

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM RICHLAND COUNTY
Court of General Sessions

SC Court of Appeals

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 III

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1 MS. CAMPBELL: The State calls Dr. Bradley Marcus.

2 THE COURT: Dr. Marcus, please come forward.

3 THE CLERK: Have a seat in the witness box. State
4 your name for the record, please.

5 BRADLEY MARCUS, after being duly
6 sworn, testified as follows:

7 THE WITNESS: Dr. Bradley J. Marcus. M-A-R-C-U-S.

8 DIRECT EXAMINATION:

9 BY MS. CAMPBELL:

10 Q Dr. Marcus, where are you employed?

11 A I'm employed at Professional Pathology Services here
12 in Columbia, South Carolina.

13 Q And what do you do there, sir?

14 A I'm a pathologist. I'm also a forensic pathologist.
15 I'm also a partner in the practice.

16 Q Can you tell this jury a little bit about your
17 education and training in the field of pathology?

18 A Sure. I went to college at the University of North
19 Carolina at Chapel Hill. I graduated in 1996. From
20 there, I went to medical school at the American
21 University, Caribbean, a small island down in St. Martin,
22 spent two years there. That's where I did my basic
23 medical training.

24 From there, I went and did my clinical training my
25 third year in Ireland, spent a year, about 13 months in

1 Ireland. I worked in Ireland, did all of my clinical
2 training there. That's where I started doing pathology.

3 Then I did my fourth year in Chicago, and after
4 graduating from medical school, I -- I wanted to pursue
5 pathology as my specialty in medicine. So I -- I was -- I
6 enrolled at the Medical University of South Carolina in an
7 anatomical and -- anatomical pathology and clinical
8 pathology training, residency training program at the
9 Medical University of South Carolina in 2002.

10 So from 2002 through 2008, I did training in
11 anatomical pathology, clinical pathology, and I also
12 stayed there, and I did fellowships. I did a fellowship
13 in forensic pathology and also, I did a fellowship in
14 cytopathology.

15 So I did all of my training at the Medical University
16 of South Carolina in Charleston between 2002 and 2008, and
17 I took all my board exams. I took all my board
18 examinations in that time.

19 I'm board certified in anatomical pathology, clinical
20 pathology, forensic pathology and in cytopathology. Now,
21 you might not know what cytopathology is because I didn't
22 discuss it, but cytopathology is the study of cells,
23 malignant cells.

24 The best example I can give anybody in this courtroom
25 is pap smears. All women have pap smears. Well, I'm the

1 guy that looks at those pap smears and says whether or not
2 you have got bad cells, need to have follow up and so
3 forth. I'm the guy that looks at those, those biopsies
4 that get done every year. All right. I'm the guy that
5 does that.

6 So that's -- that's pretty much like today after
7 this, I'm going to go and do that for the remainder of the
8 day.

9 Q Okay. And pathology, we've heard a little bit about
10 it. What is pathology, generally?

11 A Pathology is the study of disease and what causes
12 disease, okay. That's what general pathology is, and you
13 can -- we study it by understanding what the gross -- the
14 gross looking at gross organs and looking at it under a
15 microscope. Also, by understanding lab tests looking at
16 blood work and so forth.

17 People don't understand, it's a lot of
18 behind-the-scenes stuff to maybe diagnose this in the lab.
19 You know, you can get a lot of information from a blood
20 test.

21 The pathologists are the ones who are interpreting
22 all of those lab tests behind the scenes, and then that
23 report goes into the medical record. That's us. That's
24 us pathologist interpreting those reports. We actually
25 really never even see the patient in general, but that's

1 in that case.

2 Q You mentioned from 2002 until 2004, that you studied
3 down in Charleston and became board certified in four
4 different areas?

5 A That's correct.

6 Q And how many areas are you actually able to be
7 certified in pathology?

8 A The American Board of pathology only allows you to
9 have a maximum of four board certificates, so I've reached
10 the max. I cannot get any more board certifications.

11 Q Today for the purposes of this jury, I'm going to
12 focus on the forensic pathology certification you had.
13 You are actually board certified in that area, sir?

14 A Yes, I am.

15 Q And what is forensic pathology?

16 A Forensic pathology is the study of pathology in the
17 manner related to autopsies, the studying the cause of
18 death, okay.

19 Cause of death by definition is a disease or injury
20 that brings about death, okay. That's -- that's what we
21 had. So basically, anyone who suddenly and unexpectedly
22 dies, you generally get an autopsy, okay.

23 So, therefore, a pathologist does the autopsy. Now,
24 it doesn't have to be a forensic pathologist, but in
25 Richland County, forensic pathologist, board certified

1 forensic pathologists do the autopsies. That's the way it
2 is.

3 So basically, we determine the cause and manner of
4 death, determining whether a -- whether disease or injury
5 contributed to death. For instance, a cause of death
6 statement might be complications of metastatic breast
7 cancer. That's a common cause of death that we do.

8 Q And you mentioned that anybody who dies suddenly or
9 in what's called -- I think the terms are suspicious --
10 we've heard that term -- circumstances, that would be
11 referred to you?

12 A That's correct. You know, anyone who dies suddenly
13 and unexpectedly, it's kind of a suspicious death. In my
14 opinion, that's -- that case immediately gets referred to
15 the coroner's office and then goes for an autopsy to
16 determine what -- what killed this person.

17 Q And whenever there is a suspicious death that the
18 coroner refers to you for you to perform an autopsy, is it
19 necessarily going to become a homicide?

20 A No, no. By far, the majority of them are natural
21 deaths, by far. The majority of them are natural deaths.

22 Q So even if the circumstances are suspicious, you have
23 to rule out natural death or any other cause of death
24 before it can be a homicide?

25 A That's correct.

1 Q You also hold a title here in Richland County as far
2 as your work with the coroner's office.

3 A Yes. I'm also the Chief Medical Examiner here in
4 Richland County.

5 Q And as the Chief Medical Examiner here in Richland
6 County, what do your duties include?

7 A My duties include doing all the autopsies of Richland
8 County, also being the Chief Medical Officer that Gary
9 Watts, the Coroner, refers to for any medical questions he
10 has.

11 I have my -- my colleague that I work with, Dr.
12 Durso -- and I work very closely with her regarding all
13 causes of death. She comes to me with some cases that she
14 has. Most -- some cases that she has that she wants
15 consult with, I work with her. Her office is right across
16 from mine at Richland hospital. We consult all of our
17 cases.

18 My cases I bring to her. Her cases, she brings them
19 to me. So they see -- the two of us run the -- run the
20 autopsy service here in Richland County, all right.
21 Anybody who dies in Richland County and is referred for a
22 forensic autopsy, either me or her are going to do the
23 autopsy, regardless. All right. That's the way it works.

24 Q And do you also hold any positions as far as teaching
25 here in Richland County?

1 A Yes. I'm an assistant professor at the USC School of
2 Medicine in pathology. So I teach the second year medical
3 students in -- at Richland hospital. They usually sit at
4 my scope, and we sign cases out all day long or they
5 assist me doing autopsies sometimes. I also lecture the
6 second year medical students over at the medical school
7 over on Garners Ferry Road. I do that every spring and
8 March. I do a couple of lectures every year.

9 Q Have you been qualified as an expert in the field
10 of -- for purposes of this jury, forensic pathology
11 before?

12 A Yes, I have.

13 MS. CAMPBELL: Your Honor, at this time, we'd offer
14 him as an expert in forensic pathology.

15 MR. MOORE: No objection, Your Honor.

16 THE COURT: Ladies and gentlemen, this witness will
17 be qualified in the area of forensic pathology. He will
18 be allowed to give opinion testimony in that area.

19 Now, that does not mean that you must accept his
20 opinion, but it is evidence for you to use in any way that
21 you see fit to give it the weight and credibility that you
22 believe is appropriate, as you are required to do with
23 every single witness. Thank you.

24 You may continue, Ms. Campbell.

25 MS. CAMPBELL: Thank you, Judge.

1 BY MS. CAMPBELL:

2 Q Doctor, did you consult on a case involving Almanita
3 Smith?

4 A I did.

5 Q You didn't actually perform the autopsy in this case,
6 did you?

7 A No, I did not.

8 Q And is it unusual for -- you just mentioned this but
9 for Dr. Durso to come and consult with you on any -- most
10 of her cases, actually?

11 A No. Our practice -- in anything, forensics or any
12 surgical biopsy or anything, we have a very large
13 practice, and we consult everything.

14 There's 12 pathologists in our group, and we consult
15 on all sorts of cases. We're always looking and going
16 into each other's offices and throwing slides off. That's
17 actually one of the good things about our practice; that
18 we can all consult with each other.

19 No one is going to say, "Oh, you don't know this.
20 You don't know that." It's -- it makes us a better
21 practice, in my opinion, because you've got multiple
22 opinions.

23 Q And in your experience as a forensic pathologist, is
24 it unusual for other people to come and review your work
25 or your opinions?

1 A No. That's not unusual at all. You know, that's not
2 unusual at all. We have got a big QA program, quality
3 assurance program. That's not unusual at all.

4 Q Okay. So your policy is that you're open to review
5 by anyone if they want?

6 A Absolutely, absolutely.

7 Q And in this case, tell the jury basically what you
8 reviewed and what was significant in this autopsy.

9 A Well, I reviewed -- basically, in this autopsy, I
10 reviewed the autopsy report. I reviewed all the photos
11 from the autopsy report. I reviewed -- I met several
12 times with the solicitor's office regarding this case in
13 preparation for this trial. That's basically what I
14 reviewed, and I discussed the case with Dr. Durso on
15 numerous occasions.

16 Q And in reviewing the photographs, you mentioned --
17 are those photographs from the autopsy?

18 A They're photographs from the autopsy and photographs
19 from the scene.

20 Q And is it unusual for you as a forensic pathologist
21 to at some point at least review photographs from the
22 scene where the body was found?

23 A Oh, yes; yes.

24 Q That's normal?

25 A That's standard operating procedure.

1 Q Okay. In this autopsy in your review of all of
2 those, what was significant in the findings of this case?

3 A Well, significant was that this Ms. Smith, she had
4 significant decomposition present, okay, significant
5 decomposition present on her.

6 She had skin slippage, she had marbling. She had
7 bloating. She had green discoloration. The marbling is
8 the vessels in her, the bacteria going through the vessel.
9 She had -- her tongue was very protuberant.

10 On the internal examination, she had what Dr. Durso
11 described as extravasation of blood in her neck region
12 right around here, which is also another fancy name for
13 saying hemorrhage.

14 She had extravasation of her blood, of some blood in
15 her back area, which also again is another name of saying
16 hemorrhage. She also had -- she had -- on the photos, she
17 had lack of livor on her heels like she had been stored on
18 her back, okay.

19 She had mummification on her right hand and her feet
20 which tells me that she had been stored on the inside,
21 inside where low humidity levels were present.

22 Also, the fact that the hyoid bone was not fused,
23 that's significant, because if -- you know, in asphyxia
24 deaths, you can sometimes get a fractured hyoid bone, but
25 if it's not fused, it's not fractured. There's just no

1 way it's going to fracture.

2 So those things were very, very significant. Also,
3 the fact that -- that she had no medical history that
4 would bring about her early demise being a young women at
5 26 years of age. Those were all significant, significant
6 findings.

7 Q Did you also review the toxicology findings in this
8 case?

9 A I did.

10 Q Is that normal?

11 A Yeah, that's normal.

12 Q And why do you review the toxicology findings?

13 A Well, sometimes people die of drug overdoses. You
14 know, they take prescription pills or, you know,
15 recreational drugs. That can bring about someone's
16 demise, but in this case, that didn't happen.

17 Q The tox was clean?

18 A The tox was completely negative.

19 Q And you mentioned that there was what was called
20 hemorrhage or ex--- I can't say that word ex what?

21 A Extravasation of blood around the right neck and
22 right back area here.

23 Q And when you're talking about hemorrhage or extra
24 whatever that word is, what does that mean for this jury?
25 What causes --

1 A The blood -- well, traumatic injury can cause that.
2 Blood usually stays in the vessels, okay, but if you have
3 some sort of outside traumatic event that occurs where the
4 vessel tears open, that blood is going to come out, okay.

5 Think of a bruise, okay. Everyone has had a bruise,
6 a black and blue mark, okay. Think of a child on their
7 front legs, all right. They fall down. Then all of the
8 sudden, they get a bruise on their knee that turns red.

9 Okay. What happened there is you have a little small
10 blood vessel that has broken up, and blood has leaked out
11 of that vessel and gone into the tissues, okay.

12 That redness you see is blood, is blood in the
13 tissue. It's not in the vessel anymore. It's in the
14 tissue, but a week later, that's a different color because
15 the blood is actually breaking down, okay.

16 So that's what you consider a bruise, an external
17 source caused that. The problem with decomposition is
18 that in decomposition, your blood vessels are going to
19 break down, and blood can leak out of that also. So it's
20 kind of hard to tell, really, the difference.

21 Q But in this case, as noted in her report under
22 evidence of injury, I believe --

23 A Yes.

24 Q -- she actually noted the hemorrhaging or extra...

25 A Yes, she writes in here --

1 Q Thank you.

2 A There is some extravasation of blood within the soft
3 tissues of her right lateral neck, but there are extensive
4 decompositional changes with similar findings along the
5 right side of the body. So that's -- that's clearly
6 written in her report.

7 Q And that could be consistent either place with some
8 type of trauma or decomposition?

9 A That's correct.

10 Q In reviewing this autopsy, was there any other
11 evidence of injury?

12 A No. There's no other evidence of injury here on
13 Ms. Smith's body.

14 Q And based on your review of this, independent of Dr.
15 Durso, did you come up with a cause of death in this case?

16 A Yes. I believe to a reasonable degree of medical
17 certainty that Ms. Smith died of homicidal -- homicidal
18 asphyxiation.

19 Q And what does homicidal asphyxiation mean?

20 A It means that somehow she had lack of oxygen to her
21 body, all right, lack of oxygen to her body. Homicidal
22 means at the hands of another person. That's my opinion.

23 Q Was this a suicide?

24 A No, not a suicide.

25 Q Was this a natural death?

1 A No, not a natural death.

2 Q Was this an overdose?

3 A No. It's not an overdose.

4 Q And asphyxiation, what are the means by which a
5 person could be asphyxiated?

6 A Well, you can -- you can strangle somebody cutting
7 off the blood supply to the head or the airway here. You
8 can smother somebody by blocking the nose and mouth. You
9 can put a bag over their head. That would cut off the air
10 supply, too, or another way you can do it is by sitting on
11 their back and, you know, blocking their chest from expand
12 and contracting. That's another way you can do it. That
13 -- for them, you can't expand your lungs, or -- and
14 therefore, you can't inhale. That's another way of
15 asphyxiation.

16 Q And can asphyxiation occur rapidly?

17 A Yes; yes, it can.

18 Q Within a matter of seconds?

19 A Yeah; yeah, it can.

20 Q And does asphyxiation, any of those mean you're going
21 to see any trauma to any person?

22 A It may not leave trauma.

23 Q And how does that happen, sir?

24 A Especially in the -- on the back, it might not leave
25 any trauma. Especially with a bag around the face, it

1 might not leave any trauma. In the neck area, especially
2 if there's decomposition present, it might not leave
3 trauma. It just -- it might not.

4 It could be hindered by the decompositional changes
5 whether the vessels leak because of decomposition or
6 whether it was traumatic injury, it limits you. It
7 hinders your examination. It hinders it.

8 Q So you're saying to this jury, trauma could have been
9 there, but the decomposition can mask that?

10 MR. MOORE: Objection, leading, please, Your Honor.

11 BY MS. CAMPBELL:

12 Q What could decomposition do to your findings?

13 A Decomposition can hinder the findings of trauma.
14 They can hinder it, okay. It can hinder the traumatic
15 findings.

16 Q But the two areas you mentioned of this hemorrhage
17 that you saw in the body, would that have been consistent
18 with what you just explained to the jury?

19 A Yes, it would.

20 Q And would that be considered -- or could be
21 considered trauma?

22 A It could be considered trauma.

23 Q Or a decompositional change?

24 A Or decompositional changes, yes.

25 Q And, Doctor, why do you say that this is not some

1 type of natural death or death caused by disease or any
2 other suicide or anything of that nature?

3 A Well, the medical records were reviewed. This was a
4 normal healthy female that we had no reason to believe
5 that she would just suddenly drop dead, okay.

6 Suicide, again, pills, you know, her toxicology was
7 negative. So -- and there wasn't any, you know, gunshot
8 wounds to the head or anything like that, you know,
9 self-inflicted or anything like that, so we can't -- we
10 can't say that. So I can't -- I can't -- I can't even go
11 to that point.

12 Q Okay. And even in cases -- and you've seen cases
13 where young people may be doing an activity and actually
14 drop dead.

15 A Right.

16 Q In an autopsy such as those, are you going to find a
17 cause?

18 A Generally, I find a cause, yes. I find a cause of
19 death. Their heart is big. They have hypertrophic, you
20 know, cardiomyopathy. There's a history of another --
21 someone else dying or something like that. That -- that
22 happens.

23 Q And in this case, in a review of the medical records,
24 as well as a review of the autopsy, as well as a review of
25 the photos, in your opinion, what caused this death?

1 A Ms. Smith died of homicidal asphyxiation.

2 Q And is that a cause of death you attributed before to
3 other cases?

4 A Yes, yes.

5 Q Beg the Court's indulgence.

6 (Pause.)

7 As far as how long Ms. Smith had been deceased when
8 her body was found, do you have an opinion as to that,
9 sir?

10 A Yes.

11 Q And what is your opinion?

12 A I concur with Dr. Durso regarding it from three to
13 seven days.

14 Q And when you say from three to seven days, do you
15 have an opinion on which end of that she would have been
16 killed?

17 A Closer to seven.

18 Q And why is that, sir?

19 A It's based on those decompositional changes on her.

20 Q And the decompositional changes you're referring to
21 are what?

22 A Her mummification, her slippage, her marbling, her
23 bloating and so forth like that.

24 Q Is there any way this young woman could have been
25 alive the day before she was found?

1 A No way. No way, not in my opinion.

2 MS. CAMPBELL: Thank you, sir. I don't have anything
3 further.

4 CROSS-EXAMINATION:

5 BY MR. MOORE:

6 Q Doctor, in order for you to form a forensic
7 conclusion, it's important for you to know as many of the
8 facts you can possibly know, is it not?

9 A Yes.

10 Q Now, the more facts you know, the better your opinion
11 would be in regard to much of what you've testified to,
12 correct?

13 A Yes.

14 Q If you knew there was evidence that she used her
15 computer the day before she was found, would that change
16 your opinion?

17 MS. CAMPBELL: Objection, Your Honor. That's not a
18 fact in evidence. He's making up things.

19 THE COURT: Do not put speculation into questions,
20 Mr. Moore. That question is -- question is -- objection
21 is sustained.

22 BY MR. MOORE:

23 Q Sir, there is evidence, according to the record in
24 this case, her computer was used the day before she was
25 found, okay. Did you know that?

1 A I've heard that.

2 Q Because you were actually in the courtroom when
3 Dr. Durso testified, correct?

4 A That's correct, sir.

5 Q And the evidence would basically tend to indicate
6 that the sites that were accessed --

7 MS. CAMPBELL: Objection, Your Honor. May we
8 approach?

9 THE COURT: Sure.

10 (WHEREUPON, a bench conference was held in the
11 Presence but not within the hearing of the jury).

12 BY MR. MOORE:

13 Q Doctor, I would like for you to assume the following
14 facts: I would like for you to assume that there was a
15 computer, right.

16 A Yes, sir.

17 Q I would like for you to assume that that computer
18 belonged to the decedent, all right. Correct?

19 A Correct.

20 Q I would like for you to assume that the history of
21 that computer showed the decedent accessed various
22 websites --

23 MS. CAMPBELL: Objection, Your Honor, misstatements
24 of the facts.

25

1 BY MR. MOORE:

2 Q Would like you to say assume that the --

3 MS. CAMPBELL: Objection.

4 MR. MOORE: I'll with--- I'll rephrase it.

5 THE COURT: Rephrase your question.

6 BY MR. MOORE:

7 Q I would like for you to assume that the computer
8 belonged to the decedent, okay.

9 A Okay.

10 Q I would like for you to assume that that computer
11 that belonged to the decedent had a history of logging on
12 to the website of the decedent's college, okay.

13 A Okay.

14 Q I would like for you to assume that that computer
15 that belonged to the decedent had a history of regular
16 logging on to certain social websites, all right.

17 A Okay.

18 Q I would like for you to assume that one of the
19 websites which were logged onto appeared to be a
20 Craigslist woman for woman website, okay.

21 A Okay.

22 Q I would like for you to assume that there is nothing
23 to indicate that anyone else --

24 MS. CAMPBELL: Objection, Your Honor.

25 THE COURT: Sustained.

1 MS. CAMPBELL: Thank you.

2 BY MR. MOORE:

3 Q All right.

4 And I'd like you to assume that her computer was used
5 to go to those regular websites the day before she was
6 found. Would that fact be significant to you?

7 A It would be extremely odd.

8 Q The question is would that be significant to you?

9 A I guess so, yes, sir.

10 Q All right. Would you explain why those facts would
11 be significant to you?

12 A Because I couldn't see how that could happen because
13 she would have been deceased already based on her
14 decompositional changes.

15 Q If your day of death is correct, she would have been
16 deceased already, correct?

17 A That's correct, sir.

18 Q Would those facts be inconsistent with your opinion
19 as to the day of death from a -- from a degree of forensic
20 professional certainty?

21 MS. CAMPBELL: Objection, Your Honor. He doesn't
22 know who was using the computer.

23 THE COURT: Sustained.

24 MS. CAMPBELL: Thank you.

25 MR. MOORE: But, Your Honor, he is the forensic --

1 that's his job is to make determinations. Whether he
2 actually knows who actually did it or not, it's her
3 computer.

4 He ought to be able to say -- he's already told us
5 that it would be an odd fact, and it would be significant.
6 I'm simply asking which one it was.

7 THE COURT: He can explain why.

8 BY MR. MOORE:

9 Q Tell me what would be significant about those facts
10 which I have asked you to assume in regard to her
11 computer's usage the day before she was found?

12 A Okay. So let me get this straight: You're asking --
13 you want me to explain why it would be significant; why
14 you think I think it's odd that she would have accessed
15 her computer? I'm a little confused. Can you just repeat
16 all the questions again?

17 Q Certainly.

18 A Thanks.

19 Q The evidence shows that she owned a particular
20 computer, all right.

21 A Okay.

22 Q The evidence shows that many times before her death,
23 there were school sites that were accessed by that
24 computer that belonged to her, all right.

25 A Okay.

1 Q The evidence shows that many times before death that
2 computer that belonged to her accessed a particular social
3 website, all right.

4 A Okay.

5 Q The evidence -- assume that that computer that
6 belonged to her which had that history logged on to those
7 websites the day before she was found.

8 Now, your job is looking at the evidence and making
9 forensic determinations regarding cause of death and a
10 what happened, and you would want as much information as
11 you could possibly have in order to reach opinions; is
12 that correct?

13 A That's correct.

14 Q Now, you've told the jury that it would be odd to
15 find facts such as that about her computer. I would
16 simply like you to explain what would be odd about the
17 fact that her computer, going to those websites, would
18 have been used the day before her death.

19 A Okay. Well, can I ask a question? What time is her
20 computer used?

21 Q Uhm, fair to --

22 MS. CAMPBELL: Objection. I think that he needs to
23 know the defendant had access to her computer during the
24 time period we're talking about.

25 MR. MOORE: I -- I appreciate counsel trying to help

1 me with my questions, but I believe this is
2 cross-examination, Your Honor.

3 THE COURT: Yes, sir. Thank you.

4 BY MR. MOORE:

5 Q Sir, let's just assume those facts.

6 A Okay.

7 Q Let's assume nine o'clock in the evening, just to --
8 just for the sake of discussion.

9 A Okay. So nine o'clock in the evening on?

10 Q August 22nd.

11 A August 22nd, okay.

12 Well, the decomposition that was present on her -- on
13 her was very, very significant. She had lots of skin
14 slippage. Lots of green discoloration. Her livor had
15 passed.

16 Her tongue was very protuberant out of her -- out of
17 her mouth, okay. There were no fly eggs on her, no
18 maggots on her. So she was stored inside -- also, she had
19 mummification on her, on her hands and her feet. So that
20 takes three days.

21 So that's three days is what, 72 hours or so, okay.
22 So that tells me right there that she has been dead, you
23 know, 72 hours already.

24 So that's why accessing a computer to me is very,
25 very odd. It just kind of doesn't make any sense, sir. I

1 hope that -- I think that should answer your question.

2 Q It does. Like you say, it doesn't make any sense,
3 does it?

4 A That's correct.

5 Q If you're correct, it doesn't make any sense.

6 A That's correct.

7 Q So in order for your testimony to be correct, it
8 doesn't make sense if you assume the facts that I just
9 gave you.

10 A Correct.

11 Q Have you ever heard of a concept known as accelerated
12 decomposition?

13 A Absolutely, sure have.

14 Q In order to actually know the rate of decomposition
15 of a body, you actually have to know the conditions under
16 which it was stored before it was located, correct?

17 A That's correct.

18 Q And you, as the reviewing pathologist in this case,
19 have no idea what conditions it was stored under between
20 the time it died and the time it was found.

21 A Well, I have a pretty good idea.

22 Q Well, you have a pretty good idea of the conditions
23 upon which it was stored, according to you, correct?

24 A Correct.

25 Q Now, you were here for the testimony of Dr. Durso; is

1 that correct?

2 A That's correct.

3 Q And you did not actually do the autopsy in this case,
4 correct?

5 A No, sir, I did not.

6 Q Do you know that following the initial autopsy while
7 the coroner and the investigator were present that your
8 office told law enforcement that you could not make a
9 determination in regard to the cause of death?

10 A I had heard that.

11 Q You didn't examine the body yourself, correct?

12 A That's correct.

13 Q That was all done by Dr. Durso?

14 A That's correct.

15 Q You issued no report in this case?

16 A That's correct.

17 Q Did you ever even see the body?

18 A No, I did not, sir.

19 Q Would you stand by the conclusions of your partner
20 you heard testify?

21 A I will stand by her.

22 Q So we know then, based upon the findings of your
23 office, there was nothing which was found which would lead
24 a reasonable physician to conclude there was evidence of
25 trauma in this case, correct?

1 A I respectfully disagree, sir.

2 Q Well, did you basically hear Dr. Durso's testimony
3 that she found nothing that she could conclude was
4 traumatic?

5 A I did hear her testimony, yes, sir.

6 Q All right. And you say that you agree with her
7 testimony because you heard it.

8 A I do agree with her testimony, yes.

9 Q Now, were you present when you heard the words "no
10 proof of trauma; no proof of foul play"?

11 A Yes, sir.

12 Q Now, you are the medical examiner for Richland
13 County, correct?

14 A That's correct.

15 Q You get paid to work with law enforcement and the
16 solicitor's office in cases like this, right?

17 A I don't personally get paid. Our -- our practice
18 gets a fee from the autopsy itself, sir. I don't get a
19 fee to come here today.

20 Q Right. But you get paid to basically do the work you
21 do for Richland County.

22 A Yes; that's correct.

23 Q All right. Now, who is it that developed the policy
24 in your office that no proof of trauma equals no proof of
25 foul play?

1 MS. CAMPBELL: Objection, Your Honor. Again, it's a
2 mischaracterization of anything. There is no evidence of
3 that.

4 MR. MOORE: That's what Dr. Durso said. He said --

5 THE COURT: The record will reflect what Dr. Durso
6 said, and the jury can remember. I sustain the objection.

7 BY MR. MOORE:

8 Q Sir, were you here when you heard Dr. Durso say, "No
9 proof of trauma means no proof of foul play"?

10 A I was here for her testimony. I don't recall exactly
11 what she said, but if she said that, I will agree with
12 that.

13 Q Okay.

14 A That's -- that's true, but you have got to take that
15 into the context of things, okay.

16 Q When you say that's true, what's true?

17 A All right. Foul play, no proof of trauma. If
18 someone gives somebody a speedball, injects them into
19 that, you're not going to see any trauma, and there's
20 going to be -- and they're going to die. That's foul play
21 where I come from, sir. So you've got to use that in the
22 correct context, okay.

23 Q Well, in the context we were talking about was in the
24 context of an autopsy, you would agree that no proof of
25 scientific conclusion as to trauma equals no proof of foul

1 play just like Dr. Durso said.

2 MS. CAMPBELL: Objection again, Your Honor.

3 THE COURT: Well, why are we pitting witnesses?

4 MR. MOORE: I -- well, Your Honor, the witness is
5 basically from his office and works for him. I just want
6 to know if he agrees with that.

7 THE COURT: Well, ask him if he agrees with that, not
8 if he agrees with what Dr. Durso said in the context of
9 multi-hours of testimony.

10 BY MR. MOORE:

11 Q Thank you.

12 Doctor, I apologize. You would agree with that
13 statement generally, no proof -- in an autopsy, no proof
14 of trauma equals no proof of foul play, correct?

15 A I agree with that in general, but it's got to be in
16 the correct context, sir.

17 Q Well, in the context -- in the context, what you
18 basically mean then is in the context of knowing more than
19 just what's in the actual medical findings, correct?

20 A Correct.

21 Q The opinion of your office was not based upon medical
22 findings. It was based upon what the coroner's office
23 told your office, correct?

24 A No. It was based on medical findings also, sir.

25 Q Doctor, the report issued by your office basically

1 says, "Because of the decompositional changes and the
2 unfused hyoid bone, changes associated with asphyxiation
3 would not be evident at autopsy, and the cause of death is
4 based on the investigation and lack of other findings at
5 autopsy." Do you see that?

6 A Yes, I do, sir.

7 Q So basically then, you know that your office
8 concluded that it was a homicidal asphyxia not based on
9 the findings at autopsy but the other findings of the
10 investigation as the report said?

11 A That's -- yes.

12 Q Okay. Now, did you actually review the autopsy in
13 this case?

14 A I did, sir.

15 Q And did you review this report before it became
16 official?

17 A I did, sir.

18 Q So then you knew that the finding in this case of
19 homicidal asphyxiation had nothing to do with what was
20 actually found at the autopsy but was based on what the
21 investigation showed?

22 A Yes.

23 Q All right. Now, if a medical doctor is going to make
24 a conclusion on -- not on what he finds with a medical
25 report but the extrinsic evidence, would it not be

1 important for that medical doctor to have all of the
2 extrinsic evidence that was available?

3 A I would say so.

4 Q So we know in this case, then, that the sheriff's
5 department did a significant investigation, correct?

6 A Correct.

7 Q Before making a determination on extrinsic evidence
8 instead of medical evidence, the doctor should have as
9 much of that extrinsic evidence as is humanly possible,
10 correct?

11 A Correct.

12 Q And the doctor, if properly noting a medical chart,
13 would write down all of the medical facts that he -- all
14 of the historical facts that were basically used to reach
15 the diagnosis, right?

16 A Correct.

17 Q Now, in this case, that history is contained only in
18 one place. It's called the case summary, right?

19 A Right.

20 Q So the only facts that this doctor knew at the time
21 this diagnosis was reached that it was an African-American
22 woman who was found August 23rd deceased on the front
23 yard, right?

24 A That's correct.

25 Q She had not been heard from since August 16th.

1 A That's correct.

2 Q Found with decompositional changes and was pronounced
3 at the scene?

4 A But that's the information we knew at the -- at the
5 time of autopsy, sir; that's correct.

6 Q It says the medical records -- it says a review of
7 the provided medical records doesn't show any significant
8 past medical history that would have contributed, correct?

9 A That's correct.

10 Q Now, this would have been -- if your office did the
11 this properly, these would be the only extrinsic facts
12 that should have been relied upon to make this diagnosis,
13 correct?

14 A If what had been done properly, sir?

15 Q Well, let's talk a minute again. Let's back up.

16 A Okay.

17 Q I ought to be able to read this report and tell every
18 single fact that has been either found or not found that
19 has led to the diagnosis, correct?

20 A Well, there's other reports that are still out there,
21 sir, that the police do.

22 Q Well, yes, sir, but I should be able -- in the
23 medical record business, there's a rule of thumb that if
24 it's not written down, it didn't happen, correct?

25 A That's correct.

1 Q And when you issue an actual -- when your office
2 issues an actual autopsy report, that report should
3 contain every finding or non-finding that is relied upon
4 to reach the conclusion. That's correct, too, isn't it?

5 A Yes.

6 Q All right. So then if this is done properly -- if
7 this report is done properly, I should be able to read
8 this piece of paper and determine every single extrinsic
9 fact that was relied upon in order to determine the cause
10 of death, right?

11 A Yes.

12 Q If we were to read this then, the only extrinsic
13 facts that we had was that she was 26-year-old
14 African-American. She was a woman. She was found dead on
15 the 23rd, and she was deceased on the front yard.

16 She hadn't been heard from since August 16th. She
17 was found with decompositional changes and was pronounced
18 dead at the scene, and the medical record doesn't show any
19 significant past medical history. Those are all the
20 facts. Those are all of the extrinsic facts which are
21 listed in the report, correct?

22 A In the coroner's report; that's correct.

23 Q No, sir. This isn't the coroner's report. This is
24 actually the report of your office.

25 A And that's provided to us by the coroner.

1 Q Well, sir, this report is actually issued by your
2 office, correct?

3 A That's correct.

4 Q And whatever factual -- whatever extrinsic -- if
5 you're going to make -- if your office is going to make a
6 decision based upon extrinsic facts, those facts are
7 supposed to be written down in your report so that someone
8 like a jury can see what facts or nonfacts are being
9 relied upon to reach the conclusion, correct?

10 A Correct.

11 Q All right. Let's take a look at all of the
12 non-findings of this report. According to this report,
13 there was not a finding of trauma. We know that, correct?

14 A Actually, there -- actually -- I believe an
15 extravasation of the blood within the soft issues of the
16 right lateral neck can be considered trauma.

17 Q Certainly, you didn't do the report. The doctor did
18 it, right?

19 A Dr. Durso did it; that's correct.

20 Q The person that actually did the report found there
21 was nothing on the body that she could conclude was
22 traumatic, correct?

23 A That's what she said, yes.

24 Q And you told us you agree with that assessment. You
25 already told us that, correct?

1 A Yes.

2 Q All right. So now we know there was no evidence of
3 trauma, and we know that the autopsy findings were all
4 based upon the extrinsic facts that were given by the
5 coroner. We know what those extrinsic facts are because
6 those extrinsic facts should have been all written down --

7 MS. CAMPBELL: Objection, Your Honor, asked and
8 answered dozens of times.

9 THE COURT: At this point, I'm going to sustain the
10 objection.

11 BY MR. MOORE:

12 Q Sir, of these extrinsic facts --

13 MS. CAMPBELL: Objection, Your Honor.

14 THE COURT: What's the question, Mr. Moore?

15 MR. MOORE: Of these extrinsic facts, which of these
16 facts leads to the conclusion that it was homicide.

17 THE COURT: I'll allow him to answer that.

18 THE WITNESS: Well, the -- the -- based upon the
19 investigation that the coroner's office did and the police
20 and the fact that there was lack of -- lack of anything
21 else that killed her, in addition to the fact that this
22 hemorrhage in her neck area, that -- that -- that --
23 that's what led Dr. Durso and I to believe this was
24 homicidal asphyxiation.

25

1 BY MR. MOORE:

2 Q No, sir. Based upon the extrinsic -- we know that
3 this decision was based upon -- not the autopsy but --

4 MS. CAMPBELL: Objection, Your Honor. He can't
5 insert his own opinion into this.

6 MR. MOORE: I asked the question. If he can just --
7 I'm just examining him, ma'am.

8 THE COURT: Don't say "we know", Mr. Moore.

9 BY MR. MOORE:

10 Q Well, Doctor, let me ask you this: From the
11 extrinsic facts that were actually written down, as they
12 should have been, according to you, which of these
13 extrinsic facts would lead you to conclude homicide?

14 A In that -- in that -- in that summary right there.

15 Q In the history, yes, sir.

16 A That right there?

17 Q The history, yes, sir. The case summary, the
18 history.

19 A There's more history than that.

20 Q Yes, sir, but you've already told us, sir, that the
21 history that you relied on is supposed to show in your
22 report.

23 Now, I want to know in the report, if it's done
24 properly, it contains all of the extrinsic facts that
25 you're relying upon for the decision of your office.

1 Which of these facts -- which of the facts that were
2 actually written down, as they should have been, show
3 homicide?

4 A We don't know it's a homicide based on the case
5 summary, sir.

6 Q All right. Well, show me in the report, then,
7 anywhere in the history -- anywhere in the history, show
8 me any history or extraneous facts anywhere in the report
9 except for the case summary.

10 A I can't show you that here in this case summary, sir.

11 Q That's because they don't exist, right?

12 A Not here in the case summary.

13 Q Well, show me in the entire report anywhere where
14 there's any extrinsic fact written down other than the
15 factual findings on the autopsy.

16 A See, I think you're losing the plot here, sir. The
17 autopsies are performed, and you take into every -- you
18 take in all information, and then you make a determination
19 as of the cause of death, okay.

20 Q I understand that and I -- I appreciate that, but
21 you've already told us that when I read this report, it is
22 supposed to have every single fact, extrinsic or medical,
23 that you have relied upon in issuing an opinion, correct?

24 A Yes.

25 Q And it doesn't contain any fact, extrinsic fact, that

1 you would rely upon in coming to a conclusion of homicide,
2 does it?

3 A But this report here, we called it as homicidal
4 asphyxiation. It doesn't list the manner of death on this
5 report, sir. I don't see that here as a manner of death
6 on this report.

7 Q Oh, then on the report, you don't see where it says
8 probable homicidal asphyxiation?

9 A Yes. That's the final anatomical diagnosis, sir.
10 All right. That cause of death, if you look at the death
11 certificate, it says manner of death. That's not listed
12 here. That's the coroner's job, okay.

13 Q Look at page three down at the bottom, summary of
14 content.

15 A Yes, sir.

16 Q The cause of death of this 26-year-old woman is
17 probable homicidal asphyxiation.

18 A That's correct. That's the cause of death. That's
19 not manner of death, sir.

20 Q I see. Well, there's a difference then between cause
21 of death and manner of death?

22 A Right. We discussed that. Cause of death is the
23 means or injury that brings about death. The manner of
24 death is the circumstances surrounding the death.

25 Q Well, are you --

1 A We discussed that already.

2 Q What's the cause of death?

3 A The cause of death in this case is homicidal
4 asphyxiation, death at the hands of another person. You
5 don't charge based on cause of death. You charge based on
6 the manner of death. That's my understanding of it.

7 Q What's the manner of death?

8 A This case, the coroner signs it as a homicide, sir.

9 Q Well, were you -- were you -- was your office able to
10 determine a manner of death?

11 MS. CAMPBELL: Objection, Your Honor. He knows
12 that's beyond his scope. He just explained that to the
13 jury, and he keeps badgering him.

14 MR. MOORE: Wait a minute now. That's the pivotal
15 question. He's been called as an expert to give his
16 opinion on all sorts of things.

17 MS. CAMPBELL: Objection, Your Honor. Speaking --

18 THE COURT: No, sir. He does not testify as to
19 manner of death. He testifies as to cause of death.

20 MR. MOORE: Well, Your Honor, might I ask him, "Do
21 you know the manner of death?"

22 THE COURT: You can ask him if he knows that.

23 BY MR. MOORE:

24 Q Sir, do you have an opinion on the manner of death?

25 A Yes, I do.

1 Q All right. The manner of death is homicidal
2 asphyxiation?

3 A No. The manner of death is homicide. You don't --
4 there's homicide. It's one word, sir.

5 Q I see. Now, we talked then about -- in order to make
6 a conclusion -- if you're not making conclusions on the --
7 based on the actual pathology itself but on the external
8 facts, before you reached the conclusion, would you not
9 want to know if there was DNA found on the decedent's
10 body?

11 A Sometimes that could be helpful, sir.

12 Q Would you not want to know if there was DNA found
13 underneath the fingernails of the decedent?

14 A Sometimes that can be helpful, yes.

15 Q Would you not want to know if there were things found
16 in the decedent's hand?

17 A Sometimes that can be helpful, you know. It depends
18 on the case and the circumstances, yes, that can
19 sometimes.

20 Q Would you not want to know what, if any, evidence was
21 found in proximity to the body?

22 A Yes. Sometimes that can be helpful, yes.

23 Q Would you not want to know whether there were any
24 type of fibers on the body?

25 A Sometimes that can be helpful, yes.

1 Q Would you not want to know what physical evidence
2 showed potential activity the decedent had been engaging
3 in a day or two or three or five before her death?

4 A Yeah, sometimes that can be helpful, sir.

5 Q And those sorts of things can be helpful because they
6 could help establish cause of death, manner of death, time
7 of death, all of those things, correct?

8 A True, true.

9 Q And a pathologist who is relying upon extrinsic
10 evidence would want to make sure she or he has gotten all
11 of the extrinsic evidence that was readily available
12 before making a final conclusion, correct?

13 A Correct.

14 Q Do you know that the only extrinsic evidence that
15 your office had before reaching the final conclusion was
16 the information that had been provided by the coroner?

17 A That's correct, because I believe this case was
18 signed out on September 6th. A lot of that DNA stuff
19 takes several months, so a lot of that comes in
20 afterwards.

21 Q Well, then if those things are things that are
22 important or can be important and if the investigation of
23 the sheriff's department are things that are or can be
24 important, before labeling something a homicide, why
25 wouldn't you get all of the things that you need?

1 A Well, again, our office didn't label it a homicide,
2 sir. The coroner's office did that, all right. We put
3 the cause of death.

4 Q Before calling the cause of death probable homicidal
5 asphyxiation, why wouldn't you get all the information you
6 needed?

7 A Because based on what we had, we felt this is what it
8 was to a reasonable degree of medical certainty, and even
9 know after all the information is out there, we still
10 believe that and --

11 Q Have you ever heard of something called an RO-- R on
12 T phenomenon?

13 THE COURT REPORTER: I'm sorry. What is -- R on T?

14 MR. MOORE: R O -- that's R dash on dash T
15 phenomenon.

16 THE WITNESS: I'm -- I'm not familiar with that term,
17 sir.

18 MR. MOORE: It could be a cardiac event that --

19 MS. CAMPBELL: Objection, Your Honor. He said he's
20 not familiar with it.

21 BY MR. MOORE:

22 Q I'll -- that's fine. Are you familiar with a cardiac
23 event in which ventricular stimulus causes premature
24 depolarization of cells that have not completely
25 repolarized?

1 A Sounds to me like some sort of cardiac arrhythmia.
2 That's what it sounds like.

3 Q And do you know that this phenomenon can actually
4 lead to ventricular fibrillation that will show up on EKG
5 but won't show up on autopsy?

6 A Yeah, that would make sense, sir. That's -- I agree
7 with you there. That would probably make sense.

8 Q And do you know that ventricular fibrillation such as
9 is caused by the stimulus will basically cause something
10 called a Sudden Death Syndrome.

11 A Probably so.

12 Q And it is certainly not uncommon in young people, is
13 it?

14 A I've never seen it, sir. I've never seen it, so I
15 can't really answer that question, sir. I'm not a
16 clinician, so I'm not -- I'm not a cardiologist, so I
17 can't answer that.

18 Q Sir, certainly you understand the phenomenon known as
19 SDS. You're familiar with Sudden Death Syndrome.

20 A Yeah. I'm familiar with Sudden Death Syndrome, yes.

21 Q And basically, what happens is -- and that can happen
22 in anybody, can it not?

23 A Sudden death can occur in anybody. It occurs more
24 likely in older people, of course.

25 Q But it can occur in anyone.

1 A It can, yes.

2 Q And one of the main places you see it is on athletes
3 on athletic fields, correct?

4 A Yes, I agree. Yes.

5 Q Young people dropping dead for just no reason.

6 A Well --

7 Q No reason that can be found at autopsy.

8 A Well, that's where I think we're -- we have a little
9 thing. I actually did a case very recently for a
10 17-year-old kid that dropped dead playing basketball.
11 Actually, it was in April, and actually, I did find
12 something in autopsy. So that's where I'm leaving a --
13 little bit of a difference of opinion, sir.

14 Q But you don't -- on SDS, Sudden Death Syndrome, you
15 do not always find -- and the literature indicates you
16 don't -- most times on SDS, there is nothing that shows up
17 on pathology, correct?

18 A There is chance, yes. Nothing can show up. Yes,
19 sir.

20 Q And, of course, SDS is very closely related to
21 something called SADS which is Sudden Arrhythmia Death
22 Syndrome, correct?

23 A Yeah, yes. You could say that, yeah. Any sudden
24 death is going to be -- the heart is going to be generally
25 associated with some sort of arrhythmia so...

1 Q And an SADS can also happen in a very young person.

2 A It can, yes; yes, sir.

3 Q Generally, it won't show up on autopsy?

4 A Yeah. You might not see anything, yeah. There's a
5 chance of that.

6 Q And you're familiar with a Prolonged QT Syndrome?

7 A Yeah, I am familiar with that, sir.

8 Q That's called LQTS, right?

9 A That's correct.

10 Q It also is a disturbance of the electrical system of
11 the heart which causes a sudden drop dead, and it can
12 happen in anybody, right?

13 A That's correct.

14 Q And that also won't show up on autopsy?

15 A That's correct.

16 Q And you're familiar with the Brugada Syndrome?

17 A Yeah, I've heard about that.

18 Q That's a cardiac arrest and failure due to ST
19 polymorphic ventricular problems, correct?

20 A That's correct.

21 Q And that can also cause a 26 year old to drop dead
22 for no reason?

23 A Yes. There's a chance of that, yes.

24 Q And that also won't show up on autopsy?

25 A That's correct.

1 Q And you are familiar with CPVT?

2 A Yes, I am.

3 Q And that's a -- I can't pronounce it but I read it,
4 but it's basically a form of a ventricular tachycardia
5 that will kill anybody at most any age and not show up on
6 autopsy, correct?

7 A Correct.

8 Q And, of course, there is SQTs which is the short QT
9 Syndrome, correct?

10 A Correct.

11 Q That's another way somebody can just drop dead and
12 have no evidence of it found on autopsy, correct?

13 A That's correct, sir.

14 Q And, of course, you're familiar with WPW syndrome
15 which is the Wolff-Parkinson White Syndrome. That's
16 another way a 26 year old can drop dead without any
17 evidence of any kind on autopsy, correct?

18 A Correct.

19 Q Atrial fibrillation, any form of cardiac arrhythmia
20 can cause a 26 year old to drop dead with no -- no
21 evidence of foul play at all, and you can't find it on
22 autopsy generally, correct?

23 A Correct.

24 Q Would you agree -- well, how about HCO, hypo-tropic
25 cardiomyopathy?

1 A Now that, that you will see.

2 Q We will see, okay. Would you agree with me there are
3 about 150 recognized syndromes? About 150 recognizes
4 syndromes?

5 A Yeah, that's correct.

6 Q That would cause someone to drop dead no matter what
7 age for no reason that will not show up on autopsy?

8 A Yeah, that's -- that's about right. That's...

9 Q So of the -- of the fact that she had no prior
10 medical history, we know there are 150 things that could
11 have killed her naturally, and you wouldn't have been able
12 to find evidence of those on any autopsy, correct?

13 A There's a chance, yes. However, sometimes these
14 people with these -- they could have, you know, feel their
15 heart flutter every once in a while or something like
16 that. There's a chance they could have had -- in the
17 past, they could have felt their heart flutter in the past
18 but...

19 Q But we don't know if she had ever felt her heart
20 flutter or not, right?

21 A We don't know that.

22 Q But we do know there are 150 things that could have
23 been a natural cause of death that you would have found
24 nothing on autopsy, correct?

25 A Correct.

1 Q But your office just eliminated all of those.

2 A Yes.

3 Q According to the medical report based upon the fact

4 that she was in the front yard dead, right?

5 A Was that a question?

6 Q Yeah. According to the autopsy report, these are the

7 facts that caused y'all to eliminate those 150 other

8 potential causes.

9 A Yes.

10 Q Well, did you know that she had Levaquin, a

11 prescription for Levaquin?

12 A Yeah, I saw that on a piece of paper.

13 Q Right. You saw that on this piece of paper --

14 A Uh-huh.

15 Q -- which is basically an indication of what was found

16 inside of her house, right?

17 A Yeah.

18 Q Now, Levaquin, that sound like a big deal, but it's

19 an antibiotic; is that right?

20 A That's correct.

21 Q But it has side effects, right?

22 A Yeah, any drug is going to have side effects. You

23 know, it's -- any drug you take is going to have side

24 effects. There's no perfect drug out there. So any drug

25 is going to have some side effects.

1 Q Is there a toxicology test for Levaquin?

2 A I believe it tests for certain antibiotics. I don't
3 have the sheet here that -- what it tests for, so I'm
4 not -- I'm not certain whether that one was tested for it
5 on this, sir.

6 Q Levaquin has as a side effect chest pain, fast
7 heartbeat, irregular heartbeat, severe dizziness, fainting
8 and arrhythmia, does it not?

9 A You know, I would tend to agree with you, probably
10 so.

11 Q And arrhythmia is one of those things that can kill
12 you without any evidence on a autopsy, isn't it?

13 A That's true, sir.

14 Q And you don't know if toxicology tested for Levaquin
15 or not.

16 A You know, I'd have to see what they tested for. I
17 don't know exactly. There's like 400 drugs on there that
18 I'm not sure of. I'm certain they did, but I can't say up
19 here. I need to have the sheet in front of me, sir.

20 Q She also had a prescription for Oxycodone, did she
21 not?

22 A Yes, she did.

23 Q And Oxycodone, now that's an opiate.

24 A Yeah, it definitely tests for that. That I know.

25 Q Right. And the effects of Oxycodone will stay in the

1 body, because it's an opiate, for a significant period of
2 time, will it not?

3 A It will.

4 Q Now, we know then that the opiate Oxycodone for which
5 she had a prescription and which the effects can last for
6 a long time include fainting, seizure, slow and shallow
7 breathing and arrhythmia, right?

8 A Yes.

9 Q And there certainly is a reasonable possibility if
10 she was taking the medication that she had a prescription
11 for and had taken the effects for -- and the effects had
12 been in her body for awhile, that Oxycodone could have
13 caused the arrhythmia that could have led to her death,
14 right?

15 A Well, she didn't have any in her system.

16 Q Well, yes, sir, but you said the effects of it last a
17 long time. The only way it's going to be in the system is
18 if it's in the bloodstream, but the effects of an opiate
19 remain even after the actual toxicology gets out of the
20 blood stream. You know that, don't you?

21 A Yes, sir.

22 Q All right. Now, even with a toxicology report, there
23 is no way you can tell us that this lady died from an
24 opiate arrhythmia caused by the ingestion of Oxycodone, is
25 there?

- 1 A Well, I'm not toxicologist.
- 2 Q You are a pathologist.
- 3 A I am a pathologist.
- 4 Q Yes, sir.
- 5 A So I can't -- I can't tell for sure.
- 6 Q If you can't tell for sure, there's no way you can
- 7 eliminate that as a reasonable possibility, right?
- 8 A I guess not.
- 9 Q And if not, then there is something in her medical
- 10 record which would indicate a potential cause of a fatal
- 11 cardiac arrhythmia that would not show up on an autopsy.
- 12 That's true, isn't it?
- 13 A I guess it's a possibility.
- 14 Q It's true, isn't it? You're a board certified
- 15 pathologist. You know that, don't you?
- 16 A I guess so, sir, yes.
- 17 Q Then why in your office's report did it indicate that
- 18 there was nothing significant found in her medical history
- 19 which could have contributed to her death when we now know
- 20 there are at least two things in her medical history that
- 21 could have contributed to her death by virtue of a fatal
- 22 cardiac arrhythmia which would not have shown on an
- 23 autopsy? If that's true which you just said, explain to
- 24 me why your report says it's not.
- 25 A I don't know.

1 Q It shouldn't have said that, should it?

2 A I don't know.

3 Q Because there are things in her medical record which
4 are significant and which actually could have led to a
5 cause of death that was a non fatal -- non-homicidal
6 arrhythmia.

7 A The problem is these drugs might have been found in
8 her house, sir, but they were not found in her system.

9 Q They were prescription medications prescribed for
10 her, and her medical history indicated that she was taking
11 them. Your office reviewed that.

12 A They are medical, but based on our report, on our
13 toxicology, sir, they were not in her system, okay.
14 People have -- people take these drugs, okay, and then
15 they don't take them. They don't finish them. They have
16 prescriptions in their medicine cabinets that they don't
17 finish.

18 Q But, sir, you told me these drugs have residual
19 effects.

20 A They could but there's way for us to know whether
21 there was -- she could have taken these drugs three months
22 ago.

23 Q But the fact that she had them in the medical record
24 is significant.

25 A But according to our tox report, she did not have

1 them in her system.

2 Q The fact that she had the prescription for those
3 medications is a significant finding, is it not?

4 A It's a significant finding but based on our tox
5 report, they were not in her system.

6 Q Yes, sir, but you've told us about this residual
7 effect which is certainly familiar with all of these
8 medications.

9 Now, if it is a significant finding, why did your
10 report indicate that the medical history was insignificant
11 when it was significant? You told us that.

12 A Because these drugs were not -- we can't prove that
13 they were in her system. We don't know that there were
14 residual effects going on in their body.

15 People have medicines in their cabinet, everybody
16 does, that they have stopped taking months ago.

17 Q But we don't know when she stopped taking them or if
18 she was taking them. All we know is --

19 A Well, we know she wasn't taking them.

20 Q She wasn't actually -- hadn't taken one recently
21 because toxicology showed, at least on the Oxycodone it
22 showed it, but we don't know anything about the Levaquin.
23 We know that this history is significant because she had
24 significant medications, correct?

25 A There were a lot of medications, here, sir, a lot.

1 Q Well, let's talk about another one, Percocet. Now,
2 Percocet is Oxycodone plus acetaminophen, right?

3 A Yes.

4 Q Percocet can also cause a differentiation in the
5 heartbeat, correct?

6 A Well, yes.

7 Q Fainting?

8 A (There was no response).

9 Q Fainting?

10 A Yes.

11 Q Passing out, right?

12 A Yes.

13 Q Sudden Death Syndrome?

14 A It's been reported.

15 Q Yes, sir, and it can also cause the -- a fatal
16 arrhythmia that basically is non-documentable on autopsy,
17 right?

18 A Yes.

19 Q And it can also have residual effects long after
20 toxicology says it's no longer in the system because we
21 know that from the literature, don't we?

22 A It can, yes.

23 Q And we would have to know how long she had been
24 taking Percocet and Oxycodone and Levaquin, and if she
25 mixed them together and so forth and so on in order to

1 determine whether or not what she died from was a
2 homicidal asphyxiation or SDS or a sudden arrhythmia that
3 wouldn't show up on autopsy, wouldn't it? We wouldn't
4 know that, would we?

5 A Right.

6 Q Did you know that when you issued the report?

7 A No, but we do know that he she wasn't taking these
8 drugs.

9 Q Well, she wasn't -- she hadn't taken them recently,
10 but we do not know the residual impacts of what was there,
11 right?

12 A That I don't know. That I don't know.

13 Q She also had a prescription for Zyrtec, right?

14 A Yeah.

15 Q Did you test for Zyrtec?

16 A Yeah, that's -- that's usually tested for in that
17 panel.

18 Q And it's an antihistamine for allergy, correct?

19 A Yeah.

20 Q But one of its side effects -- but this one -- this
21 one is rare. One of the rare side effects is breathing
22 problems and arrhythmia, right?

23 A It can cause that.

24 Q And actually, there is a phenomenon when people start
25 mixing drugs together that one drug might be safe and

1 another might be safe but put two of them together, and it
2 can cause problems. What's that phenomenon known as?

3 A I call it combined drug toxicity.

4 Q Right. What basically can happen is you might be
5 taking one drug that's safe, another drug that's safe, put
6 them together, you magnify them and can create a toxicity
7 that can magnify the side effects, correct?

8 A Yeah, that can happen, sir.

9 Q She was also taking a Azithromycin, I believe; is
10 that correct?

11 A Yeah, that's an antibiotic.

12 Q The side effects: Fast and irregular heartbeat,
13 dizziness, fainting and arrhythmia. Did you know that?

14 A Yeah.

15 Q Did you know that, yep?

16 A Yeah.

17 Q And she was also taking Viscous Lidocaine which is a
18 pain reliever for sore throat or mouth that has the side
19 effects of decreased breathing, shallow breathing, slow
20 breathing, irregular heartbeat, mental mood changes,
21 drowsiness, seizures, nervousness, confusion, blurred
22 vision and arrhythmia, correct?

23 A Yes, sir.

24 Q All right. Now, sir, wouldn't you need to know how
25 she had been mixing and matching all of these medications

1 that the medical record shows she had?

2 A But we don't know that she was taking these at this
3 time when she died.

4 Q Well, you know --

5 A We know she wasn't.

6 Q Well, wouldn't you need to know that? You don't even
7 know if the thing tested for Levaquin. You didn't know
8 how long it had been since she had them, but you do know
9 she had a prescription for every one of them, don't you?

10 A Yeah. These were found at the -- at the scene, sir.

11 Q Now, did you ever hear of something called pulmonary
12 embolism?

13 A Yeah. I've heard of those. Yeah. I've seen a lot
14 of them.

15 Q It's called PE?

16 A Yes.

17 Q What basically happens is -- and it can happen to
18 anybody is that the blood will pool somewhere else in the
19 body, eventually break loose. It's called throwing a
20 clot, moves through the blood system, goes into the
21 pulmonary system and kills you, right?

22 A Yes, sir.

23 Q Many times, a PE doesn't show up on autopsy.

24 A No, that's -- I respectfully disagree with you, sir.

25 Q All right. Well, one thing is for certain because

1 what you're telling me is -- well, let me ask you this
2 question: When a PE happens, when that embolism takes
3 place, you can see evidence of it in the eye sockets,
4 can't you?

5 A No, no. A pulmonary embolism is just what you
6 said --

7 Q All right.

8 A -- in the chest.

9 Q The chest. It's a clot.

10 A It's in the chest.

11 Q But it causes, basically, a cutting off of blood
12 supply.

13 A It causes a cutting off of the blood supply in the
14 chest, and you can see that clot in the -- in the arteries
15 of your lung.

16 Q All right.

17 A You can clearly see it. They pop out likes sausages.

18 Q Have you ever heard of conjunctive petechia?

19 A I've heard of it, yes.

20 Q Explain to the jury what that is.

21 A They're little, little red hemorrhages that occur on
22 the -- usually on the whites of your eyes, little white
23 spots you can see.

24 Q In the case of asphyxia.

25 A Yeah, you can get them in asphyxia.

1 Q Actually, the literature recognizes that 80 percent
2 of the cases of asphyxia have conjunctive petechia. Did
3 you know that?

4 A Yes, sir.

5 Q There was no conjunctive petechia found in this case,
6 right?

7 A That's correct.

8 Q So this case is unlike 80 percent of the other
9 asphyxiation cases, correct?

10 A That's right, but our examination was limited due to
11 the decompositional changes.

12 Q But conjunctive petechia, these spots can be seen not
13 only with gross inspection, but they can also be found
14 microscopically simply by dissecting the eye. You know
15 that.

16 A I've seen it, but we couldn't -- we couldn't -- in
17 this case, you didn't see them grossly, so you wouldn't go
18 and dissect them out.

19 Q Well, you said that there wasn't -- there wasn't
20 enough there to be able to make a gross determination, and
21 if you want to find out whether it's asphyxia to find the
22 petechia is there is a relatively easy thing to do:
23 Simply dissect and do a microscopic examination, right?

24 A Yes.

25 Q It should have been done before anybody reached a

1 conclusion of homicidal asphyxiation, should it not?

2 A Generally, we don't dissect the eyes out, only on
3 children.

4 Q Yes, but the situation you have here is the question
5 of asphyxiation. You couldn't find anything else, and
6 someone decided it's a homicidal asphyxiation.

7 All you had to do to see if that was true was to do a
8 microscopic test on the eyeball to see if, in fact, this
9 conjunctive petechia was there, right?

10 A You could have done that. You could have, but if you
11 didn't see it grossly, there is reason to do it.

12 Q Well, then it could be seen grossly, and it was seen
13 grossly enough to the point where you didn't see the need
14 to do a microscopic examination, right?

15 A Well, I guess not, sir.

16 Q And, therefore, we can say, based upon a reasonable
17 degree of professional certainty, there was no conjunctive
18 petechia, and if there was asphyxiation, it's unlike
19 80 percent of the other asphyxiation cases that have ever
20 taken place, right?

21 A We could say that.

22 Q Now, if it's unlike 80 percent of the other cases,
23 you understand reasonable degree of professional certainty
24 is a 51 percent, right?

25 A That's correct.

1 Q So with the non-finding -- with knowing and knowing
2 certain enough not to do a microscopic examination that
3 this case is unlike 80 percent of any other asphyxiation
4 case that's ever happened, we can say based upon that fact
5 alone that this case more than likely isn't asphyxiation
6 based upon what was found on that body. That's true,
7 isn't it?

8 A Well, I go by the autopsy report, and I like the
9 extravasation of the blood and neck and so forth and in
10 the back.

11 Q Can a person die with SDS from sleep apnea?

12 A Yes.

13 Q Is that going to show on autopsy?

14 A No, sir.

15 Q How about from a severe asthma attack?

16 A Yeah, that will show. That will show on the -- on
17 the lung examination, sir.

18 Q How about vomit aspiration?

19 A Yeah. If there's vomit, you can see the vomit. If
20 there's chunks of food in the airway, you can see them
21 down in the airway when you look at them grossly. It will
22 come out of the airway, and you can see it on the
23 microscopic examination of the lungs.

24 Q Now, there's been some testimony -- or let me ask you
25 this: Can you suffocate somebody by simply applying

1 slight pressure on the neck?

2 A Slight pressure? It depends. You know, if they have
3 got a medical condition or an elderly person, I believe
4 you could.

5 Q Let's talk about a 26 year old ex-military trained
6 woman in good health. Can you kill a person just by
7 putting slight pressure?

8 A I guess you could. I guess you could.

9 Q The person would pretty much have to just lay there
10 and let you do it.

11 A Probably so.

12 Q Actually, it takes a great -- it takes enough force
13 on the neck to strangle a person to where the traumatic
14 pressure actually crushes off the wind pipe to the point
15 where the air will go through, right?

16 A It depends. It depends. Sometimes you break -- you
17 cut down the blood supply, the vessels, the jugular and
18 carotids. Other times, you can -- you crush the windpipe.
19 It depends. You can do both, or you can do either/or.

20 Q But it takes a crushing of those vessels.

21 A Yeah, you have to -- you have to constrict.

22 Q There was no physical finding of any such crushing of
23 the vessels, correct?

24 A Dr. Durso didn't see any.

25 Q And she looked for them.

1 A Yes.

2 Q Right? And when those vessels were crushed and those
3 windpipes were crushed, those are the types of things that
4 you generally can find on autopsy, aren't they?

5 A Yes.

6 MR. MOORE: Doctor, I thank you so much for answering
7 my questions. I don't believe I have any further
8 questions for you. I'm sure counsel may have some
9 redirect.

10 Thank you so much.

11 REDIRECT EXAMINATION:

12 BY MS. CAMPBELL:

13 Q Doctor, there were findings in the neck that she
14 noted in her report; is that correct?

15 A That's correct.

16 MR. MOORE: Objection. Leading, please, Your Honor.

17 THE COURT: Sustained.

18 BY MS. CAMPBELL:

19 Q What were the findings in the neck that she noted on
20 her report?

21 A Dr. Durso noted in her report extravasation of the
22 blood in the right lateral neck and also extravasation of
23 blood in the back, in the back area right here, okay.
24 That's hemorrhage, okay, and I've explained that to you
25 guys already.

1 Q And as far as the findings in this case, why do you
2 get a tox screen done? Why is that significant for the
3 presence or the importance of any drugs?

4 A Because drugs can -- drugs in your body can bring
5 about death, so all forensic cases always get a toxicology
6 run on them.

7 So in this case, we didn't have blood, so we had to
8 use the organs to run the toxicology. In this case,
9 everything was negative. So she had no drugs in her
10 system at all.

11 Q Any signs of alcohol use?

12 A No alcohol. Alcohol was negative.

13 Q So the questions about the drugs he referred to, did
14 the drugs have any influence in this case?

15 A No, not at all.

16 Q In your office, you're referred suspicious deaths on
17 a regular basis?

18 A We are referred -- all coroner's cases are referred
19 as suspicious deaths.

20 Q And he asked you about reviewing information, what's
21 actually in the report. The part that's in the report, in
22 this first part that he went over with you, is that the
23 information that's initially provided to you all?

24 A That's -- that's initially provided to me. That's
25 usually dictated in the autopsy room the day of the -- the

1 day of the autopsy.

2 Dr. Durso in particular, she likes to dictate that
3 part of the case in the autopsy room that day. I bring it
4 up to my office and dictate it later on that day, but I
5 know her. She dictates in the room itself.

6 Q So we don't mislead this jury, you were aware and did
7 review other information in this case as noted in the
8 final paragraph where it refers to the final
9 investigation?

10 A That's correct.

11 MR. MOORE: Object to leading.

12 BY MS. CAMPBELL:

13 Q What else did you review?

14 THE COURT: Overruled.

15 BY MS. CAMPBELL:

16 Q Thank you.

17 A I reviewed all the photos. I reviewed the toxicology
18 report. I saw this, this thing in the file. I reviewed
19 that. This was the drug sheets.

20 Q And he asked you about fibers and things found at the
21 scene. Did you review -- like in State's Exhibit 10, were
22 you aware there was a blanket thrown over the body?

23 A Yes. I had reviewed this, this photograph.

24 Q And other photographs which showed like the
25 mummification and things of that.

1 A Yes. I reviewed all the photographs in this case.

2 Q In this case, the body had been dead for three to
3 seven days, more likely toward the seven days, prior to it
4 being found?

5 A That's correct.

6 Q He also asked you about possible SDS. He used a lot
7 of different acronyms and stuff. Were those all things
8 you considered prior to coming up with your conclusions?

9 A Yes, it was.

10 Q And can you tell this jury why you came to your
11 conclusion in this case that this is a case of homicidal
12 asphyxiation?

13 A Based on the -- I saw it based on the -- the -- the
14 hemorrhage in the neck, based on the hemorrhage in the
15 back, and based on the condition of the body, I felt that
16 this was best as a homicidal asphyxiation, okay.

17 Q And you still remain firm in that finding in this
18 case?

19 A I do.

20 Q On these facts in this case?

21 A Yes, I do.

22 Q And he asked you about accelerated decomposition. Is
23 there any evidence of that in this case?

24 A Not that I can tell.

25 Q He asked you about who you get paid by. Do you get

1 paid by my office?

2 A No, I do not. I receive a salary from Professional
3 Pathology Services or my company that I -- that I'm a part
4 owner.

5 Q And in this case, as you would with any case, do you
6 make sure that you exclude any natural cause, disease or
7 anything else that would have caused this death?

8 A Yes.

9 Q And you did that in this case?

10 A Yes.

11 Q And you don't base this opinion on suspicion or
12 anything like that. You base it on the findings at
13 autopsy?

14 MR. MOORE: Objection, Your Honor.

15 BY MS. CAMPBELL:

16 Q What do you base it on?

17 A It's based on the autopsy report, the investigation
18 that the police does, the investigation of the coroner's
19 office.

20 Q And the drugs that he mentioned to you, would you be
21 surprised to find that those had been prescribed years
22 before, just as you explain to the jury? Explain it
23 again.

24 A Right. And, again, everybody can relate to this is
25 that drugs are prescribed by physicians. You know, finish

1 them. They get put up in a medicine cabinet. After
2 years, months, they accumulate. You know, they just --
3 it's just what happens. You don't throw drugs away. You
4 know, everybody can relate to that.

5 Q And in this case in the report, does it mention that
6 her uterus was, in fact, missing?

7 A Let's see here.

8 (Pause).

9 The uterus is not identified. Yes, it says that here
10 in the report.

11 Q So she had had a hysterectomy at some point?

12 A Yes. She had a hysterectomy at some point.

13 Q Do you know how many years before that, that was
14 done?

15 A No, I don't know that.

16 Q And, again, your conclusion as to -- based on, again,
17 even his questioning taking in everything, what is your
18 conclusion as to the cause of death in this case?

19 A She died of homicidal asphyxiation.

20 MS. CAMPBELL: Beg the Court's indulgence.

21 (Pause.)

22 MR. MOORE: Your Honor, I believe the bailiff is
23 raising his hand. I think he may have a bathroom problem
24 or something like that.

25 THE BAILIFF: They need to take a break, Your Honor.

1 THE COURT: How much longer are you on recross?

2 MR. MOORE: I've got one question, but I certainly
3 don't want to make anybody uncomfortable. I'm happy to
4 wait. I have one question.

5 THE COURT: Let's do it.

6 RECROSS-EXAMINATION:

7 BY MR. MOORE:

8 Q Doctor, you testified that you made your conclusion
9 based upon the autopsy and the investigative facts, right?

10 A Yes.

11 Q Tell the jury the investigative facts that you had.

12 A Body found out in the yard. Again, this is what I
13 was -- this is what I was given: Body found out in the
14 yard decomposing; it stated the woman was seen alive the
15 day before, which was just impossible. That was not --
16 that can't be true, and that's the facts right there.

17 Q Well, so when you say investigative facts, those are
18 the two facts that you had.

19 A Those are the facts that we had, yes.

20 MR. MOORE: Thank you. Nothing further. No further
21 questions.

22 THE COURT: All right. Thank you. Ladies and
23 gentlemen, we'll take our morning break now. It's 10:35.
24 Let's break for about 15 minutes. Do not discuss the
25 case. Keep an open mind. We'll see you back in a few

1 testified as follows:

2 THE CLERK: Have a seat in the witness box. State
3 your full name for the record.

4 THE WITNESS: Joseph Clarke.

5 DIRECT EXAMINATION:

6 BY MS. CAMPBELL:

7 Q Investigator Clarke, where are you employed?

8 A Richland County Sheriff's Department.

9 Q What do you do there, sir?

10 A I'm an investigator with the CID part of the
11 division.

12 Q And what are your duties as an investigator with --
13 and what is CID?

14 A Criminal Investigation Division.

15 Q As your duties as investigator with the Criminal
16 Investigative Division, what would those include?

17 A Those would be -- I'm a primary investigator. I
18 would be called out to investigate any number of crimes,
19 particularly in the Major Crimes Division which include
20 assaults, armed robberies, murders, burglaries, things
21 like that.

22 Q And, typically, if someone -- is there a team that's
23 assembled that's typically on call for homicide?

24 A Yes. We have a rotation where we're on a list as to
25 kind of spread out the workload. You'll have guys that

1 are on homicide call. You'll have a primary and a
2 secondary, and we rotate. If your time passes and
3 something doesn't happen, then you just stay in rotation
4 until something comes about your way.

5 Q I want to turn your attention back to August of last
6 year. Were you on call, I believe, the 23rd?

7 A I was.

8 Q And specifically, the morning of the 23rd, tell this
9 jury how you became involved in this case.

10 A One of my supervisors, Lieutenant Donald, called me
11 at home, said that we had a body laying in a front yard,
12 suspicious death, possible homicide, we weren't certain.

13 I was directed to go to Richland Memorial --
14 correction, Providence Northeast and speak to a person of
15 interest due to him being home where this body was found.

16 Q And about what time was it that you received a call
17 that morning directing you to go to Providence Northeast?

18 A If I recall, about seven in the morning.

19 Q And once you got that call, where did you go?

20 A I drove from my home. You know, put my appropriate
21 gear on, got my things I needed, notepads, et cetera, a
22 kit that I have and drove to Providence Northeast to the
23 ER.

24 Q On the way there, were you given certain information
25 from the crime scene?

1 A I was. I was in multiple communication with not only
2 deputies at the actual scene and my lieutenant who had
3 alerted me to this issue today but also to Investigator
4 Martin.

5 Q And was there certain information about the condition
6 of the body that was related to you that was significant?

7 A Yes. I was being told this body found belonged to a
8 female but was in a pronounced state of decomposition.

9 Q Were you also given information that you wanted to
10 follow up on as far as when this person -- and who is the
11 person at the hospital you were going to see?

12 A I was going to see a Marcus Bailey.

13 Q Were you also given information about when he stated
14 he had last seen the victim?

15 A Right. I was going to, obviously, inquire about that
16 when he had last seen this person who was, for all intents
17 and purposes, I understood it as his roommate at the time.
18 That's what I was being led to believe, possible
19 boyfriend.

20 Q Approximately what time was it you arrived at
21 Providence Northeast?

22 A If I had my report in front of me, it may help, but I
23 believe that would be just shortly before eight o'clock,
24 right at eight o'clock.

25 Q Is this your report?

1 A Yes, it is.

2 Q And those are notes in addition?

3 A Yes, ma'am.

4 Q And when you got there at 8:40 in the morning, where
5 was the defendant?

6 A Mr. Bailey was in a treatment room. The ER at
7 Providence is separated into separate bays for examination
8 behind a curtain you pull close. When I came around the
9 corner, that's where he was sitting.

10 Q Was any other law enforcement there when you made
11 contact with the defendant?

12 A Yes, Deputy Pearrow was there.

13 Q And for -- was he receiving attention from some
14 nurses?

15 A Right. He was receiving -- they were doing the
16 regular checks, blood pressure, that kind of thing just
17 looking him over.

18 Q Prior to asking him any questions, did you take any
19 steps to ensure his rights were observed?

20 A Yes. I Mirandized him immediately, and I read it off
21 the form, as the practice is, and have him acknowledge
22 that I read him his rights. Then I also have a portion on
23 the form that I read to explain that he is -- he is under
24 no obligation to speak to us, but we would appreciate it
25 if he would.

1 Q And prior did -- why did you do that in this case?
2 Is this typically what you do when someone is under
3 arrest?

4 A Not necessarily. Well, obviously, when they're under
5 arrest, we're going to question them. We want to advise
6 them of their rights.

7 In this particular case, the information I was
8 getting was that there was some conflicting stories,
9 perhaps, when he was last seen Ms. Almanita Smith alive.

10 Q So in order for you to come to court later, you
11 wanted to make sure that he understood his rights and had
12 been advised --

13 MR. MYERS: Objection, leading.

14 THE COURT: Sustained.

15 BY MS. CAMPBELL:

16 Q Why do you want him to make sure that he is advised
17 of his rights?

18 A I want to make sure he is aware of his rights; that
19 he can speak or not speak to the police.

20 Q I'm going to show you State's Exhibit No. 218. Do
21 you recognize that?

22 A I do.

23 Q And what's that, sir?

24 A This is a Richland County Sheriff's Department form.
25 It's very similar in many jurisdictions. This just

1 happens to be ours. It's listed as an interrogation or
2 advice of rights.

3 It has a place where we fill out some information
4 about the person. Who is speaking to them, the time and
5 time, and then it has the rights laid out in chronological
6 order.

7 At the bottom, it has a waiver of those rights. If
8 the person chooses to speak to us and want to go forward,
9 and they're willing to go forward, we'll have them
10 actually sign the form and move forward at that point.

11 Q And when you took out that sheet to advise him of his
12 rights, was there any handwriting on it, handwriting?

13 A No.

14 Q And who, in fact, filled out the top portion of that
15 form?

16 A I would fill out that portion.

17 Q And can you tell the jury exactly what you did and
18 how you went through advising him of his rights?

19 A Right. What I would do is I would first introduce
20 myself, explain my purpose and why I was there. Then I
21 would have -- record his name, which is Marcus Bailey.

22 It has a place for who, the officers that are
23 present. In this particular case, it was myself and
24 Deputy Pressley who is three feet away in the room. The
25 location was Providence Northeast Hospital in the ER, the

1 date and the exact time that I'm actually advising him of
2 hi rights.

3 Q And once you had filled out that information, did you
4 go ahead and advise him of what his rights were?

5 A I did.

6 Q And can you tell the jury exactly how you did that?

7 A Certainly. I read it verbatim off the form.

8 Particularly when I'm using the form, and I read it to
9 him. I said, "Do you understand that?"

10 He said absolutely, he understood that. There is no
11 question, and then there's a waiver of rights where it's
12 basically his ability to say I do waive my rights per se.
13 I want to speak to you now, and we had him sign at that
14 location.

15 Q And did he, in fact, sign indicating to you he
16 understood his rights?

17 A He did.

18 Q Did he verbally tell you that he understood his
19 rights?

20 A He did.

21 Q And at that point once he signed off on the top
22 portion of that document, did you then go a step further
23 to make sure he understood his rights?

24 A I did, and that's where the waiver of rights comes
25 in.

1 Q Yes, sir, and what is that?

2 A That's a statement that we have here printed that
3 explains that -- I can read it, okay. "I have read this
4 statement of my rights. I understand what my rights are.
5 I am willing to talk and answer questions. I understand
6 and know what I am doing. No promises have been made to
7 me, and no pressure or coercion of any kind has been used
8 against me."

9 Q Once you read that portion of it to him, did he
10 indicate whether or not he understood it?

11 A He understood it.

12 Q And did you actually follow up the definition of some
13 words to make sure he understood?

14 A I do. What has been my normal practice sometimes --
15 in this particular case, it wasn't an issue. Mr. Bailey
16 was quite educated. I have to explain sometimes what
17 coercion means.

18 I usually have an example I give of what coercion is.
19 In this case, I just told him, "You're under no obligation
20 to speak to us. We're not promising you anything. We're
21 not threatening you in any way to speak to us. You're
22 speaking to us freely and because you want to. It's a
23 voluntary situation," and he understood that immediately.

24 Q And at that point, did he then sign off on the waiver
25 of rights indicating he wanted to talk to you?

1 A He did.

2 Q What was his demeanor like at that point?

3 A Calm, you know. He was speaking, had no problems, no
4 issues. He didn't appear to be under any influence of
5 anything in any way, shape or form. He seemed almost
6 cordial, almost -- just wanted to have a conversation.

7 Q Okay. Had you taken any steps to ensure that he was
8 mentally able to talk to you that day as far as his
9 treatment?

10 A Certainly. Certainly. Almost always in the ER when
11 you go to talk to somebody -- in many cases, keep in mind
12 we're dealing with victims whom have suffered some sort
13 of, you know, trauma.

14 Sometimes I have actually spoken to people who have a
15 bullet still in them, have been stabbed, have been
16 attacked, have been assaulted. Many times, they have
17 already received some sort of medication, some sort of
18 treatment.

19 One of the first things I like to do is speak to
20 whoever the nurse is or whoever the doctor is. In this
21 particular case, I did speak to the nurse who was coming
22 back and forth. I spoke to her just a moment aside. I
23 said, "You know, is he okay to speak, talk?"

24 She said absolutely.

25 MR. MYERS: Objection, hearsay.

1 MS. CAMPBELL: It's not offered for the truth of the
2 matter asserted, just steps he went through to makes
3 sure --

4 THE COURT: I overrule the objection.

5 MS. CAMPBELL: Thank you.

6 THE WITNESS: She made it clear to me that he was
7 fine to speak. There wasn't anything -- you know,
8 obviously, he didn't have a mask on. He wasn't hooked up
9 to anything. He had not been given any, you know, heavy
10 sedative I knew of at the time. She said he was free to
11 speak.

12 BY MS. CAMPBELL:

13 Q Once he had been advised of his rights -- and I need
14 to make sure. Is 218 in?

15 THE COURT: I think so.

16 MS. CAMPBELL: I just wanted to make sure.

17 THE COURT: Yes, ma'am.

18 MR. MYERS: No objection to that form, Your Honor.

19 (WHEREUPON, State's Exhibit No. 218 was admitted into
20 evidence again.)

21 THE COURT: We may have entered it again, but it's
22 okay.

23 BY MS. CAMPBELL:

24 Q At that point, once you advised him of his rights,
25 did you ask him to consent to collect DNA?

1 A Yes, I did.

2 Q And did you actually go through a form there and get
3 him to consent to giving you DNA?

4 A I did.

5 Q Is that standard in a case such as this?

6 A It is. Certainly, if you're going to get DNA, in a
7 voluntary sense, we have a waiver, just very similar to
8 the advisement of rights where we tell someone what we're
9 collecting from them.

10 In this case, a buccal swab of the mouth, and we read
11 that form to them, make sure they understand it. If they
12 agree to it, we have them sign it. Then we have them
13 submit to a quick oral swab of their mouth. That's
14 something we've been trying to do, and we do it all the
15 time.

16 Q And you actually collected it yourself once he
17 consented to it?

18 A I did.

19 Q And it's in evidence here somewhere. Once you
20 collected that buccal swab from the defendant so you would
21 have a known standard, what, if anything, did you do with
22 it?

23 A That was actually -- I handed that to Lieutenant
24 Cavanaugh, who was en route to me with CSI. I had -- I
25 wanted CSI to show up and do some of the things they

1 needed to do. So just as a matter of convenience and
2 evidentiary procedures, I let her have that.

3 Q Okay. So that was turned over to her at the
4 hospital?

5 A Yes, ma'am.

6 Q And did you package it correctly and --

7 A Yes, ma'am.

8 Q -- and document that? Did anyone alter it or tapper
9 with it while it was in your possession?

10 A No, ma'am.

11 Q Once you had collected the DNA swab from the
12 defendant, did you then start talking to him?

13 A I did.

14 Q And can you tell the jury what happened when you
15 started talking to him?

16 A As is my standard practice is I have a notepad, a
17 legal pad. I sit down and just basically ask perfunctory
18 questions. You know, where are you from? How old are
19 you? How long have you lived in Columbia? Basic things,
20 just to kind of start the ball rolling in the discussion.
21 I did that.

22 Q Let me back up just one second. Prior to talking to
23 him after you advised him of his rights, id you threaten
24 him in any way to make him talk?

25 A No.

1 Q Did you promise him anything?

2 A Certainly not.

3 Q Did you deprive him of creature comforts or any
4 treatment he needed?

5 A Certainly not.

6 Q Was he voluntary talking to you that day?

7 A Absolutely.

8 Q And at that point, he understood his right to an
9 attorney, his right to remain silent, but he chose to talk
10 to you?

11 A Absolutely.

12 Q Okay. Continue.

13 A Let me back up just a little bit, if I could.

14 Q Yes, sir.

15 A Is that when -- one of the things I do before I
16 advise rights is I ask somebody their educational -- you
17 know, I ask them how long they get -- how far they went in
18 school, et cetera, et cetera.

19 It was quickly established that Mr. Bailey was, you
20 know, above average intelligence and understood exactly
21 what was going on, what I was explaining to him. He
22 agreed to it. He knew exactly what he was doing.

23 Q Okay. Continue.

24 A I started speaking to him and, you know, just
25 asked -- as I said before, where he was from, found out he

1 had a hospital gown on with exposed arms of some sort.

2 I noticed there was a California tattoo with 619
3 across it, and I've known from my experience that's more
4 than likely an area code. We confirmed that's what it
5 was, San Diego, for area code, where he was from.

6 So we just started some talk. He and I had some
7 similar background. I'm former military, former Army, as
8 well, and we talked about that. Then we moved the
9 questioning towards kind of like, "What's going on? Why
10 are we here today? You know, tell me why. What's going
11 on. What is the issue today," et cetera. I kind of want
12 to hear it in their own mouth, their own words.

13 Q And during the same time period before we get into
14 what all was said, did Lieutenant Cavanaugh also show up?

15 A She was present, yes.

16 Q And when she showed up, did she perform a certain on
17 the defendant?

18 A She did. I asked for a GSR, gunshot residue test.

19 Q Why did you ask for that, sir?

20 A As an abundance of caution, I was told that the
21 female laying on the front yard may have suffered a
22 gunshot wound. We weren't certain 100 percent. Just an
23 abundance of caution, we wanted to do that test. It's
24 very common. We do that all the time.

25 Q Did she also collect some other items from the

1 defendant while she was there at the hospital?

2 A She did. She went through her normal process. She
3 was taking photographs. She was writing, making some
4 notes. She did some scrapings under the fingernails, et
5 cetera, usual protocol for them.

6 Q I show you what's been marked as Defense Exhibit
7 number 5. Is that how the defendant looked that day?

8 A Yes, ma'am.

9 Q She actually took that photograph, as well as the
10 majority of those that are already in evidence?

11 A Yes, ma'am.

12 Q Once she had done that and collected the clothing, I
13 believe, from the defendant the including his phone, I
14 believe --

15 A Yes.

16 Q -- you started talking to him. What was the first
17 thing you were kind of focused on as far as asking him
18 questions?

19 A In a situation like this -- and I've dealt with many
20 death calls and certainly have worked on many homicides --
21 we wanted to kind of check his demeanor. We weren't -- I
22 was not 100 percent certain he had -- was involved,
23 necessarily in the death yet. I just didn't know what
24 that situation was. I was still gathering information.

25 So I was checking his demeanor. His demeanor seemed

1 calm, collected. We just started making small talk. At
2 that point, I moved towards when the last time he had seen
3 Almanita Smith alive.

4 Q Did he indicate when the last time he had seen
5 Almanita Smith alive?

6 A Yes. He was very specific. He said he had seen her
7 the morning before. That would have been the 22nd. Since
8 this was -- I was speaking to him on the 23rd. He said he
9 had seen her the morning before leave the house alive, get
10 into a black car with some dude.

11 Q And specifically, did he tell you time in the morning
12 he had seen her?

13 A 11:30.

14 MR. MOORE: Objection. Your Honor, for purposes of
15 the pretrial, I want to make sure our objections are noted
16 to any statements Mr. Bailey made during the
17 interrogation.

18 THE COURT: Yes, sir. I understand what you're
19 referring to from pretrial motions. I overrule or deny
20 the motion made earlier, and you may continue with the
21 testimony.

22 MR. MYERS: Thank you.

23 THE COURT: Thank you.

24 BY MS. CAMPBELL:

25 Q I'm sorry. What time did he indicate he had last

1 seen her?

2 A He said he had seen her at 11:30 a.m., the morning
3 before.

4 Q And did he tell you what she was going to do when she
5 left?

6 A He said she was going with a friend. She was
7 leaving.

8 Q Did you try to get other additional information about
9 who she was going to see or left with or anything like
10 that?

11 A I did. In any notes, you can see I actually asked
12 the question, you know, "Who was this person? Where was
13 she going? When was she going to return? Did he have any
14 other information," and he had no information whatsoever.

15 Q So he couldn't tell you who she was with --

16 A No.

17 Q -- or who she was going to see?

18 A No.

19 Q Did he claim to have seen her get into any type of
20 vehicle when she left?

21 A He claimed he saw her get into a black Toyota. He
22 was specific about that. I have that in my notes.

23 Q So his timeline as far as when you're speaking to her
24 was that he had last seen the victim alive leaving in a
25 black Toyota approximately how many hours earlier?

1 A The body was found around seven in the morning. Help
2 me out with the math. I would say less than 18 hours
3 before?

4 Q Yes.

5 A Okay.

6 Q Did you continue to talk to the defendant?

7 A I did.

8 Q And was he -- he was aware -- this is a stupid
9 question -- that you were there to talk about the dead
10 body in the front yard?

11 A Yes. I don't know if I said it specific like that,
12 but I think he would gather that's what I was doing.

13 Q And how did the interview progress?

14 A The interview was fine. You know, we spoke about
15 his, you know, his life. He really wanted to talk about
16 himself, wanted to talk about, quote, the raw deal he got
17 in the army.

18 I asked if he could explain that a little further.
19 He said he had gone from an E-6 to an E-1 in a very short
20 amount of time. That meant something to me. I was
21 enlisted in the Army, so I knew what that meant.

22 Q Did he indicate what type of discharge he got?

23 A He told me he was kicked out of the service. That's
24 the way he said it. He was put out. He said he could go
25 at any day, anytime. He had basically -- I don't know if

1 he specifically said -- let me look at my notes real
2 quick.

3 (Pause).

4 He said he got -- he was -- the word he used, he was
5 labeled as unstable. He got a general under honorable
6 conditions is the way he put it.

7 Q That's general discharge under what kind of
8 conditions did he --

9 A I got general under honorable conditions, the way he
10 put it.

11 Q And how did he characterize that to you?

12 A The way he characterized it -- and again, this -- the
13 impression I got was he was somewhat bitter about it,
14 said -- used the word, "I got a raw deal," and that it was
15 some conduct issues.

16 He did mention some AWOL and things like that, but he
17 didn't go into a lot of specifics about it other than he
18 had gotten a raw deal from the Army.

19 Q You mentioned that he wanted to talk about himself
20 that day?

21 A Yes, ma'am.

22 Q And was he wanting to talk about Almanita at all?

23 A Not really. That was what I had found a bit strange.
24 I had to kind of keep directing him back to that, taking
25 into account that he had been transported to the hospital

1 for, quote, a panic attack due to finding her, I did the
2 find it odd and certainly interesting -- I did take
3 note -- that I had to keep guiding the conversation back
4 to, "Can you tell me about Almanita? Where has she been?
5 What's going on?" That kind of thing.

6 Q What information did he give you next?

7 A Well, he talked about -- he talked about some issues
8 in their relationship. He spoke about her being -- there
9 was trust issues.

10 Q Back up for a second. In your notes, you mentioned
11 that -- you asked him about transportation?

12 A Yes. I said -- we talked about his car. He said he
13 wrecked his car in a DUI, and that happened back in March
14 or April of that same year. Then he volunteered, he
15 bragged to me that he beat the charge because the, quote,
16 "The cop didn't know what he was doing." I found that to
17 be a bit odd, you know, that he's talking about that at
18 that time.

19 Q And did he indicate whether or not he had any
20 transportation at the time?

21 A He did not. He did not.

22 Q Did you ask him about living with Almanita?

23 A I did.

24 Q What did he tell you?

25 A That the relationship ended, and in particular, the

1 relationship had changed recently. She had recently
2 returned from some Army training. She was fixing to be
3 commissioned as a Lieutenant from OCS.

4 He said when she came back, it changed. His words
5 were it was, quote, an open relationship, and he said
6 things like, "We wouldn't be checking each other's cell
7 phones anymore," that kind of thing.

8 He said that -- you know, I said, "Had there been any
9 strain, any arguing, anything like that?" He kind of
10 hemmed and hawed, but he didn't confirm that. He did say
11 that she had tried to kick him out before. That was his
12 words; that -- that she was keeping the fact that he was
13 living there somewhat quiet from other people.

14 I said, "Why?" He said something to the effect of
15 she may have been ashamed or embarrassed. I got the
16 impression, the impression that this relationship was
17 definitely on the outs.

18 Q Did he indicate whether -- when he actually moved in
19 with her for the first time?

20 A I believe it was February.

21 Q Okay. And did he also indicate whether or not he had
22 any source of employment or anything?

23 A No. He was very open about that. He had no source
24 of employment. He had no source of income. He had no
25 vehicle.

1 Q What else did he say about Almanita?

2 A He used words like she was controlling, and that she
3 gave him advice that he didn't really care for. He said
4 that -- we talked about a grass cutting incident where she
5 wanted him to cut the grass for his birthday weekend, and
6 he did not want to do that for a number of reasons to
7 include allergies, he claimed. But more importantly, it
8 was his birthday. He just didn't feel like doing that.

9 I said, "Was this a bone of contention? I mean, were
10 you arguing about this or anything?" He didn't
11 necessarily put it this way, but he brought this up. This
12 was something he volunteered.

13 So I went further with it to find out if this was
14 some sort of issue, you know, and it just appeared that
15 this had been some sort of disagreement. I asked when
16 this thing had happened, when this disagreement happened.
17 Apparently, it happened sometime Thursday evening, which
18 would have been the 16th of August.

19 Q Did he indicate -- you mentioned earlier that she was
20 not open about his relation--- I mean living there?

21 A Yeah. The -- he gave the impression -- he
22 volunteered this information that -- it sounded like
23 disappointment that, you know, perhaps she was just
24 allowing him time to get out of the house, that you
25 know -- and then he said that she was going to draw up a

1 contract where they could truly become roommates, and that
2 he would pay somewhere like \$500 a month to live there.
3 He had not been doing that up to that point, and it seemed
4 to be an issue.

5 Q Did he bring up to you anything about Almanita's
6 father?

7 A Yes. That -- that was significant, in my opinion.
8 While at the ER, I spoke to him and I said, "You know,
9 we're finding out that a lot of folks have been looking
10 for her to include her father."

11 I had gathered information that her father on at
12 least two occasions had contacted law enforcement to have
13 them come by the house and check on her. It was a welfare
14 check.

15 He said to me -- I said, "Have you ever spoken to her
16 father before?"

17 He said, "No, not until yesterday."

18 I said, "Okay." I realized that he had been living
19 with this woman, and he had never spoken to her father. I
20 said, "How did that conversation go?"

21 He said, "Her father, quote, unquote, said to him,
22 what the fuck are you doing here?"

23 I said, "Well, that's pretty strong language for a
24 man you have never spoke to."

25 He said, "Yes, it was." I wrote it in quotations and

1 clarified that's what he said. He said that's what he
2 said.

3 Now, I said, "What was the issue?"

4 He wanted to know, quote, "Why the fuck are you there
5 if she is out with another man?" I found that
6 significant.

7 Q You also mentioned that Mr. Bailey told you that
8 their relationship had changed since she had returned from
9 her most recent training.

10 A Uh-huh; that's correct.

11 Q And that would have been early August, I believe?

12 A Yes, ma'am.

13 Q And how did he indicate that the relationship had
14 changed at that point when she returned from her training?

15 A The relationship changed, and I'm paraphrasing, but
16 the impression I got was that it was going to be an open
17 relationship, perhaps more like a roommate-type situation,
18 and that they would not be intimate.

19 He alluded that there could have been some intimacy
20 if both of them choose to be intimate, but that was not an
21 expected thing anymore.

22 Q It was an open relationship?

23 A Yes, ma'am.

24 Q Where they could see other people?

25 A Correct.

1 Q Around ten o'clock that morning as this questioning
2 is going on, was Mr. Bailey released from the hospital?

3 A He was.

4 Q And at that point, did you make arrangements to have
5 him transported to headquarters?

6 A I did. With the information that I was gathering
7 from other sources and speaking to him, I had Deputy
8 Pressley transport him to our headquarters.

9 Q Before he left the hospital, did you inquire as to
10 whether or not he needed any type of comfort measure?

11 A Yes. As is my custom and practice over time, I asked
12 if he needed water, food, had any breakfast. He indicated
13 he was fine. He didn't need anything.

14 Q At that point, was he transported to headquarters?

15 A He was.

16 Q And was he handcuffed?

17 A He was.

18 Q Was that per protocol?

19 A Yes, ma'am.

20 Q Why was that?

21 A The fact that he is being transported in a patrol
22 car, we try to make him as comfortable as possible, but at
23 this point, I had reasonable suspicion to believe we
24 needed to speak to him further.

25 Q Once he was transported to headquarters, did you make

1 contact with him again?

2 A I did.

3 Q And where did that take place, sir?

4 A That took place at the back door our headquarters.
5 We have a detention cell. It's a small room there. I
6 made contact with him in the hallway. The ride from
7 Providence Northeast, our headquarters is five, ten
8 minutes at the most. It wasn't a very long ride.

9 Q And once he was back at headquarters, did you talk to
10 him again?

11 A Yes. At that point, I walked him over to my cubical,
12 my work area, and I sat him down. What I like to do at
13 that point is using my computer, I attempt what's on it
14 for a statement form which is what's in front of me. Then
15 I reduce what he said to writing and get an actual
16 statement from him.

17 Q And at that point, was anybody else present when he
18 was talking to you?

19 A Yes. Investigator Martin, by that time, he had come
20 from the crime scene and was actually meeting me and
21 shortly after sitting down and talking to Marcus, within
22 minutes, he's sitting two feet away just outside my
23 cubical listening to what's happening.

24 Q This is Investigator Martin?

25 A That's correct.

1 Q At that point, again he had already been advised of
2 his rights?

3 A He was.

4 Q And was he still wanting to cooperate?

5 A Absolutely.

6 Q And you mentioned that you took a typewritten
7 statement from him?

8 A That's correct.

9 Q I'm going to show you what's been marked as State's
10 Exhibit No. 220. Do you recognize that?

11 A I do.

12 Q What is that, sir?

13 A This would be the statement form that I use. It's a
14 template I use. It has, again, a place where the person's
15 name is placed on it. Again, there's a part on the form
16 where there's an advisement of rights that he understands;
17 he is under oath; he wants to continue, and then I start a
18 Q and A.

19 Q And at that point, did you go through and basically
20 the parts -- the questions are whose?

21 A I ask the questions, and he answers. It's a give and
22 take. I'll ask the question. He'll answer. I'll say,
23 "Is that your answer?"

24 "Yes."

25 I'm typing it as he goes. So he's fully following

1 along as we go.

2 Q And is that, in fact, the information he gave you
3 about the event you were asking about, specifically
4 Almanita?

5 A Yes.

6 Q And that's the part that was included in this
7 statement, what he told you about Almanita?

8 A Yes, ma'am.

9 Q And once you had reduced it into a typewritten form,
10 which you then printed it out, did you give him an
11 opportunity to review it?

12 A He did.

13 Q And did he actually review it?

14 A He did.

15 Q And if he wanted to make any changes, would you have
16 made those?

17 A Absolutely.

18 Q And the information in that as far as what he said
19 about Almanita came from...

20 A Marcus Bailey.

21 Q Once he had reviewed the statement, did he sign off
22 on it?

23 A He did.

24 Q And did you actually witness his signature there?

25 A I did.

1 Q And was Investigate Martin in and out during parts of
2 this process?

3 A He was.

4 Q At the bottom of this statement, I notice there's a
5 place where if you turn it over to him and give them a
6 copy, they sign on that?

7 A That's correct.

8 Q On that day, do you recall whether or not you
9 actually gave him a copy at that time?

10 A I do not recall.

11 Q Did you, in fact, get a copy of -- do you know if he
12 ever got a copy of the statement?

13 A I do know we got a copy. We made a copy.

14 Q But he definitely acknowledged that was his statement
15 by his signature?

16 A Yes, ma'am.

17 Q On each page?

18 A Yes, ma'am.

19 MS. CAMPBELL: Your Honor, at this time, we'd offer
20 State's Exhibit 220 into evidence.

21 THE COURT: Anything other than the previous
22 objection?

23 (Indicating in the negative.)

24 Okay. Over the Defense objection.

25

1 (WHEREUPON, State's Exhibit No. 220 was admitted into
2 evidence.)

3 BY MS. CAMPBELL:

4 Q Investigator Clarke, if you can just publish to the
5 jury exactly what questions you asked that day and what
6 his responses were.

7 A Okay. As is my custom, there's some questions I ask.
8 First, when I said -- I put in there I am the questioner.
9 My name is Joseph Clarke. The answer -- the person that's
10 answering questions is Marcus Bailey.

11 I asked, "How old are you?"

12 He said "27".

13 I said, "Where do you live at this time?"

14 He said, "613 Heron Glen Drive."

15 "Is English your first language?"

16 He said, "Yes."

17 "What is the highest level of education you have
18 achieved?"

19 He said, "Some college."

20 I said, "Are you able to read and write; is that
21 correct?"

22 He said, "Yes."

23 "Do you understand your Miranda warning as I read
24 them to you?"

25 He said, "Yes."

1 Do you want me to continue?

2 Q Continue.

3 A I asked a question, and I just opened it up. I said,
4 "Tell me about the last time you saw Almanita Smith."

5 His answer, and I'm writing it down typing it as he's
6 saying it. He says, "I woke up on Wednesday morning. She
7 had woke up before me. She was getting herself together.
8 She came in the room and told me she was leaving with her
9 friend.

10 I said okay. She goes downstairs. I hear the door
11 open due to the alarm," and I asked him about that. It
12 makes a beep noise. He knew that she left the house.

13 "I look out the window and see a car, a black Toyota.
14 I watch her get into the passenger's seat. The door
15 closes, and the car drives off.

16 I hear the house phone ring a couple a times. I do
17 not attempt to pick it up because I do not pick up the
18 house phone ever.

19 My friend Flea calls me. He asks about \$50. Within
20 an hour of calling me, he and his girlfriend come to the
21 house and pick me up.

22 I locked the house door. We ride to the bank. The
23 first one we go to, the ATM is out of service. So we head
24 to another bank on Hard Scrabble Road. I talk out 60 from
25 the ATM. I hand the money to Flea.

1 His girlfriend pulls around to the CVS so that he can
2 give me change. Once he received the change, we drove
3 back to the house. I go inside the house. I stayed in
4 the house all day. I did not leave.

5 Then the officer comes. She rings the doorbell and
6 knocks. She asks me a few questions. She left. I went
7 back upstairs. Shortly after the officer left, I get a
8 call from Almanita's father. He asked me questions about
9 her whereabouts. I told him she left with her friends. I
10 did not know where she went.

11 At that time, he asked was she with a male or female.
12 I replied with a male, which was an assumption." I put
13 that in parentheses.

14 He reapplies with, quote, "What the fuck kind of shit
15 is that?" Unquote. "Why would she leave you and go with
16 someone else?" Unquote.

17 I told him we were just friends. I told him if I
18 heard anything from her, I would have her call you as soon
19 as possible. After I hung up with him, I went to the
20 office where the house phone was located.

21 I noticed that Ransom had called the house. I called
22 Ransom from the cell phone. She did not pick up.
23 However, she called me right back. While talking to
24 Ransom, I received another call from Almanita's father.
25 It was a short conversation.

1 I was sitting in the house watching TV. I was
2 upstairs when the two guys from ROTC came by. They are
3 named Hinson and Benson. I went to the door. They asked
4 me, "What is up with Nita?" End quote.

5 They mentioned they had made plans to have drinks
6 with her a few weeks ago. They said when they had spoke
7 to her, she was coming back from Augusta. I told him the
8 police had come by; that her dad had called, et cetera.

9 The officer came back over. I ran downstairs. She
10 asked had I heard anything from Nita. I told her not yet.
11 At that time she, the officer, asked me to call her." He
12 alludes to calling Nita.

13 "I invited the officer in. I told her my phone was
14 upstairs. I got my phone and came back downstairs. I
15 called Almanita in the presence of the officer. The
16 officer went to her squad car. I went back outside and
17 approached the squad car. I asked her if it was okay for
18 me to leave the house. She informed me that I could
19 leave.

20 I called one of my friends to see if he wanted to
21 hang out, but she [sic] was out eating with his daughter.
22 I stayed at the house -- I stayed in the house.

23 I talked on the phone with my mom. A couple of
24 friends and I watched TV. Maybe around seven p.m., Twyla
25 came to the house. We talked for like 30 minutes.

1 We discussed Almanita, about her character, how she
2 is, how she goes out and meets people with them, et
3 cetera, et cetera. She told her parents how I stayed in
4 the house.

5 I told her that I may have to leave the house, so she
6 came back and the alarm was on, she would have to disarm
7 it herself. After that, I turned on the TV in the living
8 room. I realized there was an issue with the cable box.

9 The cable box had a message "applications were
10 loading at this time." That message had been on the box,
11 on the TV all day, so I unplugged the cable box and
12 plugged it back in so that it could reboot.

13 I standard watching TV once I got it to work. Then I
14 talked with my mother and a couple of other friends on the
15 phone. I had a cup of rum and Sprite while watching TV,
16 and I dozed off on the couch.

17 I woke up when I received a text morning around
18 three, almost four o'clock in the morning. At that time,
19 I turned off the TV and ensured all the doors in the house
20 were locked.

21 I went upstairs to the bedroom and laid down. I woke
22 up again when my phone vibrated. I looked at the message
23 and went back to sleep. The next time I woke up, I heard
24 a voice from outside.

25 I went downstairs, opened the front door and I began

1 to cry" -- No. "I noticed a body in the front yard." I
2 apologize. Let me read that again.

3 "I went downstairs, opened the front door, and I
4 noticed a body in the front yard. When I walked up on the
5 body, I noticed who it was, and I began to cry.

6 I ran in the house, grabbed a blanket on the couch
7 because she was halfway naked. I was crying. I was
8 sitting at front door when the first paramedics came to
9 the scene. I was having difficulty breathing. I was
10 stressed out and having a panic attack.

11 Another ambulance came and gave me medical attention.
12 By this time, I had called Almanita's mentor and told her
13 about Nita. While sitting in the back of the ambulance, I
14 call my son's mother. I told her what was going on. I
15 would not be able to make my son's first day of
16 kindergarten, and they took me to the hospital."

17 So then I asked the question, "So the last time you
18 saw Nita was at 11:30 a.m. on Wednesday morning?"

19 "Yes, sir", he says.

20 Question: "She stated she was leaving with a
21 friend?"

22 He answered, "Yes."

23 Question: "Did she tell you who she was leaving
24 with?"

25 His answer, "No."

1 Question: "Did she say when she was coming back?"

2 Answer: "No, she did not."

3 Question: "Did she take anything with her?"

4 Answer: "Yes, a black cloth bag with a strap."

5 Question: "She got in the car and left then?"

6 Answer: "Yes, sir."

7 Question: "The next time you see her is in the front
8 yard?"

9 Answer: "Yes, sir."

10 "While she was gone, who do you first remember asking
11 about her?"

12 Answer: "The officer."

13 Question: "Before she left that morning, had you and
14 she argued?"

15 Answer: "No".

16 Question: "Had you and her argued recently, and if
17 so, what about?"

18 His answer: "No. She said we was going to draw up a
19 contract, and we would be roommates. I would pay her 550
20 a month. If we felt like sleeping with each other, we
21 could.

22 She said she would give me the alarm code and another
23 key. She asked if I was cool with that. I told her I was
24 cool with that. She never printed it out, nor ever gave
25 it to me. It was a verbal agreement. She stated she

1 wanted to get it notarized, so it would be a legal,
2 building contract. That was the last week, on Wednesday."

3 Q Was that the extent of his statement that you just
4 wrote?

5 A Yes, ma'am.

6 Q Once he had signed off on the written statement at
7 that point, did you and Investigator Martin want to follow
8 up on certain things?

9 A We did.

10 Q And at that point, did you inquire of him again if he
11 needed any kind of nourishment?

12 A Yes. In fact, Investigator Martin at that point
13 asked if he needed anything, water, food, et cetera.

14 Q Did he ask for anything?

15 A No. We got him some water.

16 Q Okay. And tell the jury, basically, on this
17 post-written statement interview what information he gave
18 you.

19 A We then -- we were getting information of the
20 pronounced state of the decomposition and the fact that
21 was -- that it would be impossible with when he said he
22 last saw her alive.

23 So then we asked -- we asked him to go with us. We
24 walked over to an office where we could actually close the
25 door. At that point, me and Investigator Martin spoke

1 with him further and continued the interview. I've taken
2 notes during the interview.

3 Q And what did he talk about, mostly?

4 A At that point, he became quite relaxed, kind of sat
5 back in the chair and started discussing his last
6 weekend's activities. He discussed the fact that he had
7 been partying pretty hard. That's what he said.

8 He wanted to bring 27 in strong is what he said,
9 quote, unquote. He spoke about clubbing, going to club --
10 Jet Nightlife, going to Charlotte, Club Caviar with his
11 friend Flea.

12 He spoke specifically about having sex with a girl he
13 had met -- or no, a girl that offered him birthday sex for
14 his birthday, and then using Almanita's car, he drove out
15 to a field and, quote, did it outside. So that's when he
16 said so he could bring 27 in strong.

17 This is the Friday, Saturday, Sunday that had passed.
18 He said that he and Flea had picked up some girls and went
19 up to Charlotte to a place called Club Caviar.

20 He spoke of using her credit cards to buy hundreds of
21 dollars worth of alcohol and the partying that was going
22 on. He recently bought a new outfit from American Eagle.
23 That's where he mentioned Cocoa.

24 Cocoa, who he had met at American Eagle, and had her
25 come by the house. He freely admitted to having sex with

1 her downstairs in Almanita's house on the couch. So
2 really, it became this running dialogue over his exploits
3 over the last couple, three days, and how much fun and
4 good time he was having with his friends.

5 Q Did he indicate where Almanita was while he was out
6 having fun with his friends with her credit cards?

7 A Well, that was the issue. We would ask, and he would
8 say, "Well, she is sleeping." We would ask, you know,
9 "Where was she?" He didn't know, and sleeping. One time
10 he said he was fixing her some Taquitos, some sort of
11 microwave food item.

12 Q And at that point, was the conversation ended?

13 A Yeah. At that point, we realized this is what he
14 wanted to talk about, almost primarily about himself and
15 his exploits over the weekend.

16 Q And at that point, was the defendant taken into
17 custody?

18 A He was.

19 Q And what was the initial charge in this case?

20 A We charged him with murder.

21 Q And that was just based on the information you had at
22 that point?

23 A Right. At the very least, we knew -- at the very
24 least, the decomposition of Almanita's body was so
25 pronounced that he was simply not telling the truth.

1 We know knew at that point we needed to, you know,
2 kind of hold onto him for a second. We knew he had a
3 California connection. We thought perhaps he could be a
4 flight risk.

5 He voluntary mentioned that he had gotten a raw deal
6 from the Army and that he had no form of employment, no
7 form of income.

8 We thought in an ambulance of caution, we needed to
9 go ahead and make this charge now, always knowing that we
10 could amend it down if the cause of death changes.

11 Q In fact, in this case, just on that information, was
12 probable cause found?

13 A Certainly.

14 Q Later that day, did you return to the -- did you
15 actually go for the first time to the Heron Glen house?

16 A I did.

17 Q And what was the purpose of you going there that day,
18 sir?

19 A I had been in contact with Deputy Chief David Wilson.
20 He would be the head of all investigations, and he thought
21 it would be prudent that if we could put a cadaver dog in
22 the house based on the fact that Marcus had said she had
23 left the house alive and the only time she had returned
24 was dead in the front yard, then there would be a reason
25 to check the home to validate that story. So we had a K-9

1 officer meet us that the location.

2 Q Okay. And, again, are you actually looking for
3 another cadaver?

4 A No.

5 Q Have you called in a cadaver dog for the same purpose
6 on multiple caution?

7 A Multiple occasions. I've worked many cases where we
8 used cadaver dogs with quite -- great success.

9 Q And what's the purpose in bringing a cadaver dog to
10 search the home?

11 A Well, in this particular case, we asked -- we had a
12 person telling that is he had seen a live person leave at
13 11:30 the morning before full of life, and that she had
14 returned badly decomposed returning in the front yard.

15 He is saying at that point, and we realized -- well,
16 let's just verify some of the things he's saying by seeing
17 if there's any sign of decomposition of the house.

18 Clearly, if the dog does not indicate on anything in the
19 house, that adds more validity to the story.

20 Q And decomposition in the house, basically, are you
21 looking for physical signs of decomposition, or would that
22 have been done by the lab tech?

23 A That would have been done by the lab tech.

24 Q But, in fact, you often call in the dog to look for
25 what?

1 A Scent.

2 Q Scent. And were you there when the dog was there
3 with its handler?

4 A I was.

5 Q And what did you observe the dog to do initially?

6 A Deputy Pearrow had brought his dog, his cadaver dog.
7 He parked down the street, maybe three houses down. He
8 got the dog out. It's common. I've dealt with K-9s for
9 years in this line of work. He gets the dog, lets the dog
10 kind of run around for a second, go to the bathroom, kind
11 of get some of the excitement out. Then he brought the
12 dog up to the property. I explained to him --

13 MR. MOORE: Might we allow our position in regard to
14 dogs to run throughout this?

15 THE COURT: Yes, sir.

16 BY MS. CAMPBELL:

17 Q You can continue.

18 A Certainly. I explained to him where the body had
19 been -- where we found the body, and of course, the body
20 had been removed. Almanita had been removed at that
21 point.

22 He went through his machinations with his dog, got
23 his dog ready to go, took the dog off the lead. The dog
24 immediately went to that spot, circled the spot, stopped
25 and looked at him by kind of laying down, you know, like

1 this. He acknowledged to me that was an indicator. At
2 that point, we knew he could clearly smell decomposition
3 at the location in the front yard.

4 Q However, did you have any idea or any information as
5 to where the body had been stored inside the house at that
6 point?

7 A No, I did not. It was done on purpose that way.
8 That's why I was asked to go. I never went on the initial
9 scene where she was there. I went after the fact to
10 assist K-9.

11 We always have K--- we always have an officer,
12 whether it's patrol or an investigator, go with the K-9
13 operator to assist in any way, and also, it's a second set
14 of eyes to see exactly what's happened.

15 Q Once the dog entered the house -- initial when it
16 entered the house, what door did it go through?

17 A It went through the front door.

18 Q And once it went inside, what, if anything, did you
19 observe?

20 A The dog immediately became -- it appeared more
21 animated to me. It kind of turned some circles. I asked
22 Deputy Pearrow, "What's happening?"

23 He said, "She is on the scent," meaning the only
24 thing she is trained to do. She is on the scent of
25 decomposition.

1 Q And what area of the house did she proceed to?

2 A She went directly into the living room area. He let
3 her wander around, and then we went upstairs.

4 Q Once upstairs, what did you observe?

5 A I was two feet behind Deputy Pearrow who has got the
6 dog on a lead, release. You know, he lets the dog run,
7 and the dog goes into the first bedroom because you come
8 up the staircase. Take a hard left. There's a bedroom.
9 It appeared to be a spare bedroom with an air mattress and
10 some bedding material on it.

11 Q I want to show you State's Exhibit 157. Does that
12 appear to be a front of the house?

13 A It is.

14 Q And this would have been while the body was still
15 there?

16 A Yes, ma'am.

17 Q And was that body removed prior to the dog getting
18 there?

19 A Yes, ma'am.

20 Q In State's Exhibit number two, you mentioned an air
21 mattress -- actually, a futon type.

22 A Futon, correct.

23 Q And this is actually a TV here?

24 A That is.

25 Q And in this room, what did you note the dog to do?

1 A The dog became animated like I had seen before, but
2 in this particular case indicated by kind of squatting
3 down. That was what Deputy Pearrow was telling me. He
4 squatted down in that bedroom.

5 Q Did he continue to other parts of the upstairs area?

6 A We did. We went to the next bedroom in line, which
7 was clearly Almanita's room. You know, it was clearly a
8 woman's room with the purse and clothing, et cetera. At
9 that point, the dog went to the closet area and indicated
10 in the closet area.

11 Q I show you State's Exhibit No. 4. Is that the closet
12 area you're referring to?

13 A It is.

14 Q And what did the dog do that you observed?

15 A This the most pronounced that I had seen the dog.
16 The dog really was interested in that closet area. In
17 fact, Deputy Pearrow had to call it back several times,
18 but the dog continued to want to go in there and indicate.
19 That was a strong indicator, he said.

20 Q And did he continue to go into any other rooms in the
21 upstairs area?

22 A Yes. We went to the final bedroom in the line. It
23 was the first bedroom, her bedroom, the second bedroom, a
24 third bedroom.

25 This appeared to be a room that had been occupied by

1 a male. We made the assumption Marcus Bailey. There was
2 a hat and other things that would belong to men. The dog
3 indicated directly between the bed and the closet in that
4 room on the floor.

5 Q And I show you State's Exhibit No. 81. Do you
6 recognize that?

7 A I do.

8 Q And what does that show?

9 A That shows the closet, the two doors that open, and
10 the dog indicated on the spot between the bed and the
11 closet, those closet doors.

12 Q And you've been there when the dog -- maybe not this
13 dog but a dog trained in this area has been brought in
14 before?

15 A Yes, ma'am.

16 Q And were the reactions by dog significant to you?

17 A Yes.

18 Q After the dog initially hit on those three areas
19 upstairs, was the dog then removed from the residence?

20 A The dog was removed from the residence. It was taken
21 out to the vehicle, and as a -- was my thinking and also
22 Deputy Pearrow, let's do it again. Let's come in from a
23 different side this time to kind of validate what we had
24 done.

25 The dog was taken back to the car, and we waited at

1 least 20 minutes while the dog sat in the air conditioning
2 vehicle, and then we got the dog out, same thing: Let the
3 dog wander around a little bit, you know, use the
4 restroom, et cetera. Then we entered in from the back
5 door.

6 Q And what happened this time?

7 A It was a repeat. It was an absolute repeat. The dog
8 immediately went upstairs again and almost attempted
9 laying on top of another one. The dog went to the same
10 three locations again and indicated as strongly as it did
11 before.

12 Q And once the dog had done that -- and at this point,
13 this is approximately what time of day?

14 A This would be five in the afternoon, perhaps.

15 Q And you actually witnessed what the dog did?

16 A I saw all of it, yes, ma'am.

17 Q I want to turn your attention to the next day around
18 nine that morning. Did you make contact with Kalisha
19 Purvis?

20 A I did.

21 Q And why were you making contact with Ms. Purvis?

22 A I made contact with her because Marcus had said that
23 he had a child with a woman in town, the mother of his
24 child, and we wanted to speak with her.

25 Q You can't say what she said to you, but then did you

1 speak to her briefly?

2 A I did.

3 Q Later that day, did you also make contact with an
4 Eric Emedoh?

5 A I did. That was Flea.

6 Q Flea?

7 A Flea.

8 Q And did he come down to Richland County headquarters,
9 as well?

10 A He did.

11 Q You can't say what he said to you, but did he give
12 you certain information --

13 A He did.

14 Q -- about what he knew about the days leading up to
15 Almanita's body being found?

16 A Yes.

17 Q Later that day, did you also meet with Ms. Smith's
18 family?

19 A I'm sorry?

20 Q Did you also meet with Ms. Smith's family?

21 A I did. I met specifically with her father, and her
22 family. That was at the coroner's office.

23 Q Did you give them information what about the
24 investigation was showing thus far?

25 A We did. We got them up to speed as much as we knew

1 at the time.

2 Q I'm going to turn your attention to August 27th. Did
3 you continue to make contact with certain potential
4 witnesses in the case?

5 A I did. As we continued to speak with people, names
6 come up, dates come up, and then we try to follow up on
7 each one of those. That's what we did. We went through
8 the process of that.

9 Q It was on that day, I believe, you actually made
10 contact with the two guys from the ROTC?

11 A That is correct.

12 Q And that would be Jerry Hinton and Richland Benson?

13 A That is correct. They were at her -- Almanita's USC
14 battalion, Army battalion.

15 Q And was that pretty much the extent of your
16 involvement in this case?

17 A Other than just some moving around, different things,
18 yes. That would be the majority of it.

19 Q The person who gave you the information, mostly about
20 himself that day, do you see him here in the courtroom?

21 A I do.

22 Q Can you point him out for the jury?

23 A Marcus Bailey right there, plaid shirt, dark suit.

24 Q Plaid shirt?

25 A Plaid tie, I'm sorry. Plaid tie, I apologize.

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

3 THE COURT: Yes, ma'am.

4 Cross-examination?

5 MR. MYERS: Thank you, Your Honor.

6 CROSS-EXAMINATION:

7 BY MR. MYERS:

8 Q Good morning, Mr. Clarke.

9 A Good morning, counsel.

10 Q Mr. Clarke, now, I want to just put this in context.
11 I don't want to confuse you or put any words in your
12 mouth, but you've been here throughout the entire trial,
13 right?

14 A Yes.

15 Q You heard the witnesses testify all for the past week
16 or so, right?

17 A Yes; yes.

18 Q And I don't want to assume anything, but in your
19 investigation or in your career as an investigator, it's
20 important to build a rapport with the individual you
21 believe to be a suspect, right?

22 A If that's possible, that's a good thing.

23 Q And so to put this thing in context, one of the
24 things you wanted to do with Marcus upon immediately
25 meeting him was to establish some sort of rapport, right?

1 A Yes.

2 Q You wanted to make him feel as if you could -- he
3 could trust you, right?

4 A I wanted to establish a rapport, a conversational
5 rapport.

6 Q Sure, because the more rapport you establish with
7 him, the more he may open up to you, right?

8 A It's a possibly, yes.

9 Q And just like all other investigations, I mean, he
10 basically talked to you, not just about Almanita, but he
11 talked to you about a lot of different things as you
12 testified to, right?

13 A That's correct.

14 Q So it wasn't a surprise that he gave you other
15 information because, again, you wanted to establish that
16 rapport with Marcus Bailey, right?

17 A A surprise, no.

18 Q Rapport?

19 A A rapport with him?

20 Q Yes, sir.

21 A Is that the question?

22 Q Yes, sir. That's the question.

23 A Yeah, that we established a rapport. That would be a
24 beneficial thing.

25 Q Okay. If you went to the hospital, I believe we've

1 heard testimony from Deputy Pressley that he was the
2 initial law enforcement officer that accompanied Marcus to
3 the hospital, right?

4 A I believe he testified he followed the ambulance to
5 the hospital.

6 Q Sure, and he was also the one, the first law
7 enforcement officer, that was there at Providence
8 Hospital, right?

9 A That would make sense.

10 Q You weren't there before he was.

11 A No, sir.

12 Q He was there when you had gotten there, right?

13 A That's correct.

14 Q And you also heard testimony that Marcus had received
15 treatment with regards to a panic attack, right?

16 A That is what the nurse testified to.

17 Q Sure. In fact, Marcus even told you during this
18 period that you were building a rapport that when he saw
19 the body, he started crying, and he had a panic attack,
20 right?

21 A That's what he told me.

22 Q Sure. And we also know from the nurse's testimony
23 that he was given 25 milligrams of Vistaril, right?

24 A Correct.

25 Q And you never talked to the treating physician at the

1 hospital, right?

2 A That is correct.

3 Q You only talked to the nurse, right?

4 A Yes, sir.

5 Q So you didn't know anything about Mr. Bailey's
6 medical history prior to talking to him, right?

7 A His medical history, no.

8 Q You didn't talk to the doctor about any sort of
9 effects this 25 milligrams of Vistaril would have on him,
10 right?

11 A That conversation never happened.

12 Q Sure. You don't have a form to show this jury about
13 the effects that Vistaril may have an on individual;
14 right?

15 A No, sir.

16 Q Because you had absolutely no conversation with the
17 medical doctor, right?

18 A That is correct.

19 Q And the medical doctor was the individual who gave
20 him the Vistaril, right?

21 A That's what was testified to, yes, sir.

22 Q So you don't dispute that testimony, do you?

23 A No, sir.

24 Q All right. So after you talked with Marcus
25 initially, at no time at the hospital and at the station

1 did he ever say anything about harming Almanita Smith, did
2 he?

3 A Not that I recall.

4 Q All right. I mean, that would be a pretty important
5 fact.

6 A Certainly.

7 Q Don't you think?

8 A I would have written that down, right.

9 Q Yeah. You would have put that in your report, right?

10 A Certainly.

11 Q And even when you took him to the station, he never
12 said anything about, "Hey, I injured Almanita Smith," did
13 he?

14 A No, he did not.

15 Q And, in fact, he's never made any statement to any
16 law enforcement officer about harming Almanita Smith, did
17 he?

18 A Not that I'm aware of.

19 MS. CAMPBELL: Objection, Your Honor. We have a
20 matter of law.

21 THE COURT: Okay.

22 Ladies and gentlemen of the jury, if you will go back
23 to your jury room. We will get back with you in a few
24 moments. Please do not discuss the case and please keep
25 an open mind.

1 (WHEREUPON, the jury left open court at approximately
2 11:58 a.m.)

3 MS. CAMPBELL: Your Honor, as I told Mr. Myers prior
4 to putting this witness up, we were going to be very
5 careful not to go into the fact, but he invokes his
6 attorney/client privilege during the conversation. So the
7 conversation is shut down by the defendant in this case.

8 The cross-examination -- and I've instructed this
9 witness he cannot talk about that because we don't want to
10 violate any of the defendant's rights in this case -- the
11 cross-examination by Mr. Myers clearly opens the door
12 because basically, he is saying he never admitted to you,
13 and he never went into any of this, but the point is, they
14 never got into any of that because as soon as they asked
15 him anything about Almanita Smith, he said, "I want an
16 attorney. I'm not talking anymore."

17 I think he has opened the door at this point to me
18 going into that. I told Mr. Myers, I would specifically
19 make sure this witness didn't go into that; that we
20 wouldn't violate any of his rights.

21 At this point, the inference in front of this jury is
22 that he never said anything about harming her. Well, he
23 never -- as soon as they asked him the question, his point
24 was, "No. I need an attorney," and that was his reaction
25 to that, to when they brought up that information, when

1 they started asking him about the time period and about
2 that stuff.

3 It's in his follow up. I can hand it up to the
4 Court. As soon as that is said, he says, "No. I didn't
5 do anything to her, but I want my attorney." That was his
6 response, as soon as they started asking about whether or
7 not he had done anything to Almanita Smith.

8 This cross-examination clearly opens the door to us
9 at least being able to rehabilitate it at point. At this
10 point, the defense counsel wants the impression in front
11 of this jury to be that he never said anything and they
12 didn't go there. They didn't -- as soon as they started
13 pressing him and started asking him questions about what
14 he had done to Almanita Smith, his response was, "I want a
15 lawyer."

16 MR. MYERS: No.

17 THE COURT: Can I see the report?

18 MR. MYERS: Yes, sir; yes, sir. Your Honor.

19 THE COURT: May I see the report?

20 MS. CAMPBELL: He said, "I didn't do anything to this
21 woman," and then he said, "I want a lawyer."

22 THE COURT: All right.

23 MR. MYERS: It's in bold, Your Honor, which that
24 certainly is a mischaracterization.

25 THE COURT: I'm going to let you talk, I promise.

1 Just let me read it just a second.

2 (Pause).

3 All right. What's your argument, Mr. Myers?

4 MR. MYERS: Your Honor, Ms. Campbell has
5 mischaracterized. As the Court can clearly see in that
6 supplemental report, the question and the answer did not
7 go the way she is indicating to the court; that he asked
8 whether or not you did something, and he said, "Hey, I
9 want a lawyer."

10 The document that is before the court clearly states
11 that I'm not going to admit to doing something I did not
12 do. That's clear.

13 My question on cross-examination did not go into
14 whether or not he invokes his rights to an attorney,
15 whether or not he invoked any of his constitutional
16 rights.

17 We do not believe that that opened the door in any
18 way whatsoever. It would -- if the Court were to believe
19 Ms. Campbell's mischaracterization of that document, but
20 certainly, all he indicated was I'm not going to admit to
21 something I did not do.

22 So that in and of itself does not -- that question I
23 asked Mr. Clarke on cross-examination does not open the
24 door based on the response that was given by Mr. Bailey.

25 THE COURT: All right. What was the last question

1 before the jury went out?

2 THE COURT REPORTER: One moment.

3 (The last question was read back.)

4 THE COURT: So your position is what comes in,
5 Ms. Campbell?

6 MS. CAMPBELL: The fact is, Your Honor -- and I
7 explained this to Mr. Myers beforehand -- basically, "I
8 want an attorney is what he said in response to when they
9 asked him if he hurt Almanita."

10 THE COURT: Okay.

11 MS. CAMPBELL: I mean, he wants to take them
12 separately, but they're in a vacuum. It's written that
13 way in the paragraph, I believe, Your Honor.

14 They basically -- as soon as they start asking him
15 about Almanita and hurting her, he wants a lawyer. I
16 specifically told Mr. Myers that I would admonish the
17 witness not to go into that.

18 At this point, he has gotten up in front of this
19 jury, "Oh, well, he never said anything about harming her.
20 Y'all never went there. You never admitted to it."

21 As soon as they start asking him specific questions
22 about that, his response is twofold: "I'm not going to
23 admit to something I didn't do, and I want my lawyer" is
24 basically how he responded based on my conversations with
25 Mr. Clarke.

1 THE COURT: Where are you going with that line of
2 questioning?

3 MR. MYERS: That's it, Judge. That was my last
4 question on that issue.

5 THE COURT: So you're not going to -- you're not
6 going to ask any more questions about --

7 MR. MYERS: No, sir.

8 THE COURT: -- about what he said to any other law
9 enforcement about hurting her?

10 MR. MYERS: No, sir, and I will say Ms. Campbell was
11 clear before this witness testified as to what she was
12 going to do, which is the exact reason I do not intend on
13 going any further with my examination into that issue.

14 THE COURT: So you don't want it in that he says,
15 "I'm not going to admit to something I didn't do"?

16 MS. CAMPBELL: Because it -- as we explained to him,
17 it goes with, "I want my lawyer."

18 MR. MYERS: Yes.

19 THE COURT: I understand. That's --

20 MR. MYERS: Yes, sir.

21 THE COURT: Here is where I don't want to be.

22 MR. MYERS: Yes, sir.

23 THE COURT: I don't want to be, you know, "Well,
24 didn't he tell you that he didn't do it?"

25 MR. MYERS: Yes, sir. And, Your Honor --

1 THE COURT: Are you planning on going there?

2 MR. MYERS: Your Honor, as I understood the
3 conversation with Ms. Campbell, the only issue we were
4 talking about was his implication of the -- his right to
5 an attorney.

6 Now, I think it is relevant to ask whether or not he
7 ever admitted to doing anything to Almanita, and that's
8 clear.

9 THE COURT: All right.

10 Investigator Clarke, tell me -- do you have your
11 report?

12 THE WITNESS: One minute, sir.

13 THE COURT: So the answer to my question is yes, you
14 do want to ask that.

15 MR. MYERS: I do, yes, sir.

16 THE COURT: Okay.

17 MR. MYERS: Just that limited question, but I do not
18 intend on going any --

19 THE COURT: All right. Do you have your report?

20 THE WITNESS: I do, Your Honor.

21 THE COURT: Do you see the page that's labeled 11:00
22 hours at the top?

23 THE WITNESS: I do, sir.

24 THE COURT: Do you see the paragraph in the middle in
25 bold and in italics?

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. Now, I don't need you to read that
3 paragraph because I'm reading it, but give me how that
4 happened in the interview process.

5 THE WITNESS: We're in the room. Investigator Martin
6 and myself are there --

7 THE COURT: So you left -- now, I'm intimately
8 familiar with the sheriff's department.

9 THE WITNESS: Yes, sir.

10 THE COURT: So interview number one happens in the
11 cubicles out in the main hall, the investigation area
12 where the supervisors are around the outside and the main
13 line investigators are through the middle; is that right?

14 THE WITNESS: You are exactly right.

15 THE COURT: Okay.

16 THE WITNESS: And we went into a supervisor's office
17 and closed the door.

18 THE COURT: You went into a supervisor's office and
19 closed the door. Explain to me what happened.

20 THE WITNESS: We sat down, and this is when he went
21 into the dialogue about what he had done over the weekend.

22 THE COURT: Bring in 27 strong.

23 THE WITNESS: Bring 27 in strong; correct. Then we
24 moved -- we finally got to a point and realized he is not
25 talking about her at all, and therefore, we just -- we

1 just pressed a little to say, "Okay. Here is the issue."

2 We've got a -- she is lying dead in the front yard.
3 Everybody and her brother is looking for her except you.
4 Can you shed any light on why she is dead in the front
5 yard, that kind of thing.

6 THE COURT: What did he say to that?

7 THE WITNESS: He -- and Investigator Martin
8 specifically said, you know, we offered him -- I remember
9 we offered him, you know, was -- did something accidental
10 happen? Is there something because we had to explain
11 why -- I'm trying to put it in context, sir.

12 We had to explain why this badly decomposed woman is
13 laying in the front yard, and he is saying he saw her
14 alive yesterday.

15 When we pressed on that and I mean pressed, just a
16 light press of did you harm her? Did you have anything to
17 do with her demise, that kind of thing.

18 He said, "I'm not going to admit to something I
19 didn't do."

20 I said, "Well, we need to talk about this."

21 That's when he said, "I want my attorney. I want an
22 attorney." That was it. We were done. He invoked, and
23 it was that fast. As soon as we moved it towards, "Did
24 you have anything to do? Do you know anything about it?
25 Why is she in the front yard dead," et cetera, that kind

1 of thing, it was all just a couple of quick questions. He
2 immediately said, "Well, I'm not going to admit to
3 something I didn't do," and he invoked.

4 THE COURT: So let's come at this from the back door.
5 Do you care if it comes in that he invoked?

6 MR. MYERS: Yes, sir.

7 THE COURT: Okay. But you also want him to say
8 that -- what's the term I'm looking for? The statement
9 where he said he didn't do it. What's that?

10 MS. CAMPBELL: His denial?

11 THE COURT: Ma'am?

12 MS. CAMPBELL: His denial.

13 THE COURT: Yeah, when he --the statement that helps
14 him, you want that in, too.

15 MS. CAMPBELL: But he doesn't want it in the context
16 of where it came in.

17 THE COURT: Is that right?

18 MR. MYERS: Judge, I think the context has been given
19 throughout the course of -- I mean, according to
20 Investigator Clarke, this wasn't a 15-minute conversation.

21 I mean, they thoroughly discussed everything, so I
22 think based on what Investigator Clarke testified to, I
23 think the only reason it's relevant is the fact of did he
24 ever admit to doing anything? What did he say when asked?

25 According to Investigator Clarke is that he basically

1 said, "I'm not going to admit to do something I didn't
2 do." That was the end of the interrogation.

3 THE COURT: Because he invoked.

4 MR. MYERS: He invoked, yes, sir.

5 THE COURT: But then the question was did he ever
6 tell any investigator that he hurt the victim.

7 MR. MYERS: And I think the answer to that one is no,
8 as well. That opens the door --

9 MS. CAMPBELL: All we're asking is at that point when
10 he was asked about whether he hurt anyone, what did he
11 immediately do. He said, "I'm not going to admit it, and
12 I want my lawyer."

13 MR. MYERS: Your Honor, if it would expedite matters,
14 I'm willing to withdraw my last question and move on. I'm
15 happy to move on.

16 THE COURT: Do you want to do that?

17 MS. CAMPBELL: No, Your Honor, then we would ask that
18 the last couple of -- I think there was a series of
19 questions before that I would ask just be struck from the
20 record, or we'll go into it is what we really want to do,
21 but I can understand that Mr. Myers doesn't want that.

22 At this point, I think it needs to be struck from the
23 record, because as soon as they press him on anything, he
24 invokes.

25 THE COURT: So are you okay with me striking it, or

1 do you just want to move on, Mr. Myers?

2 MR. MYERS: Judge, we just want to move on. We don't
3 see any -- any need to strike those questions. We just
4 would rather move on.

5 THE COURT: Yes, ma'am.

6 MS. CAMPBELL: We would just ask that that line of
7 questioning but struck from the record and we move on and
8 go back to it, or we can ask that we follow up then go
9 into the fact that he never -- he immediately said, "I
10 didn't do it but I invoke."

11 I mean, that's the response. As soon as they started
12 asking him about harming her, and I explained that to
13 Mr. Myers before I put him up. I instructed him not to
14 get him to go into that. At this point, he can't even be
15 responsive.

16 MR. MYERS: Judge, the purpose it shouldn't -- we
17 don't wish for it to be stricken from the record is
18 because again, that was a mischaracterization of what was
19 stated.

20 Ms. Campbell wants the Court to believe that as soon
21 as they started asking about it, he invoked, but instead,
22 he stated, "I'm not going to admit to something I didn't
23 do." I'm willing to let that go and just move on with the
24 cross-examination and leave that issue entirely alone.

25 THE COURT: You're not going to go back into the

1 specifics then?

2 MR. MYERS: No, sir.

3 THE COURT: Okay. I'm going to -- here is the deal:
4 I'm not going to let you get into the fact that he
5 invoked, and we're not going to ask any more questions
6 about any other statements that he made concerning his --
7 whether or not he did it or didn't do it.

8 MR. MYERS: Yes, sir.

9 THE COURT: Period.

10 Okay. You got that?

11 THE WITNESS: Yes, sir.

12 THE COURT: Are you with me?

13 THE WITNESS: I'm with you.

14 THE COURT: Okay. Bring the jury back in.

15 (WHEREUPON, the jury came into open court at
16 approximately 12:12 p.m.)

17 THE BAILIFF: Jury is seated, Your Honor.

18 THE COURT: All right. Thank you. You may continue.

19 MR. MYERS: Thank you, Your Honor.

20 BY MR. MYERS:

21 Q Now, Mr. Clarke, when you met with Mr. Bailey at
22 Providence Hospital, I believe you were asked on direct
23 whether or not he looked like his photograph in defense
24 Exhibit No. 5.

25 A That is correct.

1 Q And I believe in this exhibit, he is wearing a
2 hospital gown.

3 A Yes, sir.

4 Q Did you notice any sort of bruising on Mr. Bailey's
5 face?

6 A No. I do not recall that, sir.

7 Q Any cuts or scrapes?

8 A There were some scratches on his arm.

9 Q All right. You heard Ms. Cavanaugh when she
10 testified earlier about those scratches about where they
11 were on his body, right?

12 A Yes, sir.

13 Q But you, yourself, you did not notice any cuts or
14 bruises on his chest area, right?

15 A No, sir.

16 Q Now, you indicated that later on that morning, you
17 went over to 613 Heron Glen Drive, right?

18 A Later that afternoon.

19 Q Yes.

20 A Yes, sir.

21 Q And the cadaver dog, I believe you testified that the
22 cadaver dog had gotten there about five p.m. that day?

23 A Approximately.

24 Q The -- Almanita's body had been found earlier that
25 morning, right?

1 A Yes, sir.

2 Q So is it fair to say that the cadaver dog didn't get
3 there for several hours after the body was found, right?

4 A I think that's a safe assumption, yes, sir.

5 Q In between the body be being found and the cadaver
6 dog arriving, there were a lot of people on that scene,
7 right?

8 A A lot, I don't know, but there were people who had
9 been there, yes.

10 Q Sure. There was more than one or two individuals
11 there at the scene.

12 A Certainly, certainly.

13 Q And when -- and you stated that you were there with
14 Deputy Pearrow, and he was giving you basically a
15 ground-by-ground report of what Mia was doing, right?

16 A He -- he was working the dog, and then I may ask him
17 a question or he may say something to me. That's how it's
18 worked.

19 Q Sure. And you stated that you and the rest of the
20 law enforcement officers, y'all searched the house where
21 Mia alerted, right? For example, y'all went up to -- you
22 stated that Mia alerted upstairs.

23 A Yes, sir. I didn't know -- I didn't -- search, I
24 didn't know exactly what you meant.

25 Q All right. So you testified that Mia alerted

1 upstairs, right?

2 A Yes, sir.

3 Q You went upstairs, and you searched where Mia
4 alerted, right?

5 A Yes, sir.

6 Q You found no DNA in that area, right?

7 A No, wasn't looking for it.

8 Q All right. But you found none, right?

9 A That's correct.

10 Q And because Mia alerted to the carpet area, the
11 carpet was ripped up, right?

12 A I do not know what happened to the carpet.

13 Q All right. But you're here -- you can't testify as
14 to whether or not any sort of DNA belonging to
15 Ms. Almanita's body was found where the dog alerted,
16 right?

17 A I cannot testify to that, no, sir.

18 Q Now, if you testified or if you searched the areas
19 where Mia alerted, why didn't you do a thorough search of
20 the living room?

21 A I didn't say we didn't do a thorough search of the
22 living room.

23 Q Sure, but you would agree with me that the area
24 upstairs where Deputy Pearrow stated that Mia alerted,
25 there was a thorough search of that area, right?

1 A I did not state that.

2 Q All right. Was there a thorough search?

3 A It was looked at. The area was observed.

4 Q In fact, the photographs that are in evidence would
5 depict that clothes were pulled out. Items were pulled
6 out, as well, right?

7 A There was -- in the particular front bedroom where
8 the futon was, there was a closet door opened, and a box
9 was pulled out.

10 Q But there was -- after Mia alerted to those areas, a
11 search was performed in the areas in which Deputy Pearrow
12 told y'all Mia had alerted, right?

13 A I recall that specific search, if you want to call it
14 that, of that bedroom.

15 Q All right. So what search was done in the living
16 room?

17 A There was the observation of, you know, touch, feel,
18 and smell. We were in there looking around.

19 Q So no pulling of the carpet in the living room?

20 A Certainly not.

21 Q All right. No examination of any clothing found in
22 the living room?

23 A I did not witness that.

24 Q All right. But everywhere that Deputy Pearrow told
25 you that Mia had alerted, y'all found no evidence of any

1 blood, right?

2 A I don't remember finding blood.

3 Q You found no evidence of any feces, right?

4 A No, sir.

5 Q No evidence of any sort of human remains, right?

6 A No, sir.

7 Q And Mia -- just to make sure we're clear, Mia did not

8 alert at all to the laundry room, correct?

9 A I did not see that happen, no, sir.

10 Q Now, you stated -- or I believe there has been

11 testimony -- and I just wanted to make sure we're clear --

12 that the DNA taken from Marcus, the fingernails, right,

13 were you there take to nail clippings yourself?

14 A There was no nail clippings taken from Marcus.

15 Q So your testimony is there were no fingernail

16 clippings taken from Marcus?

17 A There were scrapings.

18 Q Scrapings.

19 A That's different from nail clippings.

20 Q Okay. I apologize.

21 A They're okay.

22 Q None of that came back from those scrapings to match

23 Almanita Smith's body?

24 A I have not -- I don't have those lab results. I

25 don't know if they did or didn't.

1 MR. MYERS: Thank you, Mr. Clarke. No further
2 questions.

3 THE COURT: Redirect?

4 MS. CAMPBELL: Yes, sir.

5 REDIRECT EXAMINATION:

6 BY MS. CAMPBELL:

7 Q You mentioned that y'all used the dog before to come
8 out. If you find obvious signs of blood or feces, you
9 don't need the dog, do you?

10 A No. That would be redundant.

11 Q When the dog comes out, in this case and in other
12 cases, is because he can detect things the human eye
13 can't?

14 A With the nose, absolutely, yes.

15 MS. CAMPBELL: Thank you.

16 No further questions, Your Honor.

17 THE COURT: All right. Thank you, Investigator
18 Clarke. You may step down.

19 MS. CAMPBELL: May we approach?

20 THE COURT: Yes. Let's approach real quick.

21 (WHEREUPON, a bench conference was held in the
22 Presence but not within the hearing of the jury).

23 THE COURT: All right. Ladies and gentlemen, it's
24 about 12:20 or so. We're going to go ahead and stop for
25 lunch. I'll give you a chance to get out and stretch your

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 8, 2015



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM RICHLAND COUNTY
Court of General Sessions

SC Court of Appeals

The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2013-001680

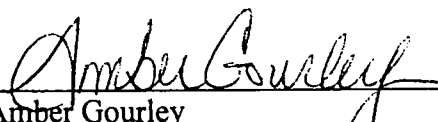
Marcus Bailey,.....Appellant,

v.

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

PROOF OF SERVICE

I certify that I have served the Record on Appeal, via hand delivery, to Appellant's attorneys, Alan Wilson, Attorney General, John W. McIntosh, Deputy Chief Attorney General, Donald Zelenka, Senior Assistant Deputy Attorney General, and Melody J. Brown, Senior Assistant Attorney General, 1000 Assembly Street, Room 519, Columbia, South Carolina 29201 on January 14, 2015.


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