

STATE OF SOUTH CAROLINA
In The Court of Appeals

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S.C. Supreme Court

APPEAL FROM LEXINGTON COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KENNETH ANDREW LYNCH,

APPELLANT

APPELLATE CASE NO. 2012-212547

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT'S ARE ON FILE WITH THIS COURT:

STATE'S EXHIBITS # 7 - # 17 (PHOTOS OF APARTMENT), STATE'S # 120 - 122 (PHOTOS OF MEDICINE), STATE'S # 129 (PHOTOS OF CLOTHES IN CLOSET), STATE'S # 130 (PHOTOS OF TOILETRIES), STATE'S # 131 (PHOTOS OF CLOTHES IN CLOSET), STATE'S # 154 (PHOTO OF BLOOD SPLATTER IN CHAIR), STATE'S # 166 (PHOTO), STATE'S # 179 (PHOTO OF SINK), STATE'S # 181 - # 182 (PHOTOS OF TOOTHBRUSHES), STATE'S EXHIBIT # 202 (PHOTO OF GRANDBABY CLOTHES)

State of South Carolina)
 vs.) Transcript of Record
)
Kenneth Lynch)
 DEFENDANT)

January 6, 2012
Newberry, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., JUDGE.

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(IC) - Denotes In Camera
(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(DW) April Bayne

Direct examination by Mr. McGuire: 5
Cross-examination by Mr. Hubbard: 17

(DW) Robin Taylor

Direct examination by Mr. McGuire: 18
Cross-examination by Mr. Graham: 49
Redirect examination by Mr. McGuire: 51

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E X H I B I T S

Court's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE #</u>
1	Affidavit - April Bayne	X		18

1 THE COURT: Do y'all have a preference to which order
2 to take the motions?

3 MR. MCGUIRE: Judge, I think would be the best use of
4 the Court's time to be as efficient as we can, in order of
5 witnesses the State would call April Bayne first. I have
6 probably got ten question for her tops. And then call
7 Robin Taylor, the SLED DNA analyst. That may be a little
8 bit longer, about thirty minutes on my part. And it would
9 be a combination of a motion to suppress 101 Dalmatians
10 blanket in the DNA testimony regarding some cuttings taken
11 from the blanket. And we object to Mr. Lynch's
12 handwriting samples, fingerprints and DNA being taken from
13 his body or having to give the samples. And the testimony
14 is going to be exact same for both motions.

15 THE COURT: Does that suit y'all to have the
16 testimony first?

17 MR. HUBBARD: Your Honor, that is fine. What we had
18 suggested for our part is with the transcript, what we had
19 already presented under oath. We are fine with that. We
20 have got the witnesses available. If he wants to call
21 them and recross them with additional information.

22 THE COURT: Fair enough.

23 MR. HUBBARD: Does Your Honor have a copy of the
24 transcript?

25 THE COURT: I have got three boxes of stuff from

1 Judge Barber. I myself personally have not inventoried
2 the entire box. If that is what Judge Barber had I do
3 have it.

4 MR. HUBBARD: Yes, sir. I will pass up a copy of the
5 transcript, Your Honor. If Your Honor doesn't mind maybe
6 perhaps at the end if we can get it back just so we make
7 sure we don't lose it too.

8 THE COURT: Okay. All right, let's call the
9 witnesses first. Call your first one.

10 MR. MCGUIRE: Judge, we call April Bayne.

11 APRIL BAYNE, being
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 By Mr. McGuire:

15 Q Ms. Bayne, where are you employed?

16 A I am currently employed at the Eleventh Judicial
17 Circuit Solicitors Office.

18 Q Back in 2006 you were a police officer with West
19 Columbia?

20 A I was.

21 Q And you are the lead investigator in the case against
22 Mr. Kenneth Lynch?

23 A Yes.

24 Q That case started as a missing person's case, is fair
25 enough to say?

1 A Yes.

2 Q You got a phone call from a woman saying that she
3 hadn't talked to her daughter and she talks to her on a
4 pretty regular basis, is that how it started?

5 A Actually I got a phone call from the Captain of
6 investigations saying that a report had been filed earlier
7 in the day on a missing person's case. He had seen some
8 red flags in it and wanted me to go back into work. It
9 was after 5:00 o'clock when he called and wanted me to
10 come back to work and start an investigation.

11 Q Okay. And it pretty much started with what is called
12 a safety welfare check at the apartment where the person
13 lived?

14 A Yes, that is correct.

15 Q And we are talking about Portia Washington and
16 **Cassandra L. [REDACTED]** and Mr. Kenneth Lynch?

17 A Their apartment, yes.

18 Q Yes. Those are the three people that lived in that
19 apartment?

20 A Yes, to our knowledge.

21 Q And you got access to the apartment on what date,
22 June in '06?

23 A I think it was June the 14th. Let me double check
24 that.

25 Q And I am talking about the entry with the manager and

1 the apartment manager's key.

2 A Yes, that was June 14th at 17:00.

3 Q And what did the safety welfare check reveal?

4 A That no one was in the apartment.

5 Q No signs of foul play?

6 A Nothing that we saw.

7 Q Basically everything was in order, nothing rifled
8 through, no furniture overturned?

9 A There was some furniture that, I guess technically
10 you call it overturned the chairs. There was a kitchen
11 area and the kitchen dinette area there was a table and
12 all of the chairs, three of the four chairs were flipped
13 up on top. Nothing to indicate some sort of massive
14 struggle or flipped over beds or dressers or anything like
15 that.

16 Q No blood detected by the naked eye or anything like
17 that?

18 A Not that I readily saw.

19 Q Okay. And when you saw the chairs were up on the
20 table it is kind of like when you go into restaurants and
21 it is closing time and they stack the chairs on the table
22 like that?

23 A Correct.

24 Q Okay. And at some point there was another search of
25 the apartment without a warrant. What day was that?

1 A Another search without a warrant?

2 Q Yes.

3 A When we went in there it was with a search warrant,
4 pursuant to a search warrant at the SLED crime scene, June
5 20th. Yes, the next time I entered the apartment from my
6 notes states June 20th pursuant to a search warrant from
7 SLED.

8 Q On the safety welfare check it was more than just
9 going in and looking around, there were photographs taken.
10 Is that true?

11 A What do you mean by that?

12 Q Did you or did somebody with you take photographs of
13 the apartment at the safety welfare check the first time
14 you went in the apartment?

15 A Yes, I did.

16 Q And what was the purpose of taking the pictures?

17 A That is mainly for a liability reason. We were in
18 someone else's home, even though we had the permission of
19 the manager we generally document how we left that
20 apartment so that, you know, later on if there are claims
21 that we stole something while we were in there or left the
22 house in disarray or whatever purposes we just document
23 that for liability reasons.

24 Q Now this search was obviously without a warrant. Can
25 you tell the Judge the extent of that search. What did

1 you do to go in and search?

2 A We basically explained to the apartment manager that,
3 you know, we have got some unusual circumstances. We have
4 got a missing young girl, we have got a missing
5 grandmother. Nobody has seen or heard from Mr. Lynch as
6 well. We have got some concerns, we don't know, the
7 family hasn't seen or heard from them in days, very
8 unusual. The apartment manager in fact told me that any
9 time Ms. Washington would leave town she would give some
10 sort of notice so they could check her mail. The manager
11 hadn't gotten any information and it had been about four
12 days at that point. So with the manager's permission we
13 went to make sure there was no one in there that needed
14 some immediate safety or help that needed to be addressed.

15 Q And specifically what did you do when you searched
16 the apartment?

17 A Went in all the rooms to make sure there wasn't
18 someone there, checked to see if there is any, you know,
19 body parts or any horrible thing that happened or somebody
20 that needed assistance.

21 Q What about opening drawers or anything like that?

22 A We opened the refrigerator. There were a few things
23 we opened just to make sure that, you know, there weren't
24 any suitcases out that looked like had been packed. In
25 the bedroom there was a breathing machine beside the bed

1 but was left there. To us that kind of indicated there
2 was no planned trip that we were aware of. We looked at
3 the medications that were laying out, documented those to
4 further assist if this is the person who is missing. A
5 lot of times we need to know from the family, we need to
6 know as much as we can about the medical history, if they
7 are diabetic, if they need insulin, those kinds of things.

8 Q I believe the report indicates there was some
9 medicine left on the counter, prescription medicine?

10 A Correct.

11 Q And did you take down, did you document and tell what
12 it was for?

13 A I did. Because a lot of those names on the medicines
14 I didn't recognize. So I just wrote them down so that I
15 could go back and talk with the doctors or look up that
16 medication to see if it was something that somebody would
17 have to have.

18 Q Okay. Fair enough. I am going to switch gears a
19 little bit here and talk to you about the State's request
20 for handwriting exemplar. You have a couple of things
21 with some handwriting in your evidence. A receipt from a
22 hotel in Vicksburg, Mississippi?

23 A Correct.

24 Q A receipt from a hotel in Arizona?

25 A Correct.

1 Q And is there anything else?

2 A We have lots of things with handwriting that is
3 believed to be the defendant. Is that what you are
4 asking?

5 Q Well, what do you want to compare a handwriting to?

6 A Well, we have got a lot of things with his signature
7 on it. His drivers license, rental agreements,
8 particularly the receipts that you mentioned from the
9 hotel. We have a lot of things in evidence that contain
10 his signature, what we believe to be his signature.

11 Q So you have some things, some records that have
12 samples of his handwriting already?

13 A We have a copy of his identification I believe. We
14 have got what we think is his book card. I will have to
15 go back through all the evidence. I know we have a lot of
16 items that we found of his and we found through the search
17 warrants with.

18 Q Okay.

19 A What we believe to be his signature.

20 Q And my understanding is is that the two things that
21 you really want to compare are the two hotel receipts?

22 A Yes, we do want to compare those.

23 Q And those were found on Mr. Lynch when he was
24 arrested?

25 A Correct.

1 Q And you want his handwriting exemplars to prove that
2 somebody else didn't write those receipts and then plant
3 them on him?

4 A Well and he did state to the FBI that he was
5 traveling across the country and mentioned several
6 State's. So we wanted to make sure that it was in fact
7 him that checked into those hotels and it wasn't somebody
8 else using his name.

9 Q But now he does use his name when he checks into the
10 hotel, correct?

11 A Correct.

12 Q And you have interviewed the hotel clerks, right?

13 A Yes.

14 Q And they don't identify anybody other than Mr. Lynch
15 checking in or writing--

16 A I am sorry?

17 Q Do they identify anybody else other than Mr. Lynch
18 being with him or checking in or writing any information
19 down?

20 A They did not see anybody else that they were aware of
21 that checked into the hotel.

22 Q And again, these two receipts were found on Mr. Lynch
23 when he was arrested?

24 A Correct.

25 Q I want to talk to you a little bit about a comforter

1 that was eventually seized in evidence pursuant to a
2 warrant. There is a 101 red Dalmation, 101 Dalmatians red
3 in color comforter that was seized from a bedroom. Is
4 that correct?

5 A I believe so, let me double check the evidence sheets
6 for that.

7 Q There is a room with a bunk bed?

8 A There was a room with bunk beds in that apartment.
9 There were several things taken into evidence. I wanted
10 to make sure what we are talking about.

11 Q Sure, take your time.

12 A I have two comforters that were placed into evidence.
13 Is there a specific one you were talking about?

14 Q The red 101 Dalmatians comforter recovered from the
15 room with the bunk bed.

16 A I have item number 15.6.1.

17 Q That is it.

18 A Okay.

19 Q Do you have a recollection of that?

20 A I do.

21 Q Do you remember seeing that?

22 A I do remember seeing that.

23 Q Okay. Do you know the history of that and what I
24 mean specifically is do you know when it was purchased,
25 when it was brought into the home?

1 A No, I do not.

2 Q How long they owned it?

3 A No, I do not.

4 Q How often it was washed?

5 A No, I do not.

6 Q When it was last washed?

7 A No, I do not.

8 Q And you have not asked anybody those questions?

9 A The information that we have from the family is that
10 Ms. Washington would clean her house pretty thoroughly
11 every Sunday, once a week. But they could not provide me
12 details on exactly what she did every Sunday.

13 Q In the early stages of this case there was swabbings
14 taken and submitted to SLED and SLED was giving you
15 information regarding the findings, is that correct?

16 A Which swabbings are you talking about?

17 Q Specifically cuttings from the carpet, swabs from a
18 green chair in the living room.

19 A Well, from the master bedroom there was a green chair
20 and there were swabs taken from that, yes.

21 Q If I remember correctly the last time you testified
22 it was your understanding that the SLED DNA analyst was
23 stating that the DNA profile from, taken from those
24 cuttings is consistent with an offspring of Teresa Brown.

25 A A daughter of Teresa Brown.

1 Q Daughter of Teresa Brown?

2 A Correct.

3 Q You recall that?

4 A Yes.

5 Q And you also testified that Teresa Brown only had one
6 daughter, correct?

7 A At that time we were aware of, yes.

8 Q And based on the fact that the DNA profile was
9 consistent with the daughter, she only had one daughter
10 you interpreted that as the DNA matched Angelica?

11 A That is one way of putting it, yes.

12 Q Well, is that the way you would put it?

13 A I would, as a lay person I would say it is a match
14 that reports that is consistent with however, whatever
15 terminology you would like to use.

16 Q You understand there is a difference between the two,
17 saying DNA, a DNA profile or DNA samples consistent with
18 say the Court Reporter being a contributor and it is
19 different if you say this DNA profile matches the Court
20 Reporter. Do you understand the difference?

21 A Well no, I don't specialize in DNA.

22 Q There were samples taken from Portia's mother and
23 Teresa Brown, Portia's daughter and mother of Angelica,
24 correct?

25 A Yes.

1 Q And there was no father sample taken. Tell me why
2 that was?

3 A The father to Angelica was no longer living and the
4 same was true for Portia's father.

5 Q So there was an effort made to try to get that which
6 is not possible?

7 A Correct.

8 Q So as lead investigator in this case you have also
9 been in contact with law enforcement officials in Seattle,
10 Washington?

11 A Yes.

12 Q That is the agency that seized the car at issue?

13 A Yes.

14 Q The Ford Focus, I believe?

15 A Yes.

16 Q And their crime scene unit inspected the car?

17 A They seized it and then towed it and then held it in
18 a garage. Our SLED crime scene analyst actually flew out
19 to Seattle and processed it.

20 Q Okay. I don't have any information in discovery that
21 indicates that any evidence of blood or foul play was
22 found in this car, is that correct?

23 A I don't know what you have in discovery, sir.

24 Q Well, let me ask you this. As lead investigator in
25 this case, are you aware of any information to indicate

1 there was a drop of blood in that car?

2 A No.

3 Q Belonging to anybody?

4 A No.

5 Q The car was totally clean?

6 A That was my understanding.

7 Q No evidence of foul play in the car?

8 A There was no blood in the car.

9 Q Okay. Or any evidence of violence in the car or
10 transportation of bodies?

11 A No.

12 Q The apartment at issue, Mr. Lynch was living there
13 with Portia. Portia was guardian of Angelica, the three
14 were living together?

15 A Correct.

16 Q And your investigation revealed that the relationship
17 between Mr. Lynch and Portia was boyfriend and girlfriend?

18 A Yes.

19 Q That is all I have at this moment.

20 CROSS-EXAMINATION

21 By Mr. Hubbard:

22 Q Investigator Bayne, did you do an affidavit in
23 preparation for the Schmerber hearing?

24 A I did.

25 Q And the last hearing we had did you also do an

1 affidavit?

2 A Yes, I did.

3 Q And is that one placed in as a Court's exhibit?

4 A Yes, it was.

5 Q Is this one basically the same thing that you
6 submitted last time as your affidavit?

7 A Yes, it is.

8 MR. HUBBARD: Your Honor, since we don't have that
9 affidavit as a Court's exhibit I believe that the Clerk's
10 office has, we will go ahead and put one in again.

11 MR. MCGUIRE: No objection.

12 THE COURT: All right.

13 (Whereupon, Court's Exhibit 1 was marked for
14 identification only.)

15 MR. HUBBARD: That is all we have, Your Honor.

16 THE COURT: You can step down.

17 MR. MCGUIRE: Judge, we call Robin Taylor.

18 THE COURT: Ms. Taylor, come forward.

19 ROBIN TAYLOR, being
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 By Mr. McGuire:

23 Q Is it Agent Taylor, is that correct?

24 A Agent or Lieutenant.

25 Q Let's go with Lieutenant. Lieutenant Taylor, you

1 have testified previously in this case?

2 A I have.

3 Q That was a year ago apparently?

4 A Yes, sir.

5 Q And you work for SLED?

6 A I do.

7 Q You are a DNA analyst?

8 A I am the Lieutenant over the DNA case work
9 department.

10 Q And you have done some DNA analysis, you have
11 analyzed some DNA in this case?

12 A I did.

13 Q You have heard April Bayne's testimony regarding a
14 101 Dalmatians comforter that was seized in evidence.
15 That was submitted to SLED as item number 15.6. Is that
16 correct?

17 A It is my item number 15.6. I have noted a comforter.

18 Q And it is actually, there is two cuttings, 15.6.1 and
19 15.6.2, is that correct?

20 A That is correct.

21 Q The 15.6.1 is a, it is referenced as a semen stain or
22 semen?

23 A Semen was identified on that cutting.

24 Q Semen was detected. And again that is 15.6.1?

25 A 15.6.1, semen was identified.

1 Q Okay. And that sample is a mixture of DNA?

2 A I reported the semen stain as a single source but
3 overall, if you consider both the female fraction and the
4 male fraction for portions of the stain, yes, there is
5 more than one person's DNA present.

6 Q And how many people?

7 A At least two, possibly three but I would say more
8 likely at least two..

9 Q So at least two people. And regarding the DNA
10 samples as you have worked with and analyzed there are
11 several that have male DNA. There is the semen stain on
12 the comforter, 15.6.1. There is item 3 which is the
13 swabbing from a hallway bathroom sink. Is that correct?

14 A Yes sir, there is male DNA present in that semen as
15 well.

16 Q There is also male DNA present from a swab that came
17 from the steering wheel or an automobile?

18 A That is correct.

19 Q And there is also some cuttings from the apartment
20 that also has some male DNA, is that correct?

21 A That is correct.

22 Q There is also a toothbrush that was recovered, I
23 think 29.1, a green toothbrush?

24 A There was a green toothbrush analyzed and it appeared
25 on my report dated December 5th of 2007. That appears to

1 be a single source male predominant.

2 Q And you don't have any information to indicate that,
3 who the owner of the green toothbrush is?

4 A No one was directly willing to take responsibility to
5 say that that did indeed belong to anyone, a particular
6 one person.

7 Q Okay. What I want to do is to ask you, again the
8 toothbrush, the green toothbrush with the male DNA
9 recovered, you referred to that as a single source DNA
10 sample. Is that correct?

11 A It appears to be a single sample.

12 Q Meaning it is not a mixture. One person's DNA is on
13 the toothbrush?

14 A That is what appears to be so, yes.

15 Q Now I want to start by asking you some questions in
16 the report. Regarding the semen stains on the 101
17 Dalmatians comforter. Is that Angelica's DNA. Can you
18 say that?

19 A The semen stain?

20 Q Is the female fraction, obviously when you have a
21 semen stain, a mixture, you extract the male portion and
22 the female portions the best you can, correct?

23 A Yes. You separate them as best you can.

24 Q And there is a female fraction in the report?

25 A Right. There is a non-sperm or female fraction, yes.

1 Q Regarding the female fraction of the DNA found from
2 the sample which is the sample with the semen detected,
3 15.6.1, can you say, based on science and your analysis
4 that that is Angelica's DNA?

5 A I can't say that, no. Number one because I don't
6 know for certain Angelica's profile. And number two,
7 there appears to be at least two people in that mixture.
8 And so no I can't for certain say that is Angelica's DNA.

9 Q All you can say is that there is some DNA in there in
10 that sample that is consistent with an offspring of Teresa
11 Brown. You can say that, right?

12 A There are alleles present that could have come from
13 an offspring of Teresa Brown. I want to be very careful
14 making mixture interpretation on the stand.

15 Q And I am sure this report is in evidence. But to
16 clarify some basic principles. When you do a DNA
17 evaluation, you analyze DNA you look at certain locations
18 along the DNA strand, right?

19 A That is right.

20 Q And we don't know what those things do. We don't
21 know whether they give us blond hair or blue eyes?

22 A No, we know pretty much that they don't.

23 Q Right. But we just know that there are certain
24 alleles that was found at this location?

25 A What we know about the DNA location using forensics

1 is that as far as we know they code for nothing.
2 Scientifically they are, scientifically they are
3 considered, "junk DNA". They are highly polymorphic,
4 highly variable between people. So your statement, you
5 know, that they code for eye color or something like that,
6 they do not. That we do know.

7 Q Right.

8 A And I am sorry, I have forgotten the rest of the
9 question.

10 Q That is okay. But just sort of in basic principles.
11 We are going to get in these locations only two alleles,
12 correct?

13 A Not necessarily. It is possibly actually to have
14 three but more under normal circumstances you get half of
15 your DNA from your father, half from your mother. You
16 could actually get this same information from both. You
17 can have one but usually two alleles at any given
18 location.

19 Q You are generally are going to have two but you can
20 draw the same allele from mom and dad when you really only
21 have--

22 A --you have a double dose of one.

23 Q Right. So you can have, basically on your chart it
24 would show that you have say a nine, a single nine but you
25 really have mom and dad.

1 A If you are referring to our chart that we put on our
2 report, yes, that is what it would appear. A single
3 number versus two numbers which is common as well.

4 Q Right. If you have a nine from mom and nine for dad,
5 you had a nine at the location your raw data would
6 actually show a single spike?

7 A A single pea, (phonetic).

8 Q A single pea. Regarding the semen stain on the
9 comforter can you say, let's assuming Mr. Lynch is the
10 donor of the DNA profile on the green toothbrush which is
11 a single male DNA sample, item 29.1. Assuming that is Mr.
12 Lynch can you say for certain that he contributed to this?

13 A Because that was not treated as a standard I reported
14 those profiles as being consistent. However, if I had a
15 standard and made that comparison I would attach a stat, a
16 statistic to it and I would be very likely, would be very
17 comfortable saying that is a match and that they are
18 likely the same person, the semen stain and the male on
19 the toothbrush. However, again, I didn't treat them like
20 a standard because it wasn't presented to me that way.
21 Those two profiles do appear to be the same person. And
22 that is what my December 5th report reflects.

23 Q And you are not aware of any information, you didn't
24 do any investigation on the history of this comforter,
25 where it goes?

1 A No sir, that is not--

2 Q That is not part of your job?

3 A Not usually. You know, again, if there is some
4 question as to whether or not the item has any role at all
5 in a case we may ask that question. But generally if it
6 is submitted we are going to run it and it is not my
7 concern. I am going to run DNA, I am going to have
8 results and they are what they are.

9 Q Now DNA is pretty hardy stuff. It sticks around for
10 a pretty good long while?

11 A Generally speaking, yes.

12 Q And we have had DNA exhumed from bodies thousands of
13 years old, right?

14 A Thousands, you know, I personally don't know that we,
15 that we have done this type of DNA on a sample that old.
16 But overall, yes, you are correct. I myself have done
17 cases that were 10 or 15 years old.

18 Q Okay. And when we talk about a mixture you are not
19 saying that DNA was combined of a certain time and then
20 deposited on this comforter?

21 A I know that there is DNA present from multiple people
22 in this stain. I do not know the circumstances of the
23 deposit of this stain or when or how it was mixed. That
24 is not up to me to determine nor can I base on the
25 technology that I have.

1 Q Sure. DNA can be deposited on a blanket type object
2 by wiping tears, running nose, cough, sneeze, wiping
3 saliva, sluffing off skin cells. All of these are
4 possible ways to get DNA on a blanket, right?

5 A It is possible to get DNA off items that way, yes
6 sir.

7 Q And in terms of when you have a mixture, when you are
8 testing a sample that is a mixture you don't know which
9 DNA that has been deposited first. You can't date it, is
10 that correct?

11 A That is correct.

12 Q And for instance somebody could deposit DNA on a
13 blanket, comforter by wiping tears, running nose,
14 coughing, saliva six months ago. And then six months
15 later somebody deposited a semen sample on top of that, is
16 that correct?

17 A That is possible.

18 Q And if that was to happen it would show up as, just
19 as it does in your report here, as a mixture where people
20 are, we know at least two people contributed to this DNA
21 sample?

22 A Those things are possible. And I do want to
23 introduce just the possibility, you know, if I cough on
24 something I am not usually depositing a solid stain of
25 DNA. But based on the cuttings that we make, if I happen

1 to cut in an area where saliva or mucus or something has
2 landed your scenario is possible.

3 Q And it would show up in your report just as this
4 does?

5 A Right.

6 Q A mixed sample and we really don't know when it was
7 mixed, who was first, who was second, who was on top of
8 who?

9 A That is right.

10 Q And there is no way for you to do that?

11 A No.

12 Q Is there a way for you to determine with regard to a
13 female fraction what kind of body cells?

14 A No. I would like to add to my answer, on occasion
15 the possibility of testing for saliva or something like
16 that may be possible but usually if it is mixed with semen
17 the results may or may not be questionable. I am not
18 going to say it is not impossible to ever know what body
19 fluid might be mixed with the semen. But in this case I
20 don't know.

21 Q Well I guess my question would be this, going back,
22 is there any way to test that sample to determine if it is
23 epidural cells, mucus membrane?

24 A The only testing available at this point and time
25 would be for saliva. And that possibility does exist.

1 Q Okay. Does it still exist in this case?

2 A I don't know, I would have to reexamine the same to
3 see an amount available. And again it doesn't exist for
4 this exact cutting because it is consumed in the DNA
5 analysis. This exact spot doesn't exist. And again if
6 someone coughs or sneezes in one place I could be testing
7 in another, I might not, depending on the size of the
8 semen stain that is present. I don't want to get too
9 picky about this. If there is stain remaining the
10 possibility testing for saliva does exist. If it is
11 negative it doesn't necessarily mean there is not saliva,
12 it doesn't necessarily mean there is epithelia cells or
13 vaginal fluids or whatever. It just will mean that there,
14 this person's DNA or non-sperm DNA present.

15 Q That is fair enough. And if I was to make, I want to
16 make a statement and tell me if this is accurate or not.
17 You can't say to a degree of scientific reliability that
18 Angelica distributed to that semen stain?

19 A In order to answer your question completely I need to
20 add a little more information. There were two other
21 toothbrushes tested. Well there were multiple other
22 toothbrushes tested in this case. There were two others
23 that yielded single source female profiles. If one made
24 the same assumption that you requested that I make
25 regarding the other male profile toothbrush, to look at

1 this profile the mixture on the female fraction there are
2 places, if I look at one locus at a time I can say yes
3 that at this location it does look like Angelica or a
4 daughter of Teresa Brown. And in another location it
5 does, another one maybe not so much. Do you understand
6 what I am saying. But my interpretation would be to the
7 entire profile. There are locations where it appears she
8 was present and there are locations where it appears that
9 she can't. I have not made that interpretation. I have
10 not offered that because I do not have a standard.

11 Q Right. You indicated in your report that no
12 conclusive interpretation of the female fraction DNA, item
13 15.6.1, can be made basically without a known standard?

14 A That is correct.

15 Q And that is where we are going to be forever?

16 A Right.

17 Q So if I were to make a statement, can you tell me, if
18 I was to make a statement that is Angelica's DNA in that
19 semen stain could you say yes based on everything that you
20 know?

21 A I don't have information to confirm.

22 Q That is what I am saying. Based on everything you
23 have right now can you make the conclusive statement that
24 is Angelica's DNA?

25 A If I could it would be in my report.

1 Q Right and it is not?

2 A That is correct.

3 Q And in getting a no source standard we would be in
4 this position forever?

5 A As far as I know now.

6 Q Okay. Based on everything you know, if somebody were
7 to say a sexual act happened between Mr. Lynch and
8 Angelica, based on everything you know, everything you
9 have up to this point you would have to say I can't say
10 that happened.

11 A I can't confirm that based on information I have in
12 this case.

13 Q All of the DNA evidence you have up to this point,
14 based on everything you have you cannot say that any
15 sexual act happened between Mr. Lynch and Angelica. Is
16 that correct?

17 A Based on what I have, no.

18 Q And again after that known sample we will know when
19 we get to that point?

20 A Correct.

21 Q Will you even be able to speculate on that?

22 A I am sorry?

23 Q Sorry, let me ask you specifically going back to your
24 report and again we are going to stick with item 15.6.1
25 which is the comforter we have been talking about.

1 Regarding the, I want to ask you with regard to the male
2 fraction which this is 15.6.1 with a capital M behind of
3 September 15th, '06 report.

4 A Okay.

5 Q With regard to the male fraction of that DNA profile,
6 at location DW there is an allele number 18, is that
7 correct. It is actually 15, 19 and 18, is that correct?

8 A Yes.

9 Q What is the significance of allele number 18 being
10 there?

11 A It has no significance to me other than I don't
12 really see it anywhere else in the case.

13 Q Exactly. The male fraction of that DNA profile has
14 an allele but does not belong to Mr. Lynch assuming for
15 argument sake that he is the male of the toothbrush DNA
16 profile 29.1. Is that correct?

17 A Mr. Lynch does not have an 18 allele but he does have
18 a 15 and a 19.

19 Q He does have a 15 and a 19 but there is genetical
20 material in this sample that you refer to as a mixture of
21 these two people being part of that. There is an 18
22 present, correct?

23 A Right.

24 Q And assuming Mr. Lynch's DNA profile found on the
25 toothbrush, the 29.1, you would have to say that that 18

1 is inconsistent with Mr. Lynch's DNA profile?

2 A He does not have an 18, he has a 15 and a 19, they
3 were the major contributors at that location.

4 Q So that would be genetic material foreign to Mr.
5 Lynch at that sample?

6 A That is correct.

7 Q Do you know if it is a male contributor or a female
8 contributor?

9 A That is about what I was going to add.

10 Q You anticipated my question.

11 A Well, 15.6.1, the female or non-sperm fraction and
12 the male sperm fraction start out as one sample. And they
13 are chemically treated in such a way that we are making an
14 effort to separate sperm cells from non-sperm. And
15 usually historically we call that male and female
16 fractions just based on the usual mentor of semen stains.
17 However it is not one-hundred percent separation. It is
18 not unusual not to get one-hundred percent separation.
19 And there are several locations in this male fraction
20 where there is DNA present that is not attributable to the
21 major contributor. And I can't speculate as to whether or
22 not that is just the incompleteness of separation or that
23 if that is male as well. I have no way of knowing that.
24 So, no, I don't know that that is male, I don't know that
25 it is female. I just know there is DNA there at a lower

1 level than major contributor and I attribute the major
2 contributor, the major profile to semen because semen was
3 identified in the case and sperm are a very rich source of
4 DNA.

5 Q And with regard to D8, assuming Mr. Lynch is the
6 donor of 29.1 there is genetic material there, again did
7 not belong to Mr. Lynch. Is that correct?

8 A There is a 15 allele present at a low level at D8 and
9 he is at D8 a 13, 14 as can be seen a major contributor at
10 that location but there is a minor 15 there.

11 Q And that DNA material would be foreign to Mr. Lynch,
12 he doesn't have that?

13 A That is correct.

14 Q And that is in this mixture that is on the 101
15 Dalmatians blanket, correct?

16 A Again, this is making the assumption that that is his
17 DNA on the toothbrush and I want to be very careful about
18 that.

19 Q Sure, for argument sake. And again with regard to
20 D21. On D21 there is an allele, specifically 32.2, again
21 Mr. Lynch is the donor of the profile on the toothbrush,
22 29.1. That would be DNA material foreign to Mr. Lynch
23 again?

24 A 32.2, he does not have that allele on that
25 toothbrush.

1 Q With regard to the female fraction of this same
2 cutting, 15.6.1. At D8 there is an allele, number 15, is
3 there any significance to that?

4 A Not particularly in the female fraction. It is
5 probably the same DNA as shows up on the male fraction.
6 Just significance, I am not at the point--

7 Q It looks like it is inconsistent with the DNA profile
8 of Mr. Lynch, I am sorry, let me rephrase that. Is it
9 inconsistent with the DNA profile that you would expect to
10 find in the offspring of Teresa Brown?

11 A Bear with me one moment, please. Teresa Brown, we
12 are talking about D21?

13 Q D8 actually.

14 A D8, I am sorry. Teresa Brown at D8 is a 13, 15. So
15 her offspring could have the 15.

16 Q Assuming that her offspring had a 15 at that location
17 is there DNA material foreign to the offspring of Teresa
18 Brown?

19 A The possibility at D8 for Teresa Brown's offspring,
20 they could have either a 13 or a 15. So the 12 or the 14,
21 the problem is you have got a father in there too. So I
22 have got half the profile missing when I am talking about
23 that. So I really cannot speculate at that. I can only
24 look at the allele that Teresa Brown could have donated to
25 her offspring. But there is a dad in there too. So I

1 honestly do not know what, I can tell you that looking at
2 D8 Teresa Brown had a 13 and a 15. So her offspring could
3 have both and they can have others as well.

4 Q A D8 to R4 alleles found. Only two can be for
5 Angelica?

6 A Angelica, we are talking about the toothbrush making
7 the same assumption.

8 Q No, I am saying just in general Angelica is only
9 going to have two alleles?

10 A Generally speaking. She would not contribute four
11 alleles, that is correct.

12 Q Sure. There are four alleles found in that location?

13 A Right. So there is at least two people at that
14 location.

15 Q Okay. And assuming that Mr. Lynch is the donor of
16 the toothbrush profile he would be at 13 and 14 at that
17 location?

18 A Those are possibly his 13 and 14. If I were making a
19 comparison and I am not sure that I have made this theory
20 in our previous discussions. I am making a comparison of
21 a standard to this female fraction profile. Because it is
22 a non-intimate sample, if it were a vaginal swab from a
23 rape kit I can assume the female profile. But I can
24 assume nothing on this and frankly it is likely that that
25 13 and 14 may be from the male contributor but there could

1 be a female contributor with 13 and 14 as well. And
2 likely making a comparison would go down to an inclusion
3 versus an exclusion and a mixture statistic. So I can't
4 unequivocally say that that 13 and 14 must belong to him.
5 There is a likelihood, I can tell you that there are at
6 least two people at that location. So there is more than
7 one person. If I have a standard I am going to say at
8 that location there are either included or excluded. I am
9 not sure if that is what you are going after or not. But
10 there is more than one person there. So yes if you make
11 the assumption that one person is there, yes, there is DNA
12 foreign to them there.

13 Q This goes back to the beginning of, it is a mixture
14 that there are two people there?

15 A Right.

16 Q I am going to ask you a little bit about item number
17 3. That is a swab from a sink, I believe, indicated in
18 your report. Is that correct?

19 A Item number 3 was indicated to me as being a swab
20 from a master bedroom sink.

21 Q And was blood detected on that sample?

22 A Yes, blood was on there.

23 Q And again I am going to start on the big questions
24 and we will go backwards. Is Mr. Lynch's DNA there?

25 A I reported that the major contributor to this mixture

1 was consistent with a daughter of Teresa Brown and I
2 reported that the remaining DNA is from unidentified minor
3 contributor.

4 Q Right.

5 A Your question was based on the--

6 Q For sake of argument, assuming is the donor of the
7 DNA profile found on the toothbrush, is his DNA in that
8 sample?

9 A I don't know, I haven't made that comparison with the
10 toothbrush. Well, bear with me one moment.

11 Q Let's go specifically on page six of your report,
12 page six and seven, this is the September 15th of '06
13 report. At location D16 you found three alleles, a 10, 11
14 and 13. 10 and 13 being the major contributor, is that
15 correct?

16 A 10 and 13 were the major profiles in D16 and there
17 was an additional lower level being 11.

18 Q And the lower level being the 11?

19 A Right.

20 Q And assuming Mr. Lynch's is the contributor of the
21 toothbrush, DNA profile 29.1, he is a 9 and a 12 at that
22 location?

23 A Based on that toothbrush Mr. Lynch is a 9 and a 12 at
24 D16, there is no 9 or 12 there. Looking only at that
25 location his DNA does not appear to be represented.

1 Q Okay. With regard to item number 3, a sample from
2 the sink. You found an even 10 allele from the major
3 contributor, a 9 as a minor. Is that correct?

4 A 9 as a minor. That particular location he appears to
5 be, based on the toothbrush an 11 and there is not an 11
6 apparent at that location.

7 Q Okay. With regard to D7, again item 3, the swab from
8 the master sink, you found an 8 and an 11 and a 12 with
9 regard to alleles, is that correct?

10 A My results were 8, 11, 12. On profiler for D7 they
11 were 8, 10, 11 and 12. Mr. Lynch is a 10 at D7.

12 Q But on the cofiler sample his allele doesn't--

13 A Those are the samples simply running on two different
14 kits and sometimes there will be minor variations at the
15 two common locations, D3 and D7 on those kits. We
16 actually no longer run those kits, we run an identifier
17 which is another kit encompassing all of these locations.
18 But in this instance the profiler results were D7 do
19 indicate a lower level 10 where as the cofiler it didn't
20 show up. But Mr. Lynch is a 10 so at D7 he is
21 represented.

22 Q Sure but on the cofiler--

23 A -- potentially a DNA that could have come from him is
24 represented.

25 Q But to be specific with regard to the profile, on

1 page six and seven of your report, at D7 you found 8, 11
2 and 12 and no 10, is that correct?

3 A On profiler.

4 Q And Mr. Lynch of course is a 10 assuming he is the
5 donor of the toothbrush profile, 29.1?

6 A He is a 10.

7 Q Assuming for argument sake that Mr. Lynch is the
8 donor of DNA profile found on the toothbrush, 29.1 again
9 the big question. Is his DNA in that sample?

10 A I am not going to say until an overall comparison, a
11 DNA comparison encompasses a comparison to the entire
12 profile, not just spots of it. I am not going to say
13 conclusively yes or no because I have not sat at my desk
14 and made that comparison carefully and measurably. When
15 you are doing mixture interpretation I would never jump on
16 something, you know, sitting here under these
17 circumstances making this comparison. I agree with you at
18 these locations, these specific locations that we looked
19 at but we could also look at some others and say, well,
20 there is DNA there that could have come from him. So
21 again I don't, I am not going to make an inclusion or
22 exclusion comparison under these circumstances.

23 Q Well if you had his profile what could you compare to
24 item number 3?

25 A If I had his profile I can make a comparison as to

1 whether or not he would be included or excluded as a minor
2 contributor to this profile. That would be about it and
3 actually even that would be very limited because I can
4 look along that profile, every where you see parenthesis I
5 can't use that statistically. I can only use it visually.
6 So there are a lot of parenthesis there, that is an
7 indication of low level DNA and below a certain level DNA
8 can act, it can drop alleles or add. So I would be very
9 cautious and the statistic would likely be low but I could
10 make a visual comparison as to whether or not he would or
11 would not be included. And it might even be inclusive.
12 Sometimes we can't make that judgment especially in a
13 mixture like this that is at least three people and for
14 which we are looking at the minor profile. It is not
15 unusual for that type of comparison actually being
16 conclusive.

17 Q And when you are talking about, when you are talking
18 about there are parenthesis, you are talking about a
19 number that is lower than 75, 149 rather, lower than 150,
20 149 or lower?

21 A Yes. 75 to 149 is, 75 is the level at which we
22 actually call an allele. And 149 is the level above which
23 we don't worry as much about stochastic or irregular
24 affects of low amounts of DNA being present. But again
25 often in instances like this with a three person,

1 potentially three people there are likely, it is difficult
2 to make those interpretations. That is really the main
3 reason I am not going to sit here and do it right now.

4 Q You actually anticipated my next question. Regarding
5 number 3, the swab from the master bedroom sink, how many
6 people's DNA is in that sample?

7 A Based on what I see it is likely at least three
8 people. There are several locations that I have six, five
9 to six alleles and it is likely three people. And at that
10 point, you know, I have the major contributor. There is
11 no problem with that one. But interpretations at three
12 people and more get sometimes a little, you have to be
13 very careful. And as I said before, it is not unusual for
14 it to be an inclusive result.

15 Q Sure. I want to make a statement and you tell me if
16 this is correct. People other than Mr. Lynch contributed
17 to number 3?

18 A Again making the assumption that that is his profile
19 on the toothbrush there are certainly some DNA there that
20 is not his. There is some that appears that it could be
21 his. Again that is a glance and I really don't want to go
22 any further than that.

23 Q And you don't know how many other people contributed
24 to Mr. Lynch's DNA, assuming he is the donor of the
25 toothbrush?

1 A Not off the top of my head, no, I would not even have
2 a speculation as to how many people. I know I have one
3 major contributor and at least two other people.

4 Q Looking at the same report. If you would look at
5 item 3, the same swab from the master bedroom sink. And
6 this is from profiler, the profiler kit. After taking a
7 look at that does that change your testimony with regard
8 to how many donors there are in this sample?

9 A No, because that is what I was looking at, I think
10 there are at least three people there.

11 Q And again there are at least some people contributing
12 that are not Mr. Lynch assuming he is the toothbrush at
13 29.1?

14 A There is some DNA there that he could not be
15 contributed.

16 Q Taking you to page 4, the same report, page 4.

17 A Okay.

18 Q The third paragraph, again you reference item number
19 3 and 4. But for purposes of this question, we will talk
20 about item number 3. There are, again, at least two minor
21 contributors?

22 A That is correct.

23 Q If I was to make the statement, Mr. Lynch contributed
24 to this DNA sample, item number 3. Could you tell us if
25 that statement is true or false?

1 A Not right now, no. I would need to sit in my office
2 and look at the two profiles and make a very measured,
3 careful consideration of that question.

4 Q Okay. You are not prepared to answer yes or no to
5 that?

6 A Not today, no.

7 Q How long would it take you to get there, I know you
8 are busy.

9 A You are requesting a comparison?

10 Q Yes.

11 A Well, considering the fact that I would need to do it
12 myself and then have it reviewed by two additional
13 qualified analysts it would probably take several hours, a
14 couple of hours depending on availability.

15 Q And I am not picking on you but you had samples
16 submitted from Mr. Lynch about a year ago?

17 A Right.

18 Q And they have not yet been tested?

19 A That is correct.

20 Q With regard to 15.6.1, this is the semen stain on the
21 101 Dalmatians comforter. You indicated that that sample
22 has been irradiated, destroyed at testing, is that true?

23 A Not to my knowledge, bear with me for just one
24 moment.

25 Q Take your time.

1 A When I said that I meant exact injection, the exact
2 stain that I chose from within the larger stain. That is
3 what I was referring to and I apologize if that was
4 unclear. But to my knowledge, if you will bear with me
5 one moment. I have indicated that there is stain
6 remaining.

7 Q The reference to that cutting still exist?

8 A Yes.

9 Q Do you take any measurements and photographs before
10 you cut?

11 A No.

12 Q So we don't know?

13 A It still exist. You can see where I cut.

14 Q With regard to that cutting do you know if, is it
15 possible the comforter, the blanket was actually washed
16 after that semen was deposited on it?

17 A In and around, to answer that it is really
18 speculation. It is not likely but I can't, that would
19 introduce to many ifs. How efficient was the washing,
20 comforters are bulky, how efficient is a washing cycle
21 especially if you use a regular washer. I mean there are
22 so many ifs to that. Semen can be washed off of items.

23 Q Items can be washed but semen still remains, correct?

24 A I have not done any test where I know there was semen
25 deposited and then, you know, look for the same so I am

1 not going to tell you that. If a comforter is put into a
2 washer I guess that is possible. You know if it wasn't in
3 an efficient washing process, it has been a long time
4 since I looked at this stain. I don't remember the
5 intensity of it. I do I had no trouble getting these
6 results and semen can be washed off of things. However to
7 speculate whether or not this particular one was washed I
8 really don't know.

9 Q So the answer to my question is, it is possible that
10 that semen was deposited on that blanket had been washed
11 when and then you got the cutting. It is possible?

12 A Possible versus probable, I don't know, no.

13 Q I am trying to nail you down--

14 A --i know you are and I don't want it to be nailed
15 down because there is just too many scenarios where I can
16 offer likely other alternative scenarios. So I really
17 don't know, I don't know. Semen can be washed off, I have
18 never done this particular experiment. But a semen stain
19 existed. It is what I am saying and whether or not the
20 item is washed, I don't know.

21 Q Answer this question however you want to including I
22 don't know. Is it possible semen can be deposited on a
23 blanket such as that 101 Dalmatians blanket, deposited by
24 a stright drip, transference, transfers and then washed
25 and then you get it and you still succeed in a test. Is

1 that possible, yes or no?

2 A See you presented about six different scenarios in
3 that question and some of them are a lot more likely than
4 others. Direct deposit is one thing but transference is a
5 lot less DNA being transferred. So every scenario has
6 its, you are saying the word possible. There is so many
7 things that are possible but I still think that the
8 likelihood has to be considered.

9 Q You are not aware of studies that have actually came
10 from dry cleaners with regard to DNA samples?

11 A There are probably studies out there. I honestly
12 don't get to read every single study that is out there and
13 there is some out there that, you know, proclaim things
14 that in our laboratory we haven't seen. But there likely
15 are scenarios such as that. We don't like getting hotel
16 sheets. So I would assume that is a possibility that
17 something can be washed and a semen stain remain.

18 However, I would think that whether or not the semen stain
19 remains would be also a product of the exact circumstances
20 of the deposit on there.

21 Q I will take responsibility in trying to nail you
22 down. Can an item be washed and then can remain to be
23 tested where people find DNA?

24 A I would assume that that is possible, yes stated like
25 that under those conditions that is possible.

1 Q You made a comment that you don't like getting hotel
2 sheets. Why is that?

3 A I shouldn't have made that comment, I apologize to
4 the Court for that.

5 Q Tell me if I am wrong. It sounds like you are
6 talking about different people having access to the
7 sheets, multiple people?

8 A Actually usually it is with covers, outer covers,
9 multiple people, yes.

10 Q And that is because you don't know when it is washed,
11 how often it is washed, multiple people have access to it.
12 Those sorts of things?

13 A Correct.

14 Q And you don't know the history of the comforter we
15 are talking about?

16 A I don't personally know.

17 Q This is the last question.

18 A Promise?

19 Q Promise. Item number 3, that is the swabbing from
20 the master sink, the sink from the master bedroom rather.
21 Are you provided with photographs or any description of
22 the swab, exactly where it came from or you just know it
23 came from the sink generally?

24 A I am not aware at this point of having any
25 information like that. On occasion we do get things like

1 that, in this case I don't recall knowing anything like
2 that. I just know the description.

3 Q Okay. And obviously we are talking about a hard
4 smooth surface that could keep DNA on it for some time?

5 A A hard, I am sorry?

6 Q If somebody puts DNA on a sink surface by putting
7 their hand on it, sneezing, coughing, rubbing their hand
8 on it, that sort of thing. DNA can last a long time on a
9 sink?

10 A Provided someone doesn't wash it. I mean it is
11 easily washed off of a hard smooth surface.

12 Q Sure. But in this case we know that the stain, the
13 swab of that location existed presumably unwashed long
14 enough for at least three people to contribute to it,
15 right?

16 A Well, I mean in a matter of five minutes or two
17 minutes or thirty seconds three people can deposit their
18 DNA so you can go both ways with that. If is definitely a
19 mixture, there is definitely multiple people there. I
20 don't know how long it was there and it is easily washed
21 off. I know that there were at least three people in that
22 mixture, that is about all I can say about that swab in
23 that sink.

24 Q And you don't know exactly where it came from?

25 A To my knowledge I don't have that information.

1 Q I believe that is all I have got. Thank you so much.

2 CROSS-EXAMINATION

3 By Mr. Graham:

4 Q Ms. Taylor, very briefly. How many DNA items did you
5 analyze that you had a standard and would be used for
6 comparison?

7 A How many items in this case?

8 Q Have been submitted to you if you had a standard you
9 would be able to compare to and reach a conclusion?

10 A Any item that was previously as having male DNA I
11 would use a known standard to make that.

12 Q One of them would be the toothbrush, is that correct?

13 A I would make that comparison to the toothbrush, yes.

14 Q And if you had a complete standard or a buccal swab
15 or something like that would you be able to reach some
16 type of interpretation that you believe would be reliable
17 as far as the standard versus the toothbrush?

18 A Yes.

19 Q As to the semen on the comforter, the male fraction
20 of that. If you had a standard from the defendant would
21 you be able to reach a conclusion as to whether or not it
22 was his or was not or that it was consistent?

23 A Yes, I could.

24 Q As to the DNA found at the sink. If you had a
25 standard from the defendant would you be able to reach a

1 conclusion as far as comparing that standard versus the
2 DNA found at the sink?

3 A I would reach some sort of conclusion. As I stated
4 before it might end up being inconclusive. However there
5 would be a comparison made.

6 Q And would you be able to make a comparison versus the
7 swab taken off the sterilized container, number 4, if you
8 had a standard?

9 A I would again, yes, make that comparison.

10 Q Without a standard what does it leave you with. What
11 is your hand down to the analysis for those four items?

12 A It remains the same as that there is DNA from an
13 unidentified male and nothing changes.

14 Q Does the potential exist for you to exclude the
15 defendant from those samples?

16 A Absolutely.

17 Q That would depend on the standard, wouldn't it?

18 A That, yes, that is why we do what we do, to include
19 or exclude a person as a contributor of a profile.

20 Q So if we don't get a standard from him we won't be
21 able to know who those belong to?

22 A Without that comparison we don't know.

23 Q Thank you.

24 REDIRECT EXAMINATION

25 By Mr. McGuire:

1 Q One final question. Knowing everything you know
2 about this case, all of the information that has been
3 submitted to you, all the samples you have. Assume you
4 get a profile from Mr. Lynch, would you ever be able to
5 say these items is involved with a sexual act with
6 Angelica or an act of violence with her?

7 A No, I would be making a comparison to the existing
8 profile, I would not speculate. Even on a sexual assault
9 case my report would not reflect, you know, an actual
10 sexual act. I would be comparing to the male profiles in
11 this case and stating whether or not there was inclusion,
12 exclusion match or inconclusive.

13 Q Thank you.

14 THE COURT: Is that all the witnesses you are going
15 to call?

16 MR. MCGUIRE: These are all the witnesses, Judge.

17 THE COURT: Let's take a brief break.

18 (Whereupon, a short break was taken.)

19 THE COURT: All right, all the testimony you have
20 called up and the transcript and the affidavit. Do y'all
21 want to place some arguments on the record also?

22 MR. GRAHAM: Your Honor, relying on the transcript of
23 the testimony that you heard before you today and the
24 affidavit that was submitted by April Bayne and the
25 testimony of Lieutenant Taylor and in the record there is

1 some testimony from Investigator Chuck Bramlett with the
2 West Columbia Police Department, the crime scene
3 investigator concerning the inked impressions. On the car
4 itself there was some fingerprints that he did a full hand
5 impressions that the State doesn't have and the fingertips
6 and the entire hand. I believe in the transcript it will
7 show that Mr. Lynch was not given access to the car, was
8 denied access to the car by the victim. The fact that his
9 fingerprints are on there are relevant. He also denied
10 that he was caught up at the Canadian Border and
11 interviewed by the FBI and the Seattle Police. And I
12 think his first words is that he was shocked, didn't know
13 why her car was up there. The fact that his fingerprints
14 are in there and the car was up there I think goes to the
15 relevancy, to the probable cause that he committed the
16 crime. Additionally the DNA in the house, there is also
17 DNA on the steering wheel of the car as well, additional
18 fingerprints. So I would make the same argument for that,
19 that it is relevant material combined with his statements
20 and the location of the car. Additionally as to the
21 handwriting sample which we haven't argued so I don't know
22 whether they are agreeing to the taking of those or not
23 but the handwriting exemplars were taken to compare to a
24 Motel 6 receipt. And I know the receipt was found on the
25 defendant but we don't know who made that, whether he made

1 it, whether somebody else made it. And those exemplars
2 are needed to prove that he was the one staying in Motel 6
3 who was fleeing in that vehicle at the time that that
4 happened which puts him in relation to South Carolina on
5 his trip up to Canada. And then finally you have the DNA
6 in the house, included in the toothbrush, the comforter,
7 the swab from the sink, the swab from the container. All
8 of that goes, depending on the results, would be to show
9 who was in that house, whether he was in that house. He
10 has made statements that he lived there, he had made
11 statements about other things but the defense doesn't get
12 to pick and choose what the State uses as evidence, that
13 is our decision. If we don't analyze those things the
14 jury will always wonder who is the unidentified male on
15 those and there won't be an answer to that question. I
16 think for as far as the Schmerber hearing goes, if there
17 is probable cause to believe that Mr. Lynch has committed
18 a crime of grand larceny and two counts of murder that
19 relevant material that we found, the transcript discusses
20 the method used to secure, how the handprints were taken,
21 how the swabs would be taken, how the exemplars are taken,
22 that that would be safe and reliable. And additionally
23 the seriousness of the crime, Your Honor, is something
24 else Your Honor has to consider is the importance of the
25 evidence, the investigation, there is a balance and

1 requirement on that. But I think if you take all of those
2 into account that we have satisfied what we need to do to
3 get those samples. Now as far as whether anything is
4 admissible or not that is not what we are here to talk
5 about today, we don't know what the results are yet and we
6 don't know whether we plan on offering it and for what
7 purpose. So I don't know that we need to get into any
8 type of suppression. I think at this point we just need
9 to focus on the taking of the samples and whether we have
10 satisfied the requirements of Schmerber. And that is it,
11 Your Honor.

12 THE COURT: Mr. McGuire.

13 MR. MCGUIRE: Thank you, Your Honor. Your Honor,
14 obviously the standard is in the registered case of South
15 Carolina which ask for a strong showing. This is Mr.
16 Lynch's house, there is a lot of evidence in this case and
17 it is in the transcript that you have from Investigator
18 Bayne. His DNA is going to be in his house, just plain
19 and simple whether it is on a bucket in the sink, blanket,
20 his DNA is going to be in his house. Now the most
21 sinister aspect or the evidence that I am concerned about
22 and worried about is obviously the 101 Dalmatians
23 comforter. This is going to bleed over into Mr. Stitely's
24 argument. But without establishing the history of that
25 comforter, the routine, how often it is washed, that sort

1 of thing. We all bring our common sense into court. The
2 reason why, the reason Ms. Taylor said they don't like
3 getting the hotel comforter is because we all know that
4 those things don't get washed. They just don't. I mean
5 my little boys both have Buzz Lightyear comforters on
6 their bed. I have got to tell you, they go months without
7 getting washed. Wash their sheets, wash the pillow covers
8 and all of that but the decorative item, that is the last
9 piece of fabric on the bed, those things don't get washed.
10 Did this little girl bring this comforter into the living
11 room to watch a movie, snuggle up in bed with her
12 grandmother. Without knowing that history, without
13 nailing that down we are going to have evidence that this
14 is a semen stain, that is some mixture and at very best
15 they can't even say that it is Angelica's DNA either.
16 They can say maybe it is consistent. So you do have to
17 consider the relevance. It is not admissible, I mean we
18 don't really have any need to get a sample from Mr. Lynch
19 or have a sample tested from Mr. Lynch. Of course his DNA
20 is going to be on his sink in his bathroom, on his carpet
21 at his house, that sort of thing. But I do think you need
22 to focus on that 101 Dalmatians blanket with regard to
23 admissibility, is it relevant. Without showing the proper
24 nexus with regard to both the mixture and the timing of
25 that sample, the history of the comforter, without that it

1 is just simply not relevant, it is just not relevant. And
2 then you are going to have to look at the 403 aspect. And
3 we are moving to suppress this in both the guilt and the
4 penalty phase and I think you need to look at both of
5 those different aspects. And I am going to let Mr.
6 Stitely argue the 403 issue. And the prejudice,
7 obviously, that we would, if that blanket comes in and the
8 testimony regarding DNA that there is a semen stain on
9 that and it is likely that the major contributor of the
10 semen stain is Mr. Lynch it is over for us. And in my
11 email for us I indicated that I thought we should do these
12 two motions because it might take care of some issues and
13 mute some other motions, it is because we are seriously
14 contemplating waiving a jury trial and having a bench
15 trial if that blanket comes in. We want a professional
16 objective decision maker and not a jury. There is social
17 science evidence out there that jury's overestimate and
18 give undue weight to forensic evidence and don't fully
19 understand it. Even Investigator Bayne is before the
20 understanding of the difference between saying something
21 is consistent with and a match. And the jury's have that
22 problem. I strongly believe it is game over for us if
23 that blanket comes in with the DNA testimony. And we are
24 seriously considering a bench trial if it does come in. I
25 am going to let Mr. Stitely argue the rest. That is what

1 I have got.

2 MR. STITELY: Your Honor, if it please the Court.

3 And I guess to start is where Mr. Graham ended off as why.

4 He said we have so many different ways that the defense

5 portrays that Mr. Lynch lived there but we have the right

6 to bring whatever we want in to prove it and that is why

7 they want the DNA. And obviously in this case it is a 403

8 prong, it is prejudice. In this case, Judge, you haven't

9 been here from the beginning so you don't have the whole

10 factual background that some of the other hearings flushed

11 out. But there is going to be no testimony at any point

12 in this case of any history, a sexual misconduct on behalf

13 of Mr. Lynch. There is not going to be any testimony or

14 evidence presented by the State in any way, shape or form

15 that would ever say that Angelica had been sexually

16 abused. There is going to be no testimony, evidence of

17 any way to show that they had any kind of inappropriate

18 relationships. What was really important about when you

19 had the questions asked by Mr. McGuire to the Lieutenant.

20 What can we actually prove even if we are to get to the

21 assumption is the contributor of the semen and the

22 contributor of the DNA on the toothbrush. As Ms. Bayne

23 stated, they talked to all the family, they were well

24 aware that he had been living there. I think the

25 testimony will come out they had been living there for a

1 number of years together. The testimony will come out
2 through any number of witnesses including Ms. Bayne that
3 they were intimate, boyfriend and girlfriend, that being
4 Ms. Washington and Mr. Lynch, there is no question, he
5 lived there. He brushed his teeth there every day, they
6 had an intimate relationship. When you are looking at
7 what we can possibly gain from the samples they are
8 requesting to do nothing but upset the jury. The question
9 was asked and it appears in both the transcript originally
10 and I can go back to the page numbers and her testimony
11 today. Even if we were to assume he is a contributor
12 there is no way to say whether that stain got there six
13 months ago. You know, he used the example and it is using
14 the transcript of the footprint. Say I step somewhere in
15 this courtroom with bare feet and I had a little bit of
16 blood on my foot and I left a smear of DNA, I stepped on a
17 101 Dalmation blanket. Six months later someone else
18 could step on it going the other way and rub a skin cell
19 off of it. There is no possible way through any degree of
20 science or any degree of certainty they can put any
21 testimony forward that says that sample had anything to do
22 with the victim. We had a situation of a washing machine.
23 The blanket could have been washed. I know he talked
24 about his sons having Buzz Light, I have two sons and a
25 little baby girl born last week. When my wife does the

1 towels she washes my boys towels with our towels. When
2 she does the sheets, she pulls the sheets off of all the
3 bed. When was asked specifically to the Lieutenant, could
4 it have been the secondary point of contact. She said,
5 sure, that is an absolute possibility. It could have been
6 on the blankets in the master bedroom washed with the
7 blankets in the children's room. We can't say, we can't
8 ever say. The only reason you would tell a jury is there
9 semen on a blanket is to try to entice some kind of
10 emotional reaction and create prejudice. Well, 403 is
11 very clear about that. Judge, I have a stack of cases and
12 I will go ahead and pass them up and I am going to talk
13 about some of them as we go. I have a copy for you as
14 well as your law clerk, Judge. Throughout the cases there
15 is a common theme we have to look at. Of course the first
16 step is you find out is it relevant. Relevance is defined
17 pretty much as anything that would have a tendency of some
18 element of the case. In this case he is charged with
19 grand larceny and murder, there is no allegations of a
20 sexual assault. Nothing to do with any kind of sexual
21 relationship whatsoever. There is no evidence to show
22 that. The fact that his DNA appears possibly on a blanket
23 isn't relevant. It would be different if the testimony
24 was that was a blanket found in the trash outside the
25 apartment that had been filled with a puddle of blood that

1 had been used to clean something up. That might be one
2 thing, that is not the factors. In this case it is a
3 specific small cutting and I guess if necessary we could
4 have it in here so Your Honor could view it. A tiny
5 little piece of blanket that we can't decide when, how,
6 where, why, any reason why a sample that could possibly
7 belong to Mr. Lynch was on it. Not relevant, I don't
8 think it flows into any scheme of relevance. There is
9 actually a case out of New Jersey, I know it is not this
10 jurisdiction but it is one of the ones that is included in
11 there and it is State v. TWM where there is DNA found on a
12 blanket which is excluded. And it goes up through their
13 Supreme Court and they say as it probably should have
14 been. Specifically in this one they say that the
15 prosecutor attempted to offer DNA evidence to show that
16 there was possibly a sexual assault but they said they
17 couldn't tell when the stain got there, how it got there
18 or any other history. And it said, well, it is just
19 prejudicial, it is there to inflame the jury. In that
20 case they were actually trying to allege a sexual assault.
21 In this case there is no allegation. And in that case at
22 least they had an idea that it was relevant as we go into
23 403 to say, is it prejudicial over probative. In this
24 case there is no allegations. Not relevant, we shouldn't
25 even have to get into the 402, 403 switch to decide

1 whether or not it is prejudicial over probative. If the
2 Solicitor's office had a specific reason why they could
3 show that proving that his, if it is his DNA on that
4 blanket it is relevant to the actual commission of murder,
5 through any kind of evidence, we have got about 2,700
6 pages of discovery, there is not one, it just doesn't
7 exist in this case. To take the evidence from the
8 toothbrush, all the evidence in this case clearly shows
9 that he lived there and he brushed his teeth there every
10 day. There is nothing that can be gained by saying his
11 DNA is on that toothbrush. And when asked the Lieutenant
12 specifically said, even if she knew that it was his DNA on
13 the toothbrush she could say he was possibly one of the
14 contributors but invoke a sink sample and the Dalmatians
15 blanket, specifically a Dalmatians blanket because that is
16 what I am talking about now, there are three times where
17 there is a sample that is not consistent with the person
18 on the toothbrush. She can't even say that he was the
19 only one there. We always use the term, he, the DNA
20 footprint that could be attributed to Mr. Lynch as the
21 only one there. The sample in the sink, she says well, he
22 definitely at best could be one of at least three people.
23 So even if I had a profile the best that I could tell you
24 is he might have been one of three or I can't rule out the
25 fact that he wasn't one of at least three. But I can't

1 tell you it was him rubbing his hand on the sink, spitting
2 out after he brushed his teeth into the sink, bleeding,
3 there is nothing. So I guess that brings up back why
4 would it come in, we have to prove some kind of probative
5 value. The typical way the State does that is through
6 Lyle, saying this shows some kind of history, you know,
7 some kind of modus operandi, some kind of nexus point Mr.
8 McGuire said, nexus is the standard here. There is
9 nothing in this case. There is no nexus between any
10 sexual act that would make any mention of any semen stains
11 relevant to this case. There is no reason and Lyle is in
12 the packet and Lyle is our classic example. There is no
13 reason to say we would need that. If the State simply
14 wants his DNA to prove that he lived there, they have got
15 20 witnesses, I think that they have named that can
16 identify him as a person who lived there. I don't think
17 that is a question. The only thing they can be asking for
18 is a specific reason to some kind of reaction to a jury.
19 And there is a lot of social science in there, there is a
20 lot of articles that have been written about the CSI
21 effect. Nothing gets a jury more excited than to say,
22 hey, they can prove DNA. The only thing that DNA is going
23 to hear in this case is the jury is going to say, semen on
24 a blanket, his DNA must be bad. No matter what we try to
25 say there is no nexus for it. And the standard that you

1 are looking at is whether evidence should come before a
2 jury is whether it tends to prove any element of the case.
3 Without it it is irrelevant. Beyond irrelevant it is
4 highly prejudicial. I looked specifically in the cases
5 because I thought Your Honor would like to take a look at
6 them. If you would like me to I will go case by case but
7 if this is sufficient I will stop talking for now.

8 THE COURT: I will look at the cases.

9 MR. STITELY: Thank you.

10 MR. GRAHAM: Just a few things, Your Honor.

11 THE COURT: Okay.

12 MR. GRAHAM: It seems if I am hearing correctly they
13 are fighting and saying that you should go ahead and rule
14 that the DNA on the comforter, whether it is his or not,
15 is immaterial and not relevant and he shouldn't give a
16 sample for that. But there are other DNA samples that are
17 relevant now. His DNA is on the car, he denied that he
18 drove the car. I think with that alone gets us past this.
19 Now whether, once you have that sample can it be tested
20 against everything else, of course it can. But I think it
21 is a later day to determine whether it is relevant. Mr.
22 Stitely says that there is no indication of a sexual
23 assault and that is not true. There is an inmate at the
24 detention center named George Murphy and he, I believe he
25 contacted the West Columbia Police Department and when

1 they went to talk to him Investigator Bayne was there and
2 Mr. Murphy said that he got into an altercation with Mr.
3 Lynch and during that altercation that Mr. Lynch said,
4 "that he would make", referring to, "that he would make
5 him", referring to Mr. Murphy, "suck his dick just like he
6 did that little bitch before he killed her and her dumbass
7 grandmother." So there is allegations of sexual assault
8 coming from Mr. Lynch's mouth that he had a sexual
9 relationship with Angelica. Depending on the DNA and his
10 sample and what the match is to that, at this point I
11 don't know what it will show. It may show that it was
12 somebody else's DNA and that leaves us and the other round
13 is is that the defense today is fighting us because they
14 don't want us to get a sample. But what happens if we
15 don't get a sample, Mr. Lynch is convicted and then his
16 PCR attorney says, well you should have checked because
17 maybe it is somebody else, we don't know. Maybe it is not
18 going to be Mr. Lynch and that seems that that would open
19 up a whole new area of defense, of Brady material that we
20 are required to go over so we are trying to pursue what we
21 can to find out what we have got. We believe that it will
22 be relevant material, whether it is relevant material to
23 the DNA coming from the bedspread we don't know. We do
24 know that if we don't test anything that we don't know.
25 For those reasons, Your Honor, I think we have satisfied

1 the requirements of Schmerber and again just ask Your
2 Honor to order the taking of the inked impressions which
3 have apparently not been argued now and the DNA from a
4 buccal swab and also the handwriting exemplars.

5 MR. MCGUIRE: For the Court's benefit, we are not
6 going to raise an objection on inked card prints. We
7 don't have an objection to that. With regard to the
8 handwriting samples--

9 THE COURT: The ink print, no objection to that being
10 provided by your client?

11 MR. MCGUIRE: If they want an inked full set of cards
12 we have got no objection.

13 THE COURT: All right.

14 MR. MCGUIRE: But we really didn't touch on the
15 handwriting. First of all, they have known handwriting
16 from Mr. Lynch or his own documents that seem to be his.
17 His drivers license signature, some registration papers
18 and that sort of thing found in a gym bag. To say that we
19 need his handwriting to prove that somebody didn't check
20 into the Motel 6 in Mississippi and somehow slipped this
21 into his property and that somebody else, in a most
22 sinister nature, was able to check into the Motel 6 in
23 Arizona and somehow plant that on them I think we are
24 getting kind of, the realm of that being plausible is kind
25 of slim. So I really don't think we need handwriting.

1 With regard, that is all we have in general in argument.
2 But I do need to bring up the issue of, I think that the
3 Court can see the DNA evidence in this case is absolutely
4 critical. This is going to be quite the battle. And you
5 know we are only 11 weeks away from the possible trial
6 date. Assuming they get a sample and they run it I am
7 going to need about 20 hours to sit down with an expert
8 who is not even in this State. And it is getting close to
9 weeks before trial. I think I would ask for about six
10 more weeks and can ask for the trial to go June 1st or the
11 first Monday in June. The case is about six years old and
12 I am only asking for six weeks.

13 THE COURT: I have heard all the arguments and
14 y'all's primary focus is on that blanket and their primary
15 focus is everywhere and that blanket.

16 MR. GRAHAM: Yes, Your Honor.

17 MR. MCGUIRE: I would agree with that. And let me
18 add, I don't think it would be, if Your Honor is
19 contemplating having a sample from Mr. Lynch for a DNA
20 profile and compare, I don't think it is out of your
21 discretion to limit it to certain things. If you decide
22 that the blanket, let's just assume that a sample would
23 match Mr. Lynch, that since we don't have the history and
24 we can't connect the nexus to the blanket, when was the
25 semen deposited, when was DNA deposited that possibly

1 could be to the child victim in this case. If you were to
2 decide that the blanket and the DNA evidence regarding
3 that issue was not admissible, I mean I don't think it
4 would be beyond your discretion that they can test and
5 compare to certain items and not others. I mean I think,
6 I can tell you that I have had that experience in the past
7 and I don't think that would be beyond your discretion.
8 To be quite honest, we don't really have a lot of beef
9 that his DNA is on his own sink in the master bathroom.
10 In fact, with the whole DNA fraction he is only hitting on
11 it maybe four or five locations on it anyway. It is
12 almost irrelevant and immaterial anyway. Obviously, the
13 concern is that blanket and the prejudicial value.

14 THE COURT: So if samples are going to be provided
15 the State will agree that they make the analysis then you
16 need the additional time to review the analysis with your
17 expert. The appropriate thing to do is delay the trial is
18 your request.

19 MR. MCGUIRE: Your Honor, I find myself in the
20 position where I am fighting DNA with piece by piece and
21 allele by allele. That is one thing. I am going to need
22 a little bit more time.

23 THE COURT: But y'all are ready to go three years
24 ago?

25 MR. HUBBARD: Yes, sir. And, Judge, depending on

1 what you do we can offer to submit a brief within seven
2 days if you need more time, you have a lot of information.

3 THE COURT: I want to review everything this weekend.
4 And I don't think you need to issue a brief. I understand
5 your arguments. I will look over the cases also. I would
6 like to make a ruling and get it done by early next week
7 and that way we can deal with the ruling and move forward
8 one way or the other. You have got the hand print, we
9 dealt with that. I don't see the harm in the handwriting,
10 I think he ought to provide the handwriting. I have seen
11 more cases and more cases come up where the State is in
12 that prox of CSI and why didn't he get a handwriting
13 sample. It is painless and I don't see the prejudice to
14 your client to provide a handwriting sample. So we are
15 going to go ahead and direct that that be provided, the
16 handwriting exemplar will be provided. How long do y'all
17 need to, how hard is it to secure a handwriting exemplar?

18 MR. GRAHAM: One has already been done so the
19 question would be can we use the one that has already been
20 ordered by Judge McMahon.

21 THE COURT: You want to do that?

22 MR. GRAHAM: The posture we are in that, the DNA
23 sample that was taken from Mr. Lynch which has not been
24 tested. I don't know if they have done any analysis with
25 the handwriting or not. They have got a full set of

1 cards.

2 THE COURT: So I am ruling that they can analyze it
3 at this time. The sample of the handwriting will be
4 provided.

5 MR. GRAHAM: Yes, Your Honor, it is my understanding
6 that the ink impressions were taken of the hands that we
7 have but I don't believe that those have been analyzed or
8 at least a report hasn't been given to us. It is my
9 understanding that the handwriting exemplars were taken
10 and those have not been analyzed but they are in our
11 possession or the police's possession. And a buccal swab
12 for DNA purposes was taken but again that hadn't been
13 analyzed either. So everything has been collected but
14 nothing has been analyzed yet.

15 THE COURT: Upon ruling on it it can be analyzed or
16 not.

17 MR. GRAHAM: Correct. Unless there is going to be an
18 objection and you can tell us otherwise that they objected
19 and do need to retake it again for some reason.

20 THE COURT: Let me review this transcript primarily.
21 Anything else we need to take up this afternoon?

22 MR. GRAHAM: Your Honor, we do have one that we filed
23 and I think I emailed it to your clerk and also to the
24 defense counsel regarding a, we want to bring up the
25 question about getting an independent psychiatric

1 evaluation of Mr. Lynch. And it is not so much that we
2 want to know what that evaluation would reveal, it is more
3 so for PCR purposes. In the State versus Kevin Mercer the
4 defense did not do one. That case has been overturned by
5 PCR because one wasn't done. So I don't know whether they
6 have done one, whether they plan on, how they pursue that.
7 I just want to address that with the Court. And we are
8 asking one to be done and try to review it so that there
9 is a record that one was done and what the findings were
10 and if there is a tactical question of why they are not
11 doing something or why they are then I think they have to
12 answer that question. Usually there is a record of why or
13 why not they are doing something.

14 THE COURT: All right. How do y'all respond to that.

15 MR. MCGUIRE: I am not sure exactly what the request
16 is of me at this point on that issue. I think the fairest
17 response that I can give to the Court is that we have not
18 put anybody onto this with regard to the introduction,
19 expert testimony regarding mental health issues. The
20 Bixby case kind of plays out the current procedure of how
21 that would work. I think we would have to put them on
22 notice and then they would have a right to have a state
23 doctor. We would have probably the ability to attend if
24 we wanted to and we could litigate the conditions and the
25 evaluation. We would have the option of Mr. Lynch

1 participating or not. And of course if he did not the
2 sanction that we would suffer would be that we would not
3 be able to affirmatively introduce mental health expert
4 testimony. And if we were to do that, out of the penalty
5 phase point in the case the examination by the State would
6 be unsealed at that point, it would be made available to
7 the State and the defense and both sides could use it for
8 what it is. But we are just really, I guess it is not
9 right because we are not, we haven't put anybody on
10 notice.

11 THE COURT: I thought their objection was whether you
12 use it or not it is your decision but you have one in case
13 you need in using for purposes of PCR. Is that kind of
14 what you said?

15 MR. GRAHAM: Yes, Your Honor, we would ask for a
16 psychiatric evaluation, also a mental retardation.
17 Because if he is mentally retarded he is not eligible for
18 the death penalty. I think your Honor needs to know that
19 question and I think for PCR purposes the whole thing
20 needs to be evaluated. We are not asking, again, we are
21 not asking to get a copy of it at this time, we would just
22 like it done.

23 THE COURT: You just want to know if it has been done
24 or not or intends to be done.

25 MR. GRAHAM: Correct.

1 THE COURT: Okay. Whether you use it or how you use
2 it is your decision among your team.

3 MR. GRAHAM: Your Honor, we are not asking whether he
4 has done one or not done one. I guess what we are asking
5 for is an independent one done by the State. Again, we
6 don't want to see the results. So we are asking for an
7 independent evaluation outside.

8 THE COURT: All right. Let me read Bixby to make
9 certain I understand the request.

10 MR. MCGUIRE: I can tell you this. I can tell you
11 that, I mean I am aware of Bixby. We will comply with the
12 rules in Bixby but I don't think there is any authority,
13 unless the Court in some of interaction with my client or
14 based on evidence in the case or have some sort of history
15 that would give rise to a concern about mental health but
16 right now there is nothing in the record that would
17 suggest that sort of thing. I have since, this is really
18 our call and we would object and I would instruct Mr.
19 Lynch to remain silent and not cooperate with any
20 evaluation at this point.

21 THE COURT: You have made certain that you have made
22 a record for the request to have it made. If it were
23 appealed it would be addressed. Anything else?

24 MR. GRAHAM: No, Your Honor, thank you.

25 THE COURT: I will read everything and get to y'all.

1 All right. The hearing is adjourned.

2 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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CERTIFICATE OF REPORTER

State of South Carolina)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Lexington, South Carolina on the 6th day of January, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 28, 2012



Joy E. Holston, Court Reporter

My Commission expires: March 13, 2016

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	—)	2007-GS-32-00525
		2008-GS-32-02652
		2008-GS-32-02653

STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	VOLUME 1
KENNETH ANDREW LYNCH	)	
DEFENDANT	—)	

April 16, 2012
Lexington, South Carolina

B E F O R E:

THE HONORABLE EUGENE C. GRIFFITH, JR., Judge

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1 THE COURT: Good morning to all. You-all be
2 seated, please.

3 Solicitor, are we ready to go?

4 MR. MYERS: The State's ready, Your Honor.

5 THE COURT: Mr. McGuire, is defense ready?

6 MR. MCGUIRE: Yes, sir, Your Honor.

7 THE COURT: All right. We had a lengthy
8 pretrial conference just to discuss some of the issues
9 that may come about in presenting this case in the fashion
10 without the benefit of a jury, so I hope we've resolved
11 some of those so that it can proceed in an orderly
12 fashion.

13 Now, prior to beginning, I think it would be
14 appropriate and I instructed the lawyers that I intended
15 to go back over the waiver of a right to a jury trial with
16 Mr. Lynch.

17 So for the benefit of the record, Solicitor, can
18 we put the indictment numbers on the court record? Can
19 you do that for me, either one of you?

20 MR. MYERS: Your Honor, the indictments are as
21 follows: Indictment No. 2008-GS-32-2652, State versus
22 Kenneth Andrew Lynch, indictment for murder. Indictment
23 2008-GS-32-2653, State versus Kenneth Andrew Lynch,
24 indictment for murder. 2007-GS-32-525, the State versus
25 Kenneth Andrew Lynch, grand larceny, \$5,000 or more. All

1 of them have been true-billed, the defendant's been
2 arraigned, the State's ready, Your Honor.

3 THE COURT: Very well.

4 Madam Clerk, can you hand me the order that was
5 prepared regarding the waiver? Do we have that?

6 THE CLERK: Do you know what date that was
7 filed?

8 THE COURT: And that I do not know.

9 Did we not do an order granting the five-day or
10 seven-day --

11 MR. MYERS: Yes, sir, you did do an order.

12 THE COURT: That's what I want to see. This
13 would be in February?

14 MR. McGUIRE: Yes, sir.

15 (A discussion was held off the record.)

16 THE COURT: All right. Mr. McGuire, Mr. Stitely
17 and Mr. Lynch, I'm going to go back over the waiver of
18 rights as well as the waiver of rights affidavit presented
19 by the defense.

20 MR. McGUIRE: Yes, sir.

21 THE COURT: All right. Madam Clerk, will you
22 place Mr. Lynch under oath for me, please.

23 THE CLERK: Raise your right hand, please, sir.

24 KENNETH ANDREW LYNCH, after being duly sworn,
25 testified as follows:

1 THE COURT: All right. Mr. Lynch, the
2 indictment numbers which have been presented on the
3 record, two of which are for murder, one of which is for
4 the offense of grand larceny, have been called by the
5 State of South Carolina, the County of Lexington, through
6 the 11th Circuit Solicitor's Office and I want to go over
7 yet again with you the waiver of your right to a trial by
8 a jury of your peers. We've been over this in a
9 preliminary -- a pretrial hearing back in February. Do
10 you remember that day?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. I'm going to ask you
13 generally the same line of questions about your rights to
14 a jury trial and I want to make certain that you
15 understand that anything I ask, you may consult with your
16 attorneys at any time to have them explain or answer any
17 questions you may have as to my questions. Do you
18 understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Now, you understand
21 under the Constitution of the United States and the
22 Constitution of South Carolina, you have the absolute
23 right to be tried by a jury of your peers?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And you understand that in this

1 trial there are three charges pending against you, two
2 indictments for murder, one for grand larceny, and you
3 would have the ability to have a jury trial on those
4 charges. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Additionally, this is a capital
7 crime and so your rights are a little more acute because
8 of the additional rights with the capital -- the State
9 seeking the death penalty in this case. Do you understand
10 that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, you understand that this trial
13 is being conducted without a jury. We'll perhaps proceed
14 a little differently in that -- I want to make sure I
15 characterize this properly -- the State bears the burden
16 of proving your guilt on each and every element -- for
17 each and every element of all three crimes for which
18 you're charged. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And so the State bearing the burden
21 of proof, the State gets to present and call its witnesses
22 first. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And generally in a capital trial the
25 trial's conducted in two phases: Phase one is the guilt

1 or innocence phase and there's a burden upon the State to
2 prove those elements of those crimes during that phase.
3 At the conclusion of that trial, the Court will make a
4 determination rather than a jury as to the guilt or
5 innocence.

6 Now, that is said in light of the fact that I
7 understand from Counsel and several motions which have
8 been filed and several which have not been filed that your
9 attorney's going to make several pretrial motions
10 regarding issues concerning probable cause and other
11 issues such as that, but those have not yet been
12 considered, and so understand, those motions will be taken
13 up by the Court.

14 And I guess the unusual thing is, not having a
15 jury, the specific order in which those motions are taken
16 up is kind of taking a different approach because I will
17 be acting as the judge or making legal determinations as
18 to certain issues and then as to other issues, I'll be
19 making legal decisions and legal rulings as well as making
20 factual determinations and weighing factual testimony
21 presented by certain witnesses and certain evidence
22 presented by both sides.

23 And so to that extent, I will be considering
24 basically all the evidence and all the legal issues, and
25 normally I would only be responsible for making legal

1 rulings and a jury would be responsible for determining
2 facts as presented from weighing the evidence that the
3 State has presented during the trial.

4 Do you understand that you will only have me as
5 the Court making these determinations of the legal issues
6 and making determinations of the factual issues presented
7 by both sides? Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you understand that because
10 of that, I'm only one person sitting in the position as I
11 am?

12 During a jury trial, there would be 12 members
13 of the jury, exclusive of the alternates, and that 12
14 people, peers of yours from Lexington County, if they were
15 so selected and qualified to act as jurors in this case,
16 that those 12 would have to unanimously decide any issues
17 of fact for them to consider in their resolution of this
18 case in the guilt or innocence phase. Do you understand
19 that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And understanding these 12 members
22 of Lexington County qualified and selected, that that will
23 not happen and that you will be waiving that right to have
24 a panel of 12 people to consider the facts and make
25 factual determinations which are perhaps in dispute in

1 this case.

2 Do you understand that once we undertake the
3 trial, that your right to a jury trial will then be gone
4 at that time? Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Is it your decision today, the same
7 as it was in February, to waive your right to have a jury
8 of 12 people to sit in this courtroom and consider the
9 testimony, the evidence, and the facts presented by the
10 parties, both the State and defense, and make a
11 determination as to your guilt or innocence? Is that your
12 decision to waive those rights?

13 THE DEFENDANT: Yes, sir, that's my decision.

14 THE COURT: Now, you understand during a jury
15 trial when they select the jury and they qualify the jury,
16 that your attorneys are allowed a little more broad scope
17 in presenting questions to the Court for voir dire to
18 screen the jury's -- potential jurors so they can make
19 determinations as to who could be fair and impartial and
20 be totally disinterested from any connection with any of
21 the parties in this case, that your attorneys would be
22 allowed that latitude. If this jury were selected, they
23 would have that ability. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, considering the -- that I'm

1 following some of your waiver of rights, so my questions
2 may be a little disjointed, but additionally, when the
3 voir dire is conducted by your attorneys through the Court
4 and from the State, that the juries are -- potential
5 jurors are asked more particular and pointed questions
6 regarding their ability and their personal beliefs
7 regarding the penalty and the imposition of the death
8 penalty. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And understanding when you waive
11 that right for the -- your attorneys to screen and voir
12 dire these potential jurors, that waiving your right to a
13 jury trial waives that right also. Is that your
14 understanding?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And likewise, during the penalty
17 phase, the victims in the case presented by the State and
18 any other witnesses for the penalty phase that the State
19 should choose, which it's allowed to choose, you also are
20 allowed to choose mitigating witnesses and have a
21 mitigation team present evidence as to your personal
22 history and that sort of thing; that during that time --
23 and the jury also must consider all the mitigating factors
24 in the sentencing side, the sentencing phase; that those
25 12 jurors must likewise unanimously be convinced -- if it

1 makes the decision to impose the death penalty, that that
2 jury would have to be unanimously, all 12, convinced that
3 you be due the imposition of that sentence.

4 Do you understand by waiving your right to a
5 jury trial, you're waiving that right for those 12 to be
6 required to be unanimously convinced that the imposition
7 of the death penalty would be the appropriate sentence if
8 the case reaches that point? Do you understand that?

9 THE DEFENDANT: Yes, sir, I understand.

10 THE COURT: And you understand that part of the
11 consideration the jury makes also is finding the
12 circumstances of aggravation and the conviction of the
13 offense of murder, but there has to be circumstances of
14 aggravation additionally proved beyond a reasonable doubt
15 by the State for the State to be entitled to request that
16 a jury consider the imposition of the death sentence.

17 Do you understand that the Court will make and
18 weigh the facts and evidence regarding that factor which
19 is required by the State? Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, since we had our last hearing
22 in February, it's my recollection that I gave you several
23 days because the hearing was mid-week and I gave you until
24 the middle of the next week to decide whether to waive or
25 withdraw your decision to go forward with a bench trial

1 only.

2 Likewise, you've had additional time since
3 then -- I'm going over these rights again today -- as to
4 your decision to waive your right to a jury trial.

5 Have your thoughts or decision changed in any
6 way since that time?

7 THE DEFENDANT: No, sir, my thoughts have not
8 changed.

9 THE COURT: And so you've had an appropriate
10 time to coolly reflect upon your decision to waive your
11 right to a jury trial.

12 So, likewise, I ask you again today, is it your
13 decision, freely and voluntarily being made, to waive your
14 rights to have a jury trial in these three indictments?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: Now, have you had ample time and
17 ample access to your two attorneys, Mr. Stitely and
18 Mr. McGuire, since that time?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And so since February you've
21 consulted with them on numerous occasions, correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And have -- you've had the
24 opportunity to revisit this decision to waive the right to
25 a jury trial, if that were your thoughts or reluctance in

1 going forward without the benefit of a jury; is that
2 correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Now, have you also had
5 access to any family members you may have, your minister,
6 the chaplain in the local detention facility, have you had
7 an opportunity to consult with any of those type people,
8 if you so chose, regarding this decision?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You've had that opportunity?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Is there anyone that you would like
13 to speak to about your right to a jury trial that you have
14 not been afforded the ability to speak with prior to
15 today's date that you would like to speak with before we
16 go forward?

17 THE DEFENDANT: No, sir.

18 THE COURT: All right. Mr. McGuire and
19 Mr. Stitely, I ask you as officers of the court, have
20 y'all, each of you separately, had ample opportunity to
21 speak and counsel with your client regarding his decision
22 to waive his right to a jury trial since the hearing on
23 February 2nd, 2012?

24 MR. MCGUIRE: Yes, sir.

25 THE COURT: Mr. Stitely?

1 MR. STITELY: Yes, sir.

2 THE COURT: Do y'all believe based upon your
3 counseling of your client that he understands his right to
4 a jury trial?

5 MR. MCGUIRE: Yes, sir.

6 MR. STITELY: He does, Your Honor.

7 THE COURT: Do you-all believe he has freely and
8 voluntarily and with a cool reflection made this decision
9 to waive his right to a jury trial in this case?

10 MR. MCGUIRE: I do, Your Honor.

11 MR. STITELY: We have, Your Honor.

12 THE COURT: And y'all have discussed with him
13 the advantages and disadvantages to proceeding both with a
14 jury or without a jury, have you not?

15 MR. MCGUIRE: We have.

16 MR. STITELY: We have, Your Honor.

17 THE COURT: And understanding both the
18 advantages to a jury trial and the disadvantages to a jury
19 trial, has your advice to him concerning that issue
20 changed since February or is it still consistently waiving
21 his right to a jury trial?

22 MR. MCGUIRE: We're still consistent, Your
23 Honor.

24 MR. STITELY: Consistent, Your Honor.

25 THE COURT: All right. Solicitor, do y'all

1 propose any further questions from the Court regarding the
2 issue of his waiver of right to a jury trial?

3 MR. MYERS: No further questions from the State,
4 Your Honor.

5 THE COURT: All right. Regarding Indictment
6 08-GS-32, Indictment 2652 and 2653, Indictment 07-GS-32,
7 Indictment 525, having conducted now two hearings
8 regarding the issue of the decision made by Counsel and
9 particularly the defendant, Kenneth Andrew Lynch,
10 regarding his waiver of a right to a jury trial in the
11 trial on these indictments, I will find that Mr. Lynch has
12 freely and voluntarily and knowingly and with opportunity
13 to consult with Counsel and any counselors he deemed
14 appropriate, that he has decided freely and voluntarily to
15 waive his right to a jury trial on these three
16 indictments.

17 All right. Based upon -- you-all can be seated.

18 Based upon the pretrial conference with the
19 attorneys, I want to note for the record that I have
20 instructed the attorneys, or after counseling with the
21 attorneys, I have told the attorneys that it is my
22 intention to conduct the trial in an orderly fashion. It
23 is my intent to take -- I'm going to classify them as
24 regimented breaks at appropriate times since we're not in
25 the presence of jurors at any time during the trial.

1 MR. MYERS: Yes, sir.

2 THE COURT: Fair enough.

3 All right. When you're ready.

4 MR. GRAHAM: Thank you, Your Honor.

5 With a heart filled with malice, Kenneth Andrew
6 Lynch murdered Portia Washington, a 53-year-old
7 grandmother, mother, daughter, friend, and co-worker.
8 With a heart filled with malice, Kenneth Andrew Lynch
9 murdered **Cassandra L. [REDACTED]** a seven-year-old innocent
10 girl.

11 Saturday, June 10th, 2006, was a normal day for
12 Angelica and Portia. They went and got their hair done,
13 they went grocery shopping, they went back to their
14 apartment, the apartment they shared with Mr. Lynch at
15 that time, were getting ready for church the next day,
16 Sunday. That was the last day they were heard from or
17 seen.

18 They leave behind friends and family that know
19 that they wouldn't run away and know that they just
20 wouldn't pick up and leave.

21 Kenneth Andrew Lynch murdered them. He stole
22 Portia's car and he ran and he lied to cover up his
23 horrific crimes.

24 Wednesday, June 14th, 2006, Kenneth Andrew Lynch
25 is stopped outside of El Paso, Texas, by a Texas state

1 trooper. He's driving Portia's car, a 2005 Ford Focus,
2 that she wouldn't let him drive. And the lies begin.

3 Kenneth Lynch tells that trooper that he's going
4 to Arizona -- doesn't say anything about going to
5 Canada -- he's going to Arizona to pick up his wife. He
6 doesn't have a wife. And he doesn't have a girlfriend
7 because he left her dead.

8 Saturday, June 17th, 2006, Kenneth Lynch tries
9 to enter Canada. He's on the run. But he's denied entry
10 into Canada. They won't let him in. So he comes back on
11 foot and he comes and he's greeted and gets in line with a
12 U.S. Border Patrol agent.

13 He's detained because he's a missing person.
14 Portia's missing, Angelica's missing, Kenneth Lynch is
15 missing. Nobody's showing up for work, nobody can find
16 them. Portia's car is gone, Portia's car was stolen.
17 Ultimately he's arrested on a grand larceny warrant for
18 stealing Portia's car.

19 But what he has on him when he's getting into
20 Canada is important. He's got a Greyhound bus ticket from
21 Seattle to Vancouver. In Seattle they find Portia's car
22 stripped, empty, no paperwork, no registration. He had
23 the registration in his hand when he talked to the
24 trooper, but the car is empty. No license plate on the
25 car because it's gone and it's at a metered parking spot

1 abandoned by Kenneth Lynch.

2 But the ticket for the Greyhound bus to
3 Vancouver is a one-way ticket. Kenneth Andrew Lynch is on
4 the run and he's not coming back. He's not visiting the
5 bears in Canada, he's not on vacation. It's a one-way
6 ticket.

7 But that's not all. When he's taken into
8 custody by the Whatcom Sheriff's Department, he doesn't
9 have any money. He's got a bag of change. There was so
10 little money that it wasn't even inventoried. There were
11 no bills, no dollar worth -- no amount worth keeping track
12 of.

13 A man on vacation doesn't buy a one-way ticket
14 and not have the money to get home and abandon a car with
15 no tags and no papers that's going to be towed and taken
16 away. Because Kenneth Andrew Lynch isn't on vacation,
17 he's on the run.

18 As he's taken into custody by the Whatcom County
19 Sheriff's Department on Sunday, June 18th, 2006, Kenneth
20 Lynch continues to lie. When they tell him that he's
21 being arrested on a grand larceny warrant, he says that
22 he's shocked, he doesn't know anything about a vehicle.
23 He says that he rode from South Carolina to Portland,
24 Oregon with a friend in a Cadillac. He states that he
25 used to live with a lady named Portia and her

1 granddaughter but that he left to go see Canada. But
2 that's not what he told the trooper. The trooper was,
3 "I'm going to Arizona to pick up my wife."

4 He said that he quit his job and was going to
5 Canada. But you'll hear that he gave no notice that he
6 was quitting his job, he didn't put in for vacation time,
7 he didn't even collect his last check and left money
8 behind.

9 Monday, June 19th, 2006, he's interviewed by a
10 Seattle detective and an FBI agent and Kenneth Lynch
11 continues to lie to cover up the murder of Portia and
12 Angelica and the theft of Portia's car.

13 He said that he quit his job again and that he
14 left South Carolina with a friend to go to Georgia, not
15 talking about going to Canada this time. He says he
16 hadn't taken a car and that he was riding with a friend.
17 And they go, "No, Mr. Lynch, we know you were stopped in
18 Texas." And he said, "Oh, Portia gave me that car. She
19 didn't want it anymore."

20 That car was Portia's freedom, probably the most
21 prized thing that she'd ever owned in her life. She was
22 current on her payments and she was proud of that car and
23 she never would have abandoned it and given it to Kenneth
24 Lynch. But he took it from her after she was dead.

25 Kenneth Lynch maintained that he left on Friday

1 because he knows on Friday they were alive and he knows on
2 Saturday they were dead. He didn't want to put himself in
3 South Carolina when they're dead. But the State will
4 prove to you that Kenneth Lynch was here in Lexington
5 County on Saturday.

6 Kenneth Lynch stole Portia's car. He used it to
7 run, he used it to hide and he lied to cover up his
8 crimes.

9 But blood doesn't lie. The seven-year-old girl,
10 **Cassandra L. [REDACTED]** blood was found in that house, in
11 the apartment that he shared with Portia and Angelica and
12 it doesn't lie.

13 Sure there was an attempt to clean it up. No
14 stranger would have tried to clean it up. He did because
15 he didn't want people to know that there'd been a crime.
16 But he left behind her blood, smeared in the carpet, and
17 you'll see photographs under the chair and on the chair
18 and on sheets.

19 With a heart filled with malice, Kenneth Andrew
20 Lynch murdered Portia Washington and **Cassandra L. [REDACTED]**

21 Thank you.

22 MR. STITELY: Your Honor, before I do the
23 opening, for the record, we would make a comment that a
24 lot of things that were brought up in pretrial motions
25 would have dealt with a lot of the items the Solicitor

1 stated were found suppression-type issues.

2 We would put, for the record, that we would have
3 made these suppression motions all through the course of
4 the opening, for the record's sake. I know we're doing
5 those motions kind of integrated, but the items found
6 leading to Step A, B, and C, we would have had motions in
7 place to deal with those items.

8 THE COURT: Certainly. All the motions in
9 limine and pretrial motions would be considered in a
10 traditional trial sense.

11 MR. STITELY: Thank you, Your Honor.

12 THE COURT: And your record is protected to all
13 the motions you filed pretrial and put on the record
14 before the opening statements. That's fine.

15 MR. STITELY: Thank you, Your Honor.

16 May it please the Court.

17 THE COURT: Yes, sir.

18 MR. STITELY: Your Honor, very briefly, it's
19 different when I get up and talk to a jury, but in this
20 case, you're called into question to find out, is Kenneth
21 Lynch guilty beyond a reasonable doubt.

22 I don't have to define a reasonable doubt, but
23 this case isn't about reasonable doubt; this case is about
24 doubt.

25 One of the things the Solicitor got up here and

1 said was that on the 10th was the last day they were ever
2 seen. You will learn in this investigation through the
3 testimony that the police only had one track in their
4 mind, one track that compelled them to follow a
5 three-year-old's premonition that's 95 percent accurate to
6 a field, but sightings by a former military personnel and
7 by former law enforcement personnel didn't warrant
8 follow-up.

9 We're just asking you to listen to the case,
10 listen to everything they have. At the end of the day,
11 you're to find out beyond a reasonable doubt that Kenneth
12 Lynch is guilty. The facts don't play it out. And any
13 time the investigation led to something, the police
14 weren't interested. It wasn't followed up on. You will
15 hear in their notes, "It did not comply with our theory of
16 the case, not worthy of follow-up."

17 You'll learn about the other sightings. You'll
18 learn about the investigation that was done and wasn't
19 done. At the end of the day, they're no closer than they
20 were back in 2006. They don't know. There's not proof,
21 especially not that beyond a reasonable doubt.

22 Thank you, Judge.

23 THE COURT: All right. Thank you.

24 We're going to start in the morning at 9:15
25 sharp, and I'm going to try to adhere more to my

1 THE COURT: All right. Call your witness.

2 MR. HUBBARD: The State calls Linda Miller.

3 LINDA MILLER, after being duly sworn, testified
4 as follows:

5 THE CLERK: If you'll have a seat over here.

6 State your name, please, and spell your last
7 name for the record.

8 THE COURT: Mr. Hubbard, I have one issue. I
9 want to see one attorney from each side up here on a
10 matter unrelated to this witness.

11 MR. HUBBARD: Yes, sir.

12 (A bench conference was held with the judge and
13 attorneys.)

14 DIRECT EXAMINATION

15 BY MR. HUBBARD:

16 Q Ms. Miller, will you state your name for the record?

17 A Linda Miller.

18 Q All right. Ms. Miller, where do you live?

19 A [REDACTED]

20 Q Is that in Columbia?

21 A Columbia, yes.

22 Q I just want to get right to the point.

23 Do you know Portia Washington?

24 A Yes.

25 Q How long do you go back with Portia Washington?

1 A Approximately 20 years.

2 Q Twenty years?

3 A Yes.

4 Q How would you describe your relationship with Portia
5 Washington?

6 A We had a very good relationship.

7 Q Good friends?

8 A Good friends.

9 Q Are you-all relatives?

10 A No.

11 Q Just friends?

12 A Just friends.

13 Q How often would you talk to Portia Washington during
14 a normal week?

15 A Probably two to three times a week.

16 Q Was that by phone?

17 A Sometimes.

18 Q And other times?

19 A She would just show up at my house.

20 THE COURT: All right. Hang on.

21 MR. HUBBARD: Yes, I'm going to move this
22 microphone around a little bit. Just speak up a touch for
23 us.

24 THE COURT: You're soft-spoken. Speak up so I
25 can hear you, but also the court reporter in front of you,

1 she and I both have got to hear you.

2 THE WITNESS: All right.

3 BY MR. HUBBARD:

4 Q So how often would you speak to her?

5 A At least two to three times a week.

6 Q Sometimes by phone?

7 A Yes.

8 Q And you said sometimes she would just show up?

9 A Yes.

10 Q Was that ever a problem when Portia Washington just
11 showed up at your house?

12 A Never.

13 Q Let me ask you, you mentioned Hanover Street. Was
14 there a time Portia Washington lived out there?

15 A Yes.

16 Q Now, did she live with you?

17 A No.

18 Q Did she have other family that lived out there?

19 A Yes.

20 Q And does she still have family that lives out there?

21 A Yes.

22 Q About how long ago did she live out in that area?

23 A Oh.

24 Q Let me ask you this: Was that about the time you
25 started getting to know her?

1 A When I first met her?

2 Q Yes.

3 A I first met her, oh, about '90, '91, I think.

4 Q And about that time, was she living out in that area?

5 A Yes, she was.

6 Q Okay. Were those good times?

7 A Yes.

8 Q Did there come a time when Portia Washington moved
9 from Hanover Street?

10 A She did.

11 Q Where did she move to?

12 A Somewhere off Two Notch.

13 Q And did she end up moving again?

14 A Yes, she did.

15 Q Where did she move to?

16 A She moved to Cayce, I think it was.

17 Q Okay. And were you aware that she also finally moved
18 to West Columbia?

19 A She told me that.

20 Q Okay. And lived in an apartment complex?

21 A Yes.

22 Q Every time she moved, she stayed in this area?

23 A Yes.

24 Q This apartment complex, what city was it in?

25 A It was in Lexington, somewhere in Lexington.

1 Q Lexington County?

2 A Lexington County.

3 Q All right. Now, Portia's family, was most of her
4 family scattered or were they mostly in the Midlands area?

5 A They're in the Midlands area.

6 Q How would you describe Portia and her family; were
7 they close or were they all estranged and never talked to
8 one another?

9 A They were a close family.

10 Q Every time Portia Washington would move, would you
11 remain in touch with her?

12 A Yes.

13 Q Knowing her as you did, of all the people she loved
14 and knew, was there any one person, any one person, that
15 she cared for more than anyone else?

16 A Yes.

17 Q Who is that?

18 A Angelica.

19 Q Who is Angelica?

20 A Her granddaughter.

21 Q How old was Angelica the last time you saw her?

22 A Six.

23 Q What, if anything, would Portia do for Angelica?

24 MR. MCGUIRE: Objection. Relevance.

25 THE WITNESS: Everything.

1 MR. HUBBARD: I think it is very relevant.

2 We're going to make our argument, Your Honor, if one is
3 gone, are they together or separate?

4 THE COURT: I think the testimony is allowable.

5 BY MR. HUBBARD:

6 Q What would she do for her?

7 THE COURT: I mean, if she knows.

8 THE WITNESS: Everything.

9 BY MR. HUBBARD:

10 Q Everything.

11 Who was raising Angelica?

12 A Portia.

13 Q What was Angelica's relationship to Portia, what --
14 was it her daughter?

15 A It was her granddaughter.

16 Q Granddaughter. Okay.

17 Who -- do you know Angelica's momma?

18 A Yes, I do.

19 Q Okay. Who is that?

20 A Theresa.

21 Q Why, if you know, was Portia raising Angelica?

22 A I can't say. I don't know.

23 Q Okay. But Portia was the one taking care of
24 Angelica?

25 A Portia was, yes.

1 Q Did you ever have an opportunity to keep Angelica?

2 A Yes, I did.

3 Q And was that common?

4 A Yes.

5 Q And was that ever a burden for you?

6 A No.

7 Q Sometime before they both went missing, did Portia
8 ever talk to you about Angelica's school?

9 A Yes.

10 Q Based on that conversation, what, if anything, were
11 you going to do for Portia and Angelica?

12 A She was going to use my address so Angelica can go to
13 Hyatt Park Elementary.

14 Q So she could go to Hyatt Park Elementary?

15 A Yes.

16 Q Is that over in Columbia?

17 A Yes, over in Eau Claire.

18 Q When was that conversation?

19 A It was right before school was out, either the last
20 of April or beginning of May.

21 Q In 2006?

22 A 2006.

23 Q So she was already thinking of plans for Angelica for
24 the following school year?

25 A Yes.

1 Q Where did -- where did Portia work?

2 A Bob Bennett Ford.

3 Q Did she ever talk about work?

4 A Yes.

5 Q Based on those conversations and you knowing her as
6 you did, did she like Bob Bennett Ford?

7 A She loved her job.

8 Q She loved her job?

9 A Yes, she did.

10 Q What about the people there?

11 A She loved her people. Everybody was nice, she said.

12 Q At some point while she's working at Bob Bennett
13 Ford, do you recall Portia getting a car?

14 A Yes.

15 Q In all those years you had known Portia Washington,
16 had she ever had a brand-new car before?

17 A No.

18 Q The car she got at Bob Bennett Ford, was it brand
19 new?

20 A Yes.

21 Q Had you -- did you get to see that car?

22 A Yes, I did.

23 Q I'm going to show you a picture.

24 Do you recognize this car in this photo?

25 A That look like her car.

1 MR. HUBBARD: Your Honor, I would offer this
2 into evidence.

3 MR. McGUIRE: No objection, Your Honor.

4 THE COURT: The photograph will be admitted as
5 State's No. 1.

6 THE COURT REPORTER: Judge, they premarked to 3,
7 so it will be No. 4.

8 THE COURT: That's fine. If anything's been
9 premarked unbeknownst to me, that's great. So mark it as
10 it's premarked.

11 I'm glad you-all have done that.

12 (WHEREUPON, STATE'S Exhibit No. 4 was marked for
13 identification and received into evidence.)

14 BY MR. HUBBARD:

15 Q The car that's in the photo, State's 4, what did
16 Portia Washington think about this car?

17 A She was very excited about her brand new car.

18 Q Would she ever --

19 THE COURT: I'm sorry. Was that premarked as 3
20 is the number?

21 MR. HUBBARD: Yes, sir. We premarked 3 last
22 night, so this is 4.

23 THE COURT: Very good. I'm trying to keep track
24 of that and my law clerk is, and we discussed the Court's
25 exhibits and the State's and defense exhibits. I want to

1 make sure I'm on the same page starting out. Okay.

2 MR. HUBBARD: It will be a long, long trial if
3 we get mixed up on the front end.

4 THE COURT: All right. That's why I want to
5 make certain I'm hearing you clearly.

6 Go ahead.

7 BY MR. HUBBARD:

8 Q Would Portia Washington ever give this car away?

9 A No.

10 Q Did she ever complain about having to pay for this
11 car?

12 A No, she did not.

13 Q She loved this car?

14 A She loved her car.

15 Q Did there come a time when she lived in West Columbia
16 in those apartments that she talked about a man?

17 MR. McGUIRE: Objection. Hearsay.

18 MR. HUBBARD: I haven't asked for the substance.
19 I just asked if they talked about a man.

20 THE COURT: Allow the question, but not what she
21 said.

22 THE WITNESS: Yes.

23 BY MR. HUBBARD:

24 Q When she first talked about this man, was this a man
25 she was interested in, friend, or was it more?

1 A Somebody she was interested in.

2 Q And at that time did you have a name?

3 A No, I did not.

4 Q Did Portia Washington, a woman you've known for a
5 long time, appear to be happy at that point?

6 A At the beginning, yes.

7 Q Did you at some point learn who that man was?

8 A Yes, I did.

9 Q Who was he?

10 A Kenny Lynch.

11 Q Kenneth Lynch. What did she call him?

12 A She called him Kenny.

13 MR. MCGUIRE: Objection. Hearsay.

14 MR. HUBBARD: It's the defendant.

15 "What did she call him?" "Kenny."

16 THE COURT: I'm going to allow that question and
17 answer.

18 BY MR. HUBBARD:

19 Q If you have knowledge, where did they meet?

20 A At work.

21 Q At Bob Bennett Ford?

22 A Yes.

23 Q Now, you had known Portia for quite some time before
24 this Kenny Lynch or Kenneth Lynch came into her life,
25 right?

1 A Yes.

2 Q How would you describe Portia Washington before
3 Kenneth Lynch entered into her life? How was she with,
4 say, with her family?

5 A She got -- they got along real well. She was a happy
6 person.

7 Q Did she spend a lot of time with the family?

8 A Yes, she did.

9 Q What about social gatherings with her family?

10 A Yes, she did.

11 Q Christmas, Thanksgivings?

12 A Yes.

13 Q After Kenneth Lynch came into her life, did anything
14 change?

15 A Yes, it did.

16 Q Did she continue to go to all those social
17 gatherings?

18 A No, she did not.

19 Q Before Kenneth Lynch, how would you describe her
20 personality? Was she a worrier or was she happy or how
21 would you describe her?

22 A She was a happy person.

23 Q After Kenneth Lynch, what, if anything, did you
24 notice about Portia Washington?

25 A She was beginning to change; she wasn't a happy

1 person anymore.

2 Q Did you-all, in fact, talk about that?

3 A Yes, we did.

4 Q Did you ever meet Kenneth Lynch?

5 A No.

6 Q You didn't even know what he looked like?

7 A No.

8 Q Was there ever a time he came over to your property
9 with Portia and Angelica?

10 A Yes, she came and dropped Angelica off and he was in
11 the car.

12 Q Could you see him?

13 A No.

14 Q Did he get out of the car?

15 A No, he was sitting way back so you -- you can't
16 tell -- you couldn't tell who was in the car. But she
17 said it was him.

18 Q Okay. He didn't get out?

19 A No.

20 Q He didn't come up and greet you?

21 A No.

22 Q Back before Kenneth Lynch, did you ever go over to
23 wherever she would live?

24 A No, I didn't.

25 Q Back before Kenneth Lynch?

1 A I would be down this -- she lived down the street.

2 Q That's right. Okay. That's what I'm getting at.

3 So you-all would still see each other?

4 A Yes.

5 Q Once she was with Kenneth Lynch and living in the
6 apartment, did you ever go over to that apartment?

7 A No, I did not.

8 Q Now, we talked about changes in -- in Portia.

9 Did you see any changes in Angelica, too?

10 A No, I didn't see them, but --

11 Q Okay. Let me ask you this: In talking to Portia,
12 did you-all ever have the conversation about concerns she
13 had?

14 MR. MCGUIRE: Objection. Hearsay.

15 THE WITNESS: Yes.

16 MR. HUBBARD: Not getting into what it is,
17 Judge. I'm not offering anything.

18 THE COURT: And she can't testify to what she
19 was told. She can testify as to whether or not her
20 conversations were had, certainly.

21 BY MR. HUBBARD:

22 Q Did you-all talk about Angelica?

23 A Yes, we did.

24 Q Did she have concerns about Angelica?

25 A Yes, she did.

1 MR. MCGUIRE: Renew my objection to hearsay.

2 MR. HUBBARD: State of mind, 803, subsection 3,
3 her concerns.

4 THE COURT: All right.

5 MR. HUBBARD: Not getting into them, Judge. I'm
6 just laying it right there.

7 THE COURT: I'll allow it.

8 BY MR. HUBBARD:

9 Q Did she have concerns?

10 A She did have concerns.

11 Q What was the last day you ever saw Portia Washington
12 and Cassandra L. [REDACTED]

13 A Friday, June 9th, 2006.

14 Q Where did you see them?

15 A They were at my house.

16 Q About what time?

17 A It was probably a little after 6 to about 7:30.

18 Q Okay. So that's the time period she was at your
19 house?

20 A Yes.

21 Q And I take it this was after work for her?

22 A Yes, it was.

23 Q And, again, you said she was dropping Angelica off or
24 talking about it -- or maybe I -- I'm not putting words in
25 your mouth.

1 A No. Angelica wanted to stay, but --

2 Q Okay.

3 A -- she wouldn't allow it.

4 Q Did you and Portia have a conversation at that point?

5 A Yes, we did.

6 Q What was the topic?

7 A Home.

8 MR. MCGUIRE: Objection. Hearsay.

9 MR. HUBBARD: I don't know what the assertion
10 is.

11 THE COURT: I'm going to allow the topic of the
12 conversation as long as she's not testifying that she was
13 told such and such, thus and so.

14 MR. HUBBARD: That's right.

15 THE COURT: It will be allowed. If it's
16 testimony as to what was said by Ms. Washington, that
17 would be hearsay.

18 MR. HUBBARD: Yes, sir.

19 BY MR. HUBBARD:

20 Q Based on your conversation with her about home, what
21 did -- what, if anything, did you offer Portia and
22 Angelica?

23 A They could stay at my house, they didn't have to go
24 home.

25 Q This was Friday the 9th --

1 A Yes.

2 Q -- 2006?

3 A Yes.

4 Q You offered them to come stay at your house?

5 A Yes.

6 Q And you say they left at 7:30?

7 A Yes.

8 Q And that was the last time you'd ever seen them?

9 A Yes.

10 Q I'm going to show you this strip and see if this
11 accurately sums up what you've said today.

12 On June 9th, 2006, somewhere from 6 to
13 6:30 p.m.--

14 MR. MCGUIRE: Judge, I haven't had -- excuse
15 me -- I haven't had the opportunity to look at that.

16 THE COURT: All right. Show it to him.

17 MR. HUBBARD: Okay.

18 BY MR. HUBBARD:

19 Q June 9th, 2006, beginning at 6, 6:30, somewhere in
20 that area, p.m., last time Linda Miller sees or hears from
21 Portia Washington and Angelica; is that accurate?

22 A That's true.

23 Q Portia and Angelica stop by Linda Miller's house and
24 leave around 7:30 p.m.; is that correct?

25 A Yes.

1 Q To return home to Park Place Apartments; is that
2 correct?

3 A Yes.

4 Q Did Portia Washington ever talk to you within those
5 last few months about any travel plans?

6 A No.

7 Q Did Portia Washington ever do much traveling?

8 A No.

9 Q You wouldn't describe her as a traveler?

10 A No.

11 Q Was she more of a homebody?

12 A She was.

13 Q The relationship that you had with Portia Washington,
14 if she was going to go out of town, would she tell you
15 that?

16 A She would.

17 Q And knowing her for all those years, did you know if
18 she had friends out of state?

19 A I don't know.

20 Q She never talked about it?

21 A She never talked about them.

22 Q Knowing her relationship with Angelica, if she was
23 going to go out of state with Angelica, would she have
24 told you?

25 A Yes.

1 MR. MCGUIRE: Objection. Speculation.

2 THE COURT: Sustained.

3 MR. HUBBARD: Twenty-plus years of relationship,
4 I figure it's like a husband/wife. You know, if they're
5 going to go out of state or not, they'll talk. I think I
6 set the foundation for that.

7 THE COURT: And she testified she was a homebody
8 and she didn't travel much.

9 MR. HUBBARD: May I ask the question, then?

10 THE COURT: Yes, ask the question.

11 BY MR. HUBBARD:

12 Q If she was going to travel out of state with
13 Angelica, would she have told you?

14 A Yes.

15 MR. MCGUIRE: Just for the record, renew my
16 objection.

17 THE COURT: Very well.

18 BY MR. HUBBARD:

19 Q Would it be -- would the Portia Washington you know
20 just pick up and leave without contacting you?

21 A No.

22 MR. MCGUIRE: Objection. Speculation.

23 BY MR. HUBBARD:

24 Q That Friday --

25 THE COURT: I'll sustain that objection.

1 MR. MCGUIRE: Thank you, Judge.

2 BY MR. HUBBARD:

3 Q That Friday when Portia Washington and Angelica came
4 by your house, what was your understanding as to whether
5 Kenneth Lynch still lived with them?

6 A He was there.

7 Q At Park Place Apartments?

8 A Yes.

9 Q What, if any, impression did you have about whether
10 Portia Washington wanted to go home?

11 A She didn't.

12 Q What, if anything, did she say to make you think
13 that?

14 A Because she called home a hellhole.

15 MR. MCGUIRE: Objection.

16 THE COURT: Wait a minute. Stop.

17 MR. HUBBARD: This, Your Honor --

18 THE COURT: I want to hear your question again.

19 MR. HUBBARD: Yes, sir.

20 THE COURT: He objected on a hearsay basis.

21 MR. HUBBARD: And I will have a lot of law on
22 this one.

23 THE COURT: All right.

24 MR. HUBBARD: What, if any, impression did you
25 have about whether Portia Washington --

1 THE COURT: Wait a minute, wait a minute, wait a
2 minute.

3 Don't answer the question -- he's saying the
4 question for my benefit -- until I tell you, you can
5 answer it. Okay?

6 I don't want her to misunderstand.

7 MR. HUBBARD: And this is the lead question to
8 the question.

9 THE COURT: All right. I understood that. I
10 just wanted to make sure she didn't jump the gun on me.

11 MR. HUBBARD: What, if any, impression did you
12 have about whether Portia Washington wanted to go home;
13 what did she say to make you think that?

14 MR. MCGUIRE: Same objection. Hearsay, Your
15 Honor.

16 MR. HUBBARD: I've got a state-of-mind exception
17 and, Your Honor, I've got a lot of case law, including
18 Weston, which went into great detail about this very
19 question. And I'd like --

20 THE COURT: Weston was the case with the --

21 MR. HUBBARD: Missing mom.

22 THE COURT: -- the adult moved back in with his
23 mother and it changed the state of mind, the mother played
24 bridge and socialized and all that sort of stuff --

25 MR. HUBBARD: Yes.

1 THE COURT: -- and she had a friend who was her
2 bridge partner, and they talked, too, that case?

3 MR. HUBBARD: Yes, sir.

4 THE COURT: All right.

5 MR. HUBBARD: And the state of concern about the
6 person in the home, of being in that home, this is exactly
7 the same thing. And I've got other cases, too, Your
8 Honor.

9 THE COURT: All right. Now, as I understand
10 that case, it was allowed -- it's kind of differentiating
11 between what was said and what was the state of mind of
12 the person making -- or receiving the statement.

13 MR. HUBBARD: Right. The limitations were you
14 can state what they felt, their concern, but not the
15 reason. I'm not going to get into the reason.

16 THE COURT: Right. It was fear or something --

17 MR. HUBBARD: Yes, sir.

18 THE COURT: -- in that case.

19 MR. HUBBARD: Yes. Here, I'm trying to elicit
20 just the dread of not wanting to go home.

21 THE COURT: And you've done that.

22 MR. HUBBARD: I think the answer is what --
23 she's going to explain the dread.

24 If I could proffer the statement for Your Honor
25 to rule on the legal issue of it.

1 THE COURT: All right. Let me hear him on it
2 first and then I'm probably going to allow you to proffer
3 it.

4 MR. MCGUIRE: Judge, if it's a -- if it's a
5 description of emotion based on behavior, I think that
6 would be admissible. But if his question is, did you have
7 an impression as to what her concern was and it's because
8 of comments or statements he's going to make, then that's
9 not admissible.

10 MR. HUBBARD: Actually, it is. And, Your Honor,
11 I have --

12 THE COURT: I'm going to get Weston because I
13 read -- I don't remember reading --

14 MR. HUBBARD: Yes, sir.

15 THE COURT: -- the exact part where they
16 questioned this friend of the deceased, Ms. Franchey.

17 MR. HUBBARD: Your Honor, there is State versus
18 Garcia as well. Basically, that's the one you can't state
19 the reason.

20 THE COURT: Yes. And Weston discussed Garcia.

21 MR. HUBBARD: Right.

22 THE COURT: And it described exactly what they
23 improved in the rule and how to interpret it.

24 MR. HUBBARD: And, Your Honor, I know you're
25 reading right now, but Garcia, which is State versus

1 Garcia at 512 S.E.2d 507 says: "The victim's state of
2 mind, that she was scared of appellant, was relevant
3 because it tended to disprove appellant's contention the
4 shooting was an accident; the victim's fear suggests
5 appellant may have intended the shooting."

6 The court says, "We find, however, that the
7 decedent's state of mind was relevant. Hopper's and
8 Estes' testimony concerning the victim's statements to
9 them were not admissible under the state-of-mind exception
10 because they go beyond saying that they were scared."

11 They gave actual reasons. I'm not getting into
12 a reason, Judge, I'm getting into one statement. I've
13 laid a foundation.

14 THE COURT: As I understand, the rule is, what
15 we're trying to quantify is, admissible statements
16 regarding declaration of a condition or state of mind is
17 not the reason for that belief.

18 MR. HUBBARD: Yes, sir.

19 THE COURT: I think it's tied to that.

20 MR. HUBBARD: Yes, sir.

21 THE COURT: All right. Now, tell me again your
22 question so I understand it.

23 MR. HUBBARD: The final question was: What, if
24 anything, did she say to make you think that? That was
25 her impression, that she didn't want to go home, Judge.

1 I'm talking about what -- how did you know what Portia's
2 state of mind was, and that's the statement that I would
3 like to proffer.

4 It's not the reason for her state of mind, it's
5 basically why -- why was she in dread. I'm not going to
6 go into details of what's happening in the home.

7 That's exactly, I think, what 803-3 is all
8 about. And that's where Garcia draws the line, and that's
9 where State versus Griffin at 528 S.E.2d 668, they draw
10 the line there.

11 Shepherd versus State, Judge, at 594 S.E.2d 462.

12 I could go through these and give you examples
13 from each of these cases.

14 THE COURT: And I think I understand.

15 And so your specific question is, what did she
16 do or say to make you believe --

17 MR. HUBBARD: That that was her state of mind,
18 that she didn't want to go home. Not the reason for her
19 state of mind, but I'm asking this witness, you're telling
20 us she didn't want to go home. What did she say to make
21 you think that?

22 THE COURT: All right. I think that limited
23 question that you just described is allowable. She says,
24 I didn't want to go home because I was afraid, I don't
25 want to go home because I was in dread.

1 MR. HUBBARD: Right.

2 THE COURT: That's allowed. The explanation is
3 not.

4 MR. HUBBARD: Correct. I'm not getting into an
5 explanation.

6 THE COURT: Now, Mr. McGuire, did you hear my
7 understanding of what the State would like to ask?

8 MR. HUBBARD: Right. And I'll phrase the
9 question so she knows exactly what I'm asking.

10 MR. MCGUIRE: I think, Judge, the -- I mean
11 we're using some pretty artful words such as did you have
12 an impression, did you learn something, instead of just
13 asking what the real question is: What was this woman
14 telling you about this?

15 Clearly, this is -- her source of information
16 are words from Portia Washington's mouth. And the word
17 "home" is skirting that reason issue that he said he's not
18 going into.

19 If she wanted to say, "I'm really nervous
20 tonight," I'd say, you know what, that's allowable, or
21 "I'm extremely sad right now," I'd say that's allowable
22 because that is the state of mind.

23 But the home, that's the reason he's pretending
24 he's not going into a reason, home's the reason. That's
25 what's not allowable under this case that we're talking

1 about.

2 It's -- we can't confront this statement. It's
3 a confrontation issue, it's hearsay, it's beyond the
4 exception of the hearsay rules, and we're skirting a
5 404(b) analysis.

6 And that "home" word, where would she get that
7 information? From a word from Portia Washington.

8 MR. HUBBARD: All right.

9 THE COURT: All right. Now, what I'm -- the
10 question I heard Mr. Hubbard state was, What did she say
11 to create or to make you think that she had -- she had the
12 particular state of mind, whichever it was.

13 MR. HUBBARD: Right.

14 THE COURT: That's allowable under the law as
15 outlined in State versus Garcia and Weston.

16 MR. HUBBARD: Yes, sir.

17 THE COURT: Nothing further.

18 MR. HUBBARD: Right.

19 THE COURT: So I'll allow that limited question
20 subject to the objection of the defense.

21 BY MR. HUBBARD:

22 Q Ms. Miller?

23 A Yes.

24 Q We're talking about she didn't want to go home. What
25 did she say?

1 A "I don't want go back to that hell hole."

2 Q "I don't want to go back to that hell hole"?

3 MR. MCGUIRE: Objection. I renew my objection
4 and move to strike that question.

5 MR. HUBBARD: Okay.

6 THE COURT: All right. Hang on. I'm going to
7 write this one down.

8 MR. HUBBARD: And, Your Honor, just for the
9 record --

10 THE COURT: I wasn't finished writing.

11 All right. I think that answer is allowed under
12 Weston and Garcia. I'm quite confident you can't ask her
13 to explain what --

14 MR. HUBBARD: Exactly. That's exactly, Judge,
15 and I'm not going anywhere else.

16 THE COURT: But the objection is noted as to the
17 question, "What did she say," and the answer just
18 provided. I wrote both of them down.

19 MR. MCGUIRE: And I'm protected on the record
20 that my objection was overruled?

21 THE COURT: Yes, your objection was overruled.
22 I've allowed the question, "What did she say?" And her
23 answer was, quote, "I don't want to go back to that hell
24 hole," stop, end quote.

25 MR. MCGUIRE: And, Judge, and again because

1 these rules of issue preservation are getting pretty
2 dogmatic, I guess our grounds would be, of course, the
3 violation of our client's right to the Sixth Amendment,
4 that the declarant made the statement; that it's not a --
5 it's offered for the truth of the matter asserted.

6 It's not a hearsay exception, and it's a 403
7 issue, and that the prejudicial value with the danger of
8 unfair prejudice outweighs any probative value and that it
9 requires a 404(b) analysis if this is going to be tried to
10 be linked up to my client in any way in that it would have
11 to be -- is there some reason that this place, as she
12 described a hellhole, it's because of what they're going
13 to imply is because of any behavior on the part of my
14 client, that would be a prior uncharged bad act, and
15 they'd have to prove it by clear and convincing evidence.

16 THE COURT: All right. And for all the bases of
17 your objections, which I believe were discussed, all those
18 bases were discussed in State versus Weston.

19 I believe that the answer provided was a
20 state-of-mind declaration of Ms. Washington and would be
21 an exception to the hearsay rule, so your objections are
22 overruled.

23 MR. MCGUIRE: Thank you, Your Honor.

24 BY MR. HUBBARD:

25 Q Ms. Miller, Portia Washington, this friend you had

1 for 20-plus years, after that conversation, did you ever
2 see or hear from her ever again?

3 A No.

4 Q After that conversation on June 9th, 2006, have you
5 ever seen or heard from little Cassandra L. [REDACTED]

6 A No.

7 MR. HUBBARD: Thank you, Ms. Miller.

8 Please answer any questions the defense might
9 have.

10 CROSS-EXAMINATION

11 BY MR. MCGUIRE:

12 Q Good morning, Ms. Miller.

13 A Good morning.

14 Q Thank you for coming to court today.

15 You said Angelica was six years old?

16 A Yes.

17 Q Would it surprise you to know she was seven?

18 A Maybe. I don't know.

19 Q And with regard to why Angelica's mother was not
20 raising her, would it surprise you to know that Portia
21 told the school district she just didn't know where
22 Theresa was?

23 A No.

24 Q Was Theresa having some trouble with drugs?

25 A I can't say. I don't know.

1 Q Okay. Now, how long did they live in the apartment
2 that they moved to?

3 A I really don't know.

4 Q Okay. Over a year?

5 A Possibly. I'm not sure.

6 Q Maybe two years?

7 A Maybe. I don't know.

8 Q Okay. And you had never been there, of course?

9 A No.

10 Q Would it surprise you to know that Portia was
11 contemplating quitting her job at Bob Bennett?

12 MR. HUBBARD: Objection, unless there's a
13 foundation on that.

14 THE COURT: All right. Lay your foundation.

15 MR. MCGUIRE: It would be inconsistent
16 statement.

17 MR. HUBBARD: Your Honor, I hear an attorney
18 testifying. I don't hear a foundation.

19 THE COURT: I mean --

20 MR. MCGUIRE: Your Honor, let me -- I can clear
21 it up.

22 We've had testimony from this witness, she
23 absolutely loved her job at Bob Bennett.

24 THE COURT: I remember that.

25 MR. MCGUIRE: Okay. And this would be

1 inconsistent with that. Just her knowledge.

2 THE COURT: All right. So if she knows?

3 MR. MCGUIRE: Right.

4 BY MR. MCGUIRE:

5 Q And you might not know this, but did you not know
6 that she had a particular problem with the new service
7 manager?

8 MR. HUBBARD: Objection, Your Honor, unless --
9 well, I'll let that one go. I'll --

10 THE COURT: Either way you characterize it, if
11 she knows. She may not.

12 THE WITNESS: I knew nothing about that.

13 BY MR. MCGUIRE:

14 Q Okay. Now, Ms. Washington used to be a bit of a
15 pistol in her younger days, right?

16 A Well, I'm not sure. I didn't know her in her younger
17 days.

18 Q Okay. But you-all go back, what, 20 years?

19 A Yes.

20 Q Okay. Ms. Washington did struggle with drugs in her
21 life?

22 A I can't say that because I don't know.

23 Q Okay.

24 A Not when I knew -- at the time I knew her, no.

25 Q Okay. So all these years that you have known her

1 going back 20 years, you're completely unaware that she
2 went to Voc Rehab for drug addiction?

3 A I don't know anything about that.

4 Q Okay. Do you know that's how she got the job with
5 Bob Bennett?

6 A No, I don't know that, either.

7 Q In this time span of 20 years that you have known
8 her, did you know her to go missing on drug binges from
9 time to time?

10 A No.

11 Q You don't recall that?

12 A No.

13 Q Okay. Are you not aware that she was convicted for
14 cocaine?

15 A I don't know anything about that.

16 Q Okay. Maybe she didn't tell you everything.

17 MR. MCGUIRE: Thank you, ma'am.

18 MR. HUBBARD: One follow-up.

19 THE COURT: Yes, sir.

20 REDIRECT EXAMINATION

21 BY MR. HUBBARD:

22 Q When Mr. Lynch came into her life, you didn't go to
23 her house anymore, wherever she lived, did you?

24 A No.

25 MR. HUBBARD: No more questions.

1 THE COURT: Anything else? All right.

2 Ms. Miller, thank you very much.

3 MR. GRAHAM: The State calls Shyla Andrews.

4 SHYLA ANDREWS, after being duly sworn, testified
5 as follows:

6 THE CLERK: Have a seat over here and state your
7 name, please, spelling your last for the record.

8 THE WITNESS: My name is Shyla Andrews.

9 DIRECT EXAMINATION

10 BY MR. GRAHAM:

11 Q And how do you spell Shyla?

12 A S-H-Y-L-A.

13 Q Shyla, where are you currently employed?

14 A South Carolina Army National Guard.

15 THE COURT: Would you speak up, please, ma'am?
16 Speak up a little bit for me so I can hear you.

17 MR. GRAHAM: Yes. There you go. Sit a little
18 closer to the microphone, Shyla.

19 THE WITNESS: South Carolina Army National
20 Guard.

21 THE COURT: Very good. Thank you.

22 BY MR. GRAHAM:

23 Q And how long have you been employed with them?

24 A Since August 24th, 2011.

25 Q And what do you do with the Guard?

1 A I'm a combat medic.

2 Q Prior to that, what did you do for a living?

3 A A medical assistant.

4 Q Back in June of 2006, what did you do?

5 A I was a hair stylist.

6 THE COURT: You need to speak up. You speak a
7 little softly and I've got to hear what you're saying and
8 Ms. Court Reporter's got to hear what you're saying, too.

9 THE WITNESS: I was a hair stylist.

10 BY MR. GRAHAM:

11 Q Okay.

12 THE COURT: Okay. It's fine. I mean, this
13 courtroom's -- most people are not used to being in here.

14 THE WITNESS: Uh-huh.

15 THE COURT: I've just got to hear. Okay?

16 THE WITNESS: Okay.

17 THE COURT: Thank you.

18 BY MR. GRAHAM:

19 Q A hair stylist. Where were you employed then?

20 A At Kimberly and Antonio's Creative Hair Design on
21 North Main Street.

22 Q And did you know Portia Washington and Cassandra L.

23 [REDACTED]

24 A Yes.

25 Q And how did you know them?

1 A They were my clients.

2 Q You did their hair?

3 A Yes.

4 Q How long did you know Portia and Angelica?

5 A For about two and a half years.

6 Q Two and a half years?

7 A Yes, sir.

8 Q How often during that two-and-a-half-year period did
9 you see them?

10 A Every two weeks.

11 Q Did they have -- every two weeks they came in, every
12 two weeks they made an appointment, how did that -- how
13 did you see them?

14 A They had a standing appointment every two weeks.

15 Q What does "a standing appointment" mean?

16 A It means automatically they would be there, my first
17 clients every two weeks. And she didn't have to tell me
18 she would be back, I knew she would be back.

19 Q What day of the week did they have their standing
20 appointment on?

21 A On Saturday.

22 Q On June 10th, 2006, that Saturday, did you see Portia
23 and Angelica?

24 A Yes.

25 Q Do you remember what time they arrived?

1 A 8:30.

2 Q 8:30 in the morning?

3 A Yes, sir.

4 Q Do you remember how they got there? Did you see how
5 they came, what vehicle? Did they come on foot or how?

6 A Ms. Portia drove her car.

7 Q Let me show you a photograph that's been marked as
8 State's Exhibit No. 4 into evidence and ask if you
9 recognize that.

10 A Yes, sir.

11 Q Whose car is that?

12 A That's Ms. Portia's car. She drove that car that
13 day.

14 Q So on Saturday, June 10th, 2006, at 8:30, you saw
15 that car?

16 A Yes.

17 Q And who came in that car?

18 A Ms. Portia and Angelica.

19 Q Had you previously -- did you know if she was dating
20 somebody? Did you know she was dating Kenneth Lynch?

21 A Yes.

22 Q Had you ever met him before?

23 A Yes.

24 Q And where did you see him?

25 A He -- at the shop, but it was a different shop. I

1 was at a different shop at the time.

2 Q And do you know what car Ms. Portia was driving at
3 that time?

4 A No, but she didn't have that car at the time.

5 Q She did not have that car?

6 A No.

7 Q That day when Portia and Angelica came in that car,
8 tell me what happened. Whose hair did you do that day,
9 who stayed, who left?

10 A I did Angelica's hair. Ms. Portia had some errands
11 to run and Angelica's hair always takes a few hours, so
12 Ms. Portia left and ran her errands and came back.

13 Q So when you say that you -- it takes a few hours to
14 do Angelica's hair, what does that mean? What did you do?

15 A Shampoo, blow dry, braid, putting beads on it,
16 whatever. She usually got braids.

17 Q At some point, did Portia come back?

18 A She did.

19 Q And when she came back, did you do her hair that day?

20 A Well, I'd like to say she got her hair shampooed, but
21 I'm really not sure if she got her hair done that day.

22 Q Do you remember -- what, if anything, do you remember
23 about Portia or Angelica ordering lunch while they were
24 there at your shop?

25 A Yes. There was a company that was doing dinners that

1 day, and they ordered and it was late.

2 Q It was late. Do you remember what time that the
3 order was placed?

4 A No. But I do remember it was about 45 minutes late,
5 though.

6 Q Do you remember what time Ms. Portia and Angelica
7 left the shop?

8 A About 1:30.

9 Q Did they eat the lunch there or did they take it with
10 them?

11 A No, they took it with them.

12 Q The lunch was late. What, if any, effect did that
13 have on Portia?

14 A She was nervous.

15 Q What, if anything, did she say to you based on her --

16 MR. STITELY: Objection, Your Honor. This is
17 going to be hearsay. He's asking what, if anything, did
18 she say to you.

19 MR. GRAHAM: This is going to fall under the
20 803-3 and the Garcia line, Your Honor.

21 THE COURT: Tell me the question again. I
22 thought -- I thought I heard you say, what did you say to
23 her, meaning her comment to Ms. Washington. I may have
24 misunderstood you.

25 MR. GRAHAM: No, Your Honor. I had just

1 elicited out of Ms. Andrews that Ms. Portia was nervous
2 because the lunch was late, and I asked her what, if
3 anything, that Ms. Portia said about being nervous.

4 THE COURT: All right. As I understand the rule
5 outlined in Weston discussing Garcia, it's allowed for a
6 comment to be made from the unavailable witness that "I am
7 some state of mind." They can make that comment, and
8 that's a hearsay exception that's allowed. They can't say
9 because she said thus, thus, and thus.

10 So she can say -- you can phrase your question
11 to elicit that response without getting her to repeat the
12 entire explanation as to why she enjoyed that belief, or
13 enjoyed that state of mind.

14 MR. STITELY: Thank you, Your Honor.

15 THE COURT: So your objection is noted, but it
16 hasn't happened yet so --

17 MR. GRAHAM: Okay.

18 BY MR. GRAHAM:

19 Q Ms. Shyla, you testified that Portia was nervous
20 because lunch was 45 minutes late. Based on her
21 nervousness, what, if anything, did she say to you to
22 explain her state of mind?

23 MR. STITELY: I'm going to object to hearsay,
24 Judge. If he's just asking did she say that she was
25 nervous, that would be one thing. He's asking what all

1 did she tell you. That's the hearsay part.

2 THE COURT: I sustain that.

3 I think we've got to be clear on this. She can
4 answer your question as to what statements she made
5 regarding her state of mind but not what caused her to be
6 in that state of mind. That's how I understand the rule.
7 I mean, I think that's how it's written.

8 MR. GRAHAM: Correct, Your Honor. I believe
9 that the answer is going to show why she was nervous at
10 that particular date and time, and it's not going to go
11 into the history of where that nervousness came from.

12 MR. STITELY: It's still direct hearsay.

13 If her testimony -- and I don't think she's ever
14 answered the question, "She told me she was nervous." I
15 think you just -- in your previous ruling, although we
16 still object to that, that would be admissible under your
17 previous ruling.

18 Getting into the reasons why she may be nervous
19 if her actual statement to Ms. Harris was that "I am
20 nervous," it's hearsay well outside of Weston.

21 Nowhere in Weston does it say that it allows him
22 to expand upon all these reasons. It simply allows if
23 they were to say, "I am nervous," that would be one thing.

24 THE COURT: I think that Mr. Stitely is correct.
25 She's never answered the question if it's been asked, Did

1 she say what her state of mind was. This young lady here,
2 Ms. Andrews, noted she was nervous because lunch was late.
3 I don't know that you've elicited the comment.

4 MR. GRAHAM: I haven't gotten there yet.

5 THE COURT: All right. You're allowed for the
6 comment but not the explanation as to that belief.

7 MR. STITELY: Thank you, Judge.

8 THE COURT: And I'm not sure how to advise you
9 on how to characterize your question.

10 MR. GRAHAM: I guess we'll find out when she
11 answers, Your Honor.

12 THE COURT: All right. Go ahead.

13 BY MR. GRAHAM:

14 Q Shyla, what, if anything, did Ms. Portia say to you
15 when lunch was late that showed her nervousness?

16 MR. STITELY: Your Honor, that -- that's not the
17 situation here. Objection, once again, hearsay.

18 The exception says that she can say she was
19 nervous, not what caused you to make you feel that she was
20 nervous. That's exactly what the Solicitor is trying to
21 elicit.

22 He's not asking her, "Did she say she was
23 nervous?" "What made you think she was nervous" is asking
24 for a direct hearsay statement.

25 And in Weston, it goes on to say:

1 "Consequently, while the present state of the declarant's
2 mind is admissible as exception to hearsay, the reason for
3 the declarant's state of mind is not."

4 THE COURT: I think I've repeated the Garcia law
5 that's outlined in Weston for the record already. I think
6 we're all clear on the rule we're trying adhere to.

7 All right. I'm going to allow you to proffer
8 your question, and her answer will be proffered for the
9 record, and then I'll make the determination of whether or
10 not it's admissible under Garcia and Weston.

11 MR. GRAHAM: Thank you, Your Honor.

12 BY MR. GRAHAM:

13 Q Shyla, what, if anything, did Portia say that showed
14 that she was nervous?

15 A After waiting, and they were already complete -- I
16 had finished their hair -- after waiting for the food, she
17 came to me and said, "He's not going to believe that I was
18 here this long." And then I called to check on the food
19 for her, and they told me it's on the way.

20 THE COURT: I'm thinking.

21 MR. GRAHAM: Yes, sir.

22 THE COURT: Carol, read that answer back to me.

23 (Requested portion was read back.)

24 THE COURT: I believe that answer is hearsay and
25 not an exception. I think she has testified as to her

1 impression that the victim was nervous in her presence and
2 that was observable to her.

3 MR. GRAHAM: Your Honor, if I might argue, then,
4 a little further.

5 THE COURT: Okay.

6 MR. GRAHAM: Going back to Garcia, the
7 statements, I believe, that had to do with her leaving and
8 going and seeing the defendant, or being with the
9 defendant, being nervous with the defendant, being afraid
10 of the defendant was allowed specifically to offset the
11 claim that the defendant made it, that it was an accident.
12 So the statement that they were going to be in fear and
13 she was going to be with him offset the accident.

14 In this case, subject to the defendant's
15 statement coming in later, which I understand that they're
16 going to make a motion to suppress, the defendant
17 specifically said that he's out of town on Friday.

18 So this is going to go directly to that point
19 that she was still afraid of him because he was in town
20 and that she was going home to him.

21 MR. STITELY: Your Honor, that's not an
22 exception. They're trying to use third-party hearsay to
23 elicit something out absolutely for the truth of the
24 matter asserted. I mean, what the Solicitor is trying to
25 do, he's trying to circumvent the hearsay rules through

1 other witnesses.

2 This witness never said Ms. Washington said she
3 was nervous. That's what Garcia, that's what Weston would
4 allow. They're trying to elicit hearsay statements to
5 prove their case later on through these witnesses. It's
6 hearsay. They're trying to get it out for the truth of
7 the matter asserted.

8 THE COURT: All right. Now, if she's
9 recalled -- the defendant testifies he was out of town, if
10 she's recalled, that statement is allowed. Not having the
11 defendant's representation that -- or the defense, "I
12 wasn't there, I was away from home at this time" and
13 before the Court right now in this trial, that situation
14 has not yet occurred, has it?

15 MR. GRAHAM: No, Your Honor. I can either
16 recall her at that time or we can -- if Your Honor wants
17 that -- or we can just take it subject to striking it now,
18 but admitting it back into evidence later, once his
19 testimony comes in or anything -- his statement comes in.

20 THE COURT: She's testified and it's been
21 allowed that it was her observation that Ms. Washington
22 was nervous. That's in.

23 The answer to your last question is not in, it's
24 a statement considering hearsay.

25 I will allow you to re-present that at such time

1 if the testimony goes as you anticipate it.

2 MR. GRAHAM: Thank you, Your Honor.

3 THE COURT: You're not precluded from that. My
4 ruling may be different at that time.

5 BY MR. GRAHAM:

6 Q Were you aware that Portia was dating Kenneth Lynch?

7 A Yes.

8 Q What, if any, changes had you noticed in Portia's
9 behavior from before she was dating Kenneth Lynch until
10 after she dated Kenneth Lynch up until the time of
11 June 10th, 2006?

12 A The last couple of months of them coming to the
13 salon, Portia didn't get her hair done as often. It would
14 be Angelica, she would drop her off and always have
15 errands to run, and that was out of character for her
16 because she's very protective of Angelica.

17 And occasionally, she would reschedule their
18 appointment to the following weekend, you know, and said
19 that Angelica was --

20 MR. STITELY: Objection to any hearsay she's
21 about to say. She said that she would say that.

22 THE COURT: She is speaking very soft. I
23 thought she said that if she missed an appointment, she'd
24 reschedule for the following weekend.

25 Is that not what she said?

1 MR. STITELY: Her next sentence was, "And she
2 would say that." So I was just trying to stop it before
3 it came out.

4 THE COURT: All right. I understood her to say
5 if she missed an appointment for whatever reason, she'd
6 reschedule for the following weekend.

7 Ask your next question so that I'm clear.

8 BY MR. GRAHAM:

9 Q In addition to those changes in her behavior, what,
10 if any, other changes did you see in Portia after she
11 began dating Kenneth Lynch in those last few months?

12 A She just seemed nervous and anxious sometimes and we
13 didn't converse as much anymore.

14 Q She didn't talk as much anymore?

15 A Unh-unh.

16 Q Did you notice any changes in her physical
17 appearance?

18 A No.

19 Q During the time that Portia began to be more nervous,
20 as you testified, did she talk to you about her problems?

21 A Yes.

22 Q Based on your conversations with her, what, if any,
23 advice did you give her regarding Kenneth Lynch?

24 A I told her that she should leave him and that I would
25 pray for her.

1 Q On Saturday, June 10th, 2006, what were your
2 expectations as far as seeing Portia and/or Angelica again
3 when they left your salon?

4 A I expected to see them in two weeks.

5 Q Did either Portia or Angelica show up for that
6 appointment two weeks later?

7 A No.

8 Q Did either Portia or Angelica call to cancel?

9 A No.

10 Q Did either Portia or Angelica call to reschedule?

11 A No.

12 Q Was that normal behavior or abnormal behavior for
13 Portia?

14 A Abnormal.

15 Q Would you say you knew Portia well? How would you
16 describe your relationship with her?

17 A Yes, I would say I knew her fairly well.

18 Q Did she share a lot of her personal life with you?

19 A Yes.

20 Q She told you about her family and about her friends?

21 A Yes.

22 Q What, if any, opinion do you have as to whether
23 Portia would voluntarily disappear and never contact her
24 friends or family again?

25 MR. STITELY: Your Honor, objection on the

1 grounds of speculation. At best, we have discovered that
2 this is someone she sees every couple of weeks. He's
3 asked her to speculate as to how she would react with her
4 family as a whole.

5 THE COURT: Give me the question one more time.
6 She testified she was a close friend, I mean, so --

7 MR. GRAHAM: What, if any, opinion do you have
8 as to whether Portia would voluntarily disappear and never
9 contact her friends or her family again?

10 THE COURT: I'll allow that. Subject to
11 objection, it's noted.

12 THE WITNESS: She was very close to her family
13 and that wouldn't happen.

14 BY MR. GRAHAM:

15 Q Did you ever hear from Portia or Angelica ever again?

16 A No.

17 Q Shyla, let me show you a statement that summarizes
18 your testimony and ask if you can read that to yourself.

19 And does that fairly and accurately represent
20 your testimony, what you testified to?

21 A Yes.

22 Q On June 10th, 2006 at 1:30 p.m. is the last hair
23 appointment for Portia and Angelica with Shyla Harris.

24 I guess Andrews is your married name, right?

25 A Yes.

1 Q Back then it was Harris?

2 A Yes.

3 Q Portia and Angelica have a standing appointment,
4 never heard from again.

5 And that's fair and accurate of your testimony?

6 A Yes.

7 MR. GRAHAM: Your Honor, the State would offer
8 this statement, the statement previously put on the board
9 through Ms. Miller and this board into evidence.

10 MR. STITELY: We're going to object to them
11 being entered into evidence. If they want to use them
12 demonstratively later on, I think that's one thing. But I
13 don't believe putting written versions of statements from
14 the witness stand into evidence is probative.

15 MR. MYERS: If you'll give us until after the
16 break, I have an in-depth detailed brief on the summary
17 charge, specifically Rule 611, the order of presentation.
18 If I could submit that to you and counsel of record.

19 THE COURT: All right. We'll take that issue up
20 later.

21 It's consistent with the testimony thus far, and
22 so the board's in the courtroom and it's available for the
23 fact finder's viewing.

24 MR. GRAHAM: Thank you, Your Honor.

25 Shyla, please answer any questions the defense

1 has.

2 CROSS-EXAMINATION

3 BY MR. STITELY:

4 Q Hey, good morning.

5 A Good morning.

6 Q And it's now Ms. Anderson. Back in 2006, you were
7 Ms. Harris?

8 A Yes. It's now Ms. Andrews.

9 Q Andrews. I apologize. Congratulations.

10 And it's true that you now are actually
11 stationed out in Arizona or over on the West Coast?

12 A No, my unit is here. I was in Texas for training.

13 Q You were in Texas?

14 A Uh-huh.

15 Q When did you get back?

16 A March 30th.

17 Q Okay. So just recently?

18 A Uh-huh.

19 Q Okay. Glad you got back.

20 I just want to ask you a couple very quick
21 statements.

22 Going back to June 10th, the last hair
23 appointment you had, you said that Ms. Washington and her
24 granddaughter had a standing appointment at 8:30?

25 A Uh-huh.

1 Q Isn't it true that that day you actually couldn't do
2 their hair at 8:30?

3 A No. I fit some -- the person that I fit in that day,
4 I didn't fit them in before them.

5 Q Okay.

6 A Is that what you're referring to?

7 Q Yeah. Do you remember giving a statement to the
8 police officers back in 2006 when they talked to you?

9 A I do.

10 Q Okay. And you actually said that when they got
11 there, there was already someone else there to get their
12 hair done that morning, correct?

13 A Okay.

14 Q Okay. And you said that you had to fit them into
15 your schedule and it set you back awhile, correct?

16 A Fit the other person into my schedule.

17 Q Okay. So what order did you do hair that day? Whose
18 hair did you do in what order? Do you remember?

19 A I can do more than one person at a time. But it
20 depends on what they're getting.

21 Q Okay.

22 A It just takes -- Angelica takes one on one for what
23 she gets done to her hair.

24 Q Okay. And it would be your testimony you did her
25 hair first?

1 A I'm not really sure how you want me to answer that.
2 You want to know who was complete first? I mean, it takes
3 a long time. I don't know.

4 Q Just whose hair did you start first?

5 A Oh, whose hair did I start first? She could have
6 been second.

7 Q Okay. And if -- if she was second to start, how long
8 do you think you'd have spent on -- and I believe the name
9 was Ms. Tommy's hair, how long would that have taken you
10 to get started?

11 A Well, originally, everybody gets a shampoo. That
12 doesn't take long. I mean, it just depends on whether or
13 not that person got their hair conditioned or roller set
14 or whatever. But while they're up under the dryer, then I
15 can spend one-on-one time with Angelica.

16 Q Okay. How long would it take you to get someone up
17 to the dryer, just -- just a guess?

18 A Ten, fifteen minutes. It depends.

19 Q And you said -- in your original statement, do you
20 recall telling officers that Ms. Portia left at any time?

21 A Yes, Ms. Portia didn't stay that day.

22 Q Do you remember telling that to the police officers
23 or do you remember telling them that she stayed there the
24 whole time?

25 A What police officer?

1 Q Whoever you did an interview with. I can tell you
2 the name of the detective. I'm sorry. I can't read their
3 signature.

4 Whichever officer came and took your statement
5 with the West Columbia Police Department. Do you recall
6 giving a statement? It may have been Investigator Bayne,
7 the young woman in the blond hair sitting in that first
8 row.

9 A On June 10th, 2006, Ms. Portia did not stay the whole
10 time.

11 Q Okay. What time did she leave?

12 A I don't know what time she left.

13 Q Okay. If you had to guess, what's the closest to
14 your recollection of when she left? Was it right away,
15 was it a little bit more into the morning?

16 A She didn't stay very long when she got there, but I'd
17 rather not say what time I believe she left six years ago.

18 Q That's fair. That's fair.

19 And she just left Angelica there by herself?

20 A With me.

21 Q Okay. And with this other woman, Ms. Tommy?

22 A Yeah. There were other people in the salon.

23 Q Do you know what Ms. Tommy's full name is, by chance?

24 A No, I don't remember.

25 Q You said that they drove up in the car that day. Did

1 you ever see anyone else driving that car?

2 A No.

3 Q Okay. Not that day?

4 A I have never -- I have never -- you know, I answered
5 your question, no, I've never seen anyone else drive that
6 car.

7 Q Do you know why Ms. Portia had Angelica with her all
8 the time?

9 A She had Angelica with her all the time because
10 Angelica was coming to get her hair done.

11 Q Okay. Do you know if she lived with her all the time
12 or you only saw them in a getting-their-hair-done
13 capacity?

14 A No, Angelica lived with her.

15 Q Do you know why she lived with her grandmother?

16 And you are under oath. If you know, you've got
17 to tell us.

18 A No. I mean, I'm just -- I really don't know how to
19 answer that question. I mean, yeah, I know she lived with
20 her grandmother.

21 Q Why?

22 A And did we discuss it? Is that what you're asking
23 me?

24 Q Why do you know that she lived there with her
25 grandmother?

1 A I know she lived with her grandmother because her
2 grandmother told me that. Is that hearsay?

3 Q I mean, it's -- it might be.

4 A I'm a little nervous about everything I say.

5 Q No, you don't have to worry about that. Don't worry,
6 they'll object if I say something wrong.

7 A Okay.

8 Q Did she ever tell you why she had to live with her?

9 A No, I don't know.

10 Q Did you know anything about Angelica's mother?

11 A Yes.

12 Q Okay. Did you know that she had a big drug problem?

13 A I know she wasn't perfect.

14 Q Okay. Is that a yes, you knew she had a drug
15 problem?

16 A I mean, I -- I only know what -- what Ms. Portia
17 tells me. I mean, is it hearsay? I don't know her mother
18 like that.

19 Q Okay. From your conversation --

20 A She didn't tell me that. I don't know. I have never
21 seen her. I don't know how to answer that question.

22 Q Sure. From your conversations in being a good friend
23 with Ms. Portia, did you know her daughter to have a bad
24 drug problem?

25 MR. GRAHAM: Your Honor, we don't object to

1 Ms. Andrews answering the question about what Portia told
2 her about Angelica's mother Theresa. There's no -- we're
3 not going to object on hearsay grounds for that. If
4 Ms. Andrews knows, we're okay with that answer.

5 THE COURT: All right. You may answer the
6 question, it's okay.

7 THE WITNESS: I just know that her daughter had
8 some issues. Whether drugs were the issue, I don't -- I
9 don't remember.

10 BY MR. STITELY:

11 Q Okay. That's fair. But would it surprise you to
12 know that Ms. Portia would tell people that she didn't
13 even know where her daughter was?

14 A No.

15 Q On any occasion, did Ms. Portia and you, from your
16 conversations over the time you're getting her hair done,
17 did you ever get the impression that Angelica's mother
18 would hang out with some pretty bad people?

19 A Well --

20 Q That never came up?

21 A "Pretty bad people," I mean, I'm not -- she never
22 said anything about Angelica's mother hanging out with
23 anybody that --

24 Q Okay.

25 A -- would threaten her or cause a threat. I mean, I

1 don't understand what you mean. I don't know. I don't
2 know anything about her friends.

3 Q Okay. That -- that's all I wanted to know.

4 Did you -- would it surprise you to know that
5 Ms. Portia had had a couple of run-ins with drug use?

6 A We didn't discuss that.

7 MR. STITELY: Okay. And that's fair.

8 One second, Your Honor.

9 (Pause.)

10 BY MR. STITELY:

11 Q Would it surprise you to know that Angelica's father
12 was gunned down in a -- in a drug murder outside of Pure
13 Passion's nightclub?

14 A It would not surprise me to know, but, no, I did not
15 know that.

16 Q Okay. Just a couple more questions.

17 Do you know where Ms. Washington lived?

18 A Yes.

19 Q Okay. Where was that? Just what neighborhood. You
20 don't have to tell me specifically.

21 A She lived in West Columbia. And I don't know exactly
22 where the apartments are -- and I -- I may be wrong with
23 the name of them, but I think it's Park Place or Park --

24 Q Okay.

25 A Yeah.

1 Q Over by the BC Baptist church?

2 A Yeah, behind there.

3 Q Okay. And do you know, by chance, how long
4 Ms. Washington was with Mr. Lynch? You said that you knew
5 that he was her boyfriend. Do you know how long?

6 A I'm sorry, I'm taking a minute because I'm thinking
7 about -- I have a long timeline in my mind. It's a long
8 time ago.

9 Q No problem.

10 Maybe that's -- do you know if it was more than
11 a couple of weeks, couple months, couple years?

12 A I would like to say it was closer to two years,
13 really.

14 Q Okay. Did you ever know any of Ms. Portia's
15 boyfriends before Mr. Lynch or know of them?

16 A She was previously married before that.

17 Q Okay.

18 A And, no, I don't know of any other boyfriend before
19 him.

20 Q Did she ever talk to you about her ex-husband?

21 A Briefly.

22 Q Okay. What was the impression you got about that
23 relationship?

24 A It didn't work out.

25 Q Do you know why, being good friends?

1 A We discussed it.

2 Q Okay. Why didn't it work out with her ex-husband?

3 A I mean, I don't know all the details.

4 Q Well, what do you know?

5 A I know that it didn't work out. I know he was seeing
6 someone else. I know they went to the same church
7 together. I mean, what else do you want to know?

8 Q I mean, was there anything else? Were there ever
9 problems with physical violence?

10 A I don't -- well --

11 Q Is that a "yes"?

12 A I don't remember.

13 Q Well, you said: "I don't know -- well -- "I mean, you
14 had to think about it.

15 A Well -- I want to be -- I put my hand on the Bible,
16 and I want to be 100 percent accurate on everything that
17 you ask me. And that being so long ago, I did not know
18 you would ask me about it, and I didn't jog my memory
19 enough to be able to answer you 100 percent.

20 Q But you hesitate -- so I mean -- and I'm not trying
21 to ask you to say something you don't know. But your
22 response -- and I'm just -- I'm just looking at you
23 here -- is that when I asked that question and you said,
24 "Well," is something ringing in the back of your head that
25 she had told you about violence with her ex-husband?

1 A I don't really remember.

2 Q Okay. That's fair.

3 MR. STITELY: One second, Your Honor.

4 (Pause.)

5 MR. STITELY: I have no further questions.

6 Thank you very much.

7 MR. GRAHAM: Nothing on redirect, Your Honor.

8 THE COURT: You may step down, Ms. Andrews.

9 THE WITNESS: Thank you.

10 THE COURT: Thank you very much.

11 All right. It's time for our morning break.

12 I have an issue I'm going to take up with the
13 media and a camera. I don't think it requires the
14 attorneys, but it requires me to deal with an issue with
15 the media and the audio/video portion. So I want to do
16 that as quickly as I can.

17 As soon as I'm done with that, I'm going to take
18 20 minutes. If you-all want to stay and listen, but
19 you-all have been able to interact and conduct the trial
20 without interference from media, and so that's what I
21 intended and we'll try to continue to do that.

22 MR. STITELY: We have no problems, Judge.

23 THE COURT: All right.

24 (A break was taken.)

25 THE COURT: Call your next witness.

1 MR. MYERS: We'd call Ms. Lela Green.

2 LELA GREEN, after being duly sworn, testified as
3 follows:

4 THE CLERK: Have a seat over here.

5 State your name, please, and spell your last for
6 the record.

7 THE WITNESS: My name is Lela Green, G-R-E-E-N.

8 Good morning, sir.

9 THE COURT: Good morning. If you'll speak up
10 loudly enough so I can hear you and the court reporter can
11 hear you.

12 THE WITNESS: I certainly will.

13 My name is Lela Green. My last name is
14 G-R-E-E-N.

15 DIRECT EXAMINATION

16 BY MR. MYERS:

17 Q Ms. Green, what county do you live in, Ms. Green?

18 A Richland County.

19 Q Okay. And did you know a lady named Portia
20 Washington?

21 A Yes, I do.

22 Q And how did you first come to know Portia Washington?

23 A It was the first part of the 1980s. I moved off of
24 Rosewood Drive and me and her kids was going to school
25 together and we'd meet up going to work together.

1 Q Did you-all live close by?

2 A Oh, yes, sir.

3 Q And how often would you see her back then?

4 A Every day.

5 Q Did you ever go to her house?

6 A Well, I used to go to the grandmama house where she
7 used to live.

8 Q Who is the grandma?

9 A It was Ms. Francis, but she passed away.

10 Q Right.

11 A Uh-huh.

12 Q And would you-all sit down and talk together at
13 times?

14 A Oh, yes, we talked a lot. We talked concerning the
15 kids, you know, me and her laughing, joking over foolish
16 stuff.

17 Q Yes, ma'am. Was Portia married back then or not?

18 A Not as I know of.

19 Q Now, how long did you-all live there by each other
20 during that time?

21 A From 1987.

22 Q So some years?

23 A Yes, sir.

24 Q Yes, ma'am.

25 Now, did one of you, either you or Ms. Portia,

1 did y'all move away from that area?

2 A Well, I did.

3 Q Yes, ma'am.

4 A Yes, I did.

5 Q And that was off Rosewood Drive over in Richland
6 County. Where did you move?

7 A I moved at [REDACTED] Eastover.

8 Q Okay. That is out there at McEntire Air Force base?

9 A Right behind it.

10 Q Okay. You still live out in that area?

11 A Yes, sir.

12 Q Now, from the mid-'80s and everything, after you
13 moved out to Eastover, did you stay in touch with Portia
14 Washington?

15 A The last time I talked to her was in 1994. I used to
16 work off of Rosewood taking care of a lady.

17 Q Okay.

18 A Uh-huh.

19 Q Now, after 1994, did y'all stay in touch with each
20 other?

21 A No, sir. No, sir.

22 Q Okay. Did there ever come a time around 2006 that by
23 chance you-all got back together?

24 A I meet her at Golden Coral, I think it was December.
25 I don't know the date, but it was in December. She was

1 there with church members from the church.

2 Q That's around '05, around that time?

3 A Yes, sir, it was the last part of '05.

4 Q Okay. And then you ran into her there, y'all talked
5 for awhile?

6 A Yeah, because I was looking for her, but, you know, I
7 couldn't drive like I wanted back then.

8 Q Yes, ma'am.

9 A I didn't know how to, you know, really get in touch
10 with her.

11 Q Right. Now, after you-all got together back in the
12 latter part of '05, did you-all have a chance to run into
13 each other again a few months later?

14 A That was '06.

15 Q Yes, ma'am, in '06.

16 A '06.

17 Q And where did you-all get together again?

18 A My aunt died and her and some of her church members
19 came to the funeral.

20 Q "Her," who are you talking about?

21 A Portia.

22 Q Some of Portia's church members and Portia came to
23 your aunt's funeral?

24 A Yes, sir.

25 Q Now, did you and Portia strike up that old friendship

1 again?

2 A Oh, yes, sir.

3 Q How'd you-all do that?

4 A Well, she give me the number and I give her my
5 number. I'd call every other day.

6 Q You call her what now?

7 A I call her every other day, and sometimes it would be
8 like three times a day I would call her --

9 Q Right.

10 A -- you know, just to see what she doing.

11 Q Now, you say you-all exchanged numbers. Did you call
12 Ms. Portia some?

13 A Yes, I called her.

14 Q And did Ms. Portia call you some?

15 A Yes, sir.

16 Q Now, I want to show you something here if I could,
17 please, ma'am.

18 There's two numbers on this board. Can you see
19 this far here, Ms. Lela?

20 A Oh, yes, sir.

21 Q There's a number up here, it's 776-0369. Do you
22 recognize that number?

23 A That was my home number at that time.

24 Q That was your number at that time?

25 A Yes, sir.

1 Q Okay. Now, is this right on this strip here,
2 Ms. Lela, Lela's cell phone number, (803) 776-0369?

3 A Yes, sir.

4 Q Same number on that board?

5 A Yes, sir. Uh-huh.

6 Q And is that the number that Portia would call you to
7 talk with you?

8 A Yes, sir.

9 Q Now, this other number here, 665-4636, do you
10 recognize that number?

11 A That is Ms. Portia's number.

12 Q You'd call that number when you wanted to talk to
13 her?

14 A Yes, sir.

15 Q Now, you said you-all would call sometimes several
16 times a day?

17 A Yes, sir.

18 Q Talk a good bit?

19 A Oh, yes, we talk a good bit.

20 Q And you-all would talk about various things, family
21 and everything else?

22 A We talked about the family, church. Most of the time
23 we were talking to her about church, since she told me she
24 was in church.

25 Q Yes, ma'am. And I think you said that she was with a

1 church group when you met her --

2 A Yes, sir.

3 Q -- and got back with her; is that right?

4 A Uh-huh.

5 Q Now, did you know where Portia was working during
6 this time?

7 A Well, she told me at a car place, but I never get the
8 name of it.

9 Q Right. And did you have a car at that time?

10 A Yes, sir.

11 Q And did you ever have an occasion for something to go
12 wrong with your car or your van where you needed some work
13 done?

14 A Well, me and her was talking and I told her that I
15 need a transmission flush.

16 Q All right.

17 A And I told her, I said everybody was saying it was
18 more than a hundred dollars, just about 200. She said her
19 had a guy that worked with her do this work. I said,
20 "Could you ask him what would he charge?" Well, she said,
21 "I'll be off on Wednesday, I'll get in touch with him, and
22 see what he saying."

23 Q Did you and Ms. Portia make plans to get together to
24 have this fellow that worked with her to fix your -- flush
25 your radiator or whatever it was?

1 A No. It was supposed to have been that next
2 Wednesday.

3 Q Next Wednesday?

4 A Uh-huh.

5 Q Okay. Now, let me ask you this: During that next
6 Wednesday we're talking about, did you ever get your car
7 flushed out --

8 A No, sir.

9 Q -- at Bob Bennett Ford?

10 A No, sir.

11 Q And about that time of that week, did you or your
12 daughter get a call from police officers looking for
13 Portia?

14 A Yes, sir. I was at church.

15 Q Okay. Now, let's start right there. During the
16 middle of this week, police officers called wanting to
17 know if y'all knew where Portia was, she's missing?

18 A Yes, sir.

19 Q All right. Let's move back now, if we could, to that
20 Saturday before then. We're talking around about
21 June 10th, '06, on that Saturday.

22 A Yes, sir.

23 Q Do you remember talking with Portia? Did you call
24 this number here, 665-4636, or did she call your number up
25 here and did you-all talk some on that Saturday?

1 A No, sir. On that Saturday morning, I get up, I love
2 to wake everybody up, so I called, I said, "I'm just
3 calling to wake you up." She said, "I'm up."

4 Q So you called Portia and woke her up on that
5 Saturday?

6 A Uh-huh.

7 Q Now, by you-all talking and everything over these
8 times and talking daily or several times a day, did
9 you-all have a routine or a plan on the weekends, like
10 Saturday and Sunday? Did you-all have a habit or routine
11 in common that you-all would do certain things on Saturday
12 and getting ready for Sunday?

13 A Well, she told me she was going to get her hair
14 fixed. I think it was around about 4:30 at that time.

15 Q Yes, ma'am.

16 A Her and daughter -- granddaughter was going to get
17 their hair fixed --

18 Q Right.

19 A -- and run to the cleaner and pick up some clothes.

20 Q Right.

21 A She said she'd call me right back when they get
22 finished. Well, around about 6, she did call me back.

23 Q Right.

24 A And she said, "I'm not going to stay on the phone, I
25 got to go to the grocery store."

1 Q Yes, ma'am.

2 A I said, "Well, what you cooking?" She said, "I don't
3 know yet, but I'm going to the store and get something."

4 Q All right. Now, what was the cooking for; was it
5 cooking for Saturday?

6 A No.

7 Q What was the cooking for?

8 A On Sunday. We cook on Saturday for Sunday.

9 Q So you-all cooked on Saturday for Sunday meal after
10 church?

11 A Yes, sir.

12 Q Okay. So she was running errands, about going to get
13 her hair done or getting to the grocery store or going
14 to -- you talked with her several times on that Saturday?

15 A Yes, sir, I sure did.

16 Q Okay. Now, you mentioned something about a
17 granddaughter. What do you know about her granddaughter?

18 A Well, when I first meet her, she told me about
19 that -- I can't announce (sic) the name -- but she told me
20 that that was the world to her.

21 Q That was what now?

22 A A world -- the world to her because she had the
23 little girl with her. Well, at the time when she know me,
24 I had five of my grands --

25 Q Right.

1 A -- and me and her used to talk about them. So she
2 told me she had -- everything she had then in her life was
3 the little granddaughter and, you know, she was going to
4 make sure that everything was okay.

5 Q The granddaughter was her life?

6 A Yes.

7 Q Angelica, does that name ring a bell?

8 A Yes, that's what it is. I just can't announce (sic)
9 it.

10 Q That's all right.

11 Now, when you knew Portia before, or when
12 you-all got back together in '06, did you know that she
13 had lost a son, her son had died?

14 A Oh, yes, sir, I been knowing that.

15 Q So, then, you knew that?

16 A Yes, sir.

17 Q And by her having lost her son, how was it with
18 Angelica coming back into her life?

19 A Well, see, I think -- and that's what she was
20 meaning, then, because she had two other kids, too, now.
21 But when you find that you can re-raise a child that you
22 never had before and it bring back the memories of the one
23 that you lost.

24 Q Yes, ma'am.

25 A And I'm thinking that the little girl really bring

1 back a part of her life that she was losing because of the
2 son.

3 Q She'd do anything for that baby?

4 A Yes, she will.

5 Q Now, you said she had a job at a car place. Did she
6 ever talk about her job?

7 A Yeah. She said she like it, and she was making more
8 than she was making, you know, us talk about the back time
9 days.

10 Q Right.

11 A She used to work up the street from me --

12 Q Right.

13 A -- at a little place herself. I used to send her out
14 to the store. And she said it relieved the pressure when
15 she got her check. And she'd looked at the check, you
16 know, saying it was bigger than she ever known that she
17 made.

18 Q Do you know how she got around?

19 A She says she had a car.

20 Q A new car?

21 A She didn't say whether it was new, but she told me
22 she driving --

23 Q Uh-huh.

24 A -- and she got her own car. She had her own
25 apartment, so --

1 Q What -- what was she -- what was her feelings like
2 about that car?

3 A Oh, she -- she was laughing and, you know, like a
4 newborn baby when they get something --

5 Q Yeah.

6 A -- because I don't think she never had a car.

7 Q Right.

8 A Uh-huh.

9 Q Never did drive much before then?

10 A I don't think she -- not as I know she was driving.
11 But this car did mean a lot to her because she could get
12 around, uh-huh.

13 Q Okay. Now, you live over there in -- over there in
14 Eastover --

15 A Yes, sir.

16 Q -- over there off the Sumter Highway?

17 A Yes, sir.

18 Q And she was living back over there in Lexington
19 County around Cayce, West Columbia?

20 A I never know exactly where she live at.

21 Q All right. Did you-all -- you-all never did get
22 together or anything?

23 A Well, we was supposed to get together that Wednesday,
24 but it never did happen.

25 Q Okay. Now, that Saturday, you talked with her

1 several times.

2 A Uh-huh.

3 Q Did you know that you were the last one to call her?

4 A No, sir.

5 Q Okay. Now, when had y'all planned on talking again
6 when y'all got through talking on that Saturday?

7 A Sunday after she got back from church.

8 Q Okay. That would have been the next day?

9 A Yes, sir.

10 Q Next day on that Sunday, did you-all talk?

11 A No, sir.

12 Q On Tuesday or Wednesday, you-all were supposed to get
13 together about getting your car fixed. Did you-all get
14 together?

15 A No, sir.

16 Q Did you ever talk with her anymore?

17 A No, sir. But I called her house.

18 Q You called?

19 A I called her house.

20 Q All right. Now, let me talk with you about that.

21 When you would call her and you-all would talk
22 sometimes two or three times a day or every day --

23 A Uh-huh.

24 Q -- if you had called her before this time and she
25 didn't answer, what would happen?

1 A Well, she call me back. Sometimes she'd tell me she
2 was taking her a shower or she was coming up in the house
3 and couldn't get to the phone, but she will call me right
4 back.

5 Q Okay. Now, if you called her and she didn't answer,
6 she'd return your call?

7 A Yes, she will.

8 Q You-all would get together?

9 A Yes, sir.

10 Q And it wasn't many days you-all didn't talk; is that
11 right?

12 A Yeah, like three days before I know.

13 Q Three days that you-all didn't talk before that call
14 came about her missing?

15 A Yes, sir.

16 Q After you-all get that call from the police about her
17 missing, did you try to call Portia again?

18 A Oh, yes, sir, I called many times.

19 Q And what happened? Did she answer?

20 A The phone just ring.

21 Q Never did answer?

22 A No. Nobody never answered the phone at all.

23 Q Did she ever call you back?

24 A No, sir.

25 Q Now, you said that Portia would talk with you about

1 what she was going to do; get her hair fixed, go to the
2 grocery store --

3 A Yes, sir.

4 Q -- go to the cleaners, go to church, get your car
5 fixed, things in the future?

6 A Yes, sir.

7 Q What kind of conversation did you-all have about her
8 taking trips, going out of town, out of state?

9 A Oh, no, she wasn't going nowhere.

10 Q Huh?

11 A She wasn't going nowhere.

12 Q She wasn't going nowhere?

13 A No. She not -- she don't take trips like that. She
14 never did.

15 Q Do you know if she talked about going to Texas?

16 A No, sir.

17 Q Mississippi?

18 A No, sir.

19 Q Arizona?

20 A No, sir.

21 Q California?

22 A No, sir.

23 Q Oregon?

24 A No, sir.

25 Q Washington state?

1 A No, sir.

2 Q Mexico?

3 A No, sir.

4 Q Canada?

5 A No, sir.

6 Q What was her life? What was her life? What meant
7 everything to her?

8 A That baby, the seven-years-old granddaughter that she
9 had.

10 Q Did she ever tell you that she was seeing anybody or
11 living with anybody, a man or anything?

12 A No, sir.

13 Q She never mentioned that to you?

14 A No, sir, never mentioned no thing or nothing.

15 Q Now, that Saturday, June the 10th, is this right:
16 That's the last time that you spoke with Portia?

17 A Yes, sir.

18 Q She's supposed to call you the next day on a Sunday?

19 A Yes, sir.

20 Q And you're supposed to go see her on Wednesday about
21 getting the car fixed?

22 A Yes, sir.

23 Q Did you ever see her or talk with her after that
24 Saturday?

25 A No, sir.

1 MR. MYERS: Your Honor, we'd like to put this up
2 on the board, number two.

3 This says Lela's cell phone number is
4 (803)776-0369. I'd like to attach that to the summary
5 chart.

6 And this one here, that on 6-10-06, the last
7 time Lela Green spoke to Portia. Expected Portia to call
8 on Sunday; if not, to see her on Wednesday. Never heard
9 from Portia again.

10 Thank you, Ms. Lela.

11 Answer any questions these other gentlemen have.

12 CROSS-EXAMINATION

13 BY MR. MCGUIRE:

14 Q Good morning, ma'am.

15 A Good morning.

16 Q I thank you for coming today. I've just got a couple
17 of questions for you.

18 A Uh-huh.

19 Q I think you said that it was around 4:30 in the
20 afternoon when Portia indicated she was going to go get
21 her hair done?

22 A Yes, sir.

23 Q Okay. And was Angelica going to go with her?

24 A Yes, sir.

25 Q Okay. And I think you had another conversation about

1 her being -- going to get some groceries for cooking for
2 church?

3 A Yes, sir.

4 Q And she was happy about that?

5 A Oh, yes, sir.

6 Q And your conversation, she was an upbeat -- upbeat,
7 positive manner?

8 A Oh, yes.

9 Q And you said she had her own apartment?

10 A Yes, sir.

11 Q And she was happy in her apartment?

12 A Yes, sir.

13 Q And she was happy with Angelica in her apartment?

14 A Oh, yes, sir.

15 Q And that day when she was talking to you these
16 multiple times in her -- in her happy home, she was even
17 talking about Angelica and laying out her clothes for
18 tomorrow for church?

19 A Oh, yes, sir.

20 Q And in all your conversations that day, Saturday,
21 June 10th, 2006, never was she down about anything or had
22 a gripe or a complaint?

23 A I didn't feel it in her voice that something was
24 wrong.

25 Q Right.

1 MR. MCGUIRE: Thank you, ma'am.

2 That's all I've got for you.

3 MR. MYERS: No further questions. Thank you.

4 THE COURT: Thank you, Ms. Green. Be careful
5 stepping down.

6 THE WITNESS: Yes, sir.

7 MR. MYERS: May she be excused, Your Honor?

8 MR. MCGUIRE: No objection, Your Honor.

9 THE COURT: No objection.

10 MR. GRAHAM: The State calls Carla Perry.

11 CARLA PERRY, after being duly sworn, testified
12 as follows:

13 THE CLERK: Have a seat, and state your name,
14 spelling your last, please, for the record.

15 THE WITNESS: My name is Carla Perry.

16 DIRECT EXAMINATION

17 BY MR. GRAHAM:

18 Q Ms. Perry, where are you currently employed and what
19 do you do?

20 A I'm employed at Paris Island Marine base. I'm
21 project manager there.

22 Q Back in June of 2006, where did you live?

23 A I lived in Park Place Apartments.

24 Q Is that in Lexington County?

25 A Yes. West Columbia.

1 Q Do you remember -- if I said apartment M-5, does that
2 mean anything to you?

3 A That's the apartment I lived in.

4 Q And did you know Portia Washington and Angelica
5 Livingston?

6 A I did.

7 Q And in relation to your apartment, where did they
8 live?

9 A Across the hall.

10 Q If I said they were in apartment M-7 --

11 A Yes.

12 Q You-all were on the same floor or different floors?

13 A We were on the same floor.

14 Q Is that ground floor or up or --

15 A Ground floor.

16 Q So across the hall?

17 A Across the hall.

18 Q How long did you know Portia and Angelica?

19 A Just a few months. I believe she moved in maybe a
20 few weeks before I did.

21 Q Do you remember when you moved in?

22 A I moved in April, April of 2006.

23 Q Did you know Kenneth Lynch?

24 A Yes, I did.

25 Q Do you see him in the courtroom today?

1 A Yes, I see him.

2 Q Can you point him out for me, please?

3 A He's sitting right there.

4 MR. GRAHAM: Your Honor, let the record reflect
5 that she's indicating the defendant who's sitting with
6 defense counsel.

7 BY MR. GRAHAM:

8 Q You're talking about the black man over at that
9 table, ma'am?

10 A Uh-huh.

11 THE COURT: The record will so reflect.

12 BY MR. GRAHAM:

13 Q What was your -- did you have a relationship with
14 him, did you know him very well?

15 A Well, no, he just lived across the hall from me with
16 Portia.

17 Q Did you have any conversations with him?

18 A Never.

19 Q Did you ever try to?

20 A No.

21 Q When was the last time that you spoke with Portia?

22 A The last time I spoke to her was the day before she
23 was missing.

24 Q If I said Saturday, June 10th, 2006, is that the
25 date you're referring to?

1 A Yes.

2 Q And tell me when --tell me what you were doing and
3 what she was doing when you saw her and spoke with her
4 last.

5 A Well, I only spoke with her. I -- I had -- Angelica
6 was the one that I -- that I was mostly involved with or
7 friends with. I didn't really know Portia very well. I
8 just knew her as Jessica's (sic) grandmother, my neighbor.
9 She was a very nice lady, but Angelica was my little
10 friend.

11 Q Did you see Angelica and Portia together outside the
12 afternoon of June 10th, 2006?

13 A I saw Ms. Portia, and I said, "Hi, how you doing,"
14 and I came into my apartment. But later on, Angelica came
15 over to see me.

16 Q Let's back up for a second.

17 When -- did you see Ms. Portia, was that
18 outside?

19 A Outside.

20 Q What was going on at that time? What was she doing?

21 A I believe she was getting some things out the car.

22 Q Okay. Now, when you say a car, if I show you a
23 photograph of her car, would you recognize it?

24 A Uh-huh.

25 Q Let me show you State's Exhibit No. 4 and ask if you

1 recognize that.

2 A Yeah, that's her car.

3 Q Okay. And you said she was getting some stuff out of
4 her car. So was her car parked outside you-all's
5 apartments?

6 A Yes. We parked side by side every day.

7 Q Every day you-all parked side by side outside?

8 A Uh-huh.

9 Q Do you know what she was getting out of her car that
10 day?

11 A Looked like laundry.

12 Q Do you remember, was it morning, afternoon, evening?

13 A It was afternoon.

14 Q And was Angelica present when Ms. Portia was getting
15 things out of her car?

16 A Yes.

17 Q And was there anybody else that was present?

18 A Mr. Kenneth.

19 Q I'm sorry?

20 A Mr. Kenneth was.

21 Q So you saw Mr. Lynch?

22 A Uh-huh, I saw him outside.

23 Q So on Saturday, June 10th, 2006, in the afternoon,
24 you saw Mr. Lynch?

25 A Yes.

1 Q And he was outside and so was Angelica, so was Portia
2 and so was Ms. Portia's car?

3 A Yes.

4 Q Later on that day, did you see -- I think you already
5 said that you saw Angelica again?

6 A Uh-huh.

7 Q Tell me about that.

8 A I was expecting some family in because a family
9 member was sick, and I had a lot of family members coming
10 in to go to the hospital, and I was waiting on them to
11 come and I got a knock on the door, I thought it was one
12 of them, and it was Angelica. And she was standing there
13 soaking wet. She had a bathing suit on, she just got out
14 of the pool. And she came in and she told me that she
15 came to buy --

16 MR. STITELY: Objection. Hearsay. She said,
17 "She told me."

18 THE WITNESS: She told me.

19 THE COURT: All right. That's sustained unless
20 you can tell me which exception you're going to pass to.

21 BY MR. GRAHAM:

22 Q Without -- don't go into what Angelica told you at
23 that time.

24 Did you see her and did you have a chance to
25 talk with her?

1 A Yes.

2 Q Based on your conversation with her, what, if any,
3 opinion did you form whether you would see Angelica at
4 some future time?

5 A Yes.

6 Q Yes, what, ma'am? What opinion?

7 A That I would see her.

8 Q That you would see her again later?

9 A Uh-huh.

10 Q Let's move a little bit later in the night.

11 About 10:30 p.m. on that Saturday, what, if
12 anything, did you notice unusual about Ms. Portia's car or
13 about the plants outside her apartment?

14 A Her car wasn't there, and her plants were outside.

15 Q Okay. Well, let's talk about each one of those
16 separately.

17 What was going on in your life around 10:30 p.m.
18 that night?

19 A We had come from the hospital. We were at the
20 apartment, and a couple of family members wanted to smoke
21 a cigarette. So I knew Ms. Portia kept a smoke can right
22 outside her door while she would sit out there and smoke,
23 so I took them out in the hallway to smoke. And it was
24 just a bunch of us ladies, and we got to laughing and
25 talking, and I realized how loud we had gotten. And I

1 told them that we needed to quiet the noise down some
2 because I didn't want to disturb Ms. Portia because, you
3 know, she was always so quiet, so I didn't want to be
4 rude. So when I turned around, I looked, her car wasn't
5 there, so I said, "Oh, she's not home, anyway." So I kind
6 of stepped back a little bit and bent around and looked,
7 and her apartment was dark, so I said, "Well, we're good."
8 So that was it.

9 Q Was it usual or unusual for her car not to be there
10 at that time of night?

11 A Unusual.

12 Q You talked about her plants being outside. Tell me
13 what you're referring to.

14 A Her flowers. She -- she loved her flowers. She
15 would put them out there on Saturdays and she would always
16 take them back in. She would never -- she didn't leave
17 them out overnight.

18 Q And at 10:30 on Saturday, June 10th, they were
19 outside?

20 A Uh-huh, yes, they were.

21 Q Did you see them again on Sunday, June 11th? Were
22 they inside or outside?

23 A Outside.

24 Q The last time that you saw Portia was when she was
25 taking something out of the car, correct?

1 A Yes.

2 Q The last time you spoke with Angelica was when she
3 knocked on your door later that afternoon?

4 A Yeah, wanting to buy a soda.

5 Q Have you ever spoken to or seen either one of them
6 ever again?

7 A No.

8 Q Ms. Perry, you said that Ms. Portia was unloading
9 something from her car?

10 A Laundry.

11 Q Laundry.

12 And what time was it that you thought -- that
13 you noticed Ms. Portia's car was gone and you noticed the
14 plants?

15 A Between 10, 10:30.

16 Q Let me show you two statements, ma'am, and ask if
17 these accurately reflect your testimony.

18 June 10th, 2006, the last time Carla Perry
19 spoke with Portia and Angelica. They were unloading
20 laundry from Portia's car at the apartment. Defendant was
21 also present.

22 A Yes.

23 Q Additionally, this statement: June 10th, 2006, Carla
24 Perry sees that Portia's car is gone and plants are still
25 outside. And that's around 10 p.m. to 10:30 p.m.

1 A Right.

2 MR. GRAHAM: Thank you, Ms. Perry.

3 Please answer any questions they have for you.

4 CROSS-EXAMINATION

5 BY MR. STITELY:

6 Q Good morning, Ms. Perry. How are you today?

7 A Well. And you?

8 Q Good. My name is Ben Stitely. I just have a couple
9 questions for you.

10 In your -- when you were asked the question by
11 Mr. Graham -- and correct me if I'm wrong -- but it made
12 it sound like you didn't know Mr. Lynch or Ms. Washington
13 really well, it was just that you knew Angelica?

14 A Right.

15 Q Okay. Is it true that you've had some run-ins with
16 the law in the past?

17 A Yes, I have.

18 Q Would it be fair to say that you ended up doing 71
19 months on a distribution -- or a possession with intent to
20 distribute heroin charge in the early 2000 time?

21 MR. GRAHAM: Objection, Your Honor. That's
22 outside the ten-year and it shouldn't be brought up. It's
23 too old.

24 MR. STITELY: It's actually ten years from when
25 the sentence ends and any probation ends thereafter, which

1 would put us well into the time frame. Especially if the
2 alleged events happened in 2006, we're clearly within the
3 range.

4 THE COURT: I'll allow it.

5 THE WITNESS: Yes.

6 BY MR. STITELY:

7 Q Did you ever let Ms. Washington know or Mr. Lynch
8 know about your -- your history?

9 A I had no reason to.

10 Q Would it be routine that you would be alone with
11 Angelica?

12 A Yes. I was on probation at the time.

13 Q Okay. At the time when you were living at Park
14 Place?

15 A Uh-huh, supervised probation.

16 Q Okay. Just to -- just a couple specific questions.

17 Do you remember how Angelica would typically
18 wear her hair?

19 A Braids.

20 Q Okay. Do you know if that's what she had that day?

21 A I'm pretty sure she did.

22 Q What time, to the best of your recollection, was it
23 you said she had been out by the pool?

24 A It was afternoon. It had to be -- maybe -- can I say
25 between 2 and 4, I believe, to make sure?

1 Q That's fine. And what time did your company end up
2 getting there that day?

3 A They got there maybe around about 5, or something
4 like that, when we all met up.

5 Q And just -- you don't have to say exactly, but how
6 many people, give or take, were over at your house that
7 evening?

8 A Let's see. Probably about six because I was going to
9 show them where the hospital was. They didn't know where
10 it was.

11 Q Okay. Was it Lexington Hospital right down the road?

12 A No. The Heart Center at Richland Memorial.

13 Q Okay. And were there people coming and going from
14 your apartment, I take it, during that time?

15 A No. They all met there, we all went to the hospital,
16 we all came back. And once we came back, they all went to
17 their motel rooms.

18 Q What time do you think you left for the hospital?

19 A Maybe about -- maybe about 5:30.

20 Q Okay. And what time do you think you got back?

21 A Probably around -- we got back a little after 9
22 because it was dark. And then we had sat in the house for
23 awhile and got something to eat.

24 Q All right. And you said that you would park right
25 next to Ms. Portia's car typically, or across from it or

1 something like that?

2 A I didn't remember her car being there. I just parked
3 because I had all them following me. But I just noticed
4 her car wasn't there because I turned around and looked
5 because we were making a lot of noise.

6 Q But that was at 10:30 -- or 10 and 10:30?

7 A Well, 10, 10:30, because after they got through
8 eating, they wanted to go out and smoke a cigarette.

9 Q But you don't have a specific recollection that the
10 car was missing at -- or wasn't there, just not in the
11 parking spot at 9 o'clock, did you?

12 A Unh-unh. I didn't pay attention then.

13 Q But you were thinking in your mind that they were --

14 A That it was there.

15 Q -- probably at home. Okay.

16 A -- because she's always home at night.

17 Q Okay. So --

18 A I've never known her car to be gone at night.

19 Q But you -- so you would -- you would assume the car
20 was there at, say, 9 o'clock, then?

21 A I assume.

22 Q Or it probably would have stuck out in your mind if
23 it wasn't there at 9 o'clock?

24 A I didn't pay attention. I was just making sure
25 everybody was getting parked so we could go in.

1 MR. STITELY: One second.

2 (Pause.)

3 MR. STITELY: That's all the questions I have.

4 Thank you for coming today.

5 THE WITNESS: Okay. May I make a statement?

6 THE COURT: No, ma'am. You can answer the
7 questions.

8 I'm sorry. I probably shouldn't say that
9 quickly, but you can answer the questions Mr. Graham asked
10 or Mr. Stitely asked. Okay?

11 THE WITNESS: Yes, sir.

12 MR. GRAHAM: No further questions, Your Honor.

13 THE COURT: All right. Thank you, ma'am.

14 THE WITNESS: Thank you.

15 MR. MYERS: Ms. Sallie Jones.

16 SALLIE JONES, after being duly sworn, testified
17 as follows:

18 THE CLERK: Have a seat, please, ma'am.

19 Once you're seated, speak up loud and clear.
20 State your full name, spelling your last, please.

21 THE WITNESS: My name is Sallie Sumter Jones,
22 J-O-N-E-S.

23 DIRECT EXAMINATION

24 BY MR. MYERS:

25 Q Ms. Sallie, tell the Judge how you were related to

- 1 Portia Washington.
- 2 A I'm -- I'm Portia Washington's mother.
- 3 Q She was your daughter?
- 4 A That's right.
- 5 Q Did Portia have any brothers or sisters?
- 6 A Nobody but Portia.
- 7 Q Now, did Portia have any children?
- 8 A Yes.
- 9 Q How many children did she have, Ms. Jones?
- 10 A She had Sam -- three.
- 11 Q Boys or girls?
- 12 A Two -- two boys and a girl.
- 13 Q And, now, you said Sam was one of her boys?
- 14 A Yeah.
- 15 Q Sam's still living?
- 16 A Yes.
- 17 Q And did Sam have any children?
- 18 A One.
- 19 Q A boy or girl?
- 20 A Boy.
- 21 Q That'd be your great grandson?
- 22 A That's right.
- 23 Q That'd be Portia's grandson?
- 24 A That's right.
- 25 Q Now, you said two boys. The other boy, what happened

1 to the other boy?

2 A He passed away.

3 Q Okay. Before 2006? Before Portia was missing?

4 A Yes.

5 Q And then you said she had a daughter?

6 A That's right.

7 Q And what was the daughter's name?

8 A Theresa Brown.

9 Q Theresa?

10 A That's right.

11 Q And Theresa's still living?

12 A Yes.

13 Q Theresa have children?

14 A Yes.

15 Q How many children?

16 A Three. Oh, she had three. She's got two now.

17 Q Okay. Now, she had three. Who was the third one?

18 A Angelica.

19 Q Angelica. Who was keeping Angelica?

20 A Portia.

21 Q Now, first of all, they've been saying something
22 about Portia one time was on drugs. Was Portia on drugs?

23 A Yeah. She used to drink some, too.

24 Q Drank and she was on drugs?

25 A Uh-huh.

1 Q In 2006 and before that when she was taking care of
2 Angelica, was she on drugs?

3 A No. She was on -- doing that when she was young.
4 But when she -- the grandchildren thing come along, she
5 didn't get involved with nothing.

6 Q When the grandchildren come along, she stopped
7 drugging and drinking?

8 A Yes. And got into the church.

9 Q Got into the church?

10 A Yes.

11 Q Okay. Now, they said something about Portia's mother
12 Theresa [sic] being on drugs; is that right?

13 A I don't know. I don't know what Theresa do. You
14 know, she's a young woman, she's riding the streets, I
15 don't know what she do out there.

16 Q Had she ever been into rehab that you know of?

17 A No, not as I know of.

18 Q Okay. Now, why was Portia taking care of Angelica?

19 A Well, Portia wanted to help her daughter, and she
20 loved her little grandchildren.

21 Q Yes, ma'am. Now, Portia, who was her husband?

22 A Nathaniel Washington.

23 Q And did they stay together or did they get a divorce
24 or what?

25 A They just separated. They didn't get a divorce.

1 Q What did he do?

2 A What you mean?

3 Q What was his work?

4 A Oh, he worked construction work.

5 Q How about before that, who was she married to?

6 Anybody?

7 A Henry Bracey.

8 Q Now, did Portia live at one place all the time or did
9 she live in different places?

10 A She lived in different places.

11 Q Now, the last place she was living before she came up
12 missing, do you know where that was?

13 A No, I don't know the place, but it was behind a big
14 church.

15 Q Behind a big church?

16 A Uh-huh. Brooklyn Baptist.

17 Q Brooklyn Baptist.

18 Was that a house she was living in or an
19 apartment?

20 A It was an apartment.

21 Q An apartment?

22 A Uh-huh.

23 Q And that's in Lexington County over in West Columbia?

24 A Yes.

25 Q And before she moved in those apartments, where did

1 she live?

2 A I don't know the name of it, but it was over there
3 across the railroad tracks.

4 Q What city? Do you know what city it was?

5 A I think it was West Columbia.

6 Q Okay. That was still in Lexington County?

7 A Okay.

8 Q Now, let me ask you this: Did you ever stay with
9 Portia yourself?

10 A Yes.

11 Q And how long did you-all stay together?

12 A Oh, we stayed together a pretty good while.

13 Q Was Angelica with her when you were staying with her?
14 Or was that before she started taking care of Angelica?

15 A We were together when -- when she first got Angelica.

16 Q You-all were together when she first started taking
17 care of Angelica?

18 A Uh-huh.

19 Q Now, tell me about your relationship with Portia up
20 until the time she was missing. How often would you-all
21 talk?

22 A Every day.

23 Q Did you-all have a close relationship?

24 A Yes.

25 Q So would you call her?

- 1 A I called her and she called me. And if she was busy,
2 she'd call me back.
- 3 Q Okay. And would you see her very often?
- 4 A Yeah. She would come by and see me.
- 5 Q Did she ever bring Angelica with her when she'd come
6 by to see you?
- 7 A Yeah, all the time.
- 8 Q What was her relationship with Angelica?
- 9 A She had a good relationship with Angelica.
- 10 Q What was her feelings towards Angelica?
- 11 A She loved her.
- 12 Q Now, did you know at this time where Portia was
13 working?
- 14 A Bob Bennett.
- 15 Q Bob Bennett Ford?
- 16 A Uh-huh.
- 17 Q Okay. What was her feelings about her job at Bob
18 Bennett?
- 19 A Well, she told me she loved it.
- 20 Q And during the time that she was out there, do you
21 know anything about her getting a car through Bob Bennett?
- 22 A Yeah.
- 23 Q Now, what was her feelings about that car?
- 24 A She -- she loved that car.
- 25 Q Did she let everybody around drive her car or was she

1 pretty possessive?

2 A No, she didn't let anybody drive it. I didn't even
3 drive it.

4 Q Okay. And while she was working out at Bob Bennett,
5 did she also have another job, a second job?

6 A Yeah, she used to clean up the bank some.

7 Q Cleaning up the bank some?

8 A Uh-huh.

9 Q This would be after she got off work at Bob Bennett?

10 A Yeah.

11 Q Who'd be taking care of Angelica while she'd be
12 working these jobs?

13 A I did.

14 Q Who is Vernelle Bellamy?

15 A My sister.

16 Q She's your sister?

17 A Yes.

18 Q And she lives around Lexington County, too?

19 A No. She lives in -- off of North Main in the
20 Rosewood area, Ridgewood area.

21 Q I got you. Over in Richland County?

22 A Uh-huh.

23 Q And was she close to Portia, too?

24 A Yes.

25 Q Was she close to Angelica?

1 A Yes.

2 Q Would Vernelle sometimes take care of Angelica?

3 A Yes.

4 Q Now, when Portia started seeing Kenneth Lynch, do you
5 remember that, when she started seeing him?

6 A No, I don't -- I don't remember when she first
7 started seeing Kenneth.

8 Q But you know that she was staying with him or seeing
9 him; is that right?

10 A Yes.

11 Q Now, how about telling us, please, ma'am, if there
12 were any changes in Portia's activities or her character
13 or anything about her as compared before she got caught up
14 with Mr. Lynch and after she started staying with
15 Mr. Lynch.

16 A Well, at first, you know, she was happy in the same
17 way. But after they'd been together for awhile, she
18 changed.

19 Q How did she change?

20 A Well, she wasn't as happy as she used to be.

21 Q What was some of the days of the year that she used
22 to be really excited about?

23 A Well, Christmas.

24 Q Yes, ma'am.

25 A Easter.

1 Q Yes, ma'am.

2 A And the children's birthdays.

3 Q What about her birthday?

4 A Yes.

5 Q And how did she appear excited about that?

6 A Well, she'd go around telling everybody about her
7 birthday.

8 Q Did she ever get together -- before she started
9 seeing Kenneth Lynch, did she ever get together with
10 family for outings or social gatherings and things like
11 that?

12 A All the time.

13 Q How did that change after she started staying with
14 Mr. Lynch?

15 A Well, she didn't get out as much.

16 Q Did she have as many gatherings with the family as
17 she used to have?

18 A No.

19 Q Now, you said Angelica was her granddaughter. Would
20 she do anything in the world for Angelica?

21 A Yes.

22 Q What about her other grandson, Sam's boy? What did
23 she think about Sam's boy?

24 A Well, she was really happy when Sam had a baby. She
25 talked about him all the time. She got him in -- started

1 carrying him to church with her.

2 Q And I think that baby was born around the first part
3 of 2006?

4 A Well, he wasn't -- he wasn't no big baby when Portia
5 got missing, you know.

6 Q Right.

7 Did she get things for that baby?

8 A Yeah. We used to -- she'd go to the flea market.
9 I'd call her and tell her where one is and she'd go and --
10 and get things from the flea market.

11 Q What were some of the things she liked to do? Where
12 would she go or what -- how did she like to spend her
13 time?

14 A Well, she -- she liked to shop and go places, and she
15 liked garage sales and stuff like that.

16 Q Okay. Was there ever a time that she went a week
17 without calling you or talking with you?

18 A No, not a day.

19 Q Any time that she would go longer than a week without
20 seeing you or calling you or talking to you?

21 A No.

22 Q Let me ask you this if I could, Ms. Sallie: That car
23 that she had, was that one of the first cars that she had
24 ever had?

25 A No.

1 Q She had one before that?

2 A Yeah, she had one before that.

3 Q What was her feelings about this particular car that
4 she got through Bob Bennett?

5 A Well, she liked that one because that one was a new
6 one.

7 Q Okay. That was special to her?

8 A Uh-huh.

9 Q Did she drive very much?

10 A Not very much. You know, like she wanted to go
11 somewhere, but just going, she'd never go nowhere.

12 Q Did she like -- I'm sorry. Go ahead, ma'am.

13 A We went out of town one time in the country to Sam's
14 wedding, so, I guess, that was as far as we -- you know,
15 she ever went.

16 Q I think that was down around Bowman or somewhere?

17 A Yes.

18 Q That's just right over in Orangeburg County?

19 A Yes.

20 Q What was she -- what was her feelings about driving
21 on the interstate?

22 A Well, she was pretty happy she learned how to drive.

23 Q Did she like to ride on the interstate or not?

24 A Not -- not really.

25 Q Yes, ma'am.

1 A More in town.

2 Q All right. Now, how many times did she drive herself
3 to Mississippi?

4 A She never gone -- she never been to Mississippi.

5 Q How many times did she drive herself to Texas?

6 A She never -- she never been to Texas.

7 Q How many times did she drive herself to Arizona?

8 A She never been to Arizona.

9 Q How about Washington state, Seattle?

10 A No.

11 Q When she got that car, usually cars come with two
12 keys.

13 A Yes.

14 Q Do you know anything about that second key that came
15 along with the car?

16 A She brought it and give it to me.

17 Q She gave you that car key?

18 A Yes.

19 Q You turned that over to the police?

20 A Yes.

21 Q Does this look like that car key?

22 A That's it.

23 MR. MYERS: Your Honor, we offer this into
24 evidence.

25 MR. McGUIRE: No objection.

1 THE COURT: That's State's 2?

2 THE COURT REPORTER: State's 5.

3 THE COURT: State's 5, without objection.

4 MR. MYERS: Your Honor, we're going to put it in
5 this bag if you don't have any objection to that.

6 THE COURT: Probably the easiest way to mark it.

7 (WHEREUPON, STATE'S Exhibit No. 5 was marked for
8 identification and received into evidence.)

9 BY MR. MYERS:

10 Q State's No. 5.

11 Now, why did she give you this car key, Ms.
12 Sallie?

13 A Because she said didn't want Kenny driving her car no
14 more.

15 MR. MCGUIRE: Objection. Hearsay.

16 THE COURT: Sustained.

17 BY MR. MYERS:

18 Q What -- when she gave you that car key --

19 A Yes.

20 Q -- what was her state of mind, her emotional feelings
21 about giving you that car key?

22 A Well, she just come and handed it to me and told me,
23 "Momma, I don't want him driving my car anymore."

24 MR. MCGUIRE: Objection. Hearsay.

25 MR. MYERS: It comes under, Your Honor, State

1 versus Griffin, and it talks about this rule, and it goes
2 for intention and plans. So her intent under the state of
3 mind and her plan under the state of mind comes in under
4 State versus Griffin.

5 THE COURT: Let me read that.

6 MR. MYERS: It says right here, it's 528 S.E.2d
7 668, and it says here, Your Honor, that under Rule 803-3
8 would provide for the admission of a statement of the
9 declarant's then existing state of mind, such as intent or
10 plan.

11 THE COURT: It's admissible.

12 MR. MYERS: And I'm not going to ask for the
13 reason why she didn't want Lynch to drive it.

14 THE COURT: Mr. McGuire, did you wish to be
15 heard on that?

16 MR. McGUIRE: Yes, sir.

17 THE COURT: Go ahead.

18 MR. McGUIRE: Your Honor --

19 THE COURT: Sorry about that.

20 MR. McGUIRE: Judge, if it was just a mere state
21 of mind, for instance, "I plan to go to the rollercoaster
22 at 2," I'd have no objection. But if the statement is, "I
23 want to go to the rollercoaster at 2 because I want to --
24 you know, because I'm -- I don't want to be at school
25 right now because I don't want to be at that teacher's

1 room, and that guy's a no-good son of gun," all those
2 reasons, with all that just talking about somebody, it
3 wouldn't come in.

4 MR. MYERS: No. I'm not going to ask for
5 reasons. I'm not going to ask for reasons. And her
6 intent at this time is to let her mother keep the key to
7 the car and not for the defendant to have it. And I'm not
8 going to ask why she didn't want the defendant to have the
9 key to that car. And under that case, Garcia and
10 Weston -- Shepherd's one more, Your Honor.

11 MR. MCGUIRE: Judge, I'd have no objection if
12 the statement was "Ms. Washington came to me and said, 'I
13 want you to have this key.'" If it stops right there, I
14 have absolutely no objection.

15 MR. MYERS: Shepherd talks about future actions
16 and not past actions.

17 MR. MCGUIRE: But the words regarding Mr. Lynch
18 have nothing to do with intent.

19 MR. MYERS: I could even bring out that she was
20 afraid of Mr. Lynch.

21 THE COURT: All right. Here's -- I think that
22 statement is allowed because it does describe the plan to
23 not allow anyone to drive the car. And I think that's
24 cumulative of some other testimony already provided that
25 she allowed hardly anyone to drive the car, which has

1 already been brought out. So it's consistent, not
2 inconsistent, with that. So I will allow what's been
3 testified to thus far, but no further explanation.

4 MR. MYERS: Thank you.

5 BY MR. MYERS:

6 Q Now, you kept this key; is that right, Ms. Sallie?

7 A Yes.

8 Q And you recently turned it over to the West Columbia
9 Police lady?

10 A Yes.

11 Q Now, the other key, who had the other key?

12 A Portia had the other key.

13 Q Did you ever see her key ring?

14 A Yeah, but I can't remember.

15 Q On her key ring, do you know how sometimes people
16 have key rings and they have something like a Bi-Lo card
17 or a Piggy Wiggly card? Did she have anything like that?

18 A She had a lot of those cards.

19 Q Bonus cards?

20 A Uh-huh.

21 Q And she had other keys on it, too?

22 A A couple of them.

23 Q Yes, ma'am. And what she gave you was the second key
24 that went to her car?

25 A Yes. She didn't have that one on a chain, she just

1 come and hand it to me.

2 Q Now, excuse me just a minute.

3 Who was making payments on that car, do you
4 know? Who was paying for her car?

5 A She was.

6 Q She was?

7 A Uh-huh.

8 Q Who was paying for her apartment, the rent?

9 A She was.

10 Q And who was paying for the utilities, the phone bill,
11 the cable, stuff like that?

12 A She was.

13 Q Now, you talked about her son, Sam, Sam Brown, Jr.?

14 A Uh-huh.

15 Q Who is Sam Brown, Sr.?

16 A That was Portia's first husband.

17 Q Portia's first husband?

18 A Uh-huh.

19 Q Were they married for a good while?

20 A Yes.

21 Q And what -- what did Sam Brown, Sr., what did he do?

22 A He was in the Army -- the Army, the Marines, I think,
23 one of those.

24 Q He was military?

25 A Yes.

1 Q He had to travel a good bit?

2 A Yes.

3 Q And did he -- he and Portia, they got a divorce?

4 A Yes.

5 Q And why did Portia decide to divorce him?

6 A Well, she didn't like all the traveling they had to
7 do.

8 Q And what did Portia want to do rather than travel,
9 what did she want to do?

10 A Well, she wanted to stay in, you know, in one place.
11 She didn't want to go all over everywhere.

12 Q Who did she want to be around?

13 A Her family.

14 Q She and Sam Brown, Sr. stay on a good relationship
15 after that?

16 A Oh, yes.

17 Q Now, let me -- let me get down to that week that she
18 was missing.

19 Did you see her or did you see Angela [sic] on
20 that Friday or that Saturday?

21 A I think I -- I think I called her that Friday and
22 told her to go on Colonial Drive to a garage sale.

23 Q Okay. So you talked with her then?

24 A But Angelica was at the beauty shop.

25 Q Angelica was at the beauty shop?

1 A Uh-huh.

2 Q Do you remember anything about -- about you or
3 Vernelle or somebody buying a pantsuit for Portia that
4 weekend?

5 A Vernelle bought the pantsuit from Sumter.

6 Q Vernelle bought the pantsuit.

7 And you talked with her that weekend, the Friday
8 and then that day that -- that Angela was getting her hair
9 done?

10 A Yes.

11 Q Were you expecting to talk with her on Sunday?

12 A Yes.

13 Q Did you talk with her on Sunday?

14 A Well, every time I call, the line was busy.

15 Q Did you ever call and the line wasn't busy?

16 A No.

17 Q Did she ever call you back?

18 A No.

19 Q Did you ever get to talk with her anymore after that?

20 A No.

21 Q Let me ask you about this phone number if I could,
22 please, Ms. Sallie. 748-8692. Is that your number?

23 A That's my number.

24 Q And you said that that day that Angelica was getting
25 her hair done, you talked with your daughter Portia on

1 that day?

2 A Yes.

3 Q From this number right here?

4 A Yes.

5 Q Last time you got to talk to her?

6 A The last time.

7 MR. MYERS: Your Honor, we'd like to put this up
8 there, 10-6-06, the last time that Sallie speaks with her
9 daughter Portia from number 748-8692, area code 803.

10 THE COURT: We've not ruled on admissibility,
11 but it's demonstrative evidence?

12 MR. MCGUIRE: For demonstrative purposes, yes.

13 THE COURT: All right.

14 BY MR. MYERS:

15 Q Now, did Portia, was she taking any medicine back
16 during this time, and was Angela taking any medicine?

17 A Angelica was taking some medicine.

18 Q And did you ever go to the grocery store to pick up
19 medicine?

20 A I went to the drug store to pick it up.

21 Q Drug store, I'm sorry.

22 A Uh-huh.

23 Q Did you have to show any identification to pick up
24 her medicine?

25 A My driver's license.

1 Q Now, also, was Portia using any kind of breathing
2 machine back then that when she'd go to sleep it was
3 something to help her breathe?

4 A Yes.

5 Q So she had a breathing machine, too. And, then,
6 Angelica was taking some medicine?

7 A Uh-huh.

8 Q Portia was taking some medicine, too?

9 A Uh-huh.

10 Q What was -- what was Portia's health like at that
11 time?

12 A Well, it was pretty good. She had had breast cancer.

13 Q She had had breast cancer?

14 A Yes.

15 Q And she had an operation for that?

16 A Yes, she did.

17 Q I think she had a hysterectomy?

18 A Yes.

19 Q Had she beaten the cancer?

20 A Yes.

21 Q So they got that under control?

22 A Yes.

23 Q She have any other serious health conditions in 2006?

24 A No..

25 Q Did she ever have diabetes?

1 A No.

2 Q Ever have a heart attack?

3 A No.

4 Q No serious medical problems?

5 A Nothing.

6 Q How about Angelica, was she healthy --

7 A Yes.

8 Q -- a healthy little girl?

9 A Yes.

10 Q Now, when you didn't get to talk with her on that
11 Sunday or Monday and you would call and the phone would be
12 busy and she never called back, did you ever start getting
13 concerned because a day or two you hadn't talked with her?

14 A Yes. We went over to the church.

15 Q Went over to where?

16 A Went over to the church, and they was going to have
17 an outing for the children.

18 Q Yes.

19 A But when we got there, on the door said it was
20 canceled.

21 Q Now, who was supposed to go to that camp or that
22 outing for the church?

23 A Angelica.

24 Q Angelica was supposed to go there?

25 A Uh-huh.

1 Q Angelica and Portia's missing, so you-all go to the
2 church to find out if they're there?

3 A Uh-huh.

4 Q They had canceled that camp or that outing?

5 A Uh-huh.

6 Q What did you-all do then, Ms. Sallie?

7 A I went to the -- went to the police department.

8 Q Okay. Did anybody else call you during this time
9 trying to find out where she was?

10 A Not as I know of. I can't remember.

11 Q Did you ever talk to anybody from Bob Bennett?

12 A No.

13 Q How about Vernelle?

14 A Yes. I'm sorry. There's a lady called Vernelle
15 because she couldn't get in touch with me to find out why
16 Portia wasn't coming to work.

17 Q Okay. Did that alarm you-all then that she had
18 missed work?

19 A Yes.

20 Q Why?

21 A Because she never missed work.

22 Q She don't miss no work?

23 A No.

24 Q Now, you go to the church, and the camp or the outing
25 has been canceled, and Portia and Angela's not there.

1 She's missing work. Now, are you-all getting concerned?

2 A Yes.

3 Q What do you do?

4 A Go over to the West Columbia Police Department.

5 Q And this had been about that Tuesday or Wednesday
6 that you-all go to the police?

7 A I think it was that -- yeah.

8 Q Did you-all ever go to the apartment complex where
9 Portia lived?

10 A I went to the police department first.

11 Q Went to the police department first?

12 A Uh-huh.

13 Q And you filed a report?

14 A Yes.

15 Q And you notified the police to help you out --

16 A Yes.

17 Q -- about finding her?

18 A Yes.

19 Q Then did you ever go back to the apartments in West
20 Columbia where Portia lived?

21 A Yes.

22 Q Did you try to get into her apartment there?

23 A Yeah, but the manager wouldn't let us in.

24 Q Wouldn't let you in?

25 A Uh-huh.

1 Q Who did they say had to come and go in?

2 A Portia.

3 Q Police?

4 A Portia.

5 Q Okay.

6 A They wouldn't let us in.

7 Q Now, did you-all still try to find out where Angela
8 and Portia were?

9 A Yes.

10 Q Did you ever get in contact with them?

11 A No, never hear from her no more.

12 Q What about holidays, Christmas, birthdays, ever get
13 in touch with her?

14 A No.

15 Q Later on, Ms. Sallie, several law enforcement
16 agencies tried to find out where they were, investigating
17 this case. Do you remember that?

18 A Yes.

19 Q Did you ever have to go out to SLED, the State Law
20 Enforcement Division --

21 A Yes.

22 Q -- for them to do a swab of your mouth for DNA?

23 A Yes.

24 Q Do you remember doing that?

25 A Yes.

1 Q Did somebody else go out with you?

2 A One of the detectives.

3 Q Okay. So they took you out there, and they took that
4 to try to match some of your DNA with Portia's since she's
5 your daughter?

6 A Yes.

7 Q Did you like when -- when Portia was living, would
8 you -- would you like to go over and see her and eat with
9 her from time to time?

10 A Well, I -- I went over once.

11 Q Was the defendant there?

12 A Yes.

13 Q Did he eat out there with you-all?

14 A Yes.

15 Q And when you would go over to see him, where would he
16 normally be?

17 A He'd go back in the room.

18 Q He'd go back into what room?

19 A Bedroom.

20 Q Wouldn't stay out there with you-all and talk?

21 A No.

22 Q Okay. Did you ever give Portia any advice about him?

23 A Yes.

24 Q What did you tell her?

25 A Well, I asked her was he going to church and she told

1 me no. And I asked why did she want him.

2 Q Did you advise her to do anything concerning him?

3 A I -- I advised her to leave him alone.

4 Q Now, when she went to church, she and Angelica, would
5 she lay out Angelica's clothes and stuff for Sunday
6 church?

7 A Yes.

8 Q Would she tithe and make offerings to the church,
9 too?

10 A Yes.

11 MR. MYERS: Ms. Sallie, that's all the questions
12 I have for you right now.

13 If you would, answer any questions that these
14 gentlemen have.

15 THE WITNESS: Okay.

16 THE COURT: Mr. McGuire, how long are you going
17 to be, estimate?

18 MR. MCGUIRE: Well, it's one of those things
19 where you kind of see where it goes. I'm not opposed to
20 breaking for lunch, if that's the question.

21 THE COURT: That's kind of what I was thinking.
22 I think it would be a good time to break. This is about
23 the time I envisioned.

24 So let's break now and we're going to come back
25 and we'll start promptly at 2, so I'll give you an hour

1 and a half.

2 MR. MCGUIRE: Yes, sir.

3 THE COURT: Ma'am, you're under oath. You can
4 step down, but you can't discuss your testimony with
5 anybody. Okay?

6 THE WITNESS: Okay.

7 THE COURT: All right. See you at 2 o'clock.

8 THE WITNESS: Okay.

9 (A lunch break was taken.)

10 THE COURT: All right. Ready to continue?

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: Get Ms. Jones back up here.

13 Ms. Jones, I'll remind you you're still under
14 oath. Okay?

15 THE WITNESS: All right.

16 THE COURT: Very well.

17 All right. Mr. McGuire.

18 CROSS-EXAMINATION

19 BY MR. MCGUIRE:

20 Q Good afternoon, Ms. Jones.

21 A Good afternoon.

22 Q And I'm just going to ask you a couple of questions.
23 Okay?

24 A Okay.

25 Q You mentioned that you didn't really know a whole lot

1 daughter?

2 A Yes.

3 Q And he would see them pretty often?

4 A Uh-huh.

5 Q And he would -- he would even stay the night with
6 them?

7 A Yes.

8 Q He had a pretty good bird's-eye view of Portia and
9 her relationship with Angelica--

10 A Yes.

11 Q -- and Kenneth?

12 A Uh-huh.

13 Q Okay. Let me ask you a little bit about, I think you
14 mentioned -- I think you mentioned that Portia liked flea
15 markets and garage sales?

16 A Yes.

17 Q Are you -- are you aware of a report regarding Portia
18 being at a flea market and having a confrontation with a
19 man who was driving a big kind of maroon car? Do you
20 remember that?

21 MR. MYERS: Objection on relevance.

22 THE WITNESS: No.

23 MR. MYERS: Objection on relevance.

24 THE COURT: What's the relevance?

25 MR. MCGUIRE: Just asking if she knows.

1 THE WITNESS: No, I don't know.

2 MR. MYERS: Objection on relevance.

3 THE COURT: She doesn't know. So I'm going to
4 leave the objection unruled upon. She said she didn't
5 know.

6 BY MR. MCGUIRE:

7 Q I think you stated earlier that you weren't exactly
8 sure when Portia started dating Kenny; is that right?

9 A That's right.

10 Q If you had to try to ballpark it as best you could,
11 do you know if they were together for three years, two
12 years, one year?

13 A Well, I -- I really don't know. I would say -- like
14 I knowed about it about six months, I think, something
15 like that.

16 Q Okay. Did you ever visit their house when they lived
17 on New State Road?

18 A I don't remember the street, but I know where the
19 house was at. But I don't know which house you talking
20 about.

21 Q Okay. Before they moved into the apartment complex,
22 the house, that was the house on New State Road?

23 A Okay. Yes, I know where that is, and I have visited
24 them there.

25 Q Okay. And I think -- now, with regard to the

1 apartment, do you remember telling a police officer that
2 you'd never been to the apartment before?

3 A No.

4 Q Okay. Because I think you told Mr. Myers that you
5 had been there one time?

6 A I think I probably did. I don't know.

7 Q You're not sure?

8 A No, I'm not sure. It's been a pretty good while.

9 Q Yes, ma'am, it has been.

10 That -- when you say that, you know, you saw
11 them that one time, could you have been thinking maybe of
12 a visit when they were still on New State Road?

13 A I've been there a couple of times. I went once for
14 dinner.

15 Q Okay. That was -- that was on New State Road, the
16 house?

17 A Yes, sir.

18 Q And as you sit here right now, you can't remember
19 being inside the apartment, though, can you?

20 A No.

21 Q Okay. Do you know a man named Ramon Loyal? Does
22 that ring a bell at all?

23 A No.

24 Q Do you know if he's -- he's on the Livingston side,
25 maybe?

1 A I didn't know the --

2 Q The Livingstons that well?

3 A No.

4 Q Okay. When-- when Angela -- when Angelica would come
5 and spend some time with you, did she ever have library
6 books with her?

7 A Yes. She had her school books, her homework.

8 Q Did you know that part of the -- the family routine
9 was that Kenny and Angelica would go to the library
10 together?

11 A No, I didn't know that.

12 Q Okay. Did you know that it was Kenny that got
13 Angelica her library card?

14 A No, I didn't know that.

15 Q Okay. Now, Kenny drove Angelica to your house
16 before, right?

17 A Yes.

18 Q And he would drive the Ford car, right?

19 A Yes.

20 Q And that's the car that's in State's No. 4. I'm
21 sorry. My eyes aren't even that good, ma'am. I need to
22 come up.

23 A Yes.

24 Q Okay. Did -- were you aware of any concerns that
25 Portia had at work about maybe even contemplating quitting

1 because she didn't like the new parts -- I mean the
2 service manager?

3 A No, I didn't.

4 Q Would it surprise you to know that Angelica told a
5 couple of people that --

6 MR. MYERS: Objection. Hearsay.

7 THE COURT: Rephrase that question, I think.

8 MR. MCGUIRE: Let me --

9 THE COURT: I didn't get to hear what you were
10 going to --

11 MR. MCGUIRE: Sure.

12 THE COURT: -- come at, but --

13 BY MR. MCGUIRE:

14 Q Solicitor Myers asked you some questions about were
15 there any plans or intentions to go to -- maybe on a trip
16 or out of state or anything.

17 Would it surprise you to know that Angelica told
18 folks that they were going to Texas?

19 MR. MYERS: Objection to the form of the
20 question. Whether she's surprised or not is immaterial.
21 It's whether she knows.

22 THE WITNESS: No. She didn't told me she was
23 going anywhere.

24 THE COURT: Hang on a minute. Hang on, ma'am.
25 Let me hear it one more time.

1 MR. MYERS: We object to the form of the
2 question as her being surprised. That's immaterial. It's
3 whether she knows anything about it.

4 THE COURT: I'll let you rephrase it.

5 BY MR. MCGUIRE:

6 Q Okay. Did Angelica ever tell you that the family was
7 going to head to Texas when school let out?

8 A No.

9 Q If you could, ma'am, about when did -- when did
10 Portia start taking care of Angelica?

11 A When she was a baby.

12 Q All right. Didn't Theresa have her for about two
13 years or so?

14 A No.

15 Q No? Did she start taking care of her pretty much
16 right when she was born?

17 A It was a couple of months after she was born, about
18 several days, I think, something like that.

19 Q And at that time, did they live with you? Did they
20 live with you?

21 A No.

22 Q Where were they living at the time?

23 A We was living together in West Columbia.

24 Q Okay. When you say, "we were living together," you
25 and Portia and Angelica?

1 A Yes.

2 Q Okay. And about what year was that when you-all
3 started living together?

4 A I don't know. I have no idea.

5 Q Okay. But you-all were together for awhile?

6 A Yes.

7 Q And if there's any reason -- if Portia wanted to come
8 back with Angelica, they could always come back to you?

9 A Yes.

10 Q Your door would always be open?

11 A Yes.

12 Q Okay. And they could come back for any reason?

13 A Yes. I was the great grandmother.

14 MR. MCGUIRE: Yes, ma'am.

15 Ma'am, that's all I have for you.

16 Thank you, ma'am.

17 THE WITNESS: Thank you.

18 MR. MYERS: That's all we have, Your Honor.

19 THE COURT: Ma'am, you may step down. Be
20 careful stepping on that step.

21 THE WITNESS: All right.

22 MR. MYERS: We'd call Vernelle Bellamy.

23 MR. STITELY: Your Honor, may we approach for a
24 moment?

25

1 (A bench conference was held with the judge and
2 attorneys.)

3 VERNELLE BELLAMY, after being duly sworn,
4 testified as follows:

5 THE CLERK: Have a seat, please, ma'am.

6 Once you're seated, I need you to speak up loud
7 and clear, stating your full name and spelling your last
8 for the record, please.

9 THE WITNESS: My name is Vernelle Bellamy,
10 B-E-L-L-A-M-Y, Bellamy.

11 THE COURT: Solicitor.

12 MR. STITELY: Judge, just for a matter of the
13 record, we approached a moment ago.

14 We would just make an objection to individuals
15 who aren't in the direct familial line -- a linear line
16 being considered the actual family of the alleged
17 victim -- be out of court during sequestration.

18 This individual's not part of that direct line.
19 So we would just object to them and any other witnesses
20 who would be outside the direct family lineage be allowed
21 to get through the sequestration motion before trial.

22 And if the Court said that would not be the case
23 with this witness, I'll put it on the record.

24 THE COURT: All right. And your objection is so
25 noted. And I'm going to allow her to testify.

1 It's my recollection that the investigator, the
2 custodian of records, and the family members be allowed to
3 stay in the courtroom, and I don't think any clarification
4 any further than that was made at that time.

5 I understand your objection and will allow her
6 to testify.

7 MR. STITELY: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. MYERS:

10 Q You stated your name yet, Ms. Vernelle?

11 A Yes, sir.

12 Q Okay. Tell the Judge, please, ma'am, how you're
13 related to Portia.

14 A She's my niece.

15 Q And who is your sister?

16 A Sallie Jones.

17 Q Now, Portia was your niece. What kind of
18 relationship was there between you and Portia?

19 A It was a good relationship.

20 Q And were you-all -- were you-all close to each other?
21 Were -- would you talk or see each other or would it be on
22 a rare occasion when you'd see each other?

23 A We talked.

24 Q How often would you see Portia?

25 A I would talk to her more than I would see her.

1 Q Okay. How often would you talk with her?

2 A Two or three times a day.

3 Q You would call her?

4 A Sometime I would call her and sometime she would call
5 me.

6 Q So it would go both ways?

7 A Yes, sir.

8 Q Now, what about Angelica? What did you know about
9 Angelica?

10 A Portia was Angelica's grandmomma and my great niece.

11 Q Okay. And, now, what was your relationship with
12 Angelica? Would you talk with her? How often would you
13 see her? Tell the Judge how you got along with Angelica.

14 A I got along with Angelica very well. She would come
15 over, sometime I would do her hair before Portia started
16 her to going to the hairdresser. The picture that they
17 put on the TV is one of the hairstyles that I gave
18 Angelica, was one of the ones that I had did, put the bows
19 and stuff in her hair.

20 Q Would she stay with you often?

21 A Sometimes she would.

22 Q What about the week before they came missing?

23 A I kept her that whole week.

24 Q The whole week?

25 A She was out of school, and I think the after-school

1 that she used to go to was closed, too. So Portia asked
2 me would I watch her that week.

3 Q Okay. When did you return Angelica to Portia, what
4 day of the week?

5 A Portia came and pick Angelica up after work.

6 Q What day was that?

7 A Friday.

8 Q On Friday?

9 A Yes, sir.

10 Q Okay. Now, when Portia would bring Angelica over to
11 stay with you, would Angelica have any kind of toys or
12 games or anything that she would bring with her?

13 A Sometimes she would have a little book that she was
14 writing in, but not many toys because she didn't stay.
15 But she used to have this little computer thing that
16 Portia had bought her.

17 Q What color was that little computer thing?

18 A I believe it was pink.

19 Q Little pink computer thing?

20 A Yes.

21 Q She liked that?

22 A She liked it because she was just learning her ABCs,
23 and things like that.

24 Q Now, when you took Angelica back to Portia, did
25 Portia come to your house or did you go to her apartment?

1 A Portia came to my house.

2 Q All right. And that was on a Friday evening after
3 she got off work?

4 A After she got off work.

5 Q And where did she work?

6 A Bob Bennett Ford.

7 Q Did you ever talk with her about her job at Bob
8 Bennett Ford?

9 A She talked about it. We talked about it.

10 Q And what were her feelings about working at Bob
11 Bennett Ford?

12 A She liked it, working.

13 Q And did you know what kind of car she came in that
14 day to pick Angelica up?

15 A I stayed inside. I didn't come -- sometimes when she
16 would pick her up, I would come outside, but sometime I
17 would stay inside.

18 Q What kind of car was she driving? Do you know where
19 she got it from?

20 A Bob Bennett.

21 Q Okay. And what was -- what was her feelings, her
22 thoughts about that car, getting that car? Did she have
23 any feelings about it?

24 A She liked the car. It was a car that she had just
25 purchased, a new car.

1 Q Her car?

2 A Her car.

3 Q A new car.

4 Do you know anything about driving, whether she
5 was a good driver, had driven a lot, whether she'd drive
6 long places or short places or what?

7 A Not long trips.

8 Q She wouldn't take long trips?

9 A She wouldn't take long trips. She was kind of a fair
10 weather driver. She wasn't a good driver like I am.

11 Q What's your -- is that what you mean by "fair weather
12 driver"?

13 A I'll drive anywhere. Florida. I'll get on the
14 interstate. I'm not afraid of big trucks. She was kind
15 of afraid of big trucks.

16 Q So she didn't like big trucks, traffic on the
17 interstate?

18 A No, sir.

19 Q Now, did -- did Portia have a good relationship and
20 kind of consider you her adviser or mentor or someone to
21 kind of lean on?

22 A Yes, sir.

23 Q What is your occupation?

24 A I'm a minister of the Gospel.

25 Q And you knew Portia had had some problem with drugs

1 early on in life?

2 A Yes, sir.

3 Q And you talked with her about that?

4 A Yes, sir.

5 Q And when she had Angelica and was taking care of
6 Angelica, did she still have a drug problem?

7 A Not to my knowledge.

8 Q She talked with you daily, several times?

9 A Yes, sir.

10 Q Now, let me talk a little bit more about that Friday.

11 About how long did Portia stay over there when
12 she was picking Angelica up?

13 A She didn't stay very long. She just came and we
14 talked a few minutes, and she was saying she was tired,
15 because normally when she came to pick Angelica up, she
16 was in her uniform.

17 Q Okay. From working?

18 A From working.

19 Q Now, did you have any plans on seeing her the next
20 day, Saturday?

21 A I had no plans to see her.

22 Q And on the next day on Saturday, did you, in fact,
23 see Portia?

24 A She came by.

25 Q She came by where?

1 A My house.

2 Q Okay. And what were your plans for that day, on
3 Saturday?

4 A We were getting ready. Me and a couple other of my
5 sisters was going to Sumter to the dress outlet to buy
6 clothes.

7 Q Did Portia like buying things?

8 A Yes.

9 Q And going to Sumter, were you to buy anything for
10 her?

11 A She gave me some money to buy her something.

12 Anything that I bought her because a lot of
13 times when I was shopping, during that time when I did a
14 lot of shopping, I would see something and I would tell
15 her that I seen it, and she would ask me would I get it.
16 And sometimes I would just get it and sometimes -- all the
17 time she would give me the money back, but I could trust
18 her if I just spent my money.

19 Q What were you to buy for her on that Saturday in
20 Sumter?

21 A A pantsuit.

22 Q And how much money did she give you?

23 A I think it was about \$80.

24 Q Okay. And when you got back from Sumter, did you, in
25 fact, buy a pantsuit for her?

1 A Yes, sir.

2 Q And did you ever get a chance to give her that
3 pantsuit?

4 A Yes, sir.

5 Q When was that?

6 A That same day.

7 Q That same Saturday?

8 A Yes, sir.

9 Q Okay. And do you know where she had been that
10 Saturday or what her plans were for that Saturday?

11 A When she came back to my house that Saturday, I
12 didn't know that she was going to come by because I didn't
13 know that I was going to see her because I -- after I kept
14 Angelica on Friday, I didn't plan to see her anymore. But
15 for some reason, she -- we was getting ready go to Sumter
16 early that morning, and she just drove up.

17 Q Yes, ma'am.

18 A They was going to the hairdresser.

19 Q Who was?

20 A Portia and Angelica.

21 Q And Angelica was with her?

22 A I believe so. I can't state for sure, but the
23 hairdresser and everything, I didn't -- I can't remember
24 whether she was in the car.

25 Q And that would have been that Saturday?

1 A Yes, sir.

2 Q Now, did you see her anymore that Saturday after you
3 gave her the pantsuit?

4 A No, sir, I didn't.

5 Q Did you talk with her anymore?

6 A No, sir, I didn't.

7 Q Now, on the next day, on Sunday or Monday or Tuesday,
8 did -- was there some concern about where Angelica and
9 Portia were?

10 A I'm believing on Tuesday.

11 Q Yes, ma'am.

12 A I can't remember the lady name. I believe it's
13 Ms. Peggy that worked at Bob Bennett, she called my house.

14 Q And what was she inquiring about?

15 A She was inquiring about Portia.

16 Q All right.

17 A And she said Portia hadn't been to work Monday, and
18 she hadn't been to work Tuesday. And Portia normally was
19 the one that opened up. I don't know whether it was the
20 front part because Portia had keys to open up some part of
21 Bob Bennett. And she was never late doing it and she was
22 concerned about it.

23 Q Was that usual or unusual for Portia to miss work?

24 A Unusual.

25 Q As a result of Bob Bennett folks looking for Portia

1 for her not being at work, what did you do?

2 A I called her mother, but --

3 THE WITNESS: Can I back up for a second, Your
4 Honor?

5 BY MR. MYERS:

6 Q Sure, yes.

7 A That Monday, I was out shopping, and I saw some
8 shoes, but I wasn't for sure what size shoe Angelica wore.

9 Q Right.

10 A So I was calling Portia to ask her what size did
11 Angelica wore, and I didn't get a response.

12 Q That was on Monday?

13 A That was on Monday.

14 Q Was that usual or unusual for you to call Portia and
15 her not return your call?

16 A Well, if she was at work?

17 Q Uh-huh.

18 A If I miss -- if we miss each other, either she would
19 call me back if I didn't get her the first two times.

20 Q Right.

21 A I knew -- I knew she was going to call me back, but
22 she didn't call me back.

23 Q On that Monday, she didn't call you back?

24 A She didn't call me back.

25 Q Okay. And then you said on that Tuesday after Bob

1 Bennett folks called saying she hadn't been at work Monday
2 or Tuesday --

3 A Right.

4 Q -- what did you-all start doing?

5 A I called Sallie, and I asked Sallie, did anybody
6 contact her.

7 Q Sallie is Portia's mother?

8 A Sallie is Portia's momma.

9 Q Okay.

10 A So we --

11 Q And what other --

12 Go ahead. I'm sorry.

13 A We got concerned because it was unusual.

14 Q Uh-huh.

15 A We wasn't too concerned about Angelica because I
16 believe my sister-in-law, Roz, was saying something about
17 Angelica was going on a trip.

18 Q What kind of trip?

19 A Church trip.

20 Q With the church?

21 A With the church.

22 Q Okay.

23 A So we started trying to find different people,
24 calling people to see had anybody seen her.

25 Q Did you-all try to call Portia that day, too?

1 A We tried to call her.

2 Q Did you get any response from her phone?

3 A No, sir.

4 Q Okay. Go ahead.

5 A Sallie was concerned.

6 Q Uh-huh.

7 A My baby brother said, "Well, why don't you-all just
8 wait until Wednesday." Sallie said, "No, come and take me
9 now to the police department," and that's where we went.

10 Q Where did you-all go?

11 A West Columbia, I believe.

12 Q Did you inform them about not being able to locate
13 Angelica and Portia?

14 A Yes, sir.

15 When we got there, we was demanded to sit in the
16 front of the jail where you get in. I'm believing now
17 that his name was Officer Shane. We told him that -- I
18 was talking, Sallie was basically standing there, we was
19 kind of talking together at first and then Sallie was kind
20 of letting me talk for her. And I was telling him that
21 this was my sister, her daughter was missing, her job had
22 called, we was trying to call her and we could not get no
23 response. And so I -- I believe he asked us what -- what
24 her cell phone number was, so Sallie gave the officer
25 Portia's number.

1 Q Right.

2 A And he called.

3 Q Get any response?

4 A He didn't get any response.

5 Q So nobody could find Angelica, nobody could find
6 Portia?

7 A No, sir. But we wasn't concerned at that time so
8 much about Angelica because we thought she was on a field
9 trip with the church.

10 Q Right. What did you-all do about the church field
11 trip, how did you-all try to find anything out about that?

12 A We went over to the church, me and Sallie, and there
13 was a -- a note on the door saying that the trip had
14 gotten canceled.

15 Q So now the church trip was canceled?

16 A Yes, sir.

17 Q What was your feelings about Angelica now?

18 A My heart started racing.

19 Q Did you-all ever try to go by her apartment in West
20 Columbia?

21 A Yes, sir, me and Sallie did.

22 Q And what happened over there?

23 A We went over there, and Sallie -- we went to the
24 office. I had never been over there.

25 Q Right.

1 A And we went to the office, which was by the pool.

2 Q Uh-huh.

3 A Knocked on the door and asked the lady that was
4 sitting in the office could we go in the apartment and she
5 said no. I got kind of upset.

6 Q Yes, ma'am.

7 A And I told her, I said, "We hadn't heard from my
8 niece. Well, can you go in the apartment?" And she said
9 that she had to get something from her manager or
10 something. So we stayed there for a few minutes and then
11 she went in. And then she came back and told us that the
12 bed wasn't made, but it looked like somebody was cleaning
13 up.

14 Q Looked like somebody had been doing some cleaning up
15 in the apartment?

16 A Yes, sir.

17 Q Was anybody inside?

18 A No, sir.

19 Q Say anything about clothes being left out?

20 A I can't remember that part.

21 Q Now, you-all notified the police, went to the
22 apartment?

23 A Yes.

24 Q Was Sallie -- not Sallie -- was Portia's car anywhere
25 out in the parking lot anywhere?

1 A Not that I noticed.

2 Q Didn't see her car either?

3 A No, sir.

4 Q Did you-all continue to try to call her on the phone
5 to try to get in touch with-- with Portia by phone or
6 anything?

7 A Every time we dialed the number --

8 Q Yes, ma'am.

9 A -- it just would just rang, rang.

10 At this time, we're in a panic because now we
11 don't know what to do.

12 Q Yes, ma'am.

13 A We don't know who to talk to because everybody that
14 we talked to said they didn't see her.

15 Q They just disappeared?

16 A (Witness shaking head.)

17 Q Did you ever see Portia again?

18 A No, sir.

19 Q Did you ever talk with Portia again?

20 A No, sir.

21 Q Did you ever see Angelica again?

22 A No, sir.

23 Q Did you ever talk with Angelica again?

24 A No, sir.

25 Q What did Angelica know about the telephone? She was

1 seven years old. What -- what did she know about the
2 telephone? Did she know anybody's numbers?

3 A She knew mine.

4 Q Did she ever call you?

5 A She had called me.

6 Q Who else do you know she'd called?

7 A She'll call Puny -- I'm sorry -- Sallie. Sallie is
8 Puny. We call Sallie, Puny.

9 Q Okay. I should have called her that when she was
10 testifying.

11 She knew Sallie, her grandmother, she called.
12 Anybody else?

13 She knew how to use the phone?

14 A She know how to use the phone.

15 Q You-all never received a call from her --

16 A No, sir.

17 Q -- after that Saturday?

18 A No, sir.

19 Q Now, are you raising any of Portia's grandsons, too?

20 A Two boys.

21 Q And that's Portia's grandsons?

22 A Yes, sir.

23 Q Who is their mother?

24 A Theresa Brown.

25 Q Okay. And what was Angelica's relationship with the

1 two -- her two brothers that you're raising. Did they
2 ever get together?

3 A Yes, sir. Sometimes Portia would bring Angelica over
4 and they basically turned her into a tomboy because they
5 would just throw her around and she liked it. She loved
6 her brothers.

7 Q So they get along together?

8 A They got along good, sir.

9 Q Now, how about Portia? Would Portia ever do anything
10 for those two grandsons, also?

11 A Yes, sir.

12 Q What kind of things would she do for them?

13 A School clothes. I never had to buy them by myself.

14 Q Uh-huh.

15 A Christmas. I never had to buy it by myself.

16 During tax time, it was nothing for her give me
17 \$700 or \$800 for those boys.

18 Q She loved her grandsons?

19 A She loved her grandsons, especially Eddie.

20 Q Would she get together with family members a good bit
21 or not?

22 A Yes, sir. If we had a big cookout --

23 Q Uh-huh.

24 A -- we know we could depend on Portia to clean the
25 chitlins.

1 Q Uh-huh.

2 A She would clean the chitlins for us. She would even
3 make potato salad for us. She would cook certain pots for
4 us.

5 Q What about her grandchildren, the two boys you're
6 raising, and Angelica, did she ever do anything about
7 their birthdays or holidays or Christmas, did she ever do
8 anything for them?

9 A Eddie, which is the oldest boy --

10 Q Uh-huh.

11 A -- he thought Portia was rich. He actually did,
12 because anything he asked her for, she would give it to
13 him.

14 Q Uh-huh. Now, do you remember about the time she
15 started seeing or staying with Kenneth Lynch?

16 A I knew nothing about Kenneth Lynch.

17 Q You didn't see him that much?

18 A I saw him twice, and I met him once.

19 Q Okay. But you remember when they kind of got
20 together, when Portia kind of got together with him?

21 A No, sir. That was -- the relationship that me and
22 Portia had --

23 Q Yes, ma'am.

24 A -- she wouldn't have told me about him.

25 Q I'm not asking you about her telling you anything

1 about him.

2 A Okay.

3 Q You just knew that they were together?

4 A I knew that she met a man.

5 Q Right. But you didn't know much about him?

6 A I didn't know anything about it.

7 Q Did you notice anything different about Portia? Did
8 she change any after she started being with this man,
9 Lynch?

10 A After she started being with this man --

11 Q Yes, ma'am.

12 A -- a lot of things changed about Portia.

13 Q And tell me about it.

14 A Her demeanor changed.

15 Q How?

16 A Portia always kept her hair up. She was a real nice
17 dresser. She was a jokester. She would play tricks on
18 you. She was always laughing. We used to call her the
19 crackler. She laughed all the time.

20 But when she met this man, it wasn't like that.
21 She hardly came around. The kids, Christmastime, the
22 money started slacking off. You know, I didn't mind it
23 because I could have taken care of them.

24 Q Yes, ma'am.

25 A Me and my husband, but it kind of slacked off.

1 Q What else, how else did she change?

2 A She didn't seem as happy as she used to be.

3 Q Now, you knew that Portia was interested in Angelica
4 going to school?

5 A Yes, sir.

6 Q And was there a certain teacher that they were
7 working with to help Angelica on her behavior in school,
8 of talking and things of that nature?

9 A Angelica loved to talk.

10 Q Right.

11 A And she would talk in school, and the teacher was
12 trying to get her -- I don't know which particular
13 teacher. I knew mostly about the bus, that she would talk
14 on the bus and sometimes she would want to stand up on the
15 bus.

16 Q About what grade was that, second grade?

17 A I believe it was the second grade.

18 Q Okay. Now, let me ask you one thing, another
19 grandson, her son, Sam Brown, Jr.

20 A Yes, sir.

21 Q Do you remember when Sam got married?

22 A I remember. I couldn't tell you the year, but I
23 remember when they got married.

24 Q Did you go to the wedding?

25 A No, sir, I didn't.

1 Q Okay. Do you know whether Portia went to the
2 wedding?

3 A Portia and Sallie went to the wedding.

4 Q Okay. Was that the time that Portia drove down
5 there, it was down in Orangeburg County, down there
6 somewhere?

7 A Yes, sir. She was kind of excited because she wanted
8 Sallie to kind of tell her she was doing a good job
9 driving.

10 Q Okay. She wasn't too good of a driver?

11 A She was not too good of a driver.

12 Q Now, Sam had a son later on, I think around January
13 of 2006?

14 A Mason.

15 Q Mason.

16 And what was Portia's feelings about her new
17 grandson, Mason?

18 A She was very excited about Mason. It was Sam's son,
19 her son's son, Mason. And she loved Sam and she loved
20 Mason. And she was just excited for the relationship that
21 her and Mason was going to have and her babysitting.

22 Q She looked forward to that?

23 A She looking forward to babysitting.

24 Q Now, you were with Portia a good many years, and you
25 talked with her several times a day?

1 A Yes, sir.

2 Q And you helped her out with Angelica?

3 A Sometimes, yes, sir.

4 Q You were helping out with her two grandsons?

5 A Yes, sir.

6 Q You-all were pretty close, you and Portia?

7 A Yes, sir.

8 Q Now, the way she was, would she have left them
9 grandbabies and gone off?

10 A No, sir. She wouldn't have left Mason, she wouldn't
11 have left Eddie, TJ. She wouldn't have did that. She
12 wouldn't have left her mother Sallie. Her and Sallie was
13 two peas in a pod. They were mother and daughter, like
14 twins.

15 Q Did you ever know -- have you ever -- have you ever
16 taken a trip with Portia?

17 A Yes.

18 Q Where'd you-all go?

19 A Florida.

20 Q And how did you go there?

21 A By bus.

22 Q And who sponsored it?

23 A Our church.

24 Q Did she know much about traveling?

25 A No.

1 Q When you-all went to Florida, was it the summertime
2 or wintertime?

3 A It was the summertime.

4 Q What kind of clothes you-all take?

5 A No. It was wintertime for us, but it was summertime
6 for Florida, and we packed all winter clothes.

7 Q And you got down there and it was kind of hot?

8 A It was hot.

9 Q So you-all didn't know much about traveling?

10 A We didn't know much about traveling.

11 Q Portia didn't know much about traveling?

12 A No, sir.

13 Q You know her and everything. Did she ever have any
14 plans to go to Mississippi?

15 A No, sir.

16 Q Texas?

17 A No, sir.

18 Q Arizona?

19 A No, sir.

20 Q California?

21 A No, sir.

22 Q Oregon?

23 A No, sir.

24 Q Seattle, Washington?

25 A No, sir.

1 Q Canada?

2 A No, sir.

3 Q Mexico?

4 A No, sir.

5 Q Was she the traveling type?

6 A No, sir.

7 Q Do you know if she's ever been on a plane?

8 A I don't believe so.

9 Q Other than that bus trip with the church, you know
10 her to take a bus trip to -- out of state, states away?

11 A No, sir.

12 Q Did you help any with cleaning out that apartment
13 over there, Ms. Vernelle, Portia's apartment after they
14 never came back?

15 A No, sir.

16 Q Okay. Do you know who did?

17 A Sam, Theresa, Tanya, and Lucci.

18 Q Relatives?

19 A Yes, and one friend.

20 Q And the last time that you talked with Portia would
21 have been -- or saw, would have been that Saturday,
22 June 10th, 2006?

23 A Yes, sir.

24 Q Is it normal or abnormal for Portia and Angelica to
25 disappear without anybody knowing where they were?

1 A It's abnormal.

2 Q What was one of the most important things in Portia's
3 life?

4 A Her grandchildren.

5 MR. MYERS: Thank you, ma'am.

6 Answer any questions the defense has.

7 CROSS-EXAMINATION

8 BY MR. STITELY:

9 Q Hi, ma'am.

10 A Hi.

11 Q My name is Ben. I just have a couple of questions,
12 just a couple timing questions.

13 Do you remember about what time Portia and
14 Angelica came over to your house that Saturday morning?

15 A It was early.

16 Q What's early?

17 A It had to be before 10 o'clock --

18 Q Okay. Before --

19 A -- because the Dress Barn we know for sure don't open
20 until 10.

21 Q Okay. Was it really early, like before the sun was
22 coming up kind of early or probably closer to that 9 or
23 10 o'clock time? If you remember?

24 A I'm -- I'm thinking about 9:30 all of the sisters got
25 together.

1 Q Okay.

2 A I'm thinking.

3 Q Where -- at the time, where were you living, was it
4 West Columbia or Richland County?

5 A Myself?

6 Q Yes, ma'am.

7 A Richland County.

8 Q Whereabouts?

9 A Off of Monticello.

10 Q That is off of exit 68 up 20, exit 68 off I-20 on
11 Monticello Road?

12 A No, exit 70.

13 Q Exit 70. So a little further out.

14 How far -- how long would it take you to drive
15 from -- do you still live out there?

16 A Yes.

17 Q How long did it take you to drive back to -- to where
18 West Columbia is, give or take?

19 A I don't understand your question.

20 Q How long would it take you to get from your house to
21 West Columbia?

22 A From my house?

23 Q Yes, ma'am.

24 A Fifteen, 20 minutes, sir.

25 Q And you're pretty positive that Angelica and Portia

1 were both out there that morning?

2 A I'm not really sure.

3 Q Okay. No problem.

4 When you said you saw Portia again that
5 afternoon, what time was that, do you think?

6 A We had been to Sumter.

7 Q Yes, ma'am.

8 A And we was back because I gave her the pantsuit.

9 Q Yes, ma'am. And Sumter's about an hour away?

10 A You could do it in that.

11 Q Because you're a good driver?

12 A Yes.

13 Q So you went down, you went shopping, you came back.
14 Was it 2 o'clock, 4 o'clock, 6 o'clock, was it after
15 supper? Do you remember?

16 A I want to say about 3.

17 Q Okay.

18 A I'm -- I'm -- I'm just guessing.

19 Q Sure. Do you know if Angelica was with Portia when
20 she came back to pick up the pantsuit from your house?

21 A She came in the house to get the pantsuit, and she --
22 we -- I saw the car drove up, I went to get the pantsuit,
23 Portia came in, it was in a plastic-like dry cleaners, and
24 I took some of it off, took it -- to show it to her, and
25 she liked it. But we stood in the door, so I couldn't

1 say.

2 Q You don't know one way or another? But your best
3 guess is that was probably around 3 o'clock?

4 A I believe -- I would say about 3.

5 Q Okay. Just a couple -- couple other timing
6 questions.

7 You said that you were aware that Angelica was
8 planning a trip. And you said in school, she was actually
9 chatty, that's what you described, she liked to talk a
10 lot. Is that fair? You said that you-all had heard from
11 teachers and the bus that she liked to talk a lot in
12 school?

13 A In school, on the bus, at my house, in the grocery
14 store, shopping, anywhere.

15 Q Did you know that she had told one of her teachers
16 that she was planning a trip to Texas right then after
17 school came out?

18 A I have no idea.

19 Q Okay. When you said you went up to the West Columbia
20 Police Department, you said it was Tuesday. Is there any
21 possibility it might have been Wednesday that you-all
22 went, the 14th, not on Tuesday, the 13th? Are you
23 absolutely positive it was 13th, that Tuesday?

24 A I believe it because my brother wanted us to wait.

25 Q Until Wednesday?

1 A To Wednesday. And Sallie said, "Let's go today." So
2 I'm believing that it was that Tuesday when we began to
3 hear everybody, you know, the lady calling and saying that
4 she wasn't there.

5 Q And that's when you talked to Investigator Shane, as
6 you called him?

7 A Uh-huh.

8 Q You remember his name being Shane.

9 When you went back to the apartment that day
10 after going to West Columbia, did the police officer go in
11 the apartment with the apartment lady or just the
12 apartment lady? You said she went inside.

13 A Me and Sallie went to the complex. A police officer
14 was not with us.

15 Q So someone else, some --- do we know the name of the
16 person who just went into the apartment that day? Do you
17 have any idea?

18 A She was the apartment manager. I don't know her
19 name.

20 Q Did you tell the police officers that someone else
21 had been in the apartment looking around before the police
22 came in?

23 MR. MYERS: How would she know what the lady
24 said to police officers who are not on the scene?

25 We object to that.

1 THE COURT: Rephrase your question. I'll
2 sustain your objection. If she knows.

3 BY MR. STITELY:

4 Q There was no police officer there at that time,
5 correct?

6 A No, sir. Me and Sallie took it upon ourself to go.

7 Q Did you eventually go back to the police and ask them
8 again to follow up?

9 A No.

10 Q Okay. You said that you knew nothing about -- I
11 don't want miss -- miss the phrase, but you said, "I knew
12 nothing about Kenneth Lynch."

13 Do you know about how long Mr. Lynch and Portia
14 were together?

15 A No.

16 Q So you don't know if it was six months, a year, two
17 years?

18 You describe her demeanor changing. Did her
19 demeanor change a month, six months, a year, five years,
20 do you know about when those changes that you would
21 characterize happened?

22 A When she met this man -- now we know him that he was
23 Kenneth Lynch.

24 Q How do you know it was him and not some other man?
25 If you don't -- if you never -- never saw him or you knew

1 nothing about Kenneth, how do you know that she didn't
2 have another man then?

3 A The man that she met at Bob Bennett.

4 Q Okay. Did you know that she was linked to maybe more
5 than one man at Bob Bennett, romantically?

6 A No.

7 Q Okay. But you don't know when that was, how long
8 before June of 2006 that she had met Mr. Lynch or started
9 dating him?

10 A Could I say this -- could I ask this -- I mean, when
11 I saw Portia with Mr. Lynch, the first time I met him
12 Portia was moving ---

13 Q Okay.

14 A -- and out of her house. And they were dropping some
15 things off to me to put in my storage and she was giving
16 her grandson some things.

17 Q Okay.

18 A That's the first time I ever met him.

19 Q Okay. Was that in March of 2006 when they were
20 moving into Park Place? Do you know?

21 A I don't know.

22 MR. STITELY: I have no other questions.

23 Thank you very much.

24 THE WITNESS: Thank you.

25 REDIRECT EXAMINATION

1 BY MR. MYERS:

2 Q Based on you talking with Portia and seeing things
3 with her after she started going with Lynch, did you ever
4 advise her to do anything concerning Mr. Lynch?

5 A Yes, sir.

6 Q What did you advise her to do?

7 A I -- I advised her to leave him.

8 MR. MYERS: Thank you, ma'am.

9 MR. STITELY: Nothing further, Judge.

10 THE COURT: You may step down, Ms. Bellamy.

11 Thank you.

12 MR. GRAHAM: Debra Hobgood.

13 DEBRA HOBGOOD, after being duly sworn, testified
14 as follows:

15 THE CLERK: Have a seat please, ma'am.

16 Once you're seated, state your -- speak up loud
17 and clear, stating your full name, spelling your last on
18 the record, please.

19 THE WITNESS: Debra Altry Hobgood,

20 H-O-B-G-O-O-D.

21 DIRECT EXAMINATION

22 BY MR. GRAHAM:

23 Q Ms. Hobgood, where are you employed, ma'am?

24 A Columbia Counseling Center.

25 Q What do you do there?

1 A I'm a front office manager.

2 Q Did you know Portia Washington?

3 A Yes.

4 Q Tell me about your relationship with Portia when you
5 met, her how you met her.

6 A Portia came to work at Bob Bennett Ford, I would say
7 probably about 2001, if not sooner. We became good
8 friends. We talked every morning, had our coffee every
9 morning. We were just really tight.

10 Q Did you work at Bob Bennett Ford prior to your
11 current job?

12 A Yes.

13 Q Okay. When did you start at Bob Bennett Ford and how
14 long did you work there?

15 A 1997 through 2008.

16 Q And you said Ms. Portia came there about 2001?

17 A I want to say around 2001. It might have been
18 earlier. Time just passes by so fast.

19 Q And you were working there at the time of her
20 disappearance in June of 2006?

21 A Yes.

22 Q So you worked with her for five-plus years; is that
23 correct?

24 A Yes, sir.

25 Q You describe yourself as good friends. Tell -- tell

1 the Judge what you mean when you say that.

2 A Well, good friends. I did a lot for Portia. There
3 was a lot of people that did a lot with Portia. We more
4 or less tried to take care of her, protect her, whatever
5 we needed to do. If she needed something, we all would
6 help her.

7 You want to know when I first met her or how she
8 was or, I mean, what?

9 Q No. You answered the question, ma'am.

10 A Okay.

11 Q What did Ms. Portia do for Bob Bennett Ford?

12 A She was a custodian.

13 Q Now, is that the same position that she had from 2001
14 until the end?

15 A Yes, sir.

16 Q And how did she do at her job?

17 A Very well. She was happy-go-lucky when she first
18 started coming.

19 Q Did she have any problems handling her job?

20 A No, sir.

21 Q At some point, did Ms. Portia have a car that wasn't
22 real reliable and she got a new car?

23 A Yes.

24 Q Tell me what you know about that.

25 A The new car. She -- we were looking at a stick shift

1 for Portia. She didn't know how drive a stick shift, and
2 we -- because of the -- the money situation, a stick shift
3 was a lot cheaper. So we -- I carried her out there and
4 was trying to teach her how to drive a clutch. We had to
5 stop before we burned the clutch up in a brand new car.

6 So we went ahead and decided -- I went over her
7 finances with her -- you know, I always helped her with
8 that, anything that, you know, needed somebody to look
9 over -- so we decided to get the Focus and --

10 Q You said that you helped her. Was Ms. Portia a very
11 sophisticated person?

12 A No.

13 Q When you say, "no," what do you mean?

14 A Well, Portia couldn't -- I mean, she was smart, but
15 she couldn't read well, she couldn't comprehend things.
16 Any kind of documents she would bring to me and I would
17 try and fill them out for her.

18 Q Did you help her pick out the car that she ultimately
19 bought?

20 A Yes, sir.

21 Q Let me show you a picture of a car that's marked
22 State's Exhibit No. 4 and ask if you recognize that car.

23 A Yes.

24 Q And that's Portia's car?

25 A That's Portia's car.

1 Q Tell me what Ms. Portia thought about that car.

2 A She loved that car. She was very particular with it.
3 That was the first brand new thing she had ever had.

4 She worked hard. I had given her \$800 down
5 payment for the car because she didn't have it, and we had
6 worked out an agreement that she would pay me when she
7 could, which wasn't a big deal to me. I mean, back then,
8 I -- I was making decent money. I was married.

9 You know, she -- she cleaned that car, she
10 washed that car, she never let anybody drive that car.

11 Q Let me interrupt you for a second.

12 You said she wouldn't let anybody drive that
13 car?

14 A No.

15 Q Do you know whether she would let Kenneth Lynch drive
16 that car?

17 A No.

18 Q No, you don't know or --

19 A No, she would not let Kenny drive that car.

20 Q Do you remember at some point in your friendship with
21 Portia when she began dating Kenneth Lynch?

22 A I remember when she started dating Kenny.

23 Q And where did Mr. Lynch work at that time?

24 A Bob Bennett Ford.

25 Now, before she dated him, I don't think he

1 worked at Bob Bennett Ford. I don't know about that part
2 of it. But he eventually came on to Bob Bennett Ford
3 working there.

4 Q And then it was after that point, you found out they
5 were dating?

6 A Uh-huh.

7 Q What, if any, changes did you notice prior to her
8 starting her relationship with Kenneth Lynch compared to
9 after her relationship and up to the time of her
10 disappearance?

11 A Well, when she first started dating Kenny, there was
12 no problem. I mean, she was happy, everything was okay.
13 And it was -- it seemed like Portia started changing
14 around September of 2005.

15 Portia was normally happy all the time. Her
16 demeanor started changing, her appearance started
17 changing, and like I said, we talked every morning.

18 Q When you say her demeanor started changing and her
19 appearance started changing, how did they change?

20 A She started doubting herself, losing the confidence
21 that she had in herself. She's always questioning what
22 she did. It's like she didn't have -- I don't know what
23 the word is -- she just didn't -- she wasn't Portia. She
24 was -- I don't know the word -- low self-esteem, I guess
25 is the word that would describe her.

1 Q Physically, did she start to look different?

2 A Yes.

3 Q What do you mean by that?

4 A Well, she came in crying. I mean, swollen eyes. She
5 didn't have that -- that look of confidence on the
6 outside. She started -- I don't know how to describe
7 this -- she just didn't look good. She didn't -- she
8 didn't take care of her physical appearance. In other
9 words, she just kind of let herself go. She used to have
10 her hair done and would look nice. And, I mean, she still
11 had her hair done but not as often. And she always looked
12 tired. She just -- she looked like she was dragging all
13 the time.

14 Q In March of 2006, what, if anything, did you do to
15 assist Portia and Angelica in finding a new place to live?

16 A I gave them a down payment for an apartment. There
17 was some things that had happened and I wanted her away
18 from Kenny Lynch. This was back in January.

19 Q You gave her the money in January?

20 A No. We -- we talked about it, and she -- she could
21 not move because her lease on the house did not end until
22 March.

23 Q Do you remember how much money you gave her?

24 A \$650.

25 Q And the reason you gave her \$650 was why?

1 A To get away from Kenny, for her and Angelica to move
2 away from Kenny to be safe.

3 Q After you gave her that money, what was your
4 understanding as far as her living arrangements regarding
5 her and Angelica and Kenny?

6 A I had asked her when I gave her the money, I would
7 gladly give it to her with the understanding that Kenny
8 would not move in. And to my knowledge, I thought that's
9 what had happened.

10 Q Let's talk about what, if anything, do you know about
11 Angelica attending a summer church camp in the summer of
12 2006?

13 A Angelica was really excited about that. I filled out
14 the paperwork; Portia brought me the paperwork to fill out
15 for her to go to summer camp.

16 Q Let me show you a document and ask if you recognize
17 it.

18 A Yes.

19 Q What is that document, ma'am?

20 A That is the document for the summer camp.

21 Q Did you help fill it out?

22 A Yes, I did.

23 MR. GRAHAM: Your Honor, the State would offer
24 this into evidence at this time.

25 MR. MCGUIRE: I'd object on a hearsay basis.

1 THE COURT: Did she identify -- she filled it
2 out?

3 THE WITNESS: Yes, I did.

4 MR. GRAHAM: She helped fill it out.

5 THE COURT: I'll allow it.

6 (WHEREUPON, STATE'S Exhibit No. 6 was marked for
7 identification and received into evidence.)

8 BY MR. GRAHAM:

9 Q Ms. Hobgood, you're looking at State's Exhibit No 6.
10 Can you tell His Honor what that is?

11 A That document is an application for Angelica to go to
12 day camp.

13 Q And did you fill that application out?

14 A Yes.

15 Q So the handwriting --

16 A It's my handwriting.

17 Q -- up at the top is your handwriting?

18 A Yes.

19 Q Okay. And who was -- who was supposed to go -- who
20 was supposed to go to summer camp?

21 A Cassandra L. [REDACTED] And she was to start in July.

22 Q What were the dates that she was supposed to go to
23 camp?

24 A Let's see. Angelica, I think, was, what, seven? She
25 was supposed to go from July the 17th through July the

1 20th.

2 Q And does it say -- was it -- is it a free camp or
3 was --

4 A No.

5 Q -- there a cost associated with it?

6 A No. There was a \$75 charge for the camp.

7 Q And you filled this out or helped fill this out
8 because why?

9 A Portia asked me to -- to fill it out. Like I said,
10 she -- she knew some of it, but didn't know all of it.
11 And she -- we sat down in my office that morning and
12 filled it out.

13 Q What, if anything, can you tell me about Portia's
14 feelings and her relationship with her granddaughter
15 Angelica?

16 A Oh, my God, she loved that child. She was so
17 protective of Angelica. She wanted Angelica to have
18 things that -- that she never thought about having. You
19 know, you always want your kids to have better than you.
20 And she wanted to make sure that -- that anything that was
21 offered, Angelica could get in on it.

22 She was very stern with Angelica. Angelica had
23 manners. Just -- she was such a good child. And Portia,
24 once she told her something, Portia meant it. I mean, she
25 would not back down like a lot of parents would.

1 Q What were your observations regarding Portia's and
2 Angelica's relationships with the rest of their family?

3 A I know that Portia loved the two grandbabies. She
4 had two boys that her auntie was keeping.

5 Q Those would be Angelica's brothers?

6 A Yes. And Portia couldn't afford to take all three of
7 them, and her auntie was supposed to be keeping the boys.

8 Angelica loved her brothers. I never observed
9 them together, but she talked about them. She would, you
10 know, come to Bob Bennett in the morning sometimes when
11 she had a doctor's appointment, Portia would bring her and
12 she would sit down and draw pictures and talk about her
13 brothers and what she was doing in school. She was a good
14 kid.

15 Q What kind of office did -- or did Portia have an
16 office at Bob Bennett Ford?

17 A No. She didn't have an office; it was like a closet
18 that she put her personal stuff in and she had the key to
19 the door.

20 Q What kind of personal things did she have in her
21 office?

22 A She had pictures of Angelica in there. She kept her
23 pocketbook in there. She had a flower in there. Any kind
24 of mail, sometimes she'd have her mail in there.

25 Q After she disappeared, were those items still there?

1 A Yeah, they were until they cleaned the office out.

2 Q When was the last time that you saw Portia?

3 A Friday before she went missing. Let's see. Her
4 birthday was coming up that Friday. That was the last
5 time I saw her.

6 Q If I said Friday, June 9th of 2006?

7 A Yes.

8 Q Tell me about that day. What -- what do you remember
9 about her from that day at work, what was unusual, what
10 was usual?

11 A Well, that day, I mean, you know, she -- she kept
12 telling us that week her birthday was coming up. She was
13 so excited about it. She knew we had something planned --
14 or knew I had something planned for it. She wouldn't have
15 missed it for the world. She was happy. You know, she --
16 she -- the last thing she said was, "I'll see you on
17 Monday."

18 Q So the last thing she said to you on that Friday, the
19 last time you saw her, was "I'll see you Monday"?

20 A "I'll see you Monday. Have a good weekend."

21 Q Did you see her on Monday?

22 A No.

23 Q Was it usual or unusual for her not to show up for
24 work?

25 A It wasn't usual -- I mean, it was so out of -- out of

1 her range.

2 If Portia was going to miss work, she would have
3 called us. She had my cell number if she couldn't get
4 through the switchboard, which Susan, who worked the
5 switchboard, always put her through or she would tell
6 Susan she wasn't coming. If she was sick, if she was
7 going to be late, we always knew. It was unusual that we
8 did not hear from her Monday.

9 Q So other times in the past, then, if she was going to
10 be sick or late or had to do something, would she call
11 you?

12 A She would call whoever. If she couldn't get Susan,
13 she would call me, yes.

14 Q And you didn't get --

15 A And I was there at Bob Bennett.

16 Q You didn't get any phone calls from her that Monday?

17 A No, no.

18 Q What, if any, opinion do you have based on your
19 five-year friendship with her as to whether Portia would
20 voluntarily leave and disappear and never come back?

21 A She would not do that.

22 MR. MCGUIRE: Objection. Speculation.

23 THE COURT: Why don't you rephrase the question.
24 If she knew.

25 BY MR. GRAHAM:

1 MR. MCGUIRE: I agree with Mr. Myers on that
2 point. I've not asked her one question regarding her
3 signed statement, that's why it's not coming into
4 evidence.

5 MR. MYERS: Well, see, that's what he -- that's
6 what he made this witness think, that it was her signed
7 statement, because that's exactly what we thought.

8 THE COURT: That's exactly what I thought.

9 MR. MYERS: Yes, sir.

10 THE COURT: I mean --

11 MR. MCGUIRE: I mean, the court reporter can
12 read back the question.

13 Judge, this is classic impeachment.

14 MR. MYERS: That's what --

15 THE COURT: Stop. Look. You-all can't talk on
16 top of each other. Ms. Carol's got a tough enough job.
17 I'll hear you both fully, but you're not going to
18 interrupt each other. Okay?

19 I was under the impression it was a statement
20 she gave to an officer in the traditional sense of her
21 statement given, not the officer's notes of a statement,
22 interview in his investigation pack. Those are different
23 animals. I was under the impression it was her statement,
24 which she can see.

25 MR. MYERS: We were, too, Your Honor, and I

1 think the witness was.

2 THE COURT: All right. Now I'll hear you.

3 MR. MCGUIRE: Well, I think what we need to
4 do -- Judge, this is classic impeachment, which is, "Did
5 you at some time tell this to somebody else," and she can
6 say, "Yes, that is what I told the officer."

7 THE COURT: And she said no.

8 MR. MCGUIRE: And she said, "No, of course not."
9 And then I said isn't it true that --

10 THE COURT: Well, you're not going to impeach
11 her with his notes.

12 MR. MCGUIRE: No, I didn't want to. I was kind
13 of surprised when they wanted me to show it to her, to be
14 quite honest with you.

15 MR. MYERS: What we're thinking, as everybody
16 else was, he's talking about this signed statement. Now
17 it's not, so it's cleared up. We object on any further
18 questions that's not something signed by this lady here.

19 THE COURT: I mean, her answer to the question
20 was, "Did you tell the officer that there were problems?"
21 "I did not," or in the negative. And you said, "I'll ask
22 the officer."

23 MR. MCGUIRE: Right. And I think that's where
24 we are now.

25 THE COURT: And I think we can go forth from

1 there.

2 MR. MCGUIRE: I agree.

3 THE COURT: Let's move on.

4 BY MR. MCGUIRE:

5 Q Now, just so we're clear, ma'am, I want to ask you
6 about another oral statement that you gave to a police
7 officer named Edwards, his last name's Edwards. I'm not
8 talking about any written statement, but I want to ask you
9 did you verbally make a statement to a Mr. -- or rather
10 Lieutenant Edwards indicating that Portia had a relapse
11 about three years prior?

12 A Absolutely not.

13 Q Okay. And you didn't tell him that she went sort of
14 on a drug binge for about three or four days?

15 A No.

16 Q Okay.

17 THE WITNESS: Judge --

18 THE COURT: No, ma'am.

19 MR. MCGUIRE: I think that's all I have.

20 Thank you, ma'am.

21 THE COURT: Mr. Myers, any more?

22 I'm sorry, Mr. McGuire?

23 MR. MCGUIRE: That's all I have at this time.

24 THE COURT: Mr. Graham?

25 MR. MCGUIRE: And, Judge, just for the record, I

1 think we had need to stick to a one-lawyer rule. If this
2 is Shawn Graham's witness, he needs to do the objections.

3 MR. MYERS: I'll remain quiet.

4 THE COURT: I'll sustain that. And I think
5 you're correct on the one-lawyer rule.

6 REDIRECT EXAMINATION

7 BY MR. GRAHAM:

8 Q Ms. Hobgood, let me show you a statement and ask if
9 you recognize that.

10 A Yes.

11 Q And is that the written statement that you gave?

12 A That is the written statement I gave.

13 Q And that's a written statement that you gave to
14 Lieutenant Matt Edwards?

15 A I only talked -- the policeman came to Bob Bennett
16 and asked us to go over to Cayce. When I got there to
17 Cayce, he introduced himself. He said, "Would you write a
18 written statement?" Not one time did I talk to anybody
19 relating to any drugs or anything else. Everything I said
20 is on this paper.

21 Q What's the date of that statement that you wrote?

22 A June the 20th.

23 Q Of what year?

24 A 2006.

25 Q And does that statement say what you said about

1 whether you were friends or not?

2 A Yes, it does.

3 Q What does it say?

4 A You want me to read the whole thing or -- "We became
5 good friends" --

6 MR. McGUIRE: Your Honor, I object to that.

7 THE COURT: I understand that.

8 She can answer questions. She doesn't have to
9 quote the statement.

10 Ask her the question so she understands.

11 BY MR. GRAHAM:

12 Q Does that statement reflect that you did tell -- in
13 that written statement, did you tell the police that you
14 were good friends with Portia Washington?

15 A Yes, yes.

16 Q Does that statement reflect that you had reason to
17 believe that there were problems between her and Kenny?

18 MR. McGUIRE: Objection. Hearsay.

19 MR. GRAHAM: That's exactly what he asked on
20 direct -- or, I mean, on cross. He opened the door of
21 whether she told the police that there were any reasons
22 for her to expect foul play or whatever the words were
23 that he used.

24 MR. McGUIRE: Your Honor, I know this is
25 difficult for the Court.

1 Now, what I was doing with Ms. Hobgood is
2 classic impeachment in that she gave her testimony, she
3 left out some details with regard to an oral, verbal
4 interview with the officer. I asked her if she made
5 statements. I gave her the opportunity to recognize the
6 person she was talking to, approximately the time frame,
7 and she said no. And we're in a classic impeachment-type
8 situation where now it's my burden later to call the
9 officer and prove up the impeachment, and that's where we
10 are, and going into the statement is improper.

11 And besides, the written statement is from
12 June 20th, and I was asking her about a conversation with
13 the officer on June 16th.

14 THE COURT: There was two questions you asked.
15 One, early on was, earlier in your questioning, "Did you
16 tell the officer of any problems?" Her answer was in the
17 negative, and we got into that whole discussion about the
18 officer's notes and the statement.

19 Then you went back to "I want to talk about an
20 oral conversation you had with an officer and provided
21 information to him. Did you tell him at that time that
22 there was a relapse, binge," that type of thing, totally
23 different issues or descriptions of issues for me, any
24 problems, relapse on drugs, et cetera. I mean problems is
25 general; drug is specific.

1 I agree with you on the second one. Your second
2 question on the drug binge, the statement I believe can be
3 brought in and cleared up on the first one as to what she
4 told the officer in her written statement.

5 So to that extent, I'm going to -- I kind of
6 sustain you partially and overrule you partially. Does
7 that make --

8 MR. McGUIRE: Well, Judge, then we have a double
9 hearsay problem. I object to -- that statement is
10 obviously hearsay. That's an out-of-court statement for
11 the truth of the matter asserted. That's how they're
12 going to offer it. It's hearsay. That piece of paper --

13 THE COURT: Declarant's available.

14 MR. GRAHAM: Well, this is what she told the
15 police. That is not hearsay.

16 MR. McGUIRE: Well, Judge, it is -- it is. It's
17 not a forced statement offered for the truth of the
18 matter. That is classic hearsay.

19 Now, a lot of folks believe that because the
20 declarant's available for cross that it's not, but the
21 case -- I can find it -- it's actually a case that's been
22 widely misconstrued in South Carolina. And the holding
23 was, if the declarant was available for cross, it's going
24 to be harmless error. It's still error.

25 THE COURT: No. I think I'm missing something

1 here.

2 She's available, she can use her statement as to
3 what she told the police.

4 Now, the hearsay within hearsay thing about what
5 Ms. Washington may have said to her that she repeated to
6 the police, I may agree with you. But her statements to
7 the police, I don't have enough to make that ruling.

8 I think there's two different things working
9 here, her statements to the police about what she knew,
10 did, saw, as opposed to what Ms. Washington told her and
11 she repeated to the police. That's separate. And I don't
12 know where we are because I haven't heard enough of the
13 statement.

14 MR. MCGUIRE: Judge, this is going to be -- this
15 is beyond the scope of redirect. She gave her testimony.
16 She implied -- she gave testimony that she wanted to get
17 Angelica and Ms. Washington to a place of their own so
18 they could be safe. She used that word. And these guys
19 are playing a pretty careful dance about people forming
20 their opinions, having impressions. It's all based on
21 hearsay, but we're kind of -- because of the magic
22 language of "she told me this" is not coming up, a lot of
23 stuff is slipping by here.

24 When she testified she gave \$650 to get Angelica
25 and Portia to an apartment where they could be safe, now,

1 in an effort to impeach that, I asked her, "Did you tell
2 an officer you-all were good friends but there were no
3 problems," to discredit this belief that they have to go
4 to some safe apartment, after that, she denied it. It's
5 my burden now to call Lieutenant Edwards and prove up the
6 impeachment.

7 THE COURT: I agree with you.

8 MR. McGUIRE: And that's where -- that's exactly
9 where it ends..

10 THE COURT: No, you went a step further. You
11 talked about any oral statement. I mean, you went to get
12 another statement.

13 MR. McGUIRE: It's the -- it's the same
14 conversation with Lieutenant Edwards. It was just -- I
15 just took it -- I took one subject and then I asked about
16 the next subject. There -- it's the exact same --

17 THE COURT: You asked a very poor question the
18 first time is what you're telling me.

19 MR. McGUIRE: Okay. I'll concede that.

20 THE COURT: And it wasn't quite clear to me
21 which statement it was because I was unaware there were at
22 least two.

23 MR. McGUIRE: And I think I'm going to concede
24 that.

25 THE COURT: Okay.

1 MR. MCGUIRE: I mean, there are -- and when you
2 say, did you tell, did you say --

3 THE COURT: Well, y'all know, I don't know. I
4 thought there was one conversation and it seemed clear
5 what my ruling's going to be, but more than one
6 conversation --

7 MR. MCGUIRE: With regard to what I asked her, I
8 mean, I think the posture we're in is, "Did you verbally
9 tell an officer this," and she said, "No." "Did you
10 verbally tell an officer this? No." And now the burden's
11 on me to call the officer and prove up the impeachment and
12 we're done. We don't have to go anywhere else. That's
13 where we are.

14 MR. GRAHAM: May I, sir?

15 THE COURT: I'll hear you.

16 MR. GRAHAM: He opened -- he opened the door to
17 that line of questioning. He's asked her whether she told
18 the police something, whether it's for the truth of the
19 matter or not, it didn't matter at that point. He's
20 questioning her credibility of what she said to the
21 police, trying to say that she said there wasn't a
22 problem. That is not true. That statement's going to
23 tell in detail the problems that she told the police about
24 them.

25 But Mr. McGuire's trying to leave Your Honor

1 with the impression that she said there wasn't a problem,
2 and that's not true.

3 It's not hearsay what she told the police. It
4 doesn't matter whether -- what Portia said to her and
5 she's repeating the hearsay. The question had to do with
6 what did you tell the police, and he opened that door and
7 that comes in.

8 THE COURT: All right. Now --

9 MR. McGUIRE: Judge, I don't want to interrupt
10 you here.

11 THE COURT: Hang on.

12 MR. McGUIRE: Judge, if I could --

13 THE COURT: Is this not a prior consistent
14 statement you're trying to use showing she reported
15 problems rather than he's wanting to impeach her but not
16 with the prior consistent -- am I missing something?
17 Because I haven't seen the statement, so I'm kind of
18 flying in the dark, but it's my understanding she gave a
19 statement to the police and reported problems is what you
20 didn't say --

21 MR. GRAHAM: She gave a multipage written
22 statement that details her understanding of the
23 relationship between Portia Washington and Kenneth Lynch.

24 THE COURT: So would that not make what you're
25 trying to do a prior consistent statement by her? Am I

1 missing it?

2 MR. GRAHAM: It would be -- I would agree with
3 that on top of the fact that he's specifically asking them
4 about "statements you gave the police." That is the
5 statement she gave to the police. That is the statement
6 that she gave to Lieutenant Matt Edwards.

7 THE COURT: In addition to an oral conversation
8 she had?

9 MR. GRAHAM: I don't think she gave an oral
10 conversation with Matt Edwards, to be honest.

11 MR. MCGUIRE: Judge -- okay. To aid the Court,
12 I got to show you this. This is what's already been
13 marked Defense No. 1.

14 And, you know, I have to have a good-faith
15 belief to ask the questions. And when you read what's
16 underlined there in those officer notes, those -- you
17 don't have the cover sheet, but that's from the lead
18 investigator in the case. We got an update from
19 Lieutenant Edwards. And if you -- obviously, you can read
20 it, you can see why we'd ask the question.

21 And you can also see that it's on the 16th,
22 four days prior to --

23 THE COURT: You know, the odd thing is we're
24 going to have to have an in camera hearing in a bench
25 trial for purposes of the record for me to understand

1 exactly where you-all are doing.

2 All right. We've been going about an hour and a
3 half. I'm due a break so I can clear my head. I want to
4 walk around and drink a diet Coke. So let's take 15
5 minutes and come back in here at 4.

6 Ms. Debra, you're under oath and you can't speak
7 with the attorneys because you're still testifying. So
8 you can stretch your legs and use the restroom and get a
9 drink of water, but you can't talk to anybody about your
10 testimony or that sort of thing, okay?

11 THE WITNESS: Yes, sir.

12 (A break was taken.)

13 THE COURT: All right. For the purposes of the
14 statements, Mr. Graham, you want to be heard further?

15 MR. GRAHAM: Yes, Your Honor.

16 For clarification, I asked the court reporter to
17 go back to see what the question was. She -- Mr. McGuire
18 asked the witness whether she was interviewed by Matt
19 Edwards. He didn't make it clear whether it was an oral
20 statement or a written statement.

21 The defense has offered, I believe, what he was
22 using to cross-examine and admitted for ID, Your Honor.
23 We'd offer that into evidence. I think it will help
24 clarify what he was asking and explain her answers better.

25 THE COURT: Any objection to it coming into

1 evidence?

2 MR. McGUIRE: We object to that statement coming
3 into evidence.

4 I'm sorry. We would object to -- I'm happy to
5 have that come into evidence.

6 THE COURT: That's what you just said.

7 MR. GRAHAM: I'm offering the defense exhibit
8 for ID into evidence, Your Honor.

9 THE COURT: And that will be a State's exhibit
10 or you want it --

11 MR. McGUIRE: If I could actually see it one
12 more time before I agree to that, Judge.

13 MR. GRAHAM: It doesn't matter, Your Honor.

14 (Pause.)

15 MR. McGUIRE: Judge, if we could approach.

16 THE COURT: All right.

17 (A bench conference was held with the judge and
18 attorneys.)

19 THE COURT: All right.

20 MR. McGUIRE: Okay. The box right here,
21 June 16, 2006, 9 o'clock, where it's got some underlining
22 and some highlighting, only that box will be admitted into
23 evidence and the rest of it will be redacted, and we'll do
24 that later.

25 THE COURT: All right. Carol, do you understand

1 the directions? Just that box, the 16th at 9 o'clock.

2 Do you understand? I want you -- I want you to
3 make a copy of it and just leave that paragraph in there.
4 Can you do that?

5 THE COURT REPORTER: The Clerk would do it. I'm
6 sorry.

7 THE COURT: Oh, the Clerk will do it.

8 As long as we're clear. I understand what's
9 been admitted. I want to make sure it gets accomplished.

10 THE CLERK: I'll do what, Your Honor? I'm
11 sorry, I was e-mailing.

12 THE COURT: May I have the exhibit, please.

13 What I want you to do is make a copy --

14 THE CLERK: Yes, sir.

15 THE COURT: -- of just that one box.

16 THE CLERK: Thank you.

17 MR. GRAHAM: On the hearsay argument itself,
18 Your Honor?

19 THE COURT: Yes, sir.

20 MR. GRAHAM: The question was, "When you were
21 interviewed by Detective Edwards, didn't you tell him
22 everything was okay," something along those lines, that
23 there were no problems. She said, "No, that's not what I
24 told him."

25 When I came back on redirect after he opened the

1 door into that, I'm talking to her about the statement
2 that she did -- he opened the door on "what you told
3 Detective Edwards." The written statement that she gave
4 is what she told Detective Edwards.

5 What she said is not hearsay. That's in the
6 statements that she made.

7 MR. McGUIRE: Judge, just to put it into
8 context, I'm asking her about what she verbally tells
9 somebody.

10 MR. GRAHAM: No, sir.

11 MR. McGUIRE: I clarified it very clear, orally,
12 verbally -- "Did you orally, verbally tell
13 Lieutenant Edwards," then I asked her that, you know, "no
14 problems or no problems to report."

15 Now, the way impeachment works is she can say,
16 "No, I didn't say that." And then I have the burden to
17 come back and show with another witness that she did.

18 The rule's not, "No, I didn't say that, but let
19 me tell you all the X, Y, Z and A, B, C that I also told
20 him." It doesn't open the door to everything else in the
21 world.

22 Impeachment's limited to that one specific
23 issue. I asked her very specifically, "Did you make a
24 statement?" She said, "No." If I can't -- if Edwards
25 gets up there and doesn't want to say that she said it,

1 then I failed, and I can't complete the impeachment. But
2 that -- but that's the rules of the game. That's the way
3 it works. It doesn't say, "Well, now, the witness gets to
4 testify about a whole boatload of other stuff," much less
5 the written statement. That's also hearsay just by the
6 fact that it's an out-of-court statement offered for the
7 truth of the matter.

8 MR. GRAHAM: Your Honor, if I may.

9 I don't believe that Mr. McGuire ever clarified
10 the question about whether there were problems. If that
11 was a clarification, I think that had to do with the drug
12 use. That did not have to do with whether there were
13 problems.

14 This witness has a right to clarify her answer.
15 He asked the question, and she has a right to answer it.

16 THE COURT: I believe the second question about
17 the problems was much more specific. It was about a
18 relapse and/or a prior addiction situation when he
19 re-engaged his questioning. The first time was described
20 as any problems. It was a general rather than more
21 specific. The second time through, it was more specific.

22 I don't -- I don't understand why the statement
23 can't come in when she's testified on direct that she
24 described that there were problems and made a
25 recommendation to the victim that she get away from him or

1 move out or seek new living quarters or whatever the
2 characterization was.

3 MR. MCGUIRE: And, Judge, that lands us into
4 the -- is this a -- clearly, we're in -- the question that
5 we face right now is should we allow what might be
6 referred to as a prior consistent statement into evidence.
7 And the only time that would come in in this situation is
8 if I was alleging some sort of motive to fabricate and
9 they were reaching past or prior to that date to say she
10 gave a prior consistent statement before she had some sort
11 of motive or bias to misrepresent.

12 Now, when you engage in this classic impeachment
13 of a witness to show that they gave a statement to an
14 officer that is somewhat inconsistent or is consistent
15 with their testimony, that does not get us into the prior
16 consistent statement scenario. You have to have the
17 motive to fabricate or the motive to be biased, and we're
18 not alleging that. And we didn't ask about that, and
19 we've not made that an issue. So a prior consistent
20 statement analysis would be improper.

21 MR. GRAHAM: Your Honor, he didn't ask the
22 question properly, and that's his problem. He did not
23 say, "On this date, did you tell Lieutenant Edwards there
24 were no problems?" He said, "When you were interviewed by
25 him, did you say everything was fine," and that's not

1 true. She was interviewed by him, she gave a statement to
2 him, and she said there were problems.

3 MR. MCGUIRE: And, Judge, not that I'm conceding
4 this point, but even hypothetically if her written
5 statement was limited to "I noticed problems," and it was
6 in line with exactly what we're talking about, then maybe
7 we'd have less of an objection.

8 But, you know, we just -- when you look at
9 Ms. Hobgood's testimony on direct, we got into that she's
10 loaning money to Ms. Washington so she can move out, leave
11 Mr. Lynch and be -- and this is her word -- safe. It is
12 inconsistent with that if she told an officer in a verbal
13 interview that "I'm good friends with Portia Washington
14 and I have no problems to report." That's inconsistent.

15 I mean, for us to say that we have to sit here
16 on our hands and let her make these sort of implications
17 that things aren't safe, she has this opinion, she's got
18 to get the people to move out, and we don't get to do
19 anything with it?

20 I mean, if we've got -- and you've seen the
21 report. We've got a darn good-faith basis to ask that
22 question.

23 And if -- if the situation is that we have to
24 choose between sitting on our hands and doing nothing and
25 not impeaching her testimony at all, or if we try to

1 impeach it in a very limited manner, then the whole kit
2 and caboodle comes in, I mean, we're in an impossible
3 situation, and that shouldn't exist in the criminal
4 justice system.

5 We have an absolute right to just engage in
6 classic impeachment, and we were very limited on what
7 we -- we spoke about, and she can say no.

8 And she did say no. And if she's correct, then
9 we will have failed to complete the impeachment, and no
10 one's going to verify that. And that's where we are.

11 (WHEREUPON, Defendant's Exhibit No. 1 was
12 redacted and re-marked for identification only.)

13 THE COURT: Hang on one second. I want to read
14 this thing.

15 (Pause.)

16 THE COURT: My understanding of the Rules of
17 Evidence and the exceptions to hearsay, I think the
18 statement comes in, and here's the box we're in.

19 Normally, you know, we're going to have a
20 hearing on the statement, it's going to be proffered and a
21 ruling's made and the jury gets to hear it, and y'all have
22 been cautious about doing that. And so it's one of the
23 multiple opportunities for the Court and for the jury
24 sitting here.

25 I think what bothers me is that there was no

1 clarification for the witness when the question was asked
2 as to whether it's the written statement or oral
3 statement, and that was confusing to me, not knowing there
4 was more than one conversation and just one written
5 statement.

6 (WHEREUPON, DEFENDANT'S Exhibit No. 1 was
7 admitted into evidence.)

8 MR. MCGUIRE: Judge, if I could address that
9 issue.

10 Let's assume that my first question, my first
11 engagement in this issue was inarticulate.

12 THE COURT: All right. We'll buy that.

13 MR. MCGUIRE: Then my second question is --
14 well, my first question would be, does it matter? Does it
15 really matter if she's thinking -- let's say she talked to
16 the officers five times, four verbal conversations and a
17 written statement. Does it really matter if we even point
18 out which one I'm talking about, if it's "Did you ever
19 tell them you were good friends and you had no problems to
20 report?" Doesn't really matter because the answer would
21 be "No, never."

22 "Did you ever tell them that she had to move
23 out? No, never."

24 So does it really matter at all exactly if we're
25 talking about the third interview, the second interview,

1 the fifth written statement or first written statement?
2 If she claims she never made it, it doesn't matter. It's
3 not tied -- nothing we're talking about right now is tied
4 to that written statement.

5 MR. GRAHAM: Your Honor, what he's trying to do
6 is say -- he's trying to imply by cross-examining her that
7 she never told the police there were problems, and that's
8 not true. And it's not right for him to ask that question
9 and leave the testimony in that posture. He opened the
10 door, he asked the question, she has a right to answer it
11 correctly and explain it.

12 MR. MCGUIRE: Judge, the box -- the box we would
13 be -- I mean, I will ask Your Honor to imagine if you were
14 on this side of the room at this table and you heard
15 Ms. Hobgood's testimony about "I had to come to the aid of
16 this woman and loan her money to get her out of there and
17 get her safe." And you've got the police report in front
18 of you where an officer says he got an update. Edwards
19 says he talked to Debra Hobgood; she says, "No problems to
20 report to you. By the way, she did have a drug relapse
21 about three years ago."

22 THE COURT: Isn't that an inconsistent comment,
23 there's no problems, but she did have a drug problem? I
24 mean, that's inconsistent in and of itself. The
25 statement's already in that we've redacted.

1 MR. MCGUIRE: Sure. But let's just --

2 THE COURT: No -- no problems, drug problem,
3 that's -- that's inconsistent.

4 MR. MCGUIRE: Sure. Let's --

5 THE COURT: Or depending on your definition of
6 what a problem is, maybe it's not inconsistent.

7 What you meant by problem, you meant, like, she
8 had an arm falling off. No, she didn't have one of those,
9 but she had other maladies.

10 MR. MCGUIRE: Right. But if we just look at the
11 first part of it, if you -- you're on this side of the
12 table, you just heard her say, "I had to come to the aid
13 of that woman, give her \$650 to get her out of there where
14 she's safe," and you've got this line where an officer
15 reports, "I talked to her and she said no problems to
16 report to you." And, you know, I mean, this is -- I don't
17 know how we could sit on our hands and let that happen.

18 So what we did was, we engaged in classic
19 limited impeachment just showing that she made a statement
20 that's inconsistent with her direct testimony.

21 MR. GRAHAM: But that's not the question.

22 THE COURT: No, no. What you did was ask the
23 question, "Did you tell the officer there were no
24 problems," and she said, "No." And then "I'm going to
25 call the officer," and that's where we should have

1 stopped. We didn't. We came back and went to yet another
2 more specific problem that she says -- that's in that oral
3 conversation. So we're kind of in --

4 MR. GRAHAM: Your Honor, the question -- to
5 cross-examine that and set it up for impeachment later,
6 the question should have been, "On this date and time, did
7 you speak with this officer at this location and did you
8 tell him this?" And that's not what he asked.

9 THE COURT: Well, I mean --

10 MR. GRAHAM: He asked him, "In any conversation
11 you had when the officer interviewed you did you say there
12 was a problem," and she answered it, and she has a right
13 to explain it.

14 (Pause.)

15 MR. McGUIRE: Judge, I think -- I think if--

16 THE COURT: I think I've gotten the thing over
17 complicated.

18 MR. McGUIRE: Well, let me see if I can clear it
19 up.

20 If the -- if the concern is fairness to the
21 witness, that perhaps she was confused, I'll rescind the
22 question and she'll have -- but it has to be a responsive
23 answer, obviously.

24 THE COURT: All right. Wait a minute. One more
25 time. In fairness to the witness you're going --

1 MR. MCGUIRE: I think that's a concern of the
2 Court, but I don't think it should be. I think --

3 THE COURT: Well, it is. I want you-all to be
4 fair to the witnesses, so if you're being unfair, I'm
5 going to call you out on it.

6 MR. MCGUIRE: Right. No, no, no --

7 THE COURT: So we're going to be fair to the
8 witnesses. I'm with you on that one.

9 MR. MCGUIRE: Right. I mean, I think my prior
10 statement saying it really doesn't matter if you gave
11 three, four, five interviews, a written statement, if what
12 I'm asking you you never gave, there's no real confusion.
13 "No, I never said that. Did you say this? No, I never
14 said that." So it doesn't really matter what statement
15 we're talking about.

16 So I don't think saying that -- I just know that
17 was a concern of the Court, that if this is an issue of a
18 confused witness, we need to be fair to the witness.

19 I mean, I always want to be fair to the witness
20 and make sure they know exactly what we're talking about,
21 but I don't think -- I don't think -- I don't think as
22 Mr. Graham would suggest, that you have to be very
23 specific with at this time, at this location because we
24 don't know some of that from those notes. All I knew was
25 Edwards, a conversation with Edwards, and that's what we

1 asked her about.

2 But, again, I don't think it matters which
3 statement we're talking about. Her saying, "No, I never
4 made any statement" has nothing to do with her written
5 statement. If she never made it, she never made it.

6 THE COURT: But Mr. Graham says it does, and I
7 can't evaluate that without seeing the statement.

8 MR. GRAHAM: Your Honor, if you'll let me say
9 one more thing, I'll be quiet.

10 THE COURT: All right.

11 MR. GRAHAM: In what Mr. McGuire offered as ID
12 that's now in evidence, it's very clear that he's
13 impeaching her and wants Your Honor to know that she told
14 an officer that there were no problems.

15 All I'm trying to do is show you that she gave a
16 statement to an officer detailing that there were
17 problems. I don't see how that's not relevant, I don't
18 see how it's not admissible, I don't see how it doesn't
19 come in.

20 MR. MCGUIRE: This is -- this is -- this has
21 been the problem.

22 We got here because the State elicited testimony
23 from this woman that she was giving money to
24 Ms. Washington to make her safe.

25 Now, we know over here that the basis of -- for

1 her to say that and have that opinion and not say, "By the
2 way, I know that," because it's all hearsay evidence, that
3 "the stuff she just told me" is a little clever going
4 around the end to basically get around the hearsay rule.
5 And then if we do anything to challenge it, they want to
6 just drive a truck through the hearsay rule and get that
7 statement in.

8 I mean, we've kind of been baited here, and it's
9 really unfair. I mean, it's unfair to let that kind of
10 testimony come out, and the Hobson's choice that we have
11 is sit on your hands, let it go, or engage in some very
12 limited impeachment, but they get to drive a truck through
13 the door. That's just completely unfair to Mr. Lynch.

14 THE COURT: Well, as I understand the portion of
15 the officer's notes which has been admitted, in my
16 reading, are a little bit inconsistent on their face.
17 There's no problems, but yet she had a drug problem and
18 had a relapse. That's inconsistent to me in the
19 description of the facts that she's relating to the
20 officer.

21 So it appears to me that she conveyed problems
22 to the officer as what was the specifics of the problem.
23 I think where you're concerned is they're not the drug
24 problems you're worried about. You're worried about the
25 other problems that were conveyed to her by the victim.

1 MR. MCGUIRE: Yes.

2 THE COURT: All right. Now, you-all tell me
3 this: In a traditional jury trial --

4 MR. MCGUIRE: You'd be able to say that
5 statement.

6 THE COURT: The jury would be out, y'all would
7 proffer it, I'd get to see it, I'd make a ruling does the
8 jury get to see it, and that's what you-all are worried
9 about. And I understand that.

10 I don't know any way to make a full record
11 without seeing the statement. So, I mean, you-all got to
12 make up your mind. I'm mean, I'm in a tough spot, I've
13 got a job to do, and I can't make that decision.

14 I can't make that decision without seeing the
15 statement and determining what else is in there if --
16 without seeing it, I'm flying blind. I mean, I think
17 you're right, but I think if I read the statement, I may
18 believe you're wrong.

19 I mean, you-all understand where I am. I don't
20 know what it says, and so I'm really guessing. If it says
21 this and it's not -- if it says that, it'd be prejudicial.
22 That's more hearsay. I mean, it's so many things for me,
23 but I don't know, and I don't want to assume anything.

24 So if I rule your way, he's going to proffer it
25 and I get to see it. If I rule his way, I get to see it.

1 So it's kind of an unusual predicament.

2 MR. McGUIRE: Yes. I mean, we're in the Dukes
3 of Hazard scenario, I guess.

4 THE COURT: We are.

5 MR. McGUIRE: And I appreciate the position the
6 Court's in and we would -- we would have no objection to
7 the Court reviewing the statement. And I think when -- I
8 think when the Court reviews it, you'll understand the
9 reason I didn't ask her about it is because it's all rank
10 hearsay, and her being allowed to testify about being safe
11 was a clever end run around the hearsay rule.

12 THE COURT: All right. What we're going to do,
13 we're going to have an in camera hearing before the trial
14 judge to determine whether or not it's admitted.

15 And so, Mr. Graham, you may redirect your
16 witness.

17 MR. GRAHAM: Your Honor, do you want to just
18 read the statement or do you want me to have her read it
19 or how are we going --

20 THE COURT: I want to read the statement.

21 MR. GRAHAM: That's why I suggested Your Honor
22 read the statement, and then we'll go from there after you
23 do that.

24 THE COURT: Where is it?

25 (Pause.)

1 THE COURT: All right. I've read the statement.
2 We're going to mark this as a Court's exhibit.

3 MR. MYERS: We'll leave that up to you, Your
4 Honor.

5 MR. GRAHAM: It's up to Your Honor.

6 THE COURT: All right. Mark this as Court's
7 Exhibit 16.

8 (WHEREUPON, The Court's Exhibits No. 16-17 were
9 marked for purposes of the record.)

10 MR. GRAHAM: Can I proffer the question that I
11 was going to ask, Your Honor?

12 THE COURT: Yes, you may. You can proffer your
13 question.

14 MR. GRAHAM: Thank you, Your Honor.

15 CONTINUED REDIRECT EXAMINATION

16 BY MR. GRAHAM:

17 Q Ms. Hobgood, do you remember talking to
18 Lieutenant Matt Edwards, a detective with the West
19 Columbia Police Department?

20 A Uh-huh.

21 Q And didn't you tell him that there were problems
22 between Portia and Kenny Lynch?

23 A Yes, sir.

24 MR. GRAHAM: That's the only question I was
25 going to ask, Your Honor.

1 THE COURT: In the proffering, I believe whether
2 I've read the statement or not, I'll allow the question.

3 MR. McGUIRE: We will concede that. We'll -- we
4 have no objection to -- if that's the followup to our
5 impeachment, we got no objections.

6 THE COURT: I think that's a proper question and
7 I'll allow it to be re-proffered as if it were into
8 evidence.

9 MR. GRAHAM: Do I need to re-ask it?

10 THE COURT: No, you do not. It is now received
11 as evidence of followup redirect for purposes of the
12 record as if it was allowed.

13 MR. GRAHAM: Thank you, Your Honor.

14 BY MR. GRAHAM:

15 Q Ms. Hobgood, do you remember discussing Portia's drug
16 problem with a member of the West Columbia Police
17 Department?

18 A No, sir.

19 MR. GRAHAM: I think that's all I have, Your
20 Honor.

21 Thank you, Ms. Hobgood.

22 THE COURT: Any recross?

23 MR. McGUIRE: We've got nothing, Judge.

24 THE COURT: Very good. Thank you, Ms. Hobgood.
25 You may step down.

1 MR. HUBBARD: Ola Wooten Mathis.

2 OLA MAY WOOTEN MATHIS, after being duly sworn,
3 testified as follows:

4 THE CLERK: Have a seat please, ma'am.

5 Once you're seated, speak up loud and clear,
6 stating your full name, spelling your last on the record,
7 please.

8 THE WITNESS: My name is Ola May Wooten Mathis.
9 Mathis is M-A-T-H-I-S.

10 DIRECT EXAMINATION

11 BY MR. HUBBARD:

12 Q Ms. Mathis, are you working now?

13 A No.

14 Q Are you retired?

15 A Yes.

16 Q Back in 2006, where were you working?

17 A Park Place Apartments, property manager.

18 Q How long were you the Park Place Apartments property
19 manager?

20 A June 2006 to June 2009.

21 Q June 2006 or 2004?

22 A 2004.

23 Q Okay. Are you a little nervous?

24 A Yes.

25 Q All right. I'm not going to hurt you.

1 THE COURT: Relax.

2 THE WITNESS: I took two or three deep breaths.

3 THE COURT: That'll work. That's the best
4 thing.

5 BY MR. HUBBARD:

6 Q Park Place Apartments, what city is that in?

7 A West Columbia.

8 Q What county?

9 A Lexington.

10 Q I want to -- let me ask you this: Portia
11 Washington --

12 A Uh-huh.

13 Q -- was she once a resident at Park Place Apartments?

14 A Yes.

15 Q And back in June of 2006, was she a resident?

16 A Yes -- no.

17 Q In June?

18 A In June, uh-huh.

19 Q Is that right?

20 A 2006. Yes.

21 Q Okay. Do you remember her and her apartment number?

22 A M-7.

23 Q I want to show you an aerial that's been marked as
24 State's No. 2.

25 MR. STITELY: Your Honor, we have no objection

1 to that document.

2 MR. HUBBARD: It's already in, I do believe, but
3 I'd offer it again on the record if that helps. It's
4 State's No. 2.

5 THE COURT: You agree it's in?

6 MR. STITELY: Judge, these are the ones we
7 agreed to yesterday. I don't know if they were put in on
8 the record.

9 THE COURT: Okay. I didn't know they -- I knew
10 you-all were discussing some when we left.

11 MR. STITELY: Yes, sir.

12 THE COURT: This is one you-all agreed to and
13 they're admitted by agreement?

14 MR. STITELY: Yes, sir.

15 THE COURT: All right. That's one of those.

16 Do you know the rest of them they've agreed to?

17 THE COURT REPORTER: There's three.

18 THE COURT: Very well. This is one of the
19 three.

20 (WHEREUPON, STATE'S Exhibits Nos. 1-3,
21 previously marked, were admitted into evidence.)

22 BY MR. HUBBARD:

23 Q Ms. Wooten, can you -- do you recognize this
24 document, this aerial?

25 A Yes, I do.

1 Q What is this?

2 A It's a layout of Park Place Apartments, phase one and
3 three.

4 Q Do you see the unit M-7?

5 A Yes.

6 Q Can you please point it out? Let's see, do I have
7 it --

8 A Backwards.

9 Q I had it backwards. There you go. You're good.

10 A Right here.

11 Q All right. Would you use this red marker and please
12 mark it.

13 A (Witness complying.)

14 Q All right. Now, Ms. Wooten --

15 A Yes.

16 Q Before the Judge, let me ask you some things about
17 this layout.

18 Where is your office?

19 A This building right here.

20 Q Speak up a little bit.

21 A It's this building right here.

22 Q Right next to the swimming pool?

23 A Right in front of the swimming pool.

24 Q Let me ask you, what are these things that I see in
25 the corners?

1 A They're trash dumpsters.

2 Q What type of trash dumpsters are those?

3 A The regular household trash.

4 Q What is this thing here?

5 A That is a material dumpster for contractors and when
6 we do trashing out apartments.

7 Q When you trash out an apartment?

8 A Trash out an apartment.

9 Q What does that mean, "when you trash out an
10 apartment"?

11 A If anybody moves out and leaves furniture they don't
12 want, we take it out and throw it in the dumpster.

13 Q Is that one of your duties as a manager when people
14 move out of an apartment?

15 A Yes.

16 Q So you're going to have go in?

17 A I've got to go in, do a move-out inspection.

18 Q Now, did you know that Portia Washington lived in
19 that apartment with someone else?

20 A Yes.

21 Q Is that Mr. Lynch?

22 A Yes.

23 Q And were you aware that there was a child as well?

24 A Yes.

25 Q Did you know any of them personally?

1 A No.

2 Q Back on June 13th of 2006, that Tuesday, what, if
3 anything, do you recall happening?

4 A I got a call saying they never showed up for work on
5 a Monday and had not showed up as of that morning for work
6 and wanted to know if I had seen them, and I told them no.

7 Q Okay. And do you remember if anybody came by?

8 A Yes, the aunt and the mother came by wanting to go in
9 and check the apartment out to see if I had seen them, or
10 anything like that, and I told them they were not allowed
11 to go in the apartment.

12 Q Is that the policy?

13 A Yes, that's the policy. Nobody goes in with the --
14 without the tenant's permission.

15 Q And were they concerned about Ms. Portia --

16 A Yes.

17 Q -- Washington's whereabouts?

18 A Yes, yes.

19 Q What, if anything, did you tell them to do?

20 A To file a missing person's report.

21 Q With law enforcement?

22 A Yes.

23 Q Now, based on that, what else did you do?

24 A I -- it was decided that I would go in the apartment
25 myself to see if they were in the apartment for any

1 reason, and --

2 Q Okay. Let me ask you this: Who made that decision?

3 A It was my supervisor.

4 Q Okay. Now, was he on-site or was he --

5 A No --

6 Q You had to call --

7 A I made to make a phone call.

8 Q You called him?

9 A Uh-huh.

10 Q I'm kind of talking over you.

11 A Okay.

12 Q So let's do this: When I ask a question, wait for
13 me. I know you already know what's coming. Just wait for
14 me --

15 A Okay.

16 Q -- then answer. That helps the court reporter.

17 A Okay.

18 Q All right. Sometimes I do it, too.

19 So to back up, you called your supervisor?

20 A Yes.

21 Q And he's the one that said go in the apartment --

22 A Right.

23 Q -- and see if anybody's there.

24 Now, when you went to the apartment, where was
25 the family members, the aunt and mother that came --

1 A In the office.

2 Q They stayed in your office?

3 A In my office, yes.

4 Q Where you pointed out on that diagram?

5 A Yes.

6 Q You had a key to that apartment?

7 A Yes.

8 Q And did you go into the apartment?

9 A Yes.

10 Q What did you notice about the apartment?

11 A It was clean. I mean, it looked like -- it was just
12 staged or whatever. There was tables -- chairs on top of
13 the tables in the dining room. And the floors had been
14 cleaned, mopped, and the floors in the living room had
15 been vacuumed. I mean, it was clean.

16 Q Did you walk on back down the hall?

17 A I walked down the hall, looked into both bedrooms and
18 there was on the -- in the little girl's room, there was a
19 dress on the top bed with shoes on top of it like she was
20 getting ready to go to church.

21 Q Okay. And before you went into the apartment, did
22 you notice any signs of forced entry like somebody had
23 damaged the front door?

24 A No forced entry.

25 Q Or broken a window?

1 A No broke windows.

2 Q Did the apartment look like it was lived in?

3 A Yes.

4 Q Clothes and furniture all still there?

5 A Everything.

6 Q What was the only thing missing?

7 A The only thing missing was the resident --

8 Q Okay.

9 A -- Ms. Washington and the little girl and her car.

10 Q And her car?

11 A And her car.

12 Q I want to show you some photographs. Just see --

13 I'll let you see them.

14 I want to see if she can identify them.

15 A That's M-7.

16 Q Okay.

17 A And that's the grill and flowers under the edge of
18 the stairwell.

19 Q I'll tell you what. Just thumb through them and see
20 if all of these are from that apartment at that time. And
21 then before we talk about them, I've got to show the
22 defense attorney.

23 A Yes, this is everything that I saw was in the
24 apartment.

25 Q Do these photographs fairly and accurately depict the

1 way that apartment looked the day you went in it?

2 A The layout, yes.

3 Q And the items in it?

4 A Everything's there.

5 Q Okay. Anything that --

6 A That I saw.

7 Q Anything that you would change?

8 A No.

9 Q Or remember differently?

10 A No.

11 Q All right.

12 MR. STITELY: Your Honor, we're going to object
13 on any of the close-up pictures of personal items. We
14 have no problem with the picture of the exterior. We ask
15 for a lack of foundation objection for the close-ups of
16 pictures, clothes, all the other stuff. I know that she's
17 not the one that took these pictures.

18 MR. HUBBARD: I don't think a foundation's
19 needed. She's already said everything she needed to say
20 to get them in evidence, and I move them into evidence
21 right now.

22 THE COURT: She identified them? Is this the
23 apartment, the pictures, did she not?

24 MR. HUBBARD: She did.

25 MR. STITELY: I don't know that's he asked if

1 she went looking into each room specifically and what
2 pictures were lined up how and where.

3 MR. HUBBARD: Here's what I asked her. I said,
4 "Is there anything in these photographs that's different
5 from what you remember seeing when you went in?" She
6 said, "Nothing, everything's the same."

7 I move them into evidence.

8 THE COURT: I'll admit them.

9 MR. STITELY: Thank you, Your Honor.

10 (WHEREUPON, STATE'S Exhibits Nos. 7-16 were
11 marked for identification and received into
12 evidence.)

13 BY MR. HUBBARD:

14 Q Ms. Mathis, before I go through those photographs, I
15 want to show you also a diagram.

16 A Okay.

17 Q That's already been put into evidence with consent of
18 the defense, State's 3.

19 A Okay.

20 Q Does this diagram look like an accurate layout of the
21 apartment complex?

22 A Yes, it does.

23 Q Okay. We can move it over here.

24 This diagram, is this the --

25 A Entry door.

- 1 Q Entry door? What area is this?
- 2 A Living room.
- 3 Q Does this look like -- pretty much like the layout?
- 4 A It's the layout the way it was.
- 5 Q Sofa, TV?
- 6 A Yes, sir. Dining room.
- 7 Q Dining area?
- 8 A Kitchen.
- 9 Q Kitchen. What is this?
- 10 A The hall, bathroom, the little girl's room, and the
- 11 master bedroom.
- 12 Q All right. Let's look at State's 15 and 16. Are
- 13 these --
- 14 A The exterior of the entryway.
- 15 Q And looking at 16, do you see a little red and blue
- 16 chair?
- 17 A Yes.
- 18 Q Is it right next to that -- their apartment?
- 19 A Yes.
- 20 Q And do you also see a grill right next to the front
- 21 door?
- 22 A I do.
- 23 Q Is this a close-up shot in 16 of that same grill?
- 24 A Yes, it is.
- 25 Q And do you see some plants there?

1 A Yes, I do.

2 MR. HUBBARD: Okay. Your Honor, I'll pass these
3 up.

4 BY MR. HUBBARD:

5 Q Looking at State's 14 and 13, what room do those
6 photos show?

7 A Living room -- the first one's the living room,
8 dining room and that one's the living room, too.

9 Q Okay. The area that -- this living area that we
10 pointed out on the diagram?

11 A Yes.

12 Q State's 14, does that show what furniture?

13 A That's the couch, dining table, and the coffee table.

14 Q And you mentioned chairs being up on a table. Do you
15 see that in photograph 14?

16 A Yes, I do.

17 Q Where in this diagram would that table be?

18 A Right behind the sofa.

19 Q This table right here on the diagram --

20 A Yes.

21 Q -- which is State's 3?

22 A Yes.

23 Q The floor in that dining area?

24 A Looks like it had been just mopped.

25 Q So that's linoleum?

1 A Uh-huh, vinyl.

2 MR. HUBBARD: Your Honor, I'll pass these up.

3 BY MR. HUBBARD:

4 Q State's 11 and State's 12. What is State's 11?

5 A It's a table on the hallway entry with pictures on
6 it.

7 Q Okay.

8 A Right there.

9 Q Is that the table in the hall?

10 A That's the table.

11 Q In State's 12, what is that?

12 A That's a little table over next to --

13 Q A closeup of the same thing?

14 A A closeup of the same thing.

15 MR. HUBBARD: Your Honor, I'll pass these up.

16 BY MR. HUBBARD:

17 Q Now, you mentioned two bedrooms.

18 A Right.

19 Q Which bedroom is the little girl's room?

20 A The smaller of the two straight down the hall.

21 Q Would that be the one my hand's on right here?

22 A That's it.

23 Q Okay. What item am I pointing to on this chart?

24 A The bunk beds.

25 Q Where was the dress that you mentioned being laid out

1 for church?

2 A On the top of the bunk bed.

3 Q On top of the bunk bed?

4 A Yes.

5 Q And you went in on what day of the week?

6 A On a Tuesday.

7 Q Tuesday. Looking at State's 10, do you see that bunk
8 bed with the dress?

9 A Yes, I do.

10 Q Can you see the shoes?

11 A Yes, you can.

12 Q State's 9, is that another shot?

13 A Yes, it is.

14 Q What other items do we see in that bedroom on the
15 bed?

16 A Some dolls.

17 Q Little girl's dolls?

18 A Little girl's dolls.

19 Q I want you to look at State's 7. Do you see a red
20 and blue chair?

21 A Yes, I do.

22 Q Is that just like the chair that was outside?

23 A Yes, it is.

24 Q And finally State's 8, what is that?

25 A That's her sandals that she had on top of the dress.

1 Q Are these dressy, sparkly sandals?

2 A Sunday shoes, uh-huh.

3 MR. HUBBARD: Your Honor, I'll pass these up.

4 BY MR. HUBBARD:

5 Q Now, at some point West Columbia law enforcement came
6 out?

7 A Yes, they came out on Wednesday.

8 Q The following day?

9 A The following day.

10 Q Now, when you had gone in the apartment, had you
11 changed or moved anything?

12 A Wasn't allowed to touch nothing.

13 Q All right. You went in and you backed out?

14 A Right.

15 Q And, again, you said the only thing missing was what?

16 A The residents that lived in the apartment and the
17 car -- and the car.

18 Q Okay. So the people that lived there and the car?

19 A Right.

20 Q When West Columbia's law enforcement came there, were
21 they able to just go in or did they have to go through
22 you?

23 A They have to come through me.

24 Q As the manager, every time they came to go into that
25 apartment, would they have to come to you?

1 A They would have to come to me.

2 Q Was it your responsibility to secure the apartment
3 when --

4 A Yes.

5 Q -- they weren't there?

6 A Yes.

7 Q Ms. Wooten -- I'm calling you Wooten.

8 A That's fine.

9 Q I think it's Ms. Mathis, right?

10 A That's fine.

11 Q Explain how the rent process was. When was rent due
12 as a tenant?

13 A As a tenant, the rent's due on the first of the
14 month, late on the fifth of the month with a late fee, and
15 if it's not paid then by the morning of the 11th, which is
16 the day we file with the magistrate, there's another fee
17 for the magistrate.

18 Q Now, were you able to hold to that schedule when it
19 came to apartment M-7?

20 A No.

21 Q Why not?

22 A Because it was an ongoing investigation at that time.

23 Q Okay. So law enforcement wouldn't let you move in?

24 A The magistrate would not let us move in.

25 Q Okay. Was your supervisor anxious to get you to get

1 law enforcement to move?

2 A Oh, yes, yes.

3 Q Why?

4 A Because we were losing money on it every day it was
5 sitting empty.

6 Q So you-all had a monetary interest to get in there,
7 clean it up and re-rent it?

8 A Yes.

9 Q When did you-all finally get to go in it?

10 A It was three, maybe four months down the road before
11 we could get into it.

12 Q Does September sound right?

13 A That sounds -- September.

14 Q When you-all went in, what was your purpose of going
15 in at that point?

16 A The purpose of going in there at that time was to
17 remove a freezer that was smelling real bad, and we had to
18 move the couch at that time to try to get it out and we
19 found a package under the couch wrapped in blankets, and
20 my guys looked at it, and it was a couple of guns, and we
21 had to lock the apartment back down, call the law back
22 out.

23 Q Okay. So law enforcement had to come back out?

24 A Yes.

25 Q When was the next time that you were able to go in to

1 try to, in your words, trash the apartment?

2 A Trash the apartment. October.

3 Q October? Now, before you-all went in, now you-all
4 are free to go ahead and --

5 A Right.

6 Q -- take over?

7 A Uh-huh.

8 Q Before you-all went in, what, if anything, did you
9 let the family do?

10 A We had notified the family and told them they could
11 come and get anything -- everything they wanted out of
12 that apartment, and what they didn't want, then, yes, we
13 threw it in the dumpster.

14 Q That big dumpster that you pointed out?

15 A At the corner behind the office.

16 Q What was your -- when you walked into the master
17 bedroom, I'm going call it, right here --

18 A Uh-huh.

19 Q -- what, if anything, was wrong with the carpet, and
20 what was your plan to fix it?

21 A There was a spot had been cut out of the carpet right
22 about where that chair's sitting. And we were just going
23 to patch it and put a piece out of the closet over that
24 and fix it and it would look new. But we had go in and
25 change the whole room out.

1 Q Why is that?

2 A The padding had under it, the carpet, like, something
3 like with blood or whatever, but we could not, you know,
4 leave it in there.

5 Q Did you-all call the law enforcement out?

6 A Unh-unh.

7 Q You-all just went ahead and ripped it out?

8 A The carpet, like I said, had been -- they had done
9 cut a big spot out of it. And you could see under the
10 edge of the carpet where there was a stain --

11 Q Okay.

12 A -- that looked like blood.

13 Q All right. And at that point you-all cleaned up the
14 apartment?

15 A Yeah.

16 Q Let me ask you. You had two adult tenants in that
17 apartment --

18 A Yeah.

19 Q -- Portia Washington, Kenneth Lynch.

20 When you have adults like that, do they each get
21 a key to the apartment?

22 A Yes.

23 Q What else do they get?

24 A A mailbox key.

25 Q A mailbox key?

1 A Mailbox key.

2 Q I'm going to show you a photo and just see if the
3 keys -- if you see keys that look like the ones that
4 you-all issued.

5 A Yes. That right there looks like a house key that we
6 issue out, and that one looks like the mailbox key that we
7 issue out.

8 MR. HUBBARD: We'll mark this for ID if the
9 State -- the Court permits.

10 THE COURT: Very well.

11 (WHEREUPON, STATE'S Exhibit No. 17 was marked
12 for identification only.)

13 MR. HUBBARD: State's ID 17.

14 BY MR. HUBBARD:

15 Q Ms. Mathis?

16 A Yes.

17 Q But for that carpet being cut out and all the work
18 you had to do, when you first walked in, what was your
19 impression of that apartment when you originally went in?

20 A It looked like it was lived in -- it's lived in.

21 Q And did it look like it was cared for?

22 A Yes, it looked like it was real -- cared for real
23 good.

24 Q Because it was clean?

25 A It was unbelievably clean.

1 Q Unbelievably clean?

2 A Yes.

3 MR. HUBBARD: Beg the Court's indulgence.

4 (Pause.)

5 MR. HUBBARD: Ms. Mathis, I think that's all.

6 Please answer any questions that the defense
7 has.

8 THE WITNESS: Okay.

9 CROSS-EXAMINATION

10 BY MR. STITELY:

11 Q Hi, Ms. Mathis, my name is Ben Stitely. How are you
12 today?

13 A I'm good. And you?

14 Q I'm very well.

15 How long were you the leasing manager or the
16 apartment manager over there at Park Place?

17 A Four years.

18 Q Four years. Had you done that kind of work before?

19 A Oh, yeah. I've been in the business 20 years.

20 Q So about 20 years of experience?

21 I'm going to approach and show you something.

22 MR. STITELY: May I approach, Your Honor?

23 THE COURT: You may.

24 BY MR. STITELY:

25 Q Ma'am, can you identify this document?

1 A That's the leasing agreement.

2 Q Is it the same kind of leasing agreement you-all
3 would use at Park Place Apartments?

4 A This is our lease agreement.

5 Q Do you recognize this particular lease agreement?

6 A Yes.

7 Q Did you have a hand in creating -- creating this
8 document?

9 A No.

10 Q Do you know whose signature this is at the bottom?

11 A That's my signature at the bottom. I am the manager,
12 but I didn't write up the lease.

13 Q Okay. But you were there when this was written?

14 A Yes.

15 MR. STITELY: Your Honor, at this time, we'd
16 offer this into evidence as Defendant's Exhibit 2.

17 MR. HUBBARD: No objection.

18 THE COURT: Defense 2 without objection.

19 (WHEREUPON, Defendant's Exhibit No. 2 was marked
20 for identification and received into evidence.)

21 BY MR. STITELY:

22 Q Looking at this leasing agreement, is there a
23 specific place where it talks about the relationship
24 between the individuals who would hold the lease in your
25 application?

1 A Yes.

2 Q And doesn't it indicate that Ms. Washington and
3 Mr. Lynch were married?

4 A Yes, it does.

5 Q That he would be her spouse?

6 A Yes.

7 Q This document right here, would you-all have kept
8 this lease in a place where you could have given it to the
9 police officers if they had asked?

10 A If they asked to see the file on a particular tenant,
11 yes, we show them.

12 Q Do you remember them asking for the file on that
13 apartment when they came out to see it?

14 A No, I don't remember them asking for anything like
15 that.

16 Q Do you know when this document was turned over to law
17 enforcement, by chance?

18 A No, sir, I do not.

19 MR. STITELY: Okay. Thank you, ma'am.

20 MR. HUBBARD: Ms. Mathis --

21 THE WITNESS: Yes.

22 MR. HUBBARD: -- one question.

23 Do you know who filled this lease out?

24 THE WITNESS: Barbara Kahn.

25 THE COURT: I'm not sure he's done. I think

1 he's done with that document.

2 MR. HUBBARD: Oh, okay. I'm sorry. I thought
3 you were done. I apologize for that.

4 THE COURT: Are you done?

5 MR. STITELY: No, Judge, I'm not done yet.

6 I'm sorry, I was getting back to my papers.

7 BY MR. STITELY:

8 Q While I'm putting things in, let me ask you a
9 question.

10 A Yes.

11 Q Do you recognize this?

12 A That's the big material dumpster behind the office.

13 Q Do you remember if this dumpster was the dumpster you
14 were pointing to on that picture?

15 A Yes, it is.

16 Q Was this the dumpster that would have been present
17 back in June?

18 A Oh, yes.

19 Q Pretty sure about that?

20 A Yes.

21 Q It looks the same?

22 A It could be the different color, but they were all
23 big 30-yard dumpsters.

24 Q Okay. Look the same as it did when they were there?

25 A Yes.

1 MR. STITELY: Your Honor, at this time, I'd
2 offer this as Defendant's Exhibit No. 3.

3 MR. HUBBARD: No objection.

4 THE COURT: Defendant's 3 without objection.

5 (WHEREUPON, Defendant's Exhibit No. 3 was marked
6 for identification and received into evidence.)

7 BY MR. STITELY:

8 Q Ms. Mathis, there's always a -- there was always a
9 dumpster like this out there at the Park Place Apartments,
10 correct?

11 A Yes.

12 Q Okay. And on that picture, there's actually a bunch
13 of other dumpsters out there at any given time, too,
14 correct?

15 A Yes.

16 Q So at least one really big dumpster and four smaller
17 dumpsters?

18 A Right.

19 Q And that would have been the same in June of 2006?

20 A Yes.

21 Q Are there any kind of cameras out at Park Place
22 Apartments, surveillance?

23 A No.

24 Q Okay. Tell me just a little bit about the apartment.
25 I've never been inside of it.

1 When were the Park Place Apartments built, do
2 you know?

3 A Somewhere around the 1960s.

4 Q So they were a little old?

5 A They're old. They're 30 years old.

6 Q Now -- and I'm not trying to say anything about any
7 of the particulars, but as far as tenants, you sound like
8 you knew a lot about the magistrate procedure. Would it
9 be common that you would have to evict people from the
10 Park Place Apartments?

11 A Oh, yes.

12 Q Okay. Once again, not trying to put them in a bad
13 light, but would it be fair to say that you got a lot of
14 bad apples that would come in and out?

15 A There were a lot of bad apples when I took over, yes.

16 Q Absolutely. How about things like noise complaints?
17 Did you ever get noise complaints?

18 A Yes.

19 Q Characterize the walls of the apartment. Would you
20 call them, like, thick walls or were they more like hotel
21 walls where it was pretty easy to hear what was going on?

22 A My phrase is paper thin.

23 Q Paper thin. So you could hear pretty easily what was
24 going on?

25 A Right.

1 Q Did you ever have the occasion to go into apartments
2 where people may have been fighting?

3 A One or two times, yes.

4 Q Ever go --

5 A But not in that particular phase.

6 Q Okay. Did you ever go in and there's stuff broken --

7 A Yes.

8 Q -- holes in walls --

9 A Yes.

10 Q Probably had to do police reports, go through the
11 whole gamut?

12 A Yes.

13 Q Okay. This apartment when you went into it, you went
14 in on the 12th, correct, that's a Tuesday?

15 A Uh-huh.

16 Q Or, I'm sorry. I apologize. I'm not right. The
17 12th was Monday.

18 A Monday. The 13th.

19 Q -- the 13th, which was Tuesday. I'm sorry about
20 that.

21 And you went in because you had received a
22 concern from some family members?

23 A Uh-huh.

24 Q The policy was, they couldn't go in, so you went in.

25 A Uh-huh.

1 Q Do you know an individual -- I'm sorry, the name was
2 mentioned by another witness who may have worked with you.
3 It started with a T.

4 Was there anyone else who worked with you at the
5 time as a leasing agent?

6 A Yes, I had two girls in the office.

7 Q Do you remember their names back then?

8 A One of them was Barbara Kahn and I think the other
9 girl was a Tatiana.

10 Q All right.

11 A But I don't remember her last name.

12 Q Okay. Do you know if she ever went in the apartment?

13 A No.

14 Q Okay. So you'd have been the one who went in?

15 A Yes.

16 Q Okay. When you went into the apartment, you
17 described it as looking very clean?

18 A Uh-huh.

19 Q You didn't see any signs of broken stuff?

20 A No.

21 Q Those pictures -- and we can pull them back down --
22 but there were pictures of, like, picture frames and
23 perfume bottles and all kinds of other stuff. That was
24 there when you went in?

25 A Uh-huh.

1 Q Okay. When you went into the apartment, did you just
2 open the door and say, "Is anyone home," or did you --

3 A I knocked, I put my key in, turned it, stuck my head
4 in the door and asked was anybody in.

5 Q Okay.

6 A We have to do that.

7 Q Sure.

8 A You have to announce yourself.

9 Q And then you would have walked in -- I'm sorry, I'm
10 going to stand in your way -- you would have walked in --

11 A Yes.

12 Q -- didn't see anybody, probably walked into the
13 kitchen?

14 A Just stuck my head around the corner.

15 Q Just stuck your head -- did you walk down the hall to
16 the bedrooms?

17 A Yes, I did.

18 Q Look in the master bedroom?

19 A I looked in the master bedroom.

20 Q And you said you looked in the little girl's room --

21 A Yes.

22 Q -- because you saw the dress?

23 A Yes.

24 Q Are there any bodies?

25 A No.

1 Q Okay. Was it clear and convincing in your mind that
2 there was no one in the apartment at that time?

3 A Yes.

4 Q Was there any way that someone else from the
5 apartment complex could have went in after you that day or
6 the day before and changed anything in the apartment or --

7 A No.

8 Q Okay. Do you remember a time when a bunch of police
9 officers came out the next week?

10 A Yes.

11 Q How many police officers do you think came out?

12 A I have no idea. I didn't count them.

13 Q More than five?

14 A I don't know. I couldn't say.

15 Q Would it be fair to say that at least 12 officers
16 were in and out of that apartment when they came in?

17 A Off and on, I would say, yeah.

18 Q Sure. And one thing you said that was interesting --
19 and I hate to jump out of order -- but you said at some
20 point in September. Do you remember if the officers were
21 kind of searching the place when they went back in?

22 A Yes.

23 Q Okay. Have you seen officers search an apartment
24 before?

25 A Yes.

1 Q Okay. And you said in September, a couple of your
2 moving guys found a bunch of guns in a -- in the house?

3 A Under the couch.

4 Q Was that stuff that was put in there sometime after
5 the police officers had done this big old search --

6 A No.

7 Q -- or was that in there the whole time?

8 A Apparently they had been there awhile because there
9 was an imprint on the floor under the couch where it was
10 laying.

11 Q So you would say the police officers didn't even
12 look?

13 A Apparently not. They didn't know.

14 Q Was it that obvious that there was stuff there and
15 they just didn't even look at it?

16 A We had to move the couch is the only way we found it.

17 Q But had anyone else moved the couch --

18 A They would have found it.

19 Q Pretty easy?

20 A Easy.

21 Q Okay. As far as -- and one other thing, we're
22 getting to that September time -- you said there was a
23 carpet with a hole and something weird under the carpet.

24 A Uh-huh.

25 Q Was it like a navy bluish, blacky purple color?

1 A Blackish looking.

2 Q Okay. Have you ever heard of something called LCV?

3 A I've heard of it.

4 Q Okay.

5 A I've never seen it.

6 Q All right. Did you know -- did you go in when the
7 officers were searching the apartment?

8 A No.

9 Q Okay. All right. Have you ever had other occasions
10 where you've known police officers have to go in and use
11 chemicals and check for stuff?

12 A Off and on when they went in and did fingerprints.

13 Q Okay. Sure.

14 All right. Did you report back to the family
15 that everything looked okay in the apartment?

16 A Uh-huh.

17 Q And you told them there was definitely no one in
18 there?

19 A Uh-huh.

20 Q Would you go so far as to say you thought everything
21 looked normal?

22 A Yes.

23 Q Okay. You actually described it as looking normal.

24 Without a doubt, you went in there that day and
25 no one else from your staff would have went in there --

1 A No.

2 Q -- before the police came the next day?

3 A No, sir.

4 Q Were you present when an Officer Shane Phillips with
5 West Columbia came out to go into the apartment the next
6 day?

7 A Yes.

8 Q Tell me about that. Did he go in the apartment?

9 A I went and opened the door for the deputies that came
10 out, but I did not enter the apartment, just the two
11 deputies.

12 Q You say two deputies.

13 A There were two deputies out.

14 Q Was that woman -- April, could you -- was it that
15 woman or was it a male who came out?

16 A I can't tell you that. I don't remember.

17 Q Okay. But that was definitely on that day.

18 A Yes.

19 Q Do you remember around the time?

20 A No, I sure don't.

21 Q If I told you lunchtime, would that sound wrong?

22 A That I couldn't say yes or no because I don't know.

23 Q How long was that deputy in the apartment?

24 A Not long.

25 Q Okay. Long enough that he obviously walked into it?

1 A Walked through it basically the way I did and back
2 out.

3 Q Okay. Did he tell you anything?

4 A Unh-unh.

5 Q Did he -- did he say he sensed any wrongdoing?

6 A Nope.

7 Q Did he tell you he'd have a whole team back out
8 there?

9 A Nope.

10 Q Did an occasion later that day occur when officers
11 came back out again?

12 A Yes.

13 Q Okay. Do you remember if Ms. Bayne came out that
14 time, the second time?

15 A I don't know. There was several officers there,
16 female and male.

17 Q Okay. Do you remember on the 14th that they went in
18 and took a whole bunch of pictures? You wouldn't know one
19 way or another?

20 A Well, I've been -- you know, seen so much and been in
21 and out of so much until I cannot remember everything that
22 actually happened during that time.

23 Q Did any officer ever ask you what you thought about
24 the apartment's condition?

25 A No.

1 Q They never even bothered to ask you?

2 A No.

3 Q Did anyone even bother to ask you what the condition
4 was when you went in that day before?

5 A Unh-unh. They seen what I saw, so I didn't have to
6 tell them anything.

7 Q But did they even ask?

8 A No.

9 Q They didn't interview you?

10 A Unh-unh.

11 Q Did they ask you for the records, who lived there?

12 A At one point in time, yes.

13 Q But was it that initial encounter, do you recall?

14 A No.

15 Q Did they ask, you know, any other questions about it,
16 or they just went -- a couple of different times went into
17 it, to your knowledge?

18 A Just -- they just went in and out. They were in and
19 out a good bit.

20 Q How many times were they in and out before they came
21 back with that whole 12 of them and they took -- they took
22 all those --

23 A I can't answer that. I don't know.

24 Q Was it at least --

25 A I don't remember.

1 Q -- at least a good couple?

2 A I don't know.

3 Q Okay. But at least twice?

4 A Yes.

5 Q And you had already been in and Mr. Phillips had
6 already -- well, one of the road deputies had already come
7 in?

8 A Right..

9 Q And just -- and just one -- one last thing.

10 And in the times you've gone into apartments
11 where there's been fights, you've evicted people, did this
12 apartment bear similarities with the way it looked with an
13 apartment you would have expected with all the glass and
14 perfume bottles and picture frames?

15 A It just looked like a normal lived-in apartment.

16 Q It just looked normal?

17 A Uh-huh, clean and normal.

18 MR. STITELY: Thank you, ma'am.

19 No further questions.

20 MR. HUBBARD: I'm not going to jump the gun this
21 time.

22 THE WITNESS: Come on.

23 REDIRECT EXAMINATION

24 BY MR. HUBBARD:

25 Q That lease, which is --

1 A Right there.

2 Q Defense Exhibit No. 2?

3 A Uh-huh.

4 Q Did you fill that out? Up at the top, all of this,
5 is that your handwriting?

6 A That's not my handwriting.

7 Q Do you know whose handwriting it is?

8 A Barbara Kahn.

9 Q Barbara Kahn?

10 A Yes.

11 Q Okay.

12 A The leasing agents do have the right to fill out the
13 applications. They just can't sign them.

14 Q Okay.

15 A Leases and applications.

16 Q So whatever information she got to fill it out, you
17 don't know if it came from one or both of the tenants?

18 A Right.

19 Q The photograph of the dumpster, which is Defense
20 No. 3?

21 A Uh-huh.

22 Q You say that looks like the dumpsters you have out
23 there.

24 A Uh-huh.

25 Q Do you know if what's in Defense 3 is the same

1 dumpster that was there at the time or do you have any way
2 of knowing?

3 A You don't have no way of knowing.

4 Q How often do they dump these things?

5 A When we call and tell them it's full.

6 Q Okay.

7 A And it may take them a month. It just depends on
8 what kind of work we have to do in the apartments and how
9 much we have to trash -- how many apartment we have to
10 trash.

11 Q Okay. I want to ask you, when you went in in
12 October --

13 A Uh-huh.

14 Q -- that apartment looked a little bit different than
15 when you first when in?

16 A Big time different.

17 Q Did you see stuff on the walls at that point?

18 A Oh, yes.

19 Q Was it kind of a lavender color?

20 A Yes.

21 Q Back in that bedroom when you-all were ripping up
22 that carpet and you noticed some spots, was it that same
23 lavender color or --

24 A Same lavender color.

25 Q On the carpet?

1 A On the carpet.

2 Q But underneath when you said you-all saw something
3 that you said looked like blood, was that different?

4 A It was different.

5 Q Okay. That's what I wanted to clear up.

6 A Yeah.

7 Q There's lavender stuff including on the top of the
8 carpet?

9 A Right.

10 Q But when you ripped it up and you saw spots, was that
11 lavender or did it look like blood?

12 A It looked like blood.

13 MR. HUBBARD: Okay. Thank you.

14 I don't have any further questions.

15 MR. STITELY: Very briefly. Very briefly..

16 RECROSS-EXAMINATION

17 BY MR. STITELY:

18 Q The dumpsters, you said you'd call someone to come
19 pick them up. Is there a log of when that would happen?

20 A No.

21 Q Would you-all get charged when they come to pick them
22 up?

23 A We are charged monthly --

24 Q Okay.

25 A -- for those dumpsters.

1 Q Okay. Is there any way to know when they were picked
2 up --

3 A No.

4 Q -- in June?

5 A No, sir. The only company -- the only way you would
6 know when it was picked up is through that company.

7 Q And just to be clear because he asked you, but when
8 you walked into that apartment and looked around that
9 first time, you didn't see blood on the floor?

10 A None. I didn't see nothing.

11 MR. STITELY: Okay. Thank you.

12 MR. HUBBARD: Nothing else, Your Honor.

13 THE COURT: You may step down. Thank you very
14 much.

15 MR. HUBBARD: May she be excused, Your Honor?

16 MR. STITELY: Yes, Your Honor.

17 THE COURT: Certainly.

18 Thank you very much.

19 THE WITNESS: Okay.

20 THE COURT: All right. Consistent with our
21 timing, I think we've done enough today.

22 Again, 9:15 good for you-all in the morning?

23 MR. HUBBARD: Yes, sir, Your Honor.

24 MR. STITELY: We have one request.

25 THE COURT: All right.

1 THE COURT: Gentlemen, are we ready?

2 MR. MCGUIRE: Yes, sir, Your Honor.

3 THE COURT: Solicitor?

4 MR. HUBBARD: Yes, sir.

5 THE COURT: All right. Call your witness.

6 MR. HUBBARD: Nathan Bresee.

7 NATHAN BRESEE, after being duly sworn, testified
8 as follows:

9 THE CLERK: Have a seat, please, sir.

10 Once you're seated, speak up loud and clear.
11 State your full name, spelling your last for the record,
12 please.

13 THE WITNESS: Nathan Bresee, B as in boy,
14 R-E-S-E-E.

15 DIRECT EXAMINATION

16 BY MR. HUBBARD:

17 Q Agent Bresee, if you don't mind, would you tell us
18 where you work.

19 A Currently?

20 Q Yes.

21 A I work for Homeland Security under ICE, which is
22 Immigration and Customs Enforcement, as a special agent.

23 Q Back in 2006, who were you working for?

24 A I worked for Customs and Border Protection in Blaine,
25 Washington, as an officer.

1 Q And which -- you say Blaine. What -- is that the --
2 at the Pacific Highway point of entry?

3 A Right. Blaine, Washington, falls under two separate
4 ports of entry that officers transition back and forth
5 between. I also worked at the Pacific Highway port of
6 entry in Blaine, Washington.

7 Q How long were you with the Customs and Border?

8 A Protection? Six years, almost seven.

9 Q Back on June 17th of 2006, do you remember having
10 any meeting or encounter with a man by the name of Kenneth
11 Lynch?

12 A I do.

13 Q And can you tell us about that?

14 A It was about 10:45 at night. I'd just come in off
15 the line admitting traffic and was just working the queue
16 in the lobby, and Mr. Lynch was next in line, and I asked
17 to speak with him.

18 Q And what did you do at that point?

19 A I noticed that he had refusal paperwork from Canadian
20 Border Services Agency and just ran standard customs
21 checks verifying U.S. citizenship, criminal history and
22 checking NCIC wants, warrants, lookouts.

23 Q Can I ask you this: A refusal slip, what is that?

24 A Canada, just like the U.S, they screen passengers
25 coming into their country. If people don't have enough

1 funds to be able to come into the country, they'll say,
2 "You know what, you need to go back, show us proof of ties
3 and equities," which would be like a phone bill, making
4 sure you have money in your bank account and they also
5 check for criminal history.

6 Q And any of those things can end up having you
7 refused?

8 A Refused entry into Canada, correct.

9 Q Now, what are rehabilitation papers?

10 A That's if you have a criminal history.

11 The U.S. has the same on our side. It's
12 basically -- it's an I-90 waiver, and it directs the
13 person on how they can get a waiver to be able to enter
14 into Canada because of their criminal history.

15 Q Does the U.S. have a counterpart to that?

16 A Correct.

17 Q Okay. And when we talk about criminal history, it
18 doesn't have to be anything significant, does it?

19 A You could get refused entry for a DUI going into
20 Canada, so --

21 Q So just -- it doesn't have to be a violent act or
22 anything like that?

23 A Right.

24 Q Okay.

25 A They have certain guidelines, and I'm not sure what

1 their guidelines are.

2 Q I want to show you a couple of documents.

3 MR. MCGUIRE: Judge, if I could see those.

4 MR. HUBBARD: I have to show them to him first.
5 I'll be happy to bring them to you.

6 THE WITNESS: Yes, this is standard --

7 MR. MCGUIRE: Your Honor, the rule is, counsel
8 sees them first before they're shown to the witness.

9 BY MR. HUBBARD:

10 Q Again, I'm going to show you a piece of paper. Can
11 you identify what that is?

12 A Yeah. This is a Canadian Border Services Agency
13 refusal slip, and it shows -- it'll cite a code of law on
14 here. There -- there's the code of law.

15 MR. MCGUIRE: Your Honor, I object to reading
16 from a document that's not been admitted into evidence.

17 THE COURT: I'll sustain that. Let him identify
18 them.

19 BY MR. HUBBARD:

20 Q Let me ask you this: The refusal slip, I know it's
21 got writing on there, but who had that refusal slip?

22 A Mr. Lynch.

23 Q And is he present in the courtroom?

24 A He is.

25 Q Can you point him out, please?

1 A He's the gentleman sitting over there with the red
2 tie.

3 Q Red tie. Next to his attorneys?

4 A Uh-huh.

5 Q Okay.

6 MR. HUBBARD: Your Honor, let the record
7 reflect, please, that he has identified the defendant,
8 Kenneth Lynch.

9 THE COURT: It will so reflect.

10 MR. HUBBARD: All right. Thank you.

11 I'd like to offer the refusal slip at this time.

12 MR. MCGUIRE: Objection. Hearsay.

13 MR. HUBBARD: He had it on him, Your Honor. I'm
14 not sure how that's hearsay.

15 THE COURT: Tell me what the form is again.

16 MR. HUBBARD: It's a refusal slip, and I'll pass
17 it up to Your Honor.

18 THE COURT: And that was hearsay, Mr. McGuire?

19 MR. MCGUIRE: Well, Your Honor, if -- if that
20 document is admitted into evidence to speak on the issue
21 of Mr. Lynch was denied entry into Canada and why, then
22 it's being offered for that point. That's the truth of
23 the matter asserted. That's a document created by people,
24 not this man. He can't vouch for the accuracy of the
25 information; he didn't create it. And, I mean, basically,

1 it'd be offered for the truth of the matter, which was
2 Mr. Lynch was denied access into Canada and the reason
3 why.

4 MR. HUBBARD: Two things, Your Honor. First of
5 all, I didn't know that was in dispute, but I'd also like
6 to set up and show why he ran a criminal background check.
7 This is what prompted it, and I'll ask the question.

8 He already testified, but I'll clear it up,
9 clear it up on the record.

10 THE COURT: Very well. Go ahead.

11 BY MR. HUBBARD:

12 Q Agent Bresee, when you -- somebody comes before you
13 with a refusal slip, what are you required to do?

14 A Run criminal history checks, make sure there's no
15 wants or warrants.

16 Q And when Mr. Lynch approached you with a refusal
17 slip, did you do that?

18 A I did.

19 Q And what happened after you ran the criminal
20 background check?

21 A We had a positive NCIC alert.

22 Q And that alert was?

23 A For a missing person.

24 Q Is this refusal slip what prompted your actions?

25 A It initiated it. It --

1 MR. HUBBARD: That's what I was after, Agent.
2 I'd offer it at this time.

3 MR. MCGUIRE: I still object on hearsay grounds.
4 I don't object to his testimony.

5 THE COURT: I'll sustain your objection. I've
6 heard the testimony and understand exactly what he did
7 following protocol.

8 MR. HUBBARD: That would be fine.
9 Beg the Court's indulgence.
10 (Pause.)

11 MR. HUBBARD: Your Honor, if I may, may I make a
12 Court's exhibit out of this?

13 THE COURT: You may.

14 (WHEREUPON, The Court's Exhibit No. 18 was
15 marked for purposes of the record.)

16 BY MR. HUBBARD:

17 Q Now, Agent Bresee, once you ran a background check,
18 did you ask for any identification papers from Mr. Lynch
19 before you ran the background check?

20 A He provided them to me with the criminal history
21 worksheet and there was a birth certificate there.

22 Q Okay. Let me show you this document.

23 Can you identify that document --

24 A Yes.

25 Q -- or do you recognize that document?

1 A I do.

2 Q Is that the document, the birth certificate, that was
3 supplied to you by Mr. Lynch?

4 A It was.

5 MR. HUBBARD: Your Honor, I offer it into
6 evidence.

7 MR. MCGUIRE: Without objection, Your Honor.

8 THE COURT: The birth certificate's admitted as
9 State's Exhibit 18 without objection.

10 (WHEREUPON, STATE'S Exhibit No. 18 was marked
11 for identification and received into evidence.)

12 BY MR. HUBBARD:

13 Q Having run the background check and come up with the
14 missing person, what did you do next, Agent Bresee?

15 A The NCIC lookout directed me to contact the
16 originating agency.

17 Q And would that be the West Columbia Police
18 Department?

19 A Correct, it was.

20 Q And did you do that?

21 A I did.

22 Q And did you speak to a local agent?

23 A I initially spoke to dispatch and dispatch connected
24 me to Detective Bayne.

25 Q Okay. Based on your conversations with West

1 Columbia, what did you-all do next, you or anybody else
2 working with you?

3 A Right after speaking with Detective Bayne, it was
4 discovered that Mr. Lynch was a suspect in a possible
5 double homicide. And for officer safety reasons, I
6 directed Officer Tuez and Officer Preer to do an immediate
7 pat-down and detain the subject.

8 Q Okay. And when you do a pat-down, is that standard
9 policy when you get a hit like that?

10 A Right. On something to this extreme, for officer
11 safety reasons, we don't know if the subject would have a
12 weapon on him or anything like that, so for officer
13 safety, we immediately detain the subject right where he
14 stands.

15 Q Was there a second pat-down after the initial one?

16 A Correct. Any time a subject is going into a
17 detention cell, we have to get supervisor approval to do a
18 full pat-down.

19 Q And who did that?

20 A Officer Tuez and Officer Preer.

21 Q In the pat-down on his person, anything found?

22 A I was not present during the pat-down.

23 Q Okay. After Mr. Lynch is detained, what did you do?

24 A We conducted a border search of the subject's two
25 bags.

1 Q Can you describe those bags?

2 A One was like a -- like a black nylon travel bag and
3 the other was like a leather-looking, almost like a
4 briefcase bag.

5 Q I'll show you two bags.

6 I'll show you two black bags, one being a black
7 nylon bag, the other a black leather-looking bag.

8 Do you recognize these bags?

9 A I do.

10 Q And were these or were these not the bags that
11 Mr. Lynch had?

12 A Those are Mr. Lynch's bags.

13 MR. HUBBARD: Your Honor, I'd like to mark them
14 for ID.

15 THE COURT: They'll be so marked.

16 (WHEREUPON, State's Exhibits Nos. 19-20 were
17 marked for identification only.)

18 BY MR. HUBBARD:

19 Q Now, the two bags, what did you do with the bags?

20 A I inspected them for documents, anything relevant to
21 Mr. Lynch's current position at the border.

22 Q Now, let me ask you as a customs agent, do you or do
23 you not need a search warrant?

24 A We do not need a search warrant.

25 Q You-all-all have a broader authority because of the

1 type of job you do?

2 A Correct.

3 Q What, if anything, did you find in the
4 leather-looking bag, which is State's ID 20?

5 MR. MCGUIRE: Your Honor, in keeping with the
6 Court's format --

7 THE COURT: Yes.

8 MR. MCGUIRE: -- you know, we're in trial, a
9 trial witness; however, the documents that were recovered
10 from these bags as a result of this search, we do object
11 to their entry into evidence based on unlawful seizure and
12 search of the bags.

13 MR. HUBBARD: And, Your Honor, we understand
14 that as we proceed, obviously you've got to rule on what's
15 front of -- in front of you, and if it's subject to later
16 motions, we understand that.

17 THE COURT: You-all knowing the facts better
18 than I do, is it easier to argue the Fourth Amendment
19 issue right now?

20 MR. MYERS: Yes, sir.

21 And may I handle that, Your Honor?

22 MR. MCGUIRE: I'd object to that as it's
23 Mr. Hubbard's witness.

24 MR. MYERS: That's okay. He'll hand you up some
25 cases on the border search, that you don't need a search

1 warrant for a search that was before --

2 THE COURT: Well, wait a minute. Hang on on
3 that. You want to argue -- you want to hear the Fourth
4 Amendment issues now or do you want to wait until they
5 bring the documents?

6 MR. MCGUIRE: I mean, we would -- we would argue
7 that the initial detention of Mr. Lynch was unlawful and
8 the seizure of the bags was unlawful and the taking of the
9 documents and sending them to West Columbia was also
10 unlawful.

11 Let me give you the basic sort of context and
12 then maybe Your Honor can decide how he wants to go.

13 Obviously, Mr. Lynch comes up as a missing
14 person. West Columbia is contacted. What West Columbia
15 tells this agent we believe is relevant on the seizure.
16 And then with regard to taking Mr. Lynch's bags and going
17 through the documents is a separate issue.

18 And then there's also the -- after there's
19 communication with West Columbia, there's the offer to
20 seize these documents and fax them to West Columbia.
21 That's another rule issue right there.

22 And, then, in -- in getting the warrant, because
23 at this moment when West Columbia's talking to this man,
24 there is no warrant for anything. And some of this
25 information may have been transmitted in getting the

1 warrant, so we might have some unlawful gathering of
2 information that was later used to get a warrant.

3 MR. HUBBARD: Judge, I'll make it easier. If we
4 can just take it up later since your objection -- he's
5 made his objection. We can argue that later.

6 A lot of the people that I think he's going to
7 want to put up are going to come up much later in our
8 case. And I would like to get our out of staters taken
9 care of. We're taking them out of order, and we can argue
10 that later.

11 MR. MCGUIRE: Well, I mean, my understanding is
12 that our agreement is -- since we follow this format -- is
13 that no out of stater's being released until we're
14 completely past this search issue, whatever is relevant.
15 As long as they're available for recall on those points.

16 MR. HUBBARD: Well, on that point, Judge, our
17 problem is, we were going to start Monday. These people
18 have flights out tomorrow, which we can extend some of
19 them. But, Judge, we're -- we're pretty much holding them
20 hostage.

21 I think he can be crossed thoroughly, and then
22 when more information comes in from both sides, you will
23 have the information you need to make a ruling.

24 If they want to serve him with a subpoena, they
25 can do that, but I think we can have a full hearing on

1 this witness. I just think we're kind of holding them
2 hostage until we get them done, and I'd like to -- I'd
3 like to move them on.

4 THE COURT: All right. For me to make a full
5 ruling, I'm going to have to hear from the other witnesses
6 also for, I guess, a total presentation of the Fourth
7 Amendment issues.

8 MR. HUBBARD: Yes, sir, for a final ruling.

9 THE COURT: Right.

10 MR. HUBBARD: What I suggest would be this, Your
11 Honor: The searches that start so much of their -- the --
12 the beginning of their motions are really going to be
13 coming in later at the end of the case. And so if we
14 start getting into all of that, I'm not going to get
15 through with these guys.

16 What I would suggest is this: Let's put these
17 witnesses up and I'm going to show them things, offer
18 things into evidence, and I would just ask Your Honor to
19 rule with what you've got in front of you, always subject
20 to a full-blown hearing later on their motions to
21 suppress.

22 We know that -- we know we're putting up this
23 case in kind of a disjointed manner, but the luxury is
24 that we don't have a jury and it allowed us in our
25 thinking to try to get up as many of these out of staters

1 and get them out.

2 Obviously, we really hoped to have been way past
3 that, but we didn't expect the motions to go the way they
4 did at the beginning of the case.

5 THE COURT: Right.

6 MR. HUBBARD: That's what we would suggest,
7 Judge.

8 I'm just going to show him things, if he can
9 identify them in a typical way you would put it in
10 evidence, put it in, but let Bill make his objections. I
11 know he's going to keep track of them, he's got to anyway,
12 and then argue -- when he argues his motions, he's going
13 to identify all the things he's objected to, all the
14 evidence he's already objected to. And then if Your Honor
15 grants his motions, then we know where we are.

16 Otherwise, I think we're going to be pulling
17 witnesses at the tail end of the case, and pulling them in
18 now, and, basically, defeating the whole purpose of trying
19 to get these out of staters done.

20 MR. McGUIRE: And, Judge, here's my concern is
21 this: I think on this issue with this -- with this
22 witness, there's communication going back between this
23 officer and his agency and West Columbia, and some of that
24 communication is going to be relevant in our seizure
25 motion.

1 And, I mean, for instance, if April Bayne's
2 going to be called towards the middle or the end of the
3 case and she was the person that I'd have to put up with
4 regard to this issue, I don't want to be in a position
5 where -- where this good man gets to go back to Washington
6 state and then I'm -- we're talking to April on Monday or
7 Tuesday and an issue comes up that we need to address with
8 this man and I'm left flatfooted.

9 I mean, if we're -- I think we need to address
10 the relevant issues where we have the witnesses available
11 live. I mean, my understanding was that these guys would
12 be available for recall on an issue that would normally be
13 a pretrial motion.

14 MR. HUBBARD: And that was certainly the intent,
15 Judge, but we're on the cusp of Friday. I mean, we've
16 really, really been holding these people for quite awhile.
17 They've been in our office since Saturday. And I know
18 they haven't complained a bit, but, Judge, I know I would
19 like to take care of them.

20 And, honestly, if we run into a huge snag, if
21 Your Honor had to break things for awhile to get someone
22 back, we can do that.

23 I mean, we know how to contact Agent Bresee.
24 He's been extremely cooperative with us. I would just
25 like if we don't run into that hurdle at the end of the

1 case, then I'd hate to have kept him here for an
2 additional week.

3 And, obviously, they can cross him if they want
4 to get into what he was told by April Bayne. I -- you
5 noticed I dodged that because it's hearsay, but if they
6 want to ask, you know, why did he do what he did, that's
7 fine. And they can also call out April Bayne later on,
8 too, in their hearings or -- or when we put her up. But I
9 think -- I'd like to, obviously, get through this agent
10 and several others that are going to be after him.

11 THE COURT: All right. If they're admitted --
12 if these pieces of evidence are admitted as we go as
13 Court's exhibits all the way through, and then after
14 hearing all the motions, they will then be either ruled
15 upon as suppressed and not admitted into the case in chief
16 or moved into evidence as State's exhibits at that time,
17 is that your --

18 MR. HUBBARD: That's -- that's my thinking, Your
19 Honor. That way they can be heard fully without
20 prejudicing their client, and we can try to maybe
21 streamline some things and get it going.

22 THE COURT: All right. Do you understand that,
23 Mr. McGuire?

24 MR. MCGUIRE: I do. I think I can agree with
25 that. And that would be sort of a normal --

1 THE COURT: It's like -- it's like an
2 extended --

3 MR. MCGUIRE: Pretrial hearing.

4 THE COURT: -- pretrial hearing.

5 MR. MCGUIRE: So, I mean, I think that's usually
6 what happens. But I just want to let everybody kind of be
7 on notice, I mean, as soon as this agent is finished
8 testifying, I would -- I would call April Bayne on the
9 search issue.

10 MR. HUBBARD: That's --

11 MR. MCGUIRE: I mean, that's what I would have a
12 right to do in a pretrial hearing. She's under my
13 subpoena, and it's relevant to the search issue, that's --
14 I would -- I would call her.

15 MR. HUBBARD: Now, we're getting into the whole
16 thing.

17 Judge, you need to take them one track or the
18 other. Either we're going to argue the search warrant,
19 and we're going to break down and do everything we've got
20 to do now, and if that's what the Court wants, we'll do
21 it. But, again, this is the State's case in chief. I
22 think they're protected by making an objection, and we can
23 move forward.

24 THE COURT: I mean, it's kind of a coin toss for
25 me. I mean, either you do it and we're imposing on --

1 we're not imposing on a jury, and that's the thankful
2 thing, but we are imposing on certain witnesses and some
3 live further away than others.

4 All right. Mr. McGuire, if after this witness
5 is done, during a normal pretrial motion you would -- or
6 when the State finishes trying to -- I don't -- I don't
7 have an idea or a -- I did not envision how the pretrial
8 hearing would have gone and how many witnesses they would
9 call and how many you would call, but it would just be a
10 different scenario, the fact we're handling it via bench
11 trial with the motions built into the trial.

12 You intend or you would like to call her after
13 he testifies just on the issues he's dealt with and the
14 information and conversations and what was done as a
15 result of their initial meeting with Mr. Lynch?

16 MR. MCGUIRE: Yes, sir.

17 And the way a normal trial would work, of
18 course, we'd be able to put up our strongest case for
19 suppression. Then, of course, your ruling is your ruling.
20 If you rule against us, there would be a motion in limine,
21 I'd have to renew it, and then this officer would also be
22 appearing again at some point in a trial and we'd have
23 another crack at him.

24 But what I'm suggesting is that after this man
25 testifies regarding this issue, that we would call April

1 Bayne, and if there is any other issue we need to address
2 with this agent, then he gets right back on the stand,
3 then he gets to go back to Washington.

4 MR. HUBBARD: Let me ask Your Honor to maybe
5 inquire of the defense, is that the only witness they're
6 going to call? Because I know Monday we're going to have
7 a couple of motions and it really adds up being a lot
8 more.

9 THE COURT: Yes. And what are you -- is that an
10 "it depends" question -- answer?

11 MR. McGUIRE: Well, if you count -- if this
12 was -- if this was a normal pretrial hearing, we would --
13 this is how it would play. We would object to the
14 detention of Mr. Lynch based on the direction of West
15 Columbia Police Department when April Bayne says, "Detain
16 him, he's a suspect." We'd object to that. There's no
17 warrant at the time and no P.C.

18 We would object to Mr. Lynch being basically
19 field arrested and placed in a cell in Blaine, Washington,
20 at that moment. His detention lasted for many hours.

21 A warrant was eventually gathered, I would
22 believe maybe based in part on some information that was
23 unlawfully gathered at the border. So we would move that
24 the warrant on its face would be invalid, lack of P.C.,
25 and that there is certain information that is just so

1 intertwined with the case that if it wasn't presented to
2 the magistrate, then that omission is basically tantamount
3 to like a Napue violation, almost -- leaving out something
4 so important that the omission is so great it's basically
5 a Napue violation. So we'd have to have a hearing
6 regarding the warrant with the judge as well.

7 And we have a subpoena on the judge, and there's
8 a motion to squash that subpoena, but that's not been
9 heard yet.

10 And then, there are certain documents that were
11 seized at the border and transmitted to April Bayne upon
12 her request, again before a warrant, before P.C., probable
13 cause, that those -- those documents would lead to
14 information or are mentioned in the search warrant that
15 was used to gain entry into Mr. Lynch's house on
16 June 20th, in the apartment that Your Honor saw. That's
17 how the natural progression would flow in a pretrial
18 hearing.

19 MR. HUBBARD: And therein lies the problem
20 because that's a lot more than two witnesses.

21 The officer that is the affiant on that arrest
22 warrant isn't April Bayne. There's a judge -- that's
23 going to be an entire hearing on whether he has to come
24 in. He had surgery, he's out for six weeks. So his
25 attorney will have to come in here, we'll have a

1 full-blown hearing on that.

2 If there's other information from other border
3 agents, we've got another border agent, is he going to go
4 into that. Somebody from the sheriff's department in
5 Washington comes up, they get involved and serve the
6 warrant, we'll have to get into that. The people at the
7 jail that hold him there, we'll have to get into that.

8 Meanwhile, back in West Columbia, you know, if
9 it becomes a debate on what the P.C. was at the time,
10 we're at the end of our trial going through the search
11 warrants and why we have P.C.

12 So, Judge, at the end of the day, we'll have --
13 we're going to have -- we'll be trying the case backwards,
14 and these guys are going to be here a week, week and a
15 half and they will be the final witnesses. That's why I
16 suggest -- suggested what I suggested.

17 And I would suggest this, that he's already
18 talked about the searches, aside from the warrant, and
19 he's explained that he has the authority to do that as a
20 customs agent. So, I mean, what he's done has really been
21 done prior to West Columbia even getting involved on an
22 arrest.

23 THE COURT: How many West Coast officers do we
24 have? I call them West Coast officers, but nonlocals?

25 MR. HUBBARD: I'll try to count them all

1 together.

2 We've got two agents from the border. We've got
3 a young man who's the sheriff's deputy from Whatcom County
4 that served the warrant, took him to the jail at the --
5 the county jail. We've got our Seattle officers, the ones
6 who get the search warrant on the car, the officer that
7 found the car.

8 Oh, we have the two agents that interviewed
9 Mr. Lynch once he was detained and brought to the county
10 jail. There's an FBI agent that was involved in that, and
11 a local Bellingham PD officer that conducted that
12 interview. That's going to be information that's used
13 back in Columbia, because all of this is before the search
14 warrant on the residence. All of this is before that.

15 And then we've got, obviously, the trooper from
16 Texas. We've got --

17 THE COURT: Well, the trooper from Texas doesn't
18 have much to do with the searches.

19 MR. HUBBARD: No, sir, but it's going to be
20 entwined in all that.

21 And then, we've got a lady who's with the
22 clerk's office from Washington state who is here as well.

23 Those are just some of the out of staters, and
24 then we've got a couple people on other issues.

25 THE COURT: All right. Mr. McGuire, I'm going

1 to follow the State's suggestion and move forward with the
2 out of staters since this is an extended bench trial and
3 the suppression motions are all mixed in with the facts
4 and testimony.

5 I'm certain you-all are good enough lawyers to
6 explain to me, once we get all the pieces together,
7 suppress or admit, and just -- I don't -- I believe it may
8 be more complicated to continue to intermix the witnesses.

9 If we allow the evidence to be marked as Court's
10 exhibits consistently through until each piece, whether it
11 be the arrest warrant, probable cause on that, or the
12 search warrant, the probable cause on that, the apartment
13 or whichever it is -- I don't know all of them, I don't
14 have an inventory of the particular issues of which you're
15 fighting the detention -- but let's admit them as Court's
16 exhibits and then it may be the very end, right before the
17 State closes its case, they then say, "We want to put in
18 all this." I mean --

19 MR. HUBBARD: Your Honor, my only question about
20 that would be, I know we've already got a number of
21 Court's exhibits. I would suggest we go ahead and admit
22 them, and then if -- and then if Your Honor rules based on
23 their motions, I'd rather convert them to a Court exhibit
24 at that time. It's easier for us to keep track of what
25 we've got.

1 They keep track of their objections, but we keep
2 track by way of our evidence. It would be much easier for
3 us, Judge. And, obviously, I know the burden's on us to
4 establish what we need and the burden's on them to keep up
5 with their objections. I would just suggest that, Your
6 Honor.

7 THE COURT: What about that?

8 MR. MCGUIRE: Well, Judge, there's no way I can
9 agree to let something be entered into evidence subject to
10 me getting it back out. That would be standing due
11 process on its head in a capital case. Whether it's the
12 presumptive position that something's in unless I can back
13 it out just is so far into procedural due process where I
14 think that would be a major defect in this trial, and
15 certainly I can't concede to that.

16 And just the other issue that I was thinking
17 about is that the State has the burden to show by the
18 preponderance standard that the search and seizure was
19 lawful, legal, and that we have the -- despite it being
20 their burden, we still have the opportunity to call
21 witnesses in those hearings.

22 And even if we just wait until the very end of
23 their case in chief to see if they've connected all the
24 dots and they've got what I believe it to be, we would
25 still be in the position where we would have to call our

1 own witnesses at that point before the close of the
2 State's case in chief. I mean, I just don't know how the
3 Court wants to deal with that.

4 MR. HUBBARD: And, Judge, in quick response, if
5 you don't mind, I don't see any due process violation
6 here. It would be going in with the understanding that if
7 it's -- if we don't meet our burden at the tail end of
8 this thing, it's coming back out. I don't see any
9 prejudice. They're still objecting, so they're protecting
10 their client. The thing that helps us is that this is our
11 way of keeping track.

12 I'd hate get to the end of this case and we've
13 got a bunch of Court exhibits, and we're -- we're going to
14 have to sit down and figure out, all right, what's a
15 Court's exhibit, what's not, because we've already entered
16 stuff into evidence. And, Judge, it's -- it's going to
17 be -- I hate for something to end up being treated as
18 evidence that was a Court's exhibit at the time or
19 something that should be evidence that is stored with
20 Court's exhibits. I think that's my problem.

21 The defense knows what they're objecting to,
22 they know what their motions are, and I think we all know
23 the ground rules if we go this way; we know when we're
24 putting something in, Your Honor can reconsider it. The
25 case isn't done and it's subject to motions later by the

1 defense.

2 But what I would suggest is that when I offer
3 something to this -- this witness, obviously, Your Honor
4 will rule on what you've got, and we all know what it's
5 subject to. And the easiest way to do that is for me to
6 offer things, and if I don't have a foundation to get
7 something in evidence, well, that's one less thing for
8 them to worry about. If I get it into evidence, great. I
9 know at the end of this case or at some point in this case
10 later on, I'm going to have to revisit it, but at least I
11 know what I've got now.

12 THE COURT: I'm trying to think of a way to
13 accommodate both your requests, and this is --

14 MR. McGUIRE: I mean, Judge, here's our
15 position: One of our positions would be that if we were
16 to hash out P.C. on arresting Mr. Lynch for the grand
17 larceny of a motor vehicle, and that breaks in our favor,
18 you don't hear from Deputy Polinder from Washington or
19 Whatcom County. He's a very nice guy. I talked to him a
20 couple of years ago, but you wouldn't even see him in this
21 trial.

22 You wouldn't even hear from Glen Hutchings, the
23 police officer from Bellingham. You wouldn't hear from
24 Brenda Davis from the FBI. The bus ticket that's
25 recovered from Mr. Lynch in addition to the car, you

1 wouldn't hear about the car or where it was found or the
2 search of the car. And there's so much evidence that
3 would be lopped off that you'd never hear. That's why we
4 want to attack the unlawful detention and arrest of our
5 client as we go.

6 MR. HUBBARD: Judge, I don't -- I don't follow
7 that.

8 We've got two murder charges. You -- you're
9 going to be hearing from all those people. You're going
10 to. They will be testifying. We're not trying just a
11 grand larceny case. So you will absolutely be hearing
12 from all of those people.

13 THE COURT: I mean, how do you break that down?
14 I mean, we're trying to make things simpler, and we're
15 not. And that's where I'm a little frustrated that our
16 pretrial conference was our universal hope to simplify
17 things. And that's what, you know, we're trying to do,
18 and you-all made attempts at that, and now we're kind of
19 at a fork in the road, and either way we go, it's a
20 slow-moving uphill train.

21 MR. MCGUIRE: And I think one of the problems is
22 that we have so many search and seizure issues. If we had
23 just one, looking through a bag and faxes of documents, if
24 that was limited to one issue, then we'd just knock it out
25 right here and move on. But, unfortunately, it's a bit of

1 a snowball that grows, and we have -- we have unlawful
2 issues, search and seizure and arrest issues, sort of
3 forking along the road the whole way here.

4 And I want to be accommodating with the Court,
5 and I'm here to serve, but, you know, this is a capital
6 trial, and we've got some due process issues, and, Judge,
7 we even agreed to withdraw all of our motions --

8 THE COURT: I know. You put that on the record,
9 that you'd stipulate to most everything if they'd withdraw
10 the capital punishment.

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: And I think the State's been
13 consistent and efficient in their answer.

14 All right. Let's take a break. I want to think
15 about this. It seems whichever way we go, we're going to
16 eat up some time, which I'm trying to prevent. And I'm --
17 having never done one of these, I'm not sure which is the
18 better way to go because if --

19 All right. Let's stand at ease for a few
20 minutes.

21 (A break was taken.)

22 THE COURT: All right. Gentlemen, as I
23 understood where we left, we were looking for a
24 methodology to deal with the search issues or any motions
25 either side may have since we're not in a traditional

1 sense of a pretrial motion and then jury trial mode.

2 The sidebar conference we had just during the
3 break among the lawyers, it's my understanding that -- or
4 my suggestion is that we compartmentalize the search
5 issues, and not knowing which issues are coming up because
6 I've not identified them yet, but I had at least three
7 identified to me by the lawyers. We're going to proceed
8 with them.

9 The search issue at the border, the State's
10 going to present it as if we were in the pretrial mode.
11 And the defense, because we discussed this pretrial, the
12 defense will be allowed to call their witnesses or any
13 witnesses pertinent to that issue at that time. And as
14 tedious as that's going to be, that's how I'm going to do
15 it.

16 And any inconvenience caused to the witnesses
17 that are downstream yet, I'm sorry, but I don't know how
18 else to do it. I guess the bright side, we're imposing on
19 them and not 14 members of Lexington County sitting on a
20 jury.

21 So that's how we're going to do it. It's how we
22 discussed it pretrial, and that's how we're going to do
23 it.

24 And if you-all can come up with a way to
25 streamline it more, I'm more than willing to do that, but

1 y'all discuss that off the record and propose it to me.

2 So that being in mind, Mr. Hubbard, you're still
3 with this witness, I believe.

4 MR. HUBBARD: Yes, sir.

5 THE COURT: All right.

6 BY MR. HUBBARD:

7 Q Agent Bresee, to kind of backtrack and kind of get us
8 where we're -- where we were, when you're approached by
9 Mr. Lynch, you run a criminal background check?

10 A Uh-huh.

11 Q You might say "yes" or "no."

12 A Yes.

13 Q -- so the court reporter, that helps her.

14 A Yes, I did.

15 Q So you do a background check and you find his status
16 is, what?

17 A He's a U.S. citizen.

18 Q And when you do a background check, though, you find
19 what -- what's ---

20 A He has an FBI record.

21 Q Okay. Missing person?

22 A Missing person under NCIC also, yes.

23 Q Okay.

24 A Sorry.

25 Q All right. So at that point, he's detained?

1 A Correct.

2 Q At this point, you-all conduct a pat-down for officer
3 safety?

4 A Correct.

5 Q And at what point do you conduct a second pat-down,
6 is it before or after you talk to West Columbia and
7 confirm his status?

8 A That was after.

9 Q Okay. But tell us about that. Let's just back up
10 and let you kind of tell us what happened.

11 A About the phone call or what transpired between
12 Detective Bayne and myself?

13 Well, initially, it came up as a missing person.
14 So when I contacted West Columbia, I was more concerned
15 about Mr. Lynch's safety, initially, than my own.

16 When I was made aware of what the circumstances
17 were out here in West Columbia, I was more concerned of
18 my -- the safety of myself and also the other officers
19 that are -- were there with me that night. I immediately
20 notified Officer Tuez, Officer Preer, and they did the
21 immediate pat-down in the lobby.

22 Q That's the first pat-down?

23 A Correct.

24 Q Okay. What happens after that?

25 A We conducted a pat-down for detention, searching for

1 merchandise, anything that would hurt us if he were to get
2 released from the cell somehow.

3 Q So at that point, he's going to be held in a cell, so
4 you-all do a more thorough pat-down?

5 A Correct.

6 Q Okay. And that's the second pat-down?

7 A Correct. And that's standard procedure for all of
8 customs and border protection.

9 Q And what, if anything, did he have on his person?

10 A I wasn't there during the pat-down.

11 Q Okay.

12 A I can't speak.

13 Q That's fine. What, if anything, did he have in his
14 possession?

15 A He had two bags.

16 Q And the bags that we've identified earlier,
17 State's ID 19 and 20, those bags?

18 A Those two bags.

19 Q Once you find he's a missing person --

20 Let me ask you this: At what point do you take
21 these bags?

22 A Immediately after the first pat-down, the immediate
23 pat-down, the bags were taken from the bench that he was
24 sitting on to a hard secondary is what it's called. It's
25 a secure area where we inspect documents and bags and --

1 and whatnot.

2 Q So you're doing that knowing he's a missing person?

3 A Yes.

4 Q Okay.

5 A I could do that even if he's not a missing person.

6 If he's -- anybody walking in the lobby, if I want to look

7 in a bag in the lobby, I can look in the bag in the lobby.

8 It's border search authority.

9 Q Because you've got usual -- unusual authority. So
10 what reg?

11 A 19 U.S.C. 42, I believe is what it is, border search
12 authority.

13 Q Okay. And with that authority, you don't need a
14 search warrant?

15 A Correct.

16 Q It's pretty wide open?

17 A Yes.

18 Q And he -- since he had crossed the U.S. border into
19 Canada and come back --

20 A Uh-huh.

21 Q -- he was subject to these type of searches?

22 A Correct.

23 Q Now, when you went into those bags, did you find some
24 documents and items in this leathery-looking bag, which is
25 State's ID 20?

1 A I did. He had numerous personal documents in there.

2 Q I believe we've already introduced the birth
3 certificate. He showed that to you early on?

4 A Correct. He handed that to me initially.

5 Q Let me show you some items and see if you can
6 identify these items as coming from State's ID 20.

7 A Yes, I do.

8 MR. HUBBARD: Your Honor, if this was a trial,
9 I'd be offering these at this time. Since it's a hearing,
10 would you prefer me to mark them as Court's exhibits?

11 THE COURT: Yes.

12 I'm going to answer.

13 I prefer you mark them as Court's exhibits
14 rather than -- you asked me a double question.

15 (WHEREUPON, The Court's Exhibits Nos. 19-22 were
16 marked for purposes of the record.)

17 BY MR. HUBBARD:

18 Q Now, Agent, I'm going to show you Court's Exhibit 19.
19 What is this?

20 A This is his Greyhound bus ticket from Seattle to
21 Vancouver on June 17th.

22 Q Mr. Lynch's?

23 A Correct, Mr. Lynch's.

24 Q Item 20?

25 A Motel 6 receipt. It just has the -- the actual --

1 has his name on it, Kenneth Lynch, and was also found in
2 his luggage.

3 Q And what date does that receipt have?

4 A 6-14-2006.

5 Q Court's Exhibit 21?

6 A Also Mr. Lynch's name and the date is June 13th -- or
7 June 12th was the check-in date.

8 Q And then item -- Court's Exhibit 22?

9 A It's a set of keys that I found in Mr. Lynch's
10 luggage.

11 Q Agent Bresee, in that lobby area --

12 Well, let me ask you this: When somebody goes
13 across the border and they get sent back --

14 A Uh-huh.

15 Q -- they're supposed to come into that area and see
16 you-all, correct?

17 A They are instructed by Canadian Border Services to
18 come into our lobby.

19 Q Isn't it possible for somebody to bypass your office
20 and leave?

21 A Very easy.

22 Q When you first saw Mr. Lynch coming in, would you
23 characterize that as voluntarily coming back in and
24 meeting with you-all?

25 A Yes.

1 Q Or could he have gone and bypassed you on his -- gone
2 on back into the U.S.?

3 A Right. He could have attempted to enter without
4 inspection, and then it would be on Border Patrol's --
5 that would be Border Patrol's duty if he were to do that.
6 He could walk down -- there's a row of duty-frees, which
7 are -- they just sell alcohol, fragrances, all that kind
8 of stuff -- and there's a row of those that we commonly
9 see people attempt to walk into the United States with
10 narcotics, all sorts of stuff.

11 Q And he may or may not have been detained or stopped
12 or --

13 A Right. It's a shot in the dark whether you make it
14 or not.

15 Q Okay. As you approach the border, are there signs
16 about being subjected to searches?

17 A Yes.

18 Q All right. Are they --

19 A They're placard --

20 Q -- openly posted so --

21 A Yes.

22 Q -- so everybody can see them?

23 A Over the entrance to the main building. They're out
24 by the inspection booths that he walked by. They're on
25 each of the lanes of traffic.

1 Q So if you want to go to the border and cross the
2 border or even just go to the border, are you subject to a
3 search?

4 A Yes, you are.

5 Q And as you approach the border, you're being
6 informed, "If you come here, this might happen"?

7 A Correct.

8 Q Okay. Does that also include vehicles if you're in a
9 vehicle?

10 A Vehicles.

11 Q Does it include a person's -- you know, the person
12 himself?

13 A It -- it takes one thing of reasonable suspicion,
14 mere suspicion to get authorized for a pat-down, but for
15 the most part, yes.

16 Q Okay. And something like a missing person notice, is
17 that suspicion?

18 A Yes.

19 Q And this search authority also pertains to, as we
20 discussed, baggage?

21 A Correct.

22 Q Anything you have might be subject to search?

23 A Correct.

24 Q Now, after you conducted this search, what happened,
25 this final search where you're -- you're detaining him and

1 putting him in the cell?

2 A The search of Mr. Lynch's person or the -- his actual
3 luggage?

4 Q Well --

5 A Sorry.

6 Q I tell you what. Yeah, I wasn't very clear on that.

7 Well, let me ask this -- let's just stop and go
8 back. Go back to the first search and start telling us
9 what you did. That way, you'll pick it up, so you know
10 where you are.

11 A Okay. First search, that was for officer safety
12 issues, just to make sure that he's safe, we're safe, and
13 that the traveling public is safe.

14 The second search, the full pat-down for
15 detention, you have to get it authorized by a supervisor
16 and Mr. Herda, Supervisor Herda authorized the pat-down.

17 Q And then at some point did you contact West Columbia?

18 A Correct. At some point there, contacted them and
19 then --

20 Q Is that when you got -- was it after the first
21 search, you contacted them about the missing person and
22 then you get more information, or how does that work? I
23 don't want to put words in your mouth.

24 A No. It wasn't that way. Initially, it was for
25 officer safety issues due to the information that we had

1 received.

2 Q The missing person information?

3 A That, along with the information received from
4 Detective Bayne.

5 Q Okay. And at some point, some of the documents that
6 you pulled out of State's ID 20, this leather-looking bag,
7 did you fax those items to West Columbia?

8 A Yes, I did.

9 Q Okay. Now, the canvas bag, State's ID 19, what --
10 what was in that?

11 A Just toiletries. I think there's shaving cream I
12 remember, I just thought it was kind of odd, and then some
13 other -- just there wasn't really a whole lot in there.

14 Q Did you find any cash --

15 A No.

16 Q -- at all?

17 A No.

18 Q Okay. At some point, did you-all confirm whether
19 there was, in fact, a warrant on Mr. Lynch?

20 A Yes. At 3:10 in the morning of the 18th, we
21 confirmed the warrant.

22 Q Okay. And what was the warrant for?

23 A Larceny.

24 Q Okay. The grand larceny of a vehicle?

25 A Grand larceny, correct.

1 Q Okay. Once you-all confirmed the warrant, what do
2 you do?

3 A Timing-wise, we knew we were getting close. Just to
4 speed up the process, we'd actually already called Whatcom
5 County at 3 -- 3 o'clock in the morning to get a deputy
6 out.

7 Q Is that about a 30-minute drive?

8 A Well, it -- it could be more than that. I think it
9 they might -- they might only have three people for the
10 entire county at that time, so they could be coming from
11 south of Sumas, which would be well over an hour.

12 Q Do you remember a deputy showing up from Whatcom
13 County Sheriff's Department?

14 A Yes, I do.

15 Q Would that be Deputy Polinder?

16 A Yes.

17 Q What happens when Deputy Polinder gets there?

18 A He Mirandized the subject, did his standard
19 procedures. I believe he read him the arrest warrant and
20 then took him into custody from us.

21 Q So he actually is the one that serves the warrant?

22 A Correct.

23 Q Now, prior to that, you-all have not interviewed or
24 interrogated --

25 A Correct.

1 Q -- Mr. Lynch?

2 A No. Once we discovered that he was the subject of
3 this investigation, we knew that Miranda rights would come
4 into play, and that's where -- that's where we stopped,
5 when it comes to the interview.

6 Q Again, as far as the bags are concerned, you found no
7 cash?

8 A No cash.

9 Q Are there some coins?

10 A I -- I couldn't remember.

11 MR. HUBBARD: Okay. That's fair enough.

12 Beg the Court's indulgence.

13 (Pause.)

14 MR. HUBBARD: Thank you, Agent Bresee. Please
15 answer any questions the defense has.

16 CROSS-EXAMINATION

17 BY MR. STITELY:

18 Q Is it Agent Bresee?

19 A Yes.

20 Q Agent Bresee, Ben Stitely. How are you today?

21 A Fine.

22 Q Thank you for coming. Have you ever been to South
23 Carolina before?

24 A Just Hilton Head.

25 Q Just Hilton Head. Fair enough.

1 Welcome to -- to Lexington.

2 A couple of questions. I guess I'll start at
3 the beginning.

4 How long have you been a Border Patrol agent?

5 A Customs officer?

6 Q All right, yes.

7 A It was six years.

8 Q Six years back then or six years now?

9 A Six years now.

10 Q Okay. So you were kind of new on the job back in
11 2006?

12 A No. I was a journeyman at the time, two years.

13 Q Okay.

14 A Two years.

15 Q Okay. That's fine. I just wondered.

16 I just want to talk to you kind of about
17 procedures, because in this case, the procedure is very
18 important to us.

19 Pretend I'm a U.S. citizen and I went across the
20 border to Canada. You said that I could be turned away
21 for any number of reasons. One I thought you actually
22 said was I didn't have any money, correct?

23 A Uh-huh.

24 Q And like Mr. Hubbard making a big deal with you, he
25 had no money on him.

1 In theory, that could be one reason Canada would
2 send me back, right?

3 A Correct.

4 Q Okay. So I walk back, and you said at that point, I
5 could easily just avoid you guys altogether and just walk
6 back into the United States potentially?

7 A That's correct.

8 Q Okay. Or I have the option of doing the right thing
9 and walking into your office and declaring myself as a
10 U.S. citizen?

11 A Correct.

12 Q Okay. I'm subject to search just like your sign
13 said?

14 A Uh-huh.

15 Q Okay. Pretend I walk into your store -- not store --
16 into your security checkpoint, I have bags on me, you do a
17 run on me and I have no warrants -- and it's true
18 Mr. Lynch had no warrants at this time, correct?

19 A Correct.

20 Q I mean, there was no hold for arrest, no warrant for
21 his arrest, nothing like that?

22 A Correct.

23 Q Okay. You said you have the right to, if you have
24 reasonable suspicion, to do a pat-down of me?

25 A Correct.

1 Q Or you could search my bags for any reason you-all
2 deem necessary?

3 A Correct.

4 Q Okay. It would be fair to say that in Mr. Lynch's
5 bags, what you typically would be looking for -- or if I
6 walked across, you'd be looking for weapons, contraband,
7 drugs, anything I shouldn't have, correct?

8 A Correct.

9 Q Okay. And it's fair to say out of everything you
10 searched, either on Mr. Lynch's person, in his bags, there
11 was no contraband, correct?

12 A Correct.

13 Q Nothing illegal, correct?

14 A Correct.

15 Q No weapons?

16 A No weapons.

17 Q Okay. At that point, you cite your -- your border
18 source authority, are you able to detain me at that point
19 if I've got no warrants, nothing illegal on my person,
20 you've searched my bags and my bags are all clean, can you
21 continue to hold me or do you need something more?

22 A If I have just mere suspicion that something is going
23 on, then I can detain you.

24 Q Okay. How long?

25 A It -- it depends on what the circumstances are.

1 Q Sure. Well, let's just talk about in a box, what you
2 had.

3 In Mr. Lynch's case, did he do anything that
4 gave you suspicion, independent of speaking to Ms. Bayne,
5 by walking in, when he could have walked around, having
6 his bags on his person, handing his -- his birth
7 certificate, did he do anything at that point that cued
8 you off as something off out of the ordinary?

9 A It was out of the ordinary that he was all the way
10 across the country, and, yes, I would have gone further
11 into detail about what he was going on, I would have
12 questioned more about what he was doing --

13 Q Sure.

14 A -- all the way across the country from South Carolina
15 in -- in a matter of days.

16 Q Sure. And if he told you he traveled across the
17 States, would that have given you reason to throw him in a
18 holding cell?

19 A We could have done a -- it all depends. I -- I can't
20 say what would have happened if I hadn't have spoken with
21 Detective Bayne.

22 THE COURT: Wasn't his testimony he was placed
23 in a holding cell?

24 MR. STITELY: He was.

25 THE COURT: Okay.

1 BY MR. STITELY:

2 Q We'll get into that, but it's a -- it's not just a
3 holding cell, I mean, it's like a jail cell, right? No
4 windows, bars, that kind of situation, right?

5 A It's a detention cell. There are no bars. There's a
6 restroom, there's a -- there's a sink, there's a bench to
7 lay down on.

8 Q But they can't walk out?

9 A Correct.

10 THE COURT: He wasn't thrown --

11 MR. STITELY: Well, sorry, I apologize, Judge.

12 He was placed. Okay. I apologize.

13 BY MR. STITELY:

14 Q All right. Let me get into -- now, what is
15 required -- and if you know this as a border agent --
16 what -- back in 2006, what was required to get into
17 Mexico?

18 A I think a birth certificate and a driver's license at
19 the time.

20 Q And do they have some kind of a --

21 A But it also depends on citizenship. I mean --

22 Q If you're a U.S. citizen?

23 A If you're a U.S. citizen, a driver's license and a
24 birth certificate.

25 Q Okay. And Mr. Lynch had both on those on his person

1 when you found him, correct?

2 A He had a birth certificate.

3 Q Okay. He at least had that.

4 If someone comes back on foot from Mexico, is it
5 actually tighter security -- or in a car, is it tighter
6 security at the Canada border or is it looser or about the
7 same?

8 A It's going to be the same across the board.

9 Q Okay. Is there the same procedure, if you're turned
10 down, they would come back through your agency, not you
11 directly, but --

12 A What are we talking about here?

13 Q Well, and you're kind of at a loss here, but if
14 Mr. Lynch had previously tried to get through customs down
15 in Canada and was turned away, would he have gone through
16 a similar procedure coming back into the United States
17 that he would from the Canada border? Like if he went to
18 Mexico, they said, no, no, and he had to come back through
19 customs.

20 THE COURT: You said -- you meant Mexico?

21 MR. STITELY: Yes, sir.

22 THE COURT: You said Canada both times.

23 MR. STITELY: I apologize.

24 BY MR. STITELY:

25 Q If he tried to go into Canada -- if he tried to go

1 into Mexico and was denied and went back through U.S.
2 Customs and Border Patrol, would it be generally the same
3 procedure?

4 A Yes.

5 Q Okay. And do you guys keep records?

6 A On who's been refused entry? It all depends on the
7 officer. I'll put in a secondary inspection result --

8 Q Sure.

9 A -- on the subject saying that he was refused entry
10 into Canada for such and such.

11 Q Okay. If there was an NCIC missing persons, do you
12 think the border agent would have noticed that if -- if
13 there was one, if someone tried to cross back in, the same
14 procedures that you followed?

15 A Like what do you --

16 Q If someone tried to come back into the United States
17 from Mexico and they had an NCIC for a missing persons, is
18 it fair to say that the border agent would have done the
19 exact same thing you did?

20 A Yes.

21 Q Okay. Now, very specific to this case and Mr. Lynch,
22 you said that you called Detective -- you called West
23 Columbia and got Detective Bayne, correct?

24 A Right. The originating agency, I called them from
25 the NCIC, spoke with their dispatch and they forwarded me

1 out.

2 Q Okay. And you spoke with her?

3 A Correct.

4 Q And at this point, you hadn't actually conducted the
5 pat-downs and the searches, it wasn't until after you
6 spoke to her and she said that -- what -- what did she say
7 to you?

8 A I can't recall exactly what she said to me, but she
9 just stated that he may be involved in a double homicide.

10 Q Okay. And at that point, you said you felt there was
11 a heightened security risk to you or your personnel?

12 A Correct.

13 Q And you did the initial pat-down and the secondary
14 pat-down?

15 A Correct.

16 Q Okay. Now, when Mr. Hubbard was cross -- directing
17 you here and --

18 A Well, I should say --

19 Q Go ahead.

20 A -- CBP, the officers at CBP did the initial pat-down
21 and the full pat-down. I wasn't involved in that.

22 Q Your agency, though?

23 A Right.

24 Q Okay. At 3:10, you were informed that there was a
25 warrant for Mr. Lynch?

1 A That's correct.

2 Q You're sure about that?

3 A It's in the report.

4 Q 3:10 in the morning on June 18th?

5 A Correct.

6 Q Now, you were -- now, were you told this or were you
7 transmitted something from Detective Bayne at 3:10 in the
8 morning on June 18th?

9 A I can't recall exactly. I'm sorry.

10 Q But because of that warrant at 3:10 in the morning,
11 custody became perfected or good in your opinion, correct?
12 You were allowed to keep holding him at that point?

13 A No. We were allowed to keep holding him from the
14 very beginning.

15 Q But at that point, you get in contact with the local
16 law enforcement?

17 A We had previously contacted local law enforcement.

18 Q Okay. You did? But you come out and, I guess, you
19 transfer custody?

20 A Correct.

21 Q Okay. If we had the flip situation, and you weren't
22 told that there was a warrant now, would you have
23 continued to hold him indefinitely, ad nauseam?

24 A No. He would have been released.

25 Q He would have been released.

1 So at 3:10 if you don't hear that there's a
2 warrant and they haven't gotten back to you, he should
3 have been released?

4 A Not necessarily. It depends. If it would have taken
5 longer, then we would have detained him longer.

6 At eight hours we have to contact the Assistant
7 U.S. Attorney to get further approval for detention.

8 Q Do you know why Detective Bayne wrote down in her
9 notes that she was told that she had two hours before
10 you-all released him?

11 A No, I do not.

12 Q Does the eight-hour clock start ticking from your
13 initial detention at 10:45?

14 A Yes, it does.

15 Q And one other -- okay. Okay.

16 And one other question is: Mr. Lynch approached
17 you willingly, as you described it, correct?

18 A That's correct.

19 Q Didn't try to run from Border Patrol agents, didn't
20 try to skirt your security checkpoint?

21 A Correct.

22 Q And you said that really wouldn't be hard to do at
23 all?

24 A Correct.

25 Q So if he was just to suspect that you were going to

1 arrest him on that site, there would have been options he
2 could have taken to avoid coming in, handing you his birth
3 certificate, and talking to you?

4 A Correct.

5 MR. STITELY: I have no other questions at this
6 time.

7 MR. HUBBARD: A quick follow-up.

8 REDIRECT EXAMINATION

9 BY MR. HUBBARD:

10 Q He's supposed to come in and check in with you; is
11 that correct?

12 A That is correct.

13 Q And there's certainly no sign, saying, Hey, if you
14 want to bypass, run?

15 A Right.

16 Q So there's no indication he knew he could skirt you,
17 correct?

18 A Correct.

19 Q But nonetheless, when someone enters into your --
20 your facility after being kicked back from the Canadian
21 border, you're viewing that as voluntary entry, re-entry?

22 A That is correct, yes.

23 MR. HUBBARD: Okay. I just wanted to clarify
24 that.

25 Thank you.

1 MR. STITELY: One second.

2 (Pause.)

3 MR. STITELY: May I approach, Your Honor?

4 THE COURT: Yes.

5 RECROSS-EXAMINATION

6 BY MR. STITELY:

7 Q Agent Bresee, I'm going to hand you something. It
8 has a little bit of handwriting on the top. But do you
9 recognize this packet?

10 A Yeah, that's my -- that's my handwriting.

11 Q And this is -- just flip through it briefly -- this
12 is the contents of what, I guess, you found that you faxed
13 down to Detective Bayne at West Columbia?

14 A Yes.

15 MR. STITELY: Your Honor, we'd ask to mark this
16 a Court's exhibit.

17 THE COURT: Are those other documents other than
18 the three that were identified earlier?

19 MR. STITELY: It includes them and a few others,
20 Judge, just whatever was found in his bags.

21 THE WITNESS: Can I look through the packet
22 completely, just so there's nothing tagged on to the back
23 of there?

24 MR. STITELY: Sure.

25 THE WITNESS: Thank you.

1 THE COURT: Mr. Hubbard, do you have any
2 objection to that whole stapled package to be marked as an
3 additional Court exhibit?

4 MR. HUBBARD: No, sir.

5 THE COURT: Beyond this Exhibit No. 22? So this
6 would be 23.

7 MR. STITELY: Okay. Your Honor, I --

8 THE WITNESS: I don't know what -- I don't know
9 what that is. This isn't mine, Your Honor.

10 MR. STITELY: There is a West Columbia -- like a
11 West Columbia custody record. I'll remove that and then
12 I'd asked it be marked. I apologize.

13 THE COURT: All right. Mr. Hubbard, are you
14 okay with that?

15 MR. HUBBARD: Yes, Your Honor.

16 THE COURT: All right. Hang on a second.
17 Carol, are you clear on it?

18 THE COURT REPORTER: Yes, I have it.

19 THE COURT: Okay. As long as -- if you are,
20 I'll be.

21 Court's Exhibit No. 23.

22 MR. STITELY: Thank you, Judge.

23 (WHEREUPON, The Court's Exhibit No. 23 was
24 marked for purposes of the record.)
25

1 BY MR. STITELY:

2 Q And you faxed that over, and it Agent Bresee
3 indicates on the top -- and I don't want to leave you
4 without looking at it -- 2:49, 0249?

5 A Time-wise that's what it says, but it doesn't
6 necessarily mean that's an accurate time.

7 Q That's what it says on it?

8 A Okay.

9 Q I'm asking. But that is what the document does say?

10 A The document does say, "2:49," but it could be not
11 accurate, inaccurate.

12 MR. STITELY: Thank you, Your Honor.

13 Nothing further.

14 MR. HUBBARD: No follow-up, Your Honor.

15 I do have something.

16 FURTHER REDIRECT EXAMINATION

17 BY MR. HUBBARD:

18 Q Is that Pacific time?

19 A It could be Eastern time. I -- it all depends on
20 whether the machine's actually calculated correctly or the
21 time's actually input into the machine, but it -- it could
22 be Eastern time, yes.

23 Q There's no way for you to know or testify?

24 A There's no way.

25 MR. HUBBARD: Okay. Thank you.

1 THE COURT: All right. You may step down.

2 THE WITNESS: Thank you, sir.

3 THE COURT: Just so the Court's clear, this is a
4 motion to suppress exactly what?

5 MR. STITELY: Your Honor, very specifically,
6 that border agent just said at 3:10 in the morning, he got
7 a warrant. They didn't even go to the judge until later
8 in that day. There was never a warrant. And Detective
9 Edwards is the one who goes to Judge Reinhart, we'll
10 eventually have to get him here. There absolutely
11 positively was no warrant.

12 THE COURT: I just want an answer, not the whole
13 argument.

14 MR. MYERS: We don't know what the motion is on
15 the floor.

16 THE COURT: That's what I want to be clear on.
17 What motion -- what are we trying to suppress?

18 MR. STITELY: We're making a motion to suppress
19 his detention which ultimately led to the search that gave
20 them all of these documents, because he testified at
21 3:10 he was told there was a warrant, held him --

22 THE COURT: No, he said he transferred him to
23 Whatcom -- Whatcom County?

24 MR. STITELY: Whatcom.

25 THE COURT: How do you spell that so I'm clear

1 on it? I don't want to be mispronouncing it and
2 misspelling it.

3 MR. MYERS: Now, I still don't know what the
4 motion is about, and I don't know the grounds or the
5 basis. That's under the State versus -- the State versus
6 William Michael Patton. It's 472 S.E.2d 245.

7 We don't -- we don't know what the motion is
8 about. If there's nothing specific, there's no reason to
9 have a suppression hearing under this case.

10 MR. STITELY: Judge, it's to suppress everything
11 that they got out of those bags.

12 MR. MYERS: Still, it's an invalid motion under
13 State versus Patton.

14 THE COURT: Quantify your motion for us. I
15 mean, is it --

16 MR. STITELY: The officer's testimony --

17 THE COURT: No -- what -- no.

18 MR. STITELY: And it would be our position --

19 THE COURT: Okay. What -- not what he's going
20 to testify to. What are you trying to exclude?

21 MR. STITELY: Everything at this point --
22 because we haven't gotten to whether or not -- everything
23 that was taken from Mr. Lynch by that agent. And, then
24 subsequently, any statements he made while he's in custody
25 resulting from a warrant that didn't exist at the time,

1 holding him longer.

2 It's our position his detention became unlawful
3 when West Columbia told this man, Officer Bresee, that
4 there was a warrant when there was, in fact, no warrant.
5 We will have a judge and a detective testify there was no
6 warrant.

7 The border agent said he would have released him
8 if there was no warrant. West Columbia fabricated a story
9 to him that they had this warrant, which caused an
10 unlawful detention, ultimately leading to an unlawful
11 seizure of anything that he had on his person, unlawful
12 statements, unlawful this, that, and the other. From
13 those things they get search warrants. All that comes
14 out.

15 There was a fabrication that they had a warrant
16 when they did not, and that's why Border Patrol held him,
17 ultimately provides all of his stuff to West Columbia,
18 which is fruit of the poisonous tree, and they then use
19 that to go get all kinds of other warrants.

20 They told Border Patrol there was a warrant. We
21 can bring a judge in who says there was not.

22 THE COURT: All right.

23 MR. MYERS: He still hasn't given the grounds
24 under State versus Patton. That's all I want him to do is
25 reply to State versus Patton.

1 Based on that by the South Carolina Supreme
2 Court, he has right now an invalid motion. We've never
3 been served with a valid motion.

4 And you can't say there's a violation of the
5 Fourth Amendment. That's what Patton says.

6 MR. STITELY: You can make any motion orally.

7 MR. MYERS: No, you can't, not under State
8 versus Patton.

9 If you haven't read the case, you should look at
10 it.

11 THE COURT: Well, let me read Patton real quick.
12 It's not a very long opinion.

13 MR. STITELY: Do you have a copy that we can
14 look at as well?

15 THE COURT: It's a page and a half, or two pages
16 and half.

17 (Pause.)

18 THE COURT: All right. Mr. Stitely, quantify
19 your motion.

20 MR. STITELY: Thank you, Judge.

21 We call Detective Edwards to the stand.

22 MR. MYERS: Wait a minute. He hasn't made -- he
23 hasn't made a proper motion.

24 THE COURT: Quantify your motion. Tell me --
25 tell me what it is.

1 MR. STITELY: Your Honor, our motion is very
2 simply, we make a motion to suppress any and all evidence
3 stemming from an unlawful detention of Mr. Lynch.

4 Very specifically, the border agent testified
5 that he was held on a request from an investigator who
6 told him at 3:10 in the morning she had a warrant or it
7 was transmitted.

8 We will provide evidence that, in fact, there
9 was no warrant and it was through a fabrication of law
10 enforcement that forced an unlawful detention, which
11 follows a seizure of his goods, which at this point is
12 further unlawful --

13 THE COURT: All right. Let's stop there.

14 The detention and the seizure are separate and
15 distinct events. How is the detention related to the
16 seizure? I thought the seizure occurred earlier by the
17 Border Patrol agent. And he just testified, "I have broad
18 authority to search anyone walking into this facility. I
19 can search them from their shoes to their top hats."

20 MR. STITELY: Yes, sir.

21 THE COURT: "Bags and all, car and all, dog if
22 they got one," and lawfully he did so, found documents.

23 MR. STITELY: And his testimony was he found
24 nothing else that would cause him to have to hold him but
25 for the fact that a warrant existed from West Columbia.

1 If Mr. Lynch had just gone through -- now we
2 have a silver platter --

3 THE COURT: No, no, no. He said if he had not
4 talked to her. She said he -- according to him, he was
5 told, potentially involved in something other than being a
6 missing person, a double homicide, perhaps.

7 MR. STITELY: True.

8 THE COURT: What she said -- what he said.

9 MR. STITELY: We're going to call her as well.

10 THE COURT: Well, now, that's outside of your
11 hypothetical is if he had only heard nothing other than --
12 I mean, her comments that involvement in a double homicide
13 are not a warrant.

14 MR. STITELY: Yes, sir.

15 THE COURT: Correct?

16 MR. STITELY: Correct.

17 THE COURT: All right. It seems he's acting
18 within his authority up to that point.

19 MR. STITELY: And what he said is, barring
20 nothing else, the rules say he has to release someone. So
21 at that point --

22 THE COURT: But he's got something else.

23 MR. STITELY: He said he would have had to go to
24 the U.S. Attorney after eight hours. He said at 3:10 he
25 received a warrant from West Columbia on a grand larceny.

1 That warrant then starts an entire additional
2 chain of Mr. Lynch being taken into custody by Washington
3 state, they appoint him a lawyer, and then they go
4 question him -- we'll get into all that -- and then they
5 extradite him.

6 The issue is that Border Patrol agent says, "I
7 maintain my hold on him because there was a warrant at
8 3:10 in the morning." It's not true. He was lied to or
9 inaccuracies were portrayed to him.

10 Additionally, we intend to call Ms. Bayne and
11 ask what probable cause or what her theory was when she
12 told that agent that night at whatever time in the
13 morning -- it indicates 2 o'clock -- that he was wanted in
14 a double homicide when that -- nowhere in her report do
15 they even make mention of that until several weeks
16 later -- or a couple of days later. And then in the
17 press -- we have that motion pending before the Court in
18 writing -- they make a motion to -- have not enough even
19 to come close to charging murder, and that continues until
20 2008.

21 So what she told the officer is imperative
22 because they get a hold on him because of a warrant that
23 didn't exist at that time. Everything that stems from
24 that is problematic.

25 The officer can search me, but he has no -- I

1 guess we can go into a silver-platter argument -- but he'd
2 have had to release me. It's not in his authority, then,
3 to turn over everything I have to -- if I would have
4 called him and said, Hey, why don't you fax -- I hear my
5 ex-wife's crossing the border. I mean, that doesn't give
6 him authority to search her and then pass that onto law
7 enforcement, and that's a heightened standard.

8 THE COURT: But, you know, the facts in this
9 case are, there's three people missing from West Columbia,
10 and the family's worried, the police are looking, and
11 they're conducting activities in Lexington County.

12 Then, the first guy to show up is Lynch at the
13 Canadian border and he has papers that cause the Border
14 Patrol guy to do an NCIC check, which he does on every
15 single person that has certain papers in his hand coming
16 back from the Canadian border. He does that. He shows up
17 as a missing person.

18 So, to me, the traditional sense of there's
19 nothing of a reason to hurry, but he showed up as a
20 missing person. He's not missing, he's now found. That
21 an odd -- that's an odd fact.

22 MR. STITELY: I don't disagree.

23 THE COURT: Okay.

24 MR. STITELY: And we can listen back, but what
25 he said is, he was told that Mr. Lynch was a suspect in a

1 double homicide. We will impeach Ms. Bayne if she ever
2 said anything close to that because her notes -- unless
3 her notes that we received in discovery were all wrong,
4 none of that ever gets mentioned until several days later.

5 The problem -- and still -- and it still stems
6 now into an unlawful arrest. I mean, they -- this agent
7 says that their agency arrests him and turns him over to a
8 local law enforcement agency for a warrant that didn't
9 exist. And I think it's our right to move to suppress any
10 and everything that stems after the unlawful arrest. And
11 that's our motion.

12 MR. MYERS: He's cited no authority whatsoever
13 and it's contrary to the United States Supreme Court.

14 The United States Supreme Court says they can
15 detain somebody up to 16 hours. That's U.S. versus
16 Montoya de Hernandez, a United States Supreme Court case.

17 So I don't know what he's talking about. I
18 still don't understand what the motion is.

19 Even if there wasn't a warrant, he's been told
20 this guy is a suspect in a double homicide. Warrants will
21 be obtained. If a warrant wasn't obtained, they could
22 still detain him there.

23 In Montez, they kept this woman for four days
24 until she passed a bunch of balloons she had swallowed.
25 They kept her for 16 hours where she didn't go to the

1 restroom or anything else.

2 So I don't know what their motion is. They've
3 cited no authority. They cited no law under State versus
4 Patton to even cause a suppression hearing.

5 He's going on State versus Blassingame, which
6 was overruled by State versus Patton. That is not the law
7 in South Carolina.

8 THE COURT: All right. Well, I guess my
9 confusion is --

10 MR. MYERS: This is a Fourth Amendment issue.

11 THE COURT: -- is that when this guy
12 testified -- correct me if I'm wrong -- that when he
13 turned him over to the deputy that showed up, the deputy
14 read him Miranda and read him a warrant. What was that?

15 MR. STITELY: It wasn't --

16 THE COURT: I'm -- I'm --

17 MR. STITELY: And we're going to get to that.
18 But he said he had a warrant at 3:10.

19 And, Your Honor, and the thing is, he said he
20 would have released him. It's their burden. The Fourth
21 Amendment says any search and seizure without a warrant
22 is, per se, unlawful.

23 MR. MYERS: Not at the border.

24 THE COURT: I mean --

25 MR. MYERS: Not at the border. The Fourth

1 Amendment doesn't apply at the border:

2 THE COURT: I don't understand what warrant was
3 read. There's been testimony there was a warrant read.

4 MR. STITELY: That's what we'd like to know,
5 what warrant existed at 3:10? And we'll be happy to call
6 the witnesses who got the warrant and to prove there was
7 no warrant.

8 MR. MYERS: Even if there wasn't a warrant, they
9 can still detain the guy.

10 Look, the border does not include the Fourth
11 Amendment. That's what they don't realize. The border
12 exception was created before the Fourth Amendment was
13 adopted. That's under State versus Ramsey, a case by the
14 United States Supreme Court. And that's found at 431 U.S.
15 606 in 1977. Then you got a bunch more in 2000, 2005.
16 They can detain people for four days.

17 THE COURT: All right. So --

18 MR. STITELY: But in this case, the reason a
19 warrant --

20 MR. MYERS: This case is not any different. The
21 law is the law. And they've not cited a single thing
22 under State versus Patton and they never have made a valid
23 motion. Up to this point, they haven't made a valid
24 motion.

25 They just can't say it's a violation of the

1 Fourth Amendment. That's what Patton says.

2 THE COURT: I think they're saying a little bit
3 more than that. They're saying there's a representation
4 made of a warrant.

5 MR. MYERS: All right. Even if there wasn't a
6 warrant and they said they read a warrant, that's --

7 THE COURT: That's -- that's where I'm losing
8 the argument.

9 MR. MYERS: That's where I'm losing it, too.
10 And he hasn't showed me a single case that the border
11 exception does not apply in this case.

12 MR. STITELY: I'm not arguing a general border
13 exception. That agent said the reason he maintained his
14 hold was not his border job, it's because West Columbia
15 told him that they had an extraditable warrant in
16 existence. This wasn't a situation where he's holding him
17 for Border Patrol reasons. He's holding him because of a
18 reliance on a false statement from West Columbia that they
19 had a warrant. And we'll prove that it's false, and
20 that's why I'd like to call my next witness.

21 MR. MYERS: Still, it's not valid.

22 See, he's trying get away from the border and he
23 can't. He's trying to disregard the border of Canada and
24 the United States, a law that goes back prior to even the
25 adoption of the Fourth Amendment of the United States

1 Constitution. He wants to get around that border, but he
2 can't.

3 THE COURT: All right.

4 MR. MYERS: They got -- now they've got
5 reasonable suspicion and probable cause because the
6 warrant's coming. And you can detain somebody to whenever
7 the warrant arrives. You just can't let a fellow in a
8 double homicide go. That's -- that's what I can't
9 understand, what their objection is. And they've cited no
10 law in support of what they're trying to do.

11 Now, if they give us a case, I'll sit down and
12 shut up.

13 THE COURT: What -- what is -- I mean, your
14 motion is to suppress everything that flowed from the
15 arrest after the Border Patrol turned him over to the
16 Whatcom County, Washington state --

17 MR. STITELY: It would be to suppress any and
18 everything from the moment that officer was told he had a
19 warrant, and the purpose of his detention stop, from
20 whatever his job description was to holding Mr. Lynch for
21 some request of West Columbia for a phantom warrant that
22 doesn't exist.

23 THE COURT: Well, something was written. It's
24 uncontradicted that Miranda was given and a warrant was
25 read.

1 MR. STITELY: By a different agency. We haven't
2 gotten to those witnesses.

3 He says he doesn't read Miranda because he
4 doesn't have that authority.

5 MR. MYERS: It was done in his presence.

6 THE COURT: No, he didn't say he didn't have
7 authority, he said that's not what he does.

8 MR. STITELY: Okay. In his statement -- I
9 apologize. In his statement, he says that they don't have
10 authority, so --

11 THE COURT: All right. Now, Solicitor Myers is
12 asking you to present or represent what law or case law
13 that -- the unlawful arrest is occurring, I guess. I'm
14 not -- I'm not exactly sure what -- I don't want to put
15 words in your mouth. It's not my case to try.

16 MR. MYERS: You're right. You're right. And
17 you don't need a warrant to arrest somebody on a felony.

18 MR. STITELY: That you see.

19 MR. MYERS: No, no. You don't have to see, not
20 for a felony. He's wrong about that, too. That's a
21 misdemeanor.

22 MR. STITELY: Wait. The border -- that's a
23 separate issue. This guy doesn't have the authority to
24 arrest someone for something outside his jurisdiction.
25 But that's not the question, either.

1 THE COURT: Slow down a little.

2 MR. STITELY: I apologize.

3 THE COURT: She's doing a wonderful job, but --

4 MR. STITELY: Yes, sir.

5 THE COURT: -- talk slowly.

6 MR. STITELY: All Fourth Amendment law says, any
7 seizure of an individual -- and the Fourth Amendment has
8 been in existence as long as we've had the law -- it's
9 unlawful to seize someone without a warrant, without some
10 showing. It becomes the State's burden to make that
11 showing.

12 Specifically here, I don't have a problem with
13 the Border Patrol agent checking into Mr. Lynch. There's
14 an NCIC for a missing person. He checks his bags. If he
15 checked them at that point, that's okay, too.

16 The reason he holds him is, first, he gets a
17 statement about a double homicide, which we intend to
18 impeach, unless that's out of the blue, that's never
19 mentioned at that point in either of the detective's notes
20 anywhere near this date and time, so we can impeach that
21 part of it.

22 And secondarily, his job as a Border Patrol
23 agent and just checking people coming back and forth is
24 set aside when he gets a call, representation, fax,
25 whatever it was, that there is a warrant at 3:10 in the

1 morning for a hold. He said at that point, "We're holding
2 because of this warrant." There was no warrant at this
3 time. It's a pretension.

4 THE COURT: All right. But you've not proved
5 that.

6 MR. STITELY: Right. And that's why I'd like to
7 call the next two witnesses.

8 THE COURT: All right.

9 MR. STITELY: I could proffer the notes.

10 THE COURT: The border exception's getting --
11 everything testified to thus far is within their
12 authority, and you can -- and thus far, I've seen nothing
13 wrong.

14 I'll let you call --

15 MR. STITELY: Your Honor, we also have that
16 problem of transference of anything the Border Patrol
17 agent seized to West Columbia because that's -- we're
18 going to say that beyond that, it's unlawful. And if
19 they're sending documents in an unlawful detention -- an
20 unlawful arrest for a warrant that doesn't exist, any
21 documents they sent to West Columbia is fruit of the
22 poisonous tree, and anything that stems from those
23 documents.

24 THE COURT: I thought that the search and
25 seizure at the border doesn't apply, so everything that

1 the Border Patrol guy, he got lawfully under the border
2 exception, didn't he?

3 MR. STITELY: For his purposes as a border
4 agent. But when he -- when he transfers it, now we've got
5 the invasion of privacy question with a Fourth Amendment
6 seizure question.

7 If anything he had in his bags would have caused
8 him to be detained by the Border Patrol, I'm okay with
9 that. That's why I went specifically. There was no
10 contraband, there was nothing illegal, there was nothing
11 in those bags that would have stopped you in your duties
12 as a Border Patrol agent from letting Mr. Lynch, who had
13 his birth certificate and everything -- he is a U.S.
14 citizen -- no warrants, no holds at NCIC, to continue
15 going.

16 THE COURT: And you keep going back to no holds,
17 NCIC. He's a missing person, so that's a big red flag for
18 him, and that throws in the nontraditional, let's see what
19 you got, pass on through. That throws a whole new wrinkle
20 in it right there. He said so. He's a missing person,
21 red flag, then it becomes broader and deeper.

22 MR. STITELY: Yes, sir.

23 THE COURT: And he went broader and deeper. So
24 I find that reasonable.

25 MR. STITELY: And then he receives word that

1 there is a warrant, and that warrant doesn't exist that
2 night. That's our point. The arrest is unlawful.

3 THE COURT: All right.

4 MR. MYERS: During this time, Your Honor, I will
5 hand this to you, U.S. versus Ramsey, 431 U.S. 606, a 1977
6 United States Supreme Court case.

7 I'm also handing up U.S. versus Montoya de
8 Hernandez, 473 U.S. 531, a 1985 case.

9 THE COURT: Thank you, sir.

10 All right. So as I understand it, is it your
11 motion -- tell me your motion again. I don't want to try
12 to recategorize it because I might say it different and
13 you say, Oh, that's exactly it.

14 MR. STITELY: Yes, sir. It's very simply, when
15 Mr. Lynch has initial contact with the Border Patrol
16 agent, he's a U.S. citizen, he testified to that. At that
17 time, there is nothing in NCIC as far as a warrant, a
18 detainer that says hold him.

19 THE COURT: Okay.

20 MR. STITELY: We're clear on that.

21 At that time, he's within his rights, he says,
22 to check anyone for contraband, whatever he wants. I went
23 through the witness. Mr. Lynch had nothing like that on
24 him, nothing illegal, nothing independently that would
25 cause him pause in his duties as a Border Patrol agent.

1 He then contacts West Columbia because of the
2 missing person. At that point, he is told that Mr. Lynch
3 is a suspect in a double homicide -- which we intend to
4 impeach through additional witnesses -- and that there is
5 some warrant for him.

6 THE COURT: No, sir. I don't think that's all
7 one conversation, according to what he said.

8 MR. STITELY: And it hasn't been cleared up. I
9 mean, I asked what time it was, he said it was 3:10, he's
10 sure.

11 He takes the items he finds on Mr. Lynch, scans
12 them or whatever he does, faxes them to West Columbia to
13 Detective Bayne.

14 THE COURT: And you're contending that's a
15 violation of the Fourth Amendment?

16 MR. STITELY: That -- that -- we have a problem
17 right there.

18 In the olden days before we had fancy things
19 like fax machines, if he'd have packaged up everything
20 Kenny had on him, shipped it down to West Columbia, let
21 them rifle through it, we would obviously have a problem.
22 It happened a lot quicker in this case.

23 But there's no reason for him to be sharing
24 Mr. Lynch's effects with another law enforcement agency
25 during the course of his routine border inspection. He

1 said absent West Columbia telling him about this warrant,
2 they had no reason, they could have released him. That's
3 what he said. What would have happened if West Columbia
4 didn't say they had this warrant? Well, he would have
5 been released.

6 THE COURT: I know, but you keep characterizing
7 it that way. He was characterized as a missing person and
8 that opened up a broader and deeper inquiry on behalf of
9 the Border Patrol.

10 And if that hadn't happened, then I agree with
11 you. But the missing person triggered it, then later
12 on -- I'm going to let you call your witness. I
13 understand you want to suppress --

14 MR. STITELY: Everything that was transmitted
15 from the border and everything that happened after his
16 arrest.

17 THE COURT: You want to -- all right. Your
18 motion is to suppress the seizure of the documents by the
19 Border Patrol?

20 MR. STITELY: Their transference and West
21 Columbia's use of them to procure any additional
22 discovery.

23 THE COURT: All right. I think under the Border
24 Patrol exception, those documents can be lawfully
25 transmitted to West Columbia because they were seized

1 properly and lawfully under the Border Patrol's authority.
2 I think that's reasonable because he was doing his job.
3 Mr. Lynch was considered a missing person at that time,
4 procedure was call West Columbia -- I mean, I think they
5 get to West Columbia.

6 Now, the next step. I've ruled on that one.

7 MR. STITELY: Okay. My next one would be to
8 suppress the arrest, because at this time -- the agent
9 definitely said at 3:10 he was told there was a warrant,
10 Mr. Lynch's arrested.

11 Eventually, Your Honor, so you know what
12 happens, he gets transferred, gets sent to local law
13 enforcement, gets an attorney, they go through the whole
14 extradition process. Eventually, at some point, a warrant
15 does come.

16 We have another hearing about what information
17 was relayed to the judge to get that warrant, statements
18 made, you know, whether those are admissible. Because I'm
19 still back to the point when if they don't arrest him on
20 this warrant that we still contend didn't exist at 3:10 in
21 the morning, they don't -- they don't confine him, they
22 don't interrogate him, we don't get all that stuff.

23 THE COURT: All right. Now, considering the
24 issue of the existence and acquisition of the arrest
25 warrant, can we compartmentalize that issue, defense team

1 and the Solicitor's State team?

2 MR. STITELY: I need Detective Matt Edwards --

3 THE COURT: I mean, that's -- we're talking
4 about compartmentalizing these search and seizure and
5 arrest issues. Is that issue a contained issue?

6 MR. HUBBARD: Your Honor, I tell you what. I
7 could call -- if I call a witness, the officer that
8 actually served the warrant on the defendant in
9 Washington, he's right outside the door, that might clear
10 up some things.

11 MR. STITELY: It doesn't change the timing --

12 MR. HUBBARD: Well, we keep talking about time.

13 THE COURT: I understand, but still, we -- I'm
14 trying to quantify what your motion is. You want to
15 suppress the arrest warrant, either the existence and
16 the -- where it came from.

17 MR. HUBBARD: And he's talking about a phantom
18 warrant. This officer will say, "I had a warrant, I
19 served it from approximately this time to this time." So
20 that will answer a lot.

21 THE COURT: I mean, is that your motion, to
22 suppress the arrest warrant?

23 MR. STITELY: Well, yeah, that's a two-part
24 motion. I -- I want to suppress the arrest, but the
25 actual motion, we need to get the judge in here to talk

1 about the probable cause that was presented to him. I can
2 make a call on this --

3 THE COURT: Correct, we're dealing with the
4 arrest warrant?

5 MR. STITELY: Yes. There's two parts of that
6 motion.

7 THE COURT: I understand. But let's -- I want
8 to deal with the arrest warrant. And I don't care how
9 many parts there are, but --

10 MR. STITELY: Yes, sir.

11 THE COURT: -- but we're going to deal with it.
12 I don't want to deal with it again.

13 MR. STITELY: Yes, sir.

14 THE COURT: Let's get it done.

15 All right. Now, we're still in pretrial mode.

16 MR. STITELY: I want get to the actual
17 procurement of the warrant. The fact that a warrant was
18 transmitted to somebody in Washington later on isn't
19 necessarily relevant at this point because that comes
20 after whether or not the warrant existed at the time of
21 the arrest.

22 THE COURT: I can consider that. He can start
23 with when it was first heard by Mr. Lynch, and we can
24 piece all that together. I understand where you want to
25 go, but I want to hear it chronologically first.

1 MR. STITELY: One other issue we're going to
2 have to deal with, a motion to quash subpoena because the
3 judge I subpoenaed filed a motion to quash.

4 THE COURT: All right. I need a quick break.

5 MR. STITELY: Yes, sir.

6 THE COURT: My court reporter may need one, too,
7 so I need to step to the restroom.

8 So I'm going to be back out at -- I'm going to
9 try to be punctual.

10 Is eight minutes enough for you-all?

11 MR. MYERS: Yes, sir.

12 MR. STITELY: Yes, sir.

13 THE COURT: Eight minutes. We've got ten
14 minutes 'til.

15 (A break was taken.)

16 THE COURT: All right. Now, for purposes of the
17 record, we're still in what I'm calling motions mode,
18 pretrial mode.

19 MR. STITELY: Yes, sir.

20 THE COURT: This is not -- I mean, we don't have
21 to re-proffer everything we've done, but if you want to go
22 over it again, we can offer by proffer, republication in
23 trial mode, and that will be sufficient, I believe. All
24 right.

25 MR. STITELY: I probably need to call Detective

1 Edwards next to get to the basis for the arrest warrant.
2 I think we can put the officer up who served the warrant
3 later on that day. I've got to ask when the warrant was
4 obtained and how it was obtained in West Columbia.

5 MR. HUBBARD: I thought this might answer some
6 questions that he kept raising, and I thought that's what
7 we're going to do, put him up and see if he answers --

8 THE COURT: I thought we were going
9 chronologically as to what happened when, not --

10 MR. STITELY: Well, that would be Detective
11 Edwards, I assume, and the judge who got the warrant,
12 because this officer can't have a warrant until the
13 warrant's gotten.. So chronologically, it would be the
14 detective who secured the warrant and the judge who signed
15 the warrant.

16 MR. HUBBARD: I think we need to go backwards.
17 He had the warrant, Judge.

18 THE COURT: I wanted to go with this guy.
19 That's what I understood. I understand you're -- we're in
20 motions mode?

21 MR. STITELY: Yes, sir.

22 THE COURT: I think I can put it back together,
23 frontwards, backwards. That's what I'm supposed to do,
24 and I'm going to make every attempt to do it properly.

25 MR. HUBBARD: Yes, sir.

1 We call Courtney Polinder.

2 COURTNEY POLINDER, after being duly sworn,
3 testified as follows:

4 THE CLERK: Have a seat there.

5 Once you're seated, speak up loud and clear,
6 stating your full name, spelling your last on the record,
7 please.

8 THE WITNESS: It's Courtney Polinder,
9 C-O-U-R-T-N-E-Y. The last name is P-O-L-I-N-D-E-R.

10 DIRECT EXAMINATION

11 BY MR. HUBBARD:

12 Q Deputy Polinder, where do you work?

13 A I work for the Whatcom County Sheriff's office as a
14 patrol deputy.

15 Q Were you working there June of 2006?

16 A I was.

17 Q Do you recall at some point getting a call from the
18 border involving Mr. Lynch?

19 A I do.

20 Q And do you remember about what time you were
21 dispatched to go to the border?

22 A Our local dispatch center received a call for a
23 warrant transport from the Customs facility at about
24 3:30 a.m.

25 Q For a warrant transport?

1 A Or a warrant arrest, yes.

2 Q Okay. Were you told what type of warrant you would
3 be serving?

4 A It was an out-of-state fugitive warrant.

5 Q All right. And when you got to the border, do you
6 know about what time you got there?

7 A I'm not sure of the exact time. The call came in
8 from Customs at 3:30 a.m. I don't know exactly what time
9 I arrived, but it would have been at least 20 minutes to a
10 half an hour after that at the earliest.

11 Q Okay. And I want to show you something, and this is
12 a -- for the record, a true copy from our clerk's file.
13 Do you recognize what I am showing you?

14 A Yes. This is the warrant for Mr. Lynch's arrest.

15 Q On what charge?

16 A It's for grand larceny, \$5,000 or more.

17 Q Now, is this the warrant that you were given when
18 you -- not -- not this particular true copy, but were you
19 given a copy of this warrant at the border?

20 A I was.

21 Q When you arrived there, where -- who gave you the
22 copy?

23 A One of the Customs agents when I got into the office
24 handed me all the paperwork.

25 MR. HUBBARD: Your Honor, I'll perhaps make a

1 Court's exhibit of this true copy.

2 THE COURT: 24.

3 (WHEREUPON, The Court's Exhibit No. 24 was
4 marked for purposes of the record.)

5 BY MR. HUBBARD:

6 Q So Detective Polinder, Court's Exhibit 24, which is
7 this grand larceny warrant, you served at roughly what
8 time?

9 A It would have been somewhere after 3:30 a.m., roughly
10 I would speculate between 4 and 4:30 a.m. in the morning.

11 Q Okay. And where did you serve this warrant on
12 Mr. Lynch?

13 A It was at the Pacific Highway or truck crossing, U.S.
14 Customs in Blaine, Washington.

15 Q Okay. And when you served him with this warrant,
16 what did you do with Mr. Lynch?

17 A I placed him under arrest, advised him of his rights,
18 and transported him to the jail for booking.

19 Q And when you read him his rights or advised him of
20 his rights, what, if anything, did you use to do that?

21 A Department-issued Miranda card.

22 Q Do you keep that on you at all times?

23 A I do, in my pocket.

24 Q And you've got it with you now?

25 A I do.

1 Q Okay.

2 MR. HUBBARD: We won't get into a full-blown
3 Miranda hearing unless Your Honor wishes to.

4 THE COURT: Is that going to be an issue?

5 MR. STITELY: Okay. I guess we could probably
6 do it now, Judge. That would be all right.

7 THE COURT: Okay. Well, go on through it.

8 BY MR. HUBBARD:

9 Q All right. Would you please take out your card.

10 A (Witness complies.)

11 Q And will you please read those rights as you did to
12 Mr. Lynch.

13 A The card reads: "You have the right to remain
14 silent. Anything you say can be used against you in a
15 court of law.

16 "You have the right at this time to talk to a
17 lawyer and have him present with you while you're being
18 questioned. If you cannot afford to hire a lawyer, one
19 will be appointed to represent you before any questioning
20 if you wish.

21 "You can decide at any time to exercise these
22 rights and not answer any questions or make any
23 statements."

24 And there's two follow-up questions for a waiver
25 of those rights that reads, the first one is: "Do you

1 understand each of these rights as I -- as I have
2 explained them to you?" And the follow-up question is:
3 "Having these rights in mind, do you wish to talk to us
4 now?"

5 Q Okay. And when you read him his rights, did he
6 appear to understand those rights?

7 A He stated he understood, yes.

8 Q Okay. And did he appear rational or not under the
9 influence of any drugs or alcohol?

10 A Yeah. I mean, he was rational and carrying on a
11 normal conversation.

12 Q And did you interrogate him --

13 A No.

14 Q -- at that time? Okay.

15 So now, let me show you what I've got -- is this
16 photocopy a copy of the rights you just read?

17 A Yes.

18 MR. HUBBARD: Your Honor, I'd make a Court's
19 exhibit of this.

20 THE COURT: 25.

21 (WHEREUPON, The Court's Exhibit No. 25 was
22 marked for purposes of the record.)

23 BY MR. HUBBARD:

24 Q After advising Mr. Lynch of his rights and cuffing
25 him, did you take control of him to take him back to the

1 sheriff's department, to the jail?

2 A Yeah, I did. He was eventually placed in my car for
3 transport.

4 Q Okay. Did you take any other items that Mr. Lynch
5 had had in his possession earlier?

6 A Yes. The customs agents advised me that they had
7 some property that belonged to Mr. Lynch, so I retrieved
8 all that property and placed it in my car as well for
9 transport.

10 Q I want to show you what's been marked as State's ID
11 19 and State's ID 20. Do you recognize these two black
12 bags?

13 A Yes. Those are the black bags that the customs
14 agents turned over to me that they said belonged to
15 Mr. Lynch.

16 Q In fact, let me show you on State's ID 19, there is a
17 ticket attached to the bag. What does it say up at the
18 top? Who's it from?

19 A It's a Whatcom County Sheriff's Office evidence tag.
20 It's a tag that I created when I booked those items into
21 evidence.

22 Q State's ID 20, does it have a similar tag?

23 A Same tag, just a different item number.

24 Q Okay. Now, when transporting Mr. Lynch --

25 MR. HUBBARD: And, Your Honor, I don't know if

1 you want to go into all the statements or if you want to
2 just compartmentalize and let's talk about this arrest
3 warrant first. It's a whole other, I guess -- a whole
4 other kettle of fish on this.

5 MR. STITELY: I think with this particular
6 officer, why don't we just go ahead and knock out what
7 he's got right now, any statements that they intend to get
8 out of this officer.

9 MR. HUBBARD: Well, I'm doing an abbreviated
10 presentation, so that's why I'm -- I'm asking. I mean, I
11 can just stop right here, we've got --

12 THE COURT: And not knowing the statements,
13 we're -- we're dealing with the arrest --

14 MR. HUBBARD: Yeah.

15 THE COURT: -- warrant --

16 MR. STITELY: These are statements made after
17 arrest, so I'm still back to --

18 MR. HUBBARD: Well, let's see if his arrest is
19 valid and then --

20 THE COURT: Very well. Let's -- let's make that
21 determination and then we'll deal with the statements.

22 BY MR. HUBBARD:

23 Q And, Deputy Polinder, did you -- when you got back to
24 the Whatcom County Sheriff's Department, is your jail
25 located near or at the sheriff's department?

1 A Yeah. Our jail's actually several stories above our
2 office. It's actually the basement of our building is our
3 sheriff's office.

4 Q Okay. That's right. I remember that.

5 And he was placed in your jail at that time?

6 A Correct.

7 Q And these bags, as you've mentioned, were placed in
8 Whatcom County Sheriff's Department's evidence?

9 A Yes. Immediately after I spoke to Mr. Lynch, I
10 walked him downstairs and entered them into evidence
11 before the end of my shift.

12 Q And let me ask you. These weren't his property that
13 you had, like somebody who's in jail that comes in with
14 clothes on them, do you keep those separate from evidence?

15 A Right. If -- if it's just somebody's property and
16 their -- the intention is for them to get them after they
17 get out, we book those in for safekeeping. But this is
18 actual evidence, so it was logged in that way.

19 Q So these bags and all their contents were treated as
20 evidence?

21 A That as well as Mr. Lynch's clothing.

22 MR. HUBBARD: Beg the Court's indulgence.

23 (Pause.)

24 BY MR. HUBBARD:

25 Q And I kind of ran through the Miranda warnings.

1 You said you didn't interrogate him; is that
2 correct?

3 A Correct.

4 Q Did you make any threats or promises if he would talk
5 to you at any time?

6 A Not at all.

7 MR. HUBBARD: Okay. Beg the Court's indulgence.
8 (Pause.)

9 MR. HUBBARD: Deputy Polinder, please answer any
10 questions the defense has.

11 CROSS-EXAMINATION

12 BY MR. STITELY:

13 Q Deputy Polinder, how are you today?

14 A Doing well.

15 Q First time in South Carolina?

16 A It is.

17 Q Outstanding. Just a couple of very brief questions,
18 kind of going backwards in order.

19 Is your car equipped with any kind of
20 videotaping or audiotaping equipment?

21 A Neither.

22 Q And you wouldn't have had any of that on any
23 conversations you had with Mr. Lynch?

24 A No.

25 Q When you said you received a call at the -- on the

1 18th, did you have a warrant in hand when you received the
2 request to come up to Border Patrol?

3 A When I received the call, no, because it just came
4 from our dispatch center.

5 Q Do you know what time this alleged warrant came into
6 the Border Patrol agents?

7 A I do not. Just that at 3:30 a.m. when I got
8 dispatched to it, they said that it had been confirmed.

9 Q Okay. And the first time you laid hands on any
10 warrant would have been, you said, probably around 4-ish,
11 4 to 4:30 is when you first --

12 A When I got to the customs port, yes.

13 Q Okay. That's how long it took you to get from the
14 county office, I guess, or wherever you were on the road?

15 A I was somewhere in the county, and it takes some time
16 to get there.

17 Q Okay. And they physically handed you a warrant?

18 A I saw a copy of the warrant.

19 Q And you served that on Mr. Lynch?

20 A Correct.

21 Q To your knowledge, had he been shown that warrant
22 before?

23 A I don't know.

24 Q Do you know anything about the details and what went
25 into procuring that warrant or you're just doing your job?

1 A Nope.

2 Q In your notes, several times you refer to it as no
3 bond. Why is that in your notes so many times? You kept
4 saying it's a no-bond warrant.

5 A Because on the -- the copy that I had seen, it was
6 listed as a no bond for the warrant.

7 Q I guess procedurally that's just different than how
8 we do it in South Carolina.

9 Was it your understanding that he just was not
10 to have a bond on this warrant or different day, different
11 people?

12 A I can't say.

13 Q I just asked because it was in your notes, so I just
14 wondered what it meant.

15 A I just copy the paperwork.

16 MR. STITELY: One second please, Your Honor.

17 (Pause.)

18 BY MR. STITELY:

19 Q You just said the word "confirmed," the warrant was
20 confirmed. Do you know how that was done?

21 A I don't. My dispatch center just advised me that it
22 had been confirmed.

23 Q When you --

24 A We --

25 Q Go ahead.

1 A We won't go -- due to procedures for the sheriff's
2 office, we won't respond to the border without it being
3 confirmed because that's what has to happen for us to
4 transport.

5 Q But you don't know how that happens?

6 A I do not.

7 Q Do you know the name of the person at Whatcom County
8 who would have confirmed the warrant? Any idea?

9 A I do not. I would assume it's through our dispatch
10 center.

11 Q Okay. Do you know how they -- do they call somebody
12 or do they -- you have no idea?

13 A I'm not sure.

14 MR. STITELY: Okay. One more second. I
15 apologize.

16 (Pause.)

17 MR. STITELY: I have no other questions for the
18 deputy at this time.

19 Thank you, sir.

20 MR. HUBBARD: No other questions.

21 THE COURT: Thank you, Deputy.

22 THE WITNESS: Thank you.

23 MR. STITELY: We'd call Lieutenant Matt Edwards.

24 THE COURT: All right. Detective Edwards.

25 MATT EDWARDS, after being duly sworn, testified

1 as follows:

2 THE CLERK: Have a seat, please.

3 Once you're seated, speak up loud and clear,
4 stating your name, spelling your last.

5 THE WITNESS: My name is Matt Edwards,
6 E-D-W-A-R-D-S.

7 DIRECT EXAMINATION

8 BY MR. STITELY:

9 Q Good morning, Detective Edwards.

10 A Good morning.

11 Q We have to ask you a couple of specific questions if
12 you don't mind.

13 A Okay.

14 Q In Mr. Lynch's case, were you the agent who actually
15 went and procured the arrest warrant for the grand larceny
16 charge?

17 A Yes, I was.

18 Q I'm going to hand you what's been previously marked
19 as Court's Exhibit 24.

20 A Okay.

21 Q And this was the warrant?

22 A Yes, it was.

23 Q Okay. And pretty much, you got the -- you weren't
24 the lead agent or lead officer on this case, correct?

25 A No, I was not.

1 Q Okay. You're supervisor over detectives now. Is
2 that the position you held in 2006?

3 A I was lieutenant over investigations back then, yes,
4 sir.

5 Q Okay. And Investigator Bayne was the --

6 A Case agent.

7 Q The case agent?

8 A Yes, sir.

9 Q Going back to this 18th of 2006 (sic), your
10 involvement in this case at that point, was it relatively
11 limited?

12 A Yeah. I was just an assisting case agent at the
13 time, yes.

14 Q Okay. At that point, you hadn't done a ton of stuff
15 with it, it was mostly Ms. Bayne's investigation, correct?

16 A It was a collective effort between probably about 10
17 investigators --

18 Q Okay.

19 A -- but, yeah, she was the case agent.

20 Q All right. As far as the information that went into
21 that warrant, where did you receive the information that
22 you wrote when you typed up that warrant?

23 A Well, several sources.

24 Q Do you have a copy in front of you? I don't want to
25 put you at a disadvantage.

1 A Yeah, I've actually got a copy of it.

2 Q Okay.

3 A I can read the body of it and --

4 Q Sure. Why don't --

5 A Different pieces of that information came from
6 different sources, so I'll go one at a time if you need me
7 to.

8 Q Well, why don't we go ahead -- well, why don't we
9 read it. I think that's a great way to start.

10 A Okay.

11 Q Go ahead.

12 A You want to read it or do you want me to read it?

13 Q You may.

14 A Okay. "In that or on or about June 14th, 2006, at
15 [REDACTED] in city of West Columbia, county and
16 state aforesaid, Portia Washington and Cassandra L. [REDACTED]
17 were reported missing to the West Columbia Police
18 Department. They had not been seen by anyone since
19 June 10th, 2006.

20 "On June 14th, 2006, Kenneth Andrew Lynch was
21 ticketed in El Paso, Texas, while driving along -- while
22 driving alone in a 2005 Ford Focus with the listed VIN
23 number that ends in 8072" -- do you want me to read that
24 whole thing?

25 Q You don't need to read it.

1 A "Valued at 12,000, which is registered to Portia
2 Washington.

3 "On June 18th, 2006, Kenneth Andrew Lynch was
4 stopped while trying to cross the U.S.A./Canadian border
5 on a bus.

6 "The whereabouts of the vehicle are unknown.
7 Investigators of the West Columbia Police Department
8 believe that Kenneth Andrew Lynch did take, steal and
9 carry away the vehicle, depriving the owner of its use and
10 value, all of which constitutes the crime of grand larceny
11 of more than \$5,000 in violation of South Carolina Code of
12 Laws of 1976, as amended."

13 Q Okay. And this was the -- the affidavit within the
14 body of the arrest warrant that you -- and I'm saying
15 "you" because your name is typed on top -- got for
16 Mr. Lynch, correct?

17 A Right.

18 Q And the date of the warrant was June 18, 2006,
19 correct?

20 A The date that it was typed and signed, yes, sir.

21 Q Okay. Now, specifically, was there any additional
22 affidavit, any other written documents or spoken things
23 that were included with this request when it was brought
24 to Judge Reinhart for his signature on the 18th of June,
25 2006?

1 A Spoken, yes; written, no.

2 Q Okay. What was spoken?

3 A Spoken, besides what's been listed on there, it was
4 reiterated that we knew the vehicle belonged to Portia,
5 and Portia alone, through DMV. We knew through
6 investigation and talking to his coworker -- his and her
7 coworkers, Portia's coworkers, talking to the family, that
8 Mr. Lynch would have not been allowed to take the vehicle
9 at any time. And that was a general understanding amongst
10 everybody we talked to. We knew that he was stopped in
11 Texas which, I believe, that's --

12 Q It is in there.

13 A -- specifically listed.

14 What I also told the judge about is that he --
15 what he told the judge he was doing, which was going to
16 pick his wife up in Arizona.

17 Number one, we knew that he didn't have a wife
18 at the time, so that was a lie that was being told to the
19 trooper that was out there.

20 Number two, we knew that he showed her -- I
21 guess, lastly, we knew that he show -- you know, showed up
22 in Washington alone, so he didn't --

23 Q Okay.

24 A -- pick up a wife or anyone.

25 Q Okay. Do you recall the time that you went out to --

1 to get this warrant?

2 A I can kind of set it up sequentially for you --

3 Q I --

4 A -- because we were out in the middle of the night.

5 But the approximate time that I met with the judge was
6 right around 5 a.m.

7 Q All right. Now, in your notes and -- and it's on our
8 discovery, page 192 at 12:23, let me show you something.

9 Do you recognize that?

10 A Yeah, that's my handwriting.

11 Q I mean, if you look down at the bottom, does it
12 refresh the time which you wrote that you met with
13 Judge Reinhart?

14 A Obviously that says 6:30.

15 Q Oh, 6:30, not 5 o'clock, though?

16 A Right.

17 MR. STITELY: Okay. Your Honor, we'd ask to
18 mark this as a Court's Exhibit.

19 MR. HUBBARD: No objection.

20 THE COURT: That's 26.

21 (WHEREUPON, The Court's Exhibit No. 26 was
22 marked for purposes of the record.)

23 BY MR. STITELY:

24 Q And the process, after you meet with the judge, I
25 guess, you would get it signed?

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1 A I'm sorry?

2 Q You would get it signed by the judge and then what
3 happens?

4 A Yeah, he got it signed, sort of on the side of the
5 road where we met, and he got it signed.

6 I called Investigator Bayne and then she did
7 what she needed to do to get it entered, and I'll let her,
8 I guess, testify to those actions.

9 Q Okay. When you -- when you get it signed, how long's
10 it take to enter into the computer, or whatever?

11 A When the warrant's in hand, it's valid, so I don't
12 enter it in the computer, that would have been something
13 our dispatch would have done. That's why I'll let
14 Investigator Bayne offer that.

15 Q Did you then bring this back to West Columbia Police
16 Department once you got it signed by Judge Reinhart?

17 A Yeah, yeah, I would have headed straight back there.

18 Q Okay. And then they would have faxed it or however
19 they send it on to whoever they send it onto?

20 A I -- I didn't do that, but, yeah, that's generally
21 the way it probably would have happened next.

22 Q Judge Reinhart lives all the way out in Chapin,
23 correct?

24 A Right.

25 Q Okay. And you met him out by his house out in

1 Chapin, right?

2 A I met him off of the Peak exit, yeah --

3 Q The Peak exit?

4 A -- which would have been about halfway -- about
5 halfway between there.

6 Q How far to Cayce from the Peak exit -- or West
7 Columbia from the Peak exit?

8 A I don't know offhand. I know that would take me --

9 Q Time-wise?

10 A Yeah, it would take --

11 Q Twenty minutes?

12 A Yeah, it would take about 20 minutes to get there,
13 give or take.

14 Q When you presented your probable cause to
15 Judge Reinhart, did you mention any conversations that had
16 been had with Ms. Washington's mother who said Kenny was
17 the one who drove the car every day to drop Angelica off
18 at her house?

19 A I had no conversations with Ms. Washington's mother.

20 Q Okay. Did you represent to Judge Reinhart that
21 you-all had been given that information when you got the
22 warrant, that he did drive the car every day to drop the
23 little girl off at her grandma's house?

24 A No. What I passed on to him is what had been openly
25 discussed --

1 Q Okay.

2 A -- by coworkers and family, that he would not have
3 been allowed to -- not allowed to do that.

4 Q Okay. Did you pass on to him information that they
5 lived together and their lease at both the previous
6 apartments may have indicated they were man and wife?

7 A No, I didn't.

8 Q Okay. Did you indicate to him that when the
9 detective or the road deputy in Texas stops him, he even
10 actually mentions her by name and says, "I'm going to pick
11 her up, Arizona border"?

12 A Yeah, that's what I said, he's going to pick up his
13 wife at the Arizona border.

14 Q But did you know at that point that in documents that
15 were provided to police that it had indicated they were
16 husband and wife on multiple written documents?

17 A I had seen no documents that indicated they were
18 husband and wife, no.

19 Q Would it be fair to say that information was not
20 given to Judge Reinhart when he was considering probable
21 cause in this warrant?

22 A What information, that they were husband and wife?

23 Q That they had at least been held out on written
24 documents, or leasing agreements and that, as husband and
25 wife?

1 A Ask me the question again. I'm not understanding
2 what you're --

3 Q When you asked Judge Reinhart -- well, I guess we
4 have to kind of take it in context.

5 You wanted to get a warrant for grand larceny?

6 A That's right.

7 Q Was that the lead theory of West Columbia at that
8 time as to what happened in this case was a grand larceny?

9 A Obviously, that was a continuing investigation on the
10 missing persons case.

11 Q Okay. I mean, you got a warrant for grand larceny.
12 Was that the main running theory between
13 Investigator Bayne and her team and you as to what was
14 going on in this case, a grand larceny?

15 A Absolutely not.

16 Q Okay. Is there any reason you didn't present a
17 warrant to Judge Reinhart for murder?

18 A At the time, the -- the -- what had been decided by
19 our command staff was that we would do the grand larceny
20 charge.

21 Q Okay. Why not the murder? I mean, you're -- you're
22 the -- the supervisor over detectives?

23 A Because that was --

24 MR. GRAHAM: Excuse me, Your Honor. That's way
25 beyond what the purpose of this hearing's for. We're

1 talking about probable cause, I guess, for a grand larceny
2 warrant.

3 MR. STITELY: Your Honor, the Border Patrol
4 agent says that they were told that he was their suspect
5 in a double homicide. I just want to know why they
6 didn't --

7 THE COURT: I mean, I think he's answered your
8 question.

9 MR. STITELY: Okay.

10 THE COURT: I agree, sustain the objection, but
11 notwithstanding -- I mean, there's -- you're making
12 representations there was numerous documents that --
13 leasing documents, I've heard of one. And so you're
14 characterizing things ways --

15 MR. STITELY: Yes, sir.

16 THE COURT: And they're -- you-all are both
17 painting pictures with brushes and painting in opposite
18 directions, and I'm taking note of that, but --

19 MR. STITELY: Yes, sir, Your Honor. We're going
20 to eventually go to why -- part of presenting probable
21 cause to get a warrant is what you know, and there's
22 actually some good case law that says it's not just what
23 you say but omissions present at the time the
24 investigators had knowledge of when seeking a warrant can
25 make a warrant defective.

1 THE COURT: I understand that.

2 MR. STITELY: Okay.

3 THE COURT: But I don't think a lease agreement
4 in an apartment complex --

5 MR. STITELY: Yes, sir.

6 THE COURT: -- husband and wife. And there's
7 been no testimony from the family at all that Mr. Lynch
8 participated in any family doings, and so that's -- that
9 was consistently uncontroverted testimony, and I think
10 that's reasonable for the police in their investigation to
11 take that into account and not to portray something, a
12 happy couple, and that's what you're portraying.

13 MR. STITELY: All right. I'll ask a different
14 way.

15 THE COURT: Okay.

16 BY MR. STITELY:

17 Q Did you tell Judge Reinhart that they had lived
18 together in multiple residences over the past couple of
19 years?

20 A No, I didn't.

21 Q Okay. Did anyone portray to the judge that these two
22 individuals had an intimate relationship that lasted, by
23 all accounts and all the information you're told at the
24 time, for a significant period of time before
25 June 10th of 2006?

1 A I believe your question was: Did anyone portray to
2 the judge -- I can't comment on what anybody --

3 Q Just you.

4 A -- else portrayed to the judge. I didn't -- I didn't
5 portray to the judge anything but what I've told you --

6 Q Is there any --

7 A -- as presenting our probable cause.

8 Q Okay. In this warrant, it just indicates that he
9 took a car that was owned by someone else.

10 Did you tell the judge that this was his live-in
11 girlfriend who he had been living with for two years?

12 A No, I didn't.

13 Q Did you tell the judge that this was the only car
14 owned, possessed or driven in that household?

15 A No, I did not tell the judge that that was the only
16 car. And we didn't believe that to be the only car. He
17 had several cars registered to him.

18 Q But it's definitely in your notes, Court's Exhibit --

19 MR. STITELY: And I'll pass them up, Your Honor.

20 I apologize. I don't think you had a chance to see them.

21 BY MR. STITELY:

22 Q -- but you didn't go out and see the judge until
23 6:30 that morning, correct?

24 A That -- that is what it says, yes.

25 Q Pretty good about keeping notes as to what time you

1 do things?

2 A I'll be glad to explain the discrepancy there. But,
3 yeah, I -- I try to keep good notes, but I don't -- you
4 know, I'm sure that what happened there was that I went
5 and tried after the fact of recounting for posterity.

6 MR. STITELY: Your Honor, one second.

7 (Pause.)

8 MR. STITELY: I have no further questions for
9 this witness.

10 Thank you very much. That's all.

11 THE WITNESS: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. GRAHAM:

14 Q Lieutenant Edwards --

15 THE COURT: May I see the Court's Exhibit 25?

16 No, I want the arrest warrant.

17 All right. Go ahead, Mr. Graham.

18 MR. GRAHAM: Thank you, Your Honor.

19 BY MR. GRAHAM:

20 Q Lieutenant Edwards, whether it was 5 o'clock or
21 6:30 a.m. Eastern time when you got the warrant, the
22 warrant was obtained between 5 and 6:30, correct?

23 A Yes, sir.

24 Q And you would agree with me that there is a
25 three-hour time zone difference between East Coast time

1 and Pacific time; is that correct?

2 A Yes, sir.

3 Q So 5 o'clock on the East Coast is 2 o'clock Pacific
4 time up the border in Washington, correct?

5 A Right.

6 Q 6:30 a.m. on the East Coast is 3:30 a.m. at the
7 border in Washington where Mr. Lynch was; isn't that
8 correct?

9 A Right.

10 MR. GRAHAM: Thank you.

11 I have no further questions, Judge.

12 THE COURT: You may step down.

13 THE WITNESS: Thank you, sir.

14 MR. STITELY: At this time, we have a little --
15 we ran into a quandary. We need Judge Reinhart to talk
16 about his recollection as to what went into what he was
17 told.

18 THE COURT: He's -- he's the judge who's had
19 some physical health problems?

20 MR. STITELY: He had knee surgery, Your Honor.
21 He had knee surgery last week.

22 And, I mean, I spoke to him at length on three
23 occasions before this and let him know what was going on.
24 They filed -- we subpoenaed him. He has filed through the
25 county's attorney a request to quash our subpoena. Their

1 office is across the street.

2 How do you want to take it up? I can make a
3 proffer as to what the judge told me. I think the
4 Solicitor's office is going to disagree with that, though.

5 MR. HUBBARD: That's correct, Your Honor. It's
6 their motion. I don't think they get to -- to provide
7 testimony for it. So -- but the attorney, Jeff Anderson,
8 is across the street. And I know the judge, from what I
9 understand, is going to be out for six weeks.

10 THE COURT: He had knee surgery?

11 MR. STITELY: Yes, sir, he had knee surgery.

12 He had told me two weeks. They -- they said
13 six. But, I mean, it was just last week. I mean, it just
14 happened.

15 THE COURT: Either way, we're in those first two
16 weeks of the six or the two?

17 MR. STITELY: Today would have been, like, eight
18 days out from knee surgery, Judge.

19 MR. HUBBARD: In addition, Your Honor, we'd
20 stand on the warrant alone. It's facially valid. Look at
21 the four corners of that warrant, it is a valid warrant.
22 Magistrates across the state have issued valid warrants
23 for far less than that.

24 They also have the officer who said he
25 supplemented it. I mean, dear Lord, I wish all of them

1 were supplemented like that.

2 But it is facially valid, and I think that
3 warrant stands.

4 MR. STITELY: And, Your Honor, here's my
5 specific exception to that. And in speaking to Judge
6 Reinhart, we called him. When this warrant was presented
7 to him, he was not told about their status as live-in
8 boyfriend and girlfriend.

9 THE COURT: No, that's -- he said that.

10 MR. STITELY: Your Honor, and he --

11 THE COURT: He said I did not say exactly what
12 you just repeated it. They did not characterize their
13 relationship as live-in.

14 MR. STITELY: Correct. He did not receive the
15 testimony that Mr. Lynch even said he was going to meet up
16 with Ms. Washington in Arizona, that information was
17 omitted.

18 THE COURT: No. I think they said he was going
19 to meet and maybe that was false. Didn't he say that?

20 MR. HUBBARD: He says -- that's exactly what he
21 said. He knew --

22 THE COURT: On direct?

23 MR. HUBBARD: Yes, sir.

24 MR. STITELY: Your Honor, once we hear the
25 trooper's audio, it says he's going to meet

1 Ms. Washington. He says "wife."

2 THE COURT: Untrue. He said, "We knew that was
3 false," because his wife wasn't in Arizona because of
4 conversation -- I don't know why he knew -- I have an
5 idea. He said the police believed that to be a false
6 statement. "So, Judge, I need this warrant because he
7 gave a false statement to a trooper in Texas." That's
8 what I believe he said in this testimony. We can get it
9 back up, but that was the -- the context of it.

10 MR. STITELY: And you haven't heard the
11 testimony yet with the trooper. He said Ms. Washington's
12 the person who he's going to meet.

13 MR. HUBBARD: Your Honor, even though that
14 hasn't been in, it doesn't matter. It doesn't matter.
15 They're saying it's a false statement. She's not in
16 Arizona.

17 THE COURT: But that's --

18 MR. HUBBARD: She's not his wife.

19 THE COURT: That's where I'm -- his presentation
20 to Judge Reinhart was their belief that Mr. Lynch gave
21 an -- a false statement about picking up a wife.

22 MR. STITELY: Who was the owner of the car, is
23 the position that we take.

24 They never told the judge that the person he
25 said he's going to pick up is Ms. Washington, the owner of

1 the car.

2 THE COURT: Well, that's different --

3 MR. STITELY: They deliberately --

4 THE COURT: -- you've changed it. You changed
5 it.

6 MR. STITELY: That's it. He said, "I'm going to
7 get Ms. Washington." He says, "My wife." He refers to
8 her as wife. They say she's not a wife because they were
9 never legally married. That's how Mr. Lynch refers to her
10 when he's talking to the trooper.

11 So, technically, they were not married by a
12 marriage certificate, but they'd been live-in for the past
13 two years.

14 He says that. He says it's Ms. Washington's car
15 when he's talking to the trooper. "I'm going to get her
16 at the Arizona border," is what he says to the trooper.

17 They present to Judge Reinhart a story of some
18 guy taking a car owned by somebody and being all alone in
19 that car in Texas. They don't tell the judge that this is
20 the -- this is a couple who's been living together for
21 years.

22 At this point, they also -- we didn't really get
23 into it, we can call -- April Bayne will be the next
24 one -- they had multiple people who said to them theories
25 about why they'd be leaving. You know, that's for later

1 on.

2 The whole part is, when they present this to
3 Judge Reinhart, they present it, we got a guy who's in a
4 different state driving a car that belongs to someone else
5 but no reason to. That's not the situation in its
6 entirety. State v. Missouri talks about the actual
7 omissions.

8 In this case, as a judge, had Judge Reinhart
9 been told this is a couple who have been together for four
10 years -- this is all of what he says to the trooper --
11 for, excuse me, two years --

12 THE COURT: All right. I'm not --

13 MR. STITELY: -- excuse me, two years. I'm
14 sorry.

15 THE COURT: I'm not concerned about the
16 truthfulness of what was said to the trooper. West
17 Columbia Police thought it was incorrect.

18 MR. STITELY: My biggest problem is the omission
19 of the fact that they were live-in boyfriend and
20 girlfriend for two years, and this was the household
21 vehicle, and they had been told by her mother that he was
22 the one who dropped the little girl off. They knew he
23 drove that car.

24 THE COURT: I haven't heard that testimony.

25 MR. STITELY: She -- she testified to it.

1 MR. HUBBARD: And, Judge, he had an
2 opportunity --

3 THE COURT: I didn't hear that.

4 MR. STITELY: Her mother testified to it
5 yesterday.

6 MR. HUBBARD: He had an opportunity to get into
7 that. Mr. Edwards said the only thing he got from the
8 family was, he didn't have permission to drive it. The
9 warrant says the vehicle is registered to Portia
10 Washington. It doesn't say Kenneth Lynch and Portia
11 Washington.

12 MR. STITELY: The omission, he said --

13 MR. HUBBARD: Hang on just a minute.

14 He kept making a point that, you know,
15 somebody's vehicle. No, it wasn't somebody's vehicle; it
16 was the victim's vehicle. They made that very clear in
17 this warrant. This is a facially valid warrant.

18 Now, my next question for the defense is, do
19 they have any other witnesses? Because he keeps talking
20 facts, but I'm not hearing them from the stand.

21 THE COURT: I -- I didn't -- I'm not certain.
22 You're going to have to tell me which witness said that
23 Mr. Lynch dropped the child off every day. I didn't hear
24 that.

25 MR. STITELY: Sallie Jones says that he would

1 drop her off after school at her house. It was said
2 yesterday when Ms. Jones was on the stand.

3 THE COURT: I'm -- I am --

4 MR. STITELY: Mr. McGuire asked --

5 THE COURT: I'm a much better listener than I am
6 a reader, and I listened really, really intensely, and I'm
7 not --

8 MR. STITELY: We can call that witness back up.

9 THE COURT: I'm going to pull Missouri and
10 review on that one. You've got to show it to me.

11 MR. HUBBARD: And, Judge, I'm not sure what it
12 matters. I mean, first of all, there's nothing in the
13 record that I know of that -- that anyone was saying that
14 the defendant Kenneth Lynch was the babysitter or that the
15 child was ever being dropped off in his custody or that he
16 was the one that would take the child to daycare or
17 anything else. I don't remember any of that. Because
18 it's not on the record, but what does it matter? That
19 warrant is facially valid and -- it's valid, Judge. This
20 is a motion to suppress that warrant saying it's invalid.
21 It's valid.

22 MR. STITELY: First, Your Honor, we can ask her.
23 Ms. -- Ms. Jones said it in cross-examination.
24 Mr. McGuire asked her, "Isn't it true that Kenny was the
25 one who dropped her off after school, driving the car,"

1 and she says, "Yes." We can pull it from yesterday -- it
2 was yesterday morning.

3 And then my problem is the sin of the omission.
4 Judge Reinhart is in the dark about the relationship
5 between the two individuals. It's portrayed to him as
6 someone he doesn't know's vehicle he just took and
7 randomly shows up with it in Texas. Had the judge been
8 told -- sorry.

9 (A discussion was held off the record.)

10 THE COURT: Ma'am?

11 MR. STITELY: She says she can't look while we
12 talk.

13 THE COURT: Well, here's what we're going to do.
14 I mean, I'm going to take a break and let her get a little
15 rest and something to eat before I ask her to dig
16 something up for me. I'm not going to do that to her. I
17 mean, it's 12:30, anyway.

18 I'll tell you what. I going to go eat lunch.
19 Let's take a break until 2.

20 Will that give you enough time to eat and then
21 go find that testimony? Because my recollection was,
22 "Were you aware that they went to the library, were you
23 aware that they got library books, were you aware that" --
24 you know, that kind of thing. And so if it's the line of
25 questioning I'm thinking about, the answer was, she was

1 unaware of those things, and that doesn't make them true;
2 she wasn't aware of them.

3 MR. STITELY: Your Honor, I believe the
4 testimony will show she does say that he dropped her off.
5 And we'll pull the exact wording.

6 MR. HUBBARD: But, Judge, the answer we got from
7 the officer, too, is that he's unaware of all that. The
8 only information he had -- hang on -- he's acting
9 reasonably and in good faith. They're trying to say he
10 misled the judge. They haven't established that with the
11 witness they called. I think they're done.

12 THE COURT: All right. I'm -- let's take a
13 break until 2 o'clock.

14 (A lunch break was taken.)

15 THE COURT: Gentlemen, I'm informed that
16 Ms. Carol worked through lunch and got that transcript put
17 together. Have you-all seen it?

18 MR. STITELY: Yes, sir, Your Honor.. She was
19 nice enough to email it to us.

20 THE COURT: Good. She worked through lunch on
21 that. So I'm a little accommodating to her because she
22 has a difficult job and I want to make certain she's not
23 worn down by this trial anymore than necessary.

24 I haven't seen the transcript yet, but what
25 does -- I have seen it now. I take that back.

1 That's the substance of what I remember the
2 testimony being. I didn't understand -- I mean, he picked
3 her up from school every day and dropped her off every
4 afternoon, that's what I thought the representation was.

5 MR. STITELY: It was just, Your Honor, that he
6 drove her in the car, Exhibit No. 4, everyone's identified
7 as the car we keep talking about, that Mr. Lynch drove it
8 with Angelica and family members were aware of that. That
9 was kind of our point.

10 If you want, Your Honor, over lunch I thought of
11 a very good way to make my motions more succinct so maybe
12 we could go there and then we can argue about it.

13 THE COURT: Okay. Now, do we need to deal with
14 Judge Reinhart's subpoena and him not being present?

15 MR. STITELY: Let me just -- if I could phrase
16 my argument, and if you think it's not relevant to your
17 decision, then maybe we don't need to deal with it.

18 THE COURT: Okay. Very well. Go ahead.

19 MR. STITELY: Specifically to that, and acting
20 in the mind of a judge, let's take the presentation of
21 what you do when you get an arrest warrant. Just like if
22 an officer was to come to you and ask, Judge Griffith, I
23 need an arrest warrant. You have Exhibit No. 24 in front
24 of you. This is the face of the document.

25 I'm not going to disagree that the face of that

1 document as presented in a vacuum completely on its own
2 doesn't give me probable cause or you, as the judge,
3 probable cause.

4 Here's my problem. The law is kind of clear --
5 it's very clear in State v Missouri -- and I can pass a
6 copy up -- that an omission is kind of -- well, it is the
7 same thing, Your Honor, as State v Missouri. It's 337
8 S.C. 548, a 1999 case. When you don't present things you
9 know, it's akin to being dishonest.

10 Now, Judge, you have that warrant in front of
11 you on its four corners. In the alternative, let's
12 proffer what West Columbia really knew and then see if
13 there's a difference, and this is where the question of
14 whether we need Judge Reinhart or not.

15 We can take it in the setting with you as the
16 judge, do you still agree with probable cause if we just
17 change the way the warrant should have read if the judge
18 was given the complete story.

19 Your Honor, he's driving a car belonging to his
20 live-in girlfriend of two years. When he tells the
21 trooper they're married, we believe that to be false
22 because they weren't really married. However, he did tell
23 the trooper that he was meeting her on the Arizona border,
24 her being his live-in girlfriend, the owner of the car.

25 It's a big difference from presenting, Judge,

1 Mr. Lynch is driving Ms. Washington's car in Texas all by
2 himself lying to a trooper. That's not entirely true.

3 We know at this time that they're live-in
4 boyfriend and girlfriend for a matter of years. We know
5 at this point they've spoken to her mother and they've
6 spoken to employees at Bob Bennett Ford -- we haven't
7 gotten to them, but they tell the police that he used to
8 drive the car to work and then she would take it and go,
9 they've already had those conversations. We haven't
10 gotten to that testimony yet. That will come up, I guess,
11 during the trial when they get back to West Columbia.

12 You have conversations with her mother, being
13 Portia's mother, that Mr. Lynch would occasionally take
14 Angelica to her house driving the car that's Exhibit No.
15 4.

16 The big holdup here is when they present it to
17 the judge, they present it like a random person he doesn't
18 know. There's no presentation to the judge.

19 If I was to say to you that I was driving
20 someone else's car, my girlfriend's car, without telling
21 you it's my girlfriend, it sounds a lot fishier than
22 saying, Well, Judge, it kind of was his girlfriend's car
23 and he kind of told the trooper he was meeting with his
24 girlfriend. Big difference.

25 So our argument is the omission of clearing

1 important details made the presentation of that warrant
2 improper. The judge would not have had the same probable
3 cause -- and I guess we ask that to you as a judge, if you
4 are presented a case in a way that says, "He was driving
5 this car by himself; he did tell the trooper he was going
6 to meet her two hours down the road at the Arizona border,
7 and she was his live-in girlfriend for two years" and they
8 were missing persons together, at this point they only
9 knew they were missing together, they had no proof of any
10 wrongdoing at this point, it's a different situation and
11 we don't believe there would have been probable cause in
12 that scenario.

13 By doing it, they manifested this warrant
14 through half-truths to secure an arrest when the Border
15 Patrol would have had to release him.

16 The part one is, of course, they didn't have the
17 warrant -- we've already talked about that -- at the time
18 Border Patrol seized them. And I know you've ruled on
19 that and I'll clarify that later on the record just to
20 make sure I don't sound like an idiot when they -- if they
21 read it again. And the second part is exactly that. As
22 I've presented to you, you now have more details, which
23 the officers clearly had at the time that they omitted in
24 an attempt to get Judge Reinhart to sign this warrant to,
25 as we would argue, unlawfully detain and unlawfully arrest

1 and seize Mr. Lynch in Washington state.

2 So if we need to call Judge Reinhart to confirm
3 that, but I think Detective Edwards said that he didn't
4 mention that they were together, didn't mention they lived
5 together, didn't mention they talked to family members,
6 didn't mention they worked together, none of that was
7 mentioned. The only thing that was mentioned is a random
8 person's car shows up with Mr. Lynch. That's
9 inconsistent. That is a glaring omission that would have
10 been incredibly relevant in making a determination on
11 probable cause. That's that issue.

12 And I could tell you, I went and confirmed with
13 him that -- and he said the same thing Lieutenant Edwards
14 said, "They didn't tell me all that; I found out all that
15 stuff later on." He pretty much said exactly what
16 Lieutenant Edwards said. This is what he told me.

17 THE COURT: Lieutenant Edwards didn't represent
18 in the court that he told the judge, I did not. He was
19 fairly firm with what he said in here --

20 MR. STITELY: And that's --

21 THE COURT: -- and he said a few extra things,
22 and then he said, "No, I did not say" certain things you
23 asked him about. He was not hesitant in saying what he
24 told him and what he didn't tell him. He was fairly
25 clear.

1 MR. STITELY: And Judge Reinhart would confirm
2 that. So that's -- I don't know that we really need him,
3 that's still our position. He was not aware of that
4 information at the time. I think it taints the probable
5 cause in that warrant, the omission being the sin.

6 THE COURT: All right. Who's arguing over here?
7 Solicitor?

8 MR. MYERS: Your Honor, probable cause has been
9 talked about so many times by the South Carolina Supreme
10 Court, by the United States Supreme Court, and -- it's a
11 technical term. The definitions have been given many
12 times.

13 Probable cause deals with probabilities, not
14 certainties. And probable cause before a magistrate is
15 simply that information that will give a magistrate enough
16 information to make a commonsense determination that
17 what's stated in a warrant is probable.

18 These courts have also said if a warrant is
19 taken before a magistrate and the magistrate issues a
20 warrant and finds probable cause, that this court and
21 other courts must give great deference to that
22 magistrate's decision.

23 This is probably one of clearest probable cause
24 arrest warrants that you can find. It's certainly
25 stronger than all the probable cause in the search warrant

1 cases.

2 We submit to you that the probable cause in this
3 thing by the four corners of the warrant is more than
4 sufficient, is more than adequate, the magistrate had more
5 than enough information to determine that probable cause
6 existed, and he so found that probable cause was present,
7 and we submit to you that that's it.

8 Probably Kenneth Lynch stole this car. Well, he
9 did. Probably he was lying about meeting somebody in
10 Arizona. He was. When he was in Canada, he'd already
11 ditched the car. Not only was all this probable, it was
12 certain, the whole thing.

13 And I don't know why we get into all the stuff
14 about when the warrant was issued and everything else. It
15 really makes no difference. Because in State versus Dean
16 at 317 S.E.2d 744, the officers detained a car at night,
17 held that car in detention while the officers could go
18 somewhere to find a magistrate to issue a probable cause
19 search warrant for the car.

20 Now, the Supreme Court said this: For the
21 officers to ignore the fact and let that car go on rather
22 than seizing it, as Mr. Lynch was seized, and then detain
23 it until a warrant was obtained, we hold that the officers
24 properly detained the person and the car until the warrant
25 was actually issued. To do so would have been a lack of

1 duty on their part.

2 So we submit to you that probable cause is more
3 than plentiful in this case. The officer had enough
4 information and not only did he put it in the warrant, but
5 he told further things and supplemented it orally to the
6 magistrate.

7 So we submit to you that this is a proper
8 warrant and it is valid.

9 MR. STITELY: Just -- just very briefly.

10 The four corners of the document, Judge, aren't
11 my problem. The problem is what the officers knew when
12 they made a representation to a judge that didn't make it
13 into the four corners of the document.

14 And just as in any situation, if an officer came
15 to you and said someone was driving the court reporter's
16 car, but they didn't mention that it was her live-in
17 boyfriend for two years who they were in an intimate
18 relationship with, worked together, a coworker said he
19 drove the car and a mother said he drove the car, it's
20 materially untrue with the intent of mischaracterizing
21 what they had.

22 And as far as the second part of Mr. Myers'
23 comment, my biggest holdup is the officer was told there
24 was a warrant when there wasn't. It wasn't, "Hold him
25 while we go get a warrant"; it was "We have a warrant," an

1 extraditable felony warrant, and at the time he seized
2 him, it wasn't true.

3 Had they told him, "Could you hold him while we
4 go see if we can take probable cause to a magistrate to
5 get a warrant," but that's not what happened. The officer
6 is very clear, "I was told they had a felony extradition
7 warrant on him," not "We're going to go get a warrant."
8 That -- I think that's an important distinction.

9 I can leave it at that and then to clarify the
10 documents and everything at the appropriate time, so I
11 want to make sure I've got that clear for the record.

12 MR. MYERS: I never seen a statute stretched out
13 so much in my life.

14 If a warrant didn't exist, how did the people on
15 the Canadian border serve a warrant on the defendant?
16 That boggles my mind.

17 And whether it happened here at 5 or 6 o'clock,
18 it's 2 or 3 on the west coast.

19 So it boggles my mind how officers can serve a
20 warrant that they say hadn't been issued yet, which
21 happened to be the same warrant here, Exhibit 24.

22 MR. STITELY: And that's why I entered the
23 officer's notes. He said he clearly put on his notes the
24 time he went to go see the judge was 6:30. At 3:10, I
25 asked him, "Are you 100 percent sure "-- even if we assume

1 three hours, I asked the customs officer three things, and
2 that's what my report says.

3 THE COURT: But you didn't show it to him.

4 MR. STITELY: I'm sorry?

5 THE COURT: You didn't show it to him. He asked
6 for it and you didn't show it to him.

7 MR. STITELY: I asked --

8 THE COURT: I noted that. Because he said
9 3:10 very specifically, and he said, "At least I think
10 that's what the report says," and he was never given that.
11 So, I mean, he was testifying from memory six years later.

12 MR. STITELY: We don't have a -- there's no
13 report.

14 THE COURT: Well, he mentioned one.

15 MR. STITELY: We never got it in discovery, so
16 maybe that's another issue for another day.

17 But we never got that report he's referencing,
18 so I unfortunately don't have something to put in front of
19 him.

20 THE COURT: Well, I mean, if it's 3:10 on the
21 west coast, three hours plus on the East Coast is 6:10.
22 This officer testified that -- I'm not exactly sure when I
23 went back and put these times in, it may have been -- he
24 was not nearly as specific with this as the customs agent
25 you're speaking of. It's a little different.

1 MR. STITELY: Yes, sir.

2 THE COURT: We're 20 minutes apart, at worst.

3 MR. STITELY: It -- it's still the
4 representation. It wasn't, "We're going to go get a
5 warrant," it's that "We absolutely have one."

6 And I still don't think that has anything to do
7 with the representation on this side that the officers
8 made to the judge.

9 And, I guess, we ask you that question. Judge,
10 if Warrant A was presented to you exactly like that,
11 without the details about the actual relationship between
12 the individuals and outside the secondary detail that he
13 says to the trooper, "I'm going to meet Ms. Washington,"
14 those were not told to him versus Warrant B where the
15 officer says, "Well, Judge, it's a live-in boyfriend and
16 girlfriend, we don't know where they are, he tells the
17 trooper he's going to meet her. He does say it's his
18 wife," we know that not to be true.

19 THE COURT: All right, now. I'm going to
20 summarize what I -- I don't disagree with what you said,
21 but what I see the police have in their investigation is
22 they're looking for three missing people, wonder where
23 they went, the car's gone, they're gone. They start
24 talking to coworkers and family members.

25 The family members are clear that there were

1 troubles in the relationship, and that -- whether those
2 are hearsay or not -- every -- there's several testimonies
3 that "we advised her to leave," so it wasn't a happy
4 relationship, it was troubled in the family members who
5 the police talked to eyes. Now, the extent of the trouble
6 may be unknown, but a troubled relationship.

7 Everybody, family members, consistently said
8 she'd never been very far from home. So the fact that she
9 was in Arizona to be picked up, the police deemed that to
10 be false, according to the investigators. We thought that
11 was bologna, he said that, truthfully, to the state
12 trooper in Texas. West Columbia, based upon their other
13 knowledge, believed that to be false.

14 MR. STITELY: They -- they didn't tell the judge
15 that part, though. They didn't tell the judge that he did
16 say he was going to see -- whether they believed it to be
17 false or not, I think it's an imperative piece of
18 information; we're talking about her car. I mean, even if
19 they didn't believe it.

20 THE COURT: Well, I mean, maybe that's even
21 worse, you know, we think he's a liar, too. I mean, they
22 could have said that.

23 MR. STITELY: They could have. But it's the
24 fact that they didn't even -- I guess even at that, that's
25 not my biggest concern.

1 THE COURT: Okay.

2 MR. STITELY: The warrant itself does not say
3 that they -- and --

4 THE COURT: All right. Now, here's -- here's
5 the troubling part for me -- this is what I've been
6 hearing factually from the witnesses -- that the police,
7 I'm confident, were told. Just in this vacuum of this
8 motions hearing is, it appears to me, based upon what the
9 witnesses are saying is that Ms. Washington concealed the
10 relationship to some extent from her family, from her
11 mother, and --

12 I mean, she had a relationship with Lynch. He
13 didn't go around with them on family things, she did. She
14 went to church without him. And the coworker also,
15 Ms. Hobgood, "I didn't know they were back together." I
16 mean, there was a little bit of concealing going on there,
17 so there was a change going on.

18 The police had to know that --

19 MR. STITELY: Sure.

20 THE COURT: -- from talking to family that,
21 Well, I knew she was seeing him and they were living
22 together, but I just -- it's like, don't ask, don't tell.
23 They -- they didn't really inquire of Ms. Washington a
24 whole lot about the relationship with Lynch. They weren't
25 real keen on that relationship is what I got from them.

1 MR. STITELY: And I -- I think that's actually
2 very important because it shows that maybe she wasn't
3 telling her family everything about her plans. We have
4 some -- we haven't had a chance to go to our case yet.

5 THE COURT: All right. I'm with you.

6 MR. STITELY: Yes, sir.

7 THE COURT: That may be true.

8 MR. STITELY: Yes, sir.

9 THE COURT: But from their side --

10 MR. STITELY: I can't --

11 THE COURT: -- that's what they believe to be
12 true. And so the police are told what they believe to be
13 true and it's what they told the magistrate.

14 MR. STITELY: At the end of the day it's acting
15 as a judge who would have been asked to sign that probable
16 cause warrant, is the omission of the fact, even if their
17 family didn't like it, that they had a relationship over
18 two years where they lived together in the same home, more
19 important than what on the face of that warrant appears
20 like a stranger/stolen car case. And that's exactly how
21 it was presented to the judge. Detective Edwards said he
22 never made mention of Ms. Washington and Mr. Lynch's
23 relationship.

24 THE COURT: He -- he says exactly that.

25 MR. STITELY: I -- I think that that fact is a

1 huge difference when you're presenting a stolen car case.

2 You see this all the time, you know, if they
3 wanted to charge it -- it may not be grand larceny at all,
4 it may be use of a vehicle without owner's consent because
5 there's a relationship there that -- that's the problem.

6 And the other thing, Judge, and we haven't
7 gotten into it, but the car is never reported stolen. No
8 one reports it missing. Her family says nothing. Their
9 neighbor said the car was gone. No family member called
10 in a tip saying the car was stolen.

11 I'm just playing devil's advocate. They never
12 called in a stolen vehicle. West Columbia is using
13 this -- and that's our whole point -- they used half
14 truths to convince the judge to come with a warrant
15 because they were afraid the border agents were going to
16 let him go, and they didn't want that to happen. And you
17 cannot use half truths to obtain a warrant for the
18 specific purpose of getting around the Fourth Amendment
19 and seizing somebody. And that -- that's at the end of
20 the day where we are.

21 And you get to decide as the judge, is that fact
22 a big omission, the fact that they were in a two-year
23 intimate relationship, living together at multiple
24 addresses --

25 THE COURT: Pardon me. I think it's the -- it's

1 the -- here's what didn't happen. And so I'm going to
2 say, I don't know. But if the police officer told the
3 whole truth, I think he would have been required to say,
4 "Judge Reinhart, these people were in a two-year
5 relationship that's been -- had trouble in it." I think
6 he'd have had to say that, not an intimate relationship.
7 You're characterizing as if it were --

8 MR. STITELY: -- I mean, if it's sexual --

9 THE COURT: -- the Brady bunch, and it was not.

10 MR. STITELY: I mean, if had been a sexual
11 relationship. I was just trying --

12 THE COURT: I mean, there was trouble in there,
13 there was some trauma in there and there was some concern
14 in there. I think trouble would be my characterization --

15 MR. STITELY: Okay. That's --

16 THE COURT: -- if I were a policeman. Now, that
17 wasn't conveyed to Judge Reinhart --

18 MR. STITELY: Yes, sir.

19 THE COURT: -- and you are arguing quite well.

20 On a probable cause warrant, I just don't think
21 that's required, to tell everything they knew.

22 MR. STITELY: I don't think they need to tell
23 everything. It's just the pink elephant in the room.

24 It's not a stranger theft, and that's how that
25 warrant's presented. It's presented as a random person

1 and he's driving their car with no reason -- no reason in
2 the world, Judge, why Mr. Lynch would have this car.
3 That's a huge omission. Even if he --

4 THE COURT: All right. What -- what if -- I
5 mean, what if, would it change the facts?

6 MR. STITELY: I think it absolutely does, Judge,
7 and -- and you get to make that -- and that's why we're
8 saying, is it still a grand larceny, because that's now
9 what we have to look to, the probable cause. How do they
10 prove that Mr. Lynch, even probable cause, took
11 Ms. Washington's car without any intent to retrieve (sic)
12 it when the exact line to the trooper in Texas is, "I'm
13 bringing the car back to meet Ms. Washington." That's
14 what he said to her -- he calls her his wife. That's what
15 he said.

16 THE COURT: The trooper in Texas believed it,
17 but he didn't know all the background that the trooper --
18 that the police in West Columbia knew.

19 MR. STITELY: They should have told the judge
20 they were in a relationship, two years. It's not a --
21 that warrant, reading it on its face, if we took it to any
22 judge, took it to you in the context of the four corners
23 of that document portrays a crime where they did not know
24 each other, there was no relationship, even if it was
25 troubled.

1 If it was his ex-wife, it'd still be a big deal
2 to know you stole your ex-wife's car, rather than just
3 saying some random person, and that's our problem.

4 It was -- you have to assume the judge would
5 have asked at least a couple more questions or wanted to
6 know a little bit more if you told him it was the
7 household car, they lived together, worked together, for
8 the past two years in a sexual relationship, it's a big
9 difference. And I -- I think that's the best I can say,
10 it's a huge omission.

11 Omissions used in that situation are akin to
12 non-truths. Without it, that warrant doesn't hold water.

13 If they just put in a line, his two-year
14 girlfriend that he lived with, I think that changes the
15 context of the entire warrant.

16 MR. MYERS: First of all, I don't know where
17 he's coming up with two years.

18 Second, there was no testimony about two years.

19 Third, that officer told the magistrate, "We've
20 got three people missing and a car missing. We've been
21 looking for them and can't find them."

22 He shows up in Texas in the car alone. He then
23 shows up at the Canadian border without the car and alone.
24 That is probable cause, and we submit to Your Honor that
25 you rule on what you have.

1 MR. STITELY: Him being at the border without
2 the car meets the story he tells the trooper, that he was
3 bringing her car to her in Arizona.

4 MR. MYERS: We would ask for you to rule, Your
5 Honor.

6 THE COURT: I think based upon the information
7 that the West Columbia Police detectives had at that time
8 and the information they presented to Judge Reinhart is
9 sufficient for meeting the burden of probable cause. They
10 had the arrest warrant issued for grand larceny.

11 I do acknowledge that there were certain facts
12 left out. I don't know how the police would have
13 characterized it had they provided those additional facts
14 because that's not before me. I can hypothesize how he
15 may characterize the troubled relationship, a good
16 relationship, intimate relationship. It wasn't conveyed.
17 I don't think that's -- that fact's in controversy.

18 I still believe that Judge Reinhart, considering
19 what was presented to him, acted properly, and I don't
20 think that the detective omitted the relationship to
21 conceal the fact. I think the relationship was troubled,
22 I -- I do, but that's my hearing the testimony that I've
23 heard.

24 So that's my ruling.

25 MR. MYERS: Thank you, Your Honor.

1 MR. STITELY: And, Your Honor, I'd like to make
2 sure I have the other motion clarified real quick, and I
3 know we're going -- once again, and I think this goes
4 into -- I don't know if you've decided now that the arrest
5 is going to be proper, but I'm guessing -- if you decide
6 the --

7 MR. MYERS: I think he just ruled that it was
8 proper, didn't you?

9 THE COURT: I've got the -- the arrest warrant
10 is proper.

11 MR. MYERS: Yes, sir.

12 MR. STITELY: And then we flowed into whether
13 the arrest itself was proper.

14 And just once again, it's a very simple
15 situation that we feel by telling him that they had this
16 warrant, they've now asked the Border Patrol to take off
17 the Border Patrol hat, put on a West Columbia hat, seize
18 documents for their behalf when they don't have a warrant
19 at this point.

20 It's akin to like if you were at an airport and
21 you have a point of entry into the country and someone
22 wanted me for some odd reason --

23 MR. MYERS: Just so I can get it straight, what
24 motion is he arguing now?

25 THE COURT: This -- this is the transmittal of

1 the arrest warrant and the seizure of the person --

2 MR. STITELY: Yes, sir, from the --

3 THE COURT: -- and -- on the West Coast.

4 MR. MYERS: Okay.

5 MR. STITELY: And the airport stops me and I've
6 got nothing wrong, but I've got a journal of all these
7 things, private little things. And as the officer said,
8 the items in Mr. Lynch's bag were innocuous at that point,
9 receipts, shaving cream, nothing wrong. And he says, Hey,
10 I got Mr. Stitely's journal, would you-all like that? And
11 then he faxes it over, my personal stuff. He is acting
12 because West Columbia asked him to. He is acting as an
13 agent for them.

14 So we affirm that the arrest is unlawful because
15 they used a warrant that wasn't -- they told them they had
16 it, they may have been going to get it, but that's a big
17 difference. And they used it to get him to seize items
18 that were personal to Mr. Lynch that has absolutely no
19 bearing on his job as a border agent. He testified they
20 were innocuous. They were not things that caused him
21 problems. They weren't drugs.

22 All the cases Mr. Myers cited earlier about
23 border stops, it's always drugs, they always grab drugs,
24 and they use that when they go into detention.

25 These were not contraband. These were personal

1 items they took, and West Columbia said, "Well, we'd like
2 those; please send them to us." That's a problem. It's
3 silver-platter doctrine. And they used the Border Patrol
4 agent as an investigator for them.

5 His authority to search him, I'm okay with. But
6 him collecting items of a personal nature which had
7 absolutely nothing to do with his specific duties as a
8 border agent -- he testified they were fine, he would have
9 let him go, I would have released him, and they use the
10 claim they already have a warrant. Even if they were
11 going to get one, if that was their idea --

12 THE COURT: But then the warrant -- the warrant
13 was 3:10 by the Border Patrol's testimony.

14 MR. STITELY: Yes.

15 THE COURT: Maybe you're losing me.

16 MR. STITELY: Well, his fax happened at 2:49.
17 He faxes it over before then. So, I mean, he's already
18 seized all this stuff, and they've requested it.

19 If we had the old mail system, just use it this
20 way: Pretend it's not a fax that happened instantly. I'm
21 stopped, and we're back in the olden days, and you have to
22 take my personal items, you bind them up, you say, "Well,
23 guys in South Carolina, I found all this stuff on his
24 person; it's his journals, it's his books, it's his
25 library card, it's his forklift license --" that you'll

1 learn also what's in the bag -- and I put all of this
2 personal stuff in here, ship it to South Carolina, three
3 weeks later it gets there, do they need a search warrant
4 to get into his stuff? The answer is, yeah, of course
5 they do. They can't just go into his stuff.

6 They used the Border Patrol agent as an agent of
7 theirs. It's the silver-platter doctrine. You can't do
8 that without the right cause, and we would argue they
9 didn't have it at the time.

10 MR. MYERS: Can I ask what case he's referring
11 to that cited that silver-platter doctrine? Because I
12 can't find it.

13 MR. STITELY: One second. It's a law school
14 term. I'll get the exact case --

15 THE COURT: Okay.

16 MR. STITELY: It's actually out of California.
17 It might be the Supreme Court. There's two different
18 cases. One, they used a little boy, they sent him in to
19 collect some information from the police.

20 THE COURT: Find the case.

21 MR. MYERS: Your Honor has ruled that the
22 warrant is valid; is that my understanding? You've
23 already ruled that the warrant is valid?

24 THE COURT: Yes, I ruled that.

25 MR. MYERS: The warrant is valid?

1 THE COURT: Yes, sir.

2 MR. MYERS: The defendant's in custody. He is
3 detained by the border people. The border people have a
4 right to do anything they want to with him, take anything
5 he's got. That's U.S. versus Ramsey, that case I gave
6 you, and a couple more border cases.

7 When the fellow from Whatcom County gets there,
8 the defendant is still being detained, his items are still
9 being held. The warrant is there, the officer reads the
10 warrant. He is now arrested.

11 He doesn't get his goods back after he is
12 arrested. Those goods are then in the possession of the
13 police officers under two theories: Search incident to
14 arrest, and when you arrest somebody and you take their
15 goods and you don't tell him he can take it into the jail
16 cell with him. They took his clothes, they took his bags,
17 and they have those, and they have the right to do
18 whatever they want to with them.

19 Now we can start citing cases. United States
20 versus Edwards at 415 U.S. 800. It's a 1974 case.

21 A fellow was arrested, he's taken into custody,
22 his personal items are taken. His personal items are then
23 used in trial, he doesn't get them back, and the Supreme
24 Court upheld that.

25 Also we have Illinois versus Lafayette. That

1 cite on that case is 462 U.S. 640, a 1983 case.

2 The fellow's arrested, he's got a shoulder bag.
3 When he's arrested, that shoulder bag is taken from him,
4 just like these bags were. He is detained, he doesn't get
5 the goods back. When they are being detained, he doesn't
6 get them back. He's in custody. That shoulder bag comes
7 into evidence and is properly admitted.

8 South Carolina Supreme Court case, State versus
9 Muquit, M-U-Q-U-I-T, is on that, Your Honor. The cite on
10 that case is 671 S.E.2d 643, a 2009 case.

11 Mr. Muquit is arrested, his personal belongings
12 are taken into custody. The South Carolina court says he
13 doesn't get them back, and what's in his belongings is
14 properly seized without a warrant, without a warrant.
15 They don't need one, and they can use it into evidence and
16 at trial.

17 Now, if he's got some cases different from that,
18 I'd love to see them. That's the law in the United States
19 Supreme Court and the South Carolina courts.

20 MR. STITELY: Your Honor, the silver-platter
21 doctrine originates in Weeks versus United States back in
22 1914. It's been cited, virtually, looks like about a
23 hundred times.

24 You can't use -- and most of the situations in
25 that one, federal agents did unlawfully seize stuff from a

1 state agency and they tried to use it in a federal
2 prosecution. And this -- there's a whole progeny of
3 silver platter.

4 The important thing, Mr. Myers is saying after
5 the arrest. And, Your Honor, you can look at -- I don't
6 believe it got up there.

7 THE COURT: It didn't.

8 MR. STITELY: The items were faxed over to the
9 West Columbia or -- to West Columbia. Even if Mr. Myers
10 is assuming it's the search after the arrest, the items
11 are faxed back at 2 o'clock. And I don't see it here.

12 MR. MYERS: I thought you already ruled on the
13 time part.

14 THE COURT: No, I've ruled.

15 MR. STITELY: It was Court's Exhibit 26, I
16 believe, the packet that the officer had. I don't see it
17 right here, Judge.

18 THE COURT: I don't have it.

19 MR. STITELY: Yes, sir.

20 Oh, here it is.

21 And, Your Honor, it's No. 23.

22 It happens before -- so all the cases Mr. Myers
23 is citing that talk about search after arrest, those
24 documents were clearly faxed. Even if we're to now assume
25 that the 3:10 is the arrest time, we heard about this

1 warrant, they're faxed before that.

2 MR. MYERS: Your Honor, I think you've already
3 ruled that the border search was valid. I think you did
4 that before lunch earlier today.

5 THE COURT: I did.

6 MR. MYERS: And what he's talking about Weeks,
7 Weeks is a totally inapplicable case. What that talks
8 about is a fine, the constitution of the state, that's
9 state court.

10 THE COURT: All right. Well, tell me this:
11 What of this that was faxed back to West Columbia was used
12 to get this? I've -- I've never seen them tied together.
13 I mean, I don't think they needed to.

14 MR. STITELY: I'm asking that they be suppressed
15 as -- as a matter of course along with the unlawful
16 arrest.

17 MR. MYERS: But there's the -- have you ruled
18 that the -- I thought you ruled that the arrest was
19 lawful?

20 THE COURT: The arrest warrant's good. The rest
21 is --

22 MR. MYERS: Yes. I don't know why he keeps
23 talking about an unlawful arrest. I don't know where he
24 gets that from.

25 MR. STITELY: That was the initial point of the

1 argument. Suppressions don't --

2 MR. MYERS: Well, I tell you what. I move under
3 Rule 18 of the criminal court that he not reargue on
4 something you've already ruled on. You've already ruled
5 the warrant's good, the arrest is good. I don't know
6 where he's coming up with illegal arrest.

7 MR. STITELY: Those documents are --

8 THE COURT: All right. You-all, please --
9 you-all be cognizant of Carol. She's doing a wonderful
10 job and you-all are talking faster as you're arguing
11 harder and I can only listen at one speed, so --

12 MR. STITELY: The documents are seized before
13 the arrest. 2:49 is the time stamp on that. Even if
14 we're to assume that 3:10 became the arrest, all the cases
15 Mr. Myers has stated talk about stuff that's seized after
16 arrest.

17 The problem isn't the Border Patrol agent
18 looking at his stuff. The problem is the Border Patrol
19 agent wearing the hat of a West Columbia Police Department
20 upon their request and having them send all of his
21 personal effects to them before he's arrested.

22 You determined the arrest is valid. Maintaining
23 our point on that, those documents were still submitted to
24 West Columbia, now seized before you determine it's a
25 lawful arrest, they're still seized before a lawful