviewed him, is
6 that correct, Captain White?

7 A. For a period of time.

8 Q. For a period of time on July 2nd.

9 At any point did Joshua Porch invoke his rights, his
10 Miranda Warnings?

11 A. He did not.

12 Q. Did he ask for an attorney, ask to take a break?

13 A. He did not.

14 Q. Let me ask you this. At that particular time was he in
15 custody at that time?

16 A. No, sir, not as I recall.

17 Q. Okay.

18 MR. PAULING: Your Honor, I would offer State's 38
19 into evidence.

20 MR. LUKE SHEALEY: Subject to the pretrial
21 objection, Your Honor.

22 THE COURT: All right, I'll admit Exhibit No. 38.

23 (Whereupon, State's Exhibit No. 38 was entered
24 into the record as evidence)

25 MR. PAULING: May I publish it to the jury?

1 THE COURT: Yes, sir.

2 BY MR. PAULING:

3 Q. Thank you, Captain White.

4 MR. PAULING: I have no further questions at this
5 time.

6 THE COURT: Any cross?

7 MR. LUKE SHEALEY: I don't have any questions for
8 Captain White, judge.

9 THE COURT: You may step down.

10 THE WITNESS: Yes, ma'am. Thank you.

11 THE COURT: Are you asking this witness be
12 excused?

13 MR. GOINGS: Yes, ma'am.

14 MR. LUKE SHEALEY: No objection.

15 THE COURT: You may be excused. Thank you for
16 coming.

17 MR. GOINGS: May we approach, Your Honor?

18 THE COURT: Yes, sir.

19 (Whereupon, the attorneys approached the bench for
20 an off-the-record discussion)

21 THE COURT: You may call your next witness.

22 MR. GOINGS: Your Honor, I have one more issue to
23 take up with him.

24 (Off the record)

25 (Back on the record)

1 MR. LUKE SHEALEY: May we approach, judge?

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion)

4 THE COURT: You may call your next witness.

5 MR. GOINGS: The State would call Major Stan
6 Smith.

7 MAJOR STAN SMITH, having been first duly sworn,
8 testified as follows:

9 THE CLERK: / Thank you.

10 Have a seat on the witness stand, please.

11 State your name for the record.

12 THE WITNESS: James Standon Smith.

13 DIRECT EXAMINATION BY MR. GOINGS:

14 Q. Good afternoon, Major Smith, how are you?

15 A. Good afternoon. Fine.

16 Q. Where are you currently employed?

17 A. The Richland County Sheriff's Department.

18 Q. How long have you been with the Richland County
19 Sheriff's Department?

20 A. I started in June of 1984.

21 Q. And obviously we are calling you major. You are a
22 major at this point in time?

23 A. I am.

24 Q. And how long have you been a major?

25 A. I have been a major about two years.

1 Q. Prior to that what were you?

2 A. I was a captain.

3 Q. Now, give us some -- you were a captain back in 2006,
4 is that correct?

5 A. I was a lieutenant back in 2006. In 2007 I was a
6 captain.

7 Q. Okay. And 2007 is when you really became involved with
8 this particular case, is that correct?

9 A. That's correct.

10 Q. What was your role --

11 Give us some of the job duties as a captain over the
12 Richland County Sheriff's Department?

13 A. At that time I'm over the Criminal Investigative
14 Division and primarily Major Crime Unit. And in that role
15 as being over the Major Crime Unit I would get oftentimes
16 involved in some homicide investigations personally. Some
17 more than others.

18 Q. And even as a lieutenant, did you have supervisory
19 responsibility?

20 A. As a lieutenant it was more directly -- most of my
21 duties were homicides and armed robberies.

22 As the captain my responsibilities grew, and as a major
23 now I'm sort of over all of the investigations, to include
24 things other than violent crimes.

25 Q. Okay. So as part of your job duties as a captain, you

1 would not only participate in investigations, but supervise
2 other officers in their investigations, is that correct?

3 A. To some degree, yes. I have a lieutenant under me
4 and -- a couple lieutenants under me that would also
5 participate.

6 Q. Now, can you recall when you became involved with the
7 investigation in the death of Nakia Mallory?

8 A. My -- I had some initial involvement that was just
9 peripheral involvement. It wasn't very significant, at the
10 time of the crime, some consultation with the officers that
11 weekend back in 2006, but my primary involvement came in
12 preparation for the first trial in 2007, June of 2007.

13 Q. Okay. So you wasn't involved in interviewing witnesses
14 back right when the murder occurred?

15 A. No, sir.

16 Q. And who had that primary responsibility of being the
17 case agent?

18 A. Investigator Holdorf was the lead case officer.
19 Sergeant Strange was the supervisor on that weekend.

20 Q. Okay. Well, let's talk about when you actually became
21 involved with the -- when it became -- you say it was trial
22 prep?

23 A. Yes, I was contacted by the solicitors who were
24 handling the prosecution of Justin Mallory.

25 Q. Were you familiar at this point in time with the

1 investigation and who had been arrested and what had been
2 discovered?

3 A. I understood the basics of the case and the probable
4 cause that had been evident the morning that they made the
5 arrest of Justin Mallory back on Mother's Day, 2006.

6 Q. Okay.

7 A. I was not familiar with all the intricate details and
8 all the witness testimony, that kind of thing.

9 Q. All right. So is it save to say that you made no --
10 some information, but the specific --

11 MR. LUKE SHEALEY: Object to the leading.

12 BY MR. GOINGS:

13 Q. Do you know every --

14 MR. GOINGS: I'll rephrase, Your Honor.

15 BY MR. GOINGS:

16 Q. Do you know every detail about every witness statement?

17 A. No, sir.

18 Q. Now, discuss how the trial prep situation works. How
19 did that come about?

20 A. It was Deputy Solicitor Meadors at the time contacted
21 me. His co-solicitor was Todd Wagner, who was an assistant
22 solicitor here at the time of the Fifth Circuit, and
23 indicated that they had some evidence that they needed some
24 further review with regard to the first trial, particularly
25 some DNA evidence that was identified.

1 Q. What was your understanding of the DNA evidence that
2 they wanted further investigation on?

3 A. My understanding was that our DNA analyst, John Barron,
4 had uncovered a second male's DNA at the crime scene. And
5 then I would say at this time our communication with our DNA
6 lab has gotten a lot better since then. At that time that
7 information wasn't directly communicated to the officers
8 working the case right away and there was a delay, and in
9 trial preparation or just before it that's when this was
10 learned about. Apparently the DNA analyst perhaps didn't
11 understand the significance of a second male, I don't know,
12 but, at any rate, at that point in time we were tasked, or I
13 was asked to get involved and try to identify this other
14 individual.

15 Q. And that's -- at that point in time you became hands
16 on, more hands on?

17 A. Yes, that's right.

18 Q. And do you know exactly when the DNA was tested?

19 A. I believe the first report that John Barron generated
20 was in August of 2006, and I'm going from memory, but I
21 believe that's correct.

22 Q. But when was the first time it was brought to your
23 attention that there was more DNA found at the scene?

24 A. I have it in my notes that says June of '07.

25 Q. Okay. And what course of action was developed for the

1 Richland County Sheriff's Department and the investigators?

2 A. Well, we wanted to try to find out who the other male
3 was to explain this. They were getting ready to go to
4 trial. We had this man charged with the murder of his wife
5 and we wanted to explain this, if we have could. So there
6 were several names that were in the file that had been
7 mentioned in the original investigation.

8 Q. Uh-huh.

9 A. One was the maintenance man at the apartment complex.
10 I believe Mr. Mallory had indicated that he came by the
11 apartment a lot.

12 Another name that was given to us was Joshua Porch.
13 The context of that, as I recall, was that Mr. Mallory had
14 been asked "if you didn't kill your wife, then who would
15 kill your wife?" And he just named these people as people
16 that would come by, and he said some things about Porch
17 being a little on the odd side.

18 MR. LUKE SHEALEY: Objection, Your Honor, subject
19 to our pretrial discussion, Rule 404(b).

20 MR. GOINGS: I'll -- I think I understand the
21 objection.

22 THE COURT: I don't think he's gotten that far.

23 Your objection is noted, and make sure that we ask
24 the question.

25 MR. GOINGS: Yes, ma'am.

1 BY MR. GOINGS:

2 Q. So you developed a list of names?

3 A. Yes.

4 Q. And the same as you are talking?

5 A. That's right, and to get the Buccal scabs from him, DNA
6 evidence.

7 Q. And at that point in time had you known about any
8 statements that Joshua Porch may or may not have given to
9 law enforcement?

10 A. If I did, I did not recall them at the time. I may
11 have -- I may have been aware that his name had come up by
12 Mr. Mallory in the initial investigation, but that would
13 have been the extent of it.

14 Q. And as part of this plan, what did you specifically do
15 with regards to the DNA problem?

16 A. I went and tried to find Mr. Porch to secure his DNA
17 and to ask him about this evidence that was also in the
18 house.

19 Q. Okay. And were you able to locate Mr. Porch?

20 A. I did. He had moved -- he and his wife at the time had
21 moved to another part of Columbia. They lived in the
22 Hopkins area and I located him on Dan Gray Road in Hopkins.

23 Q. Okay. And what day did you come in contact with Mr.
24 Porch?

25 A. Actually on the 27th of June, 2007.

1 Q. And where again was this location?

2 A. It was at 214 Dan Gray Road in Hopkins.

3 Q. And what was the purpose of your being at Mr. Porch's
4 residence?

5 A. Well, the purpose was to secure a Buccal swab and/or an
6 explanation from him as to why his DNA may, if it was, in
7 the Mallory apartment.

8 Q. Okay. And was he at home on this particular occasion?

9 A. He was.

10 Q. Now, there was no arrest warrant for Mr. Porch at that
11 point in time?

12 A. There was not.

13 Q. When you got there, I mean -- tell me where the
14 conversations took place.

15 A. I believe we initially spoke at the threshold of his
16 doorway at that residence.

17 Q. So he was not in custody at the time?

18 A. No, sir.

19 Q. And if he didn't want to talk with you, what would have
20 happened?

21 A. If he did not want to talk?

22 Q. Yeah. If you came up there and said "hey, Mr. Porch,"
23 and he said "I don't want to talk to you," what would you
24 have done?

25 A. Well, I can't make him talk. I would have had to

1 depart.

2 Q. Okay. Is that, in fact, what happened?

3 A. No, he was very freely willing to talk to me about
4 this. As a matter of fact, he immediately responded to my
5 query about why -- you know, if it could be his DNA with an
6 explanation.

7 Q. And what did he tell you?

8 A. He told me that the Saturday prior to the murder that
9 he had been over at the Mallory residence with his daughter
10 and the daughter had become hungry. He retrieved an apple
11 and was cutting or peeling an apple and cut his finger. And
12 that he went to clean up the blood and went over to the
13 kitchen area of the sink and that's why blood dripped in
14 that area, and he got some paper towels to try to stem the
15 flow of the blood.

16 Q. Okay. And did he consent to the Buccal swab?

17 A. Yes, he did.

18 Q. And you collected that at that --

19 A. I did.

20 Q. -- as you previously testified?

21 A. I did, as I testified to yesterday.

22 Q. Okay. Now, on this particular occasion when you were
23 out there on June 27th and heard these statements from Mr.
24 Porch, did you -- did he write out his voluntary statement?

25 A. I took a statement from him, and our policy is to

1 actually write the statements or type them ourselves, and in
2 this case I didn't have a computer, so I handwrote it.

3 Q. So, again, you -- this is your handwriting?

4 A. They are his words, but my handwriting, yes, sir.

5 Q. Okay.

6 (June 27, 2007 Handwritten Statement of Joshua
7 Porch was marked State's Exhibit No. 39 for identification)

8 BY MR. GOINGS:

9 Q. I'm going to show you what's been marked State's
10 Exhibit 39. Do you recognize that document?

11 A. Yes, sir, this is the -- I guess it's a copy of the
12 statement that I took on that morning, June 27th, 2007, from
13 Joshua Porch.

14 Q. And that's the question and answer?

15 A. It is.

16 Q. All in your handwriting?

17 A. It is.

18 Q. Did Mr. Porch sign that statement?

19 A. He did.

20 Q. Was he given an opportunity to review it before he
21 signed it?

22 A. Yes, I read it back to him and he agreed with the
23 content that that was what he intended to say, and he signed
24 it and I actually notarized it.

25 Q. Now, when -- you never placed him under arrest at any

1 point in time, did you?

2 A. No.

3 Q. Okay. If he wanted to quit with the conversation that
4 was going back and forth between you on this particular
5 occasion, what would you have done?

6 A. I would have quit.

7 Q. Okay.

8 MR. GOINGS: Your Honor, at this time I would seek
9 to introduce State's Exhibit 39 into evidence.

10 THE WITNESS: 39.

11 MR. LUKE SHEALEY: Subject to prior objection.

12 THE COURT: Based upon previous motions, I will
13 admit the statement.

14 (Whereupon, State's Exhibit No. 39 was entered
15 into the record as evidence)

16 BY MR. GOINGS:

17 Q. I know it's a quite lengthy statement, but could you
18 publish that to the jury --

19 A. I will.

20 Q. -- Major Smith?

21 A. It's a question and answer statement. I just write out
22 Q and then A and that's how we do it.

23 The first question "Joshua, you previously were
24 interviewed regarding the murder of Nakia Mallory, is that
25 correct?"

1 And his response was "yes."

2 Second question. "You had told the detective you had
3 been at the Mallory apartment earlier that Saturday before
4 Mother's Day, is that right?"

5 He said "yes."

6 "Did you injure yourself in any way while there?"

7 He said "yes."

8 I said "can describe how?"

9 He indicated "I asked Justin if I could have an apple.
10 I was there with my then two year old daughter Genesis and
11 she was due to eat. I was also sort of hungry. Justin told
12 me to go ahead. I used a small kitchen knife that I found
13 in the kitchen to cut up the apple. While I was cutting the
14 apple I cut my right index finger right on the tip. It
15 started dripping blood. I was trying to look for paper
16 towels. The cut more than likely dripped some as I was
17 looking for the towels. I washed my finger off at the sink
18 and then looked under the sink for a roll of paper towels.
19 The roll was in the back of the cabinet. So when I reached
20 in I knocked over a can of air freshener that was there. I
21 got a towel off of the roll and I wrapped my finger up. It
22 was right then that Justin came in and said he had to leave.
23 I then got my daughter and left too."

24 Next question. "Did you tell anyone about the cut on
25 your finger?"

1 Answer, "well when the detective came the next day I
2 told him that I cut my finger while there that Saturday. I
3 also told my wife and her family. I knew that if they found
4 my blood that I may become a suspect and I didn't want to be
5 involved."

6 Next question. "Where did you go that Saturday night?"

7 Answer. "I went to my friend Marcus' apartment off of
8 Parklane. I knew him from working together at Thomas and
9 Howard. His apartment complex is off that road right beside
10 the Texaco on Parklane Road. I left there between 11 p.m.
11 and midnight." I then went home to our apartment at
12 Meredith Square. I stayed in the rest of the night." And
13 that was the end of the statement.

14 Q. Now, again, at that point in time were you aware of any
15 previous statements made to law enforcement by Mr. Porch?

16 A. The only thing that I may have been aware of is that
17 Sergeant Strange spoke to him and that there was some sort
18 of alibi that was provided and that he had denied
19 involvement or knowledge.

20 Q. Okay.

21 A. That would be, as I recall, the only thing that I would
22 have known at the time --

23 Q. Okay.

24 A. -- because I then did check with Sergeant Strange about
25 Porch's contention that he had told him about it that Sunday

1 afternoon.

2 Q. That's my next question. So you get that statement?

3 A. Yes.

4 Q. And you leave?

5 A. I actually -- I did leave. I don't know how far I
6 went. I got on my cell phone and I called Sergeant Strange
7 and I asked him that very question, had indeed Joshua Porch
8 told him about a cut, and his answer was he didn't recall
9 any such explanation about a cut.

10 Q. So what was your next course of action?

11 A. Well, I returned to the Porch residence to again talk
12 to him about this assertion that he had told Sergeant
13 Strange about a cut, and his response at that point in time
14 was well, he thought he had told Sergeant Strange about a
15 cut.

16 Q. And this was still on June 27th?

17 A. Yes.

18 Q. And, again, you arrived back at the residence?

19 A. I did.

20 Q. Still his home?

21 A. That's right.

22 Q. Okay. Is he in custody at that time?

23 A. He's not.

24 Q. If he said "I want to quit talking to you," what would
25 you have done?

1 A. I would have quit talking to him.

2 (June 27, 2007 Handwritten Statement of Joshua
3 Porch was marked State's Exhibit No. 40 for identification)
4 BY MR. GOINGS:

5 Q. Major Smith, I'm going to hand you what's been marked
6 State's Exhibit 40.

7 A. Yes, I can identify this.

8 Q. And what is that document?

9 A. It's a second statement that I took from Joshua Porch
10 that day, that afternoon, upon my return covering this
11 particular point that I just testified to.

12 Q. On June 27th, 2007?

13 A. Yes, sir.

14 Q. Again, is it the same question and answer format --

15 A. It is.

16 Q. -- that you previously testified about?

17 A. It is.

18 Q. Okay. And when -- did you give him a chance to review
19 it?

20 A. I did.

21 Q. Did you witness him sign it?

22 A. I did.

23 Q. Was he in custody at this point in time at the time
24 that he signed this statement?

25 A. He was not.

1 Q. If he refused to sign the statement, what would have
2 happened?

3 A. Well, if he had refused to sign -- I couldn't make him
4 sign the statement, but I would later tell somebody that
5 that was his statement upon being asked.

6 Q. Okay.

7 MR. GOINGS: Your Honor, at this time the State
8 would seek to introduce State Exhibit 40 into the record.

9 MR. LUKE SHEALEY: Subject to prior objection.

10 THE COURT: Based upon the prior rulings in the
11 pretrial matters, I'll admit it.

12 (Whereupon, State's Exhibit No. 40 was entered
13 into the record as evidence)

14 MR. GOINGS: Thank you, Your Honor.

15 BY MR. GOINGS:

16 Q. Major Smith, would you publish this particular
17 statement to the jury?

18 A. I will.

19 The first question, "Joshua this morning I took a
20 statement from you regarding the fact that you accidentally
21 cut your finger at the Mallory apartment on the day before
22 her murder, is that correct?

23 And his answer was "yes."

24 The second question, "in that statement you told me
25 that you had told the detectives the next day, is that

1 correct?"

2 And he said "yes."

3 I said "are you sure that you told the detectives about
4 the accident?"

5 His answer was "I'm not sure, but I thought I had. I
6 do know I told my wife Persia after the detective left
7 because I was worried about it."

8 Question. "Again, why were you worried?"

9 Answer. "Because I didn't want them to think that I
10 was a suspect or to consider me a suspect."

11 Next question. "Why had you thought you had told the
12 detective about the cut?"

13 Answer. "I do remember telling him about going to
14 their apartment on that Saturday and I figured I probably
15 had told him about the cut. I now know I may have not have
16 told him."

17 Next question. "Did Justin know that you had cut
18 yourself that day?"

19 Answer. "Yeah, because I asked him where the paper
20 towels were. He saw that I had cut myself."

21 The last question was "did you try to clean up blood
22 drops off the kitchen floor as well?"

23 His answer was "yeah, I used some of the paper towels
24 to try to wipe up the blood."

25 Q. Thank you, major.

1 Now, at this point in time what do you do with this
2 information that you just collected from Mr. Porch?

3 A. Well, I relayed the information to Deputy Solicitor
4 John Meadors.

5 Q. And based on what you know about the investigation,
6 were those two statements that he gave on June 27th
7 consistent with what he told Investigator Strange?

8 A. They were not consistent, based on the fact that he had
9 not mentioned a cut, primarily.

10 Q. And did you have another chance to speak with Mr. Porch
11 on a different occasion?

12 A. I did.

13 Q. And when did that occur?

14 A. Deputy Solicitor Meadors asked me to bring him in for
15 an interview here at the solicitor's office and we did that
16 actually on the morning of the 28th, the following morning.

17 Q. All right. And where did that interview take place?

18 A. It took place in the deputy solicitor's office right
19 behind that wall right there.

20 Q. Let's move -- was there another chance -- did you have
21 an opportunity to interview Mr. Porch on July 2nd of 2007?

22 A. I did.

23 Q. And where did that interview take place?

24 A. The Richland County Sheriff's Department.

25 Q. How did Mr. Porch arrive, if you recall, at the

1 Richland County Sheriff's Department?

2 A. I actually picked him up and gave him a ride.

3 Q. Okay. Let's talk about that.

4 Was he in custody at the time?

5 A. He was not.

6 Q. Was there an arrest warrant out for him?

7 A. There was not.

8 Q. If he refused to go, what would have happened?

9 A. He wouldn't have gone.

10 Q. Okay. So he voluntarily got in your car and came to
11 the Richland County Sheriff's Department?

12 A. He did.

13 Q. Okay. And where was he interviewed at?

14 A. He was interviewed in an office there at the sheriff's
15 department.

16 Q. Where is that?

17 A. In an office there at the sheriff's department.

18 Q. Okay. Were you the first person to interview him that
19 day?

20 A. I believe Investigator White had interviewed him prior
21 to my involvement.

22 Q. Jimmy White?

23 A. Yes, sir.

24 Q. Okay. And did you have knowledge of whether Mr. White
25 had mirandized --

1 A. I did.

2 Q. -- Mr. Porch?

3 A. I did.

4 Q. You did?

5 A. I did.

6 Q. Have you seen that waiver of rights form --

7 A. Yes, sir.

8 Q. -- that Mr. White completed with the defendant?

9 A. Yes, sir, I was aware of that.

10 Q. But, again, Investigator White's interview was separate
11 and apart from yours, is that correct?

12 A. Initially.

13 Q. And, again -- well, let me ask you this. Is it
14 customary if a person is not in custody or under arrest to
15 actually have to give them an advise of rights form?

16 A. Sometimes we do it out of an abundance of caution.

17 Q. Okay.

18 A. You know, these matters can be argued later that -- in
19 some people's eyes it's a gray area whether they were in
20 custody or free to leave and that kind of thing, so
21 sometimes in those scenarios, especially up at the police
22 headquarters or the sheriff's department we will advise them
23 of their rights.

24 Q. And if he wanted to discontinue the questioning, what
25 would happen at any point in time during that interview?

1 A. Well, the questioning would have ended.

2 Q. Okay. Would he have been free to go?

3 A. Yes, sir.

4 Q. Okay.

5 MR. GOINGS: Beg the court's indulgence, Your
6 Honor.

7 (Off the record)

8 (Back on the record)

9 BY MR. GOINGS:

10 Q. The version of the incidents that occurred as given to
11 you on July 2nd, 2007, by Mr. Porch, do they match what he
12 had previously told you?

13 A. No, sir.

14 Q. Explain to the jury how they had changed.

15 A. Well, as I had in my notes, the story comes out in bits
16 and pieces, as I have it worded here.

17 He would now ultimately admit that he had been present
18 at the Mallory residence basically at the time that he says
19 Justin Mallory came in while he was there with Nakia Mallory
20 and he witnessed a violent domestic argument basically
21 between the two of them and that at some point in time a
22 knife was involved. He accidentally got in the middle of
23 them, or got in the middle of them trying to break it up and
24 he got cut. And Nakia Mallory -- he said the argument
25 ended. He could tell she was wounded, but did not know that

1 her wound was as bad as it would later -- he would later
2 find out it was. He cleaned his hand up and left was
3 basically the story that he told at that point in time.

4 Q. Okay. And obviously was that version of what happened
5 consistent with the prior two statements?

6 A. No, sir.

7 Q. Did he give a written statement on this particular day
8 as well?

9 A. He did.

10 Q. Okay.

11 MR. GOINGS: Your Honor, can we approach?

12 THE COURT: Yes.

13 (Whereupon, the lawyers approached the bench for
14 an off-the-record discussion)

15 (July 2, 2007 Typed Statement of Joshua Porch was
16 marked State's Exhibit No. 41 for identification)

17 BY MR. GOING:

18 Q. Major Smith, I'm going to hand you what's been
19 identified as State's Exhibit 41.

20 A. Yes, sir.

21 Q. Do you recognize that document?

22 A. I do.

23 Q. What is that a document of?

24 A. A statement that was taken from Joshua Porch on July
25 2nd, 2007. I actually took this statement in the same

1 fashion I took the others, except I typed this one instead.

2 Q. Again, he's not in custody?

3 A. He's not.

4 Q. He's free to leave, if he so chooses?

5 A. He was.

6 Q. And despite all that, he was still mirandized by
7 Captain White?

8 A. He was.

9 Q. Okay. So he understood his rights?

10 A. That's right.

11 Q. Okay.

12 A. He indicated that he understood his rights.

13 Q. Okay.

14 MR. GOINGS: Your Honor, at this time the State
15 would seek to introduce State's Exhibit 41 into the record.

16 MR. LUKE SHEALEY: Subject to my prior pretrial
17 objection and to our stipulation at the bench.

18 THE COURT: Yes, sir.

19 And based upon our prior pretrial hearings, I'll
20 rule that it is admissible based upon those grounds.

21 MR. GOINGS: Thank you, Your Honor.

22 (Whereupon, State's Exhibit No. 41 was entered
23 into the record as evidence)

24 BY MR. GOINGS:

25 Q. Major Smith, if you could publish this statement to the

1 jury?

2 A. The first question, "Joshua, have you given a couple of
3 statements", and I got parenthesis (last week) 'regarding
4 the Nakia Mallory homicide, is that correct?"

5 The answer was "yes."

6 "Were those statements true?"

7 And answer was "no, not completely."

8 Next question. "What have you now told us regarding
9 the Nakia Mallory murder?"

10 His answer was "I went by their apartment on my way to
11 Marcus' between ten and eleven p.m.. Nakia was home alone
12 and invited me in. I wanted to buy some Vodka from her but
13 all she had on hand belonged to Justin and she wouldn't sell
14 it. I stayed for maybe ten minutes and then went to
15 Marcus'. I stayed over at Marcus' until after midnight, but
16 I'm not exactly sure what time I left. I then went back to
17 Nakia's and Justin's house. I did go by my apartment at
18 Meredith Square first simply to see if Persia was still up.
19 I believe the lights were still on, but I didn't stop. I
20 didn't feel like going home, because I didn't want to go
21 home and simply go to bed. I wasn't tired. When I got to
22 their apartment Nakia was alone. She let me in and we sat
23 and drank some. We were alone for maybe an hour, or
24 something like that, but I wasn't paying attention to the
25 time. It could have been longer than that. We were both

1 sitting on the sofa at one point just talking back and
2 forth. I'm not sure how it initiated. It just happened.
3 We started to kiss and fondle one another as well as
4 grinding some against each other. We never did actually
5 take our clothes off and had actual sex, but I think it
6 would have gotten to that point. All of the sudden Justin
7 came in. Justin got mad at Nakia and wanted to know why I
8 was there. Nakia then responded by asking Justin where he
9 had been. It escalated from there. The argument eventually
10 ended up in the kitchen. I was still in the living room.
11 The gist of the argument was that she was upset thinking
12 that he was cheating on her. He kept denying it. He kept
13 getting more and more angry. They both were cursing. At
14 one point they were coming out of the kitchen and the
15 argument turned physical. Nakia pushed Justin. He got
16 upset and that was when I noticed he had something in his
17 hand. He pushed her back. She got right back in his face
18 and she pushed him more. I saw Justin's hand as he swung at
19 her. I saw something in his hand. I then stepped in front
20 of him to calm him down and to keep him from going after her
21 any further. I then got cut by the object," and I got in
22 parenthesis "(knife or whatever it was) which Justin had in
23 his hand. That was when I realized what I had seen in his
24 hand moments earlier. I didn't know at the time that he
25 also had cut Nakia prior to me stepping in between the two

1 of them. I realized that moments later. I went to the
2 kitchen to get a paper towel because I was bleeding from the
3 cut on my hand. I knew where they kept the paper towels
4 from when I had been over there before. I reached under the
5 sink and got the paper towel. At that time I also cleaned
6 up some blood which I had dripped on the floor in the
7 kitchen. It was then that I decided to leave because things
8 had gotten out of hand and I didn't want to be involved in
9 it any further. As I was leaving I looked at Nakia. She
10 was slouched back on the couch and I noticed she was
11 bleeding. I didn't remember seeing Justin at that point.
12 I'm not sure where he was as I was just concentrating on
13 getting out at that point. When I got home Persia was
14 asleep. In order to explain the wound on my hand I told her
15 I had slipped at Marcus' house and got cut on a nail that
16 was sticking out of a rail. The next day the detective came
17 by and told us that Nakia was dead. He also told us that
18 Justin was under arrest for her murder. I decided then not
19 tell the detective what I had seen while I was there because
20 I was afraid of being charged. I was afraid of being
21 charged because I had been there when she was cut. I never
22 had told anyone what I saw this past year."

23 The next question was "the story about the apple was a
24 lie?

25 His answer was "yes."

1 Question. "The story about her teasing you about your
2 hair and flicking her fingers through your hair was a lie
3 too?

4 He said "no, she did do that when I was there earlier
5 that afternoon."

6 The next question. "When the two of were you getting
7 intimately physical with one another, did you exchange any
8 bodily fluids?"

9 His answer was "no."

10 "There was no sexual penetration whatsoever?"

11 His answer was "no."

12 Next question. "Describe the nature of the contact
13 once again."

14 His answer was "pretty much fooling around and grinding
15 some."

16 Question. "Did she touch you a lot during the time
17 frame?

18 "Yeah."

19 "Is that the first time that kind of thing happened
20 between the two of you?"

21 His answer was "yes."

22 "Did you actually see Justin cut Nakia?"

23 His answer was "I saw him swipe at her with an object
24 in his hand. It was a metal object, but I don't know if it
25 was a knife or what. I didn't realize until I was leaving

1 that he had actually cut her."

2 Question. "Why didn't you call 911?"

3 Answer. "I didn't think she was going to die because
4 it didn't look bad. There wasn't blood everywhere and she
5 just had some blood."

6 Question. "You didn't talk to Justin afterwards?"

7 Answer. "No, I haven't seen or heard from him since
8 then. He didn't know where we had moved to and my phone was
9 shut off. I don't know if he tried to contact me or not."

10 Question. "When Justin came in the front door, did he
11 have his keys to open the door?"

12 His answer was "I believe the door was unlocked."

13 Question. "Where was your car parked in relation to
14 Justin's van?"

15 His answer was "my car was parked in the opposite side
16 of the lot in front of the buildings across from their
17 apartment. Justin's van was parked right in front of their
18 apartment."

19 Next question. "What words/phrases do you specifically
20 recall Nakia and/or Justin using or saying during the
21 argument?"

22 His answer was "I heard Justin say 'oh, shit, look what
23 you made me do.' That was after he swung the metal object
24 at her. I didn't know then that he had cut her. I heard
25 Justin call Nakia a bitch. I know Nakia asked him numerous

1 times where he had been and if he was cheating on her. At
2 one time I heard her ask 'who is she?' That was all she was
3 pretty much was asking him. She might have called him a
4 couple of names but I can't specifically recall them. I
5 know they were both upset."

6 Next question. "Did he ever accuse you and Nakia of
7 having an affair or sex with one another?"

8 His answer was "no."

9 Next question. "From the time Justin got home until
10 the time you left how much time elapsed?"

11 He said "ten to fifteen minutes."

12 Question. "What was Justin doing when you were
13 leaving?"

14 Answer. "I didn't see him, but I heard him talking on
15 the cell phone. He was somewhere in the apartment, but I
16 wasn't staying to look for him."

17 Question. "He wasn't in the den area?"

18 Answer. "I didn't see him in there."

19 Question. "So you saw Nakia go from being an angry and
20 vocal wife to being slumped over on the couch quiet and
21 still?"

22 His answer was "yes."

23 Question. "Did you realize then she was hurt bad?"

24 His answer was "no."

25 Question. "After you saw Justin make the swiping

1 motion at Nakia and then heard the phrase 'look what you
2 made me do,' did that end the argument? Was it quiet then?"

3 His answer was "it was quiet then, but I wasn't there
4 much after that. It took only seconds for me to leave."

5 Question. "Where was Nakia bleeding from?"

6 Answer. "I didn't see the cut. I just know blood was
7 trickling down from her face, neck, and head area."

8 Question. "Do you recall which side of her neck or
9 head she was bleeding from?"

10 He said "no."

11 Question. "What did you do when you left their
12 apartment?"

13 "Went straight home" was his answer.

14 Question. "Which hand were you cut on?"

15 He said "his left hand."

16 Question. "How long was the cut on your hand?"

17 And he said "about like that," and he (demonstrated
18 about an inch long cut) with his fingers I got in
19 parenthesis.

20 Question. "Did you see the object that Justin cut you
21 with?"

22 His answer was "no."

23 Question. "What was the position of your hands when
24 you got cut?"

25 And he said "like this", and he demonstrated at his

1 hands being at his breast away like that, (at his breast
2 line area)."

3 Question. "When Justin cut you what did you say?"

4 His answer was "he wasn't really saying anything."

5 Question. "Did you hear any of Justin's call when he
6 called someone?"

7 His answer was "I didn't hear what he was saying. He
8 was just talking to someone."

9 Question. "Have you ever heard Justin say anything
10 about the deterioration of his relationship/marriage with
11 Nakia?"

12 His answer was "I knew they were having problems and I
13 knew he was cheating on her. Earlier that same afternoon
14 when I was at their house Justin told me he was getting
15 tired of her. He said he hated her ass and wish she would
16 go away."

17 Question. "After Nakia was stabbed (or cut) did Justin
18 ask you to assist in any way?"

19 He said "no."

20 Question. "Did you have any further conversations with
21 Justin from that point?"

22 His answer was "no."

23 Question. "What was your cell phone number at the time
24 of this incident?"

25 He gave me "760-7766. It was a Verizon account. It

1 was in my wife's name."

2 Question. "What did you drink from while in the
3 apartment?

4 Answer. "I believe it was a cup, but I'm not sure. I
5 don't remember if we were drinking beer or liquor."

6 Question. "What made you believe that you could calm
7 things down by stepping between them, particularly after
8 Justin had just gotten home and said something about you
9 being there?"

10 His answer was "I don't know. I wasn't thinking too
11 much about it. I was just trying to get between them to get
12 them to stop for a minute to maybe calm things down."

13 Question. "Is there anything else that you now have
14 not told us," and I have got in parenthesis "(held back)
15 regarding this matter?"

16 His answer was "that is all I can think of."

17 And the last question was "please explain why you lied
18 once again."

19 His answer was "from fear. I was afraid I would be
20 charged as an accomplice or accused of actually doing it. I
21 was also afraid my wife would find out about me and Nakia
22 getting involved that morning."

23 That was the end of that statement.

24 Q. So based on that statement did Mr. Porch lie to law
25 enforcement previously?

1 A. He had lied to law enforcement, yes, sir.

2 Q. He had admitted his lying to his wife?

3 A. He did.

4 Q. And on how many occasions at this point in time --

5 And correct me if I'm wrong, this is prior to the first
6 Mallory trial, is that correct?

7 A. It is.

8 Q. How many times at that point in time had Mr. Porch
9 changed his story?

10 A. Well, not -- if you don't count the original story that
11 he told Sergeant Strange, I'm not sure of the full content
12 of that, that would be four. The one I just read would be
13 four, counting the oral statements he made back in the
14 solicitor's office.

15 Q. And you were familiar with the investigation by this
16 time, correct?

17 A. I had become more familiar by this time, yes.

18 Q. The witnesses they had interviewed during the original
19 part of the investigation?

20 A. Yes, sir, I knew about Sherry Tribble, in particular.

21 Q. Let me ask you this, Major Smith.

22 In the context of this last statement on July -- or
23 July 2nd, 2007, from Mr. Porch, how long after was the first
24 Mallory trial?

25 A. It was shortly thereafter. I'm not sure of the exact

1 date.

2 Q. If I told you July 13th, would you have --

3 A. I would not --

4 Q. -- any reason to disagree with that?

5 A. I would not disagree with that, no, sir.

6 Q. So this new information is developed less than two
7 weeks before the first Mallory trial?

8 A. Yes, sir.

9 Q. And the decision was to put Mr. Porch on the stand?

10 A. At this point in time, as I testified to earlier, my
11 first entry into my followup is at the request of Deputy
12 Solicitor Meadors and Todd Wagner. That's how I got
13 involved in this. All this was being reported to them.
14 This case against Justin Mallory was in their purview at
15 this point in time. The decisions driving this case were
16 made by them.

17 Q. All right. And I understand. So basically your
18 testimony is prosecution -- when it comes down to whether or
19 not they are going to proceed to trial --

20 MR. LUKE SHEALEY: Objection to the leading.

21 THE COURT: Rephrase.

22 MR. GOINGS: I'll rephrase, Your Honor.

23 BY MR. GOINGS:

24 Q. Is it your call whether or not to go forward with the
25 trial?

1 A. No, sir.

2 Q. Whose call is it?

3 A. Just like it wasn't, you know, my call in this
4 particular case, or any case.

5 Q. Okay.

6 A. It's not -- it's not -- we do our best to investigate
7 cases. Once it's in the prosecutor's hands, it's their call
8 as to what witnesses to call, when to go to trial, what
9 evidence to use, and that kind of thing.

10 Q. But you are not arguing with the fact that the
11 prosecution went forward on Mr. Mallory?

12 A. I beg your pardon?

13 Q. You are not arguing with the fact that the prosecution
14 went forward, correct? I mean, it went forward, didn't it?

15 A. Yes, sir, it went forward.

16 Q. You are just saying it was not your call?

17 A. It was not my call.

18 Q. And is it your call to determine what witnesses are
19 used at trial?

20 A. It is not.

21 Q. Okay. And who made the decision whether or not to put
22 Mr. Porch on the stand?

23 A. Deputy Solicitor Meadors and Todd Wagner made that
24 final call.

25 Q. Okay. And that's despite the fact that he's already --

1 MR. LUKE SHEALEY: Objection to leading.

2 THE COURT: Rephrase.

3 BY MR. GOINGS:

4 Q. Again, taking into account how many times had he gave
5 false statements to law enforcement, or contradictory
6 statements to law enforcement?

7 A. I can't testify for them, but I assume that they had
8 looked at all of that and made that decision, yes, sir.

9 Q. And the DNA evidence that originally started your part
10 of the investigation, do you recall that?

11 A. I do.

12 Q. To perform DNA?

13 A. I do.

14 Q. Joshua Porch's last statement -- I mean, explain how
15 those two coincided. Did it explain it? Did it not explain
16 the DNA being there, or where it was found?

17 A. He rendered two explanations, both involving the
18 retrieval of paper towels in the kitchen area, whereas it
19 was my understanding that DNA had been located, and
20 ultimately that DNA was identified as Joshua Porch's.

21 Q. In his last statement he gave to law enforcement, did
22 he indicate whether or not he cleaned up any part of the
23 crime scene, on the July 2nd statement?

24 A. In one of them I believe he did.

25 Q. Okay. Based on what you know of the photographs that

1 were taken, was there a cleanup -- did there appear to be a
2 cleanup in the photographs?

3 A. I remember from the very original investigation,
4 because I was involved in the retrieval of a washing
5 machine, that there might have been some swipe marks, or a
6 suggestion that there was an attempt to clean up in that
7 kitchen area on like a linoleum floor.

8 Q. Okay.

9 A. So I was aware of that, yes, sir.

10 Q. All right. So y'all go forward -- well, I say y'all.
11 Meadors makes the call --

12 A. He did.

13 Q. -- to go forward with the prosecution?

14 A. He did.

15 Q. And what was the result of that first trial, based on
16 your understanding?

17 A. It was a -- what we call a hung jury. The jury could
18 not reach a verdict.

19 Q. Did y'all do any additional investigation after that
20 hung jury?

21 A. I did not, no, sir.

22 Q. Do you know if anybody was requested to do additional
23 investigation?

24 A. Not that I'm aware of, no, sir, and I did not
25 participate in that trial actively.

1 Q. You didn't testify?

2 A. No, sir.

3 Q. 2008 rolls around?

4 A. (Shaking head yes).

5 Q. Mr. Mallory was tried again?

6 A. He was.

7 Q. Again, was it your call as to determine whether or not
8 to try him a second time?

9 A. It was not.

10 Q. Did Meadors have any conversations with you about it?

11 A. Yeah, we talked frequently. Probably so. I don't
12 remember what the content of those conversations was.

13 Q. Okay. And, again, Mr. Porch was used as a witness?

14 A. He was used as a witness in both cases, is my
15 understanding. Again, I did not participate in that
16 proceeding either.

17 Q. And based on your understanding, and I don't even know
18 if you were present, was his trial testimony essentially the
19 same to the last statement that you got on July 2nd?

20 A. I believe it was.

21 Q. Okay. That he was at the house when Mallory came home?

22 A. I believe it was, yes, sir.

23 Q. He witnessed Mallory stab his wife?

24 A. I believe that's correct, yes, sir.

25 Q. But Mr. Porch indicated in his statement, did he not --

1 did he call 911 --

2 A. No, sir.

3 Q. -- to help Nakia?

4 A. No, sir.

5 MR. GOINGS: Beg the court's indulgence.

6 (Off the record)

7 (Back on the record)

8 MR. GOINGS: Your Honor, that's all the questions
9 at this time for Major Smith.

10 THE COURT: Ladies and gentlemen, at this time we
11 will take a break for the evening.

12 I'm going to remind you of the instructions that I
13 have given to you, that is not to begin to discuss this
14 matter among yourselves.

15 Please also remember as you come and go through
16 the courthouse not to listen to conversations that you may
17 hear, again, for the reasons I have given to you, that is,
18 that you have to make the decisions based upon the evidence
19 presented here and not based upon conversations that you may
20 overhear.

21 Please also remember not to allow anyone to
22 approach you to discuss this matter. If someone attempts to
23 do that, please tell them that you are a juror and you
24 cannot discuss it and I ask that you report it as soon as
25 possible.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 JOSHUA WILLIAM PORCH,) 2011-GS-40-03359
7 DEFENDANT.) NOVEMBER 21, 2013
COLUMBIA, SOUTH CAROLINA

8 (VOLUME IV)
9

10 B E F O R E:

11 THE HONORABLE ALISON RENE LEE, JUDGE. ; And a Jury.
12

13
14 A P P E A R A N C E S:

15 CARY GOINGS, ASSISTANT ATTORNEY GENERAL
16 CURTIS PAULING, ASSISTANT ATTORNEY GENERAL
17 JOSHUA R. UNDERWOOD, ASSISTANT ATTORNEY GENERAL
ATTORNEYS FOR THE STATE

18 LUKE A. SHEALEY, ESQUIRE
19 BRIAN R. SHEALEY, ESQUIRE
ARTHUR AIKEN, ESQUIRE
20 ATTORNEYS FOR THE DEFENDANT

21 MICHAEL R. WATTS
22 CIRCUIT COURT REPORTER
23
24
25

1 a conversation about whether he is gay or not. "It's a
2 sensitive thing for me because my own wife has asked me if I
3 was gay, I was hanging out too much with my friends and
4 stuff. I went over there and she called me a faggot and
5 stuff."

6 Then later at thirty-five minutes and forty-five
7 seconds we start talking about childhood abuse, as if it was
8 sexual abuse, and that leads into the following page,
9 Investigator McDaniels' assertion "that it's the biggest
10 secret. It happens to a lot of folks. People sweep it up
11 under a rug and they torture children and then when they get
12 older they wonder why they think certain ways. I mean, your
13 first experience is basically a violation. What are we
14 supposed to think? Do you think like that?"

15 And Mr. Porch answers "no. For awhile it's a
16 struggle, but not now so."

17 And it goes on, "do you find yourself attracted to
18 men?"

19 So basically we have got a couple of issues, and
20 it's really about a three or four minute period I would
21 imagine in this case where under the Rule 404(b) I think
22 this is improper character evidence not having anything to
23 do with the truthfulness or dishonesty, but whether he is
24 gay, whether based on his life experiences he might have
25 child molesting tendencies, which have no place in this

1 trial.

2 They don't make it -- even if they were considered
3 relevant under 401, they don't make it under 403, because
4 they are unfairly prejudicial, not probative of anything.

5 So the defense's position is if this is being
6 sought into evidence by the State, that this portion
7 certainly has to be redacted so it is not included in the
8 video at all.

9 MR. GOINGS: The State's position, I don't believe
10 there is anything prejudicial to Mr. Porch in there. They
11 asked the questions. He answered to the gay comment no. I
12 mean, he denied all their questions. I don't know how it's
13 prejudicial to their client.

14 The second thing as -- if we have to cut that
15 portion out, then I think it breaks up the flow of the video
16 and I think the jury would be confused by that, and those
17 are our two grounds to keep it in.

18 If the judge sees fit to force the State to cut it
19 out, we would ask that the jury be told that it was by the
20 request of the defense and not something -- so they just
21 don't think it's not something that the prosecution is
22 trying to hide from them.

23 MR. LUKE SHEALEY: Obviously I would disagree with
24 the State's argument, but I think it should be cut out. But
25 if it isn't cut out, I don't think it should be instructed

1 one way or the other, because it's -- you know, it's not on
2 us to prevent prejudicial information that isn't appropriate
3 not going for the truth. I mean, it's not -- it's not our
4 burden. They're the ones seeking to introduce this
5 evidence, so it's nobody's fault. They just don't need to
6 be hearing about it at all. But certainly it's a line of
7 questioning being asked by Officer McDaniels which elicit
8 responses which violate the rules would prevent Mr. Porch
9 from having a fair trial, so I think -- I think the State
10 has plenty of resources at its disposal. I think they can
11 send the clerk back to their office, or even have the
12 solicitor's office, as they have been doing all week, and
13 redact that portion of the video. It's about probably three
14 or four minutes, and we have even got this transcript that
15 guides them to it, and I told Mr. Goings exactly where it
16 is. So --

17 THE COURT: I'm going to deny your request. I
18 don't find that it falls under 404 as either character
19 evidence or what we commonly call Lyle information.

20 There has certainly been no attempt at this
21 particular point, and I don't believe that there would be
22 any, to characterize him as having homosexual tendencies or
23 engaging in that conduct. I think that the questions that
24 were asked in the course of the investigation that were
25 relevant under the circumstances to ask the questions. They

1 were not dwelled on. He explains and indicates that he's
2 offended by being asked that and it's never discussed again
3 and it hasn't been discussed throughout the course of this
4 trial.. So I think by redacting it, it would highlight the
5 information that's been removed, and I don't think that it's
6 prejudicial to the defendant, and so I'm going to deny your
7 request.

8 Anything else we need to take up at this time?

9 (Off the record)

10 (Back on the record)

11 MR. GOINGS: Just briefly, Your Honor.

12 Your Honor, I showed defense counsel the
13 redacted --

14 (Off the record)

15 (Back on the record)

16 MR. GOINGS: I showed defense counsel the redacted
17 version of page one of that statement that was introduced
18 yesterday. I'm going to hand you back the Court's Exhibit
19 to you, Your Honor, and with the court's permission I
20 would -- on the exhibit that was introduced yesterday, I
21 would just like to take off the first page and replace it
22 with this and have it remarked.

23 THE COURT: Okay..

24 MR. GOINGS: That's the redacted version.

25 I believe it's no objection from the defense.

1 MR. LUKE SHEALEY: We are fine with that, judge.

2 THE COURT: Yes. Will you have the court reporter
3 change the stickers on it, please?

4 (Whereupon, Statement of Joshua Porch, dated July
5 2, 2007, previously marked and admitted as evidence as
6 State's Exhibit No. 41 was remarked as State's Exhibit No.
7 41)

8 MR. GOINGS: Yes, ma'am.

9 And just out of an abundance of caution, Your
10 Honor, if we could make the page we were removing from the
11 exhibit or switching out a Court's Exhibit?

12 THE COURT: If you need to do that, that's fine.

13 (Redacted Page from State's Exhibit No. 41 was
14 marked as Court's Exhibit No. 2 for identification)

15 MR. GOINGS: Nothing else from the State, Your
16 Honor.

17 THE COURT: Just as a matter of housekeeping, I
18 will let you know that I have ordered lunch for the jury so
19 that we will probably just take like a thirty or forty-five
20 minute break for lunch, and I expect that we will go to at
21 least six, so I hope that everybody would be prepared to do
22 that. We have been cutting off earlier, and in effort to
23 keep it from going into Tuesday of next week, if we can get
24 through as much of the testimony as we can today, that would
25 be helpful, unless, of course, we reach the conclusion of

1 the State's case and then we will just take up whatever
2 motions that come up.

3 Anything else?

4 MR. LUKE SHEALEY: Not from the defense.

5 MR. GOINGS: Nothing from the State, Your Honor.

6 THE COURT: You may ask the jury to come in
7 please.

8 (Off the record)

9 (Back on the record)

10 THE COURT: One other housekeeping matter,
11 gentlemen. I think we talked about kind of the schedule for
12 the rest of week. I have had a -- I did indicate that there
13 were a couple of jurors who had some conflicts on Saturday.
14 And apparently I forgot about the game, and there are --
15 some of the deputies are going to be working the game, so
16 that creates some issues with us opening the courthouse on
17 Saturday. So unless there is some strenuous objection, and
18 another thing there was a juror who would have her shift
19 off, I would propose not to work on Saturday and come back
20 on Monday.

21 MR. GOINGS: No objection from the State, Your
22 Honor.

23 MR. LUKE SHEALEY: That's fine by defense, Your
24 Honor.

25 MR. GOINGS: I guess another matter of

1 housekeeping, Your Honor, I know we had the arguments and I
2 don't think you made a ruling, or you said that you were
3 going to look back at the case law the State handed up on
4 whether or not Miranda was hearsay and whether or not I
5 could ask the officers about their observation of Roberta
6 Cohen mirandizing the defendant on July 10th when they were
7 viewing it through the monitors.

8 THE COURT: I didn't get to those issues, because
9 I thought that the way that you were going to handle that
10 was at the -- it was a continuing Miranda, and so because
11 they had given him Miranda on July 9th and that it had not
12 been revoked, or otherwise, any of the sections under
13 Miranda had not been invoked by the defendant, that it was
14 continuous and it still applied. So that was why I -- that
15 was the ruling I made, so I didn't feel I needed to address
16 that particular issue.

17 MR. GOINGS: Okay, Your Honor.

18 THE COURT: And I believe I cited case law to
19 support that.

20 Are we ready?

21 MR. LUKE SHEALEY: Yes, ma'am.

22 MR. GOINGS: The State is ready, Your Honor.

23 THE COURT: Okay. You may ask the jury to come
24 in.

25 THE BAILIFF: Yes, Your Honor.

1 (Written Statement marked as Court's Exhibit No. 3
2 for identification)

3 (The following takes place in the presence of the
4 jury panel)

5 THE BAILIFF: The jury is seated, Your Honor.

6 THE COURT: Good morning, ladies and gentlemen.

7 THE JURY PANEL: Good morning.

8 THE COURT: At this time we are ready to continue
9 on.

10 Major Smith, you may retake the witness stand,
11 please.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Yes, sir, Mr. Shealey.

14 MR. LUKE SHEALEY: Thank you, Your Honor.

15 May it please the court?

16 THE COURT: Yes, sir.

17 CROSS EXAMINATION BY MR. LUKE SHEALEY:

18 Q. Good morning, major.

19 A. Good morning.

20 Q. How are you doing?

21 A. Fine. And you?

22 Q. Good.

23 I'm going to ask you a little bit about yourself and
24 some of your qualifications and experience in a little more
25 detail than Mr. Goings from yesterday, okay?

1 A. Yes, sir.

2 Q. Now, before we get going I want to hand you a few
3 things to help us with this. Do you have all your reports
4 with you?

5 A. I have got two investigative follow-ups, yes.

6 Q. All right. Here is your investigative follow-ups. You
7 probably already have those.

8 A. I have those.

9 Q. This is a synopsis that you did, and here is a copy of
10 your deposition that we'll talk about later.

11 A. All right.

12 Q. Let's talk and let the jury know a little bit about
13 you.

14 Now, you are not -- you are from Alabama, right?

15 A. I was born in Alabama. I was actually -- we lived in a
16 small town in Georgia. The closest hospital was in Alabama.

17 Q. Right.

18 And as a child you came to South Carolina, right?

19 A. Yes, sir.

20 Q. Went to school here?

21 A. I did.

22 Q. Graduated from Wilson Hall School in Sumter?

23 A. I did.

24 Q. Okay. And attended the University of South Carolina?

25 A. I did.

1 Q. You are a Criminal Justice Major?

2 A. I was.

3 Q. And I believe you started working, correct me if wrong,
4 with the Richland County Sheriff's Department in 1984,
5 right?

6 A. I did.

7 Q. Almost thirty years ago?

8 A. Yes, sir.

9 Q. Okay. You started as a patrolman, right?

10 A. I did.

11 Q. You were on the roads, correct?

12 A. I was.

13 Q. And eventually you got promoted to what they call back
14 then the Saturation Team, right?

15 A. Yes, sir.

16 Q. Okay. And I believe that's similar to the Community
17 Action Team that we have now?

18 A. It was sort of similar to it, yes, sir.

19 Q. Okay. But that was kind of your first promotion?

20 A. It was sort of a promotion. It wasn't a financial
21 promotion, but it was a transfer.

22 Q. Right.

23 And then you took the investigator's exam and were
24 promoted to investigator in 1987, right?

25 A. That's correct.

1 Q. Okay. And back then the sheriff was Frank Powell?

2 A. It was Frank Powell, yes, sir.

3 Q. Today the sheriff is Leon Lott, correct?

4 A. That's correct.

5 Q. Okay. And it does take -- you know, those exams, it
6 takes more training and education to become an investigator,
7 right?

8 A. I didn't really study anything, as I recall. I just --
9 based on my knowledge of law and different things, that's
10 how you took the exam. There weren't a lot of study
11 materials at the time.

12 Q. Yeah, but they don't just let anybody be an
13 investigator, right?

14 A. Well, I had to go through an oral interview and a
15 written exam. And, of course, there was a training period
16 afterwards. They just didn't start handing me cases, you
17 know, right away.

18 Q. Right. Right.

19 I mean, there is training into more in-depth ways to
20 investigate burglaries, homicides, rapes? I mean --

21 A. I started out working burglaries.

22 Q. Right. Right.

23 So then as an investigator, like you said, you start
24 out working burglaries, but also worked on a few homicides
25 at that time?

1 A. I worked on my first homicide I believe in 1988.

2 Q. Okay.

3 A. As a secondary investigator.

4 Q. Right.

5 And based on your general work as an investigator, you
6 got promoted to the rank of sergeant in 1990?

7 A. That sounds right.

8 Q. And you worked in that capacity until 1997, when you
9 briefly left the Richland County Sheriff's Department,
10 correct?

11 A. That's correct.

12 Q. Okay. And you had an opportunity to become I believe
13 the manager of a security management company?

14 A. I did.

15 Q. Okay. You did that for a couple of years and you
16 didn't really take to it?

17 A. I didn't like it.

18 Q. Okay. You wanted to get back in law enforcement, so
19 then after a couple of years of that our current sheriff,
20 Leon Lott, recruited you back into the Richland County
21 Sheriff's Department?

22 A. He did.

23 Q. Okay. And that was the fall of 1999?

24 A. October of 1999, that's correct.

25 Q. And you started working your way back up ranks until

1 you were eventually on the Major Crimes Unit, correct?

2 A. That's correct.

3 Q. Okay. So you went from sergeant, to lieutenant, to
4 captain, and then to major, where you are right now?

5 A. That's the sequence, yes, sir.

6 Q. And at the time of this incident in May of 2006, you
7 were a lieutenant, correct?

8 A. I believe that's correct, yes, sir.

9 Q. But by the time right before the first trial the
10 following year, in '07, you were a captain?

11 A. That's correct.

12 Q. Now you are a major?

13 A. Yes, sir.

14 Q. And you actually got promoted to major in the fall of
15 2010?

16 A. That sounds right, yes, sir.

17 Q. Okay. And over the years you have done numerous
18 amounts of trainings. Got certificates in academy courses,
19 right?

20 A. Yes, sir.

21 Q. Blood pattern analysis courses?

22 A. That's correct.

23 Q. Interrogation courses?

24 A. Yes, sir.

25 Q. Okay. And in terms of your status at the Richland

1 County Sheriff's Department, just so this jury is aware, the
2 sheriff is Leon Lott?

3 A. Yes, sir.

4 Q. Under him is Chief David Wilson?

5 A. Well, there is -- there is a level of chiefs.

6 Q. Okay.

7 A. Yeah, there are several chiefs, deputy chiefs.

8 Q. Right below that Major Smith?

9 A. There are several majors. It's not just myself, yes,
10 sir.

11 Q. Okay. But this is a -- you are a high ranking member
12 of the Richland County Sheriff's Department?

13 A. That would be accurate, yes, sir.

14 Q. Thirty years of experience as a law enforcement
15 officer, correct?

16 A. Yes, sir.

17 Q. Okay. And a lot of years of experience in homicides;
18 since the eighties?

19 A. I have worked a lot of them, yes, sir.

20 Q. All right. Now, you said that your first homicide was
21 in 1989?

22 A. I believe it occurred in '88.

23 Q. That was '88?

24 A. Or maybe early '89. That's a long time ago.

25 Q. Right. You having been doing it for a long time,

1 though.

2 And as you were working on the Major Crimes Unit, you
3 are doing your own cases, I think you said yesterday as a
4 lieutenant, but you are also assisting in other cases?

5 A. Actually by the time that you reach lieutenant you
6 probably don't have a regular case load. You sort of get
7 involved in some cases in an assisting capacity and an
8 advisory capacity.

9 Q. And that's as a supervisor or the Major Crimes Unit,
10 you know, the sergeants and other investigators under you,
11 sometimes they need your guidance from your experience?
12 That's the point, right?

13 A. Sometimes they do. Sometimes they don't want it,
14 but --

15 Q. That's a different matter, but that's the point of
16 being a supervisor, correct?

17 A. Yes, sir.

18 Q. They get the benefit of your years, your thirty years
19 of training and experience?

20 A. The way I look at it, they do. Sometimes again they
21 just as soon do it on their own, yes, sir.

22 Q. And when necessary, you get involved in cases and
23 assist in investigations --

24 A. I do.

25 Q. -- and the way a case should go, one way or the other,

1 correct?

2 A. Oftentimes I do, yes, sir.

3 Q. All right. And just to talk a little bit statistics.

4 I mean, let's estimate, you have probably been involved in
5 dozens of homicide investigations?

6 A. Dozens would be a good way to say it, yes, sir.

7 Q. And would you say a hundred is fair?

8 A. Probably close to it.

9 Q. Okay. Because, I mean, you have been doing it a long
10 time. And as the head of Major Crimes, I think you noted in
11 2006 y'all had thirty-one murders that year?

12 A. We did. That was our largest, our highest year, our
13 highest number.

14 Q. And every year they kind of unfortunately average in
15 the teens?

16 A. Right around twenty.

17 Q. Yeah.

18 A. So thirty-one was a lot. I think three of those
19 murders in 2006 were multiple victim murders, which
20 escalated the numbers some.

21 Q. Right.

22 So over all your years of training and experience we
23 can say that you know your way around the homicide
24 investigation?

25 A. I would like to think I do. Every case is a challenge

1 and you follow the evidence trail the best you can. I don't
2 profess to be better than anybody or know more than anybody.
3 I have just learned to work the cases the best you can and
4 you follow the evidence trail the best you can.

5 Q. Well, they wouldn't make you the head of the Major
6 Crimes Unit if you knew less than everybody. That's fair,
7 right?

8 A. Well, there is a lot of factors probably that went into
9 that, not just involvement in homicides.

10 Q. I mean, your performance just in general as an officer,
11 your character and your demeanor?

12 A. I think that probably goes into it. I try to be
13 honest.

14 Q. Okay.

15 A. I try to do the right thing, yes, sir.

16 Q. Now, I want to start talking to you more about the
17 evidence in this case itself and your involvement in it.

18 We can look to your first investigative report, talking
19 about your initial involvement. And as you testified
20 yesterday, this was -- Holdorf was the case officer,
21 correct?

22 A. He was.

23 Q. Other officers were assisting, such as Investigator
24 Strange, Investigator Rownd, correct?

25 A. That's right.

1 Q. Okay. And you were their supervisor at this time?

2 A. Ultimately, yes.

3 Q. Ultimately.

4 A. Randy Strange was the supervisor that was on duty that
5 weekend.

6 Q. Okay. But ultimately through the course of this
7 investigation you were supervisor of this investigation
8 throughout the two trials?

9 A. That's really -- that's really inaccurate. I am the --
10 I am the -- was the supervisor, but not necessarily calling
11 all the shots on this case. That's not exactly the way it
12 works.

13 Q. Okay.

14 A. If I have direct involvement, I might have more
15 influence. If I see something that I think needs to be
16 corrected, perhaps, but I don't conduct the interviews or
17 direct the interviews, the investigation in every case. It
18 just depends on the case. Some I have and some I have not.

19 Q. Let's talk about this case.

20 On May 14th, 2006, your first investigator report says
21 that you were briefed by Sergeant Strange regarding this
22 homicide?

23 A. Yes. He called me at home.

24 Q. Right.

25 And you had learned through the course of that

1 conversation and other conversations that this was a
2 situation where Ms. Mallory was killed in her own home?

3 A. Yes, sir.

4 Q. There was no forced entry, correct?

5 A. That's right.

6 Q. That this was regarded as a domestic homicide?

7 A. Yes, sir.

8 Q. That the husband was a suspect?

9 A. That's what I was told, yes, sir.

10 Q. That he had been out having an affair that night?

11 A. Yes, sir.

12 Q. That there were ear and eyewitnesses who had heard the
13 argument?

14 A. That's correct. That's what I was briefed on.

15 Q. Right, you were briefed on that.

16 And then part of what's in your report from that day is
17 subsequently you assisting in preparation of the search
18 warrant?

19 A. Yes.

20 Q. Okay. And you actually glued the language of the
21 search warrant in your report?

22 A. That's the majority of my report.

23 Q. Right.

24 And that goes on -- that was the search warrant for the
25 washing machine in the Mallory home?

1 A. That's correct.

2 Q. And you assisted Investigator Holdorf in the
3 preparation of that, because it was felt that might be
4 important evidence?

5 A. At the time there was some suggestion that might be
6 relevant, yes, sir.

7 Q. Okay. And as the head of Major Crimes and being
8 involved in this you were aware that Mr. Mallory was
9 arrested?

10 A. I was. I had actually been involved in for reaching
11 the deputy solicitor that morning, running the case by him,
12 and he indicated that he felt probable cause was present to
13 affect the arrest. I then communicated that back to
14 Sergeant Strange, so I was directly involved in that
15 process.

16 Q. Right.

17 Now, you didn't really get that involved until right
18 before trial?

19 A. That -- that would be accurate.

20 Q. Okay. And this was in July of 2007?

21 A. It would be June of 2007.

22 Q. June of 2007.

23 There was some unknown DNA on the crime scene and you
24 were tasked by Deputy Meadors to figure out whose that was?

25 A. That's correct.

1 Q. Okay. Now, Deputy Meadors, you worked with him before,
2 right?

3 A. I had worked with him for a number of years.

4 Q. Right.

5 A. Yes, sir.

6 Q. He was a longstanding solicitor, deputy solicitor, here
7 under Barney Geise?

8 A. He was.

9 Q. Okay. He has vast experience in murder investigations
10 and murder trials, correct?

11 A. He does.

12 Q. And he prosecuted probably as many as you have
13 investigated?

14 A. That's probably accurate.

15 Q. I mean, he was here for over twenty years?

16 A. Yes.

17 Q. Okay. And he's still -- he's not here currently under
18 this administration, but he's still an active prosecutor?

19 A. He is actually prosecuting cases in Sumter County.

20 Q. Right, yes, sir.

21 And you trusted his judgment?

22 A. That would be fair to say, yes, sir.

23 Q. And he trusted your judgment?

24 A. I hope so.

25 Q. Okay.

1 A. He would have to answer that.

2 Q. Okay. So he, based on this investigation, with you as
3 the supervisor and as Holdorf as the case officer, actually
4 was in court and prosecuted Justin Mallory, not once, but
5 twice, correct?

6 A. That's correct.

7 Q. Okay. And I think, as has been discussed, the first
8 trial was a hung jury?

9 A. That's my understanding, yes, sir.

10 Q. Okay. Meaning that the jury couldn't make up their
11 mind one way or the other, correct?

12 A. That's correct.

13 Q. And the second trial was before a judge, right, just
14 himself being the finder of fact?

15 A. That's accurate.

16 Q. And that was a not guilty?

17 A. That's correct.

18 Q. Okay. So even after the first trial was hung, Mr.
19 Meadors, the investigative team, including yourself, decided
20 that it was appropriate to continue forward with that
21 prosecution?

22 A. That would be inaccurate. I didn't have much to do or
23 say with whether to go forward on the second trial. That
24 would have been the decision of the deputy solicitor and
25 Todd Wagner. I'm sure we talked about it, but that would

1 have been their decision to make.

2 Q. Okay. Now, you would have told them your feelings on
3 this case?

4 A. I'm sure we had discussions about the case, if that's
5 what you are asking. I don't remember what they were,
6 specifically.

7 Q. Okay. And you would have told him how, in your
8 opinion, Mr. Porch's story fit the evidence, correct?

9 A. I don't recall saying that.

10 I -- I was asked to find out whose DNA it was..

11 I did take several stories from Mr. Porch. Then I
12 relayed that information to Deputy Solicitor Meadors and let
13 him make the call as to what to do, how to proceed.

14 I -- I don't want you to try to box me in into telling
15 that I told Mr. Meadors what to do or I recommended to him
16 what to do. It was his decision to make.

17 Q. All right. So you deny telling him that the evidence
18 fit Mr. Porch's version?

19 A. I'm not denying. I'm saying that I reported to him
20 what Mr. Porch said.

21 Q. Okay.

22 A. And to some degree I guess it fit the evidence. That
23 there were problems, obviously, and it was a decision for
24 Mr. Meadors to make as to whether to proceed or what to do
25 with regard to the Porch factor.

1 Q. And I heard you tell Mr. Goings yesterday, and, again,
2 you agreed it was Mr. Meadors decision, right?

3 A. It was.

4 Q. Okay. It had nothing to do with you? That was his
5 call, right?

6 A. Yes, sir, I don't -- I have never have in any trial
7 made the call on what to do with regard to the trial, the
8 witnesses to call, the evidence to use. That's generally --
9 especially with the solicitors I typically deal with.

10 Q. And that Mr. Porch had actually lied to you a few times
11 you said yesterday?

12 A. He lied about four times.

13 Q. Uh-huh.

14 A. At least three, four times.

15 Q. And he left you with that final version, which was
16 presented at trial twice, correct?

17 A. That's my understanding. I wasn't present for either
18 trial. I did not hear him testify, but that's my
19 understanding.

20 Q. Okay. And it wasn't your call and you didn't -- you
21 didn't have a feeling about the case one way or the other,
22 whether it was good or bad? That's for Mr. Meadors, right?

23 A. I didn't testify that I didn't have a feeling about the
24 case.

25 Q. Okay. Did you have a feeling about the case?

1 MR. GOINGS: Objection, Your Honor.

2 Can we approach?

3 THE COURT: Yes, sir.

4 (Whereupon, the lawyers approached the bench for
5 an off-the-record discussion)

6 BY MR. LUKE SHEALEY:

7 Q. All right. Let's talk about this case a little more.

8 Let's look at your synopsis of the Mallory murder case
9 at trial.

10 A. All right.

11 Q. Okay. This is a report that you created, correct?

12 A. It's not actually a report. It was an inter-office
13 memorandum that I generated after the sheriff had a question
14 about the sequence of events.

15 Q. Okay.

16 A. This was not actually a report. It found it's way into
17 discovery somehow, but one generated as far as the
18 investigation of the case. It was post-trial inquiry.

19 Q. Okay. So this is something that you prepared for the
20 sheriff based on what you knew of the case?

21 A. That's correct.

22 Q. And when the sheriff asked you to prepare a document,
23 you want it to be as complete and accurate and thorough, so
24 he can have a good look at this case?

25 A. Well, actually my chief actually requested it from the

1 sheriff, but, yes.

2 Q. Okay.

3 A. Of course, they wanted to know what happened, yes, sir.

4 Q. Right. So when the chief asked you to prepare a
5 document for the sheriff, you want that document to be as
6 accurate as possible?

7 A. Yes, sir.

8 Q. To be absolutely truthful, correct?

9 A. Yes, sir.

10 Q. And for it to be easy for the sheriff to understand, I
11 guess?

12 A. I tried to, yes, sir.

13 Q. Okay. Please look at this for me.

14 So you note in your report that Mr. Mallory brought his
15 wife into the ER, correct, in 2006?

16 A. That's Mother's Day, 2006, yes, sir.

17 Q. That he had called 911 stating he came in and found his
18 wife stabbed, correct?

19 A. Yes, sir.

20 Q. He mentions the word rape. You have that in your
21 report, correct?

22 A. Yes, sir.

23 Q. Now, being the supervisor of the Major Crimes at this
24 time and being the supervisor on this case, there was no
25 evidence found by anybody of any rape, correct?

1 A. No, sir.

2 Q. Okay. And your knowledge of when Ms. Nakia Mallory was
3 brought into the hospital, her clothes were intact, correct?

4 A. As far as I know, yes, sir.

5 Q. No evidence of sexual trauma?

6 A. None that I'm aware of.

7 Q. Okay. And the comment was made, and it was noted in
8 your report, by Mr. Mallory "that the bitch bled all over my
9 TV", correct?

10 A. That was what was reported, yes, sir, I believe from a
11 security guard at the hospital.

12 Q. Right.

13 And you obviously would have reviewed the crime scene
14 photos in this case? You have before?

15 A. I don't know that I review crime scene photos. I don't
16 remember doing that.

17 Q. Your testimony in this court is that you have never
18 reviewed crime scene photos in this case?

19 A. I don't recall doing that, no.

20 Q. Okay. You are aware that blood was actually all over
21 the TV?

22 A. I knew there was a lot of blood in the apartment, yes,
23 sir.

24 Q. Okay. No signs of forced entry, as you testified to?

25 A. Yes, sir.

1 Q. Going on to the second paragraph of that report and
2 what you have already talked to us about is that the
3 evidence was that Mr. Mallory was out with his girlfriend
4 Ricki Cook?

5 A. Yes, sir.

6 Q. That he had taken her to a local motel in the Broad
7 River Road area, right?

8 A. Yes, sir.

9 Q. This was after dining out with her at Applebee's,
10 correct?

11 A. That was my understanding, yes, sir.

12 Q. You note in your report that he then, after the
13 encounter at the hotel room, goes to an Exxon gas station,
14 correct?

15 A. Yes, sir.

16 Q. Gets himself a drink and a cigar?

17 A. Yes, sir.

18 Q. And later takes her to her apartment, correct?

19 A. Yes, sir.

20 Q. Correct?

21 A. Yes, sir.

22 Q. Okay. And then he started home down I-20 towards
23 Alpine Road where he would get to his apartment?

24 A. Yes, sir.

25 Q. Okay. You note, and this is from your experience in

1 this case and your knowledge of the investigation, that he
2 hit a cellular tower off I-20 near Fairfield Road at
3 approximately 3:22, correct?

4 A. Yes, sir.

5 Q. Okay. And when you -- let's tell the jury about
6 cellular towers a little bit.

7 In your investigation it was probative to pull all his
8 phone records, right?

9 A. They were pulled, yes, sir.

10 Q. That might have been by Investigator Holdorf?

11 A. I think probably so.

12 Q. Okay. And generally as a thirty year experienced
13 qualified investigator and someone who is the head of major
14 crime units, we know that when your cell phone travels in
15 the area, it's looking for the nearest cell phone tower,
16 correct?

17 A. That's my understanding.

18 Q. Right.

19 A. That technology hasn't been there the entire thirty
20 years, but, yes, sir.

21 Q. This has been more maybe in the past --

22 A. Yes.

23 Q. -- six, seven, eight, nine years?

24 A. That's right.

25 Q. And that when you make a call, it has to go through

1 that tower to go out, right? Just roughly that's your
2 understanding?

3 A. That's my understanding, yes, sir.

4 Q. And so that the police often will use this information
5 to generally pinpoint where someone is going, because it
6 will bounce off one tower here; if they continue to go, it
7 will bounce off a tower here, correct?

8 A. You can diagnose directionality if they are moving,
9 yes, sir.

10 Q. And you noted that in this report, because it was
11 important to the case that it bounced off that Fairfield
12 Road tower near his house at 3:22, correct?

13 A. It contributed to a timeline, yes, sir.

14 Q. Right.

15 And that was part of the timeline that officers on the
16 case developed?

17 A. As a result of the ear/eyewitnesses statement, that
18 sort of set it up, and I believe there was some video at a
19 convenience store that helped define the timeline.

20 Q. Don't --

21 A. And the time of the 911 call.

22 Q. Right.

23 Tell me if these are all things that went into the
24 timeline. The ear/eyewitnesses, correct? That's Sherry
25 Tribble?

1 A. That sort of started it, yes, sir.

2 Q. Okay.

3 A. But she was a little bit vague about the exact time,
4 but, yes, sir, that started it.

5 Q. Exxon gas station video?

6 A. That was involved in it, yes, sir.

7 Q. The cell phone tower records?

8 A. That's correct.

9 Q. His own statement?

10 A. The 911 call, yes, sir, particularly. That was a firm
11 time.

12 Q. Correct. That gives you a firm time of 3:37?

13 A. It was sometime after 3:30, yes, sir.

14 Q. And that's what your report says, 3:37?

15 A. Yes, sir, it does.

16 Q. So all those things went into investigators figuring
17 out a timeline?

18 A. They did.

19 Q. Okay. Because initially he said, per your knowledge of
20 that case, "well, I was with this other girl and I didn't do
21 anything," right?

22 A. That's right.

23 Q. Okay. And that's what people in the world of -- in the
24 criminal world call alibis, right?

25 A. Well, if it covered the timeline, it would be, yes,

1 sir.

2 Q. And if it doesn't cover the timeline, it's not an
3 alibi, right?

4 A. Well, that would be correct.

5 Q. This case was not an alibi by for Mr. Mallory, per this
6 investigation?

7 A. It -- it -- my understanding of it, it squeezed the
8 timeline rather tight. It might have not have completely
9 alibied him, but it did push it to being sort of tight.

10 Q. Okay. So the next sentence in your report is "this
11 call provided the outline of the subsequent timeline
12 allowing him enough time to get home, engage in a heated
13 domestic argument with his wife, stab her, and then call 911
14 at 3:37 hours," right?

15 A. Yes, sir, that's what it says.

16 Q. Okay. So law enforcement's opinion was that he had
17 plenty of time to do this?

18 MR. GOINGS: Objection, Your Honor. It calls for
19 an opinion.

20 THE COURT: Rephrase the question.

21 BY MR. LUKE SHEALEY:

22 Q. Your investigation revealed that there was an
23 opportunity for him to have committed this crime?

24 A. It -- it was tight, but there was a timeline that it
25 was potentially possible, yes, sir. It could not be refuted

1 by the timeline.

2 Q. Correct.

3 Now, move down to the second paragraph. You discussed
4 some about this independent ear/eyewitness, and we are
5 talking about Ms. Tribble, correct?

6 A. That's correct.

7 Q. And by independent, she's not -- she doesn't have a dog
8 in this fight that any investigator could see?

9 A. That was my understanding, she didn't know the couple.

10 Q. She wasn't friends, or family, or relative? She just
11 actually was staying with her boyfriend that night was what
12 the investigation revealed?

13 A. That's correct.

14 Q. Okay. And your report calls that "the most damning
15 evidence"? Those are your words, correct?

16 A. The probable cause initially was based on Sherry
17 Tribble's account of what she saw and heard.

18 Q. But your report says the "most --

19 A. So that would be accurate, yes, sir.

20 Q. Damning, meaning powerful, bad for Mallory?

21 A. Had it not been for Sherry Tribble, I don't believe Mr.
22 Mallory would have been charged.

23 Q. Well, now, she -- you note how she was awakened by the
24 argument, correct?

25 A. Yes, sir.

1 Q. You note that she described the argument as clearly
2 violent and domestic in nature, per your report?

3 A. Yes, sir.

4 Q. And that she, as she said this week and in the past
5 trials, recalled a female saying "why? How could you?"

6 A. Yes, sir.

7 Q. A male saying "look what you made me do?"

8 A. Yes, sir.

9 Q. And this was all the while while a Mr. Mallory is
10 identified then as at the scene, correct?

11 A. That's what she indicated, yes, sir.

12 Q. Okay. And this was part of your investigation and part
13 of what was presented at these two trials?

14 A. That's my understanding. She testified in both trials.

15 Q. And what you then reduced to this report to prepare for
16 Sheriff Lott?

17 A. Yes, sir.

18 Q. Now --

19 A. I tried to synopsize the evidence as I understood it,
20 having not been present in both trials.

21 Q. Okay. You weren't called as a witness in either trial?

22 A. No, sir.

23 Q. Okay. And turn to the second page with me.

24 You start talking about your involvement with Mr.
25 Porch, which you outlined pretty well yesterday?

1 A. Yes, sir.

2 Q. Okay. We have got a series of statements.

3 We have got the day after this incident investigator,
4 per your knowledge as the supervisor of the Major Crimes
5 Unit and being involved in the front end, he was approached
6 by Sergeant Strange?

7 A. Yes, sir.

8 Q. He was approached just kind of because he was named,
9 "hey, go talk to Porch."

10 A. I believe it was in the context of "if you didn't kill
11 your wife, who would," and --

12 Q. And he mentioned two people.

13 A. He mentioned --

14 Q. Joshua Porch and the maintenance man.

15 A. And he mentioned that Porch was -- had some things
16 about Porch.

17 Q. Okay. I'm not asking you that question.

18 A. Yes. Well, you asked me how it came about.

19 Q. I'm asking you that it came out that he named two
20 people - Joshua Porch; and Vince, the maintenance man?

21 A. Yes, sir.

22 Q. So Strange went to go talk to him the very next day,
23 and as we discussed yesterday, Mr. Porch denied being there
24 at all?

25 A. He did.

1 Q. He genuinely seemed shocked that Nakia had died?

2 A. I -- I can't testify to that because I didn't see that.

3 Q. Now, this was the last anybody talked to him for over a
4 year?

5 A. I beg your pardon?

6 Q. That any kind of law enforcement with Sergeant Strange
7 was the last that law enforcement talked to him for over a
8 year?

9 A. Until I talked to him.

10 Q. Right.

11 A. Yes, sir.

12 Q. Which would have been in June of the following year?

13 A. Yes, sir.

14 Q. Now, when you talked to him, we discussed yesterday he
15 lied to you?

16 A. Multiple times.

17 Q. And specifically that first time he said -- he was
18 questioned about the DNA. He gave his DNA freely, didn't
19 he?

20 A. He did.

21 Q. But then he told you that, "you know, look, I cut my
22 hand on an apple. If my DNA is there, it's probably how it
23 happened," right?

24 A. He told that story. He certainly did.

25 Q. You followed up with Strange, came back?

1 A. That's right.

2 Q. Strange says "I don't remember that," right?

3 A. That's right.

4 Q. You go back to Mr. Porch's residence, talk to him again
5 and say "look, what's the deal?"

6 He says "oh, I thought I told Strange that," right?

7 A. That's what he said.

8 Q. Okay. You knew that subsequent statement would reveal
9 to you that was a lie as well?

10 A. That's correct.

11 Q. Okay. Again, this is right before -- a few weeks
12 before the trial is scheduled to go for Mr. Mallory?

13 A. That's correct.

14 Q. Okay. So your second report, investigative report,
15 kind of starts off at that point where John Meadors, the
16 experienced solicitor here, says -- he contacts the
17 investigative team and wants y'all to track this down?

18 A. He contacted me, yes, sir.

19 Q. Right.

20 "We do have some DNA on the scene and we can't figure
21 this out," okay?

22 A. That's right.

23 Q. Okay. "Either exclude somebody or rule him in."

24 A. Yes, sir. It was problematic and it needed an answer
25 prior to trial.

1 Q. Right.

2 And he's not -- John Meadors is not an investigator,
3 right?

4 A. No, sir.

5 Q. He's a lawyer, right?

6 A. He is.

7 Q. Like me, right?

8 A. He is. Well, he's a -- he's a prosecutor. You are
9 defense attorney.

10 Q. We were all lawyers.

11 A. There is a great distinction there.

12 Q. Thanks.

13 So the bottom line is he spends his time in court
14 trying to convince jurors about a case for the prosecution,
15 whereas you, and men under you, investigators, spend your
16 time out in the field getting him the building blocks to do
17 that, correct?

18 A. Trying to find facts.

19 Q. Okay. So the facts are what y'all are providing to him
20 so he can make his decisions on what to do?

21 A. Facts, and, of course, information, and, of course,
22 statements, which oftentimes aren't facts, like they were in
23 this case, if somebody's version that changed. But, again,
24 I passed that along to Deputy Solicitor Meadors, yes, sir.

25 Q. Facts, information, the version.

1 He hadn't been out there talking to Sherry Tribble that
2 night, the next day, had he?

3 A. No, sir.

4 Q. That was the investigators, correct?

5 A. At the time of the crime, yes, sir, but he had, I'm
6 sure, talked to Sherry Tribble in trial preparation.

7 Q. He hadn't been out there talking to Joshua Porch taking
8 these Buccal swabs. That was you.

9 A. But, again, he did in trial preparation.

10 Q. Right.

11 A. Until I brought Porch in.

12 Q. And then he was brought in to discuss things further
13 with Meadors, right?

14 A. Yes, sir, and provided additional information then that
15 he had not before.

16 Q. But he only knows what y'all tell him. You agree with
17 that?

18 A. Who only knows what we tell him?

19 Q. John Meadors.

20 A. And what he's learned from interviewing the individuals
21 himself, yes, sir.

22 Q. Okay. And what he --

23 A. He talked to Porch himself.

24 Q. And what he -- I understand that.

25 And what he gets from your investigative reports, your

1 statements, your DNA reports, all that, right?

2 A. It's all -- he looks at all of it, yes, sir, I assume.

3 Q. So getting back to Mr. Porch, it was decided that y'all
4 needed to talk to him in person right over there in the
5 solicitor's office about these statements and see if we can
6 get down to the bottom of it, right?

7 A. Meadors asked that I bring him in, yes, sir.

8 Q. And eventually he was actually sent over to Richland
9 County to talk about things even further?

10 A. He was.

11 Q. Okay. And it was at this point that he came and
12 revealed the final statement, which was reduced to writing
13 that you witnessed, correct?

14 A. Yes, sir.

15 Q. Okay. And you typed it up?

16 A. I did.

17 Q. Okay. Talked to him for an extended period of time?

18 A. We did.

19 Q. Okay. And it wasn't just you. It was Sergeant White.
20 Holdorf was involved, correct?

21 A. They were.

22 Q. And all this information was again sent to John
23 Meadors?

24 A. It was.

25 Q. And all this information was then used for two trials?

1 A. He testified in both trials.

2 Q. Okay. So -- and, again, you mentioned yesterday that
3 you got lied to, right?

4 A. Multiple times.

5 Q. Okay. And this was really Meadors call whether to go
6 forward or not?

7 A. It was.

8 Q. Okay. It wasn't your call?

9 A. No, sir, I wasn't the prosecutor.

10 Q. Okay. I would like you please -- let's talk about some
11 things that I think you had more involvement in.

12 Would you please turn to your deposition?

13 A. Yes, sir.

14 Q. If you would please to turn to page 134 and 135.

15 A. I have been doing pretty good so far, but you may have
16 to get me some reading glasses for this. I'm not sure that
17 I can make that out real well.

18 Q. You have been reading your report this whole time.

19 A. This is a little smaller.

20 Q. Work with me, Stan.

21 A. I will do the best I can.

22 Q. All right. Page 134, at the very bottom you were
23 asked -- are you there with me?

24 A. Hold on.

25 Yes, sir.

1 Q. Okay. And this is during the deposition, and what's
2 been noted previously is that the department got sued over
3 this situation?

4 A. We did.

5 Q. Okay. Now --

6 MR. GOINGS: Your Honor, I would object at this
7 time.

8 May we approach?

9 THE COURT: Yes, sir.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 BY MR. LUKE SHEALEY:

13 Q. I apologize, Major Smith. Are you still with me on
14 page 134?

15 A. Yes, sir.

16 Q. All right. Now, you just testified to that it was John
17 Meadors decision to prosecute Mr. Mallory, correct?

18 A. It was.

19 Q. It was not yours?

20 A. That's correct.

21 Q. Okay. You interviewed Mr. Porch several times,
22 correct?

23 A. I did.

24 Q. He lied to you, correct?

25 A. He did.

1 Q. He is not credible, in your opinion?

2 A. Well, he had lied. I mean, I -- then he came up with a
3 final story and explained it. And at that point in time I
4 guess Mr. Meadors -- and I can't speak for him, but I guess
5 he decided that it was a jury issue as to whether he was
6 credible or not.

7 Q. I'm not asking you to guess what you thought Mr.
8 Meadors thought. I'm asking you to say, based on your
9 training --

10 A. There was some issues. There were some problems with
11 the fact that he lied, yes, sir, certainly.

12 Q. And --

13 A. But that ultimately would be a jury issue.

14 Q. And you told us that the decision to continue with
15 Mallory was all Mr. Meadors decision. That's not your role.

16 A. It was ultimately his decision whether to proceed
17 against Mr. Mallory for trial, yes, sir.

18 Q. And is it your position today that based on these lies
19 and the inconsistencies that you didn't find Joshua Porch
20 credible?

21 MR. GOINGS: Objection, Your Honor. It calls for
22 an opinion of the officer.

23 THE COURT: Rephrase the question.

24 BY MR. LUKE SHEALEY:

25 Q. You didn't find Joshua Porch credible?

1 A. He --

2 MR. GOINGS: Objection, Your Honor. The same
3 objection. He's still asking for the opinion of the
4 officer.

5 MR. LUKE SHEALEY: He's an investigator.

6 MR. GOINGS: The credibility of a witness.

7 THE COURT: You will need to rephrase the
8 question.

9 Approach.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 BY MR. LUKE SHEALEY:

13 Q. Major, let's rephrase it a little bit.

14 After the previous three lies and then the final
15 statement that you took that's in evidence, correct? You
16 remember that statement?

17 A. Yes, sir.

18 Q. That's what was reduced to a typed format by yourself?

19 A. Yes, sir.

20 Q. Witnessed by yourself, correct?

21 A. Yes, sir.

22 Q. Described Justin coming in, Joshua Porch being the
23 eyewitness to Justin killing his wife, right?

24 A. That was his final statement, yes, sir.

25 Q. You sent that to John Meadors?

1 A. I did.

2 Q. You were satisfied with that?

3 A. I can't say I was satisfied with that.

4 Q. You weren't satisfied with that?

5 A. He had lied multiple times and that's an issue.

6 That -- again, as I testified earlier, that would be an

7 issue then this Mr. Meadors would have to evaluate, and

8 ultimately I guess he decided it would become a jury issue

9 as to whether he was credible, because that's who made the

10 ultimate determination.

11 Q. So your opinion is you weren't happy with that
12 statement?

13 A. I wasn't happy with the fact that he had lied, no, sir,
14 and I wouldn't be with any witness in any proceeding.

15 Q. Okay. And, as you said, you were not satisfied with
16 that?

17 A. I don't -- I don't understand the -- satisfaction is
18 not the issue. That's not the issue at all. I was trying
19 to find the facts. I did the best I could to get him to
20 tell the truth.

21 Q. Credibility was the issue?

22 A. Well, as it is with any witness, yes, sir.

23 Q. That was important to you?

24 A. It is with any witness, yes, sir.

25 Q. That's important to you as a thirty year investigator?

1 A. That's correct.

2 Q. So --

3 A. And by the fact that he lied, of course, that hurt his
4 credibility. But, again, it was Mr. Meadors decision to
5 allow the jury ultimately to judge that credibility, and
6 that was the ultimate -- it didn't matter what I felt at the
7 time. It was Mr. Meadors decision. Ultimately it would
8 have been the jury's decision.

9 Q. But it did matter what you felt at the time. You are
10 Mr. -- you are John Meadors right-hand man. You worked with
11 him numerous times you testified, correct?

12 A. Yes, sir.

13 Q. He asked for your involvement in this case,
14 specifically?

15 A. He asked me to find out who that DNA belonged to.

16 Q. And once you got this final statement that took a
17 couple of hours to produce, that you typed up, you
18 recommended that to John Meadors?

19 A. I recommended what?

20 Q. This statement.

21 A. I forwarded it to him. I don't know what recommend
22 means.

23 Q. This was --

24 A. I didn't tell him this is -- "you got to believe this.
25 This has got to be true." I forwarded it to him and let him

1 evaluate it.

2 Q. You found it credible?

3 MR. GOINGS: Objection, Your Honor. Still calls
4 for opinion of the officer on the credibility of the
5 statement.

6 THE COURT: I'm going to overrule that one.

7 BY MR. LUKE SHEALEY:

8 Q. Okay.

9 A. In answer to your question the best way I can,
10 apparently, in retrospect, Mr. Porch was able to glean
11 information from the interviews that he would later dovetail
12 into the scenario.

13 Now, again, it was problematic that he had lied, but I
14 was told in the trials -- and I tried to read what you were
15 getting to. I think I know what you are getting to, that
16 Mr. Meadors did tell me he felt he was credible in his
17 testimony.

18 Q. Let's go to page 134.

19 A. Yes, sir.

20 Q. You were asked about the statements elicited by Mr.
21 Porch whether you believed he was credible and believable.

22 Your answer, and correct me if I'm wrong, was "I
23 believe --

24 MR. GOINGS: Objection, Your Honor. It still
25 calls for opinion of the officer.

1 THE COURT: Overruled.

2 You need to refer to what page and line number,
3 please.

4 BY MR. LUKE SHEALEY:

5 Q. Page 135, at the top, line 4.

6 Your answer as a deponent, and correct me if I'm wrong,
7 is "I believe that what he -- his version, the final version
8 that he testified to, it did indeed dovetail into the Sherry
9 Tribble factor."

10 A. That's what I just testified to, yes, sir.

11 Q. And correct me if I'm wrong, you go on to say "I
12 couldn't get past that. It bothered me that he had come up
13 with several versions. In my interviews with Porch, it was
14 apparent that he was very, very afraid of Persia."

15 Do you agree to saying that?

16 A. Yes, sir.

17 Q. "I got the impression in dealing with and Persia that
18 he was as worried about the ramifications of the girlfriend
19 and having to admit that to his wife, and that to me
20 explains some of it."

21 Do you agree with that?

22 A. Yes, sir.

23 Q. "The fact that it sort of, again, dovetailed into
24 Sherry Tribble's explanation, the affair, the timeline, the
25 domestic-related argument, the contention and it was an

1 argument about adultery, as pointed out by Sherry Tribble,
2 an argument about an affair or infidelity. It all fit."

3 Do you agree with that?

4 A. Yes, sir.

5 Q. "So in that vein.. To answer your question. I thought
6 he was a credible witness."

7 Do you agree that you said that?

8 A. I did.

9 Q. "He hurt himself by giving false statements on the
10 front end, as far as credibility, when he testified in those
11 two trials."

12 A. And that's true, yes, sir.

13 Q. And this is, again, your sworn testimony about this
14 case?

15 A. Yes. I mean, I have said it over and over again that
16 the lying hurt his credibility. And Mr. Meadors, and,
17 again, I wasn't present for the trials, felt that he went up
18 as a credible witness.

19 Q. And, again, based on this, you didn't have a problem
20 with this final version?

21 A. I had a problem with the fact that he had lied.

22 Q. If you thought that his final version wasn't the truth,
23 in your thirty years of investigative experience as the
24 chief, the head of Major Crimes, you would have not have
25 submitted that and given your recommendation to John Meadors

1 to go forward?

2 A. I didn't -- I didn't provide a recommendation to John
3 Meadors.

4 I collected the statements as best I could. I tried to
5 get Joshua Porch to tell the truth. Joshua Porch has
6 demonstrated the ability to be a chameleon and adjust in
7 scenario at hand and change his story.

8 Q. Okay.

9 A. And, now, of course, we know what the final story is.
10 And that final story definitely dovetails with the facts.

11 Q. Okay. You agree that had Mr. Porch in his final
12 version to you, what you reduced to writing, if you had not
13 been comfortable with that, you would have told John Meadors
14 "I got a problem with this"?

15 A. It is what it is. I forwarded it to Meadors and let
16 him evaluate it. Mr. Meadors is very intelligent. He had
17 the capability of evaluating that lengthy statement and
18 determining if it was credible and if he wanted to use it or
19 not.

20 Q. And you have already said --

21 A. And apparently he made that decision to go forward with
22 it.

23 Q. And you have already said he trusts your judgment?

24 A. Well, I can't answer for that. I assume he does. You
25 would have to ask him that.

1 Q. And you trust his judgment?

2 A. I do trust his judgment.

3 Q. Okay. Let's get back to your synopsis report.

4 A. Just because somebody has good judgment, I just want to
5 point out, that doesn't mean they can't be wrong. And being
6 wrong doesn't mean --

7 Q. I'm not --

8 A. Being wrong doesn't mean you are malicious.

9 Q. Major Smith --

10 A. Sometimes people make mistakes.

11 Q. This is a stressful thing for you.

12 A. Yes, sir.

13 Q. I understand that. It's a situation where you spend
14 all your manpower, your resources, and you felt you did the
15 right thing, and now it's flipped itself. Do you agree with
16 that?

17 A. I try to do the right thing, yes, sir.

18 Q. Okay. So this is stressful and you have gotten into a
19 lawsuit?

20 A. I did.

21 Q. I understand that, but let's continue with your report.

22 Now, you go through that final version that you read
23 out loud and you published to the jury yesterday in your
24 report?

25 A. Where are we now?

1 Q. We are at the second page of your synopsis, kind of in
2 the middle.

3 A. So we are off the deposition?

4 Q. For the time being.

5 A. Okay.

6 Q. We may get back to it.

7 A. All right, just give me some direction here.

8 Q. It talks about Justin Mallory coming to the home. Do
9 you agree with that?

10 A. Okay. Tell me where are we exactly?

11 Q. We are in the middle of that first paragraph on the
12 second page of your synopsis.

13 A. Yes, sir.

14 Q. Okay. And your report indicates that Porch was
15 becoming intimate with Nakia. You are aware that
16 there was -- his statement said there was fondling?

17 A. Yes, sir.

18 Q. That's what we are talking about by intimate?

19 A. Yes, sir.

20 Q. There was never any sexual actual sex?

21 A. That was what he said.

22 Q. And they were all still clothed?

23 A. Yes, sir.

24 Q. And that when Mr. Mallory comes in, there is
25 immediately a violent argument that ensues?

- 1 A. Yes, sir.
- 2 Q. And it was at that point that Mr. Mallory got the
- 3 knife?
- 4 A. That's what he said.
- 5 Q. Okay. That -- you will note for the investigation Mr.
- 6 Mallory was out cheating?
- 7 A. Yes, sir.
- 8 Q. On Mother's Day.
- 9 A. Uh-huh. Yes, sir.
- 10 Q. Mr. Porch was actually in the home with Nakia. We know
- 11 that from the investigation?
- 12 A. We do now, yes, sir.
- 13 Q. And you knew that from that statement he told you, the
- 14 final statement?
- 15 A. He did tell us that, yes, sir.
- 16 Q. That you went forward on two trials with?
- 17 A. Yes, sir.
- 18 Q. That a violent argument ensued?
- 19 A. Yes, sir.
- 20 Q. And per your report, Mr. Mallory gets the knife and
- 21 begins assaulting Nakia. That's in your report.
- 22 A. Are you talking about the synopsis, or my report?
- 23 Q. I'm calling the synopsis your report. We can call it
- 24 the synopsis.
- 25 A. Okay.

1 Q. That's in your synopsis?

2 A. I can just read the thing, if you want me to.

3 Q. No, I'm just asking you some questions from it.

4 You agree with that, right?

5 A. It says -- he said that Mallory -- "the couple
6 immediately started a violent argument and at one point
7 Justin Mallory got a knife."

8 Q. Correct.

9 A. "Porch said he got in between the couple and he was
10 sliced on his hand in attempt to stop the assault from
11 becoming more violent."

12 Q. Correct.

13 And "he said he did see Justin cut Nakia. And also as
14 to the wound he thought was non-life threatening."

15 A. It does say that, yes, sir.

16 Q. Okay. Now, I want to talk about a couple of things,
17 and -- there has been some questions, some testimony about
18 the wound itself from the investigation, and you agree with
19 Mr. Porch's assessment that it's fair that he believed the
20 wound was non-life threatening?

21 MR. GOINGS: Objection, Your Honor. It calls for
22 speculation on what this witness would believe Mr. Porch was
23 believing at the time.

24 THE COURT: Rephrase the question.

25 MR. LUKE SHEALEY: Okay.

1 THE COURT: I'll sustain it.

2 MR. LUKE SHEALEY: I'll rephrase it.

3 BY MR. LUKE SHEALEY:

4 Q. He said that in his statement to you?

5 A. I'm not sure. You need to ask me that again. I --

6 Q. He told you in his statement to you that the wound was
7 non-life threatening in that final typed-up version?

8 A. He -- he thought it was non-life threatening, yes, sir.

9 Q. And that's where it comes from to get into your
10 synopsis --

11 A. Yes, sir.

12 Q. -- right?

13 And you didn't find anything in your years of
14 investigation and experience into a situation like this to
15 not believe that one way or the other?

16 A. Well, again, it is what it is. I mean, I don't know
17 how rapidly she was bleeding and -- I mean, I wasn't there.
18 That's what he said.

19 Q. And your understanding was he ran out fast?

20 A. That's what he said, yes, sir.

21 Q. He saw a little blood on her and was trying to get out
22 of there, per that statement?

23 A. Well, I believe he claimed he went and tried to clean
24 his hand up or something first --

25 Q. After that.

1 A. -- and then ran out.

2 Q. Right.

3 Now, I want to talk to you and point you to where it
4 says "note" --

5 A. Yes, sir.

6 Q. -- on that second paragraph. And it talks about -- it
7 gives a little more context. It says "Mr. Mallory, per the
8 investigation, naming Mr. Porch in this."

9 A. Yes, sir.

10 Q. Do you know --

11 MR. GOINGS: Objection, Your Honor.

12 May we approach?

13 THE COURT: Yes, sir.

14 (Whereupon, the lawyers approached the bench for
15 an off-the-record discussion)

16 THE COURT: I sustain the objection.

17 BY MR. LUKE SHEALEY:

18 Q. Major, in your -- continuing on in your synopsis --

19 Actually before we do that, I want to talk to you more
20 about this incident -- now -- this fight, as described by
21 Mr. Porch, in your final statement that you took.

22 Now, you are aware, obviously, that after Mr. Mallory
23 was found not guilty by that one judge, that this
24 investigation was turned over to Deputy Chief Wilson?

25 A. That's my understanding, yes, sir.

1 Q. He has actually talked to you about your perspectives
2 and asked you questions about the case?

3 A. He has.

4 Q. Okay. And basically the entire case file was sent to
5 him and he looked over everything and tried to figure out if
6 there was something that was missing, right?

7 A. Yes, sir.

8 Q. Okay. And you are aware that one of the things what
9 came up as new was a new piece of blood of Mr. Porch's on
10 Ms. Mallory's right front shirt?

11 A. I understand some additional blood of Joshua Porch was
12 found on her shirt, yes, sir. I believe it was the right
13 side and it was significant, because Porch is left-handed.

14 Q. Right.

15 And you are also aware that the left-handed versus
16 right-handed was something that came to the issue to Chief
17 Wilson?

18 A. Yes, sir, he did.

19 Q. Okay.

20 A. He felt it an issue.

21 Q. Because, you know, if you got -- if you have a left
22 hand is cut, which is in that statement, correct?

23 A. Yes, sir.

24 Q. Then the idea in this new investigation was you are not
25 going to necessarily have blood on your right side of your

1 shirt?

2 A. It's a -- a fight could be a fluid situation. It could
3 be certainly interpreted that way and that's the way he
4 looked at it, as I understand it.

5 Q. That's not the way that you see it at all?

6 A. That's not accurate.

7 Q. Okay. Like you say, a fight is fluid?

8 A. I have not formed necessarily an opinion on the -- of
9 course, I didn't know his blood was on her shirt at the
10 time. We didn't find that out, again, until he got involved
11 in it and ran some more DNA testing. And once armed with
12 that information, I guess I could see that that makes sense,
13 yes, sir.

14 Q. You agree that it doesn't matter, that a fight is
15 fluid?

16 A. It can be fluid. You know, it can be significant. It
17 may not be, because a fight can be fluid.

18 Q. And that if your left hand gets cut and you have a
19 struggle where you are stepping in between two people, it's
20 perfectly reasonable that a little bit of blood could be on
21 the right side of someone's shirt?

22 A. It's possible, yes, sir.

23 Q. Okay.

24 A. There was a lot of blood present. And it was fortunate
25 that they were able to pinpoint that blood on her shirt upon

1 further analysis, because it ultimately led to where we are
2 now.

3 Q. Turn with me again on the deposition, please, to 106.

4 A. Okay.

5 Q. And this is, again, questions about this right versus
6 left-handed.

7 MR. GOINGS: Your Honor, same objection. He is
8 now making a statement to use other evidence to impeach. I
9 mean, I haven't heard anything of that sort in here.

10 THE COURT: And we have discussed the manner in
11 which to impeach using the deposition, so we will follow
12 that.

13 BY MR. LUKE SHEALEY:

14 Q. Let's talk --

15 MR. LUKE SHEALEY: All right.

16 BY MR. LUKE SHEALEY:

17 Q. Let's talk -- turn to page 121, if you will, please,
18 before I ask you a question.

19 A. Okay.

20 Q. Now, I first need to understand again your testimony.
21 Your testimony, and what I think you said, is that it really
22 doesn't matter if you are left or right-handed when you get
23 involved in a struggle like this?

24 A. I didn't say that.

25 Q. Okay. And concerning where the placement of blood will

1 be, if you get cut in that left hand --

2 A. I said -- I said it could be a fluid situation, but it
3 could also be interpreted as being highly significant.

4 Q. Okay. Well, it could go either way, right?

5 A. Well, it could, potentially, but obviously it is a
6 factor in assaults, and Chief Wilson deemed it very
7 significant here and it made the difference in this case.

8 Q. Okay. But your opinion is that it's not significant?

9 MR. GOINGS: Objection, Your Honor. It calls for
10 opinion of the witness again.

11 THE COURT: Rephrase that.

12 BY MR. LUKE SHEALEY:

13 Q. In your training, in your experience after thirty
14 years, it's not significant one way or the other?

15 A. I didn't testify to that.

16 Q. I'm asking you that.

17 A. Well, I think it's significant here, because it led to
18 his confession.

19 Q. I'm asking you if it's significant about whether a
20 left-handed cut could, in your investigation --

21 A. It can be. It can be.

22 Q. Okay.

23 A. I don't know how else to answer that. I have answered
24 it three times. It can be, but a fight can be a fluid
25 situation as well.

1 Q. So you would disagree with Chief Wilson?

2 A. No, sir.

3 Q. You would not disagree with Chief Wilson?

4 A. No, sir. I didn't testify to that. I would not --

5 Q. I'm asking you --

6 A. I'm saying it could be a fluid situation, but it can be
7 significant.

8 Q. And you are aware --

9 A. And obviously it was in this case.

10 Q. Well, you are aware that it was significant to Chief
11 Wilson?

12 A. I am.

13 MR. GOINGS: Objection. Speculation as to what
14 Chief Wilson was thinking at the time.

15 MR. LUKE SHEALEY: Your Honor, he's already
16 said --

17 THE COURT: Go ahead.

18 BY MR. LUKE SHEALEY:

19 Q. You are aware that it was significant to Chief Wilson?

20 A. I am.

21 Q. Okay. And you degrees with that significance?

22 A. No, sir.

23 Q. Okay. Turn to page 121 in your report -- on your
24 deposition.

25 A. Okay.

1 Q. The question at the top is -- at 1358, at the bottom
2 down there, it says "Porch's DNA was found on Nakia's bloody
3 shirt."

4 A. Yes, sir.

5 Q. And the question is "what is that indicative to you, or
6 does that mean anything to you?"

7 And your answer, and correct if I'm wrong, is "when I
8 first heard that, my immediate response was 'well, he was
9 between them, by his own admission, he had gotten cut.'
10 Again, these aren't two statues involved in a fight and a
11 third one gets in the middle. I mean, there is moving and
12 gyrating and it didn't -- it wasn't that probative to me
13 and -- and not just trying to defend our investigation or
14 our case. To me, that sort or corroborated what he said."

15 And he we are talking about Porch?

16 A. Yes, sir.

17 Q. "And he was in between the two of them. Obviously,
18 someone else, you know, I (sic) felt that it was more
19 probative," or, "felt that it was more probative."

20 That someone else is Chief Wilson?

21 A. Yes.

22 Q. Okay. "And I -- and I think they actually sought the
23 arrest warrant based on that information."

24 A. What I mean there, there was an explanation potentially
25 for it, but Chief Wilson thought it was very important, and

1 it did ultimately -- it was the game changer here. It
2 changed the whole investigation.

3 Q. Okay.

4 A. So he was right.

5 Q. But not for you? It didn't -- it's not significant to
6 you?

7 A. It was explainable to me. That's what I mean by that.
8 It was potentially explainable, because a fight can be a
9 fluid situation.

10 Q. And you had talked to Mr. Porch?

11 A. But it could also be as Chief Wilson interpreted it,
12 which was obviously accurate.

13 Q. And you took the statement from Mr. Porch?

14 A. Which one?

15 Q. The final one --

16 A. Yes, sir.

17 Q. -- that you recommended to Mr. Meadors for two trials.
18 You took this statement?

19 A. I recommended to Mr. Meadors? I didn't testify to
20 that.

21 Q. Okay.

22 A. You asked me that before.

23 Q. You didn't tell him to not -- I mean, this was not
24 worth the paper it was written on?

25 A. I forwarded it to Mr. Meadors as it was.

1 Q. You believe in this investigation, you supported this
2 investigation, and John Meadors did as well?

3 A. I believe --

4 MR. GOINGS: Objection again, Your Honor. It
5 calls for speculation of the officer again. I mean, not a
6 speculation. Opinion of the officer as to --

7 THE COURT: As it relates to the last part of it.
8 Certainly the first part is relevant.

9 MR. GOINGS: That he --

10 THE COURT: In other words, it's relevant as to
11 his interpretation of the investigation as it relates to his
12 view of the evidence in the form of the investigation.

13 BY MR. LUKE SHEALEY:

14 Q. The bottom line is you were aware of Mr. Porch's
15 version getting in between them --

16 A. I was.

17 Q. -- correct? Okay.

18 Now, you are also aware from Chief Wilson talking to
19 you about this case that there is a left-handed versus
20 right-handed assailant assumption here?

21 A. Well, I believe that -- I don't know if you would call
22 it an assumption. I believe he felt in his opinion and in
23 his experience it was, of course, very significant, and
24 obviously it wound up being. I don't know if you would call
25 it an assumption.

1 Q. And in the case against Mr. Mallory, y'all were aware
2 that Mr. Porch was left-handed?

3 A. I believe at some point in time I became of that, yes,
4 sir. Obviously when he signed the statements.

5 Q. Correct. That's something that investigators will look
6 to, because it does sometimes matter?

7 A. Obviously it did here.

8 Q. Okay. Your opinion is that it matters here?

9 A. Well, I does now.

10 Q. Okay.

11 A. It ultimately did matter --

12 Q. Let's talk about that.

13 A. -- and it was the turning point of this investigation.

14 Q. Your opinion -- and you are aware, that the prosecution
15 as it turned toward Mr. Porch with, Chief Wilson leading the
16 charge, was that Mr. Porch's left-handedness was more
17 appropriate to this injury. You are aware of that?

18 A. Well, it was corroborated by his confession. I'm aware
19 of that.

20 Q. I'm not asking you about the confession.

21 A. Well, that's my answer. It was corroborated by the
22 confession, so, yes, it was very important.

23 Q. Well, let's talk about that. Let's get -- break out
24 your deposition again. Turn please to page 106 and 107.

25 And this is, again, your sworn testimony under oath,

1 correct?

2 A. Yes, sir.

3 Q. Just like you put your hand on the Bible today,
4 correct?

5 A. Yes, sir.

6 Q. All right. The question is "what is your knowledge of
7 whether the perpetrator was left-handed or right-handed?"

8 And correct me if I'm wrong, your answer is "I've read
9 some of that, and I heard some of that somewhere along the
10 way and I don't put much stock in that."

11 A. Where is that?

12 Q. The bottom of 106, line 22.

13 A. Yes, sir, okay.

14 Q. "And I don't put much stock in that, based on cases I
15 have worked, where people are -- especially in a knife-type
16 situation, because people are moving and it's -- it's a
17 fluid situation and it's difficult to pin that down. I've
18 heard that oftentimes alluded to in investigations.
19 Sometimes I have seen it to be absolutely dead on and other
20 times it's irrelevant."

21 A. I believe I just testified to that exact same thing.

22 Q. Okay. Well, I didn't get that sense from you, so I'm
23 glad --

24 A. Well, I'm sure you didn't.

25 Q. -- we're on the same page.

1 A. That's what I testified to.

2 Q. Okay. Well, now we are clear.

3 A. Yeah, I think I was clear before.

4 Q. Okay. I just want to make sure whether you are clear
5 on it. I want to make sure the jury is clear on it.

6 A. I do too.

7 Q. All right. So getting back -- let's move on back to
8 your synopsis.

9 All right. And you may not be aware of this, but there
10 is some testimony about the mistrial, the first trial?

11 A. When?

12 Q. There was some testimony in this case about there
13 being --

14 A. Well, I was sequestered. I don't --

15 Q. You are aware that there was a hung jury in the first
16 trial --

17 A. In the first trial, yes, sir.

18 Q. -- right?

19 All right. And I tell you there has been some
20 testimony in this case about certain numbers of not guilty
21 votes versus guilty votes.

22 Your opinion -- your -- your knowledge of it, based on
23 your report, is that there was more than just one person for
24 guilty?

25 A. That's -- that's what I was told.

1 Q. Okay.

2 A. Yes, sir.

3 Q. Okay.

4 A. I have no direct knowledge of the numbers.

5 Q. That's all I'm going to ask you on that.

6 All right. No further questions, and I'm basically
7 done, major, and I appreciate your time.

8 You still have some outstanding questions in this case,
9 based on -- based on your totally looking at it, being --
10 being in charge of Major Crimes at that time, okay; being
11 ultimately responsible for this, okay; being ultimately on
12 the end of a lawsuit that came from Mr. Mallory, okay; you
13 want to know where is the hat from that Exxon video? You
14 want to know that?

15 A. Your first question was do I currently still have
16 unanswered questions, and I would like to answer that
17 question, rather than you asking me them one at a time, if I
18 can.

19 Q. I'm -- I'm going to ask you this question. I was just
20 giving you a little background. You want to know where the
21 hat is on that video?

22 A. I believe that came up along the way, yeah.

23 Q. Okay. And that was part of your deposition?

24 A. Yes, sir, it probably was.

25 Q. Okay. And you also want to know where the jacket is

1 that the eyewitness describes, right?

2 A. Yeah, that -- I believe came up in the deposition as
3 well.

4 Q. All right.

5 MR. LUKE SHEALEY: Beg the court's indulgence.

6 (Off the record)

7 (Back on the record)

8 BY MR. LUKE SHEALEY:

9 Q. Thank you, major.

10 MR. LUKE SHEALEY: That's all I have at this time.

11 THE COURT: Any redirect?

12 MR. GOINGS: Thank you, Your Honor.

13 If it please the court?

14 REDIRECT EXAMINATION BY MR. GOINGS:

15 Q. Major Smith, you were just asked about unanswered
16 questions and you wanted to answer a particular question
17 that was posed to you by the defense --

18 A. I did.

19 Q. -- at first?

20 Go ahead and answer that question.

21 A. I believe that Mr. Porch's final statement, his
22 confession, answered the questions with regard to this case.
23 It was corroborated by the wounds that Nakia Mallory had in
24 that confession. He described how he struck her. He
25 described how she was cut and that was --

1 MR. LUKE SHEALEY: Your Honor, I would object to
2 this. He's not a part of this investigation. It isn't --
3 of this investigation of Mr. Porch, he's not involved
4 whatsoever, so what he's testifying his opinion is for a
5 different witness. I think it would be more appropriate for
6 Chief Wilson.

7 THE COURT: I'll sustain the objection.

8 BY MR. GOINGS:

9 Q. Well, let's move on, and I just got a couple of
10 questions for you.

11 You were asked about the timeline that was established,
12 is that correct?

13 A. Yes, sir.

14 Q. You said that it was based off of -- based on your
15 understanding of the investigation, it was based off of the
16 ear/eyewitness, mainly Sherry Tribble?

17 A. That actually started it, yes, sir.

18 Q. And you were also asked questions as to whether or not
19 you put any credence to what the defendant at the time,
20 Mallory, was telling you about where he was -- what he was
21 doing and where he was going?

22 A. Yes, sir.

23 Q. Okay. Y'all didn't really go by his statements, did
24 you?

25 A. No, sir, we tried to get independent verification.

1 Q. Okay. So the statement that he made that he got off on
2 Two Notch Road and didn't go all the way to Alpine, that
3 wasn't even --

4 MR. LUKE SHEALEY: Objection to leading.

5 BY MR. GOINGS:

6 Q. Was that considered in the timeline?

7 A. Yes, sir, everything along those lines was considered.

8 Q. You were also asked about the washing machine. Do you
9 remember that?

10 A. Yes, sir.

11 Q. Was it determined part of your investigation that the
12 washing machine was not relevant in this homicide?

13 A. It became a moot point, yes, sir.

14 Q. In fact, what did you learn about the washing machine?

15 A. I think we learned that it functioned properly.

16 MR. GOINGS: Beg the court's indulgence.

17 (Off the record)

18 (Back on the record)

19 MR. GOINGS: That's all the questions, Your Honor.

20 You may step down.

21 The witness may be excused?

22 MR. LUKE SHEALEY: We do -- he can be excused from
23 our subpoena.

24 MR. GOINGS: From the State as well.

25 THE COURT: You may be excused. Thank you very

1 stand, please.

2 State your name for the record.

3 THE WITNESS: Bradley J. Marcus, M-A-R-C-U-S.

4 THE COURT: Yes, sir.

5 DIRECT EXAMINATION BY MR. UNDERWOOD:

6 Q. Good morning, Dr. Marcus.

7 Would you please tell the jury what it is that you do
8 for a living?

9 A. I am a -- I'm a medical doctor. I am a forensic
10 pathologist by definition, so I'm actually a pathologist.
11 Also I'm a forensic pathologist. I have specialty training
12 doing autopsies.

13 Q. Okay. And, if you could, please summarize your
14 education and training that allows you to be able to perform
15 autopsies.

16 A. Sure. I went to college.

17 After that I went to medical school and got an M.D.
18 Degree.

19 From there I went to the Medical University of South
20 Carolina in Charleston. I spent six years there, studying
21 pathology in general. And in addition to that, I did
22 another year of forensic pathology training. So there I
23 learned how to do autopsies and determine cause and manner
24 of deaths on people that suddenly and unexpectedly die.

25 From that point onward I was able to pass my boards.

1 So I'm board certified in anatomic pathology, clinical
2 pathology, forensic pathology, and cytopathology. Now,
3 cytopathology is something like pap smears. People get pap
4 smears. I'm the guy that looks at all the pap smears also.

5 In addition to that, I have done approximately 2,000
6 autopsies.

7 I have an unrestricted medical license here in South
8 Carolina, North Carolina, and Georgia.

9 I also work as the chief medical examiner for the
10 Richland County coroner's office here in this county.

11 Q. And, Dr. Marcus, have you ever been qualified as an
12 expert in court before?

13 A. Yes, I have.

14 Q. In what field?

15 A. In forensic pathology.

16 Q. And on how many occasions?

17 A. Approximately twenty to twenty-five.

18 MR. UNDERWOOD: Your Honor, at this time the State
19 offers Dr. Marcus as an expert witness in forensic
20 pathology.

21 THE COURT: Any voir dire?

22 MR. BRIAN SHEALEY: Your Honor, no voir dire, no
23 objection.

24 THE COURT: And I'll find him so qualified as a
25 forensic pathologist.

1 BY MR. UNDERWOOD:

2 Q. Dr. Marcus, did you have an opportunity to review the
3 autopsy of Nakia Mallory?

4 A. I did.

5 Q. How did you get involved with that?

6 A. I was asked to review the autopsy on Nakia Mallory, a
7 autopsy that was performed in May of 2006, before I was even
8 working in my current position. At that moment I was still
9 at MUSC, but I was asked to review this approximately in
10 2012. And I reviewed the autopsy due to the fact that the
11 original pathologist has passed away since.

12 Q. Now, when we say you reviewed the autopsy, what
13 materials have you had opportunity to examine?

14 A. I reviewed the autopsy report that Dr. Stanton Kessler
15 wrote back in May of 2006.

16 I reviewed the autopsy photos.

17 In addition to that I have reviewed -- I was given
18 courtroom testimony, which I read that.

19 And also from the photos I was able to make diagrams.
20 Dr. Kessler, he was -- he just didn't make diagrams in this
21 case, so from the photos I made diagrams. I like to use
22 diagrams.

23 Q. Okay.

24 MR. UNDERWOOD: May I approach the witness, Your
25 Honor?

1 THE COURT: Yes, sir.

2 BY MR. UNDERWOOD:

3 Q. Dr. Marcus, I'm handing you what's been marked as
4 State's Exhibit 42 and 43. Can you review those, please,
5 and identify them?

6 A. Yes. These are the diagrams that I made from the
7 photos taken during the autopsy. I made these diagrams on
8 April 3rd, 2013.

9 And then the one other diagram I made on April 2nd,
10 2013.

11 Q. Can you generally describe what each diagram is of,
12 starting with Exhibit 42?

13 A. Exhibit 42, this is a diagram -- can I show the jury?

14 Q. Not yet. Just what went into the diagram?

15 A. This is a diagram of areas of hemorrhage that was found
16 on Ms. Mallory's skull and on her scalp, areas of where
17 there was bruising, like a contusion, a bruise, like a black
18 and blue mark. If you see it in the skin, it looks like
19 that color. Here is this areas of bruising on her scalp.

20 Q. And Exhibit 43?

21 A. This here -- this here is a full body diagram of
22 showing where Ms. Mallory had several injuries that were
23 photographed during the autopsy on her body.

24 MR. UNDERWOOD: Your Honor, at this time the State
25 moves for Exhibit 42 and 43 to be admitted.

1 THE COURT: Any objection?

2 MR. BRIAN SHEALEY: No objection.

3 THE COURT: Without objection, they are admitted.

4 (Whereupon, State's Exhibit No. 42 was entered
5 into the record as evidence)

6 (Whereupon, State's Exhibit No. 43 was entered
7 into the record as evidence)

8 BY MR. UNDERWOOD:

9 Q. Dr. Marcus, did you also have an opportunity to create
10 your own report?

11 A. What I did was -- yes, I put something in writing. I
12 made a new autopsy number and I called it a forensic
13 consult. I labeled it as FC12-122 as a forensic consult.
14 So I was able to then get -- put my findings in the report,
15 and then attached onto it Dr. Kessler's autopsy findings.

16 Q. Okay.

17 (Autopsy Report marked as State's Exhibit No. 44
18 for identification)

19 BY MR. UNDERWOOD:

20 Q. Now, I'm handing you what's been marked for
21 identification as State's Exhibit No. 44. Can you review
22 that document and identify it, please?

23 A. Yes, this is the forensic consult that I did on Nakia
24 Mallory, and attached to it is a copy of Dr. Kessler's
25 autopsy report.

1 MR. UNDERWOOD: Your Honor, at this time I would
2 ask for State's Exhibit 44 to be admitted into evidence.

3 THE COURT: Any objection?

4 MR. BRIAN SHEALEY: Without objection, judge.

5 THE COURT: It's admitted.

6 (Whereupon, State's Exhibit No. 44 was entered
7 into the record as evidence)

8 BY MR. UNDERWOOD:

9 Q. Dr. Marcus, I also want to hand you what's already been
10 entered into evidence as State's Exhibit 18, 19, 22, and 23.
11 Do you recognize those exhibits?

12 A. Yes, I do.

13 Q. And are those photographs that -- well, some of the
14 photographs that you reviewed as part of your consultation?

15 A. Yes, they are, sir.

16 Q. Now, Dr. Marcus, as a part of your review and
17 consultation of this case, were you able to draw your own
18 conclusions concerning the injuries and manner of death for
19 Nakia Mallory?

20 A. I did.

21 MR. UNDERWOOD: Your Honor, at this time I would
22 ask for Dr. Marcus to be allowed to step down to go through
23 some of these exhibits with the jury.

24 THE COURT: Yes, sir.

25 (Witness off the witness stand).

1 THE COURT: And I believe you talk loud enough,
2 but I'll just remind you to keep your voice up so that we
3 can make sure that we record your testimony.

4 THE WITNESS: No problem.

5 BY MR. UNDERWOOD:

6 Q. Dr. Marcus, if you could, using your diagram, Exhibit
7 42 and any pertinent photographs, can you explain to the
8 jury, using those exhibits, what injuries, as far as
9 contusions or abrasions that you found?

10 A. Yes.

11 This here is a diagram of the scalp, okay? So I want
12 you to try and visualize this. The way we have to do an
13 autopsy to preserve the face and everything like that, we
14 make an incision behind the ears and we go -- then from that
15 point then you try to get our hands up and we actually flip
16 the scalp over the face, okay? So that's what this here is.
17 Then we can take the skull cap off. Then we can put it all
18 back, cover it, and you can't tell that the head -- someone
19 went into the back of their head, because the body lies on
20 the pillow within the coffin. So this is the technique that
21 you have to use and it's the best way to preserve the face.

22 So in this case this is a diagram of that scalp kind of
23 pushed over the face there. I mean, that would just be bare
24 skull right there, and that's through the back. That's the
25 side's views. So when you do this, we do -- we actually

1 look for any types of hemorrhage where there was areas of
2 force put on the person's head at some point.

3 So in this case there was areas of hemorrhage along the
4 scalp here. So that's the scalp, and that's the underlying
5 skull. So those two would match up.

6 Here is another area of hemorrhage on the right side.

7 This is another area on the left side, and that
8 corresponds to the skull hemorrhage there.

9 And then she had several areas of hemorrhage on the
10 back.

11 So from these points, these are like blunt trauma to
12 the head. Blunt trauma caused these. You can kind of count
13 the number of impacts. This was one, two, three, four,
14 five, six. I would say at least six times she was struck by
15 something, either a blunt object, or something, this here.
16 That's what this depicts right here.

17 Q. Dr. Marcus, when you say blunt trauma, could those
18 injuries also be caused by someone's hands?

19 A. Possibly. The knuckles, possibly. Absolutely.

20 Q. Okay. What about with palm strikes?

21 MR. BRIAN SHEALEY: Objection to leading.

22 THE COURT: Sustained. Rephrase the question.

23 BY MR. UNDERWOOD:

24 Q. Dr. Marcus, is it possible for injuries like that to be
25 caused by palm strikes?

1 A. It's possible.

2 Q. Now, Dr. Marcus, in addition to those hemorrhages, were
3 there any other contusions or cuts that you observed?

4 A. Yes. On the other diagram, on diagram --

5 Q. State's Exhibit 43?

6 A. Yes, Exhibit 43, there is a small contusion right here
7 on the neck region, the left neck area.

8 Q. When you say a contusion, what exactly is a contusion?

9 A. Basically it's a bruise. If you think about a small
10 child when they are like a toddler and stuff, they get those
11 marks on the fronts of their feet, legs, because they are
12 trying to run around and they fall and so forth and they get
13 a black and blue mark a little bit afterwards, that's what a
14 contusion is. It's just from blunt trauma, basically. You
15 strike the skin and you have a little bit of hemorrhage that
16 occurs in the skin. And then over time it changes color and
17 then disappears, you know, a week, two weeks later. It
18 depends on the person. So it's from blunt trauma of some
19 sort.

20 Q. Now, Dr. Marcus, before we get to the cuts, the
21 injuries that you found on the head and the scalp and
22 contusion on the neck, were you able to determine how close
23 to the time of death those injuries occurred?

24 A. Yeah, they appeared fresh in the photos. So in my
25 opinion they occurred right about at the time of her death.

1 Q. Okay. Doctor, let's move on to the other injuries that
2 you observed.

3 A. Yes. And then there were two sharp-forced injuries to
4 Ms. Mallory. One was to the right side of her neck area and
5 one was also to her right eyebrow region, and those were
6 caused by some sort of sharp object.

7 Q. And, Dr. Marcus, could I refer you to Exhibit 19? If
8 you could demonstrate to the jury what injury that is a
9 photograph of?

10 A. This here -- this here is in her right eyebrow, and
11 this is a sharp-forced injury, like a stab wound, called a
12 stab wound to her right eye area -- or her right eyebrow
13 area.

14 Q. And from observing that wound, what conclusions can you
15 make?

16 A. Well, this wound -- this wound, something sharp touched
17 her in her eye there, okay? Not in her eye, in her eyebrow
18 region, okay, but it wasn't -- it wasn't very deep. It was
19 very superficial. It probably went, you know, down, cut the
20 skin and subcutaneous tissue underneath it and that's pretty
21 much it. It wasn't a fatal wound.

22 Q. Okay. Now, Dr. Marcus, I bring your attention to
23 State's Exhibit No. 18. Can you go through that exhibit and
24 what you learned from it, for the jury?

25 A. Yes, this here is a picture of the wound to the right

1 neck region. Now, this wound is different, because this is
2 actually a very -- it's a deep stab wound. And then any
3 time that you get a stab wound in the neck region, you got
4 to be worried about it hitting vessels, because your neck is
5 full of vessels. So in this case this wound struck some of
6 the vessels in there, and this wound is the fatal -- the
7 fatal injury that Ms. Mallory received, it struck and cut
8 the jugular vein in the neck and that caused her to bleed to
9 death.

10 Q. How fast would someone bleed to death with that kind of
11 an injury?

12 A. In my opinion, this is about five minutes, or so. Five
13 minutes, because there still would be a lot of blood coming
14 out of this wound.

15 Q. If someone were to receive a wound like that, would it
16 be quite obvious that that was a significant wound to any
17 onlookers?

18 MR. BRIAN SHEALEY: Your Honor, that's objecting
19 to the leading. Obviously --

20 MR. UNDERWOOD: He's an expert witness, Your
21 Honor. That's a medical question.

22 THE COURT: Repeat the question.

23 BY MR. UNDERWOOD:

24 Q. Dr. Marcus, if a person were to receive an injury, as
25 pictured in that photograph, would any onlookers be able to

1 obviously tell it was a significant injury?

2 THE COURT: You may answer the question.

3 A. In my opinion, yes, because it would be bleeding
4 profusely.

5 BY MR. UNDERWOOD:

6 Q. How bad? When you say profusely, will you describe
7 what kind of bleeding?

8 A. Well, yes, it would be -- it wouldn't be -- the injury
9 wouldn't -- because it's hitting an artery, it would be
10 squirting out blood. If it hit the carotid artery, every
11 time the heart beat, it would squirt blood out in a
12 trajectory path.

13 This here would probably just start, you know, oozing
14 blood at a significant amount down the neck and so forth
15 like that. On her face, possibly, depending on where her
16 body, what kind of motion her face was in.

17 Q. And, Dr. Marcus, did you say that that is the fatal
18 wound?

19 A. Yeah, this is the fatal wound. Unless you get surgical
20 therapy immediately, this is a fatal wound.

21 Q. Okay. Now, Dr. Marcus, did you -- if you need to refer
22 to your report, that's fine. Can you explain the angles and
23 depths of that injury?

24 A. The -- this was labeled as stab wound number A, again,
25 so the -- the depth of penetration Dr. Kessler wrote was 2.5

1 to 3 inches. So, you know, probably about that much of the
2 knife, or whatever object that was used went into her, a
3 sharp instrument went into her.

4 And the direction of the stab wound is backwards, going
5 forward, downward and to the left. So it's going like this,
6 according to his report.

7 Q. Now, Dr. Marcus, if you make the demonstration, but
8 would that be consistent with a sharp object coming at an
9 angle like this? If you could use my pen as what --

10 A. It would be actually almost going like this. But,
11 again, I don't know what the position of her body was when
12 she was -- you know, when she was stabbed. She could have
13 been down like this, for all I know. She could have been
14 bent over and that could have made that possible, but the
15 sharp injury was going like this. Like this. It was going
16 forward, according to the report. But, again, I can't tell
17 you exactly, because I don't know the position of her body.

18 Q. Now, if I can ask you hypothetically speaking, if the
19 assailant were standing in front of the victim, how would
20 that injury occur, assuming that both individuals were
21 standing facing one another?

22 A. It either could occur like this, going like this; or
23 the left hand can go -- like coming at someone like that.
24 Do you understand? Like this. That would be the trajectory
25 it could be.

1 Q. Okay. And, Dr. Marcus, in your opinion, is this wound
2 consistent with a person standing -- a left-handed person
3 standing, in front the victim?

4 A. It could be, yes.

5 MR. UNDERWOOD: Court's indulgence.

6 (Off the record)

7 (Back on the record)

8 BY MR. UNDERWOOD:

9 Q. I think that's enough for our demonstrations, doctor.
10 If you want to go ahead and take your seat.

11 (Witness back on the witness stand)

12 BY MR. UNDERWOOD:

13 Q. Now, Dr. Marcus, could you explain to the jury what
14 effects, as far as the color and appearance of blood, once
15 it has left the body and it's been exposed to air? Can you
16 explain that?

17 A. Yeah, the blood -- blood is red. It's red in color.
18 You know, it's kind of almost like a -- it could be a
19 darkish red color appearing. Very -- you know, it's a
20 liquid, so it can go everywhere.

21 Q. Now, when blood leaves the body and it's in the air for
22 a time, how does the color of blood change?

23 A. My experience is it gets very, very dark, because you
24 have the serum, the plasma of your blood, kind of can
25 separate a bit and then all the red blood cells kind of go

1 together, so it becomes -- it does becomes darker.

2 (Off the record)

3 (Back on the record)

4 BY MR. UNDERWOOD:

5 Q. Dr. Marcus, after your examination of this autopsy and
6 all the materials that you were given, were you able to come
7 to any conclusions concerning the cause and manner of death
8 of Nakia Mallory?

9 A. Yes.

10 Q. And what were those?

11 A. Based on my review of everything, I concurred with Dr.
12 Kessler's report that she died of a stab wound to her neck
13 and she bled to death. Dr. Kessler put that into her --
14 into his report.

15 Q. Thank you. Please answer any questions that the
16 defense may have.

17 MR. BRIAN SHEALEY: May it please the court?

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION BY MR. BRIAN SHEALEY:

20 Q. Thank you, doctor.

21 It's kind of an unusual situation reviewing an analysis
22 from a pathologist's report, correct?

23 A. It's the first time I have reviewed a deceased
24 pathologist's report. Yes, that's true.

25 Q. Okay. We appreciate you being here today.

1 Now, your report, which you come up with your
2 conclusions -- and you have a copy of your report,
3 obviously?

4 A. Yes.

5 Q. It says that you reviewed Dr. Kessler's, his own
6 report, as the person that performed the autopsy then and
7 there actually viewing the body, right?

8 A. That's correct.

9 Q. You reviewed his courtroom testimony as well, the
10 transcript?

11 A. That's correct.

12 Q. And you said that you basically concur with Dr.
13 Kessler's autopsy findings and that she died of just
14 basically blood loss from that stab wound to the right side
15 of her neck, right?

16 A. That's correct, sir.

17 Q. Okay. Now, reading the transcripts, I mean, your -- do
18 you know who Dr. Kessler was?

19 A. Oh, yes, I knew him. Yes, I have known him for many
20 years.

21 Q. I mean, he's kind of came before you and you would have
22 known who he is?

23 A. Yeah, I have seen him at many meetings around the
24 country. And then he's -- he actually was working my job.
25 I actually replaced him.

1 Q. Right.

2 And even though he passed away, he did have an
3 opportunity to testify previously right where you are on
4 this matter?

5 A. Yes, I -- I think so, yes.

6 Q. And reviewing the transcripts you reviewed -- you
7 already know his qualifications?

8 A. Right, yes, he's -- I know about his qualifications,
9 yes.

10 Q. And was working for Mass General for a time, and he
11 taught at Harvard and B.U.?

12 A. Oh, yes.

13 Q. He was well qualified. He was qualified in this court
14 and many others?

15 A. Yes.

16 Q. Now, I think you got down here and you were
17 demonstrating some things, and I think Mr. Underwood had you
18 demonstrate, you know, a stab wound and how it could have
19 occurred with that right side of the neck, and you first
20 kind of came in with your right hand, and then you
21 demonstrated how it could come in with your left hand. Do
22 you recall that?

23 A. Yes, sir.

24 Q. Okay. In reviewing Dr. Kessler's report, as well as
25 transcripts, there was really never any kind of

1 determination made about front or back, or even left or
2 right, because, you know, you can't really tell. All you
3 can really tell is the direction it actually enters the
4 body, right?

5 A. That's correct, sir.

6 Q. So when he says it's consistent, it could be consistent
7 with coming in from the left like this, you said, correct?

8 A. That's correct.

9 Q. The same way that you got to say it could be consistent
10 with coming in like this?

11 A. That's correct.

12 Q. You weren't there.

13 And the transcript testimony of Dr. Kessler also
14 testified that, you know, it could have been done from the
15 back; it could have been done from the front. There are
16 equal ways it could have occurred; front, back, left, or
17 right?

18 A. That's correct.

19 Q. And -- now, your job is difficult. I mean, you get
20 training in this regard to kind of assist as an expert and
21 assist jurors, but in this case it's really hard to tell
22 exactly how it occurred. All you know is the angle of the
23 stab wound and that that was the fatal wound?

24 A. That's correct.

25 Q. Okay. In this case Ms. Mallory unfortunately was

1 bleeding to death, and the technical term for that is?

2 A. Exsanguination.

3 Q. Right.

4 And she was also aspirating blood?

5 A. That's correct.

6 Q. Because this wound, you know, transected the vein, the
7 jugular?

8 A. Yes.

9 Q. And you testified that it would have started as an -- I
10 wrote exactly what you said. You said it wouldn't have been
11 squirting blood. It would have been more -- I believe you
12 said something synonymous with trickle -- it would start
13 oozing blood is what you said?

14 A. That's correct.

15 Q. Now, the carotid artery, that kind of artery, if that
16 had been cut, it would have been more squirting?

17 A. That's correct, sir. It would have literally squirted
18 out like a water pistol.

19 Q. Right.

20 And I think Dr. Kessler talks about that in his
21 testimony as well, but the vein that was cut here was more
22 oozing than squirting?

23 A. That's correct.

24 Q. And some of the blood on the crime scene that Dr.
25 Kessler testifies to is correlated more with aspiration and

1 coughing up of blood, you know, kind of the splattering and
2 that of thing, he testified as to that.

3 A. (Shaking head yes).

4 Q. So it's -- you know, the blood everywhere on the crime
5 scene is a massive loss of blood, correct?

6 A. That's correct.

7 Q. She dies of blood loss?

8 A. Correct.

9 Q. But some of this blood that is maybe visibly shooting
10 places, Dr. Kessler testified that was due to the
11 aspirating? She was suffocating? She's trying to cough it
12 up?

13 A. Can I review my report briefly?

14 Q. Sure.

15 A. Yes, she -- she -- she seemed to have aspirated the
16 blood. I agree with that. And -- but that could have come
17 down from her mouth, too. And, yeah, certainly she could
18 have coughed blood up. That's certainly possible.

19 Q. Now, again, you already testified that you reviewed the
20 testimony in this case by Dr. Kessler?

21 A. Yes, that's correct.

22 Q. Okay. And you agree with his conclusions regarding the
23 fatal wound, correct?

24 A. That's correct.

25 Q. Okay. She had some bruising to her neck?

1 A. That's correct.

2 Q. She had some bruising to the top of her head?

3 A. That's correct.

4 Q. Okay. Any kind of blunt object, including someone's
5 hand or something of substance, could have caused this
6 bruising, right?

7 A. That's correct.

8 Q. Okay. And there were no skull fractures or hematoma,
9 but it is bruising, right?

10 A. That's correct. There is no skull fractures, that's
11 correct.

12 Q. Okay. Now, I think you testified that, you know, with
13 this kind of blood loss in the way that it occurred, that
14 she wouldn't have survived more than five minutes, right?

15 A. That's my -- that's correct.

16 Q. And you have reviewed the transcripts and the testimony
17 from Dr. Kessler and he agrees with you, but his testimony
18 basically is that it wouldn't be more than ten to fifteen
19 minutes -- couldn't be any longer than that, but certainly
20 could be shorter. You reviewed that?

21 A. I did.

22 Q. Okay. So we are in a time from here where it can't be
23 more than fifteen minutes. And you reviewed Dr. Kessler's
24 testimony on that and you have indicated here maybe even
25 five minutes?

1 A. That's true. That's --

2 Q. We are not talking about an hour of trying to survive
3 this. It's relatively short?

4 A. In my opinion, yes.

5 Q. Now, I know Mr. Underwood had you talk to the jury
6 about these other nonfatal injuries; the cut to her eyebrow.
7 There is also a very faint marking on her cheek. A cut,
8 right?

9 Do you have that in your report? Do you have the
10 pictures with you, doctor?

11 A. I have got these four, yes.

12 Q. May I see those, please?

13 I would refer you to State's Exhibit 19, just for your
14 benefit, in case you don't see it in your report, but --
15 right there.

16 A. Yes, that's a small abrasion there on -- under her eye.

17 Q. And I think the testimony from Dr. Kessler and what you
18 have observed, that is consistent with a sharp object that
19 grazed the skin, without doing any kind of tissue damage, as
20 in the cut to the eyebrow? It's a grazing, basically?

21 A. It -- it could be. It could be.

22 To me from this angle that just looks like an abrasion.

23 Q. Okay.

24 MR. BRIAN SHEALEY: Beg the court's indulgence.

25 (Off the record)

1 (Back on the record)

2 BY MR. BRIAN SHEALEY:

3 Q. Thank you, doctor. I appreciate it.

4 THE COURT: Any redirect?

5 MR. UNDERWOOD: Very briefly, Your Honor.

6 REDIRECT EXAMINATION BY MR. UNDERWOOD:

7 Q. Dr. Marcus, is it your testimony that you agreed with
8 Dr. Kessler that Nakia Mallory could have lived anywhere
9 from five to fifteen minutes after being stabbed?

10 A. My opinion is I'm a little different with that. I
11 think she could have lived about five minutes with an injury
12 like that.

13 Q. Is it possible that she could have lived longer?

14 A. It's possible. It's possible. I don't know if she put
15 pressure on the area. I don't know that.

16 Q. Thank you.

17 MR. UNDERWOOD: No further questions, Your Honor.

18 THE COURT: You may step down. Thank you.

19 May this witness be excused?

20 MR. UNDERWOOD: Yes, Your Honor.

21 MR. BRIAN SHEALEY: Yes.

22 THE COURT: You may be excused. Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: You may call your next witness.

25 MR. GOINGS: The State would call Investigator

1 Holdorf. Travis Holdorf.

2 INVESTIGATOR TRAVIS HOLDORF, having been first
3 duly sworn, testified as follows:

4 THE CLERK: Have a seat on the witness stand,
5 please.

6 State your name for the record.

7 THE WITNESS: Travis Holdorf, H-O-L-D-O-R-F.

8 DIRECT EXAMINATION BY MR. GOINGS:

9 Q. Good afternoon, Investigator Holdorf. How are you?

10 A. Well, sir.

11 Q. Would you please tell this jury where you are currently
12 employed?

13 A. I'm currently employed with the Richland County
14 Sheriff's Department. I'm in the Sex Crimes and Child Abuse
15 Division. I'm the seventh member of our team that goes on
16 call primarily for homicides.

17 Q. And how long have you been employed with the Richland
18 County Sheriff's Department?

19 A. Nineteen years.

20 Q. Okay. And let's go through your background a little
21 bit. How did you start with them?

22 A. After high school I did four years in the Air Force. I
23 decided I did not want to make that a career, so I joined
24 the sheriff's department. I started out on the road. I
25 stayed on the road for a little over three years. They had

1 an opening for investigators, gave a test and oral board. I
2 did well on both and became an investigator.

3 Q. And when was that?

4 A. The summer of '97.

5 Q. And that's what you have doing since then?

6 A. Yes, sir.

7 Q. Okay. And that was your role in 2006, was an
8 investigator with the Richland County sheriff's office?

9 A. Yes, sir.

10 Q. Okay. Were you assigned to this particular homicide?

11 A. Yes, sir.

12 Q. All right. Describe how you first got word of it, to
13 the jury.

14 A. I was first contacted by Sergeant Strange. Our shift
15 was on call. He would be the supervisor over our shift. I
16 responded out to the hospital, which was Providence
17 Northeast off Farrow Road.

18 Q. Why did you go to the hospital first?

19 A. That's where the victim was taken.

20 Q. All right. And what did you do when you got to the
21 hospital?

22 A. Once I was there I met with Justin Mallory and started
23 talking with Mr. Mallory.

24 Q. And after that conversation ended with Mr. Mallory,
25 what was your next course of action?

1 A. It pretty much continued throughout the day. I wanted
2 to get a written statement from him. That's something that
3 you want to try to do in as timely of a fashion as you can
4 and so we went to our headquarters and I took a written
5 statement from him.

6 Q. Okay. So you never went to the crime scene that night,
7 or that morning?

8 A. I want to say later that morning.

9 Q. After your discussion with Mr. Mallory?

10 A. I believe, sir. I would have to review my notes, but I
11 don't --

12 Q. Do you have a copy of your report with you?

13 A. Yes, sir.

14 Q. Okay. You can review it to refresh your memory.

15 A. I don't believe I went to the crime scene until later
16 that afternoon.

17 Q. Okay. So the first part of your investigation focused
18 on interviewing and getting a statement from Justin Mallory,
19 is that correct?

20 A. Yes, sir.

21 Q. And did you have that conversation at headquarters?

22 A. Yes, sir.

23 Q. And based on that conversation, what did you learn
24 about Mr. Mallory's whereabouts that night?

25 A. He had left his house, went out with a lady by the name

1 of Ricki Cook. He got -- I got the whereabouts where they
2 were. He dropped Ricki back off at her sister's house and
3 then he went home.

4 Q. And what did he tell you about -- well, basically, your
5 information what time he arrived home?

6 A. I want to say, according to him, he was saying it was
7 around 3:45, or so. That was according to him. That's what
8 we had that morning --

9 Q. What --

10 A. -- if I'm not mistaken. I haven't seen his statement.

11 Q. Okay. What did he find when he arrived at his house,
12 is my question?

13 A. Okay. When he arrived at his house he noticed that
14 there was a towel that they usually kept on the blinds.

15 It's a one story -- it's a two story apartment. Theirs is
16 on the first floor, so there is a porch area that you could
17 walk in from the outside.

18 The front door would be in the breezeway.

19 He stated the first thing that he noticed was that the
20 blanket they kept over the blinds was not there. He looked
21 in and he saw his wife bleeding. Then he went to get help.

22 Q. Do you know whether or not he took his wife to the
23 hospital that night?

24 A. He did.

25 Q. Now, when you were interviewing him, was he cooperating

1 at the time?

2 A. He was.

3 Q. Okay. Did he freely give this information to law
4 enforcement?

5 A. Yes, sir, he did.

6 Q. Did he actually -- well, did you ever ask him if you
7 could search his house?

8 A. Yes, sir.

9 Q. And what was his response to that?

10 A. He let us search his house, search his vehicles, signed
11 a consent to search for his person, for his DNA.

12 Q. So is it fair at the beginning of this investigation
13 Mr. Mallory was cooperative with law enforcement?

14 A. Yes, sir.

15 Q. And based on your knowledge of the investigation, from
16 the first time that you spoke with him until now, has Mr.
17 Mallory's statements ever changed about his whereabouts and
18 what he found when he got home that night?

19 A. It has not.

20 Q. And you again said that there was -- he consented to
21 searches, correct?

22 A. Yes, sir.

23 Q. A search of the home?

24 A. Yes, sir.

25 Q. His person?

1 A. Yes, sir.

2 Q. So you have been in law enforcement for awhile, is that
3 right?

4 A. Yes, sir.

5 Q. Even though a person gives a consent to search their
6 home, does law enforcement sometimes still go and get a
7 search warrant?

8 A. Yes, sir.

9 Q. And why is that?

10 A. The consent -- if you give a consent to look at your
11 house, you can say automatically "I don't want you looking
12 any more," and it would stop right then and there.

13 The search warrant is signed by a judge. It allows us
14 to look through the property. It's just a redundant, almost
15 like a backup.

16 Q. But your testimony here today is that Mr. Mallory gave
17 you consent to search?

18 A. He did, yes, sir.

19 Q. What about consent to search his van?

20 A. Yes, sir.

21 Q. And his person?

22 A. Yes, sir.

23 Q. And -- so you get a statement from Mr. Mallory. When
24 do you go to the crime scene?

25 A. It would have been later that afternoon.

1 My responsibility that morning was staying with Mr.
2 Mallory. You are getting a lot of information coming in
3 from other investigators they were out at the scene, and
4 it's just talking with Mr. Mallory.

5 Q. And as part of the investigation early on after you got
6 the information from Mr. Mallory, did you seek to
7 corroborate his account of where he was?

8 A. Yes, sir.

9 Q. And how did you go about doing that?

10 A. He actually showed us where he dropped Ricki Cook off
11 at. He pointed out her sister's house. I went there with
12 Sergeant Strange. Mr. Mallory was in my car and Sergeant
13 Strange spoke to Ms. Cook.

14 Q. Were you there when Ms. Cook was interviewed?

15 A. I was not. I was with Mr. Mallory.

16 I also asked him where he had been before the Exxon. I
17 think it was an Econo Lodge, and verified that information,
18 not that morning, but shortly thereafter.

19 Q. And how did you verify the information that he had
20 rented a room at the Economy Inn?

21 A. Went there.

22 Q. And was that, in fact, verified by you?

23 A. It was, yes, sir.

24 Q. Do you know what time that Mr. Mallory and Ms. Cook
25 checked into the Econo Lodge -- the Economy Inn that night?

1 A. I did. I'll look at my notes.

2 He would have checked in approximately at 1:37 in the
3 morning?

4 Q. 1:37 a.m.?

5 A. Yes, sir.

6 Q. Did you get a -- at any point in time, either your
7 search from the vehicle or from the motel, did you get a
8 receipt to verify that?

9 A. I went to the front desk and would have gotten that
10 information.

11 There were no video cameras. There is no way to tell
12 when checkout was, but he stated after he left the hotel, he
13 went to the Exxon, which was across the street.

14 Q. All right.

15 A. And I obtained a video and the cash register receipt
16 from the Exxon.

17 Q. All right. Let's stay with the hotel for a second.

18 I'm going to show you --

19 (Receipt marked as State's Exhibit No. 45 for
20 identification)

21 BY MR. GOINGS:

22 Q. I'm going to hand you what's been marked State's
23 Exhibit 45. Do you recognize that document?

24 A. Yes, sir.

25 Q. And what is that document?

1 A. It's a printout from the Economy Inn --

2 Q. And --

3 A. -- where Mr. Mallory checked in. It has his name, what
4 room number they were in, the time, the date.

5 Q. Now, it also has standard check-in and checkout times
6 on there at the bottom, is that correct?

7 A. Yes, sir.

8 Q. Eleven a.m. to four p.m.?

9 A. Yes, sir.

10 Q. Okay. But it was printed at what time?

11 A. Printed on the 14th at 1:37 a.m..

12 Q. So that's the receipt that Mr. Mallory received for his
13 room?

14 A. I'm not a hundred percent if that's his receipt or
15 something we received from the hotel, but I do believe
16 that's from the Economy -- from the hotel.

17 Q. Okay. And that's shows what time he checked in?

18 A. Yes, sir.

19 MR. GOINGS: Your Honor, at this time I would move
20 to introduce State's Exhibit 45.

21 THE COURT: Any objection?

22 MR. BRIAN SHEALEY: No objection, judge.

23 THE COURT: It's admitted.

24 (Whereupon, State's Exhibit No. 45 was entered
25 into the record as evidence)

1 BY MR. GOINGS:

2 Q. So at least at 1:37 in the morning, at that point in
3 time, you know Mr. Mallory is where?

4 MR. LUKE SHEALEY: Your Honor, I object to
5 leading.

6 BY MR. GOINGS:

7 Q. Where is Mr. Mallory at 1:37?

8 A. He's checking into the Economy Inn.

9 Q. With who?

10 A. Ms. Ricki Cook.

11 Q. Okay. And this is part of the timeline that you
12 started establishing early on in your investigation?

13 A. Yes, sir.

14 Q. And you said that afterwards, once they left the hotel
15 that morning, they went where?

16 A. From the hotel they go to the Exxon, which is across
17 the street.

18 Q. And you went to both these locations, the Economy Inn
19 and the hotel, correct?

20 A. That is correct, yes, sir.

21 Q. In relation to each other, where are they at?

22 A. One is across the street from the other on Broad River
23 Road right near I-20.

24 Q. Okay. And you went to the gas station. And tell the
25 jury what happens once you got there.

1 A. Once I got there, I looked on their surveillance video,
2 compared the time that was displayed on the surveillance
3 video with the time on my cell phone. It was twenty-one
4 minutes fast.

5 Q. Okay. Was Mr. Mallory actually seen on the video from
6 your review of the surveillance?

7 A. Yes, sir, he is.

8 Q. And do you recall looking at that video?

9 A. I do, yes, sir.

10 Q. I'm going to play for you -- it's already been
11 introduced into evidence as State's Exhibit 34 -- State's
12 Exhibit 30, I apologize.

13 THE COURT: I'm sorry, what was that?

14 MR. GOINGS: State's Exhibit 30, Your Honor.

15 BY MR. GOINGS:

16 Q. Which is the gas station video surveillance. I will
17 attempt to.

18 MR. GOINGS: Your Honor, if I could have them dim
19 the lights, if possible.

20 (Whereupon, State's Exhibit No. 30 was played to
21 the jury panel)

22 BY MR. GOINGS:

23 Q. Do you recognize these security footage?

24 A. Yes, sir.

25 Q. And what is that security footage of?

1 A. It would be of the Exxon Gas Station, both inside and
2 outside.

3 Q. Now, when you were reviewing it, did you look at all
4 eight camera angles, or did you just look at one
5 specifically?

6 A. We looked at all of them that were relevant where you
7 see Mr. Mallory, or Mr. Mallory's vehicle, or Ms. Cook.

8 Q. Do they have a camera angle right at the cash register?

9 A. I --

10 Q. You may have to refresh your memory.

11 A. I don't recall.

12 Q. What is that a camera angle of?

13 A. The cash register area going out.

14 Q. And did you review this one?

15 A. Yes, sir.

16 Q. And what did Mr. Mallory tell you he purchased at the
17 gas station?

18 A. A Yoohoo and a White Owl peach cigar.

19 Q. Who is that individual we are looking at there?

20 A. That's Mr. Mallory.

21 Q. What did he purchase?

22 A. The Yoohoo and the cigar.

23 Q. Now, Investigator Holdorf, you testified that when you
24 reviewed this camera footage, that you timed the periods of
25 the time on the closed caption, is that correct?

1 A. Yes, sir, I did.

2 Q. And that was the next day, or the day of, later on in
3 the afternoon?

4 A. It was done on the 19th.

5 Q. Okay. And basically -- describe to the jury what you
6 were doing when you are making the comparison from what was
7 shown on the security camera --

8 THE COURT: Mr. Goings, you need to turn around
9 so they can hear you.

10 MR. GOINGS: Sorry.

11 BY MR. GOINGS:

12 Q. What was the time difference between what was shown on
13 the security footage and your watch?

14 A. On the security footage it's twenty-one minutes fast.
15 It's not uncommon, if you are looking at someone's else's
16 video surveillance equipment for it to be off days, weeks,
17 hours, minutes, much like most people's home VCR's or
18 computer systems. I mean, it's -- unless there is a way to
19 manually or automatically update it, they tend to be off.
20 So I wanted to make sure that the time that we see that's
21 printed on the video itself is correct.

22 Q. And what was the difference that you found between the
23 two?

24 A. Twenty-one minutes.

25 Q. Twenty-one minutes?

1 A. It was twenty-one minutes fast, the time that's on the
2 video itself.

3 Q. Okay. And you just watched the video that Mr. Mallory
4 is seen. The time and date stamp on that was -- he was in
5 the store at three minutes -- or 3:20:02, is that correct?

6 A. Yes, sir.

7 Q. Okay. So based on your viewing later of the
8 differences in time, that puts him there at what time?

9 A. Right at three a.m..

10 Q. Does that match with the information that he had
11 previously given you?

12 A. It's going to be off a bit, but nothing more than I
13 would expect. Unless there was something significant about
14 that point in time where they say "well, I looked at my
15 watch," or, "I looked at something," and they had a
16 reference for that, as I recall that Mr. Mallory gave us it
17 was about this time.

18 Q. So he was estimating his time when he gave the
19 statement to you?

20 A. Yes, sir.

21 Q. And so did y'all time the route at all?

22 A. Yes, sir.

23 Q. And who timed the route?

24 A. Sergeant Strange timed the route. I timed the route.

25 Q. What route did you take?

1 A. From -- it was actually timed from leaving the
2 apartment complex that Ms. Cook was dropped off at to Mr.
3 Mallory's apartment. It's nineteen miles and it took
4 approximately fifteen minutes, if I'm not mistaken.

5 Q. What route did you take?

6 A. Straight down I-20.

7 The apartment complex is right off of Bush River Road
8 and I-20, so straight down I-20 to Two Notch Road. From Two
9 Notch Road I want to say it's Alpine, and then Alpine to
10 Pinelane.

11 Q. All right. Well, before we get back to that, let's
12 go -- Mr. Mallory told you -- where did he go after he left
13 the gas station?

14 A. He dropped Ms. Cook off.

15 Q. And the gas station is on what road?

16 A. It's at the corner of Broad River Road and I-20.

17 Q. Okay. And Ms. Cook's apartment is where?

18 A. The corner of Bush River Road and I-20, a little bit
19 back, but pretty close to it.

20 Q. Just so we can make sure the jury understands who may
21 not be familiar with this area, if you go from Broad River
22 to Bush River, are you going in the opposite, or are you
23 going towards the residence of the Mallorys?

24 A. You are heading away from Mallory's residence.

25 Q. Okay. Approximately how long -- how many miles is it

1 from Broad River to Bush River Road?

2 A. I don't recall. If I was going to speculate, three.

3 Q. Okay. Do you know how many exits are in between Broad
4 River and Bush River Road?

5 A. Three. Two for 26 and then Bush River Road itself.

6 Q. All right. So it would take him some time to get to
7 the apartment, is that correct?

8 A. Yes, sir.

9 Q. And did he ever indicate how long he was there in the
10 apartment complex with Ricki Cook?

11 A. As I recall, he said a few minutes.

12 Q. He never gave you anything more than a few minutes?

13 A. I don't have his statement in front of me. I have his
14 statement summarized in my notes, but I do not have his
15 statement in front of me.

16 Q. So he's not leaving --

17 Based on your investigation, you are trying to develop
18 the timeline, correct?

19 A. Yes, sir.

20 Q. He had to drop -- did he still have Ricki Cook when he
21 goes to the gas station?

22 A. Yes, sir, he does.

23 Q. So he has to go away from his residence to drop her
24 off?

25 A. Yes, sir.

1 Q. And that's after what time that we know of?

2 A. After three.

3 Q. Based on the gas station video?

4 A. Yes, sir.

5 Q. And you said you timed the route, correct?

6 A. Yes, sir.

7 Q. Why did you pick the route that you took?

8 A. If I'm not mistaken, that's the way he said he went.

9 It's the most obvious route --

10 Q. Okay. Well --

11 A. -- what I believed he would go.

12 Q. Is that what you told you?

13 A. I believe he told me, but it's also the most direct
14 route, if I'm not mistaken.

15 Q. Okay. Because why is it the most direct route? I
16 mean, you drove it, and you are familiar with this area,
17 right?

18 A. It's mostly interstate.

19 Q. And what's the speed limit on that interstate?

20 A. There's parts that 55.

21 Q. And what time of day did you drive the route?

22 A. I have driven it several times.

23 In trial prep it was eight that morning, so traffic was
24 considerably heavier than it would have been at three. I
25 have driven that road hundreds of times. It's how I get to

1 and from my house.

2 Q. And your testimony is that it took fifteen minutes from
3 Ricki Cook's apartment to the residence of the Mallorys?

4 A. Yes, sir.

5 Q. And I believe -- were you familiar with how long it
6 took Sergeant Strange when he drove that route?

7 A. It would have been fifteen minutes. It's nineteen
8 miles doing the speed limit. He stated he left at 7:57 a.m.
9 and would have gotten there at 8:16 a.m.. This was going
10 sixty-five on the highway.

11 Q. Are you positive Sergeant Strange didn't report to you
12 that it took him nineteen minutes?

13 A. I have a typo in my file that location was fifteen
14 miles and it took him almost nineteen miles (sic) doing the
15 speed limit, so that would be correct.

16 Q. Okay.

17 A. It would have been nineteen minutes, fifteen miles.

18 Q. Okay. And then -- and what else did you do as part of
19 your investigation to establish a timeline for Mr. Mallory?

20 A. I would have looked at phone records.

21 Q. Were you successfully able to get phone records for Mr.
22 Mallory?

23 A. Yes, sir, I was.

24 Q. And what did you determine from those phone records,
25 once you reviewed them?

1 A. The tower locations, you get the time of the call. It
2 would give you an approximate area where he was. From one
3 call to another call you could figure out a direction of
4 travel and it was consistent. I mean, the phone calls won't
5 tell you how fast someone was going or exactly where they
6 were, so you would try to mark right in the middle where the
7 tower would be.

8 Q. Based on your conversations with Mr. Mallory, after he
9 dropped Ms. Cook off, did he indicate that whether he called
10 anybody?

11 A. Yes, sir, he made several phone calls.

12 Q. Who did he call?

13 A. If I'm not mistaken, Standric Mickens, or -- I have to
14 go back and look at the notes one second.

15 Q. Please review your notes.

16 A. I believe -- I'm not seeing ti in my summary of this
17 statement. I believe It might be in the original statement,
18 or it would definitely be on the phone logs.

19 Q. I'm going to show you and I believe you prepared this.

20 Did you prepare that document during your
21 investigation?

22 A. Yes, sir.

23 Q. Does that help refresh your memory as to the phone
24 calls that you noted after reviewing the phone records of
25 Justin Mallory?

1 A. Yes, sir.

2 Q. All right. Let's go -- on his way -- or just go over
3 the phone calls after the three o'clock hour.

4 A. All right. After three o'clock the first call is
5 3:16:02. It lasted until 3:16:04, and that was to Norris.

6 At 3:18:42 to 3:21:58. That was to Rock.

7 You have a 3:22:56 to 3:22:59. It was to a Tangy.

8 A 3:23:58 to 3:24:29 to Joseph Robinson.

9 911 is called at 3:35.

10 Q. So your review of the phone records, did that
11 corroborate any of the information that Mr. Mallory was
12 giving you at the time?

13 A. Yes, sir.

14 Q. Okay. You can just hold that.

15 And what -- I am, did he indicate that he called
16 several people on the way home?

17 A. Yes, sir.

18 Q. Did he ever tell you why he was calling people?

19 A. I think he said he wanted to go out and party more or
20 hang out more.

21 Q. Okay. Were you able to identify those individuals and
22 who the numbers belonged to?

23 A. Yes, sir.

24 Q. Were they friends or male friends of Mr. Mallory?

25 A. Yes, sir.

1 Q. Okay. Now, the last call before the 911 was placed at
2 3:24, I believe you stated?

3 A. Yes, sir.

4 Q. And the 911 call by his phone records show a time of
5 3:35?

6 A. Yes, sir.

7 Q. Now, are you aware of what time the supposed incident
8 report from 911 shows that first 911 phone call was made?
9 It's in evidence.

10 A. I would have to see it.

11 Q. Okay.

12 A. Off the top of my head, 37.

13 Q. That's right.

14 So does it surprise you that -- does it surprise you
15 that those were two different times; one from the closed
16 incident report and one from Mr. Mallory's phone records?

17 A. No. Again, you are talking two different systems and
18 you are going to have times that are a little off.

19 Q. Okay. Now, even based on this tight window -- I mean,
20 you would agree that it's a tight window from the evidence
21 that you collected via phone records and the 911 call, Mr.
22 Mallory getting home to his residence, is that correct?

23 A. Yes, sir.

24 Q. Okay. Before his first phone call to 911?

25 A. Yes, sir.

1 Q. But your investigation still led you to being the
2 primary suspect of Mr. Mallory?

3 A. Yes, sir, at the time.

4 Q. Okay. Let's talk about the witnesses that were
5 interviewed, because that was, correct me if I'm wrong, also
6 part of the timeline that you developed?

7 A. Yes, sir.

8 Q. Okay. Did you interview Sherry Tribble?

9 A. Yes, sir.

10 Q. And I believe she informed you that -- well, basically
11 what did she tell you?

12 A. She had just gotten back into town and the last time
13 that she had looked at the clock it was around 2:18.

14 She estimated that it was about forty-five minutes
15 later that she heard a female's voice. She said the female
16 was hysterical, not finishing her statements. There was no
17 answer to the female's voice. She stated that it sounded
18 like a domestic.

19 A little later she heard a male's voice saying "look
20 what you made me do."

21 Q. And she provided that in a written form?

22 A. Yes, sir, she did.

23 Q. And I'm going to get back to that and I meant to ask
24 you this before we went to this.

25 Obviously you stated the route that you took was

1 straight up the interstate, correct, to Alpine Road?

2 A. Yes, sir.

3 Q. Can you get to the apartment complex by taking the Two
4 Notch Road exit?

5 A. I said the way I got there was by taking the Two Notch
6 Road exit to Alpine Road. You could also go down 20 to
7 where it hits Alpine, or you could go 77 and hit Alpine.

8 (Off the record)

9 (Back on the record)

10 BY MR. GOINGS:

11 Q. And let me ask you this. Are there any strip clubs on
12 Two Notch Road?

13 A. Yes, sir.

14 Q. Near this vicinity?

15 A. Which?

16 Q. From Two Notch Road near where Alpine and 77 and 20
17 come in conjunction with Two Notch Road, is there strip
18 clubs in that area?

19 A. I know there is some clubs. I'm not much of a club
20 person. I don't know.

21 Q. I just wonder if you knew, from your experience, just
22 being investigating crimes in Richland County if you knew?

23 A. I know there are a couple of kind of hip hop clubs. I
24 don't know what goes on in them.

25 Q. Okay.

1 A. There are a couple towards the sheriff's department
2 that are strip clubs, but not going outbound on Two Notch,
3 that I know of.

4 Q. Based on your investigation, how much time did you
5 determine that Mallory could have had at the residence
6 before calling 911?

7 A. Doing the speed limit and all, I had approximately five
8 minutes that was unaccountable for Mr. Mallory.

9 Q. And that's assuming that he stayed at the apartment of
10 Ricki Cook for how long? I mean, how much time did you give
11 Mr. Mallory from dropping off Ricki Cook in the timeline
12 that you developed?

13 A. Initially you really can't go too much off that. You
14 can theorize a couple minutes here or a couple minutes
15 there, but it really would have come from the cell phone
16 itself with the tower information and going halfway in
17 between the towers.

18 Q. All right. Go ahead, I'm sorry.

19 A. Both Ricki and Justin, when they were talked to or
20 interviewed, this was separately to try to determine how
21 long he was there for. We even talked to Ricki Cook's
22 sister to try to get what time did she walk in the door. We
23 were never really able to narrow down a specific time.

24 Q. What was that first phone call that you recorded or
25 reviewed from Justin Mallory's phone?

1 A. The one at 3:16 of Mr. Norris.

2 Q. And were you able to determine what cell tower that was
3 hitting off of?

4 A. Yes, sir, we did.

5 Q. What cell tower was that?

6 A. I don't recall right now, but at the time we did. I
7 believe there is one that's towards Bush River Road on the
8 Broad River side of the interstate. And then as he's -- as
9 time is going on, the cell towers that are picking up are
10 moving towards his house.

11 Q. All right. But do you recall if that was the first
12 tower that his phone pinged off of?

13 A. To be best of my knowledge, yes, sir.

14 Q. And you said the location of that was where?

15 A. It was in the Broad River Road area, if I'm not
16 mistaken. Maybe Montecello at the earliest.

17 Q. Okay. And that was at what time?

18 A. 3:16.

19 Q. So based on that, you added, based on the routes you
20 took, of fifteen minutes? Is that how you determined what
21 time he could have got home?

22 A. We would have timed it from the center of where the
23 last call was on that tower. Started dead even at the
24 center, not one side of the tower where it's supposed to
25 pick up or it's where it would be dropping off, and then

1 driving to the Porch -- to the, excuse me, Mallory
2 residence.

3 Q. So is it fair to say it could be a couple minutes off?

4 A. Yes, sir.

5 Q. So based on your investigation, he could have arrived a
6 couple minutes after 3:30, the time that you put him at and
7 testified to, correct?

8 A. Yes, sir.

9 Q. Okay. Or maybe even later?

10 A. Yes, sir.

11 Q. But we know he called 911 at what time?

12 A. 3:35.

13 Q. Did you review the 911 tapes?

14 A. Yes, sir, several times.

15 Q. And what is the demeanor of Mr. Porch (sic) like on
16 those 911 tapes -- I mean Mr. Mallory --

17 A. Mallory?

18 Q. -- like on those 911 tapes?

19 A. He's in a very excited state.

20 Q. Did you talk with any of the neighbors besides Sherry
21 Tribble?

22 A. Yes.

23 Q. Who did you talk to?

24 A. We talked to the Hargraves. We talked to all the
25 neighbors around the apartment itself.

1 Q. Okay. And would one of those individuals be Shaheed
2 Hargraves?

3 A. Yes, sir.

4 Q. And what did he indicate about what he knew about what
5 occurred that night?

6 A. That he heard banging. He answers the door and sees
7 Mr. Mallory. He follows Mr. Mallory into the apartment
8 complex -- or to the apartment itself. They're neighbors.
9 They're kind of catty-corner from one another. The
10 Hargraves apartment would be down and across the hall.
11 Maybe twenty feet down the hallway, if that.

12 Q. Did he describe to you at any point in time during your
13 investigation the demeanor of Mr. Mallory when he appeared
14 at his door?

15 A. He was excited.

16 Q. Now, there is no doubt, based on your investigation,
17 Investigator Holdorf, that Mr. Mallory took his wife to the
18 hospital, correct?

19 A. Yes, sir, he did.

20 Q. Were you all able to determine what time he arrived at
21 the hospital?

22 A. Yes, sir, we did.

23 Q. And what time was that?

24 A. Around 3:47.

25 Q. You don't remember looking at a camera angle that said

1 a different time?

2 A. I'm looking at my notes. I --

3 Q. And I understand you wasn't -- you have been
4 sequestered, correct?

5 A. Yes, sir, I have been.

6 Q. So you are not privy to the other testimony in here?

7 A. Nothing.

8 Q. So if someone else testified to 3:42, would you have
9 any disagreement with that?

10 A. I can only go off of my notes. If there is better
11 evidence, then that's what he would have to defer to.

12 Q. All right. And let's go to the actual crime scene,
13 okay? What time did you get out there?

14 A. I don't recall. I know it was that afternoon.

15 MR. GOINGS: Beg the court's indulgence.

16 (Off the record)

17 (Back on the record)

18 BY MR. GOINGS:

19 Q. Now, Investigator Holdorf, I asked you about the 911
20 call that was originally made to -- made from Mr. Mallory
21 when he arrived home, is that correct?

22 A. Yes, sir.

23 Q. And you put it at 3:35, according to his cell phone
24 records, correct?

25 A. Yes, sir.

- 1 Q. And you said that you reviewed the 911 tapes?
- 2 A. Yes, sir.
- 3 Q. Was there also another 911 call or recording that
- 4 captured Mr. Mallory, based on your review?
- 5 A. The 911 call itself from our dispatch.
- 6 Q. Maybe I didn't phrase my question appropriately.
- 7 He called 911 --
- 8 A. Yes.
- 9 Q. -- about his wife. They are disconnected. Did you
- 10 find that out in your investigation?
- 11 A. Yes, sir.
- 12 Q. Is the connection reestablished between 911 and Mr.
- 13 Mallory?
- 14 A. Yes, sir.
- 15 Q. Based on your investigation, where is Mr. Mallory at
- 16 this point in time?
- 17 A. He's on the road. His direct words, he was getting it
- 18 to get to the hospital.
- 19 Q. And how did he sound during that time when reporting?
- 20 A. In a hurry, panicky.
- 21 Q. And that was -- do you recall what time that phone call
- 22 or that recording took place?
- 23 A. I have it written down somewhere.
- 24 Q. That's fine.
- 25 But we know that it was made while he was en route?

1 A. Yes, sir.

2 Q. Okay. And what hospital did he take his wife to?

3 A. Providence Northeast.

4 I have got a time here when dispatch would have called
5 him back. You have got the 544-9005. It's a number for our
6 dispatch, and that dispatch time is 3:39.

7 Q. Again, this is while he's en route with his wife to the
8 hospital?

9 A. Yes, sir.

10 Q. Okay. And you said he took her to Providence
11 Northeast?

12 A. Yes, sir.

13 Q. Do you know what the distance between the Mallory
14 residence and Providence Northeast is, how long it would
15 take?

16 A. No, sir.

17 Q. Let's go to the crime scene. You said at some point in
18 time you got there, is that correct?

19 A. Yes, sir.

20 Q. Okay. Had CSI guys already came out and processed the
21 crime scene?

22 A. They were finishing up the processing.

23 Q. And at this point in time in your investigation you
24 knew how she died, correct?

25 A. Yes, sir.

1 Q. Was a murder weapon ever found?

2 A. No, sir.

3 Q. Was the murder weapon ever found in the van of Mr.
4 Mallory?

5 A. No.

6 Q. So no knife was found at the house?

7 A. There were knives that were found at the house, but
8 nothing that we believed to be the murder weapon, or proved
9 to be a murder weapon.

10 Q. And your investigation continued, is that correct?

11 A. Yes, sir.

12 Q. Did you speak with Dennis Tentyon?

13 A. Yes, sir.

14 Q. What information did you learn from Mr. Tentyon?

15 A. Mr. Tentyon and Sherry Tribble in a relationship. He
16 gives us a little better time frame, as far as when he hears
17 the events.

18 Q. All right. And both Sherry Tribble and Mr. Hargraves
19 were part of your investigation.

20 When was the first time that you were aware that DNA
21 was found at the scene that did not -- was foreign male DNA?

22 A. It would have been in trial prep meeting with Solicitor
23 Wagner at the time and Solicitor Meadors.

24 Q. Before we get there, Mr. Mallory was already charged at
25 that point in time, correct?

1 A. Yes, sir.

2 Q. How long after your interview with Mr. Mallory at
3 headquarters was he arrested?

4 A. The interview, after we get the written statement,
5 several hours later.

6 Q. And the arrest warrant was based on what?

7 A. The probable cause that we had at the time, what we
8 believed the facts to be.

9 Q. And tell the jury what the probable cause was that you
10 stated for the arrest warrant was.

11 A. Again, I haven't seen the arrest warrant in quite some
12 time. You had Mr. Mallory we believe put himself there at
13 the crime scene with Nakia right around the time of her
14 death.

15 You had the ear witness, Ms. Tribble, where she sees
16 the wife and actually sees the van at one point in time and
17 then a couple minutes later she sees that the van had been
18 moved.

19 You had what appeared to be a cleanup at the house.

20 There was no forced entry at the house.

21 According to Ms. Tribble, that the argument between the
22 male and the female, it sounded like a domestic.

23 Q. Is it fair to say that the probable cause that you
24 stated in the arrest warrant was based on Sherry Tribble's
25 account?

1 A. Among several other things, but, yes, sir, that was a
2 key factor.

3 Q. That was the primary one?

4 A. You have Ivan Neddo, the security at the hospital,
5 giving a different account of what Mr. Mallory told him on
6 getting into the apartment.

7 Again, no forced entry and nothing appeared to be
8 missing from the house.

9 There was -- there was not just one thing that led us
10 to the arrest of Mr. Mallory, but there were several in the
11 sequence.

12 Q. But a large part of it was Sherry Tribble?

13 A. Yes, sir.

14 Q. Whose -- based on the statement I believe you testified
15 to, she said that she last looked at the clock at 2:18 and
16 thirty or forty-five minutes later she heard the commotion?

17 A. Yes, sir.

18 Q. And -- well, let me ask you this. If Sherry Tribble's
19 statement was that the last time she looked at the clock was
20 2:18 and a few minutes later she heard a woman --

21 MR. BRIAN SHEALEY: Your Honor, I object to the
22 speculation at this point.

23 THE COURT: Let me finish hearing the question
24 first.

25 BY MR. GOINGS:

1 Q. How would that affect the ability for probable cause
2 back then?

3 A. There would have been none.

4 THE COURT: One moment. Hold on.

5 Do you still object to the question?

6 MR. LUKE SHEALEY: Yes, sir.

7 THE COURT: I'll overrule it.

8 You may answer.

9 BY MR. GOINGS:

10 Q. What was your answer?

11 A. Could you repeat the question? I'm sorry, there was a
12 lot of stuff in the middle.

13 Q. Okay. You have Sherry Tribble's statement was at
14 2:18 -- the last time she looked at the clock was 2:18. A
15 few minutes later she heard the woman's sound for the first
16 time. How would affect whether or not y'all had probable
17 cause?

18 A. If that was her statement, then that would -- probable
19 cause against Justin Mallory would be very problematic.
20 That would pretty much give you no probable cause against
21 Justin Mallory, because we know his whereabouts up until
22 right around 3:30.

23 Sherry Tribble is not good with time. Sherry Tribble
24 can give you about, an approximate, but her and Dennis,
25 their own intention was to have a romantic evening when this

1 was going on.

2 When you interview a witness, you try to get their
3 words. You try to get down approximates. They don't know
4 exact. So someone's estimate on relativity, it's just a
5 shot in the dark on that point in time. I mean, she could
6 say about, approximate, which is why we go to the stores or
7 try to pull phone records so we can get a closer time.
8 Abouts are pretty hard for someone to guess.

9 Q. So that account doesn't match security footage and the
10 hotel?

11 A. It does not. The better evidence would have been where
12 Mr. Mallory was at the time.

13 Q. Okay. Now, he was arrested a couple hours after he was
14 interviewed and even actually after Nakia Mallory died,
15 correct?

16 A. Yes, sir.

17 Q. We are not talking about days before he was arrested
18 and charged with murder?

19 A. No, sir.

20 Q. Your investigation was still going on, is that correct?

21 A. Yes, sir.

22 Q. And also was there one incident of a domestic problem
23 between the Mallorys that happened sometime prior that also
24 was found out during your investigation?

25 A. I'm not sure I understand the question.

1 In any homicide-type case you want to try to get a
2 background from friends and family to get an understanding
3 of what this relationship was like. I don't know if that
4 answers your question or not, sir.

5 Q. I'm just asking, are you aware of, or do you remember
6 that your investigation found one prior incident of a
7 domestic problem with Nakia Mallory and Justin Mallory?

8 A. As I recall from multiple witnesses, it seemed like
9 they had a rocky marriage.

10 Q. Okay. A specific -- I'll move on.

11 Now, let's go to the finding of the foreign DNA.

12 A. Yes.

13 Q. When did you first learn that DNA, or foreign male DNA,
14 was found in that residence?

15 A. It would have been on the trial prep at the solicitor's
16 office, or with the solicitor's office.

17 Q. And what was the course of action after the foreign
18 male DNA was found?

19 A. It was to identify who else may have been in the
20 apartment complex and try to get a standard from them, so we
21 could find out whose DNA this is.

22 Q. And what males -- do you recall what males were
23 identified as needing to have a sample received from?

24 A. If I'm not mistaken, the DNA profile was a male, as you
25 just stated, but it was anyone that would have been in the

1 house; Mr. Porch, the maintenance guy, Joshua's brothers,
2 Nakia's brothers.

3 Q. Okay. And where did you develop the name of Joshua
4 Porch from?

5 A. The morning of, in talking with Mr. Mallory, a standard
6 question would be "who else would have done this?"

7 Q. And did he identify Joshua Porch at that time?

8 A. He gave us this name, yes, sir.

9 Q. Did he identify another individual as well?

10 A. He also gave the maintenance guy, having been --
11 recently been in the apartment complex -- or in their
12 apartment to fix a refrigerator.

13 Q. Did you, as the lead investigator, have someone to go
14 interview Joshua Porch after his name was mentioned by
15 Justin Mallory?

16 A. Yes, sir, Sergeant Strange went and spoke to Mr. Porch
17 and Persia Porch at their residence.

18 Q. And what, based on your investigation and your
19 knowledge, did Mr. Porch tell Sergeant Strange?

20 A. He wasn't there, didn't know anything about the murder.
21 Nakia -- or excuse me, not Nakia, but Persia Porch
22 corroborated that he was with her that night.

23 Q. All right. Is that the only time that Mr. Porch was
24 talked to until we know in June of 2007?

25 A. I'm not specific on the date, but, yes, sir, there

1 were -- to my knowledge, no one else had talked to Mr. Porch
2 related to this case.

3 Q. So there was no followup interview after Sergeant
4 Strange went to Joshua Porch until the DNA problem came up,
5 right?

6 A. To the best of my knowledge, that's correct.

7 Q. Okay. But the DNA problem did come up and Mr. Porch
8 was approached again?

9 A. Yes, sir.

10 Q. How long before trial was the DNA or did the DNA become
11 a problem?

12 A. The DNA came up, I'm not sure exactly how long, but it
13 was close.

14 Q. When you say close, are we talking a couple weeks,
15 months?

16 A. I would say within two months down to a few weeks.

17 Q. All right. Who went and talked with Mr. Porch once the
18 DNA issue was there?

19 A. The first person to make contact with Mr. Porch would
20 have been Major Smith, who spoke to Mr. Porch at his
21 residence.

22 Q. And was a DNA sample collected?

23 A. He did give -- Mr. Porch did give a DNA sample.

24 Q. And was it determined that Mr. Porch's DNA was, in
25 fact, at the crime scene?

1 A. Yes, sir.

2 Q. Based on that information, what, you as the lead
3 investigator, want to happen at that point in time?

4 A. I wanted to test Mr. Porch's statement. I wanted to
5 see if I could make sure it would stand up.

6 Q. In fact, when Major Smith -- I know you wasn't present,
7 as an investigator you were privy to all this information,
8 correct, about statements that Major Smith took from Mr.
9 Porch when he approached him about the DNA?

10 A. Yes, sir.

11 Q. All right. And you know from his statement that Mr.
12 Porch gave during the two trials, correct?

13 A. Yes, sir.

14 Q. Change it. The last statement he gave to Major Smith
15 and then that was his testimony at the two trials, correct?

16 A. Yes, sir.

17 Q. Okay. The two statements; the first statement he gave
18 to Major Smith and the second statement, were they
19 consistent?

20 A. They were not.

21 Q. What did he describe in his first statement to Major
22 Smith?

23 A. The first statement to Major Smith -- not his first
24 statement, but it's actually his second statement, would
25 have been that he was there that afternoon with his daughter

1 and would have cut his hand cutting an apple for her and he
2 cleaned up some of the blood. He also said that he had told
3 Sergeant Strange about this.

4 We asked Sergeant Strange if he recalled any of this
5 information and he had not, so then we had to go in a little
6 bit further.

7 Ideally when you are interviewing someone, I don't want
8 to talk at your house. I would rather have you at my
9 office, for several reasons. One, it makes that other
10 person a little bit uncomfortable, so you can pick up other
11 indicators. It also is an area where I have got my computer
12 system. I don't have great handwriting and it's a place
13 where you can sit down and talk. There is not going to be a
14 whole lot of distractions. Your home phone is not going to
15 be ringing or anything like that.

16 So after that came up, we tried to test Mr. Porch's
17 second statement and that's when the third statement was
18 taken from him.

19 Q. And in that third statement he indicates what?

20 A. The third statement comes out after Mr. Porch was
21 interviewed for a good bit of time. I don't know exactly
22 how long, but it was hours, and it was trying to see whether
23 or not we could find any reason for Mr. Porch to have killed
24 Nakia Mallory. You are looking at everything that's going
25 on. We were able to develop additional DNA between the

1 first trial and the second trial. The second statement --
2 or, excuse me, the third statement that he gives is what he
3 testified to and that it was he and Nakia were in a romantic
4 relationship and that Justin comes home and sees them.

5 Q. So at this point in time Joshua Porch has lied to law
6 enforcement how many times?

7 A. Three.

8 Q. Okay.

9 A. At the time, if I may, the third statement we did not
10 know was a lie until a fourth statement was taken later on.

11 Q. Okay. But that's why I asked. At that time when he
12 gave that second or that last statement before trial, how
13 many times had he lied to law enforcement?

14 A. Three.

15 Q. And he was used as a witness, correct?

16 A. Yes, sir.

17 Q. So he went from no involvement now to a potential key
18 witness for the prosecution?

19 A. Yes, sir.

20 Q. I mean, he basically is an eyewitness to the murder,
21 correct?

22 A. Yes, sir.

23 Q. And whose decision is it to continue prosecution, once
24 the case has been -- an arrest has been made? I mean, who
25 decides whether to go to trial or not?

1 A. It's the solicitor's office or the prosecuting agency
2 is the one that called the case to trial. After an arrest
3 has been made, I can have a say or an input, but I don't --
4 it's not my case any more.

5 Q. And who was the solicitor in charge of this case when
6 Mr. Mallory was prosecuted?

7 A. It was Mr. Meadors and Todd Wagner.

8 Q. And you testified at Mr. Mallory's trial as well, is
9 that correct?

10 A. Both trials, yes, sir.

11 Q. And you testified about exactly what you told this jury
12 here today?

13 A. Yes, sir.

14 (Off the record)

15 (Back on the record)

16 BY MR. GOINGS:

17 Q. What was the result of the first trial of Mr. Mallory?

18 A. The first trial was a hung jury.

19 Q. And that was on July 13th, 2007, that week?

20 A. I remember it was 2007, yes, sir --

21 Q. Okay.

22 A. -- around that time frame.

23 Q. Okay. Were there any investigations done between the
24 hung jury in the first trial and the second trial of Mr.
25 Mallory in 2008?

1 A. If I'm not mistaken, they were able to identify the DNA
2 on the fingernails. The first trial, if I'm not mistaken,
3 that was too weak to interpret, and they were saying that --
4 our DNA lab had said that there was just no way they could
5 say who it was. And the second one, it was a little more
6 positive, if I'm not mistaken.

7 Q. But other than that -- I mean, y'all didn't use that
8 additional information at the second trial, did you?

9 A. Anything that we had was turned over to the defense,
10 any additional reports.

11 Q. In fact, you are aware of the investigation now that --
12 or the DNA reports, are you not?

13 A. I have seen them, but it's been a while, sir.

14 Q. We will leave John Barron for that, okay?

15 A. Yes, sir.

16 Q. He's the DNA guy, correct?

17 A. Yes, sir.

18 Q. Let me ask you, but other than that, no investigations,
19 no additional information was developed from July of 2007
20 until December of 2008, or the latter part of 2008, when Mr.
21 Mallory was tried again?

22 A. Not that I recall, sir.

23 Q. Again, Mr. Porch was put on the stand to give his
24 latest version?

25 A. Yes, sir.

1 Q. Okay. Now, what was the result of the second trial?

2 A. The second trial was a bench trial, which means there
3 was no jury. The defendant waived his right to have a jury
4 trial, so it was heard just in a front of judge and he was
5 found not guilty.

6 Q. After he was found not guilty, whose case -- who looked
7 back at the case and determined where y'all were going to go
8 from there?

9 A. After he was found not guilty, Mr. Mallory started
10 contacting the sheriff's department insisting that he had
11 nothing to do with his wife's death. He actually met with
12 me and Major Wilson, who is over the entire investigative
13 division. We had a sit-down meeting at Major Wilson's
14 office and he asked us to reopen the case and to look at Mr.
15 Porch.

16 Q. So Mr. Mallory still wanted y'all to continue the
17 investigation?

18 A. He did.

19 Q. And what was the reason he gave you?

20 A. He says he had nothing to do with Nakia's death and
21 that Mr. Porch was the one who did it.

22 Q. And was an investigation at that point performed? I
23 believe it was headed up by Sergeant McDaniels and Sergeant
24 Godfrey?

25 A. Yes, sir.

1 Q. But you helped out with that part of the investigation
2 as well, correct?

3 A. Correct.

4 Q. You went out and interviewed some more people?
5 Re-interviewed Persia Porch, is that correct?

6 A. Yes, sir.

7 Q. And what did Ms. Porch tell you?

8 MR. BRIAN SHEALEY: Your Honor, objection.
9 Hearsay. I mean, he's trying to bolster. He's already
10 testified.

11 MR. GOINGS: I'll withdraw the question, Your
12 Honor.

13 BY MR. GOINGS:

14 Q. But eventually what happened as a result of the second
15 investigation?

16 A. We re-looked through the evidence we had at the time
17 with our lab people and it was decided to try to re-test
18 certain pieces of evidence to see if we found anyone else's
19 DNA, which Mr. Porch's DNA was found on a shirt that Nakia
20 was wearing.

21 We also were able to locate the Porch's vehicle that
22 they had at the time. That was tested.

23 And based upon those two factors, Major Smith -- or,
24 excuse me, major -- Chief Wilson decided to get a warrant
25 for Mr. Porch.

1 Q. Okay. And that's when Investigator McDaniels and
2 Investigator Godfrey went to California?

3 A. Yes, sir.

4 MR. GOINGS: Beg the court's indulgence.

5 (Off the record)

6 (Back on the record)

7 MR. GOINGS: That's all the questions that I have.

8 THE COURT: At this time, ladies and gentlemen, we
9 are going to take a lunch break.

10 I just need to remind you of the instructions I
11 have given to you; that is, not to begin to discuss this
12 matter among yourselves, as you have not heard all the
13 evidence that has to be presented in this matter.

14 As you understand, lunch has been ordered for you.
15 It has arrived. We will take about a forty-five minute
16 break. If after lunch you would like to go out and get some
17 fresh air, then if you will just let the deputies know that
18 so that we can accommodate you in that regard.

19 To the remaining members in the courtroom, we will
20 break until two o'clock. We will come back at two.

21 Have a good lunch.

22 (The following takes place outside the presence of
23 the jury panel)

24 THE COURT: Officer, hold on a second.

25 THE WITNESS: Yes, ma'am.

1 Q. His cell phone being smashed?

2 A. Yes, sir.

3 Q. Now, cell phones are a great way, as you testified, of
4 helping to determine someone's moving about where they are
5 going?

6 A. Yes, sir.

7 Q. Okay. But you were, in fact, able to do that in this
8 case by pulling cell phone records?

9 A. Yes, sir.

10 Q. Okay. And that was information that you had as you
11 continued to develop this investigation, right?

12 A. Yes, sir.

13 Q. I mean, you might not have it on day one, but you have
14 to actually get a subpoena for that, right?

15 A. Yes, sir.

16 Q. You are able to get that and it helped -- it actually
17 helps to corroborate the eyewitness account on this case?
18 It kind of shows Mr. Mallory going to the house from the
19 apartment?

20 A. Yes.

21 Q. Within a certain time frame, correct?

22 A. Yes, sir.

23 Q. Okay. Now, when this happened, things are normally
24 hectic on an investigation, right?

25 A. Yes.

1 lot?

2 A. When she looks out the window and sees Justin Mallory
3 getting into the van, which is his van.

4 Q. Thank you.

5 THE COURT: You may step down.

6 May this witness be excused?

7 MR. GOINGS: From the State's subpoena, Your
8 Honor.

9 MR. LUKE SHEALEY: As well as from ours.

10 THE COURT: You may be excused. Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: You may call your next witness.

13 MR. UNDERWOOD: Thank you, Your Honor.

14 At this time the State calls Chief David Wilson.

15 CHIEF DAVID WILSON, having been first duly sworn,
16 testified as follows:

17 THE CLERK: Have a seat on the witness stand,
18 please.

19 THE CLERK: State your name for the record.

20 THE WITNESS: David Wilson.

21 DIRECT EXAMINATION BY MR. UNDERWOOD:

22 Q. Good afternoon, Chief Wilson.

23 Would you please tell the jury where you are employed
24 and what your job is?

25 A. I'm a deputy chief with the Richland County Sheriff's

1 Department. I'm over the Investigative Unit, which
2 encompasses all the investigators, our forensic labs, our
3 crime scene people, our narcotics unit.

4 Q. How long have you worked in that capacity?

5 A. For the last sixteen years.

6 Q. How long have you been in law enforcement?

7 A. Thirty-five.

8 Q. And you worked your way up to where you are now?

9 A. That's correct.

10 Q. Sixteen years?

11 A. That's correct.

12 Q. As head over all the investigations units, what is your
13 day-to-day involvement with cases?

14 A. My day-to-day involvement is minimal. It's more
15 administrative at this point.

16 Q. And can you elaborate a little bit on that, as far as
17 what your administrative duties are, as far as supervising
18 that unit?

19 A. I move a lot of paper from one side of the desk to the
20 other, basically.

21 Q. So do you have much involvement on particular cases?

22 A. Not usually. There are times if we are short handed or
23 something, I'll pitch in and help, or take somebody's
24 statement, or, you know, maybe even go out and interview
25 some witnesses, depending on what's needed.

1 Q. Were you involved with the investigation of the Nakia
2 Mallory murder, which led to the prosecution of Justin
3 Mallory?

4 A. No.

5 Q. When did you become involved with this investigation?

6 A. I was aware of the investigation. Major Smith led that
7 investigation.

8 I actually became involved in the actual investigation
9 itself after Justin Mallory's trial.

10 Q. After the second trial?

11 A. That is correct.

12 Q. When he was found not guilty?

13 A. That is correct.

14 Q. How did you become involved?

15 A. At some point he had contacted Sheriff Lott. Sheriff
16 Lott asked me to personally look at this case, and so I
17 pulled all the case files and forensic files together and
18 looked at them.

19 Q. And when you say he contacted Sheriff Lott, are you
20 talking about Justin Mallory?

21 A. That is correct.

22 Q. And what was the purpose of your review?

23 A. To make sure that we had done the right thing.

24 Q. And did you go ahead and review the case?

25 A. I did.

1 Q. What were the results of your review? What did you
2 determine?

3 A. There were several things that kind of jumped out at me
4 about the initial investigation.

5 The fact that Justin Mallory had been implicated by a
6 witness, a female witness that had heard an argument in the
7 apartment and had looked out and seen his van in the parking
8 lot and then later had seen him actually carrying his wife
9 to the van. That, and his demeanor at the hospital later on
10 seemed to implicate at that time that he was probably guilty
11 of the murder of Nakia Mallory.

12 Q. And upon your review of the case, did you find any
13 problems with the investigation or with the prosecution?

14 A. There were some things that stuck out to me. The fact
15 that the defendant in this case had changed his story so
16 many times.

17 Q. And by the defendant in this case, are you referring to
18 Joshua Porch?

19 A. I am. To me that was troublesome. When people tell
20 the truth, it usually doesn't change.

21 That in one of the reports from the original
22 investigation I saw that the defendant in this case was
23 left-handed and I believe that Justin Mallory was
24 right-handed and that became significant with the location
25 of the wounds on the victim. The victim's wounds were all

1 on the right side, which led me to believe that it was more
2 consistent with a left-handed assailant. And it certainly
3 could have been a right-handed assailant, depending on the
4 position of the body and stuff like that, but to me it was
5 more consistent with a left-handed assailant. So that got
6 my attention.

7 And then later on I met with Mr. Mallory in my office
8 and actually had him write his name several times on a piece
9 of paper and he wrote it right-handed. And then I compared
10 that with his signature on his statement from the original
11 case and it was very consistent. And then I questioned him
12 about being right-handed. So that confirmed that he was
13 right-handed, so that kind of led me down that path.

14 That, and the inconsistent statements. And I later met
15 with one of our DNA analysts, John Barron, and we went over
16 the case and the forensics of the case. The victim's shirt
17 had been very bloody and it had spots of blood on it. And I
18 requested John Barron to run additional testing on the
19 shirt, and he did. He run quite a few samples of that shirt
20 over a period of time and we were able to find the
21 defendant's DNA on the lower part of the victim's shirt on
22 the right-hand side. Oftentimes --

23 Q. Again, by the defendant, are you talking about Joshua
24 Porch?

25 A. I'm talking about Joshua Porch.

1 Often when we have stabbings, the defendant cuts
2 themselves because of the brute force that is being used to
3 do the stabbing. Their hand slides and they end up cutting
4 themselves, and I felt that was consistent with everything I
5 was seeing in this case.

6 Q. Were there any other problems at that point that you
7 had identified?

8 A. Not that I remember at this point.

9 Q. So after identifying those potential problems, what did
10 you do?

11 A. Well, several things. We -- I talked with the
12 prosecutor of the previous case. I talked with Major Smith.
13 We had -- Major Smith, myself, and several other experts met
14 and went back over the scene, the crime scene photographs,
15 ordered more DNA testing to try to determine what the actual
16 weapon was that killed Nakia. We tested some broken beer
17 bottles that we assumed had been broken during the fight or
18 the struggle. There were some scissors that had been
19 located on the scene. We tested all those for potential
20 DNA, thinking they might have made the wounds, but nothing
21 significant came out of any of the further testing.

22 Q. Were you ever able to ever identify the murder weapon?

23 A. Not through DNA testing, no.

24 Q. Were you ever able to identify the murder weapon?

25 A. No, we have never recovered the actual weapon. We

1 believe at this point we know what it is, but we have never
2 recovered it.

3 Q. After requesting that further DNA analysis, what was
4 the next step?

5 A. After we had requested all those analysis and had the
6 benefit of those analysis that they didn't have in the first
7 trial, I met with Sergeant McDaniels, asked him for a second
8 set of eyes on this to make sure that I was looking at it in
9 the right way. We listened to the 911 tapes and interviewed
10 some various witnesses and stuff, just to try to back up our
11 theory about what happened.

12 Q. And after reviewing those items, what determinations
13 did you make?

14 A. At that point Joshua Porch had moved to California.
15 And we located an address for him in California and did some
16 background on him.

17 I asked Sergeant McDaniels to contact the people in
18 California, another police agency, that could assist us, and
19 I made a determination to go to a judge for an arrest
20 warrant for Joshua Porch.

21 Q. In instructing them to go to California, what was the
22 primary purpose for their trip to California?

23 A. The primary purpose was to interview Joshua Porch.

24 Q. But did they also have a warrant for his arrest as
25 well?

1 A. There was a warrant for his arrest and that warrant had
2 been entered into a national database computer called NCIC,
3 the National Crime Index Computer, which allows us -- like
4 if we stop you on a traffic stop and we run you through NCIC
5 and you come up as wanted, we can arrest you and detain you
6 for that other jurisdiction.

7 Q. Who obtained that warrant?

8 A. I did.

9 Q. And what was the probable cause that you thought met
10 the burden to get that warrant?

11 A. Well, from his previous statements he puts himself at
12 the scene when Nakia Mallory is killed.

13 I had the benefit of the additional DNA testings that
14 also puts him there, puts him in close proximity to the
15 victim, because his blood is on her shirt.

16 I thought that was plenty of probable cause to obtain
17 an arrest warrant.

18 Q. Okay. Now, after your investigators had gone to
19 California, what happened, to your knowledge?

20 A. After they had been there for a short period of time,
21 they called me with an update.

22 Q. And what was the result of that update?

23 A. The update was is they had located Joshua Porch and
24 with the assistance of a security guard and some local
25 police had arrested Joshua Porch and then interviewed him.

1 Q. And do you know the results of their interview?

2 A. Yes.

3 MR. AIKEN: Your Honor, I object. I object to our
4 arguments from pretrial.

5 THE COURT: Subject to the arguments when?

6 MR. AIKEN: From pretrial.

7 THE COURT: Counsel, approach.

8 (Whereupon, the lawyers approached the bench for
9 an off-the-record discussion)

10 THE COURT: Subject to our earlier pretrial
11 hearings regarding the statements, I will allow the
12 statements to be discussed.

13 BY MR. UNDERWOOD:

14 Q. Chief Wilson, what was the result of the first
15 interview in California of Joshua Porch?

16 A. Joshua Porch had changed his statement yet once again;
17 had eliminated Mallory from being at the scene when Nakia
18 had been stabbed.

19 Q. So did this new statement from Joshua Porch exonerate
20 Justin Mallory?

21 A. Yes, it did.

22 Q. To your knowledge, were there any further interviews
23 with Joshua Porch in California?

24 A. In my opinion, the first statement in California was
25 very self-serving, so I asked them to re-interview him the

1 next day, and they did.

2 Q. Okay.

3 (Off the record)

4 (Back on the record)

5 BY MR. UNDERWOOD:

6 Q. As a result of the further statements by Joshua Porch,
7 did those also exonerate Justin Mallory?

8 A. They do.

9 (Off the record)

10 (Back on the record)

11 BY MR. UNDERWOOD:

12 Q. Thank you, chief. Please answer any questions that the
13 defense may have.

14 THE COURT: Any cross?

15 MR. LUKE SHEALEY: Yes, ma'am.

16 May it please the court?

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION BY MR. LUKE SHEALEY:

19 Q. All right. I believe you said on direct that you were
20 instructed by Sheriff Lott to review this case after the
21 acquittal, correct?

22 A. That's correct.

23 Q. And you had access to the entire case file?

24 A. Yes.

25 Q. So just for the jury's clarification, that would

1 include all the witness statements in the case?

2 A. That's correct.

3 Q. That would include all the investigative reports in the
4 case, correct?

5 A. Yes.

6 Q. Reports by Major Smith?

7 A. Correct.

8 Q. Reports by Holdorf?

9 A. Yes.

10 Q. Reports by Strange and Rownd?

11 A. Yes.

12 Q. Correct.

13 You would have had access to the timeline and all that
14 information that went into that, correct?

15 A. Correct.

16 Q. Okay. You would have access to the Exxon video,
17 correct?

18 A. To the what?

19 Q. The Exxon video that showed Mr. Mallory on the video?

20 A. I don't recall the video.

21 Q. Okay. You had the entire file, to your knowledge?

22 A. To my knowledge.

23 Q. Okay. Access to DNA reports, to crime scene pictures,
24 to crime scene analysis reports, correct?

25 A. That is correct.

1 Q. Okay. And you have told me -- do you remember
2 testifying at a prior hearing about this case with me?

3 A. Yes.

4 Q. Okay. And I think the words, and you disagree if you
5 want to and correct me if I'm wrong, but the words that you
6 used to describe what you were asked to do was armchair
7 quarterbacking?

8 A. That could be one term to use, yes.

9 Q. Okay. You don't disagree with that?

10 A. I don't disagree with it.

11 Q. And that's basically questioning the plays that another
12 person is calling, right?

13 A. In a football game, yes.

14 In this instance I had the benefit of the trial
15 transcripts from two trials and all the information, yes.

16 Q. You had the benefit of all that information, but --

17 A. True.

18 Q. -- you weren't there on the scene?

19 A. No.

20 Q. You didn't interview Sherry Tribble?

21 A. No, I did not.

22 Q. You didn't interview Joshua Porch?

23 A. No.

24 Q. You didn't take pictures of the crime scene?

25 A. No.

1 Q. You weren't at the crime scene?

2 A. No.

3 Q. You never went to the crime scene?

4 A. That is correct.

5 Q. Okay. And I think you described to Mr. Underwood your
6 duties as moving papers from one side of the desk to
7 another?

8 A. Primarily, yes.

9 Q. You were rarely at this point the hands-on
10 investigator, except for special occasions, correct?

11 A. That is correct.

12 Q. Okay. Let's talk about what you were aware of from
13 looking at the entire case file.

14 You were aware of who Sherry Tribble is, correct?

15 A. I am.

16 Q. She was the eyewitness at the time of this incident,
17 correct?

18 A. She was.

19 Q. Okay. Your understanding from all these reports and
20 things that you reviewed was that she was looking out her
21 window from her boyfriend's apartment and saw a white van?

22 A. I believe that is correct, yes.

23 Q. You are aware from looking at these reports that this
24 white van was identified as Justin Mallory's?

25 A. That is correct.

1 Q. And at the time she sees this white van and the reason
2 she is looking out the window is because she hears a
3 domestic-type argument, correct?

4 A. Yes.

5 Q. She hears a female's voice coming from the Mallory's
6 apartment saying "how could you," correct?

7 A. Correct.

8 Q. She then sees a man who she later identifies as Mallory
9 outside at his van, which is subsequently moved closer?

10 A. I don't recall it necessarily being moved closer, but
11 it's possible.

12 Q. You would have reviewed in the trial transcripts that
13 she actually identifies that man as Mallory, correct?

14 A. She did identify him in carrying Nakia to the van.

15 Q. Carrying his wife to the van?

16 A. That's correct.

17 Q. Just after he said "look what you made me do?"

18 A. That is correct.

19 Q. Okay. So you had that information when you started
20 assessing this case at the request of the sheriff?

21 A. That is correct.

22 Q. You also had the information that at the hospital there
23 were several things that, I think you just testified, caused
24 some suspicions for Mr. Mallory?

25 A. That is correct.

1 Q. You were aware that he said things like "bitch bled all
2 over my TV," correct?

3 A. That is correct.

4 Q. And from your knowledge of reviewing the crime scene
5 photos, you, in fact, did see blood on the TV?

6 A. I don't specifically recall that, but it's highly
7 possible. It was a very bloody scene.

8 Q. Okay. You are aware that this other suspicious
9 activity was, from the file, him removing something --
10 having something removed from his white van?

11 A. I actually don't recall that.

12 Q. You don't recall that?

13 A. No.

14 Q. You don't remember the hospital security guard?

15 A. I do remember him. There was a hospital security guard
16 that gave a statement.

17 Q. And you would have reviewed his statement?

18 A. I would have at that time --

19 Q. Okay.

20 A. -- but that was four years ago.

21 Q. You didn't review all this stuff at all for testimony
22 today?

23 A. Not all of it, no.

24 Q. You reviewed your report for testimony today?

25 A. That is correct.

1 Q. Okay. So you don't remember his testimony and his
2 report that he saw something removed from that white van?

3 A. That is possible, I just don't remember that.

4 Q. Do you remember that he broke his -- Mr. Mallory broke
5 his cell phone at the hospital?

6 A. No, I don't remember that.

7 Q. But you had access to this entire file?

8 A. I did.

9 Q. You do certainly remember then that he refused to sign
10 the treatment form for his wife?

11 A. No, actually I don't remember that.

12 Q. You don't remember that?

13 A. It's possible, though.

14 Q. Okay. Do you remember that he was out cheating that
15 night, right?

16 A. That I do remember.

17 Q. Okay. That was what initially got investigators hot on
18 his trail, correct?

19 A. I think the thing that got investigators hot on his
20 trail was Sherry Tribble.

21 Q. Right, among other things?

22 A. But, I mean, that was exposed during the initial
23 investigation, yes.

24 Q. And what Sherry Tribble described was an argument about
25 cheating?

1 A. That is correct.

2 Q. And he was actually out cheating, correct?

3 MR. UNDERWOOD: Your Honor, I'm going to object at
4 this point. At this point we are going well into hearsay,
5 Your Honor.

6 THE COURT: I think he can testify as to what he
7 reviewed and what information would have been among the
8 information that he reviewed.

9 I'll overrule the objection.

10 BY MR. LUKE SHEALEY:

11 Q. Okay. So to rephrase, you are aware that the
12 eyewitness described this as an argument about cheating?

13 A. I remember the statement --

14 MR. UNDERWOOD: Your Honor?

15 A. -- "how could you?"

16 MR. UNDERWOOD: May we approach, Your Honor?

17 THE COURT: Yes, sir.

18 (Whereupon, the lawyers approached the bench for
19 an off-the-record discussion)

20 BY MR. LUKE SHEALEY:

21 Q. I don't want to get into semantics here, but you are
22 aware from your review of the reports, the statements in
23 this case, and talking to the investigators, that the
24 eyewitness' account was that this fight was domestic in
25 nature?

- 1 A. Domestic in nature.
- 2 Q. Okay.
- 3 A. I would agree with that.
- 4 Q. And that Mr. Mallory was actually married at that time?
- 5 A. Yes.
- 6 Q. It was Mother's Day?
- 7 A. I don't recall that, but it could be, yes.
- 8 Q. Do you recall this as being the incident happened on
- 9 May 14th, 2006?
- 10 A. Yes.
- 11 Q. That's Mother's Day, right?
- 12 A. I don't recall that.
- 13 Q. Okay.
- 14 A. It could be. I'm not arguing with you on that.
- 15 Q. And he was cheating on his wife on Mother's Day. Do
- 16 you recall that?
- 17 A. That is very possible.
- 18 Q. Okay.
- 19 A. He was cheating that night.
- 20 Q. Okay. And that did corroborate the eyewitness' account
- 21 that this was domestic, right?
- 22 A. I remember the statement from her. And if you want to
- 23 pass me her statement, I will be happy to read that and
- 24 publish whatever you want me to, but I remember "how could
- 25 you" out of that statement.

1 Q. Right.

2 A. But I don't know that I could say that was because he
3 was cheating, or somebody was cheating.

4 Q. Okay.

5 A. That could mean a lot of things.

6 Q. Okay. We have already established that the eyewitness
7 recalled this being a domestic, was her testimony in her
8 statement, and per your investigators reports, a domestic
9 case?

10 A. I don't recall exactly how she phrased that.

11 Q. You reviewed Holdorf's report?

12 A. I did.

13 Q. It described this as a domestic case?

14 A. I don't recall that, but it possibly could have.

15 Q. You reviewed Stan Smith's report?

16 A. Absolutely.

17 Q. It described this as a domestic case?

18 A. Possibly, yes. I mean, I -- you are talking about
19 something that I read four years ago.

20 Q. Okay. And the point of it was he was out cheating that
21 night, was he not?

22 A. He was.

23 Q. Okay. And Holdorf primarily helped create a timeline
24 in this case. Do you agree with that?

25 A. Possibly, yes.

1 Q. He didn't want to just take one person's word for
2 something, right?

3 A. Right.

4 Q. That's good police investigative work?

5 A. Sure.

6 Q. And your report says that you also tried to go over
7 that and recreate a timeline?

8 A. That's correct.

9 Q. Okay. And your report says that per your investigative
10 experience and training, armchair quarterbacking on their
11 investigative experience and training, that you established
12 a ten minute time frame from when this could have occurred?

13 A. That's approximate, yes.

14 Q. Okay. You have been an investigator for a long time.
15 You can have a knife fight in thirty seconds, can you not?

16 A. You can.

17 Q. You can have a domestic argument in one minute, can you
18 not?

19 A. They usually lasts longer, yes.

20 Q. Okay. And when you are fighting somebody and you have
21 a fight, one minute seems like a lifetime?

22 A. It can, absolutely.

23 Q. Okay. So these are some of the things that you knew as
24 you were armchair quarterbacking this case --

25 A. Absolutely.

1 Q. -- to use your own words, right?

2 You also -- let's get to Mr. Porch's statements, and
3 you brought those up as being inconsistent and something
4 that you focused on, correct?

5 A. Yes, sir.

6 Q. Before the first trials and -- during the first two
7 trials, right?

8 A. That is correct.

9 Q. But you are aware that Investigator Holdorf, who was
10 the lead on this case, was aware of these statements?

11 A. That is correct.

12 Q. And Major Smith, who was the head of the Major Crimes
13 Unit at that point, was aware of these statements?

14 A. That is correct.

15 Q. In fact, he took the final statement, correct?

16 A. I believe so.

17 Q. And that was the statement and that was the account
18 that was used in these two trials?

19 A. That is correct.

20 Q. You are familiar, very familiar, with deputy -- former
21 Deputy John Meadors here?

22 A. I am.

23 Q. Prosecutor for a long time?

24 A. That is correct.

25 Q. And you are -- what your knowledge is from looking at

1 this entire file is that he was aware of those statements
2 and satisfied with those statements?

3 A. He was.

4 Q. He is a good lawyer?

5 A. Absolutely.

6 Q. Okay. He would not suborn perjury?

7 A. Absolutely not.

8 Q. Okay. So you knew -- and you knew that the final
9 statement was that Mr. Porch was over at the Mallory's house
10 that night?

11 A. That is correct.

12 Q. That Justin was out, and as you testified, he was on a
13 date, correct?

14 A. That is correct.

15 Q. That Mr. Porch and Ms. Mallory had a few drinks, right?

16 A. Yes.

17 Q. That they somehow became -- started kissing on each
18 other, becoming intimate?

19 A. That is Porch's statement.

20 Q. And this is the statement that was put up by the man
21 who would not suborn perjury for two trials, correct?

22 A. That is correct.

23 Q. John Meadors put Mr. Porch under subpoena, per your
24 knowledge?

25 A. I assume he did, yes.

1 Q. Okay. And --

2 A. He testified in both.

3 Q. And the rest of that statement is that at some point
4 they stopped, but Justin comes in, correct?

5 A. That is correct.

6 Q. That he's upset, and Nakia is wondering -- she's upset
7 with him about where he's been, and a violent domestic
8 argument ensues, correct?

9 A. Correct.

10 Q. That Mr. Porch observes the fight go in the kitchen,
11 correct?

12 A. I don't recall them moving to the kitchen, but that's
13 possible.

14 Q. He observes Mr. Mallory with an object, something that
15 could be a knife?

16 A. Correct.

17 Q. That he observes the words "how could you," or "why"
18 coming from Nakia, correct? Do you remember that from the
19 statement that you would have, must have reviewed for this
20 case?

21 A. Yes.

22 Q. And you also remember from your investigation of this
23 case and that statement that Mr. Mallory is stabbing at
24 Nakia with this object, correct?

25 A. According to Justin -- to Porch, yes.

1 Q. That Joshua Porch jumps in between to try to do
2 something about it and gets cut?

3 A. That is correct.

4 Q. Okay. And he is between them, correct?

5 A. Correct.

6 Q. He does get cut. He runs to the kitchen to get a paper
7 towel to attend to that cut, correct? That's in that
8 statement?

9 A. Correct.

10 Q. He comes out, the fight has died down, Nakia is on the
11 couch?

12 A. I think he describes her as being on the couch.

13 If I remember correctly, and I'm going strictly by
14 memory, he goes -- Porch says after he gets cut on the left
15 hand, which is a change from his earlier statement where
16 he's cut on the right hand, that he goes in, grabs the paper
17 towel, he cleans up and leaves, and Justin is gone to the
18 back of the apartment.

19 Q. Right.

20 The fight has died down and Mr. Porch gets out of
21 there --

22 A. Correct.

23 Q. -- correct?

24 A. After cleaning up.

25 Q. Right.

1 He says he's scared in that statement of his wife
2 finding out and that's why he didn't come forward
3 originally?

4 A. That may be in the statement. I don't recall that.

5 Q. You don't recall it? You reviewed this case and all
6 this information. Do you disagree with that?

7 A. No, I don't disagree with it.

8 Q. Okay. And he was scared of getting implicated in this
9 crime itself, correct?

10 A. I'm sure.

11 Q. Okay. Now, that's -- that's pretty much a good account
12 of what you had when you saw this file, right?

13 A. Right.

14 Q. So you looked back over everything and you have been
15 asked to do a job by a sheriff, right?

16 A. Correct.

17 Q. He's met with the Mallorys already, right?

18 A. I think he's talked to him. I don't know that he
19 actually met him.

20 Q. Okay. And you start looking at it and one thing that
21 jumps out to you, based on looking at it --

22 Let's say this right now. You are not a forensic
23 pathologist?

24 A. No.

25 Q. You are not trained in medicine and how necessarily a

1 wound might be created from any certain angle. That's not
2 your thing?

3 A. No, I'm going off of purely thirty-five years of
4 experience.

5 Q. Right. But you are not a medical doctor?

6 A. No.

7 Q. And, in your opinion, you started looking at this and
8 the statements and the wound to the right side of the neck
9 and you thought it was more consistent with a left-handed
10 assailant, correct?

11 A. That is correct.

12 Q. Okay. The point you were making in your report, that's
13 noted in your report, you would agree with that --

14 A. I do.

15 Q. -- that Joshua Porch is noted to be left-handed, right?

16 A. That's correct.

17 Q. And that Justin Mallory is noted to be right-handed?

18 A. Correct.

19 Q. Okay. But you also note in your report that you can't
20 rule out a right-handed assailant? You can't rule it out?

21 A. Absolutely not.

22 Q. And when making this conclusion, you don't know
23 anywhere on your report that you talked to Dr. Bradley
24 Marcus, or any forensic pathologist?

25 A. No.

1 Q. Okay. Now, the other thing that you testified that
2 jumped out at you is the blood that you had tested is going
3 to be Mr. Porch's on the right front part of Ms. Mallory's
4 shirt, correct?

5 A. Correct.

6 Q. Okay. Now, it's fair to say this is the only new piece
7 of physical evidence you had whatsoever, correct?

8 A. Physical evidence, yes.

9 Q. Okay. And this evidence -- and I wanted to say this
10 exactly, and I wrote down what you said, what you said on
11 direct. You said that "they didn't have the benefit of DNA
12 analysis on Nakia's shirt," meaning the first investigators,
13 right?

14 A. That's right.

15 Q. Okay. Just so we are clear, they had access to a DNA
16 lab, right?

17 A. Absolutely.

18 Q. They tested numerous items for DNA in this case, right?

19 A. Sure, absolutely.

20 Q. So the point you are making is they just -- they didn't
21 test it, right?

22 A. That's correct.

23 Q. They didn't find it relevant, right?

24 A. That's correct.

25 Q. Okay. But you tested it, discovered it, but you found

1 it relevant, right?

2 A. I found it relevant and had it tested, yes.

3 Q. And you have already stated that you're armchair
4 quarterbacking this thing?

5 A. That's correct.

6 Q. All right. Mr. Meadors didn't find it relevant?

7 A. I'm not sure he was aware of it. I don't know what he
8 found relevant or what he didn't.

9 Q. Let me ask you this.

10 A. I think he would have found it relevant if had he known
11 that Joshua Porch's DNA was on her shirt.

12 Q. Okay. But he could have found that out if he chose to
13 test it? He never chose to test it?

14 A. If he would have requested it, we would have tested it.

15 Q. Okay. Stan Smith never requested to test that shirt,
16 right?

17 A. That's correct.

18 Q. Because the statement that they put through Joshua
19 Porch's testimony, right, which you agreed no one is going
20 to suborn perjury, right --

21 A. No.

22 Q. -- describes him trying to break up a fight between a
23 married couple trying to kill each other, right?

24 A. That's correct.

25 Q. Okay. So they didn't find it relevant, because it

1 makes sense. If he got cut, it's possible that her clothes
2 might have some of his blood on her. That's why they didn't
3 test it, right?

4 A. I can't tell you why they didn't test it.

5 Q. Okay. Does that make sense to you?

6 A. No, it doesn't.

7 Q. Okay. Now, let's talk about this fight. We have got
8 Justin Mallory, per Joshua Porch's account, in front, right?

9 A. That's correct.

10 Q. You have got Nakia Mallory, per Mr. Porch's account, in
11 back. They are trying to kill each other, right?

12 A. That's correct.

13 Q. This is a domestic argument, correct?

14 A. That's correct.

15 Q. Joshua Porch jumps in to try to break it up and gets
16 cut on his left hand, is his final statement?

17 A. That is his final statement.

18 Q. Okay. Now, we had a pretrial hearing that you and I
19 discussed this concept a little bit, right? You remember
20 that?

21 A. That's right.

22 Q. Now, you agree that it's possible that even though it's
23 on his left hand, that through the movement and the going
24 back and forth in a non-static situation, that blood could
25 conceivably get on the right side of her shirt?

1 A. It is possible, but I find it improbable.

2 Q. These are not two statues facing off on each other, are
3 there?

4 A. No.

5 Q. There is movement, correct?

6 A. I assume there is. This is your client's statement.

7 Q. This is John Meadors evidence from the first trials, is
8 it not?

9 A. It was introduced, yes.

10 Q. He was a lawyer for the government, is he not?

11 A. That's correct.

12 Q. This was Stan Smith's witness who took that statement
13 from him from 2006?

14 A. That is correct.

15 Q. This is Investigator Holdorf's case, correct?

16 A. It is.

17 Q. These are all government employees, good investigators
18 with your office?

19 A. Absolutely.

20 Q. Okay. So this is investigative evidence that came out
21 of the prosecution of Mr. Mallory, correct?

22 A. That's correct.

23 Q. Okay. But if I'm in a fight with somebody and my hand
24 goes this way, blood could go that way, if I'm cut, could it
25 not?

1 A. It's possible.

2 Q. And, again, you are not a forensic pathologist, but
3 that's your experience, right?

4 A. That's it.

5 Q. Okay. So that's the only new evidence you had in this
6 case?

7 A. That, and we had the witness that Mallory went to and
8 who was next door tell us that there was -- he didn't have
9 any blood on him at that time.

10 Q. Okay.

11 A. He went for help next door for somebody to stay with
12 his children while he took his wife to the hospital.

13 Q. And that witness is Shaheed Hargraves, correct?

14 A. That's correct.

15 Q. He testified in the first trials, correct?

16 A. As far as I know, yes.

17 Q. So that's not new evidence, right?

18 A. I don't know that he testified to the fact that he did
19 not have blood on him. I don't know if that was testified
20 to in the first and second trial. I don't know.

21 Q. You said that you reviewed the transcript?

22 A. I do. I did.

23 Q. Okay. So based on this one piece of new DNA that your
24 colleagues didn't find probative, you decided that you
25 wanted to get an arrest warrant?

1 A. Based on that and the totality of the circumstances
2 with the changing of the statements, the new DNA, the
3 witness that says Mallory did not have any blood on him.
4 You had an obviously bloody scene.

5 Q. Now, you testified in the first trial two trials and
6 you can't even remember what he said. You just told me
7 that, right?

8 A. To what who said?

9 Q. Shaheed Hargraves.

10 A. Yes.

11 Q. So that's not new evidence, correct?

12 A. I don't know if it is or not. I mean, that's what I --
13 you asked me what I based my decision to get an arrest
14 warrant on. That's what I based it on.

15 Q. Okay. So -- and you wanted that warrant, and what
16 you -- here is what I quote, "for your primary purpose was
17 to interview Joshua Porch." That's what you said on direct.
18 Do you recall that?

19 A. The primary purpose for sending investigators to
20 California was to interview Joshua Porch.

21 Q. Okay. And other than this luggage, what did the
22 investigators take with them to California?

23 A. I'm not sure what all they took with them. I'm
24 assuming -- I know they took a copy of the case file.

25 Q. And they took a murder warrant?

1 A. They took -- yeah, a copy of it.

2 Q. Okay. So let's be real with this jury. You didn't
3 want to interview Porch. You wanted to arrest Porch, right?

4 A. Oh, absolutely.

5 Q. Okay.

6 A. But our primary purpose was to go out there and
7 interview him.

8 Q. Regardless of what happened, if they had gone out there
9 and arrested him and he hadn't said a word, he was coming --
10 he's back to South Carolina to stand trial for this,
11 correct?

12 A. That is correct.

13 Q. All right. Do you have a copy of the warrant that you
14 prepared with you, the arrest warrant?

15 A. I do.

16 Q. Okay. Do you mind taking a look at it?

17 A. Okay.

18 Q. Now, this is what you prepared when you're submitting
19 an affidavit to a judge to get a probable cause, right?

20 A. Right.

21 Q. Okay. And in it it has your name as an affiant, David
22 Wilson, correct?

23 A. That's correct.

24 Q. And in it there is about a five line paragraph where
25 you describe why you had probable cause, right?

1 A. That's correct.

2 Q. And you swear to tell the truth and you take an oath
3 when you testify to that judge?

4 A. That's correct.

5 Q. And in this case the judge was Judge Phillip Newsome,
6 right?

7 A. That's correct.

8 Q. And you also swore to tell the truth when you came in
9 here today?

10 A. That's correct.

11 Q. And you are used to doing this, right?

12 A. Yes.

13 Q. Okay. I want to read this warrant to you. It says,
14 and correct me if I'm wrong, that "on May 14th, 2006, while
15 at 1103 Pinelane Road, Apartment 311-C, in the municipal
16 magistrate district of Richland County, one Joshua Porch did
17 commit the crime of murder; that he did it with malice and
18 aforethought assault and stab Nakia Mallory in the neck
19 which resulted in the death of Nakia Mallory," right?
20 That's the first line?

21 A. That's correct.

22 Q. And that's kind of boilerplate stuff that you have to
23 get out, right? You have to say it's a murder charge and
24 with malice and aforethought, right?

25 A. That's correct.

1 Q. Okay. Now, let's get to the meat of it.

2 The next line says -- and this is July 7th of 2009,
3 correct, the time that you swore this out?

4 A. That's correct.

5 Q. The first thing before the judge. McDaniels and
6 Godfrey had not jumped on that plane yet, because they don't
7 have a warrant yet, right?

8 A. They have not jumped on that plane yet, no.

9 Q. This is where you are asking a judge to give the
10 warrant, right?

11 A. That is correct.

12 Q. And judges don't always give warrants to you, do they?

13 A. That is correct.

14 Q. It's their job to say "huh, do I have enough evidence
15 or do I not have enough evidence," right?

16 A. Absolutely.

17 Q. Okay. And this describes what you told the judge, so
18 let's read the first sentence. "The defendant has admitted
19 to being on the scene of the crime during the assault and
20 stabbing."

21 Now, let's take that and break that down.

22 He's your eyewitness for Richland County Sheriff's
23 Department and John Meadors for two trials. He said he saw
24 Justin Mallory do the stabbing, right?

25 A. That's correct.

1 Q. Okay. So when you are saying that to a judge under
2 oath that "the defendant has admitted to being on the scene
3 of the crime during the assault and stabbing," is that fair
4 to tell that judge that without anything?

5 A. I think it's very pertinent that he admits to being on
6 the scene of the crime.

7 Q. And seeing somebody as an eyewitness kill their wife?
8 You know that's what he admitted to?

9 A. I know that's what he had said.

10 Q. But that's not what that statement says, is it?

11 A. No.

12 Q. Okay. The next line says "and has been further
13 implicated in the crime by DNA testing of blood found at the
14 scene that puts the defendant at the scene."

15 This is what John Meadors and Stan Smith and
16 Investigator Holdorf already had, correct?

17 A. No, I was referring to the DNA on the --

18 Q. We are going to get to that. We are going to talk
19 about that. I think --

20 A. Well, you are asking me the question now.

21 Q. Okay, I'll let you answer that. Go ahead.

22 A. I was referring to the fact that we got the additional
23 DNA.

24 Q. Okay. "Has been further implicated in the crime by DNA
25 testing of blood found at the scene that puts him at the

1 scene." Okay.

2 Now, his statement and the testimony of him from the
3 first two trials says he was an eyewitness and got cut
4 trying to break up a deadly fight between a man and wife,
5 right?

6 A. That's correct.

7 Q. Okay. That's the evidence that you had at the time
8 that you swore an oath to a judge of DNA putting him at the
9 scene, is it not?

10 A. Ask that again.

11 Q. Okay. John Meadors, Stan Smith already had his DNA on
12 the scene in an explainable way that they put forth from
13 this witness stand in the prosecution of Justin Mallory?

14 A. They had DNA in the kitchen where his blood had
15 dropped. They did not have the DNA on her shirt.

16 Q. We will talk about that.

17 The kitchen is the scene?

18 A. That's part of the scene, yes.

19 Q. It puts him in that apartment, right?

20 A. It certainly does.

21 Q. And he testified as an eyewitness to that killing from
22 this stand where you are sitting right now, right?

23 A. I don't know if he -- from this stand, I don't know --

24 Q. Okay.

25 A. -- but he did testify.

1 Q. The next statement about DNA, "and implicates the
2 defendant in the assault at the time of the murder." And I
3 think this is what you are getting to. Implicating someone
4 in an assault, meaning that little -- that spec of blood on
5 the front part of her shirt, right? Is that what you are
6 talking about? That's what you mean when you say that?

7 A. Absolutely I think it implicates him.

8 Q. Okay. But that sentence is what was related to that
9 new evidence, that new evidence that you had found, right?

10 A. I think that all the mention of DNA relates to that new
11 evidence.

12 Q. Okay. So that new evidence, that one thing that you
13 found, that you agreed with me could have come from being
14 cut on your left hand, can't rule that out, you swore to a
15 judge to get an arrest warrant for a murder, correct?

16 A. Based on the totality of the circumstances; looking at
17 the whole file; the multiple changes in his statement; the
18 fact that Mallory didn't have any blood on him; the fact
19 that we had new DNA evidence; yes, I went in front of the
20 judge and swore out an arrest warrant.

21 Q. Okay. And you mentioned Mallory didn't have any blood
22 on him. And you reviewed Sherry Tribble's statement?

23 A. I'm sure I did.

24 Q. Okay. And the witness recalls him wearing a white hat
25 and a dark jacket. Do you recall that?

1 A. No, I don't.

2 Q. You don't recall that?

3 A. No.

4 Q. Okay. You didn't review any trial transcripts? You
5 didn't review her statement?

6 A. I'm sure I did, but I don't recall it after four years.

7 Q. Okay.

8 A. And I didn't review it prior to this trial.

9 Q. Okay. You talked to Investigator Smith and you talked
10 to John Meadors as part of what you did here in this?

11 A. As part of my investigation, I did.

12 Q. Okay. And as part -- and what you learned from that
13 was that they think that Mallory did it and Porch is
14 innocent?

15 A. They did at that time.

16 MR. UNDERWOOD: Objection, Your Honor.

17 (Off the record)

18 (Back on the record)

19 MR. LUKE SHEALEY: I don't have anything further
20 at this time, judge.

21 THE COURT: Any redirect?

22 MR. UNDERWOOD: Briefly, Your Honor.

23 REDIRECT EXAMINATION BY MR. UNDERWOOD:

24 Q. Chief Wilson, the blood evidence that was found in the
25 kitchen that later tested positive for Joshua Porch, was

1 that DNA evidence sufficient to place him at the scene for
2 probable cause?

3 A. Absolutely.

4 Q. Despite the fact that there was an explanation provided
5 at the first two trials?

6 A. Yes, that certainly places him at the scene during the
7 assault.

8 Q. At the time that you reviewed the file, was there
9 probable cause that Joshua Porch was involved with the
10 murder of Nakia Mallory?

11 A. No.

12 Q. At what point did you determine there was probable
13 cause that Joshua Porch was involved with the murder of
14 Nakia Mallory?

15 A. When we received the new DNA evidence.

16 Q. At the time that Justin Mallory was arrested for the
17 murder, did the investigators know all the information that
18 you know now?

19 A. No, they did not.

20 Q. At the time that Justin Mallory was put on trial twice,
21 did the prosecution know all the information that you know
22 now?

23 A. No, they did not.

24 Q. Okay. When Joshua Porch testified in those two trials,
25 did John Meadors, the deputy solicitor, know that Joshua

1 Porch's version of events was a lie?

2 A. I don't believe he did, no.

3 Q. Based on what you know now, was Joshua Porch's
4 testimony in those two trials a lie?

5 A. Absolutely.

6 Q. Thank you.

7 MR. UNDERWOOD: No further questions, Your Honor.

8 MR. LUKE SHEALEY: I don't have anything further
9 for this witness.

10 THE COURT: You may step down.

11 Is this witness excused?

12 MR. LUKE SHEALEY: Yes, ma'am.

13 THE COURT: You may be excused. Thank you.

14 THE WITNESS: Thank you, ma'am.

15 THE COURT: Ladies and gentlemen, this is a good
16 time to take an afternoon break.

17 I'm going to remind you of the instructions I have
18 given to you; that is, not to begin to discuss this matter
19 among yourselves, as you still have not heard all the
20 evidence.

21 Let's take an afternoon break and then we will
22 come back.

23 (The following takes place outside the presence of
24 the jury panel).

25 THE COURT: Is there anything we need to take up

1 Ladies and gentlemen, I just want to make sure
2 that -- there was a -- there was a note about scheduling,
3 the weekend schedule. We will not work on Saturday or
4 Sunday. However, we may run later than expected this
5 evening, and perhaps tomorrow evening. In all likelihood we
6 will need to come back on Monday.

7 You may call your next witness.

8 MR. PAULING: Thank you, Your Honor.

9 The State would call Sergeant McDaniels.

10 SERGEANT SHAWN MCDANIELS, having been first duly
11 sworn, testified as follows:

12 THE CLERK: State your name for the record.

13 THE WITNESS: Walter Shawn McDaniels.

14 THE COURT: Would you spell your full name,
15 please?

16 THE WITNESS: You said my full name?

17 THE COURT: Your middle name.

18 THE WITNESS: Middle name, S-H-A-W-N.

19 THE COURT: Thank you.

20 DIRECT EXAMINATION BY MR. PAULING:

21 Q. Sergeant McDaniels, how are you doing, sir?

22 A. I'm doing okay.

23 Q. Okay. Please tell this jury where you are currently
24 employed.

25 A. I'm currently employed with the Richland County

1 Sheriff's Department.

2 Q. And how long have you been with the sheriff's
3 department?

4 A. With the sheriff's department, since 1997 -- 1999,
5 excuse me.

6 Q. Have you been with any other law enforcement agencies
7 prior to that?

8 A. Sure. I actually -- I have been in law enforcement for
9 eighteen years.

10 Q. Okay.

11 A. I was previously with the South Carolina Department of
12 Juvenile Justice.

13 Q. And currently the sheriff's department, what capacity
14 do you work there?

15 A. Currently I am the -- I'm a sergeant within the
16 Criminal Investigation Division and I am over what I would
17 like to call the new major crime, and that's white collar
18 crime. Underneath that fraud, forgery, embezzlement.

19 Q. Okay. Now, back in May of 2006, what division were you
20 in the sheriff's department?

21 A. I was sergeant over cold case homicide.

22 Q. Now, in May of 2006, during that time frame, did you
23 have anything to do with or take part in the investigation
24 of the Nakia Mallory murder?

25 A. Not at all.

1 Q. Okay. Were you familiar with the case at all?

2 A. No, not -- not at all. At the time I was working on
3 solving another unsolved homicide that we were having some
4 success right around that time, so I wasn't focused on this
5 particular case.

6 Q. At that time you said that you were in the Cold Case
7 Unit, so what does your job duties entail at that particular
8 time?

9 A. I actually supervise a team of five investigators, most
10 of them retired police officers, and our job was to focus on
11 those crimes that were unsolved; more specifically unsolved
12 murders. And at this particular time we were investigating
13 an unsolved murder and we had some success in that, so we
14 were ripping and running on our end.

15 Q. Okay. At some point, Sergeant McDaniels, did you
16 become involved with reviewing the investigation of the
17 Nakia Mallory murder?

18 A. Yes, on June 30th Chief Wilson, Chief David Wilson,
19 made his way to my office and asked me. He did it
20 like this, which is what he normally does, and he never
21 tells me what he really wants until you get in his office,
22 so I sat down and he said "I want you to take a look at this
23 file." He said -- his exact words were "I need a fresh pair
24 of eyes on it."

25 Q. Okay. I know you said June 30th, but which year was

1 that, sir?

2 A. That was in 2009.

3 Q. Okay. And he needed a fresh set of eyes to look at
4 that particular case?

5 A. That is correct.

6 Q. And so what did you do at that point?

7 A. He just dropped that seed and we didn't meet until July
8 1st of 2009. At that time inside of his office we both --
9 we actually listened to the 911 recording. I reviewed
10 several of the statements briefly. And, you know, during
11 the initial review we talked about certain observations.

12 Q. Now, was anyone else, at least at that time, working
13 with you and Chief Wilson at that point, or was it just
14 reviewing this file on your own with Chief Wilson?

15 A. I recall Investigator Godfrey being involved as well.
16 He had been approached by Chief Wilson as well.

17 Q. Okay. Now, at some point did your agency obtain a
18 murder warrant for Joshua Porch?

19 A. Chief Wilson did.

20 Q. Okay. When was that, do you recall?

21 A. Actually, if I'm not mistaken, he -- on July 7th --

22 Q. Okay.

23 A. -- I believe.

24 Q. 2009?

25 A. That is correct.

1 Q. At that point what were you tasked with doing after
2 that murder warrant was obtained?

3 A. He asked me to make contact with the Long Beach Police
4 Department in California to make arrangements on receiving
5 us; make sure we had an opportunity to have an interview
6 room available, if we were successful and meeting up with
7 Joshua Porch, and so I did that, as well as solidify flight
8 plans, hotel plans, and transportation.

9 Q. You said California. Did you attempt to locate Joshua
10 Porch here in South Carolina?

11 A. Did I attempt to locate him in South Carolina?

12 Q. Yes.

13 A. No, I did not.

14 Q. Okay.

15 A. There were several things that we did prior to going to
16 California. Like we went to Persia Porch's house, which is
17 Mr. Joshua Porch's old residence. We did go down there and
18 make an attempt to speak with her. She wasn't home at the
19 time.

20 Q. And did you and Investigator Godfrey then travel to
21 California?

22 A. Yes, we did. During -- that was on July 8th, 2009.

23 During the flight, you know, we then reviewed the case
24 and, you know, noticed, you know, some pretty interesting
25 things while we were reviewing it in detail.

1 Q. When you say pretty interesting things, can you tell
2 the jury -- what are you referring to?

3 A. Well, one of the first things that I noticed after
4 reviewing all the statements is that I noticed that there
5 was some consistency in Justin Mallory's version of what
6 happened that night. His story never changed.

7 And I also noticed that Joshua Porch, even before the
8 first trial, that he had changed his statement multiple
9 times. And it just -- you know, just based on my experience
10 in working homicides, you know, that's -- you know, that was
11 a little bit unusual for a witness to change their story so
12 many times.

13 Also -- you know, I also noticed that something that I
14 felt was pretty interesting was that Joshua places Justin at
15 the scene, but Justin never said that Joshua was present
16 there. That stood out to me, that if, in fact -- that was a
17 little bit unusual, that you have one person saying this is
18 the person that did it and he was there and so was I, but
19 this guy -- he never mentioned Joshua.

20 Q. Okay.

21 A. In addition to the new evidence with the DNA. That
22 also solidified.

23 Q. And had that information been discussed prior too with
24 Chief Wilson?

25 A. Yes, the DNA information was. Yeah, we went over that.

1 Q. Okay. Now, once you arrived in California, what did
2 you and Agent Godfrey set out to do?

3 A. If I may refer to my notes?

4 Q. Yes.

5 A. We -- we arrived in California at approximately three
6 o'clock that afternoon Pacific Time and we got settled in at
7 the hotel, and then we went out to get something to eat
8 approximately around eight p.m.. It was at that time that
9 we were planning our collaboration with Long Beach Police
10 Department. And right in the middle of dinner my partner,
11 Investigator Godfrey at the time, now Sergeant Godfrey, he
12 got sick and so -- he said his stomach hurt. And, of
13 course, you know, I gave him a hard time about that, because
14 we had plans that night to at least go and try to look at
15 Joshua Porch's residence to see what we could pass on to
16 Long Beach Police Department before we went to go try to
17 make contact with him, and so Godfrey had to go back to the
18 hotel.

19 At that time I then -- I then actually went out on my
20 own to conduct surveillance on Joshua Porch's residence with
21 no intentions of running into him. I had flip flops on, a
22 pair of shorts, and an 8 X 8 T-shirt.

23 Q. And at some point that particular evening did you make
24 contact or were you aware of where Joshua Porch was? Did
25 you make contact with him?

1 A. I pulled up in front of Joshua Porch's house at
2 approximately 10:45 p.m. that night and I sat in the car. I
3 noticed that there was a gated entrance, that in venue at
4 least, that would lead to the apartment doors, but in front
5 was a ranch style, western style type apartment complex,
6 where the entire complex was gated in. You walk into the
7 front gate and then you have like rows of apartments.

8 I noticed that apartment number two was directly to the
9 right, so I waited for someone else to walk in. I walked in
10 behind them. Apparently it was a locked gate. And then I
11 noticed that the apartment on the right-hand side, the door
12 was open.

13 I then went back and sat back in the car. I took a
14 look at the photo of Joshua Porch. I noticed that he had a
15 distinctive hairline, in terms of him being very young
16 looking, but yet his -- he had a receding hairline that was
17 a bit distinctive, to say the least. And so as I'm sitting
18 there I see three people walking up the street towards the
19 apartment complex and I noticed the receding hairline and
20 they went inside -- and he fit the description of Joshua
21 Porch. They went inside. They then came back outside and
22 walked right by my car. And so at that point I just decided
23 to follow them.

24 I got on the phone trying to call my contact with Long
25 Beach Police Department. His voicemail answered rather than

1 him answering, and so I then went to follow them into
2 Walgreen's. Went inside Walgreen's and noticed that there
3 was a security guard present in the front. Joshua Porch,
4 along with two other individuals, were by the drink section.
5 I walked by the drink section, said "what's up" to all of
6 them. And just to make sure that I had the right
7 individual, walked to the back, back to the front, contacted
8 the security guard, explained to the security guard that I
9 was a law enforcement officer from out of South Carolina and
10 that I needed for him to call the Long Beach Police
11 Department ASAP. He did that.

12 As I was standing there at the front entrance, Joshua
13 Porch, along with the two other individuals, walked up. It
14 was at that time that I showed my badge and I identified
15 myself to him, told him that he was being currently
16 detained, that I had a warrant for his arrest from South
17 Carolina. And at that time I whispered to him "you almost
18 got away with it," and that was it.

19 We waited for the Long Beach Police Department to show
20 up. The other two individuals that were with him, you know,
21 respectfully they backed away, and he was detained at
22 Walgreen's and subsequently arrested by the Long Beach
23 Police Department, once they confirmed the warrant that was
24 in the NCIC database.

25 Q. Okay. Sergeant McDaniels, as far as going out to

1 California, what was your -- was your purpose just to go out
2 and arrest Mr. Porch? What was your purpose for going out
3 there?

4 A. Our goal was to interview Mr. Porch, as well as we were
5 armed with a warrant. So, you know, we were going to place
6 Mr. Porch under arrest with a hope of interviewing him.

7 Q. And at some point did you have an opportunity to
8 interview Mr. Porch?

9 A. Yes, we did.

10 Q. Okay. And when you said we, was Investigator Godfrey
11 with you at that time?

12 A. No, he wasn't. Actually when we -- again, I turned him
13 over to Long Beach Police Department -- turned Mr. Porch
14 over to the Long Beach Police Department. I then had no
15 more contact with him on the scene.

16 I arrived at the Long Beach Police Department prior to
17 Joshua Porch getting there, and I think that happened
18 because they had to confirm the warrant. Well, when I got
19 there, they then brought Joshua Porch upstairs, and I
20 recalling them actually handcuffing him to a table inside of
21 the interview room. And so that's not something that we
22 normally do at the sheriff's department, but when you are
23 visiting other agencies, you have to play ball by their
24 rules.

25 So when I first made contact with Joshua Porch at Long

1 Beach Police Department approximately midnight, about 12:30
2 Pacific Time, I asked him if he was thirsty. I asked him if
3 he wanted to use the bathroom. He said he was fine, that he
4 wasn't thirsty or hungry.

5 At that time I then wanted to wait on Investigator
6 Godfrey, because trying to communication with him, our
7 whereabouts, again, we just got there that day, and to
8 instruct him on catching a cab.

9 And I then went to speak with Long Beach Police
10 Department to ask, to inquire about their policy in leaving
11 someone handcuffed while in the interview room. They --
12 they basically left it up to me and we made arrangements for
13 him to be un-handcuffed.

14 Q. At some point did Investigator Godfrey meet up with you
15 at the Long Beach Police Department?

16 A. Yes, he did.

17 Q. Approximately what time was that?

18 A. He got there somewhere between 12:50 to 12:55, one
19 o'clock; something like that.

20 Q. And did you proceed, you and Investigator Godfrey,
21 proceed to interview Mr. Porch?

22 A. Yes, we did. He was advised of his Miranda Rights
23 upon our contact, and, you know, we began asking questions.
24 And initially he --

25 Q. Well, let me ask you this before you get to asking

1 questions. How did you advise him of his rights?

2 A. We did it in written form. And, although, you know, we
3 were at another police department, you know, we used our own
4 written form, which is a template that we use. It's
5 Richland County Sheriff's Department interrogation advise of
6 rights form. Up top there is my name, the person who is
7 actually advising the individual of their rights. You have
8 the name of the individual who is being advised of their
9 rights. The place that they are being -- the location.
10 Date and time.

11 On there also is the -- we break the advise of rights
12 up into sections, where it's my practice when I'm reading
13 someone their rights that, you know, I ask them "before we
14 ask any questions, you must understand your rights."

15 I then pause and ask them if they understand that. I
16 would wait for them to answer. Gesturing an answer is not
17 enough for me. Shaking your head is not enough for me. I
18 tell them "I need for you to answer yes or no," or, "if you
19 have any questions, you can ask," but basically he was read
20 his rights in this manner.

21 "Before we ask any questions, you must understand your
22 rights. Do you understand that?"

23 He said "yes." I then checked it off.

24 I went to the next line where it says "you have the
25 right to remain silent. Do you understand that?"

1 He stated "yes. I then checked that box off.

2 Actually I have a copy of that.

3 MR. PAULING: Beg the court's indulgence.

4 A. Sure.

5 (Advise of Rights Form marked as State's Exhibit
6 No. 46 for identification)

7 MR. PAULING: Approach the witness, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. PAULING:

10 Q. Sergeant McDaniels, I'm going to show you what's been
11 marked for ID purposes as State's 46 and ask if you
12 recognize that document, sir?

13 A. I do, yes, sir.

14 Q. And what is that?

15 A. This is the advise of rights form that was read and
16 went over with -- as it pertains to what I was just speaking
17 on the advise of rights that I was giving.

18 And basically where I left off was, again, these are --
19 there is boxes on the left-hand side that I check off prior
20 to going to the next section.

21 And basically I asked him, again, "before we ask you
22 any questions, you must understand your rights. Do you
23 understand that."

24 He indicated "yes." The box is checked.

25 "You have the right to remain silent." The same

1 procedure. The box is checked.

2 "Anything you say can be used against you in court." I
3 asked him again "do you understand that?"

4 The answer was "yes." I checked the box.

5 "You have the right to talk to a lawyer for advice
6 before we ask you any questions and to have a lawyer with
7 you during any questioning." I asked him the question "do
8 you understand?"

9 He said "yes." The box was checked.

10 "If you cannot afford a lawyer, one would be appointed
11 for you before any questioning, if you wish." The same
12 procedure. I asked the question "do you understand it?"

13 He stated "yes." The box was checked.

14 "If you decide to answer questions now without a lawyer
15 present, you still have the right to stop answering at any
16 time. You also have the right to stop answering at any time
17 until you talk to a lawyer." I asked him that question.

18 Again, he responded by stating yes, he understood that.
19 The box was checked, and then he signified that he
20 understood what I just read to him by signing the first
21 section indicating that he understood that.

22 I then moved on to the waiver of rights, which is
23 located at the bottom section, and it states, "I have read
24 the statement of my rights and understand what my rights
25 are. I am willing to talk and answer questions. I

1 understand and know what I am doing. No promises have been
2 made to me and no pressure or coercion of any kind has been
3 used against me."

4 I asked him if he understood. He indicated "yes." I
5 checked the box.

6 And then he indicated that he also understood and that
7 he agreed to talk to me by signing the bottom portion of
8 this sheet, and it was witnessed by myself and now Sergeant
9 Godfrey.

10 Q. Thank you, Sergeant McDaniels.

11 As far as when that waiver was given, what time was
12 that that you went through those rights? What time is noted
13 there?

14 A. It was on July 9th of 2009, at 1:12 in the morning
15 Pacific Time. That would be 0412 in the morning our time.

16 Q. Okay.

17 A. And I indicated both Eastern and Pacific times on the
18 advise of rights.

19 Q. Okay. Now, Sergeant McDaniels, at that particular
20 time -- and I understand that Mr. Porch signed off on it.
21 Did he appear to understand his rights when you were talking
22 to him?

23 A. Yes, he did.

24 Q. Did he appear to be under the influence of drugs or
25 alcohol at the time?

1 A. Not at all.

2 Q. Okay. Did he appear to have any type of physical
3 condition that would cause him not to understand what was
4 going on?

5 A. No, sir.

6 Q. What was his demeanor? Did he appear tired or anything
7 to you?

8 A. No, he did not. He did not appear tired.

9 Q. Now, during this process did you threaten him, coerce
10 him at all to sign that waiver?

11 A. I did not.

12 Q. Okay. Did you threaten his friends or family members?

13 A. I did not.

14 Q. And when I say threaten him, did you make any
15 suggestion that there would be some issue for them if he
16 didn't speak with you?

17 A. I did not.

18 Q. Okay.

19 MR. PAULING: Your Honor, at this time I would
20 offer State's 46 into evidence.

21 MR. AIKEN: Your Honor, subject to our pretrial
22 objections.

23 THE COURT: And subject to that that was ruled on,
24 it's would admitted for the record.

25 (Whereupon, State's Exhibit No. 46 was entered

1 into the record as evidence)

2 BY MR. PAULING:

3 Q. Now, after you have gone through the waiver of rights
4 and he waived his rights, do you proceed to interview him?

5 A. Yes, we did.

6 Q. Okay. And could you just explain that process? How
7 did that go about?

8 A. We began to ask him questions. Once he signed the
9 waiver of rights we then asked him questions about the Nakia
10 Mallory homicide.

11 Initially when we first started asking him questions,
12 you know, we then -- you know, he stuck to the original
13 story, that his last story was that he was present during
14 the domestic. And at that time I noticed that, you know,
15 when we -- you know, it was -- he stared almost through you,
16 you know.

17 And what I failed to mention was the -- if I may, when
18 he was -- when he was first approached in Walgreen's and I
19 identified who I was and what state I was from, I remember
20 him just putting his head down. And I mention that only now
21 also because when we started questioning him at Long Beach
22 Police Department, you know, he had this same look that he
23 had almost in the Walgreen's. I remember it was almost
24 emotionless, so to speak. It was like while we were talking
25 to him, it was almost as if like he -- like he was just

1 looking right through us. And so except when I would --
2 when I made this an attempt to narrow the scope of the
3 questioning and that was strictly to this one question,
4 basically "did you lie about Justin Mallory being there when
5 Nakia was stabbed?" That was the only time that -- that was
6 the first time that he had a -- he had a response, so to
7 speak, you know, through facial expressions, and, you know,
8 that stood out to me. He looked up and he said he was not
9 there.

10 Q. Now, as far as this interview that took place,
11 approximately how long did it take?

12 A. From start to finish?

13 Q. Yes.

14 Well, let me ask you this. Was the statement reduced
15 to writing?

16 A. It was. The initial part of the questioning started at
17 approximately one o'clock, and we started memorializing it
18 in a written statement.

19 Q. Just to clarify, Sergeant McDaniels, when you said the
20 initial part of the statement began at one o'clock, the
21 statement began after you had mirandized him with his
22 rights?

23 A. Advised him of his rights, and the exact time was 1:12
24 p.m..

25 Q. Okay.

1 A. Yes. 1:12 a.m., excuse me.

2 Q. Okay.

3 A. So, of course, we started questioning him having a
4 verbal conversation, and then it was eventually memorialized
5 to a written statement.

6 Q. Okay.

7 A. Also after he said he was not there, you know -- you
8 know, so many different things ran through my mind. You
9 know, because truly, you know, I'm thinking. You know, I
10 didn't know, to be honest with you, one of the few times
11 that I was somewhat stuck for words, because that was
12 confirmation for me, that he, in fact, stood trial twice and
13 identified this man in the courtroom as the person who
14 killed his wife.

15 And the only -- the only other question I could
16 actually come up with was basically, "well, why did you
17 stand up in court and lie?"

18 And without -- without showing any sign of remorse --
19 that was the next question that he was asked. And his
20 response was "because Justin -- excuse my French, "because
21 Justin was a dick, and plus the investigators had already
22 told me that they had enough to convict Justin anyway."

23 Q. Did you say excuse your French, but were those your
24 word or his words?

25 A. No, no, those -- excuse what I was getting ready to

1 tell you, he is -- basically reciting what he stated,
2 "because Justin was a dick."

3 When I asked him "well, why did you stand up in court
4 and lie without showing any sign of remorse?"

5 His answer was "because Justin was a dick, and plus the
6 investigators had already told me that they had enough to
7 convict Justin anyway."

8 Q. Did you know what he was referring to when he said
9 that, as far as the investigators had already told him?

10 A. I knew based on reviewing the file on the flight over
11 there that he had, in fact, been contacted by Sergeant
12 Strange the very next morning and that there was some
13 dialogue as it pertains to Justin Mallory already being
14 arrested for the crime.

15 Q. And then how did the interview continue?

16 A. I asked him, I said --

17 All right, after collecting my thoughts, mind you,
18 because I'm thinking about a number of different people.
19 I'm thinking about where I work at, the people I work with,
20 and how difficult that call was going to have to be. I'm
21 thinking about the family of the victim. I'm thinking about
22 the fact -- it took me a second to get my thoughts together.

23 So I asked him, I said "be honest. Since we now know
24 that Justin was not there, tell me now what happened."

25 And so he then went to tell us his version, his first

1 version of what had happened, now since we have removed
2 Justin Mallory from the equation.

3 Q. Just to be clear, when you say his first version, is
4 this his first version, or his first version to you?

5 A. It would be his first version to me in California and
6 to Sergeant Godfrey.

7 Q. And, again, was that statement reduced to writing?

8 A. Yes, it was.

9 Q. Okay. How did that process take place?

10 A. Actually I -- again, I -- it's a Q and A process where
11 we ask the questions. It's our job to make sure that we
12 write down the exact answer to the exact response of the
13 person that we are questioning. That would include
14 profanity, slang words, missed -- you know -- you know, the
15 way they actually flow with the -- everyone talks
16 differently, so it's our job to write it down exactly how
17 they said it, and that was what was done, and it was a ten
18 page statement, initially.

19 Q. And how would that process go? Did he tell you
20 everything and then you just went from memory and wrote
21 everything down, or how did that process go, as far as
22 reducing it to writing?

23 A. As I stated, we started at approximately one o'clock in
24 the morning. We talked up until approximately three o'clock
25 in the morning. And then at approximately three a.m. we

1 began to memorialize his version on a written statement.

2 Again, I would ask the questions and solicit an answer from
3 him and write down exactly what he would say.

4 Q. During this process, sometime after one until about --
5 you said three is when you started with the written portion
6 of it?

7 A. That is correct, Pacific Time.

8 Q. Now, during that time, at any point did Mr. Porch
9 invoke his right to silence?

10 A. No, sir.

11 Q. Did he ask for an attorney?

12 A. He did not.

13 Q. Okay. Had he done those things, what would you have
14 done?

15 A. We would be back on the plane. We would have stopped
16 the interview.

17 Q. Now, as far as this length of time is concerned, was
18 there -- did he have an opportunity to take a bathroom break
19 or any of those things?

20 A. Yes, he was offered that several times throughout the
21 interview.

22 Q. Okay. And you stated you went through this process of
23 getting the statement from him. After you actually got the
24 statement, the written statement, was he allowed to review
25 that statement?

1 A. Yes, he was.

2 Q. Was he allowed to make any additions, corrections,
3 deletions that he found necessary?

4 A. Yes, he was. As a matter of fact, the -- it's my
5 practice to end all of my written statements the same way,
6 by asking basically "is there anything that you would like
7 to add or subtract from this statement?"

8 Q. Now, as far as that statement, his review of the
9 statement, did you read it back to him, or was he given an
10 opportunity to actually read it himself?

11 A. Well, we did both. I read it back to him and then I
12 handed it to him and instructed him to read it.

13 Q. During this time span, I had asked you earlier if he
14 was tired. What was his demeanor during the interview?

15 A. He was cooperative. He was -- you know, again, he was
16 answering our questions at that time. You know, he, you
17 know, didn't appear to have that same deer in the headlight
18 look. That appeared to be gone. And I also recall him
19 saying that he had -- it felt like he had a weight off his
20 shoulders.

21 Q. Okay.

22 (Written Statement of Joshua Porch, Dated July 9,
23 2009, was marked as State's Exhibit No. 47 for
24 identification)

25 MR. PAULING: May I approach the witness, Your

1 Honor?

2 THE COURT: Yes, sir.

3 BY MR. PAULING:

4 Q. Sergeant McDaniels, I'll show you what's been marked
5 for ID purposes as State's 47, sir, and ask you if you
6 recognize that particular document?

7 A. This is the ten page written statement that we took in
8 California on July 9th, at approximately three a.m. Pacific
9 Time.

10 Q. Does your name or your signature appear on that
11 document?

12 A. It does. Actually I notarized it.

13 Q. As far as Joshua Porch, is his name, signature appear
14 on that document?

15 A. It is. Actually it's on here twice per page. He,
16 again, indicating that he understood what was in here. He
17 signed it a total of twenty times in this first statement,
18 twice on each sheet.

19 Q. And you explained the first signature block. What was
20 the second signature block for?

21 A. The second signature block is for "this here is to
22 certify that I have read or have read to me the foregoing
23 statement consisting of ten pages and a true copy has been
24 given to me this 9th day of July, 2009.

25 "Sworn to and subscribed before."

1 That was -- again, I notarized it and it was witnessed
2 by Investigator Godfrey.

3 MR. PAULING: Your Honor, at this time I would
4 offer State's 47 into evidence.

5 MR. AIKEN: Your Honor, subject to our pretrial
6 objections.

7 THE COURT: Yes, sir, for the reasons given in
8 that hearing, it's admitted.

9 (Whereupon, State's Exhibit No. 47 was entered
10 into the record as evidence)

11 MR. PAULING: Your Honor, may Sergeant McDaniels
12 publish it to the jury?

13 THE COURT: Yes, sir.

14 BY MR. PAULING:

15 Q. Sergeant McDaniels, what was substance of that
16 statement?

17 A. Here you have question, answer. Question, Shawn
18 McDaniels. Answer, Joshua William Porch.

19 I even put his date of birth indicating that he were
20 dealing with the same individual.

21 Up top you have the date, the time, who was present.

22 Also you have another advise of rights. "I, Joshua
23 Porch, understand that I have the right to remain silent.
24 Anything that I say can be used against me in court. I have
25 the right to talk to a lawyer for advice before you ask me

1 any questions and to have a lawyer with me during any
2 questioning. If I cannot afford a lawyer, one will be
3 appointed for me before any questioning, if I wish. If I
4 decide to answer questions now, without a lawyer present, I
5 still have the right to stop answering at any time. I also
6 have the right to stop answering at any time until I talk to
7 a lawyer."

8 And, again, I proceeded to ask him the first question,
9 which was:

10 "Q. What can you tell me about the incident that took
11 place at 1103 Pinelane Road, Apartment 311-C, on May 14th,
12 2006?

13 "A. Persia wasn't lying when she said that she thought
14 I was home. I usually come home and stay up for a while and
15 make myself something to eat. I did go home and just sat in
16 the car. I turned the headlights off and just wasn't ready
17 to go home. After that I left and went to Justin and
18 Nakia's apartment. Once I got there I knocked on the door
19 and Nakia was there and she answered. She let me inside and
20 told me that Justin wasn't home. After that I asked when or
21 if she thought he would be home soon, and then she said 'I
22 think he should be home soon.' I said 'alright. Is it okay
23 if I sit here and wait?' She said 'yeah.'" We were just
24 sitting there talking and she offered me a drink. We were
25 drinking and talking for a while. It was late. The more we

1 are sitting there talking she started moving closer. She
2 wasn't trying to rape me or nothing. She was more like
3 leaning in for a kiss. I backed away from her and basically
4 told her no. After that she got upset, went into the
5 kitchen and grabbed a knife. Like I said, I do not think
6 that she was trying to kill me or nothing. When she had the
7 knife she came walking toward me. I was sitting on the
8 couch in the living room. I was closer to the TV when she
9 first came in the living room. I stood up when she was
10 walking towards me with the knife. She was real upset and
11 she was kind of swinging the knife. And as I walked towards
12 her I was just trying to get her to calm down or put the
13 knife down, and that is when I came up to her and got nicked
14 on my hand. It was a cut on my left hand. I don't think
15 that she realized that she cut me and I didn't realize it
16 either, not at first. That is when I grabbed her and tried
17 to get the knife from her to kind of stop her from swinging.
18 Once I grabbed her, we ended up losing our balance and fell
19 over onto the couch. After we fell over she wasn't yelling.
20 I don't think she was saying anything at all. I got up and
21 that is when I went to the kitchen. I noticed my hand. I
22 started rinsing it off in the sink. Then after that I
23 noticed that she wasn't on the couch. She was on the floor.
24 She looked as if she was trying to get up. Then I walked
25 out the door and went to my car and went home.

1 "Q. Where is the knife that was used to cut Nakia?

2 "A. I have no idea.

3 "Q. Describe the knife to me.

4 "A. It was a regular size knife with a blank handle.

5 "Q. How long was the blade?

6 "A. About four to five inches.

7 "Q. Why didn't you call 911?

8 "A. I didn't think that she was dying.

9 "Q. Did you believe that she was coming after you with
10 a knife?

11 "A. No. I think that it was more of her trying to
12 scare me. That is what I think, looking back on it.

13 "Q. At what point did you try to clean up the kitchen
14 and why?

15 "A. I don't remember trying to clean up the kitchen.
16 I remember I dropped a couple of drops of my blood on the
17 floor, because when I was in there to rinse my hand off I
18 had also gotten some paper towels. When I saw the couple of
19 drops I wiped it up and put the paper towels on my hand.

20 "Q. Did you hear Nakia say anything after she was
21 stabbed?

22 "A. No.

23 "Q. Tell me again how Nakia ended up being stabbed and
24 where was she stabbed at?

25 "A. I was grabbing her to stop her from swinging the

1 knife and we ended up losing our balance. I fell on top of
2 her and she was stabbed I think in the neck.

3 "Q. Did you have your hand on the knife?

4 "A. No, I grabbed her arm and I was just trying to
5 make her stop swinging the knife.

6 "Q. Tell me the truth as it pertains to why you would
7 lie to the investigators that interviewed you before today.

8 "A. The very first time that they came over there they
9 already said that they had more than enough evidence to
10 convict Justin. When they brought me in to give a statement
11 they would ask me questions or sometimes give a certain
12 scenario, kind of like this could have happened this way
13 or --

14 "Q. Why didn't you do the right thing and correct
15 them?

16 "A. I really didn't want to get involved. I was
17 scared.

18 "Q. Why did you lie on Justin Mallory?

19 "A. Because the police already had him in jail, plus
20 they had already told me that they had enough evidence to
21 convict him. This was the day after the incident with
22 Nakia. I don't know the detective's name, but he was
23 shorter than me, Caucasian, with brown hair, sort of on the
24 thick side. It was only one.

25 "Q. Was Justin Mallory present when Nakia was stabbed?

1 "A. No.

2 "Q. Did you ever see Justin before, during, or after
3 the stabbing incident?

4 "A. Before, earlier that day when I went there with my
5 daughter, him and Nakia were there.

6 "Q. Did you see him after that on May 14th, 2006?

7 "A. No.

8 "Q. Outside of trial have you seen him since May 14th,
9 2006?

10 "A. No.

11 "Q. Have you ever told anyone the truth about the
12 stabbing incident and if so, who?

13 "A. No.

14 "Q. Did you have any blood on you after you left
15 Nakia's house on May 14th, 2006?

16 "A. From my hand. I believe it was just mine.

17 "Q. Did you ever discuss cleaning your car because
18 there may have been blood inside or on it?

19 "A. No.

20 "Q. Is there anything that you would like to add or
21 subtract from this statement?

22 "A. I would like to add something. I want to
23 apologize to Nakia's family. I'm sorry that they lost their
24 loved one and also that I never told the truth before, and
25 that they had to wait all this time to find out what really

1 happened. Also I need to apologize to Justin Mallory for
2 lying on him and taking away a chunk of his life from him.
3 I also want to apologize to the officers involved in this
4 case. They shouldn't have to suffer because of my
5 cowardice. That's all.

6 "Q. In retrospect is there anything that you would
7 have done differently on May 14th, 2006?

8 "A. I would have never went over there. None of this
9 would have happened. If I did go over there, knowing now
10 how badly injured she was I would have called the police and
11 told the truth in the beginning."

12 The last question. "Is this statement the whole truth?

13 "A. Yes."

14 Q. Sergeant McDaniels, based on the information that you
15 previously had, was that significant -- was that statement
16 significant to you?

17 A. Very.

18 Q. And why is that, sir?

19 A. Because it basically confirmed that Justin Mallory had
20 been arrested, in spite of the fact that he didn't do it.
21 That we had arrested the wrong person.

22 Q. Now, after speaking with Mr. Porch at that particular
23 time, what did you and Investigator Godfrey do at that
24 point?

25 A. If I may refer to my notes?

1 After his statement was signed, we then made
2 arrangements for him to be booked into the Long Beach Police
3 Department. It had been a long day and we wanted to go back
4 to the hotel.

5 We made contact with Chief Wilson. I called him on his
6 cell phone and advised him of what we just learned.

7 Q. Now, did you and Investigator Godfrey have another
8 opportunity to speak with Mr. Porch?

9 A. We did, the very next day, prior to, you know, leaving
10 the Long Beach Police Department.

11 Q. And just to -- let's back up for a minute, Sergeant
12 McDaniels. That interview, that statement that you just
13 read, what date did that occur on?

14 A. That occurred on July 9th.

15 Q. That's the early morning hours of July 9th?

16 A. The early morning hours of July 9th.

17 As I stated earlier, we had gotten there July 8th, a
18 little bit of jet lag and made contact with him before
19 midnight on July 8th. He was transported to the Long Beach
20 Police Department. I got there a little bit earlier than he
21 did. He got there approximately 12:30 in the morning. I
22 waited for Investigator Godfrey to show up, and made sure
23 that, you know, he didn't need anything to drink and if he
24 had to use the bathroom, and I went to go try to remedy that
25 situation with the handcuffs.

1 Q. Okay. And I just want to make certain. You said -- I
2 asked about the second statement. What day did that occur
3 on?

4 A. That occurred on July 10th. On July 10th, prior to --
5 prior to dismissing Mr. Porch --

6 Q. Let me ask you this. Did you have an opportunity to
7 speak with Mr. Porch several hours later that same day --

8 A. Yes, we did.

9 Q. -- July 9th?

10 A. Yes, we did.

11 Q. And approximately when was that?

12 A. That was in the afternoon on July 10th.

13 Q. Well, let me ask you this before we get there. Why did
14 you feel the need to speak with him again?

15 A. Because, according to his first statement, it was an
16 accident. And myself and Sergeant Godfrey wanted to go back
17 and take a look at the case file.

18 At this particular point, you know, we didn't want to
19 make any mistakes, so we went back to look -- to look at the
20 photographs and to see if the photographs and the other
21 evidence supported what Mr. Joshua Porch was indicating that
22 it was, in fact, an accident.

23 Q. So you wanted to speak with him about that?

24 A. That is correct. You know, we told him that if it was
25 an accident, then we would do everything that we could to

1 support that.

2 Q. And did you both, both you and Investigator Godfrey, go
3 to speak with him again?

4 A. Yes, we did.

5 Q. Okay. And before speaking with him did you advise him
6 of his rights?

7 A. Yes, he was advised of his rights.

8 Q. And how did you do that this particular instance?

9 A. That was also on the same template, just a different
10 form, different date, but it has his signatures on there as
11 well.

12 Q. Okay.

13 MR. PAULING: Court's indulgence.

14 THE COURT: Yes, sir.

15 (Advise of Rights Form marked as State's Exhibit
16 No. 48 for identification)

17 (Typed Statement, Dated July 9, 2009, of Joshua
18 Porch was marked as State's Exhibit No. 49 for
19 identification)

20 MR. PAULING: Court's indulgence.

21 THE COURT: Yes, sir.

22 MR. PAULING: Approach the witness, Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. PAULING:

25 Q. Sergeant McDaniels, I'll show you what's been marked

1 for ID purposes as State's 48, sir. I'm going to ask you if
2 you recognize that document?

3 A. Yes. This is the advise of rights form that was read
4 to him this time by Investigator/Sergeant Godfrey and it was
5 witnessed by myself and signed by Joshua Porch two times.

6 Q. And did you go through the process that you testified
7 to earlier, as far as advising him of his rights?

8 A. That is correct. I was present when Sergeant Godfrey
9 advised him of his Miranda Rights.

10 Q. And what date was this? What's the date on this
11 particular Waiver of Rights Form?

12 A. This is also July 9th, 2009.

13 Q. Okay.

14 A. It was the same day, just in the afternoon.

15 Q. And what time in the afternoon?

16 A. That would be 2:19 p.m., Pacific Time.

17 Q. And just so I understand, when you concluded that first
18 interview with Joshua Porch, approximately what time was
19 that that morning?

20 A. That was anywhere between five or six a.m., as you --
21 as I indicated. I handwrote it.

22 Q. Okay. And at this time, what would have been at this
23 time, Pacific Time, when you were giving him this advise of
24 rights, what time was it then?

25 A. 2:19 p.m.. So approximately six to seven hours later.

1 Q. Okay. Did he appear to understand his rights?

2 A. Yes, he did.

3 Q. And did he -- again, did you promise him anything,
4 threaten him in any way to get him to talk with you?

5 A. Not at all.

6 Q. Okay. And did he seem to be tired or sleepy or
7 anything?

8 A. He did not. He did not.

9 Q. Okay. And I understand that he's been at the detention
10 center during that time, right, during that period of time
11 when you were with him?

12 A. That is correct. As a matter of fact, prior to him
13 going with Long Beach Police Department, I remember asking
14 Long Beach Police Department what time did they actually --
15 were they serving food, and so just to make sure that he had
16 something to eat. He then again turned around and said that
17 he wasn't hungry. That was at the end of our statement.

18 Q. Okay. He didn't appear to be under the influence of
19 alcohol, or drugs, or anything --

20 A. Not at all.

21 Q. -- during this time?

22 A. No, sir.

23 Q. Okay.

24 MR. PAULING: Your Honor, at this time I would
25 offer State's 48 into evidence.

1 THE COURT: Any objection?

2 MR. AIKEN: Subject to our pretrial objections.

3 THE COURT: Based upon the pretrial hearing, I
4 will admit it.

5 MR. PAULING: Thank you, Your Honor.

6 (Whereupon, State's Exhibit No 48 was entered into
7 the record as evidence)

8 BY MR. PAULING:

9 Q. Now, Sergeant McDaniels, what were the things that you
10 said that you wanted to kind of clear up with this second
11 interview?

12 A. He indicated in his first statement that this was an
13 accident.

14 Once we got past the fact that Justin Mallory was never
15 present during the stabbing, he stated that he was involved
16 and it was an accident, and that, you know, there was no
17 intent to stab her, and that there was an altercation as a
18 result of her trying to come on to him and he rejected her
19 and then she went to the kitchen and got a knife, because
20 she was rejected, and so I needed to clear that up.

21 You know, myself and Sergeant Godfrey went back and
22 reviewed the case file. We reviewed some of the photos and
23 we -- you know, we -- you know, in all fairness to him, you
24 know, we -- you know, we weren't trying to hold onto
25 information. We went back and said "look, this is what

1 doesn't make sense. This is where we are having a problem
2 as it pertains to the accident that took place," and asked
3 him, you know, to explain some of the questions that we had
4 as it pertains to what the evidence said and this alleged
5 accident.

6 Q. And did he provide you a statement?

7 A. Yes, he did.

8 Q. And how long did this particular process take? Was
9 this statement reduced to writing?

10 A. It was -- it was.

11 He was advised of his Miranda Rights at 2:19 p.m., and
12 we began to memorialize the statement in written form at
13 3:40 p.m..

14 Q. Okay. Now, was this done the same way as before? When
15 I same the same way before, did you hand write this, or what
16 happened at this particular time?

17 A. This time, you know, everyone else was at Long Beach
18 Police Department now, so it's -- it's in the afternoon. We
19 had access to a computer. And someone there that kind of
20 really tried to truly help us, and so Sergeant Godfrey had
21 the luxury of using a computer. But the same Q and A
22 format. Sergeant Godfrey was the one actually typing the
23 questions on this particular. I was present and assisting
24 with the questioning as well.

25 Q. And you may have just stated this, but, again, how long

1 did this interview last?

2 A. Actually I didn't say. Let's see if it indicates how
3 long. Give me one moment and see if it's in my file.

4 That ended approximately 5:15. In my followup I have
5 at 5:18 I then called Deputy Chief Wilson and gave him an
6 update.

7 Q. And, Sergeant McDaniels, during that time, during that
8 interview, did you and Sergeant Godfrey give Mr. Porch an
9 opportunity to take a break at any time, if he wanted one?

10 A. Yes, we did.

11 Q. Did you offer him any food or drink during that time?

12 A. Yes, we did.

13 Q. Okay. During that period of time did he ever ask to
14 stop the interview?

15 A. Not once.

16 Q. Did he ask for an attorney?

17 A. Never.

18 Q. And now during this it was about a three hour period
19 how did he appear to you? What was his voice and demeanor
20 during this interview?

21 A. He was cooperative. He -- you know, and very monotone
22 with respect to his inflection. So he was -- he was
23 answering the questions. He was, you know, responding
24 properly. And, you know, he -- yeah, he was -- he was
25 cooperative. That's the best I can describe him.

1 Q. After you obtained this statement, did he have an
2 opportunity to review it?

3 A. Yes, he did.

4 Q. Was it in the same manner as you testified to before?

5 A. That is correct. It was read back to him and then
6 given to him prior to signing it and he was instructed to
7 make sure that he read it.

8 Q. Did he have any problem understanding what was read to
9 him, or did he appear to have any problem reading the
10 statement? This was a typed statement, is that correct?

11 A. This was.

12 Q. Did he have any problem reading the statement that was
13 given to him to review?

14 A. He did not. He did not.

15 Q. And did he have the opportunity to make any changes,
16 additions, or deletions to that statement?

17 A. Yes, he did. There was -- again, this statement here
18 ended as well with "is there anything that you would like to
19 add to this statement?"

20 Q. Okay.

21 MR. PAULING: Approach the witness, Your Honor?

22 THE COURT: Yes, sir.

23 BY MR. PAULING:

24 Q. I'll show you what's been marked for ID purposes
25 State's 49 and ask you if you recognize that, sir?

1 A. This is the original statement. The second statement
2 that he gave us in -- the second written statement that he
3 gave us in California.

4 MR. PAULING: Your Honor, at this time I would
5 offer State's I believe it's 49.

6 MR. AIKEN: Subject to our pretrial objections,
7 Your Honor.

8 THE COURT: Yes, sir, based upon the ruling at
9 that particular hearing, I admit the statement for the
10 reasons stated in the hearing.

11 (Whereupon, State's Exhibit No. 49 was entered
12 into the record as evidence)

13 MR. PAULING: Your Honor, may Sergeant McDaniels
14 publish that statement to the jury?

15 THE COURT: Yes, sir.

16 BY MR. PAULING:

17 Q. Sergeant McDaniels.

18 A. Yes, sir.

19 Here at the top it says statement of Joshua William
20 Porch. His address, 640 Elm Avenue, Apartment 2, Long
21 Beach, California. And the number that he had at the time,
22 phone number.

23 It's also the -- indicated at the top is the date; the
24 time, which is 1539 Pacific, which would be 3:39 p.m..

25 Also Sergeant Godfrey indicated the Eastern Time as

1 well, which would have been 6:39 our time here.

2 "In the presence of Investigator Brian Godfrey and
3 Sergeant McDaniels.

4 "I, Joshua William Porch, understand that I have the
5 right to remain silent. Anything that I say can be used
6 against me in court. I have the right to talk to a lawyer
7 for advice before you ask me any questions, and to have a
8 lawyer with me during any questioning. If I cannot afford a
9 lawyer, one will be appointed for me before any questioning,
10 if I wish. If I decide to answer questions now, without a
11 lawyer present, I still have the right to stop answering at
12 any time. I also have the right to stop answering at any
13 time until I talk to a lawyer."

14 It basically says "do make the following statement.

15 "Q. Investigator Godfrey and McDaniels. Answer Joshua
16 William Porch.

17 First question.

18 "Q. Have you been advised of your rights?

19 "A. Yes.

20 "Q. Are there additional facts about the incident that
21 occurred on May 14th, 2006, during the altercation between
22 you and Nakia Mallory that you would like to add to your
23 statement?

24 "A. Yes.

25 "Q. Can you tell us once again what occurred during

1 the early morning hours on May 14th, 2006, at Nakia
2 Mallory's apartment?

3 "A. I came over to her apartment when it was late. I
4 can't give you an exact time. I came over there to see
5 Justin. I knocked on the door and Nakia answered. I asked
6 her if Justin was home and she said no. I asked her if she
7 knew when or if he would be home and she stated that he
8 would be home soon. I asked if it was okay if I stayed and
9 waited for Justin. She stated that I could. She invited me
10 in. We both sat down on the same couch. I sat closest to
11 the television and she sat closest to the door. There was
12 space between us. She sat on one end and I sat on the
13 other. She offered me a drink. She got me the drink and we
14 were both sitting on the couch drinking and talking. We
15 were just having small talk about our kids and work. As we
16 were talking she was gradually getting closer. I took that
17 as if she wanted something more sexually. We kissed.
18 Looking back I guess you could say that I initiated it. I
19 leaned in and kissed her. The initial kiss felt awkward and
20 I wasn't really sure if she was okay with me kissing her.
21 She put her hand on my side and I attempted to touch her
22 breast and she stopped me. She stopped me by moving her
23 hand from my side to against the front of me. She never
24 said stop. It was just understood by her motions that she
25 wanted me to stop. I asked her why she wanted to stop. She

1 stated that she couldn't do this because she was married to
2 Justin and they had kids together. That is when I told her
3 that Justin was probably doing the exact thing right then
4 and that he does it all the time. I kept talking to her
5 telling her things like Justin didn't care about her or the
6 kids, but she was acting kind of stupid and that she was
7 acting like a bitch. She said 'excuse me' and I repeated
8 what I said. I asked her why would she even start if she
9 didn't want to finish, referring to the physical contact we
10 had just moments prior. Nakia got up and went to the
11 kitchen. I was still sitting on the couch. I didn't know
12 why she got up. I thought she got up to get another drink
13 or something. Nakia came out of the kitchen with a knife in
14 her hand and I got up and went towards her. Nakia was
15 saying something but I do not remember what she was saying.
16 I was more focused on the knife. She did say 'you don't
17 talk to me like that.' As she was coming in the living room
18 and I was coming towards her I struck her three times in the
19 forehead with my palms. Then I grabbed her arm in an
20 attempt to get her to stop swinging the knife and at some
21 point I got cut. I didn't have realize I was cut at the
22 time. I was able to grab her arm and was trying to get the
23 knife away from her and during that I struck her in the
24 right side of her head with my left elbow. And while we
25 were still struggling I was trying to position her arm and

1 the knife ended up slicing her on her eyebrow. We were
2 still struggling and we started falling over. I ended up
3 falling with her. We landed on the couch. I landed on top
4 of her. She was on her back and I was facing her on top.
5 She was still holding onto the knife and the knife stuck her
6 in the neck. She stopped struggling. Then I got up and
7 went into the kitchen. I rinsed my hand off in the sink and
8 was getting some paper towels. I noticed that there were a
9 couple of drops on the floor so I cleaned them up. Then I
10 wrapped up my hand with paper towels. As I was getting
11 ready to leave I noticed Nakia on the floor in the living
12 room in front of the couch. She appeared as if she was
13 trying to get up. I left.

14 "Q. After she was struck in her neck with the knife
15 did she say anything else to you?

16 "A. No.

17 "Q. Why didn't you tell us the truth about the reason
18 that the altercation occurred prior?

19 "A. I was just scared. This whole situation, not sure
20 what exactly is going to happen. Sometimes I just do not
21 know what to do.

22 "Q. Do you think that you were mistaken when assuming
23 that Nakia was making advances on you by moving closer to
24 you on the couch?

25 "A. Yes. It is possible for me to be mistaken.

1 "Q. Then Nakia's actions that night frustrates you?

2 "A. Do you mean when she wanted to stop?"

3 Investigator Godfrey then answered and said "yes,
4 that's what I meant." I put that in parenthesis.

5 His answer was "yeah, a little bit.

6 "Q. Describe the force behind the palm strikes that
7 you gave to Nakia's head.

8 "A. They were quick strikes with a lot of power behind
9 them.

10 "Q. Did you at any time conspire or consult with your
11 brother-in-law Robert Brown about this incident?

12 "A. No.

13 "Q. Does that include about cleaning up the vehicle
14 you were driving the night of the incident?

15 "A. Yes.

16 "Q. In fact, you stated that you never attempted to
17 clean up your vehicle?

18 "A. That's right.

19 "Q. What did you tell Persia occurred during this
20 incident?

21 "A. She thinks what occurred is the last statement
22 that I gave Captain Smith.

23 "Q. Is everything that you told me today the truth?

24 "A. Yes.

25 "Q. Is there anything that you would like to add to

1 this statement?

2 "A. No."

3 MR. PAULING: Beg the court's indulgence.

4 (Off the record)

5 (Back on the record)

6 BY MR. PAULING:

7 Q. Sergeant McDaniels, I just want to make sure you got it
8 right. There was a question --

9 (Cell phone going off in the courtroom)

10 THE COURT: Someone has got a phone?

11 (No response)

12 THE COURT: I'm sorry, go ahead.

13 BY MR. PAULING:

14 Q. The question -- Sergeant McDaniels, the question and
15 answer regarding the palm strikes, would you reread that?

16 A. Sure.

17 "Q. Describe the force behind the palm strikes that
18 you gave to Nakia's head.

19 "A. They were quick strikes without a lot of power
20 behind them."

21 Q. "Without a lot --

22 A. "Without a lot of power behind them." Excuse me.

23 Q. Thank you, sir.

24 A. Yes, sir.

25 Q. Now, when you got that second statement, would you tell

1 the jury how was that significant in relation to the
2 information that you had gotten previously from Mr. Porch?

3 A. Well, it was very significant as it pertains to the
4 evidence that we had from the case file. Of course, it
5 was -- you know, he added more to his statement in terms of
6 the interaction, the encounter. It started swaying away
7 from Nakia Mallory being the one to initiate and being the
8 one to kind of come on to him to, you know, that she
9 rejected him. He admitted to calling her a bitch. And he
10 then offered, you know, the explanation describing the
11 sequence of events; that she got upset and that she went to
12 the kitchen and got a knife, after saying "excuse me, you
13 don't talk to me like that."

14 And he also changed his statement at this particular
15 point from the first statement, you know, as it pertains to
16 the struggle itself. You know, he added this time that he
17 struck her a couple of times to the forehead area, which was
18 consistent with the evidence that we had. Right around, you
19 know, her head area there was some contusion, signs of
20 someone being struck.

21 He also explained in this particular statement the cut
22 above her eyebrow. When we first went to talk to him,
23 again, the accident version. They -- earlier that morning,
24 you know, we didn't hold anything back at this particular
25 point with respect to everything that this case has been

1 through. We -- "you know, your accident story does not add
2 up. We are not trying to hide anything from you. As a
3 matter of fact, this is why it doesn't add up," and so he
4 was shown the photos.

5 Q. Now, did you report your findings back to Chief Wilson?

6 A. I did.

7 Q. Okay. And after discussing it with him, were
8 arrangements made for a third interview?

9 A. Yes, subsequent interview.

10 Q. And what arrangements did you make for that particular
11 interview?

12 A. We made arrangements to meet with him again the next
13 day.

14 Q. Okay. And, now, approximately what time was that?

15 A. When we met back with him?

16 Q. Yes. You said the following day, which was July 10th
17 now?

18 A. It would be July 10th.

19 If I may refer to my notes.

20 Eleven o'clock a.m. Pacific Time on July 10th.

21 MR. PAULING: Beg the court's indulgence.

22 (Off the record)

23 (Back on the record)

24 BY MR. PAULING:

25 Q. Sergeant McDaniels, before we get there, just so we can

1 be completely clear, the first time that you had interviewed
2 Mr. Porch, after he had waived his rights, I guess it was
3 the early morning hours of July 9th, from that time to the
4 second interview when he was mirandized again --

5 A. Yes, sir.

6 Q. -- had he ever invoked his rights or asked for an
7 attorney?

8 A. He never did.

9 Q. Okay. And from the time of the interview, the second
10 interview took place, until you say eleven o'clock, or --
11 eleven o'clock on July 10th of 2009, is this when you meet
12 up had him again?

13 A. Eleven a.m. Pacific Time.

14 Q. Did he invoke his rights at that time or ask for an
15 attorney?

16 A. He did not.

17 Q. Did he ever say "I don't want to talk to you?"

18 A. He never did.

19 Q. Okay. You were saying that arrangements were made to
20 have a third interview, is that correct?

21 A. That is correct.

22 Q. Okay. Was this a videotaped interview?

23 A. Yes, it was.

24 Q. And can you tell the jury what was the process of this
25 particular interview?

1 A. Well, you know, we, again, made arrangements to have a
2 subsequent or third interview with him. At this time the --
3 you know, this was actually suggested by Chief Wilson.

4 Q. Okay.

5 A. And so we made arrangements with the Los Angeles County
6 Sheriff's Department and they were able to assist us in that
7 regard.

8 Q. Okay. And as far as -- who was present for that
9 particular interview?

10 A. Myself and Sergeant Godfrey. There was an individual
11 from Long Beach Police Department who was with us the entire
12 time. Detective Mendoza.

13 Q. Was there anyone else present?

14 A. Yes, there was also an investigator from Los Angeles
15 County.

16 Q. Okay. But you said Investigator Mendoza was there as
17 well?

18 A. Mendoza was present from Long Beach.

19 Q. All right. And as far as this interview was concerned,
20 how did this take place?

21 A. It took place in one of their interview rooms. It was
22 audio and videotaped at the L.A. County Sheriff's
23 Department.

24 (Off the record)

25 (Back on the record)

1 (DVD marked as State's Exhibit No. 50 for
2 identification)

3 BY MR. PAULING:

4 Q. Sergeant McDaniels, you and Investigator Godfrey
5 interviewed Mr. Porch -- it was a videotaped interview?

6 A. I'm sorry?

7 Q. You said you and Sergeant Godfrey interviewed Mr.
8 Porch?

9 A. That is correct.

10 Q. And it was a videotaped interview?

11 A. Yes, it was.

12 MR. PAULING: Approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 BY MR. PAULING:

15 Q. I show you what's been marked for ID purposes as
16 State's 50 and ask if you recognize that particular item?
17 Is that the video?

18 A. Yes, it is.

19 Q. Okay. And you have reviewed that particular video?

20 A. I have.

21 Q. Okay. And what's reflected on the video, does that
22 fairly and accurately depict the interview that occurred
23 back on July 10th of 2009?

24 A. It is fair and accurate.

25 Q. Okay.

1 MR. PAULING: Your Honor, at this time I would
2 offer State's 50.

3 MR. AIKEN: Subject to our pretrial objections,
4 Your Honor.

5 THE COURT: And based upon the discussions in the
6 hearing, I will admit Exhibit No. 50 for the reasons that
7 have been stated there.

8 (Whereupon, State's Exhibit No. 50 was entered
9 into the record as evidence).

10 MR. PAULING: Your Honor, I ask to publish it at
11 this time.

12 THE COURT: Yes, sir.

13 (Whereupon, State's Exhibit No. 50 was published
14 to the jury panel)

15 MR. PAULING: Thank you, Your Honor.

16 I have no further questions for this witness.

17 THE COURT: Ladies and gentlemen, at this time we
18 are going to break for the evening.

19 I'm going to remind you of the instructions that I
20 have given to you; that is, that you should not begin to
21 discuss this matter among yourselves, as you still have not
22 heard all the evidence that has to be presented.

23 Please remember as you come and go from the
24 courthouse not to listen to conversations that you may hear
25 in the hallways; again, for the reasons that you have to

1 make a decision based upon the evidence that's been
2 presented here in this courtroom.

3 Additionally, please do not let anyone approach
4 you to discuss this matter with you. If someone attempts to
5 do that, please tell them that you are a juror and you
6 cannot discuss it and please report it to us as soon as
7 possible.

8 Given the hour of the evening and the fact that
9 it's dark outside and the parking garage is across the
10 street, I ask if you will just go back to the jury room for
11 just a moment. Then I will have a deputy to escort you
12 across the street so we make sure that you get across the
13 street without any problems. So if you will all just step
14 back into the jury room.

15 Please remember also all the other instructions I
16 have given to you every night; that is, not to engage in any
17 independent research or investigation. Please do not
18 discuss the matter with your family and friends, again, for
19 all the reasons that I have given to you. Again, primarily
20 that you have to judge this case based upon the evidence
21 that you have heard throughout the course of this trial and
22 what you have heard and seen and observed. And until it's
23 time for you all to begin your deliberations, you should not
24 be influenced by any outside information or material,
25 whether it comes from research or whether it comes from

1 friends or family who are discussing the matter. I ask that
2 you not engage in that conduct. Again, that's not
3 acceptable and not allowed, and a violation of that rule
4 will be subject to contempt of court. So I ask that you
5 make sure that you follow these instructions.

6 If you will just step back into the jury room and
7 as soon as I have a deputy available, I will have them
8 escort you across the street. Thank you.

9 I'm going to tell you to report at nine o'clock
10 tomorrow morning. I would like to report later, but I think
11 we have got some conflicts with some testimony tomorrow. In
12 an effort to try to move this matter along, I'm going to ask
13 that you still report at nine o'clock tomorrow morning.
14 Thank you.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: Officer McDaniels, you may step down.
18 I remind you that you should not discuss your testimony with
19 anyone overnight because you have not concluded your
20 testimony. It would be inappropriate for you to discuss it,
21 even with the attorneys. So you may step down at this time.

22 THE WITNESS: Thank you, ma'am.

23 THE COURT: Is there anything we need to take up
24 before we stop?

25 MR. LUKE SHEALEY: Yes, ma'am.

1 THE COURT: I'm sorry?

2 MR. LUKE SHEALEY: Yes, ma'am.

3 THE COURT: Yes.

4 MR. LUKE SHEALEY: And this is something that I
5 saw that didn't make my -- especially the law clerk, or the
6 transcript of this video, but, nevertheless, it's now into
7 evidence. The State never caught it either. At the end
8 right there in the last minute or two Investigator Godfrey
9 was asking Mr. Porch about drug use and using drugs and he's
10 talking about that and whether he did hard drugs, whether
11 Justin led him to that. That -- that part wasn't -- I mean,
12 I don't think I have ever seen. My law clerk was just
13 saying that wasn't a part of our tape. That is
14 unacceptable. That's impermissible.

15 I would cite the State v. Smith, which happened to
16 be a murder case where the female defendant was charged with
17 murdering her husband. There is evidence in that case that
18 actually someone else -- another witness said someone else
19 had killed the husband, ironically, and evidence of drug use
20 was admitted in that case. The drug use was not an issue in
21 the crime itself. It was found to be reversible error.
22 "The only function of the evidence concerning the
23 defendant's use of illegal drugs was to demonstrate the
24 defendant's bad character and social irresponsibility. The
25 admission of such evidence is legal error."

1 "Further, evidence of drug use is incompetent to
2 establish motive for a crime or the state of mind of the
3 defendant where the record does not support any relationship
4 between the crime and the drug use."

5 That wasn't in our video. We have never seen that
6 before, but the jury just heard about it.

7 That's State v. Smith, and I would cite 309 S.C.
8 442.

9 I would ask for a mistrial at this point.

10 THE COURT: What's the State's response?

11 MR. GOINGS: Your Honor, the State's position is
12 that the full video was turned over to defense counsel. I
13 even asked them to review it.

14 The video that we had from the Jackson v. Denno --
15 I mean the one I had that you have possession of from the
16 Jackson v. Denno hearing is the one I made a copy from to
17 give to them. It had contained video portions one and two.
18 I asked defense counsel yesterday, or the day before, I
19 can't remember when, but to review the second portion to
20 make sure there wasn't any objection to any of the material
21 in there.

22 I also leaned over to defense counsel during the
23 playing of the video saying that I would like to stop it
24 early, because there is a great portion at the end, as you
25 can tell, Your Honor, that wasn't really talking about any

1 more additional admissions. He again stated at that point
2 he wanted to play it all through.

3 The State didn't seek to introduce this evidence
4 to prejudice the defendant. I'm not going to plan on
5 arguing anything about drug use in closing or any other
6 offers or admission. I don't believe it's that prejudicial
7 to the defense to require a mistrial at this time.

8 MR. LUKE SHEALEY: And you are right, Mr. Goings
9 did ask me about thirty minutes into it whether we should
10 stop it, mentioning something about a portion where Godfrey
11 was talking about or McDaniels was talking about mother's
12 lover, there's no love like a mother's love.

13 I did want the jury to see the entire video. As
14 you know, this is a false confession case from the defense
15 perspective and I wanted them to sit through at least over
16 an hour of that type of persuasiveness and interrogation,
17 which is only a fraction of what Mr. Porch actually
18 experienced over the course of three days. So, however,
19 there is multiple angles, as we discussed with Your Honor,
20 of this video. And perhaps this -- the other angle that we
21 transcribed it.

22 The point of it is we weren't aware of it. They
23 should have been aware of it. The fact is that the jury is
24 aware of it now, this drug use comment, and it is reversible
25 error. It's completely prejudicial and it was found not to

1 be harmless, and I don't have any other choice to preserve
2 my client's right but to ask for a mistrial, and I'll pass
3 you a copy of the case, if you would like to read it.

4 THE COURT: I tell you what. Frankly I couldn't
5 understand what in the world he was saying at the end of the
6 video. I have copies that were provided to me, both before
7 the Jackson v. Denno Hearing, as well as the exhibit that
8 was presented during the Jackson v. Denno Hearing, and there
9 were two separate copies. I'll look at those and see if the
10 testimony that's disputed was on those videos. If they
11 were, then I think you have lost that opportunity, but I
12 will look at it, and then I'll read the case.

13 MR. GOINGS: And Your Honor, I would point out --

14 THE COURT: At this time -- I would say at this
15 time I didn't hear it. And like I said, I couldn't
16 understand half of what was being said by the time Godfrey
17 got to the door like he was on his way out and that
18 conversation, and so I'll listen to it again.

19 MR. GOINGS: And, Your Honor, the only thing that
20 I would point out to that end is they are right, it was two
21 camera angles. However, in discovery I gave them both the
22 CD that I had in my possession that contained the view that
23 we were looking at there and also a VHS tape that had the
24 camera angle looking down.

25 All I know is what I copied and gave to them. And

1 I was going off of -- the one I submitted in the Denno
2 Hearing that you have in your possession is from the -- it
3 was never from the VHS. It was always on the computer disc.
4 I don't know exactly what their disc, they are saying to
5 you, but it's my understanding that they may have
6 transcribed or put the VHS tape on the disc that you have in
7 your possession. When you compare the two, that might be
8 why there is a difference. I don't know. I haven't looked
9 at their disc that they submitted to the court. They didn't
10 submit -- they didn't give me a copy of it when they
11 submitted it to the court, so I don't know exactly what's on
12 their disc.

13 THE COURT: I have -- like I said, I have one copy
14 that was submitted to me by the defense before the Jackson
15 v. Denno, and then I have the Court's Exhibit 1 that was
16 submitted during the hearing, and I'll look at both of those
17 at the end and see what's on there and listen to what's on
18 there and we will go from there.

19 Anything else we need to take up?

20 MR. LUKE SHEALEY: No, ma'am.

21 THE COURT: We will see you all back at nine
22 o'clock in the morning then.

23 (Whereupon, Proceedings were adjourned to November
24 22, 2013)
25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 JOSHUA WILLIAM PORCH,) 2011-GS-40-03359
7 DEFENDANT.) NOVEMBER 22, 2013
COLUMBIA, SOUTH CAROLINA

8
9 (VOLUME V)

10
11 B E F O R E:

12 THE HONORABLE ALISON RENE LEE, JUDGE. ; And a Jury.

13
14
15 A P P E A R A N C E S:

16 CARY GOINGS, ASSISTANT ATTORNEY GENERAL
17 CURTIS PAULING, ASSISTANT ATTORNEY GENERAL
JOSHUA R. UNDERWOOD, ASSISTANT ATTORNEY GENERAL
ATTORNEYS FOR THE STATE

18 LUKE A. SHEALEY, ESQUIRE
19 BRIAN R. SHEALEY, ESQUIRE
ARTHUR AIKEN, ESQUIRE
20 ATTORNEYS FOR THE DEFENDANT

21
22 MICHAEL R. WATTS
CIRCUIT COURT REPORTER

1 (PROCEEDINGS, NOVEMBER 22, 2013)

2 THE COURT: The first matter we need to take up is
3 relating to the video and the motion for a mistrial that was
4 made yesterday.

5 I have reviewed a video that was provided to me by
6 the defense prior to our pretrial hearing back in March of
7 this year, and my law clerk reviewed Court's Exhibit 7 to
8 the Jackson v. Denno hearing that was conducted in March of
9 2013.

10 What I found on the video that I looked at was
11 that at one hour, eleven minutes and forty-five seconds the
12 question came up had he ever tried drugs, and there was a
13 conversation for about another minute, maybe two minutes, in
14 which he stated that he had tried drugs, that Justin was not
15 the one who introduced him to the drugs. He started using
16 drugs in the ninth grade when he was seventeen. He would
17 use it once or twice a day. Then -- once or twice in a
18 while. Then it -- it sounded like "when we moved to Canada"
19 he used it every day. It might have been Columbia. I
20 couldn't tell. He used every day. Then he stopped when he
21 met his wife. He stopped before that. And then when he met
22 his wife, his wife was against drug use, and so he
23 definitely had stopped at that particular point.

24 And my law clerk indicated in the video that she
25 viewed the same information was actually present on the

1 video.

2 So to the extent that it was admitted in court --
3 and I think it was admitted accidentally, but to the extent
4 that the videos were available to the defense and they had
5 the opportunity to look through all of it before it was
6 presented, there was no objection made, and that it appeared
7 that it was inadvertent, that there was a request to turn
8 off the video earlier, and so I think it was inadvertent and
9 it's not being used in the same manner in which the evidence
10 of cocaine use is being used in the State v. Rebecca Smith,
11 and so, therefore, I'll deny the request for a mistrial.

12 MR. LUKE SHEALEY: And I do want to just say at
13 that point it certainly wasn't inadvertent on the defense's
14 part and --

15 THE COURT: I think it was inadvertent on both the
16 parties part.

17 MR. LUKE SHEALEY: And -- but, nonetheless, it is
18 in evidence and that's a mistake. I take full ownership of
19 that, and if it's -- it's clearly to submit that type of
20 testimony is prejudicial, especially in the context of a
21 murder case, when credibility is on the line, so it is my
22 fault. I own up to it and it might be an issue down the
23 road against me.

24 THE COURT: And what I will say, that at least in
25 the Smith case, there was subsequent attempts by the State

1 to actually use that in connection with the charge in
2 prosecuting Smith and related to her conduct. And so far in
3 this case that has not occurred. And I think it was truly
4 inadvertent, it was accidental, and I don't expect that the
5 State will try to use any of that information in the course
6 at this point, even based upon what was heard for about a
7 minute, if that long. I don't even think it was played that
8 long in court, that there is to be no such further
9 discussion or introduction of that information in the course
10 of the trial.

11 I think calling attention to it by discussing it
12 with the jury or telling them to disregard it would just
13 highlight it, and so in the event that they need to hear the
14 video again, perhaps we can figure out a way to redact that
15 portion of it, as it's -- it's very near the end. I think
16 the tape ended at that one hour and eighteen minutes. So,
17 you know, there is further discussion afterwards that talked
18 about, you know, his children and, you know, keeping in
19 contact with his children and that kind of thing, but -- so
20 I think where it was stopped, anything after that could
21 probably be deleted, in the event the jury needs to hear it
22 again.

23 MR. LUKE SHEALEY: And while on that note, perhaps
24 we could do a remedy like we did with the statement
25 admission of polygraph, although it was in evidence, we kind

1 of stipulated to replace it with something, or cut and
2 paste. This will certainly be in evidence. For all I know,
3 they are going to listen to for ten hours, hour after hour
4 after hour, so perhaps we could, with all resources of the
5 State, cut that part off. And then by the time they get it,
6 it would be safe.

7 THE COURT: Well, how about over the weekend take
8 a stab at redacting that part and then --

9 MR. GOINGS: Yes, ma'am. The State has no
10 objection to redacting this part, and the State will go
11 ahead and put on the record that it has no intention of
12 questioning, if the defendant so chooses to get on the
13 stand, about any prior drug use or using any part of prior
14 drug use that may have been heard in that video in closing
15 argument.

16 THE COURT: Anything else we need to take up
17 before we bring the jury in?

18 MR. LUKE SHEALEY: No, ma'am, I don't believe so.

19 MR. GOINGS: I don't know if we are straight with
20 the schedule yet, Your Honor, or --

21 THE COURT: Yeah, I think we are straight. We are
22 going to try to finish up with McDaniels and then call the
23 defense's expert out of order.

24 MR. GOINGS: All right. Well, the only -- I have
25 a couple of motions as to the defense expert.

1 One, the State would the seek to exclude the
2 expert testimony.

3 THE COURT: How about we take it up when we finish
4 wish McDaniels?

5 MR. GOINGS: That's fine.

6 THE COURT: Let's go ahead and finish that and
7 then I -- Mr. Aiken says he's not going to be long, but I
8 would rather do that and keep it all together.

9 MR. GOINGS: Okay.

10 THE COURT: And then that way if we need to
11 proffer any of the testimony, we can do a proffer at that
12 time.

13 MR. GOINGS: Yes, ma'am.

14 THE COURT: Anything else we need to take up at
15 this point?

16 MR. GOINGS: Nothing from the State.

17 MR. AIKEN: Nothing from the defense.

18 THE COURT: You may ask the jury to come in,
19 please.

20 THE BAILIFF: Yes, ma'am.

21 THE COURT: And I will tell you I have ordered
22 lunch for the jury again today, so we are going to try to
23 move things along, like we did yesterday. Hopefully not as
24 late as yesterday.

25 Officer McDaniels, you may take the witness

1 stand).

2 (The following takes place in the presence of the
3 jury panel)

4 THE BAILIFF: The jury is seated, Your Honor.

5 THE COURT: Good morning, ladies and gentlemen.

6 JURY PANEL: Good morning.

7 THE COURT: We are now ready to continue on.

8 Any cross, Mr. Aiken?

9 MR. AIKEN: Yes, Your Honor.

10 May it please the court?

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION BY MR. AIKEN:

13 Q. Good morning, Sergeant McDaniels.

14 A. Good morning, sir.

15 Q. I'm Art Aiken. I'm one of Joshua Porch's lawyers. I
16 just got a couple of questions that I want to maybe clear
17 some things up.

18 A. Sure.

19 Q. In his examination of you, I heard Mr. Pauling say, and
20 I stopped counting about twenty times, that what this was an
21 interview. This wasn't an interview, was it?

22 A. No, it wasn't. It was an interrogation.

23 Q. It was an interrogation?

24 A. Yes, it was.

25 Q. It was confrontational?

1 A. With the expectation of it being confrontational. The
2 interviews may be able to -- they may start off as
3 interviews and then evolve into an interrogation.

4 Oftentimes we may have a victim come in that started
5 off as an interview, but found out the victim was actually
6 involved in it and it evolves into an interrogation.

7 So they work -- they work hand in hand. One leads to
8 the other and sometimes you have to deescalate. You start
9 off interrogating and then you may end up interviewing.

10 So this was with the expectation of being an
11 interrogation, you know, because of the circumstances.

12 Q. You had an arrest warrant --

13 A. We did.

14 Q. -- so clearly it was going to be an interrogation from
15 the jump, right?

16 A. Not necessarily. Not necessarily. I mean, it's -- you
17 know, you want to jump to that extreme, because of the
18 warrant, but, you know, having the warrant in hand doesn't
19 actually mean that you start off interrogating. It starts
20 off as an interview. Depending on the circumstances, it may
21 be different.

22 If you are asking about this particular case in dealing
23 with Joshua Porch, the expectation of it eventually turned
24 into an interrogation was always present due to the
25 circumstances and the history behind this case. We

1 anticipated that it would evolve into an interrogation.

2 Q. Well, let me ask you this. You had an arrest warrant,
3 right?

4 A. We did.

5 Q. You were going to go out there and you were going to
6 arrest Joshua Porch, no matter what, right?

7 A. That is correct.

8 Q. And no matter what he said in any of these three
9 interrogations, you -- he was going back in chains with you
10 to South Carolina, wasn't he?

11 A. He was going to be arrested.

12 Q. It didn't make any difference whatsoever what he said
13 during these interrogations. You were taking him into
14 custody, putting him on a plane and taking him back to South
15 Carolina, isn't that right?

16 A. That's -- that's not how that process goes.

17 I would like to explain it to you, if you want me to.

18 We have to go through -- there's a process in order to
19 move someone from one state to the next state.

20 So, no, in answering your question, he was not going to
21 get back on the plane with me in chains, no matter what he
22 said.

23 Q. But no matter what he said, he was going back to South
24 Carolina, wasn't he --

25 A. Not necessarily.

1 Q. -- to face these charges?

2 A. Listen, not necessarily so. You know, we -- we went
3 down there not knowing exactly what he was going to say. We
4 had an arrest warrant.

5 Plenty of times we will have an arrest warrant and we
6 may not make an arrest, depending on the circumstances,
7 depending on the facts, but he -- we had an arrest warrant
8 for him.

9 The likelihood of him being arrested was, you know,
10 probable, but not necessarily automatic.

11 Q. But it didn't make any difference what he said in these
12 interrogations, he was going to be arrested, wasn't he?

13 A. That is -- that is -- I'm sorry, sir, not necessarily
14 so. The probability of him being arrested was pretty high,
15 because of the circumstances and the fact that, you know,
16 the history, as well as the arrest warrant in place, but not
17 necessarily. The way you are putting it, no, sir.

18 Q. Once you have an arrest warrant, that's an order of the
19 court to pick him up, right?

20 A. That is correct.

21 Q. And you were under orders of the court in South
22 Carolina to pick up Joshua Porch, to arrest Joshua Porch,
23 weren't you?

24 A. Law enforcement has a responsibility to make sure that
25 we got our facts. We are continuously gathering facts

1 throughout the investigation. And in many cases we may have
2 an arrest warrant on order, as you would put it, to make an
3 arrest, but once law enforcement learns of additional
4 information, we bare an obligation, not just a legal
5 obligation, but a moral obligation to make sure that we make
6 a sound decision.

7 So in answering your question, just because we have a
8 warrant doesn't mean that they must go to jail. That's
9 improper.

10 Q. Well, let's -- let's talk about this case.

11 A. Sure.

12 Q. You had an arrest warrant. You got on the plane. You
13 flew all the way out to California --

14 A. That is correct.

15 Q. -- because you had an arrest warrant for Joshua Porch,
16 right?

17 A. That is correct.

18 Q. And the intention when you got there in Los Angeles was
19 to arrest Joshua Porch, wasn't it?

20 A. One of the intentions, yes, sir.

21 Q. And, now, I think there were three interrogations,
22 right?

23 A. Yes, sir.

24 Q. And the third one was recorded. We watched the video
25 yesterday, right?

1 A. You did.

2 Q. The first two, they were not recorded, were they?

3 A. They were not.

4 Q. Now, you have a cell phone, don't you?

5 A. I do.

6 Q. It records, doesn't it?

7 A. I do.

8 Q. You could have just turned that cell phone on and
9 recorded those two interrogations, couldn't you?

10 A. With the Richland County Sheriff's Department we don't
11 record our interviews or our -- whether it's a witness or a
12 victim.

13 And as I stated yesterday, I was at the Long Beach
14 Police Department. They don't record. They didn't have the
15 access to the -- to the equipment. And so, of course,
16 when -- when I stated yesterday that, you know, when you are
17 in Rome, you deal with the Romans. And so I kind of like --
18 even with the handcuffing, to see if it was okay for us to
19 handcuff the guy while we interviewed him. So we --

20 In answering your question, no, I didn't use a cell
21 phone. No -- although I had one, it's not our common
22 practice. We didn't have it available at the time that we
23 were interviewing.

24 So in answering your question, no, I did not.

25 Q. And it's a fact, is it not, that the Richland County

1 Sheriff's Department has a policy against recording
2 interrogations, isn't that true?

3 A. Against?

4 Q. Against it, yes. That's not your policy to do it, is
5 it?

6 A. The word against is a bit extreme. We don't have a
7 policy against it. We actually record some -- our polygraph
8 room is recorded, so it's not -- we are not -- we don't have
9 a policy against it, sir, but, you know, we -- we don't
10 commonly record all of our statements.

11 Q. You had a case involving one of your friends, didn't
12 you?

13 A. I did.

14 Q. And in that case you recorded your friend's
15 interrogation, didn't you?

16 A. That -- that is correct. That was a sting operation
17 where a church member of mine was involved -- since you
18 brought it up, a church member of mine was involved in a
19 carjacking -- I'm sorry, a home invasion that resulted in a
20 homicide. I did not believe that my friend and my church
21 member was involved in that, and so, of course, the
22 investigation must go on. I asked my supervisors to let me
23 talk to him, to make sure that we can at least gather some
24 of the truth. I wore a wire. Very, very emotional
25 circumstance for me. I watched this man be baptized, and I

1 wore a wire, and he confessed to me that he was the driver
2 in that situation. He is in jail, in prison, for seventeen
3 years.

4 So in answering your question, it doesn't matter
5 whether you're someone that I love, someone that I don't
6 know, if you are wrong, you do have to pay. You must, you
7 must be responsible and held fully accountable, you know.

8 And I -- I anticipated that question, but I can tell
9 you that in spite of the fact of how much it hurt to wear
10 that wire, he was responsible. Someone died and he's doing
11 seventeen years.

12 Q. During these interrogations did you take notes?

13 A. During the interrogation?

14 Q. Did you take notes?

15 A. All of my notes have been memorialized into my
16 followup.

17 Q. So you have no record of any of the interrogation by
18 way of notes, other than what's reflected in your followup
19 investigation?

20 A. All of my notes are in my followup. And if you have
21 read it, then you will know that things that I surmised from
22 the conversation, they are in the followup. And some of the
23 things that I felt were pertinent as it pertains to quoting,
24 they are also in my followup.

25 And if you -- if you would allow me to finish answering

1 the question to include when I first made contact with
2 Joshua Porch and those questions that I planned out
3 yesterday when he said "no one did it, it was an accident."
4 And when he said he was not there, and when he said that
5 Joshua was a dick, those were quoted in my followup, because
6 I felt those were quite pertinent, and anything else in my
7 followup is a synopsis of what was discussed.

8 Q. Did you keep your notes?

9 A. They are -- they are memorialized in my followup.

10 Q. Well, did you have handwritten notes that you used to
11 make your followup, or did you just do your followup?

12 A. I made -- I wrote bullet points down and then
13 memorialized it in more detail in my followup.

14 Q. Do you still have the notes?

15 A. Not the bullet points, no.

16 Q. Where are they?

17 A. There was no need for the bullet points.

18 Q. Well, where are they? You had them. Where are they
19 now?

20 A. I have discarded them.

21 Q. So you have destroyed them?

22 A. Okay. The bullet points were what they were. My
23 followup is more detailed as it pertains to those bullet
24 points.

25 Q. But the fact remains that your bullet points are now

1 gone, you no longer have them?

2 A. That is -- they did not have merely as much information
3 as my followup does as it pertains to the bullet point.

4 When you are engaged in an interview and interrogation
5 of such a level as this, you know, it's -- you have to try
6 to pay as much attention as possible. You don't just sit
7 there -- you just can't keep writing while the person is
8 talking to you.

9 Q. Now, you have had some training in interrogation
10 techniques, haven't you?

11 A. Yes.

12 Q. And you have had some training on the law concerning
13 interrogations, haven't you?

14 A. I couldn't -- I didn't hear that last part.

15 Q. You have some training in the law concerning
16 interrogations, don't you?

17 A. I do.

18 Q. And you are aware that the results of an interrogation
19 may not be admissible if it's considered involuntary, isn't
20 that right?

21 A. That is correct.

22 Q. And one of the -- a couple of things that could
23 undermine the voluntariness of an interrogation; number one,
24 promises of leniency is one, isn't that right? If there is
25 a promise of leniency, it may be considered an involuntary

1 confession, isn't that right?

2 A. Not exactly so.

3 Q. All right. Well, let's talk about threats against
4 one's family members. That can undermine the voluntariness
5 of a statement, can't it?

6 A. It could contribute to that, yes.

7 Q. And it would be important to have a recording of the
8 interrogation to determine whether any of those improper
9 techniques were used, isn't that right?

10 A. It would be important?

11 Q. Yes.

12 A. It's important to be honest. That's the important
13 aspect of any interview. It's not necessarily important
14 that it's recorded. I mean, our leading agency within this
15 nation doesn't record their interviews. The FBI, they don't
16 record their interviews, so it's not necessarily important
17 that we record.

18 What's important is that we are honest, we are
19 thorough, and that we follow the facts of the case. That's
20 what's important.

21 Q. And you need to follow the law too, don't you?

22 A. Of course we do.

23 Q. All right. And wouldn't it be helpful to ensure if you
24 see a recording of this -- of these two interrogations that
25 you did not record to determine whether you used any of

1 these improper techniques, isn't that right? That would be
2 the best evidence of that, wouldn't it?

3 A. I wouldn't say necessarily the best, but in answering
4 your initial part of that question, would it be helpful?
5 Just -- no differently than seeing this last video was
6 helpful.

7 Q. Now, the first interview, Mr. Porch was in custody,
8 wasn't he?

9 A. The first interview, yes, he was.

10 Q. Or the first interrogation?

11 A. Talking about in -- in the -- in California?

12 Q. The first -- the first interrogation in California,
13 right?

14 A. Okay. All right.

15 Q. Isn't that right?

16 A. The first interview in California was, in fact -- he
17 was, in fact, in custody. He was handcuffed to the table.
18 And as I stated before, generally we don't -- I don't like
19 to talk with someone handcuffed, and I tried to, you know,
20 get that straightened out with the Long Beach Police
21 Department.

22 Q. Now, when you went out to California, you obviously had
23 a warrant, right?

24 A. Yes, sir.

25 Q. And that gave you the immediate ability, with the

1 assistance of Long Beach Police Department, to arrest Mr.
2 Porch on sight, right?

3 A. That is correct.

4 Q. Okay. And you arrived in Los Angeles at three o'clock
5 P.M. Pacific time, isn't that right?

6 A. That is correct.

7 Q. And that would have been on July the 8th of 2009,
8 right?

9 A. That is correct.

10 Q. And then I think later in the day, at eight o'clock,
11 you met with Investigator Godfrey?

12 A. I did.

13 Q. And I think y'all -- you testified earlier y'all had
14 dinner?

15 A. Yes, he had a tummy ache.

16 Q. And y'all talked about surveilling Mr. Porch?

17 A. Yes.

18 Q. Surveilling his house?

19 A. We did.

20 Q. And you began your surveillance, I believe, at 10:45?

21 A. I arrived at Mr. Porch's residence.

22 Q. And then ultimately you ended up arresting him at about
23 11:15 or 11:30 at the Walgreen's?

24 A. It was sometime after that. The next time that I have
25 noted in my followup is when Mr. Porch arrived at Long

1 Beach, which was 12:30. So in between 10:45 p.m. and 12:30
2 he was apprehended. They had to confirm the warrant in the
3 NCIC.

4 Once Long Beach Police Department arrived on the scene,
5 I then went and headed towards Long Beach Police Department
6 and tried to help Godfrey to the department himself.

7 Q. And then you next had contact with Mr. Porch about
8 12:30 a.m. at the Long Beach Police Department. That would
9 be Pacific Time, correct?

10 A. That would be -- the contact that I had with him was
11 when they put him in the interview room for me and that's
12 when I noticed that he had the handcuffs on.

13 Q. And he was in an interview room, right?

14 A. He was. He was asked if he wanted something to drink,
15 and the response was the same response that he had on the
16 video. He said "I'm not hungry."

17 Q. And --

18 A. And he was asked if he wanted to use the bathroom.

19 Q. You waited until Godfrey got there before you started
20 interrogating, right?

21 A. That is correct.

22 Q. And that was at about five after one, or so?

23 A. That's when he was -- that's when -- yeah, when we
24 first walked in.

25 He was advised of his rights at 1:12 a.m.. We walked

1 in there about 1:05, and then from there read him his
2 Miranda Rights in the manner that I indicated yesterday.

3 Q. And -- let me ask you a couple other questions.

4 When you have studied up on interrogations, have you
5 learned anything about interrogation techniques?

6 A. Yes, of course, I did.

7 Q. All right. And is there any particular technique that
8 you use?

9 A. Yeah. I use the kinesic. Some people pronounce it
10 kinesic. Basically you are taught to listen with your eyes,
11 not just with your ears. And there are certain things that
12 the -- that the body -- you know, the average individual,
13 unless you know what you are doing, you can't really control
14 it when you are getting ready to be creative, or, you know,
15 if you are trying to pull from memory.

16 And so depending on the individual, you know, you have
17 to do what is called norming them. And when he norm
18 someone, you ask them something basically that you know they
19 will tell the truth about; an example being "where are you
20 from? What high school did you go to?" You know, "how long
21 did you stay at that high school?" And generally that will
22 allow them to give you an opportunity to see what side they
23 reach from by way of, you know, eye movement, by way of hand
24 movement, leg movement. It's almost -- it's -- it's -- it's
25 you know, not one hundred percent, but, you know, you can

1 kind of depend on it.

2 And, you know, so in answering your question, yes, Mr.
3 Joshua Porch was normed with respect to what side he pulls
4 from memory as opposed to creativity. Creativity is
5 generally not the truth.

6 Q. So you -- you ascribe to the notion that there is
7 significant psychology behind this whole interview or
8 interrogation process?

9 A. I wouldn't necessary say that that's strictly
10 psychology. I would -- I would say that that's a
11 combination of it being physiological. You know, just --
12 it's obviously physical, but I wouldn't necessarily say that
13 it's strictly psychology.

14 Q. Do you think that you can tell somebody is lying to you
15 just you talking to you?

16 A. Not every time. Not every time. I have to be honest
17 with you. You know, there are some people that are good.

18 And, you know, clearly in this case, you know, I happen
19 to think that, you know, Major Smith, Travis Holdorf, you
20 know, they are -- they are strong interviewers, you know,
21 but in interviewing every now and then you run across
22 someone who gives you nothing. And as I stated earlier
23 yesterday, you know, it's very difficult, you know, to --
24 you know, he looks through you, Mr. Joshua Porch,
25 emotionless, and that's very difficult to read someone. So

1 I can kind of see how four statements were given previously.

2 You know, I think showing up in California saying that
3 I'm from South Carolina, it was a shock that he wasn't
4 expecting, and whispering to him that he almost got away
5 with this was something that he wasn't expecting.

6 And so we run into people who oftentimes give you just
7 enough to shut you up. As in this case, his blood being on
8 the crime scene. "Well, this is what happened. I cut
9 myself on the apple." Okay. Well, that, uhh, you know,
10 we -- you need a little more explanation behind that.
11 "Well, I tell you what. I was there."

12 And so then we get to California and, you know, when we
13 show him the photos, it's "well, this is what happened, and
14 this is what happened."

15 You know, there are four different types of people that
16 give you a confession. The first one is the one that will
17 give it to you voluntarily. They're ashamed. They don't
18 want to be there. They are not -- this is new to them,
19 okay?

20 And the second one is the individual who will come in
21 just to see what you know. They don't want to give you
22 anything, but just to see what you know.

23 The third type of individual will come in with the
24 intent of not telling you anything. They don't even care
25 what you know. "I don't want to talk."

1 And then there is this individual that will come in,
2 and this characteristic fits Joshua Porch, that will tell
3 you what you ask them. They will give you the answers to
4 what you ask them, only if you can -- if they could see what
5 you have. So they will explain away, basically, anything
6 that you present in front of them. They will explain it
7 away. You know, they only give you piece by piece. And so
8 that's what you heard in the interview about the twenty
9 pieces.

10 Normally in a normal investigation my piece example
11 doesn't go any further than five, because people always want
12 to give you just shy of what they think would get them in
13 the most trouble. But in this particular case we are
14 talking about since 2006. We are talking about two trials,
15 and we are talking about this individual standing in court
16 and identifying the wrong man twice; talking about someone
17 that used to this system. So twenty pieces was the mark.
18 And as in the interview, sir, you heard me say "you're at
19 nineteen. You're at nineteen," because what he offered, it
20 matched the evidence in this case from the bruises --

21 Q. Are you done?

22 A. The -- stabbings.

23 I'm not done, sir.

24 Q. Okay, continue, please. I would love to hear your
25 little soliloquy.

1 A. Yes, sir.

2 As you heard in the third interview, he was fed, a
3 sandwich was bought for him. She was stabbed while they
4 were standing up now, struggling. He acknowledged that they
5 never fell -- that he never fell on her. He acknowledged
6 that we were respectful towards him. He acknowledged that
7 he wished he met myself and Godfrey under some other
8 circumstances. He was concerned about himself and his
9 family. He picked up the knife and threw it away. He now
10 picked up the knife and threw it away. He washed his
11 clothes and took a shower.

12 He confirms the original position of Chief Wilson that
13 the assailant had to have been left-handed. You heard
14 yesterday as well that's what really sparked it, and now
15 that has been confirmed.

16 He wanted to offer what he thought. "Well, I think,"
17 and I say that "I can't use what you think."

18 And he admitted to wiping the steering wheel, as well
19 as his driver's door.

20 It matches -- his story matched up to what we had, as
21 far as the evidence is concerned.

22 Q. Are you done?

23 A. Yes, I am.

24 Q. Thank you very much for that. I appreciate it.

25 A. You are welcome.

1 Q. I appreciate your explaining all that to me. That was
2 very nice.

3 A. You are welcome.

4 Q. Now, the interrogation began at 1:05 a.m. on July the
5 9th of 2009. That was Pacific Time, correct?

6 A. That is correct.

7 Q. Now, you have him in custody. You have him in an
8 interview at 12:30 a.m.. You could have just said "have a
9 nice evening. Get some rest. We will interrogate you in
10 the morning," couldn't you?

11 A. Why would I say that and we had just made contact with
12 him?

13 Q. Well, it's 12:30 in the morning. You have got a guy
14 arrested for murder. You are getting ready to interrogate
15 him. Don't you think it's a good idea to say "hey, this guy
16 might need some rest before we go through this strenuous
17 process." Wouldn't you think that? Wouldn't you as a
18 person, as a nice guy, as Mr. Morality, wouldn't you think
19 that?

20 A. I'm not really sure why you are yelling, but I -- we
21 just made contact with him in between 10:45 and 12:30. You
22 know, we -- he was under arrest. You know, I -- I did not
23 know how long he stayed up. I don't know if he just woke up
24 from a nap. I don't know that. I don't think there is -- I
25 don't think anyone knew that.

1 Q. Well, you didn't ask them that, did you? You didn't
2 say "hey, have you got some rest? Are you tired? Maybe you
3 want to take a little nap before we do this interrogation."
4 You didn't ask him that, did you?

5 A. I don't know any investigator that would ask a suspect
6 "would you like to take a nap before we talk to you?" I
7 don't -- I don't know anyone that would do that. I mean,
8 I'm not sure where you are going with that. I'm sorry.

9 Q. Well, you know, it's 12:30 a.m. his time. Isn't it --
10 isn't it possible that he's a little on the tired side?

11 A. I think that's a stretch. I don't -- I don't -- I
12 couldn't answer that.

13 Q. Do you typically stay up until six a.m. in the morning,
14 if you are not working nights?

15 A. If you knew what I do, that's not uncommon for me.

16 Q. Okay. So you do that, but the average person doesn't
17 do that, do they?

18 A. I -- I can't answer that, sir.

19 Q. You don't know what the average person does? You don't
20 know that the average person gets --

21 MR. PAULING: Your Honor, I would object --

22 Q. -- eight hours of sleep at night?

23 MR. PAULING: His answer -- it calls for
24 speculation. He just answered he didn't know.

25 THE COURT: You need to first of all ask him one

1 question at a time and let him answer the question.

2 BY MR. AIKEN:

3 Q. All right. Well, let me ask you this.

4 A. Sure.

5 Q. Don't you understand that typically in the normal
6 process of somebody's day they get eight hours sleep over
7 the nighttime? Isn't that right? Isn't that normal?

8 A. Typically.

9 Q. That's typical?

10 A. That is correct.

11 Q. So you got him at 12:30, okay, made contact with him.
12 You wait thirty-five minutes for Godfrey to get there,
13 right?

14 A. We got him earlier than that. He arrived at 12:30.

15 Q. Yeah, but what I'm saying is you first made contact
16 after the arrest with Mr. Porch at 12:30 at Long Beach?

17 A. That is correct.

18 Q. Okay. And then you waited thirty minutes for Godfrey
19 to get there?

20 A. That is correct.

21 Q. And then you started the interrogation at 1:05?

22 A. That is correct.

23 Q. And y'all end up wrapping up that whole process about
24 six in the morning?

25 A. That is correct.

1 Q. All right. All right.

2 So you started at 1:05 and you keep him up until six.
3 So you got him up for about -- during the interrogation
4 process for about five hours, between one a.m. Pacific Time
5 and about six Pacific Time, right?

6 A. Yeah, that is correct.

7 You have to understand that the topic of discussion is
8 murder. He's not up just hanging out talking about, you
9 know, what club he's going to.

10 And he was walking throughout that neighborhood when I
11 saw him. I saw him walk up the street, go into his house.
12 It didn't appear that he wanted to take a nap then. He then
13 walked out of his house and then walked to Walgreen's.

14 But the topic of discussion is murder; more importantly
15 a murder that occurred in 2006, where he was a witness. I
16 guarantee you sleep would not be on the average individual's
17 mind, sir. Murder is very heavy. It's a very heavy topic
18 to discuss.

19 Q. You want to put him under stress, don't you?

20 A. No, sir.

21 Q. You don't want to put him under any stress? You want
22 to keep him up for five hours, between one a.m. and six
23 a.m., but you don't want to put him under stress?

24 A. Is that a question, or are you testifying?

25 Q. I'm -- I'm asking you a question. You wanted to put

1 him under stress?

2 A. I do not, sir.

3 Q. Okay.

4 A. I do not, sir.

5 Q. Okay.

6 A. And if you -- and if -- if you knew me as a person, you
7 would know that that's not my character.

8 Q. So it was irrelevant to you the fact that you were
9 going to start interrogating this man at one a.m. and you
10 weren't going to stop until six a.m.? That was irrelevant?
11 That didn't give you an advantage, did it?

12 A. I don't know exactly what kind of advantage you are
13 trying to stress. I don't -- we made contact with him in
14 between 10:45 and 12:30. The topic was murder; a murder
15 that he was quite familiar with; a murder that in his head
16 was over, but it wasn't, and it's not today.

17 Q. Now, the first interrogation, did it go similar to the
18 one we saw on the video, where you asked questions and then
19 you have commentary, and then you cajole him, and you -- and
20 you come up with scenarios, and you lie to him? Was it like
21 number three?

22 A. Cajole and lie are your words.

23 I told you that at this particular juncture in this
24 case he knew everything. He sat through two trials, sir.
25 He knew what we -- what the State had and what the State

1 didn't have, but what he didn't know was about that extra
2 evidence, that DNA evidence on the Nakia's shirt. He did
3 not know about that when we first got down there.

4 So I could tell you this, that we told him -- we didn't
5 hold back anything. I'm like what you see in the movies.
6 This -- "listen, this is your life. This is what we have.
7 This is what doesn't make sense. You are telling me that
8 it's an accident now, but it doesn't make sense to what we
9 know."

10 Q. But you -- you challenged him. You challenged him at
11 every time about what he said, didn't you?

12 A. I wouldn't -- challenge is again your word. You know,
13 we questioned him.

14 Q. Yeah, but it wasn't just questions, was it? It was
15 things like, "oh, Nakia Mallory's children no longer have a
16 mother," all kind of talks of motherhood, twenty pieces, all
17 kinds of other hokum. It wasn't just asking question,
18 wasn't it?

19 A. Are you -- are you still focused on the first two, or
20 are we skipping to the third one?

21 Q. The first and the second.

22 A. Because you mentioned some things from the third one.

23 Q. Yeah.

24 A. But in talking to him during the first two statements,
25 you know, there are -- those words that you used just now,

1 they were not used. You know, they --

2 You know, I was so flabbergasted by the fact that he
3 stated Justin Mallory was not there, because I know of the
4 domino effect of that. I knew that this day would have to
5 come and we would have to have strong investigators that
6 have trained me stand up here and tell this court that we
7 made a mistake, but the important fact is that we are here
8 to correct that. We are here to correct that.

9 Q. But he initially denied any involvement as a
10 perpetrator, didn't he?

11 A. He did in the first interview --

12 Q. And you didn't accept that?

13 A. -- for the first few minutes.

14 Q. And you didn't accept that, and you challenged him,
15 right?

16 A. I told you -- I stated yesterday. I didn't tell you,
17 excuse me, that he was emotionless during the interview, and
18 it was almost as if like pulling from someone -- it was like
19 pulling from this wall, you know, and it's -- the eyes --
20 the eyes tell it all. And he was -- he was -- he was
21 looking through us as he was talking.

22 And when I did narrow the scope of the questioning,
23 "let's get over this hump. Did you lie about Justin even
24 being present?" And that's when he stated he was not there.

25 Q. But if he -- if he gave answers to questions that you

1 didn't accept, you challenged him, didn't you?

2 A. It would lead to other questions.

3 Challenge, again, is your adjective. It would lead --
4 it's questions.

5 Q. But it's not just questions. It's commentary, like it
6 was on the video of interrogation number three. It's not
7 just statements. It's a lot of commentary, too, isn't it?
8 It's a lot of you using your skills as an interrogator to
9 insinuate yourself into his mind, isn't that right?

10 A. To insinuate myself into his mind?

11 Q. Correct.

12 A. Any interview or interrogation may include additional
13 commentary, but the other description of what he is
14 implying, that's not true.

15 Q. Okay. Well, let me challenge you. You just -- you
16 just inadvertently referred to this as an interview. It
17 wasn't an interview. It wasn't no job interview, "hey, I'm
18 a -- "hey, where do you live? How long have you been
19 working in this industry," that kind of thing. It wasn't an
20 interview, was it?

21 A. The topic of discussion was murder. And as I stated
22 earlier, an interview leads to an interrogation. An
23 interrogation can lead to an interview. Sometimes, you
24 know, if -- they are -- it's a combination of both,
25 depending on the question, depending on the topic.

1 And if you are leading to this, did this ultimately
2 lead into an interrogation? Yes, it did. Did we
3 interrogate him in California? Yes, we did. Yes, we did.

4 Q. But the fact remains the interrogation that you
5 conducted, the first interrogation, was similar in format to
6 the interrogation we saw for interrogation number three,
7 isn't that right?

8 A. Similar, yes.

9 Q. Okay. Now, you took a statement, is that right?

10 A. We did.

11 Q. And that was handwritten?

12 A. That was handwritten by myself.

13 Q. And you wrote it out, right?

14 A. I did. I did.

15 As I stated --

16 Q. Okay.

17 A. As I stated as yesterday, questions were wrote out by
18 me and the answers were given by Joshua Porch, and the exact
19 answer was to the letter was written -- read back to him,
20 given to him so that he could read. He then signed twice on
21 each sheet. And then for the first statement, which was a
22 total of twenty times, indicating that this was his
23 statement and that these were his words.

24 And, as a matter of fact, when asked the question "if
25 you would like to add or subtract anything from the

1 statement," we then went back to page six of ten where he
2 made a correction. We both initialed the correction and
3 moved on and he signed it a total of twenty times.

4 Q. All right.

5 Let's count the number of questions that we have on
6 this on this --

7 A. Sure.

8 Q. -- on this statement.

9 On page one, I have got one, two, three, four, through
10 page four.

11 A. Let me catch up with you.

12 Q. Okay. There is four through page four, I believe.

13 A.. Four.

14 Q. Okay. Then five, six, seven on page five.

15 Eight, nine, ten, eleven, through page six.

16 Twelve, thirteen, fourteen, fifteen, through page
17 seven.

18 Sixteen, seventeen, eighteen, nineteen, twenty,
19 twenty-one, through page eight.

20 Twenty-two on page nine.

21 And twenty-three on page ten.

22 Now, during this interrogation there were a whole lot
23 more questions than that, weren't there?

24 A. There was dialogue. There was commentary. There
25 was -- you know, and that's indicated in my followup. I can

1 read through that, if you would like.

2 Q. That's not necessary.

3 Now, did you ever at any time tell Mr. Porch that he
4 had the opportunity to keep his wife and his brother-in-law
5 out of trouble if he told the truth?

6 A. I don't recall that.

7 Q. Okay. So you don't remember whether that happened?

8 A. I don't recall if I had a conversation with him about
9 his wife or -- and I do know that we -- his brother-in-law
10 was mentioned as we were getting additional information as
11 pertains to the car, but in terms of, you know, keeping them
12 out of trouble, and, you know --

13 I remember actually stating in this particular instance
14 now that he told us all that he told us in this up to this
15 point, I do recall actually letting him know that we were
16 going to have to follow that up. And I thank Godfrey
17 supported that. Since we went to his house after the -- he,
18 you know, he killed Nakia, then, of course, we would have to
19 go talk to her, which we did subsequently. We went and we
20 did a search warrant at the house in search of the clothes
21 that you heard him mention he had on during the stabbing on
22 the video. We went to go look for those clothes now.

23 So I did mention to him that we would have to make
24 contact with them, and that ultimately, like in any case,
25 any time an individual does something wrong and they come to

1 your house, they include you in that situation, and that's
2 unfortunate sometimes.

3 Q. But you -- but you don't -- you don't remember
4 specifically whether you made this reference keeping Mr.
5 Porch's wife Persia out of trouble and his brother-in-law
6 out of trouble? You don't remember that specifically, do
7 you?

8 A. I remember it at the end of the third interview
9 basically letting him know that we would have to follow up
10 his story in terms of where he went that night and
11 interviewing Persia Porch again, since he said he took -- he
12 washed clothes and took a shower. And, of course, in
13 interviewing her and subsequently after that she
14 corroborated that she heard him in the shower at an unusual
15 time that morning.

16 So, you know, I told him that we would have to -- like
17 any investigation, we would have to follow it up, but that
18 wasn't until after the third interview.

19 Q. But you don't remember whether you told Mr. Porch
20 specifically that he had the opportunity to keep his wife
21 and his brother-in-law out of trouble if he told the truth?
22 You don't remember specifically whether you said that, do
23 you?

24 MR. PAULING: Objection, Your Honor. I believe
25 he's asked and answered the question.

1 MR. AIKEN: He hasn't answered the question,
2 judge.

3 THE COURT: I'll allow the question. Overrule the
4 objection.

5 BY MR. AIKEN:

6 Q. But you don't remember that specifically, do you?

7 A. I don't recall saying that prior to the third
8 interview. I don't recall saying that when I first made
9 contact with Mr. Porch. I don't recall saying that when he
10 got to Long Beach Police Department.

11 I do know that after getting all the additional
12 information that he provided for us, marrying up to the
13 evidence, that, I did tell him that we were going to have to
14 follow up with it, and I believe that was corroborated also
15 by Godfrey. In the video he said "you know we are going to
16 look this up. We are going to have to follow up your story
17 in terms of the car," where he supposedly cleaned it with
18 bleach, as well as his contact with his wife the same night
19 of the murder -- the same morning of the murder.

20 Q. But the fact remains you don't remember whether you
21 made that statement to Mr. Porch, do you?

22 A. I don't recall making it before the third interview.

23 Q. What about the first interview?

24 A. In the third -- I don't recall --

25 Q. Do you recall making it in the first interview?

1 A. I don't recall making it in any interview prior to the
2 third interview.

3 Q. So --

4 A. I think -- and I believe that if -- you know, when you
5 watch the video, it's clear that we are telling him that we
6 are going to follow up with any -- any and everybody that he
7 may have had contact with, which is normal in any
8 investigation, after he does something so egregious as
9 taking someone's life.

10 Q. Well, if you don't recall that, wouldn't it be an easy
11 way to figure out whether it happened, if we had a
12 recording?

13 A. As I stated, sir, I don't recall whether I had a
14 conversation in general about his wife prior to the third
15 interview, a general conversation, but I do know that there
16 were no threats made. I did not say anything that would
17 threaten --

18 Q. But you said -- you just said you didn't recall whether
19 you made the threat.

20 A. I do know -- no, no, I -- I said I don't recall if I
21 had a general conversation about family "where you from?"

22 I do -- as I told you, we have to norm someone, so I'll
23 ask general conversations, so I don't recall whether that
24 came up, but I do know that there were no threats made.
25 There were no promises made to this individual. And I knew

1 that we were dealing with a very unique situation, someone
2 that knew facts about the case, and probably knew more facts
3 about the case than I did, because he was involved in the
4 first two trials and I wasn't.

5 Q. All right. Do you remember you were called as a
6 witness at a pretrial hearing in this case?

7 A. Yes.

8 Q. Do you remember you were placed under oath?

9 A. Yes.

10 Q. You were sworn to tell the truth on the Bible, just
11 like you were today?

12 A. Yes, sir.

13 Q. Isn't that right?

14 A. That is right.

15 Q. Mr. Jay Cooper, God rest his soul, was the man who
16 examined you, and his question was "okay. Do you recall
17 telling Mr. Porch that he had the opportunity to keep Persia
18 and Robert out of jail if he cooperated with you?" And he's
19 talking about the first statement.

20 And your -- your answer was very simple. It was "I
21 don't recall. I don't recall that." Isn't that right?

22 A. That is correct.

23 Q. That was your sworn testimony?

24 A. That is my testimony.

25 Q. Which is it, the long little soliloquy you gave, or is

1 it "I don't recall that?" Which one is it? Which one is
2 the truth, investigator?

3 A. I would love to answer. I'm sorry.

4 MR. PAULING: Objection, argumentative, Your
5 Honor. If he would let him answer the question and give him
6 space.

7 THE WITNESS: Thank you.

8 THE COURT: Sustain that objection.

9 A. As I stated, I don't recall holding a general
10 conversation with Mr. Porch about his family prior to the
11 third interview. That's the same thing that I stated in
12 pretrial. It's the same thing that I'm stating now, but
13 after the third interview, after we got additional
14 information from Mr. Porch, all those additional facts that
15 I mentioned, in addition to the two written statements, is
16 at that time we told him that we would have to follow up
17 with Persia Porch, his wife, as well as his brother-in-law,
18 as it pertains to cleaning that vehicle, the blood out of
19 that vehicle, based on his own admission --

20 BY MR. AIKEN:

21 Q. Okay.

22 A. -- after three statements.

23 So in answer to your question about the first
24 interview, sir, I don't recall holding a general
25 conversation about his family, but I do know that no

1 promises were made to him. No threats were conveyed to him.

2 Q. Now, investigator, could you get out the first
3 statement of Mr. Porch?

4 A. I have it.

5 Q. All right. And on the first page the question is "what
6 can you tell me about the incident that took place at 1103
7 Pinelane Road, Apartment 311-C on 5-14-06," right?

8 A. Right.

9 Q. And the answer that Mr. Porch gave, the first sentence
10 is, "Persia wasn't lying when she said that she thought I
11 was home." That's the first thing he says --

12 A. That is correct.

13 Q. -- in the answer, isn't that right?

14 A. That is correct.

15 But the first question was "what can you tell me about
16 the incident?"

17 You know, and as I stated earlier, you know, he
18 constantly, constantly -- you know, he knew all the facts of
19 this case. So him referring to part of one individual's
20 story from the previous two trials, or previously when he
21 was -- when Persia was spoken to, because Persia gave
22 several statements.

23 She gave one statement stating that her husband was
24 home that night, which is what thwarted that aspect of the
25 initial investigation.

1 Then she gave a second statement when she found out
2 that his statement changed.

3 MR. AIKEN: Your Honor, I object. He's talking
4 about hearsay, somebody else's statement. I mean, it's
5 nonresponsive to the question to begin with, so I move to
6 strike those references from Persia -- from Persia Porch's
7 statement.

8 MR. PAULING: Your Honor, I think he was -- he was
9 simply explaining his answer. He asked him a question.

10 THE COURT: He may have been answering the
11 question, but I think he answered beyond what was asked of
12 him.

13 BY MR. AIKEN:

14 Q. Let's talk about the second statement..

15 It looks to me like Miranda was given at 2:19 Pacific
16 Time in the afternoon, is that right?

17 A. That's correct.

18 Q. And I think you said the statement began at 3:39 p.m.
19 and ended at five p.m., is that right?

20 A. My notes have the written statement beginning at 3:39
21 p.m., and the next time noted within my followup after the
22 second statement is 17:18 Pacific Time, which would be 5:18,
23 8:18 here. I made a phone call to Chief Wilson and advised
24 him of what we just found out, the additional information we
25 found out.

1 Q. All right. In the second statement --

2 A. Yes, sir.

3 Q. -- there is reported by you, or maybe it was -- maybe
4 it was Godfrey that did this, but -- who typed this up?

5 A. Sergeant Godfrey did.

6 Q. All right.

7 A. I was present during the questioning, during the entire
8 interview.

9 Q. And one of the questions on page three is, "did you at
10 any time conspire or consult with your brother-in-law Robert
11 Brown about this incident," right?

12 A. Page three?

13 Q. Yes, about the middle.

14 A. That is correct.

15 Q. And then there is also a question further down, "what
16 did you tell Persia occurred during this incident," right?

17 A. That is correct.

18 But if you -- if you notice, the -- that is correct.
19 Those are on there.

20 If you notice in the first statement, you know, the
21 only person that actually makes --

22 I beg your indulgence for just one moment.

23 -- that makes a reference to Persia or the
24 brother-in-law was, in fact, Joshua. And so that interview
25 in between the first statement, the time frame that we spoke

1 with him, in between two o'clock and 15:39, again, we had
2 some dialogue with him, and we are on the second now.
3 Between two o'clock and 3:39, during that time frame, you
4 know, that led to that question.

5 So in answering your question about anything that may
6 have been said prior to making contact with him at 12:30
7 midnight prior to the first statement, you know, that, he
8 came out with Persia in the first statement.

9 And -- you know, unless I'm wrong, I believe that we
10 didn't ask him any questions about Persia in the first
11 statement. We didn't ask him any questions about the
12 brother-in-law in the first statement. It wasn't until
13 after we were on our second interview with him and in our
14 second statement.

15 Q. Yeah, yeah, and that's what you recorded of the
16 interview, right? That's not what actually happened with
17 the recording, so that the jury can verify what actually
18 happened during that interview or during that interrogation?

19 A. I would like to --

20 Q. You just don't have any record of that, do you?

21 MR. PAULING: Objection, Your Honor.

22 THE COURT: You all cannot talk all over each
23 other. So if you ask a question --

24 MR. AIKEN: Well, if he would answer the question.

25 THE COURT: If you ask the question, you need to

1 wait for an answer.

2 And you need to answer the question that's asked.

3 THE WITNESS: Yes, ma'am.

4 A. I wrote the statement. The questions were written by
5 me. The answers were given by him. It was read to him. It
6 was given to him for him to read. He read it. He signed
7 the first statement a total of twenty times indicating that
8 this was, in fact, his statement; that, in fact, these were
9 his words.

10 BY MR. AIKEN:

11 Q. But the only record you have of it is what you wrote
12 down, right; statement number one?

13 A. Corroborated by his signatures.

14 Q. I said the statement number one is all you have that
15 you wrote down concerning what happened --

16 A. And I have my followup, which I will be glad to read.

17 Q. You felt like you had a good rapport with Joshua Porch,
18 didn't you?

19 A. Eventually. Not initially.

20 Q. Okay. But eventually you got to the point where you
21 felt like he didn't feel like that you were a threat to him
22 or anything?

23 A. By the third interview, and I think on the video he
24 said that, you know, he -- that there was some level of
25 affinity, you know, in terms of, you know, he liked us. You

1 know, we kept telling him and I ended it "this wasn't
2 personal." It's never personal.

3 Q. Which is kind of ironic, because you are trying to
4 collect evidence to put him in prison, right?

5 A. We are trying to collect evidence to bring closure to
6 the family.

7 Q. But ultimately that means putting him in prison, right?

8 A. He needs to pay for what he did.

9 Q. Now, let's -- let's talk for a minute about the third
10 interview.

11 A. Yes, sir.

12 Q. Now, during that interview you said to Mr. Porch, "what
13 did I tell you about things that you do when you lie?
14 Didn't I tell you that? You don't want to help yourself,"
15 right? Didn't you say that?

16 A. I did. That was in reference to me reading him the
17 kinesics again. And as soon as I saw one of those signs, I
18 said "no, not that one. What did I tell you about things
19 that you do when you lie," yes, sir.

20 Q. So, in other words --

21 A. In the twenty pieces. He was at nineteen.

22 Q. Right.

23 A. Correct.

24 Q. So what was the twentieth piece? "You had the knife in
25 your hand, Mr. Porch?"

1 A. We were trying -- at that particular point, since he
2 had placed himself on the scene, since he stated he was
3 involved in the struggle and that it was not a -- that he
4 didn't fall on top of her and that he was actually standing
5 up when -- and saw the knife go into her neck, and that --
6 you know, at that particular point, again, the more we get
7 from him, we --

8 You know, I wanted to know if he had something against
9 Nakia and that it wasn't just, you know, the fact that it
10 was an altercation. So I wanted to know if he had -- if he
11 actually, in fact, went in there and stabbed her, you know.
12 I mean, it's not uncommon for us to try to -- to try to see
13 if there is -- if there is additional that he's leaving out.

14 Q. Ultimately in the third interview Godfrey asked him
15 that question directly, right?

16 A. He did, I believe.

17 Q. And I think Joshua Porch said no, didn't he?

18 A. He did, but, that -- that -- you know, the question
19 about his sexual preference was actually asked, because I
20 wanted to see if maybe he was attracted to Justin and had a
21 problem with Nakia, you know, and that -- you know, and did
22 that cause the altercation.

23 And so at that particular point -- in the interrogation
24 at that point, at that particular point we were still trying
25 to see what the motive was. "We know -- "you put yourself

1 there. You are involved in the struggle. You witness --
2 "you know, you witnessed her get stabbed in the neck. You
3 admit to striking her multiple times." All that has changed
4 from when Randy Strange, in 2006, "I wasn't there." So now
5 we are reaching for more to see if there is more. That's
6 not uncommon during any interrogation.

7 Q. But what you are telling him is "tell me the truth.
8 Help yourself," right?

9 A. "Tell us the truth."

10 Q. "And help yourself"?

11 A. Morally he would be helping himself.

12 Q. Now, ultimately you get to the point where you are
13 talking about the car, the --

14 A. The --

15 Q. -- vehicle of Mr. Porch?

16 A. The car?

17 Q. Which I believe was a jeep, right?

18 A. I believe it was.

19 Q. Okay. And you said, "so you would indulge me for a
20 moment, because the next thing that comes out of your mouth
21 I would like to know the truth, and it needs to marry up
22 with what we found in your car," right? You said that?

23 A. Right, what -- if I can have what you are reading off
24 of, I might --

25 Q. Sure. It's a transcript of the tape.

1 A. Thank you.

2 Q. I'm not trying to crowd you here. I" m --

3 A. Oh, no, you are fine.

4 Q. Right here.

5 "So if you would indulge me for a moment, because the
6 next thing that comes out of your mouth I would like to know
7 the truth and it needs to marry up with what we found in
8 your car," right?

9 A. That is correct.

10 Q. And you found nothing in his car, didn't you?

11 A. He admitted to cleaning his car.

12 Q. But the fact remains you told him about evidence -- you
13 alluded to evidence from his car, and there was no evidence
14 from his car?

15 A. During the time of that questioning we were, in fact,
16 trying to run down, to re-test his car. Investigator
17 Godfrey, as well as Chief Wilson, who were in contact with
18 South Carolina at the time, because, again, he was giving us
19 additional information in between the first time we made
20 contact with him up and to this particular third interview
21 and we were trying to run down that, you know, if there was
22 any possible way that we can re-test that car, now that we
23 have information from him that he cleaned it with bleach.

24 Q. So -- but it says "it needs to marry up with what we
25 found in your car." At that point you had no evidence from

1 his car, did you?

2 A. At that point, no, we didn't.

3 Q. So you lied to him?

4 A. Yes, that was a stretch.

5 Q. That was a straight-up lie?

6 A. That's -- that was.

7 Q. That's real moral of you, investigator, isn't it, to

8 lie to the guy?

9 A. It's not unlawful to do that. You know, we -- you

10 know, we are dealing --

11 Q. So we are talking about morality, aren't we?

12 A. We --

13 Q. You were talking about morality.

14 A. I was. I was. I did tell him that it needs to marry

15 up with what we have in his car, with the hope of him

16 actually telling us that -- okay, additional information.

17 That's what we are looking for.

18 Again, we are dealing with someone that sat through two

19 trials, you know --

20 Q. All right.

21 A. -- and knew what we had and what we didn't have.

22 Q. You also said this. "Describe the bleeding for me.

23 Did it come out slow? What did you see? It was an artery.

24 Do you understand that? What did you see?"

25 A. If I may take a look?

1 Q. Sure, be happy to.

2 Right here.

3 "Describe the bleeding for me. Did it come out slow?
4 What did you see? It was an artery. Do you understand
5 that? What did you see?"

6 "It did."

7 A. Right.

8 Q. Now, you knew at that time it wasn't an artery, didn't
9 you?

10 A. I did not know.

11 Q. You did not know? You didn't review the case file
12 closely enough to determine that the wound was actually to a
13 vein?

14 A. I did not know. I actually made an assumption that
15 because of all the blood that was on the scene, that it
16 was -- you know, I'm not a doctor. I just made an
17 assumption that that's what it was. It was a lot of blood.

18 I did -- just based on my experience and working
19 homicides, you know, I did make what I would like to be a
20 safe assumption that there was some blood that got on the --
21 on Joshua Porch, and that's what I was trying to gather.

22 "Did blood get on you during the stabbing? And if so,
23 what side of you did it get on?"

24 And I think in the video he indicates that it was on
25 the left side of him, and that --

1 You know, I even said that it came out slow. So
2 clearly I don't know. If -- and I asked him to describe it,
3 you know, asking for his description of how the blood came
4 out, and he admitted to seeing it go in and he --

5 I think if you read on in what you are referring to, he
6 gives a description as it pertains to what he saw, and he
7 describes how it came out. It fell on his shirt, what he
8 did with his shirt and thereafter.

9 Q. And then the discussions of Persia and Robert Brown,
10 the brother-in-law. "You are telling me exactly what
11 happened with your brother-in-law or your wife does not
12 necessarily mean they will have to pay for what you involved
13 them in, but you do realize at some point a lot of that is
14 going to come into place," correct?

15 A. Again, I explained to him that "we were going to have
16 to follow up with this information you have given us now as
17 to where you went right after; who did you ask to help you
18 with the bleach or to get bleach from to clean the car. We
19 have to follow that stuff up, because we know that
20 eventually this day will come."

21 Q. And you also said "and you know we talked to your
22 brother-in-law. Didn't we tell you that? Isn't that
23 right?"

24 A. I'm sorry?

25 Q. Okay. I will be happy to come back up.

1 A. Thank you.

2 Q. It says "and you know we talked to your brother-in-law.
3 Didn't we tell you that? Isn't that right?" You said that?

4 A. Was that from me?

5 Q. Yes.

6 A. Okay. I just want to make sure.

7 Q. It says McDaniels, okay?

8 A. I'm sorry.

9 Q. Go ahead.

10 A. I said "and it's important for you to be honest now."
11 His answer was "yes, I cleaned the car."

12 Q. Right.

13 But when you said you had talked to Joshua Porch's
14 brother-in-law, that wasn't true, was it?

15 A. We were in the process of trying to make contact with
16 anyone and everyone that could help us out with who he asked
17 for assistance in cleaning that car.

18 Q. All right. But --

19 A. We were -- we were all working it from South Carolina
20 to California.

21 Q. Well, I understand, but at the point that you had this
22 interrogation with Joshua Porch, it was not, in fact, true
23 that you had spoken to his brother-in-law, was it?

24 A. I didn't speak to his brother-in-law, no.

25 Q. All right. But -- so it wasn't true?

1 A. No, that -- I didn't speak to him.

2 Q. That was a lie?

3 A. I didn't speak to his brother-in-law, no.

4 Q. So that was a lie?

5 A. I didn't speak to his brother-in-law.

6 Q. Have you ever spoken to his brother-in-law?

7 A. I never spoke to his brother-in-law, no, sir.

8 Q. So it was a lie?

9 A. (No response).

10 Q. That's a question.

11 A. I didn't speak to his brother-in-law, but I was under
12 the impression that we, as in law enforcement, were in the
13 process of speaking to him.

14 Q. And then I believe --

15 A. Or making an effort to do so.

16 Q. And I believe below that you say "all right. Well, we
17 got him too," referring to --

18 A. I did say that.

19 Q. Okay. And then Mr. Porch says "you arrested him?"
20 That was his question, right?

21 A. And my answer was "no".

22 Q. And you said "no, no, but you cannot tell half the
23 truth. Your story doesn't match his. Do you understand
24 that?

25 "Now, as far as your brother-in-law is concerned, I'm

1 trying to prove his story as well. What did you discuss
2 with him?"

3 A. I wanted him to believe that we were giving additional
4 information and that -- in an effort to get information from
5 him. I did want him to believe that, that we were getting
6 everything together and that what he thought was hidden in
7 the first two trials was now out and that, you know, we
8 needed him to be honest now.

9 Q. But you were telling him the brother-in-law was in
10 trouble, right?

11 A. I told him that we had talked to the -- if I may?

12 Q. Yeah.

13 A. "And you know we talked to your brother-in-law. Didn't
14 we tell you that?"

15 His answer was "no".

16 "All right. Well, we got him too.

17 "You arrested him?

18 "No, no, but you cannot tell half the truth. Your
19 story doesn't match his. Do you understand that?

20 "Now, as far as your brother-in-law is concerned, I'm
21 trying to prove his story as well. What did you discuss
22 with him."

23 Yes, that was said in an effort to get him to give us
24 information as it pertains to the car.

25 Q. So Mr. -- when you were discussing things with Mr.

1 Porch, you represented to him that you were trying to prove
2 his story, right?

3 A. During the third interview, that's -- that's -- oh,
4 yes, definitely. And we were trying to prove Joshua Porch's
5 story about the accident, is why after the first interview
6 and the first statement we went back to him and asked him
7 questions; "okay, you know, how did these bruises happen?
8 You know, your story isn't marrying up."

9 And in the third interview you will hear me say that "I
10 went on a mission for you." He asked us to prove that it
11 was an accident. I told him that I would. That if it was,
12 in fact, an accident, I don't want that on my conscious.
13 It's already on my conscience that Justin Mallory went to
14 jail and I had nothing to do with that. But to be brought
15 into this by Chief Wilson, you know, we had a job to do, and
16 that was to find out the truth. It's not personal. He
17 wasn't threatened. It was our job to just find out the
18 truth.

19 Q. Okay.

20 MR. AIKEN: If I could have just a moment, Your
21 Honor?

22 (Off the record)

23 (Back on the record)

24 BY MR. AIKEN:

25 Q. Now, you, as the lead investigator, have been allowed

1 to sit through the whole trial, right?

2 A. That is correct.

3 Q. But the other witnesses have been sequestered, correct?

4 A. They were.

5 Q. Okay. Now, if Mr. Porch was a witness at the first two
6 trials, he would have been sequestered as well, correct?

7 A. I -- I can't make that assumption. I don't know if he
8 was sequestered, or if he would have been sequestered. I
9 don't know that answer.

10 Q. Okay. Now, in the second statement when you were
11 talking about the injuries to Ms. Mallory, you actually
12 brought pictures with you, didn't you?

13 A. We did.

14 Q. And you showed those to Mr. Porch during the
15 interrogation?

16 A. That is correct.

17 Q. So he knew full well exactly what the wounds were,
18 right?

19 A. He knew from the first two trials.

20 Q. Well, you just said you didn't know whether he was
21 sequestered or not.

22 A. I don't know, but I mean --

23 Q. So you don't really know if he sat through the trials,
24 do you?

25 A. I'm quite sure he was prepared.

1 Q. But you don't know that?

2 A. I don't know.

3 Q. You don't -- you just don't know? You have a hard time
4 saying "I don't know," don't you?

5 A. You are asking me a question?

6 Q. Yes.

7 A. I don't have a hard time saying "I don't know." If I
8 don't know, then I don't know.

9 MR. AIKEN: Could I have a moment, please, our
10 Honor?

11 A. Sure.

12 (Off the record)

13 (Back on the record)

14 BY MR. AIKEN:

15 Q. Now, the third interrogation actually started about
16 11:00, 11:30 a.m. on the 10th of July, right?

17 A. If I may refer to my notes?

18 About eleven.

19 Q. All right. And when did -- when did your interrogation
20 on the videotape start?

21 A. On the videotape?

22 Q. Yes. Yours on the videotape, when did that start?

23 A. Approximately six hours later.

24 Q. About six hours later?

25 A. Yes, sir.

1 Q. Thank you very much.

2 A. You are welcome.

3 Q. I appreciate your help.

4 A. Yes, sir.

5 THE COURT: Any redirect?

6 MR. PAULING: Just briefly, Your Honor.

7 REDIRECT EXAMINATION BY MR. PAULING:

8 Q. Sergeant McDaniels, you were asked about whether or not
9 that first interview was recorded. Where did that take
10 place?

11 A. Long Beach Police Department.

12 Q. Did they have video recording ability at that point?

13 A. They expressed to me that it wasn't -- if they did have
14 it, it wasn't available me at that hour and at that night,
15 so I don't -- we couldn't use it.

16 Again, I had to check with them for a little bit of,
17 you know, housekeeping rules in terms of the handcuffing and
18 things of that nature.

19 Q. But it wasn't available?

20 A. It wasn't available to us.

21 Q. And, in fact, that first statement was written, isn't
22 that correct?

23 A. That is correct.

24 Q. Why was that?

25 A. We didn't have access to a computer. You know, as I

1 stated, Investigator Mendoza initially did not, you know,
2 answer my phone call when I first made contact with Mr.
3 Joshua Porch, and so we were working with the Uniform
4 Division and they had no real idea as to the case.

5 Q. And that's -- but is that -- well, you just didn't have
6 a computer?

7 A. No, they didn't have access to the computer, the
8 passwords to the computer.

9 Q. Okay. And the second statement, was that typed?

10 A. That was.

11 Q. And why were you able to type it at that point?

12 A. At that time investigators were -- from Long Beach
13 Police Department were there to assist us and we were able
14 to have access to a computer.

15 Q. Okay. And, again, was video recording equipment
16 available at that place at that particular time?

17 A. It wasn't available to us then either.

18 Q. Where did this third interview take place?

19 A. Los Angeles County Sheriff's Department.

20 Q. And, now, was it at that particular location that the
21 video equipment was available?

22 A. That is correct.

23 Q. And so you were able to video this particular
24 interview, is that correct?

25 A. That is correct.

1 Q. Okay. Now, Sergeant McDaniels, let me ask you, is it
2 your common practice when interviewing or interrogating
3 someone to threaten them, or threaten their family members,
4 or friends, or anyone concerned with them?

5 A. No, sir, in all honesty I find that that's -- you
6 respect people.

7 Q. Is that one of your techniques, to threaten them?

8 A. No, sir. No, sir.

9 Q. And did you do that in this particular case? Did you
10 at any point threaten any family member of Mr. Porch?

11 A. Not at all.

12 Q. And there was a question about these notes, these
13 bullet points. The notes that you referred to, were they
14 merged into your followup?

15 A. They were and in more detail. They were what they
16 were. They were bullet points.

17 Q. And so while those bullet points notes have been
18 discarded, they are still in your followup --

19 A. They are.

20 Q. -- is that correct?

21 A. That is correct.

22 Q. And just so I understand, there was some questions
23 about the length of these particular interviews. During the
24 interviews, is the process question and answering for five
25 straight hours?

1 A. No, sir. We -- there are breaks, you know, bathroom
2 breaks, food breaks, water breaks. We are constantly, you
3 know, offering, you know, those opportunities.

4 Q. And is it a situation where you asked a question and
5 there is an immediate answer; asked another question and an
6 immediate answer?

7 A. No, sir.

8 Q. I mean, does the answer come at a varied rate? I guess
9 what I'm saying is if you asked a question in ten seconds,
10 does the answer come back in another ten seconds? Was it
11 that type of situation?

12 A. It depended on the question. You know, some of the
13 questions, you know, the response may have been short. It
14 may have been a brief period of no response.

15 As I stated to you earlier, he -- he had a very distant
16 look on his face, and -- you know, so there -- it's not as
17 repetitious as one may think in terms of question, answer,
18 question, answer, question, answer.

19 MR. PAULING: Beg the court's indulgence.

20 (Off the record)

21 (Back on the record)

22 A. There is often sometimes dialogue as well and some
23 commentary. Some examples given, you know.

24 BY MR. PAULING:

25 Q. Well, let me ask you this, Sergeant McDaniels. We are

1 talking about three different interviews. During any of
2 those interviews did Mr. Porch indicate to you, or
3 Investigator Godfrey at any point, that he was tired, tired
4 of talking to you at all?

5 A. No, sir, not at any given point.

6 Q. That he was physically tired?

7 A. No, sir.

8 Q. Okay. And that he just needed to get some rest? Did
9 he tell that you at any point?

10 A. No, sir.

11 Q. Did he ask you just to flat out "listen, let's stop
12 this interview?"

13 A. He did not, no, sir.

14 Q. But had he done that, what would you would have done?

15 A. We would have stopped the interview.

16 MR. PAULING: Your Honor, may we approach?

17 THE COURT: Yes, sir.

18 (Whereupon, the lawyers approached the bench for
19 an off-the-record discussion)

20 THE COURT: Ladies and gentlemen, we have a matter
21 which we need to take up outside of your presence. I'm
22 going to ask that you retire to the jury room and not to
23 discuss the matter further, as you certainly have not heard
24 any -- you have not heard all the evidence that has to be
25 presented. As soon as we finish with this legal issue we

1 will bring you back into court.. Thank you.

2 (The following takes place outside the presence of
3 the jury panel).

4 THE COURT: Mr. Pauling, do you want to place on
5 the record what your concern is?

6 MR. PAULING: Your Honor, the State's concern is
7 for the last question that Art Aiken asked Sergeant
8 McDaniels on cross-exam about the timeline, as far as when
9 his interview started and when Mr. Porch had arrived at the
10 police department.

11 The issue we have is, Your Honor, in pretrial
12 rulings we are not allowed -- there is not to be any mention
13 of Roberta Cohen, or the fact that Mr. Porch submitted to a
14 polygraph which was in this -- it's a five or six hour
15 window that's been referred to.

16 The State's position that in asking that question
17 defense has opened the door for us to at least discuss the
18 fact that he was interviewed by another individual with the
19 L.A. County Sheriff's Office during that time period.

20 The issue we have, though, is that it was the
21 actual polygraph exam. We think we should be able to go
22 into the fact that even during that period of time there was
23 no, I guess, change from his previous statements -- there
24 were the two statements that were given pre-polygraph and
25 then the final statement, the video statement that was shown

1 yesterday to the jury. For us not to be able to explain
2 that, that time period, for the jury it looks like that, or
3 it could look like to the jury, that this other individual
4 spoke to Joshua Porch for this period of time, not knowing
5 what was stated, what was the nature of the conversations,
6 and that's what led to this last statement taken by Sergeant
7 McDaniels and Investigator Godfrey.

8 It's our understanding that there would be -- you
9 know, we wouldn't go into -- there wasn't to be any mention
10 of a polygraph at all. Obviously Sergeant McDaniels and
11 Officer Godfrey were not involved -- and obviously we are
12 not even talking about a time frame where they assisted her
13 during the polygraph. You know, the question was "well,
14 when did your interview -- "when did you get -- "when did
15 you interview start", and there is this five or six hour gap
16 in time. To the jury it looks like, well, Investigator
17 Godfrey and Sergeant McDaniels, you know, on their own were
18 speaking with Mr. Porch for this entire period of time and
19 then all we have is this video portion, which was shown to
20 the jury. So there is that big question mark for the jury
21 as to what happened during that time period. It's the
22 State's position we should be able to explore that. I mean,
23 they have opened the door to that, Your Honor.

24 THE COURT: Yes, sir, Mr. Shealey.

25 MR. LUKE SHEALEY: Your Honor, the parameters of

1 this discussion or this video has now been admitted into
2 evidence. Originally in pretrial was that the State never
3 sought to admit any portion of Cohen's testimony. They knew
4 they had a problem. She's not here.

5 They sought to admit the final hour interview with
6 Godfrey and McDaniels, and the whole discussion and the
7 objection from the defense was, well, can you do this
8 without Cohen, number one? Is there a Crawford violation.

9 You have a hearsay issue with the actual advise of
10 rights that we thought they were going to introduce from the
11 Cohen testimony, which they have subsequently, based on your
12 ruling, decided to introduce the first interview's advise of
13 rights to get around that issue, but it was never a question
14 of them seeking to introduce Cohen, which we thought was
15 very appropriate on their part, so we didn't take that up.
16 But never in any of your rulings was it my understanding
17 that because a government witness -- now, whether she's
18 under their control or not, yes, she's not from South
19 Carolina. She's not a resident. She fought her subpoena
20 and successfully won, but she is a government witness who
21 interrogated our client for six and a half hours, in
22 addition to doing a polygraph, which is -- it's a test, but
23 it's also interrogation, and then she admitted that on the
24 witness stand in pretrial. For us to not be able to explain
25 that he was left with her on July 10th for six and a half

1 hours -- and we don't plan to go into all the details. We
2 don't think that's appropriate, but for us to not explain
3 that he was questioned by an officer for that long prior to
4 giving this final somewhat over an hour long video recorded
5 statement to Godfrey and McDaniels completely allows us
6 to -- or does not allow us to tell a complete and full
7 defense, when this is clearly one of false confession from
8 the defense standpoint. The timeline of interrogation is a
9 huge factor as a risk assessment for false confession.
10 So -- and I just didn't bring it up, because I thought --
11 maybe I misunderstood Your Honor, because I thought it was
12 clear that although she wouldn't testify, they weren't
13 seeking to introduce her evidence, clearly we have all
14 stipulated polygraph talk cannot come into play here as to
15 whether he's given a polygraph, whether Mr. Mallory was
16 given a polygraph, but to say that we are not allowed to
17 discuss this huge chunk of the largest interrogation, it
18 would be fundamentally unfair, violate his due process
19 rights to a fair trial.

20 So what I think we should do, and if we can
21 fashion this, and I'm sure we can, is to simply say -- and
22 if he wants to get it out through McDaniels here on
23 redirect, "you know, look, you weren't the only person
24 talking that day. This was the Los Angeles Sheriff's
25 Department where this was recorded. You know, he was

1 interviewed," if they want to use that word, you may use the
2 word interrogate, "by a detective with that department prior
3 to your interview?

4 "Yes.

5 "And that interview, approximately how long did
6 that last?"

7 "Typical," he can testify to that, but they have
8 to know. This is --

9 THE COURT: Well, this is -- this is -- and, of
10 course, you know, at the time that we did the pretrial, I
11 mean, it was fully anticipated that Roberta Cohen would be
12 present for trial and that she would be able to testify, not
13 to the polygraph, but at least to whatever conversations,
14 interrogation, or interview that she had with the defendant
15 before the polygraph. And based upon her testimony at that
16 particular time those statements would have been allowed
17 into court.

18 Because she's not present, and she's not present
19 because the California court ordered that she not be
20 present, I agree that the six hour, or six and a half hour
21 time period is relevant for purposes of the defense. But I
22 think you also have to balance that with what prejudice it
23 may have to the State as well.

24 If, in fact -- and I presume that it's supported
25 based upon what I saw in the video when Cohen testified,

1 that neither Godfrey nor McDaniels were present in the room
2 at the time that she interviewed him. I have no problem
3 with there being the testimony that he was interviewed by
4 someone in the Los Angeles Sheriff's Department for a period
5 of time outside the presence of these two gentlemen, who
6 would, therefore, be unable to testify what we went on.

7 Additionally, to answer the question of well, why
8 isn't she here, I think it's appropriate to at least
9 instruct the jury or have more testimony to the fact that
10 she's outside South Carolina, that a subpoena was sent to
11 her and that a California court determined that she did not
12 have to appear at trial --

13 MR. LUKE SHEALEY: Yes, ma'am, I have no problem
14 with that.

15 THE COURT: -- to give live testimony.

16 And that way, if, in fact, there is no discussion
17 about his statements to her and whether or not they were
18 consistent or inconsistent, I'm not so sure that you really
19 have to explain the fact that any statements that he made to
20 her were either consistent or inconsistent with later
21 statements.

22 MR. GOINGS: And, Your Honor, I guess the only
23 problem we have with that is there is -- if that's the
24 ruling, there is no provision that defense in the closing
25 to, as part of their false confession strategy, is to go "we

1 don't know what happened during that six and a half hours"
2 to the jury. "He could have been threatened. They didn't
3 bring them here to testify and let us know what happened."

4 THE COURT: They are not going to be able to make
5 those arguments. They are not going to be able to make the
6 arguments that he was threatened by her, that he was
7 promised or offered anything, or -- because there is
8 absolutely no testimony as to what occurred.

9 And so they may be able to discuss the time period
10 and the fact -- if, in fact, the false confession testimony
11 is that the length of the interrogation is a factor, then
12 that may be a factor, but they will not be able to make any
13 assertions or make any inferences as to what took place at
14 all with any interview with Roberta Cohen, and that means if
15 the defendant decides to testify in this particular case, he
16 would not be able to discuss that either.

17 MR. LUKE SHEALEY: We wouldn't seek to make any
18 inferences from a witness who hasn't testified. That
19 doesn't happen.

20 THE COURT: I'm just saying, you know -- you know,
21 get worked up and they say things sometimes that can be
22 construed differently.

23 MR. GOINGS: I beg the court's indulgence.

24 (Off the record)

25 (Back on the record)

1 MR. GOINGS: Your Honor, the only thing that we
2 are debating over here is -- I understand the ruling that
3 it's relevant as to the length of the interrogation process
4 before McDaniels and Godfrey came back in the room, which
5 goes to the false confession.

6 I guess the only problem we are having
7 reservations with right now is the fact that there would be
8 no testimony as to the -- from what I gather, that we are
9 not allowed to ask him about was he given breaks during that
10 six and a half hour interview, or question about that, or --

11 THE COURT: I think -- I mean to the extent that
12 they escorted him out for a cigarette break, or they
13 escorted him to the restroom, or -- you know, I think -- I
14 think that's okay, because they were present when that
15 occurred. You know, to the extent that, you know, that they
16 participated in ordering food, or whatever, I think that
17 that's fair.

18 (Off the record)

19 (Back on the record)

20 MR. GOINGS: Thank you, Your Honor.

21 MR. LUKE SHEALEY: I'm going to the next issue,
22 judge, and --

23 THE COURT: Wait a minute before we get there.

24 MR. LUKE SHEALEY: I thought they were done.

25 MR. PAULING: Yes, sir.

1 MR. LUKE SHEALEY: Your Honor, this is not a false
2 confession issue. This is -- again, I objected to the video
3 aspect, which I sought to be redacted before we admitted to
4 talking about questions about Mr. Porch's sexual preference,
5 questions about him being a child molester, whether he
6 thinks like that, whether he struggles with that. And,
7 again, Sergeant McDaniels being nonresponsive to Art Aiken's
8 questions began talking about his sexual preference and went
9 on for a little bit there about whatever it was he was
10 talking about, but --

11 THE COURT: I think he indicated why he asked one
12 particular question and the relevance that he thought that
13 it brought with respect to the interrogation, and I'm
14 presuming -- and I'm ordering that to be the end of it.

15 MR. LUKE SHEALEY: Well, what I'm going to -- and
16 so I'm just going to put this for the record. I don't
17 imagine you are going to grant my request, but it has no
18 place in this trial. It's not an issue. It doesn't go to
19 the truthfulness. It has nothing to do with motive. It
20 all -- it is not relevant under 401. It's more unduly
21 prejudicial under 403. It's bad character under 404, and I
22 ask for a mistrial.

23 THE COURT: And I would disagree as a potential
24 for motive, because the way -- the way it was explained by
25 the witness on the witness stand was, "you know, I asked the

1 question to determine whether or not there was any interests
2 to see whether -- to see if, in fact, there were something
3 against Nakia Mallory in some -- harboring some ill will
4 against her, because it could have been some attraction to
5 Mr. Mallory. And I think that's the only way it's relevant
6 and that's the only way it's allowed in. Otherwise, it's
7 not relevant, and it shouldn't -- otherwise it's not to be
8 dwelled upon. I think it is relevant in that context and it
9 is appropriate in that context and that was it.

10 If it happens again, we can talk about it again.

11 MR. LUKE SHEALEY: Thank you, Your Honor.

12 THE COURT: While we have got the jury out, let's
13 go ahead and take a break.

14 Sergeant McDaniels, again, you may not discuss
15 your testimony with anyone as you have not concluded it, so
16 it would be inappropriate for you to discuss it during the
17 break.

18 THE WITNESS: Yes, ma'am.

19 MR. LUKE SHEALEY: Your Honor, in terms of
20 scheduling, I don't know if there is a whole lot longer with
21 Sergeant McDaniels, but in terms of the next witness, I
22 imagine we are going to have -- Mr. Goings is going to
23 challenge the testimony of false confessions, generally, and
24 we will have a little discussion about that, but I guess
25 that's to be outside the presence of the jury, obviously,

1 right now either, and it doesn't have much bearing on
2 whether our expert testifies out of order.

3 THE COURT: All right, I have noted your
4 objections.

5 Let's bring the jury in and finish with this
6 particular witness and then we will go from there.

7 Which court citation do you have for --

8 MR. GOINGS: 385 S.C. 274.

9 THE COURT: 385?

10 MR. GOINGS: Yes, ma'am.

11 THE COURT: S.C.?

12 MR. GOINGS: 274.

13 THE COURT: 274.

14 MR. GOINGS: Yes.

15 THE COURT: Court of Appeals?

16 MR. GOINGS: I don't have the case in front of me,

17 Your Honor.

18 (The following takes place in the presence of the
19 jury panel)

20 THE CLERK: The jury is here, Your Honor.

21 THE COURT: Yes, sir.

22 MR. PAULING: Thank you, Your Honor.

23 BY MR. PAULING:

24 Q. Sergeant McDaniels --

25 A. Yes, sir.

1 Q. -- you were asked on cross about that third statement
2 or the time difference regarding that third statement.
3 Prior to you and Investigator Godfrey getting that third
4 statement from Mr. Porch, was he interviewed by a member of
5 the Los Angeles Sheriff's Department?

6 A. Yes, he was.

7 Q. Okay. And was it during that particular time frame
8 that he was interviewed by that individual?

9 A. The six hours prior, yes.

10 Q. Okay. And it was after that that you got that third
11 statement, is that correct?

12 A. That is correct. He was also offered throughout the
13 six hours the opportunity to go to the bathroom, get
14 something to drink. And also we purchased a sandwich from a
15 local sandwich shop in Los Angeles.

16 Q. Did you -- did you assist with that?

17 A. Yes, we did.

18 Q. Okay. Thank you.

19 MR. PAULING: No further questions, Your Honor.

20 MR. AIKEN: No recross, Your Honor.

21 THE COURT: You may step down. Thank you.

22 And, counsel, as I understand it, there are some
23 scheduling issues that will require to take a witness out of
24 order?

25 MR. LUKE SHEALEY: Yes, Your Honor.