

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

The Honorable Alison Renee Lee
Circuit Court Judge

Case No. 2011-GS-4003359

Appellate Case No. 2013-002531

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SC Court of Appeals

The State, ... Respondent,

v.

Joshua William Porch, ... Appellant.

RECORD ON APPEAL
VOLUME I

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RECORD ON APPEAL INDEX

Volume I

TRANSCRIPTS

Transcript dated October 14, 2013.....	1
Transcript dated November 12, 2013.....	19
Trial Transcript dated November 18-25, 2013 excerpts	116
November 18, 2013	116
Justin Mallory	155
Direct by Pauling	155
November 19, 2013	232
Justin Mallory	260
Cross by Shealey	260
ReDirect by Pauling	329
Jacquelyn Richburg	339
Direct by Goings	339
Cross by Aiken	348
ReCross by Aiken	350
Investigator Robert Oates	351
Direct by Underwood	351
Cross by Aiken	386
Investigator Zane Padgett	395
Direct by Goings	395
Cross by Aiken	421
ReDirect by Goings.....	427
November 20, 2013	431
Investigator John Barron	431
Direct by Underwood	431
Cross by Aiken	464
ReDirect by Underwood	476

Volume II

Sherry Tribble	480
Direct by Goings	480
Cross by Shealey	499
ReDirect by Goings	520
ReCross by Shealey.....	527
Dennis Tentyon	529
Direct by Pauling	529
Cross by Aiken	543
ReDirect by Pauling	544

Shaheed Hargraves	546
Direct by Goings	546
Cross by Aiken	554
Persia Porch	558
Direct by Goings	558
Investigator Randy Strange	575
Direct by Pauling	575
Cross by Shealey	588
ReDirect by Pauling	610
Captain James White	612
Direct by Pauling	612
Major James Smith	619
Direct by Goings	619
November 21, 2013	658
Major Stan Smith	666
Cross by Shealey	666
ReDirect by Goings	728
Dr. Bradley Marcus	730
Direct by Underwood	730
Cross by Shealey	744
Investigator Travis Holdorf	753
Direct by Goings	753
Cross by Shealey	799
Chief David Wilson	800
Direct by Underwood	800
Cross By Shealey	809
ReDirect by Underwood	839
Sergeant Shaw McDaniels	841
Direct by Pauling	841
November 22, 2013	901
Cross by Aiken	907
ReDirect by Pauling	960

Volume III

Sergeant Brian Godfrey	977
Direct by Goings	977
Cross by Shealey	1013
ReDirect by Goings	1065
Joshua Porch	1074
Direct by Shealey	1074
Cross by Goings	1127
ReDirect by Shealey	1196

EXHIBITS

November 18-25 Trial Exhibits:

State's Exhibit 39 – Statement of Porch June 27, 2007	1214
State's Exhibit 40 – Statement of Porch June 22, 2007	1217
State's Exhibit 41 – Statemen of Porch July 2, 2007	1219
State's Exhibit 47 – Statement of Porch July 9, 2009	1225
State's Exhibit 49 – Statement of Porch July 9, 2009	1236
State's Exhibit 50 - DVD	1240
Defendant's Exhibit 1 – Statement of Mallory May 14, 2006	1241
Defendant's Exhibit 6 – Arrest Warrant I-977265	1243

MISCELLANEOUS AND OTHER MOTIONS

Indictment 2011-GS-40-03359	1245
Richland County Warrant Worksheet <u>Franks</u> hearing	1247
<u>Franks</u> hearing Def Ex. 1(Arrest Warrant) I-918184	1248
Proposed Affidavit <u>Franks</u> hearing.....	1249
Richland County Sheriff's Department Investigative Report <u>Franks</u> hearing	1251
Witness Statement <u>Franks</u> hearing	1254
Notice of Appeal	1256

Certificate of Counsel

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF RICHLAND	)	Case No(s):2010GS4006445
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Joshua Porch,	)	
	)	
Defendant.	)	

October 14, 2013
Columbia, South Carolina

B E F O R E:

HONORABLE ALLISON LEE, Judge.

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I N D E X

DIRECT CROSS REDIRECT RECROSS

Motions	4
Certificate of Reporter	19

EXHIBITS PAGE

NO.

DESCRIPTION

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PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 14th day of October, 2013 at approximately 9:35 a.m.)

THE COURT: This is, uh, the State versus Joshua Porch. It's, uh, docket number 2010-GS-40-06945, the State is represented by Cary Goings with the Attorney General's office. The defense is represented by Luke Shealey and Bryan Shealey. Uh, it does not appear that Mr. Porch has been transported. When we called this morning, he was not in holding. And if you didn't get an order over to them earlier on Friday, they probably wouldn't have transported him.

Mr. Shealey, you indicated earlier that you weren't happy him not being present, but you would consider that.

MR. SHEALEY: Yes, Your Honor. I'm not happy about it, but we did speak to him this weekend about the motion we had filed. I explained to him what we'd be doing, what we were asking for. I think we would consider waiving his presence. We'll do that. We'll catch him up on what Your Honor decides.

THE COURT: Okay. We can try to bring him

1 over but you probably won't get him over before
2 -- a while.

3 **MR. SHEALEY:** Yes, ma'am. There's a lot
4 of things going on this afternoon. I don't
5 think this particular hearing will be a problem.

6 **THE COURT:** We are here on the defense's
7 petition for Rule to show cause as it relates
8 to the investigative file of Roberta Cowen.
9 I'm sure you are aware that when we did
10 pretrial of Detective Cowen who is an officer
11 from Los Angeles, uh, testified to some
12 documents and she did not have her file with
13 her. I think, at that time, I asked that it be
14 produced. And we had some additional telephone
15 conferences and a bond reduction motion. I
16 again asked that the file be produced. Mr.
17 Shealey, I will go ahead and hear from you. I
18 did read the petition that you provided on the
19 transcript excerpts from the March pretrial. I
20 will hear from you.

21 **MR. SHEALEY:** Thank you, Your Honor. May
22 it please the court. As you touched on just by
23 way of procedural background, this does stem
24 from your March 27th, 2013 order for her to
25 produce her file. That was during the pretrial

1 phase of this trial. Specifically, it was
2 revealed during the Jackson v. Deno hearing
3 where Investigator Cowen was the witness on
4 cross-examination but she had not brought her
5 file. I had received some materials in this
6 case that were attributed which I thought were
7 her materials in her file. She said
8 essentially no, that I had a whole lot of other
9 stuff that we then asked to be produced. This
10 is concerning the videotaped statement of Mr.
11 Porch, which in the realm of all statements
12 from the defense prospective is the most
13 damaging. It's on video. So our position is
14 that in order to effectively represent Mr.
15 Porch to defend against that statement, we need
16 to have all underpinnings of the statement
17 which includes the file. There were some
18 inconsistencies specifically as to how much
19 sleep he had and things like that. She
20 disagreed, uh, with materials I had been given
21 already. It is a matter of importance to the
22 defense.

23 Judge, we -- you ordered it be produced,
24 the entire file, by April 3rd, 2013. The State
25 didn't feel that that would be a problem.

1 Obviously, we had, uh, -- the case didn't get
2 called to trial back in March, but we ended up
3 getting a new trial date for July 29th. We
4 never heard anything from Investigator Cowen.
5 Essentially, my understanding is she's very
6 hard to get in touch with.

7 As of the July 29th trial date, she wasn't
8 around. She took a six-week vacation to
9 Hawaii. She ignored this court's scheduling
10 order to be here at trial. The State was
11 forced to ask for a continuance, which they did
12 and which was granted and we still hadn't heard
13 anything from her.

14 I then asked for bond. At that bond
15 hearing, Mr. Goings said that he was having
16 continuing difficulty getting ahold of her,
17 even talking to her superiors. At that time, I
18 then again requested about the status of this
19 file since we were picking a new trial date.
20 We needed that file. And Your Honor ordered
21 that it be produced at the latest by September
22 6th at that time.

23 September 6th has come and gone. We've
24 been very patient. We still have heard
25 nothing, either from Investigator Cowen or from

1 the Attorney General's office. Judge, we
2 simply need this information to properly cross-
3 examine Roberta Cowen regarding this videotape
4 statement which is the most damaging evidence.

5 We are petitioning for a rule to show
6 cause. We're asking for contempt of
7 Investigator Cowen at this time, contempt of
8 the Attorney General's office. We leave it in
9 your discretion whether it's monetary or penal
10 punishment but we're not looking to necessarily
11 put anybody in jail. We want the file. I have
12 a proposed order, Judge, that if you allow me
13 to approach, addresses it. Basically, we ask
14 the court to lift any potential contempt if
15 they can just produce the file in the near
16 future. We still have some time before trial
17 or if we get it in the near future, we can be
18 perfectly prepared by the November trial date.
19 We are at a loss. We don't know of anything
20 else to do at this point other than to ask for
21 this.

22 **THE COURT:** Mr. Goings?

23 **MR. GOINGS:** Thank you, Your Honor. If it
24 pleases the Court. Uh, yes, the court date
25 ordered us to produce the file. And as of last

1 year, you asked me to be in contact with her
2 supervisor, which I did. They sent me a copy
3 of their -- what they had.

4 This is what I have so far which defense
5 counsel already have. We have the polygraph
6 examination report, uh, some information
7 concerning some questions and some computer
8 printouts, the actual charts that were done
9 during the polygraph examination all of which
10 defense counsel may have.

11 The thing that I think we are missing and
12 what Investigator Cowen mentioned on cross-
13 examination at the hearing was a card that she
14 filled out. She was asking questions of the
15 defendant prior to the polygraph examination
16 being taken. That is the only document out of
17 her file that has not been produced. I haven't
18 seen it. I don't know what it looks like.
19 Obviously, from what was said to me on two
20 occasions, once by Ms. Cowen herself and then
21 through a Los Angeles Sergeant over there that
22 I spoke with, it is not there.

23 I have spoken to Ms. Cowen, actually this
24 morning, Your Honor, at nine o'clock. She was
25 at the office at six o'clock in the morning.

1 She informed me she was going down to the
2 basement to look through the file to see if she
3 could locate that card and was going to fax it
4 to me. That's where we stand. We are not
5 talking about her entire file. Like I said,
6 they've got the consent forms, the, uh, --

7 **THE COURT:** Well, what we originally asked
8 for was her entire file. So if there's other
9 stuff in the file that is not in there --

10 **MR. GOINGS:** I understand, Your Honor.
11 What I understand is that's the only part that
12 she didn't have when she was here at the
13 hearing. Like I said, she had this report she
14 did. She had the computer printouts, the
15 charts. She had her, uh, consent -- I mean,
16 waiver of rights form. All of this has been
17 produced to the defendant.

18 **THE COURT:** So what were you -- I'm sorry
19 to interrupt you. What else did you have to
20 say on the matter?

21 **MR. GOINGS:** That's it, Your Honor. The
22 only thing that we are missing is this
23 particular card that she referenced. I wish I
24 could tell you what it was but I haven't seen
25 it myself either. But that's the only thing

1 that she specifically mentioned during that
2 hearing that was not in her file with her on
3 that particular occasion.

4 **THE COURT:** Anything further, Mr. Shealey?

5 **MR. SHEALEY:** Yes ma'am. What you ordered
6 was the entire file. Respectfully to
7 Investigator Cowen, it doesn't instilled me or
8 probably you with much confidence in anything.
9 I don't want her to parse through what she
10 thinks she has given. I'd just like the whole
11 thing to come. We can figure it out. That's
12 what you ordered, Judge. I think that makes it
13 easy for everybody.

14 I just don't understand what has been going
15 on at this point, but I'm glad that Mr. Goings
16 has been able to physically or audibly talk to
17 her today. That does seem to be an improvement
18 over the past. But if she has it, please go
19 down to wherever it is that she needs to get it
20 and mail it or fax it to Mr. Goings so he can
21 then give it to us. And if it turns out to
22 just be that card at this point, so be it. At
23 this point, I just ask for the entire file.

24 **THE COURT:** I think what I specifically
25 said is anything that would have been

1 responsive to Brady, Rule 5 --

2 MR. SHEALEY: Yes, ma'am.

3 THE COURT: I think at this particular
4 point, there is at least some question as to
5 what was in her file and what she had or what
6 she didn't have. She just needs to produce the
7 whole thing. And, uh, I think part of the
8 problem, obviously, is the fact that she does
9 -- she's not in South Carolina which makes it
10 difficult to be able to get actual jurisdiction
11 over her.

12 To the extent the state is going to rely on
13 information that she provided and the state is
14 going to rely on her testimony and the state is
15 going to rely on documentation that she has or
16 testimony -- whatever her testimony is going to
17 be about what she did and by statements and her
18 contact with the defendant, Mr. Porch, that
19 information needs to be provided. We have
20 asked for in a couple of times.

21 I know that -- Mr. Goings, I know that you
22 have tried to obtain it from her. I thought by
23 going through the supervisor that that would at
24 least send a message that the information is
25 required. What I am going to do, since you

1 talked to her this morning, I'm going to put a
2 dropdead date on it. That is going to be this
3 Wednesday.

4 She's going down to the basement and
5 pulling her file. She needs to go ahead and
6 fax the entire file. She can put it on FedEx
7 package and FedEx it to us. Uh, I can
8 understand she may not want her original file
9 to be out of her hands but it's not doing us
10 any good because she is not producing any of
11 it.

12 I can just tell you that if it's not in
13 Shealey's hands by nine o'clock on Thursday
14 morning, then she can either -- well, two
15 things will happen. She won't be able to
16 testify about what she did in conjunction with
17 that or what may be revealed on those documents
18 and/or may not want to testify at all. That
19 means the statement doesn't come in as a result
20 of it. That's what happens. I think we have
21 given her more than enough time to be able to
22 retrieve the information. She should have
23 bought her file with her when she came back in
24 March.

25 That's where we are. That is what my order

1 will be. The trial is still set for November
2 the 18th. I think there's only one issue that
3 I have left and that's about the polygraph. I
4 have still got the statements, right? The two
5 statements?

6 **MR. GOINGS:** You have ---

7 **MR. SHEALEY:** All the statements.

8 **MR. GOINGS:** --- all the statements from --

9 **THE COURT:** Only four. The two on the 9th
10 and the two on the 10th.

11 **MR. SHEALEY:** I can go through it again.

12 **THE COURT:** No, I've got a whole stack of
13 stuff. It's been set aside. I understand my trial
14 round week is falling apart. I am going to get
15 back on it this week. They are having some
16 interesting, uh, appellate court cases lately
17 about statements and polygraphs. So I've
18 pulled those out. I should have something to
19 you by Friday. That is my goal to send them to
20 you by Friday. It may be somewhat abbreviated
21 in nature. I know you still need to do trial
22 work on them. All right. You have anything
23 else for me to take up?

24 **MR. SHEALEY:** No, ma'am.

25 **THE COURT:** Is Mr. Aiken still

1 participating in the trial?

2 MR. GOINGS: Yes, he is. He just
3 unfortunately couldn't be here this morning.

4 THE COURT: Okay.

5 MR. GOINGS: But he is fully invested.

6 THE COURT: You know what my next request
7 this going to be since I have both of you here.
8 Somebody's going to have to keep a facial hair.

9 MR. BRYAN SHEALEY: Oh yeah.

10 MR. SHEALEY: Apologize, judge. This is
11 as good as it gets for me.

12 THE COURT: That's fine. I can tell you
13 apart when you have facial hair. I could
14 probably tell you apart otherwise but I would
15 have to study your faces a little bit to do
16 that.

17 Is there anything else we need to take up?

18 MR. GOINGS: Nothing from the state, Your
19 Honor.

20 THE COURT: I will modify this and I will
21 sign it and get it clock in and sent to you
22 today on this hearing so that everybody is
23 clear. Do you need it so that you can fax it
24 out there to her? That works.

25 MR. SHEALEY: Would you like me to send

1 Sessions. The week of the 11th, I'm doing
2 Common Pleas. So I'll just have to schedule
3 this for some time. I want to hear those. We
4 can take it up before the 18th. (Pause.)

5 Yeah, the week of the 28th, I'm on
6 vacation. So we've got this week, next week,
7 then I'm on vacation. Then I go to Beaufort.
8 Then I'm doing Common Pleas. So whatever we
9 can do this week or next week. Otherwise, I
10 might just have to schedule some time the week
11 before when I come back from Beaufort.

12 MR. SHEALEY: I'll do my best to get it
13 out. I'm still kind of researching the issue.

14 THE COURT: As I understand, it's going to
15 take a full week.

16 MR. SHEALEY: The trial?

17 MR. GOINGS: The trial?

18 THE COURT: Yeah.

19 MR. SHEALEY: Yes, ma'am. I do believe
20 so.

21 THE COURT: I just want to make -- and the
22 week after that is Thanksgiving. I just want
23 to make -- I'd like to be able to do as much
24 pretrial that I can get done before they come
25 in. If it's the week of the 11th, which is a

1 Common Pleas week, that's fine. We can squeeze
2 it in somewhere. I think that Monday is a
3 holiday but the rest of the week, we are here.

4 MR. SHEALEY: Yes, ma'am.

5 THE COURT: So whatever I need to take
6 care of. Thank you.

7 MR. SHEALEY: Thank you.

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

9
10 (WHEREUPON, the proceedings conclude at
11 approximately 9:56 a.m.)
12
13
14
15

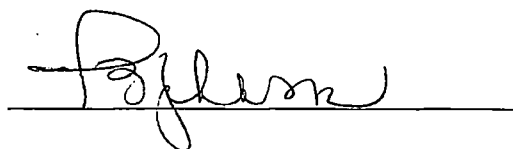
CERTIFICATE

19

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Columbia, South Carolina, on this 6th day of August, 2014.

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

A handwritten signature in cursive script, appearing to read 'T. Johnson', is written over a horizontal line.

Teresa B. Johnson

Official Court Reporter

State of South Carolina) In the Court of General Sessions
County of Richland) Fifth Judicial Circuit
2011-GS-40-03359

State of South Carolina,)
Plaintiff,)
Vs.) Transcript of Record
Joshua William Porch,)
Defendant.)

November 12, 2013
Columbia, South Carolina

B E-911 f o r e:

The Honorable Alison R. Lee, Judge

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I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
Case Called/The Court	4
Motion/Mr. Shealey	6
Reply/Mr. Goings	12
Response/Mr. Shealey	13
Reply/Mr. Goings	15
Decision by the Court	23
DIRECT CROSS REDIRECT RECROSS CHIEF DAVID WILSON	
Mr. Shealey	25
Mr. Goings	57
JUDGE PHIL NEWSOM	
Mr. Shealey	69
Argument/Mr. Shealey	75
Argument/Mr. Goings	84
Decision by the Court	85/89
Certificate Page	97

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
D-1	Multiple Evidentiary Documents, consisting of 44 pages, pre-marked prior to commencement of hearing.		

1 (On the record at 2:47 p.m.)

2 (Pre-marked Defense Exhibit 1, documents, 44 pages.)

3 THE COURT: This is Indictment No. 2011-GS-40-03359,
4 *State of South Carolina vs. Joshua Porch*. The State is
5 represented by Cary Goings and Curtis Pauling with the
6 Attorney General's Office. The defense is represented by
7 Luke Shealey and Brian Shealey, with the Shealey Law Firm.

8 We're here on the motion -- pre-trial motion, filed by
9 the defense, to suppress evidence arising out of the arrest
10 warrant.

11 And Mr. Shealey, you had -- before we went on the
12 record, you had requested that the witnesses be
13 sequestered; is that correct?

14 MR. L. SHEALEY: Yes, ma'am. I -- I would request
15 that for this hearing.

16 THE COURT: Okay. And who are the witnesses for the
17 ...

18 MR. L. SHEALEY: It would be Chief Wilson and Judge
19 Newson.

20 THE COURT: Okay. Then gentlemen, I'll ask that you
21 be sequestered; that you not discuss your testimony or
22 proposed testimony in this particular matter. I ask that
23 you wait outside, and we'll bring you in shortly
24 individually. Thank you.

25 (The witnesses exit the courtroom.)

1 THE COURT: Is there any preliminary matters we need
2 to take up before we start with the testimony?

3 MR. GOINGS: Yes, ma'am, there is.

4 THE COURT: Yes, sir.

5 MR. GOINGS: And I don't know exactly what grounds the
6 defense is going for. I know they filed a *Franks vs.*
7 *Delaware* hearing.

8 Under Supreme Court ruling that came down in *Franks*
9 *vs. Delaware*, there has to be a preliminary showing, by the
10 defense, that some false statement was made in securing the
11 arrest warrant or -- of course, I think it's probably -- my
12 guess is where -- where they're going with this there --
13 there was some omission made in the affidavit, whether in
14 the written affidavit or verbal affidavit, before the
15 magistrate.

16 They have to specifically show a *prima facie* case that
17 the affiant was intentionally trying to mislead the
18 magistrate in securing the warrant before a *Franks vs.*
19 *Delaware* hearing can even be held. And so far, besides the
20 motion just alleging a *Franks vs. Delaware* violation,
21 that's the only thing the defense has shown to the Court at
22 this point in time. And that's clearly not sufficient
23 under *Franks vs. Delaware* or the case law in South Carolina
24 to suggest a *Franks vs. Delaware*.

25 MR. L. SHEALEY: Judge, I was getting ready to go

1 through that exercise.

2 THE COURT: Okay.

3 MR. L. SHEALEY: I was -- but I'd be pleased if you'd
4 allow me to start calling witnesses. But I was going to
5 establish, per the case law, what Mr. Goings is talking
6 about.

7 Basically, what I see under *Franks v. Delaware* and
8 applicable case law in South Carolina, defense counsel must
9 make a substantial preliminary showing first that the
10 warrant applicant basically did some type of wrongdoing in
11 relating to probable cause. And we're talking here either
12 admissions in exculpatory evidence, either a false
13 statement, or a reckless disregard for the truth when
14 presenting his -- his affidavit to the magistrate judge.

15 And so what the case law says, to get a hearing before
16 the Court, the test is essentially if you look at the four
17 corners of the warrant, and if you take away any statements
18 that are either false or a reckless disregard of the truth,
19 if you set that aside and leave whatever's left language-
20 wise in the warrant, if there is sufficient probable cause
21 in your opinion, then I don't get the hearing.

22 However, if you set aside what is recklessly disregard
23 of the truth or a false statement, and you don't feel that
24 after setting that aside that there is sufficient probable
25 cause, then I do then get the hearing to delve into the

1 matter further.

2 So what I would do -- and I have presented some
3 materials up to Your Honor -- if you would take a look at
4 the arrest warrant with David Wilson as the affiant, I
5 would -- I would say that if you look at the four corners
6 of this, that he starts off with the kind of boilerplate
7 language (as read): "That on 5/14/2006, while at 1103
8 Pinelane Road, Apartment 311-C, in the Dentsville
9 Magistrate District of Richland County, one Joshua Porch
10 did commit the crime of murder, in that he did with malice
11 aforethought, assault and stab Nekia Mallory in the neck,
12 which resulted in the death of Nekia Mallory."

13 Okay. So I'm -- I'm just kind of leaving this aside
14 as boilerplate language. This -- this is not really my
15 problem. At this point, this is after two trials against
16 Mr. Mallory. He has been acquitted by Judge Tommy Cooper,
17 Jr.; and shortly thereafter, David Wilson -- who's -- is
18 asked to look at the case by -- by Leon Lott -- and he does
19 this warrant.

20 The problem where the actual meat of the warrant is,
21 where the first statement (as read): "The defendant has
22 admitted to being at the scene of the crime during the
23 assault and stabbing him."

24 Okay. As Your Honor knows from being here for pre-
25 trial where we discussed the four prior statements given to

1 Richland County Sheriff's Department, where we discussed
2 Joshua Porch being the -- the key eye witness in the
3 prosecutions of Mr. Mallory, his statement, which was
4 accepted by Stan Smith and Investigator Holdorf and John
5 Meadors, who prosecuted the case, that final statement was:
6 That I was there at the house. I come over late. Mr.
7 Mallory was not home. I had been acquaintances and friends
8 with the Mallorys. Nekia Mallory was there. We became
9 affectionate, kissing, fondling, and then stopped."

10 Shortly thereafter -- which is in the statement which
11 we did for *Jackson v. Denno* -- Mallory comes home. He's
12 upset with Nekia. Accuses her of cheating. She in turn
13 accuses him of cheating. A loud fight ensues where he
14 testified at both trials and in his final statement to
15 Richland County that Justin Mallory struck Nekia with an
16 object in his hands. He tries to intervene and gets
17 between them, gets cut in the process; runs to the kitchen
18 to treat his wound with paper towels, and does find that;
19 drips some blood in the kitchen. Cleans up and -- which is
20 in his statement -- takes a wipe at it, and then by the
21 time he starts heading out to the living room again, Mr.
22 Mallory is in -- somewhere on the other side of the
23 apartment making phone calls; and Nekia is sitting or
24 slumped on the side of the couch, still alive, per his
25 statement, per his testimony. He bolts. He's upset, said

1 he was scared of -- of Justin Mallory; that basically, he
2 was scared of -- of everything. So just -- that's the
3 context of this.

4 So to say that the defendant has admitted to being at
5 the scene of the crime during the assault and stabbing as
6 evidence that he is guilty of murder at this point in time
7 before a magistrate -- mindful, this is way before we get
8 the warrant and go out to California and get some possibly
9 other incriminating evidence -- I argue that this is a
10 reckless disregard of the truth; that, yes, he admits to
11 being there as the eye witness, the star for the State's
12 prosecution, who intervened between the two, who witnessed
13 an assault on Nekia Mallory by Justin Mallory.

14 So I -- I think that first little section of that
15 statement must be set aside as recklessly disregard of the
16 truth without -- you know, there's nothing further in here
17 about the whole context of him being a prosecution witness
18 in the prior two trials.

19 The second part of that sentence is (as read): "...
20 and has been further implicated in the crime by DNA testing
21 of blood found at the scene that puts the defendant at the
22 scene."

23 So again, which was the context of his four
24 statements, which we all reviewed as part of the *Jackson v.*
25 *Denno* hearing, he tells Richland County investigators

1 eventually -- now, he does give inconsistent statements.
2 He initially says -- first he says, "I wasn't there." When
3 they talked to him the next day, he says, "Well, I cut my
4 hand on an apple. Well, no. I -- I only told you that so
5 I wouldn't be involved. Here's what really happened."

6 And that -- and then that last statement, where he
7 gives a statement just what I -- the situation I described
8 to you, testified at trial, tells and was proffered before
9 the jury and for Judge Cooper, as to why his blood was on
10 the scene. It was because he intervened between a domestic
11 fight, between a man and wife, over cheating; was there at
12 the wrong place, at the wrong time; and got his finger cut
13 while intervening between Mr. Mallory and Ms. Mallory.

14 That was explained to a jury. Chief Wilson would have
15 known that being asked to review this case by Sheriff Lott.
16 He had access to all those reports. He had access to all
17 those statements; he would have talked in person to Stan
18 Smith, Investigator Holdorf. He had access to John Barron.
19 He states in his report that he did talk to John Barron.

20 So to say that his blood's on the scene and that
21 implicates him in murder, knowing full well that that --
22 that was known to everybody in the first two trials and
23 explained as part of him being an eye witness, is
24 recklessly disregarding the truth, is a false statement.

25 Thirdly, the last part of that section, when

1 discussing the blood, he implicates the defendant in the
2 assault at the time of the murder. Now, I can only imagine
3 when you -- when you say he implicates him in the assault,
4 now, what -- what is known, and if you let me have the
5 hearing we -- this will be fleshed out more, is in Chief
6 Wilson's report, the one piece of new physical evidence
7 that he does achieve in -- in getting because he asked for
8 Nekia Mallory's shirt to be tested.

9 It was never tested in the first two trials because
10 per his report and per his past testimony in the
11 appropriate hearing, it wasn't seen as relevant because
12 they knew why his blood was on the scene, and they weren't
13 testing it for Mallory's blood because Mallory was plenty
14 implicated by being covered in Nekia Mallory's blood.

15 So at first, the shirt was never tested, but he asked
16 that it be tested. And when he did test it, what was
17 revealed was that a drop of Mr. Porch's blood was found per
18 -- per their DNA analyst, to be on the front-right portion
19 of her shirt. Okay.

20 And so that is the -- what Chief Wilson seems to be is
21 a "smoking gun" in implicating him in the killing of Nekia
22 Mallory, even though he knows full well that it was
23 testified to, that his statement said that he intervened
24 between them and got cut.

25 So the fact that he got cut intervening between a wife

1 and a man in a domestic fight, the fact that he would have
2 a small amount of blood on the front of her shirt does not,
3 I would argue, implicate him in this murder; knowing full
4 well that they explained that in the first two trials as a
5 natural cause of his intervention.

6 So to -- without anything further, without any further
7 context, to say that is a reckless disregard of the truth
8 in this case.

9 So what I would say is that to have this hearing, we
10 would take away that entire sentence, and it only leaves
11 you with the boilerplate "On such and such date, in
12 Dentsville Magistrate, town -- you know, district of
13 Richland County, he did commit the crime of murder," but
14 there's nothing to support that.

15 So I don't -- I do think a hearing should be granted
16 in this case to delve into the matter further. The -- and
17 I think I have met the standard. And I would ask for that
18 hearing at this time.

19 THE COURT: Any response by the State?

20 MR. GOINGS: Yes, ma'am. Our first argument, Your
21 Honor, is that defense counsel's portrayal that this is a
22 false statement within the affidavit itself is just
23 completely untrue. The statement clearly says that on --
24 for the first part (as read): "The defendant has been
25 admitted to being at the scene of the crime during the

1 assault and stabbing." That's a true statement.

2 His statements in court and his last statement given
3 to Stan Smith says he was there at the time Nekia Mallory
4 was stabbed. So that is not a false statement.

5 *Franks vs. Delaware* requires you to show a false
6 statement, and if the statement's true, it can't be false.

7 Let's move onto the second part (as read): "DNA
8 evidence, for testing of the blood found at the scene that
9 puts the defendant at the scene." We had that. That's not
10 a false statement.

11 (As read) "And implicates the defendant in the assault
12 at the time of the murder." Because the blood is found on
13 the shirt of the victim, that implicates him in the murder.
14 There is no false statement that we're talking about when
15 we read that sentence on its face.

16 So *Franks vs. Delaware* should be denied because have
17 no -- have not shown a false statement at this time.
18 Nothing is untrue about the sentence. He admitted being at
19 the scene; his blood was found on her shirt; it implicates
20 him in the crime.

21 MR. L. SHEALEY: Judge, just to respond. The crux of
22 this whole idea is that affiant should not be allowed to
23 mislead the Court. That statement -- I can't argue with
24 the first two parts and that is true. But if it was true
25 in the first two trials when they prosecuted Mallory, it

1 doesn't implicate him on murder the fact that he admitted
2 being there. He admitted being an eye witness of another
3 man killing a woman.

4 The fact that his blood's on the scene: Well, yes.
5 His blood's on the scene when he intervened and got cut as
6 another man was killing a woman.

7 So it's false in the fact that it's -- it's not in the
8 full context and disregards the truth of the omissions, the
9 exculpatory omissions that he, at this time, is only
10 evidence of him being an eye witness.

11 So it -- you know, it -- that's the genesis of this
12 argument is that it misleads the Court. And -- and the
13 simple fact, on the very final phrase that blood on --
14 implicates him in the assault, I don't know how you can
15 make that leap that -- when he's already testified, with
16 experienced investigators and John Meadors, having done
17 hundreds of murder -- of trials in general, being confident
18 in the veracity of his testimony, would never have
19 considered supporting perjury; confident in him, putting
20 him up to say, "Yes. I got cut in the struggle, that --
21 that -- you're going to bleed when you get cut in a
22 struggle. The fact that she has blood on her shirt
23 anywhere has no bearing on -- no new significance that he
24 killed her.

25 So I think that and the fact that -- and what I

1 propose -- I proposed and submitted to you -- and they have
2 a copy of it -- is an affidavit excluding
3 misrepresentations, including exculpatory evidence. That's
4 part of the test.

5 So that's what the *Frank's* guidelines recommend to you
6 as what the real warrant should have been in this case, the
7 real affidavit, which includes everything possibly
8 exculpatory and incriminating at this time, the time the
9 murder warrant was requested.

10 So I will again respectfully request a hearing.

11 MR. GOINGS: And the State stands by its original
12 position. If we're talking -- if -- if their argument is
13 that these are false statements, not omissions but false
14 statements, they're not false.

15 Now, if we want to talk about omissions, then it goes
16 into a different analysis under *Franks vs. Delaware*.

17 Because I -- I -- it's either they're claiming that he
18 made a false misrepresentation or a knowingly false
19 statement in the affidavit to the magistrate; or he omitted
20 something that he should have included.

21 If we go for -- and -- and again, I don't believe
22 they're false statements. He admits that he was there at
23 the time the assault occurred, and DNA was found before and
24 after Mr. Mallory was found not guilty.

25 If he goes to the omissions part of it, I would point

1 the Court to *U.S. vs. Colkley*, which is 899 et sec 297.

2 May I approach, Your Honor?

3 THE COURT: Yes, sir.

4 (Mr. Goings hands a document to the Court.)

5 THE COURT REPORTER: The spelling?

6 MR. GOINGS: Colkley? Colkley is C-o-l-k-l-e-y.

7 And it goes into a great discussion about what is --
8 when we're talking about omissions in a -- in a warrant --
9 what has to be shown to the Court in order to get a *Franks*
10 *vs. Delaware* hearing in that regard, Your Honor.

11 And I will point your attention to the page -- page
12 301, I believe, the first paragraph. And it goes through -
13 - and -- and -- and it recognizes that unlike a -- where
14 the defense is claiming a false statement was made to the
15 magistrate judge in securing a warrant, when you're dealing
16 with omissions, you've got -- there's a higher standard
17 that you have to show, that the omission was made with the
18 intentional -- with the intent to mislead the magistrate in
19 securing a warrant. They have not done that.

20 They're -- the only thing they have shown is that,
21 okay, he omitted the fact Mallory was tried twice and that
22 some of the DNA was found beforehand. Nothing suggests
23 that when Chief Wilson went to get the arrest warrant,
24 based on his knowledge of the new DNA found and making some
25 true statements within his arrest warrant, that he was

1 intending to mislead the Court.

2 Mere negligence in omitting certain facts -- if you
3 read the last paragraph -- last sentence of that paragraph
4 -- is not enough to get a *Franks vs. Delaware* hearing.

5 THE COURT: Okay. Just give me a moment to ---

6 MR. SHEALEY: Yes, ma'am.

7 THE COURT: --- review.

8 MR. GOINGS: And -- and I will continue my argument,
9 Your Honor. There's only been one case in the State of
10 South Carolina that's actually dealt with omissions in
11 getting a *Franks vs. Delaware* hearing that I can find. And
12 I'll hand that up to the Court, too, to review while making
13 your determination. That's *State vs. Missouri*?

14 (Mr. Goings and Mr. Shealey confer briefly.)

15 (Mr. Goings hands a document to the Court.)

16 MR. GOINGS: It's a '99 case by the Supreme Court that
17 actually deals with this issue, Your Honor. And basically,
18 in that case, what they had was two-fold: They had a
19 knowing false statement made by the affiant; and an
20 omission made by the affiant, too.

21 And basically -- I'm summarizing the case -- there's a
22 narcotics investigation where they had a confidential
23 informant who told the officers that, on this particular
24 occasion, that the cocaine or crack was not going to be at
25 the residence. Well, the affiant, trying to still get the

1 search warrant, went in there and told the magistrate that
2 the crack was going to be there. So the Court found not
3 only did they make a knowingly false statement to the
4 magistrate, they also omitted the part about the
5 confidential informant telling the officer that the crack
6 cocaine was not going to be there.

7 That is the only case in South Carolina where an
8 omission of a fact was high enough to warrant a *Franks vs.*
9 *Delaware* hearing.

10 Obviously, in that case, if you -- if you review it,
11 it goes to the heart of what they were trying to do. If
12 there's no -- not going to be any crack cocaine there, you
13 don't tell the magistrate that, obviously, you wouldn't
14 have gotten a search warrant for the place. If you knew
15 that the crack wasn't going to be there and omitted that
16 from your affidavit, then obviously probable cause wouldn't
17 be issued.

18 But that's not the case. They haven't shown anywhere
19 near that in this situation. And -- and again, the State's
20 position is we shouldn't even get to a *Franks vs. Delaware*
21 hearing. The statements are true; the omissions that they
22 alleged -- supposedly alleged that were not given to the
23 magistrate, do not rise to the level of whether or not
24 there was probable cause to find Chief Wilson went in there
25 to the magistrate and swore to him about the evidence they

1 had.

2 MR. L. SHEALEY: And what we're dealing here with then
3 is omissions and reckless disregard for the truth. And the
4 whole point is are things presented to a magistrate that
5 would mislead him?

6 So, yes. The *Missouri* case deals with omissions, and
7 language from there said that (as read): "To be entitled
8 to a *Franks* hearing for alleged omission, the challenger
9 must make a preliminary showing that the information in
10 question was omitted with the intent to make or in reckless
11 guard -- disregard of whether it made the affidavit
12 misleading to the issuing judge." That is the point of
13 this.

14 So you know, under these facts, I mean, you can't just
15 say that eye witnesses on the scene -- under these facts,
16 the eye witness across the hall was technically at the
17 scene, Mr. Hargraves, who assisted Mr. Mallory -- affidavit
18 said taking his wife to the hospital. Under these facts,
19 under this argument, he could -- Chief Wilson could go to a
20 judge and say, "You admitted to being on the scene, so
21 you're implicated in a murder."

22 Okay. So that's the -- this -- the argument is just
23 omitting this, because he's only admitted to being at the
24 scene as an eye witness.

25 MR. GOINGS: And that's only ---

1 MR. L. SHEALEY: Not -- not -- and doesn't implicate
2 himself in the murder. So it's -- it's a spinning of the
3 truth, which I submit is the reckless disregard of the
4 truth, in order to mislead a magistrate.

5 If -- if -- a police officer should have nothing to
6 hide from a magistrate. A magistrate should have
7 everything that they need to be informed, to make a good
8 decision about -- to issue a warrant for murder. And by
9 admitting everything else and trying to pigeon hole these
10 statements into a context that is very legalese and "Oh,
11 he's at the scene. So he's implicated in the murder,"
12 that's not what a magistrate needs to hear. He needed to
13 hear the full facts.

14 So I understand the argument the statement may not be
15 false: "He has admitted to being at the scene." But you
16 have to give the full context. He's omitting the rest of
17 the story, and he's spinning recklessly this statement,
18 turning the eye witness to a murder into someone who's now
19 getting a warrant for murder, based on limited information
20 at that point.

21 So I -- I would respectfully again -- you can read --
22 obviously you're going to read all the cases and make up
23 your own mind. But I think we met the threshold to get the
24 hearing.

25 MR. GOINGS: My only argument is that the Hargrave

1 incident only -- he -- to answer information about DNA
2 being present as well. I mean, obviously, you have, based
3 on the affidavits in the statement, DNA tests on blood
4 found on the scene, both -- where it was found where it was
5 cleaned up where it was found on the scene and then later
6 testing -- and I believe it was September of 2009, or -- I
7 forget the date. But there was testing done prior to the -
8 - the securing of the arrest warrant, also indicates DNA on
9 the shirt of the victim and it implicates Mr. Mallory -- I
10 mean, Mr. Porch in the murder.

11 THE COURT: I'm going to take a moment to review these
12 cases.

13 (Pause while the Court reviews documents.)

14 THE COURT: And so from the defense's point of view,
15 what additional -- there -- there were several things
16 presented to me by the defense: One would be the actual
17 affidavit in -- that was part -- included in the arrest
18 warrant. Then there is the investigative report with --
19 which is three pages long. It does not specify as to who
20 the investigating officer is.

21 MR. L. SHEALEY: It's probably Chief Wilson. I think
22 it might say "Wilson" on the top right.

23 THE COURT: There is some writing up there. It's --
24 it's partially missing, but it -- it looks like it could
25 say "Wilson" underlined.

1 And then that particular report refers to -- it says
2 (as read): "See attached statement, Joshua Porch for PC
3 for murder warrant," which I assume is the next
4 sequentially-numbered document, which is three pages long,
5 that says "Joshua Porch" at the top.

6 MR. L. SHEALEY: Yes, ma'am.

7 THE COURT: And then there were a number of cases that
8 were also attached.

9 So -- and -- and then additionally, the defense passed
10 up the Richland County Warrant Worksheet, which is a one-
11 page document, as well as the statement that was given by
12 Sherry Tribble.

13 MR. L. SHEALEY: Yes, ma'am.

14 THE COURT: As well as a proposed affidavit, excluding
15 misrepresentations and including exculpatory evidence.

16 MR. L. SHEALEY: Yes, ma'am.

17 THE COURT: Okay. And I assume it is -- it is this
18 last document which the defense proposes should be the
19 information that should have been contained within the
20 warrant for consideration by the magistrate in determining
21 whether or not probable cause existed.

22 MR. L. SHEALEY: Yes, ma'am.

23 THE COURT: Is there any -- what about the remaining
24 documents and all of the other information?

25 MR. L. SHEALEY: Well, Your Honor, we -- we submitted

1 what we felt was enough to show if you take out all of the
2 so called "bad" information in the warrant, and what we're
3 left with is sufficient probable cause; that we would be
4 then -- we'd need to question Chief Wilson more -- he was
5 asked by Leon Lott to go over the entire file. So we are
6 hoping to question him about his report, which includes a
7 lot of what he looked at, the entire case, talking to DNA
8 analyst, talking to Stan Smith and those guys.

9 We felt that if we'd met our burden for the hearing,
10 once we got in the hearing, we think we could strongly
11 contend that he left out a lot of stuff that he should have
12 told Judge Newsom regarding the -- the affidavit; and then
13 we'd make our argument that the whole thing should be
14 suppressed.

15 But -- so we think a lot of that information would
16 could out through Chief Wilson. But that -- that is all we
17 had submitted at this time ---

18 THE COURT: Okay.

19 MR. L. SHEALEY: --- which we felt was sufficient to
20 get a hearing.

21 THE COURT: After -- after reviewing all of the
22 information, I -- I think that there were -- that -- that
23 the affidavit contained in -- in -- in the arrest warrant
24 lacks information which would have been relevant to making
25 a decision as to probable cause. And it -- it -- it lacks

1 both exculpatory as well as inculpatory information.

2 While the statements made in the affidavit may be
3 true, I think it also neglects to include other information
4 which would be relevant to the entire totality -- totality
5 of the circumstances in making that determination.

6 That's not to say that probable cause did or did not
7 exist. But I -- I think in light of the -- in light of
8 other information that was available, that it should have
9 included additional information for the magistrate to
10 consider. And -- and because of that, I -- I think that
11 the -- the defense has met a burden of establishing that a
12 *Franks* hearing should be held.

13 (Brief pause.)

14 THE COURT: And -- and let -- let -- let me go a
15 little bit further. I -- I think this -- I think this
16 one's a close case. I -- I think that the -- the case law
17 talks about information that's relevant but not dispositive
18 information is not enough to -- to -- to warrant the *Franks*
19 hearing.

20 It also talks about inclusion of -- in the affidavit
21 of additional information if it would -- if it would defeat
22 probable cause.

23 I -- I will say that the -- what -- in looking at all
24 of the information, I think that some of the information
25 that's contained in the proposed affidavit is not

1 information that's necessary for a -- for a determination
2 as to probable cause. I think it -- while it does include
3 some of the exculpatory information, it does not include
4 all of the inculpatory information.

5 And so while there may be other -- there may be other
6 evidence that would -- that if stated in the affidavit,
7 would more clearly establish probable cause, because the
8 affidavit does not necessarily contain that information and
9 other information that was exculpatory was omitted, is how
10 -- is the reason why I've come to the conclusion.

11 And like I said, it's a close case. And so I -- I
12 just think it would -- I -- I would rather err on the side
13 of allowing the hearing than to -- to err on the side of
14 finding that there was probable cause excluding all of the
15 information that's been presented.

16 So you can call your witness.

17 MR. L. SHEALEY: Thank you, Judge. Defense would call
18 Chief David Wilson.

19 DAVID WILSON, having been first
20 duly sworn, testifies as follows:

21 CLERK OF COURT: State your name for the record.

22 THE WITNESS: David Wilson.

23 THE COURT: Yes, sir.

24 DIRECT EXAMINATION BY MR. L. SHEALEY:

25 Q Good afternoon. Chief Wilson, you were -- basically,

1 you're No. 2 over at Richland County Sheriff's Department,
2 under Leon Lott, correct?

3 A I work for him.

4 Q Yeah.

5 A I -- I don't know who's No. 2.

6 Q Okay. He's the sheriff and you're the --

7 A I'm a deputy chief.

8 Q Deputy chief.

9 A Right.

10 Q Okay. Other than the sheriff, is there anybody else
11 that you report to?

12 A No.

13 Q Okay. Now, after -- you're familiar with this case --
14 were you familiar with this case prior to your being asked
15 to investigate it?

16 A Somewhat.

17 Q Okay. You knew there was an on-going murder trial,
18 correct?

19 A Correct.

20 Q Stan Smith, Investigator Holdorf, Investigator Strange
21 were involved?

22 A That's correct.

23 Q Okay. And you were aware of the outcome, that Justin
24 Mallory had two trials; the first being an acquittal -- I
25 mean, a -- a hung jury, correct?

1 A That's correct.

2 Q And the second being an acquittal before a judge.

3 A That is correct.

4 Q Okay. And at that point in time, shortly thereafter,
5 you were asked by the Sheriff to investigate this case.

6 A I was.

7 Q Okay. And you have prepared a couple of documents.
8 You have your investigative report. Do you have a copy of
9 that with you?

10 A I do.

11 Q Okay. And you also -- looks like there's a document
12 with the name "Joshua Porch" on top. And I think you
13 labeled that as your probable cause for Mr. Porch,
14 correct?

15 A I don't believe that I labeled that my probable cause.
16 That was kind of a time line and -- and some -- summary of
17 everything I looked at.

18 Q Okay. So on page 2 of your report, kind of in the
19 middle towards the bottom, you call it "See attachment,
20 Joshua Porch for PC for murder warrant."

21 A Can you be more specific as to where you're seeing
22 this?

23 Q Kind of -- third paragraph from the bottom, on the
24 second page of your report. (As read) "See attachment,
25 Joshua Porch," in quotes -- in quotes, "for PC for murder

1 warrant."

2 A Okay. Yes.

3 Q So in the -- the heading of this other document, it
4 says "Joshua Porch," correct?

5 A That is correct.

6 Q So this is kind of your probable cause for Mr. Porch,
7 correct?

8 A In my mind, yes, sir.

9 Q Okay. And other than that, you generated a warrant
10 worksheet, right?

11 A Correct.

12 Q And then the actual search warrant affidavit, which
13 was submitted to Judge Newsom, right?

14 A Not search warrant, no.

15 Q Not search warrant, arrest warrant. The arrest
16 warrant for ---

17 A That would be ---

18 Q --- Mr. Porch.

19 A --- the arrest warrant affidavit that you have in your
20 hand.

21 Q Right. Something like that. Do you have a copy of
22 that with you?

23 A I do.

24 Q Okay. Are -- are there any other documents that you
25 generated, as far as being involved in this case, other

1 than those four documents?

2 A I'm sure there probably are. I -- I know I remember
3 doing a time line.

4 Q Okay. Now, as part of being asked by the Sheriff to
5 look at this case -- and you've got plenty of experience
6 in investigation, right?

7 A Correct.

8 Q And -- but Stan Smith and Holdorf and Strange have a
9 lot of experience investigating cases, too, right?

10 A They do.

11 Q And as part of this, you were -- you looked -- you had
12 access to the entire case file, right?

13 A Correct.

14 Q So you could look at Stan Smith's report, right?

15 A Correct.

16 Q And you -- he's in the building; you can talk to him.

17 A Absolutely.

18 Q You can look at Investigator Holdorf's report, and
19 he's in the building and you can talk to him.

20 A Correct.

21 Q Same with Investigator Strange, right?

22 A (No audible response.)

23 Q You had access to John Barron, the guy that's in the
24 DNA lab ---

25 A Sure.

1 Q --- correct? And you had access to all witness
2 statements in this case --

3 A Yes.

4 Q -- correct? Including Mr. Porch's, including Mr.
5 Mallory's, right?

6 A Yes.

7 Q You had access to things like incident reports and 911
8 phone calls, correct?

9 A Yes.

10 Q Photos, crime scene information, correct?

11 A Yes.

12 Q Trial transcripts, correct?

13 A I think we had partial transcripts, yes.

14 Q Okay. So you had everything you needed to -- to do
15 your job the Sheriff asked you to do, in your opinion,
16 right?

17 A That's correct.

18 Q So in looking at all that information, I want to walk
19 you through some things that you would have been -- would
20 have been evident by looking at that.

21 Talking about witness statements, you were aware that
22 there's a witness by the name of "Sherry Tribble," right?

23 A Yes.

24 Q She was a neighbor and eyewitness to parts of this
25 incident, correct?

1 A Correct.

2 Q She testified for John Meadors at both the first two
3 trials, is your understanding.

4 A That is my understanding, yes.

5 Q And her statement, essentially, is that she hears what
6 she describes as a "domestic argument" at the Mallory's
7 apartment, right?

8 A Correct.

9 Q She looks outside and sees what is later revealed as
10 Mr. Mallory's white van, parked in the parking lot, right?

11 A Yes.

12 Q She hears specifically a female voice saying things
13 like, "How could you," right?

14 A (No audible response.)

15 Q You agree with that, that's in her statement.

16 A That's possible, yes. I don't recall ---

17 Q Okay.

18 A --- that specific statement. But it's possible.

19 Q Would it help you if I give you a copy of her
20 statement?

21 A Absolutely.

22 (Mr. Shealey hands a document to the witness.)

23 Q And I apologize. I have some of the important stuff
24 already highlighted.

25 But she says -- you agree in that statement, she hears

1 a female voice say, "How could you?"

2 A Yes.

3 Q She sees a man running out to a white van, correct?

4 (Brief pause.)

5 A Yeah. She characterizes it as "jogging to the van."

6 Q Right. And him being upset and -- and saying things
7 like, "Look what you made me ...", right?

8 A Correct.

9 Q And would you disagree with me that later, at trial,
10 that turned into, "Look what you made me do," was her
11 testimony?

12 A I believe that's correct.

13 Q Okay. Mind if I grab that back.

14 (The witness hands the document to Mr. Shealey.)

15 Q Thank you. So you were aware of that statement as
16 part of your investigation.

17 You also would have been aware that he was seen by Ms.
18 Tribble driving -- driving away in the van, correct?

19 A Correct.

20 Q That there was -- are you familiar with a possible
21 security guard named "Ivan Nida" or "Neda" (phonetic)?

22 A No. That may have been one of the witnesses in the
23 original trial.

24 Q You're familiar there was a hospital security guard,
25 right?

1 A I am.

2 Q He saw the white van with -- with Justin Mallory and
3 his wife pull up on the -- to a hospital.

4 A Correct.

5 Q He brought her in. And you were aware he testified
6 twice for Deputy Solicitor John Meadors in the prosecution
7 of Justin Mallory; and that he observed, basically, Mr.
8 Mallory saying and doing things that were inconsistent
9 with grief, right?

10 A That is correct.

11 Q And that was the reason he was an important witness to
12 the prosecution at that time, that Mr. Mallory saying
13 things like, "Bitch bled all over my van, my walls, my
14 PlayStation," right?

15 A Yes.

16 Q And in his experience, the witness, the hospital
17 security guard, he didn't think that that -- you know, he
18 sees a lot of people come in there, that it was not
19 genuine grief, correct?

20 A Correct.

21 Q He also wrote in his statement and brought out to
22 police that he thought that another gentleman was possibly
23 removing something from Mr. Mallory's van, right?

24 A That's possible.

25 Q Right. And that he, in his statement, thought that it

1 was possibly a gun, okay? Do you remember that?

2 A No.

3 Q You don't -- you didn't see that -- remember his
4 statement as part of ---

5 A I may have. I just don't recall.

6 Q Okay.

7 A It's been a long time since I've read through the
8 entire file.

9 Q But you remember generally that statement and ---

10 A Yes.

11 Q --- and why he was important to John Meadors and Stan
12 Smith and ---

13 A Right.

14 Q You would have -- you would have seen Investigator
15 Holdorf's report, Investigator Stan Smith's report, that
16 they developed their own time line, correct?

17 A That's correct.

18 Q And that that was done based on Justin Mallory's
19 statement, right, that ---

20 A Correct.

21 Q --- one of the things, including cell phone records,
22 cell phone calls, correct?

23 A As far as I know, yes, sir.

24 Q Okay. And these were just some of the things that you
25 looked at when you tried to develop your time line ---

1 A That's correct.

2 Q --- right? And your time line is listed in your
3 report, correct --

4 A Correct.

5 Q -- as Justin Mallory possibly having only 10 minutes
6 to commit this crime --

7 A That is correct.

8 Q -- if it was him? And that's pretty -- fairly
9 consistent with the time line that the other gentlemen,
10 the other investigators, had on the case. They said -- I
11 think that the actual -- what they said was 11 minutes.
12 So fairly consistent, right?

13 A To the best of my memory, yes. It wasn't too far off.

14 Q And people like Investigator Strange actually drove
15 the pathway that Mallory said he took. He was out on a
16 date with a woman that night, correct?

17 A That -- that is correct.

18 Q And he ended up at a hotel, and then claims he drove
19 back and just found his wife this way, right?

20 A That is correct.

21 Q So as far as they were concerned, that 10 or 11
22 minutes was plenty of time for him to kill the victim,
23 right?

24 A Correct.

25 Q And that also was consistent, in their opinion, with

1 Ms. Tribble's statement, putting his van on the scene and
2 hearing the domestic fight.

3 A That's correct.

4 Q So you would have reviewed all that.

5 You would have known that once they arrested him, he
6 gave his -- the statement. He denied the allegation, but
7 failed the polygraph --

8 A Correct.

9 Q -- right, as to whether he killed her.

10 Basically, you also would have seen several statements
11 of Joshua -- Joshua Porch, correct?

12 A Yes, sir.

13 Q Which would be reported as a verbal statement to
14 Investigator Strange the following day saying, "I wasn't
15 there. I'm friends with them, but I wasn't there that
16 night," right, basically?

17 A Right.

18 Q And this was on Mother's Day -- the original incident
19 was Mother's Day, 2006, right?

20 A Yes, sir.

21 Q May 14th. And really, Joshua Porch wasn't involved
22 until over a year later; would you agree with that
23 statement?

24 A Yes.

25 Q He wasn't actually interviewed again until June 27 of

1 2007, right?

2 A That's correct.

3 Q And that was because they were preparing for trial in
4 July, and there was some male DNA on the scene that they
5 didn't have an answer for, right?

6 A That is correct.

7 Q You saw, as part of your review of this case, that it
8 wasn't Justin Mallory's, so they started talking to people
9 to see who it was. At this point, they asked for Mr.
10 Porch's DNA and started talking to him again, right?

11 A Yes, sir.

12 Q And he basically says, well, "Yeah." It was statement
13 two, I believe, Stan Smith at Richland County -- or it
14 might have been at his house -- saying, "Well, I cut my --
15 my right finger on an apple," right? "I was over there at
16 the -- at the location with my daughter, cutting her an
17 apple; cut my finger."

18 A That sounds correct.

19 Q They talked to him later that day and say, "Well, why
20 didn't you say this before?" He basically said, "I
21 thought I did. I just didn't want to get involved. You
22 know, I don't want to be seen as a suspect," correct? Is
23 that fair?

24 A It was something to that nature. I don't have the
25 statements here in front of me.

1 Q Right. And when he's talking about his right finger,
2 is that -- you agree that's over a year later.

3 A Yes.

4 Q Okay. Would you agree that it's -- if you cut your
5 finger over a year earlier, you may not remember exactly
6 where the cut is on your hand or even which hand; is that
7 fair?

8 A Absolutely.

9 Q Okay. And so, he -- he keeps getting pressed. He's
10 taken down to Richland County and you talk to him some
11 more. And you say, "Look. Tell us why -- you know, we --
12 we got a match to your DNA. Tell us -- tell us why it's
13 there."

14 And then he gives that final statement that you're,
15 I'm sure, familiar with, where he reveals that he was
16 there, being amorous with -- with Nekia, right?

17 A Correct.

18 Q That -- that he was having some drinks; it's late.
19 And that they stopped being amorous; where then Mr.
20 Mallory comes in, confronts Nekia; she confronts him about
21 his cheating, which he was actually doing, right; that
22 night?

23 A Yes, sir.

24 Q Ms. Ricki Cook, I believe, is her name?

25 A I don't recall the name.

1 Q Mr. Porch says that there's this physical altercation
2 ensuing, where there's a -- Mr. Mallory has an object, you
3 know, going at Ms. Mallory. Mr. Porch intervenes in
4 between them and is cut in the process, you know. I think
5 he says in his statement it's his left hand -- and that he
6 runs to the kitchen to tend to his wound. Drops some
7 blood -- explains the blood in the kitchen which was there
8 -- and his, correct?

9 A That is correct.

10 Q Cleans that up, just as a matter of practice. The
11 fight's died down. His statement was that Nekia was
12 slumped next to the couch and that Mr. Mallory was on the
13 phone somewhere in another part of the -- the house,
14 correct?

15 A Sounds correct.

16 Q And that he then hightails it out of there.

17 So knowing all this, you know that this was
18 scrutinized by Stan Smith and -- and -- Major Stan Smith,
19 I think, at the time. Might have been Captain Smith, but
20 time -- time of the trial, it was Major.

21 But this was scrutinized by him, right?

22 A That's correct.

23 Q This was scrutinized -- scrutinized by Investigator
24 Holdorf. They consulted with John Meadors in the
25 Solicitor's Office, and they did ask that he be

1 polygraphed, correct?

2 A That's correct.

3 Q Okay. That was by Sergeant White, right? You -- you
4 know, per Stan Smith's report, he failed the initial
5 polygraph, right?

6 A Correct.

7 Q They talked to him some more about his DNA. And I
8 think you're familiar with Stan Smith's report -- which
9 you said you reviewed -- that the source of the DNA, which
10 was also under her fingernails, you know, was a question
11 mark; do you agree with that?

12 A Say that again.

13 Q That there's -- there's male DNA under Nekia Mallory's
14 fingernails that was not Mr. Mallory's. And so they were
15 trying to tie that down, as well as the blood in the
16 kitchen.

17 A Correct.

18 Q And that per Stan Smith's report, consulting with the
19 DNA analyst, Gray Amick, he said that fondling or rubbing
20 through -- your hands through someone's hair, that could
21 be a good source of DNA.

22 A It's possible.

23 Q And you agree that that was what was testified to at
24 trial by John Barron.

25 A Well, that's possible. I don't recall.

1 Q You're not sure it would be that, but it wouldn't
2 surprise you, right?

3 A Right.

4 Q Okay. Mr. Porch is polygraphed again. Per Stan
5 Smith's report he says that the result was inconclusive
6 and that Joshua Porch may not be a good candidate for
7 polygraph. You agree with reading that and talking to
8 Stan Smith about that?

9 A I do.

10 Q Okay. But they were -- they were satisfied with his -
11 - the veracity of his statement, right? You know John
12 Meadors, right? You've dealt with him the past?

13 A Many, many years.

14 Q Deputy Solicitor here for a long time. Done a lot of
15 murder trials, done a lot of cases, correct?

16 A Absolutely.

17 Q And obviously you worked with Stan Smith, and know
18 Stan Smith; and you're confident in his abilities,
19 correct?

20 A Yes.

21 Q Same goes for Holdorf and Strange?

22 A Yes.

23 Q Okay. And knowing them like you do, you wouldn't
24 imagine that they would put someone up on the stand that
25 conceivably would be lying to them, right?

1 A No, they would not.

2 Q Okay. So you have all that, and that's what's already
3 in the file from the past two trials, right?

4 A That's correct.

5 Q But you start doing you job and looking at this, and
6 you realize that Nekia Mallory's shirt has never been
7 tested at all as far as you can tell, correct?

8 A That's correct.

9 Q Okay. And your report, I think -- looking at your
10 preliminary transcript hearing testimony, it was that the
11 guys -- Stan Smith and those gentlemen didn't feel it was
12 relevant, correct?

13 A I don't know that I testified to that.

14 Q Okay.

15 A It's possible.

16 Q Okay.

17 A But I ---

18 Q Because they had ---

19 A --- just don't recall. It's been so long.

20 Q Well, they had an explanation for Joshua Porch's blood
21 on the scene --

22 A Sure.

23 Q -- right? And his DNA under her fingernails, right?

24 A That's correct.

25 Q And Mr. Mallory was covered in her blood, so it's not

1 really a situation of whether he was on the scene or not,
2 right?

3 A Yeah. He was covered in her blood, I guess, at the
4 hospital. There's another witness that says he was not --
5 did not have any blood on him --

6 Q Okay. Well --

7 A -- at the apartment.

8 Q Stan Smith and those gentlemen didn't -- didn't feel,
9 for whatever reason, that it was necessary to do that,
10 because they felt they didn't need it, correct? Is that
11 fair?

12 A I don't know what they felt.

13 Q Okay. Well, it wasn't ---

14 A They didn't do it.

15 Q --- done. It wasn't done.

16 A That's correct.

17 Q And so you decided it should be done. Talked to John
18 Barron. You asked that it be done, and what you
19 discovered was that there is a small amount of blood on
20 the front, right portion of Nekia Mallory's shirt that she
21 was wearing.

22 A Correct.

23 Q Okay. And in your mind, this was significant, right?

24 A The fact that it was Joshua Porch's blood was
25 significant ---

1 Q Right.

2 A --- yes.

3 Q Even though that he had -- and you reviewed his
4 statements, correct? You told us that.

5 A That's right.

6 Q And you had access to John Meadors and Stan Smith,
7 who, by the way, personally felt that Mr. Porch did not do
8 this crime. That's in your report.

9 A That is correct.

10 Q So you were fully aware of the incident Mr. Porch
11 described, right? The altercation.

12 A Sure.

13 Q Which was a man and wife confronting each other about
14 cheating; you agree with that.

15 A Yes.

16 Q He intervenes, facing Justin Mallory.

17 A Correct.

18 Q And in this quick fight, where Mallory allegedly has
19 some kind of object in his hands, is -- is cut; Mr. Porch
20 is cut, and runs to the kitchen to attend to his wound.
21 So the fact that Mr. -- Ms. Mallory got some of Mr.
22 Porch's blood on her shirt during the altercation was
23 significant for you.

24 A Yes.

25 Q Even though it wasn't significant for John Meadors and

1 Stan Smith.

2 A Yes.

3 Q Even though it's -- even though he admits to getting
4 cut in the middle of a fight between a man and woman's
5 violent altercation.

6 A Yes.

7 Q Okay. And you also note in your report that there's
8 some inconsistencies about which hand Mr. Porch said was
9 cut, right?

10 A That's correct.

11 Q And you already agree with me that, after a year, you
12 may not remember which hand you cut if you do cut
13 yourself, right? That's fair?

14 A That is fair.

15 Q So he's interviewed after a year -- when he's
16 interviewed after a year, on June 27, '07, he says the
17 right hand was cut. Then after being polygraphed, he says
18 it's his left hand, okay? So for you, that was telling
19 because he testified to the left hand being cut, right?

20 A To some extent, yes.

21 Q Okay. And so it's just inconceivable for you that if
22 his left hand is cut in this -- a violent altercation,
23 that any blood should be on Nekia Mallory, much less the
24 right side of her shirt. Was that your opinion, that it
25 just doesn't make any sense?

1 A I didn't think he was telling the truth based on the
2 totality of everything that I looked at. That's ---

3 Q Well, I'm asking ---

4 A --- not just that specific point. But yes, I think it
5 is important.

6 Q But you agree if someone steps in between a violent
7 fight between two people, that if he cuts himself, blood
8 could get on the victim. You agree that could happen?

9 A Well, the victim was -- my understanding of his
10 statement is the victim was behind him.

11 Q Right.

12 A He is facing --

13 Q Uh-huh.

14 A -- Mallory.

15 Q Uh-huh.

16 A He is cut on the left hand. The victim's behind him.

17 Q Right.

18 A So I would think it very unlikely that it'd be on her
19 shirt.

20 Q Okay. So if you're bleeding on your hand, say it's
21 raised like this (indicates), blood's going to go
22 whichever way your hand goes, correct?

23 A That -- depending on the severity of the cut, yes.

24 Q Right. And none of us, you know, were there except
25 for Mr. Porch. And we're talking two people, going at

1 each other, where the testimony was Mr. Mallory was
2 stabbing her and he was in the middle, right? This is not
3 a static situation; you agree with that.

4 A Yes.

5 Q Okay. So you agree that it's possible that, in that
6 type of high-intensity/high-movement situation, blood of
7 Mr. Porch could have gotten on her shirt. You don't think
8 that's fair?

9 A I don't know that's what happened.

10 Q I'm asking if you think that's possible with your
11 years of training and experience ---

12 A In the realm of -- yeah. I mean, anything's possible.

13 Q Right. I mean, if you turn your hand -- your left
14 hand's out and you turn this way (indicates) into her, lo
15 and behold, you're going to touch the right side of her --
16 of her body, are you not?

17 A That's possible.

18 Q That's possible. You also noted in your report that
19 you thought, like we've been discussing the left vs. right
20 hand, that the left was significant.

21 A Yes.

22 Q Right. That -- it's true that Mr. Porch is left
23 handed, per Sergeant White's intake notes, correct?

24 A That's correct.

25 Q And I think you met with Mr. Mallory, had him write a

1 few things, and noted that he was right handed.

2 A That's correct.

3 Q And you agree this is stuff that John Meadors and Stan
4 Smith already knew, right?

5 A I assume they did, yes.

6 Q Okay. But -- so in -- in your opinion, what you write
7 in your report is you thought, with the -- the wound to
8 Ms. Mallory's neck being on the right side of her neck,
9 that it would be more consistent with a left-handed
10 assailant facing her.

11 A Yes.

12 Q And he's left handed.

13 But you also note in your -- in that same report that
14 you can't rule out a right-handed assailant either.

15 A That's correct.

16 Q Okay. So that's kind of a toss up there, right?

17 A Yes.

18 Q Okay. And so that -- that testing really is the only
19 -- prior to getting the warrant -- just so we're clear,
20 prior to getting the warrant, that new testing that --
21 that John Barron did for you, seeing Joshua Porch's blood
22 on the right front part of her shirt, is really the only
23 new physical evidence you had in this case when you asked
24 for the warrant.

25 A The only new physical evidence, yes.

1 Q Okay. Did you have other evidence --

2 A I think ---

3 Q -- anything else?

4 A You know, this is like "armchair quarterbacking," you
5 know.

6 Q Right.

7 A I have the ability to look back over everything.

8 Q Uh-huh.

9 A And you see the inconsistent statements. You see the
10 fact that he's left handed. You see where the blood is,
11 and I felt there was plenty of probable cause.

12 Q Right. But what I'm saying is the only new evidence
13 that you had gotten, that John Meadors and Stan Smith
14 didn't have, was that piece of blood on her shirt.

15 A Yes.

16 Q Okay. And then -- so you began preparing your warrant
17 worksheet and your actual arrest warrant for Mr. Porch,
18 right?

19 A Yes.

20 Q Okay. Do you have a copy of that with you?

21 A I have a copy of the arrest warrant, but I do not have
22 a copy of the worksheet.

23 Q Okay. And this -- here's the warrant worksheet (hands
24 document to the witness.) Does that look like yours?

25 A Yes.

1 Q Okay. Do me a favor, what is -- what is that
2 (indicates) -- if you don't mind me approaching -- what is
3 this that says (as read): "July 6, '09; 4/13; D. Wilson"
4 and there's a phone number. What does that signify to
5 you?

6 A That would be a fax.

7 Q Okay. Did you fax this warrant worksheet over to
8 Judge Newsom?

9 A That's what it looks like. I would call, make sure
10 they were there, and fax it over.

11 Q Okay. So you didn't personally testify?

12 A Yeah. I would have gone over there --

13 Q Okay. But --

14 A -- to sign it.

15 Q To sign --

16 A Sign the arrest warrant.

17 Q Okay. But this ---

18 A This is something that's sent to the secretary to type
19 the arrest warrant.

20 Q Okay. But did you personally talk to Judge Newman
21 (sic) about your opinion for probable cause?

22 A Yes.

23 Q Okay.

24 A To what extent we went into it, I don't recall. It's
25 been four years.

1 Q Okay.

2 A But yes. He signed the arrest warrant and I signed
3 the arrest warrant.

4 Q Okay. Do you usually fax the warrant worksheet over,
5 or do you sometimes just bring that in yourself?

6 A Either way.

7 Q Do you -- do you -- I mean, you're the deputy chief.
8 Are you usually doing search warrants and arrest warrants
9 at your status these days? Just --

10 A It happens.

11 Q Okay. Every once in a while.

12 A Every once in a while.

13 Q So you fax this over, and you went and appeared before
14 Judge Newsom, but you can't really recall what you say.

15 A No. I know I did appear before Judge Newsom to sign
16 the warrant.

17 Q Sign the warrant.

18 A But what we talked about, I don't specifically recall.

19 --

20 Q Okay.

21 A -- since it's been so long.

22 Q Is it fair to say that what you talked about is
23 probably listed in the warrant?

24 A Part of it, yeah, I'm sure.

25 Q Okay. You have a copy of that with you --

1 A Copy of the warrant?

2 Q Yeah.

3 A Yes.

4 Q You look at it with me.

5 (The witness complies.)

6 Q So you agree that it says that (as read): "On May 14,
7 2006, while at 1103 Pinewood Road, Apartment 311-C, in the
8 Dentsville magistrate district of Richland County, one
9 Joshua Porch did commit the crime of murder, and that he
10 did, with malice aforethought, assault and stab Nekia
11 Mallory in the neck, which resulted in the death of Nekia
12 Mallory." You agree with that, right?

13 A Yes.

14 Q And the next statement (as read): "The defendant has
15 admitted to being at the scene of the crime during the
16 assault and stabbing...". Let's just stop right there.

17 Now, you hadn't talked to Joshua Porch at this time.

18 A No.

19 Q Investigator Godfrey, Investigator Daniels had not
20 talked to Joshua Porch at this point.

21 A No.

22 Q The last statement that you had was the statement that
23 he testified to at the request of John Meadors. It was
24 his final statement to Stan Smith, which was that he
25 intervened in a fight between these two and got cut,

1 right?

2 A That's correct.

3 Q So you feel that that's a fair statement (as read):

4 "The defendant has admitted to being at the scene of the
5 crime during the assault and stabbing..."? You feel
6 that's fair?

7 A Yes.

8 Q Okay. Do you feel like you left anything out?

9 A No.

10 Q Okay. So you don't think that Judge Newsom had a
11 right to know about the full context of him being involved
12 in between these two as Mallory stabbed Nekia?

13 A (No audible response.)

14 Q That wasn't ---

15 A And we may have talked about that. I don't recall.

16 Q You don't recall?

17 A No.

18 Q It's not -- it's not in this language here, is it,
19 that you talked ---

20 A No.

21 Q --- about it. Okay. And this says "affidavit."

22 A That's correct.

23 Q And it says "murder," correct?

24 A That is correct.

25 Q Okay. So you're not sure whether you talked about the

1 full context of it or not.

2 A Four years ago, I don't recall.

3 Q Okay. And you -- you have the ability to write as
4 much as you want in here under the facts that you say
5 support probable cause for murder ---

6 A Sure.

7 Q --- right? And sometimes people actually attach a
8 separate page and it goes a little longer, right?

9 A If necessary, that's correct.

10 Q You did not do that here.

11 A No.

12 Q Okay. And after that, the next part says (as read):
13 "And has been further implicated in the crime by DNA
14 testing of blood found at the scene that puts the
15 defendant at the scene." Okay. And you felt that was
16 appropriate to let Judge Newsom know when asking for
17 probable cause for murder on Joshua Porch.

18 A Absolutely.

19 Q Okay. Even though everything you had was already him
20 saying -- there as the star eyewitness to the fight,
21 correct?

22 A (No audible response.)

23 Q That was the statement that he put himself on the
24 scene.

25 A You're right.

1 Q Okay.

2 A Absolutely.

3 Q The statement where he's there fondling, kissing Nekia
4 Mallory, correct?

5 A Correct.

6 Q The statement where they stop and then Mr. Mallory
7 comes in, correct?

8 A Correct.

9 Q The statement where Mr. Mallory gets upset with Nekia,
10 right?

11 A Correct.

12 Q The statement where Nekia gets back upset at Mr.
13 Mallory because he was out cheating, too, right?

14 A Correct.

15 Q Mr. Porch's statement where he then witnesses Mr.
16 Mallory jab an object at Nekia, where he has to intervene
17 and gets subsequently cut, correct?

18 A Correct.

19 Q That's a little different, is it not?

20 A A little different from what?

21 Q Than what you included in this section when asking for
22 probable cause for murder?

23 A Well, he did put himself there at the scene.

24 Q But that's not what's in this affidavit before Judge
25 Newsom, is it?

1 A Well, I did not put every detail in there, no.

2 Q I'll agree with you on that. Okay. But you don't --
3 that -- you agree that's not in this section here
4 (indicates.)

5 A Absolutely.

6 Q Okay. And then further (as read): "And implicates
7 the defendant in the assault" -- we're talking about the
8 DNA -- "in the murder." Okay. And we talked about this a
9 little bit. But I assume what you're talking about is the
10 blood that you discovered on Nekia Mallory's right front
11 shirt.

12 A That's correct.

13 Q That when I described to you Mr. Porch's last
14 statement, that you told me it was conceivable that blood
15 could have gotten on -- on her shirt the way he described
16 it. That's not out of the realm of possibility.

17 A Well, anything's possible --

18 Q Right.

19 A -- but it's not consistent in my mind.

20 Q Okay. It's not consistent in your mind that you get
21 cut in the middle of a fight, that any blood could splash
22 on anybody around you. That's not consistent?

23 A No.

24 Q Okay.

25 A Not in my mind.

1 Q Right.

2 A I think all -- all this put together.

3 Q Okay. Well, certainly what's not the next sentence is
4 that John Meadors believed Joshua Porch, Stan Smith
5 believed this statement, the veracity of it, and had him
6 testify for two trials in the prosecution of another man.
7 That is not included as the next statement.

8 A No, it's not.

9 Q Okay.

10 MR. SHEALEY: Beg the Court's indulgence.

11 (Brief pause.)

12 MR. SHEALEY: Nothing further at this time, Judge.

13 THE COURT: Any cross?

14 MR. GOINGS: Yes, ma'am. If it please the Court.

15 CROSS-EXAMINATION BY BY MR. GOINGS:

16 Q Chief Wilson, you were at -- you stated here again,
17 you don't remember what you and Judge Newsom discussed; is
18 that correct?

19 A That is correct.

20 Q All right. So you don't know if you went over this
21 information with Mr. Newsom ---

22 MR. SHEALEY: Objection; leading, Judge.

23 MR. GOINGS: It's on cross.

24 Q So you don't know what information you gave the
25 magistrate; is that correct?

1 A I just don't recall after four years.

2 Q You normally talk to Magistrate Newsom about the cases
3 you bring arrest warrants for?

4 A Yes, sir.

5 Q Now, first I want to ask you, the statement that you
6 just read by the defense (as read): "Being at the scene
7 of the crime during the assault and stabbing which the
8 defendant admitted to," was that a lie?

9 A No.

10 Q (As read): "That DNA testing of the blood found at
11 the scene puts the defendant at the scene and implicates
12 the defendant." Is that a lie?

13 A That is not a lie.

14 Q All right. And you have gone over a lot already, and
15 I'm not going to get back on it, about what you knew at
16 the time that you went and got this arrest warrant; is
17 that correct?

18 A That's correct.

19 Q All right. As far as the statements given by Mr.
20 Mallory -- I mean, Mr. Porch, how many prior statements
21 until what is ultimately his final statement -- excluding
22 what happened in 2009, how many prior statements did he
23 give law enforcement based on your recollection?

24 A It was either three or four.

25 Q All right. So you got the first statement to Sargent

1 Strange: "I didn't have anything to do with it," correct?

2 A Right.

3 Q Or "I wasn't there. I don't know about it;
4 surprised."

5 A Yes, sir.

6 Q And that was actually just -- wasn't written down or
7 any formal written statement, was it?

8 A No, sir.

9 Q All right. That's just based on Sargent Strange's
10 report.

11 A Yes, sir.

12 Q Second time, after DNA is found at the Mallory
13 residence that matches -- well, that is unknown DNA; is
14 that correct?

15 A Right.

16 Q All right. And y'all approach Mr. Porch again to ask
17 for his DNA?

18 A That's correct.

19 Q And that's where he indicates that he was over there
20 earlier, cut his hand on -- when he was cutting an apple
21 for his daughter. Is that --

22 A Yes, sir.

23 Q So that's the second statement we have ---

24 A Right.

25 Q --- from Joshua Porch. All right.

1 DNA confirms it's Mr. Porch's DNA; is that correct?

2 A That's correct.

3 Q All right. And then again he is approached by law
4 enforcement. Is he asked to do a polygraph or does he
5 give another statement first?

6 A I think he was asked to do a polygraph, if I remember
7 the sequence right. And he's asked to do a polygraph, and
8 he fails that. They talk to him some more, and then he
9 gives another statement.

10 Q So he gives a second statement and what -- I take that
11 back. After DNA is found, he gives an additional
12 statement to Stan Smith; is that correct?

13 A That's correct.

14 Q All right. And then -- and there he indicates what?

15 A That he cut his finger while cutting an apple for his
16 daughter.

17 Q All right. Does he indicate going over to the Mallory
18 residence that night, after he fails the polygraph exam?

19 A No, I don't believe he does.

20 Q Eventually he does admit that, yeah, I was over there.
21 And this, in fact, becomes his trial testimony; is that
22 correct?

23 A That's correct.

24 Q In both trials for Mr. Mallory?

25 A It's my understanding.

1 Q Now, you were asked about Mr. Meadors and Sargent
2 Holdorf and Stan Smith: You've known them a long time,
3 worked with them a lot; wouldn't put somebody they
4 believed was lying to them. Did they know Mr. Porch was
5 lying to them at the time?

6 A No. I think they believed his story.

7 Q But there's no doubt there's inconsistent statements
8 given by Mr. Porch ever since the day after the incident.

9 A That's correct.

10 Q Now, let's look at all of the other evidence that you
11 wasn't (sic) asked about that you had in your possession
12 prior to getting the arrest warrant. You testified at one
13 point about a Mr. Hargraves, the neighbor; is that
14 correct?

15 A Yes, sir.

16 Q All right. What did Mr. Hargraves describe about Mr.
17 Mallory that he -- when Mr. Mallory came over for
18 assistance?

19 A I don't remember his exact words, but he -- he
20 describes him as being hysterical and doesn't have any
21 blood on his clothing at that point when he goes next door
22 to get help.

23 Q All right. So when you get this warrant, and whether
24 or not you told it to the magistrate or not, you had
25 information that -- from the neighbor, after a -- a --

1 someone was stabbed -- and you -- you saw the pictures of
2 the apartment, correct?

3 A Yes, sir.

4 Q Describe the amount of blood there for the Court.

5 A It was quite a bit.

6 Q All right. You have an individual, coming to seek
7 assistance, that the neighbor describes as not having
8 blood on him.

9 A That's correct.

10 Q Does that go into your decision as to whether or not
11 there's probable cause for Mr. Porch when you were looking
12 at it as the totality of circumstances?

13 A Yes.

14 Q Irrespective of whether you relate that information to
15 the magistrate.

16 A Yes.

17 Q What about the DNA prior to -- that y'all had of Mr.
18 Porch -- y'all had DNA of Mr. Porch prior to the test
19 being re -- retested, is that -- or the shirt being tested
20 for the first time.

21 A That's correct.

22 Q All right. Was there also information to suggest that
23 someone tried to clean up the scene?

24 A Yes.

25 Q All right. And did y'all have photographs of -- and I

1 forget what they spray on it to see if there is any
2 existence of blood that's been cleaned.

3 A We did.

4 Q All right. And -- and you had that information,
5 correct?

6 A Yes. And there was also some clothing in a washing
7 machine.

8 Q So there was indications that someone tried to clean
9 up blood off the floor in the kitchen.

10 A Correct.

11 Q And you had that information.

12 A Yes, sir.

13 Q All right. And eventually, Mr. Porch, when he finally
14 comes forward with his -- although it's not his last
15 statement we know of, but his last statement as of his
16 trial testimony, indicates that while this violent assault
17 is going on in the living room between Mr. Mallory and his
18 wife, what is he doing?

19 A He goes to the kitchen, wraps his finger, and cleans
20 up.

21 Q So this verbal assault, as -- as -- as defense counsel
22 describes it, gruesome battle is happening in the living
23 room, Mr. Porch is cleaning up his wound and cleaning up
24 the floor.

25 A Correct.

1 Q Did that seem odd to you when you went back and looked
2 at the whole entire case?

3 A Yes.

4 Q Irrespective of whether they had this information
5 before they tried Mr. Mallory the first time.

6 A That's correct.

7 Q Did that go into your decision to whether probable
8 cause existed at the time ---

9 A It did.

10 Q --- to get an arrest warrant for Mr. Porch?

11 A It did.

12 Q You were also asked about the cut on the hand, that
13 sometimes, well, it could be transferred; you don't know
14 which way he was slinging his hand. That's true, and you
15 said it's possible, correct?

16 A It is possible.

17 Q But are you looking at that in a vacuum, like that's
18 the only thing you're looking at at the time?

19 A No.

20 Q What else are you looking at?

21 A You're looking at the totality of the circumstances,
22 the changes in the statement, the fact that Mallory didn't
23 have any blood on him. You know, you're looking at the
24 cleaning up at the scene. It -- it's just -- flies
25 against logic that somebody would -- who gets confronted

1 by somebody's husband and gets cut, is going to stay on
2 the scene and clean up. It just doesn't make sense.

3 Q And what about his prior inconsistent statements?

4 A Absolutely.

5 Q Now, there's also information about Ms. Tribble, and -
6 - and I don't have her trial transcript in front of me.
7 But didn't she come off her original statement in the
8 second trial when Mr. Finney was cross-examining ---

9 MR. SHEALEY: I'm going to object to cross

10 Q --- her about the time frame.

11 MR. SHEALEY: A leading question again, Judge. He's
12 my witness.

13 MR. GOINGS: I'm on cross.

14 MR. SHEALEY: I mean --

15 THE COURT: If you'd ask him more of a direct
16 question, please.

17 Q Did Sherry Tribble's statement change in any way from
18 what she originally wrote down and what she testified in
19 court?

20 A It did.

21 Q The -- the time frame was off; is that correct?

22 A It's my understanding the time frame -- or she may
23 have told Mr. Finney that the time frame she gave didn't
24 match what Investigator Holdorf had written down.

25 Q All right. And then that was, in fact, one of the --

1 correct me if I'm wrong -- yes or no, wasn't that one of
2 the main defenses used by Mr. Finney in the defense of Mr.
3 Mallory?

4 A I didn't sit through the trial, so I couldn't tell
5 you.

6 Q Okay. You wasn't (sic) present.

7 A No, sir.

8 Q Okay. So when you go back and look, yes, Mr. Mallory
9 was tried twice, correct?

10 A That's correct.

11 Q Yes, they arrested Mr. Mallory originally for the
12 murder, correct?

13 A That is correct.

14 Q You knew that information.

15 A Yes.

16 Q Did that -- let me ask you this way: Were you looking
17 at the fact that he was tried or arrested as part of what
18 you were looking at when you were looking at the
19 information you had on Mr. Porch?

20 A I considered the fact that he was arrested, and
21 indeed, asked Mr. Mallory to take a polygraph, because I
22 wanted to eliminate it in my mind. But the evidence on
23 Mr. Porch I believe stands on its own.

24 Q And that evidence -- correct me if I'm wrong and add
25 anything if I miss it, okay: Possible changed testimony

1 of Sherry Tribble about the time line; the three or four
2 prior statements we know that Mr. Porch made about what he
3 was doing and where he was at that night, correct?

4 A Correct.

5 Q The fact that someone cleaned up, as admitted to by
6 Mr. Porch on his final statement, correct?

7 A Correct.

8 Q And the testimony or statement of the neighbor who
9 said Mr. Mallory didn't have any blood on him when he came
10 for aid to the neighbor's house, correct?

11 A Correct.

12 Q A cut on the defendant's hand, left hand.

13 A Left hand.

14 Q And you also asked whether or not -- or couldn't it be
15 that somebody got their hands confused. Well, let me ask
16 you this way: Is it more probable that you remember what
17 hand got cut on or got cut during a murder that took
18 place?

19 A Absolutely.

20 Q I mean, it's easy to forget you just cut your hand out
21 of the blue one day, but if it's involving something this
22 gruesome, wouldn't that trigger your memory better ---

23 A I would ---

24 Q --- in your opinion?

25 A I would think so.

1 Q So the fact you got a cut hand, the fact that you got
2 a defendant who's left handed and the -- the wounds are
3 consistent with a left-handed assailant, correct?

4 A Correct.

5 Q And then you have the new DNA from the shirt that was
6 tested, and you compared that to what, the statement he --
7 that Mr. Porch gave?

8 A Correct.

9 Q And why did you find it to be inconsistent?

10 A He was facing Mr. Mallory. And if he gets cut in the
11 left hand, he's facing away, by his statement, Nekia, the
12 victim, the closest hand to Nekia would be his right hand
13 to where the blood was found on her shirt, if she's behind
14 him.

15 He -- he's facing like this (indicates); he gets cut.
16 And by his statement, he goes into the kitchen, which is
17 away from Nekia.

18 Q And where -- and what did he do in the kitchen?

19 A He wraps his hand and cleans up.

20 Q While what is still supposedly going on, according to
21 Mr. Porch?

22 A The domestic dispute. And he says Mallory goes to the
23 back of the apartment.

24 Q And did Mr. Porch ever call for assistance for Ms.
25 Mallory or report this incident to law enforcement?

1 A No.

2 Q And you also had that information, too, correct?

3 A That's correct.

4 MR. GOINGS: Beg the Court's indulgence.

5 (Brief pause as Mr. Goings confers with co-counsel.)

6 Q And I'm going to ask you one more time: Is any
7 information in this affidavit a false statement?

8 A No.

9 MR. GOINGS: No further questions.

10 THE COURT: Any re-direct?

11 MR. SHEALEY: No, Judge. I don't think so.

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

13 (The witness exits the stand.)

14 THE COURT: Any further witnesses?

15 MR. SHEALEY: Yes, ma'am. We would call Judge Newsom.

16 JUDGE PHIL NEWSOM, having been
17 first duly sworn, testifies as follows:

18 CLERK OF COURT: State your name for the record.

19 THE WITNESS: My name is Phillip Frederick Newsom.

20 DIRECT EXAMINATION BY MR. SHEALEY:

21 Q Good evening, Judge.

22 A Good evening.

23 Q Thank you for being here. And we brought you here to
24 talk about the arrest warrant for murder for the defendant
25 Joshua William Porch.

1 A Okay.

2 Q As part of being here, did I subpoena you to bring
3 some documents with you today?

4 A You did.

5 Q And did you, in fact, bring those documents?

6 A I did.

7 Q Okay. And are they the actual arrest warrant and a
8 Richland County Warrant Worksheet?

9 A They are actually audit copied. Whenever we do arrest
10 warrants, the computer prints out three copies: one is
11 the original, one's the defendant copy, and one is audit
12 copy.

13 Typically, most judges don't have people sign the
14 audit copy. I do. It's a checklist to make sure whether
15 I've issued that warrant or not.

16 Q Right.

17 A And I have a warrant worksheet also attached to it.

18 Q Very good. And I also have a copy of those as well.

19 A Okay.

20 Q This -- is this fairly typical information that you
21 would get as part of an officer asking for an arrest
22 warrant?

23 A You'd have to --

24 Q Would you frequently have copies of a warrant and the
25 Richland County warrant would ---

1 A Well, actually, what happened is you see the warrant
2 worksheet?

3 Q Yes, sir.

4 A The small number of lines there?

5 Q Yes.

6 A They have to compress whatever they want to say to us
7 in that small thing. And that's because the case
8 management system software only gives them that much
9 space.

10 Q Right.

11 A So it varies from case to case as to what they put in
12 there. But it needs to be enough.

13 Q Yes, sir. Would you agree that at the top there seems
14 to be like a fax date and time, and it says "D. Wilson"
15 and a -- and a number, a fax number?

16 A Yeah.

17 Q Does that indicate that this warrant worksheet was
18 probably faxed over to you?

19 A Not to me.

20 Q Or to your ---

21 A To my criminal clerk. Yes.

22 Q --- clerk. Yes, sir.

23 And do you ever sign off on any warrants without the
24 actual law enforcement officer physically appearing before
25 you?

1 A Absolutely --

2 Q Okay.

3 A -- not.

4 Q And so he would have physically appeared before you at
5 some later point.

6 A Yes. The next day ---

7 Q Right.

8 A --- apparently.

9 Q In looking at the bottom of this, as you're getting to
10 it, it says that you signed off on this warrant on July 7,
11 2009; correct?

12 A Yes.

13 Q Okay.

14 A Now, that would have been the day that it was typed
15 and then we try to make sure that they -- there have been
16 times in -- in history where the day that it's -- the
17 warrant's printed out --

18 Q Yes, sir.

19 A -- it's actually signed a few days later.

20 Q Yes, sir.

21 A We try to conform it and not to have them printed out
22 until the officer's on the way over there. But sometimes
23 something comes up, and so I couldn't swear to you it was
24 on that day. But ---

25 Q Right.

1 A --- probably, I'd say it's a high probability ---

2 Q Sure. And you didn't take any specific handwritten
3 notes about this particular case.

4 A Never do.

5 Q And it's not audio taped or anything like that.

6 A No.

7 Q This is the totality of what, in your mind, was told
8 to you that day; you agree with that?

9 A No. I'm sure he would have said -- given me some
10 background on it.

11 Q Okay.

12 A But what he said, I couldn't tell you.

13 Q You don't remember ---

14 A No, not at all.

15 Q So -- I mean, the gist of what would have been related
16 to you is in this warrant.

17 A Yes.

18 Q That paragraph.

19 A Sure.

20 Q And it was -- you know, this was 2009. So naturally,
21 you don't remember what, if anything, might have else been
22 said other than having this before you.

23 A I mean, it's pretty clear from reading it that he said
24 the guy admitted to being present at the scene of the
25 murder, and they took his DNA --

1 Q Right.

2 A -- and that it took years, or whatever, to get the
3 DNA.

4 Q Right. And so you don't remember anything about Chief
5 Wilson telling you that they tried another guy twice for
6 this same murder.

7 A No. He would -- he would not have said anything like
8 that.

9 Q Right.

10 A I mean, that -- it's unusual for Chief Wilson to come
11 sign warrants.

12 Q Well, I figured, because he's ---

13 A Okay. And it's unusual for the -- the sheriff to sign
14 warrants.

15 Q Right.

16 A They have on --

17 Q Right.

18 A Both of them have been in my office before to sign
19 warrants. Yes.

20 Q Okay.

21 A But do I remember the -- the details?

22 Q Right.

23 A Probably not -- no. This one? No.

24 Q Right. And then that particular comment I just made
25 doesn't ring a bell for you?

1 A No.

2 Q And you don't remember Chief Wilson telling you that
3 Mr. Porch, who he was asking for a murder warrant for,
4 said that he was actually at the crime scene because he
5 witnessed the husband kill his wife.

6 A He would not have said that.

7 Q Okay. All right.

8 MR. SHEALEY: Beg the Court's indulgence.

9 THE WITNESS: Okay.

10 (Brief pause.)

11 MR. SHEALEY: Nothing further for Judge Newsom, Judge.

12 MR. GOINGS: Nothing from the State, Your Honor.

13 THE COURT: Thank you, Judge. You may step down.

14 THE WITNESS: All right.

15 THE COURT: Appreciate your coming.

16 THE WITNESS: Okay. Thank you.

17 (The witness exits the stand.)

18 THE COURT: Anything further from Defense?

19 MR. SHEALEY: No further witnesses, Judge. Just
20 argument.

21 THE COURT: Anything from the State?

22 MR. GOINGS: None for the State, Your Honor.

23 THE COURT: Yes, sir.

24 MR. SHEALEY: Thank you, Judge. May it please the

25 Court. After hearing the testimony of both witnesses, I'd

1 like to make a couple of points.

2 And you -- you're writing notes and listening
3 attentively, but as I went through with Chief Wilson here,
4 we talked about, primarily, all the stuff and evidence
5 that John Meadors and Stan Smith already had against
6 Justin Mallory that he was aware of. Okay. These are
7 things that were very important to their own case, such as
8 eye witness Sherry Tribble putting the light man,
9 identified as Justin Mallory, as on the crime scene, while
10 she's still alive, screaming about a domestic fight. Then
11 her saying things like, "How could you?" Him, running out
12 to the man saying, "Look what you made me do."

13 The star witness for the State, he was aware of that.
14 He was aware of all these things.

15 He was aware of the final statement that Mr. Porch
16 gave to the State, which was ultimately what they put
17 before a jury, which was Mr. Porch intervening -- after
18 being over there and making out -- fondling, kissing with
19 Ms. Mallory; after the husband comes home, intervening in
20 a -- a mortal fight between those two; getting cut,
21 explaining his blood on the crime scene.

22 All -- all the things that they had, his DNA being
23 explained in every way possible, to the satisfaction of
24 John Meadors and Stan Smith, all the investigators on the
25 case. He was fully aware of that and agreed with me that

1 the only new physical evidence he had was that her --
2 Nekia Mallory's shirt, on the bottom right part, had the
3 drop of his blood that matched his DNA.

4 And then he -- and then you'll decide for yourself
5 because you're the fact finder in this hearing -- agreed
6 that there are -- you know, it's not -- I pushed him on
7 this. He didn't want to agree, in my opinion. But it's
8 not necessarily a "smoking gun" that if your left hand
9 gets cut, that it's inconceivable for a drop of blood on
10 someone's right shirt standing behind you to -- to get
11 there, whether it's a struggle or that he turned into her.

12 And there's also, he agreed that Mr. Porch previously
13 stated his right hand was cut. So there's a --
14 inconsistencies that -- he agreed that you're not going to
15 remember necessarily which hand is cut. He agreed with
16 that statement.

17 So the -- I say this all as a backdrop. The important
18 question is: What did he tell Judge Newsom? Okay. He
19 admitted that what he told him, certainly, was in that
20 body of that paragraph in the search warrant -- in the
21 arrest warrant, that we've already dissected; that he
22 can't remember whether he -- what exactly he might or
23 might have not told him otherwise.

24 So the question here is -- the only thing he can say
25 with certainty is that that statement was made that's in

1 that paragraph. And he can't remember whether anything
2 else was said, and so without that -- which is, I think,
3 the reason why we got this hearing -- was that it's
4 misleading. You can't mislead a judge and not tell him
5 about the two trials; not tell him about, "Well, here's
6 why his blood's on the scene. John Meadors told it to a
7 jury. Here's why his DNA's under the fingernails; here's
8 why his finger got cut."

9 You can't leave all that out is the defense's
10 position, and Chief Wilson can't say whether that was told
11 to Judge Newsom or not. All he can say for certainty --
12 or -- is that that one paragraph was said to Chief -- said
13 to Judge Newsom. There's no other notes, there's nothing
14 else.

15 So I think that is a problem. I think it -- it puts
16 this whole situation in a misleading vacuum, that he
17 should have told all the rest and let the judge decide if
18 there was -- if there was probable cause.

19 You know, and Cary Goings did a good job of going
20 through and saying, well, he had all these other
21 suspicions and you had all these other problems, the
22 inconsistencies and everything else that -- you know, that
23 passed muster with the first investigative group.

24 But it's one thing to -- he can have that in his head,
25 but he can't say that that was told to Chief Wilson. It's

1 not in -- in the one paragraph that we know for sure was
2 told to -- to Judge Newsom, and he just can't remember the
3 others to know that's the fact of it.

4 So that's why we brought Judge Newsom in here. And he
5 does a lot of these warrants. He gets a warrant
6 worksheet. He gets -- you know, everything that's told to
7 him is condensed into that body of that paragraph.

8 And I just went and asked him, you know, I -- other
9 than that, is there anything else that you can say you
10 would have heard? No.

11 There's no other notes; there's not audio tapes;
12 there's not video tapes.

13 And so then I went on there and just threw it out
14 there and said, "Well, do you remember him telling you
15 about two other trials against another -- the husband?"

16 I know he hears a lot of warrants, but it's a murder
17 in Richland County, that's the type of thing that would
18 stick out had it been told to you. I submit it was not
19 told to him.

20 You know, would it -- did you remember if -- do you
21 remember anything about the explanation for his blood
22 being on the scene being because Joshua Porch testified at
23 two trials that he intervened? No. I don't remember
24 anything about that.

25 I submit had it been told to him, had the complete

1 picture been made, he would have remembered that.

2 So basically, the standard here is by the
3 preponderance of the -- of the evidence, Judge. That's
4 what I have to prove that there were material omissions,
5 that there were false statements that were made
6 recklessly, that the truth was -- was -- you know, I think
7 that the Chief was playing fast and loose with the truth
8 in the way he characterized it, and that this judge has no
9 memory of all the stuff, the exculpatory and the
10 explanation-type information that should have been told to
11 him for him to make a well-rounded, appropriate decision
12 on probable cause for murder.

13 So I would ask that you suppress an illegal warrant
14 and under the Fourth and Fourteenth Amendment, that you
15 suppress and exclude all evidence which is gathered as a
16 result of the fruit of the poisonous tree, because --
17 which would be seizure, in our opinion, the illegal
18 seizure of Joshua Porch and all the statements that came
19 as a result of that seizure.

20 THE COURT: Let me ask you this: Even if -- even if
21 the magistrate and the officer don't remember what was
22 discussed specifically, what's the standard in determining
23 whether or not there was probable cause, in light of all
24 the -- in light of all the testimony that has been
25 submitted here today? What's the standard?

1 MR. SHEALEY: I think the -- probable cause is usually
2 evident on the face of the warrant. And I think -- I've
3 said this a million times, probably, to you in the course
4 of other pre-trial motions, this is this most unusual case
5 that maybe I'll ever be involved with. You never see two
6 trials presented that way. So usually it's easy.

7 It's "so and so was observed selling white, rock-like
8 substance down on ground, and then caught with --and
9 confessed to the same."

10 It's usually easy and it's usually investigators and
11 officers are given leeway because it's usually in the heat
12 of the moment.

13 Here, when he asked for the warrant, it's three years
14 later. He had all the evidence that I went through with
15 him, that Mr. Goings went through with him, at his
16 disposal. And he is cherry-picking that information
17 because there's pressure on him from Leon Lott. He
18 presented the slant that I feel is most disingenuous that
19 it won't -- that puts him on the scene without telling the
20 whole story before a judge.

21 And so I don't know if it answers your question, but
22 had the real information of the whole picture been told to
23 Judge Newsom, I think even this -- as many warrants as he
24 hears, even as -- as long ago as it's been, he would have
25 remembered that one. I think anybody would have

1 remembered that one.

2 THE COURT: So let's -- let's be more specific. Then
3 based upon the testimony that I've heard from both
4 witnesses, can I make the decision as ultimately as to
5 whether or not there was probable cause based upon -- if
6 you're claiming that there was information that was
7 omitted that should have been considered, and the
8 magistrate didn't have a chance to consider that; but now
9 it has been heard and all the information, which you're
10 claiming should have been relevant to the issue of whether
11 there was probable cause, do I then get to say that, under
12 *Franks*, that based upon all that information, whether or
13 not probable cause existed?

14 MR. SHEALEY: Well, I think you can decide to rule one
15 of two ways: One can rule that he -- not enough
16 information was given to the judge; therefore, he didn't
17 have a chance to -- there is no probable cause that should
18 -- that was submitted to him and you suppress. Or you can
19 rule I think there was enough evidence.

20 That's the question: Do I think there was enough
21 evidence based on what I've heard, based on what I think
22 might have been presented. So I think that probably
23 probable cause existed.

24 As far as I know, those are the ones who were -- if I
25 understand the question ---

1 THE COURT: Yes.

2 MR. SHEALEY: --- those are the only two --

3 THE COURT: Uh-huh.

4 MR. SHEALEY: -- rulings you could make.

5 THE COURT: Okay.

6 MR. GOINGS: And Your Honor, I -- I think that's what
7 *Franks* actually said. It's a two-prong test. One, you
8 have to prove a false statement or omission; and two, you
9 have to -- if you take the false statement out of the
10 warrant or if you add the omissions in, would there have
11 been probable cause. And that's your determination.

12 MR. SHEALEY: One other point that may be obvious, but
13 I asked Chief Wilson about how often he comes down there
14 at his advanced career being the No. 2 ranking officer.
15 It's not often. He basically told me that.

16 But Judge Newsom was very forthcoming. He says he and
17 Leon Lott rarely come down. They do so every once in a
18 while.

19 So I -- I would argue that I think that would -- had
20 he said the whole story to Judge Newsom, had he told about
21 Josh's statement to Stan Smith and why his DNA was there,
22 and that he actually was the eye witness to murder, not
23 committing the murder, in the two trials before, I think
24 Judge Newsom certainly would have remembered that from
25 Chief Wilson, because he doesn't -- No. 1, he's not there

1 that frequently. This would have stood out in his head
2 and he, under oath, point blank looked at us and said, "I
3 don't recall that being said. No."

4 So I -- I think that just goes right to the point I'm
5 making it was not said. And I would ask you to suppress
6 this -- void the warrant, suppress the evidence.

7 THE COURT: Yes, sir.

8 MR. GOINGS: Your Honor, the State's position, it's my
9 understanding you have ruled an omissions has occurred
10 from the magistrate. Now that you've heard the omissions,
11 the State's position is probable cause existed for the
12 arrest, even when you add everything that Chief Wilson
13 went over, even the fact that Mallory was arrested and
14 tried twice, the statements he had.

15 When you go through the list of the things that Chief
16 Wilson had even prior to the new DNA, in the State's
17 position, there was probable cause to arrest Mr. Porch
18 then. Whether or not his excuses satisfied a assistant
19 solicitor, doesn't change the fact that it probably was
20 probable cause at the time, without the addition of the
21 new DNA on the shirt.

22 So looking at -- if you -- if you assume that all that
23 information was not given to the magistrate, you insert it
24 at this point in time, there was probable cause for the
25 arrest and for the issuance of the arrest warrant.

1 THE COURT: Based upon all the information that I've
2 heard in conjunction with this hearing, I find that there
3 was probable cause. The -- my -- my basis for having the
4 hearing was because I believed that there had been some
5 omissions that would have been relevant to consider.

6 But after hearing all of the information, both
7 information that would have been exculpatory as well as
8 information that the -- the -- the police officers had
9 available to them, I find that there's sufficient probable
10 cause.

11 You know, you don't -- you're not required to believe
12 that probable cause existed in order to -- to indicate
13 that probable cause does exist. In other words, you know,
14 for the assistant solicitor and for another police officer
15 to -- to not believe -- to -- to believe a person's
16 statement, does not necessarily negate probable cause.

17 I think based upon the totality of the circumstances
18 and everything that occurred, that there was probable
19 cause. Based upon the inconsistent statements that were
20 made, based upon the information -- and I'm talking about
21 inconsistent statements made by the defendant -- the fact
22 that there was information leading -- that -- that a
23 person who committed the crime would have been left
24 handed, and that Mr. Porch is, in fact, left handed;
25 information, while it is -- while it is conceivable that -

1 - that blood could be on the victim's shirt, based upon a
2 scenario of defending, I find that given the information
3 as the way it was presented and under the circumstances
4 that it would be more probable that it would be on the
5 victim's shirt based upon an affirmative attack; based
6 upon the statements from -- the information considered by
7 the neighbor that Mr. Mallory didn't have any blood on him
8 at the time that he came to assist; based upon even the
9 statements of Sherry Tribble about the altercation that
10 was taking place, and the -- the voices that she heard, I
11 don't think that that excludes Mr. Porch from being a
12 suspect in the matter. Based upon the fact that -- that
13 there were statements made that he -- he received
14 defensive wounds or -- or wounds in defending or coming
15 between the victim and Mr. -- Mr. Mallory, and that he
16 would, basically, leave her side in order to go and clean
17 his wound; the fact that there was blood on the floor that
18 was cleaned up, all of those things that -- while they may
19 equally point to Mr. Mallory, it -- I don't think that it
20 excludes Mr. Porch.

21 And so I believe that there was probable cause based
22 upon the totality of the circumstances, considering all
23 the information, including information that Mr. Mallory
24 was -- was tried twice before; that there were statements
25 made, certainly admitting that he was there, but the

1 reasons why he admitted that he was there; that his
2 presence alone at the scene was not the only basis to --
3 to find probable cause, but the -- but the other
4 circumstances in totality and all the information that was
5 reviewed by somebody independently who was not directly
6 caught up in the -- in the trial and prosecution of Mr.
7 Mallory, I think all of that together shows a totality of
8 the circumstances that would give rise to probable cause,
9 which would be sufficient for us to come forward to have a
10 trial, to determine whether or not the State would be able
11 to meet the burden of proving guilt beyond a reasonable
12 doubt.

13 So I will -- I deny your request to suppress the
14 information and the evidence subsequent to the arrest;
15 find that there was probable cause in which to make the --
16 for -- for the arrest warrant and to make the arrest.

17 MR. SHEALEY: Judge, respectfully, just so I'm clear,
18 are you ruling that under -- after hearing -- and you've
19 heard it, your opinion is there's probable cause or ---

20 THE COURT: Yes, sir.

21 MR. SHEALEY: --- are you ruling that ---

22 THE COURT: I'm ruling ---

23 MR. SHEALEY: --- you feel Judge -- Chief Wilson said
24 all that to give Judge Newsom the opportunity to determine
25 that?

1 THE COURT: I am ruling that based upon -- because I
2 determined that there were omissions before Judge Newsom,
3 that now, after hearing what those omissions were, I don't
4 need to send it back to Judge Newsom for -- for him to
5 reconsider and to consider it all again.

6 I think that under *Franks vs. Delaware*, that I'm
7 entitled to make that decision, and to consider the
8 omitted information along with the other information that
9 may have been presented; and to make a determination as to
10 whether probable cause exists.

11 And so that's the basis for the ruling. And if I'm in
12 -- if I'm in error in how I interpret *Franks vs. Delaware*,
13 I'll be happy to -- to hear about that. But I think
14 that's what -- I think that's what the case law requires,
15 that if in -- in considering the omitted information or
16 information that might have been misleading, that if I
17 make the determination that with the new information there
18 is probable cause, that that would be sufficient.

19 MR. SHEALEY: I guess I just -- just for the record
20 purposes, I -- I would slightly disagree with you. That I
21 think what -- to get the hearing, as we talked about, you
22 have to make the case that there has been some omission or
23 material reckless disregard.

24 THE COURT: Uh-huh.

25 MR. SHEALEY: And once I've proven that, once I get --

1 and the test is, when you set all that to the side, is
2 there still probable cause based on what was left for the
3 magistrate to determine to go forward. And if you say,
4 no, then you get the hearing.

5 So once you get the hearing, if you as the fact -- my
6 understanding ---

7 THE COURT: So what you're saying then is -- that I
8 can't consider the new information that was presented in
9 making a determination as to probable cause.

10 MR. SHEALEY: I just -- the way I viewed the case law
11 was just that ---

12 THE COURT: I tell you what, I'll look at it again.
13 I'll -- I'll -- I'll read -- I'll go back and read the
14 case law again and look at it just to see -- make sure and
15 see if my interpretation's correct. And -- and either --
16 I'll either, you know, do a paragraph that says I was
17 right or I think I'm right; or I'll do a paragraph that
18 says, no, I'm wrong.

19 MR. SHEALEY: Yes, ma'am. Just because my
20 understanding was that you're the fact -- fact finder of
21 this hearing to see what that judge heard, whether he got
22 all that exculpatory information and whether he got the
23 full truth or whether he just got a small paragraph.

24 As I was proposing there wasn't the whole truth, and
25 they decide, well, did he have chance or not.

1 But you may be right. I'll leave it to you. That's
2 just ---

3 THE COURT: I'll -- I'll read it again. Because I did
4 read the cases very quickly here today at the hearing. So
5 I will read them again, spending a little bit more time in
6 the analysis and -- and look at it, just to be fair to --
7 to both sides.

8 MR. SHEALEY: I appreciate it.

9 THE COURT: Thank you.

10 MR. GOINGS: Your Honor, just quickly, I just want to
11 give you an update on the total situation on Ms. Cohen.
12 The out-of-state subpoena has been sent. They had a rule
13 to show cause on Thursday that she did not waive her --
14 she had the right to waive the rule to show cause hearing
15 is my understanding. She is not waiving.

16 If the California Court says, "You got to go," she'll
17 be here for trial next week. We have to -- we'll make the
18 arrangements. And if the California Court says, "No. You
19 don't have to go," we're going forward without her.

20 THE COURT: Okay. Let me also just confirm for
21 scheduling purposes, it's my understanding that the trial
22 will take the entire week. And the reason I ask is
23 because right now, they have not assigned a court reporter
24 for me for Friday. I have written them, telling them that
25 it's my understanding that it's going to last all week,

1 and I will need to have a court reporter on Friday; and
2 that I -- and I told them I was conducting this hearing
3 today, and that I would inquire further.

4 MR. SHEALEY: I would -- I believe this will take a
5 full week.

6 MR. GOINGS: My -- my best guess would be the full
7 week, Your Honor.

8 THE COURT: Okay. All right. And I will know before
9 the end of the week exactly who the court reporter is. I
10 know that there's somebody on the schedule, but I -- I've
11 made a request for a court reporter who has done some
12 other hearings in this matter so that she's fully familiar
13 with what's going on.

14 And so I should know -- I would ask that if you have
15 any voir dire -- I'm not qualifying the jury next week,
16 and I don't know who is. I don't remember who is. So I
17 would presume that Monday morning would be spent looking
18 at the jury, qualifying, and then we'll start with jury
19 selection when that's done.

20 So if you've got any voir dire or any other pre-trial
21 issues or anything, I know one of the things we have not
22 discussed in detail is about the complete defense and
23 information relating -- and information relating to third-
24 party guilt. So there may be some additional issues we
25 may need to talk about, just for purposes of getting

1 through the trial so we both know what the expectations
2 are -- we all know.

3 MR. SHEALEY: Yes, ma'am.

4 THE COURT: And I'll -- and I'll be here all week. So
5 I'll be happy -- we can talk about it informally on
6 Friday, and place anything we need to place on the record
7 on Monday. Or if you -- give you all some time to try to
8 work through it, see if you can come to an agreement.

9 And if you can give me -- I won't hold you directly,
10 but I need a witness list Friday, and -- and if you have
11 an order in which you think you may call them, just for my
12 purposes. And then I'll get to -- we can get to jury
13 charges later in the week.

14 Anything else we need to take up?

15 MR. GOINGS: Nothing from the State, Your Honor.

16 MR. SHEALEY: No, ma'am.

17 THE COURT: Let me just double check one time. Just -
18 - just want to hold on a second.

19 (Brief pause.)

20 THE COURT: And just -- and for the record, I've given
21 you a copy of an order I signed today about the -- the
22 four statements post-arrest. And I think I still owe you
23 one other order as well.

24 (Brief pause.)

25 THE COURT: I think I -- I had one a recap order,

1 which I signed, I think, October the 18th, which you all
2 should have received a copy of. It went -- it just went
3 back through all the motions and just again just gave a
4 summary on what -- what the ruling was on those motions.

5 And the one I have written down is on the motion to
6 present evidence on third-party guilt was admitted by the
7 State. But we need to provide a plan. You all need to
8 provide a plan to how to handle the admission of the
9 evidence during the trial.

10 And then I gave you the order on the four post-arrest
11 statements. And I still owe you an order relating to the
12 admission of the polygraph testing as -- indicating that
13 it can only be used -- only -- only the polygraph -- only
14 the July 10, 2009 polygraph of the defendant may be
15 discussed during the trial, and only in the context of the
16 defense of false confessions, with an indication that I
17 would give a curative instruction before the testimony
18 comes in, not after, even though it's not being offered
19 for the truth of whether he passed or did not pass the
20 polygraph, or as to his guilt or innocence; but only as it
21 relates to the issue on false confessions.

22 Anything else we need to talk about?

23 MR. SHEALEY: Not at this time, Judge.

24 THE COURT: Okay. Then we may -- how bout if we just
25 plan to talk, maybe briefly. We can do it by telephone,

1 if you want, Friday morning, about --

2 MR. GOINGS: That's fine with the State, Your Honor.
3 I -- I'll know by the end whether Ms. Coleman will be
4 joining us.

5 THE COURT: Okay. Now, tell me -- tell me -- tell me
6 what's going on?

7 MR. GOINGS: We -- we sent the --

8 THE COURT: Subpoena.

9 MR. GOINGS: -- subpoena.

10 THE COURT: Yes.

11 MR. GOINGS: And based on the interstate contact --

12 THE COURT: She can challenge that.

13 MR. GOINGS: She can -- well, normally you have a rule
14 to show cause hearing. That's it. That's -- that's the -
15 - the nature of how they do it. However, she could waive
16 it if she wished. All she has to do is sign the form,
17 send it to the Court. They would issue the subpoena.

18 And I understand she did not waive it. The hearing is
19 going to be Thursday morning in California.

20 If -- my understanding is California, that she would
21 come in there and tell the why -- tell the Court why she
22 shouldn't have to go. And if the Court says, okay, you
23 don't have to go, then ain't nothing I can do about it
24 anyway. If they say, yeah, you got to go, she'll be here.

25 THE COURT: Okay. And I assume that, in conjunction

1 with the subpoena, either somebody would represent the --
2 your position as to why she needs to appear.

3 MR. GOINGS: I had to do a certificate of materiality
4 that I sent with it, and that -- the Court has it. But
5 they'll know why I need her.

6 THE COURT: Okay.

7 MR. GOINGS: And I -- we're trying -- Mr. Gowan is our
8 counterpart we're working through. He will know our part,
9 our -- our side. And I'm assuming he is going to be at
10 the hearing as well.

11 THE COURT: Okay.

12 MR. GOINGS: So, I mean, if California court doesn't
13 give it to us, there's nothing we can do.

14 THE COURT: Right. Yeah. Because she's an out-of-
15 state witness.

16 MR. GOINGS: Right.

17 THE COURT: Okay. No problem. Then let's -- let's --
18 let's do telephone at 10 on Friday, and how bout, Mr.
19 Goings, if you put everybody on the phone together.

20 MR. GOINGS: Okay.

21 THE COURT: Then we go from there. And I assume that
22 Mr. Aiken's still going to be a part?

23 MR. SHEALEY: Oh, yes, ma'am. He just had a ---

24 THE COURT: I -- I -- I ---

25 MR. SHEALEY: --- big civil order. He's got all kinds

1 of stuff everywhere.

2 THE COURT: Well, I'm not trying to exclude him. I'm
3 just want to make sure that I'm not surprised when I see
4 him show up.

5 MR. SHEALEY: He wouldn't miss it.

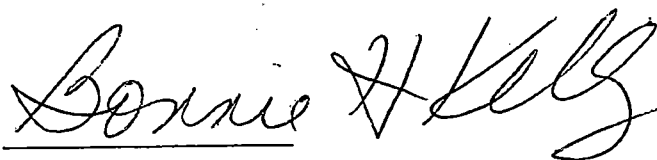
6 THE COURT: Okay. All right.
7
8

9 -- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 12th day of November, 2013.

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

A handwritten signature in cursive script, reading "Bonnie H. Kelly". The signature is written in dark ink and is positioned above the printed name and title.

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

November 5, 2014

1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
2 COUNTY OF RICHLAND

3 _____ Transcript of Record
4 State of South Carolina,

5 vs.

2011-GS-40-03359

6 Joshua William Porch,
7 _____

8 Date: November 18, 2013
9

10
11 BEFORE: The Honorable Alison R. Lee
12

13 APPEARANCES:
14

15 Curtis Pauling, Esq.,
Assistant Attorney General

16 Cary Goings, Esq.,
Assistant Attorney General

17 Joshua R. Underwood,
18 Assistant Attorney General

19 Luke Shealey, Esq.,
20 Attorney for Defendant

21 Brian Shealey, Esq.,
Attorney for Defendant

22 Arthur Aiken, Esq.,
23 Attorney for Defendant

24 Phyllis M. Campo, RPR
25 Court Reporter

INDEX TO WITNESSES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page

JUSTIN MALLORY

125

DIRECT EXAMINATION

125

BY MR. PAULING

1	INDEX TO EXHIBITS		
2		ID	EVID
3	STATE'S EXH. 1, Photograph	145	146
4	of apartment complex		
5	STATE'S EXH. 2, Photograph	145	146
6	of breezeway		
7	STATE'S EXH. 3, Photograph	146	146
8	of sliding door,		
9	STATE'S EXH. 4, Photograph	146	146
10	STATE'S EXH. 5, DVD	146	--
11			
12	DFT. EXH. 1, Statement	84	--
13	DFT. EXH. 2, Detail	84	--
14	Transacton Sheet		
15	DFT. EXH. 3, Photograph	84	--
16	DFT. EXH. 4, Photograph of	84	--
17	items		
18	DFT. EXH. 5, Photograph of	84	--
19	van		
20	DFT. EXH. 6, Arrest Warrant	84	--
21			
22			
23			
24			
25			

1 THE JUDGE: Good morning. We are here on
2 Indictment 2011-GS-40-3359, the State of South
3 Carolina versus Joshua Porch.

4 The State is represented by Cary Goings
5 and Curtis Pauling and Joshua Underwood with the
6 South Carolina Attorney General's Office.

7 The defendant is represented by Luke
8 Shealey and Brian Shealey with the Shealey Law
9 Firm, and Arthur Aiken with Aiken & Hightower.

10 There are some preliminary matters which
11 we need to take up before we get to the jury
12 part. The first matter is to put on the record
13 some of our conversations from last week. Last
14 Tuesday, November 12th, we had a hearing, Franks
15 vs. Delaware hearing, and at the end of the
16 hearing I made a ruling. There was some
17 question about whether the ruling the way it was
18 made was proper. So let me go back over that a
19 little bit.

20 I think during the course of the hearing,
21 in order to have a Frank vs. Delaware hearing,
22 there has to be a showing by the defense
23 relating to the information that is contained in
24 the warrant itself. Specifically, that there
25 has to be a showing either that the affidavit

1 contained knowingly false information or the
2 information was a reckless disregard for the
3 truth, I believe.

4 In the case as it was presented, there was
5 the affidavit, the arrest warrant affidavit,
6 which basically cites as grounds, cites as
7 grounds for the arrest warrant that on May 14,
8 2006 while at 1103 Pinelane Road, Apartment
9 311-C, in the Dentsville Magisterial District of
10 Richland County, one Joshua Porch did commit the
11 crime of murder in that he did it with malice
12 and aforethought, assault and stabbed Nekia
13 Mallory in the neck which resulted in the death
14 of Nekia Mallory. The defendant has admitted to
15 being at the scene of the crime during the
16 assault and stabbing and has been further
17 indicated upon by DNA testing of blood found at
18 the scene that puts the defendant at the scene
19 and implicates the defendant in the assault at
20 the time of the murder. Affiant and others are
21 witnesses to prove saying.

22 The arrest warrant was signed by Judge
23 Newsom on July 7th of 2009, and the affiant was
24 David Wilson with Richland County Sheriff's
25 Department.

1 Specifically, with the argument of the
2 defense that there was information that was
3 omitted from the affidavit which had a bearing
4 on probable cause, and that because that
5 information was omitted and was not considered
6 by the magistrate, it should have been
7 considered and would have changed the decision
8 of the magistrate had it been presented.

9 During the course of the hearing, the
10 information was provided including the Richland
11 County Warrant Worksheet, a statement made by
12 Sherry Tribble who is a witness, investigator's
13 report by Officer Wilson as well as an
14 attachment that contained the information
15 believed that he considered in determining
16 whether there was probable cause to take it to a
17 magistrate, and there was also submitted by the
18 defense, a proposed affidavit excluding
19 misrepresentations and including exculpatory
20 evidence which is the information of the defense
21 that should have been included in connection
22 with the affidavit in order for the magistrate
23 to consider whether or not to issue an arrest
24 warrant.

25 I think what I ruled on at the time was

1 that there was information -- based upon the
2 information that was presented by the defense,
3 that there was, in fact, some information that
4 was omitted which would have been wrong for the
5 magistrate to consider, and both that it was
6 exculpatory as well as incriminating evidence,
7 and I indicated that it was a close call as to
8 whether or not there should be a hearing. Then
9 I heard testimony from Officer Wilson,
10 Investigator Wilson, as well as Magistrate
11 Newsom.

12 At the conclusion, I guess the gist of
13 their testimony, certainly, Officer Wilson went
14 through the information that he had reviewed and
15 considered in connection with deciding to seek
16 an arrest warrant. Officer Wilson simply
17 provided information as to the fact that the
18 affidavit, which has been read into the record,
19 was presented to him.

20 Both parties testified that there were
21 additional discussions about the case and
22 about this information about the facts and
23 circumstances as known to law enforcement.
24 Neither could remember specifically what was
25 specifically discussed, and at the conclusion of

1 the hearing, I found that there was probable
2 cause and I still find that there is probable
3 cause based upon totality of the circumstances
4 and all of the information that has been
5 presented.

6 First of all, most of the case law deals
7 with false material that is contained in the
8 affidavit. In this particular case, I don't
9 find that there was false information contained.
10 There appears to be information that would have
11 been excluded from the affidavit which would
12 have had a bearing on probable cause. And so
13 while the case law talks about excluding
14 information that was misrepresented or excluding
15 information that was false, it does not really
16 talk about the standard of when you were
17 considering the evidence that was omitted from
18 the affidavit.

19 My thought at the hearing and in reviewing
20 the case law further, I think it is the correct
21 position that when you consider the information
22 that would have been omitted from the affidavit,
23 that you consider that in totality with the
24 information that is contained in the affidavit
25 to determine whether or not there would have

1 been probable cause.

2 I think at the hearing I gave my reasons
3 for why I believe there was probable cause, and
4 I think what I said at the hearing was that
5 based upon the totality of the circumstances
6 there were inconsistent statements made by the
7 defendant, and that the intended information
8 that seemed to indicate that the person who
9 committed the offense would have been left
10 handed and there was information that the
11 defendant was left handed. There is information
12 about DNA on the victim's shirt, and there was
13 some discussion as to how that could have gotten
14 on the shirt and under what circumstances that
15 could -- the argument was about how that could
16 have gotten on the shirt as well as statements
17 by the neighbor all of which would not exclude
18 the defendant from being a potential suspect in
19 the case.

20 What I did is I considered the admitted
21 evidence along with other evidence that was
22 presented to determine probable cause was
23 sufficient, and based upon the fact that the
24 case law also discusses that great deference
25 must be given to the Magistrate's conclusion and

1 you must look at the totality of the
2 circumstances, and considering that neither
3 person could remember specifically what was
4 discussed, but based upon the information that
5 was presented to me by the defense in the form
6 of the witness' statements, the actual
7 affidavit, as well as the investigator's report
8 as well as the information that the defense
9 believed it should have been considered as
10 evidence in an affidavit, I found it was
11 probable cause.

12 I note, also, that the case law seems to
13 indicate that in an arrest warrant, the
14 information that is contained in the arrest
15 warrant, must be sufficient to put the defendant
16 on notice as to what the charge would be and
17 allegations surrounding the charge, and I think
18 that the sufficiency of the affidavit in doing
19 so is apparent on its face.

20 I think the question I had was the
21 statement about whether the information that was
22 provided implicated the defendant in the assault
23 at the time of the murder, and I resolved that
24 based upon the totality of the information that
25 was available to law enforcement at the time

1 that they sought the warrant. So I found there
2 was sufficient probable cause and reiterate
3 that.

4 I believe we had a probable causation, and
5 I didn't go into great detail as to the reasons,
6 but I indicated that I believed there was
7 probable cause and made my ruling and would
8 stand as probable cause for the arrest warrant.

9 So as a result, I will deny the request to
10 suppress evidence that came about after the
11 arrest was made.

12 I believe we have some additional
13 pre-trial matters we want to take up.

14 MR. LUKE SHEALEY: Yes, ma'am, if I could
15 preserve the record of the Franks vs. Delaware
16 issue.

17 I think the crux of our objection to your
18 prior ruling at that hearing went to,
19 respectfully, that we felt that the analysis was
20 not correct, that in our opinion as Joshua
21 Porch's defense counsel, the evidentiary hearing
22 was held to determine if Judge Newsom, the
23 neutral and attached magistrate, was given the
24 opportunity, based on what was presented to him
25 or not presented to him by Chief Wilson, for him

1 to make a determination at the time whether
2 there was probable cause, and you, your Honor,
3 as the fact finder of that question -- we
4 wouldn't disagree it is your job to determine
5 and assess probable cause in this case after
6 possibly hearing and going through Jackson v.
7 Denno, it was our opinion for you to decide
8 whether Judge Newsom had that opportunity. As
9 we went over the witnesses and as we drew out
10 everything that defense counsel pointed towards
11 Mallory in the first two trials. We then asked
12 Chief Wilson were these things told to Judge
13 Newsom?

14 The only thing he could say with any
15 positivity was, well, I know it was at the
16 bottom of my arrest warrant.

17 So that was the thing we were saying that
18 the exculpatory information leading towards
19 Mallory presented in the first two trials, he
20 could not say with any certainty. And the fact
21 there were remarks such as Joshua Porch's DNA
22 was on the scene, Joshua Porch's blood was on
23 the scene, we feel that is a reckless disregard
24 for the truth because he was the star witness.
25 That was not told in the correct way. It was

1 misleading to Judge Newsom.

2 We understand your ruling and we just want
3 to make that objection for the record.

4 THE JUDGE: Yes, sir. Any other
5 pre-trial?

6 MR. LUKE SHEALEY: Yes, ma'am, just one
7 more housekeeping matter before we can make a
8 more lengthy objection sought for admission of
9 the final hour interviews since Investigator
10 Cohen will not be here to join us this week.

11 Before we get to that, we would just like
12 to renew our motion once we pick a jury to seek
13 sequestration. I think identified as the lead
14 investigator may be Investigator McDaniels, may
15 be Investigator Godfrey, we ask all of the
16 witnesses except for that witness be
17 sequestered.

18 We would ask that our client not be
19 shackled, the dangling of the chains and all
20 that in the standard motion I would make.
21 Sometimes judges let me have the client not
22 shackled throughout the whole trial and
23 sometimes it is just to testify. I want to make
24 that motion for the record.

25 Your Honor, I just want to reiterate, and

1 this is one of our pre-trial motions that you
2 did grant, was to be cautious of any bad
3 character or violations. I have been told by
4 the prosecution that the first witness might be
5 Justin Mallory, and I would just ask them to
6 caution all of their witnesses to not go into
7 obvious bad character which would be things like
8 his nickname vicious, things we discussed in
9 pre-trial, that I think there is a witness, a
10 friend of Mr. Mallory that says -- Rock Mickens
11 (phonetic spelling) thinks our client has a body
12 somewhere in California, that he is in marshall
13 arts. Those, to us, would all be things that
14 should be prohibited. Particularly, marshall
15 arts, being something that lends the jury to
16 think he is into violence and into combat, which
17 would be particularly prejudicial in this
18 particular case.

19 If they would just, out of abundance of
20 caution to their witnesses, particularly if
21 Mr. Mallory is the first one. I would like to
22 make that known for the record.

23 After discussing the situation -- do you
24 want me to continue?

25 THE JUDGE: Yes.

1 MR. LUKE SHEALEY: After discussing your
2 pre-trial ruling about the polygraph and the way
3 we discussed it, and I believe your ruling was
4 we cannot make any mention of Mr. Mallory's
5 polygraph. The only context that we can
6 question is Mr. Porch's polygraph was in the
7 context of any falsely given testimony. We have
8 made a decision in talking about it to
9 essentially not discuss polygraphs.

10 The reason we decided to bring it up was
11 because we thought it was probative. If our
12 client failed allegedly the polygraph, we should
13 be able to talk about Mr. Mallory's failure of
14 the polygraph. That is not permissible per your
15 ruling. We are not going to talk about it at
16 all. If my false confession expert, should he
17 testify, choses to talk about that as a general
18 concept and context in the whole realm of false
19 confessions, that's one thing, but I am not
20 going to focus on it. I wanted to make that
21 known.

22 Concerning your pre-trial order, and I
23 discovered most of our pre-trial issues, one
24 thing concerning all of the statements,
25 obviously, we argue in Jackson v. Denno as to

1 the voluntariness of those statements. Toward
2 the end of that hearing, we also made an
3 objection under State v. Kenneth Navy and
4 Missouri v. Seibert which went to our client's
5 testimony that he was only advised of his
6 Miranda rights after the full story was told to
7 Investigator McDaniels and Godfrey in
8 California, that it was only at that time that
9 the Mirandized statement was reduced to writing,
10 and it was a direct violation of that. That
11 goes more to his Miranda rights as opposed to
12 whether it is voluntary.

13 I didn't see that anywhere in your ruling
14 so I assume that you are not going to preclude
15 it because I have not heard anything about it.
16 But we would ask for a ruling on that Navy issue
17 which was something that came up. It was
18 somewhat ancillary, but it never got ruled on.

19 THE JUDGE: As I recall, the State v.
20 Navy case came out in 2009, was it?

21 MR. LUKE SHEALEY: It came out --

22 THE JUDGE: It came out about the same time
23 this was going on.

24 MR. LUKE SHEALEY: It came out a little
25 after this case. So my argument at pre-trial

1 was it would have been their practice, it would
2 have been their practice then to interrogate
3 someone at length, get the version they like out
4 of them, then Mirandize them, and do something
5 in writing, and that is why Navy was overturned.
6 That was, in essence, the testimony that came
7 out through our client in that hearing.
8 Obviously, it was contradicted by the State. We
9 think that is a separate issue that needs a
10 ruling on, and I just want to cover our bases on
11 that.

12 Obviously, at this time, we would renew
13 our request for Brady information, our Rule 5.
14 We did actually just today receive a CD on the
15 record from the Attorney General's Office of the
16 surveillance video of Mr. Mallory at Exxon that
17 night. This is something I really harped on and
18 discovered I didn't exactly have it last week,
19 so I did get it to Mr. Goings. He worked hard
20 to get it to me, but it took a little longer
21 than expected and I was just given it this
22 morning. That is an issue that hopefully has
23 been resolved.

24 If there is anything else pursuant to
25 Brady, pursuant to our Rule 5 motion. If there

1 is anything in their possession since the
2 interview prepared for trial, a new statement
3 for impeachment, exculpatory, whether verbal or
4 otherwise, that should be turned over to us at
5 this time.

6 Those would cover all of the somewhat
7 housekeeping type motions. I am prepared to go
8 into the other statement issues whenever your
9 Honor would like.

10 THE JUDGE: For sequestration, who is the
11 State planning on being their point person?

12 MR. GOINGS: Your Honor, we have
13 Investigator Shawn McDaniels, he is at the top.
14 Investigator Godfrey is also the individual that
15 had the same responsibilities and took on the
16 same share of the investigation, and once Mr.
17 Mallory was found not guilty, I requested all of
18 them be available at trial. It is my
19 understanding Investigator Godfrey is going to
20 be here, but Investigator McDaniels is going to
21 be with us all week. As far as any other
22 individuals, obviously due to the Victims Bill
23 of Rights, we ask any of the family members of
24 the victim, Mr. Mallory, Ms. Riley, and
25 Mr. Gibson, who is not present in the courtroom.

1 Ms. Riley is the mother and Mr. Gibson is the
2 father, and Mr. Mallory was obviously the
3 husband of the victim.

4 THE JUDGE: What are the names again?

5 MR. PAULING: Michelle Riley is the
6 mother, Grant Gibson is the father, and Justin
7 Mallory is the husband.

8 MR. LUKE SHEALEY: The defense would just
9 respond by asking that the State pick one lead
10 investigator. These are two crucial witnesses,
11 Investigator Godfrey and McDaniels, who both
12 took statements whose testimony we would not
13 want to go into the area where they might offset
14 their testimony. They are both here. We would
15 ask the State to pick one as the lead
16 investigator. In essence, Mr. Mallory, he is a
17 family member but he is also a witness. We
18 would ask that sequestration rules apply to him
19 as well.

20 MR. GOINGS: Your Honor, the only argument
21 I have is to the two officers, neither one of
22 them was designated as case agent. It was a
23 dual investigation and basically both of them
24 are the case agent for this particular
25 investigation. We believe that the State should

1 have the benefit of their presence at trial
2 during the whole trial. Mr. Mallory, he is
3 going to be our first witness anyway, your
4 Honor.

5 THE JUDGE: Well, since Mr. Mallory is the
6 first witness, I will allow him to remain in.
7 As it relates to the investigator, I will allow
8 both investigators. I will note you indicated
9 that Investigator Godfrey may or may not be here
10 during the whole trial, but certainly, as it
11 relates to discussing testimony with other
12 witnesses and all that, the rules of
13 sequestration still apply to those witnesses as
14 well.

15 MR. GOINGS: As far as prior bad acts, the
16 State is not planning to go into any nickname of
17 the defendant. However, the information
18 concerning marshall arts training by the
19 defendant, we don't believe it is, one, a prior
20 bad act or bad conduct on the defendant.

21 THE JUDGE: I am sorry, Mr. Goings, if you
22 would take that microphone and move it down
23 toward you.

24 MR. GOINGS: The information about perhaps
25 any martial arts training that he may have had,

1 I don't believe is a prior bad act or goes to
2 bad conduct on the part of the defendant that
3 shows that he acted in a certain way on that
4 particular night. However, it also may become
5 relevant at some point in time based on the
6 defendant's accounts of what happened that night
7 during his confession.

8 However, at this point, we do not intend
9 to ask any witness about any specific training
10 he may have in martial arts.

11 MR. LUKE SHEALEY: I am not sure if that
12 means they are going elicit that he has marshall
13 arts training but not go into the details of it.
14 The defense strenuously object to that not only
15 as bad character; but also, what is it probative
16 of, is it more a limited purpose of, is it
17 morally prejudicial to our client? Yes, the
18 idea that you are trained to make your body into
19 a human weapon, essentially, that this is a
20 violent killing here, that we have in this
21 situation, and somebody who takes an interest in
22 that, Judge, I think has no place in this trial.

23 THE JUDGE: I guess my question is of what
24 significance or importance does any martial arts
25 training have with respect to this particular

1 act?

2 MR. GOINGS: Give me a second, your Honor.
3 I am trying to -- your Honor, at this point in
4 time, the State will agree to caution this
5 witness not to mention martial arts. However,
6 he may bring it up at another point that becomes
7 relevant on cross-examination.

8 THE JUDGE: And we will take that up
9 before we get to it.

10 MR. GOINGS: That's correct.

11 MR. LUKE SHEALEY: The only other thing I
12 actually forgot from the housekeeping portion.
13 We had kind of a pre-trial agreement that
14 Mr. Goings would be getting us all of the
15 potential photos he may seek to introduce during
16 this trial and he did. But we kind of had a
17 pre-trial agreement at some point that we need
18 to go over those from our defense prospective to
19 make sure we don't have anything admitted that
20 violates the rules of being overly gruesome,
21 accumulative. I don't know if your Honor would
22 like to take it up at that point in time, and we
23 are dealing with the pathologist, the crime
24 scene people, and have a little hearing on it
25 and make it streamline. I want to make sure.

1 everybody didn't forget that we would do that
2 before admitting photos in evidence.

3 THE JUDGE: That may be something we can
4 take up later this afternoon.

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

6 MR. GOINGS: The only other issue the
7 State has on the motion made on the Navy case,
8 your Honor, is -- and I can't recall if you
9 ruled on it specifically or not. I remember a
10 certain line of questioning not opened by
11 defense counsel at that hearing. I call the
12 Court's attention that both officers identified
13 that they Mirandized the defendant prior to the
14 statements being taken.

15 THE JUDGE: I will look at the issue this
16 evening. My inclination is that it is part and
17 parcel with the decision that he can raise the
18 issues as to whether or not there were threats
19 made, and the same would occur with respect to
20 statements by the defendant that they had asked
21 him questions and got the story and then
22 Mirandized him.

23 I think that would go to the voluntariness
24 of the statement, and I think that is
25 conflicting evidence from which the jury can

1 consider.

2 I will review the case again this evening.
3 I vaguely recall the factual issues. I recall
4 that it was primarily an issue because it
5 involved Investigator Stan Smith and that maybe
6 it also involves Stan Smith as part of what the
7 claims were and involved which county Sheriff's
8 Department. So that was part of the reason why
9 that came up. I will look at Navy again.

10 At this particular point, I am inclined to
11 allow them to raise it as a defense because I
12 think that the State met its burden by
13 preponderance of the evidence with establishing
14 that statements were voluntary, and I will let
15 you raise that as to whether or not it was
16 voluntary beyond a reasonable doubt.

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

18 THE JUDGE: As it relates to the shackles,
19 I will say for today, especially for purposes of
20 jury qualifications, because I am not sure how
21 much the jurors can see in that first row when
22 they look back. I will allow him not to be
23 shackled for today and then I will play it by
24 ear.

25 Are there other issues that we need to

1 discuss? I will require the witnesses to be
2 sequestered. That's not a problem.

3 MR. LUKE SHEALEY: The only thing I
4 believe we have left is since our telephone call
5 on Friday it revealed that Investigator Cohen,
6 as we know, took a six-and-a-half hour
7 interrogation and polygraph of Mr. Porch while
8 in California and then turned Mr. Porch over
9 back to the County Sheriff's Department
10 investigators for additional hours. She had
11 essentially fought this subpoena that Mr. Goings
12 put on her in California State Court. She is
13 not coming to this trial. The only thing we
14 would need to take up is her portion of the
15 video sought to be admitted by Mr. Goings in
16 addition to this county portion.

17 The crucial issue is she is the only
18 person to give the Advice of Rights Form to Mr.
19 Porch at the start of that. So six-and-a-half
20 hours had gone by and the Advice of Rights was
21 not regiven at the point in time he is turned
22 him over to the county.

23 The crucial issue now with her not being
24 here with the State seeking to only introduce
25 that final hour is admissible. There are two

1 things that I think we are talking about here.
2 One is the form itself, the Advice of Rights
3 Form itself which is an out-of-court statement
4 and the actual video itself. So I have several
5 arguments, if you would like to hear it all at
6 once or point by point as to why I don't think
7 either of those two should be admitted.

8 THE JUDGE: I would like to confirm that
9 the State does not intend to offer any of Ms.
10 Cohen's statements or interviews or testimony?

11 MR. GOINGS: Your Honor, at this point in
12 time, the State believes we can go forward
13 without offering any portion of Ms. Cohen on the
14 videotape.

15 The State's position is the two officers
16 were watching simultaneous video feed of the
17 Advice of Rights being administered to Mr. Porch
18 while Ms. Cohen was doing it in the interview
19 room. I don't believe it is necessary that we
20 have to show that portion of the video.
21 Although, I think we probably have the right to.
22 I think we can go forward without it and just
23 have the officers testify that they were there,
24 they witnessed the Advice of Rights being given
25 to Mr. Porch verbally by Ms. Cohen, and both

1 officers will testify they were watching it at
2 the same time it was given. He voluntarily
3 waived those rights, even if we don't submit the
4 Advice of Rights Form that he actually signed,
5 which I don't believe is required by case law.
6 The case law just requires that the defendant
7 for interrogation be given his rights. He was
8 given his rights according to our officers. He
9 will testify to that, and he waived those
10 rights.

11 They proceeded on that waiver or Miranda
12 that was given to them by Investigator Cohen
13 when they went back immediately after the
14 polygraph was taken and then immediately after
15 Ms. Cohen had finished her interview with the
16 defendant, went in there and discussed more
17 information with Mr. Porch, which is further
18 seen by or captured by the video monitor.

19 Each one can testify that's a true and
20 accurate depiction of what occurred that day.
21 We tried to introduce that portion of the video,
22 and therefore, I think that any statements he
23 gave to the Richland County Sheriff's Office
24 investigator should be admissible in this trial.

25 MR. LUKE SHEALEY: Thank you, Judge. May

1 it please the Court. The biggest thing for us,
2 and I do have a list of objections to this, but
3 when you seek to elicit from Shawn McDaniels or
4 Investigator Godfrey that another investigator
5 who is not here advised someone of their rights,
6 and therefore, we are good to go, we can have
7 another discussion with him. It is a
8 confrontation situation, Judge.

9 The statement itself that they are
10 claiming to watch, that statement where she
11 specifically asked Mr. Porch, do you realize you
12 have a right to a lawyer? Do you realize you
13 don't have to talk to me? You have the right to
14 remain silent. Anything you are saying right
15 now could be used against you. That itself is a
16 testimonial statement. It is used in the middle
17 of custodial interrogation. It is used in
18 anticipation of litigation as it is, in fact,
19 being offered for such.

20 THE JUDGE: Let me ask this question: Why
21 is not her prior testimony capable of being used
22 for purposes of allowing the statements in?

23 MR. LUKE SHEALEY: The reason why, Judge,
24 as the exception to the Crawford confrontation
25 issue, it may be allowed if you had prior chance

1 to cross-examine, but this is a completely
2 different cross-examination than what would be
3 done before a jury. A jury did not get to
4 confront mine -- if you recall, my
5 cross-examination of Investigator Cohen, I did
6 not challenge her at all about whether the
7 Advice of Rights was done. That was not the
8 subject of that. It was the conditions of
9 Mr. Porch, the fact he was interrogated two days
10 earlier, the fact that her questioning took six
11 and a half hours, the fact that she -- when he
12 said it was an accident, she said, no. We put
13 that aside. When he said it was self-defense,
14 she said, no, the polygraph told you that's not
15 the case.

16 My questions are based on that. I have
17 not had an effective chance to cross-examine
18 that witness about Miranda and context of rights
19 they gave him. For a jury not to be able to see
20 that, a completely different cross-examination,
21 I do not think satisfies the exception.

22 THE JUDGE: Let me ask this question: I
23 am just asking the question so, you know, I
24 don't profess to know everything, so if I am
25 missing something that is obvious, please tell

1 me. It is my understanding that the purpose of
2 her testimony that we had before, that was part
3 and parcel of Jackson v. Denno hearing to
4 determine whether or not the statements would be
5 admissible.

6 In connection with that, there was
7 testimony as to whether there was Advice of
8 Rights, whether he understood those rights, and
9 part of what you chose to question her about in
10 cross-examination was whether or not he had
11 sufficient sleep, whether or not he had issues
12 along in that area, but you certainly had the
13 opportunity, and that's what Crawford requires,
14 that you had the opportunity to cross-examine
15 about the issues as to whether or not he
16 understood those rights, whether or not he had
17 sufficient indication. All those questions that
18 may go into -- obviously, he was in custody
19 because he was under arrest. I am not talking
20 about using her testimony for everything. I'm
21 talking specifically for whatever point -- I
22 have not listened to it so she may not have even
23 testified about those particular documents or
24 that there was an Advice of Rights Form. I
25 don't recall that. I know there was testimony

1 available from that hearing, which certainly, I
2 don't know whether you conducted it or whether
3 Mr. Cooper conducted it.

4 MR. LUKE SHEALEY: I did conduct it.

5 THE JUDGE: You know, as I understand
6 Crawford, you have to have the opportunity for
7 cross-examination, and whether you chose to
8 exercise it or not is a different story, but
9 there has to be an opportunity. And certainly,
10 in the context of Jackson v. Denno, the whole
11 hearing was to determine whether statements were
12 voluntarily made, whether he understood his
13 rights, whether he was in custody, and all those
14 issues that would satisfy that portion of, you
15 know, determining whether or not or at least
16 provide basic testimony.

17 You can still attack it in whatever form
18 you want to attack it. You know, as to whether
19 or not he was sleep deprived, whether or not he
20 had the opportunity, whether he understood how
21 long the interrogation was, all those things.
22 But certainly, you had the opportunity to engage
23 in discussions with her or cross-examine her on
24 those particular issues.

25 MR. LUKE SHEALEY: I agree that I had a

1 chance to cross-examine her. It was a limited
2 cross-examination, Judge, and not before a jury.
3 I lose the opportunity to confront her in front
4 of a jury. To my wildest dreams, what I would
5 expect is that she would fight that subpoena and
6 not care enough to come on this case.

7 We said this repeatedly, and it is almost
8 funny antidote at this point on how unusual this
9 case is. This is one of those things I never
10 experienced before where I would not go on to
11 have full meaningful cross before a jury to
12 confront her about everything. That was not a
13 full cross-examination, your Honor.

14 So I think that it is a Crawford
15 violation. There aren't many cases on that
16 whether you get a cross that is more limited and
17 then you go in an actual trial -- I can't find
18 the information. Maybe this will be the case on
19 that issue.

20 I think that's a Crawford violation. It
21 is a fundamental due process right that he has
22 for me to question a person that allegedly
23 advised him of his rights. Without that
24 information coming from officers that watched
25 from another room via monitor or double wall,

1 they weren't asking the questions.

2 It is particularly important to see how he
3 did not re-Mirandize him after that six and a
4 half hours when it was their time to question
5 him again. Had they done that then, this would
6 not be a conversation. So that is one side of
7 the objection.

8 The other problem is hearsay. For them to
9 elicit that information as Mr. Goings seeks to
10 do, you are basically asking these officers to
11 elicit hearsay information that Investigator
12 Cohen said this to him and advised him of that
13 right, said this to him, he answered yes. Her
14 side of that story is hearsay. Mr. Porch's side
15 of that story, obviously, is not hearsay because
16 it is against his interest and all that reason
17 why his statement is coming into evidence or at
18 least has a chance to be admissible. That side
19 of the story, what they are seeking to elicit,
20 is hearsay regarding Investigator Cohen. That
21 is a separate and distinct problem that we have
22 in this case just concerning that Advice of
23 Rights.

24 I would submit that if the Advice of
25 Rights does not come in, it would be a dangerous

1 road to run to then try to introduce that final
2 hour for purposes of this trial and all issues
3 that are already in the trial.

4 The other problem, and now I am being more
5 -- if your Honor wants me to keep going.

6 THE JUDGE: Go ahead.

7 MR. LUKE SHEALEY: Now, I am getting more
8 to -- okay, let's say that we are fine with the
9 Advice of Rights coming in, them talking about
10 it. Now, how do we get the video evidence in
11 itself? If you allow me to approach, this is
12 just a brief excerpt of Investigator Cohen's
13 testimony from the pre-trial which she described
14 this is her Los Angeles' Sheriff's Department.
15 This is her home. This is not Shawn McDaniels'
16 home, Brian Godfrey's home. This is her office,
17 her equipment, this is her polygraph machine,
18 this is her videotape that she worked and
19 operated. In the relevant chain of custody when
20 you are seeking to introduce it into evidence,
21 she is the first part of that chain. She
22 testifies that she burned that CD. This is her
23 property that was then given to one of these
24 investigators at the time, that it was mailed at
25 a later date, but she is the missing link to

1 testify what they personally observed as far as
2 hearsay. The right for the State to ask the
3 officers was Miranda given to the defendant, he
4 will simply answer, yes, he waived his right.
5 We don't have to do a specific exactly of what
6 Ms. Cohen said.

7 The State would also agree with the Court
8 that they had a prior chance to cross-examine.
9 That was the whole purpose of Jackson vs. Denno
10 hearing for Mr. Porch was to determine the
11 voluntariness of the statement. They had a
12 chance to cross-examine Ms. Cohen on the Advice
13 of Rights form, on the fact that she gave those
14 rights to him. So we, at this point in time,
15 also believe that we played that portion of the
16 tape where she was actually there. It could be
17 established by an individual, the two officers,
18 McDaniels and Godfrey, who will testify that the
19 video is an accurate portrayal of what occurred
20 that day because we were personally observing it
21 at the time it happened. That also goes to the
22 chain issue, your Honor. Obviously, this is
23 fungible evidence such as DNA and drugs where we
24 have to prove chain. Even in those cases, you
25 don't have to bring the person who handles all

1 of the evidence to the witness stand. You just
2 have to identify the person at some point in
3 time held that evidence.

4 When you are dealing with non-fungible in
5 evidence cases, obviously, the chain issue
6 becomes a lesser thing that the State has to
7 worry about because both officers can look at
8 the videotape that is placed into evidence and
9 say, yes, that's what we personally observed
10 happened while it was happening that day.
11 That's the only thing you have to do is
12 authenticate a videotape. So, therefore, we
13 believe the officer's testimony is sufficient on
14 itself to allow their portion of the video to be
15 played to the jury, not withstanding the fact
16 that the State might need to seek to introduce
17 the fact or portion where Miranda is given by
18 Ms. Cohen based on the fact it had a prior
19 opportunity to examine her under Crawford.

20 The two officers witnessed both that
21 portion and where actually they're interviewing
22 him after she was finished with him, which was
23 videotaped, and both officers can testify this
24 is an actual portrayal of the events that
25 occurred that day as they were happening and can

1 testify to the authentication of such videotape.

2 MR. LUKE SHEALEY: Am I right in hearing
3 that they are now seeking to introduce a portion
4 of Investigator's Cohen's video where she
5 advises him of his Miranda without her being
6 here? Before I thought we were leaving her
7 portion out. I would like a clarification of
8 that, although, I would object to that
9 obviously.

10 MR. GOINGS: Your Honor, I don't know if
11 we can argue about the length of time. I have
12 case law regarding that issue if you want to
13 take that after jury selection.

14 THE JUDGE: What issue?

15 MR. GOINGS: The length of time between
16 Miranda and interrogation.

17 MR. LUKE SHEALEY: That's something we
18 have already discussed as to why the statement
19 was voluntary. My problem is the fact that this
20 is the Miranda for that day, and we need Ms.
21 Cohen here due to the reasons I just stated.

22 Your Honor has already ruled on the fact
23 that Miranda was sufficient for later
24 investigation. I am sure I might argue that in
25 front of the jury coming in, but your Honor said

1 if the statement is admissible we all thought
2 Investigator Cohen would be here to go through
3 that Miranda. She is not here.

4 THE JUDGE: We can take it up later.
5 Robert Oates, is he with S.L.E.D.?

6 MR. GOINGS: Richland County Sheriff's
7 Department.

8 THE JUDGE: Investigator Rownd --
9 R-O-W-N-D.

10 MR. GOINGS: Richland County Sheriff's
11 Department.

12 THE JUDGE: Anything else we need to take
13 up before we bring the jury up?

14 MR. LUKE SHEALEY: If we could just get
15 Mr. Porch unshackled before the jury comes in.

16 THE JUDGE: Yes. Just so I understand the
17 strikes, there are five for the State and for
18 the defense. For the alternate, and I am going
19 to ask for two alternates. There are two for
20 the defense and one for the State; is that
21 correct?

22 MR. GOINGS: Yes.

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

24 (Prospective jurors entering courtroom.)

25 THE JUDGE: Good afternoon, ladies and

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 television movie I presented to you. That's why
2 it is important that you stay with us on this
3 week. Suck it up. Be here for us. Be here for
4 our system because our system failed those
5 investigators on the ground. You are going to
6 hear that they still believed that man killed
7 his wife. Even though he was found not guilty,
8 it doesn't mean he didn't do it. That's what
9 you are going to hear throughout this case. You
10 are going to agree with them or you are going to
11 agree with me and come back not guilty. Thank
12 you.

13 THE JUDGE: You may call your first
14 witness.

15 MR. PAULING: The State calls Justin
16 Mallory.

17 JUSTIN MALLORY

18 being first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. PAULING:

21 Q Good afternoon, Mr. Mallory.

22 A Good afternoon.

23 Q Can you tell this jury where you are originally
24 from?

25 A I was born in Sumter, South Carolina and

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 have been in Columbia since about the fifth
2 grade.

3 Q Since the fifth grade?

4 A Yes, sir.

5 Q How old are you, sir?

6 A Thirty-two now.

7 Q Where did you go to school?

8 A Spring Valley High School.

9 Q Did you graduate Spring Valley?

10 A Yes, sir.

11 Q When would that have been?

12 A 1999.

13 Q What did you do after high school?

14 A I tried college a couple semesters here and
15 there and started working.

16 Q When you say you started working, where did you
17 start working?

18 A After college, I found a courier job and
19 started delivering pharmaceuticals, doing that.

20 Q What company was that for?

21 A It was Neebates Courier Service and Idea
22 Courier Service (phonetic spelling).

23 Q When you say deliver pharmaceuticals,
24 essentially, what time would you run?

25 A At 5 o'clock in the morning load up the van

1 for probably 300 medical totes and take them to
2 different pharmacies and hospitals, you know,
3 overnight delivery.

4 Q You were an independent contractor?

5 A Yes, sir.

6 Q And when about exactly did you start working
7 there?

8 A '02, '01, '02, around there.

9 Q Were you still working there in 2006?

10 A Yes, sir.

11 Q Back in 2006, specifically, May of 2006, where
12 were you living at that time?

13 A 1103 Pinelane Road in Columbia.

14 Q Is that a house, apartment complex?

15 A It is an apartment complex right on the
16 other side of the railroad tracks toward Spring
17 Valley.

18 Q What apartment were you living in at that time?

19 A 310 C.

20 Q Were you living by yourself?

21 A No. I had a wife and two kids.

22 Q Who were they?

23 A Nikea Mallory was my wife, Gabrielle
24 Mallory, the daughter, Justin Mallory, Jr., the
25 son.

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 Q Nikea Mallory, how long had you known her?

2 A Since the 12th grade, high school
3 sweethearts. Probably six years.

4 Q You all met right there at Spring Valley High?

5 A Yes, sir.

6 Q Did Nikea graduate the same year as you?

7 A She was a year behind me.

8 Q Now, back in May of 2006, you said you were
9 living there at that apartment complex. How
10 long were you living there at that time?

11 A Probably about two years.

12 Q Did you have other family in the area?

13 A Yes. I had a brother that lived in an
14 apartment in the same complex, probably street
15 or two over.

16 Q Now, as of May 13, 2006, do you recall that day?

17 A Yes, sir.

18 Q Why do you remember it?

19 A Worse day of my life.

20 Q That particular morning, what did you do that
21 morning, May 13th?

22 A I picked up a side route, me and another
23 fellow split it. So it was my Saturday to work
24 so about 7 o'clock in the morning I took off for
25 my route and didn't get home to around noon that

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 day.

2 Q Normally, what would your route encompass? I
3 know you said you picked up an additional route.
4 On a typical day, where would your route take
5 you to?

6 A At that time, I think I was in the Florence
7 and Pee Dee area.

8 Q Straight to Florence and straight back?

9 A Florence and then you hit the outskirts east
10 over, Dentsville, I believe. Little rural areas
11 around Florence was my zone.

12 Q That particular Saturday morning, you picked up
13 an extra route; is that correct?

14 A Yes, sir.

15 Q You got in about what time?

16 A I would say about noon.

17 Q Now, when you left out that morning, was Nikea
18 up?

19 A That morning?

20 Q Yes, sir.

21 A I doubt it. It was early. I took off like
22 6 o'clock on Saturday morning.

23 Q As far as Nikea was concerned, was she working
24 at the time?

25 A Yes. She had a job at Aetna Insurance

1 COMPANY. She was Monday through Friday.

2 Q So she didn't to work on the weekend?

3 A No, sir.

4 Q When you left, she was home with the children?

5 A Yes, sir.

6 Q When you got back at noon, what did you do when
7 you got home?

8 A I forget the name of the movie. Might have
9 been Inside Man. We started watching TV, a
10 regular day. The movie was apparently boring
11 and I fell asleep. We had the kids in the room
12 with us.

13 Q So you, Nikea, and the kids, and the children
14 were all home together?

15 A Yes, sir.

16 Q You said you fell asleep?

17 A Yes, sir.

18 Q At some point you woke up?

19 A I remember Josh Porch came by. He was a
20 neighbor of mine. He came by with his daughter
21 and woke us up, knocked on the door.

22 Q How do you know Joshua Porch?

23 A My mother lived in the apartment before I
24 moved there. She knew him and his wife. She
25 said they were nice people. She introduced me.

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 I had a wife and two kids. He had a wife and
2 two kids. Neighborly, being cordial. I babysat
3 for him sometimes, he babysat for me sometimes.

4 Q They were living out there?

5 A Yes. He probably stayed right around the
6 corner in the same building.

7 Q Do you see that gentleman in the courtroom?

8 A Yes, sir, with the green sweater on.

9 Q With the green sweater?

10 A Yes.

11 MR. PAULING: I ask the record to reflect
12 that he identified the defendant, your Honor.

13 BY MR. PAULING:

14 Q Now, when Mr. Porch came over, what happened
15 when he got there? Did you expect him to come
16 over?

17 A He would stop by periodically. Like I said,
18 our kids play. He was a decent neighbor. He
19 stopped by to say what's up. There was no
20 reason or anything like that.

21 Q Do you recall about how long he was over there?

22 A Not long because I remember as soon as I
23 woke up, going to get the chinese food and
24 hitting the liquor store.

25 Q Do you recall where you went to get the chinese

1 food?

2 A Right off Two Notch. Everything is within
3 two mile radius. Chinese restaurant, liquor
4 store right next to it, right by the bowling
5 alley on Two Notch.

6 Q Now, did he leave out before you left out?

7 A Definitely, yes. When I was about to leave
8 him and his daughter left before I left.

9 Q Now, did you go to get Chinese food and go to
10 the liquor store and come right back?

11 A They are pretty much next to each other,
12 yes, sir.

13 Q When you got back to our house, who was home?

14 A My wife and kids. I am not sure if one of
15 her best friends, Dawn, across the hall might
16 have been over there. She came a little late.

17 Q You said you got home about noon, started
18 watching the movie Inside Man, fell sleep, woke
19 up because Joshua Porch came over?

20 A Yes.

21 Q Do you recall about what time that was when he
22 come over when you woke up?

23 A Well, it had to be before 7 because I still
24 hit the liquor store. So probably 5 o'clock.

25 Q So now, when you got back you said Dawn may have

1 been over?

2 A She came over about every day to hang out.

3 Q What did you do once Dawn was over there?

4 A We set the kids up, you know, right off the
5 porch, let them do what they want to do.

6 Listening to music, drinking liquor.

7 Q What were you drinking?

8 A Some kind of vodka, Smitka, something like
9 that, some off brand.

10 Q Now, was there anyone else that came to the
11 apartment at that particular time?

12 A Our refrigerator was acting up, and we
13 called the maintenance man that day and he came
14 by later on before I left.

15 Q Do you remember the maintenance man's name?

16 A Vince or Vick, something like that.

17 Q Now, when did you place that call? Had you
18 placed it the day before?

19 A My wife placed it. I don't know when
20 exactly she did.

21 Q Now, were you still there when he had come over?

22 A I was there when the maintenance man came
23 by. He only stayed three or four minutes.

24 Q Do you know if he was able to make the repair?

25 A It was something simple. He did repair it.

1 Q Do you know if he had to come back or did he
2 come back?

3 A I think he solved the problem, like I said.

4 Q Now, you mentioned -- let me ask you this: That
5 particular day, did you have any other plans
6 that particular evening?

7 A Yes. There was this woman by the name of
8 Ricki Cook's birthday. I hadn't heard from her
9 in about three months. It was her birthday the
10 day before.

11 Q Where did you meet her?

12 A Right outside of Sunset Place one night at a
13 gas station. It had been in early February.

14 Q Let me ask you, did she live in Columbia?

15 A She was from Greenville, South Carolina.

16 Q You already made these plans to meet with her
17 about what time?

18 A I told her that night I was going to take
19 her out to dinner for her birthday. We planned
20 to meet up about 8, but it was later than that,
21 probably 9.

22 Q You were not traveling to Greenville?

23 A Oh, no, no. Her sister lives off Bush River
24 Road in Columbia, and she was coming to her
25 sister's house, and I was going rendezvous over

1 there.

2 Q As far as that evening, do you know what Nikea
3 was planning on doing that evening?

4 A Sitting down and watching TV with the kids,
5 I guess. We were planning to go out for
6 Mother's Day, you know what I mean. This was
7 the day before Mother's Day.

8 Q Now, you said you were planning on rendezvousing
9 with another woman?

10 A Yes.

11 Q What did you tell Nikea about what you were
12 doing that evening?

13 A I told her I was going to a friend of mine's
14 house out in Blair, South Carolina to help him
15 move some furniture for his mom for Mother's
16 Day.

17 Q Who is that friend?

18 A John Jacobs.

19 Q John Jacobs?

20 A Yes, sir.

21 Q Did you call him John or did you go by John?

22 A John.

23 Q Now, at a certain point, did you begin to
24 prepare to meet Ricki Cook?

25 A Yes, around 8 o'clock I started getting

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 ready or whatever.

2 Q At that time, where was Nikea?

3 A Her and Dawn were outside, same thing,
4 tripping out, drinking, chilling.

5 Q Now, had anyone else come by the apartment that
6 time when you were getting ready?

7 A Nobody came that day but Josh and the
8 maintenance man. That was it.

9 Q At some point, if you could tell the jury, just
10 kind of take us through when you are preparing
11 to leave and go to pick up Ricki?

12 A All right. So we had planned to rendezvous
13 around 8 o'clock. I knew I was wrong, I mean, I
14 just -- I went to the corner store. I called
15 her. She said she was still out with her
16 sister. So I went back home because I didn't
17 want to hang at the corner store. I went home
18 and had a couple more drinks with the wife and
19 friend. She started -- you know, I had the
20 phone on vibrate and she hit me on the phone, I
21 am ready. I told my wife and Dawn, all right,
22 I'm going. See you all later on. And we picked
23 up Ricki from her sister's house.

24 Q You mentioned her sister lived off --

25 A Bush River Road.

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 Q Leaving your house, if you were leaving your
2 house -- let me back up. Had you been there
3 before to that particular location?

4 A I think so, yes. I knew where it was. I
5 stopped by to see her there before.

6 Q Was this your first time going out with Ricki
7 here in Columbia?

8 A No.

9 Q So you had met her at her sister's house before?
10 A Picked her up, yes.

11 Q Now, on this particular occasion, on May 13th,
12 2006, when you were leaving your house to go
13 pick up Ricki Cook, which way did you travel?

14 A Straight down Two Notch, get out 20 toward
15 Augusta and bust right and go straight to Bush
16 River Road. Take 20 to Bush River Road.

17 Q Off Bush River Road, take us -- how would you
18 get to --

19 A As soon as you get off, you pass 26, and I
20 think the next exit is Bush River Road, and get
21 off, veer right, and her house is in an
22 apartment kind of thing, Whittling Village
23 (phonetic spelling), right across from CVS,
24 right across back in that apartment complex.

25 Q Across from the CVS?

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 A Yes, sir.

2 Q Now, when you got to sister's apartment -- do
3 you remember her sister's name?

4 A No.

5 Q Now, when you got there, who all was there?

6 A I don't know. She met me outside.

7 Q Once you picked up Ricki, where did you all go?

8 A Rode around for a while and we ended up
9 going to Applebee's on the Belmont.

10 Q Her sister lived on Bush River?

11 A Yes, sir.

12 Q Why did you go to the Applebee's on Belmont?

13 A I didn't know anybody on that side of town.
14 I know I was doing dirty, had to go somewhere
15 where I would not be seen.

16 Q So once you got to the Applebee's -- it was just
17 the two of you? Did you meet anyone else there?

18 A No, sir. I was taking her out for her
19 birthday.

20 Q Once you got there, what happened, tell the
21 jury?

22 A We ate, had some birthday cake, might have
23 got another drink, and we left, you know.

24 Q Do you remember approximately what time it was
25 that you left Applebee's?

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 A It was clearing out. We got there late so
2 probably about 11, something like that.

3 Q After you left Applebee's, where did you hit?

4 A Well, ahead of time we already had
5 conversation about, you know, this is going to
6 be strictly dinner, no hotel, none of that. We
7 rode around a little while after that, and I
8 ended up taking her back to her sister's house.
9 At that point, I called the wife a couple times.
10 It was probably around midnight. I called my
11 wife couple times. She didn't answer.

12 At that time, I called Ricki back and turned
13 around and then got a hotel on Broad River Road.

14 Q You called Nikea, she doesn't answer. You
15 called her on cell phone?

16 A I called her twice. I figured she was
17 sleeping.

18 Q But you already dropped Ricki Cook off?

19 A Yes.

20 Q You called her back?

21 A I called her back.

22 Q What was the discussion you had with her?

23 A Hey, I changed my mind. We have to run.

24 Q Did she agree with you?

25 A Yes.

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 Q Where did you all end up going?

2 A We ended up going to Economy Inn on Broad
3 River Road across from Exxon.

4 Q Do you recall what time that would have been
5 that you checked into the hotel?

6 A Late, it was 12 o'clock, probably close to 1
7 o'clock that night.

8 Q Did you pay with credit card, cash, or how did
9 you pay?

10 A I didn't have a debit card at that time so
11 it had to be cash.

12 Q Do you remember how long the two of you were at
13 the hotel?

14 A Couple of hours.

15 Q After you left the hotel, what did you do?

16 A As soon as I left the hotel, I went to the
17 Exxon across the street, got a Yoo Hoo and White
18 Owl, and drove her back to her sister's
19 apartment.

20 Q Now, Ms. Cook was with you.

21 A Yes.

22 Q Did she go into the Exxon with you?

23 A I don't believe so.

24 Q Now, you were at the hotel for a couple hours
25 and you went over to the Exxon station?

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 A Yes.

2 Q Once you left the Exxon station and took her
3 back to sister's house, did you drop her off and
4 leave or?

5 A No. We sat in the car for 10 or 15 minutes
6 chit chatting. It definitely was over 10
7 minutes. She was so sleepy she didn't want to
8 get out of the car and go into the house, yada,
9 yada, yada.

10 Q After you left Ricki Cook, what were your plans
11 at that point? What were you doing at that
12 particular time?

13 A Well, after she got out -- still full of
14 energy, I guess, and I started calling all my
15 friends, anybody I thought was up that time of
16 night. I had plans to hit the strip club on Two
17 Notch Road and hang there. I called everybody I
18 thought to that might want to meet me at, I
19 believe it was Sensations, at that time.

20 Q Where was Sensations located at that time?

21 A It was on Two Notch, Old Mill, Suit City, up
22 toward the Columbia Mall toward Two Notch.

23 MR. PAULING: I beg the Court's
24 indulgence.

25 BY MR. PAULING:

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 Q Do you recall who you would have called?

2 A My partner John, my partner Rock --

3 Q Just wait, you said your partner John?

4 A The same John Jacobs I was supposedly out
5 with, yes, sir.

6 Q All right. You said Rock?

7 A Rock, yes.

8 Q What is Rock's name?

9 A Standrick Mickens. I am sure I called him.
10 And probably my cousin Ryan Roxy (phonetic
11 spelling). Everybody told me it was too late.

12 Q Now, you were calling them while you are sitting
13 there in the parking lot where her sister lives?

14 A No. This was on the way home.

15 Q When you say on the way home, what route did you
16 travel to get home?

17 A Same way I got there. I jumped on I-20
18 right there at Bush River Road and the road
19 straight to Two Notch Road.

20 Q Now, as far as apartment complex, and I am not
21 sure if you testified to it earlier, what major
22 road is that near, the apartment complex?

23 A Basically, on the corner of Two Notch and
24 Alpine Road.

25 Q Why wouldn't you just travel to Alpine Road if

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 you are heading on 20 -- or why were you taking
2 that route?

3 A At the time, I was still unsure whether I
4 wanted to go to the strip club by myself. You
5 know, that is right on the same route. Just the
6 lights and possibility -- I didn't want to take
7 that black road down Alpine Road, I never do.

8 Q You were planning on going to the strip club?

9 A I still hadn't talked myself out of it at
10 that point.

11 Q Now, once you got home -- can you just tell the
12 jury, once you got home what happened? What did
13 you do?

14 A I took my regular ride home. When I pulled
15 up in front of my apartment, I saw the lights
16 were still on. It was past 3 o'clock so, you
17 know, lights shouldn't have been on. We were
18 missing slats in our windows and we usually hang
19 a sheet over it so you can't look in our
20 apartment.

21 Q When you say slats, you mean blinds?

22 A Yes, the blinds that twist. There were no
23 curtains up, lights on, 3 o'clock in the
24 morning. So I thought that was weird. So I
25 pulled up, and I went in the house. And as soon

1 as I walked in the house, I mean, it ain't
2 even -- it wasn't red like you think. It looked
3 like chocolate all over my house, like paint
4 like. It was blood everywhere. Man, I didn't
5 even see my wife at first. I was tripping on
6 the couch and walls and all that. I saw my wife
7 right between the couch and the table on the
8 floor. So I went to call her name. I called
9 her name and she wasn't moving. I turned over
10 and saw blood coming out of her mouth, nose,
11 eyes. Instantly I put her back down and
12 panicked and went in the back and checked on my
13 kids. I opened their door. I remember a smile
14 on my daughter's face. They were asleep.

15 At that point, I went back in the front
16 room and went straight out the door beating on
17 the neighbors apartments. There are three doors
18 close to mine, beating on one --

19 Q Hold on. Let me slow you down.

20 A All right.

21 Q On the trip home, as you were driving home, did
22 you call your wife at any point?

23 A I don't believe so. I called her earlier
24 that night.

25 Q Once you got home, you go in, you see blood, you

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 see her in that condition. Why didn't you call
2 911 right then?

3 A I had to check on my kids. It wasn't even
4 like I had to do this, I had to do that. My
5 natural response as I see my wife like that, I
6 am going to run and check on my babies.

7 Q Did you hear her making any sound at that time?

8 A When I turned her over, I heard kuk, kuk,
9 kuk, which later on somebody, I don't know how I
10 heard it, whenever you received a neck injury
11 that is like --

12 MR. LUKE SHEALEY: Objection, your Honor.

13 THE JUDGE: Sustained as to hearsay.

14 THE WITNESS: Yes, I heard a kuk, kuk, kuk
15 type noise.

16 BY MR. PAULING:

17 Q After you checked on your children, you went out
18 to get help?

19 A It was all in one motion. I turned her
20 over, put her back down, went and checked on my
21 babies. I was dialing and beating on the doors
22 all at one time, getting it in.

23 MR. PAULING: Beg the Court's indulgence.

24 (STATE'S EXH. 1, Photograph of apartment
25 complex, was marked for identification.)

1 (STATE'S EXH. 2, Photograph of breezeway,
2 was marked for identification.)

3 (STATE'S EXH. 3, Photograph of sliding
4 door, was marked for identification.)

5 (STATE'S EXH. 4, Photograph, was marked
6 for identification.)

7 (STATE'S EXH. 5, DVD, was marked for
8 identification.)

9 MR. PAULING: May I approach the witness,
10 your Honor?

11 THE JUDGE: Yes, sir.

12 BY MR. PAULING:

13 Q Mr. Mallory, I show you what is marked for ID
14 purposes, State's 1 through 4. I ask you to
15 take a look at those photographs and ask you if
16 you recognize those, sir?

17 A Yes. This is in front of my apartment.

18 Q Do those pictures fairly show how your apartment
19 or layout of the apartment was back in 2006?

20 A Yes, sir.

21 MR. PAULING: I offer State's 1 through 4
22 into evidence, I believe, without objection.

23 MR. LUKE SHEALEY: Without objection.

24 THE JUDGE: Without objection.

25 (STATE'S EXH. 1 through 4, previously

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 marked for identification, was received into
2 evidence.)

3 MR. PAULING: May Mr. Mallory step down
4 for one second, your Honor?

5 THE JUDGE: Yes.

6 BY MR. PAULING:

7 Q Mr. Mallory, State's 3. What is that showing,
8 sir?

9 A This is my sliding door where a couple of
10 slats were missing.

11 Q Is this your apartment, 311?

12 A Yes, at the bottom right.

13 Q Now, State's 2, what is that showing there?

14 A That is the breezeway, that's where I ran
15 and beat on that door, that door, and that door
16 (indicating).

17 Q Is that the same breezeway area?

18 A Right where the steps are.

19 Q Now, State's 4, is this the side?

20 A Yes.

21 Q Let me ask you this: Where did you park that
22 particular night?

23 A That particular night right here
24 (indicating).

25 Q Okay. Is that the only spot that was available

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 at that time?

2 A I would park anywhere but --

3 MR. AIKEN: Objection.

4 THE JUDGE: Sustained as leading.

5 BY MR. PAULING:

6 Q State's 1, is that your apartment, C?

7 A Yes, sir.

8 Q You can have a seat. Now, you indicated that
9 you went banging on doors when you called, were
10 you calling 911?

11 A Yes. As soon as I checked on my kids, the
12 next thing was getting help so I banged on
13 doors, and I called 911 immediately after
14 calling my kids.

15 Q Did you get a hold of 911?

16 A Yes, sir.

17 Q At that point, what did you tell them?

18 A I gave them my address and I told them to
19 get here now. I mean, you know, it looked like
20 somebody raped and killed her. It was the most
21 horrible scene I had ever seen. There was blood
22 everywhere, worse than any movie.

23 Q What was going through your mind as you are
24 making that call?

25 A I am trying to save my wife. I heard

1 noises. I figured there is a possibility to
2 save her. So I just -- as quick as my neighbor
3 came over and got my kids, I threw her in the
4 van and we hauled tail and I think I made it to
5 the hospital in four minutes.

6 Q Were you able to stay on the line with 911 or
7 what happened?

8 A I gave them the address. I told them what
9 was going on. We disconnected and they called
10 me back on the way to the hospital.

11 Q Do you remember approximately what time it was
12 that you called 911, if you remember?

13 A A minute after I walked into the house, not
14 even a minute. Within 50 seconds of walking
15 into the house.

16 Q Do you recall exactly when you walked into the
17 house?

18 A Do I recall the time? I was not looking at
19 my watch.

20 Q Okay. Do you remember -- those particular phone
21 calls that you made on the way home, do you
22 remember when you made those calls, sir?

23 A Yes, sir.

24 Q Do you remember the exact time you made those
25 calls?

1 A No, sir.

2 Q Would reviewing your phone records refresh your
3 recollection of that?

4 A It should, sir.

5 MR. LUKE SHEALEY: Your Honor, may we
6 approach.

7 THE JUDGE: Yes.

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

11 THE JUDGE: Counsel, I will send the jury
12 out for a break. It is an afternoon break. I
13 am going to send you out. I ask you not to
14 discuss this matter amongst yourselves. You
15 still have not heard all of the evidence that
16 has been presented. This is a good time to take
17 an afternoon break after eating lunch. So if
18 you will go to the jury room, we will bring you
19 back shortly.

20 (Whereupon, the jury exited the courtroom
21 at 4:34 p.m.)

22 MR. LUKE SHEALEY: While the jury is out,
23 I want to put on the record my objection. It
24 seems like he is trying to refresh a
25 recollection which would be hearsay under Rule

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 803(5), which is a recorded recollection, where
2 it is a memorandum recorded record recollection
3 concerning a matter about which a witness once
4 had knowledge and now has an insufficient
5 recollection and enables the witness to testify
6 fully and accurately showing that it was made or
7 adopted by the witness. This wasn't made by
8 him. This was made by the phone company
9 probably put in the trial for investigation. He
10 doesn't know how to read this. It is not
11 appropriate to testify to it under the rule of
12 the hearsay exception. If he had a prior
13 statement of his own, or if it was in his own
14 statement and he didn't have it, and the
15 prosecutor wanted to say, well, do you remember
16 now what you hand wrote at the time, that would
17 be acceptable, but this doesn't apply.

18 THE JUDGE: Just so the record is clear.
19 The documents are not in the form of say a phone
20 bill, which certainly would have been his phone
21 bill he would have been able to use to refresh
22 his recollection. It is a document that is
23 apparently produced by a telephone carrier, but
24 it is not in a readable form such as the
25 ordinary customer would be able to look at in

1 terms of when the calls were made, what the
2 numbers were, the dates. I guess it is more of
3 a technical find.

4 What our rule was is that he would need to
5 be able to lay a foundation to establish that
6 the witness understood what it was without being
7 told what it was. And in the format that it is
8 currently in -- I don't know what he knows, but
9 it is not apparent from looking at it that it is
10 a phone bill of phone records.

11 MR. PAULING: We will move forward without
12 that.

13 THE JUDGE: Let's go ahead and take a
14 break.

15 Mr. Mallory, a couple of things. I
16 noticed that you talk over the attorney, and
17 that makes it difficult for the court reporter
18 to get information down as well as for everybody
19 else to hear what is being asked and what your
20 testimony is. So I ask that you wait until the
21 question is finished being asked before you
22 answer it. You know, I understand that you may
23 be nervous and when you testify you talk fast
24 and talk over, but if you will listen carefully
25 and try not to talk over the attorney.

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 You may step down during this break but
2 you may not discuss your testimony with anyone
3 during the break because you did not conclude
4 your testimony, but you can certainly step down.

5 We will take a break and come back in a
6 couple of minutes.

7 (A recess transpired at 4:48 p.m.)

8 (Open Court out of the jury's presence.)

9 THE JUDGE: I have a juror that needs to
10 leave at 5:20. She has part-time employment
11 that starts at 5:30 and she would either need to
12 call her employer and tell them she is going to
13 be late or leave at 5:20. Since I told them I
14 would not going to keep them late today, I will
15 try to honor that request.

16 Anything to take up before the jury comes
17 back in?

18 MR. PAULING: Not from the State.

19 MR. LUKE SHEALEY: No, ma'am.

20 THE JUDGE: May I ask the jury to come in,
21 please.

22 (Whereupon, the jury came into open court
23 at 4:49 p.m.)

24 THE JUDGE: You may continue, Mr. Pauling.

25 MR. PAULING: Thank you, your Honor.

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 BY MR. PAULING:

2 Q Mr. Mallory, you stated you went banging on the
3 doors of neighbors?

4 A Yes, sir.

5 Q Were you on with 911 at the time?

6 A I called them. I don't know if I beat on
7 the doors or I was calling while I was beating,
8 but it was all going on during the same point in
9 time.

10 Q Did anyone respond to you at that time?

11 A Nobody came to the door, and I remember
12 talking to the 911 operator.

13 Q So you obviously went outside the apartment.
14 Did you go back inside the apartment?

15 A Yes, I was talking inside the doorway
16 because she was in front of the doorway.

17 Q What happened when you got back in the
18 apartment?

19 A I was on the phone with 911 giving them an
20 address and asking them to come help. At that
21 time, one of my neighbors called my name,
22 knocked on the door.

23 Q Who was that?

24 A Shaheed Hargraves. He came to the door as I
25 was on the phone with 911.

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 Q Once he had gotten there, what did you all do?

2 A I told him somebody stabbed my wife, man,
3 get my kids, I am going to take her to the
4 hospital. So he went in the back and put
5 blankets over my kid's heads and picked them
6 both up at the same time and carried them out.
7 At that point, like I said, all I had was a van
8 I worked out of. It was full of medical totes.
9 So as soon as he got my babies out, I shot
10 outside and threw everything out of my van so it
11 would be a flat surface, and I pulled that van
12 in front of the breezeway and picked her up and
13 put her in the van and took off to the hospital.

14 Q Which hospital did you take her to?

15 A Providence Northeast on Farrow Road.

16 Q As you were heading out, did you make any other
17 phone calls?

18 A I probably called my family members and
19 said, man, meet me at the hospital.

20 Q While you were traveling to the hospital -- do
21 you know about how long it took you to get
22 there?

23 A I got there fast. I was going 95 down to
24 77. I was getting...

25 Q Now, do you recall being on with 911 at any time

1 during that trip?

2 A They called me on my way there and I told
3 them to get ready, my wife is bleeding, get
4 ready, get everything ready. I will be there in
5 a second. I told them get ready.

6 Q What happened once you got to the hospital?

7 A I didn't even park. I jumped the curve,
8 parked right in front of the door, got out,
9 picked her up, ran in there and put her on a
10 stretcher and they took her in the back.

11 Q What condition is she in when you are taking her
12 in there?

13 A She is covered with blood, man. She had on
14 like a yellow bright color shirt, man, it was
15 covered with blood. The only reason I even ran
16 to the hospital is because I heard Kuk, Kuk,
17 Kuk. I thought she was still alive. I was
18 trying to save her.

19 Q Now, after you were there at the hospital, did
20 anyone else come to the hospital?

21 A After I put her there, that's when her
22 family and friends started arriving.

23 Q Now, at some point, I guess that early morning,
24 the doctor told you she didn't survive?

25 A Yes. They came out a few minutes later and

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 told me she was dead.

2 Q Now, what happened next? What is going through
3 your mind at that point?

4 A I was out cheating and somebody killed my
5 wife while I was out cheating. I don't know.
6 Guilt, man. To this date, I mean, just regret
7 that I was even doing that, you know what I am
8 saying. I should have been home with her. This
9 would have never happened. If I saw him come,
10 this would have never happened.

11 Q Now, while you were there at the hospital, did
12 law enforcement come to the hospital?

13 A Yes. Some kind of victim advocate lady was
14 like rubbing on my shoulder, telling me to calm
15 down. Couple other officers came. It was like,
16 you know --

17 MR. LUKE SHEALEY: Objection to hearsay.

18 THE JUDGE: Sustained to what they said.

19 It is hearsay.

20 BY MR. PAULING:

21 Q Did you speak with other officers, though?

22 A I don't recall their names or anything. I
23 spoke with a couple of officers. They didn't
24 ask me what happened or anything. They were
25 getting general information.

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 Q Now, at some point, were you asked about what
2 happened, about your whereabouts?
3 A Well, when we got down to the police station
4 that's when they started questioning.
5 Q Did you provide law enforcement with that
6 information, where you had been?
7 A I told them they could take everything and
8 anything they wanted to. They could have any
9 sample, anything, just find out who did this to
10 my wife. I fully cooperated. I didn't hold
11 anything back.
12 Q Did you tell them where you had been?
13 A I had to. I came clean about everything.
14 Q Did you tell them who you had been with?
15 A I told them to find her before she went back
16 to Greenville. I took them to where I dropped
17 her off at.
18 Q You said you took them. You took them where?
19 A I didn't know the address to her sister's
20 apartment. Before we went to headquarters, I
21 took them to where I dropped her off.
22 Q When you say these?
23 A Detective Holdorph.
24 Q With the Richland County Sheriff's Office?
25 A Yes, sir.

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 Q Now, do you recall if she was there at the time?
2 You just pointed out to where the sister's
3 apartment was?

4 A I didn't see them go to the apartment. I
5 told them which door it was and everything and
6 we went to the headquarters.

7 Q You took them to where Ricki Cook was staying?

8 A Yes, sir.

9 Q Did you tell them that you had been out with
10 Ricki Cook?

11 A I told them everything.

12 Q Did you tell them where you were going?

13 A I told them every single detail of my night.
14 I held nothing back.

15 Q Let me ask you this: As far as when you left,
16 when you left and dropped Ricki Cook off and
17 gone home, did you tell the investigator the
18 route you took?

19 A Yes, sir.

20 Q What route was that again?

21 A I took Bush River to I-20. I took a left on
22 I-20 toward Florence and took I-20 to Two Notch
23 Road, took a left on Two Notch Road, went by
24 six, seven stoplights to Alpine, bust a right,
25 and I am right over -- the apartment the complex

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 is right over the tracks.

2 Q Again, you said you had been out with Ricki Cook
3 or at least you went to the hotel about 1 a.m.;
4 is that correct?

5 A Yes.

6 Q And you were there how long again?

7 A Couple hours.

8 Q Two hours there?

9 A Yes, couple hours.

10 Q After leaving there, where did you go?

11 A I went directly across the street to an
12 Exxon open 24 hours, directly across the street.

13 Q What did you get from Exxon?

14 A White Owl cigar and Yoo Hoo chocolate drink.

15 Q After leaving Exxon, you took Ricki Cook home?

16 A Yes, sir.

17 Q How far was the hotel and the Exxon from where
18 her sister lived?

19 A The hotel is directly across the street from
20 the Exxon. The Exxon is on the corner of Broad
21 River and I-20. Her sister lived two exits up
22 I-20 toward Augusta, so probably four miles,
23 five miles.

24 Q Did you get on 20 to go there or go down --

25 A Yes, sir, jumped on 20 and got there.

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 Q Again, once you got to the sister's house, how
2 long were you all there?

3 A Ten, fifteen minutes talking to each other.

4 Q Leaving from there to get home, you told me the
5 route you took. Approximately, how long did it
6 take you to get there?

7 A Like I said, I was driving the van, man, and
8 I wasn't in no rush to get home. I was probably
9 doing 60, 55, trying to find somebody to go to
10 the strip club. It took 20, 25 minutes to get
11 home.

12 Q You weren't planning on going straight home?

13 A No, sir. I was looking for any and every
14 place to go. I was looking for somebody to go
15 to the strip club with me. I wasn't ready to go
16 home.

17 Q You mentioned that you had done everything the
18 investigators asked you to. Did you give them
19 consent to search your home?

20 A Yes, sir, the vehicle, home. I gave them
21 all my clothes, everything.

22 Q Now, at some point, were you asked by the
23 investigators about who might have done this?

24 A They asked me if she had any enemies like
25 that and --

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 MR. LUKE SHEALY: Objection. Hearsay.

2 THE JUDGE: I sustain as to the questions
3 that were asked.

4 THE WITNESS: Can you repeat those?

5 BY MR. PAULING:

6 Q Did you speak to the investigators about who may
7 have done this, yes or no?

8 A Yes.

9 Q What did you tell them?

10 A I told them she didn't have any enemies, but
11 the only two people that came by that day was
12 Josh Porch and the maintenance man, Vince or
13 Vick. Those are the only two people that came
14 by that day.

15 Q Let me ask you, did you mention Dawn Kenny?

16 A In connection with killing Nikea, no. That
17 was her friend.

18 Q But those were the individuals that you told law
19 enforcement had been over there?

20 A Those two men had been to my house.

21 Q Now, as far as clothing you had on that day, did
22 you provide that to law enforcement?

23 A Yes. I gave it to them and called my
24 brother to bring me switch up clothes.

25 Q Was that that same day? When I say the same

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 day, same morning or same day?

2 A This was the same clothes I had on when I
3 started my night after, you know, when I set out
4 to get with Ricki, same exact clothes.

5 Q And you provided them to law enforcement that
6 same day when they were talking to you?

7 A Yes, sir.

8 Q Now, Mr. Mallory, were you eventually charged
9 during this investigation?

10 A Couple hours later, yes, sir.

11 Q Couple hours later?

12 A I mean, maybe five hours after they told me
13 she was dead they had me charged with murder.

14 Q Were you tried in this particular matter?

15 A Twice.

16 Q What happened after the first trial?

17 A After the first trial?

18 Q Yes.

19 A I got a bond and went for the second trial.

20 Q Mr. Mallory, you mentioned after the first trial
21 -- what was the result of that first trial?

22 A One person said I was guilty --

23 Q Let me ask you this: Was it a hung jury?

24 A Yes, sir.

25 Q Now, were you tried again?

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 A Yes, sir.

2 Q Was that in front of a jury?

3 A I chose a bench trial.

4 Q What was the result of that particular trial?

5 A The judge saw everything for what it was. I
6 was found not guilty.

7 Q Mr. Mallory, just so I can recap this so I
8 understand. After you have gone out with --
9 when you had gone to the hotel with Ricki, it
10 was about 1 a.m.; is that correct?

11 A Yes, sir.

12 Q It was about --

13 MR. LUKE SHEALEY: I object. It was
14 asked and answered. It is about the third time
15 she has been through this rendition.

16 THE JUDGE: I sustain it only to the
17 extent it is leading questions.

18 BY MR. PAULING:

19 Q What did you do after that?

20 A After I dropped off Ricki?

21 Q Yes. Well, after you leave the hotel?

22 A As soon as I leave the hotel, I go directly
23 across street to the Exxon, the Exxon across the
24 street. I got a cigar and a drink and took her
25 to her sister's house. We were there 10, 15

JUSTIN MALLORY - DIRECT BY MR. PAULING

1 minutes, more like 15. She was so sleepy she
2 didn't want to get out of the car. Probably
3 about 15 minutes I was trying to take the woman
4 out. After that, I guess, I was ready to
5 mingle. I was calling my partners to go to
6 strip club or something. There is more 24 year
7 old fools. I wasn't trying to go home.

8 Q After you got home, that's when you discovered
9 your wife?

10 A Yes, sir.

11 Q You just testified, Mr. Mallory, that you were
12 tried twice for this?

13 A Yes, sir.

14 Q Hung jury the first time, and after a bench
15 trial, you were found not guilty?

16 A Yes, sir.

17 Q Justin Mallory, did you on May 14 of 2006 kill
18 your wife, Nikea Mallory?

19 A No, I did not have a thing to do with that.
20 She was alive and well and she was totally alive
21 the last time I seen her, totally.

22 MR. PAULING: Beg the Court's indulgence.

23 BY MR. PAULING:

24 Q Mr. Mallory, throughout this entire time from
25 back in 2006 when you were charged until now,

1 have you ever changed your statement about what
2 happened, what you were doing that particular
3 time, back in May of 2006?

4 A The truth is not changed. I did not change
5 a single thing. Everything I said is what they
6 state. I didn't change any side of things. If
7 they came back, well, no. I told the absolute
8 truth from the very beginning, not four and five
9 lies. Nothing.

10 MR. PAULING: Thank you, sir. I have no
11 further questions, your Honor.

12 THE JUDGE: Ladies and gentlemen, this
13 will be a good time to end for the day. I am
14 going to remind you the instruction I have given
15 to you and that would be not to discuss the case
16 amongst yourselves because you have not heard
17 all of the evidence. I ask you to remember the
18 instructions I give you to throughout the course
19 of the trial that you should not allow anyone to
20 approach you, to discuss this matter with you.
21 If anyone attempts to do that, please tell them
22 you are a juror and you cannot discuss it, and I
23 ask to you report it as soon as possible.

24 Also, as you come and go from the
25 courthouse, I ask that you not listen to any

1 conversations that you may hear in the hallways,
2 again, for the reasons that you have to make the
3 decisions based on the evidence presented here
4 in this courtroom and not based on conversations
5 you may overhear as you come and go.

6 Ladies and gentlemen, I am going to give
7 you additional instructions I am going to ask
8 you follow. I am going to ask you not to engage
9 in independent research or investigation to the
10 extent that you may have access to any material
11 that would allow you to be able to do any
12 research on any issues or testimony that you
13 have heard whether by computer, books,
14 individuals. I ask that you not engage in such
15 research or investigation. That's not evidence
16 in the case and cannot be considered by you
17 during the course of this trial in doing your
18 deliberations because it is not evidence in this
19 matter.

20 I also ask that overnight -- I know that
21 your family and friends will want to know what
22 you are doing on jury duty. Certainly, you can
23 tell them that you were selected as a juror in a
24 criminal trial. Please tell them I have asked
25 you not to discuss what you heard or seen so far

1 with them.

2 The reason I tell you that, ladies and
3 gentlemen, is oftentimes when your family and
4 friends make comments to you, they ask
5 questions, or you begin to discuss what you
6 heard or seen they may make comments to you.
7 They may ask you questions that has the
8 potential to impact how you view the evidence
9 and how you consider the evidence in this
10 matter. While they are family and friends and
11 not strangers, it is still inappropriate for you
12 to have any conversations with anyone about what
13 you heard or seen throughout the course of this
14 trial. Please tell them the judge asked you not
15 to discuss it with them, that when the trial is
16 over that you would be free at that time to
17 discuss anything and everything that you heard
18 or seen throughout the course of the trial. But
19 until you have returned a verdict in this case,
20 it would be inappropriate for you to discuss it
21 even with family and friends.

22 Ladies and gentlemen, I don't believe
23 there will be any media reports, but to the
24 extent there may be a report, I ask that you not
25 listen to or watch or read any such reports that

1 may be out there, that someone else's recitation
2 of what they have heard or what they have seen
3 throughout the course of the trial, and again,
4 you have to be guided by what you have heard and
5 what you have seen in the course of the trial
6 and in the testimony and evidence that has been
7 presented. So I ask that you not listen to,
8 watch, or read any of those reports.

9 Ladies and gentlemen, I ask you to report
10 a little earlier tomorrow morning. I ask you to
11 report at 9 o'clock tomorrow. When you come
12 into the building, please go in and let them
13 scan your badges, and I guess you will have
14 badges in the morning. Apparently, there must
15 have been some computer glitch because you are
16 not wearing them. The Clerk's office will take
17 care of that, and to the extent that you get a
18 white badge which will record your presence here
19 in the courthouse later in the week, we will
20 take that up.

21 Tomorrow morning when you come into the
22 courthouse, please come up to the third floor
23 and meet in the same jury room where you
24 reported after lunch today and when you have all
25 assembled there at 9 o'clock and we will be

SC VS. JOSHUA PORCH - DISCUSSION

1 ready to continue on with the trial in this
2 particular matter. Until then, let your
3 foreperson know if there are any conflicts in
4 the event we go past five. If we are starting
5 at 9 o'clock tomorrow, I doubt I will go past
6 5:30. That makes for a very long day. If there
7 are anyone that has any issues, health issues,
8 that I need to be aware of for purposes of
9 taking breaks or lunch hour, please let the
10 foreperson know that so he can write a note
11 about that.

12 Ladies and gentlemen, I hope you have a
13 pleasant evening and we will see you tomorrow
14 morning at 9 o'clock. Thank you.

15 (Whereupon, the jury exited the courtroom
16 at 5:08 p.m.)

17 THE JUDGE: Mr. Mallory, you may step
18 down. Again, you should not discuss your
19 testimony overnight with anyone including the
20 attorneys because you have not concluded your
21 testimony so it would be inappropriate to
22 discuss it. You may step down.

23 (Witness being excused.)

24 THE JUDGE: We have some issues that we
25 need to continue to take up; is that correct?

SC VS. JOSHUA PORCH - DISCUSSION

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

2 THE JUDGE: Yes, sir.

3 MR. LUKE SHEALEY: I think I have gone
4 through several. Starting at the next one which
5 would be -- I will object to the one hour video
6 interrogation by Shawn McDaniels and
7 Investigator Godfrey that we have been
8 discussing previously. Separately now, under
9 Rule 403, which excludes all of the evidence on
10 grounds of prejudice, confusion, waste of time,
11 all relevant exclusion, the probative value
12 substantially outweighs by danger under
13 prejudice, confusion of the issue, or misleading
14 the jury.

15 I think that when we don't present the six
16 and a half hour interrogation by Investigator
17 Cohen, which in defense counsel's opinion
18 substantially explains his condition when he
19 gets now to the final hour of interrogation in
20 the context of the three-day ongoing
21 interrogation, that it misleads the jury. They
22 are going to see basically Joshua Porch at his
23 most weakest, at his most beaten down, and think
24 that's just what we've got.

25 He confessed and gave these two statements

SC VS. JOSHUA PORCH - DISCUSSION

1 and here we are, we have this final version. We
2 don't see all the interrogation. It is really
3 confrontational, and I played a little bit for
4 you in pre-trial of Investigator Cohen where she
5 tells him his defenses don't matter, that all
6 these things we put that away. I think that
7 does mislead the jury. It does confuse the
8 issue, and the only way for me to appropriately
9 address that would be for me to waive my
10 client's right to confrontation and enter that
11 six and half hours of video, which I am not
12 prepared to do, and I think that would be a PCR.
13 I think that he has a right, and I am not going
14 to waive that right. It takes this whole
15 interrogation out of context.

16 We already have two statements you ruled
17 that are admissible to come in. What more do
18 they need? This situation is law enforcement in
19 the making. It is because of their witness, of
20 their investigation, who didn't come to trial in
21 July, who ignored your orders to produce her
22 file numerous times to the point we had an order
23 to show cause on it. I could have issues as a
24 result of that. She eventually produced what
25 she claimed was her whole file. I don't know.

SC VS. JOSHUA PORCH - DISCUSSION

1 She is not here. She fought the subpoena to
2 come here.

3 Now because of that, the defense is left
4 in a position where we can't also present a
5 complete and full defense because we cannot
6 properly explain it. The only way for us to
7 explain his position in that final hour is to
8 introduce the six and a half hour interrogation
9 or the polygraph, which we are not prepared to
10 waive his right to proffer. So if they don't
11 need it. It is something that the law
12 enforcement is making, it is misleading the jury
13 under Rule 403, and we would argue it should be
14 excluded.

15 THE JUDGE: Any response, Mr. Goings?

16 MR. GOINGS: Your Honor, first of all,
17 oral arguments we had before the State's
18 position is that the last hour can be played for
19 the jury, show voluntariness of the statement.
20 The two investigators we have here not only
21 given the fact that the State also believes that
22 the portion of the Miranda perhaps could be
23 admissible anyway based on the fact that they
24 have had the chance to cross-examine Ms. Cohen
25 at the time of the pre-trial hearings. Crawford

SC VS. JOSHUA PORCH - DISCUSSION

1 only requires an opportunity for
2 cross-examination.

3 The State doesn't feel that that's
4 technically necessary to show that portion of
5 the video. I believe the testimony from the
6 officers saying they observed the Miranda rights
7 being given to the defendant would be sufficient
8 enough to show the State, or at least for court
9 purposes, for your determination as the gate
10 keeper of whether the statements come in, that's
11 sufficient to show the voluntariness of the
12 statement given by Mr. Porch to Investigator
13 Godfrey and Investigator McDaniels. The fact is
14 that they did not have an opportunity to
15 cross-examine these officers is untrue. They
16 could cross-examine these officers about what
17 they heard, what they saw, because they were
18 simultaneously watching the video feed and it
19 was happening at the same time Ms. Cohen was
20 going over his rights. They can go over the
21 fact that Ms. Cohen talked with him for six and
22 a half hours without showing the video. They
23 can ask the officers was, in fact, the defendant
24 interviewed for six and a half hours prior to
25 the hour testimony you are hearing today, or the

SC VS. JOSHUA PORCH - DISCUSSION

1 videotape you are hearing, or that we contend to
2 play for the jury that contains these
3 statements. So the 403 argument that it would
4 be -- that they have ample opportunity to
5 cross-examine these officers if they so chose.

6 Defense counsel's argument what more do we
7 want, we already have two statements. The third
8 statement he gives to law enforcement on camera
9 after the polygraph interview and polygraph
10 takes place, it contains much of the same
11 information of the first two statements. It
12 also contains additional information to the fact
13 that Mr. Porch took the knife, discarded the
14 knife in the trash can. All those were not
15 included in the first statement. Although, his
16 rendition of what actually occurred during the
17 stabbing remains constant at least from the
18 second statement until he discusses it on video
19 with Investigator Godfrey and Investigator
20 McDaniel exactly what happened again that night.
21 It does remain constant. However, he does add
22 information to that conclusion.

23 There is portions of the video, your
24 Honor, that the defense of coerced confession
25 where the defendant is telling the officers you

SC VS. JOSHUA PORCH - DISCUSSION

1 treated me great. I have no problem with you.
2 I wish we had been in different circumstances.
3 All of that, the jury is entitled to see that,
4 that we have in our position, we can prove is
5 voluntarily made by the defendant to drum this
6 argument that the confession was coerced.

7 The State believes we have the right to
8 play that portion of the video, your Honor.

9 MR. LUKE SHEALEY: Just to touch on that.
10 403 is now different from the overbearing
11 Crawford concerns in my opinion. I would begin
12 that the limited cross-examination I did with
13 Cohen was completely -- because no one, not
14 Mr. Goings, not myself, not this Court,
15 anticipated she would not be here for trial
16 where that crucible, where my examination of her
17 where they get to see whether she did her job is
18 what was necessary. That was not done in that
19 cross-examination and does not testify in
20 Crawford and we will not find case law on it
21 because this is the most unusual case in a
22 mirror of ways.

23 My question is: I have been citing a lot
24 of rules and constitutional principles, but at
25 what point does the law enforcement behavior --

SC VS. JOSHUA PORCH - DISCUSSION

1 at what point are they held accountable so we
2 can continue to have complete and full defense
3 of Joshua Porch. How far does it go so that at
4 this point I have to keep diminishing my defense
5 in what I can say and what I can do because she
6 refused to come multiple times, comply with your
7 order.

8 So I think had Mr. Porch simply not moved
9 to California and been arrested the same way,
10 warrant, go talk to him, we would not be talking
11 about this. It would be two statements,
12 perhaps, same way it was. They could talk about
13 he told me about the knife as well because it
14 was not on videotape. Here we are seeking to
15 introduce it when the witness is not here to
16 confront her, to make it appropriate with the
17 Advice of Rights, and also, to enter it in
18 properly and lay the proper foundation.

19 At what point does his due process right
20 get satisfied. I think those are basically all
21 of my -- I will throw in the best evidence rule.
22 I don't know what -- I don't know if this is
23 original. I have never heard testimony about
24 it. I don't know if it is a copy. I don't know
25 what the video is, where it came from, if it is

SC VS. JOSHUA PORCH - DISCUSSION

1 the original. If it is not, I think that it has
2 not satisfied the best evidence rule. That is
3 culmination of every argument as to why it
4 should not come in. In my opinion from reading
5 Crawford, being the limited right to confront
6 her, the hearsay objection, the chain of custody
7 situation, and the diminished right for us to
8 present a complete and full defense without
9 waiving our Crawford objection, we would ask
10 that the final video not be admitted and that
11 any portion of Ms. Cohen certainly not be
12 admitted without her not being here.

13 THE JUDGE: Let me say under the 403
14 analysis, I don't think that is the basis to
15 exclude the video. 403 relates to the exclusion
16 of relative evidence on ground of prejudice,
17 confusion, or waste of time, and that its
18 probative value is substantially outweighed by
19 the danger, unfair prejudice, confusion, and
20 misleading the jury. I don't think that exists
21 as it relates to the video itself.

22 Now, obviously, we have to get through
23 some other hoops before you get to that point,
24 but at least on 403, I will deny on that basis.

25 What I mentioned hearing from the State is

SC VS. JOSHUA PORCH - DISCUSSION

1 about the chain and -- specifically, what was
2 the hearsay objection that was objected to?

3 MR. LUKE SHEALEY: My hearsay objection
4 was that in order to properly say that Joshua
5 Porch was advised those rights, hearsay
6 testimony has to be elicited about what
7 Investigator Cohen said.

8 THE JUDGE: It is coming from either
9 Godfrey or McDaniel.

10 MR. LUKE SHEALEY: Correct. They are
11 saying that --

12 THE JUDGE: I understand that.

13 MR. GOINGS: As far as the chain is
14 concerned, your Honor, as for whether or not the
15 tape is the original or not, I think the
16 evidence rule is clear that the duplicates are
17 fine. To authenticate a videotape, and I know
18 your Honor knows this as well, there is very
19 different standards that state that must have to
20 show when we are talking about fundable versus
21 nonfundable evidence in a trial. Obviously,
22 with DNA drugs, things that can be altered or
23 manipulated. The requirement for the State to
24 show a complete change which is more necessary.
25 However, when we are talking about videotaped

SC VS. JOSHUA PORCH - DISCUSSION

1 photographs, if we have a witness who can
2 testify at the time the video was done, or the
3 video contains a tape of what occurred in their
4 presence, and they have reviewed that video and
5 said, yes, this is what occurred on -- I believe
6 it was July 10th of 2009, when me and
7 Investigator Godfrey were sitting in the room
8 with Joshua Porch and we looked at this video
9 and this contained an exact depiction of what
10 happened on that particular date, that's
11 admissible, will make it admissible in court.

12 MR. LUKE SHEALEY: I think that no one
13 considers that video recordings can't be
14 manipulated. The only person, as you know
15 because I passed up the transcript for you, that
16 testified that she actually produced and created
17 this video is the person that is not here,
18 Investigator Cohen. These gentleman can't
19 testify that the working of this machine, when
20 it might have been edited, when it might have
21 been cut, what might have been left in or left
22 out. The only person that can do that is
23 Investigator Cohen. She is the one that
24 produced it, burned it, worked it. It is her
25 office and her Sheriff's Department. She

SC VS. JOSHUA PORCH - DISCUSSION

1 elected that and then provided that. We think
2 this is the kind of evidence that can be
3 manipulated, and the only person to ever be
4 questioned about it is not here.

5 MR. GOINGS: That's not true. The
6 detectives can testify they were given a copy of
7 the videotape as soon after the interviews were
8 conducted. Cross-examination can be had on
9 those two detectives who were there present at
10 the time the interview was taking place and ask,
11 what is this videotape that we just saw
12 manipulate. They were there. They were there
13 through the whole entire video interview. They
14 have the background to testify whether or not
15 the tape has been manipulated. If they don't
16 feel that everything that was transpired that
17 day was there, they can be asked that. All the
18 videotape has to show is a person sitting there
19 and say this is a true and accurate reflection
20 of what occurred or what transpired on this
21 particular day. Both these officers will sit
22 here and tell you that the tape that they had
23 was what happened that day. That was their
24 interview with the defendant, Mr. Porch, after
25 Ms. Cohen interview.

SC VS. JOSHUA PORCH - DISCUSSION

1 THE JUDGE: I will look at that. I am
2 inclined to agree that if all that would be
3 required is that someone has reviewed it and
4 seen it can testify and authenticate that's what
5 occurred and that nothing was deleted or edited
6 or altered, but I would like to look at that to
7 be on the safe side.

8 Let's go back to the information about the
9 officers' testimony as to what occurred relating
10 to the Advice of Rights. I believe that, and I
11 will be happy to look at it again, but I think
12 in order to satisfy Crawford, what is required
13 is that the witness be unavailable and have had
14 opportunity to provide testimony for which the
15 defense had the opportunity to cross-examine.
16 There is no question that the testimony, that
17 the statements and the evidence that is sought
18 to be admitted, will be testimony on nature. It
19 was at a hearing, testimony at a hearing which
20 the witness was under oath. She was asked
21 questions about the events, meaning she gave
22 testimony about those events. All that is
23 required under Crawford is that there be
24 opportunity for cross-examination. It does not
25 mean that it is the cross-examination that the

SC VS. JOSHUA PORCH - DISCUSSION

1 defense would have made in front of a jury. It
2 doesn't require that they actually be
3 cross-examined on the issue. The critical part
4 is that there be the opportunity in whether or
5 not the defendant takes advantage of this is up
6 to the defense.

7 Certainly, at the prior hearing once
8 testimony was elicited, it was a hearing
9 specifically on the nature of whether he was
10 advised of his rights or whether he understood
11 those rights and circumstances surrounding the
12 giving of those rights. And certainly, there
13 was the opportunity to testify and cross-examine
14 her about what exactly occurred, what she
15 observed, and what occurred in the surroundings
16 in which the statements were made and the Advice
17 of Rights was done.

18 Additionally, there is no question in this
19 case that the officer is not available. She is
20 not available because of the conduct of the
21 State in this particular case. She was sent a
22 subpoena. She is an out-of-state witness. She
23 is certainly outside of the jurisdiction of this
24 state. So it requires a court order issued by
25 the State in which she resides in order for her

SC VS. JOSHUA PORCH - DISCUSSION

1 to appear. The State provided information. The
2 state provided subpoena to her, and the Court in
3 California made a decision that she should not
4 attend so it is without fault of the State.

5 I have heard the information. Yes, we did
6 have some discussions and quite a number of
7 hearings and discussions about her producing her
8 records. We went around that, around and around
9 with that several times. I will note for the
10 record, and everyone is aware of the fact that
11 because she did not appear -- I think we were
12 scheduled to try at the end of July, and she did
13 not appear at that particular time. We got a
14 notice of it shortly before the trial, week or
15 two or two weeks before the trial was to begin,
16 that she was unavailable through her own actions
17 and not through any actions of the State.

18 At that particular point, I indicated if
19 she failed to attend the next time the case was
20 scheduled for trial we would continue in her
21 absence. Obviously, the State did what it was
22 supposed to do to secure her presence and the
23 California court disagreed with the request and
24 denied the State the opportunity to have her
25 present.

SC VS. JOSHUA PORCH - DISCUSSION

1 So I think Crawford has been satisfied. I
2 am looking for something specifically.

3 MR. LUKE SHEALEY: Your Honor, I
4 understand where you are going and I understand
5 what your ruling is probably going to be, but I
6 can't stress how limited this confrontation was
7 compared to what it would be in front of a jury.
8 I guarantee Mr. Goings is cross-examining
9 Mr. Porch isn't going to be the same as it will
10 be when Mr. Porch testifies.

11 THE JUDGE: I understand and I am fairly
12 sympathetic with that. The law requires that
13 you have the opportunity to cross-examine. You
14 could have gone through a full
15 cross-examination, and I understand that the
16 general practice is that most solicitors and
17 prosecutors and defense attorneys will not go
18 through the same type of cross-examination that
19 they would do in front of a jury and simply
20 because it is a hearing for, threshold hearing
21 as to whether or not statements should be
22 admissible that everybody anticipates, that the
23 witness will be available for trial. But those
24 are also the dangers associated with deciding to
25 do limited cross-examination, that the witness

SC VS. JOSHUA PORCH - DISCUSSION

1 died for some reason, or the witness had been
2 otherwise unavailable, or something else had
3 occurred.

4 I am familiar with cases in which there
5 was different defense counsel. One defense
6 counsel raised the issue of I didn't have the
7 opportunity to cross-examine, and there are
8 cases that talk about those as well. Like I
9 said, I am sympathetic to that, but I think that
10 all that is required is that there is an
11 opportunity. And given the fact that it was the
12 same type of hearing regarding the substance
13 from which her testimony is sought at this
14 particular time, I think that is all the more
15 reason why there is certainly the opportunity to
16 cross-examine her specifically on these issues,
17 and you know, whether you chose to do that or
18 not is really up to the defense at the time.
19 That does not mean because she is not available
20 for reasons outside of the State's action -- had
21 she been unavailable because the State chose not
22 to call her, it would be different story. This
23 is a different situation where the State chose
24 to call her, subpoena was issued, and another
25 jurisdiction had issued an order indicating that

SC VS. JOSHUA PORCH - DISCUSSION

1 she didn't have to follow the subpoena. We
2 don't have any control over that particular
3 issue. I think she is unavailable for reasons
4 outside the State's own making; and therefore, I
5 think the strict compliance with Crawford is
6 required under the circumstances.

7 MR. LUKE SHEALEY: She is the State, your
8 Honor. She is law enforcement. She is making
9 herself unavailable. It may not be Cary Goings'
10 fault.

11 THE JUDGE: But it is not the State of
12 South Carolina's fault. The State of South
13 Carolina has done what it can do to try to make
14 her come here. They sent her a subpoena. They
15 were willing to pay her expenses. They
16 indicated her testimony was needed, and I
17 presumed the reasons why her testimony was
18 needed -- and frankly, I am at loss as to why
19 she was not required to come, but that's my
20 opinion. I am not California. I don't know
21 what their laws are. There is not anything else
22 that the State of South Carolina could do to
23 make her come and make her provide testimony.

24 MR. LUKE SHEALEY: Respectfully, I agree
25 with that. It is not Joshua Porch's fault

SC VS. JOSHUA PORCH - DISCUSSION

1 either and his right is being diminished.
2 Fundamentally, due process wise, we cannot
3 question her. Maybe under your Honor's ruling,
4 I disagree with it, but if you are going to rule
5 it satisfies Crawford but --

6 THE JUDGE: I disagree with the fact --
7 you had the opportunity to cross-examine her.
8 It wasn't that she wasn't here. She was here.
9 She was under oath, given testimony about the
10 very issue you want to talk to her about. And
11 whether it was a strategy decision on your part,
12 or whatever the reason was, you decided not to
13 go into full cross-examination because she was
14 available and there was the opportunity, and I
15 highlight the word opportunity, because that's
16 what Crawford says, the opportunity for
17 cross-examination. So unless you can point to
18 some other case law that tells me something
19 different, I will be happy to look at it.

20 MR. LUKE SHEALEY: I think the result is
21 if you have the opportunity, it may then come
22 in. I don't think it required it to come in.

23 THE JUDGE: Okay.

24 MR. LUKE SHEALEY: I think it is still a
25 judgment call. I don't think it is strictly

SC VS. JOSHUA PORCH - DISCUSSION

1 defined. Certainly, in this situation, it is
2 not defined.

3 MR. GOINGS: Your Honor, the State's
4 position was, if we are talking about whether or
5 not she gave Miranda rights for final statement
6 to come in, they asked whether or not she did
7 it. They exhausted that in her
8 cross-examination of her. We are talking about
9 that limited edition. I understand it may
10 change if we are talking about her statement in
11 its entirety coming in because there is
12 questions about polygraph examinations, the
13 questions she performed, and I can understand
14 that, but as far as the voluntariness of the
15 statement, whether or not Miranda was given,
16 that was the issue litigated specifically for
17 the Jackson v Denno. That's what Jackson v.
18 Denno is for, for the Court to determine whether
19 or not law enforcement followed their duties and
20 that no rights of the defendant, as far as
21 whether or not he was Mirandized or whether or
22 not the statement was voluntarily given, was
23 complete. That's why we were there in March
24 arguing for two and a half days for all these
25 statements to come in, whether or not they were

SC VS. JOSHUA PORCH - DISCUSSION

1 voluntary, whether or not Miranda was given for
2 all these statements that were taken by law
3 enforcement. Those issues are what was
4 litigated in March.

5 That is the only issues we are discussing
6 now is whether or not Ms. Cohen gave Miranda,
7 whether or not my officers witnessed it via
8 video camera simultaneously.

9 I think their testimony alone is
10 sufficient to get in the second statement that
11 they took prior to due to the video. Not only
12 to mention all of the other Miranda rights they
13 had already given him two days before and the
14 fact that he never once waived his right to
15 remain silent, invoked his right to remain
16 silent, in the three days that they had him in
17 custody out there, or the fact that he didn't
18 invoke his right to an attorney.

19 There is case law out there. There is one
20 case that says interrogation that lasted six
21 days and entailed four statements -- or three
22 days to gather four statements. They gave
23 Miranda one time before the first statement was
24 done. The Supreme Court of Appeals -- South
25 Carolina Court of Appeals said that first

SC VS. JOSHUA PORCH - DISCUSSION

1 Miranda that was given on day one was sufficient
2 to cover all of the statements that defendant
3 gave in that four-day period. We can go back
4 and just rely on the first Miranda rights that
5 these two officers gave him on January 9 when
6 they first arrested him and placed him in
7 custody, they Mirandized him. He never once
8 invoked his right to an attorney and never once
9 invoked his right to remain silent in that
10 three-day period.

11 There is no doubt that these statements
12 were voluntarily made by Mr. Porch. We are not
13 seeking to introduce the full interview of Ms.
14 Cohen. The only thing I want to introduce is
15 the statement received by these two
16 investigators on the date of July 10th that was
17 videotaped, which they can testify that the
18 videotape we have in our possession is a true
19 and accurate copy of what took place on that day
20 on January 10th, when they were in the room with
21 Mr. Porch when he made those voluntary
22 statements.

23 THE JUDGE: Do you want to provide the
24 case law? I know there are cases that said once
25 Miranda is given, it continues unless it is

SC VS. JOSHUA PORCH - DISCUSSION

1 specifically revoked.

2 MR. GOINGS: State vs. Goodwin is the case
3 I was referring to, your Honor.

4 THE JUDGE: Cite?

5 MR. GOINGS: 384-SC-588. It is a 2009
6 case. That is the case, and I can quote the
7 language for you that I am reading from.

8 THE JUDGE: Goodwin?

9 MR. GOINGS: Yes, ma'am.

10 THE JUDGE: 384 South Carolina 588?

11 MR. GOINGS: Yes, ma'am. When you look at
12 this case, your Honor, it is under -- it looks
13 like, (a), "Overborne Will, when they are
14 talking about the law and analysis.

15 It says, "Furthermore, the question was at
16 most a continuous 70 minutes, and while there
17 were six individual statements" -- I apologize,
18 I believe I said four statements. There was six
19 statements. "All occurred within a three-day
20 period. At no time during the three days did
21 Goodwin state he wished to stop the questioning
22 and he never requested an attorney."

23 If you read further into the case, your
24 Honor, one Miranda was given prior to the first
25 day of questioning. The next three days, no

SC VS. JOSHUA PORCH - DISCUSSION

1 additional Miranda was given, but the Court
2 still says the additional statements by that
3 defendant were given under the first Miranda and
4 were voluntary. He never invoked his right to
5 counsel, never invoked his right to remain
6 silent. He never told law enforcement I don't
7 want to speak to you anymore. This is what he
8 did. He never invoked his right to counsel. He
9 never said, hey, I want to stop questioning. I
10 need a lawyer. I want to remain silent. He
11 continued to cooperate with the investigation
12 and gave these statements.

13 MR. LUKE SHEALEY: What Mr. Goings is
14 expressing is not the issue I have raised. Your
15 Honor ruled that one Miranda by Investigator
16 Cohen satisfied the seven-and-a-half hour
17 interrogation. What we raised, primarily, is
18 Crawford, which you seem to be coming close to a
19 ruling on. Secondarily, his fundamental right,
20 due process is being violated, and this comes in
21 when the woman is not here. It is a hearsay
22 aspect I don't think you ruled on, and they
23 would have to elicit it in order to say that
24 Miranda was given and also to introduce that
25 after the period itself. So we left that

SC VS. JOSHUA PORCH - DISCUSSION

1 decision back in March about whether that
2 Miranda satisfies that or not. We are not
3 contesting that. It is all of the issues that
4 arise when she is not here. That's something we
5 have already addressed. We are saying because
6 she is not here, they don't get to say, hey, he
7 was given Miranda. Everything is good. Don't
8 worry about the person who did it. Trust us.
9 We don't get to confront her in front of the
10 jury.

11 THE JUDGE: Let's go back to the
12 procedural issue. How does the State propose to
13 elicit the testimony about the Miranda as it
14 relates to whenever the video is on July 10th
15 post polygraph statements.

16 MR. GOINGS: Your Honor, two-fold. Our
17 officers can testify that they personally
18 Mirandized at least twice on July 9th during the
19 early morning hours and one in the afternoon
20 hours. They continued their custodial
21 interrogation the following day, July 10th, and
22 that he never once invoked his right to counsel
23 or told law enforcement he did not want to
24 cooperate at any point anymore with one regard.

25 The second regard is that they were there

SC VS. JOSHUA PORCH - DISCUSSION

1 watching the video when Ms. Cohen went over the
2 rights with the defendant. The fact that -- the
3 hearsay objection, we are not offering it for
4 the truth of the matter asserted. We are just
5 offering it to show that he was informed of his
6 right to remain silent.

7 THE JUDGE: That's being offered for the
8 truth of the matter asserted. It is being
9 offered to show he was, in fact, advised of his
10 rights.

11 MR. GOINGS: I am trying to formulate an
12 argument to that, your Honor. I am going to
13 pass that off to Josh because that was his
14 argument.

15 MR. UNDERWOOD: Your Honor, if I may, the
16 statements made by Detective Cohen that you have
17 the right to have an attorney, you have the
18 right to remain silent. The State is only
19 offering those statements to show that the
20 statements were made. It is by definition non
21 hearsay. The only purpose the State is
22 presenting them is to show that Mr. Porch was
23 told those statements because it goes to his
24 state of mind as to him being informed of his
25 rights.

SC VS. JOSHUA PORCH - DISCUSSION

1 So therefore, by definition, the Advice of
2 Rights by Roberta Cohen is non hearsay as
3 defined by the rule.

4 MR. LUKE SHEALEY: I'm having a hard
5 time with that.

6 THE JUDGE: I'm having a hard time with
7 that as well.

8 MR. LUKE SHEALEY: What Mr. Goings
9 suggested, I can't think of a problem they would
10 have generally if they want to say -- well, it
11 is a two-way conversation. It is all
12 testimonial. The Court responds, anybody can
13 say or the investigator can say, I heard him say
14 that, I heard him say that. She is asking him
15 the questions so you cannot say he was advised
16 of rights by an investigator that was here
17 unless it was asked and elicited that she said,
18 "You have the right to remain silent. You have
19 the right to an attorney. Everything you say
20 can be used against you." So you can't have one
21 without the other.

22 MR. UNDERWOOD: Again, your Honor, the
23 State is not offering the statement to prove
24 that Mr. Porch does have the right to remain
25 silent, just that he was told he has the right

SC VS. JOSHUA PORCH - DISCUSSION

1 to remain silent.

2 THE JUDGE: So you are offering it to
3 prove that he was told those things.

4 MR. UNDERWOOD: That he was told those
5 things, not that they are true, but that's what
6 he was told.

7 THE JUDGE: You are offering it to say,
8 yes, it is true, Roberta Cohen told him about
9 his rights.

10 MR. UNDERWOOD: Yes, your Honor.

11 THE JUDGE: That to me is hearsay.

12 MR. UNDERWOOD: At a special degree, your
13 Honor, based on the definition.

14 MR. GOINGS: Your Honor, even if your
15 ruling is that it is hearsay, I still think the
16 officers have the right to say we observed his
17 Miranda rights being given to him, and we
18 observed him waive those rights. That is their
19 personal observation, not going into
20 specifically what Ms. Cohen may or may not have
21 said to him at the time. You have two officers,
22 whether or not the jury choses to believe, or if
23 they fully cross-examine them, where is the card
24 at, why don't we have a waiver of rights card.

25 We have two officers say I personally

SC VS. JOSHUA PORCH - DISCUSSION

1 observed Mr. Porch on July 10th being informed
2 of his Miranda rights, even though we have done
3 it twice before, and I observed him via video,
4 that I was there watching while it was
5 happening, him waive those rights.

6 MR. LUKE SHEALEY: I think simply
7 rephrasing your question to even run it around
8 eliciting hearsay does not satisfy the problem.
9 I can't confront that without eliciting hearsay
10 myself, without opening the door of, you know,
11 what she said. So I don't get the meaningful
12 right to confront them about what I would like
13 to be confronting her about. So changing the
14 questions around I don't think solves that
15 middle.

16 THE JUDGE: Just to make sure I am clear.
17 Those are the two ways that you would intend to
18 elicit information about him having his Advice
19 of Rights that the officer advised him of on
20 July 9th, and that those rights continue on
21 because he never revoked them and never invoked
22 them, or saying that they were present at the
23 time that they were in, and they observed the
24 rights being provided, and he observed that
25 Mr. Porch acknowledged that he understood them

SC VS. JOSHUA PORCH - DISCUSSION

1 and waived them.

2 MR. GOINGS: In addition to what the State
3 doesn't feel is necessary, your Honor, based on
4 those first two, the fact that defense counsel
5 had -- it goes back to my argument about the
6 whole purpose of the Jackson v. Denno hearing
7 when Ms. Cohen was here, they had an opportunity
8 to cross-examine her about the advice of rights
9 that she gave to him on that day.

10 Again, the State doesn't believe that
11 portion of the video needs to be played nor do
12 we need to go through the transcript.

13 THE JUDGE: You don't intend to use the
14 testimony from the prior hearing?

15 MR. GOINGS: I am not putting the State in
16 that position, your Honor. I don't think it is
17 necessary for you to determine that the
18 statements were voluntary and let us explain to
19 the jury about the Advice of Rights they are
20 giving him on July 9th, the fact that he
21 observed the Advice of Rights being given again.

22 However, if you disagree, the State would
23 proceed under the theory that this issue was
24 done in Jackson v. Denno hearing, and the
25 transcript should be read into the record about

SC VS. JOSHUA PORCH - DISCUSSION

1 the direct and cross-examination made to Ms.
2 Cohen about her Advise of Rights form that we
3 had back in March.

4 Again, I think it is unnecessary at that
5 point, right now, to even go that far. I think
6 it would be sufficient to move forward with the
7 Advice of Rights given on July 9th to the
8 defendant because he never invoked his rights
9 and their personal observations of what happened
10 on July 10th, 2009.

11 THE JUDGE: Anything else?

12 MR. LUKE SHEALEY: I can't imagine anything
13 else I would have to say at this point.

14 THE JUDGE: Any other issues about the
15 statements or the video? We have covered all of
16 the objections.

17 MR. LUKE SHEALEY: I think I have covered
18 all of the objections on that.

19 THE JUDGE: I will give you a tentative
20 ruling -- no, I won't. I want to give it to you
21 at one time that way I will be sure. We will
22 come back tomorrow morning at 9 o'clock and I
23 will give you the ruling as related to that.

24 MR. LUKE SHEALEY: Thank you, Judge.
25

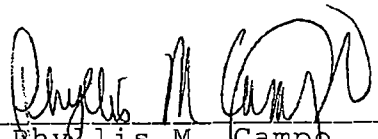
C E R T I F I C A T I O N

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

I, Phyllis M. Campo, Official Court
Reporter for the Sixteenth 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
at the time and place herein in the
above-entitled matter.

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

April 11, 2014



Phyllis M. Campo
Official Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 JOSHUA WILLIAM PORCH,) 2011-GS-40-03359
7 DEFENDANT.) NOVEMBER 19, 2013
COLUMBIA, SOUTH CAROLINA

8
9 (VOLUME II)

10
11 B E F O R E:

12 THE HONORABLE ALISON RENEE LEE, JUDGE. ; And a Jury.

13
14
15 A P P E A R A N C E S:

16 CARY GOINGS, ASSISTANT ATTORNEY GENERAL
17 CURTIS PAULING, ASSISTANT ATTORNEY GENERAL
JOSHUA R. UNDERWOOD, ASSISTANT ATTORNEY GENERAL
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18 LUKE A. SHEALEY, ESQUIRE
19 BRIAN R. SHEALEY, ESQUIRE
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22 MICHAEL R. WATTS
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24
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INDEX

(NOVEMBER 18, 2013)

WITNESSES

PAGE

JURY VOIR DIRE -- PAGE 39

JURY SWORN -- PAGE 91

OPENING STATEMENT BY MR. UNDERWOOD -- PAGE 99

OPENING STATEMENT BY MR. BRIAN SHEALEY -- PAGE 102

JUSTIN MALLORY (SW)

DIRECT EXAMINATION BY MR. PAULING

125

INDEX

(NOVEMBER 19, 2013)

1	WITNESSES	PAGE
2	JUSTIN MALLORY (SW)	
3	CROSS EXAMINATION BY MR. LUKE SHEALEY	233
4	REDIRECT EXAMINATION BY MR. PAULING	302
5	JACQUELYN RICHBURG (SW)	
6	DIRECT EXAMINATION BY MR. GOINGS	319
7	CROSS EXAMINATION BY MR. AIKEN	328
8	REDIRECT EXAMINATION BY MR. GOINGS	330
9	RECROSS EXAMINATION BY MR. AIKEN	330
10	INVESTIGATOR ROBERT OATES (SW)	
11	DIRECT EXAMINATION BY MR. UNDERWOOD	331
12	CROSS EXAMINATION BY MR. AIKEN	366
13	MAJOR STAN SMITH (SW)	
14	DIRECT EXAMINATION BY MR. GOINGS	374
15	CROSS EXAMINATION BY MR. LUKE SHEALEY	381
16	MELANIE CARICO (SW)	
17	DIRECT EXAMINATION BY MR. GOINGS	382
18	(NO CROSS EXAMINATION)	
19	INVESTIGATOR ZANE PADGETT (SW)	
20	DIRECT EXAMINATION BY MR. GOINGS	388
21	CROSS EXAMINATION BY MR. AIKEN	414
22	REDIRECT EXAMINATION BY MR. GOINGS	420
23		
24		
25		

INDEX

(NOVEMBER 19, 2013)

WITNESSES	PAGE
INVESTIGATOR BEVERLY CRANE (SW)	
DIRECT EXAMINATION BY MR. GOINGS	425
(NO CROSS EXAMINATION)	
TENA GOFF (SW)	
DIRECT EXAMINATION BY MR. GOINGS	448
(NO CROSS EXAMINATION)	
OFFICER WILLIAM CEDARSTAFF (SW)	
DIRECT EXAMINATION BY MR. UNDERWOOD	460
(NO CROSS EXAMINATION)	
OFFICER CHRISTINE BARRICKMAN (SW)	
DIRECT EXAMINATION BY MR. GOINGS	468
(NO CROSS EXAMINATION)	
INVESTIGATOR TRAVIS HOLDORF (SW)	
DIRECT EXAMINATION BY MR. GOINGS	476
(NO CROSS EXAMINATION)	

INDEX

(NOVEMBER 20, 2013)

1	WITNESSES	PAGE
2	OFFICER CURTIS BURNETT (SW)	
3	DIRECT EXAMINATION BY MR. GOINGS	504
4	(NO CROSS EXAMINATION)	
5	DEPUTY CORONER CHRISTINE BENSON (SW)	
6	DIRECT EXAMINATION BY MR. L GOINGS	508
7	(NO CROSS EXAMINATION)	
8	INVESTIGATOR JOHN BARRON (SW)	
9	DIRECT EXAMINATION BY MR. UNDERWOOD	512
10	CROSS EXAMINATION BY MR. AIKEN	545
11	REDIRECT EXAMINATION BY MR. UNDERWOOD	557
12	SHERRY TRIBBLE (SW)	
13	DIRECT EXAMINATION BY MR. GOINGS	561
14	CROSS EXAMINATION BY MR. LUKE SHEALEY	580
15	REDIRECT EXAMINATION BY MR. GOINGS	601
16	RECROSS EXAMINATION BY MR. LUKE SHEALEY	608
17	DENNIS TENTYON (SW)	
18	DIRECT EXAMINATION BY MR. PAULING	610
19	CROSS EXAMINATION BY MR. AIKEN	624
20	REDIRECT EXAMINATION BY MR. PAULING	625
21	SHAHEED HARGRAVES (SW)	
22	DIRECT EXAMINATION BY MR. GOINGS	627
23	CROSS EXAMINATION BY MR. AIKEN	635

INDEX

(NOVEMBER 20, 2013)

1		
2		
3	WITNESSES	PAGE
4	PERSIA PORCH (PRETRIAL HEARING)	
5	DIRECT EXAMINATION BY MR. GOINGS	645
6	(NO CROSS EXAMINATION)	
7	PERSIA PORCH (JURY TRIAL)	
8	DIRECT EXAMINATION BY MR. GOINGS	649
9	(NO CROSS EXAMINATION)	
10	INVESTIGATOR RANDY STRANGE (SW)	
11	DIRECT EXAMINATION BY MR. PAULING	667
12	CROSS EXAMINATION BY MR. BRIAN SHEALEY	680
13	REDIRECT EXAMINATION BY MR. PAULING	743
14	CAPTAIN JAMES WHITE (SW)	
15	DIRECT EXAMINATION BY MR. PAULING	745
16	(NO CROSS EXAMINATION)	
17	MAJOR STAN SMITH (SW)	
18	DIRECT EXAMINATION BY MR. GOINGS	752
19		
20		
21		
22		
23		
24		
25		

INDEX

(NOVEMBER 21, 2013)

WITNESSES	PAGE
MAJOR STAN SMITH (SW)	
CROSS EXAMINATION BY MR. LUKE SHEALEY	819
REDIRECT EXAMINATION BY MR. GOINGS	880
DR. BRADLEY MARCUS (SW)	
DIRECT EXAMINATION BY MR. UNDERWOOD	886
CROSS EXAMINATION BY MR. BRIAN SHEALEY	900
REDIRECT EXAMINATION BY MR. UNDERWOOD	908
INVESTIGATOR TRAVIS HOLDORF (SW)	
DIRECT EXAMINATION BY MR. GOINGS	909
CROSS EXAMINATION BY MR. BRIAN SHEALEY	956
REDIRECT EXAMINATION BY MR. GOINGS	1004
RECROSS EXAMINATION BY MR. BRIAN SHEALEY	1010
CHIEF DAVID WILSON (SW)	
DIRECT EXAMINATION BY MR. UNDERWOOD	1011
CROSS EXAMINATION BY MR. LUKE SHEALEY	1020
REDIRECT EXAMINATION BY MR. UNDERWOOD	1049
SERGEANT SHAWN MCDANIELS (SW)	
DIRECT EXAMINATION BY MR. PAULING	1055

INDEX

(NOVEMBER 22, 2013)

3	WITNESSES	PAGE
4	SERGEANT SHAWN MCDANIELS (SW)	
5	CROSS EXAMINATION BY MR. AIKEN	1134
6	REDIRECT EXAMINATION BY MR. PAULING	1187
7	DR. DEBORAH DAVIS (DW) (PRETRIAL HEARING)	
8	DIRECT EXAMINATION BY MR. LUKE SHEALEY	1220
9	(NO CROSS EXAMINATION)	
10	DR. DEBORAH DAVIS (DW) (JURY TRIAL)	
11	DIRECT EXAMINATION BY MR. LUKE SHEALEY	1243
12	CROSS EXAMINATION BY MR. GOINGS	1329
13	REDIRECT EXAMINATION BY MR. LUKE SHEALEY	1340
14	SERGEANT BRIAN GODFREY (SW)	
15	DIRECT EXAMINATION BY MR. GOINGS	1343
16	CROSS EXAMINATION BY MR. BRIAN SHEALEY	1377
17	REDIRECT EXAMINATION BY MR. GOINGS	1429
18		
19	STATE RESTS -- PAGE 1431	
20		
21	CHARLES IVAN NEDDO (DW)	
22	DIRECT EXAMINATION BY MR. AIKEN	1452
23	CROSS EXAMINATION BY MR. UNDERWOOD	1465
24		
25		

INDEX

(NOVEMBER 25, 2013)

WITNESSES PAGE

JOSHUA WILLIAM PORCH (DW)

DIRECT EXAMINATION BY MR. LUKE SHEALEY 1503

CROSS EXAMINATION BY MR. GOINGS 1556

REDIRECT EXAMINATION BY MR. LUKE SHEALEY 1625

DEFENSE RESTS -- PAGE 1626

CLOSING ARGUMENT BY MR. LUKE SHEALEY -- PAGE 1665

FINAL ARGUMENT BY MR. GOINGS -- PAGE 1711

JURY INSTRUCTIONS -- PAGE 1757

JURY VERDICT -- PAGE 1806

SENTENCING -- PAGE 1814

REPORTER'S CERTIFICATE -- PAGE 1835

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-1	PHOTOGRAPH		146
4	S-2	PHOTOGRAPH		146
5	S-3	PHOTOGRAPH		146
6	S-4	PHOTOGRAPH		146
7	S-5	DVD		
8	S-6	INCIDENT REPORT		326
9	S-7	DVD		327
10	S-8	EVIDENCE BAG		352
11	S-9	BOX OF CLOTHES		352
12	S-10	PHOTOGRAPH		405
13	S-11	PHOTOGRAPH		405
14	S-12	PHOTOGRAPH		401
15	S-13	PHOTOGRAPH		401
16	S-14	PHOTOGRAPH		414
17	S-15	PHOTOGRAPH		414
18	S-16	PHOTOGRAPH		414
19	S-17	PHOTOGRAPH		406
20	S-18	PHOTOGRAPH		365
21	S-19	PHOTOGRAPH		365
22	S-20	PHOTOGRAPH		406
23	S-21	PHOTOGRAPH	356	
24	S-22	PHOTOGRAPH		365
25	S-23	PHOTOGRAPH		365

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-24	PHOTOGRAPH		397
4	S-25	PHOTOGRAPH		397
5	S-26	PHOTOGRAPH	361	
6	S-27	PHOTOGRAPH	361	
7	S-28	CONSENT TO SEARCH		377
8	S-29	EVIDENCE BAG		380
9	S-30	DVD		387
10	S-31	EVIDENCE BAG		408
11	S-32	EVIDENCE BAG		410
12	S-33	PROPERTY REPORT		
13	S-34	CONSENT TO SEARCH	479	
14	S-35	EVIDENCE BAG		481
15	S-36	PHOTOGRAPH		541
16	S-37	EVIDENCE BAG		571
17	S-38	ADVISE OF RIGHTS		750
18	S-39	STATEMENT OF JOSHUA PORCH		762
19	S-40	STATEMENT OF JOSHUA PORCH		767
20	S-41	STATEMENT OF JOSHUA PORCH		774
21	S-42	DIAGRAM		890
22	S-43	DIAGRAM		890
23	S-44	AUTOPSY REPORT		891
24	S-45	RECEIPT		917
25	S-46	ADVISE OF RIGHTS		1070

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-47	STATEMENT OF JOSHUA PORCH		1079
4	S-48	ADVISE OF RIGHTS		1091
5	S-49	STATEMENT OF JOSHUA PORCH		1095
6	S-50	DVD		1107
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	D-1	STATEMENT	84	
4	D-2	RECEIPT	84	
5	D-3	PHOTOGRAPH		284
6	D-4	PHOTOGRAPH		284
7	D-5	PHOTOGRAPH		285
8	D-6	PHOTOGRAPH	84	
9	D-7	PHOTOGRAPH		279
10	D-8	PHOTOGRAPH		420
11	D-9	STATEMENT		586
12	D-10	PHOTOGRAPH		991
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	CT-1	JURY NOTE	231	
4	CT-2	STATEMENT	816	
5	CT-3	STATEMENT	819	
6	CT-4	DVD	1613	
7	CT-5	DVD	1782	
8	CT-6	JURY NOTE	1783	
9	CT-7	JURY NOTE	1784	
10	CT-8	JURY NOTE	1792	
11	CT-9	JURY NOTE	1804	

12

13

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1 (PROCEEDINGS, NOVEMBER 19, 2013)

2 THE COURT: Good morning, everyone. Be seated,
3 please.

4 Good morning. There are a couple of matters which
5 we need to take up before we get started.

6 I received two notes from jurors this morning.
7 One individual has some work issues. I think we may be able
8 to work around that one, so we will just play that one by
9 ear. Hopefully if we get done this week, it won't be a
10 problem. Otherwise, I just told him we will talk to his
11 employer and see what those issues are and if it's severe
12 enough, then we may just need to excuse him, but I think --
13 I think we will be able to work around them.

14 The second one is a note that says -- basically
15 this juror, juror number 211, her first cousin was convicted
16 of murder under what her family believes was a forced
17 confession after many hours of intensive interrogation. And
18 she says "although I believe I'm able to be unbiased in the
19 decision making in the trial, I felt it necessary to let you
20 know it was somewhat familiar in this case and my cousin's."
21 And I talked with her in the hallway and discussed it with
22 her. She said that she does not believe that it would
23 affect her ability to be able to be a fair and impartial
24 juror in this matter, but it did not prohibit her from being
25 able to sit and listen in this case. She indicated that

1 obviously none of the questions yesterday addressed that
2 particular issue in terms of family members who have been
3 convicted of crimes. I think I asked about victims as
4 opposed to family members who had been convicted or charged.
5 And she said -- she told me very clearly that it would not
6 impact her ability to be able to listen to the evidence and
7 make a decision in the evidence. And so I told her I would
8 share that information with you all and go from there.

9 So anything further about that particular matter?

10 MR. GOINGS: Well, Your Honor, the State would
11 argue that based -- I mean, that goes to one of the
12 essential elements or essential arguments in this case from
13 the defense of false confession. I don't think she can set
14 aside her personal feelings if a family member she believes
15 was forced or coerced -- I mean confessed to something that
16 he may or may not have done. I don't know the facts of the
17 case that she is referring to. I think it's safer at this
18 point in time to excuse her and bring in the first
19 alternate.

20 MR. LUKE SHEALEY: Your Honor, the defense would
21 object to that. I think that you said for the record that
22 you questioned her and you examined her about any
23 impartiality and finding that she said she could be fair and
24 impartial for the trial in this case, that it wouldn't
25 affect her decision. Essentially you gave her the type of

1 individual voir dire that would normally be asked at that
2 point in trial, and she seems to be comfortable that she can
3 be fair and impartial, so I think that that satisfies Your
4 Honor. That certainly satisfies us. I think it should
5 satisfy the State. We respect your decision on this and
6 would ask that you keep her.

7 THE COURT: And she did not express those were her
8 personal views. She just said that she did not want to sit
9 through the trial and then have it come up and be an issue
10 later on, and so I'm happy bring her in and ask her the same
11 questions and have you observe her as she answers those. I
12 didn't see a reason to excuse her on that basis, since she
13 did indicate that she would be able to listen to everything
14 in this particular case, that she had not made up her mind
15 at all, she was not predisposed to have feelings in certain
16 ways. I asked specifically would that -- and I explained to
17 her, I said, you know, I don't know what evidence will come
18 up in the course of the trial, but, you know, would the fact
19 that that occurred, would that affect her ability to be able
20 to make a decision that would be based strictly upon the
21 evidence that does come in and the law as I'll charge it to
22 her and she said no, it would not. And she -- her initial
23 paragraph says she is not trying to be relieved from the
24 trial, but she felt it should be disclosed based upon the
25 information that came out during the course of the testimony

1 yesterday in the opening statements, so I'll -- I don't see
2 a basis to exclude her at this particular point, but I will
3 happy to call her up for voir dire, in the event that you
4 all would want to see her demeanor.

5 MR. GOINGS: I would ask that she be called and be
6 questioned on the record, Your Honor.

7 THE COURT: Would you ask Ms. Purvis to come in,
8 please?

9 THE BAILIFF: Yes.

10 (Whereupon, Juror Number 211, Shannon Purvis, was
11 brought into the courtroom)

12 THE COURT: Good morning, Ms. Purvis.

13 JUROR NUMBER 211: Good morning.

14 THE COURT: I spoke with you earlier this morning
15 in the hallway. You sent me a note this morning, is that
16 correct?

17 JUROR NUMBER 211: Yes.

18 THE COURT: And you sent a note indicating that
19 your cousin had been convicted of murder under what your
20 family believes was a forced confession after many hours of
21 intensive interrogation. That's what you wrote?

22 JUROR NUMBER 211: Yes, ma'am.

23 THE COURT: And I believe in the hallway I asked
24 you whether the fact that that had occurred and the beliefs
25 that your family would affect your ability to be able to

1 listen to the evidence in this case?

2 JUROR NUMBER 211: Yes, ma'am.

3 THE COURT: And would it affect your ability to
4 listen to the evidence?

5 JUROR NUMBER 211: No, ma'am.

6 THE COURT: Based upon -- and I know we have not
7 concluded all the evidence, and certainly you have not heard
8 the instructions, but would this particular situation with
9 your family member affect your ability to be able to listen
10 impartially and make a decision based upon the evidence in
11 this case?

12 JUROR NUMBER 211: No, ma'am, it does not affect
13 me.

14 THE COURT: And would it affect your ability to
15 give both the State, as well as the defense, a fair and
16 impartial trial?

17 JUROR NUMBER 211: No.

18 THE COURT: Would it affect your ability to be
19 able to listen to the evidence and accept the law as I
20 charge it to you?

21 JUROR NUMBER 211: No, ma'am.

22 THE COURT: And have you expressed or formed any
23 belief as to the circumstances surrounding interrogations or
24 false confessions as a result of the incident involving your
25 relative?

1 JUROR NUMBER 211: I probably have.

2 THE COURT: Would those beliefs, would they affect
3 your ability to be able to make a decision -- would they
4 affect your ability to be able to be fair and impartial?

5 JUROR NUMBER 211: No, ma'am.

6 THE COURT: And so what I hear you telling me is
7 that while you may have developed some beliefs and some
8 concerns, that that has not so colored and tainted your view
9 of -- I guess your view of the world, that you would not be
10 able to set that aside and listen to all the circumstances?

11 JUROR NUMBER 211: That's correct.

12 THE COURT: Thank you very much, Ms. Purvis. You
13 may return to the jury room.

14 JUROR NUMBER 211: Thank you.

15 (Whereupon, Juror Number 211, Shannon Purvis,
16 returned to the jury room)

17 THE COURT: Anything from the State?

18 MR. GOINGS: Again, Your Honor, the State would
19 object to her continuing to sit or serve as a juror in this
20 case. Obviously if the State would have known this
21 information prior to the selection of the jury, we would not
22 have put her on the jury.

23 I think in all fairness to both parties involved
24 in this particular case, the fact that she has expressed
25 that she has personal views of whether or not her cousin was

1 forced to confess or not goes to the essential part of this
2 case. I think the safest part is to excuse her from service
3 on this at this time and to replace her with one of the
4 alternates that does not have this conflict.

5 THE COURT: From the defense?

6 MR. LUKE SHEALEY: Your Honor, I would note
7 specifically, I just checked, the State was out of strikes
8 at the time that she was called, peremptories, but she at
9 your questioning said she could be fair and impartial. You
10 specifically asked her about any potential opinion regarding
11 confessions, interrogations.

12 Now, when you have a family member that goes
13 through that, you are going to learn more about it. You are
14 going to probably watch the trial, but still she said that
15 she could be fair in this case. She's going to listen to
16 this evidence upon your questioning and not let that affect
17 what she hears in this case, so I agree with your judgment,
18 judge, and I think it would be unfair to Mr. Porch to
19 replace her on this jury with an alternate.

20 The State was out of strikes at the time she came
21 in yesterday anyway, so I trust your judgement on this
22 matter.

23 She -- had she really wanted to sway this jury one
24 way or the other, based on some personal belief, she simply
25 would not have disclosed this information. She would have

1 taken that and used it for whatever way she wanted to for
2 her own purposes and she is not doing that, judge.

3 THE COURT: I'm going to allow the juror to remain
4 seated. The operative questions is whether or not the juror
5 could be fair and impartial in the trial of this particular
6 case and listen to the evidence and the law that's presented
7 in this matter. And I think we all hold certain beliefs and
8 theories that we have based upon our life experiences and
9 what goes on. And the question is really whether or not
10 holding those beliefs she would still have an open mind and
11 she could still set aside those beliefs and listen
12 impartially and fairly and keep an open mind and make a
13 decision based strictly upon the evidence before you, and I
14 think that's what the law requires, and so I will allow her
15 to remain on this particular jury.

16 I will note that she was the 11th juror seated in
17 this panel and by that time the State had used all of its
18 strikes and she was the fourth juror that was selected after
19 the strikes would have been exhausted, so I will allow her
20 to remain on this particular jury.

21 Now, going back to our pretrial issues from
22 yesterday, the issues that we took up at the end of day
23 after the testimony, I believe that --

24 (Off the record)

25 (Back on the record)

1 MR. GOINGS: Your Honor, if I may -- and I don't
2 know what you were going to rule, but I have found some case
3 law last night that addresses one of the issues that we were
4 arguing yesterday after the testimony was presented,
5 specifically the State's argument that Miranda Rights are
6 not hearsay. We did some research. We found several cases
7 that said just that, that Miranda Rights -- when Miranda
8 Rights are given, it is not hearsay. And I started -- and I
9 have not found any case that said Miranda Rights are
10 hearsay, but I have found jurisdiction from Georgia, Hawaii,
11 Kansas, other places, and I have the case law here, and I
12 only have one copy, but I will hand it up to the court.

13 My research started with an unpublished opinion in
14 State v. Bulgado. It's 125 -- well, I'll give you the
15 Westlaw citation. 2011-WL-2611297.

16 When talking about -- and basically in this case,
17 Your Honor, you had two officers who interviewed the
18 particular defendant. The officer who gave the Miranda
19 Rights to the defendant died before the trial and the other
20 officer came in and testified, and said, "I observed him
21 being Mirandized. I observed him waiving those rights," and
22 they brought up the Crawford issue and the hearsay objection
23 in that particular case. The court in both instances denied
24 the suppression motion from defense counsel and specifically
25 it says "the questions or statements of Detective Young are

1 not hearsay because they are not offered for the truth, but
2 only to provide a context for Buldago's statement," meaning
3 that he was informed of his rights and that he waived those
4 rights. And it cites several cases or --

5 THE COURT: What jurisdiction was that?

6 MR. GOINGS: That was Hawaii, Your Honor.

7 I'll hand those up to the court.

8 There is also State v. McClain --

9 If I may approach, Your Honor?

10 -- which is a Kansas case. The citation of that
11 220 Kan. 80. I'm trying to find the exact language.

12 There the defendant objected to Davis' testimony
13 concerning the advisement of rights on the ground -- I'll
14 just read it. That it was hearsay and then falls under the
15 exception to the hearsay rule. They looked at it and also
16 it says given Miranda Rights is not hearsay.

17 State v. Brackett, which is a Georgia case. Well,
18 Brackett v. State, I apologize, Your Honor. This citation
19 is 142 -- or actually it's 236 S.E. 2d 538, and it
20 specifically states that "the appellant urges the testimony
21 of one officer that he was present when another officer gave
22 the Miranda Warnings is hearsay and thus violates his right
23 to cross-examine witnesses brought against him, that
24 consequently there was no probative evidence before the
25 trial judge as to Miranda Warnings having been given to him

1 and that, therefore, the incriminating statements could not
2 be found to have been freely and voluntarily given. The
3 officer's testimony that he was present when another officer
4 gave the warnings to the appellant was not hearsay," and
5 that's State v. Brackett and that's a Georgia case, Your
6 Honor.

7 There is other Kansas cases also that cites that
8 proposition, and I might even have been in an Illinois case
9 that specifically hold that the giving of Miranda Rights is
10 not hearsay and an officer who observed Miranda being given,
11 an officer who observed a defendant waiving those rights can
12 testify beyond the hearsay objection, because it's not given
13 for the truth of the matter asserted. It's just giving
14 context of whether or not the statement was voluntarily
15 given at the time.

16 MR. LUKE SHEALEY: Judge, I would just note in
17 response that I don't think that cases in Hawaii and Kansas
18 shall have much bearing on what we do in South Carolina.

19 Every state has different evidentiary rules.
20 Every state has different hearsay rules, and I think it's
21 kind of telling that we don't have a case on point in South
22 Carolina. We do think a little different in South Carolina.
23 We even have articles written into our Constitution that
24 gives our citizens greater protections than the Federal
25 Constitution, so I don't think that has a whole lot of

1 bearing on your decision on whether or not -- you
2 probably -- I think you probably already made your decision
3 and I'll just leave it at that.

4 THE COURT: I'll look at those, but in terms of
5 what information can be used relating to the statements that
6 were given on July the 10th post-polygraph, I will follow
7 our state precedence in State v. Goodwin and in State v.
8 Rochester, I believe, in which the court has determined that
9 once there is a voluntary waiver of Miranda, that it
10 continues until the individual being questioned indicates
11 that he wants to revoke the waiver and remain silent under
12 circumstances that exists which would establish that his
13 will has been overborne, his capacity for self-determination
14 has been critically impaired.

15 And so in the context of this particular case,
16 it's my understanding that Officers McDaniels and Godfrey
17 gave the Miranda of Rights to Mr. Porch on the morning of
18 July the 9th, and that although there was a break in the
19 discussions and interrogation, it continued on into July the
20 10th, and there were not additional Miranda Warnings given
21 prior to the making of the statements that were made in the
22 afternoon of July the 10th, but given the fact that there is
23 no evidence that this particular point that indicates that
24 he indicated that he no longer would want to talk to the
25 officers and that he intended to revoke his waiver or he

1 intended to remain silent or that there were other
2 circumstances, although I understand that there will be --
3 there may be some testimony by the defense as to whether, in
4 fact, his statements to them were voluntary, but at least as
5 a preliminary matter I have ruled that those statements were
6 admissible and that the State has met the burden by the
7 preponderance of the evidence for the purposes of admission
8 of those statements. The protections had been given and
9 that the defendant had waived his rights, and so I will
10 allow the July 9th reading of the Miranda and the giving of
11 Miranda Rights and warnings to the defendant to suffice for
12 the purposes of allowing the statements on July the 10th.

13 And if I find that there is a basis for an
14 additional standing ground by looking at these other
15 jurisdictions, I'll look at them, and if you need to
16 supplement, but I think that's sufficient.

17 Additionally, the second issue that we had to deal
18 with was relating to the admissibility of the videotape.
19 And I agree with the State that the purposes of
20 authenticating the video is similar in nature to
21 photographs, that it is not necessary that the person who
22 takes the photograph or takes the video needs to be present,
23 but there has to be some testimony that what's contained
24 either in the photograph or the video is such that it has
25 not been altered or changed and that what is contained on

1 the video is true and correct of the events that occurred at
2 the time that the video was made, and so I'll allow the
3 video, post-polygraph video, of July the 10th interview with
4 McDaniels and Godfrey to be admitted into evidence at this
5 particular time, subject to the additional information at
6 the time that it's actually offered.

7 Anything else we need to take up at this point?

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

9 A brief issue regarding the witness that the
10 defense has under subpoena. Her name is Sherry Tribble. We
11 served her last week with our subpoena, and -- but having
12 difficulty actually talking to her. She has been avoiding
13 us. Our investigator talked with her today and basically --
14 to her husband and he said "well, she's not going to respond
15 to you." Mr. Jerry Goings (sic) I think -- Mr. Cary Goings,
16 said "we are only going to come on Wednesday. We don't need
17 to talk to you." So I don't necessarily believe that. I
18 don't feel that's -- I talked to Cary Goings about that. He
19 says "no, that she actually called today, so there is a
20 defense investigator coming knocking on my door, what should
21 I do?" Mr. Goings has provided me with her number, which
22 was a big help. He basically I think is saying he would
23 instruct her to please talk to us when we come calling,
24 because she's an important witness for us. I think I just
25 want to put that on the record that that's been resolved,

1 required to watch trials as part of their first year
2 experience, and so they are coming in and sitting with us
3 for a period of time.

4 Mr. Mallory, you may resume the witness stand.

5 I'll remind you that you are still under oath to
6 tell the truth in this matter.

7 Mr. Shealey, you may proceed.

8 MR. LUKE SHEALEY: Thank you, Your Honor.

9 May it please the court.

10 CROSS EXAMINATION BY MR. LUKE SHEALEY:

11 Q. Now, you stated here yesterday under oath, and you told
12 this jury, that you were tried twice for the murder of Nakia
13 Mallory, correct?

14 A. Correct.

15 MR. LUKE SHEALEY: Permission to approach the
16 witness?

17 THE COURT: Yes, sir.

18 BY MR. LUKE SHEALEY:

19 Q. I'm going to show you Defense Exhibit 6 for ID
20 purposes. Do you recognize that?

21 A. What's this, the warrant for my arrest?

22 Q. Yes.

23 A. Okay.

24 Q. That's the warrant for your arrest, right?

25 A. Yes, sir.

1 Q. That's where Investigator Holdorf in 2006 put his hand
2 on that Bible, just like you put your left hand on the Bible
3 yesterday, before a judge that he had probable cause for
4 your arrest. Do you agree with that?

5 A. That's what he testified to, yes, sir.

6 Q. And you also told the jury that the first trial was a
7 hung jury, right?

8 A. Yeah, one person found me guilty.

9 Q. Okay. You have that information, do you?

10 A. You know, jurors talk after the trial, you know what
11 I'm saying?

12 Q. Okay. They couldn't make a unanimous decision about
13 your guilt, could they?

14 A. No, sir.

15 Q. But at least your testimony, which isn't official, but
16 at least as far as you know, one person certainly had you
17 guilty for your wife's murder?

18 A. Yes, sir.

19 Q. And maybe the rest had doubts?

20 A. No doubt.

21 MR. PAULING: Objection, Your Honor. That calls
22 for speculation, Your Honor. I mean, he can't say what the
23 other jurors had going through their mind.

24 THE COURT: Rephrase the question.

25 MR. LUKE SHEALEY: Okay.

1 BY MR. LUKE SHEALEY:

2 Q. Well, in your opinion, if one juror was for guilty,
3 then that would mean the others had a doubt?

4 A. I'm not understanding your question.

5 MR. PAULING: Objection, Your Honor. The same
6 question. I mean --

7 THE COURT: Rephrase the question.

8 BY MR. LUKE SHEALEY:

9 Q. It was a hung jury, right?

10 A. Yeah.

11 Q. They couldn't make up their minds, correct?

12 A. One person found me guilty. The rest said I was
13 innocent. I mean --

14 Q. Okay.

15 A. What's the question?

16 Q. They found you not guilty, correct?

17 A. Yes, sir.

18 Q. Or that's your what you think?

19 A. That's what --

20 Q. Okay.

21 A. -- I believed, yes, sir.

22 Q. So that means they had a doubt. I'm not trying to
23 trick you here.

24 A. I'm waiting -- I don't know if they had any doubts.

25 Q. We will move along.

1 Now, your next trial was before a judge, right?

2 A. Yes, sir, a bench trial.

3 Q. Okay. That was Tommy Cooper out of Manning, correct?

4 A. Yes, sir.

5 Q. That was your idea and your lawyer's idea to go and do
6 a bench trial?

7 A. Yes, sir.

8 Q. Okay. And that's unusual, you would agree with that?

9 A. No, sir.

10 MR. PAULING: Objection, Your Honor. Again,
11 this -- he's asking him what his lawyer's strategy was or
12 what his idea of his lawyer's strategy was.

13 THE COURT: I'll sustain the objection.

14 BY MR. LUKE SHEALEY:

15 Q. Okay. And at that trial that one person found a doubt
16 saying you were not guilty?

17 A. I was found not guilty in that trial.

18 Q. Because he had a doubt about your guilt.

19 Do you understand that to find you guilty, if
20 someone -- you have to present evidence beyond a reasonable
21 doubt?

22 A. Okay.

23 MR. PAULING: Objection, Your Honor. This calls
24 for a legal conclusion. I mean, he's answered the question.

25 THE COURT: Rephrase the question.

1 MR. LUKE SHEALEY: I'll move along.

2 BY MR. LUKE SHEALEY:

3 Q. So -- and that was in 2008, right?

4 A. 2008, 2009, around that time, yes, sir.

5 Q. One man versus the whole jury, right?

6 A. I had a bench trial. I was found not guilty.

7 Q. No jury of your peers has ever found you not guilty?

8 A. I had a hung jury when I had a jury trial.

9 Q. Correct.

10 Now, you have been through this system twice, right?

11 A. Yes, sir, I had two trials.

12 Q. You know how it works really well?

13 A. Is that a question?

14 Q. Sure.

15 A. I know how it works really -- I'm not a lawyer, sir.

16 Q. Okay. You have been through it twice, so you now how
17 it works?

18 A. This is my first time getting to say anything.

19 Q. Okay. Well, let's talk about that.

20 You had a right to testify in both of your two trials,
21 did you not?

22 A. Yes, sir.

23 Q. That's your Fifth Amendment to remain silent or not
24 remain silent. You had a right to do that?

25 A. Yes, sir.

1 Q. You chose not to testify?

2 A. Yes, sir.

3 Q. And after those trials, and each of those trials, the
4 judge told you, "sir, you have a right to testify. I want
5 to make sure that you didn't want to testify," right?

6 A. I would have said the same thing I write down on my
7 statement, so I didn't see a need.

8 Q. I'm not asking you what you would have said, had you
9 chose to testify.

10 A. Okay.

11 Q. I'm asking you that you chose not to testify?

12 A. I didn't testify.

13 Q. Right.

14 This is the first time yesterday that we have heard
15 your story, right?

16 A. Yes, sir.

17 Q. In a court of law?

18 A. Verbally, yes, sir.

19 Q. Okay. And that's because your story wouldn't hold up
20 under cross-examination when you are sitting there in Mr.
21 Porch's seat charged with the murder of your wife, right?

22 A. Is that a question?

23 Q. Sure.

24 A. You said my story would not hold up?

25 Q. You chose to not testify because you were concerned

1 that your story at your own trial would not hold up?

2 A. It was my defense team and my decision. Like I said,
3 they are the experts. My -- my statement was my statement.
4 They said it would be better if I didn't. I mean, I was
5 willing all the way.

6 Q. Uh-huh. They told you it would be better because your
7 story has got some problems?

8 A. No problems.

9 Q. The story that you told law enforcement, that they
10 didn't believe, that they charged you with murder, right?

11 A. Yes, sir.

12 Q. Okay. So now when nothing is on the line, you are
13 ready to tell this jury exactly what happened that night,
14 right?

15 A. I was willing at all three trials, this trial too. I
16 was willing from the very beginning. I have nothing to
17 hide.

18 Q. Right.

19 Now, your lawyer was Jerry Finney at those two trials,
20 correct?

21 A. Jerry Finney and Adam Whitset.

22 Q. It was Jerry Finney's law firm and Adam was his
23 associate?

24 A. Adam was my lawyer too.

25 Q. Right.

1 And Jerry is a good lawyer, correct?

2 A. The best.

3 Q. Got you off, right?

4 A. No, sir, not got off. Stated the facts.

5 Q. And Jerry didn't come cheap either, right?

6 A. I have no --

7 MR. PAULING: Objection, Your Honor. What's the
8 relevancy to this line of questioning?

9 THE COURT: Counsel want to approach?

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 BY MR. LUKE SHEALEY:

13 Q. Now, Jerry was actually here yesterday, wasn't he?

14 A. Jerry Finney came in for a brief moment, yes, sir.

15 Q. Okay. And he had his new female associate sitting here
16 next to you yesterday in opening arguments, opening
17 statements?

18 A. I was sitting next to a lawyer at Finney Law Firm,
19 known her for years. My mother -- my mother wasn't here and
20 I sat by her.

21 Q. She's a lawyer with the Finney Law Firm?

22 A. Yes.

23 Q. Right. Making sure -- and you talked to her about your
24 testimony?

25 A. No, sir.

1 Q. Okay. And you talked to Curtis Pauling about your
2 testimony?

3 A. I didn't -- after my -- after I took this seat right
4 here I talked to nobody about my testimony.

5 Q. I'm not talking about that. I'm talking about in
6 preparation for trial you talked --

7 A. He told me to stay calm and tell my story, as simple as
8 that.

9 Q. And you better not -- you better not deviate from that
10 statement. He told you that as well?

11 A. No, sir.

12 Q. I couldn't help but notice -- when we get into your
13 statement, you pretty went for word for word in perfect
14 chronological order. Do you disagree with that?

15 A. What are you referring to?

16 Q. Your statement, your story you told yesterday.

17 A. I mean, the truth doesn't change. If I put my socks on
18 before I put my shoe on, I don't say that over and over.

19 Q. Right.

20 You are a truthful, honest guy, right?

21 A. Yes, sir.

22 Q. Truthful?

23 A. Yes, sir.

24 Q. Okay. Now, like I said, now that you have nothing to
25 lose, you are going to testify about Mr. Porch, correct, the

1 first time? You already told us that.

2 A. I'm on the stand.

3 Q. Okay. But you also have something to gain, do you not?

4 MR. PAULING: Objection, Your Honor.

5 May we approach?

6 THE COURT: Yes, sir.

7 (Whereupon, the lawyers approached the bench for
8 an off-the-record discussion)

9 BY MR. LUKE SHEALEY:

10 Q. You can answer the question.

11 You have something to gain from testifying here against
12 Mr. Porch.

13 A. Everything. I finally get closure after seven years,
14 because the guy who killed my wife is finally going to go
15 down. That's what I have to gain from that, sir.

16 Q. Okay. What you got to gain is money. Do you recognize
17 this?

18 A. Yes, sir, it's a civil action suit against Richland
19 County.

20 Q. Right.

21 This is your lawsuit against Joshua Porch, his wife
22 Persia, Randy Strange of the Richland County Sheriff's
23 Department, Travis Holdorf with the Richland County
24 Sheriff's Department, Zane Padgett with the Richland County
25 Sheriff's Department, Stan Smith -- Major Stan Smith with

1 the Richland County Sheriff's Department, and the whole
2 Richland County Sheriff's Department, right?

3 A. Yes, sir.

4 Q. You are looking for money, is that not correct?

5 A. From that civil suit?

6 Q. Yeah.

7 A. Yes, sir. From that, yes, sir.

8 Q. Right.

9 And it's better for your case if he goes down? Your
10 lawyer has told you that.

11 A. Is that a question?

12 Q. Sure.

13 A. It's better for my case if he goes down?

14 Q. Right.

15 A. Well, my case is about how without an investigation I
16 got locked up for almost two years. I missed my wife's
17 funeral. I missed my daughter's first step. I missed
18 everything for no reason, when the real killer was out here
19 playing with his kids. That's what the civil suit is about,
20 sir, yes.

21 Q. Money is going to make it all better?

22 A. It's not going to make it all better, but at least my
23 kids have a free ride to school, hopefully.

24 Q. And your lawyer has told you that if he gets convicted,
25 your civil suit looks that much better?

1 A. I never heard that.

2 Q. You haven't talked to your lawyer about your civil
3 suit?

4 A. Him being sentenced, or whatever, in that, that's two
5 different areas. That's --

6 Q. The question is you haven't talked to Mr. Finney about
7 your civil suit that's still ongoing?

8 A. We have never discussed whether it will be a success if
9 Josh Porch goes down, no, sir.

10 Q. You are not interested in that, right?

11 A. What's your question, sir?

12 Q. You are not interested in being successful? That's why
13 you filed it.

14 A. I know for a fact he beat and murdered my wife in my
15 house. I want him to go down. I don't -- you don't have to
16 give me a dime. If he goes down, I'm happy.

17 Q. Oh?

18 A. Yeah.

19 Q. You are not interested in the money, so that's why you
20 filed this civil suit looking for money.

21 A. Any --

22 MR. PAULING: Your Honor, I believe he's answered
23 the question.

24 MR. LUKE SHEALEY: He keeps --

25 THE COURT: I'll overrule that. I think he's on

1 cross-examination. I'll give him a little leeway.

2 BY MR. LUKE SHEALEY:

3 Q. You are not interested --

4 A. Could you repeat the question?

5 Q. You are not interested in money? That's why you filed
6 the civil lawsuit, correct?

7 A. I'm a very broke, not even middle class, person trying
8 to make it. If you or anybody in the jury was done how they
9 did me, you would try to sue too, and that's the reason for
10 the civil suit, sir.

11 Q. Okay.

12 Now, you talked about your statement a little bit. Do
13 you have a copy of that with you?

14 A. No, sir.

15 Q. All right. I'm going to hand you what's marked Defense
16 Exhibit 1. Do you recognize this document?

17 A. This is my telling what happened, isn't it?

18 Q. Right, that's your statement, right?

19 A. Yeah, talking to Holdorf.

20 Q. Your signature on the bottom of that page?

21 A. Yes, sir.

22 Q. Okay. That was what was entered against you in two
23 trials as evidence of your guilt. Do you agree with that?

24 A. Yes, sir.

25 Q. Let's talk about your statement.

1 Now, you looked into this jury's eyes yesterday and
2 admitted to cheating on your wife?

3 A. Yes, sir, I did.

4 Q. All right. And that you had been doing that with Ricki
5 Cook and that you had been doing it for a few months at that
6 time?

7 A. I have known her for a couple of months at that time,
8 yes, sir.

9 Q. All right. Let's talk about cheating.

10 When you are cheating, you agree that that means that
11 you are not being honest with your wife?

12 A. You are cheating on your wife, yes, sir.

13 Q. Okay. When you are not honest with someone, you are
14 lying, right?

15 A. Yes. Not being honest with your wife, yes. That's
16 lying, yes, sir.

17 Q. So you're a liar?

18 A. I lied to my wife in that particular situation, yes,
19 sir.

20 Q. I think you just said earlier that you were all about
21 the truth, but now you can agree that you're a liar?

22 MR. PAULING: Objection.

23 May we approach?

24 THE COURT: Yes, sir.

25 (Whereupon, the lawyers approached the bench for

1 an off-the-record discussion)
2 BY MR. LUKE SHEALEY:
3 Q. All right, back to your statement.
4 Now, this would be -- you worked that day, May the
5 13th, right?
6 A. Yes, sir.
7 Q. Got off work at 12:30, right?
8 A. Yes, sir.
9 Q. And you work as a courier, correct?
10 A. Yes, sir.
11 Q. And you used that big white van to courier things
12 around the State?
13 A. Yeah, that's my vehicle for work.
14 Q. Okay. Now, you watched a movie. You fell asleep and
15 you woke up later, correct?
16 A. Yes, sir.
17 Q. All right. You were hungry, so you went and got some
18 chinese, correct? China Hut?
19 A. Yes, sir.
20 Q. And you stopped at a liquor store to get some Vodka,
21 right?
22 A. Yes, sir.
23 Q. Now, you take this Vodka, this bottle of Vodka home and
24 you wrote in your statement "me, Nakia, and our neighbor
25 Dawn drank half a bottle." Do you agree with that?

1 A. That's what I wrote, yeah.

2 Q. "We had some problems with the frig," but then you talk
3 about going out and getting some cigarettes, right?

4 A. Where -- what line are we on here? Oh, okay.

5 Q. "Went out to get some cigarettes."

6 A. Yes, sir.

7 Q. At this point when you are not in the house is when you
8 called Ricki Cook, correct?

9 A. Yes, when I went to go get some cigarettes.

10 Q. You planned on having a date with her that night,
11 right?

12 A. It was her birthday, yes, sir.

13 Q. It was her birthday.

14 All right. And Mother's Day was the next day, right?

15 A. Yes, sir.

16 Q. Okay. So you wanted to make Ricki feel special because
17 it was her birthday, right?

18 A. I agreed to take her out for her birthday, yes, sir.

19 Q. And you are not making this phone call in front of your
20 wife, are you?

21 A. No, sir.

22 Q. Okay. So you didn't tell your wife that, that you were
23 planning this date, did you?

24 A. No, sir.

25 Q. Okay. Is it fair to say you are not being honest with

1 your wife about this date?

2 A. My wife had no knowledge of me meeting up with Ricki
3 Cook that night.

4 Q. This was a lie of omission. Do you agree with that
5 statement?

6 A. Define omission.

7 Q. Not telling somebody something. Leaving something out.

8 A. Definitely.

9 Q. Correct. You got that.

10 So Ricki told you she wasn't quite ready yet, right?

11 A. Yes.

12 Q. She was at her sister's?

13 A. No, she was shopping or something with her sisters.

14 Q. Okay. So you went back and you drank some more with
15 Nakia and Dawn.

16 Now, y'all three have already polished off half a
17 bottle of that Vodka, right?

18 A. Yeah. It was a small bottle, like a ten dollar bottle.

19 Q. A small bottle?

20 A. Yeah.

21 Q. You like Vodka?

22 A. I like Vodka and Gin.

23 Q. Yeah, it's good?

24 A. Yeah, it's pretty good.

25 Q. And now you go drink some more, correct?

1 A. I had another drink with them, yeah.

2 Q. Did you finish off the bottle?

3 A. I don't think so.

4 Q. You do remember?

5 A. No, I don't quite remember.

6 Q. All right. Okay.

7 Now, you left around 9:30, right?

8 A. I left around 9:30, yes, sir.

9 Q. You would have gotten in that big white van that you
10 got to go out on your date, right?

11 A. Yeah, big white Safari van.

12 Q. Now, you have had a lot to drink. You had had half a
13 bottle and then some. Do you agree with that? That's in
14 your statement.

15 A. It's a ten dollar bottle, sir. Between three people,
16 if we drunk half the bottle, I mean, that's maybe a drink or
17 so. I mean --

18 Q. Well, I think you said yesterday it was some cheap
19 off-brand stuff?

20 A. Yeah, something like that.

21 Q. So when it's cheaper and off-brand you get a little
22 more, don't you?

23 A. I don't remember being sloppy drunk, no, sir.

24 Q. Okay. So you were -- you were buzzed?

25 A. Perhaps.

1 Q. Okay. You know we got laws in this state against
2 drinking and driving, don't you?

3 A. Yes, sir.

4 Q. Okay. So you're a liar and you are someone that drives
5 while drinking. Am I making this up?

6 A. I lied to my wife about cheating on her and I had a
7 couple of drinks before I drove a vehicle that particular
8 day, yes, sir.

9 Q. Okay. You don't agree that you were drinking while
10 driving -- drinking before driving?

11 A. I had a drink before I got -- I don't know -- I didn't
12 have a breathalyzer. I don't know if I was over the legal
13 limit.

14 Q. You know it's criminal to do that?

15 A. Criminal to have a drink?

16 Q. It's against the law.

17 Not a drink, because you didn't say you had a drink.
18 You said you had a half bottle and then you drank some more.
19 You know it's criminal to do that?

20 A. It's -- I don't know the proceedings, but --

21 MR. PAULING: Object, Your Honor. Objection, Your
22 Honor.

23 THE COURT: Rephrase the question.

24 BY MR. LUKE SHEALEY:

25 Q. I'll move on.

1 So you left around 9:30, and this is important,
2 Mallory. This is real important. Your statement then says
3 "I told Nakia that I was going to Blair with John Jacob,"
4 right?

5 A. Yes, sir.

6 Q. A bold-faced lie?

7 A. (Shaking head yes).

8 Q. The man here that only tells you the truth. Do you
9 remember you said that a little while ago? Do you remember
10 that?

11 A. Yes, sir.

12 Q. That's a bold-faced lie, because you weren't going to
13 see John Jacob.

14 A. The man here who said that statement a minute ago is a
15 thirty-two year old man. The guy who lied to his wife was
16 twenty-four years old.

17 Q. You are a different liar now than you were then?

18 A. No, sir, at the time lying to my wife at twenty-four
19 was just a stupid mistake of mine. Now all truth, sir.

20 Q. You are an older maturer liar now?

21 A. At the time, twenty-four years old I lied to my wife,
22 yes, sir. Standing here before you, absolute truth.

23 Q. And you even told her there's not going to be cell
24 phone reception out there so she wouldn't be trying to call
25 you?

1 A. This is true.

2 Q. Another lie from that young twenty-four year old guy
3 who is so different from you today.

4 Ricki kept calling you is in your statement. She kept
5 calling you about five times that she was ready, right?

6 A. Yes, sir.

7 Q. Now, you didn't want to leave her waiting on you,
8 right? It's her birthday, right?

9 A. Yes, sir.

10 Q. She is a special lady in your life. You don't want to
11 leave her waiting, do you?

12 A. I might have known her two and a half months at the
13 time. Special lady in my life was my wife.

14 Q. Oh, special enough that you are going to be with Ricki
15 on her birthday and not your wife right before Mother's Day?

16 A. Very foolish decision.

17 Q. So you went to go pick -- this is the second paragraph
18 now. Follow with me. You went to go pick Ricki up from the
19 apartment, right?

20 A. Yes, sir.

21 Q. All right. So then you start heading towards
22 Applebee's. You agree with that?

23 A. We ended up going to Applebee's that night, yes, sir.

24 Q. Now, this is the Applebee's on Beltline, right?

25 A. The other side of town, Beltline Boulevard, yes, sir.

1 Q. Right. And I know that you said that yesterday, the
2 other side of town. And you said that because you knew that
3 you were doing dirt, I think is your exact words from
4 yesterday, right?

5 A. Yes, sir.

6 Q. Doing dirt. You were being wrong, right?

7 A. Cheating on my wife, that was definitely wrong, yes,
8 sir.

9 Q. And it wouldn't be good to cheat on your wife, lie to
10 your wife, and then be at Applebee's next to your house,
11 would it?

12 A. No, sir.

13 Q. You might know somebody, might see somebody. You don't
14 want to get caught, right?

15 A. Yes, sir, you would want to go to the other side of
16 town, yes.

17 Q. So this is an example of you taking measures and steps
18 to not get caught?

19 A. Is that an official question?

20 Q. That's a question.

21 A. Yes, sir, I did not want to be discovered by my wife
22 with this other woman. Yes, sir, that's correct.

23 Q. Taking steps to not get caught, because you are a
24 thinking man. Right?

25 A. "You are a thinking man, right?" Yes, sir.

1 Q. Okay. Now, when you got there and because you sat
2 through two trials and I'm sure that you were familiar with
3 this Applebee's receipt, tell me if that looks familiar to
4 you?

5 A. I might have had one drink. I mean, I don't --

6 Q. We will get there, but does that look familiar to you
7 from your own discovery in the past two trials?

8 A. I never seen this piece of paper, sir.

9 Q. You haven't?

10 A. No.

11 Q. You can hold onto that.

12 But you would agree if I told you that was the receipt
13 pulled by law enforcement from you eating and drinking at
14 Applebee's?

15 A. I didn't never study the receipt from that night. It
16 could be.

17 Q. Okay. And you got a Bahama Mama on the very top. I
18 imagine -- you're a Vodka guy. Ricki drink that, is that
19 fair?

20 A. Possibly.

21 MR. PAULING: Your Honor, I object. This isn't in
22 evidence. He hasn't identified it. I mean, now counsel is
23 reading from it.

24 MR. LUKE SHEALEY: This statement is not in
25 evidence either and I'm reading from it, judge. I'm not

1 putting it into evidence. I'm impeaching him with it.

2 MR. PAULING: He said he didn't recall.

3 MR. LUKE SHEALEY: He didn't disagree with it,
4 though.

5 THE COURT: I think he can ask questions about
6 what he recalls and if he remembers, he can testify to it.

7 BY MR. LUKE SHEALEY:

8 Q. Do you recall drinking two Vodkas that night at
9 Applebee's?

10 A. I remember I had a Vodka. I don't remember the amount.

11 Q. All right. Do you see that there, the second line,
12 says Absolute?

13 A. Yes, sir.

14 Q. And that cost \$5.15?

15 A. Yes, sir.

16 Q. And if you look down and you go a little further you
17 see another line towards the bottom that says Absolute that
18 cost the same?

19 A. Well, actually they are different prices, sir.

20 Q. Okay, let's see. 5.35. So maybe -- maybe she messed
21 it up or maybe she just thought she would charge you a
22 little more?

23 A. I don't understand why they would do that.

24 Q. But you would agree that there is a second Absolute on
25 this bill?

- 1 A. Yeah, it says so.
- 2 Q. And you would agree that there is a riblet basket?
- 3 A. Yeah, I see riblet basket.
- 4 Q. Some mozzarella sticks.
- 5 A. Yes, sir.
- 6 Q. And a bunch of juices. Probably -- were those mixed
- 7 drinks? You know, cranberry and other juices to mix with
- 8 the Vodka, right?
- 9 A. Yes, sir.
- 10 Q. Okay. Total bill was 23 -- no, 36 -- 38.70 with tax,
- 11 right?
- 12 A. Yes, sir, that's what it says.
- 13 Q. And the tip was zero?
- 14 A. Yes, sir, that's what it says.
- 15 Q. You didn't tip?
- 16 A. I don't recall.
- 17 Q. Okay. You're not a tipper.
- 18 MR. PAULING: Objection, Your Honor. There is no
- 19 relevance to that.
- 20 MR. LUKE SHEALEY: I think it's extremely
- 21 relevant, judge. His whole credibility is on trial.
- 22 MR. PAULING: Whether or not he tips?
- 23 THE COURT: Move on.
- 24 MR. LUKE SHEALEY: He's answered the question.
- 25 I'll move on.

1 BY MR. LUKE SHEALEY:

2 Q. So let's go back to your statement.

3 Now, right there in that second paragraph, you paid for
4 dinner, right?

5 A. I paid for dinner, yeah.

6 Q. And you paid in cash. I think you said yesterday
7 didn't even have a debit card back then?

8 A. So that's why there is not a tip on there. I paid
9 cash.

10 Q. Well, it didn't register what you paid for?

11 A. No, you just leave two dollars on the table. They
12 wouldn't put that on there, I wouldn't think.

13 Q. Do you work at Applebee's?

14 A. No, sir. Sorry about that.

15 Q. Okay. Now, this is marital money. You were married at
16 the time, right?

17 A. Yes, sir, I was married.

18 Q. Using your shared money to take your other girlfriend
19 out. Do you agree with that?

20 A. Yes, sir.

21 Q. All right. Now, continuing on with the statement.

22 After you say "I paid for dinner, we started talking about
23 who was going to pay for the hotel room," right?

24 A. Yes, sir.

25 Q. "She says she was not going to pay for the hotel room

1 because it was her birthday," right?

2 A. Yes, sir.

3 Q. And you know now on the receipt that you bought her a
4 sundae -- a birthday sundae, the very bottom item?

5 A. Well, there's no charge for it.

6 Q. Maybe it was on the house?

7 A. Possibly.

8 Q. Sing y'all a little song, little birthday song?

9 A. I don't remember a song, sir, no, sir.

10 Q. Okay. But you were definitely interested in taking her
11 out because it was her birthday?

12 A. Yes, sir.

13 Q. While your wife was home on Mother's Day?

14 A. It was -- it was the day before Mother's Day.

15 Q. Oh, but this date goes on until Mother's Day, right?

16 A. Unfortunately.

17 Q. Okay. So you didn't want to pay for that hotel room
18 where you were going to have sex with her, and she didn't
19 want to pay for it either, right?

20 A. We were talking about who was going to pay for the
21 hotel room, yes, sir.

22 Q. I mean, you felt pretty good. You had already spent
23 \$38 on dinner. Why should you have to pay for the hotel
24 room?

25 A. Is that a question?

1 Q. Yeah, you can answer that.

2 A. I can't recall back in '06 what I was thinking. I'm
3 sure I was broke.

4 Q. Now, eventually you took her back to her sister's
5 house.

6 A. Yes.

7 Q. Because she wasn't going to pay -- this sex part might
8 not even happen, right?

9 A. I took her back to her sister's house after dinner.

10 Q. Okay. And then she changed her mind and said "all
11 right, I'll go to the hotel room with you," and you ended up
12 paying for it?

13 A. No, what happened was I dropped her off. I headed on
14 my way home. I called my wife a couple of times on my way
15 home. She didn't answer.

16 I had a couple of drinks at Applebee's. According to
17 this, yeah, I did, and I had changed my mind and I turned
18 around and called Ricki back and told her "let's go get a
19 room. I'll pay for it."

20 Q. So you -- now, I mean, you are horny for this other
21 woman, right? You paid for dinner. You hadn't gotten
22 anything. She wasn't going to pay for a hotel room, so you
23 decided, "you know what, I'm not going to go home and be
24 with my wife. I'm going to get me some sex and I'll pay for
25 the hotel room." That was what you were thinking.

1 A. I decided to get a room with Ms. Ricki Cook that night.

2 Q. So you go back and you pick her up in that big white
3 van, correct?

4 A. Yes, sir.

5 Q. And you take her to the Economy Inn on Broad River
6 Road?

7 A. Yes, sir.

8 Q. It's her birthday, not taking her to the Hilton.
9 Economy Inn is pretty cheap?

10 A. I forget the exact rates.

11 Q. Cheap date, cheap hotel, right?

12 A. How do you define cheap?

13 Q. I'm answering (sic) the questions. You can answer
14 them.

15 A. I guess it's not in the hundreds of dollars, no, sir.

16 Q. But ultimately you are not showing someone a lot of
17 respect by taking them to someplace nice for this sexual
18 escapade?

19 A. No, sir.

20 Q. Okay. That's who you are, okay? You agree that's who
21 you are?

22 A. That's who I am?

23 Q. Uh-huh.

24 A. Oh, I'm a lot more than that.

25 Q. Okay. Didn't have a lot of respect for women.

1 A. I respect women.

2 Q. Okay. You were respecting your wife that night,
3 weren't you?

4 A. I lied to my wife that night.

5 Q. That's not respect, right?

6 A. No, sir.

7 Q. Taking a girl on her birthday for your sexual encounter
8 at the Economy Inn, that's not respect.

9 A. If that's all you got in your budget.

10 Q. And not telling her that you were married with two kids
11 at the home, poor Ricki, that's not respect to her, is it?

12 A. I lied to Ms. Cook about being married.

13 Q. Okay. You don't respect women.

14 A. I do respect women.

15 Q. Now, after -- you went to this hotel room for a couple
16 of hours. You had some sex, right? That's not in your
17 statement, but come on now.

18 A. Yeah.

19 Q. Okay. What's the point, right, of going to the hotel
20 room if you are not going to have sex?

21 A. What's the point of going to a hotel room if you are
22 not going to have sex? You are telling me that?

23 Q. I'm asking you that. There is no point.

24 A. Some people might want to just talk. But, me,
25 particularly, yeah, I had sex that night.

1 Q. You weren't interested in just talking?

2 A. No, sir.

3 Q. You already made a substantial investment of your
4 marital money in the form of dinner and now paying for this
5 hotel room?

6 A. I paid for dinner and I paid for the hotel room that
7 night.

8 Q. Okay. Now, after the hotel room you went to the Exxon
9 right across the street, right?

10 A. Yes, sir.

11 Q. And Ricki is still with you, correct?

12 A. Yes, sir, she was in the car.

13 Q. You worked up a big thirst from all that cheating, you
14 got yourself a Yoohoo?

15 A. I bought a Yoohoo and a cigar.

16 Q. People like to smoke after sex. You wanted that White
17 Owl, correct?

18 A. You telling me you like to smoke after sex?

19 Q. Sure. You do too, don't you? You bought that White
20 Owl.

21 A. I smoke the first thing in the morning, you know.
22 After sex would be another time, I guess.

23 Q. Yeah, you had to do that.

24 Now, you are aware from the two trials that you sat
25 through right where he's sitting that you are on video at

1 that Exxon?

2 A. I was there, so if they had a camera, I would be on
3 video.

4 Q. And they introduced that evidence at your trial as you
5 sat through it? You remember that, right?

6 A. I was never disputing being at that Exxon.

7 Q. Right.

8 And you are wearing a hat in that video?

9 A. I would need to see the video.

10 Q. You need to see it?

11 A. I mean, I -- I don't remember if I had on a hat at the
12 time.

13 Q. You don't remember that being an issue in your trial at
14 all?

15 A. A hat?

16 Q. Sure, what you were wearing.

17 A. You said an issue in my trial?

18 Q. Yeah.

19 A. You had the killer testifying against me. That's was
20 the issue in my trial.

21 Q. What you were wearing was the issue in your trial.

22 A. I gave the police everything, even my socks. They had
23 my clothes, so what I was wearing they had access to it.

24 Q. Sure. They took that from you?

25 A. I voluntarily gave that up, sir.

1 Q. But what you were wearing you agree was an issue in
2 your trial, right?

3 A. Not to my recollection.

4 Q. You can't remember that?

5 A. No.

6 Q. Now, after the Exxon you dropped Ricki off, correct?

7 A. We drove back to her sister's apartment, sat in the
8 parking lot for fifteen minutes. She finally got out and
9 went in her sister's house.

10 Q. Okay. Now, read the bottom of that statement.

11 A. Which page now?

12 Q. Just at the very bottom it has "I made the statement of
13 my own free will and accord, without reward or intimidation.
14 All the above is the truth, the whole truth and nothing but
15 the truth."

16 A. Yes, sir.

17 Q. Show me where in that statement it says that you sat
18 there for ten to fifteen minutes in the car with Ricki.

19 A. Let me see. "I got home around" -- let me back it on
20 up.

21 Q. I'll help you out. I'll direct you to the first page.
22 It's at the bottom sentence of that second paragraph.

23 A. "I dropped her off at her sister's apartment and went
24 home."

25 Q. Okay. Nothing in there about "me and Ricki hanging out

1 in the van for ten to fifteen minutes," correct?

2 A. I gave this statement. I didn't sleep that night. I
3 just found my wife murdered.

4 I left. We sat in her parking lot. I wasn't arrested
5 or anything. I didn't feel as if --

6 I felt like the cops were going to find out who did
7 this to my wife. I -- I spilled my guts to these people. I
8 left out I sat in her parking lot for ten to fifteen
9 minutes. I did leave that out.

10 Q. You conveniently left that out?

11 A. Oh, I told the cops -- I mean, I told the cops
12 everything. Apparently just didn't say I sat there for ten
13 minutes.

14 Q. Now, you agree, and you got to give me this one. From
15 the past two trials against you for the murder of your wife
16 that the timeline of when you arrived at your apartment is a
17 big issue in that trial, correct?

18 A. The timeline proves there is no way I could have killed
19 my wife.

20 Q. I'm just asking you a question. Do you agree that was
21 an issue, yes or no?

22 A. The timeline was definitely a big thing, yes, sir.

23 Q. You had Investigator Holdorf investigating your
24 timeline, correct?

25 A. Yes, sir.

1 Q. You had Investigator Strange investigating your
2 timeline, correct?

3 A. I don't know who at Richland County actually was doing
4 the investigations on the timeline, but it came up in trial.

5 Q. It came up in trial?

6 A. Yes, sir.

7 Q. They had cell tower information, correct?

8 A. They had a Suncom expert --

9 Q. Correct.

10 A. -- that was pinpointing where I was at one time on my
11 way home calling everybody about a strip club.

12 Q. Because cell towers are a good way of tracking the path
13 of someone when they go. You learned that from your trial,
14 correct?

15 A. Yeah, they can pinpoint between what two towers when
16 you made the call, yes, sir.

17 Q. And they had you pinging all the way home and you
18 getting home at a certain time that was approximately 3:30.
19 That was in your trial.

20 A. I don't remember what Holdorf determined was the final
21 time, but he said I was only there like five minutes max,
22 possibility.

23 Q. You don't remember -- when these investigators who were
24 sitting at this table, different ones, same department, are
25 saying when you got home, based on science and cell phones

1 and witness statements, you are claiming -- you are telling
2 this jury you don't remember?

3 A. I don't remember if it was 1:30 on the dot, but it was
4 around 1:30. He said I was there about 1:30 -- 3:30, excuse
5 me.

6 Q. 3:30?

7 A. Right.

8 Q. You do remember?

9 A. Yes, that definitely was a time range, yes, sir.

10 Q. Okay. And in preparation for your testimony today, in
11 talking with Jerry Finney and in talking with the government
12 lawyers, you have now added a ten to fifteen minute
13 conversation with Ricki Cook because it helps your timeline,
14 right?

15 A. I believe Ricki Cook testified to ten to fifteen
16 minutes as well. I mean, it happened. It ain't convenient.
17 It's just what went on.

18 Q. This information that is not in your sworn statement
19 what you testified yesterday now helps your timeline,
20 because the later you get there the better, right?

21 A. The cell phone towers and even the head detective
22 trying to nail this on me said I didn't have but five
23 minutes. I mean, I don't know what you are asking for.

24 Q. The later you get there, the better for you, right?
25 You agree with that?

1 A. The later I get there, the better for me?

2 Q. Uh-huh.

3 A. I did not commit the murder. Ain't one piece of
4 evidence saying I committed the murder, so regardless of
5 when I got there, I didn't -- I didn't kill anybody.

6 Q. Sir, you had two trials in evidence saying that you did
7 the murder. Do you dispute that? Answer that question.
8 Did you not have two trials of evidence saying that you did
9 the murder?

10 A. It wasn't one piece of evidence, not then. They -- not
11 an eyewitness. This guy was not there.

12 Q. All right.

13 A. I mean, that's the only witness. There was not one
14 piece of evidence saying I killed my wife. They never
15 presented -- look, there is nothing, not a single thing.
16 That's -- that's true, not a single -- you show me anything
17 that says I killed my wife, anything besides this. Nothing.
18 This man has this much.

19 Q. You brought up eyewitness. Let's talk about the
20 eyewitness.

21 A. Yeah, what eyewitness?

22 Q. Okay. And this is -- we could talk all we want, but
23 ultimately it's for the jury.

24 A. Sorry about that.

25 Q. Let's leave that to them.

1 You know a women named Sherry Tribble?

2 A. She testified in trial. I don't personally know her.

3 Q. You got to respond to my questions.

4 You don't personally know her?

5 A. I don't personally know her, no.

6 Q. She's a neighbor of yours.

7 A. She might have been. I never met the woman.

8 Q. All right. Do you remember her from your trials?

9 A. Yes, sir.

10 Q. She is staying at her boyfriend Dennis Trenton's (sic)
11 apartment, correct?

12 A. Dennis Tentyon.

13 Q. Tentyon, I apologize.

14 She's awakened to a domestic argument. You agree with
15 that? That was the testimony.

16 A. She said that in her testimony.

17 MR. PAULING: Object to hearsay, Your Honor.

18 MR. LUKE SHEALEY: I'm asking him what he's aware
19 of from his past trials. I'm not asking him to elicit
20 testimony. If he chose to do it on his own, that's not up
21 to me, judge.

22 MR. PAULING: He's asking him as to what she
23 testified to. He can bring Ms. Tribble in here.

24 MR. LUKE SHEALEY: I never asked what she
25 testified to.

1 THE COURT: One moment.

2 I'll sustain that question.

3 MR. PAULING: Thank you, Your Honor.

4 BY MR. LUKE SHEALEY:

5 Q. From sitting in your two trials, you are aware that Ms.
6 Tribble places you there at 3:30, are you not?

7 A. I never heard Ms. Tribble say 3:30.

8 Q. Okay. You are aware that she wakes up to a domestic
9 argument, are you not?

10 A. If I can recall, Ms. Tribble heard something she said
11 hours before, a spat, and then time passed and she heard
12 another spat. So whatever she heard could not have been me.

13 Q. You are aware that she hears Nakia say "how could you?"

14 A. She said she did, but like I said, she also put a time
15 on that and she said it was about forty minutes between
16 that, so obviously that couldn't have been me.

17 Q. You are aware that as she hears this, your big white
18 distinctive van is outside? That's what she testified to.

19 A. I'm sure she -- if she was looking out the window, she
20 saw me pull up and put my wife in that van. Yeah, that
21 happened.

22 Q. You are aware from the past trials that her version of
23 events is that your van then moves up into the breezeway and
24 she sees you. She points you out in court, just like you
25 pointed out Joshua Porch in court.

1 A. It was 3:30 in the morning. Sherry Tribble said a lot
2 of time went by from when she heard the argument. She
3 described the time --

4 Q. I'm not asking you what to say what she said. I'm
5 asking you whether you are aware that she points you out as
6 the guy she saw?

7 A. I mean, they had my face on the news every day. Of
8 course she pointed me out.

9 Q. You think she's tainted, is that your opinion?

10 A. I'm saying the police told her that I killed my wife
11 and did she see anything. And she might have saw this man
12 right here. She might have heard them having a spat, or
13 whatever, and at the end when I came home I was screaming
14 too.

15 Q. Okay.

16 A. I just found my wife dead, so I put her in the van, and
17 she saw that as well.

18 Q. But sitting at that table for two trials, when she came
19 up here and put her hand on the Bible, she said it was you.
20 She said it was you, right?

21 A. She -- she said it was me.

22 Q. Okay. And you are aware that her testimony was that
23 you said "look what you made me do?"

24 A. I never said anything close to that.

25 Q. But that's what was presented against you. You are

1 aware that that's what Ms. Sherry Tribble thinks?

2 A. She -- yeah, she said that on the stand.

3 Q. She doesn't know you, right?

4 A. No, sir, we never met.

5 Q. She doesn't know Josh, right?

6 A. No, sir.

7 MR. PAULING: Objection, Your Honor.

8 A. I guess not. I don't know who she knows. I'm sorry.

9 BY MR. LUKE SHEALEY:

10 Q. You are not aware that she has any dog in this fight,
11 correct?

12 A. Dog in this fight?

13 Q. She has no bias one way or the other?

14 A. I'm sure she was trying to help out the police
15 investigation. I mean, just trying to be a good citizen.

16 Q. So by putting you at the scene while your wife is still
17 alive saying "how could you," you are aware that that's
18 evidence against you in this case?

19 A. It was a lot -- all right, she's across the parking lot
20 upstairs --

21 Q. Sir, answer my question.

22 A. I don't understand how -- I mean, I have to explain in
23 order to answer that.

24 Q. You are aware that's evidence against you in this case?

25 A. She said that -- she told -- she told the police that

1 she heard somebody say "look what you made me do." Yes, she
2 did, I heard that in the first two trials.

3 Q. Now, let's talk about a couple other things we have
4 forgotten, and you will freely admit this. You said it
5 yesterday. After having this sexual relationship now in the
6 wee hours of the Mother's Day with Ricki, you wanted to go
7 to a strip club, right?

8 A. Yes, sir.

9 Q. Okay. Now, you weren't quite satisfied with Ricki, do
10 you agree with that?

11 A. I can't answer that. I wasn't quite satisfied? I
12 wanted to go to a strip club before my night ended.

13 That's -- that's what it was. It wasn't satisfaction or
14 not.

15 Q. And you called your partners to see if they would go
16 with you?

17 A. Yes, sir.

18 Q. But they were too sleepy?

19 A. It was too late for them.

20 Q. Okay. You respect women so much, as you said, that you
21 will cheat on your wife on Mother's Day with another woman
22 while lying to her and then you want to go respect some
23 strippers at a strip club, right?

24 A. Like I said, I was twenty-four. I -- I didn't mean no
25 harm to nobody. I was just was going to get -- to go to a

1 strip club, that's not illegal.

2 Q. So -- and the reason I ask is because you will agree
3 that Ms. Sherry's position, Ms. Sherry Tribble, is that this
4 is a domestic argument, correct?

5 A. Sherry Tribble thought she heard a domestic argument.

6 Q. You sat through two trials against you when law
7 enforcement thought this was a fight about cheating. You
8 are aware of that, right?

9 MR. PAULING: Objection, Your Honor. He's asking
10 to speculate to what law enforcement's theory of the case
11 was.

12 MR. LUKE SHEALEY: He sat through both trials,
13 Your Honor.

14 THE COURT: Rephrase your question.

15 BY MR. LUKE SHEALEY:

16 Q. Your understanding was this was a fight about cheating?

17 A. What's the question?

18 Q. Your understanding is that this is a fight about
19 cheating?

20 MR. PAULING: Objection, Your Honor. I don't know
21 if he can answer that question.

22 A. I don't -- I don't know --

23 THE COURT: Overruled.

24 A. This is a fight about cheating?

25 BY MR. LUKE SHEALEY:

1 Q. That's your understanding.

2 A. There was no fight.

3 Q. You were cheating, weren't you?

4 A. There was -- I came home and found my wife in a puddle
5 of blood. It was no fight. It was -- it was -- it was no
6 Josh Porch there. It was -- all this stuff you are bringing
7 up is -- yeah, I cheated. Yeah, I went to a hotel. I did
8 not kill my wife. Or keep on going, yeah, I cheated, I
9 drunk -- drinking and driving, yeah, I did that, but I did
10 not kill my wife, no way, no how.

11 Q. Now, in your experience as a human being, which we all
12 have, when people cheat, their partners don't like that,
13 right? You can agree with that?

14 A. Nobody wants to be cheated on, true.

15 Q. Okay. So in your experience as a human being, when you
16 are cheating on someone and they find you coming in at three
17 a.m. in the morning, they are going to confront you about
18 that, right?

19 A. My wife was stabbed, bleeding when I got home. It was
20 no confrontation. There was no argument.

21 The detectives said I only had five minutes in the
22 house. No argument, no fight, no domestic, no nothing like
23 that.

24 Q. Right. And when you have an argument about cheating,
25 that's not something that sits and waits to be talked about

1 in the morning, is it?

2 A. You are speaking on hypothetical terms. There was no
3 argument.

4 Q. There was no argument?

5 A. We know she was -- that guy has already stabbed her by
6 the time I got home.

7 Q. You are being truthful right now?

8 A. The truth is -- it don't change. I mean, this is what
9 happened.

10 Q. You have only been here to present the truth. You told
11 us that.

12 A. I lied to my wife. I lied to Ricki. I had never lied
13 to law enforcement, not one time.

14 Q. You are a liar. You take steps to not be caught. You
15 agreed with me on this.

16 A. I cheated on my wife that night.

17 Q. You are doing dirt, right?

18 A. Doing dirt is cheating on my wife that night.

19 Q. And you are willing to break the law by going out
20 drinking and driving?

21 A. I didn't have a breathalyzer. There is no way to say I
22 was over the limit.

23 Q. And all these investigators in Richland County for two
24 trials, they just didn't know what they were talking about?

25 A. Like I told y'all before, they had me arrested on the

1 news within five hours. I mean, it wasn't even no
2 investigation. They locked me up. I mean, no nothing.
3 They didn't test no DNA, nothing. I was in jail. I
4 couldn't even hug my kids. They locked me up as soon as I
5 left that hospital. I left the hospital, went to the
6 detectives office, or whatever, and gave my statement and
7 they locked me up, just like that. No testing, nothing.
8 They didn't even give me a -- I mean, they didn't
9 investigate. They did not test a single thing. I got
10 locked up a couple hours after I took her to the hospital.

11 Q. Now, your statement says you thought you got home
12 around 3:45, if you look at that.

13 A. I got home about 3:45, yes, sir.

14 Q. Okay. So we know from sitting through the trials and
15 listening to all the evidence, that's not true, correct?

16 A. Yeah, I got home about 3:34, according to all the
17 evidence.

18 Q. You got home about 3:30.

19 Do you recognize this document?

20 A. That's my van and that might be the hospital.

21 Q. Right, correct, that's your van pulling into the
22 hospital. What's the time stamp say on there?

23 A. 3:42.

24 Q. Okay. So we know you didn't get home at 3:45.

25 We know that when you got to the hospital at that very

1 late point it was 3:42, right?

2 A. Can you repeat that, please?

3 No, this is what you just said. Can you repeat that,
4 please?

5 Q. Do you acknowledge that this is the hospital picture?

6 A. Yes, sir.

7 Q. Correct? That's your van?

8 A. Yes, sir.

9 Q. That's when you were bringing Nakia to the hospital?

10 A. I was speeding my wife to the hospital, yes, sir.

11 Q. Do you agree that that time stamp maintained by the
12 hospital says 3:42?

13 A. Yes, sir.

14 MR. LUKE SHEALEY: Your Honor, at this time I
15 would like to admit this into evidence as Defense 7.

16 THE COURT: Any objection?

17 MR. PAULING: No objection, Your Honor.

18 THE COURT: It's admitted.

19 (Whereupon, Defendant's Exhibit No. 7 was entered
20 into the record as evidence)

21 MR. LUKE SHEALEY: All right.

22 Permission to publish to the jury, judge?

23 THE COURT: Yes, sir.

24 BY MR. LUKE SHEALEY:

25 Q. So that's just a little disparity with your statement,

1 correct, because your statement says 3:45 is when got home.

2 A. He just said I got home at 3:30. I'm at the hospital
3 at 3:42.

4 Q. Okay. You got -- you see, this is the way it works. I
5 ask you the questions --

6 A. I'm sorry.

7 Q. -- and you got to answer them. No need to turn over
8 there.

9 A. I'm sorry.

10 Q. You are talking to me.

11 A. Yes, sir.

12 Q. Okay.

13 MR. PAULING: He can answer to the jury.

14 MR. LUKE SHEALEY: He's talking to the jury.

15 BY MR. LUKE SHEALEY:

16 Q. Now --

17 THE COURT: That's no significance one way or the
18 other. He can answer the question. Ask the question and
19 answer it. He can look where he wants to look.

20 BY MR. LUKE SHEALEY:

21 Q. Now, we know that you called 911 at 3:35, right?

22 A. (Shaking head yes).

23 Q. Your lawyer has told you that was important.

24 A. I haven't seen my phone records, but I know I called
25 911 as soon as I got home.

1 Q. You said yesterday, and I quote, "it was all one
2 motion. I had called 911 within a minute of being home."

3 A. I found my wife, I checked on my kids, I called 911.

4 Q. So you are just trying to make this as quick as
5 possible? One continuous motion, not enough time to get in
6 a fight and kill your wife, right?

7 A. I don't understand the question.

8 Q. Okay. Now, you know from the trial that evidence was
9 presented against you that you had a window of at least
10 five, six minutes. That's in your case. Do you agree with
11 that?

12 A. They said I got there at 3:30. I made the 911 call at
13 3:35. I must have got home at 3:34.

14 I called 911 as soon as I got there. It was no time to
15 get in no fight and stab nobody, no, sir.

16 Q. Okay. Now, the difference between 3:30 and 3:35 is
17 five minutes, right? That's the math on that?

18 A. I was at the hospital at 3:42.

19 Q. I'm asking you about what's the difference between 3:30
20 and 3:35. Is that five minutes?

21 A. Yeah.

22 Q. Now -- and they said a violent altercation ensued
23 between you and your wife, right? And they said it was
24 about cheating?

25 A. Who is they?

1 Q. The police, law enforcement, Stan Smith, Investigator
2 Holdorf, Randy Strange. John Meadors, the deputy solicitor.

3 A. What's the question?

4 Q. You asked me a question and don't do that.

5 A. I'm sorry, go ahead.

6 Q. Do you agree that that was what was said, that you had
7 five minutes in which you killed your wife in a violent
8 confrontation about cheating?

9 A. They said in five minutes, which it wasn't five
10 minutes, mind you. It was one minute, maybe. They said I
11 got in an argument. They say I stabbed -- they tried to say
12 I stabbed him, stabbed her, cleaned up, and then got my
13 neighbor and called 911 in five minutes. That's what the
14 State -- that's what they said at the last trial.

15 Q. But that's not the truth?

16 A. No, sir, I found my wife stabbed when I got home. I
17 called 911 immediately.

18 Q. Because you are only here to tell the truth?

19 A. I'm telling you the truth. There ain't no -- you can't
20 say one thing the cops found that was wrong about anything I
21 told them.

22 Q. You are not a liar?

23 A. I lied to my wife about cheating, yes, sir.

24 Q. You don't take steps to not get caught?

25 A. I lied to my wife about cheating.

1 Q. You don't break the law? You don't break the law, do
2 you?

3 A. I mean, if -- cheating is breaking the law, I guess,
4 yes, sir.

5 Q. And you weren't out doing dirt?

6 A. Oh, I was cheating. I was definitely doing dirt that
7 night, yes, sir.

8 Q. Now, let's talk to you about your van.

9 Evidence has been presented against you at two trials
10 is that after Nakia said "how could you" and after you said
11 "look what you made me do," you put her into this van? This
12 is your van, correct?

13 A. That is my van.

14 Q. That's your white van. This is in a storage room for
15 the Richland County Sheriff's Department?

16 A. I don't know what room it's in, but that's -- that
17 looks like my van.

18 Q. Do you recognize that as your van?

19 A. Yes, sir.

20 Q. Okay. This is the inside of your van. Do you
21 recognize that?

22 A. Yeah.

23 Q. Okay. Those are the supplies that you keep when you
24 are doing your courier job?

25 A. Yes, sir.

1 Q. Okay. And you recognize this picture is more of a
2 close-up?

3 A. It looks like some blood on some paperwork.

4 Q. And that's where your wife bled in your van, right?

5 A. I put her in the van and took her to the hospital.

6 Q. Okay.

7 MR. LUKE SHEALEY: Judge, at this time I would
8 seek to introduce these into evidence. This would be
9 Defendant's 3, 4, and 5.

10 THE COURT: Any objection?

11 MR. PAULING: May we approach, Your Honor?

12 THE COURT: Yes, sir.

13 (Whereupon, the lawyers approached the bench for
14 an off-the-record discussion)

15 MR. PAULING: Your Honor, I would object. I just
16 would object to State's 3 (sic), Your Honor, for reasons
17 that we -- the prejudicial value would outweigh its
18 probative value.

19 THE COURT: And pursuant to Rule 403, I will
20 overrule that objection.

21 MR. LUKE SHEALEY: Thank you, judge.

22 THE COURT: And so they will be admitted.

23 (Whereupon, Defendant's Exhibit No. 3 was entered
24 into the record as evidence)

25 (Whereupon, Defendant's Exhibit No. 4 was entered

1 into the record as evidence)

2 (Whereupon, Defendant's Exhibit No. 5 was entered
3 into the record as evidence)

4 MR. LUKE SHEALEY: Thank you, judge.

5 BY MR. LUKE SHEALEY:

6 Q. We'll come back to these photographs which are now in
7 evidence. You have already identified this as your van --

8 A. Uh-huh.

9 Q. -- correct?

10 This is the specifically the back of your van, right?

11 A. Yeah.

12 Q. This is where you put Nakia's body, right?

13 A. Yes, she -- I put her in the back of the van, yes, sir.

14 Q. This is another picture of that with the blood,
15 correct?

16 A. Yes, sir.

17 Q. And that's a nice little pornographic DVD you got there
18 that you put her body on top of, correct?

19 A. I don't -- I don't remember that DVD. Maybe it was
20 under the seat and slid up, or something, but I didn't
21 purposely put my wife's body on top of porn, no.

22 Q. No one is saying that you purposely did it.

23 A. Yes, it's a porno in my back seat, yes, sir.

24 Q. But you did put her on top of it?

25 A. Is there any blood on it?

1 Q. Well, right there.

2 A. Yeah, but there is no blood on the DVD, so I can't say
3 that I did or not.

4 Q. Okay. Now, you were -- so your testimony is you were
5 careful not to put her on top of this porn?

6 A. I was rushing. I was trying to save my wife's life.
7 He's talking about what might have been in my back
8 seat, but I put her in the van and took her to the hospital.
9 It wasn't no intention to put her on a porno. I mean --

10 Q. Let's talk about your testimony yesterday.

11 A. Okay.

12 Q. When you claimed to find her and not have killed her,
13 you said that she was still alive, right? She was making
14 noises?

15 A. When I turned her over, I heard a "gurgle, gurgle,
16 gurgle" type noise.

17 Q. So that's why you decided to take her to the hospital,
18 right?

19 A. I was trying to save her life, yes, sir.

20 Q. Otherwise you wouldn't have taken her to the hospital?

21 A. If she would have been dead, I would have waited on the
22 ambulance. I mean, I was trying to save my wife's life.

23 Q. And so you are looking out for her health at this
24 point, right?

25 A. I found my wife stabbed. I rushed her to the hospital

1 trying to save her life.

2 Q. Right.

3 A. That's what happened.

4 Q. So wouldn't it have been better to put her in the front
5 seat of that van and buckle her in for safety? Wouldn't
6 that have been better if you were --

7 A. Excuse me --

8 Q. -- trying to save her life?

9 A. -- she was laid out on the floor in a puddle of blood.
10 I wanted to put her in the van fast and keep moving. It
11 wasn't like positioning her in the front seat and putting a
12 seat belt on. No, it was put her there and go.

13 Q. If you put her down, upside down, she was going to
14 bleed out more likely. If you would cared about her
15 well-being, as you testified, you would have put her in that
16 seat.

17 MR. PAULING: Objection to the term --

18 THE COURT: Sustain the objection.

19 Rephrase.

20 MR. LUKE SHEALEY: I'll move along, judge.

21 Judge, I would like to publish these pictures to
22 the jury.

23 THE COURT: They may be published.

24 BY MR. LUKE SHEALEY:

25 Q. You agree you threw her in that van and you took her to

1 the hospital?

2 A. I put her in my van and I sped to the hospital, yes,
3 sir.

4 Q. Now, you would agree that there was some towels and
5 things found in your washing machine at your house?

6 A. I didn't do laundry. I don't know what was in the
7 washing machine.

8 Q. Okay. Do you agree with that?

9 A. I agree with I don't know what was in my washing
10 machine.

11 Q. You sat through two trials, sir, here. You know what
12 was in your washing machine, do you not?

13 A. I do not.

14 MR. PAULING: Your Honor, he just answered the
15 question as to whether or not he knew what was in his
16 washing machine.

17 THE COURT: I'll sustain the objection.

18 BY MR. LUKE SHEALEY:

19 Q. You are aware that at your two trials it was presented
20 that two towels were found in your washing machine?

21 A. I don't recall anything about two towels in the washing
22 machine. I don't recall the washing machine having anything
23 to do with the case, no, sir.

24 Q. You weren't paying attention at your two trials?

25 A. I guess not.

1 Q. You are not aware that the police thought that the
2 person who did this was covering up?

3 A. It definitely was a cleanup.

4 Q. Okay. And when you got home at 3:30 and then you
5 didn't make the 911 call until five minutes later, that's
6 time for a cleanup, correct?

7 A. No, sir, I got home and called 911 immediately. It
8 wasn't no time for no cleanup, no, sir.

9 Q. You are aware that police did a search warrant on your
10 van, correct?

11 A. I consented to search everything.

12 Q. No, they did a search warrant on your van?

13 A. I guess so. I consented to search my van.

14 Q. Okay.

15 A. I didn't hold anything back.

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

17 (Off the record)

18 (Back on the record)

19 MR. LUKE SHEALEY: We will get back to that.

20 BY MR. LUKE SHEALEY:

21 Q. So they didn't do a search warrant on your van. You
22 consented?

23 A. I told them to search whatever they wanted. I would
24 sign off on anything. I had nothing to hide.

25 Q. They didn't do a search warrant on your washing

1 machine? Your testimony today under oath is that you
2 consented to that?

3 A. After I got out on bail I got my washing machine back
4 and it had a bunch of purple stuff that the police sprayed
5 on it. I remember that. So apparently the cops did test my
6 washing machine.

7 Q. The question is you got nothing to hide. You gave that
8 to them is what you are saying?

9 A. I held back nothing, sir, not a thing.

10 Q. Your position is you didn't -- they didn't get a court
11 order for that?

12 A. I'm not sure what steps they took, but I know I didn't
13 withhold or tell them they could not search anything. I
14 consented to everything.

15 Q. Okay. Let me show you something here. What does the
16 front of this paper say?

17 A. Search warrant.

18 Q. Read that line right there. What does that say?

19 A. "97 GMC Safari, white in color, displaying South
20 Carolina tag 2247KB. VIN Number" -- I got to read the VIN
21 number?

22 Q. No, I think that's plenty.

23 A. Okay.

24 Q. Now, read this right here. What does that say,
25 "signature of judge," do you agree?

1 A. "Signature of judge."

2 Q. Okay. This is a search warrant for your van. Do you
3 agree to that?

4 A. If that -- I mean, yeah. Yes, yes.

5 Q. You didn't consent to it. They asked a judge to let
6 them search it.

7 MR. PAULING: Objection, Your Honor.

8 May we approach?

9 THE COURT: Yes.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 BY MR. LUKE SHEALEY:

13 Q. All right. We got you in this van, wife in the back,
14 get to the hospital. We know that's at 3:42, right?

15 A. That picture said 3:42, yes, sir.

16 Q. Okay. Now, do you recall at trial where substantial
17 evidence was presented against you about your behavior
18 during those trials -- at the hospital?

19 A. Yeah, a couple witnesses got up saying I was using the
20 bitch word and stuff like that.

21 Q. One witness would be security guard Ivan Neddo,
22 correct?

23 A. Yeah.

24 Q. He is hospital security is what you learned at trial?

25 A. Yes, sir.

1 Q. What you learned through your discovery, correct?

2 A. Yes, sir.

3 Q. And when you came in the hospital, do you disagree that
4 you said "the bitch blood all over my TV and Play Station"?

5 A. Can I explain?

6 Q. I'm asking you if you agree with that?

7 A. I can't answer without explaining.

8 Q. Do you agree or do you not agree? It's just very
9 simple.

10 A. In my culture when something is terrible, totally
11 unfortunate, just -- if something go wrong, I'm liable to
12 say "ain't this a bitch. Ain't this a bitch. Ain't this a
13 mouther-fuckin' bitch." I got a bad mouth.

14 Those people aren't part of my culture. Neddo is like
15 a fifty year old white guy security guard. He don't listen
16 to rap music and shuck and jive with me.

17 When I said "ain't this a bitch," he heard that as
18 "this bitch," when that's not -- I mean, who would say that?
19 I mean, when I say "man, ain't this a bitch, man there's
20 blood everywhere," he took that as this bitch bled all over
21 my Play Station and all this. I'm talking to my family
22 members. Neddo is behind us listening and then he said I
23 said all this, when in actuality I was saying "ain't this a
24 bitch." I might have said that a hundred times because it
25 was horrible.

1 Q. And you are aware that he was a hospital security and
2 he's trained to observe people when they come in?

3 MR. PAULING: Objection, Your Honor. He can't
4 testify as to what his training was.

5 THE COURT: I sustain the objection.

6 BY MR. LUKE SHEALEY:

7 Q. You are aware that he was all over you when you came in
8 holding your wife's body, right?

9 A. I heard him standing behind me after they told me she
10 was dead, yes.

11 Q. But that was the testimony at trial. You are giving a
12 nice explanation now a few years later, but that was the
13 testimony at trial, "the bitch bled all over my TV and Play
14 Station," right?

15 A. That's what he said.

16 Q. And it was important at trial, because that's
17 inconsistent with true grief for someone that actually found
18 his wife in the way that you say?

19 MR. PAULING: Objection, Your Honor.

20 For one thing, he's already answered that
21 question, but, two, it's a mischaracterization of what he
22 stated earlier.

23 THE COURT: Rephrase the question.

24 BY MR. LUKE SHEALEY:

25 Q. Your lawyers told you this is a problem in your case?

1 A. My lawyers never told me what the security guard
2 thought he heard that night was a problem in my case, no,
3 sir.

4 Q. You are a human being, correct?

5 A. Yes, sir.

6 Q. You are a normal guy, correct?

7 A. Yes.

8 Q. Now, you cheat, but you are a normal guy, right?

9 A. I'm a regular every-day working man.

10 Q. So reading your discovery -- you did read that,
11 correct?

12 A. My discovery?

13 Q. All the information that you had produced from your
14 lawyers, the incident report, your statement?

15 A. Talking about this?

16 Q. Things, and numerous other things like that. Jerry
17 showed you that, right?

18 A. I can't recall exactly what I looked at.

19 Q. Okay. Are you aware that that statement is a problem
20 in your case, right? You are aware that's why they looked
21 at you so hard?

22 A. He heard wrong. I never said "that bitch," nothing. I
23 I said "ain't this a bitch. Ain't this whole situation a
24 bitch."

25 Now, they took that as I was talking about my wife, but

1 who would -- I mean, who would do that? That's crazy, you
2 know what I'm saying?

3 Q. Right.

4 A. So I was misheard. He didn't understand.

5 When I'm -- when I'm totally gone, I'm like "ain't this
6 a bitch." That's just how I have been since I was a little
7 boy, unfortunately. I mean, I got a foul mouth, but he
8 misheard me. That's all that was. It wasn't I was calling
9 my wife a bitch after they told me she was dead. Come on,
10 man.

11 Q. Exactly. And you put your hand on the Bible today to
12 swear the truth?

13 A. I will put my hand on the Bible again, if you want me
14 to. That did not happen.

15 Q. You told us today that you are only interested in the
16 truth?

17 A. Yes, sir.

18 Q. Yet you admit to being a liar, right?

19 A. I cheated on my wife that night, yes.

20 Q. You admit to taking steps to not get caught?

21 A. I didn't tell her where I was going, yes.

22 Q. You admit to breaking the law?

23 A. I had a drink before I got in the car.

24 Q. You admit to doing dirt?

25 A. Cheating on your wife was doing dirt, yes, sir.

1 Q. Okay. Now, saying that "the bitch bled all over my TV
2 and Play Station" was not the only guilty evidence at the
3 hospital, was it?

4 A. Guilty evidence?

5 Q. Uh-huh, evidence that police thought that you were
6 suspicious.

7 A. If a man brings his wife in bleeding and then some
8 security guard is like "well, I heard him say that bitch got
9 blood all over his TV," of course, you know what I mean,
10 he -- I mean, he misheard me, sir. I don't know about the
11 evidence. I mean, that wasn't damaging in my eyes.

12 Q. You are aware from sitting through these two trials
13 that you were observed removing something from your van and
14 giving it to someone else?

15 A. I have no idea what you are talking about.

16 Q. You are aware that that was evidence in your two
17 trials?

18 A. They said that. They got video footage all over the
19 hospital. They never showed anything of the sort.

20 Q. And Ivan Neddo, the security guard, thought it was
21 either a gun or a knife?

22 MR. PAULING: Objection, Your Honor. It calls for
23 speculation. Again, he can't testify to what Ivan Neddo may
24 have seen or heard, and it calls for hearsay as well, Your
25 Honor.

1 THE COURT: I sustain the objection.

2 BY MR. LUKE SHEALEY:

3 Q. You are aware and agree that you broke your cell phone
4 at the hospital?

5 A. That night I -- yeah, I was delirious. They just told
6 me my wife was dead. I didn't want no calls. I threw my
7 cell and it broke.

8 Q. Cell phones are good evidence that police often use to
9 investigate a crime, are they not?

10 A. Yes, sir.

11 Q. Now, back to your statement. Let's go to the last
12 page, page two.

13 The second line, you say that you went to the sliding
14 door and you saw your wife on the living room floor. Then
15 you go running in the front door. It was unlocked, right?
16 That's in your statement?

17 A. Yeah.

18 Q. But what was said and what was presented to you at
19 trial by Ivan Neddo was that you claimed that your front
20 door was locked and you had to go through your sliding door?

21 MR. PAULING: Objection, Your Honor. Again he's
22 asking him to testify as to what Ivan Neddo may have said at
23 trial. It's hearsay.

24 THE COURT: I'll sustain the objection.

25 BY MR. LUKE SHEALEY:

1 Q. Let's go down to the bottom of your statement, getting
2 back to your truthfulness, those last final questions about
3 what you told Ricki. "Did Ricki know about the Nakia?

4 "No, I told Ricki I had a baby's momma in Texas."

5 You admit that's a lie?

6 A. Yes, sir.

7 Q. That's a lie to Ricki?

8 A. Yes, sir.

9 Q. Before you had been lying to Nakia, correct?

10 A. I didn't let my wife know, nor Ricki Cook know, that I
11 was talking to either one of them. I didn't tell either one
12 of them.

13 Q. They asked you "did you and Nakia have an argument
14 today?

15 "No. Everything was great."

16 Right? That's what you say in your statement?

17 A. Yeah, we ate chinese food. We drank and laughed. We
18 took naps on the couch. Everything was great that day, man.

19 Q. Everything was great for you?

20 A. Yeah.

21 Q. Your wife sat home with your kids, right?

22 A. She stayed at home with the kids, yes, sir.

23 Q. You went out and you got you some on Mother's Day,
24 right?

25 A. The day before Mother's Day.

1 Q. And the getting of the some was actually around three
2 o'clock, or so, or four. That was Mother's Day, right?

3 A. Yes, sir.

4 Q. Okay. Everything was great for you, but that's not
5 great for Nakia, is it?

6 A. No, sir, Josh Porch killed her.

7 Q. Okay. But when you are out there cheating and you are
8 having a great time and trying to go to strip clubs, that's
9 why fights happen when you come home, because everything is
10 not great for Nakia, right?

11 MR. PAULING: Objection, Your Honor. Asked and
12 answered. He's already testified that there was no fight
13 and how he found his wife when he got home.

14 THE COURT: Overruled. You may answer the
15 question.

16 BY MR. LUKE SHEALEY:

17 Q. That's how fights happen, right?

18 A. I don't know about another situation, but my wife was
19 stabbed and in a puddle of blood when I got home. There was
20 no fight. There was nothing of the sort. It was me
21 rushing -- calling 911, checking on my kids, taking her to
22 the hospital. That's what happened. No fight. No domestic
23 nothing. Nothing of the sort.

24 Q. Sherry Tribble is a liar, right?

25 A. Sherry Tribble heard that man.

1 MR. PAULING: Objection, Your Honor, again.

2 THE COURT: I sustain the objection.

3 BY MR. LUKE SHEALEY:

4 Q. All of the investigators of Richland County got it
5 wrong?

6 A. Just listen to your own facts. You said I didn't get
7 home until 3:30. I was at the hospital at 3:42. I mean,
8 how could I have done this?

9 Q. Sir, I'm asking you a question.

10 A. Yes, sir.

11 Q. Your opinion is --

12 A. It's all wrong.

13 Q. Your opinion is that Richland County got it wrong?

14 A. Yes.

15 Q. Stan Smith, a major with thirty years experience, got
16 it wrong?

17 A. They jumped the gun on this one. They arrested me
18 within five hours before investigating anything.

19 If they would have investigated, he would have went
20 rightfully to jail, I would have been able to go to my
21 wife's funeral. None of this would have happened. But
22 since I was arrested five hours after taking my wife to the
23 hospital, everybody was wrong that day, yes, sir.

24 Q. Including Investigator Holdorf?

25 A. Holdorf, yes.

1 Q. Sergeant Strange was wrong?

2 A. If they were saying I killed my wife, they were wrong.

3 Q. Investigator Rownd was wrong?

4 A. I'm not really familiar with the individual officers
5 that were wrong, but anybody going and saying I killed my
6 wife was wrong in this particular matter, yes, sir.

7 Q. Do you remember Deputy Solicitor John Meadors who
8 prosecuted you twice?

9 A. Yes, sir.

10 Q. He was wrong?

11 A. John Meadors was prosecuting the wrong guy.

12 Q. Everybody was wrong and you are only here to tell the
13 truth?

14 A. I didn't kill my wife.

15 Q. Okay. But you are an admitted liar.

16 A. (No response).

17 Q. You are admitted liar, yes or no?

18 A. I cheated on my wife. I had a drink. I did not kill
19 my wife.

20 Q. You admit to knowing how to take steps to not get
21 caught?

22 A. Actually I think you put those words in my mouth. I
23 said I went to the other side because, you know, I didn't
24 want to stay on my side of town. I mean, that's what I
25 said.

1 Q. You admit to breaking the law?

2 A. Breaking the law in what way?

3 Q. Drinking and driving.

4 A. I had a drink before I drove around, yes.

5 Q. And you are out doing dirt?

6 A. I -- I regret it. I mean, you know, I was young and
7 stupid.

8 (Off the record)

9 (Back on the record)

10 MR. LUKE SHEALEY: I don't have anything further
11 from this witness at this moment, judge.

12 THE COURT: Any redirect?

13 MR. PAULING: Yes, sir, Your Honor, briefly.

14 REDIRECT EXAMINATION BY MR. PAULING:

15 Q. Mr. Mallory, defense counsel asked you, sir, why you
16 didn't testify. Did you have the burden of proof in that
17 case? Did you have to prove your innocence?

18 A. No, it's the -- the prosecutor had to prove my guilt
19 beyond a reasonable doubt.

20 Q. Okay. And so you didn't testify?

21 A. No, sir, I didn't testify.

22 Q. But you didn't have to testify, did you?

23 MR. LUKE SHEALEY: Objection to leading.

24 A. I didn't testify.

25 THE COURT: Rephrase.

1 BY MR. PAULING:

2 Q. Did you have to testify?

3 A. I didn't have to, no, sir.

4 Q. Defense counsel asked you what you had to gain in this.
5 What do you have to gain?

6 A. The man who tried to take not only -- he did take my
7 wife, but he tried to make my kids orphans. He pointed the
8 finger at me at two trials. I mean, I want him off the
9 streets forever. I mean, this guy is a cold-blooded killer,
10 man. He tried to make my kids orphans. I mean, take their
11 momma and their daddy and he's going to play with the legal
12 system like this being their star witness? No, sir, this is
13 the worst thing I ever heard.

14 Q. Now, a lot of this cross-examination, like this thirty,
15 forty minutes, was about cheating?

16 A. That's all he talked about. He didn't say one piece of
17 evidence that led to say I was the killer.

18 Q. As it relates to Ricki Cook, did you tell the truth
19 about cheating?

20 A. To Ricki Cook?

21 Q. Did you tell the truth to this jury about what you did?

22 A. The moment I found my wife I came clean about
23 everything. I told the cops I was cheating. I told the
24 cops where we went. I told everybody -- as soon as this got
25 real and I found my wife, I spilled my guts. I gave them

1 samples of my DNA. I did anything that I could possibly do
2 to assist, I did that.

3 Q. Okay. So while you have been questioned about being a
4 liar, you told the truth about lying to your wife?

5 MR. LUKE SHEALEY: Objection to leading, judge.

6 THE COURT: Rephrase.

7 A. I -- I told the cops I was cheating.

8 BY MR. PAULING:

9 Q. Now, when you got home and you found your wife, what
10 was going through your mind?

11 A. I mean, it was -- this wasn't -- I mean, I was
12 delirious, man. I just couldn't believe -- I ain't even got
13 the words for it. I couldn't tell you, man. It just -- I
14 mean, I couldn't believe what I was seeing. It was the
15 craziest thing, man. Like I said, there was blood
16 everywhere, man. I was just panicked and trying to get her
17 help, man.

18 Q. Well, in trying to get her help, what was going through
19 your mind when you were making these preparations to take
20 her to the hospital?

21 A. I needed to get somebody to get my kids. I needed to
22 take my wife to the hospital as fast as I could.

23 Q. Why didn't you just wait for the ambulance where they
24 could just strap her in properly?

25 A. When I turned her over I heard a "gurgle, gurgle,

1 gurgles." I thought she was still trying to breath. I
2 didn't -- I was trying to help her, man. I did whatever I
3 thought would be the fastest way to get her to the hospital.
4 I figured I could get her there before the ambulance would
5 have showed up.

6 Q. So when you placed her in that van --

7 What was going through your mind when you placed her in
8 the van? Were you looking to make space? What did you do?
9 What was going through your mind?

10 A. As soon as my neighbor Shaheed Hargraves came in, he
11 got my babies for me and put little sheets over their head.
12 And at that time I shot out the front door, man, and I had
13 my van parked way down. I pulled it right in front of the
14 breezeway. I threw out some stuff, man, to make some space
15 to put her down and I just -- I mean, as fast as I could --
16 I knew if I was carrying her and I went out there, I
17 couldn't have did all that, so I just -- I moved that staff,
18 moved my van up, grabbed her and threw her in the van and we
19 booked it to the hospital, man.

20 Q. Well, did you take an inventory of everything that was
21 in your van?

22 A. An inventory?

23 Q. Yeah, did you check everything that was in your van?

24 A. I -- I don't care what was in my van.

25 Q. Why not?

1 A. It wasn't important at the time.

2 Q. Why wasn't it important?

3 A. What was in my van wasn't saving my wife, so I didn't
4 even check twice for that.

5 Q. And once you got to the hospital, what was running
6 through your mind as you are taking your wife into that
7 hospital?

8 A. Ain't this a bitch. What's going on. Oh my God. I
9 mean, I didn't know what to think, man. I mean, who did it.
10 I mean, you know, just guilt from being out cheating while
11 it was done. Man, I had a million things going through my
12 mind.

13 Q. Now, when law enforcement came to talk to you, did you
14 tell them the truth about your cheating?

15 A. As soon as law enforcement got there I took them to
16 where I dropped the lady I was cheating with, I took them to
17 Ricki's sister's house. We didn't even go to the
18 department. We went straight to her. That's the first
19 thing I told them I was out with Ricki Cook that night. I
20 mean, there wasn't no hiding anything. I straight laid it
21 out there.

22 Q. Did you tell law enforcement the truth about lying to
23 your wife about where you had been going?

24 A. I don't even believe law enforcement asked me what my
25 wife had asked me, you know what I'm saying, if I told my

1 wife I was cheating, I don't remember that.

2 Q. Okay. But as far as where you were going to be that
3 day, did you tell the truth to law enforcement about that?

4 A. Yeah, I told the whole truth. You know, I laid it all
5 out there.

6 Q. Now, did you consent to a search of your home?

7 A. I gave everything, man. I didn't hide a thing. I said
8 search it, man. Find out who did this. I gave consent to
9 do. I didn't deny consent of anything.

10 Q. If law enforcement had come to you about searching your
11 van, would you have given them consent to search the van?

12 A. Even after --

13 MR. LUKE SHEALEY: Objection.

14 A. Even after I was arrested I would have given consent.

15 THE COURT: Hold it.

16 A. I'm sorry.

17 MR. LUKE SHEALEY: Calls for speculation.

18 THE COURT: Repeat the question.

19 MR. PAULING: I asked him if law enforcement had
20 come to him about searching his van, would he have allowed
21 them to search the van. Would he have given them consent.

22 THE COURT: I'll overrule the objection.

23 BY MR. PAULING:

24 Q. If law enforcement had come to you, Mr. Mallory, and
25 said they wanted to search your van, would you have

1 allowed -- would you have given them consent to search the
2 van?

3 A. Yes, sir. I had nothing to hide.

4 Q. And, in fact, in talking with law enforcement, did you
5 tell them the route that you had taken to get home?

6 A. Yes, sir.

7 Q. And this is after dropping Ricki Cook off?

8 A. Yes, sir.

9 Q. And did you travel that route with them?

10 A. Did I travel the route with them?

11 Q. The route from dropping Ricki Cook off to going home,
12 what route did you take?

13 A. I took I-20 to Two Notch, Two Notch to Alpine.

14 Q. And you took Two Notch Road?

15 A. Yes, sir.

16 Q. You didn't take 20 -- did you take 20 to Alpine?

17 A. No, sir.

18 Q. Now, did you go with law enforcement? Did you
19 altogether ride that route that you went home?

20 A. No, sir.

21 Q. But did you tell them of the way that you took?

22 A. Yeah, I told them every aspect. I mean, every detail
23 in there.

24 Q. Can you tell this jury, Mr. Mallory, the last time that
25 you saw your wife alive?

1 A. The last time I saw my wife, her and her friend Donna
2 was on the back porch. We had the music playing.

3 The last thing I said to them is "I'll see y'all later,
4 my beautiful ladies." I kissed them both on the cheek.
5 Donna was cool, you know. I just -- "all right, y'all,
6 bye," I left man. That's the last time I seen my wife, man.

7 Q. Just to clarify, Mr. Mallory. When was the last time
8 that you saw your wife without injury, with no injuries to
9 her?

10 A. Before I left the house. I mean, the last time I seen
11 her.

12 Q. Now, again, there was some questions about you breaking
13 your cell phone. Why did you break your cell phone?

14 A. I was emotionally just distraught, man. I was just --
15 I had a million things going through my head. I mean,
16 somebody calling me just -- I mean, just hell with it, it
17 wasn't -- it wasn't -- I wasn't trying to hide nothing. I
18 just -- frustration, man.

19 Q. I mean, were you trying to elude discovery by law
20 enforcement?

21 A. No, sir.

22 Q. And that same cell phone that you broke, is that the
23 phone that you used to call 911?

24 A. Yeah.

25 Q. Is that the phone that you used to call other friends

1 and family members?

2 A. That's my only phone.

3 Q. That's the phone that you used to call Ricki Cook?

4 A. That's my only phone. I used that phone to call
5 everybody.

6 Q. And that's the phone that you used to call your
7 apartments that you were going home that evening?

8 A. Yes, sir.

9 Q. And although you broke your phone, there are cell phone
10 records to that effect?

11 MR. LUKE SHEALEY: Objection to the leading.

12 A. Of course.

13 THE COURT: You need to watch the leading.

14 MR. PAULING: Yes, Your Honor.

15 BY MR. PAULING:

16 Q. Are there cell phone records?

17 A. Yes, sir.

18 Q. Have you told the truth today, Mr. Mallory?

19 A. I have been telling the truth this whole time. Ever
20 since I found my wife and I was questioned the first time, I
21 have told the absolute truth the whole entire time.

22 Q. Have you told the truth about what you did that
23 Saturday before Mother's Day, 2006?

24 A. Yes, sir.

25 Q. Have you told the truth about lying to your wife about

1 Ricki Cook?

2 A. I lied to my wife about cheating, yes, sir.

3 Q. You told the truth to law enforcement about what
4 happened that day?

5 A. I told them every detail I could.

6 Q. And you told the truth to this jury?

7 MR. LUKE SHEALEY: Objection to the leading.

8 Sustained as leading.

9 THE COURT: Rephrase.

10 BY MR. PAULING:

11 Q. Is what you told this jury the truth?

12 A. Yes, it's the whole truth. I did not kill my wife, no
13 way.

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

15 MR. LUKE SHEALEY: I don't have any further
16 questions for this witness.

17 THE COURT: You may step down.

18 Ladies and gentlemen, this time is a good time to
19 take a morning break. I'm going to remind you the
20 instructions I have given to you not to begin to discuss
21 this matter among yourselves, because you still have not
22 heard all the evidence as to be presented.

23 Let's take a break and then we will come back.

24 THE BAILIFF: Everyone else remain seated.

25 (The following takes place outside the presence of

1 THE WITNESS: J-A-C-Q-U-E-L-Y-N.

2 THE COURT: Thank you.

3 Yes, sir.

4 MR. GOINGS: Thank you, Your Honor.

5 If it please the court.

6 DIRECT EXAMINATION BY MR. GOINGS:

7 Q. Ms. Richburg, could you please tell the jury where you
8 are employed?

9 A. Columbia Richland 911 communication center.

10 Q. How long have you been employed with them?

11 A. Thirty-one years.

12 Q. And what is your job duties with the 911 operation
13 center?

14 A. I'm the deputy director and I'm responsible -- one of
15 my duties is responsibility of pulling the recordings.

16 Q. The 911 recordings?

17 A. Yes.

18 Q. And if you could briefly describe to the jury how the
19 911 system works?

20 A. All of the phone calls and the radio traffic is
21 recorded. As soon as the call takers answers the phone, the
22 information is recorded and stored on our main data system.

23 Q. And y'all do this for every 911 call that comes into
24 your center?

25 A. Yes.

1 Q. And what happens to those recordings once they are
2 recorded when the 911 call is made?

3 A. They will remain on the recording until we get a
4 request from either emergency responders, citizen.

5 Q. And the recordings are actually kept on y'all's hard
6 drive until they are requested, correct?

7 A. Yes.

8 Q. Are they maintained in the ordinary course of y'all's
9 business, of y'all's day-to-day business?

10 A. Yes.

11 Q. I mean, that's y'all's job is not only to answer the
12 911 call, but also record it?

13 A. Yes.

14 Q. And while these recordings are being made, what does
15 the 911 operator, the one that is actually talking to the
16 individual, what is their duty?

17 A. Their duties is to capture as much of the information
18 as recorded that the caller is calling in. They don't put
19 everything that they say, but they type the most important
20 parts of the conversation into the closed incident report.

21 Q. And describe what this closed incident report that you
22 just referred to is. What is that?

23 A. It's actually a printout of the call. It tells us what
24 time the call was entered, what time the caller called, the
25 phone number, the name, and what time we dispatched the

1 call, what time the officers were en route, what time they
2 arrived.

3 Q. And how do y'all log this into your system? Is each
4 case assigned a different number?

5 A. Yes.

6 Q. So if you had a number, you could pull up the closed
7 incident report and any recordings that came in on that
8 particular incident, is that right?

9 A. Yes.

10 Q. Did there ever come a time where law enforcement
11 requested 911 telephone calls regarding an incident that
12 occurred on May 14th, 2006?

13 A. Yes.

14 Q. And when the officer makes a request, what happens?

15 A. When they make the request, they will ask for the
16 closed incident report and the recording, the phone calls,
17 recordings, as well as the radio traffic.

18 Q. All right. And where -- you said that -- you testified
19 that when the recordings are -- when the phone calls are
20 recorded, they are on those hard drives. Where do y'all put
21 them for the officers once it's requested?

22 A. We will e-mail them and let them know that the
23 recording is ready. We keep them in the director's office
24 and when they are ready, they will be -- the officer or
25 investigator will come to our office and sign off and pick

1 them up.

2 Q. All right. Would it be a -- you put them on a disk or
3 something?

4 A. Yes, we do.

5 Q. Okay. Now, are you familiar -- let me show you this
6 what's been marked State's Exhibit 5.

7 Have you had a chance to review the contents of what's
8 recorded on State's Exhibit 5?

9 A. Yes.

10 Q. All right. And what is on State's Exhibit 5, based on
11 your review?

12 A. I believe it's a couple of phone calls. Also it's the
13 radio traffic from the incidence.

14 Q. So this is everything that -- I mean, what's this a CD
15 of? I mean, is this what y'all keep in y'all's office?

16 A. Yes, it is.

17 Q. These are the records that y'all have?

18 A. Yes.

19 Q. That y'all keep on a day-to-day basis?

20 A. Yes.

21 Q. And these include -- that disk includes the 911 calls,
22 you said?

23 A. Yes.

24 Q. And have you had a chance to listen to those 911 calls
25 that are provided on that CD?

1 A. Yes.

2 Q. And have you had a chance to compare them to the closed
3 incident report that was done?

4 A. Yes.

5 Q. And what does that disk contain specifically, based on
6 your review of that disk and compared to the closed incident
7 report?

8 A. It reviewed that at least three or four calls. We had
9 a call from a neighbor, a female that called in. We had
10 another call from a male that called in. One from the
11 hospital probably is one of these. And one from the
12 security that probably is one of these. Also radio traffic
13 from the units.

14 Q. Okay.

15 MR. GOINGS: I'm going to --

16 (Closed Incident Report marked as State's
17 Exhibit No. 6 for identification)

18 BY MR. GOINGS:

19 Q. I'm going to show you what's been marked as State's
20 Exhibit 6, Ms. Richburg. Do you recognize that document?

21 A. Yes.

22 Q. What is that document?

23 A. It is a closed incident report.

24 Q. And what is it a closed incident report of?

25 A. Of an emergency situation.

1 Q. And what date did it occur on?

2 A. On May the 14th.

3 Q. And at approximately what time?

4 A. At 3:37.

5 Q. So this is the -- and have you had a chance to review
6 that document before your testimony here today?

7 A. Yes, I did.

8 Q. Does that document correspond with the disk that you
9 just testified about?

10 A. Yes.

11 Q. Okay. Does that disk that you testified about that you
12 said was kept in the ordinary course of business, does it
13 contain the phone calls that are listed on that closed
14 incident report?

15 A. Yes.

16 Q. And, in fact, that incident report details two phone
17 calls, correct?

18 A. I'm showing one phone call on this one.

19 Q. Okay. You have a phone call --

20 If you could review the top two lines and then I
21 believe the fourth line. What's it say on the fourth line?

22 A. Complainant disconnected, attempted callback.

23 Q. So you have your first phone call and this closed
24 incident report referred to, it's disconnected.

25 And does that incident report seem to suggest that that

1 caller was -- that 911 was able to make contact with that
2 caller again?

3 MR. AIKEN: Objection, leading.

4 THE COURT: Rephrase.

5 BY MR. GOINGS:

6 Q. What -- after the phone is disconnected, what else did
7 that closed incident report say?

8 A. The -- once the phone disconnected, the dispatcher or
9 call taker attempted to call back.

10 Q. Were they successful in that attempt?

11 A. No, they didn't get an answer.

12 Q. Eventually were they successful in that attempt to
13 reestablish contact?

14 A. Yes.

15 Q. Okay. And that's shown on that closed incident report?

16 A. It's not shown on this one, but on the recording, when
17 I reviewed the recording, you could hear the dispatcher
18 making contact.

19 Q. Okay. And that report that you are referring to,
20 that's State's Exhibit 5?

21 A. Yes.

22 MR. GOINGS: Your Honor, at this time I would like
23 to introduce State's Exhibit 6, the closed incident report,
24 into evidence?

25 THE COURT: Any objection?

1 MR. AIKEN: Without objection, Your Honor.

2 THE COURT: It's admitted.

3 (Whereupon, State's Exhibit No. 6 was entered into
4 the record as evidence)

5 (DVD marked as State's Exhibit No. 7 for
6 identification)

7 BY MR. GOINGS:

8 Q. I'm going to show you what has been marked State's
9 Exhibit 7. Prior to your testimony here today did you have
10 a chance to review that item?

11 A. Yes.

12 Q. And what does that item contain?

13 A. It contains some phone calls.

14 Q. Okay. Did it contain the same or some of the same
15 phone calls that State's Exhibit ID 5?

16 A. Yes, it is.

17 Q. Okay. And specifically does it contain the two phone
18 calls that you testified about on the closed incident report
19 where the original call comes in and then reconnection is
20 later established?

21 A. Yes.

22 Q. All right. And have you reviewed that disk and
23 everything on it?

24 A. Yes, I did.

25 Q. Okay. And is that a -- what's contained on both -- or

1 State's Exhibit 6, is that an accurate reflection of the
2 recordings that 911 took on May 14th, 2006?

3 A. Yes.

4 Q. Okay.

5 MR. GOINGS: Your Honor, at this time I would like
6 to introduce State's Exhibit 7 into the record.

7 THE COURT: Any objection?

8 MR. AIKEN: I thought he was referring to
9 Exhibit 6.

10 Is that Exhibit 7 you got there?

11 MR. GOINGS: Yes.

12 MR. AIKEN: Okay, without objection No. 7.

13 THE COURT: It's admitted.

14 (Whereupon, State's Exhibit No. 7 was entered into
15 the record as evidence)

16 MR. GOINGS: Your Honor, at this time I would like
17 to publish State's Exhibit 7 to the jury.

18 THE COURT: Yes, sir.

19 (Whereupon, State's Exhibit No. 7 was played to
20 the jury panel.

21 BY MR. GOINGS:

22 Q. Ms. Richburg, is that the first phone call that's
23 listed on your CIP report?

24 A. Yes.

25 Q. And that's the disconnection that you referred to

1 earlier?

2 A. Yes..

3 (Whereupon State's Exhibit No. 7 was played to the
4 jury panel)

5 BY MR. GOINGS:

6 Q. And that's the second phone you testified where the
7 connection was established, is that correct?

8 A. Yes.

9 MR. GOINGS: And, Your Honor, I know we had some
10 audio difficulties at the first phone call. I wonder if it
11 would be okay to publish that again?

12 THE COURT: Yes, sir.

13 MR. GOINGS: Thank you, Your Honor.

14 (Whereupon, State's Exhibit No. 7 was replayed to
15 the jury panel)

16 MR. GOINGS: That's all the questions that I have
17 of this witness, Your Honor.

18 THE COURT: Any cross?

19 MR. AIKEN: Just very briefly, Your Honor.

20 CROSS EXAMINATION BY MR. AIKEN:

21 Q. Hey, Ms. Richburg.

22 A. Hello.

23 Q. I'm Art Aiken. I'm one of Mr. Porch's lawyers and I
24 just have a couple of questions about this closed incident
25 report.

- 1 The time on this report looks like it says, and correct
2 if I'm wrong, the call came in 3:37:32, is that right?
- 3 A. Yes.
- 4 Q. Now, is that time recorded automatically?
- 5 A. Yes.
- 6 Q. As soon as the call is connected there is some device
7 that automatically records that time?
- 8 A. Yes.
- 9 Q. Okay. What device is that?
- 10 A. It's our recording data machine. It's a video print --
- 11 Q. I see.
- 12 A. -- recording.
- 13 Q. And y'all make sure that's correct, don't you?
- 14 A. Yes.
- 15 Q. Because it's important to know when these calls come in
16 exactly?
- 17 A. Yes.
- 18 Q. And down to the second here, right?
- 19 A. Yes.
- 20 Q. Because this records down to thirty-two seconds, right?
- 21 A. Yes.
- 22 Q. So, one, it's very important for you to record it
23 correctly; and, two, you have an automatic machine that does
24 it for you, right?
- 25 A. Yes.

1 Q. And y'all make sure that's right?

2 A. Yes.

3 Q. Okay. And you have no evidence that that machine
4 wasn't functioning correctly on the morning of May the 14th
5 of 2006, do you?

6 A. No.

7 Q. You have every confidence that that's the time that
8 that call actually came in, right?

9 A. Yes.

10 Q. Thank you. I appreciate it, Ms. Richburg.

11 A. You are welcome.

12 MR. GOINGS: Just one followup, Your Honor.

13 REDIRECT EXAMINATION BY MR. GOINGS:

14 Q. Ms. Richburg, the fact that your time says 3:37, that
15 doesn't mean that phone records from individuals who were
16 calling you couldn't say something different, is that
17 correct?

18 A. Yes.

19 Q. All right. So even though it says 3:37 on your record,
20 it could be a different time based on the records who are
21 actually calling, is that correct?

22 A. Yes.

23 MR. GOINGS: No further questions.

24 RECROSS EXAMINATION BY MR. AIKEN:

25 Q. So, Ms. Richburg, y'all have confidence in y'all's

1 system, right?

2 A. Yes, we do.

3 Q. And it's very important with this particular case to
4 know exactly when that call came in, right?

5 A. Yes.

6 Q. And y'all make sure it's right, don't you?

7 A. Yes.

8 MR. AIKEN: Thank you.

9 THE COURT: You may step down.

10 You may call your next witness.

11 MR. UNDERWOOD: Your Honor, the State calls Robert
12 Oates.

13 THE COURT: And if you would please retrieve the
14 exhibit?

15 MR. GOINGS: I got the disk right here.

16 INVESTIGATOR ROBERT OATES, having been first duly
17 sworn, testified as follows:

18 THE CLERK: Have a seat on the witness stand,
19 please.

20 State your name for the record.

21 THE WITNESS: Robert Oates, O-A-T-E-S.

22 DIRECT EXAMINATION BY MR. UNDERWOOD:

23 Q. Good morning, Investigator Oates.

24 A. Good morning.

25 Q. Please introduce yourself to the jury. Tell them a

1 little bit about your background and your training and
2 experience in law enforcement.

3 A. Great. Good morning. Again, my name is Robert Oates.

4 I will start with education. I have an Associate
5 Degree in Criminal Justice from Florence-Darlington
6 Technical College.

7 I also have a Bachelor's Degree in Criminal Justice
8 from the University of South Carolina.

9 Job experience or career experience, I have been a law
10 enforcement officer in this state for seventeen years. Nine
11 years out of the seventeen I have been a crime scene
12 investigator with the Richland County Sheriff's Department
13 Crime Scene Latent Print Division.

14 Some background or training. I have had training in
15 fundamentals of crime scene investigation and evidence
16 collection, fingerprint identification, fingerprint
17 development, forensic photography, and forensic
18 photography, blood pattern analysis, and also crime scene
19 reconstruction.

20 Q. What are your job duties as a crime scene investigator?

21 A. My job duties are to respond to any crime scene in
22 Richland County. Once on the scene, identify, document,
23 collect evidence involved in a crime.

24 Q. And in a typical case how do you go about carrying out
25 those duties from the time that you arrive on the crime

1 scene? What's the general procedure?

2 A. The general procedure is basically I make contact with
3 the line deputies who basically has the scene secured, crime
4 scene tape and a crime scene log. I make sure that things
5 are okay with that, make sure things are straight, as far as
6 documentation goes, who has been at the scene prior to me.

7 I then enter the scene and assess the scene what I
8 have. Once I have assessed the scene, what kind of
9 resources I'm going to need to use, as far as when I return
10 to actually process and document the scene. That's what I
11 do.

12 And then I'll return with my camera, photograph the
13 scene as is, and then go further with other -- using other
14 tools, as far as processing the crime scene.

15 Q. Do you always report to a crime scene by yourself?

16 A. It is possible, yes.

17 Q. Okay. Are there other times where multiple crime scene
18 investigators are there at the same time?

19 A. Yes. Yes, you have -- it can. It just depends on the
20 crime scene, the size of it. There will be the initial
21 responding CSI, which should be me, and then a supervisor
22 who is on call.

23 Q. Now, the case at hand involving the murder of Nakia
24 Mallory, how did you become involved with that call?

25 A. Okay. That particular morning I was on call day shift.

1 the actual safeguard or evidence tape, this procedure.

2 Q. Is that the safeguard to show that the evidence isn't
3 tampered with?

4 A. It, is, yes.

5 Q. Now, you said that you put those items into evidence.
6 Where is that at the sheriff's department?

7 A. It's downstairs. We have an evidence room downstairs.

8 Q. And is that a secured facility?

9 A. It is.

10 Q. Can you describe those security measures for the
11 evidence area?

12 A. Okay. Within our evidence area where evidence
13 custodians receive evidence there is -- it's secured by the
14 keys that only the evidence custodian has custody of. And
15 also there is an alarm system that they activate. It's
16 activated within the evidence room for extra security.

17 Q. And how many people have access to that evidence room?

18 A. Just the evidence techs, custodians, to my knowledge.
19 We do not have access to that. Only the personnel who work
20 there have the actual keys.

21 Q. So you don't even have access to it?

22 A. No, I don't, no, sir.

23 Q. So you would have turned it over to evidence tech?

24 A. Yes, sir.

25 Q. And do you recall who you turned that evidence over to?

1 A. It was Will Cedarstaff.

2 Q. And, again, which items is that that we are referring
3 to at this time?

4 A. We are referring to the nail scrapings, postmortem
5 prints, the strands of hair from the right hand and the left
6 hand, the head hair and the pubic hair samples.

7 Q. Now, you mentioned that you also collected some
8 clothes?

9 A. Yes.

10 Q. What did you do with those clothes after you left the
11 autopsy?

12 A. Okay. Again, the clothes were transported in my
13 vehicle back to the forensic garage. I then placed those
14 clothing within a drying cabinet within the forensic garage.

15 Q. Describe the forensic garage. What is that?

16 A. It's a building, basically, we use to process vehicles
17 out of the weather. We also have our drying cabinets, our
18 supplies, so it's kind of a multi-function type of a
19 building. If we need to do any kind of processing on
20 vehicles or other objects, items, and that would be a lot
21 bigger than we could place into our crime lab itself
22 facility, we can use our crime garage, forensic garage.

23 Q. And where is this garage located?

24 A. It's right out in the back parking lot area is where
25 our --

1 Q. At the sheriff's department?

2 A. Yeah, at the sheriff's department, yes.

3 Q. What security measures are in place for the forensic
4 garage?

5 A. Each CSI and supervisor has a key to this facility.
6 The only -- and that's -- the only -- we are the only ones
7 who have that, us and the supervisor. No other -- no other
8 person in the sheriff's department has that key.

9 Q. And you mentioned drying cabinets. What are those?

10 A. It's a -- it's a cabinet. It uses hepi-filters,
11 basically, and it basically dries any object that's wet
12 using those filters and it's self-contained.

13 Q. And what measures do you take when you are putting
14 items into the drying cabinets and why do you do that?

15 A. Well, we will -- also we have a drying cabinet log that
16 is filled out. It's basically our name, the date we put the
17 items in and case numbers, case number of the case, and
18 then -- that's the procedure that we use there.

19 We didn't have three cabinets at the time. We do now.
20 I think we only had one.

21 That is the procedure that we use to document the items
22 that we place inside this cabinet.

23 Q. And this sounds obvious, but why do you put items in
24 the drying cabinet?

25 A. Well, to prevent molding, basically. You don't want

1 your garments to mold, as far as blood or any other type of
2 liquid on the garment that could damage evidence.

3 Q. And what was the condition of the clothes when you took
4 possession of them?

5 A. They were saturated with blood.

6 Q. Were they wet with blood?

7 A. They were wet with blood.

8 Q. That's why you put them in the drying cabinet?

9 A. Yes.

10 Q. After they were placed into the drying cabinets, were
11 they secure?

12 A. They were, yes, secured.

13 Q. How were they secured?

14 A. They were secured. The cabinet itself has locks on its
15 doors. And also, like I say, with the keys situation with
16 our forensic garage.

17 Q. When did you remove those items from the drying
18 cabinet?

19 A. I removed those items from the drying cabinet I believe
20 the 28th of June.

21 Q. And what did you do with them at that time?

22 A. They were then -- well, I'm sorry, let me back up with
23 that.

24 I did not place them into evidence that day. I took
25 them out of the drying cabinet and I placed them in my

1 locker within our crime lab area.

2 Q. Okay. Describe that locker and its security measures.

3 A. Okay. Well, there is a key code access into our main
4 laboratory for crime scene latent prints. Our DNA lab,
5 chemistry lab, and our ballistics lab is in the same area.
6 So there is a key code lock system and only CSI's, firearms,
7 chemistry lab personnel have access to this area.

8 Within that we have -- each CSI has their own metal
9 locker that has its own master lock attached to a hasp.
10 Each CSI has a different master lock assigned to them. The
11 only other person that has a key to those lockers is a
12 supervisor, which is locked up in their office.

13 Q. And you said that you removed the items from the drying
14 cabinet. When was that that were actually removed from the
15 drying cabinet?

16 A. I believe it was the 28th of June, I believe.

17 Q. And you placed this evidence into your locker in the
18 lab?

19 A. Right.

20 Q. And that's on June 28th?

21 A. I believe that's correct, yes.

22 Q. Okay. After you placed the clothing into your locker
23 in the lab, what did you do with -- or how long were they
24 there?

25 A. Okay. I apologize. I have made a mistake. I don't

1 have when I placed them -- took them out of the actual
2 drying cabinet and placed them into my locker.

3 Q. So you --

4 A. What I'm -- what I'm stating is when I placed them into
5 evidence, which was June 28th.

6 Q. Okay.

7 A. That's where I got --

8 Q. Go ahead and explain what you did with that evidence
9 after you put it in the drying cabinet.

10 A. Okay. After I put it in the drying cabinet, basically
11 twenty-four hours is the time that evidence basically stays
12 in the drying cabinet, a total of twenty-four hours.

13 Twenty-four hours the better to where the fluids can and the
14 blood can dry, okay, substantially. Then after twenty-four
15 hours the clothes are taken out of the cabinet and placed
16 into evidence lockers, which is my evidence locker within
17 twenty-four hours.

18 Q. So within twenty-four hours you put the clothes in the
19 drying cabinet and then into your personal locker?

20 A. Yes, within the lab.

21 Q. And how long did it stay in your personal evidence
22 locker?

23 A. Until June 28th, and then that's when I dropped it into
24 evidence.

25 Q. And when you dropped it into evidence, you are

1 referring to the main evidence room downstairs?

2 A. Yes.

3 Q. And do you recall who you submitted those items to?

4 A. I think it was Will Cedarstaff. No, I'm sorry, Tena
5 Goff. Tena Goff.

6 Q. Is she another evidence technician?

7 A. She is, yes. She is the head technician.

8 Q. Now, were there any other issues with the case numbers
9 on any of those numbers?

10 A. Yes, there was.

11 Q. Please explain that.

12 A. I made a numerical error, which I can't believe as many
13 times as I wrote the case number down. I did write down the
14 wrong case number and it was caught by evidence technicians
15 and it was corrected to the right case number. So
16 basically --

17 Q. Which evidence is that in reference to?

18 A. The clothing.

19 Q. Since that time have you checked out or removed any of
20 those items from evidence?

21 A. I have not.

22 Q. Is that the last time that you have handled any of
23 these items?

24 A. Right, yes.

25 Q. Now, after you collected your evidence from the

1 autopsy, what did you do that day after leaving the autopsy?

2 A. Okay. Myself and Investigator Allen was summonsed to
3 return to the scene to do a final search for evidence, so
4 the crime scene was still in place to that time.

5 Q. And what did you do when you got there?

6 A. Okay. Me and Investigator Allen basically did another
7 search of the entire inside of the apartment, again, from
8 the kitchen, living room area, the bedrooms, the bathrooms,
9 just looking for any other kind of evidence, you know,
10 anything else that we may have not seen the first time, to
11 collect that. Basically it's our last sweep of the
12 residence.

13 Q. And at that time did you personally collect any other
14 items?

15 A. Yes, I collected a pair of brown-handled kitchen
16 scissors, a pair of purple-handled scissors, a pair of
17 orange-handled scissors, and two blood stained couch
18 cushions from the living room area.

19 Q. Aside from the cushions, was there blood on any of the
20 other items that you took possession of?

21 A. No, sir, no blood.

22 Q. And what did you do with all of those items?

23 A. They were placed into evidence.

24 Q. Okay. That day?

25 A. To my knowledge, yes.

1 MR. UNDERWOOD: Court's indulgence.

2 (Off the record)

3 (Back on the record)

4 (Evidence Bag marked as State's Exhibit No. 8 for
5 identification)

6 (Box of Clothes marked as State's Exhibit No. 9
7 for identification)

8 BY MR. UNDERWOOD:

9 Q. All right, Investigator Oates, I'm now handing you
10 what's been marked as State's Exhibit No. 8. Can you
11 identify that, please?

12 A. Yes, this is my evidence bag, opened. Sample of strand
13 of hair from the victim's right hand, and a strand of hair
14 from the victim's left hand, and nail scrapings from the
15 victim's right hand and left hand.

16 Q. Okay. So are these the same items that you collected
17 at the autopsy?

18 A. Yes.

19 Q. And submitted into evidence that day?

20 A. Yes.

21 Q. Okay. The time that these items were in your
22 possession, did you tamper with them or damage them in any
23 way?

24 A. No, sir.

25 Q. Okay. To the best of your knowledge, are they in

1 substantially the same condition they were when you
2 collected them?

3 A. Yes, sir.

4 Q. Now I'm handing you State's Exhibit No. 9 for
5 identification. Can you identify what that box is?

6 A. Yes, this is the box which I placed the gray shorts,
7 the white panties, the purple shirt, and the black bra in.

8 Q. To the best of your knowledge, are those items still in
9 the box?

10 A. To my knowledge, yes.

11 Q. Do you need to cut that box open to check on those
12 items? It's not a clear bag, so --

13 A. This here is taped. It's got my initials on it too,
14 so -- it's been opened several times.

15 Q. Now, for those times that you mentioned that it has
16 been opened, where you can see it's been resealed --

17 A. Uh-huh.

18 Q. -- have they been re-initialed by the people that you
19 would suspect are the ones who had opened it and resealed
20 it?

21 A. Yes, sir.

22 Q. From the time that you had collected those items and
23 put them into that box, did you do anything to tamper with,
24 damage, or contaminate any of those items?

25 A. No, sir. No, sir, they were packaged and placed in the

1 box and secured.

2 Q. Okay.

3 MR. UNDERWOOD: Court's indulgence, Your Honor.

4 (Off the record)

5 (Back on the record)

6 BY MR. UNDERWOOD:

7 Q. To your knowledge, the clothing items in that box,
8 State's Exhibit No. 9, were they eventually tested for DNA?

9 A. To my knowledge. I don't -- I don't know. I know I
10 placed them in -- I placed them into evidence on hold. If
11 another forensic request came forward, as far as for DNA
12 testing --

13 Q. That would have taken place after your involvement?

14 A. Right. Right. My only involvement was basically
15 taking them out of the drying cabinet and placing them into
16 evidence. That was my job.

17 MR. UNDERWOOD: Your Honor, the State at this time
18 would seek admission of Exhibits 8 and 9.

19 THE COURT: Any objection?

20 MR. AIKEN: Without objection, Your Honor. Thank
21 you.

22 THE COURT: They will be admitted.

23 (Whereupon, State's Exhibit No. 8 was entered into
24 the record as evidence)

25 (Whereupon, State's Exhibit No. 9 was entered into

1 the record as evidence)

2 MR. UNDERWOOD: Your Honor, I think I have a
3 matter of law to take up outside the presence of the jury.

4 THE COURT: Ladies and gentlemen, I'm going to ask
5 that you retire to the jury room but not to engage in any
6 discussions, since you still have not heard all the evidence
7 and we will bring you back shortly.

8 (The following takes place outside the presence of
9 the jury panel)

10 MR. LUKE SHEALEY: Your Honor, we haven't had that
11 conference that we said before trial that we were going to
12 have about whether photos are more prejudicial than
13 probative, whether they tend to be cumulative, so I think at
14 this time we need to take a moment to see if we can agree on
15 something. If not, run it by Your Honor before we have
16 it -- to streamline things.

17 THE COURT: You know you should have done all this
18 before we got this far.

19 (Off the record)

20 (Back on the record)

21 THE COURT: You all do this over the lunch hour.
22 I'm not going to have the jury sitting back there waiting.

23 Just bring them back in and I'll excuse them for
24 lunch.

25 MR. LUKE SHEALEY: Sorry, judge.

1 (The following takes place in the presence of the
2 jury panel)

3 THE BAILIFF: The jury is seated, Your Honor.

4 THE COURT: Ladies and gentlemen, I know it seems
5 like we are playing musical chairs, but I have decided to go
6 ahead and send you to lunch. They have got a few issues
7 that they will need to take up and so instead of having you
8 sit in the jury room, I can give you a lunch hour and you
9 can get some fresh air.

10 So I'm going to remind you of the instructions I
11 have given to you.

12 Officer, could you remove that box, please? It's
13 blocking my view of the juror.

14 THE WITNESS: Sorry.

15 THE COURT: Thank you.

16 So I'm going to remind you of the instructions
17 that I have given to you previously; that is, you should not
18 begin to discuss this matter among yourselves because you
19 still have not heard all of the evidence that has to be
20 presented.

21 As you come and go from the courthouse, again,
22 remember not to listen to conversations that you may
23 overhear, again for the reasons that you have to make the
24 decisions based upon the evidence presented here in this
25 courtroom.

1 And also please remember not to allow anyone to
2 approach you to discuss this matter with you. Again, if
3 someone attempts to do that, please tell them that you are a
4 juror and you cannot discuss it, and I ask that you report
5 it as soon as possible.

6 Ladies and gentlemen, I realize that this is now
7 the height of the lunch hour, so I'm going give you a little
8 bit longer than an hour. I'm going to ask that you report
9 back to the same jury room at 1:45. When you report back at
10 that time we will be ready to continue on with the trial of
11 this matter.

12 Have a good lunch and we will see you back at
13 1:45.

14 (The following takes place outside the presence of
15 the jury panel)

16 THE COURT: Investigator Oates, you may step down
17 from the witness stand. I'm going to ask that you not
18 discuss your testimony, since you have not concluded. It
19 would be inappropriate for you to discuss it with anyone
20 during this break. We will see you back here at 1:45.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Y'all can review your exhibits. Get
23 them premarked. We will come back at 1:45.

24 MR. GOINGS: Thank you, Your Honor.

25 (Whereupon, proceedings were recessed)

1 (Whereupon, proceedings were reconvened)
2 (Photograph marked as State's Exhibit No. 10 for
3 identification)
4 (Photograph marked as State's Exhibit No. 11 for
5 identification)
6 (Photograph marked as State's Exhibit No. 12 for
7 identification)
8 (Photograph marked as State's Exhibit No. 13 for
9 identification)
10 (Photograph marked as State's Exhibit No. 14 for
11 identification)
12 (Photograph marked as State's Exhibit No. 15 for
13 identification)
14 (Photograph marked as State's Exhibit No. 16 for
15 identification)
16 (Photograph marked as State's Exhibit No. 17 for
17 identification)
18 (Photograph marked as State's Exhibit No. 18 for
19 identification)
20 (Photograph marked as State's Exhibit No. 19 for
21 identification)
22 (Photograph marked as State's Exhibit No. 20 for
23 identification)
24 (Photograph marked as State's Exhibit No. 21 for
25 identification)

1 (Photograph marked as State's Exhibit No. 22 for
2 identification)

3 (Photograph marked as State's Exhibit No. 23 for
4 identification)

5 (Photograph marked as State's Exhibit No. 24 for
6 identification)

7 (Photograph marked as State's Exhibit No. 25 for
8 identification)

9 (Whereupon, proceedings were reconvened)

10 THE COURT: Do y'all have an agreement on the
11 photographs?

12 MR. LUKE SHEALEY: I believe we do. We went
13 through them and we went through the autopsy and different
14 crime scene. I think Mr. Goings said he wanted to argue
15 maybe on one. I don't know if maybe he changed his mind,
16 but we do have the majority of them agreed upon in this
17 case.

18 THE COURT: The witness may return to the witness
19 stand.

20 MR. LUKE SHEALEY: Your Honor, I did want to take
21 up one pretrial -- or not pretrial, while we are at a break
22 a matter.

23 I have been watching Officer McDaniels and Godfrey
24 as they sit here in front of the jury and they have been
25 allowed to not be sequestered, sitting there as lead

1 investigators. They are both open and obviously reading
2 Bibles. I don't have a problem with that if they are
3 religious, or whatever, but this doesn't need to be done in
4 front of the jury. I thought it was kind of bolstering
5 their credibility. I don't think it's appropriate. I think
6 it's on purpose. Maybe they could read the crime scene
7 file, or whatever, but they have been over there reading
8 Bibles the entire time. You know, I think it's to bolster
9 their credibility. I just ask the court to not allow that.

10 MR. GOINGS: I just ask that the -- I mean, all
11 the witnesses swear on the Bible when they take the stand,
12 so I don't know if that necessarily bolsters their
13 credibility. I haven't witnessed it.

14 THE COURT: Unless it's something that they do in
15 the normal course of every single day in order to -- at a
16 certain time. You know, I don't want to interfere with
17 anybody's religious beliefs, but if it's something that they
18 do on a regular basis all the time. You know, if they need
19 to excuse themselves while they do that, that's fine, but,
20 you know, they ought to be focused on the trial while they
21 are present in the courtroom.

22 Anything else we need to take up?

23 MR. UNDERWOOD: Your Honor, there are two
24 photographs that I think were contested.

25 Your Honor, I would like to approach so you can

1 view the photographs?

2 THE COURT: Yes, sir.

3 MR. LUKE SHEALEY: If you want to see those photos
4 that we don't object to and feel why those aren't necessary.

5 THE COURT: Which exhibits are they? Have they
6 been marked?

7 MR. UNDERWOOD: They have not yet been marked,
8 Your Honor.

9 MR. LUKE SHEALEY: Where are the ones that have
10 been marked?

11 THE COURT: I can tell you now this is an autopsy
12 photo.

13 MR. UNDERWOOD: It is. Yes, Your Honor.

14 THE COURT: Unless there is some reason why the
15 person who did the autopsy or who is making the report has
16 to refer specifically to this photograph, either we can take
17 it up at the time that witness testifies or --

18 I understand that there may be some evidence that
19 may be elicited about subdural hematomas, or whatever may be
20 related to the findings at the autopsy, but unless there is
21 a need to show exactly where it occurred, we will need to
22 defer that one.

23 MR. UNDERWOOD: Your Honor, if I may, may we have
24 the witness identify it and not show it to the jury?

25 As Your Honor may recall, the State's pathologist

1 is not the doctor who actually performed the autopsy. This
2 witness was present at the autopsy and actually took the
3 photograph, so I think it would be proper for us to have
4 this witness at least identify the photo as a fair and
5 accurate representation and then take up the issue of its
6 admissibility with the expert.

7 MR. LUKE SHEALEY: And, Your Honor, if he would
8 present to you what we have sought fit to be appropriate.

9 MR. UNDERWOOD: 10 through 25, Your Honor.

10 MR. LUKE SHEALEY: There is already four autopsy
11 photos in there. They are relatively cleaned up and they
12 show the wound from the neck, which is the cause of death in
13 this case. They show other bruising.

14 The graphic peeling back of the face to show a
15 bruise to a forehead that in no way is the cause of death
16 here, that can -- that is not necessary. It's in violation
17 of State v. Collins, State v. Torres. It's more prejudicial
18 than probative. We already have four or five autopsy photos
19 that -- I think it would insert error into this trial. It
20 would inflame the passion and prejudice of this jury.

21 Their pathologist did a pathologist diagram
22 referencing bruises on the forehead. That we don't have a
23 problem being discussed, but the only point of that photo is
24 to do what it should not be allowed to do, which is to
25 inflame the passion and prejudice of the jury.

1 THE COURT: The second photograph is basically a
2 duplicate of another photograph of Exhibit No. 25, which
3 this a close-up view of Exhibit No. 25.

4 MR. LUKE SHEALEY: May I approach, Your Honor?

5 Oh, yes, that was the other one we objected to as
6 a close-up as being cumulative. Therefore, the cumulative
7 effect makes a more prejudicial impact. It's not necessary,
8 so we also object to that second photo. That was the other
9 one we had a problem with.

10 THE COURT: I'll return these.

11 I'll exclude this one.

12 And right now I'll exclude this one.

13 MR. UNDERWOOD: Would Your Honor like to mark them
14 for identification?

15 THE COURT: You can mark them for ID, if you would
16 like, just to preserve the record.

17 MR. UNDERWOOD: I would like it to be marked for
18 identification.

19 (Photograph marked as State's Exhibit No. 26 for
20 identification)

21 (Photograph marked as State's Exhibit No. 27 for
22 identification)

23 THE COURT: And No. 27 is the one of the couch,
24 which is the duplicate?

25 MR. UNDERWOOD: Yes, Your Honor.

1 THE COURT: And No. 26 would be the autopsy photo
2 with the -- showing the three places of the hematoma during
3 the autopsy. And I don't think that either one -- well, 27
4 is a duplicate, so it's cumulative, and 26 I think is not
5 appropriate.

6 While I understand that some autopsy photos may be
7 admissible, on this particular case, since that does not
8 relate directly to the cause of death and there is
9 potentially other evidence that would explain that, I don't
10 think it's necessary to have a photograph of those areas at
11 this particular point, so I would exclude those at this
12 time.

13 MR. AIKEN: Your Honor?

14 THE COURT: Yes, sir.

15 MR. AIKEN: Is that 26 and 27.

16 THE COURT: 26 and 27.

17 MR. AIKEN: Thank you, judge. I apologize.

18 THE COURT: No problem.

19 MR. AIKEN: I didn't hear you. I'm kind of deaf
20 and didn't hear you.

21 THE COURT: We all are.

22 Anything else?

23 MR. UNDERWOOD: Your Honor, and just to clarify,
24 could I have the witness identify those two exhibits in
25 front of the jury, Your Honor, or at least have the witness

1 view them and identify them for the record?

2 MR. LUKE SHEALEY: I don't think -- why? We have
3 identified what is being excluded for the record. If you go
4 up there and show the witness, he's going to inadvertently
5 publish them to the jury.

6 THE COURT: We will put it this way. In the event
7 that Exhibit No. 26 later becomes relevant and needs to be
8 admitted, there would not be a problem with whether or not
9 it is part and parcel of the photographs that were taken by
10 this particular investigator, so the chain doesn't have to
11 be established by that.

12 MR. LUKE SHEALEY: All right.

13 MR. UNDERWOOD: Thank you, Your Honor.

14 THE COURT: Anything else we need to take up?

15 MR. AIKEN: Nothing from us, Your Honor.

16 MR. UNDERWOOD: Not from the State, Your Honor.

17 THE COURT: You may ask the jury to come in.

18 (The following takes place in the presence of the
19 jury panel)

20 THE CLERK: The jury is seated, Your Honor.

21 THE COURT: Thank you.

22 You may continue.

23 MR. UNDERWOOD: Thank you.

24 May it please the court, Your Honor.

25 BY MR. UNDERWOOD:

1 Q. Investigator Oates, earlier you testified that you were
2 present during the autopsy the Nakia Mallory. Did you take
3 any photographs during that autopsy?

4 A. Yes.

5 MR. UNDERWOOD: May I approach the witness, Your
6 Honor?

7 THE COURT: Yes, sir.

8 BY MR. UNDERWOOD:

9 Q. I'm now handing you State's Exhibits 18, 19, 22 and 23.
10 Could you please review those and identify each by exhibit
11 number?

12 A. Exhibit No. 18, yes.

13 Exhibit No. 19, yes.

14 Exhibit No. 22, yes.

15 Exhibit No. 23, yes.

16 Q. And when you say yes, are you referring that these are
17 the photographs that you took?

18 A. They are. Yes, these are the photographs that I took.

19 Q. Could you identify what each of the photographs are?

20 A. Okay. Starting with Exhibit No. 18, it's going to be
21 an injury to --

22 Q. Please don't publish it just yet. Identify what it is.

23 A. Okay, I apologize.

24 Exhibit No. 18 is going to be an injury to the right
25 side of the victim's neck. It's a close-up photograph.

1 Exhibit No. 19 is going to be an injury across the
2 right side eyelash of her eye of the victim. It's a
3 close-up shot, photograph.

4 Exhibit No. 23 is bruising on the neck of the victim, a
5 close-up photograph.

6 Exhibit No. 23 was bruising of the neck of the victim.
7 That was without a scale.

8 And Exhibit No. 22 is going to be the same as the first
9 but with a scale this time.

10 Q. And are all those photographs fair and accurate
11 representation of the injuries that you saw that day?

12 A. Yes.

13 MR. UNDERWOOD: Your Honor, at this time I move
14 that Exhibit 18, 19, 22 and 23 be submitted into evidence.

15 THE COURT: Any objection?

16 MR. AIKEN: Without objection, Your Honor.

17 THE COURT: They are admitted.

18 (Whereupon, State's Exhibit No. 18 was entered
19 into the record as evidence)

20 (Whereupon, State's Exhibit No. 19 was entered
21 into the record as evidence)

22 (Whereupon, State's Exhibit No. 22 was entered
23 into the record as evidence)

24 (Whereupon, State's Exhibit No. 23 was entered
25 into the record as evidence)

1 MR. UNDERWOOD: Your Honor, at this time I ask
2 permission to publish to the jury.

3 THE COURT: Yes, sir.

4 BY MR. GOINGS:

5 Q. Investigator Oates, during your time at the crime
6 scene, did you collect any DNA swabs while you were there?

7 A. No, sir.

8 Q. Do you know who collected those?

9 A. I believe it was Lieutenant Padgett, I believe.

10 MR. UNDERWOOD: Thank you, Your Honor. No further
11 questions at this time.

12 THE COURT: Any cross?

13 MR. AIKEN: Yes, ma'am.

14 May it please the court.

15 CROSS EXAMINATION BY MR. AIKEN:

16 Q. How are you, Investigator Oates? How are you doing?

17 A. Doing well, sir. How are you doing?

18 Q. I'm all right.

19 A. Good.

20 Q. I'm Art Aiken. I'm one of Mr. Porch's lawyers.

21 I was looking over the property report from the case
22 management system --

23 A. Yes, sir.

24 Q. -- and it indicates the items of evidence that you
25 actually put into evidence control?

1 A. Yes, sir.

2 Q. That's recorded on there, isn't it?

3 A. Yes, sir.

4 Q. Okay.

5 A. It should be, yes, sir.

6 Q. And I think some of the items that you actually turned
7 over to evidence control were clothing from Mr. Mallory, is
8 that correct?

9 And if you got your -- if you got your case management
10 database property report, it says that you submitted Items
11 46 through 58, is that right?

12 I'll let you get there.

13 Do you want me to bring it up there and let you take a
14 look at it?

15 A. That would be a lot faster.

16 Q. Okay. All right, I'll do that. I'll do that.

17 A. I just found it, but that would be a lot faster.

18 Q. All right. What I'm looking at with you is the case
19 management database property report.

20 A. Yes, sir.

21 Q. You are familiar with that form, aren't you?

22 A. Yes, sir.

23 Q. And I think it says Items 46 through 58 originally
24 submitted, and then it has some text, and then it has says
25 by Investigator Oates. That would be you, correct?

1 A. Yes. That would be me, yes, sir.

2 Q. Now, that's 46 through 58.

3 And then it looks to me like Items 56, 57, and 58 were
4 clothing from Mr. Mallory, is that correct?

5 A. Right. Right, that's from a search warrant.

6 Q. Yeah, that would be his sweat pants?

7 A. Yes.

8 Q. His black T-shirt?

9 A. Yes, sir.

10 Q. And his Timberland boots?

11 A. Yes, sir.

12 Q. Right.

13 And do you know who actually took possession of that
14 clothing from Mr. Mallory, originally from Mr. Mallory? Was
15 it you or Investigator Holdorf?

16 A. I don't recall taking the clothing at that point.

17 Q. I see. I see. So you think it probably was somebody
18 else who actually took possession of it, originally?

19 A. To my knowledge, originally --

20 Q. I see.

21 A. -- yeah.

22 Q. Okay. Now, the items that you presented, the blue, red
23 and white sweat pants, the black T-shirt, and the Timberland
24 boots, Mr. Mallory's clothing and boots, there was no hat
25 included in that, was there?

1 A. Not that I know of. Let me check.

2 I'm not seeing one on my property report here that I
3 turned in from the time that I --

4 Q. And that's -- that's something that you would have
5 recorded --

6 A. Yes, sir.

7 Q. -- if you had gotten the hat, right?

8 A. Yes, sir.

9 Q. Okay. Now, there was also no jacket, was there?

10 A. I did not collect a jacket, but I do remember testing a
11 jacket.

12 Q. Would that have been --

13 A. Yes. I did not -- I have it here as -- as far as a
14 supplemental report, as far as testing a reddish brown
15 stained or blood stained large tan jacket and also the white
16 pair of Reebok sneakers?

17 Q. I see.

18 A. But that was just for the test to see if it was blood,
19 but it turned out to be negative.

20 Q. All right. Do you know whether that was Mr. Mallory's
21 jacket?

22 A. You know, I'm not sure, because I would have gotten
23 this secondly, so all I would have done was got the jacket
24 and tested it.

25 Q. What's the date on that testing that you performed?

1 A. It is the 15th.

2 Q. Of May?

3 A. Yes, 15th -- no, it's not 15th of May. It's the 15th
4 of July.

5 Q. Okay. 15th --

6 A. July 15th, yes.

7 Q. July 15th?

8 A. Yes, that's when I tested this jacket, and that was
9 7-15 of '09. So it was like a supplemental or a secondary
10 type of processing.

11 Q. 7-15-09.

12 Now, are you familiar with the fact that the first
13 trial of this case was in 2007, the trial against Mr.
14 Mallory?

15 A. Oh, yes, I know.

16 Q. And then trial against --

17 A. Right.

18 Q. Against -- the second trial against Mr. Mallory was in
19 2008, right?

20 A. Right.

21 Q. And this would have been done in 2009?

22 A. Yes, that's when I did the -- that's when I conducted
23 this.

24 Q. Was that Mr. Porch's jacket --

25 A. I don't know.

1 Q. -- that you found no blood on?

2 A. I don't know.

3 Q. You don't know. You are not sure which one it was?

4 A. I'm not sure, because all I did was basically pull the
5 evidence and then test it.

6 Q. But originally when you submitted evidence in the
7 case --

8 A. Uh-huh.

9 Q. -- of Mr. Mallory's clothing and shoes, you did not
10 submit a jacket, did you?

11 A. I'm not finding it on my property.

12 Q. And that's something you certainly would have recorded
13 on your property report if you had received a jacket,
14 wouldn't you?

15 A. Let me see. You know what? I think I'm losing my
16 eyesight too here. I just got these new glasses and
17 undoubtedly by bifocals aren't doing any good.

18 I looked over the list too fast, but I did collect a
19 large tan jacket, left-side front bedroom closet.

20 Q. Okay. But that was never -- that was never submitted,
21 was it, for evidence control?

22 A. It says 7-15-09.

23 Q. So that would have been a tan jacket from 7-15-09?

24 A. Uh-huh.

25 Q. And whose tan jacket was that, do you know?

1 A. Well, all I know is it came from S & W from 124 Dan
2 Gray Road.
3 Q. That would have been Mr. Porch's house, right?
4 A. Okay.
5 Q. In Hopkins, right?
6 A. Right, I assisted in --
7 Q. Yeah.
8 So the tan gray jacket -- the tan jacket that you got
9 that you tested and found no blood on was actually Mr.
10 Porch's jacket?
11 A. Okay.
12 Q. Is that right?
13 A. I guess.
14 Q. Dan Gray Road, that's Mr. Porch's address, and S & W
15 would me execution of the search warrant --
16 A. Right, uh-huh.
17 Q. -- on his address in Hopkins --
18 A. Okay.
19 Q. -- where y'all got the tan jacket, right?
20 A. Right.
21 Q. And you tested it and there was no blood on it?
22 A. Right.
23 Q. Okay. So for Mr. Mallory, you never received a jacket,
24 did you?
25 A. Well, I know I collected it and I know that I conducted

1 this analysis on 7-15-09.

2 Q. And that was the jacket of Mr. Porch from the search
3 warrant on Dan Gray Road in Hopkins, right?

4 A. That's right.

5 Q. Mr. Porch's address, right?

6 A. Yes.

7 Q. So that would have been Mr. Porch's jacket --

8 A. To my knowledge.

9 A. -- that you tested and found no blood on it, right.

10 A. (No response).

11 Q. But you didn't get a jacket for Mr. Mallory, did you?

12 A. Oh, no. No, sir.

13 Q. No jacket for Mr. Mallory, okay.

14 A. This was from -- yes, you are right. This was from the
15 search -- S & W, or search warrant.

16 Q. Search warrant --

17 A. Yes.

18 Q. -- in Hopkins at Mr. Porch's house?

19 A. (Shaking head yes.)

20 Q. Is that right?

21 A. To my knowledge, yes. I just -- I just respond and
22 collect evidence.

23 Q. Yes, sir, I understand.

24 A. Is what it was.

25 MR. AIKEN: Your Honor, may I have a moment?

1 THE COURT: Yes, sir.

2 (Off the record)

3 (Back on the record)

4 BY MR. AIKEN:

5 Q. Thank you very much, Investigator Oates. I appreciate
6 it.

7 A. Thank you.

8 THE COURT: Any redirect?

9 MR. UNDERWOOD: No, Your Honor.

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

11 Were you asking he be excused?

12 MR. GOINGS: Yes, Your Honor.

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

14 You may call your next witness.

15 MR. GOINGS: Thank you, Your Honor.

16 If it please the court, the State would call Stan
17 Smith.

18 MAJOR JAMES SMITH, having been first duly sworn,
19 testified as follows:

20 THE CLERK: Thank you. Have a seat on the witness
21 stand.

22 State your name for the record.

23 THE WITNESS: James Standon Smith.

24 DIRECT EXAMINATION BY MR. GOINGS:

25 Q. Good afternoon, Mr. Smith. How are you?

1 THE COURT: You may be excused. Thank you very
2 much.

3 THE WITNESS: Thank you.

4 THE COURT: You may call your next witness.

5 MR. GOINGS: The State would call Zane Padgett.

6 INVESTIGATOR ZANE PADGETT, having been first duly
7 sworn, testified as follows:

8 THE CLERK: Have a seat on the witness stand.

9 Please state your name for the record.

10 THE WITNESS: Zane Padgett, P-A-D-G-E-T-T.

11 DIRECT EXAMINATION BY MR. GOINGS:

12 Q. Good afternoon, Investigator Padgett.

13 How are you?

14 A. Good, sir.

15 Q. Investigator, if you could tell the jury where you are
16 currently employed?

17 A. Right now I'm currently employed with the Richland
18 County Sheriff's Department.

19 Q. How long have you been with the Richland County
20 Sheriff's Department?

21 A. Over thirty-two years.

22 Q. What's your role at this point in time with the
23 Richland County Sheriff's Department?

24 A. What I do now is I'm in charge of all the equipment and
25 uniforms for the entire department.

1 Q. In 2006, obviously, you said that you were employed
2 with Richland County?

3 A. Yes, sir.

4 Q. What was your role at that point in time?

5 A. I was the supervisor in charge of the forensic
6 laboratory.

7 Q. Briefly for the jurors perspective, describe some of
8 the job duties that you had as supervisor of the crime
9 scenes?

10 A. At that point I think I had eleven forensic
11 investigators, and what we did is we would actually go to
12 the crime scenes and process them.

13 When I say process them, we do all the photographs and
14 collection of all of the evidence, DNA, blood spatter
15 analysis, and we collect any kind of hairs and fibers, and
16 basically look for all the evidence that may have been
17 involved in the crime.

18 Q. Do you remember an incident occurring at Pinelane Road
19 on May 14th, 2006?

20 A. Yes, I do.

21 Q. Did you receive a call to respond to that scene?

22 A. I was home and I received a call at 5:50 in the morning
23 and actually arrived at the scene at 6:15.

24 Q. Okay. And what is your normal -- disregarding this
25 particular case for right now, what is the normal procedures

1 that y'all would use when y'all arrive at a particular crime
2 scene?

3 A. Basically when we arrive on a crime scene, and they are
4 all different, of course, but what we do is we want to make
5 sure that it's secured, and the deputies that are there will
6 secure it for us and no one comes in, except the forensic
7 investigators, or other pertinent personnel would have to
8 come in to maybe collect some evidence.

9 And our basic role there is to take the crime scene and
10 photograph it exactly how it is. Before we move anything,
11 before we take any kind of evidence, we want to photograph
12 the entire scene so we have a picture of what it looks like
13 before we start processing it.

14 Q. Okay. And take us from the time the photographs were
15 completed, what happens next?

16 A. After we photograph the crime scene, of course, we take
17 a general look and try to figure out what occurred at that
18 scene. And then what we will do is we will start looking
19 for particular pieces of evidence that may have been
20 involved in the crime. And that type of evidence could be
21 anything from hairs, fiber, blood spatter analysis,
22 collection of blood, or collection of anything that may have
23 DNA, and also process for latent fingerprints.

24 Q. And you also collect items because -- at that point in
25 time you don't know what is exactly going to be used as

1 evidence further down the road, do you?

2 A. You never do.

3 Q. So you collect as many things as possible?

4 A. We basically go to the crime scene and we try to
5 collect one hundred percent of any of the evidence that we
6 think was involved in the crime. And to be honest with you,
7 do we always do get on hundred percent? No.

8 Q. And you said these items could be anywhere from blood,
9 hair fibers, but also can be tangible items, such as
10 bottles?

11 A. Sure, we can take bottles. I have taken couches. I
12 have cut the doors off before and taken them. I have cut
13 pieces of walls off and taken them too.

14 Q. And then what happens next after the crime scene is
15 processed?

16 A. After we think that we have collected all the evidence
17 that was involved in the crime, we are going to take that
18 evidence and take it back to our laboratory and then start
19 doing some processing on it. Some things we may process for
20 latent fingerprints. We may take swabs of some of the items
21 that had blood on them. We may take some swabs of some of
22 the items we can get some DNA on them.

23 Q. Specifically when blood is found at the scene, describe
24 the process that you would do to collect evidence from the
25 blood.

1 A. First of all, every scene is different. If there is
2 going to be blood involved, every scene is different.

3 First of all, we take a look at the blood. We try to
4 figure out some kind of pattern. I'm an expert -- I've been
5 qualified as an expert in blood pattern analysis. And what
6 we will do is we will take a look at the blood and see how
7 it's involved, see how it's splattered, where it occurs,
8 anything in it, whether there is a smear or a wipe, and we
9 try to take a look at it to figure out where the victim may
10 have been and what happened and any kind of movement that
11 may have occurred at the time.

12 Q. But, again, describe to the jury when you want to take
13 a sample of blood, what do you do?

14 A. If we find a sample of blood that we think that is
15 going to be involved in the crime or may be pertinent to us
16 for a good piece of evidence, we will take a swab, a sterile
17 swab, and just swab some of that blood and take it and then
18 put it in a container and seal it and then take it back to
19 the laboratory.

20 And, of course, that piece of blood, wherever we take
21 it from, we mark it, you know, photograph it, so we know
22 when we get back to the lab we know exactly where we took
23 that spot of blood.

24 Q. Now, let's move back to this particular night. You
25 said that you arrived on the scene, I believe your testimony

1 was, at 6:15?

2 A. Yes, sir.

3 Q. And was the crime scene already secured by the time
4 that you arrived?

5 A. Yes, it was.

6 Q. Who else was present at the time that you arrived?

7 A. When I arrived at the scene I believe Robert Oates,
8 Investigator Oates. He's a forensic investigator who worked
9 for me, he was there. And there was two other investigators
10 that came in at a later time that I called to help him.

11 Q. Okay. Two forensic investigators?

12 A. Two forensic investigators that worked for me, yes,
13 sir.

14 Q. Who was in charge of that crime scene?

15 A. I was.

16 Q. So this is your crime scene?

17 A. Yes, sir, it was.

18 Q. The other individuals under or working under the
19 direction of you?

20 A. They were working for me, yes, sir.

21 Q. Again, tell us about what you did when you arrived on
22 the scene.

23 A. When I arrived on the scene, after we take a general
24 look to try to figure out what happened, we photograph
25 everything as it is before we ever touch anything or move

1 anything. Then we will go around and try to find pieces of
2 evidence, like I said, that we may think was involved in the
3 crime.

4 At that point we don't know a lot about the crime
5 scene. We weren't there when it happened, so we have to try
6 to take a look at it and figure out what occurred. So we
7 will go around and collect samples of blood. We will go
8 around and collect items we think may have been touched by
9 the suspect. We go around and we look on the floor. We go
10 through the entire house and just take a look and try to
11 find things that -- and I hate to use this word, we try to
12 find things that are out of place, in particular, that we
13 think may have been moved or involved in the crime. And we
14 will either swab, you know, some of the blood or an item
15 that we may think has DNA on it, and then we will take a lot
16 of those items with us back to the laboratory and then spend
17 a lot of time there processing those items.

18 Q. Now, do you take -- you took photographs before
19 processing the crime scene?

20 A. We take photographs before we do anything or remove
21 anything, yes, sir.

22 Q. Do you recall what the crime scene looked like when you
23 got there?

24 A. Yes, sir, when I got there I noticed that there was a
25 massive blood loss from someone that was all over the crime

1 scene, basically located in the living room where the couch
2 was. There was a large amount of blood that pooled on the
3 cushions and the carpet that was right in front of the
4 couch.

5 We actually saw a palm transfer. When I say transfer,
6 it would be someone that maybe had blood on their palm and
7 touched something. We noticed one of those. I think it was
8 on one of the arms of the couch, the left armrest.

9 There was a lot of blood that was observed on the fan
10 and a video game that was to the left of the couch.

11 And then we also saw some swipes. When I say swipes,
12 it would be as if you had blood on you and touched something
13 and then, you know, transferred the blood on an item. It
14 could be a wall. It could be a couch. It could be any kind
15 of item. That was all through the couch.

16 Then there was also a lot of blood and swipes and
17 spatters on the wall behind the couch, up above the couch.

18 And there was some downward angle patterns located on
19 the wall. When I say that, there was some blood that kind
20 of looked like it projected in a downward angle behind the
21 couch on the wall.

22 And then I went into the kitchen. That was the living
23 room area. There is a little small dining room that was
24 kind of really in the living room, but then there was like a
25 separate kitchen that you had to walk into.

1 Q. I'm going to show you what's been marked as State's 24
2 and 25. Do you recognize those?

3 A. I do. I believe I took these photographs.

4 State's Exhibit 24 is a -- it's just a general picture
5 from a distance of the living room area where the couch was,
6 and there is a coffee table, and then the rug in front of
7 the couch. I think it's a TV to the left of the couch, and
8 then it was the blinds where the back sliding door opens.

9 MR. GOINGS: Your Honor, at this time --

10 A. And I'm sorry -- I'm sorry, sir.

11 State's Exhibit also 25 is really just a close-up of
12 the couch and the wall behind it and the area that's right
13 in front of the couch.

14 BY MR. GOINGS:

15 Q. And does that depict the blood splatter above the couch
16 that you just testified about?

17 A. Yes, sir, it does.

18 Q. And also contains the depictions of the two pools of
19 blood, one on couch and one on the floor, that you testified
20 about?

21 A. It does, sir.

22 Q. Thank you.

23 MR. GOINGS: Your Honor, at this point in time the
24 State would move into evidence 24 and 25.

25 MR. AIKEN: Without objection, Your Honor.

1 THE COURT: They are admitted.

2 (Whereupon, State's Exhibit No. 24 was entered
3 into the record as evidence)

4 (Whereupon, State's Exhibit No. 25 was entered
5 into the record as evidence)

6 MR. GOINGS: Permission to publish to the jury,
7 Your Honor?

8 THE COURT: Yes, sir.

9 MR. GOINGS: Thank you, Your Honor.

10 BY MR. GOINGS:

11 Q. Were you able to notice the amount of blood that was on
12 the couch and floor?

13 A. I'm sorry, I didn't hear you, sir.

14 Q. Were you able to notice the amount of blood that was on
15 the couch and the floor?

16 A. Oh, yes, sir.

17 Q. Describe to the jury how much.

18 A. It was -- it was a good -- a very large amount of loss
19 of blood. You know, I have to be many crime scenes,
20 hundreds and hundreds, and this was probably one of them
21 that had a lot of blood that was pooled all over the area.

22 Q. All right. And those two photographs were taken before
23 when?

24 A. Those two particular -- those photographs were taken
25 before we moved anything or processed anything or took any

1 evidence.

2 Q. And did you also take photographs of other parts of the
3 apartment?

4 A. Absolutely. We actually went through all the bedrooms
5 just to take a look to see if anything was moved or
6 disturbed in there and they looked okay, like nobody had
7 been in there, but then I went to the small dining room into
8 the kitchen area, kind of a long kitchen area, and then I
9 noticed a lot of -- some blood that was in the kitchen area
10 also.

11 Q. Describe for the jury what you did once you started to
12 notice that blood in the kitchen.

13 A. When I went in the kitchen, the first thing I noticed
14 is that there was some blood on the floor and it appeared
15 that someone had tried to wipe it up, because you could
16 obviously see wipe marks on the floor. I don't know what
17 was used, a rag. We never found anything like that, but
18 someone had tried to wipe blood off the floor.

19 I went over to the sink area and then also found some
20 very small drops of blood around the sink area.

21 And then I -- do you want me to go about the cabinet
22 and everything, sir?

23 Q. Excuse me?

24 A. Into the cabinet too?

25 Q. Yes, sir. Yes, sir.

1 A. Well, I opened up the cabinet that was right under the
2 sink to just look in there and I saw a -- there was some
3 cleaning products in there. But what I saw in particular
4 was a fabric freshener bottle, the spray bottle that you
5 would use for fabric freshener, and I noticed I think two
6 little drops of blood on the very top of that bottle.

7 Q. Now, once you noticed the blood and from your
8 observations you start photographing?

9 A. Well, I photographed them first, obviously, before I
10 take anything or move anything.

11 And then the -- the first thing that I did, I believe,
12 after I had photographed the kitchen is I was interested in
13 the blood on the floor where there were swipes. I used a
14 chemical. This was quite a while ago, I think. The
15 chemical we used quite a while ago was Crystal Violet. And
16 I believe the laboratory uses something now that does a
17 little bit better, but that's what we had at the time. That
18 was the only thing we had.

19 What Crystal Violet did is when you spray it on an
20 area, it has a reaction to the proteins in blood. So what
21 you can do, is even though you can't see the blood with your
22 naked eye, when you spray it with this chemical, you have to
23 wait just a couple of minutes, it actually brings out all
24 the blood that was on the floor, even though it was wiped,
25 because it's really difficult to even get it up. And when I

1 sprayed it with Crystal Violet, it was very, very obvious
2 then that it had just huge swipe marks on the kitchen floor
3 where someone had tried to clean up all that blood. But
4 there was also drops of blood, and they were fairly small,
5 on the kitchen floor that were never wiped or cleaned.

6 Q. So what did you do first? Did you spray the chemical
7 on the floor to determine the existence of blood, or did you
8 collect the samples of blood that was there first?

9 A. I believe what I did first was -- the little tiny drops
10 on the floor were interesting to me, because I didn't really
11 need to use the Crystal Violet on those. I actually
12 collected those with a sample. A sterile swab, took a
13 sample, sealed it, put it in the container, and then I did
14 the Crystal Violet to see if I could see any wipe marks or
15 shoe tracks, because a lot of times shoe tracks will be on
16 the floor. Not always, where you can't see them with your
17 naked eye, but when you use the Crystal Violet it will
18 actually come up. So I sprayed it with Crystal Violet and I
19 tried to collect the blood sample.

20 Q. I'll hand you what's been marked State's Exhibit No. 12
21 and 13. Do you recognize those photographs?

22 A. Yes, sir.

23 State's Exhibit 13 is a general picture of the kitchen
24 area showing the sink, the counters on the left, the stove,
25 refrigerator, and most of the floor that's in the kitchen.

1 This particular photograph has markers on the floor,
2 and those markers on the floor is where I had noted
3 something in particular that I wanted to collect. And the
4 reason we use markers, A, B, C, D, and all the way through
5 Z, if we have them, we put those markers there and take a
6 picture. So if I take a swab from marker A, I will mark the
7 box that it's marker A. So when we go back to the
8 laboratory, we have these pictures and I know exactly where
9 I took that blood. That's why we mark them.

10 State's Exhibit 12 is a close-up of the blood drops
11 that I could see on the kitchen floor, which also has the
12 markings A, B, and C.

13 MR. GOINGS: Your Honor, at this point in time I
14 would move, I believe without objection, into evidence
15 State's Exhibit 12 and 13.

16 MR. AIKEN: Without objection, Your Honor.

17 THE COURT: They are admitted.

18 (Whereupon, State's Exhibit No. 12 was entered
19 into the record as evidence)

20 (Whereupon, State's Exhibit No. 13 was entered
21 into the record as evidence)

22 MR. GOINGS: Permission to publish to the jury?

23 THE COURT: Yes, sir.

24 BY MR. GOINGS:

25 Q. Well, let's talk about those markers for a second, Mr.

1 Padgett.

2 You indicated that you believed that if you want to
3 take a sample of something, you would mark it before taking
4 a sample?

5 A. Yes, and the reason I'm marking it before I take the
6 sample is so I can always go back to the laboratory, or this
7 incident -- or this date in time several years later and be
8 able to say this particular swab was taken from marker A,
9 and then I have a photograph and shows exactly where I took
10 it from.

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

12 (Off the record)

13 (Back on the record)

14 BY MR. GOINGS:

15 Q. And, again, once it's marked, how do you collect the
16 sample?

17 A. Blood samples are collected with a sterile swab. And
18 basically if they are still wet, we just take a regular dry
19 swab, a sterile swab, and we actually just take it and put
20 it on the swab and seal it.

21 Sometimes if the blood is very dry, you take a swab and
22 really can't get it, we will use a sterile saline solution,
23 put it on the swab and then take the blood sample, because
24 the saline solution, you know, wouldn't hurt to try to get
25 DNA or anything like that. And we will take that and then

1 take the swab of the blood and do the same thing; seal them
2 and then take them back to the lab and mark them where they
3 came from.

4 Q. When you sealed, what are you referring to?

5 A. There is a box that comes with each swab and actually
6 the swab goes in the box. You close it up and then it's got
7 some information on the box where you can put the case
8 number. Sometimes put your name. And that would say, you
9 know, where it came from, and I would like put an A on it
10 where I know that it came from marker A.

11 Q. Now, obviously the photographs that you have previously
12 identified to the jury looking at, you indicated it had
13 markers A, C, D and E on it, is that correct?

14 A. A, B, and C, I think.

15 Q. Okay. Let me ask you, what are the swabs from that
16 night that you took, based on --

17 A. All of the swabs?

18 Q. Yeah.

19 A. I took a swab from the kitchen floor marked A.

20 I took a swab from the kitchen floor marked C.

21 I took a swab from the kitchen -- from the countertop.

22 I don't believe it's in that photograph that was marked D.

23 There is a small area of blood on the sink that was
24 marked E.

25 I also found a small swab or dot of blood on the coffee

1 table which was marked H.

2 The fabric freshener bottle that was underneath the
3 cabinet that had a little bit of blood on the top, I took
4 that and it was marked K.

5 And there was two beer bottles that were on I believe
6 the coffee table and I just collected both bottles and took
7 those back to the lab and they are marked L and M.

8 Q. So the fabric re-freshener bottle that you collected,
9 do you have a swab that's marked K?

10 A. That's correct.

11 Q. Did you actually collect the fabric -- I mean the
12 bottle itself as well?

13 A. I did.

14 Q. Okay.

15 A. Because I wanted to process it for fingerprints too.

16 Q. Okay. Each of these swabs, when you take it, what did
17 you do again?

18 A. Take them and put them in a sealed container, mark them
19 where I took them from, name, case number. Those were taken
20 back to my laboratory.

21 If there is any other processing I need to do to
22 something; for example, the beer bottles, or the fabric
23 freshener bottle, after I take the swab, I process them to
24 see if I can get any fingerprints or anything else on them.
25 In fact, either the bottles, I swabbed the inside of the

1 bottles where someone would put their mouth on, I swabbed
2 those too to try to get DNA off of them.

3 Q. I'm going to hand you what's previously been marked as
4 State's 20, State's 17, State's 10, and State's 11.

5 A. State's Exhibit 20 is a close-up of the spot of blood
6 that was on the kitchen floor and it's marked A. I have an
7 A marker on it.

8 State's Exhibit 17 is a close-up of the spot of blood
9 that was on the sink. That's with marker E.

10 State's Exhibit 10 is a close-up of the some blood that
11 was on the floor of the kitchen and it has a marker C.

12 And then State's Exhibit 11, which is under the sink
13 cabinet where they had a lot of cleaning stuff, you know, to
14 wash, there was the fabric re-freshener bottle, and it's
15 just a very close-up of where the bottle was, and there was
16 some other bottles around it, I took just a close-up of the
17 actual fabric freshener bottle.

18 MR. GOINGS: Your Honor, at this time the State
19 would seek to introduce into evidence State's Exhibit 10,
20 11, 17 and 20.

21 MR. AIKEN: Without objection, Your Honor.

22 THE COURT: They are admitted.

23 (Whereupon, State's Exhibit No. 10 was entered
24 into the record as evidence)

25 (Whereupon, State's Exhibit No. 11 was entered

1 into the record as evidence)

2 (Whereupon, State's Exhibit No. 17 was entered
3 into the record as evidence)

4 (Whereupon, State's Exhibit No. 20 was entered
5 into the record as evidence)

6 MR. GOINGS: I seek to publish to the jury, Your
7 Honor.

8 THE COURT: Yes, sir.

9 (Evidence Bag marked as State's Exhibit No. 31 for
10 identification).

11 COURT REPORTER: Your Honor, can the witness get
12 some water? The witness needs some water.

13 MR. GOINGS: Yes.

14 THE WITNESS: I apologize, I'm having a throat
15 problem. It's just hard for me to talk today.

16 (Off the record)

17 (Back on the record)

18 THE WITNESS: Thank you so much.

19 BY MR. GOINGS:

20 Q. Are you okay?

21 A. Yes, sir.

22 Q. I'll show you what's been marked State's Exhibit 31.
23 Can you identify that item?

24 A. State's Exhibit 31 is the actual fabric freshener
25 bottle that I collected from under the sink in the kitchen.

1 It's put in the container. It's sealed. It's marked with
2 all the information; my name, case number, where it came
3 from, and the address, and the offense, which all the
4 information in the case is marked actually on the package.

5 Q. Did you fill out that information?

6 A. Yes, sir, this is my writing.

7 Q. And when did you fill out that information?

8 A. When I get ready -- when I have finished processing an
9 item, such as this, and I feel that there is nothing else I
10 can actually do to process to try to get evidence, I will
11 take it and seal it in a container, mark the container so I
12 know where it came from with my name and all the information
13 from the case, and then this is turned into our evidence
14 room.

15 Q. And what day did you turn that item into the evidence
16 room?

17 A. The next day.

18 Q. And that's marked on that particular item?

19 A. Yes, it is.

20 Q. And this is an item that you collected and
21 photographed, as you have previously testified to?

22 A. The fabric freshener bottle that was underneath the
23 sink.

24 Q. And this item is the item that you swabbed and came up
25 with swab K, I believe?

1 A. Yes, there was a little bit of blood on top of the
2 fabric freshener bottle and I immediately swabbed that first
3 before I did any other processing.

4 Q. Okay.

5 A. That was also processed for fingerprints too.

6 MR. GOINGS: At this time, Your Honor, the State
7 would seek to introduce State's Exhibit 31 into evidence.

8 MR. AIKEN: Without objection, Your Honor.

9 THE COURT: It's admitted.

10 (Whereupon, State's Exhibit No. 31 was entered
11 into the record as evidence)

12 BY MR. GOINGS:

13 Q. Again, you testified swab A was from where?

14 A. The floor.

15 Q. Swab C was from where?

16 A. C was a faint area noted on the floor of the kitchen.

17 Q. Swab D?

18 A. Was also located on the kitchen floor, which is in the
19 photograph.

20 Q. Swab E?

21 A. E was a small drop of blood that was located on the
22 sink.

23 Q. Swab H?

24 A. Swab H, I noticed a small drop of blood that was
25 actually located on the coffee table that was in front of

1 the couch.

2 Q. Obviously you previously testified about swab K from
3 the bottle?

4 A. Yes, sir.

5 Q. Swab L?

6 A. Swab L was -- there is two -- there is two bottles that
7 was on the coffee table. One of them was broken. It was
8 cracked.

9 I swabbed the top of the bottle of -- one of the beer
10 bottles that was on the coffee table, that was swab L.

11 And then I also swabbed the beer bottle that was
12 unbroken and that was swab M.

13 Q. And what did you do with these swabs once you collected
14 them?

15 A. The same as I did when I swabbed the sink is I take
16 them and put them in a container, mark all the information
17 on the container, seal them in a package and then turn them
18 into evidence.

19 (Evidence Bag marked as State's Exhibit No. 32 for
20 identification)

21 BY MR. GOINGS:

22 Q. I'm showing you what's been marked State's Exhibit 32.
23 Can you identify that object?

24 A. Yes, sir. State's Exhibit 32 is with all the swabs
25 that I collected from the scene and they are sealed in a box

1 and then I put them in an evidence envelope, put all the
2 information in front of the envelope that pertained to the
3 case, they are sealed and then they are turned into
4 evidence.

5 Q. So for the swabs that you just previously testified
6 about, which would include A --

7 A. It would be A from the floor; C from the kitchen floor;
8 D from the countertop; E from the sink; K from the -- or H
9 from the coffee table; K from the fabric re-freshener
10 bottle; and then L from the broken beer bottle; and M from
11 the beer bottle that was not broken.

12 Q. Each individual swab is contained within a separate box
13 in that package?

14 A. Yes, sir, you can see there are separate boxes in here
15 and they are sealed and they are turned into evidence like
16 that.

17 Q. And this is the bag that you sealed them in?

18 A. Yes, sir, that's my writing on the bag.

19 MR. GOINGS: At this point in time, Your Honor,
20 the State would seek to introduce State's Exhibit 32 into
21 evidence.

22 MR. AIKEN: Without objection, Your Honor.

23 THE COURT: It's admitted.

24 (Whereupon, State's Exhibit No. 32 was entered
25 into the record as evidence)

1 BY MR. GOINGS:

2 Q. Can you tell the jurors what's the -- is this a special
3 type of bag?

4 A. Yes, sir.

5 Q. What kind of bag is it?

6 A. Those are bags that the evidence room, I think they
7 have them made, and what it is, it's made in a way where you
8 can actually mark all the information in front of the bag.
9 Then when you put them in there, there is a seal that you
10 can actually seal on top of the bag where it can't be
11 tampered -- you know, until maybe someone from the evidence
12 room may have to check it out to do DNA, or some other kind
13 of processing, but when I turn it in, it's sealed and it
14 goes straight to the evidence room.

15 Q. Okay. So if someone intended to open it that shouldn't
16 be opening it, a person who later, say a DNA guy, could
17 determine whether or not this had been tampered with?

18 A. Correct. You know, some of the swabs need to be tested
19 for DNA, so the DNA analyst would go to the evidence room
20 and he would actually check out the swab, and it's all
21 documented. He will check out the swab and take it to his
22 DNA laboratory and then test whatever that swab for DNA.

23 Q. Now, you testified that in your testimony that you
24 noticed a drop of blood that caught your eye. Obviously
25 already there's been some extensive testimony concerning

1 your collection of those drops, correct?

2 A. Right.

3 Q. You also were talking about the chemicals that you
4 sprayed on the floor after these samples were collected?

5 A. Correct.

6 Q. And, again, what did you call that chemical?

7 A. I think back then, you know, this is years ago, I think
8 we called it Crystal Violet back then. I think they use
9 something else now.

10 Q. You testified that the -- the chemical reacts with
11 protein?

12 A. That particular chemical reacts with protein which is
13 in the blood, so -- blood really isn't red. The only time
14 blood is red is if it has oxygen in it. So sometimes if
15 someone is bleeding or dropping blood and the oxygen
16 evaporates, it's clear. And when it's clear you can't see
17 with the naked eye, so this Crystal Violet will still pick
18 up the protein that's in the blood and it will actually
19 bring it out and kind of turns it a purple black where you
20 can see where the blood was, whereas before you really
21 couldn't see it with your naked eye.

22 Q. I'm going to hand you what's been marked, previously
23 marked, State's Exhibit 13, 14, and -- actually that's --

24 MR. GOINGS: Scratch that, Your Honor.

25 BY MR. GOINGS:

1 Q. 14, 15 and 16.

2 A. Okay. I took these photographs.

3 And State's Exhibit 16 is a picture taken that was kind
4 of far away from the kitchen where you can see the floor
5 after I put the amino black on it and it reacted.

6 State's Exhibit 14 is just a close-up of the kitchen
7 floor where you can see where the amino black reacted with
8 the blood.

9 And then I also put amino black on the kitchen sink,
10 because I had found some blood drops on there. And State's
11 Exhibit 15 is a close-up of the sink where I put the amino
12 black on to see if it would have a reaction to that blood.

13 Q. And based on your experience, what does that suggest?

14 A. What that suggests was that there was blood there at
15 one point. You just couldn't see it with the naked eye and
16 when you are using the chemical, it actually brings it out.

17 Q. And what would this suggests happened to the blood?

18 A. I'm sorry?

19 Q. What would these pictures suggests happened to the
20 blood that was originally there?

21 A. Well, what happens is that the blood was there at one
22 point, but it looks -- especially on the floor. It looks
23 like someone had tried to wipe it up, because you can
24 actually see the wipe marks on the floor.

25 MR. GOINGS: Your Honor, at this time the State

1 would seek to introduce into evidence State's Exhibits 14,
2 15, and 16.

3 MR. AIKEN: Without objection, Your Honor.

4 THE COURT: Without objection they are admitted.

5 (Whereupon, State's Exhibit No. 14 was entered
6 into the record as evidence)

7 (Whereupon, State's Exhibit No. 15 was entered
8 into the record as evidence)

9 (Whereupon, State's Exhibit No. 16 was entered
10 into the record as evidence)

11 MR. GOINGS: Permission to publish, Your Honor?

12 THE COURT: Yes, sir.

13 MR. GOINGS: Thank you.

14 Beg the court's indulgence.

15 (Off the record)

16 (Back on the record)

17 MR. GOINGS: That's all the questions I have at
18 this time, Your Honor.

19 THE COURT: Any cross?

20 MR. AIKEN: Yes, Your Honor.

21 May it please the court?

22 THE COURT: Yes, sir.

23 CROSS EXAMINATION BY MR. AIKEN:

24 Q. How are you, lieutenant?

25 A. I'm good.

1 Q. Good. Good.

2 I'm Art Aiken. I'm one of Mr. Porch's lawyers, and as
3 you see I have a whole bunch of stuff in front of me.

4 A. I see.

5 Q. Don't be intimidated. I don't intend to keep you too
6 long.

7 A. I testified so many times that I will not be
8 intimidated.

9 Q. I understand. I understand. I have done it a few
10 times, too, over twenty-five years.

11 A. Yes, sir.

12 Q. The Crystal Violet that you were talking about, that's
13 Gluco Crystal Violet LCD?

14 A. I believe it is, yes. This is a long time ago and I
15 have not been in lab for like seven years.

16 Q. I see. I see. And you are not -- you are not involved
17 in the lab at all any longer?

18 A. Not in the last seven years.

19 Q. Okay. So you have been gone since 2007?

20 A. That sounds about right.

21 Q. Since 2007.

22 Now, the LCD test, it picks up protein --

23 A. Uh-huh.

24 Q. -- from blood, right?

25 A. Right.

1 Q. And the kitchen is an area of the house where you are
2 likely to have protein products, like meat and milk and eggs
3 and things like that, right?

4 A. Yes, sir.

5 Q. And so from time to time you can in a kitchen have a
6 false positive on an LCD, can't you?

7 A. Sometimes the LCD will react with the other proteins.
8 For example, some of the things that you said, especially
9 like chocolate milk.

10 Q. Right.

11 A. And sometimes it will have the same reaction, because
12 what it does is it just grabs the protein, but that's why in
13 cases like this particular case I would swab areas that I
14 believe are blood around those before I used the Crystal
15 Violet.

16 Q. I see. I see.

17 A. You know, to make -- to make sure that I'm not just
18 putting it down and all I am is picking up something else,
19 and that's why I swab those little spots that are right next
20 to where I'm doing it.

21 Q. Right.

22 And you would swab before you would put the LCD down to
23 begin with, wouldn't you?

24 A. Yes, sir.

25 Q. You wouldn't want to cause any problems with later DNA

1 analysis?

2 A. Right, because the LCD could have some problems later
3 with DNA.

4 Q. It degrades DNA?

5 A. I think it's possible, but I'm not an expert in DNA, so
6 I think it does.

7 Q. I see. I see.

8 And there is another test that you could use for blood,
9 isn't there, phenolphthalein?

10 A. Well, the phenolphthalein actually tests to see if it
11 is blood.

12 Q. If it is blood?

13 A. Right, but that's all it does.

14 Q. Correct. Correct.

15 A. But it could be animal blood. It just tests to see if
16 it is blood.

17 Q. Yeah, it doesn't test for -- it doesn't distinguish
18 between animal blood and human blood?

19 A. It just tests for blood. That's it.

20 Q. But you very infrequently have false positives with
21 phenolphthalein, isn't that right?

22 A. I think you may be right, but I'm really not sure.

23 Q. I see.

24 Would you say in general terms, as far as the risk of
25 false positives, that phenolphthalein is safer than LCD?

1 A. Possible.

2 Q. Did you use phenolphthalein --

3 A. No.

4 Q. -- at this location?

5 A. No, sir.

6 Q. Now, you were asked about a number of pictures of the
7 crime scene.

8 (Photograph marked as Defendant's Exhibit No. 8
9 for identification)

10 BY MR. AIKEN:

11 Q. And I'm going to ask you about one that you weren't
12 asked about.

13 I'm showing you what's been marked Defendant's Exhibit
14 8.

15 MR. AIKEN: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes, sir.

18 BY MR. AIKEN:

19 Q. I'm showing you what's been marked Defendant's Exhibit
20 8.

21 A. All right.

22 Q. And I think I gave it to you upside down.

23 A. All right.

24 Q. Is that a picture that you took of the crime scene?

25 A. Yes, Defendant's Exhibit 8 is a close-up, which is to

1 the left of the couch. There is a fan, the pillow, I think
2 a game, and the TV. You can see actually the right arm of
3 the couch.

4 Q. And you can see blood on the DVD --

5 A. A lot of blood.

6 Q. -- player?

7 A. There is a lot of blood. There is a lot of blood
8 there.

9 Q. And a lot of blood on the Play Station?

10 A. Yes, sir.

11 Q. And a lot of blood on the -- it looks like a VCR down
12 below that?

13 A. Right, down on the shelf.

14 Q. A TV set that was on the shelf?

15 A. Yes.

16 Q. And then blood on the TV stand and on the TV?

17 A. Yes, sir.

18 Q. Is that right?

19 A. That's correct.

20 MR. AIKEN: Your Honor, we would move to admit
21 this as Defendant's Exhibit 8.

22 THE COURT: Any objection?

23 MR. GOINGS: No objection from the State, Your
24 Honor.

25 THE COURT: It's admitted.

1 (Whereupon, Defendant's Exhibit 8 was entered into
2 the record as evidence)

3 MR. AIKEN: May I have a moment, please, Your
4 Honor?

5 THE COURT: Yes, sir.

6 MR. AIKEN: Thank you.

7 (Off the record)

8 (Back on the record)

9 MR. AIKEN: Your Honor, may I publish Defendant's
10 Exhibit 8?

11 THE COURT: Yes, sir.

12 MR. AIKEN: Thank you, Your Honor.

13 That's all I have.

14 BY MR. AIKEN:

15 Q. Thank you, lieutenant.

16 A. Yes, sir.

17 THE COURT: Any redirect?

18 MR. GOINGS: Just briefly, Your Honor.

19 REDIRECT EXAMINATION BY MR. GOINGS:

20 Q. You were asked about the use of what a particular
21 chemical you used, is that correct?

22 A. Yes, sir.

23 Q. The drops of blood that you found --

24 A. Right.

25 Q. -- were they -- in location to where you photographed

1 the white card, were they in close proximity, or --

2 A. Are you talking about the markers that are on there?

3 Q. Yes.

4 A. Yeah, the markers have -- the bottom of the markers
5 have like a little L shape and it's got like a little area
6 in front of that and what I usually do is I'll put that
7 marker down, you know, like behind let's say a spot of
8 blood, so when I take the picture, I know that that's where
9 the blood is, because sometimes you can take a picture from
10 a distance and you not going to be able to see the drop of
11 blood. And then I will take a close-up, too, where you can
12 see them.

13 Q. Okay.

14 MR. GOINGS: It may be better for me to ask my
15 questions when we get the photographs back.

16 (Off the record)

17 (Back on the record)

18 BY MR. GOINGS:

19 Q. So, again, just to be sure, based on your direct
20 testimony, you see drops of blood, you photograph those
21 first and then you use the chemical?

22 A. You photograph them, mark them, and then use the
23 chemical, yes, sir.

24 Q. Let's use State's Exhibit 13. Do you remember that
25 photograph?

1 A. Yes, sir.

2 Q. The location of those markers?

3 A. Right, they are on the kitchen floor, and there is also
4 markers on the counter.

5 Q. I'll show you what's been marked State's Exhibit 16.

6 State's Exhibit 13 is where you found the drops of
7 blood before you do the chemicals, correct?

8 A. Yes, sir. Yes, sir, State's Exhibit 13 is the picture
9 where I have the markers on the floor and the counter of
10 where the drops of blood that I found.

11 And then State's Exhibit 16 is I have already taken
12 these samples of the blood. I have already removed the
13 markers, and then I used the Crystal Violet chemical on the
14 floor or the sink to see if I can see any areas that blood
15 may have been.

16 Q. And are places where the chemical reacts to where you
17 sprayed pretty much the same location as the drops of blood
18 that you found?

19 A. Exactly.

20 MR. AIKEN: Your Honor, I object. He's been
21 leading the witness for a couple of minutes.

22 MR. GOINGS: I'll rephrase the question, Your
23 Honor.

24 THE COURT: Rephrase the question.

25 BY MR. GOINGS:

1 Q. What is the significance when you compared those two
2 photographs?

3 A. What they are is they are basically the same photograph
4 taken from the same distance, but one of them is where the
5 markers and the spots of blood that I saw that I collected
6 and then removed the markers and I have already packaged the
7 swabs and the blood in a container. Then I put the chemical
8 down on the floor and the sink, let it react, and then I
9 took a picture of the reaction of it.

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

11 THE COURT: Anything further?

12 MR. AIKEN: No, Your Honor. Thank you.

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

14 THE WITNESS: Thank you.

15 THE COURT: Is this witness excused?

16 MR. GOINGS: Yes, ma'am.

17 MR. AIKEN: No objection to him being excused,
18 Your Honor.

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

20 THE WITNESS: Thank you.

21 THE COURT: Ladies and gentlemen, this would be a
22 good time to take an afternoon break.

23 I'm going to remind you of the instructions I have
24 given to you; that is, not to begin to discuss this
25 matter among yourselves, as you still do not have all the

1 Call your next witness.

2 MR. UNDERWOOD: Your Honor, the State calls John
3 Barron.

4 INVESTIGATOR JOHN BARRON, having been first duly
5 sworn, testified as follows:

6 THE CLERK: Thank you. Have a seat on the witness
7 stand, please.

8 State your name for the record.

9 THE WITNESS: My name is John Barron, B-A-R-R-O-N.

10 DIRECT EXAMINATION BY MR. UNDERWOOD:

11 Q. Good morning, Investigator Barron.

12 A. Good morning.

13 Q. Would you please tell the jury where it is you are
14 currently employed?

15 A. Richland County Sheriff's Department.

16 Q. And what do you do there?

17 A. I'm a DNA analyst.

18 Q. And did you have an opportunity to analyze the evidence
19 involved with this case?

20 A. Yes, I did.

21 Q. If you would, sir, have you ever been qualified to
22 testify as an expert in court before?

23 A. Yes, sir.

24 Q. In what fields?

25 A. Forensic serology, forensic trace analysis, and

1 forensic DNA analysis.

2 Q. Could you please explain to the jury your education and
3 training in those three fields?

4 A. Yes, sir.

5 I have a Bachelor of Science Degree in Microbiology
6 from Clemson University.

7 My first forensic science employment was at SLED, or
8 the South Carolina Law Enforcement Division, where I was
9 originally trained in forensic serology, which is the
10 identification of body fluids and trying to classify those
11 body fluids to prepare individuals, if possible, using the
12 present technology available.

13 I was also trained at SLED to do forensic trace
14 analysis, which involved the identification and comparison
15 of various fibers.

16 Also at SLED, in 1999, I was part of the first group of
17 scientists that were trained in the present DNA technology
18 under the direction of Dr. Greg Amick, who was the
19 individual who validated that for SLED, which was initially
20 the first in the State of South Carolina.

21 Dr. Greg Amick and I came over to Richland County in
22 2004 and set up their DNA laboratory there, and that's where
23 I have been since.

24 I have testified in forensic serology probably several
25 hundred times prior to DNA. And then since DNA, I have

1 testified on DNA results about sixty times.

2 Q. Okay.

3 MR. UNDERWOOD: Your Honor, at this time the State
4 would offer Investigator Barron as an expert witness in the
5 field of DNA, serology, and trace evidence.

6 THE COURT: Any voir dire?

7 MR. AIKEN: No voir dire as to his qualifications.
8 We leave his competence as an expert up to you, Your Honor.

9 THE COURT: I find him qualified as an expert in
10 those areas.

11 BY MR. UNDERWOOD:

12 Q. Investigator Barron, if you could explain to the jury
13 the procedures that the Richland County Sheriff's Department
14 has, as far as analyzing and examining evidence.

15 A. Well, as far as analyzing evidence, evidence is, of
16 course, secured at crime scenes and brought into our
17 evidence department, where it is secured until we take
18 custody of that evidence.

19 We then begin to process the evidence; in other words,
20 try to find any type of biological material that might be of
21 evidentiary value.

22 Once a prospective piece of biological material, such
23 as blood, in the case of, you know, homicides or assaults
24 where people are bleeding, we would then take a sample of
25 that and put it into a procedure involving extraction. In

1 other words, we would digest the blood, trying to remove the
2 DNA from the cells in the blood, and then we would purify
3 that DNA. We would quantify that DNA; in other words,
4 determine how much is there; or, if there is any there at
5 all, to further analyze it.

6 Then we would go through a procedure called polymerase
7 chain reaction, where we target fifteen individual sections
8 of the DNA molecule for human identification.

9 Recent -- well, within our lifetime, of course, DNA
10 technology has developed to where we can actually sequence
11 the human genome or human DNA molecule.

12 During that process there were individual locational
13 molecule that could be used for human identification, and
14 human identification only. Of course, there is others that
15 they use for medical purposes and research and things like
16 that, but as far as human DNA identification, we target
17 those areas as are used for that purpose.

18 And when we copied those portions of the DNA molecule,
19 we develop a profile. A profile consists of an allele,
20 which is a DNA term, that comes from the mother and the
21 father, because you get half your DNA from your mom and half
22 of it from your dad, the biological mother and father.
23 Those alleles then compose your genotypic DNA profile, and
24 that profile is unique to you as an individual, unless you
25 have an identical twin, which in that case it would be the

1 same, but that profile then is used to identify individuals.

2 So we would need a known sample from individuals
3 involved in the crime to develop their profile to compare
4 with the evidence with the DNA that is developed there.

5 Q. And, investigator, if I could jump in for just one
6 second.

7 When you talk about building the initial profile
8 itself, when you talk about having two different parts that
9 you looked at, can you explain how that -- how those two
10 parts are quantified to make that profile?

11 A. I'm not sure I understand that question.

12 Q. What do you look at to label each of the loci involved
13 in making a profile? How is that quantified so you can
14 compare it with another profile?

15 A. Well, the sections are copied and then they are
16 isolated. And the -- what makes up the profile is the link
17 of the DNA segment that is copied. And that link has been
18 separated and that separation is revealed on what we call an
19 electrophoregram. It simply reveals the series of peaks, if
20 you will, on a graph, and those peaks are labeled based upon
21 the size of the fragment that is copied.

22 And I know this sounds complicated, but it really is --
23 when you look at it, it's just a series of DNA fragment
24 sizes, given numbers to represent the size. So it would be
25 a series of numbers, if you will, that would compose your

1 profile.

2 Q. So is it fair to say that in the fifteen parts of a DNA
3 molecule that you are looking at for an identification,
4 there would be two numbers for each part?

5 A. There is a number, if you will, from your mom and from
6 your dad. Now, sometimes that number is the same, so you
7 would only have one peak.

8 So using terms, scientific terms, a person who has only
9 one peak as a locus or a point on the DNA molecule, it's
10 called a homozygote. The person who has two peaks, they
11 would be called a heterozygote, meaning that hetero meaning
12 two, or more than one; one from mom, one from dad that are
13 different. If they are the same, then they would simply be
14 on top of each other and would just show one peak and they
15 would be called homozygote.

16 Q. Now, if you could move on and explain how, once one
17 profile is made, how you then go and make comparisons?

18 A. Well, we would simply compare the peak sizes to see if
19 they are the same. If they are, then the profile is from
20 that person.

21 Q. And is that by matching a known DNA sample from a
22 person to the unknown --

23 A. Correct.

24 Q. -- that you are testing?

25 A. Exactly.

1 Q. What procedures are there in place for the sheriff's
2 department, as far as chain of custody, to make sure that
3 the samples are not contaminated before they get to your
4 lab?

5 A. Yes, the evidence department requires that the evidence
6 be sealed properly. In other words, it has to be either
7 taped up. It has to have evidence tape applied to it. The
8 person who submits it has to put their initials and date on
9 the item across the evidence tape.

10 And then when we receive it in the lab, we ensure that
11 process is secure. We do not accept any evidence that's not
12 properly sealed.

13 Then when we open it and take it out and analyze it, we
14 would then reseal it and put our evidence tape on it, our
15 initials and date on it and then return it back to the
16 evidence custodian, who would then return it to the
17 individuals involved with the trial.

18 Q. So just to be clear, if the seal was ever broken, would
19 you test the item?

20 A. No.

21 Q. Now, moving along in this case, how did you become
22 involved with testing evidence involved in the murder of
23 Nakia Mallory?

24 A. Well, I was the DNA analyst assigned to this case, so I
25 would be the one involved in picking up the evidence,

1 analyzing the evidence, returning the evidence.

2 I do have -- since the beginning of this case, we have
3 also acquired DNA technicians who assist me in this process.
4 They may assist me by picking it up, helping me cut out
5 samples, analyze for blood and other body fluids, just
6 assist me in that manner. But, generally speaking, I am the
7 one who is either doing it myself or supervising their work.

8 Q. And both technicians who assisted you, do they follow
9 the same precautionary procedures, as far as checking seals
10 and making sure things aren't contaminated, as you do?

11 A. That is correct, they go through a training process in
12 which they are fully aware of all the necessary security
13 measures, as well as any contamination from the laboratory
14 itself.

15 Q. Now, moving to the samples involved in this case, were
16 you able to get a standard DNA profile involving Justin
17 Mallory?

18 A. Yes, I was.

19 Q. And how did that come about? What did you examine?

20 A. Justin Mallory's known DNA profile was what we call a
21 Buccal swab.

22 Now, Buccal swab is simply the name for the type of
23 cells inside your mouth. That's just the term for it. But
24 for all -- for all practical purposes for laymen's terms,
25 it's just a swab from the inside of your mouth, your cheeks,

1 your gums, any type of area. That would remove those cells
2 that are present in your mouth that could be used to
3 identify you.

4 The unique thing about DNA in an individual is that
5 every cell in your body that has the nucleus in it which
6 contains the DNA would be the same. So it wouldn't matter
7 whether it came from your mouth, or drawn out of your arm,
8 or collected any other way, from your hair, or any other
9 tissue in your body, that DNA would all be the same.

10 So we have tried to be noninvasive, if you will, in
11 collecting known samples, so it's not very painful to swab
12 the inside of your mouth. It keeps that for your known
13 standard.

14 Q. And do you know where the Buccal swab that Justin
15 Mallory came from?

16 A. It would have come from the inside of his mouth.

17 Q. I mean -- let me rephrase it.

18 Do you know how it was obtained?

19 A. I was not present when it was obtained, so whoever --

20 Q. Let me rephrase it. How did it get to you?

21 A. It was the same way any other piece of evidence got to
22 me. It would have been -- I would have gone to the evidence
23 room and picked it up and brought it to the lab.

24 Q. And did that particular swab have an item number
25 assigned to it within the sheriff's office?

1 A. Yes, it did.

2 Q. What was that?

3 A. That would have been item 38.

4 Q. Okay.

5 MR. UNDERWOOD: Approach the witness, Your Honor?

6 THE COURT: Yes, sir.

7 BY MR. UNDERWOOD:

8 Q. Sir, I'm handing you what has been marked as State's
9 Exhibit 35. Take a chance to examine that envelope.

10 A. Okay.

11 Q. And can you explain to the jury what that envelope is
12 and what it would contain?

13 A. This is the envelope that contained the Buccal swabs
14 from Justin Mallory.

15 Q. And how did that particular package of Buccal swab
16 arrive to you, as far as chain of custody is concerned?

17 A. Okay. I would have to look that up.

18 I would have gotten that from Tena Goff, who was one of
19 the evidence custodians at the time.

20 Q. And is the Buccal swab that came in that envelope, is
21 that what you tested to perform the DNA profile for Justin
22 Mallory?

23 A. Yes, sir.

24 Q. And were you successful in creating a DNA profile for
25 Justin Mallory?

1 A. Yes.

2 Q. Moving on to Joshua Porch.

3 Were you able to perform a DNA profile for Joshua
4 Porch?

5 A. Yes, I was.

6 Q. And how did you do that?

7 A. The same manner. A Buccal swab was collected from him
8 as well.

9 Q. Now, I'm going to hand you State's Exhibit No. 29.
10 Would you take a moment and review that?

11 A. Okay.

12 Q. And what is that exhibit?

13 A. This is a heat-sealed pouch containing the little box
14 that has his Buccal swab in it.

15 Q. And is that the item that you tested to perform the DNA
16 profile for Joshua Porch?

17 A. It is.

18 Q. And, again, how did you go about creating that profile?

19 A. The same procedure. I cut a sample of the swab which
20 contained his cells from inside his mouth. I extracted it.
21 I isolated the DNA and then developed a profile from it.

22 Q. And as to both Justin Mallory and Joshua Porch, were
23 you then able to use those DNA profiles to compare them
24 against other items that were submitted to you for analysis?

25 A. Correct.

1 Q. What about Nakia Mallory, were you able to obtain a DNA
2 profile for her?

3 A. Yes, I was.

4 Q. And how did you do that?

5 A. In the case of Nakia Mallory, I received a blood
6 sample, probably taken at her autopsy.

7 Q. Now, I'm handing you State's Exhibit No. 37. If you
8 can review that, please?

9 A. Okay.

10 Q. What is that?

11 A. This is what is left of her blood sample that was
12 collected by the coroner's office, probably at her autopsy.

13 Q. Now, when you say what is left, what do you mean by
14 that?

15 A. Well, I would have removed some of the blood from it to
16 test.

17 Q. Some of the blood would have been consumed in the test?

18 A. Correct.

19 Q. Is that sample what you used to perform the -- analyzed
20 to perform the profile for Nakia Mallory?

21 A. Yes.

22 Q. And were you successful in performing a DNA profile for
23 her?

24 A. Yes.

25 Q. As far as the evidence concerned in this case, before

1 we get into the blood analysis, were any hairs submitted to
2 you?

3 A. Yes.

4 Q. And I'll begin first with sheriff's department items 11
5 and 12. Do you recall what those were?

6 A. They were materials from her right and left hand.

7 Q. Beginning with the items in -- beginning with the items
8 in number 11 --

9 Well, first I'm going to hand you State's Exhibit No.

10 8. Can you review that, please?

11 A. Yes.

12 Q. What items does that Exhibit No. 8 contain?

13 A. It contains samples from her right hand, left hand, and
14 also her left hand and right hand fingernail scrapings.

15 Q. Now, we will get to the fingernail scrapings in a
16 moment, but first the samples in number 11, the material
17 from her right hand, were you able to examine the contents
18 of that package?

19 A. Yes, I was.

20 Q. And what did you learn following your examination?

21 A. The item was submitted as the hair sample, but a lot of
22 times investigators, crime scene people, confuse hairs and
23 fibers, since they can be similar. It did contain some
24 fibers. It also contained some hair that were determined to
25 be animal in origin, not human.

1 Q. And what about the material in item number 12 from her
2 left hand?

3 A. Yes, that -- that contained one hair fragment that was
4 kind of reddish orange in color and I noted that it was
5 severely damaged.

6 Q. And by severely damaged, what did that do to your
7 analysis?

8 A. Well, it didn't do anything to my analysis. That's
9 just an observation. It could not be analyzed for DNA,
10 because to do DNA on a hair sample you need the root portion
11 of the hair, which contains the tissue with the nuclear DNA
12 present in it. This was a fragment, which means that it was
13 just a little piece of a hair.

14 I noted the color and I noted the damage to it. The
15 damage would have been the result of some type of trauma.

16 Q. Now, moving to the fingernail scrapings.

17 Beginning with item 13 on the right hand, what were the
18 results of your analysis of those fingernail scrapings?

19 A. Item 13, which is the fingernail scrapings of the right
20 hand, contained DNA that belonged only to the victim Nakia
21 Mallory.

22 Now, when the fingernail scrapings are obtained, you
23 can imagine they scrape under the fingernail. You are going
24 to get the person's DNA from whom you are scraping. And in
25 this case I obtained the DNA from the victim, Nakia Mallory,

1 whose fingernails were scraped.

2 Q. And what about the fingernail scrapings from the left
3 hand, item 14?

4 A. The fingernail scrapings from the left hand again
5 contained Nakia Mallory's DNA, but it also contained some
6 DNA from a male individual.

7 Q. To what extent were you able to identify that DNA?

8 A. The DNA that was from the male was a very, very small
9 amount. Unfortunately you do have to have enough DNA to get
10 a full profile, but if you have somewhere in between nothing
11 and enough for a full profile, you have what we call a
12 partial profile; in other words, you get some of the DNA.
13 Some the DNA amplifies or copies.

14 In this case it was a small amount of DNA, so what I
15 could do in that situation is to look at known individuals
16 that are submitted and see whether or not the alleles that
17 were developed match that person or not. And so if they do,
18 then I can include someone as a contributor to that mixture;
19 in other words, the mixture of Nakia Mallory's DNA and the
20 person involved, and/or exclude individuals.

21 Sometimes there is enough there as a separate
22 individual, we can actually identify them. And in this case
23 this fingernail scrapings I could not.

24 Q. The partial profile that you were able to identify from
25 those fingernail scrapings, did you compare that profile to

1 the known profile of Justin Mallory?

2 A. I did.

3 Q. And how did those profiles compare?

4 A. Justice Mallory was excluded as the male individual
5 under Nakia Mallory's fingernails.

6 Q. Just to be clear, can you explain again what exactly is
7 meant by the term "are excluded"?

8 A. Yes. The word "excluded" means that I looked at the
9 alleles of Justin Mallory at that particular point and
10 compared it to the male DNA that I was seeing under Nakia
11 Mallory's fingernails and his alleles are different, which
12 means he would be excluded as the contributor of that DNA.

13 Q. Okay. So there is no way that that DNA was Justin
14 Mallory's DNA?

15 A. That is correct.

16 Q. Were you able to compare that sample to Joshua Porch?

17 A. Yes.

18 Q. And how did those profiles compare?

19 A. Joshua Porch's known DNA contained the same alleles
20 that were present in that small amount of DNA from the male
21 underneath the fingernails of Nakia Mallory.

22 Q. Okay. And what is the significance of that, as far as
23 exclusion or inclusion?

24 A. Well, as far as excluded and included, he would be
25 included.

1 Based upon the amount of DNA, there we can sometimes
2 develop some type of statistical, I guess, weight to what
3 I'm seeing, but in this case the amount was so small that I
4 could not even do that. But I can in those situations
5 include or exclude, based upon what I am seeing from that
6 DNA.

7 Q. Okay. So Justin Mallory was excluded from that DNA,
8 but Joshua Porch was included?

9 A. Correct.

10 Q. Okay. So that means that that DNA could be Joshua
11 Porch's DNA?

12 A. It could be.

13 Q. Now, I want to bring your attention to sheriff's
14 department items number 15, 18, and 20.

15 I hand you State's Exhibit No. 32. Could you identify
16 that?

17 A. Yes.

18 Q. And what is contained in that exhibit?

19 A. This exhibit contains numerous swabs.

20 Item 15 is in this container, which is a swab from the
21 kitchen floor.

22 Also contains item 16, another swab from the kitchen
23 floor.

24 Item 17, a swab from the countertop.

25 Item 18 is a swab from the sink.

1 19, a swab from the coffee table.

2 20, a swab of the fabric freshener -- re-freshener
3 bottle.

4 21, a swab from a broken beer bottle.

5 And 22, a swab from an unbroken beer bottle.

6 Q. Okay. And throughout the course of this investigation,
7 did you have an opportunity to analyze all of those swabs?

8 A. Yes.

9 Q. Beginning with the swab in item 15, the swab on the
10 floor that was marked A, were you able to examine that and
11 create a profile?

12 A. Yes.

13 First of all, I would have determined -- because the
14 swab had a reddish stain on it, I would have determined
15 whether or not that red stain was blood or not. In this
16 case I did and was able to successfully determine that it
17 was blood. And then I proceeded then to develop a DNA
18 profile from that blood to determine whose blood it was.

19 Q. And were you able to determine whose blood it was?

20 A. I was.

21 Q. Whose blood was found in that spot labeled A on the
22 floor of the kitchen?

23 A. That would have been blood of Joshua Porch.

24 Q. And moving on to item number --

25 As far as -- you say that it was the DNA of Joshua

1 Porch. Is there a statistical certainty that you can apply
2 to that identification?

3 A. I can.

4 Q. Please explain that.

5 A. Each profile has a statistical certainty based upon the
6 frequency of each of those alleles known in the population.
7 That frequency is of a DNA profile developed in that blood
8 sample was approximately 1 in 110 quintillion. That would
9 be a 110 followed by fifteen zeros. Well, the population of
10 Planet Earth is only approximately seven billion, which is
11 about a hundred million times smaller than that. So to a
12 reasonable degree of scientific certainty that blood does
13 belong to Joshua Porch.

14 Q. Okay. Now, moving then to number 18, the swab from the
15 sink, were you able to analyze that?

16 A. Yes.

17 MR. UNDERWOOD: Your Honor, at this time for the
18 jury's reference, I would like to publish State's Exhibit
19 No. 13.

20 THE COURT: Yes, sir.

21 BY MR. UNDERWOOD:

22 Q. Investigator Barron, if you could please continue your
23 analysis.

24 A. Item 18, again -- let me double check my notes.

25 Item 18 was also a sample of blood that was swabbed. I

1 determined it was blood and then I proceeded to develop the
2 DNA profile.

3 This DNA profile consisted of a major contributor and a
4 minor contributor, similar to what we found in Nakia
5 Mallory's fingernails, major being Nakia Mallory, and the
6 minor being a small amount of some male.

7 In this case the major contributor would be from the
8 blood, because the blood would have contributed most of the
9 DNA from the swab like this, and it also matched Joshua
10 Porch.

11 The minor contributor was, again, just too weak to make
12 any type of determination.

13 Q. Now, as to the DNA that you identified for Joshua
14 Porch, to what scientific certainty did you identify that
15 particular sample?

16 A. In the same degree as the other.

17 Q. Now, as to the minor contributor, were you able to
18 determine what bodily substance that came from?

19 A. No, DNA is present on material that people touch,
20 people wear, people put their mouth on. Very often we find
21 a small amount of background DNA that we could see, but it
22 has to be enough there to interpret reliably. So sometimes
23 we don't know if that minor contributor is from one
24 individual, or a little bit from multiple individuals. In
25 this case I just reported that it was too weak to reliably

1 interpret.

2 Q. But within the blood of Joshua Porch, there is another
3 unidentified DNA mixed with his blood, is that accurate?

4 A. Well, I would say that the DNA from the blood is from
5 Joshua Porch.

6 The DNA also seen was probably some background DNA from
7 the substance it was swabbed from.

8 Q. But that -- again, that was a mixer of two DNA samples
9 in one?

10 A. It was a mixture. I have to say it's a mixture when I
11 see more than two alleles at a single locus, so that makes
12 it a mixture, but it has to be enough of that minor
13 contributor in order to make some type of reasonable
14 scientific certainty. In this case I was not able to do
15 that.

16 Q. Okay. Now, moving to item 20, what was that?

17 A. Item 20 was a swab of a bottle under the sink.

18 Q. I know you didn't collect it -- or did you collect that
19 sample, or was that given to you by the crime scene people?

20 A. The swab was given to me by the crime scene people.

21 Q. So you don't know what the actual bottle was?

22 A. No.

23 Q. Okay. When you analyzed the swab, what results did you
24 obtain?

25 A. This swab also contained blood and matched Joshua Porch

1 as well.

2 Again, the minor contributor too weak to reliably
3 interpret.

4 Q. So, again, that was another mixture of major Joshua
5 Porch, unidentified minor contributor?

6 A. Or contributors.

7 Q. Okay. To what degree of certainty do you make the
8 identification of Joshua Porch's DNA?

9 A. Again, the same statistic was seen and it would have
10 been Joshua Porch's DNA to a reasonable degree of scientific
11 certainty, and it's my ascertainment that it is his DNA.

12 Q. Now, Investigator Barron, without going through an
13 exhaustive list, were there numerous items that were checked
14 out to the DNA lab that were not tested?

15 A. Yes --

16 Q. And --

17 A. -- they were.

18 Q. Can you explain you that procedure works that you would
19 take possession of items without testing them?

20 A. Yes, the items are brought into the evidence room by
21 crime scene individuals, by investigators, they are
22 oftentimes packaged together, several items packaged
23 together, like this package here had some several swabs.
24 Well, sometimes the items that are packaged together are not
25 requested to be analyzed, and so we would remove those items

1 that were requested to be analyzed by the investigator in
2 the case, tested those, and just noted the fact that there
3 were other items in the package for inventory purposes, but
4 we would never open or have done any type of testing to
5 those items, but they would have been repackaged with -- the
6 items that were tested would have been repackaged in its
7 original container, along with those other items, and
8 returned to the evidence room.

9 Q. Who determines what items are to be tested?

10 A. Ultimately it's the investigator. Sometimes he works
11 in conjunction with the prosecutor's office, or he may work
12 in conjunction with us, just to get our opinion of what is
13 possible to develop DNA from. Maybe it's just something
14 that is just not relevant to the case.

15 When crime scene goes to a crime scene, they collect
16 pretty much the shotgun-type of collection. They collect
17 anything and everything that might be involved or might be
18 important, but not everything in every case is analyzed most
19 of the time.

20 Q. Now, Investigator Barron, did you have an opportunity
21 to testify in the trials of Justin Mallory?

22 A. I did.

23 Q. At that time had you tested for DNA all the evidence in
24 the case?

25 A. No.

1 Q. After that -- after those trials were concluded, did
2 you have an opportunity or were you requested to test
3 additional items?

4 A. I was. I was asked to confer with our deputy chief of
5 the sheriff's department, David Wilson. He and I had an
6 extensive conversation in his office concerning this case.
7 He expressed some --

8 Q. If you could -- just be careful. Don't go into
9 anything in particular that Chief Wilson said to you.

10 A. Okay.

11 Q. Just explain how it came about that you tested new
12 items.

13 A. As a result of that conversation, then requests were
14 made to do further testing in this case.

15 Q. And following that, what further items have been tested
16 since the trials of Justin Mallory?

17 A. The clothing of Nakia Mallory, which were extremely
18 bloody, were requested for additional testing. There were
19 some scissors and other beer bottles that were requested to
20 be analyzed. I think that's pretty much it.

21 Q. As far as the beer bottles and the scissors are
22 concerned, did any of those items have any blood or DNA on
23 them?

24 A. They did not have blood on them. All of them, except
25 for I think one sample, had a very minute amount of DNA and

1 there were no profile developed from it.

2 Q. There was no blood on it?

3 A. No.

4 Q. At what point in time did you test the clothes from
5 Nakia Mallory?

6 A. Would you like the date as to when I began that
7 analysis? Is that what you are asking?

8 Q. Yes, sir, if you have the date available.

9 A. It would have been in July of '09.

10 Q. At this time I want to hand you State's Exhibit No. 9.
11 Would you examine that box, please?

12 A. Okay.

13 Q. All right. Do you recognize that exhibit?

14 A. Yes, this was the box containing the clothing of Nakia
15 Mallory.

16 Q. And the contents of that box, are those the items that
17 you tested?

18 A. Yes, it would have been gray shorts, purple shirt and
19 bra and panties from the victim.

20 Q. And what were the internal item numbers for each of
21 those?

22 A. The gray shorts was given item number 52.

23 And the purple shirt, item 54.

24 Q. Now, beginning with item 52, the shorts, how did you go
25 about processing those items for analysis?

1 A. The items contained a lot of blood. The purpose of the
2 reexamination was to see if possible that blood from another
3 individual could be found.

4 In the case of an extreme amount of blood, it becomes
5 very difficult. It becomes like a shot in the dark type
6 think, so I would just simply look at the item, try to
7 ascertain areas where maybe it's somebody else's blood. I
8 would take very, very small cuttings of the blood sample and
9 put it into a test tube for extraction for DNA. I was asked
10 to do that.

11 I cut out several samples from each one to test. I was
12 able to obtain -- I was able to obtain results from each of
13 those cuttings.

14 And the purpose of the exam would have been at that
15 point, if nothing of evidentiary value, in other words, if
16 only Nakia Mallory's blood would have been found, I would
17 have been requested to analyze more samples until pretty
18 much it would have been exhausted, because that was the
19 purpose of the investigation at this point was to attempt to
20 find blood from another individual. It was bleeding in a
21 crime scene like this where someone is stabbed a lot, then
22 perhaps the individual who perpetrated the crime may have
23 bled.

24 Q. And what's the reasoning that a possible perpetrator
25 would have also bled --

1 MR. AIKEN: Objection, Your Honor, that calls for
2 speculation.

3 THE COURT: He just said that he has knowledge
4 based upon his experience and training, but, otherwise, I'll
5 sustain the objection.

6 BY MR. UNDERWOOD:

7 Q. I will ask the question this way.

8 Based on your experience in serology, the study of
9 blood, and forensic DNA analysis, what circumstances would
10 cause you to question whether or not a perpetrator's DNA
11 would be involved with a violent crime scene?

12 A. Well, I have been involved in analyzing evidence in
13 homicides cases like this for over twenty-five years.
14 Occasionally we do find a situation which a violent crime
15 occurs, that during that violent act the perpetrator cuts
16 himself or brazes himself enough to where his blood may be
17 part of the crime scene. And in this case, with the type of
18 violent attack that Nakia Mallory suffered, it was thought
19 that perhaps that was possible.

20 I informed the investigator that there was so much
21 blood, again, that it would be the type of a hit and miss
22 type thing, that generally speaking in a case where a person
23 bleeds out so much and soaks the garment to a large degree,
24 that the majority of the time we are only going to be able
25 to develop a profile of the person bleeding out or the

1 victim who was bleeding out on her clothing. But --

2 Q. As to item 52, the shorts, how many cuttings did you
3 make?

4 A. The gray shorts, item 52, my initial investigation I
5 cut out six samples.

6 Q. And did you test all six of those?

7 A. I did.

8 Q. What were the results of those tests?

9 A. Five of the six samples were purely DNA from the
10 victim.

11 The sixth, or the other sample, which was the second
12 sample that I collected, which I called item 54.2, was a
13 mixture.

14 Q. And you say 54.2, is that a sample from the shirt, or
15 is that a sample from the shorts?

16 A. Oh, the shorts. Excuse me, I'm on the wrong item.

17 Q. Yeah, just right now talking about the shorts, what
18 were your results?

19 A. The shorts is item 52, correct.

20 All right. The shorts only contained the blood of
21 Nakia Mallory.

22 Q. And to what degree of certainty was that identification
23 made?

24 A. It is to an absolute degree of certainty that that
25 blood belonged to her.

1 Q. Now, moving on to the shirt, how did you process the
2 shirt?

3 A. The shirt was laid out on an exam table. The blood --
4 again, a lot of blood. Random samples were taken trying to
5 find possibly isolated blood stains that could have been
6 from another individual, and I took numerous samples from
7 that as well.

8 Q. And how did you take those samples?

9 A. I took some scissors and cut out very small amounts of
10 the blood that was targeted for analysis.

11 Q. And how many pieces did you cut out?

12 A. Item 54, I cut out ten samples.

13 Q. And when you -- as you were processing the shirt, did
14 you happen to photograph it to illustrate where you were
15 taking samples from?

16 A. Yes.

17 Q. Okay. I'm now handing you what's been marked for
18 identification as State's Exhibit No. 36. Do you recognize
19 that exhibit?

20 A. Yes, sir.

21 Q. What is it?

22 A. This is a photograph that I took and printed.

23 Q. Does that photograph fairly and accurately represent
24 the shirt as you were viewing it at that time?

25 A. Yes, it would have reflected the front of the shirt as

1 I placed it out on the table and tried to re-form it into
2 its original position, because it had been cut open at the
3 hospital, or EMS, which is known to cut open the shirt to
4 get to the victim as quickly as possible.

5 MR. UNDERWOOD: Your Honor, at this time I would
6 move State's Exhibit No. 36 be admitted into evidence.

7 MR. AIKEN: Without objection.

8 THE COURT: It's admitted.

9 (Whereupon, State's Exhibit No. 36 was entered
10 into the record as evidence)

11 BY MR. UNDERWOOD:

12 Q. Investigator Barron, as the samples that you took, what
13 were the results of your analysis of that shirt?

14 A. 9 and 10 would have matched Nakia Mallory as the sole
15 contributor of DNA.

16 One of the samples was a mixture of another individual
17 and Nakia Mallory. It was a major/minor contributor. The
18 major contributor matched Joshua Porch.

19 Q. And to what degree of certainty were you able to make
20 that identification for Joshua Porch's DNA?

21 A. To an absolute degree of certainty. Again, the
22 statistics was 110 quintillion, which is a statistical
23 number that is so strong, that it would have been conclusive
24 to be his DNA.

25 Q. And of the cuttings that you made, which sample was it

1 that had this mixture?

2 A. 54.2.

3 Q. And did you label those cuts on the shirt from your
4 photograph?

5 A. I did.

6 MR. UNDERWOOD: Your Honor, I would ask the
7 witness to be able to step for the jury?

8 THE COURT: Yes, sir.

9 (Witness off the witness stand)

10 BY MR. UNDERWOOD:

11 Q. Investigator Barron, if you would, please show the jury
12 where on this photograph the sample was taken that resulted
13 in the identification of Joshua Porch's blood.

14 A. The photograph shows numbering which would number the
15 samples that I cut out.

16 The number 2 is -- number 1 and 2 are right here
17 together on the bottom of the shirt.

18 Q. And which side of the shirt is that on?

19 A. That would have been the right side.

20 Q. The right side of her person wearing the shirt?

21 A. Correct.

22 Q. Thank you.

23 (Witness back on the witness stand)

24 BY MR. UNDERWOOD:

25 Q. Investigator Barron, just to sum up all the information

1 that you just presented to us, is it your testimony that of
2 the fingernail scrapings taken from the left hand of Nakia
3 Mallory, that that was a mixture of her DNA and an unknown
4 male's DNA?

5 A. It was.

6 Q. And that DNA could have been Joshua Porch's DNA?

7 A. It the could have been, but I was not able to develop
8 any type of statistical weight to it, so I cannot say it
9 definitely is Joshua Porch's DNA, but it's certainly not
10 inconsistent with his DNA with what I found.

11 Q. So it was consistent with his DNA?

12 A. Correct.

13 Q. As to these --

14 MR. UNDERWOOD: Beg the court's indulgence, Your
15 Honor.

16 (Off the record)

17 (Back on the record)

18 BY MR. UNDERWOOD:

19 Q. And were you able to exclude Justin Mallory as the
20 contributor to that DNA?

21 A. I was.

22 Q. As to the samples that were taken, the swab samples
23 that were taken from the floor and the sink area and the
24 bottle, did those results come back as Joshua Porch?

25 A. Yes, the blood found -- I believe these items were in

1 the kitchen area. All the blood came back to that of Joshua
2 Porch.

3 Q. Was any of that blood Justin Mallory's?

4 A. No.

5 Q. As to the mixture of blood found on Nakia Mallory's
6 shirt, that was a mixture of Nakia Mallory's blood and
7 Joshua Porch's blood?

8 A. Correct.

9 Q. Was any of the DNA found on Nakia Mallory, including
10 the blood, was any of that the DNA of Justin Mallory?

11 A. No.

12 Q. So the only foreign DNA found on Nakia Porch (sic) was
13 of -- excuse me --

14 MR. AIKEN: Your Honor, I object. He's been
15 leading the witness for the last minute and a half.

16 MR. UNDERWOOD: I'm just clarifying to make sure I
17 understood his testimony, Your Honor.

18 THE COURT: I'll allow the summary.

19 BY MR. UNDERWOOD:

20 Q. And the DNA found on Nakia Mallory's clothing, it was
21 her DNA and Joshua Porch's DNA?

22 A. Correct.

23 Q. Was Justin Mallory's DNA found at all on Nakia
24 Mallory's clothes?

25 A. No.

1 Q. Thank you. Please answer any questions that the
2 defense has.

3 CROSS EXAMINATION BY MR. AIKEN:

4 Q. How are you, Investigator Barron?

5 A. I'm well under the circumstances.

6 Q. Well, I'll try to make it not unpleasant for you.

7 I'm Art Aiken. I'm one of Joshua Porch's attorneys.

8 We have talked about the term partial concerning DNA.

9 Let me tell you what I think parcel means and see if you
10 agree with me. Partial means that of the alleles that you
11 used to identify a human being by DNA, you don't have all of
12 those alleles?

13 A. That's correct.

14 Q. You only have part of them.

15 And I think you indicated the human ID part of the
16 genome is fifteen alleles, is that right?

17 A. At the time of this testing it was fifteen alleles.

18 Q. How many is it now?

19 A. We do testing on twenty-two now.

20 Q. And can you say that with twenty-two alleles, is it
21 necessarily more accurate than DNA testing done with fifteen
22 alleles?

23 A. Not if you get a complete profile.

24 Q. Okay. If you get a complete profile of fifteen
25 alleles?

1 A. Or -- it depends on the frequency of the alleles
2 developed. Some of the alleles are more rarer than others,
3 so, therefore, the statistic value goes up very rapidly and
4 so we would not need all fifteen.

5 Generally speaking, if we have -- if we can identify
6 maybe nine, or more, the statistics would be significant
7 enough to be able to make an identity.

8 Q. But if you have a partial with a smaller number of
9 alleles, it's more likely that you are not going to be able
10 to say conclusively that person is the contributor of this
11 DNA, isn't that right?

12 A. That is correct, yes, sir.

13 Q. And that's why you are, as a scientist, somewhat
14 hesitant to point the finger at somebody as a contributor if
15 you only have a partial DNA sequence, right?

16 A. That's correct.

17 Q. Because you are mindful of the statistics, the numbers,
18 because that tells you how likely it is that this person
19 whose DNA you know has the same DNA as somebody else, isn't
20 that right?

21 A. That's correct. Different genetic markers have
22 different frequencies. For instance, before DNA, we did ABO
23 blood grouping. So if someone who is Type O would include
24 that person, but it would also include every other person
25 who is Type O, so it would not be an identity.

1 But in the case of DNA and the frequency of these
2 alleles that are developed can be combined and the frequency
3 can be so rare that it is within reasonable scientific
4 certainty that individual.

5 Q. Is it true in general terms that the more body
6 product -- the reason why I use that term is you can get DNA
7 from anything living on your person, right?

8 A. DNA from -- any cell in your body that has a nucleus
9 would contain your DNA, so it depends on how much of that
10 DNA you can obtain. In this case it was a crime scene, so
11 I'm involving crime investigation would determine whether or
12 not we can say absolutely whether that DNA belongs to an
13 individual.

14 Q. And, in general terms, isn't it true that the more
15 genetic product you have, the more likely you are to get a
16 complete profile?

17 A. Yes, sir, that's correct, because --

18 Q. The less -- I'm sorry, go ahead.

19 A. I said that would be completely logical. The more you
20 have, the better chance that you have of getting a good
21 complete profile.

22 Q. Right.

23 And so there are situations, are there not, where you
24 know there is biological material, but it is in such a small
25 quantity that you can't get a full sequence?

1 A. That is correct.

2 Q. Okay.

3 A. I run into that situation quite often.

4 Q. And then let's talk for a minute about mixtures. You
5 talked about mixtures. Is that a situation where you have
6 DNA present at the same location from multiple contributors?

7 A. Correct.

8 Q. So, in other words, the sample you have that you have
9 received from the evidence room has DNA from more than one
10 person on it?

11 A. That's correct, or either the sample I collect myself
12 could have DNA from more than one person, because we collect
13 samples that are in many cases swabbed across an area and
14 that area may have DNA already present before the blood was
15 dropped there and so that would be picked up with the swab.

16 Q. And then when you have mixtures, you are sometimes able
17 to determine who the major contributor was and who the minor
18 contributor was, is that right?

19 A. Sometimes -- well, always we can determine the major,
20 because the major means there is plenty of it. And the
21 minor depends on the degree of or the amount of DNA present
22 in that minor contributor.

23 Q. Do you have your report in front of you so you can
24 reference it --

25 A. Yes, sir.

1 Q. -- because I'm going to be using item numbers from that
2 report, all right?

3 A. That's fine.

4 Q. Now, the fingernail scrapings from the right hand,
5 which is item number 13 in your report, that came back DNA
6 just of Nakia Mallory, right?

7 A. That is correct.

8 Q. And then item number 16 you tested, it was too weak of
9 a sample to get any DNA of any useful value, right?

10 A. Item 16?

11 Q. Item 16.

12 A. Item 16, meaning a swab of a spot on the floor?

13 Q. The floor, C, yeah.

14 A. Item 16, my results say a partial DNA profile was too
15 weak to reliably interpret.

16 Q. In other words, you didn't -- you didn't have enough
17 DNA to make a sequence that was of evidentiary value?

18 A. Correct.

19 Q. Now, it looks like item 40 is a pillow, couch cushion?

20 A. Correct.

21 Q. And you took some cuttings from that, right?

22 A. I did. That was part of the additional request to
23 analyze blood from the crime scene. I took ten cuttings
24 from this pillow cushion couch.

25 Q. Okay. And .1 through .8 and .10 came back as Nakia

1 Mallory, right?

2 A. Hold on, I have a very complex report here.

3 Q. I apologize. Take your time. I want to make sure we
4 get it right.

5 A. This would be item 14?

6 Q. Yes, sir.

7 And you have your cuttings labeled 40.1 through 40.10.
8 And it looks like .1 through .8 and .10 of item 40, the
9 cuttings, all came back Nakia Mallory, right?

10 A. Yes.

11 Q. But in 40.9 you came up with a mixture, right?

12 A. Correct.

13 Q. And it was Nakia Mallory as the major contributor,
14 right?

15 A. Correct.

16 Q. And then the minor contributor was an unknown male, but
17 you could not exclude Justin Mallory, right?

18 A. That is correct, Justin Mallory could not be eliminated
19 as a source of the minor contributor, and I did receive
20 other known samples that were eliminated as a contributor,
21 including Joshua Porch.

22 Q. And now it looks to me like there is an item 25, which
23 is a hand-rolled cigarette butt?

24 A. Yes.

25 Q. And you tested that for DNA, correct?

1 A. I did.

2 Q. And when you tested that for DNA, it came up positive
3 for Justin Mallory, right?

4 A. Yes. The cigarette butt -- cigarette butts at crime
5 scenes are typically submitted to the lab to see who was
6 smoking the cigarette. In this case the cigarette butt
7 revealed DNA matching Justin Mallory, so I determined
8 without any doubt that Justin Mallory was the one smoking
9 that cigarette.

10 Q. And items 56, 57, and 58 were clothes of Justin
11 Mallory, right? Sweat pants, a black T-shirt and a pair of
12 boots, right?

13 A. Correct.

14 Q. And you did testing on those as well, right?

15 A. I did.

16 Q. And those came back positive for blood. And the sweat
17 pants of Justin Mallory, the blood indicated that it was
18 Nakia Mallory, by DNA?

19 A. That is correct.

20 Q. And then the black T-shirt of Justin Mallory was Nakia
21 Mallory by DNA?

22 A. Correct.

23 Q. And then the boots of Justin Mallory, I think on the
24 right there was no blood, but on the left, which is 58.1,
25 came up positive for the blood of Nakia Mallory by DNA?

1 A. That is correct.

2 Q. Now, let's go back and talk about item 14, which is the
3 fingernail scraping from the left hand of Nakia Mallory.

4 And let me make sure I understand this. When you say that
5 Justin Mallory is -- excuse me, Joshua Porch is included as
6 a possible contributor, you are not saying that you can say
7 to a reasonable degree of certainty that that genetic
8 material under the fingernails came from Joshua Porch?

9 A. That's correct, I believe I tried to make that clear
10 earlier that there was not sufficient amount of DNA from
11 that male individual to positively identify anyone.

12 Q. And that means there is some reasonable doubt in your
13 mind as a scientist as to whether that contributor was
14 actually Joshua Porch?

15 A. It could be Joshua Porch, but it could be other male
16 individual as well.

17 Q. Now, the material that was under Nakia Mallory's left
18 hand fingernails, that was not blood, was it?

19 A. No.

20 Q. You tested it and it was not blood?

21 A. There was no blood present, so the DNA would come from
22 skin cells most likely, which is the reason why fingernail
23 scrapings are submitted, because it is supposed in a violent
24 crime that perhaps the victim was able to scratch or somehow
25 obtain the DNA from a perpetrator under the fingernails.

1 Q. Now, this was a small amount of DNA, wasn't it?

2 A. It was.

3 Q. It was so small that you couldn't get a complete DNA
4 sequence?

5 A. That is correct.

6 Q. And what would that be? A few cells, ten cells, a
7 hundred cells? Any way to tell?

8 A. There is no way to tell exactly the cell count, no.

9 Q. I see. I see.

10 But in size of skin cells, what would you think it
11 would be?

12 A. It wouldn't be much. That's all I can say.

13 Q. That's all you can say is it wouldn't be very much?

14 A. It wouldn't be very much.

15 Q. Okay. Now, if there is a violent struggle and somebody
16 reaches out and scratches the perpetrator, based on your
17 knowledge, training and experience, wouldn't you expect
18 there to be more skin cells underneath the fingernails?

19 A. Well, I've analyzed a lot of fingernail scrapings in my
20 career and sometimes we get a lot of them and sometimes we
21 get a very, very small amount.

22 There is no way I can tell how much DNA from a
23 perpetrator may have been obtained by the victim before her
24 demise. It all depends on a lot of factors before it gets
25 to me; how was that body treated; who was it collected; was

1 it collected properly; etcetera, etcetera.

2 Q. But you certainly can't say to any reasonable degree of
3 medical certainty that there was any kind of scratching that
4 resulted in skin cells underneath Nakia Mallory's
5 fingernails, can you?

6 A. No, I was not present at the autopsy. I have not read
7 an autopsy report. My analysis simply involves the
8 fingernail scrapings to determine if there is foreign DNA
9 present.

10 Q. Now, you testified at the two prior Justin Mallory
11 trials --

12 A. I did.

13 Q. -- didn't you?

14 A. Yes.

15 Q. And I believe that John Meadors, who was the
16 prosecutor, actually walked up to you and ran his fingers
17 through your hair, isn't that right?

18 A. I have no hair to run fingers through.

19 Q. But did he touch your head?

20 A. No, he did not.

21 Q. He didn't touch your head?

22 A. I don't recall that he did.

23 Q. Okay. You don't recall that?

24 A. I remember him asking a hypothetical question --

25 Q. Right.

1 A. -- about someone running their hand through someone's
2 head, would that give you enough DNA to develop profile.
3 And I believe I made a statement such as the fact that if
4 someone has dandruff, which is simply dead skin cells, that
5 it is certainly possible to obtain DNA under your
6 fingernails from maybe scratching or running your fingers
7 through someone's hair.

8 Q. But touching and fondling and that sort of thing,
9 that's one way that a person could get these skin cells
10 under their fingernails, right?

11 A. The DNA technology has advanced to the point where
12 someone can touch something and you could get enough skin
13 cell. Now, that is a very, very variable situation. It all
14 depends, again, on how much DNA the person sheds when you
15 are touching an object. We don't know. That is totally
16 individualistic. I have seen items that have been touched
17 where plenty of DNA is present, and I have seen items that
18 have been touched with no DNA present, and anywhere in
19 between.

20 Q. Okay. But contact, you know, with another human being
21 is one way to transfer skin cells, right?

22 A. If you are asking me if it's possible, I would have to
23 say yes.

24 Q. Okay. Well, do you recall testifying at Justin
25 Mallory's second trial?

1 A. Yes, I remember that.

2 MR. AIKEN: I'm sorry, Your Honor, I need to check
3 something.

4 (Off the record)

5 (Back on the record)

6 BY MR. AIKEN:

7 Q. And I believe at that trial you were examined by Mr.
8 Meadors?

9 A. I could have been. I don't really don't recall
10 specifically.

11 Q. I see. I see. I see.

12 But you testified then, right?

13 A. I did. I have testified for the Richland County
14 solicitor's office on numerous occasions.

15 Q. Okay. And you were under oath at that time --

16 A. I was.

17 Q. -- is that correct?

18 A. Yes.

19 Q. And you understood it was a murder trial and you needed
20 to be --

21 A. Absolutely.

22 Q. -- very, very careful about your testimony, right?

23 A. Absolutely.

24 Q. Okay. Well, I happen to have a transcript of that
25 trial. And what I'm going to do is I'm going to share this

1 with you and see if you can follow along here.

2 There was a question asked by Mr. Methods; "so
3 touching, fondling would be one way one person could get
4 skin cells of another person under their fingernails."

5 That was the question, correct?

6 A. Correct.

7 Q. And your answer was "sure"?

8 A. "Sure."

9 Q. Okay.

10 A. I believe I testified to that a moment ago, that if you
11 were to ask that question hypothetically, I would have to
12 say it's possible.

13 MR. AIKEN: May I have just one moment, please,
14 Your Honor?

15 THE COURT: Yes, sir.

16 (Off the record)

17 (Back on the record)

18 BY MR. AIKEN:

19 Q. Thank you very much, sir. I'm finished with you.

20 A. Okay.

21 THE COURT: Is there any redirect?

22 MR. UNDERWOOD: Briefly, Your Honor.

23 REDIRECT EXAMINATION BY MR. UNDERWOOD:

24 Q. Investigator Barron, the small samples that you were
25 unable to perform a profile on, I believe Mr. Aiken

1 described it as biological material. Were you able to
2 determine whether that was human DNA?

3 A. Yes, we target human DNA. We ignore bacteria, plant,
4 and other animal DNA.

5 Q. So that was human DNA, but you just couldn't identify
6 whose?

7 A. That's correct.

8 Q. The cigarette butt that was mentioned, do you have any
9 idea how long that was there, where it was found, anything
10 like that?

11 A. I do not. I did not attend the crime scene. Cigarette
12 butts can linger around for a very, very long time. DNA is
13 very stable, and a DNA profile, cigarette butts the majority
14 of the time is positively identified.

15 Q. As to the couch cushion that you were asked about, in
16 your experience would you be surprised to find a DNA sample
17 from a person on their own furniture?

18 A. No.

19 Q. And, likewise, if it was a cigarette butt, would you be
20 surprised for someone's cigarette butt to be in their own
21 home?

22 A. No.

23 Q. As to the discussion of Justin Mallory's clothing, if
24 someone were to pick up another person who had been stabbed
25 and it was very bloody, would you expect for that blood to

1 be transferred to the other person's clothing?

2 A. I would.

3 Q. As to the fingernail scrapings that you testified were
4 consistent with Joshua Porch's DNA, is there any way
5 possible that that was Justin Mallory's DNA?

6 A. No.

7 Q. Investigator Barron, do you have any scientific doubt
8 whatsoever about your identifications in this case?

9 A. None at all.

10 Q. Thank you.

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

12 THE COURT: Anything further?

13 MR. AIKEN: No recross, Your Honor.

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

15 I assume he's excused?

16 MR. UNDERWOOD: Please, Your Honor.

17 THE COURT: You may be excused. Thank you very
18 much.

19 Ladies and gentlemen, this time would be a good
20 time to take a brief morning break.

21 I'm going to remind you of the instructions I have
22 given to you; that is, not to begin to discuss this matter
23 among yourselves, as you still have not heard all the
24 evidence.

25 Let's take a brief break and then we will come

1 back and continue on.

2 (The following takes place outside the presence of
3 the jury panel)

4 THE COURT: Anything we need to take up before we
5 go to break?

6 MR. GOINGS: Nothing from the State, judge.

7 MR. LUKE SHEALEY: Nothing from the defense,
8 judge.

9 THE COURT: Let's take a break and we will come
10 back, a brief break.

11 (Whereupon, proceedings were recessed)

12 (Whereupon, proceedings were reconvened)

13 THE COURT: Anything we need take up before we
14 bring the jury in?

15 MR. LUKE SHEALEY: No, ma'am?

16 MR. GOINGS: Nothing from the State, Your Honor.

17 THE COURT: You may ask the jury to come in.

18 (The following takes place in the presence of the
19 jury panel)

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

21 THE COURT: Okay. You may call your next witness.

22 MR. GOINGS: Thank you, Your Honor.

23 If it please the court, the State would call
24 Sherry Tribble.

25 SHERRY TRIBBLE, having been first duly sworn,

1 establish proper foundation if that video is
2 going to get into evidence. She does not want
3 to be here, is not going to be here, and refuses
4 to be here.

5 So I think that chain of custody cannot be
6 established to introduce this piece of evidence.
7 The foundation is not there for this. That's a
8 more evidentiary problem as opposed to a
9 fundamental due process, constitutional,
10 confrontational problem.

11 In addition, the next point I will argue
12 is Under Rule 403.

13 THE JUDGE: Well, let me just stop you
14 there. I am not going through all of your
15 arguments on that point at this particular
16 point. What I would prefer to do is go ahead
17 and deal with the jury issue, pick a jury. I
18 will not swear them in until we are done, but to
19 go ahead and get the jury done and then we can
20 take up some of these other issues afterwards.

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

22 THE JUDGE: But before we do that, I will
23 get Mr. Goings to make any response.

24 MR. GOINGS: First of all, your Honor.
25 The State's position is that two officers can't