

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

Carmen T. Mullen, Circuit Court Judge

Case No. 2009GS0702636, 2009GS0702637, 2009GS0702639,
2009GS0702594, 2009GS0702595
Appellate Case No. 2013-002394

The State, ... Respondent,

v.

Earnest Stewart Daise, ... Appellant.

RECORD ON APPEAL - VOLUME V

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1 ALLEEN CARLETTA PORTER, PROFFER

2 DIRECT EXAMINATION BY MR. STONE:

3 Q Ms. Porter, you knew Jeanine Mullen?

4 A Yes.

5 Q How did you know her?

6 A She was my best friend. I had met her ten years
7 prior, when I moved to Beaufort County. She was also
8 one of my employees with the school district. She was a
9 teacher's assistant, and I was her assistant principal.

10 Q Okay. So, you worked with her at the school, as
11 well.

12 A Yes.

13 Q And what school is that?

14 A Joseph S. Shanklin Elementary in Beaufort County.

15 Q So, how long did you know Jeanine?

16 A I knew Jeanine for ten years prior to her demise.

17 Q Okay. Did you also know about her relationship to
18 Earnest Daise?

19 A Yes.

20 Q Excuse me. And how did you know that? How did you
21 know about this relationship?

22 A We -- as stated earlier, we were best friends. We
23 talked about the relationship. Previously, we talked
24 about, -- well, she talked about how volatile it was,
25 how violent it was. But at the same time, she did

1 express, you know, she had mixed emotions about the
2 relationship. And she, at some point, and not right
3 off, she knew that, at some point, she would have to get
4 out. It was a very abusive relationship. Although, no
5 one at work could tell that she was being abused, all
6 the signs were there, because she felt comfortable
7 enough to talk to me about it. Not being as judgmental
8 as some people might would have been, she opened up to
9 me about lots of things that probably lots of people
10 weren't privy to.

11 Q Did you ever see evidence of this?

12 A Absolutely.

13 Q And tell me about that.

14 A Right before -- it was Halloween one -- one year,
15 and I remember because it was getting cold. It wasn't
16 quite Halloween. She came to work, eyes were bloodshot
17 red. I asked her what had happened to her. Her eyes
18 were bloodshot red, as though she had lost some
19 circulation, and I'm -- and I just asked her what was
20 going on. She said:

21 *E and I had a fight last night. He*

22 *he choked me.*

23 And of course, I do what best friends do, and I
24 told her about my situation, and I -- I encouraged her,
25 enlightened her, and told her:

1 *Hey, this -- you can't continue to*
2 *do this. This is abusive. This is wrong.*

3 On another occasion, she had gotten her hair done,
4 and I thought it was the cutest hairstyle one could ever
5 have gotten. It didn't last. He pulled her ponytail
6 off. The ponytail part that we usually get, she -- it
7 was pulled off. When she came to work the next day, she
8 had a different hairstyle. We -- I asked her about it.
9 She told me:

10 *We had a fight last night.*

11 So, typically, it was just -- another incident was
12 her -- her arm was in a sling, and everyone at the
13 school knew at that particular point in time that
14 something was wrong. She had her right arm in a sling.
15 And when questioned about it, she made -- she would tell
16 others different stories; that she had fallen; that
17 things -- other things had happened. I asked her:

18 *E and I, we were fighting.*

19 Again, another abusive incident.

20 Q Did you ever witness any of these incidents?

21 A I didn't witness it, but I can tell you this. I
22 was on the phone with her one night. It was one night,
23 she said:

24 *I've got to call you back, because*

25 *E just walked in.*

1 And that was typical. That's typically what she --
2 she would do when he -- when she was on the phone with
3 someone and he walked in, she would hang up. But she
4 forgot to hang the phone up that day. They were arguing
5 back and forth.

6 Q Did you recognize E's voice?

7 A Yes, I recognized his voice. It was him. I could
8 hear a baby crying in the background. As stated, they
9 were arguing back and forth. Jeanine said:

10 *You don't know me.*

11 He says:

12 *Bitch, you don't me either; I'll*
13 *kill you and your mother f'ing kids.*

14 Phone hadn't hung up, so I figured I -- me, I was
15 used to this abuse. It was common. So, when the theat
16 was made, I really didn't think it would be as serious
17 as one might would have thought.

18 Q Did she ever indicate to you her feelings towards
19 him? I know you said that it was a -- she had mixed
20 emotions.

21 A She had mixed emotions, and let me clarify that.
22 When I say mixed emotions, it's an abusive relationship,
23 and there were good times. But when the times were
24 good, they were good. But when the times were bad, they
25 were bad, and bad to the point where you shouldn't be in

1 that kind of relationship.

2 But there was one specific point in time that
3 really stands out with me, and I wish I could have done
4 more for Jeanine, and I couldn't. Two weeks prior to
5 her death, she started -- she enrolled at the University
6 of Phoenix. And she came into my office one morning,
7 and this was a -- a different kind of conversation.
8 This was not like a conversation I had ever had with
9 her.

10 And she said -- she said:

11 *I want to do something different*
12 *with my life. I want to be a teacher.*

13 Because, at the time, she was a teacher assistant,
14 and she definitely had what it -- what it took to be a
15 teacher. She said:

16 *I want to be certified; I want to get*
17 *my degree. Where -- what did you do?*

18 She wanted to know what I did to get my degree.

19 So, I said:

20 *I went into a classroom and sat down*
21 *and got my degree, but I also went to the*
22 *University of Phoenix, and they do online*
23 *courses, and you can take care of your*
24 *children and stay at home and work towards*
25 *your elementary certification.*

1 And that's what she did. And she went through the
2 process. It took her two long, laborious weeks to get
3 enrolled, to get financial aid. And she said:

4 *I am going to turn over a new leaf.*

5 *I am getting rid of E,*

6 is exactly what she said to me.

7 *I'm starting school, and I'm leaving*

8 *all that nonsense behind me.*

9 And she had never said these things to me. Of
10 course, before, she would say:

11 *I want out, I want out, I need to*

12 *get out, I need to get out.*

13 But two weeks prior to her death, she was dead set
14 on starting school and getting out of that relationship.

15 And when I say the feelings are mixed, she -- I
16 still often felt that she loved him. I -- I never
17 disputed that she loved him unconditionally. But at the
18 same time, she knew that it was not a relationship where
19 she could move on and be a teacher and be successful and
20 be there for her children.

21 So, you know, on -- on the -- on Thursday, prior to
22 her death, she took the day off. And she came into my
23 office -- well, she wanted to -- she was going to go to
24 the Salvation Army and pick up toys for her children.
25 That was the day that she took off. And the day prior

1 to that she says:

2 *This is the weekend that I am going*
3 *to leave him. I am going to -- I've*
4 *already started my classes. This is my*
5 *first class. I did -- I made -- I'm*
6 *doing exceptionally well. I can't*
7 *concentrate when I have all this going*
8 *on around me.*

9 And I said to her, I said:

10 *You know the classes do get harder,*
11 *and you're going to have to be able to*
12 *focus.*

13 So, she left out of my office that day with plans
14 that she was going to move on with her life.

15 Q And that was the weekend of her death. That's
16 actually the Thursday before.

17 A That was the Thursday prior to her death. She was
18 not at work on Friday. She had to take care of
19 business.

20 My advice to Jeanine at the time, I said:

21 *If you're going to leave this*
22 *relationship, you need to be cordial,*
23 *as cordial as you possibly can be.*

24 I certainly didn't want to rock the boat with him,
25 because, as she had stated, she was terrified of him.

1 She was terrified. She put up a good front around a lot
2 of people, but she told us that she was terrified, and
3 it showed.

4 Q You could tell?

5 A Absolutely.

6 Q Did you do anything in relation to that? Any type
7 of -- and I'm specifically talking about any kind of
8 safety plan, anything like that?

9 A Yes, Jeanine and I had a safety plan. I -- at the
10 time when -- at the time of her death, I lived on a
11 barrier part, a very barrier, empty part of Saint Helena
12 Island, and no one knew I was back there, except people
13 who would come back there. And Jeanine and I had this
14 safety plan, and we would call each other throughout the
15 night, throughout certain hours, throughout certain
16 times. And although it wasn't always on point, we would
17 always do 6666 or 7777, just -- it would just depend on
18 if it was the weekend or during the day, because we just
19 wanted to know that we were both okay.

20 That particular night of her death, I didn't get a
21 call from her at all, and we knew that something was
22 definitely wrong. I called her; I didn't get an answer.
23 And it was just quite odd, because we knew that it was
24 Fred's birthday, and she would have at least called to
25 say, you know, I'm going to Applebee's; want to join us;

1 or something, but she never -- she never called me on
2 that particular day. But we did have that safety plan
3 in place because of my past volatile relationship and
4 because she was in one at the time.

5 Q How long did you have that safety plan in place?

6 A Approximately, I want to say about close to a year.
7 Not quite a year, close to a year. We -- we tried to
8 make sure that we always knew where the other was. And
9 if she was going out with him, she let me know. She
10 said:

11 *Hey, he and I, we're going to his*
12 *family's house, and we're going to hang out.*

13 Good, you know, but we just try to make sure that
14 -- that we just knew that we were covered.

15 MR. STONE: Okay. Thank you, ma'am. If you will
16 answer any questions Defense has.

17 A Okay.

18 ALLEEN CARLETTA PORTER, PROFFER

19 CROSS-EXAMINATION BY MR. MCGUIRE:

20 Q Evening, ma'am.

21 A Good evening. How are you, sir?

22 Q I'm good. Let's talk with the safety plan. What
23 was that?

24 A The safety plan was just to ensure, as I stated
25 earlier with the Defense [sic], we -- we wanted to make

1 sure that the other was okay. I lived on Saint Helena.
2 It was a very barrier part of the island. No cell phone
3 coverage, and just my home phone. We would call each
4 other periodically just to make sure that we could just
5 chat for awhile, making sure that we were there. But it
6 -- it was just covering each other's back, basically.

7 Q You said some numbers, 6666, 777? What does that
8 mean?

9 A 6666 means we would either call at the sixth hour
10 or at the seventh hour. It just -- it just depends on
11 what times we were at home. 6666 means I called her
12 every 30 minutes, or we would talk for 30 minutes, or
13 777 means that we would start calling each other at 7:00
14 o'clock. We made that arrangement because she said --
15 she would always tell me I just -- we -- we -- we just
16 always had to have each other's back, and -- and that
17 was one of the ways that we did it. We made sure that
18 we did it through a tele -- through telephone calls.
19 Jeanine lived in a barrier area, as well as I did.

20 Q So, if it was the 6666 plan, you would start
21 calling, you said, at the sixth hour. Does that mean
22 6:00 p.m.?

23 A 6:00 p.m. We would call each other at 6:00
24 o'clock; then we'd call each other at, say, 6:30; then
25 7:30; then 8:30; then 9:30; throughout the night. We

1 were on the phone all the time, just for safety reasons.

2 I --

3 Q Go ahead.

4 A I often felt that she wasn't safe. I worried about
5 her.

6 Q So, to make sure that she was safe, you all would
7 call on the hour?

8 A We would call, not on the hour, but either 30
9 minutes, 15 minutes, an hour. Be we also -- when she
10 would leave for work -- when she would leave from work
11 that afternoon, I would say 6666, or she would say 7777.
12 And you know, that would just be our little code that
13 we're going to call each other as soon as it starts
14 getting dark outside.

15 Q Okay. And what about the daytime on Saturday and
16 Sunday?

17 A On Saturday. During the daytime we were -- we
18 weren't -- we weren't as -- we didn't do this during the
19 daytime hours, because, during the weekdays, we were at
20 work. During Saturdays and Sundays, she always had
21 something to do with the children. I always had
22 something to do with my children. So, during the course
23 of the daily -- during the course, of the day, like
24 daylight hours, we -- we -- we didn't. But at night, we
25 certainly did.

1 Q And you're making these phone calls to make sure
2 that she's okay and she's safe.

3 A Yes. Or -- and to chat, of course.

4 Q Sure.

5 A There's always other underlying reasons for just a
6 chat. But you know, at the same time, I wouldn't call
7 her and hang up and say, hey, are you okay? You know,
8 the conversation would -- would -- would -- would go on
9 for a little while.

10 Q Okay. And you would call from your land line
11 phone?

12 A I would call from my land line. Our cell phone
13 coverage was not very good there.

14 Q Okay.

15 A Like I said, it was a desolate, isolated area, so
16 we only had the land line.

17 Q And would you call Jeanine's cell phone?

18 A Her cell phone, she had Sprint. She had the same
19 carrier that I did, and it didn't -- it didn't -- her
20 coverage wasn't -- it wasn't well out there, so it would
21 just be her -- her land line. I would call her land
22 line.

23 Q Would you be surprised to know that her cell phone
24 did work out there?

25 A Would I be surprised?

1 Q Yeah.

2 A I --

3 Q There's a cell phone tower right across Whale
4 Branch Creek. Did you know that?

5 A No, I wouldn't be surprised if it did.

6 Q Okay.

7 A But I didn't use my cell phone.

8 Q And you never called Jeanine on her cell phone?

9 A No, I didn't call her on her cell phone.

10 Q Her land line. If you didn't get an answer, what
11 would you do?

12 A If I didn't get an answer, typically, if I didn't
13 get an answer, typically, within 15, 20, or 30 minutes,
14 she would call me back. It would be because she would
15 be on the line with somebody or she would be out, but
16 she would call back.

17 But as stated earlier, on the night of her demise,
18 I didn't get a return phone call, except did get a call
19 from her house, but it wasn't from her. Because --
20 because I had that in place, her son, even her children
21 knew that, when I called, that was why I was calling,
22 just to make sure that she was okay. And they knew
23 that, at a specific time, that -- that I don't hear from
24 her, that I do panic. I do panic. I did panic.

25 Q And did you call the police?

1 A When?

2 Q When you didn't get the return phone call.

3 A No.

4 Q Why not?

5 A I didn't feel the need to call the police. You
6 mean the night of her demise? Can you be more specific?

7 Q I mean, if you don't -- if you don't get a return
8 phone call on your safety plan, what do you do? I mean,
9 is the answer to call the police?

10 A I've never had her not call me back.

11 Q Okay.

12 A I've never had her not to call me back within an
13 hour. Never, never not had her call me back.

14 Q Now, Jeanine and her -- excuse me. Her kids would
15 come stay with you?

16 A Yes. One specific weekend, yeah, they came and
17 they stayed for -- it was -- it was over the summer, so
18 they stayed a couple days.

19 Q And was that to get away from Mr. Daise?

20 A Yes.

21 Q And was it just the one time?

22 A They came two times.

23 Q Okay. Two times in how many years?

24 A Two times in a year.

25 Q Let's go back to the bloodshot eyes. When was

1 that?

2 A Prior to -- it was around Halloween, because I
3 remember we were outside decorating for breast cancer
4 awareness at school, so it was during the month of
5 October. That's how I remember, cause she was --
6 Shanklin is set up as such is there is a courtyard, and
7 we were outside doing -- planning something for breast
8 cancer awareness, and she was in the corridor walking
9 into the -- to the One-Two Building.

10 Q In what year?

11 A 2008.

12 Q Okay. That would be a year and a month before the
13 incident that we're here for. Is that about right?

14 A Yes.

15 Q Okay. And you seem to have some knowledge about
16 anatomy. You indicated that the bloodshot eyes you
17 thought were from being asphyxiated?

18 A Choked.

19 Q Lack of oxygen?

20 A Yes.

21 Q And that was your conclusion by just looking at
22 her?

23 A By just looking at her, but I asked.

24 Q Okay. So, you knew by looking at her eyes that
25 she'd been choked, and then you confirmed it by asking?

1 A Yes.

2 Q Okay.

3 A I didn't ask her if she was choked. I asked her
4 what happened.

5 Q Okay. But before she told you anything, you could
6 tell by looking into her eyes that she had been choked.

7 A Yes.

8 Q Okay. You never saw Mr. Daise strike Jeanine.

9 A No, I never saw him strike her. There was an
10 incident, though, where she attempted to jump out of a
11 car in the parking lot, and he pulled off as she was
12 jumping out of a moving car. The car was parked. As
13 she was jumping out, he was pulling away.

14 Q And what year was this?

15 A I can't remember.

16 Q Two thousand --

17 A Roughly '07, '08.

18 Q Okay. You indicate in this statement that you
19 typed up for law enforcement -- let me ask you about
20 that for a second. You typed up what appears to be
21 about a four-and-a-half-page statement. It looks like
22 nobody asked you to do this. You just -- you wrote it
23 yourself.

24 A It was -- what do you mean? I was asked to write a
25 statement.

1 Q Sure. Well, I'll tell you what. Let me get this
2 marked, if I could.

3 COURT REPORTER: Defendant's Exhibit 14.

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

5 ITEM IDENTIFIED AS TYPED STATEMENT
6 OF ALLEEN CARLETTA PORTER MARKED
7 DEFENDANT'S EXHIBIT NUMBER 14, FOR
8 IDENTIFICATION.

9 MR. MCGUIRE: If I could approach, your Honor?

10 THE COURT: You may.

11 BY MR. MCGUIRE:

12 Q Ms. Porter, I want to show you what's been marked
13 Defendant's Number 14. Why don't you take a look at
14 that and see if you recognize that.

15 A Yes. This is -- yes. I submitted this.

16 Q When you say *submitted*, you prepared that yourself;
17 and then you came to law enforcement to present it.

18 A Yes.

19 Q Okay. You typed this by yourself at your house?

20 A Yes.

21 Q Okay. And was that -- when you typed this up, had
22 anybody from law enforcement contacted you at all?

23 A Prior to, yes.

24 Q I mean, did you make this before the police
25 contacted you?

1 A No.

2 Q You contacted the police.

3 A No, they came to me.

4 Q They came to you.

5 A They came to the school.

6 Q Okay. And tell me how that worked.

7 A They came to the school wanting -- wanting
8 information in regards to the personal relationship,
9 Jeanine's personal relationship. Anyone who had any
10 knowledge of that was to be truthful and come forward.

11 Q So, in your statement, you indicate that you could
12 hear -- overhear some arguments; and you said that
13 Jeanine was leaving the phone off the hook purposefully
14 so that you could hear.

15 A At some point, I -- I thought she did it, but I
16 believe she, at -- I would think she would have left it
17 off by accident, but after her demise, I -- I felt like
18 it was probably on purpose.

19 Q So, you think she -- she pretended to hang up and
20 left the phone on so you could hear?

21 A Yes.

22 Q Okay.

23 A Like I indicated earlier with the Defense [sic],
24 she thought she hung the phone up and didn't, or maybe
25 did it. I don't know what thought process she was going

1 through at the time. But in my mind, she could have
2 purposely left the phone off the hook.

3 Q Okay, now, you knew that Jeanine was on the
4 Internet meeting guys.

5 A That wasn't a habit, no. She was not doing that.
6 She met one person online. It wasn't a habitual thing.
7 It wasn't something that she did all the time. But I
8 also indicated earlier with the Defense [sic] that she
9 wanted out of the relationship. And in wanting out, she
10 was seeking other avenues to -- to date and maybe meet
11 someone nice, I guess.

12 Q You don't know the name of the web site she was
13 using.

14 A No.

15 Q Or how often she went there.

16 A No.

17 Q Or if she had to pay for it.

18 A No. No.

19 Q Or if she contacted numerous men.

20 A No.

21 Q Okay.

22 A But I do know only one that she mentioned to me.
23 And as I stated earlier with the Defense [sic], we were
24 best friends, and we told each other just about
25 everything, and there was only one that I -- that she

1 told me about.

2 Q And you said she shared pictures with you of this
3 man.

4 A Yeah, just one, the one guy.

5 Q And was it something she printed off the Internet,
6 or was it a real photograph?

7 A She printed it off the Internet.

8 Q Okay. And what did the picture look like?

9 A Hmm? What do you mean, what did it look like?

10 Q Well, I've seen pictures on her computer with guys
11 with guns. Did it look like that?

12 A No. He wasn't thuggish, if that's what you're
13 making a reference to.

14 Q That's my question here.

15 A He was like an African-American male, tall in
16 stature. He wasn't pointing a gun or anything. He just
17 looked like an average male.

18 Q In your statement you indicate that:

19 *She often sought refuge at my residence.*

20 Is that the two times you're talking about?

21 A Yes.

22 Q Okay. So, but you'd agree with me that two times
23 really isn't often?

24 A I would agree that two times is often if it's over
25 a period of time. If it's longer than three or four

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1 days, I feel that, that's often.

2 Q Well, correct me if I'm wrong, but you said it was
3 two times in a year.

4 A Yes, two times in a year.

5 Q Is that often?

6 A To me, it is often if you have -- are having to
7 leave your residence to go stay with someone else to
8 hide from someone, that's often. It would depend on
9 what often means to someone. To me, that's often.

10 MR. MCGUIRE: Move the statement in for the
11 purposes of this hearing.

12 THE COURT: Okay.

13 MR. STONE: No objection.

14 THE COURT: Without objection.

15 ITEM IDENTIFIED AS TYPED STATEMENT
16 OF ALLEEN CARLETTA PORTER MARKED
17 DEFENDANT'S EXHIBIT NUMBER 14,
18 ADMITTED AS EVIDENCE.
19 ARGUMENT RE ALLEEN CARLETTA
20 PORTER, PROFFER:

21 THE COURT: Okay. Sit tight, Ms. Porter. I
22 appreciate it. Anything further from this witness?

23 MR. MCGUIRE: No, ma'am.

24 THE COURT: All right. You may step down, Ms.
25 Porter, at this time, please.

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1 A Thank you.

2 THE COURT: Absolutely.

3 You all, Caroline just, during that testimony, has
4 been doing some research on hearsay testimony, and this
5 is in reference to CDV cases. She's found one even
6 having to do with a death penalty case. And a lot of
7 these are saying that the type of statements that we're
8 talking about, that, you know, she was in fear of the
9 defendant, they say it's allowed as exception to the
10 hearsay rule, obviously, to show state of mind.

11 You all want to do any brief argument? Or, what I
12 suggest maybe, you all, and I know it's late, and I know
13 everyone's tired. I suggest that maybe you all do some
14 research. Caroline's going to give you both of our
15 email addresses, and if you would, issue -- find case
16 law tonight, email it to me, rather than give it all to
17 me at 8:30 tomorrow morning. If you find it, send it.
18 I will read it. If it's 3:00 in the morning, it might
19 not be 'til 5:00 in the morning when I get up, but I
20 will read it in the morning, and not tonight when you
21 send it, and let me take a look at it.

22 MR. STONE: I might simplify it, if I might.

23 THE COURT: Thank you.

24 MR. STONE: Yes, ma'am. Let me make sure -- I
25 don't want to go into all that.

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1 THE COURT: Okay.

2 MR. STONE: In fact, there's only four things that
3 I think are admissible that I'm interested in doing.
4 Number 1 is that Jeanine was afraid of him. Number 2,
5 that they had a safety plan because of it. Number 3,
6 that she said she was going to leave him, and I think
7 she had a two-week window; and then, the week before
8 that. And Number 4, the direct threat that she heard
9 Earnest Daise make, that I will kill you and I will kill
10 your children.

11 If we need to clean up the language, I can do that,
12 but I think all of those four things are the things that
13 I think -- and I recognize I need to control her. I
14 know she's going to get -- she's very emotional, but
15 those are the four things. I know she went on for
16 awhile, but those are the four things that I think are
17 admissible and that I would seek to introduce in her
18 testimony.

19 THE COURT: In her testimony. Okay. I think what
20 I need to hear specifically or what I need to see, I do
21 think that she was afraid is admissible, clearly, under
22 the exception to the hearsay rule.

23 While I don't necessarily completely understand the
24 safety plan, it's confusing to me, and I still don't
25 understand who was on a land line and who was on a cell

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1 phone; but be that as it may, I think she can testify
2 that she said she was going to leave him, and that was
3 right during the time period. I think she puts it in a
4 good time context.

5 My note from you all is that direct reference, she
6 said:

7 *I will kill you and your children,*
8 with the expletive.

9 Mr. McGuire?

10 MR. MCGUIRE: Well, I mean, in fair play, I mean,
11 can tell you, we have text messages that are romantic in
12 nature between Ms. Mullen and Mr. Daise that were
13 provided to us by the Prosecutor's Office. And I'm
14 trying not to use a tacky colloquialism, but they are
15 arranging an intimate assignation. And it's -- and we
16 would put it all in to refute all this stuff. I mean.

17 THE COURT: I understand that, and I would expect
18 you to, clearly.

19 MR. MCGUIRE: We weren't going to do it, but.

20 THE COURT: Okay. Well, again, I want to go, and I
21 want to re-visit, like I said, and look at any of the
22 CDV case law that shows -- again, I think it's -- as to
23 Ms. Porter, she could say she's afraid; apparently, they
24 have some kind of safety plan; that she was going to
25 leave him.

1 And again, if you can find any case law in direct
2 threat -- I mean, I think I did read in some of this
3 404(b) that there was that got admitted in some cases.
4 Again, I'll have to go through it, and it's been since
5 last week that I went through them and read them, but I
6 did read every last one of them. Those would be the
7 things I think specifically as to Ms. Porter's
8 testimony.

9 And again, I will tell you, too, I am still very
10 much right now weighing as to the actual photograph of
11 the choking. I've already said that whatever it
12 appeared was the clawing or whatever that was, those two
13 aren't coming in. Again, as to the choking marks,
14 again, I understand it's my call under a 403 analysis,
15 but again, for me, I just need to think on it as far as
16 weighing, so.

17 Does that give you all some direction kind of,
18 where I am?

19 MR. STONE: Yes, ma'am.

20 THE COURT: I hope.

21 MR. STONE: Yes, ma'am.

22 MR. MCGUIRE: Yes, ma'am.

23 THE COURT: I mean, I -- it's not compulsory. You
24 don't have to agree with me and say yes. I just -- I
25 want you to kind of know where I'm going.

1 MR. MCGUIRE: Sure. And just to protect the record
2 and object to this particular witness, I would say this
3 one's not even proven by clear and convincing evidence.
4 I think she's a bit off the rails and unreliable. I
5 find a lot of what she said implausible. The fact that
6 she can diagnose a person by having bloodshot eyes as
7 having been asphyxiated or choked out I find fascinating
8 and crazy. And I think she's just going on about --
9 she's putting herself in the starring role in a drama,
10 and I would disregard all of it.

11 THE COURT: Let me ask you, the phrase, *I will kill*
12 *you and your kids*, I guess it's -- it is a threat. Is
13 it a criminal act? It's a threat. I don't know. Does
14 that have to be proven by clear and convincing evidence?
15 I mean, it's hearsay. That's what -- I mean, that's a
16 problem is, again, it's hearsay.

17 MR. MCGUIRE: If it was --

18 MR. STONE: No, ma'am, it's not. I'm sorry, I
19 didn't mean to interrupt, but that was her hearing him.

20 THE COURT: You're correct. It was a declarant
21 that she heard by -- I'm sorry, by the defendant.

22 MR. STONE: Yes, ma'am. Yes, ma'am. I'm sorry to
23 interrupt, but I wanted to clarify.

24 THE COURT: I appreciate it, and, thank you for
25 pointing it out. Again, it's late.

1 MR. MCGUIRE: And you know, if we were -- that's,
2 again, going to argument and not the details coming in.
3 That's what all the cases say.

4 THE COURT: Um-hmm.

5 MR. MCGUIRE: And if we let those exact words come
6 in, then we're going into the details. You know, the
7 case that involves the loud noises and a thump, --

8 THE COURT: Um-hmm.

9 MR. MCGUIRE: -- they even go into detail about
10 saying this is not disclosed details between these
11 people or details of this marriage. You know, going
12 into words, that would be that. So, we shouldn't allow
13 it. You know, it would certainly be against all the
14 case law. And again, I mean, we're just down the road
15 of propensity. It's violence; plus -- it's argument,
16 plus violence; argument, plus violence; argument, plus
17 violence. It's all propensity; that he did this; that
18 he acted in conformity on another occasion. I mean, it
19 seems to be clear.

20 Now, I agree if it was some -- a situation where he
21 was saying that she put a gun up to her head and
22 threatened suicide because she was unhappy and because
23 he was going to leave her, and then he claimed accident
24 struggling over the gun, I would agree that a threat
25 would come in, like some sort of threat, to sort of

1 refute what he was saying.

2 THE COURT: Um-hmm.

3 MR. MCGUIRE: But this is just a cold -- this is
4 just a shooting of close-range shots.

5 THE COURT: This was an I didn't do it.

6 MR. MCGUIRE: Someone do -- did it. And so, none
7 of this can go to --

8 THE COURT: But doesn't that go to intent at that
9 point? Because, if it's an I didn't do it, the threat
10 of *I will kill you and your kids*, I mean, goes to --
11 that goes to intent.

12 MR. MCGUIRE: Well, --

13 THE COURT: That's the only -- that's the problem I
14 have. Let's just do this. I mean, I understand your
15 argument, Mr. McGuire. Solicitor, I think you all need
16 to search some case law.

17 MR. STONE: Sure.

18 THE COURT: See what you can find as far as threats
19 are concerned, and threats that were allegedly carried
20 out. Again, please, Caroline's going to give you our
21 email addresses, carbon us both. And that way, she
22 doesn't have to wake up in the middle of the night and
23 forward them to me. So, I'm inviting you, please just
24 carbon copy each other. Make sure whatever you send to
25 me -- and again, I don't need to hear argument from you

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1 all.

2 MR. STONE: You just need the cases.

3 THE COURT: I need your paraphrase. I'd like for
4 you to attach the case, if you could, so I don't have to
5 look it up.

6 MR. STONE: Sure.

7 THE COURT: But if you can do that, I'd appreciate
8 it.

9 MR. MCGUIRE: Yes, ma'am.

10 THE COURT: Worst case scenario, I can pull it up
11 if I need to.

12 MR. MCGUIRE: We'll have case law.

13 THE COURT: Okay?

14 MR. MCGUIRE: Yes, ma'am.

15 THE COURT: All right. You all, we have the jury
16 coming back at 9:30. I would like us all to be back at
17 9:00 o'clock so we can kind of take up this issue. I'm
18 assuming these are your first four witnesses tomorrow
19 morning.

20 MR. MCGUIRE: Yes, ma'am.

21 MR. STONE: Thank you. Yes, ma'am.

22 THE COURT: Okay. So, let's all be here by 9:00
23 o'clock. You need to make sure you have Mr. Daise here
24 by 9:00 o'clock. We'll be ready to go, you all. I
25 appreciate it. And anything else we need to put on the

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1 record? Are we good?

2 MR. STONE: Nothing from the State, your Honor.

3 THE COURT: Okay.

4 MR. MCGUIRE: Nothing at this time, your Honor.

5 THE COURT: Thank you all. Okay.

6 END DAY FIVE, MONDAY,

7 OCTOBER 14, 2013, 7:00 P.M.

8 BEGIN DAY SIX, TUESDAY,

9 OCTOBER 15, 2013, 9:15 A.M.

10 ON-THE-RECORD BENCH CONFERENCE, OUT

11 OF HEARING OF JURORS, RE CASE LAW

12 REVIEWED BY THE COURT:

13 BAILIFF: All rise.

14 THE COURT: Thank you all. Please be seated. Good
15 morning.

16 MR. STONE: Good morning.

17 THE COURT: Well, thank you all for the case law
18 you sent me over the evening. Some of it we already did
19 have. Caroline is going to come back. I just want to
20 put on the record everything that I read and considered.
21 Certainly, it was everything you all had sent to me,
22 plus, we had done our own research. If you want to just
23 go ahead and put it on the record what was reviewed and
24 read by me. Go ahead, yes. Just go ahead.

25 LAW CLERK SCRANTON: *State v. Brooks, 60 S.E. 518.*

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1 *State v. Lyle*, 125 S.C. 406. *State v. Clinkscales*, 99
2 S.E.2d 663. *State v. Plyler*, 270 S.E.2d 126. *State v.*
3 *Bell*, 393 Southeastern 2d 364. *State v. Atkins*, 399
4 Southeastern 2d 760. *State v. Williams*, 468
5 Southeastern 2d 626.

6 *State v. Smith*, 522 Southeastern 2d 598. *State v.*
7 *Beck*, 536 Southeastern 2d 679. *State v. Braxton*, 541
8 Southeastern 2d 833. *Anderson v. State*, 581
9 Southeastern 2d 834. *State v. Sweat*, 606 Southeastern
10 2d 508. *State v. Young*, 613 Southeastern 2d 386. *State*
11 *v. Weston*, 625 Southeastern 2d 641. *State v. Pagan*, 631
12 Southeastern 2d 262.

13 *State v. Fletcher*, 664 Southeastern 2d 480. *State*
14 *v. Clasby*, 682 Southeastern 2d 892. *State v. Wallace*,
15 683 Southeastern 2d 275. *State v. Wilson*, 698
16 Southeastern 2d 862. *State v. Brooks*, 60 Southeastern
17 518. 602 Southeastern 2d 758. *Blakely v. State of*
18 *South Carolina*. *State v. Garcia*, 512 Southeastern 2d
19 507.

20 *State v. Williams*, 72 Southeastern 2d 830. *State*
21 *v. Smith*, 470 Southeastern 2d 364. *State v. Pierce*, 485
22 Southeastern 2d 913. *State v. Cooley*, 536 Southeastern
23 2d 666. *Pompano v. State*, 781, A.2d 556. And did I say
24 *State v. Garcia*?

25 THE COURT: I think you did, but again, *State v.*

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1 Garcia, and I worked with it, as well. Okay. Let me
2 tell you kind of how I backed into this, and what I'm
3 looking at. I will say this, is that, what I've noticed
4 in all of these cases are, it's kind of a totality of
5 everything, is that CDV-wise, and it's totally South
6 Carolina, as I expected it to be, quite frankly, as far
7 as its prior use is concerned, I see where our Supreme
8 Court has -- it appears to be taking somewhat of a
9 proactive role, particularly in a dissent that the Chief
10 Justice wrote, I believe it was back -- was it 2010?
11 Which case was it? Anyway, where they talked about
12 sexual abuse of children, because I think in those
13 cases, children are usually the only witnesses. And
14 then, secondly, it was something like sexual abuse,
15 there isn't an obvious evidence or manifestation, as
16 opposed to physical abuse, where you can see bruises and
17 cuts and that type of thing.

18 LAW CLERK SCRANTON: That would be 2007, *State v.*
19 *York*.

20 THE COURT: That was *State v. York* that we're
21 talking about. It seems like our Chief Justice is kind
22 of coming to understand CDV law, and understanding the
23 difficulty, you know, in proving it in kind of a way
24 that it progresses.

25 Let me ask you, does the State intend on putting up

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1 any kind of expert on criminal domestic violence or?

2 MR. STONE: No, ma'am.

3 THE COURT: Okay.

4 MR. STONE: No, ma'am.

5 THE COURT: I just want to make sure. Okay. I
6 will tell you this. In looking at the witnesses, I
7 think as to Frank Mullen, the father, I think we kind of
8 all agreed yesterday that, if he can testify that they
9 had a rocky relationship, clearly; that it was probably
10 a love/hate relationship that went on and on, you know;
11 they obviously had a relationship for, he thought, was
12 five years or more; I think him saying that she was
13 afraid of him, and that she told him she was trying to
14 break it off, goes to her present state of mind,
15 provided it was within a couple weeks of the actual
16 shooting. I don't think him saying it all along I think
17 is fair. I think if she did, in fact -- and I thought I
18 heard that in his testimony, that she was afraid of him;
19 and probably more importantly than that, that she was
20 trying to break it off with him, I think is an exception
21 to the hearsay rule. I don't think -- of course, she
22 can't say why she was afraid of him because he hit her,
23 choked her, or anything along those lines, but I think
24 she can say he was -- she was afraid of him. And I do
25 think it's an exception to the hearsay rule, and it

1 clearly fits squarely with *State v. Garcia*.

2 So, as to Rosemary Dukes, I don't really think she
3 has anything to add of any firsthand knowledge, quite
4 frankly. She has no idea of time frame of this broken
5 wrist. She was told she was afraid of him. She can't
6 give us a time frame. I just don't see her testimony as
7 being relevant. I just don't see what she can testify
8 to.

9 As to Alleen Elaine Porter, first off, that Jeanine
10 was afraid of him, I think that, again, that would go
11 under an exception of the hearsay rule, under the
12 present sense impression, provided it was very close in
13 time to the actual shooting, not over time, but close in
14 time. Again, I think that falls under *Garcia*, as that
15 she had a safety plan.

16 I heard her testimony to be:

17 *We pretty much watch out for each*
18 *other; we both live in rural areas; and*
19 *we were taking care of each other during the dark.*

20 I don't know if it would be specifically directed
21 as to, say, Mr. Daise being the aggressor, but just, we
22 *watched out for each other*, I don't see any prejudice in
23 that. I think definitely her testimony that, within,
24 you know, a few days when she was taking this University
25 of Phoenix programs and that she intended on leaving

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1 him; that she was getting her life together; and I think
2 that clearly goes to motive and his motive to kill her
3 and the allegation that this was somehow retaliation for
4 her trying to leave him. And if she can testify as to
5 that, and it had to be very close in time, I think
6 that's allowed. I think it's permissible.

7 The direct threat of, you know, *I'm going to kill*
8 *you*, I believe the testimony was they had some kind of
9 over-the-phone of, *you don't know --* and she said, *you*
10 *don't know me*; he says, *you don't know me; I will kill*
11 *you and your kids*, I think, under *State v. Blakely*, it's
12 well settled that evidence of previous threats is
13 admissible to show the malice. I can't find anything
14 that doesn't allow it. Quite frankly, it's his
15 statement, you know, it's his admission. And so, I
16 don't see, in that context, where that wouldn't be
17 permissible.

18 I will tell you what I'm struggling with, though,
19 on this is **Jas. M.** testimony, as far as the choking
20 incident is concerned. I think the State has proven,
21 clearly, by clear and convincing evidence that it
22 occurred. I don't think there's a question as to that.
23 My problem is, is that when you look, we talk about
24 prior animus, you know, does this show any kind of
25 common scheme or plan? No, I don't think a choking and

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1 a shooting is anywhere close to the same thing. I also
2 don't think it's anywhere close in time. I mean, it's
3 ten-and-a half, eleven months prior.

4 I mean, I kind of looked at this in the light of
5 the *State v. Pierce* case. Again, I think it comes down
6 to, I do think the State, under *Lyle*, has proven it by
7 clear and convincing evidence. I believe probably that
8 it is relevant to this case. Again, we are back down to
9 whether or not the prejudice outweighs the probative
10 value. Again, we all know that that's my call, although
11 I can tell you from looking at the case law, I have
12 noticed that the Court is more inclined -- When I say
13 *the Court*, the Supreme Court is more inclined to be
14 looking behind judges as to probative versus prejudice
15 in making their own determination. I think we're
16 probably, up until 2006, 2007, I think they were
17 deferring to the judges who were able to see it and, you
18 know, weigh it. I think there is, with the current
19 court, and I say the Supreme Court, looking at whether
20 or not, you know, they believe the evidence, you know,
21 showed whether or not it's probative or prejudice.

22 So, I guess I'm interested in hearing from you all
23 as to that incident. I think in my mind, I have a
24 concern about that. It is a specific act. And again,
25 you've heard my thoughts and feelings. That's what I'm

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1 interested in hearing about this morning.

2 MR. MCGUIRE: Sure. And quite simply, your Honor
3 we would just rely on the Cooley case that was written
4 by Chief Justice Toal, in 2000, I think. She's still
5 there, she's still the boss, and it's almost on course
6 with what we have here. It was a charge of murder, and
7 -- and the defendant claimed accident, and the -- it was
8 a -- he killed her with a shotgun. And a relative
9 testified about the spousal abuse. It looks like about
10 a little bit over a year from the time in question. And
11 while indicated that it might be relevant, they didn't
12 pause long on the fact that the 403 analysis declared it
13 to be far more prejudicial than probative, and time was
14 one of the issues.

15 THE COURT: Okay.

16 MR. MCGUIRE: And I think they use the phrase in
17 Cooley, it was just over a year or over a year.

18 THE COURT: Um-hmm.

19 MR. MCGUIRE: And here we have about a year time
20 frame.

21 THE COURT: Um-hmm.

22 MR. MCGUIRE: And we're in a capital case.

23 THE COURT: Give me one second, Mr. Stone. I
24 apologize. I'm just looking over the Cooley case. That
25 was where the defendant, in previous incidents, had held

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1 a knife to the victim's throat.

2 MR. MCGUIRE: Yes, ma'am.

3 THE COURT: In the *Cooley* case.

4 MR. MCGUIRE: Yes, ma'am.

5 THE COURT: And that they were just -- and he
6 threatened to kill her.

7 MR. MCGUIRE: Yes, ma'am.

8 THE COURT: Just give me a second. I think the one
9 thing I would say that's distinguishable in the *Cooley*
10 case is, they were talking about it's true that no issue
11 exists as to the identity of a probable aggressor in the
12 *Cooley* case. And it goes, again, back to, and it sites
13 again *Clinkscales*, saying that you can show that there
14 was, you know, animus but not the details.

15 You know, then, I fall back to the case law where
16 the husband had shot the wife, and I can't remember if
17 it was within six or seven weeks prior to him actually
18 killing her.

19 MR. MCGUIRE: That's the *Clinkscales* case.

20 THE COURT: That is the *Clinkscales* case?

21 MR. MCGUIRE: Where he shot his wife in the back
22 with a shotgun.

23 THE COURT: Okay.

24 MR. MCGUIRE: Six or seven weeks earlier.

25 THE COURT: Right. And the Court said that that

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1 isn't coming in.

2 MR. MCGUIRE: Correct.

3 THE COURT: We're not going to allow that.. All
4 right. Solicitor, I didn't mean to cut you off, sir.
5 Please.

6 MR. STONE: Actually, *Clinkscates* said that was
7 admissible, but not to specific detail. So, the time
8 frame did not slow up the court in *Clinkscates*.
9 Secondly, *Cooley* was, as it's quoted in the case,
10 several years earlier, for one thing.

11 THE COURT: Um-hmm.

12 MR. STONE: And then, of course, I think as your
13 Honor pointed out, identity was not an issue in that
14 case. *Brooks*, on the other hand -- *Brooks*, on the other
15 hand, was within eight months before the -- around eight
16 months prior to the homicide. What we're talking about
17 is eleven months. It's a lot closer in time, and they
18 allowed that to come in.. That was both a fight, as well
19 as a threat. All of that testimony came in. So, from
20 that standpoint, I think that -- I don't think that time
21 is the issue in this case, and I don't think -- I think,
22 clearly, identity is clearly the issue, which
23 distinguishes *Cooley*, as well.

24 THE COURT: I think, looking at just the totality
25 of the cases, again, they all reiterate that we can talk

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1 about the animus, but you can't give specifics. I think
2 it is that clear. And I think, out of an abundance of
3 caution, because this is a death penalty case, because
4 death is different, I'm not going to allow **Jas. M.** to
5 testify as to the choking incident. Again, I mean, I
6 will put on the record, Solicitor, I think it was proven
7 by clear and convincing evidence. I think -- when I say
8 it's relevant, I think it's relevant as to the abusive
9 history they had, but I don't think it's necessarily
10 relevant to the actual issue that day, which was
11 clearly, you know, a coming in, a shooting, clear and
12 outright. Again, this is not a self-defense case. This
13 is a, you know, it was either Mr. Daise or it wasn't. I
14 just think, as far as the prejudice, I think the
15 prejudice of that one incident outweighs any probative
16 value. I'm afraid that this jury will think that, just
17 because he choked her ten months before, that he shot
18 her. And again, those are two separate incidents, far
19 in time. I know time isn't an issue, and you've argued
20 that, but again, I am just concerned that the prejudice
21 outweighs the probative value. Okay.

22 Solicitor, I know you're going to need some time to
23 talk to your witnesses.

24 MR. STONE: Yes, ma'am.

25 THE COURT: Clearly.

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1 MR. STONE: Yes, ma'am.

2 THE COURT: Also, I don't even know that we have
3 all our jurors.

4 BAILIFF: Yes, ma'am.

5 THE COURT: We do.

6 BAILIFF: They've all -- the last one just arrived.

7 THE COURT: Okay. I'm going to give you some time,
8 Solicitor. You just tell me how long you need once
9 you've spoken. I think with Mr. Mullen, I just think
10 you need to caution him, and you understand that. I
11 thought he gave very good, fair testimony yesterday. I
12 think he was not overly-emotional, and I'm -- quite
13 frankly, think he was fine. But I need to give you some
14 time. You just let me know. Is there anything else we
15 need to put on the record?

16 MR. MCGUIRE: Yes, ma'am. With regard to evidence
17 of Ms. Mullen being afraid of Mr. Daise, we would rely
18 on Garcia primarily, and we would object to that coming
19 in. Again, it would be more of a 403 analysis. While
20 it could have some relevance that, you know, there's --
21 there's no question about the intent of somebody who
22 puts a gun up to someone's head and shoots them. That's
23 an intent to kill. There's no question about it. In
24 most of the cases, with regard to someone being afraid,
25 it goes to refute a claim of self-defense or something

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1 like that. And so, we would -- we would move to not
2 allow that testimony. And while, generally, the rule of
3 evidence ruling is one for the State, we would say, in a
4 capital case, that it's -- it reaches the level of being
5 unfair to Mr. Daise with regard to his due process
6 rights, pursuant to the -- the *Fourteenth Amendment*.

7 THE COURT: I appreciate that. I think though,
8 squarely, under *State v. Garcia*, I think she can say she
9 was afraid of him or they can testify. It's under the
10 hearsay exception. I have limited it in time to being
11 very narrowly before. We are not allowed to say what
12 the specifics are. No one can testify she was afraid of
13 him because he beats her. I think it's narrow enough.
14 I think I have more than limited the testimony as to
15 this that it's not prejudicial. I think, and also, I
16 will tell you that I have looked at the totality of all
17 four of these peoples' testimony, and I'm convinced that
18 even the totality of it, with all that combined, it's
19 not cumulative, and I don't think it's prejudicial. So,
20 I'm comfortable that it is appropriate.

21 MR. MCGUIRE: Yes, your Honor.

22 THE COURT: Okay?

23 MR. MCGUIRE: And with regard to preserving our
24 objection, it sounds like this is the final ruling;
25 you're not going to hear anything anymore before they

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1 testify; so, can I count on that as a final ruling where
2 I don't have to renew it?

3 THE COURT: Absolutely.

4 MR. MCGUIRE: Thank you, your Honor.

5 THE COURT: I can tell you, though, if something
6 goes beyond the boundary --

7 MR. MCGUIRE: I'll stand up.

8 THE COURT: -- of what I have limited, I want you
9 to object, obviously, --

10 MR. MCGUIRE: Yes, ma'am.

11 THE COURT: -- I mean, if it goes beyond what I've
12 said. And again, this is difficult, because they are
13 lay witnesses. And I know Mr. Solicitor's going to go
14 talk to them and Mr. Thornton's going to go talk to
15 them, but I think we need to very careful in not asking
16 open-ended questions. Obviously, they can't lead their
17 witness, but on the other hand, I don't want something
18 to come out that would be inappropriate. I think it's
19 -- we're walking a tight line.

20 MR. MCGUIRE: I'm not -- I'm not really opposed to
21 leading, actually, on these issues.

22 THE COURT: Okay. I just wanted to make sure, and
23 the Solicitor clearly understands that, so.

24 MR. STONE: I will -- I'm sorry, and I don't want
25 to cut off that argument, but I will tell you another

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1 thing. Dr. Robert Cina, who is the -- who is the
2 exhibit for **John Doe 2**, was going to be scheduled to come
3 tomorrow. He has a -- he has a cancer surgery that is
4 an emergency he's doing tomorrow. I'm going to bring
5 him in and put him up first this morning. I still need
6 to go talk to the witnesses and things. He's there;
7 he's ready to go.

8 THE COURT: Okay.

9 MR. STONE: What I was telling you, though, is I
10 know there was an objection previously. I don't know if
11 you've seen the redacted version. Basically, it does
12 every --

13 THE COURT: The skull?

14 MR. STONE: Yes, ma'am. There's no skull. It's
15 the same -- exact same without the skull.

16 THE COURT: Okay.

17 MR. STONE: Everything else is the same.

18 THE COURT: Have you shown it to Mr. McGuire?

19 MR. STONE: I have not, but he is welcome to see
20 it. We've got it cued up there. He can look at it.
21 But that, obviously, the State is --

22 THE COURT: It's very quick. If you don't mind, --

23 MR. STONE: Sure.

24 THE COURT: -- give him an opportunity, obviously,
25 to see it beforehand.

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1 MR. STONE: Yes, ma'am.

2 THE COURT: Let's go ahead and do that very
3 quickly, if we could.

4 MR. STONE: Yes, ma'am. But I told you yesterday
5 that I was going to go straight into these witnesses.

6 THE COURT: I understand.

7 MR. STONE: But I did want you to know why we're
8 switching up on that.

9 THE COURT: I understand.

10 MR. STONE: I felt like the cancer surgery was more
11 important than my witness order.

12 THE COURT: Okay. That's fine.

13 MR. STONE: And if your Honor can see this, it
14 might be good that we show --

15 THE COURT: Yeah.

16 MR. STONE: -- let me turn it so you can see it.
17 That's it.

18 THE COURT: Okay.

19 MR. STONE: And this was where, at this point, was
20 when it went back into the skull.

21 THE COURT: Right. Did we go ahead and put the
22 previous video in? It was just --

23 MR. STONE: I think we did, but I will check and

24 THE COURT: Okay.

25 MR. STONE: I told you I would do that, and I have

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1 not. I don't know if I've done that or not, but I'll
2 check.

3 THE COURT: Okay. I'm going to go ahead and put
4 the previous in.. And again, it was -- the part that I
5 found objectionable was the pulling away of all the
6 skin, and it showed a skull, so, wasn't going to allow
7 that. But I think you're entitled to show -- and quite
8 frankly, I think that's better than you pulling out your
9 -- whatever your human body is that you do.

10 MR. STONE: Okay.

11 THE COURT: I forget what you call them, but
12 anyway. And sticking up -- they usually stick a -- I
13 don't even know what it is. It's like a probe. I think
14 this is better.

15 MR. STONE: Thank you, your Honor..

16 THE COURT: Thank you.
17 make sure that we do.

18 ITEM IDENTIFIED AS UNREDACTED

19 VIDEO C.D. FROM MUSC MARKED

20 COURT'S EXHIBIT NUMBER 86..

21 THE COURT: Solicitor, what are we going to be
22 qualifying this doctor in the area of, just so I know?

23 MR. STONE: He is a -- he is a pediatric surgeon.
24 He's on the pediatric surgical team at MUSC.

25 THE COURT: Okay. Is he a pediatric neurosurgeon

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1 or strictly a surgeon?

2 MR. STONE: Just surgeon.

3 THE COURT: Got it. Thank you.

4 MR. STONE: I say just surgeon, but still, that's
5 pretty impressive.

6 THE COURT: Just surgeon, yes.

7 MR. STONE: I don't want to walk out on you.

8 THE COURT: I want to give you time.. Let's all
9 take about ten minutes, if that's okay. My
10 understanding is the entire jury is here. Solicitor, if
11 you need any longer than that to talk to your witnesses,
12 I understand that.

13 MR. STONE: Thank you.

14 THE COURT: Why don't you just let me know when
15 you're ready to go. If someone will just send word to
16 Norman, and Norm will come and get me. Okay?

17 MR. STONE: Thank you. Yes, ma'am.

18 THE COURT: Thank you, you all. I will tell you
19 that our bailiffs have done a wonderful job feeding and
20 taking care of this jury. They have brought in
21 breakfast every morning, so they are back there having
22 coffee and juice and breakfast, so I think they're fine.
23 I'm not worried but them.

24 MR. STONE: Thank you.

25 MR. THORNTON: Thank you, your Honor.

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1 END BENCH CONFERENCE.
2 OFF THE RECORD 9:38 A.M.
3 ON THE RECORD 10:07 A.M.
4 BY THE COURT:
5 BAILIFF: All rise.
6 THE COURT: Thank you all. Please be seated. Good
7 morning. All right. Solicitor, are we ready to go with
8 your first witnesses this morning, sir? .
9 MR. STONE: Yes, ma'am.
10 THE COURT: Okay. And I think it would probably be
11 fine if that person is in the courtroom. Are they just
12 outside the door?
13 BAILIFF: They are.
14 THE COURT: Why don't you go ahead and invite him
15 in, Solicitor.
16 MR. STONE: Dr. Cina.
17 THE COURT: Just have him come and take a seat in
18 the back. Good morning, Mr. Dore.
19 MR. DORE: Good morning, your Honor. How are you?
20 THE COURT: Well, thank you. Can I do anything for
21 you, or are you --
22 MR. DORE: No, your Honor.
23 THE COURT: Very good. Thank you. Okay.
24 ON-THE-RECORD BENCH CONFERENCE, OUT
25 OF HEARING OF JURORS RE ALLEEN

1 CARLETTA PORTER TESTIMONY:

2 MR. MCGUIRE: Your Honor, there is one other issue
3 with Ms. Porter, and that is whether she actually
4 recognized Mr. Daise's voice. I think, during her
5 testimony, she indicated that she had never had a
6 conversation with him, I think. I may have forgotten to
7 ask that question, but that's my understanding, she's
8 never actually sort of met or had a conversation with
9 Mr. Daise. She'd have to recognize his voice. If she
10 only recognizes it because of Jeanine, on the telephone,
11 said I'm fighting with Earnest, then, we would say that
12 would be hearsay. It's not authenticated. If I could
13 just call her briefly and ask her more questions.

14 THE COURT: Doesn't that go to weight, and not
15 admissibility?

16 MR. STONE: Yes. It does, and we went through this
17 yesterday, and she was up on the stand for a long time
18 last night, and she said:

19 *I know his voice, and that was him.*

20 But yes, even if that's a question, that's
21 something that he can challenge on cross-examination.

22 THE COURT: I think he can, as well. I understand
23 what you're saying, and maybe she was equivocating just
24 a bit, as far as her conversation, but she was pretty
25 clear that she knew him, again. You can cross-examine

1 her. Okay.

2 END BENCH CONFERENCE.

3 BY THE COURT:

4 BAILIFF: Ready for the jury?

5 THE COURT: Very good. Are we ready for the jury
6 this morning, you all?

7 MR. THORNTON: Yes, ma'am.

8 MR. STONE: Yes, ma'am.

9 THE COURT: All right. Let's bring them up.

10 BAILIFF: Yes, your Honor.

11 THE COURT: Thank you.

12 MR. STONE: Tell Dr. Cina he may come on in. Thank
13 you.

14 THE COURT: Dr. Cina, just come take a seat right
15 over here. We're going to officially call you to the
16 stand, but just -- we figured we'd get you a little
17 closer.

18 DR. ROBERT CINA: Great. Thank you.

19 THE COURT: Thank you, sir. Let's bring them in.
20 Are you bringing them in?

21 BAILIFF: They're coming in, Judge.

22 THE COURT: Thank you.

23 MR. MCGUIRE: And your Honor, if I could -- so I
24 don't have to object during testimony, if I could just
25 preserve my objection that we made regarding the video.

1 THE COURT: All right. And it's reserved for the
2 record. Again, I think I did -- I know I did alter it
3 to what the primary objection was, and I understand that
4 you're objecting to it in total. I think it's fine
5 demonstrative. I don't think it's unduly prejudicial.
6 Respectfully note your objection for the record and deny
7 it.

8 MR. MCGUIRE: Yes, ma'am. Thank you, Judge.

9 THE COURT: Thank you.

10 BAILIFF: Your Honor, the jury is entering.

11 JURY ENTERS COURTROOM 10:11 A.M.

12 BAILIFF: The jury is seated, your Honor.

13 THE COURT: Good morning, ladies and gentlemen.

14 REPLIES FROM JURORS.

15 THE COURT: It's a pleasure to see you all, and I
16 want to thank you all for your promptness. I will tell
17 you that there were some matters we had to take up this
18 morning, which the attorneys have diligently done.

19 Additionally, ladies and gentlemen, I need to ask
20 you. There has been some news coverage in this case.
21 My understanding is there also has been some, for lack
22 of a better word, twittering. I'm not sure if that's
23 the actual word, but I want to make sure that no one on
24 the jury has read anything or seen anything or heard
25 anything about this case.

1 Ladies and gentlemen, if you will all just raise
2 your right hand, I'm going to put you under oath. Raise
3 your right hand. Do you swear or affirm the testimony
4 you give will be the truth, so help you God?

5 REPLIES OF *I DO* FROM JURORS.

6 THE COURT: Please place your hands down. Ladies
7 and gentlemen, at this time, has anyone on the jury
8 panel read, heard, or seen anything about this case, or
9 followed any twittering or anything along those lines?

10 All right. And the jury all -- no one has stated
11 they've heard or read anything. Ladies and gentlemen,
12 thank you. I want to, again, impress upon you how
13 incredibly important it is. Again, as I told you all
14 during your qualifications, you all have the front row
15 seats. You have the best information. Again, it would
16 be highly inappropriate to be influenced. And for that,
17 now we're going to go ahead and the Solicitor will call
18 their first witness for today.

19 MR. STONE: Thank you, your Honor. Dr. Robert
20 Cina.

21 THE COURT: Come on forward, sir.

22 MADAM CLERK: Sir, would you place your left hand
23 on the *Bible* and raise your right hand for me, please.
24 Do you solemnly swear to truthfully answer all questions
25 asked of you by this Court, so help you God?

1 DR. ROBERT CINA: Yes, ma'am.

2 MADAM CLERK: Please be seated. State your name
3 and spell it for the Court.

4 DR. ROBERT CINA: My name is Dr. Robert Cina.

5 THE COURT: Sir, would you spell your last name for
6 the court reporter.

7 DR. ROBERT CINA: C, as in Charles, i/n/a.

8 THE COURT: Thank you, sir.

9 DR. ROBERT CINA

10 DIRECT EXAMINATION BY MR. STONE:

11 Q Dr. Cina, where are you a doctor, sir?

12 A I am a pediatric surgeon at the Medical University
13 of South Carolina Children's Hospital.

14 Q How long have you been at Children's Hospital?

15 A Just over five years.

16 Q And prior to that, what did you do?

17 A I was a fellow in pediatric surgery at the
18 University of Alabama.

19 Q And prior to -- and forgive me, if you will.

20 A Sure.

21 Q But law school was three years. And then, you
22 became a lawyer.

23 A Yes, so.

24 Q How did you get to that process? What was the
25 process?

1 A So, in pediatric surgery, we do four years of
2 medical school, where I was at Creighton University. We
3 do a residency in adult general surgery, which is
4 anywhere between five to eight years, and I performed
5 that at the Beth Israel Surgical Service at Harvard
6 University. And then, I was at UAB for two years as a
7 pediatric surgeon fellow.

8 Q And then, you moved to MUSC.

9 A And then, I moved to MUSC, correct.

10 Q Now, as a pediatric -- it's pediatric surgeon. Is
11 that correct?

12 A Yes.

13 Q Now, as a pediatric surgeon, what does your job
14 entail? What -- how is that set up?

15 A So -- so, we take care of most general and non-
16 cardiac thoracic problems in anyone from a newborn to 18
17 years of age.

18 Q Okay. So, that's your age limit. And then, when
19 you say everything except -- is it cardiology and
20 thoracic surgery?

21 A Cardio-thoracic surgery. And then, even though, as
22 a pediatric surgeon, we go to 18, but as my adult
23 general surgery certification then handles everything
24 above 18 to grave. So, we're essentially board
25 certified to take care of anybody from cradle to grave.

1 Q And you say we. Do you operate as a part of a
2 team?

3 A Yes. So, we have a total of four pediatric
4 surgeons at MUSC, and that's not including the sub-
5 specialists we have, as well, which include pediatric
6 neurosurgery, pediatric ENT, pediatric cardio-thoracic
7 surgery, and so forth.

8 Q Now, how do you do that, as far as a team? Do you
9 take -- do all of you meet together per patient, or how
10 does that work?

11 A So, it varies on the patient, and it depends on
12 what their needs are. For most of my general, non-
13 traumatic patients, I take care of them solely, or if I
14 need help, I'll enlist help. As for our pediatric
15 trauma patients, we truly work as a team, because a lot
16 of times, those patients are very complex and have
17 multiple organ systems that have been injured. So, we
18 work in concert with the critical care physicians, as
19 well as whatever other sub-specialists we need to call
20 in to help manage a problem.

21 MR. STONE: Okay. Your Honor, before we go any
22 further with this testimony, I'd like to move that he be
23 determined to be an expert in the field of pediatric
24 surgery.

25 MR. MCGUIRE: No objection, your Honor.

1 THE COURT: Ladies and gentlemen, in this case, Dr.
2 Cina is being qualified as an expert in the area of
3 pediatric surgery. Ladies and gentlemen, that allows
4 him to give his opinion, and also, the reasons for his
5 opinion. Again, ladies and gentlemen, that is for you
6 to see as you deem appropriate, and as compared to other
7 evidence in this case.

8 MR. STONE: Thank you, your Honor.

9 BY MR. STONE:

10 Q Now, you mentioned trauma earlier, and that trauma
11 patients were a little bit different than other
12 patients. What did you mean by that?

13 A Yes. So, a lot of times, our trauma patients have
14 been involved in either a car accident, such as non-
15 penetrating trauma, or some other type of penetrating
16 trauma where a external projectile obviously injures
17 them. And that, a lot of times -- just the mechanism of
18 those injuries has a much higher propensity to injure a
19 lot of different organ systems. So, if you talk about a
20 -- a child who is in a car accident, they can injure
21 long bones, they can injure solid organs, they can
22 injure a lot of things. They can injure their brain, so
23 that is why those patients are more complex.

24 Q Was **John Doe 2** a patient of yours?

25 A Yes. He was admitted to our hospital as a Level A

1 trauma, which is the most -- the highest level of
2 activation.

3 Q What do you mean by that? I'm going to stop you
4 when I don't understand.

5 A So, right.

6 Q Highest level of activation.

7 A So, the trauma system is graded to call on the
8 appropriate amount of resources based on the patient's
9 injury. Obviously, you don't want to mobilize everybody
10 in the hospital for a minor car accident, so we have a
11 graded level of activation of our trauma system to best
12 utilize the resources for -- for the hospital, as well
13 as for the patient.

14 Q And **John Doe 2** was a Grade A?

15 A Level A, which is the biggest response.

16 Q Okay. Tell me about that, then. What did you do
17 as part -- and you were part of the team on this, as
18 well?

19 A Correct. So, that -- so, he came in that, I
20 believe it was the afternoon or evening, to the
21 children's hospital for -- at -- in the emergency room.
22 And he was -- came into our trauma bay where a number of
23 nurses, doctors, respiratory therapists, essentially do
24 a very thorough evaluation, looking for life-threatening
25 injuries.

1 Q Now, he is actually -- he is -- I'm assuming at
2 some point -- you're a referral hospital?

3 A Correct. So, my understanding from the medical
4 record is that he was admitted to a hospital that was
5 closer to where his injury occurred; and then, he was
6 transferred to us.

7 Q Okay. And what was the reason for the transfer?

8 A So the -- there are only three children's hospitals
9 in the state, Columbia, Greenville, and our children's
10 hospital. And so, those resources, obviously, are --
11 those -- those hospitals are much more adept at managing
12 any type of illness in children. Now, the -- there are,
13 unfortunately, only three, but there are lots of other
14 hospitals that can do a lot of things that are very
15 important in the care and stabilization of trauma
16 patients, whether adult or pediatric. And so,
17 generally, what will happen is, a patient will be
18 injured; they'll go to the closest hospital to make sure
19 they're stabilized, stabilized enough for transfer; and
20 then, transfer them to us.

21 Q Got you. All right. So, go back to **John Doe 2**
22 **John Doe 2** He arrived at your -- after a transfer, he
23 arrives at MUSC. And at what point -- what do you do at
24 this point?

25 A So, the trauma -- it's a very standardized trauma

1 evaluation, which we refer to as Advanced Traumatic Life
2 Support protocol, ATLS. And the primary -- the first
3 three things you do are look at airway, breathing,
4 circulation, make sure those -- those are the three most
5 important things that you can do that your -- your --
6 your -- you could have your airways open so you can
7 breathe; that your lungs are actually working; and that
8 your heart is pumping and providing profuse blood to
9 your body.

10 Q Now, do you also -- do you recall what type of
11 injury **John Doe 2** had when he arrived at your --

12 A When he arrived, he had -- I recall a injury to the
13 external portion of his left ear. And obviously, there
14 was a lot of blood there, as well. And then, most
15 significantly, he had a right-sided chest tube placed at
16 a -- at the other hospital, as well as -- and that was
17 -- and that was all under a dressing, so that was the
18 best that we could see what he had at that point.
19 Contused lung and blood coming out of the chest tube.

20 Q All right. Now, do you do -- at this point, did
21 you do CAT scans and various things like this to
22 determine the severity of the injury?

23 A Correct. So, we -- we examine the patient; we see
24 what injuries they have; and then, we'll base our
25 imaging based on -- on those -- what we see. And so,

1 for an injury like this, we'll usually do a -- if the
2 patient is intubated or we can't assess their neurologic
3 function right away because they're -- they can't talk
4 to us, we'll do a head C.T., chest C.T., abdominal C.T.,
5 to get a better idea of where the injuries actually are
6 that we cannot see that are internal.

7 Q All right. And the intubation is the tube down the
8 throat. Is that correct?

9 A In the throat, correct. So, that allows,
10 basically, a direct path to his lungs so we can provide
11 oxygenated -- or non-oxygenated air to help him breathe.

12 Q Now, did you -- did you order or did you -- were
13 you involved in the team that ordered a number of CAT --
14 I guess they're called CAT scans?

15 A Yes.

16 Q Is that correct?

17 A Yes, sir.

18 Q Okay. On **John Doe 2** ?

19 A Yes, sir.

20 Q And did you use those CAT scans to determine the
21 severity of injury and how to treat him?

22 A Yes.

23 Q Now, and let me back up on the treatment. What
24 ended up -- what was the end -- at the end of it all,
25 what was the treatment?

1 A So, ultimately, he was, since he had a breathing
2 tube in, he was admitted to our pediatric ICU, and we
3 supported him. Most often, patients that are
4 traumatically injured, so, there are two types of things
5 we have to do. Either we have to physically intervene
6 on their injury, they have a bleeding vessel that's not
7 stopping that we have to go in and surgically correct.
8 Or, more likely than not, we injure -- we support them
9 until their body can support itself. And so, that was,
10 for **John Doe 2**, the majority of what we did was support
11 him in that level of illness, support the dysfunctional
12 organs, his lungs. He had blood loss anemia, which he
13 had lost blood and did not have enough circulating blood
14 in his circulatory system to -- as high as we'd like.
15 So, we helped support those systems while they healed.

16 Q Okay, now, let me show you, this has been marked as
17 State's Exhibit 70, and it is a disc of the CAT scans
18 that you gave me, and have you reviewed that disc?

19 A Yes, sir.

20 Q The material on this disc?

21 A Yes.

22 Q Is this an accurate depiction of the CAT scans, as
23 well as, I guess, the --

24 A Yes.

25 Q How does that work? You've got a computer system

1 in your -- in the hospital that puts all that together?

2 A So, -- so, yeah. It's -- it's a very sophisticated
3 system that takes a -- puts a patient in, essentially, a
4 tube, and there's a spinning detector that takes
5 multiple slices of the way the -- of X rays, basically,
6 and reconstructs it into a three-dimensional or two-
7 dimensional scan that shows you what the injuries are.

8 Now, the algorithm to do that is certainly above my
9 -- my level of computer expertise, but that's,
10 essentially, how it works.

11 Q And you have reviewed this? Did you review the
12 material on this disc?

13 A Yes, sir.

14 Q And that is the -- that is basically the
15 compilation of CAT scans for **John Doe 2** ?

16 A Correct. So, we took that raw data from the CAT
17 scan, and manipulated it through a computer. It made a
18 three-dimensional reconstruction of his body. And so,
19 everything you see on that disc is either **John Doe 2** , or
20 in some cases, lines and tubes that were lying on
21 **John Doe 2** . I think there's one part where you can even
22 see the blanket that was on top of him, so.

23 Q Right.

24 MR. STONE: At this time, your Honor, we move
25 State's Exhibit 70 into evidence. We have loaded this

1 onto the computer, but the disc itself will be put as
2 far as it being part of the record.

3 THE COURT: Thank you. All right. Subject to the
4 prior objection, it's in evidence.

5 ITEM IDENTIFIED AS DISK OF COMPILATION
6 OF CAT SCANS FOR **John Doe 2**
7 MARKED STATE'S EXHIBIT NUMBER 70,
8 ADMITTED AS EVIDENCE.

9 BY MR. STONE:

10 Q Dr. Cina, let me get you to come down here, if I
11 could, please, sir.

12 A Sure.

13 Q Now, what we're going to have to do is, I want you
14 to keep your voice up so that she can hear you.

15 A Okay. Certainly.

16 Q And I'll tell you what, I'm going to give you this,
17 so we can pause and play there.

18 A Okay.

19 Q And just, if you would, first of all, what is --
20 what is being displayed on the screen?

21 A Using that C.T. data there to reconstruct

22 **John Doe 2** -- basically, they reconstruct the soft
23 tissue and hard tissue of **John Doe 2** body. So, this is
24 a external representation of that data, and you can see
25 a picture of his face that was -- that was received from

1 that C.T. scan.

2 Q Now, what does the arrow indicate?

3 A So, as we -- so, the arrow indicates what I believe
4 is the projected path of the --

5 Q Is it not working?

6 A -- fire -- of the -- of the projectile.

7 Q It's not working. There we go.

8 A And so, the --

9 Q Pause it right there, please.

10 A So, there -- this is the reconstruct there. But
11 essentially, **John Doe 2** had a through-and-through hole,
12 which means it went through the external portion of his
13 ear; and then, when we -- when I lined up the rest of
14 his injuries, it appeared he had a hole here. And then,
15 the -- the only way that we could connect it to his
16 other injuries is that it appeared that the projectile
17 went through his ear, through the back of the soft
18 tissue of his neck, and then, went toward the front of
19 the vertebral column. So, just to orient you, the way
20 our back is made up is we have multiple bones in our
21 back, and those bones, in part, surround the spinal
22 cord. So, in **John Doe 2** case, it was amazing how this
23 bullet got to where it was, in that, it went in front of
24 the spinal cord and destroyed three of the vertebral
25 bodies in his neck and the top of his back; and then,

1 went down into his chest.

2 Q Now, this -- this arrow, and you said the way the
3 projectile went in, the bullet, is that -- is that the
4 angle that the bullet went in?

5 A That -- that -- that -- based on the data that I
6 have, that's the best estimation that I can -- that I
7 can confer.

8 Q And that's based on the CAT scan showing where the
9 injury occurred.

10 A Correct. And that's based on the CAT scan showing
11 where -- and the other injuries, I think, would be --

12 Q Go ahead. Play it. So, it is a downward -- a
13 downward angle.

14 A Yes, sir.

15 Q Essentially, over the child's ear?

16 A From his left ear, back down, in front of the
17 spinal cord, millimeters; and then, into the bony
18 structures of C7, T1, and T2.

19 Q Okay. We can go to that if we need to, at this
20 point. All right. Now, what is this we're looking at
21 here?

22 A So, this is a -- essentially, it's a very similar
23 representation of his chest and torso. So, I -- this is
24 basically from here down. You can see the chest tube
25 bandage that he had on there, and the blankets and the

1 various tubes, lines, and drains that we had to support
2 him during the time that he was in the CAT scan.

3 Q Go ahead and pause and tell --

4 A So, again, this is --

5 COURT REPORTER: I'm sorry. I'm sorry.

6 Q I'm sorry. I was just telling him to pause it.

7 A And so, unfortunately, I don't have -- I can't hook
8 up that -- that first seven images, so, this -- I have
9 one contiguous image, which would have been, think, more
10 demonstrative to show you. Essentially, that projectile
11 came down, and came right in front of the -- in front of
12 the spinal cord, into the vertebral bodies of -- of his
13 back. This is heart, lungs, all this is in front of us,
14 but it looked like it was going towards the back there.

15 Q Now, what -- the spine -- what -- C --

16 A C7, which is right up -- right up here. And then,
17 T1, T2 are immediately below them. So, C7, C1 [sic],
18 they're the three --

19 Q So, basically, at the base of your neck.

20 A Basically, at the base of your neck, yes.

21 Q All-right. Now, the spinal column, where -- I
22 mean, that's the spinal column. Where is the spinal
23 cord?

24 A The spinal cord is just behind that.

25 Q Did the bullet hit the spinal cord?

1 A It did not. If it did hit the spinal cord, we
2 would have seen other signs of injuries. It would have
3 paralyzed from at least the nipples down. Possibly a
4 lot of movement of the arms would have been affected.

5 MR. MCGUIRE: Your Honor, if I could, if we could
6 approach.

7 THE COURT: You may.

8 COURT REPORTER: Do you need me?

9 MR. MCGUIRE: Yes.

10 ON-THE-RECORD BENCH CONFERENCE, OUT
11 OF HEARING OF JURORS:

12 MR. MCGUIRE: I would object to any testimony
13 regarding, you know, if the bullet would have done this,
14 he'd have been paralyzed. That's all speculation. That
15 didn't happen and it's not a fact. And the jury just
16 gasped behind me when the word *paralyzed* came out. I
17 want -- I want the Court to admonish. I want a curative
18 instruction to disregard that, that that did not happen,
19 you are not to consider it.

20 THE COURT: Okay.

21 MR. STONE: He's an expert. He is testifying that
22 it did not; it came close; and that was all. And that
23 was the whole point of the relevance of the severity of
24 the injury is obvious when you're talking about an
25 assault and battery with a deadly intent charge.

1 MR. MCGUIRE: It is -- I'm sorry. I didn't mean to
2 interrupt.

3 MR. STONE: The fact that he almost died is
4 relevant. The fact that he was almost paralyzed is
5 relevant. All that is not -- that's not guess on his
6 part. That's not -- he's telling exactly what he saw
7 and what he found.

8 THE COURT: Okay.

9 MR. MCGUIRE: If somebody puts a gun at somebody
10 and pulls the trigger and barely grazes their ear,
11 that's assault and battery with intent to kill. All
12 this is extra over the top, not necessary. It's not
13 even relevant to prove ABWIK. As soon as he says
14 gunshot, done.

15 THE COURT: Okay.

16 MR. MCGUIRE: And now we're going into he was
17 almost paralyzed.

18 THE COURT: Okay. All right. You can go back.
19 I'll do something.

20 END BENCH CONFERENCE.

21 THE COURT: Dr. Cina, we're going to go ahead and
22 continue. Again, ladies and gentlemen, we need to focus
23 on what, in fact, did occurred and not what could have
24 occurred. And I want to make sure that you confine your
25 consideration and deliberation to that.

1 MR. MCGUIRE: Thank you.

2 THE COURT: Thank you.

3 BY MR. STONE:

4 Q Go ahead. I'm sorry.

5 A So, what I can tell you is, as the bullet passed
6 through those three vertebral bodies, it did cause some
7 mild compression on the spinal cord, which is present on
8 the C.T. scan, but that was not significant.

9 Q Okay. Now, where does the bullet go after it hits
10 the C7?

11 A So, as we rotate this around, there was another
12 soft tissue wound on his chest above where -- or above
13 the chest is, and this rib fracture here. And so,
14 initially, when he was seen at the referring institution
15 and even our trauma bay, we knew he had suffered a
16 traumatic gunshot wound to his chest. We didn't know how
17 that got there. And certainly, there's only an entrance
18 wound there; no exit wound. So, in theory, if that was
19 a second gunshot wound, there would be a bullet
20 somewhere in his body, which there's not. So, what
21 makes the most sense is this bullet came down, hit those
22 vertebral bodies, but --

23 Q Has it stopped again?

24 A -- and then, made its way from there, out to the
25 chest wall; broke these two ribs, and also bruised and

1 injured the lung along the way.

2 Q And let me ask you, what is -- is that -- the blue
3 part, is that the lung?

4 A So, the blue part -- so, the lung is made up of
5 multiple segments.

6 Q Okay.

7 A So, that's one of the -- the blue represents the
8 lung here. That's the lung that's in the -- toward the
9 front of your chest.

10 Q I see. Okay.

11 A That's just basically peeling it away, the heart,
12 the lungs. This actually shows the -- the bony
13 structures of the back. And we talked about the
14 vertebral bodies. You can see all of these are normal,
15 and that one is destroyed. And then, --

16 Q Stop it.

17 A So, hooking up that rib fracture to that fracture,
18 and with the injuries to the lung, it appears the bullet
19 went from, you know, hit these vertebral bodies, glanced
20 off of those; and then, went through the chest, broke
21 the rib, and I think there -- there's another soft
22 tissue injury there. If we continue, you can actually
23 see where it exits there. And then, as they -- as we
24 put the service markers back on his body, you can see
25 where the defect is and the skin and soft tissue of the

1 -- of the chest.

2 Q Now, where is -- and where is the heart in this?

3 A The heart is right here. This -- this structure
4 right here is the heart.

5 Q And so, it's going from back to front, or from back
6 to side?

7 A Correct. So, well, you know, it glanced off those,
8 and then, went anteriorly.

9 Q Anterior.

10 A Anterior is up front. So, towards the front of
11 your chest.

12 Q Okay. All right. Okay. And so, that, from your
13 medical expertise and the CAT scan, that is -- well,
14 that's the bullet path as you see it there.

15 A Yes, sir. Given his constellation of injuries, I
16 can see of no other way that he would have sustained
17 those injuries to his multiple structures and not have
18 it be that one single projectile that went in that --
19 that pattern.

20 Q What -- what type of surgery did your team perform
21 on him as a result of these CAT scans?

22 A So, we -- I personally did not do any surgical
23 procedures, other than place a central line to insure
24 that we had adequate intravenous access, so we could
25 give the blood, fluids, that he would need to help

1 support him through -- through that period of
2 recuperation.

3 Q And you were -- you were part of the team, as far
4 as dealing with him?

5 A Correct.

6 Q Far as --

7 A I -- I lead that team, yes.

8 Q Okay. All right. And so, what, exactly, was --
9 you have to review the medical records.

10 A Yes.

11 Q You're familiar with what -- what surgical
12 intervention took place.

13 A Yes. I -- I -- for -- for -- this is an injury,
14 we left the chest tube in for several days. We
15 gradually weaned him to extubate him, which we took the
16 breathing tube out. We do that, take out the chest
17 tube. Those healed. And in addition to that, once he
18 awoke, he, on exam, I noticed that he did have some
19 left-sided weakness, which I can, given his injuries,
20 may have been from that -- that spinal cord swelling
21 that we saw from where these were injured. And I asked
22 Dr. Stephen Kalhorn, he's one of the pediatric
23 neurologists, to follow him from there.

24 Q Now, the lung, was that -- was that actually -- it
25 was injured. Did you do any -- was any surgery done on

1 his lungs?

2 A No, sir.

3 Q Okay.

4 A In most cases, that will -- unless you have a
5 injury that goes through the main vessels of the
6 lung, --

7 Q Right.

8 A -- in most cases, that bleeding will stop, and it
9 will heal on -- by itself. But, but again, --

10 Q No, go ahead. No, that's fine. That's what I was
11 trying to figure out, what type of surgery, if any type
12 of surgery.

13 A So, I did not have to do any surgery.

14 COURT REPORTER: I'm sorry, I didn't hear your
15 answer.

16 A I did not have to do surgery on him.

17 Q He did have to go through surgery at some point,
18 though.

19 A For his lung, not to my recollection.

20 Q Okay, not to his lung, but for anything else?

21 A I don't -- I don't recall from my medical records
22 that he needed anything else more specific.

23 Q Okay. All right. This is basically something that
24 you were able to treat like that?

25 A Yes, sir.

1 Q Okay. Thank you, sir. Take the stand. Now, at
2 some point, Doctor, there was -- after **John Doe 2** was
3 finished with the procedures and everything like this,
4 at some point, was he placed in some type of a brace or
5 something like this to --

6 A Yeah, so, we asked the neurosurgeons, because they
7 are the experts for spinal injury, to weigh in on what
8 was best needed, and that was their recommendation, was
9 to place him in a brace to allow -- to support those
10 areas of the -- those bones that were broken during
11 their time of healing.

12 Q And so, he was in -- and how long was he in the
13 brace?

14 A I don't recall what the specific time course was.
15 Generally, when they are place in the brace, it's at
16 least for several weeks. They -- they leave the
17 hospital with it on.

18 Q And that's basically to stabilize the -- the
19 backbone.

20 A Correct, it's to stabilize the bones of your back.

21 MR. STONE: Thank you, sir. Answer any questions
22 that the Defense may have.

23 A Thank you.

24 DR. ROBERT CINA

25 CROSS-EXAMINATION BY MR. MCGUIRE:

1 Q Morning, Doctor.

2 A Good morning.

3 Q First off, I think you and I can agree that we were
4 both happy to hear that **John Doe 2** a healthy first
5 grader this morning.

6 A Oh, very happy.

7 Q Yeah. He's doing well, and I think his aunt says
8 he's quite precocious.

9 A That's --

10 Q And I think we're all relieved to hear that.

11 A That's excellent, yes.

12 Q Yeah. I want to turn my attention to what I'm here
13 for, and that is the who did this injury.

14 A Right.

15 Q Anything that you have in your medical records or
16 your treatment indicate who may have done this?

17 A So, I reviewed my note. We -- they -- we got a
18 intake report when we are checking the patients in as to
19 a mechanism of their trauma. And so, during that
20 report, the story that we were told was that he was at a
21 birthday party, and that his father came and shot his
22 mother and other brother.

23 Q Okay. But you don't know that firsthand at all.
24 That's just something in the --

25 A That -- that is not first -- that -- that is what

1 -- well, it's from the intake report.

2 Q Okay.

3 A So, that's the only thing I can testify to.

4 Q Okay. And the other issue that I'm concerned about
5 is, I can't find where the police came to re-interview
6 **John Doe 2**. Did any law enforcement officers come to the
7 hospital to interview him or talk to him?

8 A I, again, I do not have recall -- I don't recall
9 that. You'd have to consult the medical record or the
10 appropriate document.

11 Q But in any regard, you certainly would not have
12 prevented that, if officers said we need to come back
13 and interview him about maybe some words that he said
14 earlier, you wouldn't have prevented that.

15 A Never.

16 Q Okay.

17 A So, we work very closely in child injury --

18 Q Sure.

19 A -- with DSS and the state law enforcement. And so,
20 that's something that commonly occurs in our
21 institution. So, and that is -- we never interfere with
22 that.

23 Q Okay. So, if law enforcement wanted to come to the
24 hospital while **John Doe 2** was getting better, they could
25 have talked to him.

1 A Yes. One -- I mean, obviously, once he's --

2 Q Once he's able to.

3 A -- once he's able to talk, yes, yes.

4 MR. MCGUIRE: Sure. Sure. That's all I have.

5 Thank you.

6 A Okay. Thank you.

7 MR. STONE: Nothing further, your Honor.

8 THE COURT: All right. Any objection to Dr. Cina
9 being released from anyone?

10 MR. STONE: No, ma'am.

11 MR. MCGUIRE: We do not.

12 THE COURT: You are excused, sir. Thank you.

13 A Thank you very much.

14 THE COURT: All right. Solicitor, if you'd call
15 your next witness.

16 MR. STONE: The State calls Frank Mullen.

17 THE COURT: Come on forward, Mr. Mullen. Come
18 right up here.

19 MADAM CLERK: Would you place your left hand on the
20 Bible and raise your right hand for me, sir?

21 THE COURT: Thank you.

22 MADAM CLERK: Yes, ma'am. Do you solemnly swear to
23 truthfully answer all questions asked of you by this
24 court, so help you God?

25 MR. FRANK MULLEN: I do.

1 MADAM CLERK: Please be seated. State your name
2 and spell it for the Court, please.

3 MR. FRANK MULLEN: Thank you. Right. Excuse me.
4 Frank Mullen is my name.

5 FRANK MULLEN

6 DIRECT EXAMINATION BY MR. STONE:

7 Q How do you spell your last name, sir?

8 A M/u/l/l/e/n.

9 Q Mr. Mullen, first of all, let me ask you, Jeanine
10 Mullen, what was she to you?

11 A It's my daughter.

12 Q And tell me, if you don't mind, she had children.

13 A Right.

14 Q Who -- who were her children?

15 A J.R. and **John Doe 2** , **Jas. M.** , and **John Doe 1** , four
16 boys.

17 Q I want to talk to you specifically about November
18 the 15th, 2009. Do you recall that day?

19 A Yeah. Yes, I do.

20 Q Let me start from the -- from the early morning --
21 or from the afternoon. At somewhere around 2:00
22 o'clock, did you see Jeanine and the boys?

23 A Yes, I did.

24 Q Did you see all of them, by the way?

25 A Yes, I did.

1 Q And where -- where did that happen and how did that
2 come about?

3 A Well, **Jas. M.** , the oldest one, he called me and he
4 says:

5 *Grandpa, you haven't been around*
6 *in awhile,*
7 *says:*

8 *We ain't doing nothing over here.*

9 He says:

10 *Why don't you come over and get us?*

11 So, I says:

12 *Okay -- excuse me -- I'll come over a little*
13 *later on and pick you all up and bring you all back over*
14 *here.*

15 So, later on that day, when I got there, Jeanine,
16 my daughter, was dressing the youngest one, **John Doe 2** .
17 She says:

18 *Daddy, I was going to take them to*
19 *dinner because it was **John Doe 1** birthday.*

20 So, I says:

21 *Okay. Well, I'll take the two oldest*
22 *ones; you take the two youngest ones.*

23 Q About what -- about what time was this?

24 A Oh, I don't know. I guess it was -- it was after
25 12:00, I think, I know that. I don't know exactly.

1 Q Okay.

2 A But it was after 12:00, I'm pretty sure it was.

3 Q And where by -- I kind of skipped over this, but
4 where did you go? When you went -- when you went and
5 picked them up, where were you?

6 A Oh, we went to McDonald's, and I think we went down
7 to my -- I think we went to my brother's house; and
8 then, we just went riding around. We rode around.

9 Q When you picked them up, where did you pick them up
10 from?

11 A From -- from the house, from the home.

12 Q Is that 20 Player Road?

13 A Right.

14 Q Okay. And when you got to 20 Player Road some time
15 in the afternoon -- I guess it's just in the afternoon
16 some time?

17 A Yeah.

18 Q Who was there?

19 A Jeanine and -- and the four boys.

20 Q And that is Jai. M. ? Is that correct?

21 A That's probably the oldest one. Jas. M. , Jai. M. ,
22 John Doe 2 -- I mean John Doe 1 and John Doe 2 .

23 Q And John Doe 1 , is that two names or one name?

24 A That's -- I -- I think it's one name.

25 Q Okay.

1 A Excuse me.

2 Q And then, the last one was **John Doe 2** ?

3 A Right.

4 Q And they were all at the house when you -- when you
5 went there.

6 A Right.

7 Q You took -- who did you pick up?

8 A I picked up **Jai. M.** and **Jas. M.** .

9 Q Okay. And those are the two that went with you,
10 correct?

11 A Right, the two oldest ones, right.

12 Q What was the idea? You were going to take them
13 out. You went to McDonald's and some other places.
14 What were you going to do after that?

15 A Just, you know, just kind of rode around. I think
16 I went, like I said, I think I went to Port Royal, and I
17 think I went by my brother's, if I'm not mistaken. And
18 then, from there, I says, well, I looked at my watch and
19 I says, well, -- I usually catch 60 Minutes on Sunday.
20 And I says:

21 *Well, I got a little more time, so*
22 *what I'll do, I'll just, you know, ride*
23 *around down by Penn Center and come back.*

24 Because when I got to 21, I was trying to decide, I
25 was just trying to make a choice whether to go right or

1 left, and I went right. So, I said:

2 Well, that's a good run. I'll run
3 down on the island and come back, and then,
4 we head back toward the house.

5 Because I kept -- like I said, I wanted to watch 60
6 Minutes on Sunday. I usually catch it on Sunday when it
7 comes on.

8 Q What time does that come on?

9 A 7:00 o'clock.

10 Q Okay. So, at some point, did you get -- now, were
11 you going to meet up with the -- with the family for the
12 birthday later on?

13 A No. When I left, she said she was going to take
14 them for out to dinner for **John Doe 1** birthday. And I
15 said:

16 Well, good. Then I'll just keep these
17 guys; it'll make it cheaper on your pocket.
18 That way, you only have to feed two of them.

19 Q And **John Doe 1**, how old was **John Doe 1** that day?

20 A How old was he?

21 Q Yes.

22 A **John Doe 1** was two. I think it was his birthday, if I'm
23 not mistaken.

24 Q **John Doe 1?** **John Doe 1** or -- I'm not talking about **John Doe 2**
25 I was talking about **John Doe 1**.

1 A I mean -- I'm sorry.

2 Q That's okay.

3 A That's right, yeah. **John Doe 1** -- I don't know. I
4 think he was three, four, something.

5 Q Does four sound right?

6 A Yeah, four. You have to --

7 Q All right. And how old -- **John Doe 2** was about two-
8 and-a-half? Is that correct?

9 A **John Doe 2** was the youngest. I think it was on his
10 birthday. It was his birthday.

11 Q All right.

12 A If I'm not mistaken. So, he must have been -- he
13 had to been at least two.

14 Q All right. Now, when you went and picked up **Jas. M.**
15 and **Jai. M.** and you guys went out, --

16 A Right.

17 Q -- about what time did you get back to 20 Player
18 Road?

19 A Let's see, 60 Minutes come on at 7:00, it was about
20 6:30, quarter to 7:00, somewhere in there.

21 Q Okay.

22 A If I'm not mistaken. I could be off on that a
23 little bit.

24 Q All right. When you get back to 20 Player,
25 somewhere between 6:30 and 7:00 o'clock, what do you

1 find when you get there?

2 Do you need some water?

3 A Um, --

4 THE COURT: Mr. Mullen, do you need a break, sir?

5 A No, your Honor. I think I can -- I think I can
6 manage to get through this. Just give me a minute.

7 Q Let me start slowly. When you got to the -- when
8 you got to the house, what did the front yard look like?

9 A The van was in the yard.

10 Q What van?

11 A Jeanine's van, the white van was in the yard.

12 Q Let me show you this. Okay? This is State's
13 Exhibit 8. Is that Jeanine's van?

14 A That's her van.

15 Q All right. Now, I need you to still speak in the
16 microphone if you can, sir.

17 A Okay.

18 Q And this other van that is to the left of Jeanine's
19 van.

20 A That's mine.

21 Q That's your van?

22 A That's my van.

23 Q All right. Is that how the house looked when you
24 pulled up?

25 A That's the way it looked.

1 Q Okay. Was the door open, closed, or?

2 A It was just shut. It wasn't locked. The screen --
3 the screen door was, I think, open, or -- just closed.
4 They weren't locked at all. And --

5 Q Did you walk on in? Did you knock on the door?

6 A Well, I -- I --

7 Q What did you do?

8 A Yeah, I looked -- we grabbed the stuff. The boys
9 grabbed what was left of the French fries and the stuff,
10 and they were behind me. And I looked at the van, and
11 I'm saying, *what*, you know, I'm saying *why is the van*
12 *like this*, you know? It kind of puzzled me, you know.
13 And then, I says, *well, you know, they in the house*.

14 So, I walked up the step and I knocked on the door,
15 and I called on her name, Jeanine, my daughter. I said
16 -- well, I call her Kiki.

17 Q You call her what?

18 A Kiki.

19 Q Okay.

20 A That was her nickname. And I says, *Kiki*. And we
21 kept -- and we knocked on the door, and I knocked. And
22 then, what happened, it just went open. It just flew
23 open, because I knocked it, and it just came open. So,
24 I assumed at that point that she was in the back bedroom
25 with the boys. And so, I said:

1 *You guys come on in. They back here*
2 *somewhere.*

3 And when I got to the kitchen area, right -- the
4 living room and the kitchen is, you know, adjacent --
5 that's -- that's -- that's when I saw **John Doe 1**.

6 Q Where did -- where did you see **John Doe 1**?

7 A He was on the floor. He was on the floor with a
8 bullet hole in his head, and the blood was still
9 dripping from his head. And I says:

10 *Something's wrong. Oh, my God,*
11 *something's wrong here.*

12 And I called him, and I looked at him, and I -- I -
13 - I told the boys:

14 *Just stay right here.*

15 They were in the living room, and I told them:

16 *You all stay right here.*

17 And they started screaming and hollering, and I --
18 I called out Jeanine's name and I didn't get any answer.
19 And I ran to the bedroom, and that's where I found her
20 and **John Doe 1** -- I mean, her and **John Doe 2**. I'm sorry. She
21 was on her face.

22 Q I'm sorry. I -- I'm sorry.

23 A She was on her laying on her face, down, and she
24 had -- looked like she had fell forward, because her
25 neck was pushed up under her body. And **John Doe 2** was at

1 her feet with his head headed toward the bathroom. And
2 I said:

3 *Jeanine?*

4 And I tried to move her, and I kept calling
5 *Jeanine, Jeanine.* And then, I look at Jere -- I mean,
6 **John Doe 2**, and I said, **John Doe 2**, ^{John Doe 2}*h.* And I kind of
7 peeped under the coat of **John Doe 2**. He didn't move and
8 Jeanine didn't move. And **Jai. M.** -- **Jai. M.** and -- and
9 **Jas. M.** was really freaking out on me up there, so I took
10 them out of the house. I said:

11 *Look, we got to call. We got to get*
12 *some help.*

13 And I says:

14 *Because something's wrong here.*

15 And I took them back outside. I says:

16 *You all go back outside.*

17 And so, I says,

18 *Go next door to the lady next door.*

19 Because they knew the lady next door, which was the
20 neighbor. And then, I -- I think I started calling on
21 the phone, and I prayed that that phone would pick up,
22 because down there, the reception is real bad. And
23 thank God it picked up. And I got this -- the E.M. --
24 the 911 call through, and that's when I started asking
25 for help, because something had -- was just wrong.

1 But that day was -- it just was horrible for me and
2 the boys. But that's -- and then, the EMS showed up,
3 and I told the one guy, I says:

4 *There's one in the kitchen.*

5 I says:

6 *My -- my youngest grandson in the*
7 *kitchen.*

8 I says:

9 *He's still bleeding from the head,*
10 *but I think he's already gone.*

11 And I says:

12 *But I didn't -- and there's two in*
13 *the back bedroom. Just go right straight*
14 *through, and I didn't get any response.*
15 *I tried to get a response in **John Doe 2**, but*
16 *I didn't get anything from him, so I just*
17 *-- I assumed that all three of them were*
18 *dead.*

19 And he said:

20 *No.*

21 He came back out, he said:

22 *No, Mr. Mullen.*

23 He said:

24 *We got --*

25 He said:

1 No, we've got a sound from -- from

2 **John Doe 2**. When we moved him, he cried out.

3 And they took out of that house like a bat out
4 of hell -- excuse me, your Honor -- with him. And then,
5 I -- the deputies came, you know. And then, I started
6 talking to them. But that's what happened that day when
7 I found my kids in the house.

8 Q And you were the first one in the house?

9 A Far as I know. Because, I mean, because I was
10 bringing them back, and I says:

11 Well, I'll catch half of whatever's
12 left of 60 Minutes.

13 You know. But I --

14 Q When -- when you saw -- and let me ask you this,
15 and I'm referring to 17-B, and I've already shown you
16 this. Can you see that, sir?

17 A No.

18 Q I'll slide it so you can.

19 THE COURT: Sir. That's fine.

20 BY MR. STONE:

21 Q This front area of the kitchen, --

22 A Right.

23 Q -- this is where you found **John Doe 1** ?

24 A Right. Right. Yeah.

25 Q This is where you find your daughter.

1 A That's Jeanine, right.

2 Q And how were -- do you recall where her hands were
3 or how she was positioned?

4 A I -- I think one of them was under her, and the
5 other one was like kind of cocked back, but they both
6 weren't under her at the time.

7 Q All right. And then, **John Doe 2** was --

8 A Was at her feet, right, with his head turned just
9 like that.

10 Q Okay.

11 A Because they were -- her legs were kind of close to
12 him and -- because I had to kind of step over her to get
13 to him, because he was right -- well, maybe a little bit
14 further back --

15 Q Okay.

16 A -- you know, by -- by her leg there on the left.
17 That would be the left leg that he was by.

18 Q Was -- was he -- he was obviously bleeding when you
19 saw him, then.

20 A I couldn't -- I didn't see that on the coat.

21 Q Okay.

22 A And looked like -- looked like somebody was getting
23 ready to take him from there, because he was -- but what
24 I couldn't understand was, why is he dressed like that,
25 and the other, my other grandson, was not dressed like

1 that. And I tried to roll him over and I said -- I kept
2 calling him, too -- I says:

3 **John Doe 2, John Doe 2.**

4 And he, you know, I didn't get -- I didn't want to
5 move him too much, because I didn't know what the
6 conditions of, you know, what happened. And I kept
7 calling him. I tried to vocal -- vocal, you know, to
8 get him to respond. Nobody responded. And like I said,
9 Jeanine was -- just couldn't -- wouldn't respond. I
10 didn't know she was -- at the time. But **John Doe 1**
11 definitely. The blood was still draining out of his
12 head, and it hadn't turned -- it was still red when I
13 was coming out, but the pool on the floor had turned a
14 little dark. So, I assume that he had been there for a
15 minute or two, and I -- and I couldn't get any response.
16 And that's -- like I said, that's when the EMS came in
17 and they -- after they got there and --

18 Q Thank you, Mr. Mullen. Mr. Mullen, I'm going to go
19 back to this van that is in State's Exhibit 8, that you
20 parked your van next to.

21 A Right.

22 Q The van was at the house when you got there,
23 between 6:30 and 6:45?

24 A Right.

25 Q Was this van there at noon when you went, or some

1 time in the afternoon, when you went and picked up the
2 kids?

3 A No, it -- no, it was not.

4 Q It was not there?

5 A No.

6 Q You okay, Mr. Mullen?

7 A Yeah. Yeah, I'm all -- I'm all right.

8 Q Whose van was that, Mr. Mullen?

9 A The one that was in the yard?

10 Q Yes.

11 A Okay, that's -- was Jeanine's van.

12 Q And who drives -- and this -- that would be in
13 State's Exhibit 8, this van in front.

14 A Right.

15 Q Who drove this van?

16 A Jeanine and Earnest Daise, better known as E. The
17 only two people I ever see drove that van.

18 Q Okay.

19 A I didn't like it, but that's the way it was.

20 Q Excuse me just a moment, your Honor. Mr. Mullen, I
21 know when -- and let me do it this way. Let me show you
22 what's been marked at State's Exhibit 7. Is that the
23 condition of that front room? And let me go back to --
24 I'll go back to 17-B here, this living room area.

25 A Right.

1 Q Was that the condition of that room when you went
2 in the house?

3 A I'm -- I'm -- I'm pretty sure it was.

4 Q Was there any signs in this room of anything
5 stolen, any broken glass, anything broken like that?

6 A No, no, nothing. Nothing.

7 Q I'm going to ask you very briefly about Earnest
8 Daise. Do you know who Earnest Daise is?

9 A Yes, I do.

10 Q Do you recognize him in the courtroom?

11 A Yes, I do.

12 Q He's the man standing right there?

13 A Right.

14 Q And you said he and your daughter drove the van,
15 the only two people you ever saw.

16 A The only two people I ever saw drive -- driving it.
17 My wife may have. Let me -- she may have driven it a
18 couple times, but I -- most of the time, 99 percent of
19 the time, it was Jeanine, because she -- she bought it
20 for Jeanine and the boys, so they'd have transportation.

21 Q Right. Now, when you went and picked up the boys
22 that day, where was your wife?

23 A If I'm not mistaken, I think she was in church.

24 Q Okay.

25 A Yeah, I think -- I -- I -- I think she was at

1 church. I think she was.

2 Q In whose car?

3 A She had her own car.

4 Q Okay. She wasn't in the van that day.

5 A Oh, no.

6 Q Okay.

7 A Oh, no.

8 Q Your daughter dated Earnest Daise.

9 A Right.

10 Q **John Doe 2** is their son. Is that correct?

11 A As far as I know.

12 Q Was -- was your daughter -- how did your daughter
13 feel about Mr. Daise? And I'm specifically talking
14 about right around -- right around this -- this weekend,
15 and this in November the 15th, 2009.

16 A She -- Jeanine had told me recently that she was
17 getting rid of him, because she was going back to
18 school. She wanted to continue her education. And she
19 said:

20 *Daddy, I'm -- I'm a go ahead, I'm a*
21 *take your advice. I'm a go ahead and go*
22 *back to school.*

23 She was working at the school in Shanklin, I think,
24 at the time. And she had started back going to school,
25 and she wanted to get rid of Earnest, because she said

1 he was -- she just couldn't deal with him anymore.

2 Q Was she afraid of him?

3 A Oh, yeah. Yeah, and that's -- oh, yeah.

4 MR. STONE: No further questions, your Honor.

5 MR. MCGUIRE: Mr. Mullen, I don't have any
6 questions for you, sir. Sorry you had to be here.

7 THE COURT: You're excused, Mr. Mullen.

8 A Thank you.

9 THE COURT: The State will call the next witness.

10 MR. HENDERSON: The State calls **Jai. M.**, your
11 Honor.

12 THE COURT: Okay.

13 Come on forward, sir. Come right up here, please,
14 right here.

15 MADAM CLERK: Place your left hand on the *Bible*,
16 and raise your right hand for me. Do you solemnly swear
17 to truthfully answer all questions asked of you by this
18 Court, so help you God?

19 MR. **Jai. M.**: I do.

20 MADAM CLERK: Please be seated. State your name
21 and spell it for the court, please.

22 THE COURT: Sir, will you go ahead and give us your
23 name for the record?

24 MR. **Jai. M.**: My name is **Jai. M.**

25 THE COURT: Thank you, sir.

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Jai. M.

DIRECT EXAMINATION BY MS. HENDERSON:

Q **Jai. M.** , how old are you?

A I'm 15.

Q You're 15. Did you just turn 15 yesterday?

A Yes, ma'am.

Q And where do you live right now?

A I live in Maryland, Germantown.

Q And who do you live there with?

A My Aunt Megan, Megan Mullen.

Q I'm sorry, who?

A Megan Mullen.

Q Okay. And are those your mom's sisters?

A Yes, ma'am.

Q And what was your mom's name?

A Jeanine Mullen.

Q Okay. And we're going to talk about the weekend that you lost your mom and your little brother. Do you remember what you did the night before?

A We went to a party at the Nations' house.

Q And who are the Nations?

A Our next door neighbors.

Q Okay. So, you went to a party next door? And who was at that party that was in your family?

A Just me, my mom, and my brothers.

1 Q Okay. And who are your brothers?

2 A **Jas. M. John Doe 2** , and **John Doe 1** .

3 Q Okay. And when you left the party that night, did
4 you go pick up E?

5 A Yes, ma'am, I did.

6 Q And do you know what E's real name is?

7 A Earnest Daise.

8 Q Okay. And where did you go pick E up at?

9 A 43 Poppy Hill.

10 Q Okay. **Jai. M.** , I'm going to hand you what's been
11 marked for purposes of identification as State's Exhibit
12 27. Do you recognize that?

13 A Yes, ma'am, I do.

14 Q And what is that?

15 A This is Jay's house.

16 Q That's -- and where does Jay live?

17 A Poppy Hill.

18 Q At 43 Poppy Hill?

19 A Yes, ma'am.

20 Q Okay. So, that -- that's the same place?

21 A Yes.

22 MS. HENDERSON: Your Honor, at this time, the State
23 would move to have State's Exhibit 27 entered into
24 evidence.

25 MR. MCGUIRE: Without objection, your Honor.

1 THE COURT: It's in evidence without objection.

2 ITEM IDENTIFIED AS PHOTOGRAPH

3 OF 43 POPPY HILL ROAD MARKED

4 STATE'S EXHIBIT NUMBER 27,

5 ADMITTED AS EVIDENCE.

6 BY MS. HENDERSON:

7 Q **Jai. M.**, is that where E lived when he didn't stay
8 with you?

9 A Yes, ma'am.

10 Q Okay. And did E have a car?

11 A Yes, ma'am, he did.

12 Q I'm handing you what's been marked for purposes of
13 identification as State's Exhibit 28. Do you recognize
14 that?

15 A Yes.

16 Q And what is that?

17 A These are three pictures. These are three cars in
18 the pictures.

19 Q That's okay. It's three cars in a picture?

20 A Yeah.

21 Q Okay. And whose cars are in that picture?

22 A The black one is Jay's car, and the one with the
23 hood up is E's, and the one behind the black car is
24 Asia's.

25 Q Okay.

1 MS. HENDERSON: Your Honor, at this point, the
2 State would move to have State's Exhibit 28 entered into
3 evidence.

4 MR. MCGUIRE: Without objection, your Honor.

5 THE COURT: It's in evidence without objection.

6 ITEM IDENTIFIED AS PHOTOGRAPH

7 OF THREE CARS MARKED STATE'S

8 EXHIBIT NUMBER 28, ADMITTED AS EVIDENCE.

9 BY MS. HENDERSON:

10 Q And **Jai. M.**, can I just ask you to come off the
11 stand, with your Honor's permission, to point at the
12 cars.

13 THE COURT: You may step down, sir. I'm just going
14 to have to ask you to speak up, because the court
15 reporter's going to take down everything you say, and
16 there's no microphone down there. All right?

17 A Yes, ma'am.

18 THE COURT: Thank you.

19 BY MS. HENDERSON:

20 Q Can you just stand right here and just tell the
21 jury which cars you were talking about in the picture?

22 A The black one, this one is Jay's car.

23 THE COURT: Sir, I apologize. You are going to
24 have to speak a lot louder. Okay?

25 A Yes, ma'am.

1 THE COURT: Thank you.

2 A Okay, this black car right here, this is Jay's car.
3 And the one behind it, the blue one, is Asia's. And the
4 one with the hood up all the way in the back is E's.

5 Q Okay. Thank you.

6 A Did you hear that?

7 Q You can go ahead and have a seat. **Jai. M.**, was E's
8 car like that, that weekend?

9 A I can't remember.

10 Q Okay. But you went and picked him up that night
11 with your mom?

12 A Yes.

13 Q Okay. Did E spend the night that night?

14 A Yes, ma'am, he did.

15 Q At your house?

16 A Yes.

17 Q Okay. Did you see him the next morning?

18 A I saw him in the morn -- early in the morning. I
19 walked down the hallway, and I said hey.

20 Q Okay. And what was he doing?

21 A He was walking out the front door.

22 Q He was leaving?

23 COURT REPORTER: I'm sorry, he was walking out the
24 front door?

25 A Yes, ma'am.

1 Q He was leaving?

2 A Yes.

3 Q Okay. Do you remember what he was wearing?

4 A He wore a hoodie and some jeans.

5 Q And when he left, did he -- did he walk? Did
6 someone come pick him up? Did he drive away?

7 A He drove away.

8 Q And what did he drive away in?

9 A Our -- our white car.

10 Q Your white van?

11 A Yes.

12 Q Okay. And what did you do that day? Did you stick
13 around the house?

14 A No, ma'am.

15 Q What did you do?

16 A I went out with my grandfather.

17 Q And why did you go with your grandfather?

18 A Well, during that day, me and my mom had an
19 argument, trying to find a little brother's shoe.

20 Q Which little brother?

21 A Fred's. We tried to find his -- we tried to find
22 his other shoe, and we got angry, and I decided I would
23 go with my grandfather.

24 Q And why couldn't you find the shoe?

25 A Because we all thought it was in E's -- we all

1 thought it was in the white van.

2 Q Okay. And he had the van?

3 A Yes.

4 Q Okay. And when you -- when you came back that
5 evening to the house, was the van there?

6 A Yes, ma'am, it was.

7 Q And what did it look like?

8 A It looked like somebody had ransacked the van. All
9 the doors were open. It was unusual.

10 Q Okay. And then, you went inside.

11 A Yeah.

12 Q And came back out and went to the neighbors?

13 A Yes.

14 Q And **Jai. M.**, just -- I want to make sure I heard your
15 testimony right. You said that early that morning, he
16 left with the van?

17 A Yeah. Yes.

18 Q And he was who?

19 A Earnest.

20 MS. HENDERSON: I'm sorry, your Honor. I'm trying
21 to find my marker real quick.

22 BY MS. HENDERSON:

23 Q And **Jai. M.**, just one last thing. I'm going to show
24 you what's been entered into evidence as State's Exhibit
25 8. Is that your van?

1 A Yes, ma'am, it is.

2 Q Is that what it looked like when you all got there
3 that night?

4 A Yes, ma'am.

5 MS. HENDERSON: Nothing further from the State at
6 this time, your Honor.

7 MR. MCGUIRE: Sir, I don't have any questions for
8 you. Sorry you had to come.

9 THE COURT: You may step down, Mr. Mullen. Ladies
10 and gentlemen of the jury, are you all okay? Do you
11 need a short break? You okay? All right. Let's go
12 ahead and call your next witness. Thank you.

13 MS. HENDERSON: Your Honor, the State would call

14 **Jas. M.**

15 THE COURT: Come forward right here, Mr. Mullen.

16 MADAM CLERK: Would you place your left hand on the
17 Bible, and raise your right hand for me, please. Do you
18 solemnly swear to truthfully answer all questions asked
19 of you by this court, so help you God?

20 MR. **Jas. M.** : Yes, ma'am.

21 MADAM CLERK: Please be seated. State your name
22 and spell it for the Court, please.

23 THE COURT: Sir, if you would, give us your name,
24 for the record.

25 MR. **Jas. M.** : **Jas. M.**

1 THE COURT: Thank you.

2 **Jas. M.**

3 DIRECT EXAMINATION, MS. HENDERSON:

4 Q **Jas. M.** , how old are you?

5 A Sixteen.

6 Q And who was Jeanine Mullen to you?

7 A My mother.

8 Q Okay. And who was your mother's boyfriend at the
9 time of her murder?

10 A Earnest, Daise.

11 Q And do you know how your mom felt about Earnest
12 Daise that weekend?

13 A She told me she didn't want to be with him anymore.

14 Q And what is your home phone number? I'm sorry.
15 What was your home phone number?

16 A 843-846-1372.

17 Q Let me back that up real quick. You said 843?

18 A 846.

19 Q 846.

20 A 1372.

21 Q , 1372. **Jas. M.** , did your mom own a gun?

22 A Yes, ma'am.

23 Q Do you remember what it looked like?

24 A It was -- it was silver, long, and it had the
25 revolver thing in it. Had a black handle, and it was

1 heavy.

2 Q And it was heavy. Okay. Where did she keep that
3 gun, in the house?

4 A Under the pillow.

5 Q Under the pillow?

6 A Yes.

7 Q **Jas. M.** , did your brother, **John Doe 2** , used to have a
8 nickname?

9 A Yes.

10 Q What was it?

11 A J-Dub.

12 MS. HENDERSON: J-Dub? No further questions, your
13 Honor.

14 MR. MCGUIRE: Sir, I don't have any questions for
15 you. Sorry you had to come.

16 THE COURT: You may step down, sir.

17 MR. STONE: The State calls Alleen Porter to the
18 stand.

19 THE COURT: Come on forward, Ms. Porter.

20 MADAM CLERK: Would you place your left hand on the
21 Bible and raise your right hand for me, please? Do you
22 solemnly swear to truthfully answer all questions asked
23 of you by this court, so help you God?

24 MS. ALLEEN CARLETTA PORTER: I do.

25 MADAM CLERK: Please be seated. State your name

1 and spell it for the Court, please.

2 MS. ALLEEN CARLETTA PORTER: Alleen Carletta
3 Porter.

4 ALLEEN CARLETTA PORTER

5 DIRECT EXAMINATION BY MR. STONE:

6 Q And how do you spell your last name, ma'am?

7 A P/o/r/t/e/r.

8 Q Where do you live, ma'am.

9 A Lady's Island, Beaufort, South Carolina.

10 Q How long have you lived on Lady's Island?

11 A Four years, five years.

12 Q And how long have you lived in Beaufort County?

13 A Ten years.

14 Q Did you know Jeanine Mullen?

15 A Yes.

16 Q How well?

17 A She was my best friend, and I was also her
18 assistant principal at Joseph S. Shanklin Elementary.

19 Q Okay. So, you were -- you were -- you were the
20 assistant principal at Shanklin?

21 A Yes.

22 Q And what position did she hold there?

23 A She was a teacher assistant for a kindergarten
24 classroom.

25 Q Did you deal with her a good bit?

1 A Yes, often.

2 Q And you also had a personal relationship.

3 A We also had a very close, personal relationship,
4 yes.

5 Q I'm going to ask you some specific questions.
6 First of all, let me ask you, did you -- did you know
7 who her boyfriend was, or who she dated?

8 A Yes.

9 Q And who was that?

10 A Earnest Daise.

11 Q Can you tell me, and I want to talk specifically,
12 you know when she died.

13 A Yes.

14 Q November the 15th, 2009.

15 A Yes.

16 Q A few weeks leading up to that, what was -- what
17 was Jeanine's intention when it came to Mr. Daise?

18 A She had intentions on dissolving the relationship,
19 ending it. She had enrolled at the University of
20 Phoenix. She was looking to pursue a degree in
21 elementary education, and she was just looking to make
22 changes. She was going to end the relationship.

23 Q Did she have any particular feelings toward Mr.
24 Daise, as far as -- and let me just be very specific
25 about that -- was she afraid of him at all?

1 A Terribly afraid.

2 Q Did you ever hear any type of argument between the
3 two or anything? Any threat? Anything like that?

4 A Yes.

5 Q Tell me, first of all, how did that come about?
6 Were you in there personally? Were you on the
7 telephone? How did that happen?

8 A I wasn't in there personally. She was on the
9 telephone with me. He had walked in. She thought she
10 hung up the telephone. I could hear them arguing in the
11 background. I heard a baby crying. I could hear --

12 Q Let me stop you there. When you say he, who is he?

13 A Earnest Daise.

14 Q Okay. And did you know Earnest Daise's voice?

15 A Yes, that was his voice.

16 Q Okay.

17 A Because she was referring to him as E.

18 Q Got you. So, instead of Earnest Daise, you knew
19 him as E?

20 A E, yes.

21 Q Right. Okay.

22 A When the -- when the phone conversation ended, it
23 really didn't end. She did not hang up the telephone.
24 They were going back and forth. They were arguing.
25 There were some profanities. He -- he told her, he

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1 said:

2 *Bitch, you don't know who you're*
3 *messing with. I will fuck you and your*
4 *kids up. I will kill you. I will kill*
5 *you and your kids.*

6 Something to that effect. The -- the conversation
7 pursued. The argument pursued. It ensued. I
8 eventually hung up the telephone, and spoke to her a
9 little while afterwards.

10 MR. STONE: Thank you. I don't have any further
11 questions at this time.

12 MR. MCGUIRE: I don't have any questions for you,
13 ma'am.

14 BY THE COURT:

15 THE COURT: Okay. You may step down, Ms. Porter.
16 Is there any objection to her being released?

17 MR. STONE: No, ma'am.

18 MR. MCGUIRE: No, ma'am.

19 MR. STONE: May we approach as to scheduling?

20 THE COURT: Thank you. You may. Actually, before
21 we do that, if you don't mind, ladies and gentlemen --
22 you can step down Ms. Porter. Thank you very much.
23 Thank you.

24 Ladies and gentlemen of the jury, we're going to go
25 ahead and take a brief recess. As I told you yesterday,

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1 the bailiffs have arranged for lunch. We expect it to
2 be here about 1:00 o'clock. That's typically when we
3 break for lunch, ladies and gentlemen, so that is where
4 we're looking towards. Soon as it's here, I'm going to
5 go ahead and feed you, though.

6 At this time we're going to take a break. Do not
7 discuss this case with each other. It wouldn't be
8 appropriate to do so. Please leave your notes in your
9 seats, ladies and gentlemen. We look forward to seeing
10 you back in just a few minutes.

11 BAILIFF: Thank you, your Honor.

12 JURY LEAVES COURTROOM 11:21 A.M.

13 BAILIFF: Jury is cleared, door is closed, your
14 Honor.

15 THE COURT: Thank you. Anything we need to put on
16 the record before we take a ten-minute break?

17 MR. MCGUIRE: No, ma'am.

18 THE COURT: And you all, I'm going to try hard to
19 hold very tight to the ten minutes so we can keep going.

20 I would appreciate it. Thank you.

21 OFF THE RECORD 11:22 A.M.

22 BACK ON THE RECORD 11:36 A.M.

23 BY THE COURT:

24 BAILIFF: All rise.

25 THE COURT: Thank you all. Please be seated.

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1 MR. STONE: May we approach before we bring in the
2 jury in?

3 THE COURT: Yes, sir.

4 OFF THE RECORD BENCH CONFERENCE.

5 BACK ON THE RECORD.

6 THE COURT: On the record, Wanda. Give her a
7 moment to come on up, if you would. Wanda, we just
8 wanted you to know for the record.

9 MACDOUGALL: The -- and these are helpful
10 demonstratives for the jury. The State has these
11 posters up there where they're writing words that are
12 critical of the case, and I used to do it when I was a
13 prosecutor, too. But we'd like them to be taken down
14 while other witnesses are up. It sort of continues to
15 testify to the jury inappropriately.

16 THE COURT: Okay.

17 MR. STONE: We'll be glad to do that. The problem
18 is, the next three or four witnesses are timed, and so,
19 that we're going to be continuously adding to it, but
20 I'll be glad to take the one we're not using down.
21 That's fine. Have no problem with that.

22 THE COURT: Okay. And that's fine. And I would
23 agree with that. I also, -- you know, obviously,
24 everyone has their own little strategies, but I think
25 there's also boards that are facing the jury that are

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1 over there, too. And I usually leave it to the
2 attorneys to turn them around, because, again, I agree
3 with you.

4 MR. STONE: That's fine.

5 THE COURT: But we'll leave it to you all, but just
6 turn them around.

7 MR. MACDOUGALL: Thank you, your Honor.

8 THE COURT: Absolutely.

9 END BENCH CONFERENCE.

10 THE COURT: You ready to go, you all?

11 MR. THORNTON: State's ready, your Honor.

12 THE COURT: Defense ready?

13 MR. MCGUIRE: Yes, ma'am.

14 THE COURT: Bring the jury in, Norman.

15 BAILIFF: Yes, your Honor.

16 THE COURT: Thank you.

17 BAILIFF: Your Honor, the jury is entering.

18 THE COURT: Thank you.

19 JURY ENTERS COURTROOM 11:40 A.M.

20 BAILIFF: All right, your Honor.

21 THE COURT: Thank you. Welcome back, ladies and
22 gentlemen. The State will call the next witness.

23 MR. THORNTON: Thank you, your Honor. The State
24 calls Billie Dobbs. Ms. Dobbs.

25 THE COURT: Come on forward to be sworn, ma'am.

1 Come right up here. Ms. Young is going to swear you in
2 if you'll place your left hand on the *Bible* right here,
3 and raise your right hand.

4 MADAM CLERK: Do you solemnly swear to truthfully
5 answer all questions asked of you by this court, so help
6 you God?

7 MS. BILLIE DOBBS: I do.

8 MADAM CLERK: Please be seated. State your name
9 and spell it for the court reporter.

10 COURT REPORTER: Your last name spell?

11 MS. BILLIE DOBBS: D/o/b/b/s.

12 THE COURT: Thank you, ma'am.

13 MR. THORNTON: Thank you very much, your Honor.

14 BILLIE DOBBS

15 DIRECT EXAMINATION, BY MR. THORNTON:

16 Q Ms. Dobbs, where do you work?

17 A At Dobbs B.P.

18 Q At Dobbs B.P.?

19 A Uh-huh.

20 Q I imagine that is not a coincidence. Is that
21 something that your family owns or you own?

22 A My in-laws, yes.

23 Q All right. And where is Dobbs B.P.?

24 A Highway 21, Grays Hill.

25 Q If you'll pardon me just a second. I'm going to

1 show you what's been marked for identification as
2 State's Exhibit 14, and ask you if that mark that says
3 *Dobbs B.P., 2706 Trask Parkway*, is that the approximate
4 location of where Dobbs B.P. is?

5 A Yes.

6 Q And is that the Dobbs B.P. that you just mentioned
7 that you work at?

8 A Yes.

9 Q Does Dobbs B.P. have a security system or a
10 surveillance system with cameras?

11 A Yes.

12 Q And did it have that system, and did you work there
13 in November, specifically November the 15th of 2009?

14 A Yes.

15 Q And is that a system that records the time and the
16 date? I think they call it the time and date stamp on
17 the video surveillance?

18 A Yes.

19 Q And was it in operation on November the 15th of
20 2009?

21 A Yes.

22 Q I'm going to hand you what's been marked for
23 identification as State's Exhibit Number 71, and it's a
24 computer disc, obviously, and ask did you review that at
25 the request of our office this morning?

1 A Yes.

2 Q And is that an accurate recording that you turned
3 over to law enforcement of the security video footage at
4 the Dobbs B.P., November the 15th, 2009?

5 A Yes.

6 Q And has it been altered or changed in any way, or
7 is it a fair and accurate depiction?

8 A Yes.

9 Q All right. Is it --

10 A No, it has not been changed.

11 Q Thank you, ma'am, very much.

12 MR. THORNTON: Your Honor, State would move Exhibit
13 71 into evidence.

14 MR. MCGUIRE: Without objection.

15 THE COURT: Without objection.

16 ITEM IDENTIFIED AS COMPUTER DISK
17 OF SECURITY VIDEO FOOTAGE AT
18 DOBB'S B.P., NOVEMBER 15, 2009,
19 MARKED STATE'S EXHIBIT NUMBER 71,
20 ADMITTED AS EVIDENCE.

21 BY MR. THORNTON:

22 Q Ms. Dobbs, I'm going to ask you, if you would, this
23 has been marked for identification as State's 29 through
24 40. Would you take a look, please, at these
25 photographs. Just -- you can go ahead and look through

1 them, and tell me when you're done, and I just want to
2 ask you about them. So, just -- if you'll look through
3 them, and I'm going to ask you if you can identify them
4 when you're done.

5 Are you finished?

6 A I am.

7 Q Thank you, ma'am. If I could have those back.
8 Ma'am, do those appear to be still shots taken from the
9 video footage we were just discussing?

10 A Yes.

11 Q Are they -- based on your review of them and your
12 review of the security footage, are they a fair and
13 accurate depiction, as far as being still shots of that,
14 footage?

15 A Yes.

16 Q All right. Have they been altered or changed in
17 any way?

18 A No.

19 MR. THORNTON: Your Honor, at this time, State
20 moves Exhibits 29 through 40, photographs, into
21 evidence.

22 MR. MCGUIRE: Without objection, your Honor.

23 THE COURT: All right. Without objection, they're
24 in evidence.

25 ITEMS IDENTIFIED AS PHOTOGRAPHS

1 MARKED STATE'S EXHIBIT NUMBERS 29
2 THROUGH 40, ADMITTED AS EVIDENCE.

3 BY MR. THORNTON:

4 Q Now, Ms. Dobbs, can you see this monitor okay, or
5 do you need to come down to look at it?

6 A I can see it.

7 Q You can see it?

8 A Um-hmm.

9 Q All right. I'm going to ask if you'll go ahead and
10 watch this, and tell me whether or not that was the
11 security footage that we were just mentioning. Can you
12 see it okay?

13 A Yes.

14 Q All right. Ma'am, the -- there's a man standing at
15 the counter in blue jeans and what appears to be a dark-
16 colored hoodie. Is that somebody that was a regular
17 customer at your store?

18 A Yes.

19 Q Is that a man that is shown in at least some of the
20 pictures in 29 through 40 --

21 A Yes.

22 Q -- that's State's exhibits?

23 A Yes.

24 Q All right. And who -- do you know who that is?

25 A Earnest Daise.

1 Q And -- yes, ma'am, go ahead.

2 A And then, the cashier's Jonathon Denado.

3 Q But the man standing in the dark hoodie and the
4 jeans, that's Earnest Daise?

5 A Yes.

6 Q And according to the time stamp, at least on this
7 camera, at 11:46 and 58 seconds, on November the 15th of
8 2000 -- was this -- this is 2009. Is that correct?

9 A Yes.

10 Q Earnest Daise was at the Dobbs B.P.? Is that
11 correct?

12 A Yes.

13 Q And on this other side, this is the outside view.
14 Is that right?

15 A Correct.

16 Q And is that a white van?

17 A Yes.

18 Q That is in that -- in that shot?

19 A Yes.

20 Q And is that a van that you saw Earnest -- Earnest
21 Daise drive or knew him to drive?

22 A Yes.

23 Q And was that the van he was driving on November the
24 15th, 2009?

25 A Yes.

1 Q And that would be at least at 11:46 on that side,
2 and 55 seconds, that van was parked at Dobbs B.P. and
3 Earnest is inside. Is that correct?

4 A Yes.

5 Q Now, it would appear, ma'am, that the outside
6 camera shot is running longer than the inside. Is that
7 correct? When you turned it over, it's an extended time
8 outside showing the van both pulling up, and then,
9 leaving?

10 A Yes.

11 Q I'm going to advance it. Is there anything unusual
12 other than that the van pulls off at some point?

13 A No.

14 Q Dylan, if you would, please, pull it to where --
15 right as the van is pulling away. Dylan, if you would,
16 please, maximize that on the screen and just go ahead
17 and let it play since it won't let us advance.

18 Ms. Dobbs, I'm sorry. I'm going to ask you to go
19 ahead and keep watching it to make sure that's accurate.

20 Ms. Dobbs, please tell me if I step in front of
21 you. I don't mean to.

22 A That's fine.

23 Q Dylan, freeze it right there for me.

24 To save a little bit of time, Ms. Dobbs, I'm going
25 to ask you to look again at State's Exhibit 40. Does

1 that show the -- that same white van that was parked
2 there that Earnest Daise was driving that day?

3 A Yes.

4 Q As it's pulling away?

5 A Yes.

6 Q And what time stamp is on that?

7 A 12:18.

8 Q So, from 11:45 to somewhere around 12:18, he was
9 either inside the store or in the parking lot. Is that
10 correct?

11 A Yes.

12 Q Thank you, ma'am. If you'll hang on for me just a
13 second.

14 Dylan, go ahead and cut that off.

15 And I know I just asked you this, ma'am, but just
16 to reiterate. So, on the date that's already been
17 testified to as -- as the murder of Jeanine Mullen and
18 **John Doe 1** , on that date, 11/15/2009, Earnest
19 Daise is in her -- is in a white van that you recognize
20 and talked about off of your surveillance video, he was
21 in that van from at least 11:45 to 12:18 at your store.

22 A Yes.

23 MR. THORNTON: I have no further questions. Please
24 answer any questions Defense has.

25 MR. MCGUIRE: I have no questions for you, ma'am.

1 Thank you.

2 THE COURT: Okay. Any objection to Ms. Dobbs being
3 excused?

4 MR. THORNTON: We'd ask she be excused. Thank you,
5 ma'am.

6 THE COURT: You are excused, ma'am. Thank you.
7 The State will call their next witness.

8 MR. THORNTON: Thank you, your Honor. The State
9 calls Michael Wilson.

10 THE COURT: Come on forward, Mr. Wilson. Right
11 here in front of Ms. Young. She's going to swear you
12 in, sir. Place your left hand on the Bible and raise
13 your right hand.

14 MADAM CLERK: Raise your right hand. Do you
15 solemnly swear to truthfully answer all questions asked
16 of you by this court, -- excuse me -- so help you God?

17 MR. MICHAEL WILSON: Yes, ma'am.

18 MADAM CLERK: Please be seated. State your name
19 and spell it for the Court, please.

20 THE COURT: Mr. Wilson, I'm going to ask you to
21 pull that microphone up to your mouth. Okay, sir?
22 Thank you.

23 MICHAEL WILSON

24 DIRECT EXAMINATION, BY MR. THORNTON:

25 Q Mr. Wilson, where do you currently live?

1 A 22 Saxonville Road, Saint Helena Island.

2 Q And -- so, you live on Saint -- and I know we've
3 talked about this before. You're going to have to speak
4 up into the microphone. So, you live on Saint Helena
5 Island. Is that correct?

6 A Yes, sir.

7 Q All right. And what was the name of the road you
8 live on?

9 A Saxonville Road.

10 Q And where did you live on November the 15th of
11 2009?

12 A Poppy Hill.

13 Q And was there a particular street that you lived
14 on?

15 A Sandstone Road. I'm not sure.

16 Q Let me ask you this. Did you live near a place
17 called Eddie's Disco?

18 A Yes, sir.

19 Q How close did you live to Eddie's Disco?

20 A Maybe 40 yards.

21 Q On November the 15th, 2009, do you remember seeing
22 Earnest Daise some time in the afternoon at Eddie's
23 Disco?

24 A Yes, sir.

25 Q And do you remember what time it was, or about what

1 time of day it was?

2 A Around dusk.

3 Q Around dusk? And what did you see Mr. Daise doing,
4 if anything?

5 A Telephone conversation. It ended, and he left.

6 Q Okay. You said telephone conversation. Did you
7 hear Mr. Daise make any statement as he answered this
8 telephone?

9 A No, but I heard before he hung up. He said:

10 *Who the fuck you think you talking to?*

11 And that was it.

12 Q All right. And that was some time around dusk, and
13 that's what Mr. -- and I'm not trying to put words in
14 your mouth -- is that what Mr. Daise said in response to
15 the caller at around dusk on the afternoon of November
16 the 15th, 2009?

17 A Yes, sir.

18 Q And did you hear anything else or see anything
19 else?

20 A No, I did not.

21 Q And I believe you said -- and again, I'm not trying
22 to put words in your mouth -- did you say that -- that
23 Mr. Daise then left?

24 A Yes, sir.

25 Q When he left, what was he driving?

1 A A soccer mom van, a white soccer mom van.

2 Q White van? Let me ask you -- I'm going to show you
3 -- I realize it may be from a different perspective, but
4 I'm going to show you State's 8, 9, and 10, which are
5 marked and in evidence. Is that -- does that look like
6 the van? A white van?

7 A Yeah, that looked like the van.

8 Q Sir?

9 A Yes.

10 Q Okay.

11 MR. THORNTON: Your Honor, if I could have the
12 Court's indulgence for one moment.

13 THE COURT: Yes, sir.

14 BY MR. THORNTON:

15 Q I'm going to hand you what's been marked, Mr.
16 Wilson, as State's Exhibit 41 and 42, and ask you, and
17 some of these pictures, they're kind of far away, but
18 I'm going to ask you, is that Eddie's Disco?

19 A Yes.

20 Q Is that a fair and accurate depiction of how it
21 appeared in 2009? In other words, is that about what it
22 looked like?

23 A Yes.

24 MR. THORNTON: Your Honor, at this time, I would
25 move State's 41 and 42 into evidence.

1 MR. MCGUIRE: Without objection.

2 THE COURT: Without objection, they're in evidence.

3 ITEM IDENTIFIED AS PHOTOGRAPH
4 OF EDDIE'S DISCO MARKED STATE'S
5 EXHIBIT NUMBER 41, ADMITTED AS EVIDENCE.

6 ITEM IDENTIFIED AS PHOTOGRAPH
7 OF EDDIE'S DISCO MARKED STATE'S
8 EXHIBIT NUMBER 42, ADMITTED AS EVIDENCE.

9 BY MR. THORNTON:

10 Q Thank you, Mr. Wilson. I have no further questions
11 for you. Please answer any -- I apologize, Judge. Let
12 me step back on second.

13 Mr. Hightower, if I could have 41 and 42. Let's
14 start with 41. I apologize, Mr. Wilson. Hang on for me
15 just one second.

16 All right. Mr. Wilson, this is Exhibit -- State's
17 Exhibit 41 you just looked at. Can you see that okay
18 from where you are?

19 A Yes, I can.

20 Q All right. And that's a picture of Eddie's Disco?

21 A Yes, it is.

22 Q And next photograph, please, 42. Is that just a
23 different shot, sir, of Eddie's Disco?

24 A It's not clear right there.

25 Q Okay. Do you need to step down and look at it?

1 A No, I don't need to step down.

2 Q Okay. Let me show you -- I'll come back up here
3 and show you a little bit closer. This is State's 42.
4 Does that appear to have a sign on it says Eddie's
5 Disco?

6 A Yes, that's clear.

7 MR. THORNTON: Court's indulgence, your Honor,
8 please. Thank you, Mr. Wilson. I've got nothing else.
9 Please answer any questions Defense has.

10 MR. MCGUIRE: I've got no questions for you, sir.
11 Thank you.

12 THE COURT: Any objection to Mr. Wilson being
13 excused?

14 MR. MCGUIRE: No.

15 MR. THORNTON: None from the State, your Honor.

16 THE COURT: You're excused, sir. Thank you. The
17 State will call their next witness.

18 MR. THORNTON: Thank you. Your Honor, at this
19 time, the State would ask that you take judicial notice.
20 I've got a printout from the U.S. Naval Observatory of
21 when sunset was on November the 15th, 2009. And I would
22 seek to introduce a printout of that, which would have
23 been sunset -- sunrise at 6:52 a.m., sunset at 5:22,
24 with an end at twilight at 5:48.

25 THE COURT: Any objection?

1 MR. MCGUIRE: No, ma'am.

2 MR. THORNTON: State's 43, for the record, we move
3 it into evidence?

4 THE COURT: Thank you.

5 MR. THORNTON: May I now pass it up to the Court?

6 THE COURT: It is in evidence. Thank you.

7 MR. THORNTON: Thank you, your Honor.

8 THE COURT: And for the record, Wanda, tell me what
9 number that is.

10 COURT REPORTER: 43.

11 THE COURT: Thank you.

12 ITEM IDENTIFIED AS PRINTOUT FROM
13 THE U.S. NAVAL OBSERVATORY, DATED
14 NOVEMBER 15, 2009, MARKED STATE'S
15 EXHIBIT NUMBER 43, ADMITTED AS EVIDENCE.

16 MR. THORNTON: State calls Jay Simmons to the
17 stand. I'm sorry for the delay, Judge. He should be
18 here momentarily.

19 THE COURT: That's okay.

20 MR. THORNTON: Your Honor, there is a matter, a
21 brief matter of law, we could take up while the witness
22 is coming.

23 THE COURT: Come on up.

24 MR. THORNTON: Maybe we can handle it before the
25 next witness.

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1 THE COURT: Please.

2 ON-THE-RECORD BENCH CONFERENCE,

3 OUT OF HEARING OF JURORS:

4 MR. THORNTON: This involves the pictures that we
5 discussed. It won't be through this witness. It would
6 be through the next witness, Ms. Asia Palmer, the two
7 blood stains that come back to Mr. Daise on his door.
8 Obviously, he has a cut on his hand which is evidenced
9 in the picture that Mr. McGuire's already mentioned that
10 we will be moving into evidence, also, if we haven't
11 already. I'll have to check.

12 THE COURT: Okay. We haven't had this issue
13 flushed, I understand, and we haven't talked about it.

14 MR. THORNTON: Right.

15 THE COURT: And I need to hear that.

16 MR. THORNTON: That's fine.

17 THE COURT: So, you want to take a break after
18 this?

19 MR. THORNTON: After this witness, we would need to
20 take that up.

21 THE COURT: Let's do a break.

22 MR. THORNTON: Because it would be the next
23 witness.

24 THE COURT: Okay. Thank you.

25 MR. THORNTON: Thank you, ma'am. Just wanted to

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1 give you a heads up.

2 THE COURT: I appreciate it.

3 END BENCH CONFERENCE.

4 MR. THORNTON: Your Honor, with the Court's
5 permission, I'll go see what the holdup is.

6 THE COURT: Okay.

7 MR. THORNTON LEAVES COURTROOM.

8 MR. THORNTON ENTERS COURTROOM.

9 MR. THORNTON: Your Honor, may we approach?

10 THE COURT: You may. Would now maybe be a good
11 time to go ahead and take a break?

12 MR. THORNTON: Yes, ma'am.

13 THE COURT: Okay. Ladies and gentlemen of the
14 jury, there are a couple of matters of law I need to
15 take up with the attorneys. I need to send you back to
16 your jury room again. Do not discuss this case. It
17 wouldn't be appropriate to. I look forward to seeing
18 you in just a few minutes. Thank you.

19 BAILIFF: Thank you, your Honor.

20 JURORS LEAVE COURTROOM 12:07 P.M.

21 BAILIFF: Jury is clear, your Honor.

22 ON-THE-RECORD BENCH CONFERENCE, OUT
23 OF HEARING OF JURORS, RE WITNESS

24 JAY SIMMONS:

25 THE COURT: All right. Yes?

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1 MR. THORNTON: Your Honor, I --

2 THE COURT: It's to Mr. Simmons.

3 MR. THORNTON: Yes, ma'am. I've got a witness, Jay
4 Simmons. He's outside. He's actually under current
5 charges. He's represented by Anthony Dore. That's why
6 Mr. Dore's been here. Mr. Simmons is refusing to take
7 the stand.

8 THE COURT: Um-hmm.

9 MR. THORNTON: And so, you know, I need to, I guess
10 bring him in and have the Court -- he's under subpoena.
11 He was properly subpoenaed. He has pertinent
12 information, and I'm going to ask the Court to -- to
13 force him to take the stand. And then, you know, I've
14 told him, just told him outside in front of his lawyer
15 all I wanted him to do is get on the stand and tell the
16 truth, and he says he's refusing to take the stand. So,
17 I need to have him ordered to take the stand.

18 THE COURT: Okay. Go ahead and sit down. Mr.
19 MacDougall.

20 MR. MACDOUGALL: Your Honor, Mr. Simmons, I'm
21 assuming, not even met him nor having spoken to his
22 lawyer, has a *Fifth Amendment* right that he can invoke.

23 THE COURT: I think he has to come up, though, and
24 take the stand and invoke it.

25 MR. MACDOUGALL: Right. And I think he's

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1 communicated through counsel -- I don't -- I'm not
2 disagreeing with the Court, I just want to create that
3 record, but it doesn't necessarily -- right.

4 MR. THORNTON: And Judge, just so I can clarify
5 that, he's not under charges having anything to do with
6 this incident. He just has other charges that Mr. Dore
7 represents him on. So, there's nothing that he can, --
8 you know, there's nothing about this. He's given a
9 prior statement, --

10 THE COURT: Um-hmm.

11 MR. THORNTON: -- which Defense counsel has. It's
12 actually a pretty extensive prior statement to law
13 enforcement; that he's not charged; he's not going to be
14 charged with it, you know, unless he gets up on the
15 stand and says that he did it, which he's not going to.
16 It's -- you know, all I want him to do is testify and to
17 the truth in conjunction with the prior statement he's
18 given. So, there is no -- so if I'm -- if I've confused
19 the Court, I apologize. He's not under charges for this
20 incident.

21 THE COURT: I understand.

22 MR. THORNTON: I just brought that up so you know
23 why he has an attorney with him.

24 THE COURT: Okay. And I understand that. My
25 question, though, you all, is, is that we bring him in

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1 here; we sit him down; he can invoke his *Fifth Amendment*
2 right. My question is, is that done in the presence of
3 the jury? Or does it have to be?

4 MR. THORNTON: I think -- yeah, I think, Judge, and
5 if you -- I'll have to do a little research on it, but I
6 think it would have to be done in front of the jury.
7 But I'm going to ask the Court, obviously, to instruct
8 him to do it anyway, or give some reason. I mean, you
9 can't just, as a witness, walk in and assert the *Fifth*
10 with no background, no, you know, no reasoning behind
11 it. Otherwise, no witness who ever didn't want to come
12 to court would be able to testify. They would just walk
13 in and, you know, plead the *Fifth*. There has to be some
14 basis.

15 THE COURT: Let's do this. Let's go ahead and take
16 a ten-minute break. Why don't you do the research for
17 me very quickly. We're going to do our own research, as
18 well, but again, I am interested in how we have to do
19 that. Number one, I would tend to agree with you, that
20 you need to call him as a witness; he needs to get up
21 here; he needs to invoke his *Fifth Amendment* right, but
22 I don't know how I force him to testify. So, again, I
23 mean, I can tell him he needs to be truthful, but again,
24 I need you all to do some research for me. Okay?

25 MR. THORNTON: That's fine, your Honor.

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1 THE COURT: All right.

2 MR. MACDOUGALL: Just before we take a break, we
3 would object throughout to any implication of the *Fifth*
4 *Amendment* privilege in the presence of the jury. We
5 think that should be taken up outside of the presence of
6 the jury. If the Court's going to compel him to testify
7 and immunize him, which the Court has the power to do.

8 THE COURT: Okay.

9 MR. MACDOUGALL: Then, you can put him in jail, if
10 you need to.

11 THE COURT: Okay.

12 MR. MACDOUGALL: But if you immunize him, the law
13 will show that he can be compelled to testify under
14 threat of being detained.

15 THE COURT: Okay. And this has nothing -- and his
16 testimony here has absolutely nothing to do with the
17 pending charges against him?

18 MR. THORNTON: No, ma'am.

19 THE COURT: Okay.

20 MR. THORNTON: In addition to that, your Honor, --

21 THE COURT: Well, is there any reason why I can't
22 immunize him, then?

23 MR. THORNTON: Well, --

24 THE COURT: I mean, quite frankly, from anything
25 he's going to testify to here?

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1 MR. THORNTON: Yes, ma'am, I'm fine. You know, I'm
2 happy to do that, Judge. What I don't, however, what I
3 don't want him to do, -- you know, he is friends or has
4 been friends for years with the defendant. What I don't
5 want him to do is get up, and then, take ownership, you
6 know, of this, knowing that I can't do anything about it
7 if he's going to get up and lie and take ownership that
8 I'm the one that did it, suddenly, you know, in front of
9 the jury. Because then, there's nothing I can do about
10 it. I would immunize him as to everything he said in
11 his statement. If he wants to get up there and say I
12 plead the *Fifth*, and deny making the statement, that's
13 fine with me, too, Judge. Or if he -- even if he
14 doesn't want to deny, I've got -- I actually agree with
15 Mr. MacDougall, which, odd as that may seem, that I
16 think that it should be taken outside the presence of
17 the jury if he actually had a *Fifth Amendment* right, but
18 that shouldn't be done in front of the jury.

19 THE COURT: Okay.

20 MR. THORNTON: However, he could certainly refuse
21 to answer or refuse to testify without using the words
22 '*Fifth Amendment*,' at which time, I'm going to
23 introduce the extrinsic evidence of his prior
24 inconsistent statement under 613(b). Either way works
25 for me. So, he doesn't have to use the words, if

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1 they're afraid the words '*Fifth Amendment*' would taint
2 it, I'm fine if he wants to do that part. I just need
3 him in the chair to say he's not going to cooperate, and
4 he's not, you know, going to -- he's not admitting that
5 prior statement. And then, I'll just put Officer
6 Jeremiah Fraser up, who's actually under, I think,
7 subpoena from both of us, to testify as to what he told.

8 THE COURT: So, your question would be, you would
9 put him up here, you wouldn't want him necessarily to
10 invoke his *Fifth Amendment* rights. He's just going to
11 say I refuse to testify.

12 MR. THORNTON: Yes, ma'am.

13 THE COURT: Once he says I refuse to testify,
14 you're going to ask him did you give a statement to
15 Lieutenant Fraser? And then, when he says no, --

16 MR. THORNTON: Or, if he says I still refuse to
17 answer. Because it's refusing to admit --

18 THE COURT: I agree. So then, at that point,
19 then, you call Fraser up, and yeah.

20 MR. THORNTON: To testify as to what he told him,
21 yes, ma'am.

22 THE COURT: Okay.

23 MR. THORNTON: And then, there's no *Fifth Amendment*
24 issue, and he's not charged in conjunction with this
25 case. I mean, I'm not trying to create, you know, an

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1 issue here; but he's subpoenaed; he's got pertinent
2 information; he gave it to law enforcement; it was
3 turned over to the Defense. I just need to put him in
4 the chair.

5 MR. MACDOUGALL: Your Honor, if I may, I'm not Mr.
6 Simmons' lawyer. However, what I anticipate Mr.
7 Simmons' lawyer will say is that every witness has the
8 right to invoke his *Fifth Amendment* privilege. And
9 then, the State, with the Court's approval, can either
10 immunize them or not. I think what Mr. Thornton is
11 saying, and I do disagree with him, as he anticipated,
12 you can't immunize a little bit but hold over the threat
13 of prosecution in other parts of the witness's
14 testimony. You're either immunized for the subject
15 matter of the conduct or you're not. If you're going to
16 immunize him, that's fine. There will be some very
17 serious cross-examination. What we don't want to have
18 happen is have -- have Mr. Thornton marry Mr. Simmons to
19 his written statement, and then, sit down. Because
20 then, he's testifying without the opportunity for cross-
21 examination.

22 THE COURT: Mr. MacDougall, what happens, though,
23 if he gets up here, -- and if we immunize him from this,
24 he says he did all this? I mean, what do we do then?

25 MR. MACDOUGALL: Well, then, --

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1 THE COURT: And you know it's an untruthful
2 statement, or we believe it's an untruthful statement.

3 MR. MACDOUGALL: Your Honor, I have no idea what
4 he's going to say.

5 THE COURT: I don't either.

6 MR. MACDOUGALL: And but, I will tell you that the
7 State would have had an opportunity to compel him under
8 oath in a grand jury and through all kinds of other
9 means to lock -- lock down -- down that statement. Now,
10 if they've done that, they have no fear of immunizing
11 him. If they haven't done that, they should have done
12 it.

13 MR. THORNTON: They may do that in D.C., Judge. We
14 don't have an investigative grand jury that we can
15 compel and lock in testimony with, except for the one
16 that we did in Saint Helena, which deals with mob
17 issues, as you well know, because you're the judge that
18 sat on it. We don't even -- we're not even allowed in
19 the grand jury room. So, that's just -- that's a
20 ridiculous statement. We don't have the ability.

21 THE COURT: Let me ask you a question, then. Mr.
22 MacDougall, if we don't in some way aren't able to use
23 his previous statement, as Mr. Thornton said, any
24 witness that's subpoenaed in a case could get up here
25 and say I refuse to testify. Where would that leave us

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1 in every single criminal case?

2 MR. MACDOUGALL: Well, that's -- that's not just
3 true in the District of Columbia. Mr. Thornton, as --
4 as he oft is, is mistaken. It's true all over the
5 country in the federal court system. You can compel --
6 you don't need to have a grand jury. You can compel a
7 witness to testify before a justice of the peace, before
8 a notary, and get him under oath. Now, if you do that,
9 and then, they lie on the stand, and you've immunized
10 them --

11 THE COURT: Then you can --

12 MR. MACDOUGALL: Exactly. And that's what you do
13 with witnesses that you're concerned about what their
14 testimony's going to be or whether they're going to
15 assert their *Fifth Amendment* privilege. I'm not going
16 to do his lawyer's job for him, but his lawyer is likely
17 to say that, when he takes the stand, he doesn't know
18 what questions he's going to be asked. He doesn't know
19 whether they're going to relate to what his role the
20 night of and whether the statute of limitations has run.
21 and the only thing he can protect himself with is the
22 *Fifth Amendment*.

23 COURT REPORTER: I'm sorry, the only way he can
24 protect himself --

25 MR. MACDOUGALL: The only thing he can protect

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1 himself with is the *Fifth Amendment*.

2 THE COURT: With the *Fifth Amendment*.

3 MR. THORNTON: Your Honor, my response to that is,
4 he just said that, well, if you put him under oath, that
5 would make a difference; you could put him up. That's
6 not what 616(b) says. 613(b) says, if a witness has
7 made a prior statement and it's inconsistent with their
8 testimony, i.e., if they're not testifying or refuse
9 to, or refuse to answer questions, you can advise them
10 of the date, place, and to who they made the statement,
11 and if they refuse to admit -- it's not deny -- if they
12 refuse to admit the statement, you can then use the
13 prior inconsistent statement. You know, and I know you
14 did not want us to dump law on you, Judge, but I've
15 got, you know, *State versus Bixby* is a death penalty
16 case --

17 THE COURT: Um-hmm.

18 MR. THORNTON: -- in which they used this very
19 rule. It's very clear at 613(b), *State versus Bixby*,
20 which I actually have an extra copy of, your Honor,
21 which I can pass up.

22 THE COURT: Any chance lunch is here yet?

23 BAILIFF: Pardon me?

24 THE COURT: Any chance lunch is here yet?

25 BAILIFF: You have to ask Al.

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1 THE COURT: Al, any chance lunch is here? Are you
2 going to get it?

3 BAILIFF: No, ma'am. I'm not to pick it up 'til a
4 quarter 'til one.

5 THE COURT: Okay.

6 BAILIFF: To be fair to all sides.

7 THE COURT: All right. Okay.

8 MS. HENDERSON: Would you like *State versus Bixby*?

9 THE COURT: Please.

10 MR. THORNTON: For the record, your Honor, it's 388
11 *South Carolina 528, 698 Southeastern 2d 572*. I mean,
12 this is a very common law, Judge. I've used it in front
13 of you before. This is not, you know, this is not
14 anything unusual. We have witnesses testify
15 consistently, you know, fairly frequently. That's what
16 the rule is designed for. And again, your Honor, it's
17 613(b), extrinsic evidence of prior inconsistent
18 statements of witnesses. That's what the State's
19 position would be, your Honor.

20 MR. MACDOUGALL: May I be heard whenever the Court
21 is --

22 THE COURT: Yes, sir.

23 MR. MACDOUGALL: This isn't a prior inconsistent
24 statement, because the witness won't be testifying. Mr.
25 Daise has a very fundamental right that trumps any case

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1 law Mr. Thornton wants to -- wants to cite to confront
2 witnesses brought in against him. If this witness comes
3 in, and -- and he refuses to testify, and Mr. Thornton
4 then seeks to introduce his statement, that's not prior
5 inconsistent statement. That's hearsay. That's out-of-
6 court evidence, and the witness is sitting right there.
7 This man and his lawyers have a right to confront that
8 witness with whatever statements he makes from the
9 stand, and that's the fundamental issue.

10 THE COURT: All right. Well, let me go back and
11 read *Rule 613*. Let me read *Bixby*. You can give me
12 whatever you need that you find as far as case law's
13 concerned, and we'll just take a break. Okay?

14 MR. MACDOUGALL: Thank you.

15 THE COURT: Okay.

16 MR. MACDOUGALL: Is this a lunch break, your Honor?

17 THE COURT: Sir?

18 MR. MACDOUGALL: Is this a lunch break?

19 THE COURT: No. Unfortunately, we're -- the jurors
20 don't have any lunch, and I apologize. They're going to
21 pick it up at a quarter 'til. I'd love to go ahead and
22 say let's take a lunch break.

23 BAILIFF: We can try to get it here as quick as
24 possible.

25 THE COURT: Let's do that. Let's go -- let's go

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1 ahead and take our lunch break, you all. It's a quarter
2 after. Be back, if you all would, about 1:15ish, if
3 that's fine with you. Over the lunch hour, if you find
4 some case law, will you all either call us, email us,
5 something, so we can be reading it? I don't want to
6 just -- again, I have no problem with case law being
7 dropped on me when the issue just comes up. That's not
8 a problem. Just as soon as you've got it, give it to
9 me. Okay?

10 MR. THORNTON: Yes, ma'am.

11 THE COURT: I appreciate it, you all. Thanks.

12 MR. MCGUIRE: Thank you, your Honor.

13 MR. MACDOUGALL: Yes, ma'am.

14 END BENCH CONFERENCE.

15 OFF THE RECORD 12:07 P.M.

16 BACK ON THE RECORD 1:25 P.M.

17 CONTINUE ON-THE-RECORD BENCH

18 CONFERENCE RE WITNESS JAY

19 SIMMONS; ALSO, BLOOD EVIDENCE:

20 THE COURT: Thank you all. Please be seated. Do
21 we need to wait for the Solicitor, Mr. Thornton?

22 MR. THORNTON: No, ma'am. The State's ready to go.

23 THE COURT: All right. We need to talk about
24 *Douglas versus the State of Alabama*. My law clerk
25 actually had found it before you all gave it to us, but

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1 we appreciate it. She *Shepardized* it. And Mr.
2 Thornton, what are your thoughts?

3 MR. THORNTON: At this point, Judge, what I will
4 offer to do, again, -- I don't think it's ideal, but
5 what I'll offer to do is I'll immunize. I mean, I'll
6 offer immunity.

7 THE COURT: You have to give him transactional
8 immunity.

9 MR. THORNTON: Yes, ma'am. I understand.

10 THE COURT: Okay. Just so we're clear. Okay.
11 Have you spoken with Mr. Dore?

12 MR. THORNTON: I have not.

13 THE COURT: And I see him in the back.

14 MR. THORNTON: I wanted to come in and address the
15 issue with you before I said anything, but I believe
16 we'll do that. So, if you want me to go ahead and talk
17 to Mr. Dore about that, I'll do that right now.

18 ON-THE-RECORD BENCH CONFERENCE

19 OUT OF PRESENCE OR JURORS:

20 THE COURT: We need to, and correct me if I'm
21 wrong, we also had another issue we need to take up
22 regarding the blood found at Poppy Hill Road address?

23 MR. THORNTON: Yes, ma'am.

24 THE COURT: That belongs to Mr. Daise.

25 MR. THORNTON: That's correct.

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1 THE COURT: Can we take that up, as well?

2 MR. THORNTON: Yes, ma'am.

3 THE COURT: All right. You all, again, all I know
4 is there was some blood found on, my understanding, it's
5 a wall, is 100 percent Mr. Daise's. I understand we've
6 been talking about a cut on his hand.

7 MR. THORNTON: Yes, ma'am.

8 THE COURT: Help me out in the relevance.

9 MR. THORNTON: The State's position is, Judge, it's
10 actually become more relevant after Mr. McGuire got up
11 in his opening, you know. One of the things that we had
12 to be very careful with because your Honor told us be
13 careful, and the Solicitor had to watch, was domestic
14 abuse, and how much of it would come in and not come in.
15 Mr. McGuire had copies of the photographs. There's two
16 photographs taken of the door into Mr. Daise's bedroom.
17 There are two blood stains on there. They came back a
18 hundred percent to Mr. Daise. Mr. Daise has a cut on
19 his hands. You know, his argument that he got up and
20 talked about in opening argument was, and he kept
21 repeating to the jury, you'll see this cut, and there's
22 no way that that cut made the blood on his pants at that
23 time because it's too small, which means it came from
24 some other time.

25 Well, when the police go over and take photographs

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1 of his residence, there's blood on his door, meaning,
2 you know, it's very likely it could have been fresh and
3 we can't tell that for sure, but that's weight, not
4 admissibility. So, there is --

5 THE COURT: Give me a minute. You're going to have
6 to connect the dots for me. I apologize, so.

7 MR. THORNTON: Okay. He has a cut on his hand.

8 THE COURT: And what do you allege that that came
9 from?

10 MR. THORNTON: The cut on his hand.

11 THE COURT: Okay.

12 MR. THORNTON: You mean what do I allege the blood
13 came from? He has blood mixed with the victim's blood
14 on his pants.

15 THE COURT: His blood mixed with the victim's
16 blood.

17 MR. THORNTON: Mixed with the victim's blood, on
18 his pants.

19 THE COURT: Okay.

20 MR. THORNTON: There is also a cut on his hand.

21 THE COURT: Okay.

22 MR. THORNTON: Which is where we think that the
23 blood came from.

24 THE COURT: Okay, his.

25 MR. THORNTON: Their allegation is --

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1 THE COURT: Where his blood came from?

2 MR. THORNTON: Yes, ma'am.

3 THE COURT: Okay.

4 MR. THORNTON: Their allegation, of course, is
5 that, well, this cut on his hand is so small, it
6 couldn't have come from that. He went through great
7 pains to do that. But there's also blood on his door.
8 So, the State's relevance is, it's a fresh cut, very
9 likely could have happened during the -- during the
10 altercation where he's committed double homicide with a
11 firearm. He's got a cut on his hand. He's got his
12 blood and her -- and the victim's blood on his pants.
13 He also has his blood on his door. Because their whole
14 argument in the opening was, well, it couldn't have come
15 from that cut because there's not enough blood. Well,
16 there's additional blood that they saw when they got to
17 his residence. That's the State's position on why it's
18 relevant, your Honor.

19 THE COURT: Okay. Are we also saying that some of
20 the blood that was on his pants could have come from the
21 residence? Is that what you're saying?

22 MR. THORNTON: No, I'm saying it came from -- I'm
23 saying both the blood on the door, --

24 THE COURT: I understand that.

25 MR. THORNTON: -- and then, his blood on his pants

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1 came from the cut on his hand. Their argument is it had
2 to be two different times, because the cut wasn't enough
3 to bleed that much. My argument is it was, because
4 there was blood in two places that were photographed
5 that day. One -- one on him, his pants.

6 THE COURT: Right.

7 MR. THORNTON: And one on his doorway, into his
8 bedroom.

9 THE COURT: Okay. Can I see the pictures of the
10 blood on the doorway. And can I see somewhere spatially
11 how big this blood spot is on his pants. It was tested?
12 It was tested?

13 And was the blood that was found on the pants, were
14 they able to see it to the eye? Was that, what the
15 officer saw --

16 MR. THORNTON: There is -- there are stains that
17 are visible, yes, ma'am.

18 THE COURT: Okay. And again, is there any way to
19 relate which stain is Mr. Daise's blood, allegedly,
20 versus Jeanine Mullen's?

21 MR. THORNTON: I believe that the ones under -- and
22 Mr. McGuire can correct me if I'm wrong. I believe the
23 ones under the -- on the pants pocket or near the pants
24 pocket are his, and the victim's blood is a little
25 further down the leg, if memory serves.

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1 MS. HENDERSON: Your Honor, may I approach?

2 THE COURT: Please.

3 MR. MCGUIRE: Actually, to be a little bit more
4 specific about the blood, the stain that the officers
5 talk about being very noticeable, they all noted in
6 their reports, is a stain just below the left, front
7 pocket of the jeans.

8 THE COURT: I see that in Exhibit Number 11,
9 State's 11.

10 MR. MCGUIRE: That -- the DNA on that comes back as
11 it's a mixed sample, with a majority contributor and a
12 minority contributor. Mr. Daise is the majority
13 contributor of that stain.

14 THE COURT: Okay. Okay.

15 MR. MCGUIRE: And technically, the analyst says
16 that Jeanine Mullen's DNA cannot -- Jeanine Mullen
17 cannot be excluded as the minority contributor.

18 THE COURT: Okay.

19 MR. MCGUIRE: They can't say it's her, but she
20 can't be excluded, meaning that there's obviously --
21 there's not an allele in the minority profile that's
22 inconsistent with her.

23 THE COURT: Okay.

24 MR. MCGUIRE: So. But they can't say it's her.
25 So, to say that their blood's mixed together is actually

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1 an inaccurate statement. And then, there's another
2 stain on the right leg, kind of below the right pocket.

3 THE COURT: I see that, in State's Exhibit 13.
4 Okay.

5 MR. MCGUIRE: A hundred percent Mr. Daise.

6 THE COURT: Okay.

7 MR. MCGUIRE: There's another stain, right leg, on
8 the shin.

9 THE COURT: Okay. And that's State's Exhibit
10 Number 26.

11 MR. MCGUIRE: Jeanine Mullen's DNA.

12 THE COURT: That's Jeanine Mullen's. Okay. And
13 now, as to State's 52, 53, and 54. Again, tell me what
14 -- your argument in opening statement was the blood
15 shown on the doorway, or on -- to the side of the
16 doorway cannot be Mr. Daise's finger cut. Is that
17 correct?

18 MR. MCGUIRE: No, I didn't mention the blood on the
19 doorway at all.

20 THE COURT: Okay.

21 MR. MCGUIRE: I said that the amount of blood that
22 would -- would get on jeans from that tiny little
23 abrasion, that it would have to be a greater cut than
24 that; that that tiny little abrasion on his knuckle
25 couldn't produce that kind of blood on his jeans.

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1 THE COURT: Okay.

2 MR. MCGUIRE: So, therefore, the blood on the jeans
3 had to be from some other earlier day and time.

4 THE COURT: Okay.

5 MR. MCGUIRE: I didn't mention anything about the
6 door.

7 THE COURT: Okay. And the State's argument is, is
8 that the cut on the jeans is from?

9 MR. THORNTON: Yes, ma'am. In other words, there
10 is a -- you know, again, Mr. McGuire got up and said
11 that it was too small for that. I don't recall him -- I
12 mean, he hasn't put up a case, if any yet. I don't know
13 if he's going to put up a doctor to say that, but there
14 is an abrasion on his hand that is current. It -- it's
15 an existing abrasion. There's a photograph of it. Not
16 the best of photographs, but there's a photograph of it.

17 THE COURT: Okay.

18 MR. THORNTON: He has blood on the pants that he
19 has on, his blood on his pants that he has on when law
20 enforcement arrests him.

21 THE COURT: Okay.

22 MR. THORNTON: He got up and -- Mr. McGuire got up
23 and stated that the blood on the pants had to be from
24 some other time; it couldn't have come from that cut.
25 But also, contemporaneously, with both of those things,

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1 there is blood stains on his doorway, which as your
2 Honor can see, are -- are visible to the eye.

3 THE COURT: Which may or may not be relevant, is
4 what you're saying.

5 MR. THORNTON: Yes, I mean, it --

6 THE COURT: It goes to weight, not admissibility.
7 Is that your argument?

8 MR. MCGUIRE: Yes, ma'am.

9 THE COURT: Is that your argument?

10 MR. THORNTON: It is.

11 THE COURT: So, your theory that this blood is
12 what?

13 MR. THORNTON: The theory is that both the blood on
14 his pants and that blood could have very well come from
15 the cut on his hand, which is contemporaneous with the,
16 you know, the allegation that he has just murdered two
17 people. I mean, he's got blood. And I would disagree
18 with Mr. McGuire. Your Honor has dealt with DNA before
19 with what is excluded. All that -- what that means is
20 every allele that they found matched her. They just
21 didn't have enough alleles to say it was her. So,
22 there's no DNA that says it's not her; otherwise, they
23 would have excluded her. So, I don't want the Court to
24 think that I was, you know, misstating what the finding
25 is. It -- she cannot be excluded as the minor

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1 contributor. Mr. McGuire is right. And the major
2 contributor is him. So, what arguably is at least
3 cannot be excluded as the victim's blood is perhaps a
4 better way to say it, mixed with the defendant's blood
5 on his pants.

6 THE COURT: Okay.

7 MR. THORNTON: A current cut on his hands and blood
8 on his door. And we can't -- and Mr. McGuire said this
9 in his opening, and he's right. No DNA person can say
10 when that blood was placed there, but he can't, either.
11 And nor can any DNA expert he has to say it was there
12 for an hour or, you know, or five hours. But they are
13 all contemporaneously seen by officers, you know, the
14 blood on the pants, the blood on the door, and the cut
15 on his hand. That's why we believe it's relevant.

16 THE COURT: Mr. McGuire.

17 MR. MCGUIRE: And I'm just going to straighten up
18 -- straighten up one thing. Everything Sean said was
19 -- was -- was pretty accurate, except you -- once --
20 if you get a stain from clothing and you test it for
21 blood; it test positive; and then, you throw it into the
22 DNA lab, --

23 THE COURT: Right.

24 MR. MCGUIRE: -- and they get two profiles, --

25 THE COURT: Um-hmm.

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1 MR. MCGUIRE: -- but a majority and minority, you
2 can't say that they're both -- they both came from
3 blood. All you know is that there was blood in the
4 stain; and then, once you divide it, you don't know
5 which one's blood and which one's not.

6 THE COURT: Right.

7 MR. MCGUIRE: You know there's DNA there. You can
8 have DNA on something, and then, blood comes on top of
9 it.

10 THE COURT: So, you could have the DNA that isn't
11 necessarily blood.

12 MR. MCGUIRE: Right. Right.

13 THE COURT: I understand that. And it still
14 creates a mixture, and it still appears to be blood.

15 MR. MCGUIRE: Sure.

16 THE COURT: I understand that.

17 MR. MCGUIRE: So, to say that people's blood is
18 mixing, you can't -- they can't do that.

19 THE COURT: Okay. I understand what your argument
20 it. Okay. Well, I do think it could be relevant.
21 Again, I mean, I hope that the State will link it up. I
22 do think it would go to the weight versus the
23 admissibility. I am going to allow that.

24 MR. THORNTON: Thank you, your Honor. Can I
25 retrieve those photos?

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1 THE COURT: Okay. And do you need an opportunity
2 to go speak to Mr. Dore?

3 MR. THORNTON: Yes, ma'am.

4 THE COURT: Okay. So, we'll just be at ease until
5 they come back. Okay?

6 MR. MCGUIRE: Yes, ma'am.

7 THE COURT: Okay. Thank you.

8 OFF THE RECORD 1:36 P.M.

9 BACK ON THE RECORD 1:50 P.M.

10 BY THE COURT:

11 BAILIFF: All rise. Please come to order.

12 THE COURT: Thank you all. Please be seated.
13 Thank you. Good afternoon, Mr. Dore.

14 MR. DORE: Good afternoon, your Honor.

15 MR. THORNTON: Your Honor, I spoke with Mr. Dore,
16 who is the attorney for Mr. Simmons, and Mr. Dore and I
17 discussed it. He indicates he feels like his client
18 will probably cooperate as long as he -- he feels like
19 he will, Judge, as long as he, he being Mr. Dore, is
20 allowed to be up here with him, and I have no objection
21 to that. I don't know if Defense does. I'm happy to
22 put him -- put Mr. Dore up here somewhere, you know, in
23 front of the Bar where his client can see him. He
24 thinks he will cooperate if -- if he's allowed to do
25 that.

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1 MR. MACDOUGALL: We would object to any special
2 arrangements for this witness. The witness has been
3 immunized and the witness has agreed to testify. He
4 ought to testify without being able to consult with
5 counsel. Once he begins to testify, he's waived his
6 *Fifth Amendment* right, and he has no need to Mr. Dore to
7 consult with him. So, I think it would be a real, you
8 know, imposition on the Defense, and would violate Mr.
9 Daise's *Sixth Amendment* rights if he were to have
10 counsel -- if this witness were to have counsel
11 available to advise him on specific answers.

12 THE COURT: Okay. Well, I think we are -- it's
13 clear that, once he takes the stand, Mr. Dore is not
14 going to advise him. I'd go ahead and just suggest, if
15 you're okay with that, Mr. Dore, is where Ms. Leggett is
16 sitting is direct eye line and shot to the witness
17 stand. Your client will be able to see you, he'll be
18 able to know you're here, so I think that's fine. And
19 you can sit right there. And again, it's an open
20 courtroom; you're entitled to sit there. As you know,
21 you cannot counsel him, no head bobbing, you know, all
22 that. I don't need to lecture in any way, Mr. Dore.
23 You've been around this game before, so.

24 Mr. Dore: Yes, your Honor.

25 THE COURT: So, again. Okay?

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1 MR. THORNTON: And also, to straighten out just for
2 the record, your Honor, Mr. Dore informs me he does not
3 believe, again, so long as his client -- and if that was
4 misinterpreted, I didn't mean to have counsel with Mr.
5 Dore. He basically wanted his attorney in the room with
6 him, is what I understood. Mr. Dore says he doesn't
7 think he's going to ask, or he's going to --

8 THE COURT: Invoke his *Fifth Amendment*?

9 MR. THORNTON: -- invoke his *Fifth Amendment*
10 rights. He just wanted to have Mr. Dore in the room
11 where he could see him.

12 THE COURT: Okay. And again, you know that you're
13 not to counsel him, obviously.

14 Mr. Dore: Yes, your Honor.

15 THE COURT: I don't need to tell an officer of the
16 Court what to do, particularly one as seasoned as you,
17 Mr. Dore.

18 MR. DORE: Yes, ma'am.

19 THE COURT: So, I appreciate you being here.

20 MR. DORE: Thank you, Judge.

21 THE COURT: Thank you.

22 MR. THORNTON: Thank you, your Honor.

23 THE COURT: Thank you. All right. Are you all
24 ready to go?

25 MR. THORNTON: State is ready, yes, your Honor.

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1 THE COURT: Defense ready?

2 MR. MACDOUGALL: The Defense is ready, your Honor.

3 THE COURT: Thank you. Time to bring the jury in,
4 Bob.

5 Bob's getting the jury, right, Norman?

6 BAILIFF: Yes, ma'am.

7 BAILIFF: Your Honor, the jury is entering.

8 JURY ENTERS COURTROOM 1:55 P.M.

9 BAILIFF: All right, your Honor. They're seated.

10 THE COURT: Thank you. Welcome back, ladies and
11 gentlemen. At this time we're going to go ahead and
12 continue with the State's case. Solicitor, or Mr.
13 Thornton, will you call the next witness, please.

14 MR. THORNTON: Thank you, your Honor. Jamelle Jay
15 Simmons.

16 THE COURT: Come on around, Mr. Simmons, right up
17 here, sir. Come forward, sir, right here. If you
18 would, place your left hand on the Bible and raise your
19 right hand, sir, Ms. Young will administer the oath,
20 sir.

21 MR. JAMELLE JAY SIMMONS: Oh, how are you doing?

22 MADAM CLERK: Do you solemnly swear you will
23 truthfully answer all questions asked of you by this
24 court, so help you God?

25 MR. JAMELLE JAY SIMMONS: I do.

1 MADAM CLERK: Please be seated. State your name
2 and spell it for the court reporter.

3 THE COURT: Mr. Simmons, I'm going to ask you to
4 speak up. You've got a little bit of a soft voice. So,
5 just pull that microphone right to you. Okay?

6 MR. JAMELLE JAY SIMMONS: Yes, ma'am.

7 THE COURT: Thank you, sir. Thank you.

8 MR. THORNTON: Thank you, your Honor.

9 JAMELLE JAY SIMMONS

10 DIRECT EXAMINATION, BY MR. THORNTON:

11 Q Mr. Simmons, where do you currently live, sir?

12 A With my mom.

13 Q All right. And what's your address?

14 A 19 Poppy Hill.

15 Q 19 Poppy Hill, is that Poppy Hill Road?

16 A Yes, sir.

17 Q All right. Back in November, specifically,
18 November the 15th of 2009, where did you live?

19 A 43.

20 Q I'm sorry. 43 Poppy Hill Road?

21 A Yes, sir.

22 Q Okay. And were you living with anyone at that
23 time?

24 A No.

25 Q You did not --

1 A Just my -- just my girl.

2 Q Okay. Well, that's what I'm asking you. Did you
3 live with Asia Palmer?

4 A Yes, sir.

5 Q All right. And did some -- did Mr. Daise, Earnest
6 Daise, the defendant in this case, did he stay at your -
7 - at your trailer -- or your house, excuse me,
8 sometimes?

9 A Sometimes.

10 Q All right. Did he have a key to it, in fact?

11 A Yes, sir.

12 Q And did he watch your house for you while you and
13 your girlfriend were away sometimes?

14 A Yes, sir.

15 Q Is that why he had a key?

16 A Yes, sir.

17 ITEMS MARKED STATE'S EXHIBIT NUMBER

18 44 AND 44-B, FOR IDENTIFICATION.

19 Q I'm going to show you what's been marked as 44-B.
20 I just want to ask you, have you -- do you recognize the
21 layout of that trailer?

22 A Yes.

23 Q Yes? I'm sorry, you need to speak up, Mr. --

24 A Yes.

25 Q Okay. And is that a -- I realize it's not to

1 scale, but is that a layout of where -- of your trailer
2 at 43 Poppy Hill Road, where you lived in November,
3 2009?

4 A Yes, sir. Yes, sir.

5 Q And can you point out, if you would, -- your Honor,
6 with the Court's permission?

7 THE COURT: Yes.

8 Q Would you step down for me, Mr. Simmons, please.

9 THE COURT: Sir, step down. He's going to want you
10 to point some things out. And Mr. Simmons, I'm going to
11 have to remind you to speak loudly so I can hear you.
12 Okay, sir?

13 MR. MACDOUGALL: Your Honor, may we approach?

14 THE COURT: Certainly.

15 ON-THE-RECORD BENCH CONFERENCE, OUT
16 OF HEARING OF JURORS:

17 MR. MACDOUGALL: Your Honor, the Defense objection
18 to the use of this diagram. No foundation's been laid
19 for it. It's not been published to the jury. It's not
20 admitted as an exhibit. This man did not prepare it. A
21 foundation could have been laid for it, but it hasn't.
22 The jury's now seen it. Mr. Thornton's asking him to
23 use it as a -- as an expository guide.

24 THE COURT: I think you asked him whether or not it
25 shows the layout. He said it's not to scale.

1 MR. THORNTON: I asked him if -- of his house at
2 43; that it's not to scale; the house --

3 THE COURT: Then, he should be able to testify as
4 to that.

5 MR. THORNTON: I can move it in through another
6 witness. It's not that big of a deal. Since I had him,
7 I was going to go ahead and do it. But I think we have
8 laid a foundation, Judge. I asked him if this was not-
9 to-scale, you know, the layout of his home or trailer, I
10 think I said, at 43 Poppy Hill.

11 THE COURT: I think you need to just do a little
12 bit more.

13 MR. THORNTON: Sure.

14 THE COURT: I mean, to establish, in fact, it is
15 exactly. And you may want to establish -- and I assume
16 you're getting ready to that, whose bedroom is whose.

17 MR. THORNTON: Yes, ma'am.

18 THE COURT: Is that what you're getting ready to
19 do?

20 MR. THORNTON: Yes, ma'am.

21 THE COURT: Okay. Just make sure, and again, I
22 don't think he has to be the person that drew it. I
23 think he has to be the one who says that's what it looks
24 like. And obviously, it's not coming into evidence.

25 MR. THORNTON: Yes, ma'am.

1 THE COURT: It's just a demonstrative exhibit at
2 this point. Okay?

3 MR. THORNTON: Yes, ma'am.

4 THE COURT: Okay.

5 MR. THORNTON: Thank you, your Honor.

6 THE COURT: Thank you.

7 END BENCH CONFERENCE.

8 BY MR. THORNTON:

9 Q Mr. Simmons, let me ask you a couple more
10 questions. I already said, obviously, that it's -- it's
11 not to scale, and it's actually written not to scale.
12 You testified a minute ago that this is the layout of --
13 or the layout of the home you used to reside in at 43
14 Poppy Hill. Is that correct?

15 A Yes, sir.

16 Q All right. And is this accurate, at least as far
17 as where the rooms were?

18 A Yes, sir.

19 Q Okay. And now, could you point out for me, if you
20 know, where Earnest Daise -- or, let me ask you this
21 first. Did Earnest Daise have a room there that he
22 used? Like a bedroom?

23 A Yeah.

24 Q All right. And could he come and go without you
25 knowing that he was coming and going, inside and outside

1 the residence?

2 A Yes, sir.

3 Q Could you describe for me how that -- how that
4 would happen? In other words, where is the room that he
5 used?

6 A On this end right here.

7 Q This end. This right rear bedroom?

8 A Yeah.

9 Q All right. Now, did you -- I see there's a rear
10 door and a front door. Which way would he be able to
11 come in without you knowing whether he was coming or
12 going?

13 A Front door.

14 Q Okay.

15 COURT REPORTER: I'm sorry. I'm sorry.

16 MR. THORNTON: And he had --

17 THE COURT: I apologize. I couldn't hear him from
18 here. I'm sorry, Mr. Simmons, if you'd just get a
19 little louder.

20 BY MR. THORNTON:

21 Q Did you indicate front door?

22 A Yes, sir.

23 Q Could he also come in the rear door?

24 A No, sir.

25 Q All right. So, he had a key and was able to come

1 and go as he pleased?

2 A Yes, sir.

3 MR. MACDOUGALL: Objection. Leading.

4 THE COURT: Okay.

5 BY MR. THORNTON:

6 Q Did he have a key?

7 A Yes, sir.

8 Q Could he come and go as he pleased?

9 A Yes, sir.

10 Q Thank you, sir. Just go ahead and have a seat for
11 me. Mr. Simmons, on November the 15th of 2009, did you
12 receive any phone calls from Earnest Daise?

13 A A couple.

14 Q All right. And what, if anything, did he ask you
15 to do?

16 A We didn't talk.

17 Q You didn't talk. Do you remember speaking with a
18 Detective Fraser with the Beaufort County Sheriff's
19 Office about this incident?

20 A No. I don't remember their names.

21 Q All right. Did you talk to an officer on or about
22 November the -- on or about November the 18th, November
23 the 20th, speak with a Jeremiah Fraser at the Beaufort
24 County Sheriff's Office, discussing several phone calls
25 that you made -- or excuse me -- that Earnest Daise made

1 to you, to come pick him up in the Dale area, and about
2 how he was very nervous?

3 MR. MACDOUGALL: Objection. Approach, your Honor?

4 THE COURT: Okay. Leading?

5 MR. MACDOUGALL: Well, more than that, your Honor.

6 THE COURT: Okay. Come on up.

7 ON-THE-RECORD BENCH CONFERENCE,

8 OUT OF HEARING OF JURORS.

9 MR. MACDOUGALL: May we go on the record, please.

10 COURT REPORTER: Do you need me?

11 MR. MACDOUGALL: Sure.

12 THE COURT: Do you want me to send the jury out?

13 MR. MACDOUGALL: Yes, I think that'd be a good
14 idea.

15 THE COURT: Do you think we ought to go ahead and
16 do that? You sure?

17 MR. MACDOUGALL: Sure.

18 THE COURT: All right. You all can step back.
19 Thank you.

20 END BENCH CONFERENCE.

21 THE COURT: Ladies and gentlemen of the jury, there
22 is a matter I need to take up with the attorneys. I'm
23 going to send you back to your jury room just briefly.
24 Please do not discuss this case. It would be
25 inappropriate to do so. We'll be right back with you.

1 JURY LEAVES COURTROOM 2:04 P.M.

2 CONTINUE ON-THE-RECORD BENCH

3 CONFERENCE, OUT OF PRESENCE OF JURORS:

4 BAILIFF: Jury is clear, your Honor.

5 THE COURT: Yes, sir.

6 MR. MACDOUGALL: Your Honor, my objection is as
7 follows: under 613(a), Mr. -- Mr. Simmons, as I -- as I
8 heard and as I wrote down his testimony, denied making
9 phone calls. The question he answered:

10 *Did you make phone call?*

11 *No, we didn't speak.*

12 THE COURT: Um-hmm.

13 MR. MACDOUGALL: In order to cross-examine and
14 confront him with a prior inconsistent statement, you're
15 only allowed to use prior inconsistent statements
16 relating to that statement, to that statement for which
17 he had made prior inconsistent statement. What Mr.
18 Thornton was doing was reading a whole lot of other
19 stuff in about what was said and who said it and so
20 forth. He's going to do it step by step. If he wants
21 to rely on 16 -- 613(a), that's what he has to do.

22 THE COURT: I think he was attempting to do that.
23 I think maybe he overstepped on one -- he had to ask him
24 (a) whether or not any phone calls were made. He denied
25 it. And then, he went back and said;

1 *Do you remember making these phone --*

2 or, I'm sorry:

3 -- *giving a statement to Officer Fraser.*

4 And he's required by the rule to lay it out.

5 MR. MACDOUGALL: Well, --

6 MR. THORNTON: That's correct, your Honor, and that
7 is incorrect on what the rule is. I don't have to go
8 piece by piece, line by line, with every single fact,
9 one at a time. What the rule says is you -- you can
10 introduce extrinsic evidence of a prior inconsistent
11 statement. He has given a statement that says they
12 never spoke. He gave a statement to Corporal Fraser
13 that, among other things, said they did speak, in fact,
14 that he came -- he called and asked him to come and pick
15 him up in Dale; that he went into greater detail. I
16 don't have to go line by line through the statement.
17 The rule says, if he does not admit to making the prior
18 statement -- not deny it, because that's -- that's a
19 different, you know, that's a different standard.

20 THE COURT: Um-hmm.

21 MR. THORNTON: Because otherwise, *I don't remember*
22 would be --, you know, you wouldn't be able to use
23 613(b). If he fails to admit the statement, which he --
24 I was just in the process of waiting for an answer,
25 then, you go into extrinsic evidence of the prior

1 statement, which, typically, is the officer testifying.

2 So, you know, there's no -- there's no -- and
3 again, if there's something I'm unaware of, but there is
4 no case law I know of that says you have to go fact by
5 fact through a two- or three-page statement and ask him
6 each fact, and wait for him to -- to not admit each
7 fact. It says if he does not admit the prior statement.
8 I was going as a whole, because part of that rule
9 clearly says, Judge, I have to tell him what the
10 substance of the statement is. If I can't do that,
11 then, I don't know whether he's going to admit or deny
12 it.

13 THE COURT: Mr. MacDougall.

14 MR. MACDOUGALL: Your Honor, what he was well on
15 his way to doing was reading the entire statement in,
16 which has all sorts of activity having nothing to do
17 with did you speak to him by phone that day. No one's
18 suggesting he has to go item by item, but what he can't
19 do is use this opportunity on the first question to
20 which he receives an answer, Mr. Thornton receives an
21 answer to which he -- that he believes is inconsistent,
22 and then, read the entire statement in. Because, you
23 know, we don't know if this witness is going to testify
24 truthfully as to other matters in that statement or not.
25 And in order to effectively cross-examine him, we have

1 to hear his testimony, not hear Mr. Thornton's testimony
2 in reading of the entire statement. Thank you, your
3 Honor.

4 THE COURT: Okay. Mr. Thornton, I presume you're
5 going to go ahead and ask him again. We'll bring the
6 jury back out. Whether or not he recalls making a prior
7 statement. If he needs a copy of the statement, I know
8 you're not required to give it him, but you're supposed
9 to give it to Defense counsel. He should have an
10 opportunity to review it.

11 MR. THORNTON: He -- he made no written statements.
12 Defense counsel has all the notes of the investigative
13 report.

14 THE COURT: It's just a verbal report.

15 MR. THORNTON: Yes, ma'am.

16 THE COURT: Okay. Okay.

17 MR. THORNTON: And -- and I will tell the Court
18 there is an audio recording. It's not my intention to
19 introduce it, frankly, because there's -- Mr. McGuire
20 and I have talked about this, just like with the other
21 audio recorded issue, I think there are things that are
22 good and bad for me. I'm going to put the officer up.
23 If they want it, they have a copy of the statement. It
24 was turned over to them. They have everything that I
25 have about his statement, your Honor. So, they've --

1 they've got it.

2 THE COURT: Again, it's Officer Fraser's notes of
3 his oral statement.

4 MR. THORNTON: Yes, ma'am.

5 THE COURT: So I'm clear.

6 MR. THORNTON: Yes, ma'am.

7 THE COURT: Okay.

8 MR. MACDOUGALL: Your Honor, we're not contending
9 we weren't given the statement in discovery.

10 THE COURT: I understand that.

11 MR. MACDOUGALL: What we're objecting to is Mr.
12 Thornton reading the entire statement in, in response to
13 the first inconsistent statement that was raised.

14 THE COURT: I think he needs to ask him the
15 question, and ask him, and sort of lay a foundation for
16 it, and then, you can start asking questions about the
17 statement. Okay?

18 MR. THORNTON: Yes, ma'am.

19 THE COURT: All right. Let's bring the jury back.

20 BAILIFF: Yes, your Honor.

21 BAILIFF: Your Honor, the jury is re-entering.

22 JURY ENTERS COURTROOM 2:09 P.M.

23 BAILIFF: All right, your Honor, the jury is
24 seated.

25 THE COURT: Thank you. I'm sorry, Bob. I didn't

1 mean to cut you off. Ladies and gentlemen, welcome
2 back. At this time, Mr. Thornton, you can continue.

3 MR. THORNTON: Thank you, your Honor.

4 JAMELLE JAY SIMMONS, CONTINUE

5 DIRECT EXAMINATION, BY MR. THORNTON:

6 Q Just to reiterate a moment ago, Mr. Simmons, I had
7 asked you if you talked to Earnest Daise November the
8 15th, 2009, and you said you did not speak. Is that
9 correct?

10 A Yes, sir. No, I didn't.

11 Q Did you give a statement to Corporal Jeremiah
12 Fraser, Corporal at the time Jeremiah Fraser, indicating
13 that you, in fact, did speak with Mr. Daise?

14 A No, I didn't.

15 Q All right. Mr. Simmons, did you pick Earnest Daise
16 up on the evening of November the 15th, 2009, somewhere
17 after 6:00 p.m.?

18 A Yes, I did give him a ride.

19 Q You did give him a ride. Where'd you pick him up
20 from?

21 A Off the side of the road.

22 Q Where at?

23 A On the main highway.

24 Q All right. What -- what community or what area?

25 A I mean, I don't know what -- what --

1 Q Do you recall in the same conversation with
2 Corporal Jeremiah Fraser saying that you picked him up
3 off the roadway at the corner of -- or intersection of
4 Porches Hill Road and Keans Neck Road?

5 A I didn't know the names of the roads, sir.

6 Q So, you deny saying that?

7 A I -- I -- no. I didn't say that. I said no, he
8 said the names of the road. I said I don't know the
9 names of the road. He suggest that was the name of the
10 road.

11 Q But you deny you told him that.

12 A Deny I told him what?

13 Q That's probably a bad question, Mr. Simmons. Let
14 me ask it a different way. When Jeremiah Fraser told
15 you what the road names were, did you confirm, yes,
16 that's where you picked Earnest up at?

17 A I said I think.

18 Q Did you say you --

19 COURT REPORTER: I'm sorry. I said I what?

20 A I think. I didn't know for sure if that was the
21 names of the road. I don't know the name of the road.
22 I don't know the name. I mean, I don't know what to
23 tell you.

24 Q Did you -- all right. I'm sorry, sir. I didn't
25 mean to cut you off. Are you finished with that answer?

1 A Yes, sir.

2 Q Did you take officers out to that intersection
3 where you picked Earnest up?

4 MR. MACDOUGALL: Objection. Leading.

5 THE COURT: Okay. Overruled. You can ask the
6 question.

7 MR. THORNTON: Thank you, your Honor.

8 BY MR. THORNTON:

9 Q I'll go over it again. Did you take the officers
10 out to the intersection of Porch's Hill and Keans Necks
11 Road and indicate:

12 *Yeah, this is where I picked him up?*

13 A He made me walk -- he made me ride with him down
14 there.

15 Q Is that a yes?

16 A Yes.

17 Q So that, you did identify that as where you picked
18 Earnest up at?

19 A Off the main road.

20 Q I want to show you what's been marked as State's
21 Exhibit 14. There is a blip up here that says:

22 *Intersection of Keans Neck and Porch's*
23 *Hill Road.*

24 Can you tell on this map, is that the area that --
25 is that the intersection that you picked Mr. Daise up

1 at, at a little after 6:00, on November the 15th, 2009?

2 A Sir, like I tell you, I can't remember the names of
3 the road. I don't even know what that map -- what the
4 roads are. I'd just be pointing again, like, I don't
5 know.

6 Q So, you're denying that you took them to that
7 particular intersection.

8 A Sir, --

9 Q Or excuse me. Are you saying you don't know if you
10 took them to that intersection?

11 A Right.

12 Q Okay. Did you send Mr. Daise a text on -- from
13 your phone to his phone about -- excuse me, not about --
14 exactly 6:04 p.m., that said:

15 *On the way?*

16 A Yes.

17 Q And that was prior to you picking him up.

18 A Yes.

19 Q When you picked up Mr. Daise, how was he acting?

20 A As far as what?

21 Q As far as what was his behavior like? What did he
22 act like? How did he seem to you?

23 A He seemed all right.

24 Q He seemed all right? You didn't tell Corporal
25 Jeremiah Fraser on the -- on the -- excuse me -- that,

1 during the interview that's already been referenced,
2 that he acted like he had just gotten robbed, that he
3 was stressed?

4 A Those are not my --

5 Q You didn't tell them that?

6 A Those are not my exact words.

7 Q Well, what were your exact words?

8 A I don't remember, but I don't remember saying that.

9 Q So, you don't remember what you said.

10 A No.

11 Q The area -- I know you say you don't remember
12 whether you told them -- or you don't remember exactly
13 what intersection it was. Do you know where Earnest
14 Daise stayed when he wasn't staying at your house?

15 A No, sir. No, sir.

16 Q Do you know who Jeannie -- Jeanine Mullen is?

17 A Jeanine? Yes, sir.

18 Q All right. And who was she to Earnest?

19 A His girlfriend.

20 Q All right. Do you know where she lives? Or where
21 she lived?

22 A Yeah.

23 Q In 2009?

24 A Yes, sir.

25 Q And was the area that you picked up that you now

1 say you don't know exactly where it was, was that area
2 near Ms. Mullen's house?

3 A No, sir.

4 Q It wasn't.

5 A No.

6 Q So, you -- would you deny that it's within 1.6
7 miles of Jeanine Mullen's house?

8 MR. MACDOUGALL: Objection. Leading.

9 THE COURT: Overruled.

10 BY MR. THORNTON:

11 Q I'll ask it again. Would you deny that it's within
12 1.6 miles of Jeanine Mullen's house?

13 A That I picked him up?

14 Q Yes.

15 A No, it was not within a mile. It's further than a
16 mile.

17 Q How much further?

18 A I don't exactly know, sir.

19 Q And earlier, you said he was all right, and you
20 don't remember what his -- what your exact words were to
21 law enforcement. Is that correct? I'm sorry, Mr.
22 Simmons. I looked down. Was that correct?

23 A Yes.

24 Q All right. You don't remember, or do you remember
25 telling Corporal Jeremiah Fraser that Earnest was nearly

1 begging him [sic] to come pick him up, and Jay, meaning
2 you, told him he was on the way.

3 A No, I did not say that.

4 Q Where did you go after you picked him up?

5 A I went to the store, and then, went home.

6 Q What did you do with Earnest Daise?

7 A Dropped him off.

8 Q Where?

9 A Down the street.

10 Q Where down the street?

11 A Just down the street, on Poppy Hill.

12 Q Do you remember where?

13 A On Poppy Hill Road, sir.

14 Q Okay. I mean, do you remember where specifically
15 on Poppy Hill Road?

16 A Just down, almost to the tracks. That's about it.

17 Q And did the police show up at your home later that
18 evening?

19 A Yes, sir.

20 Q And between the time you dropped Earnest off after
21 picking him up and the time the police got there, did
22 you see him anymore that evening?

23 A No, sir.

24 Q Let me go back to something you testified to
25 earlier. You indicated that, at 6:04, you sent Mr.

1 Daise a text saying that you were on the way. Is that
2 correct?

3 A Yes, sir. I don't remember the time.

4 Q I'm sorry?

5 COURT REPORTER: Yes, what?

6 A Yes, sir. I said I don't remember the time, what
7 time it was.

8 Q Would it have been after 6:00 o'clock?

9 A I don't remember what time it was, sir.

10 Q I'm going to show you what's been marked as State's
11 Exhibit Number 56 for identification, and ask you whose
12 phone number this says is from. 843-263-1787. Whose
13 phone number is that?

14 A That's mine.

15 Q That's your -- your phone number?

16 A That's the phone number I was using.

17 Q All right. Does that -- does this picture indicate
18 a text from you, from your number, on November the 15th,
19 2009, at exactly 6:04 p.m.?

20 A I'm not denying I sent it. I said I don't remember
21 the time.

22 Q After looking at this, does that refresh your
23 memory it was 6:04?

24 A Yes, sir.

25 Q All right. Is that a yes?

1 A Yes, sir.

2 Q And you picked -- did you pick Earnest up after you
3 sent that text?

4 A Yes.

5 Q Do you remember what time you got home?

6 A I can't remember. That was a long time ago.

7 Q Do you remember telling Officer Fraser that your
8 girlfriend, Asia Palmer, got off at around 6:30 and was
9 generally home between 6:30 and 7:00, and you were home
10 before she made it?

11 A Yes, sir.

12 Q So, would it be fair to say you were home by 7:00
13 o'clock?

14 A Probably.

15 Q And you did not see Earnest Daise again until the
16 police got there. Is that correct?

17 A Correct.

18 MR. THORNTON: Court's indulgence, your Honor.

19 BY MR. THORNTON:

20 Q Mr. Daise -- I'm sorry, Mr. Simmons, let me ask you
21 a couple questions. You texted on the way. Is that
22 right? Does that mean you were obviously going to pick
23 him up?

24 COURT REPORTER: I'm sorry, he did not answer. You
25 *texted on the way*; and your answer was? You shook your

1 head.

2 A Yes.

3 Q I'm sorry.

4 A Yes, ma'am.

5 Q That's my fault. You do need to answer each
6 question, Mr. Simmons, so the court reporter can take it
7 down. I'll take responsibility for that. Did -- why
8 would you text him on the way? How did you know to go
9 pick him up, if you never spoke to Earnest?

10 A I don't remember.

11 Q All right. What was he -- was he walking or
12 driving when you got to him?

13 A Walking.

14 Q So, do you know what he -- what he usually drove?
15 When he had a vehicle, what did he drive?

16 A I mean, he drive all kind of vehicles.

17 Q Oh. Do you remember telling -- well, let me ask
18 you this. What did -- do you know what Jeanine Mullen
19 drove?

20 A Yes. Jeanine had a couple vehicles.

21 Q Did she have a white van?

22 A Yes.

23 Q Did Earnest drive that white van?

24 A Yes.

25 Q And was he in the white van when you picked him up

1 at -- some time after 6:00 o'clock?

2 A No, sir.

3 Q And you said earlier, you think you were home
4 somewhere around 7:00.

5 A Yes, sir.

6 MR. THORNTON: Court's indulgence, your Honor,
7 please.

8 BY MR. THORNTON:

9 Q I did have one question that's confusing me a
10 little bit, Mr. Simmons. If you never talked to
11 Earnest, and he wasn't calling you -- or, you said he
12 was calling you, but you never spoke to him, how would
13 you know where to go get him?

14 A I don't remember. I don't remember how -- how --
15 how I got in con -- oh, because the phone did pick up
16 for one slight second. He said he was on the country
17 side, and I just drove back that way. We never had a
18 conversation. If you look at the record, you will see.

19 Q All right.

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

21 THE COURT: You may.

22 ON-THE-RECORD BENCH CONFERENCE,

23 OUT OF HEARING OF JURORS:

24 COURT REPORTER: Sean? Sean?

25 MR. THORNTON: Yes. I'm sorry, Wanda. I

1 apologize. Please come on up.

2 COURT REPORTER: That's okay. Just want to make
3 sure you get what you need on the record.

4 MR. THORNTON: I have a bad habit of talking.

5 Your Honor, I believe at this point I've gone
6 through everything in the statement. He clearly denies
7 or didn't admit to making several pieces of the puzzle
8 that I will want to go into.

9 THE COURT: Um-hmm.

10 MR. THORNTON: This is more a procedural matter. I
11 would rather bring Corporal Fraser in to testify to the
12 inconsistencies, put Mr. Simmons back on the stand for
13 them to cross-examine him. If they'd rather cross-
14 examine him now, and then, -- but I mean, either way, I
15 think Corporal Fraser, I can introduce the extrinsic
16 evidence. He clearly did not admit making several
17 portions of that statement, and that's -- that's what
18 we'd seek to do.

19 THE COURT: I think, clearly, there are
20 inconsistencies. How would you want to do it?

21 MR. MACDOUGALL: We think we have a right to cross-
22 examine him before bringing the extrinsic witness in,
23 your Honor.

24 THE COURT: Um-hmm. Certainly, you can do it. So,
25 go ahead.

1 MR. MACDOUGALL: Thank you, your Honor.

2 THE COURT: We can bring him back up again and
3 again. Okay.

4 END BENCH CONFERENCE.

5 MR. THORNTON: Court's indulgence, please, your
6 Honor. I apologize.

7 THE COURT: Yes, sir.

8 MR. THORNTON: Thank you, your Honor. I have no
9 further questions. Mr. Simmons, please answer any
10 questions Defense counsel has for you.

11 THE COURT: Mr. MacDougall?

12 MR. MACDOUGALL: Thank you, your Honor.

13 JAMELLE JAY SIMMONS

14 CROSS-EXAMINATION BY MR. MACDOUGALL:

15 Q Afternoon, Mr. Simmons.

16 A How are you doing?

17 Q I'm going to ask you some questions that are --
18 well, first of all, my name is Mark MacDougall. You and
19 I haven't met before; have we?

20 A No.

21 Q I represent Earnest Daise over there. I'm going to
22 ask you a couple of questions about some of the things
23 that Mr. Thornton asked you in the last couple minutes.

24 MR. MACDOUGALL: May I approach, your Honor?

25 THE COURT: You may.

1 MR. MACDOUGALL: The Bench?

2 THE COURT: Yes, sir.

3 BY MR. MACDOUGALL:

4 Q Mr. Simmons, I was writing as fast as I could, but
5 in case I didn't get your statements down, I apologize,
6 and you can clarify them. But I heard you testify in
7 response to the -- to the State's questions that you
8 picked Mr. Daise up on a main highway. And I think,
9 when you were looking at the graphic, it was Porches
10 Hill Road and Keans Neck Road. Do you remember that
11 question and answer a few minutes ago?

12 A Yes, sir.

13 Q Now, do you recall being interviewed by an
14 investigator for the Defense named Bobby Watkins, on
15 April the 14th, 2012? Do you remember meeting with him?

16 A Bobby Watkins. How do he look?

17 Q I'm sorry?

18 A How do he look? I don't remember.

19 Q Well, --

20 A He was a detective or?

21 Q I'm sorry?

22 A Who is he?

23 Q He was an investigator. He's deceased now. He was
24 an investigator for the Defense, and he had a notary
25 with him. Remember that?

1 A I mean, I spoke to a lot of -- a lot of folks. I
2 don't remember, you know, what day or time, you know,
3 exactly talking about.

4 Q Do you remember signing a statement under oath?

5 A Signing a statement?

6 Q Yes.

7 A No, I never signed a statement.

8 Q Do you remember telling Mr. Watkins the following:

9 *They told --*

10 *referring to the police --*

11 *They told me that I had to go down*
12 *and talk to them. And I said, 'why can't*
13 *I' -- 'why?' I can talk to you now. And*
14 *they said, 'we try -- we trying to keep*
15 *you as a witness, so I would not be an*
16 *accessory after the fact.'* So, I went
17 *and told them the story.*

18 Do you remember telling Mr. Watkins that?

19 A No, sir.

20 Q Do you remember telling Mr. Watkins:

21 *So, I told the police that I had*
22 *picked Earnest up, because they were*
23 *trying to make me an accessory to the*
24 *crime, because they had my text saying*
25 *I would be there, but I never picked*

1 *him up.*

2 Do you remember telling Mr. Watkins that?

3 A Yes.

4 Q You remember -- you remember telling Mr. -- because
5 that's truth, right?

6 A (Witness didn't answer.)

7 Q So, I basically told --

8 COURT REPORTER: I'm sorry. He didn't answer.
9 *That's the truth, right?*

10 A Yes, sir.

11 Q So, the statement that I just read is the truth.

12 A Yes, sir.

13 Q The statement you gave Mr. Watkins is what really
14 happened.

15 A Yes, sir.

16 Q You didn't pick Bobby up the day -- I'm sorry, you
17 didn't pick Earnest up the day.

18 A You're confusing me. I -- I don't understand what
19 you're saying.

20 Q Okay. Let me try again. Your statement to Mr.
21 Watkins, I'm going to read it to you.

22 A Yes.

23 Q So, I told the --

24 A Mr. Watkins is the officer?

25 Q The investigator, the private investigator for the

1 Defense. Did you tell Mr. Watkins:

2 *So, I told the police that I had*
3 *picked Earnest up, because they were*
4 *trying to make me an accessory to the*
5 *crime, because they had my text saying*
6 *I would be there, but I never picked*
7 *him up.*

8 Did you tell Mr. Watkins that?

9 A Yes, sir, I did, sir.

10 Q Now, Mr. Thornton asked you if you dropped Earnest
11 Daise off that evening, the evening of November 15,
12 2009, and you said:

13 *Yes, somewhere around Poppy Hill.*

14 Is that right?

15 A Yes, sir.

16 Q Do you remember speaking -- you recall speaking to
17 Mr. Watkins.

18 A Yes, sir.

19 Q Okay. Did you tell Mr. Watkins on April 14, 2012:

20 *I left and went down to the race track*
21 *in Seabrook to see who was down there racing,*
22 *but I did not race. And when I left to go*
23 *down there, I left Earnest in my house.*
24 *After I left the race track, after seeing*
25 *who was racing, I went to Maryland Fried*

1 *Chicken. When I got to Maryland Fried*
2 *Chicken, and while I was still there at*
3 *Maryland Fried, I got a text from Earnest,*
4 *and the text said pick me up, or something.*
5 *And I text Earnest and I said I was on*
6 *the way.*

7 Did you tell Mr. Watkins that?

8 A Yes, sir. Yes, sir.

9 Q Did you also tell Mr. Watkins:

10 *After I left Maryland Fried, I came*
11 *back home. I was looking for Earnest.*
12 *I didn't see him. And someone, I think*
13 *it was one of the young guys in the area,*
14 *told me that Earnest was at the race*
15 *already.*

16 Did you tell Mr. Watkins that?

17 A Yes, sir.

18 Q Did you then tell Mr. Watkins:

19 *I came back home around 7:00 or*
20 *7:30 p.m., after dropping my girlfriend*
21 *off at my mom's house, and that is when*
22 *I saw Earnest again. And we were all*
23 *just standing around. And then, we all,*
24 *including Earnest, went down to Uncle Eddie*
25 *Simmons' house, and we were just down there*

1 *for about 45 minutes. And then, me and*
2 *Earnest came back to my house. And while*
3 *me and Earnest were talking in my yard*
4 *there at my house, my cousin, Deloran Wright,*
5 *came to my house, and he spoke to all of*
6 *us, and I remember he said something to*
7 *Earnest.*

8 Did you tell Mr. Watkins that?

9 A I don't remember all of that. There's some of it
10 you twist-up.

11 Q I'm sorry?

12 A It's -- I don't know. It's just the way you worded
13 it. It's just -- that wasn't the exact words. I don't
14 -- I don't understand.

15 Q But in substance, is that what you told Mr.
16 Watkins?

17 A Yes.

18 Q Do you recall Mr. Thornton asking you, and
19 according to my notes, a question about your
20 recollection of Mr. Daise's body language and how he
21 appeared? Do you remember that question?

22 A Yes.

23 Q And do you recall telling Mr. Watkins the following
24 in April, 2012:

25 *After that is when my girlfriend,*

1 Asia, walked in the yard as me and Earnest
2 were talking. And she called me in the
3 house, and she asked me if I had heard
4 what had happened, and I said, 'no.'
5 And she said, 'something happened to
6 Jeanine.' And I said, 'what happened?'
7 And she said, 'someone killed Jeanine.'

8 After that, I walked back outside
9 and I looked at Earnest, because I just
10 wanted to see his body language, and he
11 did not -- and he did not act like
12 someone who had just done something.

13 Then, as me and Earnest were talking,
14 his phone rang. He was talking to someone.
15 After his phone hung up, someone else called.
16 And at that time, my girlfriend was inside
17 crying, and I asked my girlfriend what
18 happened. She said, 'she did not know what
19 happened.'

20 MR. THORNTON: Objection, your Honor. It's
21 hearsay. I mean, he keeps talking about what Mr.
22 Simmons says someone else told Mr. Simmons. That part
23 is hearsay. He's reading a statement where Mr. Simmons
24 is referencing what Mr. Simmons' girlfriend said to Mr.
25 Simmons. 613(b) does not cure hearsay. It's still hear

1 hearsay if it's not Mr. Simmons saying it.

2 THE COURT: I understand.

3 MR. MACDOUGALL: Your Honor, may we approach?

4 THE COURT: You may.

5 ON-THE-RECORD BENCH CONFERENCE,

6 OUT OF HEARING OF JURORS:

7 THE COURT: Okay.

8 MR. MACDOUGALL: Your Honor, I didn't want to argue
9 this in front of the jury. Mr. Thornton asked this
10 witness where he was and how and what his perception and
11 what his presence, his perception was.

12 THE COURT: Right.

13 MR. MACDOUGALL: Of Earnest Daise.

14 THE COURT: Right.

15 MR. MACDOUGALL: We have a dramatically
16 inconsistent statement that the State has now been
17 given; the Court has in front of it. That inconsistent
18 statement includes a description of Earnest Daise'
19 demeanor. That's what I'm reading.

20 MR. THORNTON: But he can't testify. He still --
21 it doesn't fix, your Honor, hearsay. Hearsay is still
22 hearsay, and he is --

23 THE COURT: Where are you reading from?

24 MR. THORNTON: Well, there are two -- there are two
25 problems.

1 THE COURT: I understand you're saying that he said
2 someone said. My question is, on this, where is the
3 hearsay? Where are you reading from? What page are you
4 on?

5 MR. MACDOUGALL: It's at the top -- well, I was
6 reading from the top of the second page, your Honor.

7 THE COURT: Okay.

8 MR. THORNTON: And that's what the problem is,
9 Judge, because Mr. MacDougall, I have a nasty suspicion,
10 was also about to try to back-door in third-party guilt
11 and read the part about some mysterious man off the
12 Internet, which would also be hearsay, and third-party
13 guilt without bringing it to the Court. But clearly, he
14 cannot say any statement, well, that's what so and so
15 told me. He can say what Earnest told him, because he's
16 a party opponent. It's not hearsay. This is still
17 hearsay.

18 THE COURT: Right. Exactly. He can say what he
19 saw.

20 MR. MACDOUGALL: It's not being offered to show the
21 truth of the matter.

22 MR. THORNTON: Do what?

23 MR. MCGUIRE: It's not for the truth.

24 MR. MACDOUGALL: It's not being offered to show the
25 truth of the matter. It's being offered to show state

1 of mind, your Honor.

2 MR. MCGUIRE: It seems like a very integral part of
3 the hearsay definition.

4 THE COURT: Again, I don't see in the sentence what
5 we're looking at is his state of mind.

6 MR. MACDOUGALL: If you read to the bottom, the
7 bottom of that paragraph, your Honor, he talks about --

8 THE COURT: I'm listening.

9 MR. LEDDY: I mean, we're not offering it to prove
10 that somebody killed Jeanine. It's -- it's not offered
11 for the truth of the matter asserted, so, it's not
12 hearsay.

13 MR. THORNTON: Sure you are. Your whole case is
14 some other dude did it. So you are offering it.

15 MR. LEDDY: No, that's not what the point of the
16 statement is.

17 MR. THORNTON: There's -- it's right next to it.

18 THE COURT: Okay. All right.

19 MR. MACDOUGALL: It's not whether it's true or not.

20 THE COURT: I apologize, but back up. I,
21 apparently, wasn't hearing you. I don't understand
22 where you're stating what was the question directly, and
23 what were you reading? What portion of this?

24 MR. MACDOUGALL: I was -- I was reading the top
25 portion.

1 THE COURT: Top portion of it. Tell me where?

2 MR. MACDOUGALL: May I go to the first page, your
3 Honor.

4 THE COURT: Now, at the bottom. Okay.

5 MR. MACDOUGALL: The question that Mr. Thornton
6 asked --

7 THE COURT: Yes.

8 MR. MACDOUGALL: -- was what was his demeanor?

9 THE COURT: Okay.

10 MR. MACDOUGALL: And he gave him the answer. And
11 this is where he says:

12 *After that, I walked back outside,*
13 *because I just wanted to see his body*
14 *language. He didn't look like he'd*
15 *done anything.*

16 THE COURT: Uh-huh.

17 MR. MACDOUGALL: This describes the circumstances
18 that he was in.

19 THE COURT: Yeah. Again, I don't understand where
20 the hearsay is to that. That's him observing Mr. Daise.
21 And I'm missing the part that you're getting to hearsay.

22 MR. THORNTON: Your Honor, I was having trouble
23 following some of it, but what he -- I mean, as far as
24 on paper, but what he said was, what he was -- Mr.
25 MacDougall was reading was, and he got off the phone and

1 got on the phone with somebody else, and they told him.
2 That's hearsay. Now, I stopped him before he went any
3 further, because that's not the part that I think is --
4 is about to come out.

5 THE COURT: He was talking to someone after his
6 phone hung up?

7 MR. THORNTON: Yes, ma'am.

8 THE COURT: Someone else called. And at this time,
9 I -- all it says is someone else called. It doesn't say
10 what that someone said. It just says someone else
11 called. I'm presuming this is the phone call that was
12 telling Earnest what had happened, yes?

13 MR. MACDOUGALL: Yes.

14 THE COURT: I assume. But it doesn't say that. I
15 mean, I don't see the hearsay in it. I'm still waiting
16 for it.

17 MR. THORNTON: Okay. Judge, I heard -- I heard
18 something -- what's the next line after that? Because
19 that's what I heard. If I was wrong, I apologize.

20 THE COURT: It says:

21 *I asked my girlfriend what happened,*
22 *because she had called her mother. My*
23 *girlfriend was inside calling her mom's*
24 *house to see what happened, and no one*
25 *picked up, and they didn't know what was*

1 going on.

2 I mean, basically they were trying to figure out
3 what was going on, because she doesn't know, so no one
4 relays anything to her.

5 MR. THORNTON: Okay. I apologize. I guess I mis-
6 heard. But my fear is, if I were up here, we might as
7 well deal with this next issue. I'm assuming that we're
8 not going to reference the mysterious Internet man?

9 THE COURT: I mean, that's evidence of third-party
10 guilt, unless you have something to substantiate it.

11 MR. MACDOUGALL: No, your Honor. Mr. Thornton --
12 Mr. Thornton assumes too much, your Honor.

13 THE COURT: Okay. Thank you. Okay.

14 END BENCH CONFERENCE.

15 JAMELLE JAY SIMMONS, CONTINUE

16 CROSS-EXAMINATION BY MR. MACDOUGALL:

17 Q Okay. Mr. Simmons, let's talk about what really
18 happened that day. Again, we're talking about November
19 15, 2009. Remember that day?

20 A Yes, sir.

21 Q Now, you were home, and you were planning to go to
22 a four-wheel race that day. Isn't that right?

23 A Correct.

24 Q And you got off work that day, because there -- and
25 you were at work around 4:00 or 5:00 when you got home,

1 and because you drove -- you drove home at 4:00 o'clock,
2 thereabouts. Is that right?

3 A Correct.

4 Q Okay. When you got home, Earnest was at your
5 house, wasn't he, at 4:00 o'clock? Is that yes?

6 A Yes, sir.

7 Q Then, you left and you went down to the race track
8 in Seabrook to see was there racing, but you didn't
9 race; did you?

10 A No.

11 Q You left Earnest at your house. And after you left
12 the race track, after seeing who was racing, then, you
13 went to Maryland Fried Chicken. Is that right?

14 A Correct.

15 Q And when you got to Maryland Fry, and while you
16 were there, then, you got a text from Earnest. And the
17 text said, *pick me up*, or something. And you told --
18 told -- you texted back to Earnest you were on the way.
19 Is that right?

20 A Correct.

21 Q After you left Maryland Fried Chicken, you came
22 back home and you were looking for Earnest, but you
23 didn't see him. Is that right?

24 A Correct.

25 Q Then, you left your house again, and you were on

1 your way to the race track, and your girlfriend, Asia
2 Minor [sic], told you -- called you, asked you turned
3 around, and you came home. Is that right?

4 A Say that again.

5 Q You left the house again; and then, Asia called you
6 and asked you to come back. Is that right? Do you
7 remember that?

8 A No, I don't remember that.

9 Q Do you remember dropping your girlfriend, Asia, off
10 at your mother's house that night?

11 A No, I didn't drop her off there. She had her own
12 vehicle.

13 Q I'm sorry?

14 A She had her own vehicle.

15 Q Okay. Let's go back to the statement you gave to
16 Mr. Watkins, back in 2012. Did you tell Mr. Watkins:

17 *I came back home around 7:00 or 7:30,*
18 *after dropping my girlfriend off at my*
19 *mom's house. And that is when I saw*
20 *Earnest again.*

21 Did you tell him that?

22 A Yes.

23 Q And then, you were all just standing around. And
24 then, you went to your Uncle Eddie Simmons' house, and
25 you were down there for about 45 minutes with Earnest,

1 right?

2 A Yes.

3 Q And then, Earnest and you went back to your house.
4 Is that right?

5 A No.

6 Q That's not right?

7 A No.

8 Q Did you tell Mr. Watkins in your statement to him:

9 *I saw Earnest again, and we were*
10 *all just standing around. And then, we all,*
11 *including Earnest, went down to my Uncle*
12 *Eddie Simmons' house. And we were just*
13 *down there for about 45 minutes. And then,*
14 *me and Earnest came back to my house. And*
15 *while me and Earnest were talking in my*
16 *yard there at my house, my cousin, Deloren*
17 *Wright, came by.*

18 Did you tell Mr. Watkins that?

19 A Yes. That was in an early part of the day. I
20 don't remember what time that was.

21 COURT REPORTER: That was in the early part of the
22 day?

23 A Yes, ma'am.

24 Q Let me -- let me return to that, because I want to
25 read -- I want to tell you -- or ask you to recall what

1 you told Mr. Watkins. I'm just going back a couple
2 lines here:

3 I came back around 7:00 or 7:30 p.m.,
4 after dropping my girlfriend off at Mom --
5 at my mom's house. And that is when I saw
6 Earnest again. And we were all just
7 standing around. And then, we all,
8 including Earnest, went down to my
9 Uncle Eddie Simmons' house.

10 Is that right?

11 A Right.

12 Q And that's what you told Mr. Watkins that day?

13 A Yes.

14 Q And that's what actually happened?

15 A That's what I told him.

16 Q Do you recall your conversations with the police,
17 with the Sheriff's Department, in the days following
18 November 15, 2009? Do you recall meeting with the
19 Sheriff's Deputies?

20 A Yes, sir.

21 Q And they told you to come down and talk to them.
22 And they said they were trying to keep you as a witness,
23 so you wouldn't be an accessory after the fact. Isn't
24 that what they told you?

25 A Yes, sir.

1 Q And they gave you a piece of paper and put it on
2 the counter, and said:

3 *You're going to tell me you picked*
4 *him up,*
5 *didn't they?*

6 A Correct.

7 Q And they said:

8 *We got you in the text saying you*
9 *came to pick him up.*

10 Is that right?

11 A Right.

12 Q But you didn't pick Earnest up; did you?

13 A No.

14 Q But you told the police you'd picked Earnest up,
15 because they were trying to make you an accessory.
16 Isn't that right? Because they threatened you.

17 A Correct.

18 Q Then, they put you in a car, and they drove you
19 down to Dale and asked you where you picked Earnest up.
20 Isn't that right?

21 A Right.

22 Q And you pointed to wherever they told you to point
23 to. Isn't that right?

24 A Yeah. I just told them I picked him up off the
25 main road. I just -- that's what I've always said.

1 Q Okay. But that wasn't true; was it?

2 A What, about the main -- picking him up off the
3 road?

4 Q That day.

5 A I mean, I gave him a ride to the store.

6 Q Right. When they took you to the -- to the
7 location at Porches Hill Road and Keans Neck Road, and
8 they pointed to where -- this is where you picked him
9 up, right?

10 A Right.

11 Q And you agreed with them, right?

12 A Right.

13 Q That's not where you picked him up, though; is it?

14 A No.

15 Q You didn't pick him up at all; did you?

16 A No.

17 Q And the only reason that you said that was they
18 told you they were going to make you an accessory after
19 the fact. Isn't that right?

20 A Correct.

21 MR. MACDOUGALL: May I have a moment, your Honor?

22 THE COURT: You may.

23 MR. MACDOUGALL: Nothing further, your Honor.

24 Thank you.

25 THE COURT: Thank you. Mr. Thornton.

1 JAMELLE JAY SIMMONS

2 RE-DIRECT EXAMINATION BY MR. THORNTON:

3 Q Mr. Simmons, that was the exact opposite of what
4 you just told me; wasn't it?

5 A What's that?

6 Q All the questions you just answered from Mr.
7 MacDougall --

8 A No.

9 Q -- is pretty much the opposite of what you told me.

10 A No. He be saying that, if that's what I told the
11 officer. But that's before they -- that's after they
12 came back with the -- with the text..

13 Q Okay. So, that's after they --

14 A At two different times. You all are trying to
15 confuse me with it.

16 Q Mr. Simmons, I'm not trying to confuse you. Let me
17 ask you a question. Are you, at least then, on November
18 the 15th, 2009, were you and Mr. Daise friends?

19 A Yes.

20 Q Do you particularly want to be here testifying?

21 A No, sir.

22 MR. THORNTON: I didn't think so. No further
23 questions, Judge. At this time, I would ask -- well,
24 unless he has something further, I'm going to ask for
25 Corporal Fraser.

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1 MR. MACDOUGALL: I'd ask the Court to strike Mr.
2 Thornton's last remark, your Honor.

3 MR. THORNTON: About Corporal Fraser?

4 MR. MACDOUGALL: Your Honor, Mr. Thornton responded
5 to the witness's answer with an editorial comment that
6 was inappropriate. I'd ask that that be stricken from
7 the record. Thank you.

8 THE COURT: Okay. Again, ladies and gentlemen,
9 again, that was a comment. Obviously, attorneys need to
10 keep that at a minimum.

11 MR. THORNTON: Yes, ma'am.

12 THE COURT: I appreciate it, Mr. Thornton.

13 MR. THORNTON: Yes, ma'am.

14 THE COURT: Thank you, sir. All right. Mr.
15 Simmons, you can step down.

16 A Thank you.

17 THE COURT: Call your next witness.

18 MR. THORNTON: Thank you, judge. Corporal Jeremiah
19 Fraser. Actually, sorry, Judge. I'm going to get in
20 trouble for that. Staff Sergeant now, Jeremiah Fraser.

21 THE COURT: Thank you.

22 MR. THORNTON: Sorry, your Honor. He was in the
23 restroom. He is coming up right now.

24 THE COURT: Thank you. Come on forward, Staff
25 Sergeant.

1 MADAM CLERK: Would you place your left hand on the
2 *Bible* and raise your right hand for me, please. Do you
3 solemnly swear to truthfully answer all questions asked
4 of you by this court, so help you God?

5 STAFF SERGEANT JEREMIAH FRASER: Yes, ma'am.

6 MADAM CLERK: Please be seated. State your name
7 and spell it for the Court, please.

8 STAFF SERGEANT JEREMIAH FRASER: Jeremiah Fraser,
9 F/r/a/s/e/r.

10 STAFF SERGEANT JEREMIAH FRASER

11 DIRECT EXAMINATION, BY MR. THORNTON:

12 Q Mr. Fraser, I'm probably going to get in a little
13 bit of trouble. I just referred to you when I called
14 you out as Corporal, and then, fixed it to staff
15 sergeant. Are you Staff Sergeant Fraser?

16 A Yes, sir, I am.

17 Q And what -- who do you work for, sir?

18 A I work for the Beaufort County Sheriff's Office in
19 criminal investigations.

20 Q And what do you do for them? You said criminal
21 investigation. Does that mean you're a detective?

22 A Yes, sir.

23 Q Sergeant Fraser, did you work for the Beaufort
24 County Sheriff's Office on or about November the 15th,
25 2009?

1 A Yes, I did.

2 Q And did you work for them in the same capacity as a
3 detective or an investigator?

4 A Yes, I did.

5 Q Did you have occasion to talk to one, I believe
6 it's -- and you please feel free to correct me if I'm
7 wrong -- a LaKeydra or Jamelle Simmons or Jay Simmons?

8 A I did.

9 Q And did you talk to him -- where did you talk to
10 him at? Where did you interview him?

11 A I interviewed him at our office, the investigations
12 office.

13 Q And did you interview him about any particular
14 crime?

15 A I did.

16 Q What was that crime?

17 A Murder, sir.

18 Q And do you recall the victims' names in that case?

19 A Yes, I do. Jeanine and **John Doe 2** and

20 **John Doe 1**

21 Q And who is the suspect in that case?

22 A That would be Earnest.

23 Q And is that the defendant, Earnest Daise?

24 A Yes, it is.

25 Q And when you talked to Jay Simmons, had he been

1 talked to already by other officers?

2 A Yes, he had.

3 Q And was the story that he gave those officers
4 credible?

5 A No, it was not.

6 MR. MACDOUGALL: Objection, your Honor.

7 THE COURT: Okay.

8 MR. THORNTON:

9 Q Did you have information that led you to believe
10 that those stories were not credible?

11 A Yes, we did.

12 MR. MACDOUGALL: Objection, your Honor.

13 THE COURT: Okay. Basis?

14 MR. MACDOUGALL: He's asking him to comment on the
15 testimony of another witness with respect to the
16 witness's credibility.

17 MR. THORNTON: Your Honor, the whole purpose of him
18 testifying is to comment on the credibility.

19 THE COURT: Okay. Overruled. You can ask it.

20 MR. THORNTON: Yes, ma'am. Thank you.

21 BY MR. THORNTON:

22 Q Did you have information that made the stories of
23 Jay Simmons seem not credible to you?

24 A Yes, we did.

25 Q Is that why you wanted to interview him again?

1 A Yes, sir, that's correct.

2 Q And did you interview him?

3 A Yes.

4 Q Now, during the interview, Sergeant Fraser, did you
5 make a comment to him to the effect that, you know, we
6 -- you want to be a witness and not an accessory,
7 something to that effect?

8 A Yes, I did.

9 Q And is that something that you often do when you're
10 talking to suspects to get their attention?

11 A Yes, it is.

12 MR. MACDOUGALL: Objection. May I approach, your
13 Honor?

14 THE COURT: Yes, you may.

15 ON-THE-RECORD BENCH CONFERENCE,

16 OUT OF HEARING OF JURORS:

17 MR. MACDOUGALL: Your Honor, this is, obviously,
18 direct examination, and just as obviously, this witness
19 is being led. The Court's overruled my previous
20 objections. If I could have a continuing objection to
21 misleading, if the Court's going to permit it?

22 THE COURT: I understand your previous objections
23 for leading were not correct. He's asking yes or no
24 questions, and a yes or no question's not a leading
25 question in itself. It's one that suggests an answer.

1 Although, I do find at this time I'm agreeing with you
2 that Mr. Thornton is leading now, so he is going to stop
3 at this point. Okay?

4 MR. THORNTON: Yes, ma'am.

5 END BENCH CONFERENCE.

6 BY MR. THORNTON:

7 Q Sergeant Fraser.

8 A Sir.

9 Q When you interviewed Mr. Simmons, what did he tell
10 you?

11 A There are two accountings of the story that he gave
12 us, sir. In the first accounting, he had told us that
13 he had gotten off work on the day of the murder. He
14 said that he had gotten off around 4:00 o'clock; he had
15 gotten home at approximately 4:30, which is common. It
16 was pretty much every day, consistently. He said that
17 when he got home that Earnest was at the residence. He
18 stated that he left the residence. He stated he went to
19 a four-wheeler race on Detour Road. He said once he
20 left Detour Road, he went to Maryland Fried Chicken,
21 which is right across -- right beside our office. And
22 then, he returned home, and Earnest Daise was still at
23 the home. That was his first accounting.

24 Q Did, at any time, you ask him whether or not he had
25 a cell phone?

1 A We did. We repeatedly asked him. He adamantly
2 denied having a cell phone throughout the first portion
3 of the interview.

4 Q Did that ever change?

5 A It did.

6 Q And why did it change?

7 A When we asked him -- when we arranged for Mr. Jay
8 to come into the office, we had executed a search
9 warrant as his residence. He was not aware that we were
10 executing the search warrant at his residence. They
11 were executing the search warrant while we were
12 conducting the interview with Jay at the investigations
13 office. We were able to locate the cell phone in Jay's
14 possession at his residence. When they found the cell
15 phone, they made contact with us, and Investigator Hires
16 and I both confronted Jay with the cell phone recovery,
17 and that's when the story changed.

18 Q And did you or did you not ask him about a
19 particular text that you found on the cell phone?

20 A We did. A text had been sent stating that he was
21 on his way to --

22 Q I'm sorry to interrupt. Who was the text sent to
23 from Jay Simmons' phone?

24 A The text was sent to Earnest Daise's cell phone.

25 Q Go ahead, sir.

1 A Once we confronted him with the information, his
2 story changed. He stated that some of what he said was
3 true. He said that he had got home from work
4 approximately 4:30; he got off at 4:00. He said he went
5 to the four-wheeler races by himself. He stated that he
6 went to Maryland Fried Chicken after that. While at
7 Maryland Fried Chicken, he received a phone call from
8 Earnest asking him to come pick him up. Jay said that
9 he told him he'd be on his way. Shortly thereafter, he
10 sent him a text saying, *I'm on the way*. And Jay said
11 that he picked Earnest up in Dale.

12 Q I'm sorry. Let me back you up. Where is Dale and
13 what is it? Is it -- is that a community? Is it a
14 neighborhood? What is it?

15 A Dale's a community north of the Whale Branch
16 Bridge. Player Road is in Dale. The Albany's
17 Convenience Store is in Dale.

18 Q You said Player Road. Is there -- obviously, there
19 -- you were not present during other testimony. Is
20 there something significant about, in particular, 20
21 Player Road?

22 A Player Road is where the murder occurred. It's a
23 very -- it is in the Dale community. It's within the
24 Dale community itself.

25 Q All right, sir. Go ahead.

1 A He said that he had picked Earnest up from right
2 beside the Albany's Convenience Store. The Albany's
3 Convenience Store is right off of Keans Neck Road, a
4 short distance from Player Road. He stated that he
5 picked Earnest up, Earnest seemed distraught. He had
6 thought, he said, that Earnest had been robbed,
7 possibly, by the way that he was acting. He said that
8 Earnest didn't say anything to him in the -- on the ride
9 home. He says that, when they returned -- or, as they
10 were coming home, they stopped at a Speedway. He said
11 he got out of the car, purchased a beer, got back in the
12 car, Earnest was still in the car. He said that he
13 drove back to Poppy Hill Road. When they arrived at
14 Poppy Hill Road, Earnest did not go back to his house.
15 He said he dropped Earnest off up the road from the
16 house, and Earnest left the car, heading towards the
17 railroad tracks, which is actually away from the house.
18 He says he returned home, and that's when he received a
19 phone call, the first phone call, I believe it was, from
20 his cousin, indicating that the murder had happened.

21 He went on to say that he received a second call,
22 or rather, his girlfriend told him that the murder had
23 occurred, and he said that he had just realized that he
24 had gotten -- or he may have picked Earnest up right
25 after the murder.

1 Q All right. Did he -- did he express to you whether
2 or not he had a concern about that? In other words, was
3 he concerned that he was -- now might be in -- having
4 picked Earnest up, did he express any concerns?

5 A He did. He repeated over and over that he just
6 didn't want to be involved.

7 MR. THORNTON: Sorry, your Honor. Court's
8 indulgence, one moment, please. If I could have him
9 step down, your Honor, with the Court's permission.
10 Sergeant, could you --

11 THE COURT: You can step down, Staff Sergeant.

12 A Yes, ma'am.

13 BY MR. THORNTON:

14 Q There's a mark on this map that says intersection
15 of Keans Neck Road and Porch's Hill Road. Is that or is
16 that not the area -- or the intersection that Jay
17 Simmons indicated he picked up Earnest Daise at?

18 A He did. After the interview, we took him to show
19 us where he picked him up at, and that's where he told
20 us he pick him up at. That's where he showed us he
21 picked him up at.

22 Q And do you know, Officer, or excuse me, Sergeant
23 Fraser, how far it is from the murder location to the
24 intersection of Keans Neck and Porch's Hill Road?

25 A I do. By the roadways, I drove it, and it was 1.6

1 miles, via the roads. Now, there are several trails
2 that intersect all that that are commonly traversed by
3 people who live in that area. It's very well-traveled
4 by foot traffic. So, by foot, I'm not sure how far it
5 is, but driving on the roads, it's 1.6 miles.

6 Q Would it be fair to say that it's actually closer
7 than that, I think the old saying is, as the crow flies?

8 MR. MACDOUGALL: Objection. Leading.

9 THE COURT: Again.

10 MR. THORNTON: Your Honor, I said, *would it be fair*
11 *to say?* Either it -- either it is or it isn't.

12 THE COURT: Okay. Let's just be careful. Don't
13 lead him.

14 BY MR. THORNTON:

15 Q How far is it by the road?

16 A By the road, it's 1.6 miles.

17 Q Is it longer or shorter as the crow flies?

18 A It's substantially shorter.

19 MR. THORNTON: Thank you, Staff Sergeant. Court's
20 indulgence, your Honor. At this time, your Honor, I
21 don't have any other questions. Thank you very much,
22 Staff Sergeant Fraser. Answer anything Defense has.

23 A Yes, sir.

24 MR. MACDOUGALL: A moment, your Honor.

25 THE COURT: Yes, sir.

1 STAFF SERGEANT JEREMIAH FRASER

2 CROSS-EXAMINATION BY MR. MACDOUGALL:

3 Q Good afternoon, Sergeant.

4 A Counsel.

5 Q My name's Mark MacDougall. I'm one of the lawyers
6 representing Earnest Daise here. You and I have not met
7 before. Is that right?

8 A No, sir.

9 Q If I understood your testimony correctly, there
10 were two interviews of Jay Simmons. Is that right?

11 A I believe that's right.

12 Q And you were present at the second one.

13 A Yes, sir, that's correct.

14 Q At the first interview, however, which took place
15 on the night of the 15th into the 16th of November, are
16 you aware of what Mr. Simmons told the investigators?

17 A Not right offhand, no.

18 Q Okay. Are you generally aware that he advised the
19 investigators that he left work around 4:00 o'clock; he
20 returned home from work at approximately 4:30; Daise was
21 coming out of his room; Simmons stated they both got
22 drinks out of the refrigerator and drink them. Do you
23 know that?

24 A No. I'm familiar with the time frame. It's the
25 time frame he gave that is consistent with the time

1 frame he gave me.

2 Q Okay. Are you familiar with the search warrant
3 that was executed on Jamelle Simmons' residence at 8:15
4 in the morning, on November 18, 2009?

5 A That would be the day that I was interviewing him
6 for the second interview.

7 Q Well, I'm going to ask you that, but first, just
8 answer my question. Is that the day of the search
9 warrant?

10 A I believe that's the date that we did the interview
11 with Jay, yes, sir.

12 Q And are you aware of what was seized in the search
13 warrant?

14 A I believe -- I'm aware one of the items was a cell
15 phone. I'm not sure what else was seized.

16 Q Well, are you aware that, from the master bedroom,
17 Mr. Jamelle Simmons' bedroom, was seized a -- a what was
18 described as a shoe box containing residue of green
19 vegetable matter believed to be marijuana.

20 A No, sir.

21 Q Are you aware of that?

22 A No.

23 Q You weren't aware of that. Were you aware that a
24 thousand dollars in cash was also seized, along with the
25 cell phone?

1 A No, sir.

2 Q Okay.

3 A I was concerned with the interview. I'm not sure
4 what all was seized during the execution.

5 Q Well, they -- so, they -- they told you a cell
6 phone was seized, but they didn't tell you about the
7 marijuana, they didn't tell you about the money.

8 A The cell phone was item of concern.

9 Q Please -- please answer my question. Did they --
10 did they tell you about the marijuana and the money?

11 A No. The cell phone was the item of concern for
12 us --

13 Q Okay.

14 A -- at the time, during the interview.

15 Q Okay. And then, your interview was conducted later
16 that day. Is that right?

17 A No. The -- the interview was conducted at the same
18 time.

19 Q Okay. And at the interview, suddenly, his story
20 changed. Isn't that right?

21 A Once we confronted him with the cell phone that was
22 recovered, the interview changed, yes, sir.

23 Q So, you knew the substance of the previous
24 interview.

25 A From what I gathered during the first portion of

1 our interview, which lasted about 45 minutes, it was
2 consistent from what you're telling me now, with the
3 first interview.

4 Q You're an experienced police officer, right?

5 A Yes, sir.

6 Q And when you go to interview a witness, one of the
7 things you do is, you see what prior statements they've
8 made.

9 A Yes, sir, that's why I had Investigator Hiers
10 present.

11 Q And you -- well, -- okay. Let me ask the question.
12 Are you -- are you telling us today that you were
13 unaware of the earlier statement when you went to
14 interview him on the 18th?

15 A No, sir.

16 Q So, you were aware of it?

17 A Portions of it, yes, sir.

18 Q Okay. So, you --

19 A But to testify to it right now, I cannot say.

20 Q Well, I'm not asking you to testify to it.

21 COURT REPORTER: I'm sorry.

22 THE COURT: All right. Mr. MacDougall, please
23 don't talk over him. Let him explain.

24 MR. MACDOUGALL: I apologize, your Honor.

25 THE COURT: Go ahead.

1 BY MR. MACDOUGALL:

2 A Thank you, ma'am. At this time, I don't recall the
3 substance of the first interview. My concern was with
4 the second interview and getting the cell phone.

5 Q Okay. At the time of the second interview on the
6 18th, --

7 A Yes, sir.

8 Q -- let's keep a time frame in mind on the 18th --
9 you were aware of the substance of the interview on the
10 15th.

11 A Yes, sir.

12 Q Okay. And you were aware of what was collected in
13 the -- in executing the search warrant.

14 A At the time, I was aware only of the cell phone,
15 and that was during the interview.

16 Q Okay. Are you aware that the thousand dollars that
17 was seized was later given back after you interview of
18 Mr. Simmons?

19 A No, I'm not aware of that.

20 Q You're not aware of that sitting here today?

21 A No.

22 Q Did you, at any time, tell Mr. Simmons that he was
23 going to be an accessory after -- after the fact in this
24 -- in the Daise case?

25 A In talking to Mr. Simmons, I tried to explain to

1 him all of the aspects of things that may happen if he
2 was involved in the murder, if he had taken part
3 knowingly in the murder. And one of the things I
4 mentioned was being as an accessory after the fact. I
5 believe I said hand of one, hand of all, at one time,
6 trying to express to him the -- the seriousness of the
7 charges that were being brought.

8 Q Sergeant, let me ask my question again. I just
9 need an answer. Did you tell Mr. Simmons that he was at
10 risk of being charged as an accessory after the fact?

11 A I told him he could, yes, sir.

12 MR. MACDOUGALL: A moment, your Honor.

13 THE COURT: Yes.

14 MR. MACDOUGALL: Nothing further, your Honor.

15 Thank you, Sergeant.

16 A Yes, sir.

17 THE COURT: Any re-direct?

18 MR. THORNTON: No, ma'am. None.

19 THE COURT: You may step down.

20 A Thank you, ma'am.

21 THE COURT: Thank you.

22 MR. THORNTON: Your Honor, Sergeant Fraser is
23 subject to being recalled. So, I'd ask that he be
24 allowed to go back on shift, but he is on telephone
25 standby, unless there is an objection.

1 THE COURT: Thank you, sir. That's fine. If
2 you'll call the next witness.

3 MR. THORNTON: Asia Palmer.

4 THE COURT: Come on forward, Ms. Palmer.

5 MADAM CLERK: Would you place your left hand on the
6 Bible and raise your right hand for me, please. Do you
7 solemnly swear to truthfully answer all questions asked
8 of you by this court, so help you God?

9 MS. ASIA COMAS PALMER: Yes, ma'am.

10 MADAM CLERK: Please be seated. State your name
11 and spell it for the Court, please.

12 MS. COMAS PALMER: My Name is Asia Comas Palmer.
13 A/s/i/a, C/o/m/a/s, P/a/l/m/e/r.

14 MR. THORNTON: Thank you, your Honor.

15 ASIA COMAS PALMER

16 DIRECT EXAMINATION, BY MR. THORNTON:

17 Q Ms. Palmer, where do you currently live?

18 A I live in Jacksonville, Florida.

19 Q And where did you live in -- on November the 15th
20 of 2009?

21 A I lived at 43 Poppy Hill Road, Beaufort, South
22 Carolina.

23 Q And did you live with anyone in particular at that
24 time?

25 A I lived with Jay Simmons.

1 Q All right. And I'm going to show you, ma'am,
2 what's been marked for identification as State's Exhibit
3 44, and ask you if you can identify that.

4 A Yes, sir.

5 Q All right. I'll ask you what it is in just a
6 second. And while we're at it, I will talk to you about
7 a much larger version of this in just a second, but as
8 to State's 44, what is this?

9 A That is the residence at 43 Poppy Hill Road.

10 Q So, and I realize it says on it *not drawn to scale*,
11 but is that accurate, at least as to the room layout?

12 A Yep.

13 Q And does it look like it's been altered or changed
14 in any way, or is that a fair representation of the way
15 the rooms were?

16 A That's a fair representation.

17 MR. THORNTON: Your Honor, I'd ask that State's 44
18 be moved into evidence.

19 MR. MACDOUGALL: Without objection.

20 THE COURT: It's in evidence without objection.

21 ITEM IDENTIFIED AS PHOTOGRAPH
22 OF RESIDENCE AT 43 POPPY HILL ROAD
23 MARKED STATE'S EXHIBIT NUMBER 44,
24 ADMITTED AS EVIDENCE.

25 BY MR. THORNTON:

1 Q Ms. Palmer, I'm going to ask you, this is State's
2 44-B. Is that just a larger version of State's 44 that
3 you just looked at?

4 A Yes.

5 Q And is this also accurate?

6 A Yes.

7 MR. THORNTON: Your Honor, with the Court's
8 permission, ask that she step down.

9 THE COURT: Ms. Palmer, you may step down.

10 BY MR. THORNTON:

11 Q Ms. Palmer, just a couple of brief questions. Take
12 your time. Who else, if anyone, lived with you, other
13 than Jay Simmons; or who else, if anyone, stayed there?

14 A Earnest Daise stayed there on occasion.

15 Q All right. And by that, do you mean the Defendant
16 in this case, Earnest Daise?

17 A Yes.

18 Q And did you recognize him when you walked in the
19 courtroom?

20 A Yes.

21 Q Could you point him out for me.

22 A Right there.

23 Q Where did he -- where -- did he have his own room
24 or not?

25 A Yes. It was the right, rear bedroom.

1 Q Right, rear bedroom. And that was Earnest's room?

2 A Right.

3 Q Now, did he have a key to the trailer?

4 A Yes.

5 Q And did he need your permission to come and go, or
6 could he come and go as he please?

7 A Came and go as he pleased.

8 Q Do you remember -- if you would, just have a seat
9 again. Thank you, ma'am.

10 On November the 15th of 2009, at some point in the
11 late evening or early morning hours of the 16th of
12 November 2009, did law enforcement come to the trailer?

13 A Yes.

14 Q And was -- did you discover at some point whether
15 or not Earnest was there?

16 MR. MACDOUGALL: Objection. Leading.

17 THE COURT: Okay. Rephrase the question, please.
18 Thank you.

19 BY MR. THORNTON:

20 Q Was Earnest there -- did you know whether Earnest
21 was there or not when you got home that night?

22 A No, I didn't believe he was there. I didn't
23 discover he was there until the police escorted him
24 outside of the house.

25 Q So, as I asked earlier, when the police were there,

1 did you discover whether or not Earnest was there?

2 A I did discover he was there. The police did.

3 Q You did discover he was there.

4 MR. THORNTON: Your Honor, Court's indulgence,
5 please, one moment.

6 ITEMS MARKED STATE'S EXHIBIT NUMBERS

7 45, 46, 47, AND 48, FOR IDENTIFICATION.

8 BY MR. THORNTON:

9 Q I'm going to ask you, ma'am, to take a look at
10 State's 45, 46, 47, and 48, and ask you if you can
11 identify those photographs, and you can go ahead and
12 hold them if you like, and just go through them. Let me
13 know when you're done.

14 A Alrighty. This is the laundry room, that the door
15 goes to the back of the trailer. This is the laundry
16 room, coming from the door from the back of the trailer
17 inside of the house. This is the hallway leading to the
18 back of the trailer, the bathroom, three bedrooms. And
19 this is the room that Earnest Daise occupied.

20 Q All right. Well, let me ask you this. As to these
21 photographs, are these all photographs of the trailer at
22 43 Poppy Hill that you lived in?

23 A Yes.

24 Q Are they a fair and accurate depiction of how the
25 trailer would have appeared on that day?

1 A Yes.

2 Q And does it look like they have been altered or
3 changed in any way?

4 A No.

5 MR. MACDOUGALL: Your Honor, we had made an
6 objection to one of the photographs that had been heard
7 at the Bench. I just want to re-urge that objection.

8 THE COURT: Okay.

9 MR. MACDOUGALL: I think the Court has already
10 ruled, I just want to --

11 THE COURT: Okay.

12 MR. MACDOUGALL: -- re-affirm the objection.

13 THE COURT: All right. Thank you. For the record,
14 it's noted.

15 MR. THORNTON: Thank you, your Honor. And at this
16 time, the State would move 45, 46, 47, and 48 into the
17 record -- into evidence, excuse me.

18 THE COURT: Subject to the previous objection.

19 ITEMS IDENTIFIED AS PHOTOGRAPHS
20 (OF INSIDE) OF TRAILER AT 43 POPPY
21 HILL ROAD MARKED STATE'S EXHIBIT
22 NUMBERS 45, 46, 47, AND 48,
23 ADMITTED AS EVIDENCE.
24 ITEM MARKED STATE'S EXHIBIT NUMBER 49,
25 FOR IDENTIFICATION.

1 BY MR. THORNTON:

2 Q I'm going to show you what's been marked as State's
3 Exhibit 49, and ask you if you recognize who is in this
4 picture.

5 A That's Earnest Daise.

6 Q And is that how he appeared when the police came to
7 the trailer at 43 Poppy Hill Road, on the night of
8 November the 15th, 2009?

9 A Yes.

10 Q Is it a fair and accurate representation of how he
11 was dressed when -- and when I say he, Earnest Daise,
12 when he left?

13 A Yes.

14 Q Does it look like it's been changed or altered in
15 any way?

16 A No.

17 MR. MACDOUGALL: One moment, your Honor.

18 Your Honor, we did interpose an objection in regard
19 to this photograph, but the Court has already ruled on
20 that objection.

21 THE COURT: Thank you. Subject to your prior
22 objection.

23 MR. THORNTON: Your Honor, at this time, we would
24 move State's Exhibit 49 into evidence.

25 ITEM IDENTIFIED AS PHOTOGRAPH

1 OF EARNEST DAISE WHEN POLICE
2 CAME TO TRAILER AT 43 POPPY HILL
3 ROAD MARKED STATE'S EXHIBIT NUMBER 49,
4 ADMITTED AS EVIDENCE.

5 MR. THORNTON: Your Honor, at this time, I would
6 ask to publish that one to the jury.

7 THE COURT: You may publish it.

8 MR. THORNTON: Thank you, your Honor.

9 EXHIBIT PUBLISHED TO JURORS.

10 BY MR. THORNTON:

11 Q I'm going to hand you -- these are already in
12 evidence as State's Exhibit 27 first. Can you identify
13 what that is for me?

14 A That is the front of the trailer on 43 Poppy Hill
15 Road.

16 Q I'm sorry, Ms. Palmer. You were talking a little
17 quietly, away from the microphone.

18 A I'm sorry.

19 Q What is Exhibit 27?

20 A This is the front of the trailer at 43 Poppy Hill
21 Road.

22 Q All right. I'm going to now show you what's in
23 evidence already as State's Exhibit 28 and ask you if
24 you can identify what that is a picture of?

25 A This is a picture of my 1997 Toyota 4-Runner.

1 Q What is this vehicle right here? Looks like a
2 Range Rover. Is that correct?

3 A Correct.

4 Q And who does that belong to, or did belong to at
5 that time?

6 A Jay Simmons.

7 Q And what about this old car here in the -- the
8 other car in the picture? Who did that car belong to?

9 A Earnest Daise.

10 Q And is the hood up on that vehicle?

11 A Yes.

12 Q Was that vehicle -- do you know if that vehicle was
13 even running at the time or not?

14 A I -- I never saw it being operated. It was just
15 sitting there.

16 Q And so, to your knowledge, it just sat there?

17 A Correct.

18 Q And whose car was that?

19 A Earnest Daise's car.

20 MR. THORNTON: Court's indulgence, your Honor.

21 Your Honor, may we approach briefly?

22 THE COURT: You may.

23 ON-THE-RECORD BENCH CONFERENCE,

24 OUT OF HEARING OF JURORS.

25 COURT REPORTER: Do you need me?

1 MR. THORNTON: Yes, ma'am. I apologize.

2 COURT REPORTER: That's all right.

3 MR. THORNTON: Your Honor, I just wanted to tell
4 the Court in confidence, I'm going to be very careful.
5 She is somebody who also knew Jeanine very well, for the
6 things Court has already ruled on involving domestic
7 issues. So, I may lead a slight bit, but it's to
8 control that aspect only. And what I'm going to do is
9 just ask her if she knew Jeanine, and about the van, and
10 that's it. So, I'm going to do my best not to lead, but
11 I know for control purposes only.

12 THE COURT: You okay?

13 MR. MACDOUGALL: We'll reserve on that.

14 THE COURT: Okay.

15 MR. THORNTON: I just wanted to let everybody know.

16 END BENCH CONFERENCE.

17 BY MR. THORNTON:

18 Q Ms. Palmer, did you know Jeanine Mullen?

19 A Yes.

20 Q And do you know what she drove? And when I say
21 *what she drove*, meaning at the time of her murder,
22 November the 15th, 2009, what did she drive?

23 A She drove a white Dodge Caravan.

24 Q All right. And did, to your knowledge, did Earnest
25 Daise drive that van?

1 A Yes.

2 MR. THORNTON: Thank you very much, Ms. Palmer. I
3 appreciate it. Please answer any questions the Defense
4 has for you.

5 ASIA COMAS PALMER

6 CROSS-EXAMINATION BY MR. MACDOUGALL:

7 Q Afternoon, Ms. Palmer.

8 A Hello.

9 Q My name is Mark MacDougall, and I represent Earnest
10 Daise in this case. You currently live in Jacksonville?

11 A Yes.

12 Q When did you move to Jacksonville?

13 A About May of last year.

14 Q Okay. I've just got a couple questions for you.
15 You were interviewed by the police, by the Sheriff's
16 Office on November 18, 2009. Is that right?

17 A Correct.

18 Q Okay. And you told them then you have no knowledge
19 of the murder of Jeanine Mullen. Is that right?

20 A What do you mean knowledge? I knew that she had
21 been killed at that point.

22 Q Right. But you knew nothing about -- you knew
23 nothing about the whereabouts of Earnest Daise on
24 November 15, 2009?

25 A Correct.

1 Q And likewise, you didn't -- you didn't -- you told
2 the police that you didn't learn anything from Jay
3 Simmons --

4 A Correct.

5 Q -- about the murder. That's correct?

6 A That's correct.

7 Q Okay. And in particular, you have no knowledge of
8 Jay picking Earnest up anywhere on November 15.

9 A Not from his mouth to my ears, no.

10 MR. MACDOUGALL: Thank you, your Honor. Nothing
11 further.

12 THE COURT: Thank you. Anything further?

13 MR. THORNTON: Nothing further. I'd ask Ms. Palmer
14 be excused.

15 THE COURT: All right. Any objection?

16 MR. MACDOUGALL: Without objection.

17 THE COURT: Ms. Palmer, you are excused. Thank
18 you.

19 A , Thank you.

20 THE COURT: State will call their next witness.

21 MR. THORNTON: State calls Chris Wilson.

22 MR. LEDDY: Your Honor, would it be possible for us
23 to take a break at this point?

24 THE COURT: Certainly. Ladies and gentlemen, we're
25 going to go ahead and take a brief recess. Again, do

1 not discuss this case. It wouldn't be appropriate to do
2 so. Leave your pads in the seats, please. Thank you.

3 MR. LEDDY: Thank you, your Honor.

4 JURORS LEAVE COURTROOM 3:18 P.M.

5 BAILIFF: Jury is clear, door is closed, your
6 Honor.

7 THE COURT: Thank you. We'll be at ease for about
8 ten minutes.

9 OFF THE RECORD 3:18 P.M.

10 BACK ON THE RECORD 3:45 P.M.

11 BY THE COURT:

12 BAILIFF: All rise.

13 THE COURT: Thank you all. Please be seated.
14 Okay. That's fine. All right. Ready to go?

15 MR. THORNTON: State's ready, your Honor.

16 THE COURT: Ready to go, Defense?

17 MR. MACDOUGALL: Defense is ready.

18 THE COURT: Bring the jury in, Jody. Thank you.

19 BAILIFF: The jurors are entering, your Honor.

20 JURORS ENTER COURTROOM 3:46 P.M.

21 BAILIFF: All right, your Honor.

22 THE COURT: Thank you, all.

23 MR. THORNTON: Thank you, your Honor. State calls
24 Chris Wilson.

25 THE COURT: Okay.

1 MADAM CLERK: Would you place your left hand on the
2 Bible and raise your right hand for me, please. Do you
3 solemnly swear to truthfully answer all questions asked
4 of you by this court, so help you God?

5 SERGEANT CHRISTINE L. WILSON: I do.

6 MADAM CLERK: Please be seated. State your name
7 and spell it for the Court, please.

8 SERGEANT CHRISTINE L. WILSON: My name is
9 Christine L. Wilson, W/i/l/s/o/n.

10 SERGEANT CHRISTINE L. WILSON

11 DIRECT EXAMINATION, BY MR. THORNTON:

12 Q Who do you work for?

13 A I'm a sergeant with the Beaufort County Sheriff's
14 Office.

15 Q Sergeant Wilson, did you work for the Beaufort
16 County Sheriff's Office on or about November the 15th,
17 2009?

18 A I did.

19 Q And what did you do for them?

20 A I assisted in an investigation at 20 Player Road.

21 Q Okay. I'm sorry, could you speak up a little bit.

22 A I -- I assisted in an investigation that occurred
23 at 20 Player Road on that date.

24 Q All right. Is that the case of the State versus
25 Earnest Daise?

1 A It is.

2 Q Did you serve a search warrant at 43, I believe,
3 it's Poppy Hill Road?

4 A Yes, I did.

5 Q I'm going to show you what's been marked and
6 entered into evidence as State's Exhibit 44. Actually,
7 we'll do it the shortcut way, I'll show you 44-B. Would
8 this be a not-to-scale, but otherwise accurate layout of
9 Poppy Hill -- the Poppy Hill Road address at 43 Poppy
10 Hill Road?

11 A Yes, it is.

12 Q And is this where you served the search warrant?

13 A It is.

14 Q And did you search any particular rooms?

15 A Searched the whole residence, but primarily focused
16 on one room in particular.

17 Q All right. And again, if you would, put the
18 microphone a little bit closer to you, Detective. We're
19 having a little bit of trouble hearing you.

20 THE COURT: Thank you.

21 BY MR. THORNTON:

22 Q All right. You said you focused on one room in
23 particular, --

24 A On one --

25 Q -- but you searched the whole house. Is that

1 correct?

2 A That's correct.

3 Q All right. And what room did you focus on?

4 A It was the right, rear bedroom, what we referred to
5 as the right, rear bedroom of the residence.

6 Q Did you receive information pertinent to the
7 investigation as to whose room that was?

8 A We were told whose room that was.

9 Q And that was a poorly worded lawyer question. So,
10 who's room was it, if you know?

11 A It was the bedroom of Earnest Daise.

12 Q And I'm going to point to the right, rear bedroom.
13 Is that the one that you're talking about?

14 A Yes, that's correct.

15 Q And did you find items that were seized by you in
16 that residence?

17 A I did.

18 ITEM IDENTIFIED AS PHOTOGRAPH
19 MARKED STATE'S EXHIBIT NUMBER 56,
20 FOR IDENTIFICATION.

21 ITEM IDENTIFIED AS PHOTOGRAPH
22 MARKED STATE'S EXHIBIT NUMBER 57,
23 FOR IDENTIFICATION.

24 Q I'm going to hand you what's been marked for
25 identification as State's 57 through 56. First, I just

1 want you to look through these photographs and tell me
2 if you could identify them, and then, I'll ask you about
3 them specifically.

4 A Yes, sir.

5 Q You can -- can you identify those photographs?

6 A Yes, I can.

7 MR. MACDOUGALL: Your Honor, with respect to one of
8 these photographs, we had previously interposed an
9 objection. We would reiterate that at this time. The
10 Court's already ruled.

11 THE COURT: Let me look at them.

12 MR. MACDOUGALL: May I approach?

13 THE COURT: Yes, please. I just want to make sure
14 I know what you're talking to. Yeah. Okay.

15 END BENCH CONFERENCE.

16 THE COURT: Ladies and gentlemen of the jury, there
17 is a matter I need to take up with the attorneys.
18 Again, please do not discuss this case. It wouldn't be
19 appropriate to do so. Go back to the jury room. We'll
20 bring you right back out shortly.

21 BAILIFF: Thank you, your Honor.

22 THE COURT: Thank you.

23 JURORS LEAVE COURTROOM 3:54 P.M.

24 BAILIFF: The jury's clear your Honor.

25 THE COURT: Thank you.

1 ON-THE-RECORD BENCH CONFERENCE,
2 OUT OF PRESENCE OF JURORS.

3 THE COURT: Okay. We'll go ahead and go on the
4 record. I just wanted to know what the objection was.
5 I hadn't ruled on it yet, so I'd never seen the
6 photographs. So, thank you for giving me the
7 opportunity to take a look at them..

8 MR. MACDOUGALL: And your Honor, I should have been
9 more elaborate.

10 THE COURT: That's okay.

11 MR. MACDOUGALL: They're -- They're -- we're sort
12 of backing into this. The State joined the narcotics
13 charges very shortly before the trial of this, as Mr.
14 Thornton pointed out. We had previously argued and --
15 and briefed the issue of the *Fourth Amendment*
16 protections with regards to the representations of
17 narcotics and the suppression of evidence collected per
18 the search warrant. The Court has ruled on that motion.

19 THE COURT: Okay.

20 MR. MACDOUGALL: But has not ruled on those
21 photographs.

22 THE COURT: Okay. Thank you.

23 MR. MACDOUGALL: So.

24 THE COURT: And again, I found that the search was
25 fine. And then, at the last minute, the Defense asked

1 to join the drug charges. Again, my understanding was
2 they felt they needed to do that because of the
3 newspaper article that talked about the trafficking
4 crack cocaine charge and the PWID marijuana charge.

5 So, do you have any specific objection as to this
6 photograph? You said it was just the top one, which is
7 Exhibit Number 57. Other than, to me, it shows drugs
8 and some keys, and what appears to be -- I won't even
9 say that. It looks like it's a sweatshirt maybe, but it
10 could be a blanket. I'm not sure.

11 MR. MACDOUGALL: The other photographs, your Honor,
12 show things that are not contraband. They show
13 cartridges, they show baking soda, they show keys.

14 THE COURT: What's that?

15 MR. MACDOUGALL: I think it's marijuana. So, our
16 view would be that --

17 THE COURT: Okay. That would be contraband, as
18 well. Okay. Just making sure I knew what I'm looking
19 at.

20 MR. MACDOUGALL: I sat and checked the paper this
21 morning.

22 MR. THORNTON: Your Honor, --

23 THE COURT: It's not a bird's nest. Okay. It's
24 Number 59.

25 MR. THORNTON: Judge, we'll consent to pulling that

1 photograph out. That's the -- I mean, I'm not going to
2 hold up the process over one photograph. I'll just pull
3 that one out, if that's the only one they object to.

4 THE COURT: Well, they object to both of these
5 somehow.

6 MR. THORNTON: That's fine. I've got the drugs
7 sitting right here in front of me. I'll just put them
8 in instead of the photos. It doesn't make -- make any
9 difference to me, Judge. I'm happy. The State will
10 consent. We'll pull both of those photographs.

11 THE COURT: Okay.

12 END BENCH CONFERENCE.

13 THE COURT: You all come up and approach for a
14 second.

15 COURT REPORTER: Judge?

16 THE COURT: No.

17 OFF-THE-RECORD BENCH CONFERENCE,

18 OUT OF PRESENCE OF JURORS.

19 END BENCH CONFERENCE.

20 THE COURT: Making sure I understand. All right.
21 Thank you for consenting to withdraw those two
22 photographs.

23 MR. THORNTON: Yes, ma'am.

24 THE COURT: Other than that, there are no problems
25 for the rest of them. Is that correct, Mr. MacDougall?

1 MR. MACDOUGALL: We urge our previous *Franks* motion
2 the Court's ruled on. Without objection, aside from
3 yours, your Honor, and this *Franks* motion.

4 BY THE COURT:

5 THE COURT: Let's bring the jury back out.

6 BAILIFF: Yes, your Honor.

7 THE COURT: Thanks, Norman.

8 BAILIFF: Are you ready, Judge? Judge, are you
9 ready to go?

10 THE COURT: Yes, please. Thank you.

11 BAILIFF: Your Honor, the jury is entering.

12 JURY ENTERS COURTROOM 4:00 P.M.

13 THE COURT: Thank you.

14 BAILIFF: All right, your Honor.

15 THE COURT: Welcome back, ladies and gentlemen.
16 Mr. Thornton.

17 MR. THORNTON: Thank you, your Honor. Your Honor,
18 the State would seek at this time to introduce Exhibits
19 58 through 66.

20 MR. MACDOUGALL: Subject to our previous objection,
21 your Honor. Thank you.

22 MR. THORNTON: And I apologize, Judge. It's not 58
23 though 66. It's 58, and 60 through 66.

24 THE COURT: Thank you. Are we still missing one?

25 MR. THORNTON: No, your Honor. There were -- that

1 57 and 59 --

2 THE COURT: Are the ones we're keeping out.

3 MR. THORNTON: Yes, ma'am.

4 THE COURT: I understand. Okay. Thank you.

5 ITEMS IDENTIFIED AS PHOTOGRAPHS

6 MARKED STATE'S EXHIBIT NUMBERS

7 58, 60, 61, 62, 63, 64, 65, AND 66,

8 ADMITTED AS EVIDENCE.

9 SERGEANT CHRISTINE L. WILSON

10 CONTINUE DIRECT EXAMINATION BY MR. THORNTON:

11 Q Detective Wilson, I'm going to ask you if you
12 would, please, take a look now at State's Exhibit 58,
13 and then, 60 through 66. And if you would, please, just
14 describe what those are photographs of. And if you
15 would, as you describe it, just reference what number
16 you're looking at, what exhibit number that's -- that
17 should be on the back.

18 MR. THORNTON: Your Honor, with the Court's
19 permission, I'm going to publish as she goes through
20 them.

21 THE COURT: Please.

22 BY MR. THORNTON:

23 A Exhibit 58 is a photograph of a gray plastic bag
24 that is sitting at the rear portion of a bed.

25 Q And where did you find that bag at?

1 A The bag was -- was on the bed in -- in Earnest
2 Daise's bedroom.

3 Q All right. And go ahead. Next photograph is what
4 number?

5 A The next photograph is Exhibit Number 60. And this
6 is a photograph of a floor vent with the vent cover
7 removed, with wrapped hundred dollar bills and an
8 electronic scale.

9 Q Okay. And can you see the screen, by the way?

10 A I can.

11 Q All right. Please be assured that, hopefully, we
12 won't have any technology SNAFUs today. Just make sure
13 that the same number you're referencing is the number
14 that's on the screen, please. If it's not, just let me
15 know.

16 A Yes, sir. Exhibit Number 61 is a photograph of a
17 further view inside that same room. On that photograph
18 you can still see the floor vent with the vent cover
19 removed, bundles of bills, the electronic scale, and the
20 bed over in the corner of the room, on which that --
21 that gray plastic bag is actually on that bed in the far
22 corner.

23 Q I'm sorry to interrupt. Who is the -- who is the
24 person in that photograph? Can you tell? Or who do you
25 think that would have been? I realize it's just a set

1 of legs and boots, but who else would have been there
2 with you at the time?

3 A There were several people that were present.

4 Q Okay. That's fine. Go ahead to the next one.

5 A Exhibit Number 62 is a closeup photograph of the
6 floor vent, with kind of out-of-focus bundle of bills.

7 Q And is that what was pulled? Where were those
8 located, if anywhere?

9 A These -- these -- the bundle of -- of U.S. currency
10 were found wrapped in three bundles down inside the
11 floor vent to where I had to lift the cover off and
12 actually reach down into the floor vent to pull that
13 money out.

14 Q And which bedroom was that found in?

15 A This was in the bedroom of the defendant, Earnest
16 Daise.

17 Q Go ahead to the next photograph, please.

18 A Next photograph is Exhibit Number 63. And this is
19 a -- this is a shelf on the walk-in closet in the
20 bedroom of Earnest Daise. And these are photographs of
21 a box of 7.62 by 39 millimeter ammunition and baking
22 soda.

23 Q All right. Next?

24 A Next photograph is Exhibit 64. It's a photograph
25 of a television with a DVD on top, with an electronic

1 scale and a box of baking soda.

2 Q Okay. Next?

3 A Exhibit Number 65 is a photograph of rifle,
4 ammunition, on a -- this was located on a shelf in
5 Earnest Daise's bedroom.

6 Q Next?

7 A And Exhibit Number 66 is a closeup photograph of
8 the electronic, the digital scale, that was on the
9 previous picture on top of the DVD player, on top of the
10 television.

11 Q All right. Is that the last photograph?

12 A Yes, it is.

13 Q All right. If you would, go back to the -- you
14 said that the photograph of the bag -- I'm sorry -- I
15 think that's 58, but I can't swear to that, the gray
16 plastic bag that was found on the bed?

17 A That's correct, it's 58.

18 Q Dylan, thank you.

19 ITEM IDENTIFIED AS PAPER BAG
20 CONTAINING MARIJUANA MARKED
21 STATE'S EXHIBIT NUMBER 73, FOR
22 IDENTIFICATION.

23 Q I'm now going to hand you what's been marked, while
24 that's up, as State's Exhibit Number 73 for
25 identification. Can you identify that item?

1 A Item 73 appears to be marijuana in a plastic bag.

2 Q All right. Was that -- when things are collected,
3 obviously, I know you're not a chemist, so you can't
4 testify that it is marijuana, but is -- did that come --
5 is that the bag with the -- gray plastic bag that's
6 referenced in the photograph that you're speaking of,
7 State's Exhibit, I believe, it's 58?

8 A It is.

9 Q And was that collected out of the room by you?

10 A It was.

11 Q And is that in Earnest Daise's bedroom?

12 A It was.

13 ITEM IDENTIFIED AS AWS- BRAND
14 DIGITAL ELECTRONIC SCALE
15 MARKED STATE'S EXHIBIT NUMBER 75,
16 FOR IDENTIFICATION.

17 Q I'm now going to hand you what's been marked for
18 identification as State's Exhibit 75. If you would,
19 please take a look, and ask if you can identify that
20 item.

21 A This is an AWS brand digital scale, electronic
22 scale.

23 Q And is that a scale -- where was that found?

24 A This was found on the -- on the floor -- this was
25 found -- let's see. This was found on the floor of the

1 bedroom of -- of Earnest Daise.

2 Q And does it appear in the same condition as it did
3 on the day that it was found in his bedroom?

4 A It does.

5 Q And are you the one that found it?

6 A I was.

7 Q And are you the one who collected it on behalf of
8 the Sheriff's Office?

9 A I was.

10 Q Does it appear that it's been altered or changed in
11 any way?

12 A No, it does not.

13 Q If I could see that, please, ma'am. And does this
14 scale correspond to a particular photograph that you can
15 reference?

16 A It corresponds to photograph marked Exhibit Number
17 60.

18 Q Dylan, would you please pull up 60?

19 A As well as Number 61.

20 Q And is the scale referenced in photograph 60,
21 State's Exhibit 60, is that the same scale that is now
22 in the bag marked Exhibit 75?

23 A It is.

24 Q Your Honor, at this time, I'd move State's Exhibit
25 75 into evidence.

1 MR. MACDOUGALL: Subject to the objection that the
2 Court's ruled on.

3 THE COURT: Thank you. All right. Subject to
4 prior objection, it's in evidence.

5 ITEM IDENTIFIED AS AWS BRAND
6 DIGITAL ELECTRONIC SCALE MARKED
7 STATE'S EXHIBIT NUMBER 75,
8 ADMITTED AS EVIDENCE.
9 ITEM IDENTIFIED AS BOX OF 20 CARTRIDGES
10 IN A BOX MARKED 7.62 BY 39 MILLIMETER,
11 124 GRAIN HOLLOW POINT AMMUNITION
12 MARKED STATE'S EXHIBIT NUMBER 77,
13 FOR IDENTIFICATION.

14 MR. THORNTON:

15 Q I'm going to ask you if you can identify State's
16 Exhibit 77, what's been marked for identification as
17 State's Exhibit 77.

18 A I apologize. It's a box of 20 cartridges in -- in
19 a box marked 7.62 by 39 millimeter, 124 grain hollow
20 point ammunition.

21 Q All right. And was that ammunition located in a
22 particular place that you found?

23 A It -- it was located on -- on the closet shelf in
24 the right, rear bedroom of 43 Poppy Hill Road.

25 Q And who, again, is --

1 COURT REPORTER: In the which bedroom?

2 A The right, rear bedroom. The bedroom of Earnest
3 Daise.

4 Q Thank you. And is there a photograph of where that
5 was located?

6 A Photograph Number 63.

7 Q Sixty-three. Now, I don't know if you -- if you
8 have opened it. If you haven't, please do. Do the
9 shells inside, in other words, do the bullets match?
10 Are they 7.62 by 39 millimeter?

11 A They are.

12 Q Thank you. Now, are those the same bullets that
13 you pulled out of Earnest Daise's bedroom?

14 A Yes, they are.

15 Q And do they appear to have been altered or changed
16 in any way?

17 A No, they have not.

18 Q Your Honor, at this time, State would move State's
19 Exhibit 77 into evidence.

20 MR. MACDOUGALL: Renew our objection, your Honor.

21 THE COURT: Thank you. It's in evidence subject to
22 prior objection.

23 ITEM IDENTIFIED AS BOX OF 20

24 CARTRIDGES IN A BOX MARKED 7.62

25 BY 39 MILLIMETER, 124 GRAIN HOLLOW

1 POINT AMMUNITION MARKED STATE'S
2 EXHIBIT NUMBER 77, ADMITTED AS EVIDENCE.
3 ITEM IDENTIFIED AS CARABINER-STYLE
4 KEY RING WITH FIVE KEYS AND A PURPLE
5 TAG MARKED STATE'S EXHIBIT NUMBER 76,
6 FOR IDENTIFICATION.

7 BY MR. THORNTON:

8 Q I'm going to show you now what's been marked as
9 State's Exhibit 76 for identification, and ask you if
10 you can identify the item or items inside that bag.

11 A It's a -- it's a Carabiner-style key ring with five
12 keys and a -- a purple tag.

13 Q And where were -- where were those keys found?

14 A This was on the floor in the right, rear bedroom,
15 Earnest Daise's bedroom.

16 Q All right. And I notice that -- that, so that the
17 jury understands, each time I've handed you one of these
18 items, rather than just dig through the bag, you are
19 looking at the front. Why are you doing that?

20 A To -- to, first of all, note the description is
21 what the content is in the bag, and noting my signature,
22 and my notes as to what the evidence is.

23 Q And on each one of these items I've asked you
24 about, when I've asked you if you are the one who
25 collected it, is that how you know that you actually

1 were the one who collected it?

2 A That's how I know, because I signed off on that
3 bag.

4 Q Thank you, ma'am. You can put those back in. Now,
5 are these keys the same keys in the same condition as
6 they were when you found them in Earnest Daise's
7 bedroom?

8 A They are.

9 Q And have they been altered or changed in any way?

10 A They have not.

11 MR. THORNTON: Your Honor, at this time, State
12 moves State's Exhibit 76 into evidence.

13 MR. MACDOUGALL: Renew our objection, your Honor.

14 THE COURT: Thank you. Subject to prior objection,
15 it's admitted.

16 ITEM IDENTIFIED AS CARABINER-STYLE
17 KEY RING WITH FIVE KEYS AND A
18 PURPLE TAG MARKED STATE'S EXHIBIT
19 NUMBER 76, ADMITTED AS EVIDENCE.

20 ITEM IDENTIFIED AS BAG CONTAINING
21 WHITE, ROCK-LIKE SUBSTANCE,
22 LABORATORY NUMBER L090560, ITEM
23 NUMBER 1 MARKED STATE'S EXHIBIT
24 NUMBER 74, FOR IDENTIFICATION.

25 BY MR. THORNTON:

1 Q I'm going to hand you now what's been marked as
2 State's Exhibit 74, and ask you if you can identify that
3 item. And if you need to open the sealed bag, we can do
4 that. If you can do it without that, just let me know.

5 A To read what is on the bag, the -- it's a paper bag
6 encased in a sealed plastic bag. And the bag is labeled
7 *Plastic Bag Containing White Rock Substance that was*
8 *Found on the Rear, Bedroom Floor at 43 Poppy Hill Road.*

9 Q All right. And would that be the white rock-like
10 substance that you seized from Earnest Daise's bedroom?

11 A Yes, that's correct.

12 Q And while it was in your care, custody, and
13 control, did you alter it or change it in any way?

14 A I did not.

15 Q Was it weighed at the residence?

16 A I'm not sure. I know it was turned over to another
17 officer.

18 Q All right. Thank you. And would that officer have
19 been Andrew Rice?

20 A Yes, it was.

21 Q Was the marijuana -- or, excuse me. Was the green,
22 leafy substance in Exhibit 73 also turned over to Andrew
23 Rice?

24 A It was.

25 Q And what did Andrew -- what did Andrew Rice do at

1 that time? In other words, what was his job? Not what
2 he did that day, what was his position in law
3 enforcement?

4 A At that time, he was assigned -- he was a narcotics
5 officer. And he responded, as well, to that scene, due
6 to the narcotics evidence that was present.

7 Q And was it commonly referred to as a DTF?

8 A Yes.

9 Q What does that stand for?

10 A Drug Task Force.

11 ITEMS MARKED STATE'S EXHIBIT NUMBERS

12 52, 53, AND 54, FOR IDENTIFICATION.

13 Q I'm now going to hand you what has been marked as
14 State's 53 -- or, excuse me -- 52, 53, and 54, and ask
15 you if you can identify what is shown in those
16 photographs.

17 A Yes, I can.

18 Q What are these photographs of? And I say *these*
19 *photographs* for the record, State's, for identification,
20 52, 53, and 54.

21 A They are -- these photographs are of -- of a red --
22 a red smear on -- on the door into the bedroom of
23 Earnest Daise.

24 Q All right. I'm sorry. I apologize. I was
25 grabbing for this piece of evidence. Would you repeat

1 that, please.

2 A It -- it's -- these are photographs of a red smear
3 that were -- that was on the door of Earnest Daise's
4 bedroom.

5 Q All right. And are those photographs, were they
6 taken by you or in your presence?

7 A Yes.

8 Q All right. And are they accurate as to the red
9 smear that you saw on Earnest Daise's bedroom door when
10 you executed the search warrant?

11 A They are.

12 Q And let me ask you a question. When did you
13 execute the search warrant?

14 A It would've -- approximately 5:00 o'clock in the
15 morning, on the morning of November 16, 2009.

16 Q All right. And is that how the door appeared, the
17 door to Earnest Daise's bedroom, is that how it appeared
18 on early morning hours of November the 16th, 2009?

19 A Yes.

20 Q Is it a fair and accurate representation?

21 A It is.

22 Q Has it been changed as to any of the three
23 photographs just referenced? Have they been changed in
24 any way?

25 A No, sir.

1 MR. THORNTON: Your Honor, I'd ask that State's, I
2 believe it's 52, 53, and 54 -- yes, 52, 53, and 54 be
3 moved into evidence.

4 THE COURT: They're in evidence subject to the
5 prior objection.

6 MR. MACDOUGALL: Your Honor.

7 MR. THORNTON: Your Honor, with the Court's
8 permission, I'm just going to publish them briefly to
9 the jury.

10 THE COURT: You may.

11 ITEMS IDENTIFIED AS PHOTOGRAPHS

12 MARKED STATE'S EXHIBIT NUMBERS

13 52, 53, AND 54, ADMITTED AS EVIDENCE.

14 Q All right. Is this the red smear that you're
15 talking about, or one of them?

16 A Yes, it is.

17 Q And what is that?

18 A That's the same red smear.

19 Q Same one? All right. And why would -- why do you
20 put a ruler next to it?

21 A To give it scale.

22 Q Or, I guess that's -- is it that a tape measure?

23 A It's a tape measure.

24 Q Thank you. I'm going to hand you what's been
25 marked for identification as State's Exhibit 72, ask you

1 if you can identify that for me.

2 A Okay. This is sealed. The description on -- on
3 the sealed -- or the paper bag that's inside the sealed
4 plastic bag says that it's a cardboard tube containing
5 two swabs from the red stain from the door of the right,
6 rear bedroom door.

7 Q And who took those swabs?

8 A I did.

9 Q And were those swabs taken by you of the -- the red
10 smears that we just witnesses on State's 52, 53, and 54?

11 A Yes, they were.

12 Q While they in your care, custody, and control, and
13 were they altered or changed in any way?

14 A They were not.

15 Q And were they kept in a safe, secure, sealed
16 condition?

17 A Yes, they were.

18 Q As part of your investigation, were you able to
19 determine a phone number associated with Earnest Daise?

20 A I was.

21 ITEM MARKED STATE'S EXHIBIT NUMBER

22 79, FOR IDENTIFICATION.

23 Q And before I ask you that next question, let me ask
24 you, do you recognize what's been marked as State's 79?

25 A I do.

1 Q What is it?

2 A It is a -- a black Samsung flip phone, bearing the
3 logo of Virgin Mobile.

4 Q Where was that cell phone found?

5 A It was found on -- on the bed in the right, rear
6 bedroom of Earnest Daise.

7 Q And were you able to associate a phone number with
8 the phone found in Earnest Daise's bedroom?

9 A I was.

10 Q And what is the phone number to this phone?

11 A The phone number is 843-263-0455.

12 Q And has this phone, does it appear that it's been
13 altered or changed in any way?

14 A No, sir.

15 Q Does it appear in the same condition as it was when
16 you retrieved it from Earnest Daise's bedroom?

17 A It does.

18 MR. THORNTON: Your Honor, at this time, I'd ask
19 that State's Exhibit 79 be moved into evidence.

20 THE COURT: It's in evidence.

21 MR. MACDOUGALL: Renew our objection. Thank you,
22 your Honor.

23 THE COURT: Thank you.

24 ITEM IDENTIFIED AS BLACK SAMSUNG
25 FLIP PHONE BEARING THE LOGO OF

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VIRGIN MOBILE, MARKED STATE'S

EXHIBIT NUMBER 79, ADMITTED AS EVIDENCE.

MR. THORNTON: Thank you, your Honor. Your Honor,
with the Court's permission, I'm going to power this up.

BY MR. THORNTON:

Q You may be better at this than I am; you may not
be. Detective Wilson, would you please see if you can
find if there is a text on that phone from November the
15th, 2009, at precisely 6:04 p.m.?

A Yes, I did find that text.

Q And what does that text say?

A It's from the phone number of 843-263-1787. It's
dated Sunday, November 15th, 6:04 p.m., and it says:

On the way.

Q So, the text to Earnest Daise at 843-263-0455 on
his phone is *on the way*. And what was that number
again?

A That text *on the way* came from phone number 843-
263-1787.

Q 1787?

A That's correct.

Q You can power it back down, if you would.

I'm sorry, Detective. Would you power that back up
for me? I should have waited and told you not to do
that. While we're waiting on that to come back on, I'm

1 going to ask that you -- to see if you can identify
2 State's Exhibit for identification 56?

3 A Yes, that is a photograph of the same screen that
4 -- for the text message that I just read.

5 Q Is that, based on what you just observed, as well
6 as when you retrieved the phone, is that a fair and
7 accurate depiction of that text message?

8 A It is.

9 Q Has it been altered or changed in any way?

10 A It has not.

11 MR. MACDOUGALL: We renew our objection, your
12 Honor. Thank you.

13 MR. THORNTON: Your Honor, I'd ask 56 be moved into
14 evidence.

15 THE COURT: It's in evidence, subject to prior
16 objection.

17 MR. THORNTON: Your Honor, permission to publish to
18 the jury.

19 THE COURT: You may.

20 ITEM IDENTIFIED AS PHOTOGRAPH
21 OF TEXT MESSAGE, ON THE WAY,
22 MARKED STATE'S EXHIBIT NUMBER 56,
23 ADMITTED AS EVIDENCE.

24 MR. THORNTON: Dylan, would you please also put it
25 on? And for those of you in the back, Mr. Hightower has

1 it on the screen.

2 THE COURT: Thank you, sir.

3 MR. THORNTON: Court's indulgence, please, your
4 Honor. Detective, thank you very much. Please answer
5 any questions that Defense has.

6 SERGEANT CHRISTINE L. WILSON

7 CROSS-EXAMINATION BY MR. MACDOUGALL:

8 Q Good afternoon, Sergeant.

9 A Afternoon, sir.

10 Q My name's Mark MacDougall, and I'm one of the
11 lawyers representing Earnest Daise here today. You and
12 I have not met before today. Is that right?

13 A That's correct.

14 Q I just have a few questions for you regarding some
15 of the things you just told the State. Now, you were,
16 if not in charge, you were certainly present and
17 responsible for the execution of these search warrants.
18 Is that right?

19 A That's correct.

20 Q Okay. And I think you testified that Earnest Daise
21 had his own bedroom in the back of the house. You used
22 a diagram. I don't think we need to go back to it, but.
23 And you were able to -- one of the ways you were able to
24 identify that room as his room is that there was some
25 paperwork in there with his name on it. Is that

1 correct?

2 A That's correct.

3 Q Okay. Am I right that the warrant was executed
4 about 5:00 a.m., on November 16th?

5 A Yes, at five minutes after 5:00 a.m., on November
6 16th, 2009.

7 MR. MACDOUGALL: And if I could have the -- ask the
8 Court's indulgence for just a moment?

9 Thanks, your Honor, and thank you, Sergeant.

10 BY MR. MACDOUGALL:

11 Q You testified that you -- you discovered a set of
12 keys, and those keys are in evidence. Those keys are
13 Exhibit 76.

14 A That's correct.

15 Q And is it correct that they were in a pile with a
16 sweatshirt and the plastic bag with the rocky
17 substances?

18 A Yes.

19 Q Okay. So, you found those all together with the --
20 was the sweatshirt on top of them?

21 A Yes, it was.

22 Q And was that near where the bed would be in that
23 room?

24 A Yes, it was.

25 Q Okay. Now, you testified that you found three

1 things, and we have photographs of them all. One is a
2 bundle of cash down in the vent. That was \$3,000.00,
3 right?

4 A That is correct.

5 Q Okay. And you found a plastic bag with green
6 substance in it that the State suggested was marijuana.

7 A Yes, I did.

8 Q And you also found a rocky substance that I will
9 ask you to expect was -- was crack cocaine.

10 A Yes, that's correct.

11 Q Do you have any idea what the street value would be
12 of the marijuana?

13 A I have no idea.

14 Q Okay. If I told you it was about a \$1,000.00,
15 would you disagree with me?

16 A I'd have to take your word for it.

17 Q Okay. Crack cocaine, what's the street value of
18 that?

19 A I don't have any idea.

20 Q Okay. But you would agree with me that marijuana
21 and crack cocaine, in certain environments, has street
22 value. That's the reason that people have it; they sell
23 it. Is that right?

24 A That's fair.

25 Q And they sell it for cash, usually.

1 A Correct.

2 Q All right. So, it has some value, and we don't
3 know what it is, plus the \$3,000.00.

4 A Fair enough.

5 Q Found all that in Earnest's room.

6 A That's correct.

7 Q Okay. But you didn't find anything to suggest he
8 was about to go anywhere; did you? Didn't find a packed
9 suitcase? No?

10 A Not that I recall, no, sir.

11 Q Didn't find any bus tickets?

12 A No, sir.

13 Q In fact, he was in bed when the police showed up.
14 Is that right?

15 A I don't know where he was.

16 Q Okay. But there's no sign in your search, and
17 nothing in your testimony about anything you found in
18 that room that suggested a man about to go someplace?

19 A No, sir.

20 Q Even though he had \$3,000.00 in currency, and two
21 different kinds of narcotics that we both agree have
22 significant street value.

23 A That's correct.

24 Q Okay. You executed a second search warrant on --
25 on Poppy Hill Road a couple days later. Remember that?

1 November 18th?

2 A The morning of November 18th, yes.

3 Q Okay. Well, I'm -- I apologize, Sergeant. Let me
4 just go back to the -- to the first search. You've
5 described in your testimony, and I think we've admitted
6 into evidence, various collections of ammunition.

7 A Correct.

8 Q And as I saw the photographs, when you walked into
9 the bedroom, there was a lot of different kinds of ammo
10 around. There was rifle ammunition.

11 A Yes, there was.

12 Q And there were the hollow points you showed. All
13 kinds of ammunition around. And would you agree with me
14 that that suggests a man or a -- a home where firearms
15 are owned and are fired periodically?

16 A I would make that stretch, yes.

17 Q Okay. You don't have a bunch of ammunition around
18 unless you're doing is some shooting.

19 A Correct.

20 Q Okay. Now, if we could please go to the -- the
21 second search warrant on -- on November 18th. You were
22 there for that, as well?

23 A I was.

24 Q Okay. And that was executed about 8:15 a.m.

25 A That's correct.

1 Q Okay. And in that search warrant, you searched a
2 second bedroom that was Jamelle Simmons' bedroom that he
3 shared with Asia Palmer. Is that right?

4 A Correct.

5 Q Okay. And there, you found a loaded, .38 caliber
6 pistol. Is that right?

7 A Yes, that's correct.

8 Q And you also found a box with marijuana residue.
9 Is that right?

10 A Yes.

11 Q And you also found \$1,000.00 in cash, right?

12 A I did.

13 Q Okay. And -- and are you -- isn't it correct that,
14 subsequently, the \$1,000.00 in cash was returned to Mr.
15 Simmons?

16 A Yes, it was.

17 Q It was. And that was several days after the
18 search.

19 A I don't know when it was, but it was.

20 Q A \$1,000.00 was given back to Mr. Simmons by the
21 Sheriff's Department.

22 A It was, by another officer, yes.

23 Q Okay. You talked about cell phones, and I think
24 the State had you search the cell phone that was offered
25 into evidence, and you found a particular text message.

1 You also examined a red --

2 MR. MACDOUGALL: I'd ask the Court's indulgence
3 just a minute.

4 BY MR. MACDOUGALL:

5 Q You also examined a red Blackberry phone that was
6 owned by Jeanine Mullen. Is that correct?

7 A Correct.

8 Q And in examining that phone, you concluded that on
9 November 15th, 2009, there was no activity between
10 Earnest Daise's phone that you testified about and
11 Jeanine Mullen's phone. Is that right? Can I help you
12 out, Sergeant?

13 A Yes, please.

14 Q If you go to Page --

15 A Page 7?

16 Q -- 7 of your notes, at the top of the first full
17 paragraph.

18 A That's correct. There's no -- no displayed
19 activity between Earnest Daise and Jeanine Mullen's cell
20 phone. And Jeanine Mullen's, her phone was the red
21 Blackberry phone.

22 Q So, based upon your examination of the two phones,
23 you concluded that there was no cell phone calls back
24 and forth between those two phones on November 15th?

25 A On the devices, no.

1 MR. MACDOUGALL: Have a moment, your Honor? Thank
2 you, Sergeant. Thank you, your Honor. No further
3 questions.

4 THE COURT: Thank you. Anything further?

5 MR. THORNTON: Nothing further, Judge.

6 THE COURT: Any objection to this witness being
7 excused?

8 MR. THORNTON: Ask she be excused, your Honor.

9 MR. MCGUIRE: Actually, she's also on our subpoena,
10 subject to re-call.

11 THE COURT: All right. Subject to re-call, you are
12 excused. We can call you by phone. Thank you,
13 Sergeant.

14 A Yes, ma'am.

15 THE COURT: State want to call their next witness?

16 MR. THORNTON: Yes, ma'am. Andrew Rice.

17 THE COURT: Come on forward, sir.

18 MADAM CLERK: Would you place your left hand on the
19 Bible and raise your right hand for me, please. Do you
20 solemnly swear to truthfully answer all questions asked
21 of you by this court, so help you God?

22 DETECTIVE ANDREW RICE: I do.

23 MADAM CLERK: Please be seated. State your name
24 and spell it for the Court, please.

25 DETECTIVE ANDREW RICE: Andrew Rice, A/n/d/r/e/w,

1 last name R/i/c/e.

2 DETECTIVE ANDREW RICE

3 DIRECT EXAMINATION, BY MR. THORNTON:

4 Q Mr. Rice, who do you work for, sir?

5 A I work for the Beaufort County Sheriff's Office.
6 I'm assigned to the investigations division.

7 Q Is that saying you're a detective?

8 A Yes, sir.

9 Q All right. And did you work as a detective for the
10 Beaufort County Sheriff's Office on or about November
11 the 15th of 2009?

12 A I did.

13 Q Did you have any specific designation at that time?

14 A At the time I was assigned to what was called the
15 Beaufort County's Multi-Agency Drug Task Force, the
16 Beaufort/Jasper. Now it's called the Drug
17 Investigations Section.

18 Q And this is probably going to sound like a very
19 obvious question, but what, if anything, did you
20 specialize in?

21 A Trying to stop or slow down the -- the illegal
22 drugs coming into Beaufort County.

23 Q Were you called out to 43 Poppy Hill Road, on
24 November the -- early morning hours of November the
25 16th, 2009?

1 A Yes, sir.

2 Q And when you arrived, what, if anything, did you
3 do?

4 A I was called out to help assist investigations with
5 a search warrant that they were executing at that
6 residence.

7 Q And did you assist?

8 A I did assist in anything that they needed a hand
9 with. And also, there were -- had been some drug
10 evidence that was found inside of the residence.

11 Q I'm going to ask you if you can identify for me
12 what's been marked only for identification as Exhibit
13 73.

14 A Yes, sir. It's a -- a bag containing marijuana
15 that was seized from that residence.

16 Q All right. And you said it was seized from that
17 residence. Did you do anything with the marijuana? Or,
18 excuse me. Did the green, leafy substance -- we
19 haven't, obviously, had anyone testified as to its
20 chemical makeup yet, but as to the green, leafy
21 substance located in that exhibit, did you do anything
22 with it while you were at the residence?

23 A Yes, sir. I weighed it, using a scale there that
24 was also located within the residence.

25 Q Why did you use the scale that was located within

1 the residence?

2 A The scale that I had, this -- this weighed out to
3 be roughly a half pound of marijuana. The scale I had
4 was much smaller and wouldn't give an accurate reading.
5 And also, the scale usually that you find that goes with
6 whatever the person may have that substance has a pretty
7 accurate scale, as well.

8 Q And while that was in your care, custody, and
9 control, did you alter it or change it in any way?

10 A No, sir, I did not.

11 Q And when I say it, I'm, of course, referring to
12 State's Exhibit 73.

13 A No, sir, I did not.

14 Q And what did you do with it after you weighed it?

15 A I received it from Detective Wilson and submitted
16 it to the evidence division.

17 Q And was it at all times properly secured and stored
18 until turned into evidence?

19 A Yes, sir.

20 Q I'm going to ask you, if you can, what's been -- if
21 you can identify what's been marked for identification
22 as State's Exhibit 74.

23 A Yes, sir. It's a paper bag, contains suspected
24 crack cocaine.

25 Q And did you do anything with State's 30 -- or,

1 excuse me -- State's 74 while you were at the residence?

2 A I did. I -- I weighed it there at the scene. And
3 I also conducted a field test of it with -- what we use
4 is called a KNICK kit. And it just -- you take a very
5 small sample to test to see if there's a cocaine base
6 within that substance to submit for further testing.

7 Q And how much -- how much did that weigh?

8 A This was -- it was about 26 grams when I weighed
9 it. Almost an ounce.

10 ITEM MARKED STATE'S EXHIBIT NUMBER
11 67, FOR IDENTIFICATION.

12 Q I'm going to hand you what's been marked for
13 identification as State's Exhibit 67. Can you identify
14 that photograph?

15 A Yes, sir. This is the KNICK kit that was used.
16 Once the sample of the suspected crack cocaine was
17 placed on the re-agent, it turned blue, indicating a
18 cocaine base.

19 Q All right. Now, has that -- is that photograph a
20 fair and accurate depiction of the KNICK kit that you
21 used on State's 74?

22 A Yes, sir.

23 Q Has it been altered or changed in any way?

24 A No, sir.

25 MR. THORNTON: Your Honor, at this time, the State

1 would move State's 67 into evidence.

2 MR. MCGUIRE: Just subject to our previous
3 objection.

4 THE COURT: Thank you. It's in evidence.

5 ITEM IDENTIFIED AS PHOTOGRAPH
6 OF KNICK KIT USED MARKED STATE'S
7 EXHIBIT NUMBER 67, ADMITTED AS EVIDENCE.

8 BY MR. THORNTON:

9 Q I'm going to hand you what's already been into
10 evidence, and ask Mr. Hightower if he'll put up State's
11 63 that's in evidence. Can you identify that
12 photograph?

13 A Yes, sir. This was baking soda that was
14 photographed that was in the residence. Also, next to
15 it is a box of ammunition. We'll call them 762 round --
16 762 by 39 millimeters.

17 Q And is that -- can you see that screen okay?

18 A Yes, sir, I can.

19 Q All right. Is that an accurate representation of
20 the photograph that you just looked at?

21 A Yes, sir.

22 Q All right. Let me ask you a question. What, if
23 anything, is the significance of baking soda?

24 A Baking soda is used as a cut or a dilutant in
25 powder cocaine before it's sold to try to maximize your

1 profits if you're a -- a dealer. It's also used in the
2 process of making crack cocaine. The baking soda is
3 used with the water to help dissolve the cocaine, and
4 which is later boiled or cooked to separate the mixture.

5 Q Is there -- have you ever come across or seen 7.62
6 by 39 millimeter ammunition before?

7 A Yes, sir, I have.

8 Q What is the rifle most commonly associated with
9 that ammunition?

10 MR. MCGUIRE: Your Honor, I have a matter of law to
11 take up.

12 THE COURT: Okay.

13 COURT REPORTER: Do I --

14 MR. MCGUIRE: No, no, you're fine.

15 OFF-THE-RECORD BENCH CONFERENCE,

16 OUT OF HEARING OF JURORS.

17 END BENCH CONFERENCE.

18 BY MR. THORNTON:

19 Q Detective Rice, a minute ago, I was asking you a
20 question. What kind, if you know, what kind of rifle is
21 -- or, excuse me. What kind of rifle is commonly
22 associated with 7.62 by 39 millimeter ammunition.

23 A My experience has been an AK-47 rifle.

24 Q Thank you.

25 MR. THORNTON: Your Honor. Court's indulgence,

1 please, one moment. I apologize, Judge. One more
2 minute.

3 BY MR. THORNTON:

4 Q Just one quick question. Detective, and you may
5 have gone into this. If you did, I apologize for re-
6 plowing the same ground. You talked about the KNICK
7 test. Could you explain what that is and what occurred
8 when you used the KNICK test on, I believe, it's State's
9 Exhibit 74 for identification in this case?

10 A Yes, sir. It's a -- KNICK is just merely the maker
11 of -- it's a small wipee, much like a baby wipee.

12 Q Detective, let me hold -- hold -- if you -- I'm
13 sorry to interrupt. If you'd hold on for just a second,
14 and I will ask Mr. Hightower to put it up so the jury
15 can look at it, State's 67.

16 A It's a white packet that you tear open. This one
17 specifically is a KNICK Model 6500 cocaine wipe or
18 swipe. As you can see, it's a -- the inside of the
19 white wrapper is kind of a purplish-looking wipe. And
20 the part where you take a small sample of either powder
21 cocaine or crack cocaine, or what you believe is cocaine
22 or crack cocaine, you place it on the wipe and it turns
23 blue, and if there is a cocaine base present.

24 Q Did it turn blue in this case?

25 A It did.

1 Q And is that the final test that's done, or is it
2 then sent to a lab?

3 A No, sir. We package it and submit it to our
4 forensic lab, who then further processes it.

5 MR. THORNTON: Thank you very much, Detective.
6 Your Honor, subject to being re-called, that's all the
7 State has. Please answer any questions that Mr. McGuire
8 has.

9 THE COURT: Mr. McGuire.

10 MR. MCGUIRE: Thank you, your Honor.

11 DETECTIVE ANDREW RICE

12 CROSS-EXAMINATION BY MR. MCGUIRE:

13 Q Is it Detective Rice?

14 A Yes, sir.

15 Q Okay. Detective, are you still with the narcotics
16 unit?

17 A No, sir, I'm not. I was in the criminal
18 investigations section. Still under the same umbrella,
19 just a different office.

20 Q Okay. A half pound of marijuana, what would the
21 street value be in 2009?

22 A 2009? It would depend on the grade of the
23 marijuana, maybe the -- and who it is who's buying it.
24 I'd say roughly \$500.00.

25 Q Okay.

1 A For a half pound.

2 Q And the -- almost one ounce of crack cocaine, what
3 would be the street value of that?

4 A It would be the same thing, kind of where you are
5 on the food chain.

6 Q Just --

7 A But some of the controlled purchases that I
8 participated in on the drug team was roughly \$900.00 to
9 a \$1,000.00.

10 Q Okay.

11 A And up to \$1,200.00 an ounce.

12 Q Okay.

13 COURT REPORTER: And up to \$1,200.00 an ounce?

14 A Yes, ma'am. I'm sorry.

15 Q So, that could be almost \$2,000.00 combined, the
16 two.

17 A Roughly, yes, sir.

18 Q Okay. And were you also aware that there was --
19 there was \$3,000.00 in cash seized?

20 A Yes, sir.

21 Q And are you part of the unit that seizes that?

22 A Yes, sir.

23 Q Okay. And you're familiar with the forfeiture
24 system.

25 A Yes, sir, roughly. I don't ever handle them, but

1 I'm familiar with how it works.

2 Q Sure. For instance, if a -- if a car is used to
3 transport narcotics, you can seize the car.

4 A Yes, sir, if the judge says so, yes.

5 Q Sure. If it has a nexus to the commission of the
6 narcotics offense, you can seize the automobile.

7 A Yes.

8 Q Okay. And to -- to seize something, you just have
9 to have probable cause that it was involved in
10 narcotics.

11 A Yes, sir.

12 Q And to get -- like, say, if I loan a car to
13 somebody, and they used it in the narcotics transaction,
14 I would have to go to court to get it back.

15 A Yes, sir.

16 Q Okay. You just don't give those cars back.

17 A No, sir.

18 Q Okay. And if you take money, cash money that you
19 think is drug money, it's the same forfeiture
20 proceedings.

21 A Yes, sir.

22 Q Don't generally just give that back to people by
23 asking.

24 A Not unless it's worked out privately outside of
25 court.

1 Q Okay. And just to be clear, the -- there were no
2 rifles found at this place.

3 A No, sir.

4 Q Okay. The only weapon -- and you tell me if you
5 were there for that. You may not have been there. The
6 only weapon in this whole trailer was the pistol found
7 in Jay's room. Is that right?

8 A I believe so. I didn't seize the pistol or do
9 anything with it, but I do remember there being a pistol
10 in the residence.

11 COURT REPORTER: I'm sorry. I didn't see the
12 pistol --

13 A I didn't seize the pistol or handle anything with
14 it, but I remember one being in the residence.

15 Q Okay. No weapons in the bedroom said to be Earnest
16 Daise's bedroom.

17 A Not that I saw.

18 Q Okay. And then, there was also a \$1,000.00 of drug
19 money taken from Jay. Are you familiar with that?

20 A No, sir, I'm not.

21 MR. MCGUIRE: Okay. I believe that's all I have
22 for you, sir. Thank you.

23 A Thank you.

24 MR. THORNTON: Nothing further, your Honor.

25 THE COURT: All right. You may step down, sir.

1 Thank you.

2 A Thank you, your Honor.

3 THE COURT: Okay. State want to call their next
4 witness?

5 MR. THORNTON: State would call Eileen Rios to the
6 stand.

7 THE COURT: Come on forward.

8 MADAM CLERK: Would you place your left hand on the
9 Bible, and raise your right hand for me, please. Do you
10 solemnly swear to truthfully answer all questions asked
11 of you by this court, so help you God?

12 MS. EILENE RIOS: I do.

13 MADAM CLERK: Please be seated. State your name
14 and spell it for the Court reporter.

15 MS. EILENE RIOS: Eileen Rios. Last name R/i/o/s.

16 EILENE RIOS

17 DIRECT EXAMINATION, BY MR. THORNTON:

18 Q Ms. Rios, who do you work for?

19 A I'm employed by the Beaufort County Sheriff's
20 Office.

21 Q And what do you do for them?

22 A I'm an evidence technician.

23 Q And do you also -- are you also qualified to test
24 marijuana?

25 A Correct, yes.

1 Q I'm going to hand you what's been marked as State's
2 Exhibit Number 73 for identification, and ask you if you
3 can identify it.

4 A Yes, I can.

5 Q And what is that?

6 A This is -- I took this from Investigator Rice. It
7 was a paper bag with -- sealed, with suspected
8 marijuana. I see I signed for it November 16, 2009, at
9 12:46.

10 Q And did you test that marijuana?

11 A Yes, I did.

12 Q And before I ask you what the results were -- or,
13 excuse me -- I shouldn't say marijuana. Did you test
14 that green, leafy substance?

15 A Correct, yes.

16 Q And when it was given to you, was it properly
17 stored and secured, and had deposited with you by
18 Detective Rice?

19 A Yes.

20 Q And while it was in your care, custody, and
21 control, did you maintain it in the proper condition?

22 A Correct, yes.

23 Q And did -- you said you did test it?

24 A Yes, I did.

25 Q And so, I can stop saying green, leafy substance,

1 what is State's seventy, I believe three? What is
2 State's Exhibit 73?

3 A It tested positive to be marijuana, both chemically
4 and microscopically.

5 Q All right. And again, did that stay in your care,
6 custody, and control from that -- from the point you
7 tested it until now, was it in a sealed condition?

8 A Yes.

9 Q Is it still sealed?

10 A Yes. I sealed this myself.

11 MR. THORNTON: Your Honor, at this time, I'd ask
12 that State's Exhibit 73 be moved into evidence.

13 MR. MACDOUGALL: Subject to our previous objection,
14 your Honor.

15 THE COURT: Thank you. It's in evidence, subject
16 to the prior objection.

17 ITEM IDENTIFIED AS PAPER BAG
18 CONTAINING MARIJUANA MARKED STATE'S
19 EXHIBIT NUMBER 73, ADMITTED AS EVIDENCE.

20 MR. THORNTON: Court's indulgence, your Honor.

21 BY MR. THORNTON:

22 Q And as part of your job, would you test it -- and
23 forgive me, Ms. Rios, that's all I've ever called you is
24 Eileen. What is your rank with Beaufort County
25 Sheriff's Office?

1 A I'm a technician 3.

2 Q All right. Well, can I still just say Ms. Rios
3 instead of technician 3?

4 A Yes.

5 Q All right. Did you also weigh the -- weigh the
6 marijuana?

7 A Yes.

8 Q And how much did the weight come out to be?

9 A All right. Item Number 2, which was the sealed,
10 brown paper evidence bag, tested out to be 221.39 grams.

11 Q All right. And you said that's your Item Number 2,
12 but it's my State's Exhibit 73.

13 A 73.

14 Q All right. So, State's Exhibit 73 weighed how
15 much?

16 A 221.39 grams.

17 MR. THORNTON: Excellent. Ms. Rios, thank you very
18 much. I appreciate it. Please answer any questions
19 that Defense has.

20 MR. MACDOUGALL: No questions, your Honor. Thank
21 you, ma'am.

22 THE COURT: All right. Any objection to Ms. Rios
23 being excused?

24 MR. THORNTON: She is subject to re-call, Judge.
25 She -- as evidence technician.

1 THE COURT: We can get a hold of you by telephone,
2 Ms. Rios, I know.

3 MR. THORNTON: She never goes far, Judge.

4 A Yeah.

5 THE COURT: Thank you. State ready to call the
6 next witness?

7 MR. THORNTON: We are, your Honor. At this time,
8 the State calls Jennifer Mills.

9 THE COURT: Come on forward, Ms. Mills.

10 MADAM CLERK: Would you place your left hand on the
11 Bible and raise your right hand for me, please, ma'am.
12 Do you solemnly swear to truthfully answer all questions
13 asked of you by this court, so help you God?

14 MS. JENNIFER MILLS: I do.

15 MADAM CLERK: Please be seated. State your name
16 and spell it for the court reporter, please.

17 JENNIFER MILLS

18 DIRECT EXAMINATION, BY MR. THORNTON:

19 Q Ms. Mills, who do you work for?

20 A The Beaufort County Sheriff's Office Forensic
21 Services Laboratory.

22 Q And what is your job with them currently?

23 A I'm employed and I am tasked with identifying
24 chemical substances to see if controlled substance is
25 there; and produce a report; and if necessary, to come

1 to court and testify to that.

2 Q And do you maintain a certain rank with Beaufort
3 County Sheriff's Office?

4 A No.

5 Q Okay. So, what would be the proper title for you?

6 A I am Forensic Chemist and Quality Manager for the
7 Forensics Laboratory.

8 Q And what type of training or education do you have
9 to have to do the kind of job that you do for Beaufort
10 County Sheriff's Office?

11 A I have a B.S. in biochemistry from Queens College,
12 now university, in Charlotte, North Carolina. When I
13 left there, I took a job at the Charlotte-Mecklenburg
14 Police Department Crime Laboratory, and spent one year
15 of in-service training there in 1978. Since that time,
16 I attended several classes and seminars, that being the
17 FBI Academy for Forensic Identification, the ATF
18 laboratory also, for forensics. I attended multiple
19 classes and seminars since that time.

20 Q How much -- how long have you been a chemical
21 analyst?

22 A Thirty-five years and four months now.

23 Q And have you been qualified before as an expert in
24 court to testify?

25 A I have.

1 Q Approximately how many times?

2 A It's been over 500 times now.

3 MR. THORNTON: Your Honor, at this time, I'd ask
4 that Ms. Mills be qualified as an expert in testing of
5 narcotics and chemical analysis.

6 MR. MACDOUGALL: No objection, your Honor.

7 THE COURT: Thank you. Ladies and gentlemen, Ms.
8 Mills is being qualified in the area of chemical
9 analysis. That allows her to give her opinion in that
10 area. Again, it's for you to see as you think, and as
11 compared to other evidence in the case.

12 MR. THORNTON: Thank you, your Honor.

13 BY MR. THORNTON:

14 Q I'm going to hand you what's been marked for
15 identification as State's Exhibit 74, and ask you if you
16 can identify that. If you need to open it in order to
17 do that, I will get you a pair of scissors, if you'll
18 hold on for me just a second.

19 MR. THORNTON: Your Honor, I apologize. Norman has
20 been kind enough to go to the back to grab a pair of
21 scissors.

22 THE COURT: Thank you.

23 BY MR. THORNTON:

24 A I can identify State's Exhibit Number 74.

25 Q All right. Go ahead, ma'am.

1 A State's Exhibit Number 74 has my initials, the
2 laboratory number, and the date that I sealed this
3 package on it. It also has inside, I can see through
4 here, my initials, the laboratory number L090560, and
5 Item Number 1 that I placed on the evidence inside the
6 package.

7 Q All right. And did you test the white, rock-like
8 substance inside State's 74?

9 A I did.

10 Q When you got the white, rock-like substance in
11 State's 74, was it in a properly sealed condition?

12 A Yes, sir.

13 Q And did it stay in a properly sealed condition
14 during the time it was in your care, custody, and
15 control?

16 A It did.

17 Q Did you, other than to test it, did you alter it or
18 change it in any way?

19 A No, sir.

20 Q And is it still sealed as you sealed it after your
21 testing?

22 A Yes, it is.

23 Q All right.

24 MR. THORNTON: Your Honor, at this time, I would
25 move State's 74 into evidence.

1 MR. MACDOUGALL: Subject to the ruling on my
2 previous objection, your Honor.

3 THE COURT: Thank you. It's in evidence, subject
4 to prior objection.

5 ITEM IDENTIFIED AS BAG CONTAINING
6 WHITE, ROCK-LIKE SUBSTANCE,
7 LABORATORY NUMBER L090560 AND ITEM
8 NUMBER 1, MARKED STATE'S EXHIBIT
9 NUMBER 74, ADMITTED AS EVIDENCE.

10 BY MR. THORNTON:

11 Q Did you test Item -- State's Exhibit 74, now in
12 evidence?

13 A I did.

14 Q And what were your results?

15 A The contents of State's Exhibit 74, my Lab Number
16 L090560, Item Number 1, paper bag containing a plastic
17 bag, containing chunks of white substance, results was
18 cocaine base was found, weighing 23.26 grams.

19 Q And what is another word for -- is there another
20 word for cocaine base?

21 A Yes.

22 Q And what would be the more common name for cocaine
23 base?

24 A Crack cocaine.

25 Q If I could ask you to go ahead and open that up.

1 And if I need to -- do I need to get you a pair of
2 gloves?

3 A No, sir.

4 Q All right. If you would, please open that up.

5 MR. THORNTON: And your Honor, with the Court's
6 permission, publish to the jury. And if I could ask
7 permission from the Court to have her step down once she
8 gets that open so that the jury can see.

9 THE COURT: Ms. Mills, you certainly can step down.
10 Thank you.

11 A Thank you.

12 BY MR. THORNTON:

13 Q And once you've got it into condition where the
14 jury can see the crack, if you would, just bring it down
15 and show it to them, please.

16 WITNESS OPENS BAG, SHOWS TO JURORS.

17 Q Thank you very much. Now, if you would, let Mr.
18 MacDougall see that, if he needs to.

19 MR. MACDOUGALL LOOKS AT BAG.

20 MR. THORNTON: If you would, put that back into the
21 packaging as it came out for me, please, when you take
22 the stand. Thank you very much, ma'am. I have no
23 further questions for you. Please answer any questions
24 Defense counsel has.

25 MR. MACDOUGALL: No questions of this witness, your

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1 Honor. Thank you, ma'am.

2 THE COURT: Thank you, ma'am. You are excused.

3 A Thank you, your Honor.

4 MR. THORNTON: Your Honor, may we approach?

5 THE COURT: You may.

6 OFF-THE-RECORD BENCH CONFERENCE,

7 OUT OF HEARING OF JURORS.

8 END BENCH CONFERENCE.

9 BY THE COURT:

10 THE COURT: Ladies and gentlemen, we were just
11 discussing scheduling. I wanted to let you know that.
12 We have been running hard all day long, and I will tell
13 you that as far as anticipation, we are right on
14 schedule. The attorneys informed me of that. I think
15 we're going to go ahead and break for the evening. The
16 next witness is going to take awhile. And rather than
17 chop up the testimony, I'd rather start fresh in the
18 morning.

19 Mr. Foreperson, is 9:30 still okay with the
20 remainder of the jury? Is that suiting everybody?

21 FOREPERSON: Yes.

22 THE COURT: Very good. All right. So, ladies and
23 gentlemen, again, I have to caution you, and I know I
24 keep repeating it, but it's so important. Do not
25 discuss this case with anyone. Don't do any independent

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1 research. Don't read anything online.

2 Ladies and gentlemen, I know that sometimes it's
3 difficult for a jury. You have to sit there all day.
4 You have the hardest job here. Go home, get a good
5 night's sleep, eat a good dinner, eat a good breakfast.
6 If you're an exerciser, go exercise. You'll feel better
7 in the morning. And we look forward to seeing you all
8 at 9:30, back in the jury room. I don't anticipate
9 anything keeping us from starting immediately at 9:30,
10 so we just look forward to seeing you then. Thank you.

11 BAILIFF: Thank you, your Honor.

12 JURY LEAVES COURTROOM 5:02 P.M.

13 BAILIFF: Jury's clear, your Honor.

14 THE COURT: Thank you. All right, you all.

15 BAILIFF: Let's maintain order, please.

16 THE COURT: Anything we need to put down for the
17 record? Anything, you all?

18 MR. STONE: No. No, ma'am. Not from the State.

19 THE COURT: Okay.

20 MR. MCGUIRE: We have a -- I have an objection.

21 THE COURT: Thank you.

22 MR. MCGUIRE: With regard to the question about the
23 ammunition, the 762 by 39 millimeter. And so, the
24 question was what kind of -- what kind of gun would that
25 be used in? And anticipating somewhat prejudicial

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1 response, I objected; we approached the bench; and I
2 indicated that my expectation would be that it's an
3 assault rifle of some kind. I indicated to the Court
4 that there were no -- and I think the State would agree,
5 there were no weapons found in Mr. Daise's bedroom.
6 Certainly, no rifles. Certainly, no assault rifles.

7 THE COURT: Um-hmm.

8 MR. MCGUIRE: To say that he's got a AK-47, which
9 is an automatic machine gun, ammunition, apparently,
10 too, it's just unnecessary. They're pairing it up with
11 something that's just sort of ephemeral and not existing
12 in the case, and just prejudice. It's a 403 analysis.
13 Mr. Daise is prejudiced by the mention of a machine gun.

14 THE COURT: Solicitor, do you want to respond?

15 MR. THORNTON: Your Honor, the response -- the
16 response was this at the Bench, and I will say it again
17 now. At the request of the Defense, we added in the
18 drug charges. They are possession with intent to
19 distribute marijuana.

20 THE COURT: Marijuana.

21 MR. THORNTON: Which includes distribution inside
22 the possession with intent to distribute. There is also
23 trafficking cocaine. I believe Mr. Leddy did point out
24 that can be just weight, but trafficking also is
25 bringing in, conspiracy to bring in. It encompasses a

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1 lot of different things, and there is a clear nexus
2 between drugs and guns. He had scales, he had wads of
3 cash, he had two different kinds of drugs, both in
4 excess of what you would consider the inference weight
5 for, you know, for distribution. He also had assault
6 rifle ammunition, and it wasn't as bad as assault rifle.
7 I thought that Detective Rice would probably say AK-47.
8 He did not say assault rifle. I'm not saying one's
9 necessarily better than the other, but you know, that's
10 what -- that's the ammo he had.

11 THE COURT: I understand. He responded AK-47.
12 Doing a 403 analysis, I think the probative value
13 exceeded, certainly, any prejudice. We already have
14 testimony in, certainly, that the drugs were found. The
15 door --

16 MS. HENDERSON: It's shut now, your Honor.

17 THE COURT: Thank you. That drugs were found; that
18 money was found, large amounts of money. Scales were
19 found. Baking soda was found. Again, I don't think the
20 AK-47 comment in any way affected the jury. Okay.

21 Other than that, I think we're good. I don't think
22 there's anything else we put on the record for side
23 bars. And Wanda's doing a very good job being right on
24 top of it, Lord knows, and I appreciate it.

25 It seems like we're moving along very well. As

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1 we've talked about, we anticipate that the State will be
2 finishing their case, hopefully, by, you know, either
3 late morning or early afternoon tomorrow. So, we'll go
4 ahead and begin with the Defense's case if you put up a
5 case.

6 I want to remind you, obviously, to speak to Mr.
7 Daise overnight about his rights and whether or not he
8 wishes to testify. Again, you know, I'm going to have
9 to ask him, so I just want to make sure you go over that
10 with him.

11 I think that's about everything we need for
12 tonight. 9:30 tomorrow morning. Do we need to be here
13 much earlier than that, or, you all?

14 MR. MCGUIRE: No, ma'am.

15 THE COURT: I think we're fine for everyone to be
16 here just a little bit before 9:30.

17 MR. MCGUIRE: Sure.

18 THE COURT: Yes, sir?

19 MR. MACDOUGALL: I just ask the Court's preference,
20 because this is my first time here. It would look like
21 we may have the option of closing tomorrow afternoon,
22 after the Defense puts its case on. Some jurors have a
23 strong preference not to do that at 5:00 or 6:00 o'clock
24 and then, charge at night and having the jury staying
25 late. Others like to do it in the morning. Do you have

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1 any predispositions or direction?

2 THE COURT: You know, every judge has their --
3 every judge has their standard rule is, we don't charge
4 a jury after 3:30, because we don't want to send it to
5 them for their deliberations. I particularly worry
6 about this case because of the seriousness of it,
7 obviously. It's a death penalty case. I don't want the
8 jury back there tired and deliberating, that is for
9 sure. So, as of right now, I hate to say this, I don't
10 know. It just depends on the time. If it's early
11 afternoon, we'll probably go forward. If it gets much
12 past 3:00 o'clock or so, you know, we'll just come on
13 back, and we'll do it that way.

14 I think you need to be prepared. I mean, I hate to
15 give you -- it's a very, you know, open-ended -- again,
16 I'm not exactly sure, it just depends on how quickly we
17 go. Again, we've been running so fast. I don't want
18 the jury to think that we're putting them off, but
19 again, I also don't want them to be tired. So, I think
20 there's a lot of evidence in this case we have to go
21 through. I think it takes some concentration, and I
22 appreciate that. So, chances are, if we go into the
23 afternoon, we aren't going to argue and charge tomorrow.

24 We also need to talk about the jury charge, as
25 well, and that's going to take some time. I don't know

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1 if you have forwarded any proposed jury charges or
2 anything other than somewhat standard. I will tell you
3 that we have pulled from other cases jury charges just
4 from various other judges. I don't know if there was
5 anything specific that you wanted or anything special.
6 I don't know if have what you think are model jury
7 charges. I don't know if the Solicitor has model jury
8 charges, but.

9 MR. MCGUIRE: We do have -- we do have a charge.

10 THE COURT: Okay.

11 MR. MCGUIRE: Sort of the general charge. We
12 actually pulled it from the *Susan Smith* case. It was
13 later used in another case, and it seemed to be well
14 accepted. We can give that to you.

15 THE COURT: Okay. Okay. Judge Howard? Judge
16 Howard blessed it, then, we're all good. So.

17 MR. MCGUIRE: Yeah, Bill Howard did it, sure. And
18 with regard to the most recent, I think it's called
19 *Logan*, with regard to circumstantial evidence, this
20 being a primarily circumstantial evidence case, we would
21 ask for something akin to the old *Edwards* charge --

22 THE COURT: Um-hmm.

23 MR. MCGUIRE: -- of all circumstances must point
24 conclusively to the guilt of the accused, with the
25 exclusion of any reasonable hypothesis.

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1 THE COURT: Okay. Mr. McGuire, can I leave it to
2 you to forward me a copy of the one that you're talking
3 about with Judge Howard?

4 MR. MCGUIRE: Sure. Yes.

5 THE COURT: And then, also, if you want to craft
6 something as far as with the wording of *Edwards*, I'm
7 fine with that, too, and I'll take a look at it. And,
8 you know, provided you're not twisting it terribly, you
9 know, I'm happy to consult it.

10 MR. THORNTON: And obviously, Judge, we would
11 object to that. I think that *Edwards*, the reason it's
12 the old *Edwards* is because it's been replaced. And we,
13 you know, I would prefer the new charge. But again, I
14 know Mr. McGuire will send me what he's got. I'll send
15 him what I've got.

16 THE COURT: Okay. This is what I -- you both give
17 me the request for charge for circumstantial evidence
18 that you would like.

19 MR. THORNTON: Yes, ma'am.

20 THE COURT: And I'll go read the *Logan* case, and
21 we'll decide, and I'll probably marry the two. So.

22 MR. THORNTON: Yes, ma'am.

23 THE COURT: If it's appropriate.

24 MR. MCGUIRE: Thank you, your Honor.

25 THE COURT: Okay? All right. Anything else?

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1 MR. MCGUIRE: Not at this time.

2 THE COURT: All right. Thank you all.

3 MR. THORNTON: Thank you.

4 THE COURT: We'll see you in the morning at 9:30.

5 .END DAY SIX, TUESDAY,

6 OCTOBER 15, 2013, 5:10 P.M.

7 BEGIN DAY SEVEN, WEDNESDAY,

8 OCTOBER 16, 2013, 9:36 A.M.

9 BY THE COURT:

10 ON THE RECORD 9:36 A.M.

11 BAILIFF: All rise. Court is now in session, the
12 Honorable Carmen Mullen presiding.

13 THE COURT: Thank you all. Please be seated. Good
14 morning.

15 MR. STONE: Good morning.

16 THE COURT: If the lawyers will approach for just a
17 moment.

18 COURT REPORTER: Do you need me, Judge?

19 THE COURT: No, ma'am. I'm good. I will have you
20 mark something in just a moment.

21 OFF-THE-RECORD BENCH CONFERENCE,

22 OUT OF PRESENCE OF JURORS.

23 END BENCH CONFERENCE.

24 THE COURT: Let's do this. Before we begin, how
25 about I bring Mr. Wallace out here? I'll explain to him

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1 that there is no one in this case by that name. And go
2 ahead and bring him out for me.

3 JUROR NUMBER 654 ENTERS COURTROOM.

4 BAILIFF: Mr. Wallace, Judge.

5 THE COURT: Good morning, Mr. Wallace.

6 JUROR NUMBER 654: Good morning, Judge.

7 THE COURT: Thank you so much for bringing this to
8 my attention. I understand from the foreperson that you
9 received a linked a LinkedIn request from a Neil Mullen.
10 I have spoken with the attorneys. There is no one by
11 the name of Neil Mullen as a family member of any of the
12 Mullen in this case, nor me for that matter, either,
13 because I have the same last name. I have not heard of
14 a Neil Mullen, so I don't want you concerned, although I
15 do appreciate it.

16 I would instruct you -- and it's something that I
17 probably had never thought of, but, while you are in the
18 trial of the case, I think it's probably best not to
19 accept any LinkedIn.

20 JUROR NUMBER 654: I did not.

21 THE COURT: Very good. And that's something that I
22 probably need to start telling jurors as it is. I mean,
23 it could be innocuous. Certainly, we were just talking
24 about how you get requests oftentimes if people have
25 similarities, the computer kind of puts it together, and

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1 will attach you and have a request. But it's something
2 now that has been brought to my attention that I'm going
3 to tell every juror that they are not to accept any
4 LinkedIn requests. So, thank you for the lesson, and I
5 appreciate it. And as long as you don't have any
6 concerns, we are not concerned. Thank you, Mr. Wallace.
7 I'm going to send you right back there. We'll be right
8 with you all. Okay?

9 BAILIFF: Thank you, your Honor.

10 JUROR NUMBER 654 LEAVES COURTROOM.

11 THE COURT: Mr. McGuire, I don't want the
12 foreperson to think I've ignored him, as far as the
13 concern he has with that one particular juror. With
14 both your all's agreement and permission, I'm going to
15 send a note in that says, you know, I appreciate, you
16 know, your concern; and if at any point it rises to the
17 level where you think, you know, it is impeding the
18 process or you don't think he's competent, I need you to
19 bring it to my attention. But you tell me what wording
20 you want to use. However you want to put it.

21 MR. MCGUIRE: I think just something, you've
22 discussed it with the lawyers, --

23 THE COURT: Um-hmm.

24 MR. MCGUIRE: -- and if any issue comes up in the
25 future, we'll address it then.

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1 ITEM IDENTIFIED AS NOTE REGARDING

2 JURORS MARKED COURT'S EXHIBIT NUMBER 87.

3 THE COURT: Okay. Mr. McGuire, we didn't get any
4 request to charge or anything from the Defense last
5 night.

6 MR. MCGUIRE: I -- that's my fault. I was
7 interviewing an expert witness. And then, I -- it just
8 got away from me. I --

9 THE COURT: Okay.

10 MR. MCGUIRE: I can take care of that right now.

11 THE COURT: Okay. Certainly. And if there's
12 someone else, you know, working with you, I know
13 you're --

14 MR. MCGUIRE: I think we might have it right here,
15 Judge. We'll send it right now. Judge, if we could
16 take up one more matter. It's kind of a minor matter.

17 THE COURT: Yeah.

18 MR. MCGUIRE: We'll probably have to do it at the
19 Bench, because I need to show you some writing.

20 COURT REPORTER: Bill?

21 MR. MCGUIRE: Oh. Yes, ma'am.

22 So, my understanding is Duffie and Sean will be
23 calling a cell phone custodian pretty early in the
24 morning, and he's also the custodian of the text
25 message, which is sort of a romantic -- they're setting

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1 up kind of a romantic get-together in the evening.

2 THE COURT: Okay.

3 MR. MCGUIRE: Between Jeanine and Earnest. And I'm
4 probably going to -- he's also the custodian for that,
5 so I'm probably going to move it in through him.

6 THE COURT: Okay.

7 MR. MCGUIRE: And I just want to talk about
8 redacting some of the language. It's a little thuggish.
9 Like stuff like this. I'm going to redact just, like,
10 vulgar language. Do you have any problem with that?

11 MR. THORNTON: I don't know. It's the first time I
12 -- which one of these are you introducing, all of them?

13 MR. MCGUIRE: Yeah. It's stuff like this. Like
14 this one says, Judge:

15 *Yeah, I'm a nigga, babe, trying to*
16 *get my weight up.*

17 That's not even -- that's from somebody else to our
18 guy. The vulgar language.

19 THE COURT: That's from someone else to your guy?

20 MR. MCGUIRE: Yeah. Nobody involved in the case,
21 right? I mean, that's not involved.

22 MR. THORNTON: Not that I'm aware of. I'm just now
23 looking at it, but --

24 THE COURT: Okay. I don't even know what that
25 means.

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1 MR. MCGUIRE: What? *I'm a broke nigga?*

2 MR. THORNTON: Your Honor, can we have a minute? I
3 just want to go look at it.

4 THE COURT: Yeah. You all can look at it.

5 MR. MCGUIRE: You can keep that copy.

6 THE COURT: Okay.

7 MR. THORNTON: Just a couple minutes, Judge.

8 THE COURT: Okay.

9 THE COURT: Wanda, I need you to go ahead and make
10 this note a part of the record.

11 COURT REPORTER: For the record, the note from the
12 juror, this note is Number 88, Court's Exhibit Number
13 88.

14 THE COURT: Thank you. That's the Court's Exhibit.
15 Thank you.

16 ITEM IDENTIFIED AS NOTE FROM JUROR

17 MARKED COURT'S EXHIBIT NUMBER 88.

18 THE COURT: Mr. McGuire, do you have an extra copy
19 of that? Or even if I could just take a copy, we can go
20 make one, as well. If you all can't agree, then I'm
21 going to need a copy of it, and an explanation.

22 MR. MCGUIRE: Sure.

23 BAILIFF: May I approach, your Honor?

24 THE COURT: Can I write on this, Mr. McGuire?

25 BAILIFF: Do you want it back, or give it Wanda?

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1 THE COURT: Give it to Wanda. Just go ahead and
2 mark that as the next court's exhibit, my note to the
3 Foreperson.

4 COURT REPORTER: Okay. This will be Court's
5 Exhibit Number 89.

6 ITEM IDENTIFIED AS NOTE FROM JUDGE
7 TO FOREPERSON MARKED COURT'S EXHIBIT
8 NUMBER 89.

9 MR. MCGUIRE: Judge, while the Court's in recess,
10 can I just step out for a second?

11 THE COURT: Please. Okay. Solicitor?

12 MR. THORNTON: Did you want to wait on Mr. McGuire
13 to get back in, if he's going to argue it?

14 THE COURT: I don't know who's going to do --

15 MR. MACDOUGALL: It's his evidence, your Honor.

16 THE COURT: Got it. Okay. Can you see if we can't
17 get him in? Thank you.

18 MR. LEDDY: I believe he just went out to my car,
19 your Honor, to get something.

20 THE COURT: Okay.

21 MR. LEDDY: At least he asked for my keys.

22 BAILIFF: Your Honor, I'll send somebody after him.

23 THE COURT: Thank you. I appreciate it.

24 MR. MCGUIRE ENTERS COURTROOM.

25 THE COURT: Okay.

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1 MR. THORNTON: Your Honor, the State's position is
2 that, you know, that it should not be redacted. If it's
3 going to come in, it just needs to come in. They
4 shouldn't be allowed to take -- take some of the
5 language and quote, *clean it up*, end quote, and then,
6 leave others, you know. I don't think they get to pick
7 and choose that. If they want to put in the text
8 messages, I'll concede that, you know, it's relevant,
9 then, they should be allowed to put them in, but they
10 just need to put them in.

11 THE COURT: Okay. Just so I'm clear, I think one
12 of the things that Mr. McGuire, when we were up here at
13 the Bar, has pointed out was, one of them said the
14 expletive -- I'm trying to find it. I apologize. Let
15 me just hear it from you, Mr. McGuire.

16 MR. MCGUIRE: In the course of picking battles,
17 this is not the highest one on my radar right now. But,
18 you know, there are some expletives. The *N* word is
19 used. Some of these messages -- messages are from
20 people not involved in the case.

21 THE COURT: Um-hmm.

22 MR. MCGUIRE: I don't see any harm in cleaning it
23 up. If the Court rules that I can't, I mean, I'm still
24 going to introduce it. I'll just leave it to the Court.

25 THE COURT: Just so I'm clear, is this all the

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1 messages coming and going from whose cell phone?

2 MR. MCGUIRE: This is Earnest Daise's cell phone.

3 THE COURT: Okay.

4 MR. MCGUIRE: And the messages on the -- the number
5 on the right is where the number is coming from.

6 THE COURT: Okay.

7 MR. MCGUIRE: And the number on the left is where
8 it's going to.

9 THE COURT: I mean, I understand -- is Queen Bee
10 was Jeanine Mullen?

11 MR. MCGUIRE: No. That was somebody else.

12 THE COURT: Okay.

13 MR. MCGUIRE: The number for Jeanine Mullen ends in
14 6636.

15 THE COURT: Thank you.

16 MR. MCGUIRE: And the number for Earnest Daise ends
17 in 0455.

18 THE COURT: Okay. Okay. Okay. And this is what
19 you intend on putting in? Is that correct?

20 MR. MCGUIRE: Yes, ma'am.

21 THE COURT: Okay. This is not something the
22 State's putting in.

23 MR. THORNTON: No, ma'am.

24 THE COURT: Okay. All right. I think it needs to
25 come in as it is. If you're going to use it, I think it

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1 needs to be in it's entirety. I will tell you that I've
2 gone through all of it, and while I may not understand
3 portions of it, I really don't see anything that is just
4 overly graphic.

5 MR. MCGUIRE: Like I said, --

6 THE COURT: There are a few expletives in here.

7 MR. MCGUIRE: Sure.

8 THE COURT: But other than that. All right. So,
9 we'll just leave it as it is.

10 MR. MCGUIRE: Yes, ma'am.

11 THE COURT: Okay. We ready to go this morning, you
12 all?

13 MR. THORNTON: The State's ready, your Honor.

14 THE COURT: Okay. And again, you all, help me and
15 correct me. I see that there was an article that was
16 posted online. Was there anything actually in the
17 newspaper this morning? Did you all have an opportunity
18 to look at it?

19 MR. MCGUIRE: We've not -- I've not read it.

20 MR. STONE: There wasn't anything in USA Today, and
21 that's the only thing that I had access to this morning,
22 so that's all I can tell you.

23 THE COURT: Was that from today?

24 MR. MCGUIRE: I'll hand it up.

25 THE COURT: Thank you. I appreciate it. Okay.

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1 So, it's the same article that I was reading online.

2 Okay. Let's bring the jury in, Norman.

3 BAILIFF: Yes, your Honor.

4 THE COURT: Thank you. Did we feed them this
5 morning?

6 BAILIFF: Yes, ma'am, they got bagels today.

7 THE COURT: Thank you, sir.

8 BAILIFF: Your Honor, the jury is entering.

9 THE COURT: Thank you.

10 JURY ENTERS COURTROOM 10:08 A.M.

11 THE COURT: Good morning, ladies and gentlemen.

12 RESPONSES FROM JURORS.

13 THE COURT: Thank you for patiently waiting on us.
14 Ladies and gentlemen, I need to ask you, and I need to
15 put you under oath, ladies and gentlemen, if you all
16 would, please, just raise your right hand.

17 Do you solemnly swear of affirm the testimony you
18 give to be the truth, so help you God?

19 RESPONSES FROM JURORS.

20 THE COURT: Thank you. Put your hands down.
21 Ladies and gentlemen, there was an article in the paper
22 today and various things on the website. I want to make
23 absolutely sure that no one is reading any articles,
24 watching any news stories, doing any independent
25 research. Again, no driving by anything that has been

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1 talked about in the courtroom. Has anyone done any of
2 those things? If so, please tell me now. Sir?

3 JUROR NUMBER 470: Ma'am, can I ask a question
4 here?

5 THE COURT: Absolutely. And sir, what I would like
6 you to do, if you don't mind, would you come forward to
7 speak with me? Is that okay? Can I have the attorneys,
8 please.

9 OFF-THE-RECORD BENCH CONFERENCE,

10 OUT OF HEARING OF JURORS:

11 THE COURT: Good morning.

12 JUROR NUMBER 470: Good morning.

13 THE COURT: Okay. I need you over here, if you
14 don't mind.

15 JUROR NUMBER 470: I'm -- I'm not trying to get out
16 of anything. I don't want you to presume that, but I
17 did see the headline this morning, but I did not read
18 it.

19 THE COURT: Okay.

20 JUROR NUMBER 470: I just saw the headline.

21 THE COURT: Is it -- do you get the newspaper
22 delivered to your home or?

23 JUROR NUMBER 470: Yeah, it was a natural instinct
24 for me to go out and get it and just flip it over.

25 THE COURT: But you did not read the story.

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1 JUROR NUMBER 470: I did not read the article, but
2 I felt like I should say something.

3 THE COURT: And I appreciate that. Again, I just
4 need to caution you, I can certainly understand how that
5 can happen, as long as you, of course, are not reading
6 anything that's in it.

7 JUROR NUMBER 470: I didn't read it.

8 THE COURT: The contents of it, I'm fine with it.
9 Okay? But let's -- let's get someone else to get your
10 newspaper in the morning. Okay?

11 JUROR NUMBER 470: Thank you.

12 THE COURT: Okay.

13 COURT REPORTER: Is that 470?

14 THE COURT: Number 470? Yes, sir. Sir, is your
15 number is 470?

16 JUROR NUMBER 470: Yes.

17 THE COURT: Okay. Thank you, sir. I appreciate
18 it.

19 END BENCH CONFERENCE.

20 THE COURT: All right. Are we ready to call our
21 first witness for the morning?

22 MR. THORNTON: State's ready, your Honor.

23 THE COURT: Thank you, Mr. Thornton. Go ahead and
24 call.

25 MR. THORNTON: Ricardo Leal.

1 MADAM CLERK: Would you place your left hand on the
2 *Bible* and raise your right hand for me, please?

3 RICARDO LEAL: Absolutely.

4 MADAM CLERK: Do you solemnly swear to truthfully
5 answer all questions asked of you by this court, so help
6 you God?

7 RICARDO LEAL: Yes, ma'am.

8 MADAM CLERK: Please be seated and spell your last
9 name for the Court, please.

10 RICARDO LEAL: Last name is L/e/a/l.

11 THE COURT: Thank you, sir. Good morning.

12 RICARDO LEAL: Thank you, your Honor. Good
13 morning.

14 RICARDO LEAL

15 DIRECT EXAMINATION, BY MR. THORNTON:

16 Q Just so I'm pronouncing it right, Mr. Leal?

17 A Leal.

18 Q Leal.

19 A Yes.

20 Q Mr. Leal, let me ask you a quick question. Who do
21 you work for, sir?

22 A I work for Sprint Telecommunications Corporation.

23 Q And what -- what do you do for Sprint?

24 A I'm a records custodian for the company. I've
25 served as a subpoena analyst prior to that. And

1 currently, in my position now, for over two years I've
2 been testifying in court to the records.

3 Q And basically, does that mean that you are in
4 charge of coming to court and giving testimony about
5 cell phone records and things like that?

6 A Correct. So, I have to know the practices of the
7 corporation and the different entities that we have in
8 the records.

9 Q All right.

10 ITEM IDENTIFIED AS DETAIL RECORDS
11 FOR PHONE NUMBER 843-263-0455,
12 FOR DATES NOVEMBER 14, 2009, THROUGH
13 NOVEMBER 15, 2009 MARKED STATE'S EXHIBIT
14 NUMBER 69, FOR IDENTIFICATION.

15 MR. THORNTON: Mr. Leal, I'm going to hand you
16 what's been marked for identification as State's Exhibit
17 69, and first ask you if you can identify those records.

18 A Yes, I can. These are called detail records for
19 phone number 843-263-0455, for the dates of November 14,
20 2009, through November 15, 2009.

21 Q And sir, are those records kept in the ordinary,
22 normal course of your business?

23 A Yes, they are.

24 Q And have you examined these records to insure their
25 accuracy?

1 A Yes, I have.

2 Q And are they, in fact, accurate records for the
3 dates that you've already testified to for the phone
4 number 843-263-0455?

5 A Yes, sir.

6 Q Have they been altered or changed in any way?

7 A No, sir.

8 MR. THORNTON: Your Honor, at this time, the State
9 would move State's Exhibit Number 69 into evidence.

10 MR. MCGUIRE: Without objection.

11 THE COURT: Without objection, they're in evidence.

12 MR. THORNTON: Thank you, your Honor. Your Honor,
13 at this time, I'd like to publish and go through the
14 records.

15 THE COURT: You may.

16 ITEM IDENTIFIED AS DETAIL RECORDS
17 FOR PHONE NUMBER 843-263-0455, FOR
18 DATES NOVEMBER 14, 2009, THROUGH
19 NOVEMBER 15, 2009, MARKED STATE'S
20 EXHIBIT NUMBER 69, ADMITTED AS EVIDENCE.

21 BY MR. THORNTON:

22 Q Mr. Leal, do you have a copy of this so we can go
23 through it one at a time?

24 A I do have a copy.

25 Q All right. And again, what is the phone number

1 associated with these records? In other words, what
2 phone number do these records come from?

3 A From phone number 843-263-0455.

4 THE COURT: Mr. McGuire, you have a copy; don't
5 you?

6 MR. MCGUIRE: Yes, ma'am.

7 MR. THORNTON: Your Honor, would you -- would the
8 Court like a copy?

9 THE COURT: I would, please. I can have Caroline
10 go make a copy.

11 MR. STONE: That would be great. Thank you.

12 THE COURT: Thank you. We'll give it right back.

13 MR. STONE: Thank you, ma'am.

14 THE COURT: Thank you.

15 BY MR. THORNTON:

16 Q All right, sir. And obviously, you have not been
17 in here, but that number's already been associated with
18 and testified to as the phone number of Earnest Daise,
19 which is written up on the board.

20 A Okay.

21 MR. THORNTON: Your Honor, would you prefer for me
22 to wait 'til get your copy?

23 THE COURT: You can go ahead, please.

24 BY MR. THORNTON:

25 Q All right. Mr. Leal, I'm going to ask you, and

1 would it be easiest for me just to go with a start time,
2 as far as date and time?

3 A Yes, sir.

4 Q All right. And let me ask you this. Are some of
5 these records in what they call military time?

6 A They're all in military time, correct.

7 Q Would it be okay if I use the non-military
8 equivalent, so as not to confuse people?

9 A Sure.

10 Q Okay. I'm going to ask you to direct your
11 attention first to a phone call, if you could go over it
12 and tell me who the call was from and who it was placed
13 to, or what number, excuse me, it was placed to,
14 November the 15th, 2009, at 11:39 and 24 seconds in the
15 morning. Is there a record of where that call came from
16 or what number?

17 A There is a call at 11:39:46 from phone number 843-
18 846-1372, to 843-263-0455.

19 Q All right. Would you go over those one more time
20 for me?

21 A Absolutely. At 11:39 a.m., on the 15th, there is a
22 call at 8 -- or, from 843-846-1372, to 843-263-0455.

23 Q Thank you, sir. And obviously, again, unbeknownst
24 to you, there was prior testimony that's the home phone
25 number of Jeanine Mullen, the victim in this case.

1 Is there another phone call right after that, sir,
2 at 11:39 and 46 seconds on the same day? In other
3 words, is there a phone call approximately 22 seconds
4 later?

5 A Yes, there is.

6 Q All right. And who is that -- or what number is
7 that call from, and who is that call to?

8 A It's from 843-846-1372, to 843-263-0455.

9 Q So, that is the same number which has been
10 associated with Jeanine Mullen to, obviously, Earnest
11 Daise. Next, sir, I would point your attention to the
12 same date, less than an hour later, 12:22 and 16
13 seconds, so, shortly after noon, is there another phone
14 call from 846-1372?

15 A Yes, sir, there is.

16 Q And who is that phone call to?

17 A It is to 843-263-0455, and it goes to voice mail.

18 Q And I'm going to ask you, since these records are
19 going to be in evidence, there are several places in the
20 record where the records have an 11 before the 843 area
21 code. In other words, it's 11-843. Is there any
22 significance to that?

23 A Yes, there is. The 11 signifies that the call went
24 to voice mail, and so, it's going to the voice mail
25 platform.

1 Q Is there another phone call at -- on the same date,
2 11/15/2009, at -- and I'm going to convert this, if it's
3 okay with you, sir,

4 A Sure.

5 Q -- to non-military time -- 2:39 in the afternoon,
6 2:39 and 3 seconds.

7 A Yes, sir. At 2:39 and 3 seconds, there's a call
8 from 843-846-1372, to 843-263-0455.

9 Q Next, sir, I'll direct your attention to the call,
10 same date, approximately, looks like about 15 minutes
11 later, 2:55 and 21 seconds, was there another phone
12 call?

13 A Yes, sir, there was. And that call was from 843-
14 846-1372, to 26 -- or 843-263-0455. That went to voice
15 mail.

16 Q Next call, sir. Less than a minute later, 2:56 and
17 16 seconds.

18 A Yes, sir. 843-846-1372 called 843-263-0455, and
19 that went to voice mail, as well.

20 Q Within the same minute, is there an additional
21 phone call at 2:56 and 59 seconds?

22 A Yes, sir.

23 Q And what are those numbers, sir?

24 A 843-846-1372, to 843-263-0455, and that went to
25 voice mail, as well.

1 Q Next question, sir. At 2:57:26, is there an
2 additional phone call?

3 A Yes, sir. 843-846-1372, to 843-263-0455, and that
4 went to voice mail.

5 Q 2:57 and 58 seconds.

6 A Yes, sir. 843-846-1372, dialed 843-263-0455, and
7 that went to voice mail, as well.

8 MR. MCGUIRE: Judge, if I could just have a second
9 with Mr. Thornton?

10 THE COURT: Yes, sir.

11 OFF-THE-RECORD DISCUSSION BETWEEN

12 MR. MCGUIRE AND MR. THORNTON.

13 BY MR. THORNTON:

14 Q All right, sir. And again, I'm just going to
15 reference them by the names. Obviously, you don't know
16 that. You weren't in here for testimony. Just -- you
17 can reference them by the phone numbers.

18 A Absolutely.

19 Q Is there another phone call -- I believe we left
20 off with 2:57 and 58 seconds. Is there another phone
21 call from Earnest to -- or, excuse me -- from Jeanine to
22 Earnest at 2:58:40?

23 A Yes, there is. Same scenario.

24 Q And is the next call between 1372, Jeanine Mullen,
25 to Earnest Daise; is there a call at 2:59 and 27

1 seconds?

2 A Yes, sir.

3 Q And are these still going to voice mail?

4 A Yes, they are.

5 Q All right. What about a phone call, if you could
6 go back through the numbers, same date, within a minute,
7 it says 1500. That would be 3 -- would that be 3:00
8 o'clock and 36 seconds?

9 A Yes. Yes, sir.

10 Q All right. 3:00 o'clock and 36 seconds.

11 A The 843-846-1372 dialed 843-263-0455, same result,
12 voice mail.

13 Q Another phone call, 15, -- excuse me -- 3:09 and 57
14 seconds.

15 A Yes, sir. 843-846-1372, to the 843-263-0455
16 number. That went to voice mail.

17 Q Next phone call, sir, at 3:36 and 29 seconds. From
18 and to, please, on the numbers.

19 A There's a call from 843-846-1372, to 843-263-05 --
20 455, at 15 -- or 3:36:29.

21 Q Now, let me ask you a question. In looking on
22 these records, obviously, the jury will have them in the
23 jury room, is there anything significant -- you've said
24 straight to voice mail. In the very last two columns of
25 your report, there are zeros where there are numbers in

1 some of the other columns, and there's from what would
2 appear to be the 2:55:21 phone call, all the way down to
3 and including the 2:36 -- or excuse me -- 3:36:29 phone
4 call we just talked about, is there any significance to,
5 or anything you can tell me by the virtue of zeros in
6 the last two columns of the record?

7 A Yes, sir. With a zero in the first and last cell,
8 that would be consistent with the phone being turned
9 off. When there is no cell cite information, it's not
10 able to locate the phone, and that's consistent with the
11 phone being turned off.

12 Q All right. I will ask you now, sir, if you'll go
13 back to the records at 3:43 and 19 seconds.

14 A Okay.

15 Q Is there a phone call, and who is it from, and who
16 is it to?

17 A 843-846-1372 to 843-263-0455. That goes to voice
18 mail.

19 Q Next phone call. 3:51 and 31 seconds, same two
20 numbers, from -- phone calls -- phone number -- well,
21 from Jeanine Mullen to Earnest Daise?

22 A Correct.

23 Q 3:51 and 59 seconds, is there another phone call?

24 A Yes, there is. Same scenario, 1372 to the 0455
25 number that goes to voice mail.

1 Q And finally, sir, again, November the 15th, 2009,
2 is there a phone call at 3:52 and 18 seconds?

3 A Yes, there is.

4 Q Is it from those -- is it from Jeanine, or the
5 phone number associated with her, 1372, and to Earnest
6 Daise, 0455?

7 A Yes, sir.

8 Q Now, let me ask you this. Did that call go
9 straight to voice mail?

10 A No, it did not.

11 Q How long did that call last for?

12 A It lasted for 28 seconds.

13 Q I'm going to direct you now, sir, down a little bit
14 further in your records. Same day, November the 15th of
15 2009, at 6:00 o'clock and 32 seconds. Is there a phone
16 call placed from Earnest Daise at 0455 to anyone?

17 A There is a call at 6:32, or 6:00 p.m. and 32
18 seconds. It's from 843-263-0455, to 843-263-1787.

19 Q All right, sir. And again, that's a new number
20 that was associated with Jay Simmons.

21 A Okay.

22 Q So, Mr. Daise called Mr. Simmons, according to your
23 records, 6:00 o'clock and 32 seconds. Is that correct?

24 A Correct.

25 Q Next call, sir. Is there a call at 6:02 and two

1 seconds?

2 A Yes, there is.

3 Q And let me ask you a question. Did that call go
4 straight to voice mail, or was there a conversation?
5 Well, did it go straight to voice mail, or was there an
6 actual recorded call?

7 A There was time involved.

8 Q Yes, sir.

9 A So, it did not go to voice mail.

10 Q All right, sir.

11 A It was not a 11 in the second column.

12 Q And is there a phone call again at 6:02 and two
13 seconds?

14 A There is, from the 0455 number.

15 Q Earnest Daise. Go ahead, sir.

16 A To the 1787 number.

17 Q Jay Simmons. Did that go straight to voice mail?

18 A No, it did not.

19 Q Okay. Next call, sir. Same date, approximately 38
20 seconds later. 6:02, 40 seconds.

21 A Correct. Same scenario, 0455 to the 1787 number
22 that did not go to voice mail.

23 Q Next number, sir, -- or, excuse me -- next call.
24 November the 15th, 2009, again, the same day, just a
25 couple minutes later, 6:04 and 57 seconds.

1 A 6:04, 57 seconds, there was a call from 0455 to the
2 1787 number. It was an outbound call that lasted for 46
3 seconds.

4 Q And again, did not go straight to voice mail. Is
5 that fair to say?

6 A Right. And -- and just so I make this clear, I
7 wouldn't know if it went to voice mail on the other end.

8 Q Right.

9 A And so, these calls are coming from -- they're
10 actually outbound calls from the 0455 number.

11 Q Correct.

12 A The only way we would know that they went to voice
13 mail if it was a call that was received by the 0455.

14 Q Understood. The call lasted how long?

15 A What was the time again on that?

16 Q 6:04, 57 seconds.

17 A 46 seconds.

18 Q Next phone call, 6:05, 55 seconds.

19 A 6:05:55, the 0455 number to the 1787.

20 Q Earnest Daise to Jay Simmons.

21 A Correct. Outbound call, lasted for 23 seconds.

22 Q Next call, November the 15th, 2009, less than a
23 minute later. 6:06 p.m., and 36 seconds.

24 A Yes, sir. 0455 to 1787, lasted for six seconds.

25 Q Next phone call is between those two numbers, 6:06

1 and 45 seconds.

2 A 0455 to the 1787 number was an outbound call that
3 lasted 48 seconds.

4 Q 6:13 and 31 seconds.

5 A Same scenario. The 0455 number calling the 1787
6 number. Lasted 40 seconds.

7 Q Finally, sir, 6:18 and 44 seconds.

8 A Same scenario. The 0455 number calling the 1787
9 number, and it lasted for 37 seconds.

10 ITEM IDENTIFIED AS INFORMATION FOR
11 CONTENT FOR TEXT MESSAGES FOR
12 TELEPHONE NUMBER 843-263-0455
13 MARKED STATE'S EXHIBIT NUMBER 55,
14 FOR IDENTIFICATION.

15 Q I'm going to ask you at this time, sir, if you
16 recognize State's Exhibit 55.

17 A Yes, I do.

18 Q And what is that, sir?

19 A This is information for content for text messaging.

20 Q All right. And can you indicate which phone that
21 is text messaging from?

22 A It would be the 843-263-0455 number.

23 Q Associated with Earnest Daise. Thank you, sir. If
24 you'll hang on for me just a second. Is this -- was
25 this as part of the records that were sent to us by

1 Sprint?

2 A Yes, sir.

3 Q Is it a fair and accurate representation or
4 printout of some of those records?

5 A Yes, it is.

6 Q Does it appear to have been altered or changed in
7 any way?

8 A No, sir.

9 MR. THORNTON: Your Honor, at this time, we would
10 -- State would offer 55 into evidence.

11 THE COURT: Any objection?

12 MR. MCGUIRE: Oh. Without objection, your Honor.
13 I'm sorry.

14 THE COURT: Thank you. It's in evidence without
15 objection.

16 ITEM IDENTIFIED AS INFORMATION
17 FOR CONTENT FOR TEXT MESSAGES
18 FOR PHONE NUMBER 843-263-0455
19 MARKED STATE'S EXHIBIT NUMBER 55,
20 ADMITTED AS EVIDENCE.

21 BY MR. THORNTON:

22 Q Do you have a copy of this, also, Mr. Leal?

23 A Yes, I do.

24 Q All right, sir. If you would, go to the last --
25 excuse me -- second-to-last on my page, there's a text

1 message. Now, here's what it says. It says --
2 actually, let me ask you a question before I ask you
3 about this particular text message.

4 On this printout, it is the -- are the times on
5 this printout as to text messages accurate as to Eastern
6 time?

7 A They would be either in Eastern or Central Standard
8 Time.

9 Q Yes, sir.

10 A So that, the text message gateway is held either in
11 Central Standard Time or Eastern Standard Time. So,
12 according to the record, it would either be Eastern, or
13 you would have to add an hour to it.

14 Q And did you, at my request, review these records
15 for the specific time zone?

16 A Yes, I did.

17 Q And the text messages are kept -- were they kept in
18 Central Time?

19 A Yes, sir.

20 Q All right. So, in order for this to be accurate as
21 to our time, we would need to add an hour. Is that
22 correct?

23 A Absolutely, correct.

24 Q So, I'm going to ask you, on this record, does it
25 show a text message at 15 -- excuse me -- at 1704, it

1 should be 5:04 and 6 seconds, placed to Mr. Daise's
2 phone?

3 A There is a text from 843-263-0455, to 843-263-1787.

4 Q All right. Let me ask you to look at that again,
5 and make sure that you didn't just reverse that. From
6 destination and who it is from and who it is to.

7 A Oh, absolutely, absolutely. It was received --

8 Q Okay.

9 A -- by the 843-263-0455.

10 Q From the 1787.

11 A Correct.

12 Q All right. So, from Jay Simmons to Earnest Daise,
13 and this says 5:04, which for our time zone would be --

14 A 1604 or --

15 Q Would be 6:04?

16 A It would be. You'd have to add an hour.

17 Q Yes, sir.

18 A So, it would actually be 1804.

19 Q Which would be for the non-military time people --

20 A Yes.

21 Q 6:04 p.m.

22 A 6:04, correct.

23 Q So, at 6:04 p.m., from Jay Simmons to Earnest Daise
24 there is a text message. Is that correct?

25 A Yes, sir.

1 Q And what does it say?

2 A On the way.

3 MR. THORNTON: Your Honor, Court's indulgence,
4 please, one moment.

5 THE COURT: Okay.

6 MR. THORNTON: Thank you very much, Mr. Leal.
7 Please answer any questions Defense counsel has.

8 A Thank you.

9 MR. MCGUIRE: If I could get you to mark that,
10 ma'am.

11 COURT REPORTER: Defense Exhibit 15.

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

13 ITEM IDENTIFIED AS RECORDS OF
14 TEXT MESSAGES MARKED DEFENDANT'S
15 EXHIBIT NUMBER 15, FOR IDENTIFICATION.
16 RICARDO LEAL

17 CROSS-EXAMINATION BY MR. MCGUIRE:

18 Q I'm sorry, I -- I forgot your last name.

19 A Leal.

20 Q Leal. I'm Bill, Bill McGuire. It's good to meet
21 you, sir.

22 A You too, sir.

23 Q I talked to you just briefly this morning.

24 A Yes, sir.

25 Q And I'm going to hand you what's been marked

1 Defendant's Exhibit 15.

2 A Okay.

3 MR. MCGUIRE: The State has a copy, your Honor.

4 THE COURT: Thank you.

5 BY MR. THORNTON:

6 Q And if you could, just take a look at that.

7 A Absolutely. Okay.

8 Q These are also text messages.

9 A Correct.

10 Q Records of text messages, correct?

11 A Yes, sir.

12 Q And these are also records kept in your possession,
13 as well.

14 A Yes, sir.

15 Q In the course of regularly conducted activity.

16 A Correct.

17 Q And they're accurate?

18 A Correct.

19 Q And you reviewed them before?

20 A Yes.

21 MR. MCGUIRE: Okay. We're going to move Defense
22 Number 15 into evidence now, your Honor.

23 MR. THORNTON: No objection, your Honor.

24 MR. MCGUIRE: And your Honor, I'm actually going to
25 reserve right to publish at a later time.

1 THE COURT: Thank you.

2 ITEM IDENTIFIED AS RECORDS OF
3 TEXT MESSAGES MARKED DEFENSE
4 EXHIBIT NUMBER 15, ADMITTED AS EVIDENCE.

5 BY MR. MCGUIRE:

6 Q Oh, wait. One -- I tell you what. I'm going to
7 get you to do one thing.

8 A Absolutely.

9 Q The text messages can be a little bit hard to read.
10 In fact, you just reversed them for the prosecutor a
11 second ago. We all make that mistake.

12 A Right.

13 Q I just want to make sure it's clear for the jury
14 when they have them back in the jury room. The number
15 that's sending the message is actually on the right side
16 of the page.

17 A Correct.

18 Q And the number receiving that message is on the
19 left side of the page.

20 A Absolutely correct.

21 Q And the numbers that we've talked about are the
22 number that ends in 0455 is associated with Earnest
23 Daise.

24 A Correct.

25 Q The number that's 1787 is associated with Jay

1 Simmons.

2 A Yes.

3 Q And the number that ends in 6636 is Jeanine Mullen.

4 A Correct.

5 Q Okay. That's all I have for you. And I need to
6 give that to the court reporter.

7 A Absolutely.

8 MR. MCGUIRE:

9 Q And we'll -- we'll publish at a later time. The
10 jury will have this in the jury room, your Honor.

11 MR. THORNTON: No re-direct, your Honor. I ask Mr.
12 Leal be allowed to go. I think he has to go to
13 Jacksonville.

14 THE COURT: Any objection, Mr. McGuire?

15 MR. MCGUIRE: No, of course not.

16 THE COURT: You may be excused, sir.

17 A Thank you, your Honor.

18 THE COURT: Thank you very much.

19 MR. THORNTON: State calls Jeff Purdy.

20 MADAM CLERK: Place your left hand on the *Bible*,
21 please. Raise your right hand. Do you solemnly swear
22 or affirm that the testimony you give shall be the
23 truth, so help you God?

24 MASTER SERGEANT JEFF PURDY: I do.

25 MADAM CLERK: Thank you. If you'll have a seat,

1 please. If you'll state and spell your last name for
2 the record, please.

3 MASTER SERGEANT JEFF PURDY: Jeff Purdy. Last name
4 spelled P, as in Paul, u/r/d/y.

5 MASTER SERGEANT JEFF PURDY

6 DIRECT EXAMINATION, BY MR. THORNTON:

7 Q Mr. Purdy, who do you work for, sir?

8 A The Beaufort County Sheriff's Office.

9 Q I was going to tell you, pull -- pull that up a
10 little bit, so we can make sure the court reporter gets
11 it all down. What do you do for the Beaufort County
12 Sheriff's Office?

13 A I run the Northern Criminal Investigations Section
14 in northern Beaufort County.

15 Q And what do you do for them?

16 A I supervise several investigators that do criminal
17 investigations on a day-to-day basis. I also supervise
18 the sex offender registry manager, and the victims'
19 assistants.

20 Q And did you work for the Beaufort County Sheriff's
21 Office on or about November the 15th of 2009?

22 A I did, and still do.

23 Q And did you have any connection to, or did you do
24 some work on the case that we're here about today, the
25 State versus Earnest Daise?

1 A Yes, I did.

2 ITEM IDENTIFIED AS PHOTOGRAPH
3 OF DEFENDANT EARNEST DAISE'S
4 HANDS MARKED STATE'S EXHIBIT NUMBER 51,
5 FOR IDENTIFICATION.

6 Q I'm going to first ask you if you recognize State's
7 Exhibit Number 51.

8 A I do.

9 Q All right. You said you could identify that?

10 A Yes, sir.

11 Q And I'm sorry. What is your rank currently?

12 A Master Sergeant.

13 Q All right. Master Sergeant Purdy, what is this a
14 picture of?

15 A That is a picture of Mr. Earnest Daise's hands, the
16 defendant in this case.

17 Q All right. And when was this taken? And I don't
18 mean what day, but where was it taken?

19 A That picture was taken at my office.

20 Q Yes, sir. And was this taken in your presence?

21 A It was.

22 Q And has it -- does it appear to be a fair and
23 accurate representation of Mr. Daise's hands as they
24 appeared when he was in your office on -- well, was it
25 -- what day was it? Do you recall?

1 A I believe it was November 16th, the morning of the
2 16th.

3 Q The early morning hours, November the 16th?

4 A About 0625.

5 Q All right.

6 A 6:30 a.m.

7 Q Is that accurate?

8 A Yes.

9 Q Has it been altered or changed in any way?

10 A No, sir.

11 MR. THORNTON: All right. Your Honor, at this time
12 I'd ask State's Exhibit 51 be entered into evidence.

13 MR. MACDOUGALL: We would renew our previous
14 objection of that photograph. Thank you.

15 THE COURT: Thank you, sir. Subject to the prior
16 objection, it's in evidence.

17 ITEM IDENTIFIED AS PHOTOGRAPH
18 OF DEFENDANT EARNEST DAISE'S HANDS
19 MARKED STATE'S EXHIBIT NUMBER 51,
20 ADMITTED AS EVIDENCE.

21 BY MR. THORNTON:

22 Q Can you identify anything that would resemble a cut
23 or an abrasion on Mr. Daise's hands?

24 A Yes, sir. It looks like there is a cut on the left
25 hand, on the middle finger, on the knuckle. The right

1 hand? Excuse me.

2 Q I was just going to ask you if you'd reversed your
3 right and left. So, which hand is it, sir?

4 A The right hand.

5 ITEM IDENTIFIED AS BUCCAL SWAB

6 FROM EARNEST DAISE MARKED

7 STATE'S EXHIBIT NUMBER 78,

8 FOR IDENTIFICATION.

9 Q I'm going to ask you if you can identify State's
10 Exhibit 78. If you need to open it, please let me know.

11 A I would like to open it.

12 THE COURT: Mr. Thornton, he'd like to open it.

13 MR. THORNTON: Sorry, your Honor.

14 THE COURT: If you'd like to open it, sir.

15 MR. THORNTON: They were up here just a few minutes
16 ago, Judge.

17 COURT REPORTER: I have this, but it's not --

18 MR. THORNTON: That'll work. This will work.

19 BY MR. THORNTON:

20 A This is evidence, Beaufort County Sheriff's Office
21 evidence bag that I filled out on November 16th, at
22 11:50 in the morning. It contains two buccal swabs from
23 the defendant, Mr. Daise.

24 Q And let me stop you for a second. What is a buccal
25 swab?

1 A A buccal swab is -- is basically a swab from the
2 inner mouth of an individual, typically used to collect
3 DNA evidence. And we use sterile, long, Q-Tips, and
4 swab their mouths with it. And then, we put them in a
5 sterile box and seal them. That's what's in this bag.

6 Q And did you take those swabs from -- directly from
7 the defendant in this case, Earnest Daise?

8 A Yes, I did.

9 Q And did you properly seal them and package them
10 appropriately?

11 A I did.

12 Q Did you alter them or change them in any way?

13 A No, sir.

14 Q And what did you do with them once you collected
15 them?

16 A I sealed the bag as it's sealed here, and I turned
17 them in to Beaufort County Sheriff's Office Evidence
18 Section for future processing.

19 Q Thank you, sir. I'm going to hand you what's
20 already in evidence as State's Exhibit 76. Can you
21 identify those items -- or that item?

22 A This is a set of keys that Sergeant Wilson
23 collected from 43 Poppy Hill Road. It's a --

24 Q More specifically, at 43 Poppy Hill Road, are you
25 aware of whose bedroom they were found in?

1 A Yes. That would be Earnest Daise, the defendant.

2 Q And did you -- did you, at some point in your
3 investigation, did you receive those keys?

4 A Yes, I did. I checked them out from evidence at
5 the Beaufort County Sheriff's Office Evidence Section.

6 Q And what, if anything, did you do with them?

7 A I took those keys to Jeanine's parents' house, Mr.
8 Frank Mullen and Ms. Roberta Mullen's house. I took the
9 keys over there to see if they fit the van that was left
10 at the crime scene that was brought over to their house,
11 to see if it fit the doors, as well as the ignition.
12 And the key did fit both the doors and the ignition.

13 Q And that -- you tested -- let me -- is that the
14 white van that's been testified to?

15 A I'm not sure, sir. I wasn't in here.

16 Q I'll find a picture for you. I'm going to show you
17 State's Exhibit 10, already in evidence. Is that the
18 van, the van of Jeanine Mullen, that the keys fit both
19 the door and the ignition?

20 A Yes, sir. It appears to be, yes..

21 MR. THORNTON: Thank you very much, Master Sergeant
22 Purdy. Please answer any questions that the Defense
23 has.

24 MASTER SERGEANT JEFF PURDY

25 CROSS-EXAMINATION BY MR. MACDOUGALL:

1 Q Good morning, Sergeant Purdy.

2 A Good morning.

3 Q Good to see you again.

4 A Yes, sir.

5 Q Just got a couple questions for you. You were --
6 you were one of the first senior officers at the crime
7 scene on November 15, 2009. Is that right?

8 A I was the senior criminal investigator there.

9 Q Okay.

10 A Yes, sir.

11 Q Right. And you were there shortly after the first
12 responders arrived, the officers and the EMTs. Is that
13 right?

14 A It's probably about an hour after they arrived,
15 yes, sir.

16 Q But when you arrived, you were the -- you were in
17 charge of the investigation.

18 A Yes.

19 Q On the scene.

20 A Yes, sir.

21 Q Okay. And when you arrived --

22 MR. MACDOUGALL: May I approach, your Honor?

23 THE COURT: You may.

24 BY MR. MACDOUGALL:

25 Q The State just showed you a photograph that's been

1 marked State's Exhibit 10, in evidence. If you could
2 hold that up for the jury and tell me, Sergeant, that's
3 about how you saw the van, the white van that was later
4 shown to be owned by Jeanine Mullen, that day?

5 A Can you hold on one minute before I answer that,
6 please?

7 Q Certainly.

8 A No, it's not. The doors were open.

9 Q Okay. Well, let me show you two other photographs,
10 State's Exhibit 8 and 9, in evidence.

11 A Yes, sir.

12 Q Same van?

13 A Correct.

14 Q Doors open?

15 A Yes.

16 Q Okay. Now, that's about the way you saw it when
17 you arrived. Is that right?

18 A I think that's a fair statement.

19 Q Okay. And you would agree with me that nothing was
20 done to process that van, in connection with your
21 criminal investigation. Is that right?

22 A I would disagree with that. I believe SLED
23 processed that van.

24 Q You do? Why do you believe that?

25 A Well, we called SLED in, the crime scene unit, to

1 come and take over the scene. That was included in the
2 scene, and it was turned over to Special Agent Crooks
3 and another officer, and they processed the scene.

4 Q Would you be surprised to learn that -- that
5 Special Agent Crooks has testified they did not process
6 that van?

7 A I would -- he went through the van. I'm not sure
8 if I would say he processed -- yes, I would.

9 Q You would be surprised?

10 A Yeah, I believe he went through the van.

11 Q Right. And sitting here today, you're surprised to
12 learn that he did not; that he testified that he did
13 not.

14 A I don't know if I would say I would be -- yes.

15 Q Okay. And you were the senior investigator on the
16 scene.

17 A I was responsible for the investigation. SLED was
18 responsible for the crime scene.

19 Q Okay. While you were at the scene, you and -- is
20 it Sergeant Hiers?

21 A Staff Sergeant Hiers.

22 Q Staff Sergeant Hiers searched the woods and the
23 surrounding area? Is that right?

24 A That is correct.

25 Q And you found nothing of interest in the

1 investigation.

2 A That's correct.

3 Q You found no weapon.

4 A No, sir.

5 Q You found no item of clothing.

6 A No, sir.

7 Q You found nothing that was useful to you in your
8 work.

9 A That's correct, we found nothing.

10 Q Okay. You did find at the scene in the home
11 several telephones. Is that correct?

12 A Which one are you referring to?

13 Q The crime scene, the Player Road residence. When
14 you entered the residence, you came into possession of
15 several telephones. Is that right?

16 A Correct.

17 Q Okay. One of them you obtained from one of Jeanine
18 Mullen's sons. Is that right?

19 A Yes, sir.

20 Q And you began making calls on that phone. Is that
21 right?

22 A I believe I searched the phone for the last numbers
23 called, and I made contact with one individual that I
24 remember.

25 Q Okay. And in the course of that part of your

1 investigation, you learned that Earnest Daise was trying
2 to find a ride to the hospital. Isn't that correct?

3 A That's what I was told.

4 Q Now, if I could take you forward a day, and I think
5 this is -- this is something you were asked about by the
6 State. Around 2:00 a.m., on November 16th, did you
7 accompany the SWAT team to go to 43 Poppy Hill Road?

8 A No, sir.

9 Q You were not present?

10 A No, sir.

11 Q Okay. Are you aware, as a senior investigator,
12 where Earnest Daise was found?

13 A Yes.

14 Q Where?

15 A 43 Poppy Hill Road.

16 Q Okay. Did he put up any resistance?

17 A No, sir.

18 Q Did he try to flee?

19 A No, sir.

20 Q Was there any evidence at all that he was trying to
21 flee?

22 A No, sir.

23 Q You subsequently met Mr. Daise at the
24 investigator's office. Is that right?

25 A That's correct.

1 Q Okay. And you knew each other already?

2 A That's correct.

3 Q All right. And you acknowledged that you knew each
4 other when you met him. Is that correct?

5 A Yes, sir.

6 Q You testified a few minutes ago that Mr. Daise gave
7 you an oral DNA sample. Is that right?

8 A That's correct.

9 Q And he did that voluntarily.

10 A That is correct.

11 Q And while he was with you, he never asked for a
12 lawyer.

13 A That is correct.

14 Q And he never tried to leave the room.

15 A Correct.

16 Q All right. As the lead investigator of this -- let
17 me ask you, as a lead investigator in this case, how
18 long have you been a police investigator in Beaufort?

19 A I've been with the Sheriff's Office for 20 years.
20 I spent a little over three years on the road, so, 17
21 years.

22 Q Okay. You've got a lot of experience.

23 A That's fair to say.

24 Q Investigating crimes and investigating crimes in
25 Beaufort County.

1 A Yes, sir.

2 Q Okay. And would you agree with me that, in
3 general, in general, now, when you're investigating a
4 crime, you will look for incidents and events that are
5 similar to the facts you have before you. Is that
6 right?

7 A I'm not sure what you're asking.

8 Q Okay. Let me give you a hypothetical. You come
9 upon a bank robbery, and I know the FBI investigates
10 bank robberies, but let's assume that you're
11 investigating a bank robbery. And you go back to the
12 office, and you find out that there have been three
13 other banks in a five-mile radius robbed in the last
14 week. That fact would be important to you in your
15 investigation; wouldn't it?

16 A I agree, yes.

17 Q Because you may find evidence at those other three
18 sites that help you identify who was involved in the
19 bank robbery you're investigating. Is that correct?

20 A Possibly, yes.

21 Q Okay. You're familiar with a home invasion that
22 took place on November 3rd, 2009, at 952 Kenlock Road,
23 in Dale, South Carolina?

24 A I can't remember, sir.

25 Q Do you remember investigating that crime with

1 Officer Foskey?

2 A I remember an incident out there, but I can't tell
3 you the facts of that case.

4 Q All right. So, you don't recall that the
5 allegation was that two black males entered a residence
6 screaming, *where's the money?* Suspects assaulted the
7 father with a crowbar, robbed him of about \$200.00. You
8 don't remember investigating that case?

9 A That was four years ago, sir. No.

10 Q So is this case. And you would agree with me that
11 November 3rd, 2009, was 12 days before the date of this
12 case?

13 A Yes, I would agree.

14 Q Are you familiar --

15 MR. THORNTON: Objection, your Honor. May we
16 approach?

17 THE COURT: You may?

18 COURT REPORTER: Mr. Thornton?

19 ON-THE-RECORD BENCH CONFERENCE, OUT
20 OF HEARING OF JURORS:

21 MR. THORNTON: Your Honor, the State would object
22 to this testimony. This is, in our opinion, an attempt
23 to back-door in third-party guilt by association. He
24 could list every crime in Beaufort County, and it's not
25 relevant. There's been no relevance established. He's

1 reading from reports on crimes that have nothing to do
2 with the case at Bar. Your Honor warned them ahead of
3 time they would have to go into third-party guilt and
4 lay a basis. And you know, we need to proffer it, if
5 he's going to do third-party guilt, because this is not
6 the way to do it.

7 MR. MACDOUGALL: Your Honor, as the Court's
8 observed, the central part of our theory is that there
9 was ineffective and a deficient investigation.

10 THE COURT: Right.

11 MR. MACDOUGALL: This witness was a chief
12 investigator who also investigated and is certainly
13 aware of these other cases. Our position is that no
14 work was done to try to identify any other suspects.
15 We're not going to offer third-party guilt. We're not
16 identifying third-party guilt. The purpose of this
17 interrogation is to discredit this witness and his
18 investigation.

19 MR. THORNTON: By showing that other crimes; who
20 might have done it; which is the very essence of third-
21 party guilt.

22 MR. MACDOUGALL: I, obviously, disagree with Mr.
23 Thornton to show that there are other things that could
24 have been done, just as we have with the van. And with
25 no witnesses, how the work could be done, with the work

1 that's not been done.

2 THE COURT: All right. I'm going to give you a
3 little bit of latitude. Keep going, and do your cross.
4 But again, if we are walking the line again, I'll stop
5 you, and we'll go ahead and put a full proffer on. And
6 again, I understand where you're going, but I
7 understand, certainly, your objections, though. And I'm
8 going to give you a little bit of latitude. Keep going,
9 but I don't want to be going on every single crime he's
10 investigated.

11 MR. MACDOUGALL: I understand.

12 THE COURT: Thank you.

13 END BENCH CONFERENCE.

14 BY MR. MACDOUGALL:

15 Q Sergeant, just to pick up where we left off, I
16 think your testimony was that you had no recollection of
17 this -- the investigation of this home invasion on
18 November 3, 2009, in Dale.

19 A I vaguely remember it, but I can't tell you details
20 about it.

21 Q Are familiar -- and I would ask you if you would
22 disagree with me that that address, 952 Kenlock Road, is
23 about two miles from the Player Road residence that was
24 the subject of the investigation of November 15th?

25 A I think that would be a fair statement.

1 Q Okay. Are you familiar with the investigation of a
2 home invasion on November 7, 2009, at 2 Billy Hill Road,
3 in Beaufort?

4 A Again, I can't remember that.

5 Q Would you agree with --

6 A If you show me a police report, I'm sure I can look
7 at it, and it might help me out.

8 Q Would you agree with me that Billy Hill Road is
9 about 12.7 miles from the site of the Jeanine Mullen
10 residence?

11 A I don't know how far it is, but I know it's quite
12 some distance away.

13 Q Would you agree with me that November 7th is about
14 -- is exactly eight days before the events that are
15 under investigation here?

16 A Yes.

17 Q I've got one more for you, Sergeant. September 14,
18 2009, 27 Delaney Circle, in Seabrook. Suspect entered
19 home, bound two victims with Duct tape and stole \$300.00
20 and a cell phone. Are you familiar with that
21 investigation?

22 A Again, I'd have to read it. I read so many
23 investigations throughout the day. I read them before I
24 came here. That's what I do. I read the reports, and I
25 read hundreds of reports and assign I them. I determine

1 whether or not I'm going to assign them to an
2 investigator or not.

3 Q But your answer is you don't remember that one.

4 A Correct.

5 Q Okay. And but, would you agree with me that
6 Delaney Circle in Seabrook is about eight-and-a-half
7 miles from the location of the home on Player Road?

8 A I think that would probably be close. That would
9 be fair. Fair statement.

10 MR. MACDOUGALL: May I have a moment, your Honor?

11 THE COURT: You may.

12 MR. MACDOUGALL: Nothing further. Thank you, your
13 Honor. Thank you Sergeant.

14 THE COURT: Mr. Thornton?

15 MR. THORNTON: Thank you, your Honor. Just a
16 couple of questions.

17 MASTER SERGEANT JEFF PURDY

18 RE-DIRECT EXAMINATION BY MR. THORNTON:

19 Q Master Sergeant Purdy, I realize it may be
20 difficult to do this without the reports in front of
21 you. In each of those incidents you were asked about,
22 there was a break-in, according to Defense counsel when
23 he referenced it, correct?

24 A I believe, sir. Again, I'd have to read those
25 reports to refresh my memory.

1 Q And he also referenced -- he said things were
2 stolen, \$300.00 in one case. Was that what the
3 questions were just a moment ago?

4 A I believe so.

5 Q All right. Was there any evidence that there was
6 any break-in at the crime scene at 20 Player Road?

7 A No.

8 Q Was there anything ever determined to be stolen
9 from 20 Player Road?

10 A The only thing that's missing is a .38.

11 MR. THORNTON: Thank you.

12 THE COURT: Anything further, Mr. MacDougall?

13 MR. MACDOUGALL: No further cross, your Honor.

14 Thank you.

15 THE COURT: Master Sergeant, you may step down,
16 sir.

17 A Thank you.

18 MR. THORNTON: Sorry, Judge. He is subject to
19 recall, but he has his cell phone with him.

20 THE COURT: Thank you.

21 MR. STONE: State calls Jody Hiers.

22 MADAM CLERK: If you'll place your left hand on the
23 Bible and raise your right hand. Do you solemnly swear
24 or affirm the testimony you give shall be the truth, so
25 help you God?

1 INVESTIGATOR JODY HIERS: I do.

2 MADAM CLERK: If you'll have a seat, please. And
3 if you'll state and spell your last name for the record,
4 please.

5 INVESTIGATOR JODY HIERS: Yes, ma'am. Jody,
6 J/o/d/y, Hiers, H/i/e/r/s.

7 INVESTIGATOR JODY HIERS

8 DIRECT EXAMINATION BY MR. STONE:

9 Q Okay. And Sergeant Hiers, I -- we have spoken
10 earlier, but I want to go back with you a little bit to
11 the -- to the crime scene and go through this on some
12 other issues that we did not cover earlier. First of
13 all, when -- at some point, and I -- and we want to say,
14 I guess October the -- or excuse me -- November the
15 16th, it was actually in the early morning hours, so
16 you're talking about 2:00 o'clock, something like that,
17 on November the 16th. Did you respond to 43 Poppy Hill
18 Road?

19 A Yes, sir, I did.

20 Q All right. And at that point, did you find -- tell
21 me what you did once you got there?

22 A We conducted what we call a knock-and-talk.
23 Basically, I knocked on the door and tried to locate the
24 defendant, Earnest Daise.

25 Q And this is Jay Simmons' house. This is where he

1 was living with, I think, Asia Palmer at the time?

2 A Yes, sir. That was -- it was confirmed to be Jay's
3 residence.

4 Q And about what time was this?

5 A That was around zero -- 2:00 a.m. in the morning.

6 Q About 2:00 o'clock in the morning?

7 A Yes, sir, on the 16th.

8 Q Okay. And that's that next night after the murder,
9 so that's that night of the murders. Is that correct?

10 A Yes, sir. It was the night, obviously, following
11 into the morning, so it would have been on the 16th.

12 Q Okay. And at some point, at somewhere around 2:00
13 o'clock, did you see Earnest Daise?

14 A I did. It was around 0220. I actually made
15 contact with Jay Simmons and Asia Palmer at the
16 residence. And I'd asked Jay if Earnest was there, and
17 he stated he wasn't there when he went to bed that
18 night. After a short conversation, I asked Jay to go
19 check and see if Earnest was at the residence, which he
20 did. He came back a few minutes later, and stated
21 Earnest was there. He was sleeping. He woke him up and
22 informed him that I needed to speak with him.

23 Q At the time that you spoke to him and you saw him,
24 when you saw him at the house, did you -- did you pat
25 Earnest Daise down?

1 A Yes, sir, I did.

2 Q And in what way did you pat him down?

3 A It's what we call a *Terry* frisk. When he came out
4 of the -- the house, I asked him to come down, turn
5 around, put his hands behind his back. Obviously,
6 because of the severity of what had occurred, for
7 officer safety reasons, I handcuffed him; and then, I
8 conducted a *Terry* frisk, which basically meant I started
9 checking his pockets.

10 Q Okay. Did you -- you checked his pockets. Did you
11 find anything in his pockets?

12 A No, sir. There was nothing in his pockets.

13 Q All right. And did you touch anything from his
14 pockets, down? Did you pat him down on his jeans?

15 A No, sir, I did not.

16 Q And why not?

17 A The reason why was because, when I began the *Terry*
18 frisk, I checked his right pocket first, and I went
19 around checking the back, and into the left. When I got
20 to the left pocket, I was actually observing, obviously,
21 his pants, because the reason why you do a *Terry* frisk
22 is to -- to make sure they don't have any type of
23 weapons on them.

24 In the process of checking his front left pocket, I
25 observed what appeared to be blood on the front of his

1 jeans, and I -- I didn't want to touch it, because it --
2 at the time, it looked fresh to me. I didn't want to
3 get it on my hands, so.

4 Q All right. And let me --

5 A And also, I didn't want to contaminate, obviously,
6 the jeans.

7 Q And let me show you what's already been placed into
8 evidence as State's Exhibit 11, 12, 13, and Item 26.
9 Ask if you could identify that. And if I could, get you
10 to come down off the stand, please, so the jury can see
11 it. I'm sorry, let me go first to State's Exhibit 11.
12 Could you tell us what that is.

13 A This is going to be the jeans that Earnest Daise
14 was wearing the night I made contact with him.

15 Q And it looks like -- it looks like his pocket is a
16 little pulled out. Is that what you did when you
17 reached in and checked his pockets?

18 A Yes, sir.

19 Q Okay. And this area down here is the area that you
20 did not touch. Is that correct?

21 A That's correct.

22 Q All right.

23 A I didn't touch that area.

24 Q All right. State's Exhibit 13, are these also the
25 pants that you're talking about?

1 A Yes, sir.

2 Q Okay. And I guess that's a closeup in State's
3 Exhibit 12. Is that correct?

4 A Correct.

5 Q And State's Exhibit 14, I believe, is that the --
6 is that the bottom of the pants leg? Is that right?

7 A That looks like the right side of his pant leg.

8 Q Okay.

9 A The bottom.

10 Q All right. When you were at the crime scene, by
11 the way, -- and you were at the crime scene earlier, you
12 were at 20 Player Road prior to going to 43 Poppy Hill
13 Road. Is that correct?

14 A That's correct, I was.

15 Q Did you wear gloves at the crime scene?

16 A I did.

17 Q Go ahead. You can have a seat back up on the
18 witness stand, please.

19 A Thank you.

20 MR. STONE: Your Honor, I am opening what we are
21 marking as State's Exhibit 80, and we're going to put
22 through with full other testimony, but I'll go ahead and
23 get that out, if I may.

24 THE COURT: You may.

25 BY MR. STONE:

1 Q Officer, I'm going to show you, and I'm going to
2 hold on to them, because I have gloves on, what has been
3 marked as State's Exhibit 80, at this point, just for
4 identification, and do these appear to be the jeans that
5 Earnest Daise was wearing that night when you -- when
6 you saw him and you patted and you checked his pockets?

7 A Yes, sir, they do.

8 Q All right. And these tears and cuts, these -- that
9 was not there at the time. That was done by scientists
10 later.

11 A Correct.

12 Q Okay. Now, later on that night, did you question
13 Earnest Daise?

14 A I did.

15 Q Now, prior to questioning him, did you read him
16 what we commonly call *Miranda* rights?

17 A I did.

18 Q And did you read that from a card, did you read
19 that from a form, or how did you do that?

20 A At the office?

21 Q Yes.

22 A I read it from a form.

23 ITEM MARKED STATE'S EXHIBIT NUMBER

24 50, FOR IDENTIFICATION.

25 Q Let me show you what's been marked as State's

1 Exhibit 50. Ask if you can identify that, please, sir.

2 A I can.

3 Q And what is that?

4 A That is the Beaufort County Sheriff's Office
5 Miranda rights form that I read to Earnest Daise on
6 11/16/2009, at around 03 a.m.

7 Q All right. The initials on the left, which appear
8 to correspond to various sentences, whose initials are
9 those?

10 A Those are Earnest Daise's initials.

11 Q And the signature at the bottom here, whose
12 signature is that?

13 A Earnest Daise actually signed on the right, and
14 myself and Investigator Foskey signed on the left.

15 MR. STONE: Your Honor, at this time, we move
16 State's Exhibit 50 into evidence.

17 MR. MCGUIRE: Without objection.

18 THE COURT: Without objection.

19 ITEM IDENTIFIED AS BEAUFORT
20 COUNTY SHERIFF'S OFFICE MIRANDA
21 RIGHTS FORM READ TO EARNEST DAISE
22 11/16/2009 MARKED STATE'S EXHIBIT
23 NUMBER 50, ADMITTED AS EVIDENCE.

24 BY MR. STONE:

25 Q Now, if you would, please, explain, first of all,

1 what's the process? Do you read that along with Mr.
2 Daise sitting there? Do you -- how does that work?

3 A He's actually in our presence. We're actually
4 having him follow along as we read the form. That way
5 he, you know, can also read it, and we verbally tell
6 him, you know, what his rights are.

7 Q And did you do that in this case?

8 A Yes, sir.

9 Q Specifically, what rights did you tell him he had?

10 A All right. Well, I'll actually read the whole
11 form.

12 Q Sure.

13 A So, I start off --

14 Q Go ahead and do exactly what you did that night.

15 A Okay. Yes. *The Beaufort County Sheriff's Office*
16 *Statement of Miranda Rights. The place was Northern*
17 *Investigations Office. The date 11/16/2009, time 03*
18 *a.m. This goes on the say:*

19 *Before we ask you any questions,*
20 *you must understand your rights. You*
21 *have the right to remain silent.*

22 And I asked him, you know:

23 *Do you understand that?*

24 And he stated:

25 Yes,

1 and he initialed beside it indicating that he
2 understood it.

3 *Anything you say can and -- can and*
4 *will be used against you in a court of law.*
5 He stated he understood. He initialed beside it.

6 *You have the right to talk to an*
7 *attorney for advice before we ask you any*
8 *questions.*

9 He understood. Initialed beside it.

10 *If you cannot afford an attorney,*
11 *one will be appointed for you before any*
12 *questioning, if you wish.*

13 He understood. He initialed beside it.

14 *If you decide to answer questions now*
15 *without an attorney, you will still have*
16 *the right to stop answering at any time.*
17 *You also have the right to stop answering*
18 *at any time until you talk to an attorney.*

19 He understood it. He initialed. And then, we have
20 a section called the Waiver of Rights. Waiver of
21 rights:

22 *I have read this statement of my*
23 *rights and understand what my rights are.*

24 He stated he understood. He initialed beside it.

25 The next line is:

1 I cannot read, and the statement has
2 been -- has been read to me sufficiently
3 so that I understand what my rights are.

4 I asked him if he could read. He stated he could.
5 Therefore, he did not initial beside that block, because
6 he can read.

7 And the last one is:

8 I am willing to make a statement
9 and answer questions. I do not want an
10 attorney at this time. I understand
11 and know what I am doing. No promises
12 or threats have been made to me, and no
13 pressure or coercion of any kind has been
14 used against me.

15 And he stated he understood. He initialed beside
16 it. He signed it, also.

17 Amount of education I have completed,
18 he put 12, because he's got a GED, so he put that
19 beside it. And then, he signed it again. He put the
20 date of 11/16/09, and the time is 03 a.m. And then, we
21 signed it, myself and Foskey.

22 Q Now, did you, at any time, threaten him, promise
23 him anything in order for him to get a statement to you?

24 A No, sir.

25 Q Did he appear to understand those rights as you

1 read them to him?

2 A He did.

3 Q And where are you -- where are you when you're
4 talking to him?

5 A We are at the Northern Investigations office in one
6 of our cubicles, our offices that we have inside there.

7 Q Okay. All right. Now, let me first start, you are
8 -- you are -- you are obviously at the crime scene
9 earlier. And I say -- I keep referring to the crime
10 scene, but I'm talking about, obviously, 20 Player Road.
11 You were at 20 Player Road earlier. Had you interviewed
12 witnesses and things like that prior to talking to
13 Earnest Daise?

14 A I did.

15 Q So, you had a good idea about what some people had
16 said and various things before you got there.

17 A Yes, sir.

18 Q When you talked to Earnest Daise, did you confront
19 him about any of the information that you had?

20 A During the interview?

21 Q Yes.

22 A Yes, sir, I did.

23 Q Did you ask Earnest Daise if he had gone over to
24 Jeanine Mullen's house the night before and spent the
25 night?

1 A I did.

2 Q And what did he tell you?

3 A He denied it. He said he wasn't there.

4 Q Did you ask him whether or not he had driven
5 Jeanine's van that day?

6 A I did.

7 Q And what did he tell you?

8 A He denied that, also.

9 Q Did you ask him if he had been in Jeanine's home,
10 either that day or the night before?

11 A I did.

12 Q And what did he tell you?

13 A He denied that, also.

14 Q Did you ask him if he was in the neighborhood, in
15 the -- in the -- in the area of her home?

16 A I did.

17 Q And what did he tell you?

18 A He stated he was on Poppy Hill Road all day.

19 Q Okay. And to be clear, and I think that is State's
20 Exhibit 14, and I know you've looked at this, but this
21 is State's Exhibit 14. Poppy Hill Road's down here,
22 right?

23 A That's correct.

24 Q This is -- and I say *down here*, this is down, not
25 near, necessarily, the victims' residence at 20 Player

1 Road.

2 A No, that's correct, it's not.

3 Q Did you ask him if he had ever been anywhere around
4 the intersection of Keans Neck Road or any of these --
5 any of the areas around Jeanine Mullen's house?

6 A I don't believe I asked him that, if he was in
7 that, you know, general area, but he stated he was -- he
8 was on Poppy Hill Road all day, is what he told me.

9 Q Okay. Not at Jeanine Mullen's house?

10 A Not at Jeanine Mullen's house, no, sir.

11 Q At that point, did you ask him if he knew about
12 Jeanine Mullen and what had happened to her?

13 A I did.

14 Q And how did that come about?

15 A I mean, we asked him a lot of questions that
16 morning. We --

17 Q Pull that microphone up to you just a little bit,
18 sir. I'm sorry, I'm having a hard time hearing you.

19 A We asked him quite a few questions that morning.
20 And the reason why we asked him if he had heard about
21 Jeanine Mullen and the kids was because he never
22 mentioned it to us whatsoever throughout the entire
23 interview. Never showed any concern whatsoever, never
24 asked how they were doing, you know, never asked what
25 happened at the scene. So, I asked him, I said, if he

1 -- did he know what had happened, what had occurred, and
2 he stated that he did. His exact words, I don't want to
3 misquote him, he stated that he -- he -- I asked him if
4 he knew what happened with Jeanine and the children at
5 the incident location. He stated he didn't know what to
6 do. He actually received a phone call from his sister,
7 Marida Daise. He said it was around 11:00 p.m. that
8 night.

9 Q Had you already talked to Marida Daise by that time
10 that came out?

11 A I did not, but Master Sergeant Purdy had spoken
12 with her.

13 Q So, you already knew that they had had a
14 conversation.

15 A Correct, correct.

16 Q And did you tell him that?

17 A I did. I said that -- I advised him that:

18 *Are you sure it wasn't around 8:00*
19 *o'clock; that we'd talked to Rita.*

20 I didn't know who Rita was. That's -- that's who
21 Master Sergeant Purdy told me he talked to. Well, Rita
22 was confirmed to be Marida Daise, who is Earnest's
23 sister, and she said it was around 8:00 p.m. And I
24 advised him of that, and he told me he wasn't sure on
25 what time it was when he found out.

1 Q Did he, during the interview, ask you how **John Doe 2** ,
2 his son, was doing?

3 A No, sir.

4 Q Did he ask you how Jeanine was doing?

5 A No, sir.

6 Q Did he ever tear up, get -- get emotional at all
7 with you?

8 A No, sir.

9 Q What was his demeanor?

10 A It was kind of up and down. There were times when
11 they were basically having a conversation like nothing
12 had happened. There were times when he was laughing
13 during the interview. There were times when I noticed
14 that, if I asked a question or made a statement to
15 Earnest that he didn't particularly like, he wouldn't
16 say a word. He would just sit there and stare at us.
17 And it was -- it was -- it was a hard stare. It was
18 almost a stare as if he was trying to intimidate us.
19 But he never would, you know, answer the question or
20 elaborate.

21 Q How many times did he laugh during your interview
22 with him?

23 A I don't know the count. I really don't. It was --
24 it was quite a few times.

25 Q And again, this is taking place about 3:00 in the

1 morning?

2 A Yes, sir. It was 03, 3:00 a.m., yes, sir.

3 Q And you basically got him out of 43 Poppy Hill
4 about 2:30, I think is what you said, 2:20?

5 A It was about 2:20 when we made contact with him at
6 Poppy Hill.

7 Q What condition was he in when you got him out of
8 the house?

9 A He was --

10 Q What was he doing -- excuse me -- when you got him
11 out of the house?

12 A He was sleeping.

13 MR. STONE: I don't have any further questions at
14 this time. Thank you.

15 MR. MCGUIRE:

16 INVESTIGATOR JODY HIERS

17 CROSS-EXAMINATION BY MR. MCGUIRE:

18 Q Officer Hiers, I'll -- I'll just pick up where --
19 where the prosecutor left off. Marida is Earnest
20 Daise's sister?

21 A Correct.

22 Q It was Master Sergeant Purdy that spoke with her,
23 correct?

24 A Correct.

25 Q And I believe you were -- you may have been in the

1 courtroom when we learned that he was the one that
2 learned that Earnest was trying to get a ride to the
3 hospital. That's what Marida told Officer Purdy. Is
4 that right?

5 A That's correct. He also informed me that night of
6 that.

7 Q Okay. And what I want to do now is talk to you
8 about this -- I want to take you back now to Player --
9 not Player Road -- Poppy Hill.

10 A Okay.

11 Q This is Jay's residence.

12 A Yes, sir.

13 Q This is where the knock-and-talk is..

14 A Correct.

15 Q And this is where you went to get Earnest Daise.

16 A Correct.

17 Q He came to the door?

18 A He did.

19 Q There was no evidence indicating he was in a
20 position to flee or leave the area.

21 A There wasn't, no.

22 Q He was cooperative?

23 A He was.

24 Q He was unarmed.

25 A Correct.

1 Q He let you cuff him.

2 A He did.

3 Q Even though he was not under arrest.

4 A That's correct.

5 Q You asked if you could do that, and he said yes.

6 A Yes, sir, that's correct.

7 Q He offered no resistance whatsoever.

8 A He did not.

9 Q He allowed you to frisk him and pat him down.

10 A That's correct.

11 Q Okay. Now, I want -- I want to talk about the pat-
12 down in a little bit more detail.

13 A Okay.

14 MR. MCGUIRE: To help the prosecutor, your Honor,
15 on Page 85 of the transcript from September 25, 2013.

16 THE COURT: Thank you.

17 BY MR. MCGUIRE:

18 Q I guess we should probably mark this for I.D., at
19 least I.D.

20 Now, Jody, -- Officer Hiers, sorry, do you recall
21 testifying at a pre-trial hearing September 13th, this
22 year?

23 A One of many, yes, sir.

24 Q One of many, exactly. And we actually discussed
25 the knock-and-talk and taking Mr. Daise into custody.

1 A I believe -- yeah, I believe we did.

2 Q Okay. And while the court reporter marks that, and
3 I can stop if you need to, ma'am.

4 ITEM IDENTIFIED AS SEPTEMBER 13, 2013
5 TRANSCRIPT OF INVESTIGATOR JODY HIERS
6 MARKED DEFENSE EXHIBIT NUMBER 16, FOR
7 IDENTIFICATION.

8 COURT REPORTER: Defendant's 16 for I.D.

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

10 BY MR. MCGUIRE:

11 Q Officer Hiers, do you remember that hearing we
12 talked about the pat-down, the Terry frisk.

13 A The Terry frisk, yes, sir.

14 Q Okay. Now, a Terry frisk, a pat-down, that's to
15 make sure somebody doesn't have weapons.

16 A Correct.

17 Q Doesn't have to be a big weapon, like a gun. It
18 could be a small weapon.

19 A That's correct.

20 Q A razor blade.

21 A Correct.

22 Q Small pocket knife.

23 A Correct.

24 Q Sometimes you'll even feel for contraband, like
25 drugs.

1 A You can, but normally, a Terry frisk is for your
2 safety, checking for weapons.

3 Q Sure. And the last thing you want is for somebody
4 to have a very, very small weapon; let it get by you;
5 and they can take it into the squad car and they can
6 hide it in the squad car. They can take it into the
7 interrogation room. You do not want that to happen,
8 correct?

9 A That's correct.

10 Q So, you want to pat down and frisk people to make
11 sure they are weapon-free.

12 A Correct.

13 Q Even small weapons.

14 A Yes, sir.

15 Q Do you remember when I asked you about the pat-
16 down, I asked you if it was a pretty careful pat-down,
17 and you said it was a standard pat-down for any weapons.
18 Do you remember that?

19 A I don't remember saying that. I remember telling
20 you that I checked his pockets.

21 Q Sure. What I'm going to do is, do you remember me
22 asking you the question:

23 *And because he's a person of interest,*
24 *or suspect in the murder case, I would*
25 *imagine the pat-down was pretty careful.*

1 And your response was.

2 A Do you want me to read that?

3 Q Sure.

4 A *Well, it was, a standard pat-down for weapons.*

5 Q Okay. And I asked you if you patted him down on
6 his upper body, and you said no. Is that your
7 recollection?

8 A That's correct, yes, sir.

9 Q Okay. And do you remember when I said:

10 *Did you pat down the torso area,*
11 do you remember saying:

12 *I believe all I checked that night*
13 *was the pocket -- his pocket area?*

14 A That's correct.

15 Q And then, we cleared that up, and you actually said
16 it was *pockets*, plural.

17 A Yes.

18 Q His pockets, because you already cuffed him.

19 A Um-hmm.

20 Q Okay. So, you checked both of his pockets?

21 A His pockets.

22 Q Okay.

23 A On his jeans, which is the front and back.

24 Q Okay. And you cuffed him with the handcuffs you
25 always carry.

- 1 A Correct.
- 2 Q You -- you had on -- you were armed.
- 3 A Yes, sir.
- 4 Q You had your gun that you always carry, generally
- 5 carry.
- 6 A Yes, sir.
- 7 Q In the same paddle holster that you always carry..
- 8 A Correct.
- 9 Q The same holster you go to the range with.
- 10 A Yes, sir.
- 11 Q The same -- same -- same holster and gun you go to
- 12 the range with.
- 13 A That's correct.
- 14 Q And Mr. Daise was placed in a squad car, not in
- 15 your car. Is that correct?
- 16 A That is correct.
- 17 Q And he was escorted from the front door of the --
- 18 of the Poppy Hill residence to a marked squad car.
- 19 A Correct.
- 20 Q And he offered no resistance during this walk.
- 21 A He did not.
- 22 Q Went voluntarily.
- 23 A He did.
- 24 Q Got into a squad car.
- 25 A Yes, sir.

1 Q With handcuffs on.

2 A Correct.

3 Q Even though he was not under arrest.

4 A Correct.

5 Q And you don't know who the squad car belonged to.

6 A I don't recall.

7 Q Sure. And the reason a person is placed in a squad
8 car is because it's secure with a cage, correct?

9 A That's correct.

10 Q And that means that the person can't jump over the
11 seat to get to the driver. Is that --

12 A That's correct. Yes, sir.

13 Q It's got a wall of steel, basically.

14 A Sure, correct.

15 Q Of mesh steel.

16 A Right, right.

17 Q And that's where -- that's where suspects are
18 secured for transportation.

19 A That is correct.

20 Q Okay. And not just Mr. Daise. Anybody suspected
21 of a shooting, armed robbery, possession of guns, these
22 things, these are the squad cars people would be
23 transported in.

24 A We -- we do transport, you know, any type of
25 individual that may have been involved in any type of

1 crime in patrol cars.

2 Q Right. Any crime.

3 A Yes, sir.

4 Q Violent, drugs, guns, whatever.

5 A Correct.

6 Q And he was taken to the Northern Investigation
7 office.

8 A That is correct.

9 Q And that's where suspects are taken to be
10 interviewed.

11 A Correct.

12 Q All kinds of different suspects.

13 A Correct.

14 Q Crimes of violence, shootings, robberies,
15 kidnappings, possession of guns, et cetera.

16 A Correct.

17 Q Okay. If you want to talk to them, that's where
18 they go.

19 A Yes, sir, correct.

20 Q Now, Officer Hiers, I want to ask you about
21 something. It's pretty important. When Mr. Daise comes
22 to the door at Poppy Hill, you indicate that you see
23 blood under his left front pocket, correct?

24 A Correct.

25 Q And you do specifically remember below left front,

1 below left front pocket.

2 A Yes, sir, correct.

3 Q Okay. Now, when I was asking you about the
4 handcuffing, taking his hands and placing them in cuffs,
5 and the pat-down, I asked you:

6 *Did Mr. Daise have any injuries,*
7 *scratches, scrapes, like that?*

8 Do you remember what your response was?

9 A I believe I said I didn't recall seeing anything,
10 or I didn't see any, if I'm not mistaken.

11 Q Well, actually, that's not your response.

12 A Okay.

13 Q When I asked you the question:

14 *When you saw Mr. Daise, did he have*
15 *any bruises, cuts, or scratches?*

16 Tell me what your response was.

17 A Right here?

18 Q Yes, sir.

19 A None that I saw.

20 Q None that I saw. No, sir.

21 A Yes, sir.

22 THE COURT: Mr. McGuire, I apologize for
23 interrupting. You all come here for a moment, please.

24 MR. MCGUIRE: Yes.

25 COURT REPORTER: Do you need me?

1 THE COURT: No.

2 OFF-THE-RECORD BENCH CONFERENCE,

3 OUT OF HEARING OF JURORS.

4 END BENCH CONFERENCE..

5 BY MR. MCGUIRE:

6 Q All right. Just to pick up where we left off, when
7 I asked you that question:

8 *Did Mr. Daise have any cuts, scratches,*
9 *anything like that?*

10 MR. STONE: Excuse me just a moment, your Honor. I
11 didn't mean to interrupt. I didn't know he was still
12 going to do it on this transcript.

13 MR. MCGUIRE: Oh.

14 MR. STONE: I'll hand him a copy of the transcript,
15 so he knows what we're asking him.

16 Q Thank you. Thank you.

17 MR. STONE: Thank you. Sorry to interrupt.

18 MR. MCGUIRE: Thank you, sir.

19 BY MR. MCGUIRE:

20 Q It probably is a little bit easier.

21 A Yes, sir.

22 Q When I asked you:

23 *Any cuts or scratches,*
24 *again, your answer was?*

25 A None that I saw.

1 Q Yeah, Line 10, say it.

2 A I'm sorry, sir?

3 Q Line 10, can you say it again?

4 A The one I just read?

5 Q Yeah, I just think I just talked over you.

6 A None that I saw.

7 Q Okay. None that I saw. And what you noticed to be
8 the blood on his pants became a topic of the interview
9 with Mr. Daise. Isn't that correct?

10 A Yes.

11 Q Okay. I mean, you guys asked him where could he
12 have gotten blood on him, right?

13 A Correct.

14 Q And do you remember specifically that Officer
15 Foskey -- and Officer Foskey was with you in the
16 interrogation, correct?

17 A That's correct.

18 Q And Officer Foskey was participating in the
19 interview with Mr. Daise, correct?

20 A Correct.

21 Q And he was asking questions of Mr. Daise, correct?

22 A Correct. Yes, sir.

23 Q And do you remember Officer Foskey specifically
24 asking Mr. Daise:

25 *Have you cut yourself recently?*

1 A Give me a second. I can look it up in the report.

2 Q I'll tell you what. You're report's pretty long.

3 How about if I help you?

4 A That -- that would be great.

5 Q Okay.

6 A Can you tell me what page it's on.

7 Q Sure. Page 32 in discovery.

8 A That's not going to help me.

9 Q Oh.

10 MR. MCGUIRE: If I could approach, Judge.

11 THE COURT: You may.

12 MR. MCGUIRE: I'm going to have this marked for

13 I.D.

14 THE COURT: You may.

15 MR. MCGUIRE: Oh, I'm sorry.

16 COURT REPORTER: What is it?

17 MR. MCGUIRE: Defense Exhibit.

18 COURT REPORTER: Defense Exhibit 17.

19 ITEM IDENTIFIED AS COPY OF

20 REPORT OF INVESTIGATOR JODY

21 HIERS MARKED DEFENSE EXHIBIT

22 NUMBER 17, FOR IDENTIFICATION.

23 BY MR. MCGUIRE:

24 Q I'm going to help you, Officer Hiers.

25 A That'll help. Thank you.

1 Q I'm going to show you what's been marked Defense
2 Number 17 for I.D. Do you recognize that?

3 A I do.

4 Q Okay. That appears to be your report.

5 A It's a copy of my report.

6 Q A copy of your report.

7 A Yes, sir.

8 Q But it's an accurate copy.

9 A It appears to be, yes, sir.

10 Q And the only thing that might be on are some
11 markings in my hand in pen there.

12 A Yes, sir.

13 Q Okay. And towards the first couple of sentences,
14 go ahead and read it, and see if you recall Officer
15 Foskey specifically taking the time to ask Mr. Daise if
16 he had cut himself recently.

17 A He did. Do you want me to read that?

18 Q If you would.

19 A Foskey asked Earnest if he had cut himself lately.
20 Earnest stated no.

21 Q Okay. Thank you.

22 A Yes, sir.

23 Q And there were -- there were what, a half a dozen
24 SWAT members at Poppy Hill?

25 A I believe that's accurate. I don't know the exact

1 number, but I think it was probably around that many.

2 Q Okay. And then, obviously, there were officers to
3 transport Mr. Daise to the interrogation office.

4 A Correct.

5 Q There were detectives and senior investigators
6 there.

7 A Correct.

8 Q You were there.

9 A Yes, sir.

10 Q Foskey participated in the interview.

11 A Correct.

12 Q Officer Purdy participated at some point.

13 A Correct.

14 Q Jeff Crooks was there from SLED.

15 A Correct.

16 Q In all of those officers' reports, every official
17 document filed by those officers, can you tell me where
18 anybody documented that Earnest Daise had even a scratch
19 on him?

20 A I can't tell you that. Like I told you, I didn't
21 observe any injuries on him. Of course, I didn't do a,
22 you know, full check of him, so. But as far as speaking
23 for them, I don't know.

24 Q Sure. And I've trying to find it. I can't. Can
25 you point me to anyplace where anybody would have

1 documented that?

2 A Not right offhand, unless I read through every
3 report.

4 MR. MCGUIRE: If I could have just one second,
5 Judge.

6 THE COURT: Yes, sir.

7 MR. MCGUIRE: Officer Hiers, that's -- that's all I
8 have for you right now. Thank you, sir.

9 A Thank you.

10 INVESTIGATOR JODY HIERS

11 RE-DIRECT EXAMINATION BY MR. STONE:

12 Q Other than the photograph that we just put in of
13 his hands, I guess that would be, technically,
14 documentation; would it not?

15 A Yes, sir.

16 Q Okay. Let me ask you about another point the
17 Defense brought up. First of all, did you ask Earnest
18 Daise if he had blood on his pants, if that was blood on
19 his pants that you were looking at?

20 A I did.

21 Q And what did Mr. Daise tell you?

22 A I asked him several times if that was blood on his
23 pants, and there were times when he denied having blood
24 on his pants. There were times when he said that there
25 -- it could be blood on his pants. So, he denied having

1 it.

2 Q Let me show you what has been marked as and
3 actually entered into evidence as State's Exhibit 28.
4 And I think it's also been testified that that's a fair
5 and accurate depiction of how the house looked at 43
6 Poppy Hill Road that night.

7 A Yes, sir, that's correct.

8 Q That's correct?

9 A Yes, sir.

10 Q And these are photographs that also have been
11 testified to that that is the vehicle of Asia Palmer and
12 the vehicle of Jay Simmons.

13 A Correct.

14 Q All right. These cars were at the house when you
15 went and got Earnest Daise out of it?

16 A Yes, sir.

17 Q And both Asia Palmer and Jay Simmons were there?

18 A Yes, sir.

19 Q And Earnest Daise -- or his sister said he was
20 looking for a ride to the hospital?

21 A That's correct.

22 MR. STONE: Nothing else, your Honor.

23 THE COURT: Anything, Mr. McGuire?

24 INVESTIGATOR JODY HIERS

25 RE-CROSS-EXAMINATION BY MR. MCGUIRE:

1 Q Only that, when he talked to his sister, you're
2 aware that's about 8:00 o'clock at night, right?

3 A I didn't talk to her. Master Sergeant Purdy talked
4 to her.

5 Q Okay. Are you aware just from being involved in
6 the investigation that it was about 8:00 o'clock?

7 A I don't recall what time it was. He told me that
8 he had talked to her, so.

9 Q Sure. And those photographs taken early in the
10 morning, 3:00 o'clock in the morning or so?

11 A I don't know what time they were taken, but it was
12 daylight.

13 Q Oh, that's the second search. Okay. When you went
14 to Poppy Hill to see Mr. Daise for the first time, that
15 was early morning hours?

16 A It was, correct.

17 MR. MCGUIRE: Okay. Thanks. That's all I have.

18 A Yes, sir.

19 MR. STONE: Nothing else, your Honor.

20 THE COURT: You may step down, sir. And ladies and
21 gentlemen, we're going to take a break. Again, do not
22 discuss this case. It wouldn't be appropriate to do so.
23 Leave your pads in your seats. We'll be with you
24 shortly.

25 JURORS LEAVE COURTROOM 11:32 A.M.

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1 MR. MCGUIRE: I marked these for I.D. They now
2 belong to you.

3 BAILIFF: Jury's clear. Door is closed, your
4 Honor.

5 THE COURT: Okay. Do we have anything we need to
6 take up?

7 MR. STONE: No, ma'am.

8 THE COURT: Anything from the Defense?

9 MR. MCGUIRE: Not this side.

10 THE COURT: And I want to return this to you all,
11 too, just for -- you all need it.

12 MR. MCGUIRE: Okay. We'll read it.

13 THE COURT: Oh, you don't need to read it. I'm
14 just returning it.

15 MR. MCGUIRE: I'm just teasing your.

16 THE COURT: You provided it to me, and I appreciate
17 it, so.

18 MR. MCGUIRE: Yes, ma'am.

19 THE COURT: Thank you all. We'll be at ease for
20 ten minutes.

21 OFF THE RECORD 11:33 A.M.

22 BACK ON THE RECORD 11:59 A.M.

23 BY THE COURT:

24 BAILIFF: All rise.

25 THE COURT: Thank you all. Please be seated. All

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1 right. Are you ready to go?

2 MR. STONE: Yes, ma'am.

3 MR. MCGUIRE: Yes, ma'am.

4 THE COURT: All right. Let's bring the jury in,
5 Norm.

6 BAILIFF: Yes, your Honor.

7 THE COURT: One other thing, though. You can go
8 ahead and bring them in. What are we looking at as far
9 as time-wise, how many more witnesses, just so I can
10 have an idea?

11 MR. STONE: I think we will take up the morning
12 hour. I believe that we have the -- what time did you
13 want to break today, and I can give you a better --

14 THE COURT: 1:00 is typically what I was thinking.

15 MR. STONE: Sure. We'll -- I'll -- we'll get all
16 our witnesses, except for one, up by 1:00. 1:00 o'clock
17 we've got the pathologist coming. He's MUSC, so he's --

18 THE COURT: What time is he expected to be here?

19 MR. STONE: I asked him to come at 1:00, but ii
20 expected the lunch break, so he's -- he's expecting
21 that, as well. So, that's -- that's -- at least our
22 time frame.

23 THE COURT: Okay. All right. I just need you to
24 tell me as far as when you have finished with your
25 witnesses this morning. I always call it the pregnant

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1 pause, and it never, you know, call your next witness,
2 and you have to say they're not here.

3 MR. STONE: Oh, I -- thank you.

4 THE COURT: You good?

5 MR. STONE: I'll let you know that. I don't think
6 that'll be a problem.

7 THE COURT: Okay.

8 MR. STONE: I think we'll probably run straight up
9 'til 1:00.

10 THE COURT: Okay. All right. Let's go ahead,
11 Norm, you're bringing them in?

12 BAILIFF: Your Honor, he's on his way in with them
13 now.

14 THE COURT: Perfect. I appreciate it.

15 JURY ENTERS COURTROOM 12:01 P.M.

16 BAILIFF: Your Honor.

17 THE COURT: Thank you. Welcome back, ladies and
18 gentlemen. Solicitor, if you'll call your next witness.

19 MR. STONE: The State calls Jeff Crooks.

20 MADAM CLERK: If you'll place your left hand on the
21 Bible, please, and raise your right hand. Do you
22 solemnly swear or affirm the testimony you give shall be
23 the truth, so help you God?

24 LIEUTENANT JEFFREY CROOKS: Yes, ma'am.

25 MADAM CLERK: Thank you. If you'll have a seat,

1 please. And if you'll state and spell your last name
2 for the record, please.

3 LIEUTENANT JEFFREY CROOKS: Jeffrey Crooks,
4 C/r/o/o/k/s.

5 LIEUTENANT JEFFREY CROOKS

6 DIRECT EXAMINATION BY MR. STONE:

7 Q Agent Crooks, you testified, was it yesterday --
8 day before yesterday now, I guess, concerning --
9 concerning pants that you saw Earnest Daise wearing and
10 that you, in fact, took off of him. Is that right? Do
11 you recall that?

12 A Yes, sir.

13 Q Let me go back and start briefly. This took place
14 at the Beaufort County Sheriff's Office; did it not? Or
15 at one of their sub-stations.

16 A I believe it was a sub-station, yes, sir.

17 Q Let me show you what's been marked as State's
18 Exhibit 13, 11, 26, and 12. These have already been
19 entered into evidence, but let me just give you that to
20 -- to refresh your memory.

21 Now, those photographs, what are those, sir?

22 A These are photographs of the pants that I took.

23 Q And those are being worn by Earnest Daise at the
24 time?

25 A Yes. As he was wearing them, yes, sir.

1 Q All right. Now, speak up, because I need you to
2 put that microphone a little bit closer to you, if you
3 could. You mentioned also something about some type of
4 presumptive test that you ran -- that you ran on these
5 pants. Did you run those while Earnest Daise was
6 wearing these pants?

7 A Yes, sir, I did.

8 Q All right. What is this presumptive test?

9 A Well call it a phenylphaline test. Basically, it
10 tests for the presence of hemoglobin, which is a
11 component found in blood. We use that if we have a
12 stain that we observe, and we want to know whether it
13 could be blood or not. And if it reacts positive, then,
14 that's a good indicator it might be blood, so we would
15 collect that evidence.

16 Q All right. And you -- is that by way of a swab, a
17 spray, or how do you do that?

18 A Yes, sir. We take a swab like a Q-tip swab --
19 swab. For dry stains, we will add de-ionized water to
20 the stain to help pull some of the stain off of the
21 surface that it's on. We will add phenylphaline to that
22 swab after we take a swab of the sample. And then,
23 we'll follow that by -- with adding hydrogen peroxide to
24 the swab. If it turns a hot, bright pink fairly
25 rapidly, then, that is an indicator to us that it's

1 probably blood. At that point, we'll collect that item.
2 or take an additional swab, and submit it for our DNA
3 lab to confirm.

4 Q Okay. So, you actually -- you're doing the
5 presumptive, then, you turn it over to your lab for the
6 final testing. Is that correct?

7 A That is correct. It's still presumed to be blood
8 until our DNA processes chemist analyst and says, yes,
9 this is blood.

10 Q All right. And you do that on everything on the
11 jeans, or just a particular area of the jeans?

12 A No, sir. I observed one of the larger stains. I
13 went ahead and swabbed it; did the -- did the
14 phenylphaline test. We also call that a presumptive
15 test. And once it reacted positive, I didn't do any
16 further testing. I collected the -- the pants.

17 Q Okay. All right. Now, the -- and it did react
18 positively?

19 A Yes, sir.

20 Q All right. So, the other cuts, are those going to
21 be around where you -- where you tested? In other
22 words, you're not going to -- the same area of the pants
23 are not going to be tested by both you and the chemist.

24 A Well, they very well could. We -- when we do the
25 presumptive, it's basically telling us whether we should

1 collect it or not.

2 Q I see.

3 A But once we turn it in, they very well could test
4 that same location if there's still -- if that standard
5 is still there.

6 Q Okay. Now, I am wearing gloves today. Obviously,
7 I'm handling this. Were you wearing gloves that night?

8 A Yes, sir, I was.

9 Q And were you also at the crime scene?

10 A Yes, sir, I was.

11 Q Were you wearing gloves at the crime scene?

12 A I was.

13 Q Same pair of gloves, different gloves?

14 A No, sir. I change my gloves frequently.

15 Q Okay.

16 ITEM MARKED STATE'S EXHIBIT NUMBER

17 80, FOR IDENTIFICATION.

18 Q Now, these -- and this has been marked as State's
19 Exhibit 80, and ask you, sir, and I'll hold onto them,
20 are these the jeans that you took off of Earnest Daise?
21 And I'll show you the bag that they came in, if that's
22 necessary.

23 A Can I take a closer look at those?

24 Q Certainly. You got gloves on now?

25 A Um-hmm.

1 Q Okay.

2 A Yes, sir, these are them. My initials are on them.

3 Q Okay. All right.

4 A And my initials are also on this bag. This is --
5 this is the bag I put them in. It's got my handwriting
6 and my initials on it.

7 Q Okay. And that is -- is that SLED -- does SLED
8 have an item number on this?

9 A Yes, sir. It says *I* with the number 8.

10 Q So, that's SLED Item Number 8?

11 A That's what it appears, yes, sir.

12 Q But again, for the record, make sure everybody
13 understands, I am referring, your Honor, to State's
14 Exhibit 80, which is the bag holding the jeans. You
15 collected these jeans from Earnest Daise. Is that
16 correct?

17 A Yes, sir, I did.

18 Q And what did you do with them once you collected
19 them?

20 A Put them in a paper bag. And then, took them
21 directly back to the SLED laboratory, where they were
22 logged in and transferred to the DNA department, or the
23 evidence processing part of the DNA department, for
24 further examination.

25 Q All right. Excuse me just a moment, your Honor.

1 And there was some testimony earlier about a
2 missing .38 handgun. Did you -- you actually did the
3 search of the house at 20 Player Road. Is that correct?
4 Or your team did, I guess.

5 A Yes, sir, I was involved with that.

6 Q Okay. Were you able to find a weapon or a gun
7 inside the house?

8 A No, sir, we were not.

9 Q Did you also look through the van out front?

10 A Yes, sir, I did a -- a general search of the van
11 after I photographed it.

12 Q You didn't find a gun in that, either.

13 A No, sir, I did not see a gun anywhere in the van.

14 MR. STONE: We don't have any further questions of
15 this witness, your Honor.

16 MR. MACDOUGALL: One moment, your Honor.

17 THE COURT: Yes, sir.

18 LIEUTENANT JEFFREY CROOKS

19 CROSS-EXAMINATION BY MR. MACDOUGALL:

20 Q Lieutenant Crooks.

21 A Yes, sir.

22 Q Good to see you again. I just got a few questions
23 for you. I believe the Solicitor -- and you testified
24 two days ago in this case.

25 A Yes, sir.

1 Q I believe that the Solicitor just asked you about a
2 search of the van.

3 A Yes, sir.

4 Q And you said you did a general search of the van.

5 A Yes, sir.

6 Q You remember me asking you two days ago if you had
7 done any crime scene processing of the van?

8 A Yes, sir.

9 Q And do you remember saying, no, you hadn't?

10 A Yes, sir.

11 Q You didn't search for fingerprints?

12 A No.

13 Q Didn't do any blood testing? Any phenylphaline?

14 A No.

15 Q Any of the other dozen ways of detecting
16 fingerprints?

17 A No.

18 Q You did no search for fibers?

19 A No.

20 Q You did no search for gunshot residue?

21 A No.

22 Q You did no crime scene processing of that van at
23 all; did you?

24 A Well, by search, what I was referring to is just
25 looking through the van, just in general, looking around

1 in the van.

2 Q Right.

3 A No processing of -- for particular physical
4 evidence.

5 Q You looked inside.

6 A Exactly.

7 Q And that's it.

8 A Yes, sir.

9 Q Okay. Solicitor just asked you about the jeans,
10 Lieutenant. And let me ask if you'd agree with me that,
11 as you see them here today, and as you saw them that
12 night, they're not in the cleanest of condition; were
13 they?

14 A In regard -- I'm not sure what you're referring to.

15 Q Lots of different discolorations and stains and so
16 forth.

17 A Looks like they've been marked up, yes, sir.

18 Q Right.

19 A And some cuttings taken.

20 Q Right. And before that, they didn't look like they
21 were freshly laundered; did they?

22 A They looked like regular jeans, yes, sir.

23 Q Okay. Okay. Now, you would agree with me that --
24 and you've testified previously in this case that your
25 observation of the -- of the blood stain led you to the

1 conclusion that it was a result of transference.

2 A Yes, sir, that was my general impression. It was
3 probably a transfer stain.

4 Q Right. Not a spatter stain.

5 A No, I didn't -- I didn't notice anything that was
6 -- that was obvious to me to be spatter.

7 Q Right. And just so we all understand, a
8 transference stain is that blood is on some other
9 surface, could be a hand, could be something else, and
10 it's applied to the fabric.

11 A Yes, sir. It comes in contact with the other
12 surface.

13 Q Right.

14 A And a transfer of blood takes place.

15 Q And a spatter stain would be a gunshot wound and
16 blood is -- is spewed from the wound onto the -- onto
17 the cloth.

18 A It is projected blood due to force, yes, sir.

19 Q All right. And your conclusion here is this is a
20 transference stain from one surface to another.

21 A Yes, sir, that's what I saw.

22 Q Okay. I'm going to ask you to have a look at what
23 we'll ask the court reporter to give the next
24 Defendant's Exhibit Number to.

25 COURT REPORTER: Defendant's Number 18.

1 ITEM IDENTIFIED AS SWEATSHIRT
2 MARKED DEFENDANT'S EXHIBIT NUMBER 18,
3 FOR IDENTIFICATION.

4 Q You don't have gloves on; do you, Lieutenant?

5 A I do.

6 Q You do? Okay. Very good. Have a look at what's
7 been marked as Defendant's 18 for identification. Have
8 you seen that before?

9 A Can I see the bag, please?

10 Q Sure. Again, this is Defendant's 18.

11 A Okay. This -- yes, sir. This looks like the
12 sweatshirt that I received that was submitted to the lab
13 to be looked at.

14 Q Okay. And the Sheriff's Office informed you that a
15 DNA analyst had found color specks on that sweatshirt.
16 Is that right?

17 A Yes, sir.

18 Q Okay. And that they thought it looked like blood
19 splatter.

20 A Yes, sir. They -- they wanted me to look at it.

21 Q And you tested that sweatshirt with LCV. Isn't
22 that right?

23 A Yes, sir.

24 Q And you found no blood at all.

25 A I didn't get any reaction that would indicate to me

1 that there was any blood present, yes, sir.

2 Q So, you found no presence of blood at all on that
3 sweatshirt.

4 A I did not, no.

5 MR. MACDOUGALL: One moment, your Honor.

6 THE COURT: Yes, sir.

7 MR. MACDOUGALL: Thank you, Lieutenant. No further
8 questions.

9 LIEUTENANT JEFFREY CROOKS

10 RE-DIRECT EXAMINATION BY MR. STONE:

11 Q Just one. When you went to -- when you went to the
12 Sheriff's station, was Earnest Daise wearing this
13 sweatshirt?

14 A No, sir, he was not.

15 MR. STONE: Thank you. I don't have any further
16 questions.

17 A Or at least, not when I saw him he was not, no,
18 sir.

19 MR. MACDOUGALL: One more re-cross, your Honor.

20 THE COURT: Yes, sir.

21 MR. MACDOUGALL: May I approach the witness, your
22 Honor?

23 THE COURT: You may.

24 LIEUTENANT JEFFREY CROOKS

25 RE-CROSS-EXAMINATION BY MR. MACDOUGALL:

1 Q The label on Defense Exhibit 18, what does that
2 read with respect to location of collection?

3 A On floor in right, rear bedroom at 43 Poppy Hill
4 Road, Burton.

5 Q And you understand that that's the location where
6 Earnest Daise was taken into custody.

7 A I don't know anything about that.

8 MR. MACDOUGALL: Well, have a moment, your Honor?

9 THE COURT: You may.

10 BY MR. MACDOUGALL:

11 Q Lieutenant, I'm going to show you four photographs
12 that have been previously marked and admitted as State's
13 Exhibits 31 -- I'm sorry, 30, 31, 32, and 34. For the
14 benefit of the jury, I'll just display them briefly.
15 The photographs, for the record, taken at the -- the gas
16 station.

17 Would you have a look at those please, Lieutenant?
18 Do you recognize the defendant, Earnest Daise, in those
19 photographs?

20 A I guess that's him. I -- I -- I mean, I can't
21 tell.

22 Q I will represent to you there's been previous
23 testimony --

24 A Okay.

25 Q -- identifying him as the individual in the

1 photograph.

2 A Okay.

3 Q Do you recognize the sweatshirt he's wearing?

4 A It looks like a gray sweatshirt to me.

5 Q Does it look like the sweatshirt that you've been
6 looking at in Defendant's Exhibit 18?

7 A It's -- it looks similar.

8 Q Do you see any difference?

9 A Again, it looked gray. I mean, I -- it could be a
10 different color, but it looks very similar to me, yes,
11 sir.

12 Q All right. And what's the time on those
13 photographs, if you would, please, Lieutenant?

14 A 11:46 and 55 seconds.

15 Q On what date?

16 A On 11/15/2009.

17 Q Okay. That's November 15, 2009. That's the day of
18 the Jeanine Mullen homicide. And what time did -- based
19 upon the -- your work and your arrival at the scene,
20 about what time did the police believe the homicide had
21 taken place?

22 A I'm not sure. I know I got there right before
23 midnight. I would have to look at my notes to see if
24 they told me when they thought that it had taken place.

25 Q Okay. Do you have your notes there?

1 A I do. I can check.

2 Q All right.

3 A I don't have an incident time documented.

4 Q Okay. Based upon the time you received the call,
5 what's your present understanding of when the homicide
6 took place?

7 A It was earlier in the evening, definitely,
8 obviously, before we got there.

9 Q Okay. Would you disagree with that it was some
10 time late in the afternoon that day?

11 A Yes, sir.

12 Q Okay. And the time register, the time meter on
13 that photograph was just before noon.

14 A I don't know if that's a.m. or p.m. It doesn't
15 say.

16 Q Well, the sun's shining, so.

17 A Is that a window back there?

18 Q Yeah.

19 A You're talking about right here?

20 Q Yeah.

21 A Okay. I didn't know if that was the sun or street
22 lights.

23 Q Okay. So, --

24 A That's the first time I've seen those pictures.

25 Q So, you don't disagree that the picture of Earnest

1 Daise admitted into evidence, in that picture, that
2 photograph, he's wearing a sweatshirt that looks exactly
3 like the sweatshirt you just looked at, Defendant's 18?

4 A It looks similar, yes, sir.

5 Q And you agree from the label that the sweatshirt
6 that's Defendant's Exhibit 18 was taken from the floor
7 of the residence where Mr. Daise was staying.

8 A That's what the bag says, yes, sir.

9 Q And you also agree you tested that sweatshirt and
10 found no traces of blood whatsoever.

11 A I did not find any presence of blood, yes, sir.

12 MR. MACDOUGALL: Okay. May I approach, your Honor?

13 THE COURT: You may.

14 COURT REPORTER: Mr. MacDougall, do you need me?

15 MR. MACDOUGALL: I'm sorry. Please.

16 ON-THE-RECORD BENCH CONFERENCE,

17 OUT OF HEARING OF JURORS:

18 MR. MACDOUGALL: Your Honor, we'd like to move
19 Defendant's 18 into evidence. This witness obviously
20 does not have chain of custody. Sergeant Wilson,
21 Christine Wilson, does, and we still have her under
22 subpoena. We can bring her back and have her
23 authenticate it, unless the State would consent to it.

24 MR. STONE: I don't mind. I'll consent, sure.

25 END BENCH CONFERENCE.

1 MR. STONE: Your Honor, I don't have any objection
2 putting that into evidence.

3 MR. MACDOUGALL: All right. Your Honor we'd move
4 -- the Defense would move the admission of Defendant's
5 18 into evidence in this case.

6 THE COURT: Thank you. It's in evidence without
7 objection.

8 MR. MACDOUGALL: Thank you.

9 ITEM IDENTIFIED AS SWEATSHIRT

10 MARKED DEFENSE EXHIBIT NUMBER 18,

11 ADMITTED AS EVIDENCE.

12 MR. MACDOUGALL: Thank you, Lieutenant. May I have
13 a moment, your Honor? Sorry.

14 THE COURT: Yes, sir.

15 BY MR. MACDOUGALL:

16 Q One more question, Lieutenant. Are you familiar
17 with an individual named Bob Bromage?

18 A Yes, sir.

19 Q Okay. And isn't it correct that Bob Bromage
20 communicated to you his believe and his --

21 MR. STONE: Objection. (a) hearsay; (b) that's not
22 proper re-cross. We were on the sweatshirt. We've
23 already agreed to that being admitted into evidence.

24 THE COURT: Okay.

25 MR. MACDOUGALL: Again, if I could have a moment,

1 your Honor. I think I can find a document that would --

2 THE COURT: Yes. Okay.

3 MR. MACDOUGALL: May we approach, your Honor?

4 THE COURT: You may.

5 COURT REPORTER: Mr. MacDougall?

6 MR. MACDOUGALL: Yes, please.

7 ON-THE-RECORD BENCH CONFERENCE,

8 OUT OF HEARING OF JURORS:

9 MR. MACDOUGALL: The Sheriff Department's theory is
10 reflected in that gunshot residue and other
11 communications. It was the sweatshirt was worn at the
12 time, and that the gun was put in the pocket. This
13 witness was aware of that. I can ask the question
14 differently and ask him if he's aware of that.

15 MR. STONE: I'm sorry. What is -- whose? What?

16 MR. MACDOUGALL: This witness is aware of the fact
17 that the Sheriff's Department believed that the --

18 MR. STONE: What does what the Sheriff's Office
19 believes have to do with this case?

20 THE COURT: What's next? No, that's cross-
21 examination.

22 MR. STONE: Their theory was he was wearing the
23 sweatshirt. Your Honor, there's no evidence to that.
24 The question I had was, was he wearing the sweatshirt at
25 the time that he put the jeans on. His answer was no.

1 He then re-directed -- or re-crossed on that particular
2 issue. He said one question, he said -- asked me to
3 consent to putting the sweatshirt in, I did. Now, we're
4 getting off into the Sheriff's Office theory about how
5 the murder took place? Because their theory may or may
6 not be the same as the State. And what the State's
7 theory is, is based on the evidence coming out of the
8 courtroom and off the witness stand. And to offer any
9 kind of police theories that they talk back and forth
10 about --

11 MR. MACDOUGALL: Your Honor, that sweatshirt was
12 introduced when the photographs were introduced at the
13 gas station. The State introduced the sweatshirt.
14 That's what he's wearing. And then, went to great pains
15 to say that the State also believed and asked this man
16 to test it for blood. There was no blood.

17 THE COURT: Right.

18 MR. MACDOUGALL: The State also believes that the
19 gun had been placed in the pocket.

20 MR. STONE: I didn't say that. There's been
21 nothing from me on that.

22 THE COURT: I don't see necessarily where -- I
23 mean, they took it all from his house, is my
24 understanding.

25 MR. STONE: That's right.

1 THE COURT: I don't think in the house, again, that
2 there may or may not have been blood or not blood.
3 They've tested it. There isn't any, as far as I
4 understand. I mean, as far as trying to say --
5 introduce theories, you know, by the police, I mean,
6 obviously, I mean, if I let you do that now, say the
7 only thing he's going to come up and do and say, and
8 obviously, when you're investigating a case you have to
9 look at all the options. We have to consider it.

10 They sometimes they take evidence that doesn't turn
11 out to be evidence; although, in this case, it really
12 was, because we did have it on the video.

13 MR. STONE: Yeah, sure.

14 MR. MACDOUGALL: What?

15 THE COURT: I think it's a red herring. If you
16 want to ask him something like, you know, at some point
17 did the Sheriff's Office, you know, believe or consider
18 that there would be some significance. I think he can
19 ask them about their investigation, but then, again, I
20 think it's very easy for you to get up and cross him, or
21 you know, just re-direct him and say, yeah, as a deputy
22 aren't you supposed to consider everything?

23 MR. STONE: Yeah.

24 THE COURT: Yeah.

25 MR. STONE: We're about four paragraphs away from

1 re-cross.

2 THE COURT: I know. I understand that.

3 MR. STONE: Now, we're going -- and we talk about
4 law enforcement theories and all this. There's a lot we
5 can open up on that.

6 THE COURT: I don't think we need to go into too
7 much, but again, I think I need to give him an
8 opportunity.

9 MR. STONE: Yeah.

10 THE COURT: So, a little bit.

11 MR. MACDOUGALL: Thank you, your Honor.

12 END BENCH CONFERENCE.

13 BY MR. MACDOUGALL:

14 Q Lieutenant, are you aware of any other forensic
15 tests that were done on the sweatshirt, Defendant's 18?

16 A I am not. I can only tell you what I did. I'm not
17 sure off the top of my head if it was sent to any other
18 departments or not.

19 Q So, you don't know whether any other forensic tests
20 were done.

21 A I can only tell you what I did. I'm not sure what
22 else was done to the -- to the sweatshirt.

23 MR. MACDOUGALL: Okay. Thank you, Lieutenant.

24 Thank you, your Honor. No further questions.

25 MR. STONE: No further questions, your Honor. The

1 State calls Eileen Rios to the stand.

2 THE COURT: All right. Thank you.

3 MADAM CLERK: Would you place your left hand on the
4 Bible and raise your right hand? Do you solemnly swear
5 the testimony you give to be the truth, so help you God?

6 MS. EILEEN RIOS: I do.

7 MADAM CLERK: Thank you. If you'll have a seat,
8 please. And state and spell your name for the record,
9 please.

10 MS. EILEEN RIOS: Eileen Rios, R/i/o/s.

11 EILEEN RIOS

12 DIRECT EXAMINATION BY MR. STONE:

13 Q Mr. Rios, you are with the Beaufort County
14 Sheriff's Office. Is that correct?

15 A Correct.

16 Q And you were in their evidence room, I assume.

17 A Yes.

18 Q Your job, as evidence custodian, is to accept
19 evidence, and then, move it on down the line.

20 A Yes.

21 Q You hold it for safe keeping until it's taken.

22 A Yeah. Receive and maintain.

23 Q Got it. Let me show you what's been marked as
24 State's Exhibit 78, which has been testified to as a
25 buccal swab collected by Jeff Purdy. Could you tell me

1 about that? Is that an evidence bag that you received?

2 A Yes.

3 Q Now, you received the actual brown bag part of it.
4 Is that correct?

5 A Correct.

6 Q Or how does that work?

7 A It came in as a sealed paper evidence bag.

8 Q And let me hold it, if I could. That is the --
9 that is this bag here that I'm holding up, part of it?

10 A Yes.

11 Q And what can you tell -- and what did you do when
12 you received this?

13 A Investigator Purdy brought it in. I see here he
14 brought it in November the -- the 19th. I signed for it
15 at 14:41.

16 Q Okay. And where did it go after that?

17 A At that time, I logged it into the computer system;
18 I gave it a container number; and put it in the evidence
19 lockup for security.

20 Q Did you change or alter it in any way when you had
21 it in your custody?

22 A No.

23 Q Okay. And this, at some point was then transported
24 to the State Law Enforcement Division?

25 A Correct.

1 MR. STONE: I don't have any further questions of
2 this witness.

3 THE COURT: Anything? Anything?

4 MR. MACDOUGALL: No questions, your Honor. Thank
5 you ma'am.

6 THE COURT: All right. You may be excused. Thank
7 you.

8 MR. STONE: The State calls Jean Roberts to the
9 stand.

10 THE COURT: Come forward, Ms. Roberts.

11 MADAM CLERK: If you'll place your left hand on the
12 Bible please, raise your right hand. Do you solemnly
13 swear or affirm that the testimony you give shall be the
14 truth, so help you God?

15 MS. JEAN ROBERTS: I do.

16 MADAM CLERK: Thank you. Have a seat, please. And
17 if you'll state and spell your last name for the record,
18 please.

19 MS. JEAN ROBERTS: My name is Jean Roberts,
20 R/o/b/e/r/t/s.

21 JEAN ROBERTS

22 DIRECT EXAMINATION BY MR. STONE:

23 Q And Ms. Roberts, who do you work with, ma'am?

24 A Beaufort County Sheriff's Office.

25 Q And what do you do with them?

1 A I'm the victim assistant at the time.

2 Q Okay. And at -- do you also do anything else,
3 other than that?

4 A I have been. I was the evidence technician several
5 years ago.

6 Q Several years ago. Let me show you what's been
7 marked State's Exhibit 72 that's been testified as an
8 item seized from 43 Poppy Hill Road, and I ask if you
9 could identify that for me, please.

10 A Yes, sir. This is a piece of evidence that I
11 transported to SLED on February the 22nd, in 2010.

12 Q Okay. And you transported it -- excuse me -- you
13 transported it from the Beaufort County Sheriff's Office
14 to SLED. Is that correct?

15 A Correct.

16 Q Did you change or alter it in any way when you
17 handled it?

18 A No, sir, I did not.

19 Q And then, you checked it in to SLED, State Law
20 Enforcement Division?

21 A Yes, sir.

22 Q Okay. And who -- and whom did you check it in to,
23 or in what area?

24 A They have a central receiving there, and you just
25 go in, and -- and whoever's at the desk takes it.

1 Q Okay. Thank you, ma'am.

2 A You're welcome.

3 MR. STONE: No further questions.

4 THE COURT: Anything?

5 MR. MCGUIRE: No questions, your Honor. Thank you,
6 ma'am.

7 THE COURT: You may be excused Ms. Roberts. Thank
8 you.

9 MR. STONE: State calls John Donahue.

10 MADAM CLERK: If you'll place your left hand on the
11 Bible, please, raise your right hand. Do you solemnly
12 swear or affirm that the testimony you give shall be the
13 truth, so help you God?

14 JOHN DONAHUE: I do.

15 MADAM CLERK: If you'll have a seat, please. State
16 your full name and spell your last name for the record,
17 please.

18 JOHN DONAHUE: John Donahue, D/o/n/a/h/u/e.

19 JOHN DONAHUE

20 DIRECT EXAMINATION BY MR. STONE:

21 Q What do you do, sir?

22 A I'm a DNA technical leader for the Beaufort County
23 Sheriff's Office Forensic Services Laboratory.

24 Q And how long have you been in that position?

25 A Since January of 2008.

1 Q And in your position with the DNA lab, do you also
2 transport evidence from the Sheriff's Office to the
3 State Law Enforcement Division?

4 A I have on occasion.

5 Q Okay. Let me show what's been marked as State's
6 Exhibit 78, ask you if you recognize this item.

7 A I do.

8 Q All right. And what is that, sir, and how do you
9 have some involvement in that?

10 A I transported this item from our evidence room to
11 the SLED laboratory. My signature's on the -- the
12 sealed package here, on the date of November 20, 2009.

13 Q Okay. While you were transporting it, did you
14 change or alter it in any way?

15 A No.

16 Q And you then check it in to the SLED -- I guess
17 they've got the central repository for evidence. Is
18 that correct?

19 A Yes.

20 MR. STONE: Okay. No further questions, your
21 Honor.

22 MR. MCGUIRE: No questions, your Honor. Thank you.

23 THE COURT: You may be excused, sir. Thank you.

24 MR. STONE: Verona Gibson.

25 MADAM CLERK: If you'll place your left hand on the

1 Bible, please, and raise your right hand. Do you
2 solemnly swear or affirm that the testimony you give
3 shall be the truth, so help you God?

4 MA'AM VERONA GIBSON: Yes, I do.

5 MADAM CLERK: Thank you. Have a seat. If you'll
6 state your full name and spell your last name for the
7 record, please.

8 MS. VERONA GIBSON: Verona Gibson, G/i/b/s/o/n.

9 VERONA GIBSON

10 DIRECT EXAMINATION BY MR. STONE:

11 Q And where do you work, Ms. Gibson?

12 A SLED, or the South Carolina Law Enforcement
13 Division.

14 Q What do you do there?

15 A I'm am an evidence processing technician in the DNA
16 case work department.

17 Q And what does that mean, an evidence -- what did
18 you say? Evidence processing?

19 A Technician. What does that mean?

20 A Basically, we get larger pieces of evidence, such
21 as clothing, automobile parts, and look for body fluids.

22 Q And so, as a technician, what is your job
23 specifically when you get these items?

24 A We do a visual exam, and then, we'll do any
25 presumptive testing if it's necessary. Or we'll do

1 scrapings and collect possible skin cells for ownership.

2 Q Okay. Let me show you what's been marked as State's
3 Exhibit 80 and the bag that it came in. Do you have
4 gloves with you?

5 A Yes.

6 Q Do you just carry those with you?

7 A Yes, sir.

8 Q I'll hand you what's been marked as State's Exhibit
9 80, and this -- these jeans, it's been testified it came
10 out of those bags.

11 A Yes, sir.

12 Q Did you receive that -- that item, those jeans, at
13 SLED?

14 A I did, yes, sir.

15 Q And what did you do with them? What was -- what
16 was your job, and what exactly did you do with that
17 item?

18 A I examined those for the -- if there were stains or
19 possible blood.

20 Q All right. And after you examined them, what did
21 you find?

22 A I did find areas that tested positive for the
23 presumptive test for blood.

24 Q All right. And then, do you do anything -- what do
25 you do after that with those jeans?

1 A Some of the areas that were positive, we will cut,
2 seal in a coin envelop. Initial and date that seal.
3 And then, seal it a heat-seal pouch to forward to the
4 DNA department.

5 Q Okay. Now, there are a number of cuts on these
6 jeans. I'll hold these up so you and the jury can see
7 it. Can you see it from there?

8 A Yes, sir. I'm good.

9 Q Cut here on the left pocket. There seems to be a
10 cut here on the right pants. One down here on the leg.
11 Well, and one on the other side on the leg. Are those
12 cuts that you made?

13 A Yes, sir, they are. They have a number -- point
14 another number. In this case, 8.1 through 8.4. At
15 SLED, our item number for the jeans itself was 8. And
16 so, each cutting I took off it would be .1, .2, .3.

17 Q Okay. Let me show you what's been marked as
18 State's Exhibit 81 and State's Exhibit 82, and ask if
19 you could identify those items, please, ma'am.

20 A State's Exhibit 82 is the cut -- two of the
21 cuttings I collected from the jeans, 8.3 and 8.4.
22 State's Exhibit 81 --

23 Q Go ahead, if you need to open that package up.

24 A I think I'm okay. Are the cuttings 8.1 and 8.2.

25 Q All right. So, those are the cuttings that you

1 made from those jeans?

2 A Yes, sir, they are.

3 Q And then, what did you do with those cuttings?

4 A They were sealed in this heat-sealed pouch. You
5 can see where I initialed and dated at the top, and put
6 who it was -- I mean, the department it was traveling on
7 to. I believe I gave those directly to Paul Meeh.

8 COURT REPORTER: I'm sorry. To whom?

9 A To Paul Meeh.

10 Q How do you spell his last name?

11 A M/e/e/h.

12 Q Okay. And who is Paul Meeh?

13 A He is an analyst in the DNA department.

14 Q Okay. So, you actually don't do the DNA testing
15 yourself, you hand those on to him. Is that correct?

16 A Correct.

17 Q Okay. So, you're basically doing a presumptive
18 test.

19 A Yes, sir.

20 Q And then, turning -- okay.

21 A Yes.

22 Q Both of those items -- well, there are actually
23 four items, I know, but in these two -- these two pieces
24 of evidence, those were items that you then sent on to
25 Mr. Meeh?

1 A They are, yes, sir.

2 Q Okay. And I think you said you were checking. Did
3 you hand those directly to him?

4 A I did, yes, sir.

5 Q Did you change, other than your presumptive tests,
6 did you change or alter those in any way processing them
7 on to?

8 A The cuttings?

9 Q Yes.

10 A No, sir. They were just cut straight after I
11 tested them.

12 MR. STONE: No further questions at this time.
13 Thank you..

14 VERONA GIBSON

15 CROSS-EXAMINATION BY MR. MCGUIRE:

16 Q Is it Ms. Gibson?

17 A Yes, sir.

18 Q Good afternoon, Ms. Gibson. How are you doing?

19 A Good. And you?

20 Q I'm good. You indicated that you take larger
21 pieces of evidence, and then, break it down to small --
22 small pieces, like cuttings and that sort of thing.

23 A Correct.

24 Q Do you also do swabs?

25 A We can, yes, sir.

1 Q Okay. And a lot of times, when you're doing swabs,
2 you're doing what's called touch DNA?

3 A Occasionally, yes, sir.

4 Q Okay. For instance, if you wanted to swab a wallet
5 to see who may have been handling a wallet, you could do
6 that.

7 A Yes, sir.

8 Q And you've had wallets probably presented to you.

9 A I have, yes.

10 Q Purses?

11 A Yes, sir.

12 Q Contents of purses?

13 A Yes, sir.

14 Q Small objects, like Coke cans?

15 A Yes, sir.

16 Q Beer bottles.

17 A Yes, sir.

18 Q I mean, anything that we touch, basically, we can
19 slough off DNA and you can swab for it.

20 A Yes.

21 Q And you're the person that takes the swab, and you
22 send it on to the analyst who's going to run the DNA
23 profile.

24 A Yes, sir.

25 MR. MCGUIRE: Okay. That's all I have. Thank you.

1 A Thank you.

2 MR. STONE: Nothing further. Thank you.

3 THE COURT: You may be excused.

4 MR. STONE: State calls Lieutenant Rhonda Fields.

5 MADAM CLERK: If you'll place your left hand on the
6 Bible and raise your right hand, please. Do you
7 solemnly swear or affirm that the testimony you give
8 shall be the truth, so help you God?

9 LIEUTENANT RHONDA FIELDS: I do.

10 MADAM CLERK: Thank you. If you'll have a seat,
11 please. If you'll state your full name and spell your
12 last name for the record, please.

13 LIEUTENANT RHONDA FIELDS: Rhonda Fields,
14 F/i/e/l/d/s.

15 LIEUTENANT RHONDA FIELDS

16 DIRECT EXAMINATION BY MR. STONE:

17 Q And you are a lieutenant? Is that correct?

18 A I am, yes sir.

19 Q And with whom?

20 A The DNA Database Unit.

21 Q With whom?

22 A At SLED. Sorry.

23 Q That's okay.

24 A South Carolina Law Enforcement Division.

25 Q And how long have you been with the South Carolina

1 Law Enforcement Division?

2 A Almost 15 years.

3 Q Okay. Did you attend the autopsy of Jeanine
4 Mullen?

5 A I did, yes.

6 Q At the autopsy, did you receive from the
7 pathologist a vial or a sample of Jeanine Mullen's
8 blood?

9 A I did, yes.

10 Q Let me show you what's been marked as State's
11 Exhibit 83, ask if you could identify that for me,
12 please, ma'am.

13 A Yes, sir. It contains two envelopes. It's a heat-
14 sealed pouch. Whenever I logged in the autopsy samples
15 in our Evidence Control Department at SLED, they place
16 it in these heat-sealed pouch. It contains a label that
17 has a lab identification number, as well as a container
18 I.D. And as I place the samples in here, I sealed this
19 top portion, and I initialed and date it where I've
20 sealed; and I filled out the information in the front.
21 And that's how it was containerized once it reached the
22 laboratory.

23 Q Okay. And that is an item -- that blood is
24 actually -- you received that directly from the
25 pathologist?

1 A Well, it was actually a -- a tube. It was a --
2 there was -- there was a blood tube in here, and it was
3 preserved later, I'm assuming, by someone in our
4 department.

5 Q But from the sample, you were -- you actually
6 gathered it from the pathologist at autopsy.

7 A Right, right. I collected it from the pathologist.

8 Q Did you change or alter it in any way in your
9 handling of it?

10 A I did not.

11 Q Okay. And then, you turned that directly in to
12 your DNA lab at SLED?

13 A The Evidence Control Department at SLED.

14 MR. STONE: Nothing further at this time, your
15 Honor.

16 THE COURT: Okay.

17 MR. MCGUIRE: No questions, your Honor. Thank you
18 for coming, ma'am.

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

20 A That's okay. Thank you.

21 MR. STONE: State calls Ila Simmons.

22 MADAM CLERK: Place your left hand on the *Bible* and
23 raise your right hand, please. Do you solemnly swear or
24 affirm the testimony you give shall be the truth, so
25 help you God?

1 MS. ILA SIMMONS: I do.

2 MADAM CLERK: Thank you. If you'll have a seat
3 please. And if you'll state your full name and spell
4 your last name for the record, please.

5 MS. ILA SIMMONS: My name is Ila Simmons. My last
6 name is spelled S/i/m/m/o/n/s.

7 ILA SIMMONS

8 DIRECT EXAMINATION BY MR. STONE:

9 Q So, this is not a trick question. You are now
10 currently retired. Is that correct?

11 A Yes, sir, that's correct.

12 Q How recently?

13 A A week and a half ago.

14 Q And retired from where?

15 A From the South Carolina Law Enforcement Division,
16 also known as SLED, and Forensic Services Laboratory's
17 Trace Evidence Department.

18 Q All right. Congratulations.

19 A Thank you.

20 Q How long -- how long did you spend with SLED?

21 A Fourteen years.

22 Q How many?

23 A Fourteen.

24 Q And in that entire 14 years, was that spent in the
25 Trace Evidence Section?

1 A Yes, sir.

2 Q Now, what is -- what exactly is trace evidence?

3 A We analyze gunshot residue, gunpowder residues. We
4 perform comparisons on glass, paint. We also analyze
5 explosives and arson.

6 Q And how -- and how many tests have you done in your
7 -- in your time with SLED?

8 A Probably a 100,000 different types of tests.

9 Q Okay. The -- have you ever been qualified as an
10 expert in this particular field before?

11 A Yes, sir, I have. Over 250 times in federal,
12 state, and civil courts of South Carolina.

13 Q And as an expert, I'm assuming your expert would be
14 forensic -- what exactly would the term be?

15 A Trace evidence.

16 Q Just forensic trace evidence?

17 A Yes, sir.

18 Q Expert in trace evidence.

19 A Yes, sir.

20 Q Okay.

21 MR. STONE: At this time, your Honor, I offer Ms.
22 Simmons as an expert in trace evidence.

23 MR. MACDOUGALL: Without objection.

24 THE COURT: Without objection. Ladies and
25 gentlemen, in this case, Ms. Simmons has been qualified

1 in the area as an expert in trace evidence. Again, that
2 allows her to give you her opinion and the reasons for
3 her opinion. Again, that is for you to see appropriate
4 as compared to the other evidence.

5 MR. STONE: Thank you, your Honor.

6 BY MR. STONE:

7 Q All right. Let me back up and first talk about,
8 and specifically in the areas of trace, let's talk about
9 gunshot residue. How does that come about? What type
10 of -- not what type of testing, but first of all, how do
11 you -- what are you testing for? What are you looking
12 for?

13 A Gunshot residue is a mixture of chemicals that come
14 out of a gun when it's discharged. In the movies,
15 you'll often see a big puff of smoke come out of a gun.
16 The gunshot residue that we're analyzing for is mixed up
17 in this puff of smoke. The particles we're looking for
18 are microscopic. You have to have a very powerful
19 microscope to see them, and they are composed primarily
20 of what comes out of the primer of the cartridge. And
21 it's composed of lead, barium, and antimony metals.

22 Q Okay. And these three metals taken together,
23 they're actually forming the gunshot residue. Is that
24 correct?

25 A Yes, sir, they are. And it's specific. If you

1 find a particle that is spheroidal or round, and it has
2 lead, barium, and antimony in it, it is specific to the
3 discharge of a firearm, and to nothing else that's ever
4 been found.

5 Q So, are there other -- so, in other -- other words,
6 in some cases, you'll find one or two of those elements,
7 but not all three?

8 A You can.

9 Q Is that how it works?

10 A Yes, sir.

11 Q And in some cases, I imagine you could find some
12 other chemicals, as well, but not those three, that can
13 also be associated with gunshot residue.

14 A Yes, sir, you can.

15 Q All right.

16 ITEM MARKED STATE'S EXHIBIT NUMBER

17 68, FOR IDENTIFICATION.

18 Q Let me -- and I think you had given me earlier --
19 let me show you what's been marked as State's Exhibit
20 68. This is for demonstrative purpose. This is an item
21 that I received from you. Can you tell us briefly what
22 that is?

23 A Yes, sir. This is just a firearm, a revolver, that
24 is being discharged, and you can see the gunshot
25 residue. Well, you can't see the gunshot residue, but

1 you can see the cloud that the gunshot residue is mixed
2 in.

3 Q All right. And let me, if I could, just ask you --

4 MR. STONE: Your Honor, I'm going to use this
5 simply as demonstrative evidence. If we could put that
6 up on the board, have her explain that.

7 BY MR. STONE:

8 Q Could I get you to come down, please.

9 A Um-hmm.

10 Q She needs to, obviously, hear you, but if you could
11 stand here and just show us. This is the -- this is
12 State's Exhibit 68 we'll show you. Explain that, if you
13 don't mind, please.

14 A Yes, sir. This is the revolver. This is the
15 weapon that's being discharged after the trigger is
16 pulled. This cloud here, it's -- the gunshot residue
17 that we're analyzing for is mixed in this cloud. You
18 can't specifically see it. This is smoke from gunpowder
19 and different discharges that are going on, on the
20 weapon, and this would be the projectile that's going
21 toward the target. But as you can see, this comes out
22 in a large, cone-shaped cloud, and can get on the hand
23 of the person shooting the gun, as well as the clothing,
24 that someone may be wearing, the discharge.

25 Q In this -- in that context, is this -- we refer to

1 it as powder. What condition is it coming out? Is it a
2 powdery substance? Is it -- what temperature is it,
3 anything like that?

4 A It's -- it's very hot. And at the time that it
5 comes out of the weapon, the lead, the barium, and
6 antimony that are metals are in a molding state.
7 Therefore, they're liquid. And if you were to take a
8 glass of water and throw it in the air and freeze it in
9 mid-air, you'll know that you'll have round droplets.
10 Well, that's what's so significant about having round
11 particles. That means that the particles were under
12 heat and under pressure when they cooled. Therefore,
13 you know it came from a discharge of a firearm versus
14 something else.

15 Q So, actually, so, what we're seeing is, I guess not
16 gunshot residue, it's just the powder around it.

17 A Right, it's the powder around the residue, but this
18 is what the gunshot residue is based on.

19 Q Okay. This is actually not what you're testing
20 for. It is the chemicals from the molten state coming
21 out of the gun. Is that right?

22 A Yes, sir. Yes, sir.

23 Q I done want to -- I want to make sure I get that
24 correct. Is it various guns discharge various amounts,
25 or is this all the same, or how does that work?

1 A Yes, sir. Different types of guns, as well as
2 different types of ammunition, will produce different
3 amounts of gunshot residue, depending upon the caliber
4 and type of firearm that you --

5 COURT REPORTER: I'm sorry. I'm sorry. *Different*
6 *types of gun residue and* -- could you slow down a
7 little.

8 A Okay. Yes, ma'am. Different types of guns will
9 produce different amounts of gunshot residue, as well as
10 different types of ammunition will produce different
11 amounts of gunshot residue, depending on the primer
12 that's put into the cartridge.

13 Q The molten state, when it comes out, how does that
14 affect -- when it hits an item such as clothing, things
15 like that?

16 A It will actually embed into the fibers of clothing.
17 It will sit on top of the skin.

18 Q The skin, I'm assuming, does it stay on skin as
19 long as it stays on clothing?

20 A No, sir, it will not.

21 Q Why is that?

22 A Because you're constantly making contact with your
23 skin, as well as your skin's absorbing materials into
24 it. And you're sweating. You know, perspiration will
25 wash the gunshot residue away. And on clothing, until

1 it's laundered in some way, it embeds in the fibers and
2 will not come out, or if it's removed in some way.

3 Q But if it's laundered, it will -- it will go away
4 if it's laundered, but other than that, it'll stay
5 there.

6 A Yes, sir.

7 Q And that -- and so, the description you're giving
8 is basically it's burnt onto the fibers.

9 A Yes, sir. It goes in. It doesn't really burn into
10 the fiber, but it kind of goes in and embeds in between
11 the fibers.

12 Q I see. Okay. If you'll go ahead and have a seat
13 back.

14 Now, when you are looking for gunshot residue, is
15 there -- is there any levels of specificity? Is there
16 anything, when you're looking for them, that says this
17 is a -- this is a good indication, a small indication,
18 anything like that? Or is it just it's either there or
19 it's not?

20 A It's -- it's generally the presence of gunshot
21 residues that we're looking for. It's there or not
22 there.

23 Q I got you. Now, did you -- and in front of you is
24 Item Number 80, which is, I believe, SLED's Number 8.

25 A Yes, sir.

1 Q And I think inside those, and I'll make sure I
2 refer to the right -- oh, no, you didn't do the
3 cuttings.

4 A No, sir.

5 Q That item number of the jeans themselves, did you
6 test that item?

7 A Yes, sir, I did. Um-hmm.

8 Q Did you test it as -- and did you test it as the
9 whole item, or did you just test special cut areas of
10 it?

11 A I tested the entire item.

12 Q Okay. And you received those -- you received those
13 jeans from where?

14 A Verona Gibson.

15 Q Okay. And she is with you -- your what?

16 A Yes, she is with the Evidence Processing Department
17 of SLED.

18 Q Okay. And so, when you -- when you received those
19 jeans, did you -- you -- you went straight and you got
20 them, actually, out of evidence, and you started testing
21 them at that point.

22 A I took them straight from her and tested them, yes,
23 sir.

24 Q Okay.

25 MR. STONE: At this time, your Honor, we move Item

1 Number -- State's Exhibit 80 into evidence.

2 MR. MACDOUGALL: Subject to our previous objection,
3 your Honor.

4 THE COURT: It's in evidence, subject to the prior
5 objection.

6 MR. STONE: Thank you.

7 ITEM IDENTIFIED AS JEANS TAKEN OFF
8 OF EARNEST DAISE MARKED STATE'S
9 EXHIBIT NUMBER 80, ADMITTED AS EVIDENCE.

10 BY MR. STONE:

11 Q What kind of test did you perform on those -- on
12 those jeans?

13 A I would have taken a particle lift, which is a
14 double-sided sticky tape that is on a small aluminum
15 disc, and I would have taken the -- it's sticky, so I
16 would have dabbed it across the areas of the jeans. I
17 would have dabbed it across the front area on top of the
18 pockets. I've taken a sample from each side of the
19 pocket, and a sample from on the thigh from about where
20 the thigh would meet the hip, down to where the knee is.
21 And I would have taken a separate sample from each one
22 of those areas.

23 Q And why did you take samples from those particular
24 areas?

25 A Because, consistently, if someone is discharging a

1 weapon, and they're discharging it in front of them,
2 that's where the gunshot residue is going to fall, onto
3 the clothing.

4 Q What about the pockets? Why did you test the
5 pockets?

6 A It was believed that maybe a gun would have been
7 placed into the pocket, and they wanted to see if there
8 was any gun -- any gunshot residue inside the pocket.

9 Q Okay. And if the -- I'm assuming if gunshot
10 residue was on somebody's -- well, let me -- if they
11 were on the jeans, were they just in the areas that you
12 tested, or can you tell that?

13 A I didn't -- those were the only areas that I
14 tested, so I couldn't tell if it was on other areas.

15 COURT REPORTER: I'm sorry. *Those were the only*
16 *areas that I tested, so I couldn't tell --*

17 A If they were on other areas, yes, ma'am.

18 Q Let me ask you, then, if -- if you could, in your
19 testing of those jeans, what were the results of your --
20 of your findings?

21 A I found gunshot residue on the jeans.

22 Q In what particular areas?

23 A I found a particle of gunshot residue on both of
24 the front sides, as well as round lead particles on both
25 -- both front leg and the front groin area.

1 Q There have been some questions previous about only
2 a very small amount of gunshot residue. Is that how you
3 would characterize it, on the jeans?

4 A That's typical of what I've seen in clothing in the
5 14 years I've analyzed for someone who had discharged a
6 gun. And when I have worn a lab coat and discharged a
7 gun at the laboratory in our firearms range, and have
8 taken samples from my own lab coat, and that's pretty
9 consistent with what I've seen.

10 Q Okay. And did you test the pockets, as well?

11 A Yes, sir. Inside the pockets, yes, sir.

12 Q Did you find any gunshot residue in the pockets?

13 A No, sir.

14 Q So, from your testing, could you give us your
15 expert opinion as to the person wearing those jeans.

16 A It's consistent with that person having fired a gun
17 or being very close to a weapon when it was discharged.

18 MR. STONE: Okay. No further questions at this
19 time, your Honor.

20 ILA SIMMONS

21 CROSS-EXAMINATION BY MR. MACDOUGALL:

22 Q Afternoon, Ms. Simmons.

23 A Good afternoon, Mr. MacDougall.

24 Q How long ago did you retire?

25 A A week and a half ago.

1 Q Welcome to the private sector.

2 A Thank you.

3 Q I've just got a few questions for you. You just
4 testified a moment ago that you found one particle of
5 gunshot residue on each side of the jeans. Is that
6 correct?

7 A Yes, sir.

8 Q And if I understood your previous testimony,
9 gunshot residue itself is composed of three elements:
10 lead, barium, and antimony, right?

11 A Yes, sir.

12 Q Okay. And that's different from a lead particle.

13 A Yes, sir, it is.

14 Q Now, you would agree with me that you sometimes
15 find -- probably usually find lead particles with
16 gunshot residue, but gunshot residue itself requires the
17 combination of those three elements.

18 A Round lead is a component of gunshot residue. The
19 specific particles that are definitive for gunshot
20 residue contain lead, barium, and antimony. But
21 generally, when a weapon is fired, you can find a round
22 lead from the projectile, as well as from the primer
23 mixture, yes, sir.

24 Q Just to be clear --

25 COURT REPORTER: *As well as from?*

1 A The primer mixture.

2 Q Just to be clear, you can find lead all kinds of
3 places where guns haven't been fired.

4 A Well, round --

5 Q Let me finish my question.

6 A I'm sorry.

7 Q But gunshot residue, and the reason it is an
8 accepted forensic means of analysis, is that you have
9 the high heat, high-velocity combination of those three
10 elements that you only find when a gun's been fired.
11 Would you agree with that?

12 A Yes, sir. And that's what leads to the lead being
13 round. That's why, if you were to just find chunks of
14 lead on clothing, that's not consistent with the
15 discharge of a firearm. However, the round lead that
16 was found in this case is consistent with the discharge
17 of a firearm, because it was round and in a molten state
18 when it had cooled.

19 Q Ms. Simmons, I'm going to ask you questions, and
20 I'd like for you to answer my questions. Okay? And the
21 question that I just want to be clear on is that gunshot
22 residue is the combination of those three elements. Is
23 that right?

24 A Yes.

25 Q That's it.

1 A An element --

2 Q Your Honor.

3 A The lead, barium, and antimony is specific to
4 gunshot residue. However, other elements are also found
5 when a gun is discharged.

6 MR. MACDOUGALL: Your Honor, can I approach?

7 THE COURT: Yes.

8 ON-THE-RECORD BENCH CONFERENCE,

9 OUT OF HEARING OF JURORS.

10 MR. MACDOUGALL: I know the Court isn't happy with
11 me interrupting, but --

12 THE COURT: You're fine.

13 MR. MACDOUGALL: You're fine.

14 THE COURT: You're fine.

15 END BENCH CONFERENCE.

16 THE COURT: Ma'am, you need to answer the
17 questions. Thank you.

18 BY MR. MACDOUGALL:

19 Q One more time, Ms. Simmons. Please, yes or no.
20 Gunshot residue is a high-heat, high-velocity
21 combination of those three elements, lead, barium, and
22 antimony. Is that right?

23 A Yes, sir. And that was what was found. Yes, sir.

24 Q Okay. Good. Now, gunshot residue can last a very
25 long time; can't it?

1 A It can last a very long time on an inanimate
2 object.

3 Q Like an item of clothing.

4 A Yes, sir, it can.

5 Q Okay. And in fact, you really have a -- roughly a
6 six-hour window to test hands or other flesh for gunshot
7 residue before it's assumed to have been dissipated. Is
8 that about right?

9 A That's correct.

10 Q Okay. You are a deer hunter.

11 A Yes, sir.

12 Q You are. And it's true, isn't it, that you have
13 tested this yourself. You have taken a jacket that
14 you've worn hunting deer, --

15 A Yes, sir.

16 Q -- in the fall, when it's deer season. Is that
17 right, in the fall?

18 A Yes, sir.

19 Q Okay. And at the end of the season, you've hung
20 that jacket up in your closet, right?

21 A Yes, sir.

22 Q And then, at the beginning of the next season,
23 eight or nine months later, you've tested that jacket,
24 and it still has gunshot residue on it. Isn't that
25 right?

1 A Yes, sir, we have.

2 Q Okay. And so, that would lead you to the
3 conclusion, as it would me, that gunshot residue can
4 last at least eight or nine months on an item of
5 clothing.

6 A Yes, sir.

7 Q Okay. And can be detected eight or nine months
8 later.

9 A Yes, sir. As long as the garment was not washed.

10 Q Right. And using your deer hunting jacket as an
11 example, if we were to bring that into a lab, and you or
12 another scientist were to find gunshot residue, there is
13 no way that you could tell anybody whether that was
14 deposited two days before or 18 months before.

15 A That's correct.

16 Q So, the truth is, as we sit here today, the jeans
17 that are in front of you, State's Exhibit 80, I believe,
18 you have no way of telling when that gunshot residue was
19 deposited on that clothing.

20 A No, sir, I do not.

21 Q Okay. And just to be clear, you found one
22 particle, a single particle of gunshot residue, on each
23 -- each leg of the pants. Is that right?

24 A Yes, sir, I did.

25 Q Okay. Now, we had a video -- or a graphic -- we

1 don't need to see it again -- of gas being expelled from
2 a firearm.

3 A Yes..

4 Q All right. And when that gas is expelled, it's not
5 just from the muzzle. It can come out of all kinds of
6 different places in the firearm. Is that right?

7 A That's correct.

8 Q I'd probably assume that the -- the highest
9 velocity or the largest component would come out of the
10 muzzle, but it can come out of lots of other places.

11 A Yes. Most of the residue can come out of the
12 muzzle of the gun.

13 Q Okay.

14 THE COURT: Ma'am, I'm sorry. I need to caution
15 you. You need to let him finish his question, just so
16 my court reporter can get you both down..

17 A Okay.

18 THE COURT: All right? Thank you. Before you
19 answer..

20 MR. MACDOUGALL: Thank you, your Honor.

21 BY MR. MACDOUGALL:

22 Q Are you familiar with 7.62, 39 ammunition?

23 A No, sir.

24 Q Okay. You're not?

25 A No, sir.

1 Q Okay. Have you ever heard of an AK-47?

2 A I've -- I've heard of the caliber, yes, sir.

3 Q Okay. And you know that an AK-47's ammunition can
4 be -- can be loaded in a clip. Is that right?

5 A Yes, sir.

6 Q Okay. And sometimes people who fire them, -- and
7 I'm not a -- I'm not a gun owner myself, but I -- people
8 who fire them will fire them in rapid succession in a
9 semi-automatic fashion, or even an automatic fashion, if
10 they have an unlawful weapon. Is that right?

11 A Yes, sir.

12 Q And you're aware that people, when they are
13 shooting recreational, but probably not for accuracy,
14 don't always fire from, you know, this position. Is
15 that right?

16 A I suppose they could, yes, sir.

17 Q Right. And sometimes they'll fire it from the hip
18 position. Is that right?

19 A Yes, sir, they can.

20 Q Okay. So, one way, one way that gunshot residue
21 could be deposited on a pair of pants would be someone
22 firing an AK-47 or a similar rifle from a hip position.

23 A Yes, sir.

24 Q And -- and numerous -- the more rounds that are
25 fired, the more likely it is that gunshot residue can be

1 deposited. Is that right?

2 A Yes, sir.

3 Q Now, gunshot residue can also be transferred from
4 hand to other surfaces. Is that right?

5 A It can.

6 Q So, if I were to fire a weapon several times, if I
7 were to go to a firing range and fire 50 rounds at a
8 target, the likelihood would be overwhelming that I
9 would have gunshot residue on my hands.

10 A Yes.

11 Q Is that right? And if I shook hands with you, I
12 might well deposit it on your hand.

13 A That is a possibility, yes, sir.

14 Q Right. You probably wouldn't have as much on your
15 hand as I had on my hand, but it certainly happens,
16 correct?

17 A Yes, it could. Yes, sir.

18 Q And if I were to put my hand in my pocket, there
19 would be some likelihood that there would be gunshot
20 residue in my pocket.

21 A Yes, sir.

22 Q And if I were to put my hands on a piece of
23 upholstery in an automobile, say a police car, there's a
24 very good chance, in fact, you agree there have been
25 studies shown, that gunshot residue gets deposited

1 there.

2 A Yes, sir.

3 Q It's a messy substance.

4 A It can be transferred, yes, sir.

5 Q Okay. Now, just to be sure, and I believe you
6 testified about this on direct, the jeans pockets, the
7 two inside pockets, you tested for gunshot residue.

8 A Yes, sir, I did.

9 Q And found what?

10 A No gunshot residue in the pockets.

11 Q No gunshot residue. Okay. Now, if you were firing
12 a relatively large caliber pistol, a .38, what's the
13 likelihood that -- and you fired, say, five times, you
14 would, of course, expect that there would be gunshot
15 residue on the torso of the person using the weapon. Is
16 that right?

17 A Yes, sir, depending upon how the gun is being held,
18 yes, sir. If they were firing forward, yes, sir.

19 Q You would expect that. Okay.

20 A Yes, sir.

21 MR. MACDOUGALL: Can I have a moment, your Honor?

22 THE COURT: You may.

23 BY MR. MACDOUGALL:

24 Q I don't know if you have gloves with you --

25 A Yes, sir.

1 Q -- Ms. Simmons, but if you don't, I have these,
2 keep in mind.

3 A Thanks. I appreciate that.

4 Q I'm going to ask the court reporter to mark this
5 document next in sequence for identification.

6 COURT REPORTER: Defense Exhibit 19.

7 ITEM IDENTIFIED AS TRACE EVIDENCE

8 NOTE SHEET MARKED DEFENSE EXHIBIT 19,

9 FOR IDENTIFICATION.

10 MR. MACDOUGALL: May I approach the witness, your
11 Honor?

12 THE COURT: You may.

13 BY MR. MACDOUGALL:

14 Q Ms. Simmons, I'm going to ask you to have a look at
15 a two-page document that's marked Defendant's Exhibit
16 19.

17 A Yes, sir.

18 Q Do you recognize those?

19 A Yes, sir.

20 Q Those are your trace evidence note sheets. Is that
21 right?

22 A That's correct.

23 Q And would I be fair in saying that that's the
24 document that you would prepare as you are in the
25 process of performing your test for, in this case,

1 gunshot residue to record not only what you're asked to
2 do, but what the outcome is?

3 A Yes, sir.

4 Q Okay. Are those your initials on the upper, right-
5 hand corner?

6 A Yes, sir.

7 Q And do you prepare this in the ordinary course of
8 your duties?

9 A Yes, sir.

10 Q Were the entries made contemporaneous with the
11 conduct shown in here?

12 A Yes, sir.

13 Q In other words, roughly the same time.

14 MR. MACDOUGALL: Your Honor, with that, I'd move
15 the admission of Defendant's Exhibit 19.

16 MR. STONE: No objection.

17 THE COURT: Without objection.

18 ITEM IDENTIFIED AS TRACE EVIDENCE

19 NOTE SHEET MARKED DEFENSE EXHIBIT 19,

20 ADMITTED AS EVIDENCE.

21 Q Okay. Now, Ms. Simmons, this -- these set of --
22 this set of notes talks about Item Number 42. Do you
23 remember what was Item Number 42?

24 A Yes, sir.

25 Q What was it?

1 A It was a gray, hooded sweatshirt.

2 Q Okay. And you were asked -- were you asked to test
3 that sweatshirt?

4 A Yes, sir.

5 Q Okay. And when -- what was the basis? Why did you
6 test it?

7 A They wanted to see if gunshot residue was present
8 on the shirt.

9 Q Okay. Specifically, what were you asked, if you
10 can refer to your notes.

11 A It was believed, at the time, that the suspect may
12 have placed a gun in the front pocket area.

13 Q That the suspect may have placed a gun in the
14 pocket of the sweatshirt.

15 A Yes, sir.

16 Q Okay. And who asked you that?

17 A Bob Bromage.

18 Q Do you know who he is?

19 A Yes, he works with the Beaufort County Sheriff's
20 Office.

21 Q Okay. So, Deputy or Sergeant Bromage asked that
22 the sweatshirt be tested because it was believed the gun
23 had been put in there.

24 A Yes, sir.

25 Q Okay. Now, you tested the sweatshirt. And I'm

1 going to put this out on the witness stand where
2 everybody can see it.

3 MR. MACDOUGALL: One moment, your Honor.

4 THE COURT: Yes, sir.

5 MR. MACDOUGALL: Okay. I ask the witness to step
6 down from the stand.

7 THE COURT: You may step down.

8 BY MR. MACDOUGALL:

9 Q You may want to take your notes, Ms. Simmons.

10 What I'd like to ask you to do, Ms. Simmons, if you
11 would, I'm going to put the sweatshirt right up here.
12 And I'm going to ask you to tell me where you tested for
13 gunshot residue on that sweatshirt.

14 A I would have tested the cuff. The front of the
15 cuff, the back of the cuff. That would have been two
16 separate samples. And a sample from the forearm on this
17 arm. I would have taken the same samples from that arm
18 and a sample from this side in here, and this side. I
19 would have tried to get both sides.

20 Q How about the other sleeve?

21 A Yes, sir. Yeah, that's what -- that's what I
22 meant, this cuff. The front of that cuff, the back of
23 that cuff, and that corner.

24 Q So, you tested the inside of the pockets and the
25 outside.

1 A Yes, sir.

2 Q You gave it a very thorough testing.

3 A Yes, sir.

4 Q Okay. You can return, thank you. And you found
5 zero gunshot residue on that sweatshirt. Is that
6 correct?

7 A That's correct.

8 Q I'd like you to turn, if you would, please, to the
9 second page of your notes, which I believe is now
10 Defendant's Exhibit 19 in evidence.

11 A Yes, sir, 19.

12 Q And is it correct that that shows each location on
13 the sweatshirt that was tested and the results, and the
14 dash sign, the minus sign with a circle around it,
15 indicates to you that not gunshot residue was found.

16 A That's correct.

17 MR. MACDOUGALL: May I publish that to the jury,
18 your Honor?

19 THE COURT: You may.

20 MR. MACDOUGALL: A moment, your Honor.

21 Ms. Simmons, thank you very much. No further
22 questions. If I don't have any re-cross, good luck to
23 you.

24 ILA SIMMONS

25 RE-DIRECT EXAMINATION BY MR. STONE:

1 Q Just briefly. You discussed earlier, lead
2 particles, and I think you were trying to explain to the
3 Defense attorney, but your lead particles versus your
4 gunshot residue, are those two different things?

5 A No, sir. Gunshot residue is a mixture of the three
6 chemicals. However, round lead also comes out of a gun,
7 and you can find particles that contain only lead that
8 are round that come out of the gun, as well.

9 Q Did you find round lead particles in this?

10 A Yes, sir, I did.

11 Q And what does the round lead particles tell you?

12 A That it's consistent with being in the vicinity of
13 a firearm, the jeans were.

14 Q Okay. Can you make any separation between that and
15 what's called transfer, or whatever the transfer would
16 be?

17 A The appearance of transfer that I have seen in --
18 in my experience is the -- the shape looks different.
19 If I were to take a gun and I were to shoot it; and
20 then, I were to go along this cabinet and touch it; and
21 then, someone was to come behind me and process it for
22 gunshot residue, like I did the jeans; generally, the
23 particles that you find are going to be squashed or
24 crushed or flattened. And in this case, I found round,
25 spheroidal particles that were perfectly intact. So,

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1 that is a differentiation, generally, with transfer.
2 They're not going to be round -- as round or -- and --
3 or they're going to be crushed.

4 Q And it's the round is what's created by the hot
5 gas, I guess, of the -- of the gun. Is that correct?

6 A Yes, sir.

7 Q Okay. And so, in this case, you found round
8 particles.

9 A Yes, sir.

10 MR. STONE: Thank you. Nothing else.

11 MR. MACDOUGALL: Nothing else. Thank you, ma'am.

12 THE COURT: You may step down.

13 A Thank you.

14 BY THE COURT:

15 THE COURT: Ladies and gentlemen, I think now is a
16 good time for lunch. I'm hopeful that it's back there.
17 Very good. Ladies and gentlemen, again, do not discuss
18 this case. It wouldn't be appropriate to do so. Please
19 go refresh yourselves, have a bite to eat, and we'll
20 bring you right back. Thank you.

21 BAILIFF: Thank you, your Honor.

22 JURY LEAVES COURTROOM 1:12 P.M.

23 BAILIFF: Jury is clear, your Honor.

24 THE COURT: All right. How many more witnesses do
25 you have?

1 JURY ENTERS COURTROOM 2:16 P.M.

2 BAILIFF: All right, your Honor.

3 THE COURT: Thank you. Welcome back, ladies and
4 gentlemen. Solicitor, if you'd call your next witness.

5 MR. STONE: State calls Paul Meeh to the stand.

6 MADAM CLERK: If you'll place your left hand on the
7 Bible, please, and raise your right hand. Do you
8 solemnly swear or affirm that the testimony you give
9 shall be the truth, so help you God?

10 MR. PAUL MEEH: Yes, ma'am.

11 MADAM CLERK: Thank you. If you'll have a seat,
12 please. If you'll state your full name and spell your
13 last name for the record, please.

14 MR. PAUL MEEH: My name is Paul Meeh. That's
15 M/e/e/h.

16 PAUL MEEH

17 DIRECT EXAMINATION BY MR. STONE:

18 Q Mr. Meeh, what do you do, sir?

19 A Excuse me.

20 Q That's okay.

21 A I'm a forensic scientist at SLED in the DNA
22 Department.

23 Q What is a forensic scientist exactly?

24 A Well, they ask me to identify body fluids and who
25 they belong to.

1 Q And how long have you been doing that?

2 A For about six years now.

3 Q All at SLED?

4 A Yes, correct.

5 Q What kind of training did you have to allow you to
6 do this type of testing?

7 A Well, I got my biology degree in 2001 from South
8 Carolina. I got my master's in 2003 from South
9 Carolina. And then, after I started at SLED, I was in
10 training there for a year and a half under a forensic
11 scientist in our department, in our operating
12 department. And after that, I was put out on my own.

13 Q And the -- what was your master's in?

14 A That was in biomedical science.

15 Q And you got that from the University of South
16 Carolina, as well?

17 A Correct.

18 Q Did -- have you been qualified in court as an
19 expert before?

20 A Yes. Yes, sir, I have.

21 Q In state court?

22 A Yes.

23 Q Have you done any federal court work?

24 A Not that I recall. It's possible, but not that I
25 recall. I've testified many times, so they kind of run

1 together.

2 Q How many times have you been called qualified as an
3 expert? Do you know?

4 A Approximately 30, 25 maybe.

5 Q Have you done -- how many tests have you done,
6 various things, while at SLED on DNA?

7 A On so many thousands. I mean, I've done many, many
8 tests.

9 MR. STONE: Your Honor, at this time, we'd ask Mr.
10 Meeh be qualified as a forensic scientist, particularly
11 in the department of DNA.

12 MR. MCGUIRE: No objection.

13 THE COURT: All right. Ladies and gentlemen,
14 again, as the other expert witnesses that we qualified,
15 that allows Mr. Meeh to give his opinion and reasons for
16 his opinion. Again, he's being qualified as a forensic
17 scientist, and specifically in the area of DNA analysis.

18 MR. STONE: Thank you, your Honor.

19 BY MR. STONE:

20 Q Let me first start with Item Number 80. And this
21 has been -- I don't believe that you actually received
22 this. This is a pair of jeans that's been testified
23 that there were some cuttings taken from this, and then,
24 transferred to the DNA lab. Now, you don't actually
25 receive the full pair. Is that correct?

1 A That's correct. We have an evidence processing
2 facility that processes those things.

3 Q And when they process, that's the -- they produced
4 the cuttings that you test. Is that correct?

5 A Correct. Correct.

6 ITEMS MARKED STATE'S EXHIBIT NUMBERS

7 81, 82, AND 83, FOR IDENTIFICATION.

8 Q I'm going to show you what's been marked as State's
9 Exhibit 81, 82, and 83, and ask you if you can identify
10 those items.

11 A I can see that I've worked on this. As you can
12 see, these are the pouches that we use to store evidence
13 to make sure things don't get contaminated or anything.
14 And you can see my initials and the date there on the
15 heat-sealed. So, I know I worked on this one. That's
16 Item 83.

17 Q Okay.

18 A Or your Item 83. Your Item 82, I also see my
19 initials on the back of the envelop here, and the inside
20 of this.

21 Q Okay. Now, let me -- oh, go ahead. I'm sorry.

22 A There was one more. I apologize. I'm going kind
23 of slow.

24 Q No, that's fine.

25 A Here's Item 81, also has my initials and the date.

1 So, yes, it appears that I've worked on all these.

2 Q Okay. Now, in Item 81 -- excuse me -- it appears
3 to be there's a SLED number, as well. Is that SLED --
4 what is the SLED number?

5 A This item is 8.3, and there's also an 8.4, it looks
6 like, in here. And it says it's cutting from jeans.

7 Q All right. Now, does that correspond with your
8 report and your testing?

9 A Yes, it does. I tested -- it appears that I tested
10 Items 8.1 through 8.4.

11 Q Okay. And then, let me hand you what has been
12 marked, from our standpoint, as State's Exhibit 81. I
13 believe there's a SLED number on those items, as well.

14 A Correct. This is Item 8.1 And the other one, it's
15 not in a position to be read, but I would --

16 Q Well, here. Let me make sure you can. I don't
17 want to have any question about that. I believe that it
18 is heat sealed.

19 A Yeah, they work pretty well.

20 Q Thank you. I'm removing it from those bags. Let
21 me hand you those back and ask you if you can identify
22 those.

23 A Yeah, and the second one is Item 8.2. So, these
24 are 8.1 and 8.2.

25 Q Okay. And together, these four items, what are

1 those exactly?

2 A I have them listed as cuttings -- cuttings from
3 jeans from Earnest Daise.

4 Q And these are the items that you tested?

5 A Correct.

6 MR. STONE: At this time, your Honor, we move in
7 State's Exhibit 82 and State's Exhibit 81.

8 MR. MCGUIRE: Subject to our prior *Franks*
9 objection.

10 THE COURT: Thank you. They're in evidence subject
11 to the prior objection.

12 MR. STONE: Okay.

13 TWO ITEMS IDENTIFIED AS CUTTINGS FROM
14 JEANS OF EARNEST DAISE MARKED STATE'S
15 EXHIBIT NUMBERS 81 AND 82, ADMITTED
16 AS EVIDENCE.

17 ITEM MARKED STATE'S EXHIBIT NUMBER 83,
18 FOR IDENTIFICATION.

19 REPORTER'S NOTE: THESE ITEMS WERE
20 LATER ALSO MARKED 83-A & 83-B.

21 BY MR. STONE:

22 Q Let me now go to State's Exhibit 83. We need to
23 cut that open, too, probably. Let me borrow your
24 scissors again, ma'am. Let me just hold those, and I'll
25 give them back to you. Thank you.

1 I'm cutting that back, but I've asked you to reach
2 in there and tell us what's in there, please.

3 A This is Item -- my Item 15. It looks like a blood
4 standard from a Jeannie Mullen, or I'm not sure of the
5 pronunciation, I apologize, Jeanine Mullen? I
6 apologize.

7 Q Yes.

8 A And the other is Item 16, and it's also -- looks
9 like it -- I can't tell what it is from here, from the
10 outside of the envelop. It says:

11 *Material from right fingers.*

12 I'm not sure if that's a fingernail scrapings or
13 how it was described when it was submitted.

14 Q All right. And that is -- this is all from the
15 autopsy. Is that correct?

16 A Correct.

17 Q And you received that from your SLED technician, as
18 well. Is that correct?

19 A It's possible. At one time, we had an evidence
20 room where we stored things like that, that I could have
21 gone and retrieved it myself. That would be on the
22 chain of custody. You could find out. I could have
23 also received it from a technician.

24 Q Okay. And these items, these are items that you
25 tested in accordance with your report, as well?

1 A Well, I -- I don't see Item -- I have Item 15, yes,
2 that's the blood standard.

3 MR. STONE: All right. Well, let me sub -- let me
4 do this, then. Could I do this as A and B? I'm going
5 to mark this, your Honor, as State's Exhibit 83, and the
6 two envelopes inside A and B.

7 COURT REPORTER: Oh, you have it.

8 MR. STONE: Yeah, just put A, if you don't mind.

9 COURT REPORTER: 83-A is that.

10 MR. STONE: Okay.

11 ITEM MARKED STATE'S EXHIBIT NUMBER

12 83-A, FOR IDENTIFICATION.

13 ITEM MARKED STATE'S EXHIBIT NUMBER

14 83-B, FOR IDENTIFICATION.

15 MR. STONE: And to preserve this, your Honor, I'm
16 going to put both of those back in the envelop. But I'm
17 specifically going to ask you about Item 83-A, which is
18 the blood sample from Jeanine Mullen.

19 A Yes, correct. I tested that item.

20 Q You tested that item.

21 COURT REPORTER: I'm sorry? I'm sorry?

22 A Correct, I tested them.

23 MR. STONE: At this time, your Honor, we move in
24 State's Exhibit 83.

25 THE COURT: Subject to the prior objection.

1 MR. MCGUIRE: Subject to a prior *Franks* objection
2 on chain.

3 THE COURT: Thank you.

4 ITEM IDENTIFIED AS BLOOD SAMPLE
5 FROM JEANINE MULLEN MARKED STATE'S
6 EXHIBIT NUMBER 83, ADMITTED AS EVIDENCE.
7 ITEM MARKED STATE'S EXHIBIT NUMBER 72,
8 FOR IDENTIFICATION.

9 BY MR. STONE:

10 Q I'm going to also hand you State's Exhibit 72, and
11 ask you can you tell us what's in there, please.

12 A My initials are on the heat-sealed pouch, so I
13 definitely worked on it. I may be able to read this one
14 through it.

15 Q Now, let me stop you about -- as far as the heat-
16 sealed pouch, and you put your initials on the heat-
17 sealed pouch, do you receive it -- when you receive the
18 item, is it already in a heat-sealed pouch?

19 A Yes, it is. From the -- evidence receiving places
20 into these, and you can see their initials at the top.
21 So, whatever evidence technician gets it, they just put
22 it into this pouch. Then, I cut it on the side here, so
23 I can take it out and test it, and then, put it back and
24 seal it every time.

25 Q Okay. So, if anybody's -- so, in other words,

1 that's referred to as a best evidence bag, I guess.

2 A Correct.

3 Q And what does that mean?

4 A That just means that you -- you can tell who gets
5 into it and who doesn't. I mean, you can tell if it had
6 been tampered with. Like right now, I can tell that
7 it's -- it's still sealed from when I sealed it.

8 Q And are these the same as the items that you
9 previously testified to, 83, 82, and 81?

10 A Yes.

11 Q Okay, sir.

12 A These are swabs taken from a door in the right,
13 rear bedroom, it says.

14 Q All right.

15 MR. STONE: Your Honor, at this time, we move
16 State's Exhibit 72 into evidence.

17 THE COURT: Subject to prior objection.

18 MR. MCGUIRE: Subject to our prior objections.

19 THE COURT: Thank you, sir. It's in evidence.

20 ITEM IDENTIFIED AS SWABS TAKEN
21 FROM DOOR ON RIGHT, REAR BEDROOM
22 MARKED STATE'S EXHIBIT NUMBER 72,
23 ADMITTED AS EVIDENCE.

24 Q Now, first, let me ask you about the -- the swab
25 from the right, rear door. And let me see this. This,

1 I believe -- I want to make sure I get my numbers
2 correct. That would be State's Exhibit --

3 A I think it's this one. I think it's 46.

4 Q Okay. Great. State's Exhibit 72, and this is from
5 the -- two swabs from red stain on door of rear bedroom
6 at 43 Poppy Hill Road. Is that correct?

7 A Correct.

8 Q Okay. What were the results of your tests on Item
9 Number 72?

10 A I was asked to test it for blood, and obviously,
11 who that -- whose blood that was. I did get blood
12 indicated, so the presumptive test for blood was
13 positive. The DNA profile developed from Item 46
14 matched the DNA profile of Earnest Daise.

15 MR. STONE: Excuse me just a moment, your Honor.
16 Okay, here it is.

17 BY MR. STONE: I forgot to show you this.
18 This is Item 78, which has been testified to, I believe,
19 as a buccal swab. Could you tell us about that, please.

20 A I see my initials again, so I have worked on this.

21 Q And I've already cut it. So, I think you can --

22 A This is a buccal swab from Earnest Daise. So, a
23 buccal swab is a standard. It's just like a blood
24 standard. It's just something that we can compare
25 evidence to, to tell whose it is.

1 Q Okay. And so, this would be the known sample from
2 Earnest Daise.

3 A Correct, that's the known sample.

4 MR. STONE: Okay. At this time, your Honor, we
5 move Item -- State's Exhibit Number 78.

6 MR. MCGUIRE: Subject to our previous objection on
7 chain?

8 THE COURT: Thank you. It's in evidence.

9 ITEM IDENTIFIED AS BUCCAL SWAB
10 FROM EARNEST DAISE MARKED STATE'S
11 EXHIBIT NUMBER 78, ADMITTED AS EVIDENCE.

12 BY MR. STONE:

13 Q All right. Let me back up, then. I got ahead of
14 myself. As to the swab on 43 Poppy Hill Road, the door,
15 who does that match to?

16 A That was my Item 46, and it matched to Earnest
17 Daise.

18 Q The jeans, which I believe were Items 8.1, 8.2,
19 8.3, and 8.4. Is that correct?

20 A Correct.

21 Q Is that correct?

22 A Yes, sir.

23 Q And I'm saying 8.4, but that's your SLED Number
24 8.4. Is that correct?

25 A That's right. there's a --

1 Q What were the results of the testing that you did
2 on those jeans?

3 A The DNA profile developed from Item 8.3 matched the
4 DNA profile of Jeanine Mullen, and we -- the probability
5 of randomly selecting an unrelated individual having a
6 DNA profile matching that item is approximately 1 in 1.1
7 quadrillion. So, we can be pretty confident -- very
8 confident that that was -- that that matched her. The
9 DNA profile developed from Item 8.2 was from an
10 unidentified, male individual at that time. So, these
11 are two different reports. I reported 8.3 on the
12 original report because I did not have a standard from
13 Earnest Daise at this time. So, I'm going to need to
14 switch over here.

15 Q Great. Did you later get a standard -- standard
16 from Earnest Daise?

17 A I did.

18 Q Okay.

19 A And I was able to compare that unknown individual
20 to the new standard. And that -- the DNA profile from
21 Item 8.2 matched the profile of Earnest Daise. And the
22 probability of randomly selecting an unrelated
23 individual having a DNA profile matching that item is
24 approximately 1 in 80 quadrillion. So again, we're
25 confident.

1 The DNA profile developed from 8.4 was a mixture of
2 at least two individuals. The DNA profile, the major
3 contributor to the mixture also matched the DNA profile
4 of Earnest Daise. Jeanine Mullen could not be excluded
5 as a possible minor contributor to that mixture. So,
6 what that means is, if you have blood that's on
7 something or you have even touch DNA that's on
8 something, sometimes one person will contribute more
9 than the other. And so, we'll call that the major
10 contributor in that sample, which was Item 8.4, that
11 major contributor was Earnest Daise. But then, we can
12 see other smaller portions, or, you know, I guess you --
13 we would say the person who contributed less, we can
14 sort of tell who that is, also. And Jeanine Mullen
15 couldn't be excluded as a person who contributed less
16 DNA there.

17 Q Okay. And is that basically -- you just get a
18 smaller sample? Is that what that means?

19 A Well, what it means is, yeah, just fewer cells is
20 what it's going to come down to. I mean, somebody, you
21 know, say, you can contribute a thousand cells to
22 something, and I only contribute a hundred. When I do
23 the testing, I can definitely see your profile and see
24 it very clearly, but the less I contribute, I wouldn't
25 be able to see it quite as clearly. So, I'd be less

1 confident in that result, too. But you can measure
2 those things, as well.

3 Q As for the other samples, and specifically talking
4 about the cuttings that came from the jeans, which has
5 already been testified as being worn by Earnest Daise,
6 whose blood was on those jeans?

7 A It looked like, from my results, Jeanine Mullen was
8 -- was Item 8.3, which was blood indicated, and that was
9 -- matched her profile. Item 8.2 was blood indicated,
10 and as I said, that matched Earnest Daise's profile.
11 And then, Item 8.4 was the mixture. So, that was a
12 mixture with Earnest Daise as the major contributor, and
13 Jeanine Mullen could not be excluded as a minor
14 contributor to that one.

15 And then, we're missing one. That was Item 8.1.
16 That -- although blood was indicated on that one, I
17 didn't get enough DNA to reliably say whose profile that
18 was. It was -- it was a partial profile, and I couldn't
19 tell.

20 MR. STONE: Okay. Thank you, sir.

21 PAUL MEEH

22 CROSS-EXAMINATION BY MR. MCGUIRE:

23 Q Afternoon, sir.

24 A Hey, how are you, sir?

25 Q Our paths have not crossed. I'm Bill McGuire. I

1 represent Earnest Daise, but I've -- I've seen Robin
2 Taylor a lot. Is she still the boss over there?

3 A Yes, she is. She's a lieutenant.

4 Q Okay. Is she still a lieutenant?

5 A Yeah.

6 Q I want to talk to you a little bit about touch DNA.
7 We talked to the evidence technician who came up before
8 you. And in today's environment, the testing for DNA is
9 pretty sensitive.

10 A It's -- it's very sensitive, that's correct.

11 Q And you guys have -- you all have the occasion to
12 test things that people merely touch.

13 A Absolutely, yes. We do that often.

14 Q And that can be like a Coke can.

15 A Certainly.

16 Q Beer bottle, steering wheel of a car.

17 A Certainly.

18 Q Door handles.

19 A Um-hmm.

20 COURT REPORTER: Yes?

21 A Yes. I'm sorry.

22 Q Yeah, you have to say yes for her.

23 A Yes.

24 Q Door latches on automobiles.

25 A Yes.

1 Q If somebody ransacked a van and went through a
2 purse, you could -- you could test the contents of the
3 purse.

4 A It's possible. We've done it. We don't have a
5 tremendous amount of success with those things, but we
6 do try.

7 Q Sure. For instance, I've had cases where someone's
8 alleged to have rifled through a wallet and handled
9 business cards. You can get it from that.

10 A It's possible, yes.

11 Q Because it is so sensitive.

12 A Correct.

13 Q And regarding DNA and how our skin has DNA in it,
14 we -- we collect fingernail scrapings from assault
15 victims because they can lash out and scratch their
16 attacker, right?

17 A Yes, correct.

18 Q And they could have DNA underneath their
19 fingernails.

20 A They could.

21 Q Which could identify the attacker.

22 A They could.

23 Q And you had fingernail scrapings in this case.

24 A I -- what -- do you have an item number, please?

25 Q I don't. I just heard you talking about it with

1 the prosecutor.

2 A I have items -- yes, I do have some fingernail
3 scrapings. That would be Items 12 and 13.

4 Q Okay.

5 A That would be from Walt Mullen. And then, Item 16
6 was material from right fingers, but I'm not sure what
7 that's referring to. That could have been scrapings, or
8 it could have been -- I'm not even sure, blood or -- or
9 -- I didn't find anything on Item 16, so.

10 Q Did you test them?

11 A I looked at it. Let me refer to my sheet here.
12 I'm going to look at my evidence worksheet and see what
13 -- I don't even know what was asked for on 16.

14 Q And while you look at that, sometimes you'll know
15 for sure it's fingernail scrapings. And then, sometimes
16 you'll know that it's just material from the hand of?

17 A Well, that -- that's in this case. So, we've got
18 something that was submitted. We've got Items -- or my
19 Items 12 and 13, which were referred to as fingernail
20 clippings from Walt Mullen, which that one's clear.

21 Q That's specific.

22 A Correct. And then, Item 16, though, it just says:

23 *Material from right fingers from*
24 *Jeanine Mullen.*

25 It asks for DNA analysis. And I'm guessing -- I

1 have to look at my sheet. On Item 16, it just says:

2 *Nothing of apparent serological value,*

3 which means that I -- when I examined that, I
4 didn't see anything that would indicate that it would be
5 useful for -- for swabbing or testing. I don't -- and I
6 don't recall what was in that envelop, to be honest with
7 you.

8 Q Okay. And sometimes you can get that because a
9 person's hands will be bagged at the scene, and the
10 material can get bagged.

11 A I assume so. I'm not sure in this case.

12 Q Okay. And I want to talk to you a little bit more
13 about how sensitive the DNA tests are and how we can
14 pick things up, and how things can be mixed. For
15 instance, if I -- if I ride my wife's bicycle, and she's
16 been riding it every Saturday for a long period of time,
17 you would expect to find her DNA on the handle.

18 A Oh, definitely, yes.

19 Q Okay. Let's say I borrow it just one time, and I
20 cut myself while I'm mountain biking on her bike, and I
21 put a little blood of mine on top of her DNA. You can
22 get a swab from that, right?

23 A Yes, definitely.

24 Q And you would be expected to find some DNA.

25 A Um-hmm.

1 COURT REPORTER: Is that yes?

2 Q And --

3 A Yes.

4 THE COURT: Thank you.

5 Q And it would -- sorry.

6 A I apologize. We're going quickly.

7 Q We are.

8 A It feel -- it feels odd saying yes so many times in
9 a row. I apologize to you.

10 Q That's because I'm good. I mean, you're going to
11 say yes to all my questions.

12 A Okay.

13 Q And you would expect to find DNA in that sample.

14 A Yes.

15 Q And you would find two profiles.

16 A Possibly.

17 Q Maybe more, but you could -- you would certainly
18 expect to find my wife's DNA and mine.

19 A It depends. You could overwhelm her. If you put
20 blood onto the handle, you -- it may get to the point
21 where I wouldn't be able to see hers, because hers is
22 just touch and yours was blood. So, yours may overwhelm
23 it. But it's also difficult to tell, because some
24 people seem to deposit more touch DNA than others, if
25 that makes sense. We do it at different rates, that you

1 may share something with your spouse or significant
2 other, and -- and it just doesn't equal out. Like -- if
3 that makes sense.

4 Q It does make sense. I've seen that, as well. For
5 instance, you'll have items -- like, say, you take work
6 gloves from me; you take work gloves from my cousin.
7 For whatever reason I could have a lot more touch DNA in
8 my gloves than his.

9 A Correct.

10 Q And that's -- that's not uncommon.

11 A That's common. Right.

12 Q Okay. And if you -- if I was to borrow my cousin's
13 gloves, and you took a DNA sample, you might get the
14 same two different profiles, and you might have the
15 majority contributor and a minority contributor, and
16 you'd be able to see that.

17 A Correct.

18 Q And blood is a very rich source of DNA.

19 A It is.

20 Q And very often, if you have a mixture of touch DNA
21 and blood, you would expect the major contributor to be
22 blood.

23 A That is -- yes. That -- that -- I think that's a
24 reasonable explanation of those things.

25 Q It wouldn't happen every single time. You'd have

1 to allow for the possibility of the other result.

2 A That's right.

3 Q But that's what you would normally find.

4 A This is a biological process, so it's not exact. I
5 guess that's one of the main things. I mean, the -- the
6 deposition of DNA and the retrieval of DNA, just -- it's
7 not perfect all the time. So, you can't expect someone
8 to -- you can't expect it to always turn out perfectly,
9 but what you've explained is possible.

10 Q Okay. In fact, that would be sort of the
11 traditional expectation.

12 A I think that's fair, yes. I think that the blood
13 would -- if you deposited blood onto a touch sample, I
14 think that it's fair to say that the blood would be the
15 majority of that sample. You may not see the minor at
16 all, as a matter of fact.

17 Q Right.

18 A Because the blood's so strong.

19 Q Exactly. And with regard to dating the DNA, can't
20 do it.

21 A Can't do it. We can't tell when it's deposited at
22 all. That's correct.

23 Q Right. We've had a gunshot person testify that
24 gunshot residue lasts eight months, at least, but DNA
25 goes back a lot longer than that.

1 A The -- yeah. The neanderthal genome has been
2 sequenced, if that's any, you know, indication. I mean,
3 that's thousands of years old, so.

4 Q Exactly. So, if I gave you a clothing sample and
5 said I need to know when that blood got on there,
6 there's no way to date that.

7 A There's just no way I could do it.

8 Q Okay. And you can get -- you can get samples that
9 indicate a mixture, and one person's DNA could have
10 gotten there a week ago; and then, somebody leaves DNA
11 on top, and you can't figure out who was there first.

12 A That's correct.

13 MR. MCGUIRE: Okay. I think that's all I have.
14 Thank you, sir.

15 A Thank you.

16 PAUL MEEH

17 RE-DIRECT EXAMINATION BY MR. STONE:

18 Q To just be clear, you didn't find anything one way
19 or the other on fingernail items.

20 A I didn't. The Items 12 and 13 were the fingernail
21 clippings from Walt Mullen, and I tested both of those.
22 There was nothing foreign to him in those.

23 Q Okay. And you looked at the other ones. You
24 couldn't find anything on that, either.

25 A Correct.

1 Q Okay. The blood itself -- and I know you were
2 talking about the exactness of DNA, but you were talking
3 about the retrieval. In other words, being able to get
4 DNA. Is that correct?

5 A Correct.

6 Q Not your testing, as far as the blood that you
7 tested, that tested from Jeanine Mullen on those jeans,
8 that's not what you're talking about when you're talking
9 about that was exact.

10 A The Item -- let's see, which one matched her? I
11 think it was Item 8.3 matched her, and it was only her
12 blood on those -- on the -- from that cutting.

13 Q Correct.

14 COURT REPORTER: *Her blood on the?*

15 A On the cutting.

16 MR. STONE: Okay. Thank you, sir. Thank you, your
17 Honor.

18 THE COURT: Anything further, Mr. McGuire?

19 MR. MCGUIRE: No. Give my best to Robin.

20 A Will do, sir.

21 THE COURT: Thank you.

22 MR. STONE: State calls Dr. Nicholas Batalis.

23 MADAM CLERK: Would you place your left hand on the
24 Bible, please. Raise your right hand. Do you solemnly
25 swear or affirm that the testimony you give shall be the

1 truth, so help you God?

2 DR. NICHOLAS IKE BATALIS: I do.

3 MADAM CLERK: Thank you. If you'll have a seat,
4 please. If you'll state your full name and spell your
5 last name for the record, please.

6 DR. NICHOLAS IKE BATALIS: My name is Nicholas Ike
7 Batalis, B/a/t/a/l/i/s.

8 DR. NICHOLAS IKE BATALIS

9 DIRECT EXAMINATION BY MR. STONE:

10 Q And Ike is your middle name?

11 A Yes, it is.

12 Q What do you do, sir?

13 A I'm a forensic pathologist at the Medical
14 University of South Carolina.

15 Q How long have you been at the Medical University?

16 A I've been on staff there for working on six years
17 now.

18 Q And what do you do there as far as -- you're a
19 pathologist. Is that correct?

20 A Yes, sir.

21 Q What exactly is pathology?

22 A Pathology is the field of medicine that deals with
23 the study of disease. So, a general pathologist would
24 be one that, if a surgeon took a biopsy to see if you
25 had cancer, or a different skin lesion; a PAP smear, the

1 pathologist would be the one to look at that and tell
2 your physician what sort of disease you may or may not
3 have.

4 That pathologist also gets training in clinical
5 laboratory medicine. So, if you get blood work drawn by
6 your doctor, the pathologist would be the one running
7 the lab and helping them sort out any questions when the
8 lab results come back.

9 Q And what is your -- do you have a sub-specialty, or
10 a specialty in pathologist?

11 A I do. I'm a forensic pathologist.

12 Q And what does that mean?

13 A Forensic pathology deals with the legal side of
14 medicine, particularly performing autopsies to determine
15 the cause and manner of death.

16 Q And how -- what kind of training do you have that
17 allows you to do that?

18 A So, upon completion of college, I then went on to
19 graduate medical school at the Indiana University School
20 of Medicine. After that, I came to the Medical
21 University of South Carolina, where I did a residency in
22 general anatomic and clinical pathology for four years.
23 After that, I passed national board examinations in
24 those fields, then went on to do a one-year specialized
25 fellowship in forensic pathology at the Dallas County

1 Medical Examiner's Office in Texas. Again, after that,
2 passed another national board exam, and that's when I
3 came to my -- my current employment.

4 Q And I know you've testified in court and have been
5 qualified as an expert before, as well; have you not?

6 A Yes, I have.

7 MR. STONE: At this time, your Honor, we'd offer
8 Dr. Batalis as an expert in the field of forensic
9 pathology.

10 MR. MACDOUGALL: Without objection.

11 THE COURT: Ladies and gentlemen, again, as the
12 other expert, Dr. Batalis is qualified as an expert in
13 the area of forensic pathology. Again, that allows him
14 to give his opinion and the reasons for his opinion.
15 Thank you.

16 Q Thank you, your Honor.

17 BY MR. STONE: Dr. Batalis, first, I would
18 like to ask you, if you would, please, talk to me about
19 the pathology or the autopsy that you performed on --
20 let me start with **John Doe 1**.

21 A Okay.

22 Q Do you have that report with you, sir?

23 A I do.

24 Q How old was **John Doe 1** at his death?

25 A We had him at four years to the day, on the day of

1 his death.

2 Q You performed the autopsy?

3 A I did perform the autopsy.

4 Q And when you performed the autopsy, you -- how do
5 you do that exactly? Do you -- do you do an overall
6 survey of the body, that kind of thing, or how does that
7 work?

8 A Yes. Our office in the Medical University of South
9 Carolina Charleston receives autopsies from several
10 different counties in South Carolina. The way we
11 process them, the body would be brought up to our
12 autopsy suite. We take photographs of the body as we
13 receive it, before we've done any manipulations. After
14 that, we would then take off the clothing, document all
15 of that, clean up the body, get the body cleaned, then
16 take another set of photographs after the body has been
17 cleaned.

18 We would then move on to our external examination,
19 which is basically a survey of the body from head to
20 toe. We're looking at basic stuff like height and
21 weight, eye color, hair color; and then, also, any
22 indications of natural disease or signs of trauma.

23 Once we complete our external exam, we then move on
24 to the internal exam, in which we make surgical-type
25 incisions to open the body and examine each of the

1 organs, one by one, again, looking for any -- any
2 natural disease or evidence of trauma.

3 After the autopsy's been completed, we then collect
4 blood samples for toxicology testing, and possibly
5 samples to look at under the microscope. And then, once
6 that comes together, we generate our final report.

7 Q Now, as part of your findings, what -- and you said
8 **John Doe 1** was four years old. Is that correct?

9 A Yes, he was.

10 Q Do you have a height and weight, as well, on that?

11 A Yes.

12 Q And what was that?

13 A We measured him at 40 inches in length, so that
14 would be 3 feet, 4 inches, and weighed him at 45 pounds.

15 Q And you performed -- I know as a part of your final
16 report, you do, basically, a chart to show your
17 findings. Is that correct?

18 A Yes, I do.

19 Q And you did a chart in this case?

20 A I did.

21 MR. STONE: Excuse me just a moment. I want to get
22 the last number, your Honor, for our exhibit.

23 THE COURT: Thank you.

24 COURT REPORTER: 84.

25 MR. STONE: Okay. So, we're on 84?

1 ITEM IDENTIFIED AS DIAGRAM OF
2 BODY OF **John Doe 1**
3 MARKED STATE'S EXHIBIT NUMBER 84,
4 FOR IDENTIFICATION.
5 BY MR. STONE:

6 Q Let me show you what's been marked State's Exhibit
7 84. Ask if you can identify that, sir.

8 A The entire field, or just the left side of the
9 diagram?

10 Q Go ahead and do the entire field, for the purpose
11 of this, and I'll have you come down and explain it.

12 A Okay. Yes, the left side of the -- the field is
13 the diagram I completed at the time of the report. The
14 right side is a diagram I completed a couple months ago
15 to better illustrate just the injuries on the body.

16 Q All right. And these are your reports that you --
17 that you prepared as a result of your findings?

18 A Yes, they are.

19 Q And then, obviously, this is a blowup from your
20 actual graph. Is that correct?

21 A That's correct.

22 MR. STONE: Your Honor, at this time, we move
23 State's Exhibit 84 into evidence.

24 MR. MACDOUGALL: Without objection.

25 THE COURT: It's in evidence without objection.

1 ITEM IDENTIFIED AS DIAGRAM
2 OF BODY OF **John Doe 1**
3 MARKED STATE'S EXHIBIT NUMBER 84,
4 ADMITTED AS EVIDENCE.
5 BY MR. STONE:

6 Q If I could get you to come off the stand, I need
7 you to keep your voice up. And I think we have a
8 pointer here. I'll give you this, and ask, if you
9 could, sir, to show us -- first of all, you said -- and
10 I know you were up on the witness stand. They didn't --
11 the jury did not see this, but this is what you did
12 initially? This, the right side of Exhibit 84 is your
13 initial findings? Is that correct?

14 A Yes. This is an entire body diagram that I
15 concluded at the time of the report. As you can see,
16 the top there are headers for weight, length,
17 temperature, just different aspects of the body,
18 notations in shorthand.

19 COURT REPORTER: I'm sorry. A *different* -- a
20 *different like a body?*

21 A I'm sorry.

22 Q Okay.

23 A Should I go back to the --

24 THE COURT: Please.

25 COURT REPORTER: Please. I'm so sorry.

1 A I'm sorry. There's a diagram of the body itself;
2 and then, also some headers at the top. As I mentioned,
3 we don't just describe the injuries, but we look for
4 scars, eye color, hair color. So, this diagram is --
5 has some shorthand notations of the notes I took; and
6 then, also illustrates the injuries that I did see.

7 And the diagram on the right is then a blowup, a
8 separate diagram of just the head, illustrating the
9 injuries in this case.

10 Q Okay. Tell us about the injuries in this case.

11 A So, the main finding in this autopsy was a single
12 gunshot wound to the head. The gunshot entrance wound
13 is here, on the upper, left side of the forehead, which
14 would be just right around the hairline. This was a --
15 a circular entrance wound that had a good amount of
16 stippling densely deposited around it.

17 The bullet then entered through the skin of the
18 left side of the forehead and passed into the skull,
19 passing through the brain, essentially, at an angle like
20 this, passing through the brain, through the bones of
21 the face; and then, exited the body on the right side of
22 the jaw, just in front of here. So, that would be right
23 about here on me.

24 Q Okay. Prior to your testimony, did you prepare a,
25 basically, a styrofoam head to show the angle of the

1 shot?

2 A I did.

3 ITEM IDENTIFIED AS STYROFOAM HEAD

4 MARKED STATE'S EXHIBIT NUMBER 85,

5 FOR IDENTIFICATION.

6 Q Let me show you what's been marked as State's
7 Exhibit 85. Is this the styrofoam head that you marked
8 with the -- that you put the rod through?

9 A It is.

10 MR. STONE: Okay. Your Honor, at this time, we'd
11 ask that he be able -- that he be able to put this as an
12 exhibit to the jury to explain the angle of the gunshot.

13 MR. MACDOUGALL: Clarification, your Honor. That's
14 not admitted into evidence. Is that correct?

15 MR. STONE: We'll not put it in evidence; just do
16 it as a demonstrative exhibit.

17 THE COURT: A demonstrative exhibit, yes.

18 BY MR. STONE:

19 Q Okay. Now, if you will, show me what you did --
20 and if you'd like me to, I can hold this.

21 A So, the styrofoam head is representative of the
22 decedent of this case. The entrance wound would be
23 located up here, or again, in the upper, left side of
24 the forehead. The wire is then showing the proximate
25 path of the bullet as it traveled through the body. So,

1 again, it entered here, at the upper, left side of the
2 forehead; went through the skull and the front part of
3 the brain, inside the skull. Then, where we can't
4 really see is in the middle, went through kind of your
5 sinus area, the inner parts of your face. And then,
6 exited, again, on the right side of the face, just at --
7 just at the angle under the lower jaw.

8 Q So, up here, this is -- the entrance wound is up
9 here, where I'm putting this red tag. Is that right?

10 A The entrance is up here.

11 Q All right. Now, you had mentioned earlier about, I
12 think, stippling. What do you mean by that?

13 A So, when a gun is fired, not just the bullet, the
14 bullet is not the only thing that comes out. When the
15 bullet is fired, to be fired, there is an explosion that
16 happens. So, in addition to the bullet coming out,
17 there's also gasses that come out, and there's also what
18 we call kind of a soot, which is basically the burned up
19 gunpowder. And then, other parts of the gunpowder
20 within the bullet don't get consumed; they don't get
21 burned up in that reaction. So, what they can do is fly
22 off, strike the skin, and cause small little scrapes or
23 abrasions, which would cause stippling.

24 Q All right. What's the relevance to stippling when
25 it comes to -- and you found stippling in **John Doe 1**

1 Mullen's skull, up here at the temple. Is that correct?

2 A Correct.

3 Q What's the significance of that?

4 A So, the -- the significance of stippling is,
5 depending on the type of weapon and the type of
6 ammunition used, it won't travel anymore than four feet
7 from the barrel of the gun to the decedent. The other
8 part, the soot that we mentioned, that would go -- that
9 goes out to no more than a foot, again, depending on the
10 type of weapon and the type of ammunition used. So,
11 combining the fact that we did not see any soot on the
12 skin, but we did have stippling, that would tell us that
13 the gun was approximately one to four feet from the
14 child's head when it was fired.

15 Q I took your report. I apologize, sir. Thank you.
16 Let me show you what -- well, first of all, before we go
17 to that, as an expert in the field of pathology, what
18 can you tell us as far as the cause of death and what
19 type of -- what type of death?

20 A The cause of death in this case was the gunshot
21 wound to the head. And the manner of death or type of
22 death would be homicide.

23 Q And the range of the shot, you've indicated, is
24 close contact -- contact -- what?

25 A I have it listed as medium range. Again, that

1 meaning between a foot and four feet from the body at
2 the time it was fired.

3 Q Let me show you what's been marked --

4 THE COURT: *One to four feet from the body at the*
5 *time?*

6 A Between one and four feet. The gun was between one
7 and four feet from the body at the time it was -- the
8 gun was fired.

9 ITEM IDENTIFIED AS CHART FOR
10 JEANINE MULLEN MARKED
11 STATE'S EXHIBIT NUMBER 86,
12 FOR IDENTIFICATION.

13 Q Let me show you what's been marked as State's
14 Exhibit 86. Is this a chart that you did for Jeanette
15 Mullen -- or, excuse me -- for Jeanine Mullen?

16 A It is. On this case, the one on the right is one I
17 did at the time of the autopsy, and the one on the left
18 is one I did later, just to show you the difference.

19 MR. STONE: At this time, your Honor, we move
20 State's Exhibit 86 into evidence.

21 MR. MACDOUGALL: Without objection, your Honor.

22 THE COURT: Without objection.

23 ITEM IDENTIFIED AS CHART FOR
24 JEANINE MULLEN MARKED STATE'S
25 EXHIBIT NUMBER 86, ADMITTED AS EVIDENCE.

1 BY MR. STONE:

2 Q I'll put this up here, and then, if I could -- do
3 you have a separate report for that?

4 A I do.

5 Q Tell me, if you would, now, you've mentioned this,
6 but the jury could not see it. So, which part of this
7 did you do immediately after, and how did that work?

8 A Sure. The -- this one is basically flipped from
9 the side before. So, the diagram on the right-hand side
10 here is the diagram that we did at the time of the
11 autopsy. So again, we have the shorthand headings for
12 the height, weight, different identifying features. We
13 do have the injuries included on here, as well. The
14 diagram on the right side, again, it's just illustrative
15 of just the injuries of the gunshot wounds and the
16 bullets that we recovered.

17 Q Okay. And what is the height that you have of
18 Jeanine Mullen?

19 A We measured her to be 67 inches in length, which
20 would be five feet, seven inches.

21 Q All right. Tell me what your findings -- and first
22 of all, you've got notes throughout on this. What are
23 these other notes for?

24 A So, the other notes include, other than the
25 injuries, we've described descriptions of tattoos.

1 There is various scars on the body. Some stria, which
2 are basically stretch marks, if you will, that are on
3 the abdomen here. I believe that's it, scars, tattoos,
4 just identifying features.

5 Q Specifically, down here on the -- on the left
6 foot, there's an indication of a tattoo. Does that say
7 E-Dub? What -- what -- or could you tell?

8 A It was difficult to tell. We -- we made it out as
9 E Dule, two different -- so, E by itself, and then,
10 D/u/l/e, but I believe that was in script form. So, I
11 -- I can't say that's exactly what it is.

12 Q All right. Any -- tell me about the injuries as to
13 -- as to Jeanine Mullen.

14 A She had two significant injuries on her. She had a
15 gunshot wound of the head, and a gunshot wound of her
16 left thigh, or excuse me, her -- her left thigh.

17 Q Tell me about the left thigh wound first.

18 A So, the gunshot wound on the left thigh was on the
19 -- it's drawn here on the posterior aspect, really,
20 right at the lateral aspect of the left thigh, just at
21 the side. It was somewhat of a irregular entrance
22 wound. So, the entrance wound we spoke about before on
23 the child was a perfect circle, which tells us it's just
24 a classical entrance wound. When bullets are fired,
25 they typically almost travel like a football, within a

1 spiral-type spiral, so they form very concentric
2 circles. In this case, the entrance wound was a little
3 bit irregular appearing, but nonetheless, an entrance
4 wound itself.

5 Q Does that indicate anything, as far as -- so, the
6 bullet itself is not spiraling. Is it tumbling or
7 something like that?

8 A That would indicate that it could be tumbling, in
9 which case it could be from striking an intermediate
10 target. It could be a window; it could be a piece of
11 fabric; anything that could -- could interfere between
12 the gun and the body itself.

13 Q Okay. Go ahead.

14 A So, that bullet basically just went through the
15 soft tissue of the thigh, and we recovered it from the
16 -- in the posterior inner aspect of the left thigh. So,
17 basically traveled just across the body. You can see
18 just a little bit downward, and maybe it's just a little
19 bit towards the back, but just kind of into the soft
20 tissue. And we did recover that bullet inside the
21 thigh.

22 Q Any stippling? Anything as far as -- can you tell
23 us how close that shot was, or that bullet from the gun
24 as it was fired?

25 A No. We did not have any serious stippling to

1 identify the range --

2 COURT REPORTER: I'm sorry. I'm sorry. *We didn't*
3 *have any serious stippling?*

4 A We did not have any soot or stippling to indicate
5 range to us for the wound of the left thigh.

6 Q So, that means it needed to be further back, then,
7 a certain distance?

8 A Further back, or there could have been something in
9 between. So, if somebody had, you know, a pair of jeans
10 or heavy sweats, the gunpowder isn't going to travel
11 through that and still strike the skin to cause the
12 stippling or abrasions that we saw in the previous case.

13 Q Okay. Let me ask you this. As an expert in this
14 field, would that be consistent with the -- could the
15 bullet have actually traveled through another body
16 before it hit her leg?

17 A It could have.

18 Q Okay. And it did not -- actually did not leave her
19 thigh. Is that correct? You actually found it still in
20 her thigh?

21 A Yes. We recovered the bullet at the autopsy.

22 Q Okay. Now, if you will, please, go to the -- the
23 second one of these. And first of all, how many wounds
24 were there?

25 A There were two wounds.

1 Q Okay. Tell me about the second wound now.

2 A So, the -- the second wound is located directly in
3 the middle of the forehead, between the eyes, just about
4 three inches below the top of the head. It's
5 illustrated here in the diagram at the time of the
6 report; and then, over here on the cleaned-up diagram,
7 to show the location a little bit better.

8 That entrance wound was widely gaping, so again, we
9 have three -- of the three wounds we've seen, they've
10 all appeared different. This one was almost in a star-
11 like pattern, located, again, in the middle of the
12 forehead.

13 Also associated with that star-like wound, there
14 was abundant soot on the skin, and extending into the
15 tissue and on the skull underneath the wound. So, that,
16 again, that would be the entrance wound there.

17 Q Now, what does that tell you as far as the -- well,
18 first of all, before we go there, let me ask you this.
19 Did you also prepare a styrofoam head for that, as well?

20 A I did.

21 ITEM IDENTIFIED AS CERTIFIED
22 COPY OF FAMILY COURT RECORD OF
23 EARNEST DAISE MARKED STATE'S EXHIBIT
24 NUMBER 87, FOR IDENTIFICATION.

25 Q Okay. Let me show you what's been marked as

1 State's Exhibit 87, and for demonstrative aid.

2 MR. STONE: Your Honor, at this time we'd ask that
3 we be able to publish that to a jury -- to the jury.
4 This --

5 MR. MACDOUGALL: With the same restriction, your
6 Honor, with regard to, ultimately, mitigating evidence.
7 Thank you, your Honor.

8 THE COURT: Okay.

9 BY MR. STONE:

10 Q And this is State's Exhibit 87. Did you prepare
11 this? Did you put the rod in and the markings on this?

12 A I did.

13 Q Okay. I'm going to give you the microphone again,
14 so I can get you -- all right, explain to me what -- or
15 explain to the jury what that is.

16 A So, we started out with the -- the wound itself.
17 As I was describing, as opposed to being a perfect
18 circle, like the entrance wound was on the child's head,
19 this one was really gaping and star-like, and again, had
20 the abundant soot going into the tissue itself. As far
21 as how that's relevant, again, getting back to a range,
22 so when that bullet's fired, again, the bullet comes out
23 and you have that explosion of gasses that comes out, as
24 well. If the gun is more than a couple inches away from
25 that body, that gas is going to dissipate into space,

1 and just dissipate into the air, not cause any damage
2 itself. But if the gun is pressed up against the skin,
3 particularly when it's overlying bone directly
4 underneath, such as the forehead, that gas has nowhere
5 to go. It can't go outside, so the gas gets pressed
6 into the skin and tissues, which results in these
7 typical large, gaping wounds.

8 Q What does that tell you as far as the distance is
9 concerned with the gun and that wound?

10 A This would be a contact wound where the gun was
11 against the head when it was fired.

12 Q Tell me about the angles.

13 A So, the angle here, as you can see, it's similar to
14 the last one, as far as the model here. The entrance
15 wound is here in the middle of the forehead. The wound
16 is traveling -- sorry -- the pathway is traveling from
17 front to back and downward. As you can see from the
18 side, it's traveling downward, and almost directly front
19 to back. It did travel a little bit to the left towards
20 the end. So, this bullet, after it went through the
21 skull up front, went through the lobes of the brain;
22 then, went through the base at the bottom of the skull
23 and then, we recovered this one just left of the
24 vertebra of one of the bones in her upper neck. So,
25 just -- just left of center, towards the back of the

1 neck, we recovered this bullet. So, even though the
2 wire's coming out, the bullet did not exit on this one,
3 but is representative of the angle that the bullet was
4 traveling.

5 Q Entrance wound in the front, and there was no
6 actual exit wound. Is that correct?

7 A Correct, no exit wound.

8 Q Okay. And so, from your findings -- and I'll hold
9 this -- from your findings, could you tell us the cause
10 and the manner of death for Jeanine Mullen?

11 A The cause of death in this case was determined to
12 be the gunshot wound to the head, with the gunshot wound
13 to the thigh being a contributory cause of death. The
14 manner of death, again, was homicide.

15 Q Okay. Let me ask you one other thing before I let
16 you go. State's Exhibit 17-B has been testified as to
17 how Jeanine's body, Jeanine Mullen's body, was found at
18 the time. She is -- the testimony was that she was face
19 down and in this direction. And I'll show you. It's
20 17-B, but this is the larger body with the head next to
21 the table. Can you tell us anything from the
22 determination of the angle of this shot? And I guess
23 the question is, how could she end up face down, being
24 shot straight in the forehead like this?

25 MR. MACDOUGALL: Objection, your Honor. May we

1 approach?

2 THE COURT: You may.

3 ON-THE-RECORD BENCH CONFERENCE,
4 OUT OF HEARING OF JURORS.

5 MR. STONE: He answered the question of bio-
6 mechanics. Can't he answer this question?

7 MR. MACDOUGALL: Your Honor, my objection is, this
8 man's a forensic scientist and physician. This
9 questions asks, apparently, about crime scene,
10 interpretation and the position that the body was in,
11 and what caused it. I don't think this witness is
12 qualified to testify as to that.

13 THE COURT: What's he going to say?

14 MR. STONE: He's going to testify the angle of the
15 shot and where the head was in comparison to the gun
16 itself. I don't think it's going to be anything further
17 than that.

18 THE COURT: You asked him how did she end up face
19 first.

20 MR. STONE: I'll rephrase the question.

21 THE COURT: That's what I'm thinking you're getting
22 to.

23 MR. STONE: Okay.

24 THE COURT: Sounds like bio-mechanics to me more
25 than anything. I'm just not sure I'd want to do that.

1 MR. STONE: I'll rephrase the question.

2 END BENCH CONFERENCE.

3 BY MR. STONE:

4 Q Doctor, let me ask one other question. You've got
5 -- and you have the report, and I think that is going to
6 also going to be, from indicating up here, the length of
7 her body was 67 inches. Is that correct?

8 A Correct.

9 Q All right. And try to keep your voice up a little.
10 But that's five-foot, seven inches tall? Is that
11 correct?

12 A Five feet, seven inches.

13 Q Okay. And so, from the angle, entrance wound here,
14 from the angle of the shot, what can you tell us about
15 where the head was? Five foot, seven, I guess, is about
16 right here. Where would the gun had to have been?

17 A So, the -- the wire's traveling through, is showing
18 the pathway of the bullet. So, that's telling us the
19 relationship of the gun to the head when it was fired.

20 If she was in a standing direction with her hand
21 upright, the gun would had to be, again, pressed against
22 it, against the skull, at an angle, down like that.

23 Another possibility, it's still in the upright, if she
24 tilted her head forward, --

25 Q Okay.

1 A -- then, holding the gun straight out could still
2 result in that downward angle, as you can see from here.

3 Q Okay. Thank you.

4 COURT REPORTER: I'm sorry. *Result in that*
5 *downward angle, as you can see?*

6 A As you can see here.

7 MR. STONE: Thank you, your Honor. Doctor, if
8 you'd go ahead and take the stand.

9 DR. NICHOLAS IKE BATALIS

10 CROSS-EXAMINATION BY MR. MACDOUGALL:

11 Q Doctor, my name is Mark MacDougall. I'm one of the
12 lawyers representing Earnest Daise here. I just have a
13 couple questions for you. The first is that you -- I
14 think your report described the bullets that were
15 recovered as mid-caliber. Is that the language you
16 used?

17 A I believe I said medium caliber.

18 Q Medium caliber. Okay. And is that consistent with
19 a .38 caliber?

20 A Yes, it would be.

21 Q And the other question, you've described really
22 horrific, violent homicides here. Do you agree with
23 that?

24 A To me, all --

25 Q I know it's your business, but -- but

1 notwithstanding, these were very violent killings.

2 A To me, all homicides are violent, but yes, they
3 were violent deaths.

4 Q Right. And nothing that you've testified to today
5 suggests to you, and none of your testimony is intended
6 to suggest who was responsible for those homicides. Is
7 that right?

8 A No, it's not.

9 Q I'm sorry?

10 A No, it's not. I don't know who caused the
11 injuries; I'm just -- the way we look at pathology is,
12 we're testifying for those not long -- no longer here to
13 speak. So, I'm just describing the injuries and
14 findings that I saw.

15 Q Just to be clear, you have no idea and nothing in
16 your testimony is intended to suggest who committed
17 these homicides.

18 A No.

19 MR. MACDOUGALL: Thank you, your Honor. No further
20 questions.

21 MR. STONE: Nothing further for this witness, your
22 Honor.

23 THE COURT: All right. Dr. Batalis, you may be
24 excused, sir.

25 A Thank you.