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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2013-001680

Marcus Bailey,.....Appellant,

v.

The State of South Carolina,.....Respondent.

RECORD ON APPEAL
Volume II

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1 Saturday?

2 A No, she did not.

3 Q And after that conversation on August 16th, did you
4 ever see Nita again?

5 A No, I did not.

6 MS. CAVANAUGH: Beg the Court's indulgence.

7 THE COURT: Yes, ma'am.

8 (Pause.)

9 BY MS. CAVANAUGH:

10 Q What did you tell her about Marcus coming to get the
11 lawn mower?

12 A I told her that I would prefer that she came to get
13 the lawn mower, because I really didn't know him.

14 MS. CAVANAUGH: Thank you.

15 THE COURT: Cross-examination?

16 MR. MYERS: Thank you, Your Honor.

17 CROSS-EXAMINATION:

18 BY MR. MYERS:

19 Q Good afternoon, Ms. Chesson.

20 A Good afternoon.

21 Q Ms. Chesson, I just have a few brief questions. Now,
22 you testified that you lived in a house close by
23 Almanita's house, right?

24 A Yes.

25 Q And you stated that you couldn't hear anything that

1 Q Okay. So you knew her through the Army?

2 A Through the Army ROTC program, yes.

3 Q Okay. And is that at USC --

4 A Yes.

5 Q -- or is it -- okay. Turning your attention -- had
6 you ever hung out with Almanita?

7 A Yes.

8 Q What type of occasion did you all hang out?

9 A We've hung out at parties. Well, two separate party
10 occasions where one time she came to mine and Jerry's when
11 we lived together. Her and Mr. Bailey came over, and we
12 hung out there.

13 And one time Jerry and I attended a party at her
14 house where her -- some of our and some of her friends
15 were there, as well as Mr. Bailey.

16 Q Okay. And do you know -- so do you know Marcus
17 Bailey?

18 A I've met him approximately four times.

19 Q Okay. And how do you know him outside of -- or do
20 you know him outside?

21 A I only know him through Almanita.

22 Q Okay. And going to August 23rd of -- or I'm sorry,
23 August 22nd, 2012, do you recall that day?

24 A Yes.

25 Q Can you tell the jury what happened?

1 A I'll start off with the morning. In the morning, we
2 were supposed to meet with the battalion commander, the
3 professor in military science at USC.

4 Jerry, Mr. Hinton, was supposed to be the battalion
5 commander of the battalion, the cadet battalion commander,
6 I should say, who would be basically the top of the
7 battalion.

8 I was supposed to be the operations officer for the
9 battalion, and Almanita was supposed to be the command
10 sergeant major for the battalion. So essentially, we
11 would be the top three in the battalion and would make the

12 decisions that would impact the cadets. So we were to
13 meet with the professor of military science that morning.

14 Q And that morning being which morning?

15 A That morning being the morning of Wednesday,
16 August 22nd.

17 Now, we had not confirmed with Almanita that she was
18 going to be there because any calls and text messages that
19 we had up to that point had not been responded to. So
20 that morning, we -- me and Jerry met with the battalion
21 commander, the professor of military science and --

22 Q And who is that?

23 A John Wright. He is a lieutenant colonel John Wright.
24 He is still the professor of military science at USC.

25 Jerry I met with him, and then leaving there, we went

1 and got something to eat, and then decided to go check on
2 Nita since she hadn't shown up, and her hadn't responded
3 any of our calls and text messages.

4 Q And was that unusual for her to do?

5 A It was. Now -- as I've stated or I guess I haven't
6 here -- she would not respond immediately at this some
7 points in times. But it was -- at most, an hour later,
8 she would respond to one of the two of us knowing that we
9 were usually together.

10 Q And you all were actually working together and about
11 this?

12 A Right.

13 Q The program was about to start?

14 A Right, right.

15 Q The new program.

16 A Right. So it was -- it was abnormal for her not to
17 respond at all. Whereas, you know, we would expect her
18 maybe not to respond for a couple of minutes, about half
19 an hour. But when it had been days and she didn't show up
20 in the morning, we assumed that something might have been
21 wrong with her phone and she didn't know it or something
22 to that effect. So we went out there to check on her to
23 make sure everything was okay.

24 Q And "we" being you and Jerry?

25 A Me and Jerry, yes. We drove -- we rode in my car. I

1 Q Who actually used that card that night?

2 A Marcus Bailey.

3 Q Okay. And did you know Marcus Bailey personally
4 around this time?

5 A No.

6 Q Had you seen him prior to August 19, 2012?

7 A Yes.

8 Q Where?

9 A At Jet Nightlife.

10 Q On this night, on August 18th into the 19th, who did
11 he come with?

12 A He was alone.

13 Q So he came to the club by himself?

14 A Yes.

15 Q And what did he actually purchase?

16 A He purchased two bottles of alcohol. I don't know
17 the exact bottles, but I do know that with this price
18 packaging, it was two bottles.

19 Q Okay. And what -- what type of card was used to
20 purchase those bottles?

21 A American Express.

22 Q And whose name is actually on -- what name is
23 actually on that receipt?

24 A Al Smith.

25 Q And was that the name on the card?

1 A Yes.

2 Q And how much -- how much money was actually spent
3 that night?

4 A \$490.

5 Q Is part of that what he gave you as a tip?

6 A Yes.

7 Q And how much was that?

8 A Seventy dollars.

9 Q Do you actually see Marcus Bailey in the courtroom
10 today?

11 A Yes.

12 Q And can you point him out for us?

13 A Right there (indicating).

14 Q Is he wearing a lavender shirt?

15 A Yes.

16 Q Under a suit?

17 A Yes.

18 MS. CAVANAUGH: Your Honor, let at the record reflect
19 she identified the defendant.

20 THE COURT: Yes.

21 BY MS. CAVANAUGH:

22 Q You said he came by himself; is that right?

23 A Yes.

24 Q Did anyone come to the table?

25 A There were, you know, girls that were in the club

1 that came over to join him, but he was alone when he came.

2 Q Okay. And you said that you had seen him prior to
3 that night?

4 A Uh-huh.

5 Q Where did you say that was again?

6 A At Jet Nightlife.

7 Q And when you had seen him prior, did he ever come
8 with anyone?

9 A No. He was always by himself.

10 Q Now, without saying what anyone told you, did someone
11 who also worked at Jet Nightlife approach you?

12 A Yes.

13 Q And who was that?

14 A His name is Eric Emedoh.

15 Q And, again, without saying what he told you, as a
16 result of that conversation, did you look at the receipt?

17 A Yes.

18 Q And is that when you noticed the name on it?

19 A Yes.

20 Q Did you actually witness Marcus Bailey sign this name
21 to the receipt?

22 A Yes.

23 Q Now, before he purchased those bottles, did you have
24 any interaction with him?

25 A Yes.

1 Q Can you describe that?

2 A Before we -- before we went in, we went to Tsunami,
3 the restaurant that's around for corner from Jet
4 Nightlife.

5 Now, I didn't know him personally, but I -- like I
6 said, I had seen him there before. I was -- he told us
7 that it was his birthday, and he wanted to celebrate, so
8 we went there just to -- just to eat. It was me and a few
9 other people that worked there also.

10 Q Do you remember the names of the other people?

11 A I know one of them was my friend. Well, she was
12 actually my roommate at the time. Her name is Monique
13 Weathers. She was there, as well as one other guy who
14 worked there from the club.

15 Q Do you remember his name?

16 A Chris Etheridge.

17 Q And did he offer to pay for everybody's food that
18 night?

19 A Yes.

20 Q And this was before he used the card at Jet
21 Nightlife?

22 A Yes.

23 Q Do you know how he paid for the food at Tsunami?

24 A No.

25 Q Do you remember what you ordered?

1 A I had a chocolate cake, and it had like vanilla ice
2 cream with it.

3 Q Did you stay very long at Tsunami?

4 A No, no.

5 Q And what is Tsunami?

6 A It's a -- like a sushi bar, Japanese restaurant.

7 Q Now, did you have an opportunity to observe him
8 August 18th and August 19th?

9 A Yes.

10 Q How was his demeanor?

11 A He was a nice guy. I mean, he was always friendly
12 when he came in, always joking. I never would have
13 thought anything about him.

14 Q And this night, did he seem -- did he seem happy?

15 A Uh-huh.

16 Q Upbeat?

17 A Yeah, seemed how he always -- how he always is.

18 Q And did you know the victim in this case, Almanita
19 Smith?

20 A No.

21 Q Had you ever seen her come to Jet Nightlife with
22 Marcus?

23 A No.

24 Q And, again, that was August 18th into the early
25 morning of August 19th?

1 A Yes.

2 Q Of 2012?

3 A Yes.

4 Q Other than the -- can you estimate how many girls
5 came to his table that night?

6 A I really don't know how many. It was -- it was quite
7 a few.

8 Q Okay. And did you ever see -- did you personally
9 ever see any guys interact with him at the table?

10 A Yes.

11 Q Do you remember who that was?

12 A Eric, the guy who works there.

13 MS. CAVANAUGH: Okay. Beg the Court's indulgence.

14 (Pause.)

15 Thank you, Ashlee.

16 CROSS-EXAMINATION:

17 BY MR. MYERS:

18 Q Good morning, Ashlee.

19 A Good morning.

20 Q Ms. Jones, I'm sorry. Ms. Jones, this Jet Nightlife,
21 busy place?

22 A Yes.

23 Q A lot of people coming in and out?

24 A Yes.

25 Q You were a waitress there at the time?

1 before this happened about Almanita around Memorial Day?

2 A Yes.

3 Q Can you tell the jury about that?

4 A I came over to get some gas money. I was going out
5 of town for a wedding, and I knew he wasn't happy living
6 there. He basically spoke about that. You know, he said
7 that -- he said that he had, you know, visions of taking
8 her life.

9 Q Of what?

10 A Of taking her life.

11 Q He had visions of taking her life?

12 A Yes.

13 Q And who was he talking about when he told you he had
14 visions of taking her life?

15 A He was talking about Nita.

16 Q Where did this conversation take place?

17 A Outside her house.

18 Q And was it just you and him?

19 A Yes.

20 Q And how did it come up about how he felt about
21 Almanita?

22 A Every day was a stressful situation for him dealing
23 with her. She is very complicated and, you know,
24 controlling. So it was -- it wasn't -- it was not out of
25 the ordinary for him to be able to vent to me about...

1 Q About her?

2 A Correct.

3 Q And that day, what did he say to you he had visions
4 of?

5 A Of taking her life.

6 Q What was your response? Did you respond?

7 A I kind of brushed it off. I mean, I know him pretty
8 well. I didn't -- I didn't think twice about it. I was
9 just upset, you know.

10 Q And he mentioned to you about the problems with
11 Almanita, and she was controlling. Was Marcus employed at

12 this point?

13 A Not to my knowledge.

14 Q Did he say anything else to you that day about taking
15 her life? And you're -- we've subpoenaed you to come here
16 today, right?

17 A Yes.

18 Q You don't want to be here.

19 A No.

20 Q What else did he say to you, Mr. Holden?

21 A Again, I didn't believe him, but just went into the
22 few details of, you know, how he -- how he could do it or,
23 you know...

24 (Crying.)

25 Q I'm sorry. Do you need a minute?

1 (Pause.)

2 A Sorry.

3 Q Are you okay? I'm sorry.

4 Can you tell the jury what he told you about how he
5 would do it?

6 A He said she had fingernails, so he would wear a
7 long-sleeved shirt. He said he would take his battery out
8 of his phone so it wouldn't be traced.

9 Q Battery out of whose phone so it wouldn't be traced?

10 A Out of his phone.

11 Q And he mentioned that he would wear a shirt?

12 A Yes.

13 Q And why did he say he was going to wear a
14 long-sleeved shirt?

15 A Because she had fingernails.

16 Q She had fingernails. Did he say how he was going to
17 kill her?

18 A I mean, he said he -- you know, he could suffocate
19 her.

20 Q He would suffocate her?

21 A Not would but -- not would as in he was going to do
22 it but still in the context of --

23 Q His vision?

24 A Yeah, could as in...

25 Q What did you say to him when he told you this?

1 his phone. He told me I could come in, and he ran up the
2 stairs as I was entering the front door.

3 Q Did he state to you why he was running up the stairs?

4 A To get his phone.

5 Q And did he return immediately down the stairs?

6 A Yes, ma'am.

7 Q Did you observe anything in the downstairs area that
8 you were in --

9 A No.

10 Q -- that was unusual?

11 A No. There was just stuff --

12 Q Did you notice anything -- it was what?

13 A It was very clean.

14 Q Very clean. Did you notice anything specifically
15 that caught your attention?

16 A Yeah. There was a very strong smell of like air
17 fresheners.

18 Q When he came back down the stairs, did he, in fact,
19 have the phone with him?

20 A Yes, ma'am.

21 Q And do you remember how long he was gone?

22 A Just very few seconds.

23 Q Once he came back downstairs, what happened?

24 A I observed him dial the phone number. He put it on
25 speakerphone and told her to call him back.

1 Q Did you try calling her after the 16th?

2 A Oh yes, yeah.

3 Q And were you able to get in touch with her after
4 that?

5 A No, I wasn't.

6 Q When did you start to become concerned?

7 A Really, I started becoming concerned Saturday. You
8 know, she just had gotten back from OCS, and it was just
9 out of the norm for her. I liked to talk. Then came

10 Sunday. I told my coworkers and friends that, you know, I
11 hadn't heard from my baby.

12 Q And you said OCS?

13 A Yes. She attended OCS in, I believe it was
14 Washington State and...

15 Q What is OCS, Mr. Davis?

16 A Officer Candidate School. Officer -- yeah, something
17 like that school.

18 Q Okay.

19 A But it's a military school up in Washington. She --
20 she was a staff sergeant, and she got out of the Army in
21 this program to get her Masters and to get -- and to
22 finish OCS.

23 Q Okay. And you said you started to become concerned
24 after several days had passed, and you hadn't heard from
25 her?

1 A Yes.

2 Q Did you start to -- had you left several voice mails?

3 A I did. I asked her to call me. And, you know,
4 what's wrong, you know, because it was out of the norm for
5 her, for my baby, left for service -- after she brought
6 her home and when she just home, I told her that, you
7 know, she was grown now, but you know, the way we talked,
8 you know, you don't have to tell me what you do but let me
9 know where you are, you know.

10 Q Did you also -- other than calling -- did you call
11 Nita?

12 A Nita, yes.

13 Q Other than calling Nita, did you reach out to other
14 individuals to try to contact her, as well?

15 A Yes. I called her first sergeant Twyla, and another
16 friend of hers I called, but I think they was overseas.
17 So I had -- I usually keep numbers of people that she
18 dated. I had Marcus Bailey's number.

19 Q Okay. I'm going to stop you right there. You said
20 you called Twyla. Did you also try to talk to her mom
21 about whether she had talked to her?

22 A What it was, she was -- it was supposed to have been
23 calling me to give me her mother's new number.

24 Q Okay.

25 A And that kind of alarmed me, too, because I just

1 used to talk to him and they dated, and I called his
2 number. He answered.

3 Q And you mentioned earlier that you just -- just in
4 case, you like to get the numbers of the gentlemen that
5 Nita was -- dated?

6 A Yes.

7 Q And that was because you lived in Alabama, right?

8 A Right.

9 Q But you never actually tried to call those
10 individuals, right?

11 A No, I never did.

12 MR. MYERS: Judge, I'm going to object to
13 Ms. Cavanaugh leading the witness.

14 MS. CAVANAUGH: I apologize.

15 THE COURT: Sustained.

16 BY MS. CAVANAUGH:

17 Q Did you -- did you actually call Marcus?

18 A I did.

19 Q And what did you say to him?

20 A When I called him, I asked him, I said -- I told him,
21 "This is Almanita's father." I asked him had he seen her.
22 He said, "Oh yes. She left today at around 11:30 or 12."

23 I said, "Well, did she say where she was going?"

24 He said, "She left with some friends."

25 I asked him, "Were they male or female?" He said it

1 was male.

2 I asked him, "Who was it?"

3 He said, "I don't know. She kept it short, you
4 know."

5 I asked him, "Well, what kind of car were they
6 driving?"

7 He said, "I don't know."

8 I said, "What color was it?"

9 He said, "Maroon".

10 Q Maroon?

11 A Yes.

12 Q Did that -- what about that color stuck out to you?

13 A May daughter --

14 MR. MYERS: Objection, leading.

15 THE COURT: That's not leading. Overruled.

16 Go ahead.

17 THE WITNESS: Well, my daughter had just gave me a
18 maroon Camry.

19 BY MS. CAVANAUGH:

20 Q She gave it to you?

21 A Yes.

22 Q Okay.

23 A Yeah.

24 Q But you specifically remember him saying the color
25 maroon?

1 submit all official transcripts from every school they
2 have ever attended since leaving high school.

3 They have to submit a written essay based on choosing
4 from a scenario. They have choices. They have to submit
5 two formal letters of recommendation. That recommendation
6 has a matrix that the recommender completes, and they have
7 to submit a narrative with each one.

8 In certain cases I can request additional documents,
9 but that's the standard.

10 Q And had she actually been accepted into this Masters
11 program?

12 A Yes.

13 Q And when -- when was she accepted?

14 A Okay. Well, I printed that so I can give you the
15 exact date.

16 Q Sure, if you have it.

17 A Okay. For the fall 2012 program, she applied on
18 June 22nd. She was accepted on August 7, 2012, and she
19 happened to come to the -- when I called her to tell her
20 that she was accepted for this program, she came by the
21 office that day and signed the confirmation paperwork
22 which indicated to me she wanted to have a seat reserved
23 in that class that began August 18th.

24 So she was confirmed and moved to a student status on
25 August 7, and then the process that we go through is once

1 a student -- once I move them to that stage in the
2 admission process, then the file is sent to our graduate
3 registrar who then registers each student for classes.

4 Q So it's fair to say it's a fairly heavy
5 paperwork-driven process?

6 A It is.

7 Q When was the first -- and this graduate program, can
8 you describe the semester?

9 A Sure. The --

10 Q As far as the length of time and how many times the
11 clarifications meet.

12 A Sure. This graduate program is a three semester,
13 it's fall, spring, and summer. In each semester, students
14 are on campus with us four class weekends.

15 So a class weekend in the higher ed program was a
16 Friday class from 5 do 9:30 p.m. a Saturday morning class
17 from 9 to 1:30 and a Saturday afternoon class from 2:30 to
18 7:00 p.m.

19 Q Is there also a Sunday class?

20 A There is in the second semester of the program.

21 Q Okay.

22 A There is not in the first semester.

23 Q Okay. So that fall of 2012, she would have attended
24 class Friday night from 5 to 9:30 p.m.?

25 A Correct.

1 Q Saturday morning from 9 to 1:30 p.m.?

2 A Uh-huh.

3 Q And then Saturday afternoon to early evening, 2:30 to
4 7:30?

5 A That's right.

6 Q And when was the first weekend that these classes
7 were set to begin?

8 A That was -- it would have been August 18th and 19.

9 Q And are you aware of whether Ms. Smith attended any
10 of those classes?

11 A ~~She didn't and our process is when someone is~~
12 accepted, and they're mailed their official acceptance
13 letter with their confirmation form, there is statement on
14 the confirmation form that reads failure to attend the
15 first class meeting in the semester will result in the
16 voiding of your registration.

17 Basically, that means we just administratively
18 withdraw the student because the importance of that first
19 class weekend learning how to use our learning management
20 system, the orientation information, all the, you know,
21 syllabi are gone over by professors, and so we know that
22 someone who doesn't attend that first class weekend is not
23 going to have a good chance to be successful in the
24 program. Therefore, we administratively withdraw them.

25 So the program director, who is Dr. Chris Burkett,

1 his responsibility to notify me at the end of the first
2 class weekend if there were any students who did not show
3 up so that I can contact them that next week.

4 On Sunday afternoon, August 19th at 2:49, Dr. Burkett
5 e-mailed our graduate registrar, me, and my associate
6 director of admissions to say all students --

7 MR. MYERS: Objection.

8 THE WITNESS: Oh, okay.

9 MR. MYERS: Hearsay, Your Honor.

10 THE COURT: Is this an e-mail that you received?

11 THE WITNESS: Yes, sir.

12 THE COURT: Was it written to you?

13 THE WITNESS: I'm copied on it, uh-huh.

14 THE COURT: Overruled.

15 THE WITNESS: It says, "Hi. All students showed up
16 for all three classes of higher education administration
17 except Almanita Smith," gives her ID number, "who did not
18 attend any of the three classes. All the best,
19 Dr. Burkett."

20 Q And after learning -- were you surprised to hear
21 that?

22 A I have to tell you that I was because I had had so
23 much interaction with Almanita, you know, going through
24 the first graduate program in divergent learning and then
25 this one.

1 Over the course of the summer of 2012, we had several
2 conversations via e-mail because she had some military
3 obligations and training.

4 She was concerned about would she get all of her
5 documents in to be accepted for the fall program, and she
6 was just very prompt in if she told me she would have them
7 in on this day, she did.

8 Q Okay. So you were surprised?

9 A I was.

10 Q And as a result of the notification that she did not
11 attend those classes --

12 A Uh-huh.

13 Q -- what did you do?

14 A I called the -- I mean, with any candidate that
15 happens to, I give them a call and try to find out what
16 occurred. I explain that they will have to be
17 administratively withdrawn, and then their option is I can
18 roll their admission to fall of 2013. Because we only
19 admit students into this cohort into the fall of each
20 year. So I could withdraw her completely or I can
21 withdraw and then roll her over to a new semester.

22 Q And did you, in fact, leave her a voice mail that
23 stated that she had been withdrawn?

24 A I did.

25 Q And do you know when that was?

1 THE WITNESS: Joshua Mauldin. It's M-A-U-L-D-I-N.

2 DIRECT EXAMINATION:

3 BY MS. SIMPSON:

4 Q Where are you employed?

5 A I'm currently employed at the South Carolina Criminal
6 Justice Academy.

7 Q And what is your position with the Criminal Justice
8 Academy?

9 A At the Criminal Justice Academy, currently I teach
10 basic law enforcement, CDV, criminal domestic violence
11 dynamics. I teach a weaker run with another individual,
12 what we call a crisis house.

13 We put cadets through scenarios, things we mimic and
14 respond to in real life so they can put to test the things
15 they learned from their time at the academy. I also have
16 an advanced class of that sexual assault that I teach, as
17 well, having been an SVU investigator for quite some time
18 in South Carolina.

19 Q And what is the Criminal Justice Academy?

20 A South Carolina is unique. There's maybe one other
21 state that does this. We have a single criminal justice
22 academy for all law enforcement officers in South
23 Carolina.

24 In order for anyone to become certified as a class
25 one officer in the State of South Carolina, they must

1 complete the basic training program at the South Carolina
2 Criminal Justice Academy.

3 It also offers advanced courses for experienced
4 officers or officers who are already certified who may
5 want to attend, gather additional training.

6 Q And how long have you been with the Criminal Justice
7 Academy?

8 A I've been with the Criminal Justice Academy now -- I
9 want to say maybe eight months.

10 Q And prior to that, where were you working?

11 A At the Richland County Sheriff's Department.

12 Q And what was your position there?

13 A I was a major crimes investigator at the Richland
14 County Sheriff's Department. My responsibilities were
15 investigating aggravated assaults, homicides, armed
16 robberies, things of that nature.

17 Q And prior, actually, to your work with Richland
18 County, what did you do?

19 A I was a high school chemistry teacher.

20 Q Okay. So you essentially had gone back to teaching,
21 a combination of teaching and law enforcement.

22 A It's very different now. I like this teaching.

23 Q And moving back to August of 2012, you were an
24 investigator?

25 A Yes, ma'am; that's correct.

1 Q Tell the jury a little bit about your duties with the
2 sheriff's department?

3 A As an investigator, that's, in fact, what we would
4 do. We would receive reports from deputies or possibly
5 incidents that had freshly occurred that required someone
6 to take the investigation a step further at that very
7 instant.

8 We would adopt that investigation ourselves or assist
9 with the ongoing investigation into any crimes that may
10 have occurred.

11 Q And you -- you were with major crimes, so that

12 included everything from murders -- what all did that
13 include?

14 A We are -- our major crime unit, you actually work
15 either robberies or aggravated assaults or both. I think
16 I moved from robbery to assault at that time. As far as
17 homicides go, we have a rotation with six individuals who
18 are primarily homicide officers who operate on a six-week
19 rotating schedule.

20 Q And back in August of 2012, were you still working in
21 your capacity as an investigator?

22 A Yes, I was.

23 Q Did you have the opportunity or occasion to become
24 involved in this case?

25 A I did, yes.

1 Q Tell us about how you were notified, what information
2 you received.

3 A I was -- in fact, I distinctly remember this because
4 I was driving my four year old to daycare when Lieutenant
5 McDonald apprised me of the incident and asked me to
6 respond. Of course, that was a little problematic for me
7 at the time considering I had a child in the car.

8 I believe that's how Investigator Martin become
9 involved. I was then asked, once I dropped my child off,
10 to assist Investigator Martin in the investigation.

11 He would at that time become essentially the primary
12 investigative officer, so his duties at that time would be
13 to address, you know, any potential suspects, things of
14 that nature. I would serve an assistance role, a support
15 role, to help him with anything from an investigative
16 standpoint that he may need to have done.

17 Q And that's Investigator Martin sitting there?

18 A Correct.

19 Q And what were you -- what did you learn about the
20 incident location and what type of case you were
21 responding to?

22 A I was apprised that there was a death investigation;
23 that a female had been found lifeless in the front yard of
24 her own residence and that a cursory -- just a very
25 preliminary view or examination of the body -- in an

1 examination, nobody would actually touch her body at that
2 time, indicated that there may have been something that
3 resembled a gunshot wound.

4 Q And did you actually -- did you actually respond to
5 the scene?

6 A I did not, not at that time. Eventually, yes but not
7 initially.

8 Q But you were apprised and given information --

9 A That's correct.

10 Q -- about the case? And what did Investigator Martin
11 want you to do?

12 A At that time, they wished for me to obtain a search
13 warrant to conduct a search of the residence where this
14 individual had been found in front of their home.

15 Q And with respect to the search warrant, tell the jury
16 about the process to get a search warrant?

17 A To get a search warrant, in most cases, we need
18 probable cause to enter a home, some reason why we need to
19 go into a place and things we may be looking for. In this
20 case, obviously, with a deceased person in the front yard
21 of their own home and another individual who was the
22 living subject who may have also lived there at the time.
23 A search warrant would have been necessary to avoid any
24 issues that might come of, you know, that individual's
25 expectation of privacy in the home.

1 So we conduct or collect just any initial
2 observations on scene, what we could see at the time, and
3 include that in an affidavit along with any items that we
4 may be looking for and take that, present that to a judge.

5 If the judge agrees that, in fact, the there's
6 sufficient probable cause to enter a home, then we are
7 granted a search warrant at the time.

8 Q And did you actually learn the identity of a male
9 occupant at the location?

10 A I was apprised of, yes, a male occupant.

11 Q And who was that?

12 A Mr. Marcus Bailey.

13 Q And it was your understanding at the time that he
14 actually lived there or resided in some capacity?

15 A Yes. That was my understanding, yes.

16 Q What information -- you stated that an initial -- I
17 guess initial search, for lack of a better way to put it,
18 or a sweep was done of the home. What did officers
19 observe in that initial search?

20 A I believe some -- the officers --

21 MR. MYERS: Objection, Your Honor. I don't believe
22 he can testify if he doesn't have personal knowledge.

23 MS. SIMPSON: Your Honor, I think with respect to the
24 course of the investigation, he was actually the
25 investigator who assisted in getting the search warrant.

1 This is just to show the steps in the course of the
2 investigation, so it's not hearsay or lack of personal
3 knowledge.

4 THE COURT: You just asked him what somebody else
5 observed, so under what theory is that not hearsay?

6 MS. SIMPSON: Well, I can rephrase my question, Your
7 Honor.

8 THE COURT: Okay.

9 BY MS. SIMPSON:

10 Q Did you receive some information and were ultimately
11 able to obtain a search warrant?

12 A Yes.

13 Q Okay. And after you got the search warrant, what did
14 you do?

15 A The search warrant was then taken to this location on
16 Heron Glen and executed.

17 Q Okay. And did you actually respond to Heron Glen
18 yourself?

19 A Yes, yes.

20 Q And when you arrived at the location, what did you
21 observe?

22 A Upon my initial arrival in approaching the house, I
23 observed the decedent in the front yard of the residence,
24 I believe laying face down with maybe a brownish top on,
25 no pants.

1 This individual appeared very large in size. I had
2 no knowledge of the individual in question. I did not
3 know Ms. Smith at the time, was not familiar with
4 Ms. Smith.

5 The person laying before me appeared very large in
6 size, and there was some -- it was fairly early in the
7 morning, if I remember, not many flies or anything like
8 that around and what looked like some maybe are fresher
9 feces on the person's bottom.

10 Q On her bottom. You said she appeared large in size.
11 ~~Throughout the course of this investigation, did you learn~~
12 whether or not she was actually that large?

13 A Well, I did learn -- what I did learn of Ms. Smith's
14 identity that yes, she was significantly smaller than
15 that, and I would attribute that to decomposition.

16 Q And what is decomposition, to your knowledge?

17 A To my knowledge, it's when the body -- after death,
18 the body begins to break down into its component parts.

19 Q And when you arrived with the search warrant, did you
20 actually participate in the search of the home?

21 A I did, yes.

22 Q Okay. Tell us what happened once you entered the
23 home and what you observed?

24 A I -- when I entered the home, my first observations
25 were -- I waited until the crime scene had done -- crime

1 scene had approved for us to go in the home.

2 We like to let them go in first, make sure there is
3 nothing that we are going to contaminate or nothing that
4 has to be addressed right then and there. They will give
5 us approval to go in and observe the scene.

6 At that time, we did enter the home with a search
7 warrant. I do remember the home being very cool. This
8 would stick out to me. I've done -- I've done a lot of
9 search warrants.

10 In fact, most police officers, we drop by. We enter
11 people's homes, you know, unannounced all the time. It's

12 very common for homes to be warm, even in the summer. We
13 usually hate summer search warrant because you're sweating
14 pretty badly. This home is very cool, very comfortable,
15 which, you know -- I'm not saying it's unusual for that
16 home, but it's unusual for us in our capacity. That
17 stands out.

18 Also, just as Ms. O'Donnell said before, there was
19 definitely a pretty overwhelming overpowering smell of
20 multiple fragrances.

21 Q You're saying multiple, so not one specific scent?

22 A You know, it's like -- like a -- you go into one of
23 those places that has potpourri everywhere or, you know,
24 like a Yankee candle where you have lots of scents like
25 that.

1 Q And once she --

2 MR. MYERS: Objection, Your Honor. Respectfully, we
3 have a matter of law that we'd like to take up --

4 THE COURT: Okay.

5 MR. MYERS: -- outside the presence of the jury.

6 THE COURT: Step back to your jury room. We'll be
7 with you in just a few moments. Thank you.

8 (WHEREUPON, the jury left open court at approximately
9 2:42 p.m.)

10 MR. MYERS: Thank you, Your Honor. May it please the
11 Court.

12 THE COURT: Yes, sir.

13 MR. MYERS: Your Honor, upon hearing his testimony, I
14 just realized that we have a violation of a search
15 warrant.

16 Investigator Mauldin, if I understand his testimony
17 correctly, he stated he was on his way to take his
18 four-year-old child to school; that he was initially going
19 to be the investigator to arrive to the scene, but he
20 could not for that reason.

21 So as a result, he was basically given information
22 from the scene to go to the magistrate to obtain a search
23 warrant.

24 As I look at this search warrant, page three of five,
25 the affidavit states that, "Personally appeared before me

1 one, Joshua Mauldin," and he signs it as the affiant.

2 Clearly, we know now that if he has basically
3 indicated to the magistrate that he had personal knowledge
4 of the situation as to why they needed a search warrant,
5 we know that can't be true.

6 Since it can't be true and he is the affiant, then we
7 believe that any evidence that was seized as a result of
8 what -- of the lie he told the magistrate, because it
9 wasn't based on personal knowledge, is now fruit of the
10 poisonous tree.

11 The individual certainly that should have gone and
12 gotten the warrant would have been Investigator Martin who
13 was on the scene who had personal knowledge.

14 For the same reason that I objected to what he
15 testified to, which was hearsay is a reason he cannot be
16 an affiant on the affidavit which is what he told the
17 magistrate at the time he obtained the search warrant.

18 So we have a significant constitutional issue because
19 he is not the true affiant. He told the magistrate he was
20 the affiant. He cannot be the affiant by definition of
21 what an affiant is, and any evidence seized as a result of
22 this search warrant is fruit of the poisonous tree.

23 THE COURT: And do you have a case that says that?

24 MR. MYERS: Your Honor, I can find it. Judge, again,
25 this just dropped -- the Court can give me just -- I don't

1 need very long. I think the law is pretty clear on that.

2 THE COURT: I'm pretty sure the law doesn't say that
3 but I'm open. I mean, my understanding of it is that the
4 hearsay rules don't apply in providing testimony, sworn
5 testimony, to a neutral and detached magistrate in order
6 to obtain a warrant.

7 Therefore, he can take the information provided to
8 him by law enforcement which would not be admissible in
9 this court because it would be hearsay, but in providing
10 sworn testimony to a neutral and detached magistrate, it
11 would not be -- the hearsay would be admissible.

12 He could use that information to provide to the
13 magistrate, and therefore, that would be clearly
14 appropriate. Now, I'm not saying I'm right. I'm just
15 saying that's my understanding of the law off the top of
16 my head.

17 If you want to do a little bit of legal research or
18 somebody has a case on point that I can look at while my
19 law clerk search for it, I'll be happy do look at it.

20 MR. MYERS: Yes, sir. Your Honor, as I understand
21 the law -- and, again, I could be wrong, which is why I
22 would appreciate a little bit of quick research -- but so
23 long as the magistrate was told that he is stating that
24 what he is relying on is hearsay, I don't think that's a
25 problem. Here we don't have that evidence.

1 I would appreciate just a little bit of time to do
2 some really quick research for the Court.

3 THE COURT: I still don't -- I understand the basis
4 of your argument, and you're contesting the admissibility
5 of the items obtained during the search warrant.

6 My issue is upon what information that he provided to
7 the search warrant do you believe that it was
8 inappropriate that even gets you to that argument?

9 The law clearly states that magistrates can issue
10 search warrants based upon hearsay information that is not
11 as a results of direct personal observations of the
12 affiant.

13 MR. MOORE: May it please the Court. I believe I can
14 help a little bit with the law on this. As I understand
15 it, two cases that actually would be controlling here
16 would be Aguilar -- I believe it's Aguilar versus Texas,
17 and there's another one called Spinelli. The Court.

18 Is absolutely correct. There is nothing wrong at all
19 with an affiant for a search warrant relying upon hearsay.
20 There are two different types of affidavits which are
21 acceptable in order to secure a warrant: One is a hearsay
22 affidavit, and one is an affidavit based upon direct
23 information.

24 However, you judge probable cause based upon the four
25 corners of the documents. There are some South Carolina

1 cases which are -- watered that down some and said that
2 you can supplement the four corners of the document with
3 oral testimony.

4 However, you still need to be able to find the basis
5 of the probable cause based upon the four corners of the
6 document.

7 The Aguilar case which is a US Supreme Court case and
8 the Spinelli case, which is a US Supreme Court case, both
9 indicate -- since the last time I have read them -- that
10 if, in fact, there is going to be a hearsay affidavit
11 which is totally proper, there has to be given to the

12 magistrate the information that it is, in fact, based upon
13 hearsay. It has to basically be specific in regard to who
14 the information is coming from and as to why what is
15 contained in the hearsay is believed to be reliable.

16 THE COURT: Where is the search warrant?

17 MR. MOORE: If we could have this marked, Your Honor,
18 it might help.

19 In this case, he is basically swearing that he
20 believes the victim died of a gunshot wound. Where did
21 that come from? Why is that believed to be reliable? Who
22 told him that? What is he basing that on?

23 I interrupted Mr. Myers -- and I apologize for
24 that -- but I was trying to simply provide what I believe
25 to be the law, but I could be wrong.

1 THE COURT: State's response?

2 MS. SIMPSON: Your Honor, the State's position is in
3 agreement with Your Honor's with respect to -- I mean,
4 Investigator Mauldin did not have to have personal
5 knowledge of the events supporting the warrant.

6 However, it was sworn. He did provide this
7 information to a judge, and I believe it meets the
8 appropriate requirements under 17-13-140. Additionally,
9 Your Honor, I think, first of all, this issue would be
10 more appropriately brought up at pretrial. The evidence
11 is in.

12 Also, as far as suppression or -- I'm not sure
13 exactly what the remedy that the defense is asking for,
14 but there was clearly a good faith effort. First of all,
15 our position is that we complied with getting the search
16 warrant.

17 Everything was done properly in this case, and at the
18 end of the day, there is nothing to suggest that even if
19 Your Honor found that it was improper that they did not
20 make a good-faith effort to comply with all of the
21 requirements.

22 However, we do feel that it is in compliance with the
23 statute.

24 MR. MYERS: Judge, I just want to make sure I'm
25 clear --

1 THE COURT: Okay.

2 MR. MYERS: -- as to when I learned about this
3 problem. It wasn't during pretrial. It wasn't until I'm
4 listening to prepare to cross-examine Investigator Mauldin
5 that I realize he wasn't even at the scene.

6 All I have is the document that is before the court
7 right now which says that he was there providing personal
8 knowledge to obtain the search warrant. That's all I
9 have.

10 THE COURT: This document does not say in the
11 affiant's -- in the section entitled "affidavit", it does
12 not say that he was ever at the scene.

13 MR. MYERS: Judge, I guess my argument would be that
14 if --

15 THE COURT: I mean, my argument as to your notice as
16 to that point that the -- in the area of the warrant, the
17 search warrant, which we'll need to get a copy of to mark
18 as Court's Exhibit whatever number we're on -- but the
19 reason for affidavit's belief that the property sought and
20 on the subject's premises never says that he was on the
21 scene.

22 I mean, in fact, in multiple different locations in
23 it, it says other -- like one paragraph says officers of
24 the RCSD did a protective sweep.

25 The affiant has also learned that deputies from RCSD

1 did a welfare check. I mean, this is replete with
2 information that would lead everybody to realize that he
3 obtained this information from other people.

4 MR. MYERS: Judge, I believe the description and all
5 that information, of course, is clear, but the document
6 that he signed is an affidavit.

7 THE COURT: That's what I'm looking at.

8 MR. MYERS: Yes, sir. But, Judge, my argument would
9 simply be if it is labeled an affidavit, an affidavit,
10 then that individual who signed the affidavit as the
11 affiant, that individual is the one who is swearing that
12 he believes it's based on his own personal knowledge.

13 Otherwise, throughout the entire court system, other
14 individuals sign affidavits on behalf of other
15 individuals, and they ought not to ever be a problem.

16 But here, the document that he is signing and the
17 document that he is alleging to be an affidavit. He is
18 alleging to be the affiant of the affidavit. We believe
19 that the law is clear that ought to be the individual with
20 the personal knowledge in order to be called the affiant.

21 THE COURT: Where is the case that says that? I
22 mean, under that scenario, the law that a magistrate can
23 rely on hearsay would never work. I mean, under the
24 scenario that you just gave us, then hearsay would never
25 be admissible in a search warrant affidavit. That's

1 clearly not the law.

2 MR. MYERS: Judge, I tend to disagree.

3 THE COURT: Because he doesn't have personal
4 knowledge of the hearsay.

5 MR. MYERS: Yes, sir, but, Judge, I tend to disagree
6 on that because what we're asking law enforcement to do in
7 this situation is not an extremely difficult task.

8 THE COURT: I'm not saying it's difficult or not.
9 I'm talking -- I'm sorry. Go ahead.

10 MR. MYERS: All I'm respectfully putting forth to the
11 Court is that what they're attempting to do is just lazy
12 police work.

13 If all he needed to do was to have Investigator
14 Martin go to the scene or go to the magistrate to obtain a
15 search warrant so there wouldn't be this hearsay problem
16 at all, what he is basically telling that magistrate under
17 oath is that he had the personal knowledge.

18 THE COURT: We don't know what he told the magistrate
19 under oath because he hasn't been questioned about that.
20 The first time we're hearing a challenge to the search
21 warrant is in this middle of his testimony after he has
22 already told the jury that he conducted a search warrant
23 and is getting ready to go through the house.

24 If you'd like to voir dire him on what he told -- I
25 mean, my problem is at this point, my jury already knows

1 that there was a search warrant, and my jury already knows
2 that he went through the house.

3 The jury already knows from testimony earlier in the
4 week that there was a search warrant and that they waited
5 on the search warrant to go into the house and do the
6 search. I mean, we introduced 150-plus items yesterday
7 that were taken post-search warrant.

8 MR. MYERS: Yes, sir. Judge, I believe that the
9 remedy -- the only remedy that we know of is either a full
10 suppression of all of the evidence that was there or a
11 dismissal based on evidence obtained as a result of --

12 THE COURT: But what do you not know now that you
13 didn't know on Monday -- what do you know now that you
14 didn't know on Monday morning?

15 MR. MYERS: Judge, I did not know that Investigator
16 Mauldin had not been to the scene before he went and got
17 the search warrant.

18 My understanding, Judge, throughout this entire case
19 was that has the affiant and as to the individual who
20 signed that search warrant was that he was there. He went
21 to the scene. He assessed what was going on, and then he
22 went to the Pontiac magistrate to obtain the search
23 warrant.

24 I had no idea until he testified that his whole
25 testimony was that he got the information from someone

1 else because his four-year-old son needed to go to school.

2 THE COURT: That's why we should have done a search
3 warrant hearing prior to the trial starting.

4 MS. SIMPSON: Initially, Your Honor, if I can, the
5 defense was provided Investigator Mauldin's follow up in
6 which it's clear in the first paragraph that he did not
7 respond immediately to the incident location and that the
8 search warrant and going to present it to the magistrate
9 would have been where he responded to first.

10 THE COURT: I thought --

11 MS. SIMPSON: The follow up was provided to --

12 THE COURT: I thought Investigator Martin's report
13 said something about providing information to somebody
14 else to going get a search warrant.

15 MS. SIMPSON: I believe it does. I'll have to check,
16 Your Honor.

17 THE COURT: I'll give you ten minutes to find a case.

18 MS. SIMPSON: Thank you, Your Honor.

19 MR. MOORE: If I can advise the Court that Aguilar
20 and Spinelli were overruled in 1983.

21 THE COURT: Yes. And my understanding, they deal
22 with information from informants.

23 MR. MOORE: That's correct.

24 THE COURT: Ten minutes.

25 Don't discuss the testimony with -- case with

1 anybody. Feel free gets up and move around.

2 (WHEREUPON, a short break was taken.)

3 MR. MYERS: Thank you, Your Honor. Your Honor, I'll
4 be as brief as I can. Your Honor, the case that I would
5 rely on that we were able to find would be the case of
6 State vs. Dunbar which is a 2003 case that discussed the
7 validity of the warrant.

8 I'm pretty sure the court very well knows. It was
9 the issues of the cocaine case. In that case, the
10 arresting officer was on the phone with the magistrate
11 basically explaining to him what he believed to be the
12 probable cause.

13 The Court of Appeals basically declared that the
14 search warrant was invalid in that case. Here what we
15 have is two levels of disconnect. You have Investigator
16 Martin, who is basically telling Investigator Mauldin what
17 he has seen based on his education from talking to other
18 officers.

19 So in the sense that hearsay may be acceptable to
20 obtain a search warrant, we believe that if it were one
21 level, even as it was in State vs. Dunbar, that may have
22 been acceptable, but here we have two levels of
23 disconnect. So you have two levels of hearsay.

24 Your Honor, just so that we're clear, this matter is
25 something that we just caught. Again, my position would

1 be that I didn't hear it and didn't find out about it or
2 bring it up until Investigator Mauldin was in the middle
3 of his direct testimony.

4 We believe that it's a constitutional right that can
5 be invoked at any time.

6 THE COURT: It can. I believe you. I don't need --
7 that's not a factor that's weighing into my mind at this
8 point in time.

9 MR. MYERS: Thank you, Your Honor. It is important
10 for me to note.

11 THE COURT: I don't believe that there is any -- any
12 type of anything inappropriate in the construing or the
13 timing of this in any way, shape, or form.

14 If I gave that indication earlier, that was
15 inappropriate, and I should not have done that. I'm way
16 beyond that and going into the merits of it.

17 MR. MYERS: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 Yes, ma'am.

20 MS. SIMPSON: Your Honor, if I could provide you with
21 State vs. Sullivan and State v. Dunbar. Your Honor may
22 already have them to support our position. Essentially,
23 those cases support that hearsay is appropriate for a
24 search warrant. Additionally, Your Honor, I'd point to
25 Dunbar language.

1 Beg the Court's indulgence.

2 (Pause.)

3 In that case, Your Honor, the court held that -- and
4 I apologize.

5 (Pause.)

6 And it's page six of Dunbar which states that the law
7 regarding using hearsay information to support probable
8 cause -- I apologize. I'll fast forward, said in that
9 case -- beg the Court's indulgence.

10 (Pause.)

11 THE COURT: All right. Dunbar states -- reading from

12 State vs. Dunbar which is found at 361 South Carolina 240
13 which is a Court of Appeals case from maybe -- it looks
14 like 2004.

15 So it says there is certainly -- I'm quoting directly
16 from the case. "Certainly, magistrates can issue search
17 warrants based upon hearsay information that is not a
18 result of direct personal observations of the affiant.

19 Probable cause for a search warrant can be supported
20 by information given to the affiant by other officers,"
21 quoting the United States Supreme Court.

22 Anything further, Mr. Myers, you need to put on the
23 record?

24 MR. MYERS: Your Honor, only that I believe that the
25 facts in Dunbar were just as I stated, one level of

1 hearsay where that officer was on the telephone with the
2 magistrate as the warrant was being typed up.

3 Here you have Investigator Martin who -- I can't say
4 whether he had probable cause or personal knowledge here
5 or not. He was the one who called Investigator Martin,
6 and then Investigator Mauldin went to the magistrate.

7 I would basically just rely on my previous argument
8 to the court in that you have a double level of hearsay in
9 obtaining this warrant, which I believe that exceeds what
10 the court meant in Dunbar.

11 Thank you for hearing me, Your Honor.

12 THE COURT: You're very welcome.

13 Anything further from the State?

14 MS. SIMPSON: No, Your Honor.

15 THE COURT: Thank you, Mr. Myers.

16 THE COURT REPORTER: I need a copy to mark as a
17 Court's Exhibit.

18 THE COURT: I have a copy, but I don't know whose
19 this is.

20 MR. MYERS: It's mine, Your Honor.

21 THE COURT: Thank you, Mr. Myers.

22 Okay. I'm going to allow the testimony concerning
23 the search warrant based on my review of State vs. Dunbar
24 and what I believe to be the appropriate case law.

25 Defense, your objection to that is noted for the

1 record. Do we want to bring -- do we want to do the prior
2 record now? I know it's not this witness, so I apologize.

3 MS. CAMPBELL: It would be a great time to do it.

4 THE COURT: Are you prepared to do that?

5 MS. CAMPBELL: Does that work for you all?

6 MR. MYERS: Yes, sir.

7 THE COURT: All right. Just hang on, all right. I
8 promise we'll get back to you.

9 MS. CAMPBELL: Your Honor, as far as his pending
10 charges, he does have pending one count of armed robbery,
11 one count of attempted armed robbery and --

12 THE COURT: Hold on. Hold on.

13 MS. CAMPBELL: Sorry.

14 THE COURT: I've got to make a note for myself.
15 We're talking about Mr. Walker; is that right?

16 MS. CAMPBELL: Yes, sir.

17 THE COURT: Okay. Is that the only one that we're
18 doing today?

19 MS. CAMPBELL: Yes, sir.

20 THE COURT: Okay. So he has a pending?

21 MS. CAMPBELL: Attempted armed robbery and murder,
22 and then he has a pending armed robbery.

23 THE COURT: So an attempted, and an armed robbery,
24 and a murder?

25 MS. CAMPBELL: Yes, sir, three.

1 THE COURT: So he has three.

2 MS. CAMPBELL: Three, and I have those if he wants to
3 look at those off our system.

4 THE COURT: So the armed robbery carries 10 to 30.
5 Murder carries --

6 MS. CAMPBELL: Thirty to life.

7 THE COURT: And the attempted armed robbery carries
8 what?

9 MS. CAMPBELL: Up to 20.

10 THE COURT: Zero to 20. All right. Do you agree
11 that?

12 MR. MYERS: Yes, sir.

13 THE COURT: Whoever? Okay.

14 Then where is his record?

15 MS. CAMPBELL: His record is right here, Your Honor.
16 It's my understanding -- and I'm glad to confer with
17 counsel.

18 MR. MOORE: I think we have a misprision of a felony
19 in --

20 MS. CAMPBELL: 2008, which would be impeachable.

21 THE COURT: Okay.

22 MR. MOORE: And then two burglaries in 2009.

23 MS. CAMPBELL: Two burglary seconds, and I agree
24 that's the extent of his impeachable record.

25 MR. MOORE: Those -- that's the extent of his

1 convictions, Your Honor, yes, sir.

2 THE COURT: Okay. So his convictions are misprision
3 and two counts of burglary second from 2009 that he's been
4 convicted of.

5 Anything else that you think for impeachment purposes
6 is admissible in regards to his prior convictions?

7 MS. CAMPBELL: Or record.

8 MR. MOORE: Possibly, possibly, and I would say to
9 the Court, I have to basically disclose a particular
10 theory of where we're going.

11 He has had a huge number of cases nolle-prossed.

12 Now, having looked at it, it appears most of them were
13 nolle-prossed at the same time he pled guilty in 2009,
14 but, you know, one of the things I wanted to do was
15 basically say, "You have a history of having charges
16 dismissed as cooperating with the police."

17 THE COURT: Do you have any foundation upon which to
18 base that question?

19 MR. MOORE: Obviously, he had all those charges
20 dismissed, and the only way I know how to --

21 THE COURT: That's not the question. The question is
22 did you get the charges dismissed because you were
23 cooperating.

24 My question is what foundation do you have that those
25 charges were dismissed because of cooperation?

1 MR. MOORE: The only way I could secure such a
2 foundation is to talk with him, which I've had no
3 opportunity to do so. Thus, the only way I can get an
4 answer to my question is to ask him.

5 MS. CAMPBELL: I'll be glad to ask him if he got the
6 charges dropped -- I assume he's talking about burglary
7 charges?

8 MR. MOORE: All of it. He had -- he had conspiracy,
9 larceny, burglary, all sorts of things.

10 MS. CAMPBELL: It looks like he had burglary
11 charges -- I can hand it up, Your Honor, from Lexington.

12 I'll be glad to the inquire of the solicitor's office the
13 basis for which the deal was made, but I don't think it's
14 appropriate to do it in front of this jury and for him to
15 do that.

16 In addition, Your Honor, I don't know -- he has not
17 asked of my office to ask that question or ask any
18 questions along this.

19 MR. MOORE: That's true.

20 THE COURT: And has somebody gone to Lexington and
21 pulled his file to see what the disposition sheet says as
22 far as why the charges have been dismissed?

23 MS. CAMPBELL: I can have that done.

24 MR. MOORE: All I have got is the criminal rap sheet
25 that shows they were dismissed. The file shows they were

1 dismissed.

2 THE COURT: No. The file shows you a disposition
3 sheet that states why the case was dismissed.

4 MR. MOORE: The Court just educated me to something
5 that I didn't know, and I always appreciate that. But
6 what I basically have is a rap sheet which I've been
7 given, and I've done this long enough to sort of get an
8 idea of what's going on but --

9 THE COURT: Well, have you --

10 MR. MOORE: -- that doesn't answer my question.

11 THE COURT: Have you inquired of him as to whether or
12 not these charges were dismissed as a result of his
13 cooperation?

14 MS. CAMPBELL: No, sir. His charges were in 2009. I
15 did not know that Mr. Moore would be attempting to run in
16 this way; therefore, I would be glad to get the
17 disposition sheets from Lexington so as you mentioned
18 those would reflect.

19 Typically, it's pled to other charges is the reason
20 for. It looks like a plea deal. It's typical, I know in
21 Mr. Moore's experience, but I will double check to make
22 sure there's no cooperation.

23 THE COURT: Mr. Sutherland -- hold on.

24 Mr. Sutherland, you're back with us today. I know
25 you're excited about that.

1 MR. SUTHERLAND: Yes, sir.

2 THE COURT: Can you inquire of your client as to
3 whether or not any of those charges were dismissed as a
4 result of cooperation?

5 MR. SUTHERLAND: I can ask him. I don't know. I've
6 had guys with 15, 16 burglaries and plead to two before.
7 I'll ask him.

8 THE COURT: If you would. Is he here?

9 MR. SUTHERLAND: He's downstairs, yes, sir.

10 THE COURT: How about this, Mr. Moore? I'm trying to
11 move this along. How about if Mr. Sutherland goes and

12 asks him if his charges that he was arrested on in
13 December of 2007 in Lexington County, and the eventual
14 disposition of those charges in April of 2009, if those
15 charges were dismissed because of any cooperation with any
16 state, local, or federal agency.

17 MR. MOORE: Here -- I think that my ability to
18 cross-examine on the issue should go further than that.
19 It should basically go as a part of a negotiated deal.

20 The basic points are going to be this: "Sir, you
21 ain't no stranger to this system. You understand how it
22 works. You basically have had a situation where you have
23 had things negotiated away for you in the past. You know,
24 that. You basically -- as part of that negotiation in the
25 past, you agreed to plead guilty to two charges so that 27

1 charges went away, and you understand that was negotiated
2 for you. You understand how the negotiating system works.
3 That was done for you in 2009.

4 You understand that there is a process of negotiation
5 throughout this whole process, and you were able to
6 basically make that negotiating process work for you
7 in 2009. You knew how the system worked. You understood
8 the system. You were no stranger to the system.

9 You understood that if you give them something, they
10 give you something, and you learn that by way of the fact
11 that in 2009, you gave them two pleas in exchange for

12 dismissing a bunch of other cases."

13 THE COURT: Okay. And where in Rule 609 does it say
14 that's admissible?

15 MR. MOORE: Your Honor, I think it's relevant to the
16 issue of what he knew about how the system works.

17 THE COURT: Again, under Rule 609, which is
18 impeachment by evidence of conviction of a crime, where
19 does his knowledge of the system come into play?

20 MR. MOORE: Your Honor, they're basically not
21 impeaching him as to his credibility. What that basically
22 would do, that would be showing a knowledge that he would
23 have which would give him reason.

24 Again, 609, the concept of being able to impeach
25 somebody on the issue of credibility, that's one thing.

1 It goes to his credibility. It goes to his character.

2 This is not going do credibility, and this isn't
3 going to character. This basically is going to how he
4 would be knowledgeable if there is a way to use providing
5 information as a way to create a vehicle to negotiate the
6 disposition of charges, relevant information. It has
7 nothing to do with 609.

8 THE COURT: Yes, ma'am.

9 MS. CAMPBELL: I think he has made his argument in
10 point. Theres no evidence that he did that in the past.

11 MR. MOORE: Sure.

12 MS. CAMPBELL: For Mr. Moore to get up here and say
13 that people -- the negotiations between defense attorneys
14 don't occur daily on a basis regardless of the
15 cooperation -- but we will inquire as to whether or not it
16 was the result of cooperation in the past as far as
17 snitching on another person, such as in this case.

18 However, he has absolutely no basis, and as far as
19 general negotiations between lawyers and the solicitor's
20 office and defense lawyers, hardly -- that doesn't really
21 base itself on cooperation. I don't think what he's
22 talking about.

23 MR. MOORE: Well, I tried to explain bit, but
24 apparently I'm doing a very poor job. It has nothing to
25 do with whether he turned on somebody, gave evidence

1 against somebody, nothing else. It has to do with his
2 general knowledge of how the basic criminal justice system
3 works.

4 THE COURT: I think you can ask him, you can say, "Do
5 you want something in exchange for this? Do you want some
6 of your charges dismissed? Do you want some of your
7 charges reduced? Do you want this? Do you want that?"

8 I don't have a problem with any of that. I think
9 that's fair game. My issue is when you go into specific
10 instances of conduct of because these -- I don't know how
11 many charges there are. These Lexington County charges
12 were dismissed, that that means he understands something.

13 I mean, for all we know -- and they're part of the
14 problem right now. We are in complete and total
15 speculation mode. These charges were all dismissed
16 because the victims didn't want to cooperate. Maybe he
17 was not guilty. I have no idea why those charges were
18 dismissed, and I don't think the defense does either.

19 So I'm going to ask Mr. Sutherland as an officer of
20 the court --

21 MR. SUTHERLAND: Yes, sir.

22 THE COURT: -- to inquire of his client as to why the
23 charges from Lexington County -- and do you know -- are
24 you aware of what I'm talking about, Mr. Sutherland?

25 MR. SUTHERLAND: Yes, sir. I can say that he had

1 mentioned -- oh gosh. He had told me something.

2 I believe that an evaluation -- he has tested most
3 recently as an IQ of 76, and I have reason to believe that
4 an evaluation may have played a part in that. However, I
5 didn't represent him over there. I can head right down
6 there now and find out.

7 THE COURT: Okay. Let's do that.

8 MR. SUTHERLAND: All right. Thank you.

9 THE COURT: All right. We'll figure that out, and
10 then we'll revisit it before we call him.

11 MS. CAMPBELL: Thank you.

12 THE COURT: Okay. Sorry about that, Investigator
13 Mauldin. I do apologize, but I'm trying to keep the jury
14 out as little as possible.

15 THE WITNESS: No problem, sir.

16 THE COURT: All right. Bring the jury back in.

17 (WHEREUPON, the jury came into open court at
18 approximately 3:30 p.m.)

19 (WHEREUPON, Court's Exhibit No. 3 was marked for
20 identification only.)

21 THE BAILIFF: The jurors are all present, Your Honor.

22 THE COURT: Thank you very much.

23 Welcome back, ladies and gentlemen. We'll continue
24 with the testimony.

25 You may continue, Ms. Simpson.

1 MS. SIMPSON: Thank you, Your Honor.

2 BY MS. SIMPSON:

3 Q I believe we were at the point of when you entered
4 the home and what stood out to you with respect to the
5 cleanliness and this air fresheners, correct?

6 A Yes.

7 Q What -- what did you do first?

8 A We began a room-by-room search.

9 Q And let me say by "we" who all -- who were some of
10 the people assisting in the search?

11 A I believe -- of course, I was there. I believe

12 Investigator Bolding was assisting at that point. Rob --
13 or Investigator Martin was there for a short while until
14 he had to return to headquarters and address some issues
15 there.

16 Investigator -- criminal -- or crime scene
17 Investigator Bouknight was there. I believe crime scene
18 investigator Rainsford was there; crime scene Investigator
19 Lee, and I also had a brand new deputy who was still in
20 field training assist. I believe Deputy Wenzell was his
21 name. He assisted, as well, in conducting the search.

22 Q Is it typical to have several officers and crime
23 scene investigators assisting in a search?

24 A Yes. You have got a good-sized house. It is very
25 common to have several individuals searching the residence

1 to expedite the process.

2 Q So you began a room-by-room search. What did you do?

3 A I believe -- if I recall correctly, I started in the
4 kitchen area looking in the kitchen for anything that
5 might be unusual, stand out.

6 I spent quite a bit of time in there because I did,
7 in fact, recover some items in there, I believe some
8 receipts in a trash can that were from -- appeared to be
9 from bank cards that were apparently in Ms. Smith's name
10 for some purchases in -- I believe Charlotte, North
11 Carolina was listed on those receipts.

12 I also recovered a used condom and condom wrapper out
13 of the trash can in the kitchen, as well, in addition to,
14 I believe, some spent air fresheners containers like some
15 kind of industrial strength air freshener container, at
16 least one.

17 We checked the living room, as well. I believe
18 Investigator Lee and Bouknight were in the mud room where
19 the washer and dryer were with the bed sheets and towels,
20 what have you, were still in the dryer. I did enter that
21 area, take a look at those, as well and observe the smell,
22 the odor, coming from those.

23 Q Okay. And was it a distinct odor?

24 A It was foul. In my experience, having dealt with
25 death more than I would like to, yes, it was reminiscent

1 of decomposition.

2 Q And at some point, was the garage area searched, as
3 well?

4 A It was. Items that I recall from the garage -- there
5 was a black -- I believe a black Acura that was present in
6 the garage, and I believe there were some additional bank
7 cards in that vehicle that were recovered that were also
8 in Ms. Smith's name.

9 Q I'm going to show you State's Exhibit 231. Do you
10 recognize that?

11 A Yes, this would be an envelope with some bank cards
12 and Ms. Smith's military ID taken from this vehicle.

13 (WHEREUPON, State's Exhibit No. 231 was marked for
14 identification only.)

15 BY MS. SIMPSON:

16 Q And those items were actually turned into evidence by
17 you?

18 A Yes.

19 MS. SIMPSON: Your Honor -- my apologies.

20 Your Honor, at this time, I would offer State's 231
21 into evidence.

22 MR. MYERS: Your Honor, just subject to the objection
23 we made a few moments ago.

24 THE COURT: Yes, sir.

25 Did you have that one down?

1 THE COURT REPORTER: No. Just a moment.

2 (WHEREUPON, State's Exhibit No. 231 was admitted into
3 evidence.)

4 BY MS. SIMPSON:

5 Q And State's 231, was located -- the bank cards and
6 military ID, these were located in the car that was in the
7 garage?

8 A Yes.

9 Q Okay. And are these the cards? Can you tell us what
10 those are and whose name is on those?

11 A One is a USAA MasterCard, and it's in the name of

12 Almanita Smith. The other is an American Express card.
13 It is also in the name of Almanita Smith, as well as a
14 military identification card which is in the name of
15 Almanita Smith.

16 Q All right. At some point, did you go to the upstairs
17 area of the home?

18 A I did. I did.

19 Q Tell the jury about that.

20 A Upstairs there -- if I recall correctly, if I walk up
21 the stairs, directly to the right at the top of the
22 stairs, there was a small office area.

23 I believe -- I didn't search that particular room. I
24 believe some items were recovered from there. I can't
25 recall. It was more of an office.

1 There was -- the first bedroom we encountered would
2 have been to the left of the stairs. As you came up to
3 the top, you take a left, an immediate left, into that
4 bedroom. That bedroom appeared very tidy. It looked like
5 it had been freshly vacuumed. It still had the tracks
6 from vacuuming. I believe there was a comforter that had
7 some sheets and bed -- like pillow, pillow cases that were
8 wet or damp in it.

9 Q And you observed those. Did crime scene
10 investigation or one of the investigators actually collect
11 those items?

12 A Those were collected, yes.

13 Q After that room, where did you go?

14 A I believe the master -- what I -- there were two
15 other large bedrooms upstairs. One, I assume, was the
16 master bedroom. It was a little more untidy than the rest
17 of the house. It kind of didn't fit the rest of the
18 house.

19 Items -- the one item that stands out -- I think some
20 other items were -- or articles of clothing that were
21 recovered there were maybe a purse and things of that
22 nature belonging to Ms. Smith with additional, maybe
23 identification, the typical things that a woman would
24 carry in her purse.

25 Q So that room appeared to contain female items --

1 A Yes, most.

2 Q -- of the female's room that ultimately you learned
3 was Almanita's room?

4 A I believe it was, yes.

5 (WHEREUPON, State's Exhibit No. 230 was marked for
6 identification only.)

7 BY MS. SIMPSON:

8 Q Were those bank cards and items -- actually, let me
9 show you what's been marked as State's 230. Do you

10 recognize this?

11 A Yes. These are some bank cards and additional things

12 turned in, some receipts that were also turned in by
13 myself.

14 MS. SIMPSON: Okay. Your Honor, at this time I would
15 offer State's 230 into evidence.

16 THE COURT: Admitted subject to prior -- over defense
17 objection. I apologize.

18 (WHEREUPON, State's Exhibit No. 230 was admitted into
19 evidence.)

20 BY MS. SIMPSON:

21 Q These items were found in the master bedroom?

22 A To be 100 percent honest, I cannot recall whether I
23 found them in the back bedroom or the other large bedroom
24 where there were more male clothing items.

25 Q And who -- what are these, and who is listed on

1 these?

2 A This is a Georgia driver's license in the name of
3 Almanita Smith; a USAA platinum card and the name of
4 Almanita Smith; a New York & Co. card which bears no name.
5 No. I'm sorry. It does. It belongs to Ms. Smith, as
6 well, or at least her name is listed; what looks like a
7 new, brand new, USAA MasterCard in the name of Almanita
8 Smith; and a second USAA MasterCard in the name of
9 Almanita Smith, and a Department of Veteran's Affairs card
10 in the name of Almanita Smith.

11 Q So all of these bank cards, along with her ID, were
12 located?

13 A Yes. They may have been contained within the purse.
14 Honestly, I can't recall 100 percent.

15 Q And you indicated there are some receipts in here, as
16 well. Can you tell the jury what that one is in State's
17 230?

18 A It's a -- it looks like a withdrawal receipt from an
19 ATM.

20 Q Okay. And does it indicate where that item was
21 found? Is it somewhere downstairs?

22 A It looks like bedroom floor. I'm not certain what --
23 that's not my writing, so I'm not sure what was on the
24 envelope there.

25 Q And all of those receipts -- are those additional

1 receipts --

2 A They are.

3 Q -- that were turned in by you?

4 A Yes.

5 Q All of those receipts were found in the home?

6 A Yes; that's correct. This is from the Midnight Diner
7 in Charlotte, South Carolina. There's another one from
8 the Midnight Diner in Charlotte, North Carolina and one
9 from a place called Caviar in Charlotte, North Carolina.

10 Q And what's the date on those receipts?

11 A The date listed on it is 8/20/2012.

12 Q For the Club Caviar?

13 A Yes.

14 Q And the Midnight Diner or maybe --

15 A Yes, both are 8/20 -- or all are 8/20/2012, August.

16 Q And then what are these additional receipts?

17 A This is from the purchase Shasta Beauty Supply, and
18 from 8/17 -- August 17th, 2012 in Columbia, South
19 Carolina, an American Eagle Village at Sandhills. I'm
20 trying to locate a day on this one. 8/17, August 17th,
21 2012.

22 Q And then we have several other receipts that were
23 collected, as well, correct?

24 A That's correct. Several other -- it looks like
25 American Eagle receipts.

1 Q And the dates of these receipts, did they become
2 significant in the investigation, to your knowledge?

3 A They did. They did, yes. They appeared to have been
4 generated after the time we believe Ms. Smith -- or at
5 least the time contact with Ms. Smith had been lost.

6 Q After you searched or assisted in the search of the
7 master bedroom, did you search any additional rooms?

8 A I want to say in the master bedroom another article
9 that I located that was -- that really stood out to me was
10 in the master bedroom closet, in searching that closet
11 behind the door, there was a wet towel and a wet pair of

12 brown velour pants that appeared to be the exact same
13 pants, or the matching pants, to the top that Ms. Smith
14 was wearing.

15 Q And had you actually observed Ms. Smith's body?

16 A In the front yard yes, at that time.

17 Q And did you learn some information about the towel
18 area?

19 A I would later learn that that area had a -- I was not
20 present when the dog had been run through the house, but I
21 was apprized later that that area, that general area, is
22 where the dog hit.

23 Q And in that room, there were brown pants matching
24 Ms. Smith's?

25 A Yes. In that closet is apparently one of the areas

1 where the dog indicated.

2 Q And what else did you observe at the scene?

3 A In the master bedroom -- oh, there was another
4 bedroom, and I believe there were some male clothing items
5 in that bedroom, hats, male pants, some bags, I believe,
6 of some new clothes maybe and a few receipts in there, as
7 well.

8 Q This was already -- was a wallet located?

9 A A wallet was located. I would have to look at the
10 search warrant to see the exact location of the wallet.

11 I'm not sure, but I believe a wallet that did appear to

12 belong to Mr. Bailey was located.

13 Q Okay. And this has already been introduced as part
14 of State's 230. Is this the wallet that was located?

15 A It was the wallet, yes, it is.

16 Q And what does that wallet contain?

17 A A Department of Veteran's Affairs card belonging to
18 Mr. Bailey; a USAA card also belonging to Mr. Bailey;
19 actually, numerous credit cards that belonged to
20 Mr. Bailey, and there -- I believe there was a small
21 amount of cash in the wallet, as well, some receipts.

22 Q Okay. But it was clear that that was most likely
23 Bailey's wallet?

24 A Yes; that's correct.

25 Q And what else did you observe at the scene with

1 respect to the victim's body being removed?

2 A If you'll just bear with me. Let me take a look at
3 my follow up for just a moment.

4 (Pause.)

5 Q Or I guess did you observe her body being removed?

6 A I mean, aside from the towels, the wet towels and
7 laundry --

8 Q I apologize. I'm on the outside of the home now, her
9 actual body that was located. I believe it's on page two
10 of your follow up.

11 A I'm not 100 -- you're asking me if I saw signs that
12 it had been moved?

13 Q Or did you actually observed the body being removed?

14 A Oh, I did. Yes. I didn't understand your question.

15 Q I'm sorry.

16 A Yes, I was present. Of course, we are -- as
17 investigators, we are not going to touch the body until
18 our crime scene individuals, until the coroner's office
19 has had a chance to do their job it's not to...

20 (Beetles ring tone playing.)

21 MR. MOORE: I'm sorry. Turn it off. I'm sorry. I'm
22 sorry, Your Honor. It wasn't supposed to do that. I
23 apologize.

24 BY MS. SIMPSON:

25 Q I apologize. I don't know. Where were we?

1 THE WITNESS: I -- once -- yes. Once body removal...

2 THE COURT: Do you need her to read back where you
3 were?

4 THE WITNESS: No, sir. I think I'm...

5 THE COURT: Okay.

6 THE WITNESS: We don't -- we're not going to touch
7 the body, move the body, what have you until everything
8 has been done by crime scene, coroner's office, what have
9 you, but at some point, a body removal unit will respond
10 and transport the body from that location -- or any body
11 on a crime scene or death investigation to the Palmetto

12 Richland ER morgue.

13 So I was there because that might be our only
14 opportunity to actually, you know, see other parts of the
15 body that were not readily visible.

16 Q And when you observed Ms. Smith's body, was it
17 evident that she was in a level of decomposition?

18 A Much more so, just not knowing her. At that point,
19 like I said, we first got there. There weren't so many
20 flies in the morning, and there was a substantial
21 number -- if I recall correctly -- by the afternoon.

22 When they did remove Ms. Smith and rolled her over,
23 the level of decomposition was much more evident. You
24 know, her features had been very distorted. Her tongue
25 was hanging from her mouth was substantially swollen.

1 The odor became a little more pronounced as they
2 moved her than it was just when she was lying there. It
3 was more evident that there had been a substantial amount
4 of decomposition that had occurred based on my experience.

5 Q I apologize, I was looking for a photo. After her
6 body was removed and you all had searched the scene, did
7 you actually go to do some additional investigation in
8 this case?

9 A I did. I did. At that time, Investigator Martin,
10 Investigator Clarke were conducting additional -- or
11 following up on additional kind of investigative leads.

12 Based on some things they as they apprized me, a new
13 witness came to light, a new possible witness that would
14 explain the condom I had located in the trash can. So I
15 proceeded to try to make contact with that witness, which
16 I did.

17 Q And what was the identity of that witness?

18 A Oh my goodness. Hold on for one second. The name I
19 was given was Cocoa, but she has a name.

20 Q So you later learned her actual name?

21 A Yes. I want to say it's Tiffany, Tiffany McCallum,
22 yes.

23 Q You can't say what all she said to you --

24 A Right.

25 Q -- but did she speak to you about this case or her

1 knowledge of Mr. Bailey?

2 A She did.

3 Q Did you obtain a written statement from her?

4 A I did obtain a written statement from her, as well.

5 Q Did you also obtain a buccal swab from her?

6 A Yes.

7 (WHEREUPON, State's Exhibit No. 232 was marked for
8 identification only.)

9 BY MS. SIMPSON:

10 Q I'm going to show you what's been marked as State's
11 232. Do you recognize that?

12 A I do. This is the container, carton, and buccal swab
13 I submitted into evidence from Ms. McCallum.

14 Q And was it properly collected, sealed, and packaged?

15 A It was.

16 MS. SIMPSON: Your Honor, at this time, I'd offer
17 State's 232 into evidence.

18 MR. MYERS: Subject to prior objection, Your Honor.

19 THE COURT: This wasn't taken as a result of the
20 search warrant. What's the objection?

21 MR. MYERS: I believe it was, Your Honor. It's my
22 understanding --

23 THE COURT: I thought this was the buccal swab from
24 somebody named --

25 MS. SIMPSON: Ms. McCallum, Tiffany McCallum.

1 THE COURT: Somebody --

2 MR. MYERS: No objection.

3 THE COURT: Okay. Thank you. If you have an
4 objection, that's fine. I just want to make sure I know
5 what it is.

6 Admitted without objection.

7 MS. SIMPSON: Thank you, Your Honor.

8 (WHEREUPON, State's Exhibit Nos. 232 was admitted
9 into evidence.)

10 BY MS. SIMPSON:

11 Q And what exactly is a buccal swab?

12 A A buccal swab and buccal just basically means oral.
13 It's a swab, a large Q-tip, that is swabbed on the
14 interior of the mouth. The inside of the -- again, I'm
15 not a DNA analyst but I've done a few of these.

16 It's swabbed on the interior of the mouth and the
17 cheeks and between the gums to obtain cells that can be
18 used to establish somebody's DNA.

19 Q Okay. So it's a known profile?

20 A DNA profile, standard profile, yes.

21 Q And based on the evidence from the used condom in the
22 trash can, as well as her statements to you, did it seem
23 probative to get a buccal swab from her?

24 A Yes. For elimination purposes, yes.

25 Q Did you also obtain some search warrants for cell

1 phone records?

2 A Yes.

3 Q Or assist in obtaining those?

4 A I did obtain search warrants for some cell phone
5 records, as well.

6 Q And were those -- did you actually ultimately receive
7 some records?

8 A Yes, I did. I believe from Sprint PCS maybe. Those
9 were -- I can't recall 100 percent.

10 Q And going back -- one more follow up. When you were
11 at the scene, you indicated some bug activity, the lack of
12 it, when you first described. Describe that again for the
13 jury.

14 A Just when we first arrived, I initially early in the
15 morning when I observed Ms. Smith lying in the front yard,
16 there were flies. There just weren't as many. It was
17 much more pronounced by later afternoon.

18 Q And that's over the course of a few hours.

19 A Yes.

20 Q Several hours.

21 A Yes.

22 Q And did you ever actually make contact with the
23 defendant in this case, Mr. Bailey?

24 A Briefly at headquarters.

25 Q Okay. But it was Investigator Martin, Clarke, and

1 other investigators who actually interviewed?

2 MR. MYERS: Objection leading, Your Honor.

3 THE COURT: Sustained.

4 BY MS. SIMPSON:

5 Q Did you actually speak with him about his
6 involvement?

7 A No. I -- no. Small talk and I think I provided him
8 with some water.

9 MS. SIMPSON: Thank you.

10 THE COURT: Was that all?

11 MS. SIMPSON: Yeah. I was trying to get the evidence
12 back, Your Honor, before I leave.

13 THE COURT: Cross-examination?

14 MR. MYERS: Thank you, Your Honor.

15 CROSS-EXAMINATION:

16 BY MR. MYERS:

17 Q How you doing, sir?

18 A Very well, sir.

19 Q I want take a look at...

20 Investigator Mauldin, you testified that the Georgia
21 driver's license was found inside the car, right?

22 A I believe it was.

23 Q All right. She was a resident of South Carolina at
24 the time, right, of her death?

25 A She lived there.

1 Q The expiration date of that driver's license, what's
2 the date of that?

3 A 5/25/2012.

4 Q So by the time you arrived in August, that driver's
5 license was no good.

6 A It's expired.

7 Q She couldn't have even used it if she wanted to,
8 right?

9 A Shouldn't be able to.

10 Q She would have been in violation of the law if she
11 was driving around on an expired driver's license, right?

12 A With an expired license, yes.

13 Q Now, you testified that you have experience in major
14 crimes, right?

15 A Yes, sir.

16 Q And that's robbery and assault, right?

17 A Uh-huh.

18 Q That's a yes?

19 A I'm sorry, yes, sir.

20 Q I didn't mean to choke you, but so you know as a
21 crime scene investigator what trauma is to a body, right?

22 A Well, I'm not a crime scene investigator. I have
23 seen trauma, yes, but I will say all trauma is not -- I've
24 seen a lot of dead bodies.

25 Q Okay.

1 A And trauma, cause of death, injuries are not always
2 readily visible. As a road officer I've seen people dead
3 in car wrecks without a scratch or bruise on them.

4 Q Yes.

5 A So I know what it looks like, but it's not always
6 there.

7 Q Sure, but we know now that as far as trauma goes to
8 Ms. Smith's body, there was no actual gunshot wound,
9 right?

10 A There was no gunshot wound; that's correct.

11 Q There were no stab marks?

12 A Yes.

13 Q There were no ligature marks?

14 A As far as I know; that's correct.

15 Q As far as you're sitting her today, there was nothing
16 found on that body that would indicate any sort of trauma?

17 A From what I know about the autopsy; that is correct.

18 Q And there is nothing that was found underneath her
19 nail scrapings that would suggest that she had come in
20 contact with Mr. Bailey, right?

21 A I would have to defer to the folks who collected it.
22 I don't know anything about the nail scrapings, but from
23 what I understand, nothing came of those.

24 Q Now, you testified that when you got there, you saw
25 the body, right?

1 A Uh-huh; that's correct.

2 Q And you stated that you saw some feces on the body,
3 right?

4 A Uh-huh.

5 Q So it was a mess, was it not?

6 A It was. It was not initially -- ultimately, she was
7 decomposed. I mean, mess, that's kind of subjective. I
8 mean, I've seen bodies in a lot worse state than that.

9 Q Okay. Were you -- were you there or after the
10 blanket was removed from her body?

11 A I was there after the blanket had been removed.

12 Q After the blanket had been gone?

13 A Yes.

14 Q Do you know whether or not any fibers from any sort
15 of blankets were ever retrieved from the body?

16 A I have no idea.

17 Q So you have no idea as to whether or not any fibrous
18 material from any blanket was ever retrieved from the
19 body?

20 A No. I would not have collected anything from the
21 body.

22 Q Any sort of plastic containers found near the body?

23 A Not that I'm aware of, no.

24 Q No sort of drag marks around the body?

25 A No.

1 Q Now, you indicated that you and your team went on a
2 thorough search of the house, right?

3 A Yes.

4 Q And you started, you believe, with the kitchen area,
5 right?

6 A Yes.

7 Q And there was no evidence of feces in the kitchen,
8 right, belonging to Ms. Smith?

9 A Yes. There was no evidence of any feces.

10 Q No evidence of any urine found in the kitchen area
11 belonging to Ms. Smith, right?

12 A No.

13 Q In fact, there was no sort of organic material
14 belonging to Ms. Smith found in the kitchen, right?

15 A Not by me. I mean, I would not have -- just doing a
16 search warrant, I wouldn't know that if I saw it
17 necessarily.

18 Q All right. And in the garage area, no sort of feces
19 found in the garage?

20 A No feces.

21 Q Not even inside the car?

22 A No. Correct, no.

23 Q That's not only -- just inside the cab part of the
24 car but also inside the trunk area?

25 A Yes, sir. No feces.

1 Q All right. And nothing found upstairs by way of
2 feces.

3 A No feces.

4 Q Or any type of bodily fluids from Ms. Smith found
5 upstairs.

6 A I'm trying to answer that the best I can. I don't
7 know what was on the blankets, towels, pants, what have
8 you, but I know I didn't see any pools of blood or
9 anything else that --

10 Q Okay. So somebody else would have known that, right?

11 A Yes.

12 Q Were you there when the carpet upstairs was pulled
13 back?

14 A I was not.

15 Q Do you know whether or not any fingerprints were
16 taken from the phone found next to Ms. Smith's body?

17 A I have no idea whether anything came of the
18 processing of the phone.

19 Q Do you know whether any photographs or fingerprints
20 were ever sent off for testing?

21 A I don't know that.

22 MR. MYERS: Thank you, sir. I don't have any further
23 questions.

24 THE COURT: Redirect?

25 (Pause.)

REDIRECT EXAMINATION:

BY MS. SIMPSON:

Q Just one brief question, Your Honor, or maybe two.

The -- I want to show you this. He asked you about where the license was found. Where was it found?

A Oh, okay. I'm sorry. The bank cards and Georgia license in the name of Smith were found -- actually found in the master bedroom nightstand by Deputy Wenzell.

Q Okay. And was there also a wallet?

A Yes. They were found in a wallet in the nightstand by Officer Wendell.

Q And did you all learn who the car belonged to that was parked in the garage?

A The car was -- if I recall, in the name of Ms. Smith. It was Ms. Smith's car.

Q So not the defendant's car. It was actually Ms. Smith's car?

A That's correct.

MS. SIMPSON: Thank you.

RECROSS-EXAMINATION:

BY MR. MYERS:

Q Was there only one car on the scene?

A There was only one car.

MR. MYERS: Okay. Thank you. No further questions.

THE COURT: Thank you, Investigator Mauldin. You may

1 step down.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Any objection to him being excused?

4 MR. MYERS: No objection, Your Honor.

5 THE COURT: Thank you, Investigator Mauldin.

6 THE WITNESS: Yes, sir.

7 THE COURT: You may be excused.

8 THE BAILIFF: Watch your step down and your step
9 right there.

10 ~~THE COURT: Call your next witness.~~

11 MS. CAVANAUGH: Thank you, Your Honor. The State
12 calls Joseph Trawicki.

13 JOSEPH TRAWICKI, after being duly
14 sworn, testified as follows:

15 THE CLERK: Please have a seat. State your full name
16 for me.

17 THE BAILIFF: Watch your step, sir. All right.
18 Okay.

19 THE WITNESS: Joseph Trawicki, T-R-A-W-I-C-K-I.

20 THE COURT: Hold on just a second.

21 MR. MOORE: I did not realize that this gentleman was
22 a witness, but I believe he has been in the courtroom
23 earlier in morning.

24 THE WITNESS: No, sir.

25 THE COURT: I've never seen him.

1 MR. MOORE: Okay.

2 MS. CAVANAUGH: Thank you, Your Honor.

3 DIRECT EXAMINATION:

4 BY MS. CAVANAUGH:

5 Q Good afternoon, Mr. Trawicki.

6 A Good afternoon.

7 Q Where are you employed?

8 A Sprint.

9 Q And what is your position at Sprint?

10 A I am one of the records custodians.

11 Q Okay. As a records custodian, what are your
12 responsibilities?

13 A My primary responsibility is traveling all over the
14 country and testifying in court regarding records Sprint
15 has produced.

16 Q And can you -- are these records that are for cell
17 phones?

18 A Yes, ma'am.

19 Q Cell phone numbers?

20 A Yes, ma'am.

21 Q And are these records kept in the ordinary course of
22 business?

23 A Yes, they are.

24 Q And can you describe how they're actually stored and
25 then produced?

1 testified as follows:

2 THE BAILIFF: Step up, pull it up; state your name
3 for the record and spell it.

4 THE WITNESS: Yes, sir. My name is Edward Walker.
5 E-D-W-A-R-D, W-A-L-K-E-R.

6 DIRECT EXAMINATION:

7 BY MS. CAMPBELL:

8 Q Mr. Walker, how old are you?

9 A I'm 25, ma'am.

10 Q And are you currently incarcerated?

11 A Yes, ma'am.

12 Q Where are you incarcerated?

13 A Right now I'm at Kershaw County Detention Center.

14 Q Back in the summer towards the fall of 2012, where
15 were you incarcerated?

16 A Alvin S. Glenn Detention Center.

17 Q And what dorm were you in there, sir?

18 A Lima.

19 Q Why were you being incarcerated at the Alvin S.
20 Glenn Detention Center?

21 A I had pending charges still.

22 Q And what are your pending charges?

23 A Murder, attempted armed robbery, and armed robbery.

24 Q And how long have you been incarcerated for these
25 offense?

1 A Two years.

2 Q Two years?

3 A Yes, ma'am.

4 Q Did you meet Marcus Bailey?

5 A Yes, ma'am.

6 Q And where did you meet Marcus Bailey?

7 A In Lima.

8 Q And what is Lima?

9 A That's a dorm at Alvin S. Glenn Detention Center.

10 Q That's a dorm in Alvin S. Glenn Detention Center?

11 A Yes, ma'am.

12 Q And do you remember approximately what time of year
13 it was that Mr. Bailey came to be in the same dorm you
14 were in?

15 A It was like around about September.

16 Q And after Mr. Bailey came into your dorm, did y'all
17 start talking?

18 A Yeah, we talked.

19 Q And what kinds of things would y'all talk about?

20 A Well, first we talked about like -- talked about this
21 something like words sometimes, and then we talked a
22 little bit about his case.

23 Q Okay. Tell the jury what Mr. Bailey told you about
24 his case?

25 A Well, he told me two days prior before he got there

1 that day that he cut his fingernails. He also told me
2 that he left the -- that he left for like two days. Well,
3 she left for like two days, and then she -- that they was
4 arguing.

5 Q Let me back up a little bit. What was he telling you
6 about, what he was talking to you about cutting his
7 fingernails and things of that nature? What was he
8 talking about?

9 A The DNA.

10 ~~Q The DNA?~~

11 A Yes, ma'am.

12 Q Specifically, what crime was he talking to you about?

13 A Murder.

14 Q And whose murder?

15 A Almanita Smith.

16 Q Ms. Smith's murder?

17 A Yes, ma'am.

18 Q By whom?

19 A Marcus Bailey.

20 Q And who was the person relating that information to
21 you about what he had done?

22 A Marcus Bailey.

23 Q And what did Marcus Bailey tell you about the murder
24 of Almanita Smith?

25 A He said he did it. He said he didn't mean to.

1 Q What specifically did he tell you about how it came
2 about and what happened?

3 A He said he had -- basically said he lied and said
4 that he -- they was arguing, and he left the house just to
5 cool off.

6 Q Did he say how he happened to kill Ms. Smith?

7 A No, ma'am.

8 Q What did he tell you, that he did it?

9 A Yes, ma'am.

10 Q And he said he didn't mean to?

11 A Yes, ma'am.

12 Q Is that what you testified to?

13 A Yes, ma'am.

14 Q Did he say how he did it?

15 A No, ma'am. He didn't really tell me how he did it.

16 Q Do you remember giving a statement back when this
17 happened?

18 A Yes, ma'am.

19 Q And I'm going to show you the first page of your
20 statement. Do you recognize that?

21 MR. MOORE: Your Honor, I'd object to her impeaching
22 her own witness.

23 THE COURT: Under Rule 607, this is completely
24 permissible.

25 MR. MOORE: Thank you.

1 THE COURT: Overruled.

2 BY MS. CAMPBELL:

3 Q May I approach?

4 A Yes, ma'am.

5 Q Do you remember what he said about how he did it?

6 A Yes, ma'am.

7 Q And what did you tell the police he told you?

8 A That he strangled her.

9 Q Do you remember that?

10 A Yes, ma'am.

11 Q Are you nervous here today?

12 A A little bit.

13 Q What else did he tell you about the body in the front
14 yard?

15 A He said she walked around the house half-naked
16 sometimes.

17 Q And why was that significant to you? Had you asked
18 him something about that?

19 A No, ma'am.

20 Q And why did he tell you about she walks about the
21 house half-naked?

22 A He said she just would be walking around the house.
23 That's just how she walked around the house, ma'am.

24 Q Did he tell you anything else about the charge?

25 A No, ma'am.

1 Q Do you remember him talking about what was going to
2 be the outcome of his charge?

3 A He said he was going to beat it.

4 Q Why did he say he was going to beat it?

5 A Because he's got the dream team.

6 MR. MOORE: Your Honor, this has no relevance on
7 this.

8 THE COURT: I'm sorry?

9 MR. MOORE: The fact that he said he was going to
10 beat the charge would have no relevance at all to the
11 facts of the case. Some statement about whether he

12 intended to win or lose this case would have no relevance
13 at all.

14 THE COURT: Overruled. Thank you.

15 BY MS. CAMPBELL:

16 Q You can answer now.

17 A Yes, ma'am. He said she was going to beat it.

18 Q And why did he say he was going to beat it?

19 A Because he got the Dream Team.

20 Q The Dream Team?

21 A Yes, ma'am.

22 Q And who was he referring to was the Dream Team?

23 A His lawyers.

24 Q Did he tell you specifically anything about what
25 Almanita was wearing when the police found her?

1 A He said she was wearing a black shirt.

2 Q Anything else?

3 A He said she didn't have on anything else.

4 Q After he talked to you, did you contact your lawyer?

5 A Yes, ma'am.

6 Q And why did you do that?

7 A Because, I guess, it was the right thing to do.

8 Q And when you contacted your lawyer, did he then get
9 in contact with the police officers?

10 A He got in contact with them.

11 Q Once he got in contact, your lawyer got in contact --

12 is he here in the courtroom?

13 A Yes.

14 Q Where is he seated? Now he is standing.

15 Did investigators come and talk to you?

16 A Yes, ma'am.

17 Q And did they take a statement from you on
18 October 15th?

19 A Yes, ma'am.

20 Q And that would be in 2012?

21 A Yes, ma'am.

22 Q And when they took a statement from you, is this your
23 two-page statement?

24 A Yes, ma'am.

25 Q And did you also give them some information you had

1 written down like when he told you all this?

2 A Yes, ma'am.

3 Q And I'm going to show you a copy. Is this your
4 handwriting?

5 A Yes, ma'am.

6 Q And were those notes you made after you talked to
7 him?

8 A Yes, ma'am.

9 Q Why did you make notes?

10 A Because it was the right thing to do.

11 Q And after they took that statement from you, then you
12 got transferred to a different dormitory?

13 A Yes, ma'am.

14 Q Okay. And you've been convicted before?

15 A Yes, ma'am.

16 Q In 2008, did you get convicted of -- let me make sure
17 I'm right, misprision of a felony?

18 A Yes, ma'am.

19 Q And then in 2009, did you get convicted of two counts
20 of burglary in the second degree?

21 A Yes, ma'am.

22 Q And you presently have pending a murder charge?

23 A Yes, ma'am.

24 Q And what's the penalty, potential penalty, for the
25 murder charge?

1 A Thirty to life.

2 Q Thirty years to life?

3 A Yes, ma'am.

4 Q You can get as little as 30 or as much as life in
5 prison?

6 A Yes, ma'am.

7 Q And on the armed robbery charges you have pending --

8 A Yes, ma'am.

9 Q What's the charges on that?

10 A As little as 30.

11 Q You get as little as ten or as much as 30?

12 A Yes, ma'am.

13 Q And then on the attempted armed robbery, what are the
14 penalties for that?

15 A That's zero to 30.

16 Q If I told you it was zero to 20 --

17 A Zero to 20.

18 Q You could get as little as nothing?

19 A Uh-huh.

20 Q And as much as 20 years?

21 A Yes, ma'am.

22 Q And that's what you're facing. Have you been
23 promised anything here for your testimony here today?

24 A No, ma'am.

25 Q Has any deal been made with --

1 A No, ma'am.

2 Q Your office with me or anyone from my office?

3 A No, ma'am.

4 Q About your pending charges?

5 A No, ma'am.

6 Q Do you hope that a judge will take into consideration
7 when they sentence you?

8 A Yes, ma'am.

9 Q That you cooperated?

10 A Yes, ma'am.

11 Q And you hope that your truthful testimony will help
12 you?

13 A Yes, ma'am.

14 Q But no one has promised you anything?

15 A No one promised me nothing at all.

16 Q The reason you had to be moved to a different
17 dormitory is for safety concerns?

18 A Yes, ma'am.

19 Q Has anyone promised you anything in exchange for your
20 testimony?

21 A No, ma'am.

22 Q But you hope down the road either the judge will
23 consider it or the solicitor's office or somebody will
24 consider it?

25 A Yes, ma'am.

1 Q In your sentencing?

2 A Yes, ma'am.

3 Q The person that you met in Lima dorm when you were in
4 the Alvin S. Glenn Detention Center, do you see him here
5 in the courtroom?

6 A Yes, ma'am.

7 Q Can you describe what he's wearing? You can't point,
8 I know.

9 A He's right there. He's wearing -- that's a purple
10 shirt, tie, and a low haircut right there.

11 Q Seated at the table?

12 A Yes, ma'am.

13 MS. CAMPBELL: Your Honor, may the record reflect he
14 has identified the defendant?

15 THE COURT: Yes, ma'am.

16 MS. CAMPBELL: Thank you, Mr. Walker.

17 THE COURT: Cross-examination?

18 CROSS-EXAMINATION:

19 BY MR. MOORE:

20 Q Sir, was it's my understanding that you said that you
21 hoped when you are sentenced, the judge will go lighter on
22 you because of your testimony here today?

23 A Yes, sir.

24 Q And you hoped that when you come to trial, the
25 solicitor's office will go easy on you because of your

1 testimony here today?

2 A I can't understand what you said. Repeat that again.

3 Q You said that you hope when the case comes to trial,
4 the solicitor's office will be easier on you because of
5 your testimony here today.

6 A Yes, sir.

7 Q Now, in regard to this hope that the judge will go
8 easy on you when you are sentenced for murder, armed
9 robbery, and attempted armed robbery, have you had
10 occasion to speak with your lawyer about hoping that the
11 judge will go easier on you at your sentencing?

12 A I can't understand you, sir.

13 Q Let me ask you this: This is your lawyer sitting
14 back on the row right here with the red tie; is that
15 correct?

16 A Yeah.

17 Q When you went and gave your statement to the
18 authorities, you did so through your lawyer, right?

19 A Yes, sir.

20 Q That's the lawyer representing you on the murder
21 trial, correct?

22 A Yes, sir.

23 Q And on the armed robbery trial?

24 A Yes, sir.

25 Q And on the attempted armed robbery trial?

1 A Yes, sir.

2 Q Now, you talked about hoping the judge would go
3 easier on you at your sentencing, do you have a sentencing
4 date yet set?

5 A No.

6 Q Now, we know you hope the judge will be available or
7 lenient on you at your sentencing because of your
8 testimony. When do you expect for that sentencing to take
9 place?

10 A I'm not sure, sir.

11 Q All right. Do you expect to be sentenced on the
12 murder charge?

13 A Yes.

14 Q Do you expect to be sentenced on the grand larceny
15 charge?

16 A I don't have a grand larceny charge, sir.

17 Q I'm sorry. On the armed robbery charge.

18 A Yes.

19 Q And you expect to be sentenced on the attempted armed
20 robbery charge?

21 A Yes, sir.

22 Q And actually, what you hope is that maybe the
23 solicitor's office will drop some of those charges and --
24 before you get sentenced for what you did?

25 A No, sir.

1 Q Well, you said you hoped the solicitor's office would
2 go easy on you at the time of sentencing, what did you
3 mean by that?

4 A What I mean is -- I can't say, sir.

5 Q Well, sir, you did say not more than ten minutes ago,
6 you told the jury that in exchange for your testifying
7 truthfully and being such a good upstanding citizen, that
8 you expected for the solicitor's office to be easy on you.

9 A Yes, sir.

10 Q All right. Now, those words came out of your mouth,
11 not mine?

12 A Yes, sir, out of mine.

13 Q When they came out of your mouth, you knew what you
14 meant by that, right?

15 A Yes, sir.

16 Q How about tell the jury. What did you mean by that?

17 A Basically, what I mean is that I just want leniency.

18 Q Right. You're seeking leniency on that murder
19 charge?

20 A Yes.

21 Q That grand larceny charge.

22 A I don't have a grand larceny charge.

23 Q I'm sorry. On the armed robbery charge?

24 A Yes, sir.

25 Q And the attempted armed robbery charge?

1 A Yes.

2 Q And one of the things that you hope for in exchange
3 for what you're testifying to here today is leniency
4 through the system, right?

5 A No, sir.

6 Q Leniency from the solicitor is what you said, right?

7 A No, sir.

8 Q You said lenience from this solicitor?

9 A Yes, sir.

10 Q And lenience from the judge at the time of your
11 sentencing?

12 A Yes, sir.

13 Q That's what you told the solicitor, right?

14 A Yes, sir.

15 Q Now, it would be fair to say that you had a right
16 significant involvement with the criminal justice system
17 since 2008, right?

18 A Yes.

19 Q You've been heavily involved with the criminal
20 justice system since 2008, right?

21 A Yes.

22 Q You are very familiar with how the system works,
23 right?

24 A Yes.

25 Q You know that if you give the State something, you

1 can expect something in return.

2 A No, sir.

3 Q That's generally the way it worked for you, hadn't
4 it?

5 A No, sir. I pled out everything that I got.

6 Q You pled out everything that you got?

7 A Everything -- everything --

8 MS. CAMPBELL: Objection, Your Honor.

9 THE COURT: Mr. Moore, we've gone over this.

10 MR. MOORE: Thank you, sir.

11 THE WITNESS: Everything I got I pled out.

12 BY MR. MOORE:

13 Q Well, you pled guilty to misprision of a felony in
14 2008.

15 A I pled guilty to that.

16 Q A burglary in 2009?

17 A I pled guilty to that.

18 Q Another burglary in 2009?

19 A That's the same. It's concurrent.

20 Q Right. And now, the murder that you expect to plead
21 to was committed when?

22 A 2011.

23 Q That would actually be before the case that we're
24 talking about here today, right?

25 A Yes.

1 Q Do you know why it is that the murder you expect to
2 plead to was 2011, and this case arose after that and yet,
3 this case is in the courtroom and yours isn't? Do you
4 know why that is?

5 A Why is it, sir?

6 Q Well, isn't it true it's that way because the
7 solicitor is waiting to hear your testimony before letting
8 you do your plea?

9 A I disagree, sir.

10 Q Well, one thing we know is this: The murder that
11 you're going to plead to was 2011. This one wasn't until

12 August of 2012, and yet, your case is still pending and
13 this one is before this jury, right?

14 A Yes, sir.

15 Q Now, there's a reason for that, isn't there?

16 A No, sir.

17 Q You don't -- well, do you know if there's a reason
18 for that?

19 A There's not a reason, sir.

20 Q I see. And like you said, the reason that you went
21 to the officials was because you're a good upstanding
22 citizen and just wanted to do the right thing.

23 A Yes, sir.

24 Q Didn't -- didn't want to do anything except just do
25 the right thing, right?

1 A Just do the right thing.

2 Q Just like the right thing you've done in all of these
3 criminal matters you've been involved with, right?

4 A Well, sir, my criminal matters is not what I got
5 going on, sir.

6 Q Isn't it true, sir, that you don't --

7 THE COURT: He has -- he as the right to answer.

8 MR. MOORE: Oh, I cut you off, sir. I apologize.

9 THE COURT: You have the right to finish your answer,

10 Mr. Walker.

11 THE WITNESS: Well, sir, my criminal matters, I know

12 that I got a lengthy criminal record, yes, I do, but a
13 lots of times that I get in trouble, I didn't get in
14 trouble because of the simple fact of myself.

15 I got in trouble because other people put me in names
16 and myself, myself, though, I'm not a criminal. I might
17 have a criminal record, but I'm not a criminal. I'm a
18 better person than that, sir. So --

19 BY MR. MOORE:

20 Q You're not a criminal?

21 A No, I'm not a criminal, sir.

22 Q And yet, you're expecting to do a plea to the charge
23 of murder?

24 A I'm not a criminal, sir.

25 Q I understand that. Well, we know that you've had

1 three criminal violations, and yet, you tell us also
2 you're anticipating a plea to the charge of murder, right?

3 A Yes, but I'm not a criminal, sir.

4 Q Yes, sir.

5 Now, let's talk about some of the things you
6 basically claim to have happened. When it is -- let me
7 ask you this. You don't like Marcus Bailey, do you?

8 A I don't have a problem with him, sir.

9 Q Isn't it true that while in jail, you tried to get
10 Marcus Bailey to affiliate with a gang that you're
11 involved with?

12 A No, sir.

13 Q That didn't happen?

14 A No, sir. I'm not affiliated with a gang.

15 Q I see. Do you know Fred Wise?

16 A Yes.

17 Q Now, whenever Marcus said, whatever it is you say he
18 said, Fred Wise was sitting right there, wasn't he?

19 A Yes.

20 Q Fred Wise would have heard the same things you heard.

21 A Yes.

22 Q Fred wise was also in jail, right?

23 A Yes.

24 Q So whatever it is that Marcus is supposed to have
25 said, what you say he said, Fred Wise was sitting right

1 there?

2 A Yes.

3 Q Fred Wise is still in jail, isn't he?

4 A No. He's not there anymore.

5 Q Do you know where he is?

6 A No.

7 Q Now, you said whenever Marcus was telling you and
8 Fred Wise all of this, he said he didn't mean to kill her,
9 right?

10 A Yes.

11 Q Now, the solicitor asked you did he say they were

12 arguing, and you said no, right?

13 A Yes.

14 Q He didn't say they were arguing, did he?

15 A Yes, he did.

16 Q Well, why then did you say no when the solicitor
17 asked you the question did he say they were arguing? Do
18 you remember the solicitor asking you the question did he
19 say they were arguing, right?

20 A Yes. Yes.

21 Q I wrote it down when you said it. You said no,
22 didn't you?

23 A Yes.

24 Q Now, you say it's yes, right?

25 A Yes.

1 Q So you've given the answer yes and no to the same
2 question, right?

3 A Yes.

4 Q It can't be yes and no, can it?

5 A It's yes.

6 Q Well, it can't be yes and no, can it?

7 A No.

8 Q So what you told the jury about what they were
9 arguing when the solicitor was talking to you wasn't the
10 truth, was it?

11 A It was the truth.

12 Q Well, you told the jury that he said they weren't
13 arguing when she asked you the question. When I asked you
14 the question, you say -- you said they were arguing. Now,
15 which of those two is the truth?

16 A Yes, he said he was arguing.

17 Q All right.

18 A How can I -- how can I know what a person is going
19 through? I don't know. I wasn't there.

20 Q I simply asked you what he said and so did the
21 solicitor. The solicitor, you remember her asking the
22 question --

23 A Yeah.

24 Q -- did he say they were arguing. Do you remember
25 that?

1 A Yeah.

2 Q You said no?

3 A Yeah.

4 Q Under oath, right?

5 A Yeah.

6 Q I asked you the question, did he say they were
7 arguing, and you said yes, correct?

8 A Yes.

9 Q One of those answers isn't true, correct?

10 A Yes.

11 Q Now, what I want you to do is to explain to the jury
12 why you told the solicitor something that was not true.

13 A You got it confused, man.

14 Q I may have you confused.

15 A Yes, you do.

16 Q Well, the solicitor sure didn't have you confused.

17 A You had me confused.

18 Q The solicitor didn't have you confused, did she?

19 A You had me confused.

20 Q I understand, but I didn't -- I didn't talk to you
21 before the solicitor did, right?

22 A No. You had me confused.

23 Q Well, let's talk about when you were talking to the
24 solicitor, when you were talking to Ms. Campbell, she
25 didn't confuse you, did she?

1 A I can't really hear.

2 Q Did Ms. Campbell confuse you?

3 A No, no. She didn't confuse me. You confused me.

4 Q Now -- well, hold on. I don't mean to confuse you.
5 I'm going to try to unconfuse you.

6 A Yeah.

7 Q I'm going to let you explain something to the jury.
8 You have already told us you remember Ms. Campbell asking
9 you the question, did he tell you they were arguing. Do

10 you remember that?

11 A Yeah.

12 Q And you told her, "No. He didn't say that," right?

13 A Yes, sir.

14 Q When I asked you that question, you said, "Yes. He
15 did say that," right?

16 A Yes.

17 Q You're not confused anymore about that, are you?

18 A No, sir.

19 Q All right. So we know in the last 15 minutes, you've
20 given two contradictory answers to the exact same
21 question, right?

22 A Yes.

23 Q Both the things you said can't be true, can they?

24 A No, sir.

25 Q Would you look at those folks in the eye and explain

1 to them why you told that solicitor something that you
2 knew to be untrue?

3 A Well, I was confused.

4 Q Ms. Campbell, did she confuse you?

5 A You confused me.

6 Q Sir, you have already told us Ms. Campbell didn't
7 confuse you, right? Ms. Campbell didn't confuse you, did
8 she?

9 A No.

10 Q All right. So when you told her something that
11 wasn't true, you weren't confused then, were you?

12 A Yes, I was confused.

13 Q Well, now you told us that you were confused when
14 Ms. Campbell was examining you, right?

15 A I'm confused about the whole situation.

16 Q Well, yes, let's talk about that confusion.

17 A Yeah.

18 Q Now, you told us that Ms. Campbell didn't confuse
19 you, and now you have told us that when Ms. Campbell
20 examined you, you were confused, right?

21 A Yes.

22 Q Which of those two is true?

23 A (There was no response).

24 Q Which of those two is true, sir?

25 A Both of them. I'm confused, man. You're trying to

1 cross-examine me.

2 Q Ms. Campbell confused you or she did not?

3 A She did not.

4 Q All right.

5 A This whole situation is, man. It's just -- you know
6 what I'm saying.

7 Q I don't know what you're saying. That's what I'm
8 trying to find what you're saying. All right.

9 A Yeah.

10 Q What I'm trying to get to is this: We know you told
11 Ms. Campbell who was not confusing you something that

12 wasn't true, don't we?

13 A Uh-huh.

14 Q Yes?

15 A Repeat that again.

16 Q We know you told Ms. Campbell, the solicitor,
17 something that wasn't true, correct?

18 MS. CAMPBELL: Objection, Your Honor. He's
19 misstating -- I've let it go, but he's blatantly
20 misstating what was said by the witness.

21 THE COURT: If you're going to refer to something, I
22 need to go back do what the record says.

23 MS. CAMPBELL: Why don't we do that, yes.

24 THE COURT: Can you find that, Madam Court Reporter?

25 (Pause.)

1 (Testimony was read back by the court reporter.)

2 MR. MOORE: Your Honor, I'll move on. I'll withdraw
3 the question and I'll move on.

4 THE COURT: Okay.

5 BY MR. MOORE:

6 Q Sir, my understanding is that Marcus Bailey told you
7 and Fred that he had strangled her.

8 A Yes, sir.

9 Q But he didn't mean to do it?

10 A Yes, sir.

11 Q So as you and Fred were sitting there with Marcus, he
12 said, "I strangled her, but I didn't mean to do it"?

13 A Yes, sir.

14 Q But doing something I didn't mean to do in order to
15 prepare for it, I cut my fingernails two days earlier.

16 A Yes, sir.

17 Q So he told you it was an accident, right?

18 A Yes, sir.

19 Q Told you he didn't mean to do it?

20 A He told me he didn't mean to do it, yes, sir.

21 Q He told you it came as a result of an argument,
22 right?

23 A Yes, sir.

24 Q And told you he cut his fingernails two days before?

25 A Yes, sir.

1 Q Well, if he didn't mean to do it, did he tell you why
2 he cut his fingernails two days earlier?

3 A He said he cut his fingernails.

4 Q I see. So what you understood was he cut his
5 fingernails two days earlier and strangled her without
6 meaning to strangle her?

7 A Yes, sir.

8 Q Now, this statement that you signed, did you type
9 that?

10 A No, sir.

11 Q Who did?

12 A The investigator.

13 Q Oh, so what basically happened in your statement is
14 the investigator typed up something and you signed it?

15 A No, it was verbal. It came out of my mouth. All
16 that came out of my mouth.

17 Q Sir, do you read well?

18 A Yes.

19 Q So it came out of your mouth but the investigator
20 typed it?

21 A Yes.

22 Q Do you recall his name?

23 A Yes, Investigator Martin.

24 Q Oh, that's this gentleman right here?

25 A Yeah.

1 Q So the gentleman -- the investigator who talked to
2 you about your civic duty of coming clean is the same
3 investigator who is the chief investigator on the case
4 against Marcus, correct?

5 A Yep.

6 Q It's not the investigator who is involved in your
7 case. Mr. Martin is not involved in your case, is he?

8 A Yes.

9 Q Oh, he's involved in your case, too?

10 A Yes.

11 Q I see, so this police officer just conveniently is in
12 your case and is in Marcus' case, right? Correct?

13 A Yes.

14 Q It's just a coincidence that when you decided to come
15 clean, you came clean to the gentleman who was prosecuting
16 you and also prosecuting Marcus, right?

17 A Yes, sir.

18 Q And all of this statement stuff was done through your
19 lawyer?

20 A Yes. I went to my lawyer, first.

21 Q Right --

22 A That's who I went to first.

23 Q -- actually, the meeting for you to get the statement
24 was actually arranged through your lawyer, right?

25 A I went to my lawyer first.

1 Q Right. This is the same lawyer you're hoping to help
2 get you leniency at the time you pled guilty to the murder
3 charge.

4 A That's my lawyer.

5 Q All right. And you're still in jail right now
6 awaiting trial, right?

7 A Yes.

8 Q You know Darius Walker?

9 A Yes.

10 Q Who was he?

11 A He was there, too.

12 Q He was there, too, and he heard this conversation, as
13 well, right?

14 A Yes.

15 Q Now, this Dream Team that he's talking about, is that
16 us?

17 A Yep.

18 Q Three lawyers from West Columbia, South Carolina
19 would be the Dream Team?

20 A That's what he said. He said the Dream Team.

21 Q Okay. The Dream Team of lawyers from West Columbia,
22 right?

23 A That's him. I mean, he said it.

24 MR. MOORE: Your Honor, that would be all the
25 questions I think I would have at this time, except I have

1 one series that I would like to proffer.

2 THE COURT: Yes, sir.

3 MS. CAMPBELL: Can I go ahead?

4 THE COURT: Redirect?

5 MS. CAMPBELL: Thank you, sir.

6 REDIRECT EXAMINATION:

7 BY MS. CAMPBELL:

8 Q He asked you about questions. Do you remember -- he
9 got you confused?

10 A Yeah, he got me confused.

11 Q Okay.

12 A Yes, ma'am.

13 Q And he asked you specifically about the cutting of
14 his fingernails. Can you tell me what you told me on
15 direct about the DNA?

16 A Yes, ma'am. He said he cut it two days before.

17 Q Before when?

18 A Before they locked him up.

19 Q Before they locked him up?

20 A Yeah.

21 Q And that's what you put in your statement back when
22 you told him?

23 A Yes, ma'am.

24 Q Okay. Just be clear so we aren't confusing anybody.

25 A Yes, ma'am.

1 Q And he asked you about arguing. Do you remember
2 testifying about how he argued?

3 A Uh-huh.

4 Q So when he was asking you questions, you just were
5 confused?

6 A Yes, confused; yes, ma'am.

7 Q And that's what you put in your statement, right,
8 about arguing?

9 A Yes, ma'am.

10 Q It's up here.

11 MR. MOORE: Your Honor, I object to the leading.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Sustained.

14 BY MS. CAMPBELL:

15 Q What did you put in your statements?

16 A Arguing with the girl Almanita, and he said -- he
17 said he strangled her.

18 Q And this was back on what day was the date?

19 A October.

20 Q October?

21 A I made that statement on October 15th.

22 Q And when you made your notes --

23 A It was September.

24 Q And what did you put in there about what was
25 happening when he killed her?

1 A He stated that he was arguing. He said he choked her
2 out because he was mad, but he wouldn't say why.

3 Q The defense counsel asked you about your gang
4 involvement, right?

5 A Yes, ma'am.

6 Q Specifically, do you remember talking to the
7 police -- and we couldn't go into this earlier -- about
8 the defendant in this case?

9 A Yes, ma'am.

10 Q And what did you tell them about his gang
11 involvement?

12 A He hangs with different people. He just got beat up.
13 He was bragging that he was in a gang from San Diego, and
14 he was throwing up gang signs.

15 Q And already in evidence -- and hopefully I can find
16 it -- and this is just part of the tattoo, State's Exhibit
17 No. 146.

18 A Yes.

19 Q Did you even know he had that gang tattoo? Had you
20 ever seen that?

21 A Yes, ma'am.

22 MS. CAMPBELL: Thank you, sir. Nothing further.

23 RECROSS-EXAMINATION:

24 BY MR. MOORE:

25 Q How do you know so much about gangs? You recognize

1 the signs and tattoos. If you're not affiliated with one,
2 how do you know so much about them?

3 A I mean, I know about gangs. Anybody knows about
4 gangs. Gangs is all around us.

5 Q Yeah, but I don't know anything about no gang signs.
6 How do you know about gang signs, gang colors, gang
7 tattoos?

8 A I know about gangs.

9 Q Yes, sir.

10 A I've seen documentaries. I mean, there's
11 documentaries all around. That's everything that's
12 around.

13 Q So we have a non-dope-smoking military veteran gang
14 member and you in the same room, right?

15 A Yes.

16 MR. MOORE: Okay. Thank you very much.

17 THE COURT: All right. You may step down, sir.

18 THE WITNESS: Thank you.

19 THE COURT: Thank you.

20 THE BAILIFF: Take your time, sir. Let me pull that
21 chair back for you, okay.

22 THE COURT: All right. Ladies and gentlemen, we're
23 going to stop here for the evening. We've reached a good
24 breaking point for the night.

25 Let me remind you, as I do often, to keep an open

1 mind about this case. Do not discuss the case with
2 anybody in any way, shape, or form.

3 Also, do not look for, search for, or watch, read,
4 listen to, or view any type of news accounts, media
5 accounts, or anything else about this case. As I told you
6 throughout the case, I want you to base your decision
7 solely off the evidence as it comes from this witness
8 stand, the exhibits that are introduced into evidence and
9 the law that I will give to you at the conclusion of this
10 case.

11 We have done a lot of work today, and we've been
12 through a lot of witnesses. You all have done a very good
13 job of staying awake, staying with us and paying
14 attention.

15 I know that may seem a little silly to you, but
16 sometimes we have issues like that. I want to personally
17 say, I know lawyers will completely agree with me, thank
18 you very much for your undivided attention that you have
19 paid to everybody today.

20 Tomorrow morning, we are going to start at 9:30. The
21 court has an engagement that has been scheduled for some
22 time at nine, so we will start promptly at 9:30 tomorrow
23 morning. Thank you very much. We will see you then.
24 Have a good night.
25

1 (WHEREUPON, the jury left open court at approximately
2 5:36 p.m.)

3 THE COURT: I'm getting Mr. Walker back in here to
4 proffer that testimony.

5 MR. MYERS: Thank you. Is it okay if I run to the
6 restroom?

7 THE COURT: (Nods in the affirmative.)

8 Sorry about that, Deputy Lykes.

9 (The witness took a seat.)

10 THE COURT: Just hang on.

11 THE WITNESS: All right.

12 (Pause.)

13 THE COURT: Okay. We're back on the record. At this
14 time, what we're going to do is based on Mr. Moore's
15 pretrial objection -- I mean pretrial motion to be able to
16 go into some additional information with Mr. Walker, at
17 which time I denied that motion. He is going to proffer
18 that testimony outside the presence of the jury.

19 Mr. Walker -- okay. Go ahead, Mr. Moore. I'm not
20 going to say that.

21 MR. MOORE: Sir, you understand I'm not trying to
22 confuse you, and I'll try to slow down. Do you have a
23 problem hearing?

24 THE WITNESS: No.

25 MR. MOORE: Okay. I'll try to slow down. When we

1 talk about a plea in the system, we're talking about a
2 guilty plea, right?

3 THE WITNESS: Uh-huh.

4 MR. MOORE: Is that a yes?

5 THE WITNESS: Yes, sir.

6 MR. MOORE: And all the time that you mentioned about
7 a plea, that would be a guilty plea, right?

8 THE WITNESS: Yes.

9 MR. MOORE: So you anticipate pleading guilty to this
10 murder charge?

11 THE WITNESS: ~~I mean, I'm going to have to plead~~
12 guilty. I'm going to pled guilty, sir.

13 MR. MOORE: All right. You're going to have to plead
14 guilty. The reason why you have to plead guilty is
15 because you are guilty.

16 THE WITNESS: I am --

17 THE COURT: You do not have to answer that.

18 THE WITNESS: You say --

19 THE COURT: You have a constitutional right to remain
20 silent.

21 THE WITNESS: I'm going to remain silent, sir.

22 MR. MOORE: So you invoke your Fifth Amendment right
23 to remain silent?

24 THE WITNESS: Yeah, I'm going to remain silent, sir.

25 MR. MOORE: Now, you also anticipate pleading guilty

1 to the armed robbery charge?

2 THE WITNESS: I'm remaining silent, sir.

3 MR. MOORE: You also anticipate pleading guilty to
4 the attempted armed robbery charge?

5 THE WITNESS: I'm remaining silent, sir.

6 MR. MOORE: Did you kill the person you're accused of
7 having killed?

8 THE WITNESS: I'm remaining silent, sir.

9 MR. MOORE: Did you rob the people that you attempted
10 -- that you're accused of robbing?

11 THE WITNESS: I'm remaining silent, sir.

12 MR. MOORE: Did you attempt to rob the people that
13 you're accused of robbing?

14 THE WITNESS: I'm remaining silent, sir.

15 MR. MOORE: Now, when the solicitor asked you about
16 the plea, you were talking about what you were hoping for
17 at the time of your guilty plea on these charges, correct?

18 THE WITNESS: Yes, sir.

19 MR. MOORE: Okay. All right.

20 THE COURT: Anything further, Mr. Moore?

21 MR. MOORE: Those would be the questions I would like
22 to propound in front of the jury, Your Honor.

23 THE COURT: Okay. Thank you very much.

24 All right. I'm going to find that those questions
25 are impermissible. I understand that the defendant has a

1 Sixth Amendment constitutional right to confrontation
2 which is made effective on the State via the 14th
3 Amendment of the constitution. However, I find under the
4 South Carolina precedent case law and under United States
5 precedent case law, I have the absolute right to control
6 cross-examination and confrontation in this courtroom.

7 Due to the severity of charges that Mr. Walker is
8 facing, that being life without parole plus approximately
9 50 years on top of that, I find that he has a
10 constitutional right to invoke his right to remain silent.

11 Therefore, I'm not going to allow those questions to be
12 propounded before the jury.

13 Mr. Bailey has, through his counsel, been given great
14 latitude in cross-examining this witness as to the maximum
15 possible punishment that he is allowed and that he is
16 facing.

17 He has also been able to cross-examine him on his
18 hope of leniency, his wish for leniency, and throughout
19 that cross-examination, I let him -- he almost got into
20 the very issue through the back door.

21 So there was not an objection made to that, but I
22 will note for the record that I have allowed some extended
23 cross-examination on those issues.

24 I -- due to the severity of the charges that
25 Mr. Walker is facing and due to the fact that those

1 charges are pending, I'm going to protect his
2 constitutional right to remain silent and not allow those
3 questions to be answered in front of the jury.

4 Anything else?

5 MS. CAMPBELL: Nothing.

6 MR. MOORE: If the Court will just note our exception
7 and thanks.

8 THE COURT: Yes, sir.

9 For the record, Mr. Moore made this objection -- made
10 this motion pretrial, and he has preserved it. By going
11 forward with the cross-examination prior to proffering the

12 testimony, he in no way, means, shape, or form waived that
13 motion and that objection. He is protected for the record
14 on it.

15 MR. MOORE: Thank you, Your Honor.

16 THE COURT: Thank you very much. 9:30. Thank you.

17 (Whereupon, There was an overnight recess).

18 THE COURT: Okay. We're back on the record in the
19 State of Marcus Bailey. Is there anything we need to take
20 up before the jury comes in, Ms. Campbell?

21 MS. CAMPBELL: I'm sorry, Your Honor? Everybody is
22 talking.

23 THE COURT: Anything you need to take up on the
24 record before the jury comes back in?

25 MS. CAMPBELL: No, sir, I apologize.

1 THE COURT: Mr. Myers?

2 MR. MYERS: No, sir.

3 THE COURT: All right. Thank you very much.

4 Please bring the jury back in, Mr. Dye.

5 (WHEREUPON, the jury came into open court at
6 approximately 9:33 a.m.)

7 THE BAILIFF: The jury is seated, Your Honor.

8 THE COURT: Thank you very much, Mr. Dye.

9 Good morning ladies and gentlemen.

10 THE JUROR: Good morning.

11 THE COURT: I hope you all had a good evening. I

12 appreciate you all being on time this morning and ready to
13 go, as you always are. That is such a big help and is
14 appreciated by all parties. We will continue now with the
15 testimony in the case.

16 You may call your next witness.

17 MS. CAVANAUGH: The State calls Twyla Perkins.

18 THE COURT: Please come forward, ma'am.

19 TWYLA PERKINS, after being duly sworn,
20 testified as follows:

21 THE COURT: Thank you, ma'am. Please take a seat in
22 the witness stand. If you will, state your full name for
23 the record and spell your first and last name.

24 THE WITNESS: Twyla Perkins, T-W-Y-L-A,
25 P-E-R-K-I-N-S.

DIRECT EXAMINATION:

BY MS. CAVANAUGH:

Q Good morning Ms. Perkins.

A Good morning.

Q Where are you currently employed?

A I am employed at Fort Jackson as the director of human resources.

Q Okay. And where do you live?

A In Lake Carolina.

Q And where are you actually from?

A Illinois; Rockford, Illinois.

Q And when did you move to South Carolina?

A Actually, I'm military, so I bought a home in 2004, July of 2004. So that's basically when I could say I moved here.

Q Okay. And is your status actually -- are you retired from the Army?

A Yes, I am retired.

Q When did you enlist?

A I enlisted November 24th, 1987.

Q So you were -- it's fair to say you were fairly young when you enlisted?

A I was 18.

Q And when did you actually retire from the Army?

A I retired 1 January 2008.

1 Q And Ms. Perkins, did you know the victim in this
2 case, Almanita Smith?

3 A Yes, I did.

4 Q And how did you meet Ms. Smith?

5 A I met Ms. Smith -- she arrived at my unit sometime
6 around January 2005, and that's when I met her. She was a
7 PFC.

8 Q What is PFC?

9 A Private First Class.

10 Q And when you said she arrived at your unit, what --
11 can you explain that a little bit?

12 A Meaning that she reported to duty as she was supposed
13 to.

14 Q Okay. And that was in 2005?

15 A Yes.

16 Q And were you actually -- were you considered her
17 sergeant?

18 A I was her first sergeant.

19 Q And how long were you Ms. Smith's first sergeant?

20 A Up until July 2006.

21 Q And did y'all maintain -- were y'all friends after
22 that? Did you maintain a relationship after that?

23 A Yes. She wanted me to be her mentor, so we kept in
24 touch the whole time up until I retired and after.

25 Q And other than being her mentor, how else would you

1 describe your role in Ms. Smith's life?

2 A Other than her mentor, I was like a big sister.
3 Sometimes I had to provide a little parental guidance,
4 things of that nature.

5 Q She was a good bit younger than you, right?

6 A She was.

7 MR. MYERS: Objection, leading.

8 THE WITNESS: She was very younger than me, yes.

9 BY MS. CAVANAUGH:

10 Q Did you also know her family?

11 A Yes. I knew her mother and her father, and I knew
12 her friend Sam.

13 Q And did they actually -- did they rely on you in any
14 way?

15 A As far as dealing with Almanita, yes.

16 Q Making sure you looked out for her?

17 A Yes.

18 Q And did you know -- do you know Marcus Bailey, the
19 defendant in this case?

20 A I knew him through Almanita.

21 Q And when did you meet the defendant? When did you
22 meet Marcus Bailey?

23 A April, the beginning of April, middle of April
24 approximately 2012.

25 Q Do you know whether they were in any kind of romantic

1 relationship?

2 A Yes.

3 Q Do you know when that started?

4 A March 2012.

5 Q Okay. Is that the time that they -- to your
6 knowledge, that they first met?

7 A I know that she gave him a Mail Handler First Class
8 in Iraq. She was an instructor.

9 Q And what class was that?

10 A Mail Handler where soldiers are authorized to handle
11 mail and pass it out within their units.

12 Q And that was -- she taught that class in Iraq?

13 A Yes.

14 Q Do you know what year that was?

15 A No, I do not.

16 Q Okay. Would you and Ms. Smith often hang out
17 together?

18 A Yes. We would go shopping or out to eat.

19 Q And did that include 2012?

20 A Yes.

21 Q When you had spent time with Ms. Smith, would Marcus
22 be around y'all then?

23 A Not often.

24 Q Did you -- did you know that Marcus moved in with
25 Ms. Smith?

1 A Yes.

2 Q And when was that?

3 A Sometime in April. Excuse me. Yeah, I believe --
4 yeah, sometime in March. The end of March, beginning of
5 April sometime.

6 Q Okay. As her big sister, did you approve of that
7 decision?

8 A No, I did not.

9 Q Now, going back to the earlier part of the year, the
10 early part of the summer 2012, did you often speak to Nita
11 on the phone?

12 A Yes.

13 Q Can you estimate how often?

14 A Approximately every other day.

15 Q And did you also text?

16 A I wasn't a big texter then, so she would be surprised
17 when I did text her.

18 Q So mainly just conversations on the phone?

19 A Yes.

20 Q And I'm going to bring your attention to July
21 of 2012, last summer. Where was Almanita in July of 2012?

22 A She was in ROTC. It's called LDAP, Leadership
23 Development Training for Officers.

24 Q Okay. And how long is that training?

25 A Approximately 30 to 40 days.

1 Q Okay. Did she go out of state to do that training?

2 A Yes.

3 Q Do you remember where it was?

4 A In Washington.

5 Q Okay. Was Marcus living at her house during
6 July 2012 from your understanding?

7 A No, he was not.

8 Q That was your understanding?

9 A Right.

10 Q Did -- when she got back from training, do you think
11 when they started seeing each other again?

12 A Yes. They did start seeing each other again.

13 Q And do you know whether he moved back into her house?

14 A Yes.

15 Q So when did you say that she returned from Washington
16 for this training?

17 A Around August 5th or August 6th sometime.

18 Q Early August?

19 A Early August, uh-huh.

20 Q And did -- you call her Nita?

21 A I called her Nita.

22 Q Did you get together when she got back?

23 A Yes.

24 Q What did you do?

25 A We went out to eat twice. That's it.

1 Q Okay. Do you remember whether she picked you up, or
2 did you pick her up?

3 A No, we met there.

4 Q Okay.

5 A We met at the restaurant.

6 Q Now, at this point in time, what was your
7 understanding of the relationship between Marcus and Nita?

8 A At that time, Marcus moved back in. He was supposed
9 to pay her \$550 a month. They were going to be roommates.
10 They could see other people, but they couldn't come to the
11 house.

12 MR. MYERS: Objection, Your Honor. I don't think she
13 knows personally.

14 THE WITNESS: And that --

15 THE COURT: Whoa.

16 What's your objection?

17 MR. MYERS: I believe she is relying on any sort of
18 comments or statements from Ms. Smith. I would object on
19 the grounds of hearsay.

20 MS. CAVANAUGH: I'll be happy to move along.

21 THE COURT: Thank you. Sustained.

22 BY MS. CAVANAUGH:

23 Q I'm going to take your attention to August 22, 2012.
24 What do you remember about that day?

25 A I remember picking up takeout and receiving phone

1 calls from 706 area codes, and when I realized it was
2 Almanita's mother and her father calling, I returned her
3 father's call at that particular time. He at that time
4 told me --

5 MR. MOORE: Objection.

6 MS. CAVANAUGH: I'll stop you there. You can't say
7 what someone else told you.

8 THE WITNESS: Oh.

9 BY MS. CAVANAUGH:

10 Q Did he express concern to you?

11 A Yes.

12 Q And as a result of your conversation, what did you do
13 next?

14 A I got my takeout, and I went straight over to
15 Almanita's house.

16 Q Okay. And do you remember approximately what time of
17 day that was?

18 A It was in the evening.

19 Q Okay. Would you say early evening, late evening?

20 A Late evening.

21 Q Did you -- did you tell the coroner about what time
22 the next day?

23 A I don't recall.

24 Q Is it fair to say about 7:45 to eight?

25 A Yes.

1 Q Who answered the door when you arrived at Nita's
2 house?

3 A Marcus Bailey.

4 Q And did you go inside?

5 A No.

6 Q What did you ask him when you saw him?

7 A I asked him if he knew where Almanita was.

8 Q And what did he tell you about where she was?

9 A He told me that at twelve o'clock, she got in the car
10 with somebody.

11 Q And did he tell you who it was?

12 A No.

13 Q Did he tell you whether it was male or female?

14 A No.

15 Q Was he able to tell you what car?

16 A No.

17 Q Did he tell you it was a maroon car?

18 A No.

19 Q Did he tell you it was a black car?

20 A I believe that he said -- excuse me. He said a black
21 car.

22 Q Do you remember either way?

23 A I remember him saying black.

24 Q Okay. Did he tell you anything else about who came
25 by?

1 A He told me that a police officer came by and some
2 ROTC friends that Almanita had.

3 Q Okay. Did he tell you when they came by?

4 A He just said sometime that day.

5 Q Prior to you arriving?

6 A Yes.

7 Q Do you remember anything about how he was standing
8 when he was talking you?

9 A Marcus was standing in the door with his hands up
10 against the roof of the door.

11 Q The doorframe?

12 A Yes, the doorframe, just kind of swinging -- like
13 swinging around swinging.

14 Q Did he invite you inside?

15 A No.

16 Q Do you remember approximately how long this
17 conversation was outside the front door that day?

18 A Around ten minutes at the most.

19 Q So it was nowhere close to 30 minutes?

20 A Oh God, no.

21 Q Did he mention anything to you about whether he was
22 going to leave the house that day?

23 A No.

24 Q Did he tell you anything about the alarm during that
25 conversation?

1 A The alarm to the garage?

2 Q Right. Did that come up during the conversation
3 outside?

4 A He said something like he don't know the code to the
5 garage because she changed it.

6 Q Before you left, what did you tell him?

7 A Before I left her house?

8 Q Uh-huh.

9 A To call me if we exchanged numbers and to call me if
10 she comes back home.

11 Q And did you tell him anything else about her mom or
12 dad?

13 A Just that they were worried about her and were
14 looking for her.

15 Q Okay. Now, did you -- did you have a key to Nita's
16 house?

17 A Yes.

18 Q And did her parents -- did they want you to go
19 inside?

20 A Now that I know, yes. They wanted me to go inside.

21 Q But at that point --

22 A I didn't know they wanted me to go inside.

23 Q Did you call him later on that evening?

24 A Yes.

25 Q And how did you -- did you have his number prior to

1 this day?

2 A No.

3 Q How did you actually get his number?

4 A Because when I was over there, I exchanged numbers
5 with Marcus.

6 Q So you did call him later on that evening?

7 A Yes.

8 Q Do you remember how many times?

9 A Twice.

10 Q And were you able to speak to him both times?

11 A No, just once.

12 Q And do you remember whether that was the first or the
13 second time you called?

14 A I spoke to him the second time I called.

15 Q And what did you ask him during the conversation?

16 A I just went over the scenario of the day, and I was
17 like, "Are you sure you don't know where she is? What car
18 was it? Do you remember anything about it?"

19 I told him at that time that Nita's mother was going
20 to come the very next day. I had a key to the house. I
21 was going to give her the key and everything, and she was
22 going to come over.

23 I was kind of like hoping that she didn't get
24 involved with anybody from Craigslist. She used that as a
25 dating tool from time to time.

1 Q Was that prior to her meeting Marcus?

2 A Yes.

3 Q Okay. Was it awhile ago, maybe? Do you remember
4 when that was?

5 A I remember sometime around January, February
6 timeframe.

7 Q So earlier that year?

8 A Yes.

9 Q Okay. What else did y'all talk about during that
10 conversation? Anything to note other than her whereabouts
11 and her mom coming the next day?

12 A Right now I can't recall.

13 Q Okay. But the purpose of the conversation was to see
14 if he had heard from her?

15 MR. MYERS: Objection, leading.

16 THE COURT: Sustained. Please stop leading.

17 BY MS. CAVANAUGH:

18 Q When was the next time that you spoke to Marcus?

19 A Marcus called me the very next morning.

20 Q And what did he tell you?

21 A He told me that, "It's not good."

22 I said, "What?"

23 He said, "It's not good." He said, "Nita is dead."

24 I couldn't believe anything he was saying, so I said,
25 "I'm on my way over there," and...

1 Q How did -- how did he sound to you?

2 A He sounded as if he wanted to cry. It didn't seem
3 real to me. That's why I was surprised and was going over
4 there to see for myself.

5 Q Uh-huh. What do you mean when you say it sounded
6 like he wanted to cry?

7 A Just in his voice. It was just like, "It's not good.
8 It's not good. Nita is dead."

9 I was just asking, "What do you mean? You know, I
10 can't get this right now."

11 Q But he wasn't actually crying?

12 A No.

13 Q Did he sound like he was having a panic attack?

14 A No.

15 Q Did you go to Almanita's house that morning?

16 A Yes, yes.

17 Q And who was on the scene when you got there?

18 A Police officers and the coroner. I seen a dog.

19 Q Say that again.

20 A I saw a dog.

21 Q Oh, okay. Did you actually speak to the coroner?

22 A Yes.

23 Q And did you relay information you had at the time?

24 A Yes, I did.

25 Q How did you know when the last time you had actually

1 spoken to Nita was?

2 A How did I know? I looked at my phone and showed the
3 coroner.

4 Q And do you remember when that date was?

5 A August 16th.

6 Q Had you tried to call her after August 16th?

7 A Yes.

8 Q And were you able to get in touch with Nita?

9 A No.

10 Q Is that unusual?

11 A Yes.

12 Q Beg the Court's indulgence.

13 (Pause.)

14 Ms. Perkins, do you see the person you know as Marcus
15 Bailey in the courtroom today?

16 A Yes.

17 Q And what is he wearing?

18 A He's wearing something like that a dark blue suit, a
19 light blue tie, a yellow shirt.

20 MS. CAVANAUGH: Your Honor, please let the record
21 reflect she has identified the defendant.

22 THE COURT: Yes, ma'am.

23 MS. CAVANAUGH: Thank you. Please answer any
24 questions from the defense.

25 THE COURT: Cross-examination?

1 MR. MYERS: Thank you, Your Honor.

2 CROSS-EXAMINATION:

3 BY MR. MYERS:

4 Q Good morning, Ms. Perkins.

5 A Good morning.

6 Q How are you doing today?

7 A I'm good.

8 Q You and I met briefly earlier this week?

9 A Yes.

10 Q I know this is a hard time, but I just want to ask
11 you a couple of questions. You obtained the rank of First
12 Sergeant?

13 A Yes.

14 Q Which is the top level enlistment in the military.

15 A Second, yes.

16 Q I'm sorry, Command Sergeant Major is the top.

17 A Right.

18 Q You were right there next to Command Sergeant Major
19 so congratulations, and oftentimes, when you're in
20 leadership roles in this military, you oftentimes take on
21 mentorship roles, as well, to the younger soldiers, right?

22 A Yes.

23 Q Because these younger soldiers, most of them are
24 right out of high school, right?

25 A Yes.

1 being on time. It is greatly appreciated. We will
2 continue now. You may call your next witness.

3 MS. CAMPBELL: Thank you, Your Honor. The State
4 would call Dr. Amy Durso.

5 AMY DURSO, after being duly sworn,
6 testified as follows:

7 THE CLERK: Have a seat in the witness box. State
8 your name for the record. Spell your last name, please.

9 THE WITNESS: My name is Dr. Amy Durso, D-U-R-S-O.

10 DIRECT EXAMINATION:

11 BY MS. CAMPBELL:

12 Q If you could back up just a little. We never seem to
13 get it right.

14 Anyway, Dr. Durso, where are you employed?

15 A I'm employed by Professional Pathology Services.

16 Q And what do you do for Professional Pathology
17 Services?

18 A I'm a forensic pathologist.

19 Q And what is a forensic pathologist, ma'am?

20 A A forensic pathologist is a pathologist that
21 specializes in examining bodies after death. The main
22 thing we do is called an autopsy which is a thorough
23 examination of the body after death, both the outside and
24 inside of the body.

25 What we do is we determine the cause and manner of

1 death, as well as documenting any injuries or illnesses
2 that could have contributed to the death.

3 Q Can you tell this jury a little bit about your
4 education and training in the medical field?

5 A Yes. After college, I completed my medical degree at
6 the University of North Carolina at Chapel Hill. After
7 that, I did four years of general -- general pathology
8 training at Wake Forest University, and then I did an
9 additional year of specialized forensic pathology training
10 also at Wake Forest University.

11 I sat for boards in anatomic pathology, clinical
12 pathology and forensic pathology. So I'm boarded in all
13 three.

14 Q And let me back up for a minute. You said that you
15 went to undergraduate where?

16 A At Emory University.

17 Q And when did you graduate from there, ma'am?

18 A In 1999.

19 Q And after that, you attended medical school?

20 A Yes.

21 Q And where did that take place?

22 A University of North Carolina at Chapel Hill.

23 Q And how many years did you attend medical school at
24 the University of North Carolina at Chapel Hill?

25 A Four years.

1 Q And upon completing that, did you get your medical
2 degree at that point?

3 A I did.

4 Q And then after that, did you go into additional
5 specialized training?

6 A Yep.

7 Q And what was that training, ma'am?

8 A It was general pathology at Wake Forest University,
9 and that was four years.

10 Q And general pathology, what was the definition of
11 that? What kind of training, specialized training, did
12 you get after getting your medical degree?

13 A So pathologists are basically medical doctors that
14 kind of operate behind the scenes. Not only do we perform
15 autopsies as a forensic pathologist, but we also look
16 under the microscope at tissue samples.

17 So if you have a skin biopsy or you have something
18 removed during surgery, we would look at it under a
19 microscopic and determine what disease, if there was
20 cancer, how much it spreads.

21 Q That's what I was getting to. So basically, as a
22 general pathologist, you can perform autopsies, but more
23 of your specialty in reviewing for signs of disease.

24 A Yes.

25 Q Such as in biopsies and things of that nature?

1 A Yes.

2 Q And you look for things, diseases such as?

3 A Cancer, any kind of infection, inflammatory diseases,
4 pretty much anything.

5 Q That --

6 A That you see.

7 Q Does pathology have actual additional subspecialties?

8 A Several, yes.

9 Q And you mentioned that you were actually certified in
10 certain areas, as well, in additional subspecialties other
11 than pathology?

12 A Yeah. So pathology is kind of divided. General
13 pathology is divided into anatomical and clinical
14 pathology. So anatomic is the part that includes forensic
15 pathology such as looking at bodies after death and also
16 looking under a microscope at tissues.

17 Also, clinical pathology then is looking at blood
18 samples and kind of running the labs. You have a blood
19 sample sent. Pathologists also oversee the labs that do
20 that.

21 Q And I believe that you actually -- after doing your
22 additional training in general pathology, you did
23 additional training to become specialized?

24 A Yes, in forensic pathology.

25 Q And specifically, in addition to having the training

1 in general pathology, what additional training did you get
2 as far as forensic pathology is involved?

3 A So I did what's called a fellowship. That's a one
4 year of intensive training in a special subset of
5 pathology, which in my case was forensics.

6 Q Okay. Where did that take place, ma'am?

7 A At Wake Forest University.

8 Q And did you successfully complete that?

9 A I did.

10 Q And after doing that, did you also take steps in
11 order to become what's known as being board certified in
12 certain areas of pathology?

13 A Yes.

14 Q And what is necessary to become board certified in
15 certain areas of pathology?

16 A You have to have shown that you've completed all the
17 necessary training, and then the tests are usually about a
18 day long each in each area that you want to become
19 certified in. You have to complete an intensive test, and
20 then you become board...

21 Q It's an intensive test --

22 A Yes.

23 Q -- to say the least? Once you had received your --
24 or done your training in pathology and then your
25 additional training in forensic pathology, did you then

1 get board certified in several areas involving pathology?

2 A I did.

3 Q And what areas are you actually board certified,
4 ma'am?

5 A Anatomic pathology, clinical pathology and forensic
6 pathology.

7 Q And you've successfully completed the training and
8 the taking of the board certification test required for
9 those fields?

10 A I have.

11 Q And you are currently board certified in those three
12 areas of pathology?

13 A I am.

14 Q What is the difference between anatomical pathology,
15 clinical pathology, and forensic pathology?

16 A So forensic pathology is actually included in
17 anatomic pathology training, but those that want to do
18 primarily forensic pathology would do that additional year
19 of training to become board certified in forensics so...

20 Q That's what you did?

21 A That's what I did.

22 Q So it's an even more specialized area of anatomical
23 pathology?

24 A Yes.

25 Q And as well, you've been certified in clinical

1 pathology?

2 A Yes.

3 Q And do you hold any medical licenses?

4 A I do. I have a medical license to practice medicine
5 in North Carolina and here in South Carolina.

6 Q And for a period of time, did you actually work in
7 North Carolina?

8 A Well, that's where I completed my residency and
9 fellowship.

10 Q Okay. Once you did that, did you then come to South
11 Carolina and join the pathology group here locally?

12 A Yes, I did.

13 Q And are you the only forensic pathologist within your
14 group of doctors?

15 A No. There's one other.

16 Q Okay. And what is his name?

17 A Dr. Bradley Marcus.

18 Q In addition to the two of you doing forensic
19 pathology, are there other members of your group at
20 Richland Memorial Hospital that do different areas of
21 pathology?

22 A Yes.

23 Q And approximately how many doctors are actually
24 affiliated with your group at Richland Memorial Hospital?

25 A I believe there's about ten to 12.

1 Q And do you currently hold a title here as far as
2 performing your duties in autopsies that are the result of
3 criminal behavior?

4 A Yeah. I hold a title of Deputy Chief Medical
5 Examiner in Richland County.

6 Q Deputy Chief Medical Examiner in Richland County?

7 A Yes.

8 Q And as Deputy Chief Medical Examiner in Richland
9 County, what do your duties include in that capacity?

10 A In general, I perform autopsies and assist in
11 determining the cause of death in deaths that occur in
12 Richland County as requested by the Coroner of Richland
13 County so...

14 Q So in your capacity as the Deputy Chief Medical
15 Examiner for this county, do you work pretty much with law
16 enforcement and/or the coroner's office?

17 A Yeah. I work very closely with the coroner's office.

18 Q In every case that is referred to you in cases such
19 as suspicious deaths, does that automatically mean it's
20 going to become a homicide?

21 A No.

22 Q And does that automatically make it a natural cause,
23 or does it just depend on the circumstances?

24 A It depends on the circumstances.

25 Q You also serve on some advisory boards here?

1 A I do.

2 Q ~~And~~ what advisory boards are you currently a member
3 of ~~and~~ give advice on?

4 A There's the Child Fatality Advisory Board, which we
5 review all the child fatalities in South Carolina. I also
6 serve on the Vulnerable Adult Fatality Meeting, again
7 which we review deaths of vulnerable adults.

8 Q And you served in those capacities over the last
9 couple of years?

10 A Yes.

11 Q As a forensic pathologist, what kind of information
12 can you provide, to say, a jury?

13 A Well, I can describe any injuries or illnesses I find
14 at autopsy, as well as explaining how I came to determine
15 the cause of death and the manner of death.

16 Q And have you testified before as an expert?

17 A Yes, I have.

18 Q In forensic pathology?

19 A Yes.

20 Q Which is the most specialized area you got all
21 your --

22 A Yes.

23 Q -- certifications?

24 A Yes.

25 Q And you are board certified as a forensic

1 pathologist?

2 A Yes.

3 MS. CAMPBELL: And, Your Honor, at this time, we
4 would offer her as an expert in forensic pathology.

5 MR. MOORE: May I voir dire, please, Your Honor?

6 THE COURT: Yes, sir.

7 MR. MOORE: Hello, Dr. Durso.

8 THE WITNESS: Hi.

9 MR. MOORE: I understood that you are not only a
10 medical doctor, but you got a degree in college in
11 psychology; is that right?

12 THE WITNESS: I do.

13 MR. MOORE: And you have been licensed in South
14 Carolina to practice medicine since 2010; is that correct?

15 THE WITNESS: Yes.

16 MR. MOORE: And, of course, the autopsy we're talking
17 about in this case was August of 2012. How long had you
18 actually held a medical license in South Carolina at the
19 time you did this particular autopsy?

20 THE WITNESS: Let's see. I believe I had my license
21 in July of 2010, so just over two years.

22 MR. MOORE: And -- and that wasn't -- that was your
23 general medical license you had, right? Since July
24 of 2010?

25 THE WITNESS: In South Carolina, yes.

1 MR. MOORE: So you had been licensed as a doctor in
2 South Carolina about two years and one month at the time
3 you performed this autopsy?

4 THE WITNESS: Yes; that's correct.

5 MR. MOORE: And you are a medical doctor, correct?

6 THE WITNESS: Yes.

7 MR. MOORE: And pathology is a subspeciality of
8 medicine, correct?

9 THE WITNESS: It would be considered a specialty.

10 MR. MOORE: And forensic pathology is a subspecialty.

11 THE WITNESS: That's correct.

12 MR. MOORE: So you're a medical doctor, and a
13 pathologist, and a forensic pathologist.

14 THE WITNESS: Yes.

15 MR. MOORE: And you have all the certifications you
16 need in that regard.

17 THE WITNESS: Yes.

18 MR. MOORE: And you work closely with law enforcement
19 on a day-in and day-out basis.

20 THE WITNESS: Yes.

21 MR. MOORE: In a criminal case, have you ever
22 testified as an expert on behalf of a defendant?

23 THE WITNESS: No, I have not.

24 MR. MOORE: In a criminal case, have you ever had an
25 occasion to definite that it wasn't homicide?

1 THE WITNESS: No.

2 MR. MOORE: So every time you've ever testified as an
3 expert for the State, you've always found a homicide?

4 THE WITNESS: Yes.

5 MR. MOORE: All right.

6 Your Honor, I would certainly stipulate that Dr.
7 Durso is an expert in the field of medicine, pathology,
8 and forensic pathology. I thank her so much for answering
9 my questions.

10 THE COURT: Do you want to be heard on that, Ms.
11 Campbell?

12 MS. CAMPBELL: I believe that's what we offered her.

13 THE COURT: Okay.

14 MS. CAMPBELL: For forensic pathologist.

15 THE COURT: Okay.

16 MS. CAMPBELL: I assume. I could be wrong. He is
17 agreeing with us.

18 MR. MOORE: We accept her qualifications totally.
19 Thank you.

20 THE COURT: Okay. Thank you.

21 Ladies and gentlemen, as I told you previously in the
22 trial, certain witnesses are deemed expert witnesses by
23 the court based on their qualifications and experience,
24 and they are permitted to give their opinion in certain
25 areas.

1 This witness will be qualified in the area of
2 forensic pathology and allowed to give opinion testimony
3 in that area.

4 Now, as I told you before, that does not mean that
5 you have to accept her opinion, but this is evidence for
6 you to use in any way that you see fit and give it the
7 weight and credibility that you believe is appropriate
8 under the circumstances just as you are required to do
9 with every single witness that appears before you.

10 Thank you very much.

11 MS. CAMPBELL: May it please the Court.

12 THE COURT: Yes, ma'am.

13 BY MS. CAMPBELL:

14 Q Doctor, he asked you about how long you've had your
15 medical license in South Carolina. Prior to moving to
16 South Carolina when you got your medical license, did you
17 already have your medical license in North Carolina?

18 A Yes, I did.

19 Q Did you get that in 2005?

20 A Yes.

21 Q So in order not to mislead the jury, you actually had
22 medical license. You just had to get another one for
23 South Carolina when you moved here?

24 A Right. Every time you move to another state, you
25 have to get a new medical license for that state.

1 Q Okay. He also asked you about testifying in cases
2 about the manner of death being a homicide.

3 A Yes.

4 Q And you have performed multiple -- how many -- do you
5 know how many autopsies you've performed when suspicion
6 deaths are involved?

7 A Well, total autopsies I've performed is over 1,000.

8 Q Over 1,000?

9 A Yes.

10 Q And of those, every time have you found it as a
11 homicide?

12 A No.

13 Q And, in fact, the majority of the time --

14 MR. MOORE: May I -- may it please the Court. I
15 believe she is leading her witness at this point.

16 THE COURT: Sustained.

17 BY MS. CAMPBELL:

18 Q In fact, what are your results most of the time?

19 A The majority are usually natural deaths.

20 Q And do you have any -- what stake do you have in the
21 outcome of declaring something to be homicide versus a
22 natural death?

23 A I'm sorry. Can you repeat the question?

24 Q Do you have any stake or any bias or prejudice in
25 swaying what you think?

1 A No, I do not.

2 Q And in this case, as in every case, are you basing
3 your conclusions on your findings?

4 A Yes.

5 Q And, in fact, when it's a natural cause, if you find
6 it's a natural cause, then you don't have to come to court
7 to testify.

8 A No, it doesn't ever go to trial.

9 Q I want to turn your attention to this case. Tell the
10 jury how you became involved.

11 A So I was contacted by the coroner's office that they
12 had a suspicious death of a decomposed body and that they
13 wanted me to perform the autopsy.

14 Q And who is the actual coroner in this county?

15 A Gary Watts.

16 Q Was it his office or maybe him, I don't know, that
17 referred this case to you?

18 A Yes.

19 Q And is that appropriate in cases of suspicious death?

20 A Yes.

21 Q When you -- when did you actually come in contact
22 with the victim in this case?

23 A August 24th, 2012.

24 Q And that would have been, I believe, the day after
25 her body was actually found?

1 A Yes.

2 Q And where had her body been stored prior to you doing
3 the autopsy?

4 A In the morgue refrigerator at Palmetto Health
5 Richland hospital.

6 Q And the morgue that you all use at Palmetto Richland
7 hospital, are the conditions there -- what are the
8 conditions like there to preserve, that the body doesn't
9 change?

10 A It's refrigerated. It's extremely cold so that the
11 body doesn't undergo any further decomposition after we
12 store it in the cooler.

13 Q So how it would have presented at the time it was
14 stored the day before until you saw it, just the
15 conditions are such that it wouldn't change?

16 A Except it would be colder, yes.

17 Q Okay. And the reason that you used refrigeration is
18 what?

19 A To stop the decomposition process, to stop the body
20 from breaking down.

21 Q And in this case, was the body properly stored in
22 your morgue prior to you doing the examination on the
23 24th?

24 A Yes.

25 Q Prior to actually doing a case, is it typical for you

1 to get what's called a history?

2 A Yes.

3 Q And what is a history, ma'am?

4 A Basically, it's the information that the coroner's
5 office gives me as far as how much they know about the
6 person and the circumstances surrounding their death and
7 how the body was found.

8 Q And what information were you provided in this case?

9 A Let's see. I was told that it was a 26-year-old
10 woman. She was found deceased in her front yard and that
11 she was pronounced at the scene, pronounced dead at the
12 scene, and that was pretty much all that was given at that
13 time.

14 Q And once you've been provided that much
15 information -- which agency would have actually provided
16 you with that information?

17 A The Richland County Coroner's Office.

18 Q Once you received that information, did you then
19 proceed to do an autopsy in this case?

20 A I did.

21 Q Tell the jury how you first went about doing that.

22 A So the first thing we do is we identify the body,
23 make sure we have the correct body out. Then we first do
24 an external examination, so we thoroughly look at the --

25 THE COURT: Doctor, would you slowly down just a

1 little bit for us?

2 THE WITNESS: I sure will.

3 THE COURT: Okay.

4 THE WITNESS: So we look at the outside of the body
5 first, and we document anything from identifying
6 information, tattoos, hair color. We document changes
7 that we see after death, such as how stiff the body is.
8 We also document any injuries that we can see from the
9 outside.

10 BY MS. CAMPBELL:

11 Q And in this case, when you first observed the body,
12 how is the body actually transported from the scene to
13 your morgue?

14 A I believe there's a transporter company at the
15 coroner's office.

16 Q Is the body --

17 A They place them in a body bag and lock the body bag,
18 bring it to the morgue, and then we match the lock number.
19 There's a member of the coroner's office present at the
20 time of the autopsy. They match the lock number to make
21 sure no one has tampered with the body.

22 Q And when you retrieved this body from the morgue, was
23 it properly -- or was it placed in a body bag in a proper
24 manner?

25 A As far as I know, yes.

1 Q And what did you observe when you first opened up the
2 body bag and began your autopsy?

3 A That there were decompositional changes which
4 indicated that she had been dead for some time. There's
5 different kinds of decompositional changes that we looked
6 for.

7 She had several different kinds. There was skin
8 slippage, which is when the skin starts to separate. A
9 lot of times, fluid builds up between the skin layers and
10 fills with fluid. When those burst, you get these areas
11 where it looks like the skin is almost peeling off.

12 She also had dark discoloration over her body. So as
13 the body tissues break down, it turned black and green,
14 different colors.

15 The bacteria in the body are actually breaking the
16 tissues down. We also have what we call marbling, which
17 is when the vessels get bloated and dilated. So you can
18 almost see the vessels underneath the skin. It has this
19 kind of marbled look effect to it.

20 There's also something called mummification that we
21 sometimes see in bodies that are stored indoors after
22 death.

23 Basically, the skin becomes kind of leathery, and we
24 see it in areas where there's more of a dry heat. There's
25 lack of humidity or moisture in the air. We typically see

1 that first in the fingers and on the feet.

2 Q And mummification that you just referred to is
3 evidently someone -- you mentioned it would be like stored
4 indoors or in a controlled environment?

5 A Right or out in the desert. I mean, it would have to
6 be dry conditions.

7 Q And South Carolina in August outside, you would
8 consider that humid?

9 A Extremely, yes.

10 Q When you first saw the body, did you observe any kind
11 of wrappings around her hands?

12 A Yes. She had paper bags placed over her hands which
13 is typical of decedents where they have any kind of --
14 they suspect any kind of foul play, because usually the
15 sheriff's department or the police department also come to
16 the autopsy.

17 Sometimes we need to fingerprint the hands or swab
18 them for evidence, so they typically come bagged.

19 Q Tell this jury what additional external observations
20 you made in this case.

21 A So she did have paper bags on her hands which we
22 removed after the sheriff's department located. So one of
23 the things we looked for is rigor, which is how stiff the
24 body is.

25 So typically within a few hours after death, muscles

1 start to tighten, you know, right about bodies being
2 stiff. Typically, within 12 to 24 hours, you get maximum
3 stiffness of the body called rigor. After that, it
4 gradually declines. She had no rigor at all in her body.

5 Q Let me stop you there. You're saying the word rigor.
6 Is that R-I-G-O-R?

7 A R-I-G-O-R. That's the stiffness of the body, the
8 muscles contracting.

9 Q Is that what they talk about on TV as being rigor
10 mortis?

11 A Yes.

12 Q And in this case, you indicated that after death,
13 typically, there's an onset of this rigor or rigor mortis,
14 whatever you want to call it, within how many -- what
15 timeframe?

16 A Usually within a few hours it starts, but it becomes
17 maximum within 12 to 24 hours.

18 Q Within 12 to 24 hours of the time of death?

19 A Yes.

20 Q And how long does rigor last once it sets in within
21 that 12 to 24 hours?

22 A Usually about 24 hours.

23 Q After that?

24 A Yes.

25 Q So within 48 --

1 A It decreases over that next 24 hours, yes.

2 Q So within 48 hours of death, it would be dissipated?

3 A Yes, usually.

4 Q And one of the first things you looked for in this
5 case was the presence of rigor or rigor mortis?

6 A Yes.

7 Q And was there any rigor or rigor mortis present in
8 her?

9 A No.

10 Q In the time period from the time the body was found
11 and transported to when you saw it, would the -- did you
12 account for that, as well?

13 A (There was no response).

14 Q Or would the conditions she was kept in usually have
15 kept --

16 A Usually, it decreases it, but it could still change
17 in the cooler. But typically, because of the
18 refrigeration, it doesn't change as rapidly.

19 Q In this case, when you saw the body, was there any
20 rigor?

21 A No.

22 Q Do you also look for something called lividity?

23 A We do.

24 Q And what is lividity, ma'am?

25 A So after death, you know your heart is no longer

1 circulating the blood in the body. So the blood is just
2 sitting in the blood vessels, and so they tend to sink
3 based on gravity, based on the position of the body.

4 So if someone is laying on their back after death,
5 you would have what we call lividity over the back, which
6 is this purplish discoloration, and you don't see it in
7 areas where there's pressure against the body.

8 So, you know, if someone was laying on something
9 patterned like a tennis racquet, you would actually see
10 the pattern of the tennis racquet in the lividity pattern.

11 It kind of gives us a hint as to how the body was
12 positioned soon after death. At first, if you move the
13 body immediately after death, you change the lividity
14 pattern, but after about 24 hours, it becomes fixed. So
15 it doesn't matter what position you move the body after
16 that. You're still going to see that purple or reddish
17 discoloration from the blood settling in the blood
18 vessels.

19 Q And you described in this case -- describe to this
20 jury basically, was the level of decomposition in this
21 body, does that hinder your ability to determine lividity
22 somewhat?

23 A It did because of the bacterial decomposition in the
24 body. A lot of the tissues in the skin became black or
25 green discolored which makes it very difficult to see the

1 lividity pattern.

2 Q Did you notice -- you mentioned earlier that as the
3 body decomposes, there are changes that take place. You
4 refer to it as the green-color discoloration, darkening.
5 You also mentioned other evidence of decomposition.

6 A Right. The skin slippage, the bloating, breakdown of
7 tissues. They release gas, so a lot of times the face
8 becomes bloated or swollen looking, almost like looks very
9 edematous.

10 The tongue gets pushed out because of the gasses
11 behind the tongue. The abdomen usually gets extremely
12 enlarged because of the gases trapped from the bacteria.
13 Especially the ones from the intestines and the stomach.

14 Q In this case, what if any, signs did you see in your
15 observations of this body?

16 A She did have -- let me see if I can find the diagram.
17 She had areas of skin slippage. She had areas of marbling
18 which I described earlier, which is the bacteria breaking
19 down in the blood vessels.

20 She had very dark discoloration over her face and
21 neck, as well as over her back. She had green
22 discoloration over her abdomen, and I think those were the
23 primary changes that I noted as far as decomposition.

24 Q Did you notice -- and what areas of it did you see
25 that the -- skin slippage?

1 A Over her back, over her arms, as well as over her
2 buttocks, there were areas of skin slippage.

3 Q Did you also see any of these blisters you referred
4 to earlier?

5 A Yes.

6 Q And areas of marbling, as well?

7 A Yes.

8 Q And did you also note certain areas that looked like
9 this mummification you were talking about had taken place?

10 A Right. I noticed it on the tips of the first three
11 fingers of her right hand, and I didn't notice at the time
12 of autopsy. But I did also notice it on her feet on
13 pictures from the scene.

14 Q And was that significant in determining -- and we'll
15 get to that later -- how long Ms. Smith had been dead at
16 the time the body was found?

17 A Yes.

18 Q What else did you observe about her body while doing
19 your external observations?

20 A I didn't see any obvious external injuries. I did
21 notice she had a tattoo. You know, I noted her height and
22 weight. Other than that, I didn't really have any other
23 significant findings.

24 Q How did her face present when you saw her?

25 A It was bloated and discolored.

1 Q And as far as her tongue, you mentioned earlier it
2 will often get distended.

3 A Yeah. Her tongue was protrude -- you know,
4 protruding out of her mouth.

5 Q Did you notice -- in your training as a forensic
6 pathologist, are you looking in your initial examination
7 of the body for any signs of trauma to the body?

8 A Yes.

9 Q And when we say trauma, what are we talking about?

10 A Stab wounds, gunshot wounds, bruises, anything that
11 indicates that she was beaten or other foul play had
12 come -- had befouled her.

13 Q And did you see any evidence of any gunshot wounds?

14 A No, I did not.

15 Q Any stab wounds?

16 A No, I did not.

17 Q And as far as any type of bruising in this case in
18 any area of her body, does that become a compromise
19 because of the state of decomposition in this case?

20 A Right. So bruising was a dark discoloration of the
21 skin, and you already have dark discoloration of the skin
22 from the body being broken down from the decomposition
23 process. It can mask bruises and make them very difficult
24 to determine whether it's an actual bruise or if it's just
25 from decomposing.

1 Q I want to show you what's been marked as State's
2 Exhibit No. 235. Do you recognize this, ma'am?

3 A I do.

4 Q And is this a document that you prepared before I
5 blew it up?

6 A Yes.

7 Q And are these notes you made while you were doing the
8 autopsy that day --

9 A Yes.

10 Q -- as far as your external observation?

11 A Yes.

12 MS. CAMPBELL: Your Honor, at this time, we'd offer
13 235 into evidence.

14 MR. MOORE: Oh, I have no objection, Your Honor.

15 THE COURT: 235 without objection.

16 (WHEREUPON, State's Exhibit No. 235 was admitted into
17 evidence.)

18 MS. CAMPBELL: Your Honor, the may the witness step
19 down?

20 THE COURT: All right. Now, Dr. Durso, don't go
21 quiet on me.

22 THE WITNESS: All right.

23 THE COURT: They have got to hear you all the way in
24 the back row, and the court reporter has to hear you.
25

1 BY MS. CAMPBELL:

2 Q Come over on this side because the court reporter can
3 hear you better.

4 Basically, the top of 235 is basically some basic
5 information?

6 A Yes.

7 Q And what you wrote up here was basically what?

8 A So I would have her weight was 129 pounds. Her
9 length is 66 inches. We always do the temperature of the
10 body which was cool which is typical of any body that's
11 been in our cooler overnight.

12 Rigor, there was no rigor. It passed already.
13 Livor, which was that red or purple discoloration from the
14 blood settling was not apparent.

15 I noticed the scalp hair was black in color.
16 Hirsutism, which is, you know, face on the face of a woman
17 was not present. We look at the eyes, too. So after
18 about 24 hours, the cornea, that clear layer over your
19 eye, becomes clouded. Hers were clouded, and her eyes
20 looked kind of edematous, engorged which is --

21 Q What does edematous means?

22 A Means kind of full of fluid, and engorged means that,
23 you know, there was kind of -- they looked kind of
24 reddish.

25 Q Right.

1 A And, again, ears and nose I put were unremarkable.
2 These are just notes for myself when I dictate my report
3 later on.

4 I noted that her tongue was protuberant; that she had
5 decomposition changes around her neck. The abdomen was
6 protuberant, which is typical of someone that's
7 decomposing. Like I said, the gases in the abdomen really
8 distended looking, really stick out. And, again, the
9 genitalia will also usually become distended and bloated
10 because of the gasses that the bacteria produce.

11 Q Once you noted those additional observations, did you
12 then go on here and mark general areas we referred to --
13 and we'll get to some photographs in a minute -- about
14 certain observations you made?

15 A Yes.

16 Q And --

17 A I noted the dark discoloration over her face. The
18 skin slippage I talked about, which is the skin kind of
19 coming detached a little bit from this area, the marbling.

20 You could see the kind of distension of the vessels,
21 the bacterial decomposition.

22 Let me see what else. These were some of the
23 blisters I noted over her abdomen. Skin slippage over her
24 back. There were dark discolorations over her back and
25 her arms, and also, I noted the mummification changes on

1 her fingers over here. I also noted that there were no
2 maggots or fly eggs or other insect activity.

3 Q And the maggots or fly eggs that you noted in this
4 case, why was that significant to you, or why is that
5 significant to you?

6 A Well, we live in South Carolina in August. If there
7 is dead body outside, they're usually on the dead body
8 laying eggs within an hour. Since she was found outside,
9 I would have expected if she had been there for some time
10 she would have had at least fly eggs, which is kind of
11 sawdust looking stuff on her eyes, her mouth, anywhere on
12 her body. She notably did not have that. She also had no
13 maggots which are baby flies, basically.

14 Q Typically, if she had been outside for more than a
15 day or so, you would have expected to find those?

16 A Definitely.

17 Q Even if she had been out in the heat a number of
18 hours, you would have expected that?

19 A Yes.

20 Q In this case, you also mentioned -- you were talking
21 about the livor or the lividity. It's a dark
22 discoloration. You mentioned you did see areas of
23 discoloration?

24 A But it wasn't the normal purple red discoloration.
25 It was black, and it was green. It was more from the body

1 decomposing, so I couldn't tell the exact lividity pattern
2 from that.

3 Q And the level of decomposition with this body, did
4 that emit a certain odor?

5 A Yes. We use a special room for those.

6 Q You also mentioned that there was some skin slippage
7 here on the back area.

8 A Yes.

9 Q As well as a small spot up here on the buttocks?

10 A Yes.

11 Q And, basically, down here, you mentioned there were
12 no maggots or fly eggs, but the down here it talks about
13 x-rays?

14 A Yeah. So on decomposed bodies, especially where
15 there's any kind of suspicion, we do some basic x-rays
16 just to make sure there are no bullets or broken off
17 pieces of the body or something that we might miss.
18 Because on these decomposed bodies, the autopsy is much
19 more difficult because, like I said, the bruising you
20 can't see.

21 Interestingly enough, the areas where you might have
22 a gunshot wound actually decompose faster. So we do this
23 just to make sure we're not missing anything.

24 Q When the body had gotten to you -- it had been moved
25 correctly -- did you become aware at the scene there was

1 what appeared to be red material from her mouth?

2 A I was shown pictures, yes.

3 Q And what -- do you have an opinion as to what caused
4 the red bloody fluid to come out of her mouth?

5 A Right. So that's called purge fluid. So as the
6 tissues inside of your mouth and your airway break down,
7 it's kind of this bloody fluid mixed with other fluids
8 that are being emitted from these other tissues breaking
9 down.

10 They come out of the mouth, because the gases are
11 pushing them out. They run out of the mouth, and the
12 gravity takes place. It comes up. If the head is off to
13 the side, you'll see it going off towards the back of the
14 head.

15 Q So if gravity is actually positioned that way, it
16 will pull it down?

17 A Right.

18 Q And is it unusual for the purge materials to include
19 blood?

20 A Yeah. It always has a bloody look to it.

21 Q Okay. In this case, the body, you also -- it looks
22 like you performed a sexual assault kit?

23 A Yes.

24 Q Why did you do that in this case?

25 A It was requested from the sheriff's department that

1 we perform it.

2 Q Is that done as a precaution to make sure that if
3 there is any evidence, you collect it?

4 A Yes.

5 Q And when you do a sexual assault kit, can you tell
6 the jury how you actually do that?

7 A So these boxes -- and they have several swabs.
8 That's what we use, swab several areas of the body,
9 including the mouth, the vagina, the anus. We send it
10 with the kit to whoever the investigators are. We test
11 for seminal fluid or other signs of sexual assault.

12 Q Did you see any signs of trauma to her genital area?

13 A I did not.

14 Q Okay. You can get back up.

15 (Complies).

16 Once you had notated and performed that, you would do
17 the sexual assault kit prior to doing the actual autopsy?

18 A Yes.

19 Q What, if anything, did you do to further -- in this
20 autopsy?

21 A So after the external examination, so -- every
22 autopsy, we pretty much do it a standard way. We make
23 this Y-shaped incision through the skin that comes through
24 the shoulders down to the central chest and down along the
25 abdomen.

1 We peel the skin back, and then we actually use a saw
2 to remove the front portion of the rib cage. At that
3 time, we can pretty much see all of the major internal
4 organs.

5 So we examine them, and then we actually removed them
6 and cut them and document any injuries or illnesses that
7 we can find. We also remove the brain, again by peeling
8 the skin up over the scalp --

9 Q Uh-huh.

10 A -- and make -- using a saw to cut open the top of the
11 skull and removing the brain.

12 Q And in your examination, I want to start with the
13 brain, did you note anything of significance in this case
14 as far as her brain?

15 A No, I did not. There was --

16 Q Any sign of injury or anything like that?

17 A No bleeding whatsoever, no.

18 Q You also said that you opened up her cavity, the
19 cavity to her body?

20 A Yes.

21 Q And you examined all the organs internally?

22 A Yes.

23 Q And was there any evidence of any trauma or injury,
24 say from some type of gunshot wound or stabbing or
25 anything of that nature?

1 A No, there was not.

2 Q And in this case, did you also do a dissection of her
3 neck area?

4 A Right. So in any cases that are suspicious, we can
5 do a separate neck dissection. So we leave the neck
6 intact until we're done with the rest of the autopsy.
7 Then I go back and remove the skin from this area.

8 Then we peel back the layers of muscle one by one
9 until we get to the cartilage under here, as well as the
10 hyoid bone, which is this little U-shaped bone that sits
11 in the upper neck. I feel up there. I feel a hyoid bone,
12 and then I remove everything and look at it again in front
13 of me.

14 Q And when you said you removed everything,
15 specifically, what do you remove?

16 A Remove the hyoid bone, the cartilage in the upper
17 neck, which includes the epiglottis, this thyroid
18 cartilage, the thyroid gland, the main airway going down
19 the larynx, the esophagus in that area which is where the
20 food goes through to your stomach.

21 Q And, again, what are you looking for?

22 A Any kind of injury.

23 Q And in this case, were you also looking for any kind
24 of bruising or anything that may indicate some type of
25 force was used?

1 A Yes.

2 Q And were there problems in this case because of the
3 decomposition?

4 A There were. So like I said, in decomposed people,
5 tissues break down, and when the blood vessels break down,
6 they leak blood. So in a decomposed person, there's
7 really no way to tell the difference between true
8 hemorrhage that happened before death from a bruise or
9 whether it's just part of the decomposition.

10 So she did have some hemorrhage around her neck, but
11 she had hemorrhages in other areas, as well, that go along
12 with decomposition. So even if there was true hemorrhage
13 in her neck, it would have been masked by the
14 decomposition process.

15 Q But you did note some hemorrhage in the neck?

16 A There was some hemorrhage, yes.

17 Q But in fairness, you --

18 A I couldn't say for sure that it happened before
19 death.

20 Q And hemorrhage in the neck in the areas you saw,
21 would that be consistent with some type of pressure to the
22 neck?

23 A Yes.

24 MR. MOORE: May it please the Court, Your Honor. I
25 would have to object. I don't think that question was

1 asked based upon the appropriate standard, reasonable
2 degree of medical certainty.

3 THE COURT: Rephrase your question, please.

4 BY MS. CAMPBELL:

5 Q What were your findings in the neck, and what's it.
6 consistent with?

7 A The findings were consistent with either hemorrhage
8 prior to death or just from decomposition. I could not
9 tell the difference, but if there is hemorrhage there that
10 happened prior to death, it would indicate that there was
11 pressure up against her neck to the point that it broke
12 the blood vessels and caused hemorrhage.

13 THE COURT: Objection overruled.

14 MS. CAMPBELL: Thank you, Your Honor.

15 BY MS. CAMPBELL:

16 Q You mentioned that you looked at the larynx, I think.

17 A Yes.

18 Q And the hyoid bone?

19 A Yes.

20 Q Did you note any type of fracture or breaking of
21 those?

22 A I did not.

23 Q And in cases, even in the thousand of autopsies
24 you've done, is it that unusual even in a strangulation
25 case?

1 A That's not unusual, no. It's very difficult to break
2 the hyoid bone, especially in younger people. The bone is
3 almost kind of rubbery still. She actually had a very
4 interesting finding in her hyoid bone.

5 When I initially did her neck examination before I
6 pulled anything out, I actually went up and felt her hyoid
7 bone. I thought it was initially fractured because I
8 could bend so it easily, but when I removed it, I realized
9 that where I could bend it, on both sides was very
10 symmetrical which is very odd. There was no specific
11 hemorrhage in those areas.

12 We did end up doing additional x-rays of her hyoid
13 bone. It turned out her hyoid bone, which is usually a
14 complete u-shaped bone hadn't actually fused together.
15 She actually had gaps in the bone that were just naturally
16 occurring. So even though I could squeeze her bone
17 completely, there was no fracture.

18 Q So in your internal examination, did you find the --
19 other than the hemorrhaging of the neck, did you find any
20 areas of trauma?

21 A No.

22 Q Okay. Do you collect certain samples at autopsy to
23 be examined for toxicology purposes?

24 A I do.

25 Q What's toxicology, first?

1 A So toxicology is looking for drugs, basically, in
2 someone's system. So typically, we try to collect blood
3 and urine, but since she was decomposed, she had no blood
4 and no urine available. So we collected brain, liver and
5 kidney samples to send to the toxicology lab to be tested.

6 Q And what type of testing is done at the toxicology
7 lab?

8 A They do -- I guess it's what they call a
9 comprehensive drug screen to look at all the major drugs
10 of abuse and drugs, prescription drugs, that are -- that
11 are typically seen in deaths or that can cause, you know,
12 injury or illness from the drugs, but they found nothing
13 in her system.

14 Q Nothing in her system?

15 A Nothing.

16 Q And the toxicology, even though this they have been
17 done say a week after her death, it would still reflect
18 what was in her system at the time of her death?

19 A Yes.

20 Q You mentioned earlier that y'all did some x-rays in
21 this case?

22 A Yes.

23 Q I want to show you State's Exhibit 252 through 258.
24 First, do you recognize those?

25 A Yes.

1 Q And --

2 A Yes.

3 Q Are those actual -- the x-rays that were produced or
4 at least a copy of them?

5 A Yes.

6 MS. CAMPBELL: Your Honor, at this time, we'd offer
7 252 through 258 into evidence.

8 MR. MOORE: No objection at all.

9 THE COURT: All right. Without objection 252 through
10 258.

11 (WHEREUPON, State's Exhibits Nos. 252-258 were
12 admitted into evidence.)

13 MS. CAMPBELL: Thank you, Your Honor.

14 BY MS. CAMPBELL:

15 Q And what areas of the body did you actually x-ray in
16 this case?

17 A I did the head, chest, and abdomen, as well as a
18 specific one. Also, we did the APM. So AP is
19 anterior/posterior to the front-to-back views of the head,
20 chest, abdomen, including the neck.

21 We also did a lateral view of the neck from the side,
22 and then after I removed the hyoid bone because of my
23 concerns, we also x-rayed just the hyoid bone to make sure
24 there were no fractures.

25 Q And were there any fractures in your review of these

1 x-rays?

2 A Not at all, no.

3 MS. CAMPBELL: Your Honor, may the witness step down
4 again?

5 THE COURT: Yes, just keep your voice up, please,
6 Doctor.

7 BY MS. CAMPBELL:

8 Q To show this jury -- and the victim's name is
9 actually on these?

10 A Yes.

11 Q And the number, FA12196, is that your identifying
12 information?

13 A Yes.

14 Q And those are the x-rays for Ms. Almanita Smith; is
15 that correct?

16 A That's correct.

17 MS. CAMPBELL: Your Honor, may she get close? I know
18 she is not supposed get close to the jury but just for
19 purposes of showing them --

20 THE COURT: If you need to move, Mr. Moore.

21 MR. MOORE: Thank you, and I have no objection to
22 her, the Doctor, doing whatever she needs to do to show
23 this to the jury.

24 THE COURT: Ladies and gentlemen, as we do this, if
25 you need stand up or move, you may. The goal is that

1 you're able to see. Just don't block anybody else's view
2 in the process, okay.

3 Thank you.

4 MR. MOORE: Might I suggest that we move the x-ray
5 box back to this table which I believe --

6 MS. CAMPBELL: Then they can't see anything. We
7 tried it.

8 MR. MOORE: Very fine. Not a problem at all.

9 MS. CAMPBELL: Thank you.

10 THE COURT: We want everybody to be able to see. So
11 if you can't see, just give me some kind of sign. That
12 includes everybody involved, so just let me know.

13 BY MS. CAMPBELL:

14 Q Take, just for example, the ones of the body areas.

15 A Okay. Is this the lights box?

16 Q Yeah. You have to turn it on, but then it's real
17 bright.

18 MR. MOORE: Your Honor, I don't think the witness can
19 now see, but what I can do, I have a laser pointer. If
20 the witness will come over here and have the x-rays there,
21 the jury and the witness can both see. I'm happy to let
22 her use the laser pointer if she would like.

23 MS. CAMPBELL: Whatever you want to do.

24 THE WITNESS: I can see if I can see from here. I'm
25 not sure yet.

1 BY MS. CAMPBELL:

2 Q What does this show, ma'am?

3 A So this is an x-ray of her head, of her skull. You
4 can see she has some fillings in her teeth. That's what
5 those are, but again, the only thing we're looking for,
6 really, is you know, in these cases, it's evidence of
7 trauma, a bullet or something that we might have to go
8 find. There is nothing, so there's nothing in this x-ray.

9 Q In every one of these x-rays, are you also looking
10 for any kind of trauma?

11 A Right, any kind of scratch or anything, yeah.

12 Q Okay. And this is of what area?

13 A This is the head.

14 Q Okay. And are there any signs of trauma?

15 A No.

16 Q The next one? What does this show?

17 A So this is this chest. Showing a little bit of the
18 abdomen, you can see her diaphragm here. You can see all
19 of the ribs, you know, the vertebrae here. You can see
20 her neck up here. The clavicle is coming out, and again,
21 there's no evidence of trauma, no fractures, no
22 significant abnormalities.

23 Q Okay. I don't have all of these.

24 A Okay. This is the same one. I think this is further
25 down, so this is her abdomen. But again, you can see the

1 spinal column here. These are the lower ribs up here. A
2 lot of these is just the gas because she is decomposing.
3 It's kind of squashy, but again, there were no fractures
4 or bullets or anything of significance.

5 Q And there's one of her extremities to show.

6 A The only one I have is the lateral of her neck.

7 Q Okay.

8 A So we took a side view of her neck, too, and again,
9 the main thing we're looking for some fractures in her
10 neck. But again, these are a little bit difficult because
11 of all of the gases.

12 It makes it very squashy looking, but again, there
13 were no abnormalities that I could identify.

14 Q Okay. And, finally, you mentioned the hyoid bone
15 itself you removed?

16 A Yes.

17 Q Did you actually x-ray it, as well?

18 A I did. There's the two.

19 Q And that's State's Exhibit No -- which? 253.

20 A So this is the hyoid bone. It's this u-shaped bone,
21 as you can all see. I don't know if you can see from back
22 there, but there is two little gaps where normally, that's
23 one solid bone that goes all the way around, but she had
24 these gaps.

25 So like I said, I was taking her hyoid bone. I could

1 really squeeze it, and it would not break no matter what I
2 did. You know, it would be almost impossible to break
3 this hyoid bone because it's not fused.

4 Q Is that a condition that's normally found or just
5 some people?

6 A Some people. It's just a variation. Some people
7 just don't fuse their hyoid bone.

8 Q Let me put this back in here so I don't lose it.

9 Did you also take certain photographs at this
10 autopsy?

11 A Typically, the coroner's office, a representative,
12 takes photographs for me, as well as whatever
13 investigating office, the sheriff's department, I believe
14 in this case.

15 Q I'm going to show you State's Exhibit 239 through
16 241, 244, and 247 through 249. Do you recognize those?

17 A Yes, I do.

18 Q And what are suppose?

19 A Those are pictures taken during the autopsy.
20 Actually, this is the -- yeah, they're all pictures taken
21 from the autopsy.

22 Q I'll get to the others in a minute.

23 A Yeah.

24 MS. CAMPBELL: Your Honor, at this time we would
25 offer into evidence, I believe without objection, 239,

1 240, 241, 244, '47, '48, '49.

2 MR. MOORE: No objection at all, Your Honor.

3 (WHEREUPON, State's Exhibits Nos. 239, 240, 241, 244,
4 247, 248, 249 were admitted into evidence.)

5 THE COURT: Those the items are admitted without
6 objection.

7 BY MS. CAMPBELL:

8 Q In this case, did you also review a number of
9 photographs, some of which are significant, from the crime
10 scene, as well?

11 A Several months later, yes, I did.

12 Q And I want to show you what's been marked as State's
13 Exhibit 7-- these are all mixed up.

14 Beg the Court's indulgence.

15 (Pause).

16 First 236, 237, 238.

17 A Yes.

18 Q And are those photographs you reviewed from the crime
19 scene?

20 A Yes.

21 Q And then 242 and 243?

22 A These are also from the crime scene, yes.

23 Q And finally 245 and 246?

24 A Yes.

25 MS. CAMPBELL: Your Honor, at this time we would

1 offer these into evidence, I believe, without objection.

2 MR. MOORE: Absolutely no objection at all, Your
3 Honor.

4 (WHEREUPON, State's Exhibits Nos. 238, 237, 236, 242,
5 243, 245, 246 were admitted into evidence.)

6 THE COURT: Admitted without objection.

7 MS. CAMPBELL: Thank you.

8 BY MS. CAMPBELL:

9 Q And I'm going to show you what's already in evidence,
10 State's Exhibits 166, 205, 168, 167, 176, 177, 175, and
11 178. Are these also photos you reviewed prior to us
12 getting up in front of the jury?

13 A Yes.

14 Q And in coming to a final determination in this case,
15 were those -- would it be proper for you to review those?

16 A I did not review the photos from the scene until
17 after I had determined her cause of death.

18 Q Okay. But those were also reviewed by you?

19 A Yes.

20 Q In a case such as this where you have a suspicious
21 death and there are no obvious signs of trauma, basically,
22 do you then go back and review certain items in order to
23 make a determination as to cause of death?

24 A I do. So, you know, she is 26 years old, and 26 year
25 olds don't just drop dead for no reason whatsoever. So I

1 asked to review some of her medical records to see if she
2 had any kind of underlying medical disease that would help
3 me.

4 The coroner's office was able to obtain some quite
5 thorough medical records that I reviewed. It did not
6 indicate that she had any kind of significant -- no
7 underlying medical condition.

8 Q In your examination of the internal organs such as
9 the heart and other organs, did you see evidence of any
10 type of disease or anything such as that that could have
11 contributed to her death?

12 A No. I also looked at them under a microscope. There
13 was no evidence of inflammation or other disease.

14 Q I let that out. So actually, after you removed the
15 organs, what do you do in order to look for disease?

16 A Well, on top of just sectioning through each organ
17 and dissecting it out, I also take little samples that I
18 have prepared by the histology department that I look at
19 under the microscope. Sometimes you can see disease under
20 the microscope that you might not be able to see just
21 looking at the organ with the naked eye.

22 Q And in reviewing your report, basically you examined
23 her central nervous system.

24 A Yes.

25 Q And that would include her brain?

1 A Yes.

2 Q Her cardiovascular system?

3 A Yes.

4 Q And that would include what organ?

5 A The heart and the major vessels.

6 Q Her respiratory system?

7 A Yes, the lung and the airway.

8 Q And her liver and bi---

9 A Biliary system.

10 Q Yes. I'm sorry.

11 A Yes. So liver, gallbladder, that whole system.

12 Q Okay. What other systems?

13 A So the genital, urinary system. So, you know, the
14 bladder, the kidneys, any of the internal female genitalia
15 leading up to the ovaries, the gastrointestinal tract. We
16 look at the stomach, the esophagus, the intestines, the
17 pancreas, the spleen, the endocrine system which includes
18 the thyroid glands, the adrenal glands, the pituitary
19 gland, and again, just looking at the muscular systems in
20 general. You look at everything.

21 Q Was there any evidence of any type of disease or
22 other natural death which caused this death?

23 A There was not.

24 Q And at that point, you then can make certain
25 determinations, having reviewed all after this

1 information?

2 A Yes.

3 Q Okay. Can you explain to the jury what was
4 significant in you coming to your conclusions in this case
5 as far as asphyxiation?

6 A Right. So one of the things I determined was that
7 because of the mummification changes in her feet and on
8 her fingers, as well as the lack of any kind of fly eggs
9 or maggots on her that she had to have been indoors for at
10 least three days but probably closer -- you know, three to
11 seven days is my estimate prior to being found.

12 So she had been dead for some time and that I believe
13 she had to have been dead indoors for that period of time.
14 I don't believe she could have been outside without the --
15 without having fly eggs or larva for more than an hour.

16 So I believe her body was likely placed outside
17 approximately an hour before she was found at the most and
18 that she had no evidence of natural disease, both on the
19 autopsy and in looking at the microscopic slides, as well
20 as reviewing her medical records.

21 And so because of her hyoid bone, I believe that she
22 was asphyxiated, which means that she was either strangled
23 or she could have had her head placed in a pillow or had
24 someone place pressure on her chest to the point where she
25 couldn't breath and get oxygen to her brain, which is what

1 we call asphyxiation. That was her cause of death.

2 Q So either she was strangled?

3 A Yes.

4 Q Or suffocation?

5 A Yes.

6 Q And what is suffocation?

7 A Suffocation, you know, is blocking of the airways.
8 So, you know, if you have a pillow or some other object
9 pressed tightly against their nose and mouth, you know,
10 you wouldn't be able to breathe. That is also a method of
11 asphyxiation.

12 Q And the other method of asphyxiation you mentioned
13 was constriction of the chest area.

14 A Right. So in order to breathe, your chest has to
15 expand so your lungs can take in air. So if someone
16 constricts your chest, sitting on your back even, they can
17 make it so it's difficult for you to breathe. That can be
18 a method of asphyxiation.

19 All of these methods typically have very few findings
20 at autopsy, and so they are based on lack of any other
21 finding, as well as, you know, the investigative findings
22 that, you know, her body was moved and that it's a
23 suspicious death so...

24 Q Were you also aware that there were a number of
25 medicines found at the house?

1 A I was only told that recently.

2 Q But was there any evidence -- did it matter because
3 was there any evidence of any toxicology?

4 A No. Her toxicology report was negative so...

5 Q There was no drugs of any sorts in her system?

6 A No.

7 Q No evidence of any alcohol or anything like that?

8 A No.

9 Q I do note in your findings that at one point, you
10 said a uterus is not identified.

11 A Right. It appeared that she had a hysterectomy.

12 Q And was that consistent with medical records you
13 obtained?

14 A Yes.

15 Q And you just determined -- and I believe you wrote in
16 your report that at that time -- you actually wrote this
17 report. I believe it was written or dictated on September
18 6th, 2012 --

19 A Yes.

20 Q -- as to cause of death is probable homicidal
21 asphyxiation?

22 A Right.

23 Q And when you write these reports, are you still open
24 and go back and review additional material that's provided
25 to you?

1 A Right. At this time, I had not seen any of the scene
2 photos, and I think there was still an open investigation
3 in the case.

4 Q At that point, are you able to make further
5 determinations even after issuing your report --

6 A Yes.

7 Q -- in some cases?

8 A Yes..

9 Q Specifically in this case, I want to talk about some
10 of the things you mentioned. How long, in your medical
11 opinion, was Ms. Smith dead prior to her body being
12 discovered?

13 A Three to seven days. It depends on how cold, how
14 much air conditioning was on in where ever she was
15 indoors. So if it was colder, it would be closer to seven
16 days. If it was slightly warmer, it would probably be
17 closer to three days.

18 Q And the mummification that you saw on her fingers and
19 on her feet, is that significant in the time period that
20 you're able to determine?

21 A Right. It takes at least three days to occur.

22 Q And in this case, you think -- you would say a three
23 to seven day time period?

24 A Yes.

25 Q From the time she was found?

1 A Yes.

2 Q And that's based on all the evidence you reviewed in
3 this case?

4 A Yes.

5 MS. CAMPBELL: And, Your Honor, may the witness step
6 down again?

7 THE COURT: Please keep your voice up, ma'am.

8 BY MS. CAMPBELL:

9 Q I want to show you some photographs from the actual
10 crime scene. Have you had an opportunity to review those?

11 A I have.

12 Q And I show you State's Exhibit No. 245. What is
13 that?

14 A This appears to be a photograph of her body at the
15 scene where she was found face down with a blanket
16 covering her.

17 Q And what's significant in this photograph to you?

18 A You can already see that there are dozens of flies
19 already on her body.

20 Q And again, when you did your autopsy, did you find
21 evidence of any larva or eggs if she had been left outside
22 for an extended period of time?

23 A There was no evidence of that.

24 Q However, in your findings, she had been dead for at
25 least three to seven days.

1 A Yes, indoors.

2 Q And in State's Exhibit No. 246, what does that show?

3 A So this is a picture of her buttocks. I believe it
4 goes that way.

5 Q I'm sorry.

6 A So this is the anal region here. These are her legs.
7 Those are the buttocks. You can see the skin slippage
8 here. You can also see how -- there are flies here, here
9 too. You can see the anus and how relaxed it is.

10 So after death, the same thing happens with every
11 muscle in the body. They will constrict with the rigor
12 mortis I talked about earlier and then they relax.

13 When they relax, you can get expulsion of fecal
14 material, as you can see in this case. Typically, you
15 know, the gases inside the body will kind of help push it
16 out. If you move a body, it will kind of distort the
17 gases and will also kind of come out when that happens.

18 Q So say if a body has been moved, that could cause the
19 postmortem evacuation you talked about?

20 A Yes.

21 Q And is that typically what when you see it?

22 A Typically, yes.

23 Q State's Exhibit No. 292, what do you see there?

24 A So this is a picture of her -- again, it looks like
25 she is at the crime scene. She is on the grass. She has

1 been placed on a sheet. You can see the discoloration of
2 her face, the bloating I was talking about, as well as her
3 tongue being protuberant. That's from the glasses behind
4 her tongue pushing it out.

5 THE COURT: You said 292, Ms. Campbell. Was that
6 242?

7 MS. CAMPBELL: Yes, sir. I misspoke.

8 THE COURT: Okay. Thank you.

9 BY MS. CAMPBELL:

10 Q State's Exhibit 243, again, what does that show and
11 240 -- 236? Excuse me.

12 A So these are, again, pictures of her body at the
13 scene face down. You can see all the flies on her hair.
14 You can see already a dark discoloration on her arm here,
15 the green and blackish discoloration I was talking about.

16 It makes it difficult to determine the leverage and
17 the lividity found.

18 Q Again, 237 and 238 show basically the same?

19 A Yeah, but this actually shows the purged fluid. Can
20 you see that it looks kind of bloody? Because it's
21 trailing back this way, she must have been at the time she
22 came out, on her back for it to be on her face.

23 Q So her body would not have been in this position when
24 it was being stored indoors?

25 A Correct.

1 Q And how would her body have been positioned for this
2 blood to run from her mouth down her neck?

3 A It would have been on her back tilted slightly to the
4 left for it to have been on that side.

5 Q I'm going to show you what's been marked as 166.
6 What does that show?

7 A So these are her feet, and first of all, you can see
8 the kind of dried yellow skin here. That's the
9 mummification I was describing earlier which indicates she
10 had been in an area of low humidity. So in an air
11 conditioned place in South Carolina in August.

12 Also, you can also see a little bit of the lividity I
13 was talking about, so the purplish discoloration here in
14 her feet -- but there are some areas you don't see it on
15 her heels. You don't see it on this picture, which
16 indicates that she was placed on her back after death.

17 Q I show you State's Exhibit 158 and 205. Are those
18 closer ups?

19 A Yes. Those are closer ups. Again, this one shows,
20 again, the lack of lividity. I said when you have
21 something placed against it, the blood does not settle in
22 those areas. So this is where her foot would have been
23 laying on the floor or whatever she was placed on shortly
24 after her death.

25 Q There are multiple photographs about this that --

1 A Yeah. This shows the mummification quite well.

2 Q What number is that, I'm sorry?

3 A This is 175, and you can really see the leathering of
4 the toes, how dried that looks. Again, that's
5 mummification that can only happen in dry environments.

6 Q I didn't pull up the ones on her hands, too, but you
7 can also see it on which arm?

8 A I believe it was her right hand.

9 Q Let me look at autopsy. Wait. Sorry.

10 State's Exhibit No. 239. What does that show?

11 A This the hyoid bone after I dissected it out from the
12 surrounding muscles and tissue.

13 Q And, again, where you're talking about it's not fused
14 or there was gas --

15 A These tiny little areas here which is very hard to
16 see it when you internal it, you can see. That's why I
17 x-rayed it to make sure, show if it was a fracture or not.

18 Q State's Exhibit No. 240 and 241 show what?

19 A So this is the vaginal area. This is the fecal
20 material, which again goes along with the fact that, you
21 know, when she was still on her back, the fecal material
22 would have gone downwards. But after, the fecal material
23 would have came out when she was moved and placed on her
24 stomach which is why it ran down into the vaginal area.

25 THE JUROR: Ah-ha.

1 BY MS. CAMPBELL:

2 Q Then 244 and 47 show --

3 A These are pictures in the morgue, which again just
4 show the decompositional changes which I was describing
5 earlier.

6 Q And 248 and 249?

7 A These show the marbling, really well which I was
8 telling you about the blood vessels, and the bacteria made
9 them pretty dark and discolored. Again, the skin slippage
10 and discoloration you can see on her face neck and arm.

11 Q You can get back up. Thank you.

12 You mentioned postmortem evacuation, again, that --
13 the defecation you were talking about is because of the
14 gasses?

15 A Yeah. I mean, really, it can occur anytime after
16 death, but a lot of times it's after the gases have built
17 up. It's, you know, putting pressure. If there's any
18 fecal material present right there at the edge, it's going
19 to push it out. Especially if you move the body or
20 compress.

21 Q In your review of the crime scene photos, do you have
22 an opinion of when this postmortem evacuation of her
23 bowels occurred?

24 A I believe it was when she was moved from her back to
25 where she had been stored to her stomach.

1 Q And that's based on the positioning of the actual
2 fecal material --

3 A Yes.

4 Q -- and the way it ran down. In addition to that, the
5 appearance of the fecal material also -- this sounds
6 gross. It's fresh.

7 A It does appear like it recently came out, yes.

8 THE JUROR: I thought the same thing.

9 I'm okay. I'm -- I'm fine.

10 BY MS. CAMPBELL:

11 Q On your report, Doctor, you wrote back on September
12 6th, it was probable homicidal asphyxiation. Again, what
13 all did you review in coming to your determination before
14 you testified truthfully to this court?

15 A This was based on the autopsy I performed, as well as
16 a review of the medical records, and the information I was
17 given at that point about her being found outside.

18 Q And your review of the actual crime scene, as well as
19 the autopsy pictures?

20 A Yes.

21 Q And your findings at autopsy?

22 A Yes.

23 Q And your review of the x-rays and anything else?

24 A Yes.

25 Q Did you have a determination as to what the cause of

1 death was in this case?

2 A Yeah. I believe it's homicidal asphyxiation.

3 Q To a degree of medical certainty?

4 A Yes.

5 Q And, again, as you mentioned earlier, 26-year-olds
6 don't just drop dead.

7 MR. MOORE: Object to leading please, Your Honor.

8 MS. CAMPBELL: I'll rephrase. I'm sorry, Your Honor.

9 BY MS. CAMPBELL:

10 Q What did you state earlier about 26 years old?

11 A I said 26 year olds don't just drop dead for no
12 reason, especially healthy ones.

13 Q And you also have cases that are presented to you
14 that end up being suicides?

15 A Yes.

16 Q Was this a suicide?

17 A No. There is no evidence of that.

18 Q Finally, Doctor, your estimate as far as when
19 Ms. Smith was killed would have been how many days before
20 she was found?

21 A Three to seven days.

22 Q Beg the Court's indulgence.

23 (Pause.)

24 And did you also consult with Dr. Marcus in this
25 case?

1 A I did.

2 Q And he's also reviewed the following findings?

3 A Yes, he has.

4 MS. CAMPBELL: Thank you, ma'am.

5 THE COURT: Mr. Moore, would you like to take a break
6 now or...

7 MR. MOORE: I'd like to start, if I could.

8 THE COURT: Okay. We'll go for a little bit, and
9 then we'll take our afternoon break.

10 CROSS-EXAMINATION:

11 BY MR. MOORE:

12 Q Doctor, we may be a while together today, maybe
13 Monday.

14 If I might give you something in advance it might
15 help you a little bit. If I can get you some water.

16 (Pause).

17 Doctor, I'd like to start off by just asking you a
18 little bit about what you testified to just a moment ago.
19 Okay.

20 A Okay.

21 Q It would be fair to say that you have had right
22 extensive discussions with the police and the solicitor's
23 office before you came here to testify, correct?

24 A I don't know if I would say extensive discussions,
25 but we did meet to discuss, to go over the photos, yes.

1 Q Now, it's just like you testified to, you're a board
2 certified pathologist.

3 A Yes.

4 Q Forensic pathologist.

5 A Yes.

6 Q What you say is critical as to whether the case goes
7 forward or not, right?

8 A Yes.

9 Q Because like you said, if you don't find homicide in
10 your autopsy, the case doesn't go forward?

11 A That's correct.

12 Q So whether or not there's enough to go forward is
13 totally dependent upon what you say, according to what you
14 told us a moment ago, correct?

15 A Okay.

16 Q Because if you don't find that there's a cause of
17 death that's homicidal, they can't bring the case, right?

18 A That's very typical, yes.

19 Q So unless you find homicide, the case doesn't go
20 forward, right?

21 A I'm not a lawyer, but I assume that's correct, yes.

22 Q Well, that's what you testified to a moment ago.

23 A Yes.

24 Q Right? And you testified to the truth.

25 A Yes.

1 Q So unless you find that there's a homicide cause of
2 death, the case cannot go forward.

3 A I assume it usually does not, no.

4 Q Now, in medical school, you would have received
5 training and instruction on medical records and medical
6 reports, correct?

7 A Correct.

8 Q In the field of medicine, the actual documentation of
9 what you do and why you do it is important, right?

10 A Yes.

11 Q And, of course, since a case goes forward or not,
12 depending upon what you say, when you write your pathology
13 report following an autopsy, it is critical that it be
14 right, correct?

15 A Correct.

16 Q As a matter of fact, that pathology report ought to
17 contain every single fact upon what you base your
18 conclusions, right?

19 A Yes.

20 Q So I ought to be able to read your pathology report
21 and determine every single fact you relied upon in order
22 to reach your conclusions?

23 A Yes.

24 Q Right. Hold it just a moment.

25 (Pause.)

1 And, Doctor, I'm going to hand you what appears to be
2 several pages.

3 MS. CAMPBELL: She has that, Your Honor.

4 BY MR. MOORE:

5 Q -- typed and ask you if this would be the report
6 which contains every single fact upon which you based your
7 conclusions that this case was a homicide.

8 A Yes.

9 MR. MOORE: We'd like to offer this into evidence
10 please, Your Honor.

11 MS. CAMPBELL: Your Honor, he knows it's not
12 admissible. We object.

13 THE COURT: Under what theory is it admissible? It's
14 hearsay.

15 MR. MOORE: Your Honor, she prepared it. She wrote
16 it. It's her document. It's maintained by her. It's
17 prepared by her. She has authenticated it, and she
18 basically says this is the document that contains every
19 single fact.

20 THE WITNESS: I wouldn't say every single fact. I
21 would say everything I had at the time when I determined
22 the cause of death that I wrote here.

23 MR. MOORE: Right.

24 THE WITNESS: I have since reviewed further pictures,
25 but I don't know if you need any direction.

1 MR. MOORE: But she said it contained every fact that
2 she had at the time she established the cause of death as
3 being homicide. There's no rule against it. Reports come
4 in all the time. Medical reports clearly come in all the
5 time.

6 THE COURT: Ma'am?

7 MS. CAMPBELL: Your Honor, we object because he knows
8 it's not admissible just like statements from the
9 witnesses aren't admissible. He can't deny that. He's
10 just trying to -- I don't know what he's trying to do.

11 THE COURT: Can you show me a Rule of Evidence that
12 says it's admissible? It's a report done by her. You're
13 allowed to cross-examine her on it. You're allowed to
14 show it to her, but reports typically do not come in in
15 front of the jury as evidence.

16 MR. MOORE: Your Honor, I've never known one not to,
17 but if the Court tells me it doesn't -- I've introduced
18 medical reports into evidence for years, as long as
19 they're properly authenticated by the person who prepares
20 it.

21 THE COURT: Ms. Campbell?

22 MS. CAMPBELL: Your Honor --

23 THE COURT: I'm sorry, go ahead.

24 MS. CAMPBELL: There is no authority, and he knows
25 that.

1 MR. MOORE: I appreciate Ms. Campbell saying what I
2 know and don't know. I advised the court what I do know
3 and how I practiced law in this state for nearly 40 years.
4 I have placed medical reports --

5 MS. CAMPBELL: Objection, Your Honor. May we
6 approach, please?

7 THE COURT: All right, sir.

8 We're going to take an afternoon break. If you'll
9 retire to your jury room. Do not discuss the case at all.

10 THE JUROR: At all.

11 (WHEREUPON, the jury left open court at approximately
12 2:37 p.m.)

13 THE COURT: Ms. Campbell?

14 MS. CAMPBELL: Your Honor, I -- Your Honor, if I may.
15 Your Honor, it's improper, but at this point, he said
16 so much in front of the jury, I'll withdraw the objection.

17 MR. MOORE: Thank you, Your Honor.

18 MS. CAMPBELL: But I'd like to do that in front of
19 the jury.

20 THE COURT: You want to withdraw your objection in
21 front of the jury?

22 MS. CAMPBELL: Yes.

23 THE COURT: Okay. We'll take a couple of minutes,
24 ten minutes.

25 Don't discuss your testimony with anybody.

1 THE WITNESS: Okay.

2 THE COURT: You may step down from there.

3 Thank you.

4 (WHEREUPON, a short break was taken.)

5 MS. CAMPBELL: Judge, we've had an opportunity to
6 review the document he wanted to put in. There's some
7 extraneous information. We whited it out. We'll provide
8 him with a copy. We have no objection to the clean copy.

9 THE COURT: Anything further before we bring the
10 jury?

11 MR. MOORE: No, sir.

12 THE COURT: Ms. Campbell?

13 MS. CAMPBELL: No.

14 THE COURT: All right.

15 (WHEREUPON, the jury came into open court at
16 approximately 2:59 p.m.)

17 THE BAILIFF: The jury is seated, Your Honor.

18 THE COURT: Welcome back, ladies and gentlemen.
19 Ms. Campbell.

20 MS. CAMPBELL: Your Honor, we had an opportunity to
21 review the document. We're getting a clean copy for the
22 Court. We will withdraw the objection.

23 THE COURT: That will be Defendant's Exhibit number
24 what?

25 THE COURT REPORTER: Fourteen.

1 THE COURT: Defense Exhibit No. 14 will be admitted
2 without objection.

3 (WHEREUPON, Defendant's Exhibit No. 14 was marked for
4 identification and received into evidence.)

5 BY MR. MOORE:

6 Q Doctor, do you recall telling Ms. Campbell that you
7 found no indication of obvious trauma to this body?

8 A Yes.

9 Q That would be true, correct?

10 A Yes.

11 Q So we know that when you examined the body, you found
12 no indication of trauma?

13 A Of obvious trauma, no, I did not.

14 Q Right. And, of course, you did more than look for
15 obvious trauma. You did an x-ray, right?

16 A Yes.

17 Q You did a series of x-rays.

18 A I did.

19 Q So the radiological studies show no evidence of
20 trauma, too, correct?

21 A That's correct.

22 Q You did a dissected examination?

23 A Yes.

24 Q Those showed no evidence of trauma.

25 A That is true.

1 Q You did a microscopic examination of the body?

2 A Yes.

3 Q Those showed no evidence of trauma.

4 A Yes.

5 Q You did a surgical examination of the body. That
6 showed no evidence of trauma.

7 A Yes.

8 Q So there is absolutely nothing you can find on this
9 body, surgically, from gross observation, microscopically,
10 radiologically or any other way that shows any evidence of
11 trauma to this lady?

12 A Not of definite trauma, no.

13 Q Right. And let me ask you this: You say there was
14 no evidence of obvious trauma. You could not say that you
15 found any evidence of trauma that you could say based upon
16 a reasonable degree of professional certainty resulting in
17 this lady's death, correct?

18 A Right, because the hemorrhage could have been from
19 decomposition. I can't tell.

20 Q Right. So as of this time -- and you understand the
21 standard of proof in one of these cases is by a reasonable
22 degree of professional certainty?

23 A Yes.

24 Q By a reasonable degree of professional certainty,
25 there is nothing that you found on this body that you

1 could state was the result of trauma inflicted by a third
2 party, correct?

3 A Correct.

4 Q Now, do you recall telling Ms. Campbell that in
5 case -- I wrote this down, so I just want to make sure you
6 understand it. In cases of suspected foul play, what we
7 look for is trauma, right?

8 A Yes.

9 Q So what you normally look for when you suspect foul
10 play, you didn't find, correct?

11 A You know, looking for gunshot wounds, stab wounds,
12 that's typical, yes.

13 Q Yes, ma'am. We were talking about trauma.

14 A Yes.

15 Q You indicate that trauma -- I wrote this down. Make
16 sure you said it right. Make sure I wrote it down right.
17 "Trauma is what you look for in determining foul play,"
18 correct?

19 A Yes.

20 Q And trauma is not limited to just a gunshot wound or
21 a stab, is it?

22 A That's true.

23 Q Trauma can be a hit, correct?

24 A Right.

25 Q Or a choke?

1 A Right.

2 Q Or a suffocation?

3 A Right.

4 Q Or a punch?

5 A Right.

6 Q So in the normal cases where you're looking for foul

7 play, what you look for is evidence of trauma.

8 A Yes.

9 Q And you found none in this case?

10 A No.

11 Q That's true, right?

12 A That's true.

13 Q Well, I want to understand what you're saying then.

14 You then reviewed her medical record, right?

15 A Yes, I did.

16 Q And found no disease?

17 A True.

18 Q Now, you say a 26 year old doesn't just die for no

19 reason.

20 A Yes.

21 Q Sometimes they do, don't they?

22 A No. They always have a reason.

23 Q Well, sometimes, though, a 26 year old or a 15 year

24 old or a 50 year old will die of natural causes which are

25 not able to be detected on autopsy, correct?

1 A Correct.

2 Q So it is entirely possible, based upon your
3 examination of the body, that this lady died of natural
4 causes.

5 A Usually, they have a medical history. She had no
6 medical history.

7 Q I simply am asking you it's entirely possible that
8 she died of natural causes, correct?

9 A I don't believe that's possible.

10 Q You can die of arrhythmia and not have any evidence
11 of that, right?

12 A Yes.

13 Q You can die of choking and not have any evidence of
14 that.

15 A Yes.

16 Q You can die of any number of things naturally that
17 are causative but are not disease related, right?

18 A I'm not quite sure.

19 Q Well, like the disease -- choking would not be a
20 disease.

21 A No.

22 Q There are a number of things that can cause a person
23 to die that are not homicide, correct?

24 A Oh yes.

25 Q And you didn't eliminate those, did you?

1 A Well, typically, when I use those as causes of death,
2 they have a history of seizures or cardiac arrhythmia.

3 Q In this case, though, there are times when you can
4 have an onset of arrhythmia just happened, right?

5 A It's extremely rare. I don't think I had any cases
6 like that.

7 Q Well, we'll come back to some of the other causes
8 of -- natural causes that can lead to a cause of death.

9 Let me ask you this: The fact that she was in the
10 yard doesn't mean that she was killed, does it?

11 A No.

12 Q It's entirely possible she could have choked to
13 death, and whoever she was with didn't know what to do and
14 decided later to come, place her back at her home and
15 leave. That's possible, isn't she?

16 A Well, if she choked to death, I would have found food
17 or something in her airway.

18 Q Well, not if it's on saliva.

19 A No. You can't choke on saliva.

20 Q Oh, really? You can choke on vomit, can't you?

21 A Vomit is a bit thicker and has chunks of solid food.

22 Q Well, let's talk a little about this purged fluid
23 that was coming out of her mouth.

24 A Yes.

25 Q If someone had grabbed her and hugged her and rocked

1 her like this (indicating), laying on the ground on his
2 knees, holding her up and rocking her with the mouth in
3 close proximity to his clothing, you wouldn't find it at
4 all unusual for there to be purged fluid found on that
5 person's shirt, would you?

6 A I'm a little confused. Are you the person that's
7 rocking?

8 Q Yeah. The person holding and hugging and grabbing.

9 A Where is she? Is she facing you or facing away from
10 you?

11 Q With her face facing you.

12 A But it was running down the side of her face, but I
13 suppose if you had your mouth right up against the
14 clothing, that could be possible, yes.

15 Q All right. Now, would it be fair to say that
16 chocking basically causes a lack of circulation?

17 A Depends on what kind of choking you're referring to.

18 Q A person has someone around the neck?

19 A Strangulation.

20 Q Strangulation.

21 A Yes.

22 Q That causes a lack of circulation in the body,
23 correct?

24 A Right. A lack of circulation of the blood going from
25 the heart up to the head, to the brain.

1 Q The head, right, and vice versa. That's true, too.
 2 When someone is -- is physically choked by trauma, there's
 3 going to be a circulation problem in the brain, is there
 4 not.

5 A Yes. It can press on the veins and vessels in the
 6 neck.

7 Q And many times when there is a strangulation, because
 8 of that circulation problem, you will find a pooling of
 9 blood in the brain that has resulted from the disruption
 10 of the blood supply?

11 A Absolutely not.

12 Q All right. Certainly, you checked this lady's brain.

13 A Right, but you don't find fluid in the brain from
 14 choking someone. That's not the way it works.

15 Q Now, as I understand it, this examination of this
 16 body that you did was very, very, very thorough, correct?

17 A Yes.

18 Q Did you find any type of microscopic tissue on this
 19 body to indicate that this body had ever been wrapped in
 20 some sort of a fibrous blanket?

21 A No. But I don't do that kind of examination. I
 22 examine internal organs. I don't typically look for
 23 microscopic evidence on the skin.

24 Q Well, yes, ma'am, but you basically did a thorough
 25 gross visualization of the body, correct?

1 A Yes. But I did not do a microscopic visualization on
2 the outside of the body. I'm a little confused as to what
3 you're...

4 Q I'm asking you now -- and I don't want to confuse
5 you -- about the gross observation. When you actually
6 looked at the body from head to toe.

7 A Uh-huh.

8 Q If there had been some form of a fuzzy fibrous
9 blanket that she would have been wrapped in, you would
10 have expected to see at least one or two of those fibers
11 there, wouldn't you?

12 A No, I would not.

13 Q You certainly didn't see any fibers, correct?

14 A No.

15 Q And as you said, the body was in a -- beginning to
16 decompose state?

17 A Yes.

18 Q It had skin slippage, correct?

19 A Yes.

20 Q It had the leakage of fluid?

21 A Yes.

22 Q If it had been wrapped in a blanket like that, you
23 would have certainly expected for pieces of the body to
24 have been left on the blanket?

25 A Not necessarily. Possibly the fluid, but typically,

1 the skin usually stays with the body. You saw where the
2 skin had been peeled, but it was still all there in those
3 photos.

4 Q All right. One of the things we do know, however, is
5 that there is no evidence at all that there were any type
6 of fibers on the body that would have appeared to have
7 come from a blanket of any type, correct?

8 A Again, I do not look for microscopic fibers on the
9 body. That's not what I do.

10 Q I'm just asking for what you did find. You
11 certainly, in your visualization of this body from head to
12 toe, you found absolutely no fiber of any type that
13 appeared to have come from any type of blanket?

14 A No, I did not.

15 Q All right. Now, let's talk half a minute about the
16 concept of trauma. You told us that in cases of foul
17 play, you look for trauma. And we know there was no
18 trauma here that you found, correct?

19 A No definitive trauma, no.

20 Q All right. What is trauma?

21 A So trauma is -- you know, it's either blunt force
22 trauma, as in somebody hitting someone; it can be
23 stabbing, which is sharp force trauma. It can be, you
24 know, a gunshot wound is considered trauma. I'm not
25 really sure exactly what you're looking for.

1 Q I was basically looking for a medical definition of
2 trauma.

3 A So trauma is any kind of physical -- something
4 physical that happens to the body that causes harm.

5 Q A gunshot would be trauma?

6 A Yes.

7 Q Poisoning would be trauma?

8 A I suppose some people might consider that trauma.

9 Q Drugs would be trauma?

10 A I wouldn't consider that trauma.

11 Q One thing we do know, she had no type of sedative in
12 her body at all, correct?

13 A That's correct.

14 Q So then if she were, let's say, in the process of
15 being smothered --

16 A Uh-huh.

17 Q -- or if she were in the process of being
18 strangled --

19 A Uh-huh.

20 Q -- there would have been no chemical in her body that
21 would have prevented her from fighting back?

22 A That's correct.

23 Q Now, in order to strangle somebody, the degree of
24 trauma necessary to be exerted basically has to crush the
25 windpipe to the point that oxygen cannot get into the

1 lung, correct?

2 A Actually, you can compress the blood vessels. You
3 know, you can feel your pulse, so it doesn't take as much
4 pressure. You don't really have to compress the windpipe.
5 You can compress the vessels, which is are actually fairly
6 easy to compress.

7 Q Well, let's take a look.

8 Watson, would you please pull up slide number 12.

9 (Pause).

10 Actually, give me 14, if you would, please.

11 Doctor, this would be a fairly crude diagram of what
12 the neck area basically looks like, correct?

13 A Yes; that's correct.

14 Q Now, the hyoid bone sits way up high, right?

15 A Yes, it does.

16 Q And there are actually only two bones in the entire
17 body that are associated with the neck, correct?

18 A I'm not quite sure. I mean, there's the hyoid bone,
19 and there's the vertebrae that come up through the back of
20 the neck if that's what you're referring to.

21 Q The neck is actually anatomically defined as being on
22 the posterior side, correct?

23 A I considered the neck anything between the head and
24 the shoulders.

25 Q All right. Well, there's a posterior neck, and then

1 there's an anterior neck?

2 A Yes. Anterior is the side, and posterior is the
3 back, yes.

4 Q Anterior and posterior?

5 A Yes.

6 Q What I'm talking about here would be what's called
7 the posterior side?

8 A That's anterior side.

9 Q Okay. I still get those confused from time to time.
10 What we have here in this diagram would be a photograph or
11 a drawing of where the hyoid bone would sit, right?

12 A Yeah.

13 Q Now, hyoid bone, we know, was not decomposed,
14 correct?

15 A Bones don't tend to decompose, no.

16 Q And that would be the same with the internal organs
17 and the ligaments, and the structures of the interior
18 don't decompose as fast as the outside do?

19 A They do decompose. The softer structures do start to
20 decompose, yes.

21 Q Cartilage, let's say, would not --

22 A Cartilage is a little bit tougher, yes, than the
23 regular other soft tissues.

24 Q Of course, we have the hyoid bone.

25 A Yes.

1 Q We have, basically -- this would basically be the --
2 is that the thyroidal cartilage here?

3 A Yeah. Further down you can see where the arrow is
4 pointing, the Florinel cartilage, the thyroid cartilage.

5 Q All right. This right here is basically what?

6 A It's cartilage.

7 Q Right. And then we have what's called laryngeal
8 nerve. We have a windpipe, which is also known as a
9 trachea, right?

10 A Yes.

11 Q What basically happens is this area of the body, the
12 windpipe or trachea, and all of these structures are all
13 part of what's known as the respiratory system, right?

14 A Well, the nerves, I would think it's part of the
15 nervous system, but yes, the windpipe is part of the
16 respiratory system.

17 Q Absolutely.

18 Watson, if you would please give me photo 14 --
19 twelve.

20 This would be a much better diagram of what we're
21 talking about here when we talk about the throat area,
22 correct?

23 A Well, it has all the muscles still kind of overlying
24 the structures that you showed in the diagram on the front
25 of the neck.

1 Q Right. This would basically -- what basically we had
2 at the last photograph would have been a diagram of the
3 anatomical structures. This basically shows the
4 musculature, right?

5 A Yes.

6 Q There are an awful lot of muscles in there, aren't
7 there?

8 A There are.

9 Q And there's an awful lot of ligaments, correct?

10 A Yeah. There are ligaments, too, but a lot of muscles
11 that overlie the area of the windpipe.

12 Q And there's an awful lot of cartilage in there,
13 right?

14 A Yes, there is.

15 Q Now, did you -- now, when someone has enough trauma
16 to be strangled --

17 A Uh-huh.

18 Q -- you would expect for there to be some form of
19 evidence of either injury to the muscle or cartilage or
20 organic structures or blood vessels or something, wouldn't
21 you?

22 A Not always.

23 Q Not always but in the majority of cases of
24 strangulation, you find evidence of some form of
25 anatomical damage to something here, correct?

1 A I would -- I would say maybe half of cases, at most,
2 I would find something in the muscles themselves.

3 Q Yes. But I'm talking also about cartilage, ligament,
4 hyoid bone --

5 A That's very -- it depends on the age of the person
6 because you said all of that is cartilage, right?
7 Cartilage is kind of rubbery, so it's really hard to break
8 it.

9 Q Well, I'm not talking about just the cartilage. I'm
10 talking about --

11 A But the muscles, as well.

12 Q The muscles, the veins, the cartilage, the ligaments,
13 the bones. Generally, in more than 50 percent of the
14 cases of strangulation, we find some type of traumatic
15 injury to something in that neck area, don't we?

16 A Not always.

17 Q I know not always.

18 A But usually, most of the evidence is overlying the
19 skin.

20 Q Right.

21 A So you would see most of the damage in the actual
22 skin.

23 Q And we found no evidence that you can say on the skin
24 that was related to trauma. You've already told us that.

25 A Right because it was decomposed. I would have been

1 able to tell if there was.

2 Q Right.

3 A That's correct.

4 Q And what that means is you found none, right?

5 A Yeah.

6 Q So we know that in regard to this neck from what you
7 found, you found no physical evidence that would indicate
8 this lady was strangled, correct?

9 A That's correct.

10 Q Now, tell me the types of things you have found of
11 evidence of trauma in people who you have found to have
12 been strangled.

13 A Sometimes all I found is a simple ligature mark, just
14 the indentation in the neck. Sometimes I do find
15 hemorrhage in the muscles showing up there.

16 In older individuals where that cartilage is
17 calcified, I have found fractures in a few cases.

18 Q There was no ligature mark here, was there?

19 A No.

20 Q A ligature mark is where somebody actually places a
21 foreign body, such as a rope, around the neck and pulled.

22 A Right.

23 Q Nothing to indicate that was done, right?

24 A Right. Like I said, it was darkly discolored. I
25 wouldn't have been able to tell if there was but no, I

1 didn't find that. You're right.

2 Q And actually, Marcus Bailey's DNA was not found
3 anywhere on her body, was it?

4 A I did not have any access to any DNA information.

5 Q So then we don't know that any of his DNA was
6 anywhere on that, right?

7 A I -- if you tell me that. I don't know any of the
8 DNA evidence. I never had access to that.

9 Q All right. Then so we know for certain that there
10 was nothing that you found in your physical examination of
11 this body to indicate that she had been strangled?

12 A No positive findings, you're correct.

13 Q All right. And there were no negative findings.

14 A Well, there were negative findings.

15 Q There were lots of negative findings, basically
16 meaning there was no broken hyoid bone. There was no
17 damage to the ligament. There was no damage to the
18 cartilage. There was no damage to -- to the hyoid bone.
19 There was no damage to the clavicle. There was no blood
20 vessel damage. There was nothing that would be consistent
21 with strangulation that you found, correct?

22 A Nothing to indicate that there -- no positive
23 findings, like you said.

24 Q Everything I just said was true, right?

25 A Yes.

1 Q How many times have you ever done an autopsy and not
2 be able to determine the cause of death?

3 A A handful of times.

4 Q How about describe for me the pathology of
5 strangling? How does that work? If I strangle you, I
6 reached up and grabbed your throat, choke you to death,
7 how does that work?

8 A So you would walk off the vessels. It depends on how
9 tightly you wanted to strangle me, but you would block off
10 the vessels in the neck, right. So blood is not coming
11 down from your brain, nor is blood getting up to your
12 brain.

13 Without oxygen, you lose consciousness, you know,
14 within 12 seconds. You can lose consciousness. If I
15 compress your airway, you're also unable to inhale and
16 oxidate any other blood that, you know, actually is
17 getting to your brain. It just depends on which way you
18 go about strangling me.

19 Q Isn't it true that it takes significant force to
20 strangle somebody?

21 A I don't think so that's true.

22 Q All right. Now, we know that the decedent was how
23 tall?

24 A She was 66 inches tall.

25 Q Which is?

1 A Or her length. I measured her laying down, so she
2 might have been slightly shorter with gravity, you know.

3 Q 5'6" tall?

4 A Yes.

5 Q And it appears that the defendant isn't much smaller
6 than that -- isn't much bigger than that, correct?

7 A I haven't seen him standing up, but he appears to be
8 around that height.

9 Q Did you know that the decedent had been in the
10 military and had combat training?

11 A I know that she had been in the military, because I
12 believe her medical records were from the military.

13 Q Let's talk about the pharynx.

14 A Pharynx.

15 Q Yeah, the pharynx.

16 A Yes.

17 Q Any evidence of trauma to the pharynx?

18 A No, there was not.

19 Q Larynx.

20 A No.

21 Q Epiglottis?

22 A Epiglottis, no.

23 Q Trachea?

24 A No.

25 Q Trachea is also known as the windpipe?

1 A Yes.

2 Q So there was no damage at all that you found to the
3 windpipe?

4 A No.

5 Q The blood vessels around the throat, any damage to
6 those?

7 A No.

8 Q Muscles of the throat, any damage to those?

9 A There was decomp--- there was some decomposition in
10 this muscles to the neck, but there was no definite trauma
11 that I could say, no.

12 Q Found no traumatic damage to the muscle?

13 A No.

14 Q And the hyoid bone, now, what you say is that she
15 basically had a very pliable hyoid bone.

16 A Right.

17 Q And you took it out, and you x-rayed it?

18 A I did.

19 Q Did you do the x-ray yourself?

20 A No. I had an x-ray technician come down with a
21 portable x-ray machine and x-rayed it for me.

22 Q Did you get an x-ray report?

23 A No.

24 Q You read the x-ray as totally normal.

25 A I read -- of the hyoid bone?

1 Q Yes.

2 A I read it as unfused.

3 Q It's unfused which basically means that's a

4 congenital or birth situation, right?

5 A Right, it was never fused.

6 Q Which means that in her anatomy, it just didn't

7 completely join, right?

8 A Yes; that's correct.

9 Q But there was no injury to that?

10 A No.

11 Q And her clavicle which would be the only other bone

12 affiliated with the throat, no injury to that?

13 A Clavicle is more down here. I wouldn't really

14 consider that part of the throat but --

15 Q Actually, if we look at the diagram, it does appear

16 that the clavicle intersects with the base portion of the

17 node, and would it surprise you to learn that in pathology

18 terminology, it is generally accepted that the clavicle

19 does make up part of the throat? Does that surprise you?

20 A That would surprise me.

21 Q In any event, no damage to the clavicle was found?

22 A No.

23 Q Everything you found in the throat area checked out

24 as far as you could determine as completely normal

25 except --

1 A Decompositional changes, I couldn't say if it was
2 pre-mortal hemorrhage or decomposition. So I just left it
3 s I couldn't determine it.

4 Q Well, let's talk about something called the nose. I
5 have a particularly large one. That's the thing that sits
6 in front of person's face, right?

7 A Right.

8 Q The nose is a very important part of the respiratory
9 system, isn't it?

10 A It is.

11 Q And a person is being suffocated by covering the
12 mouth. You can't suffocate a person unless you cut off
13 the nose, as well, right?

14 A That's true.

15 Q So if you're not strangling them and you're
16 suffocating them, say, by putting their face in a
17 pillow --

18 A Uh-huh.

19 Q -- you've got to be able to get the nose covered and
20 the mouth covered, right?

21 A That's correct.

22 Q Do you know if there was any evidence of a physical
23 struggle found anywhere in this house?

24 A I was not told there was one.

25 Q Was there any evidence of a physical struggle found

1 anywhere on the decedent's body?

2 A No.

3 Q Actually, there was, wasn't there? There was a hair
4 that was found in the decedent's left hand, correct?

5 A I do not recall that.

6 Q Ma'am, do you not know that in the left hand of the
7 decedent, there was uncovered a hair?

8 A No.

9 Q That would be important, wouldn't it? From a
10 forensic standpoint, the fact that she would have had hair
11 in her left hand would be important, wouldn't it?

12 A In what way?

13 Q Well, let's talk about it. One of the things you
14 look for as a pathologist are clues or guides or things of
15 significance, right?

16 A That's correct.

17 Q And in being a pathologist, especially a forensic
18 pathologist, you look for something called defensive
19 tactics, anything that the decedent may have done to have
20 protected herself?

21 A Yes.

22 Q That would be indication of a fight, right?

23 A Right.

24 Q That's why you checked for DNA under the fingernails?

25 A That's why the police checked for it, yes.

1 Q And you know the police checked in this case, and the
2 DNA was perfectly normal. Not there, right?

3 A Okay.

4 Q That would be an indication that there would have
5 been no fight, right?

6 A I suppose.

7 Q That would be one of the -- in forensics, you kind of
8 do elimination. What you find is important, and sometimes
9 what you don't find is important, right?

10 A Right.

11 Q Now, the fact that there were no DNA found under the
12 decedent's fingernails would be a significant finding,
13 would it not?

14 A Yes.

15 Q Why?

16 A Well, you just told me it was.

17 Q Well, you tell me why. Explain it to me. I don't
18 want to put words in your mouth.

19 A Well, I suppose if there was DNA, that would be
20 significant, under her fingernails because that would
21 definitely show signs of a struggle. If she did not, I
22 don't think it would necessarily indicate there wasn't a
23 struggle, but it's not a positive finding to show that
24 there definitely was.

25 Q It's not positive finding, but it's a significant

1 finding, right?

2 A If it's significant to the police, then yes.

3 Q And it would be forensic. It would be significant to
4 a forensic examiner who is trying to determine cause of
5 death, right?

6 A Yes.

7 Q Because you would then have some evidence to conclude
8 that the decedent had been in a fight where she had been
9 trying to defend herself, right?

10 A Yes. If that was there, that would be significant.

11 Q But from what was under her fingernails, there was
12 nothing like that, correct?

13 A I never had that DNA report. You're telling me this
14 for the first time.

15 Q Sure I am. I'm not trying to confuse you, but I'll
16 tell you the DNA under the fingernails was negative.

17 A Okay.

18 Q If we assume that, that is one way to prove there was
19 no defensive struggle, correct?

20 A That's really out of my field of expertise since I
21 don't analyze the DNA under the fingernails.

22 Q Yes, ma'am, but you are the person who you told us
23 determines cause and effect, right?

24 A Yes.

25 Q You're the person who determines cause of death,

1 right?

2 A Yes.

3 Q As the person who -- the case can't go on without you

4 doing it, right?

5 A You're telling me this is to...

6 Q Isn't that what you told the jury?

7 A Yes.

8 Q That's true then, right?

9 A Yes.

10 Q All right. So we look to you to gather the

11 information from the testing and to tell us what's what,

12 right?

13 A Right.

14 Q And one of the things that you need to know is, "Hey,

15 was there any DNA under the fingernails," right?

16 A Again, that's something that usually the lead

17 investigator for the sheriff's department gathers all that

18 information together. I'm really concentrating on the

19 findings on the actual body as far as my autopsy goes. I

20 never test for DNA or small fibers. That's really

21 something the police investigator would do.

22 Q So are you are you telling me that you gave a cause

23 and effect in this case without knowing if there was

24 evidence of any type of defensive struggle evidence on the

25 person of this decedent?

1 A Yes.

2 Q So you made your conclusions without knowing all of
3 the facts.

4 A I made my conclusions based on my autopsy.

5 Q Which showed absolutely no evidence of trauma.

6 A That's true.

7 Q And like you said, trauma is what you look for in
8 cases of bad dealing, cases of homicide. Trauma is what
9 you look for, right?

10 A Right.

11 Q And what you normally look for before you declare
12 something to be a homicide wasn't there, right?

13 A Right.

14 Q Let's get back to the nose for a minute. We talked
15 about the nose as being part of the respiratory system?

16 A Yes.

17 Q If a person is being suffocated by covering the
18 mouth, that cannot be done unless you also cover the nose,
19 correct?

20 A That's correct.

21 Q As far as we know -- and you looked at these, her
22 nasal passages were normal, correct?

23 A Yes.

24 Q And there was nothing to have obstructed her ability
25 to breathe through her mouth, correct?

1 A Correct.

2 Q Did you find any physical evidence by looking at the
3 body that she died of asphyxia?

4 A I based my findings on lack of other -- my
5 determination of lack of other findings, all of the
6 negative findings.

7 Q No, ma'am. My question is in regard to what you did
8 find, what evidence did you find that this lady had been
9 asphyxiated?

10 A The lack of fusion of the hyoid bone indicated that
11 even if she was strangled, you wouldn't have been able to
12 tell.

13 Q Well, yes, ma'am, but she had a non-fused hyoid bone
14 her whole life, correct?

15 A Correct.

16 Q I mean, I want to know what physical evidence you
17 found that some third-party asphyxiated her? Based upon
18 your examination of this body, what did you find wrong
19 with this lady that led you to conclude she had been
20 asphyxiated?

21 A I said I based my finding on the lack of any other
22 kind of physical finding and no evidence of natural
23 disease, and usually findings in asphyxiation, you
24 can't -- it's lack of everything else because you normally
25 don't have findings in the neck of a decomposed person.

1 So I'm a little confused as to --

2 Q Well --

3 A -- what you're trying to get me to say.

4 Q I'm just trying to -- ma'am, did you find anything
5 wrong with this lady to have killed her?

6 A No.

7 Q Now, did you find -- if a person is asphyxiated by
8 forcing a head into a pillow or a sofa or into some sort
9 of fabric, you would expect to find some sort of the
10 trauma on the back of the head or neck in regard to the
11 amount of force to hold somebody down, wouldn't you?

12 A Depends on how hard they pushed them and what they
13 pushed them with, yes.

14 Q Ma'am, you had to push pretty hard in order to cut
15 off the nose and the mouth, wouldn't you?

16 A It depends on what they were pushed up against.

17 Q Well, you opined the pillow. In order to suffocate
18 somebody with a pillow, you're going to have to push
19 pretty hard from the back of the head to do that, right?

20 A Right.

21 Q Did you find any form of anatomical mark to indicate
22 any type of trauma on the back of the neck or the back of
23 the head that would have been consistent with suffocation?

24 A No.

25 Q Did you find any physical evidence as a result of

1 your examination that this woman had actually been
2 suffocated?

3 A No.

4 Q Did you find any physical evidence as a result of
5 your examination that this woman had been strangled?

6 A No.

7 Q Do you know of any way to asphyxiate somebody other
8 than to strangle him or suffocate him?

9 A There's also compression of the chest which I
10 described earlier which would prevent you from taking a
11 deep breath.

12 Q And you would expect that to leave signs of trauma,
13 correct?

14 A Not always. If you're sitting on someone's back and
15 they can't breath, that would not have a tell-tale
16 finding.

17 Q Did you find any evidence that he had sat on her
18 back?

19 A No. Usually, there would not be evidence of that,
20 no.

21 Q Well, you can -- to get that sort of compression, I
22 would assume at times, you would expect to find some sort
23 of injury to the rib cage or to the sternum or to the
24 clavicle or at least some form of bony structure in there,
25 would you not?

1 A Sometimes.

2 Q None of that was found, was it?

3 A It's not.

4 Q So there was no evidence of asphyxiation by sitting

5 on her back or chest, right?

6 A Right.

7 Q No evidence of asphyxiation by suffocation, correct?

8 A Correct.

9 Q No evidence of suffocation by strangulation?

10 A Correct.

11 Q Can you say based upon a reasonable degree of medical

12 certainty she was suffocated?

13 A Based on the lack of all the other findings and

14 review of the medical records, I believe that she was

15 asphyxiated in some manner.

16 Q In some manner. I understand, but you've given us

17 the three manners of asphyxiation, right?

18 A Right. I'm telling you that you cannot find positive

19 findings with those causes of death, and you rule out

20 everything else. Because she was decomposed, you would

21 not have the hemorrhage in the neck.

22 It's obscured so you cannot have positive findings.

23 You are correct on that part.

24 Q Well, I just want to make positive we understand

25 something.

1 A Right.

2 Q You told us there are three ways to asphyxiate
3 somebody, right?

4 A Correct.

5 Q You cannot tell us, based upon a reasonable degree of
6 professional certainty that she was strangled, can you?

7 A Right.

8 Q You cannot tell us based upon a reasonable degree of
9 professional certainty that she was suffocated?

10 A Correct.

11 Q You cannot tell us based upon a reasonable degree of
12 professional certainty that she was asphyxiated by way of
13 sitting on her chest or back.

14 A Correct.

15 Q What you're basically saying is you looked at the
16 body, found nothing and said, "Well, since I can't find
17 anything, somebody must have done something to her"?

18 A Well, based on the fact that she had been decomposing
19 indoors for three to seven days, it was extremely
20 suspicious for foul play --

21 Q Well --

22 A -- and because of the lack of other findings, this is
23 what I determined to be the cause of death.

24 Q Ma'am, there's a lot of difference between something
25 being suspicious of foul play --

1 A Uh-huh.

2 Q -- and something existing by virtue of a reasonable
3 degree of professional certainty, is there not?

4 A Can you repeat the question?

5 Q You basically said it was suspicious of foul play,
6 and that's why you listed it as you did, correct?

7 A Right.

8 Q Isn't it true there is a major difference between
9 something being suspicious of foul play and existing as a
10 fact based upon a reasonable degree of professional
11 certainty?

12 A Yes, I believe so.

13 Q What you're finding is because you had a suspicion of
14 foul play, correct?

15 A I believe so.

16 Q There is no way you can say based upon a reasonable
17 degree of professional certainty that she was strangled.
18 That's true, right?

19 A That's true.

20 Q No way you can say based upon a reasonable degree of
21 professional certainty she was suffocated.

22 A That's true.

23 Q And no way you can say based upon a reasonable degree
24 of professional certainty that she died because someone
25 sat on her back or chest, correct?

1 A Yes.

2 Q The reason why you listed this as homicidal is
3 because you suspected foul play.

4 A Yes.

5 Q There was nothing you found wrong, so you suspected
6 foul play, and that's what you wrote?

7 A Yes.

8 Q So then your opinion that she died by homicidal
9 asphyxiation is based upon a suspicion of foul play and
10 not on a reasonable degree of professional certainty.
11 That's true as you just told us, correct?

12 A I'm a little confused by the circle of words you just
13 used. I'm not quite sure I should agree that.

14 Q Well, everything I just said is what you already told
15 us, isn't it?

16 A I don't -- you're really kind of talking in circles.

17 Q Well, you have told us that you came to the
18 conclusion in your report --

19 A Uh-huh.

20 Q -- of homicidal asphyxiation because you had a
21 suspicion of foul play, right?

22 A Right.

23 Q And you told us that having a suspicion of foul play
24 is different than being able to conclude something based
25 on the standard in this case which is a reasonable degree

1 of professional certainty. You've already told us that,
2 right?

3 A I think you told me that.

4 Q Well, you --

5 A I think I agreed to it out of the confusion, but
6 yeah, that sounds logical.

7 Q So when you agreed to it, it was true because it was
8 logical, right?

9 A You're really starting to confuse me, sir. I'm very
10 sorry. I'm not quite following.

11 Q Your Honor, can we give the doctor a moment so she
12 can collect herself and not be confused. I would ask that
13 we -- I would like five minutes so she would not be
14 confused by my questions. I do not want to confuse this
15 lady, but this is critically important.

16 THE COURT: Do you need five minutes?

17 THE WITNESS: I'm fine. I just -- can you just make
18 your question a little more straightforward?

19 BY MR. MOORE:

20 Q Yes, ma'am. Let me start over again. Look, I don't
21 mean to do anything except ask you questions.

22 A I understand that.

23 Q I'm not trying -- do you have -- presently have
24 water?

25 A I do.

1 Q I'm not trying to bully you or confuse you. If I
2 confused you, I do apologize, okay. I'm going to try to
3 slow down a little bit for you. You told us already the
4 reason why you put in your report and believed this to be
5 a homicide is because you couldn't find anything wrong,
6 right?

7 A Right.

8 Q Okay. And you've told us the reason why you called
9 it a homicide is because you suspected foul play.

10 A Yes.

11 Q Now, you also told us there's a difference between
12 suspecting foul play and being able to conclude, based
13 upon objective proof, that there's reasonable degree of
14 professional certainty that there was a homicide. You've
15 told us that.

16 A That's the part I guess I'm a little bit -- objective
17 degree of reasonable degree of medical certainty is a lot
18 of kind of legal jargon, in my opinion. Can you please
19 explain what you mean by that?

20 Q Well, yes, ma'am. You are a medical examiner for
21 Richland County, right?

22 A Yeah.

23 Q You are a forensic pathologist?

24 A Yes.

25 Q You have been trained in regard to standards of proof

1 in courtrooms because you testify all the time.

2 A Yes.

3 Q You understood that your opinions have to be based
4 upon a reasonable degree of professional certainty or
5 they're not acceptable, right?

6 A Right, and I felt like I made a determination based
7 on a reasonable degree of medical certainty, which I think
8 is like -- you're -- I think you're trying to trick me
9 into saying it isn't.

10 Q No, ma'am.

11 A So that's why I'm a little confused by your circle of
12 questions.

13 Q Well, this reasonable degree of medical certainty,
14 you called it a homicide because your couldn't find
15 anything wrong with her.

16 A It's because I couldn't find any evidence of natural
17 disease, any evidence of suicide, and because it was clear
18 to me that her body had been moved since I was told she
19 had been found outside and that it was clear her body had
20 been inside for at least three to seven days decomposing
21 and placed outside within an hour of when this was found.
22 That's what I'm basing my confusion on, whether -- that's
23 where I felt from a reasonable degree of medical certainty
24 that's why I --

25 Q I see. Then what --

1 A -- was -- the cause of death.

2 Q So then you made your conclusions on -- not anything
3 found on the body but on what the police told you.

4 A The only thing I based on was the police told me that
5 the body was found outside, and that was something the
6 coroner's office told me.

7 Q Okay.

8 A And I later reviewed the scene photos which I did not
9 actually have at the time of this report.

10 Q Right. I understand that. I'm just trying to get
11 where you came to this homicide. So let's talk a moment
12 about the nose.

13 A Okay.

14 Q It has a nasal cavity.

15 A Yes.

16 Q Superior nasal concha?

17 A Yes.

18 Q A middle nasal concha.

19 A Uh-huh.

20 Q An inferior nasal concha?

21 A Uh-huh.

22 Q An opening of the pharona--- pharyngeal tympanic
23 tube. Did I say it wrong? Pharyngeal tympanic tube?

24 A Okay.

25 Q And the nasopharynx. Those are all part of the nose,

1 right?

2 A Yes.

3 Q Nothing at all did you find traumatically wrong with
4 her nose?

5 A No.

6 Q Now, ma'am, if someone's face is forced into
7 something to the point that it actually cuts off the nasal
8 passage, you've seen that before, haven't you?

9 A I believe I have, yes.

10 Q Have you seen it, or have you not?

11 A I'm trying to think back to the 1,000 cases I've
12 done. I feel like I have seen it, yes.

13 Q You're telling me you've been the chief pathologist
14 on 1,000 autopsies?

15 A Yes.

16 Q The actual pathologist in charge?

17 A Yes.

18 Q And you think you've seen one other case of
19 suffocation?

20 A I'm telling you, I don't remember the 1,000 cases
21 that I did, how many were suffocation off the top of my
22 head.

23 Q Would it surprise you to learn that in the normal
24 case of suffocation by pressing, such as you've described,
25 there is normally found some form of damage to the

1 structures in the nose?

2 A It depends on what kind of structure the face would
3 be pressed into.

4 Q But in the normal case, in the normal case, would it
5 surprise you to learn that there is traumatic injury to
6 some form of the nasal structures?

7 A That you would surprise me, yes.

8 Q All right. And in this case, the nose is perfectly
9 okay.

10 A Yes.

11 Q Now, to suffocate a person, you basically also would
12 have to close the mouth, correct?

13 A Right.

14 Q No traumatic injury to the hard pallet, right?

15 A The hard pallet, no.

16 Q No traumatic injury to the oral cavity?

17 A No.

18 Q No traumatic injury to the lips?

19 A No.

20 Q No traumatic injury to the mandible?

21 A No.

22 Q No traumatic injury to the geniohyoid, no.

23 A Geniohyoid, no.

24 Q Mylohyoid muscle?

25 A No.

1 Q Thyroid cartilage?

2 A No.

3 Q Hyphoid cartilage?

4 A No.

5 Q Nasopharynx?

6 A Nasopharynx, no.

7 Q Soft pallet?

8 A No.

9 Q Jugula?

10 A No.

11 Q Oropharynx?

12 A Oropharynx, no.

13 Q You examined every one of those.

14 A I did.

15 Q Why did you examine those?

16 A To look for trauma.

17 Q Found none?

18 A That's correct.

19 Q If trauma is not normally found in suffocation or
20 asphyxiation in the mouth or nose, why did you look to see
21 if those were traumatized?

22 A Because if there was, then that would give me more
23 evidence to support my cause of death. We examine
24 everything because we want to be thorough, everything we
25 possibly can to come up with the cause of death. We don't

1 want to be wrong.

2 Q Yes, ma'am. Many times, many times what you don't
3 find is as important as what you do find, correct?

4 A Many times, yes.

5 Q Tell me those things that you looked for when you
6 looked for objective evidence of strangulation.

7 A We look for the skin of the neck to see if there's a
8 ligature mark. That's the most common thing we found.
9 Obviously, in a decomposed person, that would not always
10 be evident.

11 We would do a separate neck dissection and look at
12 the muscles, look at the hyoid bone, look at the cartilage
13 to see if there was something broken or if there was
14 hemorrhage. We do not always see that in cases of
15 strangulation.

16 Q None of those things you would ordinarily look for
17 were there.

18 A No, they were not.

19 Q Those would be what you would call a medically
20 significant non-finding?

21 A I wouldn't said that.

22 Q An insignificant non-finding?

23 A Because they're not always seen. Even when we know
24 it's a strangulation, and we see the ligature mark on the
25 neck, we don't always -- we often do not find a broken

1 cartilage or broken hyoid bone or a hemorrhage in the
2 neck.

3 Q So according to your testimony, the fact that there
4 was no evidence of anything wrong --

5 A Doesn't matter --

6 Q -- it's insignificant?

7 A No. It's not insignificant.

8 Q It is significant?

9 A It's -- it's always significant, and it's significant
10 in everything I do that we find or do not find.

11 Q Well, is the fact that you found nothing wrong a
12 significant or insignificant non-finding?

13 A It's always significant.

14 Q Tell me why it is significant that you found nothing
15 wrong with the throat, nose, or mouth.

16 A It's significant because I documented in my report
17 that I found nothing wrong in the nose.

18 Q You're familiar with something -- I'm sorry. You're
19 familiar with something in the eye called a conjunctive
20 tissue?

21 A Yes.

22 Q That's the red part of the eye, right?

23 A Yes.

24 Q Do you know that in 80 percent of the cases where
25 there's strangling or asphyxiation, there's something

1 called conjunctive petechia?

2 A Petechial hemorrhages yes. That's a common finding.

3 Q That's found in 80 percent.

4 A Were those decomposed or undecomposed bodies?

5 Q Actually both. Now, would it surprise you to learn
6 that 80 percent of the cases of strangulation or
7 asphyxiation have finding of conjunctive petechia?

8 A It's a common finding, yes.

9 Q It would be 80 percent of the cases. That wouldn't
10 surprise you at all, would it?

11 A It depends how they were strangled, but I wouldn't be
12 surprised that it was a common finding.

13 Q You looked for conjunctive petechia in this case when
14 you examined the eyes, didn't you?

15 A I had very difficult time examining her eyes because
16 of the edema around her eyes.

17 Q But you did a dissected examination, and one of the
18 things you looked for was conjunctive petechia, wasn't it?

19 A I wasn't able to look for them due to the
20 decompositional changes around her eyes.

21 Q Were you able to say if there was or was not?

22 A I'm not able to say if there was or was not.

23 Q You are able to say that you didn't find any, but you
24 were able to look for it, right?

25 A Right.

1 Q Do you know Deputy Bouknight.

2 A Yes.

3 Q The record reflects you told Deputy Bouknight you
4 could not establish a cause of death based on the autopsy?

5 A I did --

6 Q My question is this, did you --

7 MS. CAMPBELL: Objection, Your Honor. I think she
8 has a right to answer that before he goes to the next
9 question.

10 MR. MOORE: That was just one question, Your Honor.
11 That was one question.

12 THE COURT: Ask the question.

13 BY MR. MOORE:

14 Q Ma'am, did you tell Deputy Bouknight that you were
15 not able to establish a cause of death?

16 A After the immediate autopsy, I probably did say that
17 because I did not have time to look it under a microphone,
18 and I did not have time to review her medical records or
19 receive any other information.

20 Q All right. Well, so then the answer would be yes,
21 correct?

22 A I -- probably. I do not recall exactly what I said
23 to him, but that makes sense I would have said that, yes.

24 Q So before you did the microscopic examination, you
25 were unable to establish a cause of death, correct?

1 A That is correct.

2 Q Well, did microscopic examination provide you any
3 evidence of what killed her?

4 A No. It provided me evidence of what did not kill
5 her.

6 Q So until you learned what didn't kill her, you
7 couldn't said what did kill her.

8 A That's correct.

9 Q And, of course, there was nothing you found actually
10 on the body itself which told you what killed her.

11 A That's correct.

12 Q Now, you've told us that you did this gross
13 examination of the body and did not see any fibers from
14 any blanket, correct?

15 A That's correct.

16 Q Whose job would it have been to examine the body in
17 order to determine if, in fact, there was any type of
18 fibrous material that would have come from a body?

19 A The investigators at the scene where she was found
20 should have looked for it before they removed the body and
21 brought it to the morgue.

22 Q When you found this body there in your examination,
23 were the lungs full of air?

24 A They were partially decomposed, so there were gases
25 in there, you know, from the decomposition process. But

1 lungs, in general, are inflated unless you have asthma --

2 Q One moment, please. Your Honor.

3 A After death.

4 Q Now, we know that you don't have any idea what was
5 under her fingernails at the -- at or during the autopsy,
6 correct?

7 A As far as DNA evidence, no, I do not know.

8 Q Have you just not bothered to check since the time of
9 autopsy?

10 A That information was never provided to me.

11 Q And you didn't ask for it?

12 A I didn't know it existed.

13 Q Well, in your examination of her, did you examine her
14 fingernails?

15 A I'm sure I looked at her hands, yes.

16 Q Were her fingernails long, or were they short?

17 A I did not document that. My autopsy report -- that's
18 not something I typically document is the length of
19 someone's fingernails.

20 Q If her fingernails had been broken, you would have
21 documented that because it would have been a significant
22 finding, correct?

23 A Yes.

24 Q Now, I've asked you about this hair before, but if,
25 in fact, a long hair about this long --

1 A Uh-huh.

2 Q -- had been found in her left hand, that would have
3 been a significant finding, too, correct?

4 A Well, you're making a clenched hand which confuses me
5 because she did not have rigor at the time. So I'm not
6 quite sure how the hair was actually situated in her hand
7 if her hand had no muscle tone on it. Can you tell me how
8 it was found.

9 Q It was in her hand is all I know.

10 A Okay.

11 Q She had in her left hand a hair that was about that
12 long?

13 A Okay.

14 Q That would be significant, wouldn't it?

15 A Depends on whose hair it is.

16 Q Yes, ma'am, it would.

17 Let's assume for a moment that my client had hair
18 about as long as it is now --

19 A Uh-huh.

20 Q -- and let's assume that the hair that was found was
21 about that long (indicating).

22 A Uh-huh.

23 Q We are would be able to say from a forensic
24 standpoint that based upon a reasonable degree of
25 professional certainty, the hair in her left hand wasn't

1 Marcus', right?

2 A I suppose. I'm sure there would have been DNA
3 evidence on that.

4 Q They should have done DNA evidence on that, shouldn't
5 they?

6 A If there was DNA to get from it.

7 Q Well, did you know they did DNA?

8 A I didn't even know the hair existed.

9 Q But there's several ways you could determine whether
10 a hair and more -- likely from a person. One is by DNA,
11 correct?

12 A Uh-huh.

13 Q Another is you can compare the length of the hair to
14 the hair to the hair on the man's head, right?

15 A Right.

16 Q That's a pretty simple way to do it, but it's a
17 pretty good way, right?

18 A Unless they get a haircut.

19 Q Well, we know, according to the photographs in this
20 case, that on the morning in question, his hair was about
21 as long as it is now, okay.

22 A Okay.

23 Q If we assume that, if we assume that at the time of
24 Ms. Smith's death --

25 A Uh-huh.

1 Q -- that Marcus' hair was about as short as it is now,
2 but hair found in her hand was about this long, from a
3 forensic standpoint, we could say, based upon a reasonable
4 degree of professional certainty, that that hair did not
5 come from Marcus, can we?

6 A No. I'm really not a hair analysis expert, so I
7 really don't feel comfortable making that determination as
8 to where that hair came from.

9 Q Ma'am, you told us, though, that forensic scientists
10 are in the business of determining cause and effect from
11 the physical evidence that they basically find, correct?

12 A A forensic scientist.

13 Q A forensic pathologist. That's what you do.

14 A I'm a pathologist. I concentrate on the body.

15 Q Well, yes, ma'am, but like you told us, you've given
16 opinions that sure come from something other than the
17 body. Your opinions don't come from the body because the
18 body shows no traumatic effects at all, right?

19 A Right.

20 Q The opinions you've given have to do with a lot more
21 than what you found on this body, don't they?

22 A Yes.

23 Q The opinions that you've given today are not based
24 upon what you found on the body. They're based upon what
25 the police told you, right?

1 A No.

2 Q They're not. Well, let see what you said.

3 (Pause).

4 Ma'am, we've already placed into evidence your
5 medical report. I've just blown it up here. Let's see.

6 Do you have a copy of your report in front of you?

7 A I do.

8 Q I'm going to put this out where maybe the jury can
9 see it as we move along. There at the very end -- and I
10 believe it's the last sentence -- "Because of the
11 decompositional changes and the unfused hyoid bone,
12 changes associated with asphyxiation would not be evident
13 at autopsy." Do you see that?

14 A Yes.

15 Q And the cause of death is based on the investigation
16 and the lack of findings at autopsy, right?

17 A Right.

18 Q The pertinent anatomical findings are summarized
19 under final anatomic diagnosis, right?

20 A Yes.

21 Q So isn't it true that the cause of death is based on
22 the investigation?

23 A Right, but that did not come from the police
24 department. That was the basic stuff that the coroner's
25 office gave me on their investigational report.

1 Q Absolutely. We're going to go there for a minute,
2 because again, if I want to know what you mean by the
3 investigation --

4 A Uh-huh.

5 Q -- I can go back and look at what you wrote in your
6 history, right?

7 A Right.

8 Q Because as you told us, based on the medical records,
9 you need to put in your report all of the history that
10 you're rely upon in making your diagnosis, correct?

11 A I try to.

12 Q So we know, then, that you made your diagnosis on the
13 fact that you found nothing wrong with the body, right?

14 A Uh-huh.

15 Q You couldn't find anything else that might have
16 killed her?

17 A Right.

18 Q And upon what you knew as far as the investigation,
19 right?

20 A Right.

21 Q And what you knew from the investigation is going to
22 be written down in what you call the case summary, right?

23 A That's a brief summary of...

24 Q But like you told me, you have to put in your report
25 all of the significant facts that you're relying upon to

1 reach your conclusions. You've already told the jury
2 that, right?

3 A Uh-huh.

4 Q Yes?

5 A Yes.

6 Q So all of the significant facts that you're relying
7 upon are basically here in this section entitled case
8 summary?

9 A Right, as well as what was written down in the
10 coroner's report case summary, as well.

11 Q Well, yes, ma'am, but what you told me -- or you told
12 the jury, and I thought I heard it right but maybe I'm
13 wrong that when you're issuing something called a
14 postmortem examination --

15 A Uh-huh.

16 Q -- A final report --

17 A Yes.

18 Q -- I need to be able to look at your report and look
19 at every single fact that you're relying upon in order to
20 reach your conclusions that this was homicide.

21 A Right. That's what I referred to the investigative
22 report which is from the coroner's office, yes.

23 Q Well, what you basically have done, you don't refer
24 to that investigative report in the case summary, do you?

25 A No. That's usually what I do to give myself an idea

1 of, you know, the basic information I have at the
2 beginning of the case, but again, I usually have the
3 coroner's report right next to it. I do not feel the need
4 rehash everything they have written and put it back in my
5 report.

6 Q And you already told us that every fact you rely upon
7 in order to reach a conclusion is supposed to be put in
8 this document, right?

9 A Right.

10 Q You told us that.

11 A Right. That's why I refer to the document in there
12 as far as what I use to make my determination.

13 Q Well, show me where you say in this report anywhere
14 you're relying upon the coroner's report?

15 A Well, I guess at the very end on the summary comment,
16 which is based on the investigation, I should have been
17 more specific and put coroner's investigative report.

18 Q Was that just an error on your part?

19 A Yes, I apologize.

20 Q That error would basically be in violation of the --

21 A Well, it's not an error. It's more of an omission to
22 specify the investigation I was referring to. I should
23 have been more specific.

24 Q It basically means you did your report wrong.

25 A No. It does not mean that.

1 Q But it -- so it's -- like it is, is correct then?

2 A It's correct. I should have been more specific so
3 you'd know what I was referring to.

4 Q Well, if we look at what you actually put in your
5 report, the only thing it talks about that you knew of was
6 that she was 26 years old. She was found deceased in the
7 front yard. She hadn't been heard of since August 16th.
8 She had decompositional changes and was pronounced dead at
9 the scene. It says the information as provided by Jane
10 Powell with the Richland County Coroner's Office.

11 A That's based on her report, yes.

12 Q It says a review of the provided medical records does
13 not show any significant past medical histories, correct?

14 A Yes.

15 Q Well, tell me what there is in the coroner's report.

16 A Let's me see. I have a copy. I'll find it for you.

17 Q What is there in the coroner's report that led you to
18 believe this was a traumatic death when there was no
19 evidence of trauma found.

20 A The fact that she had been placed outside, and was
21 dead for three to seven days indoors where it seems her
22 body seems to have been hidden and then placed on the
23 front lawn within an hour of being found.

24 Q All right.

25 A That's what the investigative part I was concerned

1 about and my -- I wrote what I did.

2 Q Does the fact that she was placed on the lawn simply
3 mean that someone put her there, right?

4 A Yes.

5 Q The fact that someone put her there doesn't mean that
6 someone killed her, does it?

7 A It's awfully suspicious, isn't it?

8 Q Yes, ma'am, but we don't convict people in this
9 country on suspicion, do we?

10 A No.

11 Q And as you already told the jury, you reach your
12 conclusions based upon suspicion, right?

13 A Yes.

14 Q You wouldn't expect a jury to convict anybody based
15 upon suspicion, would you?

16 A No.

17 Q And your report, as you told us, is the result of a
18 suspicion of foul play?

19 A Yes.

20 Q Not upon any type of objective medical finding?

21 A It's based on the effective lack of medical findings.

22 Q Basically, it's a lack of anything there, something
23 not being there.

24 A Right.

25 Q What you basically said is, "I can't find what killed

1 her, so somebody must have done it"?

2 A Like I said, 26 years olds don't just drop dead for
3 no reason.

4 Q But that's the conclusion. "I can't find anything
5 wrong with her that would have killed her, so somebody
6 must have done it," right?

7 A Right.

8 Q That was basically the suspicion that you had?

9 A Yes.

10 Q And as a result of your suspicion, a result of your
11 suspicion and lack of medical proof, you issued a report
12 that caused a young man to be arrested and prosecuted
13 based upon your suspicion?

14 A Yes.

15 Q And that alone?

16 A I see --

17 Q Because as you told us, you can't go forward unless
18 you say it's there, right?

19 A I'm not one that pushes these cases forward, sir.

20 Q Yes, ma'am, but you told the jury on direct
21 examination if I don't find it, the case doesn't go
22 forward, right?

23 A Typically, if I don't -- if something isn't deemed to
24 be a homicide, you know, we don't put people on trial
25 because, you know, their next door neighbor died of a

1 heart attack.

2 Q Now, it's fair to say that you were employed by
3 Richland County, South Carolina, right?

4 A That is not correct.

5 Q Your company is employed by Richland County, South
6 Carolina.

7 A That is not correct.

8 Q Well, now, aren't you the Deputy Chief Medical
9 Examiner?

10 A Yes, but they do not pay me. The coroner is an
11 effected official. They can send autopsies to whatever
12 company or forensic pathologist they want to, and they
13 choose to send it to us. We do their autopsies.

14 They have given us titles of Deputy Chief Medical
15 Examiner, yes, but they do not pay me or employ me.

16 Q Nobody paid for this autopsy?

17 A The Richland County Coroner's Office paid my company
18 who pays me.

19 Q You are an actual official of Richland County?

20 A Official of Richland County? I suppose.

21 Q You're the Deputy Chief Medical Examiner?

22 A Yes.

23 Q Who is the Chief Medical Examiner?

24 A Dr. Bradley Marcus.

25 Q Did you tell Dr. Marcus that you were issuing a

1 report of homicide based upon your suspicions of foul
2 play?

3 A I consulted with him on this case, yes.

4 Q So you told the chief examiner that "I suspect foul
5 play and because I can't find anything wrong and suspect
6 foul play, I'm going to go ahead and call it a homicide"?

7 A No. I discussed with him all of the findings in the
8 autopsy and discussed with him, you know, the hyoid bone
9 and everything that I had found and the condition of the
10 body, how decomposed it was. I explained all of this to
11 him, and then told him this is what I was putting as the
12 cause of death.

13 Q Ma'am, let's go over this report together. It says,
14 "The decedent is" -- can y'all read that?

15 THE JUROR: No.

16 BY MR. MOORE:

17 Q Let's try again. I'm not sure I can read it either.
18 Let's read it together. I'll do the best we can. "The
19 decedent is a 26-year-old African-American woman."

20 How about read it for me, please. Case summary, just
21 publish that for me, what you said.

22 A "The decedent is a 26-year-old African-American woman
23 who was found on August 23rd, 2012 deceased on the front
24 yard. She had not been heard from since August 16th,
25 2012. She was found with decompositional changes and was

1 pronounced at the scene."

2 This information is provided by Jane Powell with the
3 Richland County Coroner's Office.

4 A review of the provided medical records does not
5 show any significant past medical history that would have
6 contributed to her death."

7 The Richland County Coroner's Office authorized the
8 autopsy.

9 Q Doctor, I know you're in a little bit of a hurry. We
10 have a really good court reporter over there, but she
11 can't type as fast as that, okay.

12 A Okay.

13 Q Let's slow it down just a little bit.

14 Now, this gross anatomical description, tell the jury
15 what a gross anatomical description is. In medical terms,
16 what does that mean?

17 A Gross means -- it's opposite of microscopic, so these
18 are things I could see with my naked eye without having to
19 look under a microscope.

20 Q So then we list those things that you actually could
21 see with a naked eye on something called external
22 examination, right?

23 A Right. On the outside of the body, yes.

24 Q How about slowly read to these folks what it is that
25 you found when you examined this body that had no evidence

1 of trauma anywhere.

2 A Do you want me to ready entire report or just enter
3 it in?

4 Q Sure. We'll take it one at a time. I want to make
5 sure we understand what you found and what you didn't
6 find.

7 A Sure.

8 Q I want to make sure the jury understands this, as
9 well. My client is on trial for murder based on
10 suspicion.

11 MS. CAMPBELL: Objection.

12 THE COURT: Mr. Moore, that's sustained.

13 MR. MOORE: Thank you.

14 THE COURT: Move on, please.

15 BY MR. MOORE:

16 Q Ma'am, if you'll just slowly read for me on external
17 examination what you found.

18 A Okay. Body weight was 129 pounds. The body length
19 was 66 inches. I put the body as that of a
20 well-developed, well nourished adult African-American
21 woman who appears compatible with the stated age.

22 The body is identified by the coroner's office. The
23 body is received with the hands in paper bags. The body
24 is cool to touch. Rigor has passed on all extremities and
25 jaw.

1 Levity is not apparent. There is diffuse dark to
2 green discoloration over the body. There is diffuse skin
3 slippage that is most prominent over the areas of the
4 neck, chest, and upper arms.

5 There are numerous fluid-filled blisters present and
6 areas of marbling. The distal portions of the first
7 through third digits of the right hand are dry with early
8 mummification changes.

9 No maggots or fly eggs are identified on the body.
10 The scalp hair is black. The cornea are clouded. The
11 sclera and conjunctiva are edematous, secondary to
12 decomposition and engorged on the left.

13 The nose and ears are not unusual. The teeth are in
14 good repair. The tongue is protuberant. The neck is
15 without masses, and this larynx is in the midline. The
16 thorax is symmetrical.

17 The breasts are well-developed without palpable
18 masses. The abdomen is protuberant. The genitalia are
19 bloated secondary to decompositional changes. No
20 traumatic injuries are identified. The anus and back are
21 unremarkable with the exception of decompositional
22 changes.

23 The upper and lower extremities are well developed
24 and symmetrical without absence of digits. Identifying
25 marks and scars consist of an illegible professional black

1 tattoo on the lower back.

2 Do you want me to keep going?

3 Q No, ma'am. That's the end of the...

4 A First paragraph, yes.

5 Q Rights. That's the external examination, right?

6 A Yes.

7 Q Now, we note there was no bite mark noted on the
8 tongue, correct?

9 A I did not see that specifically, but if there was, I
10 would have mentioned that, yes.

11 Q Would it surprise you to learn that in a large number
12 of the cases dealing with homicidal asphyxiation,
13 strangling or smothering that there are generally found
14 bite marks on the tongue?

15 A I don't believe that's true.

16 Q One thing we know is there were none, right?

17 A Right.

18 Q And the -- the finding of no objective trauma is very
19 consistent with what you have already told us.

20 A Right.

21 Q The next thing basically talks about evidence of
22 medical intervention. There was some form of EKG lead?

23 A Yeah.

24 Q Basically, what happens is in any type of situation
25 like that, the EMS had to put something like that on?

1 A Right.

2 Q That's an insignificant finding, correct?

3 A Correct.

4 Q Let's see what else you had to say. Evidence of
5 injury. Would you read that section entitled evidence of
6 injury?

7 A Sure. A separate neck dissection is performed.
8 There is no significant soft tissue hemorrhage identified
9 within any -- with any anterior neck strap muscles.

10 There is some extravasation of blood within the soft
11 tissues of the right lateral neck, but there are extensive
12 decompositional changes with similar findings on the right
13 side of the body.

14 There there are no fractures within the hyoid bone,
15 which is confirmed by radiological evaluation. There is
16 symmetrical non-fusion of a hyoid bone along the lateral
17 aspects. There are no fractures identified within the
18 laryngeal cartilage.

19 Do you want me to keep going?

20 Q Sure.

21 A There is no evidence of trauma identified to the
22 body. There are no contusions or abrasions identified.
23 Although, the autopsy is limited by decompositional
24 changes. A sexual assault kit is collected at the time of
25 autopsy.

1 Q All right. This, again, basically says that in your
2 examination, you found no evidence of any type of injury
3 caused by trauma.

4 A Correct.

5 Q All right. The next thing you did was this
6 radiological study. As I understand it, the hyoid bone
7 was something that you felt necessary to extract and to
8 particularly x-ray.

9 A Yes.

10 Q What were you looking for?

11 A I was looking for evidence of a fracture or a
12 hemorrhage.

13 Q Let's see what the x-rays show. What do the
14 radiological studies show?

15 A AP x-rays of the head, chest, and abdomen do not show
16 any evidence of projectiles or other injury. A lateral
17 x-ray of the neck does not show any obvious evidence of
18 fracture, although interpretation is difficult due to
19 bloating of the soft tissues. An x-ray of the hyoid bone
20 after it has been dissected from the body does not show
21 any evidence of fracture.

22 You have --

23 Q What you did is after you --

24 MS. CAMPBELL: Objection, Your Honor. I think she
25 has a right to finish.

1 MR. MOORE: I thought she finished. I apologize. I
2 can't read it this far away either. I'm about half blind.

3 THE COURT: You may finish this --

4 THE WITNESS: Okay.

5 THE COURT: -- that paragraph or that section you're
6 in, ma'am.

7 THE WITNESS: The hyoid is not completely fused
8 making it more pliable and less likely to fracture.

9 BY MR. MOORE:

10 Q All right. What you did when you saw that the hyoid
11 bone wasn't broken, that is a significant non-finding in
12 regard to cases of strangulation, is it not?

13 A Well, it's very significant if you have a positive
14 finding, like I testified. I believe before -- just
15 because it's not fractured does not mean that she was not
16 strangled, so -- but if it was fractured, obviously, that
17 would be something I would definitely want to mention, but
18 it was not.

19 Q And because you didn't see any evidence of it on
20 x-ray, you wanted to go ahead and extract it.

21 A I extracted it, and then I x-rayed it again, yes.

22 Q When you extracted it, you found it very pliable and
23 saw no visible evidence of injury to the bone that
24 ultimately is broken or --

25 A I thought, actually, it was fractured at first

1 because I was able to bend it, which is why I x-rayed it.

2 Q You realized it wasn't?

3 A Right.

4 Q So you x-rayed it because you wanted to see if there
5 were even subtle changes that indicate some form of
6 hemorrhage, strangulation or trauma to the hyoid bone,
7 right?

8 A Yes.

9 Q What did you find?

10 A I found it was not fused, and it was very pliable.
11 It was not fractured.

12 Q And there were no even microscopic changes to the
13 hyoid bone?

14 A I never looked at that under a microscope.

15 Q Well, you needed the x-ray for that, really, correct?
16 Radiologically, it wasn't.

17 A Right.

18 Q Okay. So visually, manually, surgically and
19 radiologically, that bone was fine.

20 A Correct.

21 Q Now, the next thing I believe you've got down here is
22 internal examination, correct?

23 A Yes.

24 Q Tell me about those, if you would.

25 A Body cavities: With the exception of decompositional

1 fluid, the pleural, and abdominal cavities contain no
2 significant fluid. All body organs are present in normal
3 and anatomical position.

4 Do you want me to keep going?

5 Q The next thing is the central nervous system. You
6 found nothing wrong that, correct?

7 A That's correct.

8 Q Tell me how you -- why you checked the central
9 nervous system to make sure there's nothing there. What
10 are you looking for?

11 A Well, we're thorough in every autopsy. Every autopsy
12 I do, we examine the brain and the central nervous system.
13 So we remove the brain to see if there could have been a
14 natural disease there. There would have been hemorrhage
15 from trauma. It's part of the standard autopsy.

16 Q You found nothing wrong there, correct?

17 A Correct.

18 Q And the next thing would basically be the
19 cardiovascular system, correct?

20 A Yes.

21 Q You found absolutely nothing wrong with the heart.

22 A That's correct.

23 Q Or any of the blood vessels.

24 A Correct.

25 Q Including the blood vessels in the neck.

1 A Correct.

2 Q And throat and surrounding area.

3 A Correct.

4 Q All right. Let's take a look at the next thing we
5 did. We looked at the respiratory system. Asphyxia deals
6 with the respiratory system, right?

7 Do you have enough water?

8 A Yeah.

9 Q All right. Asphyxia deals with the respiratory
10 system and its failure, right?

11 A Right.

12 Q All right. Tell me what you found about the failure
13 of the respiratory system. What did you write?

14 A That there were decompositional changes, and I found
15 no other evidence. Like I said, that means the actual
16 lungs are examined in asphyxiation. There was nothing
17 wrong with her respiratory system. I guess is what you're
18 getting at, yes?

19 Q And we know the GI tract was normal; the pancreas was
20 normal, right?

21 A Right.

22 Q The next system I can't read. What does that say?

23 A Reticuloendothelial system.

24 Q Skin, is that right?

25 A No. That's the spleen and colotyphoid area, the

1 tegumentary area.

2 Q Nothing wrong there, right?

3 A Right.

4 Q The musculoskeletal system, no broken bones of any
5 type, right?

6 A No.

7 Q No toxicology?

8 A Right.

9 Q And then you have a cassette summary basically
10 talking about the things you looked at.

11 A Those are things I looked at under a microscopic,
12 yes.

13 Q All right. Microscopic everything is as normal as it
14 can be, right?

15 A Right.

16 Q And then you come to the summary and content. If you
17 would just read that for me one more time.

18 A Cause of death for this 26-year-old woman is probably
19 homicidal asphyxiation. The autopsy was limited by
20 depositional changes. The moderate decompositional
21 changes, along with the lack of fly eggs/magot activity
22 and the mummification changes on the right hand indicate
23 that the decedent was likely decomposing indoors after her
24 death for at least three days, most likely between three
25 to seven days.

1 There was no evidence of natural disease present at
2 autopsy or upon review of the medical records. Toxicology
3 testing was negative. No fractures or projectiles were
4 present at autopsy or upon postmortem radiologic exam.

5 Because of decompositional changes and the unfused
6 hyoid bone, changes associated with asphyxiation would not
7 be evident at autopsy, and the cause of death is based on
8 the investigation and lack of other findings at autopsy.
9 The pertinent anatomic findings are summarized under final
10 anatomic diagnoses.

11 Q Was Dr. Britt Dove, was he with you in this
12 examination?

13 A Who?

14 Q Britt Dove.

15 A Never heard of him.

16 Q What pathologist assisted you?

17 A There was not. I was the only pathologist in the
18 morgue.

19 Q It's fair to say this autopsy was extensive, wasn't
20 it?

21 A Yes.

22 Q There was no evidence that this lady had ever engaged
23 in any type of profuse bleeding, was there?

24 A No.

25 Q Do you recall that when the sheriff's office

1 delivered this body to the coroner, the sheriff was under
2 the impression that she had been shot?

3 A No. I did not know that.

4 Q One thing for certain, you examined the body for an
5 entrance wound and an exit wound, correct?

6 A I did not find any gunshot wounds.

7 Q But you would have examined or --

8 A Oh, of course.

9 Q And to do that, you had to look at the whole body,
10 correct?

11 A Yes.

12 Q While looking for evidence of an entrance wound or an
13 exit wound, you found no evidence of any type of fiber at
14 all on this lady's body, did you?

15 A No.

16 Q If you had found a fiber on her body while looking
17 for the gunshot wounds, what would you have done with it?

18 A If I had found a fiber -- I have never found a fiber,
19 but I suppose the sheriff's department would take
20 possession of it.

21 Q Because, like you say, it's their job to do an
22 analysis of what's on the body before it comes to you.

23 A Yes.

24 Q Was there any evidence that this body had been
25 sanitized by anyone before it came to you?

1 A No.

2 Q As a matter of fact, you are reasonably certain based
3 upon a reasonable degree of professional certainty that
4 the body had not been sanitized when it came to you,
5 correct?

6 A What do you mean by "sanitize", like washed? Is that
7 what you mean?

8 Q Washed, cleaned, alcohol anything like that to take
9 fibers off.

10 A No. I didn't find any evidence of that.

11 Q I was asking you about this hair a moment ago, and I
12 believe we got distracted. If there were a hair in a
13 hand, that would be evidence of a defensive struggle,
14 would it not?

15 A It depends whose hair it is. I -- I mean, if it was
16 someone she was struggling with, sure, but she could have
17 been picked up a hair. It depends on where her body was.
18 After seven days, I'm not sure.

19 Q Sure, but forensics is the science of trying to
20 determine what most probably happened beached upon what we
21 see, right?

22 A Right.

23 Q One of the things the forensic pathologist looks for
24 is evidence of a defensive struggle, correct?

25 A Yes.

1 Q And if there's something in the hand, one of the keys
2 to a defensive struggle is that whatever that is may have
3 come from the killer, if there was one, correct?

4 A Right. My concern is she didn't have any rigor, so
5 I'm not sure. Anything that she was holding at the time
6 of struggle would still be in her hand, or it could have
7 been picked up during the transport of her body. I did
8 not see her at the scene, did not see her until she had
9 been put in a body bag and transported to the morgue.

10 Q I understand. I'm just asking what the record shows.
11 If the record shows there was, in fact, a hair, a long
12 hair, in her left hand, that would be the only evidence we
13 would have of a defensive struggle, wouldn't it?

14 A Yes.

15 Q And if there was a defensive struggle, the evidence
16 is it would have been somebody with long hair if that hair
17 was in that hand, wouldn't it?

18 A Yes, if it was a long hair in her hand.

19 Q Do you know anybody -- have you heard of anybody in
20 your investigation who could have been the owner of that
21 hair in that defensive struggle?

22 A I did not interview anyone that had to do with this
23 case or analyzing the body. I'm not the investigator on
24 the scene. I do the autopsy in the morgue.

25 Q That hair, though, would be evidence of a defensive

1 struggle, wouldn't it?

2 A I suppose. I don't know anything about the hair.
3 That's really out of my area of expertise. I don't
4 examine bodies at the scene. I examine them in the morgue
5 and do autopsies.

6 Q Well, from a forensic standpoint, you have already
7 told us that the existence of the hair would be the only
8 evidence we have of a defensive struggle, right?

9 A If she had hair in her hand. I don't know anything
10 about this hair or how it was found in her hand. I really
11 don't feel qualified to speak to it.

12 Q You would have to have all of that information in
13 order to make a determination as to who the most likely
14 perpetrator was, right?

15 A That's not my job to figure out who, if someone was
16 murdered, who murdered them. That's out of my expertise
17 jurisdiction. I determine how someone died. I don't
18 determine who killed them.

19 Q Well, if you had that hair, seen that hair, or knew
20 of that hair, you would have -- that would be evidence of
21 a defensive struggle with the person who owned that hair?

22 A Possibly.

23 Q Very well. If there were a homicidal asphyxiation,
24 you would have expected -- with the idea that there's no
25 sedative in her body, you would have expected some form of

1 a struggle, would you not?

2 A I would.

3 Q And yet, there was no evidence of any struggle
4 anywhere on the body that you found, was there?

5 A No. Like I said, the decompositional changes would
6 have made it very difficult to find, the bruises or
7 anything, but no. I did not find anything definitive.
8 You're right.

9 Q On your examination, if she was killed by a third
10 party, you found nothing that would have linked Marcus
11 Bailey to her killing, would you?

12 A No.

13 Q You're telling me that based upon your suspicion of
14 foul play, based upon a reasonable degree of professional
15 certainty, you can rule out death by natural causes?

16 A I found no evidence of natural disease, and that's
17 why I asked specifically to review her medical records,
18 which again, I found no evidence of anything that would
19 have killed her, at least on her medical records, which is
20 how I came up with my cause of death.

21 Q If you had found evidence of traumatic strangulation,
22 you would have noted that?

23 A Of course.

24 Q If you had found evidence of traumatic suffocation,
25 you would have noted that?

1 A Of course.

2 Q If you had found evidence of traumatic back or chest
3 injury, you would have noted that.

4 A Yes.

5 Q And you noted none of those?

6 A That's correct.

7 Q There is a difference medically between strangulation
8 and suffocation, is there not?

9 A Yes.

10 Q Both of those are forms of asphyxiation.

11 A Yes.

12 Q Strangulation, suffocation, and pressure on the chest
13 would be the three forms of asphyxiation?

14 A Yes.

15 Q So you believe -- you have a suspicion that she was
16 killed?

17 A Yes.

18 Q ~~You have a suspicion that it was either~~
19 strangulation, suffocation, or somebody sitting on her
20 chest.

21 A Yes.

22 Q Of those three, which one was it?

23 A I don't know.

24 Q There is no way for us to tell if it was one of those
25 three, correct?

1 A That's correct.

2 Q There's actually no way to tell for sure that it was
3 one of those three, wasn't it?

4 A To a reasonable degree of medical certainty this is
5 what I deemed to be the most likely cause of death.

6 Q Based upon your suspicion of foul play --

7 A Yes.

8 Q -- but not based upon your review of the body, right?

9 A Based upon my review of the body and the lack of
10 other findings of natural disease or any other cause of
11 death, yes.

12 Q That's what caused you to suspect foul play?

13 A Yes.

14 Q That was your suspicion to led you to believe -- to
15 get to the opinion that it was homicide?

16 A Yes.

17 Q If you had found evidence that it was strangulation,
18 you would have listed strangulation in your report, right?

19 A Yes.

20 Q If you had found evidence of suffocation, you would
21 have listed that in your report?

22 A Yes.

23 Q In you had found evidence of sitting on the chest or
24 pressure on the chest, you would have listed that in your
25 report.

1 A Yes.

2 Q What you actually have done is because you couldn't
3 find a cause of death, you have basically eliminated
4 everything else and issued a conclusion, "Because I can't
5 find anything else, somebody must have killed her some
6 way"?

7 A Based on the suspicions, yes.

8 Q Now, after you completed your preliminary autopsy,
9 you sent out for a toxicology report, correct?

10 A Yes.

11 Q Because at that time, not finding any evidence of
12 trauma, you wanted to verify whether or not she died from
13 a drug overdose or poisoning, right?

14 A Right. We have to rule everything else out.

15 Q And, of course, the death certificate originally went
16 out as pending, right?

17 A Right.

18 Q Because at the time the death certificate was issued,
19 y'all didn't have an idea what killed her, right?

20 A We didn't have any positive findings.

21 Q When was the death certificate issued?

22 A I did not issue that. The coroner issued that.

23 Q Well, at the time the death certificate was issued,
24 we had no positive findings. That basically meant you
25 didn't know what had killed her.

1 Was Investigator Bouknight with you during the
2 autopsy?

3 A Yes.

4 Q He's a sheriff's deputy, isn't he?

5 A Yes.

6 Q Would you explain to the jury what in the world a
7 sheriff's deputy investigator is doing in a scientific
8 autopsy? What role did he play?

9 A He typically would take pictures of the body during
10 the autopsy, as well as collect any evidence. Like I
11 said, the hands were bagged at the beginning, so a lot of
12 times they do fingerprinting and collect samples from the
13 nails like he explained. So they typically attend
14 autopsies where there's suspicious circumstances.

15 Q This would be a copy of the original death
16 certification, would it not?

17 A Okay.

18 Q That looks like it, does it not?

19 A It does appear to be it, yes.

20 Q I was being distracted by my partner.

21 That looks like the original death certificate,
22 doesn't it?

23 A Yes.

24 Q What is it dated?

25 A Let me see. Where is it on this? It says -- it says

1 August 29th, 2012.

2 Q By August 29th, 2012, had you already dissected the
3 body?

4 A Yes.

5 Q Had you already x-rayed the body?

6 A Yes.

7 Q Had you already seen the hyoid bone?

8 A Yes.

9 Q Had you already looked at the neck?

10 A Yes.

11 Q The brain?

12 A Yes.

13 Q The lungs?

14 A Yes.

15 Q The nose?

16 A Yes.

17 Q The mouth?

18 A Yes, ma'am.

19 Q The heart?

20 A Yes.

21 Q The liver?

22 A Yes.

23 Q The spleen?

24 A Yes.

25 Q As of August 29th, after you had done all that, you

1 were still not able to reach your conclusion as to the
2 cause of death, were you?

3 A That's correct.

4 Q The only information you got that you didn't have was
5 the toxicology, and -- I believe that's it, isn't it?

6 A I don't know. I probably hadn't looked at the slides
7 at that point either, the microscopic slides.

8 Q All right. Do you know what trace evidence is?

9 A I've heard the term.

10 Q As a forensic pathologist and the assistant chief
11 medical examiner for Richland County, do you know what
12 trace evidence is?

13 A I'm not -- I don't deal directly with trace evidence.
14 That is not my field of expertise. I'm a medical doctor.

15 Q And you're also the official medical examiner of the
16 county?

17 A That issued it, yes.

18 Q And you work with law enforcement on a regular basis
19 to assist them in establishing causes of death so they can
20 move forward.

21 A Yes.

22 Q Do you know of any type of trace evidence that was
23 found to indicate that Marcus had anything to do with this
24 lady's death?

25 A I was not involved in any trace evidence.

1 Q That would be up to Mr. Bouknight and the other
2 police officers.

3 A Yes.

4 Q Well, now you relied on information that they gave
5 you about what they found.

6 A Yes.

7 Q If you were going to rely on the information from the
8 investigation before you suspect homicide, why wouldn't
9 you ensure you have all of the information from the
10 investigation before indicating the death to be a
11 homicide?

12 A Because I completed my portion of my autopsy and had
13 all the information as far as the tox. report, and
14 sometimes, you know, if it needs to be amended, I can go
15 back and amend it if further information occurs. That is
16 given to me. I was not given any further information.

17 Q Ma'am, you indicated in your report that the cause of
18 death is based on the investigation, correct?

19 A Yes.

20 Q Now, before -- if you're going to base your report
21 not on what you find wrong with the body but on the
22 investigation, wouldn't you want to have at least the
23 complete investigation before accusing somebody of murder?

24 A I have not accused anybody of murder.

25 Q Before finding that a decedent had been murdered,

1 wouldn't you want to have -- if you're going to use the
2 investigation for your report, which is what you say you
3 used --

4 A Uh-huh.

5 Q -- not your anatomical findings but the
6 investigation --

7 A Uh-huh.

8 Q -- before you conclude that this is homicide, based
9 not on your work but on the police's investigation, what
10 they told you, wouldn't you want to at least have the full
11 report in your possession so you can know the actual facts
12 you were relying on?

13 A I was relying on the facts that were given to me at
14 that time. I signed off on this report on September 6.

15 Q Yes, ma'am. My question is did you ensure -- since
16 you were issuing your report not on the medical
17 findings --

18 A It was based on the medical findings, the lack of any
19 other positive medical findings.

20 Q Right. Basically, you -- the medical findings
21 basically said, "I can't tell you what killed her," right?

22 A Right.

23 Q And like you said in your report that your report was
24 based on the investigation.

25 A Right.

1 Q So now we know that your report was issued based upon
2 what the police investigated, not what you found or did
3 not find at autopsy.

4 A It was based on what the coroner's investigative
5 report that the body had been moved and been dead for
6 several days. That is what I based it on.

7 Q Before you -- there was no hurry for you to issue
8 this report, was there?

9 A Usually, we're required to sign out reports within 30
10 days.

11 Q Required by whom?

12 A I think it's the National Association of Medical
13 Examiners requests or recommends that you sign all the
14 reports in a reasonable amount of time so that the police
15 and the prosecution can move forward.

16 Q So is that the reason you didn't get all the facts
17 before issuing your report? You're just under time
18 constraints?

19 A I felt like I had the information I needed, and I
20 felt like if further information came about and I needed
21 to amend it, that I would amend it.

22 Q Ma'am, I just want to make sure we understand
23 something. We know -- you would agree with me, you didn't
24 have all the facts of the investigation before you --

25 A I would agree that --

1 MS. CAMPBELL: Objection, Your Honor, asked and
2 answered at least ten times.

3 THE COURT: Mr. Moore, we need to move on.

4 MR. MOORE: Thank you, Your Honor.

5 BY MR. MOORE:

6 Q Now, the body not have any pockets in it, did it?

7 A The body didn't have any pockets? You mean the
8 clothing?

9 Q Well, she didn't have any pockets on her clothing.

10 A I didn't list her clothing. The coroner's office
11 removed that, and that was usually on their form. I don't
12 know the answer to that question.

13 Q You don't know of any pockets on any of the clothing
14 that she had.

15 A I don't know of any.

16 Q And did you know there was a cell phone found by her
17 body?

18 A Someone had told me that recently.

19 Q Do you know anything about the fingerprints on that
20 cell phone?

21 MS. CAMPBELL: Objection, Your Honor.

22 THE COURT: Mr. Moore, what does this have to do with
23 this witness's testimony?

24 MR. MOORE: Your Honor, this witness testified her
25 opinion comes from the investigation. If it comes from

1 the investigation, it's important to know what part of the
2 investigation she knew about, what she didn't.

3 Apparently, she surmised there's foul play because
4 she couldn't find anything.

5 MS. CAMPBELL: Objection, Your Honor. Here---

6 MR. MOORE: She relied on --

7 THE COURT: Whoa, whoa, whoa. Stop.

8 She has stated under oath that her -- it came from
9 the coroner's investigation and that report is available.
10 What was she has said the investigation in that paragraph
11 means.

12 MS. CAMPBELL: Mr. Moore, do you want a copy?

13 MR. MOORE: Thank you.

14 Your Honor, may I have one moment to review this?

15 MS. CAMPBELL: Your Honor, that's been provided to
16 them months ago.

17 MR. MOORE: I don't dispute that. I just asked the
18 Court if I might have a moment to review it.

19 THE COURT: You may.

20 (Pause.)

21 BY MR. MOORE:

22 Q Ma'am, I'm going to show you what the solicitor has
23 just given me as being -- it's the coroner's report you
24 were talking about.

25 A Uh-huh.

1 Q Does that look like the coroner's report you were
2 talking about?

3 (Pause).

4 A Yes.

5 Q Tell me, if you would, based on that report, what
6 facts are not contained in your report that you relied on
7 in developing your suspicion of foul play.

8 A Well, there's some information stating that someone
9 said they had last seen the decedent around noon on
10 August 22nd, 2012 with some friends, and I don't believe
11 she was alive at that point based on the findings of
12 decomposition.

13 Q Is that it?

14 A Let me see. I also found, it was interesting, the
15 number of air fresheners found in the home. Again, that
16 sounded like the body had been stored inside the house,
17 and --

18 Q So there were air fresheners, and someone talked
19 about when she had last been seen.

20 A Right.

21 Q Is that it?

22 A Obviously, someone was lying when she was last seen.
23 I found that -- that's usually indicative of foul play
24 when somebody hides someone's body, lies about it, dumps
25 them on the front yard. They're usually indicative of

1 foul play.

2 Q Anything else?

3 A I believe that's all I can find right now.

4 Q All right. So air fresheners in the house and
5 misstating when a person had last seen a decedent are the
6 two facts that you replied upon to suspect foul play?

7 A And having the body dumped on the front lawn, yes.

8 Q So those are it? Those are the three facts that lead
9 you to suspect foul play, correct?

10 A That I can think of at this time, yes.

11 Q Well, ma'am, this is important -- and I'm not trying
12 to be combative or anything else. We know that you based
13 your report on the suspicion of foul play based upon facts
14 that were in those reports?

15 A Yes.

16 Q Those were the three facts: Misstating when she had
17 last been seen; air fresheners in the house; and the fact
18 that the body was found in the front lawn?

19 A Yes.

20 Q Okay. Now, when Ms. Smith was brought in, she had
21 decompositional changes; is that right?

22 A That's correct.

23 Q From those changes, you can get an idea of how long a
24 body had been dead, right?

25 A Yes.

1 Q The point between death and autopsy is what we know
2 as the postmortem interval, correct?

3 A Yes.

4 Q And it's true that environmental conditions will
5 impact the rate of decomposition, correct?

6 A Yes.

7 Q We know that hands have started to mummify?

8 A I'm sorry?

9 Q The hands had started to mummify.

10 A Yes.

11 Q And that leads you to believe that she had been kept
12 inside?

13 A Yes.

14 Q We know that in August of 2012, it was hot and humid,
15 right?

16 A Yes.

17 Q The number of days last August got over 100 degrees,
18 didn't it?

19 A Yes.

20 Q And inside a car, the temperature can reach more than
21 200 degrees, right?

22 A Yes.

23 Q You don't have any idea where that body had been kept
24 before it was found, right?

25 A Somewhere indoors.

1 Q Do you have any first-hand knowledge of the
2 conditions upon which it had been kept?

3 A For the house or her -- I'm sorry. What are you
4 referring to when you say "in"?

5 Q Let me ask you this question. Do you recognize a
6 medical term known as accelerated decomposition?

7 A I assume that means an extremely fast decomposition.

8 Q What would cause an accelerated decomposition?

9 A Being in high heat.

10 Q How does high heat cause a body to engage in
11 accelerated decomposition?

12 A Well, the bacteria multiple fast. The bacteria
13 breaks down very, very quickly. They become bloated in
14 warm-like conditions. We all know that, but it would not
15 cause mummification.

16 Q Now, if a decaying body is kept inside, it will --
17 pieces of it will basically microscopically come into
18 contact with the carpet and fibers, whenever it's kept,
19 would it not?

20 A I would think more the fluids that are leaking.

21 Q Yeah. It's certainly possible that -- let's assume
22 the lady died under natural causes, whoever knew it got
23 scared or didn't know what to do, kept it there, finally
24 decided to do something with it, took it outside, put it
25 in the yard. That wouldn't be proof of homicide, would

1 it? That would be a natural cause, wouldn't it?

2 A It would be suspicious for sure.

3 Q Right. And because it was suspicious, you came to
4 the report saying it was homicide?

5 A Yes.

6 Q And that's why you still testify to that, because you
7 have a suspicion of foul play.

8 A Yes.

9 Q And what's you have as you're here today is a
10 suspicion of foul play, correct?

11 A Yes.

12 Q Now, I'm trying to eliminate some of these questions.

13 A Thank you.

14 Q We know that a decomposing body will develop
15 something called skin slippage; is that correct?

16 A Yes.

17 Q Skin slippage is where the body will basically begin
18 to slip on the -- the skin will slip on the body, correct?

19 A Right.

20 Q The skin is actually the largest organ in the body,
21 isn't it?

22 A Yes.

23 Q And it's the first thing to go with decomposition,
24 right?

25 A Often, yes.

1 Q And often a forensic examiner can tell a lot by skin
2 slippage, can't she?

3 A Well, it's part of decomposition. I mean, it just
4 means the body is starting to decompose.

5 Q But sometimes from a forensic standpoint, it can tell
6 you more than the fact than it's just decomposing,
7 correct?

8 A It usually just tells me that that's been
9 decomposing.

10 Q And you told us that forensic pathologists is --
11 pathology is determining what caused something by an
12 examination of the body, right?

13 A Yes.

14 Q Now, we know here, based upon the State's Exhibit No.
15 235 -- let me back up so you can still see.

16 A Uh-oh.

17 Q I'm not good with these.

18 We know that there was skin slippage behind the neck.

19 A Uh-huh.

20 Q Right here?

21 A Yes.

22 Q And right above the buttocks, right?

23 A That's where the tattoo was.

24 Q Right. And these are pretty much in a straight line,
25 aren't there?

1 A Well, that wasn't skin slippage. That was where I
2 was saying there's a tattoo.

3 THE COURT: If you need to step down, Doctor, you
4 may.

5 THE WITNESS: You mean the buttocks?

6 BY MR. MOORE:

7 Q Is this skin slippage?

8 A No. I'm just circling where there was a tattoo. I
9 don't know what it says, so I just made a circle.

10 Q Was there slippage here?

11 A Yes.

12 Q All right. The fact there was slippage behind the
13 neck and slippage in the buttocks area and basically in
14 the major stomach area in the front would tend to indicate
15 that whoever carried her carried her in a cradled
16 position. That would be consistent, would it not?

17 A I don't think I can really tell what position she was
18 carried in from where the skin slippage is.

19 Q If you were going to --

20 A Some parts of the body that are exposed to heat might
21 or that are warm either in certain areas. I don't know if
22 somebody was held for some time.

23 Q All right. Wouldn't that be consistent with being
24 carried in a cradled person?

25 A I couldn't say how she was carried. I really don't

1 know that position.

2 Q Okay. There is no evidence on this body that she was
3 carried in any way other than a cradled position, is
4 there?

5 A I cannot tell which way she was carried.

6 Q All right. Okay. You can have a seat.

7 Have you ever -- of those 1,000 autopsies that you
8 have performed --

9 A Uh-huh.

10 Q -- have you ever seen a case where a killer dumps the
11 body in his own front yard?

12 A Yes.

13 Q How many times?

14 A Oh gosh, very few.

15 Q That would be highly unusual, wouldn't it?

16 A Yes.

17 Q And that would be even more unusual based upon your
18 experience in this field with someone who would have had
19 the means to dump a body somewhere else, right?

20 A Right.

21 Q In other words, have you ever seen a case where a
22 body is dumped in the front yard where the killer had a
23 car in the garage that he could have easily transported
24 the body away and dumped it somewhere else?

25 A There are so many of the cases I get I was not at the

1 scene, so I was not able to look for the presence of a
2 car. So I can't really answer that question.

3 Q Well, in most cases, you basically make your
4 diagnosis based upon your examination of the body and not
5 based upon suspicion based upon what the investigation
6 shows, right?

7 A I try to take into account what the investigators
8 tell me, along with what I find on the body.

9 Q What a -- how a body is laid from a forensic
10 standpoint can tell you a lot about how it got there, can
11 it not?

12 A It can tell if the body has been moved, yes.

13 Q It can also give you an idea of how the body was
14 dumped, right?

15 A Yes.

16 Q Now, in this case, we have skin slippage on, I
17 believe, the -- I would call this the left side of the
18 body. From a frontal standpoint, this is where the skin
19 slippage is basically the most prevalent, right?

20 A I'll have to look at the diagram. Let's see. There
21 was some on her right arm. There was some on the left
22 arm. There was some on her upper abdomen, and there were
23 some on the back and on the butt.

24 Q The skin slippage -- have you seen the photograph of
25 the body laying in the yard?

1 A Yes.

2 Q The skin slippage where it's actually located is
3 perfectly, perfectly consistent with this body having been
4 dumped from the road and not from the house, isn't it?

5 A I don't know how I could possibly say that.

6 Q Well, the face is pointing towards the road, right?

7 A If you're in a different -- I mean, she was dumped.
8 They could have come from any direction. I don't think I
9 have any way of saying that.

10 Q If the body is being carried in a cradled position --

11 A Which we don't know for sure.

12 Q If it is, and certainly, this piece of skin slippage
13 indicates it might have been. If the body is being
14 carried from the road and dumped, you would expect
15 slippage such as you found, would you not?

16 A Again, skin slippage doesn't really tell me how the
17 body was carried. It just shows that's where some
18 blisters form and pop. That's where the skin was starting
19 to come apart. It doesn't tell me which direction from
20 the road she was dumped. I can't really say that.

21 Q Take a look at -- if I can find it. It's in this
22 mountain of stuff.

23 Your Honor, may I -- it's going to take me a minute
24 to find the photograph I want. It's going to be on the
25 overhead.

1 Is Watson here?

2 Oh, the picture of the body laying in the front yard.

3 Thank you, ma'am. Thank you, Heather.

4 THE COURT: The body, is this in evidence?

5 MS. CAMPBELL: No, sir.

6 MR. MOORE: This is not in evidence?

7 THE COURT: It's not in evidence.

8 MS. CAMPBELL: I don't know where this picture came
9 from. It's not one of the pictures in evidence.

10 MR. MOORE: I would assume -- I was -- I think this
11 photograph -- the photograph of the body in the yard, I
12 think, is in evidence. I hope so.

13 THE COURT: I mean, don't put it up there yet.

14 MR. MOORE: If it's not in evidence, I'd like to find
15 my copy of it and place it in evidence, Your Honor. I
16 think it's an exhibit already.

17 MS. CAMPBELL: Did you get it off the table?

18 THE COURT REPORTER: I have the one that's ID.

19 MR. MOORE: That's not it. This is it. No. This is
20 it. The photograph we are trying to put up, I believe, is
21 State's Exhibit 236.

22 MS. CAMPBELL: We just ask that he use the evidence
23 that's in evidence.

24 THE COURT: You can use the projector. I just wanted
25 to make sure it was in evidence.

1 MR. MOORE: Yes, sir, thank you.

2 Put 236 up, please. I just want it where the jury
3 can follow along.

4 Your Honor, the family is in here. I certainly don't
5 want to offend anybody.

6 THE COURT: Whoa, whoa, whoa. Let's take about a
7 ten-minute break. I'm going to figure out how much longer
8 we're going to continue. Return to your jury room. Keep
9 an open mind. Do not discuss the case. I'll be right
10 back with you.

11 (WHEREUPON, the jury left open court at approximately
12 5:01 p.m.)

13 THE COURT: Did you get it fixed?

14 MR. BIEDIGER: We're all set now. This is the
15 exhibit.

16 THE COURT: I don't have a problem with you -- I just
17 wanted to make sure it's in evidence before we flash it up
18 there and we couldn't remove -- I didn't mean to be double
19 checking you. That was the only inference I meant by
20 that.

21 MR. BIEDIGER: Your Honor, it's graphic in nature.

22 THE COURT: Okay. I mean, we've explained. I assume
23 Ms. Campbell, through her people, explained the
24 photographic nature of some of these pictures, whoever
25 needs to have it explained to.

1 Where are we on time?

2 MR. MOORE: May I say this: I'm tired. They're
3 tired. I know the doctor is tired. It's Friday
4 afternoon. I have got three or four more hours with this
5 witness.

6 THE COURT: Three or four more hours?

7 MR. MOORE: At least, at least that's what I would
8 estimate. I will try to cut it down over the weekend. If
9 the Court will give me the opportunity to quit now, I
10 might be able to pare it down, way down, but at this point
11 in time, I think I've got three or four more hours.

12 There are lots and lots of things that I want to ask
13 her about. We are just getting started.

14 MR. MYERS: I think that I can probably assist him
15 with a couple with the Court's permission.

16 MS. CAMPBELL: We'd like to push through if we can,
17 Your Honor. I don't think he has three or four more
18 hours. I understand he can't pare it down to be late
19 tonight. We would like to finish it, if we can.

20 MR. MOORE: I can show the Court how many notations
21 that I have left to go through. I'm about half-way
22 through my examination.

23 MS. CAMPBELL: And I'm going to object to that.

24 MR. MOORE: And that's just going to create a mess.
25 We're all tired. it's Friday.

1 THE COURT: It's not going to create a mess because
2 under South Carolina Rules of Evidence 611(a), I'm about
3 to control the mode of interrogation for effective -- for
4 the ascertainment of truth and needless consumption of
5 time.

6 There's multiple of these issues that have been gone
7 through over and over and over and over and let me say it
8 one more time again, over again, that it is taking an
9 inordinate amount of time when they have clearly been
10 asked, and they have clearly been answered.

11 Ms. Campbell has given a great deal of latitude, and
12 I'm about to control the interrogation of this witness
13 pursuant to the Rules of Evidence.

14 Now, I understand you have issues you need to go
15 through and areas you need to cover, but, you know, this
16 excessive repeating of issues is about to stop one way or
17 the other.

18 MR. MOORE: I can tell the Court I have not attempted
19 to excessively repeat issues. All I've done is the best I
20 can.

21 THE COURT: Well, I understand that, Mr. Moore, but
22 you know and I know and the record knows -- I mean, you
23 went through them, four separate occasions, the fact that
24 her nose was normal.

25 MR. MOORE: Yes, sir. And this is a murder case,

1 Your Honor.

2 THE COURT: I know that but -- and I understand when
3 you're going through things and coming back around and
4 making sure everybody understands it, but we went through
5 her nose at least three or four times.

6 I mean, I think that's part of the confusion --
7 that's not part of the confusion, but I mean, that's part
8 of the -- as to the Rule of Evidence 611(a)(2) to avoid
9 the needless consumption of time, you know, we're past on
10 a lot of these issues. I mean, we read a document to the
11 jury that is evidence line by line.

12 MR. MOORE: Yes, sir, we did.

13 THE COURT: So I'm being as patient as I possibly
14 can, and I promise you that I am. I mean, but are you
15 really telling me, as an officer of this court, that this
16 is going to be three or four hours on Monday morning?

17 MR. MOORE: I will hand the Court the proposed notes
18 that I have for the balance of this examination. I can
19 pare this down, I believe, to maybe another hour if we
20 break now. I will make every effort over the weekend to
21 do that.

22 The problem is that much of what she has said is --
23 ways that I have to prepare to go in other ways, and I'm
24 modifying as I go along.

25 I can tell the Court that this is the balance of the

1 notes that I have. It runs -- I can tell the Court how
2 many pages of notes I have left: One, two, three, and
3 there are other issues. I mean, but there are -- some of
4 these notes do involve things that I probably won't ask
5 about, but I can tell the Court I don't intend to be
6 repetitive.

7 The photo of the body is going to be critical.

8 THE COURT: Yeah, I'm not even on the photos. My
9 issue is not the photo. My issue is just in timing and in
10 general and asking to repeat the question.

11 I mean, she -- I assume -- I'm making an assumption
12 here and maybe I shouldn't, but I assume you're going to
13 ask her based on the photo if she can tell how the body --
14 whether it came from the road or whether it came from the
15 house. I think she said at least three times she can't
16 tell you that.

17 Do you see -- do you understand -- do you see where
18 I'm going, Mr. Moore? I mean, she is an expert. She has
19 told you based on the medical information provided to her
20 and obtained, and the investigative information provided
21 to her and obtained, and her medical diagnosis and her
22 autopsy and a review of all the information that based
23 upon the information she has before her right now, she is
24 incapable of telling you how the body was placed in the
25 yard. My guess is you're going to ask her, based on a

1 picture, how the body was placed in the yard.

2 MR. MOORE: Yes, sir.

3 Let me say this: Here is my problem with this
4 testimony. This lady is a board certified forensic
5 pathologist accepted by this Court on cause and effect.

6 Now, a forensic pathologist does more than simply
7 examine a body. Forensic pathologists examines the body
8 in its environment and basically issues opinions in regard
9 to cause and effect.

10 Now, what happens is she is saying, "Oh, I'm relying
11 on outside sources to form my opinion."

12 Then it's like, "Well, okay. What are they?"

13 "Well, there are three of them."

14 "Fine. Well, let's talk other outside sources that
15 you didn't look at, okay."

16 You're telling me cause and effect. Here is what
17 I've got: I've got skin slippage behind the neck and at
18 the behind. That says this lady was basically carried in
19 a cradled fashion.

20 THE COURT: No. The record before this jury, it
21 doesn't say that to anybody, but the question is asked by
22 the attorney. It hasn't been confirmed by any witness.
23 It hasn't been admitted by any expert. It hasn't been
24 proven by any expert testimony, and this witness, who is
25 an expert, which I deem to be an expert, hasn't said that

1 that's true at all.

2 MR. MOORE: And that's what I was going to ask her.

3 THE COURT: Right.

4 MR. MOORE: Now, as a forensic pathologist, one of
5 three things.

6 THE COURT: But you've already asked her that.

7 MR. MOORE: But if I show her the photograph, though,
8 and show where the body is actually laying. With the path
9 the body took to get where it was, as confirmed by her
10 report, it shows this body was dumped from the street. It
11 shows the body was dumped from the street.

12 THE COURT: What shows that?

13 MR. MOORE: The photograph shows that.

14 THE COURT: How does it show that?

15 MR. MOORE: Well, that's what I was about to get
16 into.

17 THE COURT: She just told you she doesn't know how
18 the body was dumped.

19 MR. MOORE: She also told me that she had not seen
20 the body at the scene.

21 THE WITNESS: That's --

22 MR. MOORE: If she is a true forensic pathologist and
23 able to gauge cause and effect, she ought to be able to
24 tell me if a body has -- if a decaying body has slippage
25 on the right side, face this way, and the arm extended and

1 one arm under, it's probably dumped this way for the
2 person's back towards the street.

3 Now, she may not be a board certified forensic
4 pathologist. She may not be able to give cause and
5 effect. She may be able to say she doesn't know. I don't
6 know what she is going to say, but I do know this: I'm
7 not a forensic pathologist, and I can figure out that if
8 you've got skin slippage on the right side, you've got a
9 right arm under and a left arm back and the head facing
10 this way, that it physically shows the body was basically
11 dumped from the street. Now, that photograph shows that.

12 THE COURT: There is zero -- and when I say zero, I
13 mean zero -- evidence in the record of the statement that
14 you just made.

15 MR. MOORE: There --

16 THE COURT: Not one single witness or expert has
17 testified, nor is that a fact in consideration for the
18 jury.

19 MR. MOORE: Exhibit 163.

20 THE COURT: Doesn't --

21 MR. MOORE: Shows --

22 THE COURT: It doesn't show anything but a body on
23 the ground.

24 MR. MOORE: Sure it does. It basically shows right
25 arm under. It shows the head in the position towards the

1 left arm, and it shows the left arm dragging. It shows
2 the grass down the front and grass on the back, which is
3 totally consistent with the body being dumped from the
4 street.

5 Now, that's in evidence. Now, she may be able to say
6 she doesn't agree with that or doesn't know. I would
7 imagine she is going to say she doesn't know because
8 there's so much she does know.

9 Look at Exhibit 236, right arm under, left arm
10 dragging, head faced toward the left arm. That's
11 physically -- if you know anything about physics, that's
12 almost conclusive proof that whoever dumped that body
13 dumped it this way, and the body must have slid towards
14 the house.

15 THE COURT: That's nothing but pure speculation.

16 MR. MOORE: Well, it's evidence. It's not
17 speculation. It basically is a legitimate conclusion.

18 THE COURT: You're telling me that whoever put that
19 body there couldn't have slid that arm under.

20 MR. MOORE: I'll tell you this: It's no more
21 speculation than to speculate that it's a homicide because
22 I can't find a reason for death.

23 THE COURT: So it is speculation?

24 MR. MOORE: No, sir. It's not.

25 Her testimony is that -- she says -- you know, if her

1 spec--- if her testimony is pure speculation, then yes,
2 it's speculation.

3 Otherwise, it's evidence, and this is a murder case,
4 and I got a right to defend my client, Your Honor. I
5 really take exception to the fact that I'm doing something
6 wrong. I have tried this case --

7 THE COURT: I didn't say you were doing anything
8 wrong at all. What I said was is that there has been --
9 we are two-plus hours into a cross-examination of a very
10 crucial witness, and I understand that and I respect that.
11 Also, this witness has very complicated issues, and I
12 understand that, and I respect that.

13 For the record, in my opinion, you're doing a very
14 good job of cross-examining this witness. However, there
15 are -- we have been in trial now for a week.

16 We are looking into going into a second week, and the
17 solicitor's office has been -- the State has been very
18 lenient in not making objections during your
19 cross-examination. However, I have the right per the
20 Rules of Evidence to control the interrogation and the
21 presentation for effective or the ascertainment of truth
22 and to avoid the needless consumption of time.

23 I'm not going -- I feel that I have been very, very
24 patient in not controlling and moving this case forward on
25 questions that are asked over and over and over again, and

1 if I give you this break until Monday morning, then I
2 expect this thing to move in a pace that allows you to
3 cover all of the areas that you need to that you feel are
4 important.

5 But I'm not going to allow -- you know, we don't need
6 any more questions about whether or not the nose has any
7 trauma. Everybody in the room knows that this woman's
8 nose had no trauma in any way, shape, or form.

9 Now --

10 MR. MOORE: I promise, no more nose questions.

11 THE COURT: Here is what I'm going to do. I am going
12 to inquire from the jury as to whether or not they want to
13 keep working, or they want to stop. They are the most
14 important people in the room, and they are the people who
15 I have direct responsibility for.

16 So I'm going to have the bailiffs inquire of them as
17 if they want to keep working tonight, or they want to
18 break until Monday morning.

19 Would you do that for me, Mr. Dye?

20 THE BAILIFF: Yes, Your Honor.

21 THE COURT: Okay. We're going to take a little break
22 while we do that.

23 (WHEREUPON, a short break was taken.)

24 THE COURT: All right. Bring the jury back in. They
25 want to break.

1 (WHEREUPON, the jury came into open court at
2 approximately 5:18 p.m.)

3 THE COURT: All right. Ladies and gentlemen, it is
4 late in the evening. It's seven -- about 5:20, and I know
5 you guys have been working all week. We are all very
6 appreciative for that.

7 I normally do not stop overnight in the middle of a
8 witness. That's very unusual and out of the ordinary.
9 However, in this case and in this situation and based on
10 the hard work that you all have given to us all week, I am
11 going to stop in the middle of this witness. We will
12 continue with her testimony on Monday morning.

13 Now, that being said, I need you all to listen to me
14 very clearly, okay. As I've told you throughout this
15 case, do not discuss it with anybody: Spouse, coworker,
16 friend, child, anybody that you know in any way, shape, or
17 form.

18 The media attention that we had earlier in the week
19 has subsided significantly. However, you are not to look
20 at any media, that means radio, internet, television,
21 newspaper, any kind of media that I can't think of right
22 now because it's the end of the week. Don't watch it.
23 Don't look at it. Don't let it have any impact on you in
24 any way, shape, or form.

25 I want you to keep an open mind about the case.

1 Remember not to discuss the case at all. Here is one
2 thing that I'm going to ask of you over the weekend. I'm
3 going to ask if you all can look into your lives next week
4 and see if it's possibly to go until six or 6:30 some
5 night in an efforts to get this case over with next week.

6 Now, if it is not, I will continue stopping at normal
7 time, okay. That's not going to bother me or offend me.
8 I control when court starts and control when court stops,
9 okay.

10 However, if we can push through, even if it's one or
11 two nights to six or 6:30, and that's not a major
12 inconvenience on anybody's life, I think that can help us
13 move the case forward and get it over with next week.

14 Okay. So you don't have to tell me now, but Monday
15 morning when you all get here, just send me some kind of
16 note on Monday night, Tuesday night, or Wednesday night or
17 all three nights would be good nights for us to work
18 later. When I say later, I wouldn't keep you past 6:30
19 unless you were in deliberations, okay. All right.

20 Thank you very much. Keep an open mind about the
21 case. Do not discuss the case at all. Do not view any
22 media about the case in any way, shape, or form. I'll see
23 you Monday morning at 9:30.

24 Thank you.
25

1 (WHEREUPON, the jury left open court at approximately
2 5:22 p.m.)

3 THE COURT: All right, Dr. Durso.

4 THE WITNESS: Yes.

5 THE COURT: You are required to be back here Monday
6 morning at 9:30. You are not to discuss your testimony in
7 any way, shape, or form with anybody at all, okay?

8 THE WITNESS: Okay.

9 THE COURT: When Monday morning starts at 9:30, if
10 you could be seated in that witness stand, we'll pick up
11 right where we left off with cross-examination.

12 THE WITNESS: Okay.

13 THE COURT: You are not to discuss your case with
14 anybody. We'll see you back here Monday morning at 9:30.

15 THE WITNESS: Okay.

16 THE COURT: Thank you very much.

17 Anything from the attorneys before we dismiss for the
18 weekend?

19 MS. CAMPBELL: Nothing from the State.

20 MR. MYERS: No, sir, Your Honor.

21 THE COURT: All right. Thank you very much. We'll
22 see you guys Monday morning at 9:30. I appreciate all
23 your hard work. Anybody has any exhibits on the tables,
24 don't leave with them.

25 (Whereupon, the proceedings were adjourned).

1 THE COURT: All right. Anything before we bring the
2 jury back in?

3 MS. SIMPSON: None from the defendant.

4 THE COURT: I did is receive a note from the jury
5 this morning based on the request of them Friday night.
6 They did say they are willing to start every day at nine
7 and go as late as we need to get the trial completed it.
8 So just for your planning purposes, keep that in mind.

9 MS. CAMPBELL: Thank you, Judge.

10 THE COURT: All right.

11 Dr. Durso, thank you for being here and present this
12 morning and being prompt. I appreciate that. All right.
13 Let's bring the jury back in.

14 (WHEREUPON, the jury came into open court at
15 approximately 10:13 a.m.)

16 THE BAILLIF: The jury is seated, Your Honor.

17 THE COURT: Thank you very much. Good morning.

18 THE JUROR: Good morning.

19 THE COURT: Welcome back. Thank you all for being
20 prompt this morning. We will continue now with the case.
21 We're in cross-examination of idea.

22 Mr. Moore?

23 MR. MOORE: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25

1 BY MR. MOORE:

2 Q Dr. Durso, I have reviewed all of my multi pages of
3 notes over the weekend. You wouldn't have any objection
4 if I didn't ask you any more questions this morning, would
5 you?

6 A I would not.

7 MR. MOORE: Your Honor, thank you. That will
8 conclude our examination of Dr. Durso. I thank you so
9 much for your courtesies.

10 THE WITNESS: You're welcome.

11 THE COURT: Thank you, Mr. Moore.

12 Redirect?

13 MS. CAMPBELL: Thank you, Your Honor. Just a few
14 questions.

15 REDIRECT EXAMINATION:

16 BY MS. CAMPBELL:

17 Q After extensive cross-examinations, has anything he
18 asked changed your opinion in any way?

19 A No, it has not.

20 Q The autopsy and microscopic findings and slide and
21 everything, are those available for your review?

22 A Yes, they are.

23 Q Is it unusual for you to send off your slides or
24 things like that for someone else to review?

25 A That's not unusual at all, no.

1 Q And you make those available?

2 A Of course.

3 Q And they're also available to talk to anyone about
4 your findings?

5 A Yes.

6 Q He asked you about findings on the body.

7 A Yes.

8 Q And you reviewed the crime scene photographs, ma'am?

9 A I did.

10 Q I show you State's Exhibit No. 10, just one of those.
11 Are you aware that the defendant threw a blanket there on
12 the victim at the scene?

13 A Yes.

14 Q So any fibers that may have been found would have
15 been attributed to a blanket that the defendant threw on
16 her?

17 A That would be logical, yes.

18 Q He also asked you about a hair that was found in her
19 hand.

20 A Yes.

21 Q You're familiar with the determine transfer?

22 A Yes.

23 Q What is transfer, ma'am?

24 A It's when something comes from one area onto --

25 Q Does a hair being in her hand, whether it was there

1 or not, have any effect on you?

2 A No, it does not.

3 Q He also asked you about -- that you told Investigator
4 Bouknight there at the scene that you weren't making a
5 determination right up until the autopsy that you were
6 going to do further investigation?

7 A That's correct.

8 Q At that point, had you had an opportunity to review
9 the medical records?

10 A I have not, no.

11 Q In her medical records, she was in the military?

12 A Yes.

13 Q And these were very extensive?

14 A Yes.

15 Q And thorough?

16 A Yes.

17 Q And you had an opportunity to review all of them?

18 A Reviewed all of them, yes.

19 Q At this point, it was just the autopsy photographs.
20 Had you had an opportunity to get back the toxicology?

21 A No, I had not.

22 Q He asked you about the hyoid bone. In fact, the
23 reason that you thought it might have been fractured when
24 you were doing your autopsy, what happened?

25 A I could bend it all the way. Usually, you can only

1 do that if it's fractured, and it wasn't until after I
2 removed it and x-rayed it that I realized it was not
3 fused.

4 Q You talked a little bit about postmortem evacuation,
5 urine versus feces. In this case, obviously, in your
6 opinion, when the body was moved, there was postmortem
7 evacuation from the bowels?

8 A Yes.

9 Q As far as urine, in order for the urine to come out
10 of the body, does it always have postmortem evacuation?

11 A No. It happens probably not even half the time.

12 Q And even if there is urine in the bladder, it may not
13 come?

14 A That's true.

15 Q And if there is no urine in the bladder, it's not
16 going to happen?

17 A Definitely not.

18 Q He glossed over, and we talked about the hemorrhaging
19 you found in the neck area?

20 A Yes.

21 Q And again, to be fair, that could have been caused by
22 postmortem decomposition?

23 A It could have, yes.

24 Q But, in fact, if there was hemorrhage found, it could
25 have been consistent with trauma to the neck?

1 A Yes.

2 Q He asked you specifically about your -- the
3 additional findings. You didn't know about the hair in
4 the hand, anything else.

5 Is there any additional information you needed other
6 than that that was initially presented to you by the
7 coroner's office for you to make a determination for the
8 cause of death?

9 A No.

10 Q In fact, in every case, they're don't come to you
11 with every single DNA finding during the investigation?

12 A No.

13 Q The defendant said he last saw her at 12 noon prior
14 to being found that morning in that early morning hours.
15 Is that in any way consistent with your findings?

16 A Not at all consistent.

17 Q Is that in any way possible in this case?

18 A That is not possible.

19 Q He also used the term suspicious, you know, that this
20 came to you. In many cases, you get what's called a
21 suspicious death?

22 A Yes.

23 Q And when you're using the word "suspicious", that
24 means the circumstances around which it's found.

25 A Yes.

1 MR. MOORE: May I ask counsel not lead?

2 THE COURT: Yes, leading is sustained.

3 MS. CAMPBELL: Thank you.

4 BY MS. CAMPBELL:

5 Q In cases where circumstances present as such, do you
6 always find as a homicide?

7 A No, I don't always find that.

8 Q In fact, as part of your duties, what do you do?

9 A I mean, I do a full autopsy.

10 Q And exclude --

11 A And exclude either if it's a homicide or a natural
12 death.

13 Q And again, in this case, asphyxiation includes what
14 things?

15 A It includes either being strangled either by
16 someone's hands or a ligature. It includes having the
17 face, including the nose, smothering, you know, having it
18 pushed into, you know, a soft or a hard object, as well as
19 compression of the chest.

20 So you're sitting on the chest or even on the back
21 with the person on the floor not allowing them to be able
22 to take a breath and breathe.

23 Q And in your review of everything once you've had an
24 opportunity to look at everything, that is the cause of
25 death in this case?

1 THE COURT: Please come forward and be sworn, sir.

2 STEPHEN PEARROW, after being duly
3 sworn, testified as follows:

4 THE CLERK: Have a seat in the witness box. State
5 your full name from the record. Spell your last name,
6 please.

7 THE WITNESS: Stephen P-E-A-R-R-O-W.

8 DIRECT EXAMINATION:

9 BY MS. CAVANAUGH:

10 Q Good morning, Deputy Pearrow.

11 A Good morning.

12 Q Where are you employed?

13 A Richland County Sheriff's Department.

14 Q And what is your position at the Richland County
15 Sheriff's Department?

16 A I'm a senior K-9 specialist, a K-9 handler.

17 Q And how long have you been employed at the sheriff's
18 department?

19 A Three years now.

20 Q Are you also the founder of the STARR Organization?

21 A Yes, ma'am.

22 Q And does STARR stand for?

23 A STARR is acronym for Search Tactics And Rescue
24 Recovery.

25 Q Can you explain your organization?

1 A STARR is a --

2 THE COURT: Hold on one second for me, Deputy.

3 MR. MOORE: Your Honor, if we may allow our prior
4 discussion regarding this witness to run through this
5 testimony.

6 THE COURT: Yes, sir. I understand, Mr. Moore. I'm
7 going to -- I understand your previous objection. You are
8 noted for the record and protected for the based on the
9 pretrial hearing that we had.

10 Thank you, ma'am. You may go forward.

11 BY MS. CAVANAUGH:

12 Q Can you please explain -- well, first, can you tell
13 the jury what the acronym stands for again?

14 A It's an acronym for Search Tactics And Rescue
15 Recovery.

16 Q And can you explain that organization?

17 A STARR is a nonprofit 501(c)(3) organization that
18 assists special agencies in searching for the lost and the
19 missing.

20 Q And what is used to search? Does it also -- are
21 there also K-9s there that are --

22 A Yes. We have the manpower, horses, K-9, ATVs, a lot
23 of electronic equipment that we're able to use.

24 THE COURT: Can you hold on for one second,
25 Ms. Cavanaugh?

1 Can you all approach real quick. I apologize. Give
2 me one second.

3 (WHEREUPON, a bench conference was held in the
4 Presence but not within the hearing of the jury).

5 THE COURT: That was for me. I apologize,
6 Ms. Cavanaugh, for interrupting you.

7 BY MS. CAVANAUGH:

8 Q Thank you, Your Honor.

9 You said your organization employs not necessarily
10 individuals and -- not necessarily employees, but you use
11 K-9 dogs?

12 A Correct.

13 Q And what type of K-9 dogs?

14 A They are basically all types. We don't set a certain
15 aside, but we have come to -- the Belgian Malinois, German
16 Shepherds, some Labradors have been some of our best
17 assets in training.

18 Q And what are these dogs -- what areas are they
19 trained, and what are they used for?

20 A Cadaver only.

21 Q What is meant by the term cadaver?

22 A Cadaver is nothing but a deceased body.

23 Q And they are trained to detect the scent?

24 A Correct.

25 Q But do you also have dogs that are used for other

1 purposes?

2 A We do here with Richland County. We do -- with the
3 STARR team, we do have one lab tracking dog. We just
4 don't get many calls for that type of dog.

5 Q Now, is the organization STARR, is that run by the
6 Richland County Sheriff's Department?

7 A No, ma'am.

8 Q What agencies actually contact you to assist them?

9 A Basically any official agency, fire department,
10 sheriff's department, police department, coroner's office,
11 any other type of either state or federal agency that may
12 need our assistance.

13 What we basically are, we offer what other agencies
14 may not have or may not have enough of.

15 Q Now, other than being the founder of STARR, do you
16 have any other arrive roles at that organization?

17 A Yes. I basically do it all. I'm the grant writer.
18 I'm the head trainer for all of the dogs. I've got some
19 people that, you know, train the dogs, but everything has
20 to come through me, write all the grants, all the
21 protocols, website is usually controlled, added or things
22 taken off by me.

23 Q And I don't believe I asked you this earlier. When
24 did STARR actually come into existence?

25 A We went from just more than paper in August of 2002.

1 Q Did you also receive training as a Master K-9?

2 A That's actually how it got started. I've always had
3 a passion for dogs, and I started working with tracking
4 dogs. I was going around with police department --
5 anybody who had any knowledge of dogs, I was following or
6 trying to learn from.

7 Finally, when it got to the point where I was
8 financially able and stable, I started doing my work on
9 becoming a Master K-9 trainer which is a pretty long
10 process.

11 It was out of Benton, Arkansas which is where the
12 company was at, where I earned my certification.

13 Q Is it fair to say that you've received extensive
14 training in handling cadaver dogs and other types of
15 tracking dogs?

16 A Many disciplines, yes.

17 Q Now, is your agency actually state certified?

18 A No. There is no state certification or any type of
19 certification for dogs. The State of South Carolina just
20 does not have one.

21 We -- basically, what I did, we have an internal
22 certification which every agency that has K-9s has an
23 internal certification. Richland County Sheriff's
24 Department has an internal certification. The STARR team
25 has an internal certification.

1 Once these certifications are recognized by another
2 agency that does or writes some of the protocol for these
3 things, and they are recognized by either a federal agency
4 or state agency, once our certification is recognized by
5 one of those top people, then we become recognized through
6 their organization.

7 Q So outside organizations also recognize STARR?

8 A Correct, yes.

9 Q And is cadaver detection and cadaver dog, is that a
10 nationally recognized field?

11 A Yes.

12 Q And, in fact, does the FBI use cadaver dogs?

13 A Yes, they do.

14 Q And again, do law enforcement agencies across the
15 state use your dogs?

16 A Yes.

17 Q Now, were you asked to assist in the investigation,
18 in this murder investigation?

19 A I was -- I was given a phone call by the chief of
20 Richland County to ask if I had a dog available that could
21 come down to the address at Heron Glen Road.

22 Q Okay. And which cadaver dog did you bring to the
23 scene with you?

24 A I brought a Belgian Malinois named Mia.

25 Q And you said -- can you say that, her breed again,

1 please?

2 A It's Belgian Malinois.

3 Q And what blood line does she descend from?

4 A It's an 18 century concoction of a German shepherd
5 and a Great Dane. It's its own breed like a Labradoodle.
6 They started doing those. It's...

7 Go ahead.

8 Q Does Mia have an acute power of scent?

9 A Yes.

10 Q And what else about her breed is important as it
11 relates to cadaver detection?

12 A Belgian Malinois, we've learned especially over time
13 is a lot of German shepherds -- not in all cases, a lot of
14 times, German shepherds -- at a certain point in their
15 lives, I don't know the percentage of it, start developing
16 hip dysplasia. Sometimes it's an early age. Sometimes
17 it's at a later age.

18 Me, personally, I do not like spending my time and/or
19 money on a dog -- now, if it's a pet, that's one thing,
20 but if it's a service dog that I have to use, I do not
21 like putting in time and effort into a dog that I'm going
22 to lose and not be able to use after two or three years.

23 Belgian Malinois still have a history of hip
24 dysplasia. The percentage is a lot less. They have very,
25 very, very strong -- we call it ball drive, play drive,

1 hack drive, which means basically if you threw a ball off
2 the Grand Canyon, they're not even going to look where
3 they're going. They just go off the Grand Canyon trying
4 to chase the ball. They have very, very high drive on
5 that.

6 Very -- can work in the heat, can work in the cold.
7 They are -- for most of -- we've looked for the lighter
8 animals to keep the weight off the hips. A lot of times,
9 we have to pick them up. I'm not interested in picking up
10 120 pound Malinois. I like to pick up about a 40, 60,
11 80-pound Malinois, just an all around good breed of dog.

12 Q And how old is Mia?

13 A Mia, I believe, is three.

14 Q And how long has she been a part of the STARR agency?

15 A We gotten Mia from a breeder, probably when she was
16 about six-and-a-half months old.

17 Q Okay. And is Mia a single-purpose dog?

18 A Yes, ma'am.

19 Q Can you please explain that?

20 A Single purpose -- let me give you a brief what
21 dual-purpose is. Dual purpose has more than one
22 discipline. A single-purpose dog only has one thing that
23 has been trained and paid for by reward or toy. That is
24 what Mia is, a single-purpose dog.

25 Q And what purpose is that?

- 1 A Cadaver.
- 2 Q And, again, what does cadaver mean?
- 3 A Basically, it's -- I guess the dictionary term for a
- 4 deceased body.
- 5 Q So is she trained to detect on a live person?
- 6 A No.
- 7 Q Just a dead person's smell?
- 8 A Correct.
- 9 Q What about dead animals?
- 10 A No.
- 11 Q She is not trained to detect on a scent from a dead
- 12 animal?
- 13 A Correct.
- 14 Q Did you -- is Mia trained?
- 15 A Yes.
- 16 Q And did you -- are you one of her trainers?
- 17 A Yes. I had big hand in Mia. I lost my dog to cancer
- 18 shortly before we picked up Mia. It was actually a little
- 19 bit of an argument between me and the dog's handler now,
- 20 who was going to get the dog.
- 21 So we decided to actually put this dog and train this
- 22 dog together. Now, I am responsibility for all the dogs
- 23 that we have.
- 24 Q Let me stop you right there. Is that because of your
- 25 role as Master Trainer?

1 A Yes, and director. I've got to know the dogs.

2 Q Okay.

3 A So we decided that we would -- we would put in the
4 effort for this dog together, because what -- it came to
5 the point to where I wanted to wait a little while before
6 I got a new dog. I was still kind of getting over the
7 loss of my last one, so I had a big, big part in Mia's
8 training.

9 Q And can you explain some of the ways that you train
10 Mia?

11 A Mia was easy, easier than some of the other dogs we
12 worked with in the past. Different things, basically, we
13 work on drive, which at Mia's six month young age wasn't
14 an issue.

15 What I mean by driving, throw a ball, catch it, bring
16 it back, over and over and over again. Mia was the type
17 of dog that would literally just seize her out from heat
18 because she did not know when to stop. So we had to watch
19 her to be able to shut her down to say, "Hey, we're going
20 to take a break."

21 Basically with training, with Mia -- some dogs, we
22 have to start at different levels. We start all at the
23 same level, but some of the those levels move quicker than
24 others.

25 Mia was a quick dog. I don't know if you're familiar

1 with the Kong, the rig rubber toys that you can get. At
2 the bottom, they have a hole in it. We start off by using
3 odor.

4 We actually take odor, gauze pads, feminine napkins,
5 they work great, they soak in odors. We take them and
6 leave them in an ammo can because they have a heat -- they
7 have a seal on them. We literally put odor -- and what I
8 mean by odor is what we obtain. I'm not saying we have a
9 body in our refrigerator at the house.

10 Q I'm sorry. You don't?

11 A No. We do not have bodies in our office, but we do
12 have is knee fluid, blood.

13 Q And are these all from a deceased person?

14 A Yes.

15 Q And how do you obtain these?

16 A Exception for liposuction. They're not from a
17 deceased person.

18 Q How do you obtain the knee fluid and the blood tissue
19 that you just referred to?

20 A Yeah. There is a -- there is a chemically made
21 formula. It's made by -- there's a couple of companies
22 that make it, but there's a chemically made one. It's
23 called Pseudos, Pseudo 1, Pseudo 2. Actually, there's a
24 Pseudo 3. I don't like them. It's not the real thing.

25 I like to get the odor, so I called DHEC and asked

1 them for a permit to be able to house what I needed to
2 work with dogs. After being put on hold and transferred
3 calls for I mean, an hour or so because no one really
4 understood what I was asking for, I actually assisted them
5 in writing a policy with what we would do with the
6 material and got a letter from them shortly after that,
7 that I had a permit to house human remains.

8 Q Okay. So this gauze and the feminine napkins that
9 you referred to, describe the human remains as it relates
10 to these materials you just spoke about.

11 A It's different. One, we have -- I don't know the
12 exact amount of boxes that we keep this thing in. It's
13 probably close to around 150 different containers.

14 Some are refrigerated. Some are frozen. Some are
15 left out. Some are buried. Some are left in the heat.
16 Some are left in the cold. Some are left in
17 refrigerators.

18 We put dates on them to know how old something might
19 be, but it's blood. There may be gauze that is in a box,
20 an ammo can or ammo box or Tupperware, something that has
21 a good seal.

22 We will put a vial or have a vial there. I don't
23 know how much blood may be in it. We will sometimes put
24 it directly on the gauze. Other times, we will put it
25 into a container that has holes in it.

1 We will place those items in the box and let the odor
2 you know, let the gauze, whatever we are may be using,
3 rags, clean rags that we can use. Let that soak in the
4 odor.

5 We will take that item, that gauze, and we use that
6 in either shoving it into gauze. I get the odor boxes.
7 We start off by that because we do use the actual odor
8 itself, the actual blood tissue, but once you have brought
9 that out and you have exposed it for a certain amount of
10 time, whether we want to bury it, whether we want to hang
11 it, it's losing -- for a better term, it's losing its
12 potency.

13 We try very, very hard not to use a lot of that,
14 because it's very hard to get. It's not the easiest thing
15 to do is to walk into somebody's -- you know, a doctor's
16 office and say, "Can I have that?"

17 So we moved to -- once we get to the toys, whether it
18 be a Kong or the odor. What we do, is basically we throw
19 it, throw it without odor in it. She picks it up, brings
20 it back.

21 We'll throw it into a high grass area where the dog
22 cannot see. Of course, the dog watches it bounce and then
23 it disappears. Well, the dog will run in the general
24 direction of where he or she saw it, and then all of the
25 sudden, the eyes aren't working anymore.

1 You see the dog's nose go down. The hunt drives
2 kicks in, and now they are searching for it. Over time,
3 we work the odor of the cadaver material or cadaver odor
4 into the Kong.

5 Then up another problem that dogs are very, very keen
6 on their sense of are they just smelling the rubber Kong
7 now. So we have to take that out of picture.

8 We know they have the odor of the cadaver material,
9 but they may also be searching for the rubber. We have to
10 take that out of the picture. This is when we have to go
11 into odor boxes.

12 Odor boxes are usually no less than three, no more
13 than five. They are built basically how anybody would
14 want to build them. Most of them are a foot-and-a-half by
15 a foot-and-a-half and sometimes two, two-and-a-half feet
16 high.

17 They have -- they're completely enclosed in with a
18 hole about -- we measure a -- either a soda can or maybe a
19 can of green beans, that kind of size hole that is in the
20 top of that box. Only one box has hinges on it. So one
21 box can only be opened. That is the only box that ever
22 has odor in it. The rest of the boxes are blank. There's
23 nothing them.

24 We put those boxes out, sometimes no less than three
25 feet away from each other and usually no more than I'd say

1 ten yards from one another. I'm sorry, about five yards
2 from one another, and then with a leash, we walk the dog
3 to each box, introduce him. What I mean by introducing is
4 a dog likes to follow your hand. You put your hand down
5 on something, the nose goes that way.

6 We start working on alerts. Alerts are any change in
7 the dog's behavior. After we've gotten the dog -- when
8 the dog gives us a good alert, they know the odor has been
9 imprinted.

10 It smelled like it did when we were throwing the Kong
11 out in the woods. Now, we're picking up the same odor out
12 here. So it goes to -- after a while, once the alerts
13 start happening, they change behavior, sticking its nose a
14 lot longer in the one that had the odor in it. We started
15 using the toy. The toy has no odor. It's just a
16 regular -- whether it be tennis ball.

17 All dogs have different -- we have one dog that
18 catches a hair dryer. I don't know, but whatever the
19 dog's toy he chooses is what we use. Once we get through
20 the odor recognition with the changes -- the dog changes
21 behavior, which is an alert, any change in behavior the
22 dog may have, he is rewarded for it.

23 Whether it's stopped, a quick head turn, a lots of
24 dogs do different things, hackles go up, tails go
25 straight, ears go back, ears go up, whatever the case may

1 be.

2 Once we have that, we start going into indications.
3 Indication is any trained response we put on a dog, sit,
4 bark, scratch, whatever the case may be.

5 Ninety percent of our dogs are what we call passive
6 alert or passive indication, which is sit or lay down or
7 bark. Once we have that, which means they go to the box
8 with the odor, they either sit down, lay down or bark, and
9 then they're rewarded. That's all they want.

10 They have no idea what they're -- you know, they
11 don't know what's in that box. They don't care what's in
12 that box. All they know is that the odor they've been
13 trained on -- and if I go to that, and I sit down or I lay
14 down, I bark, I get rewarded. I get my toy.

15 Q Again, what is this odor that you're referring to?

16 A The cadaver.

17 Q Okay. And as far as the human remains, as far as
18 those samples that you use and the gauze, are the human
19 remains actually taken out of these boxes?

20 A If they're even put in it.

21 Q Okay.

22 A In most cases, they're never put in it because you
23 put real odor, real parts into a box then you go back and
24 take it out, you've left that odor in that.

25 So we try to stay away from actually using --

1 especially in scent boxes. We try to keep only odor
2 transfer which is a gauze or something like that.

3 Q And this gauze, that's the gauze that comes in
4 contact with what?

5 A The cadaver, whatever we may be using, blood, tissue,
6 knee fluid. There's all different types, teeth, things
7 like that.

8 Q So it's really only the gauze or the other material
9 that's used to place in these boxes?

10 A Correct. It's just the odor.

11 Q Okay. Now, is this the way that Mia has been
12 trained?

13 A Yes.

14 Q Was she -- how long did you train her before coming
15 to the determination that she was ready to be used in
16 searches?

17 A Being a nonprofit and working other jobs, when I was
18 doing -- which with Mia, if I would have done it full
19 time, spent every day with her and didn't have to go to
20 work, I could have probably done it in 15, 16 weeks. With
21 Mia, it was probably about six to eight months we had her.

22 Q Okay. And who actually assisted you in training Mia?

23 A Jamie, Jamie Gunter.

24 Q Okay. And did y'all both come to the decision that
25 she was ready to be used in searches?

1 A Yes. We -- once we got -- we gave her a -- the green
2 light to actually go for certification. I actually
3 handled Mia on her certification, and then we'd bring two
4 outside parties in to -- that know our protocols; what I
5 ask for of the dogs, and if it's a pass or fail.

6 There's no point system. They don't lose half a
7 point for this or anything. If it's one thing messed up,
8 the dog is out. It's a failure.

9 Q Did Mia pass?

10 A Mia passed.

11 Q Now, are you also one of Mia's handlers?

12 A I am, yes. I do -- I was one of Mia's -- well, there
13 was only two of us, one of Mia's primary trainers because
14 me and Jamie decided to tackle this dog together.

15 Mia had some -- a little bit of an aggression issue,
16 and I was very -- I'm very good at dog aggression issues
17 where Jamie was not. So we decided -- I don't mean she
18 wanted to bite anything or anybody, but her aggression
19 issues was more -- she was a female, and she was very
20 aggressive towards other females dogs. We have lots of
21 other females dogs on the team, and it's just something we
22 don't tolerate.

23 Q Is there a difference between the term trainer and
24 handler?

25 A For me and Jamie there isn't. We actually went to

1 the same school together. A handler is one that handles
2 the dog, but a handler is also -- we -- the way I do it is
3 they actually become the trainer of the dog, as well.

4 Because I may see these handlers two, three, at the
5 best, four times a month. So they have homework to do. I
6 can't be with them all the time. So we give them work to
7 do.

8 I will know when they come back whether they've done
9 the work or not. Unless the dog is having an all out bad
10 day, I will know whether they have done what I've asked
11 them to do.

12 Q So is it -- is it fair to say that you are very
13 familiar with Mia?

14 A I have to be familiar with all of them, yes.

15 Q Including Mia?

16 A Yes.

17 Q And in your experience as Mia's trainer and handler,
18 has she proven to be reliable?

19 A Yes.

20 Q Can you give us some examples of that?

21 A Mia has been -- her training is -- her maintenance
22 training is what we call -- whether it be a weekend or a
23 weekday after work, we get a group where five, six
24 handlers will come down, and a trainer will work with the
25 dogs.

1 What we call maintenance training is what Jamie would
2 have to do on her own or all the other handlers would have
3 to do on their own. So her maintenance training has been
4 very -- she is actually -- what I say by maintenance is we
5 start -- we start a new project with the dog, whether it
6 be something different, whether it's wooded area, a buried
7 hide, a hanging hide.

8 I'll say I want you to do this. This is step one of
9 step 44. Mia would come back and be on step 44 only just
10 a few weeks or a few days after. She was very, very good.
11 She learned very quickly, and her -- I don't come up with
12 percents, but her percent of accuracy was very, very high.
13 Very rare for a lot of dogs that I've seen come and go.

14 Q Okay. Now, you stated in this case, Mia was used at
15 613 Heron Glen Road.

16 A Yes, ma'am.

17 Q And was there crime scene tape up when you arrived?

18 A Yes, ma'am.

19 Q Now, did you arrive later in the afternoon?

20 A Yes. It was later in the afternoon, yes.

21 Q Was it your understanding that investigators and
22 deputies and maybe a deputy coroner had already been to
23 the scene?

24 A I got -- I don't know where the -- where the phone
25 call was made from. I mean, I don't know if it was at

1 headquarters or from the scene, but I was called and asked
2 to get a dog and be down at that address.

3 Q But if there were individuals, such as I just said
4 that had already been in the crime scene tape and in the
5 home --

6 A Uh-huh.

7 Q -- would that contaminate the scene for Mia?

8 A No.

9 Q And why not?

10 A Mia is a cadaver dog, not a lab scent or tracking
11 dog.

12 Q So she detects on the scent that comes from a
13 deceased human?

14 A Correct.

15 Q Not live human?

16 A Right.

17 MS. CAVANAUGH: Your Honor, at this time, I'd ask
18 that Deputy Stephen Pearrow be qualified in the field of
19 K-9 handling including the field of cadaver detection.

20 THE COURT: Previous objection?

21 MR. MOORE: If I might voir dire him, please, Your
22 Honor.

23 THE COURT: Yes, sir.

24 MR. MOORE: Judge, might we take about two minutes
25 for a restroom break?

1 THE COURT: Yes.

2 All right, ladies and gentlemen. We're going to take
3 a break for just a few minutes. It's 11:20. Please do
4 not discuss your case. Keep an open mind about it. We'll
5 see you back in just a few minutes.

6 Thank you very much.

7 (WHEREUPON, the jury left open court at approximately
8 11:20 a.m.)

9 THE COURT: All right, sir. Let's take about
10 ten-minutes.

11 Deputy, do not discuss your testimony with anybody.
12 You may step down.

13 THE WITNESS: Thank you.

14 THE COURT: Ten minutes. Thank you.

15 (WHEREUPON, a short break was taken.)

16 THE COURT: Everybody ready?

17 MS. CAVANAUGH: Yes, sir.

18 THE COURT: Mr. Myers?

19 MR. MYERS: Yes, sir.

20 THE COURT: Bring them back in.

21 (WHEREUPON, the jury came into open court at
22 approximately 11:40 a.m.)

23 THE BAILIFF: The jurors are seated, Your Honor.

24 THE COURT: Yes, sir.

25 MR. MOORE: Good morning, Mr. Pearrow.

1 THE WITNESS: Good day, sir.

2 MR. MOORE: Mr. Pearrow, I believe that last Monday
3 at a motions hearing, you and I were talking each other,
4 and you were under oath at that time, is that correct?

5 THE WITNESS: Correct, sir.

6 MR. MOORE: Now, since that time, you've had an
7 opportunity to speak with the solicitor's office about
8 your testimony in this case, have you not?

9 THE WITNESS: Correct.

10 MR. MOORE: Which of the solicitors did you actually
11 speak with?

12 THE WITNESS: Just Katherine.

13 MR. MOORE: And you spoke with her about the
14 testimony that you had given that you do not claim to be
15 an expert, correct?

16 THE WITNESS: Correct.

17 MR. MOORE: When you were on the stand last Monday,
18 you were asked the question, "Do you claim to be an
19 expert?" You said no.

20 THE WITNESS: Correct.

21 MR. MOORE: As a matter of fact, you said, "I'm not
22 an expert." Those were your words, correct?

23 THE WITNESS: Correct. I don't know everything about
24 dogs. I just know mine.

25 MR. MOORE: Well, that's the language that you talked

1 about with the solicitor before testifying today, correct?

2 THE WITNESS: I'm sorry.

3 MR. MOORE: That's the language you talked with the
4 solicitor about before testifying today, correct?

5 THE WITNESS: I think it was something I said the
6 first time we talked.

7 MR. MOORE: You didn't say that last week when you
8 were asked, "Are you an expert in dog training?"

9 You said no, correct?

10 THE WITNESS: Correct.

11 MR. MOORE: As a matter of fact, you said, "I don't
12 claim to be an expert in dog training," correct?

13 THE WITNESS: Correct.

14 MR. MOORE: And when you told the judge last week
15 from that same witness stand under oath that, "I don't
16 plan to be an expert," that was true?

17 THE WITNESS: True, correct.

18 MR. MOORE: That's true today?

19 THE WITNESS: Yes.

20 MR. MOORE: So at this point in time, you not claim
21 to be an expert?

22 THE WITNESS: Correct.

23 MR. MOORE: As a matter of fact, you said, "I don't
24 claim to be an expert in anything," right?

25 THE WITNESS: Correct.

1 MR. MOORE: That's true today, correct?

2 THE WITNESS: Yes, sir.

3 MR. MOORE: Now, let's talk a moment about the
4 cadaver dogs and what a cadaver dog is. A cadaver
5 basically is a dead body, correct?

6 THE WITNESS: Yes, sir.

7 MR. MOORE: And this is what you call a
8 single-purpose dog, correct?

9 THE WITNESS: Correct.

10 MR. MOORE: This dog is trained to do one thing and
11 one thing only, correct?

12 THE WITNESS: Correct.

13 MR. MOORE: That is to find dead bodies?

14 THE WITNESS: Correct.

15 MR. MOORE: Now, we know that there was a dead body
16 in the front yard, correct?

17 THE WITNESS: Yes.

18 MR. MOORE: And we know that before you arrived, law
19 enforcement knew there weren't any dead bodies in the
20 house, correct?

21 THE WITNESS: Correct.

22 MR. MOORE: So you took the dog in the house to look
23 for something law enforcement knew wasn't there.

24 THE WITNESS: Correct.

25 MR. MOORE: Now, you told us a moment ago that this

1 being a single-purpose dog, we know that this dog was not
2 trained to find where human remains previously had been,
3 right?

4 THE WITNESS: Correct. We use human remains and
5 light odors, heavy odors to do that, but as far as what
6 her paperwork says, no.

7 MR. MOORE: This dog is actually trained to find an
8 object that is emanating an odor, correct?

9 THE WITNESS: Correct.

10 MR. MOORE: The dog is trained to find objects, not
11 where objects previously have been, correct?

12 THE WITNESS: We train them that way, as well. We
13 train them. As far as it says, no, but how we train them
14 is basically what you're describing.

15 MR. MOORE: And as you told us earlier that when the
16 object emitting the scent goes away, then the scent
17 dissipates rapidly?

18 THE WITNESS: It can go rapidly, yes.

19 MR. MOORE: Well, didn't you testify a moment ago
20 that you hated to use it a certain way because when the
21 object is gone, the scent is gone?

22 THE WITNESS: Not the scent is gone, but it does
23 break it down, yes.

24 MR. MOORE: Rapidly, correct?

25 THE WITNESS: In some cases, yes.

1 MR. MOORE: Well, when you said on direct examination
2 that the scent dissipates rapidly, you didn't say, "In
3 some cases, it dissipates rapidly," did you?

4 THE WITNESS: No.

5 MR. MOORE: It's fair to say that when the object is
6 gone, the scent, as you testified, dissipates rapidly.

7 THE WITNESS: Depending on what type of odor you're
8 using, yes. It can go very quickly.

9 MR. MOORE: So this dog is not trained to find where
10 objects have been. This dog is actually trained to find
11 cadavers?

12 THE WITNESS: Yes, sir.

13 MR. MOORE: That's why you say it's a single-purpose
14 dog?

15 THE WITNESS: Correct.

16 MR. MOORE: Now, is there any technological or
17 scientific field recognized where dogs are trained to find
18 where human remains previously have been?

19 THE WITNESS: Not to my knowledge, no.

20 MR. MOORE: All right. So then there is no type of
21 training that you nor the dog had in trying to determine
22 where human remains previously have been, correct?

23 THE WITNESS: Correct.

24 MR. MOORE: You certainly wouldn't claim to be an
25 expert in that field?

1 THE WITNESS: No, sir.

2 MR. MOORE: And I believe what you tell me you do as
3 a handler of a dog is that you interpret dog body language
4 is what you said, correct?

5 THE WITNESS: That's a way to put it, yes, sir.

6 MR. MOORE: All right. So as a handler, you speak
7 for the dog.

8 THE WITNESS: He can't speak for himself, so I guess
9 I'm going to have to; yes, sir.

10 MR. MOORE: All right. And you speak for the body by
11 interpreting dog body language.

12 THE WITNESS: Correct.

13 MR. MOORE: And you would then still stand by your
14 testimony that you gave under oath a week ago that you
15 still do not claim an expert in anything, as you said?

16 THE WITNESS: Correct.

17 MR. MOORE: No further questions.

18 Thank you, Your Honor.

19 THE COURT: You're welcome.

20 Anything on that point, Ms. Cavanaugh?

21 MS. CAVANAUGH: Just to clarify a few things.

22 BY MS. CAVANAUGH:

23 Q Deputy Pearrow, when you say you don't claim to be an
24 expert, what -- can you -- what do you mean?

25 A An expert doesn't need to be taught anything else.

1 Q So you don't claim to know every possible thing?

2 A Correct.

3 MR. MOORE: Objection, leading.

4 THE COURT: Sustained.

5 BY MS. CAVANAUGH:

6 Q But you know Mia; is that right?

7 A Yes.

8 Q Earlier in your testimony, when you were talking
9 about the gauze and the feminine napkins and the other
10 objects that you used to help train Mia --

11 A Correct.

12 Q -- those have been with human remains, correct?

13 A Yes.

14 MR. MOORE: Object, please, to the leading.

15 THE COURT: Sustained.

16 MS. CAVANAUGH: I apologize.

17 BY MS. CAVANAUGH:

18 Q Where have those objects, the gauze and the napkins
19 and the other items that are used, what have those been in
20 contact with?

21 A Human remains.

22 Q And then what happens to those human remains during
23 the training process?

24 A They're usually left in there. We don't like to use
25 -- we try not to use the actual human remains very often.

1 Q Okay. So to clarify, are the -- the gauze is left
2 there?

3 MR. MOORE: Objection to leading, please, Your Honor.

4 THE WITNESS: In training --

5 THE COURT: You can't answer.

6 THE WITNESS: Oh, I'm sorry. I'm sorry.

7 THE COURT: When I say "sustained", she has got to --

8 THE WITNESS: I understand.

9 THE COURT: -- rephrase her question or ask a
10 different question.

11 BY MS. CAVANAUGH:

12 Q Can you -- what are -- in -- what is in that box
13 during -- how is that transfer made?

14 A We placed the cadaver material, the odor, in one of
15 the boxes, and then the gauze is put in with it.

16 Q Okay. And what is removed?

17 A The gauze.

18 Q And how is that gauze used after it's removed?

19 A Used for training, either in the odor boxes -- it's
20 either placed out in the woods. Sometimes it's placed in
21 sterile jars with holes in it, that kind of thing so the
22 dogs don't get attached to material.

23 Q And, again, is it -- is it separated from actual
24 human remains?

25 A Yes.

1 Q And these human remains, we're talking about deceased
2 human remains; is that correct?

3 A That's correct.

4 MR. MOORE: Object to the leading, please, Your
5 Honor.

6 THE COURT: Sustained.

7 MS. CAVANAUGH: Beg the Court's indulgence.

8 (Pause.)

9 Nothing further on that point, Your Honor.

10 THE COURT: All right. Ladies and gentlemen, this
11 witness is going to be qualified in the area of K-9
12 handling. He is going to be allowed to give opinion
13 testimony in that area.

14 Now, that does not mean that you have to accept his
15 opinion, but it is evidence for you to use in any way that
16 you see fit and give the weight and credibility that you
17 believe is appropriate, as I've told you to do, that you
18 must do, with every witness that testifies before you.

19 Thank you very much, over defense objection.

20 BY MS. CAVANAUGH:

21 Q Deputy Pearrow, with you asked to respond to 613
22 Heron Glen Drive?

23 A Yes, ma'am.

24 Q And what day was that?

25 A I'm not even sure exactly what weekday it was, but I

1 know it was the 23rd of August.

2 Q Okay. And what time did you receive a call?

3 A I believe it was around three o'clock in the
4 afternoon.

5 Q And what was the nature of the call?

6 A They wanted a cadaver dog at a certain address which
7 was over in the Region 6, the Region 6 area. I left to go
8 get a dog.

9 Q And you said -- what time did you say you received a
10 call?

11 A I think it was about -- around three o'clock in the
12 afternoon.

13 Q What did you have to do before you were able to
14 respond to the scene?

15 A I was actually working that day for Richland County,
16 so I had to go up the chain of command, and finally, the
17 decision was made that I have to -- that I could do it,
18 but I'd have to go per se off the clock, pick the dog up,
19 do it, what was asked of me.

20 If my shift was not over, I had to finish up my
21 shift. I had to use what we call comp. time, flex time,
22 that kind of stuff, by the time we got -- had to do the
23 paperwork.

24 Q And what time had you actually -- well, first of all,
25 what time had you actually -- first of all, were you

1 specifically requested to respond, or was it just someone
2 in your agency?

3 A No. It was specific to me.

4 Q Okay. And what time did you actually arrive on the
5 scene?

6 A I don't know exactly, but I think --

7 Q Did you sign into the crime scene log?

8 A Yes, I did; yes, I did.

9 Q I'll direct your attention to that.

10 A 5:40 in the afternoon.

11 Q 5:40?

12 A Yes, ma'am.

13 Q Okay. And what did you do upon arriving?

14 A Before leaving go? Leaving to go get -- I had a
15 pretty good trip to go to make to go back and forth,
16 but --

17 Q Once you got to Heron Glen.

18 A Once I got there, there were several cars parked on
19 the left shoulder of the road, which would be the side the
20 house was on.

21 I parked behind them and was approached by the
22 investigators, and then they -- I told them, basically,
23 that I needed to let the dog -- let the dog out, let the
24 dog break a minute.

25 Q Okay. And did you have -- what type of information

1 did you have about the crime scene itself?

2 A Very little. They didn't give, and I didn't ask.

3 Q Okay. And why didn't you ask?

4 A I was into -- I had gone from Richland County Deputy
5 to STARR team director. Unless it's something illegal --
6 which I'm sure this wasn't -- it is -- I don't get into
7 the business of it. I go for what you ask me to do with
8 the dog. That's it.

9 Q Let me -- let me rephrase my question.

10 A Uh-huh.

11 Q Why is it -- why do you want to have limited
12 information about the scene itself?

13 A About the scene itself is because no matter how good
14 a trainer is or no matter how good a handler is, they want
15 the best for the dog. They want the dog to succeed.

16 When you know what you're looking for or where they
17 want or where the odor -- of where they may have put the
18 hides, you don't know you're doing it. I still -- I see
19 it all the time. You will direct your dog to that odor.

20 It's something -- it's like trying not to blink your
21 eyes. You can't do it. You're going to guide your dog
22 towards the odor. You want your dog to succeed.

23 By not knowing where anything is, what they're
24 wanting, what area they're wanting to search, I have
25 nothing to go by. I have nothing. I'm going in blind.

1 It's pretty much what we call a blind search. If I
2 had a spotter, which is someone that goes with me and
3 actually helps me watch the dog, it's called a double
4 blind where I don't know, nor does my spotter know. In
5 this case, I didn't want to know.

6 Q And did you park the car right at the address or
7 several houses down?

8 A A couple houses down. I believe on the left, yes.

9 Q What did you do once you parked the car?

10 A I let Mia had, had her on the lead. I knew -- we had
11 about a 40, 50-minute drive. That was enough for, you
12 know, eight hours of sleep for us. Mia needs 50 minutes
13 of rest, and she's ready to go.

14 So I usually let her out, go to the bathroom, and she
15 needs to exercise. She needs to burn off that high energy
16 just so I can get her focused.

17 Q And was that -- was her break done away from the
18 crime scene?

19 A Yes, two or three doors down, yes.

20 Q Once she was done with her break, what did you do
21 next?

22 A I brought her back in, let her get a drink of water
23 out of the car -- or out of truck real quick. I leashed
24 her back up, brought her back out.

25 I walked to the neighbor's house which was next door

1 to the house, the left of the house, and about -- around
2 the garage area, around the other house, I put her in a
3 down stay, which sit, lay down, reached down, unhooked her
4 leash and gave her the command to find it which was her
5 command to go to work.

6 Q And where did -- what did she do next? What did Mia
7 do next?

8 A She immediately went in to work. She -- between the
9 two houses, the house that I was called to and the house
10 that was to the left of it, she went in just a little bit,
11 and then immediately made a right turn and then went right
12 up in front of the front door, just right up inside the
13 front door, circled around to face me and laid down.

14 Q Okay. I'm going to show you what's marked as State's
15 Exhibit 1. Do you recognize that photograph?

16 A Yes.

17 Q Okay. And now, the -- was the body there at this
18 time when Mia arrived?

19 A No, the body was not there.

20 Q And it was your understanding it had been removed?

21 A Yes.

22 Q Did you know that at the time?

23 A No.

24 Q Okay. So you did not know that this was where the
25 body was?

1 A Right. I just -- I just called the indication to the
2 investigators.

3 Q And you just referred to an area that Mia ran to.
4 Can you show, point to the jury on this photograph where
5 show ran or where she went to?

6 A Yes. You see this is the house that was next door
7 that I was talking about. I believe there was a garage
8 right there. It was in that first door.

9 The first door to the right is where I deployed the
10 dog. When I say she came across, she appeared in between
11 the two houses for, you know, just a few steps and then
12 made a direct run for this area here.

13 As she approached it from the other side, she came
14 around with nose down all the way around the area and then
15 indicated -- or her indication was to lay down.

16 Q Can you describe laying down a little bit further?

17 A When I spoke earlier about passive indications,
18 indication is a trained response is what we trained the
19 dog to do when they're in -- when they're in the odor.

20 Hers, of course, was to sit. She is not rewarded
21 until she does it. When she got into -- when she made a
22 round -- when she went around that first house and started
23 working up, I already knew she was in something.

24 She was already into something there, and I stayed
25 back. As a matter of fact, once she started -- once I

1 started seeing alerts, which an alert is a change in
2 behavior in the dog, I actually stop. I don't -- I don't
3 interfere with her at all and let her do what she is
4 trained to do, let her have her own head, let her do her
5 job.

6 She circled around and when I say by lay down, that
7 was just an indication, she just -- all four legs go down
8 to the ground. Then she stares at me while she is waiting
9 on the reward at that point.

10 Q And how else has her behavior changed? What did you
11 notice about her behavior at that time?

12 A All dogs are different. Mia is very easy as far as
13 her alerts. Her ears will go back. She will literally
14 lower herself.

15 She will drool, and a lot of times in some cases the
16 hackles -- if you're not familiar with hackles -- hackles
17 -- if you've ever seen two dogs get together and get a
18 little mohawk going from the top of their head to their
19 back, those are raised up on Mia.

20 She is very, very easy to see her change in behavior.
21 She -- it only does it when there is -- when that odor is
22 present. We tried to bring other things into it to try to
23 make her do it. She just won't do it.

24 Q So she only has that change of behavior when she is
25 detecting?

1 A Yeah. With all of those -- all of those and almost
2 in order. Yeah, we tried to do other things to get her to
3 do it. We can't get anything out of her.

4 Q So does she display those behavior changes in that
5 front yard?

6 A Yes.

7 Q Right in front like you just showed?

8 A Yes.

9 Q What did she do after that? What did she do after
10 that?

11 A I usually get to the point to where I do not -- we
12 train with rewards, but once we are actually out working,
13 there is -- we do not reward the dog. It's a good praise,
14 pet her up and then take her out of the area. She was
15 taken out of the area and given a short break, given a
16 short break there.

17 Q Okay. And what happened next?

18 A After a short break, she was allowed to get some
19 water. I brought her back in again, I leashed her back up
20 again, brought her back out of the car and brought her
21 into -- past the area and into the -- up to the front door
22 of the house.

23 Q When you say past the area, what do you mean?

24 A Try to keep her out of it, try to keep her away from
25 it. She had already -- she had already found it. She

1 didn't need to find it again. If I had turned her loose,
2 she would have gone right back to that area again.

3 Basically, when we came out, we tried to move way away
4 from the area to get her out of it.

5 Q Okay. Did you go inside?

6 A Yes.

7 Q And what happened when you went inside?

8 A When we went inside, went in through the front door.
9 I again said, you know, what -- I asked the investigators,
10 "What do you want searched?" They said, "We want the
11 house. We want the house searched." I said okay.

12 Q Let me stop you right there.

13 A Uh-huh.

14 Q Do you remember which investigators were on the scene
15 with you at that time?

16 A I know Investigator Hugh was there with me, but I
17 don't remember who the second one was. I know they stayed
18 with me throughout -- throughout the search of the house.

19 Q Okay. So continue with what happened downstairs.

20 A Yes. She was -- again, the same way she was released
21 outside is the same way. Dogs are animals of habit, so
22 everything has to be done the exact same way.

23 I unleashed her, gave her the command again to find
24 it, and she -- she is pretty big on walking a perimeter
25 first. She walks the perimeter of the indoors and then

1 got into about the middle of the den area and literally
2 started showing signs of being in odor once again.

3 I did not -- I did not stop her or reward her or give
4 her anything to push her to work harder. I just wanted
5 her to have her own head, let her figure it out for
6 herself. At that time, she went up the stairs.

7 Q About how long do you remember it took for her to go
8 upstairs?

9 A How long it took her to run upstairs?

10 Q Well --

11 A From downstairs to upstairs?

12 Q Yes.

13 A Maybe...

14 Q If you remember.

15 A Maybe a minute, it was under a minute.

16 Q And where did she go when she first went upstairs?

17 A When she first went upstairs, there was a room to the
18 left. She went up the stairs and then turned left and
19 went into a bedroom there.

20 Q I'm going to show you what's marked as State's
21 Exhibit 2. Do you recognize that room?

22 A Yes.

23 Q And is this the room you're referring to?

24 A Yes, it is.

25 Q And is that the bedroom to the left?

1 A Yes.

2 Q Okay. What happened when you got to the bedroom?

3 A Once she went into the bedroom, she went -- from
4 downstairs to going upstairs, once she made that left and
5 walked into that first bedroom, I -- she went in, and then
6 I followed her into the bedroom.

7 She was in odor again. She was, obviously, showing
8 alerts again, and she went to -- around the bedside to the
9 right of the bedside, not the wall but the one that was
10 near the wall and was giving high alerts again.

11 She started drooling all over again. I told the
12 investigators again, "You know, this is an area she is
13 showing strong, strong alerts in."

14 Q That was in the bedroom to the left?

15 A Yes, ma'am.

16 Q Do you remember anything about that bedroom as far as
17 whether there was a closet or anything like that?

18 A There was closet at the foot of the bed just in front
19 of it. There were a couple of cardboard boxes that were
20 stacked outside of it, but -- and then this is the air
21 mattress that was there. I don't recall anything else
22 being in there.

23 Q Again, what type of behavior changes did she exhibit
24 in the room?

25 A She was in odor. She was alerting on odor, on the

1 trained odor.

2 Q And was she having the same changes that she had
3 earlier?

4 A Oh absolutely, yeah. The ears would go back. She
5 would actually hunker down, bend at the -- bend at the
6 elbows and then drool, hackles, all that. She was
7 definitely in odor.

8 Q And at that point, did you tell the investigators?

9 A Yes.

10 Q What did she do -- what did she do after you finished
11 in that bedroom?

12 A She went -- I brought her back out, and then she went
13 into a -- another bedroom. Again, she was not on a leash.
14 She was free to go where she wanted. She went into
15 another room and gave -- between a -- gave me an alert
16 again next to a bed.

17 There was a bed, a closet, and then a night-table
18 that was right there. I guess this is just a little --
19 it's a little walkway there.

20 Q I show you what's been marked State's Exhibit 81. Is
21 that the room that you're describing?

22 A Yeah. It's right there by the closets, yes.

23 Q Okay. So please point to the area that you're
24 referring to?

25 A Yeah. It's right in this area. There's that night

1 table and the closet area. There was a walking space in
2 between the bed and the wall there.

3 Q And, again, did her behavior change in that area?

4 A Yes.

5 Q What did that indicate to you?

6 A I just told investigators again, I said, "I've got
7 another alert in that area."

8 Q And again, these alerts, what do you mean by alert?

9 A Any change in the behavior. I knew she was in odor.

10 Q In odor?

11 A I knew she -- yeah.

12 Q What -- what happened after you left?

13 A She left there and went into another room. I believe
14 it was a -- she didn't spend much time in that. I think
15 it was an office, had a computer and TVs and stuff and
16 desk.

17 She spent very little time in there and came back
18 out. I did not tell her to go back in there again. Once
19 she was -- she was working, so I did not have her go back
20 in there again.

21 Then she went into a third bedroom, walked to the
22 left side of the room, I believe where the windows were on
23 one side of the bed.

24 Q Let me stop you right there.

25 A Uh-huh.

1 Q Let me show you what's marked as State's Exhibit 3.

2 A Yes.

3 Q Do you recognize that room?

4 A Yes.

5 Q Is this the room you're referring to?

6 A Yes, it is.

7 Q What did she do upon entering?

8 A To the right or to the left of the picture. I guess
9 there was some windows on the other side of that bed. She
10 didn't show any interest in anything there. She came back
11 out. This, I believe, is a bathroom.

12 Q Uh-huh.

13 A She went in the bathroom, worked that area, searched
14 that, came back out, showed no interest in there and then
15 went into this, which was a walk-in closet. She went into
16 that walk-in closet, worked the area and indicated. I got
17 an -- actually an indication in the closet. She actually
18 went down.

19 Q Okay. I'm going to -- do you recognize this
20 photograph?

21 A Yes, ma'am.

22 Q State's Exhibit 4?

23 A That's the closet, yes.

24 Q Okay. And describe what you did the upon entering
25 the closet?

1 A She went in. There's not much -- not too far she
2 could go, but she went in and went -- she actually jumped
3 over these boxes right here and indicated, turned around,
4 and laid down right in this area staring at me with an
5 indication.

6 Q Okay. What did you do after she indicated in the
7 closet?

8 A Just praised, told the investigators "I've got a
9 strong indication." I said, "I got an indication in the
10 closet," and then I pulled her out.

11 Q And did she try -- did she go back in?

12 A Yes. Once I tried to bring her out, I had not
13 leashed her up. I was going to leave her free. I was on
14 my knees playing with her giving her some heavy praising.
15 All she could do was turn around, come back to the closet.
16 I'd call her back out. At that time, we had to -- we had
17 to leash her up then.

18 Q And what did that -- what did that behavior indicate
19 to you?

20 A She just kept wanting to go back to the odor. She
21 wanted the reward. She knew the odor was there. They put
22 the reward -- they put the odor in the reward as one
23 thing. "I go here. This what I get for it."

24 Q And what odor are you referring do?

25 A The cadaver, yes, just odor that she is trained on.

1 Q From a deceased person?

2 A Correct.

3 Q The smell from a deceased person?

4 A Correct.

5 Q What did Mia do after you finished with the closet?

6 A After we got done with the closet, we -- I took her
7 out. We took her out. She gets tired very quickly, so we
8 brought her out. She was put back in the truck for
9 another break.

10 Q And before leaving the scene, what did you do with
11 Mia?

12 A It was actually a mutual agreement between me and the
13 investigator, I said, "I want to do it again. Let me put
14 her in one more time, and let's see what we get."

15 She had about a 20, 25-minute break. This time we're
16 going in through the back door, so we actually went --

17 Q Why did you make the decision to go in the back door?

18 A I didn't want her to retrace her steps, nor go by
19 that first odor by the front door.

20 Q Why is that?

21 A Just to get her out of it, just to get her out of it.
22 I did not want her to want to be rewarded for that. We
23 wanted to completely take her out of that area and bring
24 her in somewhere different.

25 Q Okay.

1 A So we put her through the back door, and again, same
2 thing, released her off lead. It was -- it was like a
3 recording of what we just did.

4 It was exactly -- I was looking for possibly
5 something different, maybe an alert in a place where she
6 indicated or maybe an indication where she had alerted,
7 just something different, looking for anything that she
8 may have been trying to give me a false, and it was pretty
9 much a recording of what we did the first time. It was
10 alerts. When there were alerts the first time and an
11 indication, whether an indication the second time.

12 Q And you just mentioned the term false. Are you -- as
13 her trainer and handler, are you able to detect false --

14 A Yes.

15 Q -- indications?

16 A Yes, what we call false alerts, false indications.
17 Dogs will do it. They want that reward. They want to
18 please you. One thing the dogs cannot do that we can do
19 is act. They cannot disguise their emotion, so when a dog
20 goes to give a false, you are able to read the dogs and
21 know you're just wanting a reward. "You are not working.
22 Let's get back to work." It's the ability to read them.

23 Q And during the search at the crime scene, was this a
24 false alert?

25 A No.

- 1 Q So you stated that she did the same thing upstairs?
- 2 A Same thing upstairs, yes.
- 3 Q And this was after she went through the back door?
- 4 A Correct; yes, ma'am.
- 5 Q What time did you actually leave the scene that
- 6 afternoon? I'll show you the crime scene log.
- 7 A Yeah.
- 8 Q Did you sign out of the crime scene log?
- 9 A Yes, I did.
- 10 Q What time is on there?
- 11 A 6:34.
- 12 Q So about 50 minutes after, 50 after you got there?
- 13 A Right.
- 14 Q Did you have any other involvement with this
- 15 investigation that afternoon?
- 16 A About three quarters of the way through, I think it
- 17 was during the break, we were given the dog. I was asked
- 18 to report to the Richland County Sheriff's Department
- 19 headquarters on Two Notch Road because they wanted to --
- 20 they wanted me to check something else.
- 21 Q So this would have been after six -- you said it was
- 22 after 6:30?
- 23 A Correct.
- 24 Q P.m.?
- 25 A Right.

1 Q And what -- was it the same afternoon?

2 A Yes, it was.

3 Q Okay.

4 A So we -- we drove -- I drove there and was told to
5 meet in the back parking lot of our headquarters.

6 Q And what information, if any, were you given about
7 why you were in the forensic garage?

8 A I didn't ask. I didn't ask.

9 Q Again, that's important. Why is that important?

10 A I don't want to know. It's the same thing. I
11 don't -- I don't want to unintentionally direct my dog.

12 Q Unintentionally direct your dog?

13 A Right, right. We got there. I got there. The
14 forensics lab or the building that's positioned right
15 behind our headquarters, they had laid out three cardboard
16 boxes basically like the scent boxes I spoke about
17 earlier.

18 These were cardboard boxes. I don't know, maybe two
19 feet -- a foot-and-a-half, two feet wide, maybe three-feet
20 tall, and they were folded. They said, "We want your dog
21 to check these boxes and see if there's any type of
22 indication and/or alert on the boxes."

23 I said, "That's fine."

24 Q Did you make a report of...

25 A I did.

1 Q And did you know what, if anything, was in those
2 boxes?

3 A Not at the time, no. They just wanted the boxes
4 checked. I think -- and I cannot recall it. I may have
5 been told it was something that was taken from the scene,
6 but again, I don't -- I didn't do a lot of questioning. I
7 didn't ask a lot of questioning.

8 Q Did they tell you which box --

9 A No.

10 Q -- as far as whether anything taken from the scene?
11 Did they tell you which box?

12 A No.

13 Q They were there when you arrived?

14 A Yes. They were already there.

15 Q Were they inside the garage or outside the garage?

16 A Inside the garage when I got there, yes.

17 Q And what happened with those boxes?

18 A Basically, we placed the boxes -- I kind of told them
19 how I wanted the boxes kind of laid out so the dog would
20 know exactly, oh, this was, you know, like a training
21 exercise.

22 Q What do you mean you wanted them -- what do you mean
23 by that?

24 A What I wanted -- what I have the boxes spaced out,
25 have the boxes spaced out. A certain -- you know, a good

1 distance apart to where it doesn't get too confusing for
2 the dog.

3 Q Okay.

4 A Then, again, we brought her out, and she is deployed
5 off lead and checked the boxes and indicated that one box.
6 I told the investigator I got an indication on this
7 certain box.

8 Q There was an indication?

9 A Yes, there was an indication.

10 Q Did Mia's behavior change?

11 A Yes.

12 Q The way you described earlier?

13 A Yeah. It was quick because this was something --
14 this was familiar. The cardboard boxes were kind of the
15 same, picture of her as the odor boxes we do in training.

16 Once she was in odor, it was an immediate indication,
17 not so much searching and a bunch of the drooling and all
18 that kind of thing because this was -- this was an
19 environment that I believe that she was familiar with.

20 She knew exactly what she needed to do when she got
21 into odor was to immediately lay down, and that's what she
22 did there.

23 Q And she would be familiar with this because this is
24 what you do in training?

25 A It's very similar to what we do in training.

1 Q Okay. After the first time that she alerted on that
2 box, what did she -- what happened next?

3 A We -- I actually praised -- I actually rewarded her
4 for that and let her go sit off in a shaded area and chew
5 on her reward.

6 I asked them if they would bring the boxes out and
7 shut the doors. We left the boxes outside in the parking
8 garage for, oh, I don't know -- exactly how much time. It
9 was several, several minutes, and then we did -- we moved
10 the boxes around.

11 Actually, I didn't touch any of them. The
12 investigators actually moved the boxes in the different --
13 into different areas or different locations. If there was
14 an indication on the middle box, then that wasn't going to
15 be the box that was going to be in the middle again, just
16 kind of moved them around.

17 She was deployed, once again, and went to -- and
18 indicated on that box. I said, "Indication on this box."

19 Q So she indicated again?

20 A Yes.

21 Q Did you -- did you later find out what was actually
22 in that box?

23 A Yeah. I was told later it was a blanket, I believe.

24 MR. MOORE: Judge, hearsay, Your Honor, what he may
25 have been told.

1 THE COURT: What was the question?

2 BY MS. CAVANAUGH:

3 Q Did you become aware of what was actually in that
4 blanket?

5 THE COURT: Overruled.

6 MS. CAVANAUGH: I'm sorry, in the box.

7 THE WITNESS: Yeah. I was told it was a blanket.

8 BY MS. CAVANAUGH:

9 Q And did you know where it had come from?

10 A I was told it came from the house.

11 Q And that was after?

12 A The first one, yes.

13 Q After Mia was used?

14 A Yes.

15 Q At the garage?

16 A Correct.

17 Q Beg the Court's indulgence.

18 (Pause.)

19 MS. CAVANAUGH: Thank you, Deputy Pearrow. Please
20 answer any questions from the defense.

21 THE WITNESS: Yes, ma'am.

22 CROSS-EXAMINATION:

23 BY MR. MOORE:

24 Q Deputy, you would agree with me the testimony you
25 gave the jury today is a good bit different than the

1 testimony you gave Monday about this case, is it not?

2 A I don't...

3 Whatever questions may come up.

4 Q Well, you would agree that the testimony you gave
5 today is a good bit different than the official report you
6 filed in this case, correct?

7 A Yeah, our reports are vague.

8 Q Well, there is a difference between being vague and
9 different, isn't there?

10 A I reckon so.

11 Q Well, you have been a deputy sheriff for how long?

12 A I've been with the sheriff's department for three
13 years.

14 Q And you've been in law enforcement how many years?

15 A About 16 years.

16 Q And as a law enforcement officer, you have been
17 trained in the appropriate way to make an incident report,
18 correct?

19 A Correct.

20 Q And as the head man at this STARR Institute that does
21 this dog work, you've been trained to indicate that your
22 reports have to be accurate, correct?

23 A Our reports are mainly used for statistical purposes.

24 Q Well, yes, sir, but the report that you gave in this
25 case was actually written and given to the Richland County

1 Sheriff's Department to be used as part of a murder
2 investigation, correct?

3 A Correct.

4 Q Let's just look at just one of the things and you
5 tell me if it's vague or if it's clear. All right. You
6 told me that this dog alerted five different places inside
7 this house, correct?

8 A I don't know.

9 Q Well...

10 A I mean, five is good. I didn't count how many times
11 we did it here today.

12 Q Well, the den, three bedrooms, and a closet. That's
13 five, correct?

14 A Correct.

15 Q All right. So you told us that this dog has alerted
16 to five different places inside the house, correct?

17 A Correct.

18 Q Now, your report here -- this is the only copy I've
19 got, so I hate to get this close to you. Am I going to
20 bother you if I get this close?

21 A No, not at all.

22 Q The report says the entire house -- do you have a
23 copy of your report?

24 A Yes, sir, I do.

25 Q All right. I'll get away from you. I don't mean to

1 invade anyone's space or be rude.

2 Look at the last sentence of your report. The entire
3 house was searched by a K-9, and the two above areas
4 mentioned were the only indications?

5 A Correct.

6 Q Now, two is different from five, right?

7 A Correct.

8 Q Right. In your official report, you told the
9 Richland County Sheriff's Department that the dog only
10 alerted to two places, correct?

11 A In my report?

12 Q Yes, sir. Where it says -- that's not -- I'm going
13 to ask you if it's vague or not. It says the entire house
14 was searched by a K-9. That's the dog?

15 A Correct.

16 Q And the two above areas mentioned were the only
17 indications, correct?

18 A Correct.

19 Q All right. So at the time of your investigation, you
20 told the sheriff's department that you had only found two
21 places where the dog had indicated to anything, correct?

22 A Indications, yes.

23 Q All right. An indication is basically where the dog
24 indicates, right?

25 A A trained response.

1 Q A trained response where a dog basically indicates
2 and says, "I'm reading this dog body language, and the dog
3 is alerting to something"?

4 A Correct.

5 Q All right. So you told the sheriff's department in
6 your official report that the dog had only alerted in two
7 places, right?

8 A On the report, yes.

9 Q And two and five are different numbers, correct?

10 A Correct.

11 Q Now, you also said the dog only alerted in two
12 places. That's pretty clear, correct?

13 A You're talking about the last sentence?

14 Q Yes, sir. It says, "The entire house was searched,
15 and the two above mentions were the only indications"?

16 A Correct. You just said only alerts.

17 Q Okay.

18 A I just wanted to clarify.

19 Q All right. You told us that an alert and an
20 indication is basically the same thing, right?

21 A One is a trained response. One is a change in the
22 dog's behavior.

23 Q All right. And an alert is an indication?

24 A No.

25 Q An indication is an alert?

1 A No.

2 Q All right. Well, show me anywhere in your report
3 where you say anything about the dog doing anything to the
4 den?

5 A There won't be.

6 Q Well, sir, you wrote down -- and you've been trained
7 to write down in your reports any finding you make which
8 you believe to be significant, correct?

9 A Yes.

10 Q An alert or an indication in the den would have been
11 significant, would it not?

12 A Correct.

13 Q Yet, you didn't write in your report there was an
14 alert or an indication in the den, correct?

15 A That's correct.

16 Q So if the dog had alerted in the den, you should have
17 written that down?

18 A It was just a mistake on my part.

19 Q All right. Well, as a matter of fact, what you
20 talked to about in this place is that the dog alerted only
21 in one bedroom, right; one bedroom, one closet, right?

22 A Which one you're looking for, an alert or an
23 indication?

24 Q Well, you basically have only written down about
25 bedrooms, one bedroom and one closet is all you had

1 written down, right?

2 A Correct, sir.

3 Q So you just happened to leave out two more bedrooms
4 that you're now testifying actually happened, right?

5 A Yes, sir.

6 Q That's just another mistake on your part as far as
7 the way you fill out your reports?

8 A Yes, sir.

9 Q Now, you testified a moment ago that when you got
10 there, you didn't know much?

11 A Correct.

12 Q And you didn't know where the body was located?

13 A Not at the time, no.

14 Q When you arrived, you were not met by anybody who
15 told you that the body -- the body was found just outside
16 the door?

17 A No.

18 Q Well, look at your report where it says, "Upon
19 arrival, I was met by an investigator that stated that the
20 victim was found just outside the front door deceased."

21 Now, that contradicts directly with what you just
22 told the jury. Explain to the jury, were you just
23 mistaken about that when you wrote it in your report, or
24 were you mistaken about it when you told them on direct?

25 A Could have probably possibly been in the order of it.

1 I was told maybe after and put it in the beginning.

2 Q Well, what you said was, "Upon arrival" --

3 A Correct.

4 Q -- "I was met by an investigator that stated that the
5 victim was found just outside the front door deceased"?

6 A Correct.

7 Q Do you see that? Is that true, or is that not true?

8 A What part?

9 Q That upon arrival, you were met by an investigator
10 that stated the victim was found just outside the front
11 door deceased?

12 A I don't recall -- I remember putting it -- not
13 knowing where the body was at first. I, obviously, had
14 put it in here at the beginning. It's my mistake.

15 Q Right. You basically told jury you didn't know about
16 any of that when you first arrived. It's important not to
17 for you to do your job correctly, right?

18 A Right.

19 Q And yet, in your report, you said that you learned
20 things that you shouldn't have known to do your job
21 correctly, right?

22 A Correct.

23 Q Well, as a matter of fact, you also put in the report
24 that it was the investigators' opinion that the victim may
25 have been placed in the residence after she died and was

1 in the residence for a period of time before being placed
2 outside. You wrote that, correct?

3 A Yes.

4 Q You didn't tell the jury that a moment ago, did you?

5 A I wasn't asked, sir.

6 Q Actually, that's the information you're not supposed
7 to have in order to do your job properly?

8 A It's information -- I don't want the location of
9 where they're at.

10 Q All right. Now, we know that this is a
11 single-purpose dog that is trained to do no more than look
12 for dead bodies, right?

13 A Correct.

14 Q According to your report, you already knew that the
15 dead body was outside, right?

16 A After the fact, yes; yes, I did.

17 Q According to this, it basically says.

18 A According to the report, yes.

19 Q Well, is that report just wrong?

20 A There are places in it that are incorrect, yes.

21 Q A lot of places that are incomplete or incorrect,
22 right?

23 A Yes.

24 Q Now, aren't you the head of this dog STARR Unit?

25 A Yes.

1 Q And you're the person who has to basically provide
2 the official reports that are used in things like death
3 cases, right?

4 A Correct.

5 Q Isn't it very important, and haven't you been
6 trained, that you're not supposed to put in the report
7 things that just aren't true?

8 A Correct.

9 Q And yet we know that in this report, you put at least
10 two things that just flat aren't true.

11 A I don't know if I would go as not true, but there are
12 mistakes in the report, yes.

13 Q Well, you said the dog only indicated in two places.
14 We know that's not true, and you said that the -- you
15 weren't told upon arrival that the victim was found
16 outside. We know that's not true. So there -- in a
17 two-paragraph report, you actually wrote down two things
18 that simply aren't true, right?

19 A In the report, yes.

20 Q Okay. Now, would you explain to the jury why, at the
21 time all of this was fresh in your mind, you would provide
22 the Richland County Sheriff's Department which contains
23 information which is simply not true?

24 A Question one more time.

25 Q Sure. We know that this -- you were asked by the

1 sheriff's department to be part of a murder investigation,
2 right?

3 A I was asked to come down and bring a dog to there. I
4 did not know anything about a murder investigation.

5 Q You were asked to do that in a professional capacity?

6 A Correct.

7 Q And you say you're not an expert in this case area?

8 A Correct.

9 Q And your job is to interpret dog body language?

10 A Correct.

11 Q And we know that you've been in law enforcement for a
12 number of years?

13 A Yes.

14 Q And you've been trained in the importance of accurate
15 reporting what you do?

16 A Correct.

17 Q And we know the report, the official report you gave
18 the sheriff's department, contains in two paragraphs two
19 important statements which simply are not factually
20 correct, right?

21 A I don't know where you're coming with the factually
22 correct.

23 Q Well, the dog alerted, according to you, to five
24 place and not only two, right?

25 A By the report, yes.

1 Q All right. And we also know that the investigator
2 did not tell you what you wrote down that upon arrival,
3 you were met by an investigator that stated that the
4 victim was found just outside the door deceased. That's
5 not true either, right?

6 A I don't know how to answer your question. It was a
7 mistake in print. If I wrote it after or before, whatever
8 the case may be.

9 Q That's a mistake, right?

10 A Yes.

11 Q I'm not saying you're lying.

12 A Right.

13 Q I just want to make positive that we can agree that
14 there are two -- in two paragraphs, you have written down
15 two things that are factually incorrect.

16 MS. CAVANAUGH: Objection, asked and answered.

17 MR. MOORE: You know, he says he doesn't understand
18 what I'm talking about. I'm just trying to make sure I
19 can clarify what he asked of me, which two -- he asked me
20 which two things aren't true.

21 He previously had agreed that two things weren't
22 true. Then he says he doesn't know if they're untrue, and
23 I'm having to explain it again.

24 MS. CAVANAUGH: Objection to the speaking.

25 THE COURT: Your objection is sustained. Move on.

1 BY MR. MOORE:

2 Q Sir, would you explain to the jury why this report
3 contains at least two factual inaccuracies on your part?

4 A Very simply, it was a mistake on my part.

5 Q Well, when you went in, did you know you were not
6 looking for a cadaver?

7 A I'm sorry?

8 Q When you went in, did you know that you were not
9 looking for a cadaver?

10 A I knew I was looking for some type of cadaver odor.

11 Q All right. Well, do you recall previously telling me
12 that you cannot testify based upon a reasonable degree of
13 professional certainty that the dog alerted to human
14 remains? You testified to that before that you cannot say
15 the dog alerted to human remains, haven't you?

16 A Yes.

17 Q So we now know that whatever the dog alerted to
18 inside that house, you are not able to tell the jury that
19 the dog actually alerted to human remains.

20 A The dog is only trained to be rewarded on human
21 remains.

22 Q Right. But you cannot say that whatever the dog
23 indicated or alerted, you're not able to tell this jury
24 that the dog actually alerted to human remains?

25 A That is correct.

1 Q All right. Right now, you don't know what that dog
2 actually alerted or indicated to?

3 A I can only testify to what the dog is trained and
4 what he is rewarded for to find.

5 Q All right. But as of this moment, you are not able
6 to tell this jury what object or thing the dog actually
7 alerted or indicated to?

8 A Correct, sir.

9 Q We do know, do we not, that on bedroom number one,
10 you told the deputies, "This is an area where you should
11 search," correct?

12 A No. I said this is an area where the dog had showed
13 an alert.

14 Q Right. Now, when you looked that the first area --
15 when you looked that the first area, you were there when
16 the dog indicated or alerted, right?

17 A Correct.

18 Q You didn't see any evidence of any actual human
19 remains there?

20 A No, sir.

21 Q You didn't see evidence of a fight there?

22 A No, sir.

23 Q You didn't see evidence of any blood there?

24 A No, sir.

25 Q You saw no evidence of anything where the dog either

1 indicated or alerted, correct?

2 A Correct.

3 Q And you told the investigators this is an area?

4 A This is where the dog has alerted, yes.

5 Q All right. But we do know that in that area, you saw
6 or found no human remains?

7 A Correct.

8 Q And that would be the truth in every single area in
9 that house where the dog either alerted or indicated,
10 correct?

11 A Yes, sir.

12 Q There was no human remains or any remnants of human
13 remains found at any place where this dog either indicated
14 or alerted?

15 A Not by me; no, sir.

16 Q And do you know that those areas were searched
17 thoroughly scientifically by the sheriff's department, and
18 nothing was found in any of those locations?

19 A I'll take your word for it.

20 Q So if there were no human remains found at any of
21 these five locations, that would indicate that the dog
22 alerted to either no human remains or something else?

23 A Right, the dog is only trained to find human remains
24 that he is rewarded for.

25 Q Right. That's another point I'd like to get to. The

1 dog is only trained to find human remains. It is not
2 trained to find where human remains have been previously,
3 correct?

4 A We do not train that way. They -- well, we do train
5 that way, but that is not how we look at it. This is not
6 how we put the dog down to do, no.

7 Q And as you said, once the human remain [sic] is gone,
8 the odor will dissipate rapidly.

9 A It can, yes.

10 Q And actually, generally does, correct?

11 A It can, yes.

12 Q And when you went into the bedrooms and the den where
13 the dog basically alerted to nothing that was found, you
14 didn't smell anything either, did you?

15 A Just high air fresheners.

16 Q Air fresheners, but you just -- you at no place
17 inside that house did the dog ever alert, correct?

18 A Did I smell anything?

19 Q Yeah.

20 A I was smelling something, but I couldn't identify
21 what it was.

22 Q All right. Well, did the dog go into the laundry
23 room?

24 A Yes.

25 Q At any point in time, the laundry room was

1 downstairs, right?

2 A Yeah, it was like a closet.

3 Q Did the dog go through the laundry room once or

4 twice?

5 A I believe just one time.

6 Q At any point in time when the dog was in this laundry

7 room, did the dog alert to anything?

8 A No, sir.

9 Q So you were able to tell us based upon that from an

10 opinion standpoint that based upon the indication or

11 alerting of the dog, there were no human remains in that

12 laundry room.

13 A Yes, sir.

14 Q Now, this thing that -- they went down to the

15 sheriff's department with the three boxes --

16 A Yes, sir.

17 Q -- did you know that the item with the three boxes

18 was taken from the laundry room?

19 A No, sir.

20 Q But you can tell us, based upon a reasonable degree

21 of professional certainty, that there were no human

22 remains detected inside that laundry room by this dog?

23 A The dog did not alert and/or indicate in the laundry

24 room, no.

25 Q Based upon then what you -- based upon your senses,

1 your eyes and your observations and the dogs keen senses,
2 you can state based upon a reasonable degree of
3 professional certainty that there was no human remains
4 found inside that laundry room?

5 A Again, the dog did not alert and/or indicate in the
6 laundry room.

7 Q And based upon the way you do business, that would be
8 from interpreting dog body language and your own senses,
9 you know of absolutely nothing to indicate there were
10 human remains inside the laundry room, correct?

11 A Nothing to indicate, yes.

12 Q Now, in this den, was there any evidence that a body
13 had been bagged or drugged or anything of that nature?

14 A I didn't -- I wasn't looking, but I didn't see
15 anything, no.

16 Q You found no fecal material or blood inside the
17 house, correct?

18 A I wasn't searching for it either but no.

19 Q And you were searching the for a cadaver, a body?

20 A Right.

21 Q That's the only thing the dog is trained to search
22 for?

23 A Yes.

24 Q We know this, since the dog is trained to alert to a
25 body, an actual human body --

1 A No, sir.

2 Q -- that's what the dog is trained to find, right?

3 A No, sir.

4 Q It's called a cadaver dog.

5 A It is a cadaver dog.

6 Q All right. And certainly, you found no cadavers

7 inside the house?

8 A Correct.

9 Q And really, no evidence of human remains to indicate

10 there had been a cadaver in the house, right?

11 A The dog indicated in the areas that I testified to.

12 Q I understand the dog indicated wherever the dog

13 indicated. I'm talking about actual finding something.

14 A I'm sorry; no, sir.

15 Q There was nothing --

16 A I was not looking, but I did not see any, no.

17 Q And certainly, you realized that the sheriff's

18 department followed up on those five places. You don't

19 know what they found, correct?

20 A Correct.

21 Q Now, this dog actually belongs to Jamie Gunter,

22 correct?

23 A That is correct.

24 Q And you previously told us that the one handler, one

25 dog is an important concept, right?

1 A Except for my instructors, yes. It is very
2 important.

3 Q Well, you didn't say that when we had a chance to
4 talk the last time, did you?

5 A I did say it was for my newer handlers; yes, I did.

6 Q Well, actually, in this dog's training history -- and
7 I don't see those documents in front of me now -- the
8 person who is listed as the handler of this dog during
9 training is who?

10 A Jamie. For the maintenance training, Jamie, yes.

11 Q And actually, in none of the training records of
12 STARR that you're head of, do you show as being a handler
13 or trainer of this dog?

14 A In that set of training records, yes, I'm not.

15 Q Are there any training records that -- of course, you
16 realize you provided those as the training records for the
17 dog, correct?

18 A Correct.

19 Q In the official records kept of STARR, you are shown
20 nowhere on those records as the person who trains the dog,
21 correct?

22 A Correct.

23 Q And you're shown nowhere on those documents as the
24 handler of this dog, correct?

25 A On those notes, no. I'm not on there.

- 1 Q And you're not the owner of the dog?
- 2 A No.
- 3 Q Jamie Gunter is the owner of the dog.
- 4 A Correct.
- 5 Q And that dog stays with Jamie Gunter day in and day
- 6 out.
- 7 A Yes, it does.
- 8 Q And it's important that the trainer and handler of
- 9 the dog be the person who works the dog because to
- 10 interpret dog body language like you do in your job, you
- 11 have to know the subtleties of the dog, correct?
- 12 A Correct.
- 13 Q That's especially true of a young dog, right?
- 14 A I don't know about young dog but...
- 15 Q Mia was only two years old at the time.
- 16 A Correct.
- 17 Q Still had a lot of puppy in her, right?
- 18 A Uh-huh.
- 19 Q Now, the person, then, who trained the dog and who
- 20 handled the dog day in and day out was Jamie Gunter?
- 21 A I helped train the dog.
- 22 Q But the records don't show you?
- 23 A Correct.
- 24 Q And when you say you helped train the dog, I believe
- 25 what your testimony was earlier was that you actually

1 supervised the training of the dog?

2 A Correct.

3 Q Oh, so then what happened is the dog was trained by
4 its handler and its owner, Jamie Gunter?

5 A Right.

6 Q And what you did with the dog in this training was
7 you supervised Jamie while she was actually the person
8 training the dog.

9 A Yeah. I wasn't the supervisor over it, but I was
10 actually involved in all of the training of the dogs that
11 we have, but yes, I am the supervisor of it.

12 Q But certainly as the supervisor, you have to be
13 involved in the training of all the dogs?

14 A Correct.

15 Q But the person who actually did the training and
16 handling of this dog was not the person who took the dog
17 to the house, true?

18 MS. CAVANAUGH: Objection, asked and answered.

19 THE COURT: Sustained.

20 BY MR. MOORE:

21 Q Well, Jamie Gunter didn't take the dog to the house,
22 did she?

23 A No.

24 Q She wasn't on the scene, right?

25 A Right.

1 Q Tell me how many times before this particular day
2 you, yourself, had ever worked with this dog as the
3 handler?

4 A In training?

5 Q No, no. I'm talking about actually in the field in
6 an actual investigation. You talked about your
7 relationship with the dog and all of this stuff. How many
8 times before this particular day, had you, yourself, ever
9 worked Mia in an active cadaver investigation?

10 A About five times.

11 Q You would agree with me that the -- there is no
12 scientifically recognized field of dog handling, correct?

13 A Yeah.

14 Q That's true?

15 A That's true, yes.

16 Q All right. You didn't follow up with the sheriff's
17 department to see if they had actually found anything
18 where this dog had indicated?

19 A No, sir.

20 Q Is that just because that wasn't part of your job?

21 A They're not what I was there for, no, sir.

22 Q Well, you also weren't there to find a cadaver, were
23 you?

24 A The body itself?

25 Q Yeah.

1 A No.

2 Q Well, if what you're there for is to find the cadaver
3 and that's what the dog is supposed to be there for, why
4 did you understand that you were there?

5 A I was there to bring the dog to that area, to that
6 house, and to deploy the dog and to see if there are any
7 alerts and/or indications.

8 Q Looking for what?

9 A The only thing that dog is trained to look for.

10 Q Human remains?

11 A Human remains.

12 Q And again, nothing was found that you know of? No
13 human remains were found inside the house that you know
14 of?

15 A Correct.

16 Q Now, is it important before you go into a house that
17 the house not be contaminated in any way?

18 A That's very important.

19 Q And that's because sometimes odors can be are brought
20 in from a decomposing body. They can get into clothes,
21 fibers and so forth, and they can be tracted into a house?

22 A Yes, sir.

23 Q Now, we know because we've looked at photos together
24 before that there are a lot of police officers out in that
25 yard in the area of the body, right?

1 A Yes, sir.

2 Q We also know there were a lot of police officers who
3 went inside that house?

4 A I don't know how many went in.

5 Q You know there were a lot of them?

6 A I imagine there had to have been some.

7 Q Right. And we know that there were a lot of officers
8 who got really close to that body who also went into that
9 house.

10 A I really -- I don't know. I mean --

11 Q And it's certainly reasonable that if those officers
12 had been in close proximity and then walked into one of
13 those upstairs bedrooms, they could have been carried
14 scent with them, correct?

15 A Very possible.

16 Q And they could have left scent in those bedrooms?

17 A It's possible.

18 Q And that very easily could have been what the dog
19 alerted to, right?

20 A It's very possible.

21 Q Actually, where we are right now, we don't know what,
22 if anything, the dog alerted do, correct?

23 A I can only tell you what the dog is trained to find.

24 Q I understand but the dog -- we know the dog didn't
25 find any of the things it was trained to find?

1 A Right. It's just odor.

2 Q And we don't even what caused the odor, if there was
3 an odor she alerted to, correct?

4 A Correct.

5 Q With the dog body language interpretation that you
6 do, you can't tell us what caused that dog to act like she
7 acted on that day in question.

8 A The dog only gets rewarded and paid to find what it
9 gets paid to find.

10 Q Now, since we know that contamination can lead to
11 false results, before you went into the house, did you
12 make any effort to find if the premise had, in fact, been
13 contaminated by people walking in and out of those
14 bedrooms?

15 A No, sir.

16 Q After you finished your investigation, did you make
17 any effort to determine whether or not the scene had been
18 contaminated by people walking in and out of those
19 bedrooms?

20 A No, sir.

21 Q That just wasn't important?

22 A I was brought down there for a certain reason, to see
23 if the dog would alert and/or indicate anywhere in the
24 house.

25 Q Did you know that when you went in?

1 A What's that?

2 Q Did you know that was the reason you had been called
3 down there at the time you went into the house the first
4 time?

5 A To see if there were any -- to see if the dog would
6 indicate on anything in the house?

7 Q Right.

8 A Yes.

9 Q I thought you said it was important that you not know
10 things like because if you know things like that in
11 advance, you have a way -- you say you can't help it. You
12 basically help bring the dog do it. Did you say that?

13 A Yes, I did.

14 Q So what was important for you not to know before you
15 started, you did know because you knew why you were down
16 there?

17 A The reason I knew I was going in the house is because
18 the dog has a single purpose. Where those locations were
19 not told to me, nor did I ask.

20 Q Is it true that how a dog will alert or indicate is
21 different from dog to dog?

22 A Not so much indications but alert, yes.

23 Q What's the difference between an alert and an
24 indication?

25 A An alert is any change in the dog's behavior, a

1 noticeable change in a dog's behavior. An indication is a
2 trained response that we teach the dog to do when he is in
3 source or when he is in the --

4 Q And those are basically like "sit down" or something?

5 A Yes, sir.

6 Q And indications --

7 A Indications are, yes, sir.

8 Q All right. And indication -- I'm not sure I
9 understand. I mean that sincerely. The difference
10 between an alert and indication is what?

11 A An alert is any change in the dog's behavior. It can
12 be -- well, anything like I described earlier. An
13 indication is a trained response when he is in the odor.

14 An alert is any change in the body of the dog,
15 anything that he may do that he doesn't do regularly. You
16 learn that. You learn that as you're putting the dog in
17 an odor. Okay, there is that one thing he does or that's
18 one thing she does.

19 An indication is what you want to do when the dog is
20 in odor or in source, or it's just trained response. What
21 do I do when I get in this. See, you know, if they're
22 aggressive or a passive indication.

23 Q When you were outside in the yard where the body had
24 been found, was the body already gone by the time you got
25 there?

1 A Yes. Yes, sir.

2 Q So by the time you arrived, the body had already been

3 picked up by somebody, put into somewhere and transported

4 from the scene?

5 A Correct.

6 Q Do you have any idea how long it was from the time

7 the body was discovered until you got there?

8 A No, sir.

9 Q Well, we got this log which tells us what time you

10 arrived, correct?

11 A Yes, sir.

12 Q What time is that?

13 A I don't remember what time it was again.

14 Q The log is somewhere. I don't know where it is.

15 Your Honor, may I secure some assistance from

16 somebody? The solicitor had -- there it is. Is that the

17 log right there?

18 THE COURT REPORTER: No. That's my exhibit list.

19 MR. MOORE: No. That's the exhibit list.

20 We have the exhibits way out of order. If I might

21 have some assistance in find it.

22 MS. CAMPBELL: There is not a log in evidence.

23 BY MR. MOORE:

24 Q Is there something that indicated what time you

25 arrived and left?

1 A There is, yes.

2 Q Well, apparently, I can't put my hands on it. I'll
3 ask that question another way.

4 Do you recall anything at all about what time of day
5 it was when you arrived?

6 A It was late afternoon.

7 Q Do you know that the body had actually been
8 discovered in the early morning hours around six o'clock?

9 A I heard that, yes.

10 Q If there was no actual object found in any of the
11 places where this dog indicated in the period of time from
12 the time the body was found until you arrived, you would
13 have expected any odor to have dissipated unless there was
14 an object there, wouldn't you, in that period of time?

15 A For a dog or for a human?

16 Q For -- you said that these things -- in your
17 training, the odors dissipate fast, right?

18 A Yeah, but I don't know how fast. I can't give you a
19 time on that.

20 MR. MOORE: All right.

21 Your Honor. I have nothing further.

22 Thank you very much, Mr. Pearrow.

23 THE COURT: Redirect?

24 REDIRECT EXAMINATION:

25

1 BY MS. CAVANAUGH:

2 Q Is Mia trained to detect the scent that emanates from
3 a deceased human?

4 A Yes.

5 MR. MOORE: Object to the leading, Your Honor.

6 THE COURT: Sustained.

7 BY MS. CAVANAUGH:

8 Q Mr. Moore asked you during cross whether Mia was
9 trained to detect on human remains; is that correct?

10 A Correct.

11 Q And is she?

12 A Yes.

13 Q Is she also trained to defect on scent from human
14 remains?

15 A Yes.

16 MR. MOORE: Objection, Your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: Yes.

19 BY MS. CAVANAUGH:

20 Q Yes?

21 A Yes.

22 Q The scent from cadaver?

23 A Correct.

24 Q And she had been trained that way for two years,
25 right?

1 A Correct.

2 MS. CAVANAUGH: Thank you, Mr. Deputy Pearrow.

3 THE COURT: Recross?

4 MR. MOORE: None, Your Honor.

5 THE COURT: Thank you, Deputy Pearrow. You may step
6 down.

7 Any objection to this witness being excused?

8 MS. CAVANAUGH: No, Your Honor.

9 THE COURT: Thank you very much.

10 Do I have a report on lunch from anybody?

11 (There was no response).

12 Christine?

13 THE BAILIFF: Not here yet, Your Honor.

14 THE COURT: How long do you think the next one is?

15 MS. CAMPBELL: I could do the coroner.

16 THE COURT: Okay.

17 MS. CAMPBELL: Is that good?

18 THE COURT: Yes.

19 MS. CAMPBELL: Thank you, sir.

20 The State calls Gary Watts.

21 GARY WATTS, after being duly sworn,
22 testified as follows:

23 THE CLERK: Have a seat in the witness box. State
24 your name for the record, please.

25 THE WITNESS: Gary Watts, W-A-T-T-S.

1 raise your right.

2 JASON PARKER, after being duly sworn,
3 testified as follows:

4 THE CLERK: Have a seat in the witness box. State
5 your name for the record, spell your last name, please.

6 THE WITNESS: Jason Parker, P-A-R-K-E-R.

7 DIRECT EXAMINATION:

8 BY MS. CAMPBELL:

9 Q Captain Parker, where are you employed?

10 A I'm employed that the United States Army.

11 Q What do you do there, sir?

12 A I am a Chemical Officer. Right now I'm currently
13 stationed at Fort Gordon.

14 Q You talk faster than me.

15 A Oh. I'm a Chemical Officer stationed at Fort Gordon.

16 Q Fort Gordon?

17 A Yes.

18 Q And how long have you been at Fort Gordon?

19 A I have been at Fort Gordon since February of 2012.

20 Q And where is Fort Gordon?

21 A Augusta, Georgia.

22 Q And prior to going to Fort Gordon in Augusta, Georgia
23 in February of 2012, where were you stationed?

24 A Fort Jackson South Carolina here in Columbia.

25 Q And what did your duties include at Fort Jackson?

1 A HAC company commander for 165th troop brigade was one
2 of the assignments. I have also assisted in S-3 for the
3 brigade and BCT company commander.

4 Q What does all that mean?

5 A It means that I was in charge of the troops.

6 Q In charge of the troops?

7 A In charge of the troops, yes, ma'am.

8 Q And being in charge of the troops, did you come to
9 know Marcus Bailey?

10 A Yes, ma'am.

11 Q And how did you know Marcus Bailey?

12 A He came to the unit in April 2011 as I rebuilt the
13 transfer. He was sent from another unit to my unit just
14 to get a fresh start and, you know, move on from past
15 disciplinary issues.

16 Q Okay. Is that unusual for someone to be transferred
17 like that?

18 A No, ma'am.

19 Q When you said he would get a fresh start when he was
20 transferred into your unit, what does that mean?

21 A For me, what I told him when he came in and what I
22 tell all my soldiers, I know what happened in the past,
23 but I don't care what happened in the past, clean slate.

24 You're here. I know you were an E-6. We had a rough
25 go. You're good with me. We'll send you to the board,

1 get your rank back. You know, I don't dwell on what
2 happened before. You show you can be a good soldier,
3 that's all I need to know.

4 Q Okay. Let me back up a little bit about it. Are you
5 somewhat familiar with his history in the Army?

6 A Yes, ma'am. I was briefed on it before he came to
7 the unit.

8 Q And prior -- up until 2009, actually until 2010, was
9 he a good soldier?

10 A Yes, ma'am, he was an E-6. I mean...

11 Q And what does E-6 mean?

12 A He's a staff sergeant in the United States Army. He
13 would have been a -- it depends on what position. He
14 would have been a squad leader in charge of, you know,
15 eight to ten people if he had his position.

16 You know, according to looking at his record, he was
17 fast tracking. He made E-6 pretty fast. So he was -- he
18 was doing the right things checking the right box. He was
19 well on his way to, you know, being -- continuing a great
20 career in the Army.

21 Q And, in fact, he had gone overseas, I believe, on two
22 different tours?

23 A I believe that's correct. It's been awhile since I
24 looked at his DD 214.

25 Q And I show you his -- and y'all have got numbers for

1 everything.

2 A Yes, DD 214, yes, ma'am.

3 Q Does that reflect some of the commendations her got
4 prior to 2010?

5 A Yes, ma'am.

6 Q And, in fact, when was his last tour of duty over? I
7 believe it was in Iraq.

8 A Yes, ma'am. It was Iraq from April 14th, 2008 to
9 April 6th, 2009. Then actually -- I believe that's the
10 correct date.

11 Q But that --

12 A Yeah, and then 2005, 2006.

13 Q Was a separate tour?

14 A A separate tour, yes, ma'am.

15 Q And he was an E-6 at that point; is that correct?

16 A I'm not sure what his rank was at that point.

17 Q When he came to your unit in the Spring of 2011, had
18 he lost rank?

19 A Yes, ma'am.

20 Q And were you familiar with why he lost rank?

21 A Yes, ma'am.

22 Q And don't go into any of that, but when he presented
23 in your unit in the spring of 2011, what rank was he?

24 A He was an E-4.

25 Q An E-4?

1 A Specialist, yes, ma'am.

2 Q And what's an Article 15?

3 A Article 15 is non-judicial punishment the Army uses.

4 Q What does that mean to those of us that don't know
5 what it means?

6 A Laymen's term, it's corrective action we can use.
7 Like, you know, if a soldier does something, investigative
8 order, I can -- I can -- if there's company grade, field
9 grade, you know, as a company grade, I can take rank. I
10 can take their pay. I can take -- put them on extra duty,
11 which, you know, after work call, they can do other, you
12 know, maintenance tasks around the brigade.

13 So it's a way of just -- you know, it goes in their
14 file, but it's supposed to get their -- you know,
15 attention. Hey, you did something wrong, and you're
16 getting punishment for it.

17 Q And prior to him coming to you in April -- is it
18 April of 2011?

19 A April of 2011, yes, ma'am.

20 Q Had he gotten two Article 15s?

21 A Yes, ma'am.

22 Q And he had gone from E-6 to what?

23 A And E-5.

24 Q And then from an E-5 to what?

25 A To an E-4.

1 Q What kind of an I equivalent rank you might
2 understand, an E-4?

3 A E-4 is a specialist. It's the -- E-6 -- E-5 and
4 above, E-5, 39 is a non-commissioned officer. Then E-4 is
5 a specialist. You're still -- you're not -- you're a
6 non-commissioned officer.

7 You're still concerned like -- everybody is a
8 soldier, but you know, you're E-1 through E-4, you're
9 lower enlisted range. Once you get to E-5, you're a
10 non-commissioned officer given more -- you know, more
11 responsibility, more duty as a--

12 Q And then he was transferred into your unit. What was
13 the purpose in that, sir?

14 A To get it a rehabilitative transfer. To get, you
15 know, a fresh start. He is away from the units that gave
16 him that --

17 Q That had problems?

18 A -- had problems. Getting to a new unit, starting
19 anew and continue with his military career.

20 Q And, again, as you testified earlier, it was a fresh
21 start, and you told him that?

22 A Yes, ma'am.

23 Q And did you or the Army do anything to try to help
24 him as far as being a good soldier?

25 A Yes, ma'am. We laid out what we expect of him. I

1 mean, initial counseling, you know, this is what we expect
2 of you as a soldier. You know, this is pretty much a
3 guideline of saying, you know, this is what we expect of
4 you to move on and, you know, and be successful in our
5 company and also, you know, making sure that we knew, hey,
6 he told us that.

7 You know, medical issues he might be having. I told
8 him -- if you have issues, your number one issue is to
9 help yourself. You just let us know. If you need to go
10 to doctor's appointment, you let us know.

11 I mean, that's -- you know, we want him to get help
12 if he needed help.

13 Q Okay. And that was offered to him?

14 A Yes, ma'am.

15 Q And have you had other soldiers come to you in a
16 rehabilitative-type situation?

17 A Yes, ma'am.

18 Q And have you offered them the same services?

19 A I have and --

20 Q Have they taken advantage of them?

21 A I had a soldier come in. Same issue, he went from an
22 -- I believe an E-6 to an E-4. Again, he had a Field
23 Grade R15. I put him to work. He did great. I sent him
24 back to the board which we call -- the board is where you
25 go when you -- it's for NCOs. You go to a board.

1 They ask you questions and get points for a
2 promotion, so I sent him to the board. You know, he got
3 his E-5 back, so he became a non-commissioned officer
4 again. He's still going great things. So he turned -- he
5 knew he made a mistake. The person I'm referencing turned
6 his career around. There was a second chance, and he took
7 that chance and ran to it.

8 Q So even in the Army, you recognize people making --

9 A Yeah. I mean, everyone is human. You make a
10 mistake, and you can correct your mistakes.

11 Q So over the months from April through November -- and
12 I'll get to November in a minute -- did you try to help
13 him or get him help if he needed?

14 A Yes, ma'am.

15 Q And how did he respond?

16 A He responded -- you know, started by going AWOL
17 again. I can list the dates if you want me to during the
18 time that he went AWOL.

19 Q What does that AWOL mean?

20 A AWOL, absent without leave. He didn't show up for
21 formation. Didn't know where -- he had assigned place to
22 be. He wasn't there. I wasn't accountable for him. As a
23 commander, I'm accountable for all soldiers underneath me,
24 their whereabouts, their health and their well-being.

25 So he came to me April 11th. On 28 April, he failed

1 to report to PT formation, physical training. We do it in
2 the morning, you know, physical exercise.

3 29 April, failed to report to PT again. 6 May,
4 failed to report to PT formation; 12 June, failed to
5 report to PT formation; then from 13 June to 14 June, he
6 was listed as AWOL, again, absent without leave; 22 June,
7 he failed to report to PT; and from 23 June to 28 June, he
8 was listed as AWOL; then on 29 October to 2 November, he
9 was listed as AWOL.

10 During those times, he came to us saying, you know --
11 after all that time, we put in for another Article 15,
12 non-judicial --

13 Q This would be his third one?

14 A This is his third one. So during the first
15 reading -- after the first reading -- this started in
16 June. At the first reading, he went AWOL again, and
17 then --

18 Q What does that mean, after the first reading?

19 A Oh, you get read the first time. You know, this is
20 what we're doing. I'm going to give you an Article 15 for
21 this reason. Then he has time to go to -- see JAG, the
22 military person lawyers. JAG, Judge Advocate Corps.

23 He went AWOL. Then he comes back in enough time
24 where if you're gone more than 30 days, you get dropped
25 from roles which means that the Army -- you're dropped

1 from the Army, your pay stops. You know, you're no longer
2 my concern.

3 So he comes back, so he is still part of my unit.
4 But -- and during that time, you know, he is trying to
5 have doctor appointments. He missed doctor's appointments
6 or he'll show --

7 Q Why was he referred for doctor's appointments? Did
8 you refer him?

9 A We referred him, and we also said, you know, you're
10 having issues. You know, we discussed that.

11 Q What types of issues?

12 A Having nightmares, you know, because with two tours,
13 he's -- we thought maybe PTSD, you know, post-traumatic
14 stress syndrome, so we sent him to the doctors. He said
15 -- and they verified it. They wanted to start a mental
16 evaluation board, MEB.

17 Q Okay.

18 A So I said, "You can do that, but we're still doing
19 the" -- you know, Article 15 had started the chapter, the
20 chapter process of -- that's separating someone from the
21 military there's different chapters. That's what we call
22 it is we chapter them out of the military for different
23 reasons.

24 Q Let me ask you this --

25 A So --

1 Q -- you referred him, actually, for medical treatment
2 if he needed it, right?

3 A Yes, ma'am.

4 Q And was he responsive to that?

5 A He -- he said the doctor said -- he would show up for
6 an appointment and then the following appointments he
7 would not show up for, or he was on medicine that would
8 make him sleep. So he didn't -- after we got back, he
9 didn't show up for work until 09:00 so nine in the morning
10 so --

11 Q To accommodate the medicine?

12 A To accommodate the medicine so he didn't have to show
13 up for PT formation. Now -- so we started working with
14 that. The following appointments he would miss. Then his
15 medical evaluation board, they would get the packet
16 together.

17 You know, it was determining, you know, if he has a
18 medical issue that he can be, you know, either separated
19 medically for his issue or not. The doctors told us, he
20 said all we need is, you know, Bailey to come sign the
21 paperwork.

22 Well, he never -- he would never go up there after
23 repeated attempts. Then eventually, they stopped the MEB
24 process because we couldn't get him to sign the paperwork.

25 Q To take advantage of the help?

1 A Yes.

2 Q And eventually, did you talk to him about the Article
3 15 you were initiating?

4 A Yeah.

5 Q And about his mental condition?

6 A Yeah. We talked to -- we sent him down, said we're
7 doing, you know, this Article 15, which would, you know,
8 take him from E-4 to an E-1 and he --

9 Q Is E-1 as low as it gets?

10 A That's the lowest it gets. E-1 is the lowest rank
11 that's enlisted. We talked to him, and he was very
12 distracted over that.

13 So I asked him, you know, what's going on. You know,
14 he goes -- "I -- you know, I'm -- I have issues. You
15 know, I'm seeing doctors. I have, you know, medical
16 treatment."

17 I'm like, "Well, what does that mean to you?"

18 He goes, "Well, that should excuse all. You know,
19 what I've done in the past, excuse that behavior" which
20 that does not excuse the behavior. You know, I have had
21 soldiers that have -- you know, there are other soldiers
22 with PTSD or other conditions.

23 Every soldier is different, but they still show up to
24 work on time. You know, all we have to tell him is, you
25 know, check in in the morning; check in the evening; take

1 care of yourself.

2 Q He couldn't do that?

3 A No, ma'am.

4 Q And basically, do you recall testifying at a hearing
5 ultimately in this case? Right there (indicating).

6 Do you remember basically what you said when you
7 talked to him about his mental condition?

8 A Yes, ma'am.

9 Q What did he say? What did he say?

10 A I sat -- we sat down, myself and my first sergeant,
11 which is the NCO, the highest NCO in the company, the
12 first sergeant. He is an E-8. He is the -- you know, he
13 is in charge -- you know, he is the highest enlisted
14 personnel in the company. So he is my right-hand man.

15 Q Okay. And you have a lot of letters.

16 A Yes.

17 Q It's the first sergeant.

18 A It's the first sergeant, yes.

19 Q Okay.

20 A So we -- we're discussing with him this is the action
21 we're going to take, and he -- we were -- I was asking
22 him, is there -- are you -- are you okay? He goes, "I
23 don't know, and I go -- you know, maybe -- you know, maybe
24 I should go hide in the bush and make somebody permanently
25 AWOL, which --

1 Q Let me back up first.

2 A Okay.

3 Q I'll get to that situation in a minute. Basically,
4 when you talked to him -- when you're doing the Article 15
5 and you asked him about his mental condition, do you --
6 read that line right there.

7 A Oh, yeah. About his mental condition, when I said
8 that before, he stated that it basically means that he
9 could do anything and not be held accountable. You know,
10 that after --

11 Q That he could do anything and not be held
12 accountable?

13 A Accountable, yeah. Because of his current condition,
14 that excuses him of his actions of the past.

15 Q And did you have conversations about the defendant
16 with other medical staff and people of that nature?

17 A We did.

18 Q About him using the system?

19 A Yes. We did and we discussed it with medical staff
20 that it seems like he was -- you know, he was smart. I
21 mean, he was a good soldier, was a smart soldier.

22 He knew -- he knew the system. If he could get to
23 the medical side, there could be a way out instead of
24 being chaptered out of the military, and the doctors
25 agreed that it seemed like he was using the system, you

1 know, to use the medical chapter to get out; but even if
2 he was, he still -- all he -- he didn't go and finish that
3 part of the medical chapter so...

4 Q His last Article 15 was conducted, I believe, in
5 November of 2011?

6 A It was. That was the end of it. It started in June,
7 and with all -- the AWOLs -- it finally convened in
8 November 2011; yes, ma'am.

9 Q Specifically on November 8th, did you have
10 interaction with the defendant --

11 A Yes, ma'am.

12 Q -- as far as that Article 15 was concerned?

13 A Yes; yes, ma'am.

14 Q You started this earlier. I think I mixed you up.
15 What was his demeanor that day?

16 A He was very distraught, didn't understand why, you
17 know, this was happening to him. Again, he thought his
18 actions were excusable because of his medical condition.
19 We asked him, you know, "Are you okay?"

20 He wasn't -- you know, he really wasn't sure and...

21 Q Specifically, did he make any threat that day?

22 A He said, "You know, maybe I should go hide in the
23 bushes and make someone permanently AWOL."

24 Q Who was he talking to when he said that?

25 A Well, he was talking to myself and the first

1 sergeant, but I mean, he didn't address, you know, point
2 to us. So then we -- then we asked him. So that was a
3 red flag. You know, "Are you going to hurt yourself?" He
4 goes, "I don't know."

5 I go, "Well, you need to call us."

6 Q Let me back up a minute. He said what about hide --
7 he was going to hide in the bushes and make --

8 A Make someone permanently AWOL.

9 Q Someone other than himself?

10 A Yes.

11 Q And then what happened?

12 A We asked him, you know, we were -- my first sergeant
13 and myself were concerned for his safety or others and
14 asked him, "Are you going to do something?"

15 He goes, "I don't know."

16 I said, "Well, you need to call me." He had my cell
17 number. He had my house number. He goes, "Consider this
18 your phone call." So we advised him to go to CMHS.

19 Q CMHS?

20 A That's Fort Jackson. That's the mental health
21 portion of the hospital. So I followed -- we followed him
22 there and then checked him into CMHS.

23 Q Voluntarily or involuntarily?

24 A Involuntarily.

25 Q And how did he react to that?

1 A He did not react well. He sat with the doctors for
2 awhile and came back out. The doctors talked to me and
3 said, you know, stay for further evaluation. He did not
4 want to do that. Eventually, he -- he ran out, had to use
5 the hospital police force to bring him back, and he was
6 eventually restrained to -- to be checked into the
7 hospital.

8 Q After that, November 8th, were there any steps taken?
9 He was again evaluated by mental health, right?

10 A Yes, ma'am.

11 Q After that, were there any steps taken to separate
12 Marcus Bailey from the Army?

13 A The chapter -- the chapter board convened to...

14 Q And is this a formal proceeding that has to take
15 place before a person can be terminated? I guess
16 terminated is the word, right?

17 A Yes, ma'am, separated.

18 Q Separated?

19 A Yes, ma'am. There's -- there's a board that meets,
20 and it's pretty much almost -- kind of like what -- you
21 know, courtroom kind of thing. You have the president of
22 the board hearing, and they make a determination and all
23 of that.

24 Q Was the defendant notified to be there?

25 A Yes.

1 Q Was he present?

2 A He was not.

3 Q And at that point, did the board hear certain
4 evidence about this soldier's conduct?

5 A Yes, ma'am.

6 Q And as a result of that, was he, in fact, released
7 from the Army?

8 A Yes, ma'am, he was.

9 Q And I'm showing you his DD something.

10 A DD 214.

11 Q Thank you.

12 A It's an official military record. He was released
13 under --

14 Q What type of?

15 A -- general discharge under honorable conditions in
16 that the nature and reason for the separation is pattern
17 of misconduct.

18 Q Pattern of misconduct?

19 A Yes, ma'am.

20 Q Which included some of the AWOL and other things we
21 talked about.

22 A Yes, ma'am.

23 Q And a general discharge, is that different from an
24 honorable discharge?

25 A It's a different level. I'm not sure of the correct

1 exact difference, but I know it affects different benefits
2 the soldier receives from an honorable or general.

3 Q Okay. And there's honorable discharge, right?

4 A Yes, ma'am.

5 Q And general --

6 A And other than honorable, OTH.

7 Q And then what happened --

8 A Yeah, and bad --

9 Q Bad conduct?

10 A Yeah, bad conduct discharge.

11 Q And if he's discharged, what was the recommendation
12 that he be discharged from?

13 A My recommendation initially was when we set up the
14 initial paperwork was Other Than Honorable, OTH.

15 Q Which was the bottom one?

16 A Not bottom one. That's the one below it.

17 Q The one below?

18 A Yes, ma'am.

19 Q And he actually got a general under honorable?

20 A Yes, ma'am.

21 Q Did that allow him to continue to be available for
22 treatment if he needed it for PTSD?

23 A Yes, ma'am; yes, ma'am.

24 Q So that all his benefits weren't cut out?

25 A That's correct, ma'am.

1 Q And his actual separation date as reflected on this
2 document, I believe it's the second right there that's
3 highlighted.

4 A Yes. It's January 20th, 2012.

5 Q 2012?

6 A Yes, ma'am.

7 Q And again, his type of separation was discharge,
8 general nature, under honorable conditions?

9 A Yes, ma'am.

10 Q And the reason for that was?

11 A Pattern of misconduct.

12 Q And as far as any training he had in the same forum,
13 does it indicate whether or not he had any training while
14 in the military?

15 A Yes, ma'am. There's a -- he's had air assault
16 training, combative lifesaver course, combative level one
17 and combative level two, leader in FBCB-2 courses which is
18 a system we use to communicate --

19 Q Uh-huh.

20 A -- and total Army training. He's had it a lot of law
21 courses.

22 Q And as far as the combat training you reflected in
23 here --

24 A That --

25 Q -- one and two, what type of combat training?

1 A His was level one and two. At the time I was there,
2 it was -- for drill sergeants -- we had a drill
3 sergeant -- it was required to get that training because
4 it's -- the best way to describe it in civilian terms,
5 it's kind of like grappling. You know, wrestling,
6 grappling. You're on the ground.

7 You learn takedown moves, you know, arm bars.
8 Different submission chokes, simple submissive moves. So
9 if you're in hand-to-hand close contact, and we use that
10 to train, basic training privates. We will train the
11 basic training, the new privates coming in for basic
12 training. We will train them -- as drill sergeants, we
13 will train them on those, those moves and combatives
14 training.

15 Q And I heard you say the word choke. What type of
16 hold?

17 A There's -- different chokeholds are taught:
18 Cross-collar choke. There's the guillotine. I mean,
19 different -- all different kinds of submissive holds, you
20 know, for your opponent to -- you know, to gain ground and
21 advantage and win your battle -- or if you're in a real
22 world situation in combat, to you know, get a --

23 Q To subdue the opponent?

24 A To subdue the opponent, yes, ma'am.

25 Q And Marcus Bailey, do you see him here in the

1 courtroom?

2 A Yes, ma'am.

3 Q Can you point him out for the jury?

4 A Right there, ma'am. (Indicating).

5 Q On the end of the table?

6 A End table, right, yes, ma'am.

7 MS. CAMPBELL: Your Honor, may the record reflect he
8 has identified the defendant?

9 THE COURT: Yes, ma'am.

10 MS. CAMPBELL: Thank you.

11 CROSS-EXAMINATION:

12 BY MR. MYERS:

13 Q You and I talked over the telephone.

14 A Yes, sir.

15 Q And you understand I got some military experience, as
16 well?

17 A Yes, sir; yes, sir.

18 Q So let's talk a little bit about some things that
19 were not brought out on your direct testimony. Do you
20 have Marcus' DD 214 in front of you right now?

21 A I do have it in front of me right now.

22 Q Thank you.

23 A Thank you, sir.

24 Q You're welcome.

25 Now, Captain Parker, you are aware that Marcus

1 enlisted in 2004, correct?

2 A Yes, sir.

3 Q And you read out some of his training, the Army
4 schools that he went to?

5 A Yes, sir.

6 Q Would you also publish the ribbons that Marcus
7 received while he was in the military?

8 A Yes, sir. Yes. Let me get to the block one second,
9 sir.

10 Yes. Army commendation metal, third award; Army
11 achievement metal, fourth award; meritorious unit
12 commendation; Army good conduct metal, second award;
13 National Defense service metal; Global War on Terror
14 terrorism expeditionary metal; Global War on Terrorism
15 service metal; Iraqi campaign metal. The next block
16 and...

17 Q You have to go down.

18 A Yeah, go to the...

19 Campaign stars, Non-commissioned Officers
20 Professional Development ribbon; Army service ribbon;
21 overseas ribbon, second award; Combat action badge; air
22 assault badge; expert marksmanship badge with carbine BAR,
23 and then he has a driver mechanics badge with driver wheel
24 vehicles class second award.

25 Q Pretty good.

1 A Yeah. It --

2 Q Pretty decorated?

3 A For a short period of time that he's been in, that --
4 yeah. I guess that --

5 Q Sure.

6 A -- he was definitely fast tracking. He was checking
7 the blocks doing the right things.

8 Q Sure. And you noticed that in block 13 and 18, it
9 indicated he had served two combat tours, right?

10 A Yes, sir, two combat tours; that's right.

11 Q Now, I notice you have your combat action badge, and
12 do you -- are you aware of how Marcus received his combat
13 action badge?

14 A Yes, sir. I believe it was an IED vehicle, I
15 believe.

16 Q Sure. Is that how you received yours?

17 A I received mine with a rocket and mortar attack out
18 on patrol.

19 Q And IED stands for improvised explosive device?

20 A That's correct, sir; yes, sir.

21 Q Nothing fun about that.

22 A No, sir. I've witnessed and seen and, you know, been
23 through things. Nothing fun.

24 Q Sure. And you are aware that as a result of the
25 injury that Marcus received, he is currently receiving

1 combat -- or physical -- he is actually receiving benefits
2 related to his combat injury?

3 A Yes, sir.

4 Q And one of the things that's not notated is he is
5 also a recipient of the Purple Heart. Are you aware of
6 that?

7 A I believe he told me that, but I -- I know it's not
8 on his 214.

9 Q All right. Now, let's talk about the Army's ways of
10 discipline. You would agree with me that the Army has
11 three primary ways of discipline. You have the Courts
12 Martial, right?

13 A Yes, sir.

14 Q And within the Courts Martial, you have the Summary
15 Courts Martial?

16 A Yes, sir.

17 Q Special Courts Martial?

18 A Yes, sir.

19 Q And you have the General Courts Martial?

20 A Yes, sir.

21 Q And Marcus was never in any sort of danger of
22 receiving any punishment of those three Courts Martial?

23 A Right. No, sir, there was no...

24 Q The only punishment he received was NJP or
25 nonjudicial punishment?

1 A That's correct, sir.

2 Q And you are aware -- you can tell this jury that NJP
3 is the lowest level of punishment in the military?

4 A That's correct.

5 Q It's usually used to adjudicate the smallest of
6 offenses, right?

7 A Yes, sir.

8 Q And AWOL is considered to be a low level offense,
9 right?

10 A Yes, sir.

11 Q I mean, there is nothing -- the Army does not
12 necessarily treat AWOLs on the status of all the other
13 things on the Uniform Code of Military Justice, right?

14 A Right. No, sir. No, they don't. I mean usually, if
15 someone goes AWOL, we let them go. We don't do anything
16 to --

17 Q Sure. While, in fact, you knew Marcus Bailey, I
18 believe you only were his commander for six months?

19 A From April to roughly around December, yes, sir.

20 Q So you don't know anything about his behavior before
21 you actually became his commander in April 2011, right?

22 A Not from -- you know, from the brigade commander
23 point, this is -- this is a situation where you get into
24 the soldier. That was it. That was it.

25 Q Sure, but there was nothing in his record following

1 him into your company that would indicate that he had
2 received any sort of serious reprimand?

3 A No, sir. It's the field grades. You knew, I knew
4 about the field grades.

5 Q He was -- would you agree with me that any of his
6 problems or the problems that he had regarding AWOL didn't
7 start until his second deployment from Iraq in 2008,
8 correct?

9 A I would make the connection with that, yes, sir.

10 Q Before that, he was basically a stellar soldier,
11 right?

12 A Yes, sir.

13 Q Now Ms. Campbell talked to you about this combatives
14 training, combative level one and combative level two?

15 A Yes, sir.

16 Q Isn't it true that every soldier, male and female,
17 E-1 all the way up to the general received that sort of
18 training, right?

19 A Yes, sir. That was implemented. All the new basic
20 training privates try to do it in certain ones. You know,
21 not everyone graduating IET, which is responsive training,
22 is certified, but we are -- you know, slowly, the Army is
23 transition. Everybody needs be combative level one. Then
24 you can go to two, three, and four; yes, sir.

25 Q And the military has some special branches like the

1 Green Berets, right?

2 A Yes, sir.

3 Q The Rangers?

4 A Yes, sir.

5 Q The Special Forces guys, right?

6 A The delta level guys, yes.

7 Q Those guys receive a bunch more training than --

8 A Totally different --

9 Q -- those --

10 A -- those. Yeah, our combatives training is -- we
11 train strictly -- you're on the ground, you know, no, no
12 standing up, taking down. This --

13 Q Sure.

14 A The combatives level one and two is the lowest level
15 of combatives training. You're not getting --

16 Q Sure, the lowest level. You're not trained in doing
17 anything stealth?

18 A No, sir.

19 Q You're not doing anything to basically -- you talked
20 about the guillotine and all those. It's been a while
21 since I've been there, but if I recall the guillotine, the
22 guillotine would cause you to actually apply some pretty
23 hard pressure as far as an individual, right?

24 A Yes, sir.

25 Q In fact, all the chokeholds that you learned in

1 combatives one and two would require a very severe level
2 of pressure on an individual, right?

3 A Yes; yes, sir.

4 Q And you are aware that Almanita was also in the
5 military, are you not?

6 A I was not. I was not aware of that.

7 Q Assuming she was in the military, because of what you
8 just --

9 MS. CAMPBELL: Objection, Your Honor. He doesn't
10 know if she is.

11 BY MR. MYERS:

12 Q Assuming if she was --

13 A Yes, sir.

14 Q -- she would have gone through basic training and
15 gotten the same level of training as far as combative one
16 and two, right?

17 A She would have been gotten introduction into
18 combative one. If she received and got certified, that
19 one, I would not know.

20 Combatives, anything above combatives one, you would
21 have to go through other training. So they wouldn't
22 receive that basic training. If she received that on
23 following assignments on units, then she could have. But
24 at least she would know -- you know, she would -- she
25 would know combative one. Yeah. I know combative two.

1 She wouldn't be, you know, clueless.

2 Q And there's been some talk about his characterization
3 of discharge.

4 A Yes, sir.

5 Q Is there any doubt in the document that you have that
6 he was discharged under honorable conditions?

7 A That's what he was -- that's what the document says,
8 that he was discharged under honorable conditions, general
9 under honorable conditions.

10 Q Sure, and I know that before the board that you went
11 do and you testified to as his commander, you would have
12 been made recommendations, right?

13 A I did, sir.

14 Q And certain other individuals would have been made
15 recommendations as far as discharge, right?

16 A Right.

17 Q But the military, as a whole, went with an honorable
18 discharge?

19 A That's correct, sir.

20 Q And in fact, in order for him to receive the benefits
21 he is receiving, the only way he could get those benefits
22 would be under an honorable discharge?

23 A That's correct, sir.

24 Q And he is entitled to full benefits under this
25 characterization of his discharge?

1 A Yes, sir.

2 Q And would you agree with me or agree with me not that
3 there are only four levels of characterization within the
4 military?

5 A I agree with you, sir.

6 Q That, in fact, on paragraph 28, it's not necessarily
7 a characterization. It just states the reason.

8 A It states the reason, yes, sir. That reason is why
9 this is a discharge. It could be the same thing as, you
10 know, you were passed over for a promotion, but the main
11 point of that block is general and honorable condition.
12 That's all anyone needs to know.

13 Q Right.

14 A If he were an E-5 or something and he was discharged
15 from military, yes, in general.

16 Q Yes.

17 A Under honorable conditions.

18 MR. MYERS: Thank you Captain. Good luck with your
19 career.

20 THE WITNESS: Thank you, sir.

21 MS. CAMPBELL: May it please the Court.

22 THE COURT: Yes, ma'am.

23 REDIRECT EXAMINATION:

24 BY MS. CAMPBELL:

25 Q He asked you about the type of discharge.

1 A Yes.

2 Q It's a general discharge and then under honorable
3 conditions?

4 A Yes, sir [sic].

5 Q Is that correct? That's different from an honorable
6 discharge, is it not?

7 A It's -- it's there are different categories, yes, but
8 there is honorable, general, other than honorable
9 conditions; yes, ma'am.

10 Q And when we go to the definition of general under
11 honorable conditions, it talks about what that's
12 highlighted there?

13 A It's -- if a member serves as an honest and faithful
14 and appropriate characterization that service under
15 honorable conditions, characterization of service as
16 general under honorable condition is warranted when
17 significant negative aspects of the member's conduct or
18 performance of duty outweigh positive aspects of the
19 member's military conduct or performance of duty outweighs
20 positive aspects of the record.

21 Q And did Marcus Bailey want to be taken out of the
22 service or did y'all initiate proceedings to have him
23 removed?

24 A We initiated proceedings to have him removed from the
25 service.

1 Q And he asked you about -- what was your
2 recommendation as to how he should be discharged?

3 A Other than honorable.

4 Q Other than honorable?

5 A Yes, ma'am.

6 MS. CAMPBELL: Thank you, sir.

7 MR. MYERS: Absolutely nothing, Your Honor.

8 THE COURT: Thank you, Captain Parker.

9 THE WITNESS: Yes, sir.

10 THE COURT: Any objection to this witness being
11 excused?

12 MR. MYERS: No, sir.

13 THE COURT: Thank you, Captain Parker. You may be
14 excused from your subpoena.

15 THE WITNESS: Thank you.

16 THE COURT: All right. Ladies and gentlemen, it's
17 little after six o'clock tonight. We are going to dismiss
18 for the evening. We will start tomorrow morning at
19 nine o'clock.

20 If you can hold on just one second. We're going to
21 get somebody to walk you to your cars just because it's a
22 little bit late at night. When the courthouse starts to
23 shut down, we like to have someone walk you over to your
24 cars.

25 So if you can just give us a minute while that

1 happens. No other reason than it's just a little bit
2 later than all the other people leave the courthouse.

3 Okay. All right. See you tomorrow morning at
4 nine o'clock.

5 (WHEREUPON, the jury left open court at approximately
6 6:06 p.m.)

7 THE COURT: See you tomorrow morning at nine o'clock.

8 MR. MOORE: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 (Whereupon, There was an overnight recess).

11 THE COURT: Okay. We're back on the record, State
12 vs. Marcus Bailey. Anything before we bring the jury in
13 this morning?

14 MS. CAMPBELL: Nothing from the State, Your Honor.
15 If you'll just bear with me, my voice is kind of gone.

16 THE COURT: I'll bear with you.

17 Anything?

18 MR. MYERS: No, sir.

19 THE COURT: All right. Bring the jury in.

20 (WHEREUPON, the jury came into open court at
21 approximately it 9:06 a.m.)

22 THE COURT: Thank you, Mr. Dye.

23 Good morning, ladies and gentlemen. Welcome back to
24 1701 Main Street. We will continue now with testimony.

25 You may call your next witness.